

Jews, Gentiles, Impurity, and Humanity, Part 2

By Rabbi Ethan Tucker

Last time we explored the biblical and Rabbinic evidence regarding the impurity of a Gentile corpse. We saw that in the Tanakh and all the Rabbinic sources from *Eretz Yisrael*, there was strong evidence that there was distinction between the corpse of a Gentile or that of a Jew. In the Talmud Bavli, however, was preserved an opinion of R. Shimon b. Yohai suggesting that a Gentile corpse did not impart impurity, which is interpreted both by the anonymous voice and Ravina, and referred to one other place in the Talmud. Now we will see the responses of the medieval and modern authorities to this evidence, and conclude the topic.

I. Medieval positions

Three main position emerge in the medieval period. They not only reach different practical conclusions; they read the source material quite differently as well.

A. Tosafot—Returning to the clear tradition of *Eretz Yisrael*

In the Tosafot, **Ri** (R. Yitzhak of Dampierre, France, 12th c.) is clear: We do not rule like R. Shimon b. Yohai.

תוספות יבמות סא. ד"ה ממגע

...ואר"י דאין הלכה כר"ש דרשב"ג פליג עליה כדתנן במס' אהלות (פרק יח מ"ט כתובות עז.) והלכה כמותו במשנתנו וצריכים כהנים ליזהר מקברי עובדי כוכבים ובפרק המקבל (ב"מ קיד:) בעובדא דאליהו דהשיב לרבה בר אבוה כר' שמעון בן יוחי דהכא דחויי קא מדחי לה ועיקר טעמא שהיה סומך על רוב ארונות שיש בהן פותח טפח וכן היה רגיל בכל מקום לדחות כמו שמצינו כשהיה קובר רבי עקיבא ואמר ליה לאו כהן ניהו מר אמר ליה צדיקים אינם מטמאים ועיקר טעמא לפי שהיה מת מצוה שהיה מהרוגי מלכות והיו יראים לקברו...

Tosafot Yevamot 61a

...Ri says that the halakhah does not follow R. Shimon b. Yoḥai, because R. Shimon b. Gamliel disagrees with him in Mishnah Aholot 18:9, and when R. Shimon b. Gamliel appears in the Mishnah, the *halakhah* follows him. *Kohanim* must therefore avoid Gentile graves. And when Elijah answers Rabbah b. Avuah by citing R. Shimon b. Yoḥai, he was merely deflecting his challenge. The real reason he was in the graveyard was because most coffins have at least a cubic *tefah* [about three inches] of empty space between the body and the lid [an arrangement which prevents the corpse impurity from transferring upwards]. And Elijah frequently deflects challenges [with halakhically imprecise responses], as we find when he was burying R. Akiva and is challenged that he is a כהן and he responds that the bodies of the righteous do not defile, even though the real reason is that R. Akiva had been killed by the government and everyone was afraid to bury him [and someone with no one to bury them is a *met mitzvah* that even a *Kohen* may bury]...

The argument here has a few parts. First, Ri appeals to the generally privileged status of R. Shimon b. Gamliel in the Mishnah. Later jurisprudential sources generally grant him deference.¹ Since he follows in the tradition of treating Gentile corpses no differently than Jewish ones, so should we. R. Shimon's view is simply outweighed by that of R. Shimon b. Gamliel.² Second, the Elijah story is part of a genre where the prophet offers all kinds of stretched deflections of attacks launched against him. According to this interpretation, the Elijah stories have a playful element to them, and one should never assume that when Elijah answers an attack on his behavior that his answer is the true or total extent of the justification for his actions. In this particular case, argues Ri, Elijah *really* walked over Gentile graves because he felt confident that the corpses were buried in coffins big enough to block the impurity from escaping. Therefore, nothing normative can be learned from his answer.

Putting aside our evaluation of these arguments, it should be quite clear that Ri is doing nothing more than affirming the ancient view in *Eretz Yisrael* that corpse impurity applies equally across the entire human race. He draws out the relevant practical conclusion for his time

¹ See Gittin 75a and parallels.

² Obviously, anyone with a text of Yevamot 61a that features a reference to רבנן would also be inclined to interpret things in this way. Such terminology connotes the sense of a consensus majority position opposed to R. Shimon. But as we noted above, this version of the Talmudic text may in fact be later, shaped itself by Ri's approach.

and place: *Kohanim* may not walk over Gentile graves. While it is far from clear that this was a motivating factor for him, Ri's approach also enables one to reject the dehumanization of Gentiles that threatens to emerge from R. Shimon b. Yoḥai's statement. That sentiment, along with the ruling associated with it, is simply not normative and binding.

B. Rambam—Embracing Ravina

Rambam takes a different approach, asserting, as did Ravina, that Gentile corpses may defile just like Jewish ones, but only through the modes of direct contact and being carried:

רמב"ם שומאת מת א:יב-יג

אחד המת מישראל או מן העכו"ם מטמא במגע ובמשא.
ואין העכו"ם מטמא באהל ודבר זה קבלה הוא והרי הוא אומר במלחמת מדין כל נוגע בחלל ולא הזכיר שם
אהל...

Rambam *Tum'at Met* 1:12-13

Both Jewish and Gentile dead defile by direct contact or through carrying them.

But Gentiles do not defile via aerial space and this is a received tradition. For it says in the context of the war on the Midianites, "Anyone who touched a corpse" and no mention is made of a tent...

The Scriptural circle is squared here: The war on Midian featured direct contact with Gentile corpses, not merely sharing aerial space with them. It is for that reason and that reason alone that purification on the third and seventh day was required. In a responsum, Rambam lays out how he read the Talmudic sources to get to this conclusion:

שו"ת הרמב"ם סימן קמה

...וזה לדברי הכל ואין חולק על זה וראיה לזה מדברי רבינא דהו בתרא, נהי דאמעטיניהו קרא מאטמויי באהל,
ממגע ובמשא מי מעטיניהו קרא? ואלו היו דברי רבינא לדעת ר' שמעון לבד, היה אומר אמ' לך ר' שמעון: נהי
דמעטיניהו קרא מאטמויי באהל או היה אומר נהי דאמר ר' שמעון, שאין מטמאין באהל, במגע ובמשא מי
אמר. ומאחר שאמר נהי דמעטיניהו קרא, ראיה, שקרא זה לדברי הכל בלא ספק.

ומה שאמרו אשכחיה לאליהו דקאי בבית הקברות, ר"ל, שהיה מאהיל, לא נוגע, כמו שנתבאר מדברי רבינא.
ומה שאמר ר' אפרים ז"ל, שמצא במשנת אהלות בדבר מדורת גוים מה שמוכיח, שקברי גוים (מטמאים
באהל), הוא טעות ואין שם מה שמוכיח זאת כלל... ופרוש זאת המשנה שהמקומות בארץ ישראל, שהגוים
שוכנים בהם, טמאים מדרבנן... מפני המתים שהם קוברים שם....

Responsa Rambam #145

...[This principle, that Gentile corpses do not defile by shared aerial space] is universally held; no one disagrees with it. The proof comes from Ravina, who is the latest authority to weigh in on this question: “It is true that the Torah does not apply shared aerial space impurity to Gentiles, but who says that it exempts them from impurity communicated by direct contact or by carrying them?” Were Ravina’s point here meant only for R. Shimon’s view, then he would have said, “R. Shimon would say to you, ‘It is true that the Torah...’”, or he would have said, “It is true that R. Shimon said that Gentiles don’t defile via shared aerial space, but did he say that they do not defile by touch or carrying?” From the fact that Ravina said, “It is true that *the Torah* does not apply...” we can prove without a doubt that this reading of the verse is in keeping with all views on the matter. When Elijah was standing in the Gentile graveyard, he was walking over graves, not directly touching them, as we clarified from Ravina. That which R. Efraim raised, that he found dispositive proof [that Gentile graves defile even via shared aerial space] in Mishnah Aholot, this is a mistake. Nothing there proves that at all... The meaning of that *mishnah* is that the places in *Eretz Yisrael* where Gentiles live are *rabbinically* impure... on account of the bodies they bury there...

Rambam is fighting on two fronts here. First, in contrast to Ri, he asserts that we follow R. Shimon’s view. R. Shimon b. Gamliel’s view may well be normative, but it must be properly understood. While a cursory reading of Mishnah Aholot suggests that Gentile domiciles are impure and must be checked because one might be in the *same aerial space* as Gentile remains, Rambam reads the required check there as a *rabbinic safeguard* to ensure that one does not later *touch* Gentile remains. Such direct contact would indeed communicate biblical corpse impurity. He also appeals not just to Ravina’s engagement with R. Shimon’s view, but also the specific formulation Ravina uses, which he believes conveys a general broad acceptance of the notion that the Torah excludes Gentile corpses from the mode of defilement via shared aerial space.

And he sees the Elijah story as affirmation of R. Shimon's normative status, placing it in a more legal genre than did Ri.

But Rambam equally resists any efforts to read R. Shimon more broadly, as if he excluded Gentile corpses from human-level impurity altogether. Despite the fact that the language of the Elijah story might well indicate this, Rambam insists that the prophet only walked over Gentile graves but never would have touched them directly. He resists the notion that Gentile corpses should be treated as carcasses when it comes to purity laws. Gentile corpses are thus certainly human in their essence and in their power to defile. As we noted last week, this creates a somewhat arbitrary, somewhat incoherent position. We don't have a full-blown dehumanization, but it is also less than clear why Gentiles would lack the capacity to trigger this one particular mode of defilement. But the practical implications of this view are clear: *Kohanim* can walk over Gentile graves and can be in the same room as Gentile bodies, but they may not touch them directly.

C. Yereim—Restoring the original R. Shimon b. Yoḥai

Sefer Yereim (R. Eliezer of Metz, 12th c.) embraces R. Shimon b. Yoḥai fully and aims to restore him to his full conceptual power. Arguing with voices that articulated a position like Rambam's, he makes his case as follows:

ספר יראים סימן שכב

במגע ומשא של מתי עובדי כוכבים יש אוסרין וראייתם דאמרינן ביבמות בהבע"י [סא.] נהי דממעטיל קרא מאהל ממגע ומשא לא מיעטינהו קרא ויש להביא ראיה להיתר מדתניא בת"כ [צ"ל בספרי] ומייתי לה בנוזר [מה.].

על נפש מת לא יבא שומע אני אפילו נפש בהמה במשמע שנאמר ומכה נפש בהמה ישלמנה ת"ל לאביו ולאמו בנפש אדם הכתוב מדבר ר' ישמעאל אומר אינו צריך הרי הוא אומר ועל כל נפשות מת לא יבא בנפשות המטמאות בביאה הכתוב מדבר

פי' באהל ועובד כוכבים אינו מטמא באהל דקי"ל כר"ש בן יוחאי דאמר בהמקבל בב"מ [קי"ד ב'] רבה [בר] אבוה אשכחיה לאליהו דקאי בבית הקברות של עובדי כוכבים א"ל לאו מר כהן הוא א"ל אמאי לא תני ליה מר

סדר טהרות דתניא רשב"י אומר קברי עובדי כוכבים אין מטמאין באהל שנאמר ואתנה צאני צאן מרעיתי אדם אתם אתם קרוים אדם ואין עובדי כוכבים קרוים אדם וכיון דאליהו עשה מעשה בעצמו כוותי' עבדינן... ושמעתי [אוסרין לכהן] במגע ומשא מתי עובדי כוכבים ואני כתבתי הנראה לי [והמחמיר תבא] עליו ברכה והמיקל לא הפסיד.

Sefer Yereim #322, R. Eliezer of Metz, France/Germany, 12th c.

Some forbid *kohanim* to touch or carry the corpses of Gentiles, and their proof comes from Yevamot 61a: “It is true that the Torah does not apply shared aerial space impurity to Gentiles, but who says that it exempts them from impurity communicated by direct contact or by carrying them?” But one can cite proof to permit this from a teaching in the Sifrei—cited in Nazir 48a:

[The Torah says about a Nazirite, who, like a *Kohen*, may not come into contact with the dead:] “Do not come into contact with any dead *nefesh* (being)”—Could this include animal carcasses?... The Torah says [further in the context of the Nazirite]: “He may not defile himself to his father or mother”—it is speaking about human beings. R. Yishmael says: This derivation is unnecessary. The Torah says about a *Kohen*: “Do not *come* into contact with any dead beings”—this refers to the kinds of beings that defile by (mere) coming [i.e. simply by entering into a room, via shared aerial space].

We know that Gentiles do not defile via shared aerial space, because we follow the ruling of R. Shimon b. Yoḥai [as we know from Elijah’s citation of his position in Bava Metzia]. Since Elijah actually acted in accordance with this position, we follow him... But I have heard of those who forbid a *Kohen* from touching or carrying Gentile remains, even as I have written what seems right to me. May those who wish to be strict be blessed, but there is nothing wrong with being lenient.

Jurisprudentially, Yereim treads a similar path to that of Rambam. He sees the Elijah story as normative confirmation of R. Shimon b. Yoḥai’s opinion. We don’t know how he deals with the material in Aholot, but he either shares Rambam’s analysis or simply thinks that we rule like R. Shimon b. Yoḥai over R. Shimon b. Gamliel and the other authorities mentioned in those passages. But Yereim’s more significant contribution is to claim that R. Shimon b. Yoḥai intends to treat Gentile corpses entirely like animal carcasses. Here, he appeals to Sifrei Bemidbar 26,

which clarifies that Nazirites may come into contact with animal carcasses despite the ban (which they share with *kohanim*) on contact with human dead. In this text, R. Yishmael argues this point by saying that, once a body does not contaminate via shared aerial space, it is no longer the type of body that a Nazirite or a *Kohen* need to avoid. The earlier opinion in this text formulates this differently: Once a body does not defile via shared aerial space, it is no longer a **גוף אדם**, no longer fully human.

This, it should be clear, is simply a restatement of what we argued above was the plain original sense of R. Shimon b. Yohai.³ Gentile corpses are not fully human, a manifestation of this is their failure to defile via shared aerial space, and a *Kohen* is thus permitted to come into contact with them without restriction. How can this view be reconciled with Ravina? Wasn't he explicit that even R. Shimon concedes that Gentile corpses defile for seven days when directly touched or carried? The simplest resolution is offered by R. Meir Eisenstadt in **Responsa Panim Meirot II:14**. He simply states that Yereim must have followed the anonymous Talmud's prior resolution in that Talmudic passage. Recall that the Talmud's initial response to Bemidbar 31's requirement for purification for returning Israelite soldiers was that, according to R. Shimon, some Israelite soldiers *did* indeed die in the battle. It was on *their* account that the purification rites were required. Gentile dead alone would not have triggered this requirement. Where Rambam saw Ravina as the final word in our *sugya*, Yereim saw one opinion among two, with the first one offered plausibly even being the more normative.⁴ As a result, for Yereim, there are no restrictions on *kohanim* when it comes to the Gentile dead.⁵

³ This reading of Yereim is affirmed by Nimmukei Yosef Bava Metzia 69b.

⁴ See also Midrash Agaddah, ed. Buber, on Bemidbar 31:19 and the passage from the Zohar cited last week.

⁵ Those less open to Panim Meirot's sort of reading try other ways to square his permissions for *kohanim* with Ravina's insistence that Gentile corpses defile for seven days when touched or carried. Mishneh Le-Melekh on Hilkhhot Avel 3:1 argues that Ravina can be read as asserting a seven-day defilement for purposes of being pure and entering the sanctuary, even as it might still be the case that there are no restrictions on a *Kohen* coming in contact with Gentile remains. In other words, the corpse might be human for purposes of purity laws, but not so fully human that the priest is obligated to avoid it. This is a kind of messy middle position that lacks either legal or conceptual clarity, but is a good way of bringing Yereim in off the margins back towards the center of the discussion. Indeed, Responsa Tashbetz 3:323 already foreshadows this approach when he asserts that no one was ever in doubt regarding the ability of a Gentile corpse to defile for seven days. The only issue up for grabs, as far as he is concerned, is whether *kohanim* must avoid such remains just as they avoid Jewish ones. [He fascinatingly reports that R. Peretz Ha-Kohen of Barcelona used to avoid Gentile graves not for fear of walking over them *per sé*, but because of the Jewish apostates who might be buried there!] Ralbag on Vayikra 21:1 also endorses the notion that *kohanim* can approach Gentile corpses without hesitation. See Sefer Ha-Mafteaḥ of the Frankel edition of Rambam Hilkhhot Avel 3:3 for more literature on this.

D. Codification

In the Shulhan Arukh and Rema, we find the following:

שולחן ערוך יורה דעה שעב:ב
קברי עובדי כוכבים, נכון ליזהר הכהן מלידך עליהם; (מהר"מ ותוס' פ' המקבל) אע"פ שיש מקילין (רמב"ם
והגמ"י בשם ס' יראים). ונכון להחמיר...

Shulhan Arukh Yoreh Deah 372:2

It is right for a *Kohen* to avoid walking over Gentile graves (*even though there are some who are lenient*) but it is better to be strict...

Both R. Yosef Karo and R. Moshe Isserless prefer the view of the Ri and his expectation that *kohanim* treat all corpses—Jewish and Gentile—the same way. Nonetheless, they implicitly and explicitly telegraph that there are more lenient views, namely those of the Rambam and Yereim. What does this add up to? Is there wiggle room in pressing circumstances to rely on these positions?

Given the stated preferences of the Shulhan Arukh and the Rema here, there is a general reluctance to be outright lenient in this area, even for the moderate leniency of the Rambam. As we have seen in some earlier essays, however, there is generally greater willingness to rely on somewhat less popular positions if they can be combined with other less popular positions at the same time. This dynamic of *s'feik s'feika*—using two axes of legal doubt to justify a lenient ruling—is a broadly used tactic in halakhic discourse. A few fascinating examples of this arise with respect to this topic. In 17th c. Turkey, R. Yehudah Rosanes reports in **Mishneh La-Melekh** (Hilkhos Avel 3) that it was common for people to walk around with a charm made out of human (Gentile) remains. Many *kohanim* wished to do this as well. Mishneh Le-Melekh searches for a way to permit this and comes up with the following: Though we would not rely on the Yereim's position alone simply to allow a *Kohen* to be in direct contact with these human remains, perhaps we can combine his view with that of Ra'avad, who, on Mishneh Le-Melekh's reading, felt that, in a world in which all are impure and there is no red heifer, *kohanim* are no longer forbidden from coming in contact with the dead at all. Though we wouldn't rely on either of these views independently, perhaps we could rely on them in concert to allow *kohanim* in our own time to

come into contact with Gentile remains. In the end, he backs off of this suggestion, feeling that both Ra'avad and Yereim are too marginal to add up to much, even when working in tandem.

A similar effort is made by R. Yehezkel Landau in **Dagul Merevavah** YD 372. He suggests that we ought to simply follow the Rambam's ruling regarding walking over (but not directly touching) Gentile graves. Why? Once again: Perhaps Ra'avad is right that there is no longer any prohibition on defilement at all today, and even if there is, perhaps Rambam is right that Gentile remains do not defile via shared aerial space. Here, the weighting of the positions is more balanced, as Rambam's view is hardly as marginal as that of the Yereim as far as number of adherents goes. But he, too, backs off of this suggestion, ultimately being concerned that Ra'avad only felt that there was no longer any *biblical* prohibition in force, but that a rabbinic one remained in place.⁶ This sort of argument finally wins endorsement in **Responsa Hatam Sofer** YD #339, where R. Moshe Sofer authorizes a sick *Kohen* to try the unproven therapy of taking hold of a corpse and asking it to take one's sickness away. Hatam Sofer allows this provided the *Kohen* has already been defiled on that day. As we saw in an earlier essay,⁷ R. Tam ruled that *kohanim* may, at least in cases of need, defile themselves repeatedly on the same day when they were already defiled by another corpse. Combining R. Tam with Yereim thus creates sufficient cover to permit.

Finally, there have been some prominent voices that have invoked Yereim's position in what they feel are pressing circumstances. Medical training, as currently practiced, requires dissecting human cadavers. Outside of Israel, those cadavers consist almost entirely of non-Jewish bodies. Can *kohanim* train to be doctors, despite the fact that they will thereby directly come into contact with a corpse? A number of *poskim* take for granted that this is forbidden: According to Rambam, it is completely forbidden to touch any sort of corpse, and according to Ri, it is forbidden to be in the same room with it.⁸ Nonetheless, others have felt that the critical nature of the medical profession is such that all talented people must be able to go into it. **R. Shlomo Goren** felt strongly in this regard: In a case where the need is so pressing, certainly the Yereim's position is weighty enough to rely on to enable a *Kohen* to go to medical school.

⁶ For more on Ra'avad's view, see my essay, "Kohanim and Death", found [here](#). I argue there that Dagul Merevavah's reading is indeed the best original sense of Ra'avad, even as Sefer Mitzvot Gadol may be a better source for a more thoroughgoing, lenient view.

⁷ See previous note.

⁸ See Responsa Iggerot Moshe YD III:155 for one particularly uncompromising view.

II. *Halakhah* as guide; *halakhah* as obstacle

Having seen the fullness of this discussion and the underlying values that animate some of these positions, I would like to share a personal story, one that shed light for me on the difference between treating *halakhah* as an obstacle to evade as opposed to a guide for living. Growing up, my family was extremely close with Jimmy O’Connell, an Irish Catholic police officer in New Haven, Connecticut. Jimmy was really a member of our extended family, and also became close with many of my friends over the years, including one high school friend of mine who attended Yale College. It was extremely painful when Jimmy suddenly died of a heart attack. Jimmy had a traditional Catholic wake, and we, of course, all planned to attend. My high school friend wanted to attend as well, having forged his own relationship with Jimmy over the years. There was just one issue: He was a *Kohen*. He wanted to know: Was it permissible for him to attend the wake? Jimmy’s body would be displayed in the funeral parlor, and this was exactly the sort of contact with the dead that my friend had been raised to avoid. But he really wanted to honor Jimmy by being present. Was there a way to do that in keeping with halakhic traditions?

I didn’t know much about this topic at the time and I set about looking into it in the few days before the wake. It didn’t take long for me to get back to him with the following basic assessment: There seemed like there was a basis for going to the wake, but it felt like it came at the expense of fully honoring Jimmy’s humanity. Yes, it is possible, as I did above, to see in Ravina and Rambam’s formulation a kind of technical halakhic loophole that simply excludes Gentile corpses from one particular mode of defilement, without impugning their essential humanness. But the root exegesis and rhetoric behind R. Shimon b. Yoḥai’s position is about who gets to be called *adam*. At the end of the day, it is his claim that Jews are *adam* and Gentiles are not that enables any sort of leniency around Gentile corpses. I felt the choice was very stark. I could think about the sources here as authorities to be respected but ultimately as obstacles to get around. If so, it was fairly clear that there was at least a *post facto* justification for a *Kohen* who chose to go to a wake of this sort. The books could be kept clean, Rambam could be relied upon, and no technical aspects of the *mitzvah* would be overtly and brazenly ignored.

Alternatively, I could think about the sources here as guides, as practical rulings that are the garb for deeper value statements. If so, then R. Shimon b. Yoḥai’s statement threatened to

dehumanize Jimmy, even if on a practical level it would allow this *Kohen* to join those honoring him with their presence. By contrast, the restrictive positions, while shutting my friend out of the ceremony, refuse to make some corpses more human than others. Assuming one takes seriously the ongoing relevance of the ban on *Kohen* corpse defilement—we saw above that this point is itself contentious—it is hard to be “lenient” for someone’s honor at the expense of their essential humanity. When considered as a formal rule, the *halakhah* of R. Shimon b. Yoḥai opens up possibilities. When considered as a value statement, it threatened to turn Jimmy’s corpse into a carcass. I left the choice to my friend, but I framed it as follows: There is a view that can justify your presence at this wake. But if you continue to take the ban on defilement seriously when it comes to Jews, then the greatest honor you can pay Jimmy is *not* to attend the wake.

I don’t mean to make it sound like an overly simple decision, and I respect those who prefer to find practical ways to solve problems, particularly when charged emotional situations seem to call out for very specific responses. At the end of the day, I am not a *Kohen* and did not need to confront being excluded from this important opportunity to grieve. But it is also important never to lose sight of the values that underlie various *halakhot*. R. Shimon b. Yoḥai certainly did not divorce his practical ruling here from his broader thoughts about humanity. We owe it to him and to ourselves not to do so either. Ultimately, a conversation of Torah and *halakhah* is much richer when it unites a commitment to practice with a probing of underlying ideas and values. I hope this example can remind us to pursue that sort of discussion, as we seek not only to be loyal to *halakhah*, but to have it guide and shape how we think about the world.