

JEWES BURYING GENTILES

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The principle of *kavod hamet*—honoring the dead—has ancient roots in Judaism. The principle is evident when Abraham goes to buy the cave of Machpelah to bury his wife Sarah as much as it is found when Aaron dies and the community mourns for thirty days (Gen. 23:1–20; Num. 20:22–29). Even the anonymous dead found lying in fields are due proper burial by the appropriate community (Deut. 21). Similarly, that criminals receive less than courteous treatment upon their death reflects the principle that at least corpses of the righteous deserve respect.¹ Even the early historian Josephus understands the Jewish tradition to be one that encourages punctilious care for the dead.² In fact, in his summary of Judaic law, Josephus argues that Jews are to assist providing a decent burial for dead gentiles.³ The rabbis, as early as the Tannaim, go even further. As will be seen below, rabbis assert that Jews are to bury gentiles as well as to care for gentiles who are deathly ill, eulogize over dead gentiles, and even comfort surviving gentile mourners.

Why such Jewish participation in the technical and somewhat pastoral aspects of gentile death and mourning? What justifies such intimacy across communal social and religious frontiers? Answering the question of *why* Jews should participate in burying (inclusive of caring for, eulogizing over, and comforting) gentiles requires looking at *how* the rabbinic tradition justifies these stipulations in the first place. That is, *what* are the rationales associated with the laws obliging Jews to bury gentiles? By rationale, I mean the “because” clause associated with a law, and it bears remembering that not all Jewish law includes such explanations at all. At their simplest, biblical laws, for

¹ See story of the death of Achan at Joshua 7. See the rendition of this story by Josephus in his *Antiquities of the Jews*, V:1:14.

² Josephus, *Wars of the Jews*, IV:5:2.

³ Josephus, *Against Apion*, 2:30.

instance, state do X, or, do not do X, period: do not murder; remember the Sabbath, etc. These laws carry no explicit rationales, as their reasonableness is either transparent or too mysterious for human explication.⁴ Other laws, however, take the form do or do not do X “because of Y”: as in, honor your mother and father so that you may live long in the land that I am bequeathing to you.⁵ This “so that” phrase is the justifying because clause.

Rabbinic legal writings take on these two forms as well, though it is the latter that is most commonly associated with the topic of Jews burying gentiles.⁶ In fact, only one “because of Y” phrase is closely linked with this topic: *mipnei darkhei shalom*—literally, for the sake of the ways of peace. Emerging from the verse in Proverbs, “[the Torah’s] ways are ways of pleasantness and all its paths are peace,”⁷ this rationale is linked with a great many laws to justify acts of omission and commission—albeit usually within the realm of intra-Jewish relations.⁸ There are, however, a host of laws pertaining to Jewish-gentile relations that are also bolstered by this rationale, ranging from social to economic interactions.⁹ And here are found the laws regarding Jews burying gentiles.

Frequently when *mipnei darkhei shalom* is discussed in modern scholarship it is considered only in the aggregate, that is, as it applies to

⁴ See Rambam’s discussion of *ta’amei hamitzvot* (*Moreh Nebukim* III:26ff) for the notion that Jews are to conform to laws regardless of whether they understand the reasons or causes behind the laws.

⁵ Exodus 20 includes an illustrative sample of these two categories of law.

⁶ Jonathan Crane, “Because . . . : Justifying Law/Rationalizing Ethics,” in *The Journal for the Society of Christian Ethics* 55/1 (2005), pp. 55–77.

⁷ Prov. 3:17; see also B. Git. 59b; Rashi on B. Git. 59b, s.v., *amar lo d’oraita hi*; MT *Melachim U’Milchamoteihem* 10.12.

⁸ One might reasonably argue that it is necessary to consider the broad scope of all these laws fully to appreciate the ones pertaining to Jews’ attending to gentiles at the moment of death. However admirable such a project might be, it would inevitably entail digressions like those found on B. Git. 59b and following, where the concerns are about which class of Jew should precede other Jews in reading Torah in synagogue. There, the rationale *mipnei darkhei shalom* serves as a rhetorical tool with a practical goal: to avoid causing rancor (*d’ito lintzavei*) among Jews. A useful project would be, then, to analyze all texts listed in the *Encyclopedia Talmudit* (7:716ff) under the heading *darkhei shalom* and parse them out according to behavior. This essay, in contrast, inverts the methodology: it focuses on certain behaviors and then explores the rationales applied to justifying those behaviors.

⁹ Jennie Rosenn, *Mipnei Darkei Shalom in Rabbinic Tradition* (New York: HUC-JIR Rabbinic Thesis, 1997). Jonathan Crane, *Mipnei Darkhei Shalom and Mipnei Eivah: Reasons to Do the Right and the Good* (New York: HUC-JIR Rabbinic Thesis, 2003). Joan Poulin, “Loving-Kindness towards Gentiles according to the Early Jewish Sages,” in *Théologiques* 11/1–2 (2003), pp. 89–112.

the broad range of interreligious behaviors and not as it relates with only one or a set of tightly linked behaviors. More often than not, such consideration of this rationale in its broadest application leads modern interpreters to understand it to reflect and manifest a universalist humanitarian sensibility. Here are but a few representative illustrations of this attitude. From Moritz Lazarus at *fin de siècle*: “In point of fact, however, the leveling of the ‘paths of peace’ (*darkhei shalom*) as a motive even for actions tending to demolish national barriers and promote the universality of the moral communion is one of the highest aims of moral conduct.”¹⁰ A similar attitude is articulated in the twentieth century by Walter Wurzburger, who challenges ethnocentric interpretations of the rationale—that it articulates only enlightened self-interest. Instead, Wurzburger understands this rationale to reflect “an overriding universal moral principle. . . . In this conception, *Darkei Shalom* supplements legalistic formulations and adds a moral dimension of moral significance.”¹¹ Such universalist tropes unnecessarily obscure the broad range of specific behaviors justified by this rationale, silencing alternative understandings both of the laws and the rationale itself.¹²

The approach taken here avoids jumping to this conclusion despite its political and theological attractiveness. This essay explores a consciously circumscribed set of laws justified by *mipnei darkhei shalom*—only those pertaining to the death and burial of gentiles. Mapping a historical trajectory of these laws facilitates appreciating nuances within and behind the because clause “for the sake of peace.” What emerges is that while a universalist sentiment may be operational, it is by no means the only one motivating the construction and transmission of—and ultimate obedience to—these laws of intimate interreligious interactions.

¹⁰ Moritz Lazarus, *The Ethics of Judaism* (Philadelphia, 1900), vol. I, §174; see also vol. I, §169, where he considers this rationale in its aggregate. See references to Hoffmann and Lauterbach in Walter S. Wurzburger, *Ethics of Responsibility* (Philadelphia, 1994), pp. 48ff.

¹¹ Walter S. Wurzburger, “*Darkei Shalom*,” in *Gesher* 6 (1978), p. 83.

¹² See, for example, treatment of this rationale in the following works: Daniel L. Schiff, *Principles of Power: The Application of Ethical Norms within the Halacha* (Cincinnati: HUC-JIR Rabbinic Thesis, 1987); Rosenn, *op. cit.*; David Novak, *Covenantal Rights* (Princeton, 2000). For an analysis of these interpretations, see Crane, *Mipnei Darkhei Shalom and Mipnei Eivah*.

Visit Sick Gentiles

The Jerusalem Talmud (Y. Dem. 4, 24a; Y. Git. 5, 47c; Y. A.Z. 1, 39c) discusses the action of Jews burying gentiles three times, whereas this is mentioned only once in the more authoritative Babylonian Talmud (B. Git. 61a). In each instance, burial is embedded in a context of other behaviors, including visiting the sick and comforting mourners.¹³ Before exploring the law to bury gentiles itself, the injunction to care for sick gentiles deserves comment on three levels: grammatical, legal, and physical.

At the grammatical level, there is a critical distinction between the Jerusalem and Babylonian versions. In the latter, the phrase reads *mevakrin cholei nochrin 'im cholei yisrael . . . mipnei darkhei shalom*—"we visit ill gentiles¹⁴ along with (*'im*) ill Israelites . . . for the sake of peace." What is the grammatical force of "along with"? Is it true that Jews should visit sick gentiles only when ill co-religionists are also present? The grammar of the sentence suggests at least two possible readings. The more strict reading stipulates "we visit sick gentiles who are already among sick Israelites." As will be seen below, the eleventh century Franco-German exegete Rashi prefers this limiting qualification to Jewish-gentile interactions. On the other hand, a more generous reading says, "we visit sick gentiles just as we would visit sick Israelites"—which comports with the Jerusalem Talmud's versions.¹⁵ This line of reasoning becomes explicit in later recapitulations of this teaching, as illustrated in Joseph Karo's sixteenth century *Shulchan Aruch's* succinct statement: *mevakrin cholei 'ovdei kochavim mipnei darkhei shalom*—"we visit ill gentiles for the sake of peace."¹⁶ Shabbetai ben Meir ha-Cohen in seventeenth century Lithuania, in his commentary on the *Shulchan Aruch*, interprets this teaching to mean that even if a sick gentile were alone, Jews should nevertheless visit that person.¹⁷

¹³ That these rules are often linked with other stipulations, like providing sustenance for gentile poor or protecting gentile tools from thievery, is a fact that should not be ignored either. The overall collection of Jewish obligations toward gentiles and justified by *mipnei darkhei shalom* is a fascinating one and deserves further exploration, but the focus here is specific to laws related to gentile death and burial.

¹⁴ The term for gentiles varies across manuscripts: *'akum, nochrin, goyim*.

¹⁵ Y.'s versions of this maxim replaces *'im*—along with—with the letter *vav*, which can be either a conjunction or a disjunctive.

¹⁶ SA *Yoreh Deah* 335.9. But see Beit Yosef, *Yoreh Deah*, 158.1, which includes *'im*.

¹⁷ *Shach* at SA *Yoreh Deah* 335.9.

Does this teaching indicate an obligation (Jews must visit sick gentiles) or merely indicate what is permitted (a Jew who so desires *may* visit a sick gentile)? According to the earliest interpretations, it only indicates what is permitted: should Jews want to, they may attend to sick gentiles. Only Maimonides, in the twelfth century, understands the earlier sages to have made this rule a religious obligation: “Even in the case of an idolater, sages commanded that one must visit the sick, for the sake of peace.”¹⁸ But no one before and, for that matter, since Maimonides, considers this teaching to express a religious obligation *per se*.¹⁹

There is, of course, a physical danger in visiting sick people, since the visitor risks exposure to disease. But taking this risk is justified *mipnei darkhei shalom*. Rabbinic commentators understand that the well being of the sick person as well as of the visitor must be taken into account, and they state that visiting the sick in and of itself brings great healing. According to thirteenth century Spanish scholar Moses ben Nachman in his *Torat Ha’Adam*, visiting ill gentiles leads directly to the fulfillment of the commandment to heal them as well:

mevakrin cholei goyim ‘im cholei yisrael mipnei darkhei shalom, uvikor cholim yesh bo r’fuah g’dolah l’choleh; sh’ma minah merof’in cholei goyim ‘im cholei yisrael mipnei darkhei shalom—we visit ill gentiles along with ill Israelites for the sake of the ways of peace, and [the practice of] visiting the sick entails great healing for the ill; thus we learn from this that we heal ill gentiles along with ill Israelites for the sake of the ways of peace.²⁰

Nachmanides distinguishes visiting the sick (*bikur cholim*) from medicinal intervention (*rofin cholim*). Whereas the latter can bring about bodily well-being, perhaps the former offers an emotional uplift to the ill. This advances the notion that doctors are not the only ones who bring relief to the ill; visitors too can play a significant role in healing the ill, be they gentiles or Israelites.²¹ It seems the rationale

¹⁸ MT *Melachim U’Milchamoteihem* 10.12. But see MT *Evel* 14.12, where it is not declared a *mitzvah*. See also his Responsa 449 (*tshuvah amnon*). Elsewhere, Rambam rules that visiting the sick, comforting mourners and accompanying the dead are all of a kind: they are positive commandments (*mitzvot aseh*)—though here he does not specify doing as such for gentiles. MT *Evel* 14:1.

¹⁹ *Chidushei Maharatz Chayut* (by R. Zvi Hirsch Chajes, 1805–1855, Galicia) on B. Ned. 39b says that Rambam’s ruling is a “*halakhah* given at Sinai.” See also Chaim Binyamin Goldberg’s *Mourning in Halachah* (Brooklyn, 1991), p. 21.

²⁰ *Torat Ha’Adam, Sha’ar Hasof: inyan hakurwah*.

²¹ Elsewhere in this work, Nachmanides transforms Exod. 21:19 from a permission to get cured to an obligation to cure (and be cured, too). He asserts that every

“for the ways of peace” justifies both the extraordinary exposure to diseases Jewish doctors endure while treating patients as well as what Jewish visitors ordinarily risk by their mere proximity to the deathly ill.

In regard to the inverse situation, however, when a Jew with a mortal disease could receive medical intervention from gentiles, the rabbis are reluctant to encourage inter-religious interaction. Though the Mishnah rules that Jews ought not receive medical assistance from gentiles, the related Talmudic *sugya* interprets the ruling to mean that a Jew ought not receive gentile medical assistance unless and only unless the Jew’s life is in danger (M. A.Z. 2:2; B. A.Z. 27a-b). Maimonides configures the rule into a prohibition, though in cases of mortal danger he is lenient.²² From the Talmud through Maimonides and on to Karo,²³ receiving gentile medical assistance is abjured for the reason of suspicion—a gentile might either murder a vulnerable Jew outright or might prolong a Jew’s suffering unnecessarily.²⁴ That is, the “ways of peace” have little to do with Jews’ receiving help, only with giving help.

In light of the discrepancy between the justification for giving healing help *to* gentiles (for the sake of peace) and of not receiving healing help *from* gentiles (because of suspicion), it is difficult to understand “for the sake of peace” in any other way than as a rhetorical expression of pragmatic concerns. At least in regard to attending to the ill, this rationale does not articulate a universalist moral impulse.

Bury Dead Gentiles

When a gentile dies, the Babylonian Talmud holds: *kovrin metei nochrin im metei yisrael mipnei darkhei shalom*—“Jews are to bury dead gentiles along with dead Israelites for the sake of peace.”²⁵ Now the grammatical question looms large: is it true that gentiles are to be buried

doctor with the training and capacity to intervene medicinally to save even a gentile’s life is obliged to do so, so that refraining from so performing is tantamount to murder. Torat HaAdam, *Sha’ar Hamichush: inyan hasacana*.

²² MT *Rotzeach U’Shmirat Nefesh*, 12.9.

²³ *Kesef Mishnah*, *Rotzeach U’Shmirat Nefesh*, 12.9.

²⁴ These restrictions do not apply to a Jew’s possessions, like sick beasts; a Jew may secure a gentile’s medicinal assistance to heal animals.

²⁵ B. Git. 61a. Compare with the Vatican 130 manuscript, which reads the inverse: bury dead Jews along with (*im*) dead gentiles for the sake of the ways of peace.

“along with” (*‘im*) Jews? Rashi argues that “along with dead Israelites” means: do not bury dead gentiles in an Israelite cemetery but rather attend (*mit’asek*) to the business of burying dead gentiles only if they are found among killed Israelites.²⁶ That is, Jews should be involved with burying dead gentiles if and only if there are dead Israelites present. R. Solomon b. Abraham Adret (Rashba), in thirteenth century Spain, interprets Rashi’s restrictive argument as meaning that one should take care to attend to dead gentiles only in that instance when a dead gentile is found among dead Israelites. Moreover, a Jew should attend to the burial of dead gentiles because of the risk of arousing enmity (*eivah*) if one were to attend to dead Israelites and not to dead gentiles.²⁷

R. Yom Tov b. Avraham (Ritba) of thirteenth century Seville, understands the Talmudic “along with” (*‘im*) to mean that one should not engage in burying dead gentiles in the exact same moment as one buries Israelites; rather, just as one attends to burying Israelites, so too (*kach*) should one attend to burying gentiles. Like Rashba, Ritba urges this practice in times of increasing animosity (*eivah tapi*).²⁸ Interestingly, both Rashba and Ritba cite the Jerusalem Talmud and a Tosefta text (T. Git. 3:14) in addition to Rashi to explain the Babylonian Talmud’s teaching of “along with.” Maimonides, in contrast, does not explicitly cite other texts to justify his reading, as is his wont. As noted above, Maimonides configures the Babylonian Talmud’s teaching (inclusive of the “along with”) as a religious obligation (*tzivu*).²⁹ But in another location, he uses a truncated form of this teaching that does not include the phrase “along with” (*‘im*).³⁰

Karo seemingly distances himself from the Babylonian Talmud’s use of “along with” and the restrictive positions of Rashi, Rashba, and Ritba—at least on this issue of burial.³¹ R. Shabbetai ben Meir haCohen’s *Shach* commentary on the *Shulhan Aruch* solidifies this distancing by explaining that Jews need not be found nearby for this ruling to be in effect.³² Apparently, according to the *Shach*, Karo’s

²⁶ Rashi on B. Git. 61a. *‘im metei yisrael*.

²⁷ Hidushei HaRashba on B. Git. 61a.

²⁸ Hidushei HaRitba on B. Git. 61a. Or, put differently, this practice should be done so as not to arouse more animosity from gentiles toward Jews.

²⁹ MT *Melachim U’Milchamoteihem* 10.12.

³⁰ MT *Evel* 14.12.

³¹ SA *Yoreh Deah* 367.1 and 151.12.

³² *Shach* at SA *Yoreh Deah* 151.12. Although this comment is inserted in relation to sustaining poor gentiles (*l’fames aniyehem*), it refers to the whole teaching (visiting,

understanding about the injunction to bury dead gentiles emerges from R. Jacob ben Asher's *Tur* of fourteenth century Spain.³³ The *Tur* interprets Rashi to mean "we make an effort (*mishtadlin*) to bury them just as we make an effort (*misthadlin*) to bury Israelites."³⁴ The trend to dismiss Rashi's restrictive reading continues into the twentieth century with R. Jehiel Jacob Weinberg (Switzerland and Germany before 1938; subsequently Israel), who opines that "along with" means to attend to the business (*mit'askin*) of burying dead gentiles.³⁵

But if the narrow reading remained dominant, what would happen when a Jew came across a lone gentile corpse with no dead Israelites nearby: where should that gentile actually be buried? The Talmud rules *sh'ein kovrin rash'a b'etzel tzaddik*—"one does not bury a wicked person in a righteous person's place"—and goes on to surmise from biblical precedents that there should be two cemeteries: one for the righteous and one for the non-righteous.³⁶ Ritba opines that it would be sacrilegious to bury a gentile in a Jewish cemetery.³⁷ As mentioned above, the Ritba cites the Jerusalem Talmud and the Tosefta to bolster his position, neither of which includes "along with" (*im*) in reference to this duty of burying gentiles.³⁸ Indeed, Karo, also citing the Jerusalem Talmud, stresses that gentiles ought not be buried in Jewish cemeteries.³⁹ But by the early twentieth century, it is unclear that this position held—that gentiles should not be buried in Jewish cemeteries. R. Jehiel Jacob Weinberg rules in a *responsa* that according to Maimonides it is permitted to bury a gentile in a Jewish cemetery for the sake of peace, and this corpse ought not be moved lest it spark suspicion and animosity

burying, eulogizing, and comforting). See his comment at SA *Yoreh Deah* 335.9 for a similar distancing from the restrictive reading.

³³ See *Shach* at SA *Yoreh Deah* 367.1.

³⁴ *Tur*, *Yoreh Deah* 367. It appears that this is the first use of the verb "make an effort" (*shadal*) in reference to burying gentiles. Karo, however, in Beit Yosef, *Yoreh Deah* 367, does not use this verb.

³⁵ *Responsa Seridei Esh*, 2:104.

³⁶ B. San. 47a. There is an argument to establish four cemeteries: for the extremely wicked and for the not so wicked, for the righteous and for the extremely righteous. The rabbis conclude, though, that two are sufficient. See also Tosafot, B. San. 46b; SA *Yoreh Deah* 372.5.

³⁷ Hidushei HaRitba on B. Git. 61a.

³⁸ T. Git. 3:18 states blandly: *kovrin metei goyim mipnei darkhei shalom*. The Y. versions read: *v'kovrin metei goyim v'metei yisrael* (Y. A.Z. 1, 39c; Y. Git. 5, 47c) or: *kovrin metei yisrael v'metei goyim* (Y. Dem. 4, 24a).

³⁹ Beit Yosef, *Yoreh Deah* 367.1.

(*sh'ein lifnot binkom sh'yesh lachush l'eivah*).⁴⁰ Despite this recent permission to bury gentiles in a Jewish cemetery, that little through the centuries has been said about where dead gentiles *should* be buried suggests that dead gentiles should be buried right where they are found. This comports with the mishnaic tradition of burying corpses wherever the head is found⁴¹ and also links with the fascinating if not disturbing midrashic assertion that humans can determine which community a corpse belongs to by the odor of the bones.⁴²

In addition to *attending to* (*mit'asek*, according to Rashi, or *mishtadel*, according to R. Jacob ben Asher) burying dead gentiles, Jews are also to *attend* the burial itself. The thirteenth century *Kol Bo*, attributed to R. Aharon ben Jacob haCohen of Narbonne, rules that Jews are obliged to stand before a corpse to show it appropriate honor (*la'amod mipanav lin'hog bo kavod*), and even for a dead gentile, a Jew is obliged to accompany it four steps (*v'afilu met goy chayav lil'voto arb'a amot*).⁴³ But the *Kol Bo* does not include the rationale “for the sake of peace.” For Karo, accompaniment is required if for no other reason than for the sake of the ways of peace (*lil'vot met goy 'im lo mipnei darkhei shalom*).⁴⁴ The nineteenth century Turkish scholar R. Chaim Palache picks up Karo’s teaching and adds that should the dead gentile be from an important family in the polity or if he was a politician, there is an additional obligation to accompany the dead for the sake of the peace of the kingdom (*yesh 'od chayav mipnei shalom malchut*).⁴⁵ In sum, at first and in Franco-Germany, the practice to accompany gentile funerary marches was mandated without a rationale, and only later and in Sephardic communities was this practice buttressed with a rationale—predominantly with “for the ways of peace.”⁴⁶ Furthermore, accompaniment became obligatory insofar as it served the practical goals of peaceable relations with gentiles and peace within the polity.

⁴⁰ *Seridei Esh*. 2:104, column 688.

⁴¹ M. Sot. 9:3; see B. Sot. 45b for further discussion.

⁴² *Midrash Zuta, Shir HaShirim*, 1.3; see also *Bereshit Rabati, Vayehi*, p 264; and *Aggadat Shir HaShirim* 1.3.

⁴³ *Kol Bo*, 114: *haro'eh et hamet*.

⁴⁴ Bet Yosef. *Yoreh Deah* 367.1.

⁴⁵ R. Chaim Palache (1788–1869). *Chaim Biyad*. 125: *met leveyah*.

⁴⁶ A Hungarian rabbi, Judah b. Israel Assad (1794–1866), discusses Karo’s text and adds that even gentiles who are not distinguished deserve accompaniment, but does not include the rationale “for the ways of peace” to buttress this position. *Yehudah Ha'aleh*. I:Yoreh Deah.369.

At least in regard to burial there is a difference between Franco-German attitudes and Sephardic ones. On the one hand, Rashi and the *Kol Bo* offer a narrow reading of the textual tradition, one requiring the presence of dead Jews to activate the obligation to bury dead gentiles and the other obliging Jews to show proper respect to dead gentiles—and this without the rationale “for the ways of peace.” On the other hand, Spaniards like Rashba, Ritba and later Karo, and other Sephardic scholars like Maimonides and Palache, apparently rule more leniently, drawing on the Jerusalem Talmud to counter the more authoritative Babylonian Talmud, and invoking the rationale “for the ways of peace” to buttress their positions. Might this difference be explainable in terms of geopolitics? In Northern Europe Jews tended to enjoy significant interactions with gentiles socio-economically, in terms of international trade and then in the form of money-lending, and, despite the Crusades beginning in 1096, Jewish communities thrived. In Southern Europe, in contrast, Jews struggled to maintain juridical autonomy and, especially with the rise of Catholicism in Spain, had to endure constant battles against Christianity through centuries of Disputations. Eventually they were dispelled from the Iberian Peninsula altogether. Perhaps Sephardic legal decisors, by reading the textual tradition more broadly than their northern counterparts, urged co-religionists to attend to dead gentiles so as to promote peaceful relations with Christian neighbors.⁴⁷ It would be a mistake, however, to interpret this broader reading as evidence of leniency or of a greater ecumenism or even of a universalist moral sensibility. Indeed, these Sephardic rules put greater burdens on Jews vis-à-vis gentiles as more was expected of Jews when confronting dead gentiles.

Eulogize Dead Gentiles

Such geographic differences are less clear in regard to eulogies. A passage of the Tosefta from approximately 200 C.E. enjoins Jews to eulogize (*maspidim*) over dead gentiles—to speak good words about

⁴⁷ See discussion in Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times* (Springfield, 1961). See also relevant chapters in N.S. Hecht, et. al., eds., *An Introduction to the History and Sources of Jewish Law* (New York, 1996).

the dead—for the sake of the ways of peace.⁴⁸ Rashba in thirteenth century Spain laments that this teaching is generally the only thing recalled among Jews, at the expense of the other rule regarding burying dead gentiles.⁴⁹ His student, R. Asher b. Jehiel (Rosh), who moved from Germany to Spain in 1303 and wove together Ashkenazic and Sephardic legal thinking, also invokes this text.⁵⁰ A century later, R. Jacob b. Asher rules in the *Tur* that it is permissible to eulogize a dead gentile if one knows the dead or if the dead was a neighbor, suggesting that in all other cases Jews ought not eulogize dead gentiles.⁵¹ Following the *Tur*, Karo also rules that it is permissible to offer a eulogy for a dead gentile, but he does not stipulate that one must know the person beforehand.⁵²

On the one hand, it is difficult to ascertain a difference between Franco-German and Sephardic positions on eulogizing over dead gentiles because of the dearth of Ashkenazic texts on this topic. A practical reason for the relatively few texts on this topic in both communities could be the stringent prohibitions against entering gentile places of worship and gentile cemeteries, especially at times of religious services.⁵³ On the other hand, irrespective of these barriers, it might be surmised that a eulogy Jews would offer over dead gentiles should be as robust as a eulogy given over dead Jews.⁵⁴ This conclusion emerges when considering the modern *responsa* by R. Pinchas Zvichi of Jerusalem, in which he states that it is good to praise (*l'shavach*) gentiles for the ways of peace and uses the Tosefta to back up his opinion.⁵⁵

⁴⁸ T. Git. 3:14. B. Ber. 16b rules that at least in regard to male and female slaves, one does not stand in a row of comforters, nor recite a blessing of mourning after eating, nor comfort the mourners, nor even offer a eulogy. R. Yose, however, thinks it permissible to say in regard to a good slave (*eved kasher*), "Alas, a good man!" See the parallel at Y. Ber. 2.8, 4a. Compare with *Semachot* 1.9, which says, "for a gentile or a slave we do not engage in any [funereal] activities, but we say about him [the dead], 'Alas, Lion! Alas, Hero!'"—perhaps a form of eulogy.

⁴⁹ *Hidushei HaRashba* on B. Git. 61a.

⁵⁰ Rosh, B. Git. 5.23.

⁵¹ *Tur Yoreh Deah* 151.12.

⁵² *SA Yoreh Deah* 151.12. See also the *Kitzur Shulchan Aruch*, 167.13.

⁵³ See, for example, B. Ta. 16a; Beit Yosef, *Orach Chayim*, 579.3; *Mishnah Berurah*, 579.14 and 699.13; and more recently *Responsa Tzitz Eliezer*, 14.91.

⁵⁴ See *SA Yoreh Deah* 344.1ff.

⁵⁵ *Ateret Paz*. I:3. *Even HaEzer* 5:u're'eh gam.

Comfort Mourning Gentiles

In addition to eulogizing gentiles, Jews are to comfort living and mourning gentiles. Early texts, like the Tosefta and the Jerusalem Talmud, teach that Jews should comfort (*menachim*) gentile mourners for the sake of the ways of peace.⁵⁶ It should be noted that the Jerusalem Talmud's versions of this rule mention this practice in conjunction with comforting mourning Jews, whereas the Tosefta mentions comforting gentiles without reference to comforting co-religionists. As will be seen, this distinction is not insignificant.⁵⁷

In eleventh century Spain, R. Yitzhak b. Yehuda ibn Gahyat rules that Jews should comfort mourning gentiles along with ('*im*) mourning Israelites for the sake of peace.⁵⁸ His is the only use of "along with;" all others, that is, the Jerusalem Talmud's versions, use "and" (*v'*) when mentioning co-religionists. Later scholars never use the "along with" phrase, and only Rashba invokes the Jerusalem Talmud's "and" version.⁵⁹ All other instances of this practice to comfort mourning gentiles occur without any mention of comforting fellow Jews.

Maimonides mentions this practice only once, and, curiously, not in the same place he lists other activities like visiting and burying as rabbinically obligatory (*tziv'u*).⁶⁰ The Rosh, unlike Rashba his teacher, does not cite the Jerusalem Talmud. Instead he asserts that the rabbis ruled (*tannu rabanan*) that Jews were to comfort mourning gentiles for the sake of peace. His citation of the Tosefta, however, is truncated and excludes its mention of comforting gentiles.⁶¹ R. Jacob haCohen of fourteenth century France and Spain twice mentions the practice of comforting gentile mourners and both times without inclusion of co-religionists.⁶² R. Jacob ben Asher, also of fourteenth century Spain, perhaps had a manuscript of the Babylonian

⁵⁶ T. Git. 3:14; Y. Dem. 4, 24a, Y. Git. 5, 47c, Y. A.Z. 1, 39c.

⁵⁷ Even though Meir visits (*l'heraot lo fanim*) his gentile friend Avnimos the Garadite when the latter's parents died (Ruth Rabbah 2.13—a sixth century text), the rationale "for the sake of peace" is not mentioned.

⁵⁸ Halakhot Ritz Giyat. Evel 257.

⁵⁹ *Hidushei HaRashba* on B. Git. 61a. Interestingly, Ritba explicitly cites the Jerusalem Talmud when discussing issues of gentile burial but omits reference to comforting mourning gentiles. See *Hidushei HaRitba* on B. Git. 61a.

⁶⁰ MT *Evel* 14.12. Contrast with MT *Melachim U'Milchamoteihem* 14.12.

⁶¹ Rosh on B. Git. 5.23.

⁶² *Kol Bo* 114: *ein mefanin; Orchoi Chayim, Avel*:31.

Talmud different from other versions, because he cites the rule “we bury gentiles along with (*im*) Jews and we comfort their mourners for the sake of peace,” and then, as noted above, changes Rashi’s verb “engage in” (from *mit’asek* to *mishtadel*).⁶³ Karo includes this practice twice and both times does not mention co-religionists.⁶⁴ R. Chaim Palache in Turkey quotes Karo’s *Shulhan Aruch* as do other later decisors, but none take up the issue of comforting gentiles directly.⁶⁵

“Because” Reflections

The above survey of activities related to gentile mortality raises several interrelated issues. The first regards the nature of these rules, and the second, the nature of the rationale. Inasmuch as these rules function as *takkanot*—so the *Encyclopedia Talmudit* asserts—they serve as sources of law enacted by sages who were responding to societal conditions.⁶⁶ This assumption is not unreasonable in light of the historical circumstances mentioned above surrounding the sages.⁶⁷ To the degree these sages were responding to concrete historical stimuli, it might be useful to turn to Jürgen Habermas’s notion of “practical discourse” so as to understand better the nature of the rationale they employ.

Practical discourse is not a procedure for generating justified norms but a procedure for testing the validity of norms that are being proposed and hypothetically considered for adoption. That means that practical discourses depend on content brought to them from outside. It would be utterly pointless to engage in a practical discourse without a horizon provided by the life-world of a specific social group and without real conflicts in a concrete situation in which the actors consider

⁶³ Tur, *Yoreh Deah* 151. Neither the Vatican 130 nor 140 manuscript editions have this version; the printed Vilna edition similarly does not.

⁶⁴ SA *Yoreh Deah* 151.12 and 267.1.

⁶⁵ *Hayim Biyad*. 125. See also *Responsa Yehudah Ya’aleh, Yoreh Deah* 269.

⁶⁶ *Encyclopedia Talmudit*, vol. 7, p. 716. See Hecht, pp. 112–114. See also Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia, 1994), vol. II, p. 504.

⁶⁷ Historiography of medicine, health, and Jews supports this assumption. See, for example, Sylvie-Anne Goldberg. *Les Deux Rives du Yabbok: la maladie et la mort dans le judaïsme ashkénaze* (Paris, 1989); Manfred Waserman and Samuel S. Kotteck, eds., *Health and Disease in the Holy Land: Studies in the History and Sociology of Medicine from Ancient Times to the Present* (Lewiston, 1996); and Natalia Berger, ed., *Jews and Medicine: Religion, Culture, Science* (Philadelphia, 1995).

it incumbent upon them to reach a consensual means of regulating some controversial social matter.⁶⁸

The practical issue at hand is the continuous confrontation of Jews with gentile mortality and mourning. The significant and recurrent trope throughout the millennia is the invocation of the rationale *mipnei darkhei shalom*. The provenance of this rationale is apparently embedded with the complicated genesis of the Tosefta and little can be said about *why* this rationale was generated in the first place.⁶⁹ But inasmuch as later sages pick up this rationale and deploy it in their recapitulations of Jewish relations with gentiles, this rationale functions as a candidate reflecting the values of the Jewish community across time.⁷⁰ “For the sake of the ways of peace” reflects an enduring intersubjectively valid norm: it is a norm that speaks *to* a particular historical moment when it is articulated, and it speaks *beyond* that moment.

To the degree that this rationale speaks to and beyond a particular moment, it reflects a norm promoting the good life. According to Habermas, “ideas of the good life are not something we hold before us as an abstract ‘ought.’ Rather, they shape the identities of groups and individuals in such a way that they form an intrinsic part of culture or personality.”⁷¹ *Mipnei darkhei shalom* does not remain only as an external (or eternal) goal, a *telos*, toward which Jews are to strive. Rather, *mipnei darkhei shalom* is also an expression of intrinsic traits and values already extant within the Judaic tradition and instantiated within its ongoing communities and contemporary members. And yet there is something about *mipnei darkhei shalom* that remains akin to “an abstract ‘ought.’” This phrase rationalizes forms of life that reflect a universalist morality. In Habermas’ words, “universalist moralities are dependent on forms of life that are rationalized in that they make possible the prudent application of universal

⁶⁸ Jürgen Habermas. *Moral Consciousness and Communicative Action* (Cambridge, 1990), p. 103.

⁶⁹ On the Tosefta, see Günter Stemberger, *Introduction to the Talmud and Midrash*, Second Edition (Edinburgh, 1996), pp. 149–163.

⁷⁰ “Enduring acceptance of a norm also depends on whether, in a given context of tradition, reasons for obedience can be mobilized, reasons that suffice to make the corresponding validity claim at least appear justified in the eyes of those concerned. Applied to modern societies, this means that there is no mass loyalty without legitimacy.” Habermas (1990), p. 62. On “candidacy,” see p. 104.

⁷¹ Habermas (1990), p. 108.

moral insights and support motivations for translating insights into moral action.⁷² *Mipnei darkhei shalom* both makes possible the concrete application of universal moral insights (e.g., *kavod hamet*), and supplies motivation for translating these insights into moral action (e.g., visiting the sick, burying the dead, eulogizing the dead, comforting mourners). In this way, these *takkanot* justified by the rationale “for the sake of peace” reflect sensibilities already embedded in the Judaic tradition *and* express an idealized form of behavior or universalist morality.

This conclusion challenges prior scholarship on this rationale. Some scholars argue that this rationale articulates (only) a universalist sensibility in light of the belief that humanity is *imago Dei* or *betzelem elohim*—created in the image of God.⁷³ Some follow Maimonides’ assertion that “the ways of peace” derives from the verse “God’s mercy is on all [God’s] works” and thus see it as “an ethical mandate of *imitatio Dei*.”⁷⁴ Still others consider this rationale as “a theologically grounded principle” of universalism.⁷⁵

However attractive this line of reasoning may appear, it is incomplete inasmuch as it elides the historical reality of the speakers invoking this rationale. It should be noted that the sages discussing these issues are, for the most part, speaking from socioeconomic contexts of scarcity and from geopolitical periods of turmoil if not outright persecution. Jews did not have a monopoly on health care nor on burial practices. On the contrary, most often Jews were as resource-strapped as their gentile counterparts. And yet Jews did (and of course, still do) have a vested interest in public health. Attending to sick gentiles and burying dead gentiles are vital practices to stem outbreaks of lethal diseases generally, despite the increased risk such activities might pose to those particular Jews doing the actual deeds. On the other hand, assisting gentiles burying their own gave political fuel to Jewish arguments against being persecuted and alienated by gentile authorities: for without such protected interactions between Jews and gentiles, Jews could not reasonably be expected to offer

⁷² Ibid., p. 109.

⁷³ Katz, *Exclusiveness and Tolerance*, pp. 59–60.

⁷⁴ MT *Melachim U’Milchamoteihem* 10.12 and the Ps. 145:9; see Yitzhak Blau, “The Implications of a Jewish Virtue Ethic,” in *The Torah u-Madda Journal* 9/2000, p. 27. See also Wurzbarger, “*Darkei Shalom*,” p. 84.

⁷⁵ Novak, *Covenantal Rights*, pp. 151–152.

their services. Providing such critical assistance was as shrewd politically as it was for public health.⁷⁶

Another reason the conclusion that *mipnei darkhei shalom* articulates only a universalist sensibility is incomplete is that it does not take into full consideration the fact that this rationale is applied to many behaviors regarding intra-Jewish relations. For example, determinations regarding who reads the Torah first in synagogue, how an *eruv* in a courtyard is to be maintained, managing water resources, and general neighborliness often are based on this rationale.⁷⁷

An altogether different conclusion is that this rationale articulates a purely pragmatic sensibility: do X so as to protect the Jewish community, or do X so as to prevent increasing animosity between Jews and gentiles.⁷⁸ If this were the case, then these *takkanot* would be better served by the rationale *mipnei eivah*—for the sake of (preventing) animosity. In certain cases of Jewish-gentile relations, some sages put “prevent animosity” in lieu of “for the sake of peace.”⁷⁹ But at least in regard to the behaviors concerning gentile mortality and mourning, this replacement does not occur. Instead, when animosity is invoked—or perhaps “for the sake of the peace of the kingdom”—it complements “for the sake of peace.” Inasmuch as concern about preventing animosity articulates pragmatism, it is difficult to say that “for the ways of peace” as it applies to these activities similarly expresses pragmatism. It appears, then, that in these instances where multiple rationales are invoked, “the ways of peace” as a rationale expresses something more than enlightened self-interest.⁸⁰

Irrespective of whether the rationale reflects pragmatic or universalist concerns, these rules accompanied with *mipnei darkhei shalom* function as *takkanot*, that is, as laws. In contradistinction to laws that explicitly detail ramifications for transgression (e.g., punishments meted out by human courts), none of these laws includes, or points toward, consequences for noncompliance. In short, these *takkanot* articulate what the sages considered as lawful behavior. This issue raises the question regarding when a lawful behavior is something “desirable”

⁷⁶ See, for example, R. Moshe Isserles, *Darkhei Moshe on Yoreh Deah* 251.1.

⁷⁷ See a robust list of these behaviors in the *Encyclopedia Talmudit* 7:716ff.

⁷⁸ See Rosenm, op. cit., and Christine Hayes, *Between the Babylonian and Palestinian Talmuds* (New York, 1997), p. 238, n. 46.

⁷⁹ See Wurzbarger, “*Darkei Shalom*,” and Crane, *Mipnei Darkhei Shalom*.

⁸⁰ See Schiff, op. cit., p. 40, in regard to the mixture of interests this rationale reflects.

or just something “permitted.” Of course, it is possible that a behavior is both desirable and permitted. As it stands, the “bite” of these particular laws remains aloof. Whereas ascertaining whether and to what degree particular Jewish communities adhered to these laws is difficult, the textual evidence surveyed above shows that at least these laws and their attendant rationales were deemed worthy of ongoing inclusion in Judaic legal documents. Linking this evidence with Habermas’ arguments about norms in practical discourse, it appears that “for the sake of peace” gives expression to and reflects an ongoing, intersubjectively validated norm in the Judaic tradition writ large.

Despite this rationale’s ambiguity, its ongoing presence in Rabbinic legal literature in connection with this moment of gentile vulnerability and mortality underscores the profound importance this moment has to the relationship between Jews and gentiles—as human beings. It is not that Jews are to pound the pavement shouting to their gentile neighbors to bring out their dead so the Jews can do the dirty work of actually burying corpses. Nor is it that Jews are to celebrate at the passing of every gentile. Rather, Jews are to include in their repertoire of legally sanctioned interactions with gentiles that which enables them to be humanly present in gentiles’ times of need. In so doing, Jews manifest for gentiles—the living and the dead—the nature of Jewish passion for life as embodied in the *mitzvah* of *kavod hamet*, of honoring the dead. Perhaps, through death the living can come to know the ways of peace.