

The treatment of human remains

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Concerns regarding treatment of the dead in scientific and public arenas, issues related to consent, respect for human dignity, scientific integrity, societal expectations, and why treatment of cadavers are ethically significant are highlighted.

The display of human remains claimed as 'edutainment' or 'anatomy art' in Body Worlds is discussed. In this regard, the issues of consent, legal controversy surrounding Body Worlds' innovator, copycat competitor exhibitions, human rights violations and the legal vacuum within which anatomical specimens are permitted to cross international borders are explored.

The display of Saartjie Baartman, a Khoisan woman, as a popular novelty, curiosity and political caricature is examined. The role of anatomists, controversies and difficulties in repatriation, and the need for respect for indigenous cultural, religious and traditional values, are discussed.

The exhumation by the Truth and Reconciliation Commission (TRC) and final laying to rest of Phila Portia Ndwande are explored. The TRC report relating to the treatment of human remains, including cultural rights of the dead, sacred rituals and the demand that the 'amadlozi' (spirit of the dead) be officially brought home and inaugurated as an 'ancestor' are examined.

Boundaries will be pushed only as far as society condones it. Key recommendations include valuable lessons recommended by the TRC; the formation of a multi-stakeholder forum to consider definitive answers to complex issues in the use of unclaimed cadavers; policy relating to legacy collections; guidelines by healthcare and scientific associations; and revision of the National Health Act, 2003.

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Any civilised society is measured by how it treats its dead.¹ In Sophocles' *Antigone*, the title character defies the king and gives her brother a decent burial because it is a right ultimately protected, as she proclaims, by 'the Gods'.² Cohn³ goes further by stating that 'the way we treat dead bodies may have implications for how we treat living ones as well'. Three recent controversies regarding the treatment of human remains, viz. *Körperwelten* (Body Worlds), Saartjie Baartman and Phila Portia Ndwandwe, are explored. The issues highlighted relate *inter alia* to legal, ethical, and scientific integrity and societal expectations. The common thread linking these models is that they share the mantle of the dead and serve as a stark reminder of our duty to the dead. It is also apposite at this time, given the atrocities perpetrated during apartheid on mainly black South Africans, for our young democracy to formulate appropriate measures, including legislation, to ensure proper treatment of the dead and, where necessary, apply restitution.

Why is the treatment of human remains ethically significant?

A cadaver possesses both intrinsic and instrumental values.⁴ Jones defines intrinsic value 'as when a person and her/his body are inseparable and that the intrinsic value of a living person is bestowed upon her/his cadaver at death'.⁴ Consequently, the

treatment of the living influences our treatment of the dead. The instrumental value of the cadaver invokes values when it is recognised as the source of memories and responses: this leads to the conviction that a corpse should be respected and treated in a 'decent' manner.⁴ Hence, Jones proclaims 'To desecrate a corpse is ... to desecrate a person ...'.⁴ The instrumental value of the cadaver is also apparent when it is used as a source of organs or in teaching and clinical practice.⁴

Body Worlds

Traditionally, donated or unclaimed cadavers were used primarily for teaching and research in health sciences facilities in general, and in anatomy departments in particular, as well as in museums. Cadavers were therefore usually hidden from public view in anatomical dissecting rooms and museums: 'they were deliberately shrouded in a funereal mist'.⁵ Custodians of the dead, usually anatomists and pathologists, relied upon 'favourable and often vague legislation'.⁵ It was assumed that the 'conduct in these halls of mystery was ethical'.⁵ There have, however, been major ethical lapses, as illustrated in the Bristol Royal Infirmary Inquiry, the Royal Liverpool Children's Inquiry and the Walker Inquiry,⁶ which investigated the use of human remains without obtaining consent and resulted in legislative changes.

All this changed dramatically in 1987 when Gunther von Hagens' exhibition *Körperwelten* (Body Worlds) burst into the public arena when he displayed some 200 plastinated cadavers and body parts in Mannheim, Germany.⁷ Body Worlds exhibits healthy and diseased body parts as well as provocatively posed and preserved skinless whole corpses with defined muscles and fresh-looking tissues. The exhibitions across Europe, Asia, USA and Canada have been viewed by more than 34 million people of all ages at enormous financial gain.⁷

What are the controversies surrounding Body Worlds?

Von Hagens claims that Body Worlds, known as 'anatomy art', depicts the 'aesthetic and instructive presentation of the body's interior', and exposes the 'inner face' of people, almost like Vesalius, who centuries ago attempted to animate the cadaver.⁸ He claims to transform a 'useless corpse' to a useful, aesthetically instructive, plastinated exhibition or 'edutainment'.⁹ As an educational and research tool, plastination is widely used and ethically acceptable. However, according to Jones,¹⁰ its use in entertainment *per se* is insufficient justification for this use of human material'. He states that 'to use human material for mere entertainment is to demean and exploit the human body, just as using human material for purely decorative purposes does the same',¹⁰ and that 'anatomy art' threatens human dignity since 'human beings are exploited and crafted into artistic specimens'.¹⁰ He is also of the view that 'anatomy art' may transgress the bounds of the museum ethos.¹⁰ However, von Hagens denies that this is art.^{7,8} On the other hand, Fischer¹¹ contends that 'Anatomy art is inevitably a voyeuristic event that violates human dignity regardless of the informed donation of the individuals bodies and educational intent.'

The overwhelming concern regarding the use of cadavers in any exhibition such as Body Worlds is the issue of proper consent. Barilan¹² notes that the notion of formal duties to the dead necessitates the 'existence of an informed consent'.¹² He asserts its importance since society remains to supervise the formal duty to the dead. While there is precedence in anatomy and science for cadaveric display, albeit non-plastinated, this occurred long before the era of informed consent. He also notes that this exhibition acts independent of 'any particular culture or religion'.¹²

In his defence, von Hagens claims to have consent for all his cadavers and is confident that he will survive the ongoing storm and wide array of legal challenges relating to cadaver procurement and possible human rights violations.^{7,9}

Predictably, competitor exhibitions appeared: in 2005 'Bodies: The Exhibition'¹³ was staged in New York by von Hagens' former partner, Dr Sui Hongjin. This show caused further public outcry from human rights groups since the specimens on display may have been deceased Chinese prisoners and unclaimed corpses.¹³ Beyond these controversies remains the legal vacuum within which anatomical specimens are permitted to cross international borders. Furthermore, the analogy of comparing plastination to experiments on human beings is already being made. Opponents

of Body Worlds believe that 'there is a core of substantial duties that is non-alienable'¹² to the dead. Based on this belief, Barilan¹² therefore argues in favour of disregarding such informed consent of donors in the name of human dignity, decency and disturbing public order.

In response to public concerns regarding consent and the use of cadaveric material, a revised Human Tissue Act was passed in the UK in September 2005.¹⁴ It was 'designed to win back public confidence in the collection and use of human tissue and organs' and establishes 'appropriate consent' which is defined in the Act as the fundamental principle underpinning the storage of human body parts, organs and tissue from both the living and the deceased for both research and public display purposes. It created the Human Tissue Authority (HTA) to issue licences for removal, storage or use of human tissue, and performing postmortem examination. The Act introduced a new crime of 'DNA theft', whereby it is illegal to take a sample of a person's DNA without their consent. The Act makes provision for penalties up to 3 years in jail or an unlimited fine for researchers who break this law.

In South Africa, sections 62 - 68 (particularly section 62) of the National Health Act 61 of 2003¹⁵ address the donation of cadavers and human tissue. However, it appears deficient in so far as 'appropriate consent' is concerned. It also does not make provision for a statutory body such as the HTA to oversee licensing of removal, storage or use of human tissue. These functions appear, however, to fall within the authority of the Director-General of Health, while the Inspector of Anatomy ensures compliance at a provincial level.¹⁴

Saartjie Baartman

Saartjie Baartman was born in 1789 in the Gamtoos River Valley in Hankey in the Eastern Cape.¹⁶ At 21, she was illegally transported to England by Dr Dunlop, a British Army medical officer, who planned 'to build a fortune on the shaky foundations of one woman's buttocks'.¹⁶ As a popular novelty and curiosity, as well as a political caricature, her breasts, buttocks and hypertrophied labia were displayed in England and France.¹⁶ In death she was immortalised by French anatomist George Cuvier, who dissected her corpse and preserved it as a biological specimen.¹⁷ The issues that Baartman's story raises relate to the politics of 'race, gender, empire and specifically Western representations of black female sexuality'.¹⁷ Baartman is among the most famous human ethnological exhibits.

In France, she posed nude for a triumvirate of professors of the Muséum d'Histoire Naturelle, Geoffroy Saint-Hilaire, Frédéric Cuvier and Henri de Blainville.¹⁷ This Institute was the epicentre of the study of life sciences at the time. After noting the interest of the professorial board in Baartman when she appeared before them, her manager entered into a lucrative secretive arrangement with them to deliver her corpse for anatomical dissection upon her death.¹⁶ Cuvier recorded his observations of both the antemortem and postmortem examinations.¹⁷ According to Qureshi,¹⁷ the vilification of Baartman in Cuvier's autopsy report established him as a

racist scientist. De Blainville's lecture on Baartman was published in 1816.¹⁶ The illustration by Berré in this publication demonstrated 'De Blainville's invented elongated labia minora' which hung suspended from her 'neatly trimmed pubic mons veneris and tucked coyly between her thighs'.¹⁶ This academic dishonesty is breathtaking. Prior to her autopsy, body casts were made and subsequent to it, her brain, skeleton and dissected genitalia were preserved. These were displayed in the Muséum d'Histoire Naturelle and subsequently at the Musée de l'Homme in 1937.

The request to repatriate the remains of Saartjie Baartman, which were held at the Musée de l'Homme in Paris, led to a charged political row between South Africa and France.¹⁶ When President Mandela formally claimed the right of possession to Saartjie's remains, he declared the new South African state's commitment to honour her as a heroic ancestor and thereby committed the first international act of reclaiming cultural property on behalf of the people of free South Africa.¹⁶ The campaign took 8 years to finally lay the remains of this Khoisan woman to rest in her ancestral home. After a moving Khoisan cleansing ritual and dressing ceremony, she was buried on Women's Day (9 August 2002). In his funeral address, President Mbeki stated that her story epitomised that of the African people, of the loss of their ancient freedom and reduction to the state of objects who could be owned, used and discarded by others.¹⁶ Mbeki illustrated how Baartman was exploited by leading European scientists to prove their xenophobic theories about white superiority, and cited damning passages from Cuvier's gruesomely pornographic and bigoted autopsy report. He also focused on the role of medical history in the sexual ideology of colonial and apartheid racism.¹⁶

Phila Portia Ndwandwe

Ndwandwe, born on 2 June 1965, studied at the University of Durban-Westville for the degree of Bachelor of Dental Therapy between 1984 and 1986. She was the acting commander of the Natal MK activities from Swaziland and was responsible for the infiltration of African National Congress cadres into Natal.¹⁸ Ndwandwe was abducted from Manzini, Swaziland, by members of the Port Natal Security Branch in October 1988.¹⁸ After they failed to recruit her, she was shot dead and secretly buried. Like several others, she 'disappeared' and rumours were leaked that she had defected to the apartheid regime.¹⁸ The exhumation of the remains of Ndwandwe took place at Elandkop Farm, KwaZulu-Natal, on 12 March 1997.

The Truth and Reconciliation Commission (TRC) Report on Exhumations¹⁸ gives a moving account of the Commission's role in locating burial sites of opponents of the government who disappeared during the 1980s. The TRC undertook several exhumations with the aim of providing healing to the families of victims. The successful exhumations permitted families to retrieve the remains of their loved ones, so that they could bury them according to ceremonies of their people, thereby permitting families a degree of closure. The Commission noted that the issue of exhumations was a sensitive one and made several recommendations.¹⁸ It also noted that the state is vested with the responsibility to ensure that

human remains are examined and identified by forensic specialists and recommended strict exhumation guidelines.

In the context of the treatment of human remains, the Commission poignantly captures the issues that relate to the cultural rites of the dead that affect the majority of South Africa's citizens as follows:¹⁸

In most cultures, sacred rituals dealing with the dead are extremely important. In certain local contexts in Africa, custom demands that 'the spirit of the dead' be officially brought home and inaugurated as an 'ancestor'. Such rituals introduce the spirit to the living. It is believed that such rituals bring the spirit home out from the wilderness and into the home to rest and to watch over the living. The tragedy of politically motivated deaths and disappearances impacts on traditional, cultural and spiritual rituals, which can often not be performed. Families are left bereft and kept in a state of suspended mourning, knowing that the dead can never rest. Certainty about their dead brings families small consolation, as it also renders up memories of how the loved one may have been treated before death.

Further, the TRC emphasised the need for support for families.¹⁸ The Commission learnt some painful lessons during this process. While exhumations are a powerful mechanism to break the silence and establish the truth, they can do great harm if not conducted properly and with adequate support for families. Organisations carrying out exhumations must ensure that they are carried out in proper consultation with families and communities. It is only then that exhumations may contribute to a process of healing.¹⁸

In recognition for her contribution to the liberation struggle, Ndwandwe was awarded the Bachelor of Dental Therapy degree posthumously by the University of Durban-Westville in 1999. Ndwandwe is no longer an 'Unknown Soldier', and her son, her family and her community may at least bring closure to the life of a heroine.

Discussion

Unclaimed and unidentified cadavers

Unclaimed and unidentified cadavers usually belong to the poor and disadvantaged, are easily exploited and are traditionally the source of cadaveric material.

However, in the context of our colonial and apartheid legacy, medical treatment offered to black South Africans was on the lowest rung. Cadavers were kept in hospital mortuaries for 3 - 5 days and thereafter classified unclaimed. The Medical Superintendent and the Inspector of Anatomy authorised that these bodies be given a pauper's burial or donated to regional anatomy departments. With the existing poor communication infrastructure and the perceived lack of care from the state, family relatives may not have received timely notification of a relative's death in order to claim the body, nor would they have had the wherewithal to easily track the whereabouts of the body once it was removed from the hospital mortuary.

There is no formal audit of all the unclaimed remains stored in departments of anatomy in particular, and other health sciences departments in general. According to Qureshi,¹⁷ there are more than 2 000 skeletons in South African museums alone. She noted, and it is becoming apparent, that these bones are being removed from exhibits as 'museums reassess the politics of their display'.¹⁷

In acknowledging the sensitivity that the solution to this issue will evoke, and the impact it may have on anatomy departments and scientific research, noting as well the attrition rate in body donation and perhaps the contraindication of using HIV-positive bodies for dissection, it must nevertheless be confronted. Health sciences departments may claim to have had proper legal authority from the apartheid state, but whether such a claim can be upheld post-freedom is ethically questionable. Appropriate authorities should carefully consider the lessons and recommendations, particularly those that refer to cultural rights, of the TRC report.¹⁸ It should be mandatory to consult with the families and the affected indigenous communities as well as other appropriate stakeholders, including departments of anatomy, on how best these issues may be resolved.

Since the parallels to the treatment of these dead are similar, the issues and processes highlighted by Baartman and the TRC need to be completed, and their recommendations implemented. It is further encouraging to note the continuing work by the Missing Persons Task Team (MPTT) of the National Prosecuting Authority, in collaboration with the Argentine Forensic Anthropology Team (EAAF).¹⁹ For the healing that still has to take place during the infancy of our democracy, the families of the poor, unclaimed and unidentified, deserve closure: indeed their 'spirits' (*amadlozi*) should also be at peace.

It is also useful to note how an institution in Germany made restitution when human beings and their remains were grossly violated. The Max Planck Institute cremated all specimens and tissue slides that were obtained from corpses executed under the Nazi regime during World War II.²⁰ The controversy continues on whether to use the anatomical atlas of the ardent Nazi, Eduard Pernkopf, whose material was derived from the victims of the Nazi regime.²¹ Aside from the particular South African issues, referred to above, regarding unclaimed bodies, and in the context of exhibitions such as Body Worlds, the author concurs with Barilan¹² that the use of such bodies is immoral, especially in economies 'where a dignified funeral is a viable alternative to plastination'.

The role of the healthcare professions

Dr Dunlop played an exploitative role in the life of Baartman.¹⁶ There was no response from the medical profession at the time in either the UK or France. In the case of Ndwanwe, the role of the state medical apparatus is a matter of record, attested to in cases such as the Biko Affair and the current investigation into the professional conduct by the HPCSA of Dr Wouter Basson and his role in 'Project Coast'.²²

Internationally, medical associations remain muted in their reaction to critical bioethical issues raised by Body Worlds. The British

Medical Association reacted to von Hagens' public autopsy but fell short on commenting on the Body Worlds exhibition.²³ It is difficult to understand this reaction from the profession, especially after the reaction to the Bristol Royal Infirmary Inquiry, the Royal Liverpool Children's Inquiry, and the Walker Inquiry.⁶ Bioethical communities also appear silent, as do research and ethics committees of health sciences institutions.

The reaction of the anatomical associations is even more perplexing. The German Anatomical Association voiced concerns that the commercialisation of human corpses was ethically questionable.²⁴ The International Society for Plastination pronounced that it 'completely disaffirms display of human specimens if not entirely for educational purposes'.²⁵ Surprisingly, several international anatomical associations have yet to pronounce on this issue.

Legal issues

The author concurs with Barilan¹² that we have at least strictly formal duties to the dead. The use of human material for any purpose without consent is morally unacceptable and illegal. Transgressing sacred boundaries that have been respected over millennia, such as the purported 'anatomy art' in Body Worlds, even with informed consent, is also unacceptable. The morally reprehensible allegations of the use of executed prisoners,²⁶ contrary to the World Medical Association's pronouncements,²⁷ together with the allegations of commercialism in cadaver trade for Body Worlds and Bodies: The Exhibition, require swift investigation and, where necessary, appropriate legal action. It is necessary for the international society to co-operate, particularly with regard to the universal respectful treatment of the dead. The law with regard to cross-border movement of cadaveric material also requires urgent review.

Recommendations and conclusion

Clearly, boundaries will be pushed only as far as society condones it. Despite this, von Hagens exhibits male and female cadavers as if engaged in sexual intercourse. In response, Barilan argues that despite having informed consent, 'Should one of the bodies belong to a gay person, would he not have objected to heterosexual "mummification"?' or 'using brain-dead patients for *in vivo* display of their circulation'.¹² Should von Hagens wish to display Body Worlds in South Africa, it should be opposed.

Many international communities may learn valuable lessons from South Africa's stance in repatriating Baartman's remains to her homeland and observing the appropriate spiritual demands of her community. Similarly, the process of identifying and exhuming the remains of Ndwanwe and bringing closure to her family and community is a valuable lesson in the treatment of the dead. It is conceivable that other colonised communities may also wish to seek repatriation of the human remains of their ancestors; an obvious example of this may be the return of Egyptian mummies from Britain to Egypt.

A step in the right direction may be the establishment of regulatory institutions such as the Human Tissue Authority¹⁴ in the UK. Consideration should be given for the establishment of a similar

authority overseeing human tissue in South Africa, since it is apparent that the National Health Act is deficient in this regard.¹⁵

A multi-stakeholder forum should be convened, under the auspices of the Ministries of Arts and Culture and Health, to consider definitive answers to many of the complex issues raised, with the object of proposing suitable legislation. Such a forum should include appropriate representatives from among medical professionals, ethicists, lawyers, politicians, theologians, religious leaders and the public. It would only then be fair to claim that we have implemented *batho pele* and have paid due consideration to *ubuntu* in the treatment of the dead.

When death is on display, human beings have no chance of retaining their human dignity.¹⁰ Richardson²⁸ reminds scientists that the 'availability of cadavers is dependent upon social, religious and cultural attitudes'. It is precisely this concern on how cadavers are treated that spurs Jones¹⁰ to caution that if proper consent is not obtained, societal 'attitudes may be overturned if it is widely perceived that the practice is exploitative, harmful or culturally unacceptable'. Scientific practice should be constrained by ethical strictures, hence it is time for science to take heed since societal mores may backlash. Accordingly, the author concurs with Cohn that '... the underlying ethical and aesthetic values of our and other societies revolve around the dignity of the human body and are fundamental to humankind's social fabric'.³ This author incisively states that 'the burden of justifications falls to those who offer such displays, but the burden of protection of ethical use of anatomical material extends to larger circles'.³ We need to rise to the challenge!

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