

Final Cut: May an Autopsy Be Performed If Foul Play Is Suspected?

Adapted from the writings of Dayan Yitzhak Grossman

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The Times of Israel reports:

Protests broke out in Jerusalem and Beit Shemesh, with hundreds of ultra-Orthodox Jews blocking roads and clashing with police.

The demonstrations were sparked by the announcement that the body of a 13-year-old boy who died this morning under unclear circumstances in Beit Shemesh would undergo an autopsy—a procedure considered taboo by Orthodox Jews.

According to police, the demonstrators “started fires, damaged bus windows, threw eggs and bottles, and attacked police officers,” leading to at least five arrests as of this afternoon.

The protests continued through the evening, with protesters blocking buses at a major intersection on Yirmiyahu Street in Jerusalem.[1]

Arutz Sheva/Israel National News provides a bit more detail of the controversy:

Yesterday, a magistrate allowed the autopsy, in light of a request by police due to suspicious evidence found on the body. The family appealed, and today the Supreme Court will hear the appeal...

Rabbi Shraga Brand, a prominent figure in the Edah Hachareidis sect, explained the issue to Kol Berama. “We are protesting against the court. We cannot permit an autopsy. The teen did not feel well, and the police know that. The court is ignoring the rights of the deceased.”[2]

Kikar Shabbos reports that moments before the appeal at the Supreme Court (*Bagat”z*) was set to begin, the state attorney’s office changed its mind and withdrew its request for an autopsy.[3]

The Torah generally prohibits autopsies, but there are exceptions.[4] In this article, we consider the permissibility of autopsies and exhumations where foul play is known or suspected to have occurred.

The earliest discussion of this question of which this author is aware is by R’ Yedidiah Tia Weil (5482-5566/1721-1805), son of the author of *Korban Nesanel*, R’ Nesanel Weil. His case involved a non-Jew who had murdered a Jew, and the law said that the murderer could only be executed if an autopsy verified that the victim had not been terminally ill at the time of his murder. The man’s son and other relatives objected to the autopsy on the grounds that it constituted a disgrace of the deceased. Rav Weil considers various arguments and precedents for and against, and he ultimately concludes that an autopsy may not be performed.[5]

About a century later, two leading Polish authorities, R’ Malkiel Tannenbaum (author of *Shu”t Divrei Malkiel*) and R’ Eliyahu Kalatzkin, discussed similar questions. Rav Tannenbaum’s case involved a Jew who was found murdered and was then buried, and there were indications that the murderer was a particular non-Jewish man. He considers the permissibility of presenting a criminal complaint to the court against the

apparent murderer, given that doing so would trigger an exhumation of the body to determine the cause of death. Rav Tannenbaum rules that this is nevertheless permitted, on a variety of grounds:

- Avenging a murder provides comfort to the victim's soul, so the disgrace of the victim's body is in his own interest.[6]
- If the murder of a Jew is not avenged, then "the blood of Jews will *chas veshalom* be like *hefker* (ownerless property), for they will say, 'there is no justice for the murderer of a Jew,'" and so the imperative of preserving the dignity of the deceased is outweighed by the necessity of maintaining the safety of the living.
- Jews will not be directly or intentionally disgracing the body, only causing the authorities to order its exhumation. (Ultimately, Jews will need to carry out the exhumation themselves, because this will be more respectful to the body than having it exhumed by the authorities, but the initial presentation of the complaint is still considered only an indirect cause of the exhumation.)
- It is not certain that the body will need to be exhumed, as the murderer may confess.

Rav Tannenbaum concludes that it is clear that "it is a mitzvah incumbent upon the relatives (the *go'alei hadam*/avengers of the blood) of the deceased to cause justice to be done upon his murderers, in order that they shall not act willfully anymore.[7]^[8]

R' Eliyahu Kalatzkin (in a discussion of our topic that does not seem to be addressing any particular incident) rules even more emphatically that an autopsy must be allowed when necessary to facilitate a murderer being brought to justice, and he criticizes relatives of the deceased who attempt to prevent the conduct of such an autopsy:

When [a person] has been killed, and the relatives attempt to prevent an autopsy, and by doing so they sometimes cause the murder to be hidden and [the murderer] to not be punished through the justice system for his act, they are acting in violation of halacha...It is obvious that [the deceased] acquiesces to his disgracing and wants his murderer to be punished. On the contrary, one should aid the officials of the government to clarify the matter and to punish through the justice system...[9]

R' Nosson Nota Leiter considers a case very similar to that of Rav Tannenbaum, with the crucial (at least in his view) difference that in his case, a criminal complaint would result in monetary compensation to the victim's family and some punishment of the murderer, but not his execution. Rav Leiter is inclined to accept Rav Tannenbaum's basic argument that execution of the murderer is in the interest of the victim, who is presumed to acquiesce to his disgracing in order that he be avenged, and "a man's will is his honor." But he is ultimately reluctant to apply this principle to his case, where the murderer would not be executed:

Nevertheless, as a matter of practice I am afraid to permit (the autopsy), because we can make the distinction that only with respect to the vengeance of death does the victim waive his honor, but not

with respect to other punishments, as it is written, “the Land will not have atonement (for the blood that was spilled in it) except through the blood of the one who spilled it.”[10]^[11]

R’ Yechiel Michel Tucazinsky (author of *Gesher Hachaim*) permitted an autopsy for a man who died in a laboratory explosion. He justified this by explaining that although autopsies are generally forbidden,

This only applies in the general case of a dead body, where the death was natural. But where the death was not natural but via an accident, where we are compelled to conduct an autopsy in order to ascertain the cause of the accident and who is responsible for and who caused the accident, and in many cases the investigation is relevant to the deceased and his heirs, and since this is the law of the government—not only is there no place to attempt to prevent this, but it does not entail that much of a disgrace, because this is the custom established by the government for all such corpses.[12]

R’ Moshe Dovid Willner (the Ashkenazi chief rabbi of Ashkelon), on the other hand, adopts a stance similar to that of Rav Weil, arguing that there is no basis and no justification for permitting an autopsy in order to bring a murderer to justice:

What honor is there for the deceased in this that the murderer is caught? And with regard to the mitzvah of “and you shall destroy the evil,”[13] it is written, “among the dead who are free”[14] (i.e., the dead are exempt from mitzvos[15]).[16]

[1]Sam Sokol. Ultra-Orthodox protesters clash with police in Jerusalem, Beit Shemesh; 5 arrested. The Times of Israel.

https://www.timesofisrael.com/liveblog_entry/ultra-orthodox-protesters-clash-with-police-in-jerusalem-beit-shemesh-5-arrested/.

[2]Israel National News. Haredi Rabbi: ‘We will set the entire state on fire’. <https://www.israelnationalnews.com/news/384831>.

[3]Itzele Katz. *Mahapach Shel Harega Ha’acharon: Hapraklitus Mashchah Es Hadrishah Lenateiach Es Gufas Hana’ar* MiBeit Shemesh. <https://www.kikar.co.il/haredim-news/s8hgao>.

[4]We have previously touched on the general question of the permissibility of autopsies that are intended to help preserve the lives of others in Clear and Present Danger. Bais HaVaad Halacha Journal. Oct. 29, 2020.

[5]Shu”t R’ Yedidiah Tia Weil *siman* 100. See our discussion of Rav Weil’s argument from the episode of *pilegesh* beGiv’ah and his refutation thereof in our article on protests, n. 5 (this article was published as Rallying Point: For Demonstration Purposes Only. Bais HaVaad Halacha Journal. Jun. 25, 2020, but the note in question was omitted there).

[6]A similar argument appears in Shu”t Chavos Ya’ir *siman* 146, as we have previously discussed in Capital Losses: Can There Be a Death Penalty without a Sanhedrin? Part II. Bais HaVaad Halacha Journal. Mar. 16, 2023.

[7]Dvarim 17:13.

[8]Shu”t Divrei Malkiel *cheilek* 5 *siman* 60.

[9]Imrei Shefer (Kalatzkin) toward the end of *siman* 82 (cited in Shu”t Tzitz Eliezer *cheilek* 4 *siman* 14 os 9).

[10]Bemidbar 35:33.

[11]Tzion Lenefesh Chayah *siman* 16, cited in R' Kalman Kahana, *Nituchei Meisim Bahalacha-Skirah Bibliographis*.

[12]Gesher Hachaim *cheilek* 2 *perek* 27 *os* 3 pp. 206-07.

[13]Dvarim 17:7.

[14]Tehillim 88:6.

[15]See Nidah 61b.

[16]Chemdas Tzvi *cheilek* 2-Y.D. *siman* 20 *os* 17 p. 137.