



Human Remains In Contested Spaces

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Scope of Presentation

- ▶ Parameters of the discussion
- ▶ England and Wales
- ▶ Mount Everest
- ▶ Other Contested Spaces
- ▶ N.B-No images of human remains will be shown



Parameters (I)

- ▶ Ancient Human Remains—more than 100 years old.
- ▶ Time span reflects parameters of Human Tissue Act 2004 (see s1(5)(b).
- ▶ Intended by architects of legislation to be beyond the scope of living memory.

Parameters (II)

- ▶ Excluding remains of indigenous or colonized people taken without operative consent and kept or displayed in museums.
- ▶ This is a crucially important topic, but one that raises its own unique issues, and is beyond the scope of the present discussion.





England and Wales

What is the situation of remains of individuals who died in England and Wales and were dealt with post mortem according to the customs of the community surrounding them when they died?

Who are the stakeholders in deciding what should happen to these remains, and how they should be treated?

Museum Spaces (I)



- ▶ Some contemporary Pagan groups argue that remains of ancient Pagans are part of their community, and that they should be consulted about their treatment. Frequently they oppose the display of such remains.
- ▶ This assertion of a greater connection is strongly opposed by many historians and archaeologists, but sincerely held.
- ▶ Implications for Articles 8 and 9 via the HRA 1998?



Museum Spaces (II)

- ▶ Some observers argue that display of human remains is not inherently disrespectful.
- ▶ Why should permitting members of the public to view remains be seen as less caring or honorable than keeping them in storage?
- ▶ Does hiding something render it more taboo, and encourage fear or sensationalism?

Lack of Consensus

- ▶ The UK is a multicultural society and no consensus about norms in terms of appropriate treatment of the dead.
- ▶ It is difficult to draft and implement either hard law in the form of new legislation, or “soft law” in respect of official guidance.
- ▶ The core legal framework currently in place is almost 200 years old, but the absence of prevailing values makes reform challenging, leaving some irrational aspects of the system in place.



Twin Track System (I)

- ▶ When it comes to exhuming ancient (and indeed non ancient) remains, a twin track system is in operation.
- ▶ This was created by the Burial Act 1857-Different rules apply to depending on whether human remains are buried in Anglican ground or elsewhere.
- ▶ Exhumations outside of Anglican burial ground require a license from the Secretary of State- in practice the Ministry of Justice.
- ▶ Anglican- Ordinarily the Faculty procedure operated by dioceses, but some institutions (e.g. Westminster Abbey) enjoy greater autonomy and have their own processes in place.



Twin Track System (II)

- ▶ A consequence of this twin track system is that some sites/burials of key historical importance are within the control of the established Church, rather than state authorities.
- ▶ Is this a rational way to deal with the collective cultural patrimony of the nation?
- ▶ Some of these burials are pre-Reformation or even pre-Christian- how meaningful is the connection between the deceased and the denomination now controlling the treatment of their remains?



Mount Everest (I)

- ▶ The lack of consensus within England and Wales about the treatment of human remains is reflected more widely in Western culture.
- ▶ The complicated situation with bodies on Mount Everest illustrates this reality.
- ▶ The treatment of George Mallory provides an illuminating case study.



Mount Everest (II)

- ▶ In 1999 the body of George Mallory was located on Mount Everest by a US team, led by Eric Simonson.
- ▶ They took his personal possessions (e.g. the watch from his wrist and papers in his pocket).
- ▶ They photographed his body and sent images to the press-without warning his surviving daughter or other relatives. Images of Mallory's bodies featured in TV news coverage and in the press.
- ▶ No consent from his family was given or even sought.



Mount Everest (III)

- ▶ In addition to the distress caused, there were questions as to whether avoidable damage was done to his body, and vital historical evidence was lost.
- ▶ E.g his clothes were ripped in an effort to find photographs, and any mineral specimens collected would have been scattered in the process.
- ▶ One of the team described finding his body to discovering a Spanish galleon-demonstrating that they regarded it as treasure hunting.



Mount Everest (IV)

- ▶ When questioned about the legal status of their actions, the expedition leader, Simonson, claimed to believe that the law of “finder’s keepers” applied on the high slopes of Everest.
- ▶ Was this claim plausible?
- ▶ Mallory’s body was in Tibet- Chinese Criminal and Property Law applied, this was a space akin to international waters.
- ▶ Nevertheless, the practical difficulty of enforcing any law in such a harsh environment may have created a different impression in the minds of the team.



Mount Everest (V)

- ▶ What about other bodies on Mount Everest?
- ▶ Some ancient, others more recent.
- ▶ Some relatively recent bodies achieved iconic status, e.g. Green Boots, Sleeping Beauty.
- ▶ Removing them is often dangerous, as well as expensive. Is it ethical to risk the living to return the dead?



Mount Everest (VI)

- ▶ Recently, the Nepalese Government cleared a number of bodies from south side the mountain.
- ▶ Bodies in snow suits raise environmental concerns due to their impact on the natural landscape.
- ▶ How much responsibility does the international community have for problems created by adventure tourism? Is it quasi-colonial for other nations to even ask the question, or is it taking appropriate responsibility for the activities of citizens and businesses operating abroad?
- ▶ Should guidelines on the treatment of bodies be agreed? How might these be enforced?



Other Contexts (I)

- ▶ What about other settings that are inaccessible or outside of the ordinary jurisdiction of States?
- ▶ Shipwrecks of particular historical significance.
- ▶ HMS Erebus and HMS Terror-ships of the doomed expedition led by John Franklin seeking the North West passage.



Other Contexts (II)

- ▶ Agreements signed between UK and Canada. The Nunavut Land Claims Agreement also played a critical role in regulation.
- ▶ Special provision within these instruments to allow repatriation of human remains if practical.
- ▶ This was considered and incorporated into agreements between States and peoples even before the ships had been located, demonstrating the political and cultural significance attached, and the desire for this to be reflected in law.



Other Contexts (II)

- ▶ What relevance does the ongoing project of decolonisation have to these contexts?
- ▶ Is it appropriate for Western States demand the repatriation bodies of individuals who died in colonised territory?
- ▶ Does the duty that States have to citizens mean that they should negotiate for the return of individuals, who at a personal level were not responsible for systemic injustices?



Other Contexts (III)

- ▶ Does the age of human remains make a difference to the reasonableness, or otherwise, of seeking repatriation?
- ▶ If so, at what point should there be a cut off?
- ▶ Should the wishes and feelings of any identifiable relatives be taken into account?



Reflections

- ▶ The law in England and Wales is unsettled in respect of ancient human remains.
- ▶ But this reflects a wider cultural phenomenon in the West.
- ▶ Increasing plurality of beliefs within society, combined with the removal of death and its management from everyday experience make it harder to achieve any consensus of approach either domestically or transnationally.
- ▶ Debate is needed to establish protocols and laws to deal consistently with ancient human remains, taking into account differing priorities and interests.

