

*Human remains
in archaeology*

A handbook

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Ethical concerns and human remains

Human remains are not just another artefact; they have potency, they are charged with political, evidentiary, and emotional meanings ...

(Cassman *et al* 2006a, 1)

2.1 Introduction

The respectful treatment of human remains varies considerably in different parts of the world, reflecting socio-cultural values and opinions, including religious beliefs. Within countries, variations also occur on a regional and local scale. The excavation, study, and curation of archaeological 'materials' in their broadest sense are subject to serious thinking about the ethical issues surrounding the nature of archaeology as a whole (Zimmerman *et al* 2003), and the ethics of studying human remains from archaeological sites have been the focus of many studies (eg Walker 2000; Fjorde *et al* 2002; Scarre 2006; Tarlow 2006).

Is it ethical to excavate and study human remains excavated from archaeological sites, and then keep them in a museum or other curating institution for further study? This is not as straightforward a question as it might seem because the answer will depend on many factors. However, it is generally agreed that it is a privilege and not a right to excavate and study human remains, rights being inherent, and privileges being granted on stated conditions that create responsibilities (Joyce 2002, 102). Nevertheless, it should be remembered that in Britain the majority of human remains are excavated as a result of modern 'building', in its broadest sense (Figure 5).

Of note for Britain was a session held within the annual Institute of Field Archaeologists (IFA) conference in 1991 to discuss the excavation of human remains (Stirland 1991), where it was identified that there was a need to develop policies for the excavation of human remains. At this point, it is worth considering the study which was the stimulus for the session. In 1990 a questionnaire on the nature of excavation of human remains in Britain was sent to 123 (then) archaeological units, museums, and university departments; it gained 44 responses (McKinley 1991). On average 26% of respondents had excavated more than one cemetery site per year over the preceding ten years, and 40% of those had excavated sites with over 100 inhumations, the majority being unexpected finds and of medieval or post-medieval date. Over 80% had done excavations for 'rescue' purposes only, which included land planned for quarrying, new houses

and roads, and church alterations – at the request of local councils, developers, and the church. The majority of organisations had never had to rebury any human bone but, in 27 cases, reburial (following analysis) had occurred because the site contained Christian burials; nevertheless, <50% of reburials had been at the request of the church. Following this meeting, over ten years then went by before clear policies and guidance developed (see below).

Even as recently as 2003, when there seemed to be signs of action on the part of relevant organisations such as the Department of Culture, Media and Sport (DCMS), Roberts and Cox (2003, 385) asserted that, 'the archaeological and anthropological community have failed to engage (in this issue), as have most of our key archaeological organisations' and that, given the situation that has developed within the US, Australia, New Zealand, and Israel, such complacency is at best naive and at worst arguably negligent'. At that time they emphasised that all those parties with a legitimate interest in the fate of the dead should come together to discuss the issues. Indeed, there have been debates and suggestions by professionals in archaeology about how human remains should be treated in Britain for some time (eg Locock 1998; Reeve 1998 – the latter of which includes aspects of assessment of potential, screening during excavation, basic recording, a statement of objectives, sampling, disseminating results, taking photographs, display, and reinment). By late 2007 the BABAO sought to draw up a Code of Ethics to provide guidance on the study of human remains, although there had already been some attempts to do this (Parker Pearson 1995, 1999a). BABAO's website now also has a page devoted to reburial and repatriation (<http://www.babao.org.uk/index/reburialissues>). Thus, Britain is seeing more focus and consideration now of how the dead from archaeological sites are treated, but there is much more work to do.

The way we view the remains of the dead and how they should be treated is complex and bound up with our belief systems, our life experiences, and many other conscious and subconscious feelings. For example, more recent burials may evoke, in some, much more of a sense of identity with the dead, and relatives of the deceased may even still be alive (as with the Christ Church, Spitalfields, London crypt excavation: Molleson and Cox 1993) – so that even if the remains have to be excavated then there is a strong desire for reburial. Burials that are much older and perhaps felt to be more distant may, to many, possess anonymity, which for some makes excavating, studying, and curating them more acceptable. In fact,



Figure 5: Removal of a burial from a post-medieval cemetery by contractors in advance of modern development (with permission of Margaret Cox and Roland Westling)

Jones and Harris (1998, 258) feel that 'if no links can be established with a direct descendant or a group of descendants, then the remains should be available for reputable scientific investigation, since the findings will, in the broadest terms, be applicable to all humanity'. Where the cemetery contains indigenous remains which may be proved to be the (albeit, usually distant) ancestors of the living population, as in the case of Native American or Australian aboriginal groups, then excavation and analysis may not be desirable and, if carried out, reburial of the human remains would be required, with or without analysis. There are also people around the world, who may or may not hold religious beliefs, who feel extremely strongly about the fate of their bodies and those of their relatives when they pass away; in this respect they may be concerned for the rights of all the dead from time immemorial until the present day. Clearly, religious faiths not only determine how a body is disposed of today (Green and Green 1992), but also any beliefs in an afterlife. These beliefs will also affect whether it is thought acceptable to disturb a body (and ultimately display it in a museum). Of course, this is also relevant to the past where, for some periods of time, we are familiar with religious beliefs whereas for other periods we cannot be sure; again this affects how we should, and do, treat the dead.

As Hubert and Florde (2002, 1) have stated, because of an increasing outward indication of people's sense of identity with their past, some are now 'contesting the ownership of human remains housed in museums and other institutions', and demanding the remains be repatriated and/or reburied according to cultural beliefs associated with the dead. This is in addition to them requiring museums to disclose the human remains they curate, and to remove any on display. As long ago as 1989, the 1st World Archaeological Congress held in South Dakota, USA, drew up what is termed the Vermillion Accord on Human Remains (http://www.worldarchaeologicalcongress.org/site/about_eth1.php), which was adopted by the World Archaeological Congress Council in 1990. The agreement concerned respect for the mortal remains of the dead, irrespective of origin, race, religion, nationality, custom, and tradition, and for the wishes of the local community and relatives of the dead, as well as respect for the scientific research value of human remains; it stressed cooperation between archaeologists and indigenous people, and stipulated that agreement on the disposal of human remains should be reached by negotiation. Later, in 1991, the World Archaeological Congress then outlined a range of ethical principles for studying human remains. More recently, in 2006, the World Archaeological Congress Council adopted the Tamaki Makaurau Accord on the Display of Human Remains and Sacred Objects (http://www.worldarchaeologicalcongress.org/site/about_eth.php).

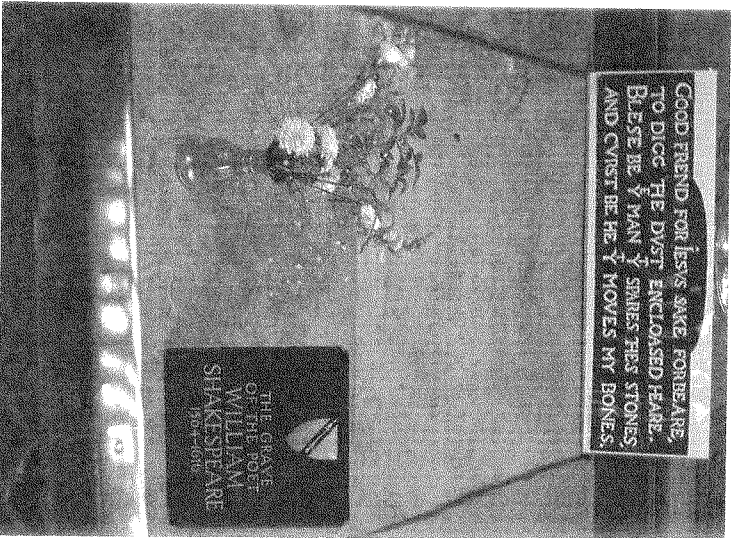
In certain cases, although there are no genealogical descendants or cultural communities to 'claim' their ancestors officially, groups asserting descent from, or having the best interests of, the human remains do exist. These groups are often marginalised in contemporary Western society (Brooks and Rumsey 2006), and tend to be referred to as 'special interest' groups. For example, recently modern pagan groups in Britain, such as those of Druidry, Wicca, Witchcraft, and Shamanic traditions, have become united into an organisation represented

by 'Honouring the Ancient Dead' (HAD) (<http://www.honour.org.uk/?q=node>). They wish, and aim, to be involved with consultation and decision-making processes regarding the excavation, analysis, and care thereafter of human remains dating from prehistory to AD 600. Although HAD has declared that reburial is not the only option, it feels it is a key area of focus. HAD asserts that its members have legitimate claims to human remains in Britain, but are not identifiable descendants of them. Bienkowski (2007) notes also that local communities other than pagan groups feel that they have a right to contribute to decisions about the fate of human remains in their areas.

Naturally, those excavating, studying, and curating human remains may not all have the same views on the treatment of human remains as do genealogical descendants and affiliated communities around the world. Indeed, those who advocate reburial are not, as Hubert and Forde (2002, 5) state, 'an homogenized, undifferentiated whole, in which all share the same views'. Different cultures view and manage death differently. On a radio programme in the 1970s, for example, Sir Mortimer Wheeler, a prominent archaeologist, was heard to say regarding burials in the archaeological record, 'we do no harm to those poor chaps. When I'm dead you can dig me up ten times for all I care' (Bahn 1984, 214), while the inscription on William Shakespeare's grave in Stratford-upon-Avon, England quite clearly indicates that he does not want his body to be disturbed (Figure 6).

In summary, as Tarlow (2006) says, archaeologists overall have an ethical responsibility to present-day groups of people, including the public at large. There is clearly an increasing awareness of the treatment and ethical consideration of human remains around the world, and of course we have a responsibility to both past and living people. The question is: what does it mean to show respect for the wishes of the dead (Scarre 2006); respect, after all, is constituted in different countries, by differing cultures, and by people within any one culture. Perhaps the treatment of human remains can only be deemed unethical if living people are harmed by this act (Tarlow 2006). Any work on human remains must contribute to human knowledge, and in bioarchaeology there are constant examples of contributions to knowledge (see later chapters). Furthermore, one could argue that since archaeologists spend so much time, energy, and imagination on knowing

Figure 6:
Shakespeare's
gravestone,
Stratford-upon-
Avon, Warwickshire,
England (with
permission of Susan
Ward)



past people, they are in a better position to represent past people than most' (Tarlow 2006, 209).

As archaeologists, bioarchaeologists, and museum curators know, the excavation and study of people brings in many visitors to museums, sells books and builds careers: we therefore have a responsibility to look after our dead ancestors (Tarlow 2006). It is important, however, to maintain a balanced view between value judgements and human rights which this chapter hopes to do, although as Lackey (2006, 162) says, 'There is no magical formula for adjudicating the requirements of religion, art and science'. Nevertheless Buikstra (2006b, 408), while admitting there is no global solution to the issues raised, emphasises that 'The need for openness for communication, for mutual respect, and for initiatives that are of interest to all collaborating parties is global'. It is disappointing then that some 'scientists' see scientific value to be more important than the cultural beliefs of living populations (Hubert 1989), especially with respect to some countries outside Britain.

2.2 Justification for the retention of human remains

If the view is that it is ethical to excavate, analyse, and curate human remains from archaeological sites, bearing in mind that in Britain the excavation of human remains is usually required because of modern development, then how is this justified? Clearly if remains are reburied this is a 'loss to science of a unique source of information about the past' (Hubert and Forde 2002, 3), but it is also a loss ultimately to the public who has an immense interest in human remains from archaeological sites. A recent survey of the public in England by Cambridgeshire Archaeology Historic Environment Record found that 80% of the 220 respondents felt that human skeletal remains should not be reburied or only reburied when there were no further research uses (Carroll 2005). Furthermore, 88% of the respondents thought that human remains could aid future scientific study and that it was appropriate to curate them. Perhaps 'this is a vote of confidence in the professionals, with the public trusting us to do the right thing with human remains ...' (*ibid.*, 11). It should, however, be pointed out that the survey was playing to an active audience and not the wider public; therefore a more widespread survey is probably appropriate now. Carroll (*ibid.*) suggested that it is time for a national debate about the issues. Such a debate has started with a limited number of interested parties engaged in discussion. Apart from the recently passed legislation (see below), few events have provided opportunities for discussion across all interested groups – for example there have only been two recent conferences in London (in 2004 and 2007), and one in Manchester (in 2006), which focused on the treatment of human remains. There is certainly room for wider consultation in the public sphere across a full range of socio-economic and religious backgrounds, and ages. However, it is not only in museums that the public have expressed their support for the retention, study, and display of human remains. Recent TV programmes such as BBC2's *Meet the Ancestors* have attracted large viewing figures that also pleased the broadcasters.

Human remains from archaeological sites are the primary evidence for people in the past; we can study their pottery, houses, and food waste but it has to be remembered that without humans none of these would exist. To understand the past, which has been created by our ancestors, we need, through studying their physical remains, to appreciate how they managed to adapt to their living environment. As we have already seen, it is essential to study the human remains in context in order to generate a bioarchaeological perspective of the past, and this might include the study of associated settlement or historical data. Furthermore, as techniques of analysis develop, it is possible to do much more detailed and explorative work than was possible twenty or even ten years ago. For example, the extraction and analysis of ancient DNA of disease-causing organisms to diagnose health problems in human remains had not been achieved before 1993. If human remains are removed from curation and passed for repatriation and/or reburial then new and informative data about the past would not be possible using these new techniques. If, as we believe, the world's population has a strong interest in its heritage then this alone is a justification for the retention and study of human remains.

Further justification for the retention of human remains has been shown in a survey of published papers (Buikstra and Gordon 1981). The authors reviewed 310 papers published between 1950 and 1980 in three major journals to assess whether any papers were re-studies of skeletal collections and if new methods had been used. Some 724 skeletal collections were described in the papers, of which 32% were re-studies, and 63% tackled new research problems. Of the 37% that looked at old research problems, in 62% of papers the conclusions were altered. In the re-studies, 48% of papers used new techniques of analysis, with 55% looking at old problems; of those, conclusions were altered in 74% of studies. Many studies were re-studies of curated skeletal collections, and the majority of studies got new data using new methods of analysis, thus in this study justifying the retention of curated human remains.

It is suggested here that, of all types of archaeological sites, burials and their contents require particularly careful attention and respect during excavation and in subsequent analysis, curation, and display of the remains. Nevertheless, there can be a tendency for many archaeologists and bioarchaeologists to focus on the benefits of excavating and analysing human remains, often neglecting to consider any perceived spiritual harm that may be done to the dead or to the living; one must not forget that the remains are both biological and cultural in value (Joyce 2002).

2.3 *Guidance and legal requirements for the excavation of human remains by archaeologists in Britain*

Of relevance to discussions concerning ethics and the study of human remains are the laws surrounding the removal of remains. It is of course unlawful to disturb human remains without good reason and without appropriate authority (see below, Table 1), ie without the necessary legalities in place. Furthermore,

human remains should always be treated with respect and care, and relevant directions, licences and *Faculties* provide guidance in this area for archaeologists and bioarchaeologists.

In England and Wales, Scotland, and Northern Ireland, laws relating to the excavation of human remains differ. Furthermore, of note, in June 2007, the interpretation and application of burial laws in England and Wales changed (see below). Additional to this, the affairs of the Department for Constitutional Affairs (<http://www.dca.gov.uk/corbur/burial.htm>), which dealt with applications for exhumation, were transferred to the new Ministry of Justice (MoJ) in May 2007 (<http://www.justice.gov.uk/whatwedo/burials.htm>). The MoJ now makes decisions on exhumation licences, regulates the removal of human remains from disused burial grounds, and considers applications for the closure of graveyards.

The majority of the laws relating to human remains reflect a concern with matters relating to public health, emphasising and maintaining public decency and respect, and the interests of relatives, in addition to highlighting the responsibilities of the Church and other bodies responsible for burial places. Most of the relevant laws are fairly old, some going back to the mid-19th century. When they were established, archaeological investigation was not a consideration, and thus they are not always clear in relation to archaeological excavation.

This outline sets out to summarise an understanding of the current position (May 2008) in relation to the excavation and study of human remains by archaeologists; this is following changes in interpretation and practice by the MoJ in May 2007 and April 2008. It is anticipated and expected that further changes will be forthcoming, especially in relation to reburial, and therefore it is sensible for archaeologists excavating human remains to check the current position with the MoJ or the Church of England, as appropriate.

Prior to describing the relevant legislation, it should be noted that over the years there have been a number of publications that have provided recommendations and guidance on dealing with human remains from archaeological sites, from excavation to curation, including legal aspects. These include documents for:

- human remains buried in Christian burial grounds in England since AD 597 (English Heritage and the Church of England 2005 – http://www.english-heritage.org.uk/upload/pdf/16602_HumanRemains1.pdf; although some of this is out of date now),
- human remains curated in museums and other institutions in England and Wales (DCMS, 2005 – http://www.culture.gov.uk/Reference_library/Publications/Archive_2005/guidance_chrt.htm, although again some of this is out of date now),
- human remains buried in Scotland (Historic Scotland, 1997 – http://www.Historic-Scotland.gov.uk/human_remains.pdf), and
- human remains buried in Ireland (O'Sullivan *et al* 2002; and O'Sullivan and Killgore 2003 for Eire – http://www.heritagecouncil.ie/publications/human_remains/index.html; and Buckley *et al* 2004 and the Institute of Archaeologists of Ireland generally for Ireland 2006 – <http://iai.ie/index.html>).

The following sections summarise the laws pertaining to England, Wales, Scotland, and Northern Ireland (United Kingdom).

(1) England and Wales

As Garratt-Frost (1992) states, in England and Wales there is no property in a corpse so it cannot be stolen, but it is however an offence to disinter a body without lawful authority. In Britain, the government began to pass laws regarding inhumation and cremation burials, and their exhumation, in the 19th century. As has been noted above, these are now seen as inappropriate for archaeological disturbance of human remains. When human remains are, or have been accidentally, disturbed in an archaeological context, consultation with the relevant authority is necessary, the relevant body being determined mainly by the context in which the remains are located (see Table 1). If an excavator expects to find human remains, a licence, *Faculty* (authorisation by the Church under ecclesiastical law), and/or directions should be sought, as required, and obtained before starting to excavate. If remains are found unexpectedly, work should stop until the necessary authorisation is obtained – when necessary, authorisation is usually obtained within a couple of days. If the remains are believed to be less than 100 years old or are interred in a recognised burial ground, then the local coroner and police have to be informed (English Heritage and Church of England 2005).

As Table 1 shows, the *Burial Act of 1857* is the 'default' legislation for archaeological excavations of human remains. Where it applies, excavators have to apply to the Ministry of Justice for a Section 25 licence. In the past, where appropriate, Section 25 licences allowed for the retention/curatorship of human remains in museums and other suitable places, such as universities, for later study. However, following the most recent MoJ interpretation of current laws, all licences issued after April 2008 have to set a date for reburial of excavated human remains. For example, as the situation stands today, a reburial date would have to be agreed for any new early hominid remains discovered at the Palaeolithic site of Boxgrove, Sussex (Roberts and Parfitt 1999). Normally two years is allowed for study unless longer is requested and can be justified; deadlines can be subsequently extended if necessary and reasonable by a further application to the MoJ (Ministry of Justice 2008), although an application must be made before the set date has expired. It should be noted that the MoJ recognises that it is desirable to retain older and more important archaeological human remains for future research. The MoJ takes the view that current legislation requires a reburial date to be set, but they are working on ways to address this potential obstacle to the full study of excavated human remains (and indeed the retention of remains in the long term). Earlier licences which permit retention in museums and other suitable places remain valid.

The *Disused Burial Grounds (Amendment) Act 1981*, and similar legislation, applies instead of the *Burial Act 1857*, where a disused burial ground which has not passed into different use is developed, and especially when it is compulsorily

purchased. Where one of these Acts applies, excavators should apply as soon as possible to the MoJ for 'directions'. These Acts apply most frequently to relatively recent burial grounds, and therefore 'directions' include requirements to advertise in order to give any relatives an opportunity to exhume and rebury the remains of family members; there may also be requirements that relate to public health concerns. A reburial date again has to be set, and relatively rapid reburial is expected, although a reasonable time will be allowed for study which can, again, be extended if necessary, as under the *Burial Act 1857*.

Ecclesiastical law (Faculty) applies to human remains located in Church of England churches, churchyards, and burial grounds – and in these cases an application for a Faculty should be made to the Church of England. Again, Faculties normally require reburial dates and these can be extended, if necessary. The *Burial Act 1857* does not apply if burials are disturbed by the normal management of COE burial places, but it does apply if archaeologists remove human remains from COE burial places in order to move and examine them elsewhere, in which case archaeologists need to apply for a Faculty and a Section 25 licence.

Other Acts that are, and may be, important include the *Human Rights Act of 1988* (http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1), and the *Human Tissue Act of 2004* (http://www.opsi.gov.uk/acts/acts_2004/ukpga_20040042_en_1); of relevance too is the Human Tissue Authority (<http://www.hta.gov.uk>) that regulates the removal, storage, use, and disposal of human bodies, organs, and tissues from the living and deceased. The *Human Tissue Act* governs remains less than 100 years old in museums and other institutions. It is worth noting that the *Human Rights Act* defines human rights abuse as only applicable to the living, so it cannot be invoked for perceived harm or wrong done to human remains from archaeological sites. However, remains could technically be covered by Common Law regarding respectful treatment of the dead (McKinley pers comm, November 2007). Certainly there are some who argue that the treatment of human remains should be viewed within a broader human rights perspective and that this would be a better way of protecting the dead from disrespectful treatment. The *Human Tissue Act* stemmed from a realisation that in some British hospitals organs and body parts had been removed and retained from deceased patients following post-mortem examinations, along with stillbirths and foetuses, without the knowledge or consent of relatives (Department of Health 2000, in Hubert and Florde 2002).

During 2008 and 2009, a second stage of reform of burial laws for England and Wales is expected to consider amendments to existing burial ground legislation, with the aim of allow(ing) otherwise lawful and legitimate activities, such as the archaeological examination of human remains; to proceed without the constraints of legislation not designed to deal with such issues, and with retrospective effect as far as possible⁶ (Ministry of Justice 2008). It will also look at the circumstances for the retention of human remains from archaeological sites in museums and other institutions. At this stage (Ministry of Justice 2008), it is intended that this should be possible, subject to appropriate conditions and safeguards, if acceptable and justified by circumstances.

Situation	Authority	Relevant legislation	Action	Comment
In a burial ground in the care of the Church of England	Church of England (Ministry of Justice)	Church Law (Burial Act 1857)	Faculty required (Section 25 licence also required if the remains are going to be taken somewhere else for study)	
In an active burial ground in other care	Ministry of Justice	Burial Act 1857	Section 25 licence required	
In a disused burial ground which has not passed into other use	Ministry of Justice	Usually Disused Burial Grounds (Amendment) Act 1981 or similar	Directions should be applied for	Various Acts can apply depending on circumstances; consult MoJ as soon as possible
On land which has passed into other use including pasture, arable, industrial, recreational, or built over	Ministry of Justice	Burial Act 1857	Section 25 licence required	

Table 1: Laws pertaining to different situations where human remains may be found in England and Wales and the relevant authorities

(ii) Scotland

In Scotland, the previous acts do not apply (Logie 1992; Historic Scotland 1997), but Civil and Criminal Law provides for dealing with disinterment of human remains. As for England and Wales, in Scotland there is no property in a corpse. Furthermore, Logie (1992, 12) states that, 'The basic premise ... is that human remains are sacred whenever they are interred, and that graves and tombs are not to be disturbed. This protection is not necessarily absolute'. All human remains have the 'right of sepulchre' (Historic Scotland 1997, 3). However, there are three exceptions to the rule that human remains must not be disturbed and, if disinterment cannot be effected through these exceptions, then it is illegal:

- if those managing a public burial ground are compelled to disturb graves,
- if the burial was in ground where there was no right of burial or,
- where a warrant has been obtained from the Sheriff Court to disinter a body – usually if relatives wish reburial elsewhere or if necessary work has to be done in the graveyard or associated buildings; there is no report of a warrant being granted for archaeological, educational, or scientific reasons (Logie 1992).

If human remains are disinterred and reinterred, they are expected to be treated with decency and respect. The same rules apply to bodies buried outside of recognised burial grounds, but there are considerable complexities and areas of doubt in this particular branch of Scots law' (Logie 1992, 14).

(iii) Northern Ireland

The Environment and Heritage Service of Northern Ireland (EHSNI) provides guidance for archaeological excavations in general. All archaeologists excavating a site have to apply for an Excavation Licence, and the current legislation covering monuments and objects is the Historic Monuments and Archaeological Objects (Northern Ireland) Order for 1995 (http://www.opsi.gov.uk/si/si1995/uksi_19951625_en_1.htm), although there has been protection for monuments since 1869. A licence has to be applied for to the EHSNI at least fifteen working days prior to the start of fieldwork on the site, except if remains are found accidentally.

The legal requirements for the excavation of human remains are outlined in Buckley *et al* (2004). If human remains are discovered accidentally then the Police Service of Northern Ireland (PSNI, formerly the Royal Ulster Constabulary, or RUC) have to be contacted. If the remains are considered >50 years old then the EHSNI need to be informed. The landowner of the site has to be identified, and the 'status' of the land. If the burial ground belongs to a District Council, the Burial Grounds Regulations (Northern Ireland) 1992 has to be complied with, subject to Section II (4) of the Coroners Act (Northern Ireland) 1959. If the burial ground belongs to the Church of Ireland then it may be necessary to obtain a *Faculty* from the church authorities.

2.4 Excavation, analysis, and curation of human remains in Britain

As we have already seen, in Britain today the vast majority of archaeological excavation is undertaken by contract archaeologists following successful tenders for work in areas where modern development will disturb archaeological deposits, including human remains. Therefore, those who feel human remains should not be disturbed need to be aware that it is rarely the archaeologist who seeks their disinterment' (White and Ganjaris 1998, 19) but rather, disturbance occurs due to the desire for property development. British planning law can also lead to professional cemetery clearances (and controlled excavations), often with immediate reburial, especially if the burials are post-1500 AD. Furthermore, as Scarre (2006, 183) states, 'Human remains probably receive, on the whole, more sensitive treatment from archaeologists than they do from developers who ... are not professionally interested in re-creating former lives'. In general, Britain does not face looting of graves, as seen in some parts of the world (Figure 7) but, in circumstances such as this, rapid excavation is necessary to prevent loss of heritage information and to try to alleviate what is seen as a lack of respect for the dead.

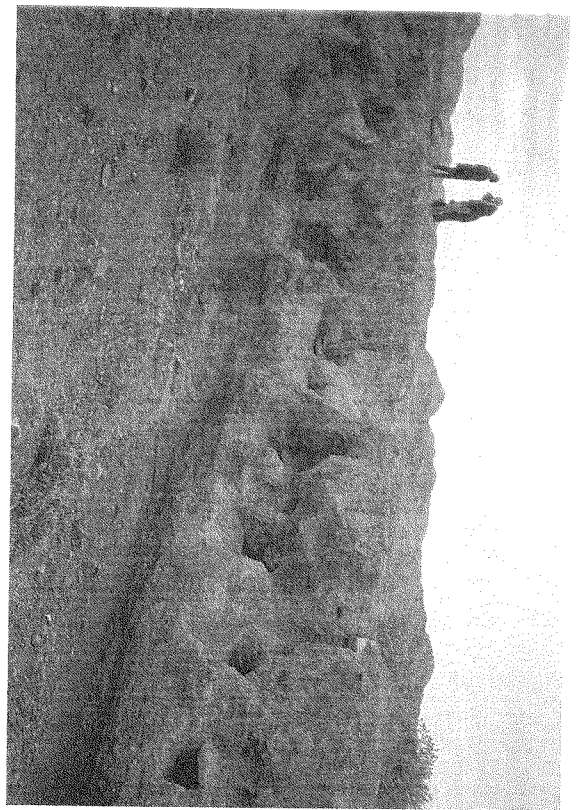


Figure 7: Exposed and robbed (archaeological) graves, Jordan (Charlotte Roberts)

There are many thousands of human remains from British archaeological sites curated in our museums, academic institutions, and research laboratories ranging in date from the Palaeolithic (c. 10,500–8,000 BC), or prehistory, to the post-medieval/Early Modern period (c. AD 1550–1850). Remains are curated to enable research to continue beyond the skeletal report produced at excavation stage. Indeed, recently there has been a move, unique to Britain, to curate human remains in other places. For example, the skeletal remains from the church of St Peter's, Barton-on-Humber, Lincolnshire, have been returned to the church and are being curated in the consecrated area, with availability for further study. In 2005, English Heritage and the Church of England agreed that depositions of archaeological human remains such as this in consecrated redundant, or partly redundant, churches were acceptable (Mays 2007), termed Church Archives of Human Remains (CAHR).

Curation of human remains allows them to be used for education and research. Ultimately, if human remains are retained then they *must be* utilised for these purposes. Otherwise, one has to question why the remains are being retained, especially if claims for repatriation and/or reburial exist. The curation of human remains for specific purposes of course has to be justified but, as Jones and Harris (1998, 262) remind us, 'We cannot justify a situation whereby thousands of skeletal remains from the recent past linger unstudied in universities and museums for years on end because ... ongoing ... scientific work is essential to justify their maintenance'. Of course one of the main arguments for retaining human remains for study is that the development of new methods of analysis will produce new data and interpretations of our ancestors that were

not possible before. However, one could also argue that, 'The expectation that one day someone may want to work on them is not sufficient reason for keeping them' (*ibid.*, 262). Even so, as we have already seen, studies have shown that re-study of human remains using new methods produces new data.

The maintaining of adequate curation facilities is essential for long-term storage, research and display and, increasingly, guidance on the proper care of human remains is being published for museums (Alfonso and Powell 2006; Cassman *et al* 2006b; Lohman and Goodnow 2006); it is appropriate here to say that other institutions that curate human remains such as universities and research laboratories should also be thinking of adopting this guidance. Clearly, cultural, spiritual, scientific, and educational values and sensitivities must be respected, while ensuring information is shared with a wide range of interested parties. It should also be noted and stressed that 'learning with real skeletal remains' is essential in a university context because plastic skeletons do not preserve the detail that is necessary to understand human variation. Related to this is the worrying, and increasing, move away from using real human bodies in medical schools to learn about the anatomy of the human body in favour of computer software programmes.

Bearing all this in mind, one should also remember that in countries that were colonised in the past, cultural heritage, including burials, was plundered in the name of 'collecting' and 'science' (Hubert and Florde 2002), and back in the 19th century grave robbers stole bodies for anatomists and surgeons. Jones and Harris (1998, 261) feel that if human remains were obtained unethically in this way in the past, it is inappropriate to accuse people wishing to work on those human remains today of the 'grave robbing' that took place 80–120 years ago: '... we can find no moral connection between killing and grave robbing of 100 years ago and work undertaken today'. Simpson (2002) nevertheless notes that there has been an increasing focus on the repatriation of museum collections of human remains and other cultural objects in Britain and elsewhere, and that this reflects the broader concern with trade in illicitly exported works of art, and indigenous claims for the repatriation of human remains removed from colonies during the colonial era by the British (most common at the end of World War One in 1918).

Whatever is felt about the way human remains were acquired for museum collections, methods of acquisition do need close scrutiny. With this in mind, the curation of human remains from other countries has recently attracted attention and discussion, resulting in a guidance document for England, Wales and Northern Ireland (DCMS 2005) following a House of Commons Select Committee on cultural property being established in 1999 (Simpson 2002). It was felt that human remains should be considered as an issue distinct from the broader issues of repatriation of ancient property, and they recommended the DCMS should look at the subject. In 2001, the DCMS established a Working Group on human remains, leading to a publication by the DCMS (2005); separate guidance for Scottish institutions is under consideration and development, and of course the *Human Tissue Act 2004* governs remains dating from the past 100 years that are curated in institutions.

As Walker (2000, 25) emphasises, 'our reconstructions of what happened in the past are refined and corrected through re-examination of collections using new analytical techniques and theoretical perspectives', while Simpson states that 'what is important is the rationale for the proposed contemporary scientific work, the quality of this work, and its potential value to the human community (including the descendants of those whose bones are to be studied)' (Simpson 2002, 261). Of course, museums need to be familiar with developments in the study of human remains and be reliably informed particularly about the potential for destructive analyses. These methods are so much more common today where there is a desire to know more about diet (stable isotope analysis), relationships between people (ancient mitochondrial DNA analysis) and disease evolution and presence (ancient pathogen nuclear DNA analysis). Moreover, funding bodies in Britain are more likely to support these types of analyses, but they can be expensive and are by no means routine in Britain. Of note also is the apparent rise in papers being published in these fields of study in recent years (Stojanowski and Bulikstra 2005). Clearly too, the public feels that it is appropriate to curate skeletons for future scientific work, as seen above (Carroll 2005).

2.5 *Displaying human remains and using them on television*

The question of whether it is acceptable to display human remains in museums is contentious, and in some parts of the world it is prohibited, for example in Australia and the United States; clearly 'the display of dead bodies is an increasingly contested issue' (Brooks and Rumsey 2006), and questions have been raised recently on whether the movement of human remains from one country to another can even be justified for display purposes (Cook 2007).

In Britain, there does nevertheless appear to be a strong desire on the part of the general public to visit museums and view human remains, whether skeletons, bog bodies, mummies, body parts, or more recent bodies such as Jeremy Bentham, the philosopher and jurist (1748–1832), whose dissected skeleton was padded out and clothed, and has been on display at University College, London since 1850 (Fuller 1998, in Brooks and Rumsey 2006). Bentham was adamant that religion should not be a hindrance to medical research and that his body should be publicly displayed after his death. Perhaps this indicates the need of the public to have a strong link with the past through the actual remains of their 'ancestors'. The real question concerns who gives consent to the display of human remains. Bentham obviously did wish his body to be used for medical research and eventual display, but what of human remains from prehistoric burials in museums?

In 2004, during National Archaeology Week, the Museum of London surveyed visitors to the museum about the display of human remains. Eighty-eight of 99 people said they would like to see human remains on display and 98 of the 99 felt it appropriate for the museum to curate and research human skeletons from London's excavations (Bill White, Museum of London, pers comm, January 2008). As a further example of public attitudes to the display of human

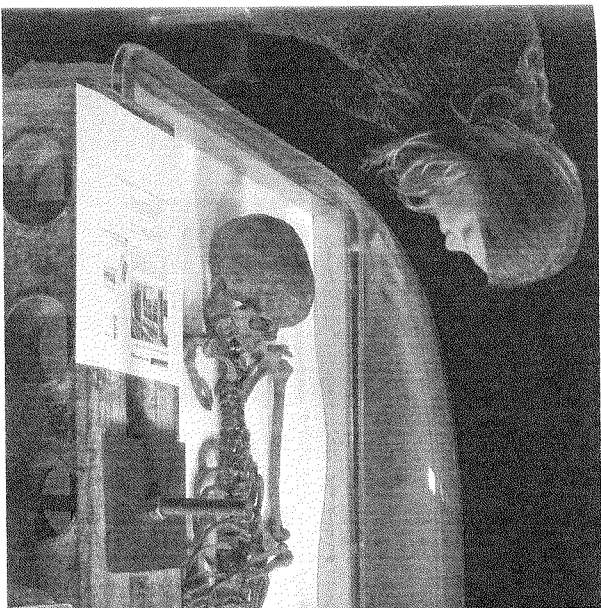


Figure 8: Display of human remains at the *London Bodies* exhibition at the Museum of London (with permission of the Picture Library, Museum of London and Nikki Braunton)

remains, Carroll (2005) found that 79% of 220 survey respondents in Cambridgeshire felt that human skeletons should be on display and 73% felt it was appropriate. Similar findings are noted by Rumsey (2001) who surveyed 51 people mainly aged from 30 to 50 years, with equal representation of male and female, and from five religions. In a more recent similar survey in 2007 (Bill White, Museum of London, pers comm, January 2008), 53% of respondents expected to see human remains on display in museums, and 92% approved of display in museum galleries. When asked if they would still approve if the human remains were deemed anonymous Christians, 92% said yes, although 22% said they would disapprove if the remains were of known identity. A convincing 95%

said that display should be the ultimate fate of human remains. Simpson (2002) also reports that, in the mid-1990s, the Museums Association surveyed museums and sought information about human remains in their collections (Simpson 1994). Twenty-four respondents had or once had human remains in their collections, and nineteen still had some on display, but none showed Native American, Australian aboriginal, or Maori materials of human origin. Nevertheless, seventeen of the nineteen had removed remains from display in the past and almost half attributed this to changes in staff attitudes. One has to ask why museum curators appear to be speaking for the public in this, often overly, politically correct world in which we live? This could ultimately affect how the public learn and expand their knowledge about the past, and alter the role and purpose of museums today. However, one must consider how different 'types' of human remains may be treated for display; consider cremated remains, fragmentary skeletal remains, complete skeletons, complete bodies such as Egyptian mummies and those from bogs, parts of bodies such as hair and skin, children's remains, foetal remains, people who suffered gruesome deaths, and more recent specimens of body parts (diseased or not) in pathological museums. Should they be displayed differently and does this affect the public's acceptance of the display?

There have been notably large audiences in recent years for displays of human remains of all ages and types in museums. Take, for example, the *London Bodies* (Figure 8) exhibition at the Museum of London in 1998–99, which attracted a

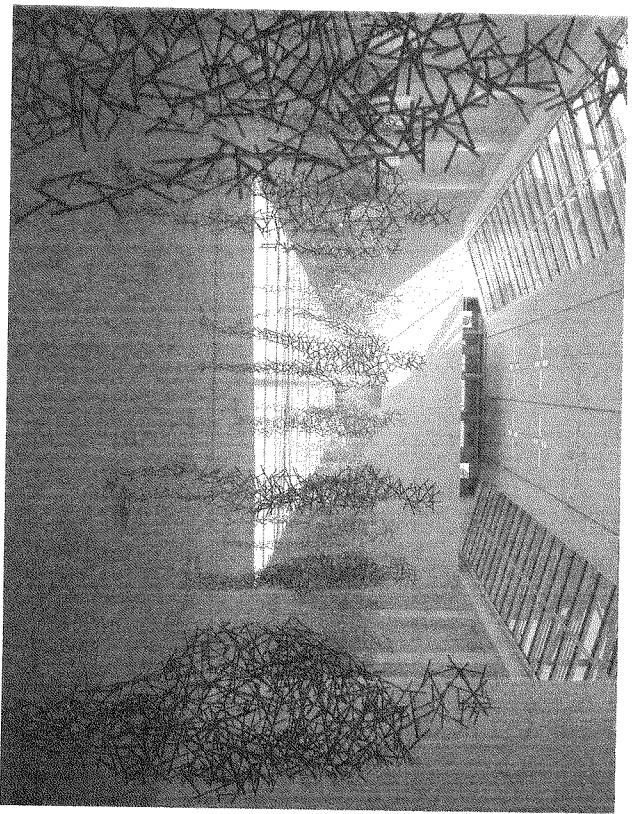


Figure 9: Display of humans: Antony Gormley, *Domain Field*, 2003 – 287 Domain sculptures, derived from moulds of local inhabitants of Newcastle/Gateshead aged 2.5 years to 84 years; stainless steel bars 4/6 x 4/76mm (copyright: the artist; photo: Stephen White; courtesy: Jay Jopling/White Cube, London)

record number of visitors (Museum of London 1998; Swain 1998; Ganiaris 2001), as did the *Body Worlds* anatomical exhibition of human bodies in London in 2003 (Discover the mysteries under your skin, Exhibition catalogue 2002) – 3200 people per day visited this exhibition, and 14 million visited the exhibit that went around the world (Brooks and Rumsey 2006). Ganiaris (2001) describes in detail how the *London Bodies* exhibition was developed and implemented, including the formation of an ‘ethics statement’ (Museum of London 1997). The *London Bodies* exhibition attracted nearly 70,000 people (Ganiaris 2001), and surveys of visitors’ reactions to how material was presented and attitudes to the display were generally positive. It was the skeletons of a child with rickets and a mother and foetus which disturbed people most. The *Body Worlds* exhibition was more a display of how beautiful human bodies can be (Brooks and Rumsey 2006), but also stressed the educational value of them. There are of course questions as to whether the dramatic poses used for many of the bodies was respectful and if using slogans to describe exhibits was appropriate, although the suggestion that this display was ‘a cross between a medical, art, and freak show’ cannot be supported (*ibid.*, 278). Both exhibitions were developed for specific reasons: *London Bodies* to increase visitor numbers, and *Body Worlds* to generate income; both were successful in achieving their aim. Related to these two very successful exhibitions where both historic and relatively recent bodies were on display was Anthony Gormley’s *Domain Field* exhibition at the Baltic in Gateshead, Tyne and Wear, in 2003. Here, the local public were encouraged to become part of the exhibition as volunteers.

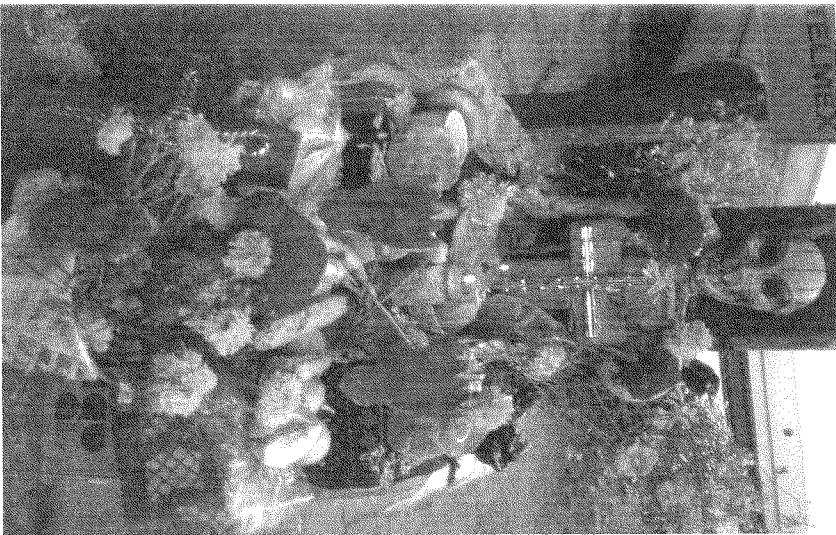


Figure 10: Display at the Mexican Day of the Dead (Charlotte Roberts)

They had their bodies moulded and the resulting casts were then filled with a matrix of thin steel bars by a welder. The result was a room full of steel matrix figures of different sizes and shapes, representing a range of ages, both sexes, and different builds with which visitors could engage (Leader 2003; Figure 9). Likewise, at the same place in 2006, Spencer Tunick produced a photographic exhibition of naked bodies of 1700 volunteers who posed for photographs early one July morning in 2005 (Fabrizi and Ley 2006). Both exhibitions were very successful.

As demonstrated above, the public are incredibly interested in the human body, both past and present, probably because they can relate directly and closely to the fact that they also have a body and skeleton. It may also be because few people come into contact with dead bodies and therefore, as Chamberlain and Parler Pearson (2001) suggest, the living rarely see the dead. By way of contrast to Britain, in many parts of the world today, death is very much part of life, and is celebrated as such – for example the annual Mexican Day of the Dead (the Christian feast of All Saints and All Souls) from 31 October to 2 November (Figure 10). This private family feast is seen as a reunion of the living and the dead, where food and drink offerings are made to the dead, and graves are tended and decorated (Carnichael and Sayer 1991).

This fascination with the dead can also be seen in the success of programmes on British television that depict the study and interpretation of human remains; these include the BBC2 series *Meet the Ancestors* (J Richards 1999), Channel 4’s *Secrets of the Dead* and *To the ends of the earth*, and some of the programmes in Channel 4’s *Time Team* and BBC2’s *Timewatch*. The question to be asked is, even if museum displays and TV programmes about human remains are very popular, does this justify them? Again, the issue of whether this is acceptable to people will depend on many factors, including their religious attitudes. Furthermore, if human remains are displayed, should there be ethical guidelines to say how they should be displayed? For example, the frozen and preserved body of Otzi (see Chapter 3) has attracted a wide audience since his discovery, and continues to do so through the display of

his remains in a temperature- and humidity-controlled chamber in the South Tyrol Museum of Archaeology, Bolzano, Italy – but is the display sensitive and respectful? Recently, staff at the Pitt Rivers Museum in Oxford have reported being increasingly uncomfortable with the display of shrunken heads there, despite the exhibit being the Museum's most famous and popular exhibit (www.spiked-online.com/index.php/site/article/3017/).

Many museums would state that one of their missions is to be aware of viewer sensitivity when displaying archaeological finds (Tyson 1995, in Aufderheide 2000). If this is done then the public should be given the opportunity to view human remains, whether they be bodies or skeletons, as long as the display contributes to a wider display and understanding of a particular place and/or time period; visitors should also be warned that human remains are on display before they encounter them in the museum (as was done for the *London Bodies* exhibition). Displaying human remains purely for curiosity's sake is unacceptable, and of course codes of practice have been developed to deal with this problem (DCMS 2005, 20; Museum Ethnographers Group 1994; Museums Association – <http://www.museumassociation.org/ma/10934>; World Archaeological Congress 2006 – http://www.worldarchaeologicalcongress.org/site/about_ethi.php; International Council of Museums – <http://icom.museum/ethics.html> (section 4.3)). There is, however, still some way to go in providing detailed ethical and moral guidance for those staging displays.

2.6 The United States: a case study

While New Zealand and Australia, in particular, have seen laws passed to prevent excavation of human remains, and/or immediate repatriation and/or reburial of remains excavated (see Jones and Harris 1998), developments in the United States will be detailed here from the perspective of providing a comparative example from outside Britain to illustrate how human remains have been treated elsewhere. It should be emphasised that considerations regarding human remains in other parts of the world are very different to the experience in Britain.

In the United States in the late 20th century there was an increased concern by Native Americans about the excavation of their ancestors' burial sites and the storage of human remains and associated funerary artefacts in museums and other institutions (Buikstra 2006b). This was supported by the public in later years which resulted in legislation being passed in 1989 and 1990. Discussions prior to the passing of legislation were presented as a conflict between ethics and science (Lackey 2006) and the legislation was described as 'an earthquake that transformed perception and memory' (*ibid.*, 147). Some argue that the legislation was created to right wrongs: pay debts to the dead, establish and maintain justice, and return what belonged to Native Americans.

The *National Museum of the American Indian Act* (NMIATA) was passed in 1989, while the *Native American Graves Protection and Repatriation Act* was passed in 1990 (NAGPRA), with its accompanying regulations appearing in 1995. Additionally, within each of the States, laws can differ regarding

Native American human remains and artefacts that fall outside the umbrella of NAGPRA (Ubelaker and Guttenplan Grant 1989). Of course, the excavation of human remains and funerary objects in the name of 'science' has seen a long history in the United States, and the collection of human remains and associated materials started long ago. In 1862 the Army Medical Museum was founded as a repository for thousands of skeletal specimens, photographs, and other medical records obtained during the treatment and autopsy of military casualties of the Civil War of 1861–65 (Walker 2000); Native American crania and artefacts were also collected by army doctors from battlefields as well as cemeteries. During the 20th century, collections of human skeletal remains of Native Americans grew in American museums, and included the curation of skeletal collections with associated records such as age at death, sex, ethnicity, stature, and cause of death. However, it was not until the late 20th century that Native Americans found that their voice had been heard. Many tribal members feel linked spiritually to all or many other Native American people, living and/or dead, and believe they have a responsibility for the spiritual well being of their ancestors. Retention of their ancestors' remains in museums therefore interferes (and interfered) with the afterlife and separates the spirits of the dead from the living (*ibid.*).

NAGPRA (<http://www.cr.nps.gov/nagpra/>) has two principal objectives (Myra Giesen pers comm, June 2007). The first is to deal with existing collections of Native American cultural items (human remains, funerary objects etc) by producing summary inventories – the collections are those made before the passage of the Act. The second is to protect Native American graves and other cultural sites still within archaeological sites on federal and tribal lands. The former objective is satisfied by the Act's provision of a mechanism for museums or federal agency officials to consult with Native Americans, and upon request repatriate human remains to lineal descendants or culturally affiliated Native American organisations. The latter objective is provided for by a system for federal land managers to consult with those organisations to determine the proper disposition of cultural items accidentally discovered or deliberately excavated on federal or tribal lands. Therefore, all federally funded public and private museums that curate cultural items are subject to this law, except the Smithsonian Institution in Washington DC, which is governed by the NMIATA; both Acts cover materials dated to AD 1492 or later.

All institutions were required to identify cultural items in their collections subject to NAGPRA and prepare an inventory of the items. They then had to consult with lineal descendants, Native American tribes, and Hawaiian organisations regarding identification and cultural affiliation of the items, and then inform them that these cultural items could be repatriated. For new discoveries of archaeological sites, only federal and tribal lands are included in the Act. As of November 2006 nearly 32,000 individual sets of human remains, nearly 700,000 associated funerary objects, 118,000 unassociated funerary objects, and 3584 sacred objects have been identified in Federal Register notices as being determined to have lineal descendants and/or cultural affiliation ([34 HUMAN REMAINS IN ARCHAEOLOGY](http://</p></div><div data-bbox=)

www.crnps.gov/nagpra/FAQ/INDEX.HTM); it is unknown what proportion of these items has undergone repatriation (Myra Giesen pers comm, June 2007). Naturally, there are many cultural items that cannot be assigned an affiliation because there is inadequate evidence. As of the end of December 2006 the number of non-identifiable human remains stood at 118,400 and 627 associated funerary objects (<http://www.crnps.gov/nagpra/ONLINE/INDEX.HTM>).

The National Museum of Natural History set up a Repatriation Office in 1991 in response to the NMAIA to inventory and assess the cultural origins of skeletal remains potentially affiliated to Native American, Native Hawaiian, and Native Alaskan people (<http://www.nmnh.si.edu/anthro/repatriation/>). As of the end of May 2006, 89,848 funerary objects and the human remains of a minimum of 3585 individuals had been repatriated. At the end of September 2006, 65 Notices of Intended Disposition had been received by National NAGPRA, identifying 207 individual sets of human remains, 851 funerary objects, 25 unassociated funerary objects, and four objects of cultural patrimony recovered from federal lands (<http://www.nps.gov/history/nagpra/NOTICES/NID.pdf>).

In addition to the two laws, several professional bodies in the United States have also provided ethical guidelines for dealing with human remains, for example the American Association of Physical Anthropologists (<http://www.physanth.org/positions/ethicsmain.htm>), the American Anthropological Association (<http://www.aanet.org/committees/ethics/ethcode.htm>), the Society of American Archaeology (http://www.saa.org/repatriation/repatriation_policy.html), and the Advisory Council on Historic Preservation (<http://www.achp.gov/docs/hypolicy0207.pdf>); see Watkins *et al* (1995) for a summary of the policies.

Many bioarchaeologists in North America would say that NAGPRA has benefited anthropology as a whole, and bioarchaeology in particular (Ousley *et al* 2005), including more comprehensive analyses of human remains – filling gaps in knowledge of the human past, increasing study of human remains overall, allowing new analytical techniques to be used on old skeletal collections, and improving curation facilities for human remains that are not repatriated and/or reburied. Lackey (2006, 162), a professor of philosophy in New York, also describes the NAGPRA experience as 'positive on the whole'. It has improved relationships and increased collaboration between archaeologists, bioarchaeologists, and native groups (Rose *et al* 1996), although not always (Buitstra 2006b, 412–13), and stimulated the production of standards for recording human skeletal remains (Buitstra and Ubelaker 1994). For example, Philip Walker at Santa Barbara University in California has worked profitably with the Chumash for over 25 years and, through discussions and consultations with their leaders, has had an osuary built on his university's campus to hold Chumash human remains for research (Buitstra 2006b).

Clearly, in the United States the push by indigenous people to have their ancestors' remains treated with respect, repatriated and/or reburied, has led to legal developments that have required archaeologists and anthropologists to look closely at how they treat human remains within a cultural context. It has also been beneficial to the discipline of bioarchaeology as much more descriptive

and analytical work has now been done, inventories have been made of skeletal samples, and new research agendas developed, leading to cooperation and collaboration between archaeologists, bioarchaeologists and Native American groups.

2.7 Summary

The excavation, study, and curation of human remains from archaeological sites can be controversial. Opinions about whether this work can be justified vary considerably and depend on a variety of factors. It would appear that a more balanced view has now developed about what is acceptable and unacceptable, and there is much more dialogue between interested parties, particularly in some parts of the world such as the United States. As for Britain, there is some way to go to enable all those with a vested interest in the dead and their possessions to have their say. However, unlike in some other parts of the world, we can *all* claim a common ancestry with our forebears, and we can *all* have opinions about how human remains from archaeological sites should be treated.

2.8 Key learning points

- the study of human remains is a privilege and not a right
- repatriation and reburial of remains occurs at varying intensities around the world
- opinions about the treatment of human remains varies geographically, culturally and temporally, and will vary within countries, locally, regionally and nationally
- all interested parties should have equal rights to engage in debates about the treatment of human remains
- in some parts of the world human remains have not been treated with respect at all times (often relating to associated injustices to minority groups)
- the value of the study of human remains in contributing to our knowledge of the past is undoubted
- more debates about the issues are needed for British-derived human remains
- laws and guidelines regarding the ethical and legal treatment of human remains in Britain exist but, as a result of a recent review of aspects of burial legislation, archaeologists and bioarchaeologists remain in limbo regarding best practice
- the public in Britain are generally favourable to the excavation, analysis, curation, and display of human remains
- retention of human remains must be justified
- people have a fascination with human remains, past and present