

From Past to Future How to Foster Justice in a Global World

33rd Meeting of the National Ethics Councils



THE PAST: Justice and Care for Human Remains

*Status of human remains in museum,
scientific and private collections
BACB Opinion n. 82 of 9 January 2023*



Requests for an opinion

9 November 2020 : the Royal Museum from Central Africa, Royal Museums of Arts and History & the Royal Institute of Natural Sciences (+ 8 February 2021)

Observations « Belgian federal scientific institutions (FSIs), universities and public and private entities house human remains of various geographical origins, periods and contexts [...] In Belgium, there is no statute, let alone a legal statute, for human remains kept in museum, scientific and private collections ».

Request to assess the ethical aspects of these collections and regarding any requests for restitution/repatriation by descendants, community representatives and states of origin



Requests for an opinion

Questions

- ordinary collectibles **or** remains of identified (or anonymous) missing persons?
- appropriable (subject to property rights) **or** not (no ownership because human or sacred?)
- if appropriable (commodities) and valorisable (patrimonial value) : marketable **or** not ?
- commercialisation lawful **or** not?
- limitations regarding the age of these human remains before they can be considered as collectibles?
- Does the use of these remains in cultural goods (relics, trophies, etc.) affect their status?

Additional Request about human remains acquired in the colonial context

An Opinion to assist institutions, legislators and the executive to set the priorities as ethically as possible, taking into account the historical, legal and legislative context »



Building a framework : key ideas

Should the status of human remains, and therefore their treatment, depend on scientific categories and classifications?

The ever-shifting categories of sciences : useful & legitimate but *not ethically relevant as such*

Instead : for a **holistic and universal view**, based on **two pillars** :

- **basic bioethics principles** regarding the human body (i)
- an **anthropological & social sciences perspective** (ii)



(i) From a bioethical point of view

The French National Assembly

« **bioethics** cannot be defined as only the ethics of the living. It also involves determining what the living may not do with **the bodies of the dead, the remains that bear the memory of the deceased** »

The Comité consultatif national d'éthique pour les sciences de la vie et de la santé français (CCNE)

« there is a **growing concern** regarding **respect for the dignity** of every human being, **even after death** »



(i) From a bioethical point of view

An evolving sensitivity within society

Gaëlle Clavandier

« **the principles of respect, decency and dignity owed to the deceased are gradually transferred to fragments**, immature bodies or human remains, for which the identity of the person is missing. **This 'body'**, in the general sense of the word, is then **the only remaining link to the person**, the only trace. [...] One of the concrete consequences of this **evolution of sensitivities** is that these **human remains** can be **treated as 'deceased'** ».

the term '**human remains**' qualifies them as **human beings**, to be **distinguished from all remains** of any other kind, **especially from waste**. Equated with **bodies**, they become one with the person and his humanity.



(ii) From an anthropological & social science perspective

The dead (= deceased or ancestors) are **vectors of significance to the living**.

The dead **contribute to the cohesion of human groups** ; play a role in **creating and maintaining social bonds over time** / in **historical human communities**

Implies the recognition that **we share a history** or histories, **perpetuated by the living**.

→ **A holistic and universalist approach, considering human remains as remnants of a common history that the living continue — and of particular histories or even stories that particular societies and communities continue. Specific status in this sense**



(ii) From an anthropological & social science perspective

- **cultural & historical differences** within the history of humanity / the human species
- the need for a contextualized approach that takes such differences into account (what's the story?); the western cultural prism should not predominate; differences matter.
- the contemporary bioethical perspective is part of it, as well as other ways to honour ancestors or dead persons

Thomas Laqueur, *The Work of the Dead. A Cultural History of Mortal Remains*, 2016)

The history of the work of the dead is a history of how they dwell in us—individually and communally. It is a history of how we imagine them to be, how they give meaning to our lives, how they structure public space, politics, and times. It is a history of the imagination, a history of how we invest the dead—again [...] »



From this holistic, universalist & *pluralistic* framework to ethical recommendations

Lead us to

- list some **guidelines / principles** for different kinds of contexts & uses : **academic research ; exhibition ; trade**
- make a **special case for human remains collected in the colonial context** and subject to restitution-repatriation



What about academic research ?

Ancient human remains : **material witnesses** that allow us to **better understand the history of the human species**. Research in palaeontology, palaeopathology, palaeogenetics, archaeoanthropology and archaeo-biology demonstrates the **value of scientific study of ancient human remains**.

But represent **more than just material matter** : ***Rec 2. : any scientific research involving human remains should undergo external ethical scrutiny to support the views of the researcher himself.***

There is also a **need for a critical examination of science** that has been used as an alibi to support objectionable propositions and unacceptable purposes in colonial contexts.



What about academic research ?

Parallel with clinical research and medical experiment ethics

***Rec 3.** : The ethical principles for the **careful handling of human remains** [...], should be as closely **aligned** as possible with **the good practices applicable** to the handling of deceased persons in a medical or research context. These principles are as follows:*

*application of **rigorous scientific methods** ; pursuit of **scientifically validated objectives** ; **proportionality of manipulations** with the scientific or conservation objectives pursued ; the **respect for the integrity of the body or body parts** by using the most minimally invasive methods possible [...], and the prohibition of trade »*



What about exhibition ?

Several museums no longer exhibit human remains : Royal Museum for Central Africa (RMCA) ; Museum aan de Stroom (MAS) in Antwerp, Musée de l'Homme in France. Others are considering doing the same. According to the Committee :

Public display of human remains **can only take place in a scientific context** with **educational explanations** provided and **under certain conditions** (in terms of light, atmosphere, etc.).

***Rec 9.** The Committee considers it desirable **to formulate a set of principles and rules applicable to all with regards the deontology of the various actors** with regard to human remains. Specific obligations may be added for each professional group*



What about the exhibition of human remains *from colonized countries* ?

Human remains acquired in the context of colonisation or colonial enterprises are mostly recent (15th to 20th centuries)

The **circumstances and purpose of their acquisition are problematic** : **context of violence** and **with the aim of establishing a hierarchy of races** in order to justify the coloniser's **domination** ("scientific" racism).

Rec 5. *Their continued **display** in our museums **cannot be justified*** - with the exception of situations where the people and communities concerned have equally participated in the development of the project



What about trade ?

The trade in human remains is ancient: the trade in mummified Maori heads in the 18th and 19th centuries ; the trade in relics during the Middle Ages et Modern Times ; today on websites (human bones, especially skulls, decorated or not).

However, the Committee considers that

the trade in human remains is unacceptable, even for scientific reasons

***Rec 10.** The Committee believes that the European Union should develop a regulation to ban the trade in human remains both within the Union and with third countries, and to allow those who possess remains to transfer those remains anonymously to an official body similar to the regulation for ivory.*



A specific case : human remains collected in the colonial context

***Rec 5.** it is not justified to continue exhibiting these remains in our museums, even in compliance with the ethical principles described.*

***Rec 6.** the restitution-repatriation of human remains to the country of origin should also include the restitution-repatriation of the funerary objects directly related to them as well as the container in which they were found and the objects found on or near the remains*

A specific case : human remains collected in the colonial context

Rec 7. the issue of restitution-repatriation of human remains should not be dealt with in a detached and purely administrative manner without **looking back into the past**. An informed, sincere and serene dialogue should be initiated.

It should address :

- the **significance** of these human remains **for the community** to which they belong
- the **social consequences of the brutal manner of acquisition, with racist intentions**, for the colonised peoples.
- the **impact of the theft** of human remains on societies where ancestral worship remains important.



A specific case : human remains collected in the colonial context

Rec 8. principles, guidelines and rules of conduct should be established.

*In particular, **any requests for restitution - repatriation** that may be addressed to the institutions and museums that preserve these human remains or to the competent Belgian political authorities **should be considered [...]***

authorities should provide the appropriate means (procedures and official referral body(s)) to ensure the orderly and equal treatment of all requests and provide administrative assistance to applicants in this regard.



Additional recommendations

Rec 11. *a code of conduct should be drawn up for the preservation of human remains*

Rec 12. *through legislative work, the principle of the Civil Code which provides that the owner of a piece of land automatically becomes the owner of everything in and on this land should not apply to human remains*

Rec 13. *a solution must be worked out for human remains that no one wants or claims: for example, a memorial could be created for these remains depending on their origin.*

To conclude

If we get back to the key ideas

It's not so much a matter of « sacrality » of the human body than a matter of history-in-the making

What story are we telling & what sort of history are we continuing through the way we treat human remains?

How to makes us capable of telling stories and making histories that somewhat repair the past injustice and open up shared futures?



**THANK YOU
FOR YOUR
ATTENTION**

