

‘Intellectual’ Property?

Perceptions of the Possession and Repatriation of Aboriginal Remains

by

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Contents

	Page
Introduction	2
Literature Review.....	3
Field Studies.....	5
Discussion.....	8
Conclusion.....	10
References.....	11

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“These are our people’s remains, not just human bones. These scientists are not doing us a favor by giving them back to our people. These remains belong to our people. They were stolen. It is our right to have them returned. It is their right to be returned.”

*Statement by Rodney Dillon,
ATSIC Commissioner for Tasmania
ATSIC Media Release 16 May 2003*

“I do understand [the argument for the return of remains] and can see the arguments to do with your religion, but there are also benefits in allowing this material to remain, that by keeping them preserved ... it’s contributing to a great emphasis on Australian Aboriginal culture within human history, and I think that’s an important contribution that again maybe their children and grandchildren will be grateful that that material is preserved”

*Statement by Robert Foley
Professor Cambridge University
The World Today, ABC Radio 29 July 2003*

Introduction

Indigenous Australians can justifiably be confused as to the status of the ancestral remains of their people. While some archaeological institutions are following the direction of the leaders of Britain and Australia, and returning aboriginal remains, the ‘big players’ in the international museum community have justified their continued possession.

The improper taking and holding of indigenous remains represents the ultimate form of dispossession. Not only has possession (or rather stewardship) of the land been lost, but so too has the most fundamental right to maintain ancestral links through the rightful possession and disposal of human remains.

If any positives can be drawn from the current situation, it is this; the continued dispossession of the aboriginals’ ancestral remains serves as a mnemonic device, strengthening the memory of the descendants of those who are stored on dark shelves in the basements of British museums. This in turn can only strengthen aboriginal resolve to regain these remains. A growing level of militancy and activism amongst the representatives of Indigenous Australians can also already be seen.

In light of recent events relating to the repatriation of indigenous remains to their 'rightful owners', this project sets out to reveal the arguments both for the continued possession of the remains by museums and private collectors, and for their return to indigenous communities. Through this, the extent to which indigenous Australians have been dispossessed of these remains, and their value to indigenous populations locally and nationally will become evident. To a more limited extent, a determination of the repatriation strategies most appropriate for, and most widely supported by the indigenous population can be determined.

While it was initially to be based extensively on interviews with the main 'players' in the issue, the subsequent discussion of the opinions of Indigenous Australians and those in possession of Aboriginal remains, will be based extensively on existing comments in the media. This will only superficially be supplemented by a general scoping of local opinion within the Indigenous communities of South East Queensland. There are various socio-cultural and practical justifications for this approach, which will be discussed further within the 'Field Study' section of this report.

Literature Review

This component of the report will focus on substantive academic commentary on the historical and current policy arrangements that have facilitated and continue to facilitate the dispossession of aboriginal human remains, and the opportunities for the return of such remains.

The collection of Aboriginal remains was "common in Australia in the 1800s" (ATSIC Media Release 16 May 2003). It commenced almost immediately upon settlement and continued "up until the 1920s and 30s" (McGuirk 2003). To Victorian England, Aboriginal remains were "invaluable specimens crucial to the study of human evolution;" (The Independent 10 November 2002), and were readily supplied by men such as Professor Alfred Cort Haddon (1890s) and the notorious Dr William Ramsay Smith, Adelaide city coroner around the turn of the last century. They were collected without the permission of Aboriginal people, to "measure and quantify

human diversity and to prove preconceived notions of the racial hierarchy” (source unknown). The belief that these remains are “essential for the future of scientific research” continues to be held by researchers such as Cambridge University’s Professor Robert Foley (The World Today, ABC Radio 29 July 2003). They were also taken as “gruesome souvenirs [or] as scientific curios, by early white settlers (Judd T, The Independent 30 July 2003).

Although Aboriginal opposition to the removal and possession of human remains have been continuous since the initial taking, significant steps in the process of repatriation started to occur in the 1970s. This lobbying has resulted in changes to museum policy and relevant legislation throughout Australia. There are “three national policies governing the return of ancestral remains” in Australia (Fforde & Parker 2001, p.9). They are:

- Draft Interim Policy on the Return of Aboriginal and Torres Strait Islander Cultural Property and Its Return to Aboriginal and Torres Strait Islander Possession – The Australian Aboriginal Affairs Council;
- Previous Possessions, New Obligations Policy – Museum Australia; and
- Policy for the Protection and Return of Significant Cultural Property – ATSIC

Each policy responsible for providing assistance in the identification and subsequently facilitating the return of Aboriginal remains and sacred objects. They can be effective in Australia, where museums and holders of private collections (including universities) are responsive to requests for the return of remains.

In Britain, where 5500 remains are held, the response can vary widely; from helpful (such as the University of Edinburgh), to hostile (such as the Museum of Natural History) (The Australian 30 July 2003). Many of the holders of the larger collections, especially the Natural History Museum, have resisted claims from Indigenous Australians. They have been able to ‘hide’ behind the British Museum Act 1963, which permits the disposal of items where they are “damaged, duplicates or unfit for study” (AAP 1 August 2003).

An on going review of British Policy, primarily by a House of Commons Select Committee on Culture, Media and Sport, has determined that further guidance regarding the handling of human remains had to be made. However, all holding institutions should be more accommodating of Aboriginal approaches, and that “information on collections should not unreasonably be withheld” and the “interests of the originating communities” should be considered (Fforde and Parker 2001, p.12). This fell well short of recommending the return of ancestral remains or the dissolution of the British Museum Act 1963. The other significant ‘apparent’ step forward has been the ‘Prime Ministerial Joint Statement on Aboriginal Remains, whereby British and Australian governments agreed to “increase efforts to repatriate human remains to Australian indigenous communities” (10 Downing Street, 5 July 2000). These efforts will occur wherever “possible [and appropriate]”. However, as we have seen, this has stopped short of removing the legislative barriers to repatriation, and merely encourages the provision of information.

Field Studies

When investigating any current issue of such a contentious nature, where parties are so diverse and unmoving in their opinions, and where the stakes are so high, it is inherently difficult to obtain responses. As such, those who maintain collections of ancestral Aboriginal remains, those who aim to recover those remains, and groups facilitating the repatriation process were unable to respond to requests for interviews.

To summarise, people were either unavailable for comment, unable to provide official comment on behalf of their organisation, not prepared to comment on an issue where outstanding legal/political issues had to be resolved, unwilling to discuss personal issues relating to ancestral remains, or simply failed to respond to requests for interviews. Other constraints, such as the level and source of this research and the lowly standing of the person undertaking it (a university assignment by and undergraduate student), and the limited amount of time to canvass responses also impeded obtaining primary qualitative data. Significant impediments were also

encountered in the identification of indigenous groups involved in the repatriation process, or in obtaining contact details for those groups.

Preliminary consultation occurred with the local indigenous community, however, this ultimately provided minimal insight into the issue. As could be expected, opinion favoured strongly (absolutely), the unconditional return of ancestral remains to their rightful custodians. However, neither knowledge of the issue nor the weighting or currency given to it by respondents from the indigenous community, resulted in any additional insight being obtained. As such, a subsequent series of formal interviews with members of the local Indigenous Australian community, were not performed.

In the initial scoping phase for this field study, an extensive body of primary source material was discovered in the local and national and overseas print media. The issue of the repatriation of Aboriginal remains has been a popular issue for the press both here, where Indigenous issues are relevant, and in Britain, where the presence of Aboriginal community representatives (often in traditional dress) provides much novelty value and a great ‘photo-op’. As such it is this material that will form the basis of subsequent analysis

The following table summarises the variety of opinions from the various ‘players’ in the debate surrounding the return of ancestral Aboriginal remains. These views have been separated into both their respective pro and anti camps.

Table 1: Pro and Anti Repatriation Exponent Comments

Camp	Exponent	Comment
Pro Repat-riation	Bob Weatherall, Foundation for Aboriginal and Islander research Actions (FAIRA)	They are not dead to us. I believe that the spirits will never get their rest with non Aboriginal people doing that repatriation (Corkill M, The Courier Mail Brisbane 8 July 2003)
		At the moment within Australia, there’s a big cloud over whether black fellas are going to be pre-eminent in the whole process of repatriation. I see this as a violation of our basic human rights and fundamental freedoms. (McGuirk R, AAP 4 August 2003)
		They are in possession of stolen property ... It’s important for the spirits of our people to pass into the spirit world and they can’t do that here in this land [Britain]. (AAP 1 August 2003)
		Their hearts, their lungs, their uteruses, their penises – we want to take them home from this barbaric place. (AAP 1 August 2003)
		They are not willing to face the errors of their ways, and they use ancient and out-of-date legislation to prevent us having any say in the safekeeping or handling of these poor people. (Hawthorne M, AAP 30 July 2003)

	Tony Eggleton, National Council for the Centenary of Federation	We are not expecting miracles overnight. It would be a good gesture to the indigenous population to have [remains] collated and returned. Having forebears remain overseas and unrecognised is painful for them. (MacAskill E, Guardian 5 July 2000)
	Tristram Besterman, Manchester Museum	The return of the remains ... is an act that recognises our common humanity ... by returning these remains now, we hope to contribute to ending the sense of outrage and dispossession felt by Australian Aborigines today, and trust that we can begin to build a more rewarding relationship based on mutual understanding and respect. (The Voice/Black Britain 29 July 2003)
	Rodney Dillon, ATSIC	Never have I come across a bloke with such a nasty attitude towards Aboriginal people – not even understanding that these remains belong to our people and the importance of coming back [Comments referring to the director of palaeontology at the Museum of Natural History, London]. (The Australian, 30 July 2003)
		This has been a long saga but it could be coming to an end and we look to working with museums in a spirit of reconciliation ... We can't fix the problem of what has happened for the past 200 years but this move [UK recommendation for release of remains] can be part of the healing – it will give our people strength. (Briggs J. Hobart Mercury 12 November 2002)
		You can't argue about the right of these remains to come home and rest in the place where they belong. This is not about ownership. This is about the right of the people, that the remains of these people come home. (Source unknown)
		These are our people's remains, not just human bones. These scientists are not doing us a favor by giving them back to our people. These remains belong to our people. They were stolen. It is our right to have them returned. It is their right to be returned ... I do not expect these scientists to understand our culture, but I do expect them to respect it (ATSIC Media Release 16 May 2003)
	Dawn Casey, national Museum of Australia	[The facilitation of the repatriation of remains] is a vital role for the National Museum, and an important recognition of the right of the Ngarrindjeri people to have control over the remains of their ancestors – something accepted by museums now, if not in the past (National Museum, Media Release 28 April 2003)
Anti Repat-riation	Neil Chalmers, Natural History Museum London	We can study [human evolution] because we have the whole collection together. [When asked if the scientific benefits outweighed the cultural ones, he said] The scientific benefits are global in their importance. (MacAskill E, Guardian 5 July 2000)
	Dr Norman MacLeod, Museum of Natural History (UK)	I do have sympathy for the position of the Aboriginal peoples ... But, even with respect to their claims, there are practical problems in the sense of how far back does this extend? Are we to return fossils ... If we were to repatriate them to the wrong groups or the wrong individuals, then we would open ourselves up to legal action (The Australian 30 July 2003)
	Professor Robert Foley, Cambridge University	The importance lies in the fact that they are basically the record of our species' history [collections of remains]. If you are interested in humans ... these collections are the information devices, they're like the books in which the history of our species is written ... [T]here are also benefits in allowing this material to remain, that by keeping them preserved when it's contributing to a great emphasis on Australian Aboriginal culture within human history, and I think that's an important contribution that again maybe their children and their grandchildren will be grateful that that material is preserved. (The World Today, ABC Radio, 30 July 2003)
	Dr Amiria Salmond, Museum of Archaeology and Anthropology	A lot of material is still around today because of [Professor Haddon's] collecting trip. It is stuff that no longer exists on their islands. It was a culture in the process of an enormous amount of change. (Jury L, The Independent 8 August 2001)

Discussion

This discussion will draw together the factual basis for this report, as described in the Literature Review, and the Comments of the various ‘players’ in this debate.

Recommendations will be summarised in the conclusion, although will become evident throughout the following discussion. In the interests of expediency and brevity the comments taken from the table above will not be referenced in the following discussion, as they are clearly identifiable.

The argument for the maintenance of collections of Aboriginal ancestral remains can be classified three ways. There are those who claim cultural preservation, others see it as an issue of scientific necessity, while still more hide behind the claim of procedural impracticality or legal restrictions. Despite these ‘barriers’, wholesale institutional responses to the Aboriginal demands for the repatriation of human remains are being made, hence making a mockery of such claims.

It is ironic that both camps claim to act in the interests of natural justice or cultural preservation. The argument goes, that it was through the taking of artefacts and ancestral remains, that these items have been able to be preserved. They continue, believing that the return of such items is an inherently destructive act. If these items are returned, they will only face the destruction from which they were originally saved. However, this theory only holds true if the continued possession of remains is in the interests of their rightful custodians. This position can be equated to saving for a rainy day but never spending the money.

To some degree, those who maintain their right to keep such collections, are putting historical interests ahead of the cultural aims that they are actually trying to achieve. If the natural journey for these remains is, ultimately their ceremonial destruction, then it is clear, in the opinion of the indigenous community, that this journey must be undertaken. Aboriginal remains must be withdrawn from this supposed ‘cultural bank’, and returned to their people. Bob Weatherall (FAIRA) and Rodney Dillon

(ATSIC) equate repatriation directly with the process of reconciliation. Dillon sees it as part of the healing, and that it will give Aboriginal people strength.

The scientific argument has fewer holes than that of cultural preservation. But how do you determine whether scientific interests should be made paramount to individual distress or socio-cultural concerns? Neil Chalmers of the Natural History Museum, London, avoided directly answering the question of whether the scientific benefits outweighed the cultural ones. However he saw the scientific benefits of maintaining a collection of Aboriginal remains as global in their importance. Dr Norman MacLeod of the Museum of Natural History equates the Aboriginal remains with fossils. However this is in direct contrast to the opinion of the Indigenous community, as stated by Dillon, who view the remains as “not just human bones,” rather they are part of, and belong to that community. However this cannot simply be equated with ownership, rather it is a more powerful bond of ‘belonging’.

Clearly this issue has been resolved by Tristram Besterman of the Manchester Museum, who has placed the goals of mutual understanding and respect, and the concept of sharing a common humanity, ahead of any scientific interests. Surely, mutual understanding and respect must be equated with complying with the valid requests of Indigenous Australians for the return of their ancestral remains.

The British Museum Act 1963, restricting the repatriation of ‘useful’ artefacts, and the fear of being sued for the incorrect return of human remains are effectively easy routes out of this contentious debate for museums to take. Certainly these were barriers that the Manchester Museum and British Universities have managed to overcome. Bob Weatherall’s demand for Aboriginal consultation and involvement in the repatriation process, together with the assistance of the National Museum of Australia, should effectively counter this argument. If the Indigenous Australian community are included in the process, the chances of incorrect assignment of remains is lessened. Regarding the British Act, it is simply up to the holders of the remains to conclude that their utility value is minimal, and that much can be learned from proper consensual engagement of the living Aboriginal population.

It appears that the British museums see that simply by distancing themselves from the initial improper taking of the human remains, justification for their continued possession can be made. Ultimately however, the reason for the taking of remains is irrelevant, and is not a determinative factor in the development of strategies or policies for their return. Both through the 'Declaration on the importance and value of universal museums' and through the comments of Neil MacGregor, Director of the British Museum, the previous unethical and illegal acts of the past were clearly placed in the past, rather it is a "question of dealing with the present" (Fielding N, The Sunday Times 8 December 2002).

Conclusion

Indigenous Australians have a valid and undeniable claim for the return of their ancestral remains. Their demands to be included in every phase of the repatriation process should be heeded, for both interests of due process and for the sake of our common humanity. Museums and other holders of collections of Aboriginal ancestral remains should recognise the distress and feeling of dispossession being created, rather than simply feeling sympathy. Political activity on this front should be extended beyond mere words, and action should be taken on various recommendations to return human remains.

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