

# Was the burial of Jesus a temporary one, because of time constraints?

Glenn Miller

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I received two questions about this, referring to two articles by friends of mine (Jeff Lowder, Richard Carrier). Here are the questions that came in:

**I would like you when you get the chance to do a rebuttal of Jeff Lowder's Article on Jesus being moved after the first burial of his body.**

**[http://www.infidels.org/library/modern/jeff\\_lowder/empty.html](http://www.infidels.org/library/modern/jeff_lowder/empty.html) ...This has bothered me a little lately and I have not seen any good rebuttals of it so far!**

And this one:

**A skeptic has argued that Jesus was reburied on Saturday night and his body could not have been in the tomb Sunday morning.**

**He posted this site: <http://www.secweb.org/asset.asp?AssetID=125>**

**This is an excerpt from the site:**

**"Such use of 'temporary tombs' is attested in the Semahot, where temporary burial is implicit in the rule that "Whosoever finds a corpse in a tomb should not move it from its place, unless he knows that this is a temporary grave" and in the story told that "Rabban Gamaliel had a temporary tomb [lit. 'a borrowed tomb'] in Yabneh into which they bring the corpse and lock the door upon it," just as Joseph does with Jesus, "Later, they would carry the body up to Jerusalem." [20] This means that, as there was a commandment to bury the body the night of death, except when something like a Sabbath intervened, Joseph would have been required to place Jesus in a temporary grave and formally bury him Saturday night. So the body could not have been in Joseph's tomb Sunday morning when all four Gospels claim the women visited it. Though they find it empty, by then his body would have to be, by law, in the graveyard of the stoned and burned."**

Jeff's article contains many more important issues than just that of the **re-burial thesis** (since his article is more an analysis of Dr. Craig's *broader* defense of the Empty Tomb story), and I will have to contain my remarks to an examination of the argument *common to* Jeff and Richard, dealing with the re-burial thesis. Jeff uses the same sources as Richard does (and I cannot find any divergence of argument in the relevant section of his article), so I feel comfortable treating Richard's article alone. Richard's article is focused specifically/exclusively on the re-burial scenario, and his article contains the most detailed defense and development of the case for re-burial (of the two), so I will focus on it. I personally enjoy both the writings and occasional email exchanges I have had with Jeff and Richard, and always profit from reading and thinking through their material. This topic is also of interest to me, since I have not seen this argument before.

The layout of Richard's argument is something like this:

1. He defends the use of Rabbinic materials to reconstruct the laws of burial at the time of Jesus. ("The Sources for Jewish Law")
2. He argues that Jewish law was still in force (including capital and burial law), even under Roman Rule. ("Jewish Law under Roman Rule")
3. He describes, from the rabbinics and other literary sources, that the bodies of executed criminals were invariably buried by sunset. ("Down by Sunset")
4. He describes the rabbinic stipulations concerning a special 'graveyard of the condemned', into which Jesus should have been buried. ("Graveyards of the Condemned")
5. Next, he gives an explanation of 'temporary burial', in which a body was placed in the holding/staging area, until proper burial could be resumed --due to Sabbath restrictions on burial procedures. And he understands the actions of Joseph of Arimathea to be simply placing the body there **temporarily**, with **full intentions of moving it** and burying it in the Graveyard of the Condemned at the end of the Sabbath --Saturday night--due to exigencies of time. ("Storage of a Body")
6. He distinguishes between Temporary and Secondary Burial, arguing that Joseph's action was **not a real burial at all**. ("Temporary Holding vs. Secondary Burial")
7. His final section discusses the Jewish emphasis on the "third day", as the measure of death's actuality. ("On the Third Day").

Astute observers will no doubt recognize an *immediate* problem (still present in the updated article) with the apparent inconsistency between points 3 and 5/ 6. The rabbinic data that Richard carefully adduces does **not** argue that the corpse must be "**down**" by sunset, but rather "**FORMALLY BURIED**" by sunset. (The 'buried' word appears in all the sources he cites: Deut, Mishnah, Josephus.) To make such a good case for this, and then turn around and argue that Joseph only 'stored the body'--WITHOUT actually "rabbinically burying" it--creates a huge potential problem for his position. **If he didn't legally bury** the body, then J of A violated this allegedly sacrosanct moral boundary (which created the 'time urgency' needed for Richard's argument to begin with); **if he DID legally bury** the body, then he didn't bury it in the 'graveyard of the condemned' like he was supposed to (which was what originally created the 'need to re-empty the tomb' for Richard's argument)...As we shall note below, the only acceptable reasons to delay burial were *to increase the honor of the burial* (certainly not applicable in Jesus case)...See the initial problem?

But let's go ahead into the analysis...

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Before we get into the substance of his argument, let us note that Richard has added a helpful clarification of the point of his updated article. He explains that he is not trying to prove that his scenario of the temporary storage is what 'actually happened', but rather that it is a 'possible natural explanation' for the empty tomb story, based upon the sources.

This is all well and good, of course, but I would like to point out that 'possible' (when used by historians) is different than 'possible' when used by scientists. A scientist might use possible to mean something like 'conceivable' or 'with a smidgeon of statistical probability among alternatives', whereas a historical normally means 'plausible' or something 'predictable, given the historical situation'. For a scientist, for example, it is 'possible' that Jesus was crucified like every other victim of the time: He suffered on the Cross for 2-4 days before expiring, wasn't taken down during Passover, and gradually decomposed on the Cross over the next year or so--as a warning to Jews. This is what 'normally' happened to Roman victims. It is a natural 'possibility' (even though it contradicts the sources and historical situation).

On the other hand, historians would not call that a 'possibility'--because it is not a 'plausible' scenario. The strictures of culture and custom of the day--in the Roman province of Judea--would have rendered this outcome 'statistically unlikely'. Of all the 'naturally possible' scenarios, only a few will be actually 'plausible' or 'preferable'. The more the scenario predicts the 'texture' of the resulting historical 'residue', the more plausible the scenario will be considered.

Applying that to our case here, the most plausible scenario--historically speaking--will be that which (a) explains the texture of the New Testament and the rise of the faith of the early believers; and which (b) does not contradict known 'fixities' in the given culture/historical situation.

The overall nature of Richard's argument will be that the 'fixities' in the cultural situation (i.e., the legal system described in the rabbinics) will preclude the body of Jesus still being in the tomb when the women arrive on Sunday morning. Of course, his position will *also* require **dismissal** of the elements in the gospel accounts which portray the tomb location as being known by others than Joseph: Nicodemus, the likely burial 'company' involved, any household servants involved, the authorities (who conceivably accompanied them, given the portrayal of their paranoia), and the women--most of whom are mentioned are implied in the gospel narratives. [This is a separate problem, and the required 'fabrication' of the gospel narratives I simply cannot take up here in detail.]

The issue for our article, then, will be a simple one: do we have adequate reason to believe the legal situation/context Richard depends on for his argument *actually exists*, and at the same time, are there that render the normal applicability of that alleged legal/cultural situation invalid?

**First, and most importantly, we should note the [deeply problematic use of rabbinical literature for understanding this period, with much of modern scholarship in sharp disagreement with the position taken by Richard](#) .**

We live in a post-Neusner world! Modern confidence in being able to decide whether/how a particular passage in the Rabbinics applies to pre-70 Judaism(s) has been severely reduced, due to the methodologically rigorous work of Neusner, his students, and even his combatants (e.g. E.P. Sanders). Scholars publishing in the last two decades of the twentieth century have *consistently* issued 'disclaimers' and offered 'caution' in their use of this material, largely due to the work of Neusner and Co.

Consider this lengthy description of the problem, from his *Introduction to Rabbinic Literature* [[HL:IRL:653](#)]:

"Now to generalize: with documents such as those of rabbinic Judaism, bearing no named author, coming to us in an indeterminate and sparse textual tradition, we have **yet to formulate a valid means for dating**, or even a clear definition of what we might mean by assigning a date to a document. It is easier to explain what we do not now know than to define what we should want to find out. This minimalist position of course contradicts the maximalist one that reigns in the standard accounts of rabbinic documents and their dates.

"That position assigns very specific dates to the various rabbinic documents; **these assignments take for granted a position rejected by nearly the entire academic world, which is**, believe everything unless you find reason to doubt something, the formulation regnant at last glance in the Jerusalem school, the Jewish seminaries of the United States, and other centers of the study of Judaism **other than academic ones**. **Since all documents present numerous attributed statements, we date the various documents in accord with the assumed dates of the authorities that are cited in them. Now this conception, gullible and primitive and nearly universally rejected**, yields groupings of documents, e.g., before 200 are "Tannaite" in that all **the authorities in said compilations are assumed to have flourished in the first and second centuries**. Not only so, but **attributions date sayings within documents**, so the date of 200 signifies not only closure at that time but also the latest date for whatever is unattributed in the document; much that is in the document, in accord with this theory, is much earlier.

"Most talmudic historians, and all of them in the State of Israel, **accept as fact all attributions of sayings and therefore assume that if a document's authorship presents a saying in a given sage's name, that sage really made such a statement, which therefore tells us what he, and perhaps others, were thinking in the time and place in which he lived.** A corollary to this position is that a saying that bears no attribution is "earlier than" a saying that has one. Hence what is anonymous is older than what is assigned (how much older depends on the requirement of the person who assumes that fact). If, for instance, we have a named saying and, in context, an anonymous one that bears a contrary view, the anonymous saying is not deemed contemporary with the named saying on the same topic but earlier than the assigned one. It goes without saying that much energy goes into restating these propositions, but not much has been invested in demonstrating them. That is because they lie **far beyond the limits of the evidence.** Still, these two complementary positions presuppose a literary process in which sayings circulated independently of the documents in which they (later on) are written down and took shape within the circle of the disciples of a master to whom they are attributed. **The position on the literary process that yields the documents that now contain these sayings has not yet been squared with the literary traits of those same documents, and analysis of those traits scarcely sustains the hypothesis of inerrant attribution and its corollary.** These results of course also dictate the dates of documents. Tannaite documents contain only authorities who occur in the Mishnah, so they all are supposed to originate before ca. 200, **even though, as a matter of fact, they ordinarily cite the Mishnah and therefore ought to be dated later than the Mishnah, after 200, and I think, much later.**

"I do not exaggerate. Consult any encyclopedia, and you will find that the Mishnah was redacted in 200, the Talmud of Babylonia in 500, and so on and so forth. One consideration makes improbable the certainty that presently prevails. **The established protocol for dating a document rests on the premise that statements attributed to a given rabbi really were said by a historical figure,** at a determinate time, and so permit us to date the document at the time of, or just after, that figure; if all the rabbis of a document occur in the Mishnah as well, then that document is assigned to the period of the Mishnah and given a date of ca. 200. If the last-named rabbi of a document is assumed to have lived in ca. 500, then the document gets the date of 501. **In general, documents presently are dated by reference to the names of the authorities who occur in them,** e.g., if the last-named authority is a rabbi who flourished in the Mishnah's period, the document as a whole is assigned to "Tannaitic times:" that is, the first and second centuries, when, it is generally supposed, the Mishnah came to closure. **But that date then presupposes the reliability of attributions and does not take account of pseudepigraphy in the rabbinic manner. The same sayings may be assigned to two or more authorities; the Talmud of Babylonia, moreover, presents ample evidence that people played fast and loose with attributions, changing by reason of the requirements of logic what a given authority is alleged to have said, for instance. Since we have ample evidence that in later times people made up sayings and put them into the mouths of earlier authorities** (the Zohar is only the best-known example!), **we have no reason to assign a document solely by reference to the names of the authorities found therein.**

"But no other basis for dating documents--than gullibility about their contents-- has yet been devised, and **since language usages are dated** (in the Judaic and Jewish institutions) **in accord with the dates of sages to whom sayings are attributed, dates that derive from Gaonic historians who flourished half a millennium after the times of those to whom they assign precise dates, philology provides no help whatsoever.** Not only so, but the **so-called philological dating, based on language usages, rests on precisely the same premise.** If a saying is attributed to Aqiba, that means the usage of language in that saying attests to first- or early-second-century conventions, and, consequently, other such usages also place the documents that contain them in the first or

early second century. **What we have therefore is simply an extension, to the dating of documents and of their contents, of the familiar gullibility and credulity of talmudic studies:** our holy rabbis really made these statements, so the rest follows."

Compare the statements of Marc Bergman, in "Pseudepigraphy in Rabbinic Literature" [[HI:PPAPLDSS](#)], in which the foundation of dating (attribution) appears gossamer:

"Considering the fact that the Rabbis seem to have no qualms about putting words in the mouth of God and biblical characters, such as Moses, it should perhaps come as **no surprise that they might occasionally put words in the mouths of fellow rabbis.** Nonetheless, the aspect of rabbinic pseudepigraphy [sic] which has elicited the most scholarly discussion is the **sometimes unreliable ascription of statements and traditions to named rabbinic sages.**" (p.31f)

"A number of detailed studies have shown that particularly in the Babylonian Talmud there are **statements which are incorrectly and probably even falsely attributed,** fictitious baraitot (i.e. tannaitic statements not found in the Mishnah) and stories about sages that seem more legend than history." (p.33f)

So, when we get to looking at modern 'disclaimers' in the scholarly literature, we see the effects of this (e.g., R.E. Brown and John Meier):

"We must be careful to recognize limitations in our knowledge of burial practices in Jesus' lifetime. Even before **recent sensitivity about the limited applicability of the Mishna to Jesus' time, and therefore about mishnaic rules for burying the bodies of the condemned,** Buckler recognized that the **references to burial in Josephus indicated a different situation in the 1st cent. from that envisioned by later information.**" [[DM](#):1206, n.1; note, by the way, that the unquestionably early Josephus differs from the rabbinics on details about *burial* practices!]

"Some aspects of the mishnaic practice were **surely ideal or reflect a post-NT situation...**" [[DM](#):1210]

"It was common among older Jewish scholars to rely heavily on the Mishna (ca. A.D. 200-220), the Tosepta (3d century), the Palestinian (or Jerusalem) Talmud (5th century), and the Babylonian Talmud (6th century) as well as the rabbinic midrashim. from various centuries to reconstruct the historical Pharisees and Sadducees. **More recently, Jewish scholars like Jacob Neusner and Shaye Cohen, as well as Christian scholars like E. P. Sanders and Anthony Saldarini, have urged greater caution in the use of rabbinic literature to delineate the very different conditions of Judaism in pre-70 Palestine.**" [[MJ](#):3:305]

In other words, one cannot assume they apply 'backward in time'--each application has to be evaluated separately.

We will have to *use* the material, of course, but we had better remember the 'softness' of conclusions drawn therefrom.

The injunction of "case by case" often noted by scholars, is appealed to by McCane (a source referred to by Richard). We can use this to illustrate the complexity of the subject...

McCane argues:

"Comment is called for here on current scholarly suspicions regarding the value (or lack thereof) of the Mishnah as a historical source for the world of Jesus. **Of course one cannot naively assume that this third-century text preserves reliable information about first-century Jewish life. In many cases it demonstrably does not. On the specific topic of burial practices, however, there is strong evidence in favor of using the Mishnah. First, at points where it can be checked against the archaeological evidence** the Mishnah has already been shown to be accurate. *m. B. Bat.* 6:8, for example, records a rabbinic discussion about the ideal dimensions for burial niches, and the dimensions given in the Mishnaic text correspond closely to the actual dimensions of so-called "loculus" niches typically found in first-century Jewish tombs in Palestine. *m. B. Bat.* 2:9 stipulates that tombs should be located at least fifty cubits outside of a town or city, and archaeology confirms that this practice was typically followed both in first-century Jerusalem and at Qumran. **Second, it is an anthropological commonplace** that burial practices change very slowly. Theological ideas about death and the afterlife are typically vague and fluid, **but burial practices and customs have a weight and mass all their own.** From this point of view, there would be nothing particularly remarkable about a third-century text which accurately preserved information about burial customs from two centuries earlier. For these reasons I do not hesitate to make critical use of the Mishnah--along with the tractate *Semahot*--in conjunction with other sources of evidence on this specific topic" [McCane, [NT:AAJ:437, n.9]]

In note 8, he had accepted Zlotnick's dating (1966) of the *Semahot* at the end of the third century.

Working backward, let's look at these three issues (*Semahot*, fixity of burial customs, archeology):

#### 1. On the *Semahot*:

If we first remember that the Neusner quote above pointed out the 'gullibility position' of accepting (a) attributions; (b) philological arguments; and (c) half-a-millennium-later historical/Gaonic judgments, and we *then* look at Zlotnick's summary of his reasons for dating *Semahot* "early", we find an *amazing* correspondence:

"We have thus found nothing in *Sm* pointing decisively to a late date. On the contrary, it can now be stated that the latest authorities mentioned in the text are the Tannaim of the fifth generation, Rabbi Judah the Prince and his contemporaries [**Neusner's 'attribution' issue!**]. Moreover, the language is Mishnaic Hebrew, and its style and structure, the literary formulation and sequence of the Halakah and the Aggadah, is always that of the Tannaim [**Neusner's 'philological' issue!**]. In the absence of further textual evidence and in view of the fact that *Sm* is clearly identified as Tannaitic by the Gaon Natronai and by all the medieval scholars [**Neusner's 'half-a-millennium later' issue!**], it seems preferable to submit to the authority of the ancients and suggest an early date--the end of the third century." [HI:Sema:8-9]

In the *Dictionary of Judaism in the Biblical Period*, Neusner and Green give this entry for '*Semahot*'--notice the difference usage of the *same data* adduced by Zlotnick:

"**Semahot** a minor rabbinic tractate on death and mourning, published with the Babylonian Talmud; euphemistically titled joys, though also known as Ebel or Ebel Rabbati, that is, Mourning. Absent from the Talmud's Munich manuscript, *Semahot* appeared in the first printing of the Babylonian Talmud (Venice, 1523). The earliest references to it are by Franco-German scholars of the eleventh century C.E. Contrary to

medieval commentators, it is not clear whether references at *B. Moed Katan* 24a and 26b to a tractate on mourning attest Semahot in particular... **Scholars place the final redaction of Semahot in the mid-eighth century C.E. Since it is in Mishnaic Hebrew and the latest rabbis it cites are third century-C.E. contemporaries of Judah the Patriarch, it may contain earlier material.** Its fourteen chapters discuss the legal status of a dying man, treatment of corpses of suicides or those who were executed, burial practices, and the laws that apply to mourners in the first seven and thirty days after burial. Chapter 8 contains a detailed martyrology. [[HI:DictJBP](#), s.v. 'semahot']

2. On the **anthropological commonplace** of the relative fixity of burial practices:

The period in which we are interested in is actually one of very high--and easily documented by the archeologists--change!

**"In summary, what is most extraordinary in the Jewish burial customs of the Second Temple period is the astonishing fact that within a comparatively short span of time burial practices, which are typically among the most conservative customs in a society, underwent rapid changes.** Loculi tombs appear with primary coffin burials, and within a century secondary burials in ossuaries in similar loculi tombs becomes the prevalent custom, a practice lacking parallels in any other contemporary neighboring culture. At the same time, these customs were short-lived and show little affinity with either the earlier Israelite customs or the later Jewish rituals of late antiquity which **contain only traces of these Second Temple customs.** Furthermore, archaeological investigation has been unable to uncover the causes for these ossuary burial **innovations.** It may be conjectured that the Jews blamed their loss of independence and their state, in 6 C.E. [sic], on their sinful behavior; the custom of secondary burial of the bones in ossuaries, after decay of the flesh, may have become a way to expiate sins. The later Beth-shearim necropolis (3d–4th century C.E.) shows the practice of individual burial in various kinds of sarcophagi and was a central cemetery for Jews both in the land of Israel and in the Diaspora." [Rachel Hachlili, [[ABD](#), s.v. "Burials (Ancient Jewish)"; note: Hachlili is cited in McCane's references in his footnote 9.]]

3. On the **congruence of archeology** with Mishnah/Semahot stipulations:

I am not sure I understand McCane's data here, frankly. *Baba Bathra* gives a niche size of approximately 6 ft by 1.5 ft by 1.5 feet, and the excavations at Jericho and some of the Jerusalem data seem to have **different** dimensions:

"The tombs found in these two cemeteries [Jerusalem, Jericho] may be divided into two types: the first consists of rock-hewn loculi tombs and the second type is a monumental tomb which is rock-hewn and has a memorial or *nefesh* standing next to or above it. Two basic tomb plans exist: one is called the loculi type (*kokhim*) and the other is the *arcosolia*. Some tombs are equipped solely with a burial room. Both types of plans are found in the Jerusalem necropolis, but the Jericho cemetery consists only of loculi tombs which are hewn into the hillsides. Both serve as family tombs but with provision for separate burial of each individual... The form of the loculi tomb consists of a square burial chamber, often with a pit dug into its floor to enable a man to stand upright. From one to three arched **loculi 1 m high and 2**

**m long** (*kokhim*) are hewn into three walls, the entrance wall excepted." [Hachlili again, [[ABD](#), s.v. "Burials (Ancient Jewish)"]]

But many of the tombs DO conform to the dimensions in the Mishnah, but I am not sure this proves very much.

We have other data that indicates that the Mishnaic portrayals are NOT necessarily representative:

We have already noted that **Josephus'** descriptions are at odds with them (and *not* 'minor points of interpretation'):

"We must be careful to recognize limitations in our knowledge of burial practices in Jesus' lifetime. Even before recent sensitivity about the limited applicability of the Mishnah to Jesus' time, and therefore about mishnaic rules for burying the bodies of the condemned, **Buckler recognized that the references to burial in Josephus indicated a different situation in the 1st cent. from that envisioned by later information.**" [[DM](#):1206, n.1; note, by the way, that **the unquestionably early Josephus differs from the rabbinics on details about burial practices!**]

"According to Rabbi Eliezer in the Mishnah (Sanhedrin 6:4), all who are stoned are hanged on a tree afterwards. The other rabbis say (ibid.) that only the blasphemer and the one who worships an idol are hanged, **whereas** Josephus restricts hanging to the blasphemer. Goldenberg (66-68), in disagreement with Weyl (1900:30-31), declares that Josephus is, in this respect, in accord with the earlier uncontroversial tannaitic halakhah that was contemporary with him [tn: concerning who is hanged]. See Weyl (1900:30-31). According to the Tosefta (Sanhedrin 9:11), the mildest and most humane form of death must be sought. A baraita in the Talmud (Sanhedrin 46b) states that the verdict is delayed until just before sunset. Then judgment is pronounced and the culprit is put to death immediately. Then, in order to fulfill the requirement of hanging, one person ties him up and immediately thereafter another unties him and takes him down. Goldenberg (68-71), noting that **this tannaitic statement apparently contradicts Josephus**, who says here that the blasphemer is stoned and then hanged for a day, suggests that the tannaitic description of the hanging does not reflect actual practice but is rather a theoretical interpretation of Deut. 22:21-23. " [[HI:FJTC3](#):401, note 596, on *Ant* 4.202]

"Kohler (1931:72-74), however, remarks that the Mishnah (Sanhedrin 4:4) by no means makes it imperative to hang up the corpse after the execution. Weyl (1900:48) concludes that **Josephus is here preserving a law unparalleled in Halakah.**" [[HI:FJTC3](#):401, note 597, on *Ant*. 4:264]

**Essene** burial customs are also somewhat at variance:

"**Essene Burial Customs.** One sect of Jews during the 1st century C.E. the Essenes, **practiced a completely different**

**primary burial** in individual graves as evidenced by their cemeteries at Qumran and En el-Guweir. The main cemetery of Qumran is located E of the settlement and contains some 1100 graves (de Vaux 1973). Its organized plan consists of rows of single graves, usually oriented N–S. The graves are marked by oval-shaped heaps of stones placed on the surface. Several graves contained signs of wooden coffins. Most of the excavated tombs contained individual burials; male interments only were found in the main cemetery (de Vaux 1973:46, pls. XXV–XXVI; Bar-Adon 1977:12, 16, figs. 19–20). On the outskirts of this cemetery and in the smaller cemeteries of Qumran, a few females and children were interred. The large number of males found in these graves compared to the small number of women and children might point to the importance placed on celibacy in this community... The Essene burial practices have **a few** elements in **common** with those of the Jerusalem and Jericho cemeteries. The **coffin** burials at Qumran, though later in date, are comparable to those found at Jericho. Grave goods were discovered with women and children at Qumran and En el-Guweir, as well as remains of mattresses and cloth (indicating that the dead had been wrapped in shrouds). Broken storage jars were discovered on top of the graves at En el-Guweir and Qumran, probably a custom parallel to that of placing storage jars outside the tombs at Jericho... **The contrasts in these burial practices** indicate differences in religious philosophy toward the dead among the Jews of this time and reflects the separation of the Essenes from more mainstream Judaism. Single-person burials at Qumran and En el-Guweir cemeteries stress the importance of the individual rather than the family." [Hachlili, [ABD, s.v. "Burials (Ancient Jewish)"]

And even the 'very Rabbinic' site at **Beth-shearim** shows many differences:

**"The Beth-shearim Necropolis.** The Jewish necropolis at Beth-shearim (M.R. 162234) was the central burial ground for Jews from the land of Israel and neighboring areas. The majority of the catacombs date to the 3d–4th centuries. Beth-shearim was expanded after the death of Rabbi Judah in the latter part of the 3d century. The *terminus ante quem* for the catacombs is the date of their destruction in the year 352 C.E. (Avigad 1976:260)... The Beth-shearim burial place consists of catacombs, with a frontal courtyard and portals constructed of stone doors imitating wooden doors with nails (Mazar 1973:Plan 1–5; pl. VI; Avigad 1976: figs. 3–5; pls. 25:1; 27:2; 28:1). Several burial halls spaced out along a corridor were hewn in the rock (see Avigad 1976: fig. 31). The graves were mainly loculi or arcosolia types and **it is clear that burial customs—that is, primary inhumation in arcosolia, coffins, and sarcophagi—have little in common with those of the Second Temple period.** On the walls were carved, painted, or incised decoration, in a popular art style. Decorated marble or clay sarcophagi contained the primary burials of local Jews or the reinterred remains of those returned from the Diaspora (Mazar 1973; Avigad 1976). By this time burial had become a

commercialized, public enterprise and was directed apparently by the burial society (*Hebrah Kadisha*), who sold burial places to any purchaser (Avigad 1976:253, 265)." [Hachlili, [\[ABD\]](#), s.v. "Burials (Ancient Jewish)"]

Indeed, **the rabbinic literature itself documents a number of funeral custom innovations** of the period. For example, *b Moed Katan* 27a-b lists a number of innovations that occurred in burial procedures:

"GEMARA. Our Rabbis taught: **Formerly** they were wont to convey [victuals] to the house of mourning, the rich in silver and gold baskets and the poor in osier baskets of peeled willow twigs, and the poor felt shamed: **they therefore instituted** that all should convey [victuals] in osier baskets of peeled willow twigs out of deference to the poor. Our Rabbis taught: **Formerly**, they were wont to serve drinks in a house of mourning, the rich in white glass vessels and the poor in coloured glass, and the poor felt shamed: **they instituted therefore** that all should serve drinks in coloured glass, out of deference to the poor. **Formerly** they were wont to uncover the face of the rich and cover the face of the poor, because their faces turned livid in years of drought and the poor felt shamed; they therefore instituted that everybody's face should be covered, out of deference for the poor. **Formerly**, they were wont to bring out the rich [for burial] on a dargesh aid the poor on a plain bier, and the poor felt shamed: they instituted therefore that all should be brought out on a plain bier, out of deference for the poor. **Formerly** they were wont to set a perfuming-pan under [the bed of] those that died of intestinal disorders, and the living suffering from intestinal disorders felt shamed: they instituted therefore that it should be set under all [alike], out of deference to the living that suffer from intestinal disorders. **Formerly** they were wont to subject to [ritual] ablution all utensils that had been used by [dying] menstruants, and the living menstruant women felt thereby shamed: they instituted therefore that they should subject utensils used by all [dying] women alike, out of deference to the living menstruants. **Formerly** they were wont to subject to [ritual] ablution all utensils used by those suffering from a flux. while dying, and the living suffering from a flux felt shamed: they therefore instituted that they should subject to ablution utensils used by all, out of deference to the living suffering from flux. **Formerly** the [expense of] taking the dead out [to his burial] fell harder on his near-of-kin than his death so that the dead man's near-of-kin abandoned him and fled, until at last Rabban Gamaliel came [forward] and, disregarding his own dignity, came out [to his burial] in flaxen vestments and thereafter the people followed his lead to come out [to burial] in flaxen vestments. Said R. Papa. And **nowadays** all the world follow the practice of [coming out] even in a paltry [shroud] that costs but a zuz."

We must also remember the comment made by Ze'ev Safrai:

**"The public at large did not obey the rabbis.** Among the Jews, **only a minority followed the rabbis, obeyed their decisions and was influenced by their sermons and moral teachings.** It was also **this small group that influenced the outlook of the *beit midrash***; its customs and attitudes constitute the social and historical background for the decisions made in the *belt midrash*. According to this perspective, then, **the texts do not provide a true image of the community, but that of a small group, a social stratum whose ties with the wider public were few and problematic.**" [[HI:ERP:5-6](#); note: he recognizes the basic validity of this (represented as others' opinions), but points out that it does not apply to ALL areas of social life.]

Part of Richard's problem, I think, is **a misunderstanding of the nature of the rabbinic material.** He has numerous statements about how it was 'law', conservatively preserving ancient law (even when the law was no longer in effect, due to changes in historical circumstance), and these rabbinic descriptions are 'innocent until proven guilty' (his amazingly anachronistic "Consequently, unless specific reasons can be adduced for thinking otherwise, the contents of these texts (he includes the Talmud in this!) applied to the time of Jesus"!).

To demonstrate this, let me give data/conclusions from **specialists in this field**, about the character of the mishnaic and post-mishnaic materials. These scholars would represent a wide cross-section of views, from the conservatism of Zlotnick, to the moderate positions of Sanders and Lapin, to the studied minimalist view of Neusner. What we will see from this is that the rabbinic literature:

1. 1. Is not a legal code at all, but a history of legal and semi-legal debate
2. 2. Described the fictional, idealized world, desired/planned/invented by the rabbi's
3. 3. Was typically not descriptive of a real world, neither past nor present
4. 4. Was not a 'conservative' description of ancient actual laws/traditions (but sometimes preserved legal debates)
5. 5. When it did describe a real world, it sometimes applied to ONLY an ancient one--and not the world of Jesus.
6. 6. When it did describe a real world, it sometimes/often applied ONLY to post-2nd-Revolt Galilee (where the rabbi's resettled)
7. 7. Many elements it 'proscribed' are known to have been not in practice

**A.** First the conclusions of **Hayim Lapin**, who studied the "most-likely-to-reflect-reality" **economic** tractate of *Baba Mesia*:

1. 1. "It also appears likely that throughout late antiquity **Rabbinic authority continued to be unofficial and limited to adherents** whose number and social distribution we are in no position to estimate. **Rabbinic texts polemicize against other, non-Rabbinic judges ("those who are appointed for money") who have been plausibly identified with the official civic judges of the Galilean cities.** Rabbinic narratives about cases judged by Rabbis may similarly be taken regularly as cases of arbitration by a holy (or otherwise significant) man...On balance, then, **there is very little positive evidence that Rabbis served as the governing body of Roman Palestine**, or even the class which provided the staff for that government. Such evidence as we do have actually suggests the opposite: that Rabbis at the time of the redaction of the Mishnah (and later) may have been a prominent wealthy group with claims to special authority, but they had **little institutional authority and no official standing.** In this respect, they may have been like other (frequently religious) figures in the ancient Greco-Roman world who served as judges, miracle workers and arbiters of public opinion. **Nor does it seem likely that Rabbinic law as such (for our purposes we may focus on the Mishnah)**

served as the legal code of the Jewish population of Roman Palestine." [X03:ERCL:18f; Note: not a legal code, not in effect]

2. 2. "This means that part of the historical investigation of *m. Baba Mesia* involves exploring the elusive **boundaries between the real world in which Rabbis lived and the constructed one of the Mishnah.**" [X03:ERCL:20; Note: a fictional world]
3. 3. "Instead, attributed statements present **what contemporaneous or later tridents thought a particular sage might have ruled** in a given case." [X03:ERCL:26; Note: not an 'enormously conservative' process of tradition!]
4. 4. "In framing the study in this way, as I have already pointed out, **I am not denying the fictional character of the Mishnah** in general or *Baba Mesia* in particular. The goal of the present study is rather to **explore the horizons of this fictional world.**" [X03:ERCL:29; Note: a fictional world]
5. 5. "...help identify where the **Mishnah reflects, distorts, or simply ignores the realities of the world** in which the Rabbis who produced it lived." [X03:ERCL:30; Note: a fictional world]
6. 6. "The **Mishnah is neither an authoritative archive of laws, practices and events**, nor even a mine of 'facts' to be uncovered and, if necessary, cleansed, purified or cut to shape." [X03:ERCL:35; Note: not a body of law!]
7. 7. "My goal, therefore, has been to understand **how Rabbis imagined the proper working of Jewish economic practices** in such an economy." [X03:ERCL:120; Note: a fictional world]
8. 8. "Nevertheless, **Rabbis do not appear to have had institutional authority in Galilee beyond their own adherents** in the second or third centuries. Moreover, **the legal program that the Mishnah outlines is ultimately an ideal one**, in which the Temple still stands and in which high priest and king still function." [X03:ERCL:237; Note: not a real, applicable law code]
9. 9. "Thus, although the Mishnah may not 'document' the social and economic life of Jews in Roman Palestine, it does indeed offer us an opportunity to examine how an articulate group of Jews within Palestinian society chose to depict that social and economic life...**Instead, the tractate is better seen as the product of the Rabbinic community for its own specialist audience.**" [X03:ERCL:238; Note: not a real, applicable law code]
10. 10. "In presenting this study I have attempted to use the text and concerns of *m. Baba Mesia* as the framework for my analysis. To conclude, I wish briefly to locate the development of *m. Baba Mesia* within a somewhat wider perspective. In the one hundred and fifty years between 50 and 200 CE, Palestinian Judaism had seen major political, social, and religious changes, not least of which were the suppression of two revolts, the destruction of the Jerusalem Temple, the garrisoning of the province with two legions, and increased urbanization. It is in the wake of a period of "pacification" and integration into the Roman empire that **the Mishnah emerged, with its imagined world** in which the Temple still stood. **Mishnaic civil law is not best seen as a codification in the late second century of laws that by that time were of great antiquity.** Indeed, both from the literature of the second Temple period and from what Rabbinic texts themselves attribute to their earliest tradents, questions of contract and property appear to have been at best questions of secondary importance or, in the case of the Qumran sect, of sectarian governance. At precisely the time during which the economic practices of Palestinian Jews would have come increasingly under the direction of Roman provincial authorities, *m. Baba Mesia* attempted to **invent a**

**"Jewish" civil law in which officials of any government (except for the angareia) are essentially absent.** [X03:ERCL:240; **Note: NOT a codification of conservatively transmitted ancient laws, but an invented one!**]

**B.** Next, the conservative and traditional **Zlotnick**, who, although he believes much of the material is ancient (and applied in earlier times), still recognizes that some of the legal material is theoretical and **actually disagrees with the legal praxis of actual courts:**

1. 1. "What clearly emerges from the many rules, cases and decisions is that we are dealing with two kinds of law: *halakah* or *halakah sham* (**theoretical law**) on the one hand and *halakah le-ma'aseh* (law in effect) on the other hand. *Halakah sham* is studied in the schools by scholars and their student. Here rules are formulated and applied in the process of the dialectic. *Halakah le-ma'aseh* however, is the domain of the court. Here jurists sit and decide the practical [sic] case. [X03:IPM:215]
2. 2. "Nevertheless, **the directives of jurists are not identical to those of scholars.** As we have learned from Rabbi Johanan, a **conclusion resulting from a theoretical discussion need not agree with a decision in a real case.** At court the attested tradition was supreme." [X03:IPM:217]
3. 3. Rabbi's Mishnah, as such, was the primary source for *halakah le-ma'dseh*. This is not to say that the law was decided from it, in every detail even for his own generation, let alone the generations that followed. Nor is it to say that Rabbi had this as his objective. **The Mishnah was never a code in the narrow sense.** We have noted, for example, how Samuel identified a section *le-halakah* and not *le-ma'dseh*, **as an academic text for the schoolhouse and not as statutory law for the court.** To be sure, in most of the Mishnah we find elements of codification - normative and casuistic law presented with surpassing brevity and lucidity. But as we have tried to show, the Mishnah is also made up of other constituent parts: narrative passages, aphorisms, rules of conduct, customs, and judicial legislation in the form of *gezerah* and *takkanah*. **Even in the strictly legal aspects of the work, Rabbi's Mishnah consistently breaks with what one would expect in a strict code.** It contains laws that were simply voted down and rejected, and still others that lost their practical force as a result of the destruction of the Temple. **More than one-third of the Mishnah, all the tractates dealing with sacrifices and most of the tractates dealing with ritual purity - that is, the lion's share of the Orders *Kodoshim* and *Tohorot* - would come under the category of *hilketa le-meshiha*, "law for the time of the Messiah"...** There are still other laws, discussed at length in the Mishnah, with even less immediate application: **rules treating of situations that are only theoretically possible.** They come under the category [sic] of *deros we-kabbel sakar*, "expound it and receive a reward!" Much of the Mishnah consists of minority views that could some day serve as a basis for new decisions and, of course, there are those **many instances where the law was left undecided.**" [X03:IPM:225f]
4. 4. "In more than one instance, **laws are recorded in the Mishnah that could have applied only to a limited period in remote antiquity...**" [X03:IPM:35]
5. 5. He gives examples of *Orlah* 1:2 (fruit trees in the time of Joshua). "Nearly all of the tractates in the Orders *Kodoshim* and *Tohorot* deal with sacrifices and ritual defilement. Most of these tractates lost their sense of immediacy with the destruction of the Temple.... Yet we see they were not removed. On the contrary, they represent more than a third of the substantive law in Rabbi's Mishnah." [X03:IPM:36]
6. 6. "Still other laws stopped being applied even before the destruction of the Temple." He gives the examples of *Sotah* 9.9 (breaking of the heifer's neck in Deut 21), which abrogated [by 54 ad] the laws of 8:1-8; and also in *Sotah* 9.9 (ordeal of waters) which abrogated *Sotah* 1-6). [X03:IPM:35f]

7. 7. "To the laws that lost their practical force before the destruction of the Temple and to the vast number that became inoperative as a result of its destruction--laws that are termed 'laws for the time of the Messiah'--we can add another category: **laws treating of situations that are only theoretically possible.**" [X03:IPM:37]

**C. Next, E. P. Sanders**--Neusner's main sparring partner in this area--agrees with him on the fictional, 'wish it were so' world of the Mishnah. He also demonstrates some of the cases where Mishnaic law was NOT observed (and likely never was):

1. 1. He points out that the 'houses of separation' of the *niddah* were NOT pre-existing customs, with the *possible* exceptions of the aristocratic few. For half the population to spend one-fourth of their lives (menstruating women) in separate housing would have been a real estate agent's dream come true! [X03:JLFJM], pp 156-161]
2. 2. "I find some of Epstein's arguments convincing and some not. I am not, for example, persuaded that Sanhedrin 6.1-7.3, the discussion of the four kinds of execution, is early. Epstein thought that it must be, since forty years before the destruction of the temple the power to inflict capital punishment was taken away from the Sanhedrin. He assumed that the discussion of death penalties was practical, and so thought that it must be pre-30. **I think it more likely that the discussion is theoretical, and that the Mishnah's definitions of 'stoning', 'burning' and the like never controlled actual practice. The difference between rabbinic theory and real life is pointed to in Sanhedrin 7.3**" [X03:JLFJM:167; **Note that this is our SPECIFIC passage--He is convinced that the legal code Richard will rely on here simply did not really exist.**]
3. 3. "In the sphere of Sabbath rules, then, we see unconscious interpretation which has become law, a conscious addition to it which was also law, and a peculiarly pharisaic practice which others did not accept... **We have also come upon pharisaic traditions which were not accepted by others...**" [X03:JLFJM:107; **Note: it was not an accepted 'law' at all**]
4. 4. "Similarly it is not possible that the Sadducees were forced to accept the Pharisee's customs. Were this the case, they would have been forced to accept them all, but it can be demonstrated that this did not happen. **Josephus's point is that the Sadducees rejected the Pharisees' non-biblical traditions, and there is ample evidence to support this statement.** We saw several instances in the six examples of non-biblical customs immediate above." [X03:JLFJM:108; **Note: it was not an accepted 'law' at all**]
5. 5. "A third passage containing the word 'torah' may be briefly mentioned. According to Sanhedrin 11.2, the torah went forth to all Israel from 'the Great Court that was in the Chamber of Hewn Stone'. Does this mean that the rulings of this court were equal to the written law? **We deal here, of course, with rabbinic imagination. In the real pre-70 temple (the location of the Chamber of Hewn Stone) there was no court composed entirely of pharisaic sages which dictated law to Israel. The real-life court, wherever it met, was headed by the high priest, who is barely mentioned in Mishnah Sanhedrin (2.1).**" [X03:JLFJM:114; **Note: this deals with our issue too--the 'capital court' is a rabbinic fiction.**]
6. 6. "On the other hand, scholarship before Rivkin and Neusner sinned on the other side. **I am old enough to remember how it used to be. The entirety of rabbinic literature was taken to be 'Pharisaism'**. Christian scholars especially thought of the Talmuds and Midrashim, running down to the eighth century or so, as forming the 'background' of the New Testament, and they used them as such: that is the point of Billerbeck's commentary, which has been and still is used by people who want to write about the 'Jewish background'. But many Jewish scholars worked on the same assumptions, and others were only marginally

different. This had a semi-academic basis: people thought very generally about 'tradition', and they regarded ancient Jews as hanging on to inherited material. An early tradition might crop up anywhere. The theory 'might crop up anywhere' often justified choosing whatever struck one's fancy. **This view, that all rabbinic literature is 'traditional', and that many or most traditions are old, dominates the older literature.** To mention a completely innocuous example: H. St John Thackeray, in translating Josephus, often referred in the notes to 'early tradition' or 'tradition', by which he meant the wide range of rabbinic parallels or contrasts which were adduced by Julien Weill, the French translator. Talmudic scholars sometimes refer to the entire vast body of rabbinic literature as 'tradition'...Neusner has done more than any other individual to change this entire way of thinking. As I wrote above, it is not that he has a clear programme and is consistently working it out. He continues to publish things whose fundamentalism would embarrass the most conservative talmudists. He has nevertheless called the question of date to everyone's attention, and this is all to the good. **The burden of proof in Jewish studies very badly needed to be shifted from those who doubt antiquity to those who assert it,** at least long enough to make clear how much unconscious retrojection there has been." [X03:JLFJM:243f; **Note: this is in direct contradiction to Richard's 'innocent until proven guilty' principle! Sanders here agrees with Neusner's principle of "if we cannot show it, we cannot know it"**]

7. 7. "...but I agree that **one does not find [in the Mishnah] the body of civil law which one would expect if the Pharisees had their own courts and had to pass judgment on numerous issues,** or if they disagreed with common law as enforced by the magistrates. The common notion, that they governed Palestine indirectly, told the priests what to do, and served as *the* legal experts for the populace on all and sundry issues is **not support by the legal corpus.**" [X03:JLFJM:245; **Note: it simply was not the law code...**]
  
8. 8. "The **Mishnah tractate Sanhedrin,** which deals with courts and offences, especially those for which the Bible prescribes death, is remarkably lenient. **According to its rules, it is most unlikely that anyone could be executed.** Not only does it require more elaborate procedures before declaring for guilt than for innocence; not only does it state that the court may reverse itself in favour of acquittal but not in favour of guilt; not only does divided testimony lead to acquittal: the tractate also requires judges to ask witnesses whether or not they warned the accused in advance (5.1). Sanhedrin and the following tractate, Makkot ('stripes'), which discusses cases for which the penalty was thirty-nine lashes, **contain so many rules requiring accusations to be thrown out of court that it is difficult to imagine a conviction...**Some of the rules for the definition of crimes and for the modes of execution may go back to actual court practices in the Hasmonean period [ended 63 bc] **but the courts of Mishnah Sanhedrin are to a considerable degree fantasy courts. The Great Sanhedrin is said to consist of sages, and the high priest is notable by his absence. In the world of the Mishnah, 'the king can neither judge nor be judged' (Sanhedrin 2.2), and courts of twenty-three try wild animals (1.4).** Its authors considered that a court of seventy-one must declare war (1 .4). **This is not the real world,** in which Alexander Jannaeus, Herod and other kings executed whom they would and waged war when they would. **Nor does the tractate reflect the world of the high priests Caiaphas and Ananus both of whom arranged for executions without consulting the laws that are now in the Mishnah. Only occasionally does the real world penetrate the discussion.** The rabbis first describe how people are executed by burning: the convicted are choked until they open their mouths and then are 'burnt' by forcing a flaming wick down their throats. There follows a comment by R. Eliezer b. Zadok: once a priest's daughter who committed adultery was burnt at the stake. 'They said to him: Because the court at that time had not right knowledge' (7.2). **'The court at that time' was probably a real court...**The **fantasy** of the Mishnah, however, mostly points in one direction: leniency. This fundamental element characterized the rabbis' Pharisaic predecessors." [JPB:420; **Note again that the data of OUR section of the Mishnah contradicts what we know of praxis (e.g., king not being able to judge) and represents instead a 'fantasy'.** ]

9. 9. "Someone will say to me that the Mishnah states that the Great Sanhedrin tried capital cases; therefore it did. **My reply is that numerous rules in Sanhedrin did not govern real life, such as the rule that kings could not judge...Josephus offers an extremely large number of individual narratives** [of criminal and capital legal proceedings] , taken from different sources, and **not one of them support either the theory of Sanhedrin-control or Pharisaic-control.** " [[JPB:489,490](#); '**control' data in Josephus does not support the Mishnah's 'reality'**]
10. 10. "The **Mishnah has theories, idealistic and unrealistic as they are, but still only theories** about how cases were decided and sentences executed." [[JPB:481](#)]
11. 11. "Besides the fact that the rabbis did not dictate practice, **rabbinic legal discussions are sometimes idealistic, referring to the way things should be done, not describing how they were done.** This too requires that the material be used with caution. **Idealism marks all the sources, not just rabbinic literature. Josephus' discussions of the law of Moses, for example, are not necessarily descriptions of what his contemporaries did.** His narrative of events, however, gives us some control. The Mishnah contains very little narrative, but what there is makes the idealization of the more theoretical discussions stand out by contrast. Further, **only the Mishnah discusses an entire ideal world in the present tense,** a world in which God's will is revealed through prophets, and the Urim. and Thummim on the high priest's vestments still give oracular advice (*Shevuot* 2.2; cf, Sanhedrin 11.5f). Other parts of the Mishnah, however, do seem to reflect current practice, and I shall attempt to derive some of the details of sacrifice from the tractates *Tamid* and *Yoma*." [[JPB:11](#); **Note--it describes an 'ideal' world, not the real one of the past or present**]
12. 12. "See the provocative lecture by Wacholder, 'Messianism and Mishnah'. He gives numerous instances in which the **Mishnah's rules**, especially about the temple, 'refer primarily to a Halakhah of the **First Temple** which will be reinstated in the Third Temple. These references to the Sanctuary **do not necessarily embrace the Second Temple.**' (p.23)" [[JPB:496](#), note 13; **Note--even when it seems to describe actual law, it doesn't necessarily apply to the time of Jesus anyway.**]

**D.** And just to close with another quote from **Neusner**, pointing to the 'constructed' and 'invented' world of the Mishnah:

"The character and interests of the Division of Damages present probative evidence of the larger program of the philosophers of the **Mishnah. Their intention is to create nothing less than a full-scale Israelite government, subject to the administration of sages.** This government is fully supplied with a constitution and bylaws (Sanhedrin, Makkot). It makes provision for a court system and procedures (Shebuot, Sanhedrin, Makkot), as well as a full set of laws governing civil society (Baba Qamma, Baba Mesia, Baba Batra) and criminal justice (Sanhedrin, Makkot). This government, moreover, mediates between its own community and the outside ("pagan") world. Through its system of laws it expresses its judgment of the others and at the same time defines, protects, and defends its own society and social frontiers (Abodah Zarah). It even makes provision for procedures of remission, to expiate its own errors (Horayot)...The (then nonexistent) Israelite government imagined by the second century philosophers centers upon the (then nonexistent) Temple, and the (then forbidden) city, Jerusalem...And the **Mishnah is above all an act of imagination in defiance of reality**...The **plan** for the government involves a clear-cut philosophy of society..." [[X03:JLFJM2:42f](#)]

The genre of most of the rabbinic literature, thus, falls outside the normal understanding of law codes or legal description. So, Sanders, in [JPB:471f](#):

"Once this simple fact is accepted, **the genre of early rabbinic legal material becomes clear. It does not consist of set rules that governed society. It consists of debates.** In the period of our study, a local Pharisee or group of Pharisees may have made a rule that people accepted. It is not inconceivable that a large landowner, who owned property in both Jewish Palestine and Syria, would have asked a nearby Pharisee what temple dues he owed. We must remember, however, that there was a competing group of teachers, the priests, and on matters such as tithes and purity most people would have followed priestly law, though if a Pharisee offered a more lenient rule some farmers might have been willing to cite it in their favour. But if anybody could *enforce* tithes, it was the priests, and only they had any say over *general* rules of purification before worshipping in the temple. The Pharisees had views, lots and lots of views. As many views on some points as there were Pharisees. They could follow their own views on most issues, since few of their special topics applied to areas of life beyond individual control. Saying that people generally did what 'the sages had laid down' corresponds neither to the social realities of pre-70 Jewish Palestine nor to the nature of rabbinic literature...To conclude: the Pharisees did not govern Jewish Palestine. They debated rules and they had opinions. Some Pharisee or Pharisees may have influenced the practice of one or many people on one or more points. The priests and Levites influenced far more, the Essenes fewer."

[It should also be noted that not only does the Mishnah itself manifest this debate character, but some have also seen the Tosefta as an 'expression of discontent' with the Mishnah. "However, at the same time, one could say that the Tosefta is the Mishnah's opponent, if indeed it was the product of discontent. This is the twofold character of the Tosefta: sometimes it is helpful, at other times it is critical...The main purpose of the toseftan material seems sometimes to be correction of the mishnaic rendering...", Alberdina Houtman, *Mishnah and Tosefta: A Synoptic Comparison of the Tractates Berakhot and Shebiit*. Mohr/Siebeck:1996, p.235]

The data above applies to the Mishnah as a whole, with special focus on its "legal traditions", but **we can actually zero in on the "capital court" institution** and see that the material about it seems to be **retro-fantasized as well**. Consider this extended argument by Lightstone [[HI:MSFERG:72-74](#)]:

"*Mishnah Sanhedrin* 2: 1 ff and the correlative pericopes at *Tosefta Sanhedrin* 8: 1, **both of which in their current versions stem from late second and early third centuries**, provide an apt example of the phenomenon described. The two pericopes document **successive stages in the projection upon the earliest rabbinism of a unified, institutionalized rabbinic body**. The passages are all the more interesting because that projection operates at the implicit level; a set of assumptions appears to have informed the editorial processes that gave the pericopes their final forms. *Mishnah Sanhedrin* 4:3-4a purports to provide a description of the Great or the Lesser Sanhedrin in pre-70 Palestine. As is the case with **much** of Mishnah's pericopes dealing with the world of the Temple cult and Temple-based government, *m. Sanh.* 4:3-4a would be more safely **regarded as an ideal reconstruction. Already in the Mishnah text, however, the description of the Great Sanhedrin is rabbinized.**

- A.1. The Sanhedrin was [arranged] as a semi-circle [the size of half of] a threshing floor,
- A.2. so that they [the members] may see one another.
- B. And two scribes of the judges stand before them, and write the laudatory evidence and the condemning evidence.
- C. 1. Rabbi Judah says, three [scribes]:
  - C. 1.1. one writes the laudatory evidence,
  - C. 1.2. and one writes the condemning evidence,
  - C. 1.3. and the third writes the laudatory evidence and the condemning evidence.
- D. **And three rows of the disciples of the sages** sit before them.
- E. Each and every one [of the disciples] knows his place (in the seating order).

[*Mishnah Sanhedrin* 4:3-4a]

"The pericope is currently cast as a narrative. In reality, the form is typically mishnaic; its narrative elements remain superficial. The mere substitution at A. 1 of a participle for the verb "to be" in the perfect tense transforms the whole into language and form typical of the greater part of Mishnah at its general, penultimate level of redaction. Thus A is an anonymous law, followed by a mishnaic dispute at B-C dependent upon A for intelligibility. D proffers another anonymous law, similarly dependent upon A. **I stress the superficiality of the narrative** characteristics for obvious reasons. The whole from a stylistic standpoint is part and parcel of Mishnah's general literary framework (and no doubt purpose), and, therefore, *prima facie* cannot be separated from the late second-century context of Mishnah's penultimate redactors.

"As to the pericope's substance, D is most enlightening for our purpose. **For until D we have only Mishnah's ideal formulation of a non or pre-rabbinic Israelite legislative and judicial body.** No rabbinic title or office appears in A-C. The terms, "scribes of the judges" in B has no rabbinic ring to it. **D, however, rabbinizes the whole, by introducing the disciples of the sages, a standard rabbinic title.** D, then, **would have us view the members of the Sanhedrin as sages, that is, rabbis.** By implication, the permanent presence of the disciples of the sages also turns the idealized institution of A into an institution of learning (or of training) as well as a judiciary or legislative body, as is established by the context. Here then in a pericope of late second-century formulation is evidence that rabbinism had begun to see an authoritative council constituted of rabbis and rabbis-in-training as a principle institution of Israel in which were merged legislative, judicial, and educational mandates. **This view of matters they projected backward into the period before 70CE.**

"Viewing *Mishnah Sanhedrin* in this light makes the glosses provided by the editors of *Tosefta* all the more understandable. **For they take still further the Tendenzen of the Mishnah's editor.** In the passage which follows, direct citations of the Mishnah appear in boldface.

- A. 1 **The Sanhedrin was [arranged] as a semi-circle [the size of half of] a threshing floor,**  
A.2. so that they [the members] may see one another.  
B. 1. The nasi sits in the middle [position on the circumference],  
B.2. and [the] elders sit to his right and to his left.  
C. Said Rabbi Eleazar b. Rabbi Sadoq, "When Rabban Gamaliel sat at Yavneh, [my] father sat to his right and [the] elders to his left.  
  
D. 1. And why did one aged-man sit to his right?  
D.2. because of the honour due an aged-man.  
E. 1. **Three rows of the disciples of the sages sit before them,**  
E.2. the greatest in the first, the second ranked in the second, and the third ranked in the third.

[*Tosefta Sanhedrin* 8: 1; see also parallel, *Yerushalmi Sanhedrin* 1:4]

"The (apparent) gloss at C of the Mishnah citation (at A) functions to make explicit the rabbinic constitution of the Sanhedrin. In addition, in its present context **C represents the organization of the sages at Yavneh in the decades following the events of 70CE** as in continuity with the institutions of governance before the destruction. The **sages, now clearly under the presidency of the rabbinic nasi (Gamaliel II) are portrayed as functioning at Yavneh in the same manner and capacity as their predecessors of the earlier period.**

"It is, however, only by appending C to A and B that the toseftan editors achieve this effect. C, however, does not depend in literary terms on A-B. C in no significant manner reflects the

language of A. Only the reference to elders finds a counterpart in B--hardly enough to show literary dependency, as opposed to editorial refinement. D glosses and does depend upon C; "elder" at D must mean 'more aged' and does not designate an office, as is the case in B. In all, C (with or without the further explanatory gloss of D) is intelligible on its own. As such there is no reason to suppose that it originally glossed either our Mishnah passage, that it refers to the Sanhedrin, rabbinized or not, or that it relates to any other formal, institutionalized council or academy. C, viewed as a tradition independent of the current context, merely offers an attributed narrative as precedent for a simple protocol, custom or etiquette (made explicit at D), which dictates that the place of honour in a seating arrangement belongs to the older person. **It is, then, via the editorial processes of early third-century rabbinic circles that an early rabbinic Sanhedrin/academy ruled by a rabbi-patriarch appears before us.**

"The toseftan and mishnaic passages just analyzed provide just two examples of **how late second- or third-century editors shape or reshape their materials in a manner that implies or assumes the prior existence of an institution which the texts upon closer analysis belie.** As one peruses, however, still later sources dealing with rabbinic organization in the late first and second centuries, the explicit portrayals of a Sanhedrin/academy led by the become commonplace, as we noted." [[HI:MSFERG:72-74](#)]

"Our analysis of two interdependent pericopae suffices to lend credence to the notion that rabbinism was not organized about a central Sanhedrin/academy under patriarchal rule before the latter decades of the second century. Moreover, that redactors of the late second and early third centuries reshape materials in a manner that projects such an institution back onto an earlier period suggest that such an institution accords with their contemporary state of affairs." [[HI:MSFERG:74](#)]

BTW, he goes on to point out that the authority of these early 'Sages' is not at all supported by the archeological remains:

"Has, then, the power and authority, or the prestige of members of the rabbinic guild, a Patriarch-sanctioned retainer class, registered on the **material** evidence for Roman Palestine, in particular in the Galilee? The short answer is, **apparently not.** The salient points are simple... The basic architecture of synagogues for the late second through fifth centuries does not accord with rabbinic texts... The art found in Late Roman and Byzantine Galilean synagogues does not accord with even the most stalwart attempts to interpret Palestinian rabbinic sources so as to render them more lenient, and hence more consistent with the material evidence." [[HI:MSFERG:193ff](#)]

Richard notes correctly (IMO) that it is generally believed that Jewish law was allowed and enforced by Roman rule at this time, but scholars in the history of Jewish law make a **distinction between civil/private law**, and **criminal/public law**. And, whereas there seems to be consensus on Jewish jurisdiction over **civil** matters, **this consensus is lacking in criminal law**--the area we are discussing here:

"In this chapter we shall discuss the extent to which the Roman authorities (who conquered all the Mediterranean lands, including Palestine known to the Jews as *Erets Yisrael*, 'the Land of Israel') permitted the Jews to keep their own **civil** law as the binding law in their relations amongst themselves. From the perspective of the Roman sources, it is a question of jurisdiction.

"The problem of jurisdiction is a particularly complex one; its difficulties vary according to the different sources and the different periods. There is a distinction between the problems of **civil jurisdiction** - which deals with **private** law (e.g., family law, contract law or property law) - and those of **public jurisdiction** which includes **criminal law**. Moreover, what were the characteristics of the court which exercised jurisdiction over Jews in **civil** and **criminal** matters? Was it a Jewish court or a Roman court? Did Jewish courts and Roman courts have any kind of

contact with one another? According to which legal system were the Jews judged? Other questions concerning this issue emerge: did Roman law give the Jews the right to hold their own courts with legal authority to judge matters between Jews? Could these Jewish courts give judgments which would be recognized by the Roman Government as judgments that could turn into a *res iudicata*, so that these cases would not be brought again before a Roman court? Were the judgments of the Jewish courts executable and who was to implement them -- the Jewish authorities or the Roman authorities... **Roman provincial governors also had in theory authority to involve themselves in civil judgments; however, following the custom of Rome, they preferred, in this period, not to intervene.** There was, however, no universal practice in such matters throughout the Empire. Yet even after Judea became a Roman *provincia*, the governor maintained the principle of leaving **civil** justice to the local Jewish institutions. Rome defined autonomy as the right to live according to independent laws (*suae leges*), 'autonomy in the broad sense of independent **civil** justice'.

"I believe that Judaea was among those states that had their own law restored to them - *leges suas reddere*. The residents had the status of foreigners enjoying their own law (*peregrini qui suis legibus utuntur*), and thus living 'in accordance with local law' (*secundum propriae civitatis iura*). Thus it is possible to establish that Jewish courts in Palestine were able to judge conflicts between Jews, just as in other places conflicts between local residents were decided by local courts or by *iudex peregrinus*.

**"As for criminal law, we cannot be certain as to the limits which Rome placed on the competence of Jewish courts to enjoy jurisdictional autonomy...** One special problem relates to the capital punishment of a stranger who entered the Temple of Jerusalem. Jean Juster believed that the Sanhedrin had the authority, with the backing of the Roman law, to execute every stranger (even if he were a Roman citizen) who had entered the forbidden grounds of the Temple. His belief was based on **a dubious paragraph in Josephus' *War*, 6,2,4, which stands in contradiction to other sources.** There is no other source, either Jewish or Roman, that can verify the assumption that the Roman administration recognized the Sanhedrin's power to pronounce death verdicts on Roman citizens. **In fact, the 'capital punishment' here may well be extra-judicial, a form of popular justice (or self-help) rather than an act of government or the judicial system.** [[HI:IHSJL:141f,144](#)]

This raises an interesting *epistemic* problem, relative to sources:

1. We do not know from the extra-biblical sources whether the Jewish courts could actually/legally *try* **criminal** cases.
2. We believe that Jewish civil law was enforced in this time, but we don't really know much about the content of that civil law (due to the problems in the rabbinic material).

This basically entails that we cannot extrapolate from Jewish jurisdiction in civil law (protected under Roman decrees, such as that of Augustus) to their jurisdiction in criminal law (*especially* in light of the practice of the Romans to reserve capital cases for themselves).

Now, these conclusions and observations by scholars in that field **argue strongly that the rabbinic 'legal' material cannot be assumed to apply to the real world at all**, much less the real world of Jesus' day. In fact, reservations are **specifically** in order about the court/capital crime proceedings in *Sanhedrin*!

I am forced to conclude, therefore, that it is **altogether unwarranted** to say that (a) the Mishnah represented the Roman-approved Jewish law of the period; or (b) that it represented pre-Roman Jewish law which had passed into the status of 'moral custom' by that time. And since we have already seen the data about the surprising 'volatility' of Jewish burial customs in that period, then Neusner's and Sanders's statement that the burden of proof has shifted to those asserting the antiquity/applicability of Mishnaic law (not to mention, Talmudic!) applies in this case. Richard will simply have to do more to convince us that (a) there was a Mishnaic court of Rabbi's who judged capital crimes at the time of Jesus; (b) that there really were

separate graveyards for the various categories of capital executions(!); (c) that *any* of the laws he uses were 'real' at the time of Jesus; and (d) that *all* of them actually applied to the case of Jesus. Failing this, we cannot grant that Richard has moved beyond 'physical possibility' to 'historical possibility/plausibility' with his argument--largely because his sources are irrelevant to the discussion.

We could stop here, of course, but we can actually go further and examine more of his argument for plausibility.

We should also note that some of our discussion below is about *legal* customs (e.g., burial of executed criminals) and not just *burial* customs per se (e.g., temporary burial). Legal customs can change dramatically, as with the Jewish Revolt, for example.

[I also do not mean to suggest that McCane is 'uncritical' in his use of the rabbinics to his discussion! (My article is NOT about McCane's work, but about whether the body of Jesus was *moved* from the tomb because of some burial practices of the first century. McCane argues that the tomb of J of A *was* a criminal tomb, and therefore there was no need to move the body anyway--contra Richard's article.) I too will be using rabbinical material below, but, like McCane suggests, I will need to consider it on a case-by-case basis.]

Practically speaking, though, I will be answering these *rabbinically-based* positions with a *rabbinically-based* defense. That way, if my defense 'fails' due to rabbinix-issues, so too will the original objection/position likely fall--*for the same reason*.

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**Secondly/additionally, we have to also recognize that scholars are not at all unified in their consensus that Jewish criminal law (whatever it was at the time) applied to the execution/burial of Jesus.**

I cite just two respected sources:

"The accounts are not necessarily contradictory as far as historical events are concerned. It is possible that Mark, Luke and John no less than Matthew are thinking of Joseph's family grave; and there are other ways of reconciling the facts related by the evangelists. **(Incidentally, as Jesus was executed by the Romans, it is doubtful whether, under the Jewish law of the time, he ought to have been buried in a plot for criminals.** The question is complicated by his having been found guilty of blasphemy by the Sanhedrin.)" (David Daube, [Daube:311])

"Yet even those who are able to believe that a real trial occurred are compelled to admit that **when the chief priests transferred the case from their court to Pontius Pilate's tribunal, they did not ask for their findings to be confirmed, but laid a fresh charge before the prefect of Judea, namely that Jesus was a political agitator** with pretensions to being the king of the Jews. It was **not on a Jewish religious indictment, but on a secular accusation that he was condemned** by the emperor's delegate to die shamefully on the Roman cross." (Geza Vermes, [JV:36f])

These are respected Christian and Jewish scholars, who have labored in this field with great success.

So, although many of the Christian commentators will refer to the criminal's graveyard (without indicating *why* they accept that position), it is **not at all clear from the data** that this was the expected course of events.

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**Third, there really is no 'time problem' here, that would necessitate a 'stop over' at the garden tomb, to begin with.**

There are two major elements involved in showing this: (1) the 'ease' of doing the burial before sundown; and (2) the lower-than-assumed restrictions of the sabbath.

### **1. The ease of doing a regular burial *before* the Sabbath.**

This can be demonstrated by simply looking at what was done in a simple, primary (non-funeral) burial, and then comparing these tasks to the time frames and burial infrastructure of the day. [Richard's article points out that the rabbinic position is that the executed criminal **would have a burial, but not an honorable one**. Therefore, we first have to determine what set of events would occur in each type--honorable burial and dishonorable burial.

- The number of tasks to accomplish for a 'regular' burial (if elaborate mourning was not required, and large crowds were not expected) was not that great:

"In fact, the practice of both primary (tanknote: at time of death) and secondary burial (tanknote: after decomposition of the body, normally a year later) in this period is well attested (Rahmani; Meyers; Hachlili) and can be set within the context of **what little we know of first-century Jewish burial** customs. **When death occurred the eyes of the deceased were closed, the mouth bound up, the corpse washed (cf. Gos. Pet. 6:24) and anointed (m. Sanh. 13:5)**—perhaps both at the place of death (cf. Jn 19:40) or at the home of the deceased and again at the tomb (cf. Mk 16:1). The warm climate dictated a speedy burial, with the **use of spices** necessary to counter the stench of decomposition. **For the same reason the body might be laid on sand or salt**. The deceased were buried in their own clothes or in specially prepared wraps (cf. Mk 15:46; Jn 19:40; Gos. Pet. 6:24). Coffins were used in some cases (cf. Lk 7:14), though it is unclear whether their usage was normal in Jerusalem. When the body was in place, the tomb was closed off by a large rock, held in place by a smaller stone. **After a twelve-month period of decomposition, the bones were collected and placed in an ossuary. The purpose of this secondary burial** seems to have been both psycho-social and theological: to help complete the work of mourning by extending that work to twelve months; and to assure the sinlessness of the deceased by means of the expiation accorded the process of decomposition (Rahmani; Meyers, 91–92)." [NT:DictJG, s.v. "Burial of Jesus"]

"Jews of the NT period buried their dead promptly, as soon as possible after death and **almost always on the same day**. **Preparations began at the moment of death: the eyes of the deceased were closed, the corpse was washed with perfumes and ointments (Acts 9:37), its bodily orifices were stopped and strips of cloth were wound tightly around the body— binding the jaw closed, the feet together and the hands to the sides of the body** (Jn 11:44). The corpse was then placed on a bier and carried in a procession to the family tomb (Lk 7:12). Eulogies were spoken, and the corpse was placed inside the tomb, along with items of jewelry or other personal effects. The funeral was thus conducted without delay, and most bodies were interred by sunset on the day of death. But Jewish burial rituals did not conclude with this first, or primary, burial. **A year after the death**, members of the immediate family **returned to the tomb** for a private ceremony in which the **bones were reburied after the body had decayed**." [HI:DictNTB, s.v. "Burial Practices, Jewish"]

"Those responsible would **wash** the body (Acts 9:37), **anoint** it with aromatic ointments (Jn. 12:7; 19:39), **clothe** it as in life (cf. 1 S. 28:14), **swathe hands and feet** in gravebands, usually of linen (Sir. 38:16; Jn. 11:44a), and **cover the face or bind it about with a napkin or handkerchief** (Jn. 11:44b). Such ministries ordinarily devolved upon loving relatives and friends, mostly women (cf. Lk. 23:54–24:1)." [[ISBE](#), s.v. 'burial']

- Most tombs were to the north and northwest of the city (Herod's was an exception, as were those elite tombs in the Kidron valley, associated with famous OT figures, and the High Priest's family). Presumably, the 'graveyards of the condemned' would have been with the other cemetery sites in the northern necropolis or in the same southern area in which the Potter's Field was located. So, the only movement of the body would have either been from the Cross to the (biblical account) Tomb of Joseph of A (traditional map sites yield a distance of only 50 yards); or from the Cross to the northern necropolis (300-600 yards?); or with the *farthest* plausible distance to the vicinity of the Haceldama--"Field of Blood" area--around a mile [at 3 mph, that's a 20 minute walk for a worst-case scenario] . So the distance to an alleged community/criminal gravesite would not be a factor.
- The few 'heavy tasks' (e.g., carrying the 75lbs of spices of Nicodemus, carrying the physical body of Jesus) would likely have been **done either by their servants** (they both are represented as wealthy, and Nicodemus is generally considered to be of the rich Ben Gurion family) **or by the professional, contract-labor burial tradesmen**, common in the day.

"In addition to **(commercial) gravediggers, there were buriers, bone collectors, professional mourners, and flute players**... The sources indicate that these **contracted laborers were independent workers employed by anyone in need of their services**. One may assume they were part of a larger organization which supplied funerary services... Those who could not pay funerary expenses received aid from *havurot*, 'societies' which functioned on a voluntary basis, **similar to the societies in Jerusalem prior to the destruction of the Second Temple**... The case of **a gentile who buried a Jew on the eve of the Sabbath indicates that, when necessary, Jews could use non-Jewish burial societies for the burial of Jews**. It is possible that in mixed cities of that period, non-Jewish buriers worked with the Jewish charitable burial societies... The **gravediggers, buriers, and all those who took part in funerary services worked independently** of any urban institution or administrative office of the Jewish community. **Family members of the deceased used their services to hew caves, purchase entire caves or single burial plots in a burial cave, conduct funeral services, and bury the dead**. Even if these workers were affiliated to an organization similar to today's *hevra' qadisha'* or were members of a guild, they still had no official connection to any urban institution. One may assume that, once granted permission by the local authorities, they were free to hew tombs and sell them. Moreover, the familial obligation to bury its deceased members, and the "good deeds" performed by others in this regard, were not connected in any way to the charitable functions of the synagogues... The existence of **private burial societies** relieved the general urban as well as Jewish communal institutions from all matters concerning burial." [[GLA](#):363ff]

[These organizations were likely under contract to the Jewish rulers, for dealing with "unclaimed" execution victims. John 19:31 has the Jewish leadership ask Pilate to prematurely end the crucifixions, and take the bodies down. Since this request was for

reasons of the Festival, some arrangements must have been 'standing orders' for such situations. According to *Semahot* 2.9, the other crucifixion victims should have been given full, honorable burials--they do not seem to have been 'condemned' by the Sanhedrin at all, nor are they mentioned by Joseph of A.]

- The time frame available for all this is from approximately 3:00 pm until 'deep' sundown-plus in April (somewhere between 6:15pm and 7:15pm). That gives a spread of 3-4 hours, with the largest time component probably being the request by Joseph to Pilate for the body. The indications are that he went quickly (although we do not know *where* Pilate was at the time: he might have been at/close to the site, overseeing the event--the interchange with the Jews in John 19.19-22 seems to place Pilate at or close to the site):

"The remark in Mark suggest that Joseph went to Pilate almost immediately after Jesus' death, since Pilate is not sure that Jesus is dead yet. Matthew and Mark noted earlier that it was becoming evening (probably somewhere between 3:00 and 5:00 P.M.), which meant that Sabbath was approaching, so the body had to be dealt with quickly or else left until Sunday." [Bock, *Luke*, at loc.]

*Pilate also had an inscription written and put on the cross. It read, "Jesus of Nazareth, the King of the Jews." Many of the Jews read this inscription, because the place where Jesus was crucified was near the city; and it was written in Hebrew, in Latin, and in Greek. Then the chief priests of the Jews said to Pilate, "Do not write, 'The King of the Jews,' but, 'This man said, I am King of the Jews.' "* Pilate answered, "What I have written I have written." (John 19.19ff)

- Even working alone, Joseph and Nicodemus (perhaps with their servants) could have done this in two hours:

"The actions now about to be described (going before Pilate who would call in the centurion, buying the linen cloth, taking the body down, tying it up, and putting it in a burial place) would have **taken not much less than two hours.**" [DM:1211f; but notice that if Pilate were on-site, or if the centurion accompanied Joseph when he went to ask for the body, then this time is further reduced...and of course, with a burial 'firm' involved, this entire process could have happened in under 30 minutes, easily.]

It should also be noted though, that John indicates that Jesus' mother was present at the Cross [Jn 19.25ff], and she could easily have been a member of the burial party (even though she is not mentioned as such--John might have simply taken her home with him, after knowing that Joseph of A was taking care of the burial).

- The large, royal-size amount of spices would not have been all used in the wrapping of the body; most would likely have been used as a 'bed' (like sand was used in common graves). The amount is substantial (commentators call it a 'royal' amount), but not impractical: if the spices were oils, they would be between 10-15 gallons; if dry powder (most likely, according to Brown), it would be the volume of 15-20 sacks of sugar or flour (this would fit in a medium-sized gym bag today). There is no need to assume that the body was 'smothered' in these ingredients. Some oils were needed for the cleaning process ("Shab 23:5 and early citations of Sm indicate that the corpse was 'anointed and washed,' i.e. it was **first smeared with oil to remove the dirt** and then washed to cleanse it of the oil." [HI:Sema:98.n3]) and some would likely have been

burned by Nicodemus in 'royal tribute', as was done in Jeremiah 34.5 ("you shall die in peace. And as spices were burned for your ancestors, the earlier kings who preceded you, so they shall burn spices for you and lament for you, saying, "Alas, lord!"").

"The amount of spices that he is reported to have brought appears to us staggering in quantity. One hundred *livtrai* is the equivalent of 65.45 pounds (hence the NEB rendering, "more than half a hundredweight," the latter being a British measure of 112 pounds). Lagrange thought that an error must have arisen in the tradition and that the original quantity will have been much less (503), while Dodd thought it "an extravagant touch introduced by the Evangelist" (*Historical Tradition*, 139 n.2). There is no need for such suggestions. The family of Nicodemus appears to have been enormously wealthy, and the bringing of huge amounts of spices at royal funerals was familiar to Jews. It is related in 2 Chron 16:14 that when King Asa was buried he was "laid on a bier which had been heaped with all kinds of spices skillfully compounded; and they kindled a great fire in his honor." That was eclipsed in the funeral of Herod the Great; according to Josephus (*Ant.* 17.199) five hundred slaves bore spices in the funeral procession as they followed the army to the king's burial place. **More closely related is the action of the proselyte Onkelos, who is recorded as having burned eighty pounds of spices at the death of Gamaliel the elder.** When asked why he had done so, he replied, citing the words of Jeremiah to Zedekiah, king of Judah: "You shall die in peace, and with the burnings of your fathers (the former kings) who were before you. Is not R. Gamaliel far better than a hundred kings?" (Str-B, 2:584. **The incident is dated ca. A.D. 40–50.** One may imagine the Teacher of Israel, a contemporary of Onkelos, echoing, "Is not Jesus far greater than all other kings?" The Evangelist thus continues the theme of the kingship of Jesus into the account of his burial." [[WBC](#), at John 19.38ff]

- I should also point out that a **Sabbath eve twilight burial is not at all uncommon in the Rabbinic literature**. There are several references which seem to indicate (a) they were common; and (b) there was enough time to get them done without a problem:
  - "In [the case of] a town which is near a graveyard [and the dead] was brought [to burial] at twilight. (**note 20**)" [Soncino Notes: "**note 20**). **Of the Sabbath eve. In such a case the ceremonial would be performed on the Sabbath.** Though the night forms, for general purposes, the beginning of the following day, in respect of the mourning on the first day of the death an exception is made, and the night is held to follow the previous day. Sabbath eve can accordingly be regarded for the purpose as Friday. viz., the first day of the burial." (*B. Baba Bathra* 100b)]
  - "For all other dead, he should hasten the burial and not make the funeral elaborate...In an emergency, however, or **on Sabbath Eve**, or if rain is coming down on the bier, he should hasten the burial and not prolong the funeral." [*Semahot* IX.9]
  - "'At twilight **on Sabbath eve**,'...Although a funeral might be rushed through at this time, and the day still counted in the sabbah..." [[HI:Sema](#):157, note 18]
  - [In the May 2002 revision of his article, Richard makes a very odd argument from Midrash Rabbath:

"This [his supposition that Jesus was not formally buried on Friday night] is supported by a similar case in the Midrash Rabbah, where **David is said to wish that he would die the eve of the Sabbath so his body would experience a final Sabbath before its burial on Sunday** (Eccl. [V:12 (148)]), which suggests it was common for those dead just before sundown to await a later burial." (emphasis mine)

Apart from the impossibly speculative conclusion ("which suggests it was common...!!!!) from ONE DATA POINT (as in N=1...smile), this is not only in contradiction to the centuries-earlier rabbinic passages I cited immediately above, but it also represents a *misunderstanding* of the Midrash text itself. Here is the text from Soncino:

"He [God] told him [David], ' [You will die] on the Sabbath.' He spoke before Him, 'Let me die on the first day of the week [Sunday].'  
[Soncino footnote: '**So that his body could at once be prepared for burial. This is prohibited on the Sabbath.**'] He replied to him, 'Already has the time of the kingship of your son Solomon arrived, and one reign may not overlap another even a hair's breadth.' ' **Then let me die on the eve of the Sabbath,**' he pleaded. He [God] replied, '*For a day in Thy courts is better than a thousand* (Ps. LXXXIV, 11), i.e. **better to Me [God] is one day in which you are engaged in Torah before Me** than a thousand sacrifices which your son Solomon will offer before Me on the altar.' **David used to sit and study every Sabbath throughout the day.** He had a garden at the rear of his house, and on that day [when he was to die] the Angel of Death came and shook the trees. He went out to see what it was, but as he ascended a step it broke under him, and he was silenced [in death]"

Notice that David's motivation has *nothing* to do with 'laying around dead/unburied on the Sabbath'--he is specifically (according to Soncino) **trying avoid this!** He is arguing for God to **let him die at a time when he CAN BE buried--the exact opposite motivation imputed to him by Richard?!** God says 'no, you cannot die on the Eve, because I want you to study Torah on Sabbath--as is your custom'. Richard has somehow misread this, or read something alien into it. This passage actually **SUPPORTS** my position that **Sabbath Eve deaths resulted in immediate and full burials.**]

## **2. The restrictions to performing funerary procedures on the Sabbath is generally grossly overstated--many of the standard Sabbath restrictions were relaxed for weddings and funerals.**

The data here is quite consistent--at least if we believe the rabbinic literature:

The **only task that seems 'problematic'** for doing on the Sabbath is POSSIBLY the **actual hauling of the body somewhere** (and even there some uncertainty exists in the sources--see below).

- "MISHNAH. **ALL THE REQUIREMENTS OF THE DEAD MAY BE DONE; HE MAY BE ANOINTED WITH OIL AND WASHED, PROVIDED THAT NO LIMB OF HIS IS MOVED. THE PILLOW MAY BE REMOVED FROM UNDER HIM, AND HE MAY BE PLACED ON SAND, IN ORDER THAT HE MAY BE ABLE TO KEEP [from putrifying].1 THE JAW MAY BE**

**TIED UP**, NOT IN ORDER THAT IT SHOULD CLOSE BUT THAT IT SHOULD NOT GO FURTHER [OPEN]" [*B. Shab* 23.5, Soncino]

- "Buying and selling were forbidden on the Sabbath and on feast days, but exceptions were made for real needs, like a death (Strack-Billerbeck 2: 812–34; *b., Shabb.* 151a; *t., Shabb.* 17.13; cf. John 13:29)." ABD, s.v. "Last Supper"]
- "Come and hear: **One may go to the tehum** (i.e., the limit of the Sabbath day's journey) to await nightfall **to attend to the affairs of a bride and the business of a corpse**. Thus, **only for** the affairs of a bride or a **corpse**, but not for the business of any other. As for another [with a purpose] analogous to [that of] a bride, it is well; the purpose in connection with a corpse be? [Presumably] **in order to bring a coffin and shrouds**; yet he [the Tanna] specifies a corpse. but not another; yet why so: let us argue that [it is permissible for another too], for if there were walls there he might bring [articles even on the Sabbath]? — In the case of a corpse too, it is conceivable where the purpose is to cut out shrouds for him...And one may go to await nightfall in order to attend to the affairs of a bride or of a corpse, to bring a coffin and shrouds for him. [*b. Shabb* 150b, 151a]
- "In this hot climate under Jewish law the **preliminary disposal of the body (including its washing, also practiced by other peoples) took precedence over celebration of the sabbath**, even if the rest of the treatment of the body had to wait. Burying the dead was an important duty of the pious in Judaism." [BBC, at Mat 27.57]
- "Because bodies decomposed rapidly, **mourners were allowed to anoint, wash and wrap the body in its shrouds even on the sabbath**. More elaborate arrangements that these loyal women disciples wish to bestow on Jesus, however, might wait until the sabbath (sundown Friday evening to sundown Saturday evening) has passed." [BBC, at Luke 23.54]
- "Our Rabbis taught: No less than seven halts and sittings are to be arranged for the dead, corresponding to Vanity of vanities. saith Koheleth; vanity of vanities, all is vanity. R. Aha the son of Raba said to R. Ashi: What was their procedure? He replied unto him: As it has been taught; R. Judah said, At first they provided in Judea no less than seven halts and sittings for the dead in the [following] manner: [The leader called out after the escort had sat down on the ground]. 'Stand, dear [friends], stand up'; [and after they had walked for some distance he again called out]. 'Sit down, dear [friends], sit down'. They said unto him: **If so, such [procedure] should be permitted on the Sabbath (note 15)** also!...An objection was raised: [It has been stated that] they said unto him, 'If so, such [procedure] should be permitted on the Sabbath also'. Now, if it is said [that the ceremonial is to take place] in the graveyard and on the first day [only], [for] what [purpose] is the graveyard required on the Sabbath? — In [the case of] a town which is near a graveyard [and the dead] was brought [to burial] at twilight. (note 20)" [Soncino Notes:" (note 15) I.e., **the Sabbath eve, if the burial took place near dusk**. In such a ceremonial **no desecration of the Sabbath could be involved. (note 20)**. Of the Sabbath eve. **In such a case the ceremonial would be performed on the Sabbath**. Though the night forms, for general purposes, the beginning of the following day, in respect of the mourning on the first day of the death an exception is made, and the night is held to follow the previous day. Sabbath eve can accordingly be regarded for the purpose as Friday. viz., the first day of the burial." (*B. Baba Bathra* 100b); **TankNote--the time period is actually 'defined away' to NOT be the Sabbath, in the case of 'late burials'!**]

As I mentioned, there is even **some rabbinic disagreement on whether the 'hard work' of burial is forbidden or NOT on Sabbath:**

- For the digging of a grave/carrying the body:

"THE LAWS CONCERNING THE SABBATH. But they are written [in Scripture]! — No, it is necessary [to state this] for the teaching of R. Abba. For R. Abba said: He who digs a hole on the Sabbath and requires it only for the sake of its earth is not liable for it. According to which authority [will this be]? According to R. Simeon, who said: one is not liable for work [performed on the Sabbath] which is not required for itself." [Soncino notes: "(note 31) — You may even say that it is according to R. Judah: (note 32) there one is improving, here one is spoiling." [Soncino Notes: "(31) E.g., a hole dug for the sake of its earth. R. Simeon stated this principle in connection with carrying out the dead on the Sabbath (v. Shab. 93a).(32) Who holds that one may not carry a corpse out on the Sabbath for burial (v. ibid.)." (*b. Hag* 10a)]

- For the carrying of a body:

"R. Simeon declared exempt even him who carries out a corpse for burial" [*b. Shabb* 94a/b, Soncino].

What this means is that there is a **great deal** more flexibility involved, than just the '*hard stop at astrophysical sundown view*' of the Sabbath might suggest. The only possibly time-constrained task would be moving the body, and we have seen that the distance was no problem. And the other in-tomb tasks (e.g., washing, wrapping, anointing) could have actually gone on a little longer past 'legal sundown'. The scriptures, however, do present the men (Joseph and Nicodemus) and the women (Mary et al) as attempting to avoid exceptions in their Sabbath observance. [Of course, the non-Sanhedren women might not have been as rabbinically-refined enough to understand their 'rights', hence their plan to return after the Sabbath...smile] Accordingly, the men finished the burial, sealed the tomb with the rock (perhaps another task for the contract labor), and went home to ponder these events...

3. We might also note that Joseph of Arimathea would have not been in any additional 'hurry' in this process, due to 'travel plans'. As a member of the Sanhedrin, he was a resident of Jerusalem and did not have to 'return home'. Plus, many, many pilgrims who came to Jerusalem for Passover stayed for the entire feast season.

**"Joseph of Arimathea:** (Mt. 27:57, 59; Mk. 15:43, 45; Lk. 23:50; Jn. 19:38). In all four Gospels the man who steps forth to bury Jesus' body is Joseph of Arimathea. **As a member of the Sanhedrin, Joseph was undoubtedly a resident of Jerusalem at this time, but he was born and had lived previously in the Judean village of Arimathea.** Joseph is described in both Mk. 15:43 and Lk. 23:50f as being a **member of the Sanhedrin**, although he did not consent to their plot and action against Jesus. He was a rich man (Mt. 27:57) with good social standing (Mk. 15:43). His wealth is shown by the fact that he possessed a new tomb freshly cut out of stone. **This undoubtedly indicates that he had made a permanent move from Arimathea to Jerusalem and expected to use this new tomb for his family burial plot in his new city.** All four Gospels agree that Joseph became a disciple of Jesus, although John emphasizes that this was done secretly (Jn. 19:38). John seems to indicate that there were many such disciples (12:42). Mk. 15:43 and Lk. 23:51 disclose that he was "expecting the kingdom of God," thus indicating that he expected the Kingdom to come through Jesus. In addition, Luke stresses that he was a good and just man (Lk. 23:50). His desire to bury the dead despite personal risk shows that he was a pious Jew." [ISBE, s.v. "Joseph of Arimathea"]

"The Greek text at Mark 15:43 and John 19:38 allows the interpretation that when Jesus' crucifixion took place, Joseph came directly "from Arimathea" to participate in the events surrounding it (if the prepositional phrase modifies the verb of motion) or, **more likely, that he was originally from the city of Arimathea and presumably now living elsewhere, probably in Jerusalem** (if the prepositional phrase modifies the name Joseph). The textual variant in Mark 15:43 and John 19:38, with the word *the* before the prepositional phrase *from Arimathea* (see *NovTG*) **argues for the latter interpretation.**" [ABD, s.v. "Joseph of Arimathea"]

Accordingly, when you factor in the minimal tasks required, the availability/standard use of contract labor, and the flexibility of the Sabbath 'boundary', the time urgency problem goes away. To be sure, they probably hurried (perhaps even out of anxiety over the Roman and Jewish leadership, who no doubt noticed them *honor* this 'criminal' Jesus), but there is no reason to believe, from the parameters of the situation, that the time crunch was so urgent that Joseph had to break Jewish ethics/mores and **not** bury Jesus (i.e., just dump him in a cave for holding).

**Next, let's talk about the 'temporary burial' practice...**

**First**, let's sketch out the **three 'kinds' of 'normal' burial/funeral scenarios** under discussion: (1) executions by the Sanhedrin, (2) honorable single-tomb burials, (3) honorable dual-tomb burials.

[Remember, though, that those *executed by the State--as in crucifixions by Roman authorities--*were supposedly allowed full honorable burial (according to *Semahot* 2.9: "No rites whatsoever should be denied those who were executed by the state"). ]

Let's list the events in sequence, from death forwards [note--you may have to print this table in Landscape orientation, I do]:

Seq	Criminal (Sanh. execution)	Single Tomb	Dual-tomb	Comments/Explanation
1.	<i>Death</i>	<i>Death</i>	<i>Death</i>	
2.		rending of clothes, baring of shoulder	rending of clothes, baring of shoulder	"We see from our text that although funeral rites were withheld from them (i.e., suicides and executions), <b>they were never denied burial... 'no rites'--i.e. rending of clothes, baring of shoulders, and the eulogy</b> , but he should <b>not be denied proper shroud or burial.</b> " [ <a href="#">HI:Sema</a> :100, II, Note 1]
3.		anoint/wash/bind/cover (this could be done at step 5)	anoint/wash/bind/cover (could be done at step 5)	"Shab 23:5 and early citations of Sm indicate that the corpse was ' <b>anointed and washed,</b> ' i.e. <b>it was first smeared with oil to remove the dirt and then washed to cleanse it of the oil.</b> " [ <a href="#">HI:Sema</a> :98.n3]....  "Preparations began at the moment of death: the eyes of the deceased were closed, <b>the corpse was washed with perfumes and ointments</b> (Acts 9:37), its bodily orifices were stopped and <b>strips of cloth were wound tightly around the body</b> — binding the jaw closed, the feet together and the hands to the sides of the body (Jn

				11:44)." [ <a href="#">HI:DictNTB</a> , s.v. "Burial Practices, Jewish"]
4.	carry to temporary grave ( <b>no</b> eulogy / procession)	carry to tomb, <b>with</b> eulogy during procession	carry to tomb, <b>with</b> eulogy during procession	"[ <i>Semahot</i> II.9; Znote: rites means 'funeral oration <b>or procession</b> ', [ <a href="#">HI:Sema</a> :99]]
5.	Place in 'slot' in community/criminal cemetery	Place in 'slot' in family or community tomb	Place in 'slot' in ("borrowed") tomb	"The dead were <b>sometimes interred in a temporary grave, a fosse , where the flesh disintegrated</b> ), and <b>from which the bones were then gathered</b> into small caskets, ossuaries or <i>ostophagi</i> , <b>for final burial</b> . The <b>Rabbis refer to this bone gathering practice as "ossilegium"</b> , <b>not to be confused with either burial in a temporary tomb</b> , in which case the corpse apparently remained intact..." [ <a href="#">HI:Sema</a> :158, note XII.1]
6.	wash/anoint, add shroud	add additional effects, additional wash/anoint, add shroud	add additional effects, additional wash/anoint, add shroud	"We learn from our text (Sm) that effects were sometimes cast on the coffin." [ <a href="#">HI:Sema</a> :25]
7.		Burning of spices	Burning of spices	"Additional rites included <b>"a great burning"</b> (2 Ch. 16:14; 21:19–20; Jer. 36:5), i.e., of <b>spice</b> and incense, not of the corpse." [ <a href="#">ISBE</a> ]
8.	Burial of the "Hanging-post" (see Note 1 below)			"Our Rabbis taught: [Then thou shalt hang him on] a tree: this I might understand as meaning either a cut or a growing tree; therefore Scripture states, Thou shalt surely bury him ( <b>note 6</b> ) [thus, it must be] one that needs only burial, so excluding that which needs both felling and burial. R. Jose said; [It must be] one that needs only burial, thus excluding that which requires both detaching and burial. And the Rabbis? — Detaching is of no consequence." [Soncino notes: " <b>(6)</b> The <b>need of burial for the post</b> is deduced from the strengthening of the idea of the verb by the infinitive..." ( <i>b. Sanh</i> 46b)]
9.	Sanhedrin <b>fast for entire day</b>			"For those executed by the court, no rites whatsoever should be observed... <b>The court that imposed the death penalty would taste no food all that day.</b> " [ <i>Semahot</i> II.6; cf also <i>b. Sanh</i> 63a: "R. Akiba said: Whence do we know that a <b>Sanhedrin which executed a person must not eat anything on the day of the execution?</b> From the verse, Ye shall not eat anything with the [shedding of] blood."]
10.	tomb entrance sealed	tomb entrance sealed	tomb entrance sealed	

11.		7-day mourning period begins ( <i>sibah</i> );	7-day mourning period begins ( <i>sibah</i> );	"...mourning begins when the tomb is sealed..." [HI:Sema:104, note 9]
12.		comforting ceremony at tomb	comforting ceremony at tomb	"After the interment the <b>mourners withdraw from the place of burial and the comforters</b> (of whom there must be at least ten) <b>gather around them in concentric circles</b> . Singly, they approach at each mourner's right and say to him, 'Heaven comfort thee!...' [HI:Sema:101f, II, Note 1]
13.		funeral oration	funeral oration	"There thus arose a third form of formal lamentation, <b>the oration which was usually delivered by a paid speaker in the vicinity of the grave.</b> " [TDNT]...  "In the Mishnah and Sm (x,8,9; xi, 3) , we read that after standing in the mourners' row and comforting the mourners, the public was given leave to go in accordance with what appears to be established custom. In a parallel passage to Sm, the Talmud informs us that Rabbi Akiba dismissed the public <b>after the funeral oration</b> : 'Return to your homes in peace'" [HI:Sema:19]
14.		dismissal of public	dismissal of public	"In the Mishnah and Sm (x,8,9; xi, 3) , we read that <b>after</b> standing in the mourners' row and comforting the mourners, <b>the public was given leave to go</b> in accordance with what appears to be established custom. In a parallel passage to Sm, the Talmud informs us that <b>Rabbi Akiba dismissed the public after the funeral oration</b> : 'Return to your homes in peace'" [HI:Sema:19]
15.	(no need, death official)	third-day "inspection" visit to tomb?	third-day "inspection" visit to tomb?	"One may go out to the cemetery for thirty (some mss. "three") days <b>to inspect the dead for a sign of life</b> ...For it happened that a man was inspected after thirty days, and he went on to live twenty-five years..." [ <i>Semahot</i> VIII.1; but Klotnick seems to have doubts about this, p.11; see Note 2 below]
16.		at 7 days, <i>sibah</i> ends (but <i>sheloshim</i> continues until 30 days are over)	at 7 days, <i>sibah</i> ends (but <i>sheloshim</i> continues until 30 days are over)	"After the funeral, during a seven-day period called <i>Shiva</i> (seven) or <i>Avilut</i> (mourning), mourners remained at home, sitting on low stools or on the floor, a common sign of mourning. During <i>Shiva</i> , they were prohibited from conducting business or doing other work, from bathing, cutting the hair, engaging in sexual relations, wearing leather shoes, or otherwise engaging in pleasurable activities. It was customary at this time for relatives and friends to visit and express condolences ( <i>B. Moed Katan</i> 28b)...The prohibitions against cutting one's hair, getting married, and participating in joyous celebrations or social gathering continued for thirty days from burial ( <i>Sheloshim</i> ) and, in the case of the death of one's parent or spouse, for the entire year after the death." [HI:DictJBP, s.v.]

				mourning]
17.	At one year, tomb is reopened and bones collected for moving to family tomb.	At one year, tomb is reopened and bones collected for containment and/or moving further back <i>within</i> the tomb.	At one year, tomb is reopened and bones collected for <i>transfer</i> to distant (family) tomb	<p>"The dead were sometimes interred in a temporary grave, a fosse , where the flesh disintegrated), and <b>from which the bones were then gathered</b> into small caskets, ossuaries or <i>ostophagi</i>, for final burial. The Rabbis refer to this bone gathering practice as "<i>ossilegium</i>", not to be confused with either burial in a temporary tomb, in which case the corpse apparently remained intact..." [<a href="#">HI:Sema</a>:158, note XII.1]...</p> <p><b>"A year after the death</b>, members of the immediate family returned to the tomb for a private ceremony in which the <b>bones were reburied</b> after the body had decayed." [<a href="#">HI:DictNTB</a>, s.v. "Burial Practices, Jewish"]</p> <p>"<i>M.Sanhedrin</i> 6. 5b refers to this custom in the <b>case of criminals</b>, first buried in two special cemeteries by the Sanhedrin of Jerusalem (after the death penalty), <b>then formally reburied in the family tomb</b>. The bones of a crucified man have been found in his family tomb." [NBD, s.v. "Burial and Mourning"]</p> <p>"When <b>the flesh had wasted away</b> [of the criminal] they gathered together the bones and buried them <b>in their own place</b>" [<i>m. Sanh</i> 6.6 (Danby), footnote: "The family burying-place"]</p>
18.			Transfer of bones	<i>Semahot</i> XIII
19.			Secondary burial at final tomb	"The funeral was thus conducted without delay, and most bodies were interred by sunset on the day of death. <b>But Jewish burial rituals did not conclude with this first, or primary, burial. A year after the death</b> , members of the immediate family returned to the tomb for a private ceremony in which the bones were reburied after the body had decayed." [ <a href="#">HI:DictNTB</a> , s.v. "Burial Practices, Jewish"]
20.			almost no mourning (one day)	"P[alestinian Talmud] informs us that there should be <b>neither lamentations nor elegies in the case of <i>ossilegium</i></b> ; neither the mourners' blessing, nor comforting of mourners." [ <a href="#">HI:Sema</a> :159, note 4]

				"In the case of ossilegium, mourning must be observed for only one day." [ <i>Semahot</i> XII.4]
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[Note 1: Not everybody agrees that hanging is automatically identified with crucifixion--note the comments by Rabbinowicz in the Soncino Talmud at *b. Sanh* 46a: "This bears no resemblance at all to crucifixion. Cf. Rabbinowicz, *Legislation criminelle du Talmud*, p. 111: 'What a difference between this hanging after death, where the executed man had both his hands tied and did not remain one minute upon the gallows, and the Supplicium, which the Romans inflicted upon Jesus, who was nailed to the cross whilst alive, with his hands on the cross, and left hanging on the gallows all day.'" However, they seem to overlap enough for the NT authors to relate His death to the 'do not leave hanging on the tree' verse in the Hebrew bible.]

[Note 2: the 'inspection period' in the majority of texts is given at 30 days. Klotnick seems to think that the 3-day reading comes from a later tradition about honorary visits to the grave of a Sage, at 3 days and at 7 days. Accordingly, it is unclear whether this 3rd-day inspection task actually was followed.

It is at this point in the research that I begin to suspect that **Richard has been misled by the ambiguity in the word 'temporary'**.

He seems to use the term as in 'temporary holding area for the body, *for a day or two*', when the use in the sources he cites is **completely different** (as in 'temporary burial site' *for a year*).

Let's look at this.

He cites the *Semahot* (footnote 20) and Amos Kloner --who cites the *Semahot* also--in footnote 18.

#### 1. The *Semahot* text:

Richard cites the following from *Semahot* X.8, embedded in his paragraph (cited text in **bold**):

"...the story told that "**Rabban Gamaliel had a temporary tomb** [lit. 'a borrowed tomb'] **in Yabneh into which they bring the corpse and lock the door upon it,**" just as Joseph does with Jesus, "**Later, they would carry the body up to Jerusalem.**"[20]"

But for some reason, **he as omitted the text *in between*** his two citations. He is the **entire** passage:

"Rabbi Simeon ben Eleazar says: 'Rabban Gamaliel had a temporary tomb in Yabneh into which they used to bring the corpse and lock the door upon it. **After forming into a line and comforting the mourners, they would dismiss the public.** Later, they would carry the body up to Jerusalem."

Zlotnick's footnotes for this passage read: "'dismiss the public'--**part of the burial procedure**... 'carry the body up to Jerusalem'--for **final burial** in the family tomb." [[HI:Sema:151,152](#)]

The omitted information in the middle **clearly indicates that the 'borrowed tomb' is used for the primary/first FULL burial, complete with mourning, comforting, and public dismissal.** Note that the mourning in this text is **not** the 'general', at-home mourning of the 30-day *selosim* period--but it is **the mourning line and ceremony at the**

**tomb**. And the 'dismissal' action described **also happened at the tomb**--after the mourning ceremony. This is NOT a 'holding area' for a body PRIOR TO its first real/formal burial. This is critical to understand--the 'temporary tomb' (lit. 'borrowed') **was the first FULL burial** in a dual-tomb funeral scenario. It was NOT moved up to Jerusalem for its **first** burial, but for its *ossilegium*--the final deposition of the bones in the family tomb (the secondary burial).

## 2. The Amos Kloner quote:

Richard cites Kloner's excellent article in BAR ["Did a Rolling Stone Close Jesus' Tomb?", *Biblical Archaeology Review*, Sept/Oct 1999 (vol 25, #5), page 29] , but somehow misses the fact that Kloner was talking about a **burial--not** a pre-burial 'holding place'. Here's Kloner's quote, given by Richard:

"During the Second Temple period and later, Jews often practiced temporary burial...a borrowed or temporary cave was used for a limited time, and the occupation of the cave by the corpse conferred no rights of ownership upon the family...[and] Jesus' interment was probably of this nature."

But the context in which that quote appears shows that Kloner is talking about a **primary burial**--a FULL burial with shroud. He even refers to the 'borrowed tomb' passage in *Shemahot* we just looked at (and saw it referred to FULL burial). Here is the wider passage, with the part Richard quoted in *italics* [my emphases in **Blue Bold**; my notes are in **Red Bold**]:

"Jesus' **burial** took place on the eve of the Sabbath. His would have been a hurried **funeral**, in observance of the Jewish law that forbade leaving the corpse **unburied** overnight--especially on the Sabbath and religious holidays. The body was simply and hastily covered with a **shroud and placed on a burial bench in a small burial cave**. This is the context in which we should understand John 20:11, in which we are told that Mary "bent over to look into the tomb," and saw two angels sitting at the head and foot of where Jesus' body had lain.

"I would go one step further and suggest that Jesus' tomb was **what the sages refer to as a "borrowed (or temporary) tomb."** *During the Second Temple period and later, Jews often practiced temporary burial.* This is reflected, for example, in **two quotations from rabbinic sources involving burial customs and mourning: [notice how Kloner also understands the *Shemahot* X.8 reference to be about burial/mourning--a FULL funeral--as opposed to some kind of 'one-night holding area']**

"Whosoever finds a corpse in a tomb should not move it from its place, unless he knows that this is a temporary grave.

"Rabbi Simeon ben Eleazar says: "Rabban Gamliel [sic] had a temporary tomb in Yabneh into which they bring the corpse and lock the door upon it

*"A borrowed or temporary cave was used for a limited time, and the occupation of the cave by the corpse conferred no rights of ownership upon the family.* **[This is simply why it was called 'borrowed'--since burials normally occurred in family-owned caves/tombs.]**

*"Jesus' interment was probably of this nature.* He was **buried hurriedly** on Friday, on the eve of the Sabbath. On the third day, the day after the Sabbath, Mary Magdalene and another Mary visited the tomb, **as was the Jewish**

**custom. [The Jewish custom he is referring to is possibly the 'inspection', a part of the initial, primary burial.]**

I should also point out that Kloner spoke of this 'temporary burial' as something 'often practiced', and this can **only** be referring to Primary/Initial burial. We don't have ANY records of any kind of 'staging area' being 'used', or especially ANY being called a 'temporary burial' in the Sages. We DO have tons of primary/secondary burial patterns, using borrowed tombs for the first (full-mourning) primary burial.

This can be further seen by looking at the *different* funeral procedures associated with **Initial/Primary Burial** and with the later (generally one year later) **Secondary Burial** (*ossilegium*).

1. The general accounts of burials and burial praxis describe **two stages**: (1) burying (with mourning and rites) in a secluded place, but one which allowed the elements to effect decomposition; and (2) collection of bones into a container, or corner of the tomb-cave. The **temporary grave was used for the decomposition process** (generally lasting a year)--not for 'pre-burial storage'. [Notice how the terms 'temporary burial' and 'temporary grave' are used here--*always* signifying initial, full, primary, for-one-year burial:

"Rabbi Eleazar bar Zadok said: "Thus spoke father at the time of his death: 'My son, **bury me at first in a fosse. In the course of time, collect my bones and put them in an ossuary**; but do not gather them with your own hands. And thus did I attend him: Johanan entered, collected the bones, and spread a sheet over them. I then came in, rent my clothes for them, and sprinkled dried herbs over them...Just as he attended his father, so I attended him." [*Semahot* XII.9]

"The dead were sometimes interred in a temporary grave, a fosse, where the flesh disintegrated, and from which the bones were then gathered into small caskets, ossuaries or *ostophagi*, for final burial. The Rabbis refer to this bone gathering practice as "ossilegium", **not to be confused with either burial in a temporary tomb**, in which case the corpse apparently remained intact..." [[HI:Sema](#):158, note XII.1]

[Soncino Note: 'It was an ancient custom to give **first a temporary burial, and after the flesh had decayed** to transfer the bones to a reserved tomb or mausoleum, where they were kept in cedar or marble coffins. Cf. Sem. XII'. (*b. Mo'ed Katan* 8a)]

2. We have seen that **initial burial always involved the 7-day and 30-day mourning/passivity periods. In contrast, secondary burial involved little/none** of this--the REAL burial was done at the time of death:

"In the case of *ossilegium*, mourning must be observed for **only one day**. As a consequence, the bones are gathered only near nightfall. If while gathering them all that day, night falls, a man is released from the obligation of mourning on the very next day." [*Semahot* XII.4]

"P[alestinian Talmud] informs us that there should be **neither lamentations nor elegies in the case of ossilegium**; neither the mourners' blessing, nor comforting of mourners." [[HI:Sema](#):159, note 4]

Richard is obviously aware of most of this process, since he refers to much of it in his section on "Temporary Holding vs. Secondary Burial". But it is in that section that the inconsistency we mentioned at first arises :

"Whereas **temporary storage is not burial at all, but the use of a holding place until burial can be performed**, much like we store bodies at a morgue today, secondary burial is an actual second act of burial (tanknote: where was the first act of real burial?), where it is permitted to enter a tomb and 'disturb' the dead with proper reverence, so that the bones can be reconsecrated in a new grave."

We have seen from the source material above that **a burial--A FULL ONE--is what is demanded by the rabbins**, which for most people would be filled with rites, mourning, comforting, relaxed religious requirements etc. For the executed, it would include washing, anointing, binding, shroud, and sealing the tomb. The term 'temporary burial' --as used in the *sources* he has cited--DOES MEAN burial, but it doesn't include all aspects (i.e., the *ossilegium*) of the overall process. It is **NOT a 'holding area' prior to the initial burial** (in a borrowed tomb, in a family tomb, or in a common or criminal graveyard).

One final point: In a *criminal graveyard scenario*, that burial **would be** a 'temporary burial', since the bones would be collected **a year later** by the family, and the bones would have then been relocated/placed in the family tomb. So, a criminal burial is a special case of the two-tomb funeral/burial scenario (but one without the mourning rites).

***But there may be a different problem hiding in here for Richard--another anachronism.***

We have seen already that the use of the Rabbinic material to 'portray' actual pre-Destruction legal custom is anachronistic, and we could very easily be encountering another one with the term 'borrowed tomb'. In have offered one explanation for the cases and texts that Richard uses for moving a body, but there is another possible interpretation of the data that must be considered. Let's look at those texts again...

**First**, if we look at *Semahot* 10.8 ("Rabbi Simeon ben Eleazar says: 'Rabban Gamaliel had a temporary tomb in Yabneh into which they used to bring the corpse and lock the door upon it. After forming into a line and comforting the mourners, they would dismiss the public. Later, they would carry the body up to Jerusalem.'", we can see three historical markers in it:

1. 1. **"Rabban Gamaliel"** was the grandson of Gamaliel the Elder (of NT fame). He was in the second generation of Tannaites (c90-130), and was the leader of rabbinic Judaism between 80 or 90 ad and c. 110. "He played a significant role in the development of the center of rabbinic learning at Yabneh and in the struggle to establish that center, its patriarch, and court as the center of Judaism." [DJBP, s.v. "Gamaliel II"]
2. 2. "Yabneh": "town near the Mediterranean on the southern coast of the Land of Israel, where, after the destruction of the Temple in 70 C.E., sages assembled and conducted schools and courts, also referred to as Jamnia." [DJBP]
3. 3. **"carry the body up to Jerusalem"**--the Jews lost access to Jerusalem at the end of the Second Revolt of 132 ad.

This places this practice of a 'borrowed' or 'temporary' tomb **squarely at the end of the 1st century**, situates it socio-economically strictly within the elite/leadership, and provides an actual motive for itself (i.e., being buried in the Holy City). This would certainly be an extremely minority practice, and one which would have had **no rationale for its existence**

**before the Destruction** (and none AFTER the 2nd revolt, either, unless "to Jerusalem" can be stretched to mean "to the environs *outside* the then Forbidden City of Aelia Capitolina).

**Secondly**, Zlotnick connects the above passage (as a case of "temporary tomb", p.158, in which *ossilegium* did NOT occur...the corpse was kept in a coffin intact) with *b. MK 25a*, in which a similar case--but this time referring to reinterment **from Babylon to Galilee** (after the 2nd Revolt, late 3rd century):

**"When they brought him up thither [to Palestine, for burial]** people told R. Ammi and R. Assi that R. Huna had come. They said: 'When we were there [in Babylon] we had not [a chance] of raising our heads because of him; now that we have come here he is come after us'. **They then were told that it was his coffin that had arrived.** R. Assi and R. Assi went out [to meet him]; R. Ela and R. Hanina did not go out. Some say, R. Ela went out, R. Hanina did not go out. What was the reason of the one who went out? According to what is taught [in the following]: **'If a coffin is passing [on its way] from place to place** they stand in a row on account of the deceased, and say the mourners' benediction on account of him and also offer condolence to the mourners'. What was the reason of the one who did not go out? — According to what is taught [in the following]: **'If a coffin is passing [on its way] from place to place**, they do not stand in a row on account of it, nor say on his account the mourners' benediction, nor [offer] condolence to the mourners'. These citations contradict one another! — This is not difficult [to explain]; **the former [ruling obtains] where the body is intact**; the latter **where the body is not intact**, and R. Huna's body was intact. Why did one not go out [to meet it]? Because he had not been fully informed of this. Then they said, **Where shall we lay him to rest?** [Said some, Let us lay him at the side of R. Hiyya]; for R. Huna disseminated Torah in Israel and R. Hiyya had likewise disseminated Torah in Israel. Who will bring him into [the cave of] R. Hiyya? — Said R. Hagga 'I shall bring him in, because I sustained [revised] my studies [before him] when I was but eighteen years of age, never having experienced the effects of an unchaste dream and he made me his attendant and therefore I know of his [pious] deeds. For one day the strap of his phylacteries was [accidentally] reversed, whereupon he sat fasting forty days'. **He then brought him in [to the cave].** Judah was laid there at the right of his father [R. Hiyya] and on his left was his [twin brother] Hezekiah. Said Judah to Hezekiah: 'Rise from your place, for it is not good manners that R. Huna be left standing'. As he [Hezekiah] rose a column of fire rose with him. R. Hagga, seeing that, was overcome with fear, **set up the coffins** and came away." [Soncino]

Notice that this is one of the premier teachers of Babylon, and his body (not just his bones) is being moved in a coffin to Palestine (Soncino says 'probably Tiberias' in Galilee). This is also clearly an elite, leader-only process, and even caused some uncertainty as to how they should act, given the coffin.

Also notice something about the terminology here. The passage refers to a 'body which is intact' (i.e. still a corpse) and a 'body which is not intact' (i.e., bones only). **Notice that BOTH 'corpse' and 'bones' can be referred to as 'a body'**, at least as long as it is in a coffin. **Hence, the reference to 'body' in Semahot 10.8, does NOT necessarily refer to an 'intact corpse'--it could just as easily refer to a 'non-intact corpse'**. But, as Zlotnick suggests, in either case they are probably in coffins.

**Thirdly**, the *Semahot* 13.5 passage reads: "Whosoever finds a corpse in a tomb should not move it from its place, unless he knows that this is a temporary grave". This passage is followed in 13.6

by the same kind of instruction, but with 'bones' instead of 'corpse'. And this is followed in 13.7 by a restriction of movement of EITHER bones or corpse from tomb to tomb (with the exception of movement to a family tomb):

**"Neither a corpse nor the bones of a corpse may be transferred** from a wretched place to an honored place, nor, needless to say, from an honored place to a wretched place; **but if to the family tomb**, even from an honored place to a wretched place, **it is permitted**, for by this he is honored." [*Semahot* XIII.7; this is a strong statement of *no-movement-allowed*. The only exception given is for movement to the family tomb, likely at *ossilegium* time, but under this alternative interpretation, it could be a trip to the homeland(?).]

This implies that a buried corpse (prior to complete decomposition) could be moved, for one and only one reason.

**Fourthly**, we might point out that the character of *Semahot* reveals that it represents a **late-version of burial customs**, specifically 'favoring' the close-knit rabbinic class. The application of the 'temporary, pre-journey-to-Jerusalem' tomb of the rabbinic leader to other elite-class rabbis is to be expected. [It also shows up in various laws of *Semahot* and in later funerary praxis at Beth Shearim:

"After the destruction of the Second Temple the rabbis tried to bridge social gaps regarding mourning and burial customs. **However, in the third and fourth centuries C.E. we find them formulating halakhot pertaining to mourning and burial which grant themselves a special status.** Mourning was prohibited for all during the intermediate days of a festival, but "a sage who died, all are deemed his relations, all tear their garments, all bare [their shoulders], all lament, and all receive a mourners' meal on his account, even in the street of the town." Not only mourning, but also making a coffin in the marketplace, reciting lamentations during the funeral, and holding a mourners' meal, which were normally prohibited during these intermediate days, were allowed in the case of the death of a sage. Participation in the funeral of a sage and lamentations for him were considered a special obligation. Even priests were allowed to participate in the funeral, despite the usual prohibition lest they contract the uncleanness of a corpse. Lamentations for a rabbi were made in the synagogue; the sources tell us of funerals of rabbis attended by many people. Halakhic discourses were prohibited near the bier of a corpse, and, despite the excuses given in the Talmud, it is clear that some rabbis allowed themselves to behave contrary to this prohibition. Not only sages, but also their sons, enjoyed the benefits of the rabbinic class. **Tractate Semahot** states that, "the sons of rich men are like the children of sages, children of sages are like the **children of royalty, and their funeral rites must be attended.**" The reality as we see it at Beth She'arim, together with the evidence of the talmudic sources, **strengthen the assumption that there were burial caves which were restricted to the rabbinic class in the Galilean Jewish cemeteries** of the third and fourth centuries C.E." [GLA:369f; several of the footnotes reference passages in *Semahot*.]

Now, if this alternative interpretation of the data is correct, then, **instead of two types of burial** (temporary/first in a local grave, and secondary/final/*ossilegium* in family grave) **we have THREE types** (temporary/first in family grave, secondary/final/*ossilegium* in family grave, temporary/first in temporary grave followed by a trip to the family tomb for post-funeral, pre-final burial interment). But notice that this interpretation--although it fits the data VERY nicely--leaves a major whole: where are the mourning rules for the 'end' of that funeral trip? We have all kinds of halakhot for first burial and for final burial and even some rules for transport of the bones from a local fosse/grave to a remote family grave, but there are none for what to do when a rabbi who had been in his coffin for 2 months was moved to Jerusalem. Given that the rules attempt to cover EVERYTHING, this omission could be considered substantial support for my initial interpretation (that bodies in the Yavneh tomb stayed there for a year, until *ossilegium*).

But neither of these scenarios are supportive of Richard's position, and both fit quite nicely with the biblical data. So let's go on...

**Now, let's ask the next question: *what difference would it make in the funeral procedures if Jesus were in the criminal category?***

Well, according to the rabbinics--many of which Richard has already cited for us--it only means that Jesus cannot have the 'rites' **while he is being buried**.

[I must confess some confusion here, over the wording in Richard's revised article of May 2002. He states at the end of the section on "Down by Sunset" the following:

"It was thus the holy duty of the Jews to see to the body of Jesus, and it was **sacred law that he be buried** the day he died, or as soon as possible. The Tractate *Semahot* confirms this, stating that '**No rites whatsoever should be denied** to those who were executed by the state' (2.9)"

His statement there **explicitly** states that Jesus was supposed to have all the 'rites' (i.e., mourning, eulogy rituals--a full honorable burial!), but this **explicitly contradicts** *Semahot* 2.6 ("For those executed by the court, **no rites whatsoever should be observed.**"), which *should* apply if Richard's argument of court-execution-to-criminal-graveyard sequence is to stand. He can't have it both ways...]

From the table of the Three Scenarios, it can be seen that the biblical accounts portray the post-mortem experience of Jesus/Joseph/etc as a "no-rite" FULL burial. **A FULL burial included washing/anointing** (done with spices, oils, and water), **bindings** (linen strips, with spices), **shroud** (recorded from the Synoptics), **entombment**, and **sealing the tomb**. [Actually, it looks more like a "*some-rite*" burial, because of the quantity of spices and statue of the burial party--Joseph and Nicodemus.] This indicates that Jesus was **buried**--whether it was an honorable burial or not, whether in shame or not--in accordance with the already-documented Jewish requirements. He was fully buried. The seven days of mourning--shiva--(in case it was NOT a dishonorable burial) would have begun when the tomb was closed.

[Note: If the historical data leads us to believe that Jesus actually was considered to have **died** on the Cross that day, then we have every right to believe He was **buried** by nightfall--*regardless of how we view the accuracy of the gospel accounts*. The Jewish social/religious pressures to bury-by-nightfall *insure us* that (absent an entourage of people who wish to eulogize Jesus too long) He was buried that night. Accordingly, it is not 'begging the question' to assert that Jesus was buried. **This can be confidently believed**, irrespective of our confidence or non-confidence in the gospel narratives, **on the basis of Jewish custom/culture of the day**... As for the gospel narratives, I consider the fact that the 'operational' or physical aspects of the burial (e.g., carry, anoint, wash, rock, etc) **are not 'theologized', but are simply described**, as indicating that these physical details are adequate historical data to work with. A secular historian might raise eyebrows at the quantity of spices, the sudden appearance of J of A, or the remark about "in which no one had been buried before", but the "non-interpreted" nature of the *physical* details in the narratives seems trustworthy enough to consider the description of the burial as being true-to-fact.]

- "They took the body of Jesus and wrapped it with the spices in linen cloths, according to the **burial** custom of the Jews" [John 19.40]
- "The **burial** of the body was hasty and had to be completed before sundown. The process is uncertain. The **spices**, being of somewhat gummy character, may have

been **laid in the folds of the cloth to provide a rigid casing for the body**, or they may have been ground and **mixed with oil to form an ointment to rub on the body**. The former procedure agrees better with the text. "Strips of linen" is a translation of *othoniois*. Later usage in the *koine* Greek made the term a generic equivalent of **clothes** (cf. MM, p. 439). In the case of Lazarus, **the graveclothes were wrapped around him in such a way that he had to be released after he was raised.**" [EBCNT, at John 19.40]

- **"Shroud.** In Mt. 27:59 par Mk. 15:46; Lk. 23:53 *sindoun* describes a linen cloth used for the wrapping of a dead body in preparation for burial. Jewish burial practices in NT times included washing and anointing the body, perhaps even after it had been earlier cleaned with oil and washed at the place of death (cf. Jn. 19:40) or in the deceased's home. Anointing might be repeated in the tomb itself (cf. Mk. 16:1). The dead were then buried in their own clothes or specially prepared ones such as a simple linen cloth on which spices would be spread as the cloth was wound around the body. With regard to Jesus' burial, **the Synoptic Gospels all relate how Joseph of Arimathea wrapped the body of Jesus in a shroud.** The **Johannine account** states that Joseph and Nicodemus followed "the burial custom of the Jews," anointing the body with a mixture of myrrh and aloes weighing about 45 kgs. (100 lbs.) and **binding it in "linen cloths"** (Jn. 19:39f). Those "linen cloths" were found in the empty tomb on Easter morning along with a "napkin, which had been on his head," which was "not lying with the linen cloths but rolled up in a place by itself" (20:6f). [[ISBE](#), s.v. 'shroud']

This data, of course, argues that Jesus **was** formally buried on Friday night--as the text says, and as the customs dictated.

#### ***But what were the women planning to do, if Jesus was already buried?***

As far as the text indicates, they didn't know what all Joseph/Nicodemus/burial tradesmen had done (some only watched from a distance initially--this makes sense if Joseph and Nicodemus were known Council members, yet *unknown* disciples of Jesus!). They might not have assumed that these Jewish leaders had performed all the anointing/washing. They did, however, see the tomb and 'how the body was laid' (Lk 23.55: "*Now the women who had come with Him out of Galilee followed after, and **saw the tomb and how His body was laid.***"). But the text (Mr 16.1) only speaks of them wanting to '*anoint*', **not 'wash' him**. This means they were aware that the core procedure of burial had been done.

They probably were also intending on adding the personal touches, much as when a grieving parent wants to put a special toy into a casket, to put a special necklace on the deceased, or to straighten the clothes of a lost one. So they carried their spices and their grief, and went to be with the One who loved them...

From the textual data, there is no reason to assume that they regarded the burial of Jesus as 'uncompleted' at all. They had seen the spices and perhaps saw the wrapping of the body, spoken of in John 19.40: "*And so they (Joseph/Nicodemus/company) took the body of Jesus, and **bound it in linen wrappings with the spices, as is the burial custom of the Jews***".

But I am not trying here to address **all** the issues in the burial/resurrection accounts--just the 'temporary tomb' issue for now...so let me try to get back on track here...

So, I think it's very accurate to say that "temporary tomb" and "temporary burial" do NOT refer to 'holding areas, prior to initial FULL burial', from the standpoint of *Semahot*, *Kloner*, and the rabbinic literature.

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Okay, so let's assume that Richard just make a *terminological* mistake, about the word 'temporary'--**could his scenario of a 'holding area' STILL stand? Would Jewish post-mortem customs/mores allow Josephus/Nicodemus to 'stash a dead body' in a cave, partially (?) buried, and then MOVE the body elsewhere 24 hours later?**

First of all, **let's be clear that the pressures to bury, even a condemned criminal, on the first night--**documented very well by Richard--were *extreme*, and can be fully corroborated by the data from *Semahot*:

- "For all other dead, **he should hasten the burial** and not make the funeral elaborate. In the case of his father or mother, he should make an elaborate funeral and not hasten the burial, for whosoever takes pains with his father and mother is praiseworthy. **In an emergency, however, or on Sabbath Eve**, or if rain is coming down on the bier, **he should haste the burial** and not prolong the funeral." [*Semahot* IX.9; note that the only exception to quick burial, in this passage is for parents, but even **this is overridden by the Sabbath**. The *that-night imperative* was indeed strong. Zlotnick notes: "If to honor the deceased, he may even let the corpse lie unburied overnight... 'on Sabbath Eve'--and **it is desired to complete the funeral before sundown, so as not to have to postpone it until after the Sabbath**." [[HI:Sema](#):146, note to IX:9]. In other words, even the desire to leave it unburied for a night is *overridden* by the Sabbath--the *delay-for-honor* principle is overridden by the *bury-immediately* principle.]
- The related passage in the Talmud: "Come and hear! IF HE KEPT HIM OVER NIGHT FOR THE SAKE OF HIS HONOUR, TO PROCURE FOR HIM A COFFIN OR A SHROUD HE DOES NOT TRANSGRESS THEREBY... Come and hear! If he [the relative] kept him overnight for his own honour, so as to inform the [neighbouring] towns of his death, or to bring professional women mourners for him, or to procure for him a coffin or a shroud, he does not transgress thereby, for all that he does is only for the honour of the deceased!" [Soncino note: '**the longer the body remains exposed, the greater the disgrace**; and **even in the case of an ordinary person**, if the funeral is delayed without cause, but simply out of neglect, it is likewise accounted a disgrace to the dead, therefore it **is forbidden**.' (*b. Sanh* 47a); but note the 'without cause' clause--the *acceptable* causes being given in the passage, none of which seem to apply to Jesus.]
- "**So long as his dead lies unburied, a mourner is exempt from** reciting the Shema, from the Tefillah, from tefillin, and from **all the commandments written in the Torah**." [*Semahot* X.1; note that this imperative to bury the dead (properly, not hide them in a closet somewhere!) **overrode all other commandments of the Law!** You can't get any more urgent than that--at least not to the writers of the rabbinic materials!]
- "In a town where two deaths have occurred, the funeral of the person who died first should take precedence. The burial of the second person should be put off, not that of the first, for it is said, **Whosoever lets his dead lie unburied overnight, disgraces him**." If, on the other hand, the delay is for the purpose of digging the grave, or bringing shrouds, or for relatives to arrive from some other place, one may let the dead lie overnight, and there is no need for concern." [*Semahot* XI.1; Zlotnick's note to above: "There may not be enough time left of the day for two funerals. If the second body has begun to swell, however, and there is concern lest it should burst, the order may be reversed." [[HI:Sema](#):154]; notice the acceptable reasons for delay do not include any that are relevant to Jesus' case (i.e. no grave, no shroud, traveling family, 'competing' body )
- "**So long as his dead lies unburied**, a mourner may sleep neither on an upright bed nor on an inverted bed." [*Semahot* XI.16, note: **he sleeps on the floor**.]

- "It would appear that **in order that a corpse might not have to lie unburied overnight, two sets of mourners, even of unequal status**, could be comforted at the same time." [HI:Sema:155, note 3; note: this is a compromise of the rabbinic principle *one-burial-at-a-time*, further indicating the urgency of *burial-before-nightfall*.]
- "'At twilight on Sabbath eve,'...Although a funeral might be **rushed** through at this time, and the day still counted in the sabbah..." [HI:Sema:157, note 18; 'rushing' is an indication of urgency]

[But one might note that many of these passages seem to be describing *honorable* burial, and to be reflecting concern over the '*honor*' of the deceased. In the case of a condemned criminal, it could be argued that this urgency might **not** apply. But, strangely enough, the *burial-by-nightfall* principle was actually **derived from the case of the criminal**. Historically, it was the Deuteronomy passage (21.22f) that was the basis for extending the *by-nightfall* to non-criminals in the rabbinics. The urgency just became more 'intense' when there was also an 'honor' issue involved.]

This creates the urgency to bury Jesus that night, which from all appearances in the text, was done. [But note again that this urgency was to complete the initial FULL 'burial'--NOT just stash the body somewhere WITHOUT 'rabbinically' burying it. Let's be clear about this. The injunctions ALL use the burial-group words.]

.....

### Okay...now, how acceptable was it to move an already-buried corpse from its burial place?

In other words, how 'strong' were the cultural pressures to **keep the body where it was**, until the one-year mark where the bones would be disassembled and compacted into a container or other part of the tomb? **To the extent these pressures were strong** (like they were in the case of *burial-immediately*), **to that same extent we would have reason to doubt the plausibility of a legitimate 'stash-and-move-tomorrow' scenario**. [Note: this wouldn't affect the argument about grave robbers, since they did not operate under the constraints of legitimacy or legality.]

Okay, let's look at some **rabbinic statements about movement of a corpse** (and bones, other than at *ossilegium* time).

- "He may not be exhumed. **After the tomb has been sealed, the dead may not be stirred from his place.**" [Semahot IV.7; note: this was a legal case in which one party wanted to exhume a child to verify that he had reached puberty. The rabbinic denial was based on the principle here ('may not be stirred after sealing'), and added a further reason of practicality: the body would have been too far decomposed to make the assessment. The former rule--of 'no stirring after sealing'--is the part that is relevant to our study. There seemed to be a strong principle of non-handling.
- "Whosoever finds a corpse in a tomb should not move it from its place, unless he knows that this is a temporary grave." [Semahot XIII.5; note: this was the passage Kloner said was about the *burial* process--removal for *ossilegium*.]
- "Whosoever finds bones in a tomb should place them in an *arcosolium* [a container]. So Rabbi Akiba. **The Sages say: "He should not move them from their place.**; If he found them in a *kok* or in a *loculus* (types of shelves/beds, upon which the corpse decomposed until bone collection), **he should not move them from their place.**" [Semahot XIII.6; this would probably allow the **single-tomb**, one-year-mark task, in which the bones from the decayed corpse were collected and moved further back into the family tomb, to make room for new corpses. No movement outside the tomb is envisioned.]

- "Neither a corpse nor the bones of a corpse may be transferred from a wretched place to an honored place, nor, needless to say, from an honored place to a wretched place; **but if to the family tomb**, even from an honored place to a wretched place, **it is permitted**, for by this he is honored." [*Semahot* XIII.7; this is a strong statement of **no-movement-allowed**. The only exception given is for movement to the family tomb, likely at *ossilegium* time.]
- "A **tomb may be neither moved from place to place** nor transferred from family to family." [*Semahot* XIV.2; whole tombs cannot be moved.]
- "I grant you [in the case of] a road [leading] to a burial place, because sometimes it might happen [that a funeral took place] at twilight, and it chanced that they buried it in the mound. " [Soncino Note: "As the funeral took place on the eve of Sabbath at twilight they might not have had time to reach the burial place before the commencement of Sabbath, and therefore they **buried** the dead body in the mound. Therefore, the mound is unclean." (*b. Keth* 20b). Note how the option of "let's come back and get it tomorrow, and finish the journey" wasn't taken...and that the mound counted as a full burial.]
- "It is well known that despite **the general injunction in Jewish law against transferring the remains of the dead for reinterment**, an exception was made in the case of such a **transfer to the Land of Israel**...the transfer of remains [to Israel for reburial] is permitted **even after burial**" [*HL:TJC*:96, and 96n1; emphasis mine. This reinterment from *outside* Israel to *inside* Israel is a late practice, from the late 3rd century, but the principles mentioned here by Gafni illustrate the strong *no-movement-allowed* principle still operative at the time.]

These seem to be rather **strong statements of a no-movement-allowed principle**. They definitely would constitute a strong case *against* an 'okay to move it' position. We will need now to study the **exceptions** to these principles, to see if there are any 'loopholes' or situations that would obviate this conclusion.

[Also remember these cases/principles apply to movement of an already-buried body. These restrictions do NOT apply to unburied corpses, as we will see below. If the generally patterns are **buried-no-movement** OR **unburied-movement-okay**, then Jesus' burial on Friday night will place it into the no-movement category.

#### Let's look now at some cases where a corpse *could be, or was* moved:

1. "In order to prevent travelers who eat their food in Levitical purity from becoming defiled (by traveling on a road with a corpse across it), **the corpse may be moved and buried in the field** in which the owner would suffer the least loss...For other cases, however, the 'stipulation of Joshua' is in effect." [*HL:Sema*:117, note 18]

Here is a case in which a corpse is actually moved. This is the case of *met miswah* ('unattended corpse'). The *Met Miswah* was a 'discovered corpse', laying on the open ground. Under very old rabbinic law, it 'owned' the ground upon which it lay, as its burial property, and it was to be buried *right there, right then, by the first person along*.. The corpse is not considered buried until it is actually placed *into* the ground. As it sits on the surface of the ground, unburied, it can obviously be moved during the burial process. But that it cannot be moved *from its gravesite* is obvious from the exception above--it can only be moved if it is laying on a road, contaminating all who traverse the road. In this case the *preclude-large-scale-defilement-if-possible* principle overrode it. We have an abnormal, 'inherited' problem--the corpse and road were **already there** before we encountered this problem.]

2. "If, on the other hand, **the tomb is found within the city, it could be removed**, our text stating: 'All tombs (within a city) may be cleared out.'" [[HI:Sema:20](#)]

Note that this is very similar to the above. We have another abnormal, 'inherited' situation--the tomb was already inside the city--and they have to minimize the large-scale impact of that. This would not apply to tombs outside the city, for example.]

3. "The **corpse was, therefore, placed in another room**, for were it interred, mourning would immediately take effect and the wedding (with meal all at-table) would have to be postponed...and then withdraw' to bury his dead." [[HI:Sema:131](#), note 15]

This is a *very* strange situation--a wedding party/feast was about to begin and somebody died in the house. The wedding (since the food is already on the table!) takes precedence, and so the body is moved out of sight until the wedding is over. But this is **pre-burial anyway** and wouldn't quite apply to our situation.]

4. [IF HE FINDS] TWO, HE MAY REMOVE THEM TOGETHER WITH THE SOIL THEY OCCUPY: Where is this law of the soil [a corpse] occupies to be found? — R. Judah said: The verse says, Thou shalt carry me out of Egypt, [signifying] carry with me [some Egyptian soil]. And what is the quantity of earth] which it occupies? — R. Eleazar explained that he takes the loose earth (**note 18**) and digs up three finger-breadths of the virgin soil. (**note 19**)...The following objection was raised — [It has been taught:] And what quantity [of earth] are we to understand by 'the ground which it occupies?' R. Eleazar b. R. Zadok explained that he takes the chips [of the coffin] and the lumps of earth, (**note 21**) discarding what certainly [did not belong to the body] and leaving whatever was doubtful [for removal]."[Soncino Notes: "(18) Formed through the decomposition of the body... (19) This being the depth to which any blood etc., coming from the body would penetrate...(21) Into which the decomposing corpse congealed." (*b. Nazir* 65a)]

Note that these bodies are seriously decayed (and not a fresh body like Jesus') and possibly even around the one-year mark, as obvious from the procedure involving the earth. The depth of earth that is moved is said (in the Soncino notes) to be 'formed by the decomposition of the body'. This indicates a very advanced stage of decomposition, and makes this of questionable relevance to our situation. Furthermore, the Gemara on this passage indicates that the **movement prohibition still stands** in the case of a *known*-corpse:

"GEMARA. Rab Judah said: IF A MAN FINDS, **but not if [he knows] it is to be found there**; [Soncino note: '**In that case he may not remove it** (Tosaf.).'] A CORPSE, but not one who had been killed; LYING, but not seated; IN THE USUAL POSITION, but not with its head lying between its thighs."

Note that **if the single-corpse grave site is KNOWN, the no-movement-allowed principle is binding!** This means, of course, that in the case of Joseph/Nicodemus, subsequent movement *by them* would not be allowed under this ruling.]

5. "Come and hear! 'A tomb built for a man still alive, may be used. If, however, one added a single row of stones for a dead person, no [other] use may be made thereof?' — This deals with a case where **the corpse had actually been buried there**. If so why [teach] particularly 'if one added [etc.]'; even if not, the law would have been the same! — This is only necessary [to teach that the prohibition remains] **even if the body has [subsequently] been removed.**" [*(b. Sanh* 48a)]

This is a discussion of a normal burial sequence, and the removal would normally be referring to the step of *ossilegium*.

6. "Rabbi Akiba said: 'This is how I began attending upon the Sages: Early one morning **I arose and found a slain man. I carried him a distance of three Sabbath limits, until I brought him to a burial place and interred him.** When I came and excitedly declared the matter to the Sages, they said to me: '**Every step that you took is accounted to you as if you had shed blood.**'" [*Semahot*, IV.19]

This case involves a lot of movement of a pre-burial corpse (6000 cubits; 9,000 ft), **but the individual is severely rebuked for it too.** Given that he was supposed to bury this *met miswah* (unattended corpse) on the spot, this would count as censure against moving a corpse (but a pre-burial one).

7. "...[but] here, [a burial] **may sometimes take place at twilight and [the corpse] is put down temporarily. (note 11)** There is also no contradiction between the two statements of the Rabbis; [for] here, since [the body] is disgraced, [the spot] cannot be designated a grave (note 12)" [Soncino Notes: "(n11) **With the intention of removing it later.** Hence, if by accident the corpse had not been removed, it may be disregarded, and does not prevent the remaining corpses from combining to form a graveyard... (n12) No regular burial, however late the hour, would take place in such a manner. The spot, consequently, could not have been a graveyard." (*b. Baba Bathra* 102b)]

At first blush, this might look EXACTLY like what Richard needs for his case. Note 11 (along with the text it refers to) *specifically* refers to a corpse being 'put down temporarily... with the intention of removing it later'. As I understand Richard's position, this is EXACTLY the scenario he is envisioning: Joseph puts the body of Jesus down (in the tomb) temporarily, with the intention of coming back after the Sabbath and removing it from this temporary place, and subsequently taking the body to the criminal's graveyard. [Granted, the "temporary nature" of this event is only supplied by the Soncino commentator in the *footnote* of this *one* passage (I cannot find anything else like it in the BT or Mishnah), but this could at least furnish warrant for further investigation.]

But let's probe this rabbinic argument a little further...

The discussion in the passage occurs in the context of trying to find the limits/presence of graveyards, for the purpose of knowing where the 'unclean places' are (i.e. for preserving Levitical purity). The text is discussing a discovery process, in which the number of bodies are being counted, and the dimensions of the area in which these bodies were found are being ascertained. "Proper" Jewish/rabbinic graveyards had a specific corpse/area 'density' and arrangement pattern. If this 'ritual density' is exceeded (too many graves, too close together), you don't have a 'real' graveyard (oddly enough). If, however, you can **exclude** one or more of the oddly-placed bodies, *as not having been actually 'buried' there* (and therefore, not actually being in a 'grave'), then the density drops to 'normal levels' and the grotto can be declared a graveyard. [Don't ask me how this makes sense--I only work here...sigh].

That's the discussion *context*. In the text cited above, the situation is as follows: An 'extra' corpse is found in the middle of the area, laying on/in some area **other than the prescribed benches or niches**. This corpse seems prepared for burial (e.g., with graveclothes on), and it is *inside* the tomb-grotto, but it has not been placed onto/into its intended bench/niche (or else the density-pattern problem would not have arisen). The Soncino commentator understands the rabbi to be arguing that this was a case of **an**

**interrupted burial.** In the process of this hypothetical burial, something draws the mourners/buriers away--BEFORE they move the corpse from the 'temporary area' (on the floor?) into its intended niche/bench. Due to accident, these people never return to the grotto to finish the job, and hence the later grotto-explorers find an unburied corpse in an improper/unexpected place.

It is this description of the situation that reveals that the 'removal' spoken of in the footnote is **NOT removal from the tomb** (in either '*ossilegium*' or 'holding area' senses), but rather 'removal **from the temporary spot within the tomb unto the intended niche**/bench, still **within the tomb**'--i.e. the completion of the burial process.

From the text (and context) we see:

- · The corpse was prepared for burial (it was being buried at twilight)
- · The corpse was *within* the grotto (from the context, and the very nature of the problem--it is called an 'intervening' corpse!)
- · The corpse is not in its proper slot (it is called 'disgraced')
- · The corpse is on the floor, or someplace lower than its intended slot (**the text says 'put down', not 'buried'**; graves were along the walls--the only other space was the floor in the middle of the area).
- · The corpse is intended for some burial niche/bench/slot (that's why it is inside *this* tomb, in burial attire, and why the law of *met miswah* does not apply).
- · The buriers intended to remove the body from this particular spot, and intended to place it in its intended niche/bench.
- · They did not make this final step in the burial of the body (something obviously greater than 'the Shema, the Tefillah, the tefillin, and all the commandments in the Torah' demanded their abandonment of the burial process!), and hence the present (unintended) location of the body cannot 'rabbinically' be considered a 'grave'--for purposes of determining 'graveyard status'.

The argument of the text is complex, and a bit obscure, but the scenario sketched out above seems to account best for all the data. [The image of the 'vines being pulled up' doesn't add much to our situation, since any uprooted vines were not for 'replanting'--the Soncino text says 'for firewood', actually.] Accordingly, this is an interrupted in-tomb burial, and the meaning of 'removal' in the Note 11 means '**removal from the floor**', **instead of 'removal from the grotto'**.

Furthermore, the Soncino commentator goes on to say (in note 12) that this theoretical scenario **never happens!**

"No regular burial, **however late the hour**, would take place in such a manner"

And in fact, according to Soncino, it never happens--'**however late the hour**'--a disclaimer that *surely* applies *against* an argument that "in a hurry, they stashed the body in a cave for a day". [There are other problems with applying this text to our passage, such as the unburied status of the body, the 'disgrace' of the corpse, and the multi-unit grave site, but the argument itself seems to render it inapplicable for our purposes.]

So, when we note that:

1. 1. There were very **strong cultural/religious/social pressures against 'moving buried corpses'**.
2. 2. **We have no cases that match Richard's suggested scenario** of a 'holding area'.

3. 3. Even the occasional possible **exceptions do not seem to be relevant or applicable to our case.**

Then I have to conclude that **'moving the corpse of Jesus' was not an available option, for legitimate Jewish leaders** (such as Joseph and Nicodemus).

.....  
So, where does this leave me (other than tired)?

So far, it **doesn't look like the 'temporary tomb' option** (from the rabbinic sources) **applies** to our case, and it **doesn't look like people were free to move corpses** (especially buried ones) around enough to support the plausibility of a 'legally transplanted corpse' scenario. [The grave robber possibility is not excluded by this discussion at all, of course.]

So, what else should we look at before concluding? Perhaps the question about the criminal graveyard should be discussed a little.

**So, what is the likelihood that Jesus should have been forced to be buried in some 'graveyard of the condemned' (especially since the other crucifixion victims would not have been required to--given *Semahot* 2.9)?**

This topic touches on the issue of Jewish authority for capital punishment, so it could get a bit complex. But we really don't even need to go there (but we probably will...sigh/smile)--all we really need to do is note **a couple of things**:

1. **ALL of the passages Richard cites** about the 'graveyard of the condemned' **only apply** when the **Jewish Council actually executed the criminal--NOT** when **they merely 'condemned' or 'judged' him**. Careful attention to the terminology of these texts reveals this, and the *Semahot* confirms this **'execution'** terminology.

- The *M. Sanh* 6.5 passage is about **executed** people, and doesn't use the word "condemned".
- The **BT** passage is the same--**no mention of 'condemned'**, (nor of the Council), but only of burying and graveyards.
- The **Tosefta** passage also specifically says 'executed' as Daube points out:

"In the Tosephta it is laid down that 'even if the criminal were a king of kings, he may not be buried in the grave of his fathers, but only in that prepared by the court'. The term 'king of kings' designates the king of the Persians, the Roman emperor or the like. Its use here seems to be figurative, since a Jewish court was never likely to pronounce sentence of death on a foreign ruler of such rank. Probably the provision simply means that, however highly placed, a criminal **executed** must suffer the 'disgrace' of a criminal's burial." [Daube:311]

- The **Midrash Rabbah** passage also explicitly says **'slain'**.
- In addition, the *Semahot* is **explicit** that the 'burial of shame' is for those **executed** by the Council (and the contrast with 'the (secular) State' is *also* about **execution**):

"For those **executed by the court**, no rites whatsoever should be observed...." [*Semahot* II.6; cf also *b. Sanh 63a*: "R. Akiba said: Whence do we know that a Sanhedrin which **executed** a person must not eat anything on the day of the **execution**? From the verse, Ye shall not eat anything with the [shedding of] blood."]

"No rites whatsoever should be denied those who were **executed** by the state." [*Semahot* II.9]

2. And then we simply note **the plain fact that Jesus was executed by the Roman State--NOT by the Council**. [Remember Vermes' sharp remark earlier.] All word-play about 'condemnation' and 'judgment' by the Council is irrelevant--the rabbinic texts *used to prove the point* ONLY say the law applies to those "**executed**" by the Council (and specifically says those executed by the State are *exempt* from dishonor!). This means that **Jesus was NOT subject to the 'graveyard of the condemned' by the very texts under discussion**. "Ratification/Approval by the Roman authority, for the Council to execute Jesus itself" is **not the same thing** as "execution by the Roman authority, at the initiative/instigation of the Council"; the former lets the Council **actually execute** Jesus, the latter does NOT.

3. And the **force of this last point is hugely increased IF the Council had ANY power of capital punishment at the time, and in that area of jurisdiction**. If they COULD have stoned, burnt, hung, or beheaded Jesus (with the possible concomitant burial in the criminal graveyard)--yet DIDN'T DO IT--then the suggestion that Jesus was destined for the criminal's graveyard is rendered **completely** forceless. [BTW, the placing of the stone on the coffin--as an act of stoning--only applied when someone died while 'under the ban' (i.e., "probationary excommunication"). See *Semahot* V.13. This has no relevance to the case of Jesus. There is plenty of scriptural evidence that they wanted him killed/stoned, but no evidence that he was placed under the ban before His death.]

So, **according to the very texts used to raise the possibility of a 'criminal graveyard', Jesus would not have been subject to forced burial in said graveyard.**

I should also point out **one additional anachronism**--the argument from "atonement". A couple of times the article refers to an allegedly Jewish theological belief that the criminal's graveyard was necessary for the wicked to 'atone for their sins'.

Jewish and Christian scholars consider the view that *death atones for sin* to be **a late, post-Destruction rabbinical response to the destruction of the place of atonement**--the Temple. Once sacrifice can no longer be made, and the Day of Atonement postponed indefinitely, some other way for atonement must be found--and the rabbis were very, very creative about this. I have documented elsewhere all the various things they came up with in this period (half way down in [cross3.html](#)), but let me give Urback's account of this development:

"The doctrine of R. Ishmael, R. Judah, and Rabbi that **death--even death without repentance--has the power to atone originated only after the Destruction**, for with regard to the Temple period it is stated: 'And for all other prohibitions ordained in the Torah, be they light or grave, [wanton or unwitting, conscious or unconscious, sins of omission or commission, sins punishable by Extirpation or by death at the hands of the court, **the scapegoat makes atonement**] (M. *Shevuot* 1.6). In truth on the subject of the four categories of person with reference to the atonement', including the teaching 'that death purges', R. Johanan said: 'This is the view of R. Eleazar b. Azariah, R. Ishmael, and R. Akiba, **but the Sages maintain that the scapegoat effects atonement**... We do not know who these Sages were, **but since the Baraita on the categories of atonement was taught after the Destruction**, for it contains no reference to the scapegoat, **they must have held that even after the Destruction death does not replace the scapegoat** as an

atonement...**At the time when the Temple still stood, it was certainly unnecessary and inappropriate to regard death as an atonement...**" [SWWRT:432f]

What this means is that the theological 'need' for Jesus to suffer shamefully in the criminal's graveyard--as atonement for His own sins--simply didn't exist back then. This theological construct is yet another retrojection from the post-Destruction world onto the pre-Destruction one.

This illustrates clearly the problematic issue of the Richard's sources for his argument:

- The sources themselves retro-ject consistently, even in the matters with which we are *specifically* concerned (courts, capital law, burial praxis).
- The data points from *Semahot* look increasingly like later, rabbinic-elite practices (e.g. moving a body later from Yavneh to Jerusalem) with NO relevance or rationale for our period, or our situation.
- The theological rationale for an self-atonement death is clearly later...from sometime after the Destruction.

So what data is left of his argument? There are many of his historical points which are correct (e.g., Jewish law was operative in the period), but unfortunately those that *are* correct and well-researched are not decisive to his argument (i.e., they are easily agreed to in *my* argument). But the key pillars in the argument are either too ambiguous to support anything, anachronistic and therefore inadmissible, or simply historically questionable/false.

1. Our evidence for Jewish jurisdiction at the time of Jesus is only for civil law, and not for the relevant criminal (esp. capital) law. And most other data about Roman legal praxis argues that Rome always reserved that authority to itself.
2. Our rabbinic sources are simply too questionable a basis to reconstruct Jewish socio-legal practice for this period, in our particular question.
3. The passages Richard uses are either too late, too ambiguous, irrelevant to our precise issue, or contradicted by parallel data.
4. In fact, the rabbinic data can easily support my/the counter-argument, in areas of funerary customs, moving corpses, and timing/Sabbath issues.

There just **doesn't seem to be enough left to establish adequate socio-legal-historical plausibility**, and hence the original goal to raise it from a physical possibility to a 'historical possibility' remains unachieved.

.....

There are many other HUGE questions about this entire Sanhedrin/Council issue, but they are more oblique to our specific question. Indeed, many questions are intertwined with this issue: motivations and representations of Joseph and Nicodemus being very important ones, and whether the rabbinic representations of the criminal graveyards have *any* relevance to the time of Jesus.

I may have to argue about the capital punishment issue later, but for now, note that the Babylonian Talmud (*b. AZ* 8b) presents **a rabbinic tradition that the Council lost the right to capital punishment** (and hence the 'use' of criminal graveyards for Jewish religious offenses) **'more than forty years' before the destruction of the Temple** (also discussed in PT and other passages). By my reckoning, that would be somewhere around 25-30 AD, maybe when Pilate became procurator(?) in 26AD. I personally have more confidence in rabbinical statements which portray the *limits* of their authority, than in statements of the *expanse* of their power (smile), so I ponder this tradition very, very carefully.

**We know most definitely that any 'Sanhedrin' in existence after the Destruction did NOT have such power** (cf. Alon, "But immediately after the Destruction that jurisdiction came to an end--once and for all" [JTLTA:208], cf. [HI:RA:42]), and **this latter period is the period MOST described by the rabbinic material**. They probably had capital jurisdiction in the Hasmonean age, but was 'subjugated' under Herod (c. 40-4 BC) [HI:JPCA:146], [FTT:145: "and it is doubtful that the Sanhedrin functioned in his time"].

That the rabbinic material-written *after* the Destruction of the temple--*still* acts and writes 'nostalgically' on the position that it *still* has capital authority, and *still* represents the 'criminal graveyard' in connection with that--when we KNOW that said social/legal framework **had not existed for at least a century or more(!)**, and when rabbinic tradition ITSELF says that authority was removed much earlier--doesn't give me a lot of confidence in the rabbinic portrayals of their capital offense criminal processes (and institutions--such as the graveyard, fasting on execution days, and burying the stake along with the criminal). I KNOW about the counter examples when the Jewish court DID execute people during Roman times, but the explanations of these by Jewish scholars Alon [[JTLTA](#)] and Safrai [[HI:JPFC](#)] are somewhat supportive of my position.

Accordingly--although I do not need to deny either capital jurisdiction nor the existence of some criminal graveyard for my position in this paper to stand--I currently have very little reason to believe in such portrayals, and actually have reason and evidence *against* such scenarios.

[I DO believe that Jewish legal councils, processes, and systems were in place and depended on by the Roman government, especially for low-level 'noise' functions. I do NOT believe the Council that condemned Jesus in the one-night-trial was anything more than a socio-political group, under the 'charter' and dominant influence of the High Priest. Although I cannot document this here, I personally am convinced that the High Priest probably *could* have had someone executed--via Jewish legal processes--but that since such capital processes normally required TWO DAYS (and not the ONE day 'required' by the High Priest to dispose of the troublemaker Jesus before the crowds started showing up for the Festival), he had to resort to a 'faster method'...an *ad-hoc* meeting of his 'cabinet', and political pressure on Pilate ('no friend of Caesar') to get Jesus killed and buried (e.g. out of the public eye before the Festival)--the response of the crowd at the Triumphal Entry a week earlier had tipped him off that Rome might take this more seriously now (they seemed so fearful of crowd behavior)... I agree with McCane that there is no reason to believe that this 'cabinet' (council) was united in its position vis-à-vis what to do about Jesus, and that the actions of J of A and Nicodemus are perhaps reflective of the disunity of the group over the 'leadership qualities' of the High Priest, and the disagreement within the council over the character of Christ. But I cannot go into this at this point, because I would have to start yet another 'series' on the Tank--when I already have many, many unfinished series already (e.g., miracles, messianic prophecies, competing revelations, the debate with James Still, the muslim articles, etc., etc., etc.)...]

My more narrow intent here was simply to evaluate the possibility of a 'legal' (even 'traditional') movement of the body of Jesus' from the initial tomb (under the 'temporary' or 'reburial' motifs)--that Jesus had been moved to a criminals' graveyard, after spending the night in Joseph's tomb.

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## Summary

1. We need to exercise **caution** in reconstructing first-century burial and legal procedures from the much later (and complex) rabbinical materials.
2. The rabbinic literature mandates that executed criminals be legally **buried** by nightfall, not just taken down from the tree/stake and/or stashed somewhere.
3. Good scholars **doubt whether Jewish criminal law was applicable to the case of Jesus**, at that time in history.
4. There was **more than enough time to bury Jesus** in the available tombs around Jerusalem, given the simplicity of His requirements.
5. **Burials at 'twilight on Sabbath Eve' are not exceptional in the rabbinic literature**--they apparently were frequent, non-problematic occurrences, even for the more elaborate (full mourning) funerals.
6. **Many** of the needed burial actions **could also have been done on the Sabbath**, 'legally'.

7. Funerals/burials of the time were of two types: one-tomb and two-tomb. [with a possible, post-Destruction exception for the elite]
8. **All burials involved two chronologically distinct steps**, occurring approximately a year apart: initial (full mourning) burial, and the (non-mourning) packing of the bones.
9. When the initial burial occurred in a tomb NOT owned by the family (requiring moving the bones to the family tomb at the end of a year), it was called a 'temporary tomb' or 'temporary burial' (because it was in a 'borrowed' tomb, to be vacated a year later).
10. The corpse stayed in the 'borrowed' ('temporary') tomb for a year, until the flesh had decomposed.
11. **A 'temporary tomb' was therefore NOT a 'short-term holding area'**, prior to initial (full mourning) burial.
12. The Jewish sources--describing the religious and cultural pressures for that-night burial--inspire great confidence that Jesus was actually *buried* on the first night.
13. The 'physical' data (i.e., physical, uninterpreted actions) in the gospels indicate that Jesus received a full burial (but with no perceivable mourners or oration).
14. **EVERYONE was buried on the first night after death**, and the only exceptions were for those with ADDITIONAL HONORS--certainly not applicable to Jesus' situation on the day of His execution by Rome.
15. There were **strong social, religious, and cultural pressures AGAINST anyone moving a buried corpse**.
16. There were **no known cases** in which a post-burial corpse was moved with approval, with the extreme exceptions of in-town cemeteries and road-pollution. [And, the possible post-Destruction exceptions of Yavneh rabbis]
17. The rabbinic sources said the criminal burial applied to those **actually executed** by the Jewish court--which did NOT apply to Jesus, who was executed by the state.
18. If the High Priest (and "his" Sanhedrin) had capital authority, then they didn't use it--and **the law applying to those 'executed by the court' was even less applicable to Jesus** than if they had NOT possessed such jurisdiction.
19. The rabbinic material describing such legal procedures (i.e. capital authority of the 'Sanhedrin'), associated customs (e.g., fasting of Sanhedrin on execution day; no rites for executed criminal), and associated institutions (e.g., two criminal graveyards) **assert that these were in force during periods of history in which it is KNOWN that they were not** (and indeed, in which material other rabbinic authorities admit that!). Accordingly, this rabbinic material has "a burden of doubt" that it carries in this project.
20. There was no 'atonement by death' requirement for Jesus to be buried in shame--that theological construct is post-Destruction in origination.

So, although I continue to enjoy and respect Richard's work, I think he (and Jeff, to the extent his position is the same in this specific area) are definitely barking up the wrong tree, in this case, with the 'reburial' and 'temporary tomb' scenario. The rabbinic data upon which it seems based *clearly* means something radically different by 'temporary burial' than they do--assuming it is reliable and relevant to our discussion here--and *clearly* indicates strong social pressures against anyone 'legitimately' moving the corpse a second time.

Hope this is of value,  
 Glenn Miller  
 October 2, 2002