

Mipnei Darchei Shalom  
For the Paths of Peace

Ilana Mills

Submitted in Partial Fulfillment of Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion

School of Rabbinic Studies

Los Angeles, California

January 19, 2012

Advisor: Rabbi Dvora Weisberg

Dedicated to my beautiful, fun, cuddly children:

**Samuel and Caleb Mills**

Table of Contents

|   |    |
|---|----|
| Acknowledgements  | iv |
| Digest  | v  |
| Introduction  | 1  |
| Chapter 1:  | 9  |
| <i>Mipnei Darchei Shalom in the Mishnah,<br/>    Tosefta, and Babylonian Talmud</i> |    |
| Chapter 2:  | 31 |
| <i>Medieval Period</i>  |    |
| Chapter 3:  | 57 |
| <i>Modern Usage</i>   |    |
| Conclusion  | 73 |
| Appendix A:   |    |
| <i>Mishnah and Tosefta texts with Translations</i>                                  | 77 |
| Bibliography  | 82 |

## Acknowledgments

It is with overwhelming gratitude that I acknowledge the many people who have contributed to this thesis. Some have shared the stories of their lives, inspiring me with their passion. Some have contributed their time and effort to this document, reading drafts and editing meticulously again and again. Many, many more have supported my efforts through this process, forgiving my frustration and seclusion and celebrating every small success along the way. I am sincerely thankful.

First and foremost, I am thankful for the help and guidance of Dr. Dvora Weisberg, who saw value in this project and helped in every step along the way. It was a true honor and joy to study and play with Jewish concepts with Dr. Weisberg. I also want to thank Dr. Reuven Firestone for his guidance and knowledge about *mipnei darchei shalom* and Dr. Stephen Passamaneck and Dr. Josh Holo for their help when I turned to them with questions.

I sincerely want to thank my husband, Colby Mills, for his endless support and love throughout the thesis process and the entirety of rabbinic school. My children always bring a smile to my face and fresh perspective. My parents started me on this path by their own passion for Judaism and Jewish learning. You are an inspiration and model for me in my own life and my vision of an educated Jew. My sisters, Mari and Jordana, have supported me through thick and thin and I am honored to call you sisters and colleagues. Finally, I want to thank my friends who have been patient and loving, supporting me when I am stressed and celebrating with me at my times of joy.

## Digest

This thesis serves to explore use and evolution of the phrase *mipnei darchei shalom* from its inception in the Mishnah through contemporary usage. *Mipnei darchei shalom*, a rabbinic phrase first found in the Mishnah, guides Jews in how to act ethically in everyday situations, above and beyond the rules of Jewish law. It teaches us how to build a stronger Jewish community by recognizing areas of tension within a community and minimizing perpetual fighting. It also holds a model for how Jews with different observance levels, and Jews and non-Jews, can positively interact within one another, while simultaneously upholding boundaries between the groups.

Since *mipnei darchei shalom* asks Jews to act above the law, the introduction explore the interaction between ethics and law. The three main chapters each explore the use of *mipnei darchei shalom* in different time periods: rabbinic texts, middle ages, and contemporary usage. The thesis uses a variety of texts: Mishnah Tosefta, Babylonian Talmud, law codes, and medieval and modern responsa. In the conclusion, I propose a new use for *mipnei darchei shalom* for the future. With its roots in tradition, *mipnei darchei shalom* can serve as a model for how we can strengthen our communities by learning to prevent perpetual fighting, teach personal ethics above the law and create meaningful relationships with Jews of different observance levels and non-Jews while maintaining boundaries.

## Introduction

The rabbis of the Mishnah first coined the phrase *mipnei darchei shalom* to indicate how to act properly in potentially stressful situations within the Jewish community and between Jews and non-Jews. One could argue that the entire Mishnah has the goal of teaching Jews how to act through its halachic discussions. Certain phrases, such as *mipnei darchei shalom*, teach how to act above the law. The rabbis realized that not all situations fell into the neat boxes of the law. Furthermore, even when situations are addressed within the law, sometimes there is a larger ethic that can and should guide one's behavior. *Mipnei darchei shalom* speaks to the larger ethics, beyond the law, that can set guidelines to deal with conflict and boundaries.

When one thinks of *shalom* today, one often thinks of world peace. Yet the rabbis of the Mishnah, Tosefta, and Talmud lived in a different geo-political reality. They did not spend their time thinking about people they had never met in countries they had never, nor would ever, visit. The discussions surrounding *mipnei darchei shalom* focus on local community conflict and how to set guidelines that will alleviate perpetual fighting and tensions within a community. They portray a more intimate and personal understanding of *shalom*. This view of *shalom* has roots in the Tanach. According to the *Encyclopedia Judaica*, in the Tanach *shalom* covers a variety of ideas including: health or well-being, prosperity, good, loyalty, kindness, friendship, and peace.<sup>1</sup> This varied understanding of *shalom* is mirrored in Mishnah and Tosefta.

---

<sup>1</sup> *Encyclopaedia Judaica: Second Edition*, ed. Fred Skolnik (Detroit: Thomson Gale 2007), s.v. "Peace"

In the Mishnah and Tosefta, the rabbis' first attempts to collect their teachings on Jewish law, the rabbis legislated for many aspects of Jewish life; however, it was impossible to cover every human interaction. The rabbis were not solely interested in legislating for a person's life. Rather, they may have also wanted to teach morals and ethics beyond the law. Scholars debate the connection between laws and morality. While the details of their debate are not essential for this thesis, their writing can help illuminate the meaning and purpose of *mipnei darchei shalom*.

The first question we need to ask is: What is the difference between law and morals? Izhak Englard examines the interaction between morality and Jewish law. He explains that:

The essential difference between a legal and a moral norm resides in the nature of the respective sanction imposed for a violation. Whereas behind a legal rule stands the threat of a predetermined and organized societal sanction (generally physically executed by a State organ), moral sanctions are of a different kind. The notion of *morality*, however, is used in different meaning: in one sense, it denotes what can be called *positive morality*, a set of rules of behavior generally accepted by society. It comprises rules of etiquette, and general standards of human behavior.... In another sense, morality means what can be called personal ethics, a normative order created by the individual for his own behavior. It is the individual's decision on the ideal conduct sanctioned by internal feelings or remorse and gratification.<sup>2</sup>

Englard explains that one distinction between law and morals is that violations of laws are punishable by society. Violations of society's standards of morality may also have consequences, such as ostracism. Individuals, however, usually govern their own morals and the consequences for violating them.

Englard further defines morality beyond the idea that it is personal and not enforceable.

Morality and Ethics tend to base themselves on the content of normative principles considered 'just', 'good', 'right', 'moral', an expression of absolute values. The

---

<sup>2</sup> Izhak Englard, "The Interaction of Morality and Jewish Law" in *The Jewish Law Annual* Vol 7 (1988) 114-5

desirable human behavior in a given concrete situation is the application of these principles.<sup>3</sup>

Englard portrays ethics as personal, enforceable by the individual and comprising ideas that guide a person to what is “right.”

According to H. Joel Laks, Aharon Lichenstien believes this differentiation between law and morals is acknowledged in rabbinic texts. He notes that “there is undoubtedly present [in the Talmud] an area of conduct that remains beyond enforcement. It remains subject only to one’s personal standards and behaviors.”<sup>4</sup> For Lichenstein and others, ethics, like law, derive from God. According to both Jewish and non-Jewish scholars, there is a personal ethic that governs human behavior and relationships. It is not enforceable by an external court or legal system. Rather, it is a set of principles that help teach a person what is “right,” and that can be applied to multiple situations. Another way to understand it is: laws make society safe, principles make it better.

As Lichenstien notes, throughout the Mishnah, Tosefta, and later the Talmud, the rabbis teach not just rules, but morals. Morals can be found within halacha. Evidence for the rabbis’ concern with morality lies within the text in situations in which a person seems to be praised for acting above and beyond the law. A few phrases, such as *mipnei darchei shalom*, *liphnim mishurat hadin*<sup>5</sup>, and *m’shum evah*<sup>6</sup> mark this type of situation: a place in which the

---

<sup>3</sup> Englard 116

<sup>4</sup> H. Joel Laks, “Three Proposals Regarding the Relationship of Law and Morality in the *Halakhah*” in *The Jewish Law Annual* Vol 8 (1989) 63

<sup>5</sup> *Liphnim mishurat hadin* is found nine times in the Babylonian Talmud in both legal and non-legal discussions. Steinsaltz defines it as both “forgoing of a legal right” and “beyond the requirements of the law.” Scholars use it to explore the interaction between laws and ethics. It differs from *mipnei darchei shalom* because it is not as widely cited and it can be used in a legal setting, while *mipnei darchei shalom* is invoked only outside of the legal context.

<sup>6</sup> *M’shum Evah* is found fifteen times in the Babylonian Talmud. In many ways it is similar to *mipnei darchei shalom*. First, it is solely an extra legal notion. Second, it addresses issues both within the Jewish community and relationship between Jews and non-Jews. Even some of the topics addressed by *mipnei darchei shalom* are



rabbis commend a person for acting above the law or not doing something they are legally entitled to do. Louis Newman, writing about *liphnim mishurat hadim* notes, “the very fact that the traditional sources recognize such a category suggests that Judaism does indeed recognize a type of moral action which is not embodied in the halakha.”<sup>7</sup> Unlike *liphnim mishurat hadin*, *mipnei darchei shalom* is not used in any legal context, but is solely extra-legal. Therefore, the focus of this work is not the interaction between ethics and law, but teaching ethics that are beyond the law.

In general, law portrays the world as black and white, but in reality the world is full of gray. The legal system laid out in rabbinic literature is different than today’s legal systems. It claims to be divinely given and tries to create a fully coherent society. “Rabbinic legal writings are preoccupied not simply with defining categories and sorting their contents, but with navigating the brackish waters between them – the anomalous areas where boundaries either overlap or leave gaps.”<sup>8</sup>

*Mipnei darchei shalom* addresses some of the gray areas and gaps both within the Jewish community and between Jews and non-Jews. Englard defines the gray areas as times when personal ethics conflict with religious rules. He notes that this conflict in Jewish law

---

also touched upon by *m’shum evah*, such as issues surrounding eruvim, priests, and non-Jews. However, *m’shum evah* and *mipnei darchei shalom* never address the same debate within any issue. For example: *mipnei darchei shalom* determines where an eruv shall lie and *m’shum evah* discusses what type of food should be put in the eruv basket. Additionally, from a brief reading of the *m’shum evah* texts, it appears that *m’shum evah* focuses on different, more intimate types of relationships than *mipnei darchei shalom*. *M’shum evah* addresses issues of divorce, betrothal, and child labor, along with the less intimate relationships such as money lending and anointment of priests. In each of the sugyot, the rabbis suggest an action, or inaction, in order to prevent ill feelings among people. While there are clearly many differences between *mipnei darchei shalom* and *m’shum evah*, *m’shum evah* supports the notion that the rabbis held beliefs about how people should interact with one another outside the legal halakhic system.

<sup>7</sup> Louis E Newman, “Law, Virtue, and Supererogation in the Halakha: The Problem of ‘Lifnim Mishurat Hadin’ Reconsidered” in *Journal of Jewish Studies* Vol XL no 1 (1989) 61

<sup>8</sup> Steven D. Fraade, “Navigating the Anomalous Non-Jews at the Intersections of Early Rabbinic Law and Narrative” in *Legal Fictions* (Leiden: Brill, 2011) 345

often occurs “in relation to the discriminatory rules... and in connection with the idea of religious coercion implying a basically intolerant attitude towards non-believers and members of other religions.”<sup>9</sup> In other words, the rabbis of the Mishnah and Tosefta wanted to draw strict boundaries between people: observant and not-observant Jews or Jews and non-Jews. Often life is more complicated than suggested by the strict boundaries the rabbis created. A person’s individual ethics may have conflicted with the rabbis’ strict boundaries. We find the roots of these conflicts in the different social or religious statuses within the Israelite community or differentiation between Jews and non-Jews. We will see that *mipnei darchei shalom* addresses these areas of fuzzy boundaries because they are the most complicated. It simultaneously supports the boundaries while allowing Jews to have normative social and personal interaction between themselves and others that falls into a different category.

I have spent much time over my six years at Hebrew Union College – Jewish Institute of Religion (HUC-JIR) thinking about and writing papers on boundaries between Jews and non-Jews. It started as an interest in issues of conversion and intermarriage. Throughout my time at HUC-JIR, it has grown to larger societal issues. When I completed my Masters in Jewish Education, I wrote my curriculum guide on the influence of non-Jewish society on Jewish culture. It taught about boundaries between Jews and non-Jews; times when the boundaries are open and moments of distinction between groups. During the fall of my fourth year, I took a Seminar in Jewish Ethics with Dr. Rachel Adler. In that class, we read articles about *liphnim mishurat hadin*, which sparked an interest of looking at mishnaic texts to conceive where the rabbis empowered Jews to act on an idea or ethic

---

<sup>9</sup> England 119

outside of the law. *Mipnei darchei shalom* falls into a similar category: a concept used throughout rabbinic literature that points to what the rabbis thought about outside of the law. I knew *mipnei darchei shalom* spoke about interactions between Jews and non-Jews. Therefore, I originally wanted to research *mipnei darchei shalom* because I saw it as a comprehensive avenue to explore where the rabbis of the Mishnah opened up boundaries between Jews and non-Jews.

Upon researching *mipnei darchei shalom*, I have discovered that it is much more dynamic than I originally perceived. Every aspect of *mipnei darchei shalom* fascinates me and should be on the minds of all Jewish professionals for two main reasons: it deals with everyday situations and with ethics. Throughout America, Jews are constantly walking the boundaries between Jews and non-Jews and between Jews with different observance levels. Judaism grows and learns from its interaction with non-Jews. We are better because we are open to learning from others. Yet, we must also learn about how boundaries support the power and right to be distinct, chosen, different. In contrast, we live in a time where the tension between different branches can be polarizing and alienating. *Mipnei darchei shalom* provides a model for inter-group interaction while simultaneously upholding and reaffirming the boundaries between them.

As Reform Jews, we often pride ourselves on our commitment to moral obligations. *Mipnei darchei shalom* provides a model for dealing with situations in which one should act differently than the law allows because it is the “right” thing to do. These situations do not focus on helping a stranger in need, but start with situations in synagogues and in the neighborhood. Often, we concentrate on people we do not know, ignoring the issues within our own communities. *Mipnei darchei shalom* can serve as a model for facing hidden issues

of jealousy and perpetual fighting within our own communities and how we can help curb them.

To explore *mipnei darchei shalom*, I began with the texts that use it, bringing in secondary material as well. Chapter One sets the stage for the entire thesis. It examines the way in which *mipnei darchei shalom* is used in its original loci: in the Mishnah and Tosefta. All of the passages with *mipnei darchei shalom* and their translations, as done by Jacob Neusner, can be found in Appendix A. The chapter looks for patterns in usage and content and discerns the ways in which the rabbis originally used *mipnei darchei shalom*. It then turns to the Talmudic discussions of *mipnei darchei shalom* to note the similarities and differences between the Tannaitic and Amoraic texts and the way *mipnei darchei shalom* evolved. Together these texts form a working definition of the phrase and highlight the major issues that it touches upon.

The second chapter acts as a transition between the original usage of *mipnei darchei shalom* and modern times. Chapter Two looks to medieval times to show how the relationship between Jews and non-Jews evolved, since many texts about *mipnei darchei shalom* focus on interactions between the two groups. It does so by focusing on the biographies of two rabbis: Rabbi Shlomo Yitzhaki (Rashi) and Rabbi Meir of Rothenberg. The chapter then looks at how the phrase was used in law codes formulated during the Middle Ages. Finally, the chapter looks at the medieval responsa of Rabbi Shlomo ben Aderet (Rashba) and Rabbi Meir of Rothenberg that reference *mipnei darchei shalom*. For both the codes and responsa, the chapter highlights differences between the use of the term in the Mishnah, Tosefta and Talmud and its use in medieval sources.

Chapter Three focuses on modern use of *mipnei darchei shalom* and ideas associated with it. In the Mishnah, one finds a discussion about how Jews with different observance levels can interact with one another and when lines need to be drawn. The chapter opens with modern parallels. It explores different Modern Orthodox responsa and writings about the interaction between different branches of Judaism. Second, the chapter looks at how modern Reform responsa use *mipnei darchei shalom*. Reform responsa only use the phrase for cases dealing with non-Jews. The chapter looks at how the modern use differs from the original use. Finally, the conclusion of the thesis suggests ways in which Judaism can and should adapt *mipnei darchei shalom* for the future.

*Mipnei darchei shalom*'s focus is ethics, acting above the law, balancing the challenges of boundaries between groups that are similar, all for the sake of shalom. As Jews and citizens, we are aware of the law and how it affects our lives, yet our actions are primarily driven by our personal morals and relationships. *Mipnei darchei shalom* guides our morals to teach us how to act above and beyond the law. The focus is not if you follow the rules, but how one acts that is even better than the rules. With *mipnei darchei shalom* the rabbis do not address situations in which acting above the law is easy. Rather, they look to places filled with tension and stress: places of perpetual fighting within a community, boundaries between Jews of different observance levels and between Jews and non-Jews. They look inwardly to internal communal issues and to patterns within human behavior. *Mipnei darchei shalom* challenges us to be better people above the law in all our interactions.

## Chapter 1

### *Mipnei Darchei Shalom* in the Mishnah, Tosefta and Babylonian Talmud

*Mipnei darchei shalom* embodies the saying, “the whole is greater than the sum of its parts.”

The phrase signifies more than any one of the words by itself. Yet it is useful to examine how these three words were used in rabbinic texts separately before exploring their use as a single unit.

Mipnei is the easiest of the three words to understand. Jastrow defines it as, “for the sake of” or “because.”<sup>10</sup> It is often followed by the letter shin and always connected to the following words. For example, m. Berakhot 1:3 asks why a person does not enter ruins. The answer is *mipnei shalosh drachim*, for/because of three reasons. Because you can cause suspicion, because debris can fall on you, and because of demons.” In Hebrew, each reason is introduced with the word *mipnei*. *Mipnei* is used before both verbs and nouns. It is used here to show a cause and affect relationship.

*Darchei*, the second word of the phrase, is the construct plural of the noun *derech*. *Derech* means “path, way, method, manner.”<sup>11</sup> It is often used in a straightforward manner to mean a physical path or road (see m. Kelim 4:7.) The rabbis also combine *derech* with a second word to form a construct with a new meaning. The most commonly known one is *derech eretz*, which literally means “the way of the land.” Jastrow translates it as “good manners.” *Derech eretz* connotes respecting the customs of the land in which you live and

---

<sup>10</sup> Marcus Jastrow, *Dictionary of the Targumim, Talmud Bavli, Talmud Yerushalmi and Midrashic Literature*, (New York: Judaica Press 1975) 1189

<sup>11</sup> *Ibid* 323

acting with good manners. (See m. Avot 3:17) Another example of a derech phrase is darchei emori, literally “the ways of the Amorite,” which signifies acting the way non-Jews act or becoming a “heretic”<sup>12</sup> (see m. Shabbat 6:10).

The third and final word, shalom, presents the most complications. Throughout the Mishnah and Tosefta the word shalom is used in a variety of ways. First, shalom is used as a greeting. (For examples see m. Brachot 2:1, m. Taanit 1:7 or t. Pesachim 3:16.) Second, shalom describes making peace between people. Here, peace can be understood as good relationships, probably between people who know one another. (See m. Peah 1:1) T. Shabbat 13:5 described peace between a husband and wife, good relationship between people who know one another very intimately. Third, one finds “world peace.” (See m. Yebamot 15:1 and m. Eduyot 8:7.) Fourth, one finds a connection between shalom and the divine. In t. Shabbat 17:2, one finds a reference to angels of peace. Later in rabbinic material, shalom becomes one of the names of God. Finally, at times one finds a broad undefined idea of shalom. For example in m. Avot 1:12, it says that the sons of Aaron loved shalom. Shalom could be world peace, peace between neighbors, spouses, divine peace, or another larger concept not defined above.

Three words that, at first, seem unconnected, form a valuable phrase that holds great significance. This chapter will explore how the rabbinic texts use this phrase. From the very beginning, this phrase guides Jews to act above and beyond the law and focused on the gray areas of society. Many of the gray areas occur when different groups try to figure out how to interact with one another.

The rabbis categorized individuals within the Jewish community by their rank in the religious hierarchy. A person’s status would influence what he/she could do and how others

---

<sup>12</sup> Ibid 323

treated him/her. For example, the priest was higher on the religious hierarchy than the Levite, who was higher than a non-levitical Jew. Rabbis also created subdivisions and hierarchies for “regular” Israelite. One subgroup was the *haver*, who was “dedicated to the precise observance of mitzvot... The main stress of [a *haver*] was the strict observance of the laws of terumah and tithes and careful adherence to ritual purity, so much so that they would eat even non-sacrificial food in a state of ritual purity.”<sup>13</sup> A *haver* is often contrasted to an *am ha'aretz*. According to Steinsaltz, *am ha'aretz* is: “A term specifically used in the Mishnaic period to refer to an ignorant person who is not scrupulous in his observance of the commandments.”<sup>14</sup> *Mipnei darchei shalom* addresses many areas of life, with particular stress on interaction between different groups within Judaism and Jews and non-Jews.

### *I. Mipnei darchei shalom in the Mishnah and Tosefta*

In the Mishnah and Tosefta, *mipnei darchei shalom* addresses three main areas of life: perpetual fighting, acting civilly above the law, and interactions with non-Jews. In each of these areas, the rabbis wanted to create peace and minimize strife, especially in situations vulnerable to controversy. The rabbis wanted to uphold the hierarchy and standards of the community, while simultaneously allowing for positive, realistic social interactions.

#### 1. Perpetual Bickering

The rabbis realized that people argue over logistics within a community or public space. They set guidelines for such occasions to stop perpetual bickering between neighbors,

---

<sup>13</sup> Adin Steinsaltz, *The Talmud The Steinsaltz Edition: A Reference Guide*. (New York: Random House 1996), 188

<sup>14</sup> Ibid. 241



friends, and Jewish community members before an argument started. They addressed issues both within the religious ritual parameters and outside of them.

#### a. Ritual Arenas

M. Gittin 5:8 contains two situations where the rabbis attempted stop perpetual fighting. First, the Mishnah addresses problems that could arise during the ritual of public Torah reading. To be called to the Torah was a significant honor and a sign of status within a community. In order to prevent a community from constantly fighting over who would read from the Torah in what order, the rabbis established the following order: “A priest reads first, and after him a Levite, and after him an Israelite for the sake of peace” (m. Gittin 5:8)<sup>15</sup> Setting the order anticipated potential arguments and established a practice which prevent petty disagreements. Without the guidelines, members of the community may have felt disrespected or overlooked and might have spent more time bickering about the order than listening to Torah.

M. Gittin 5:8 also discusses the issue of where an eruv should be placed. In ancient times, Jewish communities lived in housing complexes in which multiple houses surrounded a common courtyard. For Shabbat, Jews wanted to designate the entire courtyard and all the houses within it as one space; once done, people could carry objects within the larger courtyard complex without breaking Shabbat rules. To designate the complex as one space, neighbors contributed food to a communal basket, or *eruv*, and placed the basket in one of

---

<sup>15</sup> In areas of precedence concerning priests, the rabbis tended to ensure that the priests were given honor and respect. M. Sheqel 1:3 states that the priests do not need to pay the sheqel tax for the sake of peace. It may have been because the priests were the beneficiaries of the tax. However, it may also have been because the rabbis wanted to create peace between themselves and the priests. When the rabbis established their authority, the priests lost theirs. Therefore the rabbis may have used *mipnei darchei shalom* as a way to smooth their own underlying controversy with the priests.

the houses in the courtyard.<sup>16</sup> People may have fought for the basket as a sign of status. Therefore, m. Gittin 5:8 declares that the basket of food that creates the eruv should be placed in the house where it was first placed, for the sake of peace. This simple prevented weekly fights among neighbors.<sup>17</sup>

#### b. Societal Areas

The rabbis do not limit the scope of their conversation to the ritual arena, but also touched on issues within the larger society. M. Gittin 5:8 addressed the logistics of collecting water from a river or man-made dykes. It states, “a well that is close to the water collects first.” Parallel to the section above concerning aliyot, this Mishnah sets the standard for the proper order to collect water to limit fighting.

### 2. Acting Civilly

When the rabbis expanded the halachic system, they wanted to create an ordered society. The law teaches people how to follow rules, which hopefully help society function well. However, laws cannot cover all areas of life. Sometimes acting civilly means doing more than the law requires and sometimes it means not doing something even though one is legally able to.

#### a. Action for the sake of peace

---

<sup>16</sup> The Steinsaltz Reference guide does not define eruv. Rambam explains that an eruv is a basket in which every person contributes except for the person in whose house the basket lays. Since Rambam’s comment is a slight modification from that which is found in the Mishnah, it will be discussed in the following chapter.

<sup>17</sup> T. Eruv 5:11 addresses the same issue and comes to the same conclusion.

As explained above, the Mishnah identifies multiple categories of people based on their adherence to ritual, distinguishing between *am haaretz* and *haber*. M. Shebiit 5:9<sup>18</sup> addresses how a wife of *haber* and a wife of an *am haaretz* can interact with one another. It states:

A woman may lend to a neighbor who is suspect [of not observing the law] of the Sabbatical year: (1) a sifter, (2) a sieve, (3) a millstone, (4) or an oven. But she may not sift or grind [flour] with her [since the grain was gathered in violation of the law]. The wife of a *haber* [one who observes rules of purity in everyday affairs] may lend to the wife of an ordinary Israelite: (1) a sifter, (2) or a sieve, but from the time that [the ordinary Israelite women] pours water over the flour [and thereby renders the flour susceptible to uncleanness, cf Lev 11:24, the wife of a *haber*] may not touch it [the flour], because one does not assist those who commit a transgression. And all [of the allowances] were only made in the interest of peace....

The Mishnah explains that the wife of a *haber* can lend certain kitchen items (such as a sifter, sieve, millstone, or oven) to the wife of an *am haaretz*, even though she is less particular in her food observance. In fact, according to the second line of the Mishnah, the wife of a *haber* may even grind flour with a wife of an *am haaretz*. However, when water is added to the dry ingredients, the wife of the *haber* may no longer help. (m. Shebiit 5:9) This is significant because the *haber* is particular about ritual purity, especially surrounding food. To understand the rabbis' reasoning, it is helpful to know that dry food is not susceptible to ritual impurity; the potential for ritual impurity arises only when liquid is intentionally placed on food. When the two women grind the dry ingredients together, there is no concern for ritual impurity. The mishnah explains that the wife of a *haber* cannot help once the water is introduced so she does not help someone commit a sin. Without this rule, the wife of a *haber* may have thought that she was unable to lend her neighbor any kitchen items. With the mishnah, these women can interact on a civil and neighborly basis. The rabbis urge the wife of the *haber* to be less stringent when possible since that extra leniency will help lead to

---

<sup>18</sup> M Git 5:9 is almost identical to M Sheb 5:9. There are only two words that differ in these mishnayot.

peace between neighbors. This rule enabled her to be a good neighbor and simultaneously uphold her higher standards.

T. Peah 3:1 adds an interesting dynamic to the discussion of how one can act civilly for the sake of peace. It states, “There are poor people, who do not have the right to *leket*, if the owner is able to protest immediately, he protests. If not, he lets them be, for the sake of peace” (t. Peah 3:1). Steinsalz explains that *leket* is:

[O]ne of the obligatory agricultural gifts given to the poor. The Torah prohibits the owner of a field from gleaning individual stalks that have fallen during the harvest. Less than three stalks that have falls in one place are deemed *leket* and considered property of the poor. The owner of the field is forbidden to take them for his own use.<sup>19</sup>

It appears from the Tosefta that they were poor who qualified to collect *leket* and poor who did not qualify to collect *leket*. It is unclear who does not qualify, but it is clear some people did not. In that way, this text does not fall under the first category of doing more for the sake of peace. It does not guide the owner to do more by allowing all the poor to collect *leket*. Simultaneously, if the person who does not qualify started collecting, it does not allow the owner to stop them. The choice to go beyond the letter of the law and be more generous is the owner's; he may choose to protest, or he may choose to be silent “for the sake of peace.”

#### b. Forgoing One's Legal Rights

The rabbis recognized that there are actions that are legally permissible but not nice. M. Gittin 5:8 lays out a number of scenarios in which a person is legally able to take something from someone or some place, but should not because someone else thinks he has a claim to

---

<sup>19</sup> Steinsalz 209

it. The rabbis try to teach people to act civilly and ethically towards each other. One example from m. Gittin 5:8 concerns fish in a net. The rabbis discuss a situation in which a person set up a fishing net or trap in a river. Technically, the fish belong to no one, because the river is public space, rather than private property; therefore an individual who takes fish trapped in another person's net is not a thief. However, the rabbis explained that people other than the one who set up the net should not take the fish, even though they are legally permitted to do so. Since the net is in a public place, the net owner does not legally have possession, therefore a person who took the fish would not be officially committing a sin. The rabbis say one should act above the law. They apply the same principle to olives lying under a tree in which someone is standing and beating the olives down, a beast caught in a trap, and something found by a deaf-mute, mentally incapacitated individual or a minor. In all of these situations, there is no theft involved, since there is no legal possession; the fish and the olives have not been formally collected and acquired, and a deaf-mute, minor or mentally incapacitated person does not have the power to legally acquire items. However, the Mishnah insists that certain acts are to be avoided because they would cause rifts in society.

### 3. Non-Jews

Of the many areas that the rabbis discussed in connection to this phrase, interactions with non-Jews may be the most complicated. Of the seven times that *mipnei darchei shalom* appears in the Mishnah, only m. Sheqalim 1:3 omits a mention of non-Jews.<sup>20</sup> One saw above discussions of *mipnei darchei shalom* concerned with intra-Jewish relations. Since all

---

<sup>20</sup> Gary Porton, *Goyim* (Atlanta: Scholars Press, 1998) 140

but one mishnah with *mipnei darchei shalom* discuss non-Jews, it is clear the rabbis of the Mishnah closely associated *mipnei darchei shalom* with non-Jews.

Non-Jews were a large and complicated subject for the rabbis. Jews constantly interacted with non-Jews in social and business settings. Gary Porton notes that the proliferation of mishnayot about non-Jews underscores how often Jews and non-Jews interacted. Yet, non-Jews also threatened the sanctity of Judaism and the boundaries the rabbis tried to build through the halachic system. The relationship between Jews and non-Jews is complex in part because Jews were to follow laws and obligations found in the Torah, such as the sabbatical year, kashrut and Shabbat, that their non-Jewish neighbors are not obligated to observe. In that way, Jews sometimes live in a separate world from non-Jews because they have a second set of laws to live by.<sup>21</sup>

In many mishnayot, the rabbis tried to set a strict distinction between Jews and non-Jews, emphasizing the separation between the groups. For example, the Mishnah limits Jewish business interactions with non-Jews before, during, and after a non-Jewish holiday.<sup>22</sup> These boundaries prevented Jews from having what the rabbis deemed as dangerous interactions with non-Jews. Porton argues that the Mishnah constantly establishes boundaries between the two societies, and that even the places in which there seems to be openness to others, the rabbis still underscore the differences between the groups.<sup>23</sup>

At the same time, Jews and non-Jews clearly share the world on a regular basis through their varied interactions. “The text assumes that gentiles and Israelites interact at

---

<sup>21</sup> Fraade, 346

<sup>22</sup> The first chapter of Mishnah Avodah Zara discusses issues surrounding business around non-Jewish holidays such as when, where and what people can trade with non-Jews.

<sup>23</sup> Porton, 52 & 80

various levels.’’<sup>24</sup> The rabbis had to walk the fine line of separating and sharing boundaries.<sup>25</sup> “According to this reality, Israel’s nomain [sociological and legal]life depends on and may be threatened by a Gentile *nomos* whose authority it must acknowledge but whose religious legitimacy it must oppose in order to preserve its own sense of nomain solidarity and separation.’’<sup>26</sup>

The rabbis had many concerns about interactions between Jews and non-Jews as having the potential to lead to idolatry. They were most worried about that these interactions would lead to “assimilation” and Jews picking up “bad habits” from non-Jews. The rabbis recognized that Jews interacted with non-Jews and therefore wanted to provide guidance for those interactions. In general, *mipnei darchei shalom* refers to instances in settings where Jews may have erred on the side of upholding strict boundaries, but instead it guides a person to include or act cordially to a non-Jew. These instances can fall into three main categories: general civility, instances surrounding non-Jewish holidays and rituals, and instances surrounding Jewish customs.

#### a. General Civility

As was the case in the examples of *mipnei darchei shalom* above, the rabbis used this term to teach Jews how to act civilly towards other people, in this case, non-Jews. M. Shebiit 5:9 states that an Israelite should greet a non-Jew. While this is a very simple act, it gives Jews permission to be civil in their dealings with non-Jews. Similarly, m. Gittin 5:8 explains that one should not prevent a poor non-Jew from collecting *leket*, *shich’chah* or *peah* (the agricultural gifts designated for Jewish poor.) Again, this is similar to other uses of *mipnei darchei shalom* such as allowing people to collect *leket* even if they are not entitled to and to

---

<sup>24</sup> Porton, 21

<sup>25</sup> Fraade, 347

<sup>26</sup> Ibid, 347

not stealing from minors. While a person can legally stop a gentile from collecting *leket*, *shich'chah* and *peah*, the person should act morally above the law with both Jews and non-Jews, for the sake of peace.

Perhaps the most interesting example within the category of being civil towards non-Jews is found in T. Gittin 3:13. The text states:

In a city that has both Israelites and non-Jews, the collectors who collect money for the poor collect from Israelites and from non-Jews for the sake of peace. They give the collection to the poor of the non-Jews and the poor of the Israelites for the sake of peace.

In this situation, the second part is easy to understand. For the sake of peace, tzedakah will go to poor people, both Jews and non-Jews. Perhaps Jews did not want the reputation of helping only their own poor.<sup>27</sup> On the other hand, this mishnah may have upheld a moral principle: Jews truly believed in helping the poor, all poor.

The first half of this text may seem a little odd, but may help unpack the second half. At first glance, it may not seem like a sign of goodwill to collect money from non-Jews. Wouldn't the truly peaceful thing be to distribute money to all who are needy while collecting only from the Jews? The text clearly explains that one should not only distribute the money to the gentile poor, but also collect from gentiles. One explanation is that the collection for money was a sign of membership in the community. People who gave money were part of the community, acting, contributing members, who had equal rights. Both giving and receiving tzedakah showed that Jews and gentiles worked and lived together in

---

<sup>27</sup> In fact, Louis Feldman's *Jews and Gentiles in the Ancient World*, explained that non-Jews often accused Jews of only caring about other Jews. There appeared to be a stigma that Jews were misanthropic towards all people who were not Jewish. Louis Feldman, *Jews and Gentiles in the Ancient World*, (Princeton: Princeton University Press 1993) 125-31



interwoven communities and that Jews should not limit gentile participation in community action.

b. Non-Jewish holidays and rituals

The early chapters of Mishnah Avodah Zara establish a number of boundaries between Jews and non-Jews regarding non-Jewish festivals and houses of worship. For example, the Mishnah rules that a Jew should not do business with a non-Jew three days before a non-Jewish festival, nor should a Jew build a house with wood from a tree that worshiped in idolatry. T. Avodah Zara 1:3 explains that one can greet a non-Jew during a non-Jewish holiday for the sake of peace. In other words, while one may not participate in non-Jewish rituals, benefit financially from commerce connected to non-Jewish festivals, or benefit from anything associated with idolatrous practices, Jews can be civil to gentiles and acknowledge them on their holidays.

T. Gittin 3:14 considers how much a Jew can participate in the burial of and mourning practices for non-Jews. Since the rabbis are asking this question, one can assume that non-Jewish mourning rites may have contained religious undertones. A Jew may have thought that it would have been inappropriate for him to participate in non-Jewish mourning rites. However, the Mishnah says differently. It explains that a person can eulogize non-Jews, bury the dead, and comfort mourners, for the sake of peace (m. Gittin 3:5).

It is unclear toward whom the peace is directed. Perhaps the rabbis were concerned about social and political ramifications if Jews did not attend the funeral of their business partner or government official. Perhaps the rabbis believed that one honors the dead person by participating in burial rituals. The rabbis may have wanted to extend goodwill to the person who died, even if the dead person was not Jewish. Finally, surrounding death, the

rabbis thought about honoring those who were living. The rabbis may have realized that if a Jew and a non-Jew were friends, it would be painful for a non-Jew's relatives if the Jew did not show up at the funeral and eulogize his friend. Potentially the rabbis were also thinking that the Jew may have needed to experience the burial ritual for their own inner peace. Regardless of the reason, one sees here that the rabbis opened up a gate, which, one may have thought was otherwise closed between Jews and non-Jews, for the sake of peace.

#### c. Jewish customs

As noted above, the rabbis wanted Jews to be civil to non-Jews on a regular basis, even during non-Jewish holidays. The rabbis also briefly addressed how *mipnei darchei shalom* can be used to open up boundaries between Jews and non-Jews in areas involving Jewish practices.

During sabbatical years, Jews may not plow or work the fields they own in the land of Israel; they are to honor the land by allowing it to rest and replenish. Gentiles do not have the same relationship to the land of Israel and therefore these restrictions do not apply to them. A Jew may be conflicted about how to interact with a non-Jew during a sabbatical year in the agricultural arena. M. Shebiit 4:3 explains that toward the end of the Sabbatical year, a Jew can rent a newly-plowed field from a gentile, but not from a Jew, for the sake of peace. He may also assist the gentile in his work, but not a Jew, for the sake of peace.

This seemingly simple mishnah is truly interesting. Jews cannot work the land during a Sabbatical year because they have a special relationship to it and God; however, non-Jews do not share these relationships. Jews can work for non-Jews because they are different. Beyond enabling the two to work together, by interacting with the non-Jews in this way in a sabbatical year, Jews affirm that the non-Jew is not Jewish. This interaction can enforce

group identity and build up boundaries between groups. While the Mishnah opens many doors between Jews and non-Jews, it also underscores the difference between them. This mishnah supports Porton's idea that even when the Mishnah is opening up boundaries to non-Jews, it simultaneously underscores the difference between the groups.<sup>28</sup>

T. Peah 3:1 adds another interesting dynamic to the fine balance that *mipnei darchei shalom* tries to find. It states that one cannot give a non-Jew *leket* because it is designated for the Jewish poor. However, as a favor, someone can give the poor gentiles common produce that has been prepared properly. (t. Peah 3:1.) "Common produce" is produce that is not designated as *leket*, *peah*, etc. – the produce the farmer harvests for his own use or for sale. "Properly prepared" means that the necessary priestly portion (*terumah*) and tithes (*maaserot*) have been taken out before the produce is given to the non-Jew. Like m. Shebiit 4:3, this rule underscores the differences between Jews and non-Jews while simultaneously breaking down boundaries between the groups.

## II. *Mipnei darchei shalom in the Talmud (and Midrash)*

The rabbis of the Talmud discussed many of the concepts in the Mishnah. In doing so, they often continued, expanded upon, and even reversed the ideas or the intent of the Mishnah. Talmudic discussions of *mipnei darchei shalom* are no exception. The rabbis of the Talmud discussed some, but not all, of the mishnayot about *mipnei darchei shalom*. They continued the conversation and added new concepts to the idea of *mipnei darchei shalom*. 1. Continuation of the Mishnah

---

<sup>28</sup> Porton, 113

In the Mishnah and Tosefta section above, the largest areas of discussion for *mipnei darchei shalom* fell into three main categories: perpetual fighting, acting civilly, and non-Jews. The Talmud continues the discussion in each of these areas.

#### a. Perpetual Fighting

Gittin 59b-60b discusses M. Gittin 5:8 in which many of the issues of perpetual fighting initially surfaced. When the rabbis of the Talmud explored these concepts, they continued the conversation by asking new questions. For example, when they discuss the order for reading Torah, they explore how to assign aliyot when no Priest or Levite is present. Additionally, the rabbis realize that on some days there are more than three aliyot and thus wanted to determine the assignment of the rest of the aliyot. In order to do so, they designated subgroups of Israelites and proposed an additional order for distributing aliyot. By establishing the order, the rabbis simultaneously subvert weekly argument and establish the hierarchy of the community. Gittin 59 b explains that without established rules, people would quarrel. Quarreling is the concern implied in the mishnah, but the Talmud makes it explicit. The Talmud discusses whether one can give someone else the honor of blessing the bread for a meal and determines that indeed one may. In contrast it states that “in the synagogue one may not [give his honor of the aliyah to someone else] for [others] may come to quarrel.” (Git 59b)

Towards the end of the Talmudic sugya, the rabbis visit the discussion found in m. Gittin 5:8 about the order in which people sharing a watercourse collect water. They explore what the Mishnah means. Shmuel thought the Mishnah meant that the farms upstream should be watered first, while Rav thought it intended for the farms downstream to get their water first. Either way, the discussion between these rabbis shows that they wanted to

continue setting precedence in certain situations to limit perpetual fighting, for the sake of increasing peace and harmony.

#### b. Acting Civilly

As seen above, the rabbis of the Mishnah wanted to establish guidelines for people to act above the law by either doing more than legally required or not doing something that one was legally entitled to for the sake of peace. The rabbis of Talmud expand these ideas in both categories.

Chulin 141b<sup>29</sup> discusses issues concerning birds and bird ownership. The rabbis explained that one should not take a bird from his neighbor's porch. In this case, the bird does not legally belong to the owner of the porch. Even though legally a person could take the bird because it does not belong to the owner of the porch, the rabbis say a person should not, for the sake of peace. This is the same concept as not taking fish caught in a net in a public water source m. Gittin 5:8. The fact that one can legally do something does not mean that one should.

In Gittin 59b, the rabbis discuss a baraita that explains who should recite the blessing for bread at a meal. The baraita states that a person may give the honor of blessing and breaking the bread to someone else, a teacher or someone else more or less prominent than him. This ceding of honor is allowed in private settings because it will not cause quarreling in the same way that giving someone an aliyah in synagogue would.

#### c. Non-Jews

---

<sup>29</sup> Baba Metzia 102 and Sanhedrin 25a-b contain similar discussion about pigeons.

Like the Mishnah and Tosefta, the rabbis of the Talmud discuss many issues involving non-Jews. Of the many mishnayot and texts in the Tosefta about non-Jews and *mipnei darchei shalom*, the Talmud discusses only two.

First, commenting on m. Gittin 5:8, which mentions that non-Jews can collect *leket*, the Talmud states that they can also receive tzedakah. (Git 61a) Second, toward the end of the discussion about m. Gittin 5:8, the rabbis turn to the comment that one should lend support to a non-Jew during the sabbatical year. The rabbis try to figure out what “lend support” means. They interpret “lend support” not as physically working the land, but rather as saying “good luck.” The rabbis go on to say that one should not give a two-fold greeting to non-Jews. They then discuss what someone can and should say to non-Jews. The discussion primarily focuses on what is the least amount one should say to a non-Jew or ways to avoid giving a two-fold greeting. (Gittin 61a) In this case, it seems the rabbis of the Talmud are trying to limit the scope of the interaction between Jews and non-Jews, a concern that is not present in mishnaic texts.

## 2. Talmudic Additions to *Mipnei darchei shalom*

Not only did the rabbis continue the discussions found in the Mishnah, but they also added concepts to the understanding of *mipnei darchei shalom*.

### a. Suspicion

The biggest change between the Mishnah and the Talmud was the addition of the concept of acting to avoid suspicion. Instead of acting a certain way to teach civility, the rabbis wanted people to act certain ways so others would not suspect the worst. The motivation turned from acting civilly to recognizing others’ ability to jump to the wrong conclusion.

Gittin 59b-60b contains two separate discussions concerning about suspicion. The first discussion occurs surrounding the order for Torah readers. The rabbis asked what a community should do if there is no Priest for the first aliyah or no Levite for the second. They do not actually answer the question about a lack of a Priest. For a Levite, the first answer is that a Priest should read in his stead. However the rabbis then explained that “a Priest should not read after a Priest because this might discredit the first. A Levite should not read after a Levite because it would discredit both of them” (Git 59b). The rabbis explain why two Priests only discredit the first and two Levites discredit both. In this discussion, the rabbis clearly fear that the break from routine would lead the community to doubt the legitimacy of the Priest’s and the Levite’s status and ancestry. The rabbis assume that people would see two Levites reading and assume one of them was not a legitimate Levite. Just as they did with perpetual bickering, the rabbis wanted to anticipate people’s negative thoughts and prevent them.

Similarly, the rabbis use the idea of doubt when discussing the placement of the eruv. The Mishnah states that the eruv should always lie in the same place. The Gemara comments that it is not because of honor that the eruv should stay in the same place; rather it is to prevent suspicion. (Git 60b) Rashi explains that the rabbis expected that people would place the eruv in the same place every week. Moving the basket around would concern others. If a person was accustomed to the basket in one place and then it was moved, that person might suspect that there was no eruv and that people carrying objects in the courtyard were violating Sabbath. The Talmud says this guideline is not to stop perpetual fighting or to honor one person, but to ensure people do not doubt the religious practice of their neighbors. Again the rabbis assume that people will see something and assume the worst.

b. The Whole Torah is *Mipnei darchei shalom*

The rabbis of the Talmud often expand on ideas found in the Mishnah. With *mipnei darchei shalom*, they expand it almost as far as possible. In the beginning of the discussion about the order of Torah readers in Gittin 59b, the rabbis offer a number of proof texts from the Bible to support the order of Priest then Levite. The question then arises whether this order derives from the Bible or is a rabbinic enactment. The rabbis ultimately decide that it fulfilled both a biblical and rabbinic decree, since the entire Torah was decreed to promote peace. They cite Proverbs 3:17, which states, “Her [the Torah’s] ways are ways of pleasantness and all her paths are peace.” Proverbs does not specifically say *darchei shalom*, but it does say *darchei noam*, which can be a synonym for peace and the verse does have the word *shalom* in it. In a few short lines, the rabbis state that the entire Torah is *mipnei darchei shalom*, intended to increase peace.

c. Acknowledging Reality

In general, *mipnei darchei shalom* addresses the gray areas of life that are not explicitly legislated by halacha. In the Talmud, the rabbis truly show the complications of the reality on the ground.

Gittin 61b’s discussion about what one can and should say to a non-Jew is followed by a story about two rabbis in the marketplace who happened upon a third person with whom they do not want to speak. The story tells of the two rabbis trying to avoid talking to the third. While it does not say any specific about *mipnei darchei shalom*, it is clearly related because it concludes two large sugyot about *mipnei darchei shalom*. It further acknowledges that life is more complicated than the ideal. Sometimes one has to act civilly, even when one does not want to, because it is the right thing to do.



A second example comes from Gittin 59b-60b in the rabbis' debate over the proper order for Torah readers and many of the complications surrounding that. They clearly lay out the proper order, including subdividing which Israelites should read after a Priest and Levite. They explain that communities should not change the order to not arouse suspicion. Additionally, they say that unlike the motzi rule mentioned above, a person cannot give his aliyah to someone else to honor them. All of this is for the sake of peace. Then the rabbis take a quick turn and state that the rule about not giving away an aliyah only applies on Shabbat and Yom Tov, when the crowds are larger. However, on Mondays and Thursdays, this whole system seems to not matter because of the small crowds in the synagogues. The rabbis spend pages laying out a very specific ideal system and then in one sentence recognize the reality and that their idealized system will not be necessary every day since it only applied on days with large attendance.

### *III. Putting it all together/ Conclusion*

Like many terms in rabbinic literature, *mipnei darchei shalom* is never defined in the Talmud. One has to mine the different texts in which it is used to see the full picture. Overall, *mipnei darchei shalom* is used to create a civil society and promoting harmony among community members and addresses the following areas:

1. Limiting perpetual fighting
2. Teaching people how to act morally beyond the law
3. Interacting with not-Jews
4. Preventing others' negative suspicions.

One sees that *mipnei darchei shalom* is used to curtail negative aspects of human nature, such as perpetual fighting for ego's sake and automatically assuming the worst about others.

Clearly preventing these two human traits adds harmony to society. The rabbis recognized that people have a tendency to think negatively. They had the foresight to set systems into place to prevent them from harming a community.

Scholars have looked at *mipnei darchei shalom* primarily through the lens of Jewish-non-Jewish relations. They debate whether this phrase's primary concern is to teach a larger moral ethic or to protect Jews from harsh relationships with the more powerful non-Jewish neighbors and government. Porton, who examines how Mishnah and Tosefta deal with non-Jews in general, supports the idea that *mipnei darchei shalom* may have been in place to create "a peaceful Palestinian society for all who live there."<sup>30</sup> Haim David Halevi argues that *mipnei darchei shalom* was created so there would not be bad relations with non-Jews and not as intended for a greater moral sensibility.<sup>31</sup> Eilav Shuchtmann<sup>32</sup>, Jacob Lauterbach, among others,<sup>33</sup> all argue that it was part of a desire to create peaceful relationship with non-Jews without a political agenda or fear, but rather for a greater moral good.

The discussions about *darchei shalom* solely within the lens of Jewish-non-Jewish relations seem limited in its definition and understanding of the phrase. The longest single Mishnah about *mipnei darchei shalom* contains seven areas of personal interaction, only one of which focuses on non-Jews (m. Gittin 5:8). The longest Talmudic sugya concerning *mipnei darchei shalom* focuses on the order of aliyot, not non-Jews. It should be noted that the Talmud does limit interaction between Jews and non-Jews in a way that seem counter to the mishnah. However, overall the rabbis use this phrase to address issues of tension and

---

<sup>30</sup> Porton 48

<sup>31</sup> "Session Three: *Darchei Shalom*" *Israel-Diaspora Institute, Judaic Sources of Human Rights*

<sup>32</sup> Ibid

<sup>33</sup> Walter S. Wurzburger, "*Darkhei Shalom*" in *Convenantal Imperatives* eds Eliezar L Jacobs and Shalom Carmy (Jerusalem: Urim Publications, 2008) 55

concern. The rabbis concentrate on inter-Jewish fighting with this phrase, not only on the powerful non-Jews. It is clear that their desire for Jewish-Jewish interaction is to create a peaceful society with minimal fighting and teach people how to act morally above the law.

*Mipnei darchei shalom* guides people to think beyond the law and act morally even when they are not legally obligated to. It does not speak solely to people's negative attributes, but asks people to be civil to neighbors and friends, especially those who are different and of different status. One may want to say that there were different standards for relationships among Jews –and those between Jews and non-Jews. Even though this chapter separates out Jewish from non-Jewish issues, the rabbis of the Mishnah did not separate out the relationships when they were used this phrase. For both Jews and non-Jews, the rabbis address public arenas: leket, renting a field, sharing property and water, holidays, the shuk. *Mipnei darchei shalom* addresses only public relationships, unlike *mishum evah* which addresses personal, intimate relationships between Jews. Later the rabbis of the middle ages separated the relationships. In its original context and form, *mipnei darchei shalom* taught Jews how to be civil above and beyond the law to both Jews and non-Jews alike.

## Chapter 2

### Medieval Period

The Medieval period, (7<sup>th</sup> -18<sup>th</sup> centuries) bore witness to incredible changes for both Jewish and non-Jewish political, economic, religious, and social realms. It would be too difficult to deeply explore all of the issues around *mipnei darchei shalom* in one chapter. Therefore, this thesis will look at small sections of Jewish literature and life during the Medieval period.

First, it will offer an overview of the wide range of Jewish experience during this time. Since an overview could, and does, take up volumes in libraries, this thesis will only focus on two distinct rabbis with contrasting experiences: Rabbi Shlomo Yitzhaki (Rashi) and Rabbi Meir of Rothenburg. Second, this thesis will turn to the law codes to explore their use of *mipnei darchei shalom*, focusing primarily on the Maimonides' *Mishneh Torah*. Finally, the chapter will examine when and how two rabbis, Rabbi Shlomo ben Aderet (Rashba) and Rabbi Meir of Rothenburg, use *darchei shalom* in tshuvot, responsa.

#### I. Jewish Life in the Middle Ages: Rabbi Shlomo Yitzhaki (Rashi) and Rabbi Meir of Rothenburg

To understand the change in the use of *mipnei darchei shalom* between the the rabbinic and Medieval periods, one should first examine the atmosphere and Jewish experience of the time. As a measure of the variety of experiences, this chapter will examine two rabbis, both of whom were prominent in their time and who lived in separate regions at slightly different times. Since *mipnei darchei shalom* in the Mishnah, Tosefta, and Talmud deals with disputes within the Jewish community and with relationships between the Jewish

and non-Jewish communities, this biographical section will touch on how these rabbis dealt with intra-Jewish conflict and non-Jews.

### 1. Rabbi Shlomo Yitzhaki (Rashi)

Rashi lived in Troyes, France (1040 – 1105.) Jews started settling in France in the fourth century, but it is unclear when the community began in Troyes.<sup>34</sup> It appears that aside from purely religious activities, the Jews of France at the time of Rashi were completely assimilated into the community, including dressing and speaking like non-Jews. Herman Hailperin notes that the dress must have been identical or later governments would not have mandated that Jews wear an external symbol denoting their Jewish identity.<sup>35</sup> Jews and Christians worked side-by-side. Jews owned land, traded, and lent money. “They owned flocks of herds, but did not tend them themselves. They would rather leave them in charge of non-Jewish shepherds and cowherds.”<sup>36</sup> Jews employed non-Jews as well as rented land to and from them. It was not uncommon for Jews and non-Jews to live in the same courtyard.<sup>37</sup>

It appears that there was interaction between Jews and non-Jews even in religious realms. One may recall T Git 3:14 states that a Jew can eulogize/lament and bury and non Jew *mipnei darchei shalom*. Hailpern wrote about a case of T Git 3:14. “The death of one of the bishops, we find that both the Jews and the Christians mourn and that the Jews chant Hebrew psalms at the funeral of the Bishop.”<sup>38</sup> Religious interaction was not limited to

---

<sup>34</sup> Herman Hailpern, *Rashi and His World*, Number two, (Pittsburg: College of Jewish Studies, 1957) 16

<sup>35</sup> Ibid, 20

<sup>36</sup> Israel S Elfenbein, “Rashi in His Responsa” in *Rashi, His Teachings and His Personality*, ed Simon Federbush (New York: World Jewish Congress, 1958) 67

<sup>37</sup> Ibid 69

<sup>38</sup> Hailpern, *Rashi and His World*, 16

knowing and mourning a bishop. In fact, Jews even traded in “the sacred articles of the Church and clergy.”<sup>39</sup>

“Living in such close relations with their Christian neighbors, the Jews quite naturally were led by economic and social necessity to modify certain practices of earlier Talmudic origin which forbade Jews to trade with non-Jewish people on non-Jewish festivals.”<sup>40</sup>

Many of the Talmudic prohibitions against non-Jews call non-Jews “idolaters.” Rashi, along with many other leaders, distinguished Christians from “idolaters” to enable interaction.

By the Middle Ages, Christians were generally no longer classified as idolaters (Meir of Rothenburg, *Responsa* #386). Rabbi Isaac of Dampierre placed Christians in the category of Noachides and not of pagans (*Tosfot* to San. 73b and Bek. 2b). Menachem Meiri (1249-1306) went further by stating that Christians and Moslems who live by the discipline of their religion should be regarded as Jews in social and economic relationships (*Bet Habehirah* to A. Z. 20a). Maimonides stated that Christians or Muslims should be considered as *gerei toshav*.<sup>41</sup>

This points to a trend in the Middle Ages to classify non-Jews in a less restrictive category to enable Jews and non-Jews to interact in business and social realms and to improve political relationships between Jews and non-Jews.

In the Middle Ages, the Jews created local-based self-governed administrative bodies and appointed officials who looked after the internal Jewish affairs. New locally-based Franco-German governments influenced the smaller, scattered Jewish communities. These local Jewish governing boards had two primary functions. First, the *bet din* was a group of leaders who responded to religious and halachic questions. Jews would bring religious questions to a *bet din*, a group of leaders, who determined the answer. *Herem Bet Din* was a community’s recognition that they would follow the elected leaders’ rulings. In practice it

---

<sup>39</sup> Elfenbein, “Rashi in His Responsa” 70

<sup>40</sup> Hailpern, *Rashi and His World*, 6

<sup>41</sup> CCAR Responsa: 167 A Rabbis at a Christian Ordination Service. December 1980  
<http://data.ccarnet.org/cgi-bin/respdisp.pl?file=167&year=carr>.

became a local legal court, which only affected that community and did not determine a wider Jewish standard.<sup>42</sup> Second, the *parnasim* were elected officials governed the administrative affairs of the community, such as fiscal administration, establishment of new assessments and supervision of charitable institutions. “In the time of Rashi, the assessment and collection of taxes were vested in the hands of the Kahal *collectively*.”<sup>43</sup> “Charity was dispensed by Jews to Christians as well as to Jews,”<sup>44</sup> which was an enactment of the Talmudic law that Jews should give to the poor non-Jews along with the poor Jews *mipnei darchei shalom*.

Rashi is thought of as one of the greatest Jewish scholars. He lived at a time of “darshanim” in which Jewish thinkers were mining the bible for understanding and often used midrashic methods to see a deeper meaning. Rashi, however, wanted to ensure that people understood the pshat, or surface reading of the text. He commented on the entire Bible and Babylonian Talmud explaining the meaning so everyone could comprehend the text, while also adding his own thoughts.

There are two significant things to note about Rashi’s commentaries and non-Jews. First, Christian commentators heavily relied on and referenced Rashi’s commentaries on the Bible. A number of contemporary scholars note an extremely high usage of Rashi in Christian commentaries.<sup>45</sup> It is clear that Christian scholars trusted Rashi’s understanding of Hebrew and relied on it for their own interpretations. This shows that there was intellectual interaction between the communities. Hailperin noted that the “Jews of Troyes, favored by

---

<sup>42</sup> Haiplern, *Rashi and His World*, 10-11

<sup>43</sup> Elfenbein, “Rashi in His Responsa” 73

<sup>44</sup> Haiplern, *Rashi and His World*, 8

<sup>45</sup> Leonard B Glick, *Abraham’s Heirs*, (Syracuse: University of Syracuse Press, 1999) 137; Hailpern, *Rashi and His World* 24-27; Herman Hailpern, *Rashi and The Christian Scholars*, (Pittsburgh: University of Pittsburg Press, 1963) 103-249; Smalley, *The Study of the Bible in the Middle Ages*, 80, 103-4

the counts of Champagne, were noted for their enlightenment.”<sup>46</sup> Rashi’s scientific and rational approach shows that non-Jewish thinking influenced him.

Second, Rashi spoke about non-Jews within his commentaries, especially their interpretations of the Bible. Scholars noted how intertwined the Jewish and non-Jewish communities were through dress, work, economy, and shared neighborhoods. However, one should not forget that the first Crusades occurred during Rashi’s life. While the Crusades did not impact Troyes directly, Rashi knew of the oppression happening to Jews. In cities not directly affected by the Crusades, Christians seized money, land and increased taxes for Jews. Singer notes anti-Christian undertones in Rashi’s commentaries. He explains that Rashi may have edited those sentiments into his commentaries after the Crusades. However, he quickly dismisses that notion and relies on Grossman’s consideration that Rashi consistently had “negative attitude toward the Christian faith that existed long before the tragedies of 1096.”<sup>47</sup> Singer demonstrates many places in which Rashi actively taught against Christian readings of the Bible. For example, he speaks against reading Jesus into the Psalms.<sup>48</sup> Another interesting note is that Rashi never used the phrase *mipnei darchei shalom*.

Rashi’s biography shows a variety of aspects of Jewish life in Medieval France. The Jewish community moved from centralized locations in Israel and Babylonia to spread out, smaller communities throughout Europe. One side effect of the sprawling Jewish community was the creation of local-based Jewish governance that legislated both religious and economic arenas. Another aspect of Medieval France was the extremely high social and

---

<sup>46</sup> Hailpern, *Rashi and His World*, 8

<sup>47</sup> Michael A. Singer, “God’s Love for Israel: Apologetic and Hermeneutical Strategies in Twelfth-Century Biblical Exegesis” in *Jews and Christians in Twelfth-Century Europe*, ed. Michael A. Singer and John Van Engen, (Notre Dame: University of Notre Press) 129

<sup>48</sup> Singer, “God’s love for Israel” 130-1



economic interaction between Jews and non-Jews. However, not all interactions between Jews and non-Jews were pleasant – Rashi’s time witnessed the Crusades and other acts oppressing Jews. Biographies of Rashi do not tend to focus on conflict within the Jewish community.

## 2. Rabbi Meir Of Rothenburg

Rabbi Meir of Rothenburg’s (c 1215/20 – 1293) life falls on the other extreme of Jewish experiences in the Medieval period. He lived in Rothenburg, Germany and was a famous scholar and leader in the Jewish community. Rabbi Meir of Rothenburg’s life was not marked by shared ideas and identities with his non-Jewish neighbors, as Rashi’s was. Rather, he was well aware of animosity between the two groups early in his rabbinate. He was born the son of a rabbi in Germany. Rabbi Meir moved to Paris to study with great scholars. In addition to learning from great scholars, he also witnessed the burning of the Talmud in public squares by Nicolas Donin.<sup>49</sup> After studying in Paris, Meir moved back to Rothenburg. There he and his wife started a family and bought a nineteen bedroom home in which they started a school. In the school, he taught students Jewish texts and values and Hebrew, and also became a leader in writing tshuvot.<sup>50</sup>

His work in tshuvot was incredibly important. Similarly to French Jewry described above, in Germany in the middle ages, the Jews had community autonomy over their religious practice. They were self-governing in many ways, although they always obeyed the rules of the government in which they lived. From a very early age Jews sought Rabbi

---

<sup>49</sup> Lillian S. Freehof, *The Captive Rabbi*, (Philadelphia: The Jewish Publications Society of America, 1965) 3-10, Irving A Agus, *Rabbi Meir of Rothenburg*, Vol 1 (Philadelphia: The Jewish Publication Society, 1947) 10

<sup>50</sup> Freehof, *The Captive Rabbi*, 37-53

Meir's opinion on halachic rulings. He was seen as the "supreme court of appeals for Germany and its surrounding countries" for matters of halacha.<sup>51</sup> Like all rabbis of his time, he was often confronted with new situations and had to adapt Talmudic principles to issues not directly addressed in the Talmud.<sup>52</sup>

"In whatever country they settled, [Jews] lived as a group apart. They were willing to pay for the privilege of settling in those countries, for protection of their lives and their properties and for the right to engage in business."<sup>53</sup> Jews paid special fees to the government to live and work and thus money often created and drove the relationship with the government. By the mid-thirteenth century, it was clear that the Jews could not always count on the protection of the royalty. For example, in Frankfurt, riots erupted, killing both Jews and Christians and destroying half the town. The Jews were blamed.<sup>54</sup>

Jews became a pawn in the larger political scheme of Germany. In 1250 Frederick II died, and Germany entered a period of dissolution and decentralization.<sup>55</sup> The kings, Emperor Rudolph, and local officials vied for the power and money; each claiming they owned the Jews and the right to their money. According to Lillian Freehof, author of *The Captive Rabbi*, a biography of Meir of Rothenburg, a Jew named Amshel Oppenheimer provided the Emperor Rudolph the First of the Hapsburgs with extra financial assistance. Amshel "was *able* to help Rudolph whenever he wanted money, but even more importantly, he was *willing* to send a steady stream of gold into the Emperor's bottomless reservoirs because it helped the Jews if the Emperor was contented."<sup>56</sup> Amshel approached Rabbi Meir

---

<sup>51</sup> Agus Rabbi Meir of Rothenburg, 14

<sup>52</sup> Ibid 34

<sup>53</sup> Freehof, *The Captive Rabbi*, 49

<sup>54</sup> Glick, Abraham's Heirs, 253

<sup>55</sup> Ibid, 253

<sup>56</sup> Freehof, *The Captive Rabbi*, 54

because he too was rich and had access to great wealth within the Jewish community. He asked Meir to raise money for the Emperor. Meir complied, but he also wanted an audience with the Emperor Rudolph, to which the Emperor agreed.

As Rudolph remained in power, he wanted his treasury to grow. He raised taxes on everyone and asked the Jews for more and more money.<sup>57</sup> Rudolph became concerned that Jews would not be loyal to him. Instead of attacking them directly, he “merely gave license to the fanatic Franciscan and Dominican monks”<sup>58</sup> to do what they wanted. There were reports of Christians attacking Jews and burning synagogues.

Rabbi Meir of Rothenburg, as the leader of the Jewish community, walked a fine line between protecting his community from harm and allowing non-Jewish community to enslave the Jews. For example, when the government demanded Jews wear badges, he complied. However, Rabbi Meir of Rothenburg refused to wear a horned hat.<sup>59</sup> “The Jews... refused to accept this degraded status. We must keep in mind that at this time the Jews of Germany were still bold, proud, and liberty loving. They were not yet broken in spirit and body.”<sup>60</sup> They paid money to the government, yet Rabbi Meir of Rothenburg refused to enable the government to own the Jews.<sup>61</sup>

As the years progressed, life for Jews worsened in Germany. The government imposed more taxes, up to one-third of their working capital, and violence increased. Jews fled Germany. Those who remained continued to be pawns between competing powers.<sup>62</sup> Rudolph had two agendas. First, he wanted to increase his treasury. As more Jews left, he

---

<sup>57</sup> Ibid 103

<sup>58</sup> Ibid 105

<sup>59</sup> Ibid 117

<sup>60</sup> Agus, *Rabbi Meir of Rothenburg*, 144

<sup>61</sup> Freehof, *The Captive Rabbi*, 117-9

<sup>62</sup> Agus, *Rabbi Meir of Rothenburg* 138

knew he could no longer tax them. Second, Rudolph wanted to official claim ownership to the Jews through “*servi camerae*” which “means that the person and property of the Jew became the possession of the king.”<sup>63</sup> “Rudolph, still insisting on ownership ... declared that since the Jews had acted illegally by fleeing, their entire remaining property was forfeited to the imperial treasury.”<sup>64</sup> As more Jews left, the worse conditions became for Rabbi Meir and his family. Rabbi Meir’s family decided to pack up their life and leave Germany. On their journey to Israel, they were caught and Emperor Rudolph imprisoned Rabbi Meir of Rothenburg for his attempt to flee.<sup>65</sup> Rudolph called for the arrest of Rabbi Meir of Rothenburg as a “vindictive action” against Jews leaving Germany because he wanted to tighten his control over all the Jews and force them to agree to be his servants.<sup>66</sup>

The Jewish community raised money to free Rabbi Meir of Rothenburg. Emperor Rudolph would only accept the money if it was an agreement to be “*servi camerae*.” Rabbi Meir of Rothenburg thought such a condition was “absolute enslavement.”<sup>67</sup> Rabbi Meir refused to say that the Jews were property of the king and never allowed his community to pay for him. Additionally, he did not want the king to capture and imprison more Jews to ransom them off.<sup>68</sup>

Rabbi Meir remained in prison for many years. In 1292, Emperor Rudolph died. Freehof offers the following dialogue between Rabbi Meir and his disciple Meir Ha-Kohen when the latter told Rabbi Meir of the Emperor’s death.

R. Meir sighed. “May his soul rest in peace.”

Meir Ha-Kohen laughed lightly. “Though he was your enemy, my Master?”

---

<sup>63</sup> Freehof, *The Captive Rabbi*, 118

<sup>64</sup> Glick, *Abraham’s Heirs*, 256

<sup>65</sup> Freehof, 135-59

<sup>66</sup> Agus, *Rabbi Meir of Rothenburg*, 144-6, Glick, *Abraham’s Heirs*, 256-7

<sup>67</sup> Glick, *Abraham’s Heirs*, 256

<sup>68</sup> Agus, *Rabbi Meir of Rothenburg*, 130

R. Meir smiled. “The Talmud teaches us that we must comfort Gentiles when they mourn and, if need be, we must bury their dead as we do the dead of our own people...”<sup>69</sup>

Rabbi Meir died in 1293 in prison and his body was released fourteen years later. One can see that Rabbi Meir’s life with non-Jews was complex and full of anguish.

Rabbi Meir of Rothenburg worked in his own life to find the right balance for interaction between Jews and non-Jews. He wanted to protect Jews, by complying with non-Jewish rulers and standing up against them when needed. He also worked for what was right within the Jewish community. For example, a poor unattractive man was engaged to and married a daughter of Rabbi Judah of Duren. The daughter did not like her husband, nor did the Rabbi Judah like to be associated with his new son-in-law. After a year of marriage, Rabbi Judah sent the new groom to Rothenburg to separate him from his daughter with hopes that the husband would grant a divorce. Rabbi Meir of Rothenburg traveled to Duren and fought for the young groom’s rights to his wife. “He would not permit the rich and powerful R. Judah to take advantage of the helpless youth.”<sup>70</sup> This battle lasted years and many rabbis became involved, “Only R Meir of Rothenburg fought for the poor young man, insisting on justice.”<sup>71</sup>

Rabbi Meir of Rothenburg’s life offers a different picture of Jewish life in the Middle Ages. His was a time of deteriorating relations between Jews and non-Jews, full of violence, taxation, and political humiliation. A life of trying to do what was right for the community, by both agreeing to the protection of non-Jews and standing up for principles against non-Jews. Rabbi Meir’s Jewish community was separate and autonomous, but clearly heavily affected by the non-Jewish community.

---

<sup>69</sup> Freehof, *The Captive Rabbi*, 191

<sup>70</sup> Agus, *Rabbi Meir of Rothenburg*, 49

<sup>71</sup> Freehof, *The Captive Rabbi*, 92

## II. Codes

The Middle Ages birthed an explosion of different types of Jewish writing. The Jewish community no longer lived solely in Israel or the Middle East, but spread throughout Europe and Northern Africa, with some still in older areas of settlement. The Talmud was a canonized entity, and remained the reference for how to deal with questions of Jewish life and living. However, the Talmud is not organized by subject, nor is it easy to search for an answer to any given question.

Maimonides wanted to make the law accessible and therefore created the Mishneh Torah, a code of law, between 1170 and 1180. He created the Mishneh Torah as one, organized location for the laws in the Oral Torah. He intended for Jews to only need the Torah and the Mishneh Torah to locate the law. He organized the laws by subject and, for the most part, omitted the reasoning and proof texts for each of the laws.

Within the Mishneh Torah, *mipnei darchei shalom* appears eleven times, split between intra-Jewish issues and issues concerning non-Jews. The interesting thing to note is that, unlike the Talmud, the Mishneh Torah texts do not use *mipnei darchei shalom* to address both Jewish and non-Jewish issues within the same section. In other words, even though *mipnei darchei shalom* is still applied to both issues of Jewish-Jewish relations and Jewish-non-Jewish relations, the issues are completely separated from one another in Maimonides' code. This fact may be more of a reflection of the way Maimonides organized the Mishneh Torah than a statement about the proper use of *mipnei darchei shalom*.

### 1. Intra-Jewish issues in Mishneh Torah

The Mishneh Torah organizes issues stated in the Talmud, sometimes in different ways. Some of the laws are repeated in language similar or identical to that of the Mishnah and

Talmud, not reinterpreted or expanded. One example is the notion that priests do not donate the sheqel tax (Hilchot Sheqalim 1:10 & M. Sheq 1:3) and another example states that the first field to be irrigated should be the one closest to the water (Hilchot Shecheinim 3:1 & M. Git 5:8). The Mishneh Torah also reiterates that one should not steal from a deaf, mute, mentally incapable person or a minor. (Hilchot Gezeila v'Aveida 17:12 & M. Git 5:8)

Other issues are restated, but also expanded upon. For example, in the Mishnah and the Talmud, the rabbis state that an eruv should always be kept in the same location, *mipnei darchei shalom*. As noted above the Mishnah gave no reason, but the Talmud stated it was so people would not be suspicious that there was no eruv. The Mishneh Torah makes two interesting adjustments to this teaching. First, it states, ואם היו רגילין להניח בו אין משנין אותו, “and if they were accustomed to placing it in one house, they do not change it” (Hilchot Eruvim 1:16). One can read this text as implying that if the custom of a particular courtyard was to move the eruv every week, they could continue that custom. Second, the phrase immediately preceding this phrase states, ובית שמניחין בו עירוב אינו, explaining that the person in whose house the eruv lies does not need to contribute bread for the eruv. (Eruvim 1:16) The Touger commentary explains, “Rambam’s commentary on Mishnah Gittin 5:8 states that the person whose house gets the eruv benefits because they don’t have to put in bread. Therefore it is nice to continue to offer them this benefit.”<sup>72</sup> According to Touger, Maimonides linked these two ideas. The reason that one does not move the eruv was to continue to give the host the benefit of not contributing. It

---

<sup>72</sup> Maimonides, *Mishneh Torah*, trans. Eliyahu Touger. (New York: Monznaim, 1993) The Laws of Eruvim 1:16, 24

does not appear to be connected to perpetual fighting as in the Mishnah, or suspicion as in the Talmud, but stems out of neighborly respect.

One other rule in the Mishneh Torah also expands upon the rabbinic idea connected to *mipnei darchei shalom*. T Peah 3:1 states, “There are poor people, who do not have the right to leket, if the owner is able to protest immediately, he protests. If not, he lets them be, for the sake of peace.” Hilchot Matanot Aniyim 4:13 precedes this rabbinic text with the following addition, “It is forbidden for a person to have a lion or the like rest in his field so that the poor will fear and flee.” Maimonides quoted this idea to show that the land owners to take their responsibility to the poor seriously and not try to prevent the poor from taking food in an unethical or threatening way.

It is important to note that in addition to the small expansions to *mipnei darchei shalom* in the Mishneh Torah, there are significant ideas that are no longer connected to *mipnei darchei shalom*. The most notable is the order of aliyot. As noted above, the longest sugya of the Talmud connected to *mipnei darchei shalom* addresses the order of aliyot to the Torah. Maimonides states the same order found in the Mishnah and Talmud. However, he does not connect it to *mipnei darchei shalom*. One can assume that by the time of Maimonides, the Torah reading order was such a common practice that people did not need, nor cared about the reason behind it.

## 2. Non-Jews in the Mishneh Torah

Of the eleven sections of the Mishneh Torah that mention *mipnei darchei shalom*, six of them discuss issues about non-Jews. Just as seen above, the Mishneh Torah restates laws found in the Talmud such as those found. Hilchot Gezelah V’aveidah 11:3 relates the result of a debate found in Talmud about what someone should do if he or she finds an object the



belongs to a non-Jew. The Mishneh Torah does not retell the details of the debate, but does explain that one should take utensils of a non-Jew inside so they are not stolen, for the sake of peace. Hilchot Evel 14:13 also restates what is found in the Talmud: Jew should bury non-Jewish dead and visit non-Jewish sick people *mipnei darchei shalom*.

The Mishneh Torah's connection between *mipnei darchei shalom* and non-Jews often relates to providing for poor gentiles. In three separate texts, Maimonides states that Jews should, on some level, help provide for needy non-Jews. However each of these texts combines the idea of helping the non-Jews with different ideas. Hilchot Avodat Cohavim 10:5 states:

One should provide for the gentile poor with the Jews for the sake of peace. One should not rebuke gentiles for taking leket, shich'chah and peah for the sake of peace. One may inquire about their well being – even on their festivals - for the sake of peace. One should not double their greetings to gentiles and should not enter into their houses of worship on their holidays to greet them. If you cross paths in the market, one should greet them with a small voice and a lowered head.

This is a typical example of Mishneh Torah: a statement of laws found in the Talmud without proof texts, reasoning, or debate. This is a simple piling on of all ideas connected to how one should interact with a non-Jew. All of the parts of this halacha finds their roots in the Talmud; however, the last sentence seems to inspire interesting comments. Touger in his translation and commentary on the Mishneh Torah explains, “part of the complication of the last sentence is the use of the word ‘shalom.’ Shalom is one of the names of God and it would not be permissible to use God’s name in a gentile’s house on a non-Jewish holiday. According to this point of view, one can greet the gentiles as long as they do not use this term.”<sup>73</sup> On the other hand, in the contemporary debate about whether or not *mipnei darchei shalom* teaches a general ethic of peace or is primarily used as a tool for political security,

---

<sup>73</sup> Touger, Mishneh Torah, Hilchot Avodat Cohavim 10:5 195-6

Haim David Halevi uses this text as proof that this term was solely for political security. He focuses on the ideas at the end of this text: to greet them with a small voice and lowered head (without adding in Touger's understanding that Shalom is a name of God.) He feels that if *mipnei darchei shalom* were truly born out of a desire to create peace, then Jews would not quiet their greeting to non-Jews.<sup>74</sup>

In two other texts, Maimonides speaks about providing for non-Jews. In Hilchot Matanot Aniyim 7:7, it states that we provide sustenance and clothes for the non-Jewish poor with the Jewish poor. Hilchot Matanot Aniyim 1:9 states:

Whenever the term "stranger" is used with regard to [these] presents to the poor, the intent is a convert to Judaism. [This is evident from the wording used by Deuteronomy 14:29] with regard to the tithe [given to the] poor: "And the Levite and the stranger will come." Just as the Levite is a member of the covenant, so too, the "stranger" is a member of the covenant. Nevertheless, we do not prevent gentiles from [taking] these presents. Instead, they [are allowed to] come together with the poor of Israel and take them as [an expression of the Torah's] ways of peace.

This text limits the definition of a stranger who can collect leket to someone who wants to convert. He equates the stranger to a convert and therefore sees the Torah as only protecting the convert. This presumably restricts non-Jews from the category of stranger in the Torah. His only concession to non-Jews is the last sentence in which he allows them to take the leket set out for the poor. It is telling that he says, "they take" and not "we give." It appears that if the non-Jewish poor come to collect, Jews allow them to take, but Jews do not invite them to collect with the poor.

Commentators on Hilchot Matanot Aniyim 1:9 and on Hilchot Avodah Cohavim 10:5 limit the generosity of giving tzedakah to non-Jews. Radbaz on Hilchot Matanot Aniyim 1:9 emphasizes the word "together." He states that only in instances when a non-Jew comes

---

<sup>74</sup> "Session Three: *Darchei Shalom*" *Israel-Diaspora Institute, Judaic Sources of Human*

together with a Jew to collect leket does one apply *mipnei darchei shalom*. Other commentators make the same statement about Avodah Cohavim 10:5. “The later authorities (see Turei Zahav, Yoreh De’ah 151:9 ; Seftai Cohen 151:19) do not accept this conclusion and allow giving them gifts even when they come alone.”<sup>75</sup>

Perhaps the most interesting observation of Mishneh Torah about non-Jews and *mipnei darchei shalom* is found in Hilchot Melachim 10:12. It states:

However, our Sages commanded us to visit the gentiles when ill, to bury their dead in addition to the Jewish dead, and support their poor in addition to the Jewish poor for the sake of peace. Behold, Psalms 145:9 states: 'God is good to all and His mercies extend over all His works' and Proverbs 3:17 states: 'The Torah's ways are pleasant ways and all its paths are peace.'

Maimonides rarely provided proof texts for laws in the Mishneh Torah. This proof text asserts that God is good and merciful to all, even to non-Jews. Therefore Jews should be good to non-Jews. Furthermore, the entire Torah is for the sake of peace. One can say that treating non-Jews with respect and kindness emulates God and fulfills the Torah.

Walter Wurzbarger sees tremendous power in this text. He uses it as the basis for his understanding of *mipnei darchei shalom* as an instrument for teaching a larger Jewish ethic. He states that, “by linking the pursuit of the ‘the ways of peace’ with the divine attribute of compassion, Maimonides suggests that what is involved in ‘the ways of peace’ is an overriding religious imperative.”<sup>76</sup> In other words, Maimonides’ construction of this text shows that Jews must extend kindness to non-Jews as a religious obligation. “Significantly, the verse ‘God’s mercy extends to all His creatures’ is also cited by Maimonides as evidence that the cultivation of compassion constitutes one of the ways in which we comply with the

---

<sup>75</sup> Ibid 195

<sup>76</sup> Wurzbarger, “Darkhei Shalom” 58

mandate to emulate divine attributes of ethical perfection.”<sup>77</sup> Wurzbarger explains that this text teaches an “agent-morality,” in which Jews should act morally patterning themselves after God. One significant way in which Jews can do that is to be merciful to everyone, taking care of the poor, regardless of their religion. He concludes his article about the intention of *mipnei darchei shalom* by saying, “at least for Maimonides, and possibly for many other Jewish authorities, ‘the ways of peace’ are treated as the ethical religious norm and not merely a pragmatic dive to safeguard Jewish self-interest.”<sup>78</sup>

### 3. Other Codes – Tur and Shulchan Aruch

Other codes, such as the Arba'ah Turim (Tur) and the Shulchan Aruch follow the same patterns found in the Mishneh Torah. Yaacov ben Asher composed the Tur at the turn of the fourteenth century in Spain. *Darchei Shalom* appears ten times in the Tur, four of which deal with intra-Jewish relations, while six focus on non-Jews. The Jewish issues addressed concern aliyot to the Torah, stealing from minors, collecting water from a well, and issues surrounding an eruv. It is interesting to note that the Mishneh Torah, which was written one hundred years earlier, did not link issues about aliyot to *darchei shalom*, but the Tur did. The Tur touches on the following subjects when it talks about non-Jews: providing for the non-Jewish poor, burying their dead, visiting the sick and returning lost objects. Like the Mishneh Torah, the Tur separates issues concerning Jewish relations and Jewish-non-Jewish relations.

The Shulchan Aruch, which became the most used code of the Middle Ages and even today, mentions *darchei shalom* eleven times, four in connection to internal Jewish communal relations. Like the Tur and unlike the Mishneh Torah, the Shulchan Aruch

---

<sup>77</sup> Ibid 59

<sup>78</sup> Ibid 60

mentions issues surrounding aliyot. However, it does not justify the order by citing *darchei shalom*; rather the principle is cited to bring up a new subject, which was heavily touched upon by the t'shuvot: what should a community of all priests do about the order of reading Torah? The Shulchan Aruch also mentions issues of water collection, eruv, and taking a lost object from a minor. As should not be a surprise, in terms of non-Jews, it focuses on giving to the poor of non-Jews, visiting the sick, burying the dead, and collecting lost objects.

Overall, in their use of *mipnei darchei shalom*, the codes primarily look to the past to organize and restate the laws of the Talmud and Mishnah. Much of the time, the codes relate the information in a clearer fashion. Maimonides also expanded a few pieces and linked different laws together to create a new understanding of *mipnei darchei shalom*. All of the codes separate texts dealing with Jewish issues from those dealing with non-Jews. The separation may be a byproduct of the genre, rather than a stance on *mipnei darchei shalom*. The Talmud organized itself around the Mishnah and tends to go on tangents, which follow a stream of consciousness writing style. As such, topics get woven together that may or may not necessarily fit next to one another. It follows Talmudic logic that once it started talking about *mipnei darchei shalom*, it mentioned many topics related to it. Moreover, the Mishnah sometimes cites *darchei shalom* as the reason for several rules which are only related by a phrase. In the codes, these rules are “redistributed” by topic, separating ideas that were joined in the Talmud.

### III. Responsa

For the most part, law codes organized and simplified the rules stated in the Talmud and Mishnah. However, new situations, not addressed by the Talmud, arose daily. Communities and individuals wrote letters to rabbis with questions about how to solve a problem. The

rabbis looked to traditional sources, as well as the current Jewish situation and answered the questions in the form of tshuvot or responsa. Tshuvot serve as a good indicator of what occurred to Jewish communities at the time and the values the rabbis and the communities held. Thousands of tshuvot exist that cite *mipnei darchei shalom*, this chapter will focus on two rabbis. One is Rabbi Meir of Rothenburg. The other is Rabbi Shlomo ben Aderet from Barcelona (1235 -1310.)

### 1. Rabbi Meir of Rothenburg

Rabbi Meir of Rothenburg wrote roughly 1500 responsa, of which only one mentions *mipnei darchei shalom*. The question asked by the community was whether or not a Kohen could give his privilege of the first aliyah to someone else. This question, of course, refers to the order of Torah readers set in the M. Git 5:8, using *mipnei darchei shalom*, in which a Kohen<sup>79</sup> reads first, then a Levite, and then an Israelite. The Talmud actually answers this question. In Gittin 59b, a conversation connected to *mipnei darchei shalom* states that a Kohen cannot give up his aliyah because it may cause bickering. However, at the end of the discussion, it notes that on Mondays and Thursdays when the community is smaller, a Kohen may give up his honor. Rabbi Meir of Rothenburg accurately follows the Talmud when he cites *mipnei darchei shalom* when asked if a Kohen can give his honor to someone else.

Rabbi Meir of Rothenburg gives two main reasons why a Kohen cannot give up aliyah. His first reason mirrors the reason given by the Talmud. He explained that a Kohen should not give his honor for fear that others would become jealous and think they too are worthy of taking the Kohen's place. This is the same reason offered in the Talmud: to stop

---

<sup>79</sup> This thesis changed from using "Preist" to "Kohen." By the time of the Medieval period, the Kohenim were identified as Kohen, not Priest.

perpetual fighting before it starts. Additionally, it indicates that communities may be delicate and it was important to keep peace within the Jewish community.

Rabbi Meir of Rothenburg's second reason differs completely from the Talmud. He states that it is a mitzvah for the community to hear the Kohen read first. Therefore if a Kohen did not read first, the community would not be fulfilling their obligation. This explanation leaves the Kohen with no choice about giving someone else his aliyah. Moreover, it takes the issue away from the Kohen and his honor, and places it on the community. The issue is not about peace between individual members, but fulfilling a religious obligation for the community.

## 2. Rabbi Shlomo ben Aderet (Rashba)

Rashba's life overlapped with that of Rabbi Meir of Rothenburg, but he lived in Spain, not Germany. Rashba is known as one of the great Jewish thinkers and authors of his time. He wrote over 3000 tshuvot and commentary on the Talmud. He cites *mipnei darchei shalom* in nine different tshuvot. Some of his tshuvot clearly directly continue the conversation in the Talmud. For example, the Talmud asked the question of how a community should handle Torah reading with no Kohen or Levite present. The Talmud ultimately explains that without a Levite, the Kohen who read the first aliyah should also read the second (Gitin 59b). In a similar vein, Rashba received questions regarding what a community should do if everyone in the community was a Kohen, thus making it impossible to preserve the order of Kohen, Levite, Israelites. He answers that if there is one Israelite, they should have that Israelite read multiple times for all the Israelite aliyot.

Rashba also faced questions connected to the ideas and principles of *mipnei darchei shalom* that were not direct expansion of Talmudic ideas. In one of Rashba's Tshuvot<sup>80</sup> he answers a question posed by a community selling the synagogue building. They asked if individuals could own specific seats in the synagogue. Rasha answers that people cannot own or buy individual seats. Seats cannot be owned because they are not ownerless or declared as abandoned; the community has collective ownership of the building and its parts. However, Rashba also recognizes that community members feel ownership over their seats. People often sit in the same exact seat day after day, week after week. He therefore suggests that while a person cannot legally own a seat in the synagogue, it is not right for someone else to sit in a seat "known" to be favored by someone else. There is no legal ownership of seats, but people should behave as if there is because it is the right thing to do.

In this tshuvah, Rashba took an issue not addressed in the Talmud time and applied a Talmudic concept to it. It is easy to understand why he applied *mipnei darchei shalom* to seat ownership; it is a situation which could easily lead to perpetual fighting and he could declare that people should act above the law. Similar to situations of the Mishnah, Tosefta, and Talmud, although one legally can do something, one should not because it is not nice. This tshuvah, Rashba's tshuvot about a community of all Kohanim and Rabbi Meir of Rothenburg's tshuvah, show that rabbis recognized the value of applying *mipnei darchei shalom* to new situations to help teach Jews how to act well, limit fighting among the community, and promote congeniality among a community.

Rashba's wrote another tshuvah<sup>81</sup> with *mipnei darchei shalom*, which counters the phrase's use and relationship to law as discussed above. A community from Seville, Spain

---

<sup>80</sup> Rashba Tshuvot Part 5 Siman 250

<sup>81</sup> Rashba Tshuvah helek 3 siman 432



asks Rashba about inheritance. The question cites a community's agreement, *shtar*, justified by *mipnei darchei shalom* and agreed upon for fifty years. Jewish communities in the middle ages had tremendous autonomy over themselves. They could determine a rule for their community that did not apply to any other Jew in other location, communities sometimes create specialized laws for a specified period of time.

This particular community agreement lays out exactly how much inheritance people receive if their spouse or parent dies. The agreement states that its intention was to face the problem of children who were left destitute after a parent died. According to the question from the tshuvah, the community agreed to the following condition. If a wife died, the husband and the children divide the property equally. The same holds true for a husband's death, but she does not collect her ketubah. It is unclear from the text whether the children include both male and female children or just the sons. The response states that if a husband dies and leaves unmarried daughters, their dowries come out of the sons' inheritance. If the daughters receive no inheritance, this means they at least have something for a dowry. If they do receive inheritance, then this is even extra for them. If a husband dies and leaves the wife without children, the wife collects her ketubah and then an additional quarter of what remains. The other three quarters are divided among his heirs, presumably brothers or other male relatives.

Unlike other cases above, here *mipnei darchei shalom* is applied to a family situation. The tension is between the surviving parent and his or her children or among siblings. In every other situation above, the people involved have been in public, not intimate or familial relationships. Moreover, in this situation, *mipnei darchei shalom* trumps traditional Jewish

law. Chapter Eight of Baba Batra in the Mishnah lays out the laws of inheritance. For example:

The order of [the passing of an] inheritance is thus: *if a man dies and has no son, then you shall cause his inheritance to pass to his daughter* (Num 27:8). The son takes precedence over the daughter, and all of the offspring of the son take precedence over the daughter. The daughter takes precedence over [surviving] brothers. The offspring of the daughter take precedence over the brothers. The offspring of the brothers take precedence over the father's brothers. This is the governing principle: whoever takes precedence in inheritance – his offspring [also] take precedence. The father takes precedence over all [the father's] offspring [if none is a direct offspring of the deceased.] (mBaba Batra 8:2)

All the same are the son and the daughter as to matters of inheritance, except that the son takes a double portion in the estate of the father (Dt 21:17). [The son] does not take a double portion in the estate of the mother. The daughters are supported by the father's estate and are not supported by the mother's estate. (mBaba Babtra 8:4)

This community's agreement changes the order and amount of inheritance. In the case of the mother dying, it helps the children and weakens the husband's position because according to the Mishnah, the children do not collect when the mother dies. Rabbinic law grants a man the right to inherit his wife's entire estate upon her death; this agreement overturns that right. When a husband dies, the wife may or may not benefit from the community decision. She cannot collect her ketubah, but she is also not restricted to collecting only her ketubah. This agreement may also have provided greater protection for unmarried daughters than the Mishnah. As noted above it is unclear who receives the inheritance. If both daughters and sons automatically inherit and unmarried daughters also receive their dowry, then this provides them with much more inheritance. If the community agreement indicate that only sons inherit, then there is no change in daughters' inheritance rights – they inherit only when there are no sons. In every other case above, *mipnei darchei shalom* expanded the law or suggested that people do less than they are legally able to. Nowhere above did *mipnei darchei shalom* reverse or change the law. In this case, ethics trump law.

The tshuvah does not explain why the decree was enacted or in what way the change led to peace. The decree was enacted by the Jewish community of Seville, Spain. Seville was in a precarious position. Located in the South of Spain, it was under Muslim rule until the early thirteenth century. During the thirteenth century, the Christian monarchs reconquered Spain, including Seville. This decision may have reflected a custom borrowed from either the surrounding Muslim or Christian culture. It should be noted that practices found in the Quran state that a daughter should receive half of what a son does, which is clearly not reflected in the decree.

This decree may have reflected Jewish society's need to protect itself from inheritance taxes. With the wars between the Muslim and the Christian powers, both sides needed to increase their wealth. One way of increasing wealth was increasing taxes, especially on Jews. Scholars note that Jews were required to pay a land tax and poll tax.<sup>82</sup> One can assume that there were other taxes, but it is unclear if there was an inheritance tax. If there was an inheritance tax, then dividing the estate between a surviving spouse and the children, rather than awarding it to the spouse (i.e. the husband) and then passing it to the children upon the death of the surviving spouse, would have avoided a second set of death duties.

In Spain in the thirteenth century, as in many places in Europe, local Jewish communities governed their own religious and communal life. Decisions made in one community did not affect decisions in another. Although the cause for the decree might be external reasons -- something borrowed from non-Jews or a reaction to a specific tax -- it is possible that the Jewish community's leaders changed the law in order to make inheritance practices more ethical. In Barcelona at the time, a few Jews created written wills to ensure

---

<sup>82</sup> Stanley G. Payne, *Spain: A Unique History*, (Madison: University of Wisconsin Press, 2011) 57

their property was divided the way they wanted. The written will enabled brothers who jointly owned property to sell it with written proof of their ownership. It also offers evidence of the family structures of Spain in the thirteenth century. According to Elka Klein, both sons and daughters received property, although it appears that wives only received their ketubah.<sup>83</sup> It is possible that this community agreement reflected a trend in the Jewish community at the time to take control over property distribution. One must be cautious in drawing too many similarities between Barcelona and Seville since they are far apart and have different. While it is unclear why this community agreement was written, it shows a number of interesting things. First, the community of Seville knew that the concept of *mipnei darchei shalom* was a way to settle potential fights. Second, it was applied in a new way: to family matters, not just public relationships. Third, it overturned the law. Ethics, or concern for harmony in the family, trumped law.

#### IV. Conclusion

The medieval time period held a number of changes in the Jewish community. As Jews spread out throughout Europe, their interactions with non-Jews changed. Some non-Jews and Jews shared intellectual ideas with much mutual influence. For others, the relationship was stricken with power struggles and the constant awareness that Jews were the powerless minority. Jewish communities set up self-governing administrations that oversaw the financial and legal interactions within that specific Jewish community. In some ways, the power dynamics of the middle ages is not too different from that of the time of the Mishnah, Tosefta and Talmud: non-Jews in power, Jews setting up a secondary system in addition to the secular government for internal affairs. However, the experience from location to

---

<sup>83</sup> Elka Klein, "Splitting Heirs: Patterns of Inheritance Among Barcelona's Jews" [Jewish History](#), 2002; 16(1):49-71

location varied widely, as did experience in the same location between different rulers in that period. It is difficult to systematically define the relationship between the Jews and non-Jews during the Medieval time; it was both consistent and ever changing.

*Mipnei darchei shalom* was also consistent and changing between the time of the Mishnah, Tosefta, and Talmud and the time of the Middle Ages. During the medieval period, *mipnei darchei shalom* was used for both internal quarreling, as well as issues dealing with interactions with non-Jews. *Mipnei darchei shalom* simultaneously open boundaries between Jews and non-Jews and shows the strict distinction between them. Finally, it provides ethical guidelines above the laws.

There were also changes to *mipnei darchei shalom*. For example, the codes no longer lumped all of the issues concerning *mipnei darchei shalom* together, but separated them out by subject. This change is consistent with the way in which the codes dealt with all of the Talmud, cataloging issues by subject to make it easier to find the halacha. *Mipnei darchei shalom* was adapted to new situations and even may have been used for ethics to trump halacha. Even with the changing landscape of the Jewish community and the adaptations of the codes, *mipnei darchei shalom* functions in many of the same ways in the medieval period as it did during the tannaitic and amoraic periods.

## Chapter 3

### Modern Applications of Mipnei Darchei Shalom

Thus far this thesis has explored *mipnei darchei shalom* in its original use in the Mishnah, Tosefta, and Talmud, and examined how use of the term evolved in the Middle Ages. This chapter will explore two modern settings connected to *mipnei darchei shalom*. First, this chapter will explore contemporary Modern Orthodox views on boundaries between Orthodox and non-observant or less observant Jews. Second, it will turn to modern Reform responsa to see how the Reform Movement has employed this phrase in the past one hundred years.

#### I. Modern Orthodox Discussion of Interactions with Less Observant Jews

M. Shebiit 5:9 states:

A woman may lend to a neighbor who is suspected [of not observing the law] of the Sabbatical year: (1) a sifter, (2) a sieve, (3) a millstone, (4) or an oven. But she may not sift or grind [flour] with her [since the grain was gathered in violation of the law]. The wife of a *haber* [one who observes rules of purity in everyday affairs] may lend to the wife of an ordinary Israelite: (1) a sifter, (2) or a sieve, but from the time that [the ordinary Israelite woman] pours water over the flour [and thereby renders the flour susceptible to uncleanness, cf Lev. 11:34, the wife of a *haber*] may not touch it [the flour], because one does not assist those who commit a transgression. And all [of the allowances] were only made in the interest of peace

As explained in Chapter One, a *haber* was someone who was very particular in his observance of mitzvot, especially in terms of ritual purity and tithing. In contrast, an *am ha'aretz* was less exact about his observance of mitzvot. In this mishnah, one sees groups within Judaism with different levels of observance and the rabbis' willingness to keep relations open between them. Simultaneously, certain boundaries are not crossed; for the mishnah limits specific types of interaction.

Today, many groups exist within Judaism with different levels of observance. Reform, Conservative, and Orthodox are used to identify the major levels of religious affiliation among American Jews. Reform Judaism states it is a non-halachic movement. Conservative Judaism is a halachic movement, but differs in many instances from an Orthodox understanding of halacha. Orthodox Jews observe halacha very carefully and may see Reform and Conservative Jews as non-observant Jews, or worse, Jews who flagrantly deny core principles of Judaism even if they claim to be observant. Within Orthodoxy, there exists a range of ideology. Modern Orthodoxy is an Orthodox movement, fully committed to halacha in the traditional sense. Yet it also recognizes and includes aspects of modern reasoning and logic into Jewish practice. It is not completely closed off to Jews in the less-observant movements. Therefore, this thesis will focus on Modern Orthodox writing, sermons, and responsa to observe where they open or close boundaries between themselves and those who are less observant. Some writings support closed boundaries, while others promote more open borders.

### 1. Closed Boundaries

Some rabbis within the Orthodox world want to keep the boundaries between themselves and less observant Jews closed, especially around highly symbolic or ideological issues. For example Joseph Soloveitchik adamantly opposed mixed seating in synagogues. Soloveitchik was an influential leader in the Modern Orthodox movement. The following incident occurred when he was the chairman of the Halakhah Commission:

A young man moved into a suburb of Boston, where the only existent synagogue had men and women sitting together. He asked me what he should do on the High holy Days, Rosh Hashana and Yom Kippur; until then, on account of the mixed seating, he had not entered the synagogue; but on the Days of Awe he was very reluctant to remain at home. I answered him that it was better for him to pray at home both Rosh Hashana and Yom Kippur, and not cross the threshold of that synagogue. A few days

later he telephoned me again; he had met the man who was to sound the shofar in that synagogue, and this man had warned him that if he did not come to the synagogue, he simply would not hear the shofar at all, for the man would not sound the shofar again, privately, for his benefit. The young man practically implored me that I grant him permission to enter the edifice, at least for a half hour, that he might hear the shofar blast. I hesitated for a moment, but directed him to remain at home. It would be better to not hear the shofar than to enter a synagogue whose sanctity has been profaned.<sup>84</sup>

Here one sees clearly closed boundaries, to the point that an Orthodox Jew was told that he should not fulfill the mitzvah of hearing the shofar on Rosh Hashana. For Soloveitchik, mixed seating was a line that he was not willing to cross. However, as we shall see below, Soloveitchik was not closed to other movements on all issues.

Eliezer Waldenberg follows the reasoning of Soloveitchik. In one of his responsa, he states that an Orthodox Jew should never enter a Reform synagogue, neither during services nor when services are not occurring. He cites a Talmudic passage that says that if someone is being chased by a potential murderer, it is better to enter into a house of idolatry than a house of a different sect of Judaism. The Talmud there reasons that sectarian Jews, unlike idolaters, have access to the Torah and should know better than to break mitzvot. Waldenberg states that if an Orthodox person entered a Reform synagogue, he or she would be condoning the behavior of the congregants and aiding them to sin. Here Waldenberg employs the same the same reasoning seen in M Sheb 5:9 for why a wife of a *haver* should not help a wife of an *am haaretz* once water is introduced in the dough-making.

Soloveichik and Waldenberg ruled about issues surrounding Orthodox Jews entering a synagogue from a different movement; others wrote about boundaries when an non-observant Jew enters an Orthodox synagogue. Someone asked Moshe Feinstein if a non-

---

<sup>84</sup> Aaron Rakeffet-Rothkoff, *THE RAV: The World of Rabbi Joseph B. Soloveitchik*, ed. Joseph Epstein, (New Jersey: Ktav Publishing Inc: 1999) 47



observant Jew can be called to the Torah in an Orthodox synagogue. He replied that a non-observant Jew, especially a rabbi who should “know better,” should not recite the blessing before or after the Torah reading because his blessing is illegitimate and Orthodox Jews cannot say “amen” to it. He goes as far as to say non-observant Jews also should not lift or dress the Torah. While there is no halachic reason to say no in this case, no reason exists to give them the honor. The only reason to let a non-Orthodox Jew lift or dress the Torah is if he is politically powerful or someone who might give tzedakah to the community. Moshe Feinstein draws a distinct boundary between Orthodox and non-Orthodox Jews.

Jewish life is not restricted to synagogues. Many cities have organizations that strive to be open to all types of Jews, such as the Board of Rabbis. Orthodox Jews have debated whether or not they should participate in such organizations. According to *Sefer Shaarei Halacha U'Minhag*, Orthodox rabbis should not join these organizations because non-Orthodox rabbis participate in them. If Orthodox rabbis joined, they would be acknowledging those non-Orthodox individuals as rabbis, something many believe should not be done. *Sefer Shaarei Halacha U'Minhag* also raises the question of what to do about Orthodox rabbis who are not as observant as the author believes they should be. The tshuvah answers that Orthodox rabbis may participate with not-as-observant-Orthodox rabbis as long as the latter believe in halacha and the Torah; one may associate with sinners but not those who deny the truths that Orthodoxy espouses.

## 2. Open Boundaries

In other cases, rabbis find it important to ease strict boundaries between branches of Judaism. Rabbi Soloveitchik argued it was important for all Jews to stand together in matters of political importance. He employed the term *kelapei hutz* or external affairs for non-halachic

areas where all branches of Judaism can and should work together. In fact, Soloveitchik even disagreed with the ideas found in *Sefer Shaarei Halacha U'Minhag* that Orthodox rabbis should not join organizations with non-Orthodox rabbis. In an interview printed in 1954 he stated:

When representation of Jews and Jewish interests *kelapai hutz* are involved, all groups and movements must be united. There can be no divisiveness in this area, for any division in the Jewish camp can endanger its entirety... In the crematoria, the ashes of the pious and those filled with praiseworthy deeds mingled with the ashes of radicals and freethinkers. We must jointly fight against the enemy who does not recognize the difference between one who worships and one who does not.<sup>85</sup>

Here one sees a call for Jewish unity and the easing of boundaries between groups. Of course, this statement does not involve Jewish ritual in any way. It may be primarily out of fear of persecution, given the allusion to the Holocaust, or driven by a realization that the Jewish community is more powerful together than divided. Whatever the reason, Soloveitchik clearly supported Jewish unity for political interests.

Another influential figure in the Modern Orthodox movement, Walter Wurzburger, also advocated working with Jews of other observance levels. In his essay, "Cooperation with Non-Orthodox Jews," Wurzburger outlines a history of Orthodox stances on interaction with non-Orthodox Jews, starting with Samson Raphael Hirsh's attitude of separation. He cited rabbis who advocated not joining groups in which non-Orthodox rabbis were members, as well as rabbis who noted that Jews are all bound by a common ethnicity and covenant with God. He clearly shows the variety of opinions held about the interaction between different branches of Judaism. Wurzburger then gives his own opinion as to the right course of action.

At that time [of Samson Raphael Hirsch], Reform saw Orthodoxy as its arch-enemy: a benighted relic of the past that blocked the road of progress. Yet today, Orthodoxy's vitality and dynamism command respect throughout the Jewish world. Strategies suitable for time when Orthodoxy was the target of derision are not necessarily

---

<sup>85</sup> Ibid. 48

appropriate for our generation, when the basic problem confronting all of Jewry is how to maintain a viable community amidst blandishments of the secular ‘open’ society.’<sup>86</sup>

Wurzburger points to the “mass defections from Conservative and Reform Judaism”<sup>87</sup> as one of the signs of the problems of the times. He calls on all Jews to unite against the “mass tidal wave of assimilation.”<sup>88</sup> Furthermore, he notes the issue of interacting with non-Orthodox Jews is dividing Orthodox Judaism and he wants to put an end to it. He ultimately calls for a movement towards *kelal yisrael*.<sup>89</sup>

Wurzburger calls for open interaction between different branches of Judaism. He bases his call for unity on the fact that today differs greatly from the time when the movements formed. Reform and Orthodox movements are now strongly established and do not need to define themselves against one another anymore. Second, he sees a true threat from assimilation. For Soloveitchik, this threat was a potential external political threat to which all Jews had to fight. For Wurzburger, the fear lies in the powerful external influence of secular society, which may be more subtle than political threats. For both Wurzburger and Soloveitchik, Jews can unite on non-halachic issues to fight a bigger problem.

One finds this trend in another Modern Orthodox rabbi, who cites *mipnei darchei shalom* in his work. Emanuel Rackman calls for Jewish unity, in a nuanced way that differentiates between unity and total agreement. If Jews try to agree on one specific issue, it will fail and not lead towards a unified Judaism. He strongly urges Jews to act civilly

---

<sup>86</sup> Walter S. Wurzburger, “Cooperation with Non-Orthodox Jews” in *Covenantal Imperatives* eds. Eliezer L. Jacobs and Shalom Carmy (Jerusalem: Urim Publications, 2008) 200

<sup>87</sup> Ibid 200

<sup>88</sup> Ibid 201

<sup>89</sup> Ibid 201

towards each other, not to try to find one thing that all Jews can agree on. Speaking at a conference, he states:

Perhaps to avoid giving the wrong impression, we will change the name of our conference and substitute for the term unity either civility, or *derech erez*, or still another phrase that plays an important part in traditional Jewish law – *darchei shalom*, the ways of peace. These terms describe more accurately what we are seeking.<sup>90</sup>

He says Jews should act kindly towards one another. “The best way to achieve civility among Jews is to practice it even with the uncivil.”<sup>91</sup> He points to the civil interactions between Hillel and Shammai as the model for how Jews of different branches can interact with each other in a respectful manner.

### 3. Overarching ideas of Modern Orthodoxy

The sections above noted the places in which Modern Orthodoxy is closed to less observant Jews and where it is more open. Interestingly, it appears that the responsa or official rulings are more closed, but sermons and articles call for less stringent boundaries. One responsum, not mentioned above, stands on both sides: being open and closed. It discusses whether or not one can offer food and drink to a person knowing that the person will not wash his or her hands or bless the food properly. Therefore, offering food will lead that person to commit a sin by not blessing first. Ultimately, the author determines that one can offer food and drink to non-observant Jews because failure to do so could make them angry at the Torah and other Jews. It is a worse sin to push a non-Orthodox Jew even further from the Torah than he or she already is. This responsum seem open, but it also contains a caveat that the person should be “important” and “love people who love Torah.” The responsum may intend to only include those people of wealth who support Orthodox Jewry. Although it is more open,

---

<sup>90</sup> Emanuel Rackman, *A Modern Orthodox Life: Sermons and Columns of Rabbi Emanuel Rackman*, (New Jersey: Ktav Publishing Inc: 2008) 266

<sup>91</sup> Ibid. 268

it is limited and potentially only concerned for the community's self-interest. This could have easily been a responsum that quoted *mipnei darchei shalom*, but it did not.

There are many potential reasons why responsa close boundaries while other types of work call for Jewish unity. First, it appears easier to be more liberal in theory than practice. When it is time to make decisions, it is hard to change a well-established trend. Second, the location and job of the rabbis writing the piece makes a difference. For example, Eliezer Waldenberg was an Orthodox rabbi in Israel who faced one reality, while Walter Wurzburger was a Modern Orthodox rabbi and adjunct professor of philosophy in New York living in a different one. Their life experiences and work may contribute to Waldenberg's closed boundary philosophy, as opposed to Wurzburger's call to open up boundaries. Third, the Orthodox and Modern Orthodox movements now feel very strong in the Jewish and American societies. There is no immediate threat of diminishing numbers, nor is anti-Semitism prevalent. In times of true crisis, differences between the branches of Judaism disappear. At the moment, American Jews do not have a crisis to bond them together. This enables sides to keep boundaries closed.

## II. Reform Judaism

This thesis focuses on the use of *mipnei darchei shalom* from its inception through the Middle Ages to modern times. The realities of the Jewish community clearly changed significantly in each time period. In America, Jews are integrated into all aspects of society: business, education, government. As a movement, Reform Judaism does not base its understanding of Judaism on traditional halacha, but rather primarily depends on tradition, the Tanach, reason, modern interpretation, and ethics to make religious decisions. As such, certain rules associated with *mipnei darchei shalom* are not relevant for Reform Jews. For

instance, Reform Judaism stopped upholding the religious hierarchy of Kohen, Levites, and the rest of Israel. As such, the discussion about the order of aliyot in m. Gittin 5:8 is no longer relevant to Reform Jews. Furthermore, Reform Judaism does not differentiate between Jews based on their level of observance. Reform Jews do not need to observe laws or see them as the source of our current practice to appreciate them. Reform Judaism is currently exploring different relationships with law and issues of different levels of observance. This mishnah text can be a guide for these discussions. However, since Reform Judaism has not always had that type of relationship with halacha, the discussion about what a wife of a *haver* can lend to a wife of an *am ha'aretz*, which is based on laws, does not resonate to contemporary Reform Judaism responsa.

Reform Jews often consider whether there is a need to draw lines between Reform Jews and non-Jews. Not surprisingly, Reform Judaism applies *mipnei darchei shalom* to situations with non-Jews. Like sources from the medieval period and Modern Orthodoxy, Reform responsa show how rabbis understand and utilize this phrase. Situations continue to arise that occasion responsa. However, instead of writing to an individual rabbi, Reform Jews (usually rabbis) direct questions to the Central Conference of American Rabbis' Responsa Committee. The committee answers the question, usually providing background texts. These responsa are a great indication of the issues of the time, how Reform Jews think about a certain topic. One can find two main uses of *mipnei darchei shalom* in Reform responsa: providing historical background and justifying the response to the question, the way it does in Modern Orthodoxy seen above.

## 1. Historical Background

Reform responsa use *mipnei darchei shalom* to set the scene or provide historical perspective for how Jews have dealt with issues surrounding non-Jews. In the early twentieth century, Jews integrated into American society in a way that they had not previously. Inter-marriage rates began to rise, which raised new questions about the boundaries between Jews and non-Jews. Between 1914-1936, many responsa were written concerning the burial of a non-Jewish spouse in a Jewish cemetery. In 1916 and 1919, Kaufman Kohler and Jacob Lauterbach rule that it is acceptable to bury a non-Jewish spouse in a Jewish cemetery, provided this act does not violate the policy of the congregation that owns the cemetery. In 1919, a southern congregation asked the same question, but also wanted the committee to provide the Jewish sources to support their stance. G. Deutsch cited Gittin 61a from the Talmud, which states that Jews should bury the dead of the non-Jews with the dead of the Jews, as a support text for burying non-Jewish spouses in Jewish cemeteries.<sup>92</sup>

Another example dates to 1979. In 1979, the following question was submitted: “To what extent may non-Jews participate in a Jewish public service?”<sup>93</sup> In the course of answering the question, the CCAR Responsa Committee note that in ancient times, Jews opened borders to non-Jews in many ways. They state, “we should, of course, remember that good treatment and many privileges were extended to pagans in earlier times, both in Israel and in Babylon, *mipnei darchei shalom*. We comforted their dead, visited their sick, helped their poor, etc (Git 59b, 61a, *Tur*, Chosen Mishpat 266.)”<sup>94</sup> Here one can see the modern

---

<sup>92</sup> It is interesting to note that three of the five Reform responsa that cite *mipnei darchei shalom* concern the death of a non-Jew. In addition to the ones cited above, the other two are “Rabbi Officiating at Christian Scientist’s Funeral” and Gentile Names on Yahrzeit List,” which will be discussed below.

<sup>93</sup> Ibid, Participation on Non-Jews in a Jewish Public Service, 21

<sup>94</sup> Ibid, 21

Reform rabbis turn to *mipnei darchei shalom* to lay the groundwork for opening borders between Jews and non-Jews.

The CCAR Responsa Committee does indeed open the door to non-Jewish participation in Jewish services and lays out the following guidelines. The last paragraph of this responsum reads:

We have, therefore, gone much further than any generation before our time by permitting non-Jews a larger role in our public services; this is part of a more open and friendly interreligious attitude which the Reform Movement has encouraged and led. Yet, these steps have remained within definite limits. We have not included non-Jews, no matter how friendly, in the essential elements of the service. If we follow the line of reasoning which divides between the essential service and supplemental prayers and statements, we may conclude that Christians, Moslems, and other non-Jews who fall into the category of *Benei Noach* may participate in a public service in any of the following ways: (1) through anything which does not require specific statement from them, i.e., by standing and silently witnessing whatever is taking place (e.g., as a member of a wedding party or as a pallbearer); (2) through the recitation of special prayers added to the service at non-liturgical community wide services, commemorations, and celebrations (Thanksgiving, etc.); (3) through the recitation of prayers for special family occasions (*Bar/Bat Mitzvah* of children raised as Jews, at a wedding or funeral, etc.) All such prayers and statements should reflect the mood of the service and be non-Christological in nature.<sup>95</sup>

This responsum allows interaction between Jews and non-Jews that one may have thought was restricted by halacha. While it does open borders between Jews and non-Jews, the rabbis distinguish between non-Jews and Jews by limiting the type of participation non-Jews can have in a Jewish service. While the use of *mipnei darchei shalom* is limited to background material the responsum does play a similar function to the M Sheb 4:3 because it both opens interactions between Jews and non-Jews and brings awareness to the differences between the two groups. It raises awareness that our prayers are different both in word and meaning from non-Jewish prayer. While we can share many experiences with them, our liturgy, theology, and beliefs are not the same.

---

<sup>95</sup> Ibid 23-4



## 2. Justifying a Position

In addition to providing historical information, *mipnei darchei shalom* helps determine the details of the answer, playing a key role in the entire responsum. In 1972, Rabbi Richard Hertz of Detroit, Michigan asked the following question:

The Men's Club of Temple Beth El, Detroit, substituted for Christian volunteer hospital aides on Christmas last year (1971). That year Christmas fell on the Sabbath, and questions arose in the Detroit community as to whether it was proper for a Jewish congregation thus openly (and also with newspaper publicity) to violate the Sabbath. Since then, other Men's Clubs are planning to volunteer for such duties on Christmas. This has raised the wider question: first, as mentioned about the Sabbath, and secondly, about the value or propriety of this sort of substitute volunteering.<sup>96</sup>

In the response, the committee first notes that this question addresses a variety of issues: what can and cannot occur on Shabbat connected to a synagogue, and whether Jews can substitute for Christians as volunteers or in the workplace. They answer the second question first. Citing Jacob Lauterbach's claim that *mipnei darchei shalom* was a way to increase good "comradely relationship,"<sup>97</sup> the responsum notes that the desire for the Men's club to substitute for Christians is "not only worthy, it is also traditional."<sup>98</sup> Here again *mipnei darchei shalom* provides historical background.

After establishing the worthy nature of substituting for Christians on Christmas, the responsum asks, "What sort of activity is most suitable for this expression of good will?"<sup>99</sup> Its answer once again turns to *mipnei darchei shalom*. It states, "The *Talmud* lists certain types of what we would call 'social services' today, which is our duty to do for non-Jews. This is discussed in the *Talmud* Gittin 61a, where it says that we sustain the poor of the

---

<sup>96</sup> Ibid "Substituting For Christians on Christmas" 136

<sup>97</sup> Ibid 137

<sup>98</sup> Ibid, 137

<sup>99</sup> Ibid 138

Gentiles, comfort their mourners, and bury their dead as we do with fellow Israelites.”<sup>100</sup> It relies on *mipnei darchei shalom* as the measuring stick for the proper social interaction between Jews and non-Jews. Viewing both the texts of the Talmud and volunteering for Christians on Christmas as an acceptable social service proves that both actions are acceptable. The responsum notes that a congregation should not have this as a program on a year when Christmas falls on Shabbat. This responsum uses *mipnei darchei shalom* both to provide historical background and to justify the desire to substitute for Christians on Christmas for the means of creating good relationships with them. Furthermore, the committee uses *mipnei darchei shalom* to show that social action between the groups has a long standing tradition and therefore this type of help is allowable and advisable.

### 3. Overarching view

Thus far, this chapter looked at different uses of *mipnei darchei shalom* within Reform responsa. One can look to the responsa to understand how Reform rabbis view *mipnei darchei shalom*. It is important to emphasize that Reform responsa only use *mipnei darchei shalom* in terms of how to interact with non-Jews. It is not applied to the Reform community, to internal synagogue life, nor is it applied to issues of interacting with other movements.

For the most part, it is used to justify places in which Jews open boundaries to non-Jews, which leads one to why Jews should open their boundaries. As noted in the Chapter One, scholars debate whether *mipnei darchei shalom* functions primarily to create good relationships with non-Jews solely because they were in power or whether it was part of a larger Jewish ethic. Reform Jews tend to use it as a means of promoting good relations

---

<sup>100</sup> Ibid 138

between Jews and non-Jews, for the sake of creating good relationships, not out of fear because the non-Jews have political power.

In the responsum cited above regarding substituting for Christians, the motivation stems from a desire to be nice and thoughtful to neighbors. Similarly, in the question of how much a non-Jew can participate in a Jewish service, it appears that of the concern is participating in interfaith community services, which helps build relationships among neighbors. In the responsum about burying a non-Jewish spouse, G Deustch stated, “for the sake of peace (meaning, probably for the sake of maintaining amicable relations with our neighbors, but it may also mean, on the found of humanitarian principles.)”<sup>101</sup> Deustch points to both understandings of *mipnei darchei shalom* – political and ethical – and he allows it to mean both.

A response entitled “Gentile Names on Yahrzeit List” discusses the inclusion of name of deceased non-Jewish parents of congregants on a Yartzeit list. Not surprising, the rabbis decided that indeed non-Jewish parents can be included on the Yartzeit list. In the middle of the responsum, one reads:

The question has been discussed by R. Solomon B. Freehof. In his responsum, he dealt with the question whether gentile visitors to a service should rise for the Kaddish, and whether there was anything in Jewish tradition contrary to their doing so.

He answered: While the mitzvah to honor father and mother is not one of the seven Noahide commandments, excluding anyone from this act of reverence would needlessly raise inimical feelings on the part of the family. We would therefore caution you to avoid such a likelihood *mipnei darchei shalom* for the sake of peace.<sup>102</sup>

The responsum cites Freehof’s writing. However, in Freehof’s responsum, he does not actually cite *mipnei darchei shalom*. He does discuss that one should not anger non-Jews and

---

<sup>101</sup> Ibid 327

<sup>102</sup> “Gentile Names on Yahrzeit List” [www.ccarnet.org](http://www.ccarnet.org), October 26, 2011

therefore one should allow them to rise for the kaddish. However, he cites *mishum evah*, to avoid ill feelings, not *mipnei darchei shalom*. The author of this responsum about gentile names on the Yartzeit list equates *mipnei darchei shalom* and *m'shum evah*. He clearly associates *mipnei darchei shalom* with the desire to not create ill will between Jews and non-Jews. It is unclear if he is only concerned with not creating bad relationships with non-Jews out of political or ethical ideology. If politics was his motivation, then one could argue that he may have been concerned because non-Jews had power. On the other, he may have simply wanted not create bad relations with neighbors out of a genuine desire for good relationships with them. Either way, it is interesting to note that he substituted *mipnei darchei shalom* for *m'shum evah*.

Contemporary Reform Jews have a new relationship to tradition and to non-Jews compared to ancient and medieval times. As a movement, Reform Judaism is not committed to halacha. However, Reform rabbis and communities face questions for which they seek answers. Rabbis propose questions to the CCAR Responsa Committee for a reaction. These responsa follow patterns similar to those of earlier rabbis. They use *mipnei darchei shalom* both for background and to help answer the question. They apply it to new situations, such as what to do when non-Jewish in-laws and spouses die.

### III. Conclusion

Today Modern Orthodoxy and Reform Judaism face issues in relation to *mipnei darchei shalom*. For Modern Orthodoxy, they focus on issues with different branches of Judaism. As noted above, in Reform Jewish responsa, *mipnei darchei shalom* solely addresses issues surrounding non-Jews. For Reform Jews, non-Jews pose an interesting problem because Jews are integrating into the broader society and marrying non-Jews. Non-Jews became a

very close “other” to which Reform Judaism must figure out how to walk to line of opening borders while upholding religious difference between Jews and non-Jews. Modern Orthodox’s other is both Orthodox Jews, and less-observant Jews. Modern Orthodox Jews incorporate more modern values, such as reason and adapt halachic principles to it. Therefore less observant movements are close to them in some ways, but are a threat because they have gone “too far.” Therefore Modern Orthodoxy feels the need to be open to them while upholding the different between the groups.

While Modern Orthodox Jews face issues of boundaries with other Jews and Reform Jews focus on their relationship with non-Jews, both branches of Judaism have moved away from citing *mipnei darchei shalom*. This is not the first time that leaders of the Jewish community turned away from the phrase. Earlier this thesis noted that Maimonides, Shulchan Aruch, and the Tur ceased to cite *mipnei darchei shalom* as the reason for the order of Torah readers. This thesis proposed that the codes stopped citing this phrase because the practice was so accepted it no longer needed justification. However, today one cannot say the same for interaction between Jews of different observance levels or between Jews and non-Jews. In fact, some would argue that these boundary relationships are becoming more and more complicated, not more universally accepted. Maybe it is time to adopt a new understanding of *mipnei darchei shalom*.

## Conclusion

This thesis set out to explore the phrase *mipnei darchei shalom* from its inception in the Mishnah through its use in contemporary writing. It traced the use of the phrase and how it changed between time periods. Most importantly, it looked at how *mipnei darchei shalom* was employed to teach Jews how to act ethically above and beyond the law.

The Mishnah, Tosefta, and Talmud set the stage for an understanding of *mipnei darchei shalom*. In those texts, one saw a number of notable trends. First, it is important to recognize that *mipnei darchei shalom* addresses a number of different areas of life. Some of the issues in the Mishnah focus on interactions in one's personal life. For example, m. Git 5:8 discusses not taking fish caught in a net or a beast caught in a trap. Even though taking the animal is not considered a crime according to the halacha, one should not do it because it is not the right thing to do. Second, *mipnei darchei shalom* addresses community life within a synagogue. For example, m. Gittin 5:8 sets the order of aliyot and m. Sheq 1:3 states that the priests do not need to pay the half-sheqel tax. Third, *mipnei darchei shalom* provides guidance for how Jews with different observance levels can have a relationship with one another. Finally, *mipnei darchei shalom* explores the boundaries between Jews and non-Jews. For example, t. Gittin 3:13 instructs one that Jews should collect money from Jews and non-Jews for the poor, as well as distribute it to the poor of both Jews and non-Jews. In all of these categories, two major overarching themes appear in the Mishnah, Tosefta, and Talmud texts. The texts concentrate on teaching people to do the right thing and on creating healthy relationships that can simultaneously allow for differences between groups while allowing them to interact with one another.

The Middle Ages brought a number of changes to the Jewish landscape. The smaller, spread out Jewish communities truly self-governed their own religious practices. Two new genres of legal literature appeared during this time. First, law codes restated the rules found in earlier texts. In doing so, they organized the rules by subject, and thus issues within the Jewish community and between Jews and non-Jews were separated. Second, communities asked rabbis how to behave in situations not addressed in the Talmud, which they answered in the form of responsa. In the responsa, one sees rabbis apply *mipnei darchei shalom* to new situations. They continue to address issues within the Jewish community connected to stopping perpetual fighting, doing the right thing, and creating a stronger community.

In contemporary times, rabbis continue to apply *mipnei darchei shalom* to new situations. The Reform Movement cites it when discussing interactions between Jews and non-Jews. Different branches within Judaism also constantly struggle to both maintain strong boundaries and openness to one another. It is interesting to note that Reform Judaism struggles with issues about non-Jews in a similar fashion to the Orthodox struggle with Reform Jews.

Acknowledging that modern Reform and Orthodox responsa tend not to cite *mipnei darchei shalom*, I want to propose a new adoption of *mipnei darchei shalom* in the following four areas: personal ethics, congregational issues, inter-Jewish relationships, and non-Jewish issues. *Mipnei darchei shalom* can serve as a guide in these areas because it is based in our texts, which speak to a wide range of Jewish communities. It is broad enough to apply today and be open to modern interpretation, but specific enough to guide us towards acting ethically and strengthening a community. Since it is not a phrase that is already well known

or frequently used, it is not “owned” by any single branch of Judaism and can be truly a new expression for the future.

### 1. Personal Ethics

*Mipnei darchei shalom* teaches two very important lessons that can be applied to a personal ethic. First, when used in the Mishnah, it provided a number of examples where a person can be tempted to do the easy thing, but should not because it is not nice. *Mipnei darchei shalom* reminds us that we should strive to do the right thing. Even when we are legally able to do something, we can use this as a measure for what is ethical. Second, *mipnei darchei shalom* recognizes that human instincts can include jealousy and petty fighting. *Mipnei darchei shalom* can help remind us to recognize these instincts and put systems in place to curb them.

### 2. Congregational Issues

*Mipnei darchei shalom* speaks to a number of congregational issues. In the Mishnah, one read about the order of aliyot. The rabbis set this to prevent perpetual fighting and jealousy. Today, we can use this to both reflect on how we set honors and on places within our synagogue where there seems to be constantly be tension. Many responsa utilize *mipnei darchei shalom* in the Middle Ages to deal with issues within the Jewish community and how to sustain a close and stable one.

### 3. Non-Jews

Jewish communities can continue to cite *mipnei darchei shalom* to find the balance between opening boundaries between Jews and non-Jews while simultaneously maintaining the distinctions between the groups.

### 4. Intrafaith Relations



From the responsa cited above, it is clear that contemporary Jewish communities could utilize *mipnei darchei shalom* as a model for interaction among different branches of Judaism. *Mipnei darchei shalom* enables each party to maintain its integrity and standards, but also allows parties to interact and acknowledge one another. Today's Judaism could certainly use *mipnei darchei shalom* as a new and important lens for how the branches can treat each other with respect while keeping distinction between them.

I offer these proposals in hopes to forge new ideas in ethics and relationship to the law, especially as Reform Judaism re-evaluates its relationship with halacha. Additionally, it can guide us on how to keep boundaries while having healthy, meaningful interaction with people who are different than us. My study of *mipnei darchei shalom* indicates that ancient concepts can be valuable resources for evaluating and improving community, understanding and changing personal and communal patterns, and guiding us towards a healthier, better tomorrow.

## Appendix A

### Mishnah and Tosefta Text with Translation by Jacob Neusner

משנה מסכת שביעית פרק ד משנה ג

חוכרין נירין מן העובדי כוכבים בשביעית אבל לא מישראל ומחזיקין ידי עובדי כוכבים בשביעית אבל לא ידי ישראל ושואלין בשלומן מפני דרכי שלום:

M. Shebiit 4:3

During the Sabbatical year they lease from gentiles fields newly ploughed [during that year for the purpose of cultivating them during the following year,] but [they do] not [lease] from an Israelite [a field which he has ploughed during the Sabbatical year, in violation of the law]. And they assist gentiles [in their agricultural labors] during the Sabbatical year, but [they do] not [assist] and Israelite [who engages in such activities during the Sabbatical year, in violation of the law]. And they greet [gentiles] in the interests of peace.

משנה מסכת שביעית פרק ה משנה ט

החשודה על השביעית נפה וכברה ורחיים ותנור אבל לא תבור ולא תטחן עמה אשת חבר משאלת לאשת עם הארץ נפה וכברה ובוררת וטוחנת ומרקדת עמה אבל משתטיל המים לא תגע אצלה שאין מחזיקין ידי עובדי עבירה וכולן לא אמרו אלא מפני דרכי שלום ומחזיקין ידי נכרים בשביעית אבל לא ידי ישראל ושואלין בשלומן מפני דרכי שלום:

M. Shebiit 5:9

A woman may lend to a neighbor who is suspected [of not observing the law] of the Sabbatical year: (1) a sifter, (2) a sieve, (3) a millstone, (4) or an oven. But she may not sift or grind [flour] with her [since the grain was gathered in violation of the law]. The wife of a *haber* [one who observes rules of purity in everyday affairs] may lend to the wife of an ordinary Israelite: (1) a sifter, (2) or a sieve, but from the time that [the ordinary Israelite woman] pours water over the flour [and thereby renders the flour susceptible to uncleanness, cf Lev. 11:34, the wife of a *haber*] may not touch it [the flour], because one does not assist those who commit a transgression. And all [of the allowances] were only made in the interest of peace. And during the Sabbatical year one may assist gentiles [to do work which is forbidden to Israelites], but one may not assist Israelites [to do such work during the Sabbatical year.] And one greets them [gentiles], in the interest of peace.

משנה מסכת שקלים פרק א משנה ג

בעשרים וחמשה ישובו במקדש משישבו במקדש התחילו למשכן את מי ממשכנן ליום וישראלים גרים ועבדים משוחררים אבל לא נשים ועבדים וקטנים כל קטן שהתחיל אביו לשקול על ידו שוב אינו פוסק ואין ממשכנן את הכהנים מפני דרכי שלום:

M. Sheqalim 1:3

On the fifteenth of the same month [Adar] they set up money changers tables in the provinces. On the twenty-fifth [of Adar] they set them up in the Temple. Once they were set up in the Temple, they began to exact pledges [from those who had not paid the tax in specie]. From whom do they exact a pledge? Levites, Israelites, proselytes, and freed slaves, but not from women, slaves, and minors. Any minor in whose behalf the father began to pay the *sheqel* does not again cease [to pay]. And they do not exact a pledge from priests, for the sake of peace.

משנה מסכת גיטין פרק ה משנה ח

ואלו דברים אמרו מפני דרכי שלום כהן קורא ראשון ואחריו לוי ואחריו ישראל מפני דרכי שלום מערבין בבית ישן מפני דרכי שלום בור שהוא קרוב לאמה מתמלא ראשון מפני דרכי שלום מצודות חיה ועופות ודגים יש בהם משום גזל מפני דרכי שלום רבי יוסי אומר גזל גמור מציאת חרש שוטה וקטן יש בהן משום גזל מפני דרכי שלום ר' יוסי אומר גזל גמור עני המנקף בראש הזית מה שתחתיו גזל מפני דרכי שלום ר' יוסי אומר גזל גמור אין ממחין ביד עניי גוים בלקט שכחה ופאה מפני דרכי שלום

M. Gittin 5:8

And these rules did they state in the interests of peace: A priest reads first, and afterward a Levite, and afterward an Israelite, in the interests of peace. They prepare an *eruv* in the house where it was first places, in the interests of peace. A well nearest to the stream is filled first, in the interests of peace. Traps for wild beasts, fowl, and fish are subject to the rules against stealing, in the interests of peace. R. Yose says, "It is stealing beyond any doubt." A poor man beating the top of an olive tree – a what is under it [the tree] is subject to the rule against stealing, in the interests of peace. R. Yose says, "It is stealing beyond any doubt." They do not prevent poor gentiles from collecting produce under the laws of Gleaning, the Forgotten Sheaf, and the Corner of the Field, in the interests of peace.

משנה מסכת גיטין פרק ה משנה ט

על השביעית נפה וכברה ורחים ותנור אבל לא תבור ולא תטחן עמה אשת חבר משאלת לאשת עם הארץ נפה וכברה ובורת וטוחנת ומרקדת עמה אבל משתטיל המים לא תגע עמה לפי שאין מחזיקין ידי עוברי עבירה וכולן לא אמרו אלא מפני דרכי שלום ומחזיקין ידי גוים בשביעית אבל לא ידי ישראל ושואלין בשלומן מפני דרכי שלום:

M. Gittin 5:9

A woman lends a sifter, a sieve, a handmill, or oven to her neighbor who is suspected of transgressing the law of the Seventh Year, but she should not winnow or grind wheat with her. The wife of a *haber* lends the wife of an *am hares* a sifter and sieve. But once she has poured water into the flour, she may not come near her, for they do not give assistance to transgressors. And all of these rules they state only in the interests of peace. They give assistance to gentiles in the Seventh Year but not Israelites. And they inquire after their welfare in the interests of peace.

תוספתא מסכת פאה (ליברמן) פרק ג הלכה א

המקבל שדה לקצור לא ילקט בנו אחריו ר' יוסי או' ילקט בנו אחריו אבל העריסין (והעכורות) והחכורות והמוכר קמתו לחברו לקצור ילקט בנו אחריו היו שם עניים שאינן ראויין ללקט אם יכול בעל הבית למחות בידן ממחה ואם

לאו מניחן מפני דרכי שלום אין שוכרין פועלי גוים לפי שאין פקיעין בלקט אין נותנין מעשר עני לעניי גוים אבל נותנין להן חולין מתוקנין לשם טובה בעל הבית שהיה עומד בעיר א' יודע אני שהפועלין שכיחין את העומר במקום פלוני ושכחוהו אין שכחה ר'

T. Peach 3:1

*He who receives [as part owner] a field to harvest – his sone may not collect gleanings behind him* [because the sonw ill act as the agent of the father with the results that they will hoard the poor-offereings] (M. Peah 5:6D). R. Yose says, “His sons may collect gleanings behind him, [because the son in no way own part of fields].” But [with regard to] (1) sharecroppers, (2) [those who] rent fields, (3) or one who sells his standing [crop] to his neighbor to harvest, [in all three cases, the workers establish no claim of ownership ownership on the field] – a his son may collect gleanings behind him. [If in the field] there are some poor people who have no right to collect [gleanings, e.g., because they are part owners in the crop (cf. M. Peah 5:5 D-L)] – if the householder is able to protest [their presence] immediately, he may protest, [and recover that which the ineligible poor people take]. But if [the householder] cannot [protest immediately] he should let them be, in the interests of peace. They may not hire gentile workers [to harvest], because [gentile workers] do not scruple with regard to [laws of] gleanings.

תוספתא מסכת עירובין (ליברמן) פרק ה הלכה יא

בית שמניחין בו עירוב אין צריך להפריש ככר מערבין בבית ישן מפני דרכי שלום אם היה שם רבו או אדם גדול או שהיה משיא את בנו ורוצה לנהג בו כבוד הרשות בידו מצוה על אדם לבטל רשות אם היה אדם גדול הרשות בידו

T. Eruvin 5:11

A house in which they leave an ‘*erub* – he does not have to separate a loaf of bread [for the ‘*erub*.] They keep an ‘*erub* in the house in which it usually has been left, for the sake of peace. If one’s teacher was there, or a great man, or if he was marrying off his son [into a family] and wanted to pay respect to him, has has the right to do so. It is a religious duty of a man to give up his right. If he was a great man, he has the right to do so.

תוספתא מסכת נדרים (ליברמן) פרק ב הלכה ז

בהן אוכל נפש המודר הנאה מחבירו ומת מביא לו ארון ותכריכין חלילין ומקוננות שאין הנאה למתים מעידו עדות ממון ועדות נפשות חלה נכנס לבקרו היה לו חלה אינו נכנס ומבקרו ושואל בשלומו היה כהן זורק עליו דם חטאתו ודם אשמו מפני דרכי שלום ורוחץ עמו במרחץ וישן עמו במטה ר' יהודה או' על הקטנה בימות החמה ועל הגדולה בימות הגשמים רוחץ עמו באבטי גדול מזיע עמו במרחץ קטנה

T. Nedarim 2:7

... He gives testimony in his behalf in property caes and in criminal cases. If he fell ill, he [the fellow] goes into visit him. But if [the one who took the vow] has someone ill [in his house], [the fellow] does not go in to visit him or inquire after welfare. [If] he [the fellow] was a priest, he tosses the blood of his [the one subject to th vow] sin offering in his before and the blood of his guilt-offering, fo the sake of peace....

תוספתא מסכת גיטין (ליברמן) פרק ג הלכה יג  
 [עני שנוטל בידו ומשליך אחת אחת מה שתחתיו גזל גמור] עיר שיש בה ישראל וגוים הפרנסין גובין מישראל  
 ומגוים מפני דרכי שלום מפרנסין עניי גוים עם עניי ישראל מפני דרכי שלום

#### T. Gittin 3:13

A poor man who takes them [olives which he gleans from a tree] in his hand and throws them down one by one – what is under it [the tree] is wholly subject to the prohibition against thievery. A city in which Israelites and gentiles live – the collectors of funds for the support of the poor collect equally from Israelites and from gentiles, for the sake of peace. They provide support for the poor of the gentiles along with the poor of Israel, for the sake of peace. They make a lament for, and bury, gentile dead, for the sake of peace. They express condolences to gentile mourners, for the sake of peace.

תוספתא מסכת גיטין (ליברמן) פרק ג הלכה יד  
 מספידין וקוברין מיתי גוים מפני דרכי שלום מנחמין אבילי גוים מפני דרכי שלום

#### T. Gittin 3:14

They make a lament for, and bury, gentile dead, for the sake of peace. They express condolences to gentile mourners, for the sake of peace.

תוספתא מסכת עבודה זרה (צוקרמאנדל) פרק א הלכה ג  
 שואלין בשלום הגוים באידיהן מפני דרכי שלום אומנין של ישראל שהיו עושין אצל גוי בביתו של ישראל מותר ובביתו של גוי אסור ר' שמע' בן אלעז' אומ' אם שכר היום בין בביתו של ישראל ובין בביתו של גוי אסור אם היה שכר קבלות בביתו של ישראל מותר בביתו של גוי אסור במחובר לקרקע בין כך ובין כך אסור ובעיר אחרת בין כך ובין כך מותר ואף על פי שגמר את כליו לפני אידו לא יוליכם לו ביום אידו מפני שמשמחו:

#### T. Avodah Zara 1:3

They ask after the welfare of gentiles on their festivals for the sake of peace. Israelite workmen who were working with a gentile – in the case of an Israelite's household, it is permitted. In the case of a gentiles's household, it is prohibited. R. Simeon b Eleazar says, "If he was hired by the day, whether in the household of an Israelite or in the household of a gentile, it is prohibited. If he was hired as a contractor, in the household of an Israelite it is permitted. In the household of a gentile, it is prohibited. "In the case of working on what is as yet unplucked, one way or the other, it is prohibited. And in another town, one way or the other, it is permitted." And even though one has finished work on his utensils before his festival, he should not deliver them to him on the way of his festival because this increases in rejoicing [in his festival.]

תוספתא מסכת חולין (צוקרמאנדל) פרק י הלכה יג

המוצא קן בבורות בשיחין ובמערות מותר משום גזל וחייבות בשילוח ואם מקושרות אסורות משום גזל ופטורות מן השילוח יוני שובך ויוני עליה חייבות בשילוח ואסורות משום גזל מפני דרכי שלום:

#### T. Chulin 10:13

He who finds a nest in pits, ditches, or caverns – they are permitted as to the prohibition of robbery and liable as to the requirement of sending forth. And if they were tied up, they are prohibited as to robbery and free of liability for sending forth. The pigeons of a dovecot and the pigeons of an attic are liable to the requirement of sending forth and prohibited because of a robbery in order to keep peace.

## Bibliography

Agus, Irving A., *Rabbi Meir of Rothenburg*, Vol 1. Philadelphia: The Jewish Publication Society, 1947

CCAR Responsa: 167 A Rabbis at a Christian Ordination Service. December 1980

<http://data.ccarnet.org/cgi-bin/respdisp.pl?file=167&year=carr>

Elfenbein, Israel S “Rashi in His Responsa” in *Rashi, His Teachings and His Personality*, ed Simon Federbush , New York: World Jewish Congress, 1958

Englard, Izhak “The Interaction of Morality and Jewish Law” in *The Jewish Law Annual* Vol 7 1988

Feldman, Louis, *Jews and Gentiles in the Ancient World*, Princeton: Princeton University Press 1993

Fraade, Steven D. “Navigating the Anomalous Non-Jews at the Intersections of Early Rabbinic Law and Narrative” in *Legal Fictions*, Leiden: Brill, 2011

Freehof, Lillian S. *The Captive Rabbi*, Philadelphia: The Jewish Publications Society of America, 1965

Glick, Leonard B , *Abraham Heirs*, Syracuse: University of Syracuse Press, 1999

Hailpern, Herman, *Rashi and His World*, Number two, Pittsburg: College of Jewish Studies, 1957

Hailpern, Herman *Rashi and The Christian Scholars*, Pittsburgh: University of Pittsburgh Press, 1963

Klein, Ella “Splitting Heirs: Patterns of Inheritance Among Barcelona’s Jews” [Jewish History](#), 2002; 16(1):49-71

Laks, H. Joel “Three Proposals Regarding the Relationship of Law and Morality in the *Halakhah*” in *The Jewish Law Annual* Vol 8 (1989) 53-71

Newman, Louis E “Law, Virtue, and Supererogation in the Halakha: The Problem of ‘Lifnim Mishurat Hadin’ Reconsidered” in *Journal of Jewish Studies* Vol XL no 1 (1989) 61-89

Payne, Stanley G. *Spain: A Unique History*, Madison: University of Wisconsin Press, 2011

Gary Porton, *Goyim* (Atlanta: Scholars Press, 1998

Rackman, Emanuel, *A Modern Orthodox Life: Sermons and Columns of Rabbi Emanuel Rackman*, (New Jersey: Ktav Publishing Inc: 2008

Rakeffet-Rothkoff, Aaron, *THE RAV: The World of Rabbi Joseph B. Soloveitchik*, ed. Joseph Epstein, (New Jersey: Ktav Publishing Inc: 1999)

Singer, Michael A. "God's Love for Israel: Apologetic and Hermeneutical Strategies in Twelfth-Century Biblical Exegesis" in *Jews and Christians in Twelfth-Century Europe*, ed. Micahel A Signer, Michael and John Van Engen, Notre Dame: University of Notre Press, 2001

Skolnik, Fred ed., *Encyclopaedia Judaica: Second Edition*, Detroit: Thomson Gale 2007

Smalley, Beryl, *The Study of the Bible in the Middle Ages*, Norte Dame: University of Norte Dame Press, 1978

Steinsaltz, Adin ed., *The Talmud The Steinsaltz Edition: A Reference Guide*. New York: Random House 1996

Touger, Eliyahu ed., Maimonides, *Mishneh Torah*, (New York: Monznaim, 1993)

Wurzburger, Walter S. "Darkhei Shalom" & "Cooperation with Non-Orthodox Jews" in *Convenantal Imperatives* eds Eliezar L Jacobs and Shalom Carmy, Jerusalem: Urim Publications, 2008