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## BURIAL OF NON-HALAKHIC CONVERTS

### I

The significance of a Jewish cemetery as sacred ground reserved solely for the burial of Jews is well documented in Jewish tradition and history. So important was this requirement, and so universal was its acceptance, that the first purchase of property by Jewish communities of the Diaspora was usually for a tract of cemetery land. This often preceded even the acquisition of a building or land for a permanent synagogue structure.<sup>1</sup> The sanctity of the Jewish cemetery was formalized by the erection of a wall or fence which quite rigidly conferred the boundaries of the *beit ha-kevarot*.<sup>2</sup> Its special sanctity—*kedushat beit ha-kevarot*—extended to the entire tract of land within those boundaries.<sup>3</sup>

This law—that Jews, and only Jews, are to be buried in a specifically Jewish cemetery—is often taken for granted. The Rabbis understood it to be operable even as early as the First Temple period. The Targum to Ruth 1:17 interprets the statement *ba-asher tamuti amut ve-sham ekaver*—“where thou diest will I die, and there will I be buried”—as a recognition by Ruth that her conversion to Judaism will allow her the privilege of being buried in a Jewish cemetery, a privilege clearly understood to be reserved solely for members of the Jewish faith.<sup>4</sup>

The Talmud makes no direct reference to this halakhah. In fact, the Talmud in *Gittin* 61a seems to imply the opposite when it quotes a *baraita* which states *ve-koverin metei nokhrim im metei Yisra'el mipenei darkhei shalom*, “we bury the dead of the heathen along with the dead of Israel in the interests of peace.” However, Rashi very clearly explains that this does not mean that they are to be buried together in the same cemetery:

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.<sup>5</sup>

This explanation is repeated by a number of Rishonim, all of whom assume that it is unthinkable under any circumstance to inter non-Jews in the same cemetery as Jews.<sup>6</sup> *Bah*, however, does interpret the *baraita*'s statement to allow for the actual burial of non-Jewish deceased alongside the Jewish deceased:

However . . . [the 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*.<sup>7</sup>

Yet *Bah* makes it quite clear that the Talmud's case is the sole exception to what is otherwise an unbending prohibition to inter non-Jews in a Jewish cemetery. Furthermore, it has been argued that even *Bah* did not intend to allow the positioning of non-Jewish graves immediately adjoining Jewish graves; rather his permission was limited to *hatser ehad*—burial within “the same courtyard.”<sup>8</sup>

In short, it has always been an accepted fact within Jewish tradition that Jews and only Jews have the privilege of burial within the sacred confines of the Jewish cemetery.<sup>9</sup>

## II

The exclusiveness of Jewish cemetery ground, reserved solely for Jews, generally continued unquestioned even into the Modern era. However, together with the twin inroads of emancipation and assimilation, there now arose the very real issue of intermarried (mixed marriage) couples, and their desire to be buried together after death, just as they had lived together in life. The Jewish partner of such mixed marriages, despite his or her having married outside the faith, still coveted the privilege of burial in the Jewish cemetery. That he or she remained eligible for such burial privileges never seems to have been contested in the responsa; the only proviso discussed is that the Jewish partner of such a marriage not be buried next to the graves of righteous and religious Jews, but rather somewhat removed from them. This is similar to the Halakhah's approach to the burial of apostates and others who have rebelled against basic Jewish tenets.<sup>10</sup>

The issue appears to have been first dealt with by R. Hayyim Palache who refers to an actual case where the Jewish partner of a

mixed marriage was buried in the Jewish cemetery, in an area somewhat removed from the other graves.<sup>11</sup> R. Jekutiel Judah Greenwald best summarizes the halakhic stance when he writes in *Kol Bo al Avelut*:

Regarding the [Jewish] man married to a non-Jewish woman . . . or the [Jewish] woman married to a non-Jewish man . . . who died . . . since [the law is that] we are obligated to bury even complete sinners in a Jewish cemetery, surely we are obligated to bury these. However, they ought not to be buried among [the graves of] religious Jews, rather among [the graves of] those of similar [Jewish religious character].<sup>12</sup>

### III

On the other hand, the non-Jewish partner of a mixed marriage or the children of a non-Jewish wife<sup>13</sup> could not be eligible for burial rights in the Jewish cemetery because they were not Jewish. Or so it should have been obvious. However, in the Modern era, this question has been raised a number of times, as Jews who have married outside the faith have requested and at times demanded that their non-Jewish spouses be buried alongside them,<sup>14</sup> and that their children from a non-Jewish wife be buried in the Jewish cemetery because of their Jewish paternity.<sup>15</sup>

One such incident is well recorded. In 1903, the Jewish cemetery in Temesvar (Timisoara), Hungary allowed the burial of a five-year-old boy from a non-Jewish mother. Immediately Rabbi Bernat Schück of Temesvar took up the cudgels against this unconscionable anti-halakhic act. Rabbi Schück wrote to the leading Orthodox rabbis and scholars of his day asking for their support in his opposition to the cemetery's action, and for their advice on his proposed secession from that cemetery and his formation of an independent Orthodox *hevra kaddisha* and cemetery grounds. Many rabbis responded to his letter, and the wealth of polemic writings was collected and published by Rabbi Schück in a booklet entitled *Dat ve-Din, Hit es Allam*.<sup>16</sup> Among those who responded was Rabbi David Tzvi Hoffmann. He concurred with Rabbi Schück, that this wanton act—the burial in a Jewish cemetery of the offspring of a non-Jewish mother—should not be condoned by the local Orthodox community, and that Rabbi Schück ought to secede and form his own cemetery.<sup>17</sup>

Another who dealt with this type of question was R. Hayyim Eleazar Shapira, the author of *Minhat Elazar*, who prohibited a Jewish cemetery from accepting for burial the son of a Jewish father

and a non-Jewish mother. In this case, though the child had been circumcised, the circumcision was not done *le-shem gerut*, and the child was therefore not considered Jewish.<sup>18</sup> In the last century, the question of Jewish burial rights for non-Jewish marriage partners and the children of non-Jewish wives has been posed numerous times to halakhic authorities;<sup>19</sup> though interestingly enough, even those who posed the questions never argued with the fact that these people were clearly not considered Jewish according to Halakhah.

R. Moshe Feinstein was asked how to deal with this situation in a case where the accepted procedure within a Jewish cemetery had been to bury non-Jews next to their Jewish spouses. Rabbi Feinstein responded that the area where all other Jews are buried<sup>20</sup> must be separated from the “mixed” area where these Jewish and non-Jewish marriage partners are buried, by a space of eight *amot* (cubits) plus a fence no less than ten *tefahim* (handbreadths) high.<sup>21</sup> Rabbi Feinstein makes it clear that these requirements of separation apply not only for the burial of religiously observant Jews (“*shomerei Torah*”) in that cemetery, but for any Jew who wishes to be buried there in accordance with “*dinei Yisra’el*”; the criterion for separation is the “*kedushat Yisra’el*” of the deceased.<sup>22</sup> Other *posekim* have prohibited the burial of a non-Jewish spouse in a Jewish cemetery even if there is the separation of a fence from the other Jewish graves.<sup>23</sup>

#### IV

The above rulings appear clear-cut and simple. However, we now discuss applying this to a non-halakhic convert to Judaism, that is to say, a conversion performed *she-lo ka-halakhah*, by a non-Orthodox rabbi.<sup>24</sup> We obviously work with the premise that such a non-halakhic conversion does not effect any change in the religious status of the individual; he or she is still considered not Jewish.<sup>25</sup> But with regard to burial in a Jewish cemetery, do the same strictures apply as with a complete non-Jew, as indeed this non-halakhic convert does not possess *kedushat Yisra’el*;<sup>26</sup> or may limited privileges of burial in a Jewish cemetery be extended at times to one who does not meet the strict requirements of *kedushat Yisra’el*?

This is a very significant issue, for today’s Orthodox rabbi is often called on to officiate at funerals where the interment takes place at cemeteries controlled by independent lodges and “benefit” organizations. As such, the religious status of those accepted for burial in these cemeteries is not under the control of the local Orthodox rabbinate. And while many of these lodges and “benefit” cemeteries do not permit the burial of blatant non-Jews (even where the other

marriage partner is Jewish), they will accept for burial privileges any convert to Judaism regardless of whether the conversion was performed by an Orthodox rabbi *ka-halakhah* or by a Conservative or Reform rabbi *she-lo ka-halakhah*.<sup>27</sup> In such cemeteries it is therefore more than likely to find non-halakhic converts buried. The questions then become: how would this impinge upon the burial of other Jews in such a cemetery, both religiously observant Jews and the non-observant; how ought an Orthodox rabbi respond to a request to officiate at an interment in this type of cemetery; and how careful does a cemetery actually need to be in ascertaining that those Jews (and specifically converts to Judaism) accepted for burial privileges have the status of halakhic *kedushat Yisra'el*?

Historically, this issue was discussed long before Reform and Conservative conversion practices arose which deviated from the Halakhah. In a case reported by R. Abraham I. Gatigno in *Tseror ha-Kesef*, a gentile maid-servant (*shifhah*) who became ill requested of her Jewish master to be converted to Judaism. She did not recover; and though she passed away after undergoing *kabbalat ha-mitsvot* in the presence of a *beit din*, she had not yet undergone immersion in a *mikveh*. As a result, her conversion remained incomplete. Nonetheless, her body was allowed to be buried in the Jewish cemetery ("*tokh kivrei Yisra'el*"). Though she had obviously not acquired *kedushat Yisra'el*, not having undergone *tevillah*, she was still accorded Jewish burial privileges.<sup>28</sup> In a similar case where the maid-servant of a Jew had begun to carry out certain *mitsvot*, but had not formally undergone *kabbalat ha-mitsvot* or *tevillah* in the presence of a *beit din* (though she had undergone *tevillah le-shem gerut* in the presence of her owner's mother), R. Elijah b. Benjamin Halevi did not require that her body once buried be disinterred from the Jewish cemetery; however, it is possible that had he been consulted prior to the actual burial, he might have decided differently.<sup>29</sup>

R. Hayyim Eleazar Shapira, discussing in Responsa *Minhat Elazar* the prohibition of accepting for Jewish burial the child of a non-Jewish mother,<sup>30</sup> raises *inter alia* the question of a non-Jew who underwent circumcision *le-shem gerut* but died prior to the *tevillah*. R. Shapira felt that in this case it would only be logical to allow burial in a Jewish cemetery.<sup>31</sup> As to whether a distance of eight *amot* is needed to separate such a grave from other Jewish graves, R. Shapira does not reach a definite conclusion.<sup>32</sup>

In all of these cases there was no completed *gerut*; yet the deceased was accepted for burial in the Jewish cemetery. It appears, then, that the criterion of personal status for burial may not always be the same as for other issues of Jewish personal status, such as

marriage. For surely we would not permit an incomplete *ger* or even a questionable *ger* to marry a Jew simply because he or she had strong intentions to identify with Judaism. However, in the cases discussed above, though the deceased had not been formally admitted to the Jewish community, his or her will to identify with the Jewish community and with Judaism is considered sufficient to allow for Jewish burial privileges. Though the deceased had not undergone a full and complete conversion to Judaism and obviously did not meet the strict halakhic requirements for *kedushat Yisra'el*, his or her decision to identify with Halakhic Judaism is sufficient to permit burial in a Jewish cemetery.

A related question is discussed by a nineteenth-century Orthodox rabbi and scholar in the United States, Rabbi Bernard Illowy. The case concerned a convert to Judaism who died in 1856 in Nashville, Tennessee, and was buried in the Jewish cemetery. Her husband, however, was unable to produce a certificate attesting to the halakhic validity of the conversion, and, as a result, questions and doubts were raised. R. Illowy allowed the woman's body to remain buried based on the *hazakah* that until now she was considered Jewish, and especially since, in this case, she had clearly observed the *mitsvot* of the Torah.<sup>33</sup>

V

R. Moshe Feinstein addresses the issue of the burial of non-halakhic converts in two responsa. In *Iggerot Moshe, Yoreh De'ah*, vol. 1, no. 160, after noting that a Conservative rabbi's conversion is halakhically ineffectual,<sup>34</sup> Rabbi Feinstein nonetheless does not feel that the burial in a Jewish cemetery of such converts is so overwhelmingly significant an issue as to warrant a potentially divisive fight to oppose it. Rather, opines Rabbi Feinstein, it suffices simply to alert the religiously observant Jews ("*shomerei Torah*") to the situation of these burials, so that they be advised not to bury their own dead next to the graves of these non-halakhic converts, and preferably that they retain a separation of eight *amot*. However, regarding non-religious Jews who wish to be buried in that cemetery, Rabbi Feinstein advises the questioner just to register his protest ("*rak limhot*") about the burial of these non-halakhic converts; after that, he not be concerned anymore.<sup>35</sup>

Therefore your obligation is only to warn the *shomerei Torah* Jews [about the situation], so that they should command not to be buried near [non-halakhic] converts like these. And it is advisable to be stringent (*ve-tov le-hahmir*) to separate [their graves] from those [graves of non-halakhic converts by at least]

eight cubits. . . .<sup>36</sup> And regarding those Jews who are not *shomerei Torah* and who are indifferent [to the situation], you need only to register your protest [about the burial of these non-halakhic converts] . . . but you are not obligated to create a controversy over this issue for the sake of the transgressors. And for the *shomerei Torah* Jews, it is sufficient that you warn them to [bury their dead] eight cubits away [from these non-halakhic converts].

It is significant to compare R. Feinstein's conclusions in the case of the burial of a non-Jewish spouse, referred to above, to his conclusions in this case here. Whereas in the former case he requires a fence of ten *tefahim* in addition to a separation of eight *amot*, no fence is necessary in the present case and the distance of eight *amot* is presented merely as a stringency—*tov le-hahmir*. In the former case, furthermore, R. Feinstein makes it clear that this requirement of separation is directed even for the burial of non-religious Jews; whereas his response in this case is clearly directed as being meant only for the burial of "*shomerei Torah*." Interestingly, in the first case R. Feinstein makes reference to the non-Jewish spouse's lack of *kedushat Yisra'el*, but no such mention is made in the case of the non-halakhic convert; the issue is presented solely in terms of "*ein koverin rasha etsel tsaddik*."<sup>37</sup> In general, the whole tone of R. Feinstein's response to the burial of non-halakhic converts appears to be more subdued than his response to the burial of non-Jewish marriage partners, though it is obvious that each has not acquired the strict halakhic status of being a Jew.

In a second responsum, *Iggerot Moshe, Yoreh De'ah*, vol. 2, no. 149, Rabbi Feinstein addresses the issue of the burial of a would-be convert who was circumcised but did not undergo *tevillah* in the *mikveh*. The exact details of the case are not related, but one may surmise that the case deals with the child of a Jewish father and a non-Jewish mother who had a *berit milah* but never "completed" the process of *gerut* with *tevillah*.<sup>38</sup> In this case once again, it is clear that the deceased is not halakhically considered Jewish, as R. Feinstein himself points out:

Without *tevillah*, even though he has already been circumcised, he is not [considered] a convert [to Judaism], and therefore he ought not be buried in a Jewish cemetery.

However, in the case referred to, the family has insisted on burying this "incomplete" convert in a Jewish cemetery. As such R. Feinstein, echoing what he wrote in his previous responsum, does not feel that the issue is so significant that the questioner need take a stand and actively fight against it:

However I do not see any obligation for the [local Orthodox] rabbis to contend with this [case]. . . . It suffices that they just protest that this deceased

not be buried immediately next to the bodies that have already been interred in this cemetery, but [that there be] a separation of [at least] four cubits or [if this is impossible] that a fence be erected around those bodies that have already been interred.

Once again, in comparison with his earlier response about the Jewish burial of non-Jewish marriage partners, the tone here is more subdued. R. Feinstein instructs the questioner merely to protest, to ensure that the Jewish dead already interred in the cemetery remain at least four *amot* away from the grave of this “incomplete” convert. While R. Feinstein does admit that a distance of eight *amot* would be preferable,<sup>39</sup> he feels that a separation of four *amot* is sufficient. Alternatively, a fence may be erected in place of the four cubit separation. And R. Feinstein injects a new reason for his leniency:

Also it is possible that a non-Jew who does not worship idols, like this one, who has already undergone circumcision *le-gerut* is better than an apostate [in regards to distance of burial from other Jews].<sup>40</sup>

From both responsa it appears that R. Feinstein is of the opinion that a non-halakhic convert or an incomplete convert<sup>41</sup> has more privileges of Jewish burial than a regular non-Jew. In fact, in both responsa R. Feinstein clearly makes the comparison to the case of Jewish apostates referred to by *Gilyon Maharsha, Yoreh De'ah* 362.<sup>42</sup>

Furthermore, R. Feinstein's approach to require that the non-halakhic/“incomplete” convert's grave be separated specifically from the graves of religiously observant Jews (*shomerei Torah*) is very similar to his approach in another responsum about the separation between the graves of those who are *mehallelei Shabbat be-farhesya* and those who are true *shomerei Torah*:

If [the deceased] is well known as a Sabbath desecrator . . . they will have to separate from his grave eight cubits for the grave of an upright [religious] person . . . and if it is impossible to separate [eight cubits] because the space is tight, they will have to erect a wall of ten *tefahim* between [the two graves].<sup>43</sup>

The proviso of separation from the graves of religious Jews is in line with the idea that a *rasha* should not be buried next to a *tsaddik*. It is not then a specific disability applied to non-halakhic/“incomplete” converts.

If so, one might argue that though a non-Jew is not allowed burial in a Jewish cemetery, or is only allowed burial where there is clear and obvious separation from every other Jewish grave (i.e., eight *amot* plus a fence), a non-halakhic convert or an “incomplete” convert has attained some character of Jewish identity and thus one

need not vigorously protest his or her burial on a Jewish cemetery. The only proviso, according to R. Feinstein, is that his grave not be alongside the graves of *shomerei Torah* Jews. It appears then, that the non-halakhic convert and the “incomplete” convert—though they clearly cannot be labeled Jewish according to the halakhic considerations of their status—have perforce entered some form of identification with the Jewish community which enables them—more than any other non-Jew—to qualify for some form of limited burial privileges in the Jewish cemetery.<sup>44</sup>

It should be noted, however, that R. Feinstein’s approach to the burial of non-halakhic converts is not universally accepted. R. Jehiel Jacob Weinberg, for example, in discussing the burial of non-halakhic converts, quotes R. Feinstein’s first responsum; however, he very clearly disagrees with the conciliatory tone. R. Weinberg, in no uncertain terms, instructs his questioner to strictly enforce that the interment of non-halakhic converts in the Jewish cemetery take place only in a special row, separated by eight *amot* from all other “*kivrei Yisra’el keshirim*.” Though he is definitely aware of the controversy that this stand will engender, R. Weinberg feels that a more lenient approach cannot be condoned.<sup>45</sup> Yet, strict as his approach is when compared to R. Feinstein’s, R. Weinberg too accepts the burial of non-halakhic converts in a Jewish cemetery, provided they are interred in a separate row, something never permitted for other non-Jews.

## VI

Our premise, that Jewish burial requires a less rigid Jewish identity than a formal halakhic Jewish status, gains strength from a responsum written by Rabbi Jekutiel Judah Greenwald concerning a convert who died, where doubts arose as to the halakhic validity of her *gerut*. Specifically, the doubts revolved about the propriety of the *beit din* which consisted of an unknown “reverend” and two laymen. These doubts were strengthened by the fact that the convert’s husband was a *kohen*, a clear violation of Jewish law. On the other hand, all her acquaintances considered her to be Jewish and were apparently even unaware that she had not been born Jewish and had been converted. Furthermore she raised her children in the traditions of Judaism.<sup>46</sup>

After discussing the merits of the case, R. Greenwald allows her to be buried in the Jewish cemetery with the proviso that she be buried four *amot* away from “*kivrei Yisra’el keshirim*.”<sup>47</sup> In the course of his discussion, he offers two important points to permit her

burial in a Jewish cemetery, even assuming that halakhically she is not Jewish:

1. Furthermore, even those who do not adhere to the laws of Judaism but [simply] have abandoned their gentile religion and have died, surely it is necessary for us to bury them in a Jewish cemetery; for they have no other religion, and no other cemetery [of another denomination] will attend to their burial, for they have abandoned the faith of their birth and according to their own assumption have accepted the Jewish faith.<sup>48</sup>
2. Also if we do not accept her for burial [in a Jewish cemetery], this will cause a desecration of the Name [*hillul ha-Shem*], for what will people say; after all she has abandoned her [gentile] faith [for the Jews], and [now] no one [Jewish] will look after her [burial].<sup>49</sup>

In his second point R. Greenwald refers to a real danger of *hillul ha-Shem* if we do not accept for burial a non-Jew who has identified with the Jewish religion. His first point is more contestable, as one might argue for burial in a non-denominational cemetery. Nevertheless, R. Greenwald concludes that while her halakhic status may not be Jewish, her identification with Judaism has given her the qualifications for Jewish burial privileges.

It would seem that these statements can be applied to many non-halakhic converts, even to those performed under Reform auspices. These converts are not “incomplete” in the sense that they were prevented from completing a halakhic conversion; their conversion did not include any semblance of *beit din*, *kabbalat ha-mitsvot*, *milah* and *tevillah le-shem gerut*. Yet in many cases, the person who has undergone even Reform ritual clearly identifies with the Jewish religion. True, his or her halakhic status remains non-Jewish, but the subjective identification is Jewish; and, as we have seen, for some *posekim* this would suffice for limited burial privileges. Note that this is different from the case of the non-Jewish spouse referred to above, who did not undergo any form of “conversion” whatsoever and who retained allegiance to her gentile religion; the identity there is clearly non-Jewish, even regarding the issue of burial.

Similarly, R. Greenwald, commenting on the cases of *Tseror ha-Kesef* and *Minhat Elazar* discussed earlier (where the conversion remained incomplete at the time of death), adds the following comment:

[Regarding] a non-Jew who accepted Judaism and died before he immersed in a *mikveh* [*le-shem gerut*], [the same halakhah applies]: even if he died before undergoing *berit milah*, if it is known to all that he accepted verbally and in his heart the faith of Judaism (*kibbel 'emunat Yisra'el be-libbo u-visfatav*) and that he renounced his previous religion and abandoned it (*hikh'hish emunato ad az*) . . . he is to be buried in a Jewish cemetery.<sup>50</sup>

Here once again, the requirement presented for Jewish burial is not a halakhic conversion that creates the halakhic status of Jew;

rather it is the would-be convert's clear Jewish identification: the renunciation of the previous gentile religion and the true acceptance of the Jewish faith. One might argue that it is possible to include many non-halakhic converts under this formulation, even Reform converts, for Reform converts as well are asked to repudiate their Christian beliefs (*hikh'hish emunato ad az*) and to accept the faith of the Jewish people (*kibbel emunat Yisra'el*). Of course, not every Reform convert will meet the test of clearly identifying with the Jewish religion, especially when the "conversion" is effected after only a quick and shallow course of study; furthermore, the theological and religious deviations of Reform Judaism to which such a convert would subscribe may not always qualify as *emunat Yisra'el*.<sup>51</sup> Yet based on R. Greenwald's approach, it seems that in cases where the non-halakhic converts have really committed themselves to the concepts of *hikh'hish emunato ad az* and *kibbel emunat Yisra'el*, they could be granted some privileges in a Jewish cemetery.

## VII

Needless to say, we are dealing here with a public policy issue, one that cannot be settled by simply quoting previously published *pesak*. There are serious—sometimes conflicting—personal and communal concerns which must be addressed and balanced. But any valid conclusion on policy requires an awareness of how *posekim* have dealt with the burial rights of incomplete or non-halakhic converts. Nothing less than a full halakhic conversion will suffice to attain Jewish status. However, true identification with the Jewish community has been recognized as having an effect in certain halakhic areas, and it should figure into the final decision regarding burial.

## NOTES

1. One of the most reliable methods of tracing the spread of Jewish settlers and organized Jewish communities across the United States has been by noting the date on the oldest tombstone in the Jewish cemetery in every town; see for example, Rufus Lears, *The Jews in America: A History* (N.Y., World Publishing, 1954), pp. 27–28, 33, 67, 73, 74; see also *Encyclopedia Judaica* (1972), vol. 5, p. 276.
2. To delineate an area for Jewish burial simply by surrounding the graves with an empty space of eight (or four) *amot* is not sufficient; rather a formal *gader* or *mehitsah* is also required. See, for example, R. Josef Schwartz, *Hadrat Kodesh* (Oradea n.d.), no. 86, p. 67; J. Greenwald, *Kol Bo al Avelut* vol. 1, p. 163, par. 3; see also *Hatam Sofer* quoted by Greenwald, *ibid.*, p. 165, par. 6.
3. That the entire cemetery, including as yet unused land, has sanctity is clear from *Shiltei ha-Gibborim*, *Sanhedrin* end of chap. 6; this is summarized by Greenwald, p. 170, par. 21. See also J. M. Tukachinsky, *Gesher ha-Hayyim* (Jerusalem 1960), vol. 1, pp. 284–286. Regarding the exact nature of the *kedushah* and *issur* of the *beit ha-kevarot*, see Tukachinsky, vol. 2, pp. 58 ff.

Many communities have the custom of consecrating the walled boundaries of a new cemetery by encircling them (usually seven times) and reciting special psalms and prayers. See for example, Greenwald, p. 163, par. 4; Tukachinsky, vol. 1, pp. 301–302. It would appear that the purpose of this custom is the formal setting aside (*haktza'ah*) of the entire cemetery as hallowed ground.

4. See also Malbim *s.v. ki, q.v. Midrash Rabbah Ruth, parashah 2:25*.
5. Rashi implies that this requirement to tend to the burial arrangements of non-Jews applies only if their bodies were discovered together with the bodies of Jews. However, Ran (commentary on Rif *s.v. koverin*) disagrees and writes that we are to tend to the arrangements even if the discovered bodies consist of only non-Jews; *q.v. Rashba s.v. ha*.
6. Hiddushei Rabbenu Crescas Vidal (= traditional Ritva, now printed in *Hiddushei ha-Ritva*, ed. Mossad HaRav Kook, Jerusalem 1981, vol. 2, p. 107, *s.v. ve-ha*) is most emphatic. Ran (*loc. cit.*) and Ritva MS. (ed. Mossad HaRav Kook, vol. 2, p. 103, *s.v. tanu rabbanan*) explain the reason as due to *ein koverin rasha etsel tsaddik* (*Sanhedrin* 47a, but *q.v. infra*). This view is quoted in *Tur Yoreh De'ah* 367.
7. *Bah*, at the end of *Tur Yoreh De'ah* 151. On the wider implications of the term *darkhei shalom*, see Walter Wurzbürger, "Darkei Shalom," *Gesher*, vol. 6, 1977–1978, pp. 80–86.
8. Rabbi D. Hoffmann, in a responsum addressed to R. Bernat Schück, first printed in *Dat ve-Din, Hit es Allam* (Temesvar 1904), pp. 9–10 (Heb.), also printed in *Melammed le-Ho'il*, vol. 2, no. 127. See further below.
9. For a mystical explanation of the exclusiveness of Jewish burial in a Jewish cemetery, see the letter of R. Eliezer Deutsch to R. Schück (*Dat ve-Din*, p. 12, Heb.).
10. Even though R. Hayyim Eliezer ben Isaac Or Zaru'a (*Or Zaru'a, Hilkhote Avelut*, no. 422) had prohibited attending to the *keverah* of a person who is known as a *ba'al averot*, *Bah* (at the end of *Tur Yoreh De'ah* 362) noted that the Talmud's phraseology *ein koverin rasha etsel tsaddik* (*Sanhedrin* 47a, quoted in *Tur* 362) implies clearly that a *rasha* is to be buried in a Jewish cemetery, albeit not next to a *tsaddik*. *Bah's* opinion appears to be accepted (see for example, J. Greenwald, *op. cit.*, vol. 1, p. 193). Similarly Rashba (*Responsa ha-Rashba* vol. 1, no. 763) concludes that heretics, apostates, suicides, and "*poreshim mi-darkhei ha-tsibbur*" are definitely accorded burial in a Jewish cemetery; the phrase *ein mit'askin imahem* refers solely to our omitting *keri'ah, hesped*, and the like from the funeral service. The specific issue of the burial of a *mumar* is referred to by R. Solomon Eiger in *Gilyon Maharsha, Yoreh De'ah* 362, and also in his *Iggerot Soferim*, no. 53: "*yarhiku . . . yoter mi-shemoneh amot mi-kever Yisra'el kasher*." See *infra* n. 36. R. Moses Sofer (*Responsa Hatam Sofer, Yoreh De'ah* no. 341) discusses the case of an apostate Jew who died in the King's army—because the body was circumcised, it was assumed to be Jewish—with a cross around his neck and was buried in a Jewish cemetery. While concurring that that was correct, *Hatam Sofer* adds: *הצדיקים ההמה. איברא אחר שכבר נקבר לא נ"ל למעוטי שכבי שלא כדין עשו שקברוהו בקברי ישראל הכשרים ופגעו בכבוד*.
- His student, R. Hayyim Sofer (*Mahaneh Hayyim*, Jerusalem 1971, *Yoreh De'ah*, vol. 3, no. 49), in dealing with a similar case, decides likewise that the local *hevra kaddisha* is obligated to bury the *mumar* in the Jewish cemetery, but cautions that he be buried "*min ha-tsad*." See further, R. Hayyim Medini, *Sedei Hemed, Asefat Dinim, s.v. avelut*, nos. 127–128; R. Eliezer Waldenberg, *Tsits Eliezer*, vol. 10, no. 41, part 2, pp. 215–219; Greenwald, vol. 1, pp. 191–195. See *infra*, no. 44.
11. *Sefer Hayyim ba-Yad* on *Yoreh De'ah* (Jerusalem, reprint 1978), no. 99.
12. *Kol Bo*, vol. 1, p. 194; similarly R. Gedalia Felder, *Nahalat Tsevi*, vol. 1, Toronto 1959, p. 139.
13. It is generally accepted that the offspring of a Jewish mother and a non-Jewish father is considered Jewish. However, it is interesting to note that R. Dov Berish Weidenfeld (*She'elot u-Teshuvot Dovev Meisharim*, Jerusalem 1951, no. 143, part 2), while requiring that such a child be buried in *kever Yisra'el* (and he instructs the *hevra kaddisha* to disinter the child's remains from a non-Jewish cemetery and reinter them in a Jewish cemetery), also stresses that the location of the grave be "*rahok mt-ktivrei yeludim shel Yisra'elim*." This is out of deference to the opinion of Rashi (*Kiddushin* 68b *s.v. leima* and *q.v. Maharsha Kiddushin* 75b *s.v. Tosafot: R. Yishma'el*) that such a child does require conversion. R. Gedalia Felder delineates the distance of separation as eight *amot*; similarly R. Jehiel Jacob Weinberg, *Seridei Esh*, vol. 3 (Jerusalem 1977), no. 100.
14. A few years ago this issue became a *cause célèbre* in Israel in the case of a Christian woman, Teresa Angelovitch, who together with her husband had survived the Nazi concentration

camps and had emigrated after the war to Israel. When she died in 1982, she was buried in the Jewish cemetery in Rishon le-Zion. Upon discovering that Mrs. Angelovitch was not Jewish and had never converted to Judaism, the town's Jewish burial society demanded that her body be exhumed and reburied in a segregated section of the cemetery. In March of 1984, it was found that her body had been surreptitiously disinterred from her grave and had been deposited in a corner of the Moslem cemetery in Ramle. The body was hastily reburied by police under orders of Israel's High Court of Justice (*Jerusalem Post*, March 6, 1984, pp. 1, 2; March 7, 1984, pp. 2, 3; *N.Y. Times*, March 7, 1984, sec. 1, p. 10).

15. This was compounded in certain areas of Europe by official government rules regulating the religious registration of the offspring of mixed marriages: sons followed the father's religion, daughters followed the mother's. This was the crux of the case discussed below by *Minhat Elazar*; see also *Dat ve-Din*, pp. 2, 26 (Heb.).
16. Temesvar, 1904. See also Greenwald, *op. cit.*, vol. 1, p. 194; Felder, *op. cit.*, p. 138.
17. *Dat ve-Din*, pp. 9–10 (Hebrew), later reprinted in *Melammed le-Ho'il loc. cit.*
18. *Minhat Elazar* vol. 3 (reprint Bnei Brak 1968), no. 8; see above n. 15.
19. See for example, Greenwald, *loc. cit.*
20. That is to say: all other Jews who wish to be buried in accordance with halakhic requirements; see following two notes.
21. *Iggerot Moshe, Yoreh De'ah*, vol. 3, no. 147. In another responsum regarding burial (*Iggerot Moshe, Yoreh De'ah*, vol. 2, no. 152), R. Feinstein equates eight cubits with five yards.
22. *Ibid.*
23. R. Moshe Steinberg, *Hukkat ha-Ger* (Rubin Mass, Jerusalem 1971), p. 11, n. 1, quoting *She'elat Moshe, Yoreh De'ah*, no. 98.
24. For the sake of simplicity we have used the term "non-halakhic convert" throughout this article, though, of course, we do not mean to offer legitimacy to such conversions. Perhaps a more accurate term would have been "quasi-convert" or "pseudo-convert."
25. R. Moshe Feinstein has explained that a "conversion" conducted by non-Orthodox rabbis has no halakhic validity because 1) these rabbis do not require a proper and complete *kabbalat ha-mitsvot*, and 2) they are "*pesulin le-beit din*," making them ineligible to perform conversions in the first place. Furthermore, in the case of female "converts," the *tevillah* does not take place in the actual presence of their "*beit din*." R. Feinstein clearly directs his statements even to Conservative conversions; see *Iggerot Moshe, Yoreh De'ah*, vol. 1, no. 160.
26. See above n. 22.
27. That is, without the separation of a fence; cf. above n. 21.
28. *Tseror ha-Kesef*, no. 18 (Salonika 1756; also quoted in *Ikkerei ha-Dat on Yoreh De'ah*, chap. 35, par. 40). It is interesting to note that nowhere in the discussion is there any mention of a separation between her grave and the other Jewish graves in the cemetery; cf. below.
29. *Zekan Aharon* (Constantinople 5494, reprint Jerusalem 1970), no. 19.
30. *Minhat Elazar loc. cit.* This case is discussed above.
31. The reason, R. Shapira explains, is because the would-be *ger* had undergone true self-sacrifice (*mesirat nefesh*) in his accepting the ideals of Judaism and by subjecting himself to the ritual of *berit milah*; to relegate his body now for burial in a non-Jewish cemetery would be both cruel and unfair. See further below n. 40.
32. *Ibid.* R. Felder's statement (p. 138), that according to *Minhat Elazar* "*yirhaku oto arba amot*," does not represent an accurate quotation.
33. Printed in *Sefer Milhamot Elohim, Being the Controversial Letters and the Casuistic Decisions. . . . By His Son, H. Illoway* (1914), pp. 149–154. The husband of the deceased contended that the rabbis in Holland who had performed the conversion had refused to provide a written certificate because of fear of the royal edict which strictly prohibited conversions. A similar case is discussed *infra*, n. 46.
34. *Supra*, n. 25.
35. R. Feinstein does require that at least a protest on behalf of the non-religious Jews be made, because though such Jews may be classified as *resha'im*, yet *le-khat'hilah*, "*ein likvor . . . Yisra'el rasha etsel akkum*." Furthermore, the possibility exists that they may have done *teshuvah* a moment before death, and consequently are not considered *resha'im*.
36. R. Feinstein bases his separation of eight cubits on *Gilyon Maharsha*, quoted above n. 10; see also below.

- Similarly, in a case of bodies burnt beyond recognition, where it was impossible to determine Jewish identity with any degree of certainty, R. Aryeh Leibish Horowitz, *Harei Besamim, Mahadura Tinyana*, no. 222, permitted their burial in a Jewish cemetery, provided that their graves be separated from the other Jewish graves by eight *amot*.
37. *Sanhedrin* 47a. It is of course obvious from the first half of *Iggerot Moshe, Yoreh De'ah*, vol. 1, no. 160—*supra* n. 25—that R. Feinstein definitely denies *kedushat Yisra'el* to a non-halakhic convert.
38. It is a fact today that certain Orthodox *mohalim* in America will perform a *berit le-shem gerut* on the son of a Jewish father and a non-Jewish mother even in cases where it is clear that the parents do not intend to complete the *gerut* procedure and to have their child immersed in a *mikveh* (*le-shem gerut*) in the presence of a proper Orthodox *beit din*. While it is true that in these cases the *mohel* usually adds the notation “*ta'un tevillah*” on the certificate presented to the parents, if it is clear that the parents are concerned simply about the ritual of *berit milah* and have no intention of carrying out the “*ta'un tevillah*,” one must wonder—in terms of today’s blurring of Jewish identities—at the wisdom of starting the process of *gerut* where it is obvious that its conclusion will not be reached.
39. Like *Gilyon Maharsha*, *supra* n. 36; see *infra*.
40. Cf. the *teshuvah* of R. Asher Lemil b. R. Abraham (originally printed in *Shomer Tsiyyon ha-Ne'eman*, vols. 154–158, Altona 5613, now reprinted in *Sefer Yad Shelomoh*, Kollel Institute of Greater Detroit, N.Y.: 1986, pp. 2–12) regarding the actual case of a would-be convert who had undergone *berit milah* and *kabbalat ha-mitsvot* but had not yet undergone *tevillah*, where he concluded that not only is he permitted to do *melakhah* on Shabbat, but אפי' מחויב ומוזהר על יום ולילה לא ישבורו וחייב לעשות מלאכה בשבת כל זמן שלא . . . טבל לשם גירות . . . The emphatic nature of his *pesak*—indeed the would-be *ger* was forced to write on Shabbat to underscore its validity—aroused the ire of other authorities and created a halakhic controversy (collected now in *Sefer Yad Shelomoh*, pp. 1–27). Of special interest to R. Feinstein’s statement here is the opinion of R. Yitshak Ettlinger (*ibid.*, p. 14): דאף שעדיין לא נכנס לכלל ישראל גמור עד שטבל, מ”מ משעה שנכנס לברית מילה כבר נבדל מכלל . . . בני נח. *Q.v. infra* n. 44; also Steinberg, *Hukkat ha-Ger*, pp. 105–106.
41. We have generally equated the status of “non-halakhic converts” and “incomplete converts.” This equation has already been articulated by R. Weinberg, *loc. cit.*
42. See *supra* nn. 10, 36, 39.
43. *Iggerot Moshe, Yoreh De'ah*, vol. 2, no. 152.
44. It may be tentatively possible to formulate the Jewish identity of such non-halakhic/“incomplete” converts by stating that they have attained *shem Yisra'el* without yet having acquired *kedushat Yisra'el*. R. Aharon Lichtenstein (“Brother Daniel and the Jewish Fraternity,” *Judaism*, Summer 1963, p. 268) has already concluded that a *mumar* retains his *shem Yisra'el*, though he loses his *kedushat Yisra'el*. See *supra* n. 10, that the burial of a *mumar* too, while permitted in a Jewish cemetery, is subject to certain restrictions. The statement by R. Yitshak Ettlinger, quoted above in n. 40, would seem to support this formulation, at least for the incomplete convert (circumcised but not yet immersed). Similarly R. Moshe Steinberg, *op. cit.* p. 106, writes concerning an incomplete convert: מ”מ כבר נכנס בדת יהודית וחשוב גם קדם הטבילה בר הויה אבל בכל זאת אין בו קדושת ישראל.
- Regarding semi-Jewish status, reference should also be made to an article by R. Zalman N. Goldberg in *Tehumin*, vol. 5, *Yihus Imahut* . . . , pp. 256–257. R. Goldberg, in discussing the case of a non-Jewish embryo transferred and implanted into the womb of a Jewish host mother, concludes that such a child, while requiring a full *gerut* to be considered Jewish, nonetheless retains (even after the *gerut*) a halakhic filial relationship to his Jewish host mother. The impact of this concept—*mishpahat Yisra'el* without *shem Yisra'el*—on the discussion of our case requires further development and treatment. An English version of this article appeared in *Crossroads: Halacha and the Modern World* (Zomet, 1987), pp. 71–78.
45. *Seridei Esh*, *loc. cit.*
46. *Kol Bo*, vol. 2, pp. 68–70. A similar case is referred to above, n. 33.
- Rabbi Saul Weiss of Brockton, Mass. has told me of a case he once discussed with R. Joseph B. Soloveitchik of Boston, regarding a woman married to a Jewish husband, who considered herself Jewish, kept certain basic Jewish holiday traditions, and was accepted as part of her Jewish community. Upon her demise it was ascertained that she had

not been born Jewish but had been converted fifty years earlier. No conversion papers were available, but it appeared probable that the conversion had been performed by a Reform rabbi. R. Soloveitchik's opinion was that as long as it was not known with certainty that she did *not* immerse in a *mikveh* at the time of the conversion (*le-shem gerut*), she could not be deprived of *kever Yisra'el*.

47. Cf. *supra* n. 45.

48. *Kol Bo*, vol. 2, p. 69; *q.v.* the statement of R. Judah b. R. Shalom in *Midrash Tanhuma*, *parashat Va-Yikra* par. 2.

49. *Kol Bo*, vol. 2, p. 70; cf. *Zekan Aharon*, *supra* n. 29.

50. *Kol Bo*, vol. 1, p. 190, n. 21.

51. For example, Reform's denial of *Torah min ha-shamayim* could be considered a serious disqualification from a true commitment to *emunat Yisra'el*. On the other hand, not every Reform convert is so finely attuned to Reform theology as to have clearly enunciated such a theological denial.