

# A Grave Situation: An Examination of the Legal Issues Raised by the Life and Death of Charles Byrne, the “Irish Giant”

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**Abstract:** Charles Byrne was an eighteenth-century celebrity “Irish giant” who requested burial upon nearing death, but whose corpse was procured against his wishes by the surgeon John Hunter. Hunter reduced Byrne’s corpse to its skeleton and exhibited it as the centerpiece of his vast anatomical collection. It has since remained on display in the Hunterian Museum, London. In 2011 it was announced that research conducted on the skeleton’s DNA has revealed that several Northern Irish families share a common ancestry with Byrne. This article considers the legal issues raised by Byrne’s story. The results of fieldwork undertaken by the author in Byrne’s native townland are also discussed, where folk tradition suggests that Byrne wished to be buried foremost at a local site remembered today as “the Giant’s Grave.”

*The Russian giant recently exhibited in this country is possessed of a great fear that when dead his body will be given to surgeons for dissection. . . . This fear, however, is probably common to all freaks, and the most striking case in “show” history is that of the Irish giant, Charles Byrne.<sup>1</sup>*

## CHARLES BYRNE, “THE IRISH GIANT”

### *Background*

Byrne was born in Ireland in 1761 and died in London at the age of 22 in 1783.<sup>2</sup> He had pituitary gigantism, a condition whereby the growth of tumors on the pituitary gland, located at the base of the brain, causes the gland to malfunction and results in the afflicted person growing to an unusually large height. Byrne’s

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pituitary complications also resulted in acromegaly, a form of distorted bone growth that gradually manifested itself in its most pronounced manner through the painful expansion of hands, feet, and certain cranial features. Byrne was born in Littlebridge, County Londonderry/Derry, located in present-day Northern Ireland. He was widely regarded as being over 8 ft. tall, and at the time of his death his height was recorded at 8 ft., 4 in.; however, examination of his skeleton suggests that with exaggeration and overestimation removed, he in all probability stood at about 7 ft., 7 in., or a little above.<sup>3</sup> He is believed to have had an Irish father and Scottish mother,<sup>4</sup> although little is known of them.

Byrne's Littlebridge was a small populated pocket falling within the townland of Drummullan at the borderlands of County Londonderry/Derry and County Tyrone.<sup>5</sup> Today Littlebridge has been subsumed into what is now Drummullan town, with Littlebridge Road, and the bridge from which it takes its name, still running through the village as a reminder of its previous incarnation.<sup>6</sup> The *Ordnance Survey Memoirs* characterize Byrne's Drummullan as being permeated by the Moneyhaw and Annahavil rivers and including "a large extent of bog."<sup>7</sup>

Byrne decided to leave Littlebridge in his late teens, setting off on a tour of mainland Britain, where he exhibited himself as a human curiosity for money under the stage-name Charles O'Brien, becoming a famous and beloved character in the process. By early 1782 he had found his way to London. Here he made a home at Spring Garden-gate, then moved to Piccadilly, thence to what would become his final home, No. 12 Cockspur Street, Charing Cross. The following contemporaneous newspaper account catches the spirit of his success:

However striking a curiosity may be, there is generally some difficulty in engaging the attention of the public; but even this was not the case with the modern living Colossus, or wonderful Irish Giant; for no sooner was he arrived at an elegant apartment at the cane-shop, in Spring Garden-gate, next door to Cox's Museum, than the curious of all degrees resorted to see him, being sensible that a prodigy like this never made its appearance among us before: and the most penetrating have frankly declared, that neither the tongue of the most florid orator, or pen of the most ingenious writer, can sufficiently describe the elegance, symmetry, and proportion of this wonderful phenomenon in nature, and that all description must fall infinitely short of giving that satisfaction which may be obtained on a judicious inspection.<sup>8</sup>

So popular was Byrne that shortly after his establishment in London in the summer of 1782, a pantomime inspired by him named *Harlequin Teague, or the Giant's Causeway* was produced to great success.<sup>9</sup>

### *Death, Burial Wishes, and Hunter's Procurement of Byrne's Body*

Having accrued a comfortable amount of money as a human curiosity after his first year in London, Byrne decided to have these earnings adapted into a ban-

knote, apparently to the value of £700. Notoriously fond of alcohol, Byrne was drinking on Cockspur Street one evening with this note on his person when he was pickpocketed. The papers of the time reported the celebrity's mishap:

The Irish Giant a few evenings since, taking a lunar ramble, was tempted to visit the Black Horse, a little public-house facing the King's-mews; and before he returned to his own apartments, found himself a less man than he had been the beginning of the evening, by the loss of upwards of £700 in bank notes, which had been taken out of his pocket.<sup>10</sup>

James Quinn observes that:

[Byrne] was greatly distressed when this was stolen from his pocket in a public house. He died 1 June 1783 in Cockspur St. . . . [The] popular account is that his death was caused by excessive drinking brought on by vexation at the loss of his savings.<sup>11</sup>

Similarly, John Kay's *Biographical Sketches* records that "his death was occasioned by excessive drinking, to which he was always addicted, but more particularly after a loss he had sustained of almost all his savings, amounting to upwards of £700."<sup>12</sup>

Byrne was 22 when he died. While this drink and depression fueled decline into death perhaps seemed the obvious conclusion to the contemporary onlooker, this was some 100 years before a broad clinical understanding of gigantism. In reality, Byrne's body was racked with acromegalic pain and the effects of his pituitary condition. Alcohol would have afforded Byrne pain relief, and it is this pituitary condition, rather than a bout of depressive alcoholism after the loss of his money, that in reality killed him.<sup>13</sup> It is also likely that he had contracted tuberculosis.<sup>14</sup> The sensationalized account of Byrne's death has been received erroneously into many modern accounts of his demise, which not only ignore his pituitary condition, but also the fact that the theft of his money occurred in April and his death occurred on June 1, one to two months surely being a medically unlikely period of time for a depressive bout of alcoholism to kill a seasoned drinker.

Unsurprisingly, Byrne's body greatly intrigued the medical establishment, particularly the surgeons and anatomists. As Byrne became terribly ill, the surgeons watched the ailing celebrity's decline from the wings, and among these onlookers was John Hunter, the preeminent surgeon of the day.<sup>15</sup> Desirous both to be buried and to evade the surgeons, Byrne feared that body snatchers might exhume him if he were buried in the ground; therefore, he orally directed his friends to weight his coffin down and bury him at sea. The giant passed away on June 1 at his apartment on Cockspur Street in London. *Giants and Dwarves*, published in 1868, reprinted newspaper accounts from 1783 as the tension between a dying Byrne and a medical establishment keen to obtain the celebrity's body played out. Reveling in the sensational circumstances, the papers record that "the whole tribe of surgeons put in a claim for the poor departed Irish Giant, and surrounded his house just as Greenland harpooners would an enormous whale."<sup>16</sup> Some days later the surgeons are becoming more desperate: "So anxious are the surgeons to have pos-

session of the Irish giant, that they have offered a ransom of 800 guineas to the undertakers.”<sup>17</sup> As more time passes, the papers, referring to Byrne’s wish of being weighted down and buried at sea, observe with ghoulish delight that “the body-hunters . . . are determined to pursue their valuable prey even in the profoundest depth of the aquatic regions.”<sup>18</sup>

Accounts of Byrne’s death and the illicit procurement of his body vary slightly, but what is constant in the accounts is that his burial instructions were being set in motion and that Hunter managed to surreptitiously procure Byrne’s corpse from a dishonest person among Byrne’s party for a large sum, normally quoted at £500. The *Edinburgh Evening Courant* reported that:

[y]esterday morning, June 6, the body of Byrne, the famous Irish giant (who died a few days ago), was carried to Margate, in order to be thrown into the sea, agreeable to his own request, he having been apprehensive that the surgeons would anatomize him.<sup>19</sup>

It was during this transportation that a man in Hunter’s pay had Byrne’s body secretly swapped in its coffin for dead weight as the journeying party stopped overnight to rest, and a further accomplice covertly transported the corpse thence to Hunter.<sup>20</sup> Hunter immediately reduced Byrne’s body to its bones by stripping the flesh in a large boiling cauldron. He then hid the remains away so that any evidence implicating him in the misdeed was out of sight. When things had settled down, he bound the bones together in their correct skeletal arrangement, studied the skeleton, and wrote up his findings. Four years passed before Hunter revealed publically that the skeleton had become a part of his collection of anatomical specimens, and interested parties were invited to view the Irishman’s remains.

Today Hunter’s enormous specimen collection, the Hunterian Museum, is open to the public free of charge in the Royal College of Surgeons, London. At its center, in a towering, illuminated display case, is the skeleton of Charles Byrne.<sup>21</sup> Len Doyal and the present author have argued in the *British Medical Journal* that the skeleton ought to be removed from public display and that the remains ought to be buried in accordance with Byrne’s wishes.<sup>22</sup> Byrne’s position at the center of the Hunterian Collection perhaps brings to mind one of Hunter’s own aphorisms, “No man ever was a great man who wanted to be one.”

## LAW AND LEGALITY: GEORGIAN LONDON

### *The Socio-Legal Environment in Late Eighteenth-Century London*

The baseline expectation among Byrne’s contemporaries was that individuals had a right to burial, and that this right ought to be respected.<sup>23</sup> These views were concretizing at the common law level in the early Victorian period, with *R v Stew-*

*art* asserting directly in 1840 that every individual who dies in Great Britain has the legal right to a Christian burial, because the “feelings” and “interests” of living persons “require this, and create the duty.”<sup>24</sup> Byrne lived, however, at a time where there existed a tremendous demand for corpses due to a constant need on the part of medical colleges for both anatomical research specimens and for demonstration specimens that could be used in the teaching of anatomy students.<sup>25</sup>

The legislation in this area originates from early sixteenth-century Scotland, where the Barber Surgeons of Edinburgh were formally incorporated as a Craft Guild by Edinburgh’s Town Council and the 1505 Seal of Cause was ratified by King James IV of Scotland. The Seal of Cause<sup>26</sup> consisted of a series of “rules, statutes and privileges” drawn up by Edinburgh’s “kirkmaster and brethren of the Surgeons and Barbers,” and established the surgeons’ right to dissect the corpse of one executed criminal per year for the purposes of anatomical study: they were permitted to “have once a year a condemned man after death to perform anatomy on, whereby we may have experience, each one to instruct others.”<sup>27</sup> Metaphysical concern for the human body pervaded the statute, for the surgeons were to “uphold an altar” within College Kirk, Saint Giles, “in the honour of God and Saint Mungo our patron” and were obliged to “do suffrage for the soul” of the body they were granted, meaning, it would seem, that they were to pray for the person, perhaps in the context of a religious service either dedicated to or formally acknowledging the deceased.<sup>28</sup> Here then, from the very dawning of the anatomical legislation, socio-cultural spiritual attitudes are inextricably linked to the dissection of the human body at the legal level. Byrne’s own concerns regarding the fate of his body are therefore part of a socio-legal continuum.

Following on from the Seal of Cause, Henry VIII legislated in England to grant surgeons the corpses of four dead criminals per year in 1540, and King James II increased the allotment to six bodies in 1663. The Murder Act of 1752 widened things further so that, where the courts directed, the bodies of persons who had been executed for murder could be dissected.<sup>29</sup> The 1752 act describes dissection as a “terror and mark of infamy”; dissection is specifically intended in the statute as both a deterrent to murder and a subsequent punishment. This legal position reinforced the prevalent eighteenth-century view that dissection was something punitive and frightening, and that it literally connoted a mark of infamy.

Given that the demand for corpses remained far too great to be accommodated by these means alone, the trade of the Resurrectionists was rife, that is, the activities of body snatchers who illicitly exhumed corpses and then sold them on to the surgeons. Indeed, people who could afford the expense often chose to bury themselves in reinforced metallic coffins so that their bodies could not be gotten at in this fashion,<sup>30</sup> and the Scottish were so concerned by grave tampering that they created a special offence, Violation of a Sepulchre.<sup>31</sup> Many surgeons readily colluded in this surreptitious activity, at times instigating it and actively participating in nocturnal graveyard raids. A massive public outcry against Resurrectionist subculture, combined with the shortfall in cadavers required by the anatomists, fi-

nally galvanized the passing of the Anatomy Act of 1832.<sup>32</sup> The act acknowledged that its creation had been necessitated by the need to increase knowledge of the human body through anatomical study at a point in time where “the legal supply of Human Bodies for such Anatomical Examination is insufficient fully to provide the Means of such Knowledge.”<sup>33</sup> It continued:

In order further to supply Human Bodies for such Purposes, divers great and grievous Crimes have been committed, and lately Murder, for the single Object of selling for such Purposes the Bodies of the Persons so murdered[.]<sup>34</sup>

The statute set up a series of Inspectors to oversee Schools of Anatomy,<sup>35</sup> with precise record being kept of the name, age, and sex of each body removed for anatomical examination, and of the time that the body was taken.<sup>36</sup> More generally, it established the regulation of the movement of cadavers via the transfer of certificates that were given to anatomists along with the corpses they received.<sup>37</sup>

Byrne’s overall position in the weeks preceding his death, then, is as follows: he lived in the period immediately prior to the Anatomy Act of 1832, where the anatomists’ demand for cadavers greatly exceeded any quantities that could be obtained legally, and, consequently, the practice of body-snatching was rife<sup>38</sup>; Byrne knew that he was perceived as an intriguing medical curiosity by the surgeons and that they were keen to acquire and dissect his corpse; conventional burial could not protect the celebrity’s body from dissection, because the surgeons could easily obtain it from the Resurrectionists; and Byrne’s society viewed dissection as a terror and mark of infamy that was set aside for the most heinous criminals of the day.<sup>39</sup> Further, it should be noted that Georgian Britain attached spiritual anxieties to these matters, for the public was generally fearful that mutilation of the human body in death might somehow corrupt the deceased’s experience of the afterlife.<sup>40</sup>

### *Burial Law*

Anxious to evade the surgeons, and desirous of burial but duly anxious to avoid the Resurrectionists, Byrne orally directed that his body be weighted down and buried at sea. UK law does not treat burial instructions as legally binding, a position clarified in 1882 by *Williams v Williams*.<sup>41</sup> In Byrne’s eighteenth-century England, a corpse was considered to be a *nullius in bonis*, that is, in the legal ownership of nobody, and dead bodies came under ecclesiastical jurisdiction.<sup>42</sup> The power vested in the Church prior to the nineteenth century meant that the common law courts did not have jurisdiction over corpses, and moreover, that a person in custody of a dead body was not understood to have an ownership right over it. Nonetheless, as Pawlowski observes, “it was also recognised . . . that the deceased’s personal representatives have the right (and duty) to bury their dead.”<sup>43</sup> The law also recognized that it was in the interest of the wider community to

dispose of bodies both on grounds of general human decency and, given the risk of disease, on grounds of public health.<sup>44</sup> This notion of “decency” underpinning the legality of burial evokes the existential perception that the dead ought to be treated respectfully.<sup>45</sup>

It is noted that Byrne appears to have been effectively penniless when he died due to the theft of his money. It was often religious custom for persons associated with the deceased to give parishes money for burial in Byrne’s era, but the custom did not have legal force at common law: per Mr. Justice Abney in *Andrews v Cawthorne*, “by the common law of England, no fee is or ever was due for baptism or burial, which is de jure or of common right.”<sup>46</sup> Byrne’s impoverishment, then, should not have undermined his common right to burial.

In present times UK law facilitates the burial process by configuring a hierarchy of persons in whom burial duty is discerned.<sup>47</sup> Executors appointed by the deceased’s will sit at the top of this hierarchy.<sup>48</sup> In an instance of intestacy the law shifts the burial responsibility to the deceased’s personal representatives,<sup>49</sup> and it is established that these personal representatives have a right to guardianship or possession over the body as a necessary and logical element of the carrying out of their duty to bury.<sup>50</sup> The Administration of Estates Act of 1925 sets out a fixed distribution of personal representatives, each of whom is a relation of the deceased, and the burial responsibility falls in the law’s set hierarchical order: the spouse takes precedence, followed by issue (i.e., children), parents, siblings, and so on.<sup>51</sup>

The law in Byrne’s era was similar. In those days succession and matters pertaining to testaments and parts were under the Ecclesiastical Courts’ jurisdiction. Historically, the tradition of dividing estates into aliquot parts or shares, usually of halves or thirds, had predominated, whereby the deceased would dispose of one part by testament, with the other part, or two parts, falling to either the widow or the widow and children respectively. London converted to freedom of testation in 1724, and the Statute of Distributions<sup>52</sup> was set in place in 1670 as a means of governing intestate distribution, establishing a set scheme that administrators were bound by law to follow. As Byrne died intestate, the legal duty to bury him would have fallen to his personal representatives as defined by the intestacy administrative hierarchy.

Little is known of Byrne’s relations. So far as one can tell, no relations were present at Byrne’s death, or were involved in his life at this time. Beginning at the top of the hierarchy, one third of his estate would have gone to:

the Wife of the Intestate, and all the Residue by equal Portions, to and amongst the Children of such Persons dying intestate, and such Persons as legally represent such Children, in case any of the said children be then dead[.]<sup>53</sup>

Accounts do not cite Byrne as having been married or as having fathered children (either within or without of wedlock), and so one proceeds down the hierarchy to the next set of personal representatives:



in case there be no Wife . . . And in case there be no Child, then to the next of Kindred in equal Degree of or unto the Intestate, and their legal Representatives.<sup>54</sup>

Byrne's father would have taken to the exclusion of the mother.<sup>55</sup> In the absence of a father, the mother would have shared with any brothers and sisters Byrne might have had, and where children of deceased brothers or sisters survived, they stood in the intestacy chain as representatives of their parents.<sup>56</sup>

The burial duty lay, then, with Byrne's father, and in the event that the father was deceased, with the mother and brothers and sisters. There is a good likelihood that his father and/or mother would have still been alive at the time, given that Byrne was only 22 when he died. However, there is no mention of Byrne's parents in the old accounts and newspaper pieces, and the present writer has searched in vain among Northern Irish public records for further information. As a result, we simply do not know if his parents were still living. It has been recorded, however, that he had "at least one brother."<sup>57</sup> In the event that both of Byrne's parents were dead, then his brother, provided he was living at the time of Byrne's death, would thus have held a legal right to custody of the body and a consequent duty to bury.

In sum, although Byrne's specific burial instructions were not legally binding, he had a common right to burial and a duty to bury him was apportioned to specific persons. The actions of Hunter and those in his pay ignored and flouted these laws.

## LAW AND LEGALITY: PRESENT DAY

### *Who Owns Byrne's Skeleton?*

A perceived need to treat human remains in a principled and ethical manner that predominates in the sphere of archaeological scholarship serves to emphasize the manner in which the remains of persons from bygone eras continue to necessitate carefully considered treatment in the present day.<sup>58</sup> It has been noted earlier in this article that a corpse in eighteenth-century England was a *nullius in bonis*, that is, in the legal ownership of nobody. This position persists today, it being generally held that a human body cannot be conventionally "owned." This is chiefly due to the general understanding that a dead body cannot be classed as property.<sup>59</sup> Nor can property interests be discerned in living bodies, personal rather than proprietary rights being at issue where a living body has been intruded upon.<sup>60</sup> The classic statement of the legal elements required for a property classification in the UK courts is provided by Lord Wilberforce:

Before a right or an interest can be admitted into the category of property . . . it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.<sup>61</sup>



“In law,” Panesar writes, “property lawyers treat the notion of property as one relating to rights to or over things. Property is not the thing itself but the right in or over the thing in question.”<sup>62</sup> The dead body, then, is outside of this property remit. This means that if a present-day Resurrectionist was to “steal” a newly buried giant by exhuming him and making off with the body the Theft Act of 1968 would not apply, despite the arguable outward appearance of theft, because theft applies to property.<sup>63</sup>

Nonetheless, Byrne’s body—his actual corpse—has long since decayed from corpse to skeleton (or, more correctly, has long since been reduced purposely to its skeletal state by Hunter). As a skeleton and long-standing item in the Hunterian Collection, a right to possession of the remains is vested in the Museum’s Trustees. Authority for this possessory right is provided by *Doodeward v Spence*,<sup>64</sup> an Australian judgment that has been integrated into UK law.<sup>65</sup> The case centers upon an attempt by police to confiscate a still-born fetus with two heads that its “owner” had been exhibiting in a jar.<sup>66</sup> The court found that:

[w]hen a person has by the lawful exercise of work or skill so dealt with a human body or part of a human body in his lawful possession that it has acquired some attributes differentiating it from a mere corpse awaiting burial, he acquires a right to retain possession of it[.]<sup>67</sup>

The Hunterian Museum has filled in artificially lost or damaged skeletal material and presents Byrne’s remains in their correct anatomical arrangement, mounting them in a special display case. This demonstrates a contemporary application of work and skill that brings the skeleton within the remit of *Doodeward*.

The law does, however, leave the door open for *Doodeward* to be trumped by a party with a stronger possessory interest. As Matthews observes in his influential article, “Whose Body?,” the chief justification for a museum’s possessory interest in “mummies, skeletons, and other unburied remains” is that:

the possessor has a right to protect that possession, subject only to claims of a person with a better right to possession . . . and subject also to the insistence of a person, regarded by the courts as having *locus standi* to insist, that the body shall indeed be buried, cremated or otherwise finally disposed of (in practice, members of the deceased’s family).<sup>68</sup>

Persons having *locus standi* may object and take possessory precedence *even if* adequate work and skill has been applied to the remains.<sup>69</sup> If, however, they do not object, then “the possession of the body by the museum or other institution can continue unabated.”<sup>70</sup> With an absence of persons laying stronger possessory claim to Byrne’s remains, the Hunterian may persist in its possession.

### Byrne’s New “Relatives”

*Finally, when Mr. Holland was 20 and living in London, an endocrinologist, Dr. G. Michael Besser . . . figured out that Mr. Holland had a pituitary tumor. As soon as the tumor was destroyed with radiotherapy, Mr. Hol-*

*land's headaches disappeared and his growth hormone levels dropped to normal.*

*After the AIP gene mutation was discovered in 2006, Dr. Korbonits asked to test Mr. Holland to see if he had it. He did. Then, Mr. Holland said, she started suggesting he might be related to the giant.*

*"She was asking me pointed questions about where he lived and where I lived," Mr. Holland said [over a phone interview]. "Then she said, 'I think it is possible that you and this chap are related.'"*

*With the giant's DNA analysis, it turned out that Dr. Korbonits was right.<sup>71</sup>*

Medical research published in 2011 has utilized DNA extracted from Byrne's remains in important endocrinological research. Endocrinology concerns the study of the endocrine system, which is composed of a series of glands occurring throughout the body that secrete chemical hormones. Among these glands is the pituitary gland, located just beneath the brain within the skull. The gland plays an important role in producing growth hormones. Gigantism is a condition caused by the effect of noncancerous tumors (adenomas) upon this gland. In 1909 Harvey Cushing examined Byrne's skeleton and noted that the small hollow in the skull where his pituitary gland would have rested was enlarged, indicating acromegalic gigantism.<sup>72</sup> Medical understanding has progressed apace since Byrne's lifetime, and while Byrne was condemned to suffer pain, growth and bone distortion, and a premature death at the hands of his condition, present-day surgery and various therapies, including radiation therapy, can reduce or thwart the potential effects of excess growth hormone in modern patients.

The medical community has described Northern Ireland as a gigantism "mutational hot spot"<sup>73</sup>; *mutational* refers to the genetic mutation associated with the condition. A team of researchers based out of the Department of Endocrinology at St. Bartholomew's Hospital in London<sup>74</sup> has utilized Byrne's skeleton to enhance understanding of Northern Ireland's connection to pituitary gigantism, publishing the findings in 2011 in *The New England Journal of Medicine*.<sup>75</sup> The researchers extracted Byrne's DNA by drilling into teeth taken from his skeleton, studied a mutation in the aryl hydrocarbon-interacting protein gene, commonly abbreviated as the *AIP* gene, and then compared the Byrne findings with the DNA of contemporary Northern Irish families. Out of an initial cohort of 140 families with familial isolated pituitary adenoma, four Northern Irish families were identified with the same mutation. In other words, the genetic material evinces that Byrne and these four families are genetically related.

The Redfern Inquiry in its major report, released in December 2010 concerning the human tissue of persons who had worked in the nuclear industry, emphasized how the Department of Health and Social Security, in the interest of clarifying the issue of consent regarding post mortems, issued a circular in 1977 "focused on the removal of tissue at post mortem, in particular pituitary glands."<sup>76</sup> The circular stipulated that:

where the deceased has made an express wish to this effect, the removal of tissue may be authorized only if, having made such reasonable enquiry as may be practicable, the person lawfully in possession of the body has no reason to believe that the deceased had expressed objection.<sup>77</sup>

Byrne was unaware of the existence of DNA, but was certainly expressly opposed to “the removal of tissue” (he was opposed to being dissected), and so it is possible to argue here that, like Hunter, the present medical establishment continues the tradition of disregarding Byrne’s clear wishes. A moral counterargument is offered by the fact that the recent research is of undeniable medical value, not merely because it advances medical understanding of the *AIP* mutation and the Northern Irish “hotspot,” but also because it increases knowledge pertaining to persons carrying the mutation at present. Not all of these persons will be actively afflicted with adenomas, and so the new findings make it possible to screen those who possess the mutation in an apparently inactive state to ensure that symptoms do not begin to develop.<sup>78</sup>

Regardless of one’s ethical position,<sup>79</sup> the extraction and use of Byrne’s DNA is legally valid. The Human Tissue Act of 2004 (HTA 2004) states that it is an offence to analyze DNA in tissue samples without qualifying consent,<sup>80</sup> but that any offence is excepted if the DNA:

is material which has come from the body of a person who died before the day on which this section comes into force and at least one hundred years have elapsed since the date of the person’s death[.]<sup>81</sup>

Clearly, the extraction and examination of Byrne’s DNA, given that Byrne died in 1783, and given too that it was done with the consent of the Hunterian Trustees, was undertaken within the bounds of domestic law.

The medical findings beg the question as to whether Byrne’s newly discovered “relations” might be able to exert legal authority over his skeleton. Might it be possible for some of the newfound genetic relatives, should they so wish, to argue that as “relations” they ought to class as personal representatives of the deceased? Following this channel, might they then apply for letters of administration and, should they wish to do so, duly enforce Byrne’s burial wishes?<sup>82</sup>

A possessory interest in the corpse of an intestate person falls legally to the person or persons located at the appropriate point on the hierarchy of distribution found at section 46 of the Administration of Estates Act. Burial disputes have hitherto involved direct and known relations, and it is currently unheard of for courts to apportion burial responsibility via DNA. However, DNA evidence has been integrated into instances of inheritance disputation.<sup>83</sup> In *Feeley v Elliot*,<sup>84</sup> a Northern Irish intestate inheritance dispute involving ownership of land at Tullaghoge, Cookstown (near to Byrne’s Littlebridge), Coghlin J considered whether the plaintiff, Frances Merritt Feeley, who had argued that she was the estranged daughter of one Samuel Kerland, was entitled to inherit the late Mr. Kerland’s estate. After the bodies of Mr. Kerland and his apparent partner, Emily Crichton, were exhumed and cross-referenced with the plaintiff’s DNA to evince a familial genetic

relationship, Coghlin J awarded the entire estate to Ms. Feeley. If the UK courts will readily integrate DNA evidence into cases of inheritance disputation in such a manner, there is no reason yet stated why DNA may not inform decisions, if and where appropriate, pertaining to intestate burial dispute.

Although the consideration of DNA will not necessarily be precluded in cases of burial dispute, Byrne's particular circumstances present various hurdles. If Byrne's newfound "relations" were to press a case for his burial, they would need to stretch back in drawing their familial link from the present year of 2013 to the year of Byrne's death in 1783, a passage of some 230 years. Such a stretch is prohibited by the Administration of Estates Act, which asserts that:

[s]ave as otherwise expressly provided, this Act does not apply in any case where the death occurred before the commencement of this Act.<sup>85</sup>

Moreover, the genetic relations were not alive at the period when Byrne actually died, and as they had no claim at this critical time, it is unlikely that they would be deemed to have an authentic claim so long after the fact. An attempt by the relations to have Byrne's burial wishes borne out, then, would be ineffectual. Furthermore, and as a final insurmountable hurdle, considered inspection of the medical findings reveals that Byrne's relations are not *direct* descendants of the giant, but rather share a "common ancestor."<sup>86</sup> The most recent date at which the common ancestor may have lived is 375 years ago; however, it is also possible that this ancestor dates back some 3750 years.<sup>87</sup> Even if it *were* possible to press a claim regardless of the prior objections, then, the tenuous nature of the DNA connection here would undermine it.

### *Extending the Cultural Dimension*

The developments in the repatriation of human remains that have occurred over recent decades suggest that, if one accepts that Byrne's remains have a cultural value, and that this value can be linked to the community whence he originated, it may be possible to argue that his remains ought to be returned from England to his homeland for burial.<sup>88</sup> Dead bodies that are deemed to have "cultural importance"—that is, an innate cultural value—are legally distinct from bodies that are not deemed to have such value.<sup>89</sup> There is no doubt that human remains, and thus the skeleton of Charles Byrne, can be cultural objects.<sup>90</sup> Frigo, for example, has emphasized how the major piece of Native American repatriation legislation, the Native American Graves Protection and Repatriation Act of 1990, describes human remains as cultural items,<sup>91</sup> which suggests that "the value taken into consideration is a cultural value and that the interest to be protected is a cultural one."<sup>92</sup> This said, in engaging with the notion of laying "communal ownership" to materials from the past, be they of human or nonhuman origin, one enters a deceptively complex area.<sup>93</sup>

Both Byrne's native homeland in present-day Northern Ireland and London where his remains now reside are part of the United Kingdom and are thus under British jurisdiction; however, England is nonetheless a distinct country and therefore cannot be classified as Byrne's country of origin. In identifying Byrne's national affinities, one must take account of the political shifts that have occurred on the island of Ireland in modern times. In Byrne's lifetime, Ireland was one single independent nation, and so in this respect, Byrne was Irish, and his country of origin was Ireland. In 1800, almost two decades after Byrne's death, Ireland was united with Britain under the Act of Union, and in 1922 the island was divided into Northern Ireland, which remained a part of Britain, and the Republic of Ireland, which became an independent republic.<sup>94</sup> This is how the political landscape stands presently, and it means that Byrne, had he lived today, would have been Northern Irish because his homeland is firmly on the Northern Irish side of the border. In current terms, then, Byrne's present-day people of origin are clearly the Northern Irish. It is also arguable that citizens of the Republic of Ireland can identify themselves as Byrne's people of origin; given that he lived in a time when Ireland was a unified island both nationally and politically, Byrne's "people" were thus the people of the entire island.

In 2000 the Prime Ministers of Britain and Australia issued a joint declaration on cultural policy that steered the UK toward the creation of a working group designed to address the treatment of human remains held in British museums.<sup>95</sup> The creation of this group was followed by Parliament's enactment of HTA 2004, which regulates human tissue usage and includes "public display" within its remit.<sup>96</sup> Clearly, this is evocative of Byrne's circumstances in that his skeleton remains on display. HTA 2004 also embeds the requirement that the deceased's body be used only where consent has been given.<sup>97</sup> In Byrne's case the subject's consent has been entirely ignored, given that he requested burial (the precise inversion of public display). The Irish giant has been on display, however, since long before HTA 2004's creation, and the act does not apply to deaths occurring 100 years or more prior to its commencement of 15 November 2004.<sup>98</sup>

Section 47 of the HTA 2004 allows nine specific institutions to de-accession human remains if they are 1000 years old or less. The Hunterian is not named among these nine institutions, and so is outside of section 47's reach; however, the Hunterian Trustees possess the authority to de-accession remains in their collection in their own right.<sup>99</sup> At present, a Human Remains Advisory Service exists to offer guidance to museums on repatriation, and best practice guidance notes are in place to elaborate the suitable treatment of remains in English, Welsh, and Northern Irish museums,<sup>100</sup> and while this does, in theory, cover the Hunterian, the guidance is nonstatutory in nature and so has no legal force to affect Byrne's situation.

Contemporary international legal and ethical standards generally lean against the retention of illegally obtained remains. Thus, Article 2.3 of the ethical code of the International Council of Museums (ICOM),<sup>101</sup> concerning "Provenance and Due Diligence," states that:

[e]very effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in or exported from, its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country).<sup>102</sup>

Article 6.2, "Return of Cultural Property," also states that "Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin."<sup>103</sup>

It has been suggested earlier that in present times Byrne's people of origin are the Northern Irish.<sup>104</sup> On the face of it, it is perhaps uncertain whether the Northern Irish would feel a sufficient cumulative cultural connection to Byrne to validate a call for the return of his remains. The present writer, a Northern Irishman, has spent a good deal of time exploring and discussing the Byrne predicament with other Northern Irish people and, in particular, has spent time at Byrne's homeland of Drummullan in order to gauge the feeling of the local community there. In most cases people have felt a cultural affinity with Byrne, and a majority have expressed a desire to see him returned for burial. A small minority have proven indifferent, and a smaller minority have held that his remains ought to stay at the Hunterian Museum. According to the author's personal experience in the field, then, there appears to be a marked sense of cultural affinity toward Byrne among the Northern Irish.

These experiences harmonize with BBC2's decision to fund and produce the first comprehensive documentary on Byrne, *Charles Byrne—The Irish Giant*, screened in 2011.<sup>105</sup> The program was broadcast in Northern Ireland only, as opposed to the United Kingdom as a whole or the Republic of Ireland, in order to cater to a perceived sense of local interest. Various Northern Irish individuals and organizations have also argued publicly that Byrne's wishes ought to be respected.<sup>106</sup> Furthermore, since the publication of the article, "Should the Skeleton of 'the Irish Giant' Be Buried at Sea?" in December 2011,<sup>107</sup> the Northern Irish media has reported closely upon the pressure the piece has placed on the Hunterian Trustees to withdraw the Byrne exhibit, portraying the story as one of local and cultural interest.<sup>108</sup>

Any potential call from the Northern Irish for the repatriation of Byrne's remains must naturally occur within a British context. For example, due to the fact that both Northern Ireland and England are located within the United Kingdom under British jurisdiction, legislation that would ordinarily be relevant to the expropriation of remains from one EU country by another EU country cannot apply, such as Council Regulation (EEC) n.3911/92<sup>109</sup> and Council Directive 93/7 EEC.<sup>110</sup> In their article, "New Developments in the Restitution of Cultural Property," Cornu and Renold elaborate on how cultural property restitution has traditionally been a matter that has centered upon disputes between states.<sup>111</sup> They also observe that nonstate actors have been coming increasingly to the fore in recent years in laying legitimate claim to the restitution of cultural property, and describe these parties



as “new actors.”<sup>112</sup> Among these new actors are numbered regional or territorial government authorities. Such developments at the internal level of the state, they observe, have contributed to a consolidation of nonstate cultural competences that has “further widened the circle of holders or claimants in a position to lay claim to heritage on which their identity rests.”<sup>113</sup> The authors offer examples of these developments, including the successful settlement between the Swiss cantons of Saint-Gall and Zurich of a dispute centering on items of public cultural property that had been held by Zurich since 1712.<sup>114</sup>

Rather than placing a hypothetical Northern Irish call for the return of Byrne’s remains outside of the practice of restitution because it involves a substate British dispute within the United Kingdom, as opposed to, for example, a conventional dispute between two distinct EU countries, it could be argued that a Northern Irish request for the de-accession of Byrne’s remains would harmonize with the concept of “new actors” that Cornu and Renold identify as emerging in Europe at the substate level. Dawson has also examined the issue of “national” objects within a four-state United Kingdom in “‘National Antiquities’ and the Law.”<sup>115</sup> Drawing on Bailkin, it is emphasized that “[t]he very term ‘repatriation’ is a deeply political one, because it assumes that artefacts have a *patria*—a national character and a homeland.”<sup>116</sup> “National” antiquities are rooted in the nationhood of place, and Dawson addresses this notion against the backdrop of the United Kingdom’s “inner world.”<sup>117</sup> It is suggested that a principle of “national antiquity,” which the author exposes as being historically active in the law of treasure trove since 1859, may provide “a significant precedent” for the repatriation of cultural goods within the United Kingdom.<sup>118</sup>

It seems, therefore, that by wider standards an internal call within the United Kingdom by the Northern Irish for the return of Byrne’s remains ought not to fail on grounds of internality. Nor should Byrne’s innate ethnicity preclude such an argument: while repatriation cases frequently center upon calls by indigenous communities for the return of human remains from museums, the Northern Irish identity within the context of the United Kingdom ought nonetheless to be robust enough to allow a “community of origin” identification to stand in its own right. Taking a British example to illustrate how a community of origin’s arguments for the de-accession of human remains need not be predicated upon an indigenous/nonindigenous distinction (nor upon the need for such action to take place above the substate level), Gallagher draws the example of calls from “modern Pagan and Druid groups”<sup>119</sup> within the UK for certain remains in museums to be repatriated for burial, emphasizing that such arguments do not require indigenous differentiation.

In December 2002 the directors of an assortment of international museums signed the Declaration on the Importance and Value of Universal Museums, an influential international statement exhibiting a general principle of resistance to the return by museums of artefacts and specimens to their countries of origin. The document has provoked much museological reflection upon the subject of



the repatriation of museum-held human remains.<sup>120</sup> In particular, the Declaration states that:

Over time, objects so acquired—whether by purchase, gift or partage—have become part of the museums that have cared for them... [W]e are especially sensitive to the subject of a work's original context, but we should not lose sight of the fact that museums too provide a valid and valuable context for objects that were long ago displaced from their original source.<sup>121</sup>

Such arguments integrating the notion of the care that museums provide for their collections draw attention to the natural protection afforded to Byrne's remains by the Hunterian Museum. Here the skeleton resides in a condition of safety and remains free from careless mistreatment, vandalism, and the like. These elements of safety and care constitute a major value intrinsic to the Hunterian display. They do not, however, inherently trump arguments for Byrne's repatriation; rather, they serve to stress that the remains must be protected from harm and treated with all due care in the hypothetical instance of their return to Northern Ireland.

A further common element that factors in claims for the return of remains is the passage of time. Jones highlights how this concern tends to surface as a theme in contentious repatriation cases and elaborates how the passage of generations ranges collectively in these cases from as little as a few generations back to as many as 1200 generations.<sup>122</sup> Situating Byrne within this scale, one finds he is on the comparatively recent end of the spectrum. Therefore, although it might appear that Byrne has been dead for a long time when his story is considered in isolation, an argument against his return to Northern Ireland for burial on grounds of the passage of time will be a weak one, for in the overall temporal context of repatriation his death is extremely recent. This is highlighted by the high-profile return of human remains from Kow Swamp by the Museum of Victoria, wherein the bones in question were between 9000 and 15,000 years old and were thus distanced from living Aboriginals by such a long passage of time that it threatened to undermine their entire repatriation case.<sup>123</sup>

## A POSSIBLE SOLUTION

If a cultural property claim were to result successfully in Byrne being returned to his community of origin, it is likely that his remains would be received by the Secretary of State for Northern Ireland.<sup>124</sup> Given that a return of this nature would be underpinned by the argument that Byrne's burial wishes had been disregarded, the logical conclusion would be to arrange and execute a sea burial in the manner that Byrne requested.<sup>125</sup> The results of the author's recent fieldwork, however, suggest a possible alternative. This closing section lays out the findings of this fieldwork and discusses their implications.

*Fieldwork*<sup>126</sup>

While researching Byrne at his homeland in rural Northern Ireland last year, it became apparent that the younger generations knew of Byrne only vaguely, often through the BBC documentary and the recent media reports that have been discussed above. Many of the very elderly residents knew the story of the Irish giant well, however, for they had been brought up on tales of Byrne in their youth. The stories—those of Byrne’s life—form part of an apparently continuous oral tradition that may stretch back as far as Byrne’s own lifetime. In particular, some of the elderly townspeople connected Byrne to a local heritage site known as the Giant’s Grave. The grave was destroyed some four decades ago, and therefore it was never seen by the young generations in the community. The *Mid-Ulster Mail* made reference to the little-known site in an article last year:

Charlie [Byrne] grew to be seven foot seven inches tall. Such was local amazement that his height was recorded in a very unique way in the oak wood in the town land of Derrygonigan a few miles from Cookstown. Charlie lay down and the outline of his body was marked in the ground and later dug out. Sadly the oak wood and the spot where Charlie was remembered were both removed in the late 1960s or early 70s.<sup>127</sup>

Among the elderly persons interviewed over the course of research, Fr. Brendan, an elderly and retired priest from the area, and his slightly younger brother, a retired pharmacist, related in particular detail how they and the other children of the neighborhood visited the Giant’s Grave to play in their youth. It was here, as an informal part of their folk education, that they learned about Byrne, for his connection with the site kept his memory alive. “It wasn’t a prayerful site,” Fr. Brendan recounted, “but it was compulsory for your education.” Laughing, he added that a local child who had never been to see the Giant’s Grave was considered to be an “ignoramus” by his friends.

The interview continued:

Muinzer: What were you taught about the site? What was its importance?

Fr. Brendan: [It was said that Byrne] laid down on the ground. . . . That’s where he wanted to be buried.

Fr. Brendan’s brother: We were taught that he was “drawn around,” as if it was a “crime scene” . . . .

Fr. Brendan: That’s why they marked the grave out, that’s where he wanted to be buried. . . .

Muinzer: So it seems that that’s where he should go if he’s to be buried? There, and not sea-buried?

Fr. Brendan: Yes.

The interviewees explained that the grave was situated within an overgrown oak wood, and that the grave itself was always tended and well-kept. The ground there was raised, forming the outline shape of a giant man lying flat on his back. This

raised area was where Byrne was said to have laid on his back and been “drawn” around—embedded upon the earth by friends who had dug around his body’s imprint. In folk tradition, Byrne’s apparent desire to be buried there has been acknowledged and remembered through the name “the Giant’s Grave.”

Prior to its destruction, the Giant’s Grave was maintained by the local community as a site of special interest. An elderly lady from the local history circle named Ms. Mullan took the author to the place where the Grave had been, along with another local lady in her 80s named Mary. Mary used to visit the site as a child, and knew the late Lizzie Cane, who had tended the site in her lifetime so as to keep it neat for the community. Mary explained that the raised outline on the ground “looked like a tall man, no vegetation.” “It was perfectly flat,” she continued, “[with] a head, two shoulders.” The site was very attractive: “In the spring-time it was beautiful with bluebells,” she recalled, and she and the other local children would come specially to see the grave and to play. Ms. Mullan also knew Lizzie Cain and remembered her tending the site, describing it as being kept “pristine . . . lovely.” The Giant’s Grave no longer exists because the land was taken over by a farmer who cut the oak wood away and ploughed the grave up so that the area could be used for grazing. This is its current use. Each of the interviewees lamented the destruction of the site.

### *Implications*

Byrne’s chief desire was to be buried, and buried in such a way that his remains would be safe from the Georgian medical establishment. His primary intention, then, appears to have been to achieve burial, as opposed to *sea* burial (specifically), the latter being a measure to avoid the likelihood that his body would be exhumed by body snatchers and given to the surgeons. If one takes the view that burial in a more general sense is now more appropriate than sea burial, given that the threat of dissection and exhumation is now gone, it appears that an area at, or as close as possible to, the Giant’s Grave site in Byrne’s native homeland constitutes the optimum burial site. This is due to a series of factors. First, the Giant’s Grave has long held an important meaning for the community at Byrne’s homeland, and even though the original site has been destroyed, it continues to do so (primarily among the elderly). Second, the Giant’s Grave constitutes a physical geographic site that has been associated with Byrne and that through this association has actively sustained his memory and his legacy in his native homeland. Third, and most importantly, the site is expressly remembered because folk tradition suggests that it is the location where Byrne desired to be buried. As to whether this latter point is historically accurate, it is impossible to tell. At the least, however, it occupies a real and heartfelt place in the continuous folk narrative of Byrne’s native homeland. That, and the manner in which the story, the site, and the giant himself continue to be cherished lends the story a tremendous significance.

The findings in this article suggest cumulatively that the remains of Byrne are the cultural property of the Northern Irish, that the Hunterian Museum ought to divest itself of his skeleton on moral grounds, and that a burial ought to be carried out in Byrne's homeland at, or as near as possible to, the Giant's Grave site. A plaque or memorial could be set in place in tribute to the Georgian celebrity and in memory of his remarkable life.

## ENDNOTES

1. "An Irish Giant, *The Weekly Sentinel* (Fort Wayne, Indiana), November 14, 1906.
2. This preceded the division of Ireland into Northern Ireland and the Republic of Ireland in 1922. Byrne's homeland currently falls within Northern Ireland.
3. Medical authority J. H. Musgrave has outlined the uncertain results yielded by attempts to compute Byrne's height from his skeleton. Musgrave himself suggests that he was approximately 7 ft., 7 in.: Frankcom and Musgrave, *The Irish Giant*, 104.
4. Quinn, "Byrne, Charles," in *Dictionary of Irish Biography*.
5. Ordnance Survey Office. *Ordnance Survey of Ireland: Londonderry* (1833) at sheet 48; *Ordnance Survey of Ireland: Tyrone* (1834) at sheet 30. See note in Bibliography about these volumes.
6. Placenames NI suggests that the Drummullan townland's name stems from the Irish for "Mullan's hill ridge," that is, "Druim-Maolain": <http://www.placenamesni.org>, see entry for 1925 (accessed 24 September 2012).
7. Day and McWilliams, *Ordnance Survey Memoirs of Ireland*, 1.
8. Quoted in Wood, *Giants and Dwarfs*, 158–159. From the newspapers of 6 May 1782.
9. This now forgotten theatre piece was written by Irish writer John O'Keeffe (1747–1833). O'Keeffe has discussed it in his memoirs, *Recollections of the Life of John O'Keeffe*, at p. 47.
10. Wood, *Giants and Dwarfs*, 162.
11. Quinn, "Byrne, Charles," in *Dictionary of Irish Biography*.
12. Kay, *A Series of Original Portraits*, 11.
13. Moore, *The Knife Man*, 416.
14. Moore, *The Knife Man*, 416; Cabbage, "The Tragic Story," 5.
15. Hunter (1728–1793) was a Scotsman from humble beginnings who had ascended to the peak of the surgical profession as a practitioner in London. He is seldom recollected as a pleasant character. In *Leicester Square*, Tom Taylor notes that "roughness, partly of the man, partly of the time, always clung to John Hunter" (p. 388); he was "rough and unceremonious; quick of temper and blunt of speech" (p. 390). Regardless, his unparalleled surgical abilities, coupled with a relentlessly enquiring and fastidious mind, saw the medical iconoclast rise as the towering surgical genius of his time, and his profound influence is still present in medicine today.
16. Wood, *Giants and Dwarfs*, 163.
17. Wood, *Giants and Dwarfs*, 163.
18. Wood, *Giants and Dwarfs*, 164.
19. Wood, *Giants and Dwarfs*, 162. See "Obituary of Considerable Persons," *Gentleman's Magazine and Historical Chronicle*, 1 June 1783, for a useful contemporaneous source on the (ultimately thwarted) enactment of Byrne's burial instructions by his friends.
20. The author recommends the account in Tom Taylor's erudite but now little remembered *Leicester Square*, at pp. 404–407, as the closest to a definitive version of these events. Taylor's work reprints an account given to him directly by Professor Richard Owen, and obviously recounted by Taylor to Owen's precise approval, for Owen himself has written the postscript to Taylor's section on Hunter (pp. 420–433). Owen's source is his own father-in-law, William Clift, a distinguished medical student of Hunter's, Hunter's long-time amanuensis privy to his personal affairs, and the trusted curator of Byrne's skeleton and the rest of Hunter's anatomical collections upon his death.

21. Hunter's collection was purchased by the British Government in 1799 and then presented to the Royal College of Surgeons.

22. Doyal and Muinzer. "Should the Skeleton of 'the Irish Giant' Be Buried at Sea?"

23. Gittings, *Death, Burial and the Individual*.

24. *R v Stewart*, 12 Ad & El 773, 778.

25. The meaning of "anatomical examination" itself is not pinned down in statute until the Anatomy Act of 1984 (since repealed by the Human Tissue Act of 2004) where it is defined as "the examination by dissection of a body for purposes of teaching or studying, or researching into, morphology." Anatomy Act of 1984, sect. 1.

26. 1505 Seal of Cause: Transcription to Accessible English, RCSEd Library 2011.

27. 1505 Seal of Cause.

28. 1505 Seal of Cause. The Seal of Cause also granted the Guild "power to choose a chaplain to do divine service daily at our said alter."

29. Murder Act of 1752, 25 Geo 2 c. 37, sects. 1–2.

30. See *Gilbert v Buzzard* (1820) 3 Phil. Ecc. 335.

31. *H.M. Advocate v. Weir* (1710) 3 Adam.55n.

32. Anatomy Act of 1832, 2 & 3 Will. 4, c.75.

33. Anatomy Act of 1832, sect. I.

34. Anatomy Act of 1832, sect. I. The murders alluded to are those committed by the Resurrectionists Burke and Hare.

35. Anatomy Act of 1832, sect. II.

36. Anatomy Act of 1832, sect. IV.

37. Anatomy Act of 1832, sect. XI.

38. The solution provided by the Anatomy Act of 1832 was arguably far from ideal, however: see Richardson's *Death, Dissection and the Destitute* for a searing critique of how a linking of economic status and body access compelled the cadavers of the economically disadvantaged to become the subject of dissection under these laws.

39. Section XVI of the 1832 Anatomy Act repealed the law that "the body of every person convicted of murder shall, after Execution, either be dissected or hung in Chains, as to the Court which tried the Offender shall seem meet." This is a legal measure to erase the mark of infamy connoted by dissection.

40. Jackson, *The Law of Cadavers*; Richardson, *Death, Dissection and the Destitute*. Given these social paradigms, it is unsurprising that cremation was also considered a controversial practice during this period. Spiritual anxieties manifested themselves at the legal level, with the concern that cremation might possibly be a criminal offence being resolved as late as 1882 when Stephen J asserted that "a person who burns instead of burying a dead body does not commit a criminal act, unless he does it in such a manner as to amount to a public nuisance at common law"; *R v Price* (1884) 12 Q.B.D. 247, 254–255. The Cremation Act was passed soon after in 1902.

41. (1882) 20 Ch D 659. This is so even if a will is made appointing executors, elaborating burial instructions, and allowing for monies to cover expenses. A rational justification for this position is predicated upon the understanding that the will instrument is a means of distributing property upon one's death. The law clearly asserts that the dead human body cannot be classed as property (regardless of whether it is buried or unburied): *Haynes' case* (1614) 12 Co Rep 113; *Dr. Handyside's case* (1749) 2 East PC 652; *R v Lynn* (1788) 2 TR 733; *Re Sharpe* (1857) Dears and Bell 160; *R v Price* (1884) 12 QBD 247. And so it follows logically that an instrument designed to distribute property cannot pronounce in a binding way upon nonproperty, that is, the corpse.

42. Edward Coke records that "burial of the Cadaver (that is, *caro data vermibus*) is *nullius in bonis* and belongs to Ecclesiastical cognizance." Coke, *The Third Part of the Institutes*, 203.

43. Pawlowski, "Property in Body Parts," 36.

44. *Jenkins v. Tucker* (1778) 126 E.R.55; (1778) 1 H. Bl. 90.

45. See, e.g., *Jenkins v Tucker* (1778), at 92; "decency required the plaintiff to direct the funeral."

46. *John Andrews v Thomas Cawthorne* (1744) 125 E.R. 1308, 1.

47. Expressed in instances of intestacy in contemporary law by the Administration of Estates Act of 1925, sect. 46.

48. *Williams v Williams* (1882), 664: “prima facie the executors are entitled to the possession and are responsible for the burial of a dead body.” See also *R v Newcomb* (1898) 2 CCC 255.
49. *Dobson v North Tyneside Area Health Authority* [1996] 4 All ER 474.
50. *Dobson v North Tyneside Health Authority* [1996]; *Williams v Williams* (1882).
51. The hierarchy accords out to encompass grandparents, aunts and uncles, and is also sensitive to half-blood as well as full blood relations: Administration of Estates Act of 1925, sect. 46 (1) (i)–(v). In the case of children a subsidiary hierarchy exists, with burial duty falling jointly upon the parents (*R v Vann* (1851) 2 Den 325), upon adoptive parents over natural parents in the case of adoption (*Buchanan v Milton* [1999] 2 FLR 844), and upon natural parents over foster parents (*R v Gwynedd County Council, exp B* [1992] 3 All ER 317).
52. 22 & 23 Car. II c.10.
53. Statute of Distributions, V (2).
54. Statute of Distributions, VII (2)–(3).
55. *Blackborough v Davies* (1701) 1 P. Wms. 41: “the father surviving has the child’s whole estate at this day,” per Holt CJ at 48.
56. Statute of Distributions, X; *Carter v Crawley* (1683) T. Raym. 496.
57. Matthew and Harrison, “Byrne, Charles,” *Oxford Dictionary of National Biography*, 339.
58. See, e.g., Mays, “Ethics and Human Remains”; Walker, “Bioarchaeological Ethics”; Barker, “Archaeological Ethics.”
59. *Haynes’ case* (1614) 12 Co Rep 113; *Dr. Handyside’s case* (1749) 2 East PC 652; *R v Lynn* (1788) 2 TR 733; *Re Sharpe* (1857) Dears and Bell 160; *Williams v Williams* (1882); *R v Price* (1884) 12 QBD 247.
60. Cases such as *R v. Welsh* [1974] RTR 478 and *R v. Rothery* [1976] RTR 550 provide certain exceptions to the rule; however, as Banwell emphasizes, these cases “relate to ownership of body products [here, urine and blood] and it is questionable whether a property rule in relation to products seriously undermines the ‘no-property’ rule with respect to body ownership in general”: Banwell, “Should I Have Property in My Body?” 10.
61. *National and Provincial Bank v Ainsworth* [1965] AC 1175, 1247–1248.
62. Panesar, *General Principles of Property Law*, 6.
63. In *Yearworth v. North Bristol NHS Trust* [2009] EWCA Civ 37, involving an action under the tort of negligence concerning damage to stored sperm, the Court of Appeal concluded that the claimants had property rights in their sperm. For Quigley, “Now that the door has been opened we are likely to see the issue of property in the body and its parts being argued before the courts again in the future” (Quigley, “Property: The Future of Human Tissue?”, 466). The manner in which this thread of law evolves remains to be seen.
64. (1908) 6 CLR 406.
65. See, e.g., *R v. Kelly and Lindsay* [1998] 3 All ER 741. *Doodeward’s* key principle is also acknowledged at sect. 32(9)(c) of the Human Tissue Act of 2004.
66. An unpleasantness seems to tinge many of the judgments that draw upon the case. According to Gibson LJ in *Dobson v. North Tyneside HA* [1997] 1 WLR 596 at 601, *Doodeward* concerns “a human freak as a double-headed foetus that had some value for exhibition purposes.” The comment assumes that the stillborn fetus is human (a “human freak”); the reduction of any human being to a freakish piece of exhibition property it is arguably an offensive characterization of humanity.
67. *Doodeward v Spence* (1908), 414.
68. Matthews, “Whose Body? People as Property,” 219–220.
69. See also Woodhead, “Even in the case of a modified corpse, identifiable personal representatives would be entitled to make a claim for possession of the body to afford it proper burial” (Woodhead, “A Debate Which Crosses All Borders,” 320).
70. Matthews, “Whose Body? People as Property,” 220.
71. Gina Kolata, “In a Giant’s Story, a New Chapter Writ by His DNA.” *New York Times* May 1, 2011. [http://www.nytimes.com/2011/01/06/health/06giant.html?\\_r=0](http://www.nytimes.com/2011/01/06/health/06giant.html?_r=0). This “relative” of Byrne’s was born and raised in Co Tyrone close to Byrne’s home.
72. Korbonits et al., “AIP Mutation in Pituitary Adenomas,” 43.



73. Korbonits et al., "AIP Mutation in Pituitary Adenomas," 45.
74. Part of St. Bartholomew's and the Royal London Hospital School of Medicine and Dentistry, Queen Mary, University of London.
75. Korbonits et al., "AIP Mutation in Pituitary Adenomas," 43–50.
76. *Redfern Inquiry into Human Tissue Analysis*, 75.
77. *Redfern Inquiry into Human Tissue Analysis*, 75. Quoting DHSS HC (77) 28.
78. Korbonits et al., "AIP Mutation in Pituitary Adenomas," 49.
79. See Doyal and Muinzer, "Should the Skeleton of 'the Irish Giant' Be Buried at Sea?" for more detailed discussion of the ethical issues pertaining to Byrne's remains.
80. Human Tissue Act of 2004, sect. 45(1)(i).
81. Human Tissue Act of 2004, sect. 45(2)(a).
82. A public poll conducted on the *British Medical Journal's* website over December 2011—January 2012 in response to the article "Should the Skeleton of 'the Irish Giant' Be Buried at Sea?" by Doyal and Muinzer offered people the chance to vote on what they thought should happen to Byrne's remains. Here, Doyal and Muinzer analyze the poll's outcome:
- On the last count that we saw before voting ceased, 55.6% (310) voted for burial at sea; 13.17% (74) for removal from display and being kept for research; and 31.55% (176) for the status quo. At the very least, this should be an indication to the Hunterian Museum and the Royal College of Surgeons that a large body of ... opinion has deep reservations about the continued public presentation of Charles Byrne's skeleton in the museum. (Doyal and Muinzer, "Re: Should the Skeleton of 'the Irish Giant' Be Buried at Sea?")
83. *Booth v Booth* [2010] EWCA Civ 27, 2.
84. *Feeley v Elliot*, NI High Court, 26 February 1998 (unreported).
85. Administration of Estates Act of 1925, sect. 54.
86. Korbonits et al., "AIP Mutation in Pituitary Adenomas," 45.
87. Korbonits et al., "AIP Mutation in Pituitary Adenomas," 47.
88. Particularly high-profile repatriation cases have centered upon Australia and New Zealand: see, respectively, e.g., "Aboriginal Remains Repatriation" at <http://www.creativespirits.info/aboriginal/culture/people/aboriginal-remains.html> (accessed 24 September 2012); Herewini, "The Museum of New Zealand," 405–406. In America extensive high-profile repatriation of Native American remains has taken place in several Universities and at the Smithsonian Institute; see, e.g., Mihesuah, *Repatriation Reader*, Chapter 3.
89. Elliott, "Property Rights of Ancient DNA." For a specific definition of "cultural value" see p. 104.
90. Hubert, "Dry Bones or Living Ancestors?"
91. See the Native American Graves Protection and Repatriation Act of 1990, sect. 2(3).
92. Frigo, "The International Symposium," 438.
93. Fitz Gibbon, *Who Owns the Past?*
94. Irish Free State (Agreement) Act of 1922.
95. The group was established within the Department of Culture Media and Sport.
96. Human Tissue Act of 2004, sect. 3.(4)(a); Sch.1.1.5.
97. Human Tissue Act of 2004, sect. 1(1).
98. Human Tissue Act of 2004, sect. 1(5)(b), sect. (6)(c).
99. See Section III.A above, "Who Owns Byrne's Skeleton."
100. Department for Culture, Media and Sport, *Guidance for the Care of Human Remains in Museums*: <http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/GuidanceHumanRemains11Oct.pdf> (accessed 24 September 2012).
101. *ICOM Code of Ethics*: <http://icom.museum/who-we-are/the-vision/code-of-ethics.html> (accessed 24 September 2012).
102. ICOM Art. 2.3. Discussed in Frigo, "Ethical Rules and Codes of Honor," 52.
103. ICOM Art. 6.2; Frigo, "Ethical Rules and Codes of Honor," 53.



104. It has also been noted that the Republic of Ireland might conceivably lay a shared claim to this status.

105. McCloskey, *Charles Byrne—The Irish Giant*.

106. For example, “Why It’s Time to Give Derry Giant a Decent Burial,” Lindy McDowell, *Belfast Telegraph*, 19 January, 2012; “Free the Irish Giant” at *Culture Northern Ireland*, [www.culturenorthernireland.org/article/3709/free-the-irish-giant](http://www.culturenorthernireland.org/article/3709/free-the-irish-giant) (accessed 24 September 2012); Donaldson, *Miracle Fruit*.

107. Doyal and Muinzer, “Should the Skeleton of ‘the Irish Giant’ Be Buried at Sea?”

108. See, e.g., “The Irish Giant ‘Should Finally Be Buried at Sea,’” *Belfast Telegraph*, December 21, 2011 <http://www.telegraph.co.uk/news/newstopping/howaboutthat/8969652/The-Irish-giant-should-finally-be-buried-at-sea.html>; “Irish Giant’ Staying Put,” *Irish News*, 23 December, 2011; “Museum to Retain ‘Giant’ Skeleton,” *Mid-Ulster Mail*, 26 December, 2011.

The author has also been invited to speak in lieu of this media coverage on two of Northern Ireland’s major radio stations, *Radio Ulster* and *Radio Foyle*. The public feedback that the stations received evinced a strong sense of affinity among the Northern Irish with Byrne and a generally held sympathy for the manner in which his burial wishes have been overridden.

109. Council Regulation (EEC) n.3911/92 of 9 December 1992, on the export of cultural goods.

110. Council Directive 93/7/EEC, of 15 March 1993, on the return of cultural objects unlawfully removed from the territory of a member state.

111. Cornu and Renold, “New Developments in the Restitution of Cultural Property.”

112. Cornu and Renold, “New Developments in the Restitution of Cultural Property,” 4.

113. Cornu and Renold, “New Developments in the Restitution of Cultural Property,” 4.

114. Cornu and Renold, “New Developments in the Restitution of Cultural Property,” 4.

115. Dawson, “‘National Antiquities’ and the Law.”

116. Bailkin, *The Culture of Property*, 24 (quoted in Dawson, “‘National Antiquities’ and the Law,” 84).

117. Dawson, “‘National Antiquities’ and the Law,” 92; the expression is borrowed from Viscount Dillon (see Dawson, 82).

118. Dawson, “‘National Antiquities’ and the Law,” 92.

119. Gallagher, “Museums and the Return of Human Remains,” 77.

120. Curtis, “Universal Museums, Museum Objects and Repatriation.”

121. *Declaration on the Importance and Value of Universal Museums*, available here: [http://icom.museum/fileadmin/user\\_upload/pdf/ICOM\\_News/2004-1/ENG/p4\\_2004-1.pdf](http://icom.museum/fileadmin/user_upload/pdf/ICOM_News/2004-1/ENG/p4_2004-1.pdf) (accessed 24 September 2012).

122. Jones, *Speaking for the Dead*, 121.

123. Mulvaney, “Past Regained, Future Lost.”

124. Where “communities” are concerned, it is normal practice for such returns to be made through the state. See Cornu and Renold, “New Developments in the Restitution of Cultural Property,” 10.

125. Doyal and the present writer have elaborated this position in “Should the Skeleton of ‘the Irish Giant’ Be Buried at Sea?”

126. Conversations in this section are taken from interviews recorded in the field.

127. “Cookstown’s Own Giant,” *The Mid-Ulster Mail*, 5 October, 2011 (<http://www.midulstermail.co.uk/community/cookstown-s-own-giant-1-3119695>).

## BIBLIOGRAPHY

Bailkin, Jordanna. *The Culture of Property: The Crisis of Liberalism in Modern Britain*. Chicago: Chicago University Press, 2004.

Banwell, Caroline. “Should I Have Property in My Body?” *UCL Jurisprudence Review* 1 (1994): 1–20.

- Barker, Alex W. "Archaeological Ethics: Museums and Collections." In *Ethical Issues in Archaeology*, edited by Larry J. Zimmerman, Karen D. Vitelli, and Julie Hollowell-Zimmer, 71–84. Oxford: Alma Mira, 2003.
- Coke, Edward. *The Third Part of the Institutes of the Law of England*. Vol. 3. London: A. Crook, 1669.
- Cornu, Marie, and Marc-André Renold. "New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution." *International Journal of Cultural Property* 17 (2010): 1–31.
- Cabbage, Eric. "The Tragic Story of Charles Byrne 'the Irish Giant.'" *The Tallest Man*. <http://www.thetallestman.com/pdf/charlesbyrne.pdf> (2011) accessed 8 March 2012.
- Curtis, Neil G. W. "Universal Museums, Museum Objects and Repatriation: The Tangled Stories of Things." In *Museum Studies: An Anthology of Contexts*, edited by Bettina M Carbonell, 2nd ed., 73–81. Oxford, UK: Blackwell, 2012.
- Dawson, N. M. "'National Antiquities' and the Law." *Journal of Legal History* 28, no. 1 (2007): 57–92.
- Day, Angélique, and Patrick McWilliams, eds. *Ordnance Survey Memoirs of Ireland: Parishes of Co. Londonderry I 1830, 1834, 1836*, Vol. 6. Belfast: Queen's University Belfast, 1990.
- Donaldson, Moyra. *Miracle Fruit*. Belfast, Northern Ireland: Lagan Press, 2010.
- Doyal, Len, and Thomas Muinzer. "Should the Skeleton of 'the Irish Giant' Be Buried at Sea?" *British Medical Journal* 343 (2011): 1290–92.
- . "Re: Should the Skeleton of 'the Irish Giant' Be Buried at Sea?" *British Medical Journal* Rapid Response. <http://www.bmj.com/rapid-response/2012/02/01/re-should-skeleton-%E2%80%9C-irish-giant%E2%80%9D-be-buried-sea> (1 February 2011) accessed 24 September 2012.
- Elliott, Lisa M. "Property Rights of Ancient DNA: The Impact of Cultural Importance on the Ownership of Genetic Information." *International Journal of Cultural Property* 16 (2009): 103–29.
- Fitz Gibbon, Kate. *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*. London, UK: Rutgers, 2005.
- Frankcom, Graham, and J. H. Musgrave. *The Irish Giant*. London: Duckworth, 1976.
- Frijo, Manlio. "The International Symposium 'From Anatomic Collections to Objects of Worship: Conservation and Exhibition of Human Remains in Museums,' Paris (France), February 22–23, 2008." *International Journal of Cultural Property* 15 (2008): 437–39.
- . "Ethical Rules and Codes of Honor Related to Museum Activities: A Complementary Support to the Private International Law Approach Concerning the Circulation of Cultural Property." *International Journal of Cultural Property* 16 (2009): 49–66.
- Gallagher, Stephen. "Museums and the Return of Human Remains: An Equitable Solution?" *International Journal of Cultural Property* 17 (2010): 65–86.
- Gittings, Claire. *Death, Burial and the Individual in Early Modern England*. London, UK: Routledge, 1988.
- Herewini, Te Herekikie. "The Museum of New Zealand Te Papa Tongarewa (Te Papa) and the Repatriation of Koiwi Tangata (Maori and Moriori Skeletal Remains) and Toi Moko (Mummified Maori Tattooed Heads)." *International Journal of Cultural Property* 15 (2008): 405–406.

- Hubert, Jane. "Dry Bones or Living Ancestors?" *International Journal of Cultural Property* 1 (1992): 105–127.
- Jackson, Percival E. *The Law of Cadavers and of Burial and Burial Places*. New York: Prentice Hall, 1950.
- Jones, D. Gareth. *Speaking for the Dead: Cadavers in Biology and Medicine*. Hampshire: Ashgate, 2000.
- Kay, John. *A Series of Original Portraits and Caricature Etchings: With Biographical Sketches and Anecdotes*. Edinburgh: Hugh Paton, 1842.
- Korbonits, Márta, et al. "AIP Mutation in Pituitary Adenomas in the 18th Century and Today." *New England Journal of Medicine* 364, no. 1 (2011): 43–50.
- Matthew, H. C. G., and Brian Harrison, eds., *Oxford Dictionary of National Biography*. Oxford: Oxford University Press, 2004.
- Matthews, Paul. "Whose Body? People as Property." *Current Legal Problems* 36 (1983): 193–239.
- Mays, Simon. "Ethics and Human Remains." In *The Archaeology of Human Bones*, edited by Simon Mays, 2nd ed., 313–348. London, UK: Routledge, 2010.
- McCloskey, Ronan (director). *Charles Byrne—The Irish Giant*. BBC2 Northern Ireland Documentary. Belfast, Northern Ireland: British Broadcasting Corporation, 16 January 2011.
- Mihesuah, Devon A., ed. *Repatriation Reader: Who Owns American Indian Remains?* Lincoln: University of Nebraska Press, 2000.
- Moore, Wendy. *The Knife Man: Blood, Body Snatching and the Birth of Modern Surgery*. Great Britain: Bantam Books, 2006.
- Mulvaney, D. J. "Past Regained, Future Lost: The Kow Swamp Pleistocene Burials." *Antiquity* 65 (1991): 12–21.
- O’Keeffe, John. *Recollections of the Life of John O’Keeffe*. London: Coburn, 1826.
- Ordnance Survey Office. *Ordnance Survey of Ireland: Londonderry*. Dublin, Ireland: Ordnance Office, 1833.
- . *Ordnance Survey of Ireland: Tyrone*. Dublin, Ireland: Ordnance Office, 1834.
- Panesar, Sukhninder. *General Principles of Property Law*. Harlow, UK: Longman, 2001.
- Pawlowski, Mark. "Property in Body Parts and Products of the Human Body." *Liverpool Law Review* 30 (2009): 35–55.
- Quigley, Muireann. "Property: The Future of Human Tissue?" *Medical Law Review* 17, no. 3 (2009): 457–466.
- Quinn, James. "Byrne, Charles." In *Dictionary of Irish Biography*, edited by James McGuire and James Quinn. Cambridge, UK: Cambridge University Press, 2009. <http://dib.cambridge.org/viewReadPage.do?articleId=a1320> (accessed 24 September 2012).
- Redfern Inquiry, The. *The Redfern Inquiry into Human Tissue Analysis in UK Nuclear Facilities*, Vol. 1. London, UK: The Crown, 2010.
- Richardson, Ruth. *Death, Dissection and the Destitute*. London: Penguin, 1987.

Taylor, Tom. *Leicester Square*. London: Bickers and Son, 1874.

Walker, Phillip L. "Bioarchaeological Ethics: A Historical Perspective on the Value of Human Remains." In *Biological Anthropology of the Human Skeleton*, edited by M. Anne Katzenberg and Shelley R Saunders, 2nd ed., 3–40. New York: Wiley, 2008.

Wood, Edward J. *Giants and Dwarfs*. London: Richard Bentley, 1868.

Woodhead, Charlotte C. "A Debate Which Crosses All Borders—The Repatriation of Human Remains: More than just a Legal Question." *Art Antiquity and Law* 7, no. 4 (2002): 317–347.