Chapter 8

The Ethics of Bioarchaeology

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Introduction

The United States and other developed nations have taken enormous strides towards the advancement of human equality and protection of the basic human rights of all citizens over the last several decades. A direct outgrowth of this highly desirable development is the increasing weight given to belief systems of native and other minority or nondominant cultures. At last, many previously disenfranchised groups are gaining the political and economic power necessary to control the circumstances of their lives in ways unimaginable just a generation ago. Herein lies a crucial ethical issue for bioarchaeologists: The traditional perspective of scientists who study ancient remains has been to consider human remains as valuable objects full of research potential. Many descendants of the people whose remains bioarchaeologists study, in contrast, view ancestral remains as objects of veneration that should be protected from what they see as the indignity of examination by scientists whose motivations they consider suspect at best and immoral at worst. Because of the strength of such beliefs, newly empowered groups that previously were disenfranchised by mainstream American culture now demand—at least in some areas—that they be given the authority to make decisions as to disposition of ancestral remains they identify in museum repositories.

Over the last several decades, bioarchaeologists have been forced to grapple with the fact that they no longer have sole control of or access to the remains of ancient native populations in the United States, Canada, Australia, New Zealand, Israel, and elsewhere. In the United States, compromises between scientific and native concerns have been implemented through various state laws (Ubelaker & Grant, 1989; Price, 1991). However, it was the passage of the federal Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 that coalesced a variety of efforts across the United
States to speak to both native and nonnative concerns in a comprehensive fashion. The law has three key provisions: 1) it protects native graves on federal and tribal properties; 2) it recognizes tribal authority on these lands; and most importantly for bioarchaeologists, 3) it requires that all Native American skeletal remains and funerary objects be inventoried, and that culturally-affiliated or potentially culturally-affiliated groups will be consulted concerning the ownership and disposition of the remains (see Rose, Green, & Green, 1996). Under NAGPRA, if a federally recognized tribe demonstrates a relationship of “shared group identity” with human remains curated by a museum, the tribe is given the authority to determine the disposition of those remains. In the more than 10 years since the enactment of the law, these provisions of NAGPRA have resulted in sweeping changes in the way scientists deal with Native American remains and how research on these remains is carried out.

From our perspective, the impact of NAGPRA on both Native Americans and scientists has been both positive and negative. A wonderful outcome in many regions has been increased communication between scientists and native peoples. At many academic institutions, the new dialogue between scientists and Indians has forged new relationships and mutual understandings. From a purely scientific perspective, the legislation has also been beneficial; it has required museums and other institutions to examine, at least in a cursory fashion, archaeological collections that had never previously been studied.

On the other hand, problems both anticipated and unanticipated with NAGPRA continue. These problems have a number of sources, but one of the primary causes is the failure of the law to deal adequately with some fundamental issues, such as the disposition of culturally unaffiliated remains and procedures for determining cultural affiliation and shared group identity. The law was intended to address the rights of descendant groups. However, a number of groups would prefer to see universal repatriation, even though most remains (primarily from prehistoric contexts) are not affiliated with any of the federally recognized tribes identified by the Bureau of Indians Affairs. Misunderstanding of the intent of the law by a variety of groups, including some of the federal officials responsible for its implementation, has added no small amount of confusion to the issue. These ambiguities have resulted in lengthy disputes and legal challenges. For example, the Kennewick skeleton found in the State of Washington in the summer of 1996, dating to some 9,000 years ago, was formally culturally affiliated by the U.S. Department of the Interior (Babbit, 2000) to four federally recognized tribes and one non-federally recognized group living in the region today that were likely not even in existence as cultural entities more than nine millennia ago. This decision has served to prolong an acrimonious legal battle between scientists interested in studying the remains and Native Americans who claim the skeleton
based on the relationship of shared group identity they feel they have with this person.

**Motivations and Ethical Responsibilities**

Should bioarchaeologists study ancient remains when there are objections—very strong at times—to such work by the members of a modern group that claims an ancestral relationship to those remains? One ethical perspective on this question focuses on the value studies of human remains have for understanding the history of our species. The study of ancient remains is not motivated by idle scientific curiosity. Rather, professional bioarchaeologists, skeletal biologists, paleopathologists, and others who study ancient remains believe that the information contained in the skeletons of our ancestors is of great potential significance to living people. Human remains are a repository of a person's individual life history and collectively tell the story of the population that individual belonged to (reviewed in Larsen, 1997). They are a unique source of historical information on genetic relationships and human-environmental interactions. Skeletal data are thus critical to our understanding of the adaptive history of our species.

The knowledge we have about the past is based, in part, upon information from products of human cultural activity, such as artifacts and literary sources. Cultural products, especially the written records that document our recent past, are symbolic constructs. As any good postmodernist will tell you, this means that they can be interpreted in many different, sometimes contradictory, ways. This problem of cultural contingency is especially acute when we attempt to interpret historical documents, which often tell us more about the cultural context of their authors than they do about what actually happened in the past. Certainly, skeletal data are also subject to biases and problems of interpretation, but these are different from those that make interpreting documents difficult. This is what makes skeletal remains of such great value as sources of historical evidence. They encode information on genetic relationships and physiological process relating to growth, development, and disease that are a unique record of life and death in the past (Walker, 2000).

Outside of physical anthropology there is little appreciation for such esoteric arguments regarding the value of human remains. Indeed, most people worldwide view skeletal remains in a different light, ranging from objects of morbid curiosity, an unpleasant reminder of their own impending death, to spiritual vehicles capable of actively interacting with those still living. Many focus on the ghoulishness of remains, not their potential scientific interest.

Given this minority status of our bioarchaeological perspective on the value of human remains, what are the ethical responsibilities of scientists who
study ancient human remains? We believe that there are three ethical principles that many people, world-wide, of diverse cultural backgrounds would agree upon: 1) human remains should be treated with dignity and respect; 2) descendants should have the authority to control the disposition of their relatives’ remains; and 3) because of the importance of human remains for the understanding of our common past, human remains need to be preserved when possible so that they are available for scientific research (Walker, 2000).

The first of these ethical responsibilities is an outgrowth of the principle that all humans are to be treated with respect and dignity. But respectful treatment of the deceased is a subjective, culturally contingent, notion. Viewed from a global perspective, temporally and geographically, human beings have invented an amazing variety of ways to respect the dead. For example, some people place their dead relatives on special structures so that birds of prey can pick at the corpse; this is considered a sign of respect (Fathers, 2000). In other cultures, the same thing is done with the bodies of enemies as a sign of disrespect and social domination. In other cultures, remains of the deceased are stored in charnel structures until the soft tissue is fully decomposed and then placed in large pits. For the scientist, respectful treatment of the human remains we are entrusted with consists of treating them in a way that preserves the information they contain and allows us to learn as much as possible about the person’s life and death. We believe that these different types of respect can be accommodated.

Strength of the relationship between the modern group and the skeletal remains being claimed is another key answer to the above question of why remains are studied. Dealing with the disputes that erupt over the control and disposition of human remains force bioarchaeologists to confront many fundamental ethical issues. The belief that immediate relatives should determine the disposition of the remains of the recently deceased is, with a few minor exceptions, a cultural universal. The crucial ethical dilemma, therefore, is not the question of whether or not close relatives should have the right to control the disposition of the remains of their close kin; we all agree that they do. Ethical dilemmas do arise, however, when we consider who has or is given authority to determine disposition when the remains in questions are those of individuals distantly related to the living people who claim them. How should this authority be determined when there is a distance of hundreds, thousands, or even millions of years between the living and the dead? And if links are made, who specifically should be granted the authority? Implicit in acknowledging the authority to control the disposition of remains is the assumption that some entity or entities have the right to own human remains (see Simms & Raymond, 1999).

In the United States, the issue of control has been dealt with at two levels. Issues surrounding control over the bodies of close kin are resolved
according a rigid hierarchy of relationships: control by spouses supersedes that of parents; control by parents supersedes that of siblings, and so on. At the other extreme, decisions concerning the control over ancient Native American remains in the United States are based upon the legal concept of cultural affiliation: by the definition presented in the NAGPRA legislation, a relationship of cultural affiliation can be said to exist if there is a relationship of “shared group identity” between an ancient individual and a modern federally recognized tribe. Demonstrating such a relationship involves evaluation of a range of information from sources as diverse as the expert opinion of traditional religious leaders, folklore, and physical anthropological data. Predictably, problems have emerged in establishing cultural links: If a person “believes” they share a cultural identity with a deceased person, then by definition isn’t this a valid link? An example of the kind of ethical problem that could conceivably arise with this kind of definition concerns the intrusion of the so-called “New Age” movement into the cultural identity of Native Americans. Many Native Americans see this as an appropriation of spiritual traditions by outsiders. Is it ethical for someone who is clearly not culturally affiliated from a biological standpoint to become so because they sincerely believe that they are culturally affiliated? Probably not.

Some argue that NAGPRA adequately addresses the meaning of cultural affiliation and the allocation of rights of disposition. In some ways, this legislation has addressed the issue. However, major flaws—which we regard as having clear ethical implications—are present. Foremost in our minds is the fact that, NAGPRA empowers only federally recognized tribes when a direct ancestor-descendant relationship cannot be clearly demonstrated. Although NAGPRA has increased communication between federally recognized tribes and anthropologists, it has alienated many groups of descendents that are not federally recognized, yet are very much Native American tribal entities in every other meaningful respect. Indeed, most states have tribal groups that are state recognized, but not federally recognized. In many areas, there are tribal entities that individuals identify with as their group, and have done so for generations. Some of these entities are not even state recognized. Thus, these groups are denied any access to the provisions of NAGPRA, and have no claim to authority of disposition, in the strict legal sense. Thus, it is puzzling to us how the highest levels of the U.S. Department of Interior have affiliated the Kennewick skeleton to a group of tribes one of which is not even federally recognized.

Finally, bioarchaeologists overwhelmingly accept the ethical principle that, owing to the value of the information they contain for understanding the history of our species, whenever possible, human remains should be preserved. Skeletal remains are a unique source of information about the human past and provide the only means with which we can fully understand the lives
of our ancestors. Why is having access to this evidence about the lives and deaths of our ancestors important enough to override the sanctions some cultures have against the study of human remains? We believe that having the substantive information about what happened in the past that human remains provide is essential as a defense against the pernicious effect of historical revisionism. This is one of the favorite tools politicians use to propagate racist theories that undermine human equality and basic human rights.

Both the American Association of Physical Anthropologists and the Society for American Archaeology have offered resolutions to the effect that human remains should be preserved for future generations and that the importance of research on human remains should be communicated to appropriate groups. It is only by preserving collections that we will be able to correct inaccuracies of present and past researchers in the future. It is this self-correcting principle that allows us to understand the past as we develop new theory and method and revisit old problems. Indeed, it is because of restudy of skeletal collections due to NAGPRA and other developments in analytical techniques that there has been a recent rapid increase in the self-correcting process.

We believe that a balance should be sought between the concerns of descendant group and those of the scientific community. Indeed, it was NAGPRA that set out to create this balance. Unfortunately, maintaining such a balance is a precarious process that has been disrupted in some key areas where perhaps it shouldn’t have been, such as in the Kennewick case. In the current context where the legal system may not provide an appropriate setting for reaching ethical solutions to difficult decisions, how should we go about seeking a balance between the conflicting ethical principles of preservation and descendent control?

Crucial in the discussion is the fact that there are no inherent conflicts between the keeping of skeletal collections and respect for the dead (and see Walker, 2000). In a number of settings, for example, native societies have adopted new rituals that are consistent with old practices. The Chumash Indians of Southern California, for example, have worked with Walker in developing a cooperative arrangement involving repatriation from museums and universities to a subterranean ossuary at the University of California, Santa Barbara. As it turns out, this is a desirable arrangement with the Chumash, owing to the fact that the university is in the heart of ancestral lands. The ossuary serves dual purposes, including spiritual needs and access to remains by tribal people and to provide access to research by anthropologists under the supervision of the tribe.

Another important example of how mutual agreements about the disposition of archaeological human remains is from the Stillwater Marsh of Western Nevada. In the mid-1980s, record snowfalls in the Sierra Nevada Mountains to the west resulted in a huge outflow of water to the Great Basin. The
increase in water resulted in erosion of the surface of the wetlands, exposing dozens of archaeological sites and hundreds of skeletons. Within short order, unscrupulous collectors began to pick up artifacts and bones from the surface and continued erosion led to additional destruction of human remains.

Within days, there was a unified response on the part of local, state, and federal authorities, archaeologists, and the nearby Fallon Paiute-Shoshone tribe (see Larsen & Kelly, 1995; Simms & Raymond, 1999). Under the direction of archaeologists from the Nevada State Museum, a heroic effort was undertaken to salvage the skeletal remains. From the outset of the recovery operation, a clear goal of all of this work was to include Native Americans in the mitigation of sites and study of remains. All parties agreed that the remains should be repatriated following study. Opinions varied on what repatriation should involve, but most argued that in addition to their sacred and emotional significance, there is educational and scientific significance. As a result of discussion involving all parties, it was agreed that a concrete subterranean burial chamber should be constructed to house the remains. This arrangement allowed for long-term interment, but also access for future studies. The issue in this setting was never about ownership, but rather about mutual respect and the sense of a common goal.

These and other similar arrangements have grown from personal contacts and relationships, mutual understanding and respect, and importantly, the recognition of common interests and respect for the dead. There are situations where compromise is not possible, and many tend to focus on the instances where collaboration between various interests is not occurring. But in our experience once the veil of mystery and misunderstanding is removed, it is often the case that mutual agreements can be forged. Out of such cooperation can grow increased understanding of the collective human past; this is something that will be beneficial to all people, not just anthropologists or Indians (and see Simms & Raymond, 1999).

Conclusion

Physical anthropologists have an ethical responsibility, we believe, to record for posterity the information that skeletons provide about the history of the human condition. This perspective runs counter to the assumption by some that anthropologists are simply interested in furthering their careers. Mihesuah (2000, p. 97), for example, suggests that anthropologists have a monetary interest in American Indians remains and that they "serve as the focal points of many anthropologists' careers. The fact that Indians exist allows these people—as well as historians—to secure jobs, tenure, promotion, merit increases, fellowships, notoriety, and scholarly identity. . . . Millions of dollars,
hundreds of jobs, and numerous journals would be at stake if anthropologists could no longer study remains and their burial items." To be sure, if the motivation for studying Native American remains was career development, this would be unethical. However, most bioarchaeologists study these remains in order to understand the past and the history of humanity generally and not as a means of developing their careers.

The misperceptions about the motivation for the study of remains clearly reflect the conflict that emerges when two systems of ethics conflict (see Goldstein & Kintigh, 1990). Many have drawn the conclusion that one set of ethics is right and one is wrong. Ethics, however, are a cultural construct, and one set of ethics cannot (usually) be labeled as right or wrong. We believe that compromise is the key to reaching an ethical solution to skeletal studies of ancient ancestors. Compromise can be legislated, as was intended for NAGPRA. A key part of the legislation was to establish a seven-member committee that would advise on individual repatriation cases. This panel was intended to represent a compromise that balanced the scientific and nonscientific (native) perspectives. Thus, it was established that three members of the panel would be drawn from the Native American community, three from the museum community, and one to be determined by the Secretary of the Interior. Ten years later, the balance and compromise that formed the foundation of NAGPRA is clearly endangered: there has been a perceptible shift in the balance of power toward extremist native perspectives on repatriation. In reflecting back on the history of repatriation, compromise is developed when there is trust between two parties who have invested time and effort in reaching solutions that may not be perfect, but nonetheless attempt to competing interests of different groups.

References


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