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immunizations would certainly save more lives, reduce morbidity and are extremely cost-effective health measures.

2. It seems that the landmark Jacobson case, which upheld the rights of States to impose compulsory vaccination laws, applies to those living or working with any vulnerable population group, from infants to the sick and frail elderly. Thus, there appears to be a "compelling state interest," in protecting the health of children by requiring school-age children to be properly immunized in order to be admitted to school.

Major *poskim*, based on both the right and obligation of government to protect public health (*dina d'malchuta dina* and *safeik pikuach nefesh d'yrbim*), support mandatory childhood immunizations and influenza vaccinations, providing there are no medical contraindications.

The authors acknowledge with appreciation the contributions and editorial comments of Rabbi Avraham Steinberg M.D., Rabbi Mordechai Halperin M.D., and Rabbi Asher Bush, as well as recognizing Rabbi Alfred Cohen, Editor of the Journal, who first addressed many of these issues in his article "Vaccination in Jewish Law" in The Journal of Halacha and Contemporary Society, LIX (2010) pp. 79-116.

Jewish Perspectives on Burial in a Mausoleum

Rabbi Jason Weiner

Does Judaism recognize multiple alternative options for burial? While traditional Jewish burial has generally been underground, various contemporary concerns, such as finances and lack of space, have led to a number of alternative methods of burial. As a result of our general reticence to discuss end-of-life matters, and the complex issues involved, this topic is generally not addressed in a deep and serious manner in Jewish publications, leaving many individuals to make quick and very difficult decisions without properly understanding the issues involved.

Whether mausoleum¹ burial meets the demands of traditional Jewish law, and on what conditions, is a challenging contemporary halachic issue. While mausoleums may have efficiency and financial advantages, this article seeks to enable the reader to make informed Jewish halachic decisions on this issue. We will explore what traditional Judaism requires in the way of burial, the reasons behind these requirements, review the opinions of the great *Poskim* on these

1. Originally referring to the ancient tomb of King Mausolus of Caria, built in 350 BCE, and known as one of the Seven Wonders of the World, the term "mausoleum" refers to a structure built for multiple above ground interments. These above ground structures, also known as "crypts" or "wall spaces" are generally pre-fabricated and can accommodate a single family or as many as a few thousand corpses in a relatively small area. Although the use of a mausoleum was once seen as a sign of status, today they are often erected simply because of limited ground space for side-by-side burial.

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matters, and analyze if mausoleums fit either the letter or spirit of the tradition.

I. The Obligation to Bury

It is a Torah obligation to bury the dead,² based on the verse, "You shall surely bury him."³ If one is not buried, it is a violation of the first part of this verse, which states "A body shall not remain overnight..."⁴ It is insufficient to simply place the body into a coffin.⁵ The dead must actually be buried in the ground⁶ in order to comply with the verse, "to dust shall you return."⁷ While a body placed in a coffin and then buried under the earth is still considered to have been buried in the ground, the ideal manner of burial is for the body to actually be in contact with the ground,⁸ as the verse says "The dust

2. Talmud *Bavli, Sanhedrin* 46b; Ramban, *Hilchot Avel* 12:1; *Sefer Hamitzvot, Mitzvat Aseil* 231; *Sefer Hachinuch* #537; *Shehitot* 133 bases this obligation on the verse detailing Miriam's death and burial (Numbers 20:1). There is a minority opinion that burial for anyone besides an executed criminal is a rabbinic obligation. R. Saadya Gaon's *Sefer Hamitzvot*, positive precept 19; Rabeinu Chananel, *Sanhedrin* 46b s.v. "Anar Lei Sheur Malka"; *Responsa Chavot Yair* 139.

3. Deuteronomy 21:23.

4. Most *Rishonim* explain that this verse not only applies to those who are killed by the court, but also to anyone who has died. Although some *Rishonim* argue that the mitzvah applies only to those killed by the court, the vast majority of *Acharonim* conclude that the mitzvah applies to everyone. See *Chazon Ovadia, Avelut* vol. 1 pg. 369 for a summary of the opinions.

5. *Tur/Shulchan Aruch, Yoreh Deah* 362:1

6. *Ibid.*; *Aruch Hashulchan Yoreh Deah* 362:1-2.

7. Genesis 3:19.

8. *Tur/Shulchan Aruch, Yoreh Deah* 362:1; *Aruch Hashulchan Yoreh Deah* 362:1-2; the Talmud *Yerushalmi (Kelim* 9:3) records the last will of Rabbi, in which he requests not to be buried with too many shrouds and that his casket be perforated. The Ramban (*Torat Ha'adam* p. 117), and *Tur* (YD 362:1) explain that Rabbi wanted the bottom board removed from his casket so that his body would actually be in contact with the ground. This form of burial is still most commonly practiced in Israel, where the verse "And His land will atone for His people" (Deuteronomy 32:43), is applied, though the verse "to dust shall you return" applies everywhere, each locality according to its

returns to the ground, as it was."⁹

II. Mausoleum: The Permissive Approach

A. History

In biblical and talmudic times, burial was generally not done in the type of grave that we have come to know today, but often took place in a cave tomb, usually a natural cave or a chamber cut into soft rock, near the city. The most prominent biblical example of this practice is the burial cave that Abraham purchased to bury his wife Sarah,¹⁰ and in which Jacob requested to be buried.¹¹ Similarly, the prophet Isaiah, in reference to digging a grave, instructs them to "carve out an abode in the rock."¹² Biblical references indicate that bodies would be laid on rock shelves provided on three sides of a chamber, or on the floor. As generations of the same family used the tomb,¹³ skeletons and grave goods might be heaped up along the sides or put into a side chamber to make room for new burials.¹⁴

The Talmud also suggests that burial often took place in caves, hewn tombs, and catacombs. The Mishneh describes the custom of burial in recesses carved into the walls of chambers custom (*Tur* YD 362:1). "His land will atone" implies even greater attributes of atonement to the soil of the land of Israel.

9. Ecclesiastes 12:7.

10. Genesis 23:9 & 19.

11. *Ibid.*, 49:29-32; 50:13.

12. Isaiah 22:16.

13. This practice of family burial is one source of the expressions "to sleep with one's fathers" (1 Kings 11:23) or "to be gathered to one's kin" (Genesis 25:8, 49:29) in reference to death.

14. Delbert Hillers and Reuben Kashani, *Encyclopedia Judaica*. Eds. Michael Berenbaum and Fred Skolnik. Vol. 4. 2nd ed. Detroit: Macmillan Reference USA, 2007, "Burial" pp. 291-294.

beneath the ground.¹⁵ These catacombs were often family burial places that consisted of multiple chambers with numerous recessed niches ("Kuchin"), which served as the graves.¹⁶ The Mishnah explains that the catacombs were built depending on the nature of the rock into which they were dug, and the consistency of the soil in which they were constructed.¹⁷ Additionally, reference is also made in the Talmud to a structure called a "Kever Binyan," which may also have been considered burial in the ground.¹⁸ According to many *Rishonim*, these structures were above-ground burial tombs.¹⁹

Although rock vault burial may be the most ancient custom, when Jewish life moved to Babylon, where the soil was not suited for cave interment, ground burial became the norm.²⁰ Another change that has developed over time is that burial is no longer necessarily done in direct contact with the soil, but is usually in a coffin.²¹

This issue became especially pertinent in the nineteenth century, when Rav Yitzhak Elchonon Spector (1817–1896) was asked about the permissibility of temporarily interring bodies into a "house" (mausoleum-like structure on the ground),

15. *Bava Batra* 100b; *Moed Katan* 8b.

16. *Rashbam, Bava Batra* 100b.

17. *Bava Batra* 101a.

18. *Moed Katan* 8b; *Sanhedrin* 47b.

19. *Rashi, Sanhedrin* 47b s.v. "Be'kever Binyan" explains that this was a structure built above, and separate from, the ground. The *Nimukei Yosef* also writes on that statement in the Talmud that these were above-ground burial chambers, and *Tahmid R' Yechiel MiParis* adds that these were constructed of hewn stone covered with lime. The *Rambam* refers to "building" a grave in *Mishneh Torah, Hilchot Yom Tov* 7:15 which the *Hagahot Maimoniyot* #20 says refers to a "Kever Binyan," and in his commentary on the *Mishnah, Moed Katan* 1:6, *Rambam* defines "Kevarot" as structures for graves built above ground. *Rosh, Moed Katan* 3:9 also writes that a "Kever Binyan" is on top of and separate from the ground; *Or Zarua, Hilchot Avel* 423.

20. *Tur, Yoreh Deah* 362:1; *Encyclopedia Judaica*, Vol. 4, 2nd ed. pp. 291-294.

21. *Tur, ibid.*

surrounded by stones and sealed with a locked iron door, into which corpses could be placed in multiple niches. This was needed as a temporary emergency measure to protect the bodies, possibly against autopsies.²² Rav Spector quotes the *Rambam* who rules that the process of burial in a cave is that once the corpse is placed into it, "we then place the earth and the stones back in place above it."²³ From this we see that the soil was only placed onto the corpse after it had been placed in the hollows of the cave. However, Rav Spector cites the *Tur*'s comment that every locality buried according to its own custom, generally based on the climate and composition of the local soil, and the *Tur* explicitly states that in some places no soil was put onto the corpse.²⁴

Since historically there were places that did not put soil onto the corpse, Rav Spector concludes that such burial in a cave underneath the ground is sufficient to be considered burial in the earth. Furthermore, as we will see, placing soil and earthen material onto the mouth and eyes of the corpse would fulfill the need to return the corpse to the earth. Rav Spector thus argues that even though the proposed temporary tomb was not to be beneath the earth, its construction of bricks and stones would still be considered earth in Jewish law,²⁵ so that this could nevertheless be considered burial with soil. Indeed, although most mausoleum structures are built out of cement, not actual soil, most *poskim* rule that substances such as bricks,

22. In the 19th century (during Rav Spector's lifetime) bodies were often sold for profit by grave robbers who exhumed bodies from their graves and sold them at very high prices to medical schools and researchers. See *Death, Dissection and the Destitute*, by Ruth Richardson, 15; "Grave robbing and ethics in the 19th century," by Hutchens MP in *JAMA: The Journal of the American Medical Association* 278(13):1115, 1997 Oct 1; *Jewish Medical Ethics*, by Immanuel Jakobovits, 1148-50.

23. *Mishneh Torah, Hilchot Avel* 4:4.

24. *Tur, Yoreh Deah* 362. See also the explanation of the *Bach*.

25. *Chulin* 88b, codified by *Shulchan Aruch, Yoreh Deah* 28:23 regarding which substances may be used to fulfill the mitzvah of covering the blood of a slaughtered animal with earth.

cement,²⁶ or marble²⁷ are considered soil with regard to burial. Rav Spector thus permitted *temporarily* placing the bodies into this mausoleum-like structure, with soil placed on the bodies, followed by moving them into a subterranean grave when possible.²⁸

B. The Reasons for Burial and their Implications

At this point it is necessary to take a step back and examine the purpose of burial. The Talmud gives two reasons for the requirement of burial.²⁹ The first reason is that if a body were allowed to decompose in public view, it would be a disgrace ("Bizayon") to the deceased,³⁰ their family,³¹ and all humanity.³² The second reason is that burial achieves atonement for the deceased. The reason the Talmud raises this question is to deal with the case of one who declares that they do not wish to be buried after they die. If the reason for burial is to avoid disgrace, since this is suffered by other people and not only the deceased, a person does not have permission to refuse burial. However, according to the reason that burial is

26. Responsa *Havotini Benemini* 3:63; *Iggerot Moshe* YD3:144.

27. Responsa *Beit Yitzchak* YD 2:153.

28. *Ayn Yitzchak* YD 2:33.

29. *Sanhedrin* 46b. Additional reasons that have been suggested for the mitzvah of burial include the prohibition of deriving benefit from a corpse (*Mishnah Temurah*), and the idea that the body belongs to the earth and returning it to its rightful owner is akin to returning a stolen object – *V'hashiv et Hagezeila (Kli Chemdai)*. Furthermore, *Kol Bo al Aveilut*, vol. 1, 173, points out that a corpse is owed respect in gratitude for its service to us during our lifetime and to demonstrate faith in its ultimate resurrection.

30. Rashi, *Sanhedrin* 46b s.v. "Mishum Bizyona," *Chiddushei HaRan*, *Sanhedrin* 46b s.v. "L'mai Nafka Mina."

31. Rashi, *ibid.*, s.v. "Lar kol k'minei"; *Chiddushei HaRan*, *ibid.* s.v. "L'mai Nafka Mina."

32. *Tur Yoreh Deah* 348; *Chiddushei HaRamban*, *Sanhedrin* 46b s.v. "Boy Lahu;" Responsa *Divrei Chaim* YD 1:64 argues that the disgrace of a human corpse being left out to decay is to humanity as a whole because all humans are created in the image of God.

intended to gain atonement, one might theoretically state that they do not desire atonement for themselves and forgo burial.³³

Leaving a body unburied is a disgrace because everyone can see the human remains decompose in public.³⁴ Indeed, the Torah considers this to be a particularly horrendous form of humiliation, which it describes as a curse for breach of the covenant: "Your carcass will be food for every bird of the sky and animal of the earth."³⁵ The prophets often repeat this threat as well. For example Jeremiah says, "With the burial of a donkey will he be buried – dragged and thrown beyond the gates of Jerusalem."³⁶

Although the *Shulchan Aruch* rules that simply placing a body into a casket without burying it in the ground is insufficient,³⁷ once a corpse is placed in a casket and shielded from public view, one could argue that there is no longer a concern of disgrace. As the *Aruch Hashulchan* writes, to avoid disgrace and to fulfill the verse, "You shall surely bury" all one would technically have to do is place the body in a casket

33. The Talmud does not resolve the question of which of these two reasons is the essential rationale for the institution of burial. Since there is a doubt about a Torah prohibition, the halacha takes both reasons into account, which is why even if someone makes it known that they would not like to be buried, they are to be buried anyhow (Rambam, *Hilchot Avel* 12:1, *Tur/Shulchan Aruch Yoreh Deah* 348:3 & *Shach* 6). Tosafot *Sanhedrin* 46b s.v. "Kerurah Mishum Bizyona" notes that although the Talmud doesn't directly answer which of these reasons is the main purpose ("Ikar") of burial, it is clear from *Sanhedrin* 47b that whichever is the primary purpose, gaining atonement is indeed part of the purpose of burial. According to Rabeinu Chananel, *Sanhedrin* 47a s.v. "Boy Lahu" the conclusion of this discussion in the Talmud implies that the atonement is in fact the essential reason.

34. Rashi, *Sanhedrin* 46b sv. "Mishum Bizyona." The *Aruch Hashulchan*, *Yoreh Deah* 262:1, argues that the purpose of burial is to ensure that the body not remain out in the open, which he considers "an obvious, logical idea."

35. Deuteronomy 28:26.

36. Jeremiah 22:19.

37. *Shulchan Aruch*, *Yoreh Deah* 362:1.

and put it into a basement.³⁸ Indeed, the idea that simply removing a body from public view by placing it into a casket, even without burial, is some level of fulfillment of the mitzvah can be seen by the ruling of the *Shulchan Aruch* that if people are in a city that is under siege, and they are unable to bury a body in the ground, they may begin their official mourning process once the body is placed into a casket.³⁹ The *Shulchan Aruch* states that "closing the coffin is like burial,"⁴⁰ which the *Shach* explains to mean that although we would normally require burial to take place in the ground, in difficult circumstances simply placing a body into a casket and putting it into another house would constitute perfectly acceptable burial, "*Kezurah Ma'aliyuta*."⁴¹

However, the obligation to bury goes further, which brings us to the question of how burial in the ground effects atonement. According to Rashi, atonement is achieved because a person is being lowered down into the depths.⁴² Similarly, the Ran writes that this lowering down helps to grant a person atonement because it is tremendously humbling for a person who had been accustomed to rule over all other living beings of the earth to be lowered beneath them.⁴³

The Ran adds another intriguing comment about the reason for burial in earth. He writes that one does not fulfill the obligation of burial unless there is soil involved in the burial,⁴⁴ based on the verse "to dust shall you return" which teaches us that "soil is healing (*She'ha-afar Refuato*)."⁴⁵ It is also based on

38. *Aruch Hashulchan, Yoreh Deah* 362:1.

39. Only if they do not intend to come back later to bury the casket.

40. *Shulchan Aruch, Yoreh Deah* 375:4.

41. *Shach, Yoreh Deah* 375:5; *Responsa Teshuvot V'Yanhagot* 3:YD370.

42. *Sanhedrin* 46b, s.v. "oh."

43. *Chiddushei Haran, Sanhedrin* 46b s.v. "L'mai Nafka Mina."

44. Interestingly, he does not say that there must be "*Kezurah B'arkka*" (burial in the ground) but "*Kezurah Karak*" (burial with ground).

45. *Chiddushei Haran, Sanhedrin* 46b s.v. "Remez L'Kezurah."

this verse that the *Aruch Hashulchan* concludes that burial in a casket simply placed into a basement would not be sufficient. Based on this idea, one might argue that this verse could be fulfilled not only through being buried "in the depths" underground, as Rashi and the Ran initially argued, but also, to at least some degree, by simply placing soil into the casket and on the corpse. This idea may in fact be referenced by the Ran himself when he writes that burial in the ground is better ("*Yoter Tor*") than being left on the surface of the earth,⁴⁶ but not necessarily obligatory, leaving room for the suggestion that while subterranean burial is ideal, there may be ways to inter a corpse above ground that have at least some degree of validity.

In fact, as mentioned above, the *Shach* rules that even though burial is supposed to take place in direct contact with the earth, a corpse may nevertheless be buried in a coffin because the earthen material that we place on the face of the deceased takes the place of the burial in the soil mentioned in the earlier sources.⁴⁷ The *Be'er Heiteiv* adds that their custom was to place a linen sack of soil under the head of the deceased, which is enough to be considered like burial in the earth.⁴⁸

We thus see that while placing a body into a coffin without burying it in the ground does not completely fulfill the mitzvah of burial,⁴⁹ it does seem to address the concern of

46. *Ibid.*, s.v. "L'mai Nafka Mina."

47. *Shach, Yoreh Deah* 362:1.

48. *Be'er Heiteiv, Yoreh Deah* 362:1, adds that using dirt from the land of Israel is even better. If one is unable to obtain soil from Israel, lime should be used because it assists in the speedy decomposition of the body (*Ramo, Yoreh Deah* 363:2).

49. This is assuming, as most sources do, that burial in the ground is the Torah obligation. However, according to those (such as the suggestion made by Rabeinu Chananel quoted above), who conclude that burial in the ground is a rabbinic obligation, placing a body into a coffin may in fact fulfill the primary obligation to bury. See also *Responsa Teshuvot V'Yanhagot* 3:YD370.

disgrace. While burial above ground (still in contact with some soil) may not be complete atonement, the Ran followed by the *Shach* and others imply that there is still some atonement value. Furthermore, as we have seen, the Talmud rules that a person may choose to forgo this atonement altogether.⁵⁰

Support for this approach can be found in the rulings of Rav Ovadia Yosef,⁵¹ who quotes the responsa of Rav Yitzhak Yehudah Shmelkes, published in 1875,⁵² who suggests that based on these words of the Ran it may be sufficient to bury a body in a building on the ground.⁵³ Rav Yosef argues that everyone would agree that this is permitted if the building is made out of soil, as was done in the days of the Talmud. If the building is made out of cement, Rav Yosef argues that it would be better to at least add some dirt to the floor of the building, as well as soil between each casket. However, Rav Yosef argues that while allowing the body to touch the soil is of great benefit to the deceased, it is not absolutely required to fulfill the basic mitzvah of burial.⁵⁴

C. Contemporary Applications

This question has become particularly relevant today because many cemeteries have become filled to capacity, and it is not always practical to build new cemeteries far away from

50. Rav Shternbuch was asked if a woman who lived in Israel may choose to be buried outside of Israel, even though the ground of Israel atones, "*VeChiper Adhanto Aino*." He writes that one has the right to forgo atonement if they so choose, as one cannot be forced into atonement "*Ain kapira baal korchah*." Furthermore, he writes that if, in fact, a person does not desire this atonement, Rashi (*Sanhedin* 46b, s.v. "*Ha Amar*") states that the ground would not atone for them (*Responsa Teshuvot V'Hanhagot* 3:YD370).

51. *Chazon Ovadia, Avelut*, vol. 1, 431-433.

52. *Teshuvot Beit Yitzchak, Yoreh Deah* II 161.

53. Though the *Beit Yitzchak* quotes other sources that imply that this would not be permitted, he concludes that it is best to follow the ruling of Rabbi that the body be buried in direct contact with the ground.

54. *Chazon Ovadia, Avelut* vol. 1, 431-433.

established communities.⁵⁵ Based on the above sources, Rav Ovadia Yosef allowed the *Chevra Kadisha* of Argentina to bury in niches in a wall built above the ground. In fact, he reports that he himself advised the building of a wall in which to inter bodies in Alexandria when their cemetery ran out of space.⁵⁶ Other than requiring at least six "*Tefachim*" of soil between each grave, the specifications and design of this "wall" are not made clear.

The issue of lack of space is particularly acute in Israel, where the Chief Rabbinate came up with the idea of building layered burial chambers. They were to be constructed in such a way that although above ground, they would be contained within an artificial earthen mound, each grave concealed within soil on all sides, with concrete walls surrounding them.⁵⁷ Although a number of the rabbis had differing opinions on the matter, the Israeli Chief Rabbinate ultimately permitted the construction of these structures as long as they would maintain very specific criteria.⁵⁸ In 1987 Rav Shalom Messas, chief Sephardic rabbi of Jerusalem and Head of the Jerusalem Rabbinical Court, issued his permissive ruling based on the argument that while it would not be permitted to bury a corpse completely above ground without being in the

55. In addition to the solution of mausoleums, Rav Shlomo Amar, the Sefardi Chief Rabbi of Israel, permitted the Jewish community of Istanbul to address this concern by bringing in additional soil to their cemetery to cover up the existing graves and bury a new layer of bodies above the current ones (*Techumin*, vol. 27, pg. 429-435).

56. *Chazon Ovadia, Avelut* vol. 1, 431-433.

57. In Rav Yisrael's ruling on the matter, which will be discussed below, he specified that there should be at least an "*Amah*" of soil surrounding and above the structure, and it should be firm enough not to erode as a result of rain and wind, in order for it to be considered cave burial (*Responsa B'nei Hatzak*, vol. 4, 181).

58. The specifications were that the local *Chevra Kadisha*, rabbi, and family agree, and the Chief Rabbinate would have the opportunity to inspect the construction of each structure before it was utilized. (See *Responsa B'nei Hatzak*, vol. 4, 176).

soil, it would be permitted to construct a hill in such a way that the graves are surrounded by earth on all sides. Rav Messas based his ruling on the discussion in the Talmud which prohibits deriving benefit from an object that has been used for the burial of a body, unless it is "*Mechubar L'Karka'*" (attached to the earth). His discussion concludes that one may not derive benefit from a "*Kever Binyan*" (burial structure) because it is separate from the ground.⁵⁹ However, Rav Messas argues that since the Talmud refers to a *Kever Binyan* being dug, it implies the construction of walls and a floor to strengthen the grave after it has been dug in the ground, creating a vault where a corpse can be placed, separate from the ground. He further argues that as long as the structure is connected to the ground, and the corpses are surrounded on all sides by soil in a structure constructed from concrete, then in a case of great need (such as lack of space) this would be a permitted form of burial.⁶⁰

We thus see that some *Poskim* do see mausoleum-like burial structures, *when properly constructed beneath earth to emulate caves*, as acceptable burial in the ground. Furthermore, many *Poskim* are of the opinion that the reasons for burial are satisfied by these structures, and can thus be permitted under extenuating circumstances. However, many leading authorities have expressed a great deal of opposition to these opinions, as will be discussed below.

III. Mausoleum: The Case Against

Despite the possible reasons for permissibility listed above, the vast majority of contemporary *Poskim* have been strongly opposed⁶¹ to burial in mausoleums. One of the primary

59. Raashi explains that a *Kever Binyan* "is built above, and separate from, the ground."

60. *B'neihei Chessed V'emet*, Annual Journal of the Tel Aviv-Yafo *Chevrá Kadisha*, 1988, 102-105.

61. For example, Rav Moshe Feinstein refers to burial in a mausoleum as

arguments against this sort of burial is that it does not properly fulfill the commandment to be buried, or the simple understanding of the mitzvah of burial in the ground,⁶² and one who is buried in such a structure is thus in violation of the command⁶³ that, "A body shall not remain overnight..."⁶⁴

A. History

Many *poskim* also argue that burial in a mausoleum is simply not the age-old Jewish custom⁶⁵ of plots in the earth and is rather an imitation of non-Jewish practices and thus in violation of the prohibition⁶⁶ of "You shall not walk in their statutes."⁶⁷ Today, mausoleums are often a cheaper form of burial than subterranean interment, but because they used to be much more expensive, many *Poskim* felt that those

an "*Issur Gadol*" a major prohibition (*Iggerot Moshe* YD 3:143); Rabbi Avraham Aharon Yudelovitz, the head Rav of the *Agudat Hakehillot* of New York, strongly prohibited the practice of burial in a mausoleum in his *Av B'chochmah* (1927). He pointed out that this prohibition must be publicized because, "nearly all of the rabbis are unaware of this prohibition and rule mistakenly in the matter." Rav Nissan Yablonsky, who was the Rosh Yeshiva of Beit Midrash L'Torah in Chicago in the 1920's, ruled that burial in a mausoleum is "certainly forbidden" (*Responsa Nitzanei Nissán*, 166-171).

62. Rabbi Yitzchak Yaakov Weiss, head of the rabbinical court of the *Eitah Charadit* in Jerusalem, wrote in 1985 that burial in the actual ground ("*Eretz Mamash*"), not just having earth placed on the body, is the mitzvah (*Responsa Minchat Yitzchak* 10:122); *Iggerot Moshe* YD 3:143. Rav Moshe does not think that burial in a mausoleum violates "A body shall not remain over night..." but rather does constitute some form of burial since the mausoleum building is made of cement, bricks, and stones that are connected to the ground, and is thus "like ground," but he does argue that it is improper and that one certainly has not fulfilled the mitzvah of burial in this manner.

63. Deuteronomy 21:23.

64. *Sefar Av B'chochmah*, 124-125; *Kol Bo al Aveilut*, vol. 2, 48; *Responsa Minchat Yitzchak* 10:122; Rav Shaul Yisraeli in *Charot Binyamin* 1:24.

65. *Iggerot Moshe* YD3:144.

66. Leviticus 18:3.

67. *Responsa Nitzanei Nissán*, 166-171; *Sefar Av B'chochmah*, 124-125; *Kol Bo al Aveilut* vol. 2, pg. 48.

mausoleums also contradicted the ancient Jewish burial philosophy of equalizing everyone, rich and poor alike, by displaying arrogance above the simple coffins in the ground.⁶⁸

Furthermore, Rav Shaul Yisraeli, as a member of the Israeli Rabbinate's high court, challenged a number of the sources that his colleagues in the Rabbinate marshaled in their approval of mausoleum-like structures in artificial above-ground mounds. He pointed out, based on a Midrash recounting the burial of Aaron which is quoted by Rashi,⁶⁹ that while it is true that ancient burial took place in caves, the bodies were in the sides of mountains and completely enclosed within earth, and thus technically underground.⁷⁰ A similar point was made by Rav Nissan Yablonsky, who was the Rosh Yeshiva of Beit Midtash L'Torah in Chicago in the 1920's. He ruled that burial in a mausoleum would not satisfy the requirements of burial because proper interment requires complete enclosing and encasing of the body. A mausoleum does not fulfill this requirement if a body can be easily accessed and removed.⁷¹ Rav Yablonsky concludes that mausoleums existed in the world in the days of the Talmud, but the Jews didn't make use of them, which implies that they rejected them.⁷²

B. Disgrace

Moving on to the issue of disgrace as a reason for the mitzvah of burial, some explain that burial in the ground was intended to preclude the likelihood that people could easily open the casket. Since simply placing a body in a casket and

68. *Responsa Nitzanei Nissan*, 166-171; *Kol Bo al Aveilut*, vol. 2, 48; *Iggerot Moshe* YD3:144.

69. Numbers 20:26.

70. *Chavot Binyamin* 1:24; *Responsa Nitzanei Nissan*, 166-171, makes a similar point.

71. *Responsa Nitzanei Nissan*, 166-171.

72. *Ibid.*

leaving it above ground does not address this issue, and it does not fulfill the mitzvah.⁷³ Similarly, many of the *Poskim* rule that burial in a building above ground raises the concern that it lacks permanence and may one day fall or be destroyed.⁷⁴ Indeed, Rav Greenwald noted that it was specifically the corpses of Jews interred in mausoleums in Germany that were the first to be removed from their graves by the Nazis and thrown to the dogs, precisely a concern that burial in the ground was intended to prevent.⁷⁵

C. Atonement

In reference to the goal of burial bringing about atonement, some have pointed to the Rashi in *Sanhedrin*, which (in addition to other *Rishonim*) explains that the body is specifically being "lowered down into the depths," which serves as atonement for the soul of the deceased, and if a body is not lowered but left above ground, this atonement is not achieved.⁷⁶ Furthermore, many also argue that burial helps to induce the decomposition of the body, and as long as a body is not able to decompose it is unable to be granted atonement.⁷⁷ It is argued that delaying the body's decomposition by withholding burial in the ground serves to extend the period of judgment, slow down and delay the process of atonement, and cause increased anguish to the soul of the deceased.⁷⁸

73. Rav Aharon Dovid Goldberg, *Sefer Avodat Dovid*, *Sanhedrin* 46b.

74. *Sefer Av B'chochinah*, 124-125; *Iggerot Moshe* YD 3:143.

75. *Kol Bo al Aveilut*, vol. 2, 48.

76. *Sefer Av B'chochinah*, 124-125; *Responsa Nitzanei Nissan*, 166-171; Rav Shaul Yisraeli quoted in *B'nei Tzei Chessed V'emet*, 96.

77. *Kol Bo al Aveilut*, vol. 2, 48; *Iggerot Moshe* YD 3:143. Rav Moshe bases this on a Ramo in *Yoreh Deah* 363:2, who writes that one would be permitted to place lime onto a corpse in order to speed up the decomposition. The *Taz* (3) explains that this is based on the verse in Job 14:22, "His flesh will be pained over itself", which means that as long as one's flesh remains intact, one can not rest from judgment.

78. Rav Moshe bases this on the ruling in the *Shulchan Aruch*, *Yoreh Deah*

Although some have conceded that burial in a mausoleum does address the concern of disgrace by enclosing the body away from sight, the Rif, Rambam, and Rosh do not conclude if the primary purpose of burial is to avoid disgrace or to bring about atonement. Instead, all of them seem to try to satisfy both concerns, in which case they would apparently all oppose burial in a mausoleum.⁷⁹

D. *Kever Binyan*

Along similar lines, regarding the issue of "*Kever Binyan*" raised above, Rav Greenwald argued that this was a structure used in the times of the Talmud only in order to allow the bodies to decompose, after which their bones were properly buried.⁸⁰ In fact, the Talmud never clearly states that these buildings were an acceptable form of Jewish burial.⁸¹ Additionally, Rav Yablonsky argues that since most authorities require burial in the ground, and since a "*Kever Binyan*" or mausoleum is to be considered above and separate from the ground, it did not fulfill the requirements of burial. Additionally, if there is no soil in the mausoleum, it would certainly not fulfill the verse, "to dust shall you return," which is ideally fulfilled through contact with the earth. Although this verse can be fulfilled by burial in a sealed casket that is beneath the ground, it is not fulfilled in an above-ground structure.⁸² Although the *Beit Yitzchak*, quoted above,

363:1 that one should not re-inter someone who has already been buried. According to the *Shach* (1) this prohibition is rooted in the concept that the confusion would strike fear in the dead and we are prohibited from causing them increased pain.

79. *Responsa Nitzanei Nisan*, 166-171.

80. *Kol Bo al Aveilut*, vol. 2, 48.

81. A similar point can be made in response to the claim that archaeological finds have shown mausoleum-like graves in ancient Israel. There is no indication that these were sanctioned Jewish graves. The vast majority of archaeological finds have been beneath-ground graves.

82. *Responsa Nitzanei Nisan*, 166-171.

permitted such burial if there is earth placed on the body in the casket, Rabbi Yitzchak Yaakov Weiss argues that this would still not be considered burial in the ground, which is why this ruling seems to have been retracted by the *Beit Yitzchak* in his next responsum.⁸³

Another approach was taken by a number of authorities who explained that the concept of a "*Kever Binyan*" mentioned in *Sanhedrin* is not a building that was on top of the ground, but as the Rambam⁸⁴ and *Yad Ramah* say,⁸⁵ it refers to large holes or vaults in the ground, in which niches were cut out for the placement of bodies.⁸⁶ According to this approach, despite the construction of these structures, the actual burial still took place beneath the ground. Rav Yisraeli argues, based on a reading of the Talmud in *Sanhedrin*, that the concept of a "*Kever Binyan*" would only be a permissible form of burial if the structure was attached to the ground. Indeed, while others quoted Rashi's statement that this structure was built above ground as proof that it could be compared to today's mausoleums, Rav Yisraeli points out that Rashi only mentions that the building was above ground, implying (based on another statement of Rashi)⁸⁷ that perhaps the corpse was in fact buried below the ground, with the "*Kever Binyan*" simply serving as a monument for the deceased, built above the grave.⁸⁸

83. *Responsa Beit Yitzchak* 10:122.

84. *Torat Haadam*.

85. *Yad Ramah, Sanhedrin* 47b.

86. *Sefer Av B'chochmah*, 124-125; *Beit Yitzchak, Yoreh Deah* 2:161. This can be seen from the fact that the Talmud in *Sanhedrin* refers to it as being "dug out," the implication being that the "*Kever Binyan*" was a structure within the soil, not above it.

87. *Sanhedrin* 48a, s.v. "*Nefesh*." Rashi states that a "*Nefesh*" was a tomb-structure that was ornamentally erected over a burial plot. Rav Yisraeli's point is that this "*Nefesh*" is also what is called a "*Kever Binyan*."

88. *Chavot Binyamin* 1:24. Rav Yisraeli makes the same point on the *Yad Ramah's* explanation of a "*Kever Binyan*," implying that he also believes that the structure was simply built in the earth, and the corpse was placed into

E. Coffins

In response to the point made above that Jewish burial has shifted from direct contact with the soil to burial within coffins, numerous rabbinic sources make it clear that coffins have, in fact, been used throughout Jewish history and are thus an ancient Jewish practice.⁸⁹ Some have pointed out that it was simply a matter of location. While in the land of Israel burial took place in cave tombs, in Babylon burial took place in coffins with soil placed on the body of the corpse.⁹⁰ The authorities note that it has indeed always been perfectly permissible ("*Lehatchila*") for one to be buried in a coffin; it is simply better to be buried directly in the ground when possible.⁹¹ The Rambam writes explicitly that "we may bury in a wooden coffin", upon which the Radbaz goes so far as to claim that a wooden casket can in fact be considered soil because everything comes from the earth and will return to the earth.⁹² Similarly, some sources consider wooden coffins to be perfectly permissible because they eventually decompose and allow contact with the earth, something not true of a mausoleum.⁹³ In fact, the *Aonei Nezer* writes that being buried in a wooden coffin in the ground is "*Chashiv K'ara Samichia*" as if one is connected to the ground.⁹⁴ While many *Rishonim*

this underground structure.

89. Some examples of talmudic reference to their use of coffins include: *Brachot* 19b; *Shabbat* 151a; *Sanhedrin* 46a; *Sanhedrin* 98a-b; *Talmud Yerushalmi, Kilayim* 9:3, 32b.

90. *Hilchot Rabbeinu Yitzchak Ibn Geyut*, Bamberger edition, 2:30.

91. *Dinei Sofrim on Shulchan Aruch* YD 362:3; *The Levush*, YD 362:1 is one exception to this. Though he also notes that one may be buried in a coffin, he writes that burial directly in the ground is the true intention of the mitzvah ("*Siim kavur b'aretz mamash masha*") and is thus the ideal form of burial.

92. *Hilchot Avot* 4:4.

93. *Talmud Bavel*, *Nezir* 51a, *Rashi* s.v. "*Eizelu Meit*," *Talmud Yerushalmi, Pesachim* 8:8 & *Korban Ha'eida* there which refers to burial in a wooden coffin as "*k'kavur*", like being buried.

94. *Responsa Aonei Nezer* YD 472.

permit the use of a coffin,⁹⁵ the *Yad Ramah* actually suggests that there is a mitzvah to use it. The Ravan explains that this is based on the Midrash in which R. Levi interprets the biblical phrase that Adam and Eve hid themselves in the wood of the garden to mean that their descendants would be placed within coffins of wood.⁹⁶

IV. Conclusion

The purpose of this discussion has been to explore various reasons and types of Jewish burial, not to imply halachic rulings on the matter. This topic is complex and in any practical case one should consult a competent Rav for guidance. From the above sources and discussion, it does become very clear that Jewish burial is ideally fulfilled through burial in the ground and that interment in a mausoleum is problematic from the standpoint of Jewish law. We have also seen that defining precisely what constitutes burial in the ground has many nuances. It is also important to understand that halacha recognizes gradations of preference, and that some acts are better than others, while other options are worse than others. Today, various concerns lead many away from traditional Jewish burial and Jewish cemeteries. To our sorrow, they often opt for cremation instead, which is certainly worse than interment in a mausoleum from the perspective of halacha.⁹⁷

It should thus be kept in mind that, to the extent that mausoleum burial can constitute some form of burial in the ground if done correctly, and that it can address some of the reasons for burial, it may be possible to justify certain types of mausoleum-like burials if they are built and utilized

95. For example, *Chiddushhei haRan, Sanhedrin* 46b, s.v. "*Remez L'kenurah*."

96. *Bereshit Rabba* 19:8.

97. An often cited responsa against cremation is *Achiezer* 3:72, but a complete study of the prohibition against cremation in Jewish sources is beyond the scope of this article.

appropriately, as discussed above. This would clearly only be true in cases of great need when traditional underground burial is for some reason not an option, and in consultation with a competent Rav, as a choice that is not as good as burial in the ground, but may be better than many other "alternative" forms of burial. It should be kept in mind that many contemporary mausoleums are not constructed or utilized in a manner that conforms to the above requirements. Furthermore, despite any sources or historical precedent that can be marshaled, we must remain cognizant of the fact that the traditional Jewish psyche often expects underground burial and can be highly uncomfortable with the notion of any sort of interment above the ground or in a wall. It is our hope that through further education on the topic, that the history, sources, and reasons for traditional Jewish burial in the ground will be better understood and more people will appreciate and utilize this highly preferred method of burial despite any competing issues.

Determining Priorities and Triage¹ in Medical Care

Rabbi Moshe Walter

An ambulance with three paramedics arrives at the scene of a car accident. There are a total of eight passengers that require serious medical attention. To which of these eight people do the three paramedics tend first? How should an intensive care unit at a hospital with a limited number of beds and equipment decide who is admitted first? When there are insufficient organs for transplantation to help patients dying of organ failure, what is the appropriate protocol to determine which patient receives the necessary organ first?

Decisions regarding the allocation of scarce medical resources are continuously being made in hospitals, doctors' offices, pharmacies, emergency rooms, intensive care units, and organ transplantation programs. These decisions are emotionally challenging, heart wrenching, difficult to make, and may well determine whether a patient lives or dies. As such, attempts have been made to establish rules to determine the priorities to deal with these questions. Unfortunately, little definitive evidence is available to assist the physician in deciding which patient to admit for medical reasons, and sparse data are available for the system to determine strategies to optimize capacity, efficiency, and the use of ICUs.²

1. The assessment of priorities is called triage, which is a French word meaning to select or choose. The Hospital de Triage was the French Army's emergency medical aid station during the Napoleonic war.

2. C.L. Sprung and P.D. Levine – "Modifying triage decisions to optimize

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