

Marking boundaries between legal and moral issues: the competition for human rights

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During the nineteenth century the Tasmanian Aborigines were considered little more than biological curiosities with it being considered 'fashionable' to possess their remains. Many of these then ended up in Museums, with the Natural History Museum in London, until recently, possessing the remains of seventeen unidentified Tasmanian Aborigines. This possession saw a legal battle between the Museum and the Tasmanian Aboriginal Centre (TAC) for the right to determine what should be done with these remains. The TAC sought a court order for letters of administration, that is, an authority from the court that gives powers of administration where a valid will has not been made. While the letters of administration were not granted, the TAC was appointed administrator of the estate, though this was limited to commencing legal action seeking the return of the remains, then taking possession of the remains in order to provide a proper burial. The TAC also sought to prevent the Natural History Museum from carrying out tests on the remains before their return, with the present situation being that the remains have now been returned, but the Natural History Museum has retained the samples while further negotiations continue with the TAC in respect to being allowed to carry out these tests. What this case has illustrated is that indigenous groups have little or no legal rights in regard to determining what happens to indigenous remains that are in the possession of museums. The reason for this is that while legislation allows museums to repatriate remains, it rarely requires that they do so. The determination of what should be done in regard to the return of human remains to indigenous groups is therefore, at present, more of a moral question than a legal one.