

The repatriation of human remains – problem or opportunity?

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The editor's question "*who do human skeletons belong to?*" (*Antiquity* 78: 5) can be answered positively, but it must be answered in context. The question was prompted by reports from the *Working Group on Human Remains* established by the British government's Department for Culture, Media and Sport (DCMS) in 2001 to review the current legal status of human remains held in all publicly funded museums and galleries, and to consider and review submissions on the issue of the return of non-UK human remains to their descendent communities (DCMS 2003: 1-8). In effect, the report was primarily concerned with human remains from Indigenous communities, using a definition which follows the UN Draft Declaration on the Rights of Indigenous Peoples as "*distinct cultural groups having a historical continuity with pre-colonial societies that developed on their territories*" (DCMS 2003:7). Consequently, the report deals primarily with the Indigenous communities of Australia, New Zealand and North America.

The establishment of the Working Group followed recommendations in 2000 by the Select Committee on Culture, Media and Sport. Its existence was also facilitated by a meeting between John Howard, the Australian Prime Minister, and Tony Blair in 2000 in which it was agreed that increased efforts were needed to assist repatriation efforts by Australian Indigenous communities (DCMS 2003; Howard 2000). The key findings of the report (DCMS 2003:161f) recommend that the law governing national museums be changed to allow the repatriation of human remains, that all museums put in place transparent procedures for responding to repatriation claims, and that a government licensing authority be established to monitor these procedures and the general handling, treatment and return of human remains. The report also offers a sequence of recommendations and guidelines for consultation and dialogue between all parties, and suggests that DCMS, using the existing Spoliation Advisory Panel as a model, also set up a Human Remains Advisory Panel. Significantly, the report does not detail specific criteria for establishing the legitimacy of claims, but does offer guidelines for establishing dialogue for understanding the cultural legitimacy of Indigenous claims. It takes a step toward acknowledging the legitimacy of claims of descent made outside of the temporal and genealogical criteria that often underpin British and wider Western conceptualisation of kinship and descent. It does, unfortunately and somewhat in contradiction to the tone of cultural sensitivity that the report works hard to achieve, side-step the issue of associated funerary objects.

Predictably, the report has been met with a mixed response. The Australian Government, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the World Archaeological Congress (WAC) have all responded warmly (Howard 2003; ATSIC 2003; WAC 2003). On

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the other hand some curators of large English National collections have been reported in the press as stating that the recommendations of the report are ‘unworkable’, are ‘over bureaucratic’ and that they threaten the integrity of scientific collections and scientific research on human remains (for instance, Anon 2003; Bailey 2003; McKie 2003; Appleton 2003; Jenkins 2003). Many of these cite the criticism of Neil Chalmers, Director of the Natural History Museum and a member of the Working Group, whose ‘*statement of dissent*’ within the report outlines his concerns that the report is overly weighted in favour of Indigenous concerns and has paid insufficient attention to the ‘*public benefit*’ of research (DCMS 2003:177).

Much of this rehearses the dire warnings about the ‘end of science’ and the assault on the ‘academic freedom’ of archaeological research that were made in the Australian, New Zealand and North American media and archaeological literature in the 1980s and 1990s. These criticisms, underpinned as they so often are by a discourse laden with assumptions about the unassailable ‘truths’, ‘objectivity’, ‘rights’ and ‘universal relevance’ of science, including archaeological science, miss the point. Moreover, they achieve very little in the long run. In the USA, a ferocious and lengthy legal and cultural debate over access claims to the Kennewick human remains has been underway since the remains were found in 1996. The latest legal decision (2004) has upheld the access claims by a group of eight archaeologists/anthropologists who originally filed a lawsuit in 1996 to prevent the remains being reburied by the Confederated Tribes of the Umatilla Reservation under provisions of the *Native Graves Protection and Repatriation Act* (NAGPRA), 1990 (PL101-601). Although this strategic utilisation of the discourse has so far achieved the retention of the Kennewick human remains, any victory for ‘science’ in the end will be Pyrrhic. This is because adherence to such a narrow discourse will ultimately result in a significant lost opportunity. The Working Group’s report, should it ultimately lead to the development in Britain of procedures that facilitate the return of human remains to their communities, offers both a chance to realise maturity and a significant opportunity for British archaeology.

My intention here is not to review the Working Group’s report in detail, but rather to argue why it represents *a first step* to both maturation and opportunities for British archaeology, and research on human remains more generally. In discussing the first issue, it is necessary to review and rehearse some of the arguments concerning the importance and significance of repatriation. This is necessary to provide a background for the second issue and to reveal the extent of the opportunity that is being offered to British archaeology.

The politics of cultural identity

Debates over the retention of Indigenous human remains have had a major impact on archaeological practice in Australia, New Zealand, Canada and the US, and each of these countries has developed practical responses to them. For instance, in Australia codes of ethics (AAA 1991; Museums Australia 1999) have been put in place that recognise Indigenous custodial rights and details consultation and consent procedures for research, while in the US a suite of State and Federal laws governing repatriation are in place (for instance, NAGPRA 1990). Until now, these debates and responses have been somewhat peripheral to archaeology in Britain: Britain is at least 15 to 20 years behind these countries in dealing with and coming to terms with these issues in practical terms. One of the oft cited reasons for why English national museums at least have not engaged directly in repatriation processes and debates

(although I note that some regional and Scottish museums have – see DCMS 2003:3, 15-6) is that the current law forbids national museums from disposing of objects from their collections. However, as the Working Group's report observes (DCMS 2003:94), the legal position is actually unclear and that these museums can dispose of objects if they are deemed to be 'unfit to be retained'.

The Working Group's report means that repatriation issues cannot now be ignored, and the range of ethical debates that it throws up must be faced, in practical terms, by British archaeology. This highlights an interesting paradox. British archaeology was, in the 1980s and 1990s, one of the leaders in the development of post-processual theory. In addition, via the founding of the World Archaeological Congress in Britain, British archaeology became internationally perceived as engaged in recognising the political nature of archaeological theory and practice. As those involved in these events acknowledge, the criticism of Indigenous peoples, and particularly those criticisms centred on the retention of Indigenous human remains, were integral in initiating these debates and events (see Ucko 1987; Hodder 1992; Shanks & Tilley 1987). Consequently the myth of 'objectivity' that dominates much of archaeological theory was called into question. While post-processual theory has itself attracted criticism, it did bring a degree of maturity to British and Western archaeology more generally. It has helped to close the theoretical gap between archaeology and the rest of the humanities and social sciences by importing post-modern and other critiques into the discipline, and helped to stimulate debate about the political, theory-laden and subjective nature of the discipline. Unfortunately, its facilitation of the latter, as I have argued elsewhere (Smith 1994, in press), was overly abstract and consequently obscured the ways in which 'politics' was to be 'done' in archaeology.

This abstract theoretical response contrasts with the very practical set of responses that have been implemented in many post-colonial countries. The contrast is marked: the implications of the range of practical, and often politicised, responses to Indigenous concerns have yet to be adequately theorised and their consequences for the development of archaeological theory have yet to be addressed (Smith in press). This is not to say that post-processual theory necessarily holds the answers here, but rather to highlight the so far contradictory collective response of British archaeology to the issue: that it has facilitated the recognition of archaeological politics, but has yet to deal with the practical issues that must flow from this recognition.

So, what are the political issues that must be considered here? Some commentators on repatriation debates have characterised the debates as one of science vs. religion (Meighan 1984, 1992; Mulvaney 1991; Dawkins 1998). This characterisation misses the point. The issues are political ones that revolve around the politics of identity and recognition – in which the disciplinary and individual identity of archaeologists and other scientists are as much at stake as those of Indigenous peoples. However, what often works to obfuscate the political nature of this debate are the cultural differences that underlie it. It is important to acknowledge and understand these differences before examining the politics of the issue in more detail.

While there is a wide range of Indigenous cultural, philosophical and religious beliefs and values systems about the nature and significance of human remains, in simple terms, many Indigenous people consider that the idea that human remains should be stored in museums

to be odds with their belief systems. As Parker Pearson observes '*British attitudes to dead bodies are ambivalent, contradictory and volatile*' (1999:183), nonetheless some synergy exists between British and some Indigenous attitudes to human remains. Legislation in Britain exists to prevent the unauthorised excavation of Christian remains, drafted in the wake of the activities of the 'resurrection men' excavating the newly dead for anatomical research and teaching (Parker Pearson 1999:181; see also Richardson 1987). Despite this apparent similarity, however, two significant cultural issues tend to inflame the political nature of repatriation and reburial debate, and to get in the way of accepting the legitimacy of Indigenous claims over their dead.

The first of these is the issue of 'time'. In British culture, and Western cultures more generally, things that are 'old' are seen as intrinsically valuable, mysterious and wondrous – they are the proper objects of archaeological research. Human remains from the distant past are objects of curiosity, while human remains from the recent past elicit an entirely different emotional response. As Swain (2002:95) notes, the retention of dead children's organs by Alder Hey Hospital attracted major public condemnation, and yet the display by the Museum of London in their 'London Bodies' exhibition of the skeletal remains of a medieval woman and infant, who died in childbirth, generally elicited only curiosity from the viewing public. Swain draws attention to an important question: at what point do the remains of a human being become viewed in the West as primarily data? At what point in our range of emotional responses to human remains does a sense of, or a concern for, our human mortality recede, and become dominated by curiosity? What is often difficult for archaeologists and other researchers on human remains to understand is that for many Indigenous people the issue of depth of time simply does not apply, and the age of the remains does not necessarily temper the intensity of the ancestral link.

The other issue is that of genealogical descent. For many in Western cultures it is often necessary to trace some form of direct biological link to a population or individual to show kinship. Why this is may in part rest on the degree to which colonial administrations utilised 'race' and other biological concepts of identity to divide and classify people, and/or the degree to which biological links have been emphasised and identified as important in evolutionary science and biological classification, often in opposition to Western religious claims. Whatever the reasons it is a culturally important consideration in many Western cultures. In some, but not all, Indigenous cultures identifying direct biological linkages may be irrelevant, and entirely different criteria are used for identifying ancestral/descendent links. The emphasis placed in the West on issues of 'time' and 'genealogy' has often, as currently in the Kennewick case, impeded negotiations and understandings between archaeologists and Indigenous peoples. The importance of the Working Group's report is that it is moving toward recognising these differences. The report does not argue, and neither do I, that we must incorporate Indigenous cultural values and adopt them for ourselves, but rather that we must accept firstly that difference exists, and secondly, that the difference is *legitimate*. The recognition and acceptance of the legitimacy of Aboriginal cultural values lies behind, for instance, the return by Australian archaeologists of the c. 24 000-year-old Mungo woman's remains in 1992 (Smith & Burke 2003).

Responses to the Working Group's report in the British media to date have worried that Indigenous cultural values will be given primacy over scientific values. Various commentators

have noted that repatriation should occur in the cases of 'named individuals', but that remains from the 'deep past' should not be returned (Stringer cited in Fray 2003; Jenkins 2003). Others have asserted that the proposed break-up of collections represents a '*loss to science* [that] *would be incalculable*' (Foley quoted in McKie 2003:News14). It needs to be pointed out though that a significant number of remains in collections are in fact only studied for the first time *because* of the repatriation process (see for instance, Rose *et al.* 1996).

So why is it important that scientific values open negotiation with Indigenous values, and why should Indigenous values be privileged? For many Indigenous communities the control of ancestral human remains is not only about defending their belief systems, but is embedded in wider struggles to control identity. It has to be understood that the collection of human remains and their study has, historically, often gone hand in hand with the colonial domination and reclassification of Indigenous people as 'colonised'. The nineteenth and twentieth century collection of human remains was, as has been well documented (see for instance, Trigger 1980, 1989; Attwood 1989; McGurie 1992), part of racist research that labelled Indigenous peoples as 'primitives', objectified them as natural history specimens, and helped to justify and underpin a series of genocidal acts and government policies. Thus control over identity and material elements, including 'the body', that are used to symbolize that identity are important in Indigenous attempts to assert self-determination. In Western society, in contrast, archaeological and other expert pronouncements on Indigenous identity and culture are given authority. It thus becomes crucial for Indigenous peoples to control how they are understood and viewed if they are to have direct participation in wider negotiations and debates with governments and their bureaucracies over the legitimacy of their claims to sovereignty, land and self-determination.

The significance of identity politics to this debate is revealed in some of the old mythologies that have been raised in the media in response to the Working Group's report. For instance, Foley (cited in McKie 2003:News14), Director of the Leverhulme Centre for Human Evolutionary Studies, which contains an extensive collection of human remains within the Duckworth Laboratory, rehearses the old myth that the Tasmanian Aboriginal people no longer exist – thereby giving unintentional 'scientific' authority to the denial of the existence of a whole community! Stringer, while acknowledging the racism of the nineteenth century argues that, as he was not responsible for it, the collections should not be broken up (quoted in Fray 2003). Appleton (2003) argues that Indigenous peoples also benefit from science and should themselves train as archaeologists and anthropologists so that they can understand the benefits of the research. What these arguments misunderstand is the nature of the identity politics involved and the dynamics of colonial history. Stringer, despite his non-involvement in nineteenth-century practices, still benefits from these practices in a number of ways, while the idea that Indigenous peoples simply need to learn archaeological and other 'scientific' values for the problem to be resolved ignores the direct role that archaeology has played in colonial history. It is important for the British community to publicly acknowledge that the colonial history of countries like Australia, New Zealand, Canada and the US are integral parts of British history – and that such history has brought economic and other material benefits to the UK. The retention of collections of Indigenous human remains by British institutions conveys a powerful symbolic message, however unintentional that may be. At best, the message that is conveyed is that the British community sees itself as positioned

outside the consequences of its own colonial history, while at worst, it affirms the legitimacy of that history and the negative continuing consequences it has for Indigenous peoples and their campaigns for recognition and equity.

The ‘politics of recognition’ is a significant area of political negotiation. As Nancy Fraser observes, identity politics can “*represent genuinely emancipatory responses to serious injustices that cannot be remedied by redistribution alone. Culture, moreover, is a legitimate, even necessary, terrain of struggle, a site of injustice in its own right ...*” (2000:2). This does not mean that there should be a single-minded emphasis on the recognition of cultural identity. However, by emphasising both the economic and cultural aspects of social justice issues Fraser turns our attention to the material consequences and power of not only the politics of recognition, but also the real injuries that may be done through mis-recognition. Appleton (2003), in her commentary on the Working Group’s report, suggests that the repatriation of human remains does little to redress the real inequalities experienced by Indigenous peoples, and that it is little more than an empty political gesture designed to obfuscate material equity issues. However, as Fraser goes on to observe:

Properly conceived, struggles for recognition can aid the redistribution of power and wealth ... This means conceptualizing struggles for recognition so that they can be integrated with struggles for redistribution, rather than displacing and undermining them ... (2000:2).

Thus the lesson here is that the politics of recognition is an important political act that, if framed and carried out constructively and with conviction, can be more than simply a gesture. Further, archaeologists and other researchers cannot pretend to be innocent bystanders in the wider politics of identity and recognition. In the first instance, this is because the authority of archaeological and other scientific pronouncements, and practices – including the act of retention or return of human remains – can have material impacts on public perceptions of the legitimacy of Indigenous identity claims and aspirations. To this end archaeologists and other researchers on human remains have to be wary of the degree to which right-wing elements not only share, but actively utilise the archaeological discourse of ‘scientific rights’ in repatriation debates, while also pursuing agendas about so-called threats to Western values or pushing white supremacist ideologies (for the range of reactions to repatriation debates see: Appleton 2002, 2003; Jenkins 2003 for the UK; see material reported in Preston 1997; Egan 1998; May 2001 and the powerful rebuttal of this material by Goodman 1998, for the US).

In the second instance, archaeologists and other scientists are themselves active participants in the politics of identity. What must be obvious, to even the most casual observer of debates on repatriation, is the degree to which careers, personal reputations, and institutional and disciplinary identities become themselves empowered by the possession of high prestige artefacts and remains. The ability to retain and control such items is integral to the construction of *archaeological* identity (Lahn 1996, Smith 1999, Smith in press, Fforde 2002). The ability to retain human remains, particularly very old or controversial remains, through the ability to invoke the authority of scientific discourse, ensures that the scientific credentials of archaeology, museums and other institutions as scientific, authoritative and powerful are maintained (Smith 1999, in press; Fforde 2002). All this is tied into what Tindill (1999)

identifies as the 'pathology of collecting' whereby the acquisitiveness of Western cultures is legitimised and naturalised.

The opportunities

The active participation of the archaeological community in the repatriation debate can present a range of significant opportunities. The Working Group's report emphasises the possibilities of new relationships with Indigenous communities (DCMS 2003:139). Certainly, the experience in Australia cannot be characterised as one of 'lost' scientific opportunities. The return of human remains to communities, alongside sustained and committed informed consultation and negotiation with those communities, has certainly resulted in a shift in the way archaeology is 'done', but it has also significantly widened the scope of archaeological research. While, as Smith and Burke (2003:191) point out, the effectiveness of the codes of ethics used in Australia still needs to be assessed, there is evidence of the benefits of this practice to archaeological research at least. Once relationships of trust and respect have been developed with communities, joint community and archaeological work has arisen that, by its nature, is immediately more meaningful to community questions about their history and past (see for instance, Davidson *et al.* 1995; Field *et al.* 2000; Clarke 2002; Greer *et al.* 2002; Smith & Burke 2003; Smith *et al.* 2003). One of the catch cries of 1970s processual archaeology was for archaeology to be 'more relevant' for contemporary needs – and joint community research certainly may realise this. Alongside this type of work, new ideas and ways of seeing the significance of data may be incorporated into research. I am not saying that we have to uncritically adopt oral histories or other non-archaeological knowledge or interpretations, but the opportunities for new ideas and insights are significant.

Furthermore, the ways in which knowledge is constructed, legitimised and disseminated both within archaeological research and outside the discipline is still under-theorised. If archaeologists are to engage in meaningful community dialogues and research, then some understanding of the way knowledge is legitimised is necessary. What is apparent in post-colonial countries is that attempts to use oral histories and other cultural knowledge in archaeological research either sit uneasily in the dominant processual or science-led development of archaeological knowledge, or it risks becoming appropriated and thus de-contextualised through the power/knowledge relations that underpin the discipline. The cross-cultural opportunities for critically scrutinising the value of archaeological knowledge, and its utilisation outside the disciplinary frameworks, are important if archaeology is to deal meaningfully with non-archaeological communities and knowledge. Nor is this simply a postcolonial issue.

The social and cultural inclusion policies of the British Government stress the desirability of community participation in heritage management and other archaeological activities (see English Heritage 2000; Newman & McLean 1998). While we may, and probably should, debate the ability of these policies to achieve their aims, they do mean that archaeologists are increasingly being asked to engage with local and regional communities. This must also mean that British archaeologists will increasingly encounter 'other' ways of viewing the past, material culture, and human remains.

The Working Group's report, together with the upcoming report by English Heritage and the Church of England on the treatment of UK origin human remains (DCMS 2003:8), must draw attention to the debate still to be had on dealing with human remains from *British* archaeological contexts. Human remains, no matter their age, are not like other archaeological data – the debate with Indigenous peoples tells us this. The symbolism of how we treat the dead, whether 'recent' or 'ancient', sends messages not only to Indigenous peoples, but to other archaeological audiences as well. The range of British public attitudes to the dead, and human remains and the archaeological treatment of them are, as yet, not well understood in archaeology. Although calls have come for ethical debates to be undertaken on these issues (Parker Pearson 1999), it is revealing that a recent special edition on human remains of a postgraduate student journal, which by its nature should be reflective of current research directions and attitudes, did not once raise the issue of ethical practice (Baxter 2003).

Any discussion or debate about ethical practice must engage archaeologists directly, if it is to be meaningful at all, with community and/or wider public views, concerns and aspirations for archaeological research. As experience in post-colonial countries demonstrates, these debates often open up avenues into, or opportunities for, community-driven or joint projects. Thus, ethical issues are integrally tied to the move forward in British archaeology to community archaeological projects, and the widening audiences for this sort of work as evidenced by the popularity of archaeological television programmes. Moreover, the upswing in media interest in archaeological research in Britain means that careful consideration needs to be given to whether or not the updating of the viewing public on archaeological practice and theory should be left entirely to the current crop of television programmes.

Any ethical debate needs to also consider the implications that working with human remains must have for archaeological workers themselves. Cox (1996) has drawn attention to the psychological impact and other health risks of working with remains, particularly those of the 'recently' dead (see also Reeve 1993; Cox 1998). These issues become particularly urgent as the field of so-called 'forensic archaeology' grows. The disciplinary culture, which often insists upon viewing human remains as primarily 'data', has done much to mask the emotional responses that archaeological audiences and Indigenous peoples have to human remains, let alone archaeologists themselves. Archaeological students receive relatively little training preparing them for the range of workplace hazards and realities – and we should not underestimate the emotional impacts that working with human remains can have for the unwary.

Conclusion

While the Working Group's report does not address all the issues that lie in wait in the repatriation process (it is notable, for instance, that Indigenous representation was absent in the Working Group itself), it is nonetheless an important and useful first step. The opportunities that can be realised in any move toward active and critical engagement with the treatment of human remains is significant. At the very least, however, it affords archaeologists the means and opportunities to enter into a sequence of ethical debates that will have a consequence not only for the development of theoretical debates and research practices, but also a finer understanding of the utility and value of archaeological research at community level, in every country.

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