

Chapter 19

Autopsies II: The National Jewish Hospital for Consumptives

I. THE NATIONAL JEWISH HOSPITAL

In the late nineteenth and early twentieth centuries, Denver, Colorado, was a haven for people suffering from lung disease, specifically tuberculosis (consumption). Jews spearheaded the relief effort, founding the National Jewish Hospital for Consumptives in 1899 and the Jewish Consumptives Relief Society in 1904. As a part of their hospital work, doctors autopsied deceased patients to learn more about the illness. The hospital being run by Orthodox Jews and the doctors being overwhelmingly observant as well, it was only natural that an opposition group arose. This group, calling itself *Yaqra de-Shikhvi* (honor of the dead), cited the prohibition of autopsies and demanded that the hospital stop performing them. Each side of this debate turned to the American Orthodox rabbinic leadership for support.

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The Account of Rabbi Dr. Nehemiah Mosessoehn, LL.D.

Among the prominent leaders and supporters of the hospital and the relief society was an Orthodox rabbi, academic, journalist, entrepreneur, and lawyer named Nehemiah Mosessoehn (1853, Odessa–1926, New York).¹ As the founder and editor of the *Jewish Tribune*, he used his position to put out two pamphlets, one in Hebrew and one in English (the latter written by his son, David Nehemiah Mosessoehn), describing the situation and defending the practice of autopsy at the hospital. He sent the Hebrew pamphlet out to rabbis across the country to get their feedback.²

הנה זה עשר שנים אשר נוסד בעיר
דענווער קאלאראדא בית-חולים
לרפאות חולי עמנו אשר המחלה
הנוראה "קדחת הריאה" הממס.
הרופאים שמה יהודים המה ועושים
מלאכתם בתום לב. מגמתם למצוא
מזור למחלת החולים, ובחכמתם
כי רבה הצילו רבים מחרמי המות,
ולחולים אשר לא נתרפאו יען
כי מחלתם גברה עליהם טרחו
הרופאים להקל מכאוביהם.

It has been ten years since the hospital in Denver, Colorado, was founded to cure the sick among our people who are being ravaged by the horrible illness tuberculosis. The doctors there are Jews and do their work conscientiously. Their goal is to find relief for the sick from their illness, and with their great wisdom they have saved many from death. As for those patients whom it has not been possible to cure because their illness is too advanced, the doctors have worked hard to relieve their suffering.

1. He was not a medical doctor. We thank our colleagues Dr. Eric Goldstein and Dr. Marc Shapiro for their help in identifying this person and researching his life and accomplishments. Although Rabbi Dr. Mosessoehn was one of the founders of the relief society and his son was the president for some time, he himself was living in Portland, OR.
2. The Hebrew pamphlet (pub. 1915) was called *She'eila be-ad ha-Haim el ha-Meitim* (A Question on Behalf of the Living to the Dead); the English pamphlet (pub. 1914) was called *Post-Mortem Examinations Among the Jews*, and it came out as a supplement to the *Jewish Tribune*.

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דבר ידוע הוא כי חכמת הרפואה עוד לא הגיעה למצא מקור וטבע המחלה הזאת, אשר רבים הפילה ר"ל... ולמען התלמד ולמצא מהות המחלה הזאת אחזו הרופאים בבית-החולים הנזכר במנהג בתי-חולים אחרים, לנתח גופי המתים, לחקור ולדרוש, לראות וללמוד ביותר קורות וטבע המחלה, למען המציא מזור להחולים אשר עוד בחיים הנם, להצילם מרשת המות הפרושה לפניהם או לפחות להקל מעליהם עול סבל המחלה הממדרת חייהם וחי האנשים אשר סובבים אותם - כן נהגו מיום הוסד הבית-החולים עד היום הזה, ות[ודה] ל[אל] רבות למדו לטובת החולים.

והנה זה לא כבר עמדו אנשים אשר לבותיהם כאבו על גויות המתים, ויאספו לאגודה אחת ו"יקרא דשכבא" קראו את שמה, ומגמתם להפך עבודת הרופאים ולאסור עליהם נתוח המתים, וצעקתם גדלה עד מאוד, וגם הסכימו לבקש את תומכי בית-החולים הלזה לבל יוסיפו עוד תת נדבתם אליו. כפי הנראה, גדלה בעיניהם גופי דשכבא מנפשות החולים, אשר חייהם תלויים להם מנגד וכל תקותם להרפא היא בבית החולים הלזה.

It is known that medical science has yet to determine the cause and nature of this illness, which kills so many... so in order to study and find the cause of the illness, the doctors in the aforementioned hospital have adopted the practice of all other hospitals, autopsying the bodies of the deceased patients, examining them carefully, to try to learn the nature and progression of the illness, in hopes of curing the patients who are still alive, saving them from the net of death spread before them or at least easing the burden of their suffering, which embitters their lives and the lives of their loved ones. This has been the practice of the hospital since its founding, and thank God, much of use to the patients has been learned.

Now not long ago the hearts of a group of people were pained for the cadavers, and they formed a group called *Yaqra de-Shikhvi*. Their goal is to disrupt the work of the physicians and forbid them to perform autopsies. Their cries are very great, and they have even decided to contact the supporters of this hospital, telling them to stop funding it. It would seem that the bodies of the dead are more important to them than the survival of the patients, whose very lives hang in the balance and whose hopes to be cured all rest in the success of this hospital.

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Rabbi Dr. Mosessohn's position is very clear. All his sympathies lie with the physicians and the methods of modern medicine. He has no patience for the members of the *Yaqra de-Shikhvi* group, whose priorities Rabbi Dr. Mosessohn sees as misplaced. He cannot understand why anyone would put the proper treatment of a corpse before the lives of the patients.

Rabbi Tzvi Shimon Album's Account

The National Jewish Hospital was not the only group that engaged a scholar as a pamphlet writer to assist it in its cause. The *Yaqra de-Shikhvi* made their own connection with the well-known Chicago rabbinic scholar Rabbi Tzvi Shimon Album (1849, Kovno–1921, Chicago).³ His description of the same situation sounds rather different:

הנה החברא "יקרא דשכבי" אשר בעיר דענווער קאלארדא הלכו לדרוש את ד', לרבות תלמידי חכמים - אלו הרבנים הגדולים אשר באמעריקא - להגיד להם את דבר ד' - זו הלכה - אם מותר לנתח ולחנוט את המתים בבית החולים למוכי השחפת בעיר הנ"ל, אשר לפי דברי הרופאים הם עושים כן לתכלית הלימוד והחכמה, אולי ימצאו מזה עזר ותרופה להקל המחלה מעל חולים אחרים במחלה כזו.

The group *Yaqra de-Shikhvi* in Denver, Colorado, went to ask of God, meaning Torah scholars, i.e., the great rabbis of America, so that they [i.e., the great rabbis] could inform them of the word of God – meaning halakha – whether it is permitted to dissect and embalm the dead in the hospital for consumptives in that city. According to the physicians, they do this to gain information and knowledge in the hope that they will find some treatment or cure to remove the illness from their patients suffering from the disease.

3. Rabbi Album is most famous for getting into a loud and contentious turf war over *kashrut* supervision in Chicago with the famous scholar Rabbi Yaakov David Willowsky (Ridbaz). Album wrote a two-volume treatise called *Divrei Emet* defending his position and excoriating Rabbi Willowsky. The fight caused Rabbi Willowsky to leave America and move to Palestine.

והנני מסדר סדר המערכה משמיה
דהחברא "יקרא דשכבי" הנ"ל:⁴ כפי
שנודע ע"ל] ד[בר] בית החולים
הניזכר, מנתחין שם את גוף המת
ומוציאין ממנו את כל האספסוף
אשר בקרבו:⁵ הלב והריאה והכבד
והטחול והכליות והקנה והושט
והדקין והגידין והורידין, ואחר כך
ממלאין את חלל הגוף שלו בנסורת
של עץ ומוסדין את יתר הפליטה
לחברת קברנים.

והנה זה כחדש ימים הייתי
בדענווער, והתאספנו כולנו יחד,
ראשי החברא "יקרא דשכבי"
והרופאים המומחים מבית החולים
הנ"ל, ואחר אשר נשאנו ונתנו
הרבה בענין זה, הגדתי להם חות
דעתי על פי דת תורתנו הקדושה,
כי אסור הוא זה מצד הדין וגם מצד
היושר, והבטחתים לתת את דברי
אלה בדפוס, לבאר טעמי ונימוקי
ולשולחם לכל הרבנים הגדולים
אשר באמעריקא ולשמוע חות
דעתם הקדושה בענין זה.

Now I will lay before you the order
of the procedure as described by the
Yaqra de-Shikhvi: As is known regard-
ing the referenced hospital, they dissect
the cadaver and remove all the "mixed
multitude" inside of it: the heart, the
lungs, the liver, the spleen, the kid-
neys, the trachea, the esophagus, the
intestines, the tendons, and the veins.
Afterward, they fill up the empty space
of the cadaver with sawdust and give
these leftovers to a burial company.

About a month ago, I was in Denver, and
we all gathered together, the heads of the
Yaqra de-Shikhvi group and the expert doc-
tors from the aforementioned hospital.
After we went back and forth a lot about
the matter, I offered my opinion – based
on our holy Torah – that it is both halakhi-
cally and ethically forbidden to [autopsy].
I assured them that I would publish my
words and explain my reasoning and that
I would send this [publication] to all the
great rabbis of America in order to hear
their holy opinions on this matter.⁶

From the very beginning, Rabbi Album's tone and perspective
are quite different from those of Rabbi Dr. Mosessohn. Rabbi Album
speaks in glowing terms about the *Yaqra de-Shikhvi* and mocks the work
of the doctors autopsying the cadavers. As will be seen in some of his

4. The phrasing here plays off the description of the sacrificial service in the morning prayers.
5. The line plays off Numbers 11:4.
6. He titled the pamphlet *Teshuva al Hanutat ha-Meitim (Responsum Regarding Embalming the Dead)*.

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reasons for declaring the act forbidden, he does not seem to believe that autopsies can possibly do any good. Finally, it is clear that even though Rabbi Album is willing to speak with physicians, to him the main arbiters are “the great rabbis of America,” *not* the great doctors.

II. RABBI DR. NEHEMIAH MOSESSOHN’S QUESTION AND RESPONSE

The Question

Rabbi Dr. Mosessoehn did not just write up the case in his pamphlet: he also wrote his own responsum, the most interesting part of which is how he phrases the question and the note with which he ends it, which essentially tells the *posqim* what they must do:

אם כי לא נפונה, כי אתם דועי
ישראל, יודעי דת ודין, תדונו
דין אמת לאמתו ותאירו עינינו
בגודל חכמתכם ובינתכם בענין
הנחוץ הזה. על כל זאת אמרנו
בנפשנו כי חוב מוטל עלינו
לגלות אזנכם כי לא ממרד
וממעל ח"ו עשו הרופאים
מעשיהם. המה יהודים, בני
אברהם יצחק ויעקב, ויש מהם
לומדי תורה ואוהבי אשדת
ישראל. המה יסדו מעשיהם על
דברי התורה כפי השגתם. גם
המתיקו סוד עם כמה רבנים,
ואחרי יגיעה רבה מצאו כי אין
עול במעשיהם ואין רע בידיהם,
ואדרבה, לטובת ישראל וכל
סוג האנושי מגמותיהם,
והמצוה "וחי בהם" יקרה
בעיניהם, ואתם, דועי ישראל,

Although we will not turn away [from your guidance], as you are the shepherds of Israel, knowing the laws, and you will come to a true judgment and illumine our eyes with your knowledge and perspicacity regarding this important issue, I thought to myself that it was incumbent upon me to clarify that the doctors do not do this out of rebellion or sacrilege, God forbid. They are Jews, sons of Abraham, Isaac, and Jacob. Among them are students of Torah and lovers of Jewish practice. They base their actions on the words of the Torah as they understand them. They even consulted with a number of rabbis and, after much effort, came to the conclusion that there is no sin in what they do and no wickedness in their deeds. On the contrary, they act for the benefit of Jews and all humanity. The mitzva of “and you shall live by [the commandments]”⁷ is dear to them. So you,

7. He is invoking Leviticus 18:5 and the talmudic and Maimonidean interpretation that this verse means that saving lives overrides other laws (b. *Yoma* 85b).

תלחמו מלחמותיהם למען קיים נפשות ישראל אחיכם ואחיהם! shepherds of Israel, fight their fight in order to save Jewish lives, your brothers and theirs.

The Response

The heart of Rabbi Mosessohn's pamphlet deals with a number of halakhic issues, but we will focus on the question of desecrating the body, regarding which Mosessohn has one overarching argument: it is permitted to desecrate a body in order to save lives. The only reason Rabbi Landau forbade autopsy in his case was that he did not believe it would have any practical benefit, since he saw little chance that the doctor in question would ever see another case of the same illness. As Mosessohn points out, however, the National Jewish Hospital in Denver was full of patients suffering from consumption, thus fitting neatly into the category of "before us," to use Rabbi Landau's term, and its work therefore was permissible.

III. RABBI ELAZAR PREIL'S ANSWER AND RESPONSES TO IT

Rabbi Elazar Meir Preil

Rabbi Dr. Mosessohn's pamphlet made it into the hands of Rabbi Elazar Meir Preil (1878, Kovno–1933, Elizabeth, NJ), one of the editors of and chief contributors to the journal *Yagdil Torah*.⁸ A well-respected scholar, Rabbi Preil was eventually appointed to be one of the *rashei yeshiva* at RIETS. He titled his essay *Yaqra de-Hayyei* (the honor of the living),⁹

8. A number of journals go by this name; the journal in question was edited by Rabbi Moshe Binyamin Tomashoff (known as Mabit; 1878, Sutzk–1960, Brooklyn). It was originally printed in Sutzk, but moved to the United States with its editor.
9. One of the issues brought up by Rabbi Dr. Mosessohn is the question of whether a *kohen* may perform the autopsy. Discussion of this question led to a second series of articles debating this point, by Rabbi Dr. Dov (Bernard) Revel (lenient) and Dr. Yehudah Eliakim Goldberg (strict); see Revel, *Yagdil Torah* 8 (5669/1908–9): 4:23; 6:42; 8:60; vol. 9 (5670/1909–10): 2:18; vol. 10 (5671/1910–11): 2:32; and Goldberg, *Yagdil Torah* 8 (5669/1908–9): 6:41; 8:51; 11:69; 13:72; vol. 9 (5670/1909–10): 3:20; 12:75; vol. 10 (5671/1910–11): 2:11, 31. See also the brief response to Revel by Rabbi Mordechai Shlomo Zilber of Minneapolis, *Yagdil Torah* 9 (5670/1909–10): 2:15. See also the response to Dr. Goldberg by Rabbi Yaakov Horowitz in *Yagdil Torah* 10 (5671/1910–11): 2:30, and references to earlier, related articles (*ibid.*). Revel and

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but his concern is for the dead more than the living and he has little if any sympathy for the position of Rabbi Dr. Mosessohn. If anything, he seems shocked by it.

This is clearest in his response to Rabbi Dr. Mosessohn's observation that it is permitted to violate the scriptural prohibition of making models of the planets in order to learn about them for the purpose of understanding astronomy and setting up the Jewish calendar. Rabbi Dr. Mosessohn sees this as a precedent for violating halakha in order to learn something necessary for halakha (in the autopsy case, desecrating a body in order to learn how to save others). Rabbi Preil responds to this point (1:2):

לא דיהא מותר לו לעבוד איסור
הלנת המת ואיסור ניוול המת
בשביל שיתלמד הוא חכמת
הרפואה - אתמהה! ומלבד
זה, אם הותר לו למען התלמוד
להגות את השם וכו', דבר שאינו
נוגע לזולתו, האם בשביל כן יהא
מותר לו להשפיל ולזלזל כבוד
אחרים למען יתלמד הוא חכמת
הרפואה? תמה אנכי על איש
מודרני שיאמר ככה.

This does not mean that it is permitted to violate the prohibition to leave a body unburied for a while or the prohibition to desecrate a body in order to learn medicine – I am shocked! Furthermore, even if [a Torah scholar] is permitted to pronounce God's name in order to learn it, which is something that affects no one but him, does it follow that [a doctor] is permitted to insult or degrade another in order to learn medicine? I am shocked that a modern person would suggest this.

Rabbi Preil's article on this subject spans a few issues of the journal,¹⁰ but his bottom line is to be strict (3:15):

בהא סלקינן ובהא נחתינן:
דאסור לנתח מת ישראל
להתלמד טבע המחלה, אף ביש
חולים לפנינו הנצרכים לזה, כיון
שאין הרפואה ברורה וידועה.

With this we begin and with this we end: it is forbidden to autopsy a Jew's cadaver in order to learn the nature of a disease, even if sick people who need it are before us, since the medical application is uncertain.

Goldberg also engaged in a related debate about purity laws in general in these same issues of the journal; the debate was heated, with Goldberg publicly apologizing to Revel in one of the articles – but this debate is not related to our subject.

10. Elazar Meir Preil, *Yagdil Torah* 8 (5669/1908–9) 1:2; 3:15, 5:31; 7:49; 8:59.

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Rabbi Preil's position is problematic, even from a traditionalist perspective. As seen above, Rabbi Landau, Rabbi Sofer, and Rabbi Shik were all in agreement that if there are actually sick people who may be helped by the autopsy, it certainly is permitted. Rabbi Dr. Mosessoohn has a simple and authoritative precedent to support him and is supporting a cause that has the potential to save hundreds of lives – and yet Rabbi Preil offers what best can be described as a novel reading (*hiddush*) of these sources (we cannot enter in this survey into all the details of the *pilpul*). He gives greater weight to his talmudic *hiddush* than to the actual findings of the doctors as to the facts and possible cures. He dismisses medical achievements and to put it bluntly, if he had his way, many more patients would die.

Considering the life-or-death nature of the issue, it would hardly seem to be the time or the place to offer creative and strict readings of the sources. Nonetheless, a number of other rabbis contributing to the volume agree with Rabbi Preil and offer their own strict readings.¹¹ To these *posqim*, the *lomdus* and the possible talmudic precedents inherited from the past appear to be real, whereas the medical advances and the lives of patients saved seem more ephemeral.

Rabbi Natan Neta ha-Levi Horowitz

Another contributor to the journal, Rabbi Natan Neta ha-Levi Horowitz of New York,¹² points out the surprising nature of Rabbi Preil's claim:

11. See, e.g., the article of Rabbi Yisrael ha-Levi Rosenberg (of Paterson, NJ), who pushes back against some of the proofs offered by Rabbi Album but ends off by saying that he is speaking only theoretically and not offering permission to autopsy bodies: *Yagdil Torah* 8 (5669/1908–9): 7 (pp. 187–90). See also the article of Rabbi Yaakov Levinsohn (of Brownsville, NY), who emphasizes the importance of treating bodies with respect, arguing that this overrides even saving the life of a fetus: *Yagdil Torah* 10 (5671/1910–11): 2:17 (pp. 104–5).

12. *Yagdil Torah* 8 (5669/1908–9): 7:50.

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ובאשר הרב פרייל רוצה לדחוק ולהכניס בדברי קדש של החתם סופר.... ודבר מוזר הוא, אחרי כי המחלה הזו סתום ונעלם גם מרופאים מומחים ובקיאים, ורוצים על ידי נתוח זה להתחכם אחרי סבת ושורש המחלה, ואם כן, איך נוכל לידע קודם נתוח שודאי או קרוב לודאי שרפואתו קרובה? ועבור זה אסר הרב פרייל הנתוח, מחמת שאין הרפואה ידועה לנו, ואחרי כי החתם סופר התיר כשהחולה לפנינו, ודאי כוונתו אף על ספק [ספקא].

Now Rabbi Preil wishes to force [his own ideas] into the words of the *Hatam Sofer*.... This is very odd, since the nature of this illness is unknown even to expert physicians and they wish through these autopsies to gain greater knowledge about the causes and the origins of the illness. If so, how can they know before an autopsy that it certainly or almost certainly will lead to a cure?! Yet for this reason Rabbi Preil forbids the autopsy, since the medical application is uncertain. However, since the *Hatam Sofer* allowed [autopsy] when the sick person is before us, he certainly meant to apply this even when the efficacy of the autopsy is uncertain.

Rabbi Horowitz makes the forceful and almost self-evident claim that a physician studying a body in order to further understand the illness cannot *by definition* know what he is going to find. Rabbi Sofer certainly understood that doing an autopsy was no guarantee that the doctor would discover a cure, and yet he wrote that doing so when there are actual sick people in need is almost certainly permitted. Thus, in Rabbi Horowitz's estimation, Rabbi Preil's attempt to argue otherwise does violence to the meaning of Rabbi Sofer's (and Rabbi Landau's) statement and is an inappropriate response to the crisis in Denver.

Rabbi Avraham Aharon Yudelovitch

Another response to Rabbi Preil was written by Rabbi Avraham Aharon Yudelovitch (1850, Navahrudak–1930, New York) in his *Beit Av Hamishai* (356). Rabbi Yudelovitch takes a firm stance in support of autopsy for medical purposes and in defense of the National Jewish

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Hospital in Denver, something he does in his response to Rabbi Album as well:

בניתוח המת למצוא על ידי
הניתוח איזה דרך רפואה -
הנה הוא דבר דרגילי הרופאים
לעשות והרבה רפואות למחלות
משונות השיגו הרופאים על ידי
ניתוח המתים, כידוע,

Regarding the autopsy of bodies for the purpose of identifying a treatment – this is a common practice for physicians, and many treatments for various illnesses have been developed by physicians through autopsy, as is known.

וגם הרופאים בדענווער
קאלארדאדא המה רופאים
מומחים ומובהקים שאומרים
כי על ידי הניתוח למתים יתכן
שישיגו לדעת שורש המחלה
ושאפשר שימצאו על ידי
הניתוח תרופה למחלה זו....

In addition, the physicians in Denver are expert and trustworthy doctors who say that there is a chance that by autopsying the dead they can figure out the cause of the illness, and perhaps, through autopsy, they can devise a treatment for the illness....

ולכן אנכי על משמרת
אעמודה דמותר לנתח המתים
מוכי השחפת בבית החולים
האספיטאל דעיר דענווער
קאלארדאדא, כמ[ו] [שכ]תבתי
בתשובתי לשיקאגא.

Therefore, I will stand my ground that it is permitted to autopsy the cadavers of patients who have died from tuberculosis in the hospital in Denver, Colorado, as I wrote in my responsum to Chicago.

Rabbi Yudelovitch approaches this issue with halakhic common sense. Autopsies save lives; therefore they are permitted. Underlying his decision is an enthusiastic respect for the medical profession.

Rabbi Yehudah Leib Levine

A compromise position based on the same logic as that of Rabbi Ettlinger (discussed in the first essay in this section) was suggested by Rabbi Yehudah Leib Levine of Detroit.¹³ He agrees with Rabbi Preil

13. *Yagdil Torah* 8 (5669/1908–9): 5:31.

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that defiling the dead in the hope that doing so will be useful to the living is forbidden. Nevertheless, Rabbi Levine feels that this is an insufficient response to the needs of the sick and throws in the following as his final paragraph:

אכן כדי שלא תהיה נעילת דלת
לחכמת הרפואה להתפתח,
ו"דרכיה דרכי נועם" כתיב, לבן
דעתי נוטה באם שהחולה בחייו
יתרצה לזה בפה מלא ובקנין
גמור, אזי יש רשות לנתחו,
דלו בעצמו יש רשות להתנהג
במידת חסידות... דאם לא כן,
אי אפשר לרפואה שתתפתח
ולהרופאים שבבית החולים
בודאי יזדמנו להם אנשים
שיתרצו לזה, אבל חלילה
לפתותם, שלא תטרוף דעתם.

Nonetheless, in order for the door not to be slammed in the face of the development of medical science – and [regarding the Torah] “its paths are peace” is written – my own opinion is that if the ill person during his lifetime consents to this explicitly, fully understanding to what he is agreeing, it is permitted to autopsy him, for he himself is permitted to act according to ways of piety (*middat ḥasidut*) ... for if not, medicine will be unable to develop, and it is certain that the doctors in the hospital will come across patients willing to agree to this. However, Heaven forbid that they be pressured into it, lest their minds be overwhelmed.

Rabbi Levine's decision here presents an important example of a *poseq* who knows that he is stuck on the wrong side of an issue. For whatever reason, Rabbi Levine finds Rabbi Preil's analysis more convincing than that of Rabbi Dr. Mosessohn. He realizes, however, that if his halakhic analysis were to end there, he would be leaving the physicians in Denver no way to improve their treatments and save their patients' lives. Hence, Rabbi Levine digs deeper into his toolbox and pulls out the same idea as Rabbi Ettlinger: the prohibition of degrading a body can be overridden if the patient gives permission, forgiving (*meḥilla*) in advance any insult to his person.

Rabbi Chaim Hirschensohn

A fourth and very thorough response to Rabbi Preil was written by Rabbi Chaim Hirschensohn of Hoboken (1857, Safed–1935, Hoboken) in the third volume of his *Malki ba-Qodesh* (pp. 137–52 [149]):

עלינו לבקש נקודות אחרות
בשאלת נתוח המתים, לא כלל
אותן הנקודות שבקשו הרבנים
שיחיו הכותבים ביגדיל תורה
אשר נמשכו אחרי הגאון בעל
נודע ביהודה וחתם סופר,
זכרם לברכה, ולא חדשו דבר
בענין זה מה שלא כתבו שני
הגאונים האלה ז"ע. אמנם
כלם אהובים וכלם ברורים, אך
האמת אהוב יותר, שכל שיש
בו כבוד החיים או תביעות
החיים, אין בזיון למת...

It is incumbent upon us to look for other points regarding autopsy that were not included by the great rabbis in *Yagdil Torah*, who all followed the great *Noda bi-Yehuda* and *Hatam Sofer*, of blessed memory. They added nothing new to the discussion that had not already been written by the two aforementioned scholars. However, although they are all beloved and articulate, the truth is more beloved,¹⁴ and this is that anything that involves respect for the living and is necessary for the living is not a degradation of the dead...

ומבני העמים יש שמוכרים
עצמם לזה לנתחם אחרי
מיתתם, שלדידהו לא הוי
מומא, ואדרבא: יש אחדים
מהם שחושבים עוד זאת
לכבוד ולאידואל, להביא
תועלת לעולם. א[ם] כ[ן].
אין לנו לעשות זאת במתים
יהודים החושבים זה לניוול
ולפגם משפחה ובחיייהם אינם
חפצים בזה,

Among the gentiles, there are those who sell their bodies to be dissected after their deaths. To them this is not [inflicting] a blemish. Quite the contrary, some of them see this as a great honor and an ideal, as they bring benefit to the world. That said, we should not be doing this with the bodies of Jews who consider this to be a desecration and a stain on their families and who have expressed in their lifetimes that they do not want this.

14. He is invoking the famous statement of Aristotle “Dear is Plato, dearer is the truth.” The earliest rabbi known to have invoked this phrase was Rabbi Zerahya ha-Levi, who used it in his introduction to his halakhic work on the Talmud, the *Maor*, which consistently critiques Rabbi Yitzhaq Alfasi’s work.

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אבל מי שמת מחלה אשר הרופאים עמלו ולא מצאו את רפואתו וחושבים שעל ידי הנתוח ימצאו את סוד המחלה להביא תועלת להאנושות בכלל ולהחולים המצפים לרפוא בפרט, וזה בודאי לא יוכל להעשות ע[ל] י[נדי] אחרים, כי לא כל האנשים שוים במחלה אחת ולמות תוצאות, ודאי צרכי החיים וצרכי הרבים... אך אם צרכי החיים וצרכי הרבים נקרא כבוד החיים ותביעות החיים, שמבטלים בשבילם איסור ניוול המת, זה שאלה אשר צריכה להתברר ע[ל] י[נדי] וכוח חכמים מיסודי התלמוד או ע[ל] י[נדי] העמדה למנין מב[ית] ד[ין] הגדול שבארץ ישראל.

Nevertheless, when a person has died due to an illness on which the physicians have worked hard but found no cure and they believe that by autopsying this person's body they may find the secret of the illness and bring benefit to humanity as a whole and to the ill patients hoping for this cure in particular, this cannot be done by [autopsying] others' bodies, for not everyone suffers from the same form of the illness and death has many forms.¹⁵ This certainly represents the needs of the living and the needs of the masses... but whether [meeting] the needs of the living and the needs of the masses can be termed respect for the living or requirement of the living such that we cancel for their sake the prohibition of desecrating the dead – this is a question that needs to be clarified through debate of sages steeped in Talmud or by establishing a high court in Israel that can vote on it.

Although in the final comment above Rabbi Hirschensohn seems to back away from giving a definitive answer about autopsies, he appears both sympathetic to what the doctors are trying to accomplish and genuinely frustrated at colleagues such as Rabbi Preil, who he feels are shirking their responsibilities by just quoting Rabbi Landau and Rabbi Sofer and offering no real creative engagement with one of the great challenging issues of their time. As an overall rule, Rabbi Hirschensohn leans toward the view that the needs of the living outweigh the needs of the dead, although he stops short of saying that Jews should proactively donate their bodies to science – as many righteous gentiles do.

15. Again a reference to the talmudic midrash that there are 903 forms of death; see the section on the *Minhat Elazar* in the previous essay for more details.

IV. ALBUM'S PAMPHLET AND YUDELOVITCH'S RESPONSE

Rabbi Album's argument, although peppered with the usual halakhic sources as is Rabbi Preil's, is filled as well with stronger and more passionate rhetoric. We will look at two points in particular in his argument and in Rabbi Yudelovitch's response.

Medical Advancements

Rabbi Album

First, Rabbi Album seems exceedingly skeptical of the possibility of medical advancement from autopsies in general and from the National Jewish Hospital specifically. After quoting Maimonides' position (commentary to m. *Yoma* 8:6) that one cannot violate halakha for "quack medicine" that has never been demonstrated as being useful and has no logical connection to the illness, Rabbi Album tries to connect this principle to the case of the National Jewish Hospital:

וכן אנו יכולין לומר גם כאן:
כי מיום אשר ברא אלהים
את האדם על הארץ עד היום
הזה, כמה מאות ורבבות
אלפי אלפים אנשים אשר מתו
ממחלת השחפת ואשר חנטו
וחתכו אותם, אף על פי כן אפילו
הרופאים והפרופוסרים היותר
גדולים בכל ארצות התבל לא
מצאו עוד רפואה אמיתית
למחלה זו. ועל [ל] כן [א]ינו מצד
הדעת כי הרופאים בדענווער,
אם כי רופאים מומחים הם
ועושים את מלאכתם בתם
לב, אבל הנסיון הוא רחוק
מהם, וקשה להאמין כי ימצאו
עזר ותרופה על ידי זה, וטענה
חלושה היא מן הטוען.

Now we can offer the same argument here: From the day when God created humanity upon the earth until this very day, how many hundreds of thousands of people have died of tuberculosis? Many of these were embalmed and dissected. Nevertheless, even the greatest doctors and professors in all the world have found no real treatment for this illness. Therefore, it makes no sense to suggest that the doctors in Denver, who though they are competent and do their work with a pure heart have little real experience – it is hard to believe that they will discover some sort of useful treatment by doing this. The petitioner's [i.e., Mosessohn's] claim is weak.

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Although Rabbi Album does not exhibit hostility toward physicians, as did Rabbi Haim Shapira, he expresses profound skepticism of the possibility that anything new or important will come out of the autopsies in Denver. What stands out most is not his belief that the doctors in Denver, being second-tier, will not be the ones to find a cure, but his belief that no doctor will ever find a cure. He invokes the creation of the world as if medical progress in the modern age were not something totally different from that of the premodern age. This illustrates the lack of scientific understanding of a relatively modern rabbi living in early twentieth-century Chicago.

The conclusion Rabbi Album draws is to reject the doctors' work:

וענל] כן] אם יחנטו ויחתכו את המתים, סימן הוא כי להנאתם הם עושים, ומת אסור בהנאה. Therefore, if [the doctors] embalm and dissect the bodies, it is a sure sign that they are doing this for their own benefit, but it is forbidden to derive benefit from the dead.

Although not nearly as derisive and accusatory as Rabbi Haim Shapira, Rabbi Album shares his belief that doctors perform autopsies for their own purposes and that they really do not assist the living at all.

Rabbi Yudelovitch's response

To the claim that the doctors do autopsies for their own benefit, Rabbi Yudelovitch offers a forceful response (*Beit Av H'Hamishai* 5:355):

ואנכי בעניי לא ידענא מה סח, והלא אם בניתוחם לא מצאו עזר ותרופה למחלת השחפת, אם כן, איזה הנאה היה להם מן הניתוח, והלא רק עמלו ושרחו בחנם, ובכדי חנטו חנטיא ונתחו נתחיא? ואטו הרופאים והפרופסורים כאלו, As for me, in all humility, I have no idea of what he is talking about. If, in their autopsies, they end up finding nothing useful and no treatment for tuberculosis, then what benefit could they derive from the autopsy? Was all their work and toil not in vain, and all their embalming and dissection of no purpose?!¹⁶ [Does

16. Yudelovitch is playing off the talmudic passage (b. *Ta'anit* 5b) in which Rabbi Yitzḥaq quotes Rabbi Yoḥanan as saying that Jacob never died, to which Rav Naḥman responds, "Did they mourn him, embalm him, and bury him for no reason?!"

אשר אומנתם גדולה, לא ראו כלל אברי האדם, והלא נהירים להו כל גידי ועורקי האדם כשבילי דמתא? וכל טרחתם במתים מחולי השחפת הוא רק אולי ימצאו בניתוחם איזה עזר ותרופה למחלה זו. ואם לא ממצאו עזר ותרופה, הרי עלתה טרחתם בתהו, ויש להם צער ולא הנאה.

Rabbi Album imagine] that these physicians and professors, who are expertly trained, have not seen the inside of a human body? These [doctors] know every tendon and artery as if they were the neighborhood streets!¹⁷ The entire reason for their hard work with these cadavers of those who have died from tuberculosis is only in case their autopsies will be helpful in finding a treatment for this illness. But if they find nothing of use toward developing a treatment, then all their work has been for nothing. This is better described as nuisance, not benefit.

Again, Rabbi Yudelovitch demonstrates his overall faith both in the competence of the doctors – in Denver and in general – and in their good intentions. He seems to have little patience for the calumnies Rabbi Album throws at them by calling them incompetent and accusing them of performing autopsies with some, perhaps subconscious, ulterior motive.

The Suffering of the Dead

At one point in his pamphlet, Rabbi Album appeals to the reader's natural fear and disgust at the idea of having his or her body dissected after death by adopting a mystical view of death that envisions the soul as looking over the body and feeling its pain. Rabbi Album's main source for this view (he has more than one) is the description found in *Sefer Hasidim* (1163):

17. This plays off Shmuel's comment in the Talmud that thanks to his knowledge of astronomy, the geography of the heavens is as clear to him as the layout of the streets of Nehardea (b. *Berakhot* 58b).

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הנשמה רואה מה שעושים לגוף
אחר מיתה... לכך קשה דימה
למת, לא שכואב לו, אלא
הנשמה - קשה לה זילות הגוף.

The soul sees what happens to the body after it dies. ... This is why the maggot is appalling to the deceased, not because it causes him pain, but rather because the humiliation of the body is appalling to the soul.

Inspired by this picture, Rabbi Album offers his own depiction of the soul's suffering at seeing its body autopsied:

ומזה תוכל להבין גודל הכאב
והצער של הנפש בראותו
את הגוף מונח על השלחן
כ"חטאת" וכ"אשם"... ובכל
חוקת "הפתח" פותחין את בטנו
ומוציאין ממנו את הריאה את
הכבד את הגידין ואת הוורידין.

From this one can understand the great pain and suffering of the soul when it sees the body lying on the table like a sin offering or guilt offering. ... And following all the "laws of openings,"¹⁸ he is opened up at the abdomen, and they remove his lungs and his liver and his tendons and his veins.

והיא נתונה לבוז ולמשיסה,
ובכף רגל היא דרוסה,
והנפש חוגרת שק ומתאבלת,
וכאלמנה וגלמודה היא נמשלת.

And it is left in humiliation and destruction, and it is trodden underfoot, and the soul wears sackcloth and mourns, comparable to a widow or bereaved woman.

Rabbi Album's rhetorical force comes from the abundant power of his wit and style. He arouses the natural abhorrence people feel at the idea of their bodies being dissected. He *literally* waxes poetic in his description of the soul's mourning the degradation of its body.

18. This pun is based on the Ashkenazic pronunciation of the word פתח as *pesah*, which makes the word a homonym of the Hebrew term for Passover. The accustomed phrase in halakha is that a person conducts the Seder "according to all the laws of *Passover*," which is sarcastically used by Rabbi Album to claim that the autopsy has been performed "according to all the laws of *pesah*," i.e., opening up the body.

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Rabbi Yudelovitch's response

Not surprisingly, for Rabbi Yudelovitch this was just too much:

ואני אומר: אם כ"ג יאמר כי עלה שמים וראה או ידע כי נפשתיים של מוכי השחפת מדענווער קאלארעדא בוכים ומתאבלים ומצטעדים על ניתוח גופם, ראוי לנו לקבל דבריו באמונת חכמים. האומנם כל זמן שלא עלה שמים וירד, הרי דבריו בזה רק שענינים ועשתונות, חזיונות ורעיונות דמיונות, ולהכריע בהם הדין אינם ברורות ונכונות, כי יתכן לומר בהיפך: אשר נפשתיים ששות ושמחות בה שיתנו גופם לטבח טבח לחפש בהם תועלת להחיים ופיקוח נפשות החולים.

Now I say that if the great and honorable [Rabbi Album] says that he went up to heaven and saw or somehow knows that the souls of those who died of tuberculosis in Denver, Colorado, are crying and mourning in agony over the dissection of their bodies, we should accept his word as part of our faith in the sages. However, as long as he has not actually gone up to heaven and returned, his words are purely smoke and mirrors, fantasy and speculation, and they have no power to decide the law. One could speculate the opposite as well: that their souls are elated about the fact that their bodies have been chopped up to search within them [for a cure] as a benefit to the living, thus saving the lives of the ill.

Rabbi Yudelovitch responds to sarcasm and melodrama with sarcasm of his own. Everything Rabbi Album said in this paragraph, Rabbi Yudelovitch points out, is beyond his ability to know. Someone with an opposite view regarding autopsy might just as easily suggest an alternative heavenly scenario, which is why, Rabbi Yudelovitch states, one must ignore such rhetorical flourishes and stick with medical and halakhic facts.

Rabbi Yudelovitch's own response to the question put to the American rabbinic establishment by Rabbi Dr. Mosessohn and by the *Yaqra de-Shikhvi* is exceedingly straightforward. He answers the question succinctly in the beginning of his responsum to Rabbi Album:

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הנה הגיעני קונטרסו דמר שיצא
לאסור, ואנכי הנני תמה מאד
מדוע ולמה יהיה איסור ניוול
המת חמיר מכל האיסורים של
תורה זולתי עבודה זרה, גילוי
עדריות ושפיכות דמים, דהותרו
כולם במקום ספק פקוח נפש,
ואפילו אלף ספיקות אינו מהני
בהו להחמיר, ולמה באיסור ניוול
המת אינו כן?

I received your pamphlet in which you forbid [autopsy in the National Jewish Hospital for Consumptives in Denver] and I am totally shocked. Why should the prohibition of desecrating a body be more severe than any other prohibition in the Torah – other than idolatry, severe sexual transgressions, and murder – for all the others are overridden when there is a possibility of saving a life? Even if there are a thousand reasons the action that overrides a commandment may not work, one may still not be strict and prohibit it, so why should the ruling be different regarding the prohibition of desecrating a corpse?

...הכא בשאלתינו, דאיכא חול
מוכי שחפת לפנינו הרבה בבית
החולים דעיר דענווער, ואם כן,
גוף הניתוח שיעשו הרופאים הרי
הם עושים בשביל ספק פקוח
נפשות להציל החולים שלפנינו,
ולאיכא על הדקטורים שום חטא
בשעה שמנתחים, דכמו דמותר
לחלל שבת וכל האיסורים
בשביל ספק פקוח נפשות, כן
יהיה מותר איסור ניוול המת.

... In the scenario in question, there are many patients afflicted with tuberculosis in the Denver hospital, so that when the doctors perform the autopsies, it is a case of possible lifesaving, trying to save the sick patients before us. Therefore, the doctors are committing no sin whatsoever when they perform the autopsies. Rather, just as Shabbat and all other prohibitions are overridden in order to save lives, so too is the prohibition of desecrating a corpse.

As Rabbi Dr. Mosessoehn did, Rabbi Yudelovitch approaches the question as a cool-headed halakhist. Although he agrees that dissecting a body is a violation of desecrating the dead, he argues that this is just a run-of-the-mill prohibition in the Torah, like any other, and must be overridden for considerations of lifesaving. Granted, some prohibitions, a category known as the big three, can never be overridden, but cutting

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into a dead body is not one of those three. Thus, Rabbi Yudelovitch can only express extreme puzzlement at Rabbi Album and the *Yaqra de-Shikhvi's* strong negative reaction against the hospital.

The nature of the debate

The character of the debate between Rabbis Album and Preil, on one side, and Rabbi Yudelovitch, on the other, is less about the rabbinic sources than about their attitudes toward medicine and doctors.

Deep down – or maybe not so deep down – Rabbi Album does not trust the doctors. He does not believe they can gain anything by autopsy and therefore sees the process as a senseless and useless degradation of Jewish bodies. To put it differently, in denying that autopsies have any health benefit for the living, Rabbi Album feels comfortable upholding the traditional prohibition – as if nothing has changed in the medical situation.

Rabbi Yudelovitch, however, expresses his fundamental trust in the medical establishment and believes that the autopsies may lead to treatments or even a cure. To him, therefore, this is an open-and-shut case of lifesaving that overrides a Torah prohibition, no different from violating Shabbat to save a sick person's life, which is codified as permitted, even required, in the Talmud itself.

V. TZVI HENRY ILLOWAY AND THE CASE FOR MODERN MEDICINE

Dr. Tzvi Henry Illoway's (1849, Kolin, Bohemia–1932, New York) *Yagdil Torah* article stands out in the series.¹⁹ Unlike the other respondents, Dr. Illoway was a medical doctor (a gastroenterologist) and not a rabbi. Nevertheless, as the son of the illustrious Rabbi Bernard (Yissakhar Dov) Illoway, Ph.D. (1814, Kolin, Bohemia–1871, Cincinnati),²⁰ he came

19. Like the other articles, Dr. Illoway's spans a number of journal issues: vol. 9 (5670/1909–10): 1 (pp. 30–33); 9:9; vol. 10 (5671/1910–11): 1 (pp. 68–75); see also vol. 10 (5671/1910–11): 3:48 (pp. 205–6).

20. Rabbi Illoway (father and son spelled the last name differently) was ordained by Rabbi Moshe Sofer and is popularly known as the Civil War rabbi. He is most famous for declaring the Muscovy duck to be nonkosher.

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at the question as one familiar with the halakhic sources and halakhic reasoning but intimately acquainted with the medical realities as well.

Dr. Illoway begins his response with a forceful critique of his fellow respondents:

אך במחילת כבודם, לא מצאו
בה לא ידיהם ולא רגליהם
ואין רוח הבריות המשכילים
והמבינים דבר נוחה מדבריהם,
כי השאלה הזאת לא ממיין
השאלות שהורגלו בה הרבנים
מימי קדם עד היום היא ואין
דומה לה בכל ספרי שאלות
ותשובות שהודפסו עד זמנינו,
ועל כן לא תוכל להתרץ על ידי
פלפול.

Begging their pardons, [my colleagues] cannot make head or tail of this problem, and wise people cannot make sense of their words, for this question is not like the questions that rabbis from olden times until today usually answer and there is no real precedent in any of the responsa literature that has been published until our time, which is why the question cannot really be answered through casuistic logic (*pilpul*).

בעבור זה אמרתי גם אני:
ברשותא דמרנן ורבנן, אדבר
דברים אחדים בהענין הזה
ואחזה דעתי כפי שחנני רבון
העולמים חונן הדעת, ואף על
פי שלא סמכו אותי ידי מלכא
דישראל - מאן מלכא? רבנן -
מכל מקום צורבא מרבנן אני,
למדתי ושמשתי וגם חכים יקראו
לי.

For this reason, I decided that I too, with the permission of the rabbis, would state some thoughts on this topic and speak my mind, with which the Master of the Universe, the Granter of Wisdom, has blessed me. Even though I have not been ordained by the kings of Israel – Who are the kings? The rabbis²¹ – I am a scholar of rabbinics, I learned and apprenticed with rabbis, and people call me learned.

Although Dr. Illoway begins by apologizing for taking part in the debate while lacking rabbinic ordination, it seems clear that he believes himself uniquely qualified to respond. In Dr. Illoway's opinion, although a good understanding of halakha is required to answer the question, a proper understanding of the medical facts is even more important. For

21. b. *Gittin* 62a.

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this reason, the great rabbis (notwithstanding their being “kings”) actually are not qualified to express an opinion on this matter.

Dr. Illoway continues his article by articulating his thoughts about the state of the medical profession in premodern times:

עד הזמן שהתחילו לדרוש ולחקור בטבע המחלות על ידי נתוח המתים, היתה חכמה הרפואה רק חידה גדולה, והרופאים מששו כעורים בעת אשר נקראו לרפאות איזה חולה.

Until such time as empirical research of diseases began to be carried out through autopsy, the science of medicine was one big riddle and the doctors were feeling their way around like blind people whenever they were called upon to treat an illness.

As Dr. Illoway implies in his introductory remarks, medicine has undergone a sea change, with premodern thinking about autopsy and other issues now totally irrelevant. This is why, he believes, digging in past responsa for precedent is of little help. Instead, he approaches the question from a different angle:

ועתה הגענו לדון על שאלת נתוח המת: Now we can open up deliberation on the question of autopsy:

- (א) רופא מומחה - צורך גדול של הצבור הוא, ובזה אין שום חילוקי דעות...
- (1) An experienced doctor is a great necessity for the public; no one would argue this point...
- (ב) זה הכלל גדול שהכל מודים בו: שאין אפשר לדרוש ולחקור בטבע המחלות והשנוים שהן פועלות בגוף החולה רק על ידי נתוח המתים שהלכו בדרך כל חי על ידי מחלה זו או אחרת. על כן נתוח המתים - צורך גדול של הצבור הוא.
- (2) Here is a principle with which all agree: the only way to actually study the nature of various illnesses and the changes they effect in the body is through autopsying people who have died of each illness.²² Therefore, autopsying cadavers is a significant necessity for the public.

22. Ironically, nowadays (one century later), with our advanced imaging technology, this is no longer the only way.

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- (ג) אין דבר העומד לפני צרכי הצבור... (3) Nothing should stand in the way of public necessity...

כמה וכמה אלפים ורבבות מבני אדם מוכים בכל מדוי מצרים צועקים אל הרופאים: "הביאו לנו מרפא למחלתנו, צרי מגלעד! אל תעמדו מרחוק כרופאי אליל! למה נמות בחצי ימינו ונעזוב אחרינו נשינו אלמנות ובנינו יתומים לגוע ברעב או לחזור על הפתחים בעד פיתותי לחם?" והרופאים עושים מה שיכולים לעשות, נותנים סמים, משקאות וטריקים, אך לשוא! כי עוד לא למדו למדי על ידי נתוח המתים שמתו במחלה זו כל טבע המחלה וכל מפעלה...

How many thousands of people who are struck with all the illnesses of Egypt²³ call out to the doctors, "Bring us a cure for our illnesses, balm from Gilead!²⁴ Do not stand far away like false doctors! Why should we die in our prime and leave behind our widows and orphans to die of hunger or to go house-to-house begging for crumbs?" The doctors do all they can; they administer drugs, potions, and other remedies, but all for naught, for they have not yet learned enough about the nature of the illness and its workings through the autopsies of those who have already died of the illness ...

מכל הטענות שהביאו המתנגדים לנתוח המת אין רק אחת שיש לה דגל קצרה לעמוד עליה, וזאת הטענה היא חשש ניוול המת. על זה אני משיב כי אין כאן שום חשש ניוול המת.

From all the arguments made by those who oppose autopsy, only one has even a tiny leg upon which to stand, and that is the claim about the possibility of degrading the corpse. To this I respond that there should be no fear at all that the dead are being degraded.

הרופאים המנתחים מת שמת במחלה מן המחלות - אין להם שום מחשבת פיגול על המת חס ושלום. כל מחשבתם וכל מגמתם

The doctors who perform the autopsy of a person who died of a certain illness have no intention to insult the dead, God forbid. Their design and purpose

23. A reference to Deuteronomy 7:15.

24. A reference to Jeremiah 8:22.

רק לחדור בסתרי המחלה, ללמוד הליכותיה ומפעלותיה בחלקי הגוף המוכים ומראיהם. ועל ידי דרישות וחקירות שדרשו וחקרו הרופאים אחרים או לענין טבע המחלה או לענין הרפואות הנצרכים לרפואתה ידעו מה לעשות כאשר יבואו אלף אלפי אלפים אחרים המוכים במחלה זו ומבקשים מרפא בעד מכאוביהם.

is only to uncover the secrets of the disease and to learn its ways and effects on the various parts of the bodies of their patients and how they appear. Through these inquiries, which other doctors have painstakingly carried out, whether in reference to the nature of the disease or in reference to possible remedies required to treat it, they will know what to do when thousands of other patients infected with this disease come and request healing from their pain.

Clearly, Dr. Illoyay shares Rabbi Album's flare for the dramatic. Although he is not responding directly to Rabbi Album (his response is aimed at Rabbi Preil), Dr. Illoyay's widows and orphans can be seen as the rhetorical counterpart to Rabbi Album's tortured spirits.

Dr. Illoyay begins with a two-part argument. First, autopsy is an absolute medical necessity in order to cure any illness, and therefore its lifesaving potential should override any prohibition of desecrating a body. Second, since the doctors have only the welfare of suffering patients in mind, the autopsy should not be seen as desecrating the dead.

In a later section (9:9), Dr. Illoyay expands on this point by quoting the talmudic ruling that if a woman dies in childbirth, her stomach is cut open in order to attempt to save the fetus.²⁵ Dr. Illoyay explains this ruling in a way that fits with his overall philosophy:²⁶

25. See the responsum of Rabbi Ya'akov Reischer (1661–1733; *Shevut Ya'akov* 1:13), who discusses this case and its implications at length.

26. In a very long note, the editor of *Yagdil Torah*, Rabbi Moshe Binyamin Tomashoff (Mabit), attacks this reading of the Talmud.

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ויש לתרץ כמה תירוצים שהם מענין אחד: This [i.e., the permissibility of desecrating the body of the dead mother] can be accounted for with a number of explanations, all of which lead to the same conclusion:

(א) משום פיקוח נפש הולד, ואין לך דבר העומד בפני פיקוח נפש. (1) In order to save the life of the child, for there is nothing that stands in the way of lifesaving.

(ב) משום שהכל תלוי במחשבת העושה, ובודאי הרופא בעשותו מעשה כזאת אין שום מחשבת פיגול בלבו. אדרבה: מחשבתו יותר חשובה, יותר קדושה, לקיים נפש בן אדם. (2) Because everything depends on a person's intentions. Certainly, the physician when he does this has no inappropriate thought in his mind. On the contrary, his intention concerns the most significant and most sacred matter: to save a human life.

וכל זאת היה כל כך פשוט להם לחכמי התלמוד שלא עלה על דעתם לשאל כאן שאלת ניוול המת. All this was so obvious to the talmudic sages that it did not enter their heads to worry about whether this desecrates the body of the deceased [mother].

Dr. Illoway argues that the reason a deceased mother's belly is cut open to save the fetus is that saving a life is so important that it overrides any question of desecrating the corpse. Furthermore, since the physicians cutting into her belly are just trying to save the fetus' life, this should not be seen as disrespecting her corpse.

One element that stands out in Dr. Illoway's writings here that differs from the style of the other contributors is his willingness to criticize the treatment of the subject by the *Gedolim* of the past, in this case, Rabbi Landau. In fact, this tendency infuriates his opponents in this dispute. Where this matter comes to a head is a segment (10:1) aimed at dealing with a number of critiques Rabbi Tomashoff lobbed against Dr. Illoway's earlier pieces. As part of his defense, Dr. Illoway turns to a discussion of Rabbi Landau's foundational resposum:

נבא ולא ידע מה נבא. השאלה באה מהעיר לנדן, מטרפלין מדינת ענגלנד, עיר רבת האוכלוסיין והרבה בתי חולים, ובודאי בכל יום היו כמה חולים ממין שנשאל עליהם לפני הרופאים.

[Rabbi Landau] spoke but did not know what he was saying.²⁷ The question came from the city of London, a metropolis of England, a city with a huge population and many hospitals. Certainly they would have had a number of people suffering from the same illness [about which the question was submitted] coming before the doctors every day.

ומה שאמר שהרופאים רוצים רק ללמוד החיתוך וכו' - תמיהה גדולה היא! איך היה יכול אדם גדול כמוהו לכתוב דברים כאלה? הימתין הרופא בלימודו מה לעשות באיזה מחלה איזה סמים ליתן או איזה חיתוך לעשות עד שיבא החולה לפניו ואז יתן מה שיתן או יעשה מה שיעשה? אוי לחולה זה, כי הוא הולך למות, ואוי להרופא זה, כי חלקו בגיהנם!

And regarding his statement that the doctors [are doing the autopsy] just to practice cutting, etc. – I am stunned. How could a great man such as he write such things? Should a doctor, when learning how to treat a given illness, which medicines to prescribe or what type of surgery to perform, wait until a sick person comes before him and then [for the first time] try out what he is going to do? Woe to this sick person, since he is going to die, and woe to this doctor, for he is going to Hell!

אם נשאל שאלה מרב באיזה ענין, יוכל לבוא בבית ספריו שלו לעיין בספרים מה אמרו הראשונים וגם האחרונים, ואם הזמן דוחקו היום, יוכל לעשות זאת למחר או יום אחר, אך לא כן הרופא: הוא צריך להיות מוכן ומזומן בכל מיני מדעים הנוגעים

If a rabbi is asked a question about some topic, he can go to his books and research what the early and late authorities said. If he is pressed for time that day, he can do it the next day or the day after. This is not true of the doctor. He must be prepared with knowledge of all types of scientific data relevant to medicine, so

27. Literally, “he prophesied but did not know what he was prophesying” – a rabbinic expression.

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לחכמת הרפואה, למען שיהא בידו לעשות מיד בכל רגע ביום או בלילה בשום שכל ובכונה ישרה מה שהוא יותר טוב להחולה, וזהו פיקוח נפש!

...מובטח אנכי כי הרב אפילו היותר אדוק וחסיד אם חס ושלוש יפול עליו מחלה או על אחד מבני ביתו, לא יקרא לרופא כזה, שיודע שלא למד כל צרכו בנין הגוף וחלקיו על ידי חתיכת המתים ולא שמש כל צרכו בביקור המחלות בגופי מתים ולא ראה בעיניו השינוים שנעשו בחלקי הגוף על ידי מחלה זו או אחרת, ובודאי לא יתן לגזור כזה לעשות לו או לאחד מבני משפחתו הנצרכים לאיזה חיתוך, ואם הוא צריך לן רק רופא מומחה ומנוסה בכל המדעים, למה לא יהיה רופא כזה לכל שארית ישראל?

...וכל הלימוד הזה להרופאים, אשר היה דבר קטן כל כך בעיני הנודע ביהודה, הוא כמו שנודע היום לכל העולם צורך הצבור, או בלשון הגמרא: "צורך רבים", היותר גדול והיותר חשוב, כי עליו תלויות עיני אלפי אלפים חולים בכל קצוי תבל, ומהם מצפים תרופה למכתם.

that he will be able to act immediately, at any moment, day or night, intelligently and purposefully, to do what is best for the patient, and this is the very definition of lifesaving!

... I am positive that even the most meticulous and pious rabbi, if – God forbid – he or a family member were struck ill, would not call a doctor whom he knew had not been sufficiently educated in the structure of the body and its parts through dissection, who had not sufficiently participated in autopsying the bodies of those who had been afflicted with the disease, and who had not seen with his own eyes what symptoms a given disease causes in the various parts of the body. Certainly he would not allow such a surgeon to perform surgery on him or a member of his family. If he needed a surgeon, he would turn only to an expert experienced in all forms of science. Why should all other Jews not get such a doctor?!

... All of this medical training, which was a matter of such little consequence in the eyes of the *Noda bi-Yehuda*, nowadays is well known (*noda*) to the entire world as the public necessity – or in the words of the Gemara, "a need of the masses" – of the greatest and most supreme importance, for to it are turned the eyes of thousands upon thousands of ill people across the entire globe who hope for a cure to their illnesses.

Chapter 19 – The National Jewish Hospital for Consumptives

Essentially, Dr. Illoway accuses Rabbi Landau of answering a question on a topic he did not really understand. Although the thrust of Dr. Illoway's essays was to highlight the difference between modern medicine and premodern medicine, in this piece he makes a point that is even harder for a traditional, conservative *poseq* to digest.

It is one thing to say that Rabbi Landau or Rabbi Sofer was unaware of the significance body dissection would play in training twentieth-century doctors and how autopsy would become the cornerstone of modern medical research into the nature and etiology of disease. A reasonable person would not blame Rabbi Landau or Rabbi Sofer for not knowing the future. It is quite another thing, however, to say that Rabbi Landau, in describing the reality of medicine as he understood it in his own time and in the London hospital in question, in fact was speaking out of ignorance and misconception.

Misunderstanding a situation based on one's lack of experience with it is a very human and understandable error. Nevertheless, it is difficult for most religious people to imagine any of the greats, past or present, falling into this kind of error. For this reason, the reactions to Dr. Illoway's piece among his fellow responders in *Yagdil Torah* focus on this rather shocking way of approaching the question.

For instance, Rabbi Preil includes a long editorial note on the third piece in which, among other things, he takes umbrage at Dr. Illoway's harsh criticism of Rabbi Landau:

אדוני הד"ר! יען שמאמרו בא בתור תשובה להעורך הרב וכו' מבי"ט שליט"א נמסר ע[ל] כ[ן] לדפוס כמו שהוא, מבלי להשמיט אפילו את הבטוים הגסים נגד הנודע ביהודה, אף שהנם צורבים את האזן ודוקרים כמחט בבשר החי, למען לא יתאונו אחר כך שהעורך פגם את מאמרו.

My sir, the doctor! Since your essay came in as a response to the editor, the distinguished rabbi Mabit *shliṭa*, it has been set to print as is – without leaving out even one of its obnoxious expressions against the *Noda bi-Yehuda*, even though they burn the ear and feel like needles stabbing live flesh – so that you do not complain later and accuse the editors of ruining your essay.

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In his own essay, Rabbi Preil does not express himself this emotionally. Although he does express shock at Rabbi Dr. Mosessohn's position, Rabbi Preil's tone is even-keeled when he discusses the doctors and the "desecrated" bodies. When it comes to Dr. Illoway's statement that Rabbi Landau did not know what he was talking about, however, Rabbi Preil cannot contain his outrage and his writing is taken over by poetic literary flourish.

Rabbi Tomashoff himself, adding a note toward the end of the essay, has a similar reaction to that of Rabbi Preil, although his own displeasure is couched in more general terms and is tucked into an overall critique of Dr. Illoway's approach:

אודות נוול המת אשר כ' האריך,
לא מצאתי בהם שום דבר ממשי,
ורק קמחא טחינא טחן. דברים
אשר כבר נאמרו ונשנו בהיגדיל
תורה הרבה פעמים, וטענותיו
על הנודע ביהודה היה זה מראש
טענת הד"ר מאזעסאהן, וכבר
דחו אותו הרבנים במאה עובלי
בטעמים נכונים ומספיקים, ואין
לי מה להוסיף עליהם. רק צר
לי מאד אשר כבודו נגע ופגע
וחלל כבודו של הנודע ביהודה,
וצ"ל על לא דבר בדברים כאלה,
שאסורים להשמע.

Regarding desecration of the dead, about which your honor wrote at length, I find nothing substantial in these words: they are just an attempt to grind ground flour, matters that have already been hashed out many times in the pages of *Yagdil Torah*. Your claims about the *Noda bi-Yehuda* really are the same as Dr. Mosessohn's, and the rabbis already disproved his assertions with a hundred different well-founded proofs. I have nothing to add to the substance, but it is very upsetting to me that your honor struck at the honor of the *Noda bi-Yehuda zt"l* for no reason with words that are forbidden to utter.

Rabbi Tomashoff's phrase about matters that are forbidden to utter is striking. Although Rabbi Tomashoff hears Dr. Illoway's critique of Rabbi Landau loud and clear, he does not hear the underlying message of Dr. Illoway's articles. What Dr. Illoway is trying to communicate is that like Rabbi Landau, none of the rabbis taking up the fight against Rabbi Dr. Mosessohn and the National Jewish Hospital has any idea of what he is talking about when it comes to the significance of autopsy for studying tuberculosis.

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When Dr. Illoway received responses that he and Rabbi Dr. Mosessohn could not be right since the *Noda bi-Yehuda* in the eighteenth century had said that autopsy was permitted only in certain scenarios, Dr. Illoway responded by saying that it would be illegitimate to mine premodern halakhic literature on a matter of life and death in modern hospitals. Rabbi Preil and Rabbi Tomashoff, however, could not hear that argument, as they were stuck in the usual manner of halakhic disputation, in which the main issue is plausible interpretation of a canonical text rather than scientific fact or the real-life consequences of the *pesaq*. Hence, they felt that it would be a greater sin to violate the words of Rabbi Landau or Rabbi Sofer than to allow tuberculosis patients to die due to their doctors' lacking adequate investigation into the etiology of the illness.

Happily, Dr. Illoway's words did not fall only on these deaf ears. Rabbi Hirschensohn cites Dr. Illoway's piece with approval in his treatment of the question:

הוא בלי ספק כאשר הבאתי
בראשית דברי דעת חכמי
הרפואה בזה מדברי הד"ר
הנכבד וירא אלהים ות"ח
מוהר"ר צבי איליוור נ"י.

The matter [i.e., the significance of autopsy] without doubt is, as I quoted in the beginning of my piece, in accordance with the established medical opinion, as expressed by the esteemed doctor and God-fearing scholar, our master and teacher, Rabbi Tzvi Illoway.

Unlike Rabbi Preil's and Rabbi Tomashoff's compliments, which are barbed with contempt, Rabbi Hirschensohn takes a genuinely respectful tone in reacting to Dr. Illoway's essay. To Rabbi Hirschensohn, Dr. Illoway is the ultimate authoritative source for this type of matter, since he is rabbinically trained but also a practicing medical doctor. As opposed to Rabbi Tomashoff and Rabbi Preil, Rabbi Hirschensohn takes no offense at Dr. Illoway's critique of Rabbi Landau. Instead of accusing Dr. Illoway of having said things that are forbidden to say, Rabbi Hirschensohn calls him a God-fearing Torah sage. He even calls Dr. Illoway "rabbi," despite Illoway's own acknowledgment that he is not ordained.

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As we saw earlier in the discussion of Rabbi Hirschensohn's response to Rabbi Preil, Rabbi Hirschensohn was bothered by what he considered to be the unreflective quoting of Rabbi Landau and Rabbi Sofer in *Yagdil Torah* as the be-all and end-all of the issue, Dr. Illoway being the refreshing exception. To Rabbi Hirschensohn, the important question is how useful autopsy is in saving lives and whether this overrides any and all concerns of desecrating a corpse. To answer that question, one first and foremost needs proper medical information about autopsy – the type of information that can be supplied by Dr. Illoway, not by Rabbi Preil or Rabbi Tomashoff.

Not surprisingly, years later, Rabbi Yosef Messas expressed his strong sympathy with Dr. Illoway's piece (*Mayim Haim*, vol. 2 YD 109). As was seen in the first essay in this section, Rabbi Messas has the most extreme positive view of autopsy and medical school dissection, as he believes selling one's body for scientific purposes to be permitted. Also, if anything, his own critique of Rabbi Landau and Rabbi Sofer (especially the latter) was even harsher than that of Dr. Illoway. As part of that piece (which we again will see in the section on corneal transplants), Rabbi Messas mentions having read through all the essays in *Yagdil Torah* on the subject and offers his overall thoughts. From his summary, it is clear that he favors the position of Dr. Illoway:

ולדעתיה ולדעת האמת, אף אם אינם נמצאים, כנמצאים דמו, ואין כאן שום נוול למת, כי הרופאים אין להם שום מחשבת פגול ונוול, וכל כוונתם רק לתועלת חולים אחרים ועושים כל מלאכתם בכבוד ראש...

According to him [i.e., Dr. Illoway] and according to the truth, even if [no sick people] are around, it is as if they are around, and there is no desecration of the dead here, since the doctors have no inappropriate intentions: all they want is to be of benefit to other patients, and they do their work with requisite solemnity...

לכן טוב להקל במקום צורך כזה לשמור את בריאות הצבור ולפקח נפשות, וכן הסכימו כמה רבנים וכן מעשים בכל יום,

Therefore, it is right to be lenient in a case of need such as this to protect the health of the public and to save lives, and many rabbis have agreed with this and it is a

וכבר התנדבו רבים ונכבדים
את גויותיהם לדבר הזה ונעשו
תועלויות רבות וחיו רבים, וצדקת
המתנדבים עומדת לעד, הגוף
כלה וחסדם לא ימוש, ושכרם
גדול בעולם הנשמות.... הרי
לך דלא חששו לדעת האוסרים
ועשו והצליחו.

matter of daily occurrence. Many honorable people have already donated their bodies to this cause, and much good has come of it, with many people's lives preserved. The righteousness of the donors lasts for eternity:²⁸ although the body is destroyed, their kindness is never lost and their reward is great in the world of the souls. ... As you can see, they did not worry about the opinion of those who forbade [autopsy], yet they succeeded at what they did.

Little can be added to Rabbi Messas' glowing endorsement of Dr. Illoway's position. Rabbi Messas simply blesses those who are willing to sacrifice their bodies and the bodies of their loved ones for the purpose of curing others, and thanks the doctors for working so hard to find cures for various ailments. Hindsight, Rabbi Messas argues, demonstrates who was and who was not on the correct side of this issue.

CONCLUSION

History repeats itself. This can be seen from a comparison of the battle over autopsies in Denver's National Jewish Hospital in the early 1900s with the protests against autopsy policy in Israeli hospitals in the 1960s and 1970s. In each case, a handful of basic approaches to autopsy were expressed by the opponents and the proponents.

In the Denver controversy, three distinct groups emerged:

- (1) Enthusiastic about medical progress and desirous of aggressively integrating all needed medical procedures into hospital policy. This group sees the medical reality as the main issue and the classical sources as secondary, with lifesaving (or potential lifesaving) carrying enormous halakhic weight. Not surprisingly, this group

28. See Psalms 112:3, 9.

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contained not *posqim*, but people with both secular and yeshiva training (Rabbi Dr. Mosessohn and Dr. Illoway).

- (2) Firmly planted against medical interventions that seem to collide with previous halakhic norms. This group sees change as threatening the structure of Torah and appears more concerned about the possible violation of an ancient sage's interpretation of the Talmud than the possible death of patients due to the inevitable insufficiency of research and training (Rabbi Album, Rabbi Preil, Rabbi Tomashoff, and the *Yaqra de-Shikhvi* activists).
- (3) Occupying the middle ground are traditional *posqim* who feel less threatened by the idea of modern medicine's changing halakhic practice and are willing to bend halakha's previous norms due to the possibility that the doctors are correct and lives can be saved (Rabbi Hirschensohn and Rabbi Yudelovitch).

The third group is critical for sustaining a vibrant Judaism. With the rapid progress of medical technology, medical halakha requires rethinking and adjustments every decade or so. The vain attempt to comply with the words of sages unfamiliar with modern medical technology ends up costing lives; in the debate surrounding organ transplantation, it certainly does. For this reason, *posqim* such as Rabbi Hirschensohn and Rabbi Yudelovitch, working in tandem with visionaries such as Rabbi Dr. Mosessohn and experts such as Dr. Illoway, are always needed to update medical halakha.

Fortunately, the Denver hospital story has a happy ending. A century later, the National Jewish Hospital for Consumptives, now known as National Jewish Health, is rated the number-one respiratory hospital in the country. The hospital attracts doctors, including CDC medical specialists, seeking training in respiratory medicine from around the country, and patients with respiratory illnesses come from all over the country to receive expert treatment. One of the hospital's current goals is to treat drug-resistant tuberculosis. Such inspiring success came only because the hospital followed medical professional protocol, including autopsy. To paraphrase Rabbi Messas, there is little question of which side of the debate has been shown to be on the right side of history.

POSTSCRIPT: EDUCATING POSQIM

An important lesson we can learn from this account is that the failure of *posqim* to educate themselves in secular studies (including medicine) cripples their capacity to judge halakhic matters correctly. One is reminded of the statement of Rabbi Barukh ben Ya'aqov Shik of Shklov (1740–1812) in his introduction to his translation of Euclid in which he recalls what he heard from Rabbi Eliyahu Kramer, better known as the Vilna Gaon:

כפי מה שיחסר לאדם ידיעות
משאר הידענות, לעומת זה
יחסר לו מאה ידות בחכמת
התורה.

In proportion to a person's lack of secular knowledge will be shortcomings a hundredfold in his knowledge of Torah.

Since medicine's advances have saved millions of lives, the *posqim's* unfamiliarity with secular knowledge – and lack of sensitivity to their limitations – have led decisors to put halakha in opposition to lifesaving.

Maimonides opposed any approach that would advocate for supposedly upholding halakhic prohibitions at the expense of lifesaving:

הא למדת שאין משפטי התורה
נקמה בעולם, אלא רחמים וחסד
ושלום בעולם.

You thus have learned that the laws of the Torah are not vengeance on the world, but instead [are] mercy, loving-kindness, and peace in the world.²⁹

Regarding opposing approaches, Maimonides invokes the words of the prophet Ezekiel (Ezek. 20:25):

וְגַם אֲנִי נָתַתִּי לָהֶם חֻקִּים לֵאמֹר
טוֹבִים וּמְשַׁפְּטִים לֹא יִהְיוּ בָהֶם.

I [i.e., God] gave them decrees that are not good, laws by which they cannot live.

29. Maimonides, MT Laws of Shabbat 2:3.