

Setting the Table: An Introduction to the Jurisprudence of Rabbi Yechiel Mikhel Epstein's Arukh Hashulhan.

By Michael J. Broyde and Shlomo C. Pill. Boston: Academic Studies Press, 2021. Pp. 428. \$139.00 (cloth); \$150.00 (digital). ISBN: 9781644690703.

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Since the Bible, there are three codes that can lay claim to covering the gamut of Jewish law, including laws whose relevance is dependent on the existence of a Temple in Jerusalem: The third-century redaction of the oral tradition *Mishna*, Maimonides's twelfth-century magnum opus *Mishne torah*, and the comprehensive code penned by Rabbi Yechiel Mikhel Halevi Epstein (1829–1908). Epstein's extensive legal writings include two series: *Arukh hashulhan* covering laws applicable in contemporary reality as defined by previous codifiers, and *Arukh hashulhan ha'atid* dealing with laws relevant to an aspirational future.¹ Of the three codes, Epstein's writings have attracted the least attention.

In light of the paucity of research on Epstein's code, Michael J. Broyde and Shlomo C. Pill have made a significant contribution with their volume *Setting the Table: An Introduction to the Jurisprudence of Rabbi Yechiel Mikhel Epstein's Arukh Hashulhan*.² *Setting the Table* complements other recent efforts to recount Epstein's biography, explore his literary oeuvre, and plumb his legal writings.³

¹ The point about the uniqueness of Maimonides and Epstein in their comprehensive ambitions was made by Michael J. Broyde and Ira Bedzow, *The Codification of Jewish Law and an Introduction to the Jurisprudence of the Mishna Berura* (Boston: Academic Studies Press, 2014), 14–15, and again in *Setting the Table*, 17n58, 46–47. Cf. *Setting the Table*, 16, 17n57 (Rabbi Yitzhak Alfasi is described as “the first attempt to craft a complete code of Jewish law.”).

² Broyde concurrently served as a translator for an English edition of *Arukh hashulhan: Aruch Hashulchan in English: Orach Chaim, Chapters 242–292 (Laws of Shabbat)*, trans. Michael J. Broyde, Ilan Segal, Mordechai Torczyner, ed. Ilan Segal (Jerusalem: Urim Publications, 2021). For a brief, glowing review, see Ari Enkin, “Aruch Hashulchan in English,” *Torah Book Reviews*, October 5, 2021, <http://torahbookreviews.blogspot.com/2021/10/aruch-hashulchan-in-english.html>.

³ Works that deal with the jurisprudence of *Arukh HaShulchan* that are not referenced by Broyde and Pill (see *Setting the Table*, 35n9) include the following: Michael Rosen, “The Interaction of Kabbalah and Halachah in the ‘Aruch HaShulchan,’” *Maqom Journal for Studies in Rabbinic Literature*, no. 19 (n.d.), www.maqom.com/journal/paper22.pdf; Mark Washofsky, “Rabbi Yechiel Mechel Epstein and the Arukh Hashulchan,” review of *The Boldness of an Halakhist: An Analysis of the Writings of Rabbi Yechiel Mechel Halevi Epstein*, by Simcha Fishbane, H-Judaic, H-Net Reviews, December 2008, www.h-net.org/reviews/showrev.php?id=23501; Shimon Yisraeli, “Torah livnei adam: ‘al darko hahilkhatit shel r. Yehiel-Mikhel Epstein besifro ‘Arukh hashulhan’ [Law for humans: Regarding the legal



Setting the Table is organized into three clear sections: a historical perspective, a conceptual analysis, and detailed data. These sections are followed by a bibliography and indices.

In part 1 (1–68), Broyde and Pill present an overview of codes of Jewish law, and place Epstein’s work in the context of the history of Jewish codification. They recount the work of previous scholars, presenting the material in an accessible manner. Their target audience of this section appears to be students of United States law, as Broyde and Pill use that legal system as a point of reference for their discussion, often noting the similarities between the two legal systems (see 6, 11, 123, 209–20; see also references to US statutory and case law at 11n40, 12n44, 14n49, 27nn91–92, 123, 123nn56–57, 209n3, 209–10).

When discussing the contemporary context of Epstein’s legal writing, Broyde and Pill use a different code as a reference point: *Mishna berura* by Rabbi Yisrael Meir Kagan (1839–1933). This is a well-justified choice given that *Mishna berura* and *Arukh hashulhan* were published at the same time. Moreover, the two works present different approaches to the codification of Jewish law and are often seen as competing codes amongst Jews of European descent. In fact, other scholars have also trodden this path when considering *Arukh hashulhan* or *Mishna berura*.⁴ Previously, Broyde co-authored with Ira Bedzow an extensive work on the jurisprudence of *Mishna berura*.⁵ Their analytical approach to examining the *Mishna berura*’s jurisprudence is similar to Broyde and Pill’s in *Setting the Table*. Consequently, there is a sound base for comparison and holistic analysis. The methodological subtext of Broyde’s co-authored volumes is significant. Without appropriate comparative yardsticks, it is nearly impossible to assess the approach, jurisprudence, or decisions of any jurist.⁶ As I discuss below, that is not the only methodological message of *Setting the Table*.

In part 2 (69–247), Broyde and Pill turn to conceptual analysis, seeking to extract “the unstated rules of decision that drive *Arukh HaShulchan*’s substantive *halakhic* choices and conclusions” (51). They present these rules in the form of ten clearly stated principles.

approach of R. Yehiel Mikhel Epstein in his book *Arukh Hashulhan*], *Netiva* 2 (2012): 185–202; Levi Cooper, “Custom in the ‘*Arukh Ha-Shulhan* and Custom in the *Mishna Berura*,” in *The Paths of Daniel: Studies in Jewish Studies in Honor of Rabbi Professor Daniel Sperber*, ed. Adam S. Ferziger (Ramat-Gan: Bar-Ilan University Press, 2017), 301–36 (Hebrew); Elazar Goldshtein, “Rabbi Yehiel Mechel Halevi Epstein: Bio-bibliography and Halakhic Method” (MA thesis, Ben-Gurion University of the Negev, 2017) (Hebrew); Shlomo Zalman Havlin, “Two Comments on *Arukh haShulhan* and *Mishna Berura*: In the Wake of the Book *Ta’arokh Lefanai Shulhan* by Rav Eitam Henkin H.Y.D.,” *Hama’yan* 60, no. 1 (2019): 432–38 (Hebrew); Eitam Henkin, *Studies in Halakhah and Rabbinic History*, ed. Chana Henkin (New Milford: Maggid, 2021), 202–09, 279–84). This list could be supplemented with works discussing aspects of Epstein’s biography or other writings.

⁴ Haym Soloveitchik, “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy,” *Tradition* 28, no. 4 (1994): 64–130; Simcha Fishbane, *The Boldness of an Halakhist: An Analysis of the Writings of Rabbi Yehiel Mechel Halevi Epstein*, *The Arukh Hashulhan* (Boston: Academic Studies Press, 2008); Cooper, “Custom in the ‘*Arukh Ha-Shulhan* and Custom in the *Mishna Berura*,”; Eitam Henkin, *Set a Table before Me: The Life and Work of Rabbi Yehiel Mikhl Epstein, Author of Arukh HaShulhan* (Jerusalem: Maggid Books, 2018), 309–17 (Hebrew); Havlin, “Two Comments on *Arukh haShulhan* and *Mishna Berura*.”

⁵ Michael J. Broyde and Ira Bedzow, “The Codification of Jewish Law and an Introduction to the Jurisprudence of the *Mishna Berura*,” *Hamline Law Review* 35, no. 3 (2012): 623–54; Broyde and Bedzow, *The Codification of Jewish Law*.

⁶ This point was made by Haym Soloveitchik, who demanded that it be fiercely applied. Haym Soloveitchik, “Can Halakhic Texts Talk History?” *AJS Review* 3 (1978): 153–96, 174–76; Haym Soloveitchik, *Yeinam [Their Wine]* (Tel Aviv: Am Oved, 2003), 9–10; Haym Soloveitchik, “Halakha, Hermeneutics, and Martyrdom in Medieval Ashkenaz,” *Jewish Quarterly Review* 94, no. 1 (2004): 77–108, at 77; see also Jacob Katz, *Halakha and Kabbala* (Jerusalem: Magnes Press, 1984), 229 (Hebrew). For a softer position that accepts the basic premise but argues for a looser application, see Levi Cooper, “The *Admor* of Munkács Rabbi Chaim Elazar Shapira: The Hasidic *Poseq*: Image and Approach” (PhD diss., Bar-Ilan University, 2011) (Hebrew), 9–10.

Recounted in different forms throughout the book (51–53, 78–81, 244–45, 252–54), these principles are Broyde and Pill’s central thesis.⁷

Further, Broyde and Pill group the ten principles into four categories. The first category deals with determining the ideally correct legal standard. This category includes the primacy of Talmudic norms as understood by Epstein (principle 1). Epstein’s self-confidence in determining the correct Talmudic norm is tempered by the second principle, which is intellectual humility, particularly before key legal authorities of the past (principle 2).

The second category covers principles for resolving doubts. These principles come into play when the first two principles do not provide an answer to the legal question. This category includes reliance first on Maimonides and then on Rabbi Yosef Karo (principle 3)⁸ and use of existing secondary rules of Jewish jurisprudence (principle 4).

Broyde and Pill’s third category explores principles for mediating between Talmudic norms and other religious values, including opinions that have been marginalized by rabbinic consensus (principle 5), supererogatory religious conduct (principle 6), and practices advanced by the Jewish mystical tradition (principle 7). Their fourth category turns to principles for mediating between Talmudic norms and what Broyde and Pill define as pragmatic concerns. This category covers the role of custom (principle 8), rationalization of norms in light of contemporary circumstances (principle 9), and consideration of practical challenges in upholding the law (principle 10).

While Broyde and Pill explain the ten principles in lucid terms, they do not spell out the relationships between the principles. Thus, for example, it is unclear when Epstein’s own understanding of the Talmudic norm trumps consensus (principle 1) or when Epstein bows before that consensus (principle 2). Furthermore, Broyde and Pill do not clearly demarcate the boundaries of the principles. For instance, methodological principle 6, which deals with supererogatory behavior, demonstrates “a balanced approach to the role of religious stringency in *halakhic* practice” (166), though they do not explain how Epstein struck that balance.

Broyde and Pill’s important methodological statement in *Setting the Table* is that the conceptual analysis is data-driven. In part 3 (249–393), they offer readers the raw data that undergirds the ten delineated principles. They detail no less than 204 rulings from *Arukh hashulhan*, explaining each briefly while noting which of the ten methodological principles are at play in the specific case. An index to these examples, categorized by methodological principle, is provided at the end of the volume (413). This innovative methodology tends toward a Big Data paradigm, albeit on a minor scale and without a predictive element.

Broyde and Pill explain that part 3 “offers insights into how the various principles ... interact with each other in practice, especially when they seem to pull in different normative directions” (251). While the rich collection of examples indeed provides such insights, the reader is still left wondering how Epstein navigates clashes between the principles.

Broyde and Pill’s examples—and therefore the principles—are culled exclusively from the *Orah hayim* section of the classic four-part division of Jewish law. They are explicit about this throughout the volume. If *Mishna berura* is the starting point for their analysis, the choice to limit the exploration to *Orah hayim* is understandable because Kagan’s code deals only with that section. Yet if their goal is to analyze Epstein’s jurisprudential approach, then what one

⁷ The repeated restatement is reminiscent of Maimonides’ frequent reiteration of the 613 commandments as the framework for his *Mishne torah*.

⁸ Broyde and Pill refer to this principle as *reliance on precedent* (79, 112, 244, 253; but see 52, where different terms are used). While the term *precedent* resonates with common law jurists, in the context of Jewish law, the term is misleading because it is not a reference to the *stare decisis* doctrine. See, among others, the literature referenced in *Setting the Table* at 90n30 and 115n17.

might call the *datafication* of Epstein's code remains to be completed. Readers will likely ponder whether the methodological principles that Broyde and Pill identify are also relevant in other sections of the code.

Without a doubt, Broyde and Pill are aware that other sections of Epstein's code are germane to the discussion. Indeed, in the footnotes they occasionally reference other sections of the code.⁹ In this sense, Broyde and Pill have opened the door for further analysis. Quietly, they raise important research questions. For example, to what extent is *Orah hayim* jurisprudence distinct from the jurisprudence of other sections of practical Jewish law? In some cases, central discussions exist in other sections of *Arukh hashulhan*, and those sections need to be analyzed in order to complete the image painted in *Setting the Table*. The role of custom is perhaps the best example of this, for important discussions appear in the *Yoreh de'ah* section of *Arukh hashulhan*.¹⁰ Or what about legal writings that have no contemporary practical impact? Clearly some of the principles of *Orah hayim* jurisprudence cannot be taken into account when discussing laws that are not practiced, such as the weight of custom or practical considerations. Given that the stakes are entirely different when discussing inactive law, are there additional or alternate principles that enter the playing field? Broyde and Pill implicitly table these questions and invite further datafication of Epstein's code.

French literary theorist Gérard Genette (1930–2018) taught that the paratext—that is, all material that frames the main text—affects the encounter with the text and its reception, and it may even control the reading.¹¹ The paratext, therefore, is of prime significance. Paratexts are produced by authors, editors, publishers, and anyone involved in the process of bringing a manuscript to print. Legal historians have noted the necessity of examining the paratext, producing fruitful studies of late.¹² Consequently, I offer a few comments about the paratext of *Setting the Table*. In discussing these features, which reflect key decisions made anonymously in the editing, layout, and publishing process, I focus on four paratextual elements: transliteration, font size, endorsements on the back cover, and the cover design.

First, the volume includes transliteration inconsistencies that could have been scrubbed as the manuscript was being prepared for print. This begins with the title, where the Hebrew letter *het* (often rendered in English as *h*) is transliterated both as *ch* as in *Yecheil* and as *h* as in *Hashulhan*.¹³ This continues throughout the work: for example, Karo's *Shulchan Arukh*, not *Shulhan Arukh* (21). In other cases, there are regrettable errors, such as *Arbah Turim* rather than *Arba'ah* (20). To be sure, there are different transliteration conventions for Hebrew, but

⁹ *Setting the Table*, 38n29; 39–40n32, 35–38, 40; 42n48; 43n50; 83n1; 91n33, 35; 189n15, 17; 191n24; 205n94; 242n80. No footnotes refer to *Arukh hashulhan ha'atid*.

¹⁰ For example, *Arukh hashulhan*, *Yoreh de'ah* 64:41, deals with two customs that are contradictory. This is vital for principle 8 (and to a lesser extent principles 9 and 10). This is a classic issue in Jewish jurisprudence. See, among others, Natan Nuta Shapira of Hrodna, *Mevo she'arim 'al hagahot, on Sha'arei dura* (Lublin, 1574) sec. 76, no. 60; Zvi Katz, *Nahalat zvi, on Shulhan arukh, Orah hayim* (Krakow, 1646–1649), sec. 8, no. 14; Moshe Feinstein, *Iggerot moshe, Yoreh de'ah* [part 1] (New York, 1959), no. 136. In one case, Broyde and Pill acknowledge that being strict in practice should be favored when there is no economic cost, and that “this concept is even more pronounced” in *Yoreh de'ah* (242n80, in the context of principle 10). Custom plays a different role in civil law, while in the field of marital law the stakes are higher. That is why I highlight *Yoreh de'ah*, as opposed to *Even ha'ezer* and *Hoshen mishpat*. Notwithstanding, a full data set would have to include all sections of Epstein's code.

¹¹ Gérard Genette, “Introduction to the Paratext,” trans. Marie Maclean, *New Literary History* 22, no. 2 (1991): 261–72; Gérard Genette, *Paratexts: Thresholds of Interpretation*, trans. Jane E. Lewin (Cambridge: Cambridge University Press, 1997); Marie Maclean, “Pretexes and Paratexts: The Art of the Peripheral,” *New Literary History* 22, no. 2 (1991): 273–79.

¹² For paratextual analysis of legal documents, see Iain Stewart, “*Mors Codicis*: End of the Age of Codification?” *Tulane European and Civil Law Forum*, no. 27 (2012): 18–47, at 24–26; Levi Cooper, “Mysteries of the Paratext: Why Did Rabbi Shneur Zalman of Liady Never Publish His Code of Law?” *Diné Israel* 31 (2017): 43*–84*.

¹³ However, in the title of chapter 2 (and elsewhere in the book) *Arukh HaShulchan* is used.

consistency is paramount. It is only a matter of conjecture as to what those involved in the writing and publishing process were assuming about the book's potential readership. Two possibilities spring to mind: either the book is aimed at those who do not have access to the original Hebrew and therefore have no need for transliteration accuracy, or at readers so proficient in Hebrew that inconsistency and inaccuracy in transliteration is not of concern. Alas, readers who fall in between these two groups might be befuddled by the rendition of Hebrew words.¹⁴

Second, the font of part 3 is smaller than that of the rest of the book. This may just be in consideration of the length of the work. Nonetheless, the smaller font suggests that the average reader can understand the central thesis of the book without reviewing the raw data. This is indeed the case: readers who do not wish to dive into the data will still benefit from the first two sections of the volume. Yet for scholars familiar with the vicissitudes of Jewish legal codification, these 204 examples might be the most exciting contribution of *Setting the Table*, for each example serves as a commentary on a particular section of *Arukh hashulhan*. Indeed, in the front matter, Broyde and Pill note that this section is the “most ambitious part” of *Setting the Table* (xiii). Moreover, as noted above, part 3 sends an important methodological message: thorough analysis of a code must include broad-based data collation and analysis rather than a selection of choice examples. This point is made astutely in one of the endorsements printed on the back cover.¹⁵ This data-driven, inductive methodological approach brings me back to the challenge posed by *Setting the Table*: to complete the data set by examining the other sections of Epstein's codificatory writings. The relative font size of part 3 suggests that at some stage in the publishing process it was decided that the volume would primarily serve beginners. Including the data at the back of the volume, albeit in a smaller font, ensured that casual readers would be unburdened by lengthy footnotes, while hard yakka, bespectacled readers would still be able to crosscheck Broyde and Pill's conclusions.

My note about the blurb on the back cover brings me to a third paratextual feature. Blurbs, which serve as endorsements of a book, are another paratextual element that frames the encounter with the book. The identity of the person providing the endorsement is as important as its content, if not more so. It is therefore worth noting that three blurbs were solicited: two from American law professors specializing in Jewish law—Chaim Saiman (Villanova University) and Suzanne Last Stone (Yeshiva University)—and one from a modern American Orthodox rabbi—Yosef Blau (Rabbi Isaac Elchanan Theological Seminary), suggesting that the intended readership includes students of law, in particular the academic study of Jewish law, as well as rabbis and rabbinical students.

The front cover of a book is a fourth illuminating paratext. The front cover of *Setting the Table* reproduces a page from *Arukh hashulhan* partially covered by a text box that includes the title, lengthy subtitle, and authors' names. The backdrop is an image from Epstein's laws of the synagogue.¹⁶ The choice of the particular page is unexplained; it appears to be a random selection that serves to illustrate the appearance of a page from the standard edition.¹⁷

¹⁴ Such readers might also be confused by the bibliography (395–404), which lists primary and secondary sources together. The index that follows the bibliography first lists biblical texts (405), followed by “Talmudic and Classical Rabbinic Texts” (405–06), and then “Post-Talmudic Rabbinic Texts” (406–08).

¹⁵ In that blurb, Chaim Saiman writes, “Too often, discussions of *halakhic* methodology proceed from a few high-profile examples ... This book ... presents ... data-based analysis of the *Arukh Hashulchan's* decision-making.”

¹⁶ *Arukh hashulhan*, *Orah hayim*, 150:3–9.

¹⁷ The standard edition could be contrasted with the 2006 Oz Vehadar thirteen-volume edition, which includes the rulings of the *Mishnah berura* at the bottom of each page and an appendix by Rabbi Pinhas Menahem Alter of Ger (1926–1999). For critique of this edition, see [Eitam Henkin], “‘Arukh hashulhan’ mahadurat Friedman” [*Arukh Hashulhan* Friedman edition], *Alonei mamrei*, no. 120 (2007): 119–24.

Serendipitously, one paragraph on the page opens with an internal reference to one of the other sections in *Arukh hashulhan* that is not covered in *Setting the Table*. This particular section of Jewish civil law limits the right to build a new structure within a certain distance of a neighbor's windows lest the new structure blocks the light.¹⁸ Epstein qualifies this rule for synagogue windows, requiring greater distance. This qualification was stated in a pithy line in Karo's sixteenth-century code of Jewish law: "One who builds opposite the window of a synagogue, a distance of four cubits is insufficient, because [the synagogue] requires much light."¹⁹ Readers of Karo's code might be unaware that this is a qualification of a civil rule discussed elsewhere. Epstein's style dictated that he placed the rule in its broader context. Incidentally, *Setting the Table* relates to Epstein's synagogue windows in an entirely different context: the recommendation in the *Zohar* not to pray in a windowless synagogue.²⁰ Thus the cover of *Setting the Table* silently broadcasts the need to consider the entire code, rather than just the high-profile *Orah hayim* section.

As mentioned, Broyde was a co-author of the 2014 volume exploring the jurisprudence of the *Mishna berura*. Both volumes were published by Academic Studies Press. The cover of that volume used a similar format: a text box with the title and the authors' names, and a page from the work in the background. For the *Mishna berura* volume, the backdrop is not a page from the work, but the title page of one of the six volumes.²¹ Viewed side by side, the two volumes appear to be a series. Might this suggest that further data-driven studies of the jurisprudence of other modern Jewish codifiers will be in the offing?²²

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¹⁸ *Arukh hashulhan*, *Hoshen mishpat* 154:16.

¹⁹ *Shulhan arukh*, *Orah hayim* 150:4.

²⁰ *Arukh hashulhan*, *Orah hayim* 90:7, relying on *Zohar* 2:251a. See in *Setting the Table*, 181 and 288 example number 49.

²¹ The reproduced image is from *Mishna berura*, vol. 5, first published in Warsaw 1902. Yet the image is not from the first edition, but from a stereotypical reproduction where the printer's name had been erased.

²² Perhaps *Ben ish hai* (Jerusalem, 1898) by Rabbi Yosef Hayim of Baghdad (1835–1909) might be a worthy candidate considering he was active at the same time as the two codifiers discussed. Broyde and Pill entertain such a comparison (*Setting the Table*, 58n44, 178n24). Or perhaps the next project is the code penned by current Sephardi Chief Rabbi Yitzhak Yosef (b. 1952) titled *Yalkut yosef*. Broyde and Pill also entertain that comparison (*Setting the Table*, 27n92, 68n69) in addition to repeatedly referencing Yosef's 2009 *Ein yitzhak* compendium of legal rules and principles (*Setting the Table*, 5n14, 13n48, 73n17, 74n22, 77n34, 111n5).