

## Mummy Issues, Part II: May One Derive Benefit from Human Remains?

Adapted from the writings of Dayan Yitzhak Grossman

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Our previous article discussed whether a museum exhibition of dead bodies or doing business in dead bodies violates either the prohibition to derive benefit from the dead or the prohibition to do business in items that one is forbidden to consume. This article discusses various other prohibitions that may be violated by such exhibits.

### ***Nivul hameis* (desecrating the dead)**

In various places, the Gemara takes for granted that desecrating the dead is prohibited, though it does not provide a source or basis for the prohibition:

Rav Kahana said: [The idea that we follow a majority that is not in front of us (*ruba delessa kaman*)] is derived from the halacha of one who murders a person, for the Merciful One said: Execute him. But let us be concerned that perhaps the victim was a *treifah* (someone with a fatal physical defect or injury), and one is not liable to death for murdering a *treifah*! Rather, is it not the case that we are unconcerned about this possibility because we say "Follow the majority," and most people are not *treifos*! This proves that we follow a *ruba delessa kaman*.

And if you will say that rather than relying upon the majority, we actually examine the victim to see whether he was a *treifah*, his body would be defiled (and it is forbidden to defile a dead body)!...[1]

There was an incident in Bnei Brak involving someone who sold some real property of his late father and then died. The other members of the father's family came and challenged the validity of the sale, saying that the seller had been a minor at the time of his death. They came and asked R' Akiva: What about examining the body to determine whether he was a minor? He said to them: You are not permitted to defile him...[2]

The Maharshag (R' Shimon Greenfeld) accordingly prohibits the dissection and examination of Jewish cadavers by medical students on the grounds of *nivul hameis*. He is lenient, however, with regard to non-Jewish cadavers, arguing that the prohibition against *nivul hameis* is limited to Jewish bodies. He acknowledges that according to the Ramban's understanding of the *pasuk* "for a hanging person is a curse of G-d"[3] as rooted in the idea that "in the image of G-d He made man,"[4] the prohibition of *nivul hameis* would indeed extend to non-Jews, "for a non-Jew is also included in 'Man' who was created in G-d's image." [5] But he argues that the true rationale for the prohibition of *nivul hameis* is not the concern for his having been created *betezelem Elokim*, but is rather based on the idea that the departure of the soul from the body is analogous to the burning of a sefer Torah.[6] Rashi explains this to mean that even the lowliest Jew has at least some Torah and mitzvos,[7] and just as it is prohibited to desecrate a sefer Torah, it is prohibited to desecrate the body of a Jew. A non-Jewish decedent is exempt from mitzvos, so he is not analogous to a sefer Torah

and the prohibition of *nivul hameis* does not apply. Although “we bury non-Jewish dead along with Jewish dead because of *darchei shalom*,”[8] this does not apply in the context of medical education. (The Maharshag does not elaborate on this last point; perhaps he means that since non-Jewish society does not consider the dissection and examination of cadavers in the course of medical studies to be wrong, engaging in such activity does not violate *darchei shalom*.)[9]

It is also not entirely clear whether the mere exhibition of bodies would constitute *nivul hameis*. The Gemara’s two invocations of *nivul hameis* that we cited refer to exhumation and autopsy, and the later discussions of *nivul hameis* of which this author is aware are also generally concerned with mutilation rather than mere exhibition.

### ***Kvuras hameis***

Another potential problem with the exhibition of bodies is that it flouts the mitzvah to bury the dead (*kvurah*). As mentioned above, the Maharshag assumes that the duty of *kvurah* does not in principle apply to non-Jewish dead (beyond *darchei shalom*); we discussed this question in detail several months ago.[10]

### **Marking graves**

The Gemara cites numerous *psukim* as requiring that graves be marked.[11]

R’ Moshe (Maharam) Schick maintains that chemically preserving a miscarried fetus for medical study violates the imperative to mark a grave. The *teshuvah* does not specify whether the fetus in question was Jewish, and it is thus not entirely clear whether the Maharam Schick means that the obligation to mark graves includes non-Jewish ones. This question may hinge upon the extent to which the halacha of *tum’as meis* (impurity of dead bodies) applies to non-Jews; while almost all authorities maintain that even a non-Jewish body transmits *tum’ah* via direct contact (*maga*), there is considerable debate about whether it transmits *tum’ah* to people under the same roof as it (*ohel*).[12]

The Maharam Schick also forbids preserving a fetus because a body is *asur behana’ah*, but surprisingly, he raises neither the issue of *nivul hameis*—which he himself discusses elsewhere in a similar context[13]—nor the problem of the mitzvah of *kvurah*. Perhaps the fetus in question was not Jewish, and he assumes that the prohibition of *nivul hameis* and the mitzvah of *kvurah* are limited to Jewish dead; if that is the case, then he evidently maintains that the obligation to mark the location of bodies includes those of non-Jews.

[1]Chulin 11b.

[2]Bava Basra 154a.

[3]Dvarim 21:23.

[4]Bereishis 9:6. See our discussion of this Ramban in *Going to Ground: The Mitzvah of Kvurah*. Bais HaVaad Halacha Journal. Feb. 1, 2024.

[5]See Pirkei Avos 3:14.

[6]Shabbos 105b, Mo’ed Katan 25a.

[7]Rashi Shabbos *ibid.*, but cf. here.

[8]Gittin 61a.

[9]Shu"t Maharshag *cheilek 2 siman 210* from s.v. *Amnam mitzad echad*.

[10]See n. 4.

[11]Mo'ed Katan 5a.

[12]A thorough discussion of this topic is beyond the scope of this article, but see Maharshag *ibid.* s.v. *Amnam bemeis akum* and here.

[13]*Ibid. siman 347*. This *teshuvah* is a response to one by R' Yaakov Ettlinger (the Aruch Laneir), originally published in the latter's journal *Shomer Tzion Hane'eman* and subsequently republished in his *Shu"t Binyan Tzion siman 170*. *Siman 171* is Rav Ettlinger's response to the Maharam Schick, and *simanim 172-73* consist of further explication by Rav Ettlinger of his position. Cf. *Shu"t Noda Bihudah tinyana Y.D. siman 210*; *Shu"t Chasam Sofer Y.D. siman 336*.