

## **EARLY MODERN WORKSHOP: Jewish History Resources**

**Volume 21: The Land of Israel**

**Monday August 19 and Tuesday August 20, 2024**

### **The Representation of the Land of Israel in Joseph Karo's *Shulhan 'Arukh***

Alyssa M. Gray, Hebrew Union College-Jewish Institute of Religion

#### **Introduction**

Joseph Karo's (1488–1575) legal *oeuvre* marks a transition between the Jewish Middle Ages and early modernity. Of his legal works, two are particularly consequential: the analytic magnum opus *Beit Yosef* (“House of Joseph”), presented in the form of a commentary on Jacob ben Asher's fourteenth-century lawbook *Arba'ah Turim* (“Four Rows,” known as “Tur”), and its companion, *Shulhan Arukh* (“Prepared Table”). Karo composed *Beit Yosef* over an approximately twenty-year period (1522–1547, with later revisions), and its four parts were printed in Italy between 1550 and 1559. *Shulhan Arukh* was first published in Italy in 1565. In a brief introduction, Karo describes *Shulhan Arukh* as a lawbook that collects *Beit Yosef*'s rulings, presenting them “in a concise manner.” *Shulhan Arukh* is also to serve as a Jewish law *aide mémoire*, the content of which both seasoned scholars and students would come to know by heart through constant monthly study and repetition. While the story of *Shulhan Arukh*'s composition and reception is incomplete without reference to Moses Isserles's

(1530–1572) glosses and their early printing as part of the work (beginning in 1574), this presentation focuses on Karo's own text.

Karo's brief introduction to *Shulhan Arukh* does not fully account for how he composed it. Even *Shulhan Arukh*'s early readers recognized the lawbook's clear indebtedness to the language of *Arba'ah Turim* (especially) as well as that of Maimonides's *Mishneh Torah* (twelfth century). Source-criticism reveals that at times, Karo introduces novel ideas into sequences of language he takes from these predecessors, especially *Arba'ah Turim*. Karo's literary interventions may be based on legal sources *Arba'ah Turim* neglected or was unaware of, or they may be his own original formulations. Ongoing research demonstrates to date that there are demonstrable thematic patterns to two sets of these interventions, one of which is the subject of this presentation: Karo's literary interventions touching on the land of Israel. Identifications of other literary interventions and their themes is a desideratum. Broader study of these thematic patterns beyond the "four walls" of Karo's lawbooks may further illuminate his thought, public roles, and Safedian context.

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*Shulhan Arukh Orach Hayyim* 151.11

If at the time the synagogue was built, [the community] made a condition [allowing them] to use it [as well for a non-sacred purpose], it is permitted to use it [thusly] when it is in ruins. But a condition is ineffective when [the synagogue] is habitable. And even [when the synagogue is] in ruins, a condition is ineffective [to allow] for a disgraceful use, such as planting and public accountings. **These [principles] apply to synagogues outside the land [of Israel], but no condition at all is effective as to synagogues in the land of Israel.**

*Tur Orach Hayyim* 151

And if at the time [the synagogue] was built [the community] made a condition [allowing them] to use it [as well for a non-sacred purpose], it is permitted to use it [thusly] when it is in ruins. But a condition is ineffective when [the synagogue] is habitable. And even when it is in ruins, a condition is ineffective [to allow] for a disgraceful use, such as planting and public accountings.

*Beit Yosef to Tur Orach Hayyim* 151

And the Tosafists wrote<sup>1</sup> that this [principle] “[synagogues] are made on condition” is only effective for those [synagogues] in Babylonia, for at the time of

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<sup>1</sup> Tosafot to bMegillah 28b, s.v. “*batei*.” The Tosafists (Hebrew, “Tosafot”) were Franco-German scholars of the 12<sup>th</sup>-13<sup>th</sup> centuries who composed dialectical commentaries on the Babylonian Talmud with the aim (in part) of harmonizing real or perceived inconsistencies between passages. “Tosafot” means “additions.” The “additions” are to the widely-accepted commentary of the northern French scholar Rashi (1040–1105).

the redeemer's coming (may it be speedily in our days), their sanctity will be canceled. But a condition is ineffective for those [synagogues] in the land of Israel, the sanctity of which endures forever.

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*Shulhan Arukh Orach Hayyim 151.11*

אם בשעת בנין בהכ"נ התנו עליו להשתמש בו, מותר להשתמש בו בחרבנו; אבל ביישובו, לא מהני תנאי. ואפילו בחרבנו, לתשמיש מגונה, כגון: זריעה וחשבונות של רבים, לא מהני תנאה; בד"א, בבתי כנסיות שבחוצה לארץ, אבל בבתי כנסיות שבא"י, לא מהני שום תנאי.

*Tur Orach Hayyim 151*

ואם התנו עליו להשתמש בו בשעת בנין מותר להשתמש בו בחורבתו אבל ביישובו לא מהני ביה תנאה: ואפילו בחורבנו לתשמיש מגונה כגון זריעה וחשבונות של רבים לא מהני תנאה.

*Beit Yosef to Tur Orach Hayyim 151*

וכתבו התוספות (כח: ד"ה בתי כנסיות) דהא דעל תנאי הן עשויין לא מהני אלא לאותם שבבבל שהרי לעת בוא גואל במהרה בימינו תפקע קדושתם אבל לאותם שבארץ ישראל לא מהני תנאי שהרי: קדושתן לעולם קיימת.

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*Shulhan Arukh Orach Hayyim* 248.4

It is forbidden [for Jewish travelers] to depart three days prior to the Sabbath (i.e., Wednesday–Friday) as part of a desert caravan [led by non-Jews]. Everyone [involved] knows that [the Jewish travelers] will need to desecrate the Sabbath because, on account of the danger [to life entailed by a desert journey], they will not be able to delay [their journey and remain] by themselves in the desert on the Sabbath. They are permitted to depart on Sunday, Monday, and Tuesday, and if thereafter a [situation of] danger emerges and [the traveler] must desecrate the Sabbath on account of [the obligation of] saving life, this is permitted and there [legally] is no [Sabbath] desecration. **And the one who ascends to the land of Israel, if he chances upon a caravan even on Friday, since this is a matter of [divine] commandment, he may depart. . . .**

*Tur Orach Hayyim* 248

One does not set sail on a ship within three days of the Sabbath. This [rule] applies to a discretionary matter, but [setting sail] is permitted as to a matter of [divine] commandment. . . And on the subject of “matter of [divine] commandment,” Rabbenu Tam<sup>2</sup> interpreted [that to mean] that wherever a person goes, be it for commerce, or to visit his friend—it is all considered to be a matter of [divine]

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<sup>2</sup> Rabbi Jacob ben Meir Tam of Ramerupt (1100–1171), a leading master of the dialectical Tosafist school of talmudic learning in northern France.

commandment. Only traveling for the sake of traveling is considered to be a discretionary matter.

*Beit Yosef to Tur Orach Hayyim 248*

And thus did the Rivash<sup>3</sup> write in a responsum (chapter 101) that this which our rabbi (=the Tur) wrote in the name of Rabbenu Tam is an extreme leniency. And he wrote that, nevertheless, ascending to the land of Israel is certainly a matter of [divine] commandment. . . .

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<sup>3</sup> Rabbi Isaac bar Sheshet Perfet (1326–1408). A prolific writer of responsa and communal leader in Valencia and Barcelona, he eventually settled in Algiers.

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#### *Shulhan Arukh Orach Hayyim 248.4*

היוצאים בשיירא במדבר, והכל יודעים שהם צריכים לחלל שבת כי מפני הסכנה לא יוכלו לעכב במדבר בשבת לבדם, ג' ימים קודם שבת אסורים לצאת, וביום ראשון ובשני ובשלישי מותר לצאת, ואם אחר כך יארע לו סכנה ויצטרך לחלל שבת מפני פיקוח נפש, מותר, ואין כאן חילול; והעולה . . . לארץ ישראל, אם נזדמנה לו שיירא אפילו בערב שבת, כיון דדבר מצוה הוא, יכול לפרוש

#### *Tur Orach Hayyim 248*

אין מפליגין בספינה פחות מג' ימים קודם השבת בד"א לדבר הרשות אבל לדבר מצוה מותר. . . ולענין דבר מצוה פר"ת שכל מקום שאדם הולך כגון לסחורה או לראות פני חבירו חשיב הכל דבר מצוה ואין חשובה דבר הרשות אלא כשהולך לטייל

#### *Beit Yosef to Tur Orach Hayyim 248*

וכן כתב הריב"ש בתשובה (סי' קא) שזה שכתב רבינו בשם רבינו תם קולא יתירה היא ומכל מקום . . . כתב שלעלות לארץ ישראל הוי שפיר לדבר מצוה



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*Shulhan Arukh Orach Hayyim 269*

They are accustomed to sanctify [the Sabbath] in the synagogue.<sup>4</sup> The one who sanctifies should not taste of the sanctification wine, but should give it to a child, for the sanctification should only be [recited] in the place of the [Friday evening Sabbath] meal. And originally, [the practice of reciting the sanctification in the synagogue] was only instituted on account of guests who ate and drank in the synagogue, to fulfill for them their obligation [to sanctify the Sabbath prior to eating the Friday night meal]. And now, the reason[ing] of those places that have been accustomed to recite the sanctification in the synagogue is that the enactment is not nullified even though guests do not eat in the synagogue. **But it is better to institute the practice of not sanctifying in the synagogue, which is the practice of the land of Israel.**

*Tur Orach Hayyim 269*

And they are accustomed in all places that the prayer leader sanctifies [the Sabbath on Friday nights] in the synagogue. And I am astonished: How has this practice spread? . . . for they only instituted [the recitation of the Friday night sanctification in the synagogue] on account of guests. And since there are no [longer any] guests [who eat meals in the synagogue], it is appropriate not to sanctify [the Sabbath there]. And had I the power I would nullify [this practice].

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<sup>4</sup> “Sanctify [the Sabbath]” refers to the recitation of a passage that begins with a blessing over wine and concludes with a blessing of God “who sanctifies the Sabbath.” This passage is known as “*kiddush*” (“sanctification”), the nominal form of the verb *l'kadesh* (“to sanctify”).

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*Shulhan Arukh Orach Hayyim 269*

נוהגין לקדש בבהכ"נ, ואין למקדש לטעום מיין הקידוש אלא מטעימו לקטן, דאין קידוש אלא במקום סעודה (וע"ל סי' רע"ג). ומעיקרא לא נתקן אלא בשביל אורחים דאכלי ושתי בבי כנישתא, להוציאם י"ח, ועכשיו אע"ג דלא אכלי אורחים בבי כנישתא לא בטלה התקנה, זהו טעם המקומות שנהגו לקדש בבהכ"נ. אבל יותר טוב להנהיג שלא לקדש בבהכ"נ, וכן מנהג ארץ ישראל

*Tur Orach Hayyim 269*

ונוהגין בכל המקומות שש"ץ מקדש בבהכ"נ ואני תמה היאך נתפשט זה המנהג. . שלא תקנו אותו אלא משום אורחין וכיון דליכא אורחין ראוי היה שלא לקדש ואי איישר חילי אבטליניה

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*Shulhan Arukh Orach Hayyim* 306.11

It is permitted to buy a house in the land of Israel from a non-Jew on the Sabbath, and [the non-Jew] signs and brings [the document] to the [non-Jewish] courts.

*Beit Yosef to Tur Orach Hayyim* 306

It is written in the *hagahot Asheri*<sup>5</sup> in chapter 2 of [Babylonian Talmud tractate] Mo'ed Katan (paragraph 18) in the name of *Or Zaru'a*<sup>6</sup>: “It is permitted to buy houses from a non-Jew on the Sabbath. How does one do it? [The Jew] shows [the non-Jew] wallets of *dinarin* (monies) and the non-Jew signs and brings [the document] to the courts.” End quote. **And it appears that [*Or Zaru'a*] is dealing with buying a house in the land of land of Israel**, and as we say in the first chapter of [Babylonian Talmud tractate] Gittin (8b) and at the end of the chapter [the name of which is] “is greater” (Babylonian Talmud tractate Bava Kamma chapter 7) (BK 80b).

*Hagahot Asheri*, Mo'ed Katan 2.18

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<sup>5</sup> Notes on the legal commentary of Rabbi Asher ben Yehiel (1250–1327) on the Babylonian Talmud, alleged to have been written by Rabbi Israel of Krems (14<sup>th</sup> c.).

<sup>6</sup> A 13<sup>th</sup> c. lawbook written by Rabbi Isaac ben Moses of Vienna (ca. 1180–1270).

**It is permitted to buy houses from non-Jews on the Sabbath.** How does he do it? [The Jew] shows [the non-Jew] a wallet of *dinarim* (coins) and the non-Jew signs and brings [the document] to the courts. From *a''z* (*Or Zarua'*).

*Or Zar'ua* 2.85

And there is another proof, for we say in the first chapter of [Babylonian Talmud tractate] Gittin (8b) that the one who buys a field [in Syria is like one who buys a field] in the outskirts of Jerusalem. [The Jew] tells the idolater, and he writes a bill of sale for him even on the Sabbath. For even though telling an idolater [on the Sabbath to perform a labor for a Jew] is a [violation of Sabbath] “rest,”<sup>7</sup> **the rabbis did not issue a decree [prohibiting this] on account of [encouraging] settlement of the land of Israel.**

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<sup>7</sup> “Rest” (שבות, *shevut*) is a category of activities that the talmudic rabbis prohibited on the Sabbath even though these activities (in this case, speech directing a non-Jew to perform labor on the Sabbath) are not technical Sabbath violations for a Jew. The prohibition is a rabbinic stringency to meant to provide an additional layer of protection to the sabbatical character of the Sabbath day.

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*Shulhan Arukh Orach Hayyim* 306.11

מותר לקנות בית בארץ ישראל מן הא"י, בשבת, וחותרם ומעלה בערכאות

*Beit Yosef to Tur Orach Hayyim* 306

כתוב בהגהות אשרי פרק ב' דמועד קטן (סי' יח) בשם אור זרוע מותר לקנות בתים מן הגוי בשבת כיצד הוא עושה מראה הוא לו כיסים של דינרין והגוי חותם ומעלה לערכאות עכ"ל ונראה דבקונה בית (:) וכדאמרינן בפרק קמא דגיטין (ח:) ובסוף פרק מרובה (ב"ק פ בארץ ישראל מיירי

*Hagahot Asheri, Mo'ed Katan* 2.18

מותר לקנות בתים מן הנכרי בשבת כיצד הוא עושה מראה הוא לו כיס של דינרים והנכרי חותם ומעלה לערכאות. מא"ז

*Or Zar'ua* 2.85

ועוד ראה דאמרי' פ"ק דגיטין דהקונה שדה [בסוריא כקונה] בפרוורי ירושלים אומר לעכו"ם וכותב עליו אונו אפי' בשבת דאע"ג דאמירה לעכו"ם שבות משום ישוב ארץ ישראל ל"ג רבנן

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#### *Shulhan Arukh Orach Hayyim 566.4*

They are accustomed to increase [the number of] penitential prayers in the blessing “Forgive us.”<sup>8</sup> And there are those who are not accustomed to recite penitential prayers until after the conclusion of the eighteen blessings,<sup>9</sup> **and thus did the ancients (rabbis) institute in the land of Israel, which is the correct practice.**

#### *Tur Orach Hayyim 566*

And they are accustomed to increase [the number of] penitential prayers in the blessing “Forgive us.” And the Ri<sup>10</sup> explained that they rely on that which we say<sup>11</sup> “And if he [wishes] to [add petitions] at the end of each [petitionary] blessing [of the *Amidah*] reflecting that blessing, he may do so.<sup>12</sup> But he must begin [with a petition] reflecting that blessing, and afterwards he may lengthen [it] with words of appeasement [of God] and pleas as he wishes, whether in private or public. And

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<sup>8</sup> There are nineteen blessings in the *Amidah* (“standing”) prayer, the central prayer of the three daily prayer services recited mornings, afternoons, and evenings on weekdays. The first three blessings praise God, the middle thirteen are petitions, and the final three offer thanks to God. The blessing “Forgive us” is the sixth of the nineteen (and thus the third of the petitionary blessings). It begins “Forgive us, our father for we have sinned” and ends “Blessed are you, Lord, gracious one who is abundantly forgiving.” The *Shulhan Arukh* paragraph deals with adding extra petitions to “Forgive us” on public fast days.

<sup>9</sup> “Eighteen blessings” is another old name for the *Amidah* prayer, which originally (according to the Babylonian Talmud) consisted of eighteen blessings. Although the prayer came to be composed of nineteen blessings, this old name remains.

<sup>10</sup> Rabbi Isaac ben Samuel of Dampierre (1115–1184). A leading master of the Tosafist school in northern France, and a nephew of Rabbi Jacob ben Meir Tam.

<sup>11</sup> bAvodah Zarah 8a.

<sup>12</sup> The reference to bAvodah Zarah 8a ends here.

that which Rabbi Yehoshua ben Levi said,<sup>13</sup> that one can say [petitions] after his [*Amidah*] prayer even like the order of the Yom Kippur [prayer service],<sup>14</sup> does not exclude [adding personal petitions] at the end of each blessing if he began [with a petition] reflecting that blessing. But rather, after the [*Amidah*] prayer, he can begin saying [petitions] however he wishes—which is not the case in the middle of the [*Amidah*] prayer. And there are places in which they are accustomed to recite petitions after the conclusion of the eighteen blessings. And thus Rav Amram<sup>15</sup> wrote, that one may recite petitions in “Forgive us.” And thus did Rav Natronai<sup>16</sup> say: “It is the practice of the two academies<sup>17</sup> that in the morning of a public fast they recite seven petitionary prayers and three in the afternoon. And if there is sufficient time [in the afternoon], they recite five.” And thus did Rav Sar Shalom<sup>18</sup> write: “It is not our practice on a public fast day to recite petitionary prayers after the eighteen blessings (the *Amidah*), but rather in ‘Forgive us.’”

### *Beit Yosef to Tur Orach Hayyim 566*

And they are accustomed to increase [the number of] petitionary prayers in the blessing “Forgive us.” And the Ri explained that they rely on that which we say: “And if he [wishes] to [add petitions] at the end of each [petitionary] blessing [of the *Amidah*] reflecting that blessing, he may do so,” etc. And the Tosafists wrote in the first chapter of [Babylonian Talmud tractate] Avodah Zarah (8a, s.v. “*im ba*”) that Rabbi Yehoshua ben Levi’s statement that one can say [petitions] after his [*Amidah*] prayer even like the order of the Yom Kippur [prayer service] means what it says, but that [he may] not add petitionary prayers in the middle of his [*Amidah*] prayer. And [continue the Tosafists], one can say that our practice now on fast days to lengthen [the *Amidah* prayer] with [scriptural] verses of mercy and petitionary prayers in the blessing “Forgive us” is due a community’s being

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<sup>13</sup> bAvodah Zarah 8a.

<sup>14</sup> Which is quite lengthy.

<sup>15</sup> Rav Amram ben Sheshna (ca. 810–875), for a time the “gaon” (“excellency,” academy head) of Sura in Iraq. He composed a lengthy responsum on liturgy that is widely considered to be an early attempt at composing a rabbinic Jewish prayer book (*Seder Rav Amram Gaon*).

<sup>16</sup> Rav Natronai bar Hilai (9<sup>th</sup> c. CE) was a gaon of the Sura academy and an older contemporary of Rav Amram bar Sheshna.

<sup>17</sup> Sura and Pumbedita in Iraq.

<sup>18</sup> Rav Sar Shalom (9<sup>th</sup> c. CE) was a gaon of Sura and predecessor of Rav Natronai bar Hilai.

different (i.e., a community is permitted to take liturgical liberties that an individual may not). End quote. And it appears that [the Tosafists'] reasoning is that they understand that which we say: “‘And if he wishes to [add petitions] at the end of each [petitionary] blessing [of the *Amidah*] reflecting that blessing, he may do so’ means [adding] a few things, but not to go on at length to the extent that we do.



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*Shulhan Arukh Orach Hayyim 566.4*

נוהגים להרבות סליחות בברכת סלח לנו; ויש שאין נוהגים לומר סליחות עד אחר סיום י"ח ברכות, וכן הנהיגו הקדמונים בא"י והוא המנהג הנכון.

*Tur Orach Hayyim 566*

ונוהגין להרבות סליחות בברכת סלח לנו ופר"י שסומכין על הא דאמרינן (ע"ג ח א) ואם בא לומר בסוף כל ברכה מעין אותה ברכה אומר רק שיתחיל מעין הברכה ואח"כ יכול להאריך בדברי ריצוי ותחנונים כפי רצונו בין יחיד בין רבים והא דאמר רבי יהושע בן לוי שיכול לומר אחר תפילתו אפי' כסדר י"ח לא בא למעט בסוף כל ברכה וברכה אם התחיל מעין הברכה אלא שלאחר התפלה יכול להתחיל ולומר היאך שירצה מה שאין כן בתוך התפלה ויש מקומות שנוהגין לומר סליחות אחר סיום י"ח ברכות וכ"כ רב עמרם שיכולין לומר סליחות בסלח לנו והכי קאמר רב נטרונאי מנהג ב' ישיבות בתענית צבור בשחרית אומרים ז' סליחות ובמנחה ג' ואם יש פנאי אומר ה' וכ"כ רב שר שלום בתענית צבור אין מנהגינו לומר סליחות אחר י"ח ברכות אלא בסלח לנו.

*Beit Yosef to Tur Orach Hayyim 566*

ונוהגים להרבות סליחות בברכת סלח לנו ופירש ר"י שסומכין על הא דאמרינן אם בא לומר בסוף כל ברכה מעין אותה ברכה אומר וכו'. והתוספות כתבו בפרק קמא דעבודה זרה (ח. ד"ה אם בא) אהא דאמר רבי יהושע בן לוי אם בא לומר אחר תפילתו כסדר יום הכפורים אומר משמע אבל באמצע

תפילתו לא ומה שנוהגים עתה בתעניות להאריך בפסוקי דרחמי ובסליחות בברכת סלח לנו איכא  
למימר דציבור שאני עכ"ל ונראה שטעמם משום דמשמע להו דהא דאמרינן אם בא לומר בסוף כל  
ברכה מעין אותה ברכה אומר היינו לומר קצת דברים אבל להאריך כל כך כמו שאנו מאריכים לא

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*Shulhan Arukh Orach Hayyim 576.11*

And similarly, over rain. How so? Were the rains to be overwhelming to the point of causing anguish, these [affected people] may pray about them (for the rains to stop), for there is no greater anguish than this, that houses collapse and [people's] homes turn out to be their graves. **And in the land of Israel one does not pray [for the cessation] of excessive rains, for it is a hilly land, their houses are built of stone, and excessive rain is a goodness for them. And one does not fast to cause a goodness to pass away. But now in Safed there are house collapses on account of rain, and one prays about them (for a cessation of the excessive rain).**

*Tur Orach Hayyim 577*

One prays concerning any trouble, that it not come upon them, except for excessive rain, since one does not pray for [the cessation of] an excess of goodness. And this applies to a hilly land that requires much rain. But a sunken land for which excessive rain is a hardship and in which, moreover, it causes house collapses, one prays [for the rains to stop] since there is no greater anguish.

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וכן על המטר. כיצד, הרי שרבו עליהם גשמים עד שיצרו להם, הרי אלו מתפללים עליהם, שאין לך צרה יתירה מזו שהבתים נופלים ונמצא בתיהם קבריהם; ובארץ ישראל אין מתפללין על רוב הגשמים, מפני שהיא ארץ הרים ובתיהם בנויים באבנים ורוב הגשמים טובה להם ואין מתענים להעביר הטובה; ועכשיו בצפת מצוים מפולת בתים מפני הגשמים, ומתפללים עליהם.

*Tur Orach Hayyim 577*

מתפללין על כל צרה שלא תבא עליהם חוץ מעל רוב הגשמים שאין מתפללין על ריבוי הטובה וה"מ בארץ הרים שצריכה לרוב גשמים אבל ארץ מצולה שרוב גשמים קשין לה ולא עוד אלא שמפילין בתים עליהם אין לך צרה גדולה מזו ומתפללין עליהם

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*Shulhan Arukh Yor'eh De'ah* 251.3 (excerpt)

And the poor of one's house take precedence over the poor of one's town, and the poor of one's town take precedence over the poor of another town. **And the inhabitants of the land of Israel take precedence over the inhabitants of outside the land.**

*Tur Yor'eh De'ah* 251

And the poor of one's house take precedence over the poor of one's town, and the poor of one's town take precedence over the poor of another town.

*Beit Yosef to Tur Yor'eh De'ah* 251

It was taught in the Sifrei<sup>19</sup> (see *piska* 63): *your brother* (Deuteronomy 15:7)—this is your brother from your father. *One of your brothers* [this is your brother from your mother]. This teaches that your brother from your father takes precedence over your brother from your mother. *In one of your gates*—the people of your town take precedence over the people of another town. *In your land*—the inhabitants of the land of Israel take precedence over the inhabitants of outside the land. And the inhabitants of outside the land, from where [do we derive that they should be given charity]? Scripture says, *which the Lord your God gives you*—this comes to

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<sup>19</sup> The reference is to Sifrei Deuteronomy, a 3rd–4th c. CE compilation of midrash to the biblical book of Deuteronomy. The passage is found in *piska* 116 of the Finkelstein edition of Sifrei Deuteronomy (the standard scholarly edition).

include every place [where Jews live]. End quote. And the SeMaG<sup>20</sup> wrote this [tannaitic] passage [into his lawbook] (there 207a), as did the Mordecai<sup>21</sup> [in his legal notes] to the first chapter of (Babylonian Talmud tractate) Bava Batra (paragraph 503).

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<sup>20</sup> *Sefer Mitzvot Gadol* (“Great Book of Commandments”), a lawbook organized around Maimonides’s (1138–1204) list of the 613 commandments of the Torah, was written by the northern French Tosafist Rabbi Moses of Coucy in the first half of the 13<sup>th</sup> century. In his introduction to the Beit Yosef, Karo includes the SeMaG as one of the five “second-tier” scholars of importance in his legal decision-making.

<sup>21</sup> Mordecai ben Hillel (d. ca. 1298) wrote legal notes to the Babylonian Talmud which are included in standard printed editions. He was a student of the famed Rabbi Meir ben Rabbi Barukh of Rothenburg (1215–1293). In his introduction to the Beit Yosef, Karo includes the Mordecai as one of the five “second-tier” scholars of importance in his legal decision-making.

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*Shulhan Arukh Yor'eh De'ah* 251.3 (excerpt)

ועניי ביתו קודמין לעניי עירו, ועניי עירו קודמין לעניי אחרת ויושבי ארץ ישראל קודמין ליושבי חוצה  
לארץ.

*Tur Yor'eh De'ah* 251

ועניי ביתו קודמין לעניי עירו ועניי עירו קודמין לעניי עיר אחרת.

*Beit Yosef to Tur Yor'eh De'ah* 251

תניא בספרי (ראה פסקא סג) אחיך זה אחיך מאביך מאחד אחיך [זה אחיך מאמך] מלמד שאחיך  
מאביך קודם לאחיך מאמך באחד שעריך אנשי עירך קודם לאנשי עיר אחרת בארצך יושבי ארץ  
ישראל קודמים ליושבי חוצה לארץ ויושבי חוצה לארץ מנלן תלמוד לומר אשר ה' אלהיך נותן לך  
:(לרבות כל מקום ע"כ. וכתבוה סמ"ג (שם רז ע"א) להאי ברייתא והמרדכי בפ"ק דב"ב (סי' תקג

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*Shulhan Arukh Yo'reh De'ah* 310.3

A non-expert who looked over a firstborn animal which was then slaughtered [erroneously] on his say-so, [the animal] is buried and [the non-expert] compensates [the owner] from his own resources. How much should he pay [as compensation]? If he is in the land of Israel, he should pay half the value of a large animal and a quarter of the value of a small animal. And outside the land, [he should pay] half the value of either a large or small animal. **And today, in which most fields even in the land of Israel are not [in the possession] of Jews, it is permitted to raise small cattle even in the land of Israel. Therefore, even in the land of Israel he pays half [the animal's] value [as compensation].**

*Tur Yo'reh De'ah* 310

A non-expert who looked over a firstborn animal which was then slaughtered [erroneously] on his say-so, [the animal] is buried and [the non-expert] compensates [the owner]. And how much should he pay [as compensation]? If he is in the land of Israel, he should pay half the value of a large animal and a quarter of the value of a small animal. And outside the land, [he should pay] half the value of either a large or small animal.



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*Shulhan Arukh Yo'reh De'ah 310.3*

מי שאינו מומחה, וראה את הבכור, ונשחט על פיו, יקבר וישלם מביתו. וכמה ישלם, אם הוא בארץ ישראל משלם בגסה חצי דמיו, ובדקה רביע דמיו; ובחוץ לארץ, בין בדקה בין בגסה חצי דמיו. והאידנא, שאף בא"י אין רוב שדות של ישראל, מותר לגדל בהמה דקה אפילו בארץ ישראל, הילכך אפי' בא"י אף בדקה משלם חצי דמים.

*Tur Yo'reh De'ah 310*

מי שאינו מומחה ורואה בכור ונשחט על פיו יקבר וישלם וכמה ישלם אם הוא בא"י משלם בגסה חצי דמיו ובדקה רביע דמיו ובח"ל בין בדקה בין בגסה חצי דמיו

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*Shulhan Arukh Even Haezer 45.2*

**Today, the entire kingdom of the land of Israel, Egypt, and Turkey are not accustomed to be concerned about nuptial gifts, except in Constantinople, where they are concerned about them.**

*Tur Even Haezer 45*

One is concerned about nuptial gifts. And Rashi<sup>22</sup> explained that if [the prospective groom] settled marriage terms with [the prospective bride] initially and sent her nuptial gifts afterwards with witnesses, we are concerned that perhaps he sent them to her for the sake of [legal] betrothal, and she will require a bill of divorce [to terminate the relationship]. Therefore, if most of the town are accustomed to betroth and send nuptial gifts afterwards, we are concerned that they sent [the gifts] for the sake of [legal] betrothal. But if most of the town are accustomed to send [nuptial gifts] first and [legally] betroth afterwards, we are not concerned. . . and according to Rashi's explanation, we are concerned, therefore it is good to be wary. . . to be stringent. And thus was the conclusion of my lord, my father, the Rosh, z"l.<sup>23</sup>

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<sup>22</sup> Rabbi Solomon ben Isaac of Troyes (1040–1105), author of the principal commentary on the Babylonian Talmud.

<sup>23</sup> Rabbi Asher ben Yehiel (1250–1327).

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*Shulhan Arukh Even Haezer 45.2*

זולתי בקוסטנטינה, האידנא, נהגו בכל מלכות ארץ ישראל ומצרים ותוגרמא שלא לחוש לסבלונות  
שחוששין להם.

*Tur Even Haezer 45*

חוששין לסבלונות ופירש"י שאם שדכה תחילה ואח"כ שלח לה סבלונות בעדים אנו חוששין שמא  
שלחם לה לשם קדושין וצריכה גט לפיכך אם רוב העיר רגילים לקדש ואח"כ שולחים סבלונות  
חוששין שמא לשם קידושין שלחם אבל אם רוב העיר רגילים לשלוח תחילה ואח"כ מקדשין אין  
::... חוששין... ולפירש"י חוששין הלכך טוב לחוש... להחמיר וכן היא מסקנת א"א הרא"ש ז"ל

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*Shulhan Arukh Even Haezer* 142.1

An agent who brought a bill of divorce from one place to another outside the land [of Israel], or from the land of Israel to outside the land, or from outside the land to the land of Israel: if the agent was present at the time of the writing and signing of the bill of divorce, he states before two [valid witnesses], “It was written before me and before me it was signed.” Afterwards, he gives it to [the wife] in their presence and she is divorced by it. And [this is so] even if his witnesses are unknown to us . . . and if the husband protests, we do not pay attention to him. . . . And similarly, an agent who brings a bill of divorce within the land of Israel and says, albeit unnecessarily, “It was written before me and before me it was signed,” we do not pay attention to the husband should he protest. . . . And why did [the sages] require saying “Before me it was written, and before me it was signed” outside the land [of Israel]? In order that the woman not need to uphold the [validity of the bill of divorce] were the husband to object, because witnesses are not [necessarily] available to uphold [a bill of divorce’s] validity from one place to another outside the land. **And it appears to me that today, even in the land of Israel, [the agent] must say: “Before me it was written, before me it was signed.”**

*Tur Even Haezer* 142

One who brings a bill of divorce from a province of the sea and the husband made him an agent to bring it to his wife, [the agent] must stand by [the bill’s] writing and signing and say: “Before me it was written and before me it was signed.” But [an agent] from the land of Israel need not [say this]. And the reason is that

witnesses are not available to uphold [the validity of the bill of divorce] outside the land and if she [re]marries through it today or tomorrow the husband may come and protest and she will be unable to find witnesses to uphold it. Therefore [the sages] instituted that she not be divorced by it until the agent says “Before me it was written and before me it was signed,” and they believe him, and then are not troubled by the husband’s protest. But in the land of Israel, where she can uphold it, she may [re]marry through it even though [the agent] did not say “Before me it was written and before me it was signed”. . . . but also in the land of Israel, if [the agent] says “Before me it was written and before me it was signed,” this [declaration] helps to push off the husband’s protest, even though it is unnecessary.

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*Shulhan Arukh Even Haezer* 142.1

שליח שהביא גט ממקום למקום בחוצה לארץ, או מארץ ישראל לחוצה לארץ, או מחוצה לארץ לארץ ישראל, אם היה השליח עומד בשעת כתיבת הגט וחתימתו, ה"ז אומר בפני שנים: בפני נכתב ובפני נחתם, ואחר כך יתן לה בפניהם ותתגרש בו; ואע"פ שאין עדיו ידועים אצלנו. . . . ואם בא הבעל ועמד וערער, אין משגיחין בו. . . . וכן שליח שהביא גט בארץ ישראל ואמר: בפני נכתב ובפני נחתם, אף ע"פ שאינו צריך, אם יבא הבעל ויערער, אין משגיחין בו. . . . ומפני מה הצריכו לומר: בפני נכתב ובפני נחתם, בחוצה לארץ, כדי שלא תהיה האשה צריכה לקיימו אם יבא הבעל ויערער, מפני שאין עדים מצויים לקיימו ממקום למקום בחוצה לארץ. ונ"ל דהאידנא, אפילו בארץ ישראל צריך לומר: בפני נכתב ובפני נחתם.

*Tur Even Haezer* 142

המביא גט ממ"ה והבעל עשאו שליח להוליכו לאשתו צריך שיעמוד על כתיבתו וחתימתו ויאמר בפני נכתב ובפני נחתם אבל מא"י אין צריך וטעמא משום דבחוצה לארץ אין עדים מצויין לקיימו ואם תינשא בו היום או מחר יבא הבעל ויערער ולא תוכל למצוא עדים לקיימו לכך תקנו שלא תתגרש בו עד שיאמר השליח בפני נכתב ובפני נחתם והאמינוהו ואז לא נחוש לערערו של הבעל אבל בא"י שתוכל לקיימו תינשא בו אע"פ שלא אמר בפני נכתב ובפני נחתם. . . . ובא"י נמי אם אומר בפני נכתב ובפני נחתם מועיל לדחות ערעורו של בעל אע"פ שלא היה צריך.

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#### *Shulhan Arukh Hoshen Mishpat 30.2*

Even though witnesses in monetary cases do not require intense cross-examination, their testimony is invalid if they contradict each other in [their responses to] inquiries and investigations. But if they contradict each other [in their responses to] examinations, their testimony stands. How? If one [witness] says: “[X] borrowed from [Y] in Nisan,” and the second says: “No, it was in Iyar,” or **one says: “[X] borrowed from Y] in Jerusalem,” and the second says: “No, in Lod,”** their testimony is invalid.

#### *Tur Hoshen Mishpat 30*

And even though there is no need of intense cross-examination, if [the witnesses in a monetary case] contradicted each other in [their responses to] inquiries and investigations, their testimony is invalid:

But if they contradicted each other in [their responses to] examinations, their testimony stands. How? If one [witness] says: “[X borrowed from Y] in Nisan,” and the second says, “No, he borrowed from him in Iyar,” or if one said, “[X borrowed from Y] in such-and-such a place,” and the second said: “No, it was in such-and-such a place,” their testimony is invalid.

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אעפ"י שאין עידי דיני ממונות צריכין דרישה וחקירה, אם הכחישו זה את זה בדרישות או בחקירות, עדותן בטלה; ואם הכחישו זה את זה בבדיקות, עדותן קיימת. כיצד, אחד אומר: בניסן לזה ממנו, עדותן, והשני אומר: לא כי אלא באייר, או שאמר האחד: בירושלים, והשני אומר: לא כי אלא בלוד בטלה.

*Tur Hoshen Mishpat 30*

וואע"פ שאין צריך דרישה וחקירה אם הכחישו זה את זה בדרישות וחקירות עדותן בטילה אבל אם הכחישו זה את זה בבדיקות עדותן קיימת כיצד אחד אומר בניסן לזה הימנו והשני אומר לא כי אלא באייר לזה הימנו או שאמר האחד במקום פלוני והשני אומר לא כי אלא במקום פלוני עדותן בטלה:



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*Shulhan Arukh Hoshen Mishpat* 409.1

One does not raise small cattle in the land of Israel, because their way is to graze in others' fields and their [resulting] damage is common. But one may raise [them] in Syria and in the deserts of the land of Israel. **And today, when it is uncommon for Jews to have fields in the land of Israel, it seems that [raising small cattle in the land of Israel] is permitted.**

*Tur Hoshen Mishpat* 409

The sages instituted that people should not raise [small cattle] in a place of fields and vineyards but rather in forests, because the way of small cattle is to graze in others' fields and their [resulting] damage is common. It is even forbidden [to raise small cattle] in the house, and even if [the beast] is not his. And [the sages] were strict about this in order to prevent damage, for a person is forbidden to cause damage to his fellow. Nevertheless, the essential enactment was for the land of Israel, except that the *gemara* says that Babylonia is considered to be the land of Israel for this purpose. And there are those who say that we are drawn after Babylonia as to all of our practices, and [thus] for us, too, [raising small cattle] should be forbidden. But it seems that we are not drawn after Babylonia as to this. The reason that [raising small cattle] was forbidden in Babylonia was because most of the fields were [in the possession] of Jews. And since now this reason is inapplicable, [raising small cattle] is permitted.

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#### *Shulhan Arukh Hoshen Mishpat 409.1*

אין מגדלים בהמה דקה בארץ ישראל, מפני שדרכם לרעות בשדות של אחרים והיזקם מצוי; אבל מגדלים בסוריא ובמדברות שבארץ ישראל. והאידנא, שאין מצוי שיהיו לישראל בארץ ישראל שדות, נראה דשרי.

#### *Tur Hoshen Mishpat 409*

מפני שהבהמה דקה דרכה לרעות בשדות אחרות והיזקה מצוי תקנו חכמים שלא יגדלנה האדם במקום שדות וכרמים אלא ביערים ואפילו בבית אסור ואפילו שאינה שלו והחמירו בה כדי להרחיק מההיזק שאסור לאדם שיזיק את חבירו ומיהו עיקר תקנה זו לא נתקנה אלא על ארץ ישראל אלא דקאמר בגמרא שבבל יש לה דין ארץ ישראל לדבר זה וי"א דבכל מנהגי דילן בתר בבל גרירינן ולדידן נמי אסור ונראה דבהא לא גרירינן בתר בבל דטעמא דאסור בבבל לפי שהיו שם רוב שדות ישראל וכיון דהשתא ליתא להאי טעמא שרי

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#### *Shulhan Arukh Orach Hayyim* 601

1 On the second day [of Rosh Hashanah] . . .<sup>24</sup> and we read from “And God tested Abraham” (Genesis 22:1) until the end of the portion, and the [reader that] concludes<sup>25</sup> reads in the same manner as on the previous day, concluding with Jeremiah (Jeremiah 31:1), “Thus says the Lord, found favor in the desert” through “Is Ephraim not a dear child to me” (Jeremiah 31:20). And on the evening after Rosh Hashanah, we divide<sup>26</sup> as on the evening after the Sabbath, except that we bless neither over the spices nor the flame.

**2 Even in the land of Israel we observe Rosh Hashanah for two days.**

#### *Tur Orach Hayyim* 601

On the second [day of Rosh Hashanah] we pray and sound [the horn] as on the first [day]. And we read in *parashat Vayera*<sup>27</sup> from “And God tested Abraham”

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<sup>24</sup> I have omitted R. Moses Isserles's (1530–1572) interpolated note: “and we pray as on the first day (Tur).” That language comes between “On the second day” and “and we read from.”

<sup>25</sup> Two Torah scrolls are read from on Rosh Hashanah. There are five individuals called to the reading from the first scroll (in this case, the Genesis 22 reading), and the “reader that concludes” (מַפְטִיר; *maftir*) is called to a reading from the second scroll about the ancient sacrificial service for Rosh Hashanah. This second “reader that concludes” reads the same portion from the second Torah scroll read by the “reader that concludes” on the first day. This reader also reads a portion from the books of the prophets, which constitute the middle part of the Hebrew Bible, after the Pentateuch (“Torah”). That prophetic portion is called “*haftarah*” (“conclusion”), the nominal form of “*maftir*.”

<sup>26</sup> This refers to the “*havdalah*” (“division”) ritual performed at the conclusion of Sabbaths and festivals. Just as these holy days are begun with recitations of “sanctification” (see Text 3), so are they concluded with a ritual of “division,” which marks the transition from holy time back to ordinary time.

<sup>27</sup> This is the weekly Torah portion ranging from Genesis 18:1 (which begins with the word “*vayera*,” “and he saw”) through Genesis 22:24.

(Genesis 22:1) until the end of the portion.<sup>28</sup> And the [reader that] concludes reads in the same manner as on the previous day, and concludes with Jeremiah, “Thus says the Lord, found favor in the desert” through “Is Ephraim not a dear child to me.” And on the evening after Rosh Hashanah, we divide as on the evening after the Sabbath, except that we bless neither over the spices nor the flame.

*Beit Yosef to Tur Orach Hayyim 601*

And the Rif<sup>29</sup> wrote (Betzah 3b): “And we learn from this that the people of the land of Israel must observe two days of Rosh Hashanah.” And the Rosh<sup>30</sup> wrote (Betzah chapter 1, paragraph 4) that [the Rif’s] student Rabbenu Ephraim<sup>31</sup> disagreed with [the Rif] and wrote that this (i.e., the two-day observance in the land of Israel) applies at a time when they would sanctify [the new moon each month] by sight. But now, when we rely on the secret of intercalation (i.e., there is now a set calendar and the date of each new month is known in advance), the entire land of Israel has gone back to being a “house of meeting” (*beit ha-va‘ad*)<sup>32</sup> who have no doubt about the sanctity of the day, and they should only observe [Rosh Hashanah] one day:

And the Ba‘al Hama’or<sup>33</sup> wrote (there) in accordance with Rabbenu Ephraim’s words. And he wrote further that so were they accustomed in the land of Israel during all the generations prior to us [to observe Rosh Hoshanah for one day]—until now, when “new ones who came [there] but lately”<sup>34</sup> [from among] the sages of Provence instituted the practice of observing two festival days on Rosh

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<sup>28</sup> Genesis 22:24.

<sup>29</sup> Rabbi Isaac ben Jacob Alfasi (1013–1103), of Qalat Hamad and Kairouwan (north Africa), and later Lucena. Composer of an influential law code that Karo later relies on as one of his three “pillars of [legal] instruction” according to his introduction to the Beit Yosef.

<sup>30</sup> Rabbi Asher ben Yehiel (1250–1327). Refugee scholar from Germany who settled in Toledo in 1305. Father of Rabbi Jacob ben Asher (1269–1343), author of the Tur. Asher’s law code is one of Karo’s three “pillars of [legal] instruction.”

<sup>31</sup> “Rabbenu” (“our rabbi”) Ephraim of Qalat Hamad, a younger contemporary of Alfasi.

<sup>32</sup> That is, a meeting place for scholars who, among other things, set the standard of religious practice for the Jewish people.

<sup>33</sup> Rabbi Zerachiah ha-Levi (ca. 1115–1186), of Girona and later Lunel. He wrote a talmudic commentary by this name, which is presented in printed editions as a commentary on Alfasi’s code.

<sup>34</sup> Deuteronomy 32:17 (trans. NJPS)

Hashanah following the *Halakhot* (“Laws”) of the Rif. And [Ba‘al Hama’or] brought a proof that originally, they only observed one day. . . .

And Maimonides<sup>35</sup> wrote in chapter 5 of the Laws of the Sanctification of the Month (paragraph 8) and in chapter 1 of the Laws of Festivals (paragraph 21) in accordance with the Rif’s words. And the Rav Hamagid<sup>36</sup> wrote (there) that there are those who disagree [and who hold that Rosh Hashanah must be observed for only one day in the land of Israel]. But the words of the *Halakhot* (the Rif) and of our rabbi (Maimonides) are the principal [ones], **and so are we accustomed today to observe two days of Rosh Hashanah even in the land of Israel**. His (Rav Hamagid) language [ends] here:

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<sup>35</sup> 1138–1204. Author of the law code *Mishneh Torah*, which Karo later relies on as one of his three “pillars of [legal] instruction.”

<sup>36</sup> This is a commentary on Maimonides’s *Mishneh Torah* written by Vidal of Toulouse (late 14<sup>th</sup> century).

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כמו אתמול ומפטיר ומפטיר קורא, א ביום שני וקורים מוהאלהים נסה את אברהם עד סוף סידרא  
בירמיה (ירמיה לא, א) כה אמר ה' מצא חן במדבר עד הבן יקיר לי אפרים; ובמוצאי ר"ה מבדילין כמו  
במוצאי שבת, אלא שאין מברכין על הבשמים ועל האש

ב. אף בארץ ישראל עושים ר"ה שני ימים

*Tur Orach Hayyim 601*

בשני מתפללין ותוקעין כמו בראשון וקורין בפרשת וירא אליו מן והאלהים נסה את אברהם עד סוף  
סדרא ומפטיר קורא כמו אתמול ומפטיר בירמיה כה אמר ה' מצא חן במדבר עד הבן יקיר לי אפרים  
ובמוצאי ר"ה מבדילין כמו במ"ש אלא שאין מברכין על הבשמים ועל האש

*Beit Yosef to Tur Orach Hayyim 601*

וכתב הרי"ף (ביצה ג.) ושמעין מינה דבני ארץ ישראל צריכין למיעבד שני ימים טובים של ראש  
השנה וכתב הרא"ש (ביצה פ"א סי' ד) שרבינו אפרים תלמידו נחלק עליו וכתב דהני מילי בזמן שהיו  
מקדשין על פי הראיה אבל עכשיו שאנו סומכים על סוד העיבור חזר כל ארץ ישראל להיות בית הועד  
שאין להם ספק בקדושת היום ואין להם לשמור אלא יום אחד: וכתב בעל המאור (שם) כדברי רבינו  
אפרים ועוד כתב שכן נהגו בארץ ישראל כל הדורות שהיו לפנינו עד עתה חדשים מקרוב באו לשם  
מחכמי פרובינצ"א והנהיגום לעשות שני ימים טובים בראש השנה על פי הלכות הרי"ף והביא ראיה

שלא היו עושים מתחלה אלא יום אחד . . . והרמב"ם בפרק ה' מהלכות קידוש החדש (ה"ח) ובפרק א'  
מהלכות יום טוב (הכ"א) כתב כדברי הרי"ף וכתב הרב המגיד (שם) יש חולקין ודברי ההלכות ורבינו  
עכ"ל עיקר וכן נוהגין היום אף בארץ ישראל לעשות שני ימים ראש השנה

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