Submission to the

Working Group on Human Remains

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1. Introduction.

1.1. While evidence of indigenous opposition to the collecting of human remains is documented frequently in the historical literature, the reburial campaign was first experienced by archaeologists, anthropologists and the museum profession in the 1970s, primarily in Australia and North America. In the 1980s, calls for the return of indigenous remains began to be made to UK institutions. Today, requests for the return of remains have been heard from many different indigenous peoples around the globe.

1.2. In the UK, remains and/or cultural property have been returned from museums to, for example, Australia, New Zealand, North America and Hawaii. In a few instances, remains from Australia and North America have been exhumed from British cemeteries and returned to their country of origin.

1.3. Institutions returning remains from the UK have not (with the notable exception of the University of Edinburgh) been those with major holdings of human skeletal or soft tissue material. Such collections (at, for example: the Natural History Museum, London; the Royal College of Surgeons, England; the University of Cambridge; and to a lesser extent the Oxford University Museum) hold different policies on repatriation and have yet to agree to any requests for the return of items.

1.4. In the USA, repatriation has now been the law for over a decade. In Australia, Canada and New Zealand, a combination of museum policy and legislation means that, to a large extent, indigenous descendants now hold pre- eminent rights to their ancestral remains. In Scandinavia there have been recent policy developments in this area with regards to Sami remains held in Scandinavian institutions. The importance of science is acknowledged with the recognition also that consultation must first take place with appropriate indigenous authorities. There now exists, therefore, a large body of policy, legislation and experience both in the UK and abroad which can be used by this Working Group in its deliberations.

1.5. Indigenous concern about, and requests for the return of, human remains in UK institutions is/are ongoing and will almost certainly increase as additional groups learn more about this part of their history. Religious belief and responsibility towards ancestors, coupled with the knowledge that remains were taken without consent as part of a practical and ideological process that maintained unequal power relations between colonised and colonisers, form essential elements in the wish for remains to be returned to their communities of origin.

1.6. The way forward for the academy in the UK is to engage with indigenous people in this debate, accord respect to their concerns and recognise that ultimate rights to determine the future of remains (whether this be repatriation or retention in museums) lie with the descendants of these remains. Such recognition does not necessarily preclude scientific research.

1.7. Issues surrounding the appropriate treatment of human remains are by no means restricted to requests for repatriation by indigenous groups. Concern to ensure appropriate treatment of human remains underpins British legislation that controls, for example, the disturbance of burial sites and the use of donated cadavers for medical science. However, British Law is unequal in its coverage of treatment of the dead. For example, while teaching anatomy departments or institutions must conform to legal requirements in their use of cadavers, they are not impeded

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2 An early example of Aboriginal concern that the head of a corpse might be removed by Europeans is provided by the missionary Lanciolet E. Threlkeld who described in 1825 how one of the mourners at a burial ceremony came to me and requested in broken English that I would not disclose where the body was laid. Upon enquiring why I would be so particular, they assured me that they were afraid lest 'whitefellow should come and take the head away' (in Gunson 1974: Australian Reminiscences and Papers of L. E. Threlkeld. Missionary to the Aborigines 1824-1859. Australian Aboriginal Studies 40 (2 vols). Canberra: Aboriginal Studies Press, Pp 48).
4 In 1997, the skull of Yagan, an Aboriginal man from Perth, was exhumed from a Liverpool cemetery and repatriated to Australia. In the same year the bodies of Long Wolf and White Star were exhumed from Brompton Cemetery in London and returned to the USA.
by legislation in their treatment or use of human remains that they collected in the past for archaeological or anthropological study.\(^4\)

1.8. The Alder Hey scandal has further highlighted the inequitable treatment of human remains under the law in Britain. This scandal, as well as that which followed the discovery of the treatment of the bodies of those who had died in the Marchioness disaster, demonstrates that not only is concern for appropriate treatment of the dead by no means only an indigenous matter, but that there is a wide void between general public assumptions about how remains are treated and the reality of what sometimes actually takes place. The outrage at the lack of consent sought from victim's relatives in these cases finds easy comparison in many of the fundamental reasons given by indigenous representatives for the return of remains removed without consent and retained in UK institutions against the wishes of their descendants.

1.9. There are numerous additional examples of public and Government concern for appropriate treatment of the British dead. War graves (whether cemeteries or sunken ships, crash sites or battlefields) are protected, as are cemeteries in general. The desecration of War Graves frequently attracts a public response and media attention – whether within the UK or overseas.\(^5\) The findings of the Culture, Media and Sport committee on Cultural Property and Illicit Trade, the Government’s Response, the joint Prime Ministerial statement on Aboriginal human remains and the convening of this Working Group demonstrate an increasing recognition in the UK that the issue of retaining indigenous human remains against the wishes of their descendants is one that must be resolved.

2. Ownership

2.1. By far the majority of indigenous human remains in UK institutions were collected without the permission of relatives or communities. However, some museums assert that they have legal title to these remains. Is it possible or ethical to assert legal title to human remains collected without informed consent? In its deliberations on the legal standing of remains in UK institutions, the Working Group might wish to consider that the onus of proof should be placed upon museums to prove their asserted legal title, rather than upon indigenous groups to contest this.

2.2. Historical evidence indicates that many collectors knew their actions were against the wishes of communities, and some had met considerable resistance to their efforts.\(^6\) Such evidence exists whether remains were collected before or after funerary ritual. While in the minority, there are a significant number of examples of remains sent to UK museums that were collected before funerary ritual had taken place and in particularly immoral circumstances. Any deliberation of legal title over collections must also take such remains into account. The Working Group, may, for example, wish to examine as a case study the legal standing and ethical implications of retaining remains such as those currently held by a UK museum that are of Australian Aboriginal individuals killed in a ‘punitive expedition’ in 1920. The leader of the expedition boiled down the bones of the massacre victims after slaughter was complete in order to prepare them as museum specimens.

2.3. Pertinent also to the Working Groups terms of reference on legal standing is the existence of legislation in originating countries which controlled the export of anthropological material. Also significant to the case just mentioned is the presence of legislation in Australia which made it illegal to export anthropological specimens (including human remains) without a permit after

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\(^4\) Many UK anatomy departments maintain, or once maintained, collections of indigenous human remains, procured for the study of physical anthropology and/or comparative anatomy.

\(^5\) In 1991, some of the graves of the South Wales Borderers, who fought the Zulus at Rourke’s Drift in 1879, were robbed of war memorabilia, leaving skeletons strewn across the ground. This caused great concern to the officials managing the site in South Africa, and also to the relatives of the men whose graves had been so treated (Lincoln and Radnor Express 11.4.1991). Shortly after the original battle the bodies of the Zulu warriors had themselves been ‘looted’ – at least 2 skulls of Zulus killed at Rourke’s Drift were sent to the Williamson Collection in the UK. (see Fforde, C. 1992: The Williamson Collection. World Archaeological Bulletin 6: 20-21).

\(^6\) In 1864 craniologist Carl Vogt even suggested that indigenous resistance was a major reason why collections in European museums were, he believed, so inadequately provisioned: Many naturalists, like Blumenbach at Gottingen, Morton in America, and others, have devoted much of their time to the formation of collections of crania, representing the various types of races of mankind. Even here the difficulties we meet with are great. It is hardly feasible in the times we live in to cut off the heads of the living; and to despool the graves of the dead is in most civilised countries considered a crime, and severely punished. Pious ignorance even now declares against dissection, and it is not so very long since English anatomists were driven to employ resurrection men, and were directly the cause of murders being committed. We must, therefore, not wonder that the procuring in uncivilised countries is not unattended with danger, and that we succeed only in exceptional cases in collecting a sufficient number of skulls of any stock to enable us to draw just inferences from comparison. (Vogt 1864. Lectures on Man: His place in creation, and in the history of the earth. London: Longman, Green, Longman and Roberts. Pp8-9). For further examples see Fforde 1997.
1913. If remains exported after this date are not accompanied by the required permit, how does this effect museum claims to legitimate title?

2.4. In the USA, NAGPRA legislates that descendant communities have the right to determine disposition of their ancestors' human remains and funerary objects. In other countries such as Australia, legislation and museum policy also give pre- eminent rights to descendants. In these countries, therefore, claims by museums to legal title have been dropped or superseded, in recognition of the enduring primary rights of indigenous groups and the acknowledgement that past appropriation of such material by museums did not extinguish these rights. It is difficult to see how the repatriation debate in the UK can be moved forward, as it has in other countries, without the acknowledgement of these rights. Such acknowledgement does not preclude scientific research or retention of remains by museums.

The British Museum Act 1963

2.5. The Natural History Museum has asserted that it is constrained by the British Museum Act (1963) from repatriating human remains. However, the Act does enable the de-accessioning of items if certain criteria are met, and any decision is placed at the discretion of the Trustees. Indeed, according to Simpson (1997: 34), there is evidence that items have been de-accessioned and returned to originating countries in the past. Nonetheless, if the British Museum Act hinders a museum's ability to repatriate human remains, then the Working Group might wish to recommend legislative change to remove this impediment.

Individual museum policies and the inadequacy of selective criteria for repatriation

2.6. Within the UK, various museums hold different policies regarding the repatriation of human remains. Some hold no policy at all. Some, such as the University of Edinburgh, do repatriate human remains at the request of legitimate communities. Others do not. Still others have policies which apply strict criteria (such as agreeing to only return named or known individuals) in deciding which remains they may agree to repatriate, and which remains they will not. The history of the reburial debate in countries such as Australia or North America, or indeed within UK institutions which ultimately decided to adopt pro-repatriation policies, has shown that applying criteria is ultimately untenable – both ethically and scientifically, not only because such policies are impractical, but because they ultimately fail to recognise the pre-eminent rights of communities to determine the future of their ancestral remains.

2.7. One example of the use of selective criteria is provided by the policy of a London institution which holds a significant number of non-European human remains, in particular a large collection (over 50) of Aboriginal skulls donated after World War Two. For the past decade this institution has provided information about remains to, at least, Aboriginal communities on request, but has refused to repatriate any of its collection. As of the beginning of this year, this institution's policy read:

So far as human material derived from named individuals is concerned, the museums will consider requests for its return received from close relatives sympathetically, provided that (i) they can furnish legal evidence of the relationship, (ii) the wishes of the named individual are not contravened and (iii) provided the return does not involve contravention of any relevant British regulation (including the Anatomy Regulations 1988 and the Anatomy Act 1984) or of any international legal regulation regarding the exportation and importation of human remains.

2.8. The policy provides a good example of the difficulties inherent in adoption of selective criteria. Insistence, for example, on the provision of legal evidence by 'close relatives' is problematic not only because no definition of 'close' is supplied, but also because it upholds a 'Western' assumption that it is only 'close' relatives who hold legitimate responsibility for the deceased. Further, providing 'legal evidence' of this relationship can be difficult to supply due to the lack of historical records.

2.9. Policies can often seem inconsistent. Thus the policy quoted above gives weight to the wishes of named individuals, providing that these wishes are against repatriation, but places no importance on the wishes of those who, it can be reasonably assumed from the historical

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9 This policy was then under review. The outcome of the review is unknown.

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literature, would not have wished for their remains to have been part of a museum collection in the first place.

Access to archives and provision of collection information

2.10. As deliberated and concluded by the Select Committee, and argued for many years by indigenous and other groups, it is unacceptable for institutions to deny information about their collections to legitimate enquirers – including claimant communities. In the past, the inability of communities to access archives relating to collections has severely restricted their ability to locate and request ancestral remains. For example, one UK university maintained in the early 1990s (and may still do so today) that it held a policy of repatriating named or known individuals. However, the refusal of the relevant department to allow access to its collection archives meant that it was impossible for communities to determine whether or not the collection contained any named or known individuals. In this case, the University’s policy was ultimately undermined by the practical issues relating to archive access.

3. Conclusion

3.1. The issue of the repatriation of human remains can not be resolved without recognising that the requests of indigenous groups are legitimate and to be respected. The fact that human remains may be of scientific value, either now or in the future, does not mean that the scientific community has pre-eminence rights to them. Acknowledging the right of legitimate claimants to determine disposition of remains leads to a resolution of this issue, enables equitable discussion and does not necessarily preclude scientific research.

3.2. It is suggested that the Working Group develop a Statement of Principles that is based on the recognition of the right of indigenous groups to determine the future of their ancestors’ remains. Such rights should be un-hindered by selective criteria. As noted above, there is a significant body of policy, legislation and experience, both within and outside the US, which can be used by the Working Group in developing such a Statement of Principles.

3.3. Crucial to this process of policy development is the input of indigenous groups on equal footing with museum professionals. Equally fundamental is the need for the provision of accurate information regarding UK holdings of indigenous human remains. Any Statement of Principles should require institutions to provide information about collections to legitimate enquirers, including claimant groups, and allow access to archives for further research. It is clear that some institutions are not in a position to provide detailed listings. It is suggested therefore that this Working Group recommend targeting funding for such research in order to construct a centralised National Database. Perhaps accessible through the internet, and linked to museums, such a database would act as a point of first contact as well as an economical method of information provision.

3.4. Information about UK holdings of indigenous human remains is available to some degree (as published, for example, in the 6th World Archaeological Bulletin) but is far from complete. However, to compile such a national inventory would be achievable in a relatively short period of time as much research has been done in this area already. The progress of such research requires monitoring and it may be advantageous to facilitate this, as well as ongoing discussion, policy development and information provision, by maintaining a committee to oversee the process.

3.5. Through discussion, to which access to archives and provision of information to all parties is essential, mutually acceptable agreements can be reached. For the academy to act ethically and to recognise its wider responsibilities in the community, it is important to move forward on this issue and facilitate the rights of descendants to determine the future of their ancestors’ remains. The Working Group has the opportunity to effect overdue change in this area in the UK.
4. Recommendations

4.1. In light of the history of human remains collecting and the ongoing legitimate concerns of indigenous groups, the Working Group should acknowledge that the descendants of human remains have the pre-eminent right to determine the future of these remains.

4.2. That the Working Group develop a Statement of Principles (and supporting guidance) relating to the care and safe keeping of human remains and to the handling of requests for return which takes 4.1. as its guiding principle.

4.3. That the Working Group's Statement of Principles addresses the need for collection archives to be accessible to all legitimate interested parties, including claimants, and for information about collections to be provided to the same.

4.4. That the Working Group suggest legislative change to ensure there is no legal impediment to the de-accessioning of human remains.

4.5. That the Working Group seeks commitment from institutions to adhere to its Statement of Principles and/or seeks the enactment of legislation that provides indigenous groups with a legitimate claim to remains held in UK institutions with the right to determine their disposition.

4.6. That the Working Group seeks funding to support the development of a National Database of indigenous human remains in UK institutions.