

# Autopsies in Jewish Law: A Dissection of the Sources

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## **I. Introduction**

Whether in the realm of forensic medicine or in the medical studies of anatomy, autopsies have become increasingly popular in modern day society. The performance of autopsies dates back to the fourth century B.C.E. when human bodies were dissected for medical studies with the permission of King Ptolemy.<sup>1</sup> Some say it dates back even further to the Biblical accounts of embalming the dead, such as was done to Jacob and Joseph, which may have involved some dissection of the body. Historically, however, such a permissive attitude towards autopsy was rare, as ancient civilizations in Greece, Rome, India, China, and Syria all prohibited autopsy for religious reasons.<sup>2</sup> The religious debate over the permissibility of autopsy has been going on for centuries. In particular, the autopsy question in the Jewish religion dates back to Talmudic times and continues up until today.

The consensus among the Jewish public has traditionally been that autopsies are absolutely forbidden according to

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1 Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner (Jerusalem: Feldheim, 2003), pg. 73

2 Ibid.

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Jewish law. Where this prohibition comes from, however, is not as clear. Indeed, Judaism has always maintained the sanctity of the human body. The Torah prohibits wounding or mutilating oneself,<sup>3</sup> and advocates that one take care of his or her own health and body.<sup>4</sup> These commandments, however, refer specifically to a living body. Therefore, the permissibility of autopsies will very much hinge upon how the Torah views the treatment of the dead human body. By exploring the differing opinions on the matter and delving into the questions at hand, the conclusions drawn, contrary to popular belief, indicate that there is not necessarily an absolute restriction on Jewish autopsies, and there may indeed be instances to allow it.

## II. Specific Prohibitions

There is a definite Biblical prohibition regarding desecrating a dead body.<sup>5</sup> What constitutes desecration, however, is subject to rabbinical debate and is dependent on the reason the dissection is being done. In addition to the prohibition to desecrate a dead body via dissection, some consider the acts of exhuming the body from the grave, viewing the body, or delaying the burial (all of which may be necessary in the course of performing an autopsy) as additional acts of desecration. According to other opinions, these acts are lesser forms of desecration and thereby are permitted under appropriate circumstances.<sup>6</sup>

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3 Leviticus, 19:28

4 Joshua, 23:11

5 Rashi, Deuteronomy, 21:23 states that desecrating a human body vis-à-vis leaving it unburied overnight is tantamount to desecrating God himself, in whose image man is created.

6 Rabbi Moshe Feinstein, Responsa *Iggrot Moshe, Yoreh Deah*, Part 2, #151.

There are additional issues that come into play when discussing autopsies. As noted above, there is a Biblical requirement<sup>7</sup> to bury the dead immediately, so as not to allow for prolonged exposure of the corpse. Moreover, there exists a specific Biblical prohibition of leaving a dead body unburied overnight.<sup>8</sup> The performance of an autopsy will inevitably delay the burial, thereby adding another factor that must be taken into account in deciding this issue. Still, another Biblical restriction involves deriving benefit from a dead body,<sup>9</sup> and there is a conflict of opinion over whether using an autopsy to attain medical knowledge constitutes deriving true benefit from the dead.

The Jewish autopsy debate is not just a question of physical desecration, but encroaches upon the spiritual realm as well. The main purpose of the Jewish human body in life is that it provides a home for the *neshama*, the eternal spiritual soul, upon which man's whole being functions. But many Rabbis believe that the human body maintains its holiness even after the soul departs in death, and thus an autopsy would be a disruption of that holiness.<sup>10</sup> Furthermore, there is the belief that the soul is not completely detached from the body even upon death,<sup>11</sup>

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7 The Biblical prohibition is learned out from executed criminals; therefore some debate whether the obligation to bury all others is of Biblical or Rabbinic origin, notably Rabbi Sadya Gaon's *Sefer Hamitzvot*, positive precept #19 and Rabbenu Chananel, Sanhedrin 46b who hold that it is Rabbinic in origin, while Rashi, Sanhedrin 46b, and Maimonides *Sefer Hamitzvot*, positive precept #231, hold that it is indeed a Biblical requirement.

8 Deuteronomy 21:23. This is subject to certain exceptions, such as when a delay would cause honor to the deceased, or if the death occurred shortly before Shabbos.

9 Rashi, Sanhedrin 47b

10 Rabbi Y. Arieli *Torah SheBe'al Peh*, Vol. 6, 5724 pp. 40 ff.

11 *Derashot Ran* #7

to the extent that the soul is pained if the body is harmed.<sup>12</sup> While we generally do not render *halakhic* rulings from spiritual matters, the human body's very essence is as much a spiritual entity as it is a physical one, thereby necessitating the consideration of spirituality into the final equation.

### III. Early Sources

The Jewish autopsy question is raised several times in the Talmud. By looking at some of these sources, it may be possible to draw some *halakhic* conclusions with respect to the permissibility of autopsies. The Talmud in *Baba Batra*<sup>13</sup> talks about an instance in B'nai Brak, in which Rabbi Akiva is asked by the family of a boy who sold his father's property and then died if the boy's body could be exhumed and examined for signs of maturity to determine the validity of the sale. Rabbi Akiva gives a twofold answer that seems to indicate that the family is not allowed to examine the boy's body to prevent disgracing him. However, Rabbi Akiva adds that if the buyers of the property wanted to examine the body to determine the sale's validity, they would be permitted to do so,<sup>14</sup> for their own money is more important to them than the desecration of this boy's body.<sup>15</sup> This suggests, therefore, that under certain circumstances, such as when a monetary loss is involved, an autopsy may be permitted.

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<sup>12</sup> Job 14:22, Shabbos 13b

<sup>13</sup> 154b

<sup>14</sup> In reality, the Gemara concludes they would not be able to do so, not for reasons of desecration but rather because the body undergoes changes postmortem which may obscure the ability to determine if the boy was mature at the time of the sale.

<sup>15</sup> Baba Batra, 154a-b

Another Talmudic passage in *Arachin*<sup>16</sup> mentions that if a pregnant woman dies during labor, one must cut open her womb to bring out the fetus. Some deduce from this case that one may desecrate a dead human body in order to save another life.<sup>17</sup> Other opinions point out the uniqueness of this particular case, noting that an autopsy would be permitted only if it could save another life directly and immediately, such as when that “other life” is present and in front of us.<sup>18</sup> A third opinion is that the Talmud’s case is irrelevant to the discussion of post-mortem desecration, since the removal of the fetus from the mother through an incision is an honor to the mother and what she herself would have wanted.<sup>19</sup> Thus, perhaps no conclusion may be drawn from this particular case altogether.

One final Talmudic source in *Chullin*<sup>20</sup> mentions that if one kills a man who is determined to be a *tereifah*,<sup>21</sup> the murderer is not liable for the death penalty. Thus, the question arises whether it is permitted to perform a postmortem examination on a murdered man to determine whether he was a *tereifah*, thereby possibly preventing the execution of the murderer. After much deliberation, the Talmud states that since in a majority of cases the victim is not going to be a *tereifah*,<sup>22</sup> we do not allow a postmortem

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16 7b

17 Rabbi Ben-Zion Uziel, Responsa *Mishpetei Uziel*, Part 1, *Yoreh Deah* #28

18 Rabbi Moshe Schick, Responsa *Mahram Schick*, #347-348

19 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170.

20 11b

21 A person who will die within the next twelve months

22 Another consideration is that it is possible the murderer inflicted his wound in such a spot that it would hide any evidence of the victim being a *tereifah*

examination, even to save the murderer's life.<sup>23</sup> The relevance of this case to whether autopsies are allowed will be discussed below. Still, it is clear that the autopsy question existed as far back as Talmudic times.

#### IV. Recent History

While the issue of autopsies is not a new one, it became a more prevalent issue during the 20<sup>th</sup> century in Israel, Poland, and the United States – the three major centers of Jewish life at the time. In the United States, the issue was first raised in 1916 – Rabbi Nehemiah Moseson permitted autopsy for the specific purpose of studying medicine, while Rabbi Simeon Elbaum forbade it.<sup>24</sup> The general view among the rabbinical organizations in the United States was against the use of autopsy in the fields of medical study and research.<sup>25</sup> Across the Atlantic Ocean, the Rabbis of Poland maintained a similar position, and did not allow autopsies for medical study. The issue created much controversy in the early 1920s when Jewish medical students were expected to provide Jewish bodies to their respective universities for study. Upon their refusal to do so, the students were often failed or expelled. This led to a rabbinic allowance for a limited number of Jewish bodies to be donated, but this permission was strictly a result of the circumstances.<sup>26</sup>

The autopsy question was also present in Israel, starting

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23 Chullin, 11b.

24 Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner (Jerusalem: Feldheim, 2003), pg. 74

25 *Yagdil Torahi*, Year 9, *kuntres* 1, Nissan 5677.

26 Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner (Jerusalem: Feldheim, 2003), pg. 75

in 1925 with the founding of Hebrew University. At that time, autopsies were permitted on very rare occasions; that is, only with the family's approval and specifically when an autopsy would determine the cause of death to help prevent future deaths. Upon the opening of the Hebrew University medical school in 1947,<sup>27</sup> a specific set of guidelines was published that allowed autopsies to be performed. This was the first instance in which the performance of autopsies was dictated by a strict *halakha*-based set of guidelines set out by a nation. Those guidelines permitted an autopsy if it was required for a forensic medicine case; if it was required to determine the cause of death (based on the affirmation of this fact by three doctors); if the results would directly and immediately lead to the saving of a life of another ill patient (again, with the approval of three physicians); and if the autopsy would enable the saving of relatives with the same condition (such as in a case of a genetic or inherited disease).<sup>28</sup> Despite these guidelines, over the course of the next fifteen years Israeli autopsies began to be performed in large numbers without rabbinic approval. Extreme controversy over the issue ensued for the next several decades until 1980, when the Israeli government added a final amendment to the Anatomy and Pathology Act, requiring familial consent before performing any autopsy, and mandating a five-hour waiting period before commencement.<sup>29</sup>

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27 Ibid. Interestingly, the autopsy question delayed the medical school opening for 22 years.

28 Ibid.

29 Ibid., pg. 76.

## V. Major Opinions

### *A. Rabbi Yechezkel Landau and Rabbi Moshe Sofer*

Two early authorities to address the autopsy question were Rabbi Yechezkel Landau,<sup>30</sup> published in his Responsa *Noda Biyehuda*, and Rabbi Moshe Sofer,<sup>31</sup> published in his Responsa *Chatam Sofer*. The *Noda Biyehuda* starts with the opinion that it is a Biblical violation to disgrace the dead. Thus, an autopsy for no purpose would be prohibited, but based on the case mentioned above from *Chullin*, if the mere *possibility* exists that an autopsy will result in the saving of another human life, it may indeed be performed. Furthermore, the *Noda Biyehuda* weighs in on the Biblical accounts of embalming and mentions that such a procedure did not involve any human dissection, and would therefore not pose a problem on the autopsy front.<sup>32</sup> The *Chatam Sofer* agrees with the *Noda Biyehuda* that disgracing the dead is indeed a Biblical prohibition, and that the embalming process mentioned in the Torah did not involve any autopsy issues. The *Chatam Sofer* adds to his responsa that the human body maintains its sanctity even after death, and thus an autopsy may indeed be a disruption of that sanctity.<sup>33</sup>

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30 18<sup>th</sup> century Rabbi and scholar in Poland. His most famous works include the *Noda Biyehuda* and the *Dagul Mervavah*.

31 Influential Rabbi in Austria-Hungary through the 18<sup>th</sup>-19<sup>th</sup> centuries who fought hard against the Jewish secularization movement.

32 Rabbi Yechezkel Landau, Responsa *Noda Biyehuda*, 2<sup>nd</sup> edition, *Yoreh Deah* #210.

33 Rabbi Moshe Sofer, Responsa *Chatam Sofer*, *Yoreh Deah* #336.



### ***B. Rabbi Yaakov Ettlinger and Rabbi Moshe Schick***

After these two responsa were published, two more major authorities came out with their own opinions on the matter. Rabbi Yaakov Ettlinger<sup>34</sup> and Rabbi Moshe Schick<sup>35</sup> published their opinions in *Shomer Zion Haneeman*, later to be published in their respective responsa (*Binyan Zion*, by Rabbi Ettlinger and *Maharam Schick*, by Rabbi Schick). In *Binyan Zion*, Rabbi Ettlinger takes a rather extreme view and specifically contrasts himself with the *Noda Biyehuda*. He states that dissecting a human body is as if one is stealing from the dead. Based on the law that one may not steal from a friend in order to save himself, Rabbi Ettlinger states that in this case too, one may not dissect a human body in order to save another life, even where a life-saving situation is extant. At the same time, however, Rabbi Ettlinger agrees that the *gemara* mentioned above in *Chullin* permits desecration of the dead in a situation where there exists a *possibility* that a human life can be saved. Rabbi Ettlinger limits the extent of this case, however, by explaining that the life-saving situation described in *Chullin* is not a “typical” life saving situation. In general, by *pikuach nefesh* (life threatening situation) it is better to be passive and allow another individual to die to avoid desecration of another human body by dissection. Since the case in *Chullin* is a case of *ibud neshama* (loss of life), in which there is no opportunity to be passive, the court must take an active role in killing the murderer. Thus, when faced with the dilemma of actively desecrating the body versus actively killing the

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34 19<sup>th</sup> century German Rabbi, author of *Aruch L'ner*.

35 19<sup>th</sup> century Hungarian Rabbi who wrote an extensive responsa on both the four sections of *Shulchan Orech* and the 613 *mitzvos*.

alleged murderer, the court should choose to desecrate the body rather than kill.<sup>36</sup> Rabbi Ettlinger also weighs in on the *gemara* from *Arachin* mentioned above, and offers three reasons why cutting open the dead mother in order to save the fetus is permitted. First, the mother would want herself to be cut open in order to save her child, and the wishes of the deceased can have tremendous implications on the permissibility of performing an autopsy.<sup>37</sup> Second, cutting open the mother in such a situation would be considered an honor rather than a desecration of her body, for her child will likely survive as a result. Finally, because the mother is holding the baby in her womb, she is viewed as a *rodef*,<sup>38</sup> and since it is permissible to kill a *rodef* in order to save the one being chased, it is likely permissible to cut open the mother's body in order to save the child's life.<sup>39</sup>

The *Maharam Schick* argues with Rabbi Ettlinger, stating that the prohibition of stealing from the dead is waived in order to save a human life, as are all other prohibitions. He derives his opinion from the *gemara* in *Chullin*, like the *Noda Biyehuda* (but in contrast to Rabbi Ettlinger) that in a case where there exists the *possibility* that a human life may be saved, it is permissible to do an autopsy. However, the *Maharam Schick* limits this rule, based on the *gemara* in *Arachin*, to cases where the life-saving situation is present in the here and now. Therefore, in a situation in which the opportunity to save a human life is not currently in our presence but is rather something

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36 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170.

37 This concept will be further elaborated on below

38 One who is chasing someone else with the intent to kill

39 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #171.

that may potentially present in the future, performing an autopsy would not be permissible.<sup>40</sup>

### ***C. Rabbi Moshe Feinstein and Rabbi Ben-Zion Uziel***

Two contemporary opinions who contribute largely to the present-day approach towards autopsies are Rabbi Moshe Feinstein<sup>41</sup> and Rabbi Ben-Zion Uziel.<sup>42</sup> Rav Moshe takes an interesting approach and states that the obligation to save a human life applies only when the life-saving situation is presented right in front of you; however, there exists no obligation to actively seek out opportunities to save a life or prepare for a future life-saving scenario. Based on this approach, Rav Moshe holds that it is not permissible to desecrate the dead via an autopsy to save a life potentially sometime in the future. Rav Moshe uses the *gemara* in *Chullin* to explain that desecrating the dead is permitted only when it will undoubtedly prove the murderer's innocence. In a case of doubt, it is forbidden to disgrace the dead body.

However, using the *Gemara* in *Bava Basra*, Rav Moshe does allow for a lesser form of desecration – such as delaying the burial – when such an action can potentially lead to the saving of another life. He distinguishes between the relatives and non-relatives of the dead, in stating that relatives are not permitted to delay the burial, for they have a specific obligation to bury without delay. Furthermore, in an opinion unique to Rav Moshe and few other later

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40 Rabbi Moshe Schick, Responsa *Mahram Schick*, #347-348.

41 Leading Ashkenazi Rabbinic authority in the United States throughout much of the twentieth century, author of the famous responsa *Igros Moshe*, written on the four sections of *Shulchan Orech*.

42 Sephardic chief Rabbi of Israel from 1939-1954.

authorities, one would be allowed to perform any medical or surgical procedures on the dead that would similarly be performed on the living. Thus, one may perform endoscopies, laparoscopies, needle biopsies or blood draws from the deceased.<sup>43</sup> Rabbi Ben-Zion Uziel, in his Responsa *Mishpetei Uziel*, states that the prohibition of desecrating the dead is waived in any life-saving situation. Rabbi Uziel considers an autopsy to be a desecration only when it is performed without purpose.<sup>44</sup>

## VI. Specific Situations

It is generally agreed upon that performing a needless autopsy is strictly prohibited. We must therefore identify various situations in which performing an autopsy has a purpose and then determine how the differing opinions rule on the matter, based primarily on what each authority defines as constructive.

### A. *The Study of Anatomy*

Familiar to medical students across the world, the first situation in which an autopsy is performed is in the anatomy lab, in which dead bodies are dissected for the sake of learning human anatomy and studying medicine. The *Noda Biyehuda*, *Chatam Sofer*, and Rabbi Moshe Feinstein all prohibit performing such dissections on a Jewish body,<sup>45</sup> for while learning human anatomy may potentially lead to the saving of lives in the future, it will not immediately save any

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43 Rabbi Moshe Feinstein, Responsa *Iggrot Moshe*, *Yoreh Deah*, Part 2, #151.

44 Rabbi Ben-Zion Uziel, Responsa *Mishpetei Uziel*, Part 1, *Yoreh Deah* #28-29.

45 Rabbi Yechezkel Landau, Responsa *Noda Biyehuda*, 2<sup>nd</sup> edition, *Yoreh Deah* #210, Rabbi Moshe Sofer, Responsa *Chatam Sofer*, *Yoreh Deah* #336, Rabbi Moshe Feinstein, Responsa *Iggrot Moshe*, *Yoreh Deah*, Part 2, #151

life that is currently threatened and present in front of us. The *Mishpetei Uziel*, on the other hand, permits the dissections for several reasons. First, as stated above, the *Mishpetei Uziel* permits the performance of an autopsy if it is proven to serve a purpose, and studying medicine clearly does constitute a definitive purpose. Second, studying anatomy can lead to the saving of future lives, which, according to the *Mishpetei Uziel*, is enough to allow it. In addition, according to the *Mishpetei Uziel*, many of the prohibitions discussed above, such as leaving the dead unburied and stealing from the dead, do not apply if the dead body is being studied for the purpose of medicine.<sup>46</sup> Most authorities agree that merely observing an autopsy being performed for the study of anatomy and medicine is permissible, with the exception of the *Maharam Schick*, who prohibits even observing.<sup>47</sup>

### ***B. Establishing the Cause of Death***

Perhaps the most important modern day use of autopsies involves its ability to establish the cause of death. By identifying the cause of death, doctors can help future patients who are suffering from the same ailment. While the permissibility of performing an autopsy in order to save another human life has been previously mentioned, the following is a brief overview. Rabbi Yaakov Ettlinger prohibits using an autopsy for the immediate saving of a life even when the situation is present in front of you.<sup>48</sup> Most of the other authorities permit it when the information gleaned from the autopsy will directly result in the saving of a life,

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46 Rabbi Ben-Zion Uziel, Responsa *Mishpetei Uziel*, Part 1, *Yoreh Deah* #28-29

47 Rabbi Moshe Schick, Responsa *Mahram Schick*, #344

48 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170-171

defined in Jewish law as being “*lefaneinu*,” or present in front of us. However, the *halakhic* definition of *lefaneinu* differs among the authorities. The extreme view, taken by the *Noda Biyehuda* and *Chatam Sofer*, is that *lefaneinu* is to be taken literally, and an autopsy may only be performed when there is a patient present dying of a similar illness, and there is good reason to believe that performing an autopsy will help cure this patient.<sup>49</sup> Others are more lenient and say that any death that is determined to be caused by a very common disease may entitle an autopsy, for there will be many future patients who will present with such an illness and we can be ensured that information from this autopsy can, and will, save another human life.<sup>50</sup> The *Mishpetei Uziel* is even more lenient and deems any death to be a satisfaction of *lefaneinu*, based on the rationale that hospitals nowadays are filled with so many different types of illnesses and diseases that any deceased person can provide valuable information to help save future patients. He also writes that any autopsy performed for the study of the death-causing illness can represent the ability to save a future life, and he would therefore allow autopsies under most circumstances.<sup>51</sup> While others disagree and believe that, in general, autopsies are not revealing enough to provide information to save future lives, in specific circumstances (such as during epidemics or in a case of death caused by genetic disease) autopsies can be more informative and would therefore be permitted.<sup>52</sup>

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49 Rabbi Yechezkel Landau, Responsa *Noda Biyehuda*, 2<sup>nd</sup> edition, *Yoreh Deah* #210 Rabbi Moshe Sofer, Responsa *Chatam Sofer*, *Yoreh Deah* #336.

50 *Chazon Ish*, *Yoreh Deah* 208:7.

51 Rabbi Ben-Zion Uziel, Responsa *Mishpetei Uziel*, Part 1, *Yoreh Deah* #28-29

52 Rabbi Y. Arieli *Torah SheBe'al Peh*, Vol. 6, 5724 pp. 40 ff.

### C. Financial Purposes

As alluded to in the *gemara* in *Baba Batra*, an autopsy can also serve a financial purpose, specifically when non-relatives make a claim that they are owed money from the deceased. It should be noted that an autopsy could satisfy this purpose only when the deceased person is *directly* responsible for the financial loss.<sup>53</sup> The *Noda Biyehuda* states that in such a situation, an autopsy can be requested by non-relatives of the dead in order to verify certain financial claims that they might have. In contrast, relatives may not demand an autopsy, as they have a specific obligation to bury and honor their dead.<sup>54</sup> While the *Noda Biyehuda* allows a full desecration via a complete autopsy in a situation of a financial need, Rabbi Moshe Feinstein allows for only a minor desecration, such as a viewing of the body or a slight delay in the burial.<sup>55</sup> If a life insurance company demands an autopsy in order to pay a claim, there is a difference of opinion over whether it would be permitted for the heirs of the deceased to request an autopsy. On the one hand, the dead person would probably desire it, for he was the one paying the monthly premiums and would prefer the claim be paid out, and the wishes of the deceased can determine the permissibility of performing an autopsy.<sup>56</sup> On the other hand, the relatives have a specific obligation to honor and respect their dead

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53 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170.

54 Rabbi Yechezkel Landau, Responsa *Noda Biyehuda*, 2<sup>nd</sup> edition, *Yoreh Deah* #210

55 Rabbi Moshe Feinstein, Responsa *Iggrot Moshe*, *Yoreh Deah*, Part 2, #151

56 See below for a detailed discussion of this point.

relative. Some authorities only allow for an external examination in such a case.<sup>57</sup>

#### ***D. Legal Reasons***

Another instance in which an autopsy may be necessary is if it is required for legal reasons. Occasionally, an autopsy must be performed to determine the cause of death as a means to help identify the killer. Sometimes, an autopsy can help prove an alleged murderer's guilt or innocence. Although one view states that an autopsy is prohibited if it will determine the guilt or innocence of a killer,<sup>58</sup> most others allow it in such a case.<sup>59</sup> Rabbi Yosef Shalom Elyashiv, one of the chief Ashkenazi Jewish authorities in Israel, limits the above permissibility to when it will potentially lead to the execution of the murderer, but not if it will result in imprisonment.<sup>60</sup> Others allow an autopsy to be performed when the person did not die a natural death, and performing an autopsy can yield valuable legal information to the heirs.<sup>61</sup> Another legal situation in which an autopsy may be permissible is if it will allow the deceased to be identified. For example, if identification is necessary to allow the wife of the dead to remarry, some permit one to be performed,<sup>62</sup> while others disagree.<sup>63</sup> However, most generally

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57 Responsa *Chemdat Tzvi*, Part 2, *Yoreh Deah* #20.

58 Ibid.

59 Responsa *Tzitz Eliezer*, Part 4 #14.

60 Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner (Jerusalem: Feldheim, 2003), pg. 89 n.129.

61 *Gesher Hachayim* Part 3 Chapter 28:3.

62 Responsa *Sho'el U'meshiv*, 1<sup>st</sup> edit, Part 1 #331; Responsa *Yabiya Omer* Part 3 *Yoreh Deah* #23; Rabbi S.Z. Auerbach, cited in *Nishmat Avraham, Yoreh Deah* 349:1.

63 Responsa *Shivat Zion*, #64; Responsa *Teshuva MeAhavah* #47-48.



agree that autopsying war victims strictly for the purpose of identifying them is prohibited.<sup>64</sup>

### ***E. Wishes of Deceased***

One final but important aspect that must be taken into consideration is the will of the deceased.<sup>65</sup> Rabbi Ettlinger states that if a person willed his body to medicine in order to be dissected, he is forgoing his own honor that is due to him at death and thus it is permissible to perform an autopsy on him.<sup>66</sup> It may be possible to extend this to other situations in which it can be determined that the deceased would want an autopsy performed. Others are stricter and state that only an autopsy serving a concrete purpose, such as to learn about a specific illness, may be performed on someone who willed it.<sup>67</sup> Rav Moshe, the *Maharam Schick*, and the *Chatam Sofer* all have the most stringent view on the matter, and never allow one to request that his body be desecrated.<sup>68</sup>

## **VII. Special Categories**

Until now, we have primarily discussed the issue of performing autopsies on Jewish bodies. With regards to performing autopsies on non-Jews, there is a divide over

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64 Responsa *Shevet Halevi*, Part 5 #178:1.

65 It is worth noting that the will of the deceased is a major factor in determining whether it is permissible for a Jew to donate his or her organs upon brain death, a completely separate issue that recently has been subject to much debate and is beyond the scope of this paper.

66 Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170-171

67 Responsa *Tzitz Eliezer*, Part 4 #14.

68 Rabbi Moshe Sofer, Responsa *Chatam Sofer*, *Yoreh Deah* #336, Rabbi Moshe Schick, Responsa *Maharam Schick*, #344, Rabbi Moshe Feinstein, Responsa *Iggrot Moshe*, *Yoreh Deah*, Part 2, #151

whether the prohibitions discussed above apply to both Jews and non-Jews alike. According to the *Mishpetei Uziel*, the same restrictions apply to both Jews and non-Jews, and therefore any situation in which an autopsy would be forbidden on a Jewish body, it would likewise be forbidden on a non-Jewish body.<sup>69</sup> The *Chatam Sofer* states, however, that for the medical study of anatomy, performing autopsies on non-Jewish bodies would be permissible.<sup>70</sup> There is also a difference of opinion over whether one may dissect Jewish sinners who were put to death by the government. Their status as a sinner may allow for their body to be desecrated postmortem. In a final special category, it is generally forbidden to perform autopsies on fetuses or on babies that died within the first thirty days of life.<sup>71</sup> However, Rabbi JJ Neuwirth allows autopsies on very early fetuses,<sup>72</sup> and Rabbi Shlomo Zalman Auerbach allows for an autopsy when a mother has had several miscarriages, if there is good reason to believe that dissecting the fetus will help prevent further miscarriages.<sup>73</sup>

## VIII. Conclusion

In trying to determine the permissibility of autopsies in Jewish law, this paper reviewed a historical account of the world's view on autopsies, and discussed specifically some of the Biblical and Rabbinical prohibitions that might

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69 Rabbi Ben-Zion Uziel, Responsa *Mishpetei Uziel*, Part 1, *Yoreh Deah* #28.

70 Rabbi Moshe Sofer, Responsa *Chatam Sofer*, *Yoreh Deah* #336

71 Rabbi Moshe Schick, Responsa *Maharam Schick*, #344, Rabbi Yaakov Ettlinger, Responsa *Binyan Zion*, #170-171

72 Cited in *Nishmas Avraham*, *Yoreh Deah* 349:2.

73 Ibid.

be involved in performing one, along with the relevant Talmudic sources on the matter. In general, there is a great debate among both early and later Jewish authorities over whether autopsies are permitted at all, and if so, under what circumstances. It is important to realize that every situation is unique and therefore must be treated as such via consultation with the appropriate authorities. What is clear is that while many Jews assume that autopsies are forbidden unconditionally, there are in fact several different situations in which they may indeed be permissible. Nevertheless, in any situation in which an autopsy is allowed, the remains of the deceased *must* be buried immediately after the completion of the autopsy. Furthermore, it is crucial that the autopsy be performed with dignity and respect towards the deceased, and it should not be done in a setting of levity and lightheadedness. For after all, the human body is sacred both in life and in death.

