Cremation in the Jewish Tradition

RABBI MORRIS M. SHAPIRO

This paper was adopted unanimously by the CJLS in 1986. The names of voting members are unavailable.

שאלות

The following questions will be discussed:
1. Is cremation permissible in the Jewish tradition?
2. If the answer to the above question is negative, may the rabbi who has advised the family that cremation is against Jewish tradition, and whose advice was disregarded, officiate at the funeral of one who is to be cremated?
3. May the ashes be buried in a Jewish cemetery?
4. If the answer to the above question is positive, may a rabbi, after he advised the family that cremation is against Jewish tradition, conduct burial services when the ashes are interred?
5. May a rabbi conduct burial services over the ashes of a cremated body when his advice concerning cremation was not sought and he is faced with a *fait accompli*?

תשובות

Even though our tradition has clearly developed a taboo against cremation, there is no explicit source in the Bible or in the Talmud against it.
In Samuel I, 31:12-13, we find:

> All the valiant men arose, and went all night, and took the body of Saul and the bodies of his sons from the wall Beth-Shan and came to Jabesh, and burned them there... And they took their bones, and buried them under a tree at Jabesh.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

The Radak, who was obviously concerned lest one interpret this episode to mean that the Bible condones cremation, comments:

> אפשר שהיה דעתו כמו שכתבו רבותינו ז״ל שורפין על המלכים. ומה הם שורפין עליהם מטתן וכלי תשמישן. או דעתו על שריפת בשמים כמו ויחנטו הרופאים. ויתכן לפרש כי הבשר שרפו שהעלה רמה ולא רצו לקברם עם התולעים כי לא היה דרך כבוד; ושרפו הבשר וקברו העצמות.
>
> Perhaps, he (the *Tosafot Yeshanim*) was referring to what the Sages, of Blessed Memory, have written: we burn on the death of kings; and what did they burn; their beds and their utensils. Or perhaps, he was referring to the burning of spices, analogous to what Scripture says: and the physicians embalmed.
>
> A more plausible explanation would be that they burned the flesh because it had brought forth worms, and it would have been disgraceful to bury the flesh with the worms; and, therefore, they burned the flesh and buried the bones.

According to the Radak then, cremation is permissible when it is done לכבוד המת, to honor the dead.

The Talmudic source against cremation is in *Sanhedrin* 46b:

> R. Yoḥanan said on the authority of R. Simeon b. Yoḥai: Whence is it inferred that whoever keeps his dead unburied over night transgresses thereby a negative command? From the verse, "thou shalt surely bury him," whence we learn that he who keeps his dead unburied over night transgresses a prohibitory command. Others state: R. Yoḥanan said on the authority of R. Simeon b. Yoḥai: where is burial as a means of disposing of the dead alluded to in the Torah? In the verse, "Thou shalt surely bury him;" here we find an allusion to burial in the Torah.

Rabbenu Ḥananel summarizes the talmudic dialogue:

> א״ל שבור מלכא לרב חמא מנא לכו קבורה מן התורה? שתק ולא אמר ליה ולא מידי. ואמרינן הוה ליה למימר מדכתיב כי קבור תקברנו ודחי׳ יכול למימר דעביד ארגז, כלומר תתנהו בארון. קבורה בארץ מנא להו שאין ת״ל תקברנו דדריש אנן לא משמע ליה למלכא. לימא ליה מדאיקבור אבות ומשה רבינו; ואמרינן יכול למימר מנהגא בעלמא... וק״ל מצוה זו מדרבנן היא.

King Shapor asked R. Ḥama: from which passage in the Torah is the law of burial derived? The latter remained silent, and made no answer. Thereupon R. Aḥa b. Jacob exclaimed: he should have quoted, "For thou shall bury!" That is no proof, since it might merely have meant, that he would be placed in a coffin.

But it is also written, "bury, thou shall bury him." He, the King Shapor, would not have understood it thus. Then he would have proved it from the fact that the righteous – the patriarchs and Moses, were buried. He, the king, might object, that it was merely a custom. And it is a general assumption that the mitzvah of burial is a rabbinic mitzvah .

The Talmud continues:
The scholars propounded: "Is burial intended to avert disgrace, or as a means of atonement? What is the practical difference?"

Take the case of a man who said, "I do not wish myself to be buried, if you say that burial is to prevent disgrace, then the choice does not depend entirely upon him. But if it is for atonement, then in effect he has declared, 'I don't desire atonement. Come and hear! From the fact that the righteous were buried, If then you say that it is for atonement – are the righteous in need thereof? Even so, for it is written, 'For there is not a righteous man upon earth who does good and sins not."

Come and hear! It is written: "And all Israel shall make lamentation for him, and they shall bury him, for only he, Jeroboam, shall come to the grave." Now, should you assert that burial is for the attainment of forgiveness, then the others too should have been buried, that there might be atonement for them? [No] This one who was righteous, deserved to find forgiveness, but the others were not worthy to attain it.

Come and hear! "They shall not be lamented neither shall they be buried: It may be precisely in order that there might be no atonement for him."

The Rosh concludes that the question whether burial was intended to avoid disgrace or as a means for atonement is not resolved. Based on this conclusion, the Beit Yosef rules:

ולא איפשטא. וכתב הרמב"פ הלכך קוברין אותו דספק איסורא הוא. אפילו בעו יורשים נמי דלא ליקברוהו מוציאון מהם בע"כ. ואפי' במת דעלמא דלית ליה יורשים וקאמר אל תקרבוהו אין שומעין לו, דבזיונא דכולהו חיי קא אמרינן ולא משום משפחה לחוד[1]

The sages could not arrive at a final conclusion. The Rambam rules: therefore we bury him; for it is a ספק איסור. even when the heirs, too, request not to bury him, we take him out forcefully. Even when the deceased has no heirs, and he requests not to be buried, we don't listen to him. Because "disgrace" refers to all the living and not merely to the relatives.

The conclusion of the סוגיא is that it is for the sake of atonement. Rabbenu Ḥananel, on the other hand, concludes without advancing any reason, וסוגיא סלקא דמשום כפרה.

In fact, the text seems to favor the conclusion of the Rosh: ולא איפשטא. Perhaps Rabbenu Ḥananel based his conclusion on his previous ruling that burial is only a rabbinic mitzvah; and, therefore, the question whether burial is to avoid disgrace or to effectuate atonement becomes a ספק דרבנן, and we follow the lenient position.

According to Rabbenu Ḥananel then, when a person leaves a will stating that he does not want to be buried, we should listen to him.

It should be noted that Rabbenu Ḥananel is not the only *Rishon* who maintained that burial is rabbinic:

הרמב"ם בפי"ב מהל' אבל ה"א בל ה"א פסק דאם צוה שלא יקבר אין שומעין לו שהקבורה מצוה, שנאמר כי קבור תקברנו. והעור עליו הלח"מ דכיון דהטעם דאין שומעין לו משום דהויא בעיא דלא איפשטא ספק איסורא לחומרא כדכתב הרמב"ן א"כ לא היה לו לתלות הטעם משום דקבורה מצוה, אלא דקבורה משום בזיונא, דזהו הצד מהבעיה דאין שומעין לו. וכתב בלח"מ ליישב דהרמב"ם ס"ל דעיקר ספיקת הגמרא משום דאין קבורה מן ותורה, וכאיכא דאמרי דאמר ר' יוחנן משום רשב"י רמז לקבורה מה"ת, אבל ללישנא קמא דר"י דקבורת שאר מתים הוא מה"ת והמלין אותו עובר בל"ת ליכא בעיא, דכיון דהיא מהיא מצוה מן התורה לקבור את מתו לאו כל כמיני לומר שלא יקברוהו. וכיון שהרמב"ם פסק כל"ק, לכן כתב הטעם משום דהקבורה היא מצוה.

The Rambam, Laws of Mourning 12.1, rules: If he requested not to be buried, we don't listen to him, because burial is a mitzvah: for it is written: "bury, thou shall bury him." The *Lehem Mishnah* comments: Wherefore the reason why we don't listen to him is because it was an inquiry for which a final conclusion has not been arrived at, and ספק איסור לחומרא is as the Ramban states, therefore, he (the Rambam) should not have said: "because burial is a mitzvah ," but rather that burial is because of disgrace.

The *Lehem Mishnah* explaining that Rambam, holds that the student who read the inquiry whether "burial" is because of "atonement" or because of "disgrace" held that burial is not biblical but rabbinic, in accordance with the second version: others state . . . where is burial – as a means of disposing of the dead – alluded in the Torah?

But according to the first version of R. Simon b. Yoḥai who maintains that burial is מן תורה, and one who keeps his dead unburied overnight transgresses thereby a negative commandment; there is not inquiry. And whereas it is a biblical mitzvah to bury his dead, one has no right to request not to do so. And Rambam rules in accordance with the first version, therefore, he gave the reason "burial is a mitzvah."

The mere fact that the Gemara is asking the question whether burial is, משום כפרה (because of atonement) or משום בזיונא או (because of disgrace) supports the views of Rabbenu Ḥananel and the *Leḥem Mishneh* that burial is merely rabbinic mitzvah: otherwise, the Gemara would have

disregarded an accepted Talmudic principle: לא דרשינן טעמי (one does not analyze the Bible's reasons).

Let me cite still another authority who held the same view: burial is a rabbinic mitzvah:

ועי׳ בשו״ת חרות יאיר סי׳ קל״ט שכתב דהך דהמלין מתו עובר בל״ת אינו רק אסמכתא.[2]

Ḥarrot Yair wrote that the prohibition of leaving a corpse unburied is only an *asmakhta*.

It is obvious from the sources that the authorities are divided as to whether burial is biblical or rabbinic. The Rambam according to the *Leḥem Mishneh* is of the opinion that there is a basic halakhic disagreement between the two Talmudic versions about Rabbi Yoḥanan: The first version holds that burial is biblical (and the law is in accordance with the first version). The second version about Rabbi Yoḥanan holds that burial is rabbinic. The Rosh and the Tur are of the opinion that there are no halakhic differences between the two versions about Rabbi Yoḥanan – both hold that burial is biblical. And when the Talmud does not arrive at any conclusion as to whether burial is to avoid disgrace or to effectuate atonement it becomes ספק דאורייתא. (doubt with regard to a biblical precept).

A third opinion is that of Rabbenu Ḥananel. Both Talmudic versions hold that burial is Rabbinic, hence, it becomes a ספק דרבנן (a doubt with regard to a Rabbinic precept) לקולא (ruled permissively).

Two more sources, that are relevant to our inquiry, should be cited. Is cremation, indeed, a בזיון המת (a disgrace of the corpse)? The Meiri on Sanhedrin 46b states:

כל שצוה שלא יקברוהו אין שומעין לו אחר שהיא מצוה. ולא עוד אלא שיש בזיון לקורבים כשנבלתו עומדת ומסרחת.

Anyone who requested not to be buried, we don't listen to him. Because it is a mitzvah, and also it is a disgrace to the family should the corpse become odorous.

Thus, according to the Meiri cremation should not be considered a בזיון המת (a disgrace of the corpse). The Magen Avraham explicitly states so.

The Shulḥan Arukh rules:

כל שצוה שלא יקברוהו אין שומעין לו אחר שהיא מצוה ולא על ידיהם . . . ואם אין לולא זה ולא זה מטלטלו טלטול גמור. וכל זה באותו רשות.

A corpse that is lying on a place where there is a fear of fire, one puts on it a loaf of bread or a child and carries it away. We are permitted to carry it within the domain only.

The Taz comments:

זה תמוה דהא אח"כ משום בזיון לחוד התירו אפילו מרה"י לכרמלית וכו' וכאן יהיה אסור אלא דוקא באותו רשות! וכבר כתב הלבוש שהוא ט"ס דודאי מותר אפילו לרשות אחר.

This is surprising! For the sake of preventing disgrace to the deceased, it is permitted to carry him from a private domain to a כרמלית. And here he permits to carry within the domain only.

However, the Magen Avraham comments:

זה כתב הרב"י הרמב"ם ונפלה דליקה בחצר ישי בו מת משמע דלהוציאו אסור, דליכא הכא בזיון המת כשנשרף.[3]

The Beit Yosef ruling is based on the Rambam, who ruled: "And a fire broke out in the square where there is a corpse," which implies that to take him out from the square is forbidden because it is no disgrace when a corpse is burned.

According to the Magen Avraham then, should one leave a will requesting cremation, we should listen to him, even should the reason for burial be for the sake of avoiding disgrace.

Still another objection to cremation is ניוול המת (desecration of the dead) of course, one could reasonably argue that as long as we don't view cremation as ניוול המת (disgrace of the corpse) why should we view it as ניוול המת (desecration of the dead).

I have presented the above sources to demonstrate, in my judgment, the taboo the modern authorities[4] have protested against cremations of their own making. There is indeed room for leniency among the *poskim*.

However, I find myself in agreement with our revered colleague, Rabbi Isaac Klein, of blessed memory, who in his paper, "Cremation," argues against it.

In the final analysis, there is no convincing reason why we should deviate from such a sacred established tradition. Nowhere in the Talmud is there any doubt *vis-a-vis* the established method of burial: the question merely centers around whether we should listen to a person who says "I don't want to be buried." The argument that we might someday run out of burial space is just not convincing in view of the fact that the Jews make up approximately 3/10 of 1% of the world's population.

As to the second inquiry: May the ashes be buried in a Jewish cemetery? Rabbi Mayer Lerner, of blessed memory, in his book *Ḥayyei Olam* lines up a host of authorities ruling against it. Their decision is primarily based on the assumption that the mitzvah of burial does not apply to the ashes of a deceased body since there is not a כזית on the מת.

This assumption, however, is questionable. The Rambam rules:[5]

ומצות עשה לקבור את כל הרוגי בית דין היום ההריגה.

It is a positive requirement to bury people executed by the court on the day of death.

The word *kol* implies to include also those who have been condemned to burning.

The Mishnah *Sanhedrin* 52a states:

The manner in which burning is executed is as follows: His mouth was forced open, the wick lit and thrown into his mouth, so that it descended into his body and burnt his bowels.
Gemara: Whence do we know this? It is inferred from the fact that burning is decreed here: and was also the fate of the assembly of Koraḥ; just as there the reference is to the burning of the soul, the body remaining intact, so here too. R. Eleazar said: It is deduced from the employment of the word 'burning' here and in the case of Aaron's sons; just as there the burning of the soul is meant, while the body remained intact, so here too. Now, he who deduces it from the assembly of Koraḥ, why did he not learn it from Aaron's sons? Because they were actually burnt (this being his opinion): Then why not deduce from them that this shall be the method of burning? R. Naḥman answered in the name of Rabbah b Abbuha: The verse saith, 'But thou shalt love thy neighbor as thyself, (which implies) choose an easy death for him.

Now, should the mitzvah of burial not apply to the ashes of a deceased, the Gemara could have advanced a more logical answer: one would not be able to fulfill the mitzvah of burial.

The following is even more convincing: Imarta, the daughter of Tali, a priest, committed adultery. Thereupon R. Hama B. Tobrah had her surrounded by faggots and burnt. R. Joseph said: He (R. Hama) was ignorant of two laws. He was ignorant of R. Mathma's dictum (that burning was carried out by pouring molten lead down the condemned man's throat) and of the following *Braita*.[6]

Should the mitzvah of burial not apply to the ashes of a burnt body, the Gemara should have said that he was ignorant of a third law: namely, of the mitzvah of burial.

After writing this, I was pleased to note that Rabbi Joseph Deutsch of blessed memory, had reached the same conclusion from practically the same source:

כפי הנראה ס״ל לבעל לחם הפנים שמן הדין אין חיוב לקבור אפר הנשרפים – בכל זאת לבבי לא כן ידמה. וחיל׳ דידי מהא דאיתא בסנהדרין דף נב ע״א – רב אליעזר ברבי צדוק אומר מעשה בבת כהן שזינתה והקיפוה חבילי זמורים ושרפוה . . . ולפי דעת ר׳ אליעזר בר׳ צדוק ששריפה הוא שריפת כל הגוף בודאי הוא כעין שריפת פרים הנשרפים או כאין שרפת פרה אדומה ושם נשרפו כל העצמות. ובכל זאת היה הלמ״מ קבורות לנסקלין ולנשרפים. ובודאי דוחק גדול לאמור שר׳ אליעזר בר׳ צדוק יחלוק גם על זה. מלבד כללו של הרמב״ם שבהלמ״מ לא שייך פלוגתא. עוד זאת אפושי פלוגתא לא מפשינן. וכנראה מוכרה הדבר שגם הנשרפים כלל קבורה.[7]

The way it seems, the Leḥem Haponim holds that from a halakhic point of view, one is not obligated to bury the ashes of those who have been burned. My heart tells me that that is not so. My proof is from Sanhedrin 52a: "R. Eleazar b. Zadok said: It once happened that a priest's daughter committed adultery, whereupon bundles of faggots were placed round about her, and she was burned."

According to R. Eleazar b. Zadok, when the Torah condemns a person to be burned, it means burning the whole body, analogous to the bulls that are completely burned, or analogous to the burning of the red heifer. Nevertheless, it is הלכה למשה מסיני that those who were stoned or burned had to be buried. It is very unlikely that R. Eleazar b. Zadok disagreed also with that.

First the Rambam's general principle that in reference to הלכה למשה מסיני, there is no disagreement among the sages. Second, we do not increase disputes unnecessarily.

We may safely conclude, then, even though we have reached the conclusion that cremation is against the Jewish tradition, nevertheless if the body has been cremated, there is still a positive mitzvah to bury the ashes. The contention that those who wish to be cremated are: מומרים, כופרים, רשעים, חוטאים, פושעים, פורקי עול (apostates, skeptics, sinners, etc.) and, therefore אסור להתעסק בהם (one may not attend to them) is not valid in light of our modern experiences. The religious views of those who wish to be cremated are no different from other non-observant Jews. The wish to be cremated, in our days, is rather psychological, not religious.

CONCLUSION

1. Cremation is against the Jewish tradition, and the family should be so advised by the rabbi.
2. Should the family decide not to follow the rabbi's advice, he may still choose to officiate in the funeral parlor before the body is cremated.
3. The ashes should be interred in a Jewish cemetery.

4. The interment should be private, without the presence of a rabbi.
5. In a situation where the rabbi's ruling has not been defied by the family, but he is faced with a *fait accompli*, the rabbi may choose to conduct services at the cemetery.

NOTES

1. Beit Yosef to Tur, *Yoreh De'ah, Hilkhot K'vurah* 348.
2. Tzvi Hirsch Chayes, *Hagahot Sanhedrin.*
3. *Sh.A., Oraḥ Ḥayyim* 311.1.
4. R. Mayer, *Ḥayyei Olam* ; R. Yehiel Weinberg, *S'ridei Eish* #124.
5. *Hilkhot Sanhedrin* 15.8.
6. Sanhedrin 52b
7. *Ḥayyei Olam* 87-88.