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RESEARCH FREEDOM AND ACCESS TO KNOWLEDGE IN ARCHAEOLOGICAL RESEARCH ON HUMAN REMAINS: LEGAL AND EXTRA-LEGAL PERSPECTIVES

Abstract. Present-day bioarchaeology of human remains has a complex, normative foundations, and this results in a nearly paradigmatic shift in research conducted in that discipline of science. This article first introduces the manifold non-scientific significance of human remains and mortuary sites and the essentials of bioarchaeological research as well. It subsequently examines the concept of research freedom in the context of international and domestic regulations. Each state regulates bioarchaeological research distinctly. The article outlines a diplomatic pathway for undertaking research abroad. We then examine (de)colonial, indigenous, religious, and political contexts in which extra-legal regulations on the study of human remains also gain validity. This leads to a normative pluralism, the sources and justification of which we analyse and examplify. Such a pluralism unveils the deficits of positive legal regulation in the various contexts of discussed research. Our article is to support researchers in dealing with normative challenges – legal and extra-legal – when it comes to undertaking research on human remains.

Keywords: Research freedom, research on human remains, bioarchaeology, legal, extra-legal, and multinormative regulations, (de)colonial, indigenous, religious, and political contexts

WOLNOŚĆ BADAŃ I DOSTĘP DO WIEDZY W BADANIACH ARCHEOLOGICZNYCH SZCZĄTKÓW LUDZKICH: PERSPEKTYWA PRAWNA I POZAPRAWNA

Streszczenie. Dzisiejsza bioarcheologia szczątków ludzkich ma złożone umocowanie normatywne, które pociąga za sobą zgoła paradygmatyczne zmiany w badaniach prowadzonych w tej dyscyplinie nauki. Niniejszy artykuł w pierwszej kolejności przybliża wielorakie pozanaukowe znaczenie szczątków ludzkich i miejsc pochówki i istotę badań bioarcheologicznych. Następnie

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analizuje pojęcie wolności badań w kontekście międzynarodowych i rodzimych regulacji. Każde państwo odrębnie reguluje badania bioarcheologiczne. W artykule nakreślamy dyplomatyczną ścieżkę umożliwiającą podjęcie badań za granicą. Następnie badamy konteksty (de)kolonialne, rdzenne, religijne i polityczne, w których ważność zyskały także pozaprawne regulacje dotyczące badania ludzkich szczątków. Prowadzi to do pluralizmu normatywnego, którego źródła i zasadność analizujemy i egzemplifikujemy. Pluralizm taki odsłania deficyty pozytywnych regulacji prawnych w najróżniejszych kontekstach badań nad ludzkimi szczątkami. Nasz artykuł ma wesprzeć naukowców w radzeniu sobie z wyzwaniami normatywnymi – prawnymi i pozaprawnymi – gdy przychodzi im podjąć badania na ludzkich szczątkach.

Słowa kluczowe: wolność badań naukowych, badania na ludzkich szczątkach, bioarcheologia, regulacje prawne, pozaprawne i multinormatywne, konteksty (de)kolonialne, rdzenne, religijne i polityczne

1. INTRODUCTION

Human remains are not just 'dead matter' or scientific or museum objects. Nor are they merely things to be taken out of their native context, made the property of the academy or part of the world's cultural heritage. Thus, bioarchaeology (concerned with human remains) is undergoing a paradigmatic shift. The recent changes in the normative status of human remains discussed hereafter reflect this shift. This paper identified the normative foundations – as well as the limitations – of research freedom in the archaeological investigation of human remains. We applied (a) scientific enquiry; (b) doctrinal (collecting legally relevant facts) and non-doctrinal research methods (in terms of socio-legal studies, legal pluralism, et cetera.); and (c) descriptive-analytical methods.

We began by outlining the manifold significance of mortuary sites and general international regulations in this area in concert with a discussion of *research freedom*. We then examined the legal and ethical codifications applicable to bioarchaeological research in Poland. Subsequently, we explored the contexts that push bioarchaeological researchers to confront new colonial, indigenous, religious, and political normative challenges. Succinctly, our study shows that research on archaeological human remains is governed by multiple regulations of a legal and extra-legal (i.e., not sanctioned by law) nature. We posit that growing awareness of such regulations should go hand in hand with the pending process of decolonisation of (bio)archaeological sites and artefacts (also happening within science and research institutions).

2. MORTUARY SITES AND THEIF MANIFOLD SIGNIFICANCE

As[1] for the term *human remains*, it "is to be understood as intact skeletons, parts of skeletons, and other human biological material kept in museums and collections, or discovered as a result of archaeological and other investigations" (Denham et al. 2022, 7). Research on human remains can be undertaken on "prehistoric, medieval, (…) early modern sites [and] modern cemeteries and tombs, including those from war" (Florek 2020, 373). In the Middle-European territory burial cemeteries called kurgans (Wiercińska 1970; Dzierlińska 2019), Jewish cemeteries, Muslim cemeteries, anonymous common graves, military graves, skeletal graves, catacombs, and further deposits of human remains (Sołtysiak, Koliński 2011) can be identified. In foreign locations, people encounter burial shafts, sarcophagi, unburied coffins with mummies (Riggs 2017), urns at pre-Columbian mortuary sites (Kieffer 2018), cannibalistic sites (Marsh, Bello 2023; Ullrich 2005), and open graves.

Archaeological research at sites with human remains may be non-invasive (Karski et al. 2017) or invasive. Non-invasive research "preserves the historical and cultural heritage" (Misiuk et al. 2019, 2) without damaging its substance or structure. Invasive research, in contrast, affects, transforms, or even destroys both substance and structure. *An immovable* archaeological site is an integral, unique whole whose damage would be irreversible. "In the case of an immovable archaeological landmark site, we deal not only with a collection of movable artifacts or distinct structures and layers but above all with their composition. It is formed as a result of a continuum of activities and processes, whereby all traces of events that have no direct tangible representation are of equal importance (…). The significance of an archaeological immovable landmark is largely determined by the originality of the composition of stratigraphic units and finds located in situ, in their original context of usage and deposition, including every slightest disturbance. An archaeological heritage must be treated as a whole and not as a collection of independent components that can be arbitrarily removed from it" (Misiuk et al. 2019, 2).

In many cultures, human remains are regarded as an integral and even immovable whole (e.g., Orthodox Judaism refuses exhumation or displacement of bones) or as integral parts of a whole. In these cultures, it is believed that displacement can result in disintegration, decontextualization, and oblivion of the dead. Burke referred to the special memory bond between the living and the dead as *pietas* (Scruton 2013). Margalit addresses the closeness of these relationships.

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"We want to have the kind of intense relations that will deserve to go on after our death. We want to be remembered by those who survive us" (Margalit 2004, 93).

Other scholars argue that "revelations by archaeologists of the details of past lives are a stronger counter to oblivion than the preservation of dead bodies intact in their graves" (Scarre 2003, 247). Nonetheless, the integrity of mortuary sites can also be critical to original communities, cultural heritage, and science. In contrast, "movable finds (…) can be deposited in various units of historical preservation, resulting in the dispersion of compact collections" (Misiuk et al. 2019, 5). The history of archaeology has witnessed the disintegration of finds and the dispersion of remains of countless individuals in museums, research institutes, and private collections.

Present-day research ethics already recognize that "all human remains, irrespective of age, are unique and have intrinsic value. Research activities that entail the destruction of human remains should only be carried out if it can be justified, based on a thorough assessment. In addition, some human remains are unique as research material due to their lack of contextual parallel" (Denham et al. 2022, 9). Scholars themselves realize that in the study of human remains, exhumation meets excavation and "heritage meets bioethics" (Blake 2021). For example, Chinchorro mummies from Atacama Desert were also cult objects.

Spiritual aspects and the fragility of this type of human remains to research interventions and unstable storage conditions would argue for field- and non-invasive research procedures. For example, unwrapping the mummy from the bandages would be highly invasive (Hudetz 2023; Moissidou et al. 2015) compared to computed tomography (CT), muon imaging, microarchaeological techniques (Panzer et al. 2019; Borselli et al. 2023; Warsaw Mummies Project 2016; Weiner 2012), and digital-archaeological techniques (Ulguim 2017; Jurda et al. 2019).

For example, the microsampling from human remains for DNA analysis may raise objections from local communities and authorities. On the other hand, limited "access to the distinctive aspects of the biology of present and past man, revealing a history of migrations and mixtures between populations (…) and confirming the role of the human body as a 'biological archive', unique and unrepeatable, of humanity and history" (Licata et al. 2020, 1; see Reich 2018) can be challenging for rapidly progressing paleo- and archaeogenetics. Furthermore, amid epidemics still uncontrolled by medicine, studies on human remains have recently gained in priority and urgency (Swali et al. 2023; van der Kuyl 2022; Loudine 2021; Fuchs et al. 2019; Gallagher, Dueppen 2018; Fornaciari 2018).

This discussion justifies the importance of providing researchers with an orientation regarding the scientific versus extra-scientific value of archaeological human remains (e.g., Lozina et al. 2021; Pearce 2019). Such orientation would be the *sine qua non* for salvaging both values; yet sometimes a limitation of scientific freedom and ambitions is essential. Limitations can be defined by legal and extra-legal normative sources (Nillson Stutz 2023), and ethical guidelines (Denham

et al. 2022; Tienda et al. 2019). An exhaustive presentation of them across national contexts would exceed the scope of this article, which is focused on Poland (for a comprehensive presentation see O'Donnabhain, Lozada 2014).

After defining research freedom, we outline the normative and procedural situation of a domestic bioarchaeologist, including a path towards research in international contexts. We then discuss emerging normative challenges that transform bioarchaeology around the world and can be sooner or later encountered by domestic researchers.

3. RESEARCH FREEDOM AND ITS LIMITATIONS

International codifications promote freedom of research. Specifically, Article 19(2) of the *International Covenant on Civil and Political Rights* protects "the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one's] choice". As for the European Union (EU) context, in 2020, the EU's Research Ministers and the European Commissioner for Innovation, Research, Culture, Education, and Youth enacted the Bonn Declaration on Freedom of Scientific Research 2020. Therein research freedom is "a universal right and public good" and a "core principle of the European Union and as such anchored in the Charter of Fundamental Rights of the EU" (2012) as well.

Further, Article 13 of the Economic and Social Council UN/Committee on Economic, Social and Cultural Rights (2020) states that "members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. (…) This freedom includes, at the least, the following dimensions: protection of researchers from undue influence on their independent judgment; the possibility for researchers to set up autonomous research institutions and to define the aims and objectives of the research and the methods to be adopted; the freedom of researchers to freely and openly question the ethical value of certain projects and the right to withdraw from those projects if their conscience so dictates; the freedom of researchers to cooperate with other researchers, both nationally and internationally; and the sharing of scientific data and analysis with policymakers, and with the public wherever possible. Nevertheless, freedom of scientific research is not absolute; some limitations are possible".

The normative foundations of scientific research outlined above are general and abstract in nature. They must be precised in domestic legislations and administrative procedures, research ethics, the procedures of bioethics boards issuing approvals, and at the level of societal and cultural consensus. Thus, research freedom is subject to complex regulations. The UNESCO Recommendation

Concerning the Status of Higher-Education Teaching Personnel (1997) states that "research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world" (para. 33). Hellenic Society for Law and Archaeology (2023), Cultural Heritage in EU Policies (2018), The European Convention on the Protection of the Archaeological Heritage (1992) and Code of Ethics of World Archaeological Congress (1990) define an axio-normative framework for archaeological research mainly for the European context.

4. LEGISLATIONS ON RESEARCH ON HUMAN REMAINS IN POLAND

This section dealing with legal regulations for conducting (bio)archaeological research on human remains in Poland commences by emphasizing the importance of research freedom and access to scientific knowledge. It is guaranteed by the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, item 78.483). Article 73 states that "Everyone shall be guaranteed freedom of artistic creation, scientific research and the publication of its results, freedom of education and freedom to benefit from cultural goods". This freedom is mainly expressed in the free selection of the research subject, research methods and how results and findings are presented (this includes not presenting the results) (Sobczak 2008, 110). Research arising from research freedom benefits all people irrespective of citizenship, political, and cultural background (Sobczak 2008, 96). Indeed, "A fundamental trait of human beings is an insatiable curiosity accompanied by an irrepressible ambition. It pushes researchers to take on ever new challenges, against all the odds, in spite of restrictions and risks" (Sobczak 2007, 70).

However, researchers cannot exercise their freedom in an unlimited manner. Nor is scientific truth, the establishment of which this freedom is intended to serve, an absolute value for the attainment of which it would be acceptable to sacrifice every other value. An orientation towards truth as an exclusive and unique value would indicate a deficiency of social and democratic competencies in a researcher (Cern, Nowak 2008, 336). The Polish legislator demonstrated these competencies by granting scientific truth the status of a value that must coexist with other values; hence, it does not have absolute priority. Article 31 of the Constitution provides the normative basis for the restriction of scientific freedom. It states that limitations on the exercise of constitutional freedoms and rights may be enacted only by laws and only if they are necessary in a democratic state: for its security or public order; for the protection of the environment, public health, and morals; and for the freedoms and rights of others.

Limitations, however, should not affect the essence of freedoms and rights. At this point, the following question arises: Which of the aforementioned premises

justifies the restriction of the freedom of archaeological research on human remains? We posit that it should be the premise concerning public morality. What denotes the concept of public morality? Kalisz indicated it is a general clause to protect values that are "public, i.e., so established and accepted by the majority of society that they can be considered characteristic" (Kalisz 2013, 197–210). On the other hand, Pietrzykowski argues that public morality is not a positive one because it tends to be internally inconsistent, often based on stereotypes, culturally conditioned intuitions, or the casual effects of socialization. Nor is it an individual morality but a body of ethical consequences derived from fundamental moral values and principles widely recognized by society. Moreover, the public morality concept presupposes a link between fundamental moral values and principles on the one hand and the axiological foundations of the legal order on the other (Pietrzykowski 2019, 16–17).

It may therefore be assumed that the respectful treatment of human remains – as physical traces of past human life – and the prohibition of treating them in merely material and instrumental terms are ethical consequences of the fundamental moral values and principles recognized in society. These values can include reverence and loyalty to the dead on the part of the living due to a sense of intergenerational bonding. Consideration of these values renders the vision of science as value-free inexact. In this vision, dating back to a bygone age, science rejects moral discussions as empirically meaningless (Rollin 2006, 20). As an aside, it would be naive to think that scientists are only motivated by the pursuit of truth. "[T]here is probably just us much lying, cheating, stealing, falsification, obstruction and downright fraud among scientist as there would be in society in general or in any large subgroup of society" (Rollin 2006, 249).

Present-day society, increasingly self-aware of its history and cultural complexity, is also developing sensitivity of and comprehension for the variety of traditions cherished by cultural, ethnic, and indigenous minorities. These traditions may require that ancestral remains be treated with particular piety. For example, exhumation may be prohibited. In turn, the values and moral principles that give rise to public morality should also be internalized by researchers based on shared citizenship or community affiliation. Respect for both universal and minority values when using research freedom has a strong justification in the Constitution. In turn, the legislators' task is to determine the normative at the level of statutory laws and administrative regulations that will restrict research freedom, considered here in the context of bioarchaeology. As for the legal situation of those who study human remains, they must reckon with various limitations that make scientific knowledge difficult and, in certain circumstances, even impossible to attain. These limitations are outlined below.

Małek-Orłowska and Jach (2022) rightly point out that Polish legislation governs biomedical research but provides little guidance to investigators from remaining disciplines. In the case of bioarchaeological and related research, there

is no single legal act to provide comprehensive guidance on the research of human remains. In fact, the norms authorizing such research must be reconstructed on the basis of a variety of legal statutes and regulations: (1) Act on cemeteries and burial of the dead of 31 January 1959 (Journal of Laws 2023, item 887); (2) Act on the preservation and custody of monuments of 23 July 2003 (Journal of Laws 2022, item 840); (3) Regulation of the Minister of Culture and National Heritage of 2 August 2018 on conducting conservation works, restoration works and conservation research on a monument entered in the register of monuments, as well as archaeological research and search for monuments (Journal of Laws 2021.21; Journal of Laws 2018, item 1609); (4) Act of 18 December 1998 on the Institute of National Remembrance (Journal of Laws 2023.102) and (5) Regulation of the Minister of Health of 7 December 2001 on the treating of human cadavers and remains (Journal of Laws 2021.1910).

In the Republic of Poland territory, human remains are usually buried in graves concentrated in three types of cemeteries: communal, confessional, and military (e.g., Malarewicz 2008). The status of these sites is not explicit. They are both immovable and movable archaeological monuments, and parts or complexes thereof. They are man-made artefacts and evidence of a bygone age "the preservation of which is in the public interest on account of their historical, artistic or scientific value" (see Article 3, item 1 of the Act of 23 July 2003 on the preservation and custody of historical monuments; Florek 2019, 15–16).

According to Article 36, item 1, § 4 and § 5 of the same Act, launching archaeological research at such sites adds a new quality – that of excavation (Trzciński 2007). Permission of the relevant voivodship monuments' conservator must be obtained to conduct research and research documentation. Adhering to requirements specified in the Regulation of the Minister of Culture and National Heritage of 2 August 2018 on the conduct of conservation works, et cetera, researchers submit a properly justified application to initiate an administrative procedure. Among other things, their application must include (1) their identification data including the name and address of the institute to which they are affiliated; (2) the location of the planned archaeological research – including geodetic or geographical coordinates with an accuracy of one 0,001th of a second; (3) a systematic plan for the execution of archaeological research; (4) a museum's (or another organizational unit's) declaration to host the exhumed remains and (5) a description of how the site will be cleaned up after the research is completed.

The conservator of monuments issues decisions based on administrative discretion under Article 36 item 1, § 1 of the Act on the preservation and custody of historical monuments of 23 July 2003. This means that the legal provisions of the Act do not determine when permission should be issued and when it should not. This happens at the discretion of the administrative authority (i.e., conservator of monuments) (Ginter, Michalak 2016). Such discretion does not exempt conservators from examining all legal and factual circumstances in the case under consideration.

They must also ex officio consider the legitimate societal and citizens' interests and further administrative procedures (Leszczyński et al. 2012, 468). Conservators' decisions do not contain any formal requirements for human remains that are categorized as archaeological monuments (i.e., standard documentation of excavations is to be produced and a storage place for the remains is to be provided once excavations have been completed). Instead, there are 'soft' recommendations in the form of codes of good practice including Misiuk et al.'s (2019) compendium, which was developed on behalf of the General Conservator of Monuments.

During the dig, archaeologists are bound by the provisions of the Act on cemeteries and burial of the dead regarding exhumation and transportation of remains of 31 January 1959 (Journal of Laws 2023, item 887). According to Article 19 of this Act, regulations on exhumation and transportation of remains do not apply to excavation work outside cemeteries covered by this legal act. Basically, archaeologists are obliged to both obtain the permission of the relevant conservator of monuments and consider the provisions of the Act on cemeteries and burial of the dead (Florek 2020, 372). The latter does not apply to accidental discoveries made in sites where tombs have not previously been identified. Bioarchaeological research in those instances can then be undertaken without restriction.

A major practical issue in bioarchaeology is the treatment of human remains. What is their legal status? Certainly, human remains in a material sense cannot be traded legally (Lichwa, Stec 2023). Nor should they be treated as possession of the National Treasury simply because they have been excavated from an immovable monument such as a cemetery (Florek 2019, 18). The Regulation of the Minister of Health of 7 December 2001 on the treatment of human cadavers and remains provides reliable guidance for bioarchaeologists. This regulation applies to dealing with (1) ashes (cremated remains); (2) remains of bodies excavated from graves or in other condition and (3) body parts detached from the whole, similarly as to dealing with the cadavers (with the reservation of §§ 2–6). Skeletal remains, fragments of bodies, and burnt bones (ashes) from open graves should be treated as human remains and reburied (Florek 2020, 373).

It is questionable, however, that an act with the rank of a regulation – thus hierarchically lower than a legal statute – prescribes the treatment of human remains as with bodies. We reason that such a norm should be encoded in the provisions of the aforementioned 1959 Law on cemeteries and burial of the dead. The duty of humans towards human remains is analogous to that towards bodies and involves reburial. Prehistoric, medieval, or even early-modern funeral site remains were once considered archaeological specimens and stored in museums, laboratories, and such. These practices, however, seem to exceed research freedom. Instead, the legal act prescribing burial applies to any human remains regardless of whether they were found at a confessional cemetery, in a war grave, or in a historical mortuary site. The regulation under discussion does not indicate a time limitation on the reburial (Florek 2020, 373).

Further, there is no plausible rationale why human remains dating back 50 years should be given a respectful burial and those dating back 500 years should not. Although it is indisputable that human remains are a material trace of an individual human's existence, this does not entitle the remains to be reduced to scientific resources, an item held in storage, and a property of a research institute or museum. Furthermore, although archaeological human remains (Márquez-Grant, Fibiger 2011) can be a precious – even irreplaceable – source of data and scientific knowledge, and hence be treated in a specific way, this is not a reason to instrumentalize and objectify them.

Is it thus reasonable to consider criminal liability for committing the offense under Article 262 § 1 of the Penal Code when institutions store human remains instead of reburying them? An offense is committed only by one who insults a human body, ashes, or the funeral place. Let us note that the normative scope of this legislative provision also covers human remains, which is confirmed by its linguistic interpretation (Hanc, Sitarz et al. 2017, 66). Human remains integrally belong to a body as confirmed by the legislator in the aforementioned regulation. Moreover, in line with the a fortiori rule, if the Criminal Code prohibits insulting human ashes, it prohibits insulting human remains even more (Barcik, Pilarz 2016, 91–92; see also Sierpowska 2020). Thus, theoretically, human remains from archaeological research can be the subject of an executive action.

Further, can the storage and preservation of remains, despite the burial regulation, be regarded as tantamount to insulting human remains or ashes (Florek 2020, 374)? We tend to accept that the use of human remains for investigative purposes does not actually mean an offense (Hanc, Sitarz 2017, 78). Hanc and Sitarz rightly noted that in Article 262 § 1 of the Criminal Code, the legislator did not prohibit all disrespectful and unethical behaviors toward human remains. Only those expressing contempt are to be criminalized (Hanc, Sitarz 2017, 64). The offense does not occur when treating remains as valuable research material and a source of knowledge, not of contempt. Nonetheless, failing reburial seems to transgress the corresponding law of burial. At the same time, legislation in most countries does not regard osteological remains from archaeological research as cadaveric. However, as we shall illustrate below, this may change across colonial, indigenous, and confessional contexts, where the law will be shaped in a pluralistic way.

It is worth noting the global ethical standards that museums (often collaborating with research institutes) must follow on the acquisition and preservation of human remains: "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" (ICOM 2019/2020, 10).

A serious legal problem addresses the repatriation of human remains (Lichwa, Stec 2023, 104–111) as a legacy of colonialism or imperialism practicing plundering politics towards the conquered peoples and their overall heritage. Repatriation refers to returning human remains to their country or community origin. Once taken (i.e., looted), the remains are commonly used as museum exhibits (Lichwa, Stec 2023), didactic preparations (Mazurkiewicz, Szymaniec 2019, 183), and curiosities in traveling circuses or human zoos. Sarah Baartman (1789–1815) was forced into slavery and made into a living curiosity. Posthumously, her skeletal remains and a body cast continued to be publicly displayed (Lichwa, Stec 2023), and her repatriation and burial in Hankey only occurred in 2002. In turn, 'trophies' in the form of prepared human heads from South America or New Zealand ended up in museum and private collections (e.g., Arkady Fiedler Museum in Puszczykowo; see Kobyliński 2018; Bugaj 2018). Considering such practices, Helena Eilstein's suggestion of research self-restraint sounds pertinent: "We are not obliged to occupy our minds with all the questions to which we can provide reliable accounts. We have the right to consciously decline the opportunity to acquire some knowledge, as long as our refusal to acquire it does not harm or expose other people to harm" (Eilstein 2005, 155).

In the international domain, on the other hand, bioarchaeologists are confronted with "a lack of internationally applicable framework regarding human skeletal remains" (Lozina et al. 2021, 162). "Because of different legislative, different religious distribution of the populations, and different historical (usually unresolved) issues, every country has different views on how, when, how long, in which manner, by whom, etc., human remains should be handled" (ibidem; also, Márquez-Grant, Fibiger 2011). Accordingly, the road to research abroad is diplomatic in nature.

To elaborate, the principal investigator must usually apply to the destination country's proper consular department for assistance in getting approval (concession) to conduct bioarchaeological (and related) research on that country's territory. The consular office then facilitates arrangements between the researcher and government agencies in the destination country (e.g., the Ministry of Culture). A multilevel, bilateral, properly documented agreement is produced and must be signed by the researcher (faculty dean or rector, respectively). If the project is international and grant-funded, the granting agency would expect to get insight into the agreement in which the destination country's authorities have set out the project's legal and procedural framework, research concessions, and so on.

5. STATEMENT FOR RESEARCH ON HUMAN REMAINS ACCORDING TO THE POLISH NATIONAL SCIENCE CENTRE

A bioarchaeological (e.g., anthropological, and medical) project planning research on human remains requires a legal-bioethical statement. In 2023, the Polish National Science Centre (NSC) released guidance on such a statement as an integral part of a grant application in which national and international bioarchaeological (and related) research on human material is intended. For instance, bioarcheologists are to address the following items:

- description of the type of local resources that will be used in the research;
- approval of the relevant bioethics board (its institutional affiliation and location), in particular for genetic research on human material;
- in case of research on genetic material, observance of the Nagoya Protocol to the Convention on Biological Diversity;
- an agreement to confirm scientific collaboration with the institution(s) abroad;
- permissions or approvals from relevant state authorities for the use of local cultural or natural resources (e.g., archaeological, and historical);
- description of the type of material imported;
- description of the type of material exported;
- an agreement authorizing the transfer of biological material and personal data between institutions (e.g., Material Transfer Agreement or Data Transfer Agreement) or other documents proving the establishment of scientific collaboration;
- authorisation for export of resources to countries located outside the EU;
- authorisation for importing materials (e.g., human remains, and artefacts) into Poland, which specifies the materials referred to, and the name of the approving institution; and
- permission to export materials from Polish institutions (National Science Centre 2023, 15).

We conclude from the above that the legal-bioethical statement of this leading national grant agency is focused on the relocation of human remains and biological materials; proceduralistic in nature (e.g., requiring several approvals, and concessions) (see Jaskólska 2020); and poor in normative guidance. The application form (and practice) suggest that applicants must correctly refer to any legal and ethical regulations. Application reviewers must assess the applicant's orientation in this respect. Additionally, the NCN does not address the essential legal and extra-legal, international, and intercultural contexts, a concern that we address in subsequent sections. The following sections focus on four contexts that present normative challenges that bioarchaeological researchers may have to confront: colonial, indigenous, religious, and political.

6. COLONIAL CONTEXT

Several states owe a considerable part of their scientific resources to their colonial relationship to other states, peoples, and communities or even to entire continents (Winkelmann et al. 2021; Museum of British Colonialism 2020; Trigger 1984). As an example, the African continent was *terra nullius* (i.e., not owned by anyone) for centuries. "From the 18th century on is there, thanks to the Enlightenment, a 'science' of difference: anthropology. It 'invents' an idea of Africa. Colonialism will elaborate upon the idea" (Mudimbe 1994, 30; also, Mudimbe 1988; a parallel work on the Americas is Dussel 1995). Consequently, colonizers transformed Africa into "a magnificent natural laboratory" (Tilley 2011, 2). It was not until circa 1930 that people began to consider Africa in terms of justice and "the development of Science in Africa, of Africa by Science" (Tilley 2011, 2).

Classical archaeology has mostly (1) emerged from the colonial discourse on discoveries, artefacts, and data colonized (i.e., displaced from their original contexts) and "ideas and institutions surrounding them" (Schnapp 2002, 134) and (2) has blended in the "external" contexts (Moro-Abadía 2006; Gosden 2004). Such practices have led to epistemic violence and the exclusion of indigenous populations from any benefits of (bio)archaeological research.

Furthermore, fossils and osteological remains discovered in Africa contributed to the myth of human origins long before Darwin and Huxley. Depending on who and where early fossils were unearthed, humankind's 'origin' or the evolutionary 'missing link' shifted from continent to continent, frequently in line with colonial hierarchies granting supremacy to Asia over Africa, Eurasia over Asia, and so on (Athreya et al. 2019). Anthropological expeditions also penetrated the African continent in search of evidence of races (e.g., Czekanowski 1917–1927; Czerska 2017). However, "in the past decade, new discoveries in anthropology have completely reshaped our ancestral evolutionary tree and scientific understandings of the origin of our species" (Joannes-Boyau et al. 2020).

States and communities may raise claims for the return of archaeological finds, including human remains, as well as reparations for damages and harms suffered. Unfortunately, the addressees of such claims (i.e., governments) are not obliged to consider them under existing international legislations as the latter does not apply retroactively. Recently, scholars have been attempting to determine which direction the development of suitable legislation should take (Labadie 2021). This determination would enable both the study of human remains and their treatment in line with indigenous, spiritual, and further grassroots requirements. "The excavation, retrieval, and celebration of the historical individual, the effort of bringing her within accessibility" (Spivak 1999, 199; see Ferris 2009; Ferris 2003) would meet here repatriation and reburial. Such legislative advances would

further transform bioarchaeology into colonial-sensitive research and relieve it of its predominantly commercial focus (Everill 2007).

Such a transformation based on the self-regulatory processes is already happening in Australia and Germany. In Australia, it was common practice for academics and museum professionals to collect Aboriginal human remains. The osteological remains of 4,600 individuals rest in cardboard boxes in the South Australian Museum. "They included skeletons stolen in their hundreds from ancient burial grounds. Others were collected upon request by frontier workers and police who either came across the dead or killed the living so as to make them collectable. It's no coincidence some of the skulls in the collection bear bullet holes" (Delay 2020). According to D. Rathman, chair of the museum's Advisory Board, "the injustice of what happened – the injustice that this collection of old people tells the story of – is profoundly disturbing" (Daley 2020).

At the core of postcolonial justice implemented in the science sector (Eckstein et al. 2017), there can be no shortage of sensitivity and activism on the part of researchers themselves. Such activism in bioarchaeology and anthropology, dealing with human remains deposited in museums, universities, and hospitals, can recently be observed in Germany. "Formal and informal colonial structures favored collecting and acquisition practices for collections and museums in the Global North and their networks, actors, and activities" (Winkelmann et al. 2022, 17). German collectors, collections, researchers, and research institutions benefited from the colonial structures of both German and non-German colonial powers (ibidem). Researchers are reckoning with their country's colonial past and infamous century of racial anthropology. In line with the International Council of Museums' (ICOM) (2022) policies, researchers have resolved that research on human remains acquired in the colonial era will not be continued. Instead, it will be replaced by multidisciplinary provenance research (*Provenienzforschung*) including the revision of collections and archives, the restoration of subjectivity to human remains, and, as far as possible, their repatriation. That said, the law still allows German institutes and museums to conceal information even about those individuals whose remains are being searched by descendants (e.g., Mboro, Kopp 2018).

7. INDIGENOUS CONTEXT

The concept of 'indigenous' is a variable construct with context-dependent, local sense. It is generic – a broad bucket within which there are thousands of nations, communities, cultures, and so on. United Nations has adopted an official definition of Indigenous opting instead to use the following criteria of indigeneity:

- Self-identification as indigenous peoples at the individual level and accepted by the community as their member,
- Historical continuity with pre-colonial and/or pre-settler societies,

- Strong link to territories and surrounding natural resources,
- Distinct social, economic or political systems,
- Distinct language, culture and beliefs,
- Form non-dominant groups of society,
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities" (Indigenous and Tribal Peoples Convention 1989, No. 169, fact sheet).

For a long time, the world was fascinated by the lives and afterlives of indigenous peoples. "Once disparaged as primitives on the lowest rung of the evolutionary ladder, these neo-'noble savages' have been a rich source of creative inspiration. (…) emulated, commodified, and otherwise appropriated, their distinctive cultures have greatly enriched dominant societies in any number of senses, not just economically" (Nicholas, Wylie 2012, 197). Fortunately, the states that were shaped as a result of colonization have reached a turning point in terms of the just treatment of indigenous minorities, including in the science sector.

This is significant because, currently, the United States (574 recognized Indian Tribes – Indigenous Americans) and Canada (630 First Nations communities – 50 nations) have advanced regulations on the treatment of indigenous heritage. Circa 300 First Nations were registered in Brazil, 68 in Mexico, 55 in Peru, and 10 in Chile. Officially, 705 ethnic-indigenous groups live in India, 40 in the Russian Federation, and 56 in China. There are a total of about 5,000 indigenous groups in the world (Amnesty International 2023).

The UN Declaration on the Rights of Indigenous Peoples (2007) prompted the transformation of research on human remains in indigenous contexts. According to Article 31, "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as (…) genetic resources, seeds, medicines, knowledge of the properties of flora and fauna" (see also Skille 2022). When the self-determination, vital interests, and traditions of indigenous peoples and their claims (arising from damages and harms inflicted by colonialism – and often in various forms continuing until today) are recognized by official legislation (e.g., federal and state level), they have a legal status. As long as the law does not recognize them, they retain extra-legal status. The UN Declaration promotes "partnership between indigenous peoples and States" in this respect, too.

Extra-legal reasons can be identified when an indigenous group refuses archaeological access to the remains of their ancestors while state or federal legislation does not constrain such access. In Canada, for example, the "Indigenous law and Aboriginal law are very different. Indigenous laws are the legal traditions of the respective Indigenous Peoples that continue to exist independently of Western legal systems. Aboriginal law is the constitutional protection of the rights of Indigenous Peoples under the Canadian Constitution, made by the courts and legislatures, that governs Aboriginal-Crown relationships" (Thompson Rivers

University 2023). The law of a particular indigenous group consists of a set of rules, habits, and cases, not only rooted in their traditional knowledge. "Indigenous societies have at least five sources of law: sacred, deliberative, custom, positive, and natural (…).

- Sacred law: creation stories and treaty relationships.
- Natural law: relationship with the natural world.
- Deliberative law: talking circles, feasts, council meetings, and debates.
- Positivistic law: proclamations, rules, regulations, codes, teachings, and Wampum readings
- Customary law: marriages, family relationships, and recent land claim agreements" (Thompson Rivers University 2023).

Likewise, notions of Indigenous law are variable by context because each Nation fits or not very differently within or apart from contemporary State conceptions of law in place. For example, in Canada, this plays out in law by the heritage of past State legal precedence in much of the eastern two-thirds of Canada. Colonial Sovereigns negotiated treaties and land surrenders in the past with Indigenous Nation Sovereigns, which today have tangible implications in the intersection of Indigenous and Settler Society rights and interests under Canada's Constitution (so First Nations spend a lot of time and effort researching the validity of past treaties and whether the State adhered to their Fiduciary obligations under them). When the colonizers arrived, each Indigenous nation had its distinctive land rights. Much of Canada's British Columbia and the north were occupied without legal framework of treaty, creating a different principle in law. Basically, without treaty, these lands are still First Nations Sovereign territory thus requiring the State to negotiate and share a level of decision making that is harder to legally impose in the east. Canadian courts continue to recognize them as part of the Canadian legal system; 'the rule of law' therefore embraces both Canadian and Indigenous laws (Gunn, McIver 2020).

Such a multi-juridical situation (Tamanaha 2021; Schiff Berman 2020; Dupret 2007; Teubner 1996; Vanderlinden 1989) does not always imply harmonious relations between the heterogeneous laws, however. Moreover, there is even less prospect of putting them all into one coherent, federal-level statute. The chair of the Indigenous Law Research Unit at the University of Victoria (Canada) claims law to finally be "[a]t its most basic level (…) collaborative problem solving and decision-making through public institutions with legal processes of reason and deliberation" (Napoleon 2016; see also Napoleon 2012). Practicing law in such a way clearly challenges the Enlightenment postulate of positive law's secularization, the state's authority as a sole legislative power, the centric view, and the Separation Thesis (Hariri et al. 2022; Zamboni 2021).

States increasingly recognize and protect Indigenous citizens' rights and liberties. For instance, "as post-colonial sensibilities slowly permeate North American society, descendant communities have challenged the basis for both

archeologists to assert an exclusive stewardship of the archeological record, and the state's authority to endow this exclusivity to archeologists" (Ferris 2003, 154). The denial of access to ancestral remains by descendants is not only justified by respect and cult. Sometimes the living owe the dead or communicate with the 'living death' (Baloyi, Makobe-Rabothata 2014). Indigenous peoples are also critically interested in ensuring that their historical and biocultural heritage (1) retains its distinctive meaning; (2) receives adequate representation in science and (3) does not become the victim of political, economic, or cultural appropriation (Nicholas, Wylie 2013).

The dignity, autonomy, and re-empowerment of indigenous groups is manifested in their control over their own heritage. "Central to this conception of appropriation is the insight that it involves intentional decontextualization" (Nicholas, Wylie 2013, 195–221; see Henderson 2009) and privileged access to archaeological resources. The equivalent of appropriation, however, will not be property, possession, or ownership in the colloquial sense.

> While the term 'ownership' is used here, I don't mean simple property possession, although that is how archaeological ownership tends to be defined in statute and in discussions about repatriation. Rather, the term is intended to convey privileged access to archaeological remains, privileged ability to interpret the record and write the stories of the past from those remains, and privileged right to speak on behalf of the record (Ferris 2003, 155–156).

Accordingly, research ethics has adopted the following principle: research on indigenous ancestor remains and any artifacts identified in mortuary contexts is conducted with the explicit consent of the descendant community. Consent is also necessary for reproducing, exhibiting and publishing archaeological finds from indigenous contexts. As Ferris and Welch assume, this is an integral aspect of archaeology as an "activist practice [and] a broad social engagement in and with contemporary societies over the material past", which "tends to be on behalf of causes and communities and typically adopts multi-vocality in the form of community, collaborative, engaged, activist, public or indigenous archaeologies as the means of defining and undertaking archaeological research, and more critically, of sharing or re-centering authority beyond archaeology" (2015, 72).

To continue, "much of it is overtly revisionist to more conventional academic practices that situate archaeology as an internal, authorized investigation of intellectual curiosity driven by a 'science-like' prerogative, and whose accountability is limited only to academic peers and institutions. Revisionist practice seeks to be inclusive, redresses colonial legacies embedded in archaeological conventions, and is quick to acknowledge the broader implications of practice in contemporary society, and the overtly political nature of making meaning from the past in the present" (Ferris, Welch 2015, 72).

On a different continent (Australia), the Uluru massif and the surrounding Kata Tjuta National Park have been home to the Anangu tribe since times

immemorial. The massif is also the residence of ancestral spirits and means 'everything' to its inhabitants. The Anangu are the traditional owner of Uluru territory, which, since 2017, has been granted autonomy under Australian federal law (the Uluru Statement from the Heart) (Lino 2017). By way of background, before the Australian Government allowed the Aboriginal communities to have a voice in public deliberation on recognition of their rights, there was overly liberal research into the remains of their ancestors (Thomas 2014).

To elaborate, in 1948, the Arnhem Land Expedition conducted – and filmed – such research in the Northern Territory of Australia. Decades later, local people were invited to a slideshow.

> The pillaging of a mortuary site and the decision to film it are sufficient to unsettle many viewers. For Aboriginal people with whom I have watched the footage, the close physical handling – the intimate contact of the living flesh of the intruder with the remains of the interred – is particularly unnatural and disturbing. (…) A person's spirit remains indelibly associated with the bones of the deceased. Living people have responsibilities towards the spirit, as much as they do to each other (Thomas 2014, 130).

In such cases, scientific interests clearly collide with indigenous values. Given that tourists have returned the rust-colored stones that they took from Uluru (claiming they have brought misfortune upon them), the return of indigenous remains seems just a matter of time (Australian Government, Director of National Parks 2023).

Another example of legislation meeting the autonomy of indigenous people may be the North Sentinel Island in the Andaman/Nicobar archipelago.[2] The Sentinelese (approx. 100 individuals) have inhabited the island for 30,000 years with no contacts with outsiders; they still violently resist such contacts (Safi 2022). In 2019, the Government of India placed Sentinel Island under strict legal protection:

> The entire North Sentinel Island along with 5 km coastal sea from high water mark is notified as tribal reserve. The Sentinelese are still in isolation practicing primordial hunting and gathering way of life. The Government respects their way of life style, therefore, has adopted an 'eyes-on and hands-off" practice to protect and safeguard the Sentinelese tribe. A protocol of circumnavigation of the North Sentinel Island has been notified. The ships and aircrafts of Coast Guard and boats of Marine Police make sorties around North Sentinel to keep surveillance.

DNA testing of Sentinelese ancestors would arguably be a breakthrough for science. It goes without saying that relations between state laws and the rights of Indian Indigenous inhabitants are complicated (Bhagabati 2023).[3]

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[2] Between 1850 and 1857, the Nicobar archipelago was a penal colony owned by the British Empire.

[3] "India has long been the world's primary source of bones used in medical study (…) In 1985 (…) the Indian government outlawed the export of human remains, and the global supply of skeletons collapsed" (Carney 2008; compare Locata et al. 2020). At the same time, "there is no specific

These are just a few examples illustrating the kind of research procedures with human remains in indigenous contexts that are no longer on today's agenda. For bioarchaeology, this would mean a transformation of their research practice towards a *sustainable* archaeology (Ferris, Welch 2014), an *indigenous* archaeology (Zimmerman 2010), a *sacred* archaeology (Ferris 2003, 167), and an *aboriginal* archaeology. These distinctions go hand in hand with the multi-jurisprudence phenomenon explained above.

Regarding the East European context, indigenous (and ethnic) groups have often undergone displacement due to wars, forced migrations, and demographic policies (Kołodziejczak, Huigen 2023). Displacement is a standard tool in the hands of colonial and imperial powers against indigenous populations. Among other practical consequences for bioarchaeological research, this practice implies that attribution of ancestors' remains to descendants in a straight line – or even to the population living in a particular territory today – would be difficult, if possible, at all. This, in turn, makes obtaining the consent of descendants for relevant research on human remains impossible. Displacement may involve taking entire mortuary sites from the indigenous population along with all the territory they originally inhabited and relocating the population (e.g., to a reservation). In such cases, rights or policies reclaimed by indigenous peoples would legitimize the repatriation of their ancestral remains to the reservation territory – and not necessarily eliminate the research opportunity.

For instance, in 1996, at Kennwick (Washington), the Army Corps of Engineers unearthed a skull (8,340 – 9,200 y. old). Claims to the remains were submitted by five Native American tribes. A research team eventually petitioned the court for authorization to examine the find. In 2015, DNA testing, in collaboration with the Confederated Tribes of the Colville Reservation, unequivocally confirmed the find's affiliation with the Native peoples. The US Congress recommended placing the skull in the Washington State Department of Archaeology and Historic Preservation. A repatriation and reburial of 'The Ancient One' followed in 2017.

> But the extensive notoriety afforded to this case, and others like it, negatively impacted both academic and public impressions of repatriation – the return of ancestral remains and other cultural patrimony to descendant groups from institutions like museums and universities. Such controversial cases often overshadow more collaborative repatriation work and promote the idea that repatriation is always incompatible with scientific research (…) For example, the 2020 book *Repatriation and Erasing the Past* argues that repatriation has harmed science and threatens to end certain types of archaeological research. It garnered significant backlash online, including a petition for the book's retraction (Nichols et al. 2021; see Weiss, Springer 2020).

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law in India for protecting the rights of the dead" (New Delhi 2021; https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20for%20Upholding%20Dignity%20%26%20Protecting%20the%20Rights%20of%20Dead.pdf)

For bioarchaeologists from abroad, the legal and extra-legal standards implemented in a country for the inclusive and just treatment of indigenous peoples and their heritage are binding as an integral part of global research ethics. How these standards are to be respected needs a pre-agreement with the legitimate owners of the heritage. If the standards derive from common law precedents and case law, they apply with no less normative force than the letter of statutory law.

8. RELIGIOUS CONTEXT ON THE JEWISH DOCTRINE CASE

Religious or ritual contexts do not necessarily overlap with indigeneity (Sossis 2007) and territorial rootedness of believers. They may have behind them the history of deterritorialization due to pogroms, genocide, or migrations. In the tradition of Judaism, for example, respect for human remains is a consequence of the recognition of the special value of everyone who once possessed a body. This belief is reflected in the following commentary by the seasoned Halacha expert Rabbi Joseph B. Soloveitchik:

> The failure and absurdity of life are highlighted by the human corpse: the curse and affliction that bear down on the self-aware being appear in all their dread upon the landscape, over which hovers the fear of death, which mocks at all. Here, human dignity poses and aggressive and powerful demand. Be benevolent to the dead; protect his dignity, which is also your dignity. Demonstrate the humanity maintains itself even in the face of death, even when confronted with destruction and nothingness. To be benevolent to the dead – that is true *gemilut chasadim*. (Soloveitchik 2017, 177)

The Jewish cemetery is referred to as *beit olamim* (house of eternity) or *beit chayim* (house of life) and in Yiddish as *gute ort* (good place) (Gordon 2009, 106).

In Judaism, two principles are fundamental: the inviolability of the grave and the inviolability of Jewish cemeteries. Also, it is forbidden to interfere with the structure of the land. Human remains must rest in peace, intact (Bednarek 2020, 162). There is a strong emphasis on fulfilling obligations towards the dead. Deeds associated with the burial of the dead are referred to as *Chesed shel emet* (truekindness), for the dead cannot repay kindness. Respect is also expected towards the deceased (*Kvot ha-meit*) (Telushkin 2009, 95).

Both the norms of Halacha and the religious law Shulchan Arukh contain an important injunction in relation to human remains: "One should not remove a corpse and bones from a dignified grave to [another] dignified grave, nor from an undignified grave to [another] undignified grave, nor from an undignified one to a dignified one, and needless to say [that it is forbidden] from a dignified one to an undignified one. And [to remove a corpse] into his own, even from a dignified [grave] to an undignified one, is permissible, for it is pleasant for a man that he rests beside his ancestors" (Yoreh De'ah / Karo 1563, 363; Denburg 1955).

Consequently, archaeological research in Jewish cemeteries is subject to several restrictions. Noteworthy here is managing archaeological research on Jewish remains in the light of Polish diaspora policies. To date, 1167 graveyards under its custody have been catalogued on Poland's territory.[4] Some are among the oldest or largest worldwide. For example, the Warsaw Bródno cemetery, founded by Szmul and Judyta Zbytkower, contains an estimated 250,000 graves. Archaeological, ethnographic, and conservation research is being carried out there (including but not limited to identification of the deceased and returning tombstones to their original locations). For such research, authorizations are required from (1) the rabbinate; (2) the authorities of the local Jewish community, which usually owns the graveyard and its land; (3) the Rabbinical Commission for Cemeteries (in cooperation with the cemetery management); (4) the voivodeship heritage conservator and (5) the Foundation for the Preservation of Jewish Heritage (or other foundations taking custody of the cemetery – if they hold or administer the cemetery).

The Halakhic law prevents the excavation and keeping of human remains outside an original grave, moving them in the ground, sectioning or drilling them, and taking samples (Guidelines of the Rabbinical Commission for Cemeteries). "Neither archaeological excavation nor any paleoanthropological research are [sic] allowed to be undertaken" (Colomer 2014, 169). This doctrine allows examination in the field limited to visual inspection and identification, followed by placement of accidentally discovered remains on burial grounds.

Halakhic law and the traditional doctrine of Judaism are clear examples of extra-legal rulings restricting research on human remains. They have primacy over both legal acts and international standards of research ethics. In Israel, the legal system reflects the religious, ethnic, and cultural diversity of the population and has a multi-juridical character. The archaeological legislation is sound and consists of (1) The Antiquities Law (1978) and (2) The Israel Antiquities Authority (1989).

Remains unearthed at archeological excavations, at the request and under confirmation of a rabbi, are to be placed at the disposal of the Ministry of Religious Affairs (Reich et al. 2023, 365–366). In turn, exhumations carried out at universities have evoked constraints and demonstrations of ultra-Orthodox believers (Nagar 2021; Siegel-Itzkovich 2001). Doctrinal restrictions do not apply to studying human remains from foreign cultural contexts discovered in this unparalleled historical region (Nagar, Sonntag 2008), except the Islamic. "Political sensitivities about human remains mean that for most early Islamic burials discovered in Israel, paleo-anthropological studies have been limited to recording

[4] The oldest are Lublin (founded in 1541) and Cracow (1551); the largest are Wola (founded in 1806) and Bródno (1780), which are located in Warsaw. For comparison, 7 Muslim cemeteries are preserved (Sulkiewicz, Pawlic-Miśkiewicz 2021), and a few of different ethnics, e.g., Lemko, https://tmzl.labowa.edu.pl/galeria/cmentarze-lemkowskie/

the position of bodies and the presence or absence of bones" (Srigyan et al. 2022, Suppl., 5–6).

The situation may look different when research on human remains of Jewish origin is conducted in extraterritorial and unexpected. For example,

> in 2004, construction workers digging in advance of the Chapelfield shopping center development in Norwich, UK, uncovered a medieval well containing the remains of at least 17 people (…). Scientists from the Natural History Museum, University College London, Mainz and Cambridge Universities, and the Francis Crick Institute, conducted analysis on the remains of six of these individuals, uncovering new genetic, medical, and historic information. The whole genome analyses reveal the individuals appear to be a group of Ashkenazi Jews who fell victim to antisemitic violence during the 12th century (Bonner 2022; also, Brace et al. 2022).[5]

As for analogies made between Jewish communities' struggle for recognition of their funeral hereditary and indigenous communities' vindications,

> following American indigenous communities' vindications, the archaeology of the dead has similarly become the perfect battlefield for Ultraorthodox Jewish minority groups. It advances their interests in reinforcing their present political voice (…) and reassuring their religious capital worldwide. However, beyond a first appearance of being a similar topic of 'indigenous ethics', the two cases show little resemblance (Colomer 2014, 169).

9. NEAR AND MIDDLE EASTERN POLITICO-NORMATIVE COMPLEXITY

On a final note, in the Near and Middle East (without going into the semantic scope of the term) (Brooks, Young 2016), where abundant residues of ancient and later civilizations' remnants attract archaeologists, colonialism was a multifaceted phenomenon, not reducible to the European background, as it also included, for example, Ottoman colonialism (Türesay 2013). Colonial rules have finally created nation-states with little concern for the indigenous, ethnic, religious, and cultural identities of the local populations. They developed "a centralized administration, a legal system, a flag, and internationally recognized boundaries" (Owen 2004, 9; also, Tibi 1990) with which different bottom-up sources of law (especially Islamic) contemporarily intersect or interfere.

The Kurds, for example, were denied statehood (Eliassi 2016). In this extensive and greatly populated region, legal pluralism (Oberauer et al. 2019; Shahar 2008; Sullivan 2005) shows more tensions than the better-harmonised systems in Canada and the US as discussed. Colonization in many of the states that were created and even populated by settlers from Europe (with the exception of the Near and Middle East from which they withdrew) usually left behind one source of law and either

[5] Depending on what genetic research is carried out, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 2014 applies (e.g., Davis, Borisenko 2017).

a (1) codified civil law or (2) common-law system, which long dominated (e.g., local case law, the judiciary, and traditional laws). The increasing importance and voicing of grassroots sources of law in the public sphere thus reflects citizens' emancipation as autonomous lawgivers and rightsholders (Rivlin 2012).

From country to country, bioarchaeologists may encounter variable legal and extra-legal rules not limited to the most representative Islamic (*hadith*) (Márquez-Grant, Fibiger 2011) and the most restrictive regional system adopted in Israel (see Section 7). These rules are combined with highly bureaucratic regulations on the preservation of archaeological heritage. To illustrate, excavating pre-Islamic funerary sites would raise relatively little objections in Islamic communities. As for the remains of those buried in the Islamic faith, depending on the denomination of Islam, there may be more or less objections.

To continue, in the grave, (1) a Muslim's body is laid directly on the ground so that the face looks (or the feet are directed) toward Mecca. (2) In some communities, touching human remains is not accepted. (3) Orthodox believers may associate cemetery surveys and grave markers used in mortuary archaeology with blasphemy, for the doctrine holds that all Muslims are equal in death. Therefore, graves cannot display economic distinctions (Bullion et al. 2022, 632). "The rarity of archaeologically investigated Muslim burials is largely the result of religious sensitivities and traditional beliefs about the necessity for having a complete body with which to enter the afterlife" (Srigyan et al. 2022, Suppl., 3–4). Consulting with local archaeological circles that are familiar with what is acceptable for the local community is thus recommended when planning an excavation.

The export of archaeological human remains is virtually restricted to zero in Egypt and Turkey. Favorable conditions (including the exportation of complete skeletons excavated from archaeological sites) prevailed in Sudan before the outbreak of the civil war. Certain countries require returning unused samples and materials. It is not uncommon for properly documented researchers to be denied access to archaeological sites with human remains by an authority in a foreign country (as well as its population) on political or ideological grounds (Diaz-Andreu 2015, 4820; Curta 2014; Jones 1997; Cox, Ephross 1998).

Ethnic hostilities are another example. Over several decades, in archaeology, 'natural' or 'innate' ethnicity (ethnogenesis) has been replaced by concepts such as culture and community (Diaz-Andreu 2015, 4820; Curta 2014; Jones 1997; Cox, Ephross 1998). Nonetheless, inter-ethnic tensions may be challenging for archaeologists in restive regions. In one example, a research team planned a DNA study of the remains of representatives of an ethnic group that had populated a particular territory for millennia. Today, their original homeland is under the jurisdiction of a state that fails to recognize that particular ethnic group and pursues a policy of erasure of material evidence and remembrance of it (Bloxham 2003). Such situations may occur in territories where genocide, ethnic cleansing, expulsions, apartheid, et cetera, have been conducted.

It is easy to understand this situation using the example of research planned at archaeological sites with the remains of the Armenian individuals in eastern Turkey. In such a case, a politically or ideologically motivated refusal will limit not only the scientific role of the archaeologist but also their importance as a "bearing witness" (Bloxham 2003, 141–191; Staniewska, Domańska 2023; Smith 2023). In other cases, researchers may face refusals, restrictions, and censorship, which are part of an infamous tradition when "a state-sponsored historical narrative had stigmatized certain communities, encouraging archaeologists to avoid any evidence of their material remains" (Smith 2023, S57).

On the other hand, politically independent archeology strives to return communities "from historical erasure as well" (Smith 2023, S86; compare Letsch, Connolly 2013). Also, residents of a particular land may question access to and excavation involving the remains of unaccepted groups that are unfamiliar to them due to ethnic, religious, cultural, and other reasons. A related and multifaceted issue that requires distinct consideration is 'political exhumations' (an exquisite compendium on this topic is offered in Staniewska and Domańska 2023).

Disputes also concern the return of archaeological monuments and treasures to states established in the territories of origin of the disputable artefacts.[6] For instance, the Turkish Government, which plans to open the National Museum of Civilisations in Ankara to celebrate the 100th anniversary of the state, claims the return of archaeological treasures from museums in London, Berlin, New York, or Vienna. Sanctions against archaeological teams working become tools in the dispute (e.g., working in the Ephesus or Konya regions). Archaeologists working in demanding contexts may face restrictions depending on the political wind and the quality of diplomatic interstate relationships. Claims arising in Cairo concern mummies (Ronald 2023) followed by controversies. Further, museum objects from indigenous or colonial contexts are currently regarded as 'accidental refugees' and 'repatriates' (Appadurai 2017; Hick 2021; Colwell 2014) that deserve 'postcolonial curation' (Gaupp et al. 2020). The concept of such objects evolves both ontologically and normatively. Another global concern to note is the online trade of remains (Huffer et al. 2019).

[6] One of the items in dispute is the Pergamon Altar (located in the Pergamon Museum in Berlin), saved from destruction by Carl Humann in 1860: "The truth is that Humann had watched in horror as reliefs were being loaded into lime kilns (…) on the basis of contracts made according to the law governing antiques at the time, it was arranged for the reliefs to be brought to Berlin and so it was saved" (Letsch, Connolly 2013).

10. CONCLUSIONS AND PROSPECTS

Given the historical background of the colonial legacies, which gave rise to most of the barriers that bioarchaeologists encounter (outlined above), the "European nations who benefited from colonialism usually used International Law as a functional instrument for their expansionist interests. Specifically, the notion of *terra nullius* served to justify their occupation, expropriation, and looting of Indigenous peoples' lands around the world" (Labadie 2021, 137).

After World War 2 and decolonization, international legislation became non-retroactive, and their legal force suffered from limitations. Nonetheless,

> the UN *Declaration on the Rights of Indigenous Peoples*, although not a binding instrument, calls on States to provide reparation – which may include restitution, with regard to cultural artifacts of which they have been deprived. However, despite this normative arsenal regarding the prohibition of looting and the obligation to return cultural artifacts, the existing instruments often prove inadequate to resolve the demands relating to the Colonial Era (Labadie 2021, 136).

Closely related to reparations is the repatriation of human remains (Lichwa, Stec 2023). This, in turn, is a demanding aspect of reparative (restorative) justice, which refers to the broad spectrum of bioarchaeological practices that we approached in various contexts in this article. One of the difficulties in this regard is that during the annexation of archaeological resources, colonial legislation may have prevailed in a given territory, but there may have been no provision for the excavation and export of archaeological finds. In turn, there may have been very different ethnic, cultural, political, and legal contexts in a given territory prior to the setting up of a colonial order than there are at the present time. It may then be impossible to demonstrate that a tort (or organized crime) has occurred and that it requires litigation and an act of restorative justice (Blake 2015; Cornu, Renold 2010).

For researchers involved in the science sector of the democratic rule of law, where science is a public good, the changes taking place recently in international law of recognition "based on rights" become relevant. "These are the rights of minorities and of native peoples" (Tourme-Jouannet 2013, 677). The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) suggests the course to be followed in stabilizing the relationship between legal and extra-legal policies especially regarding research on specific archeological resources, including human remains.

To elaborate,

> externally, the principle of diversity means equal treatment for each state's cultures and the right for each of them to be respected in what makes it specific. States also have the right (…) freely to establish and preserve their own cultural policies. That is, a state legally has the ability, within the limits of respect for fundamental human rights, to limit its citizens' access to foreign cultures in order to protect their own culture. But internally states also have legal

obligations to protect and to promote diversity within their territory, and so to respect substate or indigenous cultures and promote individual freedom of creation and expression (Tourme-Jouannet 2013, 675).

The same obligations apply to the EU member states, which, since 1995, have implemented the following principle: "Pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity" (Council of Europe, Framework Convention for the Protection of National Minorities 1995, Preamble).

To conclude, we first described the extra-scientific significance of mortuary signs and analysed the limitations on *research freedom* in the archaeology concerned with human remains. The rationale and type of these limitations are often co-determined by manifold, extra-scientific, axiologies and norms. Positive legislation does not always reflect them. In certain contexts (decolonial, indigenous, religious, political) regulations take on a multijuridical and intersectional character. These normative transformations result in a paradigmatic shift in bioarchaeology itself as a scientific discipline, related research, and practices. This new development may challenge researchers insisting on access to the precious, but not unconditionally available, data and knowledge, the source of which can be human remains.

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