
Concerning Cremation

One Rabbi's Perspective

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Introduction

Perhaps it was all simpler years ago. When a Jew died, family members knew what they were traditionally required to do. And if they didn't know what to do, they asked their rabbi, and then they followed their rabbi's instructions—many times unquestioningly. Jews buried their dead in the traditional Jewish way, simply because that was the custom.

Today things are not so simple. Following the traditional pattern is no longer the knee-jerk reaction it once was. Many Jews today are more assertive about asking for the reason behind this or that tradition. In addition, many question whether this or that traditional requirement really *is* required—pushing the envelope, so to speak, of the notion of “requirement,” asserting their right to deviate from tradition.

One of the traditions related to Jewish funerals and mourning is the prohibition of cremation. Many ask: Does Jewish law really prohibit cremation? Why? How compelling is this prohibition today?

The matter is complicated further when it becomes more than a theoretical question: when a family member indicates his or her desire to be cremated after death. To what extent (if at all) does the traditional prohibition of cremation outweigh the family's obligation to honor their loved one's request? This provides a daunting dilemma to grieving family members, and an equally daunting dilemma to the rabbi, whose professional mandate is the paradoxical task of being sensitive and responsive to people's needs, on the one hand, and being faithful to the letter and the spirit of Jewish law and tradition, on the other hand.

This article is intended for various categories of Jews alluded to above:

Jews who are committed to honoring the traditional Jewish prohibition of cremation, but who want to know the reasons for it; Jews who are contemplating cremation for themselves after their own deaths; and Jews who are struggling with a request for cremation made by a family member. It is an attempt to present the bases and significance of the Jewish prohibition of cremation, and to present some of the ways in which one rabbi has struggled with this complicated issue.

Why Burial?

Burial in the ground is axiomatic in Jewish tradition. From the story of Abraham procuring a suitable burial place for his wife Sarah,¹ through numerous other biblical narratives, burial in the ground was the pattern throughout biblical literature and laid the foundation for post-biblical Judaism.

It is perhaps noteworthy that the following summation of the biblical position comes from the pen of a Reform rabbi, writing at the end of the nineteenth century: “The Bible proves beyond any doubt that since the day on which Abraham bought the Cave at Machpela for a family sepulchre, burying was the one and exclusive manner of disposing of corpses.”²

In addition to biblical narratives that describe burial of the dead, a general observation about humanity, found early in the Book of Genesis, provides another basis for burial: “אִתְּךָ יָשָׁב [For dust you are] אֶתְּרָא יָשָׁב לָאָרֶץ [and to dust you shall return].”³ One reason that burial in the ground is seen by our tradition as the only appropriate disposition of our physical remains is that it is in sync with the “cosmic order”: we come from Nature, and we return to Nature. This is true both symbolically and literally. The Bible tells us: “אֱלֹהֵינוּ יָצַק אֶת הָאָדָם מִדָּוָר [The Lord God formed Man {*adam*} from the dust of the earth {*adamah*}]”⁴ Beyond the Bible's description of our origin in the earth, it is also literally true that we come from the earth: the cells in our bodies are derived from the food we eat, all of which originates (directly or indirectly) in the earth. Burial in the earth, returning our physical bodies to the earth from which we came, means letting Nature take its course, and there's tremendous profundity in this—both psychologically (in terms of acceptance of death) and spiritually (in terms of putting death in its natural place in the cosmic scheme of things). And Jewish tradition maintains that anything that unnaturally interferes with this process—either impeding it (e.g., embalming) or hastening it (e.g., cremation)—is forbidden.

But there is a specific biblical/halakhic basis for burial in the ground. In the laws related to capital punishment, the Bible tells us: “וְיָשָׁב אֶת הָאָדָם אֶת הָאָרֶץ [An executed criminal's] body shall not remain all night upon a tree, אֲדָמָה אֶת הָאָדָם וְיָשָׁב אֶת הָאָרֶץ [but you shall surely bury him the same day.]”⁵ In a world in which the bodies of executed criminals were publicly displayed and perhaps never buried at all, the Bible mandated a “proper burial” even for such a criminal.

The Talmud sees this as the halakhic basis for requiring burial in the

ground for *all* people: "התורה מן הקבורה וזו התורה גמירי" [Where is {the obligation of} burial alluded to in the Torah?] תקבור תקבור כי קבור לומר כי קבור [In the verse, 'You shall surely bury him.']⁷⁶

Moses Maimonides makes clear that burial is required for all Jews: "ואצות עשה לקבור את כל הרוגי בית דין ביום התורה" [It is a positive commandment to bury all executed criminals on the day of their execution.] ותצו עשה לקבור את כל הרוגי בית דין ביום התורה [as it is written, 'You shall surely bury him the same day.'] ותצו עשה לקבור את כל הרוגי בית דין ביום התורה [this requirement applies] not only to executed criminals;] ולא תעשה בלא עובר עולין בלא תעשה [And {this requirement applies} not only to executed criminals;] ולא תעשה בלא עובר עולין בלא תעשה [but anyone who delays the burial of his dead violates a negative commandment.]⁷⁷ Long before Maimonides' time, capital punishment was no longer imposed by Jewish law. What is halakically relevant in this passage, then, are two obligations regarding deceased Jews: promptness of burial¹⁰ and burial itself.

Elsewhere, the Talmud insists on burial of the dead, based on a different biblical antecedent—and the theological notion of *Imitatio Dei*, imitating God. In a discussion of God's attributes of mercy—and our obligation to emulate those attributes of mercy¹¹—the Talmud says: "קבור אתה ביום קבורתו" [The Holy one, blessed be He, buried the dead;] ואתה ביום קבורתו [for it is written: 'And He buried him' in the valley.]¹² ואתה ביום קבורתו [Thus you shall bury the dead.]¹⁴

It is not only the letter of the law that argues in favor of burial in the ground (although, for halakically-committed Jews, the demand of halakhah, in and of itself, is certainly a compelling factor). Rabbi Chaim Steinmetz, writing in a recent issue of *Moment* magazine, presents a number of "syn-bolic" reasons for burial in the ground. "Burial is considered the most respectful way to treat the body of the deceased," he writes. "The Talmud compares the dead body to a Torah scroll that is no longer usable. . . . Out of respect, we bury an unusable Torah scroll, and it is forbidden to burn it."¹⁵ We are taught to revere the Torah—not only its teachings, but a physical *sefer* Torah, as well; and not only a *sefer* Torah when it is used, but even when it is no longer usable. Our tradition also teaches us to respect human beings—not only their essence, but even their physical remains. To burn a *sefer* Torah is unthinkable; burial in sanctified ground is its appropriate disposition. How can we demand anything less regarding a human body?

Rabbi Steinmetz cites another symbolic reason for burial in the earth, gleaned from the pen of Rabbi Yehiel M. Tuchinski:¹⁶ "He says that burial represents the body's return to mother earth, the source of all life, the provider of food, and becoming one with it, a person's body can become part of the earth's life-giving magic."¹⁷

A similar insight is echoed by a contemporary, popular source, the recent Disney movie *The Lion King*, in which Mufasa offers the following observation to his son Simba: "Everything you see exists together in a delicate balance. . . . When we die, our bodies become the grass, and the antelope eat the grass. And so, we are all connected in the Great Circle of Life."¹⁸

Finally, Rabbi Steinmetz argues that, even if Jewish law did not mandate

burial in the ground—which it does—another consideration argues in favor of it: it is the traditional Jewish way. "The clear historical evidence that it was an ancient Jewish custom to practice underground burial and not to cremate is significant, for even if there was no direct halachic warrant for burial, it would be an important part of our folk religion and culture. It is also the last religious act in any person's life."¹⁸

Why Not Cremation?

Up to this point, we have presented considerations *in favor* of burial in the ground. In addition to those, there are a number of considerations that argue *against* cremation in particular.

Pagan Associations

The first is the ancient association of cremation with paganism. The Talmud sees cremation as a forbidden idolatrous practice: "שורפיה" [Any death that is accompanied by burning] כורבנים [constitutes paganism.]¹⁹

As Rabbi Maurice Lamm explains, "It is an offensive act, for it does violence to the spirit and letter of Jewish law, which never, in the long past, sanctioned the ancient pagan practice of burning on the pyre."²⁰

We should not underestimate the relevance of this anti-pagan element in Judaism. That the religion of Israel (that which later evolved into what we call Judaism) was, first and foremost, a religious revolution against the paganism of the Ancient Near East, is clear to students of the Bible and of Ancient Judaism. That the Bible is a polemic against Ancient Near Eastern paganism is abundantly clear.²¹ One might even say that the refutation of paganism—along with the concomitant assertion of monotheism—was the original *raison d'être* of Judaism!

Many of us, in our study of the Bible, even in our learning the weekly Torah portion in the synagogue, appreciate and applaud the ongoing anti-pagan polemic in the Bible. In addition, numerous practices were prohibited by biblical law because of their association with paganism—and many remain forbidden according to contemporary Jewish law as well.

But is it really appropriate essentially to say: "It's very nice to appreciate the anti-pagan stance in the Bible—but that doesn't have any relevance to my life"? Certainly not! If anti-paganism was central in ancient Judaism, maintaining that stance of anti-paganism—of pro-monotheism—should be central in our Jewish concerns as well.

Desecration

A second compelling argument against cremation is that fundamentally it is a desecration of a human body. We should not use the word "desecration"

lightly: it means negating the sanctity of something that is holy. The human body is a holy object. It is especially holy while it is the repository of our souls, and Judaism is very specific about what may or may not be done with or to our bodies—in terms of safeguarding health,²² maintaining the sanctity of eating,²³ and even maintaining the sanctity of our sexual relations.²⁴

But the holiness of the human body does not terminate at the moment of death. A dead body is holy as well, and Jewish law mandates that any trifling with the body nullifies that sanctity and, therefore, is forbidden.²⁵

There is a significant theological basis for the prohibition of cremation. Rabbi Elliot N. Dorff writes: "The prohibition derives from a key theological concept in Judaism, namely, that God owns our bodies and therefore we must honor them in death as in life. To cremate would be to destroy property which is not ours to destroy."²⁶

If the traditional Jewish arguments against cremation have been compelling for millennia—and, I believe, they have been—perhaps an even more compelling argument emerges from the contemporary association between cremation and the Holocaust.²⁷ As a rabbinic colleague of mine has often said, "We've had enough Jewish bodies burned this century; we don't need to add to that number." Or as Rabbi Dorff writes, "On a more emotional plane . . . in the generation after the Holocaust I find it hard to empathize with those who would do to the bodies of their loved ones what the Nazis did to our people."²⁸

Death-denial

Another compelling argument against cremation is that, I believe, it is part of the American tradition of death-denial. Ours is a death-denying and grief-denying culture. We hide behind euphemisms such as "passed away." We try to shield ourselves from the reality of death, to "soften" that reality, with flowers at funerals, AstroTurf at cemeteries, and burial outside the presence of mourners. Our American socialization tells us that public displays of grief are inappropriate. And cremation—favored by some, ostensibly to avoid the distasteful spectre of physical decomposition—is part of that American culture of death-denial.

The traditional Jewish approach to death and mourning files in the face of this American tradition of death-denial and grief-denial, because the latter approach is psychologically dishonest, as well as spiritually dishonest. Death is an inevitable part of life. Death means not only the absence of our loved one from our lives; it also means the death of the body: the cessation of biological functions, followed by the natural decomposition of the body.

Is that decomposition pretty? Certainly not. Is it gruesome? Undoubtedly. Think of the macabre little songs about skeletons, worms, etc. that we learned in elementary school. But think also of the statement in Pirkei Avot: "אֵיךְ הָיָה מָוֶת אֶת הַבָּרָא [Where are you going?] הַבָּרָא הָיָה מָוֶת [To a place of

dust, worm, and maggot.]"²⁹ The purpose of this statement is not to "gross us out." Its purpose is to remind us of our mortality—and of the compelling necessity of making something significant of our lives, in the face of that mortality. But perhaps Rabbi Akavya ben Mahalalel chose such graphic language to remind us that it is not only the temporal limitation of our lives that is part of God's plan; it is also the natural decay of our bodies after death.

It's natural. It's Nature's way. We need not dwell on its gruesome or aesthetically displeasing aspects—because we're not going to see that! Burial in the ground means returning our loved one's physical remains to Nature—and once that return takes place, the matter is out of our hands, and should be largely out of our thoughts.

Cremation is a desecration of a human body. To perform such a desecration—and, in so doing, to rob Nature of its prerogative to reclaim our physical remains—is indefensible.

Denying Survivors a Gravesite

There is an element of selfishness (perhaps inadvertent selfishness, but selfishness nevertheless) in the request for cremation, in view of the fact that most cremains probably are not buried in a cemetery.³⁰ By requesting (or insisting upon) cremation after death, one denies his or her survivors an important element in their mourning process: a gravesite to visit.

Visiting a grave is so important. Whether frequent or infrequent, it offers survivors a place to focus memories, to work through feelings, to further the mourning process. Those who lack a gravesite to visit know how detrimental this privation can be to the process of mourning, of healing. The burden of Holocaust survivors is often made greater because their loved ones lack a grave—more burdensome because their loved ones were denied the dignity of traditional burial, and more burdensome because they, the survivors, lack that specific gravesite that is so important.

As a rabbi I've found that when occasionally engaged in an effort to convince someone to change his or her mind about a requested cremation, the most convincing argument is not necessarily any of those cited above, but rather: "Do if for them, your survivors. Don't deny them what they will sorely need once you are gone."

AIDS: A Unique Case?

It has been suggested that death from AIDS presents special circumstances vis-à-vis cremation. Is the proportion of people desiring cremation after death larger than other categories of people desiring cremation? Perhaps that is the case—and if so, understandably so. AIDS often brings one of the most painful, debilitating, and ugly deaths imaginable. Many an AIDS patient comes to loathe his or her body: "My body has betrayed me," many

AIDS patients assert. Having endured all of the suffering and indignities that AIDS imposes on one's body, many AIDS patients may feel that once death comes, the best thing to do with that loathsome body is to burn it to ashes.

While most of us certainly recognize that AIDS is not exclusively a "gay men's disease," still AIDS does claim the lives of a disproportionate number of gay young men. For many of them, the deterioration of their bodies arouses, with unusual intensity, a narcissism of the body which, I am told, is a feature of many gay men's experience. Perhaps such a culture, which places a particular value on physical attractiveness, makes all the more insulting to the young gay man dying of AIDS the scrawny, deteriorated, unattractive body that has become—and makes his desire to have that body, cremated after death, all the more intense.

But even as we try to empathize with the particular horror of the dying AIDS patient, even as we try to understand the specific interest in cremation that AIDS patients may have, we must assert that the compelling arguments against cremation, and those in favor of traditional burial in the ground, override even those strong feelings.

For one thing, to put it bluntly, AIDS does not have a monopoly on suffering, debilitation, or disfigurement. Unfortunately, many conditions that are ultimately fatal bring their own array of horrors. "My body has betrayed me" is an assertion I've heard from young AIDS patients—and one that I've heard from many other people, of a variety of ages, suffering from a variety of debilitating conditions. Indeed, even the "normal" vicissitudes of aging usually impose physical circumstances that are lacking in attractiveness and functionality. But in the face of our contemporary culture—which values "beauty" over "ugliness," "fitness" over "inadequacy," "young" over "old"—Judaism asserts that real value is not found in such ephemeral qualities. As for the narcissism of the body that may be particularly central in the culture of many gay men, to such narcissism, whatever its cultural derivation.

Ultimately, we must assert that simply wanting something, simply feeling strongly about something, is not, in and of itself, compelling enough reason to abrogate halakha. Cremation is unquestionably forbidden by both the letter and the spirit of Jewish law. Cremation is a desecration, and the prohibition of cremation—based on any or all of the reasons cited above—outweighs even the intensity with which some people may favor it.

What to Do

What then are we to do in the face of a family member who desires cremation after death? If we are respectful of the traditional Jewish prohibition of cremation, it seems to me that we have two possible choices: convince our loved one to change his or her mind, if possible, before death occurs; or disregard our loved one's request, after death has occurred.

I once had a congregant who came to me with a painful dilemma: His mother, who by that time had descended into the oblivion of Alzheimer's disease, had previously expressed her desire to be cremated upon her death. My congregant could not see himself fulfilling such a request,³¹ and yet how could he disobey his mother?

After discussing with him some of the traditional reasons for the prohibition of cremation, I asked him to imagine *why* his mother had made the request in the first place. Perhaps she was unaware of the traditional reasons for the prohibition. Perhaps she had her own conflicts about Jewish tradition and simply was not willing to concede to halakha on this point. Perhaps there were other reasons we might never know.

But what, I then asked, if she had not been felled by Alzheimer's disease? What if, even now, she were still sufficiently conscious to engage in a meaningful conversation with her son? Perhaps, if not for the progression of her disease, he would even now be able to convince her to change her mind. Perhaps he could convince her of some of the compelling reasons I've discussed above; perhaps he could convince her to change her mind simply because of how strongly he felt about it. Perhaps.

It was on the basis of that glimmer of hope—that idea of what might have been, had it not been for her disease—that my congregant made his peace with the decision to disobey his mother's request. Whenever she died, whether a few months from then or a few years from then, he would give his mother a traditional Jewish burial, despite her earlier request, because he felt that was most appropriate, and because—who knows?—she might have agreed to it anyway.

Some years later, I was involved in the death of a young mother in my congregation. This was a particularly difficult situation for me as a rabbi, as I had shared experiences with her and her family and had fondness for her, her husband, and her two teenage sons. The situation became even more challenging since she wanted to be cremated after death.

Although she and I discussed this a number of times, and although I like to think I might have convinced her had there been more time, the final descent of her terminal illness soon made this impossible. In her last days, my attending to the needs of a dying congregant and her suffering family included my attempt to sensitively convince her husband to give his wife a proper Jewish burial. (Although I never said this to him, I was also arguing on behalf of myself: I desperately wanted to be able to officiate at her funeral, but in absence of a traditional burial I would be unable to do so.³²) The husband was quickly and easily convinced—perhaps because of his commitment to Jewish tradition, perhaps because of what he felt he owed to his sons and to himself.

On the day of her funeral, I was glad that I had tried so hard to convince her husband. On purely selfish grounds, I was glad to be able to conduct her funeral; it was one of the most difficult yet one of the most important experi-

ences of my career. In her synagogue, she was mourned and honored by her community; and subsequently she was buried, with dignity and simplicity, in her synagogue cemetery. And a year or so later, as I stood with her husband and sons at her unveiling, I was all the more convinced of the rightness of what had been done, as I saw how important that gravesite had become to her grieving family.

How Can We Disregard a Loved One's Wishes?

It's one thing to understand the significance of traditional burial and the reasons behind the prohibition of cremation. But how can we disregard the wishes of a dying loved one? After all, the Talmud does tell us: "מציזת לקיים מצות מציזת" [It is a mitzvah to fulfill the words of a dying person.]⁷³

On the other hand, the Talmud also deals with the specific question of one who has requested not to be buried after death—and concludes that such a request must not be honored. The Talmud's discussion on this point begins by asking for the basis of the requirement of burial: "אמר רבי יוחנן קבורה גזושה בריבוי ארץ [Is burial [intended to avert] disgrace⁷⁴ or [a means of atonement?]⁷⁵] אמר רבי יוחנן בריה דרבא גזושה בריבוי ארץ [What is the practical difference?]⁷⁶ אמר רבי יוחנן בריה דרבא גזושה בריבוי ארץ [If a man said, 'I do not wish myself to be buried.'] אמר רבי יוחנן בריה דרבא גזושה בריבוי ארץ [If you say that it is to prevent disgrace, then it does not depend entirely upon him?]⁷⁷ . . ."⁷⁸

Beyond this specific halakhah, we should assert the following essential points: First, *not every request that a loved one makes of us must categorically be obeyed*. People make all sorts of requests and demands of us, and sometimes we legitimately disagree with them and legitimately disobey their request. Second, *not every request that a loved one makes of us, related to his or her impending death, must categorically be obeyed*. Even though the emotional stakes may be higher, we have a right, when we disagree even with a death-related request, to disobey such an illegitimate request.

In fact, we arguably have an obligation to disregard such a request, when it involves the violation of Jewish law. Although free will endows each of us with the ability to disregard or abrogate Jewish law, a Jew does not, according to the law itself, have the right to compel another Jew to violate halakhah.

But what if the request for cremation comes from one's parent? Doesn't the obligation, "כבוד אב ואם" [honor your father and mother]⁷⁹ outweigh other considerations? The simple answer to this question is "no." The obligation to honor our parents does not include the obligation to obey a request or demand if such obedience constitutes a violation of halakhah. "If a conflict occurs between a parent's wishes and halakhah, the child must follow the higher authority, God, which both parent and child are bound to respect."⁸⁰ And if a parent's insistence on cremation must be disobeyed, then all the more must such a request from another loved one be disregarded.

I've been asked on a number of occasions: "What would you do if one of

your own family members insisted on cremation?" It's one thing to advocate a certain position as a rabbi; it's another thing to pursue such a course as a family member, in a non-theoretical situation. What would I do if one of my parents, or my wife, or one of my siblings or children insisted on cremation and I found myself in the decision-making position to obey or disobey such a request? Even though the chances of such a scenario are highly unlikely (since I believe such a request from one of my close relatives is very improbable), would I disobey? Without a moment's hesitation.

What Should the Rabbi Do?

Family members have decisions to make, and rabbis have decisions to make; each must live with the implications of those decisions. Sometimes, despite our most persuasive attempts, families do arrange for the cremation of loved ones. How, then, should the rabbi respond? Should a rabbi officiate at a funeral involving a cremation? Should he or she allow cremains to be buried in the synagogue's cemetery? Should the rabbi encourage the family to observe the other trappings of traditional Jewish mourning? There are a number of responses among rabbis.

The most stringent position is presented by Rabbi Maurice Lamm: "Jewish law requires no mourning for the cremated. *Shiva* is not observed and Kaddish is not recited for them. Those who are cremated are considered by tradition to have abandoned, unalterably, all of Jewish law and, therefore, to have surrendered their right to posthumous honor."⁸¹

Rabbi Lamm does not provide references in the classical halakhic literature for this position, so it is difficult to judge the halakhic basis of his statement. However, there are all sorts of *averot*⁸² that our loved ones may commit during their lifetimes, and we honor their memories despite their *aveirot*. As hesitant as I may be to disagree with a rabbi of Maurice Lamm's stature, it seems to me that this position is unduly harsh and untenable.

A second position is to refrain from officiating at such a funeral and to forbid burial of cremains in the synagogue cemetery. Rabbi Isaac Klein writes: "A great number of authorities forbid the burial of ashes in a Jewish cemetery because this would encourage the practice of cremation (see *Duda'ei Hasadeh*, sec. 16; *Mahazeh Avraham*, vol. 2, T.D. 38; and Lerner, *Hagvei Olam*)"⁸³ This position essentially says: We cannot forcibly prevent you from violating this important halakhah, but we will not be a party to this violation.

There is strong basis in halakhah for such a position: it is a halakhic principle known as *"yifnei'veir"*.⁸⁴ Based on a mitzvah in Leviticus, "וְיָצַדְתָּ אֶת הָעָם לְעֵשֶׂת דְּבָרֵי הַתּוֹרָה" [Before the blind you shall not put a stumbling block],⁸⁵ *"yifnei'veir"* is classically applied by the Rabbis to go far beyond the question of placing physical stumbling blocks before people who are literally sightless. Its classical application prohibits misleading anyone, facilitating one's *aveirah*,⁸⁶ or being a party to one's *aveirah*.⁸⁶

Rabbi Klein's concern regarding burial of cremains is a valid one regarding two components of *'afinei sveiv*": either being a party to someone's *'aveirah* or leading to future *'aveirah*. If one maintains that cremation is an *'aveirah*, a violation of Jewish law, then permitting burial of cremains might be considered being a party to that *'aveirah*. And if one is convinced that permitting burial of cremains in a Jewish cemetery would encourage cremations in the future, *'afinei sveiv*" would argue against such permission.

A third position on the part of rabbis would be to permit the burial of cremains in a Jewish cemetery. When the matter was considered by the Jewish community of London at the end of the last century, the Chief Rabbi wrote: "We subscribe to the opinion stated by my venerated Predecessor, that there does not exist any precept prohibiting the interment in a Jewish cemetery of the ashes of a person who has already been cremated, an opinion supported by other eminent rabbis including the Chief Rabbi of Kovno (Rabbi Isaac Elchanan Spector, 1817-1896). We accordingly permit such a burial. At the same time we earnestly beg you and the members of the community not to construe this permission into a sanction of the practice of cremation. At the ardent hope that no brother or sister in faith will make a similar testimony disposition, involving, as it does, a grave breach of Jewish law."⁴⁷ Note in his words that, although the Chief Rabbi permitted burial of cremains, he was acutely concerned about the effect this decision might have on encouraging future cremations. If that was a concern in the 1890s, it's an even more significant concern now, over a century later.⁴⁸

In the Conservative Movement, the concern of *'afinei sveiv*" vis-à-vis cremation has been addressed. "The Law Committee of the Rabbinical Assembly has ruled that cremation is not permitted. When it is done by the family in disregard of Jewish practice . . . the ashes may be buried in a Jewish cemetery and appropriate prayers may be said, but not by a rabbi, lest his participation be interpreted as approval."⁴⁹ Note that, in the Law Committee's position, rabbis are advised⁵⁰ that they may be *meikil* [lenient] on the question of officiating at the burial. This is a different point on the spectrum from the position cited immediately above, but it too wrestles with the question of applying *'afinei sveiv*" to a very difficult question.

The final rabbinic position is to permit burial of cremains in a Jewish cemetery and to provide rabbinic officiation at the funeral and/or burial. Sometimes this is done only after attempts have been made to dissuade the family from cremation and have been unsuccessful; sometimes this is done in the absence of attempts to dissuade.⁵¹ This most liberal position, undoubtedly motivated by compassion for the grieving family, is probably the one followed by the minority of Conservative rabbis.

Most Conservative rabbis probably adopt one of the preceding positions, and it should go without saying that, even when the rabbi is unable to permit burial of cremains and/or to officiate at that funeral or burial, attempts are made to compassionately deal with the grieving family's needs⁵² and mourning process.⁵³

The Letter of the Law and the Spirit of the Law

One of the burdens of the rabbinate is the responsibility to determine the position of Jewish law and tradition in a variety of areas—often to provide a "yes-or-no" answer. In the stereotypical world of the shtetl, most answers may have been less emotionally charged: "Yes, this chicken is kosher" or "No, this chicken is not kosher."

The paradox of the rabbinate is that we serve two masters: the desires and needs of our congregants, on the one hand, and the demands of Jewish law and tradition, on the other. And in a sense, we struggle with multiple paradoxes upon paradoxes: differentiating between congregants' *desires* and legitimate *needs*, and differentiating between what we perceive as the *letter* and the *spirit* of halakhah in a given instance. Gray areas abound in such judgments that we are called upon to make, and as a result of many of the "yes-or-no" answers we are required to give—in areas of Shabbat or *kashrut* observance, bar/bat mitzvah standards, Jewish/non-Jewish status, wedding rituals, conversion requirements, and a plethora of other areas—occasionally someone is going to be disappointed or angry. And where the emotional stakes are high, such as situations involving death and mourning, people will sometimes be very disappointed or very angry.

But it would be wrong to assert that every rabbinic decision that is *meikil* [lenient] is compassionate, while every decision that is *makmir* [stringent] is lacking in compassion; that every "yes" is a wise and sensitive answer, while every "no" is lacking in wisdom and sensitivity. Halakhic decision-making is more complicated than that, and the rabbinate is far more complex than that.

As a (Reform) rabbinic colleague said to me not long ago, "we are the gatekeepers" and indeed we are. Our challenge as rabbis is to maintain Jewish tradition at the same time that we seek to transmit it, to resist the winds of change at the same time that we strive to be creatively responsive to new circumstances and new questions. Often it's a maddeningly difficult balancing act, and perhaps that's the key word: balance. ". . . [T]he way we respond to the tradition and apply it to contemporary circumstances must be a *balance* of compassion with both law and theology," writes Rabbi Dorf. "Only if we *integrate* the law as it has come down to us with the theological perspectives underlying it and with empathy for the human beings involved can we reach a decent decision—decent in both the sense that it authentically bespeaks the tradition at its best, and decent in the sense that it is morally and humanly appropriate."⁵⁴

Struggling with this paradox is not only the lot of the contemporary rabbi: it is the challenge of the contemporary, halakhically committed Jew. At best, it is a healthy, creative tension—even though it's not always easy. But that's the challenge of being a committed Jew in the modern world, of maintaining faithfulness to a tradition which is both ancient and contemporary, both timely and timeless. As Blu Greenberg writes: "Of course, there are conflicts in being a citizen of the world and a member of the covenantal community, conflicts in embracing universalistic and particularistic values almost simultaneously. But the tensions are quite bearable and the impasses are generally negotiable."⁵⁵

NOTES

1. Genesis 2:3.
2. Dr. Bernard Feinstenthal, article in *CCAR Yearbook*, Vol. III, 1893, pp. 40-41, 53-58.
3. Genesis 3:19.
4. Genesis 2:7.
5. Deuteronomy 21:23.
6. B. Sanhedrin 46b.
7. *Mitzvat Yezei*: "thou shalt . . ."
8. *Lo ta'aseh*: "thou shalt not . . ."
9. Moses Maimonides, *Mishneh Torah, Hilkhot Sanhedrin* [Judicial Laws] 15:8.
10. Hence, the Jewish tradition to perform a funeral as soon as possible, usually twenty-four hours or so after death.
11. Based on the commandment: "וַיִּצְוֶה אֱלֹהִים אֶת מֹשֶׁה וְאֶת אָהֳרֹן לֵאמֹר הַזֶּה הַשֵּׁם הַיְהוָה וְעָבַדְתֶּם אֹתוֹ וְיָצִיטְתֶּם אֶת אֱלֹהֵי אֲבוֹתֵיכֶם וְעָבַדְתֶּם אֹתָם וְיָצִיטְתֶּם אֶת אֱלֹהֵי אֲבוֹתֵיכֶם וְעָבַדְתֶּם אֹתָם" [follow the Lord your God] (Deuteronomy 13:5).
12. Moses.
13. Deuteronomy 34:6.
14. B. Sotah 14a.
15. Rabbi Chaim Steinmetz, "Response: A Parent Dies, Instructing in the Will that He or She Be Cremated. Must the Children Follow their Parent's Wishes?" *Moments*, June 1995, p. 16.
16. Yehiel M. Tuchinski, *Gedler Ha-Hayyim* (Jerusalem: Solomon, 1960), Vol. II, Chapter 13.
17. Steinmetz, op cit., p. 17.
18. Steinmetz, op cit., p. 16.
19. B. Avodah Zarah 1:3.
20. Rabbi Maurice Lamm, *The Jewish Way in Death and Mourning* (New York: Jonathan David, 1969), p. 56.
21. See Nahum M. Sarna, *Understanding Genesis* (New York: Schocken, 1967); *The JPS Torah Commentary: Genesis*, ed. N. M. Sarna (Philadelphia: Jewish Publication Society, 1989); *The Anchor Bible: Genesis*, ed. E. A. Speiser (Garden City: Doubleday, 1964); and Yehetzel Kaufmann, *The Religion of Israel*, trans. M. Greenberg (New York: KTAV, 1960); among many other contemporary sources.
22. For example, *pkhahy nefesh* [saving a human life] takes precedence over virtually all other *mitzvot*. Many apply the principle of *pkhahy nefesh* to assert that general safeguarding of health takes precedence over other *mitzvot* and that anything that is injurious to health is forbidden by Jewish law.
23. *Kashrut*, the Jewish dietary laws, help to elevate the experience of eating to a level of *kedushah* [holiness].
24. The Hebrew word for marriage is "*kidushin*," which means "sanctification."
25. The Talmud (B. Hulhin 11b) contains a discussion of the permissibility of performing an autopsy in the case of suspected murder, and forbids such an autopsy on the grounds that it would desecrate the body. Similarly, the prohibition of removing organs from a body for the sake of transplantation is overridden only on the grounds of *pkhahy nefesh*.
26. Rabbi Elliot N. Dorff, posted on Ravnet, March 22, 1996, quoted with permission.
27. In addition to the association with the Holocaust that cremation evokes—specifically, the crematoria in which millions of Jewish bodies were burned—the literal meaning of the word "holocaust" is "thorough destruction by fire."
28. Dorff, op. cit.
29. Avot 3:1.
30. Perhaps the "usual" disposition of cremains is scattering them—at sea, in a forest, etc. In addition, burial of cremains is not permitted in many (if not most) Jewish cemeteries; see discussion below.
31. The ironic fact that he and his mother were Holocaust survivors may have colored his perspective—as, paradoxically, it may have colored hers as well.

32. More on this point below.
33. B. Ketubot 70a; B. Ta'anit 21a.
34. The aesthetic disgrace of physical decomposition, which would be publicly visible if not for burial.
35. The Talmud suggests that decomposition, a process furthered by earth and moisture, brings about a certain atonement for sins committed during one's life.
36. In other words, whether burial is required to avoid disgrace or to provide atonement, it is required nevertheless: one's request not to be buried may not be honored.
37. It is not only he who would be disgraced if he were not buried properly; his family would be disgraced as well. In other words, it's not only his own feelings that are germane in this decision; feelings and sensibilities of family members are also germane.
38. B. Sanhedrin 46b.
39. Exodus 20:12.
40. Steinmetz, op cit., p. 16.
41. Lamm, op cit., p. 57.
42. Violations of Jewish law; sins.
43. Rabbi Isaac Klein, *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary of America, 1979), "The Laws of Mourning," p. 275.
44. Leviticus 19:14.
45. Singular of *sanivot*.
46. The Talmud (B. Pesahim 22b) considers the matter of a nazirite, one who has taken a vow to refrain from (among other things) drinking wine: "וַיִּצְוֶה אֱלֹהִים אֶת מֹשֶׁה לֵאמֹר הַזֶּה הַשֵּׁם הַיְהוָה וְעָבַדְתֶּם אֹתוֹ וְיָצִיטְתֶּם אֶת אֱלֹהֵי אֲבוֹתֵיכֶם וְעָבַדְתֶּם אֹתָם" [How do we know that one may not offer a cup of wine to a nazirite?] . . . וְלֹא יִשְׂתַּי אֶת כַּסְּאֵי הַיַּיִן וְלֹא יִשְׂתַּי אֶת כַּסְּאֵי הַיַּיִן וְלֹא יִשְׂתַּי אֶת כַּסְּאֵי הַיַּיִן וְלֹא יִשְׂתַּי אֶת כַּסְּאֵי הַיַּיִן [Scripture teaches: 'Before the blind you shall not put a stumbling block.'] If the nazirite breaks his vow by drinking wine, the sin is primarily on his head. But by offering him the wine—by being a party to his violation—you bear some culpability, based on the prohibition of *yiffet speir*.²
47. Chief Rabbi, Dr. Hermann Adler, *London Beti Din*, September 1891, first quoted in the *London Jewish Chronicle*, October 2, 1891, p. 10.
48. See the opening paragraphs of this article.
49. Klein, op cit., p. 276.
50. The Rabbinical Assembly's Committee on Jewish Law and Standards is a body of halakhic specialists who provide guidance and advice to the Conservative rabbinical community. Rarely does the Law Committee impose its will on Conservative rabbis, saying: "You must do such-and-such" or "You must not do such-and-such." Each Conservative rabbi, as *marza d'atara* [halakhic authority] of his or her congregation, is burdened with the responsibility of determining and applying the halakhah in his or her own situation.
51. There are different gradations of this position, as well. For example, some rabbis will try to dissuade a family from cremation, and only after such attempts are unsuccessful, such rabbis will officiate at a funeral (but only before the cremation is actually performed), will permit burial of cremains in the synagogue cemetery, but will not officiate at the burial of such cremains.
52. Including making sensitive attempts to help them understand, if not accept, the rabbi's position.
53. *Shivah* [the seven-day period of mourning], *mitzvanim* [services] in the home or synagogue, etc.
54. Dorff, Ravnet, March 27, 1996, quoted with permission.
55. Blu Greenberg, *How to Run a Traditional Jewish Household* (New York: Simon and Schuster, 1983), pp. 17-18.