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Death Rites Disrupted: Coronavirus, 'Lockdown' Laws and the Altered Social Ritual of the Funeral

Heather Conway*

While emergency measures for tackling coronavirus fundamentally altered our daily lives, this limiting of freedoms on public health grounds had an equally dramatic impact on the rituals of death. The sweeping restrictions imposed on the time-honoured social practice of the funeral recast its fundamentals, but have not been meaningfully probed in legal scholarship. This article addresses that lacuna by examining the relevant laws and government guidance and their broader societal impact. Drawing on the multidisciplinary field of death studies, it examines both the transformative effect of these measures on funerals and the attendant human and social consequences. Integrating this analysis with evidence from emerging research on bereavement and grief during the pandemic, the article argues that the ongoing emotional toll of COVID-era funerals is fuelling a new type of public health crisis.

KEYWORDS: coronavirus, lockdown laws, funerals, public health, rituals, grief

Without tradition and ritual, death is a terrifying and meaningless experience.¹

1. INTRODUCTION

Death, that one fate that awaits us all, is something that most people do not wish to contemplate. Modern Western societies are said to be 'death denying'; talking publicly about death and accepting its inevitability has become something of a social taboo. In his seminal work *The Hour of Our Death*, French historian Philippe Ariès attributed this twentieth century phenomenon to specific factors that removed death from people's everyday lived experiences, from dying in hospital to the professionalisation of funerals.²

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¹ MH Jacobson and A Peterson, 'The Return of Death in Times of Uncertainty—A Sketchy Diagnosis of Death in the Contemporary "Corona Crisis"' (2020) 9 *Social Sciences* 131, 140.

² P Ariès, *The Hour of Our Death* (New York: Alfred A Knopf, 1981). Ariès was one of a nucleus of scholars who formulated this narrative of denial, though the underlying thesis has been criticised. See M Robert and M Tradii, 'Do We Deny Death? I. A Genealogy of Death Denial' (2019) 24 *Mortality* 247 and 'Do We Deny Death? II. Critiques of the Death-Denial Thesis' (2019) 24 *Mortality* 377.

Yet the global pandemic caused by the spread of SARS-CoV-2, the novel strain of coronavirus that emerged in late 2019,³ made death a daily, and inescapable, fact of life. As cases surged across successive waves, and mortality rates climbed with unsettling and seemingly relentless speed, the worldwide devastation inflicted by a virus-clad Grim Reaper became all too apparent.⁴

The severe threat posed by the virus prompted radical public health controls in the spring of 2020, as individual governments devised strategies to tackle a rapidly evolving situation. The UK's domestic legal architecture took the form of the Coronavirus Act 2020 and ancillary regulations⁵ that fused a centralised approach with discrete powers for each of the devolved administrations.⁶ Passed as time-limited, responsive measures designed to manage the effects of the pandemic and curb virus spread, the end result was an interventionist set of emergency rules supplemented by repeated government guidance and exhortations. Restrictions on movement, prohibitions on gatherings and social distancing were integral elements of a 'new normal', imposed on everyone as part of a collective effort to mitigate the COVID-19 crisis through radically different individual, group and societal behaviours. While these measures fundamentally altered our daily lives, the limiting of freedoms on public health grounds had an equally dramatic impact on the rituals of death. As part of lockdown rules and associated infection control measures, sweeping restrictions were imposed on funerals—restrictions that aggressively dismantled and recast the fundamentals of this time-honoured rite of passage, in a manner that few would have imagined pre-pandemic. It is these restrictions, and their societal impact, that form the basis of this article.⁷

³ This article will use the generic term 'coronavirus' for this particular strain of the human virus. The term 'COVID-19' denotes the disease caused by the illness.

⁴ Even if this pandemic was not as deadly as others, such as the 1918 influenza pandemic that killed an estimated 25-50 million people globally.

⁵ The principal regulations were the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350); Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103); Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 (SI 2020/353 (W 80)); and Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (SR 2020/55). These regulations were subsequently repealed and replaced, with numerous ancillary regulations (too extensive to list individually) also passed at various stages of the pandemic.

⁶ This vast, hastily enacted legislative framework was not without criticism—see nn 14-15 below and accompanying text.

⁷ The social gathering of the wake, which is traditionally held before the funeral (though sometimes afterwards as a post-funeral gathering), is also an important element the ritual of death. There are commonalities between these two sites of mourning in that close friends and family gather to remember the deceased, and to express their feelings. However, the focus here is on the funeral. Wakes are less formal, unstructured events that do not attract specific laws; and emergency coronavirus measures did not directly target wakes, beyond generic rules around numbers gatherings and non-mixing of households.

Funerals, in the sense of a ritualised or ceremonial disposal of the body,⁸ bring family, friends and communities together to mark the life of the deceased in an act of symbolic expression. As structured events where participants interact and engage in set patterns of behaviour, they create intensely personal yet simultaneously shared experiences for the bereaved that are, at once, both incredibly intimate and public.⁹ Despite the breadth of law's involvement in death,¹⁰ the prescriptive content of funerals has traditionally been shaped by a composite blend of personal choice, social convention, religious beliefs and cultural values; legal directives are kept to a minimum, beyond the mechanics of bodily disposal and environmental impacts.¹¹ However, all this changed with the emergence of COVID-19. As strictly enforced legal rules curbed attendance at funerals and promoted radically different behaviours, the funeral ritual as part of society's 'essential constitution', as something that 'speaks to people's core emotions and reveals values that a society holds dearest',¹² was transformed overnight. Until now, these measures and their influence on experiences of loss and mourning have scarcely been probed; while some legal scholarship has attended to the complexities arising from the effects of the pandemic on funerary traditions,¹³ the substantive issues identified in this article remain largely unexplored.

Although the subject has much wider resonance, this article looks at the legal response to COVID-19 in the UK, and its impact on embedded socio-cultural practices around death and dying, through the medium of the funeral.¹⁴ The topic is significant for various

⁸ Adopting the definition in T Walter, 'Bodies and Ceremonies: Is the UK Funeral Industry Still Fit for Purpose?' (2017) 22 *Mortality* 194.

⁹ And regardless of variances between traditional, religious funerals and the more modern, secular ceremonies- see eg G Cook and T Walter, 'Rewritten Rites: Language and Social Relations in Traditional and Contemporary Funerals' (2005) 16 *Discourse and Society* 365.

¹⁰ See H Conway, *The Law and the Dead* (Abingdon, Oxon: Routledge, 2016).

¹¹ Isolated exceptions sometimes arise, where a particular funeral raises legality issues (eg a proposed open-air cremation in *Ghai v Newcastle City Council* [2009] EWHC 978 (Admin) and [2009] EWCA Civ 59) or public policy concerns (eg the funeral of Moors Murderer Ian Brady in *Oldham Metropolitan Borough Council v Makin* [2017] EWHC 2543 (Ch)).

¹² GP Miller, 'The Legal Function of Ritual' (2005) 80 *Chicago-Kent Law Review* 1181, 1181.

¹³ See e.g. H Conway, 'Funerals and Coronavirus in Northern Ireland: New Legal Rules, New Social Norms' (2020) 2 *Folio: Northern Ireland Conveyancing and Land Law Journal* 16 and C Nyamutata, 'Funerary Rites and Rights of the Dead: Jurisprudence on Covid-19 Deaths in Kenya, India and Sri Lanka' (2023) 12 *Global Journal of Comparative Law* 36.

¹⁴ The funeral itself (as the dispositive element) is one in a series of multiple events that mark an individual's death- eg visiting the deceased's family, displaying the body, the wake or post-funeral gathering. Commemorative events, such as memorial services and the scattering of ashes post-cremation, are other key elements. Emergency restrictions affected all these things, though the current focus is on the funeral.

reasons. While legal scholars busied themselves with a range of issues surrounding the emergency restrictions, from the deprivation of personal liberties¹⁵ to the impact on social care systems and mental capacity laws,¹⁶ the impact on the funeral as a basic human institution was curiously neglected. The pandemic not only gave death a captive, global audience; it was also the first time that the funeral as a universally recognised and carefully constructed ritual¹⁷ was hastily reconfigured by law and public health directives– something that assumed even greater importance when higher mortality rates throughout the pandemic made funerals a lived reality for more people. In stimulating a much-needed debate on the significance of this particular paradigm shift, the article makes another distinct contribution by fusing legal analysis with insights gained from the multidisciplinary field of death studies. Seeing the funeral as a blend of organic rituals that performs specific tasks for both the living and the dead¹⁸ not only contextualises the legal issues. It also reveals the transformative effect of these public health measures, and the attendant human consequences.

The first part of the article examines the traditional public health narrative around the fate of the dead (bodily decay), and explains how the recently deceased posed a different sort of contaminant risk to the living through community transmission of coronavirus at funerals. Having detailed the main restrictions, the article notes the public health fixation with physical health and not contracting COVID. This is exposed as being selectively and temporally myopic because it ignored the emotional impact of the emergency restrictions, something that is very evident in the funeral context. Drawing primarily on the fields of sociology, psychology and anthropology, the next section examines the role that funerals play in saying goodbye to the dead and caring for the living by fostering connectedness, providing essential social support and facilitating the

¹⁵ See eg C Nyamutata, 'Do Civil Liberties Really Matter During Pandemics? Approaches to Coronavirus Disease (COVID-19)' (2020) 9 *International Human Rights Review* 62; J Pugh, 'The United Kingdom's Coronavirus Act, Deprivations of Liberty, and the Right to Liberty and Security of the Person' (2020) *Journal of Law and the Biosciences* 1; and T Hickman QC, E Dixon and R Jones, 'Coronavirus and Civil Liberties in the UK' (2020) 25 *Judicial Review* 151.

¹⁶ I Antova, 'Disability Rights and COVID-19: Emergency Laws and Guidelines in England' (2020) 28 *Medical Law Review* 804 and AM Farrell and P Hann, 'Mental Health and Capacity Laws in Northern Ireland and the COVID-19 Pandemic: Examining Powers, Procedures and Protections under Emergency Legislation' (2020) 71 *International Journal of Law and Psychiatry* 101602.

¹⁷ See GM Bosley and AS Cook, 'Therapeutic Aspects of Funeral Ritual: A Thematic Analysis' (1994) 4 *Journal of Family Psychotherapy* 69.

¹⁸ The core literature is referenced in Part 3.

grieving process. The article goes on to assess how this was changed by the process of law-making during the pandemic; it also probes interpretative issues surrounding the emergency measures, the difficult choices faced by the bereaved, and posits reasons for widespread compliance with the rules. Finally, the article considers the impact of disrupted death rites on individuals and communities. Drawing on a growing body of work that connects lockdown funerals to emotional trauma and complicated grief, it sets out a rudimentary framework of analysis for a new and emerging public health crisis.

2. PUBLIC HEALTH IMPERATIVES AND DEALING WITH THE DEAD

The law's treatment of human remains has always been based on two core values: respect for the dead, and public health fears around decaying corpses. The first is a universal standard that permeates the law.¹⁹ Respecting the dead not only speaks to basic notions of human dignity; as a society, and as individuals, we care about how our dead are treated, because it gives us a sense of existential comfort about our own treatment when we die. The second speaks to the threat of disease as unattended bodies decompose: to guard against this, and the risk of sensory or visual offence, the dead must be physically separated from the living. These core values counter-balance each other in a delicately poised set of virtual scales, as twin imperatives that death laws must reflect and respect. However, in pandemics and other emergencies,²⁰ the balance inevitably tips heavily to one side.

Addressing a 'serious and imminent threat to public health'²¹ was the overriding objective of the legislative framework and government messaging for tackling coronavirus.²² While the legal response was unparalleled, the containment measures relied on orthodox

¹⁹ From judicial statements this effect (see eg Martin J in *Calma v Sesar* (1992) 106 FLR 446, 452: the dead must be 'disposed of without reasonable delay, but with all proper respect and decency') to international humanitarian laws mandating the respectful treatment of those killed in armed conflict (see eg Article 16 of the Fourth Geneva Convention).

²⁰ Eg natural disasters.

²¹ This was the justificatory language used in the Introductory Text to the first set of principal regulations passed in March 2020 (see n 5 above), and in subsequent iterations of the core regulations across the four nations- see eg the Health Protection (Coronavirus, Restrictions) (No 3) (England) 2020 (SI 2020/750) and the Health Protection (Coronavirus) (Requirements) (Scotland) 2021 (SSI 2021/277).

²² As part of this, the Coronavirus Act 2020 augmented existing public health measures in the Public Health (Control of Disease) Act 1984, and extended specific powers under the 1984 Act (which applies to England and Wales) across the UK.

suppression techniques of prevention and containment;²³ constant edicts to wash our hands, practice social distancing and self-isolate were supplemented by legal rules prohibiting social gatherings and placing restrictions on movement to curb person-to-person transmission.²⁴ In using emergency measures to protect public health, the working assumption was that all citizens posed a significant risk of virus spread. And while the primary focus was on the living, the dead featured strongly in the public health narrative, though not in the conventional sense.

(a) A Different Contaminant Risk?

The contaminating potential of the corpse was the formative basis of a raft of burial laws passed in nineteenth century England when a toxic combination of urban expansion, unsanitary conditions, and high mortality rates overcrowding graveyards, posed a major threat to public health.²⁵ Fast forward to COVID-19, and the contaminant risk of the dead being in proximity to the living was still part of the socio-legal narrative, though not through the natural process of decay. At the start of the pandemic, concerns around the infectious properties of corpses and possible virus transmission through respiratory droplets and bodily fluids necessitated protocols for handling human remains in suspected or confirmed COVID-19 deaths.²⁶ This necessitated pathologists and funeral directors wearing personal protective equipment, bodies being placed in closed coffins, and both long-standing social traditions and religious or cultural rites being halted where these involved contact with the body (including washing or viewing the corpse).²⁷ However, a greater danger quickly emerged: that of the dead inadvertently acting as highly localised sites for person-to-person transmission, by bringing the living into close contact with each other through the medium of the funeral and eg shaking hands or hugging to

²³ See A Wilder-Smith and DO Freedman, 'Isolation, Quarantine, Social Distancing and Community Containment: Pivotal Role for Old-Style Public Health Measures in the Novel Coronavirus (2019-nCoV) Outbreak' (2020) 27 *Journal of Travel Medicine*.

²⁴ The specific legal rules are discussed below.

²⁵ ME Hotz, 'Down Among the Dead: Edwin Chadwick's Burial Reform Discourse in Mid Nineteenth Century England' (2001) 29 *Victorian Literature and Culture* 21.

²⁶ Though the level of risk was unknown- see LGM Dijkhuizen, HT Gelderman and W Duijst, 'The Safe Handling of a Corpse (Suspected) With COVID-19' (2020) *Journal of Forensic and Legal Medicine* 1.

²⁷ See eg E Crubézy and N Telmon, 'Pandemic-Related Excess Mortality (COVID-19), Public Health Measures and Funerary Rituals' (2020) 22 *EClinicalMedicine* 100358. These restrictions had a huge impact on various religious and ethnic communities, given the centrality of the prohibited acts to their death rituals- see eg 'The Muslim Bereaved Cruelly Deprived of Closure by Coronavirus', *The Guardian* (7 July 2020) located at <https://www.theguardian.com/world/2020/jul/07/the-muslim-bereaved-cruelly-deprived-of-closure-by-coronavirus>.

express condolences.²⁸ This public health risk is what drove the restrictions imposed on all funerals in late March 2020, for both COVID-19 and non-virus deaths.

(b) Emergency Measures and the Reconfigured Funeral

The Coronavirus Act 2020 was silent on the issue of funerals, focusing instead on systems management, and ensuring that national and regional authorities had capacity to handle dead bodies with care and dignity as mortality rates increased.²⁹ Funerals were dealt with under the statutory regulations, introduced across the four nations of the UK within days of the 2020 Act becoming law.³⁰ Operationalising specific powers conferred by the Act,³¹ the initial result was fairly uniform set of restrictions in England, Scotland, Wales and Northern Ireland.

Respect for the dead and bereaved families meant that funerals could take place with mourners present,³² while the basic dispositive options of burial or cremation remained available.³³ Funeral directors were permitted to operate as essential services,³⁴ while places of worship, crematoria and burial grounds that were (initially) closed to the public could open for funerals,³⁵ which were a listed exception to the prohibition on public gatherings of (what was originally) two or more persons.³⁶ And while people were

²⁸ As occurred in Africa during Ebola outbreaks- C Park, 'Traditional Funeral and Burial Rituals and Ebola Outbreaks in West Africa: A Narrative Review of Causes and Strategy Interventions' (2020) 5 *Journal of Health and Social Sciences* 73.

²⁹ Pandemic preparedness, and expediting burial and cremation processes (if necessary), necessitated a number of measures. These included changes to death certifications (2002 Act, ss 18-21 and Sch 13) and inquests (ss 30-32), and ensuring that potentially large numbers of dead bodies could be transported, stored and disposed of with respect (s 58 and Sch 28).

³⁰ The discussion immediately below focuses largely on the 'principal regulations', passed in late March 2020 and listed at n 5 above, which triggered the initial changes to funerals. For brevity, subsequent amendments to these regulations, and additional or replacement measures, uses selective examples across the four nations.

³¹ In particular, the power to issue directions in relation to events, gatherings and premises under s 52 and Sch 22 of the 2020 Act.

³² Unlike Italy, where high mortality rates and strict confinement of citizens to their homes meant that funeral services (both religious and civil) were banned early in the pandemic- 'Coronavirus: How Covid-19 is Denying Dignity to the Dead in Italy', *BBC News Online*, 25 March 2020 located at <https://www.bbc.co.uk/news/health-52031539>.

³³ An earlier version of the Coronavirus Bill that appeared to allow forced cremation (assuming a surge in deaths and lack of grave space) was hastily amended, following a backlash from MPs and faith groups- see 'Emergency Coronavirus Legislation Altered after Muslim and Jewish communities Raise Concern Over Forced Cremation', *The Telegraph* (23 March 2020).

³⁴ As businesses exempt from closure and other specific restrictions- reg 5(1) and Sch 2, Pt 3 of the principal regulations in England; reg 6(1) and Sch 1, Pt 4 in Wales; reg 4(1) and Sch 2, Pt 3 in Northern Ireland; and reg 4(1) and Sch 1, Pt 3 in Scotland.

³⁵ See regs 5(5), (6) and (8) of the principal regulations in England; regs 7(1) and (3) in Wales; regs 4(5), (6) and (8) in Northern Ireland; and regs 4(6), (7) and (9) in Scotland. However, social distancing measures and operational constraints meant that some buildings could not, or chose not to, allow any mourners- see the examples listed at n 74 below.

³⁶ See reg 7(c) in England; reg 8(5)(c) in Wales; reg 6(c) in Northern Ireland; and reg 6(c) in Scotland.

prevented from leaving their homes without 'reasonable excuse', one such justification was to attend the funeral of '(i) a member of the person's household, (ii) a close family member, or (iii) if no-one within....(i) or (ii) [was] attending, a friend'.³⁷ Government guidance on funerals and public health more generally supplied further granularity, imposing numbers caps by limiting attendance to a maximum number (initially ten people both indoors and outdoors– though slowly increased across the four nations under subsequent statutory regulations)³⁸ and insisting on strict social distancing measures throughout.³⁹ Persons from different households would have to travel separately to and from the funeral, and sit or stand at least 2 metres apart from each other, something that later became a legal mandate⁴⁰ alongside the requirements to wear face coverings in enclosed spaces (introduced in the summer of 2020)⁴¹ as the living were spatially segregated to minimize the risk of virus spread.

The minutiae of these funeral restrictions⁴² changed periodically, as the pandemic ebbed and flowed.⁴³ However, the two core elements– the macro-level changes that altered the social fabric of the funeral more than anything else– remained mercilessly intact for over a year. Upper limits on mourners and physical spacing created a new, state-imposed governance structure; these, in effect, became terms and conditions that the bereaved had to accept when burying or cremating their dead. A core theme of what

³⁷ See regs 6(1) and (2)(g) in England; regs 8(1) and (2)(g) in Wales (though the Welsh government also added a 'carer' of the person attending as a fourth category); regs 5(1) and (2)(g) in Northern Ireland; and regs 5(1) and 8(4)(g) in Scotland.

³⁸ In line with different restrictions on gatherings, which saw eg England move to a maximum of 30 mourners in April 2020 under the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 (SI 2020/684). It appears that Northern Ireland was the only jurisdiction to set numerical limits *for funerals* in statutory regulations, in the first months of the pandemic– see Conway (n 13 above) 17–20.

³⁹ See generally [Coronavirus \(COVID-19\): guidance and support - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/coronavirus-covid-19-guidance-and-support) with links to various pages and guidance documents such as *Public Health England, Guidance for Managing a Funeral During the Coronavirus Pandemic* (first published in April 2020).

⁴⁰ At least in Northern Ireland, Scotland and Wales where it appeared in the various regulations (see eg reg 12 of the Health Protection (Coronavirus Restrictions) (No 2) (Wales) Regulations (2020) (SI 2020/725 (W 162)) following an earlier, albeit more limited, directive in an amended version of the original principal regulations) but not in England where it retained a strongly-recommended but nonetheless advisory status.

⁴¹ And this time across the four nations as government advice became a legal requirement in each one– see eg the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (SI 2020/791).

⁴² This generic term denotes the combined statutory regulations and government guidance affecting funerals, unless it is necessary to distinguish between the two.

⁴³ Repositories of the key changes, in each of the UK's four nations, can be found on the website of the Deceased Management Advisory Group ('DMAG')– see [Government advice - dmag2020.org](https://www.dmag2020.org). DMAG was established early in the pandemic as the central co-ordination point for the funerals, bereavement and death care sector.

follows, though, is an assertion that the same restrictions on funerals were an overreach on public health grounds.

(c) Public Health and Selective Myopia

Going back to the critical phases of the pandemic and looking at public health through the analytical prism of coronavirus, the refracted view is one in which the metaphorical eye focused primarily on physical health and the dangers posed by COVID-19; everything else was dispersed into the peripheral field of vision. When the phrase entered the new pandemic lexicon in the spring of 2020, the operative conception of the 'serious and imminent threat to public health' mantra⁴⁴ became the respiratory illness caused by coronavirus and its immediate, observable impacts in confirmed cases, increased hospitalisations, and virus-related deaths. As with all the forced changes to our lifestyles and deathstyles, it was this narrowly construed threat to public health that redefined COVID-era funerals. These became potential super-spreader events, with stories of localised clusters at burials and cremations confirming the risks involved.⁴⁵

Utilitarianism as a moral framework for imposing swathes of legal restrictions that focused solely on the risk of death or serious illness to the living might seem like an obvious ethical choice, and one that was an essential crisis management tool when organised measures to stop the spread of coronavirus dominated the social and political landscapes. One could argue, however, that equating public health with physical health– and with preventing one disease to the exclusion of others– was an erroneous equivalence, with predictable outcomes. A myopic and temporally selective focus on COVID-19 at best downgraded, and at worst ignored, all other physical illnesses that presented during the pandemic.⁴⁶ Yet, this is only part of the picture. The conjoined elements of physical and

⁴⁴ The justificatory basis for adoption of sweeping state powers from March 2020- see n 21 above and accompanying text.

⁴⁵ See eg 'Coronavirus: Seventeen Family Members get Virus at Funeral', *The Times* (30 March 2020) located at <https://www.thetimes.co.uk/article/coronavirus-seventeen-family-members-get-virus-at-funeral-mtn99gg2r>. Similarly distressing stories emerged elsewhere: see eg 'Six People Die from Attending the Same Funeral in South Carolina', *The Independent* (17 April 2020) located at <https://www.independent.co.uk/news/world/americas/coronavirus-south-carolina-deaths-cases-funeral-a9471541.html>.

⁴⁶ The full impact of delayed diagnoses, rescheduled appointments and routine screening being missed will be felt for years to come. See eg CR Wells and AP Galvani, 'Impact of the COVID-19 Pandemic on Cancer Incidence and Mortality' (2022) 7 *The Lancet*

mental wellbeing are central to any discourse around health as a basic human right and the measures that states must implement to ensure this.⁴⁷ While the psychological impact of coronavirus rules also assumed greater prominence as the pandemic progressed,⁴⁸ funerals– as events that are cloaked in emotionality– showcased the tensions between physical and mental health from the outset. In pursuing the legitimate goal of protecting the public as the dead became unwitting vectors for virus transmission, studies carried out by those working in the fields of bereavement and primary health care are revealing the emotional impact of the legal rules, government guidance and resultant paradigm shifts in the funeral on those bereaved during the pandemic.⁴⁹ Before examining these impacts in more detail, it might be helpful to consider the socio-cultural function and significance of the funeral.

3. WHAT FUNERALS 'DO', AND THE IMPACT OF CORONAVIRUS RESTRICTIONS

Death is more than a biological progression; as Charmaz points out, 'it is an inherently social process'.⁵⁰ The absence of a clear dividing line between biological and social death has been highlighted by scholars across a range of disciplines,⁵¹ and it is this duality that shapes our perceptions of the recently deceased who straddle the metaphysical boundary between person and thing. On the one hand, they are inanimate objects, devoid of physical life and undergoing the inevitable process of decay; at the same time, the newly dead remain socially alive, enmeshed within a network of relational ties that ensure the corpse is still narratively connected with the human being that was (and, in some ways, still 'is').⁵² Funerals reflect this duality, by fusing the 'practical and emotional tasks associated with death'.⁵³ They are essential dispositive mechanisms that remove

Public Health e490-e491; RM Wood, 'Modelling the Impact of COVID-19 on Elective Waiting Times' (2022) 16 *Journal of Simulation* 101-109.

⁴⁷ See eg the preamble to the 1946 Constitution of the World Health Organisation which defines health as a 'state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'

⁴⁸ See eg B Pfefferbaum and CS North, 'Mental Health and the Covid-19 Pandemic', *New England Journal of Medicine*, 13th April 2020 <https://www.nejm.org/doi/10.1056/NEJMp2008017>; K Konstantinos, M Economou and C Papageorgiou, 'Mental Health Effects of COVID-19 Pandemic: A Review of Clinical and Psychological Traits' (2020) 17 *Psychiatry Investigation* 491.

⁴⁹ See the various sources listed throughout Part 4.

⁵⁰ K Charmaz, *The Social Reality of Death: Death in Contemporary America* (Reading, Mass: Addison-Wesley 1980).

⁵¹ See eg E Hallam, JL Hockey, G Howarth, *Beyond the Body: Death and Social Identity* (Routledge, 1999); and KJ Norlock, 'Real (and) Imaginal Relationships with the Dead' (2017) 51 *Journal of Value Inquiry* 341.

⁵² See eg C Valentine, *Bereavement Narratives: Continuing Bonds in the Twenty-First Century* (Routledge, 2008).

⁵³ Bosley and Cook (n 17 above) 69.

bodily matter from the active realm of the living, while cementing the deceased's place in the lives of family, friends and community through a series of socially mandated and highly symbolic acts. It is the latter component of the funeral– the set behaviours that frame the ritual in the minds of participants– that was fundamentally changed by COVID-19 and the associated process of law-making.

Funerals are major events that go beyond expressions of love and admiration for the deceased,⁵⁴ or the performance of religiously or culturally mandated death customs.⁵⁵ Of course, there are dangers in essentialising, and implying that all funerals are experienced the same way: things like social class, ethnic origin, religion and geography have a major influence.⁵⁶ Yet, there are commonalities.⁵⁷ Funerals supply both a time and a normative framework for conveying sympathy to the bereaved,⁵⁸ who have social licence to display their emotions as part of the grieving process.⁵⁹ They also provide essential support for the bereaved,⁶⁰ creating a sense of order and stability at a time of chaos and disorder– what Gino and Norton describe as 'compensatory mechanism[s] designed to restore feelings of control after losses'.⁶¹ And they offer societal acknowledgment of the change in relationships that death has triggered,⁶² marking the deceased's permanent removal from the living community while 'assur[ing] survivors that the world goes on'.⁶³ Thus funerals, with their composite blend of the transformative,

⁵⁴ In late modern Western societies, funerals are more about 'serving the needs of the bereaved, rather than commending the departed'– M Holloway, S Adamson, V Argyrou, P Draper and D Mariau, 'Funerals Aren't Nice But It Couldn't Have Been Nicer. The Makings of a Good Funeral' (2013) 18 *Mortality* 30, 30.

⁵⁵ These are essential constitutive elements of certain belief systems and cultures– see eg T O'Rourke, BH Spitzberg and AF Hannawa, 'The Good Funeral: Toward and Understanding of Funeral Participation and Satisfaction' (2011) 35 *Death Studies* 729.

⁵⁶ See eg T Walter, 'Three Ways to Arrange a Funeral: Mortuary Variation in the Modern West' (2015) 10 *Mortality* 173. For instance, geographically, practices will vary from country to country, but also within countries with local and regional variations and urban/rural divides.

⁵⁷ And for a general discussion on funerary orthodoxy during epidemics– from which commonalities can be drawn– see S Ripoll, 'Death and Funerary Practices in the Context of Epidemics: Upholding the Rights of Religious Minorities' (2020) *CREID Working Paper 3*, Institute of Development Studies.

⁵⁸ V Lensing, 'Grief Support: The Role of Funeral Service' (2001) 6 *Journal of Loss and Trauma* 45; HB Mitima-Verloop, TTM Mooren and PA Boelen, 'Facilitating Grief: An Exploration of the Function of Funerals and Rituals in Relation to Grief Reactions' (2021) 45 *Death Studies* 735.

⁵⁹ O'Rourke et al (n 55 above) 746. See also Bosley and Cook (n 17 above) 78.

⁶⁰ WG Hoy, *Do Funerals Matter? The Purposes and Practices of Death Rituals in Global Perspective* (New York: Routledge, 2013).

⁶¹ MI Norton and F Gino, 'Rituals Alleviate Grieving for Loved Ones, Lovers, and Lotteries' (2014) 143 *Journal of Experimental Psychology: General* 266, 268 citing BD Romanoff, 'Rituals and the Grieving Process' (1998) 8 *Death Studies* 697.

⁶² Lensing (n 58 above) 49.

⁶³ LA Gamino, LW Easterling, LS Stirman and KW Sewell, 'Grief Adjustment as Influenced by Funeral Participation and Occurrence of Adverse Funeral Events' (2000) 41 *OMEGA— Journal of Death and Dying* 79, 79-80.

expressive and supportive, typically accomplish a range of social and psychological functions.

Unravelling the cognitive and affective underpinnings of rituals more generally, Hobson and others describe them as formalised, symbolic expressions that are slow to change, and whose meanings are reinforced through constant repetition.⁶⁴ Funerary customs are no different: they are 'long standing traditions and non-discursive practices' where things are done in a particular way and any deviation must be 'justified, explained, discussed, and negotiated'.⁶⁵ Rebay-Salisbury's depiction highlights the enduring quality of this particular ritual, and suggests a process of change that— when it occurs— is both deliberative and incremental. Recent transformations to funerals bear this out; the emergence of things like direct cremation (with no funeral service and no mourners), eco-friendly burials and personalised ceremonies,⁶⁶ has been gradual and prompted by a mix of ideological shifts, technological advances and contemporary social norms.⁶⁷ With COVID-19, however, funerals were reconfigured overnight and for very different reasons. Achieved by a potent and highly effective combination of legal rules and government guidance, the result was a set of swift, pervasive and highly disruptive changes to the embedded, ritualised content of all funerals through limits on attendance and the operationalisation of social distancing measures.

(a) 'Stay at Home' Orders, Numerical Limits and a Process of Unnatural Selection

Funerals are collective and participatory events that simultaneously create and reinforce specific death rites among those attending. The idealised narrative of a 'good funeral' speaks to a social grouping, to interactive and shared experiences where the presence

⁶⁴ NM Hobson, J Schroeder, JL Risen, D Xygalatas and M Inzlicht, 'The Psychology of Rituals: An Integrative Review and Process-Based Framework' (2018) 22 *Personality and Social Psychology Review* 260, 260-261.

⁶⁵ K Rebay-Salisbury, 'Inhumation and Cremation: How Burial Practices are Linked to Beliefs' in MLS Sørensen and K Rebay-Salisbury, *Embodied Knowledge: Historical Perspectives on Technology and Belief* (Barnsley: Oxbow Books, 2012) 15, 15. The funeral's 'formal standardisation and repeatability' are also noted in E Knopke, 'The Arranged Mourning Ambience. About the Professional Production of Atmospheres at Funeral Services' (2020) 25 *Mortality* 433, 434.

⁶⁶ See eg Cook and Walter (n 9 above).

⁶⁷ With the possible exception of direct cremation, the ritualistic elements of funerals remained intact: people still gathered together, engaging in acts of collective remembrance with some form of ceremony.

of an 'audience...is crucial'⁶⁸ and gives the funeral its 'ritual potency'.⁶⁹ COVID restrictions however, created a very different type of funeral medium.

At the start of the pandemic, the legal obligation to stay at home along with the imposition of numerical limits on funerals removed the community element, transforming the typical funeral from a public event that evokes a sense of 'symbolic communitas',⁷⁰ of connectivity and consequent emotional support, to an innately private and more isolated affair. For large parts of the population, such as rural communities, faith groups and ethnicities with traditions of large funerals, this change was a significant one.⁷¹ Familiar, enduring patterns of 'gather[ing] at the same time in one place' and engaging in set behaviours as part of the funeral's implied 'ritual scripts'⁷² became part of an alien landscape, replaced with strange new adaptive rituals such as lining the route to watch the funeral procession pass as a mark of respect for the dead and support for the living.⁷³ However, the cap on numbers also meant that funerals became 'invite only' events for the bereaved, as a maximum of what was originally only ten members of the deceased's household or close family (or failing that, friends of the deceased) could physically attend.⁷⁴

Walter and Bailey note that a funeral 'stratifies mourners into family or nonfamily',⁷⁵ but the changes imposed in March 2020 prompted a new process of intra-familial stratification, as surviving relatives were forced to decide which ten individuals should

⁶⁸ T Bailey and T Walter, 'Funerals Against Death' (2016) 21 *Mortality* 149, 152.

⁶⁹ N Turner and G Caswell, 'A Relative Absence: Exploring Professional Experiences of Funerals without Mourners' (2022) 85 *OMEGA-Journal of Death and Dying* 868, 871. See also O'Rourke et al (n 55 above).

⁷⁰ C Wouters, 'The Quest for New Rituals in Dying and Mourning: Changes in the We-I Balance' (2002) 8 *Body & Society* 1, 2.

⁷¹ The impact is outlined in LSE Anthropology, 'A Good Death' During the Covid-19 Pandemic in the UK: A Report of Key Findings and Recommendations (2020), 10-14.

⁷² Knopke (n 65 above) 434.

⁷³ Whether this simple act breached the prohibition on 'outdoor gatherings' (see eg regulation 6A of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 (SR 2020/55) as amended) was one of many interpretative questions posed by the measures. One option was to treat this as a series of individual gatherings, with no resultant breach- see D Holder, 'From Special Powers to Regulating the Lockdown: The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020' (2020) 71 *Northern Ireland Legal Quarterly* 537, 549

⁷⁴ However, some local authorities initially banned *all* mourners from their crematoria to limit the risk of virus-spread- see eg 'UK Councils Begin to Ban Funeral Ceremonies Due to Coronavirus', *The Guardian* (4 April 2020) referring to the practice at Bradford, Leeds and Kirklees and available at [UK councils begin to ban funeral ceremonies due to coronavirus | Coronavirus | The Guardian](#) and 'Ban on Mourners at Belfast Crematorium Continues', *The Belfast Telegraph* (20 April 2020) and available at [Ban on mourners at Belfast crematorium continues - BelfastTelegraph.co.uk](#).

⁷⁵ T Walter and T Bailey, 'How Funerals Accomplish Family: Findings From a Mass-Observation Study' (2020) 82 *OMEGA-Journal of Death and Dying* 175, 175.

have this particular 'golden ticket'.⁷⁶ Families have described making near impossible choices to whittle down attendance,⁷⁷ with potential for conflict due to restricted numbers.⁷⁸ The situation improved as permitted attendees increased in each of the four nations (rising for example, to 30 in England and 25 in Northern Ireland by October 2020)⁷⁹ and the legal restriction to members of the same household and close family was dropped.⁸⁰ Many families, however, had to endure a tough process of internal negotiation in finalising a short guest list for the deceased's funeral—especially during the critical first wave when restrictions were most severe. Virtual attendance, if the funeral could be live-streamed, became the default option for those who did not make the list.⁸¹

The concept of a hierarchy of mourners is not a new thing; within families, there is a sense in which funerals have always been about crafting a highly visible and perpetual marker of who was closest to the deceased in life.⁸² For lockdown funerals, however, such internal rankings were conditioned by a mixture of external variables⁸³ and relational dynamics. No legal definition of 'close family member' appeared in the original statutory regulations, or in subsequent versions that adopted the same language.⁸⁴ This contrasts sharply with other categories of death laws, with their fixation on set and frequently hierarchical orderings of family that offer little in terms of flexibility.⁸⁵ By omitting any

⁷⁶ As Roald Dahl fans will know, the 'golden ticket' was the rare and coveted pass to enter Willie Wonka's Chocolate Factory, with only five tickets available worldwide—R Dahl, *Charlie and the Chocolate Factory* (1964).

⁷⁷ See A Torrens-Burton, S Goss, E Sutton, K Barawi, M Longo, K Seddon, E Carduff et al, "'It Was Brutal. It Still Is": A Qualitative Analysis of the Challenges of Bereavement During the COVID-19 Pandemic Reported in Two National Surveys' (2022) 16 *Palliative Care and Social Practice* 26323524221092456.

⁷⁸ Funerals have always been stress amplifiers within families (see H Conway and J Stannard, 'The Honours of Hades: Death, Emotion and the Law of Burial Disputes' (2011) 34 *UNSW Law Journal* 860). One suspects that decisions on who made the 'final cut' of 10 have created new fault lines within families.

⁷⁹ At the same time, the legal limit in Scotland was 20 while numbers in Wales depended on venue size and availability of social distancing. Hickman et al (n 15 above) have criticised the numerous jurisdictional variances in the delegated legislation; with funerals, these would have created more confusion and distress for the bereaved.

⁸⁰ This change occurred several months into the pandemic, under the second substantive set of regulations in each of the four nations—see eg the Health Protection (Coronavirus, Restrictions) (No 2) (England) Regulations 2020 (SI 2020/684) and the Health Protection (Coronavirus Restrictions) (No 2) (Wales) Regulations 2020 (SI 2020/ 725 (W 162)) which came into effect in early July 2020.

⁸¹ See eg S Pitsillides and J Wallace, 'Physically Distant But Socially Connected: Streaming, Funerals, Memorials and Ritual Design During COVID-19' in P Pentaris (ed), *Death, Grief and Loss in the Context of COVID-19* (Abingdon, Oxon: Routledge, 2021) 60–76.

⁸² Conway and Stannard (n 78 above).

⁸³ Namely, practicalities and generic legal restraints where eg certain individuals could not attend because they were shielding, self-isolating or prohibited from travelling due to ongoing restrictions.

⁸⁴ Likewise, there was no definition of 'a member of the deceased's household' (though this is easier to determine) or 'a friend' (more nebulous, by its very nature).

⁸⁵ Eg s 47(a) of the Coroners and Justice Act 2009 lists 'interested persons' to any coronial investigation as including a spouse, civil partner, cohabiting partner, parent, child, sibling or step-parent of the deceased (in that order). Section s 65 of the Burial and

definition or attempted categorisation, the regulations allowed the bereaved to construct and formalise their own definition of close family and to make specific choices at a time when so much freedom to choose other aspects of the funeral ritual (eg lowering the coffin into the grave, holding a wake) was denied to them. Research is emerging on whether the legal rules and the lived realities of a pandemic have reinforced normative concepts of kinship or constructed an alternative version of 'close family' in the funeral context.⁸⁶ However, the basic concept of funerals as 'must attend moments in the lives of all surviving family members'⁸⁷ was suddenly suspended by restrictions designed to tackle the pandemic.

(b) Social Distancing and New Modes of Funeral Behaviour

Funeral rites have a normative force; they compel people to behave and to interact in certain ways, when participating in this universal post-death ritual. However, social distancing meant that those who could attend so-called 'COVID-safe' funerals had to maintain a two-metre distance from persons from a different household when indoors; this involved sitting and standing apart at all times in places of worship, crematoria and other funeral venues, in line with the prevailing legal requirements in Scotland, Wales and Northern Ireland.⁸⁸ Whether this also prohibited hugging or taking someone's hand, with consequential enforcement powers in the event that mourners literally reached out to one another, is open to interpretation.

We accept that the law restricts unwanted physical contact within both the criminal and civil law spheres,⁸⁹ yet to say that people were 'not allowed to hug' (an oft-cited mantra during the pandemic, and not just in the funeral context) or touch overstates the legal remit of social distancing rules. Strict adherence to the rules in an enclosed space would

Cremation (Scotland) Act 2016 allows the deceased's 'nearest relative' to arrange the funeral, defined as the surviving spouse or civil partner, then cohabiting partner followed by child or step-child, parent, sibling etc.

⁸⁶ See eg J McCarthy, K Woodthorpe and K Almack, 'The Aftermath of Death as a Family and Community Event: A Sociological Perspective On Diverse Responses and Experiences', *15th International Conference on Death, Dying and Disposal* (Manchester Metropolitan University, 2021). Sociologists have already identified the funeral as a theoretical lens for analysing what constitutes 'family' - see eg K Woodthorpe and H Rumble 'Families and Funerals: Locating Death as a Relational Issue' (2016) 67 *British Journal of Sociology* 242 and Walter and Bailey (n 75 above).

⁸⁷ P Giblin and A Hug, 'The Psychology of Funeral Rituals' (2006) 21 *Liturgy* 11, 18.

⁸⁸ Though not in England- see n 40 above.

⁸⁹ Offences against the person, and trespass to the person are obvious examples.

have made such interactions physically impossible beyond members of the same household, and any resultant violation might not have been viewed as an egregious breach of social distancing rules given the context. Outdoors, there was no such legal edict; maintaining a distance from others was public health advice that assumed a 'rule like' status, but did not amount to a prohibition on hugging or other similar gestures.

Yet, in a pandemic that has highlighted how fundamental touch is to the human experience and the emotional consequences of 'touch hunger' when physical contact is stripped from everyday life,⁹⁰ the shared social ritual of the funeral illustrates the point perfectly. Virus suppression measures meant suppressing the innate behaviours and non-verbal communications that are embedded in the emotional fabric of this particular dispositive rite as acts of comfort and reassurance,⁹¹ yet were suddenly classed as health-harming. For some, instinct trumped social distancing rules; and when crematorium staff interrupted a service in Milton Keynes in October 2020, instructing two sons to move away from their distraught mother as they comforted her during their father's funeral, the family's reaction was one of outrage and disbelief.⁹² There is no doubt that this was a heavy-handed enforcement of the rules.⁹³ However, the incident shows how a basic need to provide emotional support outweighed any risk of virus transmission *and* justified breaking the restrictions (at least in a moral sense). This latter point brings us to another important theme: that of compliance.

(c) The Compliance Question

Transforming funerals into quick, minimalist and sparsely attended affairs that were literally devoid of the human touch would only contain virus spread in this particular social

⁹⁰ See eg J Durkin, D Jackson and K Usher, 'Touch in Times of COVID-19: Touch Hunger Hurts' (2021) 30 *Journal of Clinical Nursing* e4; R Visser, 'Losing Touch? Older People and COVID-19' in Pentaris (n 81 above) 197-208.

⁹¹ Such interactional elements (eg the affirmation of emotion, gestures of comfort and expressing condolences) are part of what makes a 'good funeral'- O'Rourke et al (n 55 above) 746.

⁹² A reaction shared, when footage of the incident circulated on social media- 'Funeral Interrupted as Grieving Sons Told to Leave Mother's Side by Crematorium Staff', *The Telegraph* (5 October 2020). Many crematoria issued edicts around physical contact between mourners- 'Coronavirus: Mourners Attending Funeral Services Asked to Avoid Hugging and Hand-Shaking', *The Independent* (19 March 2020).

⁹³ A familiar theme during lockdown more generally, with oppressive policing of 'stay at home' orders in particular- see eg 'UK police chided for overzealous response to coronavirus lockdown', *Reuters*, 30 March 2020 available at [UK police chided for overzealous response to coronavirus lockdown | Reuters](#).

setting if restrictions were followed. Two things suggest high levels of compliance. The first is the public's reaction to the so-called 'Partygate scandal', where funeral restrictions acted as a lightning rod for much of the opprobrium towards then Prime Minister Boris Johnson. As stories emerged of lockdown-breaking gatherings in Downing Street, one dominant counter-narrative was of grieving relatives who dutifully adhered to the rules, with drastically scaled-back burials and cremations.⁹⁴ The second, and perhaps more evidentially compelling, is the comparatively rare media reporting of rule-breaking at funerals and consequent criminal prosecutions.⁹⁵ Other clear and egregious breaches would almost certainly have been reported, given how the pandemic dominated news reports for months across television, radio and digital platforms.

In short, funeral restrictions seemed to be reluctantly accepted, as long as some attendance was possible,⁹⁶ and the rules were not applied with unfeeling bureaucracy⁹⁷ or openly flouted by others.⁹⁸ So what of the underlying reasons? Closer analysis suggests a number of explanations, though one thing is clear: to suggest that the law was the sole architect of these new societal norms overlooks a number of pandemic-centric influences and some discrete factors linked to the nature of the funeral itself.

Compliance theory posits a number of reasons why people obey the law, including legitimacy, moral obligation, heeding legal deterrents and (to a lesser extent) fear of

⁹⁴ See eg 'We Obeyed Covid Rules as our Dad Died. I'm Angry the PM has Dodged a Partygate Reckoning', *The Guardian* (20 May 2022) available at [We obeyed Covid rules as our dad died. I'm angry the PM has dodged a Partygate reckoning | Robbie Hadden | The Guardian](#). Boris Johnson was also heavily criticised by Conservative MP Aaron Bell, who obeyed COVID restrictions at a family funeral- 'Tory Backbencher asks if Boris Johnson "Thinks I'm a Fool" for Following Covid Rules at Grandmother's Funeral', *The Independent* (21 January 2022) available at [Tory backbencher asks if Boris Johnson 'thinks I'm a fool' for following Covid rules at grandmother's funeral | The Independent](#).

⁹⁵ Though isolated incidents did occur, invariably where the number of mourners exceeded the legal limit- see eg 'Covid Scotland: Police were Called to Funerals due to Large Numbers Gathering During Lockdown', *The Scotsman*, 4 October 2021; 'Covid-19: Two £10,000 Fines Issued for 150-Person Funeral', *BBC News Online*, 22 January 2021 available at [Covid-19: Two £10,000 fines for '150-person' funeral - BBC News](#). See also the examples at n 96 below.

⁹⁶ Crematoria that banned mourners at the beginning of the pandemic were severely criticised for doing so- see n 74 above.

⁹⁷ As in the Milton Keynes crematorium, noted above.

⁹⁸ Media reports of public anger over a lack of censure for what apparently clear breaches of coronavirus restrictions included the June 2020 funeral of IRA figure, Bobby Storey, attended by senior members of Sinn Féin who were part of an estimated crowd of 2,000 mourners ('Bobby Storey Funeral: "Different Rules for Different People"- Angry Reaction From People who Buried Loved Ones During Lockdown', *The Newsletter* (31 March 2021) available at [Bobby Storey funeral: 'Different rules for different people' - angry reaction from people who buried loved ones during lockdown | Belfast News Letter](#) and the presence of over 150 members of the travelling community at a funeral in Kettering, Northamptonshire in November 2020 ('COVID-19: MP Claims 'Outrage' at Dropped Charge for 150-Guest Funeral', *BBC News Online*, 23 April 2021 available at [Covid-19: MP claims 'outrage' at dropped charge for 150-guest funeral - BBC News](#)).

punishment.⁹⁹ Cognitive scientists, meanwhile, argue that laws and their enforcement mechanisms are dependent 'on a broad consensus about the moral legitimacy of the rules' and 'what constitutes appropriate behaviour'.¹⁰⁰ There are shades of all this in adherence to lockdown restrictions in general, though it seems that possible criminal sanctions were not the main driver. Instead, compliance was shaped by a range of things, including substantive moral support for the rules, normative obligations to obey the law, social norms and lived environment.¹⁰¹ Stannard refers to 'socially necessary rules' that were 'adhered to as much by consent as by coercion',¹⁰² and posits a model of psychological jurisprudence based not just on the perceived practical legitimacy of the rules but on people's feelings about them and an 'internalized duty'¹⁰³ to behave in a certain manner. In other words, self-interest (not contracting COVID-19), the collective social responsibility to keep others— particularly the elderly and clinically vulnerable— safe (not spreading coronavirus), and ensuring that the NHS could still cope under pressure (safeguarding hospital capacity) elicited a consensual model of compliance.¹⁰⁴

Running through all of this was something else that had not been widely experienced before: a pervasive feeling of social panic (especially during the first months of the pandemic), fueled by the insidious and seemingly uncontrollable nature of this new infective agent.¹⁰⁵ The rapidly embedded 'threat to life' narrative acted as a centripetal force, vindicating emergency measures across the UK while ensuring widespread adherence to them.¹⁰⁶ Other elements were also used advantageously. In obscuring the distinction between public health guidance (where compliance is optional) and legal

⁹⁹ See eg TR Tyler, *Why People Obey the Law* (Princeton, New Jersey: Princeton University Press, 2006); A Licht, 'Social Norms and the Law: Why People Obey the Law' (2008) 4 *Review of Law and Economics* 715.

¹⁰⁰ E Fehr and U Fischbacher, 'Social Norms and Human Cooperation' (2004) 8 *Trends in Cognitive Science* 185, 185.

¹⁰¹ EB Kooistra et al, 'Mitigating Covid-19 in a Nationally Representative UK Sample: Personal Abilities and Obligation to Obey the Law Shape Compliance with Mitigation Measures' (2020) *Amsterdam Law School Research Paper*, (2020-19). See also A Burton et al, 'Understanding Barriers and Facilitators to Compliance with UK Social Distancing Guidelines During the COVID-19 Pandemic: A Qualitative Interview Study' (2022) *Behaviour Change* 1, the authors noting that things like caring responsibilities, fatigue, emotional needs and constantly changing rules were barriers to compliance.

¹⁰² J Stannard, 'Engage, Explain, Encourage, Enforce: Therapeutic Jurisprudence and the Coronavirus Lockdown' (2021) 25 *European Journal of Current Legal Issues* (p 2).

¹⁰³ *Ibid* (p 11).

¹⁰⁴ K Murphy, H Williamson, E Sargeant and M McCarthy, 'Why People Comply with COVID-19 Social Distancing Restrictions: Self-Interest or Duty' (2020) 53 *Australian & New Zealand Journal of Criminology* 477.

¹⁰⁵ CA Harper, LP Satchell, D Fido and RD Latzman, 'Functional Fear Predicts Public Health Compliance in the COVID-19 Pandemic' (2020) 19 *International Journal of Mental Health and Addiction* 1875.

¹⁰⁶ And, in this respect, was probably as good a deterrent against non-compliance as the threat of legal sanction.

prohibitions (which attract criminal sanctions), Hickman has accused the UK government of creating and exploiting a sense of 'normative ambiguity'.¹⁰⁷ This led to a 'powerful sui generis form of emergency regulatory intervention'¹⁰⁸ that drove compliance by leading people to believe that the legal requirements– and consequent limits on personal freedoms– were greater than they actually were.¹⁰⁹ Examples have already been noted in the funeral sphere, from social distancing in graveyards and cemeteries, to refraining from hugging where confusion between the advisory and the mandatory helped segregate different households.

Finally, there are several funeral-specific factors that would have prompted compliance with the restrictions. First, funerals are carefully planned and sober affairs and, by their nature, are less open to breaches than unplanned parties or social gatherings. Secondly, the presence of 'middle' men and women– ie funeral directors and celebrants/officiants, as well as cemetery and crematorium managers– was also pivotal in advising families what was permitted, and discouraging potential rule-breaking.¹¹⁰ Thirdly, the age profile of the dead and those mourning them was probably a factor: while COVID was fairly indiscriminate, mortality rates were higher in the over 70s,¹¹¹ and their partners, siblings and close friends (who were likely of a similar age profile) would have been particularly careful not to allow such funerals to be sites of virus spread. And, last but not least, is the existence of a different type of internalised duty (to borrow Stannard's term) when burying or cremating the dead. Within the complex of 'aesthetic and emotional services'¹¹² that make up the funeral, there is an overwhelming sense of bereaved

¹⁰⁷ T Hickman, 'The Use and Misuse of Guidance during the UK's Coronavirus Lockdown' (September 2020), available at SSRN: <https://ssrn.com/abstract=3686857> or <http://dx.doi.org/10.2139/ssrn.3686857>.

¹⁰⁸ *Ibid*, p 2.

¹⁰⁹ Empirical studies appear to confirm this- see e.g. N Finch, S Halliday, J Tomlinson, J Meers and M Wilberforce 'Undermining Loyalty to Legality? An Empirical Analysis of Perceptions of 'Lockdown' Law and Guidance During COVID-19' (2022) 85 *MLR* 1419. Similar criticisms have been levied at governments elsewhere- see A Eustace, S Hamill and A Mulligan, *Public Health Law During the COVID-19 Pandemic in Ireland*, Public Policy Report of the COVID-19 LEGAL OBSERVATORY School of Law, Trinity College Dublin (August 2021) and available at <https://www.tcd.ie/law/tricon/covidobservatory/>.

¹¹⁰ Funeral directors were instrumental here, and risked fines where clear and blatant breaches of the rules occurred. One was fined £10,000 for not managing the event correctly where 150 people attended a funeral when the maximum number was 30- see the BBC News Online report at n 95 above.

¹¹¹ RE Jordan, P Adab and KK Cheng, 'Covid-19: risk factors for severe disease and death' (2020) *Bmj* 368.

¹¹² Knopke (n 65 above) 435.

families 'doing the right thing'. For COVID-era funerals, this meant obeying the restrictions and avoiding the resultant shame and social stigma had families acted otherwise.¹¹³

4. THE HUMAN COST OF LOCKDOWN FUNERALS: EMERGING EVIDENCE OF A NEW PUBLIC HEALTH CRISIS

As the pandemic ebbed and flowed, the rules around funerals were tweaked in tandem with the sequential relaxation and reinstatement of lockdown restrictions, before being largely removed through the spring and summer of 2021.¹¹⁴ Yet, limited attendance and social distancing– the two things that catapulted us into a radically different type of dispositive ritual as the first wave of the pandemic gathered pace in March 2020– remained firmly in place for long periods, as governments continued the delicate balancing act of allowing the living to mourn their dead while limiting the spread of COVID-19.

With a UK coronavirus death toll approaching 230,000 at the time of writing, and higher numbers of non-COVID deaths during the pandemic, millions of people endured burials and cremations where the usual rituals and social interactions were stripped away. So, returning to the earlier argument that fundamentally altered funeral arrangements were an overreach on public health grounds, what effect did the restrictions have on the mental health and emotional well-being of those bereaved during critical phases of the pandemic?

Some of the literature is still in its infancy, though discrete pockets of evidence are steadily emerging from short-term and longitudinal studies. At the outset, we must acknowledge that looking at the impact of funerals in isolation is simply not possible. The pandemic was

¹¹³ J Riley, 'The Losses and Affordances of Pandemic Restrictions on Funerals', *15th International Conference on Death, Dying and Disposal* (Manchester Metropolitan University, 2021). Responding to a post-presentation question from the current author on families being conscious of legal rules around funerals, Riley suggested that bigger concerns were safety (not wanting to transmit coronavirus) and a sense of a funeral being an 'awful place [to be] told off' for breaking the rules. (Note of conversation on file with author.) Riley's paper was based on findings from an ESRC funded project involving herself and other researchers at the University of Aberdeen- see [Care in Funerals | The School of Divinity, History, Philosophy & Art History | The University of Aberdeen \(abdn.ac.uk\)](https://www.abdn.ac.uk/care-in-funerals/).

¹¹⁴ While coronavirus restrictions were lifted in England, Scotland and Wales in July 2021 and in Northern Ireland in August 2021, some specific rules around funerals had already been eased. For example, numerical limits for funerals were lifted in England in May 2021, while Northern Ireland moved- from April 2021- to permitted numbers based on a risk assessment of the relevant building or premises.

an emotionally traumatic event that transformed people's lives, careers, education, familial and social interactions. Likewise, it is difficult to separate the impact of funeral restrictions from distressing experiences of illness and loss due to other aspects of pandemic management- for instance, people who died after becoming infected with coronavirus in formal health and care provision settings, and the likelihood of the restrictions compounding this.¹¹⁵ However, the emotional trauma caused by lockdown funerals is documented in the literature as a grim legacy of the pandemic.

The initial coronavirus response obliterated long-standing social conventions around dying, this final exit from the living world that is the inevitable precursor to the funeral. Just like the idealised narrative of the good funeral, there is the idealised narrative of the so-called 'good death', where someone passes away peacefully and surrounded by family.¹¹⁶ However, COVID-19 fatalities and other deaths in hospitals or care homes during the pandemic 'embod[ied] the attributes of a 'bad death', making them particularly devastating for bereaved kin',¹¹⁷ as visiting was banned or severely restricted to reduce the threat of virus spread. Dying alone¹¹⁸ thus became another public health imperative. In these circumstances, some sort of redemptive funeral ritual was needed, to compensate for letting the deceased down at the end of life.¹¹⁹ Sadly, the reality was very different as 'restricted funeral practices caused further upset' to grieving relatives.¹²⁰ Not having wider family and friends present at the funeral, travelling to and from funerals alone, maintaining physical distance throughout, and the 'fear of further contagion and...specter of further loss'¹²¹ if coronavirus infections occurred at the burial or

¹¹⁵ These additional stressors are recognised in the relevant literature. For specific examples, see TR Jordan, AJ Wotring, CA McAfee, M Polavarapu, D Cegelka, VR Wagner-Greene and Z Hamdan, 'The COVID-19 Pandemic has Changed Dying and Grief: Will There Be a Surge of Complicated Grief?' (2022) 46 *Death Studies* 84; RA Neimeyer and SA Lee, 'Circumstances of the Death and Associated Risk Factors for Severity and Impairment of COVID-19 Grief' (2022) 46 *Death Studies* 34.

¹¹⁶ See eg B Heart, P Sainsbury and S Short, 'Whose Dying: A Sociological Critique of the "Good Death"' (1998) 3 *Mortality* 65.

¹¹⁷ D Carr, K Boerner and S Moorman, 'Bereavement in the Time of Coronavirus: Unprecedented Challenges Demand Novel Interventions' (2020) 32 *Journal of Aging and Social Policy* 425, 425.

¹¹⁸ In the sense of having no family (or friends) physically present.

¹¹⁹ Torrens-Burton et al (n 77 above).

¹²⁰ Ibid, 9.

¹²¹ Neimeyer and Lee (n 115 above) 39.

cremation all contributed to a sense of not giving the deceased the funeral that they deserved.¹²²

The longer-term impact on the grieving process is also becoming clear. Funerals simultaneously normalise and facilitate this process;¹²³ they create a 'sense of being connected to a large community',¹²⁴ and providing space to celebrate the individual's life. As such they are one-off, immensely therapeutic events with a strong psycho-social element, and impossible to replicate. All of this contrasts sharply with lockdown funerals, and the absence of the traditional wakes and funeral gatherings that bookend this particular dispositive ritual.¹²⁵ Experts agree that COVID-driven restrictions have triggered an increase in complicated grief disorders, where intense feelings of loss are prolonged and impair the individual's ability to function.¹²⁶ Enforced isolation and separation are dominant themes. Not only were the living isolated from the dying at the point of death; they were isolated from close relatives at the funeral, and deprived of the basic human need to interact physically with each other- and a community of mourners- following the deceased's passing.¹²⁷ Beyond the funeral itself, lockdown restrictions reinforced feelings of loneliness and social isolation, and were akin to a 'second bereavement'.¹²⁸ Adhering to the rules meant that the bereaved were sequestered away, shut off from the outside world and from their usual support networks (both familial and social). Grieving alone, while coping with a heightened sense of anxiety around the pandemic and constant

¹²² Torrens-Burton et al (n 77 above) 9. Giving the deceased the 'send-off' they deserved is important for the bereaved's sense of 'funeral satisfaction'- see J Rugg and S Jones, *Funeral Experts by Experience: What Matters to Them* (2019) Research Report, University of York, UK.

¹²³ Giblin and Hug (n 87 above) 11.

¹²⁴ Wouters (n 71 above) 2.

¹²⁵ Wakes and funerals gatherings were prohibited by restrictions on gatherings, rules on non-mixing of households and the closure of hospitality for long periods.

¹²⁶ See eg M Stroebe and H Schut, 'Bereavement in Times of COVID-19: A Review and Theoretical Framework' (2021) 82 *OMEGA—Journal of Death and Dying* 500; S Albuquerque, AM Teixeira, JC Rocha, COVID-19 AND Disenfranchised Grief' (2021) 12 *Frontiers in Psychiatry* 638874; F Diolaiuti, D Marazziti, F Beatino, F Mucci and A Pozza, 'Impact and Consequences of COVID-19 Pandemic on Complicated Grief and Persistent Complicated Bereavement Disorder' (2021) 300 *Psychiatry Research* 113916; and K Doka, 'Grief in the COVID-19 Pandemic' in Pentaris (n 87) 29, pp 30-31. See also A Torrens-Burton et al (n 77 above); Neimeyer and Lee (n 115 above); Jordan et al (n 115 above); and the various other sources cited immediately below.

¹²⁷ Substitute networks through eg live-streaming of funerals and virtual wakes played an important role. Yet some users found these to be inauthentic and lacking in emotional connectivity; as feeling 'voyeuristic'; and being problematic due to technology glitches- D Rawlings, L Miller-Lewis and Jennifer Tieman, 'Impact of the COVID-19 Pandemic on Funerals: Experiences of Participants in the 2020 Dying2Learn Massive Open Online Course' (2022) *OMEGA—Journal of Death and Dying*, <https://doi.org/10.1177/00302228221075283>.

¹²⁸ C Pearce, JR Honey, R Lovick et al, "'A Silent Epidemic of Grief': A Survey of Bereavement Care Provision in the UK and Ireland During the COVID-19 Pandemic' (2021) 11 *BMJ Open* e046872.

daily media coverage made 'grief and trauma [feel] inescapable',¹²⁹ exacerbating psychological problems caused by the deceased's passing and subsequent funeral.

Of course, the evidence that is emerging merits some measure of caution, given that more attention is likely to focus on negative experiences of lockdown funerals.¹³⁰ However, several positives have been identified. For some, any form of ceremony was appreciated because 'it was the best way possible at that time'.¹³¹ Small(er) gatherings were viewed as more 'intimate' and 'personal' events,¹³² that were less pressurised.¹³³ Meanwhile, live-streaming fostered connectivity by enabling those who could not be physically present to experience the funeral (albeit in an altered medium).¹³⁴ What mattered was creating a meaningful occasion, not large-scale funeral participation.¹³⁵ Yet, the bulk of the studies referenced here depict something very different. For many people bereaved during the pandemic, normal grief experiences were disrupted by restrictions on funerals alongside the 'multiple ambiguous losses embedded in restrictions to everyday life'.¹³⁶ The result of this combination of law and government guidance is being described as a different type of public health crisis for large parts of the population, linked to complicated grief.¹³⁷ And the effects, for those individual, will continue to be felt for a long time.

5. CONCLUSION

The usual rituals, customs and interactions that occur in the context of end of life and after a death are another casualty of the virus.¹³⁸

¹²⁹ Torrens-Burton et al (n 77 above) 9-10.

¹³⁰ And surveys are more likely to recruit participants with negative experiences.

¹³¹ HB Mitima-Verloop, TT Mooren, ME Kritikou and PA Boelen, 'Restricted Mourning: Impact of the COVID-19 Pandemic on Funeral Services, Grief Rituals, and Prolonged Grief Symptoms' (2022) 13 *Frontiers in Psychiatry* 1103.

¹³² LSE Anthropology (n 71above) p 7.

¹³³ They relieved the pressure of having to host, or perform for, lots of people- Riley (n 113 above).

¹³⁴ Pitsillides and Wallace (n 81 above), though not all virtual experiences were positive- see n 127 above.

¹³⁵ A Burrell and LE Selman, 'How Do Funeral Practices Impact Bereaved Relatives' Mental Health, Grief and Bereavement: A Mixed Methods Review with Implications for COVID-19' (2022) 85 *OMEGA- Journal of Death and Dying* 345.

¹³⁶ H Kaur, AK Lillie and C Wagstaff, 'Prognosticating Covid Therapeutic Responses: Ambiguous Loss and Disenfranchised Grief' (2022) *Frontiers in Public Health*, p 3.

¹³⁷ Pearce et al (n 128 above). This was predicted early in the pandemic- see eg SS Mortazavi, S Assari, A Alimohamadi, M Rafiee and M Shati, 'Fear, Loss, Social Isolation, and Incomplete Grief Due to COVID-19: A Recipe for a Psychiatric Pandemic' (2020) 11(3.Covid19) *Basic and Clinical Neuroscience* 225.

¹³⁸ S Albuquerque, AM Teixeira and JC Rocha, 'COVID-19 AND Disenfranchised Grief' (2021) *Frontiers in Psychiatry* 1, 2.

As part of the sweeping changes imposed in early 2020, COVID-19 necessitated a temporary deprivation of certain rights surrounding death and mourning. When we think of the embedded narrative of the recently deceased as potential contaminants, invoking public health measures to mitigate disease spread in dealing with the dead is nothing new. However, the nature, scope and reach of the restrictions was unprecedented,¹³⁹ and used to target a very different threat in the funeral context: that of the living congregating around the corpse.

COVID-era funerals are prime examples of what Chua and Lee describe as 'governing through contagion'¹⁴⁰ with an amalgam of legal controls and public health directives deployed to ensure that private citizens did not become potentially lethal infective agents. As with most pandemic-induced measures, one could argue that the public health outcomes legitimised the means when focusing solely on virus transmission. With funerals, however, the human consequences stretch far beyond coronavirus risks. For the millions bereaved during the pandemic, grief is even more traumatic and unresolved when set against the backdrop of social isolation and the lived experience of funerals where the usual participatory elements, communal rites and support mechanisms were missing. There is a strong argument for saying that the government got it wrong here, and that its focus on protecting the population against COVID-19 was overly narrow because it ignored the wider and equally important issue of mental health.¹⁴¹ To date, most of the studies carried out on funerals support this point.

By drawing on research from other disciplines to gain a deep and informed understanding of the wider impact of the restrictions, this article has highlighted the dynamic effects of law and public health protocols on a highly symbolic social ritual. Like so many of the rules that were rushed through during the pandemic, the longer-term

¹³⁹ Probably one of the most over-used words of the pandemic.

¹⁴⁰ L Chua and JG Lee, 'Governing Through Contagion' in VV Ramraj (ed), *Covid-19 in Asia: Law and Policy Contexts* (New York: OUP, 2021) 116-132.

¹⁴¹ Especially at the critical phases of the pandemic when the restrictions were harshest, though regrets were later expressed about this- 'Banning Close Relatives from Funerals during Lockdown was Wrong, Admits Matt Hancock', *The Telegraph* (10 July 2020) (available at <https://www.telegraph.co.uk/news/2020/07/10/banning-close-relatives-funerals-lockdown-wrong-admits-matt/>).

effects on individual and collective experiences of bereavement, and their consequent emotional toll, are only being understood with the passage of time. Reflecting on these findings not only enables us to identify the strengths and weakness of the coronavirus measures. It also alerts governments to the need to frame better solutions when the next pandemic or similarly catastrophic event strikes– solutions that are not just short-term, emergency management processes, but drafted with potentially adverse outcomes in mind.

Finally, there is the question of lasting effects on the funeral itself, and whether pre-pandemic levels of attendance and behavioural norms will be restored post-pandemic. It may be that this final rite of passage has been permanently transformed, and that coronavirus has simply accelerated what some sociologists had already identified as the diversification of funerals norms alongside the 'privatisation' of contemporary funerals as smaller, invite-only events.¹⁴² Yet, such claims may be premature. The 'traditional' funeral,¹⁴³ with its public and communal dimensions, its sense of bringing people together to emote and to offer support at a time of profound loss, is embedded in our socio-cultural DNA.¹⁴⁴ Short-term reversals are not accurate bellwethers of long-term trends, especially in a pandemic where changes were imposed by the state and not driven by personal choice. The funeral ritual will remain, even if its form alters. Only time will reveal whether the final rite of passage, as a collective experience with a physically present and large(r) supporting cast, is something that people re-embrace on emerging from living and dying in the shadow of coronavirus.

¹⁴² K Woodthorpe, H Rumble, A Corden, J Birrell, H Schut, M Stroebe, C Newsom and Y Smith, "“My Memories of the Time We Had Together Are More Important”: Direct Cremation and the Privatisation of UK Funerals (2022) 56 *Sociology* 556.

¹⁴³ Which is an emotionally laden term in itself, and infers a certain resistance to change.

¹⁴⁴ And especially so, for specific religions and cultures- and for certain generations of people.