

How to Deal with Holocaust Era Human Remains: Recommendations Arising from a Special Symposium "Vienna Protocol" for when Jewish or Possibly-Jewish Human Remains are Discovered

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Yad Vashem was established in the immediate aftermath of the Shoah (1946) as a research and commemoration institute, and - after the establishment of the State of Israel (1948) – was given its official status through a special law enacted by the Knesset (1953). From its inception, it was commissioned to investigate all aspects of the Shoah and its impact and repercussions. With time proceeding, aspects of memory, commemoration and coping with the past in Israel and abroad, it gradually gained importance. From this perspective, the way states and institutions dealt and still deal with unexpected material findings from that period, are part of our mission. Consequently, the troubling affair of the mishandling of the Berlin-Dahlem bone specimens - and other cases that occurred since, draw our attention.

When Dr. Götz Aly, Prof. Bill Seidelman, and Dr. Miriam Offer approached the International Institute for Holocaust Research on this issue, we jointly developed the idea of convening at Yad Vashem a workshop in which experts will discuss its different aspects and formulate guidelines of handling future such findings - to be disseminated to relevant institutions.

We are proud that this initiative could be realized in May 2017. The results of this important discussion are to be found in the following pages of this Protocol. We all hope that our recommendations will indeed be used and followed in future cases – if and when they will occur.

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Preface

The following recommendations are the product of a scholarly deliberation by a group of international experts in response to the discovery on the Dahlem campus of the Free University (Freie Universität - FU) of Berlin of human skeletal remains from possible victims of experiments carried out at the concentration camp of Auschwitz by Dr. Josef Mengele.

The issue of the exploitation of the victims of Nazi terror by the medical and scientific establishment of Nazi Germany has been the subject of extensive research dating back to the 1980's. In response to the questions raised by the Dahlem discoveries, and, given the state of knowledge of the role of medicine and medical science in Nazi Germany, the Yad Vashem International Institute for Holocaust Research organized and hosted a special on the subject on May 14, 2017. Participants included some of the leading scholars in the field including historians and anthropologists. The Symposium noted that in recent years there have been continuous discoveries of human remains of possible victims of Nazi terror. Given the initial, purportedly inadvertent, mishandling of the Dahlem specimens and the lack of any apparent policy or procedure regarding present or future such discoveries, the Symposium participants decided to formulate a set of recommendations that would serve as a guide in the event of future discoveries of human remains of victims of Nazi terror. These recommendations could then be used by

institutions and governments as guidelines for actions not only in the face of coincidental discoveries, but also in the process of investigating historic collections of human remains.

A separate but critically important part of the Symposium and the "Recommendations..." is the "Vienna Protocol" authored by Rabbi Joseph Polak, the Chief Justice of the Rabbinical Court of Massachusetts, with input from Prof. Michael Grodin of the Elie Wiesel Center for Jewish Studies at Boston University. The "Vienna Protocol" initially arose from a question posed by Prof. Susan Mackinnon of Washington University and her associate Andrew Yee with respect to the use of paintings from the Pernkopf Atlas of Human Anatomy, many of which are believed to be based on the dissection of victims of Nazi terror in Vienna. The question posed by Mackinnon and Yee related to the continued use of some paintings, which, they argue, save human lives and contribute to significant improvement in the quality of the lives of their patients. In response to this question, Rabbi Polak and Prof. Grodin prepared the "Vienna Protocol," so named because of the origins of the Pernkopf atlas. The underlying argument for the protocol is the Jewish concept of "Pikuah Nefesh" (The saving of a human life). Rabbi Polak and Prof. Grodin were also asked to consider the issue of how one deals, in Jewish tradition, with human remains of Nazi victims who are believed to be Jews. Neither of these questions, the use of the images and the discovered remains, had ever received a thorough religious and ethical expert analysis. The "Vienna Protocol" is a unique and unprecedented religious and ethical analysis in the tradition of a Rabbinical "Responsum". While it was undertaken from a Jewish religious and ethical perspective, it is, in fact, a universal document that can be considered as a model for people of other faiths and beliefs.

The recommendations represent the outcome of the deliberations of a singular group of experts who contributed to the May 14, 2017 Special Symposium. Deliberations concerning the final text extended for weeks beyond the May 14 Symposium as an iterative process. They include the review and correction of the English translation of the 2015 Report of the Society for Anthropology (Gesellschaft für Anthropologie) on the subject of "Bone Finds-FU Berlin." We are grateful to Dr. George McGlynn, the Chairman of the European Virtual Anthropological Group (EVAN) for undertaking this task on our behalf.

While it is not the policy of Yad Vashem to provide official institutional authorization of statements such as these recommendations, the input Yad Vashem and its staff provided to the Symposium contributed greatly to its success.

The Symposium planning was undertaken by a small group, which included Prof. Dan Michman, the Head of the International Institute for Holocaust Research of Yad Vashem, Dr. Götz Aly of Berlin, Dr. Miriam Offer of Galilee Western College. Dr. Sabine Hildebrandt of Harvard Medical School and Boston Children's Hospital was a corresponding member of the planning group. Prof. William Seidelman was the Symposium chair.

Rabbi Joseph Polak, the Chief Justice of the Rabbinical Court (Bet Din) made a significant contribution not only as participant in the Symposium but also in the recruitment of resources from generous contributors who helped offset the costs incurred by the Symposium. We are grateful for the generous contributions of the Zuckerman family of Livingston, NJ, the Gutwirth Family Fund, and other generous contributors.

This Symposium could not have happened without the leadership of Prof. Dan Michman, the Head of the International Institute for Holocaust Research and incumbent of the John Najmann Chair of Holocaust Studies at Yad Vashem and the staff of Yad Vashem.

We also wish to acknowledge to contribution of Lilka Elbaum, who assisted with preparations for the Symposium and the preparation and formatting of the final report.

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Recommendations/Guidelines for the Handling of Future Discoveries of Remains of Human Victims of Nazi Terror

Background

Since the end of World War II there have been discoveries of remains of untold numbers of human victims of that tragic era. In addition to the victims of the military conflicts that encompassed much of the world, there have been revelations of the recovery of the remains of victims exploited in life and death by medicine and the medical profession for inhuman experiments performed on living prisoners in Nazi concentration camps, and the exploitation of the bodies of victims of Nazi terror executed by the, so-called, "justice system", tens of thousands of victims murdered in the "euthanasia" killing programs, and other victims who died as a consequence of Nazi policies including Jewish citizens committing suicide out of desperation and Soviet subject peoples and Polish slave laborers convicted and executed for trivial crimes or socializing with German women. Also to be included are the Chinese and Allied victims of the Japanese germ-warfare research Unit 731.

Whereas the overall intention for most of the victims of Nazi genocide was for the victims, and all remnants of their life and culture, to be obliterated, in the case of the "medical victims" their physical remains were retained for their scientific or utilitarian value such as teaching anatomy and advancing professional and scientific careers. Thus, the physical remains or parts thereof, often with records of the subjects' identities and cause and place of death, were retained by universities and scientific and research institutes.

The experiments were often led by leading university professors and medical scientists associated with renowned universities and internationally noted research institutes such as those of the Kaiser-Wilhelm Society. University institutes of anatomy exploited the increasing numbers of executions to obtain an enhanced supply of human bodies which had previously been rare. The world renowned Kaiser-Wilhelm Institute of Brain Research (Berlin-Buch), and especially its Department of Neuropathology under Julius Hallervorden, and of Psychiatry (the German Research Institute for Psychiatry notably its Department of Histopathology under Willibald Scholz), retained the brains of potentially thousands of victims of Nazi 'euthanasia' for their

collections. The Vienna Museum of Natural History purchased skulls of Polish resistance fighters and Jewish Holocaust victims from the anatomist Prof. Hermann Voss, who headed the anatomy department of the Reichsuniversität in Posen/Poznan in Nazi-occupied Poland. The noted anatomist, Prof. Eduard Pernkopf of the University of Vienna, exploited the increasing supply of bodies for the preparation of a landmark atlas of human anatomy, in which the artists included Nazi insignia such as the SS runes and Swastikas in their signatures. The Pernkopf Atlas of Human Anatomy was published in five languages until 1994. Tens of thousands of volumes of the Pernkopf atlas probably remain in private collections until today.

Despite a valiant attempt to identify such medical atrocities at the Nuremberg Doctors' Trial of 1946-47, "A Great Silence" pervaded the world of medicine in Germany and Austria during the ensuing Cold War. It was not until the 1980's that the secret of the specimens was first revealed. In the ensuing decades there have been further revelations, continuing until this very day. The impact of the "Great Silence" as well as apparent ignorance and miscommunication were manifest after the initial discovery of human skeletal remains on the Dahlem campus of the Free University of Berlin at a site very close to a building that formerly housed the Kaiser-Wilhelm Institute of Anthropology, Human Heredity and Eugenics. Established in 1927, the institute's founding director was the anatomist, geneticist and anthropologist, Prof. Eugen Fischer. In 1942, Fischer was succeeded by Prof. Otmar von Verschuer, an internationally renowned expert on twin studies. The German Research Fund/Deutsche Forschungsgemeinschaft (DFG) funded research by Verschuer. In his role as principal investigator he oversaw investigations such as the notorious Auschwitz twin studies carried out in 1944 by his assistant, Dr. Josef Mengele. It is known that specimens from Auschwitz victims were sent to the Dahlem institute headed by Verschuer, among them also blood specimens for the biochemist Prof. Adolf Butenandt. Attempts to discover specimens from the aforesaid institutes were, until recently, unsuccessful.

Unfortunately, the mishandling of the Dahlem specimens resulted in the destruction by cremation of the specimens that had been discovered in 2014. While the possibility of a relationship to the Verschuer/Mengele Auschwitz experiments had been considered, it was not pursued.

Fortunately, as a consequence of news reports, authored in part by Dr. Götz Aly, as well as a petition of international experts in the history of medicine in Nazi Germany and the Holocaust, the Free University of Berlin, together with the Max Planck Society (the successor to the Kaiser-Wilhelm Society) and the Berlin historical preservation office undertook expanded excavations in an attempt to recover all additional remains in the area of the original finds and to determine the provenance of the remains discovered at the Dahlem site.

Since the reports of the 1980's, there have been recurring examples of discovered remains in various institutions; three of which having occurred within the past three years: Dahlem, Strasbourg (a victim of the planned "Jewish Skeleton Collection" of Professor August Hirt), and the Max Planck Archives in Berlin-Dahlem (brain specimens of 'euthanasia' victims). In the light of these cases it is assumed that more discoveries are likely to occur.

The following recommendations are based in part on those proposed in 2015 by Dr. George McGlynn, Chairman of EVAN (The European Virtual Anthropology Network), at the request of the Anatomische Gesellschaft, an international organization of anatomists.

Recommendations/Guidelines

Given the likelihood of future discoveries, it is imperative that there be clearly defined policies and guidelines regarding any possible future discoveries. The enactment and implementation of such policies and guidelines are ultimately the responsibility and jurisdiction of the state or region or institution in whose jurisdiction such discoveries occur.

The basic principles for handling of such discoveries must include:

1. Immediate securing and protection of the specimens and the surrounding site including, where appropriate, excavation.
2. The identification and securing of any and all available archival records and materials related to the discovery including, where possible, the provenance of the specimen and the identity of the victim. Ensuring

unrestricted access to these archival records for research.

3. Notification of the legal and institutional authorities including extraterritorial authorities such as the war graves commissions as is appropriate.

4. When the religion has been clarified, notification of the relevant religious authorities.

5. Engagement of historians with expertise in the history of the institution, the era, and the specific program e.g. anatomy, 'euthanasia', experimentation etc.

6. The engagement of expert archaeologists and anthropologists or other such persons with expertise in the identification of human remains.

7. Where possible, notification of family or relatives of the victim, or, if these cannot be determined, relevant representatives of potential victim groups must be undertaken. Anonymized and collective burials and memorials should only occur when all attempts to identify the victim have been exhausted.

8. Determination of final resting place for the remains, based on any potentially known wishes of the victim, and wishes of victim's family or representative.

9. Documentation of the history and identification of the remains, including biographies of victims. Also, exact documentation of the handling of the remains since their discovery.

10. Ongoing Institutional commemoration of the victim(s) based on documentation of the history of events that led to the demise of the victim; including that of the institutions and organizations involved.

EVAN Memo:

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Source: Society for Anthropology (Gesellschaft für Anthropologie), 2015
Subject: Bone Finds, FU Berlin.

Background

The Society for Anthropology is an organization comprised of anthropologists, physicians, and students focusing on various areas within the field of biological anthropology.

One of their main areas of specialization is osteological anthropology, which deals with the analysis of skeletal material deriving from archaeological contexts. Ethical issues concerning these bone finds are also an important consideration with respect to these biological remnants. However, in modern cases where wrongful doing is suspected in association with a possible criminal act, war crime or a human rights violation, additional scientific inquiries are requisite, including thorough field archaeology, radiocarbon dating or DNA analysis. In these cases, the Society for Anthropology can provide advice and the necessary expertise in order to conduct such investigations.

1.1 Ethical / legal considerations and provisions

Source: Grupe G., Harbeck M., McGlynn G., (2015) "Prehistoric Anthropology," Springer Verlag.

"The guidelines in Germany regarding the handling of human remains originating from the Third Reich context are relatively clear. In the event that such remains are subject to defamation, regulatory statutes (§189 StGB, §194 StGB) can be applied resulting in legal consequences for the perpetrators (AMPiS, 2003). Furthermore, a 1989 resolution made at a Conference for the Ministry of Culture indicates that "specimens from NS victims and specimens of uncertain origin from an unspecified time period, should be removed from the collections immediately" and "handled with respect and dignity, and promptly reported to the institutional administration" (AMPiS, 2003). For example, the rediscovery of so-called "cadaver journals," dating between 1914-1949 at the Institute for Anatomy at the Friedrich Schiller University in Jena, led to a detailed investigation of that collection's origin (Redies et al., 2007). This collection is now regarded as exemplary. Yet it also showed the difficulties associated with such investigations. Although no specific evidence for a connection between the majority of the collection's objects and wrongful doing within the context of National Socialism was found, this assurance proved impossible for the department's anonymous and unspecified bone collection (Redies et al., 2007).

Unfortunately, the origin of many human remains continues to be uncertain and clarification in some cases is difficult or even impossible. This is partly due to incomplete or nonexistent records (Kästner et al., 2011), lack of financial and human resources of the institutions involved, and sometimes simply because of a lack of enthusiasm to conduct the check (Jütte, 2010). However, removing all unidentified remains with the subsequent intent of reburial is not an adequate solution since this would result in the irretrievable loss of valuable teaching and study material. By obtaining external expertise, the University of Jena was able to retain their bone collection (Redies et al., 2007).

Unsure origin is also one of the main problems in dealing with human remains collected during the colonial period. This situation is playing an increasing role in the Anglo-American area in the already decades long repatriation movement of indigenous groups (see chapter 3.4). Repatriation, also referred to as restitution, implies the return of human remains to the respective ethnic groups from which they originate. Past demands made by various indigenous peoples led to the "Native American Graves Protection and Repatriation Act" (NAGPRA), a federal law providing state-recognized Native American tribes that can prove a "cultural relationship" with specific human remains with the right to claim these remains (For a detailed discussion, see Walker, 2008).

Some collections and museums in German-speaking countries possess human remains suspected of being associated with certain indigenous populations originating from other countries (see chapter 3.4). Requests for the return of such human remains are no longer coming just from the indigenous people of North America, but also from Africa, Asia, and Australia. In 2011, for example, the Berlin University Hospital Charité handed over 20 historical skulls to a Namibian delegation.

Repatriation requests are fraught with the problem of providing a clear determination of a single, cultural, or genetic descendant, a task that is often impossible. In contrast to the destiny of unidentified remains in collections mentioned previously, repatriation does not always entail an obligatory re-burial. Occasionally, the repatriated remains are stored in museums or private archive facilities situated on sacred ground and made accessible to scientists by the associated tribe, thereby providing researchers with the opportunity of future examinations should these be necessary (Walker, 2008).

Assessing a repatriation requirement is fundamentally different from a re-burial request, especially with regard to a possible wrongful doing context. Guidelines for dealing with repatriation requests are provided by the German Museums Association in "Recommendations for the care of human remains in the museums and collections" (DMB, 2013).

1.2 Practical considerations for working at the excavation; Source: Grupe G., Harbeck M., McGlynn G., (2015) "Prehistoric Anthropology," Springer Verlag.

"Close cooperation between anthropologists, archaeologists and excavation technicians is essential when human skeletons are uncovered during archaeological excavations. These different disciplines complement each other, and teamwork always leads to the best results since each field has the necessary competencies. Anthropological knowledge in field and laboratory techniques is prerequisite to ensuring the correct unearthing, *in situ* documentation and exhumation of individual burials or even entire cemeteries. Inexperience or lack of osteological praxis and methodological knowledge inevitably lead to an irretrievable loss of information, even in spite of good archaeological field documentation. This is why the presence of a certified anthropologist at the excavation site is imperative. The presence of an experienced anthropologist specializing in skeletal analysis is particularly essential following the initial discovery of skeletons or bones in the field." Unlike the layperson, their expertise in examining bones deriving from an archaeological context allows them to differentiate between taphonomic alteration caused by burial surroundings from those caused by disease or violence.

In Germany, the number of licensed, freelance anthropologists specializing in skeletal analysis that work with archaeologists, private excavation companies and universities is currently increasing. A list of these freelance "osteo-anthropologists," including names and contact information, is available on the Society for Anthropology website: <http://www.gfanet.de>

Course of action and storage of remains from illegal contexts

According to the German Museums Association and the Quality Assurance Standards of the Society for Anthropology, the following guidelines are recommended for dealing with human remains from contexts wrongful doing, war crimes or crimes against humanity such as those of the Nazi era:

1. Anthropologists trained in osteology must be consulted and present at the excavation.
2. Personal identification must be attempted, and at least societal origins should be determined. A detailed anthropological investigation of the findings is necessary to accomplish this.
3. If identification is possible, the bodily remains shall be given to the descendants.
4. If only a group or societal association is known (e.g., Jewish origin), the remains are to be handed over to official representatives of this group (e.g., Central Council of German Jews).
5. If identity or provenance remain unascertained, but an illegal context is suspected, the remains are to be handled with respect and reburied with dignity.

"Vienna Protocol" for when Jewish or Possibly-Jewish Human Remains are Discovered

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Introduction

For the most part, the victims of the Holocaust have no graves¹, and when the Jewish memorial prayer ('el male rahamim)) is recited on their behalf, the phrase veyanuhu 'al mishkavam be-shalom ("may they repose in peace in their resting places") is omitted. Yet, much as they tried, the Germans and their collaborators did not succeed in concealing their crimes, and bones and skulls of victims persist in appearing in the most awkward moments, not just in abandoned rural killing fields throughout Europe,

but also, and especially, in the anatomy labs of some of its most distinguished universities.²

It is known, for example, that the anatomist August Hirt of the Reichsuniversität of Nazi-occupied Strassburg requested that a group of Jewish prisoners in Auschwitz be especially murdered so that he might complete one of his skeletal collections. So also Hermann Voss and his technician from the Reichsuniversität of Posen acquired the bodies of Jews from a nearby concentration camp to allow them to prepare death masks and de-fleshed skulls, some of which were then sold to the Museum of Natural Science in Vienna.³

It is therefore hardly remarkable that in 2014, at the Free University of Berlin in Dahlem, when a water pipe under a sidewalk needed to be replaced, a sizeable cache of human remains was found, carefully hidden deep underground. The police were called, and, intending well, they proceeded to collect, cremate, and finally bury the ashes in a Christian cemetery, thereby succeeding in horrifying every Jew who heard about the cremation and burial-location. The investigation still continues, but it does turn out that one of the previous tenants of the building adjacent to the faulty water pipe was the Kaiser-Wilhelm Institute of Anthropology. Its director was Otmar von Verschuer, a formidable international expert on twin studies, who was apparently not averse to receiving choice anatomy specimens collected weekly and shipped carefully to him by his Auschwitz-based former student, Josef Mengele.

It was in response to this incident, and others like it, that I was approached by a group of scholars in the field asking for a religious ruling on how Jews would prefer to have their remains treated; they were asking for a protocol for such situations -- likely, as these were, to recur.

A need for a second, slightly different protocol arose as well; this time from a book. In 2016, Professor Susan Mackinnon, Director of the Center for Nerve Injury and Paralysis; the Sydney M., Jr. and Robert H. Schoenberg Professor and Chief, Division of Plastic and Reconstructive Surgery at Washington University in St. Louis, MO, together with her associate Andrew Yee, sought permission from its publisher to reproduce a painting from a classic in the field of anatomy: the Pernkopf Atlas. She has the atlas open in front of her during surgery, Mackinnon told me; there is nothing like it, for visual relief and clarity of detail. Photographs,

apparently, don't even come close. She has unquestionably saved patients with it.

Pernkopf, it turns out, was a rabid Nazi, and the drawings in this Atlas, spectacular as they are, are signed by the artists, sympathizers of the Nazis, with the "SS" logo or Swastika proudly carved into their signatures. The colored drawings in the Atlas, moreover, may well have been copied from the body-parts of victims murdered by the Third Reich.

"May we use these drawings," I was asked, "in the interests of medicine; even, in the interests of medical education?"

A group of scientists and historians from all over the world were convened at Yad Vashem in May 2017 to discuss these issues, and this is where I first presented an earlier version of the protocols that follow.

A) Major Classical Jewish Sources for the Protocol

In this section I list many of the classical texts informing the Protocol, including sources from the Bible, the Talmud, Maimonides ("Rambam"), and other Codes, as well as from the Responsa literature. It also contains my occasional reflections on these sources, intended to help ease the way for readers unfamiliar with these types of materials. Finally --the list of texts presented is hardly exhaustive, but this is because I have already considered and documented many others (including Noda' biYehuda, Hatam Sofer, Maharam Schick, Igrot Moshe, Tzitz Eliezer etc.) in an earlier, related article.⁴

The first obligation when someone dies -- often, but not always, overridden by all other considerations, is the swift burial of the corpse:

And if a man have committed a sin worthy of death, and he is put to death, and thou hang him on a tree: his body shall not remain all night upon the tree, but thou shalt surely bury him that day (for he that is hanged is accursed of G-d:) that thy land be not defiled, which the L-rd thy G-d gives thee for an inheritance. (Deut. 21:22-3)⁵

The Talmud, from which the following extract is drawn, is composed of an early section called the Mishna (3rd C.), and then elaboration on the Mishna called the Gemara, or Talmud (3rd to 6th C.).

And not only of this one [a criminal] did they [sc. The Sages] say it [that the corpse not be left hanging overnight] but whosoever lets his dead lie overnight transgresses a negative command. [However] if he kept him overnight for the sake of his honor, to procure for him a coffin or a shroud, he does not transgress thereby. (Mishna Sanhedrin 46a).⁶

Further Gemara following this Mishna raises the question of whether [immediate] burial is a means to avert disgrace⁷, or is a means of atonement.⁸ What is important here is the notion of burial itself being redemptive.⁹

Again, the Gemara here¹⁰ raises the question whether prompt burial, or for that matter, burial itself, is for the benefit of the deceased or for survivors, and concludes it is for the deceased, implying that the survivors do not have the option to delay burial unless doing so is of benefit to the deceased.

It is forbidden to derive benefit from the deceased, save for his hair, which is permitted for benefit since it is not part of his body. So also his coffin and shrouds are forbidden for benefit. However vessels [objects, material] set-aside for shrouds are not forbidden for benefit until placed in his coffin to be buried with him. For things set aside [for the dead] are not prohibited from benefit. Rambam, Yad, Eivel 14:21

Mishna: All things which are requiring to be buried must not be burned¹¹, and all things which are required to be burnt [e.g. certain animal sacrifices] must not be buried. Gemara: ...And no benefit may be derived from the crumbled flesh of a corpse... (B. Temura, 14a).

Ash from cremation, where the cremation was against the will of the deceased, as is the case in persecutions, may be buried.¹² If it is not known whether all the burnt victims were Jews, the corpses may be buried together in a properly demarcated area of a Jewish cemetery.¹³

On the Sabbath, based on biblical injunction, it is forbidden to carry an object from a public to a private domain –say from your house (private domain) to the street (public domain), or vice versa. But if I carry a person on a litter from his house to the street, the Mishna explains¹⁴, then I have not violated the prohibition of carrying, because a human being is never described as a burden, and in fact "carries

himself."¹⁵ But if one carries a corpse, one does indeed violate this prohibition, because a corpse does not "carry itself." The Mishna now proceeds: so how much of the corpse –what measure—do I need to carry to violate the prohibition? –The size of an olive.

R Yom Tov Lipman Heller of Kraków (18th C) in his commentary to this Mishna: "It is also possible, that [with respect to a corpse] if the [size of the remains is indeed] less than the size of an olive, there is [also] no obligation to bury it."¹⁶ There are some who disagree with this position, including R Samuel Strashun,¹⁷ but the majority of decisors appear to support it, as documented in footnote.¹⁶

There are three modern compendia, each widely accepted in the halakhic world, that serve as encyclopedic gathering-places for Jewish laws having to do with interment and the dead. The first is the Kol Bo of the late R. Yekutiel Grunwald of Columbus, Ohio, to which we have already referred. Grunwald came from the Hungarian Yeshiva world, known for its inexhaustible capacity to remember everything, and then associate with enormous creativity from one set of laws to the other. The second was the late R. Yechiel Michel Tukochinsky, author of the *Gesher haHaim*, a Jerusalem-based Yeshiva administrator, with origins in the Lithuanian Yeshiva world, with its contrasting capacity for penetrating analysis, leading often to surprising conclusions. The third is the *Yesodai Semachot* of R. Aaron Felder, whose work by this name, in addition to containing his own analyses and guidance, records most significantly the rulings of his teacher, R. Moses Feinstein, the most widely accepted American halakhic decisor of the twentieth century, and of his father, R Gedaliah Felder, who had the same reputation in Canada.

Our case is not uncharacteristic of the Lithuanian method. In a section of his work devoted to corpses burned during persecution, R. Tukochinsky unequivocally recommends their interment, not so much because of a prohibition of not leaving one's dead unburied¹⁸, but to ensure that no BENEFIT (which prohibition continues to be operative) be ever derived from these remains¹⁹. He bases his decision on the Temura Gemara cited above.

Responsum of R. Isser Yehuda Untermann, late Ashkenazi Chief Rabbi of Israel, regarding sacks of earth containing the remains of Jewish martyrs preparing to be interred in Israel:

"...my opinion is to bury the sacks in a separate grave in the cemetery, and to erect a massive monument over it explaining just what is buried here..."²⁰ (This will from here on in be referred to as the Untermann Protocol).

B) The Ensuing Preamble to the Protocol:

Whereas:

1. The classic Jewish legal tradition requires burial of its dead,
2. and requires burial without delay,
3. and maintains that such burial is of benefit to the mourners permitting them to grieve,²¹
4. and because such burial is also of benefit to the dead:
 - a) since the remains are now putrefying and ugly and should therefore not be seen by others²²; b) because burial is part of the process of forgiveness for the sins of deceased,
5. and since it is prohibited to derive any BENEFIT from both corpses and objects on them or in their immediate vicinity,
6. and since all cremation is strictly prohibited,
7. and since bodies burned at the request of the deceased may not be interred in a Jewish cemetery,
8. but bodies cremated against the will of the deceased, must be buried in a Jewish cemetery,
9. and since, while body parts smaller than the size of an olive need not be buried, but are still prohibited from benefit,
10. and whereas the remains of anonymous dead discovered inadvertently assume the halakhic status of metay mitzvah – imposing the obligation of incumbent, immediate burial upon its finder – to the extent that the discovered anonymous Jewish deceased legally acquires deed and title to the earth upon which he is found.²³

C) The Protocol and Recommendations

1. When human remains are (inadvertently) found, local legal (forensic) civic and religious authorities need to be consulted immediately.
2. If there is even a remote chance that such remains may be of Jewish origin, the nearest Jewish rabbinic authorities need to be consulted immediately.
3. If a full cemetery or killing field is come upon, marked or unmarked, then except under the rarest circumstances, reinterment to another site is not recommended,²⁴ and ignoring these remains so as to, for example, construct real estate (e.g. the shopping center in Vilnius) over them, is extraordinarily offensive to Jewish custom, life, traditions, and values and to the memories of victims, if victims they be, and should be vociferously avoided. Under no circumstances should they be either cremated, or buried in a gentile cemetery.
4. Since not all rabbis are expert in these matters, a copy of these Protocols should be forwarded to the local rabbinic administration in which the remains are discovered, and a central clearinghouse established.
5. The remains should be immediately covered and kept covered, and where humanly possible, buried the same day²⁵, in a Jewish cemetery close to where discovered, or sent for burial in Israel.
6. It is permitted to delay reinterment in order to do the forensic investigation to identify some or all of the victims or their persecutors.²⁶
7. Survivor families who would normally mourn such victims need to observe shiva rites on the day itself of reinterment.
8. If the discoveries are likely a mixture of gentiles and Jews, all may be buried in a demarcated area of a Jewish cemetery.²⁷
9. If the remains found are smaller than the size of an olive, the obligation for immediate burial is lifted, but the prohibition against benefit is not, and so all such discoveries should, in fact, be buried, not forgetting the Untermann Protocol discussed above.²⁸
10. There is a rich Jewish legal literature on the impermissibility of photographing the dead, for reasons

already cited. Moreover, according to some authorities including Strashun²⁹ and others, this might extend to histology slides and similar minute samples so as to preclude violating the prohibition of "benefit." Where no issues of pikuach nefesh or medical education are involved, competent local halakhic decisors should be consulted regarding their disposition.

11. All graves of reinterred remains, or of remains of this type buried for the first time, need to bear elaborate explanatory markings as to their nature³⁰ ("the Untermann Protocol").

12. In a far-ranging discussion on the permissibility of human autopsy in Jewish Law, Rabbi Doctor Abraham Steinberg speaks about the permissibility of autopsy for the purposes of discovering the cause of death that could save the lives of others, as in a plague, and of its permissibility in teaching medicine, and his study is too nuanced and lengthy to summarize here.³¹ But the drawings in the Pernkopf Atlas, drawn by artists and scientists mostly with Nazi sympathies, based on corpses of prisoners executed by rogue civilian and military courts of the Third Reich, would normally fall under the prohibition of benefit from the dead. They might also likely fall under the prohibition of photographing the dead, which R. Grunwald prohibits,³² and of gazing at the dead, which is also prohibited.³³ Yet their use would certainly be permitted by most authorities to help save lives (pikuach nefesh), as during surgery, and, following other authorities, even for medical education.³⁴ In all cases where using the Pernkopf Atlas becomes permissible, I would invoke the Untermann Protocol, which requires making it known to one and all just exactly what these drawings are. In this way, the dead are accorded at least some of the dignity to which they are entitled.

13. If the remains found have been burned, and appear to be the result of unsought violence, then their charred or cremated remains must be buried in a Jewish cemetery.

14. If fresh remains are found, not yet buried, which were clearly the result of a murder, then there is no need for a tahara (ritual washing of the body).³⁵

15. A killing field or large mass grave should probably not be disturbed but formally designated as a Jewish cemetery, a ritual procedure familiar to many rabbis and Jewish burial societies. This ritual would include establishing unambiguous formal perimeters for all the

graves in the area (for purposes of establishing sacred space and for tziyun laKohanim³⁶). A broad, fully-descriptive plaque detailing the events that took place on this site should be erected at once, following the Untermann Protocol.³⁷

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Footnotes:

1 The reference here is to the post-Wannsee murders. I am aware, of course, of the earlier killing fields in the Ukraine, where bodies of victims were shot and left in mass graves.

2 We can now reap the benefit of Dr. Sabine Hildebrandt's masterpiece of science and decorum on this phenomenon, *The Anatomy of Murder: Ethical Transgressions and Anatomical Science during the Third Reich* (Oxford and New York, 2016).

3 Götz Aly, "The Posen Diaries of the Anatomist Hermann Voss. in Götz Aly, Peter Chroust and Christian Pross (eds.) *Cleansing the Fatherland: Nazi Medicine and Racial Hygiene* (Baltimore: 1994).

4 Joseph A. Polak, "Exhuming Their Neighbors: A Halakhik Inquiry," *Tradition*, 35:4 (2001), 23- 43.

5 Koren Bible, trans. Harold Fisch.

6 Soncino translation, slightly adapted. See also, Nachmanides, *Commentary on the Bible*, (Deut. 21) that this prohibition applies with greater severity in the Land of Israel. See also R. Chaim David haLevi, *Responsa Mayim Chaim* (Tel Aviv, 1991), p. 28.

7 Decomposition and putrefaction make the dead loathsome: burial may be intended to spare them and their relatives that disgrace (Soncino note).

8 For the sins committed during the lifetime (ibid).

9 There is a broad rabbinic literature, mostly Mishnaic in origin, which considers the disposal of the remains of sacrificial animals set aside for sacred purposes and subsequently incurring blemishes which then precluded them from being offered at the temple altar (remembering that by the time the Mishna is committed to writing (3rd C.), animal sacrifice has been discontinued for almost 300 years). The animals in question may neither be burnt, nor discarded, nor may any benefit of any kind be drawn from their remains. Indeed, the only respectful thing to do with their carcasses, the tradition teaches, that is equal to their sacerdotal status, is to bury them. See Mishna Hulin, 10:2, M. Bechorot 1:7 and 2:3, Tmura 7:4-5. From this we see that burial, in Judaism, constitutes an accordance of deep respect.

10 B. Sanhedrin 47a.

11 This Mishna is thus the basis for the Jewish prohibition against cremation.

12 Y.Y. Shmelkes, Resp. Bet Yitzchak, Yoreh De'ah, 125, and Yekutieli Y. Grunwald, Kol Bo 'al Avelut (New York: Feldheim, 1988), p. 183.

13 Resp. Harei Besamim, cited in Grunwald, op. cit, p.189.

14 Shabbat 10:5

15 And the litter itself, insofar as it is carrying a person who "carries himself", so-to-speak, is thus not carrying anything. This is actually not the final ruling with respect to the litter.

16 Ibid. Also cited by R. Solomon Eiger (probably on behalf of his father, R Akiva Eiger) in his gloss to the Code of Jewish Law, Gilayon haMaharsha, Yoreh De'ah 362:2. R. Akiva Eiger confirms this independently in his own Tosafot on this Mishna in Shabbat. So also R. Isaiah Berlin-Pick, Rishon leTziyon on the Mishna Shabbat (op. cit.), and who sends us to R. Judah Rozanes, Mishne laMelech on Maimonides, Yad Hahazaka, end of Eivel, to the effect that there is no obligation to inter olive-size portions of a corpse – what needs to be buried are "rosho veRubo" –the head and majority of the body.

17 Rashash on the Mishna.

18 He is not convinced that the obligation for charred remains is identical to that of a normal corpse. The probable basis for such a conclusion, I would suggest, may be found in Bavli Kidushin 58a, citing what is learned from Exodus 22:30 s.v. "throw it to the dogs." See also the discussion by Kehati on Tmura 7:7, s.v. "veChulin sheNishchetu".

19 Gesher haChaim, vol. 1, p.154.

20 Resp. Shevet miYehuda, vol. 2, section Yoreh De'ah, #54.

21 Modern psychological sources.

22 Ma'avar Yabok.

23 A full discussion of the parameters of "met mitzvah" may be found in my earlier article, Polak, op. cit.

24 See esp., Rozin, J., Tzafnat Pa'aneah 'al Hatorah, Deuteronomium 19:14, including his sources and the footnotes.

25 The prohibition against lina kicks in upon discovery.

26 Polak, op. cit.

27 Grunwald, Kol Bo, op. cit.

28 For an extended discussion and rulings, see Shaul Yisraeli, Resp. 'Amud haYemini, resp.34, 3rd ed. (Machon haTorah vechaMedina, Jersusalem, n.d.).

29 Op. cit.

30 Unterman, see note 17 above.

31 Avraham Steinberg, "Autopsy," in the Encyclopedia of Jewish Medical Ethics (Feldheim, New York, 2003), pp. 73-89.

32 Op. cit., p. 36.

33 Ma'avar Yabok, essay 25, p. 95.

34 Steinberg, op. cit.

35 Aaron Felder, Yesodei Smochos (Balsham, New York, 1974), p. 30.

36 Burnt corpses, which are the rule rather than the exception in places like Sobibór, do not pose a tum'a-problem for kohanim. See Rambam, Yad Hahazaka, Laws of Tum'at Met, 2:6 and 3:9. See also Kesef Mishneh on 3:9, and his citations there from Bavli and Yerushalmi. See also Menahem Mendel Schneerson, Liqutei Sihot, vol. 18, Huqat, 2:3.

37 Protocol 15 was added in response to an inquiry about the ongoing forensic investigation proceeding at this time on the grounds of what was the Sobibór concentration camp. See also Mishna Oholot 16:3 and 16:5.

Symposium Program - Jerusalem, May 14, 2017

Yad Vashem International Institute for Holocaust Research - Special Symposium



1930s photo showing Nazi flags flying on the Kaiser Wilhelm Institute of Anthropology, Human Heredity and Eugenics.

Image Credit: Archives of the Max Planck Society, Berlin. Used with permission.

"The Remains of Jewish Martyrs Who Were Victims of Nazi Medical Experiments - Former Kaiser Wilhelm Inst. of Anthropology, Human Heredity and Eugenics: Berlin-Dahlem"

Jerusalem, May 14, 2017 – Symposium Program:

08:45 - 08:50

Welcome: Prof. Dan Michman, Head, The International Institute for Holocaust Research & John Najmann Chair of Holocaust Studies, Yad Vashem

08:50 - 09:00 Introduction: Prof. (Em.) William Seidelman, Symposium Chair.

09:00 - 09:25 "The discovery and disposition of the remains of Nazi victims in German universities and research institutes: 1983-2017" Dr. Götz Aly, Historian/Author, Berlin

09:25 - 09:45: Discussion

09:45 - 10:10 "The Kaiser-Wilhelm/Max Planck Institutes and the exploitation of the brains of murdered victims of Nazi 'euthanasia'" Prof. (Em.) Heinz Wässle, Max-Planck Institute for Brain Research, Frankfurt/Main; Chair, President's Commission on 'Euthanasia' Victims, Max Planck Society.

10:10 - 10:30: Discussion

10:30 - 10:55 "Ethical transgressions on the bodies of deceased victims of Nazi terror by German and Austrian universities and research institutes" Prof. Sabine Hildebrandt, Harvard Medical School, Boston Children's Hospital

10:55 - 11:15: Discussion

11:15 - 11:25 Refreshments

11:25 - 12:50 "From Dahlem to Auschwitz to Dahlem: The careers and research of Drs. Josef Mengele and Otmar von Verschuer" Prof. Paul Weindling, Wellcome Trust Research Professor in the History of Medicine, Oxford-Brookes University

11:50 -12:10: Discussion 12: 10-12:35 "The skeletal evidence. Possible approaches and methods" Dr. Margit Berner, Vienna Museum of Natural History

12:35 -12:55 Discussion

12:55 -13:20 "Applied archaeology in the identification of the victims of Sobibor." Yoram Haimi, Yad Vashem

13:20 -13:40 Discussion

13:40 - 14:00 Lunch

14:00 - 14:30 Archeologist. An expert cognizant of the Berlin excavations.

14:30 - 15:30 Discussion

15:30 - 15:55 Caring for the remains of the dead in Jewish tradition: Rabbi Joseph Polak: Chief Justice of the Dayanim (religious judges) of Boston, Massachusetts.

15:55 -16:15 Discussion

16:15 - 16:25 Break

16:25 -17:25 The next steps: Statutory guidelines, policy and legislation re future discoveries of remains of victims of Nazi medical crimes

17:25 - 17:30 Closure: "Vision of the Valley of Dry Bones" - history, memory and commitment. Dr. Miriam Offer: Senior Lecturer, Western Galilee Academic College.

Conflict of Interest Statement

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