YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**20th Century Teshuvot**

**By Rav Gidon Rothstein**

**Shiur #03: R. Kook’s View of the Problems with Cremation**

The *teshuva*of R. Kook’s I have chosen to look at this time, *Da’at Kohen*197, has three factors recommending it. First, it is misdated as having been written 13 Tevet 5898, while R. Kook passed away on the 3rd of Elul 5895/Sept. 1935. (As it happens, I am writing my first draft of this on the 3rd of Elul, and had not known it was R. Kook’s *yahrzeit*.) Second, he wrote it to a rabbi in Cape Town, and thus it serves as a reminder that the world was not as small or unglobalized as we sometimes think – although the recipient, a R. Moshe Chaim Mirvish, was a [pioneering rabbi](https://www.academia.edu/34393500/Remembering_Cape_Towns_pioneer_Rabbi) in South Africa. And third – the main reason – its topic, cremation, has come around again to be of concern in our times, a reminder that, sadly, Jewish nonobservance goes in cycles, old problems arising as if new in various generations.

Let’s see what he had to say about it.

**Were It Only a Custom**

The *teshuva*comes to explain the *mecha’a*, statement of protest, R. Kook appended to the end of the letter. To allay your suspense, the *mecha’a* simply decries the breach by those seeking to adopt non-Jewish ways and burn the remains of those who have passed away. The signatories notify *chevrot kadisha*, burial societies, not to involve themselves with the ashes of the cremated and not to accept them for burial in a Jewish grave.

R. Kook lets his correspondent know he had gathered a group of important rabbis in his home, who all signed. Among the list, I recognized the name of R. Tzvi Pesach Frank, longtime rabbi of Jerusalem; the others were not familiar, other than R. Chaim Heller (although I don’t know how it could be the well-known one, since I don’t think he was in Israel then).

It was obvious to them that cremation started with negative motives – a desire to abandon or change Torah and the Jewish religion. This is always hard; our sense that someone’s motives conflict with those of the Torah stimulates a much greater suspicion of their ideas/suggestions/practices, and leads to less willingness to find compromises or accommodations. In our times, when some are sure others’ motives are a problem, there will be *melamdei zekhut*of two types: those who are sure the motives are not as bad as we might think, and those who are sure the best way to bring people closer is always to be gentle with them, work with them, welcome them, etc. R. Kook himself was known for the latter approach in many cases, and this responsum is an interesting corrective – a reminder that he also sometimes stood firmly against violations of religion.

Assume for a second, he says, that burial in the ground were “only” a custom; we would still be obligated to adhere to it, as the Gemara adjures us to be careful to continue the customs of our forefathers. (This statement is made in *Beitza* 4b, in the context of observing a second day of holidays outside of Israel even though the establishment of a fixed calendar seems to have rendered the practice irrelevant.) *Yerushalmi Bava Metzia* 7:1 even has a statement by R. Hoshaya that custom can [*sometimes* – an idea we would have to investigate carefully before applying in practice] override the laws on the books.

**Torah Law or Roots**

Except – burial is clearly not “just” a custom. Rambam held that burial involves both a prohibition and an obligation, based on *Devarim*21:23, where the verb “to bury” is doubled. While we might argue that the verse does not specifically require burial in the ground, it clearly involves putting the body somewhere, not burning it.

When the Torah puts a model in place, regardless of technical level of obligation, we have no right to decide some other way is better. R. Kook sources this idea to Rashbam’s explanation (*Bava Batra* 81b) of the principle of *kol ha-raui le-bila* (“anything fit to be mixed”): the *kohanim*did not need to mix the oil and flour in flour offerings in the *Beit Ha-Mikdash*, but the proportions had to be conducive to mixing – with enough oil and little enough flour that it would be *possible* to mix them. Rashbam says the Gemara based this on the fact that the Torah refers to pouring the oil and flour *and mixing it*. Given that tradition stated it was not in fact necessary to mix them, there had to be some other reason the Torah mentioned mixing.

Returning to our case, perhaps the Torah did not set up a specific obligation to bury, but the bare fact of the Torah’s speaking of it means there must be some element of burial in the way we deal with the deceased, and R. Kook is sure it is the fact that we do not destroy the body. Moreover, he says, the Torah doubles the verb for burial in order to tell us it must go in the ground. (I think he was worried people would be unconvinced by the inference, and offered another level of argument. Really, the inference teaches us we must bury. Even without, the fact that the Torah spoke of it must imply some obligatory element, to rule out destruction of the body.)

**Refusal to Bury Is a Sin We Cannot Abet**

*Sanhedrin*46b wonders about a man who leaves word he does not wish to be buried. Were burial solely a way to atone for sins – via the suffering involved in decomposition, as the Gemara assumed the soul and body were connected enough after death for the pain of decomposition to “count” – he or she could theoretically declare disinterest in the benefit. The Gemara concludes, however, that it is a matter of *bizayon*, a denigration of the human form.

R. Kook draws our attention to the only reason the Gemara thought it possible the Jew *could*reject burial, that she or he wished to forego the atonement that burial and decomposition provide, and notes that this is also unacceptable – as rejecting atonement involves a sinful disregard for the fate of one’s soul. Part of Jewish faith is the awareness that we have a soul, and that it is our job to improve that soul as much as we can; for a Jew to see and reject a path to atonement and spiritual cleansing itself shows the Jew’s sinfulness.

His understanding of the issues shows us why other Jews may not help one who wishes to avoid burial, who is finding a way to lose out on atonement. We believers are certain that atonement matters and are not allowed to take part in a fellow Jew’s choice to discard an opportunity for it.

**Who Defines What Counts As Degrading**

The Gemara viewed non-burial as *bizyona*, disgraceful. The *Kessef Mishneh* (*Hilkhot Avel* 12:1) points out that the disgrace is to humanity, not the particular family; if it were, they might argue they don’t care. To refute the possible counterargument, that people in our times (whenever that is) no longer think of cremation as a mistreatment of human remains, R. Kook enlightens us as to whose opinion counts for such issues. His point is that those who think cremation is not mistreatment are plain wrong, because their view is outweighed by the consensus.

A consensus is whatever people in general, especially the Jewish people, hold, with the significant caveat that he is sure the “Jewish people” for these purposes consists of the observant who hold to traditional faith. (I think he means those who are observant in practice and faithful in worldview.) Since *those*Jews continue to be aware of what is wrong in cremation, and since it is clearly wrong to abandon a longstanding practice of our nation, he sees no justification for it.

[The idea that only certain people’s opinions count for establishing the consensus of the Jewish people is both clear and also problematic, since one first step in making a claim will be to reject those who disagree as no longer part of the observant.]

**Imitating Non-Jewish Practices**

Cremation also fails because it was clearly adopted from non-Jews. R. Kook points us to *Sanhedrin*52b, where R. Yehuda objected to chopping a criminal’s head off with a sword because it was the way non-Jewish kings put people to death. (Feeling there was no other choice, R. Yehuda suggested a model of *hereg* that he admitted was gruesome.) His premise that we do not adopt non-Jews’ practices was accepted, though *hereg*was determined to be an exception because this form of death penalty is written in the Torah.

The logic applies better to burial, which honors the deceased and is written in the Torah. Were it only a custom, we would still have to continue it rather than take on the ways of handling human remains chosen by those who have a completely different worldview.

A *mishna* in *Chullin*41a makes the same point, prohibiting slaughtering an animal in a pit because that was how non-Jews did it, and *Megilla* 24b rejects a *chazzan*who insists on being dressed in the style of non-Jewish prayer leaders. *Rivash*224 adds that it need not even be a practice non-Jews considered necessary; a Jew’s insistence on something Judaism does not value makes us worry he has absorbed heretical ideas. All the more so here, where Jews have always insisted on burial and some are now looking toward cremation.

**Rambam and Reasons for *Mitzvot***

Earlier in the *teshuva*, R. Kook reminded us of the Talmudic debate about whether burial is for atonement or to treat the deceased with due respect. Rambam states that burial is a mitzva, but does not give the Gemara’s reason of *bizayon*. R. Kook assumes it is because Rambam’s position is that we do not establish *halakha* based on our understanding of reasons for *mitzvot*. The Torah obligated burial, so we must bury, and the why isn’t our concern.

It's a surprising stance for Rambam, who spent the last twenty-five chapters of *Moreh Nevukhim*giving reasons for *mitzvot* despite a passage in the Gemara that seems to say the opposite. For instance, *Berakhot*33b tells us to stop a *chazzan*who says *al kan tzippor yagi’u rachamecha*, Your mercies reach a bird’s nest [implying the reason for the mitzva to send away a mother bird before taking the babies stems from God’s mercy], because God’s laws are decrees, not mercy. Rambam (*Moreh Nevukhim* III, 48) agrees there was such a view, but asserts that we follow other Talmudic views, according to which there are reasons.

R. Kook cites a commentator on the Guide, R. Shem Tov Ibn Falaquera, who noted that Rambam in fact codifies this rule in the *Mishneh Torah*: we do not allow the c*hazzan*to pray that way. This leads R. Kook to assume Rambam bifurcated; in his statements of *halakha*, he disregarded all reasons for *mitzvot*, even as he made a philosophical point of assuming there are such reasons. (There could be other answers, too, but this is not the venue.)

**The Belief Problem**

R. Kook later goes on to say he sees no reason to bury the ashes of one who was cremated. We might have thought it protects *kohanim*from accidentally becoming ritually impure, except that ashes do not convey *tum’a* (impurity). Without a reason of our own to do it, providing some sort of burial would give the sense this was an acceptable option, a sense we are not allowed to convey.

Now we find out that R. Kook buried the lede, because here he says burial expresses and fortifies our Jewish belief in the bodily resurrection of the dead, a central principle of the Torah. As *Daniel*12:2 says, “Many of those who sleep in the ground will awake.” Cremation denies this, and we can have no part of such denial.

(This is a deceptively elegant line. The first *mishna* of the last chapter of *Sanhedrin*declares the necessity of belief in a Scriptural source for bodily resurrection, although the Gemara there struggles to identify an ineluctable verse or verses. Rambam was accused of not believing in resurrection of the dead because of how he presented it in his writings, forcing him to write a letter asserting his faith. There, he pointed to this verse in *Daniel*as the sole certain source, and it only takes one, he says. R. Kook has compressed a whole history of discussion into one short line.)

The cremators could counter that their practice need not contradict this belief, because God can resurrect ashes as easily as decomposed bodies, as traditional Jews certainly assume for martyrs burned by persecutors – an idea Ramban defended at length in his *Sha’ar Ha-Gemul*, his treatise on reward and punishment. (Ramban and R. Kook were discussing people burnt at the stake in Talmudic times, by the Spanish Inquisition, and by other oppressors; sadly, since R. Kook wrote this, we have to add all the martyrs cremated during the Sho’a.)

However, when the Torah laid out a practice, ratified by Jewish custom, which increases awareness of a central Jewish belief, there is no excuse for dispensing with it. It is further prohibited to aid and abet those who do, even only by offering them any kind of ritual or honor, when God will deny them honor as well.

R. Kook was welcoming and sought opportunities to connect, but also stood firm when people tried to tear down Jewish practice and custom.