

**THE MATERIAL REMAINS:
AN INTRODUCTION TO THE OBJECTIFICATION, PERSONHOOD, &
POLITICS OF HUMAN REMAINS IN AMERICA**

by

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A thesis submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Master of Arts in American Material Culture

Summer 2017

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ACKNOWLEDGMENTS

I owe a debt of gratitude to the following industry professionals. Their work inspired this research and greatly informed my thinking. They are: Jaime Barker, Medicolegal Investigator and The Ada County Coroner's Office; Joni DeTrant, Health Information Manager and the Oregon State Hospital; Jodie Jones, Ret. Deputy Administrator and the Oregon State Hospital Replacement Project; Caleb Wilde, Funeral Director and Parkesburg Funeral Home; and Dave Deihm, Crematory Operations Manager and Evans Burial Vaults and Crematorium.

This effort stands on the shoulders of giants. Intended for all audiences, it would not be possible without the work of the brilliant scholarly community that precedes it. I would also like to thank the museum staff and academic programs community at the Winterthur Museum, Garden and Library. You inspire my thinking and make me a better scholar. I am particularly grateful to Dr. Catherine Dann Roeber, Dr. Lu Ann De Cunzo, and Dr. Tom Guiler for their scholarly guidance and belief in this project. Finally, special thanks to my academic adviser Dr. J. Ritchie Garrison for his insight, advice, and endless support.

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ABSTRACT

In the modern United States, individual value systems for human remains conflict with institutional value systems for human remains, and preempt the final wishes of the deceased and the bereaved. The study presents contexts that cast remains as mundane objects or people, but they are also regarded as spiritual objects, or combinations of the three. Factors that contribute to the objectification of human remains, the ways objectification of the deceased affects public policy and lawmaking, and some effects of the previous points on American mortuary culture receive the most attention.

The first half of this study shows how technology, language, cultural heritage institutions, and medical science objectify remains and create ontological understandings that conflict with the opinion that remains are people. The second half demonstrates how objectification of human remains is enforced in mortuary law and policy. This is accomplished through case studies of US death-care facilities and the application of statutory, common, and regulatory law in modern funerary contexts. Ultimately this study encourages public conversation about changing American mortuary practices and policies.

PREFACE

This project began as an attempt to understand the problem of unclaimed cremated remains. The factors that culminate in the abandonment of millions of individuals in funeral homes, coroner's offices, and cemeteries are numerous and complex. Rather than reduce the complexity of the issue, I decided to start with one question: are human remains objects or people? This research approaches this question with social construction and material culture theory, a journalism and media review, and evaluations of law and public policy via numerous cases studies.

Social construction theory argues that social reality is a mutually agreed upon, rather than a naturally mandated set of beliefs and behaviors. As a type of artifice, social constructs are subject to interpretation based on context. Data collection occurs through observation of the interactions between these contextual interpretations. The study of physical objects, material culturists collect data by examining how an object is made, used, and/or altered by a culture. In this way, objects divulge cultural values and social practices. Applying material culture theory to the study of human remains and funerary objects reveals some of the ways people interact with the deceased, as well as modern US attitudes about the dead body.

In addition to the above theoretical approaches I conduct an extensive journalism and media review. Pre-existing scholarship was consulted when available,

but to date, there are no studies that examine human remains in modern American mortuary culture. Contemporary newspapers, periodicals, blogs, and social media thus became an effective way to obtain recent information on modern funerary customs as well as up to date opinions on death and dying across a mixed demographic of US citizens.

Findings in this study were also obtained through twenty-plus case studies of death-care facilities and cultural heritage institutions, as well as twelve interviews with death-care industry professionals. The case studies were selected based on geographic location, relevance, and recency. The interviewees chosen were either identified as key figures in shaping modern deathways discussions, or were selected for their visibility in the media, the type of death-care facility where they are employed, or their job roles within their particular death-care industry. All interviews and case studies were conducted between March 2016 and March 2017, using protocols established by the Human Subjects Review policies at the University of Delaware.

Chapter 1

INTRODUCTION: A 'CATHOLIC' DILEMMA

For many Catholic-Americans, end-of-life decisions became end-of-life dilemmas on October 25, 2016. That day, the Vatican presented an Instruction entitled *Ad Resurgendum cum Christo*^{*}, *Regarding the Burial of the Deceased and the Conservation of the Ashes in the Case of Cremation* at the Holy See Press Office.¹ The Instruction had “a dual aim: to reiterate the doctrinal and pastoral reasons for the preference for the burial of the dead, and [...] to issue rules for guidance on the conservation of ashes in the case of cremation.”² In brief, the church maintains its 1963 stance that cremating the body is not “opposed per se to the Christian religion,” but declares that any church members who scatter or separate their ashes, or chose not to be buried in consecrated ground, forfeit their resurrection after the second coming of Christ. For devout Catholics this is *the* fate worse than death, rising with Christ

¹ To Rise with Christ*; “Instruction *Ad Resurgendum Cum Christo* regarding the Burial of the Deceased and the Conservation of the Ashes in the Case of Cremation.” NEWS.VA Official Vatican Network. August 15, 2016, <http://www.news.va/en/news/339759>.

² "Presentation of the Instruction *Ad Resurgendum Cum Christo* regarding the Burial of the Deceased and the Conservation of the Ashes in the Case of Cremation." NEWS.VA Official Vatican Network. October 25, 2016, <http://www.news.va/en/news/339758>.

being the ultimate spiritual goal of the faith and the main reason not to fear one's mortality.

Despite the intent to save Catholic souls from oblivion, the Instruction comes at a bad time. Like many countries, America is transitioning from an ancient preference for burial to cremation.³ The church observed this during the conference where the Instruction was presented. "There has been a continual increase in the number of requests for cremation rather than burial, and it is likely that in the near future cremation will be considered a commonplace practice."⁴ The Church's intervention is perhaps more frustrating, since the shift from burial to cremation is due, in part, to the exorbitant cost of western funerals.⁵ (See Tables 1 and 2 on pg. 83-4) Even if money were not an object, in the country's largest cities, there is also an active burial space shortage. The almost three million Catholics who currently reside in New York City must either find increasingly remote locales for interment and encroach on

³ *National Funeral Directors Association / 2015 NFDA Cremation and Burial Report: Research, Statistics, and Projections*. Report. July 10, 2015, 2. See Table 1 on pg. 83.

⁴ "Presentation of the Instruction *Ad Resurgendum Cum Christo*,"; The Instruction is not addressing an issue exclusive to the United States, but a global concern in which the united states is a participant. This concern is outlined in Par. 2 of the press release: "The document, as Cardinal Müller noted, is addressed to the bishops of the Catholic Church, but directly regards the life of all faithful, in part since in many countries there has been a continual increase in the number of requests for cremation rather than burial, and it is likely that in the near future cremation will be considered a commonplace practice. This development is accompanied by another phenomenon: the conservation of ashes in domestic environments, as commemorative items or their dispersal in nature."

⁵ *2015 NFDA Cremation and Burial Report*, 7. See Table 2 on pg. 84.

other regions' burial grounds, or, disregard the *Ad Resurgendum cum Christo* altogether. Neither option is ideal.⁶

This end-of-life dilemma is not exclusive to Catholics. Muslims and Jews do not usually practice cremation, and among the non-religious, half of Americans still prefer burial.⁷ The burial space shortage is thus wide reaching and will continue to affect more Americans over time. As the largest US city, New York is the first area to feel the effects of this global problem, but places like Los Angeles, and Philadelphia are not far behind. Already, the bodies of past Americans are frequently exhumed, relocated, and sometimes destroyed to accommodate the needs of the living in these cities. At present, there is no indication that this practice will change. What does this mean for spiritual groups that believe remains must be kept intact in consecrated grounds? As baby boomers enter later life, and populations continue to increase, the issue will be unavoidable.⁸

⁶ According to data collected by NYC planning and the PRRI there are 2,736,129 Catholics residing in New York City as of 2015; "Current and Projected Populations," Department of City Planning, July 2015, <http://www1.nyc.gov/site/planning/data-maps/nyc-population/current-future-populations.page>.; Robert P. Jones, Ph.D., "Religious Affiliation of New York Residents by Borough," PRRI. September 22, 2015, <http://www.prii.org/spotlight/religious-affiliation-of-new-york-residents-by-borough/>.

⁷ "Industry Statistical Information," Cremation Association of North America (CANA). 2015, <http://www.cremationassociation.org/?page=IndustryStatistics>.

⁸DeathLab, Columbia University GSAPP, accessed November 12, 2016, <http://www.deathlab.org/about.php>.; Chris Coutts, "Baby Boom Will Lead to Shortage of Cemetery Space." *The New York Times*. October 30, 2013. <http://www.nytimes.com/>.

This case study encapsulates the complexities typical of American mortuary culture at large. New York City Catholics must navigate finance, religion, politics, the real estate market, and their own conscience before they can rest in peace, and even then their resting place is not assured. And urban burial space shortages are just one of America's many funerary troubles. Cultural heritage institutions objectify human remains by displaying them as exhibit items. Zoning laws have a prohibitive effect on green burials, ash scatterings, and the construction of new funerary facilities. Technology, embalming, the medicalization of death care, cremation, and the containers we choose to house remains alter the way the dead are cared for and perceived by the living. To address these issues they must be contextualized. Yet, in the US, dispositions and the ways in which human remains are perceived are entangled in a complex network of interacting factors that accommodate shifting interpretations of the issues. So where does one begin?

Body Issues

In his book *Reassembling the Social*, Dr. Bruno Latour recounts a conversation between a professor and student. The professor asks “what is more important to study: X that is the special case or Y which is the rule?” he continues, “I would bet on Y myself, X will not teach you anything new. If something is simply an ‘instance of’

some other state of affairs, go study this state of affairs instead.”⁹ To address the individual cultural issues that shape modern American mortuary practices—i.e. the burial crisis or the Catholic cremation dilemma—is to examine the special cases. In modern US deathways, the ‘rule’ is the dead body. Consider the following three mini case studies:

Crematoria. In 2015, nearly one in two Americans opted for cremation, and both the National Funeral Directors Association (NFDA) and The Cremation Association of North America (CANA) project a continued rise in the practice over the next fifteen years.¹⁰ As a result, many American death-care providers seek to expand their facilities to keep pace with cremation needs. The rise in cremation has also led to an increase of new death-care businesses. Despite the growing need for crematory services, many zoning laws thwart the expansion or construction of new facilities.¹¹ Crematoria drive down real estate prices, and no one wants to breathe the

⁹ Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory*, (Oxford: Oxford University Press, 2005), 143.

¹⁰ 2015 NFDA Cremation and Burial Report, 7; "Industry Statistical Information."

¹¹ Geoff Fox, "Dade City Crematorium Doesn't Get Needed Zoning." *Tampa Bay Times*. December 10, 2015, <http://www.tbo.com>.; Andrea Zrimsek, "Planning Commission Votes to Deny Crematory, Zoning Ordinance Amendment." *Peters Patch*, March 16, 201, <http://patch.com/pennsylvania/peters/planning-commission-votes-to-deny-crematory-zoning-or5b255597f6>.

smoke.¹² There is still, however, a demand for cost-effective disposals of the deceased. In this case, the problem is disposing the dead without offending the sensibilities of the living.¹³

Embalming. In most states, embalming must be performed if a dead body is to be on public view.¹⁴ In a historical context, embalming better preserved Civil War dead for long distance travel home in an age before mechanical refrigeration.¹⁵ In a modern context, embalming is rooted in a vestige of infectious disease control, though human remains normally pose little biological threat to the living.¹⁶ In both cases, the procedure resolves the problem of decomposition so the body can be present in specific rituals.

¹² Georgia Department of Public Health Environmental Health Branch Chemical Hazards Program. *Common Health Concerns About Crematory Operations*, Accessed October 16, 2016, (Woodstock, GA: DPH), 2.

¹³ In the context of this essay the word dispose does not mean “to throw away.” It is the root of the word disposition; “the way something is placed or arranged.”

¹⁴ Tanya D. Marsh, *The Law of Human Remains* (Tucson: Lawyers & Judges Publishing Company, 2015), 26.

¹⁵ For more on civil war embalming see: Gary Laderman, *Rest in Peace: A Cultural History of Death and the Funeral Home in Twentieth-century America*, (New York: Oxford University Press, 2003), 14.

¹⁶ Donna Eberwine, "Disaster Myths That Just Won't Die." *Perspectives in Health - The Magazine of the Pan American Health Organization*, November 1, 2005. http://www1.paho.org/english/dd/pin/Number21_article01.htm.

Remains Law. In 2015, Dr. Tanya Marsh published the first compendium of United States human remains law.¹⁷ Her text underscores problems associated with governing a dead citizen. Only two types of human remains are addressed at the Federal level; Native Americans and Veterans. All other laws pertaining to human remains fall under state or local jurisdiction and vary widely. Out of five hundred pages, Marsh dedicates over four hundred to the intricacies and variations of remains law at the state level. Local laws are not addressed at all. In the case of remains laws, the problems lie in determining the rights of the dead in relation to the rights of the living.

Examining remains law, embalming, and cremation in conjunction with the urban burial crisis and the cremation dilemma facing Catholics, reveals the question at the heart of all the issues: what is the correct way to handle human remains? The answer varies with the setting. These variations interact to form the basis of confusions, contradictions, and paradoxes that characterize and circumscribe modern American mortuary customs.

Indeed, American deathways are influenced by social, legal, cultural, religious, linguistic, medical, financial, political, philosophical, ecological, and psychological considerations. In the contemporary United States, disagreements between these secular, scientific, and spiritual perspectives lead to confusion over the very nature of

¹⁷ Marsh, *The Law of Human Remains*

human remains. These disagreements then foster mortuary practices that conflict with the systems that regulate them.

Numerous scholars from a variety of disciplines have written about death. While impossible to review the entirety of scholarship, I will highlight key works within two schools of thought most relevant to this research. Section 1.2 includes a brief historiography of works that address western thought about death and dying in modernity (psychology). Section 1.3 presents works that analyze the ways in which society thinks about the nature of the dead body (ontology). It bears restating that both reviews are most representative of western attitudes and practices, currently the group with the greatest influence on US mortuary culture and policy.

Historiographies of Compartmentalization Psychology

Several scholars directly or indirectly address structures and systems that inform American society's psychological approach to death and dying. The scholarship reveals a marked desire to compartmentalize death. Tools of denial and compartmentalization are not new to mourning, but have lately become more complicated and patterned. Americans seek to manage the dead to get on with the act of living. This feature of modern mortuary culture contributes to the objectification of human remains.

The psychological compartmentalization of death and its side effects, the objectification of the dead body, was first addressed by French historian Phillipe Airès. In his book *Western Attitudes toward Death*, Airès wrote extensively on what

he calls “the interdiction of death” in the United States.¹⁸ Airès states that this cultural interdiction began as empathy for the dying. The living mask signs of grief and despair in the presence of the terminally ill to ease their passing. The practice evolved into a stoic attitude for the sake of the surviving relations. Finally, the practice became normative and overt emotions towards death, culturally taboo. Airès cites America as the epicenter of this practice.

Socio-cultural anthropologist Ernest Becker presents a more primal understanding of Airès phenomenon in his book, *The Denial of Death*. According to Becker, fear of death and death anxiety are inherent to human biology. The terror a person experiences at the thought of dying becomes so overwhelming, that they strive to stay oblivious to it as a form of self-defense.¹⁹ Becker calls this ‘The Vital Lie of Character’, and it is the impetus behind many efforts to sanitize and minimize the presence of death in waking life. Becker’s theory is plausible, but not the only reason Americans construct elaborate systems to separate themselves from reminders of death.

Psychological compartmentalization of death may also be rooted in America’s turbulent political history. Many scholars agree several modern mortuary practices trace back to the Civil War. In her book *This Republic of Suffering*, Dr. Drew Gilpin

¹⁸ Philippe Ariès, *Western Attitudes toward Death: From the Middle Ages to the Present*. (London: Marion Boyars, 1976), 92. Ariès cites English sociologist Geoffrey Gorer as the first to discuss what he calls the interdiction.

¹⁹ Ernest Becker, *The Denial of Death*, (New York: Free Press, 1997)

Faust examines the nation's efforts to cope with the catastrophic loss of life as death literally spilled into every sphere of daily activity. She explains that both misinformation and lack of information on the war dead often prevented survivors from processing their grief and instead forced them to deny it.²⁰ According to the Kübler-Ross model, denial is a well-established coping mechanism when processing grief. It effectively compartmentalizes the emotional impact of death on the psyche.

Dr. Gary Laderman has also written on the Civil War roots of modern American death culture. As Laderman explains, embalming had a deleterious effect on deathways. Coupled with a shift from home deaths to hospital deaths, it eventually led to a demand for specialized death professionals and the formation of the National Funeral Directors Association in 1882.²¹ Funeral directors removed the burden of care of the dead from families. From this point, American funerals became increasingly spectacular, and the face of death became friendlier as its day-to-day presence diminished. By outsourcing death care needs, the funeral industry contributes to the psychological compartmentalization of death and the objectification of human remains.

By the mid-twentieth century American funerals were at their most lavish. In the 1950's the typical middle-class American spent thousands of dollars on their

²⁰Faust, Drew Gilpin. *This Republic of Suffering: Death and the American Civil War*. (New York: Alfred A. Knopf, 2008), 144.

²¹ Laderman, *Rest in Peace*, 3.

funerals, often financing the affair. Jessica Mitford's *The American Way of Death*, published in 1963, is a scathing indictment of the American undertaking industry.²² Mitford's exposé elevates cremation as the most economical method of disposition. Multiple scholars cite Mitford's work as the catalyst for the recent rise in cremation in the US.²³

Unfortunately, thanatology (death studies) is a relatively new academic field. Within the last twenty-five years, sociologists, archaeologists, and cultural heritage workers have just begun to study how ontological understandings of the body are formed. To date, the most salient review of scholarship addressing the nature of human remains was published in 2011 by British sociologist, Tiffany Jenkins.

Ontological and Theoretical Historiographies of Human Remains

In *Contesting Human Remains in Museum Collections: The Crisis of Cultural Authority*, Jenkins studied a relatively new issue within the British museum sector; an

²² Jessica Mitford, *The American Way of Death Revisited*, (New York: Alfred A. Knopf), 1998.

²³ Historians Stephen Prothero, Gary Laderman, and Order of the Good Death founder Caitlin Doughty, all point to Mitford as a major player in the rise of cremation. Indeed, Mitford is a somewhat notorious figure in death scholarship. Her outspoken and incisive reporting in her book garnered both criticism and praise. Although she is often lauded for exposing the perceived chicanery of American funeral directing, she is equally criticized for being sensational and unforgiving. For additional critical reviews of Jessica Mitford's work, see: Stephen R. Prothero, *Purified by Fire: A History of Cremation in America*, (Berkeley: University of California Press, 2001), 166; Doughty, *Smoke Gets in Your Eyes*; 107; Laderman, *Rest in Peace*; 83.

ethical debate between museum professionals regarding whether or not human remains require special care and handling. Jenkins' work focuses on how and why human remains became objects of contention in the museum world, the reason the issue is only now garnering professional attention, and the benefits and pitfalls of repatriating historic and/or scientifically significant remains. Many of her findings will be discussed in a later section.²⁴

As she addressed these concerns, she conducted a brief but important review of sociological, archaeological, and anthropological ontologies of the body. The historiography that follows includes both scholarly works reviewed by Jenkins as well as my own review of sources.²⁵ My contributions cover works not discussed in *Contesting Human Remains* or those released after its publication.

There is an expansive body of scholarship that argues the various ways human remains are, can, and should be understood. This section narrows in on the theories directly informing this research. Michel Foucault, Sociologists Elizabeth Hallam, Jenny Hockey, Glennys Howarth, Tony Walter, and Chris Shilling analyze various ways societies assign ontological meaning to human remains and the body.

Anthropologists Ian Hodder and Lambros Malafouris, as well as political scientist Jane Bennet, address the flow of agency within body/mind/object relationships. Art

²⁴ Please see page 31 for more information.

²⁵ The inclusion of Michel Foucault, Elizabeth Hallam, Jenny Hockey, Glennys Howarth, Tony Walter, and Chris Shilling in this historiography are owed to Jenkins' insights.

historian, Jules D. Prown's theories discuss ways to extract data through observation of the material qualities of objects. His theories are applicable to the study of human remains.

One of the earliest ontological discussions of the body comes from French social theorist and philosopher Michel Foucault. In the 1960s and -70s, Foucault published *Birth of the Clinic* and *Discipline and Punish*.²⁶ He situated the body in institutional contexts—the hospital, the court, and the prison—to demonstrate how the it becomes a political object.²⁷ Medicine judges bodies as normal and abnormal, living or dead. Correctional facilities enact punishments on the body to show authority. Courts rule on the extent to which a females' may control their reproductive systems, decide what physical activities are appropriate in public, and ascertain which bodies can legally marry. By placing the body at the center of these decisions, Foucault argues that it becomes a symbol of power. His theories mainly concern the living body, but are applicable to human remains in discussions of law, public policy, identity, and psychology.

About thirty years later, in their book, *Beyond the Body*, British sociologists Elizabeth Hallam, Jenny Hockey, and Glennys Howarth proposed one reason why

²⁶ Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception*. London: Routledge, 2010.; Michel Foucault, *Discipline and Punish: The Birth of the Prison*. 2nd ed. (New York: Vintage), 2009.

²⁷ Jenkins, *Contesting Human Remains in Museum Collections*, 117.

certain remains are objectified while others are not.²⁸ Hallam, Hockey, and Howarth theorize that the death of an individual does not end the social relationships a person had in life; thus, the more recently deceased an individual is, the stronger the influence they exert on the living.²⁹ Older remains are divorced from their social influence because of great temporal and/or geographic distance separating them from the living. Because these remains exist outside of living relationships, they are easier to objectify. This dissociative process helps explain why remains of different eras take on different ontological status. Hallam, Hockey, and Howarth's theory informs later discussions of public works projects and cultural heritage institutions.

Within the last twenty years, many social theorists have addressed the link between identity and the body.³⁰ In his article *Body Worlds*, an analysis of the eponymous German exhibition of plastinated remains, sociologist Tony Walter

²⁸ Ibid, 7.

²⁹ Elizabeth Hallam, Jenny Hockey, and Glennys Howarth. *Beyond the Body: Death and Social Identity*. (London: Routledge), 1999.

³⁰ Concerning scholarship on the subject of social identity, there is an embarrassment of riches. For more information on the body as a site of identity, please see: Anthony Giddens, *Modernity and Self-identity: Self and Society in the Late Modern Age*. (Cambridge: Polity Press, 2010); Chris Shilling, *The Body and Social Theory*. (London: SAGE Publications, 2014); Avi Shoshana, "Coming Out of the Coffin: Life-Self and Death-Self in Six Feet Under." *Symbolic Interaction* 29, no. 4 (November 01, 2006): 557-76. <http://www.jstor.org/stable/10.1525/si.2006.29.4.557?ref=search-gateway:8a26aa748f2e172df60b66670d00d697.>; Susanne Lundin, and Lynn Åkesson. "Creating Life and Exploring Death." *Ethnologia Europaea* 26, no. 1 (1996): 37-49.; Ruth Richardson, *Death, Dissection and the Destitute*. (Chicago: Univ. of Chicago Press), 2009.

presents an overview of recent scholarship that addresses the body as a site of identity.³¹ In this review, Walter argues that “if in high modernity the body is increasingly the bearer of personal identity, then seeing the corpse as a person is not an old-fashioned ‘superstition,’ but very much part of contemporary consciousness.”³² Walter’s findings merge academic knowledge and observational studies of visitor interactions with the plastinated bodies, and corroborate the idea that modern individuals increasingly assign person-hood to human remains.

Sociologist Chris Shilling, takes another position on modern society’s tendency to give human remains attributes of person-hood.³³ Jenkins provides an excellent summary of Shillings’ thesis in *The Body and Social Theory*. “Shilling argues that in high modernity the decline of formal religious frameworks and the collapse of grand political narratives that sustained ontological meanings outside the individual means there is a tendency for people to place more importance on the body. As a consequence, he contends, the body becomes increasingly important to people’s sense of identity.”³⁴ Shilling’s theory supports an important point in this research:

³¹ Tony Walter, "Body Worlds: Clinical Detachment and Anatomical Awe." *Sociology of Health and Illness* 26, no. 4 (2004): 464-88.

³² Walter, "Body Worlds", 466.

³³ Shilling, *The Body and Social Theory*.

³⁴ Jenkins, *Contesting Human Remains in Museum Collections*, 115.

increased secularization in America influences both disposition customs and perceptions of the body.

I apply the theoretical work of material culture theory pioneer Jules D. Prown to this study even though he posits that material culture excludes the natural world. Prown states that “the underlying premise [of material culture] is that objects made or modified by man reflect, consciously or unconsciously, directly or indirectly, the beliefs of individuals who made, commissioned, purchased, or used them, and by extension the beliefs of the larger society to which they belonged.”³⁵ Thus, although human remains mark a liminal space in material culture scholarship, the modification or preparation of the dead body still indicates American cultural beliefs.

In addition to the above scholarship, since 2011, anthropologists Ian Hodder and Lambros Malafouris have both published theoretical studies that discuss the relationships between objects and objects, objects and the mind (cognition), and the effects of these relationships on other humans and objects. Both scholars argue that humans and objects share equal power within interdependent and/or fluid relationships.³⁶ According to Hodder, objects have as much agency as humans in the formation of social constructions. This assertion is important because, while I agree

³⁵ Jules David Prown, "Mind in Matter: An Introduction to Material Culture Theory and Method." *Winterthur Portfolio* 17, no. 1 (Spring 1982): 1-19, 2.

³⁶ see Ian Hodder, *Entangled: An Archaeology of the Relationships between Humans and Things*, (Malden, MA: Wiley-Blackwell, 2012); Lambros Malafouris, *How Things Shape the Mind: A Theory of Material Engagement*. (Cambridge, MA: MIT Press, 2013).

with Hallam, Hockey, and Howarth's theory that time and geography can weaken the social influence of a dead body on the living, Hodder's work forces us to consider whether or not this is true in every context.

Malafouris' work also argues that objects and the body share equal power, though he uses a different approach. He views the body as an extension of the mind; much like an antenna or receiver of external information. Malafouris extends this argument to inanimate objects such as a stick or any other tool humans use to interact with their environment. That the mind can function through inanimate objects, means that inanimate objects can be surrogate containers of the mind and equivalent to the body. In acknowledging the capacity of objects to act as a surrogate body, Malafouris' theories suggest that objects through which the mind can perceive human sensations can also become a site of identity. Ultimately, this theory helps explain why human identification can occur when the living view human remains. It also explains why individuals tend to ascribe person-hood to the dead.

Similar to Malafouris and Hodder, political scientist Jane Bennett asserts that inanimate objects have as much agency as living beings. In her book *Vibrant Matter*, she addresses the tendency of humankind to cast themselves as the apex of all life-forms and materials. She presents several arguments meant to de-bunk this attitude, one of which is an analysis of Odradek, the protagonist from the short story *The Cares*

of the Family Man by Franz Kafka.³⁷ Bennett notes that the narrator of the story has difficulty assigning ontological status to Odradek because he is alive, and at once, not alive.³⁸ Odradek's story is meant to illustrate Bennett's larger point that inanimate material is as vibrant and vital as living material. It also illustrates the difficulty assigning ontological status to human remains. Like Odradek, human remains can be thought of as an inanimate life, and are therefore, not easy to define. Bennett's theory underscores the importance of keeping discussions of human remains complicated.

The work of the above scholars illustrates that opinions of human remains are products of cultural context, symbolism, politics, religion, science, memory, and identity. Human remains are ambiguous social constructions and their interpretation is often bound by a degree of uncertainty. This parallels Heisenberg's uncertainty principle; which in part, studies electrons in atoms. Scholars can measure the location of an electron, or its momentum, but never both at the same time. The data points are always in flux. It is similarly difficult to capture a comprehensive understanding of human remains.

Indeed, remains are political objects, and Jenkins work on human remains in museums foreshadows what will happen in American deathways. A shift in the society's cultural understanding regarding what is and isn't acceptable to do with the

³⁷ Jane Bennett, *Vibrant Matter: A Political Ecology of Things*, (Durham: Duke University Press, 2010), 388.

³⁸ *Ibid*, 388.

dead will force a conversation with or without the benefit of scholarly analysis. Much as Jenkins works responds to issues perceived in the British museum sector, my work responds to issues I perceive in modern American funerary culture.

A conversation about the nature of human remains sits at the center of all of major deathways issues. The following discussion does not offer therapies for what ails American mortuary culture, it identifies factors that shape modern thinking on the nature of the dead body. This paper is, therefore, divided in two. The first half presents these factors within a socio-cultural analysis of death and dying in the US. The latter half uses case studies of mortuary law and public policy to similar effect. Mortuary issues affect all Americans, thus, the ideal solutions will include many perspectives. The following research explores some of the complexities of modern American deathways to encourage discussions in public and academic forums.

Chapter 2

THE OBJECTIFICATION OF HUMAN REMAINS

For many, conceptualizing human remains as objects is problematic if not unfathomable. The self-identification that human remains evoke, especially when in individualized bodily form, makes the concept difficult to digest. The idea of remains as objects is also contested by religions in which reverence of the dead is an integral part of the faith. The Catholic Church's new Instruction on cremation is one example. Americans that descend from Asian or African cultures may also be averse to conceptualizing remains as things. The practice of ancestor veneration is widely performed in such societies, and in the US is normally linked to sites where remains are interred.³⁹ Despite American sub-cultures and faiths that engage the human and

³⁹Two extreme examples of cultures that practice ancestor veneration include: 1) the Sulawesi people of the Philippines, who exhume their dead every three years to celebrate the festival of Ma'nene, or the cleaning of the corpses.; Amanda Bennett, "When Death Doesn't Mean Goodbye." National Geographic. March 2016. <http://www.nationalgeographic.com/magazine/2016/04/death-dying-grief-funeral-ceremony-corpse/>. 2) In Madagascar, many Malagasy participate in the tradition of Famadihana or, the Turning of the Bones, a ritual which, like the Sulawesi, involves exhuming the dead and giving them fresh graves clothes.; Johnny Hogg, "Madagascar's Dance with the Dead." BBC News. August 16, 2008. http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/7562898.stm. In America, the most common peoples to practice ancestor veneration include citizens of Japanese, Korean, and Chinese descent.

spiritual aspects of remains, many are still regarded as objects. This is not to suggest that treating remains as things is correct or wrong, only that it happens.

Public works projects often handle remains as objects. We have discussed this practice in major cities in Chapter One. Older graveyards are excavated for commercial or public development, and bodies are often cremated and put into a range of storage systems, moved to potter's fields, or sometimes destroyed.⁴⁰ The cultural heritage or historic significance of the interred occasionally alters this effect, but the care and handling of remains more commonly takes secondary importance to considerations of logistics, time, money, and land-use needs.

In general, US mortuary law and policy regard human remains objectively. Federal statutes, common law precedents, and regulatory laws are pragmatic and

⁴⁰ Reburials for commercial develop happen more often than people realize. Unless the deceased are socially or politically relevant, grave relocations are usually done quietly. In Philadelphia, the city released plans to lay new utility lines through a playground in Queen Village in 2013, but the action was halted when a scholar came forward with evidence of an early 19th-century African-American gravesite.; Peter Crimmins, "Thousands Buried Beneath Philly Playground," NBC.com., July 18, 2013. <http://www.nbcphiladelphia.com/news/local/Thousands-Buried-Beneath-Philly-Playground-Mother-Bethel-217078301.html>. On the converse, the Oregon State Hospital exhumed their entire cemetery in 1913, a total of 1,500 people, to expand their facilities. In 1950, 85,000 individuals from Philadelphia were moved by the Raymond Rosen Public Housing Development to accommodate residential developments. For more information, see: Sherrill A. Hochspeier, *The Asylum Cemetery: 1883-1913, Salem, Marion County, Oregon*. Compiled by Susan N. Bell. Salem, OR: Willamette Valley Genealogical Society, 1991. Allison Burdo and David Chang. "Forgotten Bodies Unearthed at Local Playground." NBC 10 Philadelphia. August 11, 2016. <http://www.nbcphiladelphia.com/news/local/Caskets-Found-Underneath-School-Playground-234493631.html>.

contradictory. They create confusion for bereaved carrying out of final wishes and preempt spiritual and personal value systems for the dead.

In the home, containers chosen to house the deceased can objectify the individual inside. For many bereaved, urns in the home may serve a function similar to a photograph of the deceased, but for an unknowing guest, urns could appear as any other decorative element of a home. This is more prevalent now as cremated remains can be incorporated imperceptibly into paintings, glass sculpture, pottery, and jewelry.

Cremation removes all traces of humanity from remains. It turns the body to granules of calcium phosphate and other trace elements through chemical and mechanical processes. Americans rarely handle the intact corpses of their loved ones even if embalmed and made-up by a mortician. Yet, ash scattering is practiced by a third of all bereaved who chose to cremate their dead. This underscores the ways in which cremation makes an object of a dead body.

Remains are also objectified in science and medicine. Body farms, safety testing facilities, and even museums, rely on dead bodies to advance knowledge.⁴¹ One keystone of the Mütter Museum's collection in Philadelphia, Pennsylvania are the skulls of 139 individuals. These remains function as a means for the medical museum to address the variety of shapes and sizes of the human head. In universities and

⁴¹ For more information on the various uses of the dead body for education and scientific discovery see: Elizabeth Cohen, John Bonifield, and Renea Lyon. "Ten Uses for Your Body after You Die." CNN. October 28, 2010. <http://www.cnn.com/2010/HEALTH/10/28/body.after.you.die/>. In cultural institutions human remains, such as Egyptian mummies, are often incorporated into exhibits.

secondary schools, replicas of skeletons and body parts fill biology labs, and the word ‘cadaver’ transforms a person’s remains into an educational tool for the classroom.

Defining Human Remains

As an audible or written representation of thought, language and word choice demonstrate another way psychology affects American perceptions of human remains. Calling a cremated body ‘ashes’ rather than ‘remains,’ for example, leaves a listener with distinct impressions and exemplifies the ways in which words reveal cultural attitudes. This section examines Oxford English Dictionary (OED) definitions to analyze select words and phrases commonly used to discuss the dead.

Definition 1.a of ‘remains’: “that which is left of a thing or things after other parts have been removed, used, or destroyed,” classifies them as incomplete entities. The parts removed, used, or destroyed, perhaps referring to the desiccation of a body, or the consumption of soft tissue by other organisms. In the moments after death, before decomposition or desiccation occurs, this definition invokes René Descartes mind-body dualism.⁴² It implies that the part removed from human remains is the mind or the soul. By referencing the loss of tangible or intangible aspects of the deceased, defining a dead body as remains casts it as a vestigial object. As a vestige, of the complete individual, is it appropriate to call remains ‘human’?

⁴² The famous philosopher’s work posits that the mind and body are distinct entities.

In definition 1.a, the OED defines ‘human’ as: “of the nature of the human race; that is a human, or consists of human beings; belonging to the species *Homo Sapiens* or other (extinct) species of the genus *Homo*.”⁴³ Since the definition does not exclude the inanimate, it encompasses corporal remains, but not cremated remains. Cremated remains are almost 75% calcium phosphate and a mixture of other trace elements, but contain no DNA, or biological systems; nothing consistent with human beings or a belonging to the genus *Homo*.⁴⁴ All considered, cremated remains are more similar to cosmic dust than living humans, and by the strictest definitions, are chemical compounds; “A union, combination, or mixture of elements.”⁴⁵ In the case of corporal and cremated remains, the condition of the remains— whole or in pieces, incinerated or desiccated—determines the way they are perceived. More will be discussed on this later.⁴⁶

If cremated remains cannot be human in all cases, maybe they can still be a person. According to the OED definition 2.a, as “an individual human being; a man,

⁴³ "human, adj. and n.". OED Online. November 2016. Oxford University Press. <http://www.oed.com/view/Entry/89262?redirectedFrom=human>.

⁴⁴ Christopher W. Schmidt and Steve A. Symes. *The Analysis of Burned Human Remains*. London: Academic Press, 2008. 87-91; Once cremated, the body of a dog or cat and the human body become nearly indistinguishable: dogs and cats are generally much smaller than a human once cremated.

⁴⁵ "compound, n.1". OED Online. November 2016. Oxford University Press. <http://www.oed.com/view/Entry/37831?rskey=ZHWSlf&result=1&isAdvanced=false>

⁴⁶ For a deeper discussion on how the condition of remains alters perception, see the section on law and public policy on page 42.

woman, or child” personhood is contingent on human status.⁴⁷ There must be a word that neatly encapsulates all incarnations of the dead body. OED defines an ‘object’ as “a material thing that can be seen and touched.”⁴⁸ By this understanding, everything tangible—you and I included—is an object. But object is defined in terms of a ‘thing,’ a word “used indefinitely to denote something which the speaker or writer is not able or does not choose to particularize, or which is incapable of being precisely described.”⁴⁹

In the social sciences, however, the word ‘thing’ is laden with theoretical and philosophical meaning.⁵⁰ Dr. Bill Brown’s Thing Theory, presented in *A Sense of Things*, affects semantic analyses of death language.⁵¹ In a journal article published in *Critical Theory* the Professor of American Culture explains that “we begin to confront the thingness of objects when they stop working for us. [...] The story of objects

⁴⁷ "person, n.". OED Online. November 2016. Oxford University Press.
<http://www.oed.com/view/Entry/141476?rskey=AaIK6L&result=1&isAdvanced=false>

⁴⁸ "object, n.". OED Online. November 2016. Oxford University Press.
<http://www.oed.com/view/Entry/129613?rskey=PyYg4g&result=1&isAdvanced=false>

⁴⁹ "thing, n.1". OED Online. November 2016. Oxford University Press.
<http://www.oed.com/view/Entry/200786?rskey=ukghFL&result=1&isAdvanced=false>

⁵⁰ In the first paragraphs of his book *Entangled*, Dr. Hodder provides a brief overview of the “bewildering array” of recent scholarly approaches to things. For more information, see: Hodder, *Entangled*, 1-2.

⁵¹ For more information on Thing Theory please see: Bill Brown, *A Sense of Things: The Object Matter of American Literature*, (Chicago: University of Chicago Press, 2003).

asserting themselves as things, then, is the story of a changed relation to the human subject and thus the story of how the ‘thing’ really names less an object than a particular subject-object relation.”⁵² In short, Brown posits that when an object no longer serves its original purpose it becomes a thing. If remains are things because they stop functioning as humans, then Thing Theory is entirely, albeit unnervingly, applicable to the case of human remains.

This brief analysis reveals how and why remains defy single states of being. Both Thing Theory and semantic evaluations of death language underscore how everyday speech reflects popular psychology and cultural understandings of human remains. Outside of academia, few individuals have likely heard of Thing Theory, but in general, language is an accessible means of demonstrating the inconsistent ways a dead body is conceptualized in word and thought.

Remains + Technology = Object

The role of technology in modern American mortuary culture is often difficult to apprehend. Its adoption into modern deathways occurred over a century and a half. This slow incorporation allows the passage of time to obscure the influence technology has on perceptions of human remains in modernity.

⁵² Bill Brown, "Thing Theory." *Critical Inquiry* 28, no. 1 (2001): 1-22. doi:10.1086/449030, 4.

In 1917, the average American died at home, and was left in situ without embalming for several days while visitors came to call. The deceased was attended by relations around the clock until the time of burial, at which point, the family carried their departed loved one to the cemetery themselves.⁵³ In the span of 100 short years, American port-mortem rituals have changed *dramatically*. In 2017, the average American dies in a hospital, is immediately retrieved by a death-care professional, and within 24 hours or less, is usually embalmed for burial or cremated and returned to next-of-kin after a process called direct cremation. In some states, direct cremation can be initiated and settled online and the ashes returned by mail.⁵⁴ Online funeral services are one marker of an increasing distance between the living and the dead in United States mortuary culture.

This increasing distance correlates to an increasing reliance on technology to manage death care needs and it creates opportunities for Americans to compartmentalize the impact of death and objectify the dead body. Like many other realms of modern American life, an accelerating reliance on science and technology has been a trend for the last 150 years. Such was the case when Americans abandoned

⁵³ An image depicting a typical turn of the twentieth-century funeral can be found in the online collection of Maggie Land Blanck at <http://www.maggieblanck.com/NewYork/Life.html>

⁵⁴ Caitlin Doughty, *Smoke Gets in Your Eyes: And Other Lessons from the Crematory*, (New York City: W.W. Norton, 2014), 100.

family-driven home death care in the early-twentieth-century, and developed a now twenty-billion-dollar pseudo-medical death care industry.⁵⁵

Ann Neumann, an instructor from New York University's Religious Studies Program, examines this transition in her book *The Good Death: An Exploration of Dying in America*.⁵⁶ Neumann notes that approximately eighty percent of Americans will die in death care facilities like nursing homes and hospitals.⁵⁷ Neumann attributes this shift to technology and a culture which has medicalized and professionalized death-care "to the point where we no longer have to dirty our hands with it." In 2017, this transition is, perhaps, less the intentional choice that Neumann suggests, and more the result of slow changes over time leading to a decreased level of social awareness of the dead and dying than had existed in previous centuries.

In the anthology *Passing*, psychologist Dr. Robert Blauner discusses the effects of technology on western deathways from a societal perspective. Blauner observes that in non-industrialized societies death is felt more distinctly because the loss often creates a "social vacuum." In such contexts, one individual can be integral to the day-to-day function of the society, thus, at their death, a "gap in institutional

⁵⁵ Perianne Boring, "Death of The Death Care Industry and Eternal Life Online." *Forbes*. April 25, 2014.

⁵⁶ Although Neumann examines this shift from the perspective of the dying not the deceased, her findings are no less relevant.

⁵⁷ Ann Neumann, *The Good Death: An Exploration of Dying in America*. (Boston: Beacon Press, 2016), 8.

functioning results.”⁵⁸ To contrast this to modern America, most who die are of retirement age, not in demographics that contribute directly to crucial social functions.⁵⁹ This is due to an increase in life expectancy via advances in medical and public health technologies. These developments mean that in a social sense, most US residents are usually unaffected by, if not oblivious to, the majority of deaths that occur in their community.

Picking up where Neumann’s descriptions of dying in America leave off, the extent of most contemporary Americans’ interactions with the dead are limited to one or two instances: the moments after death before the deceased is taken by a hospital attendant or death-care service provider, and at a funeral, if an open casket service is conducted. In in the latter case, however, the deceased will be embalmed and often painted to appear as little like a corpse as possible. If cremated remains can be

⁵⁸ Robert Blauner, "Death and Social Structure." In *Passing*, edited by Charles O. Jackson, 174-209. Contributions in Family Studies, No. 2. (Westport, CT: Greenwood Press, 1977), 176.

⁵⁹In his paper *Death and Social Structure*, Blauner used a 1966 study that tracked the age of Caucasian males at their time of death to support his argument that most deaths in western societies do not create a “social vacuum”. In order to bring his conclusion up to date, I have applied his framework to analyze a 2014 source that tracked age at time of death across all demographics in the US. The 2014 NVSS data indicates that of the 2,626,418 deaths included in the study, 1,922,271 occurred over the age of 65 (about 73 %). The majority of American deaths therefore still occur after the traditional age of retirement. These results align with Dr. Blauner’s, but reveal this statement to be true for both men and women and across all races, not just in Caucasian communities. Data obtained from: National Vital Statistics System. *National Vital Statistics Reports, Deaths: Final Data for 2014*. Publication no. Volume 65, Number 4. June 30, 2016. https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf. 30.

considered a dead body in the strictest interpretation, then some Americans may interact with them as a decorative element in the home, usually as an urn or in another style of container as discussed earlier. As the most popular and technologically involved method of treating human remains, this is the most likely way in which an American would interact with a 'corpse'.

While the above instances represent the most common methods of disposition, there are even more technologically spectacular ways to conduct a funeral. Granted, America's cultural diversity is reflected in its deathways, but science has literally taken the possibilities for disposition to astronomical heights. Those with the financial means can launch 'symbolic portions' of their loved one's cremated remains into space.⁶⁰ Modern remains can also be freeze-dried, bio-chemically decomposed, hydrolyzed, or, if urban planners at Columbia University develop their conceptual designs, suspended under bridges in luminous white pods that power themselves by using the body as an electrical biomass.⁶¹ When making end-of-life arrangements, Americans have never had more options, but these technological funerary marvels impact understanding of human remains. The body's humanness is replaced with objectness the more involved it becomes with technology.

⁶⁰ "Memorial Spaceflight Services." Celestis Memorial Spaceflights.
<http://www.celestis.com/services.asp>.

⁶¹ DeathLab, Columbia University GSAPP, Accessed November 07, 2016.
<http://www.deathlab.org/about.php>.

Many of the disposition options just discussed are in prototypical stages and engage remains as an element of an experiment. This approach may be a holdover from the principles of medical and scientific education. Namely, that the body is a tool that can be utilized for the sake of academic discovery and development, and to improve the human experience. While use of the dead body to develop new disposition technology never approaches the nefarious level of nineteenth-century grave robbing for cadavers, both practices serve to objectify the body.

Tiffany Jenkins also notes the objectifying effect of scientific/medical study on the body in her discussion of remains in cultural heritage sites. “One consequence of the scientific conception of the body is that it has been possible to display and research human remains, and to view them as objects of science. [...] Theorists thus commonly interpret the display of human remains in museums as permitted due to the scientific conception of the body, the institutional context, and also the age of the remains, all of which re-contextualize these potentially problematic human objects as research objects for learning.”⁶²

As Jenkins acknowledges, technology is not the only means by which objectification of the dead body occurs in the US. In the last fifty years, cultural heritage institutions across the country have had a profound impact on the way everyday Americans view human remains. The next section will present case studies of museums and institutions with human remains collections.

⁶² Jenkins, *Contesting Human Remains in Museum Collections*, 112.

Remains + Cultural Heritage Sites = Object

You may not have heard of the Orlovits family but they are famous in certain academic circles. Michael Orlovits, 41, his wife Veronica, 38, and their one-year-old son Johannes, came to America in 2010. The family hails from Vác, Hungary, a rural town in the foothills of the Carpathian Mountains. Since arriving in the US, the Orlovits' have helped over 1.3 million Americans better understand the lifestyle, health, and culture, of working and middle class families in Hungary. Of course Michael, Veronica, and Johannes don't remember any of this because all three passed away before 1808.⁶³ The Orlovits family are three mummies currently touring the United States as part of American Exhibitions Inc.'s natural history exhibition, *Mummies of the World*.

Mummies of the World opened in Los Angeles California in 2010.⁶⁴ The show represents the largest collection of real mummies and related artifacts ever assembled. Brought together with the help of fifteen international institutions from six different countries, the over 150 artifacts and mummies "reveal how the scientific study of mummies provides a window into the lives of ancient peoples from every region of the

⁶³ Chris Wells, "Medicine Meets Mystery: The Vác Mummies." The Houston Museum of Natural Science. October 26, 2016.
<http://blog.hmns.org/2016/10/medicine-meets-mystery-the-vac-mummies/>.

⁶⁴ American Exhibitions Inc., "Mummies of the World Exhibition to Debut in Los Angeles Summer 2010." PR Newswire. February 17, 2010.
<http://www.prnewswire.com/news-releases/mummies-of-the-world-exhibition-to-debut-in-los-angeles-summer-2010-84605222.html>.

world. [...] *Mummies of the World* illustrates how current science tools enable us to study mummies in new and non-invasive ways, allowing unprecedented insights to past cultures and civilizations.”⁶⁵ Despite the scientific and educational value of *Mummies*, the exhibition, and others like it are controversial topics among cultural heritage workers.⁶⁶

In America, cultural heritage sites have become one of the only places for a person to have a casual encounter with human remains. Industry professionals, particularly in Britain, are aware of this, and have produced much scholarship discussing the ethical, political, scientific, and cultural implications of the practice of exhibiting the deceased as artifacts.⁶⁷ Many members of the academic community support the study and display of human remains as a means of investigation of historic peoples. Others believe handling them as educational objects disrespects the deceased.

⁶⁵ Ibid.

⁶⁶ Jenkins, *Contesting Human Remains in Museum Collections*, 3.

⁶⁷ Tiffany Jenkins, "Dead Bodies: The Changing Treatment of Human Remains in British Museum Collections and the Challenge to the Traditional Model of the Museum." *Mortality* 13, no. 2 (2008): 105-18. doi:10.1080/13576270801954419.; Hugh Kilminster, "Visitor Perceptions of Ancient Egyptian Human Remains in Three United Kindom Museums." *Papers from the Institute of Archaeology* 14, no. 0 (2003). doi:10.5334/235.; Vicki Cassman, Nancy Odegaard, and Joseph F. Powell. *Human Remains: Guide for Museums and Academic Institutions*. Lanham, MD: AltaMira Press, 2007.; Hedley Swain, "The Ethics of Displaying Human Remains from British Archaeological Sites." *Public Archaeology* 2, no. 2 (2002): 95-100. doi:10.1179/146551802793157042.

This debate began in earnest during the last quarter of the 20th century after Native American nations began to petition cultural heritage institutions for the repatriation of the remains of their ancestors. The campaigns ended in 1990 with the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA). Since the passage of NAGPRA, American museums have repatriated 50,518 individuals, and almost one and a half million funerary objects.⁶⁸ Over thirty years later, the issues first broached by NAGPRA activists still affect cultural heritage institutions with human remains collections.

Dr. Gunther Von Hagen's recent *Body Worlds* exhibition and medical museums like the Mütter Museum in Philadelphia, Pennsylvania represent one side of the debate. *Body Worlds*, a traveling exhibition of plastinated human remains, is the product of 16,000 individuals who wished "to be used for scientific purposes and to increase public awareness of the complexity of the human body."⁶⁹ In this way, the museums that serve as exhibition venues both promote knowledge and implement the final wishes of the deceased. Scholar Tony Walter notes that, *Body Worlds* and institutions like Philadelphia's Mütter Museum, which features thousands of

⁶⁸ Since 1990 American museums have repatriated: 1,185,948 associated funerary objects (includes many small items, such as beads), 219,956 unassociated funerary objects (includes many small items, such as beads), 4,914 sacred objects, 8,118 objects of cultural patrimony, and 1,624 objects that are both sacred and patrimonial; "NAGPRA Frequently Asked Questions." National Parks Service. Accessed February 28, 2017. <https://www.nps.gov/nagpra/faq/index.htm>.

⁶⁹ "Body Worlds Vital." *Body Worlds Vital*. Accessed March 01, 2017. <http://bodyworlds.pl/en/o-wystawie/>.

anatomical specimens and skeletal models, teach audiences a form of clinical detachment, through which they can “suspend personal feeling and see, discuss and treat the body with objectivity.”⁷⁰ In this case, presenting the remains as objects facilitates an educational experience. Many scholars, however, believe that education is not a valid reason to interpret and display human remains. Even changing the presentation of human remains in these settings, may not be enough to alter the effect on our ontological understandings.

The other side of the debate has been broached in the book, *Who Owns the Dead?: The Science and Politics of Death at Ground Zero*. Author Jay D. Aronson, founder and director of the Center for Human Rights Science at Carnegie Mellon University, addresses the controversy of the remains currently held at the National September 11 Memorial & Museum.⁷¹ The remains at the 9/11 museum are not on public view although they feature prominently in the institution's interpretive narrative. This was an intentional effort “to balance sensitivity toward family members with the commitment to “factuality and authenticity in telling the story” of September 11.”⁷² The remains in the National September 11 Memorial & Museum are located in the building's basement behind a stone wall, however, the choice to keep them in the museum, rather than a separate memorial has incensed some families of the unidentified victims

⁷⁰ Walter, *Body Worlds*, 464.

⁷¹ Jay D. Aronson, *Who Owns the Dead?: The Science and Politics of Death at Ground Zero*. (Cambridge, MA: Harvard University Press), 2016.

⁷² *Ibid*, 232.

interred on the site. In a particularly poignant op-ed piece submitted to the New York Daily News, Retired FDNY deputy fire chief Jim Riches asked “Should the 9/11 families have to walk past the 9/11 Museum store on the first floor, selling its WTC cups, shirts, and books while on their way down past thousands of tourists to pray over their loved ones' remains?”⁷³ Chief Riches never received an answer. Like NAGPRA, Aronson’s study reveals how important respect and deference of human remains is for the relatives of the deceased, perhaps even more when the remains in question are still part of living memory.

Reviewing the above cases supports Hallam, Hockey, and Howarth’s theory that time diminishes our perception of the person-hood of the deceased individual, and facilitates their objectification. Little has been said over the years of the Orlovits family, the early nineteenth-century Hungarian mummies, however, the ancestral remains of many present-day Native American Nations as well as the remains at the National September 11 Memorial & Museum are still debated over and contested. These case studies also reveal that de-individualizing remains affects visitor perceptions. The human remains in *Body Worlds* are stripped of their defining characteristics and the bodily fluids replaced with plastic resin. Medical museums like the Mütter further de-individualize the body by presenting it as disarticulated and decontextualize components.

⁷³ Geller, Pamela. "911 Human Remains: "Who Owns the Dead?"" Geller Report. April 17, 2011. <http://pamelageller.com/2011/04/911-human-remains-who-owns-the-dead.html>; also cited in Aronson, *Who Owns the Dead?*, 234.

The problem of de-individualization is critical to the discussion of cremation. Given the nation's ever-increasing adoption of the de-individualizing practice, cremation arguably serves as the most pervasive system in American deathways to objectify human remains. This practice can have a massive and unpredictable effect on the ways future American will view our remains. The following section will discuss the physical process of cremation and demonstrate how the culture that surrounds it transmutes human remains into things.

Inside the Crematory

In 2015, National Geographic published an interview with husband-and-wife team Karel and Iris Schrijver, a Lockheed Martin astrophysicist and Stanford University medical pathologist, respectively. The scientists' book, *Living With the Stars: How the Human Body Is Connected to the Life Cycles of the Earth, the Planets, and the Stars*, confirms what Joni Mitchell has sung all along, "we are stardust."⁷⁴ Bearing this in mind, dispositions by cremation take on a poetic cast. Unfortunately, however, the poetry stops there. In America, cremation is usually chosen because it is

⁷⁴ In the interview, Iris Schrijver explains "That our bodies are made of remnants of stars and massive explosions in the galaxies. All the material in our bodies originates with that residual stardust." Simon Worrall, "How 40,000 Tons of Cosmic Dust Falling to Earth Affects You and Me." National Geographic. January 28, 2015. <http://news.nationalgeographic.com/2015/01/150128-big-bang-universe-supernova-astrophysics-health-space-ngbooktalk/>. Worrall also cleverly connects the Schrijver's work to Mitchell's lyrics.

the most economical and expedient way to dispose of a dead body, not because it completes a cosmic circle of life.

I touch on several aspects of cremation culture that promote the perception that human remains are things: the changes the process enacts on the body, its psychological impact on the bereaved, and, in the next chapter, the zoning laws that restrict its practice. The practical process of cremation equally contributes to this perception. To discover how human remains are transformed into ‘ashes’—a procedure seldom witnessed by next-of-kin— I visited Evans Burial Vaults and Crematorium in Lancaster County, Pennsylvania.

As a funerary service provider, Evans Burial Vaults has operated continuously for 100 years. Although located in the unincorporated village of Leola, Pennsylvania, Evans serves over 120 funeral homes in central and southeastern Pennsylvania, northeastern Maryland, and northern Delaware. Its geographically dispersed clientele reflects the zoning laws that prohibit crematories inside city limits. After arriving at Evans, I was greeted by Dave Deihm, the Crematory Operations Manager. A compassionate, yet knowledgeable and practiced businessman, Deihm has worked for Evans since 1968 and started the companies’ crematory unit. Before entering the crematory proper, however, my host and I sat in his office, and I received and overview of the process I was about to witness.

Procedures differ slightly depending on state law or a facility’s equipment and policies, but most cremations look the same no matter who performs the service. A

crematories' clientele may also vary. Evans deals primarily with funeral directors, but many work directly with next-of-kin. Regardless of the type of client, however, authorization forms and permits must be obtained, signed, and submitted to the facility before a cremation occurs. Next-of-kin complete this step, and based on circumstances of death, a medical examiner or coroner is involved to a varying degree. Depending on state law, there is a waiting period of up to forty-eight hours from time of death before cremation. After the required period elapses and ceremonies or viewings conclude, the decedent is transported to the crematorium for processing. When the decedent arrives, a crematory employee assigns the body an identification number and tag. The ID tag stays with the deceased at all times since remains become indistinguishable after entering the cremation chamber, or cremator. In retrospect, hearing about funerary rites in such bureaucratic terms underscored the objectification of the body during this process.

After detailing the administrative aspects of a cremation, Dave began my tour of the crematory proper. Upon entering the room that held the cremation units, Dave raised his voice to speak over the roar of the cremator furnaces. "Transforming a decedent into cremated remains is a multi-step procedure involving both chemical and physical processes!" He continued: Prior to entering the cremator, the body is transferred to a temporary casket, usually a cardboard box called an alternative container. Pacemakers and personal items explode under the high temperatures, and are removed from the body. The deceased is then placed into a walk-in body refrigeration unit. Dave lowered his voice as we entered the refrigeration unit. I

pondered the concept of meat-lockers before realizing that I inadvertently objectified the remains. Dave continued the tour.

When the body reaches the top of the queue, it is wheeled out of the refrigeration unit on a gurney, then placed onto a conveyor system which rolls the body into the cremator feet-first. (At this point, all three of Evans' cremators were already in operation so Dave continued the tour from memory.) Once in position, the crematory operator engages the chamber door, adjusts the airflow, and turns on the ignition burners. Upon ignition, heat and flames reaching 1,800 degrees Fahrenheit consume the alternative container, and all substances except for the calcium compounds of the bone and non-combustible materials such as prosthetics and implants. Throughout the process, operators monitor the temperature and may open the chamber door periodically to check the progress of incineration or reposition the deceased with hooks to assure a complete cremation. The total time required to achieve cremation varies based on the size and weight of the deceased, but the process usually lasts approximately one and a half to three hours. Although Dave was not callous while narrating this part of the process, his familiarity with the procedure made the description sound similar to a cooking show host explaining how to bake bread.

Once a cremation was complete, I watched as the operator lowered the cremator temperature to approximately 500 degrees Fahrenheit. The body inside cooled for about an hour. Once cool, the remains and non-combustible materials were swept from the cremator into a metal bin using a long-handled broom. This step was reminiscent of cleaning out a fireplace. The operator collected as much of the remains

as possible, however, small amounts of residue clung to the ceramic floor of the cremator, and resulted in an inadvertent, yet unavoidable, commingling with other remains. After all of the remains were recovered from the cremator, the operator transferred the contents of the bin to a sorting tray where non-combustible materials were separated from the bone fragments by manual and magnetic action. Once separated, the cremated remains were further processed in a machine called a cremulator. Cremulation reduced the size of the bone fragments by grinding them into uniform particles in a process similar to grinding coffee. Once ground, the cremated remains were poured from the cremulator into a plastic liner bag and sealed with a twist tie and the deceased's ID tag.

Depending on the bone structure of the decedent, the resulting granules weigh between three and nine pounds. If an urn is provided to the crematory, the plastic bag will be placed into this receptacle. If no urn is provided, the bag of remains will be placed in a temporary plastic urn and transferred to a designated holding area. Based on prior arrangements, the urns will be retrieved by a funeral director or packaged for delivery to next-of-kin by mail.

After touring the facility, I noticed that the process of cremation objectifies human remains, but the employees at Evans crematory do not. The employees carefully protect the privacy of the individuals in their care and treat all remains with

the utmost respect.⁷⁵ However, the process is evocative of so many food preparation procedures—baking, refrigeration, cleaning a hearth, grinding coffee— that it is difficult not to dehumanize the remains, or at least, not to think of the remains as objects. The employees' regard for the remains as people juxtaposes the perfunctory processes used to transform them into 'ashes' and exemplifies the cognitive dissonance felt when establishing the nature of human remains in other contexts.

The processes used are not the choice of the facility, however, but are dictated by public policy and state law. Certainly, neither the crematory employees, nor next-of-kin wish to de-humanize anybody's loved ones, however, most of the methods used are legally circumscribed. The next chapter examines how legal mechanisms impose understandings of human remains as things and restrict the immediate and long-term funerary wishes of the deceased and the bereaved.

⁷⁵ To protect the privacy of their clients, the employees at Evans Burial did not allow photography inside the crematory. For a great article featuring photos of the cremation process, please see: Josh Sanburn, and Lars Tunbjörk. "Cremation: The New American Way of Death." *Time*, June 13, 2013. <http://time.com/3800220/cremation-the-new-american-way-of-death/>.

Chapter 3

LAW AND THE BODY POLITICS

America is a nation of laws. Indeed, in an age where it feels like there is a law for everything, the existence of laws and policies to govern the dead will likely come as no surprise. American remains law, however, is full of ambiguity, inconsistency, and contradiction. This affects how Americans mourn and conduct funerals, as well as the way we relate to and perceive human remains.

Before discussing how American mortuary laws alter the living's relationship with the dead, I want to present some key features of the American legal system. In the US, there are three main types of law: statutory law, common law, and regulatory law. Statutory laws are framed in the house and congress and passed through legislative process. These laws are often prescriptive and intentionally ambiguous. Statutory laws are written laws. Common law, or case law, result from the final rulings of legal proceedings and are thus the product of the judicial system. Usually instructive and specific by comparison, common law is a collection of legal precedents. Regulatory laws are framed by authorized government agencies and belong neither to the legislative nor judicial branch. Regulatory laws are often enacted by agencies to give greater specificity to statutes. Normally administrative, regulatory laws outline proper legal procedures and instate means of enforcing written law.

Some components of mortuary common law protect the deceased's right to

perpetual care, religious burials, and the execution of the deceased's estates according to their final wishes.⁷⁶ Many of these precedents originate in English common law and date back centuries.⁷⁷ On the other hand, rapid changes in American deathways over the last century have also lead to many comparatively new laws. The newest statutes, case laws, and regulations are reactionary responses to specific issues at the corresponding level of jurisdictions.⁷⁸ In terms of ambiguity and failure to anticipate or manage continuously changing death-care needs, these laws are often the most problematic.

The following section examines the problematic aspects of current mortuary laws and public policy, beginning with a discussion of federal statutes and key principles of common law, continuing with an examination of regulatory law through case studies of the zoning hearings, and concluding with an analysis of public polices related to unclaimed remains and indigent burials. But first, let us start with a story.

⁷⁶ Marsh, *The Law of Human Remains*, 42-49.

⁷⁷ It is no coincidence that the aspects of our law which protect the religious wishes of the individual descend from English common law. In Georgian England, the church, not the state, was the entity responsible for overseeing matters of the deceased. Ibid, 3.

⁷⁸ Federal Law is slow to change. Of the three federal mortuary laws, the National Cemetery Act was amended in 2003, NAGPRA was amended in 2010, and The Funeral Rule in 1994, for more information please see: Ibid, 19, 24; and, U.S. Department of Veterans Affairs. *History and Development of the National Cemetery Administration*. Report. October 2015.
<http://www.cem.va.gov/docs/factsheets/history.pdf>.12.

The Value of the Dead

In in the early 1990s, Jim Berndt, LPG, environmental consultant and Principal Hydrogeologist at August Mack Environmental, Inc. lead a team of geologists on a routine evaluation of a plot of land at the former site of the Indiana State hospital in Indianapolis.⁷⁹ The land was to be sold for commercial development by the state of Indiana. As part of the pre-sale evaluation, Berndt's team used auger drills to acquire soil samples to test for chemical impurities. While extracting a sample from a depth of ten feet, one geologist noticed chunks of bone in the excavated material conveyed to the surface. The entire project was immediately halted.

Berndt's team followed proper protocols and reported their discovery to the state. A forensics team of Indiana state archaeologists and police came out to the site to determine if the excavated bones were human or animal, recent or historic. Work on the project resumed in short order after authorities determined that Berndt's team discovered a Civil War-era limb pit.⁸⁰ According to established procedure, the limbs were relocated off-site, the hole was backfilled, and the property was approved for commercial sale. If his team discovered a pit of complete skeletons, a forgotten cemetery, or a Native American burial ground, however, the outcome of the project would have been quite different.

⁷⁹ Berndt, Jim, LPG. Telephone interview by author. August 1, 2016.

⁸⁰ Limb pits are often found on the sites of mid- to late-19th-century hospitals. Limb pits are in-ground receptacles for amputated appendages.

Berndt explains that from a bureaucratic perspective, when professionals respond to the discovery of human remains on a site, “dealing with a cut off arm is a nuisance. Dealing with a body is a crisis.” In this case, discovery of the limb pit was resolved in a matter of weeks with the excavation of the remains and continuation of the project. Has the team discovered an undocumented cemetery or family plot, the project could have been stalled for a few months to a year. This would allow authorities the time to mark and document the burial ground and determine what to do with the bodies. If anthropological evidence had revealed the presence of a Native American graveyard, the project would have been canceled at once.

Mr. Berndt’s experience provides an entry point to discuss the objectification of human remains in current law and policy as well as the potential threats posed to a person’s final wishes. In this case study, we observe how the state of remains informs our perception of them and the deference they receive, a tendency that is partially the product of key features of Federal statute and common law.⁸¹

Federal law protects two types of human remains: US veterans and Native Americans. The Native American Graves Protection and Repatriation Act (NAGPRA) and, the now heavily amended National Cemetery Act, both detail the ways and means for the protection, burial, and perpetual care of the remains with which they are concerned.⁸² The balance of US remains law derives from seven precedents

⁸¹ Marsh, *The Law of Human Remains*, 8-11, 19.

⁸² *History and Development of the National Cemetery Administration*.

summarized in Tanya Marsh, esquire's, recent compendium, *The Law of Human*

Remains.⁸³ The seven fundamental principles are:

- 1) The courts have jurisdiction over the dead, particularly after burial.
- 2) The preferences and religious beliefs of the decedent should be honored
- 3) The rights of the next of kin to control the disposition of the dead should be respected.
- 4) Individualized human remains are more worthy of protection than de-individualized remains.
- 5) An individual decedent shall be committed to a single, memorialized grave in perpetuity.
- 6) The interests of the dead shall not trump the needs of the living.
- 7) There is no property in human remains.

Note that these principles contradict themselves. They direct individuals be singularly memorialized in perpetuity in the faith of their choosing, while simultaneously yielding to the needs of over 300 million people now residing in the US.⁸⁴ Now add to this NAGPRA and the National Cemetery Act. The resulting policies accommodate qualitative assessments of the deceased and imply that not all remains are equal. Effectively: Individualized dead are more important than pieces of the dead, deceased soldiers are more important than deceased civilians, and remains of

⁸³ For more information on the seven principles and the precedents that established them please see: Marsh, *The Law of Human Remains*, V.

⁸⁴ United States Census Bureau. "U.S. and World Population Clock" Population Clock. Accessed February 11, 2017. <http://www.census.gov/popclock/>.

Native Americans are more important than those of the descendants of enslaved or immigrant Americans. By giving specific remains preferential treatment, we can see how some become objects while others are venerated.

Presumably, it was not the intent of policy makers to create a system of hierarchy to classify remains. NAGPRA was a response to a long history of protests against the desecration of Native American remains and grave goods by cultural heritage institutions and public works projects. The National Cemetery Act, enacted under President Lincoln, was meant to ensure that Americans who gave their life in military service would receive a respectable burial regardless of their financial situation.⁸⁵ Both NAGPRA and The National Cemetery Act intend to ensure respect for and the integrity of the remains with which they are concerned. But intent does not alter the practical effect: the current state of affairs is such that only two groups of deceased Americans are given deference by law.

To illustrate why this is problematic, consider a hypothetical tax attorney from 2017, an Irish immigrant from 1880, and a Cherokee from 1740. It is reasonable to

⁸⁵ The National Cemetery Act, now the National Cemetery Administration, currently falls under the purview of the Veterans Administration, but began as an act of congress as follows: “SEC. 18. *And be it further enacted*, That the President of the United States shall have power, whenever in his opinion it shall be expedient, to purchase cemetery grounds, and cause them to be securely enclosed, to be used as a national cemetery for the soldiers who shall die in the service of the country.” For more information on this enactment, please see: U.S. Congress. Senate. *Library of Congress*. 37 Cong., II sess. S. Rept. Ch. 200, Sec. 18. Accessed February 17, 2017. <https://www.loc.gov/law/help/statutes-at-large/37th-congress/session-2/c37s2ch200.pdf>.

assume that all three equally desire that the graves of their ancestors and relatives be treated with deference. Yet, current law does not support all these hypothetical individuals' wishes.

This is partially because individuals use human identification, social relationships, and personal experience to value remains, while laws assign value based on factors such as temporal distance from the time of death, cultural heritage, historic relevance, public health, and land-use needs. The benefit is that policy makers can respond to the needs of the living (principle 6) without impediment from religious or spiritual considerations. If a defunct cemetery is discovered while building a new road, the problem can be resolved among professionals and incurs little public fanfare. Like the Civil War-era limb pit, or the public works projects previously discussed, past Americans are frequently exhumed without warning.⁸⁶

But this is problematic given the personal, emotional, and spiritual impact of death. By largely ignoring these in the enactment and enforcement of mortuary law, those features that protect individual wishes, such as principles 2, 3, and 5, are often left to religious groups to defend or uphold. We will see in the next section, however, that this is also problematic. Whether issued by the Vatican or a local congregation, spiritual directives do not exist in a vacuum. As much as a leader or practitioner of a

⁸⁶ Please refer to the cases of the Philadelphia, PA and Salem, OR gravesites discussed in the text and footnotes on pg. 8. In both situations the remains of thousands of individuals were treated without regard for their religious beliefs, and were removed from their place of final rest.

given faith may desire a certain outcome for their mortal remains, zoning regulations can frequently obstruct these wishes.

Zoned Out

This analysis of US zoning regulation is divided into halves. The first half presents six cases studies that illustrate some of the ways zoning boards enforce US regulatory laws in different situations as well as how they impede or alter individual and group funerary wishes. The second half examines the most common justifications constituents cite when opposing the construction of new death care facilities, and demonstrates how death politics play out at the local level, the ways our decision-making processes are informed by socio-cultural mores rather than empiricism, and how these tendencies objectify the dead.

In cases where remains are not in danger of exhumation for land re-use, American mortuary regulations and politics can still interfere with the wishes of the deceased and their next-of-kin. This interference usually comes in the form of zoning ordinances and restrictions. Zoning restrictions on cemeteries, crematoria, and other locations for death-care needs vary depending on the city in question. Regardless of locale, patterns still emerge when comparing the final outcomes of death-care facility zoning cases and the justifications used to support them.

Islamic communities in America deal with resistance when attempting to establish new burial grounds. A recent article published by the Associated Press reviewed several national cases in which Muslim congregations were denied rights to

establish US cemeteries.⁸⁷ In traditional Muslim burials, the deceased are washed and the un-embalmed bodies wrapped in a cloth shroud. Their dead are usually interred within twenty-four hours of death without caskets, coffins, or burial vaults.

In the 2015 case from the Pennsylvania township of West Pennsboro, the Bosniak Islamic Cultural Center applied for a permit to build their new cemetery over the site of a derelict farm.⁸⁸ Fearful that the uncontained, decomposing bodies would contaminate the ground water supply, town residents raised public health concerns. This, along with the perceived threat to property values became primary reasons the board denied the request, despite testimony from hydrogeologist Douglas Cwienk, stating that burial of un-embalmed bodies is safer for the environment than embalmed

⁸⁷ As will be discussed, zoning boards often cite decreased property value, increased traffic, and public health concerns as reasons to rule against new cemeteries. Many sources reviewed, however, reveal racism and bigotry to be a major reason proposals are rejected when attempting to establish new Muslim cemeteries. Without denying or minimizing the pervasiveness of Islamic prejudice in the United States, it is my belief that this is not the sole reason Muslim cemeteries are denied. When compared to the reasons given for rejection in cases where a group or individual sought to establish non-denominational crematoria, or cemeteries, the reasons are often the same. In the case of Muslim burial grounds this suggests that psychological aversion to spaces for the dead, in addition to racism, is also a deciding factor. For this reason, the case of the Bosniak Islamic Center can and should be used in support of this theory. For more information on the effects of racism on Muslim burials please see: Denise Lavoie, "Backlash Greets Plans for Muslim Cemeteries across US." *The AssociatedPress.Org*, April 25, 2016. <http://bigstory.ap.org/article/58d4287818d94658ac52db51ddd94f36/backlash-greets-plans-muslim-cemeteries-across-us>.

⁸⁸ David Dekok, "Pennsylvania Township Nixes Proposed Islamic Cemetery, Appeal Likely." *Reuters*, March 24, 2015. <http://www.reuters.com/article/us-usa-pennsylvania-cemetery-idUSKBN0MK2MQ20150324>.

bodies and would pose no threat the town's ground water supply. The ruling was later overturned after appeal.

In 2014, the Jewish synagogue, Temple Adas Israel in Sag Harbor, NY encountered similar setbacks when attempting to expand their cemetery into an adjacent lot.⁸⁹ Unlike the original cemetery property, the new lot was located in a designated water recharge district, development of which is severely restricted by town law. Like Muslims, practitioners of Judaism usually wash their un-embalmed dead before wrapping the bodies in a shroud. In the Jewish faith, however, the decedent is interred in an unsealed raw pine coffin. Like West Pennsboro, the town also cited concerns over contamination of the city water supply as well as at the clearing of the natural growth on the lot in question. Temple Adas Israel's initial request was denied despite temple attorney William B. Anderson's argument that such rulings run counter to the "constitution's prohibition against passing laws that restrict religious practices." The Temple's request was later approved by the East Hampton Town Zoning Board of Appeals, but only after multiple experts testified to the low impact of Jewish burials on the surrounding environment.⁹⁰

⁸⁹ T.E. McMorrow, "Temple Seeks Cemetery Expansion." *The East Hampton Star*, April 11, 2014. <http://easthamptonstar.com/News/2014410/Temple-Seeks-Cemetery-Expansion>.

⁹⁰ T.E. McMorrow, "Cemetery Expansion Okayed." *The East Hampton Star*, July 9, 2014. <http://easthamptonstar.com/Government/2014709/Cemetery-Expansion-Okayed>.

In both of these examples laws and policies were applied to situations that ultimately, albeit temporarily, hindered the funerary wishes of the exemplified community. Although environmental protection is a noble cause, in these instances it masked hidden agendas and certain truths. First and foremost, traditional western burials are far more hazardous to the environment, with one urban planning professor from Florida State University estimating that traditional interments put “enough wood to frame over 2,300 single-family homes; sufficient steel to erect almost 15 Eiffel Towers; nearly four times as much concrete as was used to build the Pentagon; and a volume of embalming fluid that would overflow an Olympic swimming pool” into the ground every year.⁹¹ Additionally, despite worries that decomposing bodies are a source of contamination there is no evidence that communities remove the bodies of local fauna before they taint ground water supplies. Indeed, even the suggestion is ridiculous.

It is likely that in both of these cases town residents did not actually fear environmental pollutants. The line of delineation is more likely a psychological aversion to the proximity of the dead. That said, there are legitimate cases where zoning laws are used to protect the environment without secondary motives.

⁹¹ Chris Coutts. "Baby Boom Will Lead to Shortage of Cemetery Space." The New York Times. October 30, 2013.
<http://www.nytimes.com/roomfordebate/2013/10/30/cemeteries-are-running-out-of-room/baby-boom-will-lead-to-shortage-of-cemetery-space>.

Outside of San Ramon, California, thirty-four miles east of San Francisco, residents and city officials have debated the construction of Creekside Memorial Park Cemetery, a 60-acre site, for the last five years.⁹² Unlike the cases of Temple Adas Israel and the Bosniak Islamic Center, construction of Creekside Memorial Park Cemetery poses a legitimate threat to the environment. The cemetery's construction would destroy 220 plus acres of habitats belonging to unique species of owls, foxes, and frogs as well as various plant-life. Keeping the cemetery lush would also consume more water than the ranching operations currently on the proposed site.⁹³

This concern is weighed against the primary reason to support Creekside's construction. The two cemeteries that currently offer price breaks on burials of Contra Costa County taxpayers are either at, or approaching capacity.⁹⁴ If Creekside is not built, county residents will be forced to travel farther to bury their deceased in more expensive plots or embrace cremation culture.

Psychological aversion to death and its reminders is a factor here. County resident Tim Clancy said in an interview with Bay Area news outlet *The Mercury*

⁹² "Creekside Memorial Park Cemetery, Contra Costa County, CA Official Website." Contra Costa County, California Official Website. Accessed February 12, 2017. <http://www.co.contra-costa.ca.us/4710/Creekside-Cemetery.;> Friends of Tassajara Valley. "Timeline." Stop the Creekside Memorial Park Cemetery. February 6, 2017. Accessed February 12, 2017. <http://www.stopthecemetery.org/timeline.html>.

⁹³ Jason Sweeney, "\$35 Million Plan to Bury 150,000 Bodies in Tassajara Valley." *The Mercury News*, August 12, 2016. <http://www.mercurynews.com/2013/02/15/35-million-plan-to-bury-150000-bodies-in-tassajara-valley/>.

⁹⁴ *Ibid.*

Times, “I don’t want to sit on top of the knoll and watch people bring in caskets on Sunday. I don’t want to sit on my porch and drink my coffee and watch people cry over the graves.”⁹⁵

Another report published in nearby Eureka, California’s *Times-Standard*, reported that in a San Ramon city council meeting thirty residents “expressed worries that the cemetery would destroy the area’s picturesque landscape, [...] clog its already traffic-ridden streets, lower property values and regularly expose children to the specter of death at too-young an age.”⁹⁶ San Ramon resident Crystal Lu added that “if this cemetery would be built it would be forcing the idea and image of death down our children’s throats. It would be the last thing that my husband and I would want to see.”⁹⁷ Both newspapers reported that town residents believed cremation would alleviate the need for more burial space.

Construction of crematories, however, would not change the problems associated with death-care zoning laws. The need for crematory facilities is increasing as cremation’s popularity rises, yet, it is the idea of cremation—noxious smoke, loud furnaces, constant reminders of death— that encourage communities to use zoning

⁹⁵ *Ibid.*

⁹⁶ Joyce Tsai, "San Ramon: City Council Takes Action to Oppose Tassajara Valley Cemetery Project." *Times-Standard*, December 10, 2014. <http://www.times-standard.com/article/ZZ/20141210/NEWS/141219607>.

⁹⁷ *Ibid.*

regulations to impede the construction and expansion of death-care facilities. In the past decade, the construction of crematoria has been a contentious topic for many American communities. News outlets across the country, report on zoning boards that reject new crematoria proposals after encouragement from constituents. Unlike the cemetery cases just reviewed, many of these proposals are never approved. Consider the following national cases selected at random from the last five years.

In 2014, in the Atlanta suburb of Peachtree Corners, Georgia, Crowell Brothers Funeral Home applied for a permit to add a crematory to their facility. Crowell Brothers have provided funerary services to the Atlanta metropolitan area for fifty-six years, but their request was denied due to concerns over the potential of mercury poisoning. Residents feared that mercury dental fillings would turn to toxic vapors upon incineration. In the city council meeting, a resident who lived across the street from the funeral home commented, “I don’t want to feel like a hostage in my own house...it’s just too close.” In the same council meeting, a ten-year-old resident, added “for the sake of all children, do not put a crematory there. I have eight years until I go to college, I want to be able to play outside.”⁹⁸

This ruling was made despite a 2011 report issued by the Georgia Department of Public Health stating:

⁹⁸ Chris Stephens, "Public Gives Input on Proposed Peachtree Corners Crematory." *Gwinnett Daily Post*, January 22, 2016. http://www.gwinnettdailypost.com/archive/public-gives-input-on-proposed-peachtree-corners-crematory/article_2ee32f58-96bb-5b5e-9d90-de19f1538533.html.

“Chemicals emitted by crematories may include mercury, dioxin, hydrochloric acid, nitrogen oxide, sulfur dioxide, carbon monoxide, and dioxins. These chemicals are emitted at extremely low levels and when released into the air, they break down quickly by sunlight, or are diluted and carried by the wind. The levels of mercury emitted from a crematory are considered extremely low and do not pose a health risk. In addition, emission control devices that reduce mercury levels released to air are located on crematory stacks.”⁹⁹

The way the residents of Peachtree Corners responded to this situation, however, is common. Despite reliable information that should alleviate concerns about pollution, towns nationwide reject the construction of new crematories for similar reasons.

In August of 2013, Heath Carroll owner of Carroll-Lewellen Funeral and Cremation Services, requested a zoning variance to install a crematory in his business in Longmont, Colorado. Carroll justified the expansion stating that “60 percent of the funerals this year will be cremations. With the business growing as fast as it has been, not having a crematory is not only inefficient, but it's also costing money in the long run.”¹⁰⁰ By September of that same year, however, Carroll had withdrawn his request after objections from town residents that the crematory would bring down property values and threaten the local environment.¹⁰¹

⁹⁹ Georgia Department of Public Health/ Environmental Health Branch Chemical Hazards Program. "Common Health Concerns About Crematory Operations." <http://www.woodstockga.gov/DocumentCenter/Home/View/1781>.

¹⁰⁰ Tony Kindelspire, "Carroll Proposes Adding Crematory to Longmont Facility." *The Times-Call*, August 31, 2013. http://www.timescall.com/longmont-local-news/ci_23990797/carroll-proposes-adding-crematory-longmont-facility.

¹⁰¹ Tony Kindelspire, "Heath Carroll Exploring Other Options Besides Installing Crematory at Downtown Longmont Funeral Home." *The Times-Call*, September 26,

In a more recent example from Plymouth Township, Pennsylvania, in January 2015, the owners of Caramenico Funeral Home in Norristown, PA were met with resident disapproval after applying for a variance to build a new funeral home and crematory. The attorney representing Caramenico offered that “there are no funeral homes in the township.”¹⁰² Caramenico’s proposal was nonetheless the subject of a petition receiving over 250 signatures. Much of the opposition, again, stemmed from residents’ fears about mercury poisoning, the corruption of their children, decreased property values, and what one resident called “the psychological ‘ick’ factor”.¹⁰³ In an attempt to allay resident worries, *The Times Herald*, the local paper that reported on the case, published reports by the president of Matthews International Cremation Division and a British emissions study refuting the possibility that crematory emission might lead to mercury poisoning.¹⁰⁴ The Caramenico Funeral Home project was ultimately defeated by mid-March that year.¹⁰⁵ These cases represent only the tip of

2013. http://www.timescall.com/business/local-business/ci_24185241/heath-carroll-exploring-other-options-besides-installing-crematory.

¹⁰² Carl Rotenberg, "Plymouth Residents Voice Strong Opposition to Proposed Funeral Home and Crematorium." *The Times Herald*, January 9, 2015. <http://www.timesherald.com/article/JR/20150109/NEWS/150109853>.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Carl Rotenberg, "Funeral Home Withdraws Plymouth Crematorium Plan." *The Times Herald*, March 13, 2015. <http://www.timesherald.com/article/JR/20150313/NEWS/150319898>.

the proverbial iceberg. This journalism review revealed similar stories in cities in Kansas, Maryland, Minnesota, Oregon, New Jersey, Oklahoma, Connecticut, and South Carolina, to name a few.¹⁰⁶

Regulatory laws can also interfere with the funerals of cremated individuals on a more personal level. The practice of scattering ashes is heavily regulated. Scattering ashes on federal lands, such as National Parks, requires a permit.¹⁰⁷ The Environmental Protection Agency (EPA) regulates ashes scattered at sea. County and local governments and zoning boards usually regulate ash scatterings on land. Local and state laws regulating the practice vary dramatically.

It is impossible to review all of the country's local regulations on scattering. In this regard, Tanya Marsh, Esq.'s compendium on remains laws proves helpful. According to Marsh, "In all states other than California, cremated remains that have been pulverized freely beyond recognition as skeletal remains may be scattered on privately owned property with permission of the land owner."¹⁰⁸ After that, states

¹⁰⁶ Patricia A. Scheyer, "Funeral Home Proposal Dies in Erlanger Amid Residents' Opposition." *The River City News*. August 03, 2016. <http://www.rcnky.com/articles/2016/08/03/funeral-home-proposal-dies-erlanger-amid-residents-opposition.>; Community Awareness Network. "No Crematory." Home. Accessed February 13, 2017. <https://no2crematory.wordpress.com/>.

¹⁰⁷ Bess Lovejoy, "Cremation Is on the Rise, but Where to Put the Ashes?" *Time Magazine*, June 13, 2013. <http://ideas.time.com/2013/06/13/cremation-is-on-the-rise-but-where-to-put-the-ashes/>.

¹⁰⁸ Marsh, *The Law of Human Remains*, 64.

usually defer to local and county agencies to regulate the process, with a few exceptions.

California and South Dakota require that next-of-kin report the place ashes are scattered to state or county officials.¹⁰⁹ In Georgia and Kentucky, next-of-kin must report the final location of the disposition to the funerary establishment that cremated the deceased.¹¹⁰ In New York, public health code regulates where cremated remains can be scattered.¹¹¹ Tennessee and Rhode Island prohibit the scattering of ashes on land to privately owned properties or in cemeteries with a designated scatter garden.¹¹² In D.C. and Idaho there are no laws regarding the disposition of cremated remains.¹¹³ As it relates to scattering at ashes at sea, The EPA allows cremated remains to be scattered in ocean waters at least three nautical miles from land, but the agency requires that it be notified within thirty days of the event.¹¹⁴

In 2013, *Time Magazine* reported on the legal ways to scatter ashes in the US, and explicitly advised readers that “ashes must be finely pulverized and widely

¹⁰⁹ Ibid, 64.

¹¹⁰ Ibid, 218.

¹¹¹ Ibid, 346.

¹¹² Ibid, 416, 441.

¹¹³ Ibid, 149,181.

¹¹⁴ "Burial at Sea." EPA. February 14, 2017. <https://www.epa.gov/ocean-dumping/burial-sea>.

distributed to avoid leaving any potentially alarming chunks of tooth or bone.”¹¹⁵ This legislation is the psychological “ick” factor in action. The law implies that it is unacceptable to expose the general public to anything that even *alludes* to a dead body. Granted, this may be a form of troubleshooting: a passerby who sees a chunk of a legally scattered femur may file an unnecessary police report, but that remains must be pulverized even to be scattered in a cemetery—a designated location for human remains—suggests that this is more about protecting people from the psychological trauma of accidental exposure to a corpse. This regulation does not just objectify the body; it turns the dead into something offensive.

By making it confusing or illegal to conduct a scattering service in the US, many bereaved adopt a “don’t-ask, don’t-tell” policy and conduct dispositions anyway. Doing so places them outside of the law, and although it seldom happens, families caught in violation of zoning regulations may incur fines. Legally restricting scatterings on the basis of fear or psychological distaste criminalizes a harmless practice and gives credence to the idea that something is wrong with the customs or beliefs of the deceased and surviving next-of-kin.

It is tempting to rationalize zoning laws and regulations as ultimately beneficial. They support functional city growth and prevent dangerous or inappropriate construction and activity in residential areas. What’s more, zoning regulations should reflect the wishes of constituents. But in some cases, such as those

¹¹⁵ Lovejoy, “Cremation is on the Rise, but Where to Put the Ashes?”

reviewed, regulations enable unfounded fears about crematoria, cemeteries, and human remains, and forestall construction of much needed death care services, often indefinitely.

But if zoning boards rule according to constituents who do not want to see death or feel pressured to do so, what harm is there? Recall that the invisibility of death and dying in American society is a modern invention. The impulse to minimize the visibility of death and death-care facilities in the modern age likely stems from compartmentalization psychology and the observable psychological aversion to death itself. In the cases presented, we see psychological aversion (veiled as empiricism) weighed heavily in the decision making processes. This leads to a culture where death is compartmentalized, and this aversion is a problem. Scrutiny of the top reasons given in opposition of new death care facilities and disposition practices illustrates why.

In the six cases studies presented, zoning boards ruled based on:

- 1) environmental concern
- 2) traffic
- 3) property value/aesthetics
- 4) child welfare
- 5) the psychological 'ick' factor, (i.e. psychological aversion).

We already contextualized the role of environmental concerns. Death care facilities and ash scatterings generally have a low impact on the environment. Research shows that many constituents rally behind environmental causes, even when experts refute

them, until the proposals are defeated. In many cases, the accuracy of the information is less important than its ability to advance a desired agenda.

With regard to point two, discussion on correlations between death care facilities and traffic patterns would be speculative. At least in the cases selected, it is not clear what specific traffic problems draw resident concerns. They could potentially oppose funeral processions, daily business traffic, or the increased appearance of hearses in their neighborhood. I have not uncovered research on the relationship between traffic patterns and death-care facilities. This suggests that the traffic problems connected to these facilities are assumed rather than empirical.

Point three, the effect of death-care facilities on property value is more complex. Concern over property value is usually rooted in social and economic factors that are expressed more altruistically as environmental or aesthetic protections. With the case of Creekside Memorial Park Cemetery, the proposed site runs adjacent to a major hiking trail. Some San Ramon residents object to it because it would interrupt the pristine ridgelines and scenic vistas of the valley.¹¹⁶ These residents visually prefer natural landscapes to cemeteries. But according to Stanford University's Encyclopedia of Philosophy, aesthetic evaluations are essentially "judgements of taste [...] based on a feeling of pleasure or displeasure."¹¹⁷ Aesthetic judgements against death care

¹¹⁶ Sweeney, "\$35 Million Plan to Bury 150,000 Bodies in Tassajara Valley."

¹¹⁷ Nick Zangwill, "Aesthetic Judgment." Stanford Encyclopedia of Philosophy. August 26, 2014. <https://plato.stanford.edu/entries/aesthetic-judgment/>.

spaces, then, are rooted in psychological aversion or attraction. For every individual who doesn't want to "drink [their] coffee and watch people cry over the graves,"¹¹⁸ there is likely an individual who does. Redfin, a nationwide real estate company reports that homes near cemeteries retail for nearly \$20 dollars more per square foot once sold.¹¹⁹ Cemeteries add to property values by appealing to an enthusiastic niche market, demonstrating that on this point, the data counters resident concerns.

Point three is further complicated when applied to the issue of crematoria. Most are familiar with the aesthetic of a cemetery. But crematories can be built in any type of building and are often difficult to identify. Some look like warehouse buildings, some resemble commercial properties, and others can be constructed inside residential buildings.¹²⁰ Often, the only indication that a building is a crematory rather than a factory, a repair shop, or house, is a sign stating as much on the property and the presence of smokestacks on the roof. Smokestacks, however, can be hidden through strategic placement or by decorative elements. In addition, crematory stacks must have afterburners, so there is usually no visible smoke, only thermal radiation.¹²¹

¹¹⁸ Sweeney, "\$35 Million Plan to Bury 150,000 Bodies in Tassajara Valley."

¹¹⁹ Christin Camacho, "I See Dead People: Do Homes Near Cemeteries Sell Well?" Redfin. October 16, 2014. <https://www.redfin.com/blog/2013/10/i-see-dead-people-do-homes-near-cemeteries-sell-well.html>.

¹²⁰ Crematories can take the appearance of other buildings, but usually include more fire safety features.

¹²¹ In cases where smoke *is* visible, it is often because the afterburners are failing or need to be serviced or adjusted.

Given the scant visual evidence to associate with crematoria, constituents that oppose them on the basis of property devaluation (rightly or wrongly) either perceive a health/environmental threat or are psychologically averse to their presence. Separation of these businesses from the spaces of the living is the commonly sought solution.

Because they address feelings, points four and five, child welfare and the psychological “ick” factor are, perhaps, the most unempirical objections on the list. Analyses of resident statements, show that many believe it inappropriate for children to see spaces for death-care. Individuals do not want to “expose children to the specter of death at too-young an age,” fearing that “it would be forcing the idea and image of death down our children's throats.”¹²² This opposition may stem from a place of love and protection, but these arguments also mask certain facts of life.

Because children learn by example, a child would not fear crematories or graveyards without learning the fear first. Ultimately, the fear adults cite for their children are projections of their own fear of death. Thus, psychological aversions to death-care facilities can be viewed as much a product of socio-cultural inculcation as of self-preservation discussed by Airès and Becker in chapter one. Proliferating this fear among children who would be otherwise none the wiser, stigmatizes needed death-care facilities, mortuary practices, and the dead.

¹²² Joyce Tsai, "San Ramon: City Council Takes Action to Oppose Tassajara Valley Cemetery Project." *Times-Standard*, December 10, 2014. <http://www.times-standard.com/article/ZZ/20141210/NEWS/141219607>.

All of the aforementioned zoning issues make the practice of modern mortuary culture difficult for residents to navigate. But assessing the degree to which mortuary laws and policies align with personal post-mortem wishes is critical for anyone who cares about the legacy and security of their remains. There is minimal protection of final resting places in statutory and common mortuary law, and regulatory mortuary laws are demonstrably subject to psychological or emotional influence. Legal biases and inaction can therefore be as detrimental to the creation of functional deathways as legal heavy-handedness. This is evident when examining the American approach to unclaimed, abandoned, and indigent remains.

Bodies Nobody Wants

America has hundreds of thousands of unwanted remains. The ways in which these unclaimed and/or unidentified individuals are managed reveal another way American remains law and policy fall short of everyday death care needs. Like other aspects of US mortuary policy, there is insufficient legislation, precedent, and regulatory experience to effectively manage the unclaimed dead. In states, counties, and cities that do have policies, they are often ambiguous, inconsistent, and incomplete. With no other options but to make due, stewards of the unclaimed dead are often forced to improvise to manage their wards. In death-care facilities across the nation, the unclaimed occupy filing cabinets, basements, storage closets, bookshelves, sheds, and numerous other similarly unexpected settings. This situation increases

opportunities to objectify the dead. Despite the pervasive nature of this issue, the problem of America's unclaimed dead is little known by the general public.

A person's remains become unclaimed when an individual dies and cannot be identified, or, when they die without known next-of-kin. Unclaimed individuals generally fall into specific demographics — the elderly, the indigent, the homeless, and the mentally or criminally ill— however, absolutely anyone can suffer such a fate. Unclaimed remains usually become the wards of funeral directors, cemeteries, hospitals, and medical examiners/coroners. Some death-care service providers bury the unclaimed dead in potter's fields, however, for reasons of space, economy, and public health, the remains of most unclaimed individuals in the US are now cremated. Cremation is cheaper, cremated remains take up less space, and do not decompose. Cremated remains are also logistically easier to manage. Since no-one technically owns the unclaimed dead, cremating them makes transporting the deceased more efficient in the event that they must be relocated to another holding space.

Tanya Marsh, Esq. reports in her book that five percent of all cremations performed in 2006, or 35,000 individuals, were unclaimed.¹²³ Based on calculations obtained from my case studies, the current tally of unclaimed cremated remains in the US currently surpasses 85 thousand, however, my calculations are intentionally conservative. According to research published in *Time Magazine*, this figure exceeds

¹²³ Marsh, *The Law of Human Remains*, 64.

two million.¹²⁴ As of 2013, Unclaimed cremated remains comprise one percent of all deaths.¹²⁵ Despite this, death-care professionals have difficulty finding places to put them. With cremation in America continuing to rise, the occurrence of unclaimed cremated remains is also forecast to follow suit.¹²⁶ This makes the management of the unclaimed dead an increasingly dire predicament.

The issue of unclaimed cremated remains underscores the problems that characterize America mortuary law. The way death-care providers manage the unclaimed dead provides a lens to examine what transpires when A) the law is too ambiguous, B) cremated remains are not scattered, and C) laws conflict with our conscience. Examining the management of unclaimed remains also demonstrates how the spaces the dead inhabit objectify or humanize them.

I selected the Oregon State Hospital, or OSH, as a case study to illustrate these points because it houses the largest known assemblage of unclaimed cremated remains in the country, and, recently, has undertaken a massive project to memorialize and return the cremated remains to next-of kin. As an exemplar of both the problems with mortuary law and the potential resolutions, I visited the Oregon State Hospital in July of 2016.

¹²⁴ Sanburn, "The New American Way of Death." 2013.

¹²⁵ Josh Sanburn, "The New American Way of Death." *Time Magazine*, June 24, 2013.

¹²⁶ *National Funeral Directors Association / 2015 NFDA Cremation and Burial Report: Research, Statistics, and Projections*. Report. July 10, 2015. 2.

To provide some background information, the hospital was founded in 1883. From that time, until 1913, all unclaimed individuals who died at the hospital were interred in the institution's private cemetery, aptly named Asylum Cemetery. Cremation at the Oregon State Hospital began in 1913 with the passage of State's Senate Bill § 109. This legislation instructed that a crematorium be built on the campus. The law further stipulated that unclaimed inmates were to be incinerated one week after their passing. The enactment also carried a clause: in Section three of the bill, all patients already interred in the cemetery were to be exhumed and incinerated. Joni DeTrant, Health Information Manager at OSH, revealed that the impetus for this legislation was both financial and strategic.¹²⁷ Cremating newly deceased patients would save money, and exhuming and cremating patients interred in Asylum Cemetery would unencumber valuable real estate for development. Thus, Senate Bill § 109 marked the beginning of the accumulation of OSH's now nearly 3,500 unclaimed cremated remains.¹²⁸

The unclaimed cremated remains at the OSH exited obscurity in 2004 when Oregon State Senate President, Peter Courtney and a team documentary filmmakers

¹²⁷ "Interview with Joni DeTrant." Interview by author. July 29, 2016.

¹²⁸ "OSH Cremated remains Memorial Project Public Meeting to Be Held August 18 in Salem." <http://oshmuseum.org/osh-cremated-remains-memorial-project-public-meeting-to-be-held-august-18-in-salem/>.

ventured into the hospital to assess its overall condition.¹²⁹ During their visit, they surveyed outbuilding 60, an abandoned morgue. The group found 3,500 heavily corroded copper canisters stacked three deep on white pine shelves. The canisters contained the remains of all the hospital's unclaimed patients who died at OSH since 1883. After the discovery of the cremated remains, Senator Courtney facilitated a national journalism campaign exposing what he called "a total nightmare." The public response to this campaign resulted in a state vote which allocated nearly half a billion dollars to the Oregon State Hospital Replacement Project, an initiative to improve the state's mental health care standards and facilities.¹³⁰ The final stage of the project included the transformation of building 60 into a memorial for those patients whose ashes stay unclaimed.

In addition to creating a prominent new memorial, since their re-discovery, OSH has also launched a campaign to re-unite the unclaimed individuals in their care with next-of-kin. Two staff members at OSH spend hours reviewing patients' records, conducting genealogical research, and making phone calls in order to reunite their wards with long-lost relatives. Where applicable, OSH employees also work closely with the Veterans Administration and the national Native American community to

¹²⁹ *Library of Dust*. Directed by Ondi Timoner and Robert James. USA: Nureality Productions, 2011. DVD.

¹³⁰ *Ibid.*

help lay patients to final rest. According to the Hospital's searchable database of the unclaimed individuals in their care, there are still 3,229 remains to re-home.¹³¹

The case of the unclaimed dead at the Oregon State Hospital offers a unique opportunity to evaluate potential ways of responding to ambiguous mortuary laws and regulations. In terms of re-connecting the unclaimed dead with next-of-kin, the efforts made at OSH reveal that the process is slow and difficult. Most places in the United States provide little if any legal instruction detailing how this process should go. And unlike OSH, if a policy does exist, most death-care facilities do not have designated staff members to perform the task. This is one reason remains accumulate, but there are others.

Study of the unclaimed dead at OSH also reveal that, unclaimed remains accumulate because applicable policies are often ambiguous or insufficient. As of 2015, Oregon statutes on unclaimed remains declare that if the decedent is not claimed within fifteen days, "the funeral establishment may cremate or bury the body without consent."¹³² The word 'may' provides an opportunity for inaction and indecision.

¹³¹ "Oregon State Hospital Honoring the Past - List of Unclaimed Cremains." Oregon.gov. Accessed February 21, 2017. <http://www.oregon.gov/oha/osh/Pages/cremains.aspx>.

¹³² "2015 ORS 97.170¹ Disposition of Unclaimed Body of Deceased Person • Rules." ORS 97.170 - Disposition of Unclaimed Body of Deceased Person - 2015 Oregon Revised Statutes. Accessed February 20, 2017. <https://www.oregonlaws.org/ors/97.170>.

Stewards 'may' dispose of unclaimed remains, but do not have to. This is partially what happened at OSH.¹³³

Similar legislation exists in many parts of the country. In Ada County, Idaho, unclaimed remains must be held for a period of one year.¹³⁴ In Pahrump, Nevada it is 30 days.¹³⁵ In Pennsylvania, the unclaimed must be kept for 90 days.¹³⁶ Some states have not passed legislation on appropriate protocol. In these locations, officials can hold onto the deceased indefinitely. I have spoken to death care professionals in all the aforementioned locations. Each have unclaimed cremated remains in their care that could legally be interred but have not been.

In cases where holding periods for the unclaimed dead are defined, the stewards interviewed allow remains to accumulate for reasons of conscience. First, they see the remains as people. They want them to be returned to their families and disposed according to the dictates of their chosen faith. Second, if estranged next-of-kin ever do return to reclaim them, it is easier to retrieve the deceased. When cremated

¹³³ Remains also accumulated at OSH because there was inadequate money in the OSH budget to address them.; "Interview with Joni DeTrant." Interview by author. July 29, 2016.

¹³⁴ "Interview with Jaime Barker, Medico-Legal Investigator Ada County Coroner's Office." Interview by author. July 21, 2016.

¹³⁵ "Interview with Angela Mercer, Funeral Director and Manager, Lee Funeral Home & Cremation Service." Interview by author. September 18, 2016.

¹³⁶ "Interview with Caleb Wilde, Funeral Director, Wilde Funeral Home." Interview by author. March 3, 2016.

remains are interred, they are usually committed to mass graves, thus retrieving a long-lost relative's remains is impossible or an expensive and potentially lengthy process.

While it doesn't directly address the looming burial space shortage, study of the unclaimed individuals at OSH reveal an unexpected potential complication. When cremated remains are not buried they accumulate, *fast*. Cremations were only performed at OSH from 1913 to 1971, but in that time, over 3,500 individuals collected in the hospital's basement. OSH is an isolated example, but this type of accumulation occurs nationwide despite the fact that unclaimed cremation cases represent a mere one percent of cremations annually.¹³⁷

According to the Cremation Association of North America (CANA), one-third of people who do claim cremated remains bury them, one third keep them, and the last third scatter them.¹³⁸ To contextualize this in terms of the burial space shortage, only

¹³⁷ Juliet Bennett-Rylan, "The Ashes of Over 1,300 Unclaimed Deceased Will Be Buried Next Month." *LA-ist*. November 13, 2015. http://laist.com/2015/11/13/unclaimed_remains_2012.php; Curious What Happens To Unclaimed Cremated Remains." CBS Boston. October 1, 2010. <http://boston.cbslocal.com/2010/10/01/curious-what-happens-to-unclaimed-cremated-remains/>; Ross Lord, "Unclaimed Cremated Remains Pile up in North American Funeral Homes." *Global News*. January 29, 2014. <http://globalnews.ca/news/1116074/unclaimed-cremated-remains-pile-up-in-north-america-funeral-homes/>; Allison Steele. "Unclaimed Remains of 1,500 to Get a Final Resting Place in Laurel Hill Cemetery." *The Philadelphia Inquirer*, September 30, 2010. http://articles.philly.com/2010-09-30/news/24978068_1_proper-burial-unclaimed-bodies-vaults; Anna Webb, "Idaho Counties Contend with Abandoned and Unclaimed Cremains." *The Idaho Statesman*, November 12, 2015.

¹³⁸ Lovejoy, "Cremation Is on the Rise, but Where to Put the Ashes?"

remains that are scattered will help resolve the impending space problem. Cremated remains that are buried may eventually be exhumed, and those taken home with relatives are only secure until the death of their caretaker, after which point, they may be passed to another relative, scattered, buried, or mistakenly liquidated in estate sales and auctions.¹³⁹ Since cremation is projected to rise in popularity, this issue will only become more pressing as time passes. OSH shows us that we must create regulations and statutes that empower death-care providers with socio-culturally appropriate means of managing the unclaimed and long dead.

The Verdict

The American legal system creates opportunities for the living to objectify the dead and allows governing bodies to temporarily and even permanently disrupt the immediate and long-term funerary wishes of the deceased. Some mortuary laws, such as those preventing grave desecration or the sale of corpses, prevent cultural practices that objectify the dead and thus preserve the legacy of the deceased's final wishes. But for those mortuary laws that counter common practices and final wishes, the discrepancies reveal a desired priority for convenience.

Both the rise in cremation and the expansion of new death-care services demonstrate that Americans want convenient and cost-effective accommodations in

¹³⁹ Katy Wolk-Stanley, "6 Bizarre and Disgusting Things from Goodwill." Clark.com. 2016.; Dan Corcoran and Ari Mason. "Urns End Up on Thrift Store Shelf." NBC Connecticut. 2015.

the afterlife. The nation is not yet confronting the widespread burial space shortages facing countries like Japan, although the situation is serious in urban centers like New York City. In most of the US, there *are* still places to inter the dead, but Americans do not want to travel to them. The case studies reveal this.

Creekside Memorial Park Cemetery, project developer echoes that “locals want to be buried where they live.”¹⁴⁰ Heath Carroll of Carroll-Lewellen funeral home only sought to expand his facilities in response to his clients increasing demands for local cremation services, and Temple Ada Israel sought to offer its congregation a nearby locale for future burials. Caramenico Funeral Home wanted to build its new facility in a town without death care service providers.

Many of the case studies also convey that Americans want to control their experiences with death and dying. Opposition to the construction of new death-care facilities and practices like green burials and ash scattering appears to be a manifestation of the psychological desire to control one’s exposure to reminders of death. The passage of NAGPRA came about because First Nation families sought control of their ancestors’ remains. A hidden aspect of American mortuary culture is illuminated by combining the socio-cultural and legal analyses of modern deathways just presented. Not only can we see the influence of objectification of the body on our mortuary practices, but also an overarching shift in the relationship between the living and the dead. The relationship is characterized by a desire for separation.

¹⁴⁰ Sweeney, "\$35 Million Plan to Bury 150,000 Bodies in Tassajara Valley."

Chapter 4

EPILOGUE: DYING FOR A CHANGE

This examination of contemporary American deathways sheds light on the most problematic aspects of the country's mortuary practices: burial space shortages, the objectification of human remains, and policies that interfere with individual final wishes. These practices are tied by a common thread; Americans resolve mortuary issues with containment. Multiple facets of modern funerary practices provide the supporting evidence. In cemeteries, hospitals, or funeral homes, the dying and deceased are kept separate from spaces for the living. Human remains are literally enclosed in urns, caskets, coffins, and vaults. Many US residents outsource death care needs, and minimize or eliminate interactions with the deceased. Policymakers rarely consult surrounding communities as they manage the dead through a system of pragmatic laws that disregard spirituality and religion.

Eye of the Beholder

The general public often lacks awareness of practices that separate the dead from the living. There are not many alive who remember when home funerals were a cultural standard, thus, a majority of citizens have little knowledge of, much less any reason to question long-wave changes to American deathways. In the 21st century, our

deaths are not topics that inspire candid conversations; rather there is a culture of quiet complacency with and acceptance of current funerary practice.

Indeed, the American public only seems comfortable engaging with topics of death when the discussion is divorced from reality. In yet another form of containment, movies and TV present death and dying as entertainment, and confirm Phillippe Ariès' assertion that "in the modern era, death, by its very remoteness, has become fascinating."¹⁴¹ To corroborate this claim, glance at the plots of 2016's top five television series.¹⁴² *Game of Thrones*, *The Walking Dead*, *Pretty Little Liars*, *Westworld*, and *The Flash*, feature death prominently, and in four of five of these programs, death is a central theme.

Games of Thrones gruesomely kills and tortures main characters without discrimination and is famous for its catchphrase; "All men must die". *The Walking Dead* is set in a future where humanity is obliterated save for a handful of characters who must kill hordes of living dead every episode to survive. Often, they do not. *Pretty Little Liars* is the tale of high school girls embroiled in one murder plot after the next. *Westworld* concerns a theme park populated with anthropomorphic robots that exist solely to cater to the baser desires of its guests; homicide chief among these.

¹⁴¹ Philippe Ariès, and Helen Weaver. *The Hour of Our Death: The Classic History of Western Attitudes toward Death over the Last One Thousand Years*. (New York: Barnes & Noble), 2000.; As cited in: Walter, "Body Worlds", 465.

¹⁴² Gus Lubin, "Data Reveals the 20 Most Popular TV Shows of 2016." *Business Insider*. December 30, 2016. <https://tinyurl.com/ydxszqtd>.; Rankings here were determined using ratings data (where available) and analyses of peer-to-peer sharing, and social media chatter.

Once killed, the humanoid robots are rebooted and subjected to these fates again and again. Although *The Flash* does not take death as a main theme, in almost every episode someone is either under the threat of murder or killed off.

This propensity has roots that correlate with the development of the funerary industry. The outsourcing of death care certainly makes death remote. As the funerary industry was at its height by the middle of the twentieth-century people's relationship with the dead was, subsequently removed. Since the remoteness of death makes it novel and fascinating, it is not surprising that westerns, monster movies, and psychological thrillers à la Alfred Hitchcock gain such traction in popular culture at this time.

In addition to dramatizing mortality, US culture readily masks reminders of aging and death. This process is visible in popular culture's admiration of youth and aesthetic beauty. Modern concepts of attractiveness employ hair dye, makeup, pharmaceuticals, and cosmetic surgery to camouflage signs of ageing, which are in essence, signs of the body dying. Similar practices extend to the dead through mortuary science. The newly deceased are whisked away from the living, altered, and sanitized or incinerated within hours of their passing. One of a mortician's primary responsibilities is to prepare life-like corpses for public display. They fill in sunken eyes, sew gaped mouths shut, paint mottled and sallow skin, and slow decomposition with chemical preservatives. Outside of death-care facilities, the modern American will rarely, if ever, see a decomposing body, much less touch or keep it in their living room. Popular culture thus implicates contemporaneous societal values. I point out

modernity's inclination to contain, fictionalize, and avoid death in day-to-day life because this research attempts to break through these barriers.

Policies of Truth

In the modern United States, the objectification and ever-shifting perceptions of human remains, and pragmatic mortuary policies, are tools to manage the dead. This toolkit is frequently contradictory and there is much research left before society and government representatives arrive at more humane approaches to human mortality and the law. At this point, it is clear that effective policies and practices need to do more to acknowledge and respect culturally and spiritually diverse perspectives on death and human remains.

The first step towards construction of functional deathways is to consider and/or reconsider justifications behind new and existing policies and practices. Justifications matter. When writing the section on zoning laws, I asked myself if the parties in my case studies needed to furnish empirical evidence when opposing death care facilities or mortuary practices. My answer was 'yes.' Inaccurate justifications allow communities to defeat beneficial agendas on the grounds that some individuals find them upsetting or uncomfortable. This is one reason social issues like racial segregation, or more recently, homosexual marriage are highly debated. In both cases, US courts ruled that individual discomforts do not trump group civil liberties. Is access to death-care a civil right? Do laws informed by psychological aversions to

death infringe upon the rights of others? Future conversations must address these questions.

Arguing that a dead body can contaminate a water supply or that a crematory can give an entire community heavy metal poisoning, breeds unrealistic fear of the dead, contributes to a desire for containment, and objectifies the deceased. Spreading misinformation objectifies remains as environmental toxins—something akin to untreated sewage or exhaust pipe fumes. Saying that the presence of the dead causes psychological harm to children creates opportunity for cultural taboos to become truths rather than opinions. All such practices, regardless of intent, interfere with the creation and maintenance of places all Americans eventually require for death-care. The task at hand is to find a better way.

The End is Near

Before this meditation ends, briefly recall two previous case studies: the unclaimed individuals at the Oregon State Hospital and the passage of NAGPRA. Both reveal approaches to the many unknowns in modern American deathways. From 1913 until 2004, the unclaimed individuals' cremated remains at the Oregon State Hospital were housed in at least four separate locations including a basement, a storage closet, a records room, and an abandoned morgue.¹⁴³ After Oregon Senator,

¹⁴³ Joni DeTrant, Cremated remains History Fact Sheet. June 2014. Raw data. Oregon State Hospital, Salem, OR.

Peter Courtney, discovered the individuals at the Oregon State Hospital, he asked the local press to disseminate their story widely. His decision drew criticism, but the publicity garnered enough attention that his constituents would later vote to allocate over 600 thousand dollars to memorialize the remains and begin an initiative to return them to next-of-kin when possible. In addition to helping the unclaimed individuals at Oregon State Hospital, Senator Courtney's publicity campaign opened a conversation of the national problem of unclaimed individuals, an issue which currently affects approximately 2 million deceased Americans.

NAGPRA also came about through political action; a long history of protests by dedicated Native Americans led to one of only two federal laws that protect and preserve the resting places of the dead. The passage of NAGPRA affirmed in law the belief that spirituality can be embedded in human remains. I have observed in my research that most western attitudes on the dead agree with this sentiment.

Yet, there is no simple fix for the issues at hand. Instituting mortuary policy at the federal level would be slow and may result in legislation that lacks sufficient accommodations for the diversity of beliefs it must encompass. Additionally, mortuary policy reform is a drop in the proverbial bucket when compared to the list of social reforms already on the docket. In the current political climate, poverty, immigration, women's rights, labor reform, and racial equality are often matters of life and death, thus it is reasonable that these issues take precedence. Yet it is problematic to relegate policymaking to state and local jurisdictions. Local variations in policy caused the problem in the first place. States and local communities can address specific needs of

constituents more directly, but there is no way to insure consistency from one locale to the next.

In this diverse republic, the road to solutions is paved with long conversations. The road might begin with a decision to apply the same standards used for the remains of Native Americans to all individuals residing in the US. Then policymakers can decide what compromises the dead must make for the living. If this happens, final resting places would be preserved and cultural heritage institutions would have to repatriate remains of individuals to the families that desire them. Such legislation could mitigate a major objectifying force in modern deathways and bring comfort to the families of the victims who are still kept in the basement of the National September 11 Memorial & Museum.

Yet problems persist because it is easier to disregard the issues bubbling up in modern American mortuary culture than to address them. Death and all its trappings is inherently uncomfortable to discuss in a society with diverse views on faith, spirituality, and the rights of individuals v. groups. Additionally, no one knows if the dead care what happens to them, but it usually matters to the living. This is tied to an issue not yet addressed; the subject of grief and loss.

Grief manifests in deeply personal and varied ways, but it absolutely affects the care of the deceased. A grave, headstone, or human remains, is a tangible representation of memory and grief. Just as some confront grief while others avoid it, objects can similarly compel us to action or inaction. After a loved one dies, that social relationship is replaced by a psychological relationship with grief— a painful and

stressful relationship to navigate. Yet, healthy relationships with grief evolve over time, incorporate new information, and lead to growth.

This is analogous to what needs to happen now in American deathways. To grow as a culture, US mortuary practices must evolve and incorporate the changes that have occurred during the last 150 years. To halt future objectification of the dead in this increasingly secular society, our individual value systems for the dead must be reflected in, not at odds with institutional value systems. We must resolve the discrepancies between mortuary policy, faith, and deference to ensure the legacy of our own remains.

TABLES

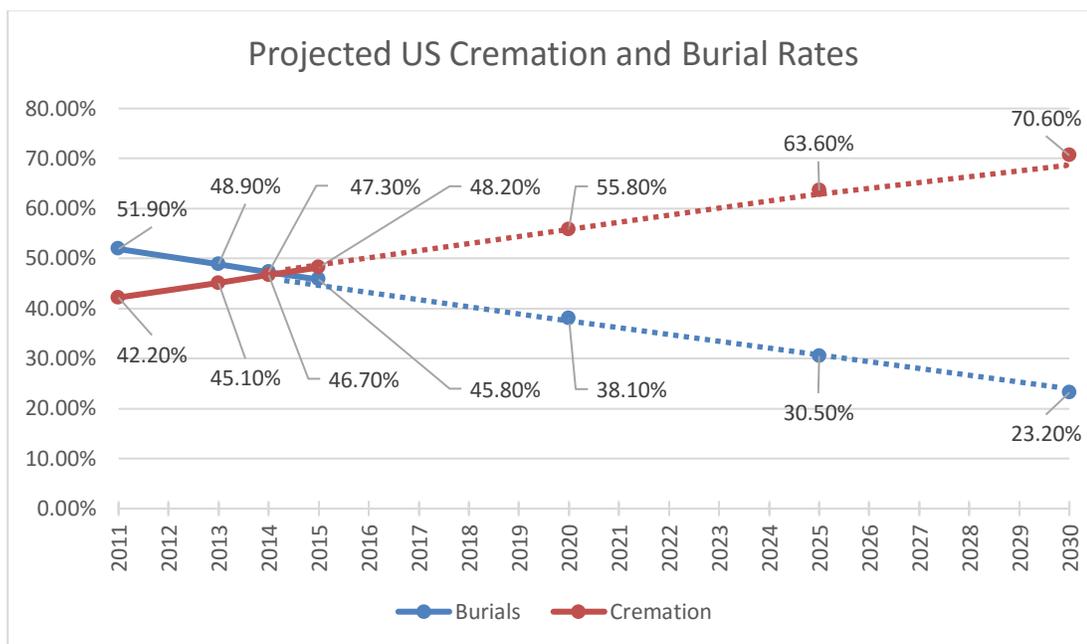


Table 1 The following rates were compiled by the National Funeral Directors Association in 2015 based on figures collected in 2014.¹⁴⁴ The chart reflects a shift from cremation to burial in US funerals. *Data plotted by author.*

¹⁴⁴ *National Funeral Directors Association / 2015 NFDA Cremation and Burial Report: Research, Statistics, and Projections.* Report. July 10, 2015, 2.

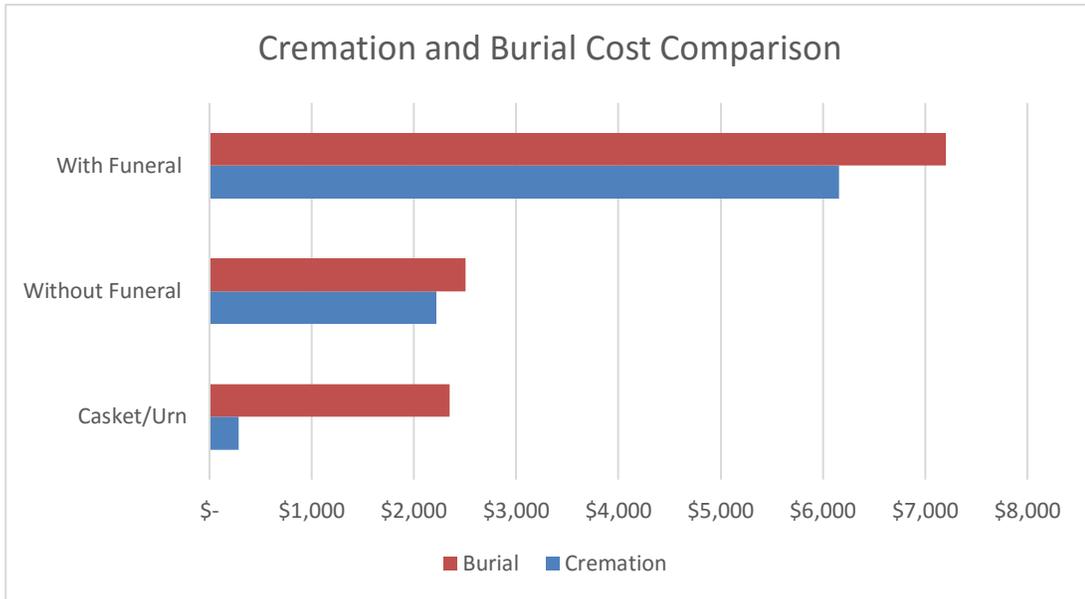


Table 2 The following rates were compiled by the National Funeral Directors Association in 2015 based on figures collected in 2014.¹⁴⁵ The data represented reflects national averages. The graph demonstrates the lower cost of cremation compared to burial. *Data graphed by author.*

¹⁴⁵ *National Funeral Directors Association / 2015 NFDA Cremation and Burial Report: Research, Statistics, and Projections.* Report. July 10, 2015, 2.

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