

## *May Parents Waive the Requirements of Avelut?*<sup>1</sup>

By: SHLOMO BRODY

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<sup>1</sup> *Personal Preface*: At some point when I was a teenager, after my father, Prof. Baruch Brody, ז"ל, had been through his period of *avelut* (mourning) for both of his parents, he declared that he would not want his three children to observe mourning practices for a full year after he reached 120. "After *shloshim*," he said, "I only want you to say *Kaddish* and no more." I didn't make much of it then, partly because I was a teenager, and partly because it seemed far away. As I got older, he repeated this statement, including after my mother was in *avelut*, when both of my parents now made this request. The whole thing seemed foreign, since I had never heard of such a thing, and I didn't make much of it, until one day when I was learning *Hilkebot Avelut* (the laws of mourning) for my rabbinic ordination and discovered that this was, in fact, a request that halakha demanded children to respect. It was right there in black and white in the Shakh's glosses to the *Shulhan Arukh*. Sometime thereafter, I called my father and said, "This is a real thing." To which he replied, "Yes, of course it is." "Do you really want us to do this?" "Absolutely," he responded. "So put it in writing," I told him. Several months later, my brothers and I received an email with an attached document, signed by both of my parents. In the document, they stated, inter alia, "To our dear children... [You] requested that we put in writing our feelings, which we have expressed many times, about how you should spend the year in mourning after the *shloshim* when we pass away. We just want you to know that we release you from any mourning obligations other than saying *Kaddish* after the *shloshim* are over. We want you to have a normal life and to remember how much we love you when you are doing something you enjoy. We pray that none of this will be relevant for many years to come and that we can enjoy our family together and we can join you in tons of *semahot* in the coming years... So celebrate our lives, not our deaths and make us happy! With love, Mom and Dad."

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Shlomo Brody is the co-dean of the Tikvah Online Academy and a columnist for the *Jerusalem Post*. He previously served for a decade as a rebbe at Yeshivat Hakotel and as a junior research fellow at the Israel Democracy Institute. A *summa cum laude* graduate of Harvard College, he received rabbinic ordination from the Israeli Chief Rabbinate, an M.A. in Jewish philosophy at the Hebrew University, and his Ph.D. from Bar-Ilan University Law School, where he continues to serve as a post-doctoral fellow. His work has appeared in *Mosaic*, *First Things*, *The Federalist*, *Tablet*, *Tzohar*, *The Forward*, *Hakirah*, and other popular publications, and has been cited in Israeli Supreme Court decisions. His book, *A Guide to the Complex: Contemporary Halakhic Debates* (Maggid), won a National Jewish Book Award.

## Introduction

In the popular mindset, *avelut* is about the mourner. This makes sense, to a large extent, because the mourner is the one who is obligated to observe the customs and prohibitions of the period. Moreover, the experience of *avelut* has been popularized as one of great existential meaning. Many modern writers articulate this idea, but none better than Rav Soloveitchik, זצ"ל. Take, for example, the following line in his *Out of the Whirlwind*: “The whole concept of *avelut*, mourning, at both an individual and a historical level, is nurtured by a unique doctrine about man and his emotional world.”<sup>2</sup> The entire premise of the book, beautifully developed with many deep insights, is that *avelut* is an experience of profound insight into the human psyche and condition.

It might therefore come as a surprise that within Talmudic and post-halakhic literature, there is a discussion about whether the deceased can exempt his relatives to mourn for him, and that furthermore these relatives may be obligated to fulfill this request. The discussion begins with questions of burial and eulogies but extends to *shiv'ah*, *shloshim*, and particularly the extended 12-month period (“*yud-bet hodesh*”) observed while mourning for parents. It also comes up concerning reciting *Kaddish*, the ritual that has become most identified with mourning, even though it is only of medieval origin. This highlights the fact that at its core, the obligation of mourning can never be separated from the honor of the deceased, even if the laws (and experience) of *avelut* is borne by the mourner.

In part one of this article, we'll explain the Talmudic origin of this notion of “waiving *avelut*” and see its manifestation in the writings of various decisors. In particular, we'll explore which periods of *avelut*—*shiv'ah*, *shloshim*, or the 12-month period—may be waived. In part two, we'll use this discussion to highlight some fascinating (and relatively unknown) suggestions made by some *poskim* to solve the problem of attending a family wedding during the *avelut* period.

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Alas, this request became relevant on the 17<sup>th</sup> of Sivan, 5778, when my beloved father, Baruch Alter ben Ha-Rav Eliezer Ze'ev, זצ"ל, passed away. This article is dedicated to his memory.

I would like to thank Rabbis David Brofsky, Aviad Tabory, Michael Broyde, Shay Schachter, Aryeh Klapper, Binyamin Samuels, Dov Frimer, and Aryeh Frimer, as well as my brothers Todd Brody and Jeremy Brody, for fruitful discussions and helpful comments on earlier drafts.

<sup>2</sup> Rabbi Joseph B. Soloveitchik, *Out of the Whirlwind: Essays on Mourning, Suffering, and the Human Condition*, ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (Ktav Publishing, 2003), p. 10.

## Part I: Waiving *Avelut* in Halakhic Literature

### 1. The Talmudic Discussion: Waiving Burial and Eulogies

The basis for this halakhic discourse is a discussion in the Talmud whether a person may request not to be buried. The very suggestion is surprising since the Mishnah speaks of the need to bury executed criminals immediately because all human beings, even those worthy of execution, were created in the image of God.

ומתירין אותו מיד ואם לן עובר עליו בלא תעשה שנאמר (דברים כא, כג) לא תלין נבלתו על העץ כי קבר תקברנו כי קללת אלהים תלוי וגו' כלומר מפני מה זה תלוי מפני שבירך את השם ונמצא שם שמים מתחלל.

The dead man hangs there for only a very short time, and then they immediately untie him. And if he was left hanging overnight, a prohibition is transgressed, as it is stated: "His body shall not remain all night upon the tree, but you shall bury him that day, for he that is hung is a curse of God" (Deuteronomy 21:23). That is to say: Were the corpse left hanging on the tree overnight, people would ask: For what reason was this one hung after he was put to death? They would be answered: Because he blessed God, a euphemism for blasphemy. And therefore the name of Heaven would be desecrated were the dead man's corpse to remain hanging, reminding everybody of his transgression.<sup>3</sup>

The Talmud goes on to cite the full verse in question to derive the obligation to bury someone while further noting that burial customs were already observed by our forefathers.

איכא דאמרי אמר רבי יוחנן משום ר"ש בן יוחי רמז לקבורה מן התורה מניין ת"ל כי קבר תקברנו מכאן רמז לקבורה מן התורה.

There are those who say that Rabbi Yoḥanan says in the name of Rabbi Shimon bar Yoḥai: From where in the Torah is there a hint to the mitzvah of burial? The verse states: "But you shall bury him [*kavor tikberenu*]," doubling the verb for emphasis. From here there is a hint to the mitzvah of burial in the Torah.

All of this would seem to indicate that burial is an absolute obligation that has Biblical roots and is theologically grounded in the fact that humans were created in the image of God.

Nonetheless, the Talmud goes on to ask whether we should respect a request not to be buried.

איבעיא להו קבורה משום בזיונא הוא או משום כפרה הוא.

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<sup>3</sup> Translations are based on Sefaria's William Davidson Talmud.

למאי נפקא מינה דאמר לא בעינא דליקברוה להווא גברא אי אמרת משום בזיונא הוא לא כל כמיניה ואי אמרת משום כפרה הוא הא אמר לא בעינא כפרה מאי.

A dilemma was raised before the Sages: Is burial obligatory on account of disgrace, i.e., so that the deceased should not suffer the disgrace of being left exposed as his body begins to decompose, or is it on account of atonement, i.e., so that the deceased will achieve atonement by being returned to the ground from which he was formed?

The Gemara asks: What is the practical difference that arises from knowing the reason that burial is necessary? The Gemara answers: There is a difference in a case where one said before he died: I do not want them to bury that man, i.e., myself. If you say that burial is required on account of disgrace, it is not in his power to waive his own burial, as his family shares in the disgrace. But if you say that burial is required on account of atonement, didn't he effectively say: I do not want atonement, and with regard to himself one should be able to do as he wishes? What, then, is the *halakha*?

The Gemara's dilemma is quite remarkable. If burial is to prevent disgrace, then we don't respect the deceased's request since others (i.e., his relatives), if not the deceased himself,<sup>4</sup> will be shamed. Others have a stake in this question and therefore it is not an individual prerogative. Yet if burial is about gaining atonement, then a person can choose whether to seek *kapparah*. The Talmud doesn't clearly resolve this question, but the consensus among medieval commentators is that we must bury the deceased, even if he requests otherwise. This is because a) it is a denigration to his family, and to the human race, to leave a body unburied<sup>5</sup> and/or b) the premise of the Talmud's dilemma was rejected and we conclude that it is an absolute obligation to bury all bodies in consonance with the Torah's emphasis on the importance of interment.<sup>6</sup> This ruling is recorded affirmatively by R. Yosef Karo.<sup>7</sup>

Yet the paradigm seems to be set that if the ritual is not a bona fide commandment and is only to benefit the deceased (e.g., to gain atonement), then the deceased may elect to pass on the ritual. This conclusion

<sup>4</sup> Regarding whether this is a *bizayon* to the deceased as well, see Rashi *d.h. mishum*, Tosafot *d.h. keverah*, and *Yad Ramah d.h. ve-asikna*.

<sup>5</sup> See Ramban, *Torat Ha-Adam, Inyan Ha-Keverah*, p. 118 in *Kitvei Ramban*, Vol. II, ed. Chavel (Mossad Harav Kook, 5724) and Tur, YD 348:3. Accordingly, even if the deceased has no family members, the body must still be interred because it is an affront to the human race.

<sup>6</sup> Meiri, *Bet Ha-Be'irah* to *Sanhedrin* 46b *d.h. kevar biarnu*.

<sup>7</sup> YD 348:2-3. See also *HIM* 253:30.

is borne out in the following discussion in the Talmud about whether we respect a person's wishes not to have eulogies at their funeral.

איבעיא להו הספידא יקרא דחיי הוי או יקרא דשכבי הוי למאי נפקא מינה דאמר לא תספדוה להווא גברא אי נמי לאפוקי מיורשין.

A dilemma was raised before the Sages: Is the eulogy delivered for the honor of the living relatives of the deceased, or is it delivered for the honor of the dead? The Gemara asks: What is the practical difference between the two possible reasons? The Gemara answers: There is a difference in a case where one said before he died: Do not eulogize that man (i.e., myself). If the eulogy is delivered to honor the deceased, he is able to forgo this honor, but if it is delivered to honor the living, he is not, as it is not in the power of one individual to forgo the honor of others. Alternately, the difference is with regard to whether it is possible to collect the eulogist's fee from the heirs. If the eulogy is to honor the dead, it is possible to collect this fee from the heirs, even against their will, but if it is to honor the living, they are able to forgo this honor.

After several attempts at resolving this question, the Talmud concludes that eulogies are indeed for the honor of the deceased.<sup>8</sup> Accordingly, a person is allowed to assert that he or she does not want eulogies delivered at their funeral. This ruling is widely accepted and is recorded in

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<sup>8</sup> *Sanhedrin* 47a

ת"ש ר' נתן אומר סימן יפה למת שנפרעין ממנו לאחר מיתה מת שלא נספד ולא נקבר או שחיה גורתו או שהיו גשמים מזלפין על מטתו זהו סימן יפה למת ש"מ יקרא דשכבי הוא שמע מינה.

The Gemara suggests: Come and hear a proof from a *baraita*. Rabbi Natan says: It is a good sign for the deceased when he is punished after his death and does not receive an honorable burial or eulogy, as his lack of honor brings him atonement for his sins. For example, if the deceased was not eulogized, or if he was not buried, or if a wild animal dragged his corpse, or if rain fell on his bier, this is a good sign for the deceased. Learn from the *baraita* that a eulogy is delivered for the honor of the dead, so that when he is deprived of this honor, he achieves atonement for his sins. The Gemara affirms: Learn from the *baraita* that this is so.

It is interesting to note that this Gemara, which talks about atonement when a body gets denigrated, might also serve as the basis to respect someone's request for his own corpse to be denigrated before burial. While in general we do not respect a person's request for his body to be posthumously denigrated (see, for example, *Sefer Hasidim*, ed. Margoliot, #620), some decisors do permit it if the intent is to achieve *kapparah* (atonement). See, for example, *Hokhmat Adam, Sha'ar Simbah*, 155:10.

*Shulhan Arukh*.<sup>9</sup> According to many decisors, it is prohibited to deliver a eulogy if the deceased explicitly states that he or she does not want a eulogy, in accordance with the obligation to fulfill the wishes of the deceased (*mitzvah le-keiyem divrei ha-met*).<sup>10</sup>

Accordingly, the following paradigm is set up: Actions which are demanded because they are mitzvot, or which are performed for the sake of the living (i.e., the mourners or the broader human race), cannot be waived. Actions that are done to honor the deceased, on the other hand, can be waived during one's lifetime. It is on this basis, for example, that requests for simple or modest writings on headstones must be respected. These are to honor the deceased, and therefore their requests should be respected.

## 2. Waiving *Shiv'ah* and *Shloshim*

The Talmud only addresses examples relating to the burial and funeral but does not address questions relating to *avelut* itself, such as *shiv'ah* and *shloshim*, the 7- and 30-day periods of mourning observed for one's immediate relatives (mother, father, son, daughter, brother, sister, and spouse). This issue is debated by later commentators. Rabbi Yaakov Reischer and Rabbi David Oppenheim ruled that we respect the wishes of a person who requests that his or her loved ones not observe *avelut*.<sup>11</sup> The case, perhaps not surprisingly, dealt with someone who was on their death bed in the period immediately before their child's wedding date and requested that the ceremony should still take place. Rabbis Reischer and Oppenheim

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<sup>9</sup> ḤM 253:30, YD 344:10.

<sup>10</sup> See *Sm"ā* ḤM 253:69 and *Be'er Hetev* ḤM 253:59. If, however, the deceased simply states that a eulogy is not necessary, then the mourners may be permitted to deliver a eulogy. See Rabbi Nahum Yavrov, *Sefer Divrei Sofrim al Hilkhobot Avelut*, Vol. 1, p. 153. On whether this rule applies to the most significant rabbinic figures of the era (*gedolei ha-dor*), see *Shu"t Beit Yaakov* #83, *Shu"t Tesbuwah Me-Aharab* 1:174, *Shu"t Minbat Elazar* 2:3, *Drashot Hatam Sofer*, Vol. 2, p. 391, and the glosses of *Pithei Tesbuwah* YD 344:10 *d.h. shomin lo*.

<sup>11</sup> For R. Reischer, see his *Sefer Iyun Ya'akov* to *Sanbedrin* 47a and his *Shu"t Shruṭ Yaakov* 2:102 (cited in *Pithei Tesbuwah*). For R. Oppenheim, see his *Shu"t Nishal David* YD #26. They were brothers-in-law, and R. Reischer refers to R. Oppenheim's responsa in his own writing. Another decisor who took this position, without argumentation, was R. Yaakov Castro (Maharikash, 16<sup>th</sup> century Egypt), in his *Erekh Lehem* glosses to YD 344.

ruled that mourning rituals are done for the sake of the honor of the deceased (יקרא דשכבי), and therefore their wishes should be respected.<sup>12</sup>

This ruling, however, was in opposition to the position of the Rama, Rabbi Moshe Isserles, who followed Rabbi Yaakov Weil (15<sup>th</sup> century, Germany) in asserting that one could not waive these periods of *avelut*. This was either because they were concerned that mourning is ultimately for the sake of the mourners, or that these periods are a bona fide obligation which, whatever their rationale, may not be waived.<sup>13</sup> Accordingly, the generally accepted position is to follow the Rama's explicit ruling that these initial periods of *avelut* may not be waived.<sup>14</sup> One contemporary exception to this trend is the position of Rav Ovadiah Yosef, who believes

<sup>12</sup> Their proof for this assertion is the following passage in *Masekhet Semahot* (2:1) regarding the mourning rituals which are not performed when someone gravely sins by committing suicide. המאבד את עצמו בדעת אין מתעסקין עמו בכל דבר אין קורעין ואין חולצין ואין מספידין עליו אבל עומדין עליו בשורה, ואומרין עליו ברכת אבליים, מפני שהוא כבוד לחיים כללו של דבר כל שהוא לכבוד החיים הרבים מתעסקין בו, וכל שאינו לכבוד החיים אין הרבים מתעסקין בו.

The last line gives a clear rule: anything for the honor of the living is performed (like consoling rituals immediately after the burial), but anything that is not for their honor is not performed, such as eulogies. In Rambam's formulation (*Hilkhot Avel* 1:11), recorded verbatim in *Shulhan Arukh* (YD 345:1), he explicitly adds that we do not mourn for such a person, seemingly because this is an act of honor for the deceased that would be inappropriate in this case.

המאבד עצמו לדעת אין מתעסקין עמו לכל דבר ואין מתאבלין עליו ואין מספידין אותו, אבל עומדין עליו בשורה ואומרין עליו ברכת אבליים וכל דבר שהוא כבוד לחיים

As R. Karo notes in *Bet Yosef* (YD 345:1), this is in contrast to Ramban (*Torat Ha-Adam, Inyan Ha-Hesped*, p. 83 in *Kitvei Ramban*, Vol. 2, ed. Chavel), who argued that the obligation to recite *birkat avelim* and stand in a line to console the mourner indicates that *avelut* is still observed in this case. In his mind, we only do not perform *avelut* for those sinners who are executed by the court. (See also the position of Tur 345:1 and *Shu"t Hatam Sofer* YD 2:326.) As Rabbi Akiva Eiger notes in his glosses to YD 344, R. Yosef Karo's ruling in *Shulhan Arukh* indicates that he agrees with Rambam that *avelut* is a matter of *kavod la-metim*. By that logic, a person should be allowed to waive this honor, as Rabbis Reischer and Oppenheim asserted, in contrast with the ruling of the Rama. R. Eiger, however, seems to leave the question unresolved, although he ends his comments by referring to R. Reischer's position.

<sup>13</sup> The former explanation is given by Rabbi Eliezer Fleckeleles (*Shu"t Teshuvah Me-Aharab* 1:207), the latter explanation is offered in the *Levush* (YD 344) and *Hokhmat Adam* (*Sha'ar Simhab* 155:10). One can see indications of both arguments in the words of R. Weil.

<sup>14</sup> See Shach 344:9, *Pithei Teshuvah* 344:2, *Birkei Yosef* 344:5, *Arukh Ha-Shulhan* 344:7, *Shu"t Divrei Malkiel* 4:96 (of R. Malkiel Tzvi Tannenbaum), and the summary of positions in Rabbi Nahum Yavrov's *Sefer Divrei Sofrim al Hilkhot Avelut*,

that parents may waive this requirement, but allows the children to choose to disobey within this period because of the redemptive benefits that the deceased receive in Heaven from these mourners, according to Kabbalistic sources.<sup>15</sup>

### 3. Waiving the 12-Month Period

All of this, however, has been stated only regarding the *shiv'ah* and *shloshim* periods which are standard in all cases of mourning. What about the extended 12-month period which exclusively marks the passing of one's mother or father? In this circumstance, Rabbi Weil, in the same passage noted above, asserts that parents may waive this requirement since the extended period of mourning is only done out of a sense of honor for them (*kibbud av va-em*). Accordingly, they may waive this honorary rite. In his words,

לאחר ל' עד י"ב חדש לא הוי אלא משום יקרא של האם, והאם שמחלה על כבודה  
כבודה מחול כדאמרינן פ"ק דקידושין.<sup>16</sup>

This position is affirmed in *Shakh* YD 344:9<sup>17</sup> and from there by all subsequent *poskim*, such as *Be'er Hetev*, *Arukh Ha-Shulhan*, and *Hokhmat Adam*. R. Chaim Medini, in his *Sedei Hemed*, notes that while decisors disagree regarding the 7- and 30-day periods, he has found no one who disagrees with R. Weil's ruling when it comes to waiving the 12-month period. In his words,

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- Vol. 1, p. 155-156. See also R. Yekutiel Greenwald, *Kol Bo al Avelut*, Vol. 1, p. 363; R. Feivel Cohen's *Badei Ha-Shulhan* to *Hilkebot Avelut* 355:55 (p. 142); R. Yisroel Dovid Harpenes, *Nishmat Yisrael*, Vol. 2, chapter 8, p. 555; and R. Yitzhak Yosef, *Yalkut Yosef: Avelut*, p. 655.
- <sup>15</sup> Rav Ovadiah Yosef, *Hazon Ovadiah: Hilkebot Avelut*, Vol. 1, p. 549-550, who cites the positions discussed earlier. It should be noted that this is not the position recorded by his son in *Yalkut Yosef* (cited in the previous note).
- <sup>16</sup> *Shu"t Mabari Weil* #17. As a paradigm, he cites the Talmud's ruling that parents may waive during their lifetime honorary acts owed to them by their children. See *Kiddushin* 32a and YD 240:19.
- <sup>17</sup> The only slight objection I've found to this ruling is in R. Malkiel Tzvi Tannenbaum, *Shu"t Divrei Malkiel* 4:96. He is bothered by the notion that someone could waive the rabbinic practice of observing 12 months, and further notes the Rama never quoted the lenient ruling of R. Weil, but only cited his stringent ruling regarding the 7- and 30-day periods. Yet he fails to note that Rama does quote the entire position of R. Weil in his *Darkhei Moshe*, and in any case, all later commentators assume that he agrees entirely with the position and logic of R. Weil. Indeed, even R. Tannenbaum himself does not ultimately rule against the Shakh's explicit position, given its universal acceptance.

אבל בענין י"ב חודש, לא מצינו חולק על מהרי"ו.<sup>18</sup>

The position is recorded affirmatively in many of the major contemporary guidebooks to the laws of mourning: *Badei Ha-Shulhan*, *Pnei Barukh*, *Me-Olam ve-ad Olam*, and others.<sup>19</sup> Here, for example, is the formulation by R. Yitzhak Yosef.<sup>20</sup>

ואמנם לענין שמיעת כלי שיר והשתתפות בשמחה במשך הי"ב חודש על פטירת  
אב ואם, יש אומרים שבזה אם האב מהל על כבודו וציוה לבנו שלא ימנע משמחה  
במשך הי"ב חודש, והתיר לו להשתתף בשמחות וכדומה, או ללבוש בגד לבן חדש  
במשך הי"ב חודש, הבן רשאי לנהוג כן.

As Rav Yosef clearly asserts, if a parent waives this requirement, then their child may attend festive occasions and do other things normally prohibited in this period.

As his formulation makes clear, in cases in which the mourning rite is an act of omission (*shev ve-al ta'aseh*), such as not purchasing new clothing, then there is no requirement for them to actually buy a new garment, just that they are allowed to do so. In a mourning ritual of commission (*kum ve-aseh*), however, there would be a prohibition to do the mourning rite. This was the case in the particular question addressed to Rabbi Weil regarding whether a woman may wear a kerchief or turban traditionally worn by mourners if she was told by her mother not to do so. R' Weil ruled that it was prohibited for the mourner to wear the kerchief after the 30-day point.<sup>21</sup>

At least one decisor encourages people to waive this period of *avelut*, as we'll see shortly.

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<sup>18</sup> *Sedei Hemed*, Vol 4., *Asifat Dinim – Ma'arabet Avelut*, Seif #1.

<sup>19</sup> *Hokhmat Adam (Sha'ar Ha-Simhal)* 155:10; *Arukh Ha-Shulhan* YD 344:7; R. Shraga Feivel Cohen, *Badei Ha-Shulhan*, p. 142, #56; R. Chaim Binyamin Goldberg, *Pnei Barukh*, p. 344, fn. 1; R. Gavriel Goldman, *Me-Olam ve-ad Olam*, p. 190, #20; R. Yisroel Dovid Harpenes, *Nishmat Yisrael*, Vol. 2, chapter 8, p. 555; R. David Brofsky, *Hilkhot Avelut*, p. 193.

<sup>20</sup> *Yalkut Yosef*, *Avelut*, 41:3.

<sup>21</sup> On the custom in 14<sup>th</sup>- and 15<sup>th</sup>-century Germany to follow the Talmudic practice (*Moed Katan* 15a and 24a) of wearing such a head-covering, see *Shu"t Mahari Weil* #5 and especially *Sefer Maharil (Minbagim)*, *Hilkhot Semahot* #13. For further discussion of this practice, see Yitzhak (Eric) Zimmer, *Olam Ke-Minbago Nobeg* (Jerusalem, 1996), p. 191-210.

#### 4. Waiving *Kaddish*

To appreciate the widespread acceptance of the parental ability to waive the 12-month *avelut* period, it pays to compare the various rabbinic positions taken to a similar question. Can a parent request a child not to recite *Kaddish* for them?<sup>22</sup> As has been well-documented, the mourner's *Kaddish* emerged in the 12<sup>th</sup> century as a form of intercessory prayer that would help atone for the sins of the deceased and reduce their suffering in the afterlife.<sup>23</sup> In the words of the Rama,

וכשהבן מתפלל ומקדש ברבים, פודה אביו ואמו מן הגיהנם.<sup>24</sup>

As such, this is a ritual that is meant to achieve atonement. According to the principles developed in *Sanhedrin*, therefore, the deceased should be able to waive recitation of *Kaddish* since this is for their benefit.

This conclusion, in fact, is reached by a few decisors. R. Elyakim Getz<sup>25</sup> concludes that since this is a matter of his own personal benefit, the father may directly instruct his son not to recite *Kaddish*. Furthermore, it was prohibited for the son to disobey these orders and recite *Kaddish*, as the father had demanded of him to avoid an act of commission, as discussed in the previous section. The logic behind this ruling was already noted by R. Yosef Shaul Nathanson.

אם צוה שלא יאמר אחריו קדיש, הרשות בידו, שהקדיש הוא תיקון לנשמת המת  
והוא אינו רוצה בזה ולא ניחא ליה בתקנתו.<sup>26</sup>

Following this ruling of R. Getz, which is cited in *Pithei Teshuvab*, R. Yekutiel Greenwald and R. Feivel Cohen agree that one may waive *Kaddish*.<sup>27</sup>

<sup>22</sup> It should be noted that *avelut* practices and *Kaddish* are not in the same category of practices, and therefore it is possible for a parent to waive one set of obligations but not the other. This point is made explicit in *Sedei Hemed* (arguing that a person whose mother waived *avelut* is still entitled to his turn to recite *Kaddish*) and by R. Gershon Ephraim Marber, *Darkhei Ha-Hayyim Al Hilkebot Semahot*, p. 137 (arguing that we should not assume that a parent who waives *avelut* restrictions also intended to waive *Kaddish* requirements).

<sup>23</sup> For an early source, see *Mahzor Vitri* #144. For a recent study and a complete bibliography, see David Shyovitz, "You Have Saved Me from the Judgment of Gehenna": The Origins of the Mourner's *Kaddish* in Medieval Ashkenaz," *AJS Review* 39:1 (April 2015), p. 49–73.

<sup>24</sup> YD 376:4.

<sup>25</sup> *Shu"t Even Shoham*, *Siman* #42. This position is briefly and seemingly approvingly cited in *Pithei Teshuvab* to YD 344:10.

<sup>26</sup> *Shu"t Shoel U-Meshiv*, *Mahadurab Telita'ab* 1:259.

<sup>27</sup> *Kol Bo al Avelut*, Vol. 1, p. 366; *Badei Ha-Shulhan*, p. 141, n. 51.

Several decisors, however, have raised questions on this ruling, partly based on the motivations behind the request, and partly based on their understanding of *Kaddish*.

- 1) R. Nathanson himself, for example, addresses a case in which only one son was asked not to say *Kaddish* as opposed to his siblings. He asserts that this might create the mistaken impression that the son was of illegitimate origins or not actually his seed, thereby impugning on his reputation. Accordingly, R. Nathanson ruled the son does not have to heed this request in this circumstance.

More recently, R. Yisroel Dovid Harpenes concludes from this logic that in any circumstance where the son's omission of reciting *Kaddish* would bring him or his parents shame, he is allowed to recite *Kaddish* anyway. This is in accordance with the idea that one can waive one's *kavod* (honor) but not to the point of bringing to oneself disgrace (*bizayon*). Therefore, he rules that if one is already at a *minyán* during the time of the mourner's *Kaddish*, he should recite it.<sup>28</sup>

- 2) R. Nathanson also quotes others who deal with a case in which the father objected to the version of the *Kaddish* that the son would recite, and therefore requested it not be recited at all. In this particular case, it was dealing with a firm *misnaged* whose son had become a *Hasid* and therefore would add the words **ויצמח וישיחה משיחה ויקרב משיחה** to the text of *Kaddish*. R. Nathanson records the opinion that the son must say *Kaddish* but should omit those words and follow his father's *minhag*.
- 3) Other *poskim* raise the question of the motivation of the parent. Suppose, for example, that the parent did not want to "bother" or "impose" on the child the burden of attending *minyán* on such a regular basis. R. Yaakov Breisch, for example, deals with a case where the father feared that it would interfere with his son's business or job to attend *minyán* in the morning. He replies that the father in this case was not expressing opposition to the son reciting *Kaddish* or explicitly requesting it not to be done; he simply did not want to burden the son. Yet there is no reason to think that the father would not want the benefits accrued to him by the recital of *Kaddish*. Moreover, the son in any case is required to try to attend *minyán* (whether or not he is a mourner), and the father

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<sup>28</sup> *Sefer Nishmat Yisrael al Hilkehot Avelut*, Vol. 2, p. 650-652.

certainly has no power to waive such a requirement to attend *minyan*.<sup>29</sup>

- 4) In another case, the father directed the child not to say *Kaddish* because of a bitter dispute between them. Some *poskim* argue that this is not an appropriate motivation in light of the great benefits that he accrues for *Kaddish* recited on his behalf, and therefore the children should still recite *Kaddish*.<sup>30</sup>

Finally, Rav Ovadiah Yosef simply rejects the ruling in *Shu"t Even Shoham*. He asserts that in light of the great benefit the deceased receives from *Kaddish* recitation on his behalf, he certainly would regret this decision once in the afterlife. Given its spiritual benefits, a person simply does not have the ability to waive such lofty assistance and surely would not have tried to do so had they realized what they were forfeiting. Children, therefore, should entirely ignore this request and recite *Kaddish*.<sup>31</sup>

I suspect that this rationale is one of the many reasons why one does not see the ruling of *Pithei Teshuvah* cited regularly in contemporary halakhic handbooks. Decisors do not respect the potential motivation nor do they think that it is in the best interests of the deceased.<sup>32</sup> This is in contrast with waiving the 12-month *avelut* requirement which, as we saw, was widely accepted.

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<sup>29</sup> See *Shu"t Helkat Ya'akov* YD 231. (In older editions, this was Volume 2 *Siman* 93.) Along these lines, Prof. Dov Frimer similarly reported to me that he asked Mori v-Rabi, Rav Aharon Lichtenstein about whether a parent could tell their child that he only needs to recite *Kaddish* if he is already in shul; otherwise, he does not need to make an extra effort for the sake of *Kaddish*. Rav Lichtenstein did not approve of the suggestion.

<sup>30</sup> See R. Eliezer Deitsch, *Shu"t Pri Ha-Sadeh* 2:53 and R. Moshe Perlmutter, *Shu"t Hemdat Moshe* YD 89. Indeed, this issue came up in a 2007 Israeli court case where a father requested a court injunction to prevent his children from attending his funeral or reciting *Kaddish*. See the opinion issued to the court written by R. Moshe Bari and Dr. Yuval Sinai, "*Hafka'at Amirat Kaddish Yatom*" (May 17 2007). It should be noted that R. Deitsch argues that if the father simply did not believe in the *Kaddish* (seemingly because he was not religious or for theological objections), then the son could heed this request because it wouldn't work for him (i.e., the father) anyway! Yet as Rav Eliezer Waldenburg notes, the son's prayers may still be efficacious, and in the next world (*olam ha-emet*), one can presume that the deceased would appreciate his child reciting *Kaddish* on his behalf. See his *Even Ya'akov*, *Siman* #47, p. 67.

<sup>31</sup> *Shu"t Yabia Omer* YD 6:31. See also *Yalkut Yosef: Avelut* 41:3, p. 655.

<sup>32</sup> Indeed, Rav Waldenburg dedicates an entire chapter (*Even Ya'akov*, *Siman* #47) to showing how the ruling of R. Greenwald in *Kol Bo Al Avelut* is in error.

**Summary of Part One:** In the first part of this article, we've established that the notion of "waiving *avelut*" is well founded within halakhic literature. All *poskim* permit it after the *shloshim* period and a few even allow it for earlier stages of mourning. The basis for this ruling, as we saw, was the Talmudic notion of waiving honorary acts such as eulogies. Accordingly, just as it is the prerogative of a person to request not to have a eulogy at their funeral, so too may parents waive the requirement for their children to mourn for them after the thirty-day period.

### **Part II: Should We Utilize the Notion of "Waiving *Avelut*" in Order to Avoid the Dilemma of Participating in Family *Semaḥot* During the Year of Mourning?**

In part two of the article, we'll now explore how the notion of "waiving *avelut*" has been utilized to address the well-known dilemma of attending family weddings or bar/bat mitzvah celebrations (with music and dancing) within the 12-month period. This is one of the more difficult prohibitions within the *avelut* period, particularly when a close relative is getting married. From anecdotal evidence, it strikes me as the most challenging restriction of this period since many feel an emotional need to attend events that affirm the perpetuation of the deceased's family and legacy. Within classic codes of halakha, however, attending such events, at least as a full participant, seems to be prohibited to mourners.<sup>33</sup>

#### **5. The Prohibition of a Mourner Attending a Wedding or Other *Seudat Mitzvah***

From the outset, it should be noted that not all medieval commentators believed that there is a prohibition against attending events, such as weddings, that celebrate the performance of *mitzvyot* (*seudot mitzvyah*). The basis for the lenient position is a seemingly clear-cut statement in *Masekhet Semaḥot* that a mourner may attend a *seudat mitzvyah*.

על כל המתים כולן, אסור לילך לבית המשתה עד שישלימו לו שלשים יום, על  
אביו ועל אמו כל שנים עשר חודש, אלא אם כן היתה משתה של מצוה.<sup>34</sup>

On this basis, in fact, some *rishonim* allowed mourners to attend a wedding, at least after the 30-day mourning period. Here's the formulation in the *Sefer Mitzvyot Gadol*:

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<sup>33</sup> YD 391:2-3.

<sup>34</sup> *Masekhet Semaḥot* 9:15.

ותניא במסכת שמחות (פ"ט וע"ש) אם היתה סעודה של מצוה מותר. והרב רבי יוסף ומורי רבינו יהודה מפי רבינו יעקב ורבינו יצחק היו מתירין לבא לסעודת חתן, ובירושלמי (שם) גרסינן אם היתה חבורת מצוה או קידוש החדש מותר, מכאן התיר רבינו יעקב למי שמת אביו או אמו לכנוס לאחר שלשים יום.<sup>35</sup>

Many authorities, however, took a stricter approach, based on their interpretation of the restrictions laid down in the Bavli.

כל המתים כולן נכנס לבית השמחה לאחר ל' יום על אביו ועל אמו לאחר י"ב חדש.<sup>36</sup>

With regard to all other deceased relatives, he may enter a place where a joyous celebration is taking place after thirty days; in the case of his father or mother, he may enter such a place only after twelve months.

Noticeably absent in the Bavli, of course, is the exclusion of a *seudat mitzvah*. Indeed, the Talmud continues to indicate that there is greater room for some leniency only when a mourner needs to fulfill certain social pleasures by reciprocating an invitation to guests for social (i.e., optional, non-mitzvah) meals, a caveat absent from *Masekhet Semahot*. Some medieval commentators, like Ramban, assert that it is indeed prohibited for a mourner to attend any part of a wedding ceremony. Other medieval commentators, seeking to reconcile these competing trends,<sup>37</sup> argued that the dispensation in *Masekhet Semahot* is either for *seudot mitzvah* which are not festive (like a *pidyon ha-ben* and arguably a *brit milah*),<sup>38</sup> or is only when the mourner is essential to making the wedding happen (as may be the case of the marriage of orphans).<sup>39</sup> The latter argument is regularly cited in the name of Rabad.

האי לשם שמים דשרי היינו שהוא משיא יתום ויתומה או עני ועניה לשם שמים ואם לא יכנס שם יתבטל המעשה אבל בנישואי עשיר שהזמינו לסעודה כדי להתכבד בו אסור ליכנס שם.<sup>40</sup>

<sup>35</sup> *Sefer Mitzvot Gadol, Asin Aseh Derabanan* #2, *Hilkebot Avelut*. See also Rosh, *Yevamot* 4:27.

<sup>36</sup> *Moed Katan* 22b.

<sup>37</sup> One could argue, as Meiri notes, that there is simply a disagreement between these texts. See his *Bet Ha-Be'irah* to *Moed Katan* 22b *d.b. aval rabati*.

<sup>38</sup> See the disagreement in *Tosafot Moed Katan* 22b *u-le-simhat*.

<sup>39</sup> See *Nimmukei Yosef* (14a in Rif) *d.b. bein*.

<sup>40</sup> His position is cited in Rosh, *Moed Katan* 3:42, and elsewhere. R. Yehezkel Landau (*Noda Be-Yehudah, Mahadura Kama*, YD #100) thinks he means that the wedding would literally not occur without the presence of the mourner. R. Yehiel M. Epstein (*Arukh Ha-Shulhan* YD 391:5) thinks he was speaking figuratively,

Significantly, Rabbi Moshe Isserles adopts a generally prohibitive stance by asserting that the common practice is not to be lenient for either *seudot mitzvah* or for social meals.<sup>41</sup> Nonetheless, as Rabbi Yeḥiel M. Epstein notes (*Arukh Ha-Shulhan* 391:10), the disputes over this prohibition are important. We may utilize a minority position in a case of need, especially since the general rule in the laws of *avelut* is to side with the more lenient position.

What is the rationale behind the general prohibition of attending weddings and the dispensations that emerged in halakhic literature? It would seem that the logic is that the nature of *avelut* demands abstinence from festivities, even when celebrating a mitzvah.<sup>42</sup> Of course, there is a general notion that people should participate in *seudot mitzvah*—but such an obligation is not incumbent on a mourner. In the words of the Ritva,

ולכניסת החופה שהיא מצוה אין מצוה זו מוטלת עליו, שאין אבילות עם השמחה  
כלל.<sup>43</sup>

## 6. Dispensations to Attend a Wedding or *Seudat Mitzvah*

There are times, however, when an *avel* has a counter-obligation to fulfill a mitzvah. The Yerushalmi refers to such a case in which he may participate in a “*ḥaburah shel mitzvah*.”<sup>44</sup> While this could be seen as conflicting with the Bavli, many commentators interpreted it to allow the mourner to

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i.e., that the bride or groom would be heartbroken if the mourner was not in attendance.

<sup>41</sup> YD 391:2-3. See also *Gesher Ha-Hayyim* 21:8:6. A generally prohibitive stance was also adopted by R. Mordechai Eliyahu in his *Tzror Ha-Hayyim*, p. 41. Yet many Sephardim did not adopt this blanket stricture. See Ḥida’s *Birkei Yosef* 391:2 and the sources cited in *Shu”t Yabia Omer* YD 9:42 and *Yalkut Yosef* 39:24-25.

<sup>42</sup> The disagreement about other types of *seudot mitzvah* relates to whether such meals constitute a festive occasion. One could argue, for example, that a *brit milah* constitutes pain for the baby, or that a *pidyon ha-ben* is insufficiently festive. Other *rishonim* and *poskim* argue that the *simḥah* does not have to be as festive as a wedding for it to be too celebratory for a mourner. The disagreement is recorded in YD 391:2. Regarding a *siyum*, see *Pnei Barukh*, p. 223.

<sup>43</sup> Ritva *Moed Katan* 22b *d.h.* He, following Ramban, goes so far as to prohibit attending the *huppah*, even if there is no music or eating. Rama 391:3, following earlier figures (see Ra’avyah #841 p. 554 and Mordechai *Moed Katan* 891), permits one to attend the wedding since the prohibition is limited to festivities that include food and drink.

<sup>44</sup> *Yerushalmi, Moed Katan* 3:8.

participate in a festive meal in which he directly fulfills a mitzvah, like eating a *korban pesah* or *ma'aser sheni* in Jerusalem.<sup>45</sup> In fact, it was precisely this passage in the Yerushalmi which was cited by Rabad to allow for a mourner to participate in a wedding that would not otherwise happen. In such a case, he personally has an obligation to attend because his presence is integral to making sure this great mitzvah is fulfilled. For similar reasons, an *avel* may attend a wedding if he is necessary for making the required *minyan* (quorum).<sup>46</sup>

On this basis, there are well-established dispensations for a mourner to get married. This is even true within the *shloshim* period if the wedding date had already been set or if the mourner had not yet fulfilled the mitzvah of procreation.<sup>47</sup> The logic is that the mitzvah of *avelut* after *shiv'ah* does not override the commandment of getting married or taking care of one's children. Or to put it another way, in this case, the event must be held for him to fulfill a mitzvah that is incumbent upon him.

This dispensation has also broadly been applied to those responsible for marrying off their children—namely the parents<sup>48</sup>—to allow them to attend the wedding.<sup>49</sup> This is, in part, because of their obligation to marry off their children, and also because of the great anguish that it would cause the bride or groom if one of their parents were not present on their special day (a *yom tov* for them, so to speak).<sup>50</sup> The latter factor is also invoked by

<sup>45</sup> See, for example, Meiri *Bet Ha-Beirah* to *Moed Katan* 22b *d.h. aval rabati*.

<sup>46</sup> *Or Zarua*, *Hilkehot Avelut* #347.

<sup>47</sup> YD 392:2.

<sup>48</sup> In this respect, the formulation of Radbaz (comments to Rambam's *Hilkehot Avel* 6:6) is particularly striking: וסמך רבינו על מה שכתב מי שלא קיים מצות פ"ו או שיש לו בנים קטנים וכו' וכ"ש במקום שיש שם מצוה שלא העמידו גזירת שלשים אלא במקום דליכא צד מצוה הילכך משיא יתום ויתומה או עני ועניה שאם לא יכנס יתבטל המעשה כיון שיש מצוה מותר וכן דעת הראב"ד ז"ל וכן נ"ל דעת רבינו אף על פי שלא פירש.

<sup>49</sup> See, for example, *Pithei Teshuvah* YD 391:7, following the Rama's ruling that an *avel* may escort the bride or groom (usually their child) to the *huppah*.

<sup>50</sup> See, for example, *Gilyon Maharsha* to YD 391:2 *d.h. she-mesi yatom*. Rav Moshe Feinstein (*Iggerot Moshe* YD 2:169, based on the position of *Knesset Gedolah*) approves of this dispensation even within *shiv'ah*. This position is recorded in *Sefer Pnei Baruch* 20:10, p. 212. Regarding the dispensations beyond *shiv'ah*, see *Gesher Ha-Chaim* 21:8:11, p. 232-233 and *Pnei Baruch* 20:17, p. 216-218. Another factor may sometimes be the potential financial loss if the planned wedding would be cancelled. See Shakh YD 392:5 and *Shu"t Noda Be-Yehudah (Mabadura Kama)* YD #100.

many *poskim* to extend this dispensation to grandparents of the bride or groom who are in *avelut*.<sup>51</sup>

This dispensation, however, does not help others who do not bear such responsibility for the mitzvah, even as one can argue that their presence is important to the couple. These may include: 1) siblings of the bride or groom who are also in mourning; 2) the siblings of their parents (i.e., uncles and aunts of the bride and groom); and 3) close friends of the bride and groom or their families. What is to be done in such a case?

- a) One simple response is that they should attend the limited formal wedding ceremony (*birkat erusin* and *nesuin* under the *huppah*) and then leave. The Rama records the opinion that some were lenient to allow mourners to hear the wedding ceremony in the hall or area in which the blessings are recited since this does not constitute entering the *beit ha-misbteh* in which there is eating and dancing. Once the ceremony is over and the festivities begin, however, they should no longer attend.<sup>52</sup>
- b) The Rama records a (disputed) notion that an *avel* may serve as a member of the wait staff or other workers who service the wedding (*meshamshim*). This would allow the *avel* to remain in the vicinity of the meal but not to dine in the hall or to join the dancing.<sup>53</sup> Some *poskim* believe the task needs to be performed throughout the wedding, and cannot be fulfilled by simply offering drinks to guests.<sup>54</sup> Other *poskim* have further questioned

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<sup>51</sup> Regarding grandparents, see *Arukh Ha-Shulhan* YD 391:10, R. Ovadiah Yosef *Shu"t Yabia Omer* YD 9:43, *Nitei Gavriel* 16:6, and the ruling of Rav Yosef Zvi Rimon in his *Hilkhos Avelut* (first edition), p. 89. (See also *Shemirat Shabbat Ke-Hilkhata*, Vol. 2, 65:67 (p. 343), which records Rabbi Shlomo Zalman Auerbach as treating grandparents like parents when it comes to participating in *sheva be-rakbot*.) As some of these *poskim* note, the extension to grandparents partly relies upon those *rishonim* who believe that there was never any prohibition to attend a wedding, even as this position is generally rejected.

<sup>52</sup> On a logistical level, this dispensation has become more difficult in our times since food is regularly served before the *huppah* while music and singing is present at almost every stage of the wedding. Yet many *poskim* assert that one does not need to worry about the music played at these stages of the wedding.

<sup>53</sup> See *Arukh Ha-Shulhan* YD 391:13. It should be noted that while the *Gesher Ha-Hayyim* 21:8:11 speaks of this leniency only for family members, the *Nitei Gavriel: Avelut* (20:4, p. 162) argues that there is no reason why it couldn't apply to other guests such as close family friends.

<sup>54</sup> *Pnei Barukh*, p. 216, fn. 35 in the name of Rav Yosef Shalom Elyashiv and Rav Shlomo Zalman Auerbach.

whether this criterion can be fulfilled today given the elaborate nature of our weddings and the elaborate staff that services them.<sup>55</sup> Even those that adopt a more lenient approach,<sup>56</sup> however, still maintain the prohibition of dancing<sup>57</sup> and of eating in the wedding hall.<sup>58</sup>

In my experience, many *avelim* find themselves somewhere in no-man's land on such occasions. On the one hand, they don't find themselves doing much to serve as *meshamshim*, leading to guilty feelings of being present or of manipulating a loophole. At the same time, they don't fully participate in the wedding festivities since they eat outside the main hall and do not participate in dancing. This might be a healthy balance on an emotional level, but it's not clear to me that this solution works for all. Moreover, it seems halakhically problematic in light of the inability to having people serve as meaningful *meshamshim* at the wedding.

- c) In some communities, there were relatives (beyond parents in *avelut*) who fully participated in the wedding feast after *shloshim*. This is attested to in the glosses of R. Yaakov Castro (Egypt, d. 1610).<sup>59</sup> There is much speculation as to the reasoning behind such lenient practice. R. Castro himself refers to the argument made by R. Shmuel de Medina (Salonika, sixteenth century,

<sup>55</sup> See R. Mordechai Eliyahu, *Tzror Ha-Hayyim* #192 and the ruling of Rav Avigdor Nevenzahel recorded in *Me-Olam ve-ad Olam*, p. 183 fn. 42.

<sup>56</sup> See *Nitei Gavriel* 20:2, p. 160, who agrees that one should be serving throughout the wedding but notes that the popular practice is to do a minimal form of service. He contends that the most important thing is for the *avel* not to lose sight of their *avelut* during the wedding. (In *Shu"t Shevet Ha-levi* 2:219, Rav Vosner argues that one must fulfill a real task, even as he indicates that many are more *mekil* than they should be.)

<sup>57</sup> See, for example, *Sha'arei Tesbuva* to OH 551:1.

<sup>58</sup> See, for example, the formulation in *Yalkut Yosef* 38:18.

וגם שאר הקרובים לחתן או לכלה, הנמצאים בתוך י"ב חודש לפטירת אב ואם, או בתוך שלשים לפטירת שאר קרובים, יכולים להשתתף בשמחת הנישואין של קרובם, לשמוע ברכות הנישואין וקריאת הכתובה, ואם אין שם תזמורת, רשאים גם להיות בסעודה כל שיש לחתן צער מאי השתתפותם בחתונה. אבל לא יאכלו בסעודה זו [אלא בחדר צדדי], ובמשך כל זמן שהותם בחתונה ישתדלו לשמש את האורחים ולהגיש להם כיבוד. אבל בשעה שמנגנים בכלי שיר, נכון לעזוב את אולם החתונות אחר החופה (בשאר קרובים לחתן ולכלה)

<sup>59</sup> *Erekh Lehem* to YD 391, quoted in Hida's *Shiyurei Berakha* to YD 391. See *Shu"t Zera Emet* 3:169, who explains his logic, and other relevant sources cited in *Nitei Gavriel*, p. 133 fn. 18. It is worth noting that R. Castro similarly believed that a person could waive *shiv'ah* or *shloshim* in *Erekh Lehem* YD 344, as discussed previously. Yet he does not connect these factors, as far as I can tell.

known as the Maharashdam),<sup>60</sup> who claimed that perhaps a precedent may be taken from the laws of Sukkot, in which a groom and his “entourage” are exempt from dwelling in the Sukkah, even though this is a Biblical commandment. The logic of including the entourage is seemingly that you can’t have a bride or groom without having their closest companions by their side, even if this means that they don’t fulfill the mitzvah. So too, the logic goes, the need to accompany the bride or groom overrides the prohibition of a mourner attending a wedding ceremony, which is at best a rabbinic proscription, and as we saw, is not even accepted by some medieval authorities. Following this logic, Maharashdam allowed siblings to attend in a case in which they regularly ate with the bride or groom, and their absence would be acutely felt.<sup>61</sup>

In essence, this is a middle-ground position that doesn’t allow any or all mourners to attend a *seudat mitzvah*, but does allow close family members to fully participate. Many *poskim* rejected this position,<sup>62</sup> in part because of their deference to Rama and in part because this distinction does not appear in the writings of earlier commentators.<sup>63</sup> Additionally, they note that the analogy from the laws of Sukkot seems to be irrelevant since the laws of dwelling in a Sukkah are governed by a special rule of *teshuva ke-ein taduru* (i.e., you should dwell in the Sukkah as you normally live) which are not germane in other areas. Many, however, cite the opinion of Maharashdam as a potential source to rely upon in combination with other considerations, as we’ll now see.

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<sup>60</sup> *Shu”t Maharashdam* YD #202. For another lenient position along these lines, see R. Yosef Molkho (Salonika, d. 1768) in his *Shulhan Gavoha* YD 391, who contends that he does not know why the Rama was stringent in these matters since the laws of *avelut* typically follow the lenient opinion. See other sources cited in *Nitei Gavriel*, p. 129 fn. 10.

<sup>61</sup> While some understand him to have only allowed this in a case in which the siblings regularly dine with the bride or groom (e.g., they live together), Rav Eliezer Waldenburg, *Even Ya’akov*, p. 78, notes that his logic and language indicates that this would include his family members whose absence would cause him great anguish.

<sup>62</sup> *Beit Meir* to YD 391:2; R. Elazar Fleckles, *Shu”t Teshuvah Me-Ahavah*, Vol. 3, Siman #413 (regarding YD 391); R. David Sperber, *Shu”t Afarsakta De-Anyan* 1:34.

<sup>63</sup> Maharashdam anticipates this challenge and argues that Rabad needed a different reason to allow an essential person to attend a wedding because he was a non-relative; if he had been a close relative, this reasoning would have not been necessary at all.

## 7. Can We Assume That a Parent Would Waive Mourning Rites in Such a Circumstance?

In his posthumously-published rulings on the laws of mourning, Rav Yosef Shalom Elyashiv deemed the argument of Maharashdam as weak. Nonetheless, to address the problem of how to deal with cases in which the uncle or aunt of the bride or groom were in *avelut*, he offered the following novel suggestion:

ההלכה היא שאב או אם שמחלו על אבלות י"ב חודש – מועילה מחילתם... בדברים אלו יש קצת יסוד להתיר בשאלה מצויה... אולם מאחר שמחילת האב על אבילות י"ב חודש פוטרת, יש להתיר במקום שגלוי וידוע לאבלים שאביהם היה מאד חפץ לכל ילדיו ישתתפו בשמחות אחיהם. אם כן אנן סהדי שמחל על אבילות זו, והרי מועילה מחילה. ועל כן בצירוף עם המהרשד"ם, יש להתיר כשברור שהאבא היה מאד רוצה בזה. ובעצם כל אבא מעוניין בזה.

Recognizing that the notion of *mehilah* clearly works in the 12-month period, Rav Elyashiv asserts that even if the deceased did not expressly waive this requirement, we can assume that he did (*anan sehad*) in cases when it is clear to the mourners that their parents would have desired for all of their children to participate in the wedding of their grandchild. He further adds that we can assume that every parent would desire this, and therefore, in combination with the position of the Maharashdam, we can permit the uncles and aunts to fully participate in the wedding.

In fact, a similar position was previously adopted by R. Eliezer Waldenburg, well-known author of *Shu"t Tzitz Eliezer*, in his monograph on *hilkhot avelut, Even Ya'akov*.<sup>64</sup> In addition to discussing the position of the Maharashdam, he cites the explanation given by R. Shaul Nathanson for the position (attributed to Rabad, as discussed above) to allow a mourner to attend the wedding of an orphan or poor person that would otherwise not take place. R. Nathanson contends that since *avelut* for the 12-month period is only for *kibud av va-em*, we can assume that not only would the parents not object to their children attending such a wedding, but that they would see it as a *kevod* for them that their son did such a wonderful mitzvah!<sup>65</sup> Following this logic, R. Waldenburg argues that one can similarly assume that a parent who dedicated so much time to raising their

<sup>64</sup> The book, published in 5722, is unfortunately out of print, but was included in the printed versions of volume 5 of *Shu"t Tzitz Eliezer*, after Kuntres Ramat Rachel. Regretfully, this text has been omitted from the Bar-Ilan CD Database. The original book is also available on the *Otzar Ha-Hokhma* database.

<sup>65</sup> For R. Nathanson's position, see his *Divrei Shaul: Yosef Da'at* to YD 391:2.

children and getting them to the *huppah* would have certainly waived *avelut* so that the entire family could be together for this special occasion.<sup>66</sup>

This argument is fascinating and is not without precedent, yet it remains somewhat novel.<sup>67</sup> Firstly, because it suggests that we assume the person would be *mohel* even if this was not indicated beforehand. In fact, this rationale was proposed to Rav Yaakov Kaminetsky, who rejected it.<sup>68</sup> This may be because while it may be intuitive to think that a parent would want all of their family to attend their grandchild's wedding, one could counter that the obligation to mourn, out of respect for the parent, should trump other considerations. Alternatively, some parents may desire the *kevod* granted to them by traditional norms, even if it may sometimes come with a cost.

Secondly, if this was a viable halakhic alternative, then one would have expected someone to explicitly suggest it beforehand, given the hundreds of years in which the question of family participation at a wedding has been discussed. These caveats notwithstanding, the claim is being made by major *poskim* and comes to legitimize the intuitive decisions made by

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<sup>66</sup> *Even Ya'akov*, *Siman* #56, p. 76. See also *Pnei Barukh* p. 220 fn. 48.

<sup>67</sup> The editor of Rav Elyashiv's *sefer* cites the position of R. Nathanson (in the *Divrei Shaul*) as a logical precedent for this ruling. He also cites a ruling of R. Avraham Y. Karelitz (*Hazon Ish*, YD 208:5) to allow opening graves in order to properly identify the buried corpse, even though such action is normally considered a denigration of the honor of the deceased. In addition, he cites the case discussed by R. Reischer, discussed in an earlier section about waiving *shin'ah*. The latter case, however, is not an exact parallel, as it was a situation where the person, while ill, explicitly requested the wedding to take place anyway, and R. Reischer asserted that we can assume (*anan sehadi*) that he meant this to include situations where his children were in *avelut* (i.e., he had passed away). It's a much easier logical leap to make such an assumption when the deceased explicitly expressed his general desires before his death, even if he had not specifically waived *avelut*. In any case, the logic of assuming that a father would be *mohel* was employed by Rabbi Zalman Melamed to permit a mourner to participate in *Simhat Torah hakafot* dancing. See the citation of his son, Rabbi Eliezer Melamed, in his *Peninei Halakha: Sukkot*, p. 156 fn. 4. I am thankful to Rabbi David Brofsky for this source. The logic was also employed by Rav Moshe Feinstein to allow a mourner to be the guest of honor at a fundraising dinner on the assumption that his parents would be *mohel* for the sake of bringing honor to their child. See Rabbi Gedalia Felder, *Yesodei Semahot*, p. 128-129 and p. 136 fn. 115. I am thankful to Rabbi Binyamin Samuels and Rabbi Richard Weiss for helping me to locate this source.

<sup>68</sup> See *Emet Le-Ya'akov al Shulhan Arukh*, ed. R. Daniel Neustadt, p. 397.

many fully-committed Jews to honor the memory of their parents by attending such affairs. The precedent of these rulings by towering figures like Rabbis Waldenburg and Elyashiv should not be quickly dismissed.

### 8. Should Parents Explicitly Waive *Avelut* to Prevent This Dilemma?

After citing the law of waiving *avelut*, Rabbi Gershon Ephraim Marber (Warsaw/Antwerp, 1872–1941) suggests that parents not only can but should waive the *avelut* of the 12-month period so that children will not fail in the lesser-known and somewhat disputed restrictions imposed in this period.<sup>69</sup> Beyond attending festive events, these include, for example, not getting a haircut for an extended period beyond the end of *shloshim*<sup>70</sup> and not wearing a significant new garment during the entire 12-month period.<sup>71</sup>

לדעתי מצוה לפרסם בזמננו זה הדין, שקשה לקיים כדין אבלות י"ב חודש, ופרט לשיטת... שלא לגלח בי"ב חדש רק כל פעם אחר ג' חדשים, וכן בלבישת בגדי שבת, ולילך על שמחות שיש שם כלי זמר וכו', ונכשלים ע"פ רוב כנה"ל, ואם אביו ואמו מחלו להם לא יכשלו. ואם ירצו אחר שמחלו להם לקיים אבלות י"ב חודש, יכולים.

To solve this problem, R. Marber recommends that parents should waive *avelut*. Their children, however, may choose to passively avoid certain joyous practices. That's their prerogative, since these *avelut* restrictions are acts of omission, but in the meantime, the mourners won't have the threat of sin hanging over them. The children, furthermore, may elect to use this dispensation to fully participate in weddings and other festive occasions, provided that they tell others that their parents waived this requirement to avoid problems of *marit ayin*.<sup>72</sup> This recommendation

<sup>69</sup> *Darkhei Ha-Hayyim Al Hilkehot Semahot*, p. 76-77 and fn. 9. For another case in which a parent chose to waive these mourning practices to reduce the burden on their children, see the above-cited passage in *Sedei Hemed*.

<sup>70</sup> R. Moshe Isserles (YD 390:4) records the position that one should wait until 3 months have passed until they get a haircut. Some interpret this as being from his last haircut, while others say it is from the beginning of the mourning period. Others have more lenient approaches, but still speak of refraining from a haircut for a couple of months. For various opinions, see R. David Brofsky, *Hilkehot Avelut*, p. 194.

<sup>71</sup> YD 389:3.

<sup>72</sup> The need to address this problem is also noted by Rabbi Gavriel Goldman, *Me-Olam ve-ad Olam*, p. 190 #20. My brothers and I found opportunity to let people know about this while we were sitting *shiv'ah*, which obviated some but not all

is cited, albeit in a footnote but seemingly approvingly, by R. Gavriel Zinner in his well-known series, *Sefer Nitei Gavriel*.<sup>73</sup>

Of course, it may seem radical to broadly suggest that parents should waive the 12-month mourning period. Yet Rav Marber's proposal is subtler. He suggests that people waive the requirement in order to prevent their children from erring, particularly in light of stringent opinions or because of complex situations like family gatherings. Yet this doesn't prevent children from utilizing this dispensation wisely and stringently taking on many of the mourning practices voluntarily. As we've noted, many mourning restrictions are acts of omission which one can still refrain from performing. You may be allowed to go to concerts, but that doesn't mean you are required to do so. It does mean, however, that the mourner doesn't have to fret over the wide range of opinions regarding when they can cut their hair, eat Shabbat meals outside of their homes,<sup>74</sup> attend Purim *seudot*,<sup>75</sup> and other matters of continued dispute. More significantly, it also means that when one believes their parent would allow or even want for them to attend an affair, such as family events or weddings that give honor to their legacy, then it would be permissible and even appropriate to attend.

How should this be done? In theory, a parent can simply state to their child that they waive their obligation to mourn. In practice, this seems unadvisable, since oral directives can be misunderstood. I'd suggest that a parent who desires to waive this obligation should express this idea in writing, as with a last will and testament, and also express their feelings to all of their children in a group meeting. This will prevent misunderstandings and grievances. It goes without saying that parents should not be pressured into waiving these restrictions.

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of the problems. In a private e-mail communication in April 2019, Rabbi Hershel Schachter of RIETS told me that his father, Rabbi Melech Schachter, waived *avelut* requirements. Rabbi H. Schachter reported that it was difficult for him to find a way to explain to people why he'd be attending a wedding during the 12-month period, especially since this law is not well-known, and therefore he did not utilize this dispensation too much. On one occasion, when he was asked to speak at a *bris*, he began his speech by explaining to the crowd why he was allowed to be present.

<sup>73</sup> *Sefer Nitei Gavriel: Avelut*, Vol. 2, p. 137-138.

<sup>74</sup> For different opinions, see R. David Brofsky, *Hilkebot Avelut*, p. 205 fn. 50 and Rabbi Nahum Yavrov, *Sefer Divrei Sofrim al Hilkebot Avelut*, Vol. 2, p. 580-581.

<sup>75</sup> For various opinions, see R. Simcha Rabinowitz, *Sefer Piskei Teshuvot*, Vol. 6, OC 696:7, p. 595.

## 9. Is Waiving *Avelut* a Good Idea?

Is it a good idea to waive *avelut*? That's a difficult question to answer. On the one hand, Rabbi Marber's logic is tantalizing. There are many potential pitfalls in the 12-month mourning period, including restrictions relating to wearing new clothing, getting haircuts, attending Purim *seudot* and Shabbat meals, and social gatherings which may fall into the category of restricted events. On these issues, moreover, there are many different practices and customs, creating a certain amount of confusion. All of this, of course, is before one gets to dealing with issues of family celebrations and the laudable desire to participate in such gatherings.<sup>76</sup>

At the same time, observing the 12-month period of *avelut* is a beautiful expression of honoring one's parents. Many mourners have found it to be therapeutic on a personal level, and there is no need to tamper with successful time-tested aspects of our tradition. While there is a certain level of ambiguity with regard to the 12-month period restrictions, the mourner can gain clarity by following their rabbi's rulings for the range of appropriate behavior in this time period.

That said, if one desires to attend weddings that are particularly important to them, one is not left with many great options. As we saw, all of the *heterim* currently employed do not allow full wedding participation or alternatively are highly disputed. The suggestion of Rav Waldenburg and Rav Elyashiv that we can assume that the parent is *mobel* may certainly be utilized, even as it remains a fairly novel suggestion. Explicitly waiving *avelut* (or, at the very least, its implementation with regard to attending family *semachot*)<sup>77</sup> is the clearest and most obvious way to avoid such problems, which children can then wisely implement to give honor to their parents while allowing for appropriate expressions of bereavement.

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<sup>76</sup> Another factor may be the age of the children at the time of the death and the difficulties of imposing *avelut* restrictions at younger ages. Rabbi Michael Broyde reported to me that his father, Rabbi Barrett Broyde, instructed him that as long as the younger Broyde was single, he should not observe *avelut* after *shloshim*. Following his marriage, he instructed him to observe the full *avelut* period. This was reported to the younger Rabbi Broyde as a practice that his father had learned from his days as a student of Rabbi Yitzhak Hutner at Yeshivas Chaim Berlin.

<sup>77</sup> This assumes that since we are dealing with a parent choosing to waive their honor, they may choose to waive these restrictions on a selective basis. For example, a parent could state that he or she is *mobel* for their child, a teacher, to attend the weddings or graduation celebrations of their students; or they can tell their children that they want them to attend all professional ball games with their grandchildren; or that he or she allows them to fully participate in all weddings.

I leave the suggestion of Rabbi Marber to encourage *mehilat avelut*, as explicated in part two of the essay, for the consideration of *talmidei hakhamim* and *poskim*. The prerogative of a parent to choose, on their own initiative, to waive *avelut* for their children after the *shloshim* period remains unchallenged in halakhic literature, as documented in part one of the essay. ❧

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There is ample precedent for such a notion when it comes to a parent waiving particular aspects of *kevod* while they are alive (e.g., a child doesn't have to stand for their parent). I have not, however, found explicit suggestions in this regard with *mehilat avelut*.