*Takanot* "In the Interests of Peace" in Talmudic Literature: When a Halakhic "Truth" Meets Interpersonal Relationships

The halakhic system is a legal mechanism by which the sages of the mishnaic-talmudic period regulated all aspects of the life of the individual and the society. This system derived from and rested on the earlier tradition of biblical commandments that were recognized as *torat* *@hayim*, a code for living that was intended to be actualized. In the dialogue that arose between Torah and "life," the sages not only had to address potential disputes and conflicts over rights, resources, or feelings of injured honor, but also had to cope with the arena of shared existence of social groups holding different ideas. Indeed, the heterogeneous nature of the Jewish community produced a variety of dilemmas and conflicts for which there were, in fact, no clear halakhic answers; strict adherence to the halakhah would have exacted a drastic social price, expressed in rancorous animosities within the community and between the community and its neighbors.

Research today has proposed a number of approaches to the question of rabbinic dominance in the Jewish society of the period of the Mishnah and the Talmud. Catherine Hezser provides an example of a particularly minimalistic approach.[[1]](#footnote-1)

One should note that in various places in talmudic literature the sages reveal their inability coerce the public to follow their views. So, for example, they admit their limited power over the *kohanim*: either because the *kohanim* had their own judiciary, or because of their strong position within Jewish society, resting on the traditions of the Torah and the religious and social conditions that had existed in the days of the Second Temple (e.g., mEd 8:3). Another example that reflects the sages' understanding that the halakhic system was not always adequate for changing deeply-rooted norms in society can be seen in talmudic sources describing leading sages trying to institute desired norms by personal example.[[2]](#footnote-2)

I believe that when we ask ourselves what can be learned from the rabbinic sources about the connection between halakhic discourse and the sages' lived reality, especially when we examine their use of *takanot*, one should take into consideration two additional points: The first derives from the character of *takanot* as legislation intended to solve a contemporary need — demonstrating an actuality.[[3]](#footnote-3) The second rests on the sages' aspiration to impose their concepts and precepts over society at large, even though this aspiration was never fully realized. From this perspective, even if we suppose that "ways of peace" *takanot*, which I will discuss further below, were not implemented by all members of the community, they remain a suitable lens for examining the sages' different approaches in coping with actual challenges, and not just as reflections of internal theoretical and academic discussions (*pilpul*). [[4]](#footnote-4)

In Mishnah tractate *Gittin* one finds a group of *takanot* in which the decisions are justified by the phrase "in the interests of peace."[[5]](#footnote-5) This justification clearly conveys that the considerations that guided the sages in their decisions did not always stem from the internal logic of the halakhic matter under discussion, but from other factors altogether; in this case, the expected ramifications of a halakhic decision on people's behavior towards one another.

The preference for a social consideration — "peace" — instead of legal logic and argumentation, raises key questions regarding the concepts and principles of the halakhic system, and its relation to social reality and its respective challenges.[[6]](#footnote-6)

Recent years have witnessed a vigorous debate regarding the questions: Can one point to a "meta-halakhah"?[[7]](#footnote-7) Is there any different between "meta-halakhic" considerations and non-halakhic considerations?[[8]](#footnote-8) Or between meta-halakhah and the philosophy of halakhah?[[9]](#footnote-9) And what do these concepts from varied disciplines contribute to our understanding of both the sages' thought and the halakhic system?[[10]](#footnote-10)

This articles bases its use of the concept of "meta-halakhah" on definitions found in the work of Eliezer Goldman.[[11]](#footnote-11)

Meta-halakhah is the unearthing of the mechanism that is found in halakhic literature. These are value statements sown in halakhic discourse, but are not part of the logical principles of the halakhah. Despite their marginal status, they have the power to direct the course of decisions and overcome correct, logical halakhic judgements at critical decision points, when the judgement reaches halakhic conclusions that are problematic in their content.

In contrast to Yeshayahu Leibovitz and Rabbi Solvetchik, who can be seen as thinkers holding a formalistic conception of the halakhah,[[12]](#footnote-12) Goldman contends that halakhah is not founded on a single meaning context. In his view, halakhahis based on an approach related to the different meanings in which human practice operates, because the Torah was given to particular people who always live a concrete existence and hold a particular value system. The significance of this is that serving the Lord [that is, applying the Torah to reality by using *halakhot*. S.M.] must be done through that reality.[[13]](#footnote-13) Meta-halakhic norms are the mechanism that bridges between halakhah and reality. These norms guarantee the religious significance of the halakhic system and the practical human suitability. The meta-halakhic foundation is therefore the one that identifies the connections other than the inherent logic in any specific halakhah that is relevant to ahalakhic norm decision. [[14]](#footnote-14) In Goldman’s words:

The main task of meta-halakhic norms is to annex a halakhic matter to a specific context. If the matter belongs in a context, then the characteristics of that context, the standards operating within it, and the value judgments it uses to decide are relevant for a halakhic determination. This contention also applies to legislation within the framework of the halakhah as well as to judgements and teaching.[[15]](#footnote-15)

Building on Goldman’s definition, I will first try to show that "ways of peace" is a "value concept" that reflects the judgements of R. Yehudah ha-Nasi and his coterie (who edited the corpus of "ways of peace" *takanot* in the Mishnah).[[16]](#footnote-16) As such, "ways of peace" was brought to the act of judgement and diverted from the path of narrow logic, which ostensibly reflects the proper means of deliberation, to other *halakhic* results. As I will demonstrate, diverting the path of judgement from one *halakhic* result to another is sometimes apparent from the Mishnah itself, and at times from alternate suggestions found in the Talmuds. However, even if one treats "ways of peace" *takanot* as based on meta-halakhic principles, there is still room to ask additional questions regarding the place of these principles within the halakhic system. One question touches on the essence of the meta-halakhic principle: Does this principle, as a value judgement, stand as an "absolute value" reflecting a correct situation (ethical or social), in the halakhic system?

Perhaps the opposite is true: the meta-halakhic principle of "ways of peace" was considered the best available solution to a complex social reality in which people were, at times, motivated by emotions and impulses and not by rational considerations. Alternatively, occasionally they were guided by concepts of normative interpretations that did not fit with those of the sages themselves. As such, these regulations should be treated as "beyond the strict letter of the law" and not as true halakhah. Therefore, it was thought that their use should be restricted and minimized as much as possible.

Another question is: Were decisions based on a meta-halakhic principle more significant to later authorities than "regular" decisions (in keeping with the logical relevance of the *takanah*)? In other words, was a decision based on a meta-halakhic principle born of a specific historical social and cultural context considered binding also by authorities operating in a different historical milieu?

 In the remainder of this article, I will present examples that illuminate the above questions, while at the same time attempting to elucidate the key approaches taken by the sages and *poskim* (rabbinic authorities) of later periods towards seemingly "meta-halakhic" judgements. From the examples offered here, one can, to my thinking, point to two principal approaches: One approach sees everyday life in a community framework — inevitability alongside various "others" — and its assorted emotional or ideological challenges as not necessarily negative. On the contrary, this approach holds that it is correct to consider different *halakhot* that were decided in regard to decisive issues as justifiable by the meta-halakhic principle of the good of society as a whole, and not by some specific subject. The second approach contends that there should only be limited use of meta-halakhic"ways of peace" reasoning. Its adherents do not necessarily reject "ways of peace" as a fitting moral value to which society should aspire. Nevertheless, it is doubtful that they saw a justification for a meta-halakhic level in the halakhic structure. In other words, to their thinking a meta-halakhic principle, if indeed it has any role to play in the halakhic system, should be limited to theoretical discourse and not applied to practical decision making.

 **The context of the phrase "in the interests of peace" in the Mishnah**

"In the interests of peace" is mentioned as a justification for eleven *takanot* found in chapters four and five of Mishnah tractate Gittin, whose stated goal is *tikun‘olam* (literally, "repairing the world," though the phrase is variously translated). These chapters can be viewed as a textual unit which is made up of three clusters, each comprising sources from different periods. In the main cluster (mGit. 4:4-5:4) we find *takanot* and arguments that employ the rationale "for the sake of *tikun ‘olam*." The two additional clusters, which do not mention *tikun ‘olam* explicitly, can be grouped together. The first of these additional clusters includes *takanot* employing rationales that resemble the *tikun ‘olam* *takanot* both in syntax and semantic field (mGit. 5:5-7): "the *takanah* concerning the return of the value of stolen property" (*takanat ha-shavim*, mGit. 5:5); *sikarikon* (mGit. 5:6); and "for the repair of the altar" (*tikun  ha-mizbea@h*, mGit. 5:5)." The second of these additional clusters contains *halakhot* that employ the rationale "in the interests of peace" (*darkei shalom*, mGit. 5:9–10).

The concept of *tikun* ‘*olam* originated around the end of the Second Temple period. The first element of the concept was a widening of the personal legal status of individuals in the Jewish community, and the inclusion of women and emancipated slaves. It ensured that they would be able to establish families according to the halakhah, and to bring children (who would not be considered *mamzerim*) into the world in order to populate it. This conception began to change during the Ushah period. At that time, ensuring a viable birth-rate was still regarded as the central facet of *tikun* ‘*olam*; the critical importance of this issue must be understood against the background of the needs of Jewish society in Palestine after two wars.[[17]](#footnote-17) However, the continuing existence of Jewish society was not seen as being solely dependent on the size of its population. Other measures were required in order to ensure its survival, and it is clear that the rabbis placed a relatively large emphasis on favorable economic conditions as well.

The main change came at the end of the mishnaic period, with the editing of the *tikun* ‘*olam* unit mentioned above by R. Yehudah ha-Nasi and his disciples. The earlier determination that‘*olam* referred to Jewish society brought about a continuing expansion of the areas to which *tikun* should be applied. At this point, *tikun* was perceived as an expanding set of measures to ensure the existence of Jewish society as a culture of settlement with clear and well-defined religious and national characteristics. As a result, regulations and *halakhot* that were enacted by different rabbis at different times were removed from their original contexts and placed in this section of Mishnah *Gittin* with the addition of the phrase *mipnei* *tikun* ‘*olam*. In the new context, they were endowed with a new ideological slant, which viewed the concrete social confrontations they reflected as representations of a broader aim, in accordance with R. Yehuda ha-Nasi and his disciples' understanding of *tikun* ‘*olam.* Together, they would cause the Jewish community in the Land of Israel to flourish, thus strengthening the civilization which had the responsibility of populating the world.

As a result of the changes in the perception of *tikun* ‘*olam*, its central significance became the primary tier of the concept about the logical priority of the conditions required to ensure the existence and growth of Jewish society. However, other layers were added as well. These additional layers reveal a gradual move from a concern for assuring the basic survival of the community towards the assurance of humane living conditions within it. Finally, there were *halakhot* that occupied a position between the formal area of *halakhah* and the informal area of community life. The purpose of these *halakhot* was to prevent disputes between members of the community and to ensure friendly relations between neighbors as a means of promoting social solidarity.[[18]](#footnote-18)

The corpus of *halakhot* "in the interests of peace" in Mishnah *Gittin* 5:9-10 includes this list:[[19]](#footnote-19)

The following rules were laid down in the interests of peace

1. A priest is called up first to read the law and after him a Levite and then a lay Israelite, in the interests of peace.
2. An ‘*Erub* is placed in the room where it has always been placed, in the interests of peace.
3. The pit which is nearest the [head of the] watercourse is filled from it first, in the interests of peace.
4. [Taking] objects founding by a deaf-mute, an idiot, or a minor is reckoned as a kind of robbery – in the interests of peace. R. Jose says: it is actual robbery.
5. [The taking of] beasts, birds and fishes from snares [set by others] is reckoned as a kind of robbery - in the interests of peace. R. Jose says: it is actual robbery.
6. If a poor man gleans on the top of an olive tree, [to take the fruit] that is beneath him us counted as a kind of robbery. R. Jose says: it is actual robbery.
7. The poor of the Heathen may not be prevented from gathering gleanings, forgotten sheaves, and the corner of the field, in the interests of peace.
8. A woman may lend to another who is suspected of not observing the *Sabbatical* year a fan or sieve or a hand mill or a stove, but she should not sift or grind with her.
9. The wife of a *Haber* may lend to the wife of an *‘Am Ha-Aretz* a fan or sieve and may winnow and grind and sift with her, but once she has poured water over the flour 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 only in the interests of peace.
10. Heathens may be assisted in the *Sabbatical* year but not Israelites.
11. and greeting may be given to them, in the interests of peace.

The corpus includes three groups of *halakhot*. The first deals with relations between neighbors, and the conflicts that arise from individuals' encounter in the public space of the community (synagogues or public areas). The second deals with the conflicts arising from the differing *halakhic* observances of the *@haverim* of the community (‘*am-ha-’arets*, *@haverim*; observers of the sabbatical year, transgressors of the sabbatical year). The third group reflects the increase in interpersonal connections and addresses relations between Jews and gentiles.

 One can see that the underlying concept guiding the sages' judgement was the desire to prevent hostility between neighbors and different groups in the community. The editors of the corpus saw interpersonal conflicts as disruptive events that could bring about the social dissolution of the community and plunge it into a primitive state of chaos. The "ways of peace" rules therefore create an additional buttress to strengthen the community (i.e., *tikun ha-‛olam*). Ostensibly, one can suppose that those who employed this approach saw the rules as a compromise (perhaps acceptable, if painful) that they had to make with "others" of various types in order to guard the integrity of the Jewish community.[[20]](#footnote-20)

Another perspective on this approach uses a model of the overlapping concepts of "right" and "good." Dorrf explains those concepts as follows: "Judgments of the "right" . . . are assertions of *what must be done to advance the basic need of the society* as that society envisions them. . . . The "good," in contrast, is a declaration of *the less basic needs* *or the ideals of the society*."[[21]](#footnote-21)The right, he continues*,* "must be defined in terms of the needs of human survival *as a particular society sees them*."[[22]](#footnote-22)

However, it is possible to point to a different approach guiding the sages, which saw "ways of peace" as a value in and of itself. If so, then perhaps "ways of peace" *halakhot* did not only arise from pragmatic considerations, but were enacted to rectify a mistaken or deficient *halakhic* situation — a lacuna — with the intent of bringing it into accord with appropriate absolute values or morals.

We now turn to a discussion of a number of *halakhot*. These are discussed with respect to their considerations on social connections, whether referring to individuals within a Jewish community, as individuals belonging to a certain strata of society that was observant of the *halakhah* (as they were understood and fashioned by the sages) but in a different manner, or between Jews and gentiles.

1. Halakhot relating to theft among Jews[[23]](#footnote-23)

1. [Taking] objects founding by a deaf-mute, an idiot, or a minor is reckoned as a kind of robbery – in the interests of peace. R. Jose says: it is actual robbery.
2. [The taking of] beasts, birds and fishes from snares [set by others] is reckoned as a kind of robbery - in the interests of peace. R. Jose says: it is actual robbery.
3. If a poor man gleans on the top of an olive tree, [to take the fruit] that is beneath him us counted as a kind of robbery. R. Jose says: it is actual robbery.

These three *halakhot* are connected by their shared subject matter, and all include a dispute between the tannaitic tradition that quotes the halakhah (*tanna* *kama*) and the opinion of R. Yose.[[24]](#footnote-24) The *halakhot* settle the property rights in cases in which the ownership of the property is considered to be unclear. Halakhah 4 deals with people — a deaf-mute, an idiot, or a minor — who in many instances were considered by the sages to not be competent to uphold halakhic norms, including bearing witness, marrying, and the right to hold property.[[25]](#footnote-25) Whereas *halakhot* 5 and 6 concern situations in which a person acts to obtain some object — by placing traps to catch various animals, or by shaking olive branches to gather the olives that fall from a tree (note that at issues is the halakhah concerning the poor who are gathering *pe’ah* or forgotten fruit, and not the actual owner of the tree) — but has yet to obtain it. Hence, according to the usual laws of property, he or she has not yet acquired ownership of the object.[[26]](#footnote-26) During this liminal, intermediary phase, the object has been seized by another. Now the question arises: Did this second person steal the object, or is he or she now its legal owner? In all three cases, the sages, including R. Yose, decide that the object belongs to the first person, even if he is not competent to hold various property rights, or that he had not yet obtained ownership of the item. The taking of an object by another — finding[[27]](#footnote-27) an animal or olives — is considered theft. However, the justification "for the sake of peace" indicates that the sages did not consider the seizure forbidden because the item was owned by the first person — i.e., as a result of the legal status of the object itself — but rather because of the implications such a stance might have on interpersonal relationships within society, including leading to physical violence. This can be seen from the reasoning in mPe’ah 4:4 regarding the distributions of *pe’ah* to the poor following violent incidents and the damage that might be inflicted on the general welfare of society. R. Yose disputes the reasoning of the sages, and views the ownership of the item through the lens of the regular laws of theft. In other words, the sages reasoning strays from the halakhah's general property rules and reaches a conclusion "beyond the strict letter of the law." By determining that the object belongs to that individual on account of a meta-halakhic consideration — either because of ethics or public policy — the sages see the halakhah as having a role in creating social justice and social solidarity. R. Yose, on the contrary, holds that there is a halakhic prohibition, deriving from the laws of property themselves, and thus considers these as cases of theft according to the usual, generally operating legal system, inherent in the halakhah and not needing any outside justification.

This dispute between the sages and R. Yose illustrates the questions that I posed above regarding the relations between halakhah and meta-halakhah. Apparently, there were cases in which the judgements of the sages were guided by a concern for the impact decisions would have on interpersonal relations and not by the law alone. In these cases, the decision was justified by "the interest of peace."

However, examination of the talmudic discussion of these instances[[28]](#footnote-28) reveals that "expanding the rule," based on transforming a case that is "beyond the strict letter of the law" into the law, brings with it dilemmas of principle and of practice. Should the punishment for an action not prohibited by the law be identical to the punishment for an action that is forbidden by the law?[[29]](#footnote-29) Perhaps this is the dilemma that motivated R. Yose to decide that such seizure is undeniably theft,[[30]](#footnote-30) and, therefore, falls under the usual laws of theft and the sanctions that accompany them. The designation "in the interest of peace" would seem to indicate that practical sanctions were not applied, but only moral ones, namely the determination that the act was theft. Therefore, it appears that at least some of the sages held that meta-halakhic principles did not have more validity than key *halakhot* (and perhaps *vice versa*), even if their ethical (or pragmatic) intention was worthwhile.[[31]](#footnote-31)

**2. Contact with those Suspected of Violating the Sabbatical Year and with *‘Am ha-’Arets***

1. A woman may lend to another who is suspected of not observing the *Sabbatical* year a fan or sieve or a hand mill or a stove, but she should not sift or grind with her.
2. The wife of a *Haber* may lend to the wife of an *‘Am Ha-Aretz* a fan or sieve and may winnow and grind and sift with her, but once she has poured water over the flour 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 only in the interests of peace.

These *halakhot* deal with relationships between neighbors who do not observe the halakhah to the same extent. Halakhah 8 considers different levels of observance of the sabbatical year, while halakhah 9 considers different levels of observance of eating in purity.[[32]](#footnote-32) These *halakhot* also are found in chapter 5 of Mishnah *Shebi’it*, along with other *halakhot* concerning contact with those "suspected of *shebi’it*," and shape the manner of dealing with them. Among other laws, we learn:

1. These are the implements which the craftsman may not sell in the Seventh Year: a plough and whatever pertains thereto, a yoke, winnowing fan or mattock. But he may sell a sickle or a scythe or a wagon and whatsoever pertains thereto. This is the general rule: any implement is forbidden whose sole use is one that transgresses, but it is allowed if its use may be either one forbidden or one permissible.
2. The potter may sell five oil-jars and fifteen wine-jars, since a man is accustomed to get so much from the ownerless produce; and if he gets more it is permitted . The potter may sell to gentiles with Land and to Israelites outside the Land.
3. The School of Shammai say: A ploughing heifer may not be sold to a man in the Seventh Year. But, the School of Hillel permit it since he may perchance slaughter it. One may sell him produce even in time of sowing; even it is known that he has a threshing-floor one may lend him a *seah*-measure; and one may give him small money in change even if it is known that he employs laborers. But if [it is known that these are required] expressly [to transgress the law of the Seventh Year] they are forbidden.
4. A women may lend a sifter, sieve, handmill, or oven to her neighbor that is suspected of transgressing the law of the Seventh Year, but she may not winnow or grind corn with her. The wife of a *chaver* may lend a sifter or sieve to the wife of an *am-haaretz* and may winnow, grind or sift corn with her; but when she pours water over the flour she may not draw near to her, since help may not be given to them that commit transgression. All these have been enjoined for the sake of peace. Gentiles may be helped in the Seventh Year, but not Israelites. Moreover, greetings may be offered to gentiles for the sake of peace.

The pertinent question here is: In what sense are the *halakhot* in mishnah 9 different than the *halakhot* in tractate *Shebi’it*, which alone were categorized as "ways of peace"?[[33]](#footnote-33) Apparently, the difference in understanding between these and other halakhot is in the *okimta —* a new approach to a tannaitic source that turns it into a particular example differing from the accepted decision[[34]](#footnote-34) — to the *halakhah* that deals with a suspected transgressor of the sabbatical year, fixed by R. Zeira in order to fit the rules of tractate *Shebi’it*.[[35]](#footnote-35)

R. Zeira asked in the presence of R. Mana: The Mishnaic passage concerns a case in which it is not known [whether the woman suspected of transgressing the restrictions of the Sabbatical year wishes to borrow the utensils for a permitted or forbidden purpose].

But if the borrower made explicit that the utensils were needed for a forbidden purpose, the other individual may not [lend them to her].

[Disagreeing, Mana] said to him, now [since these utensils only purpose is the preparation of flower and bread,] is not a case in which it is not made explicit [that the borrower wishes to use them for that purpose] comparable to a case in which it is made explicit?

R. Zeira responded [to him]: I can reason: A sifter, to count coins; a sieve, to sift sand; a millstone, to grind medicines; an oven, to store bundles of [wet] flax.[[36]](#footnote-36)

R. Zeira bases the halakhah regarding one suspected of transgressing the sabbatical year on the rule found in mishnah 8 of tractate *Shebi’it*. In his opinion, the mishnah permits lending the utensils mentioned in the passage to the suspected transgressor because she did not explicitly state her purpose in borrowing them (= undefined, unknown). In this case, one can interpret the purpose of borrowing in different ways which may be permitted. However, one may not lend her utensils if the borrower categorically stated that she needed the instrument in order to prepare bread from grain suspected to have sprouted in the field after the beginning of the sabbatical year, or grain that was not removed (i.e., removed from the home and distributed generally). This was because one may not aid in committing a transgression, as stated at the end of *Shebi’it* 5:8: "they are forbidden. This *okimta* R. Manne disputes, 'now [since these utensils' only purpose is the preparation of flower and bread,] is not a case in which it is not made explicit [that the borrower wishes to use them for that purpose] comparable to a case in which it is made explicit?'" In other words, why categorically state the intended use? Could there be any other possible purpose than preparing grain? In reply, R. Zeira suggests other possible uses of those same utensils: "A sifter, to count coins, etc." That is to say, in the absence of a clear statement of the intended use of the utensils, the lender may conclude that the borrower will utilize them for permitted needs.

The halakhic discourse surrounding these halakhot, in which a legal step is taken to fit the specific halakhah to the internal logic of the sabbatical year permissions, clearly reveals the moment that the halakhic decision was so diverted from its inherent and proper direction as to result in a new halakhic result: The permission to lend utensils to neighbors in all cases, and not only in those cases in which the woman clearly declared her intended use. Moreover, even though both judgements can be seen as achieving the same result — at least ostensibly, basing the halakhah on "ways of peace" does not change the final result, since in both cases it is permitted to lend utensils to a neighbor suspected of infringing the sabbatical rules — one can clearly see how the sages endeavored in later periods to remove the justification provided by the Mishnah. Instead of basing the decision on "ways of peace," they preferred to base their justifications on the rule that "any implement is forbidden whose sole use is one that transgresses, but it is allowed if its use may be either one forbidden or one permissible."

 One should note that, while both justifications base an individual halakhah on a more general rule, they do not function in the same way. The general rule set down in tractate *Shebi’it* regulates a relatively narrow assortment of cases that all concern the same subject: defining the criterion for determining whether to prohibit or permit the use of utensils in the sabbatical year, a criterion that can be formulated according to the various potential uses of the utensils. As such, this rule fits the definition of a "legal rule" according to legal doctrine and the philosophy of law.[[37]](#footnote-37) Contrarily, the "ways of peace" justification fits the concept of a "legal principle" (and the halakhic concept it parallels, a "*halakhic* principle") because it is based on a general value that does not regularize an individual case, but determines a judicial value by which individual decisions are reached. [[38]](#footnote-38)R. Zeira's legal move provided us with the possibility of identifying which justification is functioning as a *concrete halakhah*, which as a *halakhic rule*, and which as a *meta*-*halakhaic* *principle*. This classification justifies the identification of the reasoning "in the interests of peace' as a meta-halakhic principle.

 These observations on talmudic discourse lead me to the conclusion that the original justifications for the *takanah* "a women may lend a sifter, sieve, handmill, etc." did not stem from the permissions found in tractate *Shebi’it*, but that, instead, one has to seek another cause. The difference between this *takanah* and those preceding it stems, I believe, from the character of the relationships described there. In contrast to the preceding *mishnayot*, which are based on shared economic interests — of merchant, craftsman, consumer, etc. — mishnah 9 deals with relations between neighbors. The intimacy that characterizes these relationships is reflected in three ways: first, the Mishnah clearly uses the words "a woman lends to her neighbor"; secondly, the suspected transgressor requests the use of the household utensils "a sifter, a sieve, a handmill, or an oven" every day; and thirdly, it is apparent from the Mishnah's depiction that these utensils being were used together by neighborhood women, as echoed in the phrase "she may not winnow or grind corn with her." Hence, it is no wonder that the Mishnah concludes that the two women are close. The request for the utensils indicates a relationship of trust and confidence between the lender and the borrower, as does, perhaps, the fact that each accepts the other as they are, without enumerating the religious differences that separate them from those who strictly observe the *halakhot* of the sabbatical year. Therefore, while one can base the permission to lend the utensils on the fact that the request was not detailed, as R. Zeira does in other *mishnayot* on the sabbatical year, this mishnah's ruling is justified by the desire to protect relationships between neighbors, in contrast to relationships founded on and sustained by common economic interests.[[39]](#footnote-39)

One can also interpret similarly the passage concerning the wife of an ‘*am ha-’arets*. Yair Furstenberg has addressed the changes in the sages' perception of the ‘*am ha-’arets* from the destruction of the Second Temple until the end of the mishnaic period.[[40]](#footnote-41) He points out that in the earlier period:

Severe social separation is attributed to the *@haver*, encompassing an extreme restriction on any social and commercial contact with an ‘*am ha-’arets*, thanks to which he is recognized as devoted. Evidently, in the tradition, who were distinct in their life style and their strict observance of purity, and by its nature lent itself to wide and blurred borders, as well as bringing into existence different levels of keeping one's distance from the polluted environment . . . . By means of complete isolation from those who do not observe purity . . . in contrast to the earlier characteristics of membership, the set of obligations in Tosefta Demai 2:3 does not include the element of isolation from an ‘*am ha-’arets* . . . the *@haver* continues to maintain personal contacts with the ‘*am ha-’arets*. He must be cautious only that in meeting him he does not further pollute his purity. This situation fits Mishnah *Teharot* of the sages of Usha, which assumes ‘*am ha-’arets*'s presence in the home of the *@haver*, and that the *@haver* can even keep his utensils and clothing in the home of the ‘*am ha-’arets*.[[41]](#footnote-43)

Thus, the social situation apparent from the "ways of peace" tradition exactly coincides with the conceptions of the Usha generation of tannaim. In the Mishnah, there is no isolation or social distancing from the ‘*am ha-’arets*. On the contrary, the wife of a *@haver* and the wife of an ‘*am ha-’arets* are depicted as neighbors, have personal contacts, and lend utensils to one another. Furthermore, the two women can even enjoy doing their daily chores together; the only obligation the sages lay on the wife of the *@haver* is to be careful that the wife of an ‘*am ha-’arets* does not make her ritually impure.[[42]](#footnote-44) This is the reason why they designate the precise moment when the food might become polluted: when water is poured into the flour to form the dough.[[43]](#footnote-45) The *mishnayot* on these subjects — concerned with potential conflicts arising from coexistence with other social groups holding different standard of religious observance — reflect the importance the sages attached to developing neighborly relations between people living in close proximity.

In opposition to formulistic approaches to halakhah, I believe that, in the view of R. Yehudah ha-Nasi and his circle, good neighborly relations rooted in everyday life do not contravene the halakhic system. Instead, one should see them as a source for legal principles derived from a theological conception of the present — a notion that expresses itself in ideas found at the core of the concept of *tikun ‘olam* — that delineate the "proper community."

The examination of the *halakhot* in this section demonstrates that the concept of "ways of peace" should be viewed as a meta-halakhic concept in the sense that it is employed as a value concept whose role is to bridge between a theological view (*tikun ‘olam*) and the human reality to which it supposedly applies through the medium of concrete *halakhot*. [[44]](#footnote-46) In Goldman's formulation: A concept that enables serving G-d in a way suitable to human reality. [[45]](#footnote-47)

**3. Relations with Gentiles**

In the examination of *halakhot* in this section I will attempt to answer the other fundamental questions that I posed at the beginning of this article, concerning "ways of peace" *takanot* in particular, and meta-*halakhic* principles in general: Does a meta-*halakhic* principle, as a "judicial value" have standing as an "absolute value," reflecting the "proper situation" (ethically or socially) that the creators of the halakhah wish to achieve with the aid of their *takanah*? [[46]](#footnote-48)Another question that I will examine is whether the decision, in accordance with the meta-*halakhic* *principle*, reached within a specific social, historical, and cultural context was seen as binding by authorities operating in a different historical context?

The gleanings of the field, forgotten sheaves, and *pe’ah* are all biblical *halakhot* whose purpose is to aid poor Israelites.[[47]](#footnote-49) While the law does not permit distribution of such "gifts to the poor" to gentiles as well, it does determine that one cannot prevent a poor gentile from also taking what has been left in the field. But one wonders why is it necessary to ordain consent if there is no encouragement to actively give to the gentiles? In all probability, it is because there is no *halakhah* here that allows a clear constraint, the permission granted to gentiles to gather the forgotten sheaves, the gleanings of the field, and *pe’ah* could decrease the portion received by poor Israelites, which would be considered theft from the poor.[[48]](#footnote-50) Hence the sages saw the necessity of anchoring it in a ruling.

The parallel Tosefta *Gittin* 3:13-14, adds more obligations:

A city that has Israel and gentiles the leaders tax Israel and the gentiles "in the interest of peace";

Provide for the gentile poor with the Israelite poor "in the interest of peace";

Eulogize and bury dead gentiles "in the interest of peace";

Comfort the mourners of the gentiles "in the interest of peace"[[49]](#footnote-51)

Later, we also find the following *baraita* in the Palestinian Talmud, *Gittin* 5:9, 47c:[[50]](#footnote-52)

We learn, that a city that has gentiles that Israel appoints a gentile treasurer and an Israelite treasurer and collects taxes from both the gentiles and from Israel. It also provides for the poor of the gentiles and the poor of Israel.

Visits the sick of the gentiles and the sick of Israel.

Buries the dead of the gentiles and the dead of Israel

And gives solace to the mourners of the gentiles and the mourners of Israel

And cleans the utensils of the gentiles and the mourners of Israel.[[51]](#footnote-53)

In the interest of peace

Babylonian Talmud *Gittin* 61a also includes a *baraita*, which comprises the "question" on this mishnah, that mentions some of the obligations noted in the Tosefta and the Palestinian Talmud:

The Rabbis have taught, provide for the poor of the gentiles with the poor of Israel

Visit the sick of the gentiles with the sick of Israel

Bury the dead of the gentiles with the dead of Israel

For the sake of peace

 It appears that the mishnaic permission was expanded in the *baraita* to other activities that enjoin action ("arise and do" rather than "sit and do not do") up to and including the establishment of regulations for an entire city. The difference between the version in the *baraita* as it appears in the Babylonian Talmud, in which it is written "provide for poor gentiles along with poor of Israel," and the version in the *baraita* in the Tosefta and the Palestinian Talmud, in which the actions are joined with the conjunction "and" ("appoint a gentile treasurer and an Israelite treasurer") sharpens the question of whether "ways of peace" *halakhot* were perceived as pragmatic arrangements stemming from the demands of life alongside gentile communities, or as an absolute value that one should live by. Saul Lieberman, in referring to the parallel text "the gentile and the slave — one does not deal with them in any case" from tractate *Sema@hot* (1:9), claims "we have already seen that chapter 1 of tractate *Sema@hot* explains that one does not involve oneself with a gentile. Apparently there the law was communicated, but here the halakhah was "in the interest of peace."[[52]](#footnote-54) In other words, the sages preferred to stray from the law in order to create good neighborly relations with gentiles.

This subject was raised in the commentaries of the rishonim, as can be seen in the examples that follow. Rashi, to begin with, interprets the matter in this way:

"With the dead of Israel" — Not with the graves of Israel but to deal with them if they are found with Israel.

Rashba (Rabbi Shlomo ben Aderet) in *@Hidushei ha-Rashba* on bGit. 61a, explains Rashi's statement. According to Rashba's understanding of Rashi, the rule is limited in its scope and relates only to a situation in which the gentile is present at the time of the act itself. In this circumstance, enmity might arise as the gentile will resent discrimination by an Israelite who only takes care of a deceased (or impoverished) Israelite. To prevent such hostility, in the interest of peace one should take the same actions for the gentile. But in when no gentile is present, there is no need for a consideration of "the interest of peace." One should observe the *halakhot* of purity and avoid making oneself unclean through contact with the dead body. This approach considers "in the interest of peace" as a way to prevent enmity and hostile actions by the gentiles. Consequently, one should not see "the interest of peace" as representing an absolute value and the halakhah as it should be, but rather as a necessary evil alone, stemming from obligations that arise from living alongside gentiles.

Rashba, unlike Rashi, relies on the Tosefta and Palestinian Talmud versions, and presents an opposite approach. The word "with," which appears in the *baraita* in the Babylonian Talmud, is interpreted by Rashba as an analogy: "as one buries Israelites, so one buries gentiles." He finds his proof in the Palestinian Talmud, which inserts a conjunctional vav between Israelite and gentile. Rashba understands this vav as indicating an instruction to do "this and also that," with no reservation or discrimination between actions taken for an Israelite and a gentile. The *baraita* in the Tosefta, which refers to eulogies and condolences for gentiles without any reference to Jewish mourners, takes a similar approach.[[53]](#footnote-55)

From the above, it is difficult to judge whether the rabbis who enacted these rules in the mishnaic period saw them as an expression of an absolute value, or as a necessary condition for reasonable coexistence with gentiles. I believe that it is difficult to rely on the various textual versions — whether those found in the Tosefta manuscripts,[[54]](#footnote-56) which contain several variants, or the *baraitot* in the Talmud — in making a claim that the sages held different approaches on how to act towards the gentiles. Lieberman assumes that the general halakhah in tractate *Sema@hot*, which forbids buring a gentile, is the ideal law, and that *halakhot* "in the interest of peace" stray from it in order to accommodate the complicated reality of living alongside gentiles. If this is correct, my supposition that "the interest of peace" reflects the sages' preference for developing neighborly relations within the Jewish community, and between it and it neighbors, is better supported. That is to say, the judicial process whereby a meta-halakhic principle diverted the halakhic decision from its "correct" path would have ostensibly produced another result had the sages followed the internal logic ofthat particularhalakhah.

This conclusion is strengthened by the fact that the parallel from *Sema@hot* 1:9 noted above, which forbids eulogizing gentiles and slaves, cited a different position: R. Yehudah and his disagreement with the sages:

The same is the case with a gentile or a slave, nevertheless they may exclaim over him: "Woe, lion lion! Woe, hero!

R. Yehudah said: (it may be said also:) Woe, trusted man! Woe lived by his labor![[55]](#footnote-57)

They said to him: if so, what is there left to say of the upright?

He rejoined: If he was righteous why should tis not be said of him?

No consolation is needed (on the death of) male and female slaves.

According to R. Yehudah's reasoning, one should not decide whether to eulogize a person on the basis of his ethnicity or personal status. A person is entitled to a eulogy regardless of religious differences, sex, or social standing; the only relevant factor is his actions while alive. This value, to judge all people on the basis of their actions alone, stands in contradiction to the ethnocentric view of the sages, as demonstrated by their response, "if so, what is there left to say of the upright"; i.e, what differentiates Jews from non-Jews? [[56]](#footnote-59)At the same time, however, R. Yehudah does not justify his decision by "the interests of peace." Once again, we see that even if the outcome of two halakhic judgements are identical — one may eulogize a gentile (or a slave), according to both R. Yehudah in tractate *Sema@hot* and the sages in the Tosefta — they may stem from different rationales. For R. Yehudah, the *halakhic* decision stems from a rationale inherent in the question: What is the correct criterion to determine who is suited to be eulogized? (The answer, as we have seen, is the behavior of the deceased). But the authors of the rule in the Tosefta base their decision on systematic considerations — positive neighborly relations with gentiles — which are not tied to the behavior of the deceased himself.

 Be that as it may, it is difficult to conclude what exactly the sages meant by the term "in the interest of peace": Was this a justification for an absolute value representing the "good" in their eyes? Or the opposite, a necessary compromise enabling coexistence with gentiles?

The answer to the additional question I posed above — was a judgement based on a meta-*halakhic* principle seen as more binding than one based on a specific contextual justification — is no clearer. It seems to me that the fact that Rashi, in his commentary on the Mishnah, chose to ignore this point, and to consider only the *baraita* in the Babylonian Talmud ("And bury the gentile dead") while reducing to the word "with," reflects the fact that commentators and authorities (since the interpretation creates halakhic decisions that might have been different from the spirit of the Mishnah) did not grant *halakhot* arising as a result from decisions according to a meta-halakhic principle preference above *halakhot* that arose from halakhic rules (or from specific individual judgements). The opposite is true. In fact, because the halakhic principle is a "value concept," it can be rejected in the face of other values that are preferable in the eyes of the authorities who operated within a different reality (geographical or historical). This conclusion joins the picture made apparent in the first part of this article in which a legalistic interpretation of the halakhah (of R Zaira) rejected its establishment on meta-*halakhic* value and instead was founded it only on a "legal – halakhic rule."

**Conclusion**

The "ways of peace" justification primarily reflects the importance the sages placed on developing good relations between people living near each other who share a common public space. This conclusion is based both on halakhot from the corpus not analyzed in this article , which provide the order of preference for the various communal spaces — common courtyard, synagogue, or division of common water resources — and on *halakhot* I did analyze above, namely relations with neighbors suspected of transgressing the sabbatical year, ‘*am ha-’arets*, and even gentiles.

This approach arises from the decision of the editor(s) of the Mishnah to create a complete corpus of halakhot whose purpose is to promote peaceful and friendly interpersonal relations, which are seen as indispensable to the building of a healthy community structure. This is apparent from the placement of the section on *tikun ‘olam* within the Mishnah and from the decisions of most sages regarding the wife of an ‘*am ha-’arets* and the suspicion of violating the sabbatical rules. As we saw, the sages of Usha did not strive to be separated from other groups in the Jewish community; on the contrary, it is evident that there were instances in which they reduced to the minimum the "area of danger" with regard to infringement of the halakhah. This was in order to nurture friendly relations between neighbors, resulting from concern for the needs of the "other" (e.g., lending utensils), and performing the routines of daily life together (e.g., women’s household chores). It appears that for those who adhered to this approach, common life in a community framework, inevitability alongside various "others" and with its assorted emotional or ideological challenges, was not necessarily a bad thing. On the contrary, it was seen as proper to consider different halakhot on decisive issues (such as observing the sabbatical year), as justifiable by the welfare of the society and not by some specific subject.

Ostensibly, we have also seen a different approach towards "ways of peace." This second approach is reflected in the judgement of R. Yose on "regular theft" and not "theft in the interest of peace," and later in R. Zeira's *okimta* in the Talmud to the halakhah that sets the relations between the wife of a *@haver* and one suspected of violating the sabbatical year laws. It appears in the approach of the Babylonian amoraim, who explained the difference between "theft in the interest of peace" and "regular theft" by the punishments that they incurred. It is tempting to assume that adherents of this approach believed in limiting "ways of peace" *halakhot*. R. Zeira canceled the need "in the interest of peace" by justifying the halakhah on the basis of halakhic rules derived from the internal logic of the sabbatical year halakhot. Babylonian amoraim for the most part concluded that no sanctions should be applied to acts judged as theft "in the interest of peace." But one should note that not only did the various interpreters of the halakhah act in different periods and geopolitical realities, but their considerations did not necessarily stem from the same theoretical source. One can point to at least two perceptions which inspired the attitudes regarding the proper connection to actual life and the aims and methods of the halakhic structure. It seems to me that, according to the thinking of the first approach, the halakhic structure has meta-halakhic principles, which in part grew out of life. These principles justify limiting the specific law, diverging from it, or the opposite, applying it to "beyond the strict letter of the law" in order to actualize the value intrinsic in the meta-halakhic principle "peace between a man and his fellow." On the other hand, adherents to the other approach do not necessarily reject "ways of peace" as a fitting moral value to which a society should rightfully aspires.[[57]](#footnote-60) Nevertheless, it is doubtful if they saw a justification for a meta-halakhic level, which gives priority for external consideration of the halakhah under discussion. As we saw in several cases, there were those among the sages who set their rulings on a more narrow level of the judiciary — i.e., "legal rule" — as "any implement is forbidden whose sole use is one that transgresses, etc.," or (as said by R. Yehudah): "If he was righteous why should this not be said of him?," instead to put it on more broad (social) considerations which embodied in a "legal principle" (such as "in the interest of peace"). In other cases, we saw the power of a meta-halakhic principle is limited to a theoretical halakhic clarification[[58]](#footnote-61) — for example, creating halakhic definitions in grey areas in which there are halakhic lacuna — but the full practical significance of a specific law on what is in principle beyond the law cannot apply, especially when dealing with the severity of the punishments.

Nevertheless, one must admit that one cannot in all cases find in the halakhic literature the reason (or the approach) that brought an authority to his decision.[[59]](#footnote-62) In fact, in conceiving of the halakhah as containing meta-halakhic norms that are employed by the authorities' bridging mechanism between halakhah and reality, and for the researcher as a base that identifies the "other" connections — outside the inherent logic of any specific halakhah, but relevant to the determination of that halakhah — it is difficult (perhaps impossible) always to decide how the authority himself grasped the logic of his decision. Such was the case in which we tried to examine the positions of Rashi and Rashba regarding the *takanah* dealing with the burial of gentiles. As we saw above, the commentators' version of the rabbinic sources made possible different interpretations. Hence, we were prevented from drawing certain conclusions regarding the motivation that guided the sages in enacting these halakhot (if these enactments that organized contact with gentiles in various circumstances were seen as "good" from the moral standpoint or "proper" from a practical standpoint), and as we have seen, to a great extent, what among many factors, was the one that motivated the later commentators in their decisions.

In summary, I believe that the concepts with whose aid we analyzed the "ways of peace" *halakhot*, and primarily the distinction between the different levels on which the halakhic system operates, did give the possibility to cast more light on most of the "ways of peace" *takanot*, their purpose, and their proper ramifications in the view of their creators and interpreters. At the same time our investigation showed that one must be careful of assuming that individual concepts have the power to totally clarify each and every point in the halakhic system or place it systematically on one all-encompassing organizing principle.

1. Catherine Hezser*, The Social structure of the Rabbinic Movement in Roman Palestine* (Tubingen, 1997). But see the critique of this approach in the review by Lee I. Levine, *Jewish Quarterly Review* 90 (2000): 483–488. For a more recent survey and critique see, Ishay Rosen-Zvi, "Rabbis and Romanization: A Review Essay," in *Jewish Cultural Encounters in the Ancient Mediterranean and Near Eastern World*, eds. M. Popovic, M. Schoonover, and M. Vandenberghe (Leiden and Boston, 2017), 229–230 and n. 55. I agree with Rosen-Zvi regarding the Mishnah's account of the aspiration of the rabbis: "It [the Mishnah, S.M.] legislates and regulates a Jewish 'Empire' which rules all Jews wherever they may be." [↑](#footnote-ref-1)
2. See Sagit Mor, "The Status of Female Captives on their Return to the Jewish Community in the Talmudic Literature" (Hebrew) *Jewish Studies* 42 (2003): 95–106. [↑](#footnote-ref-2)
3. Ephraim Elimelech Urbach, *The Halakha: Its Sources and Development* (Hebrew; Givataim, 1984), 69-70 and chap. 2; Menachem Elon, *Jewish Law*: *History, Sources, Principles* (Hebrew; Jerusalem, 1992) 391–392 ; Christine Hayes, "The Abrogation of Tora Law: Rabbinic *Taqqanah* and Praetorian Edict," in *The Talmud Yerushalmi and Greco-Roman Culture*, ed. Peter Schäfer (Tubingen, 1998), 643–647. [↑](#footnote-ref-3)
4. See, for example, the mode of dialectal discourse and terminology that developed in the yeshivas of Babylonia. See Jeffrey L. Rubenstein, *The Culture of The Babylonian Talmud* (Baltimore and London, 2003), 39–53. [↑](#footnote-ref-4)
5. mGit., 5:9-10. [↑](#footnote-ref-5)
6. In its theoretical formulation, the discussion of the relationship between halakhah and reality resembles the discussions of the relationship between law and reality (discussions that forged the formalistic and positivistic conceptions of the law). In the formalist conception of the halakhah, according to which there is no direct relationship between outward, lived reality and the halakhic ruling, the halakhah is indeed a closed system. Social and economic conditions, on the one hand, and moral, cultural, and social values, on the other, are not legitimate and cannot be employed as relevant factors in the deliberative process. According to Avi Sagi, this approach is characteristic of the thought of Yeshayahu Leibovitch and Rabbi Joseph Soloveitchik. See Avi Sagi, "Rabbi Soloveitchik and Professor Leibovitch as Theoreticians of the Halakhah" (Hebrew), *Da'at* 29 (1992): 131–148 ; Sagi, *A Challenge:* *Returning to Tradition* (Hebrew; Ramat Gan, 2003), 260–281; Sagi, *Halakhic Loyalty: Between Openness and Closure* (Hebrew; Ramat Gan, 2012), 116–148; 155. [↑](#footnote-ref-6)
7. See Aviezer Ravitzki and Avinoam Rosenak, *New Streams in Philosophy of Halakah* (Hebrew; Jerusalem, 2008); Avinoam Rosenak, ed. *Philosophy of Halakhah: Halakhah,* *Meta-Halakhah and Philosophy: A Multi-Disciplinary Perspective* (Hebrew; Jerusalem, 2011). For a survey of different perceptions of the concept of "meta-halakhah" and the need to employ it in research on halakhah see Avinoam Rosenak, "*Metah-halakhah, filosofiyah shel ha-halakhah ve-Yosef Schwab*," in *Philosophy of Halakhah*, 17-26. [↑](#footnote-ref-7)
8. By "non-halakhic considerations" I mean ideological, political, societal, or cultural considerations. See Benjamin Porat, "The Philosophy of Jewish Law: Methodological Reflection" (Hebrew), *Dine Israel* 30 (2015): 180n6. [↑](#footnote-ref-8)
9. Sagi, *Halakhic Loyalty*, 27–42; Porat, "Philosophy," 179–180. [↑](#footnote-ref-9)
10. See notes 8 and 9 above. [↑](#footnote-ref-10)
11. See Eliezer Goldman, *Expositions and Inquiries: Jewish Thought in Past and Present*, eds. Daniel Statman and Avi Sagi (Hebrew; Jerusalem, 1997), 13-14; Goldman, "Yesodot metah-hilkhatiyim la-hakhra‘ah ha-hilkhatit," in *New Streams*, 259-278. A similar approach, concerning the legal system overall but applicable to the halakhic system, claims that the law includes principles that do not relate to norms outside the judicial system, but are integral to the system itself. See Yair Lorberbaum, *In God's Image: Myth, Theology, and Law in Classical Judaism* (New York, 2015), 80; and for a conceptual clarification of theories in philosophy of law and their adaption to the world of halakhah, 76-86. It seems to me that the "halakhic principle" functions for Lorberbaum in parallel to Goldman's "meta-halakhic" principle. [↑](#footnote-ref-11)
12. Meaning that they believe that the halakhah is a normative, *a priori* ideal system not based on reality. See Sagi, *Halakahic Loyalty*, 121. [↑](#footnote-ref-12)
13. Goldman, *Expositions and Inquiries*, 367: "Serving God by observing the commandments expresses the fact that man can only serve God within human existence. The covenant is God's grace and enables worship within this reality." To compare this idea with the thought of Leibovitch, Soloveichik, and Goldman, see Avi Sagi, *Halakhic Loyalty*, chap. 6; Gili Zivan, *Religion Without Illusion: Facing A Post-Modern World* (Tel Aviv, 2005). [↑](#footnote-ref-13)
14. Sagi, *Halakhic Loyalty*, 166–167. [↑](#footnote-ref-14)
15. Goldman, *Expositions and Inquiries*, 305. [↑](#footnote-ref-15)
16. See below on the corpus of "*tikun* ‘*olam*" *takanot* and their place in the corpus of "ways of peace" *takanot*. [↑](#footnote-ref-16)
17. The Great Revolt and the destruction of the Second Temple in 70 CE, and the Bar Kokhba Revolt of 132-135 CE. [↑](#footnote-ref-17)
18. For an exposition, with examples, of the concept of *tikun ‘olam*, see Sagit Mor,"'Tiqqun ‘Olam' (Repairing the World) in the Mishnah: From Populating the World to Building a Community," *Journal of Jewish Studies* 62 (2011): 262–283. [↑](#footnote-ref-18)
19. The Hebrew text of the Mishnah is taken from the Kaufman manuscript. English translations of the Mishnah and Babylonian Talmud are based on the Soncino Press Edition, (CD-ROM Judaica Press, N.Y.); and *The Mishnah*, trans. H. Danby (Oxford, 1933). English translations of the Hebrew Bible are from *Tanakh: The Holy Scriptures*, (Philadelphia/Jerusalem, 1985), CD-ROM edition.

בבקשה להוסיף מידע ביבליוגרפי (במיוחד שנה) [↑](#footnote-ref-19)
20. For the significance of the "compromise" approach see Avi Sagi, "‛Al meta@him bein datiyim va-@hiloniyim: Bein sia@h zekhuyot le-sia@h zehut," in *A Good Eye, Dialogue and Polemic in Jewish Culture*, ed. in Nahem Ilan(Hebrew; Tel Aviv, 1999), 408–430. For a different conception of the rationale and aims of these *takanot*, see Jonathan K. Crane, "Because . . . : Justifying Law/Rationalizing Ethics," *Journal of the Society of Christian Ethics* 25 (2005): 55–77; Christine Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York & Oxford, 1997), 238n46. [↑](#footnote-ref-20)
21. Elliot N. Dorff, *To Do The Right and The Good: A Jewish Approach to Modern Social Ethics* (Philadelphia, 2002), 249. [↑](#footnote-ref-21)
22. *To Do The Right*, 253. Emphasis in original. [↑](#footnote-ref-22)
23. The order of these *halakhot* varies in different manuscripts of the Mishnah; consequently, the talmudic passages (both in the Babylonian and in the Palestinian Talmuds) discussing them are also not in identical order. Similarly, the opinion of R. Yose is missing in *halakhah* 4 of the Kaufman manuscript, but it is found in other manuscripts. See David Weiss Halivni, *Sources and Traditions: A Source Critical Commentary on Seder Nashim* (Hebrew; Toronto, 1968), 678. [↑](#footnote-ref-23)
24. Ibid. [↑](#footnote-ref-24)
25. For property ownership by deaf-mutes, idiots, and minors see mB. Qam 4:4; 6:4. [↑](#footnote-ref-25)
26. For property laws that deal with obtaining ownership of various objects see mQidd 1:4-5. [↑](#footnote-ref-26)
27. For a similar law concerning finding, see tHul 10:13 (ed. Zuckermandel [Jerusalem, 1970], 512): "The pigeons of a dovecot and the pigeons of an attic require to be sent forth, and the prohibition of robbery applies to them, because of the paths of peace."

 [↑](#footnote-ref-27)
28. pGit. 5:8, 47a-b (*The Academy of the Hebrew Language*, [Jerusalem, 2001], 1078), p‘Erub 7:6, 24c (idem, 485), bGit. 61a. נא לוהסיף מידע ביבליוגרפי מלא [↑](#footnote-ref-28)
29. As pointed out by Moshe Halbertal, this new halakhic question reflects efforts to develop the halakhah. See his "The History of the Halakhah and the Emergence of Halakhah" (Hebrew), *Dine Israel* 29 (2013): 17. [↑](#footnote-ref-29)
30. While it is reasonable to assume that R. Yose does not consider these cases "grey areas," i.e., that the found property indeed belongs to the deaf-mute, the idiot, and the minor, and that the actions taken to obtain ownership means that at issue is not only a matter of mere intent and transfer it to ‘action’ that purchases the item (at least there was more than one who did nothing active to buy it). For this reason, some of the Babylonian amoraim interpreted Rabbi Yose's decision and formulated his rationale in the following manner: "The sages made what was unentitled to entitled." Meaning that according to Rabbi Yose's method, we have here property ownership deriving from the rules of the sages, and therefore one who takes from the entitled is an absolute thief and his actions fall under the biblical laws of theft (see bGit. 30a, bBek. 18a, bB. Metzi’a 12a-b). לא ברור [↑](#footnote-ref-30)
31. The principle issue in the dispute between the sages and R. Yose in the Babylonian Talmud is the question: Does a determination "in the interest of peace" come with legal sanctions, or does it operate as a social (ethical or moral) sanction only. In general, one can see that in the Babylonian Talmud, R. Yose's view is interpreted as mirroring the conception that "ways of peace" was a social-moral justification of the underlying purpose of a rule, and neither serves as a halakhicdefinition of "theft" nor carries actual sanctions. In the Palestinian Talmud, on the other hand, it is suggested that "ways of peace" is the justification for the rule and does determine its halakhic quality. Therefore, theft according to the rule "in the interest of peace" is identical to "regular theft" as it relates to legal sanctions. Eliezer Bugard contends that the approach which sees "in the interest of peace" as a moral sanction only is rooted in the idea that "ways of peace" rules are based on piety, which does not demand normative obligations from the general society. For an examination of the interpretations in the Talmud see Sagit Mor, "Tikkun ha'olam in the Thought of the Sages" (Hebrew; PhD diss., Hebrew University, 2003), 226–231. See also Eliezer Bugard, "Mipenei darkhei shalom" (master's thesis, Bar Ilan University, 1977). [↑](#footnote-ref-31)
32. On the subject of eating in purity, see Yair Furstenberg, *Purity and Community in Antiquity: Traditions of the Law from Second Temple Judaism to the Mishnah* (Hebrew; Jerusalem, 2016); on the impurity of the *‘am ha-’arets*, see 208-255, 313-359. See also Furstenberg, "*Am Ha-Aretz* in Tannaitic Literature and Its Social Context" (Hebrew), *Zion* 78 (2013): 287–319. [↑](#footnote-ref-32)
33. See Yehuda Feliks, *Talmud Yerushalmi, masekhet Shevi‘it* (Jerusalem, 2000), 1:357–358, and n. 261: "The commentators have already reasoned that the question [brought in discussion in the Palestinian Talmud, S.M.] 'The issue is which allowances? Rabbi Yose Bar @Hanina asked, Was this stated concerning the entire passage or only concerning this [particular] law?' and the answer, 'From the fact that these [other rules in mSheb. 5:6-8] are not taught in *Gittin*, [it is clear that mSheb. 5:9 applies] only to this [particular] law [mSheb. 5:9] . . .' The version according to tractate *Shevi’it* (trans. Jacob Neusner, *The Talmud of the Land of Israel* [Chicago and London, 1991], 5:191). לא ברור [↑](#footnote-ref-33)
34. For an exact definition of the expression *okimta* see Menachem Fisch, "Forced Readings and Binding Texts: The Amoraic *Uqimta* and the Philosophy of the Halakhah," in Ravitzki and Rosenak, *New Streams*, 323n24. See also Leib Moscovitz, *The Terminology of the Yerushalmi: The Principal Terms* (Hebrew; Jerusalem, 2009), 462. האם הכותר של המאמר של פיש מופיע בספר? [↑](#footnote-ref-34)
35. These rules underlined here. [↑](#footnote-ref-35)
36. pSheb. 5, 9, 36a (Neusner, *Talmud of the Land of Israel,* 5:190). [↑](#footnote-ref-36)
37. Regarding the distinction between rules and principles see R. Dworkin, *Taking Rights Seriously* (Cambridge, 1977) 22–31. See also the critique by J. Raz, "Legal Principles and the Limits of Law," *Yale Law Journal* 81 (1972): 834. [↑](#footnote-ref-37)
38. For parallels to these concepts in the philosophy of law and their application in the halakhic system, see Y. Lorberbaum, *In God's Image*, 77–78. He writes: "Legal principles, like halakhic principles, may be abstract to a greater or lesser degree. The same applies to legal rules, making it impossible to draw a sharp a distinction between them. . . . There is a continuum among the different levels of generality of any particular set of rules, or of any particular set of principles. A similar continuum exist with regard to the levels of generality of the rules of the law and its principles, but characteristically a distinction may be made among them" (77). [↑](#footnote-ref-38)
39. This question also perturbed some of the rishonim. See *Tosafot*, s.v. *mashatal ’ishah le-@hevratah* by Rabbeinu Tam. Another attempt at a solution can be found in the Rambam's commentary on the Mishnah. From the two justifications he creates an harmony. לא ברור [↑](#footnote-ref-39)
40. See Furstenberg, *Purity*, 208-255, 313-359. [↑](#footnote-ref-41)
41. Furstenberg, "*Am-Ha-Aretz*," 309-311. [↑](#footnote-ref-43)
42. See the *baraita* in bSheb.[[?]] 61b (=bHul. 6,2; tTehar. 8:4): "We learn that the wife of a *@haver* grinds with the wife of an ‘*am ha-’arets* when she is polluted, but not when she is pure; R. Shimon ben Elazar says even when she is polluted she does not grind with her, since her friend feeds her." [↑](#footnote-ref-44)
43. On the strict monitoring of moist, as opposed to dry, foods, see Furstenberg, "*Am Ha-Aretz*," 309. [↑](#footnote-ref-45)
44. Sagi, *Halakhic Loyalty*, 166–167. [↑](#footnote-ref-46)
45. Goldman, *Expostitions and Inquiries*; Sagi, *Halakhic Loyalty*, 166. [↑](#footnote-ref-47)
46. See the observations by Dorff concerning the distinction between "the right" and "the good" mentioned above. [↑](#footnote-ref-48)
47. Lev. 19:9-10, 23:22; Deut. 14:28-29, 29:19-22, 26:12. [↑](#footnote-ref-49)
48. See Eliav Shochetman, "Ya@hasei Yehudim ‘im nokhrim," *Mekhanayim* 1 (1992): 55. See also his reference (n. 5) to Rashi's answer to a similar situation in which he determines that one who gives gifts to poor gentiles during Purim is stealing from poor Jews. Regarding gifts to the poor gentiles during Purim see Eliav Shochetman, "‘Al minhag liten matanot le-’evyonei nokhrim ba-Purim," *Sinai* 100.2 (1987): 852. [↑](#footnote-ref-50)
49. Vienna Codex., ed. Saul Lieberman, 259. נא להוסיף מידע ביבליוגרפי [↑](#footnote-ref-51)
50. And also Palestinian Talmud, *Demai* 4:6, 24a; ‘*Avodah Zarah* 1:3, 39c. See Saul Lieberman, *Tosefta ki-feshutah*: *Gittin* (Hebrew; New York, 1993), 849. [↑](#footnote-ref-52)
51. In the parallels in tractates *Demai* and *‘Abodah Zarah* it states: "And bring in the utensils of the gentiles and the utensils of Israel." Possibly the letter nun replaced the letter bet because of their orthographic similarity. Alter Hilevitz ("Le-bi’ur sugiya 'mipnei darkhei shalom' be-ya@has la-goyim," *Sinai* 100 [1987]: 340) maintains that the correct version is "bring in gentile utensils," since there it would incur a loss in funds which does not occur in the version with the word "clean." לא ברור [↑](#footnote-ref-53)
52. Saul Lieberman, *Tosefta ki-fshutah*, 850. [↑](#footnote-ref-54)
53. For further analysis of the statements of the rishonim see Jonathan K. Crane, "Jews Burying Gentiles," *Review of Rabbinic Judaism* 10 (2007): 151–154. Crane suggests that the differences between the sources stem from differing geopolitical circumstances of the French-Ashkenazi and Spanish communities. He states that in the northern French-Ashkenazi Jewish communities, the Jews prospered (except for the periods of the Crusades) and maintained close commercial relations with the gentiles. Consequently, Rashi and the other Ashkenazi rabbis (such as the author of *Sefer ha-kol bo* attributed to Rabbi Aharon ben Yaakov ha-Kohen of Narbonne, 13th century) did not need the justification of "in the interest of peace" or the avoidance of enmity with them. This in contrast to the Jewish communities of Spain, especially during the period of the Catholic conquest of the Iberian Peninsula, who endured long periods of hostility and persecution, and hence needed the justification "in the interest of peace in order to improve their political situation and their daily life in such an unfriendly environment. I concur with Crane that one cannot find the existence of an ethical-universal conception in the interpretation of the Spanish Jews. Nonetheless, the preference for the Palestinian tradition (found in the Tosefta and the Palestinian Talmud), which interprets certain *halakhot* as relating to gentiles without a parallel relating to the Jews, might reflect a conception of coexistence not as a "tolerated situation" that, for the sake of Jewish existence, must be made as livable as possible, but as a value that should be fostered. [↑](#footnote-ref-55)
54. For a discussion of the differences among the Tosefta manuscripts, see Adiel Scheremer, "Le-mesoret nusa@h ha-Tosefta: ‘Iyun rishoni be-‘ikvot Shaul Lieberman," *JSIJ* 1 (2002)" 11–43; Haya Nathan, "The Linguistic Tradition of Codex Erfurt of the Tosefta" (Hebrew; Ph.D diss., Hebrew University of Jerusalem, 1984), 1–34. For a summary of opinions regarding manuscript variants, see Michael Matthew Pitkowsky's ("'*Mipenei Darkei Shalom*' (Because of the Paths of Peace) and Related Terms: A Case Study of How Concepts and Terminology Developed from Tannaitic To Talmudic Literature," [Ph.D. diss., JTS, 2011], 137–143), and his conclusion that variants do not necessarily arise from differences in approach, but rather from the process of transmission and differing traditions. [↑](#footnote-ref-56)
55. For the Hellenistic background of these idioms, see Saul Liberman, *Greek and Hellenism in Jewish Palestine* (Hebrew; Jerusalem, 1984), 57–59. [↑](#footnote-ref-57)
56. See Sagi, On Tension, 415, for a definition of an "essentialist approach." לא ברור [↑](#footnote-ref-59)
57. It is incorrect to view R. Yose's decision on "regular theft" as a total rejection of "ways of peace," but rather as an application of practical sanctions of the laws of theft on what is not by law clearly theft. If I am correct, then the dispute between the general view and R. Yose is not about values but about formalities. See Benjamin Brown, "Formalism and Values: Three Examples," in Ravitzki and Rosenak, *New Streams*, 233-258. האם בספר זה יש תרגום סטנדרטי לאנגלית? [↑](#footnote-ref-60)
58. See Halbertal, "History," 22, on one of the actions that led to the dissemination and expansion of the halakhic organism "From an independent matter in the concept, without connection to it application" (in this case the concept of "property"). לא ברור [↑](#footnote-ref-61)
59. See Porat, "Philosophy," 187–189. [↑](#footnote-ref-62)