Excavations in Mamilla Cemetery: Ethical and Moral Aspects[[1]](#footnote-1)

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1.

This article seeks to examine the complex encounter between two parties: archeologists interested in performing professional activities in a cemetery and those who have a connection to the cemetery, including the individuals whose remains are interred there.

A discussion of this encounter should lead to conclusions regarding three different stages of archeological activity. The first is the planning stage, which raises the question as to whether it is permissible to excavate in a site that is a cemetery. The second is the implementation stage: in our case—excavation in a cemetery, and particularly in graves containing human remains. The third is the stage of displaying the findings, whether in a museum or in another public setting. The discussion here centers on the public display of human remains. In all these stages, we are interested not in the permission granted by any particular authority, but in the justification for archeologists to excavate in a cemetery, expose human remains and remove them from burial, displaying some or all of these remains in public.

Any justification is based on a given system of norms intended to guide behavior in accordance with specific values. Naturally, a given set of norms may justify one of the relevant actions, just as it may decline to grant justification, or even categorically deny justification, to that activity. In the case of justification for performing archeological activities in cemeteries, it is appropriate to examine the conclusions reached by each of three key systems: law, professional ethics, and morality. We will present each of these briefly, and then explain why other systems do not enjoy such a central status.

The legal system of a state defines a boundary which, as citizens of that state, we are prohibited to cross. If we are suspected of being present on the wrong side of the boundary, institutions of the state (in most cases, the police) will force us to leave move back into the confines of the boundary. If it is suspected that we were present outside the boundary, institutions of stage (in most cases, the police) will investigate our actions to clarify whether we this was indeed the case, indict us (the prosecutor’s office), potentially try us and find us guilty of crossing the boundary (the court), and even impose a penalty on us.

The contours of this boundary is determined by the state: that is to say, it is first delineated by the legislator and then defined more precisely by the courts. In a civilized country, the course of the boundary is determined in accordance with the state’s basic values. Within the borders of boundary fence, citizens may do as they please; but if they cross the boundary, they will be found to have violated basic values of the state, such as liberty, justice, and equality.

The perspective of the basic values of the state raises conclusions regarding permitted conduct in the context of the two key components of the issue before us: concerning humans who have died and whose remains are interred in the cemetery, on the one hand, and regarding individuals whose professional activity enables the enrichment of human knowledge and understanding concerning the past, on the other. In a civilized country, legal arrangements are intended to establish the boundary around permitted conduct in the contexts of the encounter between the attitude toward the deceased and the attitude to archeological research. This article will not discuss the details of Israeli law regarding the contexts of this encounter and instead will focus on two other perspectives: the perspective of morality, as befits an encounter between humans, living or dead; and the perspective of professional ethics, as befits an encounter of professional researchers in archeology.

2.

The moral perspective may be described briefly in terms of preserving the dignity of humans qua humans. The theory of preserving the dignity of humans qua humans, or in traditional Jewish language—preserving the dignity of the human created in God’s image, is based on four principles:[[2]](#footnote-2)

Firstly, it is desirable from this perspective that human conduct manifest a special and positive attitude toward the human, favoring the human over any object, property, or non-human animal. A very simple existence of such human conduct is reflected in the maxim appearing in Ethics of the Fathers: “Be first to greet every person.” A person who acts first to greet their fellow identifies their fellow as a human and, accordingly, acts toward them in a particularly positive manner. As we shall see in a moment, the difference between the positive attitude to a human and a human attitude to an object or such like will reflect the qualitative difference between a human and an object or such like.

Secondly, it is desirable from this perspective that human conduct manifest a special and positive attitude toward the human qua human, whether they are loved, close or similar or whether they are not loved, close or similar. Naturally, a special and positive attitude toward a beloved person may differ in its quality from the special and positive attitude toward another person; but whoever the person, they deserve to be treated with a special and positive attitude, even if they are different, alien, remote or even hated. A special and positive attitude does not permit any humiliating behavior. Neither can it countenance any manifestation of a racist attitude, that is, an attitude that calls for the display of an overly negative attitude toward a human because of some component of their identity, such as color, sex, ethnicity, nationality, religion, culture, and so forth. There is no situation in which it is permissible to consider a person as having lost their human image. Even the attitude toward an enemy is an attitude toward a person defined as an enemy, and not an attitude toward an enemy who does not constitute a human.

Thirdly, it is desirable from this perspective that human conduct manifest a special and positive attitude toward the humanity in an individual, that is to say—a special and positive attitude toward the liberty and wisdom of the human qua human; the inherent ability of the human to shape, establish, and maintain a human way of life in accordance with their taste, values, and beliefs, in order to live and to maintain a way of life as they see fit. This is a human capacity of the individual that enables them to adhere to a given system of values and beliefs within a ready-made way of life, just as it enables them to develop their own values and beliefs within the framework of a new way of life, or within the framework of a new shade of a given way of life, and just as it enables them to change their own values, beliefs, and ways of life to suit their own taste.

The most important way to manifest a special and positive attitude this human ability is to maintain a protected and practical framework of human liberties in the basic fields of life. This is the familiar format in any democratic country that overtly recognizes civil and human rights and grants them practical protection. In a system of government that preserves the dignity of the human qua human, any authority, body or individual should be very careful when performing any action or establishing any arrangement that implies the restriction or violation of any basic human liberty. In order to preserve the dignity of the human qua human, serious and decisive grounds are required in order to justify the restriction of any basic liberty.

Fourthly and finally, it is desirable from this perspective that human conduct also manifest a special and positive attitude toward the humanity in an individual in the manner in which a restriction is unavoidably imposed on their liberty. Human liberties are many, and if they are all maintained without any restrictions, they clash with each other. There is an unavoidable clash between the unlimited liberty of an individual to go wherever they wish within the state and the liberty of an individual to be the master of their own home, in keeping with the saying “one’s home is one’s castle,” and they determine who may enter its gates. The arrangements of the system of government that are supposed to guide the actions of citizens in situations of conflict seek to guide their conduct when one basic liberty contradicts another. Since the democratic system of government demands the preservation of human dignity in all circumstances, it will also demand the preservation of human dignity when it restricts conflicting basic liberties. A system of government that preserves human dignity will impose restrictions on any basic liberty only if these derive from its inherent obligation to preserve human dignity. Freedom of movement is restricted insofar as it violates freedom of property. But it will not be restricted if a given individual desires to deny the movement of another (whom they deem disagreeable) near the former’s home. An individual does not have a basic liberty to exclude others from the public environs, as these constitute a public domain for all.

In a democratic state, the preservation of the dignity of the human qua human is incumbent upon everyone: the citizen, the community, the corporation, and above all—the state itself, with all its institutions. The arrangements that a democratic state establishes and maintains to preserve the dignity of the human qua human should be consistent with these four principles, but not only with them. We should recall here that a democratic state is not only expected to establish and maintain fair arrangements for guiding the conduct of citizens in situations of conflict in a manner that preserves the dignity of the human qua human. If the resolution of conflicts between citizens is to be fair, it must be based, first and foremost, on the demand for neutrality toward the different sides involved in the conflict.

The preservation of the dignity of the human qua human in a consistent and systemic manner thus guides both the moral individual in their behavior toward others and the democratic state in all the arrangements it establishes and maintains for organizing the common lives of citizens. This includes the fair resolution of conflicts between citizens. The obligation to maintain the dignity of the human qua human also appears in professional ethics in democratic countries, as we will discuss in the next section.

3.

The second perspective we must present here briefly is the perspective of the professional ethics of archeologists interested in excavating in cemeteries. We will begin by presenting the general idea of professional ethics, and then add some principles for archeological ethics—the professional ethics of archeologists.[[3]](#footnote-3)

We should begin by recalling the many meanings that have been attached to the term “ethics” over the 2,500 years that it (and related terms) have been used, from “ethics” as the good path of life to “ethics” as philosophical inquiry into moral questions. In our context, “ethics” will have the same meaning it has in such familiar phrases as “medical ethics,” “the ethics of scientific research, “social work ethics,” “ethical code,” and the like. In all these contexts, ethics is *an orderly perception of a practical ideal of behavior, within a professional framework constituting a defined framework for a special human activity*. Thus, ethics in medical research is an orderly perception of the practical ideal for the behavior of the scientific researcher, within the framework of their professional activity; engineering ethics is an orderly perception of the practical ideal for the behavior of the engineer in the framework of their professional activity. Similarly, ethics in archeology is an orderly perception of the practical ideal for the behavior of the archeologist in the framework of their professional activity in this field. We may now briefly clarify the components of the profile of “ethics” according to our formula. For the sake of convenience, we will begin at the end and work backward.

*Special human activity*: There are human activities that may be said to be natural, since any ordinary person, in any ordinary situation, can perform them well and without any difficulty. An example of this is the verbal activity of speaking and listening to speech. Conversely, not every ordinary person in an ordinary situation knows how to write a complex computer program for comparing fingerprints, or knows how to deploy a large and complex police force in order to restore order following a mass riot. Writing a complex computer program and deploying a large and complex police force are examples of human activities that may be said to be “special.” This distinction between a natural human activity and a special human activity may explain why we do not have an ethics of casual conversation, but we do have an ethics for computer programming and for police command. Archeological activity constitutes a special human activity.

*A defined framework for a special human activity*: There are some human activities that are not natural, and not every ordinary person in an ordinary situation knows how to undertake them, but nevertheless any person knows how to undertake them in the appropriate circumstances. An example of such an activity is riding a trained horse. Any person can sit on the back of such a horse, while it is standing still, and all that is needed is commonsense, deliberate will, and simple circumstances in order to acquire the skill required to mount the trained horse and lead it to a slow and calm canter in a circle. By contrast, in any sphere of professional activity, commonsense, deliberate will, and simple circumstances will not be sufficient. Not every ordinary person in an ordinary situation can diagnose the medical problem afflicting someone who arrives at a hospital emergency room; but the physician in this emergency room can do so, within the defined framework of their activities as a physician in an emergency room. This distinction between a simple activity (even if it is not natural) and a complex activity, within a defined framework, explains why we do not have an ethics for riding a trained horse, but we do have ethics in a defined professional framework, such as medical ethics. Archeology constitutes a defined framework for a special human activity. Archeological activity demands more than commonsense, deliberate will, and simple circumstances.

*A professional framework constituting a defined framework for a special human activity*: The professional framework differs profoundly and crucially from any other framework for special human activity. Professional activity differs substantively from other activity in each of its following components: (A) Professional activity takes place against the background of a systemic body of knowledge without which it would not be possible; (B) professional activity takes place by means of a systemic “toolbox” providing a network of skills enabling the successful resolution of professional problems; (C) professional activity takes place against the background of a body of knowledge that is constantly updated, and by means of a “toolbox” that is constantly elaborated. Professional activity is an activity that entails constant learning: not only from the experience of the individual or others, but also from innovations thanks to researchers, who create new knowledge, or developers, who create new tools; (D) professional activity takes place on the basis of understanding; this is what enables a reply to be given for “why” questions. In a professional world, this understanding may be not only for its own sake, but also the understanding of principles that enable the solution of unusual problems for which the routine “toolbox” does not provide a response. The judge applies an understanding of the law through the process of interpretation, particularly when relying on the “spirit of the law.” Archeology constitutes a professional framework.

*Behavior*: A person’s life always proceeds in several dimensions simultaneously. A new fact about the individual or others, about humans or about the world, may add to the individual’s knowledge; arouse emotions that may be fierce or moderate, positive or negative; reinforce or weaken attitudes; encourage desires or place obstacles in their way; create new intentions and divert or even eliminate existing intentions; completely undermine plans or adopt them intact; motivate the individual to act or paralyze him completely. All these dimensions play important roles in the individual’s life, but the dimension of behavior is the only one that is by its nature overt and subject to external examination. Professional ethics addresses human behavior within a defined framework for a special human activity; it does not address human emotions, however important these may be. The ethics of archeologists addresses their behavior in the framework of their activities as archeologists.

*A practical ideal of behavior, within a professional framework constituting a defined framework for a special human activity*: A given behavior of a person in the framework of their professional activity may be subject to various tests employing different criteria. Behavior may be routine or original, and it may meet or fail the test of creativity. Another test is based on the criterion of what is desirable in accordance with a given system of values and principles. This is the test that is reflect in professional ethics.

An *ideal*, in this context, is a system of values and principles that provides a foundation for grounded decisions regarding proper behavior in the circumstances of the special human activity, within the defined framework of the profession in question. The system of values and principles reflects the professional identity of the sphere of activity in question.

A *practical ideal*, in this context, is a system of values or principles that provides a foundation for grounded decisions whose content is *practical*, not only in the sense that they relate to actions and patterns of conduct, but also in the sense that they relate to decisions that are not beyond the ordinary capacity of an ordinary person, in an ordinary situation, with the professional framework of his activity. In order to implement any decision regarding proper behavior, as derived from the practical ideal, such a person need only *know* what the decision is and *wish* to observe it. The expression “ideal” does not seek to position the proper behavior on or near the horizon, in a place that cannot be reached but can always be neared. The expression “practical ideal” seeks to emphasize this point: the person knows and wants, and accordingly – is capable. At the heart of a professional ethics, therefore, stands a practical ideal of behavior, within a professional framework that is a defined framework for a special human activity. This is true of any profession, archeology included.

The values and principles of the professional ethics are based on three foundations. We shall itemize these foundations and add some comments regarding two of them. One foundation is professionalism per se. The professional is supposed to act in a very different manner to any other person.

A second foundation is the professional specificity that characterizes professional identity and reflects the essence of the profession in question. The professional identity of archeology includes, first and foremost, the common value it shares with all the professions of scientific research: the value of the quest for truth. By the inherent nature of this profession, the professional identity of archeology also includes an aspiration to understand the past, and not only to reveal material facts. To these two values we may add another one of a different type that also forms part of the professional identity of archeology: the value of respect for the culture under examination, as a human culture. Such a culture may include components we find unacceptable, whether because they are immoral or because, over the years, human opinions and tastes have changed with regard to many aspects of life. Primarily, however, archeology seeks neither to praise the ancient culture nor to condemn it, but rather to expose it, become familiar with, and understand it, from a standpoint of respect for the humanity of those who established, developed, nurtured, and lived in it.

The third foundation is the *values of the social environs*. The full and correct answer to the question “what is the proper behavior” of a hospital nurse, in certain circumstances of her professional activity, is based not only on the recognized fact that nursing is a profession, nor only on this fact together with the professional specificity of nursing as a certain caring profession, but also on additional values to which the nurse is required to show loyalty. These include the value of the privacy of a patient in the framework of medical treatment—in other words, the value of medical confidentiality. In the civil society of a democratic state, the value of preserving the dignity of the human qua human is a fundamental, formative, and binding one. In other words, in a democratic society, morality forms part of any professional ethics. Accordingly, morality—at least in the sense of the preservation of the dignity of the human qua human—forms part of the professional ethics of archeologists.

4.

We are now drawing closer to the issue of archeological excavations in cemeteries, on the basis of the moral perspective of preserving the dignity of the human qua human, and the perspective of the professional ethics of archeologists, which mandates a quest for truth, an understanding of the past, and respect for the past culture as a human culture. Preserving the dignity of the human qua human means preserving human dignity both in life and in death. Since our intention is to consider archeological excavations in cemeteries, including the tombs that may contain human remains, we must firstly understand the content of the demand to preserve the dignity of a human in death. In order to present an orderly approach to the question of “the dignity of a human in death,” we must equip ourselves with an orderly approach to “the human in death,” and combine this with the approach we encountered above regarding “the dignity of a human qua human.”

Accordingly, we shall briefly present an approach to “the human in death.”[[4]](#footnote-4) The key concept in this approach is “presence.” We may delineate a spectrum of stages. At one end of the spectrum, we recognize humans who have a live, full, and autonomous “existence,” as does each person presently writing or reading these remarks. At the other end of the spectrum, we have those who have passed from the world and been forgotten, as if they had never existed, without leaving behind any memory or remnant. “Presence” lies between “existence” and “as if they had never existed.” The difference between “presence” and “as if they had never existed” is clear and obvious: those in the category of “as if they had never existed” did not leave behind any memory or remnant, while those who have “presence” left behind some type of memory or remnant. If person A remembers person B, then person B has a “presence” in the memory of person A. If the body of person A is buried in a particular grave, under a tombstone bearing their name, then they also have a physical “presence” in the form of the remains buried in that grave, as well as a social and cultural “presence” in the form of the tombstone bearing their name.

The difference between those who have “existence” and those who have “presence” is also clear and profound. In this case, however, it is worth noting not only the differences, but also the similarities. Person A may say of person C: “I think about him, I learn from his words, I act with my students as he did, I am proud of him, I see him as a model for moral behavior,” and so forth. On hearing A’s comments about C, we cannot tell whether C is alive or has passed on and is no longer among the living. In other words, we cannot tell whether C has “existence” in our world or only “presence.” To take another example: let us assume that A acts in accordance with a given document and distributes certain assets among several people. Again—is A acting in accordance with the instructions of living person, or in accordance with the testament of a person who has died and left the testament behind in order to distribute his assets in accordance after his death according to his wishes? Clearly, therefore, “presence” includes many important components of “existence.” The differences and clear and profound: a person who has “existence” is alive and autonomous, while a person who has “presence,” and not “existence,” is not alive or autonomous. Nevertheless, in determining the proper attitude toward a person who is no longer alive, it is right to take into account the fact that they are not alive or autonomous, but also the fact that they have a “presence” that includes many important components of “existence,” though of course not all of those components.

For the purposes of the current discussion, we may distinguish between two types of “presence.” We will use the term ‘primary presence” of a dead person to refer to their physical remains, such as bones buried in their tomb. We will use the term “secondary presence” to refer to any clear manifestation of a direct reference to that person: from the place they occupy in the memory or emotions of a given living person through objects recognized as their objects, whether small such as a book or large such as an extensive area of land, and on to actions, customs or institutions named after the person or operated in their memory and honor.

Preserving human dignity in death should apply both to their “primary presence” and to all the aspects of their “secondary presence.” However, it is reasonable to assume that there will be a different format for preserving human dignity in death depending on whether we are addressing a “primary presence” or a “secondary presence.”

5.

In the previous section, we saw the salient features of the moral obligation to preserve the dignity of a human qua human. This is also the ethical duty of archeologists in the issues before us. We shall now show how the salient features of preserving the dignity of a human qua human may be applied to a person not only in their life but also in their death, regarding both their “primary presence” and their “secondary presence.”

The guiding idea is the analogy between the situation in which we seek to preserve the dignity of a human qua human when that human has “existence” and is alive and autonomous, and the situation in which we seek to preserve human dignity when that human has “presence” but is not alive or autonomous.

Accordingly, we may return to some of the principles of preserving human dignity as discussed above. Firstly, the human behavior required in the framework of preserving human dignity should manifest a special and positive attitude toward the human—one that favors the human over any object, possession or even non-human animal.

At the same time, the human behavior required in the framework of preserving human dignity should manifest a special and positive attitude toward the human “primary presence”—one that favors the holder of “primary presence” over any object, possession or even non-human animal.

The first practical conclusion we reach, therefore, is that in archeological excavations in a cemetery there is a moral and ethical obligation to grant special status to interred human remains. These remains are not to be treated in the same manner as the other findings of excavations. In terms of the desirable attitude toward the bones of dead humans, these are not objects or possessions. We shall discuss later the required behavior of archeologists excavating in a cemetery regarding the “secondary presence” of the humans buried in that cemetery.

In accordance with the second principle of observing human dignity, as discussed above, the required human behavior in the framework of preserving human dignity should manifest a special and positive attitude toward the human qua human, whether loved, close or similar or not loved, close or similar.

At the same time, the human behavior required in the framework of preserving human dignity should manifest a special and positive attitude toward the human “primary presence” qua human “primary presence.” The attitude that favors the holder of “primary presence” over any object, possession, and even over the “primary presence” of a non-human animal, does not depend on the identity of the person whose “primary presence” is before us, nor on any of the components of this identity. Moreover, this behavior is also required regardless of the character of the “primary presence” itself—for example, whether this constitutes a skeleton or merely part of a skeleton. The special attitude is required since we have before us a “primary presence” qua “primary presence.”

In today’s world, “primary presence” may take the form of blood, semen or DNA samples or such like. The moral and ethical obligation to preserve the dignity of the human qua human leads to the conclusion that even when the “primary presence” before us takes the form of some such sample, it also deserves the special attitude mandated by the obligation to preserve the dignity of the human qua human. Naturally, if a DNA sample is produced today from the bones of a person removed from a grave, in archeological excavations or otherwise, this sample must be treated as befits the “primary presence” of a human qua the “primary presence” of a human.

In accordance with the second principle of observing human dignity, as discussed above, the required human behavior in the framework of preserving human dignity should manifest a special and positive attitude toward the humanity in an individual, that is to say—a special and positive attitude toward the liberty and intellect of a human qua human, toward the inherent ability of the human to shape, establish, and maintain a human way of life in accordance with their taste, values, and beliefs, in order to live and to maintain a way of life as they see fit.

At the same time, the human conduct required in the framework of preserving human dignity should manifest a special and positive attitude toward the human “primary presence” qua human “primary presence,” insofar as the human inherently has liberty and intellect and, accordingly, the ability to shape, establish, and maintain a human way of life in accordance with their taste, values, and beliefs, in order to live and to maintain a way of life as they see fit. In accordance with this principle, respecting the human means respecting the human’s wish to shape and pursue their life in accordance with their taste. Accordingly, respecting a human’s “primary presence” means, inter alia, respecting the desire that a person had while alive to maintain a way of life in accordance with their taste. In many instances, the way of life humans have established for themselves or undertaken to observe includes customs concerning the attitude toward their “primary presence” after their death. Respecting the “primary presence” qua “primary presence” of a person who maintained a way of life that included customs concerning the funeral, burial, tombstone, memorial, and so forth means respecting these customs with regard to the “primary presence.”

Respect for these customs derives not only from the moral approach of respect for a person in their death—respect for the “primary presence” of a human qua human—but also from the ethical approach, rooted in the professional identity of archeology, to respect the studied culture as it is.

The practical conclusion we reach, then, is that in archeological excavations in a cemetery there is a moral and ethical obligation to attach special status to the way of life of the humans whose remains are interred in that cemetery, insofar as this way of life includes customs, rules, principles, values, and so forth concerning the proper attitude toward their “primary presence” after their death. We shall immediately add two clarifications. Firstly, there is an obligation to attach special status to the way of life of the said humans insofar as this is known to the archeologists. Naturally, it is assumed that the latter have done their professional best to recognize the said way of life. If, nevertheless, they have not gained such recognition, when planning the excavations in the cemetery, they will not be required to attach special status to the specific way of life of the humans whose graves they are about to excavate, though naturally the general obligation to respect the human “primary presence” qua human “primary presence” remains. Secondly, the obligation to attach special status to the way of life of the said humans, insofar as this is known to the archeologists, is one that must always be weighed in the framework of the totality of considerations concerning the planned archeology excavations in a cemetery. In the framework of the discussion of the totality of considerations, it will be appropriate to discuss the place of this obligation, whether it is a crucial one to met whatever the other considerations, such as archeological interest, or whether it is an obligation to be considered to a certain degree alongside the due examination of all the other considerations.

The practical conclusion that emerges from the obligation to take into consideration the way of life of those humans for whom the cemetery in question served as their cemetery is the following: it is appropriate to take into consideration the customs of those humans in practical questions concerning the excavations in the cemetery, the excavation of graves, access to remnants of skeletons, touching the remnants of skeletons, moving the remnants of skeletons from their place within the confines of the said grave, moving the remnants of the skeletons to a storage place for the purpose of further research, and displaying the remnants of the skeletons in public in museum of history. Accordingly, the effort by archeologists, to the best of their professional ability, to recognize the way of life of the humans in whose cemetery they wish to excavate should include an effort to obtain as full answers as possible on these practical questions regarding the said way of life.

6.

We may now progress from questions of preserving the dignity of the human in death, in the format of due consideration for the “primary presence” of deceased humans, to questions of preserving human dignity in death, in the format of due consideration for some “secondary presence” of those humans. As will be recalled, the “secondary presence” of a dead person is some manifestation of direct reference to that person, from a place that carries the person’s memory or emotions, through objects recognized as that person’s objects, and on to actions, customs or institutions named after that person or dedicated to their memory or honor.

In the previous section, our moral and ethical discussion led us to the practical conclusion that in archeological excavations in a cemetery there is a moral and ethical obligation to grant special status to the way of life of the humans whose remains are interred in that cemetery, in so far as that way of life includes customs, norms, and values recognized by the archeologists. We applied the practical conclusion regarding the “primary presence” of the humans whose remains are found in the cemetery, and we may also, by way of analogy, use this conclusion regarding certain types of “secondary presence” of these humans.

In the present context, a particularly important “secondary presence” is the objects buried with the bodies. Consideration for the way of life of these humans should apply not only to the remnants of their skeletons, but also to objects buried with the bodies. The obligation to preserve the dignity of a human in their death requires archeologists excavating the cemetery to take into consideration the way of life of these humans, insofar as this regards their attitude toward the objects buried together with their bodies: access to them, touching them, moving them from place to place within the confines of the grave, moving them to a storage place for the purpose of further research, and displaying them in public in a museum of history or art.

Another type of “secondary presence” is objects associated with the burial place, but not necessarily interred with the bodies. The stones placed on the grave, and in later periods the tombstones, are the prominent example of this category. In moral and ethical terms, these, too, deserve consideration in accordance with the way of life of the humans interred in these graves.

The practical conclusion here is that preserving human dignity in death must be applied not only in the format of preserving the dignity of their “primary presence,” but also in the format of preserving their “secondary presence” of the types noted.

Alongside these two types of “secondary presence,” an additional type requires special attention and appropriate practical principles for preserving human dignity in death. This type involves humans who have a clear affinity to the way of life of the person buried in the cemetery. In order to understand the spectrum of possibilities regarding such a clear affinity, we will extend the discussion from cemeteries that archeologists are interested in excavating for the purpose of their historical research to all cemeteries, whether ancient or contemporary and still used for the burial of the dead. The clearest affinity to a person buried in the cemetery of interest to us is that of a first-degree relative of the deceased, who knew the deceased during their life and continues to take an interest in them in their death, shared with them their way of life and continues to pursue the same way of life. If we do not have a ready answer regarding the dead person’s attitude toward their remnants, objects, and accessories on their tombstone, then the person who holds such a clear affinity to the deceased may provide us with testimony regarding their attitude to the remnants and objects, and we may use this testimony in order to shape the proper attitude toward these.

A significant affinity regarding a person buried in a cemetery may exist not only in the lives of survivors who are first-degree relatives, but also in the lives of descendents from subsequent generations. In a Jewish cemetery in a certain town in Poland, I found the grave of my paternal great-grandfather. I did not know him and I am not in possession of his testament, but I am familiar with his way of life. I cannot testify to it in a personal and specific manner, but I can describe his way of life in a communal and general sense. Similarly, I can provide considerable information concerning the way of life of my maternal great-great-great-grandfather. I can do so on the basis of family and community traditions, as well as books of various kinds. In the same spirit I can generalize regarding a clear affinity to a person buried in a cemetery on the basis of family, community, ethnic, religious, cultural, and other such traditions, when the deceased and the living person in question belong to a sequence of generations that maintains traditions of these types and allows us not only to gain considerable knowledge regarding the way of life of past generations, but also to identify with the desire to respect their way of life when touching their “primary presence.”

The practical conclusion that emerges here is that preserving human dignity in death, in the format of preserving the dignity of their “primary presence” and the dignity of their “secondary presence” of the type of objects and accessories, requires us to grant special status in decisions concerning archeological excavations in the cemetery to living people belonging to the same family, community, ethnic, religious or cultural tradition, who broadly maintain the way of life of the humans buried in the cemetery in question, or at least the memory of this way of life. We shall see below what can be done when there is more than one such tradition, or even practical differences between different traditions.

In granting people status in such a proceeding, a distinction should be made concerning different degrees of affinity of the living people before us to the dead people buried in the cemetery where the archeological excavation is planned. The degree of affinity is determined on the basis of three natural parameters: family affinity, affinity of way of life, and temporal affinity. When dozens of generations have passed since the human was buried in the cemetery, family affinity may exist and be recognized, but it should not properly be considered decisive. Humans’ psychological affinity to some of their ancestors may be maintained over many years, but the family affinity is negligible, since twenty other partners were present along the course from my ancestors twenty generation ago down to myself. The psychological affinity may be very strong, but so too may be the psychological affinity of strangers to the said person who do not have even a negligible family affinity.

We may raise here the question as to whether status should be granted in the decision-making process to any person who has a psychological affinity to the deceased? Such psychological affinity may be profound, but its character is not personal but historical, religious or cultural. Such psychological affinity indeed constitutes a “secondary presence” of the deceased, but since the individual character has been weakened and even dissipated over the generations, and been replaced by a different character, there is no justification here to demand consideration for such a “secondary presence” in the name of consideration for the human dignity of the deceased. Over a distance of generations (and over a distance of ways of life), the human dignity of a person in whom the “secondary presence” of the deceased reverberates will have its place, but this will be a place of the dignity of the holder of the “secondary presence” and not of the deceased.

To what extent should any status be granted to persons holding a “secondary presence” by their own right, rather than by right of the deceased? In order to move toward an answer on this question, we must mention a possible additional distinction between those individuals who hold a “secondary presence” of the deceased. A person holds a “secondary presence” of the deceased when their life includes some manifestation of a direct reference to the deceased. Let us consider those people whose lives include a positive manifestation regarding the deceased. These positive manifestations may differ in their quality. We shall note two parameters for the quality of the positive manifestations.

Firstly, we shall distinguish between active positive manifestations and passive positive manifestations. An active positive manifestation is the product of an action whose purpose is to manifest a positive attitude toward the deceased. A familiar example of such an action is a memorial devoted primarily to praising the deceased. A passive positive manifestation is reflected in the consistent avoidance of any negative manifestation toward the deceased. The reluctance to make negative manifestations is well known, for example, in the saying “do not speak ill of the dead.” This does not require us to launch into exhaustive praise, but it requires us to avoid manifestations of reprobation.

Secondly, within the active positive manifestations, we will make a distinction between high-intensity manifestations and low-intensity manifestations. A person may grant the “secondary presence” of the deceased a highly prominent place in their life in words, actions, customs, or qualities, and equally a person may grant that “secondary presence” a marginal place in their life, on rare occasions and in sparse actions or words.

In granting status to the holders of “secondary presence” in decision-making proceedings concerning archeological excavations in a cemetery, it is not reasonable that special status will be granted to a holder of “secondary presence” that is confined solely to passive positive manifestations, or to low-intensity active positive manifestations. The consequent practical conclusion is that only persons holding a positive, active, and high-intensity “secondary presence” will deserve any status in such proceedings.

The difference in intensity may lead to significant practical conclusions regarding excavations in a cemetery. Let us imagine a very large cemetery, one side of which includes ancient graves, while the other side, very distant from the first, is still used for the burial of the members of a given community. An interesting question is whether it is conceivable to excavate the ancient side of a cemetery when burial of the members of the present generation is taking place at its other side. The answer will depend on the intensity of the attention to the ancient side of the cemetery. If this attention is negligible in all respects, and there is no practical manifestation of respect for the dead, then, according to our approach, it is permissible to excavate in the ancient section, in accordance with all the rules we have delineated here, provided that these excavations do not in any tangible way disrupt the process of the burial of members of the community. The latter will not be able to determine the question of the excavations at the ancient end if they do not attend to this section despite the fact that they could do so, and even easily. Conversely, if the members of the community show ongoing and high-intensity activity in the ancient section of the cemetery, then for as long as they are using the cemetery for the burial of the current generation, it will not be proper to excavate the cemetery. The attitude of the members of the community toward those who have recently died influences the archeologists’ attitude not only toward the new graves, but also toward all the other sections of the cemetery.

7.

To conclude our discussion, we will examine situations in which a conflict emerges between different parties that have status in the decision-making process concerning archeological excavations in a cemetery. Such a conflict may emerge between archeologists interested in excavating and people who hold a “secondary presence” granting them status in the practical discussions regarding the “primary presence” in the cemetery. It may also emerge between different groups of holders of “secondary presence,” all of whom enjoy status, but whose opinions differ. We will offer here two practical principles for making decisions against the background of such conflicts.

We adopt one principle from the arrangement enacted in the United States in the title Native American Graves Protection and Repatriation Act (1990). This provision permits planned excavations in sites where graves, human remains, and objects with a clear affinity to a Native American tribe or a Native group in Hawai’i are likely to be found. The NAGPR Act, valid since November 16, 1990, mandates consultations with the representatives of the tribe or the native group regarding the receipt of remains and objects from the archeologists after the excavations. Such an arrangement allows archeological research to proceed by its professional means, on the one hand, while on the other hand allowing a given human group to act regarding what is exposed in the excavations in accordance with its way of life, which is close and perhaps even identical to the way of life of the humans whose graves were exposed during the archeological excavations.

The NAGPR arrangement is appropriate to the context of the United States, both in terms of the way of life of the relevant human groups and in terms of their status within the legal frameworks of that country. The adoption of an arrangement in similar spirit with groups maintaining a Jewish or Muslim or Christian way of life will not be entirely parallel to the American arrangement, but it will be possible to establish and maintain an arrangement in a similar spirit and in a format appropriate to the given context.

Lastly, we should mention the possibility that people belonging to the same group that has a clear affinity to the people buried in the cemetery due to be excavated by archeologists may disagree and present very distinct demands regarding the conditions for excavation and for displaying the findings. When faced with several such groups, and insofar as the decision rests with the archeologists themselves, it is proper to seek general consensus, that is to say—an arrangement that will meet the archeologists’ desire to perform proper professional excavations, as well as the desires of all the different groups. However, when there is no alternative and no practical way to secure such general consensus, it is appropriate to reach an arrangement between the archeologists and the members of a group representing commonly-held and accepted customs, even if these are inappropriate in the opinion of the members of another group that holds extreme positions on the relevant issues. Such an approach demands a measure of courage and determination to withstand pressure from those who hold extreme positions, but it is the approach that should properly be adopted in the absence of general consensus.

1. This article is an expanded version of a lecture given on July 25, 2016 at the Archeology Department of Tel Aviv University. I would like to thank those present for their comments and questions, which helped clarify and deepen the arguments in the article. [↑](#footnote-ref-1)
2. In this section I draw on my article on democracy, as included in the Israel Democracy Institute’s *Guide to the Legislator*, Jerusalem, 5775/2015: 23-45 (in Hebrew). [↑](#footnote-ref-2)
3. In this section, I draw on my article “Professional Ethics,” from: *Ethical Issues in the Therapeutic Professions and Psychological Counseling*, Magnes, Hebrew University, 2007, 15–29 (in Hebrew). [↑](#footnote-ref-3)
4. My presentation of this perception draws on the final chapter, “Life in Flames, in my book *A Little Book on the Meaning of Life*, HaKibbutz HaMeuchad and the Yehoraz Association, Tel Aviv, 5762, 2002 (in Hebrew). [↑](#footnote-ref-4)