Frederika Kaestle's Commentary on "Ethical Considerations: When Epistemological Systems Collide"

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Ethical Considerations: When Epistemological Systems Collide

This case presents multiple points for discussion of ethical behavior in the context of a situation with multiple stakeholders in the outcome, and even pursuit, of scientific research. Although the case is presented from Darby's viewpoint, there are several additional actors either evident or implied in the discussion of the case, all of whom had opportunities to make ethically relevant choices.

First, it is important to point out that, traditionally, IRBs at universities consider archaeological research and research on prehistoric remains to be exempt from review, unless the research *also* involves data from living peoples. Thus, the "IRB approval" that Darby obtained would only have been in the form of an exemption, rather than an actual review of his research proposal. The IRB assumption that living peoples have no stake in research performed on prehistoric peoples is clearly problematic. This provides an opportunity to discuss the responsibility of the university to ensure ethical treatment not only of research "subjects," but also of other stakeholders in research performed by its faculty and students. The public good is protected in some ways in the university environment through committees to examine use of hazardous materials, and the welfare of animal subjects is also protected by committee review. However, is it possible for an internal review committee at a university to truly understand the viewpoints of all the relevant stakeholders? How might one rank opposing viewpoints?

Second, an important distinction should be made between what is "legal" and what is "ethical." First, there are several legal aspects to this case that are not made clear. Importantly, legislation other than the 1906 Antiquities Act apply to the human remains that Darby wishes to study. Most importantly, the Native American Graves Protection and Repatriation Act (NAGPRA, see The Case of the Over Eager

Collaborator for more detail) clearly applies to Native American remains recovered from federal land, such as the Detsi National Forest. This act requires that these remains be assessed for affiliation with a living person or federally recognized tribe. In this case, it is unclear whether these remains would be considered affiliated with the tribal groups living at the reservation to which the Pisha were removed in the 19th century. This type of cultural affiliation would depend not only on the oral history of the federally recognized group, but also on the scientific and historical record (such as examples of cultural continuity in the region since the time period from which the remains were recovered). If the remains were considered culturally affiliated with the federally recognized tribe, it would be their decision alone as to the type of research, if any, Darby could perform. However, the fact that Darby received consent from the Detsi National Forest for his research suggests that these remains are considered culturally unaffiliated to any federally recognized tribe. This situation brings up an issue that is common in the social sciences — the inadequacies of the law for dealing with socially defined groups. NAGPRA requires federal recognition for consideration as a stakeholder in the treatment of ancestral remains and artifacts. However, many tribes are recognized by the state but not the federal government, or are officially unrecognized. In addition, a large portion of the US population with Native American ancestry is not affiliated with any tribal group (recognized or not). Is there any way this legislation might be changed to accommodate these other kinds of stakeholders? If, indeed, the Pisha group that has returned to its traditional homeland were recognized under NAGPRA in some way, that would allow them a voice in the decision making process. However, if they disagreed with the federally recognized tribe regarding the treatment of the remains, it is not clear what the outcome should be. Are they *more* Pisha than the federally recognized tribe in some way? Are there other important stakeholders who are unconsidered in this case (e.g. other Native American or non-Native American groups who might benefit from Darby's research, the general US public interested in the history and prehistory of the country)? If the remains are not culturally affiliated with a particular tribe, might it be the case that *any* Native American tribe would be a more appropriate group to decide the fate of the remains than a non-Native American committee or individual might be? Why might this be? All of these questions have relevance to the policy and law makers in our country — could they have done a better job enacting legislation that made their intentions clearer, or better protected stakeholders?

In social science research, there are often many stakeholders (who might these be?). Negotiating a research plan that protects all of their rights, which may conflict, is very difficult. Again, some of these issues are also explored in "The Case of the Over Eager Collaborator."

The determination of cultural affiliation as defined in NAGPRA brings to the forefront a central debate within this case — the potentially opposing viewpoints of differing epistemologies (whether scientific vs. religious, one religion vs. another, western vs. "indigenous," etc.). NAGPRA states that cultural affiliation is to be determined by "a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion" (NAGPRA, Section 7a(4)). However, since these sources of information are not only often contradictory, but also are based on differing ways of viewing the world, resolution of cultural affiliation is often impossible. The conundrum of approaching the study of the "other" from within one's own cultural milieu is a common obstacle for social scientists. How can one truly understand a "foreign" culture, whose members have another way of viewing the world? During this endeavor, how can one protect the rights of members of the "other" culture if one cannot understand their world view? If their beliefs conflict with yours, whose rights are primary? In this case, Darby believes that his research has the potential to provide improved health not only to living Pishas, but also to the general public. However, the living Pisha (at least those in the unrecognized group) believe that their health is actually damaged by such research, and can only be improved by reburial of the remains. One might argue that western science finds no evidence supporting such a world view. However, recent studies do find that peoples' mental well-being is intimately connected to their physical well-being. In addition, one's health is defined not only by ones physical status, but also by one's mental status. Thus, in either light might it be the case that study of the remains would truly harm the health of the Pisha? Should the Pisha's health be held in higher regard than that of the general public, who might also benefit from Darby's study? Do the Pisha have an obligation to "humanity" to allow the study, even if it reduced their own health, if it promised to improve general health? Even if western science suggested their health could in no way be affected, should the Pisha's beliefs still prevent Darby's research?

In this case, the history of the interaction between groups also needs to be taken into account. There is clear reason for the Native American group (federally

recognized or not) to be wary of the motivations of 1) Federal lawmakers, 2) non-Native Americans who claim they will “help” them, 3) scientists in general, and 4)archaeologists in particular. One also must be careful of falling into the role of the “colonialist” do-gooder who knows better than the Native Americans themselves what is best. That said, the scientific method for studying the natural world does appear to be extremely successful. When does, or should, the scientific method “trump” other epistemologies, both in the law and in general? Another important question is whether science can inform ethics itself in any way.

Finally, on a more practical note, Darby plans to perform both destructive and non-destructive analyses. It might be useful to consider these two research agendas separately. Might the non-destructive analysis be more acceptable to the Pisha and other stakeholders? Would significant health benefits be possible with only non-destructive analysis? Might it be possible to rebury the remains after non-destructive analysis, thus satisfying the Pisha as well as advancing Darby’s research? In fact, would a promise to rebury the remains after study (destructive as well as non-destructive) be an acceptable compromise? Note that Darby also has an obligation to future generations to protect the integrity of these remains in case new developments allow better scientific approaches. How does destructive analysis balance with this obligation? How does repatriation and reburial balance with this obligation? These issues are not addressed in the case, but certainly provide avenues for further thought.