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Edited by Chris Scarre and Geoffrey Scarre

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CHAPTER I

*Introduction**Chris Scarre and Geoffrey Scarre*

This book aims to promote dialogue between archaeologists, anthropologists and philosophers on significant ethical issues raised by the contemporary practice of archaeology. We believe that it represents the first attempt at an intellectual interchange between philosophically minded archaeologists and anthropologists, and philosophers with an interest in archaeology. But we do not think, in view of the growing sense of the importance of archaeological ethics and of the difficulty of many of the issues, that it will be the last.

The twenty-one authors of the chapters that follow comprise ten archaeologists, four anthropologists and seven philosophers. The two editors are an archaeologist and a philosopher. Since the 1980s there has been much good and innovative writing on the ethics of their discipline by archaeologists themselves and a number of substantial anthologies on the subject have appeared in print. That is just as it should be, since ethical problems in archaeology are the problems of archaeologists. It is researchers in the field who encounter the problems at first hand, and their reflections carry the authority of experience. To have to deal with a moral dilemma is a very different thing from abstractly theorising about it in one's study, and can involve a much steeper learning curve.

But whilst archaeologists may have the advantage of relevant experience, few are also trained moral philosophers, with the conceptual tools and analytical skills that have been developed within that tradition over centuries. Ethical thinkers in the west have been wrestling for more than two millennia with deep and difficult questions about what sort of people we should be, what kinds of acts we should perform or avoid, and how we should treat our fellow human beings. In recent years much attention has been devoted by the philosophical community to moral problems arising within such special contexts as the law, medical treatment and research, genetic engineering, business and the commercial world, and the management of the environment. Cooperation between philosophers

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and professionals in these and other areas has produced new insights and understanding that would otherwise have remained elusive. It is our conviction that similar happy results will flow from a pooling of their efforts by archaeologists, anthropologists and philosophers.

Whilst this book does not purport to cover every theoretically or practically important ethical question that faces archaeologists, or those with an interest in the subject, its scope is broad. Among the topics addressed are: archaeologists' relations with indigenous peoples; the virtues, professional standards and responsibilities of researchers; the role of ethical codes; the notion of value in archaeology; concepts of stewardship and custodianship; the meaning and moral implications of 'heritage', local and universal; the question of who 'owns' the past or has a right to interpret it; the problem of 'looting' and the trade in antiquities; the repatriation of skeletal material and culturally significant artefacts; and archaeologists' treatment of the dead.

A major purpose of the book is to show how important moral questions such as these can be approached in a more appropriate analytical manner than they sometimes have been. Thus the editors do not share the view expressed by Karen Vitelli, in the introduction to her 1996 collection *Archaeological Ethics*, that 'One need not be trained in philosophy, an expert in cultural property law, or even have followed closely the fast-growing body of literature on the subject, to be qualified to teach a course on archaeological ethics.' Vitelli rightly remarks that 'Any serious and conscientious archaeologist will discover that she or he harbours a wealth of relevant experience' (Vitelli 1996b: 21). But it would be naïve to think that experience, taken raw, can provide all the moral answers. One may be a serious and conscientious researcher, and a decent human being to boot, without necessarily finding it easy to appraise moral claims, weigh up and decide between conflicting interests, or determine the dutiful or virtuous thing to do – still less deliver a course on archaeological ethics. In our view, good intentions are not enough and any worthwhile writing in this area needs to be both well informed and philosophically rigorous. The experts we have invited to contribute to this collection approach their topics from a variety of perspectives but are all, we believe, well able to meet these exacting standards.

Ethics is concerned with the critical appraisal of human conduct and character. Moral judgements are sharply distinct in kind from factual ones. In the words of J. H. Muirhead, everything can be looked at from two points of view: 'We may take it simply as it is, seeking to discover how it came to be the thing it is, and how it is related to other things; or

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we may compare it with some ideal of what it ought to be' (Muirhead 1912: 414). We can say what a person is doing (description) or we can judge whether she ought to be doing it or how creditable her performance is (evaluation). Sometimes ethics is presented as if it were chiefly concerned with dampers on action: dos and don'ts, rules, limits and constraints. But that is a distorted image. Ethics is also about positive and attractive springs of action: values, goals and ideals, aspirations, and personal and social fulfilment. The subject of perhaps the greatest of all ethical treatises, Aristotle's *Nicomachean Ethics*, is the living of a human life in its best possible form. For Aristotle, ethics is about locating and attaining the highest goods available to us (identified by him with excellences of mind and character). People who keep their moral hands clean and satisfy the bare requirements of acceptable behaviour may be described as minimally ethical agents. In contrast, those who follow a more inspiring view of the ethical life not merely avoid the bad but energetically pursue the good.

These ideas carry over into professional ethics, though with an important caveat. Archaeologists should be seeking to realise the highest goods of their profession, whatever these may be. Deciding what they are is one important part of archaeological ethics; determining how they may *legitimately* be achieved is another. This second clause is the one that conveys the caveat. The problem is that the highest goods for the archaeological profession may not always be compatible with the highest goods for other groups of people. Thus, to take an obvious example, an ancient cemetery whose excavation would yield rich archaeological data may be a sacred site for an indigenous community. The archaeologists' end of knowledge is at odds with the local people's end of preserving and respecting the remains of the ancestors. Once upon a time – and not so many years ago – researchers too often assumed that the interests of science trumped all other interests. A classic instance is the series of excavations carried out by the cultural anthropologist Alěš Hrdlička in Larsen Bay, Alaska, in the early 1930s, in which several hundreds of skeletons and many thousands of mortuary items and other artefacts were removed to the Smithsonian Institution in the face of vehement and sustained objections by the local population. As Randall McGuire has remarked, for anthropologists and archaeologists of Hrdlička's stamp, the objects they uncovered 'were data, not mothers, fathers, aunts, and uncles' (McGuire 1994b: 182). Small wonder then that, in the words of another recent scholar, Hrdlička displayed 'a gruff and belligerent manner of dealing with native peoples

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who appeared at the dig site to protest the disturbance of their ancestors' (FitzHugh 1994: viii).

The ethics of any profession cannot be conceived in isolation from ethics in general. Moreover we should be good persons before being good archaeologists, philosophers, politicians or bus-drivers. No doubt a researcher like Hrdlička had a clear view of the goods he was seeking. He was also *right* to think that the knowledge and understanding he sought were goods worth having. But Hrdlička's was also a striking case of moral tunnel vision. His brusque, not to say brutal, treatment of the local protesters reflected not only a disproportionate weighting of his own goals but also, one suspects, his unquestioning belief in the racial superiority of whites to Indians and the consequent right of the former to exploit the latter. Such blatant racism amongst archaeologists and anthropologists is happily now a thing of the past. Yet we should beware of resting on our laurels, however enlightened and egalitarian we believe ourselves. As several of the writers in this book remind us, it is easy even for well-intentioned researchers, through ignorance or inadvertence, to show insufficient respect for native people and their traditions.

Attempts by archaeologists to formulate principles of ethics to guide their practice have by and large recognised the importance of accommodating the goals of the profession to broader moral requirements. Whilst doubts are sometimes expressed as to whether archaeological ethics can be satisfactorily reduced to a neat system of general principles (see, e.g., Hamilton 1995; Tarlow 2001b), codes such as that propounded by the Society for American Archaeology in 1994 at least provoke thought on the relations between archaeologists' goals and the morally significant interests of those whom their activities affect. They also afford an opportunity to reflect on the points of possible intersection or convergence of the interests of archaeologists and others. For example, the fourth principle of the SAA's code is headed 'Public education and outreach' and encourages archaeologists to disseminate their findings to all who are interested in the preservation and interpretation of the past, 'including students, teachers, lawmakers, Native Americans, government officials, environmentalists, service organizations, retirees, reporters, and journalists' (Lynott and Wylie 1995: 23). The praiseworthy intention behind this provision is to lessen the sense of an 'us and them' divide between archaeologists and other constituencies, and to emphasise that the goods of archaeologists are by no means exclusive to them.

We have divided the chapters in this volume into four sections, although many of the themes intersect and overlap and these divisions

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are to some extent arbitrary. Nor do all the authors find themselves in agreement on key issues. The emphasis throughout is on the obligations of archaeologists as practising professionals, though several of the chapters seek to balance these against the rights and obligations of other interest groups.

We begin with a group of papers focusing on the ownership of cultural objects. The very term 'cultural' implies that these objects possess a special status which removes them from the ordinary and everyday, and raises the question how 'ownership' in such objects is to be assigned and understood. James Young identifies four categories of potential owner for archaeological finds (excluding remains of the dead). These may be individuals (including both collectors and museums on the one hand, and the finders or archaeologists on the other); or some larger grouping such as a culture, a nation, or indeed humanity as a whole. He supports the claim of 'cultures' but not on the basis that any group inherits rights to objects which may be centuries or millennia old; cultural, ethnic, social and religious change make any such claim difficult to accept as a universal. Instead, he takes the view that no one has inherited a claim to many archaeological finds but that the ownership question should focus on the current value of those finds for living communities. This may in the case of specially significant objects mean indigenous or other special interest groups, though he argues that many finds might more properly remain with their discoverers. Furthermore, other principles must be invoked, including the need in most cases to ensure the preservation or conservation of an object, the desirability of public access, and the principle that separated parts of cultural property ought to be reunited. Where Young differs from some of the other contributors to this volume is in denying the utility of the concept that archaeological finds are the common heritage of all humanity. As he observes, although we may wonder whether archaeological finds should be 'owned' in the same way as ordinary personal property, at the end of the day decisions have to be made about who ought to hold such objects. The 'common heritage' question is none the less an important principle to which we return in the final section of this volume.

Oliver Leaman contrasts the legal ownership of cultural artefacts with the moral or political criteria that might be cited to justify such ownership. If cultural artefacts belong in some way to the wider community, legal ownership can never be absolute. At the same time, Leaman contests the view that ownership should be decided simply or largely on moral criteria of desert. He argues for the parallel between care of artefacts and

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care of children; parents are allowed freedom to bring up their children in a diversity of different ways, and other authorities only intervene in cases of neglect or abuse. In the case of artefacts, this would require some definition of the public good against which the proper care of artefacts could be measured. The difficulty of defining such a 'public good' leads Leaman to argue that if we were to contemplate removing an object from its owner then we would need to show not only that it would do better elsewhere than with its present owner, but that its present owner may represent a danger to the object's future. He cites various ways in which different kinds of ownership might be beneficial (for instance in spreading the products of different cultures around the world and placing monetary value on their survival) and concludes that a diversity in the ownership of artefacts is ultimately the best state of affairs.

The concept of cultural artefacts as private property to be bought and sold raises the key issue of commodification. This is addressed directly by Robert Layton and Gillian Wallace, who begin by defining cultural property as artefacts and buildings that embody the values and traditions of a community such that concern about their fate transcends legal ownership. Layton and Wallace hence agree with Leaman that ownership of cultural objects cannot be or should not be determined merely on the basis of modern Western concepts of private property. From an anthropological perspective, concepts of ownership vary considerably from culture to culture. Traditional societies may consider certain cultural objects as simply inalienable, their ownership vested not in an individual but in the wider community or clan. Furthermore, such 'ownership' may extend beyond physical objects to include oral performances or religious practices and beliefs. Here there is potential for conflict with Western principles such as copyright, which rely upon the existence of a durable object albeit one that may be a transcript or recording. At the same time, indigenous and other local communities may manage and benefit from the commodification of their culture and traditions through practices such as eco-tourism. The looting of archaeological sites by local communities could be considered in the same way: as the financial exploitation of a group's ancestral capital. As Layton and Wallace illustrate, the role of archaeologists in all this is ambiguous; they may sometimes be called in to provide evidence in support of local land claims, though by its nature archaeological evidence is rarely conclusive, and most archaeologists feel uncomfortable about the use of excavation to help resolve political disputes such as that surrounding the destruction of the Ayodhya mosque.

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The final chapter in this first group considers the problematic issue of the looting of sites by local communities. Julie Hollowell examines the conflicting ethics of archaeologists seeking to preserve and manage archaeological resources for the future, and the needs of local communities to gain a livelihood. She calls the latter 'subsistence digging' and questions an archaeological ethic which may place the preservation of archaeological remains above the survival of (often impoverished) local people. The issue focuses once again on the ownership of archaeological materials, and on who has the right to control and exploit them. Hollowell warns against the sometimes distant and alienating stance taken by archaeologists, and stresses the need to pay much greater concern to the local communities who may consider archaeological sites as legitimate resources, left them by their ancestors, to be mined for profit. 'Subsistence digging' declines significantly where other sources of income and employment are available. The solution, she suggests, is for archaeologists to involve local communities much more closely in their work, and as far as possible to make the archaeological heritage the basis for the sustainable employment of local people.

The second part of this volume concerns the responsibilities of archaeologists towards other interest groups, including (though not restricted to) indigenous peoples and local communities. Jeffrey Bendremer and Kenneth Richman advocate the extension of human subjects reviews to archaeological projects. They accept that anthropologists generally approach their work with a desire to benefit the host communities, but observe that considerable harm has none the less resulted in many cases, owing to a lack of mutual understanding. Human subjects reviews (as used in regard to biomedical projects in the United States) would address the problem by requiring formal consent from the local community or the descendants of the people being studied before an archaeological project was given clearance to proceed. The basis for the approach lies in the ethical principles enshrined in the Belmont Report produced by the US National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in 1979 to guide biomedical research. This arose from discussions at a seminar held at the Smithsonian Institution Belmont Conference Center three years earlier. The key ethical principles recognised in the Belmont Report comprise respect for persons; beneficence; and justice. Bendremer and Richman also advocate involving local communities not only in negotiating the ways that archaeological projects may be carried out but also in the choice of research questions to be addressed by those projects. These proposals have particular resonance in

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a North American or colonial context, but could be applied more widely, wherever local communities can be involved in the planning and execution of archaeological fieldwork.

Bendremer and Richman focus on the practical mechanisms which might be installed to ensure that archaeological work conforms to ethical standards; Chip Colwell-Chanthaphonh and T. J. Ferguson take a different line, considering not the rules and procedures but the ethical basis for archaeologists' obligations towards both living and dead communities. They propose Virtue Ethics as the basis for these relationships. Virtue Ethics revolve around questions of character and trust, and place emphasis not on codes of practice or regulations but on the subjectivities of social interactions. Establishing mutual relations of trust between archaeologists and local or indigenous communities here again emerges as a key objective; but Colwell-Chanthaphonh and Ferguson argue that this can be extended to the dead, with whom we also have a relationship which leads us to cultivate respect for their remains and to treat them with dignity. The principle that archaeologists have direct obligations towards the deceased (not merely through the medium of their living descendants) opens the much wider issue of the appropriate treatment of human remains, to which we return in a later section of this volume.

Archaeologists have a growing awareness of the need to respect the wishes of indigenous communities amongst whom they work. This is borne out in most recent codes of ethics and in national legislation such as NAGPRA in the United States. As David E. Cooper argues, however, archaeologists have responsibilities which extend beyond these considerations, to professional integrity and 'truthfulness'. The desire for epistemic inclusion – the acceptance that archaeologists do not have the sole authority in dealing with and interpreting the past – may sometimes result in conflict between the results of archaeological work and the beliefs of local or indigenous communities. Cooper observes that the willingness by archaeologists to relinquish control over remains of the past (e.g. by returning the dead for reburial by descendent communities) must be carefully distinguished from the abandonment of archaeological interpretations in favour of a particular community's mythical beliefs about the past. The latter would be to abrogate the virtue of truthfulness. Respect for indigenous beliefs and interpretations should not lead archaeologists to abandon their archaeological understanding of the material they uncover.

The background to the NAGPRA legislation, and its implications, run through several of these chapters. Douglas Lackey addresses the issue head

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on, examining the ethical principles behind the aims and operation of the Act. Like Cooper, he argues that respect for indigenous beliefs and practices must be viewed alongside considerations of other and equally legitimate demands, including those arising from science and aesthetics. He questions whether the claims of indigenous communities to possess and perhaps rebury or destroy human remains or cultural objects should in ethical terms outweigh the desire to study or inspect (have access to) those remains. NAGPRA makes no reference to the competing demands of science or aesthetics, but simply seeks to return objects to their rightful owners. Lackey concludes that the ethical argument is not so simple, and that, on ethical grounds, competing claims cannot always be so easily dismissed.

The recurrent contention that archaeological or cultural remains cannot be owned absolutely in the same way as most other private property leads to the concept of 'stewardship': that archaeologists or others who possess these remains hold them in trust for the wider community. Attractive though this idea might be, Leo Groarke and Gary Warrick demonstrate its inadequacies, for 'stewardship' is exercised on behalf of another, but in this case that 'other' is hard to identify. Not only is the concept of stewardship vague, but it is impracticable, since it assumes that it is possible to manage the archaeological resource in the interests of all stakeholders, whereas in reality many of those will make conflicting demands (for preservation, ownership, redevelopment, etc.). It may be more appropriate to regard the archaeological profession as only one among several interest groups whose competing claims might more appropriately be decided in the political arena; archaeologists cannot at one and the same time be advocates for the archaeological resources and adjudicators in disputes about them. Furthermore, Groarke and Warrick argue that there is more to ethics than stewardship and that archaeologists' ethical obligations go much further than this and include commitments to honesty, openness and professional standards. They propose that the principle of stewardship should be coupled with a principle of archaeological professionalism.

Many see the ethics of dealing with the remains of the past as focused on the claims and obligations of living communities. An alternative view, however, argues that we also have obligations towards the dead themselves. This is the view taken by Colwell-Chanthaphonh and Ferguson in the context of Virtue Ethics, as we have seen. It is developed further in the two contributions to the third section of this volume. Geoffrey Scarre draws attention to the second principle of the Vermillion Accord, which

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requires respect for the wishes of the dead concerning the disposition of their remains, wherever those wishes are known or can be reasonably inferred. Archaeologists whose work disturbs remains of the dead frequently try to act with great sensitivity towards the feelings of descendent communities. It is a very different thing to claim that the wishes of the dead in their own right should be respected. Scarre argues that although we may believe that death is an end to existence, in another sense people can be injured after death if their posthumous wishes or desires are not respected. Dead people remain in many respects interest-holders, and their memory or reputation may be harmed by things which happen after their death. This does not mean that the interests of living archaeologists (or developers) may not often override the claims of the dead, but it raises an issue that requires further debate.

Sarah Tarlow also argues that dead people may be harmed by activities in the present, and emphasises the need for research on human remains (as in the sphere of medical research) to be justified by a demonstrably beneficial consequence. She furthermore points to the special responsibility that archaeologists have in interpreting or reconstructing the lives or physical appearance of dead individuals. Is it ethical to construct unflattering depictions of the humans who are being studied? The question is not simply one of honesty and accuracy (principles to which all archaeologists should subscribe) but concerns the dilemma posed by hypotheses or interpretations which may be more loosely tied to the archaeological evidence. Tarlow also observes that however much archaeologists seek to operate sensitively with regard to others, conflict is almost inevitable when dealing with people whose ethics are differently constructed from our own; that, in essence, there can be no absolute set of ethical principles that we can expect everybody to accept.

The final trio of chapters in this volume address the idea that cultural and archaeological remains cannot belong to private owners, local communities or interest groups in any absolute way since they must be considered the common heritage of humankind. Some forty years ago the Government of Malta proposed to the United Nations that the oceans should be regarded as the common heritage of everyone, and the concept has been applied to other extraterritorial entities such as outer space or Antarctica. Sandra M. Dingli argues that the same rationale should apply to archaeology, on the basis that the past belongs to no one, but is instead the shared cultural heritage of everyone, including future generations. This leads her to three important consequences: that the past must be managed for the benefit of all humankind; that it must be conserved for