

May a Non-Jew be Buried in a Jewish Cemetery?

In many small Jewish communities, one Jewish cemetery serves the needs of all members of the Jewish community, whether they are Reform, Conservative or Orthodox. The degree of control which traditional rabbis hold over the policies of such cemeteries varies in these communities. (Note: In the specific case which led to the issuing of this responsum, the Reform Temple owned the community cemetery, and it was not feasible to start another cemetery.) Given the high rate of intermarriage in many of these communities, as well as the Reform movement's acceptance of patrilineal descent, there is much pressure to inter in these community cemeteries non-Jewish spouses of Jews, people who underwent non-halakhic conversions, and people who consider themselves Jews by patrilineal descent. What position should a traditional Rabbi take in such circumstances?

Tractate *Semahot* 1:9 (trans. Zlotnik, *The Laws of Mourning*, p. 32) teaches:

For gentiles or slaves, no rites whatsoever should be observed, but one may join in the lament, "Alas, O Lion! Alas, mighty one!"

"No rites whatsoever" is rather categorical and it might also include burial. Yet, even at first glance it is strange that we may join in a lament, and a flattering one at that, but must withhold the rite of burial. Impossible, writes Prof. Saul Lieberman (*Text and Studies*, New York, 1974, p. 256):

In Rabbinic times, no human being in the world would intentionally be left unburied by a religious Jew....Josephus considered the behavior of

the Idumeans to be an abominable sin. They cast out the corpses of the men whom they had slain without committing them to burial in flagrant disregard of Jewish Law....All human beings—slaves, pagans, and criminals—are entitled to burial.

The formula, “no rites whatsoever should be observed”, appears several times in *Semahot* and its implications are argued by the early medieval authorities. Rabbi Isaac ben Moshe of Vienna cites an authority, Rabbi Simhah, who takes the phrase in its absolute literal sense:

In the tractate “Mourning” (1:8) it is written “For a dismembered fetus, a footling, a miscarried fetus, a living eight-month baby, or a stillborn nine-month baby, no rites whatsoever should be observed.” “No rites whatsoever shall be observed” includes everything, even burial. This is as I explained it previously in name of Rabbi Simhah (*Or Zarua*, vol. 2, 422, 86c; See also Lieberman, *op. cit.*, p. 256, no. 25).

Rabbi Yoel ben Samuel Sirkes of 16th–17th century Poland argues against this interpretation:

Because it is written that we do not bury a wicked person beside a righteous one, it clearly proves that we do tend to the burial needs of even a wicked person, but we do not bury the wicked person beside the righteous. And because we do not bury an extremely wicked person beside a moderately wicked person, it demonstrates that we tend to the burial of even an extremely wicked person. It is possible to differentiate between burial on the one hand and the accoutrements of burial on the other. Burial is mandatory, but we may withhold shrouds and the other accoutrements of burial. We simply place him in the grave as he is. (*Bayit Hadash* on Tur, *Yoreh De'ah* 362, s.v. *ein notrim*).

Burial is an inalienable right (rite) that cannot be denied even the worst criminal. The phrase “no rites whatsoever should be observed” means that we omit the use of shrouds and other accoutrements, but it does not preclude burial.

Rabbi Solomon ben Abraham Adret elaborates and states that “no rites whatsoever” means: the rending of clothes, baring of shoulders, and the eulogy, but shrouds and burial are not withheld (*Responsa RaShBA*, Sec. 1, no. 736; Sec. 4, no. 311; Sec. 5, no. 236).

In summary, burial may never be denied to any human being. If it happens that we, as a Jewish community, are responsible for the interment of a Gentile, we must fulfill that obligation. That we have an obligation to bury has been established. But where to bury (i.e., in a Jewish cemetery or non-Jewish cemetery) has not yet been clarified. It is to this question that we now turn our attention.

The Talmud (*Gittin* 61a) states:

Our Rabbis have taught: we support the poor of the Gentile along with the

poor of Israel, and visit sick of the Gentile along with the sick of Israel, and bury the dead of the Gentiles along with the dead of Israel, in the interest of peace.

The Tosefta (*Gittin* 3.14, ed. Lieberman, p. 259) phrases the issue somewhat differently.

We support the poor of the Gentile along with...we eulogize and bury the dead of the Gentile in the interest of peace.

The Tosefta and *Semahot* (*op. cit.*) are very much in agreement with each other; burial may not be withheld from a Gentile. The Talmud's phrasing "we bury the Gentile along with the dead of Israel" might be understood to mean that not only do we bury Gentiles, but we bury them with Jews in the same place! So RaShI, anticipating an improper interpretation of this sort, is quick to add: "But not in the graves of Jews! Rather we tend to their funeral needs if they are found dead amongst Jews." (*Gittin* 61a, s.v. 'im mettei yisrael)

This comment of RaShI was understood by a number of authorities to mean not only that Gentiles are never buried in the same place as Jews, but also that we need not even tend to the burial of a Gentile unless that Gentile is found slain amongst Jewish dead "for only then will [refusal to tend to the non-Jew while tending to a Jew] result in enmity" (*Hiddushei haRaShBA*, *Gittin* 61a, s.v. *ha'*; see also *Hagahot haMordekhai* to *Gittin*, par. 464). This restrictive interpretation of RaShI's comment is a substantial retreat from the position of the Tosefta and *Semahot* which mandates a more general, less restricted responsibility to inter a Gentile corpse. But, under no circumstances, may we bury a Jew and Gentile together. Other authorities, however, do not interpret RaShI's comment restrictively (RaN to Alfasi, *Gittin*, Ch. 5, end). This difficulty in RaShI led Rabbi Joel Sirkes (*Bayit Hadash*, Tur, *Yoreh De'ah* 151, s.v. *assur*) to analyze the position of Maimonides, who uses the phrase "along with the dead of Israel" inconsistently.

It seems that his [Maimonides], use of the phrase "along with the dead of Israel" does not imply that if the non-Jew is found alone we do not tend to the burial. Of course, even in the absence of Jewish dead we bury a non-Jew!....Maimonides usage does however give implicit permission in the case of a non-Jew found dead amongst Jewish dead. In such a case, the Gentile may be buried in a Jewish cemetery. Even though we do not bury a Gentile along-side a Jew...we may, however bury this Gentile in our cemetery in the interest of peace.

In extremis, when a Gentile is found dead amongst Jewish dead, he may be buried, not alongside the Jew, but in the same cemetery in a special section or row for the sole use of non-Jews. Rabbi Sirkes also reaffirms our obligation to tend to the interment of any Gentile in our midst.

Thus far, we understand that, although a Gentile may not routinely be interred in a Jewish cemetery, there are unusual situations in which it is permitted for the purpose of maintaining peaceful relations.

According to Rabbi J.Z. Lauterbach (*Studies in Jewish Law, Custom, and Folklore*, New York 1970, p. 175), *darkhei shalom* (peaceful relations) signifies an action which is designed "to further peace and good will among all men alike". He draws a distinction between *darkhei shalom* and the concept of *mishum eivah*, which Lauterbach defines as an action done "for the sake of avoiding enmity or hatred on the part of the gentile" (*ibid.*, p. 176). The latter (*mishum eivah*) is basically a politically motivated action for the attainment of a calculated political result, i.e., the avoidance of anti-Semitism. *Darkhei shalom* is a positive action which is designed to bring harmony and peace and not just to avoid anti-Semitism. *Darkhei shalom* functions not only between Jew and Gentile, but amongst Jews as well.

As the Talmud (*Gittin* 59b) teaches: "The purpose of the entire Torah is to maintain peace as it is written: Her ways are ways of pleasantness and all her paths are peace."

Rabbi Lauterbach writes: "This cannot mean that the purpose of the entire Torah is merely to avoid the enmity of the gentile or to maintain peaceful relations with them."

The implication in our case as cited in *Gittin* 61a is that, were it not for reasons of *darkhei shalom*, we would be forbidden from burying Gentiles either in Gentile cemeteries or under certain extreme circumstances in Jewish cemeteries.

However, Rabbi Samuel Edels (MaHaRShA, *Gittin* 61a *ad locum*) writes that were the issue of *darkhei shalom* not involved in the case of a Gentile corpse in our midst, there would be no prohibition to bury the corpse. But neither would there be an obligation to bury it or tend to its interment.

To sum up: whereas in *Semahot* it would appear that we have a firm obligation to tend to the interment of Gentiles in our midst, other sources indicate that the obligation is a function of *darkhei shalom*. Where there is no issue of *darkhei shalom*, there is no firm obligation to attend to the burial of Gentiles, but neither is there a prohibition from doing so should we so choose. We may bury a Gentile with a Jew in a Jewish cemetery only under the most extreme circumstances. There is no permission to do so routinely.

Liberal congregations came to allow the indiscriminate burying of Jews and Gentiles together by relying on documented cases where exceptions were made permitting the interment of a Gentile in a Jewish Cemetery (see *American Reform Responsa*, ed. Walter Jacob, CCAR, 1983 pp. 321-41). But these exceptions are just that: exceptions. A precedent is of no consequence unless it is argued cogently, and the exceptions cited are less impressive than they appear. Included are cases

of Jewish apostates, unrecognized conversions and Gentiles buried beyond the fence of a Jewish Cemetery.

The point that an intermarried spouse has a legal right to be buried alongside the Jewish partner (K. Kohler, *American Reform Responsa*, p. 324) is refuted by another Reform rabbi (Jacob Mann, *ibid.*, p. 332) who writes that: "...civil marriage has nothing to do with the Jewish cemetery, which is part of the Jewish religious organization. The latter can so formulate its rules and regulations as not to permit such a burial..."

Moreover, to view a cemetery as a collection of individual graves where each individual, by virtue of ownership, has absolute right to dispose of the graves as he so chooses irrespective of the consequences for the cemetery as a communal institution is a very narrow perspective of a cemetery. Although Rabbi S. Freehof allows for the burial of Gentiles in family plots he does, interestingly, recognize something of the communal nature of the cemetery. He made the following ruling for the CCAR Law committee in 1963.

But if it is a question of a single grave not in a family plot, the situation is different. A Jew may object to a Gentile who is a stranger being buried next to his parent or other close relative. Here, then, where there is no family bond between the Jew and the Gentile, we have no right to force the burial of a Christian next to the grave of a Jew....Therefore, for single graves (not in a family plot), the cemetery may set aside a small section for such infrequent requests (*ibid.*, p. 339).

In our pursuit of individual liberties, we have allowed for the destruction of the common space. If a Jew makes a decision to marry a Gentile, or if a Gentile, knowing our practice, refuses to convert properly, we are not obliged to treat these people as we would full Jews and as a consequence destroy the integrity of our cemeteries. We are under no obligation to bury them routinely amongst our loved ones. The language of individual rights in these cases is insufficient to deal with the community problems that would be engendered were we to simply ignore the issue. The cemetery is not a simple conglomeration of individual graves, rather, it is a community institution which reflects not only how we die but also, and more importantly, how we live. Those who participate in our cemetery, just as those who participate in our synagogue, have communal obligations and not just individual rights. Every person who uses our cemetery, whether he be the owner of a single grave or a family plot, has a trust to preserve the traditional integrity of our final resting place.

In our tradition a corpse doesn't totally stop being the person we loved and knew. A corpse must be washed and cleaned and prepared for burial. The preparers complete their rituals and then ask forgiveness of the deceased for any indignities they may have inadvertently committed during the preparation. The subjectivity of

the dead is not totally ignored. *Kevod hamet* (the honor given to the dead) is a function of this absent life still before us in the shape of a body. That individual's subjectivity is remembered, never lost in the abyss of death. How that individual lived, the commitments, beliefs and actions or omissions remain. The Rabbis never forgot what that individual stood for. "We do not bury a wicked person beside a righteous one" (*Sanhedrin 47a*) is a reminder that, despite the fact that admission to a Jewish cemetery was predicated on proper ancestry, a person's life commitments would nevertheless bear on that individual's final resting place even within the cemetery. A suicide, an apostate, or a heretic would be interred in a separate row or section in, or just outside, the Jewish cemetery. So, if a person's life allegiance has been non-Jewish, *kevod hamet* demands that we recognize and respect that person's values and that we bury that person in a non-Jewish cemetery.

In 1936, Rabbi Jacob Mann was asked (*American Reform Responsa*, p. 331) whether it would be proper to bury a woman who "is an active member of a Christian church" in a Jewish cemetery by virtue of the sentiment which she felt for her Jewish husband. Rabbi Mann argued that her life long love for the church was *prima facie* evidence of her "non-Jewish allegiance."

Such a person, whose religious convictions should be respected, could rightly claim that her tombstone should have a symbol of her church, viz., the Cross. There is further involved the point of her clergyman officiating at the funeral. Being an active member of her church, she has the perfect right to have her last rites performed by the accredited representative of her religion. All this tends therefore to the positive conclusion that her last resting place should not be the Jewish cemetery, but the burial ground of her church. The rabbi should therefore advise the woman concerned that in view of her attachment to her religion—which should be fully respected—arrangements should be made with the authorities of her church. It is not a pleasant task for the rabbi to do so, considering the natural marital sentiments involved; however, in order to obviate an effacement of religious boundaries, one should take a clear stand in such matters. In the long run, courage and honesty prevail over weak compromises. (*ibid.*, pp. 332–3)

A much more difficult case would be one where the deceased was a Gentile by Jewish law, yet considered himself Jewish. By this is meant a Gentile who was incompletely converted (i.e., in a ceremony where there was no *mikveh* immersion or circumcision) and who is now living a Jewish life or a patrilineal "Jew" who was raised as a Jew and even practices Judaism, Torah study and who is raising a family Jewishly and who always considered him/her self to be Jewish. In both of these cases, we cannot consider the individuals in question to be Jewish. Despite the existential commitment, the formal rites of passage have not been observed, so full and complete membership must be denied these people until such time as the

prescribed rites are completed. They are Gentiles but, in a most important way, they are Gentiles who consider themselves to be Jews and who, in many cases, do indeed practice Judaism in a reasonable and sincere manner. They have abandoned or never accepted the church or any other religion. They are recognized as Jews by the Reform and Reconstructionist movements. For the purpose of *darkhei shalom*, in the interest of promoting some peace and harmony amongst the various houses of Israel, and given the fact that even a Gentile may be buried in a Jewish cemetery under unusual circumstances, we should routinely allow Gentiles who consider themselves Jews access to our cemeteries. However, their graves must be separated from all the others by shrubbery, or a railing, or a groove ten handbreadths high or deep, or, if the family chooses, by leaving the space of one empty grave on each side. Because the unity of our people is as badly threatened as it is today, and because the threat of schism hovers over us, we find ourselves in an unusually difficult situation which merits this action.

We must continue to insist upon the separation of our graves in the above cases in order to encourage halakhic conversions, not to give an after the fact blessing to an intermarriage, and not to condone the idea of patrilineal descent.

In other words, by burying an incompletely converted Gentile next to a Jewish spouse without any separation of graves, we may be seen as condoning, in this final act, an intermarriage. Likewise, were we to bury a "patrilineal Jew" next to his/her Jewish father, we might be seen as condoning the principle of patrilineal descent. This we must not permit. On the other hand, we must never forget their life commitments to our people. It is wrong to allow them to be buried in a church cemetery by a Gentile clergyman whom they never sought out. They have earned a final resting place amongst us by virtue of their belief in our God, and by their commitments to raise a Jewish family. Judging their sincerity will put us as practicing Rabbis in difficult political and personal situations. Yet, Rabbis of times past made equally difficult decisions about people when the concept "we do not bury a righteous man alongside a wicked one" was fully operative.

Finally, it should be noted that a cemetery which, as a matter of routine, without any separation from the graves of Jews, inters people who consider themselves Jews by patrilineal descent or through an incomplete conversion should be regarded as fundamentally unfit for the routine burial of traditional Jews. The indiscriminate burial in these cemeteries of unconverted Gentiles who never had any commitments to our people other than the fact that, by accident of fate, they were married to Jews or worked for Jews, renders the cemetery unusable for traditional burials unless the grave of a Jew who wishes to be buried in such a cemetery is partitioned from all the other graves of the cemetery by shrubbery, railing, or a groove ten handbreadths high or deep, or is partitioned by leaving the empty space of one grave on each side of the burial site. A partitioned section

designated for traditional burials within such cemeteries would be the preferable option.

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