

May a Mausoleum Be Used for Jewish Burial?

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This paper was adopted on June 7, 1983 by a vote of 11-0-1. Members voting in favor: Rabbis Kassel Abelson, Isidoro Aizenberg, Ephraim L. Bennett, Ben Zion Bokser, David M. Feldman, Morris Feldman, David H. Lincoln, Joel Roth, Morris M. Shapiro, Gordon Tucker and Alan J. Yuter. Abstaining: Rabbi Edward M. Gershfield.

Note: An addendum, "The Use of Mausoleums for Jewish Burial" by Rabbi David H. Lincoln, was adopted by the Committee by the same vote, and appears following this paper.

SHE'ELAH

Does Jewish law permit burial above ground or is burial restricted to below ground?

TESHUVAH

The same question has come before the Law Committee on numerous occasions and in each instance the response has been in the negative. At times the language of the reply was expressed in very strong opposition to even the suggestion that the question should arise. One reply was unequivocal by stating that "Burial in mausoleums is absolutely against Jewish law." Rabbi Jules Harlow, in *The Bond of Life*, states categorically that "the dead are buried in the earth, 'for dust you are and to dust you shall return' (Genesis 3:19).

This strong distaste for an alternate method of above-ground burial in mausoleums is caused, I believe, by the present fully accepted world-wide and entrenched approach we employ today. Our present tradition of burying the dead in a casket placed in a grave below ground is so universally recognized that it has become virtually inconceivable to even suggest that other methods were ever employed or may be employed today. However, a review of the pertinent literature indicates that in the past other methods than those in use today were accepted and employed.

Indeed, *Yoreh De'ah, Hilkhos Avelut* 362 looks askance at our wide use

of any kind of casket and states: "Although use of a casket does not violate the law against desecration of a corpse (*bizyon hamet*) nevertheless it is more proper to bury the dead in the ground itself." This aversion to use of a casket, the codifier adds, extends even to burials in the Diaspora.

The *Shakh* goes beyond the text and contends that if a casket is used, holes must be drilled into each side so the corpse will have direct contact with the ground.

The *Be'er Hetev* adds that although the corpse must have direct contact with the earth, this may be accomplished by providing a pillow of dirt under the head of the corpse -- or better yet, by placing some dirt on the face of the corpse, rather than having holes cut into the casket.

Radbaz takes a more lenient stance and suggests that direct contact with the earth does not require direct burial in the ground. In the event of the use of a casket, he neither requires cutting holes in it nor does he require placing dirt under or over the head of the body, inasmuch as "everything comes from the earth and returns to it," including the casket.

Other methods than the one we employ of burial in an underground grave were often determined by topology and soil conditions. In the time of the Rambam, a cave was dug, a crypt was hollowed out in the side of the cave, and the body put into the crypt -- face upward. The dirt and stones were then replaced (Rambam, *Hilkhot Avel* 4:4). Almost as an afterthought, he adds that a casket should be used.

This latter method of burial in a grotto is fully described in minute detail in *Bava Batra* (101a). This method necessitated the construction of elaborate catacombs. The distances between each grotto and between crypts were determined by soil and rock conditions so that each individual burial site would remain intact and separate from its neighbors. The accuracy of the descriptions in the Talmud is supported by recent archaeological findings of a Jewish cemetery, seven miles long, in the hills of Jericho. (See *Biblical Archaeology Review*, July/August 1979 and January/ February 1983.)

Although arrangements for the crypts were similar to those which we conceive of as mausoleums, and are often called mausoleums, it must be noted that the system of burial described in *Bava Batra* was still underground and therefore does not apply to the question at hand. Nevertheless, it does indicate that it is quite proper for burials to be in horizontal and vertical rows as long as each individual plot remains separate and distinct.

In *Semahot* (Chapter 12), we find a radical departure from the system of burial today. The tractate describes the method of final disposition of the body. The corpse was first buried and left in place until the flesh was completely decomposed -- or until the skeleton fell apart. On the appointed day, a festive day or a day of mourning was declared for the family and the

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bones were gathered and deposited in a stone (ossuary) or other kind of a casket (*Mo'ed Katan* 8a).

R. Eliezer b. Zadok said (*Semaḥot* 12):

When my father was dying he gave me this instruction: "On my death bury me first in the valley, and later gather my bones and place them in a cedar coffin, but do not gather them with your hands." And I did so for him. R. Yohanan entered (the cave) and spread a sheet over (the bones); then I entered, I rent (my garments) and spread clumps of earth over the bones. As (my father) did for his father, so I did for him.

The Mishnah and Gemara in *Mo'ed Katan*, however, are most germane to the subject under consideration. The tome discusses in detail kinds of work permitted on the Festival and those prohibited. We must assume that if a certain kind of work is noted as being expressly prohibited on the Festival, then the same work was permitted and generally performed on the ordinary weekday.

The tractate turns our attention to permitted and prohibited kinds of work should death occur on the Festival:

מתני' אין חופרין כוכין וקברות במועד אבל מחנבין את הכוכין במועד (רש"י):
לצורך המת) גמ' מאי כוכין ומאי קברות, אמר ר' יהודה כוכין בחפירה וקברות
בבנין (מועד קטן ח:)

Rambam, in his commentary on the above Mishnah, defines the key words in unambiguous terms: "*Kokhim* are made by digging graves in the ground and *kevurot* are *binyan al hakarka* -- structures for graves above ground."

In *Hilkhot Yom Tov* 7:15, Rambam also indicates that burial above ground was permitted and practiced:

עושיין כל צרכי המת במועד . . . ואין חוצבין אבנים לבנות בהן קבר.

It is permitted to perform all necessary work for the dead, but it is forbidden to hew stones from which to build a burial place on the Festival.

The commentator on the Rambam, *Hagahot Maimoniot* adds:

אין אסור אלא קבר בנין אבנים שראוי לעמוד ימים רבים או כוכין . . . אבל
נברכת שהיא הבקעה דהיינו כעין קבר שלנו חפורה בעלמא למלאותו עפר שרי.

The expression, *kever binyan avanim shera'ui la'amod yamim rabim*, is a clear definition of a modern mausoleum -- construction of which is

prohibited on the Festival, but permitted at other times.

We must therefore conclude that mausoleums are not new to our heritage, but have been known, employed and approved in the past.

The term mausoleum originally, in fact, referred to the tomb of King Mausolus of Caria, erected by Queen Artemisia at Halicarnassus about 350 B.C.E., which was considered one of the seven wonders of the world. In more modern times, it has come to denote a structure for multiple above-ground interments. Mausoleums are essentially constructed of granite with marble interiors. Today, because of the growing demand for this type of interment, it has become economical to produce pre-fabricated mausoleums. The mausoleum may be built for a single family to accommodate 8-10 bodies, as is found in many old Jewish cemeteries in this country or, as is becoming more common, a communal mausoleum that can accommodate as many as 2,000. In the newer mausoleums, elevators are installed to enable visitors to reach the upper grave sites. The crypts, arranged in locker style, most often open into a large central hall, but may also open to the outdoors. Central halls are most frequently heated in the winter and air-conditioned during the summer to afford comfort and convenience at any time of the year in which visitors may come to pay their respects.

Bodies prepared for burial in a crypt may or may not be embalmed, and then are placed in a casket which in turn is put into a zinc liner and then inserted into the locker-like crypt. The crypt is then permanently sealed with a "shutter." A memorial plaque may be placed on the shutter. Each crypt is vented both upward and downward so that fluids and gases from the decomposing bodies may escape, thus avoiding the possibility of an explosion.

In earlier periods, family mausoleums were erected as a status symbol indicating the family had "arrived" and could afford this form of burial. Today, however, there are also practical, as well as psychological reasons as to why a family selects above-ground burial as opposed to in-ground. Cemeteries, particularly Jewish cemeteries in the more heavily populated inner cities, are simply running out of space. No new charters have been issued in New York State for at least eight years, and possibly for as long as 50 years. Where land is available for purchase as possible cemeteries, local municipalities are reluctant to issue appropriate permits for fear of losing projected taxes if the land is given over to a non-profit cemetery board.

There are some experts in the field who believe that available land for in-ground burials in present cemeteries may be exhausted in the next two or three decades, thus necessitating a more economical and disciplined use of available land. An area now subdivided for some twenty in-ground plots may accommodate a mausoleum with a projected total of a

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hundred times that number of crypts. (It is noteworthy that Christian cemeteries permit three to four bodies to be buried one above the other in each individual plot.)

Families frequently opt for mausoleum burial because it is "dignified, reverent and beautiful." Mausoleum interment, including perpetual care, is comparable in cost to in-ground burial. One expert now in the memorial stone business, stated, "There is no future for memorial stones. Mausoleums will become the only method of interment."

In spite of the growing trend to burial in mausoleums, there has been no great outcry against this practice and it has not been difficult to secure rabbis even from among the "most observant" to officiate at the interment and at the unveiling of a memorial tablet on the crypt.

CONCLUSION

Although there does not seem to be any impediment in Jewish law to using a mausoleum for burial, it should not be encouraged. Indeed, it should be actively discouraged since it is an obvious change from methods universally accepted today and its general publicized approval may create confusion. While it should be discouraged, we must recognize that it is permitted and that a rabbi may therefore officiate at an interment in a mausoleum.

Although a mausoleum is halakhically permissible, certain restrictions applicable to a cemetery should be applied to the mausoleum. The mausoleum should be used exclusively for those of the Jewish faith. If a "non-sectarian" mausoleum is used, definite and easily recognizable demarcations should be imposed, such as its own central hall and entrance, clearly indicating its Jewish nature.

(I am indebted to Mr. Joe Garr of Sprung Memorials, a designer and builder of mausoleums for 40 years, and Mr. Shakiry, of the New York State Cemeteries Board, for sharing their vast storehouse of information pertinent to this paper.)

