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DEATH, DYING, AND BURIAL: APPROACHES IN RELIGIOUS LAW AND PRACTICE

INTRODUCTION

WILLIAM J. WAGNER*

Death, as life's terminus, forms a constant, often unconscious reference in our activity. It may come expressly to mind as a thought of disaster—the untimely or needless death flowing from a loss of control, as in the case of a plane crash. Or, it may enter our imaginations as a vanishing point against which we may measure the stature of a bygone civilization, as in the extinction of those who once lived on the slopes of Vesuvius. Then, again, we may consider ourselves as especially rational when we think of death as a factor of risk in calculations of social utility, as in the case of cost-benefit decisions about safety precautions or medical treatment.

When we ask about death's more comprehensive meaning, we may stop to consider—if this does not frighten us unduly—that it represents the complete and final loss of everything. We then find ourselves inquiring into the meaning, not so much of death itself, but of everything else—everything which death will take from us. We begin by asking what death means, but, as we conclude, death has posed a question of us. Death has turned the table on us. To those inclined to be religious, the ultimate question which death poses to us is a religious one.

If we wish to look into the answers which religion gives to this question, we may study religious doctrine. But, we may also benefit from a more concrete study of religious practice, specifically from the study of a religion's way of caring for the dying person; disposing of the dead body; and remembering those who have died. Some religions observe law and custom. In the case of these religions, the content of law and custom then becomes the specific object of study, and the study of religious practices in the area of death, dying, and burial becomes an occasion of secondary reflection on the nature of religious law and custom.

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The collection of papers which follows seeks to understand the religious response to death not by the study of doctrine, but by such an inquiry into practice. Specifically, it explores religious law and custom governing death, dying and burial. It takes as its focus the religions of Judaism and Catholicism. The collection adopts a comparative perspective in order to set more sharply in profile the salient qualities of each religion; to discover themes common to both; and to derive the more readily abstract or general concepts descriptive of the concrete practices considered. It includes papers written from within the disciplines of medicine, theology, religious law, art history, and history. The premise underlying this interdisciplinary approach is that a single discipline could not encompass the question presented.

The first paper in the series, Dr. Christina Pulchalski's "End of Life Care: A Time for Listening and Caring," sets forth an insight which serves especially well as a common starting point for comprehending the ideas of the collection as a whole. In her article, Dr. Pulchalski, an expert in the care of the dying, relates her experience of the limits inherent in a medical ethic which conceives of itself solely in terms of curing patients, and thus is without resources for the dying person who gradually, and irreversibly, loses control over bodily functions, increasingly is without social relationships, and more and more suffers pain. She proposes the adoption by medical practitioners of an ethic of healing which cares for incurable dying patients by supporting them in their search for personal meaning.

The argument of Dr. Pulchalski's paper is that a good death is possible, and she explores medicine's role in fostering the conditions most conducive to one. To be specific, she highlights the frequently religious and spiritual nature of the dying patient's quest for meaning. She sets out for our consideration, from the perspective of medicine as a caring profession, the individual's experience of dying as a form of dissolution eliciting his or her spiritual and religious quest for meaning. Her account of this experience seems an especially appropriate entry to the inquiry which the other papers in the collection undertake into Jewish and Catholic law and custom on death, dying, and burial.

Among other topics, Rabbi Benjamin Mintz, in his article "Religious Approaches to Death and Dying: The Jewish Approach," and Father Kevin Irwin, in his piece "Dying, Death and Burial—Overview of Christian Practices," each explore the prescriptions of religious law and custom for the care of the ill person who is dying. In doing so, both begin, in significant part, from Dr. Pulchalski's distinction between hoped-for

cure and a religious reconciliation with the dissolution of dying. From the perspectives of their respective religious traditions, each describes and interprets the prescriptions which religion imposes for the sake of advancing the latter state of mind when it becomes timely.

In his paper, "Jewish Burial Societies: The Origins and Development of the *Hevra Kaddisha*," David Wachtel deepens our appreciation of the elements of Jewish law and practice to which Rabbi Mintz has introduced us, by a careful exposition of their history. In her article, "The Material Culture of Death in the Early Modern Jewish Community," Sharon Liberman Mintz does the same with her sensitive interpretation of the art and artifacts of past Jewish practice regarding the dying.

Read together, these three papers introduce the reader to a concept of "the care of the sick" which unifies and explains the conduct Jewish law and custom prescribe for others when a member of the community is dying. Such care is conceived as a *mitzvah* or duty which bears a religious meaning. Jewish law and custom are seen to conceive of their response to the dying person largely from the perspective of those who minister to the dying. In fulfilling their duty, the healthy members of the community emulate the example of God in his care for humanity. They cultivate an awareness of the holiness of life in general and, in particular, of the precious nature of the life and health of the person who is ill. These papers introduce the reader to the marked sensitivity of Jewish practice to human feeling. We discover such particulars of Jewish law and custom as that those tending to the dying person are observing an obligation to come to see him or her regularly to ensure that he or she is not left alone. While they are with the person who is sick, they attend to his or her feelings and take care not to address him or her in a demoralizing manner.

As the dying person moves beyond the reach of possible cure, these authors show us that within Judaism the community increasingly cares for the sick person by encouraging him or her to be open to reconciliation with God through penance for past transgressions and through trust in his mercy. Judaism emphasizes the importance of placing one's trust in God as the merely temporal props of bodily life and health fall away. It strives to extend hope to the dying person in a life in God transcending merely temporal existence. Those attending the ill person seek to educate him or her in these attitudes through spiritual reading. They pray constantly to God with and for the person who is ill. We learn that the culmination of this prayer is the dying person's *Vidui* or confession, acknowledging his or her mortality in an act of fealty to God. This act comprises the dying person's proximate preparation for death. Christian readers are likely to

find in Rabbi Mintz's exposition of the *Vidui* a fascinating exploration of the Jewish context of Jesus' final words at the time of his dying, especially as recorded by St. Luke.

Kevin Irwin's article invites us to consider Catholic religious law and custom on the care of the dying. Through its exploration of historical antecedents, Father Michael Driscoll's article, "Death, Dying, and Burial: Liturgical Considerations from the Early Middle Ages," gives the reader a sense of their evolving theological meaning. In these articles, we learn that the care which Catholic Christianity offers the dying person has an essentially sacramental character. Under church law and custom, the community cares for the dying person through gestures communicating participation in goods which transcend the temporal dimension. Catholic practice assumes a pervasive distinction between the good of merely temporal healing and that of a transcendent wholeness which the sacrament signifies. The community's care for the dying person's physical and emotional needs forms a backdrop to, but is essentially distinguishable from its distinctively religious response to the person. The latter occurs through specific sacraments. And these are administered by an ordained minister.

In Father Irwin's paper, we encounter an exposition of the applicable sacraments. One of these is the Eucharist, which, received at the deathbed, is known as the *Viaticum*. The other is the anointing of the sick which prior to the liturgical renew of the 1960's was known as "the last rites." Father Irwin introduces the reader to the spiritual comfort communicated through sacramental word, gesture, and consecrated bread or oil. The priest's words and gestures and the consecrated substances he employs can have this effect, because of the role of mediation and analogy in the Catholic mind and religious imagination. A gesture, in itself an empirical fact, under prescribed conditions, becomes a sign of a transcendent relationship; the ordained minister mediates the efficacious touch of God; and the suffering, death, and resurrection of Jesus Christ bring about reconciliation between human beings and God.

When one compares the categories of thought informing the essays of Mintz, Liberman Mintz, and Wachtel, on the one hand, and those of Irwin and Driscoll, on the other, one perceives that Jewish law and custom ascribe a meaning to life, as a gift of God, which includes both spiritual and temporal dimensions without distinction, whereas Catholic law and custom distinguish the two dimensions, in order to allow one to serve as a sacramental sign of the other. A reading of these papers suggests that, as a consequence, while the Catholic mind and imagination value

sensitivity to the emotional well being of the sick person as an expression of charity, they do not accord it the same distinctively religious importance as does the Jewish mind and imagination. Such a reading suggests as well that, while both traditions approach the care of the dying with a common devotion to God as the source of life and mercy, Catholicism conceives God as being specifically accessible through the paschal mystery of Christ and that this is a mystery mediated by the sacraments. It suggests too that both traditions take reconciliation with God as a basic theme in the spiritual care of the dying, but that Jewish practice thematizes this reconciliation through the concept of the observance of *mitzvah*, while Catholicism does so through the concept of grace flowing from Christ's sacrifice.

We see that the displacement of *mitzvah* by a sacramental mediation of grace in Catholicism leads Catholicism to lose its specifically religious interest in the concept of the care of the sick and healthy. On reading the papers assembled here, one may ask whether developments of the post-conciliar period have accentuated this difference in traditions. Although neither of the Catholic authors being considered here mentions it, the Catholic tradition once emphasized "visiting the sick," while not as a sacrament, at least as one of the corporal works of mercy. Similarly, the sacrament of reconciliation continues to be part of the pastoral care of the dying, but the two Catholic authors writing from a contemporary perspective do not mention it, leaving it to Father Driscoll to cite it in his exposition of past usage.

A comparison of these sets of papers by Jewish and Catholic authors, nonetheless, establishes a wealth of particulars joining the two traditions and affirming the existence of common practice. Both traditions are seen to offer the dying person the hope of participating in a life transcending the merely temporal; both seek to educate the dying person by spiritual readings; both seek to comfort, strengthen, and intercede for the dying person through constant prayer, and the prayer of both reflects basic themes of penance and hope in God's mercy.

Once the person has died, the community is left with the task of disposing of his or her body. Both Catholic and Jewish law and custom regulate the matter. And, so Rabbi Mintz moves from the care of the dying to the treatment of the body of the deceased. Rabbi Barry Freundel takes this second theme as the exclusive focus of his paper, "From Death to Burial in Jewish Law." Again, David Wachtel and Sharon Liberman Mintz in their papers deepen our understanding of the theme from the perspectives of history and art history, respectively. Taken together, these four

papers give a multi-faceted account of the prescriptions of Jewish law and custom for the treatment of the body after death. We learn from these authors that Jewish law and custom lavish care on the preparation of the body for burial.

We discover that the members of the community are under a *mitzvah* to see to this preparation and to fulfill their duty in a manner expressing respect for the dignity of the deceased person and the sanctity of his or her body. Jewish law and custom regulate the demeanor of those engaging in this ministry in view of these ends. They may not treat the body purely as an object. Rather, they must act in the presence of the body as if they were still in the presence of a person. The symbolism of respect, akin to that one shows a living person, dictates that they perform certain ritual gestures, as, for example, the closing of the eyes and mouth of the deceased. They are required to show modesty in the treatment of the bodies of members of the opposite sex and tenderness in the treatment of the bodies of children. Again, in these matters, we see the exquisite attention given by Jewish law and custom to human feeling.

The authors clarify for us that the purpose of the preparation of the body is to ready it to be committed to the earth in anticipation of the resurrection. There is thus a duty to watch over the body to ensure that it is not destroyed, lost, or stolen. Prohibitions exist against cremation or autopsy. The body is symbolically washed and dressed in preparation for the spiritual transit from this world to the next.

The authors make clear that observing the complex religious symbolism of the dead body calls for preserving a difficult balance. On the one hand, the body may not actually be treated as a living person. For example, the body may not be dressed in a functional prayer shawl. On the other hand, the body is to be regarded as representing the person who once dwelt in it, so that it is dressed in an *altered* prayer shawl in symbolic readiness for the resurrection. The body is not to be treated as a mere object and respect for the person who once dwelt there calls for reverence in its presence, but at the same time, in its dead aspect, the body defiles, and those preparing it must purify it by washing it. Thus, the observance of the religious duties of the preparation of the dead for burial is quite solemn, and those observing them do so with close attention to the spirit in which they carry them out, constantly reciting prayer in the form of psalms.

In contrast to the preparation of the body, we learn that Jewish law and custom regarding the funeral service and the interment of the body, al-

though dramatic, are very simple. Essentially, one must place the body in the ground as soon as possible. In contrast to what we will learn about Catholic practice, Jewish law and custom require little more in the matter.

Kevin Irwin's paper invites us to turn to Catholic law and custom on the disposition of the body after death. He is joined in his treatment of this theme by Father James H. Provost in his paper "Canonical Aspects of the Treatment of the Dead." By tracing the antecedents of contemporary practice, Father Michael Driscoll offers an historical justification for certain relevant standards of authentic practice. We learn from these three Catholic authors that the law and custom of Catholicism join with those of Judaism in requiring that the bodies of the dead be treated with respect, and that they be committed to the earth in anticipation of the resurrection. But, unlike Judaism, Catholicism places no specifically religious meaning on the acts and gestures associated with the preparation of the body for burial. Nor does it prohibit autopsies or, in contrast to its own strictures of an earlier era, cremation. In regard to the latter practice, it limits itself to the rather minimal requirement that the cremated ashes be committed to the earth or the equivalent (under some circumstances, for example, to the ocean) rather than scattered in the air.

We discover that Catholic law and custom on the disposition of the body have other primary concerns. Of most central importance is their regulation of the celebration of the funeral Mass or Mass of Resurrection. In this celebration, the community marks the passing of one of its members as an occasion of hope in the deceased's resurrection to eternal life. The liturgical event gives the community the opportunity to commend the deceased to the care of God and his angels, in a kind of final farewell.

Beyond the specifics of the funeral Mass, a reading of the papers collected here leaves the reader with the clear impression that the requirements of Catholic law and custom revolve, more generally, around the coordination of the physical location of the body in relation to the liturgical observance of the community. The Church, for example, regulates the body's placement in relation to the celebration of the Mass. It regulates the procession of the casket and worshipers from the place of the Mass to the place of burial. And it regulates the final placement of the body in consecrated ground. It passes judgment on who is to be permitted burial within a church (pope, cardinal or bishop) and who may not be buried in consecrated ground (notorious apostates, heretics, and schismatics, those who choose cremation for reasons opposed to the Catholic faith and other manifest sinners).

Both Judaism and Catholicism clearly perceive religious symbolism in the preparation and interment of the body, but Catholicism does not perceive the fullness of Jewish symbolism in all aspects of these activities, limiting itself to the terms of the body's placement before and at burial. Its focus shifts rather to the symbolism of the community's liturgical observance of the event of the death of its member. It would be of interest to explore whether parallels may fairly be drawn between the last confession or *Vidui* of the dying in Judaism and the Catholicism's final commendation of the deceased during the funeral mass. If so, the shift would seem to reflect in yet another especially interesting way the mediating role which Catholicism generally ascribes to the Church.

We learn that Judaism's commitment to the holiness of life finds expression in a ritual regard for the symbolism of defilement through contact with death. This Jewish attitude seeks to sustain a way of life defined by respect for life and the avoidance of futility and death. Catholicism also reflects a canonical concern for avoiding defilement, but it defines defilement differently. It concerns itself with avoiding the violation of consecrated places such as churches and cemeteries, and it seeks to do so by placing burial restrictions on certain types of persons whose mode of living to the end of their lives is sharply at variance with the moral values of the community. This Catholic attitude bespeaks a consistent respect for the sacramental efficacy of the Church as holy in its capacity to bind and loose sins. Thus the Church reserves the power to declare who is a notorious sinner or otherwise in bad standing in relation to the graces it mediates, and such persons are denied inclusion in the final liturgical rites of passage the Church provides.

As a final stage of concern with death and dying, law and custom in both Judaism and Catholicism regulate the remembrance of the dead. The papers of Mintz, Liberman Mintz, and Wachtel are sources for instruction about such law and custom within Judaism. The scope of such law and custom appears to be extensive. We learn that Jewish practice, again with its sensitivity to human feeling, foresees stages of grieving according to which the survivors withdraw from and gradually return to participation in social life and full religious observance. We learn that the survivors' prayers to God are specifically envisioned for those in their time of mourning, and that these prayers serve to commit the one mourning to faith in God. We learn that those mourning devote themselves at the time of the funeral service principally to eulogizing and remembering the deceased, and thereafter observe an annual remembrance of the deceased on the anniversary of his or her passing.

In their papers, Fathers Irwin and Provost set forth parallels existing within Catholic practice. Catholic practices of wake and vigil service, funeral Mass, and burial are sensitive to the emotions of those who are grieving over the person who has died. Current practice leaves room for eulogy and remembrance in this sequence of events. Beyond this, in keeping with the emphasis in post-conciliar Catholicism, the Catholic authors are notably silent about the traditional Catholic practices of praying for the dead. This is so even though, for thematic reasons, the conference at which this collection of papers was originally delivered took place in November, the month the Church devotes to the remembrance of the dead. In fact, reminiscent of the Jewish practice of annual remembrance, Catholics traditionally have devoted themselves to the commissioning of diocesan priests and priests in religious orders to pray and offer Masses annually for the dead, and memorial masses on the anniversary of death remain fairly common in many Catholic parishes. In Catholic countries, families traditionally spend the feast of All Souls on the 2nd of November at the graves of their deceased members. A reason for the recent de-emphasis on prayer for the dead within Catholicism may be the difficulty the Church has, under contemporary cultural conditions, in communicating the meaning of its doctrine of purgatory.

Thus far, this introduction has considered the contributions of the collected papers to the focal issue of how law and custom within Judaism and Catholicism regard death, dying, and burial. In addition to this core content, these papers also offer valuable ancillary insights on other related topics. In particular, several of the essays, i.e., those of Provost, Driscoll, Liberman Mintz, and Wachtel, undertake historical treatments of the topic offering glimpses of large vistas of historical experience lived within the traditions studied. For example, as David Wachtel traces the development of the present-day *hevra kaddisha* or burial society from the Jewish benevolent societies of the Middle Ages, he takes the reader from the Babylonian Talmud of the third to the fifth centuries CE, to the impact of the First Crusade on the Jews of the Rhineland in the eleventh century, to the writings of Nahmanides in the thirteenth century, to the rise and spread of kabbalistic mysticism in the sixteenth and seventeenth centuries.

In her study of the material culture of death, dying, and burial, Sharon Liberman Mintz relates sometimes hidden historical causes to explain Jewish behavior, as in her explanation of Jewish reliance on Christian depictions of Jewish practices by reference at least in part to medieval restrictions on Jews entering the guilds fostering printing and engraving.

She also offers numerous tantalizing details of changing fashion over time. She gives us such examples as the wrapping of one's head as a sign of mourning; the commissioning of silver goblets by burial societies; the adornment of the body of the deceased with elaborate lace and ribbons; the placing of pebbles atop tombstones when visiting the grave of a relative as a mark of respect; the placing of pottery fragments on the eyes of and mouth of the deceased to prevent him or her from "seeing" the misdeeds of family or from "repeating" them; and the throwing of grass over one's shoulder at the grave site for its biblical symbolism.

Father Driscoll's scholarly purpose is to trace an aberrant evolution in Catholic liturgical materials of late antiquity and the middle ages, from an attitude of simple confidence in the Christian message of resurrection hope to one, at times, of contempt for the body and obsessive concern with the possibility of divine judgment and condemnation. In the course of fulfilling this purpose, he, like David Wachtel, but now through a Catholic lens, introduces the reader to a rich panorama of historical detail. With Father Driscoll as guide, we move from Pope Gelasius of the fifth century to Popes Gregory and Honorius of the seventh, to Pope Hadrian of the eighth. In route through the sixth century, we encounter the tribal Franks, Burgundians, Ostrogoths, and Visigoths and in the eighth, we find ourselves considering Charlemagne and Alcuin. In considering manuscript source types, we contemplate the Sacramentary of Pope Gelasius of the fifth century (the Gelasian Sacramentary), the "Nuns' Ritual of Caesarius of Arles" of the sixth century, and finally the Gregorian Sacramentary, named for Pope Gregory the Great of the seventh century.

In his article, Father Provost stimulates further reflection by reference to historical detail, but consults history for different reasons than does Father Driscoll. He gains our attention with his answers to commonly asked questions about changing church policy. He explains, for example, why the Church imposed a blanket ban on cremation in 1866 and lifted it in 1963; why Catholic churches no longer necessarily have cemeteries attached to them; and why monarchs are no longer buried inside Catholic Church structures. His historical survey offers us glimpses of material culture, at points paralleling those of Sharon Liberman Mintz. We are thus intrigued to learn from him about the meaning of both catafalque and columbarium.

In addition to the meaning and history of law and custom immediately concerned with death, dying, and burial, the collected papers also provide significant insight into modes of social and financial organization

among Jews and within the Catholic Church, adopted for the care of the dying and the maintenance of burial observances. Thus, one learns much from David Wachtel about the social significance of the internal organization, hierarchy, and finances of the *hevra kaddisha*; Sharon Liberman Mintz about domestic life and family relationships among Jews throughout the historical periods she considers; and Father Provost about the fiscal and administrative structure of the ecclesiastical agencies overseeing burial and the upkeep of cemeteries.

Although the papers collected focus primarily on liturgical usage, they also deal with technical issues of legal interpretation of special interest to rabbis and canonists. Rabbi Freundel's paper, for example, contains numerous and fascinating examples of dilemmas in the observance of law, which he solves through a form of casuistry distinctive to his tradition. Father Irwin, for his part, sets out, definitively and with magisterial clarity, sources of law governing the liturgical matters he treats in his paper. He orients us generally to the shift that occurred at the time of the Second Vatican Council from an earlier model emerging at the Council of Trent, and then specifies that current Catholic practice is governed by the ritual, *Pastoral Care for the Sick: Rites of Anointing and Viaticum*, promulgated in 1972. He explains that this document is to be interpreted in keeping with its distinctive *praenotanda* and against the backdrop of the Constitution on the Sacred Liturgy of Vatican II and Paul VI's apostolic constitution, *Sacram unctionem infirmorum*.

Father Provost complements Father Irwin's technical discussions of formal liturgical norms governing the care of the dying, by providing an exposition of the canon law governing burial, explaining the relevant provisions of the 1917 and 1983 Codes of Canon Law. He uses changes in the norms governing cremation to illustrate changes in approach under the two versions of the code. He provides a particularly interesting discussion of how the application of new law may only reach stability and uniformity through a process of trial and error. The example he offers is that of a translator's error in a Vatican response published in the vernacular. He shows that a uniform interpretation and application of the underlying norm were reached only after a series of requests for exceptions from the norm by national bishops' conferences and corresponding responses by the Vatican.

The papers collected here thus offer a rich basis for further reflection not only on the nature of religion's response to questions raised by death and dying, but also on the function of law and custom on matters of central and perennial importance in two major religious traditions: Catholi-

cism and Judaism. As such, they would appear to offer a welcome point of departure for general ecumenical discussion on the similarities and differences between these two family groupings of elder and younger brothers and sisters in the faith of Abraham. The papers would seem to generate, as well, countless other questions, worth pursuing, about the history and social organization of these same religions. Each paper which follows has its own worthwhile contribution to make on at least some of these questions. One may suggest with confidence that the reader will benefit in studying each with care.