

Don't Let the Dead Go to Waste: Autopsy and Jewish Law

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Inside the New York City Office of Chief Medical Examiner, a Latin inscription behind the reception desk reads: “*Hic locus ubi mors eam gaudet succurrere vitae*,” or “This is a place where the dead are pleased to help the living.” The Office of Chief Medical Examiner is responsible for investigating deaths that are deemed unusual or occur under suspicious circumstances such as crimes, accidents or suicides. Medical examiners provide a crucial service in a city where approximately 5,000 autopsies are performed per year to yield answers and a sense of closure to those affected by a sudden loss.

Post-mortem examination, or autopsy, is defined as the anatomical dissection of a deceased person to determine the manner and cause of death. Other objectives of post-mortem examinations include forensic medicine, study of anatomy and pathology by medical students, advancement of medical knowledge and retrieval of organs for transplantation. The dissection of human bodies for medical studies dates to the fourth century B.C.E. in Alexandria. Hierophilus and Hirsistratus were the first to dissect human bodies under the permission of King Ptolemy [1].

Historically, however, the ancient Greeks and Romans, as well as other ancient civilizations such as those in India, China and Syria, prohibited autopsy for religious reasons [1]. The subject of autopsy continues to draw polarizing views among Jewish thought leaders, citing religious arguments. Judaism argues for preserving the sanctity of the human body, thus the body of a Jew is to be treated with honor and respect even after death [2]. Early sources found in the Talmud deal with the subject of autopsy. More specifically, Jewish law identifies three prohibitions encountered when conducting an autopsy: the prohibition of delaying burial of the dead, the prohibition of *nivul hamet* (defiling the deceased), and the prohibition of deriving *hanaah* (benefit) from the deceased [3]. Even so, Jewish law allows for the performance of an autopsy in certain circumstances.

The need for immediate burial is found in Deuteronomy (21:23), in the case of a man who commits a crime that is punishable by death. After the criminal is executed and hanged, the Torah states, “His body shall not remain all night upon the tree, but thou shall surely bury him that day” [4]. The Gemara (*Sanhedrin* 46b) deduced that such a requirement concerns all Jewish bodies, not only those executed by court. Furthermore, it is not only a positive commandment to bury the dead immediately, as it states, “Thou shalt surely bury him...,” but also, one who delays

in burial of the dead also transgresses a negative commandment, “His body shall not remain all night” [5]. Therefore, the performance of an autopsy would inevitably delay the burial and would result in an act of desecration that is biblically prohibited. However, under certain circumstances, it is permissible to delay burial if it is deemed that the deceased would have wished so. In other words, an autopsy that could potentially save the life of his/her relative is allowed since it is not considered degrading to the deceased [3].

Nivul hamet, the prohibition of degrading the body of the deceased, is discussed in the Gemara in *Bava Batra*. The Gemara discusses a boy who sold his father’s property and the son died soon after. The son’s inheritors claimed that the deceased had not reached adulthood and therefore the sale should be void, while the buyers argued that the deceased had reached adulthood and therefore the sale was legally binding. Rabbi Akiva was asked by the family of the boy whether it is permitted to exhume the boy’s body to look for physical signs of adulthood and establish the validity of the sale. Rabbi Akiva determined that such act would be *nivul hamet* and even further, that after death, signs of puberty change and an examination of the body would be inconclusive (*Bava Batra* 154 a-b). *Tosafot* explain that Rabbi Akiva provided the latter reason since there are cases in which an examination of the body would be acceptable. If the buyers requested to examine the body because they stand to lose money, an examination of the body would be permissible since their own money is more important to them than the desecration of the boy’s body (*Bava Batra* 154b). In other words, financial loss is a permissible reason to examine the body of a deceased according to *Tosafot* since it is not considered *nivul hamet*.

The prohibition of deriving any kind of *hanaah* from a Jewish body is found in the Gemara (*Avoda Zara* 29b). Routine autopsies are prohibited since no benefit should be derived from the deceased. Others argue that gaining knowledge from viewing, dissecting and analyzing the body of the deceased does not fall under the classic form of *hanaah* since no physical or monetary gain is derived. Furthermore, it is argued that knowledge derived from the performance of an autopsy is not tangible, concluding that routine autopsies are permitted [3].

Violations of the three prohibitions mentioned above would only be acceptable in the case of *pikuach nefesh* (life-saving situations). According to the Gemara, violation of the Torah in order to save the life of another Jew is allowed (*Sanhedrin* 74a). Most *poskim* allow autopsies in

cases of *pikuah nefesh*, such cases include: epidemic/new diseases, familial/genetic illness, experimental therapies, and forensic medicine. Other cases that do not fall under the category of *pikuah nefesh*, such as financial loss for non-family members, the need to identify the deceased to allow a widow to remarry, and for the study of medicine in Israel could also be permissible [3]. In addition, some conclude that procedures routinely performed on live patients are not considered *nivul hamet* and can be performed on the deceased. However, the *Noda Bijebudah (Yoreh Deah 21)*, argued that when there is no *choleh lefanenu* (present patient), it is not a case of *pikuah nefesh*. All in all, it is a common consensus that when an autopsy is deemed necessary, it

must be performed with the utmost dignity and in the appropriate manner.

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References

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