'Sapient trouble-tombs'? Archaeologists' moral obligations to the dead

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Abstract

This chapter argues that moral questions raised by archaeological research on human remains are helpfully studied in the context of a broader range of questions about the ethically proper relations between the living and the dead. How, for instance, if death is extinction of the self, can anything that is done to a person's remains after her death constitute a harm or wrong? Whilst a common moral intuition prompts us to treat the remains, memories and antemortem wishes of the dead with respect, justifying that intuition has proved to be problematic on the assumption that the dead are no more. However, recent philosophical work is adduced to show that persuasive reasons can be given for treating the dead respectfully, that these reasons are distinct from those relating to archaeologists' responsibilities to descendant communities, and that they do not preclude all archaeological work that deals with the dead, though they do attach strings to it.

1. Introduction

Archaeological research commonly involves the disturbance of burials, the disinterment of the dead, and the (sometimes destructive) study of skeletal and other physical remains of once-living human beings. The corporeal fragments that remain, together with associated grave goods, are sometimes returned to the place and community of origin (in the USA, for instance, under NAGPRA provisions) but may also be retained for future investigation or even museum display. To give some idea of numbers, it is estimated that UK institutions alone hold the remains of no fewer than 61,000 individuals – the

population of a small city (DCMS 2003: para.34). Worldwide, the total runs into several millions. Many archaeologists, anthropologists and museum curators in recent years have paid sympathetic heed to the requests of indigenous communities for the repatriation of 'their' dead; but there has been relatively little attention devoted to the ethical responsibilities of researchers towards the dead themselves.

This is perhaps unsurprising in view of the inevitable puzzles that arise when we start to think about the moral obligations of the living to the dead. In fact, we might wonder whether there can really *be* any moral responsibilities to people who are no more, or who at least are permanently removed from the living scene. Thomas Jefferson was adamant that one must be alive to be the subject of interests that can form the basis of rights: 'But the dead have no rights. They are nothing; and nothing cannot own something' (Jefferson 1816). In similar vein, the UK Human Rights Act 1988, displaying what its drafters doubtless considered to be rugged common sense, states that one must be alive to be a victim of rights abuse. Yet many people intuitively feel that we can act wrongly towards the dead, for example by undermining their reputations or failing to observe their reasonable testamentary wishes; and interfering with a burial against what may be presumed to have been the formerly living person's wish to be allowed to rest in peace may arouse a similar sense of moral discomfort. Unless we believe that the dead continue to exist as souls or spirits aware of what goes on in this sublunary world, it is hard to see how such treatment can do them any actual harm (especially since it is only the physical remains that are being disturbed, and a person cannot be simply identified with her corpse). But the recognition that what are being investigated are the remains of people with whom we share a common humanity persuades many to think that the dead should, in Kantian phrase, be treated respectfully as ends in themselves, and not merely as means to others' ends.

Of course not all archaeologists have allowed such thoughts of a common humanity to put much of a brake on their professional activities. Sir Mortimer Wheeler's oft-quoted words have acquired a certain notoriety: 'We do no harm to those poor chaps. When I'm dead you can dig me up ten times for all I care' (quoted in Bahn 1984: 214). Such 'sapient trouble-tombs' (in Charles Lamb's delightful phrase) as Sir Mortimer evidently believe that since the dead are beyond good and evil, then nothing that happens to their

physical remains makes any difference to *them* (whatever effects it may have on the living who are linked to the dead by ties of affection, kindred or community). On this view, where there is no harm, there can be no disrespect. But most archaeologists find it hard to treat human remains with the same moral and emotional indifference that they do mere artefacts; bones belong to their owners in a much more intimate sense than do their pots, jewellery or weapons, and demand a special kind of recognition. Human remains are unique amongst items of archaeological study in being parts of people rather than mere extraneous possessions. A sense of shared humanity prompts researchers to accord human bone and tissue a dignity not felt to be owed to any associated objects found with them, however valuable or significant those may be in other respects. Breeur and Burms remark that '[a] dead human body is treated as if the significance of the living person were still dwelling in it in some way: most people think that they should respect or honour it and believe that desecrating it would be cruel, immoral and criminal' (Breeur and Burms 2008: 138). The same point is sensitively captured in the recent report of the Church of England/English Heritage Advisory Panel on the Archaeology of Christian Burials in England: human remains are special because while 'a corpse has no more eternal significance than an empty shell,' it still possesses 'meaning as the visible manifestation of one with whom we lived, laughed and conversed' (Church of England 2005: para.156).

The moral question of how archaeological human remains should be treated is best perceived as an aspect of a larger question about the ethically proper relations between the living and the dead. It might be expected that the views we hold about the metaphysical status of the dead (e.g. are the deceased extinct, or do they retain some form of existence as souls or spirits?) would have a considerable bearing on our opinions on the moral proprieties. Yet, at least within western culture, their impact is often remarkably slight. People who hold that death marks the end of the personal subject usually believe as firmly as those who maintain the reality of an after-life that it would be wrong to flout a deceased person's legitimate testamentary wishes, or break a promise we made to her on her deathbed, or donate her body against her will to medical research. What Joel Feinberg has termed a person's 'moral estate' (on analogy with her legal estate) is customarily acknowledged to survive her death by people whose understanding

of the significance of death otherwise varies widely (Feinberg 1984: 83). However, it is not so easy to make philosophical sense of the notion of a moral estate which outlasts its owner. The analogy with a legal estate soon falls down, because while the latter consists in property, rights and entitlements which can pass straightforwardly to new owners, the former seemingly involves un-transferable abstract rights and obligations which have assumed a mysterious free-floating existence. But now the metaphysical *bona fides* of a posthumously surviving moral estate looks dubious, for how can there be rights without a right-holder or interests in the absence of an interested subject? (It is sometimes thought that while we cannot *harm* the dead, we can *wrong* them, but there is still something mysterious about the idea of *wronging* a non-existent subject; moreover, it would remain to be explained how a person could be wronged by something that did not adversely affect her interests.)

Perhaps Wheeler was right after all and it really doesn't matter what we do to the dead (provided we don't hurt the feelings of the living), since there is no subject around anymore to be harmed or wronged.

 2. The discourse of 'respect'

Justifiably or not, the idiom of 'respect' has become the dominant one in contemporary discourse about archaeology and the dead. The highly influential Vermillion Accord on Human Remains drawn up by the WAC Inter-Congress in 1989 makes frequent use of the term 'respect', its first two principles enjoining that:

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 reasonably inferred.

That 'respect' has become a buzz-word in archaeological ethics is not surprising in view of its popularity in many modern ethical debates. *The Concise Oxford Dictionary* defines the relevant sense of the noun 'respect' as 'deferential esteem felt or shown towards person or quality'. Respect can take many different objects – individuals, groups, genders, institutions, creeds, stances, art-works or other precious things, to name

but a few – and it characteristically combines an attitudinal with an active-dispositional component (in other words, respect should not just be felt but also demonstrated). Since people sometimes respect wrong or unworthy things, it is always worth asking what justifies a claim that such-and-such deserves respect. Principles such as those agreed to at the Vermillion meeting thus require fleshing out with a cogent rationale as well as some detailed prescriptions for application.

There are at least four different modes in which the notion of respect might be applied when it comes to dealing with the dead, namely:

1. respect for the persons whose remains are at issue;
2. respect for the remains themselves;
3. respect for humanity, as represented in the remains;
4. respect for the feelings and wishes of surviving relatives and/or genetic or cultural descendants of the dead.

The distinction between 1-3, on the one hand, and 4, on the other, has frequently been noted (for instance, the Vermillion Accord contains a separate clause concerning the respect due to the wishes of 'the local community and of relatives or guardians of the dead'). But often – though the Vermillion Accord is a partial exception – modes 1-3 are conflated, or not clearly or consistently distinguished. This matters because the different dimensions of respect may not evoke the same patterns of action in every case. So archaeologists may think they show all needful respect when they handle human bones with a certain degree of reverence and care (respect type 2), yet they may be paying no heed to their owners' known or suspected wishes that their remains should be undisturbed (respect type 1). Arguably the handling of those bones as tools of research is also incompatible with the respect due to humanity (respect type 3), if Kant is right that we should always treat human beings as end-in-themselves and never solely as means; for while bones maketh not the man, using the bones of an unconsenting subject could be considered to be treating *him* without the respect due to an end-in-himself, and thus by implication in a manner insulting to humanity.

It should be apparent that respect of type 2 – respect for the remains themselves – is less fundamental than respect of types 1 and 3, and is plausibly regarded as derivative from one or both of them. For it is the identity of bones and other remains as parts of

human persons that entitles them to a degree of reverential handling. An archaeologist who believed that she fully discharges her moral responsibilities so long as she does not wilfully or pointlessly destroy, discard or play games with human skeletal material would be suffering from moral tunnel vision, blind to the broader ethical context which makes such behaviour wrong. (This charge may not, however, apply to Gerald Vizenor's somewhat fanciful proposal (in Vizenor 1996) to establish 'bone courts' in which archaeological human bones are ascribed rights and allowed legal representation by trained advocates, assuming that its underlying intention is to do justice to the *persons* whose remains they are.)

The idiom of respect for the dead and their remains may seem attractive in enabling us to sidestep the conceptual difficulties arising from the non-existence, or the permanent non-presence, of the dead. If it is hard to understand how the dead can leave behind a moral estate of present interests, it may seem easier to grant that they can still be the object of respect or disrespect. I can have respectful thoughts, or say respectful things, about Queen Victoria even though her status as deceased appears to preclude my doing anything to benefit or harm her. Respect and disrespect belong to a class of attitudes – others include remembering, admiring, regretting, praising and being proud or ashamed of – that can be held towards no-longer-existent persons and things. While the past is a foreign country, it can be visited in thought, guided by the relics that remain. And the way we treat those relics is the best test of the sincerity of our claimed attitudes. An archaeologist who purported to respect ancient skeletons and their owners but threw the bones away as soon as her research was done would be likely to find her pretensions questioned. Even if such behaviour did no harm to the dead, it would scarcely be compatible with holding them in respect.

But intuitively appealing though this line of thought may be, it is problematic on two counts. First, it is not clear that it really circumvents the problem of the non-existence of the dead. Since treating a person disrespectfully is itself a mode of wronging her, we need to know that we can wrong the non-existent dead before we can be sure we can treat them disrespectfully! This point is easily missed when we slur over the difference between being respectful *to* a person and being respectful *about* her. It is perfectly possible to say respectful things about the deceased Queen Victoria, but it is impossible

to show respect to her, as a courtier in her day could have done. Someone who now makes disparaging comments about Victoria may offend her present-day admirers but not the Queen herself. And since the disturbance or destruction of human remains likewise has no potential impact on the subject, it is equally unclear how it could be disrespectful *towards* the dead themselves. Indeed, if the eternal non-presence of the dead debars them from being possible objects of respect or disrespect, then the belief that we can show the dead type 1 respect is simply false, a moral illusion born (perhaps) of the difficulty we have in grasping the real finality of death. Further, if respect of type 1 is impossible, and respect of type 2 – that shown to the remains themselves – is derivative from the former, then the latter must also be baseless. Arguably the cavalier handling of human bones may show a generalised disrespect to humanity – (dis)respect of type 3 – and be objectionable on that score, but it would not be specifically disrespectful to the owners of the bones.

The second, quite different problem with the idiom of respect for the dead concerns the difficulty in spelling out precisely what 'respectful treatment' of the dead involves in practice. Many researchers would be only too pleased to defer to the wishes of the researched regarding the respectful treatment of their remains, if only they knew what they were. A sensible default assumption is that people whose remains are uncovered by archaeologists would have wished those relics to be treated with dignity. Yet as Søren Holm has remarked, '[a]n interest in dignified treatment can only be fulfilled if we know what the person would see as dignified; and to know that we need to know quite a lot about the person, her culture and her place in that culture' (Holm 2001: 446). Often the cultural distance separating researcher and researched makes such knowledge hard to come by, and guesswork is a poor substitute. Even where guidance to past beliefs is available from the genetic or cultural descendants of the subjects of study, archaeologists sometimes find themselves confronted by baffling world-views. For some contemporary indigenous peoples, the dead, far from being non-existent, are still around in spiritual or ghostly form, extant subjects of interests. Piotr Bienkowski notes that 'indigenous peoples and other animists regard ancestors who died hundreds of years ago as still members of the group living today' (Bienkowski unpub.: 3). Where researchers face views which are so very incongruent with their own, their best efforts to 'treat the dead

with respect' are liable to seem inadequate to those who regard the dead as a subset of the living. Although it would be unwise to conclude from this that the discourse of respect for the dead and their remains should be abandoned (since we have nothing better to put in its place), some proffered defences of particular dealings with the dead as 'respectful' may be recognised to be little more than hand-waving.

3. The problem of the missing subject

Philosophers have been far from unanimous in their views on whether anything can be good or bad for the dead. One writer who thinks that the dead retain some form of moral estate is T.M. Wilkinson, who believes not only that some interests are carried over from life to death (such as the interest in retaining a good reputation) but that certain new interests can develop after death (for example, 'the interest in not having one's remains desecrated') (Wilkinson 2002: 34). In Wilkinson's view, '[w]e can make sense of harming someone after her death in the same way that we can make sense of remembering someone after her death' (ibid.). Furthermore, the interests that survive, or arise after, death are potentially as important as those that a person has during life and should not be seen as interests of the second rank. Wilkinson notes that there are many examples of people going to great trouble during life to ensure that (what they conceive as) their posthumous interests will be satisfied. And because these interests matter to people, there are resultant moral obligations on others to take them seriously (2002: 36).

Yet the notion of posthumous interests, whether new or continuing, is metaphysically troublesome for the reason that Eric Partridge, echoing Jefferson, has crisply stated:

> After death, with the removal of a subject of harms and a bearer of interests, it would seem that there can be neither 'harm to' nor 'interests of' the decedent. Because in such a context, these phrases (i.e. 'harm to' and 'interests of') use prepositions with no objects, they are, strictly speaking, senseless (Partridge 1981: 253).

Once again, the rock in the way of positing posthumous interests is the non-existence, or permanent non-presence (though I shall not continue to specify this alternative), of a posthumous subject to *have* the interests. *Pace* Wilkinson, it is more difficult to explain how we can *harm* or *wrong* someone after his death than how we can *remember* him (the

latter is what philosophers call an intentional attitude, which represents in mind an object that need not currently exist). Intriguingly, Partridge does not draw the apparent conclusion that it does not matter morally how we act in regard to deceased people (or their remains). Rather, he thinks that we should promote the 'fiction' that the dead remain interest-holders in order to sustain 'the moral order in society' that might be compromised if such things as casual slander or the breaking of promises were tolerated where the ostensible 'victim' was dead (1981: 258). But the relegation of the idea of posthumous interest-holders to the realms of fiction has struck many philosophers as morally dubious and conceptually inadequate.

One ingenious proposal to deal with the missing subject problem has been defended by a number of writers, including most notably George Pitcher and Joel Feinberg. (See Pitcher 1984, Feinberg 1984.) In their view, it is the living, *antemortem* person (an indisputably existing subject) that is the real subject of harmful or wrongful acts committed after her death, the harmful or wrongful impact being, in effect, retrospective. This may initially appear a far-fetched suggestion, involving an objectionable concept of backwards causation, something usually deemed to be metaphysically impossible. But Pitcher and Feinberg deny that backwards causation is at issue, pointing out that the current significance of acts and projects – their status as successful or futile, say – is very often determined by what happens at a later date. If, for instance, virtuous Sue devotes her life to fighting for a certain good cause and then after her death malicious Sam effectively negates all her previous efforts, then Sam makes it the case that those efforts were actually futile all along, although no one, including Sue, could have known that at the time. By rendering the dominant project of Sue's life a misadventure, Sam can be said to harm the antemortem Sue, causing her to have been wasting her time, despite the fact that the frustrating acts are performed only after her death.

This account can be applied to the case of archaeological treatment of human remains. Take the Egyptian pharaohs and other notables who went to great lengths to build secure resting-places for their mummified remains in order that their spirits should flourish in the after-life. Their immortality-seeking projects were entirely defeated when tomb-robbers or archaeologists undid the good work. While the acts that wrecked their intentions were posthumously performed, they made it the case that the pharaohs and

others were engaged during life in a project that was going to fail. Admittedly, archaeologists who disbelieve the Egyptian cosmology will regard that project as mistaken, and reject the charge that disentombment is really harmful to the dead. But the Pitcher-Feinberg account of how posthumous harm and benefit is possible relies on a theory of well-being which (roughly) holds us to be better or worse off according to whether our desires are fulfilled or thwarted. On this account, Howard Carter's dismantling of the tomb of Tutankhamen harmed the antemortem king by frustrating his desire for his remains to be left in peace. In the words of Walter Glannon, 'the future event of the thwarting of my present interests logically entails that I am now (while alive) harmed, even though I do not know it' (Glannon 2001: 138). Although Tutankhamen would never experience the rifling of his tomb, the fact that it would happen harmed him while still alive since it meant that he was entertaining a desire that would one day be frustrated.

   The Pitcher-Feinberg theory of posthumous harm, and the theory of well-being which underpins it, are controversial and continue to be keenly debated by philosophers. Some writers persist in finding the idea of backdated harm paradoxical or reject the desire-satisfaction theory of well-being. For Glannon, nothing that occurs after a person's death can make any difference to the 'intrinsic properties of his mind and body' while alive, and only such changes can constitute genuine harms or benefits (2001: 139). Christopher Belshaw similarly contends that there can be no harm after death since 'the notion of harm seems to point to some description of your internal condition – it is not as good as it was, or not as good as it otherwise would have been', and while the dead have no such 'internal condition', that of the antemortem subject is incapable of being affected by posthumous events (Belshaw 2009: 151). Moreover, the unrestricted desire-satisfaction theory of well-being seems unreasonable in implying, for example, that the fulfilment of a very mild wish of mine for an improvement in the welfare of a distant stranger would be good for *me*. Yet there is intuitive force in the thought that the fulfilment of at least some kinds of self-regarding desire constitutes a benefit to us, and does so even when the fulfilment is posthumous. Plausibly, it is better for Sue if Sam's efforts, after her death, to derail the project with which she has identified herself during life should fail. Likewise the non-observance of a person's testamentary wishes may be

seen as not merely subversive of the moral order of society, as Partridge holds, but positively bad for the testator. But if we wish to avoid ascribing the harm that is done to a ghost, then we may prefer to assign it, as Pitcher and Feinberg propose, to the antemortem person.

It is also worth reflecting that the genus of harm has many species and is by no means limited to the more overt forms of physical or mental damage. When Wheeler claimed that archaeologists do no harm to the 'poor chaps' they disinter, he ignored the fact that one sort of harm consists in the denial of a person's right to make crucial decisions affecting his own future (a right that is deemed sufficiently important to be protected by the 14th amendment to the US Constitution). Almost no one thinks that living people can reasonably be compelled against their wishes to take part in medical or other research, even where such research can be guaranteed to do no lasting physical or mental injury. Yet, in spite of the second Vermillion principle, burials of dead subjects are routinely disturbed by archaeologists regardless of the likelihood that the deceased subjects would have regarded such a prospect with horror (if not for religious reasons, then sometimes from a simple wish to protect their privacy). True, the second Vermilion principle calls only for 'respect' to be paid to the wishes of the deceased and places no outright ban on excavation in such cases. But this call for respect possesses scant content if the standard presumption is that, where wishes clash, those of researchers may always take precedence over those of the interred dead. This asymmetry of attitudes to the living and the dead is puzzling because the right to say what shall happen to our remains after our death, while not unqualified (e.g. we cannot reasonably demand that our heirs should scatter our ashes on Mount Everest), is a right of self-determination closely related to the right to lifetime bodily integrity. Someone who ignores those wishes after our decease acts against our present right to determine the fate of our remains, and may thus be held to treat us harmfully as *living* subjects and without the deference that is due to rightfully self-determining beings.

Archaeologists will argue that the research they conduct on bodies and burials serves other legitimate interests that need to be weighed in the balance against the autonomy interests of the dead whom they disturb. And they will rightly point out that research done on the unconscious dead cannot cause mental pain to its subjects in the way that

research done on the conscious and unwilling living would do; so it at least avoids *that* form of harm. (However, since this defence of archaeological treatment of the dead would appear also to warrant unconsenting research done on living subjects who are in a persistent vegetative state, it perhaps should not be pressed too far.) But the difficult question remains of determining to what extent the presumed wishes of the dead should be taken into practical account, and here the vague prescription of the second Vermillion principle is of little help. From the researcher's point of view, the most obvious practical difference between living and dead people is that the former can defend their own interests while the latter cannot. But that is hardly a morally salient contrast.

4. Resolving value conflicts

Imagine that all tombs and burial sites of people who would have been strongly opposed to any interference with their remains bore 'Keep Out' signs at their entrance. Maybe an explicit injunction to stay outside would give some archaeologists pause who normally feel few inhibitions about excavating burials. Tombs and graves would appear more obviously like private houses, which no one thinks may be entered without the owner's consent. As Wilkinson remarks, '[b]y symmetry, if it would not be permissible to break into the property of living people against their wishes for the sake of a research project, it should not be when they are dead' (Wilkinson 2002: p.36).

Archaeologists will reasonably protest, however, that it is not mere idle curiosity, or greed for treasure or plunder, or an arrogant disregard of others' belief systems and moral values which impels them to investigate burials and the human remains within them. Their objective is the noble one of knowledge – a primary human good – and the methods they employ essential to accessing the information content of their sources. According to the British Museum Newsroom:

> The study of human remains provides one of the most direct and insightful
> sources of information on different cultural approaches to death, burial practices
> and belief systems, including ideas about the afterlife. … In addition to
> furthering the public understanding of other cultures, human remains in
> museum collections also help advance important research in fields such as
> the history of disease, changing epidemiological patterns, forensics and

genetics (BM Newsroom 2005).

While the truth of this statement is indisputable, its practical implications are elusive. Presumably not just any research into human remains, or modes of museum display of skeletons, unwrapped mummies or bog bodies, are ethically acceptable, but devising any more specific guidelines than the generalised prescriptions of the Vermillion Accord is hard in view of the competing values involved. There is no sound philosophical reason to suppose that all value conflicts must in principle be capable of rational resolution even within a single worldview, or that moral demands can always be non-arbitrarily ranked. Where different worldviews are in competition, the problems are even more complex. But since in practice doing nothing is generally not an option, competing interests somehow need to be weighed and action-policies determined.

In the case of archaeological human remains the situation is frequently further complicated by the existence of a third class of stakeholders, namely people who claim genetic or cultural connection with the dead and a consequent right to a say in what happens to their remains. Although archaeologists' relations with indigenous communities are not the focus of the present chapter, it should be remembered that many members of such groups feel strongly that any disturbance of the dead in the name of science is an affront both to the deceased themselves and to their living descendants. Sa'ke'j Henderson, a Canadian lawyer of First Nations ancestry, puts a typical position forcefully:

> For a variety of legal, ethical and spiritual reasons, most First Nations
> strongly believe that the skeletons ought not to be disturbed. FN considers
> ancestral burial grounds or sites and their contents as 'sacred' and involving
> freedom of religion…. They consider the spirits of such sites to be of central
> importance, to implicate the order of embodied spirits and to be necessary
> for the maintenance of good relations and harmony (Henderson 2009: 56).

The moral imperative to take account of the beliefs and values of genetic or cultural descendants is recognised by the third principle of the Vermillion Accord, which holds that 'respect for the wishes of the local community and or relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful'. Yet in view of the

potential conflicting interests involved in this eternal moral triangle, what, and whose, criteria are to be applied in defining what is 'possible, reasonable and lawful'?

It is often claimed that the paramount moral imperative is to do no harm (*primum non nocere*). To this, many would add that we should reduce to a minimum the risk of doing harm. Taken strictly, this position threatens to rule out any archaeological practice whatsoever which disturbs the dead, except in rare cases where it is safe to assume that the deceased subjects would not have objected and where the consent of descendant communities is readily given. (There are also cases where the dead would be disturbed anyway, in the course of development or the re-use of land, but it is not clear that archaeologists can legitimately shift all the moral responsibility for disturbance in such cases on to the shoulders of third-parties, given the advantage that they themselves take of it.) A more workable and common-sense view, however, allows that it is sometimes right to cause lesser harms in order to prevent larger ones or produce greater benefits. The undoubted goods that flow from archaeological investigation of burials and their human and material contents provide a moral warrant for their research which is, though, much less than a *carte blanche*. Foolish archaeologists will rush in where wiser ones fear to tread without carefully considering the moral issues and, where possible, consulting with members of local or descendant communities, who will often (though not always) have a better idea of what the subjects under investigation are likely to have wanted. Judicious investigators will also apply a light-touch approach to excavation where this will not seriously jeopardise attainment of the research objectives. Excavations in sensitive areas should be planned and conducted in close consultation with local people, and care should be taken to do the minimum of damage to tombs and graves. On the principle of diminishing marginal returns, the number of burials uncovered should be kept to the minimum, while non-intrusive techniques of investigation should be substituted for exhumation wherever possible.

Contemporary archaeologists are much less likely than their predecessors to assume that their interests invariably trump those of deceased subjects or of their living descendants. If they are not to deserve the epithet of 'sapient trouble-tombs', archaeologists who deal with the dead should accept, as most now do, that theirs are not the only concerns in town – though they need not apologise for those concerns or

concede their invariable subordination to those of other stake-holders. The dead need not be regarded as being ethically off-limits to archaeologists but nor are they a morally unproblematic research resource to whose remnants anything at all may be done. To negotiate the thorny path between these extremes requires archaeologists to operate in a spirit of compromise and concession which maintains the integrity of their own professional values while also acknowledging the legitimacy of others'.

References

Bahn, Paul. 1984. Do not disturb? Archaeology and the rights of the dead. *Journal of Applied Philosophy* 1(3): 213-26.

BM Newsroom. 2005. Human remains. <http://www.thebritishmuseum.ac.uk/newsroom/current2005/humanremains.html>

Belshaw, Christopher. 2009. *Annihilation: the sense and significance of death*. Stocksfield: Acumen.

Bienkowski, Piotr. [unpub.]. Whose past? Archaeological knowledge, community knowledge, and the embracing of conflict. Forthcoming in Robin Coningham and Geoffrey Scarre (eds.) *Appropriating the Past*. Cambridge: Cambridge University Press.

Breeur, Roland and Burms, Arnold. 2008. Persons and relics. *Ratio* 21(2): 134-46.

Church of England/ English Heritage. 2005. *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England*. http://www.cofe.anglican.org/about/cathandbuild/humanremains/

DCMS 2003. *Report of the Working Group on Human Remains*. Department of Culture, Media and Sport.

Feinberg, Joel. 1984. *The moral limits of the criminal law. Volume One: Harm to others*. Oxford: Oxford University Press.

Glannon, Walter. 2001. Persons, lives, and posthumous harms. *Journal of Social Philosophy* 32(2): 127-42.

Henderson, James [Sa'ke'j] Youngblood. 2009. The appropriation of human remains: a First Nations legal and ethical perspective. In Young, James O. and Brunk,

Conrad G. (eds) *The ethics of cultural appropriation*. Chichester: Wiley-Blackwell: 55-71.

Holm, Søren. 2001. The privacy of Tutankhamen: utilising the genetic information in stored tissue samples. *Theoretical Medicine and Bioethics* 22(5): 437-49.

Jefferson, Thomas. 1816. Letter to Samuel Kercheval Monticello. Available at *From Revolution to Reconstruction*
http://www.let.rug.nl/usa/P/tj3/writings/brf/jefl246.htm.

Partridge, Ernest. 1981. Posthumous interests and posthumous respect. *Ethics* 91(2): 243-64.

Pitcher, George. 1984. The misfortunes of the dead. *American Philosophical Quarterly* 21(2): 183-8.

Vermillion Accord on Human Remains. 1989.
<www.worldarchaeologicalcongress.org/site/about_ethi.php>.

Vizenor, Gerald. 1996. Bone courts: the rights and narrative representation of tribal bones. In Hodder, I. and Preucel, R. (eds) *Contemporary archaeology in theory: a reader*. London: Routledge.

Wilkinson, T.M. 2002. Last rights? The ethics of research on the dead [I]. *Journal of Applied Philosophy* 19(1): 31-41.

Suggested further reading

Bradley, Ben. 2009. *Well-being and death*. Oxford: Clarendon Press. Explores the question of what is bad about death.

Brecher, B. 2002. Our obligations to the dead. *Journal of Applied Philosophy* 19(2): 109-19. Argues that we can have obligations to the dead.

Callahan, Joan. 1997. On harming the dead. *Ethics* 97(2): 341-52.   Valuable critique of the Pitcher-Feinberg account of posthumous harm.

Feldman, Fred. 1992. *Confrontations with the reaper: a philosophical study of the nature and value of death*. Oxford: Oxford University Press. Important book which defends a distinctive theory of how and why death is an evil for the person who dies.

Fischer, J.M. (ed). 1993. *The metaphysics of death*. Stanford, CA: Stanford University Press. Reprints some of the most important papers on its topic from the two decades prior to publication, including Thomas Nagel's seminal essay 'Death' (1979).

Fuchs, A.E. 1990-91. Posthumous satisfactions and the concept of individual welfare. *Journal of Philosophical Research*, 16: 345-51. Well-argued challenge to the notion that the dead can be harmed.

Kant, Immanuel. 2002. *Groundwork for the metaphysics of morals*, Zweig, A. (trans). Oxford: Oxford University Press. Classic source for the view that human beings should always be treated as ends in themselves, and never merely as means.

Levenbook, B.B. 1984. Harming someone after his death. *Ethics* 94(3): 407-19. Defends a view of posthumous harm on similar lines to Pitcher and Feinberg.

Luper, Steven. 2004. Posthumous harm. *American Philosophical Quarterly* 41(1): 63-72. Critical discussion of the Pitcher-Feinberg view of posthumous harm.

Luper, Steven. 2009. *The philosophy of death*. Cambridge: Cambridge University Press. Lucid study of what makes death bad and why killing is wrong.

McMahan, Jeff. 2002. *The ethics of killing: killing at the margins of life*. Oxford: Oxford University Press. A much-cited text which contains, *inter alia*, some powerfully-argued discussion of how death can be an evil in the absence of its subject.

Malpas, Jeff and Solomon, Robert (eds). 1998. *Death and philosophy*. London: Routledge. Important collection of essays on the nature and significance of death.

Portmore, Douglas. 2007. Desire fulfilment and posthumous harm. *American Philosophical Quarterly* 44(1): 27-38. A well-argued appraisal of the bearing of desire-satisfaction theories of welfare on the possibility of posthumous harm.

Scarre, Geoffrey. 2007. *Death*. Stocksfield: Acumen. General survey of contemporary discussion of ethical and metaphysical issues concerning death.

Taylor, James Stacey. 2008. Harming the dead. *Journal of Philosophical Research* 33: 185-202. Argues against the idea that the dead can be harmed or benefited.