

Please consider this a submission to the Victorian Law Reform Commission's consideration of the matter of funeral and burial instructions.

I would like the Law Reform Commission to examine the extent to which the *Cemeteries and Crematoria Act 2003* limits the exercise of choice in relation to body disposal methods. If a person's burial instructions are at odds with the prescribed methods of the Act, then they cannot possibly be followed, regardless of how much legislative support is given to adherence to written burial instructions.

I would like the disposal of my own body to begin with a period of above-ground exposure to scavenging and decomposition by wild organisms, similar to the Buddhist practice of *jhator*. I have well-defensible philosophical/spiritual reasons for this preference, which stem from our obligation to ethical reciprocity and material generosity towards the biospheric community of organisms, the members of which we, as animals, necessarily spend our lives killing and eating.

The Act provides for interment or cremation, and other methods of body disposal are allowed only at the discretion of the Secretary (Sec. 147). When I enquired to the Department of Health (July 2013), I was told that my preferred method would not be possible, because it was not consistent with the policy purpose of the legislation or with “accepted community standards and expectations about the disposal of human remains.” The policy purpose was described as “to ensure there is no threat to public health, ie. to dispose of bodily remains quickly and hygienically, to reserve decency and dignity for the dead and in line with cultural norms.”

There is some support for these claims in the Act. Sec. 2A(a) provides the objective that “human remains are treated with dignity and respect.” Sec 180(1)(e) authorises regulation for “the protection of public health.” I can find no reference to “accepted community standards and expectations” or “cultural norms,” but since the Act rests arbitrary authority with the Secretary, there is nothing to say the application of such principles is contrary to the law.

Philosophically, foundation of dignity is *autonomy* (see e.g. Kant). To significantly diminish or thwart another's autonomy is to degrade them and to *violate* their dignity. Such considerations are surely at the core of our liberal, pluralistic society. We are, or ought to be, free to make choices for ourselves based on our own reasons, irrespective of cultural norms, so long as those choices don't adversely affect the liberty of others. Our bodies, more than anything else in the world, are the objects of our autonomy. Our sovereignty over our own body is central to the exercise of our

dignity.

Death represents the end of a person's autonomous, embodied existence. Control over one's body *is* relinquished; its materiality *is* returned to its origins. Dignity after death consists in the exercise of autonomous choice over the circumstances of the relinquishment of control. Survivors can respect the dignity of the deceased person by acting as the agent of the final autonomous act of the deceased, carrying out his wishes in relation to the manner and circumstances of the disposal of his body. The coercive imposition of “cultural norms” against the wishes of the deceased, does not preserve dignity: it *violates* it, by thwarting the person's final act of autonomous agency.

I believe the legislation must be amended to better protect the right of each person to choose the circumstances of the disposal of his or her body. It should be made explicit that this is inherent to respecting the dignity of the deceased, as demanded by Sec. 2A(a). The power of the Secretary to refuse an alternative method of disposal of human remains should be limited to reasons of public health and environmental protection, so that no illiberal and coercive appeal to “cultural norms” may be made. There should also be an avenue of appeal in the case of an unfavourable decision by the Secretary.

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