

The Burial of Non-Jews in a Jewish Cemetery

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Up until two hundred years ago, Jews lived in communities unto themselves and did not mix with the larger population around them. Since the Enlightenment, this situation changed. Not only have Jews been accepted into the general society, they developed new forms of Judaism to make it possible to straddle the Jewish and non-Jewish worlds. Part of this opening up of Jewish life has involved intermarriage. This phenomenon is not only here to stay, it has raised new questions about the involvement and treatment of non-Jewish family members in Jewish communities. One of these issues pertains to the burial of non-Jews in Jewish cemeteries which is the subject of the rest of this teaching.

A question has arisen as to whether or not non-Jewish spouses of Mt. Sinai members can be buried in the synagogue cemetery, and if so, how that should be handled. This is not a simple question and many avenues need to be explored before a decision can be made. There is much debate about this subject and the answers are not definitive. I will attempt here to delineate the issues from a transdenominational perspective as that is most representative of the congregation.

The cemetery has existed at its present site since the early 1900's. The Articles of Incorporation of the Jewish Cemetery Association call for the burial of Jewish persons in the cemetery. It has been the practice of the synagogue to only bury Jews in its cemetery and in fact intermarried couples who have inquired about buying plots have been advised to seek them at other cemeteries up until the present. The congregation is now revisiting this decision in light of greater numbers of intermarried couples comprising membership in the synagogue. Because changing the long-established policy has far-reaching effects, it is not one that should be made lightly as it will endure for the life of the cemetery.

In Jewish history and tradition, the significance of a Jewish cemetery being reserved solely for the burial of Jews is well documented. So important is this aspect of our tradition that a newly formed Jewish community normally purchases land for a cemetery before acquiring land to build a synagogue. The land set aside for the cemetery is marked off as separate by a wall or a fence and the entire ground within the boundaries is consecrated as holy. Jews and non-Jews are not buried together because according to Rabbeinu Nissim Gerondi (14th C), there is a prohibition against burying a wicked person next to a righteous person. These practices are codified as law in the *Tur* and *Shulchan Aruch*.

It should be noted that while the *Tur* and *Shulchan Aruch* refer to the prohibition on burying the wicked next to the righteous, it does not state specifically that a non-Jew cannot be buried next to a Jew. In other words, the wicked are not necessarily non-Jews and the righteous are not necessarily Jews. The original context of the use of the word wicked in *Sanhedrin* 47a refers to an executed criminal. Both Conservative and Reform decisors find it ethically problematical to infer that non-Jews are wicked.

While there is no direct statement regarding this *halacha* in the Talmud, the reference most commonly referred to is a *baraita* quoted in *Gittin* 61a which states, “we bury the dead of the heathen along with the dead of Israel in the interests of peace.” This statement has been interpreted in a variety of ways depending on who you ask. Rashi’s commentary included the explanation that, “Along with the dead of Israel: [This does] not [mean that the non-Jewish dead are buried] in a Jewish cemetery, but rather that we take care of their [funeral arrangements] if the non-Jewish dead are found slain together with the Jewish dead.” The Bach interprets the *baraita*’s statement to allow for the actual burial of non-Jewish deceased alongside the Jewish deceased:

However . . . [Talmud’s statement in *Gittin* 61a] comes to teach us that they can bury the [non-Jewish] dead in a Jewish cemetery if the bodies were found slain together with Jewish bodies. And even though we never bury a non-Jew next to a Jew . . . however [in this case] since the bodies were discovered slain together, he can bury the non-Jewish deceased in the same courtyard as the Jewish deceased, because of *darkhei shalom*.

Maimonides ruled that:

With regard to non-Jews, the Sages enjoined that we visit their sick and bury their dead with Jewish dead and support their poor along with Jewish poor, on account of peace. For it is written: “The Lord is good to all and His mercy is upon all His works” (Ps. 145:9); and it is written: “Its [the Torah’s] ways are pleasant ways and all its paths are peace” (Proverbs 3:17).

There is another principle in the Talmud (*Beitzah* 2b) which says, “It is preferable to be lenient.” Rashi comments on this dictum as follows: “It is better to teach us the force of a permissive decisor because he relies on his *halakhic* tradition and is not afraid to be lenient.”

Modern Orthodox practice is to bury non-Jews in a separate area of the cemetery that is set aside for this purpose, though some do not allow it at all. The Conservative position modifies this ruling to allow a non-Jewish spouse to be buried next to their Jewish spouse provided there is a physical barrier between the two such as a hedge or a fence, though this is not the practice in every cemetery. In some cemeteries a separate area is set aside for those who were intermarried. Reform practice is to bury non-Jewish spouses next to the Jewish spouse without differentiating between them.

The question then arises as to whether or not the burial of non-Jews in a Jewish cemetery renders the entire cemetery *pasul*. There was a case in 1903 in Hungary in which a non-Jew was buried in the Jewish cemetery and the rabbi who protested this action was given support by the Orthodox community to secede and form his own cemetery. Modern Orthodox decisor Rabbi Moshe Feinstein cautions that observant Jews not be buried in adjacent proximity to non-Jews but he does not render the entire cemetery *pasul*. The Conservative responsa cite the analogy of water in the *mikveh*. As long as there is the requisite amount of living water in the *mikveh*, the addition of non-

living water does not create an unfit *mikveh*. Similarly as long as the majority of people buried in the Jewish cemetery are Jews then the addition of some non-Jews does not render the cemetery *pasul*.

The next issue of concern is defining who is a Jew and who is a non-Jew. Orthodox authorities do not recognize the conversions that are performed by Conservative and Reform rabbis. Some Conservative rabbis do not recognize the conversions performed by some Reform rabbis. Consequently, there exists a whole category of people who, as converts, consider themselves to be Jewish but would not be recognized as such by the Orthodox community, and possibly not by the Conservative community. For the past twenty years, conversions to Judaism at Mt. Sinai Congregation have relied on Reform Responsa CURR (25) 96-100 as the cornerstone for their legitimacy, i.e., the conversions are recognized by the Reform movement but not by the Conservative or Orthodox. All of this raises the question of how this affects the families of those more observant members who are buried in the cemetery who may be expecting that only Jews will be buried next to Jews, i.e., they don't recognize the conversion that took place.

Along these same lines is the issue of patrilineal descent. This is endorsed by the Reform and Reconstructionist movements but not the Orthodox or Conservative movements, so the question exists as to how someone's Jewish status is recognized. The current policy at Mt. Sinai is to recognize as Jews those who claim patrilineal descent as well as those of matrilineal descent whose upbringing was not strictly Jewish but have made public affirmations of an exclusively Jewish identity and practice. This policy has been in effect since the revision and ratification by the membership of the Constitution and By-laws in 2006. Prior to that time it was an established minhag in the community to accept patrilineal descent without that being spelled out. At some further point back in the history of the synagogue, the traditional definition, being born of a Jewish mother, was the recognized standard. There are current members who still hold to the traditional definition despite the change in policy and practice. This leads to an important consideration: If you bury a person who undertook a Reform conversion or one who considers him or herself Jewish by patrilineal descent, next to an observant Jew who has been buried for decades, are you in effect changing the original expectations of the long-deceased member to be buried in a Jewish (by his or her definition) section of the cemetery? What about the case of a person who was in the process of conversion but hadn't completed it? Are they allowed to be buried in the Jewish cemetery? Some Orthodox allow this provided the person is not buried next to an observant Jew. In today's reality, it is inevitable that some non-Jews will be buried in the Jewish section because of a mistaken assumption that they are Jewish or through deception. This needs to be taken into consideration. However, exhumation is not necessary, even by Orthodox standards.

If the decision is made to allow non-Jews to be buried in the Jewish cemetery, then another whole set of questions present themselves. Is there a difference between one who continued to practice his or her non-Jewish faith and one who, without converting, was nevertheless an active and supportive member of the synagogue? How will the

funeral of the non-Jew be conducted? Will the cemetery allow non-Jewish clergy to officiate? Will the cemetery allow non-Jewish symbols on the grave? What about the children produced from a marriage of a Jewish man and a non-Jewish woman? Are they eligible to be buried in the Jewish cemetery? What if their mother converted under Reform auspices (i.e., her conversion is only recognized by Reform authorities and maybe some Conservative authorities?) How do non-Jews participate in Jewish funerals and how do Jews participate in non-Jewish funerals?

In beginning to answer some of these questions, the current Conservative position is to insist that the agreement with non-Jewish cemetery operators is to allow the Jewish community complete control over the religious administration of the Jewish section. Only Jewish rites may be performed there and only Jewish clergy may officiate. The operators must agree that the Jewish section will remain an exclusive Jewish cemetery in perpetuity. In Reform Judaism, non-Jewish clergy may officiate at the church or funeral home but only Jewish clergy can officiate at the interment. However, if the (non-Jewish) deceased was an active member of the synagogue, Jewish clergy may officiate. No non-Jewish symbols are allowed on graves. Non-Jews can serve as pallbearers and speak during the eulogy in a Jewish service. In a non-Jewish service, Jews can serve as pallbearers, speak during the eulogy, and say kaddish at the graveside (for the Jewish interment). Jews who participate in non-Jewish funeral services do not accept communion or kneel in any part of the service.

A final consideration is how the community makes decisions. Is a decision made to include the most observant members of the community so that they can continue to function within it? Is a decision made to serve the majority? Or is some other process utilized?

Most people feel strongly about wanting to be buried next to their spouse. Changing the current practice needs to be made by the entire congregation after study and discussion in which people become more fully informed as to the issues involved. It is not a decision which should be made by the rabbi alone. And because this decision has such long-ranging implications, it is not feasible to change it whenever a new rabbi who is uncomfortable with it is hired. This is not an issue on which you can easily go back and forth.

In making a decision as to whether to change the current practice to allow the burial of non-Jewish family of members, it is very important to keep in mind that you are not making a decision for the present only. You are making a decision for the past and the future as well. Most of the people who are buried in the cemetery were observant Jews who had certain understandings of what it meant to be a Jew as well as expectations that they would remain buried with other Jews by their definition, i.e., born of a Jewish mother or converted under Conservative or Orthodox auspices. To bury someone in their proximity who is born of a Jewish father or converted under Reform auspices is to violate the sanctity of the Judaism in which they believed. Likewise, care must be taken when considering future generations. While the synagogue is currently embracing more Reform practices, it is conceivable that at some point down the road the community in

general may become more observant. The decision you make today needs to account for more observant members: those already buried, those alive today as well as those of the future. On the other hand, consideration needs to be taken for current and future members who do not consider themselves to be observant yet are fully accepted as members of the community and do not wish to be judged on an earlier generation's more stringent definition of who is a Jew.