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## Does Jewish Law Permit Cremation?

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### Background:

*In July 2005, Alon Nativ opened up "Aley Shalechet", Israel's first crematorium, in Hibbat Zion, a Moshav south of Hadera. In January 2006, the Chief Rabbinate announced that the ashes of cremated Jews should be rejected by all burial societies and the relatives of those cremated should not sit Shiva, say Kaddish or observe any mourning rituals. On August 22, 2007, the crematorium at Hibbat Zion was burned down by arsonists. The residents of Hibbat Zion, both religious and secular, expressed across-the-board opposition to the crematorium. In January 2007 and August 2007, the Shas party said that it wants to pass legislation outlawing cremation in Israel.*

*According to Aley Shalechet, cremation is chosen in the Western World as follows: Japan 99.9%; Switzerland 75.5%; England 73%; Sweden and Denmark 70%; Canada 45%; U.S. 32%; Spain 17.8%; Italy 16%.*

*A 2002 survey by Geocartographia in Israel, found that about 10% of Israeli Jews would choose cremation. Even so, only 450 people turned to Aley Shalechet, and 80% of them are alive and well.<sup>1</sup>*

*In light of the above, it is timely to publish this heretofore unpublished responsum by Rabbi Isaac Klein z"l. It was, apparently, written for the Committee on Jewish Law and Standards of the Rabbinical Assembly in 1976. It was subsequently listed in indices of Conservative responsa.<sup>2</sup> I xeroxed a copy of the responsum in 1990 from the CJLS archives in New York but could not locate the xerox in 2005, when we republished Rabbi Klein's Responsa and Halakhic Studies. It has been edited below following the format of that volume.*

### ***Sheilah:***

The question of the permissibility of cremation according to Jewish Law is coming to the fore again. This time it is not a problem caused by a changing theology nor one posed by the pressure of assimilation, which makes Jews assume the customs of their non-Jewish neighbors; but rather an economic problem created by the present situation in which we witness an increasing population and a decrease in ground available for cemeteries. As time progresses, less and less ground will be available for burial purposes. This situation prompts us to consider the question anew.

### ***Teshuvah:***

The accepted practice among traditional Jews is that cremation is forbidden. Those who request cremation do it consciously and deliberately as a deviation from normative Jewish practice. Hence the ample literature on the subject deals, with a few notable exceptions, not with cremation itself, but rather with the situation where cremation is a *fait accompli* and questions arise from it. For example:

1. Are the members of the family under obligation to observe the laws of mourning? (*Sho'alin Vedorshin*, Dr. Isaac Una, No. 51)
2. May the ashes be buried in a Jewish cemetery? (*Hayyei Olam*, Dr. Meir Lerner, Berlin 1905; *Da'at Kohen*, Rabbi Avraham Yitzhak Hakohen Kook, No. 198)
3. May a rabbi officiate at such a funeral?
4. If we should permit the ashes to be buried in a cemetery, how much space do we have to allot for them? (*Noam*, Vol. 10 [5727], p. 322).
5. When a person was burnt in a crematorium against our wishes, when does the period of mourning begin: when the body has been burnt, when they put the ashes into a container, or when they bury it? (*She'eilot Uteshuvot Zikhron Ya'akov*, R. Ya'akov Yisrael Zuber, No. 15).

We have also a question where it is not the permissibility of cremation that is under consideration but rather whether it may be done under extraordinary circumstances. For example: A person living among Gentiles far from a Jewish community and is worried that should he die he would receive non-Jewish burial in a Gentile cemetery, may he request that he be cremated? (*Mahaneh Hayyim*, R. Hayyim Fishel, Part 3, No. 42).

Among traditional authorities, I came across only the following few direct questions about cremation:

1. Dr. Michael Higger in his *Halakhot Va'aggadot* (New York, 1933, pp. 161-183) has a *teshuvah* on cremation.
2. Rabbi Yitzhak Yehudah Shmelkis in his *Responsa Bet Yitzhak*, Vol. 2, *Yoreh De'ah*, No. 155 (The *teshuvah* was actually written by his son-in-law).
3. Rabbi Avraham Yitzhak Hacoen Kuk in his book of Responsa, *Da'at Kohan*, No. 197. The question was directed to him by Rabbi Moshe Hayyim Mervis of Cape Town, South Africa.

In order to discuss the question properly we must first give the sources of the law. In the Bible we read:

וכי יהיה באיש חטא משפט מוות והומת ותלית אותו על עץ. לא תלין נבלתו על העץ כי קבור תקברנו ביום ההוא כי קללת אלהים תלוי, ולא תטמא את אדמתך אשר ה' אלהיך נתן לך נחלה (דברים כ"א: כ"ב-כ"ג)

And if a man have committed a sin worthy of death, and thou hang him on a tree; his body shall not remain all night upon the tree, but though shalt surely bury him the same day; for he that is hanged is a reproach unto God; that thou defile not thy land which the Lord thy God giveth thee for an inheritance (Deut. 21:22-23).

The Mishnah extends this commandment against delaying burial overnight to all dead bodies and says:

ולא זו בלבד, אלא כל המלין את מתו עובר בלא תעשה (סנהדרין ו' ה')

Furthermore, everyone who allows his dead to remain overnight transgresses a negative commandment (*Sanhedrin* 6:5).

The implications of this ruling are not clear. The biblical commandment prescribes two things: a. that the body not remain overnight; b. that the body be buried. Our problem now is whether the Bible insists on burial in the usual meaning of the term, or is any form of disposal of the body permitted as long as it takes place the same day? If the latter, then burial is mentioned because *dibru hakhamim bahoveh*, the Bible speaks of what was customary and not of what was mandatory.

The Talmudic discussion of this Mishnah leaves the problems unsolved. Thus:

אמר רבי יוחנן משום רבי שמעון בן יוחי: מנין למלין את מתו שעובר עליו בלא תעשה? תלמוד לומר: "כי קבור תקברנו" (דברים כ"א: כ"ב). מכאן למלין את מתו שעובר בלא תעשה. איכא דאמרי: אמר רבי יוחנן משום רבי שמעון בן יוחי: רמז לקבורה מן התורה מנין? תלמוד לומר: "כי קבור תקברנו", מכאן רמז לקבורה מן התורה (סנהדרין מ"ו ע"ב).

Rabbi Yohanan said in the name of Rabbi Shimon ben Yohai: Whence is it inferred that whoever keeps his dead unburied overnight transgresses thereby a negative commandment? From the verse, "Thou shalt surely bury him" (Deut. 21:22); whence we learn that he who keeps his dead unburied transgresses a negative command. Others state: Rabbi Yohanan said in the name of Rabbi Shimon ben Yohai: Where is burial alluded to in the Torah? In the verse, "Thou shalt surely bury him"; here we find an allusion to burial in the Torah (*Sanhedrin* 46b).

[A variant] reading of this passage is found in the *Yalkut Shimony* on this verse, which reads as follows (ed. Venice 1566, parag. 930):

אמר רבי יוחנן משום רבי שמעון בן יוחאי: מנין למלין את מתו שהוא עובר בלא תעשה? תלמוד לומר "לא תלין נבלתו". ומנין שעובר אף בעשה? תלמוד לומר "כי קבור תקברנו". איכא דאמרי וכו'

Rabbi Yohanan said in the name of Rabbi Shimon ben Yohai: Whence is it inferred that whoever keeps his dead unburied overnight transgresses thereby a negative commandment? From the verse, "his body shall not remain all night upon the tree". And whence is it inferred that he also transgresses a positive commandment? From the verse, "Thou shalt surely bury him". Others state etc.

The Talmud (*Sanhedrin* 46b) continues by telling this incident:

אמר ליה שבור מלכא לרב חמא: קבורה מן התורה מניין? אישתיק ולא אמר ליה ולא מידי. אמר רב אחא ברב יעקב: אימסר עלמא בידא דטפשא, דאיבעי ליה למימר "כי קבור"! דליעבד ליה ארון. "תקברנו"! לא משמע ליה. ונימא מדאי קבור צדיקי? מנהגא בעלמא...

King Shapor asked Rav Hama: From what passage in the Torah is the law of burial derived? The latter remained silent and made no answer. Thereupon Rav Aha bar Yaakov exclaimed: The world has been given into the hands of fools, for he should have quoted, "For thou shalt bury"! That is no proof since it might merely have meant that he should be placed in a coffin. But it is also written "thou shalt bury him"! He, King Shapor, would not have understood it thus from the double verb. Then he should have proved it from the fact that the righteous were buried! He might have replied that that was merely a general custom...

It is obvious that Rav Hama agreed with Rabbi Yohanan but simply did not feel like getting into a discussion with King Shapor, suspecting that he would not have understood or would not have accepted the Talmudic type of reasoning.<sup>3</sup>

One more passage from the Talmud (*ibid.*) is relevant to our question:

איבעיא להו: קבורה משום בזיונא הוא או משום כפרה הוא? למאי נפקא מינה? דאמר "לא בעינא דליקברוה להווא גברא" - אי אמרת משום בזיונא הוא, לאו כל כמיניה, ואי אמרת משום כפרה הוא, אמר "לא בעינא כפרה" מאי? תא שמע:

מדאיקבר צדיקי, ואי אמרת משום כפרה, צדיקי לכפרה צריכי? אין דכתיב "כי] אדם אין צדיק בארץ אשר יעשה טוב ולא יחטא" (קהלת ז': כ').

The scholars propounded: Is burial intended to avert disgrace, or as a means of atonement? What is the practical difference? If a man said, "I do not wish myself to be buried" - If you say that it is to prevent disgrace, then he does not have the legal power [to disgrace his relatives]; but if it is for atonement, if he says "I do not desire atonement", what is the law? Come and hear: From the fact that the righteous were buried, if you say it was for atonement - are the righteous in need of atonement? Yes, as it is written, "For there is not a righteous man upon earth who does good and sinneth not" (Ecclesiastes 7:20).

This leaves the question open whether burial is a *minhag* or a *din* (law), and if a *din*, whether *midoraita* (Biblical) or *midrabbanan* (Rabbinic). Opinions differ.

Dr. Higger in his responsum discusses the question thoroughly and in detail. While claiming to be free of the prejudices of the contending parties and accusing them of coming to the problem with their minds already made up before examining any of the pertinent evidence, he [is guilty of the same sin] when he stamps those with whom he disagrees as pilpulistic rabbis, while those on his side he calls *Hakhamim* (Sages).

Dr. Higger's thesis is that burial was not mandatory. Neither the Bible nor the Talmud make it a must. At best, it had priority over other forms of disposal; it was *מצווה מן המובחר* (the most preferable way to perform a *mitzvah*) or even just a *minhag*. Dr. Higger has to do a lot of juggling in order to overcome the general opinion that it is a *Mitzvat Assei*, a positive commandment. Thus Maimonides says:

ומצוות עשה לקבור את כל הרוגי בית דין ביום ההריגה שנאמר "כי קבור תקברנו ביום ההוא". ולא הרוגי בית דין בלבד אלא כל המלין את מתו עובר עליו בלא תעשה (הלכות סנהדרין ט"ו: ח').

And it is a positive commandment to bury all those executed by order of the court, for it is said, "thou shalt surely bury him the same day". This is not only true of those executed by order of the court, but whoever leaves his dead overnight transgresses thereby a negative commandment (Laws of Sanhedrin 15:8)

In his *Sefer Hamitzvot*, Maimonides says:

מצווה רל"א היא שציוונו לקבור הרוגי בית דין ביום שנהרגו. והוא אמרו יתעלה "כי קבור תקברנו ביום ההוא". ולשון ספרי "כי קבור תקברנו" מצוות עשה. והוא הדין בשאר מתים, רוצה לומר שנקבור כל מתי ישראל ביום מותם.

Commandment 231 is that God commanded us to bury those executed by order of the court on the day of execution, for the Exalted One said: "for thou shalt surely bury him the same day". And the language of the Sifrei is, "for thou shalt surely bury him", is a positive commandment. The same law applies to all the dead, that is to say, that we must bury all the dead of Israel on the day of their death.

Maimonides further says:

ההספד כבוד המת הוא... ואם ציווה שלא יספידוהו אין סופדין אותו. אבל אם ציווה שלא ייקבר אין שומעין לו שהקבורה מצווה שנאמר "כי קבור תקברנו" (הלכות אבל י"ב:א')

The eulogy is in honor of the dead... but if one ordered that he should not be eulogized, they do not eulogize him. If, however, he ordered that they should not bury him, they should not listen to him, since burial is a commandment, as it is said, "thou shalt surely bury him" (Laws of the Mourner, 12:1) (See also *Sefer Hahinukh*, ed. Chavel, Mitzvah 534; *Semag, Lo Ta'aseh*, No. 197; Ramban, *Torat Ha'adam*, ed. Chavel, p. 117; *Die Feuerbestattung vom Standpunkt der Halacha*, von Rabbiner Dr. Schiffer, Frankfurt a. M., 1912, p. 13)

It is thus clear that not only must one refrain from leaving the body overnight, but he must also dispose of it by burial, and burial means specifically to put a body into the ground for that is the most honored way of disposing of the dead. The Ramban in his commentary on the Torah (to Deut 21:22) gives a very logical explanation why this law is mentioned only in the case of a criminal, saying: אף על פי שזה ראוי לנוולו: "כי קללת אלוהים תלוי". "Even though this person [who was executed for a capital crime], because of the enormity of his sin, deserves that his body be dishonored, you should not do so because, 'he that is hanged is a reproach to God' ". The extension of the law by the rabbis of the Talmud is not mere *pilpul* but a very logical conclusion.

One cannot miss the fact that the form of burial in the Bible and in rabbinic literature is always assumed to be burial in the ground. This, of course, includes burial in niches in caves. Burning is always mentioned as a *bizyon hamet*, a form of dishonoring the dead. Dr. Higger tries to distinguish between burning that is *derekh bizayon* (disrespectful) and burning that is *derekh kavod* (respectful). This may be a pragmatic observation of the contemporary scene, but there is no basis for it in *halakhah*. Mutilation of the body even minimally is called *nivul hamet* (desecration of the dead). Burning would certainly fall into this category.

We mentioned before that almost all the responsa on the subject deal not with cremation itself but with questions arising from cremation. Whenever the problem itself arose, it was usually met by a public condemnation by the Rabbis. Thus, the question arose in Italy at the end of the 19th century. Rabbi Elijah ben Amozegh, Chief Rabbi of Livorno, wrote a treatise on the subject *Ya'aneh Ba'esh* (Livorno, 1886), consulted other Rabbis (see *Hayyei Olam*, p. 108) and called a conference of the Rabbis of Livorno who reaffirmed the ban against cremation (see Rabbi Moses Israel Tedeschi in "Gutachten uber Leichenverbrennung", *Monatsschrift fur die Literatur und Wissenschaft des Judenthums*, Vol. 2 [1890], pp. 149-153).

In 1905, Dr. Meir Lerner of Altona, Germany, published his famous *Hayyei Olam* (Berlin 1905), containing answers of Rabbis from every country in the world that had a Jewish community with a rabbi. Not only did they all condemn the practice, but also, with a few notable exceptions, they prohibited doing anything with the ashes, such as burial in a Jewish cemetery, or for the survivors to observe the laws of mourning.

On November 27, 1911, the Orthodox Rabbis of Germany met at Frankfurt am Main, discussed the question, and reaffirmed the conclusion reached by that body at a previous conference in 1904, to wit:

- 1) Die Erdbestattung ist eine biblische Vorschrift und nicht bloss eine uralte Sitte. (Burial in the ground is a biblical precept and not only an old custom.)
- 2) Die Leichenverbrennung ist religionsgesetzlich unzulässig
  - a) weil durch sie das Gebot des Erdbegräbnisses unerfüllt bleibt, sodann
  - b) weil sie nach Anschauung der Propheten eine Barbarei und
  - c) nach Meinung des Talmud und der Decisoren ein *bizyon hamet*, eine Entwürdigung des Toten ist.(Cremation is halakhically forbidden
  - a) because the *mitzvah* of burial in the ground remains unfulfilled;
  - b) because according to the view of the Prophets it is barbarism;
  - c) according to the view of the Talmud and the decisors, it is *bizyon hamet*).
- 3) Die letztwillige Verfügung eines Verstorbenen, verbrannt zu werden, verpflichtet und berechtigt die Hinterbliebenen keineswegs, sich gehorhsam zu erweisen. (The last will and testament of a deceased to be cremated does not obligate nor justify obedience by the survivors.)
- 4) An Leichen, die eingeäschert werden sollen, haben die Mitglieder der Heiligen Beerdigungsbruderschaft von der Vornahme Abstand zu nehmen. (If a body is supposed to be cremated, the members of the *Hevra Kadisha* must keep their distance.)
- 5) Ebenso wenig darf in solchen Fällen seitens des Rabbiners irgend welche Trauerfeier abgehalten werden. (Even so, in such cases, the Rabbi is allowed to conduct some sort of memorial ceremony.)
- 6) Die Leichenreste sollen auf dem Totacker neben dem Krematorium und nicht auf dem Juedischen Friedhofe begraben werden. (The remains should be buried in the graveyard near the crematorium and not in the Jewish Cemetery.) (*Die Feuerbestattung*, Dr. Schiffer, pp. 26-27)

In 1935, the Rabbis of Jerusalem met and issued this ban against cremation:

הננו מודיעים לכל אחינו בני ישראל שכל חברה קדישא אסורה להתעסק באפר השרופים הנ"ל, ואסור לקבל את האפר לקבור אותו בקברי ישראל ולא לעשות שום סדר של כבוד המתים באפר השרופים הנ"ל... י' טבת תרצ"ה...

We hereby notify all our fellow Jews that every *Hevra Kadisha* may not handle the ashes of those cremated, and they may not receive the ashes to bury them in a Jewish cemetery nor [honor them in any way]... 10 Tevet 5695 (1935)... (Responsa *Da'at Kohan* of Rabbi Avraham Yitzhak Hakohen Kuk, p. 382)

It is evident that in Eastern Europe and in the Orient cases of cremation were very rare and the cases that did come up were always associated with apostasy. To be sure, even in countries that came under the influence of Emancipation, the Orthodox Rabbis did not falter in their condemnation of cremation or even of showing any leniency in the permission of the burial of the ashes in a cemetery, as witnessed by Dr. Lerner's book, *Hayyei Olam*.

Cracks do, however, appear in this solid phalanx even amongst Dr. Lerner's respondents, who overwhelmingly forbid not only cremation but any involvement with the remains. Thus, Professor David Zevi Hoffmann, while agreeing with the other respondents in principle, calls attention to the fact that not all people who ask to be cremated are motivated by apostasy and do it *l'hakhees* (as a provocation). Many do it for reasons of fear lest they be buried with the breath of life still in them, or because of "aesthetische und sanitaere Ruecksichten" (esthetic and sanitary motives). (*Hayyei Olam*, p. 101). This is quite in contrast with the epithets hurled by the majority of the other respondents at those who ask that their bodies be cremated. They use such choice terms as: מומרים, כופרים, רשעים, חוטאים, פושעים, פורקי עול, עוברי עבירה" (apostates, evil ones, sinners, criminals, etc.). Prof. Hoffmann's attitude must have been taken into consideration by those who advocated a more lenient approach.

Thus, Rabbi Eliyahu Hazzan, Chief Rabbi of Alexandria, Egypt, permitted all observances that were *kevod hahayyim* (for the honor of the living). He refers to a responsum that he had written twenty years earlier to Rabbi Eliyahu ben Amozegh. Then there is also the answer of Rabbi Herman Adler, the Chief Rabbi of Great Britain, who permits the burial of the ashes in a Jewish cemetery (p. 106). In his answer, he refers to a *heter* (permissive ruling) issued by his father. This alludes to a letter to that effect sent in November 1887 by Rabbi Nathan Marcus Adler (1803-1890) to Nathaniel Mayer, the first Lord Rothschild, stating the following:

With reference to the religious bearings on the question, I beg to state that whilst there does not exist any precept prohibiting the internment in a Jewish cemetery of the ashes of a person who has already been cremated, our law is

decidedly and emphatically opposed to the practice of cremation. Both Jewish law and usage require the interment of the bodies of the dead and view the reduction of a corpse to ashes by fire as an indignity and an outrage. This can be proved by several passages in the Holy Scriptures, e.g. Amos 2:1, where punishment is pronounced upon Moab “because he burned the bones of the King of Edom into lime”. (*A Guide to Life*, Rabbi Tzvi Rabinowicz, p. 18).

This was reaffirmed by his son and successor four years later when the question came up again when the wife of the prominent Dr. Maurice Davis was cremated on September 27, 1891. Rabbi Herman Adler ruled:

I have given this request my full consideration in concert with the members of the Beth Din. We subscribe to the opinion stated by my venerated Predecessor that there does not exist any precept prohibiting the interment in a Jewish cemetery of the ashes of a person who has already been cremated, an opinion supported by other eminent rabbis including the Chief Rabbi of Kovno (Rabbi Isaac Elhanan Spector, 1817-1896). We accordingly permit such a burial. At the same time, we earnestly beg you and the members of the community not to construe this permission into a sanction of the practice of cremation. We ardently hope that no brother or sister in faith will make a similar testamentary disposition, involving, as it does, a grave breach of Jewish law. (*A Guide to Life*, p. 19).

Because of these decisions, the by-laws of the Burial Society of the United Synagogue of London included the following rule:

The Society shall not make any arrangements whatever for cremation. Where cremation is nevertheless to take place, a service may be held at the house prior to the removal of the body, and if the ashes be encoffined, then interment may take place at a cemetery of the United Synagogue, and the Burial Service shall be conducted there at the time of interment. (*A Guide to Life*, p. 19).

The surprise is that Rabbi Zadoc Kahn, the Chief Rabbi of France, joins those who forbid the interment of the ashes in a Jewish cemetery without any qualifying statement (p. 105), though we learn from other sources that he was lenient in the matter.<sup>4</sup> Perhaps his response is not given in full.

We shall now deal with the advocates of the practice, who claim that there are no valid halakhic objections to cremations. They submit the following considerations in support of their thesis:

1. Our primary source for the obligation of the burial of the deceased body is the passage of the Talmud in Tractate *Sanhedrin* that we quoted above. Attention is called to the fact that the Talmud does not ask a straightforward question: Where in the Torah does it state that burial is commanded or required? It is couched, rather, as

an oblique question. i.e. Where is it hinted, *remez*, which would indicate that it is not a requirement, a commandment, an obligation. It just indicates that it was a current practice.

2. The RASHBA (Rabbi Solomon Ibn Adret, Barcelona, ca. 1235-1310) suggested that lime be put on the body (Responsa, Vol. 1, No. 369) to hasten decomposition, a practice that was adopted by many of the pious living in the Land of Israel. If the purpose is rapid decomposition, is not cremation an even better method?

3. The usual reasons given for the objection to cremation are not relevant any longer. Such are the reasons by Rabbi Jacob Anatoli:

והטעם השני הוא החזק והצריך לאמונתנו בתחיית המתים, כי אילו היו משליכים גוף האדם המת כאחד הנבלות היו בני אדם אומרים "נמשל כבהמות נדמו" (תהלים מ"ט: י"ג) ולא היו מקבלים אמונת התחייה... ולקיום זאת האמונה ההכרחית נכתבה בתורה מה שבא בקבורת האבות ומקפדותם במקום קבורתם "ושכבתי עם אבותי" (בראשית מ"ז: ל') (ר' יעקב אנטולי, מלמד התלמידים, פרשת פרה, פ"ח ע"א-פ"ט ע"א).

And Rabbi Isaac Arama:

והעניין הוא שהמיתה אינה רק השבת החלקים המחוברים בו אל מקומם כמו שפירש הכתוב "וישב העפר על הארץ כשהיה והרוח תשוב אל האלוהים אשר נתנה" (קהלת י"ב: ז'), גילה לנו בזה שאי אפשר השבת הנפש למקום מנוחתה כי אם בהשבת הגוף אל עפרו לגמרי (ר' יצחק עראמה, עקידת יצחק, ריש פרשת חיי שרה).

4. The one responsum to which all the *matirim* (lenient authorities) refer is that of Rabbi Moses Israel Tedeschi of Trieste (quoted above). He claims that cremation is not only permitted but is recommended, it is a *Mitzvah*. His definition of *Hibut Hakever*, which was considered a severe punishment, is the fear that one might be buried alive. Now that we have a far better way of disposing of the dead, which would eliminate this fear, we should use it. The suggestion of R. Solomon Ibn Adret to put lime on the body he construed as a form of cremation. Again, he insists, now that we have a far better method, it should be used in consonance with the suggestion of Adret. All the biblical verses where a return to mother earth is urged are not commandments but rather statements of fact, *diber hakatuv bahoveh*.

It is our considered opinion that these objections are not valid, for the following reasons. The first objection that the term *remez* does not constitute a rule is not correct. Dr. Schiffer in his article on cremation mentioned above brings these objections of Dr. Wiener, but Professor Maybaum brings parallel passages in the Talmud where the term *remez* is used and where it is clear that a commandment is implied. (p. 9 ff.). Furthermore, in the very same Talmudic passage where King Shapor asks the same question, he uses the words קבורה מן התורה מנין - "From what passage in the Torah is the law of burial derived?"

The second objection, claiming that Adret's suggestion of putting lime on the body is analogous to cremation, is forced. Lime simply acts as a catalytic agent for nature to do its work a bit faster, unlike cremation, which eliminates the normal work of nature. Furthermore, Rabbi David ben Zimra (RADBAZ) has this comment on Adret's suggestion:

ואף על פי שדבר זה מותר וכדכתיבנא וכל שכן כשהוא בעצמו מצווה על זה, מכל מקום הוא התחכמות על מה שסידר הקב"ה בטבעו של עולם, כיון שהדבר על צד העונש מה הועיל, הקצור קצרה ידו יתברך להתפרע ממנו בעונש שהוא קשה ומר מזה, ואם צדיק הוא, הלא יצווה את הטבע להשיב כל יסוד לייעודו בזולת זמן או בזמן קצר כדי שתעלה נשמתו למקומה בלי מונע. הלכך על זה וכיוצא בזה אני קורא "תמים תהיה" וגוי' (דברים י"ח: י"ג) (שו"ת רדב"ז, חלק א', סימן תפ"ד).

(This responsum is quoted by Ya'akov Gellis, *Minhagey Eretz Yisrael*, p. 311; *Hayyei Olam*, p. 108) It thus did not receive universal approval. Furthermore, Adret gave this permission only in a case where they wished to transport the bones to another place and therefore wished for the flesh to decompose faster. He did not permit it as a normal procedure.

The third objection is valid and eliminates those reasons. But those were not the only reasons. The other reasons - that cremation constitutes *bizyon hamet*; biblical urging that "dust thou art and to dust shalt thou return"; and the constant repetition of burial as the most respectful disposal of the dead - still stand.

The objections to Rabbi Tedeschi's thesis are obvious from what we have already said.

We have already mentioned Rabbi Higger's strictures, claiming that the law does not forbid cremation. But *aharey kikhlot hakol* (in the final analysis), Dr. Higger comes to this conclusion:

מצד ההלכה והדין אין לאסור שריפת המתים בדרך כבוד. אבל משום טעמים אחרים הנוגעים לדת ישראל, טוב להרחיק ממנהג ההוא ולצוות על הקבורה (עמ' 181).

According to the *halakhah*, one should not forbid cremation which is done in a respectful fashion. But for other reasons, which touch upon *dat yisrael* (the religion of Israel), it is good to stay away from this custom and to order burial.

Rabbi Stanley Rabinowitz has now posed the question in a new light. Because of the increasing shortage of ground available for cemeteries, the state may step in and make its own regulations. Why not anticipate the situation by being more lenient on the subject? I have checked with some of the people in the field and found that Rabbi Rabinowitz is unduly alarmed. For a long time, the shortage will easily be met by allowing more than one person to a grave.<sup>5</sup> There is no objection in *Halakhah* to such burials.

In 1939 and 1954, the Rabbinical Assembly issued the following rulings: Cremation is not permitted. When it is done by the family in disregard of Jewish practice, the rabbi may officiate at the service in the funeral parlor only. The ashes may be buried in a Jewish cemetery and appropriate prayers may be said, but not by the rabbi lest it be interpreted as approval. (*Proceedings of the Rabbinical Assembly*, Vol. 6 [1939], p. 156 and Vol. 18 [1954], pp. 52-53).

It is our considered opinion that, in view of the material that we presented, we continue to abide by this ruling and continue to follow a practice that has so much meaning and sentiment behind it, and which for millennia has been the way of showing our regard for the departed.

### **Appendix** **Reform Rulings on Cremation**

Among our Reform colleagues, cremation became a "burning" question at the very inception of the organization of the C.C.A.R. at the end of the 19th century. Reacting to a general spate of activity concerning cremation in many countries of Europe, it was put on the agenda of the second annual convention. A paper was read by Dr. M. Schlesinger in which he advocated that cremation be recommended. (*C.C.A.R. Yearbook*, Vol. 2, [1892], pp. 33-40). He seeks to prove that cremation was practiced in the early days of the people of Israel, but admits that burial became the prevalent custom. He explains the reason for the adoption of this custom. It was cheaper; in those days, making a fire was a major operation. Furthermore, burning meant making a bonfire like the burning at the stake, which was a horrible sight and a real *Bizyon Hamet*. Today's cremation has eliminated both these considerations and it is esthetically attractive, in contradistinction to burial, which he calls, "the slow and loathsome dissolution of the body in a pit, a process which poisons the air and the water and endangers the health and life of those we leave behind". Hence, he concludes, that the spirit of Judaism is not against but most decidedly *for* cremation. (*ibid.*, p. 40).

At the convention of the following year, Dr. B. Felsenthal read a paper with the title, "On Cremation from a Jewish Standpoint" (*C.C.A.R. Yearbook*, Vol. 3, [1893], pp. 53-68), in which he refuted Dr. Schlesinger's claims about the dictates of the spirit of Judaism. Dr. Felsenthal meets those claims with the sarcastic paraphrase of a familiar poetic maxim, thusly: Was Geist des Judenthums ihr heisst, das ist im Grund des Herren eigner Geist (What spirit of Judaism you do call, it is your own spirit after all) (*ibid.*, p. 65). Nevertheless, Dr. Felsenthal ends with the proposal of the following resolution: "Be it resolved that in case we should be invited to officiate as ministers of religion at the cremation of a departed co-religionist, we ought not to refuse on the plea that cremation be anti-Jewish or irreligious (*ibid.*, p. 68). This has been adopted by the Reform movement and is still the practice today (see S. Freehof, *Reform Jewish Practice*, New York, 1976, Vol. I, pp. 133-135).

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## Notes

1. This summary is based on: *The Jerusalem Post*, January 31, 2006, p. 6; January 9, 2007; February 6, 2007; August 24, 2007, p. 4; *Ha'aretz*, March 11, 2007; June 12, 2007; August 23, 2007 (two stories); August 24, 2007.
2. Robert Slosberg, *Conservative Judaism* 34/1 (September-October, 1980), p. 47; David Golinkin, *An Index of Conservative Responsa and Practical Halakhic Studies 1917-1990*, New York, 1992, p. 51. The original typescript has neither title nor attribution nor is there any internal evidence that Rabbi Klein is the author. However, the style is that of Rabbi Klein and the main points and responsa cited are similar to Rabbi Klein's *Responsa and Halakhic Studies*, New York, 1975, pp. 122-123 = second edition, Jerusalem, 2005, pp. 146-147 = *A Guide to Jewish Religious Practice*, New York, 1979, pp. 275-276.
3. Re. King Shapur II and the Jews, see *Encyclopaedia Judaica*, Vol. 14, cols. 1306-1307 and Jacob Neusner, *A History of the Jews in Babylonia*, Vol. 4, Leiden, 1969, pp. 49-50.
4. The original typescript indicates “(“ which indicates that Rabbi Klein had intended to fill in a source.
5. He means burying one person on top of another. See *Yoreh Deah* 362:4 and David Golinkin in *Responsa of the Va'ad Halakhah*, Vol. 6 (5755-5758), pp. 277-279.