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MIPNEI DARKEI SHALOM IN RABBINIC TRADITION

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Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

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Mipnei Darkhei Shalom in Rabbinic Tradition
Advisor: Dr. Eugene B. Borowitz
Summary Statement

The goal of this thesis is to gain an understanding of the meaning of the phrase *mipnei darkhei shalom* as it is used in rabbinic sources. This phrase is a rubric through which to examine the larger question of Jewish responsibility for the well-being of Gentiles. The primary focus of this study is the use and meaning of *mipnei darkhei shalom* as vis-a-vis relations between Jews and Gentiles. At the center of this inquiry rests an essential question: Do the enactments which are made *mipnei darkhei shalom* have a strategic or intrinsic value? In other words, does *mipnei darkhei shalom* reflect an effort to provide a social lubricant, to avoid strife and enmity, or does it represent an attempt to orient people towards a higher social ideal?

A thorough analysis was conducted of all of the instances of *mipnei darkhei shalom* as it relates to Jews and Gentiles found in the Mishnah, Tosephta, Talmud Bavli, Talmud Yerushalmi, Mishneh Torah, Tur, Beit Yosef, Shulchan Arukh, Rema, and selected 20th century responsa.

While there are many nuanced meanings which emerge from this analysis, the bottom line is that in the vast majority of instances, *mipnei darkhei shalom* is indeed understood as a strategic maneuver enacted to avoid enmity or some sort. This is true across the historic spectrum -- from the Mishnah (where the phrase first appears) to contemporary *teshuvot*. There does emerge, however, a sort of on-going dialectic. In every genre and time period there emerges a rare, but clear voice suggesting that one acts in certain ways towards Gentiles (i.e. providing for their needs) for its own sake.

There is no apparent correlation between the social circumstances from which particular sources emerged and the position articulated. With subtle variation, the majority of voices come from a realistic position of strategy and defensiveness, and throughout the sources a rare voice articulates an ethical and social ideal.

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Chapter I: Introduction

This work attempts to gain an understanding of the meaning of the phrase *mipnei darkhei shalom* as used in rabbinic sources. During the preliminary stages of research, this phrase was identified as one rubric through which to examine the larger question of to what degree Jews are responsible for the well being of Gentiles¹.

Mipnei darkhei shalom is the reason sometimes given for why someone should act in a particular way despite the fact that it is not mandated by halakhah. For example, an item found by a deaf person, an imbecile, or a minor does not according to halakhah belong to him, since these three kinds of people do not have the intentionality needed to acquire something. Therefore, according to the letter of the law, another person may take the found item from such a person thus legally acquiring it for himself. There is an enactment made in the Mishnah², however, that one should not take a found object from a deaf person, an imbecile, or a minor; in fact, it is considered theft. The reason given for this enactment is *mipnei darkhei shalom*.

The phrase *mipnei darkhei shalom* first appears in the Mishnah and is used with some frequency in later rabbinic sources. Like other such terms, (*mipnei tikkun olam*, *mishum eivah*, etc.³), *mipnei darkhei shalom* seems to have a quasi-halakhic status. The phrase is used in a variety of contexts. While the primary focus of this study will be *mipnei darkhei shalom* as the reason given for Jews to act in a particular way towards Gentiles, the phrase is also often

¹"Gentiles" will be used throughout this thesis to refer to non-Jews as the term "non-Jew" feels inappropriately self-referential.

²Gittin 5:8.

³It is not possible within the limited scope of this thesis to examine the ways in which these differ from *mipnei darkhei shalom*.

applied to interactions between Jews as with the example from Gittin given above. Some attention will be paid to the meaning of *mipnei darkhei shalom* vis-a-vis relationships between Jews, particularly in the phrase's early usages. The primary goal of this study, however, is to determine what the phrase means when applied to interaction between Jews and Gentiles.

While at first glance, the phrase appears easy to translate (*for the sake of the ways of peace*), its meaning is anything but clear. There are many possible meanings, and at the center of the inquiry rests a more essential question: Do the acts which are called for *mipnei darkhei shalom* have a strategic or intrinsic value⁴? In other words, does *mipnei darkhei shalom* reflect an effort to provide a social lubricant, to avoid strife and enmity, or does it represent an attempt to orient people towards a higher social ideal. Furthermore, if it is the second of these two possibilities, what is that ideal?

Some of the other questions which frame this inquiry are: Does the meaning and usage of *mipnei darkhei shalom* change over the course of time? What does the meaning of *mipnei darkhei shalom* indicate about Jewish responsibility to Gentiles? And finally, do the texts examined provide a unified response to these questions?

Overview of Research Methodology

In order to enable a close study of the way *mipnei darkhei shalom* functions within the limitations of the scope of this thesis, a few sources have been chosen for inquiry. This work will examine the way the phrase is used in

⁴This phrase will be used repeated throughout this work. It refers to a given act (i.e. giving to the Gentile poor) being good in its own right as opposed to strategically advantageous.

the Mishnah, Tosephta, Talmud Bavli, Talmud Yerushalmi, Mishneh Torah, Tur, Beit Yosef, Shulchan Arukh, and a few selected modern responsa.

There will be a thorough exploration of all of the instances in which *mipnei darkhei shalom* appears in the Mishnah, Tosephta, Talmud Bavli, and Talmud Yerushalmi. These works contain the earliest appearances of the phrase *mipnei darkhei shalom*. Since all subsequent sources draw upon these sources, the phrase will be examined in every context in which it appears -- both among Jews and between Jews and Gentiles. The Amoraic and Tannaitic sources have been presented in one unified chapter both because the material is quite interconnected and because there are no indications that the phrase's use or meaning in the Mishnah and Tosephta is categorically different than its use or meaning in the Talmud Bavli and Talmud Yerushalmi.

The particular sources listed above were selected on several grounds. Rambam's Mishneh Torah and the Tur/Beit Yosef/Shulchan Arukh/Rema quartet are central authoritative halakhic works. They also contain numerous references to enactments made *mipnei darkhei shalom*. References to the phrase grow so numerous, in fact, that beginning with the Tur and continuing thereafter, research is restricted only to instances in which *mipnei darkhei shalom* is used vis-a-vis Jews and Gentiles.

It should be noted that there are many sources (particularly from the time period between the Talmud and the Mishneh Torah and between the Rema and the 20th century *poskim*) which deal with enactments made *mipnei darkhei shalom*. Unfortunately, due to the limited scope of this thesis, it was not possible to examine the entire range of sources. In an effort to study the use of *mipnei darkhei shalom* in the context of democratic societies in which Jews are living side by side with Gentiles, 20th century responsa were selected.

While it is possible to examine all instances of *mipnei darkhei shalom* that relate to Jews and Gentiles in the Tur, Beit Yosef, Shulchan Arukh, and Rema, such thoroughness becomes impossible with responsa literature. In an effort to gain diverse representation, it was determined that at the very least an American, a European, and an Israeli *posek* would be included. An attempt was made to identify *teshuvot* which corresponded with one another either by subject matter or by the earlier sources they cited. An attempt was also made to find *teshuvot* which referred back to the sections of the Tur, Beit Yosef, and Shulchan Arukh which had already been examined. Neither of these attempts produced any matches. In the end, *teshuvot* were chosen through identifying well respected *poskim* from diverse geographic and political arenas who responded to particularly interesting questions and referred to *mipnei darkhei shalom* directly.

In terms of methodology, great efforts have been made to translate and analyze the selected texts in as objective and straightforward a way as possible. The author's desire to discover that *mipnei darkhei shalom* indicates an intrinsic social value, and perhaps even a mandate, to care for one's Gentile neighbors means that she must be ever vigilant in her efforts to read the sources honestly and openly. The body of this work offers a close reading of numerous and varied usages of *mipnei darkhei shalom* throughout Jewish history. A strong attempt has been made to discern underlying meaning while remaining very close to the *peshat* of the texts.

Finally, enactments which are made *mipnei darkhei shalom* have been identified through a computer search on the Bar-Ilan Responsa Project found on CD-ROM. With the exception of the modern responsa which were retrieved directly through the CD-ROM, all relevant citations identified by the computer were located in books. A few instances of *mishum darkhei shalom*, a

formulation of *mipnei darkhei shalom* which first appears in medieval codes and seems to have identical usage and meaning as *mipnei darkhei shalom*, are also included.

Meaning of *Shalom* in the Bible

The phrase *mipnei darkhei shalom* first appears in the Mishnah; the word *shalom*, however, is used for over a thousand years before this time. A brief overview of the use and meaning of the word *shalom* in the Bible offers important background and insight into the powerful phrase *mipnei darkhei shalom*⁵.

The word *shalom* comes from the root *shin, lamed, mem*; the verb *shalem* means to be whole or complete. The word is used in the Bible with many different nuances and does not always mean "peace," though it is often translated as such. Although there are numerous examples of most of the nuances of the word, for purposes of background it will suffice to mention one or two examples of each usage and to indicate the general frequency with which it is found.

Shalom often refers to physical or spiritual wholeness and well-being. In Genesis 29:6, for example, Lavan's well being is asked after. Similarly, the word can be used to refer to safety or health as in Leviticus 26:6, where *shalom* is equated with *bitachon*. Similarly, when the people return from battle to the camp and to Joshua they return *beshalom* (Josh. 10:21).

This wholeness and completeness, it should be noted, can also be attributed to things. A debt can be made good (*shallem*) through monetary payments or a vows can be completed through sacrificial offerings. Also, the

⁵Even the phrase *darkhei shalom* does not appear in the Bible.

word can be used to refer to an individual or to the prosperity and security of a people.

Shalom can also refer to internal tranquility. When Avram is told that he shall go to his fathers *beshalom* (Gen. 15:15), *shalom* refers to a state of being. Avram is told he will die peaceably and without turmoil; his life will have been complete.

Shalom is also often associated with the covenant between God and the Jewish people (Gen. 26:30ff, I Kings 5:26; Isa. 44:10). The Blessing of *shalom*, furthermore, is essential for the integrity of Jerusalem and Judaism (Ps. 122:6-8 and 125:5), and it comes with the promise of continued blessing. The Jewish people's covenant with God indicates that the relationship is strong and whole.

Quite often *shalom* is linked to *tzedek* (righteousness), *mishpat* (justice), and even *emet* (truth), particularly in prophetic literature. Zechariah 8:16-19 reveals the powerful connection between *emet*, *mishpat*, and *shalom*. The trio suggests that *shalom* encompasses a relationship that is ordered, true, and just. Righteousness and peace are often joined in the Bible as in Psalms 85:10 "*Tzedek ve-shalom nashaku*" (righteousness and peace have kissed). There are numerous other verses in the Bible in which peace and righteousness are joined (i.e. Ps. 72:7; Isa. 48:18; 57:2; 60:17). To engage in *shalom* is to be upright (Mala. 2:6), to be faithful (II Sam 20:19), to uphold truth (Esth. 9:30 and Zech. 8:19), and to practice justice (Isa. 59:8 and Zech. 8:16). And *shalom* is not something that just happens. Rather it must be pursued. "Do good, seek peace and pursue it" (Ps. 34:15). It is clear that *shalom* is not simply (or even necessarily primarily) the cessation of war. Rather, it includes a deep commitment to the work of justice. "And the work of righteousness shall be peace; and the effect of righteousness, quietness and assurance forever" (Isa. 32:17).

Somewhere between *shalom* as the pursuit of justice and *shalom* as the antithesis of war lies the meaning found in Judges 4: 17 and I Kings 5:4. Here *shalom* means friendly relations between two peoples. Similarly, *shalom* can be negotiated to end or even preclude hostilities as in the instructions given in Deuteronomy 20:10-12. *Shalom* can also indicate submission or even military victory (i.e. Judges 8:9).

As one would expect there are also verses in the Bible in which *shalom* does indeed mean peace, as in the antithesis of war. The use of *shalom* in Ecclesiastes 3:8, "There is a time for *shalom* and a time for war" and Psalms 120:7 "I am a man of *shalom*, but when I speak, they are for war" clearly juxtaposes *shalom* with war. The number of verses in which the word is used in this way, however, is unexpectedly few.

Given all of the meanings discussed above, it is not difficult to understand how *shalom* is also connected to the one who bring in the new age. The one who brings *shalom*, the renewer of justice and righteousness, is mentioned in Isaiah 9:5 forward. Peace is the restoration of creation to justice, truth, and righteousness. Isaiah makes frequent references to this glorious new creation. "I will make your government peace, and righteousness will rule over you" (Isa. 60:17) and "For thus says the Lord, Behold I will send peace flowing over her like a river" (Isa. 66:12). This peace is the mark of the new heavens and the new earth which the Lord will make (Isa. 66:22). God's eschatological promise is a promise of peace. (This is also articulated in Ps. 85:8ff and Isa. 26:12.)⁶

⁶E.M. Good, "Peace in the OT," *The Interpreter's Dictionary of the Bible*, ed. George Arthur Buttrick (New York: Abingdon Press, 1962) vol. 4, 705-706; Harold Louis Ginsberg, "Peace in the Bible," *Encyclopedia Judaica* (Jerusalem: Keter Publishing House, 1972) vol 13, 194-195; and Joseph P. Healey, "Peace," *The Anchor Bible Dictionary*, ed. David Noel Freedman (New York: Doubleday, 1992) vol 5, 206-207.

The degree to which *shalom* is not simply the absence of war, but a strikingly positive concept relating to health and wholeness, the covenant, pursuit of justice, the building of good relations between peoples, and ultimate redemption provides an important backdrop for the inquiry into the meaning of *mipnei darkhei shalom* in rabbinic sources which follows.

Chapter II: Tannaitic and Amoraic Sources

There are numerous enactments in rabbinic literature which are explained as *mipnei darkhei shalom*. What follows is an attempt to analyze the passages in the Mishnah, Tosephta, Talmud Bavli, and Talmud Yerushalmi which utilize the phrase *mipnei darkhei shalom*. Efforts will be made to unearth the meaning of the phrase in its various contexts.

Mishnah

The earliest known usage of the phrase *mipnei darkhei shalom* is in the Mishnah. It is referred to in Gittin 5:8 and 9, Shekalim 1:3, and Sheviit 4:3 and 5:9. As much of the subsequent literature will be based upon these early sources, these mishnayot will be dealt with in some depth. The analysis will begin with the two mishnayot found in Gittin since references to *mipnei darkhei shalom* are the most extensive in this *masechet*.

Gittin 5:8 and 9

And these are the things that they prescribed *mipnei darkhei shalom*: A priest reads (from the Torah) first, and after him, a Levite, and after him, an Israelite, *mipnei darkhei shalom*. One puts the *eruv* in the old house (the house in which it is usually), *mipnei darkhei shalom*. A pit which is closest to the water source is filled first, *mipnei darkhei shalom*. (Items in) traps for wild animals, birds, or fish comes under the category of theft (*mishum gezel*), *mipnei darkhei shalom*. R. Jose says it is definite theft (*gezel gamur*). Something found by a deaf person, imbecile, or minor falls comes under the category of theft (*mishum gezel*) *mipnei darkhei shalom*. R. Jose says it is definite theft (*gezel gamur*). If a poor person beats the top of an

olive tree, what is under him comes under the category of theft (*gezel*), *mipnei darkhei shalom*. R. Jose says it is definitely theft (*gezel gamur*). One must not prevent the Gentile poor from gathering gleanings (*be-lekel*), the forgotten sheaf (*shikhechah*), or the corner of the fields (*peah*), *mipnei darkhei shalom*.

-- Gittin 5:8

Mishnah 8 begins with the statement *ve-elū devarim amru mipnei darkhei shalom* which introduces a list of enactment followed by the statement *mipnei darkhei shalom*. The phrase is a literary cliché⁷, a linguistic phrase which links together a random assortment of thoughts. *Mipnei darkhei shalom* is a simple literary cliché in so far as it is linguistic, mnemonic, concise, and repeated, but it parts company with the typical literary cliché in that it is also thematic. An examination of these enactments, all of which are explained as *mipnei darkhei shalom*, provide a first attempt at discerning the meaning of this phrase in the Mishnah.

The first enactment declares that the order of Torah readers should be Priest, Levite, and then Israelite, *mipnei darkhei shalom*. In this case, the enactment seems to attempt to avoid dispute among the Torah readers by setting the appropriate ordering. There may also be some fear that other permutations of ordering would result in incorrect assumptions being made about the reader's status. The rationale here is primarily the avoidance of arguments, though there is also a hint of efforts being made to maintain social order.

The next enactment states that one should not move the bread of the *eruv* from the *bayit yashan*, the home in which it usually resides. No explanation is given, and one must look to later commentaries to gain a better understanding

⁷Dov Zlotnick, *The Iron Pillar: Mishnah Redaction Form and Intent* (Hoboken: KTAV Publishing House, Inc., 1988) 47.

of the rationale of this enactment.⁸ In a similar vein, the Mishnah continues that one should allow the pit which is nearest to a water source to be filled first. This scenario, like the one involving the bread of the *eruv*, seems to link *mipnei darkhei shalom* to smooth social functioning and not to ensuring that what is best for everyone, or even what is fair, be done.

The enactments now turn to cases determined to be *mishum gezel*, like theft -- animals, birds, and fish caught in traps; items found by a deaf-mute, mentally incompetent person, or minor; and fruit beneath an olive tree after a poor person has beaten it. These enactments are necessary because the law itself does not view the taking of these items a theft. Acquisition in the first and third case must involve seizing an object by hand and a deaf, incompetent, or young person is not considered to have the *daat* needed for acquisition. In these cases, the enactments can also be seen as a striving for social ease; the rulings are created to mitigate against friction caused by conflicting claims.⁹

⁸According to the Bartanura, there is concern that someone will see that the bread is not in its usual place and see that people are carrying and assume that they are *mechalel shabbat*. Maimonides offers a different reason for the enactment stating that one should not cause disruption by taking the bread away from the people who are used to having it in their possession. Legally, if the *eruv* is in your home you do not have to contribute bread to it; therefore being the owner of the home in which the *eruv* resides is slightly financially advantageous.

⁹In the last two cases it could be argued that the enactments strengthen the position of certain disadvantaged people. The validity of this suggestion depends upon the method by which one reads mishnaic statements. If it is acceptable to separate the trio, the phrase *mipnei darkhei shalom* in the last two cases may suggest a policy which gives support to people in disadvantaged positions. If all of the statements must be read with a consistent understanding, however, the concluding phrase in all three cases indicates an effort to avoid disputes over ownership.

In opposition to the *stam*'s statements, Rabbi Jose asserts that these three cases are *gezel gamur*, definite theft. According to the Bartanura when the *stam* says that these statements are like stealing the phrase is used for moral suasion. The *stam*'s statement does not suggest that one could retrieve a "stolen" item in court. Rabbi Jose, by contrast, believes that these situations are *derabbanan* real stealing. As far as he is concerned, it is not a matter of *mipnei darkhei shalom*; rather according to the law it is *gezel gamur*. Rabbi Jose in effect, according to the Bartanura, is accusing the *stam* of misunderstanding the rabbis. This difference of opinion is significant to our discussion in so far as it indicates the authority of an enactment made *mipnei darkhei shalom* as opposed to a statement made *derabbanan*.

The Mishnah concludes with a statement that people must not prevent the poor of the non-Jews from gathering the gleanings, forgotten sheafs, or the corners of the field *mipnei darkhei shalom*. It should be noted that this is the first case in our Mishnah which deals specifically with Gentiles. It is also among the most difficult scenarios to tease out. Does *mipnei darkhei shalom* indicate an effort to avoid disputes or to build towards some sort of larger peace with Gentile neighbors? An examination below of a related Tosephta may be helpful in further determining the phrase's meaning. Within the context of the Mishnah, however, the meaning remains unclear.¹⁰

Gittin 5:9 discusses the case of a woman and her neighbor who is suspected of transgressing the laws of the sabbatical year. The Mishnah enacts that she is allowed to lend such a neighbor two kinds of sieves, a handmill, and an oven, but she is not allowed to sift or grind with this neighbor. The Mishnah continues with a scenario involving the wife of a *chaver* (someone who is very strict in their ritual practice especially concerning laws of purity) and the wife of an *am ha-aretz*. In this case, the first woman may lend the second woman the aforementioned utensils, and she may winnow, grind, or sift with her. When it comes time to pour out the water, however, she must not touch the dough with her. The reason is given that she must not assist her in committing a transgression¹¹. These enactments are followed by the statement, *ve-chulan lo*

¹⁰It should be noted as well, that this final line of mishnah 8 may be a later addition. Structurally, this statement breaks the pattern of *stam/Rabbi Jose, tam/Rabbi Jose, etc.* This in itself would not be sufficient evidence. As will be noted below, however, when the Tosephta discusses at some length providing for the Gentile poor of one's city, it does not include this final line. One could hypothesize that the final line of the Mishnah was not known to the authors of the Tosephta. The last line of Gittin 5:9, which also deals with relations between Jews and Gentiles, appears to be a later addition as well. The implications of this finding will be discussed.

¹¹ A brief explanation of the *peshat* of these enactments may be helpful. In the first case the neighbor is suspected of violating the laws of the sabbatical year whereas in the second case, one can assume that the average Jew observes these laws. Therefore, the woman is allowed in the second case to go a step further and grind and sift with her neighbor. One of the defining

amru elah mipnei darkhei shalom which indicates that the above enactments are *kullahs*, leniencies, enacted *mipnei darkhei shalom*. Once again it is difficult to determine the rabbis' rationale. Perhaps these are further examples of disputes the rabbis are trying to avoid. Perhaps these enactments merely reflect an effort to keep the neighborhood calm and free of resentment. Or perhaps it is a statement about the importance of neighborly sharing to whatever degree is possible without threatening one's religious observance. It is difficult to determine. What is clear, however, is that the *shalom* desired here is between Jews with different religious and ritual practices.

The Mishnah could easily end here, but it does not. Like the previous Mishnah, it closes with an enactment about Gentiles: One may encourage Gentiles during the sabbatical year, but not Jews. And one may offer them greetings (*ve-shoalin bisheloman*), *mipnei darkhei shalom*. Although the ruling not to encourage Jews in practices which violate the sabbatical year relates to the rest of the Mishnah, the mention of Gentiles seems a bit out of place. Furthermore, the issue of offering greetings seems to come without a context.

The ending may, in fact, be a gloss, or even two glosses. The first addition is the enactment regarding encouraging Gentiles during the sabbatical year. While there is a conceptual parallel in Sheviit 4:3, the line appears almost as a brief afterthought here in Gittin. The second addition is the inclusion of offering Gentiles greetings. The content of this concern is that greeting Gentiles (especially on their holidays) may result in increasing their joy and may even lead them to offer up extra sacrifices or prayers¹². The feared result -- abetting

characteristics of the *chavérim*, however, is their concern with issues of purity. Therefore, there is concern that the dough may become *tameh* from the vessel of the wife of the *am ha-aretz* thereby defiling the challah. (Water is a conduit of *tumah*.) The wife of the *am ha-aretz* would no doubt be less concerned with such matters.

¹²See Tosephta Avodah Zarah 1:3.

avodah zarah! The issue of offering greetings, therefore, appears not to relate at all to the sabbatical year per se¹³. Its only link seems to be to the concept *mipnei darkhei shalom*¹⁴. The question remains how greeting Gentiles is allowed *mipnei darkhei shalom*. The most obvious understanding is that if one does not greet Gentiles, their anger may be provoked. They may view the lack of greeting as an insult; therefore, such greetings are allowed.¹⁵

Sheviit 4:3 and 5:9

With the exception of the first statement (One may rent newly-plowed land from a Gentile in the Sabbatical year, but not from a Jew¹⁶), Mishnah 4:3 of *masechet Sheviit* is identical to the end of Gittin 5:9. It declares that you can encourage the work of a Gentile during the sabbatical year, but not that of a Jew. Furthermore, you can offer them greetings *mipnei darkhei shalom*. As is so often the case, it is unclear whether the final phrase, in this instance *mipnei darkhei shalom*, applies only to the final statement about greetings or whether it also applies to either of both of the previous statements.

Regarding the first statement, it is not clear how renting land from a Gentile on the sabbatical year relates to *mipnei darkhei shalom* (unless the law simply allows for on-going business relations). The end of Sheviit 5:9 also

¹³As will be discussed below, Sheviit 4:3 of the Talmud Yerushalmi understands this as greeting Jews who are violating the sabbatical year.

¹⁴If the final statements of both mishnah 8 and mishnah 9 are indeed later additions, they may indicate that concerns about Jewish-Gentile relations increased at a slightly later time due to social forces.

¹⁵Theoretically, offering Gentiles greetings could also be understood as a way of building peace through friendly relations. This enactment could imply the importance of building good relations between Jews and Gentiles and not just avoiding resentments.

¹⁶This means that a Jew can rent newly-plowed land from a Gentile on the sabbatical year to be used the following year even if the land was prepared on the sabbatical year.

implies that *mipnei darkhei shalom* may not relate to this enactment. In 5:9 the other two statements are reiterated word for word in the context of *mipnei darkhei shalom*, while this first enactment from 4:3 is omitted.

Based on Sheviit 5:9, however, it is possible to deduce that *mipnei darkhei shalom* does refer to both encouraging a Gentile during the sabbatical year as well as greeting him. As discussed above in the context of Gittin 5:9, both of these enactments can be easily understood as promoting good feelings between Jews and Gentiles. Whether this means promoting good feelings in order to avoid resentments or whether it means building good relations for their own sake is less clear.

Shekalim 1:3

Shekalim 1:3 introduces a new scenario in which *mipnei darkhei shalom* is given as the reason for an enactment. This mishnah discusses the rules concerning from whom pledges are taken. The Mishnah states that pledges (collateral for the half-shekel owed) are taken from Levites and Israelites, proselytes, and freed slaves but not from women, slaves, or minors (who don't contribute a half-shekel in the first place). Furthermore, if a father has begun to pay for his son who is a minor, he must continue to do so. Then the final enactment is made: *ve-ain me-mashkenin et-ha-kohanim mipnei darkhei shalom*. No pledges are to be taken from the priests, *mipnei darkhei shalom*.

This is a complicated statement since there is a *machloket* among the rabbis and between the rabbis and the priests as to whether the priests must contribute a half shekel. In the next Mishnah, Shekalim 1:4, R. Judah says in the name of Ben Buchri that it is acceptable (*aino chait*) for a priest to contribute a

half-shekel¹⁷. R. Jochanan ben Zakkai responds that if a priest does not contribute his half-shekel he has committed a sin. The priests, cleverly citing a *pasuk*, claim that they do not need to contribute a half-shekel.

The final statement of 1:3 thereby seeks to avoid the entire argument found in 1:4 while also trying to stave off any public disputes at the time of sacrifices. This enactment seems to attempt to avoid a priest from entering the Temple to perform a sacrifice, being stopped at the door to pay his half-shekel, refusing to pay, and an argument ensuing. Therefore, a Temple guard may not ask a priest for collateral *mipnei darkhei shalom*. The enactment strives for a peace between the rabbis and the priests¹⁸. It also seeks to avoid a scene and tries instead to create a public peace.

Tosephta

The Tosephta includes additions to Mishnah, alternative formulations of the Mishnah, material which relates to the Mishnah by way of expansion, and traditions opposing the Mishnah. As such, the Tosephta can help to flesh out the understanding of *mipnei darkhei shalom* gleaned from the Mishnah, even as it may also present some understandings unique to itself. The Tosephta, it should be noted, is roughly contemporary with the Mishnah. Although the Tosephta was redacted later than the Mishnah, there is much debate as to whether the material of the Mishnah pre-dates the material included in Tosephta or vice versa.

¹⁷The concern seems to be that if the priest contributes money, the sacrifice will then belong to him.

¹⁸At least at the time of the sacrifice. Later, they can argue.

Gittin 3:13 and 14

Gittin 3:13 and 14¹⁹ of the Tosephta begins with the enactment found in Gittin 5:8 of the Mishnah concerning the fruits a poor person shakes off an olive tree. The Tosephta, echoing R. Jose's position, asserts that to take these fruits from such a person is *gezel gamur*. The Tosephta continues stating that in a city in which both Gentiles and Jews live, the collector of funds for the support of the poor collect equally from Jews and Gentiles, *mipnei darkhei shalom*. They provide support for the Gentile poor along with the Jewish poor, *mipnei darkhei shalom*. Gittin 3:14 continues with the call to eulogize and bury the dead of the Gentiles *mipnei darkhei shalom*. The section closes with the enactment to comfort Gentile mourners *mipnei darkhei shalom*.

On the one hand, these rulings may exist for the sake of avoiding the jealousy, resentment, or wrath of Gentile neighbors. (This, please note, is different than avoiding dispute.) If the Gentiles see Jews providing resources to Jews alone, they may become resentful.

On the other hand, the way the Tosephta spells out the importance not only of distributing support to both the Jewish and Gentile poor, but also of collecting funds from both populations may suggest a desire for some level of integration around matters of caring for the poor. Furthermore, the enactment to comfort (*menachamin*) Gentile mourners seems more like an act of compassion than a political move. While the call to *maspidin* the Gentile dead

¹⁹Lieberman edition. M. S. Zuckerman's edition (1882) of the Tosephta relies on the Erfurt and Vienna manuscripts. Saul Lieberman's edition (1955-1973) corrects many errors Zuckerman made in copying. Lieberman's edition relies on the Vienna manuscript and records variants from the Erfurt manuscript, the first printed edition of the Tosephta, and from the Cairo Geniza. Unlike Zuckerman's edition, Lieberman's edition is not eclectic. Lieberman's edition, however, only includes Zera'im, Moed, Nashim, and Baba Kamma, Baba Metzi'ah, and Baba Batra of Nezikim. H.L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash* (Minneapolis: Fortress Press, 1992) 178.

could be understood as either to "eulogize," "make the funeral arrangements," or the more emotional "lament," *menachamin* is unequivocally emotional. Neither of these acts, furthermore, are monetary. The Tosephta thereby seems to be calling upon Jews to go beyond what would be due to Gentiles simply because they contributed to the communal funds. We are told not only to provide for their poor along with the poor of Israel (a natural consequence of collecting from them), but also to care for their dead and their mourners.

While one could hardly make a definitive statement, given the mixed evidence, this usage may indicate that *mipnei darkhei shalom* in this Tosephta means more than simply avoiding resentments. These enactments may make a statement about Jewish and Gentile interaction and responsibility to one another. (Again, given the other usages of *mipnei darkhei shalom* in Tannaitic literature discussed below, one could hardly argue this unequivocally.)

The relationship of this Tosephta to the Mishnah with which it shares a line (Gittin 5:8) is not at all clear. The question remains whether the Tosephta is an extension of the Mishnah or whether the Tosephta includes material which existed at the time of the Mishnah, but that the redactor of the Mishnah chose to edit out. Either way, this Tosephta is decidedly more concerned with general relations between Jews and Gentiles than are the mishnayot in Gittin. Furthermore, the Tosephta's usage of *mipnei darkhei shalom* may be pointing to something beyond avoiding resentments. The phrase is used in the context of easing others' pain²⁰ and acting with compassion -- acts which can be understood as ways of responding to the needs of others.

²⁰Note that all of the circumstances described are ones of pain. We are not told, for example, to rejoice with Gentile brides *mipnei darkhei shalom*. This may be based on the rationale that others are more likely to grow angry when you do not respond to their pain than they are when you do not participate in their celebrations. (This understanding would suggest that *mipnei darkhei shalom* here does have something to do with avoiding resentments.) On the other hand, the inclusion of circumstances of pain may simply reflect a belief in the importance of responding

Additional References to *Mipnei Darkhei Shalom* in Tosephta

Several of the other references to *mipnei darkhei shalom* in the literature of the Tosephta shed additional light on the Tannaitic meaning of the phrase. In Peah 3:1²¹ a situation is described in which poor people who do not merit the gleanings of the field (ostensively because they are part owners) collect the gleanings nonetheless. The Tosephta states that if the *baal ha-bayit* is able to protest immediately, he should protest. If he is not able to protest immediately, he should let the gatherers go about their business *mipnei darkhei shalom*. This is a somewhat puzzling arrangement, for what is the difference between protesting immediately and waiting a while before objecting? It seems that there is a reluctance to make a fuss or to cause humiliation once the sheaves have already been gathered. It is one thing to stop people about to pick up the gleanings; it is quite another to force the gatherers to return their pickings! The phrase *mipnei darkhei shalom* may here refer to the, now familiar, avoidance of a dispute over ownership.²²

Eruvin 5:11²³ is in part a restatement of what appears in Gittin 5:8 of the Mishnah. The bread of an *eruv* should be kept in the house in which it is usually kept (*bayit yashan*) *mipnei darkhei shalom*. As discussed above, this avoids the disruption that might occur if it is taken from the people who are accustomed to keeping it in their home. The Tosephta continues with circumstances under which it is desirable to consider moving the *eruv*. It is

compassionately to the pain of others. (This understanding would suggest that *mipnei darkhei shalom* here relates to the importance of responding to the pain of Gentile neighbors.)

Furthermore, as will be discussed at some length below, perhaps only painful circumstances are mentioned because contributing to the celebrations of Gentiles can lead to *avodah zarah*.

²¹Lieberman edition.

²²This passage also brings an added nuance to the phrase as it may indicate an attempt to avoid humiliation as well.

²³Lieberman edition.

understood that in these special cases, such as if the other party is an *adam gadol*, there will not be conflict²⁴. The exceptions are made, therefore, not because there is a principle considered higher than *mipnei darkhei shalom*, but because there is no fear of arguments in these instances. In these instances, *darkhei shalom* can be maintained even if the *eruv* is moved.

Nedarim 2:7²⁵ offers a new context for the phrase *mipnei darkhei shalom*. This section includes a list of exceptions allowed to a man who has taken a vow not to give benefit to his fellow man. (Such a vow was often made out of anger and bad feelings and thus offers a somewhat ironic context for the appearance of *mipnei darkhei shalom*.) The Tosephta states that despite this vow, if his fellow man dies the vower may bring a coffin, shrouds, wailing pipes, and wailing women. This is quickly explained as acceptable since a dead person cannot receive benefit. The Tosephta continues asserting that the vower may give testimony on behalf of his fellow man. If the man falls ill, the vower may visit him; if, however, there is a sick person residing in the man's house, the vower may not visit him. Finally, if the vower is a priest, he may throw the blood of his fellow man's sin-offering and of his guilt-offering on his behalf in the Temple service, *mipnei darkhei shalom*. As in previous passages, it is difficult to know whether *mipnei darkhei shalom* refers to all of the stated exceptions or just to the final one. There are arguments which support both readings. However, as commentators on the Tosephta link the phrase back beyond the final statement²⁶ and as such a reading allows the broadest understanding of *mipnei darkhei shalom*, our analysis will proceed under this assumption. The

²⁴Furthermore, although the person in the *bayit yashan* is given the guiding principle *mitzvah al adam levatel reshut*, the *reshut* remains in his hand. He can decide whether or not to let the *eruv* be moved from his house.

²⁵Lieberman edition.

²⁶Saul Lieberman, ed. *Tosephta Kifeshuta: Seder Nashim* (New York: The Jewish Theological Seminary of America, 1967) 425-428.

conclusions drawn from this analysis, however, should be understood against the possibility that *mipnei darkhei shalom* was not intended to be applied to all of the exceptions listed.

The statement that a vower can give testimony on behalf of his fellow man (whom he vowed not to benefit) *mipnei darkhei shalom* seems to link the phrase to the smooth running of society. Whatever the vower's personal feelings for this man, and despite the vow he took, the legal process must be carried out.

The reasoning behind the enactment which allows (*mipnei darkhei shalom*) for the visitation of the man if he is sick is a bit more complicated. It is particularly perplexing in light of the prohibition against visiting an ailing person residing in the man's house. There are many ways to understand this enactment, and each way has its weaknesses. *Mipnei darkhei shalom* could in this instance simply mean *for the sake of compassion* or *because it is a mitzvah*. Neither of these words, however, are used. This enactment, alternatively, could be made in order to avoid anger and resentment on the part of the sick man. This understanding, while common in many contexts examined thus far, seems ridiculous in the context of a man who has taken a vow not to benefit another.²⁷ A final understanding, which while not wholly satisfying holds possibilities, is that visiting the sick man is allowed for the sake of the vower. If he were not to visit the sick man, people may speak badly of the vower²⁷. Here *mipnei darkhei shalom* could be understood as a sort of protection of the social airwaves. It is an attempt to avoid bad words from being spoken about people in the community. All of these explanations are challenged, however, by the statement that if a sick person is residing in the fellow man's home, the vower may not visit him.

²⁷Ibid, 428.

There is not a fully satisfying way of reconciling this puzzling statement. Perhaps in most general terms the sick person can be understood as more removed from the vower than the man against whom he took his vow. Therefore it is considered sufficient for the vower to simply ask after the sick man in place of visiting him.

Finally, there is the exception stated that if the vower is a priest, he may throw the blood of his fellow man's offerings, *mipnei darkhei shalom*.^{*} This case, like in the instance of testifying, points to an effort to not allow personal vows to interfere with the sacrificial system. *Mipnei darkhei shalom* could be understood here as for the sake of the functioning of the Temple.

References in the Tosephta that Parallel the Mishnah

Several of the references to *mipnei darkhei shalom* in the Tosephta are parallel to examples found in the Mishnah and do not contribute new understandings of the phrase. Nonetheless, they are worth mentioning in so far as there is an element of tallying involved in the process of determining meaning. While, a final understanding will certainly not be reached through a vote, a sense of the frequency with which concepts arise can be helpful.

In Hullin 10:13²⁸ it is stated that doves in a dovecote²⁹ and doves in an attic are subject to the law of letting go³⁰ and are prohibited as theft *mipnei darkhei shalom*. This means that although they do not strictly belong to the owner of the dovecote or the attic, the rabbis recognized that the owner has "set his mind on them." Thereby, they should be regarded as if they belong to the

²⁸Zuckerman edition.

²⁹Birdhouse of sorts.

³⁰Deuteronomy 22:6 and forward.

owner of the dovecote or attic³¹. This enactment is parallel to the cases in Gittin 5:8 of the Mishnah whereby various incomplete acquisitions are regarded as complete vis-a-vis theft *mipnei darkhei shalom*. In both sources it is an obvious attempt to avoid disputes over property.

Finally, according to Avodah Zarah 1:3³² one should offer greetings to Gentiles even on their holidays *mipnei darkhei shalom*. This is identical to the enactment found in the Gittin 5:9 of the Mishnah. Although the meaning of this ruling is not entirely clear, on the most basic level, it can be understood as an attempt to avoid the resentment of Gentiles³³.

Babylonian Talmud

For the most part the meaning and usage of *mipnei darkhei shalom* does not change in the Babylonian Talmud³⁴. Although there are slight variations and additional nuances to glean, the Amoraim do not fundamentally use the phrase differently than their Tannaitic predecessors.

Baba Metzia 102a and Hullin 141a both deal with the status of doves in dovecotes and attics discussed in Hullin 10:13 of the Tosephta. The passages are identical, though their contexts in the *sugiyot* are different³⁵. The meaning of

³¹This means that they are liable to the requirement of sending forth and fall under the category of theft.

³²Zuckerman edition.

³³See the above analysis of Gittin 5:9 of the Mishnah for other possible interpretations.

³⁴Baba Metzia 12a and Sanhedrin 25b, for example, note that an object found by a deaf-mute, imbecile, or minor may not be taken away because it is considered *gezel mipnei darkhei shalom*. Sanhedrin 25a proclaims that an Ara (related linguistically to *Ada*), a person who puts up decoy-birds to attract other birds away from another person's dovecote, is committing *gezel mipnei darkhei shalom*. Once again, the distinction between *gezel deoraitah* and *gezel mipnei darkhei shalom* is made in these *sugiyot*.

³⁵This section of Baba Metzia contains an argument about ownership of manure, a valuable commodity, and how a landlord or a tenant might come to acquire it. The primary issue discussed is whether a man's courtyard can acquire something on his behalf, and the example of doves is

mipnei darkhei shalom in these *sugiyot* is identical to its meaning in Hullin 10:13 of the Tosephta. If someone does not have full ownership but has quasi-mental ownership of something, taking the item from him is considered theft *mipnei darkhei shalom*. The phrase clearly expresses a desire to avoid conflict. These talmudic passages, furthermore, emphasize the discussion in Gittin 5:8 of the Mishnah.

If so (if whenever a person can acquire something, his courtyard can acquire it for him) are they forbidden as robbery (only) mipnei darkhei shalom? If he (a person who comes and find the birds) sends the mother bird away, it is real robbery (since once the mother bird is sent away, the eggs immediately become the property of the courtyard owner)?

Like in the argument between the *stam* and Rabbi Jose in Gittin 5:8 of the Mishnah, a clear distinction emerges between theft *mipnei darkhei shalom* and theft determined in its own right. Despite the hierarchy revealed here, our section of Talmud concludes with a statement about the power of *mipnei darkhei shalom*. If a minor takes doves under these circumstances, his father must return them *mipnei darkhei shalom*.

Shevuot 41a makes a similar statement noting the difference between *gezel mipnei darkhei shalom* and *gezel gamur*.

And according to R. Jose who holds that in the case of a Rabbinic (law) we also go down to his property? For we learnt: The finding of a deaf mute, imbecile, or minor is subject to the law of theft in the interests of peace. R. Jose says: Real theft. (Not only in the interests of social stability do we empower the deaf-mute, imbecile, and minor to retain what they find; it is really lawfully theirs; and he who extracts it from them is guilty of real theft.) And R. Hisda said: (He means) real theft according to

brought into the argument. In Hullin 141a the *sugiyah* discusses when and how one should let a bird go free.

their enactment. (Not real theft according to the Biblical law, but only according to the Rabbinic law.) What is the difference? (Between R. Jose and the other Rabbis, since he also agrees that it is only theft by enactment of the Rabbis in the interests of social peace.) **Its extraction in Court.** (R. Jose makes the proprietary rights of the deaf-mute stronger -- though only Rabbinically, and not Biblically -- and if anyone steals from him that which he has found, the Court extracts it from the thief, though the thief has not transgressed the Biblical law nor is he disqualified from being a witness. According to the other Rabbis, if the thief stole from the deaf-mute the thing that he found, the Court does not interfere.)
(Soncino translation and notes)³⁶

A simple reading of this passage reveals the relatively weaker authority attributed to an enactment made *mipnei darkhei shalom*. The discussion that ensues between R. Jose, R. Hisda, and the stam, however, hints at the possibility that R. Jose may be trying to add strength to the enactment not trying to supplant it. R. Jose's statement that this case is *gezel gamur* may not be a statement in opposition to it being *gezel mipnei darkhei shalom*, but rather an effort to strengthen the nature of the rabbinic enactment.

Turning from this question of authority back to the issue of content, Gittin 61a offers a powerful endorsement of the Tosephta (Gittin 3:13 and 14) which calls for Jews to support the poor of the Gentiles along with the Jewish poor, to visit the Gentile sick along with the Jewish sick, and to bury the dead of the Gentile along with the Jewish dead³⁷ *mipnei darkhei shalom*. While this statement is not included in the Mishnah, the Talmud brings this Baraita as an extension and explanation of the final statement of Gittin 5:8: The poor of the Gentiles are not prevented from gathering the gleanings, forgotten sheaves, and the corners of the field *mipnei darkhei shalom*. As discussed above, it is not entirely clear whether Jews should act in these ways to avoid the resentment of

³⁶ I have included this one passage with the notes found in the Soncino translation of the Talmud because my interpretation of this section is dependent upon them. It also enables the reader to better understand the twists and turns in the argument and will hopefully facilitate his reaching his own judgment.

³⁷ In addition to the Jewish dead, not in the same cemeteries.

Gentiles or as part of a larger vision of relations between Jews and Gentiles. Regardless, the Talmud's inclusion of this passage is noteworthy.

Another *sugiyah* which discusses Gittin 5:8 of the Mishnah offers the first overt discussion of the meaning of *mipnei darkhei shalom*. In Gittin 59b R. Joseph and Abaye debate the scope and authority of *mipnei darkhei shalom*. Abaye asks R. Joseph whether the rule of allowing a priest to read first is *mipnei darkhei shalom* and whether it is from the Torah. R. Joseph answers that it is derived from the Torah, and it is *mipnei darkhei shalom*. R. Joseph then continues and, citing Proverbs 3:17³⁸, proclaims *kol ha-Torah nami mipnei darkhei shalom*. Abaye quickly objects with a story which illustrates that *mipnei darkhei shalom* only applies to certain situations and its meaning and scope should not be expanded.

This debate reflects one of the basic questions which arises vis-a-vis the concept of *mipnei darkhei shalom*. Namely, how limited or expansive is *mipnei darkhei shalom* as a concept. Does it solicit certain behaviors in given situations or is it an overarching concept which stands at the foundation of Jewish life and our vision for society?

Talmud Yerushalmi

By and large the instances of *mipnei darkhei shalom* in the Talmud Yerushalmi are the same as or parallel to its usage in the Talmud Bavli.³⁹ There are, however, a few slightly new interpretations and new contexts which are worth noting.

³⁸ *Derakheha darkhei-noam ve-chol netivoteha shalom*.

³⁹ Such passages from the Talmud Yerushalmi include: Nedarim 1:1; Shekalim 1:3; Eruvim 7:6; and Gittin 5:9 and 10

Sheviit 4:3

In Sheviit 4:3 there are two understandings of to whom the mishnaic phrase *ve-shoalim bishloman mipnei darkhei shalom* applies. One opinion holds the now familiar position that this phrase means that an Israelite may say to a Gentile, "May you have strength so as to complete your field work" (being done during the sabbatical year). The other opinion states that the Mishnah means that an Israelite may greet another Israelite who is working in the field during the sabbatical year and say "Hello to you." This second opinion is somewhat radical since by offering words of greeting, an Israelite is offering subtle moral support to a person transgressing the law. Nonetheless, according to this opinion (which is followed in the Talmud by a lengthy story supporting it), Jews may offer greetings to other Jews who are transgressing the laws of the sabbatical year *mipnei darkhei shalom*. While the Talmud does not go so far as to allow Jews to offer direct words of encouragement (as they may to Gentiles), the Yerushalmi still offers a strong statement which reflects the importance of *shalom*.

At its most basic level this enactment seems to promote good relations between two individual Jews -- one who is working in his field on the sabbatical year and one who is walking by. This enactment may also, however, reflect the larger social reality of life under Roman rule. 'The biblical command to let the land lie fallow every seventh year had been observed throughout the period of the Second Commonwealth as 'a mitzvah confined to the Holy Land.' After the Destruction it was assumed to be still in force, but many Jews simply disregarded it, and the sources are full of references to 'those suspected of neglecting shevi'ith.' The reasons for this are not far to seek: the difficult economic situation, coupled with the fact that the government now frequently ignored the

traditional Roman practice of forgiving taxes on farm produce during the sabbatical year⁴⁰. Furthermore, the Romans often encouraged Jews to work on the sabbatical year. A Jew passing by who was rude to a fellow Jew working in his field might be reported to Roman authorities as uncooperative. Therefore, the *shalom* strived for in this enactment may reach beyond the relationship of two individual Jews to Jewish-Roman relations.

Eruvim 3:2 and 7:9

Perhaps the most puzzling usage of *mipnei darkhei shalom* appears in Eruvim 3:2 and 7:9. The initial reason given for *eruvim* (the symbolic meals which legitimized the extension of the Sabbath boundary) being in courtyards in addition to alleyways is to teach children about the laws of *eruvim*, literally "so that they will not forget" (Eruvim 7:9). But R. Yehoshua b. Levi offers a different understanding (which is somewhat unusual for an Amora to do). He says that *eruvim* are allowed in courtyards *mipnei darkhei shalom*. What follows is the story of a woman who was fighting with her friend. The woman sent her son to her friend's home with her share of the *eruv*. The friend took the son and hugged him and kissed him warmly. And so the two women made peace.

It remains unclear why placing *eruvim* in courtyards is *mipnei darkhei shalom* or how the story is dependent on the *eruv* being in the courtyard. Furthermore, the fact that the story's protagonist is a child who brings a portion of the *eruv* only confuses the two understandings of why *eruvim* are in courtyards -- to teach children and *mipnei darkhei shalom*. Unfortunately, it is

⁴⁰ Gedaliah Alon, *The Jews in their Land in the Talmudic Age*, trans. and ed. Gershon Levi (Cambridge: Harvard University Press, 1989) 731-2.

not possible at this time to better understand how *mipnei darkhei shalom* is functioning in these passages.

Avodah Zarah 1:3

Finally, Avodah Zarah 1:3 presents a fascinating discussion of how to balance the value of *mipnei darkhei shalom* with the risk of *avodah zarah*. In many ways this issue stands at the crux of Jewish-Gentile relations. Every step Jews take towards closer relations with Gentiles poses a threat. To the rabbinic mind the greatest threat is the risk of falling into or abetting *avodah zarah* -- a treacherous sort of assimilation.

This sugiyah begins with a discussion of the days on which Jews are and are not allowed to conduct business with Gentiles. (As discussed above, this has to do with their holidays and the risk of promoting *avodah zarah*.) The Baraita which enacts provisions for the Gentile poor, sick, dead, and mourning is cited followed by this exchange:

The people of Circa asked R. Ami, "The day on which Gentiles make a feast, what is the law?" He considered permitting it *mipnei darkhei shalom*. Said to him R. Ba, "Did not R. Hiyya teach: The day of a feast of the Gentiles is forbidden?" Said R. Ami, "Were it not for R. Ba we would have ended up permitting their *avodah zarah*. Blessed is God who has kept us distant from them!"

This powerful exchange reveals one of the essential tensions that surrounds the pursuit of *darkhei shalom*. In the end it seems that the Baraita still holds. Furthermore, the discussion which follows the Baraita does not directly relate to providing for the Gentile poor, sick, dead, and mourning. Rather, the discussion focuses on issues of conducting business. Nonetheless,

the proximity of the two sections and their thematic link reflects their connection. When R. Ami considers allowing business with Gentiles on their holidays *mipnei darkhei shalom* his consideration is informed by the above Baraita. In the end a balance of sorts is struck. The Baraita stands and is not directly mitigated, but Jews are not allowed to conduct business with Gentiles on their holidays. In this instance, the fear of *avodah zarah* outweighs the value of *darkhei shalom*. Furthermore, R. Ami's final statement, *Blessed is God who has kept us distant from them*, reveals the sense of fear and threat which underlie all efforts to include and draw closer to Gentiles⁴¹.

Conclusion

The major variation among the different rabbinic genres, aside from the Tosephta's inclusion of material which seems to broaden the definition of *mipnei darkhei shalom*, appears in passages from the Talmud Bavli and Talmud Yerushalmi. In addition to the numerous examples which echo statements made in the Tannaitic material, both Talmuds contain abstract discussions about the nature of *mipnei darkhei shalom*. Debates are recorded about several of the very questions probed above: the authority of an enactment made *mipnei darkhei shalom* as opposed to a ruling made *deoraitah*, the competing values of pursuit of *darkhei shalom* and avoidance of *avodah zarah*, and finally the question of whether *mipnei darkhei shalom* has an instrumental or intrinsic value. In other words, does it simply function pragmatically or does it reflect a larger ethical and religious ideal?

⁴¹A parallel discussion takes place in Gittin 5:9 of the Talmud Yerushalmi between R. Immi and R. Abba.

Although there is a wide range of usages of the phrase *mipnei darkhei shalom* in rabbinic literature, it is possible to begin to draw some general conclusions. In the Mishnah, Tosephta, Talmud Bavli, and Talmud Yerushalmi *mipnei darkhei shalom* is most commonly used to indicate an effort to avoid arguments (often over property) or to more generally ensure that society functions smoothly. There is also a particular interest in avoiding public disputes. When *mipnei darkhei shalom* is used with regard to avoiding disputes over property, the parties involved are always both Jews. There are, furthermore, several instances in which *mipnei darkhei shalom* is evoked in the context of a discussion about how Jews with differing religious practices should interact. One passage addresses even more specifically the issue of peace between the priests and the rabbis. Avoidance of disputes and the maintenance of a smoothly functioning society seem to be the primary meanings of *mipnei darkhei shalom*.⁴² When *mipnei darkhei shalom* is used in reference to relations between Jews and Gentiles it is primarily used to indicate the avoidance of resentment and anger. There are also indications, especially in the Tosephta which is later cited by both Talmuds, that it may be possible to understand *mipnei darkhei shalom* as a statement of Jewish responsibility to Gentiles who are poor, sick, dead, or mourning. It must be stressed, however, that this final meaning is merely hinted at and is not stated explicitly. It should be maintained as a possible meaning, but not understood as the definitive one.

⁴²There are slight hints of other possible meanings. They include: an attempt to maintain the status quo; an effort to strengthen the position of disadvantaged people; the achievement of a certain level of integration between Jews of differing levels of observance, and the avoidance of humiliation. These possible meanings can, however, only be lightly posited.

Chapter III: The Rambam's Mishneh Torah

A Brief Introduction to the Mishneh Torah

In the 12th century, Rabbi Moses ben Maimon (Rambam) compiled a code of encyclopedic scope. Having already written many works, including a commentary on the Mishnah and Babylonian Talmud, a compendium of laws in the Palestinian Talmud, and the Book of Mitzvot, Rambam wrote the Mishneh Torah. His goal was to create a code that was brief, complete, and organized. While Rambam draws on the Mishnah, both Talmuds, the Sifra, Sifre, Tosephta, as well as Geonic works, the sources are all presented in the Mishneh Torah anonymously. The result is a smooth, well synthesized code which in Rambam's own words attempts not only to compile rules as to what is allowed and forbidden, but also to elucidate Torah principles and theological fundamentals⁴³. Finally, Rambam's attempt to articulate the tacit assumptions and aspirations of laws and to reveal their rationales and rationality⁴⁴ is particularly relevant to our exploration of his use of *mipnei darkhei shalom* as the phrase itself is a form of explanation.

Rambam's Use of *Mipnei Darkhei Shalom*

The majority of instances of *mipnei darkhei shalom* in Rambam's Mishneh Torah are identical to the tannaitic and amoraic usages discussed in the previous chapter, though in a few instances there are slight linguistic variations.

⁴³ Isadore Twersky, *Introduction to the Code of Mishnah Torah* (New Haven: Yale University Press, 1980) Introduction.

⁴⁴ Ibid.

Amidst a series of laws about caring for the poor, the Mishneh Torah interjects a statement that one must feed and cloth the Gentile poor with the Jewish poor *mipnei darkhei shalom* (Hilkhot Matenot Aniyim 7:7). This is restated in Hilkhot Avodat Kokhavim 10:6 with additions about the restricted way in which a Jew may greet Gentiles during their holidays. (These are not Rambam's additions but a concise synopsis of the rulings found in Gittin 62a of the Babylonian Talmud.) The Mishneh Torah, continuing to reiterate the Bavli, states in clear Hebrew prose that the following rulings hold *mipnei darkhei shalom*: If someone who is not qualified to glean has already taken gleanings, the owner must let him be (Matenot Aniyim 4:13); a half-shekel is not to be extracted from the priests (Hilkhot Shekalim 1:10); one should not move the bread of an *eruv* from the house which is regularly used for this purpose (Hilkhot Eruvim 1:16); and we bury the dead of Gentiles, comfort their mourners, and visit their sick (Hilkhot Avel 14:12). Rambam specifies that all of these enactments are made *mipnei darkhei shalom*.

With regard to identical restatements of earlier sources it is interesting to note that in stating the rules about waterway rights (Hilkhot Shechenim 3:10), Rambam uses the Gemara's ruling as opposed to that of the Mishnah. In the Amoraic version the strength of *mipnei darkhei shalom* is actually somewhat mitigated by an interceding statement about strength prevailing.

When people have fields along a river they water them in order (of their proximity to the river). But if one of them wants to dam up the flow of the river so that his field may be watered first, and then reopen it, and another wants to water his field first, the stronger prevails. The cistern nearest the water duct is filled first *mipnei darkhei shalom*.

While this is not an example of Rambam making a change but rather of his choice of a particular version, there are other instances in which Rambam's use of *mipnei darkhei shalom* vary subtly though significantly from instances found in the earlier sources. Rambam's use of *mipnei darkhei shalom* in Hilkhhot Matenot Aniyim 1:9, Hilkhhot Melakhim 10:12, and Hilkhhot Avodah Zarah 10:5 are useful in gaining insight into Rambam's understanding of the phrase.

Hilkhhot Matenot Aniyim 1:9

Rambam begins by defining the term *ger* as it relates to gifts to the poor in a particularistic way. He then, however, more broadly applies the ruling of giving to the Gentile poor. It is a curious maneuver in which he limits the category of *ger* but does not at all undermine the strength of *mipnei darkhei shalom*.

In every instance in which the term *ger*⁴⁵ is used with reference to gifts to the poor, it refers only to a *ger tzedek*⁴⁶. (This is inferred from the reference) in Scripture to a poor person's tithe that says, "And the Levite...and the *ger*...shall come" (Deuteronomy 14:29). (This implies that) just as a Levite is a son of the covenant, so a *ger* is a son of the covenant. Nevertheless the Gentile poor may not be excluded from these gifts; rather they may come together with the Jewish poor to take of them *mipnei darkhei shalom*.

Rambam reasons through midrash that when earlier sources say that a *ger* may receive gifts for the poor, they specifically mean a *ger tzedek*. Needless to say, Rambam's enactment up to this point severely limits the ruling as it affects

⁴⁵Literally "stranger," this term refers to a person who is not Jewish.

⁴⁶A convert to Judaism.

Gentiles. But Rambam continues that the Gentile poor "may not be excluded from these gifts" and even states the ruling again, in the affirmative: "Rather they may come together with the Jewish poor to take of them." The reason given is *mipnei darkhei shalom*.

It is difficult to deduce from this passage how Rambam understands the phrase. The text does not provide us with enough information to determine whether the Gentile poor should be included in order to keep the peace or because of the intrinsic value of serving Gentiles in need. What is clear from the very structure of this passage of the Mishneh Torah is Rambam's move from the particular to the more universal. Hilkhhot Melakhim 10:12 offers a clearer picture of Rambam's usage of the phrase.

Hilkhhot Melakhim 10:12

Typical of the style of the Mishneh Torah, this passage is a fascinating conglomerate of rulings gathered from parts of the Mishnah and Gemara, with a few telling additions by Rambam himself. It begins with the rulings about how to adjudicate if two Gentiles come before a Jewish judge and how to adjudicate if a Jew and a Gentile come before a Jewish judge. The halakhah instructs that whichever law (Jewish or Gentile) will vindicate the Jewish party that law should be used.

Rambam continues stating that it seems to him that if the other party is a *ger toshav*⁴⁷ the case is handled differently. Instead of using the legislation which favors the Jewish party, the suit is adjudicated according to the laws of the *ger toshav*. Furthermore, Rambam continues with a general statement about

⁴⁷A resident alien. Such a person is a Gentile who has accepted some, but not all, of the laws of Judaism and who wishes to live permanently among the Jews.

treatment of *gerei toshav*. "And so it also seems to me that we should treat *gerei toshav* with the consideration and kindness (with which we treat) Jews. For behold we are commanded to sustain them as it says (in Scripture), 'You shall give it to the *ger* that is within your gates that he may eat it'⁴⁸."

It is within this context, a clear argument for equal treatment of *gerei toshav*, that Rambam introduces *mipnei darkhei shalom* and brings his own commentary to bear on it.⁴⁹

Even with respect to the Gentiles, the Sages command us to visit their sick and to bury their dead (along) with the Jewish dead and to provide for their poor with the Jewish poor, *mipnei darkhei shalom*. For behold it is said (in Scripture) *The Lord is good to all and His compassion is over all His creatures*⁵⁰. And it is (also) said (in Scripture), *Her ways are ways of pleasantness and all her paths are peace*⁵¹.

What is most noteworthy about this usage of *mipnei darkhei shalom* is not the now familiar enactment to visit, bury, and provide for Gentiles in need as one would Jews. Rather, it is the Biblical verses which Rambam provides as support for this enactment which are of particular interest. The prooftext from Proverbs could be read simply as a statement proclaiming the importance of peace and therefore could support an understanding of *mipnei darkhei shalom* as a call for peaceful relations. Peace is of preeminent value; therefore, provide

⁴⁸Deuteronomy 14:21.

⁴⁹The brief statement which is found between the Rambam's instructions for the proper treatment of *gerei toshav* and his rendering of *mipnei darkhei shalom* as it relates to the Gentile poor, sick, and dead is of interest. "As to the statement of the Sages that you should not double the greeting (given) to Gentiles, (this does) not (relate) to *gerei toshav* (rather to other Gentiles)." This statement serves to answer the potential question about the known restriction to not double your greeting when meeting a Gentile. Rambam assures the unnamed questioner that this does not contradict the previous statement about equal treatment because the restriction applies specifically to Gentiles who are not *gerei toshav*. This intercoding statement also serves as a transition from a discussion about *gerei toshav* to consideration of *stam* Gentiles.

⁵⁰Psalms 145:9.

⁵¹Proverbs 3:17.

for Gentiles in need so as to not cause strife (the opposite of peace). The verse Rambam provides from Psalms, however, offers clear support for another meaning of *mipnei darkhei shalom*. Unlike his subtle shift from the particular to the universal in Hilkhot Matenot Aniyim 1:9, Rambam's call to care for needy Gentiles based on an ethical value is undisputable. The verse teaches that God is the God of all creatures; The Gentile poor are people of God and so they must be served as part of God's creation.⁵² In this particular halakhah, Rambam makes a clear statement that *mipnei darkhei shalom* refers not only to avoiding strife, but to the intrinsic value of providing for Gentiles.⁵³

Hilkhot Avodah Zarah 10:5

Given Hilkhot Melakhim 10:12 it is particularly intriguing that Rambam also tries to limit the application of the very laws which provide for the welfare of Gentiles. In Hilkhot Avodah Zarah 10:5 Rambam again states that one must provide for the Gentile poor; one must not withhold gleanings from them; and

⁵²Walter Wurzbarger terms what emerges from this formulation of *mipnei darkhei shalom* an emphasis on "agent-morality" as opposed to "act-morality." He explains "agent-morality" as "the precept mandating the cultivation of moral disposition patterning itself after the divine model." While "act-morality" may contain features which would make for differentiation between obligations towards Jews and Gentiles, "agent-morality," taking its cues from imitatio dei, dictates that one display compassion to all individuals regardless of background. Walter Wurzbarger, "Darkhei Shalom," *GESHER: Bridging the Spectrum of Orthodox Jewish Scholarship* 6 (1978): 80-86 and *Ethic of Responsibility: Pluralistic Approaches to Covenantal Ethics*, (Philadelphia and Jerusalem: The Jewish Publication Society, 1994) 47-52.

⁵³In a compelling article which discusses the difference between the Ashkenazi and Sefardi customs of giving to Gentiles, Eliav Shohetman argues that Rambam is not simply trying to avoid a Gentile feeling discriminated against. Rather, Rambam is trying to create a framework of relationship between the Jewish community and Gentiles. There is even an attempt to create equality in the areas mentioned (providing for the poor, burying the dead, etc.). Shohetman asserts that the language Rambam uses, *tzivu hakhamim* (the Sages commanded) is a term regularly used by Rambam when he is dealing with an ethical obligation. (There is an article about this usage of *tzivu hakhamim* to be published soon by Aviad Ha-kohen.) Eliav Shohetman, "Al ha-minhag liten matanot le-avyonei nokhrim be-purim," *Sinai*, 100:1 (1987): 853-865.

one must greet Gentiles on their holidays. After each statement the reason is provided: *mipnei darkhei shalom*. In 10:6, however, Rambam specifies that these provisions are only for the time during which the Jews are in exile and live under the dominion of Gentile rulers. If these circumstances were to change, Rambam asserts, these enactments would no longer be applicable.⁵⁴ This suggests that Rambam views providing for Gentiles to be a form of protection for the Jews, not an intrinsic value. Needless to say this appears contradictory to his position in Hilkhoh Melakhim 10:12.

Rambam's Unique Usage

There is one unique instance in which Rambam uses the phrase *mipnei darkhei shalom*. As opposed to other contexts in which the phrase has been used in earlier sources, in Hilkhoh Gezeilah Ve-avedah 1:3 Rambam uses the phrase in a context which has not appeared before -- keeping a Gentile's property.⁵⁵ The beginning of this section states that the lost property of a Gentile may be kept by

⁵⁴In his article in *GESHER*, Wurzbarger seems to ignore this and other indications that Rambam does not categorically view *mipnei darkhei shalom* as an overriding and sublime ethical principle. Wurzbarger writes, in fact, that "Maimonides...makes it abundantly clear that concern for the welfare of a non-Jew transcends consideration of enlightened self-interest and reflects the religious mandate to imitate the ethical attitudes of God....Apparently, Maimonides went out of his way to guard against any attempt to look upon moral actions towards non-Jews as grounded exclusively in purely pragmatic considerations calculated to secure the peace of the Jewish community." Wurzbarger, *GESHER*, 84. In his discussion of *mipnei darkhei shalom* in *Ethics of Responsibility*, however, Wurzbarger acknowledges that Rambam indicates that under certain conditions (i.e. when not living under Gentile rule) enactments made *mipnei darkhei shalom* should no longer hold. Wurzbarger claims, however, that this "does not at all indicate that they (the ordinances pertaining to *mipnei darkhei shalom*) are viewed as mere counsels of expediency devoid of intrinsic moral significance." Rather, he claims, seemingly desperate to prove that Rambam is purely voicing one perspective, that Rambam's comment only reflects his tremendous fear of the spread of idolatry and not a mitigation of the supreme religious value of caring for Gentiles. Wurzbarger, *Ethics of Responsibility*, 52.

⁵⁵Early rabbinic literature discusses animals in traps, doves in dove-cotes, and the property of a minor, deaf person, and imbecile. There are not however, Tannaitic or Amoraic references to the general property of a Gentile.

Jews; it is forbidden, furthermore, to return this, as it would be considered supporting the wicked. An exception is made, however, if returning the item would result in the sanctification of God's name. In such a case the Gentiles would praise the Jews and realize that they are honest. The passage ends with a warning about thieves.

In a case involving the profanation of God's name, it is forbidden to keep (a Gentile's) lost (property), and it must be returned. In all cases, however, their belongings must be taken into safekeeping because of thieves, as is the rule for Jewish belongings, *mipnei darkhei shalom*.

It seems quite clear from this passage that the only reason to return a Gentile's property is if it will result in the sanctification of God's name. This sanctification, interestingly, is equated with regarding Jews as honest and praiseworthy. This statement reflects the classic rabbinic belief that there is a very close relationship between how Jews are viewed and God's honor.

Furthermore, it appears that the phrase *mipnei darkhei shalom* may only refer to the final statement about protecting the property of Gentiles from thieves. Here the phrase seems to refer to the desire to avoid a situation in which a Gentile's property would be stolen while in the domain of a Jew. Such a situation, no doubt, would result in dispute and in Jews being viewed badly. This in turn could lead to the profanation of God's name.

Omissions of *Mipnei Darkhei Shalom*

Given the comprehensive scope of Rambam's *Mishneh Torah* it is worth noting not only the places in which he employs *mipnei darkhei shalom*, but also

the instances in which he does not.⁵⁶ There are instances in which the phrase is used by earlier sources in conjunction with certain enactments, but is omitted in these instances by Rambam. In recounting laws about aiding another Jew in harvesting during the sabbatical year and about the property of a minor, deaf person, or imbecile, Rambam does not mention that the reasoning is *mipnei darkhei shalom*. There is also an enactment in Hilkhoh Gezeilah 6:3 which while dealing with the ownership of pigeons, does not make reference to *mipnei darkhei shalom*. This could be read as an attempt to reduce the importance of the concept, though given some of his explicit uses noted above, this seems unlikely. One could also speculate that Rambam believes some other principle applies in these particular cases. Whatever the reason, it is worth noting, as is the fact that both of the instances in which he excludes the phrase refer to relationships between Jews.

A Teshuvah: Further Limitation

Another example of Rambam limiting the application of *mipnei darkhei shalom* is found in a response he wrote to a question about whether a person can supplant another person who is regularly given a particular aliyah (Teshuvot

⁵⁶Although there are these few instances in which Rambam omits the phrase, the number seems small when compared to the number of times he omits *mipnei tikun olam*. (In rabbinic usage, it should be noted, this phrase does not carry the modern positive ethical tone. It is rather a neutral principle of jurisprudence which permits various adjustments in the law because they are "good for the social order.") As the scope of this thesis does not include *mipnei tikun olam*, I will refer to the scholarship of Menahem Lurbaum. He has determined that whereas Rambam usually includes *mipnei darkhei shalom*, he often omits *mipnei tikun olam*. Lurbaum reasons that *mipnei tikun olam* is the larger meta-principle which makes the entire project of enacting such laws possible. It would therefore be redundant to state the phrase since it is the reason behind all such rabbinic legislation. According to Lurbaum, *mipnei darkhei shalom*, on the other hand, is a smaller scale rationale brought to bear on specific situations. (A possible challenge to Lurbaum's theory is Rambam's statement that all of the Torah is *mipnei shalom*.) Menahem Lurbaum, "Tikun Olam" *al-pi Ha-Rambam: Iyun be-takhtiyot ha-halakhah, Tarbitz Tishre-Kislev* (5755): 65-82.

Ha-Rambam 243). Rambam is completely in keeping with earlier sources when he asserts that if this other person is of equal stature to the person who regularly has the honor, it is maintained by the regular person *mipnei darkhei shalom*. Also in keeping with earlier sources, if the challenger is wiser or more pious he may take the aliyah. (Presumably everyone would understand in such a case, and there would be no ill feelings.) Rambam parts company with his predecessors in the case of a challenger who is of lesser stature than the usual person. While Rambam agrees that in such a case the original man maintains the aliyah, the reason he gives is not *mipnei darkhei shalom*. Rather he cites *maalin bekodesh ve-ain moridin*⁵⁷ and in doing so he seems to limit the application of *mipnei darkhei shalom*.⁵⁸

Conclusion

The above analysis reveals the complexity of Rambam's understanding of *mipnei darkhei shalom*. Rambam offers clear evidence that he understood the phrase to reflect a value unconnected to fear of strife or feelings of discrimination. When he cites in conjunction with *mipnei darkhei shalom* the verse from Psalms 145:9, *the Lord is good to all and His compassion is over all His creatures*, there seems little doubt that he is asserting the intrinsic importance of treating Gentiles in an equal manner as Jews when it comes to matters of need.

A careful reading of all of the instances in which Rambam uses the phrase *mipnei darkhei shalom*, however, shows that Rambam is of two minds. There are several cases in which Rambam limits the application of the phrase. This

⁵⁷One must increase in holiness, not decrease.

⁵⁸His use of this principle may also indicate something about Rambam's general view of the significance of various jurisprudential principles. Unfortunately, this highly complex issue is beyond the scope of this work.

alone would not be sufficient evidence to challenge his universalist perspective, but his clear statement in Hilkhot Avodah Zarah 10:5 about the impermanence of these enactments cannot be easily ignored.

We are left with a multi-faceted view of Rambam's understanding of *mipnei darkhei shalom*. Within the Mishneh Torah Rambam applies the term in both expanding and limiting ways. He uses the phrase in different instances to reflect both an intrinsic social value and an attempt to avoid dispute and hard feelings. Whether or not it was Rambam's intention, he has succeeded in reflecting the complexity of views which preceded him while also adding to them his own depth of insights. His work reflects the rabbinic dialectic which is essentially realistic but occasionally idealistic.

Chapter IV: The Tur, Beit Yosef, and Shulchan Arukh

Introduction to the Sources and their Inter-relationship

Much has been written about the similarities and differences in genre, content, and style of Jacob ben Asher's Tur and Joseph Caro's Beit Yosef and Shulchan Arukh.⁵⁹ For the purposes of this study it is sufficient to briefly outline the relationship between these three works; this will provide background which will prove relevant when issues are traced through the Tur, Beit Yosef, and Shulchan Arukh below.

Jacob ben Asher, the author of the Tur (also called Sefer Ha-Turim or Arbaah Turim), was born in Germany in 1270 and fled to Spain in 1303. Here he wrote the Tur in an effort to restore a sense of definitiveness to halakhic literature. A plethora of halakhic opinions and sources emerged in the 12th and 13th centuries. (The Tosafists were major contributors to this body of literature.) Ben Asher felt an urgent need to produce a comprehensive code which would not burden itself with source references, but would maintain the continuity of the law. The Tur therefore states categorically (and without citation of sources) legal principles in language very close to the Talmudic original. The essence of various post-Talmudic opinions are then cited. This is often followed by Ben Asher's conclusion about how the law should be declared. It is a concise and subtle work.⁶⁰

The Beit Yosef, authored by Joseph Caro, is a commentary on the Tur. Although Caro was born in Spain in 1488, his family was exiled in 1492 and after

⁵⁹For a fairly straight forward analysis of the relationship between these three works see Menachem Elon, *Jewish Law: History, Sources, and Principles*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: Jewish Publication Society, 1994), vol. III, 1138-1344.

⁶⁰*Ibid.*, 1277-1302.

considerable wandering, Caro settled in Safed. His Beit Yosef attempts to fill in much of what Ben Asher intentionally omitted, namely citations of sources and multiple opinions. His self-proclaimed methodology of determining law is a mathematical computation of the opinions of Alfasi, Maimonides, and Asheri. When any two of them agree, law is determined accordingly. If two do not agree, the opinions of Nachmanides, Rashba, Ran, and others are considered. Caro therefore determines law through a technical formulation, not based upon the intrinsic merits of the given arguments.⁶¹ Despite this seemingly mechanical and consistent methodology, in particular instances it is sometimes difficult to see this formulation at work. As one can see in particular passages of the Beit Yosef analyzed below, Caro's determination of the law is not always neat and clear.

While Caro himself considered the Beit Yosef to be his most significant work, his Shulchan Arukh has become a more widely renowned code. The Shulchan Arukh presents clear, categorical, and monolithic law without any rationales, contrary opinions, or source citations. In many ways it is even more concise than Maimonides' Mishneh Torah or Ben Asher's Tur. Also, unlike the synthesized style of the Mishneh Torah, Caro makes no attempt to create a harmonized whole; rather each law is stated in the language and style of its source. Caro, it should be noted, did not view the Shulchan Arukh as an adequate work unto itself, but expected it to be used in conjunction with his more multi-vocal Beit Yosef.⁶²

Moses Isserles, also known as Rema, was born in Cracow in 1530. His glosses to Caro's Shulchan Arukh, often called Mappah, are one of his most important codificatory works. His glosses supplement the law presented in the

⁶¹Ibid, 1309-1319.

⁶²Ibid, 1319-1349.

Shulchan Arukh; they emphasize conclusions derived from the views of Ashkenazi authorities whom Caro did not take into serious account.⁶³

The way in which these works relate to one another will become simultaneously clearer and more complex as we examine the development of particular laws related to *mipnei darkhei shalom*. Each citation can be best understood, by examining not only the work in which the phrase appears, but the parallel sections in all three works. For example, the phrase *mipnei darkhei shalom* may appear in halakhah aleph of only the Beit Yosef, but in order to fully understand its usage there, one must also consider halakhah aleph in the Tur and the Shulchan Arukh. (Quite conveniently, most of the halakhot are numbered identically.) The Rema will be referred to in the instances in which he has something relevant to say about *mipnei darkhei shalom*. Finally, it should also be noted that the phrase *mishum darkhei shalom* appears in these works as well and is, it seems, a mere synonym for *mipnei darkhei shalom*.

Meaning of Mipnei Darkhei Shalom Remains Elusive

There are two instances of *mipnei darkhei shalom* in Yoreh Deah in which it is virtually impossible to determine what lies behind the phrase. Section 251 in the Tur states that one must give tzedakah to anyone who stretches forth his hand, even if he is a Gentile, as "one sustains the Gentile poor with the Jewish poor *mishum darkhei shalom*." (The Tur continues with Rabbi Eliezer's statement that one is not obligated to give tzedakah to a Jew who has transgressed and not repented.) The same section in the Beit Yosef simply restates the obligation substituting the phrase *mipnei darkhei shalom* and cites the source for this ruling (Cittin 61a). The Shulchan Arukh restates Rabbi

⁶³*Ibid.*, 1345-1361.

Eliezer's ruling without mentioning him by name and in this particular context omits the ruling about giving to Gentiles and the subsequent concept of *mipnei darkhei shalom*. Interestingly, Rema in his gloss offers the statement from the Tur and Beit Yosef and cites the source in the Gemara. This is a fine example of how the Tur, Beit Yosef, Shulchan Arukh, and Rema echo one another. The phrase is used again in section 335 of Yoreh Deah in the Tur, Beit Yosef, and Shulchan Arukh. The ruling from Gittin 61a to visit the Gentile sick *mipnei darkhei shalom* is simply interjected into a litany of guidelines about visiting the sick. (The only difference between the ruling's three brief appearances is that in the Beit Yosef it is accompanied by a source citation.) In both of these sections, there is too little information offered to make any deduction at this point about the overtones of the phrase *mipnei darkhei shalom*.

Mipnei Darkhei Shalom linked to Mtshum Eivah

There are, however, several other usages of *mipnei darkhei shalom* in these codes which offer a fairly clear indication of the authors' understanding of the phrase. In section 367 of Yoreh Deah we can see the development of the ruling to bury the Gentile dead and comfort the Gentile mourners *mipnei darkhei shalom*. What is presented as a fairly simple legal statement in the Tur turns into a more extensive discussion that reveals complexities in the Beit Yosef and then returns to a ruling in the Shulchan Arukh -- one which appears even simpler than the original one in the Tur. Not surprisingly, it is through the variety of opinions catalogued in the Beit Yosef that it is possible to glean a deeper understanding of what is meant by *mipnei darkhei shalom*.

The Tur states, "bury the Gentile dead with the Jewish dead (*im metei Yisrael*) and comfort their mourners *mipnei darkhei shalom*." And according to

Rashi, one does not bury them in a Jewish grave, but rather makes an effort to see that they are buried as one makes an effort to see that a Jew is buried.

After stating the basic injunction and its source (Gittin 61a), the Beit Yosef puts forth several opinions about the matter. Rashi, he claims, holds that not only does one not bury the Gentile dead in the same cemeteries as the Jewish dead, but one must only attend to Gentile dead who are found killed with Jews (*Mitaskim bahem im matzaum harugin im Yisrael*). In contrast to Rashi's narrowing reading of when one must attend to the Gentile dead, the Ran⁶⁴ asserts that one must bury a Gentile even if he is found apart from the Jewish dead. He agrees, however, that one does not bury Gentiles in the same cemeteries as Jews explaining that one does not bury the wicked with the righteous (*ein kovrim rasha etzel tzadik*). This statement follows the classic rabbinic belief that Jews and Gentiles have a different religious status. It remains unclear (even when read in conjunction with the Shulchan Arukh) how the Beit Yosef views Rashi's and the Ran's statements.

The passage in the Beit Yosef continues with a presentation of Kol Bo's⁶⁵ concern: How can we attend to the Gentile dead when we don't do this for a Jew who has transgressed by eating meat slaughtered by a Gentile? The Beit Yosef responds by stating that any astonishment about this is unwarranted since a Jew who has transgressed in such a way is considered bad; a Gentile, by contrast is not a bad person as he is bound only by the Noahide laws. Therefore, the Beit Yosef concludes that Kol Bo's *kushiya* must have been that we attend to the Gentile dead at all. If it were not specified that we do this *mipnei darkhei shalom* one would not take care of the Gentile dead in such a way. The implication of the

⁶⁴The Ran, R. Nissim ben Reuven, was the head of the Yeshiva in Barcelona in the mid 1300s and is best known for his commentary to the Rif.

⁶⁵The Kol Bo is an anonymous halakhic work written at the end of the 13th or the beginning of the 14th century.

Beit Yosef's understanding of Kol Bo's concern is that there are only a few righteous Gentiles who would naturally be worthy of such honorable treatment. The phrase *mipnei darkhei shalom* comes to inform us that we must always do this as a tactical maneuver, not because most of the Gentile dead are inherently worthy.⁶⁶

The complexity of opinions and even the Beit Yosef's understanding are abandoned in the Shulchan Arukh. Caro only quotes the simple injunction found in the Tur: "Bury the Gentile dead and comfort their mourners *mipnei darkhei shalom*." (*Korvim metei avodat kochavim u-mazalot u-menachmin avaleihem mipnei darkhei shalom*.) He omits the phrase *im metei yisrael* and thereby circumvents the entire question not only of whether they are to be buried in the same cemeteries as Jews (an issue on which all seem to agree), but whether the Gentile dead must be found in amongst the Jewish dead in order to receive this sort of treatment. His terse statement in the Shulchan Arukh also does not reflect his understanding of the phrase as a tactical maneuver which is suggested in the Beit Yosef.

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All of the other uses of *mipnei darkhei shalom* in the Tur, Beit Yosef, and Shulchan Arukh also imply, to varying degrees, that one must perform certain acts for Gentiles in order to avoid strife. The Tur explains in Section 266 of Choshen Ha-Mishpat that one is not obligated to return a lost article to a Gentile in the way that one is obligated to return it to a Jew. Quoting Rambam the Tur continues that if he returns the lost item in order to sanctify God, then it is a

⁶⁶Conversely, one could argue that it is an idealism which rests behind this urge to include even the unworthy.

praiseworthy act. In any event, one must keep the items safe from thieves, *mipnei darkhei shalom*. It is understood by this statement that if a lost item belonging to a Gentile was stolen while in the possession of a Jew, a dispute might erupt. In the same section in the Beit Yosef and then in the Shulchan Arukh, Caro reiterates this statement, but with one addition. Caro goes a step further stating that not only is one not obligated to return a lost item to a Gentile (except in cases when *kiddush ha-Shem* will result from such an act of returning) but to do so is to commit a transgression (*over aveirah*). Such a gesture, he asserts, strengthens the hand of transgressors (*ovrei aveirah*). When Caro in both the Beit Yosef and the Shulchan Arukh then concludes this injunction with the reiteration that one must keep lost items safe from thieves *mipnei darkhei shalom* the context is clear. These items should not be protected because of the intrinsic value of protecting the lost property of Gentiles. Rather, the property should be protected for the sole reason that if it is stolen while in the possession of a Jew, trouble may erupt. The only question which remains is why there is not concern that conflict will arise from not returning the lost item in the first place. Perhaps here too there was concern, but the value of not supporting transgressors was weighed as more important than avoiding conflict. By contrast, perhaps avoiding conflict by simply protecting the items from thievery was seen as worthwhile.

Orach Chayim 694

While the Tur itself makes no mention of *mipnei darkhei shalom*, section 694 in Orach Chayim of the Beit Yosef, citing the Nemukey Yosef⁶⁷ citing the

⁶⁷Nemukey Yosef was written by the Spanish talmudic scholar Joseph ibn Habiba in the 15th century.

Ramban, equates *mipnei darkhei shalom* with *mishum eivah* (for the sake of preventing enmity). The Beit Yosef presents numerous opinions based on the Tur's statement. The Tur asserts simply, "(On Purim) every person is obligated to give gifts to the poor -- at least two gifts to two poor people....And one does not check up on them. Rather one gives to any one who stretches forth his hand -- whether Jew or Gentile." Caro in the Beit Yosef offers a variety of readings; some of them expand the ruling, while others limit it.

As to what our master wrote, "Whether Jew or Gentile." And so wrote Nemukei Yosef (in his commentary on) Perek Hahamanim (chapter 6 of Baba Metzia) in the name of Ramban that it is a custom in all of Israel to give even to Gentiles and one is not exacting in this matter (of giving gifts), but one gives to everyone. If we don't give to Gentiles then there will be strife (*mishum eivah*). As the Baraita (Gittin 61a) states "One supports the Gentile poor with the Jewish poor *mipnei darkhei shalom*." That is the end of his statement. And the Hagahot Maimoniyot⁶⁸ wrote that a certain student wrote, "I saw people that give gifts on Purim to male and female Gentile slaves that served in the homes of Jews." And Rav Meir of Rothenberg⁶⁹ in the name of Rabbi Ephrayim⁷⁰ wrote "that in a city where this is not the custom, it is forbidden to do this, but in a city where it is the custom to act accordingly, don't change the practice (*ein levatel hadavar*) *mishum darkhei shalom*." And our Rabbi (Jacob ben Asher of the Tur) permitted that it is possible that in a place where it is the custom (*davkah*) or in a new city (where there is no practice yet) if there is a need, then behave as such (give to Gentiles) *mipnei darkhei shalom*.

Several interesting perspectives emerge from this passage. The Beit Yosef first cites the Nemukei Yosef and the Ramban's clear equation of *mipnei darkhei shalom* with *mishum eivah*. Then the Hagahot Maimoniyot suggests more

⁶⁸This commentary to Ramban's Mishneh Torah was written in the 14th century in Germany by Meir ha-Kohen of Rothenberg.

⁶⁹Rabbi Meir ben Barukh of Rothenberg was an exceptional teacher and spiritual leader in Germany in the 13th century. (His students included the author of the Hagahot Maimoniyot.)

⁷⁰This is probably a reference to Rabbi Ephrayim ben Isaac of Regensburg; he was an esteemed tosafist during the 12th century.

limited conditions under which Gentiles are given *matanot* -- namely when they work as slaves in Jewish homes. He further cites Rav Meir of Rothenberg calling upon the name of Rabbi Ephrayim as saying that whether one gives to Gentiles or not depends entirely on the custom of the city *nishum darkhei shalom*. Here the medieval equivalent of the phrase *mipnei darkhei shalom*, namely *nishum darkhei shalom*, is stated not as the reason why one gives to Gentiles, but as the reason one follows the custom of a given city.

The implications of all of these commentators are brought together in the Beit Yosef's final statement in which he gives his sense of the implications of the Tur's statement. Namely, "it is possible that in a place where it is the custom (*davkah*) or in a new city (*be-ir chadshah*) if there is a need, then behave as such (give to Gentiles) *mipnei darkhei shalom*." One gives to Gentiles if it is the custom of the city or if there is some compelling need. The word *tzerichim* may suggest pressure or impending trouble. Giving to Gentiles is done in order to avoid conflict which might otherwise arise. Caro asserts this position again in the Shulchan Arukh, but without the various opinions and reasoning. The Shulchan Arukh's statement is identical to the one found in the Tur until the end. At this point Caro adds, "in a place that is accustomed to giving even to Gentiles one gives." (*U-be-mekom she-nahagu liten af le-avodat kochavim u-mazalot notnim.*) ^{71 72}

⁷¹Despite Caro's Sephardic lineage he adopts Meir of Rothenberg's position (thereby making it unnecessary for the Rema to add a note reflecting the Ashkenazi tradition).
⁷²It should be noted that Caro's position, that giving to Gentiles on Purim should be dependent upon the local custom, is quite consistent with his general approach to cities with varying practices. In discussing legal theory Caro writes "if in some few countries the custom is to prohibit some few matters despite our ruling to the contrary, they should maintain their practice for they have already accepted the opinion of the authority who prohibits (this action) and it is forbidden to them (now) to introduce a permissive standard as is clarified in the passage, 'In a place where the custom is....' (Pes. 50a and following)" Eugene B. Borowitz, "What does the Halakhah Say about....? Joseph Caro's Preface to the Bet Yosef," *CCAR Journal: A Reform Jewish Quarterly* Spring/Summer (1996): 57.

Choshen Ha-mishpat 249

Section 249 of Choshen Ha-mishpat in the Tur lays the background for yet another case of the Beit Yosef and Shulchan Arukh using the phrase *mipnei darkhei shalom* to imply the avoidance of trouble. The Tur states, "it is forbidden to give free gifts (*matnat chinam*) to a Gentile but it is permitted to give (them) to an alien resident (*ger toshav*) for behold it is a mitzvah to sustain him.

In the Beit Yosef the Tosafot raise some legitimate questions. First, what about the case in Perek Kol Shaah (Chapter 2 of *Pesachim*) in which a shank is sent to a Gentile? The Tosephta answers that in this case, the Gentile was known by the one who sent the shank, so it is not considered a free gift (*matnat chinam*). A second case is raised which is also deemed different from the general prohibition against giving free gifts to Gentiles because one man was accompanied on his way by the other. Finally, a third challenge is raised to the ruling that one cannot give free gifts to Gentiles: What about the statement that one should sustain the Gentile poor with the Jewish poor *mipnei darkhei shalom*? This is rebutted by the assertion that sustaining Gentiles and giving them free gifts are not the same thing (*ein zo matnat chinam*). The Beit Yosef's recounting leaves the distinct impression that the free gifts prohibited to Gentiles are not part and parcel of the sustenance of Gentiles *mipnei darkhei shalom*.

It is therefore, quite surprising to discover that in codifying a final opinion in the Shulchan Arukh Caro writes: "It is prohibited to give gifts to a Gentile who is not a resident alien (*ger toshav*) unless one knows him or if there is a reason *mishum darkhei shalom*." This statement reveals two things. First, according to the Shulchan Arukh, gifts are included in the rubric of *mipnei darkhei shalom*. (This means that the question posed in the Beit Yosef by Rabbi

Yehuda is left hanging.⁷³) Even though Caro quoted the passage from the Tosafot with all of its challenges and rebuttals, Caro does not in the end rule according to it.⁷⁴ Second, the implication of the Shulchan Arukh's use of the *mipnei darkhei shalom* is once again that of avoiding trouble. In these circumstances, one can give gifts to Gentiles.

Orach Chayim 325

Finally, the opinions brought to bear on the question of inviting a Gentile on Shabbat reflect in part a discussion about the nature of *mipnei darkhei shalom*. Section 325 of Orach Chayim in the Beit Yosef reveals multiple positions about why one may or may not give food or other possessions to a Gentile on Shabbat if the Gentile may carry that item outside of the courtyard. The Tur outlines the basic rubric.

One is permitted to invite a Gentile⁷⁵ on Shabbat even though it is forbidden on a holy day. And one is permitted to give him food in the courtyard. And if he takes it and goes out (with it), it is not his (the Jew's) problem (*ein nezikein lo*) -- and this is when the Gentile is in the courtyard (*davka*). But, it is forbidden (to give him food) if he is standing outside (the courtyard) and stretches his hand into the courtyard because it is known that he is going to take it out, or to give him other items that it is the custom to go out with. Even if he stands inside or even if the items belong to the Gentile (it is

⁷³But this is not really of concern to Caro!

⁷⁴This reminds the reader that it is not always possible to deduce Caro's final position from the Beit Yosef. We are shown where he could have gone with the argument and did not. (It is also, of course, possible that he changed his mind in the interim)

⁷⁵It is interesting to note that instead of using the phrase *ovdei kohavim u-mazalot* or *nokhri* to indicate a Gentile, the Tur uses the euphemism *aino yehudi*, non-Jew. This new term may indicate an increased sensitivity to Gentiles at this time. (It is also possible that the printer introduced the term.)

forbidden) because someone might see it being given to him and not know that the items belong to the Gentile.

The opinions cited in the Beit Yosef all agree about cases in which an item is clearly going to be carried outside of the courtyard. In such a case a Jew should not give food or even possessions to a Gentile. It is the border-line instances which spur debate. Hagahot Maimoniyot asserts in the name of many other commentators that we are granted permission in such cases to give because it is our obligation to feed a Gentile since we are commanded to sustain him *mipnei darkhei shalom*. (*Mipnei she-anu choshvin oto kemezonotav aleinu kevon she-anu metzuvim lefarneso mipnei darkhei shalom*.)⁷⁶ The Rabad, by contrast, is very *machmir* and forbids giving anything to a Gentile if there is a chance that the item will be carried off. He holds that to the degree that we do provide food for Gentiles it is only because they come and eat while we are eating; we do not directly feed them.

A bit later in the Beit Yosef's discussion of the Tur, the Hagahot Maimoniyot in the name of the Or Zarua⁷⁷ states that one is permitted to give an item to a Gentile in a case which is *mishum darkhei shalom* or in the case of a violently strong Gentile (*eino yehudi ulam*)⁷⁸. In other words, one can give to a Gentile if there are compelling mitigating circumstances which would otherwise pose a threat. By coupling *mishum darkhei shalom* with *eino yehudi ulam*, the meaning seems clear. Interestingly, this understanding runs counter to the Hagahot Maimoniyot's perspective stated earlier. Perhaps this inconsistency can be reconciled by the fact that here he is quoting the Or Zarua.

⁷⁶Such a case, he adds, is not like that of a pig for which we are not obligated to provide.

⁷⁷This pious digest of Jewish law by R. Yitzchak ben Moshe of Vienna was written in the 13th century.

⁷⁸It is also possible that this could be read as *eino yehudi ilem*, a mute Gentile; this option, however, makes less sense given the context.

Caro himself offers an account of how the Mordechai⁷⁹ represents the opinion of the Or Zarua. He states that we are not permitted to give items to Gentiles in these dubious cases unless we are doing a mitzvah (i.e. getting rid of chametz) or *mipnei darkhei shalom*. A specific case is presented, thereby clarifying the meaning of *mipnei darkhei shalom* yet further⁸⁰. One would give food to a Gentile *mipnei darkhei shalom* if a townsperson were sent to the home of a Jew to retrieve food for sick person. The implication is clear: not to give food in such an instance would result in trouble.⁸¹ If there is any remaining doubt as to the meaning of *mipnei darkhei shalom*, the phrase's juxtaposition with *mitzvah* solidifies the issue. The two cases in which an exception is made are for a *mitzvah* or *mipnei darkhei shalom*.

As opposed to the original statement of the Hagahot Maimoniyot in which feeding Gentiles was declared an intrinsic *mitzvah*, the Or Zarua clearly views feeding Gentiles under these circumstances as something one does only in order to avoid conflict. Given the plethora of opinions Caro presents in this passage in the Beit Yosef it remains impossible to determine with any certainty how Caro reads the phrase. The Shulchan Arukh, however, presents a clear view. By quoting directly from the Or Zarua Caro makes known his perspective. It is permitted where there is (a case of) *mishum darkhei shalom* or (a case of) a violently strong Gentile. (*Heikha deikah mishum darkhei shalom o be-ovdei kokhavim u-mezalot ulam mutar.*) Rema returns to one of the conditions listed in the Beit Yosef, and in his gloss adds the case of doing a mitzvah such as getting rid of chametz.

⁷⁹This work was written by R. Mordekhai ben Hillel ha-Cohen, another disciple of R. Meir ben Barukh of Rothenberg.

⁸⁰This is a rare and most helpful occurrence.

⁸¹One could also argue that such an act would be simply cruel.

This final passage in Orach Chayim raises yet again the tension between various possible meanings of *mipnei darkhei shalom*. Does it reflect an intrinsic value or indicate a social necessity? Here, as with all of the passages in the Tur, Beit Yosef, and Shulchan Arukh analyzed above, the bulk of opinions rests on the side of *mipnei darkhei shalom* as a tactical maneuver. And although it is often difficult to tease out Caro's own position, in the instances in which it surfaces it is always in keeping with this majority perspective.

As discussed in *Chapter I: Introduction*, efforts were made to select a leading halakhic authority from Europe, America, and Israel respectively who deal with *mipnei darkhei shalom* as it relates to Jews and Gentiles. The examination of 20th century responsa will hopefully offer some insight into the meaning of *mipnei darkhei shalom* in democratic societies in which Jews live side by side with Gentiles. Through an extended process outlined in *Chapter I: Introduction*, Rabbi Yechiel Yaakov Weinberg, Rabbi Moshe Feinstein, and Rabbi Ovadiah Yosef were selected. Two *teshuvot* of Rabbi Yosef's are included because it became apparent that neither one individually provided sufficient insight into *mipnei darkhei shalom*. An additional *teshuvah* from Israel is also included. Rabbi Shlomo Aviner's *teshuvah* warranted inclusion because of its compelling, relevant, and surprising nature. It also emphasized a meaning not articulated by the other respondents.⁸²

The nature of responsa literature requires that the essential outline of the *teshuvah* be laid out, even if many of the arguments do not relate directly to *mipnei darkhei shalom*. One needs to understand the *teshuvah* as a whole before it is possible to analyze the use of *mipnei darkhei shalom*. There are, however, many twists and turns in the arguments, and not every interesting statement, concern, or source will be included. An effort will be made to offer the reader an adequate understanding of the *teshuvah* without dwelling on aspects which are not relevant to a greater understanding of *mipnei darkhei shalom*. An analysis of the use of *mipnei darkhei shalom* will follow the presentation of each *teshuvah*.

⁸²This *teshuvah* was identified by David Rosenn.

Rabbi Yechiel Yaakov Weinberg was a leading talmudic authority, thinker, and teacher in Germany during the first half of the 20th century. He remained in Europe during the war and survived the Holocaust. Rabbi Weinberg's most important work was the *Seridei Esh*, a compendium of responsa from 1961-1969.

One of the questions posed to Rabbi Weinberg directly involves the concept *mipnei darkhei shalom*. Rabbi Teubisch writes to Rabbi Weinberg about a woman who was buried in a Christian cemetery because they did not know that she was Jewish. Now it has become clear that she is Jewish. The question is whether it is permitted, or even commanded, to exhume the Jew from this cemetery. Also of note is the fact that there are many other Jews who were buried in this Christian cemetery before there was a special Jewish one.

Rabbi Teubisch includes in his *sheelah* his opinion on the matter. He articulates a position held by many⁸³ that in order to honor someone, we bury him with his ancestors (*hainu likhvoru bekhvorot avotav*); thus it is permitted to exhume him. This is further supported by the argument made clear in *Pitchei Teshuvah* that for anyone buried by accident in Gentile ground (a Gentile cemetery) it is actually a mitzvah to exhume him since a Gentile might want to plow and seed on top of him and this is the greatest dishonor. Rabbi Teubisch adds that it may actually be a mitzvah to exhume; even if there are no concerns that a Gentile will plow or seed on top of the grave, there is concern that he may clear out the grave after several years. Christian graves fall under the category of not being well protected (*aino mishtamer heitev*). By contrast, this does not happen in a Jewish cemetery where the graves are carefully guarded. All of this suggests that it is permissible to exhume the body.

⁸³Including the Rashba, Rahag, Ramban, and Tur.

On the other hand, Rabbi Teubisch is concerned that such an exhumation may be forbidden because it may cause enmity (*nishum eivah*) and there is here a case of *mipnei darkhei shalom*. As it says in *Gittin* 61a "Bury the Gentile dead with the Jewish dead *mipnei darkhei shalom*" (*kovrin metei akum im metei Yisrael mipnei darkhei shalom*). And even if this does not mean, as Rashi explains, to bury the Gentile dead in a Jewish cemetery, it is nonetheless possible to say that one should not exhume *mipnei darkhei shalom*. And furthermore, to exhume in such a case would be a dishonor to the other Jews who were buried there before there was a Jewish cemetery. So Rabbi Teubisch ruled that one should not exhume (in such a case), but rather one should erect a headstone on the grave in Hebrew in order to make known that this is a Jewish grave.

Rabbi Weinberg, acknowledging that Rabbi Teubisch has covered the matter quite comprehensively, offers his opinion. As for the concern that Gentiles may plow over the grave, this is not a concern in our case since the grave in which the woman is buried will be well guarded. Also the opinions of Rashi and the Ran may support the view that it is permissible to move a Jew from a Gentile cemetery to a Jewish one. They both understand the ruling in *Gittin* 61a, "Bury the Gentile dead with the Jewish dead *mipnei darkhei shalom*" to mean not in the same cemetery.

There is no clear proof from this that it is permissible to exhume the body. It is possible to say, however, that since we learn from the *Yerushalmi* in *Moed Katan* and in *Yoreh Deah* 363 of the *Shulchan Arukh* that one is allowed to exhume a corpse when someone is not buried with his family (*be-tokh shelo*), so too one can exhume a corpse to move it from a Gentile cemetery to a Jewish cemetery. This too, it seems, falls into the category (*geder*) of *betokh shelo*.

Rabbi Weinberg then addresses Rabbi Teubisch's opinions about why it may be forbidden to exhume a corpse in such a case. One reason Rabbi Teubisch

gives as to why it may be forbidden is *mipnei darkhei shalom*. But Rabbi Weinberg points out that this seems to contradict the Rishonim who specify that burying Gentiles as well as Jews does not mean that one should bury Jews and Gentiles in the same cemetery. Segregated burial does not seem here to be a problem *mipnei darkhei shalom*. Rabbi Weinberg does, however, offer his own reasoning as to why exhuming a corpse in such a case may be a problem *mipnei darkhei shalom*. Citing the opinion of the Bach in the name of the Ramban, Rabbi Weinberg states that the word *in* may be there to intentionally teach that if you find the Gentile dead with the Jewish dead then it is permissible to bury them in the same cemetery *mipnei darkhei shalom*. If this is so then all the more so one cannot exhume a corpse if there is concern that it will cause enmity. (*Kol she-ken she-ein lefanot be-makom she-yesh lachush le-ervah.*) Rabbi Weinberg also calls attention to the concern of the Chatam Sofer that one exhumation may lead to many others; the Gentiles may often ask Jew to move their graves.

Another possible problem is the degradation of the remaining Jews buried in the Gentile cemetery. Why should this particular woman (*darkah*) be moved and not the others? And if you say she should be moved because she was buried by mistake (because they thought that she was a Christian), one still cannot do this in a place where it will result in the degradation of other dead people. (*Ein lehatir be-makom she-yesh bizayon le-metim acherim.*) Furthermore, it seems that the woman did not go out of her way to ensure that she was buried in a Jewish cemetery. In fact, it seems that she did not act in Jewish ways and did not reveal that she was Jewish to the point that she was thought to be Christian.

The third reason why it may not be a permissible to move the woman is that she may fall into the category of an apostate. (*Efshar she-hi bikhlal ha-porashim min ha-tzibur ve-hem ha-anashim she-parku mealeihem of ha-*

mitzvot.) Although one is obligated to bury such a person (though not to follow mourning practices on their account)⁸⁴, exhumation does not fall into the category (*geder*) of burial. In other words, while you are required to bury an apostate, you may very well not be obligated to move her into a Jewish cemetery if she was initially buried elsewhere.

Finally, Rabbi Weinberg makes the point that if there are relatives of the buried person who come and want to exhume her, perhaps it is reasonable to allow exhumation. But in a case like this where there are no relatives requesting that the woman be moved, it is not incumbent upon the community to assume the costs and hassles of such a move. This is especially so when there are other Jews buried in the same cemetery as discussed above. Rabbi Weinberg concludes his *teshuvah* by stating, "And so I agree with Rabbi Teubisch that it is not incumbent upon the community to exhume the buried woman and (it is only incumbent upon the community) to erect a headstone, as Rabbi Teubisch wrote."

Rabbi Teubisch connects *mipnei darkhei shalom* and *mishum eivah*. If one exhumes the grave, Gentiles may be insulted and enmity will be aroused. It is possible that he is also linking *mishum eivah* to his concern about disgracing the other Jews who are buried in the Christian cemetery. Even though the Rishonim are in agreement that *kovrin metei akum im metei Yisrael mipnei darkhei shalom* does not mean that they should be buried in the same cemetery, nonetheless moving the body of this Jewish woman may raise issues of *darkhei shalom*. They seem sufficiently weighty to propel Rabbi Teubisch to rule that the body should not be exhumed.

⁸⁴Yoreh Deah 345 and Chatam Sofer on Yoreh Deah 341.

Rabbi Weinberg, however, does not see *mipnei darkhei shalom* as posing a problem to the exhumation of the grave in the way that Rabbi Teubisch asserts. Rabbi Weinberg is sufficiently swayed by the Rishonim's specification that burying Gentiles with (*im*) Jews does not mean in the same grave. He does, however, raise another possible way in which exhuming the corpse may be problematic *mipnei darkhei shalom*. If the word *im*, as Ramban and Bach suggest, comes to teach that if you find a Gentile corpse with a Jewish corpse, then it is permissible to bury them in the same cemetery *mipnei darkhei shalom*, then exhuming this woman's grave would be highly problematic (since this understanding allows for a Jew and Gentile to be buried together). Rabbi Weinberg's concern *mipnei darkhei shalom*, while different in the specifics, also seems to come down to the problem of the enmity that would result from an exhumation under these circumstances.

The concept of *mipnei darkhei shalom*, understood as avoiding enmity, seems to be one of the compelling factors in Rabbi Weinberg's ultimate decision that it is not necessary to exhume the corpse. (It is, as can be seen above, by no means the exclusive reason.) In this *teshuvah*, the phrase seems to be understood predominantly as connected to *mishum eivah*. There are, however, more general and subtle implications of the phrase's usage that warrant mentioning. Namely, Rabbi Weinberg's citation of the Ramban and Bach's understanding that if found together a Jew and Gentile can be buried together *mipnei darkhei shalom* allows for a woman to be acceptably buried with Gentiles. In addition to the main meaning of the phrase in this *teshuvah* (avoiding enmity), there seems also to be a more general way in which the phrase's use may imply mutual and peaceful coexistence.

Rabbi Moshe Feinstein, author of *Iggerot Moshe*, was a leader of American Orthodoxy. Rabbi Feinstein was one of the leading halakhic authorities of the 20th century and his rulings were accepted as authoritative by Orthodox Jews throughout the world. He often wrote about issues related to modern science and technology and the particular challenges facing Jews in the United States. Volume 2 of *Yoreh Deah* was published in 1959.

Rabbi Feinstein is asked by Rabbi Shmuel Yelaf⁸⁵ of Syracuse whether a convert who has an ailing Christian mother is allowed to go visit her with her children as her mother requests. The woman has been quite distant from her Christian father and mother since the time that she converted twenty years ago, even thought they live in the same city. Now that the mother is sick she requested that her daughter come to visit her with her children (the woman's grandchildren); she misses them a lot. Although the convert knows that according to the Torah, she is not to have any relationship with her parents, she very much wants to visit her mother in this time of illness, as is natural, given her love for her parents (*khafi he-teva ahavah le-horeha*). Rabbi Yelaf thinks that the convert should be permitted to visit her mother lest she return to her "straying ways" (*shema tachzor lesurati*)⁸⁶. He compares it to the law regarding inheritance which allows a convert to inherit from his father because of the same fear.

Rabbi Feinstein responds that while he agrees with Rabbi Yelaf's ruling, he does not agree with his analogy and states that monetary loss is different than a

⁸⁵This may not be the correct spelling of his name. It is difficult to tell from the Hebrew which is *yud, aleph, lamed, aleph, vav, vav*.

⁸⁶i.e. her prior religion.

desire to visit a sick parent. Furthermore, there is another concern here. Namely, he is worried that Gentiles will say that the law of the Torah is not just (*she-yomru chas ve-shalom dinei ha-Torah she-hem lo beyosher*), and this is a significant reason in its own right even if there is no concern about the convert returning to her straying ways. Rabbi Feinstein then continues citing the injunctions of *Gittin* 61a to visit the Gentile sick *mipnei darkhei shalom* and to provide for the Gentile poor and bury their dead *mipnei darkhei shalom*. He then explains the commentators' understanding that the word *im* does not mean that one should bury Gentiles in the same cemetery as Jews. Rather, it means that they should be attended to in the same way. Rabbi Feinstein clearly states that of course it would be against *darkhei shalom* if she (the convert) and the grandchildren did not visit her (the convert's mother) in her sickness. (*Ve-aleha ve-al nekhdeha harei vadai hu neged ha-derekh shalom keshelo yevakruha becholeha.*)

Rabbi Feinstein then goes on to cite the Rambam who specifies that a convert may not curse or hit or degrade his Gentile father lest people say that the convert has gone from a place of greater holiness to one of lesser holiness. It is of interest to Rabbi Feinstein that the *Shulchan Arukh* records all of Rambam's ruling, but omits the phrase *noheg bo ketzat kavod* thereby indicating that it may not, according to the *Shulchan Arukh* be a *chiyuv* per se to honor one's Gentile parent. Rabbi Feinstein reasons this implication away, however, stating that had the *Shulchan Arukh* intended this it would have explicitly said it is forbidden to honor him (*she-likhvodo asur*).

According to Rabbi Feinstein, the woman should go to visit her ailing mother because of the obligation of honoring one's mother (*chiyuv kevod em*); if she did not visit her mother in her sickness she would be disgracing her (*bizayon le-ha-em*). Moreover, if she does not go to visit her mother, she may

— actually cause her illness to worsen. So, Rabbi Feinstein states "not only is she permitted, but she is obligated to do the will of her Gentile mother in this (way) and she should go to visit her with her children."

Returning to Rambam's concern that others will say that the convert has descended in holiness if she does not honor her parents, Rabbi Feinstein explains that the source of Rambam's concern is the prohibition against a convert engaging in incestuous relationships with his relatives in order that people will not say that he has descended in holiness (*mikedushah chamura le-kedushah kalah*). Rabbi Feinstein reasons that while this seems like a poor analogy (since incestuous relationships are prohibited for *benei noach* and honoring parents is not one of the commandments to which they are bound), it may be a credible analogy after all. He reasons that while honoring parents is not an overt commandment for *benei noach*, it is their practice to observe it, and therefore they would be apt to see a violation of this practice as a decline in holiness.

Rabbi Feinstein continues that the prohibition against being ungrateful is equal for Jews and Gentiles and not honoring one's parents can be understood as being ungrateful. While this may imply that it is indeed an obligation upon Gentiles to honor their parents, it may not be an explicit obligation (*chiyuv mamash*). Even being ungrateful is not clearly a *chiyuv mamash*. It is for this reason that Rambam's statement about what others will say about Jewish law and practices is significant. It is from this that a *chiyuv mamash* emerges.

Rabbi Feinstein concludes his response, stating:

The effect of this reasoning is that even if she (the mother) is not sick, (the convert) is permitted to go (visit her) infrequently if she would be considered ungrateful if she did not go. But it is forbidden for her to go there regularly because she should distance herself from them (her parents) and not return to her "straying ways." And her children, of course, are forbidden

from going there regularly so that they does not eat forbidden things there. But now that the Gentile mother is sick, besides visiting *mipnei darkhei shalom*, she (the convert) is obligated to go to visit her with her children by virtue of "some obligation"⁸⁷ to honor one's mother and to avoid disgracing her as Rambam wrote and also the *Shulchan Arukh* ruled.

One of Rabbi Feinstein's primary concerns about a woman not going to visit her ailing Gentile mother is what others will say about the justness of the Torah. Will they comment that the woman has declined in holiness through her conversion to Judaism? After discussing this concern, Rabbi Feinstein continues with a citation of the ruling in *Gittin* 61a that one must visit the Gentile sick, provide for the Gentile poor, and bury and Gentile dead *mipnei darkhei shalom*. It seems that it is because of *darkhei shalom* that the woman should visit her mother. What is less clear is what exactly is meant by this.

As in Rambam's discussion of returning lost items to Gentiles, where a connection is made between *mipnei darkhei shalom* and *kidush ha-Shem*, this *teshuvah* seem to associate *mipnei darkhei shalom* with upholding the ethical reputation of the Torah. It remains ambiguous, however, as to whether *mipnei darkhei shalom* connotes that going to visit one's ailing mother is itself an ethical value or whether it suggests that the concern is only that people will mistakenly think that the Torah (and therefore Judaism) is unethical. (Regardless, the concern here, while it may be reputation, is not out and out enmity.)

In Rabbi Feinstein's concluding statement he returns to the issue of *mipnei darkhei shalom* and juxtaposes it with the obligation to honor one's mother. The linguistic juxtaposition suggests that these two reasons are not one

⁸⁷This is Rambam's phrasing.

and the same. In his conclusion, *mipnei darkhei shalom* seems to be the phrase reflecting his concern about what others will say about the Torah and Jewish law.

Yabia Omer vl. 3 Yoreh Deah #15

Ovadiah Yosef, the former Chief Sephardi Rabbi of Israel, is a prolific writer of *teshuvot* who has great familiarity with both Ashkenazi and Sephardi sources. His *Yabia Omer*, published throughout the 1950s and 60s and *Yechaveh Daat* are vast compendia of *teshuvot*. Rabbi Yosef is known for lengthy and erudite *teshuvot* which cite numerous sources in the process of answering a halakhic question.

Rabbi Yosef is asked whether it is permissible for the *gabbai* and the sexton (*shamash*) of the synagogue to open the *Sefer Torah* that is in the holy ark before a Christian government minister or before a Christian priest when they come to visit the synagogue, and request to see the ark and its accoutrements. Rabbi Yosef offers a three part response.

He begins by quoting a story from Isaiah 39 in which Merodach-baladan son of Baladan the king of Babylonia sent letters and an offering to King Hezekiah. Hezekiah was very pleased by these things and he showed them his treasure house, and there was not anything in his palace or in his kingdom which Hezekiah did not show them. And Isaiah the prophet came to King Hezekiah and he said to him, "Behold a time is coming when everything in your palace will be taken away....nothing will remain said the Lord." According to Rashi, there was nothing that Hezekiah had not shown them (*ve-lo hayah davar asher lo heram*) even the *Sefer Torah*. "Nothing will remain" (*lo yoter davar*) was a measure for measure punishment for the fact that there was nothing he did not show them.

One obvious conclusion that can be drawn from this story is that Hezekiah's sin was that he showed the envoy the *Sefer Torah*. Chapter 52 of *Pirke De Rabbi Eliezer* supports this understanding when it tells how "he showed them all the treasures of the Holy of Holies, he even opened the ark for them and showed them the tablets, and he said to them that with this we make war and are victorious." According to *Pirke De Rabbi Eliezer*, God immediately became angry and said to him, "It is not enough that you show them all the treasures, but you (also had) to open for them by hand (the ark and show them) the tablets?! By your life they will rise up and take all your treasures." Rabbi Yosef then cites numerous other commentators who make the connection between Hezekiah showing Gentiles the *Sefer Torah* and the tablets and the kingdom losing its treasures and strength in war.

Despite the obvious parallel between our case and the story in Isaiah, Rabbi Yosef points out that in the case of Hezekiah he showed the envoy the *Sefer Torah* without their requesting to see it; there also was not any fear of them (*ve-gam lo hayah lo leehashosh mehem klal*). "But when they (Gentiles) request to be shown the *Sefer Torah* and there is concern (that it will cause) enmity if you don't answer their request (*ve-yesh chashash eiva im lo yaanu lemevuksham*), one is permitted to do it *mishum darkhei shalom*⁸⁸."

The second section of Rabbi Yosef's response to this question points out, however, that according to *Sefer Chasidim*⁸⁹ and its followers one cannot open the ark in such a situation. They base themselves on the same incident in Isaiah 39. This ruling indicates that one apparently cannot be lenient in this (showing

⁸⁸As was discussed in Chapter V, *mishum darkhei shalom* appears to be identical in meaning and implications to *mipnei darkhei shalom*.

⁸⁹*Sefer Chasidim*, traditionally considered to have been written by Rabbi Yehudah ha-Chasid, is a major work in the field of Jewish ethics. While some sections of the work are homiletical and exegetic, other parts discuss daily practices and ethics. It is comprised of the teachings of the Chasidei Ashkenaz movement of the 12th and early 13th centuries.

Gentiles the *Sefer Torah*) even when a minister requests it and even when there is concern (that not showing it to them will cause) enmity (*lem iehakei baze af keshe-ha-sar mevakesh al ze ve-eikah lemichash le-eyva*). But, Rabbi Yosef points out, one cannot be certain that there was concern about enmity in this case (the case of Hezekiah). Rabbi Yosef also explores the question of whether it makes a difference if the Gentile is an idolator or not. But, the central issue remains for the *Sefer Chasidim*. In the case of Hezekiah the envoy was respectful and there was no fear that they would mock the *Sefer Torah* as one might fear from an idolator. It remains clear that according to the *Sefer Chasidim* and those who follow its ruling, opening the ark in such a case is prohibited.

In section three of his *teshuvah*, Rabbi Yosef analogizes the issue at hand to the relationship between women in *niddah* and the *Sefer Torah*. From this analogy he determines that looking at the Torah cannot in itself convey *tumah*. Since Gentiles generally do not touch or read the Torah, one does not have to be concerned that simply by opening it in front of them *tumah* will be transmitted. Rabbi Yosef also explores the implications of reading from the *Sefer Torah* once it is opened. He determines that any time that the *gabbai* or the sexton opens the *Sefer Torah* in front of Gentiles and reads from it even just one verse it is permitted when it is done out of concern for enmity. (By reading from the Torah one ensures that the *Sefer Torah* has been taken out for a reason other than simply to show it to Gentiles.)

In summary, Rabbi Yosef states that one should be strict about not opening up the *Sefer Torah* in front of Gentiles out of honor to the *Sefer Torah* (*mipnei kavod Sefer Torah*). However, when there is concern about causing enmity it is permissible to open it in front of a Gentile who has requested it. Whereas one can open the *Sefer Torah* for a Jew without reading a verse (i.e. for fortune

telling), the *Sefer Torah* can be opened for a Gentile only if a Jew reads at least one verse. This is in order that it will not be opened for a need other than the study of Torah.

Rabbi Yosef raises the concept of *mipnei darkhei shalom* in his effort to differentiate between the situation with Hezekiah and the case at hand. He points out that in the case of Hezekiah the envoy did not ask to see the *Sefer Torah* and there was no concern that not showing it to them would cause enmity. In other words, it was completely voluntary. In the case at hand, however, not only did they request to see the *Sefer Torah*, but there is concern that if it is not shown, there will be enmity. Therefore, Rabbi Feinstein says one is allowed to show it *mipnei darkhei shalom*. There is a direct connection made between *mipnei darkhei shalom* and *mishum eivah*.

Yechaveh Daat vl. 6 #60

The question is posed to Rabbi Yosef as to whether a convert (*ger tzedek*) is permitted to pray to God to heal his Gentile father who is on his death bed. And after his death it is possible to say Kaddish for his soul?

Rabbi Yosef's answer is lengthy and only parts of it are relevant to the exploration of *mipnei darkhei shalom*. As in the previous *teshuvot* examined, an attempt will be made to enable the reader to understand the framework of Rabbi Yosef's response, without getting diverted by the minutia of the arguments.

His response begins with a citation of the *Shulchan Arukh's* statement (*Yoreh Deah* 158:1) that it is forbidden to save idolaters (*ovdei avodah zara*) if they are going to die and one should not heal them even with money if there is

not a fear of causing enmity (*im lo benakom eivah*). In other words, one is not allowed to try to save an idolator from dying unless not doing so will cause enmity. Rabbi Yosef then records extensive discussion among various sources about the status of Arabs (the population that Rambam often healed). In the end Rabbi Yosef declares that "it is quite clear that if the convert's parents are Arab and they are sick, it is permissible to pray for their complete healing since they are not idol worshipers." And he continues that one could say that this is so even if his parents are Christian since Christians "join together God's name and that other one" (*shemishdafim shem shamayim ve-davar acher*). In other words, Christians join God's name and Jesus into one and therefore are not considered idolators (*ein dinam ke-ovdei avodah zara*)⁹⁰. After a fair amount of back and forth among authorities as to whether Christians are considered idolators because of the role of Jesus', Rabbi Yosef concludes that they are not idol worshipers and therefore one is permitted to heal a Christian even if there is no concern of causing enmity (if one does not heal the ailing Gentile). (*Ve-lefi ze nireh she-kevan she-af ha-notzrim ein dinam ke-ovdei avodah zara mutar lerapotam, afilu be-mekom she-ein lechush le-eiva, ve-khen mutar lehitpalel lerapotam.*) Rabbi Yosef also points out that while it is possible to argue that it is not permissible to heal a sick Christian directly with one's hands if it is not a case of *mishum eivah*, to pray for the recovery of such a man is allowed, since ultimately God will do as God sees fit. Furthermore, Rabbi Yosef points out, if the Gentile requested that his son pray for him it seems that the father has faith in God.

Rabbi Yosef cites the case of Gaon Rabbi Yitzchak Atayah who was asked if it is permissible to make incantations and to pray for a Gentile who is sick. He

⁹⁰Proof for this appears, among other places, in the *Tosafot* on *Sanhedrin* 63b and *Rema's* gloss on *Orach Chayim* #156.

answered that if the person is known to be a righteous gentile who observes the seven Naachide laws, then one is allowed to pray for his recovery. If, however, there is doubt and one does not know his deeds, one can pray that he return to good and be healed. (This is compared to Beruriah instructing Rabbi Meir to pray for the death of a person's sins, not the death of the sinner himself.) Rabbi Atayah continues, "one should provide for the Gentile poor with the Jewish poor *mipnei darkhei shalom* (Gittin 59b). So, it is permissible to pray for the Gentile sick that they should be healed." He adds that it may even result in a Gentile becoming a *ger tzedek* or in the sanctification of God's name. Amidst a series of examples of how such healing may result in conversion or in the sanctification of God's name, he adds an interesting statement. "This is all the more so true at this time when we live in exile and we need them (Gentiles)." (*Ve-kol she-ken bezman ha-ze she-anu begalut, ve-tzarikhim annu la-hem.*) Rabbi Atayah then clarifies how his position reconciles with the *Shulchan Arukh's* explicit statement that unless there is concern for enmity, one does not heal them (Gentiles). He says that this refers to idolators, and asserts that since in our time there are not idolators⁹¹ it is acceptable (*shapir dami*) and when there is concern about enmity, it is necessary to pray and to bless (*she-tzarikh lehitpalel u-levarekh*). This then ends the statement of Rabbi Atayah.

After citing more examples, Rabbi Yosef says that "in our case where the convert wants to pray for his Gentile father, that he will recover from his sickness, he is permitted to do so, and it is possible that it is also a *mitzvah*." He goes on to say that even though the sages say that a convert is like a child who is born anew, there is still a relationship between a father and son. In fact, if one bears children when one is a Gentile and then converts, one has through them

⁹¹A dubious claim.

fulfilled the commandment of bearing offspring (*pru u-revu*)⁹². Rabbi Yosef says that this is similar to the reason why a convert is forbidden to curse his parents even though they are bad. People should not say that he declined in holiness by converting to Judaism. Despite the principle that a convert is like a child born anew, one cannot deny the relationship which a convert has to his original family. So, Rabbi Yosef, agreeing with Rabbi Atayah, states that it is permissible to pray for a Gentile who is sick that he return to good. And "all the more so in our case it is permissible for a convert to pray for the recovery of his father since he brought him into this world, and on account of him he (the convert) merited to enter under the wings of the *Shekhinah* (to convert) and to life eternal."

Rabbi Yosef now turns to the second part of the question: After the convert's father dies, may he recite *Kaddish* for him? Rabbi Yosef states that despite the fact that a convert is like a child born anew, since his father bore him and brought him into this world and caused him to merit conversion he should pray to save him and to bring him into the world to come. Furthermore, it is permissible to say *Kaddish* for someone unrelated. Therefore, it follows that of course one can say *Kaddish* for the person through whom one was brought one into this world.

The same question was brought to Rabbi Aaron Valkin who wrote that it is permissible for a convert to say *Kaddish* for the ascension of the soul of his Gentile father, but is not obligatory. So, Rabbi Yosef concludes that a convert may pray for the recovery of his Gentile father. He is also allowed to say *Kaddish* for him after he dies to help in the ascension of his soul. This is also the rule for the mother of a convert.

⁹²*Yebamot* 62a.

It is difficult to determine Rabbi Yosef's understanding of *mipnei darkhei shalom* in this *teshuvah*. Rabbi Yosef raises the issue of *mishum eivah* early in his response when he quotes the Shulchan Arukh stating that one should not save an idolator except in the case of *mishum eivah*. He then goes on to explain that the case at hand does not involve idolaters. Despite this mention of *mishum eivah*, he does not directly link it to *mipnei darkhei shalom*. In fact, Rabbi Yosef himself makes no direct reference to *mipnei darkhei shalom* in this *teshuvah* at all. What can be gleaned here is from Rabbi Yosef's citation of Rabbi Atayah.

Rabbi Atayah asserts that from the edict to provide for the Gentile poor with the Jewish poor *mipnei darkhei shalom*, one can deduce that one should pray for the Gentile sick to be healed. He seems to be expanding the ruling and increasing the circumstances which fall under the rubric of *mipnei darkhei shalom*. (It is interesting that he relies on the ruling about providing for the Gentile poor and not the one about visiting the Gentile sick. It is as if in some way Rabbi Atayah views praying for a person's recovery to be more akin to offering him material support than to visiting his bedside.)

Rabbi Atayah also implies that there may be strategic reasons for visiting the Gentile sick. He mentions that there are two potential by-products of such an act: sanctification of God's name and eventual conversion by the ailing person. He then goes on to say that "this is all the more so at this time when we live in exile and need them (Gentiles)." It is difficult to know exactly to what this comment refers. Do we need them to convert? Do we need them to sanctify God's name? Do we need them to think well of the Jews? Do we need them simply to let us live in peace and safety? Whatever the intention of this comment, it has strategic implications.

Rabbi Yosef by and large agrees with Rabbi Atayah and endorses his analysis, even expanding on it a bit further. Nonetheless, the implications of *mipnei darkhei shalom* in this *teshuvah* remain hazy. There are only hints which point to an expansion of the ruling to provide for the Gentile poor *mipnei darkhei shalom* and vague strategic implications.

Teshuvot Intifada, Rabbi Shlomo Aviner, 65-66

Rabbi Shlomo Aviner is a widely respected rabbi of the nationalist religious movement in Israel. He is the *rosh yeshiva* of *Yeshivat Ateret Cohanim* in the Old City of Jerusalem. The *teshuvah* explored here is from a collection of his *teshuvot* entitled *Teshuvot Intifada*, published in 1990⁹³.

Due to the relative brevity of this *teshuvah* and the relevant nature of its content, this two part *teshuvah* will be presented in its entirety.

Question: A friend suggested to me that we distribute gifts and clothes to the residents of the refugee camp next to our settlement, but I said to him that first we need to worry about our own poor. Who is right?

Response: There are many principles of priority regarding the giving of *tzedakah*. For example, one's poor relatives come before other poor people, one's father and mother come before other relatives, one's neighbors come before other poor people in the city, and the poor of one's city (come before) the poor of another city, and the poor of the land of Israel come before the poor from outside the land of Israel, and so on, as explained in the *Shulchan Arukh* (*Yoreh Deah* #251).

Moreover, the community is of course obligated to provide for all poor people. As it is written in the Mishnah, "One should not prevent the Gentile poor from gathering gleanings (*be-*

⁹³*Teshuvot Intifada* is a collection of Rabbi Aviner's responsa concerning issues raised by the circumstances surrounding the Palestinian uprising of the 1980s known as the Intifada. Shlomo Aviner, *Teshuvot Intifada* (Jerusalem: Bet El Books, 1990) 65-66.

leket), the forgotten sheaf (*shikhechah*), or the corners of the field (*peah*), *mipnei darkhei shalom* (Gittin 5:8). And the Gemara adds, "Support the Gentile poor with the Jewish poor (Gittin 61a)." Now, from the expression "with the Jewish poor" it is possible to reason that only if they are found together must one support them, but not if they are found separately. However, the decision of the halakhic authorities was that one should support them also when they are (found) by themselves (*Shulchan Arukh Yoreh Deah* 251:12, *Shakh* 100:19, and *Taz* 100:9), and it is even permissible to give them the (funds) collected for the Jewish poor (Y. Unterman, *Kol Torah*, Nisan 5726), for one should not prevent them if they collect gleanings, the forgotten sheaf or the corners of the field that belong to the Jewish poor -- as opposed to a regular (not poor) Jew, who if he did these things, it would be stealing.

And what is the reason for all this? Rambam writes, "Behold it is said (Psalms 145:9) 'The Lord is good to all and his compassion is upon all His works', and it is said (Proverbs 3:17), 'Her ways are ways of pleasantness and all her paths are peace.'" Just as the Holy One Blessed be He is good to all and shows compassion to all, so it is incumbent upon us to be good to all and to show compassion to all, even Gentiles who are idolators (Rambam, *Melakhim* 10:12).

Question: Must we show compassion even to Gentiles who are our enemies?

Response: If these Gentiles are murderers and are involved in killing us, of course we should not be compassionate towards them, and acting compassionately towards them is actually cruelty towards the innocent people whom they are trying to kill; and about this it is said: "Compassion for the wicked is cruel (Proverbs 12:10)," and "Anyone who is compassionate toward the cruel, in the end will become cruel towards the compassionate (*Yalkut Shimoni*, Samuel, #121)." However, if these Gentiles are decent people, the sages have commanded that (we) act towards them with *darkhei shalom*.

In this *teshuvah*, *mipnei darkhei shalom* brings with it absolutely no hint of strategy or avoidance of enmity. Like other respondents, Rabbi Aviner makes clear that while there was some dispute over the meaning of the word *im*,

authorities determined that one must care for Gentiles not only when they are found with Jews, but also when they are found by themselves.

Rabbi Aviner, however, goes several steps further than other modern halakhic authorities and states explicitly why one must give to the Gentile poor.

"What is the reason for this?" he asks. He answers by citing Rambam, the one other posek who has been shown to view this act as having an intrinsic value. "Behold it is said 'The Lord is good to all and his compassion is upon all His works (Psalms 145:9)', and it is said, 'Her ways are ways of pleasantness and all her paths are peace (Proverbs 3:17).'" Lest this citation in itself does not make clear the intrinsic ethical value of providing for all God's creatures and the paradigm of *imitatio dei*, Rabbi Aviner articulates it fully. "Just as the Holy One Blessed be He is good to all and shows compassion to all, so it is incumbent upon us to be good to all and to show compassion to all, even Gentiles who are idolators (Rambam, *Melakhim* 10:12)."

The implications of *mipnei darkhei shalom* in the second half of the *teshuvah* are less clear. "However, if these Gentiles are decent people, the sages have commanded that (we) act towards them with *darkhei shalom*" Given the context it is possible, in part, to understand the phrase in the same way as it is used in the first response. "Treat them well because they are God's creatures. But the scenario now involves known enemies and so there may be an additional implication. *Mipnei darkhei shalom* may suggest that "we act toward them peacefully"⁹⁴,⁹⁵

⁹⁴It is noteworthy that only in this final excerpt of halakhic literature is the most simple meaning of *mipnei darkhei shalom* (as acting peacefully) emerging.

⁹⁵It should be noted, as well, that the possibility of enmity may mean that they do not fall into the category of "decent people."

Conclusion

The five *teshuvot* explored provide an interesting prism through which to examine the role of *mipnei darkhei shalom* in the 20th century. There does not seem to be a breakdown of understandings along either chronological or geographic lines. In other words the respondents' usages of *mipnei darkhei shalom* cannot be easily seen as an evolving understanding of the phrase. Neither, do the authorities in the diaspora respond as a whole differently than the Israeli authorities. (One certainly might expect otherwise given the centrality of Jewish-Gentile relations to this concept.)

Instead, one can see that Rabbi Weinberg (and Rabbi Teubisch) and Rabbi Yosef in his *teshuvah* from Yabia Omer understand *mipnei darkhei shalom* as intimately connected with *mishum eivah*. One is not obligated to move a Jewish woman buried in a Christian cemetery in part because of *mipnei darkhei shalom*. In other words, doing so may cause enmity. And if not showing a *Sefer Torah* to Gentiles will cause enmity, with certain stipulations, one may open the *Sefer Torah*, *mipnei darkhei shalom*. In his *teshuvah* in *Yechaveh Daat*, Rabbi Yosef rules that a convert can pray for the recovery of his father and after his death recite *Kaddish*. He hints at *mishum eivah* and other strategic reasons, but does not in the end make clear what he means by *mipnei darkhei shalom*.

Rabbi Feinstein clearly connects *mipnei darkhei shalom* with the importance of upholding the ethical reputation of the Torah. It is in part because of his concern for Judaism's reputation that he rules that it is permissible for a convert to visit her ailing mother.⁹⁶

⁹⁶It is of interest to note that several similar questions are posed in Reform Responsa literature. *Mipnei darkhei shalom* is brought to bear on the following issues: Saying Kaddish for a Gentile parent (Solomon B. Freehof, ed. *Recent Reform Responsa*. Cincinnati: Hebrew Union College Press, 1963, 132-138.); rabbinic participation in a memorial service in a Christian cemetery (Freehof, ed.

In contrast to all of the other halakhic authorities considered, Rabbi Aviner clearly understands *mipnei darkhei shalom* as an intrinsic value. Because of the mandate to treat all of God's creatures with compassion, an Israeli settler is told to give gifts and clothes to the residents of a nearby (presumably Palestinian) refugee camp.

Despite the differences between the *teshuvot*, there are several general similarities shared by these five *teshuvot*. Most basically, all of the respondents employed the phrase *mipnei darkhei shalom* as it relates to Jews and Gentiles, and in the end, all ruled in a fairly permissive way.

Also, with the subtle exception of the *teshuvah* of Rabbi Aviner⁹⁷, all of the questions posed concerned boundaries between Jews and Gentiles. In each case it was determined that with stipulations, the boundary could be crossed. The *teshuvot* of Rabbi Weinberg and Rabbi Feinstein have to do with a Jew being permitted into Gentile realms. In the end it is determined that a Jewish woman can remain in a Gentile cemetery (but a Hebrew headstone must be erected). A convert may, with her son, visit her ailing Gentile mother (but not too often). Rabbi Yosef's *teshuvah* in *Yabia Omer* is the inverse; it concerns whether a Gentile can enter into holy Jewish space. It is determined that indeed a *Sefer Torah* may be shown to a Gentile (so long as the Gentile requests it, there is concern that not showing it to him will result in enmity, and a Jew reads at least one verse from the scroll).

Finally, in Rabbi Yosef's *teshuvah* in *Yechaveh Deah*, it is more difficult to determine in which direction the boundaries are being crossed. When the

Reform Responsa. Cincinnati: Hebrew Union College Press, 1960, 143-146.); burying a Jew in a Christian cemetery (Freehof, ed. *Contemporary Reform Responsa*. Cincinnati: Hebrew Union College Press, 1974, 151-154.); and officiating at a Christian funeral. (Freehof, ed. *Current Reform Responsa*. Cincinnati: Hebrew Union College Press, 1969, 175-178.)

⁹⁷One could argue that this too has to do with boundaries around money, but it seems less connected than the other cases to issues of space.

convert is told he may pray for the healing of his father or say *Kaddish* for his deceased father is it as if he is allowed to cross back into the territory of his biological, Gentile father? Conversely, is it as if his father is being allowed to enter into the Jewish realm?

In all of these *teshuvot*, in the end, permission is granted to cross the boundary between Jews and Gentiles (either *bediavad* or *lekhatchilah*). *Mipnei darkhei shalom* while having differing implications in various *teshuvot*, plays a role in each of these 20th century cases. But as indicated above, in every case firm stipulations are also given. While *mipnei darkhei shalom* may offer an opening through which crossing is allowed (albeit for very different reasons), the gateway must be carefully guarded.

Returning to the question of the implications of *mipnei darkhei shalom* in modern responsa literature, one finds that just as in previous eras, the texts are hardly of one voice. Instead, one can see many of the possible meanings of the phrase that were discovered in Tannaitic, Amoraic, and medieval works cited and applied to modern concerns. Through the end of the 20th century the meaning of *mipnei darkhei shalom* remains multi-faceted.

Chapter VI: Conclusion:

A thorough examination of enactments made *mipnei darkhei shalom* in the Mishnah, Tosephta, Talmud Bavli, Talmud Yerushalmi, Mishneh Torah, Tur, Beit Yosef, Shulchan Arukh, Rema, and selected 20th century *teshuvot* has revealed a strikingly consistent theme. *Mipnei darkhei shalom* is usually used in a defensive, strategic sense, albeit with a number of nuances. It is impossible to claim that the primary meaning of *mipnei darkhei shalom* reflects an intrinsic social ideal, though there is a rare, but consistent minority voice throughout the sources.

In the Amoraic and Tannaitic sources almost all instances of *mipnei darkhei shalom* refer to some version of avoiding dispute. There is, however, one statement in the Tosephta, which is later quoted in the Talmuds, which points to the inherent Jewish responsibility to care for Gentiles.

Rambam in his Mishneh Torah seems to be of two minds. In several instances he overtly limits the application of *mipnei darkhei shalom* and he offers a clear statement that given different social circumstances (i.e. Jewish rule), enactments made *mipnei darkhei shalom* would no longer hold. Rambam also, however, provides the central argument which supports *mipnei darkhei shalom* as indicating an intrinsic social value. In Hilkhhot Melakhim 10:12 he explains that the enactment made in Gittin to visit the Gentile sick, bury the Gentile dead, and provide for the Gentile poor is based on the essential ethic expressed in the Bible, "The Lord is good to all and His compassion is over all His creatures" (Ps. 145:9). This is followed by Proverbs 3:17 "Her ways are ways of pleasantness and all her paths are peace." Rambam clearly connects *mipnei darkhei shalom* to the religious imperative to provide for all of God's creatures. While a strong

statement, it is nonetheless a minority opinion, and even within Rambam's own work a dialectic emerges.

Most of the instances in which *mipnei darkhei shalom* is used in the Tur, Beit Yosef, Shulchan Arukh, and Rema it is clearly equated with *mishum eivah*, avoidance of strife. *Mipnei darkhei shalom* is used time and again in the context of a tactical maneuver to avoid enmity, as in the case of protecting the found property of Gentiles from thieves so that the Gentiles will not think badly of the Jews. The discussion in Orach Chayim 325 contains multiple views which vaguely represent some other positions. Even within the Hagahot Maimoniyot himself there is a bit of a dialectic as to whether one gives food to Gentiles on shabbat because it is a *mitzvah* in itself or in order to avoid their wrath. Any indication that it may be a value in its own right, however, is quickly abandoned and the conclusions drawn in these medieval codes are quite consistent -- *mipnei darkhei shalom* means to avoid strife.

Finally, one might expect the contemporary responsa to reflect a more idealized view of *mipnei darkhei shalom*. It is possible that the increased social position of many Jews in the 20th century and the greatly increased interaction with Gentiles might lead to a greater sense of responsibility towards Gentiles. This is not, however, what the bulk of the *teshuvot* examined reveals. Like the medieval codes that precede them, all but one of the *teshuvot* examined equate *mipnei darkhei shalom* with *mishum eivah*. There are definite nuances, and the focus of the *teshuvot* is not the nature of *mipnei darkhei shalom*. Nonetheless, *mipnei darkhei shalom* seems to be consistently understood by these rabbis as a means of avoiding enmity between Jews and Gentiles. The meaning remains embedded in a defensive posture.

The only exception to this consistent position is Rabbi Shlomo Aviner's *teshuvah* about giving gifts and clothing to Palestinian refugees in Israel. In an

unexpected twist, this rabbi who serves an ardently right wing community in the West Bank cites the Rambam's statement from *Hilkhot Melakhim*. Rabbi Aviner goes even a step further and spells out why we are obligated to care for all of God's creatures. The social and historical circumstances of this *teshuvah* are even more puzzling. One would think that Jews in Israel might be less free than Jews in Europe and America to turn away from concerns about security and towards the value of providing for all. (The *teshuvot* from Rabbi Ovadiah Yosef suggest that Rabbi Aviner does not necessarily represent the mainstream opinion among Israeli *poskim*.) Rabbi Aviner's perspective is also interesting in light of the fact that Israeli Jews are the only Jews who live in a country under Jewish rule.

As the major exceptions to the predominant understanding of *mipnei darkhei shalom* are found in the Tosephta, Mishneh Torah, and Rabbi Aviner's *teshuvah*, it is difficult to draw any correlations between the understood meaning of the phrase and the social and political circumstances in which it is used. There is no clear evolution of the usage, and no recognizable pattern emerges. The meanings are nuanced across the board with a majority and minority perspective emerging in every era and genre examined.⁹⁸

⁹⁸It is worth noting that the conclusions drawn in this section are different from those drawn by others who have asked similar questions about the usage and meaning of *mipnei darkhei shalom*. Walter Wurzburger, for example, maintains that there is support within traditional sources to understand the enactment to support needy Gentiles *mipnei darkhei shalom* as both intended to serve the self-interests of Jews (by avoiding the wrath of their neighbors) and as an act of "genuine moral concern that transcends purely pragmatic or prudential considerations." While it is undisputable that both positions are found in the sources, Wurzburger declares that they are on virtually equal footing. Wurzburger, *Ethics of Responsibility*, 47-52 and *GESHEK*, 80-86. Sol Roth in his discussion of particularism and universalism in Jewish community asserts that rabbinic precepts which were made *mipnei darkhei-shalom* "were not prompted merely by the intention to eliminate hostility and war. They were also intended to encourage friendship and mutual concern among the various groups in a non-homogeneous society." He goes on to explain that failure to do many of the acts which Jews are instructed to do *mipnei darkhei shalom* (i.e. extending greetings to Gentiles) would not "normally lead to conflict." Therefore, enactments made *mipnei darkhei shalom* are not being made from a defensive or protective position. "Darkhei shalom," Roth concludes, "has the positive connotation of achieving a kind of social cohesion that will encourage

The Dialectic

While perhaps it is too bold to refer to the sources as ambi-vocal, there are clearly two voices which emerge from the texts. The stronger one is the voice of realism which grows out of concerns for security, protection, safety, and well-being in the face of a Gentile majority who has often been unkind. History has taught the Jews the importance of watching out for their own self-interests. The other softer one is the voice of idealism. It is the voice echoed by Hillel's renowned maxim, "If I am only for myself, what am I?" It is the voice which articulates the ideal of caring for all of God's creatures including Gentiles. The tradition is clearly dominated by the voice of self-interest with its stance of practicality and protection. But the dialectic is essential, and the rarer voice which reminds Jews of the ideal is canonized as well.

Areas for Further Research

This study has been thorough within a limited range. It would be of interest to see what one could glean from an examination of additional usages of the phrase *mipnei darkhei shalom*. A close reading of the Tosefists' use of the phrase, for example, would help to flesh out the extensive period between the Talmuds and the Mishneh Torah. In addition, a conscious decision was made in this study to focus on 20th century responsa. It would be worthwhile, however,

reciprocity and mutuality." Sol Roth, *The Jewish Idea of Community* (New York: Yeshiva University Press, 1977) 67.

to also examine *teshuvot* from the 16th-19th centuries and look for signs of shifting views which may (or may not) emerge with the enlightenment.

If one wanted to search further for categorical differences in the meaning of *mipnei darkhei shalom*, it might be useful to do a more thorough study specifically grouped by region. Similarly, a more intensive examination of the use of *mipnei darkhei shalom* as it relates among Jews may help to provide a more complex context in which to understand the phrase vis-a-vis Jewish-Gentile relations. A categorical difference may or may not emerge. Finally, a parallel investigation into the phrases *mipnei tikkun olam* and *mishum eivah* would surely enrich the study of *mipnei darkhei shalom*.

Lessons Learned

Perhaps one of the most powerful lessons to take away from this inquiry is that despite a relatively thorough investigation into the meaning of *mipnei darkhei shalom*, a single truth has not emerged. In fact, it seems that a dialectic is somehow fundamental to the search for truth⁹⁹. Similarly, a clean correlation between the usage and meaning of *mipnei darkhei shalom* and particular times or circumstances in history has not emerged. Perhaps this non-correlation happens more often than not.

Furthermore, the dominant voice which has emerged is not the one for which I, a liberal Jew with universalistic instincts and values, hoped. Given the dialectic, I am disappointed to find that the two voices are not at the very least more balanced. I am once again challenged to find a way to integrate my values (deeply influenced by modernity and American culture no doubt) with Jewish

⁹⁹ This has profound theological implications for me. Perhaps the experience of writing this thesis will help me to further relinquish my belief in and desire for there to be an answer "out there."

tradition. I cannot abandon my ideals, discard tradition, or pretend that that my instincts are fully represented in the sources. They have a voice, but it is weak.

Instead American Jews are challenged to gather up many perspectives and resources and to create our own understanding of *mipnei darkhei shalom* as it relates to Jewish responsibility for Gentiles. We bring to the table, the multi-faceted understanding of *shalom* as articulated in the Bible¹⁰⁰, the rabbinic sources which teach us that one provides for Gentiles to avoid strife and related reasons of self-interest, the rare rabbinic voice which articulates the intrinsic value of caring for all of God's creatures, other parts of rabbinic tradition which emphasize responsibility for all, our modern ideals of universalism and human rights, our people's experience of persecution throughout history, and the experience of being a Jew in America at the very end of the 20th century.

The challenge we face in determining how responsible we are for the welfare of Gentiles (and in determining how we should distribute our resources accordingly) is very old. As our closeness to Gentiles has increased and as we have internalized modern and American values, our sense of responsibility for the well being of Gentiles has grown. But something else has changed as well. American Jews are in a relatively strong and prosperous position in society today. While it would be foolish to abandon all concern for the safety and well-being of Jews, we are in a position of relative freedom. Perhaps we are free to lean a little further in the direction of the ideal because our reality is in fairly good shape.

The meanings and implications of *mipnei darkhei shalom* discussed in this work, reflect the Jews' on-going struggle to both survive as a people and to become the people we envision being. The rabbinic sources stress the side of

¹⁰⁰Including its association with avoiding dispute, building good relationships, and pursuing justice.

realism. But perhaps we are now in a time when we can, integrating all of our resources, teachings, and historical experiences, live out more fully the Jewish ideal of providing for all of God's creatures without abandoning our commitment to our own survival, protection, and growth.

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