

The Ethical-Legal Issue Related To Archaeological Excavation Activities: Some Notes

Martina Patusso¹

¹(Phd Student at Department of Archaeology, Faculty of Arts, University of West Bohemia, Plzeň)

Abstract: *Over the centuries, human presence has left indelible marks of its passage, signing the ground and conditioning history.*

The desire to reconstruct even partially parts of this more or less distant past has motivated archaeologists and anthropologists to draw from different sciences in order to search for an individual and collective identity capable of satisfying the desire to belong to any social group. However, sometimes, blinded by the desire to define a communal history, a cultural heritage, we lose sight of the rights of those who, unsuspecting, left the traces of this past that we strive to reconstruct.

Key Word: *Archaeological excavation; Ethics; Protection of human remains; Valorization; Restitution.*

Date of Submission: 16-07-2023

Date of Acceptance: 26-07-2023

I. Introduction

The strong synergy with which archaeology and anthropology work together in some situations is such that the term Archaeoanthropology has been coined. There is no need to emphasize the importance that an object, in itself a carrier of relevant historical information, assumes when associated with a funerary context, extrapolating different levels of meaning and elevating at the same time the importance of these disciplines.

Archaeoanthropological discoveries have always evoked, and continue to this day to evoke, non-negligible reactions among individuals, distinguishing themselves both by entity and by nature in relation to the social and/or religious groups to which they are subjected. Thus, the discovery of a new Egyptian tomb will result in cultural and patriotic responses in which the civilian can legitimize himself; remains of religious personalities of undisputed importance will emphasize identity traits in different beliefs; the exhumation of soldiers, kept concealed for decades and beyond by nature, will affect the emotional traits of family members and at the same time result in nationalistic consequences [1]; likewise, the stratigraphic excavation of a clandestine burial, as a result of forensic investigation, will generate legal interests in a crime and at the same time produce justified sentimentality in family and friends. Yet, archaeoanthropological research activities do not always find consensus in the popular acceptance system. Indeed, in some circumstances, studies of the osteological material of burials, more or less ancient, and the practices of exhibiting in museum facilities human bodies, are considered as gratuitous acts of desecration dictated by a total irreverence to ancestors and, in some circumstances, comparing these as "macabre activities."

In fact, ethics cannot be considered absolute [2] and is closely linked to tradition and religious faith in man, and this tends to greatly influence opinions regarding archaeo-anthropological activities.

The following is a reflection with the aim of focusing on the topic of the ethical-legal issue related to archaeological excavation activities and musealization activities of human remains with the hope that this issue may occupy its rightful place.

II. From excavation to musealization

The passage of man leaves traces in the ground that are perceived by the careful eye of the researcher through the anomalies that alienate them from their surroundings [3]. Such anomalies, therefore, directly and indirectly suggest the presence of any ancient evidence which, following a preliminary reconnaissance, will be highlighted by a series of procedures enclosed in the activity of archaeological and anthropological excavation.

In the specific case of burials, whether individual or collective, the method applied remains the same for any context of any period [4]. Therefore, the excavation of a late antique burial will use the same schemes and rules as an excavation of nineteenth-century and forensic burials. The different steps, to which we refer to already known publications [5], conquer a series of data that, once placed in their correct position in the stratigraphic seriation, will provide information on the "chronological and spatial succession of events of natural and anthropogenic origin" [6], answering questions at the head of the excavation itself. The phase of recovery and

study of ancient evidence is necessarily followed by that of its location. In the case of a forensic find [7], once the data of judicial interest has been obtained, the remains will be returned to the family of the deceased, who will independently direct the postmortem practices.

Different is the case with the "human remains" of the past. In the Italian sphere there are a whole series of legislative acts that, through the code of cultural heritage, the code of ethics, and the ICOM code of ethics, clearly express the concept of cultural heritage [8] promoting its protection [9] and valorization [10] and defining, among other things, the archaeologist's duties towards it [11]. Within the scope of valorization, the concept of public enjoyment [12] is made to be included, whose pedagogical purpose, i.e., Heritage education [13] determines that in most cases, bone remains end up, within museum showcases.

Therefore, the predynastic mummy of the Egyptian Museum in Turin, the human casts of Pompeii (fig.1), the "doncella de Llullaillaco" of the High Mountain Archeological Museum in Salta, the mummies of the Crypt of the Capuchins in Palermo (fig.1)-just to name a few-become the object of curious, fascinated or displeased looks of millions of visitors who, every day, walk through the rooms set up.



Figure 1: Examples of the musealization of human remains. Clockwise: Predynastic mummy, Egyptian Museum, Turin, Italy. (<https://trevaligie.com/il-museo-egizio-di-torino-guida-alla-visita/>); Exhibition of human casts in the amphitheater of Pompeii (<https://archeologiavocidalpassato.com/tag/conferenza-internazionale-human-remains-ethics-conservation-display/>); The "doncella de Llullaillaco," High Mountain Archeological Museum in Salta (<https://www.focus.it/cultura/storia/dalle-mummie-dei-bambini-inca-i-segreti-dei-sacrifici-della-capacocha>); The mummies of the Crypt of the Capuchins in Palermo. (<https://www.focus.it/cultura/curiosita/segreto-mummie-naturali-italiane>).

Those mentioned above represent a small example of the countless number of humans remains displayed inside display cases in ethnographic and archaeological museums, but even worse so many others rest stacked inside forgotten boxes in many museum warehouses. At this point one has to ask how correct it is, for the sake of science and popularization, to decontextualize and display such remains. Is it really possible that disciplinary perspectives were given greater prominence than the dignity of the deceased or what remains of them?

The scientific value that these remains hold is unquestionable; the study of bone remains, in fact, allows us to delve into certain aspects of the life of ancient populations, revealing information about diseases, social stratification, diet, sexual dysmorphism [14], but also beliefs, customs and traditions of that cultural context. They are, therefore, an irreplaceable heritage that, nevertheless, must be protected and respected.

III. Protective Activities

Regarding the preservation and management of human remains, some references to bodies with an interest in this issue seem fitting.

ICOM, International Council of Museums, since 1946 has been the only international organization representing Museums and its professionals with the goal of preserving, conserving and sharing cultural heritage

by setting minimum standards of professional conduct and performance for Museums and their staff. That institution recently included human remains in its Code of Ethics in a special category called "culturally sensitive materials" [15]. This designation encapsulates the sensitivity of the public than the dignity of humans themselves [16]. According to the Code of Ethics, therefore, bodies can only be displayed in museums if the latter ensure proper enhancement and, at the same time, proper protection and respect [17].

ETHICS, CNR's Commission for Ethics and Integrity in Research, in its "Code of Ethics and Deontology for Researchers Working in the Field of Cultural Heritage and Activities," provides ethical prescriptions for researchers in the stages of research, collection, cataloguing of cultural objects and cultural property in the phase of publishing the results, in the activity of preserving, acquiring and disposing of the property and its protection in cases of armed conflicts, emphasizing that the researcher must consider the interests and beliefs of the relevant communities and ethnic or religious groups involved [18].

Human Remains Working Group, in the United Kingdom, evaluates the opportunities and criteria for the acquisition, research, display, and alienation of human remains; again, it is clearly specified how bone remains, representative of the historical background of cultures of different kinds, must be respected by museums as well as researchers and the public, who must ensure their proper use [19].

HAD, Honoring the Ancient Dead, represents a nonprofit initiative that attempts to protect the sanctity of the human body and the dignity of all the dead [20]. This association is based on three foundations:

1. As human beings we have a duty of care toward every other human person.
2. As integral and influencing members of the community, the ancestral dead retain their personhood.
3. Personhood entails the need for respectful interaction.

The emergence of many activist groups, one owes to the strong ethical interest in this particular class of cultural property dictated by the massive presence of human remains in Britain: a census would attest to the existence of some 61,000 human remains stored in 132 institutions [21].

IV. Ethics

The Greek term *èthos*, behavior, denotes all those norms and values that regulate man's actions in relation to his fellow man, but at the same time the criteria that enable the individual to evaluate conduct, his own and that of others, in relation to good and evil. To seek unambiguity in ethics is difficult. Firstly, because it is closely related to a particular religion and/or ideology: taking into account that among religions, doctrines, philosophical schools, beliefs, sects and tribal cults we reach more than 10,000 professions, it is evident that tracing univocity in the ethical theme becomes almost impossible. Second then, one must take into account that normative institutions, such as law, are different for each geographical area; this ethical pluralism results in misunderstandings between different cultural groups and difficulties in archaeology and anthropology. This is because the activities of excavating a burial and the process of enhancing the human remains, resulting in their enjoyment and dissemination in museums-which in itself would constitute the archaeologist's duties toward cultural heritage [22]-would stand in stark contrast to certain social ethics and religious orientations that hold relationship with death based on the sacredness of the human body.

As far as Catholic doctrine is concerned, this offers several insights. Consider, for example, the Capuchin catacombs in Palermo or the Convent of the Capuchin Friars Minor in Rome (fig.2), where there is the display of the bones of deceased monks used as architectural decoration. As much as this practice served to educate the faithful about death, it also makes one perceive detachment from that which is no longer part of life. This detachment can also be perceived by the frantic secular rush to search for relics of Christian saints and martyrs whose remains have been decontextualized and often disarticulated to be venerated in churches-see the example of St. Ambrose (fig.3). The need to educate and emphasize belief in the faithful, therefore, suggests a gentle approval towards archaeological excavation and anthropological study of human remains.

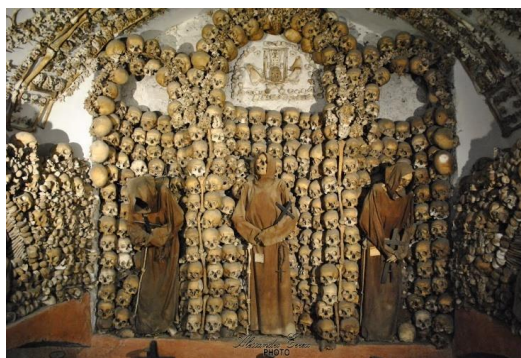


Figure 2: Second chapel of the crypt of the Church of Santa Maria Immacolata in Rome (<https://commons.wikimedia.org/w/index.php?curid=1011069>).



Figure 3: Skull of St. Ambrose (<http://www.laricerca.loescher.it/storia-e-geografia/1806-cosa-ci-dicono-le-ossa-di-sant-ambrogio.html>).

The same approbation is given to what is called archaeology of War. This discipline aims to investigate the Great War using the methods applied by the traditional field archaeologist [23]; it tends to investigate battlefields to understand the theme of the conflict and, at the same time, analyze anthropological concepts such as notions of ethnicity and identity of the deceased soldier. (fig.4). As difficult as the recognition phase of individuals is, the study of skeletal remains and related objects can provide important support. The case of the Soglio Melegnon in Arsiero, Vicenza [24] (fig.5) testifies to this. Here, careful archaeological excavation, through the identification of a military vaccination badge, religious medallions, and parts of clothing, enabled the definition of the Italian nationality of a group of soldiers found in a communal burial pit. The issue of World War I historical heritage protection is quite heartfelt, and the Archaeology of War is a rising and well-respected discipline.



Figure 4: Remains of a fallen soldier from the Great War (photo: Trento Province Archives).



Figure 5: Mass grave from the site of Soglio Melegnon di Arsiero, Vicenza [25].

Despite a positive view of archaeological excavation and subsequent anthropological study to date, there is evidence to the contrary. The case of the northern Chilean Atacameño people is offered as an example (fig.6). In 1954 the priest Gustavo Le Paige arrived. During his practicum, which lasted about 26 years, he had the audacity to carry out sweeping archaeological excavation activities [26] involving the burials of the tribe's ancestors. Such activity had negative feedback from the Chilean population, which considered these activities disrespectful and comparable to looting. The archaeologist is transformed in the eyes of the native into a "predator of culture" a "thief" who enriches himself by desecrating the history of others. The rancor toward archaeological excavations has persisted even after La Paige's death; to this day the archaeologist is no longer authorized to excavate pre-Hispanic burials, and when, by design, he cannot help himself, it is through a collaboration with the local tribe. The sentiment towards the history of one's own culture has triggered a real claim to rights over the management of cultural heritage, which, in the Chilean case, represents a not insignificant limitation: in fact, no matter how much progress has been made towards indigenous peoples by recognizing their identity and that of their heritage [27], the administration of this "cultural wealth" has remained the exclusive domain of the Chilean state.



Figure 6: Collection of skulls obtained from the excavations at Le Paige. IIAM Archives.

V. Restitution

The example of the Atacameño tribe makes clear how the appropriation of human remains, by scholars and museums, did not always take place with the consent of the natives and was the consequence, often and gladly, of looting activities of cemeteries and sacred sites. Over the course of the centuries, however, appropriation of bone remains has also occurred through the purchase of human remains directly from natives or by decidedly unethical-picking of body parts of individuals who had just been killed or died of nautical causes (as might have happened for people considered martyrs or even saints).

In the modern perspective, consideration has begun to be given to the possibility of returning decontextualized human remains [28] and their effects, to their place of origin. This need, is perceived in the federal or state legislations of some countries. In the United States of America, for example, in the late 1990s, the NAGFRA [29] was enshrined, which provides for a commitment on the part of museum institutions to return the objects to all native communities (and among them human remains) who request them, provided there is a direct descent or cultural affinity with the inhabitants of the geographic area where they were originally taken. Similarly, the National Museum of Australia provides for the precise return of the many humans remains-sacked about a century ago-to Aboriginal groups who request them. A case example of restitution is provided by the return of the Kow Swamp collection of human remains to the Echuca Aboriginal community, which decided on its reburial, preventing future research beyond repair.

The issue of restitution, which touches on ethical, legislative, protection and accessibility aspects of cultural heritage [30], is still sensitive today, and museums still struggle to grant the return of objects and human remains to the area of origin despite the demand that presses daily [31].

VI. Conclusions

Archaeological excavation and anthropological study are able to provide interesting direct (type of burial, age estimation, height and sex of the deceased, eventual diseases, etc.) and indirect (lifestyle, social stratigraphy, cults, etc.) indications about a lived experience remote to us. The knowledge, which is obtained from this multidisciplinary study, constitutes a public cultural heritage and, as such, plays an educational role by involving the community and promoting the value of the archaeological discipline to society [32]. From this point of view, museums and all extension exhibitions play a major role. However, it is necessary to point out how what is exhibited may, in some circumstances, antagonize the public. The difficulty of accepting the exhibition activities of human remains, resulting from the multicultural imprint of society, leads to misunderstandings and limitations.

Therefore, finding an unambiguous answer to the question of whether the excavation and display of human remains is ethically correct remains impossible for the time being. If the excavation and study of human remains helps to restore an identity to a human, or what remains of one, which in itself is an ethically correct gesture, its display can result in the loss of that identity, and as much as the efforts shown by museum institutions in trying to implement legislative measures to safeguard human remains is appreciable, such efforts are often not enough.

In conclusion, it is hoped that these brief notes may in some way provide an incentive to approach such a sensitive issue with greater responsibility and sensitivity by attempting to find a fair compromise between disciplinary development and respect for the culture and wishes of the deceased.

References

- [1]. Bezzi L., Bezzi A., Gietl R., Feistmantl K., Naponiello G., *Archeologia Del Conflitto. Dai Principi Generali Della Disciplina Al Contesto Particolare Della Valle Di Non*, Palazzo Laifenthun. Livo 2018.
- [2]. Panico B., Secci M., Tornatore E., *Etica E Archeologia: Alcune Riflessioni Sul Carattere Della Disciplina. Archeologi In Progress: Il Cantiere Dell'archeologia Di Domani*. Catania 2003; 577–586.
- [3]. Piccarreta F., Ceraudo G., *Manuale Di Aereofotografia Archeologica. Metodologia, Tecniche, Applicazioni*. Bari 2000; 99–125.
- [4]. Harris E. C., *Principi Di Stratigrafia Archeologica*. Roma 1983.
- [5]. Renfrew C., Bahn P., *Archeologia. Teorie, Metodi, Pratica, Zanichelli*. Bologna 1995. Borrini M., Lusa V., *La Prova Occulta. L'indagine Sub Suolo Alla Luce Della Procedura Penale*. Borgomanero 2012; 109–116.
- [6]. Borrini M., Lusa V., *La Prova Occulta. L'indagine Sub Suolo Alla Luce Della Procedura Penale*. Borgomanero 2012; 17.
- [7]. Milanese M., *Per Un'archeologia Dell'età Contemporanea: Guerra, Violenza, Violenza Di Guerra E Stragi*. Annali Della Facoltà Di Lettere E Filosofia Dell'università Di Sassari. Sassari 2009; (1) 303-318. Koff C., *La Memoria Delle Ossa*. Milano 2006.
- [8]. Codice Dei Beni Culturali, Art.2, Comma 2: «Sono Beni Culturali Le Cose Immobili E Mobili Che, [...] Presentano Interesse Artistico, Storico, Archeologico, Etnoantropologico, Archivistico E Bibliografico E Le Altre Cose Individuate Dalla Legge O In Base Alla Legge Quali Testimonianze Avente Valore Di Civiltà»
- [9]. Codice Dei Beni Culturali, Art.3, Comma 1: «La Tutela Consiste Nell'esercizio Delle Funzioni E Nella Disciplina Delle Attività Dirette, Sulla Base Di Un'adeguata Attività Conoscitiva, Ad Individuare I Beni Costituenti Il Patrimonio Culturale Ed A Garantirne La Protezione E La Conservazione Per Fini Di Pubblica Fruizione»
- [10]. Codice Etico Dell'icom, Art.1
- [11]. Codice Deontologico, Art.1
- [12]. Codice Deontologico, Art.2
- [13]. Brunelli M., *Archeologi Educatori. Attuali Tendenze Per Un'archeologia Educativa In Italia, Tra Heritage Education E Public Archaeology. Il «Capitale Culturale»*. 2013; (VII) 12–17.
- [14]. Carrara N., Scaggion C. *Studying And Exposing Human Remains: Two Cases From The Padua University Museum Of Anthropology. Museologia Scientifica Nuova Serie*. 2016; (10) 124.
- [15]. ICOM, *Code Of Ethics For Museums*. 2009.
- [16]. Carrara N., Scaggion C. *Studying And Exposing Human Remains: Two Cases From The Padua University Museum Of Anthropology. Museologia Scientifica Nuova Serie*. 2016; (10) 122.
- [17]. ICOM, *Code Of Ethics For Museums*. 2009, Art. 2.5: «Collections Of Human Remains And Material Of Sacred Significance Should Be Acquired Only If They Can Be Housed Securely And Cared For Respectfully. This Must Be Accomplished In A Manner Consistent With Professional Standards And The Interests And Beliefs Of Members Of The Community, Ethnic Or Religious Groups From Which The Objects Originated, Where These Are Known».
- [18]. ETICS, *Codice Di Etica E Deontologia Per I Ricercatori Che Operano Nel Campo Dei Beni E Delle Attività Culturali*, 1g: «Nelle Ricerche Su Resti Umani O Su Materiali O Luoghi Considerati Sacri [...] I Ricercatori Agiscono Nel Rispetto Degli Interessi E Delle Credenze Delle Comunità Di Riferimento E Dei Gruppi Etnici O Religiosi Coinvolti, Con La Massima Diligenza E Trasparenza. [...] Inoltre, I Materiali Biologici Di Origine Umana [...] Vanno Trattati Con La Cura E Il Rispetto Dovuti Durante Tutte Le Fasi Della Ricerca [...]».
- [19]. Palmer N., DCMS. *The Report Of The Working Group On Human Remains*. 2003; (403) 162: «Museums, Scientific Researchers, Genealogical And Cultural Descendants, The Concerned Public And Others Have Beliefs About The Proper And Respectful Treatment Of Human Remains. These May Differ Significantly Owing To Cultural Background And The Different Experiences Of Populations Across History. Respect For These Different Positions, A Desire To Understand Them And Their Underlying Cultural Meanings, And A Sincere Commitment To Working Together To Ensure That The Right Decision Is Made About The Future Of Human Remains, Must Be At The Heart Of Interactions Among These Parties»
- [20]. Monza F., *Esporre I Resti Umani: Un Problema Tra Ricerca, Etica E Comunicazione. Il Caso Britannico. Museologia Scientifica Memorie*, 2014; (11/2014) 241–244.
- [21]. Monza F., *Esporre I Resti Umani: Un Problema Tra Ricerca, Etica E Comunicazione. Il Caso Britannico. Museologia Scientifica Memorie*, 2014; (11/2014) 241–244.
- [22]. Codice Deontologico: Doveri Verso Il Patrimonio Archeologico, Art.1
- [23]. Bezzi L., Bezzi A., Gietl R., Feistmantl K., Naponiello G., *Archeologia Del Conflitto. Dai Principi Generali Della Disciplina Al Contesto Particolare Della Valle Di Non*, Palazzo Laifenthun. Livo 2018; 15.

- [24]. Gaudio D., Betto A., Vanin S., De Guio A., Galassi A., Cattaneo C., Excavation And Study Of Skeletal Remainsfrom A World War I Mass Grave. Wiley Online Library, 2013; Fig.1.
- [25]. Gaudio D., Betto A., Vanin S., De Guio A., Galassi A., Cattaneo C., Excavation And Study Of Skeletal Remainsfrom A World War I Mass Grave. Wiley Online Library, 2013.
- [26]. Ayala P., Relaciones Entre Atacameños, Arqueólogos Y Estado En Atacama (Norte De Chile). 2007;133-157.
- [27]. Ley Indígena 1993;19.253, Título IV, Art.28: «El Estado Reconoce Que Los Indígenas De Chile Son Los Descendientes De Las Agrupaciones Humanas Que Existen En El Territorio Nacional Desde Tiempos Precolombinos, Que Conservan Manifestaciones Étnicas Y Culturales Propias Siendo Para Ellos La Tierra El Fundamento Principal De Su Existencia Y Cultura» (Título.I, Art.1); «El Reconocimiento, Respeto Y Protección De Las Culturas E Idiomas Indígenas Contemplará:Riconosce»
- [28]. Favole A., Appropriazione, Incorporazione, Restituzione Di Resti Umani: Casi Dall'oceania. 2013;121–139.
- [29]. American Graves Protection And Repatriation Act. 1990.
- [30]. Canadelli E., A Chi Appartiene Il Passato? Il Dibattito Sulla "Repatriation". 2016. ([Http://Lameladinewton-Micromega.Blogautore.Espresso.Repubblica.It/2016/05/26/A-Chi-Appartiene-Il-Passato-Il-Dibattito-Sulla-Repatriation/](http://Lameladinewton-Micromega.Blogautore.Espresso.Repubblica.It/2016/05/26/A-Chi-Appartiene-Il-Passato-Il-Dibattito-Sulla-Repatriation/)).
- [31]. Ayala P., Avendaño S., Cárdenas U., Vinculaciones Entre Una Arqueología Social Y La Comunidad Indígena De Ollagüe (Región De Antofagasta, Chile). Chungará (Arica). 2003; 35(2), 275–285.
- [32]. Brunelli M., Archeologi Educatori. Attuali Tendenze Per Un'archeologia Educativa In Italia, Tra Heritage Education E Public Archaeology. Il «Capitale Culturale». 2013; (VII) 12-17.