

BURIAL OF JEWS PRACTICING CHRISTIANITY

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The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

שאלה

May a Jew practicing Christianity be buried in a Jewish cemetery?

תשובה

From Rabbi Haim Palagi, in his responsum “Haim B’yad, Siman 99,” we see that a **מומר** (apostate) is seen as falling into the category of **הפורשים מדרכי צבור** (one who separates from the ways of the community). Of such a person, we are told, **אין מתעסקין עמו לכל דבר** (we do not deal with him in any manner). This is further defined as not dealing with mourning practices, but there is a significant consensus that Jewish burial is performed.

Indeed, the Hatam Sofer (Responso, vol. 2, Yoreh De’ah, Siman 341) explains that even for those executed by the Jewish court for idolatry or Sabbath violators, or residents of an **עיר הנדחת**, there is to be burial. From the context it is certainly in a Jewish cemetery. The apostate must similarly be buried because there still exists the Biblically mandated positive commandment (**מצוות עשה**) of burial.¹

The strong historical halakhic consensus is to permit such burial. Yet I would argue against permitting such burial. In this view, I follow the opinion of the late Rabbi Boaz Cohen who wrote Rabbi S. Joshua Kohn of Utica, N.Y. the following letter on October 3, 1939:

¹ Deut. 21:23, **כי קבור תקברנו**.

Dear Joshua Kohn,

In reply to your letter of September 27, I wish to inform you that this young man, since his mother is Jewish, is considered from a legal standpoint a Jew and is entitled to a Jewish burial, even if he had embraced Christianity officially, although in the latter case, it would be necessary to bury him in a special corner of the cemetery.

However, as a matter of general policy, I would urge you strongly to discourage the burial of this young man in a Jewish cemetery in as much as during the lifetime, he externally at least, lived a Christian life even after he reached the age of discretion. I would further advise the mother that it would be manifestly unfair to the father who is a Christian, to have his son buried in a Jewish cemetery, and it would be no more right for her to defer to his wishes.

Back in 1939, when intermarriage was minimal and apostasy significantly less than today, Rabbi Cohen, while affirming the Jewishness of the apostate and his right to burial, still advised not burying the young man in a Jewish cemetery. In today's world with so much intermarriage and proselytizing of Jews, we need to keep the lines of demarcation clear.

According to the Council of Jewish Federations' 1990 National Jewish Population Survey, 210,000 born Jews have changed their religion. Furthermore, 700,000 children under the age of eighteen are being raised in religiously mixed households where they are being raised in a religion other than Judaism.

In the past when we were engaged in a struggle for survival against the emergence of new philosophies or religions, the Rabbis changed or prohibited previously permitted actions so as to clearly differentiate between Jews and sectarians. The fact that we no longer practice the oriental prostration, except on high holidays, is one such example. Rabbi Max Arzht explained that, "Because Christianity had adopted these gestures of adoration – we ceased to practice full prostration."²

Similarly the Ten Commandments, once recited in the Temple service, were forbidden to be used in the regular service in order to refute the contention of the heretical sects (מינים) that only the Ten Commandments were divinely given.³

So too here, if we accept a position that even an apostate should be allowed full burial in a Jewish cemetery, the current crisis is enough to make us prohibit it. Furthermore, in the literature of the "Jews for Jesus," they do not claim to be Christians, but more insidiously they claim to be "fulfilled Jews." They argue that they are and continue to be Jews but unlike the rest of the Jewish community they surpass us in that we are unfulfilled without Jesus. To allow them to be buried in a Jewish cemetery is to affirm their position and to undermine our defenses.

We must be able in word and in deed to articulate the position that one may be a Jew or a Christian, but one may not be both at the same time.

There is also a sensitivity in the codes that allows for the presumption of duress or mental illness in the apostate that would allow the מרא דאתרא to mitigate the above rul-

² Rabbi Max Arzht, *Justice and Mercy* (New York: Holt Reinhart and Winston, 1963), p. 182.

³ B. Berakhot 12a.

ing and allow for burial. There is also a strong concern to allow for last minute תשובה and return to the Jewish fold, even without מקוה, for those who would otherwise require it. It should be left to the מרא דאתרא to examine the possibility that such repentance may have occurred even up to the moment of death, but absent such תשובה, Jewish burial should be denied to an apostate.

Conclusion

Despite the fact that halakhah would allow for Jewish burial of an apostate even while forbidding mourning, we would prohibit such Jewish burial rites to the apostate. Today's environment makes it necessary to prohibit such Jewish rights and privileges including burial in a Jewish cemetery to an apostate. It is hoped that such a public statement would speak loudly to the lie of the "Jews for Jesus" and others, who would advocate the position that one could remain a Jew and practice Christianity at the same time. Thus we hope to establish in the minds of the community, the distinctiveness of Jew and gentile.