

PEACEFUL PATHS: BURIAL OF NON-JEWS IN A JEWISH CEMETERY FOLLOWING A COMMON DISASTER

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This paper was approved by the CJLS on October 5, 1994, by a vote of twenty-three in favor (23-0-0). Voting in favor: Rabbis Kassel Abelson, Ben Zion Bergman, Stanley Bramnick, Elliot N. Dorff, Jerome M. Epstein, Samuel Fraint, Myron S. Geller, Arnold M. Goodman, Susan Grossman, Jan Caryl Kaufman, Judah Kogen, Vernon H. Kurtz, Alan B. Lucas, Lionel E. Moses, Paul Plotkin, Mayer Rabinowitz, Avram Israel Reisner, Joel E. Rembaum, Chaim A. Rogoff, Joel Roth, Israel Silverman, Gordon Tucker, and Gerald Zelizer.

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שאלה

The terrorist attack on the Jewish community headquarters building in Buenos Aires, Argentina on Monday, July 25, 1994, killed a large number of Jews and Christians. There are body parts and limbs which are so mangled they cannot be identified for burial. May these limbs and body parts, which could be from both Jews and Christians, be buried together in a mass grave in a Jewish cemetery? Must such burial be restricted to a special section? How shall the gravesite be marked?

תשובה

This responsum will review certain halakhic requirements for a Jewish burial site, the traditional ban on burial together of Jews and non-Jews and special circumstances in which such burial may be permitted.

Requirements for a Jewish Burial Site

Among the traditional requirements for Jewish burial, three which relate to the burial site are:

1. קבר שלו – The plot used for burial should be owned by the deceased. The Talmud quotes Josh. 24:33 about the death of Elazar ben Aharon and his interment at a site owned by his son Pinhas. The Gemara is concerned about the basis of Pinhas' title to the property. Abaye rejects R. Papa's suggestion that Pinhas might have purchased it.

Such title, terminating at the Jubilee year, would leave *צדיק קבור בקבר שאינו שלו*, a saint buried in a plot which he does not own.¹

The Talmud understood that a *צדיק* required *קבר שלו*, ownership of his burial plot; later authorities extended this mandate to all Jews. “Although Baba Batra 111b states that a *צדיק* should not be buried in a plot which he does not own, this is not specific to a *צדיק*, rather every individual must be buried in a plot which he owns!”² Rabbi Isaac Elchanan Spector supplies the rationale for the extension in that each Jew enjoys a presumption of sainthood to whom the *קבר שלו* requirement applies.³ Thus every Jew must be buried in a plot owned in perpetuity by the deceased.

2. *קרקע ישראל* – The cemetery in which the individual gravesite is located must be designated exclusively for Jews. “Our rabbis placed a great responsibility on the Jewish community that they have cemeteries designated for their exclusive use and that the land be theirs.”⁴ Although Jewish ownership of the cemetery is preferred, it is not an absolute requirement of halakhah. *קרקע ישראל* is not a mandate about title but of exclusive application of “Jewish legal rules and sensitivities,” control over the rites to be conducted there and the perpetuity of the designation of the cemetery as Jewish.⁵

3. *אין קוברין רשע אצל צדיק* – A sinner should not be buried with or near a saint. The Mishnah reports that two cemeteries were maintained for *הרוגי בית דין*, criminals executed by order of the courts. One was used for the burial of criminals who had been decapitated or strangled, forms of execution which, because they were considered swift and less painful, were imposed for lesser capital offenses. A second cemetery was reserved for those whose violations were so heinous that they were executed by the harsher methods of stoning or burning. In the Mishnah under discussion, the severity of the infraction and subsequent punishment determine in whose proximity violators could be laid to rest. The Gemara explains that a hierarchy of virtue or of sin is applied in determining where people may be buried in a Jewish cemetery.⁶

A Biblical proof-text is provided by R. Aha bar Hanina. He cites 2 Kings 13:21 about the deceased Elisha who resurrected a false prophet rather than allow the sinner to be interred with him. It is noteworthy that Elisha did not use his powers to forestall an attempt to bury the sinner near him. Only when, at the approach of an armed enemy band, the sinner’s bones were hastily dumped in Elisha’s grave thereby touching those of the saint, did the revival of the sinner occur. Nevertheless, the Rabbis established a principle barring proximate as well as contact burial of sinners and saints.

Burial of Non-Jews with Jews

Later sources, by inference from a minor to a major premise, applied the *אין קוברין* principle to the burial of non-Jews near Jews, forbidding it in a Jewish cemetery. Thus, in regard to burial in *קרקע ישראל*, all Jews are presumed to be saints, even executed criminals; all non-Jews, sinners, thereby excluded from burial there.⁷

Although the baraita which states, “Non-Jewish dead may be interred with Jewish dead, *מפני דרכי שלום* so that we follow peaceful paths,” would seem to permit for civil-

¹ B. Bava Batra 111b.

² Yekutiel Greenwald, *Kol Bo Al Aveylut*, p. 174.

³ Ein Ytzhak, no. 34.

⁴ Greenwald, op. cit., p. 162.

⁵ Rabbi Ben Zion Bergman, “A Matter of Grave Concern: A Question of Mixed Burial,” above, pp. 418-425.

⁶ B. Sanhedrin 47a.

⁷ Kesef Mishneh, Hilkhot Melakhim 10:12; S.A. Yoreh De’ah, 367:1.

ity's sake, the burial of non-Jews with Jews in all circumstances, Rashi and others limit its application to a common disaster when non-Jews and Jews are found dead alongside each other.⁸ Rashi understands the baraita to refer to a situation in which the identification of the faith group of each of the cadavers is possible and the Rabbis are concerned about the unseemliness of Jews carrying away their own dead for burial while abandoning non-Jewish dead. Only in these circumstances and **מפני דרכי שלום**, does Rashi acknowledge a Jewish obligation to non-Jewish dead. It is restricted to burial alone, but interment in a Jewish cemetery is not permitted. However, if non-Jewish dead are found without Jewish dead nearby, no obligation falls on Jews to undertake their burial.

Ran reads the baraita text **עם מתי ישראל** to mean "Non-Jewish dead are buried as are Jewish dead, **מפני דרכי שלום**." He enlarges the circumstances in which Jews are obligated for the burial of non-Jews to any case when their remains are found, even if no Jewish dead are nearby. He does not, however, question the essential point in Rashi's interpretation of the baraita, that non-Jews may not be buried in Jewish ground and he applies the rationale **אינן קוברין רשע אצל צדיק**.

Even adjacent location of non-Jewish burial ground and **קרקע ישראל** is restricted in our sources. This view is expressed most forcefully by Rabbi Shlomo Kluger who requires a physical partition between such cemeteries. He cites the use of the **פרוכת** which separated the **קודש** from the **קדושים קדושים**, the Holy from the Holy of Holies, to define spaces in the ancient Temple which had different degrees of sanctity. How much more so, he argues, must a physical barrier divide between the sacredness of the Jewish cemetery and the impurity of the Christian.¹⁰ He is particularly exercised about crucifixes in Christian cemeteries which, if no separation and barrier were in place between the two burial grounds, would stand close to the interment site of Jews. Just as crucifixes are barred unequivocally from **קרקע ישראל**, so too must their shadow be removed from Jewish burial sites by physical separation and partition. Ideally, a space of eight cubits should be left, but if necessary a space of four cubits plus the requisite partition, four cubits in height, may suffice.¹¹

Special Circumstances

Despite halakhic imperatives about the exclusivity of Jewish burial ground, circumstances exist which occasionally permit the burial of non-Jews in **קרקע ישראל**. Thus, the BaH permits Jews and non-Jews found slain together to be buried together in **קרקע ישראל** and such burial does not render the cemetery unacceptable for further Jewish use. Commenting on permission granted by the baraita cited above to bury non-Jewish dead **מפני דרכי שלום**, he writes:

This permission for the burial of non-Jews comes to teach us that in circumstances when they are found slain together with Jews, their dead may be interred **בקברי ישראל**, in Jewish burial ground. Although there is no doubt that non-Jews may not be buried near Jews since even a Jewish sinner may not be buried

⁸ B. Gittin 61a.

⁹ Ran, Gittin, loc. cit.

¹⁰ Shlomo Kluger, *Tuv Taam Vadaat*, 3:250.

¹¹ Greenwald, op. cit., p. 163.

near a Jewish saint, nevertheless, non-Jewish dead and Jewish dead may be buried in a single location, *מדרכי שלום*, when they are found together.¹²

In a more recent though similar case, Rabbi Shlomo Goren reports his perplexity when, following Israel's War of Independence, a large pile of bones assumed to be a mixture of Jewish and non-Jewish remains, the latter in the majority, was found in an area which had formerly been behind enemy lines. Rabbi Goren cites the BaH, but wonders if the BaH would permit burial in *קרקע ישראל* if the non-Jews involved were "enemies of Israel who fell in their war against us." Rabbi Goren seems to suggest that it is the character and behavior of non-Jews which should determine whether they may be buried, in these special circumstances, in a Jewish cemetery.¹³

Anguished at the prospect of leaving Jewish remains outside a Jewish cemetery, Rabbi Goren turned to the Hazon Ish to resolve his dilemma. The Hazon Ish specifically permitted the burial of all the remains in *קרקע ישראל*. "This is not a matter of *אין צדיק אצל רשע* because we perceive these non-Jewish bones as if they were stones." In this instance, where enemies of Israel were involved, the Hazon Ish did not refer to the *מדרכי שלום* rationale of the baraita. Instead, he introduces a new principle, dehumanizing the non-Jewish remains, treating them as stones and permitting their burial in *קרקע ישראל*. Based on this ruling, Rabbi Goren had a separate section in the Haifa military cemetery opened where the remains of enemies of the State of Israel and its Jewish defenders were buried together. Rabbi Goren's decision was more stringent than that of the BaH or the Hazon Ish who, under these or similar circumstances, did not require a separate section in a Jewish cemetery for interment together of Jewish and non-Jewish remains to be permitted.

Summary

According to the BaH, non-Jews found slain together with Jews, may be buried in a Jewish cemetery *מדרכי שלום*. In the case under consideration, this would certainly apply to almost all of the non-Jewish body parts and limbs that are available for burial. If remains of the terrorist who caused the tragic loss of life are also present, Rabbi Goren's reservations about burying enemies of the Jewish people together with Jews in a Jewish cemetery may apply here. We may rely upon the precedent established by the Hazon Ish to dehumanize remains of enemies of Israel and view them as nothing more than stones. In our case, common burial for remains of Jews and non-Jews which may include those of the terrorist is permitted in a mass grave.

Since body parts and limbs are not identifiable in our case, the *קבר שלו* requirement cannot be applied. Halakhic precedent permitting the burial of non-Jews in a Jewish cemetery, under certain circumstances, indicates that doing so does not violate *קרקע ישראל* and will not bar Jewish burial in adjacent plots in the future. Such burial does not necessitate barriers as might be required between a Jewish and a non-Jewish cemetery. Rabbi Kluger's concern about Jews being buried in the shadow of crucifixes does not apply in a Jewish cemetery where symbols of other faith groups are always to be banned.

It has been noted that non-Jews are identified by tradition, at least in reference to interment in *קרקע ישראל*, as *רשעים*. This is the basis for refusing them burial in our

¹² Tur, Yoreh De'ah, 151.

¹³ Shlomo Goren, *Maishiv Milhama*, v. 3, p. 407.

cemeteries. When the Hazon Ish introduces a new concept, dehumanizing non-Jewish remains and characterizing them as stones in order to allow their burial in a Jewish cemetery, he refers only to the remains of enemies of Israel in the specific circumstances under discussion and this designation cannot be applied to other non-Jews. However, Rabbi Bergman has already rejected the characterization of all non-Jews as רשעים as ethically offensive in our day. “This is particularly offensive since the statement אין קוברין רשעים in its original context is used to explain why הרוגי בית דין were buried separately. In other words, in the original context the רשע is an executed criminal. Furthermore, the tradition in saying ‘The righteous of all nations share in the world to come’ recognizes that not all non-Jews are רשעים.”¹⁴

Conclusion

The burial of Jews and non-Jews or their body parts or limbs found together following a common disaster is permitted in a Jewish cemetery. Even when remains of an enemy of Israel may be present, such burial is permitted. Ample precedent exists in ancient and modern sources to allow this course of action. Such burial does not desecrate the final resting place of Jews already interred there and does not prohibit future Jewish burials.

Furthermore, no special section is required for burial. However, the gravesite should be identified as the final resting place of the remains of Jews and non-Jews and a monument should be placed as a memorial to the tragic events which brought them to a common grave.

¹⁴ Bergman, above, pp. 424-425, condensed.