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Bury Him, Yes, Bury Him – A Concurring Opinion to Paul Plotkin's "Burial of Jews Practicing Christianity"

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This paper was accepted into the record on March 25, 1998, as a concurrence to "Burial of Jews Practicing Christianity," by Rabbi Paul Plotkin. Concurring and dissenting opinions are not official positions of the Committee on Jewish Law and Standards.

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

A Recent Responsum

The שאלה was recently considered by Rabbi Paul Plotkin in a responsum submitted to the Committee on Jewish Law and Standards.[1] This תשובה concurs with Rabbi Plotkin's conclusion but introduces several sources not considered in his paper and makes certain suggestions that the מרא דאתרא, confronted with the difficult task of adjudicating a burial request, may find helpful.

Rabbi Plotkin acknowledges that "the strong historical halakhic consensus is to permit such burial." He cites Biblical and halakhic sources which required burial, presumably in a Jewish cemetery, of criminals executed by the Sanhedrin for idolatry and other transgressions such as murder or sexual violations. Sabbath desecrators, residents of an עיר הנדחת, a wayward city, and apostates. Nevertheless, in our day he bans burial in a Jewish cemetery of an apostate Jew practicing Christianity for several reasons:

[1] Above, pp. 400-402.

A) On sociological grounds – the obvious and pervasive problem of intermarriage in American society with the concerns this engenders about apostasy;[2]

B) Jews for Jesus claim to be fulfilled Jews and to allow them to be buried amongst us would affirm their position and undermine our defenses; and,

C) Jewish group identity has been blurred under the impact of intermarriage and the need exists to keep clear the lines of demarcation between Jew and Christian. We must articulate a position that one may be a Jew or a Christian but not both.[3]

Rabbi Plotkin arrives at his conclusion by way of a קל וחומר, an argument from minor to major. He cites a 1939 letter from Rabbi Boaz Cohen urging a colleague to discourage the burial of a young Jewish Christian in a Jewish cemetery. Rabbi Plotkin argues, "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."[4]

Limits of the Responsum's Precedent

Rabbi Cohen's recommendation was determined by the special circumstances of the case he was considering. It was not based, as is Rabbi Plotkin's conclusion, on a desire to reject apostasy, clarify an individual's blurred identity or provide an educational message to the larger community. The deceased was of mixed parentage and his Jewish mother wanted her son buried in a Jewish cemetery. Rabbi Cohen pointed out that the deceased was raised from childhood as a Christian, and had continued this practice as an adult. "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 than right for her to defer to his wishes."[5] Even then Rabbi Cohen did not bar the burial, only discouraged it for lack of fairness. It appears from the first part of his letter that, otherwise, he would follow the halakhah which recognizes the apostate as a Jew who is entitled to Jewish burial.

At about the time Rabbi Cohen was writing his advisory, a ruling of the Committee on Jewish Law and Standards, possibly based on the very same case, decided that, "A young man born to a Jewish mother and Christian father who lived all his life as a Christian, should as a matter of general policy, not be buried in a Jewish cemetery. Furthermore, to do so would be manifestly unfair to his Christian father."[6] In suggesting the exclusion from Jewish burial as a matter of general policy, the תשובה intimates that halakhah would dictate otherwise. The CJLS conceded, however, that in the case it was considering, it was appropriate to accommodate halakhah to the wishes and feelings of the Christian father. Neither Rabbi Cohen's letter nor the CJLS ruling speak directly to the case of an apostate Jew whose parents are both Jewish or when the family agrees to seek burial in a Jewish cemetery of an apostate born of a Jewish mother.

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[2] Above, p. 401.

[3] Plotkin, loc. cit.

[4] Above, p. 401.

[5] Ibid.

[6] *PRA* 7 (1940): 32.

The Apostate in Halakhah

The apostate is neither a newcomer nor a stranger to Judaism. The idolater, that most heinous of apostates, like others condemned by the Bible to capital punishment, was after execution, hanged on a tree as a warning to others. The Torah insists however, לא תלין נבלתו על העץ כי קבור תקברנו ביום ההוא, forbidding the corpse to remain overnight without burial, insisting that the remains be interred that very day.[7] The Mishnah informs us that two cemeteries were maintained for הרוגי בית דין, those executed by the court; one for the decapitated and strangled, the other for the stoned and the burned.[8] It is from this text that the Gemara derives the tradition אין קוברין רשע אצל צדיק, a sinner is not buried next to a saint.[9] This was understood to mean that burial in the same cemetery of saints and sinners was permitted, so long as sinners were located at a remove from saints.

The Shulhan Arukh urges relatives of an apostate not to mourn him when he dies but to dress in white, eating, drinking and celebrating the destruction of an enemy of God.[10] Nevertheless, the burial of an apostate in a Jewish cemetery is obligatory because he is considered to remain a Jew, albeit, one who has sinned.[11]

So too in other areas of halakhah. An apostate's marriage is valid, requiring a גט to dissolve it.[12] חליצה is required from him if his sister-in-law, widowed without children, is to be allowed to remarry.[13] The standard which governs halakhah is the Talmudic principle ישראל אע"פ שחטא ישראל הוא, a Jewish sinner remains a Jew.[14]

Christian Science and Jewish Burial

During the first half of this century an extended discussion took place in the Jewish community over apostasy to the Church of Christian Science.[15] As early as 1912, the Central Conference of American Rabbis had registered concern about Christian Science and its doctrinal appeal to large numbers of Jews. Many Christian Scientists of Jewish birth claimed that they were still Jewish, that they were better Jews for having added Christian Science doctrines to their beliefs and that they wished to be buried amongst their own people in Jewish cemeteries. The CCAR adopted a resolution declaring, "Christian Science in its tenets and beliefs is essentially different from and in fundamental contradiction with Judaism, and that it is impossible for a Jew to accept Christian Science without thereby denying Judaism."[16] Nevertheless, Rabbi Solomon B. Freehof, distinguished halakhist of the Reform movement, concluded that it was necessary to "treat the Christian Scientist of Jewish birth in accordance with the Talmudic dictum: 'Although he has sinned he is still an

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[7] Deut. 21:23.

[8] B. Sanhedrin 46a.

[9] B. Sanhedrin 47a.

[10] Yoreh De'ah 345:5.

[11] For a fuller discussion of the subject, see Yekutiel Greenwald, כל בו על אבלות, pp. 191-193. Greenwald cites at some length the tradition that the burial of apostates is obligatory within the limits established by halakhah. He then continues, בזמננו שיש לכל כתה וכתה בית קברות מיוחד להן, יקחו את המומר להם. הלא נכנס לאמונתם ומה לנו ולהם. Nevertheless, he acknowledges in conclusion, כן נראה לי, אבל לעת עתה לא מצאתי בשום מקום הערה זו.

[12] Even HaEzer 44:9.

[13] Magid Mishneh, M.T. Hilkhot Yibum, 1:6.

[14] B. Sanhedrin 44a.

[15] Henry L. Feingold, *The Jewish People in America: A Time for Searching: 1920-1945* (Waltham, Mass.: American Jewish Historical Society, 1993), p. 36.

[16] *Yearbook of the Central Conference of American Rabbis* 22: 229.

Israelite' (B. Sanhedrin 44a). We accord him the right of burial in the Jewish cemetery."[17]

Some years later: the Conservative movement also responded to the inroads of Christian Science. In 1920 Rabbi Louis Epstein rendered a report of the Committee on the Interpretation of Jewish Law on behalf of its absent chairman, Professor Louis Ginzberg:

> A congregation affiliated with the United Synagogue had among its membership a woman who was also affiliated with a Christian Science Church and at her death the survivors applies for her burial on the congregation's cemetery. The congregation referred the matter to your Committee on the Interpretation of Jewish Law, and the Chairman with the consent of the other members of the Committee has decided, in view of Jewish Law and as a matter of expediency to check a current evil, that the woman be given the burial rite prescribed by the Law for apostates. Following upon this as a precedent, the Committee feels that congregations affiliated with the United Synagogue shall not tolerate in their membership persons connected with the Christian Science Church or its activities.[18]

The Committee was well aware of the need to confront apostasy to the Christian Science Church and determined that such persons should be excluded from membership in congregations affiliated with the United Synagogue. Still, it followed the halakhah which provides, with restrictions on location, for the burial of apostates in a Jewish cemetery.

Seven years later, however, the exclusion of Christian Scientists from congregational affiliation was expanded to bar their burial in a Jewish cemetery also. Responding to an inquiry from Abraham Neuman, rabbi at Mikveh Israel in Philadelphia, Prof. Ginzberg wrote:

> On the basis of the law referred to in the Mishnah, the Talmud draws the inference that the wicked and the just, the sinful and the pious ought not to be buried in the same cemetery.
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> 1. The Christian Science Church is undoubtedly a part of the general Christian communion, and any Jew who had become a member of this Church severs his connection with the Synagogue. In an address delivered before the annual convention of the United Synagogue several years ago, I strongly emphasized this fact. I have no copy of my address and doubt whether the United Synagogue has one.
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> 2. I fully agree with you that the Ethical Culture Society is neither a religious or anti-religious society and, hence, membership in it could not be considered as a break with the Synagogue.
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> 3. The answer to question three is contained in my general remarks at the beginning of the letter, according to which it is against Jewish Law and practice to bury a person in a Jewish cemetery who had left the Jewish fold.[19]

Two decades would elapse before the CJLS confirmed the ban on the burial of apostates when it ruled "that membership in a Christian Science Church signifies the

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[17] Solomon B. Freehof, *Reform Jewish Practice*, vol. 1, p. 144.

[18] *United Synagogue of America Annual Reports*, 1920, p. 90.

[19] Eli Ginzberg, *Louis Ginzberg: Keeper of the Law* (Philadelphia: Jewish Publication Society, 1966), p. 228.

adoption of Christianity. Consequently such a person must of necessity be denied burial in a Jewish cemetery."[20]

The halakhah is unequivocal that apostates remain Jews and it is a מצוה דאורייתא to bury a Jewish apostate according to Jewish practice. A number of rulings of the CJLS and from other sources in our movement acknowledge and conform to this halakhic standard. Nevertheless, in response to circumstances that were felt to threaten the community, Prof. Ginzberg and later the CJLS, rejected the burial of apostates in a Jewish cemetery. It is to these rulings that Rabbi Plotkin might turn for precedent.

The Burden of the Mara D'atra

The מרא דאתרא responding to a request for the burial of an apostate in a Jewish cemetery may be confronted with one of a variety of circumstances, including:

(1) An apostate Jew who requests burial in a Jewish cemetery in accordance with Jewish tradition may be expressing a desire for תשובה, a return to the Jewish faith. The מרא דאתרא should make every effort to determine if this has occurred and should respond with the greatest sensitivity and openness to expressions of return or if the individual is already deceased, to testimony of תשובה by family members or others.

(2) As is sometimes the case, the deceased may be brought for burial by Jewish parents or other family members. If burial is refused, great hurt may be inflicted on devoted and caring Jews. The מרא דאתרא should consider the possibility that duress or even mental illness may have driven the deceased from כלל ישראל. If this can be determined, the deceased may be buried in a Jewish cemetery. The historical leniency of halakhah regarding the burial of apostates should always be applied when there is an indication of תשובה, duress, mental illness or other mitigating circumstances.

(3) If the deceased has non-Jewish family members who prefer burial in a Christian cemetery, the concerns expressed by Rabbi Cohen and the CJLS for Christian family members, to whom burial in a Jewish cemetery would be unfair, should be considered.

(4) In the absence of תשובה, duress, mental illness or other mitigating circumstances, the reality of the life of the deceased urges that burial in a Jewish cemetery be barred.

Conclusion

"Despite the fact that halakhah would allow for Jewish burial of an apostate even while forbidding mourning, we would prohibit such burial rites to the apostate. Today's environment makes it necessary to prohibit any 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 Jews and gentiles.

"There is 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 ruling 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."[21]

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[20] *PRA* 11 (1947): 62.

[21] Plotkin, above, pp. 401-402, but here changing the order of the last two paragraphs.