

The Delayed Burial Debate of 1772

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[טז, א] "ויקח קרח" מה כתיב למעלה מן הענין? "דבר אל בני ישראל ואמרת אליהם ועשו להם צצית." (במדבר טו) קפץ קרח ואמר למשה אתה אומר "ונתנו על צצית [הכנף פתיל תכלת]." "טלית שכולה תכלת מה היא שיהא פטורה מן צצית, א"ל משה: חייבת בצצית, א"ל קרח טלית שכולה תכלת אינה פוטרת עצמה וארבעה חוטין פוטר אותה! ...

Korah here makes the *rational* argument against the kiyum of the mitzvot – i.e., "I see you want strings of tekhelet so I have lots, no need for your mitzvah." While we are all quick to repudiate Korah as the villain of the Torah, and rightly so, nevertheless, we need to ask ourselves if we are not guilty of doing the same thing – arguing about the validity of Jewish practice? Questioning the validity of mitzvot because they don't align with our rationale.¹

What was Korah's punishment? Buried alive:

במדבר פרק טז, ל-לד

(ל) וְאִם בְּרִיאָה יִבְרָא יִקְוֶה וּפְצִתָּהּ הָאֲדָמָה אֶת פִּיהָ וּבִלְעָה אֹתָם וְאֶת כָּל אֲשֶׁר לָהֶם וַיִּרְדּוּ חַיִּים שְׂאֵלָה וַיִּדְעֶתֶם כִּי נֹאצוּ הָאֲנָשִׁים הָאֵלֶּה אֶת יִקְוֶה: (לא) וַיְהִי כְכֹלְתוֹ לְדַבֵּר אֶת כָּל הַדְּבָרִים הָאֵלֶּה וַתִּבְקַע הָאֲדָמָה אֲשֶׁר תַּחְתֵּיהֶם: (לב) וַתַּפְתַּח הָאָרֶץ אֶת פִּיהָ וַתַּבְלַע אֹתָם וְאֶת בְּתִיחֵיהֶם וְאֶת כָּל הָאֲדָמָה אֲשֶׁר לָקָרַח וְאֶת כָּל הַרְכוּשׁ: (לג) וַיִּרְדּוּ הֵם וְכָל אֲשֶׁר לָהֶם חַיִּים שְׂאֵלָה וַתִּכַּס עֲלֵיהֶם הָאָרֶץ וַיֵּאבְדוּ מִתּוֹךְ הַקֶּהֶל:

This brings us to a very interesting debate that occurred in 18c Germany regarding precisely our topic – the validity of the Jewish practice of burying people ASAP.²



In 1772 Fredrick II, Duke of Mecklenburg-Schwerin – based on the medical theory of his day, which believed that a person might be thought dead while actually in a coma; the only way to determine such being to observe bodily decay להרקיב (which occurs by day three) – issued an edict that all must wait three days before burying their dead.

Such a delay in burial goes against the Jewish practice to bury ASAP, which is learned by the Gem. as follows:

דברים פרק כא, כג

(כג) **לא תלין** נבִלְתוּ עַל הָעֶץ כִּי קְבוּרָתְכֶם בַּיּוֹם הַהוּא כִּי קָלְלַת אֱלֹהִים תִּלְוִי וְלֹא תִטְמָא אֶת אֲדָמְתְּךָ אֲשֶׁר יִקְוֶה אֱלֹהֶיךָ נָתַן לָךְ נִחְלָה: **ו**

¹ I am not advocating the abandonment of reason, but only pointing out, as will be developed here, that maintaining the balance requires effort.

² The following historical account is taken from the unpublished article of Prof. R. L. Kaplan's "On the Boundary Between Old and New: The Correspondence Between Moses Mendelssohn and R. Jacob Emden"

תורה תמימה דברים פרק כא פסוק כג

לא תלין - מכאן למלין את מתו שעובר בלאו [שם שם]:

תורה תמימה הערות דברים פרק כא הערה קס - ר"ל כל מת,

כי קבר תקברנו - מכאן רמז לקבורה מן התורה [סנהדרין מ"ו ב']:

כי קבר תקברנו - זו מצות עשה [ירושלמי נזיר פ"ז ה"א]:

Now, the Duke was known to allow religious freedom but was told by a Jewish convert to Christianity that burial ASAP in Judaism was a custom without authoritative status.

At the time there were two great leaders of the Jewish Community in Germany: Moses Mendelssohn and R. Yaakov Emden. Mendelssohn was a well-known philosopher and maintained good relations with the authorities. R. Emden was the foremost rabbinic authority (*gadol hador*) in Germany at the time (a.k.a., Yaavetz). Their appreciation of one another was such that when the Jewish community had approached R. Emden to write the Duke, he wrote a response but told them that Mendelssohn, being more politically well connected, should write the final letter and submit it to the Duke.³

Mendelssohn wrote the Duke that the custom had basis its biblical and rabbinic law (as seen above), and given that since the Duke's concern is that no one be buried alive, he proposes that the Jewish community will require a medical practitioner to sign a medical certificate attesting to the fact that individual was dead before burial.

However, while Mendelssohn defended Jewish practice toward the Duke, he wrote to the Jewish community, that really they could and should honor the Duke's edict since immediate burial is delayed for various reasons and certainly *pikuach nefesh* is one. He then suggests that if the Duke doesn't accede to his suggestion, then the Jews should make a burial cave like in ancient times and leave the body there for three days and then bury it. He concludes that "this is the correct thing to do."

Now, as mentioned, Mendelssohn was on good terms with R. Emden and the two corresponded about this issue. R. Emden wrote back to Mendelssohn that, he had gone too far in arguing in favor of the new edict, for:

- 1) One could not so easily wave this long-entrenched practice that was based on Torah and Gemara; the leniencies that sometimes applied notwithstanding.
- 2) And as for burial caves, that was a practice ended long ago, valid only in the desert climate and in that social milieu.
- 3) Furthermore, this edict sounded more like the Gentiles trying to impose their religious will on Jewish religious practice. And their doctors do not trump our sages.

The correspondence over this issue, it should be noted, is underpinned by the deep understanding of both thinkers that they were living in turbulent times from the point of

³ As a point of history, the community had also approached Mendelssohn directly and he had already submitted his letter before receiving the letter from R. Emden.

view of Jewish observance. Both Emden and Mendelssohn were aware that, living in the enlightenment period (תקופת ההשכלה), a time of sweeping change on many fronts, required, in certain instances, modifications to Jewish practice. Indeed, both express the need, when necessary, to do away with unfounded later customs, for example. In this particular case, it was the medicine of the day that was being pitted against Jewish practice – Mendelssohn finding more accommodation in Jewish practice than R. Emden.

In the end, the Duke accepted Mendelssohn's proposal and the controversy was diffused (המחלוקת נכבית).

What I think is important for us in all this is that, while we live some 250 years later, this struggle to balance between the “reason” of the times and our ancient traditions is still very much an issue. That is, we too must deal with maintaining traditional Judaism as a rational system to live by, constantly reevaluating old norms, ever moving forward with modernity while not breaking the framework that has maintained us as a people for over 3000 years.

Indeed, if we don't, our fate could be to be buried alive in the “enlightened” rebellion of Korah (במרד המושכל של קורח).