

## *Survey of Recent Halakhic Periodical Literature*

### CADAVERS ON DISPLAY

#### I. THE EXHIBITIONS

Over the past decade exhibitions displaying preserved skinless human corpses with well-defined muscles and tissues have attracted over twenty million viewers worldwide and have grossed over two hundred million dollars. The mastermind of the operation is a German scientist, Gunther von Hagens, whose “Body Worlds” exhibit utilizes cadavers prepared and preserved at what has been described as “a modern mummification factory located in China.”<sup>1</sup> Bodies are dissected and skin and fat are removed. The bodies are then placed in machines that replace natural human fluids with soft chemical polymers. The corpses may be placed in seated or standing positions and displayed as doing lifelike things, such as holding a musical instrument or sitting astride a similarly preserved dead horse. A competing exhibition company, Premier Exhibitions, is the creator of “Bodies: The Exhibition” that was shown at the South Street Seaport in New York City. Similar exhibitions have appeared in major museums in Chicago, Houston and Los Angeles.<sup>2</sup>

Human rights activists are concerned that these commercial enterprises may be using the bodies of mentally ill people and executed prisoners. Presumably due to a concern with regard to improper exploitation, in July, 2006 the Chinese government issued regulations outlawing the purchase or sale of human bodies and restricting the import or export of human specimens for purposes other than scientific research.

As is well known, Jewish law not only forbids ignominious and undignified treatment of a corpse but regards the human body as an object deserving of respect of the highest order because of its status as the earthly abode of a sacred soul. Accordingly, the body of the deceased must be accorded prompt and dignified burial. Dissection of a corpse is permitted only in exceptional circumstances, e.g., for preservation of a human life already at risk.

## II. VIOLATION OF A CORPSE

There is some controversy with regard to whether the prohibition against violating a corpse is limited to bodies of deceased Jews or whether it extends to non-Jewish corpses as well. R. Meir Shapiro, *Teshuvot Or ha-Me'ir*, no. 74, demonstrates that it may be inferred that Rashi and Ramban, in their respective commentaries on Deuteronomy 21:23, would differ with regard to their resolution of that question. The scriptural verse that is the subject of their comments prescribes that the corpse of even a convicted criminal may not be allowed to hang from the gallows in ignominy but must be interred without delay. Both commentators cite an aggadic explanation as the rationale underlying the regulation mandating respect for the dead. The source is a talmudic parable concerning a pair of identical twins. One of the twins grows to adulthood and is crowned king of the realm; the second becomes a highwayman, is apprehended and executed as punishment for his crimes. Suppose, then, we are told, the body of the executed twin were placed on public display. Would not passersby scrutinize the body and, perceiving what they believe to be the familiar countenance of their ruler, assume that it is none other than the king himself who has been punished so ignominiously? Man is created in the image of God with the result that, however that anthropomorphic term is to be understood, the human body reflects an aura of divinity. Just as the king is dishonored in the indignity meted out to his twin, the Deity is dishonored in the dishonor of the divine image associated with the human body.

Rashi and Ramban differ in their recounting of the parable in one salient detail. Rashi uses the term "Israelite" in association with dishonor of the body while Ramban fails to use that qualifying term and thereby implies that the prohibition encompasses the desecration of any human corpse. *Tosafot Tom Tov*, *Avot* 3:14, explains at length that all human beings, gentiles as well as Jews, are created in the image of God. That matter is not at all a point of dispute as evidenced by the fact that it is Adam—who was not a Jew—who is described in Genesis 1:27 as having been created "in the image of God." The controversy between Rashi and Ramban is limited to the ambit of a specific biblical prohibition, i.e., whether it is the spark of the divine universally present in all of mankind that triggers the prohibition against desecration of a corpse or whether it is the particular sanctity of a body hallowed by participation in Sinaitic revelation that evokes comparison with the Deity.

### III. PROHIBITED BENEFIT

#### A. FINANCIAL BENEFIT

Jews, thankfully, do not seem to be involved in the ghastly process of modern-day mummification. This writer has, however, been the recipient of numerous inquiries with regard to the propriety of attending these various exhibits. There have been no similar inquiries from persons who profit financially from the exhibits. One may at least hope that there have been no such inquiries because those involved are not Jews.

The first issue to be addressed is the prohibition regarding deriving benefit from a cadaver. Charging an admission fee constitutes a clearly prohibited financial benefit as has been unequivocally stated by R. Jonathan Eibeschutz, *Binah le-Ittim*, *Hilkhot Yom Tov* 1:23, in addressing a question posed by a person who sought to exhibit a grotesquely formed abortus in order to earn a livelihood.<sup>3</sup> If it is forbidden to accept such fees, payment for viewing the cadaver would similarly be prohibited as a form of “placing a stumbling block before the blind.”

The sole issue in that regard is whether the prohibition against deriving benefit from a corpse applies only to a Jewish cadaver or whether it extends to a non-Jewish cadaver as well. That question was addressed in detail in the context of a discussion of fetal tissue experimentation in this column in *Tradition* and in this writer’s *Contemporary Halakhic Problems*, IV (New York, 1995), 185-187.

#### B. SCIENTIFIC KNOWLEDGE

If deriving benefit from a non-Jewish cadaver is not interdicted there is no formal prohibition against attending such an exhibit. If, however, deriving benefit from non-Jewish cadavers is forbidden, the issue resolves itself into the question of whether attendance at such exhibits represents a proscribed “benefit.” In responsa examining the permissibility of port-mortem examinations, both R. Moses Sofer, *Teshuvot Hatam Sofer*, *Yoreh De’ah*, no. 336, and his disciple R. Moses Schick, *Teshuvot Maharam Shik*, *Yoreh De’ah*, no. 344, declare that acquiring medical information by means of such procedures constitutes a forbidden benefit.<sup>4</sup>

In support of that position *Maharam Shik* cites the ruling recorded in the Mishnah, *Nedarim* 48a, to the effect that a person who, by means of a vow, generates a prohibition against benefiting from a fellow

townsman is forbidden to use Torah scrolls that constitute property owned by the community. Quite apparently, the knowledge gleaned from such books is regarded as a "benefit" forbidden to such an individual since, were those scrolls not available, it would be necessary for him to spend his own funds in order to acquire a Torah scroll for such purposes. Similarly, argues *Maharam Shik*, observation of a post-mortem procedure obviates the need to expend funds in an endeavor to obtain that information in some other manner.<sup>5</sup> *Hatam Sofer*, however, seems to imply that it is the knowledge *per se* that constitutes the forbidden benefit.<sup>6</sup>

### C. "UNUSUAL" BENEFIT

R. Yitzchak Arieli, *No'am*, VI (5723), *Torah she-be-'al Peh*, VI (5724), 48, suggests that examination of a cadaver for scientific purposes constitutes an "unusual" form of benefit and hence is permitted. In doing so he relies upon R. David ibn Zimra, *Teshuvot Radvaz*, III, no. 548, who maintains that only "usual" forms of benefit may not be derived from a cadaver.<sup>7</sup> Presumably, the concept of a "usual" benefit in association with a cadaver is the type of benefit that might be considered ordinary and usual were the cadaver regarded as no more deserving of respect than carrion. Flesh of dead animals can readily be used as dog food. Cadaveric flesh is not put to such ignominious use because of innate recognition of the value of human dignity. Since even bodies of animals are seldom used for scientific purposes, argues Rabbi Arieli, use of a cadaver in that manner is "unusual."

However, R. Akiva Eger, *Gilyon ha-Shas*, *Avodah Zarah* 12b and *Hiddushei R. Akiva Eger*, *Yoreh De'ah* 349:1, disagrees with the principle formulated by Radvaz. In general, prohibitions against deriving benefit from designated substances are associated with commandments couched in terms of "eating" and predicated upon talmudic exegesis demonstrating that "eating," unless otherwise indicated, connotes other forms of pleasurable benefit as well. Accordingly, "unusual" benefit is not encompassed in the prohibition, just as "unusual" forms of eating are not subsumed within the connotation of a biblical commandment in the form of "Thou shalt not eat." In contradistinction, the ban against deriving benefit from a corpse is not predicated upon an explicit admonition but is derived by talmudic exegesis on the basis of application of one of the hermeneutic principles of interpretation. Hence, asserts R. Akiva

Eger, no distinction can be drawn between usual versus unusual forms of benefit. A similar position is espoused by *Mishneh le-Melekh*, *Hilkhot Ma'akhalot Assurot* 14:10 and *Hilkhot Avel* 14:21.<sup>8</sup> The basic principle is codified by Rambam, *loc. cit.*, with regard to milk and meat that have been cooked together and with regard to the product of mixed species of grain and grapes that have been commingled in planting. A similar view is expressed by *Tosafot*, *Avodah Zarah* 12b and *Pesahim* 26a, with regard to deified objects of pagan worship or sacrifice.

#### D. VISUAL BENEFIT

The remaining factor to be considered is whether mere visual examination undertaken solely for aesthetic or recreational purposes constitutes a forbidden form of benefit. "Benefit," in the fundamental halakhic meaning of the term, connotes tangible physical benefit such as eating, drinking or anointing the skin or financial enrichment. Thus, the Gemara, *Pesahim* 26a, declares, "Sound, sight and smell do no constitute *me'ilah* (*kol, mareh va-reah ein ba-ben mishum me'ilah*)." "*Me'ilah*" refers to prohibited use of consecrated property for mundane benefit. In context, the Gemara is defining and limiting the concept of *hana'ah*, or benefit. Although other forms of sensual pleasure do constitute *hana'ah*, benefit derived by means of "sight" does not rise to the level of a prohibited "benefit." The principle is made explicit with regard to the prohibitions concerning *me'ilah* but, logically, it is equally applicable to all categories of *issurei hanah'ah*.

This, however does not necessarily mean that such forms of *hanah'ah* are entirely innocuous and hence permissible. The talmudic statement "*ein ba-ben mishum me'ilah*" serves only to establish that enjoyment of such benefit does not constitute a punishable infraction. Despite the fact that no punishable offense is engendered as a result of deriving benefit from "sound, sight or smell," the act may yet remain prohibited, albeit unpunishable. Indeed, the Gemara, *Pesahim* 26a, declares explicitly that deriving such benefit does constitute an infraction of Jewish law. That prohibition is recorded by Rambam, *Hilkhot Me'ilah* 5:16. Nevertheless, *Tosafot*, *Shabbat* 21a, cites a statement of the Gemara, *Sukkah* 53a, to the effect that a woman is permitted to sort kernels of wheat by the light illuminating festivities attendant upon the drawing of water on *Sukkot* (*simhat bet ha-sho'eval*). Illumination was provided by means of fuel purchased with consecrated funds devoted to defraying the cost of that celebration. The

woman's activity is entirely secular and mundane. Although an alternate interpretation is suggested, *Tosafot* cite a comment of the Palestinian Talmud indicating that the woman's activity is entirely permissible,<sup>9</sup> i.e., that there is no prohibition whatsoever against deriving a benefit by means of "sight" from that which is otherwise *asur be-hana'ah*.<sup>10</sup> However, even according to *Tosafot*, the Babylonian Talmud appears to prohibit benefit in the form of "sound, sight or smell."<sup>11</sup>

The prohibition concerning "sight, sound and smell" is not limited to benefit derived from consecrated property (*hekdesb*) but extends to other forms of *issurei hana'ah* as well.<sup>12</sup> The issue with regard to forbidden forms of smell arises with regard to the prohibition against deriving benefit from *hamez* on *Pesah*. On *Pesah*, may a Jew, knowingly and willingly, inhale the pleasant aroma of freshly baked bread? On the basis of a statement found in a gloss appended to *Issur ve-Heter be-Arukh* 39:33, it is clear that such pleasure is forbidden to a Jew on *Pesah*. A similar ruling is recorded by *Shulhan Arukh ha-Rav*, *Orah Hayyim* 443:3, and *Ma'adanei Shmu'el* 113:2. Similarly, with regard to sight, *Shulhan Arukh*, *Yoreh De'ah* 142:15, rules that it is forbidden to enjoy the aesthetic pleasure derived from gazing upon an object of beauty if the *objet d'art* is associated with idolatrous practices. Accordingly, it would follow that the prohibition against deriving benefit from a corpse would serve to prohibit even benefit derived solely from visual examination undertaken solely for esthetic or recreational purposes.

Nevertheless, R. Chaim Sofer, *Teshuvot Mahaneh Hayyim*, *Yoreh De'ah*, II, no. 60, cites a number of sources that clearly indicate that merely looking or gazing upon objects from which it is forbidden to derive benefit is permissible. Chief among those is the statement recorded by the Gemara, *Yoma* 21b, declaring that upon removing the week-old shewbread that remained fresh despite having been exposed upon the table for an entire week it was held up and displayed before the entire assemblage with the declaration, "Behold, how you are cherished by the Almighty!" Gazing upon the shewbread and the table was clearly permitted despite the fact that they were consecrated objects. *Mahaneh Hayyim* also cites the report recorded in *Ketubot* 103a of how, after his death, R. Judah the Prince appeared to his family every Friday evening despite the fact that the members of his family certainly took great pleasure in those visits. Although it is presumably the case that R. Judah did not appear in a physical state, *Mahaneh Hayyim* apparently assumes otherwise and cites that narrative as establishing that benefit derived from merely gazing upon a cadaver is permissible.

Nevertheless, *Mahaneh Hayyim* himself counseled that consecrated oil and wicks cannot be used to provide illumination for mundane purposes. If, for example, such light is used only to facilitate study and the acquisition of knowledge, how does it differ from witnessing an anatomical dissection? Although the distinction is not made explicitly by *Mahaneh Hayyim*, he may have intended to distinguish between “sight” (*mar’eh*) in the sense of illumination and “sight” as a means of acquiring information. *Mahaneh Hayyim* apparently regards illumination enabling a person to see properly as a form of proscribed sensual benefit whereas *histaklut*, or visual examination, yielding intellectual benefit, or emotional benefit as in the case of the shewbread, that is entirely non-corporeal and non-sensual in nature, he regards as permissible.

Putting *Mahaneh Hayyim*’s permissive view aside, those authorities who forbid participation in post-mortem examination must perforce recognize that exhibition of the shewbread was not only permitted but meritorious despite the satisfaction and pleasure associated with the visual experience. That pleasure must have been intense and was occasioned only by the event, but such pleasure was not the result of the transfer of anything tangible or intangible from the shewbread to the perceiver. God’s love of Israel and even the preserved freshness of the shewbread were already known to all; the experience conveyed no new information. “A picture is worth a thousand words” because, oftentimes, visual perception generates an emotional experience that mere intellectual awareness does not produce. But that emotional experience and any accompanying pleasure arises reflexively in the psyche. The external event is merely a catalyst rather than the efficient cause of the resultant emotional pleasure. That form of benefit is permissible whereas benefit in the form of scientific knowledge imparted by examination of a prohibited object may well be forbidden.

#### E. INDIRECT BENEFIT

As noted earlier, *Hatam Sofer* and *Maharam Shik* regard the use of cadavers for the study of anatomy as forbidden because of the intellectual benefit derived from that activity. R. Meir Shapiro, *Or ha-Me’ir*, no. 74, deems the benefit derived to be instrumental in nature rather than a benefit in itself. The student or physician observing the dissection, he asserts, does not benefit from the observation until he applies the knowledge gained thereby in the treatment of a patient. Such instrumental benefit, he contends, is not forbidden. A similar view is

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expressed by R. Zevi Pesach Frank, *Teshuvot Har Zevi*, no. 278. Apparently, both *Or ha-Meir* and *Har Zevi* do not deem mere acquisition of medical knowledge to be a prohibited form of "benefit."<sup>13</sup>

### F. PASSIVE BENEFIT

R. Mordecai Winkler, *Teshuvot Levushei Mordekhai, Mahadura Telita'ah, Orah Hayyim*, no. 29, rules that benefit derived passively, i.e., without an overt act, for the ultimate purpose of fulfilling a *mizvah*, i.e., treatment of the patient, is not prohibited. *Teshuvot Kol Eliyahu*, II, *Orah Hayyim*, no. 23, regards the prohibition against visual benefit to be limited to benefit derived from consecrated property but entirely permissible with regard to other prohibited objects. This may well be the position of *Bet Yosef, Yoreh De'ah* 224, as well. These various opinions have been discussed in detail in *Contemporary Halakhic Problems*, IV, 227-233.

## IV. CONCLUSIONS

It must also be stated that anatomical dissections pose a problem only for the medical student whose knowledge and understanding of the nature and structure of the human body is greatly enhanced by the experience. There is little reason to assume that a maintenance employee may not pause in the course of mopping the floor to gaze at the dissection by peering over the shoulder of the medical student. The experience will not contribute to the edification of the maintenance worker for he is likely to have learned absolutely nothing. Observation of such a procedure is certainly not a source of aesthetic gratification.

For a serious and engaged student a visit to "Body Worlds" would undoubtedly be a learning experience. For a person seeking a recreational activity it may well prove to be no more than a macabre experience and hence devoid of halakhic complexity.

Despite the earlier cited differences of opinion among rabbinic authorities there is at least one talmudic statement that seems to confirm the permissibility of deriving information from examination of cadavers. The Gemara, *Bekhorot* 45a, recounts that the students of R. Ishmael obtained the body of a harlot who had been executed by civil authorities and boiled the cadaver in order to determine the number of organs in the human body. Similarly, the Gemara, *Niddah* 24b, relates that Abba Sha'ul said of himself that at an earlier period in his life he



was professionally involved in the burial of the dead and that it was his wont to scrutinize the bones of the diseased. As a result of his examinations he discovered that "The bones of one who drinks undiluted wine are burned; those of one who drinks properly diluted wine are black (or dry, according to the second explanation of Rashi). The bones of one whose drinking exceeds his eating are burned; [those of one] whose eating exceeds his drinking are black (or dry); [those of one who eats and drinks] properly are [moist with] oil." Elsewhere, the Gemara, *Nazir* 52a, addresses a question pertaining to ritual defilement that hinges upon whether a number of spinal vertebrae come from a single cadaver or from the corpses of a multiple number of individuals. The Gemara relates that a container full of bones was brought to the synagogue. Thereupon a certain Theodos the Physician entered the synagogue accompanied by "all the physicians." Upon examining the bones they declared that the vertebrae did not come from a single spinal column. R. Mordecai Winkler, *Teshuvot Levushei Mordekhai, Mahadura Telita'ah, Orah Hayyim*, no. 29, cites this narrative and questions how it was possible for Theodos and his colleagues to make such a determination unless they had previously studied the shape and configuration of vertebrae in other cadavers. These sources serve to establish one of two halakhic principles: either (1) there exists no prohibition against deriving benefit from the corpse of a non-Jew, as *Hatam Sofer* does in fact deduce on the basis of the *Bekhorot* 45a; or (2) mere examination of a cadaver does not constitute a forbidden form of *hana'ah*.

Thus, it may be concluded that visual examination of a non-Jewish cadaver is not forbidden by any rabbinic decisor. The cadavers prepared for these purposes in China are assuredly those of non-Jews. Although, as noted earlier, a Jew is forbidden to accept payment for viewing a cadaver, non-Jews are not bound by the prohibition of deriving benefit from a corpse. Since the promoters profiting financially from these enterprises appear to be non-Jewish, the payment of admission fees does not constitute placing of a stumbling block before them.

Nevertheless, the endeavor is odious in the extreme. The absence of a formal interdiction does not serve to render a practice innocuous in nature. Commercial exploitation of human remains and its acceptance by the public at large is one example of the depravity of the age in which we live. Refusal to become complicit in the moral degeneration of society by personal participation and financial support is certainly an appropriate Jewish reaction.

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### NOTES

1. See David Barboza, "China Turns Out Mummified Bodies for Displays," *New York Times*, August 8, 2006, p. A1.
2. *Ibid.*, p. C6.
3. That question involved, *inter alia*, the issue of whether it is forbidden to derive benefit from an abortus. See this writer's *Contemporary Halakhic Problems*, IV (New York, 1995), 182-185.
4. Cf., *infra*, note 13 and accompanying text.
5. *Maharam Shik* was certainly under a misimpression. Knowledge and skill derived from performing anatomical dissections cannot be obtained from textbooks or from tutors. Even more significantly, *Hatam Sofer's* comments address a question presented much earlier to *Noda bi-Yehuda*. See R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 210. That situation involved an unsuccessful surgical procedure that was apparently in its infancy. The autopsy was sought in order to learn how to make the abdominal incision smaller and more precise. That information was as yet unknown and hence could not have been acquired in another manner by expending funds for that purpose.  
*Maharam Shik's* thesis is, however, relevant in our day. Proposals have been advanced for eliminating the use of human cadavers and replacing them with replicas made of synthetic materials. Moreover, computer technology has made possible high-resolution, three-dimensional representations of human tissues and organs. Computerized scans and three-dimensional recreations of the human body provide more efficient, albeit more expensive, teaching tools than dissection of actual cadavers. See *New York Times*, March 23, 2004, p. F1. Hence, today, use of a human cadaver does serve to obviate the expense of acquiring such knowledge in other ways.
6. Nevertheless, *Hatam Sofer* would presumably agree that in the case of the Torah scroll the prohibited benefit is financial in nature since fulfillment of a *mizvah* does not in itself constitute a "benefit."
7. A permissive view with regard to "unusual" benefit is also espoused by R. Chaim Sofer, *Teshuvot Mahaneh Hayyim*, II, no. 60. Cf., R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 119, who is concerned with retention in one's possession of an object from which it is forbidden to derive benefit because of the danger of inadvertent transgression but does not raise the issue of whether deriving scientific benefit constitutes a form of forbidden benefit.
8. Cf., the discussion of this issue by *Sha'ar ha-Melekh*, *Hilkhot Ishut* 5:1.
9. Sifting or sorting kernels of wheat would otherwise have required use of a candle or lamp. Accordingly, use of the illumination provided by the *simhat bet ha-sho'eivah* served to obviate the need for expenditure of funds for that purpose. If so, *Maharam Shik's* contention that obviating the need for expenditure of funds constitutes a forbidden form of benefit is not consistent with the position of the Palestinian Talmud. See *supra*, note 4 and accompanying text.
10. Cf., *Tosafot*, *Pesahim* 26a, s.v. *me'ilah* and *Pnei Yehoshu'a*, *Shabbat* 21a. See also R. Ovadiah Yosef, *Teshuvot Yabi'a Omer*, III, *Yoreh De'ah*, no. 20.
11. See the discussion of R. Joseph Cohen in his *Harerei ba-Sadeh*, annota-

- tions on R. Zevi Pesach Frank, *Teshuvot Har Zevi, Orach Hayyim*, I, no. 183.
12. See, however, R. Eliyahu Tufik, *Teshuvot Kol Eliyahu, Orach Hayyim*, no. 23, who asserts that, according to Rambam, the prohibition is indeed limited to benefit derived from consecrated property. Cf., the differing opinions regarding Rambam's position cited by *Yabi'a Omer*, VI, *Orach Hayyim*, no. 34, sec. 3.
13. Cf., R. Moses Sofer, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 336 and R. Moses Schick, *Teshuvot Maharam Shik, Yoreh De'ah*, no. 344, as well as *supra*, note 4 and accompanying text.