

Going to Ground: The Mitzvah of Kvurah

Adapted from the writings of Dayan Yitzhak Grossman

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Yeshiva World News reports:

HaRav Yehudah Aryeh Dinner, *rav* of central Bnei Brak and a renowned *posek*, was recently asked an interesting *sheilah* by IDF soldiers stationed in Gaza.

"The soldiers said that they're spending Shabbos on the Gaza border and they're forbidden from moving to another location over Shabbos," Rav Dinner said.

"In the area they're staying in, there are many '*neveilos utreifos*' scattered around—the bodies of dead terrorists. And there's a stench from the bodies. They asked if they're permitted to move dirt with their feet on Shabbos in order to cover the bodies and stop the odor, so they can make *brachos* and daven."

Rav Dinner explained that the answer to the *sheilah* is "dependent on several things. Are we discussing it from the angle of *graf shel rei'i* (a repulsive object, such as a chamber pot)? If so, then it's permissible for them to take the bodies and throw them away—because there's no *kvod hameis* regarding these bodies.

"The debate is regarding digging a pit and carrying *muktzeh*..."[1]

(Rav Dinner proceeds to rule leniently on these latter questions as well.) In this article, we consider a question related to Rav Dinner's contention about *kvod hameis*: Does the mitzvah *de'Oreisa* to bury the dead extend to non-Jews, and in particular, to those enemies whom it is a mitzvah to kill?

In Parshas Ki Seitzei, the Torah commands:

If a man shall have committed a sin whose judgment is death, he shall be put to death, and you shall hang him on a gallows. His body shall not remain for the night on the gallows, rather you shall surely bury him on that day, for a hanging person is a curse of G-d, and you shall not contaminate your Land, which Hashem, your G-d, gives you as an inheritance.[2]

In Sefer Yehoshua, Yehoshua is twice described as hanging captured Cna'ani kings but then lowering their corpses from the gallows at sunset.[3] Various *Rishonim* comment that the lowering was in accordance with the admonitions of "His body shall not remain for the night on the gallows" and "and you shall not contaminate your Land." [4] The Radak explains that these commands apply to anyone hanged in Eretz Yisrael (even non-Jews), because any unburied corpse entails contamination of the Land; [5] the Ralbag says the corpses were buried to avoid contaminating the air. [6] This of course does not imply that there is any duty to treat non-Jewish enemy corpses with respect; indeed, after being lowered from the gallows, the kings' corpses were thrown, which is certainly not a respectful way of handling them. The question of whether respect must be shown to non-Jewish corpses, however, may hinge on a dispute between Rashi and the Ramban. Rashi, in his commentary to the aforementioned *psukim* in Ki

Seitzei, seems to limit the concern of “for a hanging person is a curse of G-d” to Jewish corpses:

...For a hanging person is a curse of G-d—i.e., a degradation of the Divine King, for man is made in His image and the Bnei Yisrael are His children. This may be compared to the case of twin brothers who very closely resembled each other. One became king, but the other was arrested for robbery and hanged, and whoever saw him on the gallows thought the king was hanging (Sanhedrin 46b).[7]

The Ramban, however, disagrees:

And the parable concerning the twin brothers contains a secret; it does not refer, as the *Rav* thought, to the Bnei Yisrael, who are called the children of Hashem...[8]

“And you shall not contaminate your Land”: In the opinion of the Sages, this is not merely a reason, meaning (that a corpse may not be left hanging) “in order that you not defile your Land,” for if so, it would be permissible (to leave the dead overnight) outside the Land. Instead, this is a second negative mitzvah...It is by reason of this negative mitzvah that Yehoshua buried the Cna’ani kings during the day of their execution...on account of the *tum’ah* of the Land (that their hanging would have caused) or because he was apprehensive of chillul Hashem, on the basis of the parable of the two brothers, as I mentioned.[9]

The Ramban maintains that the parable of the twins is not limited to Jews, and he apparently understands it as alluding to a universal duty of respect for all human beings, in order to avoid chillul Hashem, although his comments are quite cryptic, and we have no business with hidden matters.[10]

R’ Meir Tzvi Hirsch Wittmayer (the Ramatz) is unsure whether there is any Torah obligation to bury non-Jews, and he suggests that even the Ramban might only mean that the burial of non-Jews is in accordance with the spirit of the law, not that the formal Biblical prohibition actually extends to them.[11]

R’ Meir Simcha of Dvinsk (the Meshech Chochmah) infers from Yehoshua’s burial of the Cna’ani kings that even non-Jewish corpses may not be left unburied. He himself inclines toward the view that this is only in Eretz Yisrael, due to the mitzvah not to contaminate the Land, but there is no mitzvah to bury non-Jewish dead in *chutz la’Aretz*, although he acknowledges that the Ramban is uncertain about this.[12]

The Chasam Sofer also takes for granted the existence of a mitzvah *min* haTorah to bury non-Jewish dead, at least in Eretz Yisrael.[13]

R’ Shmuel Wosner (the Sheivet Halevi) agrees that the Ramban is asserting a *de’Oreisa* imperative not to let even non-Jewish dead remain overnight, but he explains that this does not mean they are included in the mitzvas *asei* of burial in the ground, only that they cannot remain overnight, so they may be cremated.[14]

R’ Avraham Te’omim (author of *Shu”t Chesed LeAvraham*) takes for granted that there is no mitzvah to bury a non-Jew. (He does not acknowledge the

comments of the Ramban.)[15]

R' Yechiel Michel Tucazinsky rules unequivocally (but without providing sources) that there is no general obligation to bury a non-Jew.[16] He acknowledges that the Ramban and other authorities do require the burial of non-Jews in Eretz Yisrael, due to the special *lav* of "you shall not contaminate your Land,"[17] but he fails to mention that the Ramban explicitly considers the possibility that there is indeed a general obligation to bury non-Jews (presumably even outside of Eretz Yisrael), as noted by the Meshech Chochmah.

R' Yitzchok Zilberstein also assumes that there is no mitzvah to bury non-Jews.[18] A basic argument against the existence of a general Torah obligation to bury non-Jews (invoked by Rav Zilberstein and previously alluded to by the Meshech Chochmah) is from a passage in the Tosefta, cited in the Gemara, asserting that "we bury the gentile dead along with the Jewish dead, on account of the ways of peace." [19] The implication is that there is no intrinsic duty to bury non-Jews, and we only do so on account of the ways of peace.[20]

R' Eliezer Yehudah Waldenberg (the Tzitz Eliezer) raises the apparent contradiction between the implication of this Tosefta and the position of the Ramban that there is indeed an obligation to bury non-Jewish dead. He proposes a number of resolutions, which are beyond the scope of this article.[21]

He concludes a comprehensive discussion of our topic by ruling, in accordance with the Ramban and the Chasam Sofer, that "there is a mitzvah *de'Oreisa* to bury non-Jews...a fortiori here in the Land." [22]

In summary, there is considerable disagreement among halachic authorities as to the very existence of a Torah obligation to bury non-Jewish dead (including those of our enemies), as well as its parameters if it does exist.

[1] War Halacha: Can IDF Soldiers Move Bodies On Shabbos In Order To Daven? Yeshiva World News.

<https://www.theyeshivaworld.com/news/israel-news/2255993/war-halacha-c-an-idf-soldiers-move-bodies-on-shabbos-in-order-to-daven.html>.

Cf. Kikar Shabbos.

[2] Dvarim 21:22-23.

[3] Yehoshua 8:29 and 10:23-27.

[4] R' Yosef (Mahari) Kara *ibid.* 8:29. Cf. Ibn Ezra to Dvarim *ibid.* and notes 95 and 97 in the Strickman and Silver edition.

[5] Radak Yehoshua *ibid.* and *ibid.* Cf. Shu"t Chavos Ya'ir *siman* 139 s.v. *Ulefi shnei te'amim devikra* (cited in Shu"t Tzitz Eliezer *cheilek* 10 *siman* 25 *perek* 9 os 7).

[6] Ralbag *ibid.* 8:29.

[7] Rashi Dvarim *ibid.*

[8] Ramban Dvarim *ibid.* *pasuk* 22.

[9] *Ibid.* *pasuk* 23.

[10] Chagigah 13a.

The Minchas Chinuch (Kometz Lamincha to mitzvah 537) cites the dispute between Rashi and the Ramban. Shu"t Tzitz Eliezer (*cheilek* 10 *siman* 25

perek 9 os 5) understands the Minchas Chinuch to be endorsing the Ramban's interpretation of the parable of the twins as applying even to non-Jews and thus the existence of a duty to bury non-Jews even in *chutz la'Aretz*. But I am not sure where he sees this in the words of the Minchas Chinuch, who may just be pointing out that the Ramban definitely assumes (contrary to the implication of Rashi) the existence of a Torah obligation to bury non-Jewish dead, at least in Eretz Yisrael due to the prohibition against contaminating the Land.

Cf. Maharsha Chidushei Agados Sanhedrin beginning of 46b.

[11]Shu"t Ramatz O.C. end of *siman 14 os 10* (cited in Tzitz Eliezer *ibid.*).

[12]Meshech Chochmah *ibid. pasuk 23*.

[13]Shu"t Chasam Sofer O.C. end of *siman 208 s.v. Umah shekasav sham mina lei* leRambam. Cf Tzitz Eliezer *ibid. osios 8-11*.

[14]Shu"t Sheivet Halevi *cheilek 8 siman 256*. On the permissibility of cremating non-Jewish remains, see Chashukei Chemed cited below; R' Efraim Kachalon, *Be'inyan Sreifas Gufos Goyim Vehamista'eif*, Haotzar gilyon 15 pp. 285-308; *Lisrom Kessef Bishvil Kvuras Goy (os 2)*, *Darchei Hora'ah* Lerabanim.

[15]Shu"t Chesed leAvraham (*mahadura kama*) O.C. *siman 109 s.v. Vehinei haMishneh Lamelech*. Cf. Tzitz Eliezer *ibid. os 11*.

[16]Gesher Hachaim *cheilek 1 perek 7 anaf 1 se'if 10 p. 54*.

[17]*Ibid. anaf 2 os 1*.

[18]Chashukei Chemed Bava Basra 22a p. 149. Rav Zilberstein quotes his father-in-law, R' Yosef Shalom Elyashiv, as maintaining that according to the *poskim* that permit deriving benefit from non-Jewish remains, it follows that there is no mitzvah of burial of such remains, and it is permitted to cremate them, whereas according to the *poskim* who forbid deriving benefit from them, "perhaps it is prohibited to cremate them." It is unclear why Rav Elyashiv believes that the prohibition to derive benefit from human remains should imply a prohibition to cremate them—after all, there are many categories of items from which deriving benefit is prohibited and the halacha specifically mandates burning them!

[19]Tosefta Gittin 3:18, Bavli *ibid. 61a*.

[20]Cf. *Lisrom Kessef Bishvil Kvuras Goy (os 1)*.

[21]Tzitz Eliezer *ibid.* from the beginning of *perek 9*.

[22]*Ibid. os 122*. Cf. Rav Kachalon *ibid. os 11 pp. 297-300*.