

Report to the Board of Trustees of
The British Museum

Request from Te Papa Tongarewa
for the return of
sixteen Māori *kōiwi tangata* to
New Zealand



**He iwi kee, he iwi kee
Titiro atu, titiro mai!**

One strange people and another
Looking at each other

Independent assessment by
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Front cover illustration: facial *moko* drawn by Sydney Parkinson, scientific illustrator on Cook's first voyage of discovery 1768-1771. (Parkinson 1773.)

Front cover quote: from a Haka by Merimeri Penfold. (Salmond 1997: 15)

GLOSSARY of Māori nomenclature

Aotearoa	New Zealand.
Iwi	Māori tribal groups, collectively all Māori.
Kaihautū	Leader. Māori co-leader at Te Papa.
Kōiwi	Human skeletal remains of Māori or Moriori origin.
Kōiwi tangata	Any part of the human body (skeletal or soft tissue) of Māori or Moriori origin, which is in an unmodified state since death. This includes all <i>Toi Moko</i> (Te Papa 2001).
Māori	The original meaning is natural, normal or local. Only since the colonial era has it come to be used to distinguish between those who are descended from the indigenous nations of Aotearoa and white European settlers.
Mana	Spiritual power.
Mana Taonga	The power of <i>taonga</i> to communicate deep truths about Māori people. This principle has been formally adopted by <i>Te Papa Tongarewa</i> as informing its approach to access and research ¹ .
Moko	Tattoo.
Mokomokai	Tattooed, preserved heads of Māori or Moriori origin (now obsolete). This term has multiple cultural associations, some derogatory (particularly in relation to categories of trade head). Consequently, the term is no longer used by <i>Te Papa Tongarewa</i> (Te Papa 2007a). See <i>Toi moko</i> below.
Rangatira	Chiefs of the <i>iwi</i> .
Pounamu	Greenstone (nephrite jade) from South Island, highly prized by Māori for implements and ornamental carving. It is very hard and strong and keeps a good edge.
Ta moko	The practice of Maori tattooing.
Tangata	Human being.
Taonga	Treasure, property prized and protected as sacred possessions of the <i>iwi</i> . The term carries a deep spiritual meaning and includes things that cannot be seen or touched, such as language and beliefs, as well as places and made objects. Includes <i>kōiwi tangata</i> .
Tapu	Sacred, forbidden; a state of being under the influence of the gods (Hanson & Hanson 1983).
Tūpuna	Ancestors
Te Papa Tongarewa	Museum of New Zealand. Frequently shortened to Te Papa.
Toi moko	Tattooed, preserved heads of Māori or Moriori origin. The term accords all such ancestors the same dignity and respect regardless of origin (Te Papa 2007a).

¹ <http://www.tepapa.govt.nz/TePapa/English/CollectionsAndResearch/Collections/TaongaMaori/>

1 Terms of engagement and 'public benefit'

1.1 Remit

The British Museum (BM) has received a formal request for the repatriation to New Zealand of sixteen Māori *kōiwi tangata*. The claim is set out in a letter from the *Kaihautū* at Te Papa Tongarewa (White, 2006). At its meeting on 23 November 2006, the Board of Trustees received a report on this claim and agreed to commission two further reports by independent experts that would shed further light on the significance of the remains and their cultural context.

Having received further clarification on a number of points by letter from Te Papa (Bennington 2007), Dr Burnett wrote to me on 20 March 2007, asking me to provide the Trustees with "an assessment of the actual and potential public benefit of the remains in question, if held (by) the Museum".

Dr Burnett's letter explained the context of the claim, both in terms of the BM's own Policy on Human Remains and the correspondence in which Te Papa Tongarewa presents its claim.

1.2 Public benefit

The term 'public benefit' was clarified in subsequent discussion with Dr Burnett on 26 March, to include **any or all of the many communities with which the BM engages both in the UK and overseas**. This is consistent with the BM policy statement of its Collection being held for the "benefit of present and future generations throughout the world" (BM 2006: 3).

1.3 Statement of independence

In making my assessment of the claim by Te Papa for the repatriation of sixteen *kōiwi tangata*, I have approached the task with an open mind. The context of the claim has proved complex and has raised very specific issues, which have no precedent in the Australian cases in which I have been involved².

In making this report, I have consulted a number of authorities on matters of fact and interpretation, both at the BM and at Te Papa; the conclusions that I have drawn are mine alone, and are made free from undue influence or favour.

² As Director of The Manchester Museum, I oversaw the repatriation of ancestral human remains to recognised representatives the Australian Aboriginal community in 2003 (Besterman 2003). In 2005, in response to an invitation from the Director of the BM, I furnished the Trustees with a report (Besterman 2005) recommending the return to Tasmania of two cremation ash bundles, which were repatriated by the BM in 2006. In 2006 I visited Tasmania and learned at first hand something of the values, practices and beliefs of Tasmanian Aborigines. I have subsequently advised and assisted the Tasmanian Aboriginal Centre in their legal challenge to the Natural History Museum over the latter's unilateral decision to collect data, without the permission of the source community, from the remains of Tasmanian Aborigines that they hold. This matter is currently *sub judice*.

2 Legal, ethical and procedural context

The assessment that follows takes account of the relevant legal and published ethical framework that must inform the BM's decision on how it will respond to Te Papa's request for return.

2.1 English law

- **British Museum Act 1963:** clauses 3 (1) and 5 (c) deal with the duties of the Trustees to keep objects and their powers of disposal.
- **Human Tissue Act 2004:** clauses 47 (1) – (4) provide the Trustees with powers to transfer human remains from the BM's collections.

2.2 Museum ethics and published standards in the cultural sector

Annex 1 provides extracts of the relevant codes and conventions summarised below.

- **Museums Association Code of Ethics for Museums** (2002): paragraphs 6.1.6, 7.4, 7.5 and 7.7 are relevant to the treatment of human remains and engagement with source communities.
- **International Council of Museums Code of Ethics for Museums** (2004): paragraphs 2.5, 3.7, 4.3, 6.2, 6.3 and 6.7 are relevant to the treatment of human remains and engagement with source communities.
- **World Archaeological Congress Archaeological Ethics and the Treatment of the Dead** (1989). 'The Vermillion Accord': a statement of principles agreed by archaeologists and indigenous peoples at the WAC, held at Vermillion, South Dakota, USA on the treatment of human remains.
- **United Nations, UNESCO and UNIDROIT statements** on the treatment human remains, Tasmanian Aborigines communities and the obligations of science (1994-99).
- **Museum Ethnographers' Group (UK) Guidelines on the Management of Human Remains in Ethnographical Collections** (1994). Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the United Kingdom.

2.3 BM Policy on Human Remains

The current iteration of the BM's *Policy on Human Remains* (BM 2006) was approved by the Trustees on 6 October 2006 and provides the policy context for the Trustees' determination of the New Zealand Claim. Specific clauses of the BM Policy are considered in Discussion at Section 7 below.

2.4 Process

Procedures for dealing with requests for the return of human remains are addressed in the *BM Policy on Human Remains* and are also expressed in Part 3 of the DCMS consultative draft *Code of Practice for the Care of Human Remains in Museums*.

My report is framed to be consistent with the practices set out in both documents.

3 Description of the *kōiwi tangata* in the BM

On 13 April, I visited the BM's off-site ethnography store where I examined seven *Toi moko* and some of the *kōiwi* bone fragments, in the company of Natasha Smith from the BM's Department of Africa, Oceania and the Americas.

3.1 *Toi moko*

The first thing that struck me on seeing the *Toi moko*, is that I was coming literally face-to-face with people, who must, in this preserved state, have been easily recognisable as individuals to those who knew them when they were alive.

The *moko* on all the heads is distinctive, and is, as might be expected, consistent with the kind of facial adornment drawn in the eighteenth century by Sydney Parkinson, the scientific illustrator who accompanied James Cook on his journey to the South Seas 1768-1771 (see 5.1 below).

The BM *Toi moko* fall into two rather distinct groups. Three are relatively pale skinned with tattooing mainly in the form of stripes of bluish pigment within the skin layer, the surface of the skin relatively smooth across the tattoo. The other four are much darker skinned, including one head in which the tattooing is deeply engraved into the skin.

The documentation with which the BM has supplied the author states that four of the seven *Toi moko* in its possession show evidence of *post mortem* enhancement of the tattooing. Indeed, Robley (1896: 189-190) states that

"*Post mortem* moko is easily distinguished by the non-appearance of the subcutaneous colour; and where moko was incomplete at the time of death the pattern was often added to. But the difference of the cuts on live and on hardened flesh is easily recognised... In one³ of the British Museum specimens this *post mortem* tracing is of totally different pattern to that cut during life, and this is the more regrettable as the original pattern was not only good and complete and well preserved, but the new one is carelessly worked or scratched, and looks pale over the blue of the older and real moko."

Whilst the evidence for *post mortem* modification may have been easily discernible to Robley when he examined the BM *Toi moko*, it was not so obvious to this author's admittedly untutored eye. The assertion of evidence for *post mortem* modification is discussed further at 7.2 below in relation to the claim for repatriation.

3.2 *Kōiwi*

I examined the nine bone fragments which are included in the claim. In contrast to the *Toi moko*, the sole evidence for the human origin of these fragments is in their associated documentation.

³ This head is illustrated with a line drawing (Robley 1896: 190), and can be unequivocally identified as BM *Toi moko* Oc,NZ.71.

The pieces of **long bone** showed a highly distinctive pattern of reduction. The outer margin of the bone was clean cut, whilst the inner part was roughly irregular, consistent with fracture (Fig. 1).



Fig. 1. Kōiwi fragment showing marks at the cut end.

BM Oc,1895,-.628 (photo TB 2007)

The Māori would have used a sharp stone implement, probably either of obsidian or *pounamu* to cut around the bone using a sawing action, before breaking it at the line of cut. This interpretation has been confirmed by Dougal Austin, Curator Māori, Mātauranga Māori Curatorial Team at Te Papa:

“the bones have been sawn in traditional manner similar to working *pounamu* (greenstone), whereby an abrasive stone 'saw' is used to cut most of the way through the bones, then the final part was just snapped off. See how the cut is at an angle not straight through. This is consistent with grooves being filed out with a stone saw. And see also how the innermost part is rough where it has been snapped off. They are bone sections which have been prepared in order to make something out of them, but for some reason or another that next step never happened”. (Te Papa 2007b: 1).

That a stone axe rather than a knife was used is suggested by the gashes on the shaft of BM Oc,1895,-.627 (Fig. 2). The possibility that such marks may have resulted from wounds inflicted through violence in life cannot be discounted.



Fig.2. Kōiwi fragment showing a gash on the shaft.

BM Oc,1895,-.627 (BM photo)

None of the pieces of cut bone which I examined shows any evidence to justify, in my opinion, the use of the term 'implement?', as it appears in the BM's documentation. The pieces of long bone, apart from their crudely cut ends, are entirely unmodified, lacking any evidence of re-shaping, decoration, perforation or carving. The only possible exception is BM Oc,1895,-.629 (Fig. 3), which shows wear, possibly indicative of some kind of repetitive use.



Fig.3. Kōiwi fragment showing unusual wear along the top edge. BM Oc,1895,-.629 (BM photo).

It is informative to compare these fragments of kōiwi with highly worked, useable artefacts in the BM collection, which have been made by Māori from human bone, and include personal adornments, fish-hooks and a flute (Fig. 4):



Fig.4. Koauau (flute) made of kōiwi. BM Oc,1896,-.930 (BM photo).

The precise purpose of long bone reduction can only be speculative: cutting as part of a mortuary process cannot be ruled out (perhaps to fit the bones more easily into a small container or space to assist concealment), nor can the possibility that these were destined to be made into an artefact:

“The Māori was always very particular in concealing bones of his dead, lest they be discovered by tribal enemies, who would be in great glee at such a discovery, and would at once proceed to manufacture fish-hooks, piercers, flutes, points for bird-spears, &c., out of the said bones.” (Best 1914: 110).

In their present state, in my opinion, all that can be stated with any degree of certainty is that they have been reduced in length after death for an unknown purpose. This means that all the bone fragments, with the possible exception of BM Oc,1895,-.629, fall outwith the exclusion defined in para 5.11 of the BM's Policy (BM 2006: 5). The small fragments of crania were partially blackened, in a way that suggested charring in a fire. This is consistent with cremation.

Establishing the human origin and more accurately the part of the skeleton from which these bones derive can be done without difficulty by submitting them to the examination of a forensic scientist, and if necessary, sampling the DNA of the fragments (see also 6.4 below).

4 Historical setting

4.1 Earliest settlement of Aotearoa

There is general agreement that “Māori prehistory covers a period of less than a thousand years, from the arrival of the first Polynesian colonists in Aotearoa... to the beginning of sustained contact with Europeans in the late eighteenth century” (Davidson 1996: 8). Opinions vary on more precise dating. Sutton (1994) states that archaeological and linguistic evidence dates the arrival of the Māori in Aotearoa to between AD800 and 1000 in waves of migration from eastern Polynesia. Anderson (1991) favours a date for the original colonisation “on the weight of opinion” at around AD 1,000 or 1,100.

This means that the Māori *kōiwi tangata* in the BM are most unlikely to be more than one thousand years old, and therefore fall within the statutory power of the BM Trustees to “transfer from the Collection any human remains which they reasonably believe to be remains of a person who died less than one thousand years before the day on which section 47 Human Tissue Act 2004 came into force” (BM 2006: 3) as stated in the BM's Policy para 4.1.

4.2 European contact and trade in *Toi moko*

It is almost certain that the individual Māori from whom the BM's *kōiwi tangata* derive, died within the last two hundred and fifty years.

The first European known to have visited Aotearoa was Abel Tasman, the Dutch explorer, who sailed into Aotearoa's inshore waters in 1642. Tasman describes in some detail the 'native' people, whom he observes from the safe distance of his ship. Despite recording their complexion, hair, figure and attire, Tasman makes no reference to tattooing. Finding it difficult to believe that Tasman had failed to notice such facial decoration, Robley (1896) infers from this that the custom of *Ta moko* began later.

Cook records in his Journal the first “native with moko” being shot on Sunday 8 October 1769, noting that “the one side of the face was tattooed in spiral lines of a regular pattern. The navigator calls the tattooing ‘amoco’.” (Robley 1896: 4).

Starzecka (1992: 1) states that “The earliest record of the custom of preserving human heads in New Zealand, and the first instance of such a head being acquired by a European, comes from Captain Cook's first voyage.” Robley (1896: 167) relates the acquisition on 20 January 1770 by Joseph Banks of the “head of a youth of fourteen or fifteen, who had been killed by a blow that had fractured his skull.” Cook's journal entry for that day records:

‘Some of the natives brought along side in one of their Canoes four of the heads of the men they had lately kill'd, both the Hairy scalps and skin on the faces were on: Mr Banks bought one of the four, but they would not part with any of the other on any account whatever...’ (Beaglehole 1968: 237).”

Regular contact between the Māori and Europeans was not established until the first decade of the nineteenth century (Gilbert 2000: 67). Māoris were employed by European and American sealers to cut timber and repair ships, and later to replace members of the crew who had deserted. Trade was gradually established, though

"Māoris disdained trading items such as cloth, mirrors, beads and trinkets, but took a great interest in knives and guns" (Gilbert 2000: 68). Such weapons gave those who possessed them enormous belligerent advantage over tribes whose culture was still effectively neolithic.

It wasn't long before Māori discovered that Europeans would willingly trade a musket for a *Toi moko*, so...

"...before long business was booming. Māori warriors made raids on neighbouring tribes for the sole purpose of obtaining tattooed heads to trade for guns. The traders took these heads through Sydney, where they were acquired by dealers who sold them at outrageous prices to museums and private collectors in Europe. As more Māoris acquired muskets, more heads became available, and business prospered.

"The supply of guns was inexhaustible, but the supply of heads was not, and before many years had passed, the Māoris were forced to resort to desperate measures. Slaves and commoners captured in battle were tattooed and killed so that their heads could be sold." (Gilbert 2000: 68).

During the peak years of trade between 1820 and 1831, it is reckoned that hundreds of *Toi moko* were bartered (Blackburn 1999: 18) largely to satisfy the acquisitive appetites of western museums and collectors.

The trade, though beginning to decline continued for a further decade. A number of factors cause the demise of the procurement and bartering of *Toi moko*. The market – both for weapons and for heads – was becoming saturated. Public awareness of the atrocities perpetrated to create *Toi moko* led to growing public revulsion at the trade. Māori themselves were moved to discontinue "a practice which was repulsive to their instincts" (Robley 1896: 178). In 1831 Governor Darling, moved as much by growing concern at the number of weapons passing into 'native' hands as by humanitarian considerations, issued a proclamation in Sydney intended to put a stop to a trade in which that city had been the primary clearing house. His proclamation, dated 16 April 1831, in relation to the "purchasing and bringing from (New Zealand) human heads which are preserved in a manner peculiar to that country..."

"...and whereas there is strong reason to believe that such disgusting traffic tends greatly to increase the sacrifice of human life amongst savages whose disregard of it is notorious, His Excellency is desirous of evincing his entire disapprobation of the practice... as well as his determination to check it by all means in his power... His Excellency further trusts that all persons who have in their possession human heads recently brought from New Zealand... will immediately deliver them up for the purpose of being restored to the relations of the deceased parties to whom these heads belonged..." (Robley 1896: 180).

A more recent author places the trade in the context of the complex interactions between the Enlightenment project and the traditions of Māori culture:

"Pressed, painted, written about, bottled and transported, exotic plants, animals and people were taken to the explorers' homelands to be sorted, stored and exhibited in herbaria, encyclopaedia, zoos, botanical gardens and museums... where Pacific and other 'curiosities' were brought under intellectual control.

These philosophical and political encounters between Māori people and European scientists complicated affairs... Whereas European science sought to plumb the mind of God by means of maths and taxonomy, Māori philosophies described the world by means of *whakapapa* (genealogy), networks of interactive links between different beings of different kinds, and sought to influence it by means of ancestral power.

"In these early encounters the scene was set for struggles and exchanges, not just between different ways of thinking, but between Māori and European ways of being." (Salmond 1997: 32).

4.2 Kōiwi tangata in the context of the Treaty of Waitangi

The Treaty of Waitangi is the founding document of modern New Zealand. The Treaty is an agreement made between the British Crown and about 540 Māori *rangatira* in 1840.

The Treaty is an important part of the setting within which the *kōiwi tangata* came eventually to the BM and in which the Māori claim for repatriation should be assessed today, when it is now common to refer to the intention, spirit or 'principles' of the Treaty.

"The Treaty of Waitangi is of central importance to the operation of Te Papa, and to the current political and social fabric in New Zealand... The founding Te Papa Concept explicitly expresses this, noting that '*In all that it does the Museum of New Zealand Te Papa Tongarewa will honour the principles of the Treaty of Waitangi*'. The Concept also utilises a Treaty framework to ensure Te Papa's work is for the benefit of all communities... So all of Te Papa's work derives from, and must be cognisant of and reflect the Treaty of Waitangi.

"This commitment is reflected at Te Papa in relationships with tribal groups, internal policies and practices and in every facet of Te Papa's operation. This is a significant driver in Te Papa's work regarding the repatriation of *kōiwi tangata* from international institutions. Further, Te Papa conducts this work in partnership with *iwi* – Māori tribes. Te Papa is guided by *iwi* regarding the return of *kōiwi tangata* to their tribal regions, and how and when this should occur. Partnership is one of the key principles of the Treaty of Waitangi developed by New Zealand's Courts, and the Crown, and used by Māori and the Crown to work together toward mutually positive outcomes." (Te Papa 2007b: 2).

Somewhat controversially, The Treaty was signed by the principal parties in an English and a Māori version, a translation that was produced overnight by an English missionary and his son. There are differences of emphasis between the two versions. Whilst the English version guaranteed 'undisturbed possession' of all their 'properties', the Māori translation guaranteed to the Māori '*ino rangatiratanga*' (full authority) over '*taonga*' (treasures). Te Papa confirms that "for Māori and indeed Te Papa, the concept of *taonga* would include all forms of ancestral Māori and Moriori human remains". (Te Papa 2007b: 3).

5 Māori practices: *Toi moko*

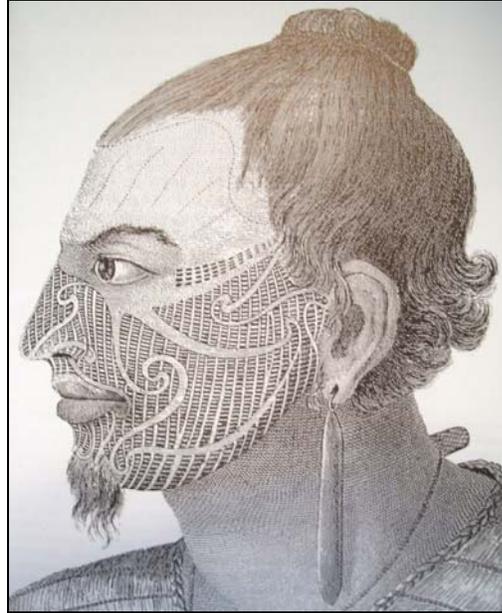
5.1 *Moko*: tattoos in Maori culture

Tattoos, involving the introduction of pigment permanently to the subcutaneous layers of human skin, are a form of facial and bodily decoration widespread in cultures across the world. For Māori people it is a traditional part of their culture, with both men and women using *moko* to enhance their status and looks. “An elegantly tattooed face was a great source of pride to a warrior, for it made him fierce in battle and attractive to women” (Gilbert 2000: 67). Women's tattoos were usually not as elaborate or as extensive as men's, with the lips outlined and pigmented blue making the woman particularly desirable.

Moko were applied not only to the face, but also to other parts of the body, including the torso, buttocks, thighs and lower leg.

Facial *moko* for Māori typically follow and enhance the contours of the face. Gilbert (2000) explains that *Moko* comprise a number of components, which are added during the life of the individual, and become unique to that person.

Fig. 5. Facial *moko* drawn by Sydney Parkinson, scientific illustrator on Cook's first voyage of discovery 1768-1771.
(From Parkinson 1773.)



Captain Cook's Journal entry for 8 October 1769 observes that “The marks in general are spirals drawn with great nicety and even elegance... no two were formed alike on close examination” (Robley 1896: 4).

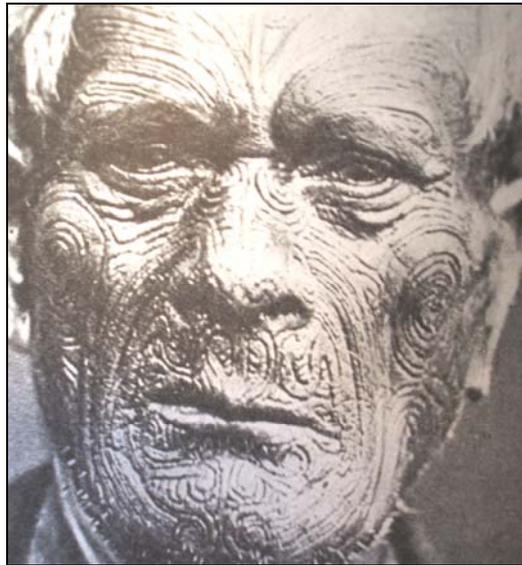
The individuality of *moko* is stressed in nineteenth century accounts: a person's *moko* was integral to their identity and was a form of personal signature. Robley (1896) provides accounts of Māori chiefs being able to draw their own facial *moko* accurately, as well as those of close kin, in a way that clearly represented them as individuals.

Exactly what can be 'read' from an individual's *moko* is, however, highly controversial. The interpretation of the motifs used range from the tribal and heraldic to the personal and decorative. “...at this distance in time the possibility of firmly establishing a person's identity, or even his tribal affiliations from his *moko* is doubtful. The general opinion among scholars seems to be that whatever specific meaning *moko* may have had in the past, the key to understanding of it has effectively been lost” (Starzecka 1992: 1-2).

5.2 *Ta moko*: the Māori process of tattooing

Māori tattooing was *tapu*. It was also intensely painful: undergoing *Ta moko* was a test of character. A warrior should neither flinch nor utter a sound as the flesh of their face or body was literally carved. The extent of a man's *moko* was not only testimony of their status and feats in battle, but also of their capacity to withstand the tattooing process itself.

The oldest form of *moko* involved the use of small, flat chisels (represented in the collections of the BM and illustrated in Robley 1896: 48) called *uhi*. Sometimes the cutting edge was serrated. "The incision into the flesh was made by applying the edge to the skin, and driving it in by means of a smart tap applied to the handle with a small light mallet, thus causing a deep cut in the flesh" (Robley 1896: 49). The pigment was made from charcoal, which "under the skin... looks bluish black" (Robley 1896: 50). The chisel itself was dipped in pigment at the time of cutting, and a piece of flax, dipped in pigment, was "applied to the incision as soon as it was made" (Robley 1896: 49).



After European contact and exchange had introduced metal tools into Māori culture, Robley (1896: 50) reports that a less brutal method of tattooing began to be practiced. "...later on the system of pricking was introduced and allowed the artist far more scope for his elaboration of detail."

Both forms of *moko* are represented in the *Toi moko* held by the BM (see 3.1 above).

5.3 *Toi moko*: the Māori process of making dried heads

Robley (1896: 148 ff) provides a reasonably complete account of the process of 'embalming', which was *tapu* in Māori culture. The 'curing' process necessarily involved the complete dehydration of the head, but in a way that would minimise distortion of the features of the face. A large hole cut at the base of the skull facilitated the removal of the brain, the eyes were extracted, the sockets filled with flax and the lids sown together. Set up on poles, the heads were alternately exposed to the heat of the sun and to the fumes of a wood fire, from which "the pyroligneous acid helped to preserve the tissues and protect them from the ravages of insects."

5.4 The cultural context of *Toi moko*

In Māori culture, *Toi moko* embody the person and spirit of the departed. *Toi moko* were made not merely to keep the memory of a dead person alive, but also to enable the deceased continued presence amongst the living.

“To understand the full significance and importance of *mokomokai* for the Māori, it has to be remembered that both the tattooing and the head preservation were extremely *tapu*. *Tapu* is a complex concept but in essence it means the state of being under the influence of the gods (Hanson and Hanson 1983: 50); concomitant ritual regulations govern people's behaviour, as *tapu* is contagious and potentially dangerous. To break *tapu* is to be deprived of the gods' protection and to put one's very existence in jeopardy... The head is the most *tapu* part of the body, and among all the circumstances of existence the events connected with death and burial are amongst the most *tapu*.” (Starzecka 1992: 5).

In relation to the seven BM *Toi moko*, three cultural categories of *Toi moko* must be considered. The original systems of belief outlined above were central to the way in which Māori people treated *Toi moko* from their own *iwi*, and informed their very different approach to the *Toi moko* of an enemy tribe. These I have distinguished respectively as Kin and Foe *Toi moko*. After European contact, a third category of Trade *Toi moko* emerged.

(i) **Kin** *Toi moko*

Making *Toi moko* “was among the Māoris an acknowledgement of the nobility of its owner: it served to keep alive the memory of the departed” (Robley 1896: 131).

The head of a deceased chief or a family member became the visible sign of their continued presence amongst the tribe. Such *Toi moko* were carefully kept, and “placed in a secluded spot; ...they were brought forth and exhibited only on great occasions... or at a gathering of the tribe” (Robley 1896: 134). The *Toi moko* of loved ones of more modest rank were treated with no less esteem: “...it was no uncommon thing to embalm in this way the head of a favourite wife or child. The heads of these and of other relatives were brought out to be honourably mourned over, and on these occasions they were... placed in a conspicuous position. In former times the principal wife of a deceased chief would have her husband's head cut off and dried, and also sleep with it by her side⁴.” (Robley 1896: 147).

(ii) **Foe** *Toi moko*

The heads of enemies were taken as trophies. Priority was given to collecting the heads of chiefs and notable warriors slain in battle, since these provided evidence of valour of the conquering tribe.

“After the battle the preserved heads were carried home where they were displayed, impaled on short stakes stuck in the ground, as an object of derision and contempt to be abused and insulted, and as a source of torment to prisoners. When the victors' thirst for revenge was satisfied, the heads were put away until the next important occasion when they would be displayed again for

⁴ There is an echo of this practice in a grisly piece of English history. It is recorded that the grieving widow of Sir Walter Raleigh kept his embalmed head in a velvet purse by her bedside after his execution in 1618, until her death 29 years later. The head was eventually reunited with his body where it is buried at St Margaret's Chapel, Westminster.

another bout of insults and abuse accompanied by reminiscences of military exploits." (Starzecka 1992: 1).

Consequently Māori went to great lengths to prevent such a disaster happening to them or their kin, removing the heads of both dead and wounded and guarding them lest they be subjected to such a humiliating fate at the hands of the enemy.

Foe *Toi moko* sometimes played a more positive role in resolving conflict between warring *iwi*. Robley (1896: 136) relates that "At the conclusion of war, an exchange of heads was an indispensable article in the treaty of peace" though Vayda 1960 suggests that such behaviour may have been exceptional, since peace ceremonies were uncommon amongst the Māori.

(iii) **Trade** *Toi moko*

The emergence in the first three decades of the nineteenth century of a flourishing trade in *Toi moko* between Māori and Europeans and Americans has been described above (4.2). It had a profound and lasting impact on the culture and processes surrounding *Toi moko*.

Initially Māori traded 'genuine' foe *Toi moko* (no Māori would trade kin *Toi moko*). But the supply of heads from captured warriors and slain chiefs could not keep up with demand (Palmer and Tano 2004: 1). As the supply of genuine *Toi moko* became scarcer, the commercial market in *Toi moko* generated a grisly counterfeit human merchandise. Slaves were tattooed and murdered because their head was more valuable than their working body (Lewis: 1982: 93).

"Many a poor slave suffered a horrible fate – mokoed only to be murdered for his head... the unhappy slave was now forcibly tattooed and when his scars had healed he was tomahawked, his head dried, and then sold to the ever ready trader." (Robley 1896: 170).

Moreover, for heads on which the *moko* was either indistinct or not as impressive as the market demanded, *post mortem* enhancement would exact a higher price from the ignorant and gullible buyer. The *moko* on such heads were clearly as culturally debased as the currency they had become (see also 3.1 above).

Ironically the trade contributed to the demise of the practice of *Toi moko*. Such was the fear that being the proud possessor of a finely tattooed head would make you a natural target for the trade, that the art of *moko* declined and Māori ceased to preserve the heads of friends lest they be taken and sold (Robley 1869: 170).

6 Public benefit residing in the *kōiwi tangata* in the BM

6.1 Introduction

The public served by the British Museum is here interpreted within the context of the BM's mission to engage with wider society, in its many forms and at many levels. The sense of the BM as a 'universal' museum is expressed as much through its relationships with communities worldwide as through its stewardship and interpretation of a global patrimony.

'Benefit' is here taken to encompass 'value' to the constituencies described below.

6.2 Value to the Māori

Kōiwi tangata are the remains of Māori ancestors and are deeply *tapu* in Māori tradition. They form an integral part of the culture and beliefs of living Māori.

"It is important to understand that Māori *kōiwi tangata* held within overseas collections continue to contain *mātauranga Māori* (Māori knowledge), which remains unbroken despite the removal of these ancestral remains from Aotearoa. This information can only belong to Māori people themselves and is part of this living, vibrant culture." (Te Papa 2007b: 4)

Te Papa Tongarewa, which acts with the consent of Māori as the repository and conduit for repatriated *kōiwi tangata*, upholds and promotes the "principle of *Mana Taonga*, to acknowledge the spiritual and cultural connections communities have to *taonga*..." (Te Papa 2007a), which includes *kōiwi tangata* (Te Papa 2007b).

"Te Papa does not recognise *kōiwi tangata* as being artefacts or collection items. They are *tūpuna*/ancestors, and as such have permanent ties to their descendants and descendant communities." (Te Papa 2007b: 4)

That cultural value is not served by the continued retention of the *kōiwi tangata* in the BM, regardless of whether they are in an off-site store or in the Bloomsbury building. The principle of *Mana Taonga* cannot apply at a distance of 14,000 miles. The value of the *kōiwi tangata* to the Māori people can only be realised by their return to New Zealand where modern Māori can be reunited with their ancestors through the principle and practice of *Mana Taonga*.

Furthermore, there is an indissoluble link in the Māori creation myth between the ancestors and Aotearoa, in which the cycle of life, death and return to their own earth should not be broken.

6.3 Value to the study of social anthropology

Viewed as a material resource for scholarly study, the *kōiwi tangata* held in the BM are uniquely valuable to furthering our understanding of Māori customs and traditions in the context of European contact in the nineteenth century.

Following best practice, the BM can reasonably be expected to consult Te Papa to obtain the consent of Māori representatives before allowing such research to proceed. Particular avenues for research, prior to return, might include:

- Methods of *ta moko* and *post mortem* enhancement;
- Forensic investigation of the implements used to reduce the seven cut-and-break *kōiwi*.

Relevant expertise for conducting such research in partnership with the BM is, the author is informed (Te Papa 2007b: 2), to be found in the ESR (Environmental Science and Research Ltd), a New Zealand-based independent research organisation⁵.

6.4 Value to the study of bioanthropology

The preserved soft tissue and the bones of the *kōiwi tangata* held in the BM are likely to be a rich source of bioanthropological data, not least for studies of human diversity in general and the diaspora of Polynesian colonists in particular. At 3.2 above the question of human attribution is raised in relation to the *kōiwi* bone fragments. Forensic analysis will establish the human origins of the bone fragments and the age of all the *kōiwi tangata*. I understand that a separate report has been commissioned from an expert in this field, so further comment from me on these aspects should be superfluous.

On the ethics of process, however, I would offer the following observations. Following best practice, the BM can reasonably be expected to consult Te Papa to obtain the consent of Māori representatives before allowing such research to proceed. Te Papa does not currently carry out any form of invasive research including scientific testing of *kōiwi tangata* (Te Papa 2007a).

Notwithstanding that ethical imperative, Te Papa concedes the right of the holding institution to carry out research that may entail sampling prior to repatriation. "...in those cases where institutions decide to proceed with sampling, then Te Papa may consider engaging the services of the Institute of Environmental Science & Research Ltd... so that a collaborative approach can be taken and the results can be maximised for all parties" (Te Papa 2007a: 3-4). Liaison with the Natural History Museum, which has expertise in this area of study, might also be beneficial, and is likely to be acceptable to Māori representatives (Te Papa 2007b: 1).

6.5 Value to the museum visitor

The ethics of displaying human remains in museums is a sensitive subject that is the subject of continuing debate. Undoubtedly there is a public appetite for exhibited human remains, from skeletons exhumed during archaeological excavations in the UK to ancient mummies from the Nile Valley. Nonetheless, serious questions are raised about the ethics of satisfying (or indeed of refusing to satisfy) that appetite. There is a general ethical presumption against the display of the remains of people when such unrestricted public access would be offensive to lineal or cultural descendants (see Annexes 1a, 1b and 1e).

In relation to the Maori *kōiwi tangata* held at the BM, it would be unethical – indeed unthinkable – to display any of the remains without the willing consent of the Māori source community. Since *kōiwi tangata* are deeply *tapu* in Maori culture (see 5.4 above), it is inconceivable that their consent would be given. Even in the

⁵ <http://www.esr.cri.nz/>

late nineteenth century the display of a *Toi moko* in South Island's Canterbury Museum, Christchurch was stopped, because it "gave offence to some resident Maoris", and the curator was instructed that "the offending exhibit" should be "put out of sight" (Robley 1896: 181-182).

In the absence of information to the contrary, I believe that none of the *kōiwi tangata* that are claimed has ever been publicly exhibited by the BM. Nor does Te Papa exhibit *kōiwi tangata* in its safekeeping.

One can only conclude that the public value of these *kōiwi tangata*, in the sense of public access through display, is nil, since they cannot be displayed without causing deep offence and lasting damage to the international standing of the BM.

7 Discussion and conclusions

7.1 Consent

The issue of whether human remains that entered UK museums occurred with or without the consent of the source community is of fundamental importance in determining a claim for repatriation. This is a point made strongly in the recommendations to the Secretary of State by the DCMS Working Party on Human Remains:

"No institution shall retain, or perform any other act in relation to, human remains where it knows or has compelling reason to believe:

- that the original removal of the remains occurred without the consent of the deceased person or that person's close family, and
- that the present retention or other proposed act is without the consent of:
 1. close family or direct genealogical descendants of the deceased person; or
 2. where no such family or descendants are identified, those who have within the deceased person's own religion or culture a status or responsibility comparable to that of close family or direct genealogical descendants." (DCMS 2003: 170)

The historic narrative that describes the way in which *Toi moko* left New Zealand and came to Britain is summarised at 4.2 and 5.4 above. At one level it can be argued that *Toi moko* were willingly traded, providing compelling evidence of 'consent'. However, such a construction on the events that enabled the trade to occur would be wilfully to ignore the inter-tribal violence that fed the trade.

The seven Māori *Toi moko* in the BM almost certainly include early Trade *Toi moko*, and are thus likely to comprise heads that started as Foe *Toi moko*. The source *iwi* from whom such trophies were taken not only never consented, but suffered as a result an appalling violation of their beliefs as well as straightforward bloody violence.

No-one would be taken seriously today who argued that the sale of slaves from West Africa more than two centuries ago was done with their consent merely because their Black brothers colluded willingly in the trade by procuring the human

merchandise. By analogy, the fact that one Māori tribe traded willingly the *Toi moko* of their vanquished (or enslaved) brother should not obscure the underlying dispossession and lack of consent of the source *iwi*.

The circumstances surrounding the removal and export of the nine bone fragments are unclear. However, in terms of Māori cultural practices and beliefs, all *kōiwi tangata* are *tapu*, so it is inconceivable that such remains arrived in the BM with the consent of the source *iwi*.

TEST OF 'CULTURAL IMPORTANCE' (BM 2006: 7)

Since all sixteen of the *kōiwi tangata* in the BM were removed without the consent of the source *iwi*; they therefore meet BM Policy criterion 5.14.4 (a).

7.2 Post mortem modification

All the *kōiwi tangata* in the BM have been modified in some way after death. The preparation of the BM's seven *Toi moko* inevitably involved extensive *post mortem* modification of the kind described above (see 5.3), regardless of whether they show signs of *moko* enhancement *post mortem* (see 3.1). All the nine *kōiwi* bone fragments have been changed, *post mortem* (see 3.2). The significance of this observation must be analysed in the context of both the BM's Policy on Human Remains and Te Papa's policy framework.

By contrast, in the BM's collection of Māori items there are 22 objects fashioned from human bone, for utilitarian or ornamental purposes, such as flutes, *tiki* pendants and fish-hooks. Te Papa does not claim these items: "...we are only requesting the repatriation of those *kōiwi tangata* ...which are unmodified since death, as per our government mandate" (Bennington 2007: 2). These items are unambiguously defined and are uncontested. (It should, however, be noted that such items were made by one *iwi* tribe as a form of vengeful humiliation against a vanquished hostile tribe, their *post mortem* modification and subsequent trading a deliberate torment and humiliation to the source *iwi*).

The sixteen *kōiwi tangata* in the BM that are the subject of the claim are modified in a quite different sense from this. Te Papa (2007b: 1) have offered the opinion that the nine fragments of *kōiwi* "would more properly be called 'worked bone'. They are not implements". The fragments of cranium show signs of cremation (see 3.2).

Te Papa's policy is unequivocal on the status of *Toi moko* which may have been subject to *post mortem* 'improvement'. "As per Te Papa's mandate from the New Zealand Government and *Kōiwi Tangata* Policy, Te Papa only pursues repatriation claims for human body parts of Maori or Moriori origin... This includes all *Toi moko* which are tattooed, preserved heads of Māori origin – even those which display *post mortem* tattooing" (Te Papa 2007a: 1).

TEST OF 'HUMAN REMAINS THAT HAVE BEEN MODIFIED FOR A PURPOSE OTHER THAN MORTUARY DISPOSAL' (BM 2006: 5)

Since none of the sixteen *kōiwi tangata* in the BM show any evidence of modification for making into a usable artefact, it is reasonable to conclude that clause 5.11, which excludes modified remains from consideration for repatriation, does not apply in this case.

7.3 Applying the concept of mortuary disposal

The *kōiwi* bone fragments, would, if left undisturbed, have been part of a mortuary ritual, in the sense in which such practices are commonly understood: the laying to rest, in a reverent manner, of the mortal remains of the dead. Best (1914: 110-111) describes the circumstances under which *iwi* would bury their dead (when on their own territory) or cremate them when in open country or under circumstances when they were vulnerable to enemy misappropriation (for making into fish-hooks, etc). The two cranium fragments of *kōiwi* are clearly in this category, since they show signs of cremation (see 3.2 above).

The status of the other seven fragments of *kōiwi*, which have been deliberately cut and broken (see 3.2 above) is more complex. Following Maori tradition, these *kōiwi* would have been laid to rest. However, the evidence of the cut-and-break treatment to which they have been subjected is strongly indicative of misappropriation by hostile *iwi*: Te Papa's opinion on the BM *kōiwi*, based on photographs supplied by the author, is that these are inconsistent with Māori mortuary practice (Te Papa 2007b). Te Papa's inference is quite the opposite, and that these were destined to be made into "fish hooks and the like". However, as stated in para. 3.2 above, Te Papa agrees that none of the *kōiwi* has yet been fashioned into an artefact: their status can therefore be construed as transitional between a *tapu* mortuary practice of the kin *iwi*, and a process intended to denigrate *tapu* by hostile *iwi*. This transitional status does not exclude the seven cut-and-break *kōiwi* from their claim under Te Papa's policy for repatriation.

As to the *Toi moko*, in relation to "mortuary disposal" (BM 2006: 2), there is dissonance between the BM's definition, and the purpose and treatment of *Toi moko* in Māori society. The BM's Policy is framed around the purpose of 'laying to rest of human remains that is specific to a particular cultural (sic) or society' (BM 2006: 2). In the sense that the term 'laying to rest' is commonly understood in the West, it is not strictly applicable to *Toi moko*; the practices and beliefs that form the cultural context for their creation and the part they played in the life of the *iwi* cannot be described as 'at rest' (see 5.4 above).

TEST OF 'MORTUARY DISPOSAL' (BM 2006: 5)

The evidence points strongly towards the two *kōiwi* crania (BM Oc1895.-.630 and 631) meeting this criterion, because they show evidence of cremation.

The other seven *kōiwi* bone fragments that exhibit signs of cut-and-break reduction (BM Oc1895.-.396-7, 627-9, 633-4) are in a transitional state between mortuary disposal and being refashioned into Māori artefacts.

The seven *Toi moko* fit less easily into the BM definition of mortuary disposal: because it is unlikely that the Policy was intended to exclude such human remains, it is recommended that the BM should review whether the drafting as it stands is appropriate to remains of this kind.

7.4 The public benefit

The benefit – or as it has been interpreted in this assessment: the value – of the *kōiwi tangata* in the BM's possession has been assessed in Section 6 above. In summary, the value to the Maori is deeply cultural, spiritual and immeasurable; to the

anthropologist they are an irreplaceable scholarly resource; and to the museum visitor, their value is for all practical purposes nil.

TEST OF PUBLIC BENEFIT (BM 2006: 7)

All sixteen *kōiwi tangata* in the BM are *tapu*, the skeletal remains and *Toi moko* having equal cultural importance as Māori ancestors and accordingly both should be accorded equal respect.

Therefore the significance of the sixteen *kōiwi tangata* on the grounds of Cultural Continuity and Cultural Importance to the Māori is such that the benefits of repatriation in my view overwhelmingly outweigh those of retention.

Te Papa recognises the right of holding institutions to carry our research on *kōiwi tangata* prior to return, so there is an opportunity for the BM to work with Te Papa to answer the kind of research questions outlined above (see paras 6.3 and 6.4) is not precluded by a decision by the Trustees to return the claimed *kōiwi tangata*. Managed sensitively and appropriately, a research programme would not be controversial, at least as far as Te Papa is concerned.

There is a public benefit that would flow from the BM's commitment to establishing a relationship with Maori people that is based on mutual respect and trust:

“Repatriation also offers some way forward towards reconciliation for iwi and for reconnections to occur. It also provides an opportunity for museums to work as advocates for understanding and interpreting cultures by being part of this process.” (Te Papa 2007b: 4).

Acknowledgements

I am greatly indebted to Natasha Smith at the BM for her painstaking assistance with examining the *kōiwi tangata* at the BM and for facilitating access to source works in the BM Ethnography Library. Natasha Barrett at Te Papa for her inexhaustible patience in answering my questions on matters relating to Te Papa's policy as well as the complexities of Māori culture and terminology. I am also indebted to Te Papa for permission to use images of the remains of Māori ancestors for the purpose of illustrating the evidence from which I have drawn some of my conclusions.

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30 April 2007

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**Digest of national and international
Codes, Declarations and Conventions
related to human remains in museums**

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Annex 1a

Museums Association Code of Ethics for Museums (2002): paragraphs 6.16, 3.15, 7.4, 7.5 and 7.7 are relevant to the treatment of human remains and engagement with source communities.

Annex 1b

International Council of Museums Code of Ethics for Museums (2004): paragraphs 2.5, 3.7, 4.3, 6.2, 6.3 and 6.7 are relevant to the treatment of human remains and engagement with source communities.

Annex 1c

World Archaeological Congress Archaeological Ethics and the Treatment of the Dead (1989). 'The Vermillion Accord': a statement of principles agreed by archaeologists and indigenous peoples at the WAC, held at Vermillion, South Dakota, USA on the treatment of human remains.

Annex 1d

United Nations, UNESCO and UNIDROIT statements on the treatment human remains, indigenous communities and the obligations of science (1994-99).

Annex 1e

Museum Ethnographers' Group (UK) Guidelines on the Management of Human Remains in Ethnographical Collections (1994). Professional guidelines concerning the storage, display, interpretation and return of human remains in ethnographical collections in the United Kingdom.

**Code of Ethics for Museums
Museums Association, 2002**

This is the latest iteration of codified ethical standards published by the Museums Association (MA) over the last 25 years. It represents the consensus of museum practitioners and their governing bodies in the UK. The underpinning rationale is expressed at the beginning of each section in terms of the standards that society can expect of museums in the UK.

The following sections are relevant to the treatment of human remains, engagement with source communities (and their descendants) and the return of cultural material:

Society can expect museums to...:

...hold collections in trust on behalf of society

1 Museums behave as ethical guardians as well as owners of collections.

...encourage people to explore collections for inspiration, learning and enjoyment

3.15 Consider restricting access to certain specified items where unrestricted access may cause offence or distress to actual or cultural descendants.

...consult and involve communities, users and supporters

4 Museums seek the views of communities...Museums engage with changing needs and values.

4.3 Work in partnership with others. Involve partners in decision-making. Treat partners with respect. Exercise the authority vested in the museum responsibly and guard against the unwitting or deliberate misuse of power.

...safeguard the long-term public interest in the collections

6 There is a strong presumption against disposal out of the public domain. Disposal should be undertaken within a strategic framework..., as a means of returning an item to its rightful owner...

6.16 Dispose of human remains with sensitivity and respect for the beliefs of communities of origin.

...recognise the interests of people who made, used, owned, collected or gave items to the collections

7 Museums try to develop constructive relationships with people who contributed to collections, with representatives of these people, their heirs and descendants, balancing responsibilities to a range of stakeholders.

7.4 Inform originating communities of the presence of items relevant to them in the museum's collections, wherever practical.

7.5 Respect the interests of originating communities with regard to elements of their cultural heritage present or represented in the museum. Involve originating communities, wherever practical, in decisions about how the museum stores, researches, presents or otherwise uses collections and information about them.

7.7 Deal sensitively and promptly with requests for repatriation both within the UK and from abroad...taking into account: ...the interest of actual and cultural descendants; the strength of claimants' relationship to items; their scientific, educational, cultural and historical importance; their future treatment.

Code of Ethics for Museums

International Council of Museums, 2004

The *ICOM Code of Ethics for Museums* was first published in 1986. This version results from a thorough review of Code in the light of contemporary museum practice. It is based on key principles of professional practice. Its ethos continues to be that of service to society, the community, the public and its various constituencies, and the professionalism of museum practitioners.

The *Code of Ethics for Museums* provides a means of professional self-regulation in a key area of public provision where legislation at a national level is variable and far from consistent. It sets minimum standards of conduct and performance to which museum professional staff throughout the world may reasonably aspire as well as providing a statement of reasonable public expectation from the museum profession.

The following sections are relevant to the treatment of human remains, engagement with source communities (and their descendants) and the return of cultural material:

2.5 Culturally Sensitive Material

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 known.

3.7 Human Remains and Material of Sacred Significance

Research on human remains and materials of sacred significance must be accomplished in a manner consistent with professional standards and taking into account the interests and beliefs of the community, ethnic or religious groups from whom the objects originated where these are known.

4.3 Exhibition of Sensitive Materials

Human remains and materials of sacred significance must be displayed in a manner consistent with professional standards and, where known, taking into account the interests and beliefs of members of the community, ethnic or religious groups from whom the objects originated. They must be presented with great tact and respect for the feelings of human dignity held by all peoples.

6.2 Return of Cultural Property

Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

6.3 Restitution of Cultural Property

When a country or people of origin seek the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country's or people's cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to co-operate in its return.

6.7 Use of Collections from Contemporary Communities

Museum usage of collections from contemporary communities requires respect for human dignity and the traditions and cultures that use them. Such collections should be used to promote human well-being, social development, tolerance, and respect by advocating multi-social, multicultural and multilingual expression.

'The Vermillion Accord'
Archaeological Ethics and the Treatment of the Dead
World Archaeological Congress

A statement of principles agreed by archaeologists and indigenous peoples at the **World Archaeological Congress** held at Vermillion, South Dakota, USA in 1989.

1. Respect for the mortal remains of the dead shall be accorded to all irrespective of origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of the relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
6. The express recognition that the concerns of various ethnic groups, as well as those of science, are legitimate and to be respected will permit acceptable agreements to be reached and honoured.

Ethical Principles
World Archaeological Congress

A statement of ethical principles agreed the **World Archaeological Congress** in 1989.

This acknowledges, *inter alia*:

- the importance of indigenous cultural heritage, including human remains.
- that indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage

International declarations related to the treatment of human remains

UNESCO: *Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples* - Human Rights Commission 1997

These recommend, *inter alia*:

- the establishment of programmes enabling inventories of collections of sacred objects and other aspects of indigenous heritage in museums worldwide
- a mediation mechanism to facilitate applications from indigenous peoples for the return of their cultural property across international borders
- an international trust fund to act as global agent to protect and administer rights to the use of indigenous people's heritage

No reference is currently made to these principles in UK legislation or museums ethical guidance, as far as I am aware.

UNIDROIT: *Convention on the Return of Stolen or Illegally Exported Cultural Objects* 1995

This Convention requires signatory states to return all material shown to have been stolen. The UK Government is not signatory and has indicated its intention not to become signatory. Nonetheless, UK Museums are expected under the terms of the MA Code of Ethics for Museums to comply with the terms of the UNIDROIT Convention. The UNIDROIT Convention cannot be invoked retrospectively.

United Nations: *Draft Declaration on the Rights of Indigenous Peoples* 1994/45

This Declaration expresses the right of indigenous peoples to practise and revitalise their culture, recognising that material culture is part of the cultural and intellectual property of indigenous people. It also declares, *inter alia*, that indigenous peoples have the right to:

- maintain, protect and have access, in privacy, to their cultural sites
- control the use of ceremonial objects
- have human remains repatriated to them (Article 13)
- take special measures to control and protect the scientific and other manifestations of their culture, including human and other genetic resources

No reference is currently made to this Declaration in UK legislation or museums ethical guidance, as far as I am aware. Since the UK is a permanent Member of the United Nations, it could be argued that the Government should set an example for others to follow.

UNESCO World Conference on Science: *Science for the 21st Century - a New Commitment* 1999

This conference, held in Budapest in 1991, published a *Draft Declaration on Science and the Use of Scientific Knowledge*. Whilst the *Declaration* asserts the universality of science, it also:

- *Recalls* that scientific research and the use of scientific knowledge should respect human rights and the dignity of human beings
- *Appreciates* the importance of traditional and local knowledge and the need to safeguard and make better use of it *Underlines* the need for a strong commitment of political, economic and social partners to science, as well as an equally strong commitment of scientists to the well-being of society.

Museum Ethnographers' Group Guidelines on the Management of Human Remains in Ethnographical Collections in United Kingdom Museums

Adopted by MEG in 1991, revised 1994, published in the *Journal of Museum Ethnography* No 6 1994.

Introduction

- 1.1 Human remains are defined as including both prehistoric and historic biological specimens as well as artefacts (i.e. items made from human remains which have been altered by deliberate intent) in ethnographic collections in British museums. MEG acknowledges that other groups of museum professionals have overlapping areas of interest in human remains as defined above.
- 1.2 Different practices have commonly been applied in the curatorship of human remains from western and non-western societies. However, not all human remains in museums are problematic.
- 1.3 A number of interested parties claim rights over human remains. These include: actual and cultural descendents, legal owners and the worldwide scientific community. Governing bodies, museum curators and others have to evaluate these potentially competing interests and acknowledge that ideas about the legal and moral aspects of holding many sorts of material are complex and may not always coincide.
- 1.4 Human remains in museum collections were often acquired under conditions of unequal relationships. Ethnic and minority peoples are now taking back control over the preservation and interpretation of their heritage. This is part of the growing politicisation and cultural recuperation which is taking place amongst indigenous peoples in various parts of the world. The claim for the return of human remains may in some circumstances be a method of political self-assertion. In order to take these issues forward it is necessary to open dialogue between museum professionals and indigenous peoples from a position of equality.
- 1.5 Attitudes to death and human remains differ from one culture to another, and change within cultures over time. Curators need to address cases both in the light of the present-day situation and in a full and deliberate consciousness of all the historical circumstances. The question of human remains in museums is a developing issue. Therefore, policies made now may need to be reviewed in the future.
- 1.6 Requests concerning the appropriate care or return of particular human remains must be resolved by individual museums on a case by case basis. This will involve the consideration of ownership, cultural significance, the scientific, educational and historical importance of the material, the cultural and religious values of the interested individuals or groups, and the strength of their relationship to the remains in question.

Collections management

- 2.1 Museum collections are in the public domain and bona fide enquirers have the right of access to data on holdings.
- 2.2 However, it may be appropriate to restrict access to certain specified sacred items where unrestricted access may cause offence or distress to

actual or cultural descendants. This may include the provision of separate storage facilities.

- 2.3 Governing bodies and curators should consider all the ethical and legal implications before continuing the active or passive acquisition of human remains.

Display and interpretation

- 3.1 Curators should take a proactive rather than reactive position with regard to the display of human remains. Existing display arrangements should be evaluated to consider whether the current treatment is likely to cause offence to actual or cultural descendants.
- 3.2 The process of preparing a display is a subjective editorial activity. Curators should inform themselves of the concerns of indigenous peoples and where practicable should seek their involvement through consultation.
- 3.3 Exhibitions in museums carry authority. Curators should be aware of the likely public effects of exhibitions. They should evaluate whether an exhibition is reinforcing existing cultural stereotypes or broadening an understanding of a particular group of people in a way which is relevant to the present day.

Requests for the return of human remains

- 4.1 All requests for the return of human remains should be accorded respect and treated sensitively.
- 4.2 It is the responsibility of the curator to assess the validity of the person or group making requests and to establish the credentials of their claim. Some embassies and high commissions and overseas national museums already have established networks which can provide advice.
- 4.3 Long-term loans are considered to be an inappropriate method of responding to requests for the return of human remains.
- 4.4 The rules and governance of the museum or institution will dictate the parameters for any action.
- 4.5 Legal ownership of requested items needs to be established before any transfer can be considered.
- 4.6 Before any decision is made the curator should establish and inform the governing body of the long-term fate of the items under consideration. This may include either the transfer to a museum or a local keeping place or the return to the community for customary disposal such as cremation or burial.
- 4.7 The cost and means of return should be considered before a decision is taken.
- 4.8 In those cases where a museum is free to dispose of items the Museums Association's codes of ethnics and the Museums and Galleries Commission Guidelines for a Registration Scheme in the United Kingdom should be followed.
- 4.9 Before any transfer takes place items should be fully documented. A copy should remain in the museum and a copy should be transferred with them.

The Treaty of Waitangi: a short historical note

By the late 1830s, growing numbers of British migrants were arriving in New Zealand. To begin with, the largely unregulated activities of 'frontier' life held sway, with unruly behaviour reported amongst some settlers, and opportunistic deals for land widespread with Māori. Abandoning an initial, somewhat laissez faire attitude, the British government eventually decided to annex the country to 'protect' Māori interests and regulate British subjects. Amidst signs that France also had its Gallic eye on New Zealand, Her Britannic Majesty's intervention would also secure commercial interests for a nation whose seat of government lay on the Thames, some 12,000 miles distant.

The Treaty of Waitangi is the founding document of modern New Zealand. The Treaty is an agreement made between the British Crown and about 540 Māori *rangatira* (chiefs). It is named after the place in the Bay of Islands where it was first signed, on 6 February 1840.

The Treaty, which was drafted and signed both in an English and a Māori version, "is a broad statement of principles upon which the British and Māori made a political compact to found a nation-state and build a government in New Zealand." However, there are discrepancies between the two language versions of the Treaty, which has three articles. The English version states that:

- (i) Māori ceded to Britain the sovereignty of Aotearoa;
- (ii) Māori gave the Crown an exclusive right to buy land that iwi wished to sell (in return the Māori were guaranteed full rights of ownership of their lands, forests, fisheries and other possessions);
- (iii) Māori would have the rights and privileges of British subjects.

A British missionary worked through the night on 4 February 1840 to translate the English draft into Māori. The translation contained important differences from the English original.

"Most significantly, in the Māori version the word 'sovereignty' was translated as '*kawanatanga*' or 'governance'; some Māori believed they gave up the government over their lands but retained the right to manage their own affairs. The English version guaranteed 'undisturbed possession' of all their 'properties', but **the Māori version guaranteed '*tino rangatiratanga*' (full authority) over '*taonga*' (treasures, not necessarily tangible)**. Māori understanding was at odds with that of those negotiating the Treaty for the Crown, but Māori society valued the spoken word, and explanations at the time were probably as important as the document." (NZ History 2007⁶, my emphasis).

⁶ <http://www.nzhistory.net.nz/politics/treaty/the-treaty-in-brief>

“Hobson and others stressed the Treaty’s benefits while playing down the effects of British sovereignty on *rangatiratanga* (chieftainship or authority). Reassured that their status and authority would be strengthened, many chiefs supported the agreement. About 40 chiefs, starting with Hone Heke, signed the Māori version of the Treaty on 6 February. By September that year, another 500 had signed copies of the document that went around the country. Some signed while remaining uncertain; others refused, or had no chance to sign. Almost all signed the Māori text. The Colonial Office in England later declared that the Treaty applied to Māori tribes that had not signed. Sovereignty was proclaimed over the country on 21 May 1840.” (NZ History 2007).

40 Māori *rangatira* signed two days later on 6 February. On 21 May 1840, British sovereignty over all of New Zealand was proclaimed (some months before a further 500 chiefs signed the Māori version of the Treaty, some reportedly with a degree of uncertainty. Many other *rangatira* refused to sign or had no opportunity to do so.

Whilst the Treaty is not recognised in New Zealand’s modern domestic legislation, it nonetheless has currency in New Zealand today. The Treaty is explicitly referred to in several Acts of Parliament, and in 1975 the Waitangi Tribunal was established to determine the meaning of its provisions and to investigate alleged breaches of the Treaty by the Crown. Māori have lodged more than a thousand claims with the Tribunal, some of which have been settled.

Today the Treaty underpins the philosophy and working practices of Te Papa Tongarewa, which is committed to honouring the founding principles of the Treaty.