

Burials, excavations and the Ministry of Justice

HOW WE ENDED UP IN THIS POSITION

1. The 1857 Burial Act was designed to protect the Victorian public from exposure to recent corpses, grave-robbing and clearance of recent graves, during the expansion of the cities. Section 25 is the relevant bit for archaeology. To read the Act itself, go to <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1042715>
2. More than 150 years later, this Act now has to cover the archaeological excavation of ALL human remains – from early humans onwards. It does not mention reburial, and it is hard to see why it applies to archaeological sites dating to before the Medieval period.
3. In order to regulate scientific research into the human past, the MoJ appears to have available only this Victorian legislation.
4. Until 2008, licences for archaeological excavation of human remains were issued by the Home Office. The licences specified curation in museums as an acceptable place of deposit for remains of scientific interest.
5. This system worked. Archaeologically excavated remains were curated in museums, or reburied if an ethnic or religious group with close connections to the deceased was identified and requested such action.
6. With the transfer of functions from the Home Office to the Ministry of Justice, the MoJ initially tried to apply to archaeology the requirements of another Act, the 1981 Disused Burial Grounds (Amendment) Act. This Act covers the clearance of burial grounds whose use has changed. It is used to licence the wholesale removal of remains from cemeteries by commercial clearance companies, in advance of development.
7. During 2007/2008, the MoJ changed its mind and declined to issue any licences for archaeological excavation, stating that the burial laws did not apply to archaeology.
8. Meanwhile, in 2006 the Council of British Druid Orders asked to be given prehistoric human remains held in the Alexander Keiller Museum, Avebury, so that they could bury them.

WHAT'S HAPPENING NOW

9. By April 2008, the MoJ had changed its mind again and began to issue licences for archaeological excavations under the 1857 Act, requiring reburial of all human remains within two years of excavation. These licences no longer include the option of curation in a museum.

10. The MoJ now issue extensions to licences where research is still to be completed, but with the requirement for eventual reburial always stated.
11. The MoJ stated in 2008 and 2009 that the legislation needed amendment, and indeed had proposals in place for how to proceed. Two relevant documents are available at <http://www.justice.gov.uk/guidance/docs/burial-law-archaeology-statementii.pdf> and <http://www.archaeologists.net/sites/default/files/node-files/ta72.pdf> page 30
12. In 2009 English Heritage and The National Trust took the question of the reburial of remains in the Alexander Keiller Museum to public consultation. They opened up the process to a wide selection of the UK's religious leaders, religious organisations, individuals and professionals from the heritage sector as well as the general public. The conclusion was that the remains should not be reburied. There was widespread support for the retention of remains in museums and their scientific investigation by archaeologists (see point 23, below).
13. These issues were brought to wide public attention with the publication of a short feature by Duncan Sayer and Mike Pitts in British Archaeology Nov/Dec 2010 (published October 8, <http://www.britarch.ac.uk/ba/ba115/index.shtml>). The MoJ did not formally respond, but its comments to the media suggested it believed archaeologists were making a fuss about nothing.
14. The Secretary of State, Kenneth Clarke, has apparently been told that the archaeological profession has no problem with the legislation. The relevant letter from Mr Clarke is available at <http://www.parliament.uk/documents/commons-committees/science-technology/101110-Letter-from-Lord%20Chancellor-archaeological-remains.pdf>
15. There is no guidance from any legislative or administrative body as to how or where archaeological human remains should be reburied, nor any practical provision of means by which such reburial should be performed. The responsibility for (and control of) this appears to rest with the archaeologist to whom the licence is issued.

REPERCUSSIONS

16. The 1857 Act may apply only to burials; human remains found by archaeologists with no apparent evidence of 'burial' (e.g. stray human bones on settlement sites) may not be covered by the Act. The MoJ has apparently never issued any advice on this question.
17. A standard licence condition imposed by the MoJ and its predecessor, the Home Office, is that all excavations of human remains must be screened from public view. This is presumably a necessity for exhuming the recent dead from churchyards that has been applied in a blanket fashion to burials of all periods. It is today inappropriate for many archaeological excavations of skeletal remains, of enormous interest to the public. The wholesale screening of all excavations impedes our engagement with the public (who, in their millions, are allowed to watch televised excavations of human remains, but are NOT allowed to see them in the ground!)

18. Britain is a world-leader in osteoarchaeology and funerary archaeology. Our universities train students from all over the world, especially North America, at postgraduate level. Our field practitioners are second to none. The MoJ's current interpretation of the Act diminishes our ability to carry out long-term and sustained research. It also places commercial organizations in an impossible position when they excavate human remains.
19. Human remains of any date do not belong to anyone. In law, human remains can only be owned when they have undergone a process of skill (as in the case of anatomical specimens). The Human Tissue Act, passed in 2004 to regulate medical and anatomical dealings with human remains, purposefully excluded historic remains over 100 years old. The terms of the current MoJ excavation licences contradict this arrangement.
20. The treatment of prehistoric and ancient human remains cannot be decided by genes. The possibility of DNA analyses is sometimes mentioned by interested members of the public. Even when DNA can be obtained from ancient human bone, it would be logistically impossible to identify and then consult all the descendants carrying that DNA – for any prehistoric individual, there may be no descendants, or there may be millions, scattered across the planet. DCMS Guidance for the Care of Human Remains in Museums is a very well-thought out document that covers this and the next few points thoroughly; it is available at http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/publications/3720.aspx
21. Archaeology can recover evidence of the existence of prehistoric religions but cannot prove what a prehistoric deceased individual's beliefs were in life. No religion practised today can prove any continuous links to the prehistoric religions of Britain. No group or individual today can legitimately claim control of any prehistoric remains in Britain on religious grounds.
22. Since no individual or group can claim ownership of or a privileged relationship to the prehistoric dead, their treatment has to date been decided by society as whole.
23. Public opinion on the curation of prehistoric human remains in museums has been canvassed through various surveys of museum visitors (biased because this is a self-selected group) and by a randomized nationwide survey commissioned by English Heritage in 2010 and carried out by an independent organisation. In EH's national survey, 91% of respondents agreed that museums should store and display ancient human remains. See <http://www.babao.org.uk/index/reburialissues>

AN EXAMPLE OF WHAT YOU TOO COULD FACE IN THE FUTURE

24. In 2010 the Charity Commission recognised Druidry as a religion. At the same time a member of the Druid faith opposed an extension of the licence to remove ancient human remains (that had been reburied at Stonehenge in 1935) issued by the MoJ to the Stonehenge Riverside Project. Since the granting of the extension this individual has applied for a Judicial Review to overrule the decision, arguing that the MoJ did not consider his opinion properly and that his human rights have been infringed.

25. Before the request for Judicial Review and with reference to the investigation of these Stonehenge remains, the MoJ informed a Druid that once the osteological analysis has been completed, it is proposed that “the religious views of the Pagans and Druids will be respected and the remains reinterred.” You can read this on-line at <http://www.eternalidol.com/?p=8211>
26. It is as yet unclear whether the MoJ believes that today’s Druids have some sort of privileged relationship to these prehistoric remains, greater than the relationship enjoyed by any other section of the population. However, this action suggests they do not have the experience to manage an open consultation or to manage the process of adjudication, responding instead to minority interest groups independently of public opinion or the interests of other groups such as Pagans who favour archaeology. For example, the group Pagans for Archaeology is very supportive of archaeological research and curation of remains.

The current situation is untenable. The 1857 Burial Act is 19th-century legislation unfit for purpose as its authors could not have anticipated the complex situation we find ourselves in today. It was not designed to cover archaeology. It does not mention reburial or museum curation. There are many and varied groups interested in the UK’s heritage. Ancient human remains are not owned by anyone but are important to everyone. Archaeologists must make their opinions known and ask for the legislation to be amended, or re-interpreted, to accommodate our research and reflect our interests.