

The Controversy Concerning Early Burial

A historic chapter in Halacha

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It is the accepted custom in Jerusalem as well as in certain other places to bury the dead as soon as possible after death and under ordinary circumstances not to leave a corpse unburied overnight.¹

This is a literal interpretation of the biblical command (Deut. 21:22-23):

“And if a man have committed a sin worthy of death, and he be to be put to death, and thou hang him on a tree: his body shall not remain all night upon the tree, but thou shalt in any wise bury him that day; for he that is hanged is accursed of God; that thy land be not defiled, which the Lord, thy God, giveth thee for an inheritance.”

The Sages of the Talmud hold that this regulation applies to all the dead, with the exception of special cases that will be considered later. Two main talmudic sources are Talmud *Bavli*, *Sanhedrin*, 46 a-b, and Talmud *Yerushalmi*, *Nazir*, ch.7, 1.

Let us briefly consider these sources.

1. Regarding the practice of early burial see J. Marx, “Genaue Prüfung der frühen Beerdigung der Todten bey den Juden,” *Juden für Deutschland* October, 1784: pp. 224-234; idem, *Über die Beeridigung der Todten* (Hannover: Vg. Der Schmidt: Buchhdlg., 1788); M. Herz, *Über die frühe Beerdung der Juden: Zweite vermehrte u. verbesserte Auflage* (Berlin: bei Chr. Fried. Voss, 1788); I. Euchel, *Ist nach jüdischem Gesetz das Uebernachten der Toten wirklich verboten?* (Breslau, 1797); S. Pappenheim, *An die Barmberzigen zu En-dor oder Ueber die zu frueh scheinende Beerdigung der Juden* (Breslau, 1794); M. Dienemann, “Die Frage des Beerdingungstermines” in M. Grunwald (ed.), *Hygiene der Juden* (Dresden, 1911): pp. 268-270; J. Pruess, *Biblical and Talmudic Medicine*, translated by Fred Rosner, (New York: *Sanhedrin* Press, 1978): pp. 512, 515-521 [cf. pp. 607-616 in the original German edition (Berlin, 1911)]; Rabbi David ibn Zimra, *Responsa* 1, 311; Rabbi Moshe Sofer, *Sefer Chatam Sofer; Yoreh De'ah* 338.

Yerushalmi, Nazir ch. 7, 1:

“It is evident from what is written (Deut. 21:23) ‘Thou shalt in any wise bury him’ (קבור תקברנו), that it is a positive commandment (מצות עשה) to bury one who has been sentenced to death ...”

Bavli, Sanhedrin 46b:

“Rabbi Yohanan said in the name of Rabbi Shimeon ben Yohai: Wherefrom do we know that whoever leaves his dead unburied overnight has trespassed a negative commandment? From the Scripture: ‘Thou shalt in any wise bury ...’ Others state that Rabbi Yohanan said in the name of Rabbi Shimeon ben Yohai: Wherefrom do we find a biblical allusion (רמז) for [the necessity] of burying the dead? From what is written: ‘Thou shalt in any wise bury him.’”

Accordingly – the necessity of burial is indicated in the Bible; burying a person sentenced to death is a positive commandment – leaving the dead unburied transgresses a negative commandment.

However, the Mishna delineates special circumstances under which burial may be delayed.

“If the body has been left (unburied) overnight ... in order to provide a coffin or shrouds, there is no transgression (of the law)” [*Sanhedrin* 46a]. There is no prohibition to delay burial out of respect for the dead (לכבודו) in order, for instance, to provide time to inform others of the death and for the arrival of relatives from a far or to summon (professional) mourners. Interestingly enough, the Talmud [*Sanhedrin* 47a] discusses the question to whom the respect should be paid. Some are of the opinion that לכבודו means out of respect for the living (members of the family). This would mean that the dead may be left unburied overnight out of consideration for the family, in order to arrange a more dignified burial.

This brief paper should not be considered as a review of the laws, regulations and duties relating to the dead. Preparing the dead for the burial, accompanying the deceased to the grave, visiting the families in mourning are duties particularly important in their theological, ethical, social and psychological aspects.

In former times people used to stop work when informed of a neighbor’s death and they would busy themselves caring for the dead and the bereaved family, but soon there developed a special society (חברא קדישא) which took care of such matters [cf. *Mo’ed Katan* 27b].

Attending a funeral (לווית המת) is considered to be “a true act of kindness” (גמילות חסד של אמת), as it cannot be repaid by the one to whom this kindness is shown. It is one of the deeds whose main reward will be bestowed in the world to come [*Shabbat* 127b].

How were people buried in Jewish antiquity? In the Bible we hear of caves (cf. the cave of *Machpela* in Genesis 23) that were used as family tombs. But in the case of Absalom, after having thrown his body into “a big hole in the forest,”² stones were heaped on the site (II Samuel 18:17).

The Talmud describes in detail how corpses were interred in recesses hewn out of the rock walls of caves or in sarcophagi. These recesses were called *kuchin* (כוכין). Even their exact dimensions are mentioned in the Mishna [*Baba Bathra* ch. 6, 8]. But *kever* (קבר) or *kever binyan* (קבר בנין) was a tomb built over the ground.³

“First they laid corpses in mounds; when the flesh had decomposed [*Mo’ed Katan* 1, 3], in some places the bones were sprinkled with oil and wine, or with oil alone, but the Sages interdicted both, while permitting the use of grains of dry sod.⁴

Burial in the ground was practised in ancient times, especially for the ordinary population. There also were probably even common graveyards (קברי בני העם) [See II Kings 23:6 and Yer. 26:23]. The dead were wrapped in shrouds (תכריכין), and then buried in the ground or buried in a coffin.

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Premature burial has been the theme of many discussions in medical and theological circles. Galen (2nd cent.) was the putative author of a dissertation on *The Interdiction of (Early) Burial*. Maimonides considered this work to be spurious, but cites it in his Aphorisms [*Pirke Moshe*, XXIV, 44-51, translated from the Arabic by Judah Al-Harizi (1170-1235)].

The manuscript is entitled *Sefer Issur Ha-kevurah le-Galenos* (The Book of the Interdiction of Burial by Galen). Further, on the first line of the same manuscript is added: “... before seventy-two

2. Absalom had erected a mausoleum (מצבה) during his lifetime, but indeed he was finally buried in the forest [cf. II Sam. 18:18].

3. *Kever*, used alone, has many meanings, including that of a “tomb” or any kind of sepulchre (cf. *Sanhedrin* 47b).

4. תפירין (ג.א. ספירין) יבשין, i.e. excavated dry earth (cf. *Semachot* chapter 12).

hours.” Whereas Maimonides [loc. cit., 44] calls it “Galen’s dissertation on the interdiction of burying the dead before twenty-four hours,” although he later [loc. cit., 49] states that (citing Galen) the interment should take place after seventy-two hours.⁵

Massechet Semachot refers to a limit of three days (72 hours), but in a different context. “One should go to the cemetery to visit the dead during three days, which custom is not considered of idolatrous nature (משום דרכי האמורי). It happened that one such was visited, lived twenty-five years and then died. Similarly another one fathered five sons before he died” [*Semachot*, 8, 1].

Accounts of people buried alive are recorded in literature throughout the ages. It is possible that some cases have been cited repeatedly, modified and expanded. Edgar Allan Poe with his imaginative pen has described several such cases in his story “The Premature Burial.”

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A vivid controversy on premature burial took place among German Jews in 1772, when Duke Friedrich von Mecklenburg-Schwerin ordered that no body, in his estates, be buried until seventy-two hours had elapsed after death. Such authorities as Rabbi Ezekiel Landau of Prague, Rabbi Jacob Emden of Altona, Moses Mendelssohn, and Jewish physicians of national fame like Markus Herz und Jacob Marx were involved in the dispute. Letters were exchanged, dissertations were penned, papers pro and con appeared in the journal *Ha-Me’assef*,⁶ and even non-Jews joined in the discussion.

One of the best sources for a thorough study of the dispute is that of the non-Jew Johann David Michaelis (Goettingen, 1789).⁷ Another non-Jew, Johann Peter Frank (1779-1827), the pioneer of Public Health in his monumental *System einer vollstaendigen medizinischen Polizey*, spoke of “the danger of being buried alive” (Vol. IV, part 2, section 5), where several pages are devoted “Remarks on Burial Among Jews” (pp. 738-743).

5. This statement by Galen is quoted by Maimonides in a medical work, but is not endorsed by him in his halachic works.

6. *Ha-Me’assef* 1785, no. 2. This journal was the organ of the *haskalah* and first appeared in 1783.

7. J. D. Michaelis, *Neue orientalische und exegetische Bibliothek* (Goettingen, 1789): pp. 52-77.

Frank mentions the case of a Jew of Hamburg who was found to be alive as he was being brought to the cemetery, a story that was reported in all the newspapers. Dr. Jacob Marx pointed out that the burial of the man was indeed prevented when it became realized that “death” had taken place suddenly. According to Marx, Rabbi Ezekiel Landau of Prague decided that in a case of sudden death burial should not be undertaken before twenty-four hours after his presumed death. In fact, this man never came back to life, the whole story being a journalistic hoax.

In answer to the Jews of Schwerin, Moses Mendelssohn stressed the fact that “all medical scholars will testify that they know of no absolute criterion of certain death.” This was for him, as it was for the physicians Markus Herz and Jacob Marx, a sufficient reason to wait “two or three days,” for the first signs of decomposition. If the deceased cannot remain in his house, the body could be transferred to a place where it may be repeatedly checked by physicians, such as the hall near the cemetery where corpses were cleansed and prepared for burial.

We find that it was customary to bury the deceased some four hours after death. However, it is not quite clear when and why this custom (מנהג) was started.⁸ One of the reasons might have been the fear of the corpses being stolen for anatomical dissections or because of demands by the local authorities for large sums of money to permit burial.

Rabbi Ezekiel Landau of Prague believed that the soul hovered over the body as long as it was not buried, resulting in unnecessary suffering. Obviously, such a statement would be unacceptable to “enlightened” physicians and philosophers. It was based on Jewish mystical tradition.⁹ However, to quote the Midrash [Levit. Rabba, 18,1]: “In the first three days the soul hovers over the body, ready to return; when the face has undergone decomposition, the soul departs.”

This dispute was one of many that took place in German Jewry in the period of “enlightenment” (השכלה). However, many years earlier, in 1605 in Italy, an orthodox Mantuan physician, Abraham

8. This may perhaps be related to a statement in the Talmud that “it is *laudable* to bury the dead as speedily as possible; not so for one’s father or mother where it is *unworthy*” [*Mo’ed Katan* 22a; *Semachot* 9],

9. See Zohar: *Ki Teitze*, on *Deut.* 21:22.

Portaleone¹⁰ in his will asked his sons “not to bring me to burial until seventy-two hours have elapsed after my death ...” And he added: “If for any reason my corpse cannot be left ... in my house for three days, it should be put in a wooden coffin, coated with pitch, and be taken to ... one of the cemetery buildings, and watched until burial.” Finally he remarks: “Though our forefathers buried their dead as soon as possible (היו זריזים מאוד בקבריהם), do not be surprised at what I say, for there are many different schools of thought (כי לא כל הדעות שוות).”¹¹

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Today we have more accurate means of ascertaining death. Nevertheless there are still cases with elements of doubt, such as poisoning, exposure to extreme cold, or sudden death, where rapid burial may have to be postponed. Moreover, established customs may vary from place to place. In Jerusalem, since olden times, a body is not left unburied overnight,¹² probably for reasons of *tum'ah*. In the diaspora it is more customary to wait one or two days, although in religious circles every effort is made to bury the dead within twenty-four hours.

It appears that the lapse of time preceding burial was not only a controversial theme in the period of the *Haskalah*, it was also a subject widely discussed in halachic literature from talmudic days right up to modern times.

Source: *ASSIA – Jewish Medical Ethics*,
Vol. I, No. 1, May 1988, pp. 31-33

10. See S. Kottel, “Abraham Portaleone, an Italian Jewish Physician of the Renaissance Period: His Life and his Will...” *Koroth* 8, 7-8 (1983): pp. 269*-278* (in English) and pp. 223-238 (in Hebrew).

11. There are different opinions among Rabbinic authorities as to whether such a will should be complied with. See *O.H.* 11 עקרי הד"ט (positive) and שו"ת ראש בשמים (negative).

12. *Tosefta Nega'im* 6; *Baba Kama* 82b; *Avoth de Rabbi Nathan* 35, 2.