**Disposal of the dead in England: pluralism and pragmatics**

**Introduction**

Issues relating to religious equality and burial space play out within a distinctive historical and legal framework in the UK, which is not a secular state. The Church of England remains the Established Church of England and Wales, but the British burial system is built on nineteenth-century religious pluralism. As consequence, cemeteries generally contain both consecrated and unconsecrated sections. British burial law is markedly liberal in other respects: for example, there is no requirement that a body has to be buried in a particular place although any interment is subject to planning permission. On application for planning permission, any individual or institution can open a burial ground. However, this liberality carries the disadvantage of a lack of clarity on rights. It could be argued that in the UK no minority group has the right to independent burial space managed in accordance with its cultural preferences and religious precepts. This is because, arguably, no-one in the UK has any rights with regard to burial. All parishioners – with some exceptions – have a common law right to Christian burial. In practice, however, anomalies in the law mean that no statutory authority has a legal responsibility to provide burial space. Further anomalies within British burial law mean that, arguable, no religious group carries any intrinsic advantage in terms of burial provision since in practice, no individual has the right to local and affordable burial space.

**Church and State in the UK**

Before entering into more detailed discussion of the issue of burial provision in England, it is appropriate to outline, briefly, the status of the Church of England. The United Kingdom comprises three countries – England, Wales and Scotland – and the principality of Northern Ireland. Devolution has transferred some powers from the national Parliament to the Scottish Parliament, National Assembly for Wales, Northern Ireland Assembly and the London Assembly. The Church of England remains the Established Church in England: twenty-six Church of England bishops sit in the House of Lords – the higher legislative house – and the Archbishops of Canterbury and York are the highest ranking non-royal individuals in the State. Within the Lords, bishops are at liberty to influence all legislation coming before the House, not just matters pertaining to the Church (Wolffe, 1994).

Religious adherence in England, Wales and Scotland has historically been split between Protestant denominations. Roman Catholicism is a minority religion, although in some distinctive localities – for example, Glasgow and Liverpool – the proportions may constitute a sizeable minority. Northern Ireland is exceptional in the UK in having Roman Catholics constitute a third of the population, often living in communities that are highly segregated in religious terms (Wolffe, 1994). Each country and province within the United Kingdom has a distinct religious political history. Roman Catholics were subject to particular civil disabilities until the passage of emancipatory legislation in the 1820s. In England, dissenters from the tenets of the Book of Common Prayer left the Church of England in the 17th century, creating the ‘Old Dissent’ denominations of Presbyterianism, Independents and Baptists. This Dissenting community was later augmented through the rapid growth of Methodism in the eighteenth century. This denomination was rooted in the eighteenth-century spread of Evangelicalism, which stressed the importance of each individual seeking a‘re-birth’ in Christ, and a personal relationship with Christ as redeemer (Bebbington, 1989).

The strength of Dissent from the Church of England led to the disestablishment of the Church in Northern Ireland in 1861, and in Wales in 1920. Within Scotland, the Church of Scotland is the established church, and is largely Presbyterian although the secession from the church of 2,000 clerics in 1733 led to the creation of Presbyterian Dissent. The profound differences between the four separate parts of the UK mean that it is not possible to generalise across the whole nation in matters relating to burial. Burial law is different in England and Scotland, and differences remain between England and Wales, since the latter has no Established Church. Northern Ireland again remains anomalous. This chapter will focus its discussion on England, with some discussion of the current proposals to amend Scottish burial legislation.

**Burial provision at the mid-nineteenth century**

Unlike some other countries in Europe, the UK was not subject to the imposition of the Edict of St Cloud through the aegis of the Napoleonic Code. Indeed, burial issues were not subject to national legislation until the middle of the nineteenth century and the passage of the Burial Acts. It is appropriate to review burial provision at that time. Under common law, all parishioners had a right to Christian burial and each parish might contain one or more churches and churchyards. The Religious Census of 1852 estimated that there were some 14,000 churches in England and Wales. This number had been augmented by legislation in 1818 and in 1832 which between them granted the Church of England a sum of £1.5m for new church building. The new churches generally included churchyards, bringing much needed new burial space to the towns and cities that were rapidly expanding in the first half of the century (Rugg, Stirling and Clayden, 2014).

Although national figures are not available, it is probable that the vast majority of burials were taking place in churchyards, even by the middle of the nineteenth century. This circumstance proved problematic for some non-Anglican groups. This was not necessarily an issue of division between Roman Catholic and Protestant denominations. The UK was overwhelmingly Protestant at the mid-point of the nineteenth century: the Religious Census of 1851 indicated that less than four per cent of all attendances at religious services on Census Sunday were to Roman Catholic churches (Snell and Ell, 2000, Appendix A).[[1]](#footnote-1) Rather, difficulties lay in theological and religious political differences between Protestant denominations. In the nineteenth century, individuals and families defined themselves as being either ‘Church’ (Anglican) or ‘Chapel’ (Nonconformist), and through the nineteenth century, religious tensions between these groups dominated local and national politics.

Church of England attendances accounted for just under half of all attendances on Census Sunday. The second largest group comprised Methodists, who had no strong theological issue with burial in Church of England churchyards. However, their preference was interment in unconsecrated land since consecration was regarded as ‘Popish’. Furthermore, it was not permitted for Methodist ministers to conduct funerals in churchyards or in any other consecrated space. Many chapels had attached chapel burial grounds, although – again – numbers are not known, and the number of burials could be small (Rugg, Stirling and Clayden, 2014) although there was a great deal of regional variation.

Major issues attached to the burial of the remaining quarter of the population, which was neither Anglican nor Methodist. Amongst this group were a small number of Protestant Nonconformists including Independents, Baptists, Unitarians, and Quakers. Independents, later more generally termed ‘Congregationalists’, comprised just over ten per cent of attendances on Census Sunday. This denomination did not hold with any style of church administration, believing that Christ was the head of the Church. As a consequence, each congregation was self-governing, defined its own style of worship and had its own burial space. The Religious Census found over 3,000 Independent chapels in operation. Quakers were also what is generally termed ‘Old Dissent’, having origins on the seventeenth century. Again, this group favoured a degree of simplicity in administration and also a rejection of ritualised activity. For Quakers, the act of burial was attended with no ritual ceremony: headstones were modestly uniform, and burial grounds tended to be small and used for just short periods of time (Stock, 1998).

The two remaining groups had more substantive issues with regard to burial in consecrated, Church of England churchyards. Both Baptists and Unitarians had beliefs which could preclude them from use of the churchyard. Baptists believed that, rather than baptising at birth, adults should actively choose or profess their belief; baptism would then follow through total immersion. Unitarians did not believe in the Trinity, and did not regard Christ as God. Anglican clergy to refuse churchyard burial to both groups on the basis that death may have taken place before adult baptism and through a failure to invoke the Trinity at baptism. Through the course of the nineteenth century, scandal often became attached to instances where clergy refused churchyard burial to the children of Baptists (Rugg, 2014).

These denominational differences meant that, although burial provision was strongly dominated by Church of England churchyards, interment in alternative locations was common. At the mid-century point, towns and cities generally contained a principal churchyard, a number of minor and often newer churchyards, and two or more small Nonconformist burial grounds attached to chapels. Chadwick’s 1843 Supplementary Report on Interment found thirteen Protestant Dissenting grounds operating in the Metropolis, although it was likely that demand was also being met by small-scale commercial funerary chapels which instituted ‘vault’ burial in their cellars. (Chadwick, 1843).

By 1820, a new innovation had been introduced: the application of joint stock financing to the creation of new burial space. This innovation had arisen from within the Dissenting community, which wanted funeral services to be taken by their own minister, on land that would not be consecrated. Joint stock financing raised the amount of capital available for land purchase, and so the creation of larger-scale sites became possible. The first of the purely commercial enterprises – the cemetery of All Souls at Kensal Green, London – was opened in 1836. Proprietors arranged for their cemetery to be consecrated by the Bishop of London, who required that compensation be paid to clergy who would otherwise lose burial fees as a consequence of their parishioners’ use of the site. The action set a precedent, and compensation clauses were common in joint-stock cemeteries (Rugg, 2013). York General Cemetery, opened in 1836, introduced the innovation of part-consecration so that the site could be used by both Anglicans and Nonconformists. By the 1840s, town councils were themselves forming cemetery companies as a preferred alternative to paying for a new cemetery through the rates, and within a decade almost all major towns had at least one cemetery company in operation.

The new cemeteries tended to cater for the principal Protestant denominations. Provision for non-Protestant groups remained marginal. The Religious Census found 53 Jewish places of worship, with around 6,000 attendances in total on the Jewish equivalent of Census Sunday, which was Friday evening to Saturday afternoon, 28-29th March. However, other sources indicate a larger Jewish population, of some 30-35,000 in the mid-19th century (Alderman, 1992). Jews had, since the seventeenth century, taken responsibility for providing their own burial spaces and so ensuring that their special funerary requirements could be fulfilled. Synagogue membership included payment to cover the cost of interment. Edwin Chadwick’s 1843 survey, found four Jewish burial grounds located in the Metropolis, which between them accommodated around 300 burials a year (Chadwick, 1843). The scale of operation in London expanded substantially through the second half of the nineteenth century, following the mass migration of Jews from Russia and Eastern Europe, but this provision remained outside the statutory system (Alderman, 1992).

**The Burial Acts, 1852-1906**

New cemeteries proliferated through the first half of the nineteenth, but could not prevent continued use of overcrowded city churchyards which were believed to be a major source of disease. In the UK, burial legislation came largely through the passage of the Burial Acts. The Burial Acts were a series of fifteen Acts passed between 1852 and 1906. An additional piece of legislation – the Public Health (Interments) Act, 1879 – is also pertinent to the provision of burial space but sat outside and did not correspond with the Burial Acts, creating legal complexities that will be discussed below. A first Burial Act, passed in 1850, was wholly repealed by the Burial Act, 1852. The Metropolitan Interments Act, 1850 would have set the UK more soundly within a continental European tradition of state control of both burial and undertaking functions, reframing interment as a purely secular function. Indeed, the Jewish community aimed to block passage of the Act, in anticipation that Jewish burial grounds would be closed, and no allowance made for Jewish funerary ritual (Alderman, 1992). The 1850 Act had been passed at a time of considerable panic following a major cholera epidemic, and was repealed in its entirety. A return to the principle of *laissez-faire* followed as Treasury baulked at the cost of compulsorily purchasing private cemeteries (Finer, 1952).

The Burial Act, 1852 took an entirely different approach to the provision of burial space, building on strengths – and in the longer term, weaknesses – of the English local government system. The parish was the principal unit of local government in the nineteenth century, inextricably linked to the Church of England since parish governance took place through the vestry system. Vestries – local administrative Church committees – had the power to raise rates to pay for elements of local poor relief and elements of infrastructure such as highways maintenance. The vestry was democratic, in the sense that all local ratepayers could vote on vestry expenditure, irrespective of their denominational allegiance.

The Burial Acts of 1852 and 1853 set out new principles on which burial space would be provided. The Acts set out procedures by which closure of overcrowded churchyards and burial grounds would be effected. The Act also established that, where a majority of ratepayers voted accordingly, the vestry could set up a burial board and use the rate system to raise finance and lay out a cemetery. The cemetery would be laid out according to the scientific principles detailed in guidance notes to the regulations. In addition, the cemetery would – following the example York General Cemetery – be part consecrated. The consecrated section would be managed as if it were an extension to the parish churchyard, with fees payable to the local minister. An unconsecrated section would remain open to usage by any other denomination, with no restrictions as to service or minister (Brook Little, 1902).

These provisions appeared ostensibly equitable, but the fact that further Burial Acts followed indicated the failure of the regulations to work equitably in practice. For example, it was argued that the provisions required the creation of mortuary chapels for both Nonconformist and Anglican use. The measure introduced considerable expense which in itself discouraged communities from taking up the option of burial board establishment and instead seek the simpler alternative of expanding the churchyard. Indeed, in some locations, the incidence of churchyard extension far outnumbered the establishment of new cemeteries. Nonconformist communities in rural locations, where churchyard extension was more likely, argued that their burial needs were not being met by the Burial Acts since it was still not possible for Nonconformist clergy to take funeral services in Anglican churchyards.

The argument relating to burial rights drove to the very centre of issues relating to the concept of an established church. Nonconformists argued that, if the Church of England was a national church, supported through government grant – as funding for Church building indicated – then its facilities should be available to all taxpayers, irrespective of their denomination. If the Church of England held its facilities for use only by a particular denomination, then it could make no claims to be the National Church. The burial debate rumbled through local and national politics during the 1860s and 1870s, and was finally resolved through the passage of the Burial Grounds Amendment Act, 1880. This Act constituted a major concession with the intention of diffusing growing calls for disestablishment of the Church of England. The Act laid out the procedures whereby Nonconformist ministers could take services in Anglican churchyards and so – by extension – in the consecrated sections of cemeteries. However, a burial fee was still payable to the parish vicar (Rugg, 2014).

The legislation diffused some of the religious tensions with regard to burial space, but by no means all. In 1879, and sitting outside the Burial Acts, the Public Health (Interment) Act allowed for the creation of new cemeteries using an older piece of legislation – the Cemeteries Clauses Act, 1847. The proponents of the 1879 Act had intended to simplify the creation of cemeteries and so expedite a necessary public health measure. However, the Act made it possible to create cemeteries without any consecrated space, a step which some communities – strongly dominated by Nonconformist interests – aimed to take. Increasing scandal was attached about the financial benefits derived by Anglican clergy from cemeteries laid out on the rates, not only through burial fees but also through the imposition of monument erection fees.

The response, following a major Parliamentary inquiry, was the penultimate Burial Act, 1900. This Act drew burial matters more strongly into a secular framework. The new Act removed the presumption that the interests of the Church of England should be protected. If new cemeteries or extensions to cemeteries were planned, then application to the Home Office had to include a justification for consecration, based on existing usage. Burial fees were payable to the minister taking the service irrespective of denomination and with no compensation paid to the Anglican minister; and any monument erection fees charged in the consecrated cemetery section would be retained by the burial authorities (Rugg, 2013).

The Burial Acts had ensured that, until 1900, the Church of England retained a strong control of burial provision, largely through the requirements that part of the cemetery should be consecrated. However, management practice of sites set up under Burial Acts remained largely discretionary. Local burial boards set the tone for the degree of tolerance exercised in apportionment within unconsecrated sections. For example, at the Yorkshire market town of Malton, the Burial Board decided not to grant a section to the local Roman Catholic community because there were only nineteen ratepayers of that denomination. By contrast, the nearby town of Thirsk afforded a section to the Roman Catholic community without discussion or comment. Malton was more amenable to an approach from a local Jewish landowner, who was able to purchase a substantial plot within the cemetery for exclusive Jewish use. Thus apportionment could be a very localised matter depending on the play of demand and of local religious politics (Rugg, 2013).

**Twentieth-century burial legislation**

Localised religious tensions between denominations on the apportionment of burial space continued to be evident even up until the 1940s. The Burial Acts were successful in enabling even small communities to fund burial space, and remained in rather anomalous operation despite successive changes to local government legislation increasing the scope of local authority activity. The Burial Act, 1900 did not constitute a decisive resolution of non-religious burial. Many cemeteries and burial grounds lay outside any formal statutory regulation, and the provision of burial space was a permitted act rather than a statutory obligation. The Cremation Act, 1902 encouraged burial boards to consider the establishment of crematoria. For much of the twentieth century, propaganda co-ordinated by the Cremation Society of Great Britain successfully associated burial with insanitary and ‘old fashioned’ practice that was wasteful in terms of land consumption. By the end of the 1960s, cremation had become the majority option following a death. The principles defining burial management shifted. The Burial Act regulations had originally encouraged a system of grave re-use. However, by the 1930s, this practice had fallen out of favour, and the Home Office had begun to interpret a clause within the Burial Act, 1857 as a measure to prohibit disturbance of graves without specific Home Office licence.

Agitation to review the burial laws continued, and substantive change took place through the passage of the Local Government Act, 1972. This Act brought the operation of burial boards to an end. Many had, by this time, become amalgamated within existing local authority governance but some remained. The law defined ‘burial authorities’ to include parish and community councils, town, district and unitary authorities and London boroughs. The law did not include any reference to the small number of commercial cemeteries that were still in operation, small denominational burial grounds that were – again, in small number – still functioning, or Church of England churchyards. Church law still pertained where land had been formally consecrated, including within cemeteries.

The Local Authorities Cemeteries Order (LACO), 1977 provided new cemetery regulations, and still applies Under the Act, burial authorities are permitted to arrange for consecration of a cemetery if the act is regarded as appropriate, and provided that part of the cemetery remains unconsecrated or set aside for use by a particular denomination or religious group. S 5 (5) of LACO allows that in the unconsecrated sections, burial may take place without religious service or with such ‘Christian and orderly religious service…as the person having charge of or being responsible for the burial may think fit,’ which appears discriminatory (Rivers, 2001) although in practice the clause has not precluded local authorities setting aside non-Christian sections. Burial in the consecrated area may use funeral services other than those defined by the Church of England but the consecrated section still remains under the authority of the Bishop and subject to ecclesiastical law. Local authorities may set aside unconsecrated sections within cemeteries for use by particular religious groups, provided that sufficient unconsecrated land remains for other groups. However, the unconsecrated portions of cemeteries have no legal status: the regulations do not oblige the use of any particular rite or ceremony in those sections, and members of any religious group may not object to the interment of another individual not of their faith within their designated section.

**Religious diversity and burial provision in 2011**

A census of UK residents takes place every ten years, and has done so since 1801 with the exception of 1941. A question on religion was introduced for the first time in 2011, and asked ‘What is your religion’. Eight options were possible: Christian, Muslim, Hindu, Sikh, Jewish, Buddhist, ‘Other religion’ and ‘No religion’. Table 1 summarises the responses, and indicates that close to 60 per cent of the population regarded their religion as ‘Christian’ although no denominational detail is available. Of the remainder, ‘no religion’ is the largest group, at 25 per cent. Muslims constitute the largest non-Christian religious group (4.8 per cent), with Hindus the second-largest, at 1.5 per cent. Jews, Sikhs and Buddhists each constitute less than one per cent (see Table 1).

Arguably, current burial and cremation provision is well placed to cater for the 75 per cent of the UK population who regard their religion as either ‘Christian’ or ‘None’, since burial provision is generally split between consecrated and unconsecrated space. Issues relating to Protestant denominational difference have largely receded as formal church membership has declined. The Church of England and the Methodist church have increasingly co-operated in the provision of services and sharing of churches and chapels; indeed, in 2010 the leader of the Methodist Church signalled the possibility that Methodism may be re-subsumed into the Anglican Church (Taylor, 2010). However, it remains the case that a small – and undefined – number of burial grounds remain in operation. For example, small Quaker burial grounds are may still be in use in rural locations, although interment may only be sporadic (Rugg, 2013).

|  |  |  |
| --- | --- | --- |
| Table 1: Answers to question ‘What is your religion’ on the UK Census, 2011 | | |
|  | Number | Percentage |
| Christian | 33,243,175 | 59.28 |
| Muslim | 2,706,066 | 4.83 |
| Hindu | 816,633 | 1.46 |
| Sikh | 423,158 | 0.75 |
| Jewish | 263,346 | 0.47 |
| Buddhist | 247,743 | 0.44 |
| Other religion | 240,530 | 0.43 |
|  |  |  |
| Religion not stated | 4,038,032 | 7.20 |
|  |  |  |
| No religion | 14,097,229 | 25.14 |
|  |  |  |
|  | 56,075,912 | 100 |
|  |  |  |
| Source: <http://www.ons.gov.uk/ons/> (accessed 4 January 2016) | | |

Any attempt to assess the capacity and suitability of existing provision relative to demand is hampered by a lack of statistics on the ownership and use of burial space. The fact that local authorities are still not required to provide burial space means that no formal framework is in place for the collation of data on performance. Neither of the two government departments that might be thought to have oversight of the issue – the Department of Communities and Local Government, which oversees planning and urban development, and the Ministry of Justice, which has responsibility for burial law – take any strategic responsibility (ETRA, 2002).

There is no national information, but the planning arm of the Greater London Authority has overseen the completion of two separate audits of burial space within the 33 London boroughs within the capital (Halcrow Fox, 1997, Rugg and Pleace, 2009). London boroughs are designated burial authorities, and so are permitted to provide burial space although one – the London Borough (LB) of Tower Hamlets does not. The most recent audit indicated that there were 128 operational cemeteries and burial grounds in the capital. No data were collected on churchyard interment: it was likely that between 30 and 40 were still in operation, but the overall the number of interments was thought to be small (Rugg and Pleace, 2010).

The two London audits collated data on faith sections within cemeteries. Of the 128 sites open for use, 23 contained sections dedicated for use by the Roman Catholic community; two large Roman Catholic burial grounds were also in operation in the capital. Just three sites contained specifically Jewish sections. Jewish demand continues to be met from within the Jewish community: there are eleven sizeable Jewish burial grounds in the capital, catering for different groups within the Jewish community. The most substantive development has been the creation of specific areas to meet Muslim need in the capital. The 2010 Audit found that 23 cemeteries contained sections dedicated for use by the Muslim community. Two large Muslim burial grounds were also in use. The Muslim Gardens of Peace is a charitable trust which opened one site at Redbridge in 1998 and another in 2015. There were also two sections within London cemeteries catering for Buddhist need.

It is evident that London boroughs vary in their capacity and willingness to meet the burial needs of particular groups whose faith requires that burial space is managed in a particular way. Demand is spread unevenly across the capital and particular provision – for example, the Muslim Gardens of Peace – draws burials from a number of boroughs. However, even where boroughs have high levels of demand, it is not necessarily the case that demand will be met. Some Inner-London boroughs – including Tower Hamlets – have higher proportions of Muslim residents, but no specific capacity to meet that or indeed any need. Inner London residents often travel to neighbouring boroughs for burial space, and some London demand is met in cemeteries outside the Greater London boundary.

**Human rights, ethics and disposal of the dead and the law in the UK**

English burial history constitutes a distinctive context in which to consider human rights and burial provision. Other chapters in this text will discuss the issue of burials in the context of nations where the state is overtly secular, and where religious equality in terms of burial creates particular tensions. The UK is a Christian country in principle, but the Church of England has, in recent years, tended to embrace religious diversity and to promote religious tolerance. The UK is a pluralist society. A tolerance of faith creates a general presumption of respect for religious difference in funerary practice. Local authorities in principle aim to meet diverse and non-Christian need. Indeed, the first specifically Muslim section was created in Birmingham in the 1930s

However, there are instances and circumstances which challenge the ‘toleration’ principle, and two examples will be discussed. The first concerns the case of Davinder Ghai, a Hindu, who in 2006 applied to Newcastle City Council for permission to arrange for his body to be burned on a pyre after his death. Permission was refused and duly challenged, but in February 2010 that challenge was overturned by the Court of Appeal. The legality of the debate tended to rest on definition of the purport of the Cremation Act, 1902 which prohibits the cremation of human remains outside a crematorium, defined as ‘any building fitted with appliances for the purse of burning human remains’ (s2). The judgement found that an unnecessarily restrictive interpretation had been given to the term ‘building’. A funeral pyre of the type proposed by Ghai, which comprised a walled enclosure, could be interpreted as being a building. No explicit reference was made to Ghai’s human rights with regard to pyre cremation, but the issue did provoke a wider and largely academic discussion of the matter (Cumper, 2010, Juss, 2013).

Despite the fact that Ghai’s plans have been judged to be not illegal with reference to the Cremation Act, 1902, there are as yet unresolved regulatory difficulties with regard to planning and public health legislation. European legislation strictly controls cremation emissions: indeed, compliance with the regulations has meant considerable investment in upgrading and replacing cremators in the UK. Much of the academic debate on pyre cremation has rested on the human right to decisions on the matter of disposal, but none have addressed the ethical concerns relating to possible environmental harm caused by the practice (Parekh, 1999). It might be argued that the scale of pyre cremation is unlikely to be considerable and so the risk of harm is minor. However, in recent comment to the media, Ghai has argued that pyre cremation might be a possible response to funeral poverty, in constituting a cheaper alternative to conventional cremation (Marsh, 2015). Pyre cremation may be allowed in principle, on the basis that Ghai should not be denied the right to material expression of his faith. The question of whether pyre cremation should be permitted as a generalised preference remains moot, since higher incidence escalates the scale of environmental harm.

Second, issues remain on the provision of land for interment. It is evidently inequitable that certain groups should themselves fund the creation of burial space for their own usage, whilst at the same time paying local rates that may be used to finance and manage burial space for the rest of the community. This has traditionally been the case for the Jewish community, which even from the nineteenth century took financial responsibility for elements of welfare, education and burial provision to meet the specific faith needs of Jewish people. It was felt, at that time, that if the Jewish community proved to be burdensome to the British taxpayer, then steps would be taken to restrict levels of in-migration (Alderman, 1992). In the UK, the Muslim community has – in some locations – stepped outside the local taxation system and itself funded the provision of burial space using a charitable trust framework, as in the case of the Muslim Gardens of Peace, or through private finance arrangements. For some Muslim groups, control of a section can ensure that all ritual needs are met, including the provision of washing facilities.

However, sitting underneath this issue are tension which arise less as a consequence of absolute difference in funerary practice, and more as a reflection of the apportionment of burial space as an increasingly scarce commodity. New sections have been created to accommodate Muslim need, but Muslim religious belief requires the burial of just one body in each grave. In the UK, graves generally contain multiple family members where the burial right has been purchased, or multiple unrelated members in the case of ‘unpurchased’ or public graves. Muslim practice absorbs burial space at a much more rapid rate than common Christian practice, at a time when local authority finances are insufficient to meet need, and where the possible introduction of grave re-use to meet demand is being mooted. This is a measure that would not necessarily be palatable to the Muslim community, but the as yet unaddressed question remains: should virgin burial space be reserved for Muslims, whilst ‘Christian’ burials are obliged take place in re-used graves? The issue is of ethical importance. In the UK, many people find the idea of grave re-use unpalatable, as a consequence of strong feelings that such practice runs counter to desire to protect the corpse from undue disturbance (Rugg and Holland, forthcoming).

**Conclusion**

As David Felman observes, ‘the problem of how to make law and govern a society which contains more than one cultural community is now a new one in the history of the British state’. Since the middle of the nineteenth century, pluralism has been the ‘predominant political response to religious diversity’ in the UK (Feldman, 2012, 10, 11), and cemeteries have reflected that principle in containing both consecrated and unconsecrated portions, and in some instances sections dedicated to the use of particular denominations. Muslim burial needs are generally accommodated within existing cemeteries where space is available. Provision for pyre cremation is a slightly different matter. The practice accords with the Cremation Act, 1902, but may contravene environmental law.

The apparent liberalism of the British law undermines the notion of rights for any group with regard to burial. A common law right gives all parishioners access to Christian burial, which appears discriminatory, but burial authorities have no responsibility to provide burial space. In effect, the law in practice discriminates against everyone. Furthermore, access to burial space is often limited by civic legislation prohibiting grave re-use. Graves are more readily available in some rural churchyards, where ecclesiastical regulation does not preclude re-use, and where some sites have been in use for centuries. However, these sites are not located close to major urban centres or Muslim demand, and in any case previously used graves may not be palatable to the Muslim community. Burial issues in the UK therefore become more an issue of pragmatics and ethics than of human rights and religious toleration.

**Bibliography**

ALDERMAN, Geoffrey, *Modern British Jewry*, Oxford, Clarendon Press, 1992, p. 397.

BEBBINGTON, David, *Evangelicalism in Modern Britain: A History from the 1730s to the 1980s*, London: Routledge, 2002, p. 364.

BROOK LITTLE, James, *The Law of Burial*, London: Shaw and Sons, 1902, p. 758.

CHADWICK, Edwin, *A Supplementary Report on the Results of a Special Inquiry into the Practice of Interment in Towns*, London, HMSO, 1843 p. 279.

CUMPER, Peter, ‘Last human rights and human rights: funeral pyres and religious freedom in the United Kingdom’, Ecclesiastical Law Journal, 12, 2010, p.131-151.

FELDMAN, David, ‘Conservative pluralism and the politics of multiculturalism’ in YUVAL-DAVIS, Nira and MARFLEET, Phil (eds) *Secularism, Racism and the Politics of Belonging*, London, Runnymede, 2012 p.10-12.

FINER, Samuel, *The Life and Times of Edwin Chadwick,* London, Methuen, p. 555.

Environment, Transport and Regional Affairs Committee, *Eighth Report: Cemeteries*, London, HMSO, 2002, p. 63.

HALCROW FOX, *Burial Space Needs in London*, London, London Planning Advisory Committee, 1997, p. 201.

MARSH, Michael, ‘Newcastle Hindu healer Babaji Davender Ghai reignites funeral pyre plans’, *Chronicle Live,* 15 February 2015. <http://www.chroniclelive.co.uk/news/north-east-news/newcastle-hindu-healer-babaji-davender-8557432> Accessed 10 January 2015.

JUSS, Satvinder Singh, ‘Sikh cremations and the re-imagining of the clash of cultures’, Human Rights Quarterly, 35, 2013, p. 598-630.

PAREKH, Bhikhu, ‘The logic of intercultural evaluation’, in HORTON, John and MENDUS, Susan (eds), *Toleration, Identity and Difference*, Basingstoke, Macmillan, p. 163-197.

RIVERS, Julian, ‘Religious liberty as collective right’, *Law and Religion: Current Legal Issues Volume 4*, published online at, DOI:10.1093/acprof:oso/9780199246601.001.0001

RUGG, Julie, ‘The Burial Laws Amendment Act of 1880 and strategies of evasion in rural North Yorkshire’, Northern History, 51, 2014, p. 113-130.

RUGG, Julie, *Churchyard and Cemetery: Tradition and Modernity in Rural North Yorkshire*, Manchester, Manchester University Press, 2013, p. 427.

RUGG, Julie and HOLLAND, Steven, ‘Respecting corpses: the ethics of grave re-use’ *Mortality*, forthcoming.

RUGG, Julie and PLEACE, Nicholas, *An Audit of London Burial Provision*, 2010, London, Greater London Authority. Available at: <http://www.london.gov.uk/sites/default/files/Audit%20of%20London%20Burial%20Provision.pdf> (accessed on 9 January 2015).

RUGG, Julie, STIRLING, Fiona and CLAYDEN, Andy, ‘Churchyard and cemetery in an English industrial city: Sheffield, 1740-1900’, Urban History, 41, 2014, p. 627-646.

SNELL, Keith and ELL, Paul, *Rival Jerusalems. The Geography of Victorian Religion*, Cambridge: Cambridge University Press, 2000, p. 499

STOCK, Gwynne, ‘Quaker burial: doctrine and practice’, in COX, Margaret (ed.) *Grave Concerns: Death and Burial in England 1700-1850*, York, Council for British Archaeology, p. 129-143.

TAYLOR, J. (2010) ‘Leaders signals end of Methodism’, 12 February, <http://www.independent.co.uk/news/uk/home-news/leader-signals-end-of-methodism-1897141.html> (accessed on 4 January 2016).

WOLFFE, John, ‘“And there’s another country…”: religion, the state and British identities’ in PARSONS, Gerald (ed.), *The Growth of Religious Diversity. Britain from 1945, vol II Issues*, London, Open University Press, 1994, p. 85-122.

1. The Cenus counted attendances at morning, afternoon and evening services. [↑](#footnote-ref-1)