

TATTOOS, JEWISH BURIAL AND PERMANENT MAKEUP

by Rabbi Dr. Nachum Amsel June 3, 2018

This essay is reprinted from the book, "The Encyclopedia of Jewish Values" published by Urim, or the upcoming books, "The Encyclopedia of Jewish Values: Man to Man" or "The Encyclopedia of Jewish Values: Man to G-d" to be published in the future.

When tattoos were originally banned by the Torah, this action, in almost all cases, had the connotation of something religious and non-Jewish. Today's tattoos are put on the body, by and large, as fashion statements, whims of the moment, or just for fun. Therefore, would they be permitted today in Jewish law, or would tattooing violate the spirit of Jewish values? What about cosmetic tattooing and permanent or semi-permanent makeup? Would these be permitted or prohibited from a Jewish perspective? And what are the underlying values that would allow or forbid a tattoo today?

In addition to these questions, there is a "Jewish old wives' tale" when it comes to tattoos. Sometimes, these "legends" that have come down through the ages, mostly by non-observant Jews, have some basis in fact or in Jewish law. Other times they have little basis in Jewish law, but are somewhat related. And occasionally they are total fabrications. For example, almost all Jews and non-Jews who know anything about Jews and Judaism are aware that Jews are forbidden to eat pork. While this is certainly true and the prohibition to eat pork is found explicitly in the Torah, pork or ham are no more forbidden than many other foods and no more forbidden than mixing linen and wool in one garment, which is a little-known Jewish law outside of traditional Jewish circles. Another "Jewish old wives' tale" is that a person should not go swimming on the fast day of Tisha B'Av, which in most Jewish communities falls out at the height of summer. Many people who know nothing else about Judaism, or do not know anything about Tisha B'Av and the Temple's destruction, seem to be aware of this law-custom. While it is true that swimming is forbidden on Tisha B'Av, this is only a custom, probably linked to the custom not to go swimming during the entire Nine Days, the period leading up to Tisha B'Av, and certainly not a violation of Jewish law like eating any food on the fast day of Tisha B'Av. Yet, there are people who know about not swimming on Tisha B'Av, but are unaware that eating is forbidden on this day.

In the same vein, there is a notion that Jewish people who have tattoos cannot be buried in a Jewish cemetery. This is such a common notion that two popular TV shows in the last twenty years expressly dealt with this issue. On one show "The Nanny" (Season 4, Episode 9, aired November 20, 1996) described someone who wanted to get a tattoo, and then the Jewish nanny, Fran, stated that if this person gets the tattoo, she will not be able to be buried in a Jewish cemetery. On a more recent show, "Curb Your Enthusiasm", one episode (Season 3, Episode 6, aired October 20, 2003) depicted the death of Larry's mother (who was Jewish). Larry discovers that the funeral already had taken place, and that because of her tattoo, she was not buried in the regular Jewish cemetery but rather in a "special section" reserved for villains and the like. What is the actual view about the proper place for burial of Jews with tattoos, and what is the basis, if any, of the notion described above by Jews with minimal backgrounds?

THE GENERAL PROHIBITION OF TATTOOS AND ITS REASON

The Torah prohibits a Jew from writing a tattoo upon his or her body.¹ Although the Torah does not give a reason for the prohibition, Rashi implies a reason,² as he explains that it was the custom of idol worshippers to scar their bodies as a ritual of mourning (the prohibition in the first part of the verse). Consequently, non-Jews must have written words in the tattoos on their bodies also as a death or mourning ritual. In the Talmud, Rashi explains this prohibition more clearly,³ and says that there was a form of idol worship to permanently imprint the name of their G-d on their bodies. Based on this idea, any permanent marking on the body is prohibited, no matter the purpose or origin. Sefer HaChinuch says this was a practice of Arabs in his time – to make a permanent tattoo on their skin as a sign of dedication to the non-Jewish G-d.⁴

Maimonides, in codifying this prohibition,⁵ explains that it was the custom of idol worshippers to permanently write on their flesh that they were servants of their G-ds. He adds, as will be discussed below, that the tattoo includes both the cutting of a permanent indentation in the flesh and also writing in that indentation with permanent ink. But it seems clear that even if the intention had nothing to do with any form of idol worship, a Jew is still prohibited to put a tattoo on his or her body.

THE PROCESS OF TATTOOING AND THE SPECIFIC PROHIBITION

Human skin consists of two principal parts, the epidermis and the dermis. The outer, thinner epidermis contains four or five cell layers, while the inner dermis is made up of two portions: the upper, papillary region and the reticular region. Tattoos are generally made by introducing ink into the (deeper) dermis portion of the skin. The dermis sheds cells at a much slower rate than the epidermis, and, thus, can retain tattoos for a long period of time, even a lifetime. The Mishna makes clear⁶ that both the skin must be cut down to the inner portions of the dermis and then permanent ink must be written into that cut, in order to violate the Torah prohibition. Rabbi Shimon in that Mishna says that the name of the G-d of the idol worshipper must be the word(s) written, in order to be guilty of the Torah sin, but this appears to be a lone opinion. Any writing deep into the skin is a violation and a sin. Rashi's commentary on the Torah verse explains that the writing must be permanent and written with a needle into the skin,⁷ while in his commentary on the Talmud, he reinforces the idea that it must be permanent and the ink must penetrate the deepest portion of the skin, whether using a needle or knife.⁸ Rosh reinforces the concept that both elements must be present in order to be prohibited.⁹ Thus, for example, an ink mark that does not penetrate the skin, such as a stamp of an amusement park (to allow a person's return if he or she needs to leave for a few moments), is perfectly permissible, since there is no penetration into the skin and no permanence to the markings.

¹ Leviticus 19:28

² Rashi commentary on Leviticus 19:28

³ Rashi/Rivan commentary on Makkot 21a

⁴ Sefer HaChinuch, Mitzvah 253

⁵ Maimonides, Hilchot Avodah Zara 12:11

⁶ Mishna Makkot 3:6

⁷ Rashi commentary on Leviticus 19:28

⁸ Rashi commentary on Mishna Makkot 3:6

⁹ Rosh commentary on Gittin 20b

Tosafot seems to disagree, and says that even if it is not technically a tattoo that fulfills the criteria listed above, but if it merely looks like a tattoo, it is forbidden as a rabbinic prohibition.¹⁰ This is based on the opinion of Rabbi Ada bar Ahava,¹¹ who says that it is prohibited to place ashes in a wound to soothe it simply because it appears to be a tattoo, since a color is made on the skin, even though it is not actually a tattoo. Ritva's commentary on the Talmud states that the order of making the tattoo is of no consequence, and even if the ink is first placed on the skin and then the cut is made which establishes the tattoo, it still violates the Torah prohibition.¹² While reiterating that both aspects of the process are necessary (the cutting of skin and filling it with ink or dye), Maimonides seems to disagree with Ritva, and states that the Torah prohibition is violated only if one first makes the deep mark in the skin and then fills it, and not vice versa.¹³ A later authority, Rabbi Yosef Babad (1800-1874), clearly sides with Ritva and says that the order of the creation of the tattoo makes no difference.¹⁴ Shulchan Aruch, the Code of Jewish law, does not comment on this controversy, but does rule against Tosafot and says that putting ashes on a wound is indeed permissible, even if looks like a tattoo.¹⁵

IS A PICTURE TATTOO A VIOLATION OF JEWISH LAW OR MUST IT BE WRITING?

As mentioned above, the origin of the prohibition of tattooing in the Torah is in writing the name of a non-Jewish G-d on one's skin. Although any tattoo, even not for this specific purpose, is prohibited in Jewish law, must the tattoo consist of letters in order to be prohibited, or would a picture tattoo alone, the common form today, also be prohibited in Judaism? The wording of the Mishna, quoted above, seems to address this question.¹⁶ It seems in the Mishna that all agree that the violation from the Torah occurs only if letters are permanently written onto the body. Although there is an argument between the first opinion and Rabbi Shimon about where the name of the idol G-d must be written to incur the sin, even that first opinion in the Mishna, which does not require a name of G-d to be written, still uses the verb "to write" in describing the sin, implying the use of letters. The Midrash also uses this verb, and the prohibition itself is called the "writing" of a tattoo.¹⁷ However, in one Talmudic passage cited earlier, Rav Ada bar Ahava stated that filling a wound with ashes is forbidden because it appears like a tattoo.¹⁸ In that case, it is clear that no letters were written, and at most filling in a wound looks like a picture tattoo, and yet it seems to be considered a tattoo. This implies that an actual tattoo of a picture is forbidden.

Based on a statement in the Tosefta, the Shulchan Aruch rules that a person who imprints a brand on his servant/slave in order to mark that this person is his servant and not someone else's, is not guilty of making a tattoo.¹⁹ It is not clear from this ruling if the mark made on this person's body is a letter or a mark resembling a non-lettered picture. It is possible that the reason this marking is not considered a tattoo is that it is "only" a picture and not a letter. Rabbi Moshe Isserles adds that for the Ashkenazim, making this mark on a servant/slave is

¹⁰ Tosafot commentary on Gittin 20b

¹¹ Makkot 21a

¹² Ritva commentary on Makkot 21a

¹³ Maimonides, Hilchot Avodah Zara 12:11

¹⁴ Minchat Chinuch, 253:1

¹⁵ Shulchan Aruch, Yoreh Deah, 180:1, 3

¹⁶ Mishna Makkot 3:6

¹⁷ Midrash Sifra, Kiddushin 6:10

¹⁸ Makkot 21a

¹⁹ Tosefta, Makkot 2:9, Shulchan Aruch, Yoreh Deah, 180:4

indeed forbidden. Could this argument in Shulchan Aruch between these two opinions possibly rest on the question of whether a picture marking violates the sin against making a tattoo? It is not clear.

Rabbi Avraham Eisenstadt (1813-1868), who wrote a later commentary on the Shulchan Aruch, raises this specific question: Must a Jew actually write letters to violate the tattoo prohibition or is a picture sufficient for the violation²⁰? After quoting various opinions, he concludes that even permanently writing one letter on the skin is enough to violate the Torah prohibition of tattoos, but a picture is not a Torah violation. He implies, however, that a picture is a rabbinic violation (most prohibitions in Jewish law today are rabbinic violations). Minchat Chinuch seems to agree that if it is a picture, it is a prohibited tattoo, but only if the image is complete like a complete letter, and not a broken image.²¹ A twenty-first century rabbi and expert in Jewish law also discusses the subject of tattoos at length, and brings up this issue of whether or not a picture tattoo is a sin.²² He concludes that there are many legitimate opinions on each side of the question, but a picture tattoo is certainly forbidden, if only as a rabbinic prohibition.

IS SEMI-PERMANENT MAKEUP CONSIDERED A TATTOO AND PROHIBITED?

Over the last few years, a phenomenon has developed where women undergo a treatment of semi-permanent makeup that lasts for about three years. Based on the majority view that even a picture without letters is prohibited (even if only rabbinically), would this process be a violation of the process of tattooing? What precisely is this process and what do the rabbis have to say about this?

In the procedure called derma pigmentation or cosmetic tattooing, a needle deposits colored pigments made from iron oxide into the skin's dermal layer (the lower layer between the permanent base layer and the constantly changing epidermis or top layer). One of the main issues regarding this controversy is the question of permanence. As discussed and concluded above, unless a tattoo is of a permanent nature, it is not forbidden. Both Rashi²³ and Chinuch²⁴ stress this aspect of the prohibition – i.e., that if the tattoo will eventually come off, it is permitted. Thus, if the cosmetic markings last only three years, there should be no prohibition whatsoever, as this is not considered permanent. Yet, there are various sources that show that the word and concept of permanence in Jewish law, "*Le-olam*", need not be literally forever.

For example, in order to violate the Shabbat prohibition of tying a knot, the knot must be permanent. Rashi stresses this aspect of the sin in his Talmudic commentary.²⁵ However, less than one page later in the Talmud,²⁶ Rashi states that he considers a "permanent" knot any knot that can come apart even after a week or a month. Thus the "forever" of *Le-Olam* in Jewish law may just be referencing a long time, but not actual permanence. The Torah itself teaches us this concept when it comes to a Jewish servant/slave who wishes to remain with his master after six years, after which he is free to leave. The Torah says that if he prefers to stay beyond this time,

²⁰ Pitchei Teshuva on Shulchan Aruch, Yoreh Deah, 180

²¹ Minchat Chinuch, 253:5

²² Siach HaSadeh, Patshegen Haketav, 8, page 79

²³ Rashi commentary on Leviticus 19:28

²⁴ Sefer HaChinuch 253

²⁵ Rashi commentary on Shabbat 111a

²⁶ Shabbat 112a

he remains in the master's home *Le-olam*-forever. Yet, all authorities agree that "forever" ends with the Jubilee year.²⁷ Thus, just as "forever" can be a few years (or a month) in regard to other Jewish laws, perhaps it is the same concerning makeup. Three years may be considered "forever," which would render this makeup procedure forbidden.

Since this question deals with a relatively new procedure, several expert rabbis in Jewish law have discussed this issue only recently. Rabbi Natan Gestetner specifically states that this procedure is forbidden because three years is considered "forever" and permanent in Jewish law, as demonstrated above.²⁸ Rabbi Wosner agrees with this ruling, but for different reasons.²⁹ In addition to the prohibition of tattooing, he writes that this procedure constitutes excessive makeup, which in and of itself is forbidden, quoting the Talmudic passage that states that women who wear too much makeup was one of the causes of the destruction of the Temple.³⁰ On the other hand, Rabbi Avigdor Nebenzhal, Former Chief Rabbi of the Old City of Jerusalem, permits this semi-permanent makeup³¹ because it does not consist of any written letters, the essential violation of tattooing (as noted above) and it does not last forever, which is the actual prohibition of tattooing. Similarly, in oral communications and unpublished responsa, Rabbi Yaakov Ariel permits semi-permanent makeup for the same reasons (*Birkat Chaim*) as does Rabbi Ovadia Yosef (*Taharat Habayit*, section 3, page 29).

REMOVAL OF TATTOOS: RIGHT THING TO DO?

In recent years, the Baal Teshuva (return to Jewish tradition) movement has seen thousands of Jews embrace Jewish law and practice. Many of these individuals had acquired tattoos before they adopted their current Jewish lifestyle. Keeping a tattoo, which is a constant visible reminder of a past that most repentant Jews would like to forget, seems like it causes unnecessary psychological pain that most people would prefer to avoid. Thus, many of these newly observant Jews would want to remove their tattoos. On the other hand, causing intentional damage to one's body is forbidden (see chapter on Dwarf Tossing) which seems to make the removal of a tattoo forbidden.³² What should a Jew do who is embarrassed by his or her tattoo?

This issue is discussed by various rabbis. It is clear that the Torah prohibition is on placing the tattoo into the skin in the first place, but once created, there seems to be no obligation to remove it. (This is true with many sins -- i.e., that once the sin is committed, there is no obligation to remove or undo the sin. The most notable example of this is a hybrid fruit, which is forbidden to create in the first place, but once it has been created, it may be eaten.) But the question remains: may a person who is embarrassed by the tattoo, have it removed?

Long before the Baal Teshuva movement became popular, this question was asked by Holocaust survivors right after World War II, who were embarrassed by the numbers that had been tattooed on their arms by the Nazis. Rabbi Ephraim Oschry (1914- 2003), who wrote the classic work on questions concerning the Holocaust, writes³³ that a survivor should not remove

²⁷ Exodus 21:6 and Rashi commentary

²⁸ Responsa Lehorot Natan 10:64

²⁹ Responsa Shevet HaLevi, Yoreh Deah 137

³⁰ Shabbat 62b

³¹ Techumin 18, page 118

³² Mishna, Bava Kama 8:6. Maimonides, Hilchot Chovel Umazik 5:1

³³ Responsa Mima-amakin 4:22

the tattoo for various reasons. Already at that time people were claiming that the Holocaust did not really occur, and it was important that the survivors retain their tattoos to show and prove what they had endured. In addition, he tells survivors to wear that tattoo as a badge of courage and not embarrassment, suggesting that this is symbolic of the ultimate triumph of Judaism over the Nazis attempted genocide.

Rabbi Gestetner, after citing the concepts mentioned above, states that it is permitted to retain a tattoo that was created in sin and that, in general, one is forbidden to harm himself and cause pain (which takes place in the removal of the tattoo). Nevertheless, he allows the tattoo to be removed,³⁴ even though it is a painful procedure. The pain, he states, can be regarded as an atonement for the person's sordid past, and shows that he or she now wants to lead an exemplary life. Rabbi Ephraim Greenblatt agrees with this assessment³⁵ and stresses that keeping the tattoo will cause psychological pain to the tattooed individual in his new observant lifestyle. Thus, he permits its removal. There is a story of a newly observant Jew who wishes to go, for the first time, to immerse himself in the Mikva (ritual bath) on the day before Yom Kippur, as is the custom. But he is embarrassed because he has a tattoo on a place on his body that is not usually seen. A man who is already in the Mikva notices his trepidation and hesitation, and tells this young man not to be embarrassed as he also has a tattoo. He then shows him his arm, with its number tattooed by the Nazis.

Rabbi Yaakov Weiss (1901-1989) discusses a rather unusual circumstance regarding this issue. A man, in his non-observant days, had a tattoo of an unclothed woman put on his left forearm. Now, each time he wants to put his Tefillin on this forearm, he will see this tattoo. Rabbi Weiss was asked if he must remove this tattoo.³⁶ Rather than order this person to have the tattoo removed, Rabbi Weiss rules that as long as the tattoo is covered during the blessing on the Tefillin, it is permissible to wear Tefillin over this tattoo. He says that an effort should be made to cover as much of the tattoo as possible while wearing the Tefillin, but he does not rule that the tattoo must be removed.

BURYING A TATTOOED PERSON A JEWISH CEMETERY: ANY QUESTION?

Prior to discussing the specific question of burying a person with a tattoo in the "Jewish section" of the cemetery, the more general discussion of burying sinners in a Jewish cemetery needs to be addressed. Already in the Mishna, there is a statement that Jews should not to bury sinners in the regular Jewish cemetery.³⁷ But this reference is specific to sinners who have died because of capital crimes at the hands of the Jewish court. This law is derived from the incident in the Bible, where the body of a false prophet was thrown into the Prophet Elisha's grave, and it then arose from the dead because G-d did not want the sinner buried with Elisha the prophet.³⁸ The Talmud expands this specific concept to a generalization, by saying that righteous people should not be buried next to evildoers, and even those evildoers guilty of more radical

³⁴ Responsa Lehorot Natan 7:72

³⁵ Responsa Revevot Ephraim 8:306

³⁶ Responsa Minchat Yitzchak 3:11

³⁷ Mishna Sanhedrin 6:7

³⁸ II Kings 13:20-21

and harsh sins should not be buried next to "mild" evildoers, guilty of lesser sins.³⁹ This concept is later codified in Jewish law, in the Shulchan Aruch.⁴⁰

In practice, however, in the past few hundred years at least, there was never a policy of setting up multiple Jewish cemeteries, or of burying a sinner in a different cemetery from other Jews. There might be several reasons for this. First, there is a long tradition that death itself serves as an atonement for sins, even for severe sins.⁴¹ If this is the case, then the sinner being buried is no longer a sinner, and just as righteous as the person who lived a righteous life. Thus, all Jews should be buried together, since they are no longer sinners. Second, the Jewish law, as quoted by Shulchan Aruch, seems impossible to enforce. Who is to determine who was a sinner during life? Who was a severe sinner? Who was a righteous person? If all Jews who sinned were not buried in a Jewish cemetery, there would be very few Jews buried in any Jewish cemetery in the world. Therefore, the practice was clearly to bury all Jews in the same Jewish cemetery.

There used to be one possible exception to this rule. Those people who died by committing suicide, a sin in Judaism sometimes equated with murder (since our bodies are not our own, but belong to G-d), were to be buried outside the Jewish cemetery (actually on its outskirts). This is based on the Mishna⁴² which recalls the suicide of Achitofel,⁴³ and says that he lost his share in the World to Come because of his sin. This practice is codified by later authorities in Jewish law.⁴⁴ Why is burial outside (or on the outskirts) of the Jewish cemetery practiced only regarding this specific sin? The reason may be that this is one sin for which no one can claim that the death of this person is an atonement since the sin itself is causing the (unnecessary) death. However, this custom was discouraged in practice by almost all Jewish legal authorities. In more modern times, its disregard is based on medical reasoning: since most people who commit suicide have a psychological condition or reasons that drive them to this unfortunate act, they are not considered of sound mind when they kill themselves and are thus deemed not culpable according to Jewish law, and not considered sinners. Therefore, in practice, all suicides today are indeed buried in the Jewish cemetery with other Jews.

Where does that leave us regarding Jews who tattooed themselves and sinned in this manner? Is there any basis to deny them burial in a Jewish cemetery along with all other Jews? In a word, no. Their sin of tattooing is no worse than many other sins, including those Jews who ate pork, for which no one has ever claimed that ham eaters should not be buried in a Jewish cemetery. The majority of Jews who are buried in Jewish cemeteries around the world are sinners of some kind who committed sins no less than anyone with a tattoo. What, then, could possibly be the reason that this "old wives' tale" began and continues to be promulgated? In a conjecture by the author, it is possible that just as suicides, who died with sins committed to the body, were at one time shunned, those who died with tattoos, also a sin to the body, might have been equally shunned. It is also possible that the *Chevra Kadisha* (the Jewish Burial Society) in some cities might have refused, at one point, to perform the *Tahara*-washing ceremony prior to every burial on Jewish bodies that had obviously sinned, and the evidence of that sin remained

³⁹ Sanhedrin 47a

⁴⁰ Shulchan Aruch, Yoreh Deah 362:5

⁴¹ Maimonides, Hilchot Teshuva 1:4

⁴² Mishna Sanhedrin 10:12

⁴³ II Samuel 17:23

⁴⁴ Sifte Cohen commentary on Shulchan Aruch, Yoreh Deah 345:1

on the corpse. And from there the legend might have grown. But no *Chevra Kadisha* today refuses to perform a *Tahara* or refuse to bury anyone with a tattoo in a Jewish cemetery.

WHO IS GUILTY – THE TATTOOER OR THE TATTOOED PERSON?

Until now, we have discussed the sin of tattooing and have assumed that the person tattoos himself or herself. But we know today that tattooing is a professional and lucrative business, performed by professionally trained tattoo experts, and rarely does the person making the tattoo do it to himself or herself. If a Jew walks into a tattoo parlor and asks the professional to create for him or her a tattoo that is forbidden by the Torah (or the rabbis), who is guilty – the person getting the tattoo, or the person doing the forbidden act?

Clearly in earlier times, the person who created the tattoo was always the same individual who received the tattoo, as Maimonides describes the person who tattoos his own body for reasons of idol worship.⁴⁵ But the Tosefta discusses our question:⁴⁶ who is guilty if a different person creates the tattoo? If both people took an active role in the process – i.e., one person ordered the other to make the tattoo – then the Tosefta says both are guilty of the sin. Maimonides, in the same passage quoted above,⁴⁷ states that if the tattooed person was unaware or had no part in making of the tattoo, then he or she is not culpable. Shulchan Aruch agrees, and rules⁴⁸ that if the person that receives the tattoo had no part in it, then he is not guilty at all. But if he or she helped in the process in any way, or asked that it be created on his or her body, then both the person receiving the tattoo, as well as the person making the tattoo are guilty.

Rabbi Dr. Nachum Amsel currently works with Rabbi Berel Wein and the Destiny Foundation as the Director of Education, whose mission is “to bring Jewish history to life in an exciting, entertaining and interactive way.” Rabbi Amsel has also served as a teacher, a school principal, and an adjunct professor. He has also taught over 2000 educators how to teach more effectively. Rabbi Amsel has worked in all areas of formal and informal Jewish education and has developed numerous curricula including a methodology how to teach Jewish Values using mass media. Recently, he founded the STARS Program (Student Torah Alliance for Russian Speakers), where more than 3000 students in 12 Russian speaking countries learn about their Jewish heritage for five hours weekly. Rabbi Amsel previously served as the Educational Director of Hillel in the Former Soviet Union. He lives Jerusalem with his wife and has four children and three grandchildren.

⁴⁵ Maimonides, Hilchot Avodah Zara 12:11

⁴⁶ Tosefta Makkot 3:9

⁴⁷ Maimonides, Hilchot Avodah Zara 12:11

⁴⁸ Shulchan Aruch, Yoreh Deah 180:2