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ANALYSIS OF THE RABBINIC USAGE OF “BECAUSE OF THE WAYS OF  
PEACE”

by

Bruce Roth

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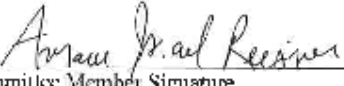


Department of Jewish Studies

Towson University  
Towson, Maryland 21252

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This is to certify that the thesis prepared by: Bruce Roth entitled "Analysis of the Rabbinic usage of 'Because of the Ways of Peace'" has been approved by the thesis committee as satisfactorily completing the thesis requirements for the degree MA in Jewish Studies.

 Chairperson, Thesis Committee Signature	Dr. Ben Fisher Type Name
	<u>12/9/2014</u> Date
 Committee Member Signature	Dr. Avram Reisner Type Name
	<u>12/11/2014</u> Date
 Committee Member Signature	Dr. Robert Tappan Type Name
	<u>12/10/2014</u> Date
 Janet V. DeFino Dean Graduate Studies	
<u>12/15/14</u> Date	

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## Abstract

Rabbinic Literature highlights the pursuit of a peaceful and just society. This paper argues that contemporary modes of discourse have utility in understanding the social problems that the Rabbis sought to solve. By reading and interpreting a specific rabbinic decree justified as *Mipnai Darchei Shalom* “because of the ways of peace” (MDS), this paper demonstrates that the understanding of specific rabbinic laws can be enhanced by using contemporary terms such as “groups”, “power” and contemporary definitions such as “human, cultural and individual values”. The desire to minimize and resolve social conflict sheds light on the sages pursuing an ordered society, much as society aspires to do today.

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## Introduction

This thesis will analyze the sources in which the term *Mipnei Darchei Shalom*, “because of the ways of peace” (MDS), was used in the Mishnah, Tosefta, Jerusalem (*Yerushalmi*) Talmud and Babylonian (*Bavli*) Talmud. The collective use of the term MDS indicates that these rabbinic decrees seek to resolve or prevent conflict. This paper will demonstrate that the rabbinic endeavor to promote peace and harmony using MDS decrees presupposed and incorporated the interactions of three groups. Group one, consisting of individuals who largely possess shared core values; group two, consisting of individuals who only partially share those values, and group three, consisting of individuals who possess opposed core values. MDS was applied in order to promote peaceful interactions both within group one and between them and group two or three. In all three group cases MDS was applied in order to promote peaceful interactions.

Previous analyses of MDS have overly focused on relationships between Jews and Gentiles, which only apply to a small number of the cases addressed by MDS.<sup>1</sup> A close reading of MDS in the Mishnah, Tosefta, *Yerushalmi* Talmud, and *Bavli* Talmud

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<sup>1</sup> Michael Matthew Pitkowsky, “*Mipnei Darchei Shalom* (Because of the Paths of Peace) and Related Terms: A Case Study of How Early Concepts and Terminology Developed from Tannaitic to Talmudic Literature” (PhD diss., Jewish Theological Seminary, 2012).

will be employed, followed by an examination of the Midrash to confirm continuity of the use of the term MDS. The works of Meiri, Levinas, and Halbertal will also be used in order to assert that biblical law primarily applies to groups one and two, namely individuals united in some shared beliefs. MDS encompasses groups one and two, and expands the circle to also include group three, even individuals with opposing beliefs. The use of MDS in these rabbinic texts thus leads to the following conclusions:

Conclusion 1: The Sages' sensitivity to the Other emphasizes the importance of tolerance, through the use of MDS, to promote the common good for all people.

Conclusion 2: MDS moves beyond tolerance towards inclusion for purposes of social welfare and social harmony. The MDS interactions with group three create shared values, in which barriers are removed and group three can ultimately become part of group two.

Conclusion 3: The sages recognized that a well ordered society possesses a set of values that address human, cultural and personal needs. MDS applies across all three of these dimensions. This sheds light on modernity and the search for balanced individual and communal values.

Nachmanides, (1194-1270), explains that the verse in Deut 6:18, "and you shall do that which is right and good in the eyes of God," authorizes both legislators and individuals to continually refine their societies.<sup>2</sup> He explains the principle that the Torah could not possibly list every norm and mannerism that would regulate commercial and

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<sup>2</sup> Nachmanides, *Commentary on the Torah*, trans. Charles Chavell (New York: Shilo Publishing House, 1976), Deut. 6:18, vol. 5, 88.

ethical interaction between neighbors and across the entire spectrum of society.<sup>3</sup> Thus, the verse in Deut 6:18 is a guiding principle. He writes:

Our Rabbis have a beautiful Midrash on this verse. They have said *that which is right and good* refers to a compromise and going beyond the letter of the law. The intent of this is as follows: At first he [Moses] stated that you are to keep His statutes and His testimonies which He commanded you, and now he is stating that even where He has not commanded you, give thought, as well, to do what is good and right in His eyes, for He loves the good and the right. Now this is a great principle, for it is impossible to mention in the Torah all aspects of man's conduct with his neighbors and friends, and all his various transactions, and the ordinances of all societies and countries. But since He mentioned many of them such as *Thou shalt not go up and down as a talebearer, Thou shalt not take vengeance nor bear any grudge, neither shalt thou stand idly by the blood of your neighbor, Thou shalt not curse the deaf, Thou shalt rise up before the hoary head*, and the like, He reverted to say in a general way that, in all matters, one should do what is good and right, including even compromise and going beyond the requirements of the law... Thus [a person must seek to refine his behavior] in every form of activity, until he is worthy of being called 'good and upright.'<sup>4</sup>

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<sup>3</sup> Ibid., 88

<sup>4</sup> Ibid., 88



The idea expressed in the verse in Deut 6:18 empowers the sage to introduce norms that enhance civic, ethical and religious behavior. The concept of the rabbinic decree is derived and mandated by the biblical directive.

The Torah mandate to rabbis to create norms, personal and communal, that express biblical values, can be understood in contemporary terms by the following text from a modern teacher of Talmud. Max Kadushin writes: “Being non-definable, the value concepts are extremely flexible and they can, therefore, respond to and express the differentia of human personalities. At the same time, the value term does convey an abstract, generalized idea of the concept it represents, and this general idea is common to all members of the group. The complex of value-concepts as a whole is hence meaningful enough and colorful enough to make of the individuals who employ it a unified group, a society with a clearly recognizable character.”<sup>5</sup> The value concepts acquired from the Torah are applied communally via rabbinic decrees and personally by all participating members. Kadushin sensitizes the reader to the aspect of living law, in which the rabbinic enterprise seeks to take biblical values and apply them to society in order to address different social needs. This concept will be quite evident in the readings of MDS, which address the value concept of minimizing and resolving social conflicts as quickly as possible.

Pitkowsky recently wrote a dissertation in which he compared the term MDS with two related terms, *mishum eivah*, “in order to prevent hatred,” and *hillul hashem*,

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<sup>5</sup> Max Kadushin, *The Rabbinic Mind*, (NY: Bloch Publishing Co., 1972), 3.

“desecration of the divine name.”<sup>6</sup> He concluded that the common thread among all three terms was an expression of the high value that the sages placed on relationships between groups.<sup>7</sup> Recent studies have tended to focus on Jewish-gentile relations, which is only one category of many *takanot* rationalized as MDS.<sup>8</sup> This study attempts to build on current works, such as those of Crane and Pitkowsky.<sup>9</sup> Focusing exclusively on MDS, can the text be explicated anew by understanding both the problem to be solved and the legal/social/ethical tools and modes of thought that the sages developed. This paper will apply contemporary approaches to see the texts more clearly by building on Pitkowsky’s organization of the material,<sup>10</sup> and his understanding that the sages sought to reduce conflict by creating norms that solve problems.

## CHAPTER ONE: Readings

This section presents the texts that contain the rabbinic decrees derived from the principle MDS. The specific cases where the term is used will be presented and analyzed in a close textual analysis in this section and then more broadly in chapter two using contemporary language. The texts will be addressed in the following order: MDS in the

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<sup>6</sup> Pitkowsky, *"Mipenei Darkhei Shalom"*

<sup>7</sup> Ibid.

<sup>8</sup> Jonathan Crane, “Because...: Justifying Law/Rationalizing Ethics,” *Journal of the Society of Christian Ethics* 25, no. 1 (2005): 55-77.

<sup>9</sup> Jonathan Crane, “Jews Burying Gentiles,” *Review of Rabbinic Judaism* 10, no. 2 (2007): 145-61.

<sup>10</sup> In particular see his summary pg. 267: “The role of the terms that I examined was to prevent enmity or to actively promote peaceful relations. This role can be divided further into the following categories. 1. The justification of a ritual law or practice when no law already existed; 2. The justification of a law or practice whose purpose was to protect an individual or group; 3. The justification of a law or practice that did not overturn a prohibition, but may have been against the accepted practice; 4. The justification of overturning an already existing law in order to promote better relations between groups; 5. The rationalization of an already existing law when no explanation or justification had previously been given for this law.”

Mishnah, MDS in the Tosefta, MDS in the Palestinian Talmud, and MDS in the Babylonian Talmud.

The Mishnah and Tosefta are Tannaic texts, namely texts written by scholars that lived in the 1<sup>st</sup> to the 3<sup>rd</sup> century CE.<sup>11</sup> The Talmud contains the Mishnah followed by the Gemara, which is an Amoraic text, namely a text written by scholars who lived up to the 6<sup>th</sup> century CE,<sup>12</sup> discussing the Mishnah. There are two Talmud texts, the Jerusalem Talmud (*Yerushalmi*) and the Babylonian Talmud (*Bavli*). The *Yerushalmi* was compiled earlier than the *Bavli*.<sup>13</sup>

### Mishnah

In *Gittin* 5:8, it is written:

The following rules were laid down in the interests of peace. A Priest is called up first to read the law and after him a Levite and then a lay Israelite, because of the ways of peace. An 'eruv'<sup>14</sup> is placed in the room where it has always been placed, because of the ways of peace. The pit which is nearest the [head of the] watercourse is filled from it first, because of the ways of peace. [The taking of] Beasts, birds and fishes from snares [set by others] is reckoned as a kind of robbery, because of the ways of peace. R. Yossi says that it is actual robbery. [To

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<sup>11</sup> H.L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash*, (Minneapolis MN: Fortress Press, 1992). 189-213

<sup>12</sup> Ibid. 189-213

<sup>13</sup> Ibid., 189-213

<sup>14</sup> The word *eruv* means to mix. By forming a common food dish households sharing a courtyard made the courtyard common property, which allowed them to carry on Shabbat.

take away] Anything found by a deaf-mute, an idiot or a minor is reckoned as a kind of robbery, because of the ways of peace. R. Yossi says: it is actual robbery. If a poor man glean on the top of an olive tree, [to take the fruit] that is beneath him is counted as a kind of robbery. R. Yossi says it is actual robbery. The poor of the heathen may not be prevented from gathering gleanings, forgotten sheaves, and the corner of the field, because of the ways of peace.<sup>15</sup>

The Mishnah informs us that there is a group of rabbinic *takanot* that emanates from a concern for peaceful relations. The seven cases in this Mishnah have a basic similarity. They involve interaction of at least two or more neighbors. Rashi, in his explication of the first case in the Mishnah, of the Cohen in the synagogue, invokes a term used in the Gemara, “*dlo letu l'intzuyei*,” “so that they will not come to argue.”<sup>16</sup> He, therefore, grounds the Mishnah in conflict avoidance. There must be orderly conduct in the synagogue, no one must argue about the order of who reads from the Torah therefore the order is set as Cohen, Levy, Yisrael.

The next case in the Mishnah teaches that a rule was established regarding placement of the *eruv*. A group of neighbors sharing a courtyard who form a common domain by preparing a common dish for the purpose of carrying within the courtyard on the Sabbath should not move the placement of the common food dish from place to place but keep it in its original home. Kehati's commentary on the *Mishnah* cites three

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<sup>15</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon (London: The Soncino Press, 1964), Gittin 5:8, 59a.

<sup>16</sup> *Babylonian Talmud*, trans. Adin Steinsaltz, (Jerusalem: Milta Books, 1993), Gittin 5:8, 59a, Rashi s.v. [Cohen koreh rishon Cohen reads first].

opinions: “The idea of suspicion is explained three ways: Rashi explained that if the residents came into the usual place and saw no loaf, they would suspect the residents of carrying without an *eruv*. Tosafot suggest that they would suspect the old residents of stealing the common loaf since it was not there. According to Maimonides, the reason is that the house where the *eruv* is placed does not have to contribute towards the bread, therefore moving causes conflict of deciding who will get it and not have to contribute”.<sup>17</sup> The reason for this teaching is to promote positive neighbor relations and avoid suspicious appearances.

The Mishnah now moves from religious ceremonial interaction to commercial interactions that might cause disagreements. In the third case, rules were established to prevent farmers from fighting over water. All farmers have rights to the water, but the order of filling cisterns is set by proximity to the channel. Those closest to the channel may divert the water and fill the cistern first.

The case of traps is also intended to establish a rule in order to minimize conflict. Well-delineated box traps or deep net traps represent clear cases of private ownership based on Torah law. This Mishnah adds a rabbinic MDS rule where the situation was less defined. Kehati uses the term “straight nets which have no receptacle” and can therefore not acquire possession for their owners, under biblical law.<sup>18</sup> The sages instituted the rule to avoid argument. Open or flat traps are rabbinically protected as private property and any animals caught in them belong to the trap owner MDS.

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<sup>17</sup> *Mishnah*, ed. Pinchas Kehati, trans. Edward Levin, (Jerusalem: Maor Wallach Press, 1996) Gittin 5:8, 77.

<sup>18</sup> *Ibid.* 77

The case of traps is followed by cases addressing property rights of the disabled, minors, poor and gentiles. Yet again, norms are set to avoid conflict and keep the peace. In order to promote healthy neighborly relations, biblical injunctions are extended to protect the rights of groups that are not covered by biblical law. Thus, even though “minors, idiots and deaf mutes” were not granted property rights biblically, the sages extended rights to them so that they would not argue or feel slighted by society.<sup>19</sup> Thus, if they found something that did not belong to anyone, they were granted ownership MDS. If something is taken against one’s will, it in effect becomes a violent and non-peaceful act, even if it is legal. MDS seeks to prevent this violence.

The next case in the Mishnah addresses the gleaner. The Torah provided for the poor by allowing them to enter private fields, after they have been harvested, in order to collect the leftover produce so that they would have food to eat: “When you reap the harvest of your land, you shall not reap all the way to the corner of your field, or gather the gleanings of your harvest. You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard; you shall leave them for the poor and the stranger; I the Lord am your God.”<sup>20</sup> Whatever the gleaner picked up and put in his pile belonged to him. The sages in our Mishnah enacted an additional MDS decree. To avoid arguments between two gleaners, olives or other fruit that one gleaner has knocked down but has not yet

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<sup>19</sup> Ibid. 79

<sup>20</sup> Leviticus 19:9-11

picked up and put in his pile are considered his property and cannot be collected by another gleaner.<sup>21</sup>

Likewise, in the final case of the Mishnah a poor gentile in need of food would indeed feel slighted if he was prevented from gleaning. Therefore the sages granted him access MDS.<sup>22</sup> There is a thematic connection among all of the cases in the Mishnah, namely the idea of an ordered civil society. The next Mishnah in *Gittin* 5:9 continues this theme: “A woman may lend to another who is suspected of not observing the sabbatical year a fan or a sieve or a handmill or a stove, but she should not sift or grind with her. The wife of a haber [family who has accepted stringent laws of purity] may lend to the wife of an ‘am ha-arez [family who has not accepted stringent laws of purity] a fan or a sieve and may winnow and grind and sift with her, but once she has poured water over the flour [and the food is subject to impurity] she should not touch anything with her, because it is not right to assist those who commit a transgression. All these rules were laid down because of the ways of peace. Heathens may be assisted in the sabbatical year but not Israelites, and greeting may be given to them, because of the ways of peace.”<sup>23</sup> The rabbinic understanding of neighborly relations is thus developed further in this *Mishnah*. One must share with a neighbor, even if the neighbor has different values or levels of religious behavior than you. In the first case, a person who has a neighbor who was not strict in observance of the sabbatical year must lend her kitchen utensils, but

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<sup>21</sup> *Mishnah*, Gittin 5:8, 79.

<sup>22</sup> Ibid.79.

<sup>23</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 5:9, 61a. This Mishnah also appears in Shiviit 5:9. The latter part of the Mishnah appears in Shiviit 4:3

must not prepare food with her since the food may be prohibited due to the Sabbatical year. During the Sabbatical year, the fields rest and it is prohibited to work the fields and harvest produce.<sup>24</sup>

Kehati adds: “even though these utensils might be used for the preparations of foodstuffs from the prohibited produce of the Sabbatical year and it is forbidden to assist those who commit transgressions, the Sages nevertheless permitted loaning her these utensils, because of the ways of peace, on the assumption that she will use them for things which are permitted”.<sup>25</sup> The second case in this Mishnah involves helping a neighbor who is not stringent in observing the laws of purity. The Mishnah teaches that all efforts up to the point of doing something prohibited must be done. In this case the person who is very strict with the laws of purity may assist his/her non strict friend in preparing the food up until the point that it could acquire impurity.<sup>26</sup>

The Mishnah thus clarifies the norm by asserting that one should keep the peace up until the point of a prohibition. One may assist a transgressor in normal day to day life and should not shirk from neighborly duties, but one may not assist a transgressor in a prohibited activity. The Mishnah then discusses a third case, in which to foster good relations with gentiles it is permitted to assist them during the sabbatical year. In this Mishnah one is encouraged to help one’s neighbor as much as possible without transgressing. This is further expanded by the topic of greetings, which directs that one

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<sup>24</sup> Leviticus 25:1-7. See also Ex.23:10, Deut.15:1.

<sup>25</sup> *Mishnah*, Gittin 5:9, 80

<sup>26</sup> *Ibid* 80



must greet and give well wishes to everyone.<sup>27</sup> Greeting the transgressing Jew is an MDS directive.

The sages instituted rules that promoted good neighborly relations. This theme is repeated in tractate *Shviit* where Mishnah 4:3 states: “Newly plowed lands may be rented from a non Jew in the Seventh year, but not from a Jew. And one may encourage non Jews in the seventh year, but not Jews. And one greets them for the sake of peace.”<sup>28</sup> The Mishnah in *Gittin* 5:9, *Shviit* 5:9, and in *Shviit* 4:3 here all mention greetings. Kehati teaches that if one may assist non-Jews in the Seventh year, it is unnecessary to state that one may greet them. Rather, the Mishnah means to state that even on their holidays, which they celebrate in honor of their idols, one may offer them greetings MDS.<sup>29</sup> The importance of being neighborly overrides any concern of affirming idol worship. One greets his neighbor to be friendly, not to affirm or object to his religious practices.

The next text in the Mishnah to mention MDS is in tractate *Shekalim*. The tractate deals with the laws of the half shekel that was collected in order to support the temple and purchase the daily sacrifices. The half shekel was collected from all: Priests, Levites and Israelites. The Mishnah 1:3 discusses the timing and the collections of the half shekel. If a person did not pay by a certain date, a pledge or collateral, *mashkon*, was exacted from Israelites and Levites until they paid the half shekel, “and one does not exact collateral from the Cohanim because of the ways of peace.”<sup>30</sup> The Cohanim were

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<sup>27</sup> Ibid 81

<sup>28</sup> *Mishnah*, *Shviit* 4:3, 51. See also Pitkowsky on this Mishnah pg.59.

<sup>29</sup> Ibid 51. See discussion of *Yerushalmi* in subsequent pages.

<sup>30</sup> *Mishnah*, *Shekalim* 1:3, 6-7.

awarded a privilege in order to promote their welfare as members of the community. This is not readily understood and will be discussed further in the reading of the *Yerushalmi*, where the possibility that it was a value in contrast to MDS is explored. The Mishnah describes a norm that is applied to the authorities interacting with a Cohen. In this Mishnah, the Cohen is exempted from the standard practice of pledges, which is a form of keeping the peace. Kehati assumes conflict avoidance: “So that those that collect collateral will not come to quarrel with them.”<sup>31</sup> In this case, the Mishnah assumes that the Cohen demands his privilege as a descendent of Aaron who can be counted on to pay the half shekel without a pledge or collateral. MDS prevents an argument and affords the Cohen an exemption. In any case, at this point in the discussion it belongs to an MDS category to preserve a peaceful society in which the Cohen is a member.

The reading of the sources in the Mishnah leads to the following conclusion: The sages sought to enhance relations among different groups. The annexation of non-Jews in the cases points to inclusion of the Other in a clear and straightforward way. In fact, looking at the Mishnah texts, it can be concluded that discrimination was to be avoided for the simple reason of keeping peace. The sages needed and wanted all parties to be at ease and in harmony, not through the strong dominating the weak, but rather through the strong finding a means of protection for the weak, such as minors and the disabled. MDS mandates the importance of civility and assisting your neighbor. However, MDS did not permit transgressions for the purpose of civility.

Tosefta

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<sup>31</sup> Ibid., 6-7.

Tosefta Gittin 3:13 states: “It was taught: a city that had Gentiles and Jews, the charity collectors collect from both and provide sustenance to the poor of both and visit the sick of both and bury the dead of both and console the mourners of both and protect the property of both because of the ways of peace.”<sup>32</sup> This Tosefta broadens the understanding of MDS further. The community is obliged to provide for the poor, sick and dead regardless of whether one is a Jew or a gentile. This also includes property protection for all members of society. MDS is used by the sages to promote a peaceful society. Notably, this reading does not mention Jewish governance of a city or a Jewish majority. It is the MDS mandate to cooperate unconditionally with any group, including those with values counter to Judaism, in the provision of services to the needy in order to promote social harmony.

The sages show how to be just by pursuing the ways of peace and civic order. This adds weight to the argument that tolerance of diversity was built into rabbinic life and thought. The Tosefta expands the definition of interacting parties to include entire communities. MDS has moved beyond two individuals accepting a norm that will minimize their conflict, to a much broader concept indicating that in the areas of charity, visiting the sick, burying the dead, and protecting property, communities must provide services to those who are in need. This represents an expansion both in the scope of MDS and in the duties and obligations of communities. The Tosefta expands the rabbinic MDS *takanah* into the area of communal concerns and functioning. Disparate groups, with

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<sup>32</sup> *The Tosefta*, trans. Jacob Neusner, (NY: Ktav Publishing, 1979) Nashim Gittin 3:13, 224.

potentially divergent values, are obligated by MDS to interact and coordinate delivery of services to the needy. This will be discussed further in chapter two.

The Tosefta in Chulin introduces an MDS *takanah* regarding the commandment (*mitzvah*) of *Shiluach Haken* (sending off the mother before you take the young).<sup>33</sup> The Tosefta text in Chulin 10:13 presents the following case: “[Wild] Doves in a bird house and doves in a loft carry obligation of *Shiluach Haken* (sending off the mother before you take the young) but are prohibited as theft [since they are on private property] because of the ways of peace.”<sup>34</sup> Here, the Tosefta presents a situation that two parties may view differently. The wild state of the bird, necessitating sending off the mother, implies it is not private property. Thus, anyone should be able to send the mother off and take the young. However, the birdhouse is private property and the property owner would claim that the offspring or the eggs belong to him. In order to resolve this conflict, the sages invoked MDS to prevent strife by clarifying the rules of private property, and did not allow a person to claim ownership of the eggs based on their wild state. Just as seen in the Mishnah, the sages enacted an MDS norm to settle an ambiguous case in order to keep neighbors from disputing with one another.

This is further demonstrated by our next source.

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<sup>33</sup> This commandment is derived from the following verses in Deut. 22:6-7: “If a bird’s nest chance to be before thee in the way, in any tree, or on the ground, whether they be young ones, or eggs, and the mother bird sitting upon the young, or upon the eggs, thou shalt not take the mother bird together with the young: but thou shalt surely let the mother go, and take the young to thee; that it may be well with thee and that thou mayest prolong thy days.”

<sup>34</sup> *Tosefta*, Kodoshim Chulin 10:13, 98

The use of MDS to promote harmony is further demonstrated in Tosefta Nedarim 2:7, which also mentions MDS as a rabbinic mechanism for mandating instances in which an individual who has vowed not to interact with someone else must engage in an interpersonal interaction.<sup>35</sup> MDS decrees a Cohen must fulfill all ritual obligations with a person from whom he is *mudar* (vowed abstinence). In a similar fashion, if someone has vowed not to interact with someone else, they still must visit this person if the individual is sick. This MDS decree is congruent with the model of a society whose primary values prioritize positive interpersonal interactions and civic decorum. An MDS decree takes precedence over a biblically valid vow, in order to promote visiting the sick.

The Tosefta Avodah Zarah 1:3 states that one should inquire after the well being of a gentile, even on a pagan holiday.<sup>36</sup> This case refers to neighbors who have divergent values, illuminating the notion that MDS seeks to maximize harmony among people who have different values.<sup>37</sup> MDS mandates greetings and interactions, and does not permit ignoring one's neighbor. In a similar fashion to the Mishnah texts, this Tosefta reinforces that people who live together in a society must greet each other.

The final two sources in the Tosefta are from Eruvin 5:11<sup>38</sup> and Peah 3:1.<sup>39</sup> The first source is a repeat of the law in which an *eruv* is not moved from the original place.

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<sup>35</sup> Ibid., Nashim Nedarim 2:7, 106.

<sup>36</sup> Ibid., Nezikin Avodah Zarah 1:3, 311.

<sup>37</sup> The Tannaim wrote in a historical era in which Jews lived amongst Roman and Greek pagans as well as Persians.

<sup>38</sup> *Tosefta*, Moed Eruvin 5:11, 93.

<sup>39</sup> Ibid., Zeraim Peah 3:1, 57.

In the second case in Peah, the Tosefta mentions a gleaner who is “not worthy of gleaning,” meaning he is known to have an interest in the crop and is therefore not eligible to glean.<sup>40</sup> Nonetheless, the MDS directive indicates that even though he should not glean, and is not eligible for gleaning, excessive conflict should be avoided and he is not prevented from gleaning. Once again, the primary concern is conflict avoidance as opposed to right and wrong. Embarrassing the ineligible gleaner publically or restricting him by force is simply counter to the entire enterprise of a society that focuses on feeding the poor and promoting civility.

In summary the Tosefta readings are very similar to the Mishnah, as demonstrated in table one.

Table 1. List of Mishnah and Tosefta Cases

Mishnah

Cohen in synagogue

Eruv

Water Rights

Open Traps

Property Rights of Minors and Deaf Mutes

Poor Person Gleaning

Gentile Gleaner

Lending Tools

Helping someone who might transgress with food preparation

Greeting transgressors

Greeting gentiles

Cohen exemption from half shekel pledge

Tosefta

Global MDS to take care of all poor, sick and dead

Wild Doves on private property

Cohen who vowed not to be with someone must do ritual with him

Person who vowed not to be with someone must visit him if sick

Greet Idolator on Holiday

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<sup>40</sup> Ibid.

Allow non eligible gleaner to glean

Table one lists the cases that the Mishnah and Tosefta addressed, which reveals both specificity and diversity. The sages operated across a broad range of social concerns, but the majority of cases appear to address instances in which two individuals might be in conflict, and present a peaceful resolution to preclude the problem. Table one shows us that the sages incorporated conflict avoidance as part of the broad goal of creating a harmonious society. The sages decreed that certain individuals or groups in need were eligible and had rights to glean, acquire property, or receive services in order to promote peace. In summary, the sages placed significant emphasis on resolving potential conflicts between parties before they begin, and extended this idea to marginalized groups that needed rights and recognition. The next phase of the analysis presents the Amoraic discussion of the above Mishnayot, followed by Amoraic texts that mention cases of MDS that are not mentioned in the Mishnah.

#### Jerusalem Talmud<sup>41</sup>

The Jerusalem Talmud tractate Shviit 4:3 analyzes the Mishnah: “Newly plowed lands may be rented from a non Jew in the Seventh year, but not from a Jew. And one may encourage non Jews in the seventh year, but not Jews. And one greets them for the

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<sup>41</sup> Citations in this section are from the *Yerushalmi* first printed by Daniel Bomberg in Venice 1523. The Library of Congress possesses an original copy, which was used. The format is: Chapter: Mishnah (folio column). There can be slight numbering differences between the Bomberg original and current Mishnah texts. This is noted regarding Gittin 5:8-9, which in Bomberg is Gittin 5:9-10. In this analysis Gittin 5:8-9 is used to be consistent with other sections, however the cited text uses Gittin 5:9-10. For tractates Dmai, Shviit, and Maaser Sheni, the following text was used: *Jerusalem Talmud*, ed. Nosson Scherman (NY: Mesorah Publications, 2002). For tractates Eruvin, Shekalim, Nedarim, Gittin, and Avodah Zarah, the following text was used: *The Talmud of the Land Of Israel*, trans. Jacob Neusner (Chicago: University of Chicago Press, 1991).

sake of peace.”<sup>42</sup> A Jew is not allowed to plow on the Seventh year, so one cannot rent land that he plowed to use after the Seventh year since the land preparation was a transgression. This is not the case with the non-Jew, who is not obligated by the laws of the Seventh year, hence it is permissible to contract to rent land from him on the Seventh year to grow crops after the Seventh year. The Jerusalem Talmud has an interesting discussion here debating the definition of the term encourage and the term greet. Two opinions debate the meaning of the term encourage: “Rabbi Chiyah and Rabbi Imi disagree. One said that one may say to the non-Jew ‘plow it well and I will take it from you after the Seventh year’, and the other said that it means that one may say to the non-Jew ‘may you be strengthened.’”<sup>43</sup> The discussion continues to explain the next passage in the Mishnah: “According to the one who said that encouraging means saying ‘plow it well and I will take it from you after the seventh year,’ what is meant by ‘one greets?’ It means that one may say to the non-Jew may you be strengthened. But according to the one who said that encouraging means saying may you be strengthened, what is meant by greet? It means that one may inquire about the peace of a Jew who does not observe the seventh year and wish him “peace be upon you.”<sup>44</sup> “May you be strengthened” is the term for wishing someone success, signifying a validation of the activity. The reluctance to wish success to the Jew who was violating the Seventh year occurs because he is

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<sup>42</sup> *Yerushalmi* (Venice: Daniel Bomberg, 1523) Shviit 4:3, (34d).  
*Jerusalem Talmud*, ed. Nosson Scherman (NY: Mesorah Publications, 2002) Shviit 4:3 (29a).

<sup>43</sup> *Yerushalmi*, Shviit 4:3, (35b).  
*Jerusalem Talmud*, Shviit 4:3 (29a).

<sup>44</sup> *Ibid.*



engaged in prohibited activity, but no such hesitation is in order for the non-Jew since he is not transgressing by working on the Seventh year. Thus, he is eligible for a wish of success, while the Jew is only greeted with “peace be upon you.”

An incident is then related: “Rabbi Chanina bar Pappa and Rabbi Shmuel bar Nachman happened upon one of those Jews who would plow during *Sheviit* (seventh year). Rav Shmuel said to him: “may you be strengthened”.<sup>45</sup> Here, Rav Shmuel wished him success, not just peace. Rabbi Shmuel bar Nachman<sup>46</sup> concluded that one should wish transgressors success as well as peace. This discussion incorporates gestures of civility into MDS, acknowledging the need to be courteous to someone who does not share your values. Rabbi Shmuel bar Nachman extends MDS further, and states that all greetings and well wishing must be bestowed on everyone including Jewish violators of the sabbatical year. Rabbi Shmuel bar Nachman interprets the Mishnah expansively, and allows one to wish success to the violating Jew. Rabbi Shmuel ben Nachman’s reading of the Mishnah set the standard that wishing one success will not encourage forbidden activity. Wishing someone well on all fronts, even if he is a transgressor, is an accepted way of promoting tolerance and good will and is not interpreted as positive reinforcement to the transgressor. On the contrary, if people greet each other they are likely to respect each other. Tolerance does not encourage transgression, but rather it enhances positive interpersonal relations.

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<sup>45</sup> Ibid.

<sup>46</sup> Strack, 97. Rabbi Shmuel bar Nachman was a student of Jonathan ben Eleazar. He was a third generation Palestinian Amora who twice travelled to Babylonia. Rabbi Chanina was his student.

The *Yerushalmi* Mishnah *Shiviit* 5:9<sup>47</sup> continues the discussion of giving aid to neighbors who have different norms, in regards to lending support to those who might be committing transgressions:

A woman should lend her friend who is suspected of violating the laws of *Shiviit* (Sabbatical year) a sifter, a sieve, a handmill and an oven but may not sort or grind with her. The wife of a family who has accepted stringent laws of purity may lend to the wife of a family who is not strict on laws of purity, a sifter and a sieve and may sort and grind and sift with her but once water has been added (and the food is subject to impurity) the wife who is stringent on laws of purity must not assist any more, for one may not lend support to those who are committing a transgression. And all these were stated only because of the ways of peace. One may lend support to idolators who work the land on the sabbatical year but not to Jews who do the same. One may inquire into their welfare and greet them (i.e. the transgressing Jew and Gentile working the field) because of the ways of peace.<sup>48</sup>

The Mishnah stated that if there is a possibility that the activity is permitted, then one is obligated to be helpful in order to promote peace and neighborly relations, but if not one should not interact. A discussion of this source takes place in the Jerusalem Talmud:

“Rav Z’eira stated in the presence of Rav Mana: <sup>49</sup> The Mishnah is discussing a case where the friend does not specify, [that the utensil will be used to process grain or flour]

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<sup>47</sup> *Yerushalmi* *Shiviit* 5:9, (35d).  
*Jerusalem Talmud*, *Shiviit* 5:9 (40b).

<sup>48</sup> *Ibid.*

<sup>49</sup> Strack, 90-93. Rav Zeira was a first generation Babylonian Amora, and Rav Mani was a second generation Amora. They both lived in Yohanan’s era.

where, however, the friend does specify that it will be used for these purposes she may not. Rav Mana said to Rav Z'eira: But [with utensils such as these] is not 'unspecified' the same as 'specified.' Rav Z'eira responded 'without specified' I can say the sifter to count money, the sieve to sift sand, the mill to grind herbs and the oven to store bundles of flax."<sup>50</sup> If the neighbor states that it will be used for prohibited activity, one is not allowed to be neighborly and offer support. MDS seeks to keep the peace, but not to assist in transgression. The debate concludes that MDS mandates lending tools unless one knows for sure they will be used for prohibited activity. Rav Z'eira clarifies our understanding of the Mishnah, but there is no change in the understanding of MDS.

The discussion in the *Yerushalmi* explores whether conflict avoidance applies implicitly to previous Mishnayot that do not mention MDS explicitly: "Rabbi Yose bar Chaninah inquired: was this stated with regard to all the rulings in the entire chapter or was it stated in regard to this ruling only? The Rabbis of Caesarea said in the name of Rabbi Yudah bar Titas: From that which the Mishnah in Tractate taught this ruling only, this tells us that it was stated with regard to this ruling only."<sup>51</sup> Rabbi Yose addresses the issue of whether MDS decrees could be applied to other rulings without mentioning MDS. Once the importance of conflict resolution has been established, perhaps it applies to many other rabbinic decrees mentioned in this chapter that deal with social interaction that do not mention it. The discussion here concludes that the rationale of promoting MDS is specific to the cases mentioned.

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<sup>50</sup> *Yerushalmi*, Shviit 5:9, (36a).  
*Jerusalem Talmud*, Shviit 5:9 (41a). Also in Gittin 5:9.

<sup>51</sup> *Ibid.*

The Mishnah in Tractate Eruvin discusses the types of sharing that create common domains that allow carrying on the Sabbath. A common courtyard becomes shared property through an *eruv*, a dish to which everyone contributes. In Tractate Eruvin 3:2, the Mishnah discusses what foods may be used for the common food dish that will constitute the *eruv*. It also mentions that the carrier or deliverer of the *eruv* must be a responsible party. There is no mention of MDS in this Mishnah. The *Yerushalmi* Gemara relates the following: “Said Rabbi Yehoshua ben Levi: For what purpose do they prepare a meal of comingling for a courtyard (*eruv hazerot*)? It is for the sake of peace. There was a case of a woman who was on bad terms with her neighbor. She sent her *eruv* with her son. The other woman took him and hugged and kissed him. He went and told his mother. She said: is this how she loved me and I did not know. They became [good] friends [again]. This is in line with the following verse of scripture ‘her ways are ways of pleasantness and all her paths are peace’ (Prov 3:17).”<sup>52</sup> This is an interesting case in which a story about the preparation and delivery of an *eruv* created harmony and peace between two estranged women, and is used as a rationale for why an *eruv* is prepared. This approach, including quoting the verse in Proverbs, allows one to ethicize communal activity as a method of promoting peaceful relations. Rabbi Yehoshua ben Levi (RYBL), the narrator, was a first generation Palestinian Amora, which places this ethical view very close in time to Tannaic influence and thought.<sup>53</sup> It is clear that communal activities can

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<sup>52</sup> *Yerushalmi* Eruvin 3:2 (20d)

*The Talmud of the Land Of Israel*, trans. Jacob Neusner (Chicago: University of Chicago Press, 1991). Eruvin 3:2, 96. Neusner translates Rabbi Yehoshua as RYBL.

<sup>53</sup> Strack, 92. Rabbi Yehoshua ben Levi lived in Lydda. He was one of the most eminent Amoraim of Palestine in the first half of the third century.

have an integrating effect, thus grounding the enterprise in rational pragmatism that is enhanced in import by the biblical summons mentioned in Proverbs “all her paths are peace.”<sup>54</sup> The thought process that seeks to promote peace can be very broad. However, as shown by the specificity of the cases in the Mishnah and Tosefta, the category MDS is not applied to every good act or every value system. The specific focus of the term grounds the Talmudic literature in cases that address two or more individuals or groups viewing a situation from potentially conflicting perspectives. The presentation of RYBL’s story expands our understanding of MDS as part of a global pursuit of peace.

The discussion in the *Yerushalmi* regarding the Mishnah in Eruvin 6:7 provides further clarification regarding the common dish that makes courtyards a communal domain. The Mishnah teaches: “Brothers who ate at their father’s table, but who slept in their respective homes, require an *eruv* for each of them [to carry in the common courtyard]. Therefore, if one of them forgot and did not prepare an *eruv*, he annuls his right [to carry in the common courtyard]. Under what circumstances? When they bring their *eruv* to some other place; but if the *eruv* was brought to them, or if there are no other residents in the courtyard, they do not have to prepare an *eruv*.”<sup>55</sup> No mention is made of MDS in the Mishnah. The discussion in the Gemara quotes the Mishnah from Gittin and Tosefta Eruvin that were discussed earlier in this analysis, regarding the MDS rule “They

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<sup>54</sup> Many modern writers such as Levinas and Stone approach reading the Talmud at large in a pietizing or ethicizing method. This will be discussed in the second chapter.

<sup>55</sup> *Yerushalmi*, Eruvin 6:7 (23d).  
*The Talmud of the Land Of Israel*, Eruvin 6:7, 98.

keep an eruv in its original place because of the ways of peace.”<sup>56</sup> In this source, no differing understanding of MDS is presented.

In similar fashion, the Mishnah in *Eruvin* 7:6 discusses how to make a partnership in an alleyway to create the common domain.<sup>57</sup> No mention is made of MDS, but the mechanism of establishing a partnership is achieved by having a common meal in which all residents are granted possession, and of which they must take possession either themselves or through a valid emissary. The Gemara in the *Yerushalmi* quotes the discussion that if a child understands the difference between a stone and a nut, he is granted property ownership rights because of MDS.<sup>58</sup> The relevance here is that this concept would allow the qualified child to deliver the common meal. The sages, using MDS, granted property rights to the child that possessed awareness of the concept of property. In a similar fashion, a child who knows what property rights are and what an *eruv* is can be the valid emissary to deliver the *eruv* and take possession, under rabbinic law, on behalf of his family.

In *Yerushalmi Eruvin*, the discussion in the Gemara regarding Mishnah 7:9 again quotes the RYBL story,<sup>59</sup> and the understanding of MDS remains the same. The Gemara in *Yerushalmi Shekalim*<sup>60</sup> adds a case that broadens MDS. The Mishnah 1:3<sup>61</sup> discusses

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<sup>56</sup> Ibid.

<sup>57</sup> *Yerushalmi*, Eruvin 7:6 (24c).  
*The Talmud of the Land Of Israel*, Eruvin 7:6, 220

<sup>58</sup> Ibid.

<sup>59</sup> *Yerushalmi*, Eruvin 7:9 (24cd).  
*The Talmud of the Land Of Israel*, Eruvin 7:9, 225.

<sup>60</sup> *Yerushalmi*, Shekalim 1:3 (45d).

who is obligated to give the half shekel and how it was collected. Pledges (*mashkon*) were exacted from Levites, Israelites, proselytes, and freed slaves who had not yet paid, but not from Priests MDS. The *Yerushalmi* discusses the topic of exempting priests from the pledge MDS, and offers a new explanation. The case in the Mishnah is to be understood as it is “for the sake of honor” (*mipnei hakavod*).<sup>62</sup> This case introduces either a new category or a subcategory of MDS. This explanation seems to read as an anomalous case in regard to conflict avoidance and seems to suggest a different value. There are three interpretive options: 1. The statement in the Gemara, “for the sake of honor,” removes this decree from MDS and declares a different rationale. 2. The statement creates a new class of MDS reasons that have nothing to do with conflict avoidance. MDS is mentioned in the Mishnah, and the Gemara interpreted it as some form of societal stabilizing norm, in this case giving honor to the Cohen. 3. A hybrid that combines honor with conflict avoidance. Thus, option three suggests the priests expected recognition of their status as descendants of Aaron who had served in the Temple, and they expected to be trusted regarding the half shekel without having to give collateral. MDS included honoring them as part of an ordered society. This had the effect of promoting harmony by recognizing the Cohen as exempt from collateral and trusted to pay the half shekel. This discussion in the Gemara suggests that it is overly limiting to define MDS solely in terms of conflict avoidance and resolution. MDS acknowledges the honor of the Cohen, recognizes the rights of minors, and expands communal obligation to

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*The Talmud of the Land Of Israel*, Shekalim 1:3,18.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

provide healthcare, welfare and burial assistance to those who need them. MDS' purpose is to promote a society that interacts without hatred and fosters harmony, by introducing very specific policies.

The *Yerushalmi* in Tractate *Nedarim* mentions MDS. The tractate discusses the laws of vows. The biblical injunction to keep your word is defined and discussed in this tractate. There is a proper format for taking a vow. The first Mishnah 1:1<sup>63</sup> in the tractate teaches that diverging from proper form and using substitution language does not release one from keeping his word. There is no mention of MDS in this Mishnah. The Gemara mentions a discussion between Rabbi Yohanan<sup>64</sup> and Rabbi Eleazar regarding the punishment for someone who does not keep his vow. Rabbi Yohanan opines that people are not flogged for violating their own verbal prohibitions, even though the Torah mandates keeping your word. Rabbi Eleazar disagrees.<sup>65</sup> As part of the discussion they mention that in certain instances one can violate his vow in order to keep the peace: "Said Rabbi Yacob bar Aha: thus did Rabbi Yohanan reply to Rabbi Eleazar 'In accord with your view, in which you maintain that people are flogged on account of violating prohibitions [taken upon themselves by a verbal statement] 'for have we not learned he who is prohibited by vow from enjoying benefit from his fellow, goes in to visit him,' but

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<sup>63</sup> *Yerushalmi*, Nedarim 1:1 (36c).  
*The Talmud of the Land Of Israel*, Nedarim 1:1,13.

<sup>64</sup> Strack, 94. Rabbi Yohanan bar Nappaha was a second generation Palestinian Amora. His teachers were Yannai, Hoshaya and Hanina. He taught at his birthplace in Sepphoris and later in Tiberias. Rabbi Eleazar was his student. Initially born in Babylon, he was taught by Rav and Shmuel (1<sup>st</sup> generation Babylonian Amoraim), prior to going to Palestine to study with Rabbi Yohanan.

<sup>65</sup> The text is not clear, and scholars debate the positions of Rabbi Yohanan and Rabbi Eleazar. Here, Neusner's translation is used.



[in accord with your view that a flogging is involved], he should not go in to visit him at all.”” Said R Jeremiah that case is different [for he is permitted to do so even in violation of his vow] because of the ways of peace.”<sup>66</sup> The discussion here quoted the text from Tosefta *Nedarim* 2:7 that was presented earlier. The Tosefta presented the innovation that MDS would override a vow that had biblical validity in order to visit the sick and promote good neighborly relations. Maintaining a cohesive society is a primary goal of MDS. Rabbi Jeremiah taught that the case in the Tosefta does not shed light on the debate between Rabbi Yohanan and Rabbi Eleazar who were debating biblical law. MDS allowed a violation of the vow in this specific case, for the specific reason of promoting visiting the sick. MDS remains a specific decree applied to cases that enhance social harmony in order to create a peaceful society.

As mentioned, the Mishnah in *Gittin* 5:8<sup>67</sup> lists seven MDS cases that were decreed in order to foster peace. The *Yerushalmi* and the *Bavli* have very similar discussions explaining this Mishnah. The Jerusalem Talmud briefly discusses each case listed in the Mishnah.<sup>68</sup> The rule regarding the Cohen being called first is understood as resulting from a concern for decorum and avoidance of arguments.<sup>69</sup> The *eruv* is placed in its usual location in order to avoid the appearance of something wrong in that home or

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<sup>66</sup> *Yerushalmi*, Nedarim 1:1 (36c).

*The Talmud of the Land Of Israel*, Nedarim 1:1,13.

<sup>67</sup> *Yerushalmi*, Gittin 5:9 (46b). In subsequent editions of the Mishnah this is 5:8. To remain consistent with the other editions of the Mishnah cited here, in order to avoid confusing the reader, Mishnah section 5:8 is used above.

*The Talmud of the Land Of Israel*, Gittin 5:8, 147- 151

<sup>68</sup> *The Talmud of the Land Of Israel*, Gittin 5:8, 147- 151.

<sup>69</sup> *Ibid.*

mistrust of that household.<sup>70</sup> The water rights are intended to establish order: “There [in Babylonia] they say that the one who is more distant but finds it easier to draw water takes water first over the one who is nearby, but finds it more difficult to draw the water.”<sup>71</sup> The Mishnah presented the criteria of proximity to the water channel. Farmers closest to the channel fill their cisterns first. The Gemara relates that in Babylonia they developed MDS rules for water rights based on ease of obtaining the water. They interpreted the Mishnah’s rule as seeking to maximize water flow and minimize interference, hence difficult irrigation diversions would wait for simple irrigation diversions to be completed prior to filling the complex ones. Thus, the MDS rules preserve order and keep the channel open as much as possible.

The Gemara next discusses the property rights of minors: “If one gives him a nut and he takes it, a pebble and he throws it away, someone who takes from him commits theft because of the ways of peace.”<sup>72</sup> The intention remains to define the condition that protects the minor and the deaf mute by giving them property rights. Likewise, in order to avoid arguments, open traps are also protected as property of the trap-owner MDS. A normal trap such as a cage or a deep net is easily recognizable as private property, and is protected based on biblical law. In order to avoid arguments regarding traps that were less discernible, the sages established a rule protecting the trap owner. A passerby cannot take any caught animal from these flat or open traps. However, the poor man is permitted

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<sup>70</sup> Ibid.

<sup>71</sup> *Yerushalmi*, Gittin 5:9 (47bc).  
*The Talmud of the Land Of Israel*, Gittin 5:8,149.

<sup>72</sup> *Yerushalmi*, Gittin 5:9 (47c).  
*The Talmud of the Land Of Israel*, Gittin 5:8,150.

to take fruit left over from the olive tree. If he picks up the fruit, he acquires it and it belongs to him: “That which you have said applies to the case of the ones on the ground. But as to ones which he picks with his hand, his hand effects acquisition for him.”<sup>73</sup> Once the poor person has picked them up, he has acquired the fruit under biblical law. MDS is not needed for this clear case. The Gemara qualifies this point and mentions that the Mishnah extended MDS ownership to olives that the poor person knocked down but has not yet picked up. The Gemara elucidates the Mishnah’s extension of gleaning to poor gentiles by quoting the Tosefta Gittin 3:13 that obligated the community to provide for the poor, sick and dead of Jews and gentiles.<sup>74</sup> Allowing a poor gentile to glean is part of the same enterprise as feeding poor Jews and Gentiles. In summary, the Gemara explicated the Mishnah in a similar fashion to the reading presented above. Thus, the Amoraim remained close to the Tanniac view of what MDS seeks to accomplish.

The discussion expounding Mishnah Gittin 5:9<sup>75</sup> concerning neighbors assisting each other by lending utensils and helping each other in food preparation is also found in both Talmuds. The *Yerushalmi* and the *Bavli* try to find the exact conditions for when one should provide assistance. The application of MDS is further explored by the discussion inquiring whether the MDS principle should be applied broadly or only to the Mishnahyot that reference the term. The Talmud is forced to conclude that the application of MDS is a specific discussion, even though the topic of promoting peace is global. If

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> *Yerushalmi*, Gittin 5:10 (46b).  
*The Talmud of the Land Of Israel*, Gittin 5:9,152. Also in Shiviit 5:9.

other rules are brought forward without referencing the MDS principle, they also have specific reasons in their own right. MDS is not used as a rationalization for all endeavors that promote peace.<sup>76</sup>

Tractate *Dmai* deals with laws of doubts regarding tithing of produce. Upon determining that in fact there was a significant minority who were not careful with certain tithing procedures, additional cautionary tithing procedures were instituted. This assured that the produce did not have questionable status. The entire enterprise of tractate *Dmai* documents rabbinic decrees expanding the biblical requirements for tithing. Mishnah *Dmai* 4:2 states: “If one pronounces a vow on his fellow that he should eat by him, and [the invitee] does not trust [the host] regarding tithes, he may eat with him on the first Sabbath even though [the host] cannot be trusted regarding tithes provided that [the host] says to him ‘the food is tithed’. But on the second Sabbath even if [the host] pronounces a vow that [the invitee] not have benefit from him [unless he accepts his invitation], he may not eat with him unless he separates the tithes.”<sup>77</sup> The Mishnah does not present a reason or principle such as MDS. Someone, unreliable and not worthy of trust under normal circumstances, makes an overture to a neighbor and invites him to accept his invitation or risk offending him. The Mishnah seeks a solution in order not to offend the non-trustworthy person, but also allow the neighbor some autonomy of his own. The reading in the Mishnah states to eat with him on the first Sabbath, but the second time full standards should be enforced. There is no mention of MDS in the Mishnah.

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<sup>76</sup> *Yerushalmi*, Gittin 5:10 (47c).

<sup>77</sup> *Yerushalmi*, Dmai 4:2 (23d).  
*Jerusalem Talmud*, Dmai 4:2 (36a).

The Gemara, discussing the Mishnah, does mention MDS: “Rabbi Avin said: Here [the Rabbis] permitted Rabbinic ‘tevel’ (Dmai) because of the ways of peace. Rabbi Chaninah said: Rabbi Yirmiyah asked If because of the ways of peace is the reason, [why does the Mishnah qualify] provided that the host says to him the food is tithed.”<sup>78</sup> The discussion may be understood as an issue of different points of view interpreting the Mishnah. In Rabbi Avin’s opinion, the Mishnah permits eating the uncertain food MDS, in order to promote harmony. Rabbi Chaninah points out that the Mishnah added the requirement that the host declare he has taken tithes. In his view MDS alone would not have permitted the food even though we seek civility in interactions. Despite the principle of MDS, the Mishnah nevertheless requires the host to provide further assurances that the food is permissible. Only upon receipt of these assurances from the host does the Mishnah then instruct the guest to accept the host’s hospitality and not offend him.

The Mishnah 4:3 continues: “One may not carry or take tithes to the Cohen or the pauper<sup>79</sup> on the Sabbath, if however, a Cohen or a pauper was accustomed to eat by him, they may come and eat their respective portions provided that he informs them that he is serving them tithes.”<sup>80</sup> The discussion in the Gemara determines that this is a topic of honest representation known as “stealing knowledge” *gneivat daat*.<sup>81</sup> There is no

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<sup>78</sup> *Yerushalmi*, Dmai 4:2 (24a).  
*Jerusalem Talmud*, Dmai 4:2 (36a).

<sup>79</sup> Second tithes in years three and six of the Sabbatical cycle were given to the poor.

<sup>80</sup> *Yerushalmi*, Dmai 4:3 (23d).  
*Jerusalem Talmud*, Dmai 4:3 (36a). See *Mishnah*, Zeraim, Dmai 4:3, 36.

<sup>81</sup> *Ibid.* Literally stealing your knowledge, i.e. giving you the wrong impression about something.

mention of MDS in this Mishnah. To clarify, once one separates tithes, the tithes no longer belong to him but rather belong to the Cohen and the pauper. It was not permitted to separate tithes on the Sabbath and also not permitted to deliver and hand over the tithes on the Sabbath. Transactions and exchange of ownership, in which the second party acquires the property by lifting it up to take possession, were not permitted on the Sabbath. Therefore, one cannot take the tithes to a pauper or a Cohen on the Sabbath, even if they were separated prior to the Sabbath, but as this Mishnah states, if they were frequent guests, the host was permitted to serve them their portion provided he inform them that they were eating from tithes that belonged to them, as opposed to being the recipient of his hospitality in sharing his own food. The Gemara follows this discussion by quoting the Baraita from Tosefta Gittin 3:13.<sup>82</sup> The linkage between the Mishnah regarding hosting the Cohen or pauper and properly representing the produce belonging to them, and the Baraita quoted here in the Gemara, which is the global directive to apply MDS to individuals in need, implies that the Amoraic rabbis considered the concept of MDS applicable to relationships that include: (a) two neighbors who needed to find common ground regarding tithes, (b) a host who had to be honest with his guests, and (c) entire communities that also had to find common ground. The Baraita extends the very specific aspect of improved neighborly relations between two parties, such as sharing tithes, to broad communal relationships. The sages extended the provision of basic needs of society to all, MDS. The Gemara sought to emphasize this often. This Baraita sets a community standard. Fulfillment of this obligation at the communal level sets an example

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<sup>82</sup> *Yerushalmi*, Dmai 4:4 (24a).  
*Jerusalem Talmud*, Dmai 4:4 (36b).

for the individual to pursue in his engagement with society. MDS is applied very specifically, but addresses a very diverse set of conditions in order to foster peace.

The next source is a discussion in the *Yerushalmi* tractate Maaser Sheni. This tractate deals with laws of second tithes. The concept of a second tithe is a rather unique idea. Some years the second tithe belongs to the crop owner in order to go to Jerusalem to celebrate a holiday, and some years the second tithe is given to the poor. The second tithe is taken after both Terumah – the Cohen’s portion, a small amount slightly more than 1% – and first tithe – the Levite portion, 10% of what remains – have been taken. In years 1,2,4, and 5 of the Sabbatical cycle the owner takes the produce or its redeemed value to Jerusalem and uses it there. In years 3 and 6 the owner gives it to the poor. Mishnah 4:4<sup>83</sup> lists those individuals who cannot be chosen to participate in assisting the redemption, namely the conversion of produce to money in order to take to Jerusalem or give to the poor. There is no mention in the Mishnah of MDS: “A person may say to his friend or to his adult son or daughter or to his male or female Hebrew slave: Here are these coins for you and redeem this *maser sheni* yourself. But he cannot say this to his son or daughter, who are minors, for their hand is like his hand.”<sup>84</sup> The Gemara analyzes the definition of a minor for these purposes: “According to the view of the Rabbis from there [Babylonia] it is satisfactory for there they relate in the name of Rabbi Nachman bar Yaacov: Any child who, when given a nut discards it and when given a stone takes it for himself, if one finds an ownerless object in his hand it is as if he finds it in a trash heap. If the child has

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<sup>83</sup> *Yerushalmi*, Maaser Sheni 4:4 (55a).  
*Jerusalem Talmud*, Maaser Sheni 4:4 (37b)

<sup>84</sup> Ibid.

reached the stage that when given a nut he takes it for himself and when given a stone he discards it, stealing an object from him is considered theft because of the ways of peace.<sup>85</sup> Rabbi Nachman's position is that awareness of ownership is the criteria for the minor to acquire property under rabbinic law, citing the reason of MDS. The definition of a minor in the Mishnah, which is not an MDS case, is clarified by an MDS text that defines property rights of a minor based on awareness. This is extended to the current Mishnah by allowing a child, who has the awareness of ownership, to assist in the redemption. Categories of obligations and interaction have a basis in the status of the knowledge and awareness of the participants. MDS is the rationale used to extend recognition, status or rights of ownership to the minor participant who has qualified.

The next text that discusses MDS in the *Yerushalmi* that will be examined is in tractate Avodah Zarah. Tractate Avodah Zarah deals with commercial relationships with pagan gentiles, laws pertaining to idols, and treatment of wines associated with pagan libation. If one's neighbor is a pagan he is still owed the courtesies due to a neighbor, so once again this literature attempts to find the correct balance of neighborliness and rejection of idolatry. The Mishnah 1:3 lists days that are restricted from transacting with a gentile pagan: "On the day on which [a gentile] shaves off his beard and lock of hair, on the day on which he came up safely from an ocean voyage, on the day on which he got out of prison and a gentile who made a banquet for his son. It is prohibited for only that day and in regard to that individual alone [to enter into business relationships of any

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<sup>85</sup> Ibid.



sort].<sup>86</sup> The Mishnah gives no counter situation and does not bring up MDS, but the Gemara brings up the topic of ways of peace and quotes the Tosefta from *Gittin* 3:13<sup>87</sup>

The Mishnah restricted commerce on very specific days, but the discussion in the Gemara expanded to the larger application of MDS in order to promote peaceful relations with neighbors. MDS here addresses the balance of being a good neighbor while not supporting idolatry. This completes the survey of the *Yerushalmi*, as summarized in table two.

Table 2. Summary of Jerusalem Talmud Explication

Shmuel bar Nachman reading of Mishnah: Wish everyone peace and success  
 Yehoshua ben Levi story: All her paths are peace, *eruv* interaction brought the peace  
 Awareness of child is reason for MDS granting rights  
 Simple (ease of drawing) water projects take precedence  
 Poor Gleaner granted rights to what he has knocked down  
 Eating with someone who usually does not take tithes  
 Serving tithes to Cohen or Poor person on Shabbat - honesty equated to promoting peace

Table two shows that the rabbis of the Jerusalem Talmud remained very close to the view of the rabbis of the Mishnah. There is a slight ethical expansion when the transgressor is wished success and peace, but overall the concept of MDS remains consistent.

### Babylonian Talmud

The sources in the *Bavli* that mention MDS will now be examined. In *Bava Mezhiah* 12a<sup>88</sup> the Mishnah mentions that in the case where a son who is a minor, finds a

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<sup>86</sup> *Yerushalmi*, Avodah Zarah 1:3 (39c).  
*The Talmud of the Land Of Israel*, Avodah Zarah 1:3, 25.

<sup>87</sup>Ibid.

<sup>88</sup>*Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Bava Mezhiah 12a.

lost object, which he is permitted to keep since the ownership cannot be determined, the object belongs to the father. A son who is an adult may keep the found object. The Gemara discusses whether a minor can acquire property. If he can acquire property, he must give it to his father willfully and willingly. If he cannot acquire property, his father can take it and acquire it. The discussion in the Gemara mentions the Mishnah in Gittin 5:8 where according to an MDS decree minors were granted property rights regarding finding and acquiring a lost object. In that Mishnah, Rabbi Yossi stated that taking from minors was total theft (*gezel gamur*), implying that minors have inherent biblical property rights. The Gemara here in Bava Mezhiah clarifies Rabbi Yossi's position. Rabbi Yossi, too, agreed that the property rights were rabbinic, but his point was that the enforcement should be complete with full judicial protection to that property even if it was a rabbinic *takanah* in order to foster peace. Rabbi Yossi afforded extra protection to minors, albeit rabbinically. Our understanding of MDS remains consistent.

One final interesting point of clarification in the Gemara is the discussion of the definition of "minor" (*katan*) and "adult" (*gadol*). Rabbi Yohanan opines that a new interpretation for the two terms is needed here since the Mishnah adds nothing by telling us that the adult son takes possession, since he has full property rights. Therefore, he interprets the Mishnaic terminology by suggesting that a minor who is not supported by his father is an adult and an adult who is supported by his father is a minor. Thus, the discussion is extremely innovative in determining who has acquisition and property rights in the properly ordered family. If a father supports a son, either a minor or an adult, it is proper to give the father the found objects, so that the family is working toward a common economic goal and avoids the father feeling envy were he to work, support his

son, and receive nothing. If the minor son supports himself, he is eligible to keep the found property per this Mishnah by virtue of being classified as an adult. Rabbi Yohanan did not use MDS in his rationale and explication of the Mishnah. Perhaps, the removal of rights from the adult son was not seen as an MDS category as the adult son might feel distress and conflict may actually result from this ruling, hence MDS was not offered as a rationale for Rabbi Yohanan's interpretation.

In Bava Mezhiah and Chulin,<sup>89</sup> a discussion takes place regarding sending the wild mother bird away. As mentioned in the discussion of the Tosefta, this commandment is derived from Deut. 22:6-7. In *Chulin*,<sup>90</sup> the chapter is explaining the laws of sending the wild mother bird away (*shiluah haken*), and in *Bava Mezhiah*<sup>91</sup> the chapter is discussing property rights and laws of leasing. Both sources quote the Tosefta *Chulin* 10:13: “[Wild] Doves nesting in a birdhouse and in a loft, the mother must be sent off and the eggs are protected as private property, because of the ways of peace”.<sup>92</sup> The Gemara presents the following discussion: “Now if Rabbi Yossi son of Rabbi Chanina's dictum, that a man's courtyard effects a title on his behalf without his knowledge, is correct, then apply here the verse, *If a bird's nest chance to be before thee*, [implying public domain] excluding that which is [always] at thy disposal [private property].”<sup>93</sup> The ruling in the Tosefta refutes Rabbi Yossi's statement, but Rava explained: “As for the egg, when the greater

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<sup>89</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Bava Mezhiah 102a and Chulin 141b.

<sup>90</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Chulin 141b.

<sup>91</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Bava Mezhiah 102a.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

part of it has issued [from the body of the fowl], it is subject to the law of sending away, whilst he [the owner of the court] does not acquire it until it falls into the courtyard; and when it is stated, ‘They are subject to the law of sending away,’ [it means] before it falls into the court.”<sup>94</sup> Rava explains that the Tosefta does not refute Rabbi Yossi’s statement that a courtyard acquires ownership for the property owner. When the Tanna in the Tosefta teaches that the doves are subject to the laws of sending away, he refers to the case where the owner wishes to grab the egg prior to its entering or falling into his courtyard. In this case, he has not acquired the egg and the nest is considered wild. Hence, the obligation to send the mother away applies. The Gemara challenges this answer, stating: “If so, why are they forbidden as robbery? .... If so, are they forbidden as robbery [only] for the sake of peace? If he [the stranger] sends the dam away, it is real robbery; whilst if not, she is to be sent away! This refers to a minor, who is not obliged to send her away. But is a minor subject to provisions enacted for the sake of peace. It means thus: The father of the minor must return them for the sake of peace.”<sup>95</sup> The Gemara seeks to determine the definition of when MDS applies. Even if the birds are wild, and the eggs belong to no one until the mother is sent away, thus permitting the taking of the eggs, they could potentially revert to the owner of the loft and not require protection under the ways of peace. The concept of MDS here applies to avoid conflict. Potential conflict could occur in the property owner arguing with the neighbor who wanted to claim something wild. MDS prevents this conflict, and further states that if a

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<sup>94</sup> Ibid. Text in Chulin quotes Rav.

<sup>95</sup> Ibid.

minor took the eggs, his father must return them to the loft owner in order to foster peace. This further supports the argument that MDS is not just a judicial category, but also a neighborly interpersonal value.

This understanding of MDS is challenged by a discussion that occurs in tractate *Sanhedrin*.<sup>96</sup> The Mishnah there lists those who are disqualified from being witnesses and mentions “dove flyers” (*maphrichei yonim*).<sup>97</sup> The Gemara defines this in two ways: pigeon racers, who gamble, and pigeon decoyers who train pigeons to bring other wild pigeons to their lofts.<sup>98</sup> Gamblers could be disqualified in a similar fashion as a thief. Decoying wild birds is not direct theft, but is considered indirect theft as an MDS category. According to the opinion in the Gemara that disqualifies pigeon decoyers from being a witness, it seems clear that a person who violates rabbinic MDS has a moral deficiency similar to a thief. This is supported later on in the Gemara when discussing the increase in frequency of cases of taking property improperly from minors and the disabled, as those thieves, by MDS standards only, were also excluded from being reliable witnesses: “A Tanna taught: [To those enumerated in the Mishnah] were added robbers and those who compel a sale. But are not robbers [disqualified] by Biblical law? [Yes, but] it [the addition] was necessary in respect of one who appropriates the finds of a deaf-mute, idiot or a minor. At first it was thought that this was of infrequent occurrence, or [that such appropriation was robbery only] judged by neighborliness in general: but when it was seen that after all it was someone else's property that they seized, the Rabbis

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<sup>96</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Sanhedrin 25a,b.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

disqualified them.”<sup>99</sup> This case adds a legal dimension to our understanding of how MDS was applied. Lapses in rabbinic norms, lack of ethical behavior, and poor neighborly behavior result in a broader legal consequence, such as disqualification as a witness.

The following text confirms that Rabbi Yossi, who in the Mishnah in Gittin affords the minor court protection for his found property, agrees with the sages that it was a rabbinic decree. He afforded more protection to the minor by giving the court power to return the property if someone took it from the minor, which the sages did not. This illumines his understanding of this specific case of MDS. *Shevuot* 41a<sup>100</sup> discusses the difference between cases that require taking an oath to settle claims of dispute between two parties based on Biblical mandate versus rabbinic requirement. Refusal of a defendant to fulfill the Biblical requirement of taking an oath to prove his ownership allows the court to seize and transfer the property to the claimant, but that refusal of the defendant to take an oath to settle a claim, based on a rabbinic requirement, does not give the court authority to rule on behalf of the claimant. The Gemara brings up the case mentioned in Mishnah Gittin 5:8 in which Rabbi Yossi afforded the minor and disabled court protection, even though this was a rabbinic *takanah* of MDS: “What is the difference between an oath imposed by the Torah and an oath imposed by the Rabbis? ...There is this difference: going down to his property [allow the court to seize it and return it]; in the case of a Torah oath we go down to his property; in the case of a Rabbinic oath we do not go down to his property. And according to R. Yossi who holds

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<sup>99</sup> Ibid.

<sup>100</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, *Shevuot* 41a.

that in the case of a Rabbinic [law] we also go down to his property? For we learnt: The finding of a deaf-mute, idiot or minor, is subject to the law of theft, in the interests of peace. Rabbi Yossi says: Real theft. And Rabbi Chisdah said: [Rabbi Yossi means] real theft according to their [rabbinic] enactment. What is the difference? Its extraction by the Court [allow the court to seize it and return it].”<sup>101</sup> Here, Rabbi Chisdah is explicating the difference in opinion between the sages and Rabbi Yossi. MDS was important to both Rabbi Yossi and the sages. However, the sages did not offer court protection regarding claiming property that was taken from the minor or disabled while Rabbi Yossi did offer court protection. The sages treated MDS decrees as any other rabbinic law, while Rabbi Yossi, according to Rabbi Chisdah, treated it as a special case.

*Bavli Gittin*<sup>102</sup> discusses Mishnah 5:8. The seven cases in the Mishnah are discussed in the Gemara: “A Cohen reads first from the Torah, then a Levi, then a Yisrael because of the ways of peace.”<sup>103</sup> The explication in the Gemara is as follows:

Said Abaye<sup>104</sup> to R. Joseph: Is this rule only [a Rabbinical one] in the interests of peace? It derives from the Torah? He answered: It does derive from the Torah, but its object is to maintain peace. But the whole of the Law is also for the purpose of promoting peace, as it is written: *Her ways are ways of pleasantness and all her paths are peace?* (Proverbs 3:17) No, said Abaye; we have to understand it in the light of what was said by the Master, as it has been taught: Two persons wait for

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<sup>101</sup> Ibid.

<sup>102</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a.

<sup>103</sup> Ibid.

<sup>104</sup> Strack, 104. Abaye was a 4<sup>th</sup> generation Babylonian Amora.

one another with the dish, [to eat] but if there are three they need not wait. The one who breaks bread helps himself to the dish first, but if he wishes to pay respect to his teacher or to a superior he may do so. Commenting on this, the Master said: This applies only to the table, but not to the synagogue, since there such deference might lead to quarrelling.<sup>105</sup>

The endeavor of the entire Torah is to foster peace, as the verse in Proverbs indicates, but the case of the Cohen requires a particular understanding. A Baraita records that the one who breaks bread and recites the blessing for everyone should take and eat first, but if he wants to honor someone else at the table, he has that prerogative. This was understood to be only at the table. In the synagogue, however, one does not have the prerogative of transferring his honor to another, in order to avoid arguments. Thus, Abaye presents us with a case that is not global but rather a specific rabbinic *takanah*, in which the Cohen cannot transfer his biblical precedence to another in order to avoid arguments. The public nature of the synagogue required more orderly norms, and therefore MDS was invoked to fix the order of the readers.

The next case in the Mishnah is the *eruv*: “The *eruv* is not moved from its original place to a new home because of the ways of peace.”<sup>106</sup> The explication in the Gemara is as follows: “What is the precise reason? Shall we say it is out of respect (*kavod*, honor) for the owner of the room? Then what of the shofar [horn that was used as a communal charity box] which at first was in the house of Rabbi Judah and later in that of Rabbah

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<sup>105</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59b.

<sup>106</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a.



and then in the house of Rabbi Joseph and then in the house of Abaye and finally in the house of Rava? The real reason is, so as not to excite suspicion.”<sup>107</sup> The person who had the *eruv* in place would be offended and arguments would break out if the respect were transferred. A story about a shofar or charity box being transferred is mentioned, implying that respect can be relocated without offense and argument. The Gemara concludes that MDS is invoked regarding the *eruv* due to “suspicion.” A change of placement of the *eruv* results in people seeing the absence in the usual home. This could have two effects, namely the impression that there is no *eruv* at all or the impression that something is wrong with the home that had hosted the *eruv*.<sup>108</sup> This results in degraded interpersonal relations, which MDS seeks to avoid.

The next case in the Mishnah discusses water rights: “Cisterns nearest to the watercourse are filled first because of the ways of peace.”<sup>109</sup> The Gemara explicates as follows: “It has been stated: [‘Where fields] adjoin a river, Rav says that the owners lower down have the right to draw off water first, [with canals] while Shmuel says that the owners higher up have the right to draw off water first. So long as the water is allowed to flow, both agree that no problem arises. Where they differ is on the question of damming for the purpose of watering. Shmuel says that those above can draw off water first, for they can say ‘We are nearer to the source,’ while Rav holds that those below can draw off first, for they can say ‘The river should be allowed to take its natural course.’”<sup>110</sup> The

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<sup>107</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 60b.

<sup>108</sup> *Ibid.*, and *Mishnah* Gittin 5:8, 78.

<sup>109</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a.

<sup>110</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 60b.

Gemara discusses the difference of opinion between Rav and Shmuel.<sup>111</sup> Rav said the lower canals fill up first and Shmuel said the upper canals. The discussion explains if the river water fills up the canals without any interference there is no disagreement. Rav and Shmuel are referring to cases where the farmers build dams, which will interfere with the flow of water and impact other farmers. Shmuel says the farmers up-river can dam the river first, since they are closest to the source. Rav says by starting downriver we are letting the river flow more naturally. Our Mishnah seems to support Shmuel by stating that water pits are filled by proximity. The Gemara continues: “Shmuel explained this on behalf of Rav to refer to a water-channel which passes close to a man's pit. If so, what is the point of the remark? You might think that the others can say to him, ‘Close up the mouth of your pit so as to take in water only in due proportion’; we are therefore told [that this is not so].”<sup>112</sup> Shmuel says that our Mishnah could support Rav too, which refers to a canal that fills the pit without a dam and therefore Rav would have no objection to the closest one being filled first. The lower farmers could say to the upper farmer that he has no right to fill up his cistern, reservoir, or pit even without a dam since he is taking more water and interfering with the flow. Therefore, the Mishnah teaches that the farmer does have a right and that arguments should be avoided MDS. Shmuel understands this to mean that the up-river farmers have a right to build dams, and fill their canals and cisterns. Shmuel’s position is that placement and geography give the farmer closer to the source rights over the farmer that is further away, and MDS protects

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<sup>111</sup> Strack, 93-94. Rav and Shmuel were first generation Babylonian Amoraim, placing them close to Tannaic time.

<sup>112</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 60b.

those rights. Rav understands rights more democratically, asserting that farmers along the river have rights to the water and MDS demands that everyone have access with minimal interference. The Gemara continues, “Said Rav Hunah bar Tachlifa: Now that the *halacha* (law) is not said according to Rav or Shmuel, *kol dealim gavar*, whoever is stronger will prevail.”<sup>113</sup> Each farmer will dam and fill his canal and then open it up for other farmers. Realistically, not every case has a norm and not every norm works for every case. Often a farmer must resolve an issue with a neighbor situationally. The sages recognized that there will be cases where MDS does not apply and the involved parties must establish resolution.<sup>114</sup>

The current MDS text that deals with water rights includes the following story about Abaye. The story reinforces the MDS values associated with being neighborly regarding water rights. The following story is told in the Gemara:

R. Shimi b. Ashi presented himself before Abaye with a request that he should give him lessons. He replied: I use my time for my own studies. Then, he said, would your honor teach me at night. He said: I have to do some irrigation. Said the other: I will irrigate for your honor by day, and do you teach me by night. Very well, he said. So he went to the people higher up and said to them: The people lower down have the right to draw water first. Then he went to those lower

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<sup>113</sup> Ibid.

<sup>114</sup> See also Maimonides Laws of Neighbors 3:10: “Dwellers along the river irrigate in order. If one wanted to dam and water and then reopen and another also, (there is no fixed order) whoever does it does it, but cisterns do have a fixed order because of the ways of peace.”

בני הנהר משקין על הסדר, רצה אחד מהן לסכור כדי שיחזור לו המים וישקה תחלה ואח"כ יפתח, ואחר רוצה להשקות תחלה כל המתגבר זכה, ובור הקרוב לאמה מתמלא ראשון מפני דרכי שלום

down and said: The people higher up have the right to draw water first.

Meanwhile he had dammed the water and irrigated Abaye's fields. When he presented himself before Abaye, the latter said to him: You have acted on my behalf according to two contradictory authorities; and Abaye would not taste of the produce of that year.<sup>115</sup>

In this story, Rabbi Shimi came to Abaye and asked him for time to learn together at night. Abaye told him that he had to irrigate his farm at night. Rav Shimi said he would irrigate his field during the day, freeing Abaye to learn with him at night. Rav Shimi went to those that were up river and told them the lower fields have precedence. He then went to the down river farmers and told them the up-river farmers have precedence. In the meantime, he dammed the river and irrigated Abaye's fields. Rabbi Shimi used the two opinions of Rav and Shmuel to his advantage in order to limit up-river and down-river water usage. When Abaye learned of this activity, he chastised Shimi and would not eat the produce for that year. Since MDS is intended to promote neighborly relations, Abaye felt moral accountability regarding his own produce. The produce from that year was obtained immorally, since Shimi invoked two divergent halachic opinions to assure he had water to irrigate. Abaye set a positive example and did not benefit from that produce. The inclusion of the story reinforces the need to be cooperative rather than competitive with neighbors. Another story is also told about water rights and Abaye: "Certain peasants in Be Harmakh went and dug a trench from the upper waters of the canal Shanwatha and brought it round [their fields] to the lower waters. Those higher up came

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<sup>115</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 60b.

and complained to Abaye, saying, they are spoiling our river. He said to them: Deepen the bed a little [before it reaches them]. They said to him: If we do this, our trenches will be dry. He then said to the first set: Leave the river alone.”<sup>116</sup> In this case, when a group of farmers diverted the river in a way that negatively impacted other farmers, Abaye told them to cease and desist.<sup>117</sup> The example of water rights demonstrates the importance of promoting neighborly relations and fostering an environment of peace. It also configures the sage, Abaye, as the promoter of peace, while at the same time the arbiter of the disagreement.

The Gemara discusses the four remaining categories mentioned in the Mishnah: “Traps for animals, fowl and fish are protected property of the trap owner because of the ways of peace.”<sup>118</sup> This Gemara discusses this as follows: “If loose or close nets are used, there is no difference of opinion between the Rabbis and Rabbi Yossi. Where they differ is when fishhooks and traps [are used].”<sup>119</sup> The traps mentioned in the Mishnah are open traps. Closed traps and nets are considered private property by all and taking the contents is theft. The situation that might cause argument and ambiguity is the open trap that has no sides. To eliminate arguments, the sages included this form of trap and fish hooks as protected property according to MDS.

The case of ownerless property found by the minor and disabled is now discussed: “Lost, ownerless, property found by a deaf-mute, idiot or a minor belongs to them, and

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<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a.

<sup>119</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 61a

therefore are given status of theft if taken from them because of the ways of peace. Rabbi Yossi considers this direct theft.”<sup>120</sup> As the Gemara discusses: “Rabbi Chisdah says: [Rabbi Yossi means], actual robbery according to the Rabbis. ‘What [then] is the practical effect of Rabbi Yossi’s ruling? That the article can be recovered by process of law.’”<sup>121</sup> The discussion regarding Rabbi Yossi’s opinion is clarified here in the Gemara. Ownerless property claimed by the deaf mute person or minor, is protected MDS. Rabbi Yossi’s opinion, according to Rabbi Chisda, is that the court has the right to return the property to the injured party if someone took it from them, even though it is a rabbinic decree.

The case in the Mishnah discussing the gleaner is then analyzed: “If a poor man gleans on the top of an olive tree, [to take the fruit] that is beneath him is counted as a kind of robbery, because of the ways of peace.”<sup>122</sup> The Gemara adds the following: “A Tanna taught: If the poor man had gathered the fruit and placed it on the ground with his hands, to take it is actual robbery. Rabbi Kahana was once going to Huzal when he saw a man throwing sticks [at a tree] and bringing dates down. He went and picked up some and ate them. Said the other to him: See, Sir, I have thrown them down with my own hands.”<sup>123</sup> Regarding the case of the poor person cutting or knocking down olives while gleaning, the Gemara clarifies that if he or she grabbed the olives in their hand and then dropped them to the ground, that is not the MDS case of the Mishnah. By holding them

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<sup>120</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a

<sup>121</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 61a

<sup>122</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a

<sup>123</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 61a

they have gained total ownership and if the person drops them it remains their property.

The case in the Mishnah expanded the property rights of a poor person to include what he knocked down, before he took actual possession, in order to eliminate arguments among gleaners, MDS. The story about Rabbi Kahana reinforces that the MDS norms were known and understood by gleaners.

The final case in the Mishnah is of the poor gentile gleaner: “No interference is allowed to poor gentiles that are gleaning because of the ways of peace.”<sup>124</sup> The Gemara explained this as follows: “Our Rabbis have taught: ‘We support the poor of the heathen along with the poor of Israel, and visit the sick of the heathen along with the sick of Israel, and bury the poor of the heathen along with the dead of Israel, in the interests of peace.’”<sup>125</sup> The Mishnaic statement that no interference is allowed to a poor gentile who comes to glean is elucidated by quoting the Baraita in Tosefta Gittin regarding kind treatment to the poor, sick and dead of Jews and Gentiles. In summary, the Gemara in the *Bavli* sees MDS both in its specificity and its diversity in a very similar fashion to the *Yerushalmi*, with no substantial expansion of the concepts developed by the Tannaim of the Mishnah and Tosefta.

#### Summary of Readings in Chapter One

MDS has several applications, as seen in table three. This may be grounded in conflict avoidance, ethics, or pragmatism. MDS recognizes that the poor, sick and dead of all societal groups have a legitimate claim. Ultimately this category is basic and

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<sup>124</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 59a.

<sup>125</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 61a.

universal. Groups that have similar or divergent values must still find a way to cooperate in delivering services to the needy.

### Table 3. Applications of MDS

Communal harmony.

Universal equality regarding care of poor, sick, and dead.

Interpersonal situations that attempt to define the boundary around a transgressor within groups that have shared or divergent values.

Interpersonal norms that establish accepted procedures in order to minimize misunderstandings and conflicts within and between groups.

Greetings of support to your neighbor regardless of the circumstances.

The named stories and concepts of Shmuel bar Nachman, Joshua ben Levi and Abaye show a remarkable continuity across the generations. There is a slight movement to ethicize, but the core concept of MDS remains focused and specific. Having completed a first reading attempting to discern the social problems the sages were attempting to solve using the rationale of MDS, a second reading seeking additional conclusions derived from the texts using contemporary language, and terms will be presented in the next section. What is the relationship of “ways of peace”, neighborliness, to tolerance? What is the relationship to taking care of the Other? Who is the Other?

## Chapter Two: Interpretation

In Chapter One, the RYBL story expanded the understanding of MDS as part of a broader idea expressed by the verse in Proverbs 3:17, “all her ways are peace.” Abaye cited the same verse when asserting that the purpose of the entire Torah is to foster peace. Yet, MDS appears as a focused set of rabbinic decrees rather than a broad philosophical concept. In the *Bavli* Sanhedrin 6b the discussion focuses on three judges seeking the correct verdict, but the Gemara also mentions: “But Aaron loves peace and pursues peace and puts peace between neighbors [before it is brought to court] as it is written in



*Malachi* 2:6 “True Torah (instruction) was in his mouth, and nothing false was on his lips, in peace and uprightness he walked with Me, and many were returned from sin.”<sup>126</sup> Courtroom justice, *din*, requires unbiased fidelity to the principle of true justice.<sup>127</sup> This form of justice can include accommodations to make the trial fair. An example can be found in *Bavli Shevuot* 31a where the following is listed among other laws derived from Ex. 23:7<sup>128</sup>: “If one of the parties to the suit is well dressed and the other ill clad, the judge should say to the former: either dress him like yourself, before the trial or dress like him, then the trial will take place.”<sup>129</sup> This accommodation was a courtroom example designed to make the trial fair. However, the domain of Aaron was not in the courtroom but in society. In everyday life, harmony, accommodation, and peaceful relations must be facilitated as part of a constant endeavor. MDS becomes much more than a legal interpretive principle. Since its application was both very specific and diverse, it conveys a way of thinking about society and halacha. This chapter attempts to understand MDS within a broader context.

The texts in chapter one demonstrated that the sages placed high value on peaceful neighborly relations and introduced rules to facilitate these interactions. Examination of the Midrashic use of MDS illuminates this idea further. The term *Shalom*

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<sup>126</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Sanhedrin 6b.

<sup>127</sup> Ibid.

<sup>128</sup> “From words of falseness distance yourself.” Ex. 23:7.

<sup>129</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Shevuot 31a,b.

(peace) is found often in the bible and rabbinic literature.<sup>130</sup> The term MDS is found in 21 distinct Midrashim.<sup>131</sup> A Midrashic text *Mishnat Rabbi Eliezer*<sup>132</sup> quotes parts of the readings of chapter one. *Mishnat Rabbi Eliezer* includes a lengthy presentation about peace. The first paragraph discusses the unique importance of peace: “Of all things that are dear to God only peace is mentioned twice associated with God saying “unto Me” *li*. The verse in Isaiah 27:5 uses the word *li* twice: “or he will take strength in Me, peace unto Me, he will make peace unto Me.”<sup>133</sup> The Midrash goes on at length to explicate how and why peace is important. This interesting discourse segues to MDS:

And these are the things that were said because of the ways of peace: Cohen reads first, then a Levi, then an Israelite because of the ways of peace. And an *eruv* is placed in the original home because of the ways of peace. A cistern that is near the channel is filled first because of the ways of peace. Ownerless property found by a deaf-mute, idiot or a minor even though they are not considered an adult male and do not have *kinyan* (property acquisition rights), has the status of theft (if taken from them) because of the ways of peace. Traps of animals, birds and fish, even though the hunter has not acquired them by lifting them up are

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<sup>130</sup> Using the Bar Ilan database: the term “shalom” is used in the Bible in 99 different chapters. The term is listed in rabbinic literature in about 1200 different discussions of which over 800 of the discussions are in the Midrash. This large number of quotes affirms the importance of a theology of peace. MDS in the Midrash is used in a similar context to the current discussion, in 21 distinct Midrashim.

<sup>131</sup> Ibid.

<sup>132</sup> Strack, 356-357. “The work must be regarded, not as a compilation like other midrashim, but as the creative achievement of a personal author.” The work appears to have originated in eighth or ninth century Palestine.

<sup>133</sup> *Mishnat Rabbi Eliezer*, Chapter 4, Bar Ilan Responsa Project.

considered theft because of the ways of peace. A poor person gleaning who knocks down olives, but has not yet lifted them up, it is considered theft because of the ways of peace. An Israelite who has left *leket shikhecha and peah* (gleanings) for the poor of Israel and there are also poor gentiles gleaning among them, does not interfere with a poor gentile that comes to glean because of the ways of peace. One greets a gentile including on his holiday because of the ways of peace. Since all the commandments of the Torah are peace as it says “and all its paths are peace.”<sup>134</sup>

The *Mishnat Rabbi Eliezer* continues with a homily based on a verse by Rabbi Yohanan that as the Temple was intended to bring peace, how much more so human beings.

Embedded in a comprehensive treatise about the importance of peace and the counterproductive state of conflict and argument, (*mahloket*), the *Mishnat Rabbi Eliezer* recites the eight MDS laws mentioned in Mishnah. MDS in the Midrash text remains specific and actionable, just as in the rabbinic texts discussed in chapter one.

MDS is understood as a mechanism of extending civility and harmony. The Midrash located MDS as part of the larger global push for harmony and conflict resolution as RYBL and Abaye did in the texts in chapter one when they quoted the verse from Proverbs “and all its paths are peace.” The MDS cases reviewed are very diverse. Each case on its own seeks to resolve a conflict, and the sages did not restrict themselves to any particular domain of concern. Any social interaction in which individuals or

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<sup>134</sup> Ibid.

groups need help in improving interpersonal harmony, whether they have common values, shared values or divergent values, might be applicable to MDS.

The contemporary review of MDS in the Talmudic Encyclopedia (TE) illuminates the utility of applying categories. Minimally, categories present a method of conveying information efficiently. Maximally, categories allow the opportunity for further extrapolation or further application of the ideas. The TE, a contemporary compendium, organizes MDS into five categories designed to limit friction between parties: honor, suspicion, monetary situations, neighbor relations, and gentile relations.<sup>135</sup> The TE understood that all of these categories involve relationships. The TE presented both topical terms, such as monetary, suspicion, and honor, and group terms such as neighbors and gentiles. Using the TE as a template, the terms groups, situations, and values will be analyzed. For the TE, the Mishnah in Gittin is the organizational locus for MDS. To review, that Mishnah includes rules restricting the Cohen's ability to "give his place" to read the Torah to someone else by MDS. Regarding the half shekel the Cohen was exempted from an imposed pledge. This MDS rule, as explained in the Gemara, honored and promoted the Cohen's self esteem. Regarding the *eruv* the Mishnah defined MDS as preserving order in the courtyard. If an *eruv* had a history and precedence of being in one location, moving it to another location might indicate that something was wrong and could cause friction between neighbors. This rule was designed to avoid suspicion according to the Gemara. MDS was designed to minimize situations in which neighbors might get the wrong idea about each other. The topics of water rights, property rights of

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<sup>135</sup> *Talmudic Encyclopedia* (Hebrew) (Jerusalem: Mossad Harav Kook, 1956), vol. 7 col 616.

hunters, property rights of minors and the disabled in claiming ownerless property, gleaning rights of the poor and gentile poor are all classified as monetary rights by the Encyclopedia editors. MDS is also extended to someone who comes to glean who may not be poor or eligible to glean at all, because of some ownership of the field, in order to prevent arguments.<sup>136</sup>

Neighbor relations, another category in TE, refers to the topics of lending utensils, participating and helping a neighbor who is less stringent or observant and the topic of well wishing to a neighbor who is a transgressor, as previously discussed. TE also directs us to *Bava Mezi'ah* 10a where the sages gave property rights of an ownerless object to a person if it was within his four cubits, “so that people should not argue” about whose object it is.<sup>137</sup> Finally, MDS prompted the sages to extend rights to poor, sick and dead Jews and gentiles on a global scale. At the individual level, the specific topics of well wishing and protection of property regardless of ethnicity all come under this large umbrella of promoting peace, fostering harmony and avoiding conflict.<sup>138</sup>

The group structures mentioned in the introduction shed light on MDS and rabbinic views on social interactions. Group one is characterized by interactions among individuals who largely possess shared core values. An example: The *eruv* remains in its original place to avoid suspicion. Group two, defined as interactions among individuals possessing only some shared values. An example: One lends tools to the less stringent

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<sup>136</sup> *Talmudic Encyclopedia*, vol. 7 col 620. This case is about conflict avoidance. The unqualified gleaner would usually be confronted, but MDS precluded that from happening.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.* The TE points to *havaat shalom* bringing peace and *shalom hamalchut* wishing peace for government as related topics.

neighbor. Group three, defined as interactions among parties with opposing views. An example: One greets his pagan neighbor, including on his holiday. In all three group cases MDS was applied to promote peaceful interactions. The following readings will discuss and affirm that the sages did not shirk from extending rabbinic decrees to promote social welfare among groups with divergent values.

The Meiri, a 14<sup>th</sup> century Rabbi, who lived in Catalonia, discussed the topic of who is protected by biblical law, as a member of society, in his commentary to the Talmud called “Beit Habehira.”<sup>139</sup> When elucidating the Mishnah in Gittin that discussed allowing a gentile to glean and the Tosefta that extended equality in terms of providing for the needy, Meiri wrote that this case of MDS applied to an idolator that did not “restrict himself in the ways of religion” (*gedurin bedarchei hadat*).<sup>140</sup> His text suggests that the Torah only restricted, segregated, and discriminated against a group defined as idolaters who did not respect civil society. According to Meiri’s text, law-abiding non-Jews, who accepted legal restrictions and religious societal values, and enforced them, were never part of this paradigm. He wrote: “All who are from nations that are restricted by the ways of religion and worship God in any fashion, even though their belief is far from ours are considered like Israel completely in all these matters.”<sup>141</sup> A Gentile who does restrict himself in the ways of religion is equivalent to a Jew (*harei hem keyisrael gamur*). Thus, in his text’s discussion of the Mishnah and Gemara, the poor gentile who

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<sup>139</sup> Rabbi Menachem Meiri, *Beit Habehira*, (Tel Aviv: Schlesinger, 1956) Gittin 61a.

<sup>140</sup> Ibid.

<sup>141</sup> Meiri, Baba Kama 113b. הא כל שהוא מעממין הגדורים בדרכי הדת ועובדי האלהות על איזה צד אע"פ שאמונתם רחוקה מאמונתנו אינם בכלל זה אלא הרי הם כישראל גמור לדברים אלו

seeks to glean, mentioned in the Mishnah, appears as an extreme Other with no values in common with the Jew, and the Sages still protect his rights even though he is part of a group that might hold values counter to Judaism. Nevertheless, the sages protect him not only as an individual, but also mandated that civic services be provided to that group in order to enhance harmony.<sup>142</sup> Stated in a slightly different way, the Meiri's understanding of the Mishnah is as follows: for a non Jew who has accepted to "restrict himself in the ways of religion," there is no differentiation between him and any Jew. He shares common values and belongs to group two. If he is poor he may glean under biblical protection, and MDS is not needed as a rabbinic decree to protect him. The destitute non-Jew is entitled to glean just like any other poor Jew. MDS protects members of group three, even though they have limited common values.

Emmanuel Levinas' 20<sup>th</sup> Century writing is similar to Meiri's text:

Each time Israel is mentioned in the Talmud one is free, certainly, to understand by it a particular ethnic group which is probably fulfilling an incomparable destiny. But to interpret in this manner ... would be to forget that Israel means a people who has received the Law and as a result, a human nature which has reached the fullness of its responsibilities and of its self consciousness. The heirs of Abraham-men to whom their ancestors bequeathed a difficult tradition of duties toward the other man, which one is never done with, an order in which one is never free. In this order, above all else, duty takes the form of obligations toward the body, the obligations of feeding and sheltering. So defined, the heirs of

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<sup>142</sup> *Tosefta*, Gittin 3:13.

Abraham are of all nations: any man truly man is no doubt of the line of Abraham.<sup>143</sup>

Meiri and Levinas both describe law abiding society united in some common values as the “we” (defined here as group two). Thus, groups one and two are bound to help people outside the group. Note that Levinas mentions feeding and sheltering in a similar fashion to the Tosefta. MDS mandates relationships, obligations, interactions and greetings even to the extreme Other, group three.

Moshe Halbertal affirms this reading of the Meiri:

Establishing a moral stratum shared by all religiously bound communities requires a mindset quite different from one that distinguishes between true religion and false religion- a distinction that lives at the heart of intolerant attitudes. One must be able to set aside distinctions between true and false religions and forge a generic concept of religion encompassing all the specific religions, including Judaism, free of any inquiry into truth or falsehood. The Meiri establishes the following rule: whenever a membership- based distinction is drawn between ‘brother’ and ‘other’ with respect to basic rights and obligations, the only pertinent component of the distinction is between lawful and lawless societies. He [Meiri] consistently translates the distinction between ‘brother’ and ‘other’ into

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<sup>143</sup> Emmanuel Levinas, *Nine Talmudic Readings*, trans. Annette Aronowicz, (Bloomington IN: Indiana University Press, 1990), xxix.



these terms, thereby constructing the category of the moral community- the relevant fraternity.<sup>144</sup>

The fraternal community still has non-members. In this case, the pagan gleaner is an example. The sages used MDS to extend rights to the extreme Other, namely group three, which is termed by Halbertal as “lawless societies.”<sup>145</sup> While Halbertal’s reading of the Meiri expanded the “group,” the sages recognized that there will always be someone who is either slightly or dramatically outside the group such as the pagan gleaner or pagan neighbors that need charity and assistance with burial.

MDS is a movement towards promoting peaceful interactions with neighbors and anyone needy who requires support. MDS seeks to remove hostilities or differences by invoking tolerance and acceptance, as opposed to exclusivism. Thus, while scholars, correctly, identify biblical laws that appear discriminatory based on group membership and language such as “friend, neighbor, and brother,”<sup>146</sup> and while the Meiri expanded the understanding of biblical terms to include “all grounded in religion,” the sages, writing a millennium before the Meiri, used MDS to apply to group three. The reason is to enhance positive interactions and expand peaceful relations. Thus, Halbertal writes: “The ways of peace as a meta-halachic principle thus require not only the granting of basic rights but the elimination of all distinctions between friend and other with respect to

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<sup>144</sup> Moshe Halbertal, “Human Rights and Membership Rights” in *Judaism and the Challenge of Modern Life*, eds. Moshe Halbertal and Donniel Hartman (NY: Continuum Press, 1997), 186.

<sup>145</sup> Ibid.

<sup>146</sup> See Lev. 25:17, Ex. 21:35, and Deut. 22:3 as examples.

all communal welfare and relief institutions.”<sup>147</sup> For purposes of communal welfare MDS places no one is outside the group. In a similar fashion other types of individuals were defined and given status due to MDS. The minor child (group one) who has the knowledge and awareness of what property ownership means is allowed to keep the ownerless object he finds. A poor person gleaning may keep the fruit he has knocked down from the tree, thereby extending biblical law in order to protect his rights. There is room for expanding the relevancy of these two categories (minors and the poor) in the contemporary dialogue using the concept of “power” and imposed authority. Recall that in *Bavli Gittin* when the Amoraim were discussing water rights, Rav Hunah mentioned *kol dealim gavar* (whoever is stronger prevails).<sup>148</sup> The discussion can be understood much more clearly using Michel Foucault’s concerns: “Indeed I would say that the analysis, elaboration, and bringing into questions of power relations and the ‘agonism’ between power relations and the intransitivity of freedom is a permanent political task inherent in all social existence.”<sup>149</sup> Foucault calls on societies to constantly evaluate power structures to assure that there is an appropriate balance as a society progresses. Recall the story about Rabbi Kahana eating the fruit that the poor gleaner had knocked down. The gleaner was able to point out to him that MDS had protected his property and therefore balanced the power structure. Broadly, MDS is a tool or method to promote harmony by granting status or needed rights to those who lack power, such as the minor

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<sup>147</sup> Halbertal, 183.

<sup>148</sup> *Babylonian Talmud*, ed. I Epstein, trans. Maurice Simon, Gittin 60b.

<sup>149</sup> Michel Foucault, *Foucault, A Critical Reader*, ed. David Hoy (Cambridge MA: Blackwell Publishing, 1996), 169. Foucault’s debate with Chomsky in 1971 also discusses this.  
<http://www.chomsky.info/debates/1971xxxx.htm>

and the gleaner. Even group one must constantly balance power structures within the group to promote harmony.

Conclusion 1: The Sages used MDS to promote tolerance and balance power structures that needed correction as part of seeking a society with less conflict.

Conclusions can also be drawn from the stories that were included in the MDS texts. In *Yerushalmi Bava Meziah*, the story of Shimon ben Shetach is told.<sup>150</sup> He was a flax dealer and his students bought him a donkey to ease his load. The donkey had a jewel attached to it. Shimon ben Shetach asked them if the desert nomad (*sirkai*) who sold them the donkey realized that he was giving the jewel with the animal. They said no. He told them to return it. They reminded him that a lost object of a pagan (lawless person) need not be returned. He then voiced two objections: “Am I to be lawless, and moreover I want him to say “blessed is your God.”<sup>151</sup>

It appears to read like a voice within the tradition criticizing the state of affairs and objecting to the situation of not being required to return the jewel. The broken state of affairs is repaired when the students returned the jewel. Shimon ben Shectach was then able to overcome his own barrier to his sense of fairness, expressed “am I to be lawless”. The nomad, upon receiving his lost jewel, will surely remove any barrier he has towards the students, by acknowledging his respect for their law. When the nomad blesses the “God of Israel” upon the return of his jewel, he will become *gedurim bedarchei hadat*,

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<sup>150</sup> *Yerushalmi*, Bava Meziah 2:5 (8c). He lived in 2<sup>nd</sup> and 1<sup>st</sup> century BCE.

<sup>151</sup> Ibid. See also Maimonides *Hilchot Avadim* 9:8 where he lists the halacha that you can work the Canaanite slave with rigor and then he says that “it is the way of piety and the way of wisdom that a man pursue justice” and not treat him that way.

bound by the restrictions of religion, and the barrier between the members of group three will be removed. By sharing common values, they joined in harmony and are now group two, united by appreciation for the law and an awareness of God. The nomad has thus left the group of the lawless.

There is a connection between the story of the jewel and the story of two women who were reconciled as told in the Talmudic MDS text: “Said Rabbi Yehoshua ben Levi: For what purpose do they prepare a meal of comingling for a courtyard (*eruv hazerot*)? It is because of the ways of peace.”<sup>152</sup> MDS is a mechanism that moves in the direction of full reconciliation. If the students return the jewel and the nomad blesses the God of Israel, then harmony and peace have been fostered. When the nomad “blesses God”, he is no longer lawless; he has been brought into the group and group three becomes group two. MDS is then no longer needed as a rationale, since private property must be restored without any MDS decree to those in group two. Thus, the story of the two women, as told by RYBL now explains the principle: whenever any conflict is resolved, a barrier is removed. MDS is understood as both the rationale and the vehicle or mechanism that facilitates harmony. Interaction facilitates peace and “her ways are ways of pleasantness and all her paths are peace” (Prov 3:17).

The RYBL story had a different structure than the Shmuel bar Nachman story where we were told that he wished the transgressor peace and success as part of an MDS decree. RYBL took an existing ritual called *eruv* and added a layer of ethical interaction, such that the *eruv* mitzvah brought about peace. This is a slight change on the theme that

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<sup>152</sup> *The Talmud of the Land Of Israel*, Eruvin 96.

MDS seeks to make rules that prevent conflict. RYBL described the *eruv mitzvah* as resolving conflict. As Martin Debelius suggests, rabbinic stories stand in three possible relationships to their context: A. The narrative corresponds to the context in which it stands according to its original nature. B. The narrative has no relation to the halachic context, but rather is placed there on associative or literary grounds. C. The narrative was originally foreign to the context, but was fitted into it when an interest corresponding to the context was stamped on it.<sup>153</sup> The story of the two neighbors who were reconciled through the mitzvah of *eruv* fits the second category (B). The mitzvah of *eruv* is done in all courtyards in the absence of conflict. The halachic context is to create a common domain for purposes of carrying. The story adds to our understanding of communal interaction by telling us how the mitzvah of *eruv* caused the two women to reconcile. The Shmuel bar Nahman story of greeting and well wishing to the Jewish transgressor and the Abbaye story telling of his refusal to eat the produce that resulted from illicit watering, are directly related to the context of MDS and fit the first category (A). Piety, neighborliness, reconciliation and removal of barriers are the common thread in the stories. The separation that caused the conflict is transformed by the interaction. Group three became group two since they now have shared values. They no longer stand in direct opposition to each other. Through the interaction they live in harmony.

Conclusion 2: MDS moves us from tolerance to inclusion for purposes of social welfare. MDS seeks to create shared values and bring all parties to a state of harmony. Parties in group three can become group two when they interact peacefully.

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<sup>153</sup> Martin Debelius, *From Tradition to Gospel*, trans. Bertram Lee Wolfe. (London: James Clarice 1971), 141.

In the introduction to the paper, we cited Kadushin who used the term value concept to assist in understanding rabbinic values that shaped rabbinic thought and action. The sages responded to social needs and expanded the biblical directives by enacting rabbinic decrees. John Kekes, a contemporary thinker who writes about modern society, has much in common with the sages. Kekes builds a secular argument that seeks to explain why good values should be reinforced and that society should hold wrongdoers accountable for their actions.<sup>154</sup> Recall that pigeon flyers were disqualified from being witnesses. Kekes writes: “The external and independent something is our society’s system of values. We may commit ourselves to some of these values because we believe they would contribute to our well being...Our commitments have to fit...our psychological condition: our sense of who we are and want to be, what we have to do...what matters to us deeply.”<sup>155</sup> The sages and their society inherited a body of values from Sinai. Secular society also inherits a body of values from its cumulative history and precedents. Late Antiquity was not a “mistake free” society. Imagine the following: two gleaners arguing over olives, an aware minor taking possession of an ownerless object confident that it is now his, an ill gentile requiring help or neighbors whispering about another neighbor. This is the world that the sages wanted to improve. Conflicts must be prevented and if they occur they must be resolved. MDS is a way to both prevent and resolve conflicts. Kekes advocates that modern thinkers balance social values as needed, and not exclude any single domain, including individual rights, prior to evaluating

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<sup>154</sup> John Kekes, *The Human Condition*, (New York: Oxford University Press, 2010).

<sup>155</sup> Kekes, 82-83.

problems and making new rules. The sources read in this paper emphasized the point that the sages enacted MDS decrees in many diverse areas of social interaction that required conflict resolution, congruent with Kekes' assertions. As an example, the sages made rules that applied to neighbors living in a courtyard using the principle of MDS. Using MDS in an entirely different social context, they mandated communal responsibility to provide for the needy, and that the Cohen must break his biblically valid oath in order to provide the ritual needs of the person who he vowed to abstain from. They did not limit MDS to any single domain. This is similar to what Kekes is advocating.

Kekes describes contemporary dimensions of value: "Our system of values is three dimensional both literally and metaphorically: it has a human, cultural, and personal dimension, each with its own values, and it is capacious enough to include a wide variety of evaluations. Human values are the same for all human beings; cultural values hold in a particular society at a particular time and may or may not hold in others; and personal values vary with individuals. The justification, or the criticism of a society, then depends on how well its conventions protect the human, cultural and personal values on which our well-being depends."<sup>156</sup> Using the above mentioned dimensions, the MDS decrees of the sages can be understood as human, cultural and personal value concepts. This provides an appreciation for the diversity of the sages' endeavor. They did not avoid any dimension of human need. The Torah mandated a just society. The sages' pursuit of that goal took them into human, cultural and personal domains, where they selectively applied MDS. The basic need to provide food and shelter to every person, whether in groups one, two or

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<sup>156</sup> Kekes, 89. Also compare to Kadushin in introduction.

three, is reflected in the Tosefta *Gittin* 3:13. The basic need for farmers to establish norms to share water rights can be categorized as a human need in order to produce food. The decision of how to do that is an MDS enactment of the sages. Similarly lending tools and utensils to a neighbor is a personal value but the sages had a communal intention that was to foster interaction and good relations. The personal value is the decision of the individual not to withdraw and hide, but to be part of the neighborhood. The cultural dimension is how far to engage and when to stop and draw boundaries. MDS operates across these boundaries. This categorization was important to Kekes since he argues against any primacy of claims of a particular category. The idea that society would only value or enforce basic human categories and ignore other categories is as foreign to Kekes as it was to the sages.

Understanding the reason for the specificity of MDS applications is now much clearer. The sages understood the importance of peace. Pursuit of peace is a multi dimensional value. It does not derive its importance solely from a global basic human need; rather it extends to the cultural and personal dimension as well. Conflicts and gray areas are possible in all three dimensions. This involves acceptance, compromise and tolerance. The story, told by RYBL, of the two women who reconciled as a result of the *mitzvah* of *eruv* had no right or wrong party. In conflict, usually, each side is confident in being right. Whether the argument is rooted in secular modernity or whether the argument is from antiquity and calls for the fulfillment of the biblical summons, the idea of peace and harmony remains grounded in compromise, tolerance and interaction.

Conclusion 3: The sages recognized that a well ordered society possesses a multi layered set of human, cultural and personal values. MDS applies across all three dimensions.



To elaborate, if property protection is considered a basic human norm, it is acknowledged that within different cultures there can be variations of how this is applied. In a similar fashion, if greeting a neighbor is considered a basic human practice, the culture and individual preference shapes this norm. Thus, the intent is not to isolate each MDS case in one of three categories, but rather to argue that the sages operated across all societal dimensions in order to promote an orderly society. The sages sought to minimize and resolve conflicts by targeting specific solutions to areas that needed attention.

Kekes, much like the sages, wants contemporary readers to operate across all dimensions and not discard one dimension as inferior to another. Thus, the MDS readings and Kekes's argument complement each other.

### Conclusion

Under an extremely broad umbrella of the ethical, moral and legal value of “paths of peace,” the sages decreed a set of rules intended to foster relationships and promote a more peaceful interactive society. The specificity of these norms, at first, appeared very narrow in a legal and moral sense. Close examination revealed, however, that they demonstrate the sages' concern for a balanced and cohesive society. No criteria of eligibility at all was placed on the provision of basic human needs such as food, healthcare, burial and overall support. Similarly, interactions with neighbors who possessed different values were encouraged as long as the law was observed.

Conclusion 1: The Sages sensitivity to the Other has direct similarity to the modern discourse that seeks tolerance and balancing of power structures.

Conclusion 2: MDS moves us from tolerance to inclusion for purposes of social welfare. Members of group three can become members of group two through MDS interactions.

Conclusion 3: The sages recognized that a well ordered society possesses a set of values that can be understood as addressing varying needs across broad categories, namely Human, Cultural and Personal. MDS applies across all three dimensions.

The study of MDS points to contemporary possibilities. Modern societies seek to maximize individual opportunity while guaranteeing public safety and welfare. Peace is both a secular and religious fundamental value based on common understanding of well-being and human security. MDS is a unique rabbinic tool that contemporary society can appropriate as a practical facilitator of conflict prevention and resolution.

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## CIRRICULUM VITA

NAME: Bruce Roth



DEGREE AND DATE TO BE CONFERRED: Master of Arts, 2014

Secondary education: Netiv Meir High School, Jerusalem, Israel, 1970

<u>Collegiate institutions attended</u>	<u>Dates</u>	<u>Degree</u>	<u>Date of Degree</u>
University of Miami Major: Electrical Engineering	1978 – 1981	Bachelor of Science	1981
Towson University Major: Jewish Studies	2011 – 2014	Master of Arts	2014

### Professional positions held:

2007-2011 Radar Engineering and Business Management Consultant	Eldersburg, MD
2006-2007 Vice President Strategic Planning, Telephonics Corp.	Farmingdale, NY
1992-2006 Vice President, Systems Engineering Group, Inc.	Columbia MD
1985-1992 Radar Engineer and Department Manager, TSC	Silver Spring, MD
1981-1985 Signal Processor Design Engineer, RCA	Moorestown NJ
1977-1981 Hebrew teacher, Beit Breira	Miami, FL
1976 Banking Procedures Instructor, Bank Hapoalim	Ramat Gan, Israel
1972-1975 Communications Instructor, Israel Defense Forces	Israel

