The Politics of Human Remains in Managing Archaeological Medieval Jewish Burial Grounds in Europe

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SUMMARY

The archaeology of Jewish Medieval burial grounds has been a matter of dispute over the non-disturbance of Jewish human remains by Ultraorthodox Jewish groups. They call for the application of the Halakha, the Jewish religious law, claiming that those graves are of people of Jewish faith. The topic of non-disturbance of human remains by archaeologists may echoes the disputes, claims, and arguments defended by indigenous communities. But I will argue here that the two cases show little resemblance since neither are Jewish people uniquely indigenous in the European context, nor do religious laws govern the management of medieval heritage in Europe. Accordingly, the topic under discussion has little relation to religious claims to ancient heritage nor to the ethics of archaeological practice in relation to human remains, but to the politics of archaeological practice in the contemporary multireligious world. The article seeks to provide a full picture of discussion on the issue of the management of ancient burial grounds in Europe, raising sensitive issues regarding particular religious communities. Here the recommendation given by the Faro Convention will be introduced, but also its limitations discussed when mediating with particular communities and their religious agendas.

Keywords
archaeological heritage management, human remains, heritage community, faro convention, jewish burial grounds, politics of religious communities, ultraorthodox
INTRODUCTION

In Spain during the last two decades, the archaeology of Jewish Medieval burial grounds has been a matter of dispute, sometimes even in aggressive terms, over the non-disturbance of Jewish human remains. Ultraorthodox Jewish groups claimed that those graves are of people of Jewish faith and therefore make two further claims. Firstly, neither archaeological excavation nor any palaeoanthropological research are allowed to be undertaken. Secondly, these ancient corpses need to be treated as if they were Jewish people of today, not as cultural heritage elements. Consequently they should either rest in peace in the same archaeological site or be reburied in contemporary Jewish cemeteries (either in Spain or in Israel). These statements are motivated by the Halakha, the Jewish religious law, which obviously governs some Jewish religious communities today but not necessarily, as I will argue here, the management of medieval heritage both in Spain and Europe more broadly.

The case of Jewish medieval burial grounds and claims regarding them is intrinsically an archaeological question. It is also an example of how archaeology can be used in the power struggles and the politics of religious (minority) communities in present-day societies. Here I argue that archaeology, like any social science today, is not free of subjectivities and particular agendas, and consequently is very much involved in the politics of cultural heritage management. Furthermore, the topic of non-disturbance of human remains by archaeologists echoes the disputes, claims, and arguments defended by indigenous communities in relation to the practice of archaeology in their sacred places, especially in countries affected by European colonialism, such as North America and Australia (Layton 1989, Jones & Harris 1998).

Following American indigenous communities’ vindications, the archaeology of the dead has similarly become the perfect battlefield for Ultraorthodox Jewish minority groups. It advances their interests both in reinforcing their present political voice (especially in the Israeli context, see Wald 2002, Sharkansky 1996, Cohn 1998, Hallote & Joffe 2002), and in reassuring their religious capital worldwide. However, beyond a first appearance of being a similar topic of “indigenous ethics”, the two cases show little resemblance.

Here, I will argue that, in the European context, it is inappropriate to identify Jewish medieval burial grounds as uniquely “indigenous” or “native”. Then, I will argue that it would be inappropriate to apply religious laws to civil matters, as Ultraorthodox Jewish groups demand in the case of medieval burial grounds. Finally, I argue that the topic under debate here is not so much the ethics of excavating human remains but how both archaeologists and heritage managers engage with stakeholder communities regarding particularly sensitive heritage involving human remains or religious identity. It is a debate about how archaeology manages the cultural-heritage values and ideologies of other stakeholders in a multireligious society. Here the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (known as the
Faro Convention, 2005) has introduced useful definitions, recommendations and agreements that may help to solve this dilemma.

THE DISPUTE ABOUT HUMAN REMAINS IN MEDIEVAL JEWISH GRAVES IN SPAIN

Between AD 500 and 1500, the presence of three different established religions – Christianity, Islam and Judaism – gave rise to three distinctive communities in the Iberian Peninsula that strongly shaped its social, economic and cultural history. Due to this rich medieval past, a significant number of Christian, Muslim and Jewish burial grounds exist in the Iberian Peninsula. Today the best-known archaeological Jewish burial grounds in Spain are in Barcelona, León, Girona, Saragossa, Teruel, Murcia, Valencia, Cordoba, Segovia, Plasencia, Besalú, Deza, Seville, Biel, Uncastillo, Sagunt, Tàrrega, Toledo and Lucena (see Casanovas 2003). The earliest excavations took place during the 1940s, but mainly during the 1980s and 1990s. However, despite this long research activity, it was not until the mid 1990s that active Ultraorthodox Jewish organizations began to interrupt archaeological work, e.g. in Valencia, Lucena, Tàrrega, Barcelona, and Toledo (see Colomer 2013). This tendency has now come to the point that no development project may be undertaken either by developers, local authorities or archaeologists wherever there is the slightest reason to suspect the possible existence of a Jewish burial ground. Further, the local Jewish communities, even those not openly engaged, find themselves entangled in this heritage conflict since it has put habitually comfortable dialogue with the local authorities in a difficult position.

The actions and results of these conflicts between this religious minority and archaeology have gradually gained force owing to the firm determination of the religious group, coupled with the inconsistent behaviour of the administrative authorities. In some cases, rescue excavations were undertaken without any special concerns from the local Jewish community, so the site was developed as planned (e.g. Seville; Santana Falcón 2007). In others, the human bones have been reburied in situ after a memorandum of agreement was signed between the religious and the secular authorities (e.g. Girona; Planas, pers. communication, included in Colomer 2013). Other cases included both a scientific analysis and a conservation heritage project for its public dissemination (e.g. Lucena; Botella 2013). In Tàrrega, the rescue excavation was fully completed despite the presence of Ultraorthodox Jewish people coming onto site without authorisation to protest against the work. But the archaeological human bones were not allowed to be completely studied and were abruptly reburied in a contemporary Jewish cemetery hundred kilometres away (Colet & Saula 2013). In Barcelona, the archaeological burial ground was partly studied, but it was impossible to develop the site into a respectful religious heritage place open to the public as planned by the local authorities because Ultraorthodox Jewish groups were strongly lobbying against it (Puig 2013, Colomer 2010). The most controversial decision was taken in Toledo, where the archae-
ological excavations were stopped, no future on-site and lab works were allowed to be undertaken, and the few burials excavated were immediately reburied in the same site under the supervision of a rabbi, without any report of this action to the director of the excavation. Subsequently, the site was capped and a new building was constructed on top of it, without any conservation measures to prevent future damage to the archaeological remains capped (Ruiz Taboada 2011, 2013, and pers. comm. June 2010).

In the last three cases, the archaeological activities were halted by a small group of Ultraorthodox rabbis, normally headed by the local Zakhor Association but strongly supported by the international Orthodox group Atra Kadisha (an organization whose members are among the most fundamentalist of Orthodox Judaism). They basically argue that a Jewish cemetery exists for eternity, and that graves need to be respected and must never be violated by archaeologists. They also claim sovereign ownership over both the Jewish human remains and the land in which they are found. They also demand that no future decision on these burial grounds must be taken without fulfilling their wishes, pushing thus the local heritage management authorities to act according to their religiously motivated prescription. On some occasions these Ultraorthodox parties strongly criticized the Federation of Jewish Communities in Spain, for trying to sign a protocol on the excavation of medieval Jewish burials with the Spanish Cultural Heritage Office. The Federation is the only legal representative of Jews in Spain that is entitled to make agreements with the Spanish Authorities (according to the Spanish 1980 Religious Freedom Act), The Ultraorthodox groups argued that no archaeological excavation could be undertaken without harming the Halakha. On other occasions, with the support of US Ultraorthodox members and international organizations such as the Conference of European Rabbis (CER) and the Orthodox organization the Committee for the Preservation of Jewish Cemeteries in Europe (CPJCE), they exerted political pressure on the Spanish Authorities through the US State Department and its embassies, to stop some undergoing archaeological works. In sum, what was initially an issue concerning the excavation and management of archaeological heritage turned into a dispute between Jewish religious claims and the Spanish cultural heritage policies, and could also develop into a diplomatic conflict between the USA and Spain.

**REDRESSING INJUSTICES AMONG INDIGENOUS COMMUNITIES**

Archaeology is, in origin, a Western social science very much influenced by positivist philosophies and methodologies of objectivity in science and research in practice. The European tradition sees the (European) past as a distant issue, detached enough from our present cultures, traditions and beliefs to become a subject of scientific research. When the discipline was applied outside Europe, the ancient remains of indigenous cultures were accordingly treated as a legitimate subject for scientific research. Indigenous groups, however, had different perspectives on time and on their own past. They did not
agree that Western archaeologists and anthropologists were better (in the sense of more objective) at explaining and understanding their societies, material culture, traditions and history. This conflict is especially true in the treatment of human remains, where archaeological research interests may conflict with spiritual or religious approaches to death coming from other non-Western cultures (Hubert 1989, Zimmerman 1996, Bray 1996, Jones & Harris 1998, Fjorde, Hubert & Turnbull 2002, Watkins 2005).

In Australia and North America, reburial, restitution, repatriation and non-disturbance of indigenous human remains have become key issues and indigenous groups (still) reclaim their ancestors from museum displays and stores scattered across several Western countries (Barkan 2002, Nilsson Stutz 2008). Without denying the appropriateness of the arguments, archaeological interferences are seen as another example of the long list of injustices, segregation, and racism suffered by these minority groups, and therefore their claims are part of the public campaigns for the restitution of their civil rights as today’s citizens. Accordingly, indigenous communities are demanding to become taken seriously as both stakeholders and decision-makers in the management of the heritage of their ancestors’ burial sites. They thus seek to establish control over today’s minority community affairs, and indirectly challenge the intellectual discrimination by the scientific academy. As Parker Pearson (2009) notes, the reburial issues have developed out of specific historical conditions of exploitation and unequal relationships of power. They have strong echoes among those communities who feel most discriminated against and under threat from secular authorities, and who are often more powerless to control their own political and economic destinies. For those indigenous communities, whose ancestors were victims of atrocities and exploitation, archaeologists and anthropologists have constituted a second wave of colonialism, in which science has been viewed as just another vehicle of oppression.

As a result of these arguments, since the early 1980s there has been a long debate in the archaeological discipline about ethical dilemmas and the role of archaeology in non-Western countries (Vitelli 1996, White 1991, Jones & Harris 1998, Scarre 2006, 2013). Archaeologists have maintained that their work is important for the general knowledge of humans as a world community, regardless of their cultural affiliations, and accordingly their results are worth more than any minority (party) interest. That said, we must remember that archaeologists are not different from scholars in other human sciences in relation to their ethical standards affecting the public community (Scarre 2013). Archaeologists are not free of political agendas or unaffected by their relation to the rest of society and cultural policies. Consequently, indigenous communities are treated not just as subjects of research, but as equal agents in valuing and management of heritage. Since the 1990s there have thus been significant advances in cooperation and mutual understanding between archaeologists and indigenous people in many parts of North America and Australia. Pro-indigenous legislation such as the US Native American Graves Protection and Repatriation Act 1990 (NAGPRA), or the Native Title Act (1993) in Australia, are
tools developed in response to these well-grounded claims, and consequently many museums have been required to return all native human remains to the appropriate tribal groups for reburial. Today, issues concerning the alleged remains of indigenous people had evolved to the ethics of researching on human skeletons in general, and therefore several countries had published professional recommendations or passed legal acts on such ethical issue (i.e., *Guidance for the Care of Human Remains in Museums* (2005) drawn up by the UK Department of Culture, Media and Sports (DCMS), following the UK’s *Human Tissue Act* (2004) (see also Alfonso & Powell 2007).

Indigenous claims to items and ancestors from their past, however, bear in themselves a problematic element for the cultural and social sciences. NAGPRA, for example, includes the implicit recognition of the existence of two distinctive (if not opposite) communities, i.e., the indigenous and the non-indigenous (mainly Western), who negotiate indigenous heritage issues. In this dual context, ownership is related to “lineal descendants”. Ownership here is then synonymous with cultural and physical affiliation, either to cultural tribes or genetic groups (either Western or Indigenous). As Nilsson Stutz (2012: 40–41) reasonably argues the cultural affiliation to an item or to human remains implemented by NAGPRA constitute not only a privileged emotional connection or a political control of the past, but also an actual appropriation of ownership, a concept (a right) deeply rooted in the US’s notion of identity. Ownership is thus viewed as a process of regaining the fundamental rights of self-definition as it renders concrete the appropriation of other intangible values as to define oneself and to have freedom of religion. From the anthropological and archaeological point of view, this transfer of property to private/tribal hands contributes to a commodification of cultural heritage, that cultural heritage can be a “property”, and challenges the fundamental idea that cultural heritage belongs to humanity. The political consequence of this cultural heritage paradigm is that USA and Australia solved this archaeological heritage conflict not through the concept of society as a “melting pot”, but through the “salad bowl” society, where each ingredient (indigenous, Westerners, and other second wave immigrants) stays separate to give a united salad. The question – to be answered elsewhere rather than here – is whether the acceptance of two (or more) distinctive political and social communities, with separate cultural affiliations and separate ownership of their respective cultural heritage elements, will actually help to solve this historical unequal relationship among citizens. It could be that, by emphasizing different ancestral heritages at the expense of an inclusive heritage of the country, it will only reiterate community differences, and therefore reinforce today’s ethnic divisions.

MINORITY COMMUNITIES OWNING THE PAST

Considering that most of the Ultraorthodox Jewish people working in Spain after the 1990s are either of US origin or are influenced by Ultraorthodox groups now settled in the US, it is not surprising that the arguments given by
them in the context of European medieval burial-ground excavations perfectly echo the Western vs. Indigenous conflict debated in the USA (i.e. ownership equal to identity). It is argued thus that a direct line of biological, cultural or religious consanguinity converts the individuals of the past and the products of their culture – in other words, today’s archaeological heritage – into the direct property of their descendants (contemporary Jews), that is, of their contemporary representatives (in the cases under debate here, Ultraorthodox Jews).

Nevertheless, if *a priori* cultural and genetic affiliations seemed “easier” to define in America and Australasia, the topic is especially unclear in Europe where all are indigenous. The boundaries of indigeneity in Europe are very difficult to draw because Europe did not suffer colonial events from which the notion of a clear ‘Other’ is derived. There have been numerous migration processes at different periods that blur neat cultural and genetic affiliations (e.g., Celts, Saxons, Muslims, Jews, Normans, Gauls, Christians, Visigoths, Romans, Greeks, Phoenicians, and so on, until we arrive at Lucy from whom we may all be descended!). European history, from the beginning of times, is the history of the migration of people; the history of mixing and making cultural (tangible and intangible) responses to various historical circumstances; the development and the dissolution of cultures, languages, and ideas, and also of frontiers, nations and empires. Cultural “essences” were (and are) constantly diluted, negotiated, transformed, and redefined with the passage of time (see also Holtorf 2009, Scham 2001, Meskell 2002). Bearing in mind the plural and changing nature of human cultural phenomena, it is very difficult for Europeans citizens to establish a relationship of direct identity to a particular cultural past. Nor can one group claim to be direct descendants of any particular ancient human remains without dismissing the rest of its past and discriminating against the rest of its fellow citizens.

In Europe both archaeologists and historical minority communities are themselves indigenous, with a shared voice in our common, even diverse (or divergent), cultural past and present. Considering this historical scenario, who should be appointed (or has *more* legitimate claims) as the ancestors of these archaeological medieval Jewish corpses? The question, and its answer, seems to be inapplicable or irrelevant. Many people today find it odd to see that any Ashkenazi from Brooklyn, USA, is more entitled of ownership over medieval Iberian Jewish heritage than any other Iberian *converso*, a Sephardic Jew, or any Spaniard – or a European, or world citizen, whether Jew or not. Summarizing, cultural and genetic affiliations, at least in the European context, seem to be more a general claim (to be advocated by any human being caring for the past), rather than a strict historic argument exclusively in favour of a minority community. As Holtorf notes (2009), the question is whether these links should be significant concerning the ownership of ancient human remains, and should be materially relevant for the management of heritage today.
RELIGIOUS CONVICTIONS CONCERNING THE EXCAVATION OF HUMAN REMAINS

In addition to the cultural/ancestry affiliation argument, Ultraorthodox Jews cited that their main reasons for stopping excavations of medieval burial grounds is respect for Jewish religious law, the Halakha. According to that, Jewish human remains must remain eternally undisturbed. Strict followers of the Halakha, Ultraorthodox have a deep-rooted concern for the proper respect for the dead, which includes laws against medical autopsy, and limits the removal and excavation of corpses or bones. In this sense, any archaeological excavation of any ancient (disused) cemetery is viewed as gravesite desecration, humiliation of the dead, a form of theft, and a serious violation of Jewish law (as discussed by Breitowitz n.d.). Consequently, medieval archaeology in Spain has been seen as another outrage to the Jewish religion; as a sort of déjà-vu of the Spanish medieval Inquisition.

The dispute about the relevance of the Halakha in archaeological heritage management in Spain has sometimes turned into a question of inter-religious respect, while accusations of anti-Semitism often prevented any possible dialogue. However, similar violent religion–archaeology struggles have also occurred in Israel, where Ultraorthodox Jews have systematically stopped archaeological excavations. They came to protest on the archaeological sites, stopping all work in progress, forcing to the Israeli police to intervene on many occasions in order to separate archaeologists from the Ultraorthodox. In the last decade, Ultraorthodox political parties have amended the 1978 Antiquity Law to the point that today Israel has an extremely restricted law concerning the excavation of burial grounds solely for scientific interests, while the archaeological authorities have to periodically submit a complete list of rescue excavations in progress to the Department of Religious Affairs, so they can negotiate which burial sites should be excavated and how (Shay 1992, Einhorn 1997, Nagar 2002, Hallote & Joffe 2002, Sivan 2013).

It thus seems that the conflict is not exclusively between gentiles and Jews, and that the arguments of the Halakha do not resonate equally for all Jews. If this is so, then the core of the controversy is not accurately understood. To do so, it is necessary to acknowledge the intrinsic interpretative nature of the Halakha. Rather than being a rulebook, the Halakha is a guide, whose strict observance depends both on rabbinical interpretations, and on the branch of Judaism that interprets it. Orthodox Jews adhere strictly to the whole traditional Torah (Written and Oral) and Halakhic rules, and this includes the Ultraorthodox group, known for maintaining the strictest standards of religious observance and for refusing to make accommodations to secular society. Conservative Judaism (also called Religious Zionist or Modern Orthodox; see Wald 2002) also holds Halakha to be binding, but believes in a more pragmatic view in relation to today’s State of Israel by which Halakha can be adjusted to changing social norms or the political needs of Israel. Reform Judaism, even it retains much of the same values and ethics of Judaism, does not accept the binding nature of the Halakha and recognizes that sacred heritage has evolved...
and been adapted over the centuries and that it must continue to do so. Reconstructionism instead sees Judaism as an evolving spiritual civilization rather than a religion, and encourages democracy and political participation in the synagogue-centre as the basis of today’s modern reshaping of the Jewish faith and traditions. Moreover, and reflecting the cultural diversity of Jewish communities, slightly different approaches to Halakha are also found among Mizrahi, Sephardi, Falashim, and Yemenite Jews. Summarizing, the boundaries of Jewish law may be understood not in terms of strict observance of rules but determined through the Halakhic process itself: a continuous religious-ethical system of legal reasoning and debating that enriches and adapts Jewish matters to life. That is actually its force (Einhorn 1997). Therefore theoretically there is no single Halakha, a “canonical” interpretation that establishes the way Jewish matters need to be undertaken, as Zakhor and Atra Kadisha argued in Spain. The strict observance required in Tàrrega, Montjuïc, and Toledo is the result of one interpretation of the Halakha, made by one of the branches of Judaism but not necessarily the interpretation that all Jews would feel comfortable with.

From the 1990s onwards, there has been a substantial increase in opposition to archaeological excavations of ancient cemeteries on the part of Orthodox and Ultraorthodox Jewish groups in Europe (Polonovski 2013), but also in Israel, where many Ultraorthodox organizations have had an influence on the Israeli government (see Wald 2002). The controversy has introduced high levels of conflict into public disputes, and consequently, more non-religious and non-Orthodox religious Israeli voices are questioning their Ultraorthodox compatriots as to whether the needs of the dead are taking precedence over the needs of the living (e.g., Sivan 2013). In response, Israeli Ultraorthodox Jews perceive differences among Jews as being generated by heretical intents; they see other interpretations as a threat. They grant no legitimacy whatsoever to any form of Judaism other than their own voice, the true and only protector of Judaism (Cohn 1998). Ancient remains of the dead are thus enlisted as pawns in competing political struggles in the often contentious Israeli governmental coalitions, resulting from the foundational Israeli State’s Zionist-Orthodox status quo (Sharfman 1993, Wald 2002, Hallote & Joffe 2002). Thus, when negotiating the future of the Jewish archaeological heritage in Europe, it is worth being aware of both the politics behind the scenes, and of the fact that one particular rabbinical interpretation of the Halakha may be imposing its view on Jewish issues (Sharkansky 1996, Cohn 1998). We have to question to what extent this voice actually represents, religious and politically, all the Jews that live today in Europe or Israel (after Halsell 1994).

RELIGIOUS CLAIMS VS. SECULARISM IN EUROPE

In the foreground of this discussion on the politics of religion in relation to the management of cultural heritage in Europe, there is another more profound issue related to the juridical nature of twenty-first-century societies in Europe:
the rights, but also the limits, of religious claims in secular societies. Succinctly, secularism is defined as the separation of religion and state, and it is commonly understood as the Enlightenment solution to the irresolvable wars of religion during the sixteenth and early seventeenth centuries in Europe. Secularism gave freedom to all those to whom the Church did not give personal and social space along with their own religiosity. Henceforth secularism gave European citizens social and political rights beyond their faith, equalizing everyone beyond their religion. In order to accomplish this, two requirements were necessary: firstly, to establish religious affiliation as a matter of individual conscience (equivalent to freedom of religion), and secondly, to exclude the State from identifying with (or imposing) a particular religion on its population.

Today’s European states are mainly shaped by secularism, especially as regards the first requirement mentioned above, so they tolerate both the diversity of faiths and the existence of different religious organizations as part of this respect for individual religious freedom. Following this modern social contract, they also recognize some legitimate role for religion in the public sphere, but certain limitations to religion are prescribed by law in the interests of public safety and for the protection of public order, health, morals and the rights and freedom of others (Garlicki 2001, Álvarez Cortina & Villa 1998). Consequently it is mainly accepted that no individual or minority group may impose its religion (including the practice or laws of this religion) upon the actions of the State. Doing otherwise will mean asserting the interest of certain individuals (or minority groups) over the general interest of all other citizens (Martínez-Torrón 1994). From this rule it follows that, in secular states, the freedom of religion that minorities benefit from also contains a paradox for many fundamentalist groups. They are, on one hand, equal to other citizens to practice their ultraconservative interpretation of religion (as they have the same rights as any other religious community to practice their religion), but unequal to the majority because their beliefs and customs cannot rule the whole society, even it is prescribed by their dogma (Asad 2003). And this contingency theoretically applies to all religious fundamentalist practices in Europe, either they are Jewish, Christian, Muslim or any other.

Besides providing a new civil and political dimension to the concept of citizenship, European Enlightenment secularism also established a new model of church-state relationship based on the notion of separation of powers. Succinctly, this model developed two autonomous entities with separate set of laws: the religious law (historically called canon law), and the civil or public law (with the exception of the UK). The European Enlightenment therefore managed to demarcate the limits between the dogmas of faith and the civil norms, between the (Christian) Church and the res publica. Nowadays almost all European countries enshrine this division of laws as one of the fundamental principles of their constitutional jurisprudence, even though each country defines different models of separation, from the most strict division to the most lenient (Garlicki 2000). The division of realms, however, does not attempt to deny the fact that religions do exist and have their importance, both historically
and personally. Therefore most European countries have established different types of cooperative agreements with their religious groups, first with the historically pre-eminent Christian Church, and more recently with other religious communities.

The principle that no religious law of any religious community may dictate to the State any action that may affect the civil law is a principle that governs not only the agreement but also other aspects of private law. For our concern here, all this means that the same principle governs heritage management: the legal framework defines historic and cultural heritage as elements within the public domain, rather than an exclusive legal matter of a particular faith. Accordingly, archaeological heritage in Europe is regulated by the civil law, never by any religious law, and that prescription includes both ancient cemeteries and sacred places, no matter to which faith they belonged in the past.

Even though the legal tradition and framework in which cultural heritage is managed seems to be clear, the practice in Valencia, Tàrrega, Barcelona and Toledo portrays a rather different, or opposite, picture. Both the strong political (Ultraorthodox) pressure felt by all parties involved (archaeologists, politicians, heritage managers, and the local Jewish community), and an ambivalent interpretation of what is religious freedom in a secular state (and, too often, the fear of being called anti-Semitic), have had the effect that the Spanish authorities have adopted solutions that contradict the legislation on heritage management. This has irreparably damaged any future knowledge of Sephardic archaeology. Pushed by political and diplomatic pressure, the Spanish administration seemed to bend the law (to different degrees), at least regarding the application of cultural heritage policies. This leads to a confusing situation in which it seems that the law does not apply equally to all: certain minority groups get preferential treatment regarding their specific requirements compared to others with less active lobbyists.

The Spanish examples are quite extreme, but similar situations happened previously in the UK. In 1980 archaeologists working in Jewbury (York) also felt that they had been caught in the middle of parties who had difficult decisions to make. UK political and Jewish religious authorities were not clear enough on issues regarding cultural management (whether a particular development project was acceptable), on the nature of the ancient burials (whether they were actually Jewish or not), on the professional practice of archaeologists (the classic statement on the ethical dilemma of the conflict of science with human reverence for the dead), or on who should solve this conflictual cultural issue and how (Civil authorities revoked the license after they had issued it due to rabbinical pressure). Finally, the Home Office agreed with the Chef Rabbi’s demands, and the bones were immediately reburied without any further possibility of osteological analysis (Lilley et al. 1994). In sum, the confusing situation in both countries put local archaeologists in a disconcerting, suspicious, and resentful position, feeling professionally unsupported or questioned by all, including the legal authorities.
NEGOTIATING ARCHAEOLOGICAL PRACTICE IN TODAY’S POLITICS OF DEATH

If European heritage professionals and administrators, as well as stakeholders involved in heritage management, admit that the framework of heritage legislation cannot be determined (or annulled) by religious laws and rules, they would consequently agree that medieval Jewish burial grounds fall legally within very specific regulations related to the cultural (historical) heritage. If this is not the case, then other civil laws and legal rules that may encompass the interests of religious minorities in ancient religious places, including those with ultraconservative views, will need to be publicly discussed and approved by relevant authorities.

That said, the legal core affecting Jewish medieval burial grounds summarized in this article does not determine how the conflicts raised recently should be solved; it only frames the limits of the dispute. Solutions are to be found on the basis of negotiation, and in this procedure, the key issue is involving the interested groups reclaiming or caring for the management of historical heritage. In relation to this, it would be interesting to frame the issue in terms of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society from October 2005 (or Faro Convention), a key document concerning future heritage management in Europe serving today’s society (Council of Europe 2005). The Faro Convention is significant here in two important ways. Firstly, it establishes that heritage must have a value to everyday public life, in terms of values, identity, social integration and economic sustainability. Secondly, it affirms that heritage management should genuinely reflect citizens’ responsibilities for the attribution of heritage values and conservation management. In this sense, heritage managers are only that, managers. They are not exclusively responsible for the site nor are they the expert voice vis-à-vis other voices which have to be accommodated. The Faro Convention introduces important term: “heritage community”. This consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to maintain and transmit to future generations, regardless of which territorial, cultural, geographical or social background they have, or feel related to (Council of Europe 2005: Article 2b). Accordingly, the “heritage community” is no longer defined in terms of place identity, social belonging, or cultural affiliation, but by everyone interested in the conservation of particular heritage elements.

The Faro Convention can thus be seen as an important manifestation within the realm of European heritage policy-making for a conceptualization of cultural heritage around a people-centred perspective. This in turn promotes the inclusive participation of all society in defining what is heritage and which values it bears (see also Fojut 2009, Fairclough 2009, Holtorf 2011, Holtorf & Fairclough 2013). The Faro Convention encourages bottom-up democratic synergies that may enrich citizens and stakeholders, organised in the form of heritage communities, to take decisions on and pool resources for the management of cultural heritage. These participative practices may not only help give long-term sustainable solutions to heritage places, but may also solve issues con-
cerning contested heritage elements by encouraging agreement on their values. Likewise, the Convention emphasises an innovative approach to social, political and economic problems, using culture and heritage to reach all stakeholders in society. Moreover it broadens the social uses of cultural heritage by promoting democratic participation in order to influence policy-making and render it more legitimate and sustainable.

More than twenty years ago, the Jewish medieval burial ground of Girona (also called Montjuïc) was discovered and excavated. At that time, the negotiations were very different from what was possible in Barcelona’s Montjuïc recently (Colomer 2010). The local archaeological authorities contacted both the Federation of Jewish Communities in Spain and Chevra Kadisha (a Jewish society which ensures that bodies of Jews are prepared for burial according to the Halakha). With all the necessary legal support, a cooperation accord was signed which detailed how the excavation would be conducted, how much would be dug, and what would be studied. Once the archaeological work and research were completed, the site was again covered so the burial ground remains there. Today Girona’s local authorities are negotiating to purchase the land so that a memorial can be arranged or the archaeological area displayed. As Silvia Planas, director of the City History Museum of Girona, has stated: twenty years ago the situation of Jewish communities in Catalonia was very different from today (i.e., less Ultraorthodox-biased), resulting in less problematic means of conciliating interests among archaeologists, the local heritage authorities, and the Jewish community (Silvia Planas, pers. communication, included in Colomer 2013). The negotiation in Girona was possible because of three factors. Firstly, all parties understood and respected the arguments of all other parties involved in the conflict. Secondly, they understood the limits of their claims, and consequently recognised what it means to have rights and responsibilities towards heritage in the public domain. Finally, all parties recognised the private and the collective sensibilities involving today’s religious faiths in heritage places. The intentions were to accommodate actions with due archaeological rigor and with the necessary sensitivity towards today’s minorities, in the belief that all stakeholders share the same philosophy, goals and responsibilities towards cultural heritage: preserving and enhancing a shared historic heritage, to ensure the dignity of the living and the dead.

CONCLUSIONS

This article has sought to provide a full picture of the discussion on the issue of the management of ancient burial grounds raising sensitive issues, regarding particular religious communities, with the intention that these arguments may serve for future mediations in Europe on the management of sacred places in conflict. Another aim was to point out that the topic under discussion here has actually little relation to ancient matters, such as medieval burial grounds, nor to the ethics of archaeological practice in relation to human remains, but to the politics of archaeological practice in a multicultural world.
European countries have both laws concerning the nature of cultural heritage, and procedural guidelines governing the management of archaeological heritage, especially in relation to the practice of the archaeology of death. Accordingly, the archaeological professional associations or the local administration have taken note of some of the major previous ethical problems encountered with the practice of the archaeology of death, and consequently adapted their professional protocols and their legislation to it. This includes the repatriation of cultural heritage and human remains (see also Nilsson Stutz 2008).

As the topic echoes other conflicts regarding the ownership of ancient human remains of indigenous communities, this paper has also tried to de-construct any possible comparative conclusion between the practice of indigenous archaeology in the US and Australia and the practice of the archaeology of death in Europe. It has argued that what may exist instead is a significant link between these claims exerted in the heritage arena and today’s religious-political interests (i.e., the position of Ultraorthodox groups, which recently moved from the US, in the Israeli and Jewish political arenas).

The topic under discussion seems to deal with more profound factors than only cultural heritage issues, because one of the hidden elements in this discussion is how a place for traditional religious forces is conceived among secular states in multicultural, multireligious, and multiethnic societies. Religion is currently one of the principal reasons for political mobilization in many countries. Conservative or fundamentalist postures in religion have not died as a result of secularism (or of democracy), as some intellectuals naïvely forecast forty years ago. Instead, there is a resurgence of traditional religiousness in all faiths. Fundamentalists position themselves as a crucial element in twenty-first-century international and national politics elsewhere, influencing particular currents of world politics in America, Europe and the Arab world (Casanovas 1994, Jelen & Wilcox 2002, Soper & Fretzer 2002).

In this scenario, how could secularism properly answer orthodox claims? How could secular states give voice to fundamentalist religions without breaking the established social contract? Perhaps it may be more appropriate to turn the question upside down, and ask how orthodox religious groups will accommodate their faith and “orthopraxis” both to secular state formations and to societies comprised of non-religious citizens? As Asad (2003) notes, this adaptation is likely to be very difficult, if not impossible. It would become a focus of permanent confrontation: orthodox fidelity is based on religious correctness and obedience rather than being exclusively a matter of individual private faith, a matter of cultural identity, or a matter of social contract, as liberal democratic states insistently wish to define these religious groups.

Thus the core dispute under discussion when dealing the presence of fundamentalist religious groups in ancient cemeteries does not lie in the archaeological ground itself but in a revived dispute between secularism and religious doctrines. To locate these issues more broadly within contemporary European...
politics, the discussion may extend beyond Jewish medieval archaeological heritage to affect any sacred heritage, no matter which dogma it is “related to” (see Stovel 2005). This is a matter for a broad debate not only among heritage professionals but also among all citizens touched by the presence of conservative religious practices in their daily life. The archaeology of sacred places, and the archaeology of death in particular, seem to be just another pawn in this renewed public battle of state vs. religion, while Jewbury, Tàrrega and Toledo can be seen merely as some of the battlefields of that conflict in Europe.

While this situation does not lead to any social/political agreement, the practice of archaeology of death must take an active management role to prevent misleading situations as those seen in Jewbury, Tàrrega or Toledo. As archaeologists and heritage managers deal with elements of public interest, it is recommended that they encourage other interested heritage communities to also participate in the management of sacred places, for example, following the aims, definitions and proceeds of the Faro Convention (or either similar other approaches as Mason & Avrami 2000 and Demas 2000, or the ICOMOS-Australia’s Burra Charter 2013). It is obvious that heritage may be significant in different ways to a much broader range of communities and interest groups (from purely scientific to more spiritual), and that this may generate competing ways of valuing and managing heritage places. For these cases, the Faro Convention acknowledges that multiple heritage communities see themselves as part of their environment, which is a heritage to be defended and promoted for the benefit of all. Therefore it must be possible to reach consensual compromises if opposing stakeholders (i.e., archaeologists, religious communities, and heritage administrators) recognize that, along with their rights to claim special relationships to cultural heritage, there are also responsibilities to preserve this heritage for the benefit of all humanity (Silberman 2013). Girona’s Montjuïc could be seen as an early good example of the Faro Convention’s philosophy. It is, however, important to note that the negotiation process was possible because there was no heritage community whose standpoints were radical enough to stop any possible dialogue on the value of this heritage place. There was no extremist religious community asserting that human remains are not to be regarded as “antiquities”, denying the site’s current heritage nature, and standing exclusively for religious arguments. Agreements can be reached only if conflicted parties work for similar goals, in this case the conservation of heritage.

The Faro Convention states that the parties involved must “establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities” (Council of Europe 2005: Article 7b). It also recognises the need to “develop knowledge of cultural heritage as a resource to facilitate peaceful co-existence by promoting trust and mutual understanding with view to resolution and prevention of conflicts” (Council of Europe 2005: Article 7c). However, the Convention does not acknowledge, and thus does not face, the existence of conflicts involving interested parties whose agenda does not include, by statute, the con-
ervation and management of particular historical places, because they refuse to define them as cultural heritage elements. This is the case of Ultraorthodox Jewish groups with Jewish archaeological human remains. As seen in Spain, this contested circumstance leads to irreconcilable positions with very little room to mediate conclusions. The consequence of this clashing situation is the halt of any further provisions necessary for enhancing the (sacred) value of any affected archaeological burial ground in an inclusive way. The question then, not solved by the Faro Convention, is whether these particular stakeholders are to be properly considered as “heritage communities”, with equal rights and responsibilities in the decision-making process of heritage value and protection, as the Faro Convention aims to promote. Certainly, it seems to exist “communities of interest” (such as the Ultraorthodox groups in this case) that are not “heritage communities” (in Faro Convention’s terms), and it has not been yet determined how such communities can take part in the process of heritage management and decision-making.

ACKNOWLEDGEMENTS

This paper owes much to all the wide range of views and arguments expressed during the seminar Archaeological Intervention on Historical Necropolises: The Jewish Cemeteries (organized by the City History Museum of Barcelona, Barcelona, January 2009), and the International Workshop Heritage in Conflict and Consensus (organized by the Center for Heritage & Society, UMass & Bart College, Amherst, November 2009). Many thanks to Max Polonowski, Renée Sivan, and Michael Blakey for conversations on the management of religious heritage today. I also thank Carme Miró and Arturo Ruiz Taboada for their contributions on the Spanish archaeological case studies under discussion. I am also grateful to Cornelius Holtorf, Neil Silberman, and Gabe Mosheenska for their comments on early versions of this paper, as well as to two anonymous peer-reviewers, for their comments on its latest version.

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