

The Use of Mausoleums for Jewish Burial

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This paper, an addendum to the preceding paper by Rabbi Morris Feldman, "May a Mausoleum Be Used for Jewish Burial?" 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 Gershfield.

SHE'ELAH

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

TESHUVAH

I agree with Rabbi Morris Feldman's paper, "May a Mausoleum Be Used for Jewish Burial?", submitted at our last meeting. Rabbi Feldman concludes, "Although a mausoleum is halakhically permissible, it should not be encouraged."

My reason for writing a further paper on the subject, however, is because of a controversy which arose in the Chicago Jewish community some years ago when one of our cemeteries, Shalom Memorial Park, decided to build a mausoleum. At that time, a distinguished Orthodox rabbi, Ben Zion Kaganoff, was asked to publish a paper with a view to giving a historical overview, rather than a teshuvah. I have recently spoken to Rabbi Kaganoff and he has provided me with his paper, as well as certain responsa on the subject, and I quote almost entirely from his papers hereunder. Parenthetically, I think it fair to point out that Rabbi Kaganoff was not happy with the outcome of the construction of the mausoleum. It seems that it was originally to be built as an underground facility, but the final result was not quite as he had imagined. It should also be mentioned that there is a great deal of reticence amongst Conservative and Traditional rabbis to encourage burial in those vaults.

Although the verse, "From dust thou art and unto dust thou shalt return" (Genesis 3:19) was interpreted by the Sages of the Talmud as referring to burial in the earth, the Bible does not mention any funeral or burial rites practiced in early times. The Cave of Machpelah became a prototype for the burial of Hebrew patriarchs and matriarchs and this custom was still followed during the period of the Kings and Prophets. In Isaiah (22:16) there is reference to depositing the dead in a niche hewn out of the rock.

In the Gospel references of Matthew 27:59, Mark 15:46, the Acts 5:6 and in Jewish works of the first century B.C.E., we see that the corpses would be placed in the rocks without coffins. However, in the Talmud (*Semaḥot* 13) it appears that coffins made of cedarwood and earthenware or stone sarcophagi were used.

There is no mention in the rabbinic literature of the talmudic period of public burial places like our cemeteries. Rather, hollow areas, called *kokhin*, and vaults (*me'arah*) are mentioned, as is the *golel*, a large stone to close the opening of the niche. The Talmud (*Sanhedrin* 47b and *Ketubbot* 4b) states that the mourning period officially begins when the *golel* is set in place or sealed.

It is true that Rashi and the Tosafists understood the expression, "when the *golel* is sealed," to mean, "when the coffin in the grave is covered with earth."

The name we use today, *beit hakevarot*, literally means "the chamber of graves" and no doubt originally referred to the network of chambers that was used in former times.

It is well known that many famous catacombs have been found in Italy, Tunisia, Libya, Asia Minor, Egypt, etc. In Jerusalem, the most famous necropolis is in the suburb of Sanhedria, where various burial troughs and niches are to be found.

In Beit Shearim, located 20 kilometers southeast of Haifa, where excavations were begun in 1936, a whole area of catacombs consisting of a series of halls and side chambers has been unearthed. When the Mount of Olives in Jerusalem became inaccessible after the ill-fated Bar Kokhba revolt of 132-135 C.E., the greatest rabbis were buried there.

In summary, it is clear that the oldest form of Jewish burial was in rock vaults, but when the center of Jewish life moved from Palestine to Babylonia, it was found that the soil of that country was not suited for cave burial. Students of halakhah have long recognized that the Jewish communities of Southern Italy and North Africa tended to follow Palestinian custom, while the Jewish communities of France, Germany and Northern Italy saw themselves as a continuum of Babylonian traditions.

Whatever geographical, cultural and halakhic factors were at work, the fact remains that vault burial is historically the oldest form of Jewish interment of the dead.

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A number of responsa on the subject of cement boxes and mausoleums have been published in recent times.

Solomon B. Freehof, Rabbi Emeritus of Rodef Shalom Temple, Pittsburgh, writes:

The question asked here...(is) that the proposed family burial place is not in the ground, but in a mausoleum. This raises the question of the opposition of modern Orthodox authorities to mausoleum burials altogether. Most of the laws involved are discussed in *Reform Jewish Practice*, vol. I, p. 123ff., where it is mentioned that in Palestine, in ancient times, all the burials were in rock-hewn caves, with separate caves for each family and niches dug in the rock for each body, equivalent to a modern mausoleum (see the reference there). To those references may be added the large quotation from Hai Gaon given by Jacob ben Asher in the Tur, *Yoreh De'ah* 363, which describes the rock and cave burial of Palestine. Therefore, while it is not the modern Orthodox preference, burial in a mausoleum is basically permissible in Jewish law.¹

A report presented to the 1961 Convention of the Rabbinical Assembly by Rabbi Max J. Routtenberg, then Chairman of the Committee on Jewish Law and Standards, reflects the following:

- Q. Is a lawn-style cemetery halakhic?
- A. Yes.
- Q. May mausoleums be erected in a Jewish cemetery?
- A. Archives yield a mixed opinion.
 - a. They could not be outlawed.
 - b. We dissuade use of mausoleums.²

In *Havalim Beneimim*, Volume III, Responsum 63, which was written to Rabbi Joshua Hershhorn of Montreal, Rabbi Judah Leib Graubart states, regarding Rabbi Hershhorn's concern whether cement is in the category of earth in the use of either a concrete liner or a mausoleum, as follows: "And that which you were concerned about cement, it is certainly earth." Rabbi Graubart also quotes Shabtai Cohen in Paragraph 352, sub-paragraph 1, "In our day we place clay pottery on the mouth and eyes. It is the same as putting on earth which was the practice in earlier days."

Rabbi Natronai Gaon says that it is enough that they put earth on the mouth and eyes. This has been interpreted to mean that a mausoleum is permissible if earth is placed in the casket.

CONCLUSION

In conclusion, it would appear to me that, as I have stated earlier, we should uphold our own traditions of Northern Europe, but if people nevertheless insist on a mausoleum, some sort of earth should be put into the coffin, as suggested by Rabbi Judah Leib Graubart.

NOTES

1. Solomon B. Freehof, *Modern Reform Responsa* (Cincinnati: The Hebrew Union College Press, 1971) p. 258.
2. Max J. Routtenberg, "Report of the Committee on Jewish Law and Standards," *Proceedings of the Rabbinical Assembly XXV* (1961) p. 198.

VI.

DIVORCE

