CASUISTRY
A METHOD FOR ANALYZING NOVEL ETHICAL PROBLEMS IN ARCHAEOLOGY

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The SAA is now considering whether its ethics principles should be updated. Regardless of the decision, a successful ethics program requires methods and approaches that, in the end, provide practical advice. In our experience (the principal author has 12 years teaching the ethics of cultural property), it is challenging to develop ethics principles that provide practical guidance. The analytical method most often taught is often termed "applied" or "principle-based" ethics through which ethical principles, often listed in an ethical code, are applied to problems. Solutions are deduced from those principles, whether the established SAA Principles of Archaeological Ethics (Lynott and Wylie 2000; https://www.saa.org/career-practice/ethics-in-professional-archaeology), Aristotelean virtues (Colwell-Chanthaphonh and Ferguson 2004), contextual utilitarian considerations, or deontological prescriptions. Even simple questions can be difficult to tackle, and complex problems with multiple, sometimes competing, considerations can overwhelm. Here, we suggest casuistry as an alternative or supplementary technique that can help organize elements of complex or novel problems to facilitate decision-making. In contrast to top-down, principle-based ethics, casuistry, which derives from Latin for "cases," uses resolved ethical problems to both inform new problems and derive fundamental ethical maxims (Arras 1991).

In this article, we demonstrate the use of casuistry with the following real, novel archaeological ethical problem. The ethical problem is *whether it is ethical for archaeologists to work with artifacts owned by the collector described in the following scenario in their research*. We assume that the artifacts are relevant to research questions, provenance problems are satisfactorily addressed, and the artifacts meet the same standards for legality for artifacts found in many public collections.

> Growing up in central Florida, our protagonist was always interested in Florida precontact history. He occasionally found artifacts, but collecting was never more than a passing interest. After high school, he amassed a sizeable fortune and began buying in-state and out-of-state private collections of historic and precontact Florida artifacts, paying top dollar. After spending many millions, his collection includes many thousands of artifacts together with provenance data of varying quality.[1] He wants to ensure these artifacts remain in Florida for people to see and researchers to analyze. The collection is secured. Researchers are encouraged to visit the collection, where they can handle, photograph, and record data on the artifacts. His intent is to transfer the collection to a suitable public facility where the collection would remain intact, displayed to the public, and open for research. So far, his collection has facilitated several professional research projects and publications and a thesis.

This scenario was shared with colleagues for their opinions about whether working with these artifacts is ethical. Some hate it, some like it, many are bothered. Most who find it problematic are disturbed by the buying of artifacts, but respondents also raised concerns about the reliability of the data, including fakes and inaccurate information, and the permanence of artifacts remaining available for study.

Principle-Based Ethics

Ethical principles and codes give practitioners lofty, prima facie duties to follow, such as stewardship, honesty, or accountability, but they give little practical advice in particular cases (Freeman and Francis 2006). Tackling the novel scenario from a deductive approach, we are quickly mired in seemingly conflicting principles with little guidance as to which is most applicable (Jonsen and Toulmin 1988), undermining the goal of clear ethical guidance. For example, we might argue that stewardship broadly requires that we extract information from the archaeological record regardless of who owns it (Pitblado 2014), or that stewardship narrowly requires only public ownership and that professional excavation will suffice (Goebel 2015). We might believe archaeologists should not work with collectors because the artifacts may eventually be sold, violating principles of reproducibility of results and anti-commercialism (Murphy et al. 2000). But

most archaeologists would work with professionally excavated CRM collections even though those are often privately owned and may eventually be sold (Hamilton et al. 2000), so maybe an ethic of professionalism is more important. However, most archaeologists would work with artifacts in museum collections that were unprofessionally excavated decades ago or purchased, or with data from collections that were repatriated or lost. Is this an expediency consideration that supersedes reproducibility and professionalism or that museums provide absolution? This morass creates what Giacomini (2005:211) calls "the usual agony familiar to anyone who has tried principle-based . . . reasoning." Part of the problem is trying to derive normative behaviors from broad principles that apply to the specific facts. Broadly worded principles are broadly applicable but subject to conflicting interpretations when context is important (Freeman and Francis 2006). For example, there is no obvious and universal answer to the fundamental question of whether condoning private ownership of artifacts violates or satisfies the principle of stewardship (Pitblado 2014; Wylie 2000). It depends.

Secondly, deductive reasoning can work for individual principles but does poorly when several principles are applied to the same facts. Two problems may be easily resolved independently, but when they interact, they can seem unresolvable, even when principles are ranked in importance (Smith and Burke 2003). Sometimes, when considered together, the factors affecting problem resolution are morally opaque, maybe with unknown features or factors that appear morally neutral but unify our conclusions (Coleman 2007:475; Freeman and Francis 2006). Finally, deductive reasoning strips nuance from a problem in order to reveal its moral essence, even though small factual variations may make the difference between moral and immoral behavior.

Casuistry turns deductive-ethics on its head, prioritizing practice—in the form of previously determined acceptable behaviors—over principles. What differentiates casuistry from deductive-ethics is how applicable principles are derived. Rather than a set of precepts set on high and stripped of context, like Kant's unequivocal prohibition on lying, guiding principles are extracted through discussion and dissection of actual cases (Erickson 2016; Lozano 2003). It is akin to the way the common law is derived and applied in English-speaking judicial systems, and why those systems are adaptable to new conditions; a law school textbook on common-law negligence, for example, may simply be 1,000 pages of case opinions spanning 400 years. From that collection, one can discern evolution of the law due to temporal changes in technology and understandings of morality.

Casuistry has deep roots, with its origins in the musings of Aristotle, who believed ethics should be practical rather than theoretical (Paulo 2015). It matured most notably with the Jesuits in the 1500s, who used it to answer novel moral questions for the Church, especially when souls were at stake (Jonsen and Toulmin 1988). Recently it has been revived as fields of study move toward secularity (and in doing so, encounter ethical problems that cannot be easily answered by rigid religious guidelines), such as law (Paulo 2015) and biomedical (Lozano 2003), environmental (Erickson 2016), and computer ethics (Coleman 2007). Stripped of its religious constraints, modern practitioners of casuistry are cognizant that its resolutions are socially constructed rather than deduced from absolute and timelessly true doctrines (Coleman 2007). This flexibility facilitates a multidimensional way of exploring an issue, as it reinforces the idea that answers may not be set in stone but are contextual and subject to constant reevaluation.

A Casuistic Example

We use the Novel Scenario to briefly illustrate the process. Space prevents a detailed account because casuistic analyses require deep dives into facts and contexts of the problem and all analogic cases (Giacomini 2005; Tomlinson 2012). There is no single analytical approach, but the process includes identifying a paradigmatic case for comparison, deep description of the facts and context of the problem and comparatives, iterative discussion and reasoning seeking similarities and differences, agreeing on the most probable ethical action, and sometimes extracting one or more maxims to guide future behavior (Arras 1991; Erickson 2016; Jonsen and Toulmin 1988). Our novel case is ethically ambiguous, meaning no consensus has yet developed about its resolution (Erickson 2016). The first step is to start with an analogic paradigmatic case that is clear-cut, meaning a consensus has been reached on its ethicality. We use two possible paradigmatic cases that represent different, potentially analogous, situations: working with artifacts owned by a Private Collector and those owned by a Museum. The Private Collector buys and sells artifacts, digs on his own, and knowingly purchases unprofessionally excavated artifacts.[2] The Museum is public and is typical of a university or regional museum. For this exercise, we assume virtually all archaeologists would work with artifacts in the Museum but few would work with this Private Collector. Table 1 summarizes the Novel Scenario and the paradigmatic cases.

We start with the Private Collector as the paradigmatic case because there are clear parallels—both are private individuals who purchased collections. But does this differentiate them enough from the Museum, which occasionally purchases, trades, or deaccessions artifacts? Unlike the Private Collector, the protagonist is not profit-oriented and shares research and public-education motivations in common with the Museum. Perhaps the best analog is a private research institution or a collector whose artifacts will one day form the institute's core, like the private collection assembled by George Gustav Heye, largely through purchases of items, that forms the foundation of the Smithsonian Institution's National Museum of the American Indian. Regardless, once the paradigm is selected, other cases of like kind but slightly different facts are compared

Table 1. Summaries of Potentially Distinguishing Factors (Divided into Categories) for the Novel Scenario and Private Collection and Museum Paradigmatic Cases.

I. Nature of the Collection

	Novel Scenario	Private Collection	Museum
a. Method of acquisition, status of artifacts	Purchase of private collections	Personal collection, some purchased artifacts and some sold	Donation of private collections, some private collections purchased for donation, some professional excavations
b. Legality	Most, if not all, are legal	Most legal, some probably not	Most, if not all, are legal
c. Professional excavation	Some purchased from unprofessionally excavated sites	Some personally dug or purchased from unprofessionally excavated sites	Some acquired by donation from unprofessionally excavated sites
c. Permanence	Highly likely with final donation, but owner has power to sell until then	Unlikely, owner has power to sell artifacts	High, but museum has power to sell or deaccession artifacts
d. Public ownership	Eventually, if donated	No, likely never	Yes
e. Motivation	Research, public display, education, consolidate scattered collections, personal satisfaction	Profit, personal enjoyment	Research, public display, education

II. Archaeological Significance

	Novel Scenario	Private Collection	Museum
a. Importance of artifacts	High	Variable, potentially high	High
b. Geographical breadth	Single state	Multi-state	Mostly single state
c. Temporal breadth	Paleoindian-Historic	Limited to collector's interests	Paleoindian-Historic
d. At least some fakes	Probably	Probably	Probably
e. Provenance accuracy	Fair to high	Uncertain, some secret	Fair to high

III. Accessibility

	Novel Scenario	Private Collection	Museum
a. Research	High	Fair	High
b. Public availability	No present availability	None	Small displays
c. Education	No present availability	None	High

with the novel problem until a consensus is reached about the best ethical guidance, termed the most probable resolution (Coleman 2007). For example, most archaeologists would work with artifact collections generated through CRM, even though those are often privately owned and impermanent. Why would that be ethical but not the Novel Scenario? Other potential factors raised by these simple comparisons are not easily deduced from the SAA Principles of Archaeological Ethics but could be important in guiding an ethical resolution, such as are there pertinent differences between public and private institutions, how much buying and selling is too much and to what extent does it matter how recently it occurred and under what circumstances, and are personal motivations important and how should they be evaluated? Each of these questions, and others, raise many considerations, but sorting out the pertinent factors in the comparative cases allows us to hone in on the important ethical principles at play.

A detailed analysis has an additional advantage: it is easier to avoid biases that can motivate ethical decisions because biases are often based on broad assumptions rather than facts. For example, the general assumption that museums are institutions dedicated to professional research and public engagement glosses over the actual permanence of the collections or their often-shady origins. Requiring one to clearly articulate the details of comparative cases contextualizes summary glosses and, in this case, blurs the presumptively bright-line differences between museums and some collectors. After reviewing the details of the comparatives, we think a Museum is a better paradigmatic case and makes the Novel Scenario less like cooperating with a collector and more like working with a museum. It is not clear to us that a deductive approach could adequately contextualize the scenario and reveal the myriad nuances, leading to an unambiguous consensus outcome.

Casuistry is a not a perfect solution. Its focus on decided cases and consensus can make it slow to adopt changing notions of morality (Arras 1991). Practically, we could never implement a full casuistry ethical program in archaeology; the discipline has no corpus of decided cases, there are relatively few scenarios in which consensus has formed, and the details of different scenarios vary dramatically. Despite these shortcomings, casuistry could be profitably added to existing techniques for ethical analysis (Colwell-Chanthaphonh et al. 2006).

Notes

1. The legality of private collection of artifacts on Florida's state-owned lands, notably from freshwater rivers and large lakes, has changed through the years and often was murky at best (Glowacki and Dunbar 2019; Thulman 2006). To this day, the state has not attempted to recover artifacts collected on these lands prior to 2006, when all collecting was banned. Some of the artifacts in the possession of this individual in Florida were collected since at least the early 1900s, some from very important sites. It is not knowable whether all these artifacts were legally collected, but the collector made efforts to ensure they were.

2. We avoid the pejorative term "looted" because it is not easily defined.

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