

Cemetery Law & Eminent Domain

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General Overview

- Cemeteries and burial places may be taken by eminent domain
- There are a variety of kinds of burial places, which may be governed by different laws
- Multiple parties may have compensable interests
 - family typically has right to determine where remains shall be reburied
 - owner of the fee simple interest in the cemetery has compensable interest in the property taken
- Disinterment requires a “disinterment permit” and supervision of a funeral director

Wash. Rev. Code § 68.60.040

Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW.

Wash. Rev. Code § 68.60.055

(2) Any person engaged in ground disturbing activity and who encounters or discovers skeletal human remains in or on the ground shall:

(a) Immediately cease any activity which may cause further disturbance;

(b) Make a reasonable effort to protect the area from further disturbance;

(c) Report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible; and

(d) Be held harmless from criminal and civil liability arising under the provisions of this section provided the following criteria are met:

(i) The finding of the remains was based on inadvertent discovery;

(ii) The requirements of the subsection are otherwise met; and

(iii) The person is otherwise in compliance with applicable law.

An English Churchyard



18th Century English Law

Common Law

- Owner of real property where person died (“householder”) had duty to decently cover and take remains to parish church.
- Church of England had duty to inter without expense (provided person in good standing w/Church at death)
- Next of kin had no obligations or rights

Ecclesiastical Law

- Church took actual, corporeal possession of human remains.
- Church held remains in trust until Resurrection.
- Church decided all controversies involving the possession or the use of burial places.
- Church established rules regarding who should be allowed to lie in consecrated earth-and, in fact, who should be allowed to be interred at all

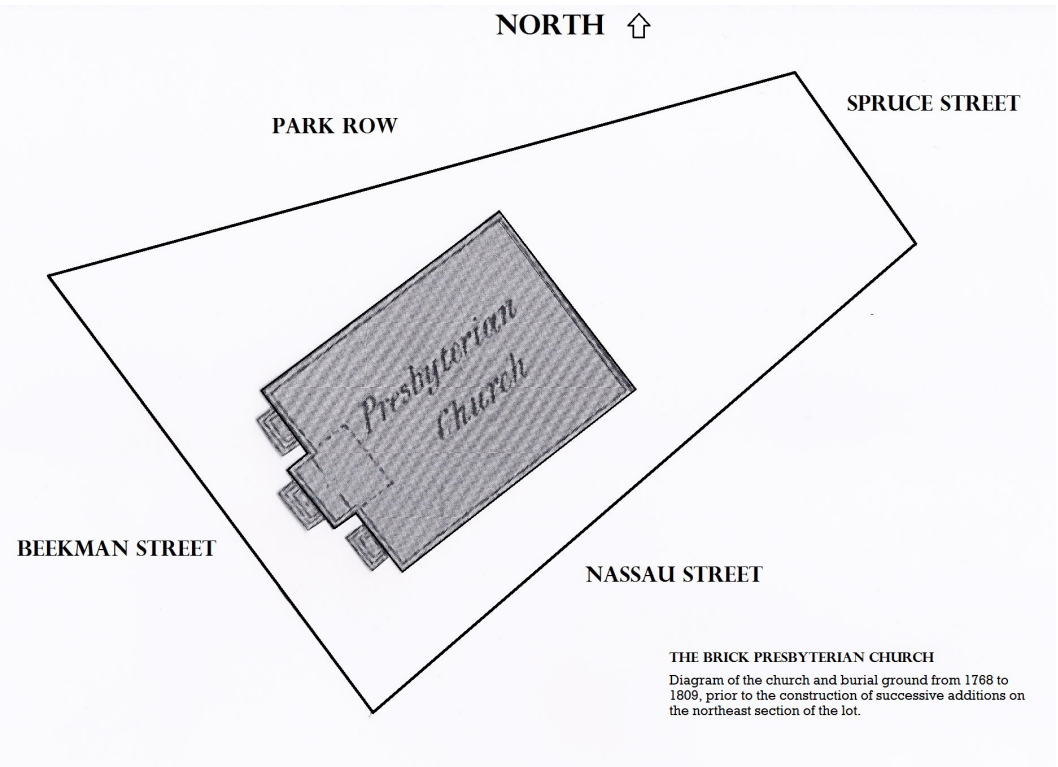
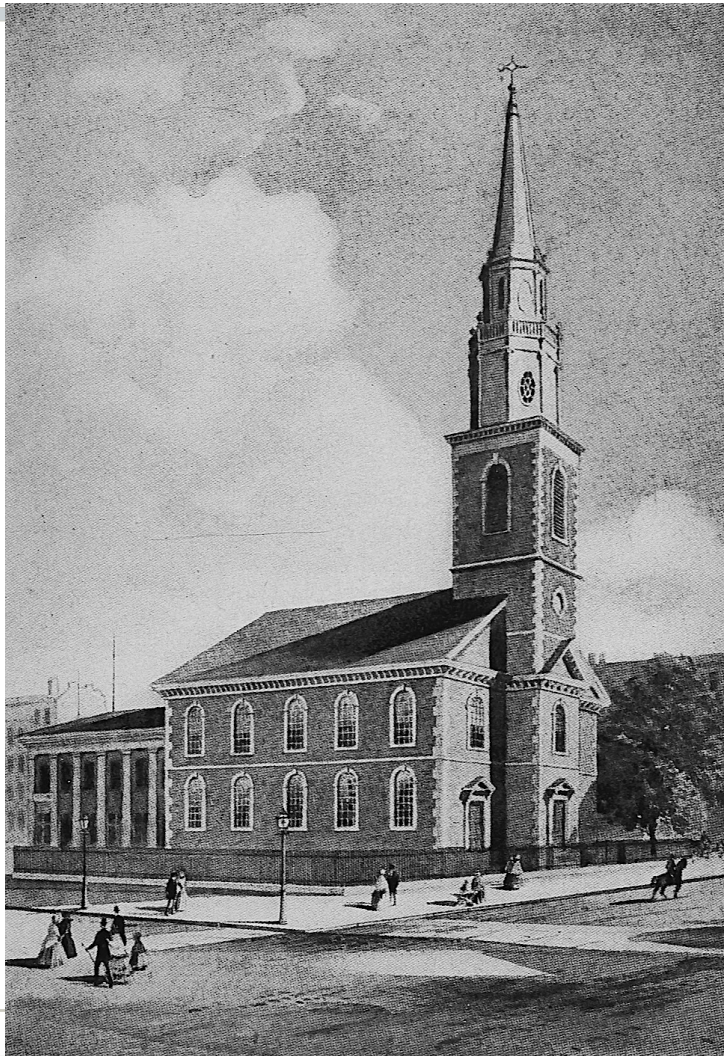
Early American Burying Places



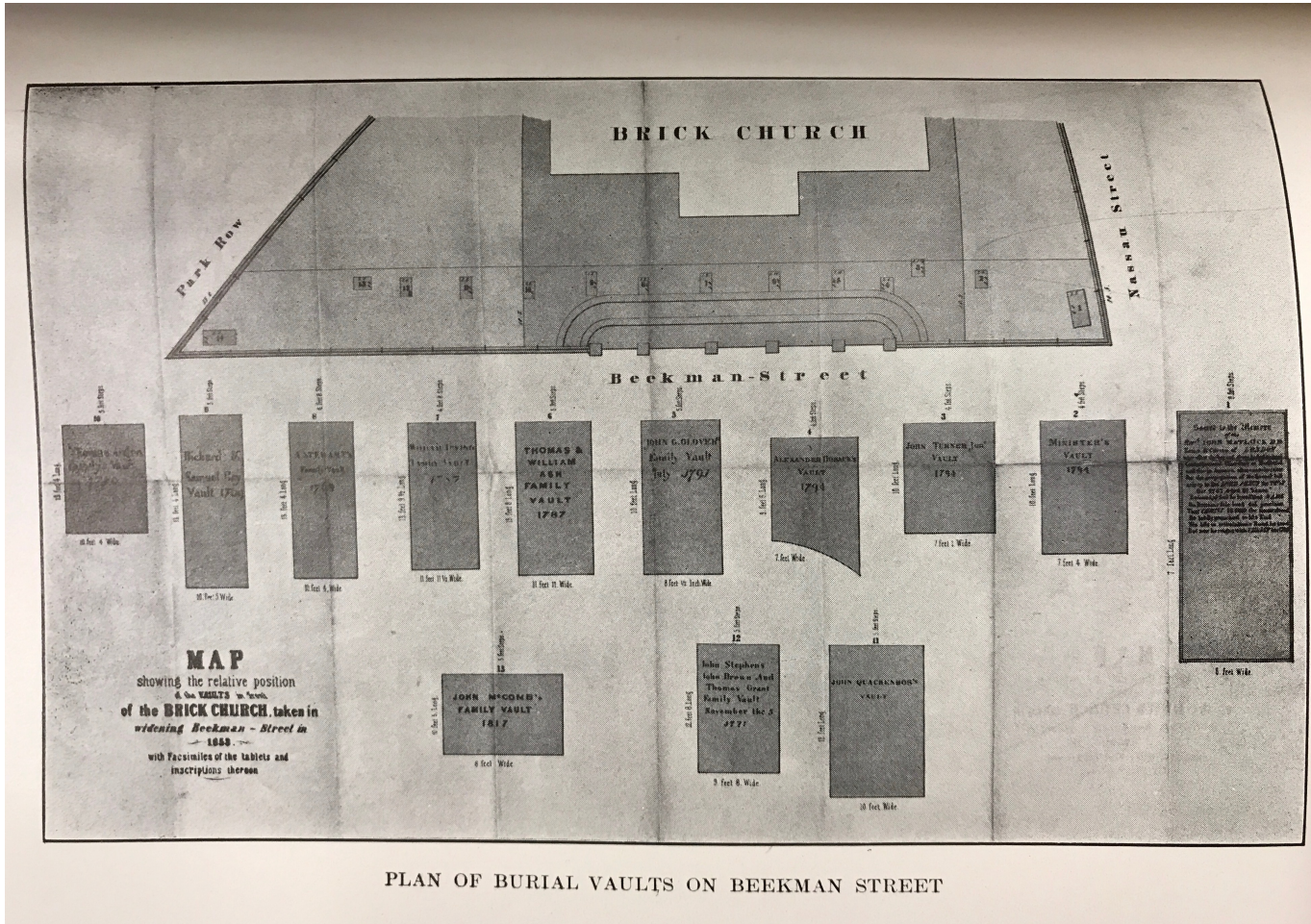
Types of Burial Places in United States (Ownership)

- Religious organizations
- Individual(s) (family graveyards; graves on private land)
- Non-profit corporations
- Fraternal organizations
- For-profit corporations
- Municipal or state government
- Federal government
- Native American burial places (specific federal and state laws)

Brick Presbyterian Church



Brick Presbyterian Church



Conclusions of *The Ruggles Report* (1856)

1. That neither a corpse, nor its burial, is legally subject, in any way, to ecclesiastical cognizance, nor to sacerdotal power of any kind.
2. **That the right to bury a corpse and to preserve its remains, is a legal right, which the courts of law will recognize and protect.**
3. **That such right, in the absence of any testamentary disposition, belongs exclusively to the next of kin.**
4. **That the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture, and to change it at pleasure.**
5. That if the place of burial be taken for public use, the next of kin may claim to be indemnified for the expense of removing and suitably re-interring their remains.

Legal & Property Rights in a Grave

1. **Right of the dead** to decent burial and undisturbed repose (legal right) [may be taken by eminent domain]
2. **Right of Sepulture** (attaches to remains) (legal right)
 - Before interment, right to control human remains and determine place & manner of disposition.
 - After interment, right to protect human remains from desecration & right to determine place of re-interment
3. **Right of Interment** (attaches to burial places) (property right)
 - Before interment, right to inter remains subject to cemetery rules.
 - After interment, right to protect human remains and grave subject to cemetery rules.
4. **Owner of Burial Place** (property right) [compensable right]