The Issues of Custody and Practical Respect

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ABSTRACT

In recent years, with the rise of repatriation to source communities overseas, a number of laws and guides have been issued as guidance for institutions holding human remains, including the Human Tissue Act (2004) and the DCMS Guidance on the Care of Human Remains (2005). Nevertheless, these do not necessarily address all the relevant issues, particularly around custody of human remains from the UK. This paper critiques the fundamental assumptions of the DCMS Guidance, arguing that as a framework it is impossible to apply to British human remains and engage effectively with those communities with an interest in them. At the heart of this lies the question of respect: for whom and by whom. But what is meant by ‘respect’, and how can it be carried out in a practical way by museums, archaeologists and communities? The notion of ‘respect’ varies culturally, and what might be deemed respectful for one group is the opposite for another, so it can be difficult to find a compromise. This paper further explores how consultative processes need to ensure that all the different notions of value around human remains - and different notions of what constitutes respect - are given equitable value, and are acknowledged as legitimate criteria in decision-making processes.

Introduction

This paper is essentially about the basis on which British museums, which cannot legally ‘own’ human remains, can nevertheless retain legal custody or possession of human remains, and particularly the criteria according to which they include or exclude external interest in them – whether that be as part of formal ‘claims’, involvement in formal decision-making, or more general wishes just to be involved and listened to. In recent years, with the rise of repatriation to source communities overseas, a number of laws and guides have been issued as guidance for institutions holding human remains, including the Human Tissue Act (2004) and the Department of Culture, Media and Sport (DCMS) Guidance on the Care of Human Remains (2005). Nevertheless, these do not necessarily address all the relevant issues, particularly around custody of human remains from the UK.

This paper divides into three parts. First, I critique the fundamental assumptions of the DCMS Guidance, and will argue that as a framework it is impossible to apply to British human remains and engage effectively with those communities with an interest in them. At the heart of this lies my second point, the question of respect: respect for whom and by whom. I will explore what is meant by ‘respect’, and question how it can be carried out in a practical way by museums, archaeologists and communities. The notion of ‘respect’ varies culturally, and what might be deemed respectful for one group is the opposite for another, so it can be difficult to find a compromise. The third part of the paper will explore how consultative processes need to ensure that all the different notions of value around human remains - and different notions of what constitutes respect - are given equitable value, and are acknowledged as legitimate criteria in decision-making processes. I will conclude by

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reques...tions to the language of ‘expressions of interest’.

My focus, then, is on ancient British human remains. Nevertheless, it is true that the origins of current guidance were kick-started in the United States by the struggles of Native Americans that led to the signing into law of NAGPRA (the Native American Graves and Protection Act of 1990, which acknowledged the spiritual needs of Native Americans with regard to the dead, and created a new relationship between the tribes, government, archaeologists and museums: see McManamon 2002), and by successful Australian Aboriginal and New Zealand Maori requests for repatriation of human remains from western museums (see Fforde 2004; Fforde, Hubert and Turnbull 2002; Cove 1995; Hole 2007). Australian repatriations originated in the growing political cohesiveness and power of indigenous groups in Australia, who eventually felt confident enough to demand the return of the remains of their ancestors. Although it was a process largely resisted by archaeologists, who on the whole dismissed the different world-view inherent in Aboriginal culture, it gained political backing both in Australia and in the United Kingdom with a joint declaration in 2000 by the UK and Australian prime ministers to increase efforts to repatriate human remains to Australian indigenous communities. Within the United Kingdom this led eventually to the 2003 Report of the Working Group on Human Remains (DCMS 2003), the 2005 Guidance for the Care of Human Remains in Museums (DCMS 2005), and the 2005 Guidance for Best Practice for Treatment of Human Remains Excavated from Christian Burial Grounds in England (Mays 2005). In parallel, within the United Kingdom, scandals about the use of body parts of dead children for research without the knowledge of their relatives led to the 2004 Human Tissue Act, which strictly regulates the retention and research use of human bodies, tissue and body parts less than 100 years old. Following the recommendations of the 2003 Working Group (DCMS 2003), the British Government included Section 47 of the 2004 Human Tissue Act, which enables nine named national museums to deaccession and transfer human remains less than a thousand years old.

Critique of the 2005 DCMS Guidance for the Care of Human Remains in Museums

Within the museum sector in the UK, the key document in recent years has been the 2005 DCMS Guidance (DCMS 2005). As is clear from its history, the DCMS Guidance was written in response to the need for museums to engage with overseas source communities seeking to repatriate their ancestral human remains. A key part of the document – and the longest single section – are criteria for judging claims for the return of human remains, specifically whether a claimant community is a legitimate claimant or not (DCMS 2005: 23-30). Its language of claims, and the strict criteria of demonstrating genealogical relationship, cultural community, connection and continuity to prove legitimacy, were drafted to address the specific issues of overseas repatriation. As argued previously (Bienkowski 2007b: 118-20; Bienkowski and Chapman 2009: 101-02), even for overseas source communities the criteria of the Guidance impose a colonialist genealogical model which ties the notion of a legitimate claim for ownership to tightly defined definitions of lineal descent and kinship, fundamentally misrepresent the ways in which people whom we class as indigenous actually constitute their identities and relate to dead ancestors, and set demands of evidence and proof of ‘legitimacy’ which are offensive to some source communities. The Tasmanian Aboriginal Centre (TAC), for example, in its 2006 case with the Natural History Museum, stated that:
It is deeply offensive to Aboriginal claimants to demonstrate to the satisfaction of museum officials the significance to our people of the remains of our ancestral dead (TAC 2006; for the historical background to TAC, see Cove 1995: 109ff.).

That the Guidance should adopt such criteria is perhaps not surprising. For example, through the 1980s, when Tasmanian Aborigines were fighting for legitimacy, the Tasmanian state government asserted biological descent as the only valid criterion for Aboriginal status – and regarded itself as the only legitimate body to make those judgments – while TAC asserted its cultural legitimacy that did not depend on pre-contact conceptions of territorality or tribal divisions (Cove 1995: 105-21). Nevertheless, Tristram Besterman (quoted in Heywood 2009: 35) says: ‘The DCMS criteria spring from a western museum mindset that only rubs salt into the wound of the original act of dispossession’, and points out that the balance of power is still unequal: the western institution holds all the cards and makes all the rules (Besterman 2009). Focusing specifically on human remains of British provenance, it is clear that the historical situation of indigenous communities and of colonial explorers and collectors is quite different from that of British remains and those British communities expressing special interest in them. There is no indigenous community in Britain which has been colonised and whose ancestral remains have been appropriated by non-indigenous collectors and museums. To apply the criteria of the DCMS Guidance, then, to source communities is, frankly, arrogant and unethical, and to apply them to British cases is inappropriate and illogical.

Two examples highlight the difficulties of applying the DCMS Guidance to ancient British human remains. The first example is the parish council of Melbourn in Cambridgeshire (see Bienkowski 2007a and 2007b: 116). In 2001 the council approached Cambridgeshire Archaeology (part of Cambridgeshire County Council) with a request for reburial of Anglo-Saxon skeletons excavated in 2000 from Water Lane in Melbourn. The community in Melbourn, characterized by its deep sense of history and heritage (see Melbourn Village History Group 2005), wished to rebury at least some of the human remains at the entrance to its new parish cemetery, close to the original excavations, through a feeling of responsibility and as a tangible link between the past and present inhabitants. Negotiations continued until 2006, when Cambridgeshire Archaeology requested advice from the Human Remains Advisory Service (HRAS), set up by the DCMS as support for the DCMS Guidance (DCMS 2005). Eventually, DCMS concluded that the HRAS was unable to give advice since its advisers could not agree, and the issue was left to Cambridgeshire Archaeology and the parish council to resolve (Carroll 2007).

This was the first and only case ever to be considered by the HRAS, and largely as a result of its failure to come to a decision, the HRAS effectively ceased to exist – or at least to function (to my knowledge it has not yet been formally disbanded; see Caldon 2007). The disagreements among its advisers focused on the issue of applying the DCMS Guidance criteria: strict application of the principles of genealogical descent, cultural community of origin, country of origin and age of the remains (the Guidance states that claims for remains over 500 years old are unlikely to succeed). All evidence against these criteria indicated that Melbourn parish council had no legitimate basis for its request for reburial. Nevertheless, some of the advisers felt that the Melbourn community should be listened to, but this was not taken into account by the DCMS. This case then highlights how the criteria of the DCMS Guidance cannot be successfully applied to a British group – since they were originally framed to apply to overseas indigenous source communities – indeed they cannot but fail when applied to a British group; moreover, there are no criteria in the Guidance which take into account more subjective feelings of connection to the ancient dead shared by present-day inhabitants of the same landscape.
The second example is the still unresolved Avebury consultation. Following a request in June 2006 made by certain members of a small Pagan group, the Council of British Druid Orders (CoBDO), for the reburial of the ancient remains of ‘Charlie’, a Neolithic child excavated on Windmill Hill, Avebury in 1929, English Heritage and the National Trust launched a public consultation exercise, which ended in early 2009. The results of that consultation are still awaited (for discussion of the original request and the consultation process, see Wallis and Blain in preparation). CoBDO framed its claim according to the DCMS Guidance – the only route available to them – attempting to show its genealogical connection with the Neolithic remains, and claiming a genetic link between modern people and prehistoric people in the Avebury region, in an attempt to evidence their claims for reburial:

The human remains of Charlie and the Kennet Avenue ancestors are everyone’s family and belong to us all. Modern research on mtDNA from the University of Oxford clearly proves an unbroken genetic link between people today indigenous to Europe and our long dead. Statistically, these range between 43% and 2%. Women therefore carry our ancestral line from our deep past and into the future. Oxford also state that male DNA traces back through deep time. Until this research is disproved I will assume that members of the Council, like all people indigenous to Europe, have a ‘close genetic’ claim for reburial as stated in the DCMS Guidance (ibid: 26). We all have a close and unbroken cultural and spiritual relationship with the human remains of our ancestors. It is time to remember who we are – the ancestors reborn. This genealogical claim therefore informs and underpins the main points of our request for reburial that are based upon ethics and belief (see the CoBDO West website: http://www.CoBDOwest.org/reburial.html).

David Thackray and Sebastian Payne (2008), in their draft report on behalf of the National Trust and English Heritage, rejected this claim: ‘we take the view that this is not a direct and close genealogical link in the sense meant in the DCMS Guidance’. They further state, referring to the other criteria in the DCMS Guidance regarding claims for cultural continuity: ‘CoBDO make no claim for continuity of belief, customs and language between them and the human remains’. As with the Melbourn case, DCMS Guidance criteria applied to ancient British human remains were bound to fail; similarly, the Guidance makes no provision for spiritual interests and experiential connection to ancient British human remains. While Honouring the Ancient Dead (HAD), a Pagan organisation which advocates more broadly for respect for and dialogue around ancient British human remains, did not support the claim for reburial – being unable to support such an exclusive claim of authority over the remains – in its response to the consultation and subsequent press release it fully agreed that CoBDO had a right to make such a request as an expression of special interest on religious and spiritual grounds:

CoBDO’s position is an entirely valid Pagan perspective based upon genuine, experiential, spiritual connection and the profound duty of care which such a deep connection evokes (http://www.honour.org.uk/node/283).

Wallis and Blain (in preparation), in their critique of the Avebury consultation process, conclude that

although the [draft] report is sensitive to the Druids’ emotional attachment it does not take this into account over any other individual’s or group’s emotional interest. There
is room for emotional responses, as such responses may be listened to, but there is no methodology for using them as evidence in themselves, or for moving this respect to a level which involves negotiation... problematically the default position was one of scientific value and of the axiomatic authority of archaeologists; there was no room for collaboration and no strategy for dealing with emotional and spiritual views or philosophical debate.

It seems that there may still be some intolerance of spirituality being accepted as a legitimate criterion in the human remains debate, and such motivations are often dismissed as purely political posturing by marginalized communities (Hubert 1992: 124; Layton 1994: 13-15; Woodhead 2002: 342-5). Furthermore, as I have argued in detail elsewhere (Bienkowski and Coleman in press), it seems that it is certain kinds of religious expressions, for example modern Paganism, that are particularly accused of lacking legitimacy. Where it is believed that the claims are ‘invented’ or ‘re-invented’ either for political gain or from romantic sentimentality, they are undermined as ‘religious’ beliefs. A certain kind of continuity with the past is considered necessary for groups to have claims over certain human remains, but also for their religious claims and spirituality to be taken seriously. There is a significant emphasis on tradition, custom, and the existence of institutions, and it is just this lack of tradition and institutionalisation that is criticized in Pagan spiritualities. The problem for determining which kinds of views count is in part a proxy for determining whether this is the kind of religious belief of which we approve, and which metaphysical beliefs will be privileged. This raises a concern that such distinctions are based on a deep-seated prejudice against those who practice beliefs that lack an institutional framework and basis in a certain kind of tradition.

Such prejudices come to a head when judgments have to be made about particular human remains claims, and whether a particular group is ‘legitimate’ or not. The language of ‘claims’ in the DCMS Guidance is by definition polarizing – in the sense that a ‘claim’ is by its nature exclusive – and the Guidance explicitly excludes the evidence of spiritual or emotional connection as a valid criterion, thereby effectively excluding any British group from being able to make an effective ‘claim’.

**Practical respect**

At the heart of this lies the question of respect. In their draft report on the Avebury consultation, Thackray and Payne (2008) write:

> English Heritage and The National Trust recognise that CoBDO’s associations with the Avebury landscape, to them a sacred landscape and a place of special pilgrimage, and their feelings for their prehistoric ancestors, deserve respect and sympathetic consideration.

In the absence of criteria that can take such emotional and spiritual associations into account as evidence, however, such phrases as ‘deserve respect and sympathetic consideration’ lack conviction. Part of the problem is that the language of ‘respect’ permeates the human remains discourse, but there is no overall agreement as to what it actually means: who or what should we have respect for, how can it play out in practical terms, and can there ever be a consensus on these issues? A few examples show that there are some fairly fundamental disagreements about what constitutes ‘respect’ around human remains – and in this section I make extensive
and deliberate use of quotes, since the notion of what is and is not respectful must be built up from many perspectives and not just one.

Martin Smith and Simon Mays, writing on behalf of the British Association for Biological Anthropology and Osteoarchaeology, have this to say on the topic:

We disagree with the idea that scientific investigation is incompatible with respect for the dead...One way of showing respect for another person or culture is to take an interest in them and to try to understand more about them. Research and respect for human remains are not incompatible and there is no reason why they should be seen as conflicting (Smith and Mays 2007).

Archaeologist Sarah Tarlow fleshes out explicitly what ‘respectful treatment’ means to many archaeologists:

[N]ormal practice in Anglophone archaeology is that human remains in the field and in the lab are treated in a way that conventionally denotes ‘respect’ in the cultural terms of the excavators: ‘nicknaming’ skeletons is not usually acceptable; bones are not used as props in practical jokes; they are handled with care and used in serious and scholarly contexts (Tarlow 2006: 208).

Archaeologist Duncan Sayer argues along the same lines, but points out some difficulties:

Theoretically, excavation is a ‘meticulous’ process, and could be seen as intrinsically respectful...More reverence is accorded by excavators to visibly human tissue...This is however not universal...the prevailing attitude among Italian archaeologists was to see bones as artefacts and treat them with no more respect than any other archaeological material (Sayer 2009: 202).

Although they do not use the word ‘respect’ explicitly, Native Americans Alyce Sadongei and Phillip Cash Cash make clear that even ‘respectful’ excavation and treatment of human remains is insufficient:

For many indigenous communities, the removal of an ancestor from his or her final resting place is an unnatural and desecratory act that belies human comprehension. Preserving human remains in a museum is contrary to the most fundamental aspirations of indigenous culture and society (Sadongei and Cash 2007: 99).

Paul Davies, on behalf of the Council of British Druid Orders, appropriates the language of indigenous source communities in his reaction to excavation of human remains:

These actions are disrespectful to our ancestors. When archaeologists desecrate a site through excavation and steal our ancestors and their guardians, they are killing me as well as our heritage. It is a theft. I am left wounded. My identity as a Druid is stolen and damaged beyond repair. My heart cries (Davies 1997: 12-13).

Clearly we will have difficulty reaching any consensus where one view regards the process of excavation and analysis of human remains as demonstrating respect, but another view regards any excavation of human remains at all intrinsically disrespectful. It has been recognised that respect is of course culturally contingent:

‘Respect’ is differently constituted in different cultural milieux, however, and what denotes respect in modern Britain or America might not be appropriate
elsewhere... For example, in the modern west ‘respect’ for the dead is signalled by adopting a demeanour of solemnity and seriousness, dressing soberly and using lugubrious or no music; in many Latin American countries bright colours, festive music, dancing and food may attend the ceremonies of the dead without implying any disrespect (Tarlow 2006: 208; see also Scarre 2006: 182).

Archaeologist Lynn Teague has attempted to break through these difficulties by exploring ‘respect’ through the ideas of justice and fairness, adopted from the philosopher John Rawls. She concludes that, in the United States, NAGPRA has come down on the side of justice as fairness by giving Native American groups a substantial role in decision making, rather than automatically favouring the overall good of society – in this way, NAGPRA rejects utilitarian values that posit that society should override the interests of an individual or group in pursuit of the greatest benefit to society as a whole (Teague 2007). On the basis of this, she acknowledges that there is no one simple answer to how human remains should be treated, no actions that if always taken would automatically be ‘respectful’. She proposes what a process of practical respect, which takes account of all views, might look like:

It is meaningless to speak of ‘respectful treatment’ as if there were practices that, if adopted, would place the museum curator or the agency official beyond reproach... Responsible people... are committed to respectful and dignified treatment of the remains of the dead, regardless of the ethnic or racial origin of those remains. The cornerstone of any effort to achieve this goal must be consultation with all of the affected parties, in search of a fair and just outcome... it is consultation that lies at the heart of any respectful approach to the treatment of human remains (Teague 2007: 246-9; my italics).

This focus on consultation was first proposed by Restall Orr and Bienkowski (2006), who called on museums and archaeological units to set up consultative panels or networks on human remains, comprising representatives of all interested communities; it was echoed too by Colwell-Chanthaphonh and Ferguson (2006), who, within the framework of Virtue Ethics, recommended the establishment of mutual relations between archaeologists and local or indigenous communities, though they argued that this should be extended to the dead themselves, on the principle that archaeologists have direct obligations towards the deceased.

If consultation is the cornerstone of respect, who then should be included in that consultation? A good starting point to consider this question is the Vermillion Accord on Human Remains. This was adopted in 1989 at the South Dakota World Archaeological Congress Inter-Congress, its key motivation being the inclusion of indigenous interests by archaeologists and museums. The fundamental underpinning of its six principles is the notion of ‘respect’ both for the dead themselves and for the concerns of contemporary ethnic groups (reproduced in http://www.worldarchaeologicalcongress.org/site/about_ethi.php#code2). Here are the six principles in full:

1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.

2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonable inferred.

3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.

5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of science and education.

6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

While laudable in principle, Zimmerman (2002: 97) comments that what have not changed since the accord was agreed in 1989 are attitudes about the primacy of scientific approaches to the past, and this is echoed by the critique of the Avebury consultation by Wallis and Blain (in preparation, quoted above): that its default position was one of scientific value and of the axiomatic authority of archaeologists. To move forward beyond such entrenched default positions, then, we need to be more explicit about unpacking who should be involved in consultation, but also what values must be taken account of.

The Vermillion Accord includes four ‘groups’ or values towards which we should show respect:

- The mortal remains of the dead
- The wishes of the dead
- Local communities, relatives or guardians of the dead
- Scientific and educational research value and concerns of scientists

These, then, are the groups and interests who should be represented at any consultation, to ensure that ‘respect’ is inclusive. Let us examine each of these in turn.

Respect for the mortal remains of the dead, most minimally, must involve ‘not treating bones or body parts as junk or comic props or curios’ (Scarre 2006: 182), although I would add that, irrespective of one’s metaphysical worldview, the remains should ideally be handled with a recognition of the humanity of the deceased, and of their achievements and contribution, even if unknown, their place in our history and their role in shaping all we are and the land around us.

The wishes of the dead, in my experience, are not normally taken into account in any practical way. Yet there is plenty of argument suggesting that it is reasonable, even necessary, to consider them:

Before proceeding with an investigation, an archaeologist should think about the interests of the dead as well as of the living...Too often the convenient assumption is made that the interests of living archaeologists trump those of dead subjects (Scarre 2006: 197-8).

Colwell-Chanthaphonh and Ferguson are even more damning:

That deceased people have rights is recognised in modern societies by the sanctity of graves in consecrated cemeteries, and by the legal status of wills. The failure of some
archaeologists to extend this approach to the deceased people of other cultures is somewhat inexplicable but is beginning to change (Colwell-Chanthaphonh and Ferguson 2006: 123-4).

Tarlow recognises that the original wishes, or consent, of the dead are unobtainable, but that

Sometimes, however, there are pretty clear archaeological indications that, even though a person did not expressly prohibit archaeological research, they would not have welcomed any post-mortem disturbance: heavy slabs, stones or mounds of earth may cover the entrance to a place of burial; historical sources may reveal an anxiety about preserving the integrity of the corpse... In these cases research on human tissue surely constitutes pretty flagrant disregard for the wishes of the deceased (Tarlow 2006: 210).

It is sometimes argued that ancient burials do not represent the direct wishes of the dead, but of the still-living who buried them, and thus we cannot infer the real wishes of the dead from the nature of their burials. While this is technically true, this is not a useful or persuasive argument, since in most cases – other than examples such as the European bog burials – individuals would have been fully aware of what sort of burial practices likely awaited them as part of their cultural tradition. Furthermore, while in the absence of texts we cannot be certain how far ancient people hoped or expected their burials not to be disturbed in the future, in the instances where we do have explicit textual evidence – for example from ancient Egypt (Hubert 1994: 162-3) – it is clear that they wished their bodies to remain undisturbed, in their own tombs and in their own country.

When it comes to respect for the wishes of the local community and of relatives and guardians, we potentially reach the same impasse as identified above with the DCMS Guidance: who constitutes a legitimate group with an authentic connection to the dead, and therefore who should be included or excluded in a consultation? However, I suggest that we can cut through this impasse by recognising that we are talking here about respect and consultation, not about a process for an exclusive claim, so it is unnecessary (and, indeed, disrespectful) to demand that groups meet pre-set criteria before the consultation has even begun. As noted above (Bienkowski and Coleman in press), some communities or groups have been excluded from such discussions in the past on principle because they are deemed to be ‘inauthentic’, lacking a historical tradition or an appropriate institutional framework, and such distinctions seem to be based on a prejudice against certain types of beliefs which has no place in a respectful consultative process, which must be inclusive. We are aiming ideally at a process that is about listening, not pre-judging. Teague (2007: 248) refers to ‘consultation with all of the affected parties’, while Manchester Museum’s human remains policy expressly includes all interested communities:

As far as is practical, all interested communities should have an opportunity to be consulted when decisions are taken regarding the management of all human remains, and the Museum will attempt to consult with all known interested parties (http://www.museum.manchester.ac.uk/aboutus/ourpractice/humanremains/fileupload max10mb,120796,en.pdf).

Rather than consider who should be included, perhaps we should turn the question around the other way: what possible basis is there for museums and archaeologists, who as custodians but not owners of human remains are interested parties themselves, to exclude from a consultation anyone with a genuine interest in those human remains? Such inclusive consultation recognises the social value of human remains to communities and individuals,
and although it falls short of the community ownership of ‘heritage’ advocated by Carman (2005: 58-61), at least it gives them a say in decision-making and is a step forward from what he calls the generalised and abstract ‘public good’ represented by heritage institutions.

Respect for the scientific value of human remains would appear to be deeply embedded in decision-making around human remains. There is, however, an important caveat in the relevant clause of the Vermillion Accord that is normally ignored: that such value should be demonstrated to exist. The value and consequent public benefit of the retention of and research on particular human remains appears to be assumed by scientists, rather than explicitly argued, and it has been accepted that scientists need to explain and justify their case for such benefits more transparently (Bienkowski and Chapman 2009: 103). As Layton (1994: 13-14) has pointed out, the value of exhumed skeletons for archaeology is not sufficient reason for archaeology to have automatic rights and access to them. Similarly, Cove (1995: 183) states robustly that the knowledge claims of science can no longer take a priori primacy:

Knowledge for its own sake, which was historically at the core of the scientific enterprise, is no longer universally accepted as a self-evident good. Further, the new moral context neither gives unchallenged primacy to scientific rationality nor allows scientists the exclusive prerogative of determining what they should do or say.

It is no longer sufficient to assert the need for unfettered study of human remains in terms of the universalistic interests in knowledge for its own sake about human origins and variability: in a pluralistic society ‘[k]nowledge for its own sake has less import, and competing political interests create different bases of relevancy’ (Cove 1995: 190, 197). What this means in practice is that, while it is accepted that wider benefits can flow from the study of certain human remains, depending on context, archaeologists and scientists must be prepared to argue their case – alongside other interested parties – for the real, tangible and measurable value to wider society of the excavation, analysis and display of particular human remains, and be prepared to accept that on occasion their argument may be dismissed as based on disciplinary self-interest.

To summarise, consultation lies at the heart of practical respect in relation to human remains. That consultative process should include representation by or consideration of a number of groups, interests and values:

- The mortal remains of the dead, in terms of the bones and body parts, should be treated with care and seriousness, and with acknowledgment of the humanity of the deceased.
- The wishes of the dead should be brought into active consideration as far as can be inferred from archaeological or historical evidence.
- All known interested parties should be invited to the consultation, without prejudging who might be considered legitimate or ‘inauthentic’.
- Scientists, archaeologists and museums should be explicit about the value and benefits of the excavation, retention, analysis and display of individual human remains.

Consultative processes
Returning to the language, structure and assumptions of the DCMS Guidance, and bearing in mind what we have learned about respectful and inclusive consultation, at the very least a distinction should be made between clearly ‘exclusive claims’, which may apply to some, many or even most requests from indigenous source communities (although there are instances where several small indigenous groups make exclusive claims and accuse each other of being fraudulent), and ‘claims’ which are no more than expressions of interest and often have no claim to exclusivity and can easily incorporate discussions among several groups or communities. For example, it seems to me that CoBDO and Melbourn parish council used the term ‘claim’ simply because it is currently the only route available to them, and with the criteria as they are, they are effectively put in a no-win situation. In a sense, they have been forced into using this language because, according to the DCMS Guidance, no other route was available to them. A more inclusive language, and more appropriate to the British situation, would be that of ‘expressions of interest’, which allows many different communities to have a legitimate interest in remains in whom they have a particular interest for various reasons – whether through geographical location, spiritual connection, or scientific and educational interest. Such a change of language has been proposed by others (Bienkowski and Coleman in press, Wallis and Blain in preparation, and in the HAD response to the Avebury consultation: http://www.honour.org.uk/node/281). This would effectively replace the ‘genealogical’ model of the DCMS Guidance with a ‘relational’ model, as with Manchester Museum’s human remains policy which commits the institution to give equal weight to all interested parties (see Bienkowski and Chapman 2009). If a British organization such as CoBDO or Melbourn parish council were given the option of using the language of ‘expressions of interest’, the relevance of their input should be heard, understood and valued.

Furthermore, according to the Museums Association’s Code of Ethics, the modern museum is one which actively seeks the views of communities and users and values the contributions they make (Museums Association 2001: 12). Criteria and processes should be inclusive and welcoming, not exclusive and polarizing. A point to be stressed is that not all expressions of interest concern reburial. From informal feedback from archaeologists and museums, I am aware of their fear that any approach from an external community may eventually result in a request for reburial, thus they are often reluctant to engage in open discussions with external groups about human remains. Nevertheless, in many cases, community groups are interested in simply being involved, not exclusively but with others, in discussions and decisions around storage, interpretation and display of human remains (see, for example, the inclusion of multiple voices in Manchester Museum’s exhibition on Lindow Man: Brown 2009; Rees Leahy 2008; James 2008; with the original consultation report on http://www.museum.manchester.ac.uk/aboutus/ourpractice/lindowman/fileuploadmax10mb120485.en.pdf). Regrettably, the current Guidance is sometimes used as a tool to rebuff approaches from British communities, on the grounds that they cannot be legitimate ‘claimants’ and thus cannot have any input. A change of language to actively encourage expressions of interest would transform the Guidance from a methodology for processing claims into an inclusive consultative process, respectful of different views and values. This would encourage more and wider input into decision-making around human remains which, in the absence of legal ownership of human remains in England, would to some extent devolve decisions about excavation, custody, display and potential reburial to the wider community rather than staying with the archaeological and museum professions who are only one among several interested parties. Clearly, in each situation the individual or group who makes the final decision needs to be explicitly identified beforehand – and this will vary on a
case by case basis – and perhaps the most the Guidance can do is to be explicit about the involvement of wider interests in the consultation process.

As well as taking into account the four groups and interests identified above, such a change to the Guidance would need to include more explicit inclusive criteria about the values to be taken into account in the consultation process. Currently, the Guidance focuses on the scientific, educational and historical value of the remains to the museum and the public:

Many human remains have undoubted potential to further the knowledge and understanding of humanity through research, study and display... If the remains do have value for research, teaching and display, a museum should decide whether this can override other factors such as the wishes and feelings of genealogical descendants or cultural communities (DCMS 2005: 28).

According to Carman (2005: 58-9), such a utilitarian scheme of value is characteristic of state custodianship over heritage, and tends to exclude the rather vaguer social value scheme because it is harder to measure. But as Wallis and Blain (in preparation) have pointed out, emotional and spiritual connection to human remains needs to be included as evidence, and it must be accepted on equally valid terms – and not as aspects which, in decision-making, will always be perceived as less important than research, teaching and display. Furthermore, if reburial is to be considered, it must not be simplistically dismissed as a ‘last resort’ which is effectively depriving museums and science of future research material, but as a positive option – recognising its social value – which is experienced by many as emotionally and spiritually healing, bringing huge community benefits, and reaffirming connections between the living and the dead (Bienkowski and Chapman 2009: 103). For example, Manchester Museum’s public consultation on unprovenanced human remains (November 2009-February 2010) explicitly gives the option of reburial equivalent status to the options of retention or transfer to another museum, in contrast to the Avebury consultation.

Indeed, one interpretation of the law in the United Kingdom suggests that the default option should be reburial – whereby explicit and overwhelming arguments for retention would need to be produced in order for a body not to be reburied. This stems not merely from the recent reinterpretation of the burial laws by the Ministry of Justice which has made an interim recommendation that any human remains should be reburied no more than two years after excavation (see Sayer 2009: 201). An enduring and ancient legal precedent for the ownership of human remains is that ‘the only lawful possessor of the dead body is the earth’ (see discussion in Pawlowski 2009); while the common law doctrine of the right of sepulchre – that human remains must be left undisturbed in their final place of deposition – is enshrined in Scottish law. The Church of England also has a presumption against disturbance of human remains unless there are specific identified benefits, ‘and any disturbed remains should be reinterred in consecrated ground as close as possible to their original resting place within a specified time, even when a period of research is allowed’ (Mays 2005: 31). This, to me, suggests that a default option of reburial for all but the most crucially important human remains – these to be identified and agreed through consultation – is not an unreasonable proposition.

I would therefore recommend the addition of the following paragraph in a revised DCMS Guidance, alongside replacing the language of ‘claims’ with that of ‘expressions of interest’:

It is acknowledged that many individuals and communities feel a deep emotional connection to ancient human remains, either through spirituality, religion and a
feeling of ancestry or through a deep experience of place, feeling a connection to and responsibility for those who lived in that place before them. Such criteria of social value have equal validity to potential for research, study and display. Furthermore, if contemplating deaccession of human remains, the option for reburial should not be seen as a ‘last resort’. It is recognised that for many individuals and communities, reburial is a positive step, and this option has equivalent status to the options of retention in a museum or deaccession and transfer to another museum.

Summary and conclusion

In recent years there has been growing interest in British human remains from various British communities, and a wish to be involved in decisions around excavation, retention, storage, display and reburial. The key document concerning human remains in the museum sector is the DCMS Guidance (DCMS 2005), which was developed to deal with repatriation claims from abroad, and which I have argued is inapplicable to British cases. Its criteria for assessing who is or is not a legitimate claimant are inherently biased against British communities, whose interests in being involved in decision-making and programming around human remains are consequently rebuffed or constrained.

At the heart of this lies the question of respect towards the human remains themselves and to different attitudes towards human remains. The notion of respect is of course culturally variable, but I have followed Teague (2007) in concluding that consultation lies at the heart of a respectful approach to human remains. Using the Vermillion Accord as a starting point, I have proposed that a respectful and inclusive consultation process should include representation by or consideration of a number of groups and interests: the mortal remains of the dead, the wishes of the dead, all known parties with an interest in particular human remains, and scientists, archaeologists and museums, who should be explicit about the values and benefits of retaining individual human remains.

I propose that the language of ‘claims’ in the DCMS Guidance be replaced by that of ‘expressions of interest’, which would thus encompass all interested parties, broaden the input into decision-making on human remains, and transform the Guidance from a narrow methodology for claims processing into a guide to inclusive and respectful consultation on all aspects of human remains, which would better fit the needs of an increasingly user-focused and participatory museum sector. Furthermore, the Guidance should include explicit acknowledgment of emotional and spiritual values that would be accepted on equally valid terms alongside research, teaching and display. Finally, the Guidance should acknowledge that the option for reburial of human remains – and there are legal arguments which imply that reburial would be a reasonable default position – should be regarded as a positive and legitimate option on an equal footing alongside retention and transfer to another museum, rather than being perceived as a last resort which deprives science of research material.

Increasingly, the role of museums and archaeology is changing from being about passive conservation and interpretation of the past to actively using their collections to foster understanding between cultures, communities and individuals – and such understanding crosses the boundaries between past, present and future, between living and dead, and between different constructions of value. From that perspective, wider involvement in decision-making through consultation and respect for different values around human remains, which so directly link us to the past, is central. It creates an inclusive framework for a respectful, understanding relationship between modern communities and the ancient dead.
Bibliography


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