

I SHALL SPRINKLE PURE WATER UPON YOU AND YOU SHALL BE PURIFIED: A QUESTION OF TAHARAH

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שאלה

It is the practice of a Jewish mortuary in the Los Angeles area that all bodies brought to the mortuary are immediately washed. The rationale for this procedure is hygienic, to ensure the safety of mortuary personnel. The deceased may be carrying infectious bacteria or viruses and the purpose of this initial washing is essentially to provide some measure of disinfection. In recent years, with the proliferation of fatal infection, the mortuary personnel have become even more acutely sensitive to the need for protection.

This initial washing presents two issues which confront Jewish law:

(A) The **חברא קרישא** personnel have raised the question whether this initial washing preempts, or impacts, in any other way, on the **טהרה**. In other words, may there be any washing of the body other than the **טהרה**?

(B) If this initial washing does not conflict with halakhah, can this initial washing be done by anyone regardless of gender? In other words, may a woman be washed by a man and a man by a woman, or must the procedure be done by someone of the same gender as the deceased? In addition to the extra expense of having both male and female personnel available at all times (even in the wee hours of the morning since bodies are brought into the mortuary at any time), the mortuary personnel have raised the issue that to require that the initial washing be done by someone of the same gender impugns their professionalism.

תשובה

a. It should be stated at the outset that every precaution must be taken that nothing be done which would prevent the full טהרה and other ritual laws from being able to be fulfilled. This responsum therefore assumes that all necessary procedures will be followed and limits itself to the questions posed.

In a previous review of this mortuary's procedures, I addressed the question of the legitimacy of the initial washing. I indicated then that the טהרה procedure should be the final process before the deceased is clothed, so that the purification ritual, including the recitation of the expiatory prayers and prescribed Biblical verses, are the last acts preparing the deceased for burial. I then concluded that the initial washing does not preempt nor in any way adversely affect the טהרה.

I come to this conclusion on the basis of several halakhic considerations. The source for the טהרה (ritual purification procedure) of the deceased is to be found in the Mishnah (Shabbat 151a) where it is stated simply that even on the Sabbath:

עושיין כל צרכי המת; סכין ומדיחין אותו ובלבד שלא יזיז בו אבר.

One may perform all that is necessary for the dead viz. rubbing with oil, washing with water, but one may not move any limb.

The rubbing with oil, as the commentators indicate, was evidently to facilitate removal of fecal matter and other loathsome substances before the rinsing with water. It is abundantly clear that the motivation for the טהרה procedure in ancient times was respect for the deceased. This is stated explicitly by Nahmanides in *Torat Ha'adam*:

מה ששנו במס' שבת, עושיין כל צרכי המת סכין ומדיחין וכו', אין זה אלא מפני כבודו.

What we have learned in Tractate Shabbat that we do all that is necessary for the deceased, i.e., rubbing with oil and washing, is done only out of respect for him.¹

The consideration of respect for the deceased was in terms of his or her effect upon others. Thus Rabbi Joseph Karo (Bet Yosef, sec. 352) states:

מדיחין אותו כדי להעביר זוהמתו שלא יקיצו העם בטלטולו.

We wash the body to remove any filth (possibly fecal matter) so that those who carry the body are not nauseated.

Maimonides (Laws of Mourning, ch. 4) also adds the use of aromatic spices to counter offensive odors.

One can cite many other practices motivated by the same consideration. Let me add only one other outstanding example. In the Babylonian Talmud, Tractate Moed Katan 27b it is stated:

בראשונה היו מניחין את המוגמר תחת חולי מעים מתים והיו חולי מעים חיים מתביישין; התקינו שיהו מניחין תחת הכל מפני כבודן של חולי מעים חיים.

Originally incense would be burned especially beneath the bier of the deceased who had intestinal illness. But since this practice of singling out this decedent in this way would embarrass living persons with the

¹ Cited by Grunwald, *Ach L'tzara*, ch.1, sec. 6a, from *Torat Ha'adam, Sha'ar Hasof*, subsection *Inyan Hak'vura*.

same intestinal problems, they then instituted that incense would be burned under the biers of all deceased, out of consideration for the feelings of the living who suffer from gastro-intestinal diseases.

This example highlights the attitude of Jewish law in its understanding of the respect that must be shown to the deceased. Thus, for example, respect for the dead required speedy burial. Remembering that these laws were formulated in a hot climate with no refrigeration, respect for the dead required burial before putrefaction would set in and render the body loathsome. Yet sometimes, if close family members were in a distant place from which it would take some greater time in order to arrive for the funeral, the burial could be delayed (though not for an excessive amount of time). This is cited in the Talmud Bavli (Sanhedrin 46b, 47a) in the context of a discussion of whether the eulogy is motivated by יקרא דחיי (respect for the living) or יקרא דשכיבא (respect for the dead). While the Gemara finally decides that the eulogy is for יקרא דשכיבא, from the discussion it is clear that both considerations are operative in our dealing with the dead and the two considerations are not antithetical. Specifically, the statement is made:

כל העושה לכבודו של חי, אין בו בזיון למת.

Whatever is done for the honor of the living is not a dishonor to the deceased.

Rashi specifically points out:

האי דליתייקרו ביה קרוביו לאו בזיון הוא לדידיה.

That honor accrues to his relatives is not a dishonor to him.

Concern for the living, therefore, is a factor that the halakhah takes into serious consideration, permitting it to affect the burial procedure, as long as it does not cause dishonor to the deceased.

I therefore conclude that the initial washing of the deceased for hygienic purposes is not contrary to Jewish law.

(1) As indicated *supra*, cleansing of the body before the washing with water was part of the procedure. Even as late an authority as Rabbi Solomon Kluger (1785-1869) writes in a volume of responsa (*Ha'elef L'cha Shlomo* No. 305):

לוקחים השמשים אותו מן הארץ, ומקנחין אותו יפה בסדין שלא יהיה עליו שום לכלוך וטינוף ואח"כ יתחילו לרחצו במים חמין מראשו ועד רגלו ואומרים הפסוקים המבוארים בספר מעבר יבק.

The attendants lift him off of the ground, cleanse him with cloths so that there be no dirt or filth and then they begin to wash him with water from head to foot and recite the verses as specified in the book, *Ma'avar Yabok*.

The rabbinic authorities, therefore permitted removal of the loathsome matter before the טהרה. One can extrapolate from loathsome matter to loathsome bacteria which can cause serious and possibly fatal infection. I am convinced that the same authorities, who urged preliminary cleansing of the body for removal of the hazards that they could see and be aware of, would today urge preliminary cleansing for removal of hazardous substances of which we are now aware.

(2) Additionally, as indicated *supra*, the motivation for the טהרה procedure was respect for the dead. Yet, as also indicated *supra*, יקרא דשכיבא (respect for the dead) and יקרא דחיי

(concern for the living) were both values which the halakhah considered operative in issues of burial procedure. In the present instance, since the initial washing would not be considered disrespectful of the deceased, since it renders the corpse less threatening, certainly **יקרא רחיי** – concern for the health of the mortuary personnel – should be a major concern.

For these reasons, I reiterate that the initial hygienic cleansing is not inimical to the halakhah and does not impinge upon, preempt, or in any way adversely affect the ritual **טהרה**.

B. Regarding the issue of the gender of the attendant who does the washing, there is no doubt in my mind that Jewish law would unequivocally require that the washing be done by someone of the same sex as the deceased.

There is a responsum by the author of *T'shurat Shai* (No. 546) which is illustrative. The question concerned a woman who lived in a non-Jewish village who died right before a Jewish holiday and was to be buried on the second day of the holiday. There were no Jewish women in that place to do the **טהרה** although there were Jewish men, one of whom was learned in Jewish law. There was not sufficient time for Jewish women to arrive there, perform the **טהרה** on the eve of the holiday and be able to return home before the holiday. The distance from the Jewish village to the non-Jewish village was such that traveling (even on foot) would constitute a violation of the festival. The response was that Jewish women could not violate the law of the holiday and that non-Jewish women should be instructed by the learned Jew and they should perform the **טהרה**.

Now, the halakhah is clear that **טהרה** should be performed by Jews. This requirement could have been satisfied by having the **טהרה** performed by the Jewish men, one of whom was even described as expert and knowledgeable. However, rather than have men take care of a female body, the Rabbinic response was to allow non-Jewish women to perform the necessary ablutions.

This is another case where the halakhah is confronted with a conflict between two disparate values. On the one hand, that only Jews take care of the deceased is a halakhic requirement. (See Responsa of R. David b. Zimri, pt. 2, no. 507.) Rabbi Leopold Greenwald in one of his encyclopedic works on the laws of burial and mourning (*Ach L'tzara*) cites an authority who goes so far as to forbid the deceased to be touched by a non-Jew. It is therefore surprising that the decision was to have non-Jewish women take care of the body. On the other hand, however, there is the Jewish moral value of **צניעות** (chastity and modest behavior). In all cases, the treatment of the deceased must be in accordance with what the deceased would have wished, were he or she able to express his or her desire. The halakhah will always make the assumption that the deceased would wish that he or she be treated properly and that nothing be done which would, were he or she alive, violate standards of modesty and chaste behavior. Indeed, it is illustrative that in the case cited *supra*, the woman in question is described as not being ritually observant, eating non-kosher food, bread on Passover, etc. Nevertheless, even for her, it was considered inappropriate for men to perform the ritual washing since it would violate the principle of **צניעות**.

Rabbi Samson Morpurgo (1681-1740), who was Rabbi in Ancona, Italy, in his work *Shemesh Tzedaka* (Book 4, 4:6), raises the question of whether a husband may participate in the **טהרה** of his wife and clothe her afterwards. Now certainly, for the deceased who was intimate with this man, we cannot impute the same sense of shame and violation of modesty. Nevertheless, after lengthy discussion, he concludes that one should be strict and not allow it rather than take the lenient position.²

² While not affecting the issue upon which the decision was ultimately based, a complicating factor was the fact that the woman had died while in a state of **נידה**.

Similarly, a modern work, *Death and Bereavement* by Rabbi Abner Weiss, states (page 55): “*Taharah* for deceased Jewish males is performed by Jewish males. If *really* [emphasis in original] necessary, and if a competent rabbi so rules, women may perform *taharah* on men [although not vice-versa].” Evidently, women were assumed to be more chaste and therefore more scrupulously careful in their handling of the male body and less likely to be sexually aroused or engage in lewd or salacious remarks than men might be in the reverse situation. But even then, it was only **בשעת הדחק** (in a dire emergency). Thus, **צניעות** was considered an essential value to be safeguarded in our treatment of the deceased.

The requirement that the naked body of the deceased be washed by a person of the same gender should not be construed as, in any way, impugning the professionalism of the mortuary personnel. As professionals, they are able to attend the deceased with complete objectivity and detachment. However, the issue is not the feelings or attitude of the person ministering to the deceased, but the feelings and attitude which the halakhah would presume to be those of the deceased.

The mortuary personnel, in asserting their position, sought to analogize the relationship of the mortician vis-à-vis the deceased to the relationship of doctor or nurse vis-à-vis a patient. However, the analogy is specious. In the doctor-patient relationship, the live patient is making a conscious choice. A patient who is especially modest and embarrassed to be seen naked by someone of the opposite sex will choose a doctor of the same sex. And, as doctors have informed me, should a male patient be embarrassed by being attended by a female nurse, he may request a male nurse and his request would be granted. The same would be true for the female patient who would have the right to reject a male nurse. In the mortician-deceased relationship, however, the deceased cannot make a conscious choice. Jewish law, therefore, must operate with the presumption that every Jew holds to the value of **צניעות**, presuming therefore that he or she would consider ministrations by someone of the opposite sex as impinging on his or her sense of **צניעות**. Jewish law would therefore mandate that all ministrations to the naked body of the deceased be done by persons of the same sex.

I repeat that this in no way disparages the professional objectivity of the mortuary personnel. On the contrary, it is reflective of their sensitivity to the values of the deceased.

Conclusion

The initial hygienic cleansing is not inimical to the halakhah and does not impinge upon, preempt, or, in any way, adversely affect the ritual **טהרה**.

Regarding the issue of the gender of the attendant who does the washing, there is no doubt in my mind that Jewish law would unequivocally require that the washing be done by someone of the same sex as the deceased. In all cases, the treatment of the deceased must be in accordance with what the deceased would have wished, were he or she able to express their desire. The halakhah will always make the assumption that the deceased would wish that he or she be treated properly and that nothing be done which would, were he or she alive, violate standards of modesty and chaste behavior. **צניעות** is considered an essential value to be safeguarded in our treatment of the deceased. In the mortician-deceased relationship, the deceased cannot make a conscious choice. Jewish law, therefore, must operate with the presumption that every Jew holds to the value of **צניעות**, presuming therefore that he or she would consider ministrations by someone of the opposite sex as impinging on his or her sense of **צניעות**. Jewish law would therefore mandate that all ministrations to the naked body of the deceased be done by persons of the same sex.