ARCHAEOLOGICAL ETHICS
IN ARMED CONFLICTS

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by
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Abstract

Like its ancestral disciplines, archaeology is no stranger to human conflict. Greek and Roman warfare often resulted in the sacking of cities, with all property (public, private, temple) taken as booty and the population and heritage exterminated or absorbed (men killed, women and children sold into slavery). In addition to the personal danger risked in a hostile region, archaeologists may also be thrust into deep and divisive cultural embattlements. Cultural property may be destroyed, intentionally or unintentionally. Graves, including potential evidence of genocide or mass murder, may be disturbed. Archaeologists may find themselves embroiled in many of these disputes and violent events, leading to difficult and complex ethical issues. This viperous nest of ethical concerns is amplified where an archaeologist is present as part of, or perceived to be related to, an invading or occupying military force. The goal of this thesis is to develop an engaging and pragmatic virtue-based professional ethic that may guide an archaeologist and archaeology through the ethical bramble bush raised by modern human conflict. The present ethical systems, based primarily on utilitarian or deontological principles manifested in ethical codes, are deficient because they fail to establish the archaeologist as a trustee (active or passive) in a political dynamic, elevate the archaeological record even when these professional codes purport to discount its importance, fail to address adequately the matrix of relationships in a manner that ensures trust across the interests of all stakeholders – both present and past, and dramatically fail to identify and develop the central thrust of a professional ethic (as opposed to personal moral judgment) in the first instance.

Index Words: Conflict Archaeology, Ethics Codes, Virtue Ethics, Political Ethics, Embedded Archaeologists, Site Preservation and Cultural Protection
Acknowledgments

Undertaking a thesis is both a curse and a blessing. First the curse: it is challenging, exhaustive, and if done right, discomforting. As you travel across the waterways of such an intellectual endeavor, you find sandbars and shallows that require you to confront assumptions, bias, and prejudices. If all goes well, you may be richer for it, but you are at the least a different person, a different archaeologist. At least for me, one who is less sure of what he knows and surer of what he does not. A thesis is an uncomfortable, transformative experience.

Now the blessing: no one travels alone. It may be a challenging and discomforting voyage, but it is one that is populated with wonderful people, many on the shore urging you on and a few in the boat helping with the oars. These are friendships, renewed or made, and worthy of acknowledgement. I want to thank my two thesis supervisors, Dr. Mark Pluciennik and Deirdre O'Sullivan. Their patience (often tried by me), wisdom, and good counsel were often sought out and much appreciated. I learned so much from them. I further want to thank Dr. Sarah Tarlow, one of my upgrade reviewers and internal reviewer for the *viva voce*, and Dr. Yannis Hamilakis, my external reviewer for the *viva voce*, for their thoughts and insights on my thesis.

I also want to thank my family and friends, too many to list, whose sacrifices and patience allowed me to fulfill my dream of reaching this day. Finally, I want to thank those people whose names appear in this thesis, my teachers and colleagues who have struggled with the issues of archaeology and war. I build on the theoretical scaffolding that they constructed and stand on their shoulders in presenting my proposed professional ethic founded on the virtue of trust. In conclusion, I want to acknowledge my late Aunt, Marie Ayache, an exceptional archaeologist in her own
right, trained in the classical Continental system, who taught me in the mountains of Afghanistan, the deserts of Morocco, and Indian Country in Oklahoma to see in every artifact a human face.

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July 5, 2013
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List of Abbreviations

AAA (American Anthropological Association)

AHRPO (US Army Human Research Protection’s Office)

AIA (American Institute of Archaeology)

ANCBS (Association of National Committees to the Blue Shield)

AOR (Area of Responsibility)

BCT (Brigade Combat Team)

CA (Civil Affairs)

CEAUSSIC (AAA Ad Hoc Commission on Anthropology’s Engagement with the Security and Intelligence Communities)

CENTCOM (US Central Command)

CIA (Central Intelligence Agency)

COIN (Counterinsurgency Operations)

CORDS (Civil Operations and Revolutionary Development Support)

CPA (Coalition Provisional Authority)

CPP (Cultural Property Protection)

CRM (Cultural Resource Management)

DA (US Department of the Army)
DI (US Director of Intelligence)

DoD (US Department of Defense)

EAA (European Association of Archaeologists)

FAO (Foreign Area Officer)

FOB (Forward Operating Base)

FM (US Army Field Manual)

GWOT (Global War on Terror)

HTS (Human Terrain System)

HTAT (Human Terrain Analysis Teams)

HTT (Human Terrain Team)

ICOM (International Council of Museums)

ICOMOS (International Council on Monuments and Sites)

ICRC (International Committee of the Red Cross)

ICTY (International Criminal Tribunal for the Former Yugoslavia)

IED (Improvised Explosive Device)

IFRC (International Federation of the Red Cross and Red Crescent)

IO (International Organization)

IRB (Institutional Review Board)
MoD (Ministry of Defense – UK)

NATO (North Atlantic Treaty Organization)

NCO (Non-Commissioned Officer)

NGO (Non-Governmental Organization)

OEF (Operation Enduring Freedom)

OIF (Operation Iraqi Freedom)

OSD (Office of the Secretary of Defense, US)

OSS (Office of Secret Services, US)

OUSDI (Office of the Under-Secretary of Defense for Intelligence, US)

PDT (Product Development Team)

RPA (Register of Professional Archaeologists)

RRC (Reachback Research Centers)

SAA (Society for American Archaeologists)

SF (Special Forces, US Military)

SME (Subject Matter Expert)

SMEnet (Subject Matter Expert Network)

SOP (Standard Operating Procedures)

SSRA (Social Science Research and Analysis)
SOPA (Society of Professional Archaeologists)

TCE (Theater Coordination Element)

TRADOC (US Army Training and Doctrine Command)

TSO (Theater Support Office)

UK (United Kingdom)

UN (United Nations)

UNESCO (United Nations Educational, Scientific and Cultural Organization)

US (United States)

USSR (Union of Soviet Socialist Republics)

WAC (World Archaeological Conference)

WAC IC (World Archaeological Conference Intercongress)

WMA (World Medical Association)
CHAPTER 1: INTRODUCTION

Imagine your country at war. It has suffered a brutal, unprovoked, surprise attack by an enemy committed to imperialistic designs. The attack has been repelled – for the moment. This enemy has invaded other countries and has engaged in acts that amount to war crimes and genocide directed at civilians within its areas of invasion and occupation. Your country’s military response is consistent with international law and is sanctioned by international authorities.

As a proud citizen of your country, you support the war effort. You and your family have made very personal sacrifices. You have family in the military and some are presently in harm’s way. You understand that there are many citizens of the belligerent nation that may not support the imperialistic designs of their country, but that seems to be beside the point at the moment.

Your country is committed to complete victory. It is a signatory to the 1954 Hague Conventions that protect cultural property from destruction in military operations except where a “military necessity” exists. Your country intends to abide by its international obligations as required by the Hague Conventions. The war has recently turned to your country’s advantage with the possibility of a violent and deadly invasion of the enemy’s country looming on the horizon.

You are also a well-respected archaeologist, working as a professor at a public university; your specialty – the archaeology and cultural history of your country’s present enemy. One day, you receive word that several prominent government officials seek your counsel. Eager to help, you arrive at the meeting. Present company surprises you. Along with the expected government and military officials, you are in the company of several prominent scientists also dedicated to the war effort. The question put to you is whether there are any particular cultural heritage sites that should be
avoided if your government begins bombing of the enemy’s country in anticipation of the expected invasion. You are also asked what cities are of greatest cultural value. You carefully prepare a list of sites and cities that should be avoided in an effort to minimize the destruction of cultural property. Bombardment soon begins with most of those sites and cities spared.

Many months pass before you are called to a second meeting. At that meeting, you are given a list of five cities and asked to provide an assessment of the importance of the cultural property and heritage of each. One city in particular, Emerald City, is of particular cultural importance. Museums, university collections, and other important cultural sites are present. Moreover, many of the enemy’s intellectuals live there. You discuss the importance of all five cities but you point out the central importance of Emerald City to the cultural heritage of the enemy.

After lunch, you are approached once again. You are asked to rank all five cities in the descending order of cultural importance to the enemy. The government representatives state that Emerald City is at the top of that list thanks in large part to your previous contributions on the subject. You are to identify the sequence of the remaining four. You are also told that the first two cities on your list (Emerald City and the second you identify) will be bombed. Moreover, the scientists you met in the previous meeting have developed a weapon of unprecedented destruction that will be used on both cities to end the war sooner with less loss of life. You provide the list.

A month later, you receive a frantic request to meet with the Secretary of Defense. At your meeting, he appears agitated and deeply troubled. The Secretary is an intellectual and a person of culture and is visibly concerned with the use of this horrific weapon against Emerald City because of the destruction of cultural property and heritage. Although he is aware of the target selection committee’s justification that destroying
large portions of Emerald City is better understood by the enemy’s intellectuals who would put pressure on the government to sue for peace, he cannot endorse Emerald City as one of the primary targets. He asks that you approach the President of the United States with him, share your knowledge about the cultural importance of Emerald City, and urge with him another city to be bombed in its place. You agree because of your specific expertise as an archaeologist, hoping that cultural property will be preserved and the war may end sooner with less loss of life. Soon, you learn that your country has dropped atomic bombs on two cities, sparing Emerald City and bringing a war that your country did not start to an abrupt end.¹

As an archaeologist and a member of the archaeological profession, did you act ethically? How would you even know? What guidance could you turn to in an effort to come to a morally acceptable decision? And what would your profession have to say about you, the process, and your conclusion? The course of responding to these questions is the subject of this thesis.

I come at these ethical issues over a two decade-long struggle with archaeology, religion, culture, and armed conflict. Although this thesis strives for comparative scope, it retains a certain North American perspective and bias, in that I write within that geo-cultural and political space (although I would not be your typical American – if there is such a thing – having been born in Casablanca, Morocco, to a Moroccan mother whose family’s presence there predates the 11th century and an American Indian father from Broken Bow, Oklahoma, where I spent many of my formative years). I have participated in what became the critical study of the cultural preparedness of the battlefield since the early 1990s, first as an actual participant and consultant to the US

¹ Far from fanciful, the scenario presented fairly tracks the workings of the target selection committee’s recommendations and the US government’s decision-making process in selecting Hiroshima and Nagasaki, and sparing Kyoto, the “Rome of Japan” (Rhodes 1986: 630–641)(and authorities cited therein).
government and then as an academic. By cultural preparedness of the battlefield, I mean identification and protection of targets within a theater of operations as required by international laws and conventions; providing subject matter expertise on religious and cultural issues that may influence operational, tactical, and strategic choices by an invading and occupying military (what would soon be dubbed managing the human terrain); providing guidance to the military on stabilizing and rebuilding within a theater of operations after major combat; and providing general education to military personnel about cultural sensitivity, among other things.

Initially, I was attracted to an important contemporary question: To what extent does awareness and knowledge of the cultural space aid law enforcement and the military in preventing or mitigating (i) terrorist attacks and (ii) armed conflicts between nation states (Williams 2005)? It was only later that I confronted the question of the *ethical* issues posed by the role archaeology plays and ought to play, if any, in the cultural preparedness of the battlefield.

In attempting to answer that question, my research developed potential patterns of attack by several prominent militant Islamist groups, most notably Egyptian Islamic Jihad and its successor, *al Qaida*. I found that *al Qaida* carefully selected targets and developed means of attack that were both religiously and culturally acceptable to its leaders and followers, a group that espoused neo-Wahhabist, militant, and revivalist versions of Islam (Williams 2007a; 2007b; Urgo and Williams 2008). My research then turned to how to use the fact that *al Qaida* had weaponized its revivalist and militant brand of Islam to predict and help prevent attacks (Williams 2010).

After the *al Qaida* attacks of September 11, 2001, my research and consulting for the US government turned to cultural and religious issues developing in Afghanistan (a country in which I had spent much time) and later in Iraq. Although approached, I did
not participate in the identification of cultural property in Iraq because I was not an expert on Iraq or Mesopotamia, and never reached the ethical question of archaeology’s role, if any, in target identification and protection.

As the conflicts in Afghanistan and Iraq intensified, cultural preparedness of the battlefield came to the forefront among the US, UK, and other armed forces. It was at this time, that managing the human terrain through subject matter experts, both in the US and in the theaters of operations, emerged as a pressing issue within the Department of Defense (US) and the Ministry of Defense (UK). This focus began with training military personnel in the US before being shipped out to war. Eventually, the question of embedding civilian social scientists within combat units in conflict zones emerged. I voiced concerns on several occasions about embedding civilian scientists within combat units because of the professional ethical issues I envisioned and not because that such action would be operationally unsuccessful. In fact, during this time, I developed cultural sensitivity training modules for the US Central Command and Special Forces Command and constructed an improvised explosive device (“IED”) interdiction model designed to predict the location of IED “factories” in Iraq based on cultural inputs, among other things.

An early architect and strong advocate of what would become the human terrain system was Dr. Montgomery McFate. McFate, a lawyer and an anthropologist, convincingly constructed an argument in support of embedding civilian social scientists that would eventually turn into a proof of concept program (a pilot program) and then eventually into what the US Army has called an operationally successful permanent fixture in the US military. Contrary to several accounts, McFate was concerned about ethical issues and the role anthropology ought to play in armed conflict. She personally resolved those issues differently than the American Anthropological Association (“AAA”) and I.
It is worth stressing: McFate and I both addressed the issues on a personal ethical and political level. It was only later that the AAA weighed in on the issue, providing collective professional guidance to McFate and other anthropologists; no archaeological association ever did the same for archaeologists like me.

Shortly after the human terrain system proof of concept was disclosed to the public and then launched, the AAA weighed in on embedding social scientists into military units. The AAA found numerous problems with the program. The AAA followed up with a deliberate and thoughtful study, resulting in a detailed report rejecting as unethical the human terrain system as presently constructed. Members of the AAA also voiced emotive and entertaining opinions on various blogs during this time overwhelmingly in opposition to embedding anthropologists in human terrain teams.

During this time period, a critical stage in the formulation of the human terrain system, the professional voice of archaeological associations remained silent. To be sure, various archaeologists personally voiced concern or outright hostility to embedding social scientists in human terrain teams. Meanwhile, some archaeological associations participated in the cultural preparedness of the battlefield by providing to the US military cultural training and a list of Iraqi cultural property to be avoided in any aerial attack, but did not specifically address embedding archaeologists in human terrain teams. Thus, no voice, no guidance came forth from professional archaeological associations. This was the case even though archaeologists were serving as embeds, providing specific guidance on items of cultural heritage and their importance to various tribes within Iraq, assaying the vitality of local markets through an assessment of the variety of spices and other merchandise present, protecting and preserving artifacts and sites, preserving archival materials, and studying archaeological landscapes to aid in the
reflooding of the marshes in Iraq. It was the void of any collective archaeological professional voice that led me to undertake this study.

1.1 Background

This thesis is about how archaeologists ought to do, and should refrain from doing, archaeology (that is, the praxis of archaeology) as a profession in war. Paradoxically, this thesis is not designed as a field manual for the practice of archaeology in a combat zone or as a treatise on theoretical aspects of the discipline (see, e.g., Kelley and Thomas 2009; Renfrew and Bahn 2008; Bahn (ed.) 1996: McMillon 1991; Barker 1993; Coles 1979). Rather, this thesis is about how archaeologists should practice their arts within a mature profession (Jackson 2010; Brown 1992; Bayles 1981). Through the prism of the archaeologist’s role in armed conflict, the thesis explores the nature of an archaeological professional ethic and the nature and justification of an archaeologist’s exercise of professional judgment.

Archaeology in war is an appropriate paradigm to address ethics issues because of its current notoriety and the importance of these issues in their own right. Moreover, the paradigm allows us an efficient way in which to extrapolate to the question of archaeology and ethics in general. This is the case, to echo the words of Thomassen (2010: 3), because “‘archaeology in conflict’ does not relate to a subfield of the discipline, but to an essential dimension of what archaeologists do – anytime, anywhere.” This thesis suggests that the practice of modern archaeology is more akin to a branch of moral philosophy than it is to science (Postman 1993, quoting Goodman 1970; see also Saitta 2007: 267). Science is about nature, archaeology is about human nature, and there is a great difference between the two. Archaeology is not mere history as a sequence of events. It is about the truths that emerge through time.
When discussing archaeological ethics, there are usually more questions than answers – a lot more. This is certainly no less true when one addresses ethical issues confronted by archaeologists who find themselves directly and/or indirectly involved in human conflict. For example, an archaeologist may find herself in the role of protecting cultural heritage, cultural property, or archaeological sites (Stone and Farchakh Bajjaly 2008; Rush 2010; Stone 2011). Another archaeologist may find himself participating in target selection in an effort to identify and protect cultural property or sites (Stone 2011: 1-9). Still yet another archaeologist may find himself educating military personnel both in and out of the area of conflict to be more culturally sensitive and aware of cultural heritage (Rush 2011: 141; Emberling 2008; American Institute of Archaeology (“AIA”) Statement 1997). Archaeologists may also serve as part of a follow-on or tactical military team to provide stability, construct infrastructure, and further the interests of a conquering nation state (Stone and Farchakh Bajjaly 2008; Rush 2010; Stone 2011; Teijgeler 2011; Rush 2011; Suchard 2011). More generally, archaeologists must address what roles, if any, they play in armed conflict – both as individual professionals and as members of a profession – and what a professional ethic might have to say about the contours and limits of those roles.

Operation Enduring Freedom (“OEF”) in Afghanistan and Operation Iraqi Freedom (“OIF”) in Iraq have not only focused, but also polarized, these discussions. These debates are often framed in emotive and extreme terms such as “collaboration” and

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2 “Operation Enduring Freedom (“OEF”) includes ongoing operations in Afghanistan, operations against terrorists in other countries, and training assistance to foreign militaries which are conducting operations against terrorists” (Kapp 2005). OEF was sanctioned by the international community shortly after military operations were begun by NATO forces (Teijgeler 2011: 93 n.9).

3 “Operation Iraqi Freedom (“OIF”) includes the invasion of Iraq, the defeat of Saddam Hussein’s regime, and the subsequent peacekeeping, rebuilding, and counter-insurgency operations in Iraq” (Kapp 2005). The military intervention in Iraq by the “Coalition Forces” led by the US and the UK was only partially sanctioned by the United Nations several months after the invasion (Teijgeler 2011: 93 n.9).

4 I acknowledge that the very use of the terms “Operation Enduring Freedom” and “Operation Iraqi Freedom” connote intent on behalf of the prosecutors of those wars and a vision that is far from self-evident and not without great controversy. However, I use these terms in sections of this thesis, albeit uncomfortably, but with purpose. In other sections of the thesis, I refer to these two conflicts as the Afghanistan and Iraq wars.
“non-collaboration” or “patriot” and “traitor.” This thesis considers the kinds of parameters that might bound such decisions, but focuses specifically on the circumstances of those who are involved, or are asked or potentially might be asked to be involved, with the political or military prosecution of conflict qua archaeologists. This has become particularly relevant to substantial numbers of archaeologists in recent times with the “embedding” of archaeologists and heritage professionals working with the military as cultural heritage managers in combat zones and working for the military within tactical units in OEF and OIF (6th World Archaeology Congress – Dublin 2008; AAA CEAUSSIC Final Report 2009; see also Stone and Farchakh Bajjaly 2008; Rush 2010; Stone 2011; Teijgeler 2011; Rush 2011; Suchard 2011; Hamilakis 2009; Albarella 2009). However, the debate’s importance will endure well past these present armed conflicts.

The debate within archaeology should not focus entirely on the recent interventions in the Middle East and Central Asia, as these are only examples within a much wider discussion: the legitimacy of military intervention and any associated archaeological role (Teijgeler 2011: 99).

The decision to make war is not made by archaeologists. Nor is that decision made by the military. War is made by politicians; it is fundamentally political and purposefully violent (Howard 1994; Stone 2011). An ethic that seeks to serve archaeologists in the many roles in war explicited above must recognize that strong political tugs and ideological overtones entrenched in any ethical system are constantly at play. Any notion that an archaeologist may insulate himself or herself from the myriad of political and ideological influences in armed conflict is disingenuous and deceptive (Hamilakis 2009, 2007, Hamilakis and Duke (eds.) 2007; Pollock 2008: 357-58). Simply, any

5 The term “embedded” is not uniformly defined. In this thesis, I define “embedded” as that situation where a civilian archaeologist has been asked, contracted with, or employed to work alongside a military force in a combat zone (see also Cuneo 2010: 2).
archaeological ethics of war must consider context in its full and robust form. Context, after all, is theoretically where archaeologists excel.

Professional ethics is relatively easy in the realm of first choices (first-best solutions) and makes fine grist for a parlor game. In the abstract, professional ethics is intellectually entertaining. In reality, in a world of second-best solutions, professional ethics is frustrating and discomforting. Ethical dilemmas are not conveniently about right and wrong choices – such challenges may be difficult to meet but they are not dilemmas. Ethical dilemmas are about multiple right choices or multiple wrong choices – usually multiple wrong choices.

Presently, archaeological ethics are code-bound (e.g., AIA Code of Ethics 1997; SAA Code of Ethics 1996; WAC Code of Ethics 2006). Codes are law-like statements that direct archaeologists to do, and refrain from doing, certain things (Colwell-Chanthaphonh and Ferguson 2006: 116). Although the codes of ethics from each relevant professional organization stress different but related themes (compare AIA Code of Ethics 1997 with SSA Code of Ethics 1996 and WAC Code of Ethics 2006; see also chapter 3 of this thesis), they all fail to appreciate the extent to which ethics are intertwined with politics (Pollock 2008: 357-58) – they present ethics as borne of a politically clean room. Moreover, the very nature of a code suggests that answers to ethical issues are self-evident; one need only apply the code to resolve thorny ethical questions and dilemmas. Even a hint of reality leads to the observation that ethical issues are messy and unruly affairs not susceptible to ease in resolution through application of rules. After all, can an archaeological ethic be reduced to a well-ordered architecture of general standards and specific rules contained in a code? Because of this and other perceived deficiencies, codes of ethics have been criticized in archaeology as well as in other disciplines (see, e.g., Tarlow 2006, 2001; see also Pluciennik (ed.)
2001: 39-45; Holtorf 2008: 6:10-12) precisely because ethical issues are messy and their resolution not susceptible to encasement in a sausage skin of rule-like directives (Tarlow 2001; but see Hall and Pels 2005 (arguing the value of codes of ethics as guidelines in some situations)).

The study of professional ethics requires us to confront profound and challenging questions about what sort of archaeologists we ought to be, what we ought to do and should refrain from doing as archaeologists, how we ought to treat each other professionally, and, collectively, what sort of profession we are and ought to become (cf. Scarre and Scarre 2006: 1). Essentially, ethics is a study of human conduct or character or both conduct and character (Scarre and Scarre 2006: 2; Wylie 2003: 3-6; see also Colwell-Chanthaphonh et al. 2008). A professional ethic, however, demands more of us (Wylie 2003: 5).

Within a professional ethic, it is not enough that we are personally ethical, whatever that may mean in any given circumstance; rather, a professional ethic also requires that the collective – the professional community as an institution – act ethically (Colwell-Chanthaphonh et al. 2008). The goal of a professional ethic rests upon this duality of purpose. A professional ethic must empower the individual archaeologist who is ultimately responsible for the resolution of ethical questions and dilemmas in the first instance and safeguard the institutional integrity of archaeology as a profession. This is no easy task.

This thesis focuses on the nature of archaeologists as practicing professionals in the unpleasant and, at times, horrific landscape of modern armed conflict. Some commentators have argued that we “have built a professional identity that revolves around the possession and study of things” (Colwell-Chanthaphonh and Ferguson 2006: 115) with the archaeologist as central to the story. In that narrative, the archaeological
record is elevated to some form of fetish (Hamilakis: 2009). In many instances “fieldwork” is seen as the central archaeological practice (Pluciennik and Drew 2000; Gupta & Ferguson 1997; Lucas 2001). In that narrative, the archaeologist sees himself or herself as a midwife of sorts, birthing discovery upon discovery, artifact upon artifact, theory upon theory.

We fail as a profession when the archaeologist is the hero of the story (McGuire 1997: 65). Moreover, when we elevate artifacts and the archaeological record over the lives of human beings, we have lost our empathy as humans and our way as a profession. A professional ethic moored to a “thing” is an ethical system moored to nothing. Rather, ethical obligations must be built on relationships, and relationships are between people. For an archaeologist in practice, that ethical relationship rests between the archaeologist and both living communities and people of the past.

Modern archaeological ethics, particularly after the ethical turn of the 1980s, has discounted or dismissed the importance of the dead in an effort to elevate the significance of the living. Although this approach is a convenient rhetorical device, it does not have to be this way. Put differently, the tension that has percolated in the profession between choosing between past and present people is a false conflict that is resolved through a trust-based professional ethic which administers the archaeological record for the benefit of the living and the dead consistent with a general intent of the dead. This is assuredly the case where archaeologists enter the space of human conflict where we witness the evil that humans visit upon themselves.

A professional ethic must foster good character, provide action guidance, and enable an archaeologist to apply first principles (what I will later refer to as attributes or values of good professional character) to real-life challenges, often without the luxuries of detachment or time. A professional ethic must be contextual, recognizing that the ethical
issues play out in legal, political, ideological, and cultural spaces (Hamilakis 2009, 2007; Hamilakis and Duke (eds.) 2007). A professional ethic must be dynamic, supportive in an archaeologist’s struggle with the resolution of real-life situations, a process of engagement and trust making with numerous stakeholders.

1.2 Integrity of the Profession

It is not enough that a professional ethic provides guidance to members of the profession in confronting ethical issues in archaeological praxis. A professional ethic must also protect the integrity of the profession itself from erosion, subordination, and ultimately irrelevance by other institutions that may mislead, usurp, or highjack the essence of the profession (Chadwick 1998). For archaeology, and related disciplines like anthropology, in armed conflict, that principle of professional ethic requires both the archaeologist and the profession to ask just how far they should go to allow themselves to be incorporated in another institution, be it the military, the government, private capital (see, e.g., AAA CEAUSSIC 2009). The question, although difficult, is hardly novel.

Applied anthropology played a significant role in the manner in which the federal government managed its relationships with the first nations it conquered in the establishment and expansion of the US (Tyrrell 2007: 2). With the removal policy of the US government dominant in the first half of the 19th century, anthropologists endeavored to develop classification techniques to establish an identification protocol for American Indian tribes first to support removal, then to support other currents of policy (Tyrrell 2007: 2). Thus, by the end of the 19th century and the first several decades of the 20th century, anthropologists were instrumental in the new assimilation policy embraced by the US, often involving the forced removal of children from Indian
homes, educating them in Eastern schools, and indoctrinating them into the ways of civilized Western manners (Spring 1994; Adams 1995; Hoxie 2001).

On December 20, 1919, *The Nation* published a letter by Dr. Franz Boas (Boas 1919). In that controversial letter, entitled “Scientists as Spies,” Boas called out as unethical various anthropologists who participated in espionage against the Axis Powers in Central America during World War I (Boas 1919; Tyrrell 2007: 3; Price 2000). Boas strongly condemned anthropologists serving as intelligence collectors. He argued that such scientists “prostituted science by using it as a cover for their activities as spies” (Boas 1919; Price 2000). Boas further asserted that engaging in espionage under the cover of anthropology damaged the credibility of all anthropological research and resulted in the anthropologist losing any claim as scientist (Boas 1919). Within ten days of the publication of the letter, the governing council of the AAA censured Boas (AAA Censure of Dr. Franz Boas 1919).6

Boas’ concern does not appear to be with anthropologists engaged in the war effort – to be sure, many prominent anthropologists contributed to the war effort. Rather Boas’ concern was the subordination of the discipline of anthropology to a separate profession, the military and clandestine services.

During World War II, prominent American anthropologists contributed to the war effort in many capacities (Tyrrell 2007: 7; *see also* Price 2000). Seldom did these anthropologists do so under the false pretense of “fieldwork,” thus largely avoiding the criticism by Boas of engaging in “prostituted science” (Price 2000). More importantly, these anthropologists were able to aid in the war effort for the most part without losing

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6 In 2005, the AAA rescinded the censure of Boas (AAA Website June 15, 2005).
the distinct character of their profession. During World War II, the Australian anthropological experience was similar to that in America but with distinct cultural flavors (Gray 2006: 156). Several prominent Australian anthropologists worked with aboriginals in efforts to thwart a possible invasion of Australia by the Japanese (Gray 2006: 156).

The issue concerning the boundaries and structural integrity of a professional ethic is not confined to just archaeologists and anthropologists. For example, in the first half of the 20th Century, medical doctors and geneticists throughout the US and Europe embraced the eugenics movement (Gould 1996). Many did so within governmental institutions in an effort to see that their theories were implemented as law (Lombardo 2010). During World War II, nuclear physicists, metallurgists, mathematicians, engineers, and chemists banded together in an effort to beat Nazi Germany to the atomic bomb (Kelly and Rhodes 2009; Rhodes 1986). These scientists worked with the military in the development of these weapons often in secluded, restricted areas, eschewing research and publication for political and governmental ends (Rhodes 1986, discussing Los Alamos and Chicago Soldier Field locations). After the destruction of Hiroshima and Nagasaki (Hersey and Sloan 2009), when physicist Enrico Fermi was asked if he would engage in the research again, now knowing what destruction the fruits of that research would sow, he infamously answered, “Yes, it was good science” (Rhodes 1986: 770).

Most recently, journalists were embedded within military units during both OEF in Afghanistan and OIF in Iraq (Verdi 2004; Gay 2003; see also Fahmy and Johnson 2005). After the initial waves of the invasions, journalists and their various organizations began to question the propriety of embedded journalists covering the very
people they were living with and actions of which they were now a part (Ricchiardi 2003; Fox and Park 2006).

Embedding a profession within another institutional structure does not modify the profession; it transforms it. It strains one’s credulity to suggest that an archaeology that plays a vital role in a military structure is business as usual. In fact, such a transformation makes it an entirely new archaeology altogether. That may or may not be a good thing. It is, however, a very different thing. And it is precisely that potential transformation that demands archaeological input from the perspective of a profession. A profession that shies away from the collective resolution of this fundamental challenge to the reason of its existence forfeits the honor of profession and resolves itself to the status of fraternity.

1.3 Build-up to a Professional Ethic

A professional ethic must be built up from its foundational level if it has any reasonable chance of providing meaningful action guidance to its practitioners. One acceptable approach is to consider recurring, difficult cases that potentially span a wide range of scenarios in a narrative form (Newton 1995). These case studies are designed to build competing narratives that may provide insight in constructing a useful professional ethic (see, e.g., Jones 1999; Newton 1995). In this thesis, I will consider several recurring scenarios in developing a professional ethic to address ethical issues posed by the role of archaeologists in armed conflict. These scenarios are:

- An archaeology professor contacted to help develop a list of sites that should be protected from a contemplated air bombing campaign that will precede an invasion.
- An archaeology graduate student hired by the military and embedded in a combat unit to help prosecute a war.
• An archaeologist offered a job to assist the military in cultural preservation and site protection in a war zone.

• An archaeology professor contacted to provide training for military personnel in an effort to ensure the military discharges its legal duty to protect cultural property in an occupied territory.

• An archaeologist retained by the military to help stabilize occupied territory by providing guidance and advice on tribal structures and general cultural awareness.

• An archaeologist offered a job with the military to be responsible for the archaeology within an area used as a training camp.

1.4 Plan of the Work

This thesis constructs a professional ethic for archaeologists in armed conflict based on virtue, law, and politics, all necessary inputs or drivers in constructing a robust and useful professional ethic (Teijgeler 2011: 104) that both guides the individual in her exercise of discretion and preserves the integrity of the profession. The virtue of trust is the foundation stone to the model of ethics built in this thesis. One reason that trust is so compelling a lodestar in a professional ethic is that it is a simple principle near universally endorsed, implicitly or explicitly, in everyday life (Potter 2002). Because trust no longer receives the public or professional attention it once did, there is something of a disconnect between the way people officially talk about trust and the way in which trust is actually practiced in people’s lives (Potter 2002). This thesis will confront that disconnect.

The thesis has eleven chapters divided into five parts. The first part, comprising chapters 2 and 3, unpacks the current state of archaeological ethics and its application to the various roles of archaeologists in armed conflict. Chapter 2 introduces the various
roles archaeologists have played in armed conflict. These roles have included education, protection of cultural heritage, target selection for aerial attacks, and spying (e.g., Stone 2011; Hamilakis 2009, 2007; Mourad 2007). More recently, in OEF and OIF, archaeologists and anthropologists have been embedded in military units to help prosecute those wars (e.g., Suchard 2011; McFate 2005; Connable 2009). Chapter 2 will also examine the role of social scientists in Napoleon’s invasion of Egypt (Miles 2011; Dykstra 1998) and the Lewis and Clark expedition in the Western US (America’s first human terrain team) (Lewis and Clark 2005). The Chapter will then turn to social scientists and espionage or other war-supportive roles in World War I and II (Boas 1919). Finally, the Chapter will confront the sordid history of social scientists and government during the Vietnam War.

Chapter 3 analyzes the traditional approaches to archaeological ethics. It begins with the importance of the archaeological record to traditional ethical accounts (Zimmerman et al. (eds.) 2003: xiii-xiv). It then turns to an examination of the potential universe of traditional beneficiaries to an ethical duty. This Chapter then critiques existing codes of ethics and the nature and utility of a code in the first instance.

The second part consists of two chapters – Chapters 4 and 5. Chapter 4 analyzes the exciting and challenging emergence of political ethics in archaeology. Spearheaded by Hamilakis, Duke, and others (Hamilakis and Duke (eds.) 2007), this perspective demands that we consider the political context in addressing ethical issues, especially in armed conflict. Archaeological praxis is political (Hamilakis 2009, 2007). This movement rejects any attempt by archaeologists to present the profession as objective and detached from politics. Any ethical dilemma, especially those confronted by archaeologists in war, is necessarily a political and ideological dilemma (Lawler 2008: 517). Chapter 4 ends with a consideration of the role of politics in archaeological ethics.
and the dominance of conquest and colonialism in much of how archaeologists view the praxis of archaeology (Mourad 2007).

Chapter 5 explores the role customary international law and international legal instruments, such as The Hague Conventions of 1954 and its two protocols (1954 Hague Convention; Protocol I 1954; Protocol II 1999), play in providing context to the questions and obligations that archaeologists must confront in armed conflict. Many serious commentators on archaeological ethics in armed conflict have failed to consider the importance of the legal regime that, in many instances, contemplates, if not demands as matters of law, a role for archaeologists in modern military campaigns. Of course, a professional ethic is not slave to law. However, an honest and engaging ethical assessment must acknowledge the law even where it may seek to disobey it through notorious acts of civil disobedience (Thoreau 1864; Chenoweth and Stephan 2011). For an archaeologist, law may not be congruous with ethics, but it is undeniably part of context.

The third part consists of one chapter – Chapter 6. Chapter 6 considers and then challenges as deficient the existing ethical approaches to archaeology in armed conflict. In doing so, the Chapter seeks to map strengths and weaknesses in an effort to construct a more robust and contextual method for resolving ethical issues of archaeological praxis in warfare. Far from simply dismissing the many attempts to address the complex issues of archaeologists at war (e.g., Stone and Farchakh Bajjaly 2008; Rush 2010; Stone 2011; Teijgeler 2011; Rush 2011; Suchard 2011; Hamilakis 2009; Albarella 2009), the thesis builds on the theoretical scaffolding constructed by those that have gone before. Building on serious attempts to address these challenging issues, the Chapter embraces an ethical paradigm founded on virtue ethics.
The fourth part consists of three chapters – Chapters 7, 8, and 9. Chapters 7 and 8 explore the argument that virtue ethics is a compelling foundation for a model of political-ethical reasoning. These Chapters explore the meaning of an ethical system based on the virtues articulated by Aristotle (Marino (ed.) 2010; Broadie 1991) and others (MacIntyre 1981; Anscombe 1981; Hursthouse 1999; Slote 2001). These Chapters also introduce a virtue-based model of ethics that demands an engaged approach within the context of politics and law.

Chapter 9 draws themes from the experience of other professions with an ethic based, at least in part, on virtues (e.g., Oakley and Cocking 2001). In particular, the thesis investigates virtue ethics in the contexts of business and law, seeking to draw lessons that may enlighten the process by which an archaeological ethic based on virtue theory may be constructed.

The fifth part, comprised of two chapters – Chapters 10 and 11, includes a construction and application of a model of a professional ethic firmly rooted in the virtue of trust constructed from the narrative of real-life cases and interviews with archaeologists and anthropologists who have served in these roles, a bottom-up political ethical process. These Chapters seek to mine virtue ethics in an effort to develop a foundational ethical dynamic that may inform and guide archaeologists who participate in some form with the government or military. The ultimate goal of this thesis is to develop an engaging and pragmatic virtue-based professional ethic that may guide the actions of archaeologists and preserve the independence and integrity of the archaeology profession through the ethical thicket generated by modern human conflict. The trust-making model is designed to provide action guidance for, and to empower individual archaeologists with, institutional support for ethical stands they may take in confronting these challenging issues. Further, the trust-making model is designed to preserve and
reaffirm the independence and integrity of archaeology as a profession by guarding the degree by which archaeology is subsumed by another institution, be it the military, the government, or private capital (often through the practices of contract archaeology), and thereby, through that process, lose its independence and separate identity.
CHAPTER 2: ARMED CONFLICTS

2.1 Introduction

Traditionally, an archaeologist has the primary duty to preserve, protect, and enhance the archaeological record (Chase et al. 1996: 30-37; Green 1984; Lynott 2003: 17-19). Over time, the application of conservation and stewardship principles subsumed in the characterization of the role of archaeologist has eroded with a greater emphasis placed on relationships rather than things (Lynott and Wylie 1995). Recently, archaeologists have called for a redirection of ethical thought to assess the context in which ethical questions and dilemmas are presented, addressed, and resolved (Lynott and Wylie 1995; Hamilakis 2009; see also Hamilakis 2003b: 51-65; Hamilakis 1999: 60-79 (followed by comments by Hodder, Patterson, Kotsakis, Bartu, and Karakasidou); see generally (Hamilakis 1999: 99-103)).

Archaeology aspires to be a careful and honest conversation with people who have no voice (past peoples or victims of genocide or mass murder) wherein they tell us about themselves, which, in theory, leads to a better understanding of history for the betterment of the present and the future (cf. Teijgeler 2011: 99; Williams 2008). However, this engagement is far from innocuous (Foucault 1972: 49; see also Layton and Wallace 2006: 48). Acknowledgement of this special role begins a process of recognition of multiple pasts and contexts – and different degrees of belief in those multiple pasts and contexts (Tarlow 2011: 198), and that these pasts and contexts refuse to serve one purpose or one constituency (Hollowell 2006: 69, citing Wilk 1999). As a profession, we have come to recognize that excavation is a transformative event – every time. We are only now recognizing that archaeological praxis in all forms is also a transformative event.
2.2 Armed Conflict and Cultural Heritage

Modern war-fighting propels the archaeologist into a maelstrom of complex and difficult situations that may erode the individual archaeologist’s moral judgment and may result in the subordination or sacrifice of a professional ethic (Teijgeler 2011; Williams 2009, 2008). For example, an archaeologist may be asked to identify various sites or artifacts in a war zone in contemplation of an aerial bombardment campaign by the military (Stone 2011, 2009, 2005). Although such activity may appear innocuous at first blush, an archaeologist undeniably becomes an essential actor in the war machine, part of the target selection command that will contribute – directly or indirectly – to death and destruction, whether or not he cares to admit it (Hamilakis 2009, 2007, 2003; Mourad 2007; Albarella 2009; see also Harrington 2005: 3-4, collecting incidents where the purposeful destruction of cultural property was weaponized as part of ethnic cleansing campaigns). His decisions may protect the archaeological record as deemed of importance by him and his colleagues (Hamilakis 2009, 2007), but at the expense of the lives of local people who find themselves in the unfortunate position of not having the prescience to select proximity to “important” archaeological sites as the home at which they raise their families. Yet, as is often argued, the military engages in aerial bombardments with or without archaeological assistance so why not try to save that which he, the West, or some other constituency believes is worthy of saving (Stone 2011, 2009). Is this a compelling rationale for archaeological involvement or a rationalization for archaeological endeavors that cannot stand the test alone? The question itself portrays the classic ethical dilemma; a choice not between right and wrong, but between two wrongs (e.g., Hugo 1862 (Les Misérables)). More on this topic later.

An archaeologist may also be offered a job by a government or the United Nations (“UN”) and asked to help in developing an evidentiary record of mass murder or
possible genocide (Crossland 2009). Forensic archaeologists are called on, unfortunately, on a regular basis to provide this expertise (Crossland 2009). However, it is not unusual for governments and non-governmental organizations (“NGO’s”) to restrict site access, to disturb excavations, to impose counterproductive timelines, and to misuse the research adduced during an investigation for political ends (cf. Renshaw 2011). What is the archaeologist to do when she recognizes that she has become a pawn in a “great game” among various factions? The resolution of this dilemma is far from self-evident and will not be found in any ethical code.

Furthermore, an archaeologist may be embedded in a tactical military unit and asked to develop a human terrain profile about adversaries and local populations (McFate 2005; Connable 2007; Hamilakis 2009, 2007, 2003; Emberling 2008; Suchard 2011). Consistent with that assignment, the archaeologist may be asked to research the history and social order of a people to develop a strategic or tactical plan (Suchard 2011; Rush 2011). That plan may be consistent with operations designed to provide stability in an effort to bridge the divide between hostilities and relative peace (a better term may be the cessation of hostilities – peace is illusive when following on the heels of war). However, that plan may be to identify and assess social structures, for example, tribal affiliations and relative intra-tribal power, among local populations to improve the efficacy of operations, including killing the enemy. Should an archaeologist engage in such activities? What if the archaeologist begins in a follow-on capacity and, through orders by superiors, experiences a morphing of her role into an important component of kinetic operations? May she simply follow such orders? There are no easy answers, no oracle of ethical truths to which an archaeologist or archaeology may turn.

Present archaeological ethics systems, themselves often built on an assumption of professional mistrust (Williams 1999), fail to provide a meaningful approach to these
and other questions of immediate concern in a number of areas of conflict. However, as this thesis will show, a professional ethics system based squarely on the virtue of trust (Marino (ed.) 2010) as implemented through trust-making (Potter 2002) may provide the content and context necessary to resolve these ethical issues and dilemmas and, as importantly, provide professional cover to those archaeologists that refuse to engage in some or all of the activities identified above.

Even before the advent of archaeology, and certainly well before archaeology experienced the scientific rigor that permeates the profession today, the ancestral disciplines of archaeology engaged the enemy by identifying spoil and booty, learning strengths and weaknesses of present or potential adversaries, either preserving or destroying cultural heritage (whatever the super authority decided would be the better course), and eradicating visible traces of local lives for political ends (Harrington 2005: 1). The following sections of the thesis consider several precursors to the challenging issues presented by the role, if any, of archaeology and archaeologists in armed conflict.

2.2.1 *Ancient Conquest and Booty*

Although seizing war booty predates the Assyrian empire, that particular empire provides insight in why booty was taken and cultural heritage ignored or purposefully destroyed (Kapornaki 2010: 1). Conquering empires took cultural property as booty because they could. The Assyrian empire was a war machine, and war booty fed that machine (Kapornaki 2010: 1).

The collection and sharing of booty ensured two goals. First, the collection of booty served as a material representation of conquest, solidified sovereignty, and financed power (Miles 2011). Booty was not only a source of funding; it was also a symbol of power and superiority (Kapornaki 2010: 1-2).
Second, of even greater importance to the political leaders, sharing booty with the conquering army ensured that the booty would actually return to the conquering monarch (Kapornaki 2010: 1).

The Greeks and the Romans continued the practice of plundering and publication (Miles 2011). Greek and Roman warfare often resulted in the sacking of cities, with all property (public, private, religious) being taken as booty and the population exterminated by death or absorption (Miles 2011). Miles however, observes that Greek historian Polybius supported a ban on looting for the very practical reason that once looted, a conquered people have little left to lose and become more difficult to govern (Miles 2011: 10). According to Polybius, a country should not “strip cities under the idea that the misfortunes of another are an ornament to their own country” (Miles 2011: 10). Finance, always an important part of booty in the Assyrian empire, appears to have been of relatively little importance to these later empires, especially to the Romans (Kapornaki 2010: 1-2; but see Miles 2011: 30-31).

The Romans did not seek to hide their acts; they published them in an overt and notorious manner because soldiers ransack for personal gain; armies ransack for cultural ruin (Fox 1999: 11).

2.2.2 Native Peoples and Westward Expansion

During the westward expansionism of the US during the 19th and 20th centuries, the US Army and other government agencies attacked Indian populations, waged war against numerous tribes, and seized properties of the indigenous peoples, including human remains and other sacred items, transporting many of these items to proprietors of cabinets of curiosities and museums in the US, Great Britain, and France. Although the series of events that would ultimately lead to the conquest of the Native Peoples by the US government preceded the expedition of Meriwether Lewis and William Clark, it was
this expedition, the US military’s first human terrain team, that led to the opening of the American West and the unparalleled fueling of the doctrine of manifest destiny (Kehoe 1998: 83; Kennedy 1994), a politico-religious doctrine that would attempt to stamp out the cultural heritage of the Native Peoples through the cycles of segregationist and assimilationist policies launched by the US from the 19th century to the present.

Lewis and Clark shared with their friend and fellow Virginian, President Thomas Jefferson, a passion for such Enlightenment sciences as ethnology, paleontology, zoology, and botany. This brand of anthropology saw its practitioners comfortable in support roles for the military and the government. A perusal of the unedited journals of Lewis and Clark reveals that both Lewis and Clark saw themselves as US Army officers (Lewis and Clark 2005). Their instructions from their Commander-in-Chief were clear; claim the West and its wealth for the US, blunting any claim from Spain to the South and Britain to the North. Although the Corp of Discovery, a group of thirty-one hand-picked men led by Lewis and Clark, was outfitted with scientific instruments, the chief goal of the expedition was expansion of power and not necessarily knowledge (Moulton (ed.) 2003). To be sure, knowledge was important to Lewis and Clark, as well as to their President; but Jefferson, like the Corp of Discovery, measured knowledge based on the yardstick of utility (Tyrrell 2007: 2, 3). They also measured and classified the Native Peoples they encountered (Tyrrell 2007: 2).

In engaging the Native Peoples, Lewis and Clark were exploring more than wilderness. They interacted with the Native Peoples to investigate and determine whether the Native Peoples would help or hinder America’s westward expansion (Moulton (ed.) 2003). After 8,000 miles and 28 months of travel from their start near St. Louis, Missouri, Lewis and Clark with the Corp of Discovery returned to a hero’s welcome.
Interestingly, when Lewis and Clark began their expedition by launching their boats and rowing west on the Missouri River through Indian country, they were actually looking for the fabled Northwest Passage (Moulton (ed.) 2003). The Northwest Passage was a mythical link of continuously navigable waterways between the Atlantic and Pacific oceans that could be tapped to fuel intercoastal commerce (Moulton (ed.) 2003). Lewis and Clark never found the Northwest Passage because it did not exist.

Rather than admit failure, President Jefferson changed the objectives of the expedition, rendering the expedition a success. The new objective was the actual understanding of the numerous tribes of Indians hitherto unknown (Moulton (ed.) 2003). In fact, Clark’s map of the West is strikingly reminiscent of the maps of colonialism common during the expansion of the British, French, Spanish, Portuguese, and Italian empires. Not only did Clark’s cartographic masterpiece identify with impressive accuracy the mountain ranges and rivers encountered, but also identified the names and locations in bold type of dozens of Indian tribes that lived there.

In a real sense, during the Lewis and Clark expedition, anthropology became one of the military sciences (Hallowell 1976). Existing and potential adversaries were studied to understand motives, purposes, customs, languages, alliances, and tactics. This knowledge, in the case of the US government’s engagement with the Native Peoples, was used to kill, conquer, and subjugate.

According to Tyrrell (2007), Jefferson’s establishment of the discipline of anthropology manifested itself with clarity through the Lewis and Clark expedition. Tyrrell suggests that to Jefferson, “the emphasis was on everything relating to Native Americans, including military intelligence, and was very much in the same vein as the classical military ethnographies of Tacitus” (Tyrrell 2007: 2). Jefferson anticipated the coming
tension with Native Americans and the importance of anthropology in understanding those tensions.

To Jefferson, anthropology was intended to be the handmaiden of colonialism. Jefferson did not simply envision anthropology as a discipline subservient to political and military aims; he saw the science and its practitioners as an essential and integral part of the political, military, and economic institutions of the US (Tyrrell 2007: 2).

Throughout the 19th and 20th centuries, Jeffersonian anthropology would play a key role in the interaction between the US government and the Native tribes. In the early 18th century, beginning about the time of the then US President Andrew Jackson’s administration (1829 – 1837), Native Americans were forcibly moved from their ancestral lands east of the Mississippi to allocated land in the wilderness west of the Mississippi (Satz 2002; Remini 1997; Wallace 1993) pursuant to the Indian Removal Act of 1830, in a march known as the “Trail of Tears” (Satz 2002). During this time period, social scientists played a substantial role in identifying, classifying, and justifying removal of Native Americans from the Eastern US (Gould 1996). Many of these scientists and politicians, including Jackson, believed that the Indian tribes would soon become extinct (Patterson 2004).

Humanity has often wept over the fate of the aborigines of this country, and Philanthropy has been long busily employed in devising means to avert it, but its progress has never for a moment been arrested, and one by one have many powerful tribes disappeared from the earth. (Patterson 2004: 1, quoting US President Andrew Jackson).

Other scientists and politicians, although in agreement with Jackson’s view on the long term survival of the Native Americans, nonetheless asserted that the best way in which to deal with the Indian was through assimilation and not segregation (Hoxie 2001). These policy makers would capture policy making in the late 18th and early 19th
centuries with the establishment of Indian schools to civilize the “child savage” (Adams 1995; cf. Joukowsky 1991: 8). Many children were taken from their families in the Western US and relocated to Indian schools run by the US government or various missionaries with US government funding (Fritz 1963). Again, social scientists, many serving roles in the US Army, were involved in the assimilation or “Americanization” programs, including developing standards of dress, establishing Indian school curricula, and infusing the Indian children with American culture (Hoxie 2001).

2.2.3 Napoleon’s Savants

The US did not have a monopoly on conquest and booty. From 1794 onward, France’s revolutionary armies conquered their adversaries and collected artwork of all forms (Miles 2011: 32-33; Waxman 2008: 33-61). France’s design was to seize as spoils of war artwork and antiquities for the purpose of filling their new public palaces, including what would become the Louvre (Kaplan 2006). France’s antiquities quest hit its zenith with the rise and military successes of Napoleon Bonaparte (Kaplan 2006; Chandler 1966). In fact, Napoleon is an infamous figure in the practice of war booty (Miles 2011: 32-40; Kapornaki 2010: 2; Waxman 2008: 33-61; Fagan 1975: 90).

Napoleon’s conquests across Europe and North Africa resulted in systematic looting of archaeological sites, cultural property, artwork, and various other artifacts (Miles 2011: 32-34; Kapornaki 2010: 2; Waxman 33-61). Central to this policy were the savants, the men of science, France’s first human terrain teams with embedded scientists whose goal was to collect ancient relics (White-Spunner 2011: 79-80; Kapornaki 2010: 2). Embedded in Napoleon’s army, the savants sought out all manner of antiquities (Waxman 2008: 33-61; see also Belzoni 1820: 157). At its height, the number of savants exceeded 150 of the best scientists in France (Kapornaki 2010: 2). These savants established the Institut de l’Egypte, dedicated to the study of their finds
(Waxman 2008: 33). Their results were published in an opus entitled the “Description L’Egypte,” a twenty-four volume set (White-Spunner 2011: 79; Miles 2011). The savants added an academic justification to Napoleon’s imperialistic campaigns (Miles 2011: 32-34). Their role also provided legitimization of the appropriation and exportation to France of cultural property so that it might be protected, studied, and displayed (Miles 2011: 32-34).

In 1815, the Duke of Wellington defeated Napoleon’s army at Waterloo. Unlike most defeats of this magnitude, the Duke of Wellington did not keep France’s cultural property as spoils of war (Miles 2011: 34-40; Waxman 2008: 68). Rather, the Duke ordered the French to repatriate artwork and other cultural objects to their homes in other European countries (Miles 2011: 34-40). The British sought to put an end to the notion of cultural property as a military trophy commemorating conquest (Miles 2011: 40). Consequently, the British compelled the French to return over two thousand pieces of art to various countries (Miles 2011: 34-40). Interestingly, the British did not compel the repatriation by the French of antiquities seized by France in Egypt (Waxman 2008). Many of these items may be found to this day in the Louvre (Waxman 2008).

2.2.4 World War I and a Crisis of Conscience

During the Great War, World War I, anthropologists and archaeologists joined the war effort on behalf of the Allied powers. These social scientists provided intelligence analysis and cultural context to those political and military officials assigned to prosecute the war against Germany and her allies. Some social scientists, including anthropologists, served as intelligence collectors or spies, using their professional and academic cover to mask intelligence-gathering activities (Boas 1919). It was these perceived hypocrisies that captured the attention of possibly the most influential North

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Boas, and his students, were driven to professionalize and institutionalize North American anthropology by imposing a scientific rigor (including strong methodologies and theoretical bases) to the discipline, a new cultural relativism (including emphatic shifts about the people who are being studied), and meticulous fieldwork (including long-term observations of the subjects of the study) (Tyrrell 2007: 2). For Boas, Jeffersonian anthropology, where the science serves as a source of intelligence in support of government action, was the antithesis to his new anthropology (Tyrrell 2007: 3). This new view of anthropology forced a sea-change in anthropological ethics (Tyrrell 2007: 2-4).

To Boas, one could not be both a scientist and a spy in support of government’s war effort. He made this point dramatically in his December 20, 1919 letter to The Nation.

In that letter, Boas (1919) wrote:

A soldier whose business is murder as a fine art, a diplomat whose calling is based on a deception and secretiveness, a politician whose very life consists in compromises with his conscience, a business man whose aim is personal profit within the limits allowed by a lenient law – such may be excused if they set patriotic deception above common everyday decency and perform services as spies. They merely accept the code of morality to which modern society still conforms. Not so the scientist. The very essence of his life is the service of truth. We all know scientists who in private life do not come up to the standard of truthfulness, but who, nevertheless, would not consciously falsify the results of their researches. It is bad enough if we have to put up with these, because they reveal a lack of strength of character that is liable to distort the results of their work. A person, however, who uses science as a cover for political spying, who demeans himself to pose before a foreign government as an investigator and asks for assistance in his alleged researches in order to carry on, under this cloak, his political machinations, prostitutes science in an unpardonable way and forfeits the right to be classed as a scientist.
Ten days later, the AAA censured Boas (Tyrrell 2007: 3). Troublingly, according to Tyrrell (2007: 3), three of the five members of the executive council that issued the censure were involved with military intelligence. What comes from the Boas letter and the AAA executive council’s censure is a stark contrast between two caricatures representing both sides of the debate. Boas’ description of science is a caricature of the actual discipline. Both Popper (1959) and Kuhn (1970) have persuasively confronted the rigidity of a code based on “scientist as truth seeker.” But this moniker is important to Boas’ argument against the anthropologist as a spy, a role consistent with that envisioned by Thomas Jefferson. With this characterization, Boas can contrast spying as deceptive and false (Tyrrell 2007: 3). What profession seeks the goals of deception and falsehood?

This conclusion leads to the second caricature; that any government work in support of the military is “spying.” To be fair, Boas never said this. He actually takes care in identifying the role that offends him – an anthropologist that uses “science as a cover for political spying” (Boas 1919). It is this anthropologist serving in this capacity that “prostitutes science in an unpardonable way and forfeits the right to be classed as a scientist” (Boas 1919). This limiting language has been lost on subsequent generations of anthropologists (Tyrrell 2007: 3-10). As Tyrrell (2007: 11-12) cogently observes, for many anthropologists, Boas’ “spying” has morphed into serving any role within the military.

2.2.5 World War II as a “Just War”

World War II witnessed both the importance and permanence of anthropology and related disciplines to the Allied war effort against the Axis powers (Stone 2011: 3-4; Edsel 2009; Nicholas 1995; Woolley 1947)). By World War II, Boas and his students’ views on research ethics and their distaste for military operations had moved to a
position of dominance within the profession. Nonetheless, World War II would see a
reversion to Jefferson’s view of anthropology in service to the military (Tyrrell 2007: ).
Over sixty percent of the Anthropology Ph.Ds. in the US were employed by the military
and its new intelligence organization, the Office of Secret Services (“OSS”) (Tyrrell
2007: 7; Stocking 1976), the forerunner to the Central Intelligence Agency (“CIA”).
However, even though most prominent American anthropologists contributed to the war
effort in many capacities, seldom did these anthropologists do so under the false
pretense of fieldwork, thus largely avoiding the criticism by Boas of engaging in
“prostituted science” (Boas 1919). Specifically, archaeologists were part of the Allied
Monuments and Fine Arts Unit (Edsel 2009; Nicholas 1995; Woolley 1947). This Unit
mustered in an effort to protect cultural property, including sites, buildings, and
personal property of Europe. These social scientists were able to aid in the war effort
for the most part without losing the distinctive character of their profession.

During World War II, the Australian anthropological experience was similar to that in
America, but with distinct cultural flavors (Read 1947; Hogbin 1951; Gray 2006: 156).
Several prominent Australian anthropologists worked with aboriginals in efforts to
thwart a possible invasion of Australia by the Japanese (Gray 2006: 162-163). This
work included education regarding the local populations as workers (carriers and
laborers) in the war effort, issues associated with segregated units, and the use and
effect of propaganda on local communities. Interestingly, little contemporary debate
considered the ethical issues associated with using the aboriginals in the war effort in
the first instance (Gray 2006: 157, 178).

The reversion to Jeffersonian anthropology during World War II has been justified, or at
least rationalized, through the assertion that World War II was a “just war” in which
Nazi Germany and Imperial Japan harbored and embraced an ideology of racial
superiority that was fundamentally inconsistent with the collective view of the AAA (Tyrrell 2007: 6; Price 2002: 15).

The Australian experience also echoed the “just war” slogan. The Reverend Professor Adolphus Peter (A.P.) Elkin, President of the Royal Society of New South Wales in 1942, asserted that anthropology could produce the counterbalance to the pernicious racism espoused by Nazi Germany (Elkin 1942: 3; see also Elkin 1941: 11-14). To Elkin, anthropologists were uniquely positioned to provide meaningful insight on the causes of war, a state between nations that he considered culturally driven (Gray 2006: 161). He also recognized that anthropology could be a major component of total war, an all-out commitment to the Australian war effort (Wise 1985: 147-50). Consistent with his view of anthropology in service to government in its war efforts against Nazi Germany, he strongly endorsed a substantial and vital role for anthropology in what he dubbed the “management of victory,” that is, the reconstruction effort and the development of policies related to the former enemy (Gray 2006: 161-162).

Of course, context is important (Price 2002: 15). In World War II, the enemy included Nazi Germany and Japan. Both nations embraced a pernicious form of racism and engaged in extermination campaigns directed with vulgar efficiency toward populations and cultures these countries sought to subjugate and exterminate. In particular, Nazi Germany asserted Aryan superiority over all other races generally and, the Jews specifically. In many ways, Nazi Germany embodied the logical extension of the Eugenics movement, popular in form throughout the West (Lombardo 2008). This movement, in all its forms, was repugnant to the Boasian critique of the concept of race (Price 2002: 15).

Consistent with its extermination policies against those people seen as “inferior,” Nazi Germany promulgated an official policy of plunder of war booty (Kaye 1998: 657) that
resulted in the confiscation and pillage in artistic, historic, and religious artifacts and art on a scale that defies imagination (Feliciano 1997; Nicholas 1995; Simpson (ed.) 1997). To that end, the Nazis used the services of art historians, archaeologists, historians, and anthropologists to implement the official policy of pillage and confiscation. Their goal was to fill a museum in the making, the Führermuseum, to be built in Linz, Austria (Petropoulos 1996). The museum would serve as trophy case on a grotesque scale, a symbol of their superiority over the other. In a perverse sense, it was the ultimate form of cultural property protection – removal from the combat zone and into the aggressor’s own country for protection and preservation. At each step of the Nazi effort to build their grand cabinet of curiosity, social scientists played an integral role as an embedded part of their total war effort.

The magnitude of looting by the Nazi’s was unprecedented. Nicholas (1994) characterizes the twelve years of the Nazis era as the greatest displacement of art in history. Kaye (1988), referring to estimates made by the US government shortly after the war, observes shockingly that over one-fifth of Western art was either seized or acquired through “coerced sales” (Kaye 1998: 657-658). After the war, millions of cultural items were returned to their owners, the owner’s heirs, or their country of origin (Kaye 1998).

2.2.6 Vietnam and the Secret Use of Social Scientists

From the end of World War II to the Vietnam War, anthropologists were often indirectly influenced in their research by the government, largely through research funding mechanisms and protocols (Tyrrell 2007: 7). Many in the discipline turned a blind eye to the potential ethical issues raised by this practice. However, others were growing increasingly concerned about governmental influence (Price 2003: 373-401).
These underlying tensions erupted as a result of two scandals involving social scientists – Project Camelot and the Thai Scandal (McFate 2005: 35-37; Tyrrell 2007: 7).

Project Camelot was a US Army-funded cluster of research programs whose purpose was to understand the tipping points in social revolutions and to identify the counter-actions a government could take to prevent its overthrow (Horowitz 1967). Project Camelot was launched in 1964 with an eye towards its operational use in Chile (McFate 2005). The program was terminated in 1965 (McFate 2005). The Army’s purpose was explicit and bold:

Success in such tasks as equipping and training indigenous forces for an internal security mission, civic action, psychological warfare, or other counterinsurgency action depends on a thorough understanding of the indigenous social structure, upon the accuracy with which changes within the indigenous culture, particularly violent changes, are anticipated, and the effects of various courses of action available to the military and other agencies of government upon the indigenous process of change (Colby and Dennett 1995: 1).

For anthropologists, the direct influence of research by the US military for counterinsurgency purposes amplified the concern that the science had lost its skepticism and independence (Madian and Oppenheim 1969: 326-336). To many in the field, Project Camelot was a subversion of the discipline. It was a real-life manifestation of the Boasian nightmare that would get worse.

In 1970, documents were stolen from a university professor’s office implicating various anthropologists in a US and Royal Thailand government funded program designed to develop a counterinsurgency program to support the Thai government (McFate 2005: 36-37). When disclosed, the program appeared to already be at the operational stage. The implicated anthropologists did not deny their involvement; rather, they justified it by arguing that they were involved precisely to keep Thai villages from being harmed (McFate 2005: 36).
Project Camelot and the Thai scandal became the tipping point; anthropologists reacted immediately with a ban by the AAA on secret research, a theme that exists in several codes of ethics to this day (Price 2000; Tyrrell 2007: 7; McFate 2005: 36). Tyrrell (2007: 12) captures the state of the relationship between anthropologists and the military:

The roots of this “extreme distaste for the military” are quite deep in the modern discipline, going back to the end of World War I, and reinforced during the Cold War and Vietnam. American Anthropology, as a discipline, does not trust the military or the intelligence community.

Much of archaeology appears to feel the same way.

2.2.7 Archaeologists Working for the Military

In the discussion of whether, and to what extent, archaeology should engage the military, an important fact of life is usually overlooked. Archaeologists are presently employed by militaries of numerous countries and have been for some time (Stone 2011: 3; Rush 2011). These archaeologists are typically employed to protect cultural property located on, and heritage around, military reservations, bases, and training sites (Rush 2011; Stone 2011; Brown 2010).

2.2.8 Taliban Sovereignty through Destructive Acts

More contemporary examples of destruction of cultural heritage unfortunately abound, particularly with the aftermath of the invasion and occupation of Afghanistan by the Union of Soviet Socialist Republics (“USSR”) in December 1979 (Girardet 1986; Cordesman and Wagner 1989; Saikal and Maley (eds.) 1989; Hyman 1992; for a European example, see, e.g., Chapman 1994). In 1988, the USSR began withdrawing its troops from Afghanistan, leaving a vacuum of power that resulted in horrible internecine violence among various ethnic, religious, and tribal groups that continues today (Coll 2004). Many of these groups sought domination through destruction of
cultural property associated with another group (Renfrew and Bahn 2008: 10, 546-548). Other groups engaged in subsistence looting to generate income for food, fuel, and shelter (Stewart 2004: 150-160; Renfrew 2000). By 1996, seventy percent of the capital city of Kabul’s museum holdings had disappeared, including many exquisite examples of Gandharan sculpture (Brodie and Gill 2003: 38). During that same time, Gandharan sculptures began appearing in auction houses and art collections in London and New York City, and were well-received by an active international base of purchasers (Brodie and Gill 2003: 38). Factional Afghan war lords were using antiquities interjected into the international markets to support their armies in the expanding conflict (Brodie and Gill 2003: 38).

When the Taliban ascended to power in 1996, they turned to destruction of cultural heritage and the people associated with them (Rashid 2010). Unfortunately, it was only after the attacks on the US on September 11, 2001, that many people learned of the violent attacks by the Taliban on the Hazara (Rashid 2010). Previously, much of the West, especially the academy, was captivated by the threatened and eventual destruction of the famous giant stone Buddhas of the Bamiyan Valley some 8,000 feet above the ground, perched in two niches some 200 feet tall (Renfrew and Bahn 2008: 10, 546-548). The actual destruction of the famed Buddhas occurred in March 2001 when the Taliban dynamited the two icons, leaving piles of rubble (Renfrew and Bahn 2008: 10, 546-548). What had stood vigil at the western frontier of the Buddhist world for over 1,400 years was destroyed in seconds (Stewart 2004: 253).
Photograph 2.1 Buddhas of Bamiyan

(UNESCO – F. Riviere)

Photograph 2.2 Destruction of Buddhas

(UNESCO – A. Lezine)  (Photo by Carl Montgomery)
The leader of the Taliban, Mullah Mohammad Omar, had declared the Buddhas idols and ordered them destroyed (Rashid 2010). There is, however, more to the story that is of interest to the panoply of issues addressed in this thesis.

In response to the destruction of the Buddhas, many in the West pointed to the act as a symbol of religious intolerance and oppression (Renfrew and Bahn 2008: 10). It is true that the Taliban did engage in the destruction of what they perceived to be idols, particularly some statuary housed in the Afghan museum. Nonetheless, there were many examples of shrines and other icons that the Taliban would consider idols under their interpretation of Sharia, or Islamic law, that were left undisturbed. An example is the shrine of Ansari in Herat (Stewart 2004: 80-81). Ansari was an 11th century Sufi mystic. His tomb is believed to possess magical powers. (Stewart 2004: 80). Located on the hill north of Herat, the shrine is well known. Most orthodox forms of Sunni Islam, including the Taliban, are suspicious of shrines, particularly those to which people ascribe supernatural powers. Yet, the Taliban never touched this shrine nor many others like it interspersed throughout the regions of Afghanistan they controlled. Why?

The answer lies in the Taliban’s perspective of power. The destruction of the Buddhas of Bamiyan Valley was simply a vessel by which they exercised that power. The Buddhas served as targets because of their importance to the West, and secondarily, their importance to the Hazara (Nemeth 2010). For the Taliban, destruction of the Buddhas was an act of sovereignty at a time when only Pakistan and the Kingdom of Saudi Arabia recognized their government. It was a signal to the world that you want it, we own it, and we shall destroy it. The assertion of Islamic law as a justification was a post hoc rationalization of the destructive act.
The destruction of the Buddhas caused a great hue and cry across the world. Japan and India were particularly incensed because of their historical association with Buddhism and their offer, which was unceremoniously rejected by the Taliban, to pay for the Buddhas’ relocation. Archaeologists also joined in the condemnation of the Taliban for the destruction of unique examples of Gandharan sculpture and cultural heritage. Troublingly, however, there was no such unified archaeological voice condemning what the Taliban were doing to the ethnic group most closely associated with Herat and the Bamiyan Buddhas – the Hazara. During this time period, the Taliban increased their efforts several fold to exterminate the Hazara (Stewart 2004: 250-253), and thousands of Hazara were killed in mass executions (Rashid 2010). This is a contemporary example of the archaeological record apparently elevated over the lives of people, a theme that this thesis shall return to in coming chapters.

2.3 Archaelogists in OEF and OIF

The UN-sanctioned invasion of Afghanistan by North Atlantic Treaty Organization (“NATO”) forces (UN Resolution 2001), including the US, United Kingdom (“UK”), Canada, and other armed forces, after the attacks on September 11, 2001, thrust the archaeologist and archaeological policy into a maelstrom of thorny issues, including what to do about the infamous Taliban destruction of the Buddhas of Bamiyan in 2001, previous looting of the Kabul Museum, and subsequent trafficking in the antiquities once proudly stored there. Moreover, coalition forces engaged in selected aerial bombardments, risking extensive damage to many historic sites. Furthermore, shortly after the fall of Baghdad in OIF (an invasion not directly sanctioned by the UN), in the chaotic aftermath of the fall of Saddam Hussein and before any attempt by coalition forces to maintain order, some Iraqis engaged in whole-scale looting of national and provincial museums, archaeological sites, and artifacts once in situ. Inadvertently,
Coalition Forces later built bases on important archaeological sites (Hanson 2011: 113; Stone and Farchakh Bajjaly 2008; Rothfield 2008; Emberling and Hanson 2008).

In many contemporary conflicts, archaeologists have served in forensic operations to investigate allegations of genocide and develop the evidentiary record concerning mass murders and possible genocide or ethnic cleansing. None of this activity was without its political themes, notwithstanding the protestations by some archaeologists that they could stay above the political fray.

Human conflict presents especially difficult ethical issues and dilemmas. Aside from the personal danger risked by an archaeologist in a hostile region, archaeologists may be thrust into deep and divisive cultural embattlements. Moreover, as discussed, cultural property may be destroyed, intentionally or unintentionally. Graves, including potential evidence of genocide or mass murder, may be disturbed. Because war spawns societal and economic chaos, subsistence digging flourishes as struggling families, many now refugees, “carry off portable antiquities in an attempt to ensure survival” (Hollowell 2006: 75). Additionally, professional looters swoop in and harvest portable antiquities, often bribing local and national officials, competing with subsistence diggers, and threatening those that seek to stand in their way (Renfrew 2000).

In the following sections of the thesis, I identify and discuss the numerous roles archaeologists played in OIF in Iraq and are continuing to play in OEF in Afghanistan. None of these roles are limited to either OIF or OEF; we have witnessed archaeology’s engagement with the military in many forms in the past and will continue to see engagements in the future. In these sections, I do not engage in an extended critique of the ethical issues from the trust-based professional ethic that I develop in my thesis; rather, I save that endeavor for chapters 10 and 11 of the thesis.
2.3.1 Targeting Influence

Advances in war fighting technology to some degree permit US and UK armed forces to avoid cultural sites through the use of smart bombs, thus propelling the archaeologist into the uncomfortable position of identifying cultural property and sites and negating a full category of targets (Stone 2011; 2009). The role of social scientists in influencing target selection is not new. Cultural experts within the US Departments of State and War (now known as Defense) and the White House influenced the drop sites of the two atomic bombs during World War II (Rhodes 1986).

Archaeological experts were asked by both the US and UK to identify important cultural sites to be protected from bombing and secured during the invasion in Iraq (Stone 2009: 32-38; Curtis 2011). Some archaeologists refused to participate in the site selection and mapping process in the lead up to the invasion of Iraq (Curtis 2011). However, though professing discomfort, some archaeologists did in fact serve in that role, advising target planners and influencing target selection (Stone 2009: 32-36). People died and property was destroyed based, in part, on this input. Many archaeologists serving in this role understandably were troubled by the conflict and upcoming invasion of Iraq but, nonetheless, rationalized their role based, in part, on the concern that since they could not stop the bombing, they should at least influence the selection of targets to mitigate damage to the archaeological record, preserving the cultural heritage of the country under attack (Stone 2009: 36).

2.3.2 Embedded in Tactical Units

The US Army’s Human Terrain System (“HTS”) is the latest attempt to use cultural experts (including archaeologists) as battlefield advisors to fight a more intelligent war against an opponent that, conventional wisdom holds, is difficult for western minds to comprehend (US Army 2010: 1-3). The US military has not always made a necessary
effort to understand the foreign cultures and societies in which it intends to conduct military operations (Kipp *et al.* 2006: 1). That policy has dramatically changed.

In accurately defining the contextual and cultural population of the task force battlespace, it became rapidly apparent that we needed to develop a keen understanding of demographics as well as the cultural intricacies that drive the Iraqi population (Chiarelli and Michaelis 2005: 5).

The HTS is a US Army project that provided a litany of decision-makers in Iraq and presently in Afghanistan with a greater understanding of the local population’s culture and perspectives. HTS deploys human terrain teams (“HTT”s) and human terrain analysis teams (“HTAT”s) of civilians and military personnel to support brigade, division, and theater level staffs and commanders with operationally relevant information. The HTS program is also designed to provide training for deploying personnel, reach back analysis, and software tools developed by HTS to support sociocultural analysis. HTS emphasizes the use of tools and approaches commonly associated with the academic disciplines of anthropology and sociology in its efforts to collect and analyze data about local populations.

The HTS program began to take shape in late 2003 when anthropologist and lawyer Montgomery McFate developed the idea to make anthropology more relevant in the military again at both strategic and tactical levels. In addition to developing the HTS framework and a prototype database from which officers would glean cultural information, McFate was a key author, along with General David Petraeus⁸ among others, of the US Department of Defense (DoD) Counterinsurgency Field Manual (FM 3-24) (“FM”). That FM was published in 2005 and provides a fascinating peek into the US military leadership’s vision of cultural awareness and the “cultural preparedness” of the battlefield.

⁸ Former Commander, US Central Command (“CentCom”) and former Director, Central Intelligence Agency (“CIA”).
The FM draws heavily on the use of the HTS to achieve several goals. The HTS program is used for the collection, analysis, and archiving of cultural information to (1) forge alliances between and among US forces and indigenous people, including tribes; (2) offer up respect and dignity to the indigenous populations by identifying and understanding ethnic, religious, and cultural symbols and rituals; and (3) provide the cultural context to build infrastructures of stability and security in an area of responsibility (“AOR”).

The HTS program continued to gain support in the military community through 2006, while at the same time the HTS program began to generate a coming storm of controversy from various professional organizations and cultural professionals. In February 2007, the Army deployed the first forward operating HTS teams to the Middle East. By October 2007, former US Defense Secretary Robert Gates approved a $40 million budget expansion for the HTS program. By that time, five more teams were deployed to join brigades in Iraq. Ultimately, the DoD’s goal was to continue to grow the HTS program and implement five-man HTS teams with each of the twenty-six combat brigades operating in the Afghanistan and Iraq theaters.

Human terrain (“HT”) is a concept that is both counterintuitive and confusing. In this context, the US Army defines HT as:

The human population and society in the operational environment (areas of operations) as defined and characterized by sociocultural, anthropologic, and ethnographic data and other non-geophysical information about the human population and society. Human terrain information is open-source derived, unclassified, referenced (geospatially, relationally, and temporally) information. It includes roles, goals, relationships, and rules of behavior of an operationally relevant group or individual (Kipp et al. 2006: 10 n.2).

The DoD has deployed anthropologists, archaeologists, and other social scientists in Afghanistan and Iraq to assist both officers and enlisted men in ascertaining a better
understanding of the adversary and local populations (McFate and Jackson 2005: 42; Rohde 2007). It is this practice of embedding the social scientist that poses some of the most difficult challenges to a professional ethic. Personal moral judgment aside, a stance cautiously taken at this juncture, what does a professional ethic have to say about its profession when it becomes a part of another institution like the military? To answer this complex question, there is a need to understand how the HTS program is structured and how, why, and when an archaeologist plays a role.

2.3.2.1 Human Terrain Systems

The HTS program is operated through the U.S. Army Training and Doctrine Command (“TRADOC”) (US Army 2010). TRADOC’s center of operations and training programs are located at Fort Leavenworth, Kansas, US (US Army 2010). HTS is a militarily oriented top to bottom system that informs decision making at the tactical, operational, and strategic levels (US Army 2010: 1; Kipp et al. 2006: 1).

The US military recruits and trains each five-man HTTs to serve a brigade in a specific forward operating region. HTTs are comprised of military personnel, linguists, area studies specialists, and civilian social scientists (“subject matter experts” or “SME’s”). These teams are designed to integrate fully into the brigade as one of its working components. This integration includes the overlap of each HTT’s tour of duty with that of the units it supports because the teams are “critical to the maintenance of an ever-growing ‘unit memory’ and a smooth and complete transfer of local area knowledge and previous lessons learned during unit rotation” (US Army 2010: 1-3).

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9 In the US Army, a brigade runs from 2,500 to 4,000 soldiers. It is smaller than a division and approximately the same size as or slightly larger than a regiment. In the US Marine Corp, there are no standing brigades. The Marines have intact regimental structures and will form brigades for certain missions only.
Each HTT is designed to support the battalion\textsuperscript{10} with which it works to understand the socio-cultural environment in which the battalion operates. The HTT’s mission is to increase the ability of brigades, battalions, companies,\textsuperscript{11} platoons,\textsuperscript{12} and squads\textsuperscript{13} to understand the local populace that they live with and operate among (Kipp et al. 2006: 2). This support includes the interaction of everyone from the battalion commander to the enlisted men with their brigade’s HTT. The HTTs are assigned staff to a Brigade Combat Team (“BCT”) and support the commander with open-source, unclassified socio-cultural analysis, performing a non-combat support role. The HTT works with the brigade staff to help ensure that the brigade operates with an understanding of the local population and environment (US Army 2010: 2).

The military is adamant that HTT’s are not used to endanger the lives of any of the local population with whom they interact (US Army 2010). The Army’s website for HTS explicitly states that “HTTs do not collect actionable military intelligence, nor do they participate in lethal targeting” (HTS Website). Professional organizations, nonetheless, remain skeptical (e.g., AAA Board Statement 2007).

At the division level,\textsuperscript{14} the HTS program uses HTATs, which provide support away from the front lines (Kipp et al. 2006: 6-9). The components include an analytical team that provides research and information to HTT’s known as the Research Reachback Center (“RRC”) (Kipp et al. 2006: 6-9). The RRC is based in the US, and its team members include military and civilian analysts who work side by side with social scientists. Furthermore, the RRC provides commanders and analysts a bridge to experts

\textsuperscript{10} A battalion is a military unit of between 300 to 1,200 soldiers usually consisting of between two and seven companies. Several battalions are grouped to form a brigade.

\textsuperscript{11} A company is a military unit of 80 to 325 soldiers usually consisting of three to five platoons.

\textsuperscript{12} A platoon is a military unit of 26 to 50 soldiers usually consisting of two to four squads.

\textsuperscript{13} A squad is a military unit of 8 to 13 soldiers. Squads may be further subdivided into fire teams. In the US Army, a fire team generally consists of four soldiers and a squad has two fire teams. There is also a squad leader in charge of the two fire teams.

\textsuperscript{14} A division is a large, generally self-sustaining military unit of approximately 10,000 to 30,000 soldiers, comprising several regiments or brigades.
in fields of specific interests, such as professors at universities, through the Subject Matter Expert Network (“SMEnet”), who typically provide support from their home location (Kipp et al. 2006: 6-9).

In the digital plane, both the RRC and SMEnet members use a service called the HT-Map Toolkit to “facilitate research, analysis, storage, archiving, sharing and other applications of socio-cultural information relevant to the unit commander’s operational decision-making processes” (US Army 2010; see also Masellis 2009). This program generates useful tools such as maps, charts, time lines, visualizations, and reports to assist all related military personnel.

All of these components are overseen by the Product Development Team (“PDT”). It is the PDT’s responsibility to provide an annual comprehensive review of all HTS elements and determine successes and failures and identify where improvements can be made at substantive and procedural levels (US Army 2010; Masellis 2009).

Advocates assert that HTS has seen operational success in Afghanistan and Iraq (Masellis 2009). For example, in Operation Khyber during the summer of 2007, 500 US and 500 Afghan soldiers sought to clear roughly 250 Taliban from the Paktia province. The goal was to reclaim one of southeastern Afghanistan’s most important roads and reverse the rise in suicide attacks (Rohde 2007). An HTT anthropologist identified an unusually high concentration of widows in poverty in the area with increased suicide attacks. The sons of the widows were joining the well-funded Taliban insurgency to counteract their family’s poverty. Using the HTT member’s observation, Army commanders developed a job training program for the widows (Rohde 2007). Furthermore, the HTT interpreted the beheading of a local tribal elder as an effort to divide and weaken a powerful local tribe, the Zadran. As a result, Afghan and US
officials focused on uniting the Zadran to combat the rising Taliban influence in the area (Rohde 2007).

In Summer 2007, during Operation Maiwand, HTT members advised soldiers carrying out peacekeeping missions on how to interact with and gain the respect of the local tribal leaders (Morin 2007). HTT members instructed the commander on how to identify elders, how to read their body language, and how the commander should carry himself and use his own body language (Morin 2007). The meeting ended with results that were beneficial to both the Americans and the local Afghans.

Claimed success is also acknowledged by the highest echelons of the DoD. Former Defense Secretary Robert Gates stated that HTS has witnessed positive returns despite “growing pains” (“Gates 2008). Former Defense Secretary Gates also outlined an emerging program known as the Minerva Consortia (Gates 2008). The purpose of Minerva is to bring together the DoD and US universities to promote research in specific areas related to today’s global military landscape. Gates identified several key areas, including Chinese military and technology studies, Iraqi terrorists and perspectives projects, religious and ideological studies, and a “new discipline” that would focus on specific topics “such as history, anthropology, sociology, and evolutionary psychology” (Gates 2008). Funding for Minerva would be provided by the DoD and various other governmental agencies to the universities engaged in the research (Gates 2008).

2.3.2.2 McFate’s HTS Vision

To appreciate the potential role of HTS, one needs to understand the system’s architect and the themes that drove her development of HTS. Montgomery McFate’s Ph.D. thesis in Anthropology examined the British counterinsurgency effort against the Irish Republican Army (Kamps 2008: 309). In her studies, McFate discovered that military
personnel lacked cultural knowledge in their combat training (Stannard 2007). In 2005, a science adviser for the Joint Chiefs of Staff of the US military requested her assistance in developing the military’s social awareness (Stannard 2007).

McFate authored two articles that year outlining the DoD’s cultural awareness problems and proposed a solution (McFate 2005; McFate and Jackson 2005). She argued that the face of the US’ opponent and the enemy’s operating environment had changed so much from the Cold War that national security doctrines required an overhaul to infuse them with an understanding of cultural drivers for there to be any hope of success in the Global War on Terror (“GWOT”) (McFate 2005). The DoD’s failure to do so would result in continued disappointment with US operations abroad because a lack of cultural understanding would promote policies that exacerbate any insurgency, create negative public opinion, and endanger both civilians and troops (McFate 2005: 44). McFate cited mistakes in Iraq that could have been prevented if the military had used preexisting indigenous systems to create legitimacy for the actions of the occupying power (McFate 2005: 43). Furthermore, according to McFate, the DoD should have recognized that the “indigenous social organization (including tribal and kinship relationships) determines the structure of the insurgency” (McFate 2005: 47), and the overall strategy should have avoided imposing western cultural norms on the people of Iraq because it bred distrust amongst the Iraqi people (McFate 2005: 47).

McFate and Jackson recognized that there were other institutions in the military that had programs with a social science component, but these programs were “dispersed, underfunded, or not easily accessible to military commanders and policymakers from all agencies and services” (McFate and Jackson 2005: 18). She proposed a structure for a program that would provide a centralized approach to attaining the cultural knowledge
that the military needed to achieve its mission. Eventually, the HTS program arose out of the ideas upon which McFate’s articles were based.

As envisioned by McFate and implemented by the US military, the HTS program thrusts the archaeologist, anthropologist, or other social scientist into a military structure during armed conflict. The HTT archaeologist coordinates active collection of cultural information; engages local populations; maps social and governance structure; isolates and studies rites, rituals, and symbols; and teaches and advises military personnel (Rush 2011). The HTT archaeologist will look like – and in fact is – an important part of the military campaign (Rush 2011). It is this role that presents the most visible and notorious ethical issues for social scientists in armed conflict.

2.3.3 Cultural Property Protection in a War Zone

War wreaks havoc on people, places, and things. For example, as the coalition forces invaded Iraq in the first Gulf War in an attempt to rollback Iraq’s earlier invasion of Kuwait in 1991, military officials and reporters witnessed widespread looting of numerous sites and museums (Pollock and Lutz 1994; Pollock 2008: 356). Moreover, as previously mentioned, shortly after the fall of Baghdad in OIF, in the chaotic aftermath of the fall of Saddam Hussein and before any attempt by coalition forces to maintain order, some Iraqis engaged in whole-scale looting of national and provincial museums, archaeological sites, and artifacts once in situ (Pollock 2008: 356-357; Bogdanos and Patrick 2005; Stone 2009: 35).

Not only is this type of activity common during the chaos of war, but it is also expected (Stone 2009: 33). Nations have come together to protect cultural property through international law, treaties, conventions, and protocols (Gerstenblith 2009: 19-20). These laws date to the Duke of Wellington’s ad hoc treatment of Napoleon and the French after the latter’s defeat at Waterloo (Miles 2011).
As discussed in chapter 5, nation states have developed a complex legal regime to address the concern regarding the vulnerability of cultural property and heritage (see, e.g., Gerstenblith 2009: 21-29). At the core of this body of international law rests the duty imposed on a military to secure, preserve, and repatriate cultural property (Gerstenblith 2009: 21-24). This legal directive is consistent with conservation or stewardship principles that serve as the foundation stone of modern codes of ethics for archaeologists (Smith and Burke 2003; Davis 2003). Thus, this directive forces militaries to protect historical and pre-historical sites, secure museums and their collections, prevent looting by local populations, police looting by members of the occupying force personnel, and aid in the repatriation, if necessary, of cultural property (Gerstenblith 2009: 21-25).

2.3.4 Cultural Training of Military Personnel

Consistent with the mandate under international law, military organizations, particularly in the West, have invested resources in the cultural training of military personnel (Emberling 2008: 451-456). These training programs may be clustered around two independent but related themes: (1) cultural training to raise awareness and sensitivities of military personnel in country, that is, the theater of operations; and (2) cultural training in direct support of or in aid to war fighting.

The notion of cultural sensitivity training of the military appears noncontroversial at first blush (Stone 2011; Brown 2011; Rush 2011; Emberling 2008). It is, however, far from it. This is the case, not because archaeologists are opposed to teaching (notwithstanding rumors to the contrary), but because of concern that any relevant information and training may be used for unintended and even nefarious purposes (Emberling 2008: 448-456).
The US military maintains numerous cultural programs in support of its efforts in both Afghanistan and Iraq. A major hub of the cultural programs is housed at Ft. Leavenworth, Kansas (see http://www.cgsc.edu). In addition to extensive hands-on training addressing cultural differences and sensitivities, this command develops curricula, trains instructors, and maintains a library of recommended readings and videos. Moreover, the command engages in and funds research in areas related to cultural issues of interest to the US military, particularly those cultures, religions, and languages existing in present theaters of operations.

In addition to various commands dedicated to the training of military personnel and the study of local peoples in theaters of operation, the US military also retains independent contractors for purposes of conducting research and instructing military personnel on cultural sensitivities, site locations, cultural heritage, language, and practices and customs (Emberling 2008: 451-456). Many of these independent contractors hold academic positions, and some may have been conducting fieldwork in present theaters of operations. Furthermore, the US and UK militaries employ hundreds of civilian archaeologists who work within the military at training sites to preserve cultural property and interact with local communities (Rush 2011).

2.3.5 Phase IV or Stabilizing Operations

Archaeologists and other social scientists have played a significant role in stabilizing or Phase IV operations. Phase IV activities involve stabilizing AORs through constructive interaction with the local population (Kipp et al. 2006: 1). These tasks are often accomplished by restoring good order, aiding in standing up a police or security force, training such forces, rebuilding or building infrastructure, providing medical care, building schools, and providing other forms of aid (Kipp et al. 2006: 1). During this phase, an occupying army seeks to build relationships with the powerbrokers in-country
to stave off any effective insurgency and to begin the transition of the country back to a pre-conflict state of affairs (Kipp et al. 2006: 2-3). Western militaries have retained archaeologists and other social scientists and incorporated archaeological research to accomplish those ends (Rush 2011).

Furthermore, in all contemporary conflicts, archaeologists have been called on to serve in forensic operations to investigate allegations of genocide and develop the evidentiary record concerning mass murders and possible genocide or ethnic cleansing (Stone 2009: 33). These roles are often conducted either under the direction or auspices of military or other governmental organizations. Generally, strict protocols have been developed and implemented to inform all parties in interest and stakeholders of the nature of the investigation and the results thereof. Evidence adduced through these forensic investigations has been and will continue to be used in legal proceedings, including war crimes prosecutions (Hunter and Cox: 2005).

2.3.6 Archaeology within Military Training Camps

The US military has called on archaeologists to aid in conducting preservation and conservation in areas in which military bases or camps have been established (Rush 2011). These bases may be permanent, as is the case of Ft. Benning, Georgia, where the US Army has several archaeologists on staff responsible for the archaeology within the base (Rush 2011). These bases may also be temporary, like those the US Army established in Iraq on the site once believed to have been the ancient city of Babylon (Rush 2011).

The situation where an army encamps in a war zone on an archaeological site should be covered by the analysis based on cultural protection in war zones. The situation, however, where an archaeologist is on staff, responsible for archaeology within a training camp is different. This type of archaeologist is not educating the military, at
least not directly (but see Rush 2011). She is also not protecting cultural property in a war zone. She is most likely engaged in a form of conservation management (Rush 2011). The archaeologist is usually called in when, for example, ordinance is exploded and a burial mound exposed. That is not an uncommon occurrence on military bases in the US.

2.4 Observations

The relationship between social sciences (like anthropology and archaeology) and the government (including the military) is a peculiar one. It presents tantalizing issues concerning professional ethics, particularly where the social scientist is an actual part of the military structure. These relationships often began, and were usually portrayed, in a manner that was perceived by many as presenting no problems. In fact, the role of social scientists, like Lewis and Clark or Napoleon’s savants, were well publicized and celebrated. The relationship then took a nasty and public turn from a relatively carefree co-existence to one where a relationship with no spying would only pass muster. Recently, the relationship appears to be entirely problematic and has migrated from a relationship of acceptability so long as there was no spying, to a relationship of unacceptability where collaboration is condemned. In the next chapter, this thesis explores the existing body of archaeological ethics to determine what may be gleaned from those that have carefully considered the thorny subject before.
CHAPTER 3: ARCHAEOLOGICAL ETHICS: TRADITIONAL APPROACHES

3.1 Introduction

The great body of knowledge we understand as ethics is a particular discourse within philosophy. Ethics contains both substantive and procedural themes. For example, ethics is an understanding of the science of morals in human conduct, exploring systems of values that have implications for all aspects of our lives (Marino (ed.) 2010; Wylie 2003; Hyde 1892). Ethics may also be understood as a process of delineating standards of conduct and moral judgment (Marino (ed.) 2010).

A professional ethic incorporates both themes. A professional ethic provides a system of behavior towards others through a complex matrix of directives, guidance, and aspirations, that is, a substantive guide to understanding and regulating professional conduct (Colwell-Chanthaphonh et al. 2008). Additionally, a professional ethic provides a process or dynamic that informs the professional as she seeks to identify standards of conduct and exercise moral judgment (Colwell-Chanthaphonh et al. 2008; Sharswood 1860). What makes an ethic professional as opposed to individual, however, is the importance of the collective or profession, that is, a professional ethic contemplates, if not demands in the first instance, a profession, which infuses an institutional perspective on each step in the build-up to an ethical system (Colwell-Chanthaphonh et al. 2008).

In this thesis, the focus is not on general ethical thought or the philosophical source of ethics. Rather, the discussion centers on what various theories of ethics have to say about several fundamental aspects of the practice and study of archaeology. Several of these fundamental aspects include the identification of the place of ethics in archaeology as a profession, the meaning of ethics in the praxis of archaeology, the scope of practice or obligations, the role of the archaeologist, the importance of the archaeological record,
the identification and importance of stakeholders and beneficiaries, and potential areas of concern that are particularly challenging in an operational environment (see generally Gathercole and Lowenthal 1990; Gero et al. 1983; Kane 2003; Karlsson 2004; Lynott and Wylie 1995; Meskell and Pels 2005; Pinsky and Wylie 1989; Pluciennik 2001; Scarre and Scarre (eds.) 2006; and Zimmerman (eds.) et al. 2003).

Archaeologists struggle with ethical issues on a regular basis. This struggle reached a greater level of consciousness through the ethical turn of the 1980s and 1990s (Pluciennik 2001; Baron et al. 1997). In doing so, archaeologists regularly employ an alchemy of borrowings from the frameworks of virtue, deontological, consequentialist/utilitarianism, and prima facie duty-based ethical systems to guide them towards a morally acceptable judgment (that is, a judgment that one can live with), and especially a negative utilitarianism; that is, often an archaeologist knows that one cannot make a wholly rational judgment (for example, one does not know all the facts), but one strives to avoid obvious harmful and immediate consequences and strives to avoid making a judgment at that point because one is ill-informed. By their recurring use, these approaches, or at least a combination of these approaches, have provided a workable personal ethic, a base from which to exercise moral and ethical judgment. But a personal ethic is not the same as a professional ethic. Although these blended approaches have influenced the development of codes of ethics, they are problematic when used as a base from which to develop a professional ethic. This chapter will explore why that is the case.

Archaeologists work under several sources of ethical mandates and guidance (Hunter and Cox 2005). For example, archaeologists generally work according to agreed best practices (Hunter and Cox 2005: 213). These best practices often contain the implicit (more recently, explicit) resolution of ethical values in terms of behavior or professional
conduct (Hunter and Cox 2005: 213). Furthermore, archaeologists often act in accordance with protocols (descriptions of what should be done) or standard operating procedures (“SOPs”) (details of how protocols should be carried out) (Hunter and Cox 2005: 213). Although protocols and SOPs are established for practical purposes, they regularly contain underlying moral reasoning. Additionally, archaeologists may conform their conduct to codes of ethics (Hunter and Cox 2005: 213).

To be meaningful to archaeologists, any ethical system needs to encompass all aspects of field practice, lab work, report writing, consulting, and expert witness testimony, among other tasks of the archaeologist (Hunter and Cox 2005: 214). Such ethical systems must aid in interaction with the public, media, teaching, research, and publication. (Hunter and Cox 2005: 214). In short, the ethical system must provide a priori action guidance in a host of professional settings.

Ethics, like archaeology, has moved from a focus on things to relationships (Gilligan 1982; McGuire 2003: vii), a move welcomed by many commentators in the field of archaeological ethics (McGuire 2003: vii.). The paradigmatic shift has actually made ethics more complex and challenging in the practice of archaeology. Ethics in archaeology are “very complex, conflicted, and confusing” (McGuire 2003: vii.).

Traditionally, the conservation ethic dominated ethics and archaeology (e.g., Colwell-Chanthaphonh et al. 2008). The conservation ethic spawned a system of best practices, protocols, SOPs, and codes of ethics that centered on things and not relationships. More troubling, the conservation ethic was a byproduct of the unequal power of the archaeologist and all that he represented (both fairly and unfairly) and the other, most predominantly local, non-Western populations. The conservation ethic assumes that archaeological sites are not a renewable resource (McGuire 2003: vii-viii). Thus, archaeological sites must be protected; hence, the subtle but significant movement from
conservator to steward. But protected from what or, more importantly, from and for whom? For many decades, these questions went unanswered, at least among polite company.

However, the view that the conservation or stewardship principle *should* dominate archaeological ethics was not without controversy. Since the 19th century, several voices in archaeology and related disciplines challenged the importance of conservation and stewardship as a fundamental theme of archaeological ethics, correctly recognizing that such an approach is rooted in the law and policy of conquest (McGuire 2003: ix).

“The vast majority of North American archaeology has been a form of colonial practice – the study of the conquered by the conqueror” (McGuire 2003: ix). Archaeological ethics was never immune from this colonial overhang. A perusal of a sampling of field notes, best practices, protocols, and SOPs maintained during the US engagement with Native Americans portray a profession (like many during the relevant periods) self-absorbed with its importance to an understanding of Western civilization, zealous in implementing what it perceived as what was in the best interests of the Native Americans without their meaningful input, and slavish in its devotion to the archaeological record of their choosing. These archaeologists were not bad people, however. Their body of work shows that they cared. They cared about their profession, the archaeological record, their students and workers, and even the Native American communities in which they worked (*cf.* Biolsi and Zimmerman (eds.) 1997; Swindler (ed.) 1997). It does not benefit the debate or enlighten the arguments to attempt to villainize the archaeologists that practiced during that time. However, it is important to recognize that such practice was constrained by the shackles of conquest. In fact, it would not be until late into the 20th century that colonialism would be confronted as archaeologists concerned about a professional ethic forced a vantage-point shift from the archaeological record to human beings.
3.2 A “Professional” Ethic

A professional ethic refines ethical standards for a profession, that is, a subgroup of humanity that professes a special expertise and relationship with someone (Wylie 2003: 5; see also Colwell-Chanthaphonh et al. 2008). In contrast, a moral code consists of a “society’s most general standards or institutional roles . . . [that] apply to all people in society regardless of their professional or institutional roles” (Resnick 1998: 15). In professional ethics, ethical conventions must be justified in the “philosophical, not the pugilistic, sense” (Wylie 2003: 6). A rupture occurs when conventions are disrupted or falsified on a regular basis (Wylie 2003: 6). At that point, professional life can no longer go on as usual (Wylie 2003: 6-7). This thesis concludes archaeology is at that point.

An effective and moral professional community must have the ability to articulate and maintain a moral vision and define the ethical prescripts of practice (McIntosh et al. 1996: 216). Practitioners within that profession must practice within the vision and prescripts, but must also accept ultimate responsibility for their conduct (McIntosh et al. 1996: 216). A professional ethic is no better than its professionals (Sharswood 1860).

Lynott (2003: 17) recognizes the inherent utility of professional ethics to archaeology. Ethics represent guidelines that aid and support a specialized profession in functioning in a complex real world (Lynott 2003: 17-18). They also provide cover from the overreach of other professions, including politics.

Ethics appears to enter archaeology about the end of 19th century with concern over unscientific excavation of sites (Lynott 2003: 17). Prior to this time, archaeology was primarily about the artifact itself (Lynott 2003: 17). “[T]he first debate about archaeological ethics swirled around the unscientific excavation of sites to recover artifacts for museums and collectors” (Lynott 2003: 18). The archaeological movement
to preserve (conservational ethic) and protect (stewardship ethic) archaeological sites is most closely associated with the historic preservation movement in the US and the preservation of context (King et al. 1977). This movement recognized the value of the archaeological record as a “thing in itself” (Lynott 2003: 18).

Although small in number, this movement wielded considerable national influence (Lynott 2003: 18). An indication of this influence is found in the establishment of the Smithsonian Institution by the US government in 1846, which immediately announced its interest in archaeological site preservation through a series of publications and announcements (Lynott 2003: 18). Further indication of national influence was the enactment of the Antiquities Act of 1906 (“1906 Act”) (16 United States Code §§ 431-433; see also Lynott 2003: 19; Lee 2000). The 1906 Act embodied the ethical principle of site preservation, protection from looters, and the necessity to excavate sites in a scientific manner (Lynott 2003: 19). Groups supporting enactment of the 1906 Act included the AIA and the AAA (Lynott 2003: 19).

The 1906 Act authorizes the US President to establish national monuments to protect sites on public land (16 United States Code § 432). The 1906 Act was drafted by Edgar Lee Hewett, an archaeologist (Lynott 2003: 19). It fairly reflects the archaeological ethical concerns of the early 20th century (Lynott 2003: 19). Thus, by the early 20th century, what one can discern from an archaeological ethic is the dual concern of site protection and preservation, often captured by the terms conservationism and stewardship, and scientific excavation, elevating the importance of context over content (Lynott 2003: 19).

Trimble and Marino (2003: 99-101) persuasively map the development of the conservation and stewardship principles within archaeological legislation, which has been legislatively refined over 100 years with a more relatively recent consideration of
cultural empathy. A perusal of applicable legislation in the US supports this proposition and provides insight on the evolution and refinement of the principles of conservation and stewardship that permeate present ethical codes today. For example, the 1906 Act states its goals:

That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected: Provided, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the US (16 United States Code § 432).

Interestingly, a parallel history was evolving at the same time. That history was being written by, and not about, the Native Americans in the US. At the time of the 1906 Act, the State of Oklahoma did not exist (Baird and Goble 2011). Native Americans were largely confined to reservations under the law of conquest (Sowell 1998: 317-319; Horsman 1988; Prucha 1988; Hagain 1988; Kelly 1988; Mahon 1988; Utley 1988; Baca 1988). Reservations were owned by the US government and are included in the 1906 Act’s mandate (Sowell 1998: 317-319; Baca 1988: 230-235). However, although the 1906 Act was the fruit of a political process, Native Americans on reservations were not granted US citizenship (Baca 1988: 232; see also Indian Citizenship Act of 1924, 43 U.S.C. § 253, whereby all noncitizen Indians born in the US were made US citizens) and possessed no right to vote in federal or state elections (Canby 1988: 239-240). Thus, much like the Lewis and Clark expedition, the federal government seized control of valuable resources from Native Americans residing on Indian reservations without any meaningful input (Joukowsky 1991: 8).
Under the 1906 Act, the federal government, through the President, is the viceroy of stewards of the archaeological record. Moreover, through the exercise of his power under the 1906 Act, the President decides what may (and, by default, may not) be a large part of the archaeological record in the US (16 U.S.C. § 432). To be sure, archaeologists did play a role in aiding the President in exercising his duties under the 1906 Act; however, it was only those archaeologists in favor with the political party in power and most assuredly did not include marginalized voices such as the Native Americans. In a real sense, the 1906 Act was an overt politicization of the archaeological record and a government co-opting of how it was to develop in the US.


(b) The Congress finds and declares that —

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation’s heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
Although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities (16 United States Code § 470).

The 1966 Act is a further politicization of the archaeological record and an attempt to forge a permanent alliance among federal and state governments and private capital. First, the 1966 Act seeks to embrace and reaffirm the importance of cultural heritage to the national narrative (that is, a narrative of the West without voice to discrete and insular minorities such as the Native Americans or the African slaves and their descendants in the US) to orient the American people. Both purpose and beneficiary of the US government stewardship are boldly identified in the language of the 1966 Act. Second, the 1966 Act states the importance of the preservation of cultural heritage and its view that cultural property is not a renewable resource. This naked assertion that the record is not a renewable resource is the justification of the usurpation of power by the US government from people who otherwise would assert a claim to such property, including Native American tribes. Third, the 1966 Act identifies future generations of Americans as a major part of the beneficiaries of the preservation of cultural heritage. Finally, the 1966 Act identifies and begins the implementation of federal, state, and private capital cooperation in the preservation and protection of cultural heritage. Throughout the detailed purposes listed in the 1966 Act, one does not find any mention of the Native Americans, notwithstanding their contribution to American cultural heritage writ large and Native American materials (including skeletal remains) that embody a major component of the archaeological record in the US.

It is the purpose of this Act [16 U.S.C. §§ 469-469c-1] to further the policy set forth in the Act entitled, "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved August 21, 1935 [Historic Sites Act, as amended, 16 U.S.C. §§ 461-467] by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen’s communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program (16 United States Code § 469).

The 1974 Act reaffirms the importance of preservation of cultural property. It also focuses on the public record. Again, there is no mention whatsoever of Native Americans.

Although the principles of conservation and stewardship are important in the legislative evolution in the US, they are not all important. In 1989, the US Congress navigated a turning point in archaeological legislation with the passage of The National Museum of the American Indian Act of 1989 ("1989 Act") (Public Law 101-185 1989). The 1989 Act tempered the traditional principles of conservation and stewardship with a requirement that the Smithsonian Institution establish a Museum of the American Indian and with that requirement, inventory Native American burial artifacts in its collections, and consider the repatriation of certain artifacts to federally recognized tribes (Watkins 2005, 2003, 2000). Although well-intentioned, the 1989 Act resulted in a department store approach to Native American materials and did not increase the power of the Native American voice over the longstanding concern by those tribes of the return of
burial remains and icons of religious significance to the various tribes (Joukowsky 1991: 8).

The movement toward a recognition of people affected by possession of the archaeological record, notwithstanding the best of intentions in regard to conservation and stewardship, reached a relative high point with the enactment of The Native American Graves Protection and Repatriation Act of 1990 (“NAGPRA”) (25 United States Code §§ 3001 et seq.). NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects, and objects of cultural patrimony – to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations (Lackey 2006). It forces collaboration between Native American tribes and the West (and its agents, such as government officials, archaeologists, anthropologists, curators, museums, etc.).

These five statutes provide a portal into the interaction of archaeology as a profession and the national legislation promulgated by the US government. A meta-analysis of the five legislative acts would suggest that the dual policies of conservation and stewardship migrated from an uncontested position of all importance to one of great importance tempered with cultural empathy. Along with the documented migration, one can fairly characterize a fundamental change in the role of archaeologists from the star of the narrative to an important element in a sea of relationships surrounding the archaeological record.

Native Americans view the complete body of cultural protection legislation identified above as largely one of numerous manifestations of the law of conquest and the prerogative of the conqueror (Joukowsky 1991: 8; cf. Sowell 1998: 317-328) – in effect, a trail of tragedies. Each piece of legislation stands as a monument to the West’s conquest over the Native Americans; its trophies are the finds and artifacts from Native
American people, most especially funerary and skeletal remains resting in situ on federal land or housed in public and private collections throughout the world. The legislation is nothing less than an assertion of dominance and control of the archaeological record by the US government, and derivatively through the government, the archaeologist, as a reaffirmation of sovereignty over one of the most intimate aspects of a population, that is, its material remains. The government’s assertion of control is based on power that is, itself, rooted in large part in the law of conquest (Sowell 1998: 317-319; Horsman 1988; Prucha 1988; Hagan 1988; Kelly 1988; Mahon 1988; Utley 1988; Baca 1988). In that vein, the legislation is actually destructive of indigenous rights in its “protection” of cultural heritage and property, differing from the Romans sacking of Jerusalem, Napoleon’s savants’ annexations of Egyptian artifacts, and the Taliban’s demolition of the Buddhas of Bamiyan in degree and not in kind.

The five statutes also present a difficult question that preoccupies disputes like the present one in Western civilization: who owns the archaeological past? (Renfrew 2001; Chase et al. 1996; see generally Messenger (ed.) 2003), and the related, but no less troubling and complex question of who do we do archaeology for (Hamilakis 2007)? The issue is further clouded because the question who owns the past often masks the subtler question of who decides how the past is to be used (Duke 2007: 41). The issue of who owns the past is an emotional one, having as much to do with the politics of the present as it does the conservation of the past (McIntosh et al. 1996: 185; Young 2006: 15-21). Pitted against each other are archaeologists who claim that archaeology’s scientific authority elevates it above the cultural biases of individual practitioners, and those archaeologists who doubt objectivity is possible (McIntosh et al. 1996: 187). Ownership, however, necessarily implicates relationships, and relationships implicate living people and, in some cases, the dead. (Hohfeld 1919; Young 2006; Scarre 2007).
Archaeologists interact with living people in many ways. Thus, careful consideration of living people and communities and how each is affected by what we do and how we do it is vitally important to a robust model of ethical professional behavior (Tarlow 2006: 203; Williams 1985: 201). Certain principles and declarations have developed that guide researchers in ethical behavior when dealing with living things as research subjects (Bendremer and Richman 2006: 97-98). Among these sources that guide and regulate research on human beings is the World Medical Association (“WMA”) Declaration of Helsinki (“Declaration”) (WMA 1964 (most recent amendment Oct. 2008)). Under the Declaration, all research should be carried out within an ethic of respect for persons (McIntosh et al. 1996: 215). The US has developed human subject reviews to ensure informed consent, ethical protocols, and protection and authorized use of any data developed (Bendremer and Richman 2006: 97). Federal regulations and guidelines have led to the establishment of Internal Review Boards (“IRBs”) tasked with monitoring human subject research.

The Declaration contains five specific attributes that govern human subject research (WMA 1964). Although the Declaration has been amended several times, these attributes continue to ring true (see generally Bendremer and Richman 2006: 97). The first attribute is a researcher’s *beneficence* toward the human subject (WMA 1964: Declaration Paragraphs 3-4, 6). In this context, beneficence requires the scientist to do positive good. The second attribute is a researcher’s *nonmaleficence*, that is, to do no harm (WMA 1964: Declaration Paragraph 6). The third attribute is the requirement that a researcher obtain *informed consent* from the human subjects (WMA 1964: Declaration Paragraphs 24, 26-29, 33, 35). Informed consent acknowledges that a human subject is not a thing, but a human being endowed with self-importance and autonomy. Thus, to subject a human being to research, the researcher must provide all relevant information in a meaningful form and in a timely manner to which an individual may attach...
significance in deciding whether to begin and continue in a study. If an individual is incapable of giving consent (for example, a minor or incompetent), then, in many circumstances, the law provides a process for decision by proxy by way of the judicial appointment of a guardian or custodian (WMA 1964: Declaration Paragraph 29). However, in some situations, the law does not permit informed consent in any circumstance, for example, where the human being is a prisoner incarcerated in a government prison. The fourth attribute is the dual requirement of confidentiality and anonymity (WMA 1964: Declaration Paragraphs 11, 23). These dual components ensure the researcher affirmatively protect the human dignity of an individual to privacy. This attribute recognizes that the participation of an individual in a study and the data developed from such study is owned by the individual subject to the use by researchers of that information consistent with the other attributes under the Declaration. The fifth attribute is the requirement that a researcher has a duty of veracity, that is, a duty to tell the truth (WMA 1964: Declaration Paragraph 9). The fifth attribute permeates the preceding four and fairly may be characterized as serving as the foundation stone of the Helsinki Declaration regarding research on human subjects.

These five Helsinki attributes may sometimes be in conflict. One addresses that conflict through moral reasoning. The resolution of these conflicts is not self-evident. How are such conflicts resolved? Are such conflicts resolvable? If resolvable, is there an internal primacy or ranking among these attributes? How does the culture of the researcher affect the ranking and resolution? Is there room to consider the culture of the human subject? Who is the human subject? Can a subject include ancestors no longer living, living ancestors, living descendants, and future generations? This is the practical world in which archaeologists practice.
The Declaration rests comfortably on a bed of truth. Truth, in turn, rests on trust. In fact, the Helsinki attributes are drivers of truth and, thus, drivers of trust. These attributes, in various forms, foster a virtuous character and will serve as action guidance in the professional ethic based on the virtue of trust developed in later chapters in this thesis.

Wylie (2003: 3) cogently asserts that the domain of archaeological ethics is generally defined in terms of a series of contrasts. For a profession, ethics can take on many roles. Ethics may be a “set of standards that guide action, social norms that prescribe or prohibit certain kinds of behavior, or a code of conduct” (Wylie 2003: 3, citing Resnik 1998: 14). Ethics may also be the study of these standards in context, a discourse within the greater philosophy (Wylie 2003: 3). Ethics breaks to the normative, not factual, divide; ethics speak to what we should do (Wylie 2003: 3).

Not all normative principles are ethics (Wylie 2003: 4). Law can direct what we ought to do or refrain from doing. Law can also punish our transgressions through fines, confinement, and ostracization. Laws set outer limits but do not completely fill the ethical space (Wylie 2003: 4). Ethics may demand more or possibly less, for example, when our ethics demand that we disobey unjust laws through notorious acts of civil disobedience (Sunstein 2003; Zunes 1999; Thoreau 1868). Ethics is primary; law, secondary.

Two broad families of moral theories that have been dominant in Western philosophical ethics and often figure in debate about ethical issues in archaeology are utilitarian/consequentialist (Mill 2010; see also Colwell-Chanthaphonh et al. 2008) and deontological (Kant 2010; see also Colwell-Chanthaphonh et al. 2008) theories (Wylie 2003: 7).
Under the utilitarian approach, what makes an action right or wrong is what effect it has in the world, its consequences assessed in terms of happiness or well-being (Mill 2010). A mature utilitarian approach should carefully consider indirect and down-the-line costs (Wylie 2003: 8).

In contrast, the deontologist approach requires that we assess the intrinsic quality of an action that makes it right or wrong, regardless of its consequences (Kant 2010). Moreover, a deontologist approach, at least one that respects Kant’s categorical imperative, demands that we recognize that individuals have intrinsic value as ends in themselves and never as means (Wylie 2003: 8).

Wylie (2003: 11) acknowledges that archaeologists are cognizant of the philosophical themes that surround utilitarian and deontological debates, including:

> [W]hose interests (or well-being) should be considered, how should different kinds of consequences be weighed, and what range of indirect and down-the-line effects should bear on moral judgments about a particular class of actions or action-guiding rules.

However, many of us are becoming aware that consequentialist or deontological arguments may be rejected out of hand because a particular approach is inconsistent with a culture. For example, the cultural heritage of the Choctaw Indians of Oklahoma does not recognize a consequentialist approach as legitimate (O’Brien 2005: 50-58; see generally Haag and Willis 2001; Cushman 1999; see also Wylie 2003: 11). Wylie (2003: 12) then suggests that we assess any ethical approach from the vantage point of other cultures – a vantage shift. For example, the entire debate and drama about graves and American Indians can be understood in large part by a failure of archaeologists, among others, to appreciate that many North American Indian tribes reject consequentialist models as inconsistent with tribal cultural values (Wylie 2003: 12).
3.3 Movement Toward a Relationship-Based Professional Ethic

The movement toward a relationship-based professional ethic in archaeology has not been easy and is far from free of the influence of conservationism and stewardship (Hamilakis 2007; Mourad 2007). Moreover, it is not apparent what precisely the movement toward a relationship-based professional ethic will eventually mean or entail. Commentators have struggled with an appropriate model of ethics for archaeologists with a focus on relationships (Colwell-Chanthaphonh and Ferguson 2006; Cooper 2006; Tarlow 2006). These commentators regularly recognize that a profession demands a dynamic ethical system where human relationships are central and not byproducts of archaeological praxis. Beyond that observation, the literature fragments.

One impressive attempt at constructing a relationship-based professional ethic rests on the foundational assumption that ethics are not static rules; rather, they must represent an ongoing discussion and debate of a “trinity of responsibilities” (Zimmerman et al. (eds.) 2003: xiii-xvi). This trinity includes responsibilities (1) to the archaeological record, (2) to diverse publics, and (3) to colleagues, employees, and students (Zimmerman et al. (eds.) 2003: xiii-xvi). This approach seeks to anchor any responsibility to specific beneficiaries, one of which is the archaeological record (Zimmerman et al. (eds.) 2003: xiii). Even with this dramatic and persuasive movement toward an ethics of relationships to people, the advocates nonetheless include a relationship to a “thing,” that is, the archaeological record (Zimmerman et al. (eds.) 2003: xiii). To understand better the movement from conservation to stewardship to relationships among people and things to a value driven relationship-based professional ethic proposed in this thesis, one must begin with the centrality of the archaeological record to traditional archaeological praxis and that tradition’s high priests and priestesses.
3.3.1 Responsibilities to the Archaeological Record

From the inception of the profession of archaeologist, experts in the discipline have recognized the importance of the archaeological record (Young 2006; Leaman 2006; Layton and Wallace 2006). Although not always well understood, the archaeological record may be best described as a collective mosaic of what archaeologists consider of importance to the understanding of humans. It is a collection of things related to human beings and their conduct in context. Through the archaeological record, archaeologists provide voice to those of the past (Williams 2008). In many ways, the archaeological record is the stream of information related to the study of things in context that teach us and help us understand humanity across time.

But the record was always something more than that. It breeds a familiarity and fascination in the things themselves. This is a natural phenomenon of the study of things, even things by a profession that professes that context is ostensibly its primary area of interest. The importance of the archaeological record dominated the study and practices of archaeology and, its preservation and protection, the ethics of archaeologists (Colwell-Chanthaphonh et al. 2008; Zimmerman et al. (eds.) 2003).

If the preservation of the archaeological record dominates traditional professional ethics, it should come as no surprise that the profession’s great bogey man is looting (Hollowell 2006: 85). Looting comes in several forms, including high-end antiquities laundering (see Renfrew 2001) to subsistence digging (see Hollowell 2006) and many variations in between. Lynott’s (2003: 19-26) history of archaeological ethics explains why conservation and stewardship are seen in the Society of American Archaeology (“SAA”) principles as the first of the trinity of the beneficiaries of a relationship-based professional ethic. Looting and associated commercial markets, whether during or outside of conflict, violate this responsibility to the archaeological record (Zimmerman
et al. (eds.) 2003: xiii). High-end looting manifests itself on the international market where otherwise reputable institutions, brokers, archaeologists, and collectors play in the shadows (Renfrew 2007). This unlawful activity in antiquities increases in areas of conflict (Zimmerman et al. (eds.) 2003: xiii; Stone 2009: 33; Stewart 2004: 150-156). Interpol statistics on looting and stolen antiquities put their market value at US $4-5 billion a year, similar to the arms trade, and second only to narcotics (Zimmerman et al. (eds.) 2003: xiii). Renfrew has also estimated that looting and the international black market economy in artifacts are approximately US $3 billion (Lidstone 2009), with the largest share of the profits pocketed by the dealers (Hanson 2011: 120). This art market negatively affects the archaeological record (see Brodie and Gill 2003: 32-35; see also Hollowell-Zimmer 2003: 48 (addressing low-end market looting)). Low-end or subsistence looting also seeks compensation from violation of the archaeological record through sales (Hollowell 2006: 77; Stewart 2004: 150-156). These sales are made for subsistence living, usually in third-world areas where little or no economic activity other than looting is present, and for very modest sums (Stewart 2004: 150-156). In addition to subsistence looting, looters may engage in such activities for hobby with no intent to sell artifacts (see Renfrew 2001). Nonetheless, such avocational activity also erodes the archaeological record.

Looting, in all its permutations, destroys context (Hollowell 2006: 85). For some time, many archaeologists have dedicated themselves to developing ways by which to stop looting. Some of these efforts have led to legislation, international conventions, and codes of ethics that embody policies to further preservation of the record. Educational programming has also sought to dissuade looting in its many manifestations (see AIA website 2013).
Interestingly, there may be an overstatement of harm to the archaeological record caused by looting. For example, although Hollowell-Zimmer (2003: 48) notes the importance of minimizing the looting of archaeological sites in an effort to preserve the record, she acknowledges that “[l]ooting may actually account for less damage to archaeological sites than erosion, agriculture, or development . . . .” She rightly observes that this fact provides no solace, just recognition of incremental harm (Hollowell-Zimmer 2003: 48-49).

As mentioned, the incidence of looting increases significantly with the chaos that comes from war. Local governments break down (Hollowell 2006: 74-79). Organs of the state, such as the police and other security forces, stop functioning effectively. Violence becomes the norm. Lawlessness ensues. As the social contract breaks down, people prey on others and on things. Looting becomes rationalized as a means of self-help retribution for those that have felt victimized by the fallen regime. Others may see looting as windfall, artifacts as targets of opportunity. In this chaos, local archaeologists and their colleagues from outside the conflict area, as well as ordinary citizens, regularly risk life to preserve the archaeological record and to protect the cultural heritage of the local and descendant communities or their ancestors (Wonacott 2009).\(^{15}\)

3.3.2 Responsibilities to Diverse Publics

Social concerns drive responsibilities to diverse publics by increasing constituencies (Zimmerman et al. (eds.) 2003: xiv–xv). This should be no different for archaeology. Taxpayers who fund our work, descendant communities, the local communities, the government, and the general public all have an interest in what we do and how we do it.

The traditional focus on the conservation and stewardship of the archaeological record

\(^ {15}\) If archaeological ethics is about relationships, and that is what this thesis argues is the case, why do archaeologists and other people risk life to protect property (see generally Stone 2011: 8-9)? That question is beyond the scope of this thesis but is part of an upcoming article on the professional ethics of such practices (see generally Hollowell 2006: 73 n.3 (mentioning a defeated archaeological association proposal to permit armed archaeologists to prevent looting)).
paid short shrift to other constituencies, particularly the diverse public (Zimmerman et al. (eds.) 2003: xiv-xv). Archaeological ethics and practice discounted or totally ignored interests of a diverse public. In some instances, such discussions and debates viewed such potential stakeholders as adverse to the profession’s interests in conservation and stewardship of the archaeological record (Zimmerman et al. (eds.) 2003: xiv-xvi).

The movement toward a relationship-based professional ethic does much more than acknowledge the importance of the diverse public. Such a professional ethic encourages, if not demands, engagement by archaeologists with the diverse public. However, the expansion of the beneficiaries of relationships to include explicitly people beyond their role in preserving the archaeological record presents a new problem – conflicting priorities (Zimmerman et al. (eds.) 2003: xiv–xv). Multiple constituencies present priority problems (Zimmerman et al. (eds.) 2003: xiv–xv). Smith and Burke (2003: 177-179, 191-193) compellingly argue that the priorities reflected in the ethical codes around the world privilege the goals of the profession (archaeological conservation and stewardship) over the concerns of living people. Obviously, this resolution of conflicts among relationships is not self-evident and is deserving of more attention. The thesis will return to the issue of priorities when addressing the beneficiaries of a trust-based professional ethic.

3.3.3 Responsibilities to the Profession

The third leg of the trinity of relationships concerns an archaeologist’s obligations to colleagues, employees, and students (collectively, the “Profession”). Ethical codes recognize this obligation to members of the Profession, usually by reference to publishing and sharing our research and findings with colleagues (Zimmerman et al. (eds.) 2003: xv). Even here, however, the responsibility is not absolute. For example,
details about archaeological sites may not be published despite the commitment to share such information to prevent looting (Wylie 2003: 9; see generally Halsey 1991).

The guidance by ethical codes on our relationship with other members of the Profession, especially employees and students, is not well developed. It should be. These are integral members of the Profession. The thesis will return to the issue of ethics and members of the Profession when addressing the beneficiaries of a trust-based professional ethic.

3.4 Present Ethical Codes
For the practicing archaeologist, there is no lacking in regulatory codes of professional ethics. In fact, as a profession, we are privy to an overabundance of ethical codes. Codes of ethics may be found from the AAA, World Archaeological Conference (“WAC”), European Association of Archaeologists (“EAA”), AIA, Register of Professional Archaeologists (“RPA”), and the SAA, just to name a few. Each code of ethics stresses various aspects of what its sponsoring body perceives as a professional ethic and responsible behavior (Pollock 2008: 357; Smith and Burke 2003: 181-185, 191). Remarkably, none of these codes of ethics identified above fully appreciate the political context in which all professional ethics are actually played out (Pollock 2008: 357; Hamilakis and Duke (eds.) 2007). Rather, these codes of ethics support the practitioner and, more importantly, also provide guidelines that may be used to judge the conduct and credibility of their profession.

In understanding the role of ethical codes in archaeology, one must begin with the history of the organizations that promulgated them. The AIA was founded in 1879 by professional archaeologists and dedicated avocational supporters (Lynott 2003: 19). As previously discussed, the AIA was instrumental in the enactment of the 1906 Antiquities Act. An analysis of the AIA Code of Ethics isolates the importance of
conservationism and stewardship as paramount principles that have retained their dual
dominance (Lynott 2003: 19-21; see generally Smith and Burke 2003).

The SAA was founded in 1934 as an organization specifically dedicated to the same
dual concerns of protection and the scientific excavation found in the 1906 Act (Lynott
2003: 19-20; Smith and Burke 2003: 182-183). In addition to the dominant principles
of conservationism and stewardship, one finds the importance of the preservation of
context through adherence to a robust scientific rigor (Smith and Burke 2003: 182-183).

Although the AIA and SAA continued consideration of ethical issues in light of
industrial development, encroachment, and threat to many sites in North America, it
was not until after the end of World War II that one witnesses a burst of archaeological
energy in the US through the government-sponsored Interagency Archaeological
Salvage Program and the River Basin Surveys (Lynott 2003: 19-20). These
governmental programs developed in response to post-war dam building throughout the
US. This large-scale nationwide construction and job programs threatened the
archaeological heritage of the US. Development destroyed sites. As a harbinger of
things to come, these federal programs subordinated site preservation to development
and job programs, and re-focused federal policy on the scientific study of the record
(Lynott 2003: 20).

From the post-war to 1960, the archaeological field was filled with professionally
trained archaeologists, dedicated avocational archaeologists, amateurs, looters, and
looters for hire. At this point in the evolution of archaeology as a profession, a
movement developed among various professional organizations to visit the issue of
more rigorous standards (Lynott 2003: 20). This development is one of the early signals
of the maturation of the profession of archaeology, an attempt to explain what it means
to be an archaeologist.
In 1960, the SAA appointed a committee that developed the “Four Statements of Archaeology” (Lynott 2003: 20; see generally Smith and Burke 2003). Statement 1 defines the profession of archaeology. Statement 2 emphasizes the importance of scientific excavation, that is, “systematic methods and record keeping” (Lynott 2003: 20). Statement 3 is entitled “Ethics” and encompasses several directives. These directives focus on the publication of research results, prohibition against the trafficking in artifacts, sharing of collections and records with competent scholars, preventing an archaeologist from raiding another’s excavation site, and prohibiting spoilage or concealment of archaeological data (Lynott 2003: 20). Statement 4 seeks to establish certain minimum educational and experience standards by requiring a BA or BS, two years of graduate training, and two years of field experience. That Statement also states that a Master’s degree is highly recommended and that a Ph.D. in a relevant academic field is preferred, but not required (Lynott 2003: 20). These Four Statements represent a time capsule of sorts that captures a slice of what ethical issues concerned many influential archaeologists at the time. As Lynott (2003: 20) observes, these Statements were heavily focused on issues of importance to universities and museums at that time and place.

Lynott (2003: 20) observes that the “1970s witnessed an explosion of archaeological work under the umbrella of conservation resource management (CRM)” (see also Bergman and Doershuk 2003: 86-87). Lippe (1974) published his influential paper that offered a completely new take for the profession on the role of a conservation ethic in an era of unprecedented economic and infrastructure development (Lynott 2003: 20-21). Among other things, this paper spawned a movement to establish a registry of
professional archaeologists. This in turn led to the establishment of the Society of Professional Archaeologists (“SOPA”) in 1976 (Lynott 2003: 20).\(^{16}\)

In a parallel process, various archaeological organizations were developing their own ethical guidance through codes. In 1976, the SAA commenced a series of meetings that would ultimately lead to a code of ethics (Davis 2003: 251). This process led to SOPA, a combination of codes and standards, something that the SAA committee believed was at the core of the practice of archaeology (Davis 2003: 251-252).

Presently, most national and many state (or local) associations have codes of ethics. However, only the AIA and RPA in the US provide that professional members (see AIA) or registered archaeologists (see RPA) can be investigated and sanctioned (Davis 2003: 254).

The establishment of SOPA is a milestone in the movement in archaeological organizations from scholarly or academic organizations to professional organizations (Lynott 2003: 21). SOPA developed Bylaws, a Code of Ethics, Standards of Research Performance, and Grievance Procedures, the accoutrements of an emerging profession (Lynott 2003: 21). This matrix of self-regulation was reminiscent of structures embraced by various other professions, including law and medicine (see, e.g., American Bar Association Model Rules of Professional Conduct 2012).

Ethics codes in archaeology are written in mandatory tones with affirmative and negative directives. These codes seek to establish minimum standards of conduct (Lynott 2003: 25). They are designed as guidelines to assist professionals in meeting the “specialized goals of their profession within the more complex circumstances of the greater society in which they live and work” (Lynott 2003: 25). Some of these codes...

\(^{16}\) For an account of the founding of SOPA, see McGimsey (1995).
identify the beneficiaries of those rules – the public, colleagues, employees, students, employers, and clients.

As Smith and Burke (2003: 178) note, ethical codes in archaeology and related fields are of relatively recent vintage. The AAA developed one of the first professional ethical codes in the US in 1971 (Smith and Burke 2003: 178). Smith and Burke (2003: 178) further observe that codes provide context for ethical dilemmas facing any profession at the time of their enactment. Such codes express the “common core of group wisdom” (Smith and Burke 2003: 178). A code “distills the belief of its members, articulates the underlying assumptions and guiding principles of the association, and provides a fundamental framework for conducting research in an ethical and responsible way” (Smith and Burke 2003: 178). Each code is developed in a “social ‘bubble,’ resulting in widely differing core values” (Smith and Burke 2003: 178).

Smith and Burke’s analysis of the core values embodied in various archaeological professional codes is a masterful work of archaeology in itself. They begin with the AIA code. That code seeks to educate, to provide a greater understanding of archaeology (Smith and Burke 2003: 178). In contrast, the SAA and New Zealand Archaeological Association seek to define, develop, and instill the principle of stewardship as paramount in their respective codes (Smith and Burke 2003: 178). According to Smith and Burke (2003: 181-182), the AAA recognizes that the paramount ethical responsibility owed by an anthropologist is to those who are being studied. The WAC, the Canadian Archaeological Association, and the Australian Archaeological Association place front and center the importance of indigenous cultural heritage to the survival of indigenous cultures (Smith and Burke 2003: 178, 183-185, 187-188). Smith and Burke compellingly argue that stewardship privileges one ethical
standpoint, while survival of cultural heritage privileges another (Smith and Burke 2003: 178). Thus, codes are developed from the needs of a particular group at a particular time and place, to deal with local situations in different parts of the world (Smith and Burke 2003: 191).

Smith and Burke observe that professional codes capture a professional spirit, the most important attribute of a code from their perspective (Smith and Burke 2003: 179). It is this spirit that serves the professional to work through ethical problems and dilemmas (Smith and Burke 2003: 179).

One of the earliest adopters of ethical codes was the AAA (Smith and Burke 2003: 181). The AAA adopted its first code in 1971, entitled “Principles of Professional Responsibility” (Smith and Burke 2003: 181). The AAA incorporated in a formal code of ethics in 1998 (Smith and Burke 2003: 181) its first principle, which provides that any responsibility is to people, materials, and species that are under observation and to the people with whom they work. This principle trumps seeking new knowledge or discharging an obligation to a sponsor, etc. The principle may break down when applied to the dead, e.g., the Kennewick Man (Smith and Burke 2003: 181-182).

A comparison between the SAA’s Principles of Archaeological Ethics and the WAC’s Code of Ethics shows the influences that vantage point and politics have on a professional ethic (Bendremer and Richman 2006: 106-111). In the 1930s, the SAA was formed as an “international organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas” (Smith and Burke 2003: 182). The SAA originally developed a simple structure to its code of ethics. However, in 1996, the SAA promulgated its Principles of Archaeological Ethics, a more robust approach to professional ethics. The Principle of Archaeological Ethics offers a window into the fundamental principles identified by the SAA in archaeology at that
time (Bendremer and Richman 2006: 105-107; Smith and Burke 2003: 182). The primary thrusts of the Principles are conservation and stewardship, that is, the preservation and protection of the archaeological record. Specifically, Principle No. 1 provides:

**Stewardship**
The archaeological record, that is, *in situ* archaeological material and sites, archaeological collections, records and reports, is irreplaceable. It is the responsibility of all archaeologists to work for the long-term conservation and protection of the archaeological record by practicing and promoting stewardship of the archaeological record. Stewards are both caretakers of and advocates for the archaeological record for the benefit of all people; as they investigate and interpret the record, they should use the specialized knowledge they gain to promote public understanding and support for its long-term preservation.

Principle 3, entitled “Commercialization,” seeks to preserve and protect the archaeological record by discouraging an archaeologist from serving as part of the commodification of artifacts. Principle 4 directs the archaeologist to enlist the public in efforts to preserve and protect the archaeological record through education and outreach programs. In Principle 4, the SAA refines its meaning of the “public.”

Many publics exist for archaeology, including students and teachers; Native Americans and other ethnic, religious, and cultural groups who find in the archaeological record important aspects of their cultural heritage; lawmakers and government officials; reporters, journalists, and others involved in the media; and the general public.

Principle 5 classifies the archaeological record as a matter within the public domain. Specifically, Principle 5 provides that any knowledge derived from a study of the archaeological record is itself part of the archaeological record. As part of the archaeological record, the knowledge derived is subject to the principle of stewardship as delineated by Principle 1 and not treated as within the realm of intellectual property protections under applicable law. Principle 6 continues the theme that research derived from the archaeological record is part of the record by requiring as an ethical imperative
the presentation within a reasonable time of any knowledge gained in a form generally accessible by the public. Principle 7 imposes on the archaeologist a duty to encourage “colleagues, students, and others” to preserve and permit access to the archaeological record as that concept has been expanded by the Principles.

In Principle 2, the code seeks to temper the principle of stewardship (but not conservationism) with accountability to the public and a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved.

This is an attempt by the governing body to force sharing of the archaeological record between the archaeologist and the public. Moreover, this Principle encourages a shift from a parochial archaeology that patronized the public to a profession that encourages public involvement throughout the practice of archaeology.

After elaborating on the principle of stewardship, an expanded notion of the archaeological record, and the importance of public involvement, the Principles introduce an explicit duty of competence and care. Principle 8 provides:

Given the destructive nature of most archaeological investigations, archaeologists must ensure that they have adequate training, experience, facilities, and other support necessary to conduct any program of research they initiate in a manner consistent with the foregoing principles and contemporary standards of professional practice.

In contrast to the Principles of Archaeological Ethics promulgated by the SAA that seeks an alliance between the archaeologist and the public writ large, the code of ethics promulgated by the WAC seeks to protect and empower indigenous people (Smith and Burke 2003: 183-185). In 1987, the WAC was founded to recalibrate the balance among archaeologists, sponsoring organizations (both public and private), nation states
with varied interest in archaeology, and indigenous people (Smith and Burke 2003: 183). WAC is an international organization (“IO”) with elected representatives from all over the world. WAC, driven largely by North American and Australian archaeologists, has promulgated a series of ethical codes that attempt to regulate the practice of archaeology. These ethical codes include the First Code of Ethics, The Vermillion Accord on Human Remains, and the Draft Code of Ethics for the Amazon Forest People.

The First Code of Ethics (1989) provides, in pertinent part:

Members agree that they have obligations to indigenous peoples and that they shall abide by the following principles:

1. To acknowledge the importance of indigenous cultural heritage, including sites, places, objects, artefacts, human remains, to the survival of indigenous cultures.
2. To acknowledge the importance of protecting indigenous cultural heritage to the well-being of indigenous peoples.
3. To acknowledge the special importance of indigenous ancestral human remains, and sites containing and/or associated with such remains, to indigenous peoples.
4. To acknowledge that the important relationship between indigenous peoples and their cultural heritage exists irrespective of legal ownership.
5. To acknowledge that the indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage.
6. To acknowledge and recognise indigenous methodologies for interpreting, curating, managing and protecting indigenous cultural heritage.
7. To establish equitable partnerships and relationships between Members and indigenous peoples whose cultural heritage is being investigated.
8. To seek, whenever possible, representation of indigenous peoples in agencies funding or authorising research to be certain their view is considered as critically important in setting research standards, questions, priorities and goals.

The word “indigenous” or some derivative is used fourteen times in WAC’s First Code of Ethics. It appears nowhere in the SAA’s Principles of Archaeological Ethics. Interestingly, the words “stewardship,” “conservation,” or “archaeological record” appear nowhere in the WAC First Code of Ethics (1989). According to WAC, the
primary responsibility of archaeologists is to acknowledge the importance of indigenous cultural heritage to the survival of indigenous cultures (Smith and Burke 2003: 184). This is a dramatically different standpoint than that of conservationism or stewardship (Bendremer and Richman 2006: 110-111).

In 1989, WAC adopted the Vermillion Accord on Human Remains. The Vermillion Accord provides the following:

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

The Vermillion Accord on Human Remains uses the word “respect” or some derivative five times. Interestingly, the scientific value of human remains is listed fourth among six areas of concern. WAC promulgated the Vermillion Accord on Human Remains at a time when a concern for the respect of the dead and any living descendants, guardians, or local communities related to or associated with the mortal remains had finally captured the attention of concerned archaeologists, people, and governments.

The RPA also maintains a code of conduct. Core elements of the code include professional morality, professional responsibility, and professional competence (RPA
Preamble 1988). The Code then introduces thirty-two “shall” and “shall nots.” The commandments center on (1) an archaeologist’s responsibility to the public; (2) an archaeologist’s responsibility to colleagues, employees, and students; and (3) an archaeologist’s responsibility to employers and clients (RPA Code of Conduct Parts I, II, and III 1988).

3.5 Deficiencies in Professional Codes of Ethics

Smith and Burke assert that most archaeological codes of ethics are deficient in enforcement mechanisms (Smith and Burke 2003: 192). For example, the SAA Ethics Committee and the WAC have no authority to investigate ethics complaints even if such complaints are brought before these bodies against members of the respective associations. The RPA and the AIA maintain tribunals with enforcement authority, but these regimes are unusual in that regard (Smith and Burke 2003: 192).

Smith and Burke cogently observe that the very existence of a code of ethics may present dangers to a profession such as archaeology (Smith and Burke 2003: 191). Among these dangers is the suggestion that codes are closed-systems with the answer to most ethical questions and dilemmas embedded within them (Colwell-Chanthaphonh and Ferguson 2006: 116). Moreover, the existence of a code suggests to some that what is not specifically prohibited is permitted (Smith and Burke 2003: 191). Finally, codes are products of their time and, thus, are always in a state of flux (Smith and Burke 2003: 191). Codes of ethics appear to be relatively poor time travelers.

Present archaeological ethical code systems generally come in three varieties – (1) rule-based systems; (2) standard-based systems; and (3) hybrid-based systems (Sullivan 1992; Kaplow 1992; Diver 1983). Rule-based systems contain specific directives in an attempt to provide clear guidance to an archaeologist, for example, regarding what conduct is permitted or prohibited (Sullivan 1992; Williams 1994). Rules are designed,
by nature, to limit discretion of the professional whose conduct they seek to regulate (Sullivan 1992; Williams 1994). For example, the RPA has enumerated some thirty-two specific rules in an effort to regulate conduct (Colwell-Chanthaphonh and Ferguson 2006: 116).

The deficiency in a rule-based approach is that any code is inherently both over – and under-inclusive (Sullivan 1992; Williams 1994). That is, there will be some types of conduct that are prohibited by a rule-based code that should otherwise be permitted in a particular circumstance, some types of conduct that will be permitted that should be prohibited in a particular circumstance, and some types of conduct that were never contemplated by the drafters of the code (Colwell-Chanthaphonh and Ferguson 2006: 116; see also Sullivan 1992; Williams 1994). Within a professional ethic, codes tend to foster absolutism in an environment where one can ill-afford a congregation of one-eyed prophets.

Standard-based systems attempt to address both the over – and under-inclusiveness of a rule-based approach by permitting a freer exercise of discretion of a professional whose conduct these systems seek to regulate (Sullivan 1992; Williams 1994). In contrast to specific rule-directives, standard-based systems contain ethical principles, often couched within an aspirational patina, that establish fundamental tenets (Sullivan 1992; Williams 1994). For example, the SAA promulgated the “Principle of Archaeological Ethics,” wherein eight ethical principles are articulated and discussed, including the importance of stewardship, the importance of the archaeological record, and the concern of those affected by archaeological practices (Colwell-Chanthaphonh and Ferguson 2006: 116-117).

Although a standard-based system allows a professional broader discretion to manage the errors of over – and under-inclusiveness, the system introduces a new set of errors.
These errors include bias (including conflicts of interest) and prejudice (including both the cognitive and noncognitive varieties) of a professional in reaching a decision on what is or is not prohibited, the incompetence of the professional which is effectively masked under a standard-based system, lack of guidance of confronting the most difficult ethical dilemmas, and the opportunity for no meaningful review of alleged actions of misconduct (Sullivan 1992; Williams 1994).

Hybrid-based systems attempt to synthesize both a rule-based and standard-based approach in a theoretical effort to reduce the types of errors endemic to both classical approaches. For example, the First Code of Ethics of the WAC sets out eight ethical principles an archaeologist owes to indigenous peoples, followed by seven rules or directives (Colwell-Chanthaphonh and Ferguson 2006: 117). Thus, the WAC system establishes an ethical standard that archaeologists should acknowledge and respect the importance of a cultural heritage to an indigenous people, followed by a specific rule that, for example, requires an archaeologist to obtain informed consent from the representatives of the subject people (Colwell-Chanthaphonh and Ferguson 2006: 117). Instead of fixing the problems of error delineated above, these systems often carry with them a combination of errors found in the two systems from which they are created.

The contemporary ethical paradigms are steeped in aspirational ethical principles with their concomitant range of errors and deficiencies or code directives with their own stable of errors and deficiencies. The hybrid-based systems slurp conflicting rules of conduct and ethical principles together and suggest, if not demand, a form of intellectual balancing of competing ethical concerns with no meaningful guidance as to what to consider in the balance, what weight should be accorded each concern, or how to strike ultimately the balance in the final instance. Strikingly, any present ethical system contains within it an interesting irony. The flavor of the ethical system ultimately
embraced is itself driven, in large part, by a question of trust. In a rule-based ethical system, such as that promulgated by the RPA, the super-authority (the RPA) distrusts the archaeologist and limits her discretion through a matrix of specific directives (Williams 1999). In a standard-based ethical system, such as that promulgated by the SAA, the super-authority (the SAA) generally trusts the archaeologist and expands her discretion, but with little guidance in addressing the difficult questions and dilemmas that she will confront (Williams 1999).

3.6 Observations
A professional ethic is something more than a personal ethic. A professional ethic must provide an archaeologist *a priori* action guidance and preserve the integrity of the archaeological profession. This chapter introduces movements within archaeological ethics with their focus on utilitarian or deontological goals. The history and evolution of legislation in the US reflects traditional utilitarian or deontological approaches wherein the principles of stewardship and conservationism are paramount and are designed to encapsulate a distinctive Western archaeology, largely ignoring Native Americans. The epicenter of the movements, as reflected in the legislation, is the elevation of the archaeological record and the transfer of its control to the government, at least in the US. In contrast, modern ethical movements have focused on various responsibilities rooting ethical systems on relationships, including the record, diverse publics, and the profession.

Codes of ethics were identified and discussed. These codes bring with them advantages and disadvantages. The advantages are largely process-based; that is, the codes focus debate and discussion on the issues of importance to the profession at the time. The disadvantages are found in the actual structure of the codes. Rule-based codes are over-and under-inclusive. Standard-based codes correct for that type of error but introduce
bias, prejudice, and incompetence. Both forms of codes do carry with them an overarching disadvantage: they end thought and suggest that answers to ethical questions are found largely within their four corners. In this thesis, the discussion on the praxis of archaeology has strayed from an overt discussion of ethics and politics. That is now about to change.
CHAPTER 4: POLITICS AND ETHICS

4.1 Politics of Ethics

Traditionally, archaeology was focused, if not fixated, on the identification, development, preservation, and protection of the archaeological record (Colwell-Chanthaphonh et al. 2008; Zimmerman et al. (eds.) 2003: vi; see also Champe et al. 1961). Little attention was paid to past people or future generations – the aphorism “the future is now” captured the professional sentiment for much of the history of archaeology. At the ethical turn of the 1980s and 1990s, many archaeologists redirected focus from the archaeological record to living, often local communities (Colwell-Chanthaphonh et al. 2008). Both camps, to be fair, sought to do archaeology to learn and understand the past and to better explain and understand the present and future of humanity. However, this engagement with the past and with present people related to the past is far from innocuous (Foucault 1972: 49). Each discourse (both verbal and nonverbal) will shape the way we experience the world. Thus, archaeologists must acknowledge that they have a special power, borne of a professional expertise, to shape the way in which “cultural traditions are transmitted and transformed” (Layton and Wallace 2006: 48).

Acknowledgement of that special role begins, but does not end the discussion. Once the contemporary archaeologist acknowledges her special role, she must traverse a range of interests, often conflicting, recognizing that the past refuses to serve one purpose or one class of stakeholder (Wilk 1999). Unsurprisingly, this has always been the case, although several contemporary archaeologists have forced the profession to confront this uneasiness of process and the context in which process plays out. Hamilakis (2007) asserts that archaeology has always served many masters (not merely the archaeological
record, whatever that may mean to him and to others). These masters manifested
themselves in the dominant structures of power in society (Hamilakis 2007).

For what Hamilakis (2007) calls official Western archaeology, these dominant
structures have included at its core “Private Capital,” that is, the wealth of people,
usually very financially well-to-do people. Within the category of Private Capital that
has funded, and, therefore, directed archaeological research and influenced, if not
dominated, the creation and amplification of the archaeological record are private
corporations, foundations, and benefactors. Alongside Private Capital is “Government”
(Hamilakis 2007). The Government includes universities, the military, any agencies
that fund archaeological research, and museums (Hamilakis 2007). This should not
surprise us. Archaeology in the service of the state is not something that just happened.
According to Duke (2007: 115), it is what we have always been about. Notice that the
masters that Hamilakis identifies that are served by archaeology – Private Capital and
Government – do not include the cultures actually studied or their descendants
(Hamilakis 2007). This is not professional oversight, according to Hamilakis and Duke
(Hamilakis 2007; Duke 2007). In fact, engrained in the dominant archaeological themes
of conservationism and stewardship are a colonialism based on the laws of conquest that
has fogged the study and pursuit of archaeological ethics to this day (Hamilakis 2007;
Duke 2007).

Historically, the uncomfortable nexus among archaeology, Private Capital, and
Government was usually glossed over by practitioners and seldom confronted (\textit{but see}
the work of Hamilakis and Duke (eds.) 2007). Armed conflict and the role of
archaeologists, individually and as members of a profession, has starkly exposed the
politics of archaeological ethics and the constituencies for which archaeologists do their
bidding (Stone 2011; Hamilakis and Duke (eds.) 2007; Mourad 2007). Like many
transformative moments in the collective lives of a profession, this awakening is not pleasant.

4.2 Hamilakis’ Critique of Archaeological Ethics

Students of the politics of archaeological ethics must begin with the work of Yannis Hamilakis. Although not the first to raise the importance of an understanding of politics and its effect on professional ethics, Hamilakis has created a robust literature on the topic with keen, and at times discomforting, insights on concepts and practices that we often take for granted (see generally Hamilakis and Duke (eds.) 2007).

Hamilakis marshals considerable evidence in support of his thesis that archaeological ethics is about politics (Hamilakis 2007: 15-32). This position is important to an understanding as to where Hamilakis stands. He is not merely asserting that politics play a role in ethics; his position is much bolder. If he had simply pointed out that politics may influence ethics in certain situations, his observation would have been met largely without controversy. Rather, Hamilakis asserts that archaeological ethics is inherently political (Hamilakis 2007: 15). Thus, based on his argument, the debate about ethics should be shifted to the political field, demonstrating that the ethical and political arenas should not be separated (Hamilakis 2007: 15). To Hamilakis, ethics, including a professional archaeological ethic, can never be or remain apolitical (Hamilakis 2007: 15-32; see also Thomassen 2010: 3 “Archaeology has always been political.”).

Hamilakis begins to build support for his provocative position by confronting the role that the archaeological record plays in ethics. To him, its centrality to archaeological ethics, and the many ethical codes and laws that seek to confine or guide reasoned discretion, is a logical manifestation of the influence of Private Capital on archaeological ethics (Hamilakis 2007: 15-18). Government serves as the handmaiden
to Private Capital, ensuring that the status quo is served and protected (Hamilakis 2007: 17-18). Over time, Hamilakis asserts that the archaeological record has been transformed into a fetish (Hamilakis 2007: 17-18).

Moreover, time and again recent discussion has shown . . . that western official archaeology has fetishised an abstract metaphysical entity which it calls the “archaeological record,” and declares it the primary object of concern and study. Yet the record as such, does not exist, neither in the sense of the intention on the part of the past people to leave a record of their actions, nor in the sense of objective reality outside the realm of archaeological practice. What exists is only the fragmentary material traces of the past which are then shaped, reordered, organized, recorded and exhibited by archaeologists as the “record” (Hamilakis 2007: 22-23).

According to Hamilakis, throughout the process of forging the archaeological record permeates socio-political themes, contexts, and practices (Hamilakis 2007: 23). The fruit of a process that commodifies cultural heritage, projects relative power and intellectual superiority, and implements policies supportive of Private Capital is the pre-occupation with the archaeological record (Hamilakis 2007: 22-23). This fetish, then, is simply the logical progression of that creed.

This characterization of the personification of the archaeological record and its being influenced by Private Capital and protected and promoted by Government would fit equally with another fetish in the purely business realm – the modern corporation. The modern-day characterization of the corporation may also lend insight to the ethical issues associated with embracing the personification of a thing, often at the expense of human beings. The history and jurisprudence on Private Capital, the Government, and private corporations provide insight on how an abstract idea transforms itself into a legal fiction with the rights of a natural person and, then, ultimately into a person per se with little caution and no reservation that such concept ultimately rests on a pyramid of fictions. This detour into the treatment of corporations in the law illustrates that when Private Capital seeks to transform a thing into a fetish, when it suits Private Capital, the
law generally follows obediently, notwithstanding ironic if not seemingly absurd results. In fact, the corporation, the vehicle by which Private Capital conducts business on a domestic and international basis, is nurtured, protected, preserved, and endowed by Government with the status and rights of a person.

Corporations are fictional legal entities recognized throughout Western jurisprudence as “persons” for purposes of transacting business, owning property, contracting, and suing and being sued. The conclusion that a corporation is a legal person entitled to many of the rights of a natural person, including the right to transact business, has been settled well-before the leading case of *Dartmouth College v. Woodward* (17 U.S. 518 (1819)), decided by the US Supreme Court in 1819. The Supreme Court observed:

> The opinion of the Court, after mature deliberation, is that this corporate charter is a contract, the obligation of which cannot be impaired without violating the Constitution of the United States. This opinion appears to us to be equally supported by reason, and by the former decisions of this Court.

The US Supreme Court’s holding embraced the prior position of the common law. Thus, in *Dartmouth College*, the Supreme Court held that a corporation is a person for purposes of asserting the protections embodied in the Impairment of Contract Clause in the US Constitution.

In 1830, the Supreme Court held that the rights that natural persons have to the protection of property ownership exist for a corporation and its corporate property. (*Society for the Propagation of the Gospel in Foreign Parts v. Town of Pawlet*, 29 U.S. 480 (1830)). In that same year, the Supreme Court in *Providence Bank v. Billings* (29 U.S. 514 (1830)), furthered the legal fiction of corporate personhood by stating that, “[t]he great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men.” In the historical and social context, these precedents that hold as obvious a legal principle that was far from
obvious when announced by the Supreme Court in the heart of the Industrial Revolution in the US.

The personification of the thing would soon reach it logical end state in a series of Supreme Court cases that strain one’s credulity. The anthropomorphism of corporations would soon take a most peculiar twist based on precedents designed to remove from the US the vestiges of a most peculiar institution – slavery.

As part of the Civil War amendments, the Fourteenth Amendment to the US Constitution sought to protect recently freed slaves from purposeful and invidious actions by state governments. At the heart of the Fourteenth Amendment are two clauses – the due process clause and the equal protection clause. The due process clause provides “nor shall any state deprive any person of life, liberty, or property without due process of law . . . .” (U.S. Const. 14th Amendment 2010). The equal protection clause provides “nor [shall any state] deny any person within its jurisdiction the equal protection of the laws” (U.S. Const. 14th Amendment 2010). Along with the Thirteenth Amendment (that prohibits slavery) and the Fifteenth Amendment (that prohibits infringement of the right to vote), the Fourteenth Amendment was designed to remove any badges of slavery and prohibit the southern states from violating basic due process rights or deny equal protection to freed slaves. Thus, the “person” referred to in both clauses was the recently freed African American slave. In the Slaughterhouse Cases (83 U.S. 36 (1872)), the Supreme Court observed:

The most cursory glance at these articles discloses a unity of purpose, when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning. Nor can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history, for in it is found the occasion and the necessity for recurring again to the great source of power in this country, the people of the States, for additional guarantees of human rights, additional powers to the Federal government; additional restraints upon those of the States. Fortunately, that history is fresh
within the memory of us all, and its leading features, as they bear upon the matter before us, free from doubt. We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all, and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him.

However, among the first “persons” to assert these Post-Civil War constitutional rights were corporations, alleging they were also within the ambit of the term “person” and not subject to certain forms of state regulation. The US Supreme Court agreed (*see Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394 (1886)). Eventually, the Supreme Court would conclude that the corporation had basic constitutional rights, including free speech, freedom of association, security from unreasonable searches and seizures, protections against cruel and unusual punishment, and the right to contribute to elections without any meaningful limitations, among many other constitutional rights (*Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010); *see also* Heminway 2011: 137; Ribstein 1995: 95; Butler and Ribstein 1995; Ribstein 1992: 109). Thus, the thing as a thing yields to the thing as embryo, which, ultimately yields to the thing as a person with the status and rights of such. Archaeology has witnessed a similar metamorphosis of the archaeological record; however, the end game has yet to come but only because the present state suits Private Capital and Government.

If we step back from the primary thrust of Hamilakis’ argument, we may be able to see that the central dominance in ethics of the archaeological record is not necessarily the logical outcome of archaeological ethics without the political drivers mentioned above. In other words, the dominance of the record in archaeological ethics was not inevitable and is not self-evident. It is a matter of politics.
Take for consideration the antiquities fever of the 18th and early 19th centuries, an international race to fill cabinets of curiosities and national museums. This cycle of wants drove supply. And archaeologists were the suppliers of the antiquities, at least in the neoclassical sense of markets. These markets resulted in the commodification of the archaeological record. This commodification, in turn, transformed artifacts into valuable and highly desirable commodities (Hamilakis 2007: 17). International markets were created and fed by archaeologists, among others. Hamilakis, and others, see in this commodification of the record, the footprints of a socio-political and economic presence consistent with Private Capital and Government. He calls the entire process of commodification “official western archaeology” (Hamilakis 2007: 18). For him, the handmaidens of the archaeological record are traditionally the two most important doctrines in archaeological ethics: conservation and stewardship (Hamilakis 2007: 18-23).

Hamilakis acknowledges the work of others in addressing the politics of ethics (Hamilakis 2007: 20); however, his conclusion is that:

[W]hat has happened in the last 15 years or so is nothing less than the bureaucratization and instrumentalization of ethics, and these transformations have resulted in the depoliticalizations of ethical debate in archaeology (Hamilakis 2007: 20).

This is a serious and troubling accusation. Hamilakis sees in the codes of ethics a sponsoring organization’s attempt to wrestle free from the political arena and supplant politics with a self-regulating and self-perpetuating process. The champions of that process are the ad hoc committee and working groups, consisting of academics and, more recently, conservation resource managers (Hamilakis 2007: 21). These working groups then began the development, codification, and implementation of codes of conduct. Hamilakis is convinced that:
The idea [behind a code of ethics] was to codify the basic ethical principles that western archaeologists should adhere to in their professional practice. The contentious matters of the day, from reburial and indigenous issues to looting, often become single-sentence principles, after a series of internal debates and compromises (Hamilakis 2007: 21).

Hamilakis acknowledges utility in the codification process (Hamilakis 2007). The process, not the codes themselves, directs debate on important issues of the day. However, the utility associated with the codification process is eclipsed by the negative consequences of an existing code of conduct thrust upon the profession (Hamilakis 2007). Hamilakis asserts that codes are designed in effect to truncate debate (Hamilakis 2007; see also Tarlow 2001; Tarlow 2006). They are monuments to the death of thought (cf. Williams 1999). This is especially the case where a code of conduct seeks to direct action through a matrix of rules as opposed to standards, such as the thirty-two directives contained in the RPA’s Code of Conduct (cf. Williams 1994). This campaign attempts to strip ethics from politics but misses the mark. As Hamilakis cogently states, everything that we do in archaeology is political (Hamilakis 2007: 24). For example, he asserts that, as a profession, we regularly ask who is benefiting from our work and at whose expense? To Hamilakis, these are inherently political questions.

I argue that it is this principle of political ethic that provides the best antidote to the instrumentalisation and professionalisation of ethical debate. Instrumentalism sees ethics as a tool, as a purely technical device, that can be used to achieve something else, most commonly to continue to do archaeology as normal, to declare that it is “business as usual,” now with the additional advantage of a clear ethical consciousness. I do not wish to deny the good intentions of many archaeologists involved in these procedures; nor that the adoption of ethical principles, even in their instrumentalised form, may result in different practices, and at times benefit disadvantaged and persecuted groups and communities. But due to the inherently depoliticised nature of these debates most of the time they result in generic and vague calls to support and benefit the “community,” the “people,” the “locals,” and so on; they thus implicitly ignore the conflicting interests amongst these diverse groups and take for granted that archaeology and heritage (most often meant in its modernist sense) is good for “them,” only if we could share its benefits with those “others.” By contrast, the political ethic puts
the archaeological enterprise constantly in doubt, asking always the difficult questions, including the most fundamental of all: Why archaeology? These unsettling questions are bound to have unpredictable outcomes and may lead to the abandonment of specific archaeological projects, but then again, who said archaeology is always a “good thing?” (Hamilakis 2007: 24 (emphasis in original)).

This rather lengthy quote reveals the crux of Hamilakis’ central theme. It is necessary to unpack the quotation to expose what he perceives to be the “ills” of the present and the “antidotes” of the future. First, Hamilakis sculpts his argument through a classic rhetorical device: the “contrast” of differences. Although what he dubs “official western archaeology” may share some or many attributes with his “political ethic,” it is the differences that matter. Second, Hamilakis asserts that official Western archaeology employs codes to corral ethics. It does so through the instrumentalization and professionalization of debates surrounding ethics. In this process, compromise and consensus are sought as ends in themselves. The result of this instrumentalization and professionalization process is to preserve the *status quo*. Rarely does compromise and consensus result in dramatic departures from present conventions. Third, he argues that instrumentalization and professionalization provide a platform of process that stamps a professional imprimatur on preserving the *status quo*. This is what he calls the “clear conscience.” Fourth, a professional ethic developed through this process is devoid of the vigor of life; it rings hallow and is prone to jingoism. Fifth, such a professional ethic runs roughshod over conflicting interests and alternative views of how to engage, if at all, the past. A corollary is that instrumentalization and professionalization necessarily lead to a paternalistic and, at times, romanticized view of certain stakeholders, such as local populations that simply do not see the benefits from archaeology and heritage. Finally, Hamilakis observes that the fault is not with the archaeologist, who he sees as generally well intentioned, but with the process itself (Hamilakis 2007).
In contrast, Hamilakis offers up an antidote to the ills explicated above: a political ethic. At the heart of this new system is an attitudinal change. The entire archaeological enterprise is challenged repetitively (Hamilakis 2007). These challenges are specifically designed to cast doubt on any undertaking. Doubt sows discomfort. This constant cycle of challenge, doubt, discomfort, and recalibration will result in unpredictable results. For an archaeologist, no two situations will be the same; in fact, no two weeks on the same enterprise may be the same (Hamilakis 2007). Among archaeologists, the same factual scenario may lead to widely divergent conclusions. For Hamilakis, this is a virtue of a political ethic. Unpredictable results suggest the exercise of thought, deliberation, and political judgment. Under this political ethic, there is no single “truth” (Hamilakis 2007: 25, citing Foucault 1972 for the notion of the existence of “regimes of truth.”).

4.3 Stewardship through a Political Ethic Lens

Having framed his idea of a political archaeological ethic, Hamilakis turns to confront “a concept that, more than any other, has been at the centre of the archaeological discussions on ethics, that is the concept of stewardship” (Hamilakis 2007: 25). “Stewardship” is a provocative concept in its own right. Stewardship is acting as the surrogate of another toward something that has been entrusted to you (Garner & Black 1999). The concept shuns any claim of ownership of property. One is not a steward to property that one owns outright (Hamilakis 2007: 26-27). Moreover, asserting “shared stewardship” with some stakeholder also denies a right of ownership in that stakeholder. In fact, stewardship may quite literally reject any claim of ownership by any of a multitude of stakeholders (Hamilakis 2007: 26). The concept also empowers the archaeologist by making him the gatekeeper to the archaeological record (e.g., Wylie 2002, 2005).
By advancing the concept of stewardship through the use of codes of ethics, archaeologists avoid the controversial question of who owns the past – no one – while advancing a favored role for the profession. Through well-meaning codes, archaeologists transform traditional property claims into rights of control, a right that historically has rested with the profession. But the concept of stewardship, most often taken for granted as the chief principle of archaeological ethics (to the point that it is not often debated let alone challenged), is far from universal (Hamilakis 2007: 2-27-28).

To begin with, the principle itself is far from apolitical. Stewardship is a concept that implements the policy of conservationism of the archaeological record. By avoiding the question of ownership, stewardship in a sense renders the archaeological record ownerless. This provides the ethical legitimacy to deny private rights of ownership in artifacts, finds, etc., to disrupt traditional market practices (Hamilakis 2007: 26). In theory, the conservation concept and stewardship principle once implemented should chill markets and reduce looting. At the same time, once the question of ownership is subordinated or suppressed, the right to control the record has been seized by the profession. Ownership is ephemeral; control lasts forever.

There may have been a little more nefarious political purpose at foot behind stewardship and the logical extension of that principle to the status of ownerless property then Hamilakis recognizes in his writings. What I am getting at is captured in the question of who owns ownerless property? The ownership of ownerless property is not a tautology. Hamilakis does not appear to address this issue but the law speaks to it; and the conclusion may buttress one of Hamilakis’ great concerns. Truly ownerless property is not ownerless; in the West, it immediately escheats\(^{17}\) to the Government, which, in turn, reintroduces it to Private Capital. Whether or not we realize it, personifying the

\(^{17}\) “Escheat” is the lapsing or reverting of property, particularly land, to the state (Garner, Dictionary Modern Legal Usage 1995: 326).
archaeological record and rendering it ownerless, empowers the Government and its control over the archaeological record. It does not preserve the status quo; it changes it for the benefit of the Government and those the Government itself seeks to benefit.

Not all cultures, however, value conservation. Hamilakis tracks several such cultures that would reject the concept of conservation on cultural or religious grounds (Hamilakis 2007: 27-28). This chronicling of cultures that reject what original Western archaeology would classify as a noncontroversial ethical principle plays a valuable role. Nothing in developing a professional ethic is unquestionable; nothing should be obvious. The thesis will return to this point as central to trust-making as a principled manner in which to bridge the gap between the intent and wishes of the past and the needs and desires of the present.

4.4 Ethics and Repatriation of Cultural Property

Bauer et al. (2007) have observed that archaeology has traditionally focused on the discovery of the past and not the policy of who owns the past or how the past is to be used (Duke 2007: 41). This has left open a significant issue that has captured the attention of people and their governments and, only relatively recently, archaeologists and their profession – cultural property claims by nation states.

One is hard pressed to find a more unifying topic within archaeology than the notion that archaeologists should strongly endorse the repatriation of cultural property (cf. Shahidan 2006). But Bauer et al. (2007) do a great service by forcing us to confront with a critical eye the question of why archaeologists support cultural property claims, especially with the general thrust that the record is essentially ownerless (or owned by all, which is just another form of ownerless). The answers uncomfortably depend more on politics than we might acknowledge.
Traditionally, archaeologists have advanced two justifications to support cultural property claims by nation states. The first justification sounds in a special form of deterrence. Archaeologists support cultural property claims by nation states to dissuade looting and destruction of sites. Looting feeds the illicit antiquities markets. By dissuading looting and the unscientific disturbance of sites, archaeologists seek to ensure the integrity of culture (Bauer et al. 2007: 45). This is an empirical claim that Renfrew (2001) has convincingly refuted as a justification for cultural property claims.

The second justification embraces a special form of reparations. Archaeologists support cultural property claims by nation states to atone for past wrongs and to empower those whose property has been taken (Bauer et al. 2007: 45) through the return of something of peculiar importance to them.

Bauer et al. (2007) begin their critical analysis of cultural property claims by nation states by challenging the first rationale. They note that archaeologists endorse the return of cultural property because the object belongs at its point of origin where both the material and the culture are united (Greenfield 2007). Correctly, they acknowledge that this is the rationale behind the UNESCO 1970 Convention and claims for return of the Parthenon, the Eglin Marble, and other artifacts (Bauer et al. 2007: 47; Merryman 1986, 2005). Subsumed in this justification may be a belief that non-Western cultures are unstable, more fragile, and less resilient. Their concern is that we may be replacing one form of paternalism with another (Bauer et al. 2007: 47).

Superficially, the notion of reuniting material with culture through the recognition of cultural property claims by nation states is appealing. The “thing” is returning “home” to be restored to its most appropriate “context” where it “belongs.” Thus, under this approach, objects take on a social life. This is the case notwithstanding the archaeological view that objects taken unscientifically out of context cease to be
meaningful (Bauer et al. 2007: 47). In the end, Bauer et al. build a strong qualitative case that the first justification to support cultural property claims is unpersuasive. To them, the issue appears to be one of fundamental respect (Bauer et al. 2007: 49; Shapiro 1998).

After dispensing with the first justification in support of cultural property claims, Bauer et al. turn to the rationale of repatriation. They assert that repatriation is morally right with respect to the living communities that feel most closely connected to the cultural property in question (Bauer et al. 2007: 49; Barkan 2002: 17). Recognizing cultural property claims amends for past injustices and lends both support to and respect for the groups that have been disenfranchised by loss of power and have suffered disempowered political status (Bauer et al. 2007: 49).

However, just as Bauer et al. start to make us feel good about ourselves, they introduce an obvious but often overlooked question – is the cultural property being returned to the right nation state? Even more disturbing, assuming it is going to the “right” nation state, is the property going to the right people? It is certainly worthy of careful examination whether the return of cultural property to a nation state is simply another form of paternalism where those most closely affiliated with the cultural material are themselves disenfranchised within their own country (Bauer et al. 2007: 50). Their observation is disturbing and uncovers what may be a more compelling justification for the support by archaeologists for the return of cultural property.

I would suggest that the second justification couched in the concept of repatriation is actually two related but distinct justifications that draw from ethics and politics, a disciplinary union that Bauer et al. would embrace: (1) to atone for past wrongs wrought by colonialism and (2) to remedy those who have suffered cultural property damage. Politically/ethically, either justification may be sufficient. These justifications
support an obligation of return and the right to receive, correlative obligations/rights that mediate the power differences between those that have taken through force and those that have suffered through deprivation. This juxtaposition of justifications presents a discomforting possibility: are we repatriating because it makes us as archaeologists feel better (and possibly superior) or because we seek restorative justice?

Bauer et al. (2007: 54) observe that archaeologists have an obligation to investigate the political impact of their work and especially to question critically our support for cultural property claims by nation states. Critical examination of such claims may expose that a large part of the motivation behind archaeological support, that is, to help historically disenfranchised groups reclaim their heritage, may be frustrated by the act of repatriation. Slavish devotion may blind the profession from the fact that it has become an instrument that furthers disenfranchisement of groups by allowing nation state control over cultural materials (Bauer et al. 2007: 54-55). Through the case study of support for cultural property claims, Bauer et al. expose the important but troubling fact that even well-intended archaeological positions are fundamentally political. Thus, even support for cultural property claims – what many have called a “prime moral imperative” – must be critically evaluated and illustrates why all archaeologists must strive to be more fully aware of the particular political and social contexts in which they work. This is especially true where a nation state controls the fate of those cultural materials important to a minority constituency (Bauer et al. 2007: 54, 56).

4.5 Beneficiaries of a Political Ethic

What does a political ethic have to say about those who benefit from the exercise of political discretion in this context? One may recast the question and ask to whom is an archaeologist responsible? Hamilakis (2007: 30) responds to the question by stating that an archaeologist must engage people in the present and material things from the
past that live in the present, including the material traces of past people (see also Tarlow 2006). Duke (2007: 41) is characteristically blunt. For him, an archaeologist’s only responsibility is to contemporary people. The archaeologist has no responsibility to the archaeological record. The archaeologist has no responsibility to science or objectivity. The archaeologist has no responsibility to the past or its material remnants. Responsibility flows to living people, and only living people (Duke 2007: 41).

Duke’s critique goes too far if he suggests that the archaeologist has no responsibility to the people of the past, the actual subjects of study. Rather, I read his criticisms as focused more on the infatuation with the archaeological record and the need of archaeologists to press past that preoccupation to focus on relationships with people – both living and dead (Duke 2007). If, however, he is rejecting any relationship with past people, I would disagree.

Relationships may be maintained with the living and the dead. Although the suggestion that an archaeologist – or anyone for that matter – may maintain a relationship with the dead smacks of new age philosophy, the legal institution has recognized as much for over 500 years in the context of charitable public trusts. In this thesis, I will offer a professional archaeological ethic based on relationships with both present and past people over administration of the archaeological record soundly resting on the virtue of trust. The thesis will also make explicit the political assumptions embedded in any professional ethic, archaeological ethics being no exception, so that the profession can acknowledge and confront the strength and efficacy of those assumptions.

4.6 The Political Ethics of Local Communities

In recent years, archaeologists have focused on both internal and external critiques of power concentration and exclusionary practices by seeking greater involvement from “descendent, native, or indigenous communities.” The meaning of the terms is not self-
evident. Some archaeologists mean it to represent individuals with ancestral or familial links to the archaeological record. Other archaeologists mean it in a broader sense to include “a non-homogeneous, self-identified group encompassing those who, regardless of background, identify with the particular past or locale through shared traditions, proximity, or collective memories” (Nicholas and Hollowell 2007: 77 n.1). Still others mean it to represent a group with an interest in the archaeological record but no other claimed affiliation other than collective current location. With the present global patterns of population flow, it is likely to become increasingly common that the “community” archaeologists will encounter and engage will be increasingly these local communities without necessary recourse to biological, cultural, or ethnic affiliation.

While most archaeologists are nominally in favor of a more equitable archaeology, in reality they still hold the power in terms of the actual production and interpretation of archaeological knowledge, access to or use of data, and the capital derived from these processes. The very idea of sharing power appears threatening to some because it means a radical revision of ethical responsibilities and research paradigms and altering deep-seated notions about scholarly privilege, intellectual property, and control over the production of knowledge (Nicholas and Hollowell 2007: 59 [citations omitted]).

Members of descendent and local communities are understandably anxious about the meaning of the ethical turn within archaeology as it relates to them and any cultural claim they may make. These communities recognize the historical power imbalances related to the exclusionary practices of archaeologists, site restrictions, and assertions of monopoly over information harvested from excavations (Nicholas and Hollowell 2007: 59-62).

Archaeologists have sought to close the gap between their profession and the concerns of local communities through a number of constructs. Until recently, noticeably absent was any robust discussion about political and economic interests (Nicholas and Hollowell 2007: 59; Hamilakis 1999; Schmidt 2005). Archaeology must recognize that
interaction with descendent and local communities will necessarily evolve into either functional or dysfunctional relationships. Functional relationships will rest on the bedrock of ethical and equitable foundation stones. Such an approach must acknowledge and address real differences among diverse interests and objectives and motivations for doing or refraining from doing archaeology (Nicholas and Hollowell 2007: 59).

Local and descendent communities are skeptical if not suspicious of archaeology and its ethical turn. Archaeology is firmly viewed by these communities as a colonialist enterprise, closely associated with nation-state sponsors, wielding tools of oppression to disenfranchise them from their own histories (Nicholas and Hollowell 2007: 60; Deloria 1969; Langford 1983; Thomas 2000; Watkins 2000; but see McDavid 2002 (work on sugar plantation descendant communities that had several positive outcomes)).

Historically, archaeology has served the needs of the nation-state and those in positions of power and privilege. Archaeologists often work as technicians of the state, under a system of “governmentality.” The idea that archaeologists are specially appointed stewards of the “archaeological record” – a concept that they themselves created – for the benefit of all people comes with an implicit presumption of privilege justified by appeals to intellectual and scientific authority. In actuality, public access to the material and intellectual results of archaeological research remains limited, and in most contexts “held in the public trust” means “owned and managed by the state” for particular state interests and purposes (Nicholas and Hollowell 2007: 60 [internal citations omitted]).

Colonialism may take many forms, some even altruistic in appearance. Zimmerman (2001: 169) has coined an elegant phrase to capture the historical relationship between archaeologists and local people. The phrase, “scientific colonialism,” emerges from the ethical concerns posed by Project Camelot (Nicholas and Hollowell 2007: 60; Galtung 1967: 295-302). Scientific colonialism is a form of extraction, exportation, and importation (Nicholas and Hollowell 2007: 61). At its heart is the exploitation of
another’s cultural heritage, artifacts, and finds through extraction and transportation to one’s own territory “for processing into profitable goods such as articles, books, or PhD’s” (Nicholas and Hollowell 2007: 61). Thus, a host country’s cultural property is viewed like any other natural resource subject to the long arm of Western commodification (Hollowell 2006: 83).

Researchers typically not only claim property rights over the knowledge they produce, but also proprietary rights over the subject matter – the field of raw data – which they extracted their knowledge. This conceptual paradigm continues to be imposed upon the world-is a type of vested tool colonialism – long after the decline of those Imperial regimes that gave rise to it in the first place (Nicholas and Hollowell 2007: 61, quoting Ames 2003: 171).

Archaeologists delude themselves if they do not realize that local communities view archaeological praxis as largely rooted in scientific colonialism. Local communities fixate, rightly or wrongly, on their marginalization and subordination to dominant political structures and policies trumpeted willingly or unwillingly by the archaeologist, often perceived as the instrument of a nation state (Nicholas and Hollowell 2007: 61).

Archaeological theory was constructed by imperial interests within the colonial regime for settler population to study a past to which they contributed nothing. Their explanations are unimpressive to Indians because the authors cater to an audience that is culturally distant from the data they observed. Indians see little of themselves or their ancestors when they review those theories so they perceive little gain by giving archaeology any consideration (Yellowhorn 2002: 77).

Collaboration between archaeologists and local communities must mean something more than an acknowledgment of multiple interests in an archaeological site, its excavation, and the harvest and publication of data. Such collaboration must respect other worldviews – including oral histories as valid in their own right – and must address the historical and present inequitable relations of power (Nicholas and Hollowell 2007: 63–64).
One fundamental concern among local and descendant communities is that they are used as means to obtain data that will be used elsewhere by those who have historically breached or betrayed their trust (Riggs 2007: 84). Riggs has considered this issue in Southwestern US archaeology practice. He acknowledges that often scientific research is at odds with respect for other cultures (Riggs 2007: 85). He brings forth a wonderful and insightful observation from White Deer:

The scientific imperative presumes an unqualified right to suspend social ethics and cultural taboos in the name of the greater good: objective discovery. In the name of the objective discovery, empiricism distinguishes for us between…grave robbery and archaeology. Unfortunately this notion amounts to an ethical blank check for visits to Indian country (White Deer 1997: 39).

Although some of the ethical codes weigh in on the issue of respect for subject groups, they leave much to be desired, according to Riggs (Riggs 2007). For example the SAA states in its mission statement:

The mission of the Society for American Archaeology is to expand understanding and appreciation of humanity’s past as achieved through systematic investigation of the archaeological record. The society leads the archaeological community by promoting research, stewardship of archaeological resources, public and professional education, and the dissemination of knowledge. To serve the public interest, SAA seeks the widest possible engagement with all segments of society, including governments, educators, and indigenous peoples, in advancing knowledge in enhancing awareness of the past (SAA 1996).

The AAA makes explicit responsibility to assign primary importance to the concerns of any subject group over the acquisition of knowledge and the publication of research results.

Anthropological researchers bear responsibility for the integrity and reputation of the discipline, of scholarship, and of science. Thus anthropological researchers are subject to the general moral rules of scientific and scholarly conduct (AAA 2009).
Moreover, the AAA ethical guidelines state:

> Anthropological researchers have primary obligations to the people...They study and to the people with whom they work. These obligations can supersede the goal of seeking new knowledge (AAA 2009).

These guidelines suppose too much with too little. Riggs offers a pragmatic vision based on a delightful attribute of archaeology that is often overlooked (Riggs 2007: 94). He asserts that archaeology is a probabilistic endeavor. If that be the case, it should not surprise us that there may be many paths to managing uncertainty. In fact, many commentators have asserted that there are multiple pasts, including the “real past,” the “known past,” and the “wished for past” (Kehoe 2007: 170-171; Piggott 1981: 187) and multiple “contexts” (Tarlow 2011: 198). Riggs argues that unless a “particular approach to understanding the past has a high probability of being the only correct interpretation, why inflict upon an indigenous past when other avenues may be available?” (Riggs 2007: 94). His common sense suggestion is that the beliefs of indigenous (local?) people are a good starting point, “a place to discover ideas to be tested that are not foreign to our subjects” (Riggs 2007: 94). This may lead to multiple pasts, but that is not such a bad thing after all. “Multiple pasts are not failures in interpreting ‘the’ archaeological record; they mirror diversity in the mosaics that are contemporary nation-states” (Kehoe 2007: 177). Some archaeologists have attempted to do just that by reaching out to local people in collaborating on methodology and observations.

For example, Colwell-Chanthaphonh and Ferguson (2004) engaged four Native American tribes located within Arizona’s San Pedro Valley. These researchers embraced an ethics driven methodology rooted in the philosophy of virtue ethics. Based on a virtue ethics approach, these researchers develop the research process in which
participants shared power, responsibility, and value for the work, even when they perceive very different benefit from doing archaeology (Nicholas and Hollowell 2007: 72). A research methodology was developed through robust collaboration with the tribes, drawing from oral tradition and Native American terminology (Nicholas and Hollowell 2007: 72). As discussed later in this thesis, much may be developed from the role trust can play in building a professional ethic respectful of many beneficiaries, including “connected communities” both in the narrow (biological, cultural, or ethnic) and broad (geo-spatial) sense.

4.7 Observations
Archaeological praxis is rooted in politics. “Archaeology is all about context and politics” (Teijgeler 2011: 104). There is nothing that an archaeologist or the profession can undertake without political and social consequences. Of course, that observation does not mean that politics is the full measure of archaeology. It is not; nor have any of the commentators discussed in this chapter ventured such a vision. Rather, archaeological praxis must consider its history – steeped in scientific colonialism – and the shadow that that history casts on present engagements with descendant, indigenous, and local communities. Archaeological praxis must also not shy away from the politics of its past, present, and future. Even generally noncontroversial archaeological positions, such as the recognition of cultural property claims, present real political and social questions and dilemmas. However, a robust and meaningful professional ethic, if it is to be of any use as a guide to practice and profession, must explicitly acknowledge and engage the political dimensions of the conundrums that it seeks to address.
CHAPTER 5: LEGAL FRAMEWORK

5.1 Legal Framework and Constraints

Law and ethics are different; they do not always agree. Law does not provide the basis of ethics. Law is not the measure of ethics. Although law may set a floor on ethical requirements, as a system of conduct, it is not designed to provide a robust matrix of ethical characteristics. To be sure, any ethical model should consider and be generally consistent with the present domestic and international legal regime; however, the present regime is systematically deficient from a professional ethic point of view, fails to provide guidance to the archaeologist in many recurring scenarios in armed conflict, and ultimately fails to pass muster as a coherent, consistent, and integrity-based paradigm of conduct.

5.2 Nature of Duty

Although most archaeologists would not recognize the labels assigned them under the law, they would understand the substance of the legal role they potentially play. In many contexts, the archaeologist is a fiduciary. A fiduciary is an agent with specialized knowledge, experience, or skill that acts for the benefit of someone or something (Williams 2012: 322-325). Often, the law imposes a fiduciary duty where the control of something is divorced from the ownership of that thing or where no owner can be found. In law, every fiduciary must have a beneficiary. Duty does not float unattached in the air (Williams 2012: 323-328). The beneficiary may be a human being or a “thing,” that is, what the law calls a legal fiction, for example, a private corporation. The law also acknowledges that a beneficiary may not (for example, an incompetent or minor) or factually cannot (for example, a corporation) assert duties or argue that such duties have been breached by the fiduciary. Thus, in such circumstances, the law indulges others to bring such actions even though they are not the beneficiary.
Historically, the law has imposed certain duties and obligations on parties to a relationship where ownership and control of property are bifurcated. Initially, the law looked at these relationships as a form of entrustment of property by the owner to the manager, that is, the one in control of that property (Shaffer 2000: 481; see also Freeman 2009: 337). The law then developed a construct: when one is entrusted with the property of another, one has certain duties that he or she must discharge for the benefit of the owner.

A consideration of the trust structure in American and European law may illuminate the nature of the fiduciary duty and, with patience, will help us understand the fiduciary relationship an archaeologist may undertake on behalf of various classes of beneficiaries. The unique nature of the trust vehicle is that ultimate ownership and management can be, and often are, separated. Applicable trust codes require a trust’s affairs to be managed or directed by a trustee. The separation of ownership (by the beneficiaries) and control (by the trustee) of the trust creates a tension between the two constituencies. This tension – between ownership and control – serves as the catalyst for the creation and continued development of fiduciary duties. Trustees, acting on behalf of and for the benefit of the beneficiaries of the trust, are thus fiduciaries of their beneficiaries. These trustees must act with care, loyalty, good faith, and obedience when making decisions about the trust for the benefit of all beneficiaries.

There is no clear definition of fiduciary duties. Authorities have both grown and pruned the attributes of fiduciary duties driven, in part, by the facts and circumstances of each situation. Here, corporate law may be illuminating in that much has been written regarding fiduciary duties a corporate board of directors owes to the corporation (a “thing”) and its shareholders (usually “people” or a “thing”). In the landmark US case of Meinhard v. Salmon, the court observed:
Many forms of conduct permissible in a workaday world for those acting at arm’s length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior (164 N.E. 545, 546 (N.Y. 1928)).

Implementing this imperative has confounded many authorities (see, e.g., Balotti & Finkelstein 2008: §§4.14-4.21). Notably, courts fail to reach agreement on an exclusive list of fiduciary duties. However, there is consensus that, among these duties, one would normally find the duty of care and duty of loyalty. Authorities have also recognized the duty of good faith, duty of disclosure, duty of impartiality, and, in some circumstances, the duty of obedience. Originally, these duties were designed simply to prevent abuse of position where there existed a separation between custody and ownership.

Generally, applicable law (usually state law for U.S. corporations, but with more regularity, the law of foreign nations) vests the responsibility for management of the corporation in a board of directors (see Model Bus. Corp. Act 2010 §8.01(b)). State law generally provides that the directors of a corporation owe a fiduciary duty to the corporation that redounds to the benefit of its shareholders. Outside of contractual provisions and specific statutory limitations, the directors generally do not owe a fiduciary duty to creditors of the corporation.

Although the nature of the fiduciary duty is not self-evident, the fundamental components are well understood (see generally Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985); see also Sharfman 2008: 287). In essence, a fiduciary relationship is one where a fiduciary must act for the benefit of another, the beneficiary (see Tuttle 1994:

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18 For example, state fraudulent transfer law imposes statutory duties on the directors of insolvent corporations and also condemns actual fraudulent transfers.
There can be no fiduciary without a beneficiary (Guth v. Loft, 5 A.2d 503 (Del. 1939)).

Each fiduciary relationship is made up of constituent *fiduciary duties*. These duties, with some notable limitations, are essentially *per se* rules to the contract adopted by the corporation and accepted by its shareholders, directors, and managers. As mentioned above, relevant duties in the corporate fiduciary relationship may include the duty of care, the duty of loyalty, the duty of good faith, the duty of disclosure, the duty of impartiality, and the duty of obedience (DeMott 1992: 471).

The *duty of care* requires that the fiduciary exercises the care that a person in a like position would exercise under similar circumstances (see, e.g., United States v. Aldrich (In re Rigden), 795 F.2d 727, 730 (9th Cir. 1986)). The duty of care requires that the fiduciary act in an informed and considered manner. To fulfill the duty of care, for example, corporate directors:

> [H]ave a duty to inform themselves, prior to making a business decision, of all material information reasonably available to them. Having become so informed, they must then act with requisite care in the discharge of their duties (*Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 367 (Del. 1993)).

In short, the duty of care requires that a fiduciary act with a reasonable amount of attention and skill, well-informed, and exercising reasonable oversight (*Van de Walle v. Unimation, Inc.*, 1991 WL 29303 (Del. Ch. Mar. 7, 1991); *see also* Bogart 1994: 155, 168).

The *duty of loyalty* springs from the central principle of placing the interest of the beneficiary first, thus avoiding self-dealing and conflicts of interest (see *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 367 (Del. 1993)). In *Guth v. Loft* (5 A.2d 503, 510
(Del. 1939)), the Delaware Supreme Court offered the classic formulation of the duty of
loyalty in the corporate context.

Corporate officers and directors are not permitted to use their position of
trust and confidence to further their private interests. While technically
not trustees, they stand in a fiduciary relation to the corporation and its
stockholders. A public policy, existing through the years, and derived
from a profound knowledge of human characteristics and motives, has
established a rule that demands of a corporate officer or director,
peremptorily and inexorably, the most scrupulous observance of his duty,
not only affirmatively to protect the interests of the corporation
committed to his charge, but also to refrain from doing anything that
would work injury to the corporation, or to deprive it of profit or
advantage which his skill and ability might properly bring to it, or to
enable it to make in the reasonable and lawful exercise of its
powers. The rule that requires an undivided and unselfish loyalty to the
corporation demands that there shall be no conflict between duty and
self-interest. The occasions for the determination of honesty, good faith
and loyal conduct are many and varied, and no hard and fast rule can be
formulated. The standard of loyalty is measured by no fixed scale.

A fiduciary must put aside personal benefit, subordinating such benefit for the good of
the beneficiary. Fiduciaries must also make full disclosure of potential conflicts of
interest and may need to abstain from consideration of such matters in their entirety.
Even though fiduciaries owe a duty of loyalty to the beneficiary, “fiduciary
management entails taking action in which the decision-makers have personal interests
and conflicts” (Freeman 2009: 19).

The duty of loyalty can still be met in such circumstances through full
disclosure and approval or ratification of the decision by disinterested
persons. A common example of this rule is the approval of corporate
transactions with a board member by a vote of other disinterested board
members. (Freeman 2009: 19).

Thus, for example, corporations, through their directors, address potential conflicts of
interest by creating and carefully implementing several constructs, including approval
of certain actions by disinterested directors, recusal of interested directors from board
discussions or votes, submitting certain proposals to shareholder approval after full
disclosure, and ensuring that deliberations are extensive and recorded more fully than otherwise may be the general practice.

The duty of good faith is the cornerstone of the relationship between fiduciaries and their beneficiaries (Roselink Investors, LLC v. Shenkman, 386 F. Supp. 2d 209, 221 (S.D.N.Y. 2004), quoting Orman v. Cullman, 794 A.2d 5, 14 (Del. Ch. 2002). Fiduciaries must make “a good faith effort to be informed and to exercise appropriate judgment” (In re Caremark Int’l Derivative Litig., 698 A.2d 959, 968 (Del. Ch. 1996)). Recent court decisions have observed that good faith is intertwined with the duties of care and loyalty (e.g., In re Walt Disney Co. Derivative Litigation, No. 15452 (Del. Ch. Aug. 9, 2005); see also Cook 2004: 91).

The duty of disclosure requires that fiduciaries truthfully and candidly disclose to beneficiaries all facts material to any action directly involving them (see Kahn v. Roberts, 679 A.2d 460 (Del. 1996)). For example, when a board of directors seeks shareholder action, it has a duty “to disclose fully and fairly pertinent information within the board’s control” (Williams v. Geier, 671 A.2d 1368, 1383 (Del. 1996)). A fiduciary’s communications must be unambiguous to allow the beneficiary to make an informed decision (Williams v. Geier, 671 A.2d 1368, 1383 (Del. 1996)).

The duty of impartiality governs how a fiduciary manages the duty of loyalty among all beneficiaries where the beneficiaries’ interests may conflict (Freeman 2009: 20). “When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them” (Restatement (Second) of Trusts 1959: §183).

The duty of obedience is often a forgotten duty, subsumed in the duties of care and loyalty. In the appropriate context, it requires that a fiduciary obey the directions of its
beneficiary. Failure to comply with the direction given to a fiduciary by its beneficiary may run afoul of this duty.

Thus, in summary, fiduciary duties that may apply to an archaeologist engaged in certain archaeological enterprise are expansive. Interestingly, we often speak and write around these duties without explicitly identifying them and their anchors in law.

First, an archaeologist may have a duty of good faith. The duty of good faith requires the archaeologist to perform any actions in accordance with honesty in fact and objective good faith. Truthfulness and honesty are the watchwords of good faith.

Second, an archaeologist may have a duty of care. The duty of care suggests a reasonably acceptable level of professional competence, the employment of best practices, continuing education, associating with those who have an expertise that the archaeologist does not have, and prevention of the undocumented destruction of contexts. Truthfulness is the companion of care.

Third, an archaeologist may have a duty of loyalty. The duty of loyalty includes disinterestedness and a recognition that the archaeologist must act in the best interests of the beneficiary, whoever that may be. The duty of loyalty is so strong that even when such action is inconsistent with the best interests of the archaeologist, he must yield and perform in his beneficiary’s best interests. Truthfulness is the confidant of loyalty.

Most archaeologists, and professional organizations, employ a fiduciary-based model of ethics even without realizing, like Moliere’s Jordain, that they have been “speaking prose all their lives” (Moliere and Clapin 2011). In fact, at least to some significant
degree, each professional body in archaeology speaks the language of “fiduciary” without an explicit acknowledgement of the influence of this body of legal doctrine.\(^\text{19}\)

For example, the AAA Code of Ethics draws heavily on the duty of good faith. It encourages members to be open and honest with subjects, colleagues, and donors about the purpose and possible impacts. Members are reminded that they have a responsibility to be “honest and transparent” with all parties involved, including colleagues, governments, hosts and sponsors, and are counseled that they should not “deceive or knowingly misrepresent (i.e., fabricate evidence, falsify, and plagiarize)” their work. The duty of care is illustrated in the code’s admonition to ensure the safety and privacy of research subjects, including animals. Further, the code instructs members that they have a primary ethical obligation to the “people, species and materials they study” and that these obligations can “supersede the goals of seeking new knowledge, can lead to decisions not to undertake or to discontinue a research project when the primary obligation conflicts with other responsibilities, such as those owed to sponsors or clients.” This is a clear embodiment of the fiduciary duty of loyalty. In short, the anthropologist should put the needs of its subjects ahead of his interest in continuing research.

Indeed, examples of the duties of good faith, care, and loyalty can also be found in the codes of ethics of the AIA, SAA, EAA, and WAC. The table below highlights some of these examples of a duty-based ethical model.

\(^{19}\) At this point, I would suggest a thought experiment. Reread this section of the thesis, replacing the word “corporation” with the term “archaeological record” and the words “director,” “board,” or “board of directors” with the term “archaeologist.” The development of the corporation from legal fiction to a thing to which directors owe a duty is strikingly similar to the development of the archaeological record to which many archaeologists assert we owe a duty.
<table>
<thead>
<tr>
<th>Code</th>
<th>Duty of Good Faith</th>
<th>Duty of Care</th>
<th>Duty of Loyalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIA Code of Ethics and Code of Professional Standards 21</td>
<td>“Professional archaeologists must not engage in plagiarism or the fabrication or falsification of data.”</td>
<td>Members should “seek to ensure that the exploration of archaeological sites be conducted according to the highest standards under the direct supervision of qualified personnel.”</td>
<td>“As primary stewards of the archaeological record, they should work actively to preserve that record in all its dimensions and for the long term; and they should give due consideration to the interests of others, both colleagues and the lay public, who are affected by the research.”</td>
</tr>
<tr>
<td>SAA Principles of Archaeological Ethics 22</td>
<td>“Responsible archaeological research, including all levels of professional activity, requires an acknowledgement of public accountability and a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved.”</td>
<td>“Given the destructive nature of most archaeological investigations, archaeologists must ensure that they have adequate training, experience, facilities, and other support necessary to conduct any program of research they initiate in a manner consistent with . . . contemporary standards of professional practice.”</td>
<td>“The archaeological record . . . is irreplaceable. It is the responsibility of all archaeologists to work for the long-term conservation and protection of the archaeological record by practicing and promoting stewardship of the archaeological record. Stewards are both caretakers of and advocates for the archaeological record for the benefit of all people.”</td>
</tr>
<tr>
<td>EAA Code of Practice 23</td>
<td>“Written permission must be obtained for the use of original material and acknowledgement to the source included in any publication.”</td>
<td>“Archaeologists will carry out their work to the highest standards recognised by their professional peers. Archaeologists have a duty to keep themselves informed of developments in knowledge and methodology relating to their field of specialisation and to techniques of fieldwork, conservation, information dissemination, and related areas.”</td>
<td>“Archaeologists will not engage in, or allow their names to be associated with, any activity that impacts the archaeological heritage which is carried out for commercial profit which derives directly from or exploits the archaeological heritage itself.”</td>
</tr>
</tbody>
</table>

21 AIA Standards 1997.  
22 SAA 1996.  
23 EAA 2009.
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|---|---|---|---|
| **Code** | **Duty of Good Faith** | **Duty of Care** | **Duty of Loyalty** |
| WAC Codes of Ethics | “Members shall not interfere with and/or remove human remains of indigenous peoples without the express consent of those concerned. Members shall not interfere with and/or remove artefacts or objects of special cultural significance, as defined by associated indigenous peoples, without their express consent.” | “Members shall recognize their obligation to employ and/or train indigenous peoples in proper techniques as part of their projects, and utilise indigenous peoples to monitor the projects.” | “Members agree that they have obligations to indigenous peoples . . .” and agree to “. . . acknowledge that the indigenous cultural heritage rightfully belongs to the indigenous descendants of the heritage . . .” and “to seek, whenever possible, representation of indigenous peoples to agencies funding or authorising research to be certain their view is considered as critically important . . .” |

5.3 **Beneficiaries**

Who is the beneficiary of the fiduciary duties owed by an archaeologist? This step in the ethical process is important for two reasons. First, the step cements the fiduciary relationship so that the fiduciary knows for whose benefit he or she serves. Second, the question itself elevates the importance of relationship, permitting one to see that the duties are in fact attributes of a relationship between a fiduciary and his or her beneficiary.

In answering the question of who is the beneficiary of the fiduciary duties owed by an archaeologist, commentators have not balked at painting a full picture (Pluciennik 2001). The beneficiaries of ethical duties identified by archaeologists include:

- The archaeological record
- The dead
- The living associated with the dead

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24 WAC 1990.
- Identifiable descendants of those who are the subject of study
- Specific culture
- World culture
- Finder or acquirer
- The archaeological profession
- The public, i.e., a common inheritance of all humanity
- The funding source, e.g., a benefactor
- The government
- Statutorily-mandated beneficiaries that may but need not necessarily include those categories already identified above (e.g., NAGPRA 1990).

In an earlier discussion, I stated that the law may characterize the ownership of something by all as ownership by none. The law also cautions that a beneficiary class of many in fact may quickly become a beneficiary class of none. Does such a broad array of possible beneficiaries meaningfully inform an archaeologist as he tries to fulfill his fiduciary duties, or can it confound his efforts to act in the best interests of the appropriate party because the identity of the appropriate party is unclear? The answer is far from settled.

In considering who may be the beneficiaries of an archaeological ethic based on fiduciary duties, one may want to begin with an assessment of any legally-mandated beneficiary class (e.g., NAGPRA 1990; cf. UN 2007 Declarations: 11-13). To the extent any laws or regulations apply, those directives would control, notwithstanding what common sensibilities, personal judgment, or professional codes may suggest to the contrary. Under the NAGPRA (1990), human remains, funerary objects, sacred objects or objects of cultural patrimony that are in the possession or control of a federal agency, state and local governments, or institutions receiving federal funds (including museums) must be catalogued and returned to lineal descendants, Indian tribes or Native Hawaiian
organizations. To have standing to assert a claim under NAGPRA, a lineal descendant must be able to trace his or her ancestry “directly and without interruption” according to the methods used by the descendant’s Indian tribe or organization (43 C.F.R. § 10.2(b)(1)). An Indian tribe must be officially recognized by the Bureau of Indian Affairs (a branch of the US Department of the Interior) to have standing to bring a claim (43 C.F.R. § 10.2(b)(2)), although there is a review process available for tribal groups that are not officially recognized by the US.

Under the Treasure Act of 1996 and Portable Antiquities Scheme (England and Wales), a find may become public property but only upon a payment to the finder of market value of the find, that is, just compensation (Layton and Wallace 2006: 61). This approach is akin to the concept of a government’s exercise of eminent domain, wherein the government “takes” private property for the public good for just compensation (Addyman 2001). Finders may forgo payment of just compensation so that finds may be acquired by public collections without cash payments (Treasure Act 1996).

In Scotland and Northern Ireland, all portable antiquities must be reported and sometimes relinquished to local government (Addyman 2001; see also Layton and Wallace 2006: 61). Under Scottish common law, items found anywhere in Scotland are the property of the Crown and must be reported. Items are allocated to (or claimed by) accredited Scottish museums to advance the preservation of Scotland’s cultural heritage (Treasure Trove in Scotland 2008).

Continuing the recognition of the importance of indigenous interests in cultural heritage in all its forms is The United Nations Declaration on the Rights of Indigenous Peoples. Adopted in 2007, the Articles affirm, among others, the following principles:
Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Articles 11, 12, and 13 are interesting and unique. They seek to create new human rights and not simply state aspirational goals. They also seek to encourage countries to make these rights enforceable in their respective courts. These Articles also seek to
grant the power to indigenous people to control the taxonomy of the components of the archaeological record. In all, over fourteen new rights are created. Further, these Articles include remedies for the violation of these rights, including restitution, negative injunctions, and affirmative injunctions.

We often confound beneficial interest with ownership. The focus on ownership obscures the question of who is the beneficiary of any ethical duty an archaeologist may owe. Although ownership may be an important consideration, it is not the most important and may confuse the issue of ethics altogether. It is not unusual for an interest of an owner of property to find that ownership interest subordinated to the interests of nonowners, including the public. Ownership may inform ethical relationships; however, it does not control it.

Unfortunately, we also confuse the beneficiary with the class that may enforce the “right.” For example, the discussions on the obvious inability of the dead to assert rights, etc., as justification for ignoring or shifting the beneficiary to some other class, are unpersuasive. It should not surprise us that someone other than the actual beneficiary may have standing to assert the rights of the beneficiary, for example, a parent for child, a guardian for an adjudicated incompetent, a trustee for some future claimant, etc. Equating the ability to assert a right, if any, with being the beneficiary of that right further confounds the ultimate issue of to whom should the duties of an archaeologist flow (see, e.g. Vizenor 1996 (develops the idea of a “bone court”)).

5.3 Treaty and Convention Framework

The thesis now turns to a consideration of the statutory and treaty law that regulates archaeological conduct and informs, in part, ethical behavior. As discussed in Chapter 2, since ancient times, cities were often sacked during warfare, and public and private property looted as war booty. Gradually, the laws of war began to recognize that certain
property, including churches, temples, public buildings, and cultural property, should be protected from unnecessary destruction (Johnson 2006: 117). Although Napoleon largely ignored emerging ideas on the protection of cultural property as his armies pillaged cities and looted treasures across Europe, Asia, and Africa, Great Britain’s refusal to claim the treasures as booty after the Battle of Waterloo (Gerstenblith 2006: 253) and its requirement that France return (some) of the stolen property reinforced the notion that the destruction and looting of cultural property was “contrary to every principle of justice and to the usages of modern warfare” (Johnson 2006: 118). However, the obligation to protect some forms of cultural property was not codified in any form until later in the 19th century (Gerstenblith 2009: 20; Johnson 2006: 119).

5.3.1 The Lieber Code (1863)

US President Abraham Lincoln engaged Francis Lieber, a Columbia University law professor and former Prussian soldier who incidentally had been present at the Battle of Waterloo (Gerstenblith 2009: 20), to draft a code of conduct to be used by the US Army during the American Civil War. Lieber’s document, known officially as “Instructions for the Government of Armies of the US in the Field, General Orders No. 100” (“Lieber Code”), included regulations for the declaration of martial law, treatment of deserters, prisoners of war, captured messengers and spies, the exchange of prisoners, and dealing with the civilian population (Lieber 1863). Although the Lieber Code allowed the appropriation of public property, including movable property and money, belonging to the “hostile government or nation,” it provided protections for private property not forfeited because of crimes or offenses of the owner (although private property could be seized as a result of “military necessity”). Further, the Lieber Code specified that the property of churches, hospitals, exclusively charitable organizations, schools and museums should not be considered public property and thus were not subject to seizure (but could be taxed), and that “[c]lassical works of art, libraries, scientific collections, or
previous instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury . . . .” Important as the precursor to the Hague Conventions of 1899 and 1907 (Gerstenblith 2009: 20; Johnson 2006: 119), the Lieber Code is also the first codification of the obligation to protect cultural property of an occupied area in armed conflict (Gerstenblith 2006: 245; Johnson 2006: 119).

5.3.2 *Hague Conventions of 1899 and 1907*

The Hague Conventions of 1899 (“1899 Convention”) and of 1907 (“1907 Convention”) were the first international treaties to specifically require the protection of cultural property during armed conflict (Johnson 2006: 120). The conventions forbade the destruction or seizure of enemy property unless “imperatively demanded by the necessities of war,” prohibited pillage and the seizure of private property, and required that care be taken to protect “buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded were collected, provided they are not being used at the time for military purposes.” The duty to mark such property with a “distinctive and visible sign,” the Blue Shield (Gerstenblith 2009: 20), to indicate its protected status fell to the “besieged” party. The conventions also designated institutions dedicated to religion, charity, education, arts and sciences as private property, even if the institutions were otherwise state property, and made the seizure, destruction, or willful damage of such property forbidden (1899 Convention; 1907 Convention).

Article 56 of the 1907 Convention suggested that willful destruction or seizure of these institutions, historic monuments, and works of art and science should be subject to legal proceedings. Although the document provided a means by which action could be taken after cultural property was stolen or destroyed, it lacked any real deterrent effect. Additionally, there was no clear enforcement mechanism. Thus, the conventions were
generally criticized for failing to prevent catastrophic damage to cultural property (Johnson 2006: 121-124) during World Wars I and II (Gerstenblith 2009: 20). But the fallout created by the scale of the destruction during World War II substantially changed customary international law in that individuals could be held criminally liable for their bad acts (Johnson 2006: 124). Prior to World War II, states alone were thought to be liable for destruction of cultural property (Johnson 2006: 124). However, several Nazi officials were prosecuted, and in some cases executed, for violations of the conventions through the destruction and unlawful seizure of cultural property (Gerstenblith 2009; Johnson 2006).

5.3.3 Customary International Law

Established by charter in 1945, the International Court of Justice is the primary judicial body of the UN. The Statute of the International Court of Justice (1945) lists the traditional sources of international law as international treaties and conventions, international custom, general principles of law recognized by “civilized nations,” and important and influential prior judicial decisions. Two elements are required in order for international custom to be recognized: (i) the custom must be actual state practice; and (ii) there must be a sense of obligation to follow the practice (opinion juris sive necessitatis) (Guernsey 2000: 143; Henckaerts 2005: 178).

By the end of World War II, customary international law clearly prohibited the destruction and unlawful seizure of cultural property (Johnson 2006: 124), as evidenced by the prosecution of Nazi leaders. However, the lack of any meaningful deterrent to prevent widespread destruction and theft of cultural property led to the adoption of the Hague Convention of 1954.
5.3.4 Hague Convention of 1954

The Hague Convention of 1954 (“1954 Convention”) was one of a number of humanitarian conventions adopted by the international community to attempt to avert the kind of death and destruction wrought during World War II (Gerstenblith 2009: 21). It was the first international convention solely to address the protection of cultural property in armed conflict (Gerstenblith 2009: 21; Johnson 2006: 125). The preamble to the convention asserts the universal value of cultural property, notes the damage to all mankind when cultural property is destroyed, and imposes an obligation to protect cultural property (Hague Convention 1954).

Drawing from and expanding on the Hague Conventions of 1899 and 1907, Article 1 of the 1954 Convention defines cultural property as:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings, which, as a whole, are of historical or artistic interest; works of art; manuscripts, books, and other objects of artistic, historical or archaeological interest, as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centers containing monuments’ (Hague Convention 1954: art. 1).

Article 2 of the 1954 Convention defines protection of cultural property as “safeguarding of and respect for” the property. Article 3 obligates parties to the 1954 Convention to take appropriate measures in times of peace to safeguard cultural property within their borders against foreseeable effects of conflict. Article 4 deals with respect for cultural property. Parties to the 1954 Convention may not use cultural
property in a way that might expose it to damage (although there is a waiver for military necessity). Additionally, parties to the 1954 Convention are obligated to try to prevent, prohibit, or put a stop to the theft or destruction of cultural property. Finally, parties are prohibited from requisitioning cultural property and may not commit acts of reprisal against cultural property.

Article 5 of the 1954 Convention details the obligation of occupying powers with regard to cultural property. Parties are to support “competent national authorities” of the occupied state in safeguarding and preserving its cultural property. If the occupied state is not able to execute its obligations to safeguard and protect, the occupier, working in cooperation with the national authorities, should take the necessary steps to preserve the property.

Article 6 allows for the placement of a distinctive emblem, the Blue Shield, on cultural property so that it may be easily recognized. Article 7 obligates the parties to the 1954 Convention to introduce training programs into their militaries to foster a respect for cultural property.

The obligation to try to prevent or put a stop to the destruction or theft of cultural property under Article 4 came under scrutiny after the looting of the Baghdad Museum in 2003 (Gerstenblith 2006). Between April 9, 2003, and April 12, 2003, thousands of artifacts were stolen from the Iraqi National Museum (Johnson 2006), home to the world’s largest collection of Mesopotamian artifacts (Gerstenblith 2006: 288). Coalition forces were criticized for allowing the looting to take place by failing to protect the building. However, the extent of the obligation is open for interpretation (Gerstenblith 2006: 309). Based on customary international law, the obligation appears to be limited to preventing looting by a party’s own military, and not preventing looting and destruction by locals (Gerstenblith 2006: 309-311).
Other criticisms have been levied against the 1954 Convention. The “military necessity” waiver available in Article 4 appears to erode the prohibition against use of cultural property (Gerstenblith 2009: 21). Article 5 outlines the obligations of occupying forces, but fails to define what “occupation” means (Gerstenblith 2006: 263). Finally, the 1954 Convention does not contain provisions that dictate punishment for violations; thus, prosecutions must be initiated under the laws of the parties (Gerstenblith 2006: 264-265).

As of 2012, the Hague Convention of 1954 had been ratified by 126 countries. After decades of objections by the military related to the Cold War, the US ratified the convention in 2009, subject to four understandings. First, the level of protection afforded to cultural property in the convention was a codification of customary international law. Second, actions by individuals will only be judged based on the information that was reasonably available to them at the time the action was taken. Third, the rules apply only to conventional weapons. Finally, the primary responsibility for the protection of cultural property falls to the party controlling the property. When it ratified the convention, the US indicated that its ratification would be self-executing or would be binding without the need for additional legislation (Gerstenblith 2009: 24).

5.3.5 The First Protocol

The First Protocol to the 1954 Convention was enacted to deal specifically with the disposition of movable cultural property. The protocol has two elective provisions, and parties may elect which of the two will be binding (Hague Protocol 1954: art. 9). The first provision requires parties to attempt to prevent the exportation of cultural property from an occupied territory during an armed conflict. If found, each party is required to

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26 As of July 5, 2013, the UK had not ratified the 1954 Convention, although it has expressed such intention and has taken steps to begin the process. A convention is not binding on a state that has not ratified it (Gerstenblith 2009: 24).
take into custody any cultural property that was illegally imported into its territory from an occupied territory and to return the property to the occupied territory upon the cessation of hostilities (Hague Protocol 1954: sec. I, art. 1-4). The second provision requires parties to remove cultural property from an occupied territory to protect the property. Any property removed for protection must be returned to competent national authorities when the conflict is over (Hague Protocol 1954: sec. II, art. 5). The First Protocol was not popular among western European nations and the US (Gerstenblith 2009: 23) and has only been ratified by 102 nations as of August 2012. Neither the US nor UK has ratified the protocol.27

5.3.6 The Second Protocol

The Second Protocol to the 1954 Convention was promulgated by the United Nations Educational, Scientific and Cultural Organization ("UNESCO") in 1999 to address some of the critical shortcomings of the convention and the First Protocol (Gerstenblith 2009: 23; Johnson 2006: 132). The Second Protocol recognizes the specific issues generated by the fact that most current conflicts are within a nation state and not across nation states; thus, the combat zone is generally isolated within a nation state even though the consequences are often borne, in part, by contiguous nation states through displaced persons and refugees, etc. (Fox 1999: 14; Harrington 2005: 8). The Second Protocol requires the occupying power to prohibit excavation in the occupied territories except to protect or preserve cultural property and then only in coordination with the competent national authorities, to prevent modification or concealment of cultural property to hide evidence, and to prevent illicit trade in cultural property (Hladik 2010: 2-3). The "military necessity" waiver allowed under Article 4 of the convention was limited such that it would only be available if the cultural property had become a

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military objective and there is no alternative available to obtain a similar military objective (Fox 1999: 14; Harrington 2005: 8). The waiver is only available so long as there is no other alternative, and is limited to use by forces equivalent to a battalion or larger. Finally, the protocol directs that advance notice should be given whenever circumstances permit. (Second Protocol 1999: art. 6).

The Second Protocol also requires parties to do everything feasible to minimize collateral damage, directs that actions that may cause incidental damage to cultural property be proportional to the military advantage obtained (Second Protocol 1999: art. 7), prohibits excavation of cultural property unless the excavation is necessary to protect the property or the archaeological record (Second Protocol 1999: art. 9), and requires parties to the Second Protocol to enact laws that would establish criminal offenses for violations, including appropriate punishment (Second Protocol 1999: art. 15).

As of August, 2012, sixty-three nations have ratified the Second Protocol. Neither the US nor UK has ratified the protocol. Because the number of states bound by the Second Protocol is small compared to the 1954 Convention or the First Protocol, it is unclear what impact the Second Protocol will have on the protection of cultural property in armed conflicts (Johnson 2006: 132).

5.3.7 United Nations Resolutions

Notwithstanding the modifications to the 1954 Convention brought about by the Second Protocol, the 1954 Convention and its protocols have not prevented destruction of cultural property in armed conflicts (Gerstenblith 2006: 270). Further, there are few practical examples of meaningful implementation. (Hladik 2010: 8). However, the UN Security Council (the “Security Council”) has enacted resolutions dealing with

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prosecution and punishment for the destruction of cultural property in armed conflict (Gerstenblith 2006: 271; Gerstenblith 2009: 25) and also the return of cultural property stolen during armed conflict (Hladik 2010: 8).

For example, the Security Council has established the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) (Security Council ICTY 2009). This adjudicatory body was established in response to the intentional destruction of cultural property as part of a campaign of ethnic cleansing during the Third Balkan War (circa 1991 – present). The Security Council granted authority to the ICTY to prosecute for violations of the Geneva Conventions of 1949 and violations of customs of war (Gerstenblith 2006: 270-271). The Geneva Conventions of 1949 include prohibitions on the destruction and theft of property when not justified by military necessity (Gerstenblith 2006: 271). Additionally, the ICTY indicates that wanton destruction or devastations not justified by military necessity, plunder of public or private property, and seizure or destruction of cultural property are violations of the laws or customs of war (Gerstenblith 2006: 271). Although the ICTY did not specifically refer to the 1954 Convention or its protocols, the 1954 Convention has been cited as a source of customary international law in some individual prosecutions (Gerstenblith 2009: 26).

Another example is the UN Security Council Resolution 686 (1991). After Iraq invaded Kuwait in 1990, the Iraqi’s raided Kuwaiti museums and private collections and removed art and other cultural property to Iraq (Gerstenblith 2006: 281). At the time, Iraq claimed it was acting under the First Protocol to safeguard cultural property from occupied territory (Gerstenblith 2006: 281). On March 2, 1991, the Security Council issued Resolution 686 requesting that the property be returned to Kuwait (Hladik 2010: 8). As a result, 25,082 items were returned to Kuwait (Hladik 2010: 8).
However, not all items were returned and some of the stolen property is reportedly available on the art market (Gerstenblith 2006: 281-282).

A third example is UN Security Council Resolution 1483 (2003). In response to the looting at the Iraqi Museum in April 2003 (Hladik 2010: 9), the Security Council adopted Resolution 1483 (see Harrington 2005: 9-18, for a discussion of harm to the Iraqi Museum and its collections during the peri-conflict phase of military operations). That resolution requested that member states help facilitate the return of stolen property to the museum, prohibited the trade or transfer of items that were suspected to have been illegally removed from the museum, and called upon UNESCO to help coordinate efforts. The UK and US have been active in the investigation and return of Iraqi cultural materials.

5.4 Observations

The common law has developed an intellectual architecture that helps explain the relationship an archaeologist may have with a beneficiary or several beneficiaries in certain specific instances. The common law does this by imposing a duty-bound system that seeks clear decisional lines involving a known fiduciary, a beneficiary, an owner, and a rights-enforcer. Although a fiduciary is not also his beneficiary, a fiduciary can be an owner (although rare) and can have the power to enforce rights held by the beneficiary (very common). And although a beneficiary is not also his fiduciary, it is quite common for the beneficiary to be an owner and a rights-enforcer.

Legislatures have also sought to impose certain policy and political themes and imperatives on archaeologists in areas like the respect of the dead and their things, respect of culture, preservation of resources, etc. NAGPRA is an instructive, but far from isolated, example of legislation that drives consideration, if not respect, of the other.
Finally, nation states have sought greater clarity and protection through the use of treaty and convention powers. These attempts have been undertaken by intelligent people with, in most instances, the best of intentions. However, one must not lose sight of a simple fact when considering legal imperatives in the context of ethics: These law sources help inform but do not address the ethical issues we experience as a profession, and most assuredly, fail to address the ethical challenges archaeologists confront in armed conflict.

Many serious commentators (e.g., Hamilakis 2009; Stone 2009; Mourad 2007) on archaeological ethics in armed conflict have failed to consider fully the importance of the legal regime that in many instances contemplates, if not demands as matters of law, a role for archaeologists in modern military campaigns. Of course, a professional ethic is not slave to law. However, an honest and engaging ethical assessment must acknowledge the law even where it may seek to disobey it through notorious acts of civil disobedience. For an archaeologist, law may not be congruous with ethics, but it is undeniably part of context.
CHAPTER 6: EXISTING ETHICS APPROACHES TO ARMED CONFLICT

6.1 Introduction

In chapter 4, this thesis explores the political influences on the development of ethics systems in archaeology. Although many archaeologists have dismissed the importance of politics in the development of a professional ethic (accord Kersel 2008: 507; Lawler 2008: 519, 521), that approach has been effectively criticized by a number of commentators. A professional ethic designed to aid the archaeologist and profession in grappling with difficult situations and dilemmas posed by armed conflict must necessarily consider the political context in which an armed conflict is unfolding and the political influences and consequences of the role archaeology plays within the currents that swirl around modern warfare, with its asymmetrical profile, insurgent and counter-insurgent dimensions, and blurring of combatant and civilian status. Much of the work correctly acknowledges and addresses the political assumptions and influences embedded in the archaeological ethics in armed conflict that historically remained unspoken (Kersel 2008: 507, citing Hamilakis human rights approach). These assumptions include, but are not limited to, conquest, subordination, imperialism, and empire (Mourad 2007).

The work on the role of archaeologists and armed conflict may be roughly divided into two camps. In one camp are those who would embrace an ad hoc approach to resolving the role of archaeologists in war; an approach that would make explicit and overt the political assumptions and values embodied in any ethical system and decision in defining a proper role, if any, for an archaeologist and the profession. In this thesis, I refer to this camp as championing “skeptical engagement.”

29 Much of the work in this area supposes that there are no local archaeologists but that the archaeologists are external to the nations affected. Of course, that is not usually the case – and certainly was not the case in OIF and OEF – and the role of local archaeologists poses slightly different but related issues addressed in this thesis.
In the other camp are those who advocate a disengagement (from a strong if not complete position) of the profession from the military. This camp asserts that there is essentially no ethically responsible role that an archaeologist may play in armed conflict that would permit or encourage a formal association with the military. Under this approach, there are many activities that an archaeologist may undertake as archaeologist, concerned citizen, or member of a neutral IO or NGO, but not as part of a military structure. According to this view, once the archaeologist associates himself with a military structure, he loses the status of intellectual and civilian, those becoming just another weapon in the hands of conquering armies and imperialist nations. In this thesis, I refer to this camp as embracing a de facto disengagement policy. Some advocates do leave theoretical room for limited form of engagement in narrowly defined situations; however, in fact, that practical space simply will never exist, hence the modifier “de facto.”

Both camps provide critical insight on the issue of what ought a professional ethic say about the conduct of archaeologists in armed conflict. Unfortunately, the two camps have been largely debating past each other, failing to directly join issue on many of the challenges confronted by the profession at war (other than with itself). Some archaeologists have asserted that other archaeologists – despite their good intentions – have elevated the importance of preserving the archaeological record over the concern for people in a combat zone. They “publicly mourn the loss of artifacts but find no words for the loss of people” (Hamilakis 2003a: 107). Others refer to archaeologists working for the military – many of whom have worked their entire professional careers protecting cultural heritage, educating military personnel, and collaborating with local populations – as part of an evil empire (Albarella 2009: 117-118). Still others dismiss those who hold to a non-engagement approach to archaeology and the military as effectively taking “a pacifist line to have nothing to do with the military . . . .” (Stone
2011: 7) and not caring about the use of archaeology’s “expertise to mitigate the effects of violent conflicts” (Stone 2011: 7).

Both sides do a disservice to debate by fashioning and then slaying a caricature of the opposing side’s arguments. A couple of examples prove my point and hopefully will get us past the exaggeration of position that has done injury to the debate, a concern that the following three archaeologists, in fact, share. In offering up these observations, I do not intend to call for an impersonal or unimpassioned debate (“[t]he wars in Afghanistan and Iraq have led to frequently heated debate in the archaeological community . . . .” (Teijgeler 2011: 86)); little is more personal and in-your-face than war and the debate about going to and prosecuting war should be impassioned and emotive.

Stone’s professional credibility has been called into question by Hamilakis (2003; 2007; 2009) for engaging the military in providing aid in identifying and protecting cultural property and by Albarella (2009) in preparation of the bombing and invasion of Iraq. The arguments that Stone, therefore, provided “academic and cultural” (Hamilakis 2003a: 107) legitimacy to the invasion of Iraq and disregarded people for the sake of the protection of cultural property are unfair and unsupported by the record. To be quite honest, the criticisms exaggerate the importance to a government of the voice of archaeologists in the lead up to the Iraqi invasion. Stone defends his position eloquently, and I need not add to that defense at this point in this thesis (Stone 2011: 4-9).

However, Stone’s characterization of both Hamilakis’ and Albarella’s positions is also unfair and unsupported by the record. Hamilakis, as I read him, is not opposed to archaeological involvement with the military; rather, he suggests that any involvement with structures of power – including the military – (particularly powers that can wield
structural violence) should be an “examined relationship” cognizant of the political context within which the wider debate should take place. He opposes archaeological involvement with the military in Iraq because he perceives that war as unlawful or unjust or both. Curtis (2011) and Teijgeler (2011) would reach the same result as Hamilakis, and in the case of Teijgeler, at least as to the actual invasion of Iraq, because of the lack of international sanction at that time, a position that Stone (2011) believes is worthy of considerable discussion. Hamilakis is most incensed by his perception that archaeology collaborated with the military in Iraq without critical examination of its role, politically, culturally, and ethically. Ostensibly, Hamilakis, at least in his later writings on the subject, leaves open the question of archaeology’s engagement with the military in the appropriate context and commends archaeologists for mitigating damage in both Iraq and Afghanistan, far from the pacifist moniker Stone employs to describe Hamilakis’ position. In fact, Hamilakis articulates a much more nuanced and subtle approach than Stone credits, an approach that leads me to consider Hamilakis in the skeptical engagement camp (and not the de facto disengagement camp) where I would also include Stone.

Albarella’s criticisms of Stone are too personal and acerbic, thus losing their intellectual impact in a sea of vitriol. However, Stone’s response and characterization of Albarella’s position also lacks nuance. As I read him, Albarella’s position (and to a slightly less extent Mourad) does come close to effective disengagement with the military in time of war. He does not slam the door completely shut but comes nigh close to that position. That leads me to place Albarella (and Mourad) in the de facto disengagement camp. However, Albarella does see an important role for archaeologists in the protection of people and cultural heritage (property) but by working through non-belligerent IOs. This position is a far cry from the stance Stone assigns to Albarella, that the latter would not permit archaeologists to use their specific “expertise to mitigate
the effects of violence” (Stone 2011: 7). That is simply not a fair reading of Albarella’s position. Importantly, Stone (2011, 2009, 2005), Teijgeler (2011), Rush (2011), Curtis (2011), Hamilakis (2009; 2007), Mourad (2007) and Albarella (2007), shorn of extraneous sniping, in some of their cases, have provided a bountiful harvest of ethical fruit in understanding the importance and the metes and bounds of an archaeological professional ethic that may provide guidance to the archaeologist and preserve the separate identity and integrity of the profession as it engages (or refrains from doing so) with the military.

The thesis now turns to these various opinions in an effort to glean insights for the construction of a robust and dynamic professional ethic. That professional ethic must provide action guidance for the archaeologist in armed conflict and maintain the separate integrity of the profession of archaeology in war. The common theme that permeates these apparently conflicting ethical views is the virtue of trust and the action of trust-making. This chapter will develop the various ethical attributes of trust-making and ultimately borrow much from those in our profession who have struggled with these issues to construct a robust professional ethic founded on the virtue of trust that guides the archaeologist and archaeology through the every-changing rapids of political ethical challenges.

6.2 Archaeological Action in the Iraq and Afghanistan Wars

As discussed in chapter 3, archaeologists have played, and continue to play, a myriad of roles in armed conflict. That fact has not changed in both the Iraq and Afghanistan Wars. Each professional role brings with it a unique set of facts and circumstances, drawing on difficult political, military, and ethical themes. What makes matters challenging is that these roles are not innocuous. Each role draws from historical antecedents largely associated with conquest, oppression, and colonialism, particularly
in the Middle East (Emberling 2008: 446). They come with colonial and imperialist histories and are revisited in local lore and mythology, where “excavations can thus be seen as part of the cultural arm of imperial control” (Emberling 2008: 446; see also Kuklick 1996; Larsen 1996). Thus, for many local communities, when it comes to archaeology and cultural property, there are no blank slates (Larsen 1996; see also Kuklick 1996). Mourad (2007) illustrates this point convincingly. She writes that:

Archaeology in the Near East developed in the same crossroads of Imperial hegemony, serving respective empires and their tent set territorial, social, and political control of strategic zones of natural resources, commerce, transportation, and military control since the 19th century (Larsen 1994: 29). Archaeology is always involved when it comes to colonial or imperial control of the Near East; archaeology developed at the core of the relationship between capitalist advancements in the cycle of dispossession, appropriation and annexation of territories. Consequently, archaeology and archaeologists have become instrumental to Imperial advancements (Liverani 2005: 223-243) (Mourad 2007: 154 citations in original)).

The roles archaeologists have played and are continuing to play range from informing the media about cultural concerns in the area of conflict to embedding archaeologists in tactical military units as part of HTTS. Many appear innocuous; but as Mourad (2007) has convincingly argued, that is far from the case when we shift our perspective to that of indigenous or local populations. Thus, serving as a subject matter media expert often projects colonial power, particularly where the archaeologist is perceived as elevating the archaeological record over the welfare of local people (Mourad 2007: 157-158; Albarella 2009: 110). Additionally, forensic investigations by archaeologist as part of investigative teams in Iraq are commendable and absolutely necessary to bring war criminals to justice. However, within certain political contexts, such activity may be used by warring countries to justify invasion and promote neo-colonialism and Western hegemony (Mourad 2007: 157-163; Albarella 2009: 109-110; cf. Renshaw 2011). Furthermore, serving as educators enables military personnel to discharge their
obligations under international law and conventions to protect cultural heritage and property. However, the education of military personnel as a mitigant against cultural property damage and loss of life may be itself weaponized by the military and used in strategic and tactical operations (Emberling 2008: 452). Moreover, archaeologists may engage in fieldwork and research in countries ruled by oppressive dictators, giving a patina of legitimacy to brutal governments, and coordinate with invading and occupying military forces to manage and protect cultural property, providing legitimacy to the invasion and occupation in many instances (Heinz 2008: 460; Pollock 2008: 357). Additionally, an archaeologist serving as a cultural manager in a war zone is the epitome of the neo-colonial agent, identifying, classifying, and often removing cultural property for “safe-keeping” from the area of conflict to the comfort of the invading army’s host nation. Moreover, archaeologists participating in the compilation of archaeological sites worthy of protection from aerial bombardment also heighten the concern by local populations that the archaeologist has resorted to his or her traditional neo-colonial ancestral role as Western agent (Albarella 2009: 108). Finally, the embedding of archaeologists in HTT as part of the HTS is perceived by many within local communities as the natural progression of archaeologist as agent of empire, neo-colonialism, and Western hegemony, a complete reunification of the present with the profession’s birth (Emberling 2008: 448).

6.3 Skeptical Engagement

In one of the more provocative writings on the subject, Teijgeler articulates a model of archaeological engagement with the military in armed conflict holding great promise (Teijgeler 2011). Teijgeler constructs his approach by borrowing core principles from humanitarianism and the agencies that provide humanitarian aid in conflicts. In particular, Teijgeler considers the fundamental guiding principles of the national Red Cross and Red Crescent societies, the International Committee of the Red Cross
and the International Federation of the Red Cross and Red Crescent societies ("ICRC") and the International Federation of the Red Cross and Red Crescent societies ("IFRCC") (Teijgeler 2011:86). These fundamental humanitarian principles include (1) humanity, (2) impartiality, (3) neutrality, and (4) independence. In 1994, the International Red Cross and Red Crescent movement and NGOs in disaster relief issued a code of conduct (Red Cross CoC 1994). In relevant part, the Red Cross CoC builds on the four fundamental principles.

According to Teijgeler, "neutrality" appears to be the most relevant of the four guiding principles to the role of archaeology in war. "It is clear that the principle of neutrality is central to this debate, given that, in new wars, the politicalisation of aid and the growing complexity of emergencies means that it is very hard for civil society to remain outside politics and thus to stay neutral" (Teijgeler 2011: 95). "Neutrality" has engendered controversy and serious debate. Specifically, the Red Cross’s general approach resulted in its failure to denounce egregious violations of law (Teijgeler 2011: 88). Thus, even with knowledge of the Nazi genocide of Jews in Europe, the Red Cross refused to publicly denounce the actions so as not to violate its principle of neutrality (Favez 1988). To many critics, “silence can turn into complicity…. “ (Teijgeler 2011: 88).

Teijgeler concludes that the ethical problems confronted by archaeologists in combat zones are similar to the concerns confronted by humanitarian aid workers in combat zones (Teijgeler 2011:98). Thus, archaeologists, and by extension archaeology, must confront the question of operational neutrality (Teijgeler 2011: 98).

Before Teijgeler articulates an ethical model based on confronting archaeological neutrality, he addresses two important issues regarding an archaeological role with the military in armed conflict: legitimacy and responsibility. (Teijgeler 2011: 99). He asserts that the question of the legitimacy of the military campaign as a precondition to archaeological involvement with the military during armed conflict has been largely
neglected. (Teijgeler 2011: 99). Under his model, Teijgeler would insist that as a precondition to archaeological involvement with the military in wartime, military intervention must be sanctioned by an “international political body” (Teijgeler 2011: 99).

Teijgeler undertakes a robust inquiry as to the question of archaeological responsibility in armed conflict. He compares the archaeologist’s duty to preserve, protect, and enhance the archaeological record for the benefit of those who no longer have a voice to the “responsibility to protect people at risk of genocide” (Teijgeler 2011: 99, citing Williams 2008).

Without elevating the loss of artifacts and monuments to the same level as the loss of lives, the destruction of cultural heritage in an armed conflict can be considered as part of the same issue as genocide. Numerous recent conflicts have provided clear evidence of the vulnerability and fragility of the heritage of the innocent victims of war. The term to describe the deliberate destruction of the cultural heritage of the people or nation for political or military reasons is “cultural genocide.” Where the State is, for whatever reason, incapable of preventing cultural genocide, the international heritage community has the responsibility to protect – in this case – the material and immaterial culture of those who have been silenced. (Teijgeler 2011: 100).

Teijgeler observes that the responsibility to protect contains three attributes. These attributes are the responsibility to prevent, the responsibility to react, and to rebuild (Teijgeler 2011: 100). These attributes cohere neatly to the three phases of protection of cultural property and heritage in armed conflict that Teijgeler develops (Teijgeler 2006: 136). These three phases are what Teijgeler calls pre-conflict, peri-conflict, and post-conflict (Teijgeler 2006: 136, 2011: 100; Thomassen 2010: 3). The archaeologist’s role will generally differ based on the phase of the conflict. For example, in the pre-conflict stage, the role of an archaeologist is largely centered on prevention. This would include Stone’s involvement with the government in developing no-strike lists. In the peri-conflict stage, archaeologists must be present in country to interdict and intervene.
Thus, to prevent military encampments on culturally sensitive sites, an archaeologist must be there before the camp is constructed. Furthermore, archaeologists should refrain from excavation in a war zone (Teijgeler 2011: 102). Additionally, during this stage of the conflict, an archaeologist could develop monitoring and preventive programs to dissuade looting (Teijgeler 2011: 102). Not only is the reduction in looting during armed conflict laudable in its own right in the protection of cultural property and heritage, but it also reduces a source of funding for insurgent groups (Bogdanos 2008: 124; Russell 2003). In the post-conflict stage, where the military has stabilized the theater, archaeologists would primarily engage in cultural property protection and heritage management. Although the multistage approach in considering the archaeological responsibilities during modern conflict is helpful in understanding the military context in which an archaeologist operates, its utility as an architecture for an ethical model may be suspect. Teijgeler acknowledges a significant shortcoming of the temporal model where he writes that:

Sadly, many conflicts are fixed or “frozen” for decades at the periconflict stage, with alternating periods of relative peace and mounting violence. The situation makes the questions archaeologists should ask themselves even more pressing (Teijgeler 2011: 100).

Teijgeler addresses the approach archaeology should take in regard to the question of operational neutrality. Initially, he asks the question of whether employment by the military effects neutrality of a professional (Teijgeler 2011: 101). He dismisses this question as uninteresting, masking the more significant question of whether employment by the military in peacetime should be ethically different than employment by the military in war.

Perhaps the question should be put differently by differentiating between employment in peacetime and in times of war. Is neutrality jeopardized if an archaeologist works for the military in peacetime? There is no indication that any archaeologist working for the military in times of
peace is less objective than his colleagues who are employed elsewhere. However, do the special circumstances under which an archaeologist has to work in a violent area introduce the risk of biased results? Are there other professionals, such as humanitarian workers and civil servants, who work under the same conditions and experience the same stress and are generally faced with the same problems? Are the products of their work biased as well? (Teijgeler 2011: 101).

Teijgeler recognizes that meaningful access to stakeholders in cultural heritage is greatly missed by the preservation of neutrality. Nevertheless, he acknowledges that in a combat zone, archaeologists are generally unable to physically access local populations without military cooperation and security (Teijgeler 2011: 102). Based on his own experience in Iraq, he strongly endorses “extensive consultations with the authorities of the host nation…for any archaeological action” (Teijgeler 2011: 104) during the peri-conflict stage.

Teijgeler asserts that the question of the way in which archaeology confronts the issue of neutrality remains unresolved. He sees both advantages and disadvantages to neutrality. Based on his experience, he concludes that for an archaeologist to provide any meaningful protection and preservation of cultural property and heritage in armed conflict in the peri-conflict stage, he or she must be present in the combat zone (Teijgeler 2011: 107).

Facing the daily difficulties of working in a war, they will have a hard time preserving their neutrality, all the more so as their work will be very practical. A job based on the needs of those concerned cannot be fulfilled without support from somewhere. To abandon neutrality is certainly a possibility, but is not one without risks. To give up a neutral stance for solidarity reasons does not necessarily mean to lose impartiality and objectivity unless one is blinded by ideology or ethnocentrism; equally, to work with the military does not mean archaeologists necessarily lose their impartiality or objectivity. That the military is, in principle, a morally bad employer is an untenable position nowadays. However, during a conflict, embedded archaeologists run the risk of losing their objectivity by sympathizing too greatly with their employer (Teijgeler 2011: 107).
Based on his careful dissecting of the issues confronted by providing humanitarian aid, particularly the question of an organization’s association with the principle of neutrality, the question of legitimacy, and the question of responsibility, Teijgeler constructs an architecture for a pragmatic professional ethics system (Teijgeler 2011: 107). Although he identifies a number of tenets central to this ethical system, I will focus on just a few. First, Teijgeler reaffirms that “archaeologists have the responsibility to protect endangered cultural heritage” because of their special expertise (Teijgeler 2011: 107). Second, he demands that a precondition for archaeological involvement with the military in armed conflict is the sanction of military intervention by an internationally recognized political body (Teijgeler 2011: 107). Third, archaeologists that work for the military should be identified as military personnel, ostensibly in a noncombatant role, and apparently in uniform or with some clearly identifiable symbol (Teijgeler 2011: 108; *but see* Rush 2011: 141). By definition, such archaeologists cannot be neutral; that archaeologist works for one of the belligerent nation states (Teijgeler 2011: 108). Fourth, archaeological neutrality does not necessarily lead to greater access to cultural property or people or greater advantage in mitigating harm to people or places (Teijgeler 2011:108). In war, the military provides protection and stability and often is a primary provider of humanitarian aid. Finally, neutrality does not ensure safety to archaeologists in a combat zone (Teijgeler 2011: 108).

Stone has also developed several observations of note to an ethical approach to address the appropriate level of cooperation between archaeology and the military. His approach borrows heavily from the work of Bernbeck (2008) and, along with Teijgeler, places neutrality and impartiality at the model’s core (Stone 2011: 7-8).

First, Stone reaffirms his view that human life and its protection supersedes the protection of cultural property *every time* (Stone 2011: 7). Second, echoing Teijgeler,
Stone observes that any ethical model addressing archaeology and the military should have a longer shelf-life than the present Iraq and Afghanistan Wars (Stone 2011: 107). Third, Stone advocates a role for archaeologists in education of military personnel both in peacetime and in war, including preparation for an invasion (Stone 2011: 107). He does not, like Teijgeler, insist on international acceptance of a military intervention as a precondition to archaeological involvement, although he acknowledges that such a position is worthy of further consideration. He, of course, did not insist on international sanction of the invasion of Iraq before he provided support to the MoD to identify and protect cultural property. He also appears to part company with Bernbeck on the question of providing particularized cultural property site information. Stone in fact did so (Stone 2011, 2009). Bernbeck would refuse to provide any particularized information to the military in contemplation of military intervention but would educate the military on its general duty to preserve and protect cultural property under applicable international law and conventions (Bernbeck 2008). Finally, Stone observes that Bernbeck would require certain conditions to satisfy his goals of neutrality and impartiality. These conditions include: (1) archaeologists may work with but not for the military (they should not be subject to the military chain of command); (2) archaeologists may not be of the same nationality of the belligerent nations; and (3) archaeologists must closely collaborate with local archaeologists (Stone 2011: 8). Stone does not indicate whether he endorses some or all of these preconditions but he does appear to cite them favorably.

Curtis (2011) advances a view on the appropriate role between archaeologists and the military based on a line of demarcation – pre-conflict and post-conflict (Curtis 2011: 196, 214). During the pre-conflict stage, Curtis sees a limited role. He would strongly endorse an archaeologist teaching military personnel about their legal duties to mitigate and protect cultural property, particularly if that instruction takes place during
peacetime (Curtis 2011: 215). However, he would not (and did not) participate in aiding the military in pre-conflict briefings of cultural property (Curtis 2011: 215).

I would have found it very uncomfortable trying to maintain good relations with Iraqi colleagues who were all fervently hoping there would not be a war while at the same time supplying information about which targets to avoid. The same applies to Iran, and I wonder if those archaeologists who argue that archaeologists should always collaborate pre-conflict are now ready to hold up their hands and offer to supply information about which targets to avoid (Curtis 2011: 215).

During the post-conflict stage, Curtis envisions a pragmatic role for archaeology (Curtis 2011: 196).

The pre-conflict situation is, in fact, governed by political considerations over which the Army has no more control than archaeologists, but in the post-conflict situation, when the damages occurred, both the Army and archaeologists have an obligation to rebuild the infrastructure, including cultural heritage. Working with the Army post-conflict is, therefore, a pragmatic solution. It is only they who have the resources to facilitate visits and provide protection. They also have a great deal of expertise that can be harnessed for archaeological work. For these reasons, I’ve come to the conclusion that cooperation between the military and archaeologist post-conflict is very useful and desirable, and, indeed, if there had been closer collaboration, disasters such as the building of the military camp at Babylon or the building of the gate on ancient Ur could have been avoided (Curtis 2011: 196-197).

Additionally, Curtis considers favorably Teijgeler’s requirement of international approval of any military intervention before an archaeologist should cooperate with the military (Curtis 2011: 216). He also finds much to commend with Teijgeler’s use of humanitarianism as a relevant precedent for archaeological cooperation with the military in armed conflict (Curtis 2011: 216).

Price (2011) rejects the distinction espoused by Curtis regarding pre-and post-conflict archaeological activity.
This principle is similar to archaeologists refusing to cooperate with the military before and during the invasion on the basis of the statement of political, moral, or ethical beliefs, but then agreeing to go into Iraq to survey and “rescue” archaeology. The first position claims the moral high ground by refusing to support aggression against the population of Iraq. The second position appears to support the Iraqi people, but in fact is actually driven by an attachment to the archaeology of Iraq. The archaeology is seen as detached and separate from the Iraqi people, who are implicated both in its destruction to the construction of defensive works during the war and its neglect during the long and costly war between Iraq (as a US heritage) and Iran (Price 2011: 201).

In a series of writings, Hamilakis has developed a mature account of archaeological ethics and armed conflict (Hamilakis 2009, 2007, 2003). The focal point of his critique of the ethics of archaeological praxis is the archaeological engagement in the Iraq war (Hamilakis 2007: 31). To Hamilakis (2009, 2007), the Iraq war was the event that best represented the deep ethical crisis in archaeology and that demands serious and robust debate among members of the profession (Hamilakis 2007: 30-31).

Hamilakis recognizes that war visits misery on people and results in the destruction of things (Hamilakis 2007: 31). If that be the case, what ought to be the role, if any, of archaeology in armed conflict? To begin to answer that question, Hamilakis poses the question of what roles have archaeologists actually played in the Iraq war (Hamilakis 2007: 31). He identifies several roles that generate their own ethical conundrums worthy of further discussion (Hamilakis 2007: 31): target identification (Hamilakis 2007: 31; see also Stone 2009, 2005); advisory (Hamilakis 2007: 31; see also Emberling 2008); cultural property protection (Hamilakis 2007: 31; see also Gerstenblith 2009); and embeds (Hamilakis 2007: 31).

For example, in the buildup to the invasion of Iraq by the Coalition Forces, archaeologists, both inside and outside of Iraq, stressed the threat and later the danger to archaeological sites and artifacts (both in museums and in situ) that may be caused by

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invasion, occupation, looting, etc. (Hamilakis 2007: 30-31). These archaeologists sought to inform various decision-makers, the general public, and invading and occupying forces of the importance to the West and Iraq of the cultural heritage of Iraq, the need to preserve the cultural heritage both in museums and *in situ*, and the duty to protect the cultural heritage and property under international law and the Hague Conventions (Hamilakis 2007: 31; see also Stone 2009; 2005). Generally, Hamilakis found this type of archaeological activity acceptable because that was historically what an archaeologist did (Hamilakis 2007: 31). However, he did so with one important caveat: that the archaeological profession must recognize the political influences and consequences in something as historically comfortable as an advisory role in the protection of the archaeological record, let alone the more aggressive roles that an archaeologist may be asked to play (Hamilakis 2007: 30-32).

Hamilakis also addresses the conduct by some archaeologists who served as advisors to the military in the mapping of potential targets for aerial bombardment (Hamilakis 2007: 31). During the lead up to the invasion of Iraq, several archaeologists and archaeological organizations acted as advisors to the military, providing information and a list of sites that should be spared during the bombing of Iraq to soften the battle space (Stone 2009). Hamilakis observes that the preservation and rescuing of artifacts in Iraq was consistent with the ethical duty of stewardship and the advocacy of the archaeological record (Hamilakis 2007: 31). However, he is troubled by what he considers the obvious consequences of archaeologist involvement in target selection for anticipated bombardment (Hamilakis 2007: 31). By selecting certain sites, thus preserving those sites, archaeologists sacrificed other sites and the people who lived there. Hamilakis found this role played by archaeologists and archaeological organizations troubling and ethically problematic (Hamilakis 2007: 31).
Hamilakis ultimately concludes that Western archaeologists have “failed the people of Iraq” (Hamilakis 2007: 32). He rejects the notion that preservation and protection of the archaeological record should be more significant than the lives of human beings (Hamilakis 2007: 32). According to Hamilakis (2007: 32), the protection and plight of human beings should be archaeology’s top priority in Iraq. Hamilakis ultimately suggests that a political ethic would insist on unmasking the inherent assumptions that would permit and justify archaeological involvement in the selection of targets (Hamilakis 2007: 32). Further, he observes that a political ethic would have forced a critical assessment of archaeological involvement and the profession’s political impact on the ultimate political act, that is, the prosecution of war (Hamilakis 2007: 32). He concludes that a political ethic would have resulted in the opposition to war in Iraq (Hamilakis 2007: 32).

Hamilakis refines his model of archaeological ethics in armed conflicts (Hamilakis 2009). In an influential article (Hamilakis 2009), he develops a more robust approach to an archaeological ethic steeped in a political dynamic, especially as it relates to military structures during times of armed conflict. Again, Hamilakis employs the Iraq war as the model by which to apply his political ethic critique. According to Hamilakis, archaeological involvement in the lead up to the Iraq war was largely uncritical and devoid of any assessment of the political consequences of any archaeological actions or formal positions (Hamilakis 2009: 39). He notes that such involvement could lend credibility and legitimacy to an invasion and occupation of a country (Hamilakis 2009: 39-40).

Hamilakis is highly critical of what he perceives as the cultural turn of the global war on terror (“GWOT”) (Hamilakis 2009: 42). He is concerned that archaeological praxis has migrated uncritically and uncomfortably close to the military without a thoughtful and
deliberate debate among archaeologists regarding the ethical questions that such an association would present. He warns of a coming military-archaeological complex (Hamilakis 2009: 48-52), echoing the warnings of former US President Dwight D Eisenhower over a half-century ago about a military-industrial complex (Eisenhower 1961).

After studying his cogent critique of archaeology and war, one would think that Hamilakis would strongly advocate complete archaeological disengagement from the military during war. That is not the case (Hamilakis 2009: 39).

Rather than resting his critique on exaggerating the positions of those that may oppose his views of a political-ethics assessment of archaeological praxis in the Iraq war, Hamilakis recognizes the merits and legitimacy of multiple visions of archaeology and war (Hamilakis 2009). His major challenges to the present professional ethical paradigm are both simple (but far from simplistic) and elegant. First, Hamilakis asserts that the relationship of archaeology to the military and other prosecutors of war should be an “examined relationship” (Hamilakis 2009: 51). For example, he acknowledges and welcomes the movement away from primacy of cultural property protection to the protection of people as central to an archaeologist’s duty (Hamilakis 2009: 51-52). In response to this ethical turn, he asks the question of how would the multitude of roles an archaeologist might be asked to fill ultimately square with this migration from the singular importance of the preservation and protection of the archaeological record to the protection of people. For Hamilakis, the profession should openly and honestly debate this question across the multitude of roles that an archaeologist may be called upon to perform in war (Hamilakis 2009: 46-51). Second, Hamilakis is critical of those archaeologists who appeared to ignore the political context in which their work would be performed (Hamilakis 2009: 45, 51-52). To Hamilakis, to ignore the political
context of archaeological praxis is to depoliticize war (Hamilakis 2009: 45). No good could come from this ostrich-like behavior.

To prove the importance of these two inquiries to the development of a robust professional ethic to guide archaeological praxis in war, Hamilakis considers specific roles actually filled by archaeologists in the Iraq war. One role that he found extremely problematic was the use of an archaeologist to assess and determine the site selection of targets in anticipation of an aerial bombardment (Hamilakis 2009: 45-47). He notes that archaeologists are most ethically comfortable in preserving and protecting the archaeological record, notwithstanding the ethical turn in archaeology from the centrality of the archaeological record to the protection and concerns of people (Hamilakis 2009: 45). He then asks a troubling and poignant question: how does an archaeologist even begin to make a target site selection when all material culture should be the concern of archaeologists (Hamilakis 2009: 45)? He posits a classical ethical dilemma that demands a response from the individual archaeologists that performed such activity and the archaeological profession.

The archaeologist has two choices. The first choice is to participate in the target selection, thereby saving and protecting cultural heritage and property. This fact, however, is not without great ethical cost and sacrifice in professional integrity. When an archaeologist helps make the choice of which targets should be protected and, therefore, should not be bombed, that archaeologist is undeniably part of the military structure that will ultimately choose which targets to bomb and destroy. That choice will result in the destruction of property, including cultural property that an archaeologist deems not worthy of protection (at least relative to other property that is more worthy of attention), and in the death of people living within the vicinity of the targets. For this archaeologist, who has voluntarily thrust himself in the decision-
making process of death and destruction, this is not a classic question of the choice between right and wrong. This is a question between two wrong choices – the making of an ethical dilemma.

The second choice is to refuse to participate in the target selection process. The archaeologist’s failure to participate in that process will most assuredly not prevent the aerial bombardment from taking place. The military will turn inward to its own internal resources in an attempt to identify cultural property and protect cultural heritage that the military determines is worthy of such protection. As discussed in chapter 5 of this thesis, the military has the legal obligation to do so subject to certain important exceptions. Although an archaeologist would have something very important to say about culture, heritage, artifacts, and the people in the potential kill zone, his choice not to participate in target selection would in all likelihood result in a significant discounting or outright dismissal by military planners of any general advice. Even the choice not to participate in the selection of target sites is fraught with ethical costs. Death and destruction within the laws of war and the rules of engagement are what militaries are trained to do. They will continue to serve the role of warfighters notwithstanding the refusal of archaeology to lend itself to armed conflicts. However, archaeology could offer much to minimize both death and destruction of cultural property. Again, the second choice not to participate in target selection is not a classic question of what is right and what is wrong; rather, it presents a choice between two wrong alternatives.

Hamilakis recognizes the ethical dilemma posed by an archaeologist’s participation in the selection of targets for an aerial bombardment (Hamilakis 2009: 45-46). He suggests that archaeologists who purposefully avail themselves of the role in target selection should not find legitimacy under the rubric of protecting the archaeological
record without a full political accounting of the consequences of their actions (Hamilakis 2009: 45 and 51). He denies any archaeologist the ability to cloak such practice under the rhythmic refrain that the archaeologist is just doing what archaeology has historically done, that is, the protection of the archaeological record, and thus such action is somehow above the political fray (Hamilakis 2009: 51). By focusing on the political influences and consequences of archaeological praxis and, therefore, the need for an archaeological ethical system to consider politics in its fullest form, Hamilakis has done a great service to individual archaeologists and their profession, notwithstanding the great discomfort caused by such questions.

Hamilakis also considers other roles that archaeologists played in the Iraq war. These roles include advisory roles to the military both inside and outside the theater of operations, the teaching of culture to military personnel, the survey of cultural property damage to inform the military of its duties under international law and the Hague Conventions, and the embedding of archaeologists into combat units (Hamilakis 2009: 45-52). As with the scenario concerning the archaeologist who serves as part of a target site selection team, Hamilakis observes that each association between archaeology and the military should be an examined relationship, eschewing engagement or disengagement per se (Hamilakis 2009: 55-57).

Although I strongly agree with much of Hamilakis’ political-ethical approach, his approach misses the mark. For example, he pays too little attention to the international mandate of the protection of cultural heritage and property by invading, occupying, and in-theater nation states (see chapter 5). My decade’s long experience studying the military and its legal duty to protect cultural property suggests that such duty is taken very seriously by many militaries, including the US, UK, Australia, France, among other nation states. As discussed in chapter 5 of this thesis, whether founded under
international law and/or the 1954 Hague Convention and its two protocols, militaries have duties to minimize destruction of cultural property and preservation of cultural heritage and, as an occupying force, to protect cultural property. To discharge those duties faithfully, the military must know what is and is not cultural property. This role, and the necessary decision that some but not all of the materials of human activity are worthy of protection may be troubling to Hamilakis. Recall that one of the major concerns he has with an archaeologist serving on a target site selection team is that the archaeological record should include all material not just that which archaeology might consider worthy of protection (Hamilakis 2009: 45, 51). Nonetheless, the law requires the military to undertake this effort (see chapter 5).

The archaeology profession could refuse to serve in the role as advisor to aid the military in discharging its legal duty under international law (Hamilakis 2009: 53-55), but that would simply shift the responsibility to governments and the military to make those decisions without the special expertise of archaeological input. Hamilakis may ultimately conclude that archaeology may reject this advisory role but his failure to carefully consider the legal context weakens what is otherwise a valiant critique of the shortcomings of present professional ethics paradigms as applied to archaeology in armed conflicts. Moreover, one cannot help but believe that Hamilakis’ exclusive focus on the War in Iraq and his observation that lack of direct UN sanction made the invasion by coalition forces unlawful may have served as a crutch in avoiding difficult ethical dilemmas. Would Hamilakis have reached the same conclusions through a similar process if he fixed his attention to the War in Afghanistan, for example, a UN and NATO sanctioned invasion and occupation? We do not know. Nonetheless, this thesis has mined many of the treasures developed by Hamilakis in offering his model of a political-ethic for archaeology and armed conflict.
Hamilakis is not alone in confronting the political ethics issues posed by archaeology and war. At the Sixth World Archaeological Congress (“WAC 6”) held in Dublin, Ireland, on June 29 – July 4, 2008, multiple academic sessions on archaeology and conflict were held (Stone 2011: 5-6). These sessions included:

1. “Archaeologists, War and Conflict: Ethics. Politics, Responsibility.” This session generally advocated an approach that would result in a boycott or complete disengagement by archaeology of the military (Schipper 2010).

2. “Working with the Military: Not Evil, Just Necessary.” This session generally suggested ways in which archaeology could constructively engage with the military (Schipper 2010; Williams 2008).

3. “Archaeology in the Context of War.” This session focused on the legal issues associated with archaeology and war, including the protection of cultural property (Schipper 2010).

WAC 6 spawned a WAC Intercongress (WAC IC) in Vienna devoted to the question of archaeology and conflict (Stone 2011: 6; Schipper 2010). Over 80 papers were presented at the WAC IC in Vienna and published in the Forum Archaeologiae (Stone 2011: 6; WAC IC 2010). In addition to the launching of the WAC IC, WAC 6 also resulted in the adoption by over 100 delegates of the following resolution (Hamilakis 2009: 57; Albarella 2009: 105-106):

The 6th World Archaeological Congress expresses its strong opposition to any unilateral and unprovoked, covert or overt military action (including air strikes) against Iran by the US government, or by any other government. Such action . . . will seriously endanger the cultural heritage.

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31 Over 1,800 archaeologists from over 75 countries attended the Conference in Dublin.
32 I was a participant in this academic session and presented a paper on archaeological praxis, ethics, and war.
33 The resolution was proposed by Yannis Hamilakis and seconded by Umberto Albarella. (Albarella 2009: 105).
of Iran and of the Middle East in general. Any difference with Iran (as with any other country) should be resolved through peaceful and diplomatic means.

The Congress also urges its members, all archaeologists and heritage professionals to resist any attempts by the military and governments to be co-opted in any planned military operation, for example by providing advice and expertise to the military on archaeological and cultural heritage matters. Such advice would provide cultural credibility and respectability to the military action. Archaeologists should continue emphasising instead the detrimental consequences of such actions for the people and the heritage of the area, for the past and present alike. A universal refusal by archaeologists and others would send the message that such a plan is hugely unpopular amongst cultural professionals as well as the wider public (WAC Delegate Resolution 2008).

The Executive of the WAC did not adopt the resolution. Rather, the Executive issued the following press release, which reflected a different tone and position (including a rejection of the second paragraph in toto (Albarella 2009: 106)):

**CULTURAL HERITAGE IN IRAN UNDER THREAT**

The World Archaeological Congress expresses its strong opposition to aggressive military action (including air strikes) against Iran by the US government, or by any other government.

Such action could have catastrophic consequences for millions of people and will seriously endanger the cultural heritage of Iran and of the Middle East in general,” said Professor Claire Smith, President of the World Archaeological Congress.

The Iraq war was a disaster for cultural heritage in this region. The world cannot afford to replicate mistakes such as this.

The World Archaeological Congress strongly opposed the war in Iraq, and we strongly oppose any war in Iran,” said Professor Smith.

“War destroys both lives and cultural heritage. Any differences with Iran (as with any other country) should be resolved through peaceful and diplomatic means.

“There was a lot of debate around the issue of whether archaeologists should provide advice and expertise to the military on archaeological and cultural heritage matters,” said Professor Smith.

“There is a strong view by some members that a refusal by archaeologists and others to work with the military would send a message that war with Iran is hugely unpopular amongst cultural heritage
professionals,” said Professor Smith. “The view here is that providing advice and expertise to the military during the war planning against Iran would offer cultural credibility and respectability to the military action.”

“Other members take the opposite stance, that it is their responsibility as cultural heritage specialists to attempt to mitigate the damage done to cultural heritage wherever there is conflict as this cultural heritage could be an essential building block in the peace process,” said Professor Smith.

A resolution suggesting that no archaeologists or cultural heritage specialists assist the military in planning to protect the cultural heritage was passed by the Plenary session of the WAC-6 Congress for consideration by the World Archaeological Congress Assembly, Council and Executive but was not approved as a formal statement of the position of the organisation as a whole.

“This debate highlights how strongly people feel about any impeding military engagement with Iran,” said Professor Smith.

Since 2003 the World Archaeological Congress has had a Task Force on Archaeologists and War with an explicit remit to investigate the ethics implications of working with the military.

In order to address these issues from a global perspective the World Archaeological Congress will be holding an Inter-Congress with the theme “Archaeologists, Ethics and Armed Conflict.” This is likely to be held in the Hague in 2010 (WAC-6 Media Release 2008).

Hamilakis (2009) and Albarella (2009) have addressed the resolution and press release in the context of the political ethical issues associated with archaeological involvement in the war in Iraq. Hamilakis was troubled that the resolution was not published on the WAC website as of 2009 (Hamilakis 2009: 59). That is still the case as of the submission of this thesis. Albarella recognized the confusion created by the fact that the WAC assembly passed the resolution in toto, whereas, the Executive issued the press release without the second paragraph, creating ambiguity with regard to any official WAC position (Albarella 2009: 106).

The concern among many of us in attendance at WAC 6 was the possibility of an aerial bombardment or invasion of Iran by the US military and the harm to people and cultural heritage that action would cause. The dissection of the WAC resolution and the WAC
Press Release provides interesting context for the development of the trust-based model rooted in virtue-ethics that is constructed later in this thesis.

Initially, turning to the resolution, two preconditions appear to have to be met before the boycott is triggered. First, any military action against Iran must be unilateral. This appeared to be based on the mistaken view held by many archaeologists that the US unilaterally attacked Iraq. That was not the case. The US was joined by the UK and over 45 countries in its invasion and occupation of Iraq. That is far from a unilateral attack. Any attempt to re-write the resolution by suggesting that “unilateral” means “not UN sanctioned” would be unsupportable by the very language used in the resolution, although this is what many had in mind at the time. However, the use of the term “unilateral” may refer to a “one-sided” attack as opposed to a bi-lateral or multi-lateral attack. This interpretation of the precondition would add little to the resolution, however, in light of the second precondition resting on an unprovoked attack. Second, any military action against Iran must be unprovoked. This precondition is also ambiguous. Does the possibility of the development or procurement of nuclear weapons constitute provocation? How about the outrageous statements concerning the annihilation of a UN nation state member routinely made by Iran’s President coupled with a nuclear capability? Whether this would constitute a provocation is unclear at best. Thus, the ambiguity in the triggering of the resolution harms its efficacy. This is amplified when one considers the second paragraph. This paragraph was clearly the more controversial from the WAC Executive’s perspective. But a careful reading of the paragraph appears to limit its disengagement directive to a unilateral and unprovoked attack on Iran, re-introducing the ambiguities mentioned above.

Importantly, the resolution seeks to affirm that the primary concern of archaeology should be the preservation of the people and cultural heritage of the affected areas in
that order of priority. Although to non-archaeologists, the concern for people as primary to property that is embodied in the resolution is generally viewed without controversy; it does not always appear to non-archaeologists to be the case among archaeologists, however.

6.4 De Facto Disengagement

Some commentators have argued for a complete or near-complete disengagement of archaeology from the military, at least during times of war (Albarella 2009). Mourad (2007) has written an ambitious piece on war, ethics, and archaeology. She, too, focuses largely on the ethical issues generated by the War in Iraq, although undertaking a fascinating critique of history and empire in the Fertile Crescent, drawing on the strongly held view that the Iraq War was unlawful *ab initio* to bolster her positions. Again, one is left with the question of whether the critique is one of ethics and war in general, whether the Iraqi War has a special place in the lexicon of archaeological ethics, or whether the Iraqi War is perceived as a form of “low-hanging” intellectual fruit ripe for the ethical picking. However, this criticism should not distract one from the many salient points Mourad scores in her article (Mourad 2007).

Mourad is most troubled by the relationship between archaeology and the military during the Iraq War (Mourad 2007: 152). She chronicles the many roles archaeologists played in that war, including reporting the destruction of sites, looting, and the illicit sales of antiquities (Hamilakis 2003a: 105), advising the DoD (US) and the MoD (UK) on site coordinates, and the embedding of archaeologists in military units (Mourad 2007: 152). However, it is the concern that archaeological involvement in war – particularly the Iraqi War – may lead to the loss of civilian status under international laws, treaties, and protocols that is the focus of her critique (Mourad 2007: 152).
The central thrust of her ethical position is to reaffirm the civilian status of archaeologists in wartime. Our association with armies may change our status from civilians to combatants under the Geneva Conventions of 1949 and the 1977 Protocols (Mourad 2007: 152-153). That is a bad thing. She asserts that such associations injure our professional credibility (Mourad 2007: 152). Thus, she sees as a primary thrust of an archaeological ethic a goal to safeguard our status as civilians by eschewing relationships with agents of war, that is, the military in general, the warfighter specifically (Mourad 2007: 153). Archaeologists become collaborators with the military and, when we collaborate with the structures of war, we place our civilian status at risk (Mourad 2007: 164). In fact, an archaeologist that collaborates with the military may find herself classified as a combatant under the Geneva Conventions of 1949 Protocol I (1977: Art. 44, Sec. 3). Combatants generally must wear uniforms, follow a chain of command, overtly carry arms, and be associated with a military force affiliated with a nation state. However, a nonuniformed person may also be classified as a combatant if classified as a fighter and if carrying arms in preparation for or during an attack (Geneva Conventions of 1949 Protocol I (1977: Art. 44, Sec. 3).

It is important to Mourad that archaeologists retain their status as civilian intellectuals and not as combatants (Mourad 2007: 165). She insists that our role as civilian “informs our relationship with stewardship” (Mourad 2007: 166). She writes further:

Instead of regarding ourselves as stewards of material culture, and their physical integrity, we should regard ourselves as stewards of the informational content of material culture. Whenever we ask ourselves for whom are we preserving the past, we should answer for civilians, local communities and the public, and not for armies. We should safeguard the history of human experience, promoting and celebrating human diversity in existence, instead of providing historical advice for armies. We should question the fragrance of “democracy,” which trespasses universal human rights and which evaporates to leave us with the harsh reality of at least 100,000 dead in Iraq, with torture in Abu Ghraib, with deaths in Afghanistan. It is time to redefine ourselves as civilians and realize that
when activities in Iraq or Afghanistan are advertised as benevolent, humanity is the victim (Mourad 2007: 166).

There are a number of deficiencies with Mourad’s approach to a professional ethic that guides action in any conflict as opposed to the specific conflict that to her is top of mind, that is, the Iraq War. Initially, her view of what constitutes a combatant and what constitutes a civilian is ethnocentric, based exclusively on Western international law and conventions. Her reliance on the Geneva Conventions to classify the difference between combatant status and civilian status presupposes that the constituent parties to a conflict are signatories of the Geneva Conventions or, if not actual signatories, would abide by the Conventions. That was not the case in Iraq or in Afghanistan. For example, after the sudden fall of Saddam Hussein in Iraq, the coalition forces were fighting an insurgency drawing warriors from the former Baathist party, local populations, militant Muslims from a number of nations, and members of al Qaeda. This enemy did not recognize the finer legal distinction between combatant and civilian as reflected in the Geneva Conventions. In fact, numerous fatawa34 were issued by so-called militant religious authorities that converted the “civilian” status of every US taxpayer to that of combatant in the Iraqi and Afghanistan Wars. In Afghanistan, under the tribal code known as the Pashtunwalli, the Taliban rejected the distinction found in the Geneva Conventions between combatant and civilian. Many Taliban leaders concluded that unless given safe status by a recognized Taliban leader, any Westerner could be characterized as a combatant by military commanders on the battlefield. Thus, a resort to the customs and traditions embodied in the Geneva Conventions to justify a meaningful distinction between combatant and civilian status may simply not be recognized in present or future wars.

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34 A fatawa (plural of fatwa) is a religious verdict issued by an Islamic religious authority generally in response to questions asked by Muslims.
Furthermore, as discussed previously in chapters 3 and 4, this thesis rejects the notion of stewardship as an appropriate model for the relationship of an archaeologist to the many constituents involved in the protection of cultural property. Stewardship, either overtly or covertly, presupposes superiority in position of the archaeologist vis a vis local, particularly non-Western populations. This concept actually propagates the very concern about hegemony, colonialism, and neo-imperialism voiced so eloquently by Mourad.

In sum, Mourad’s justifications for her position of de facto disengagement are problematic and internally inconsistent with her purpose. They are problematic because her notion of civilian status would work only in a conflict between signatories to the Geneva Conventions; whereas, an ethical system should be scalable and generally uniform in application. They are also problematic because the concept of stewardship, even rooted to the principle of protecting people over record, conjures up images of the evils of Western archaeology that she seeks to slay.

Albarella (2009) has also staked out a position of de facto disengagement based on a different but related series of rationales from that offered by Mourad. He begins to build his political ethical critique by exploring the relationship between archaeology and the military, an association he labels “collaboration,” a telling choice of words (Albarella 2009: 106). Albarella is most interested in archaeological collaboration with a military of a country at war (Albarella 2009: 106).

Forms of collaboration between archaeologists and the military have always existed and, though they have generally been accompanied by various degrees of controversy, none is more delicate than the cooperation of archaeologist with the military of the country involved in a war. This is particularly so when that country is responsible for the beginning of the hostilities (Albarella 2009: 106).
Albarella turns to the role scientists played in Nazi Germany. He notes the “notoriously close relationship” between some archaeologists and the Nazi party (Albarella 2009: 106; see also Arnold and Hassmann 1995). He poses a discomforting question, amplified but not necessarily transformed by this most uncomfortable relationship, of whether such archaeologists should be viewed as “scientists working in difficult circumstances or Nazi collaborators” (Albarella 2009: 106).

The examples that Albarella uses to explore the ethical quagmire are common ones: forensic investigation and heritage conservation jobs in Iraq after the invasion. As previously discussed, forensic archaeologists were part of crime scene teams, investigating allegations of mass murder and genocide. Heritage conservation experts developed protection and management protocols for the protection of artifacts, finds, sites, and museums. Both archaeological roles may be fairly characterized as set loosely within military structures (Albarella 2009: 107). Albarella adopts the characterization used by Teijgeler (2006) of the “embedded” archaeological professional (Albarella 2009: 107). As Albarella notes, a professional embedded in a military structure loses some level of independence (Albarella 2009: 107). However, that is true, at least to some degree, of archaeologists associated with most organizations, businesses (Ronayne 2007; 2008), and institutions (including academic institutions), and may fairly include those archaeologists that seek a dig permit in some countries.

Albarella then considers the role of forensic archaeologists and heritage conservation managers outside a political context (Albarella 2009: 107). He acknowledges that archaeologists that undertake such a role, but for the political context, engage in commendable action (Albarella 2009: 107). Of course, archaeology does not have the luxury of operating outside the political sphere (Albarella 2009: 107). Within the
political context, Albarella asserts that archaeological involvement with invading armies is highly problematic and should be avoided (Albarella 2009: 107).\footnote{Albarella does not reject an archaeological role in war zones; rather, he strongly questions and then rejects an archaeological role in association with the military (Albarella 2009: 107).}

He begins his defense of de facto disengagement by observing that political decisions are all rooted in the “stability of a [politician’s] positions” with the ultimate prize being “re-election” (Albarella 2009: 108). Assuming this premise, archaeologists have the ability and obligation “to distance themselves from those who are instrumental in generating [conflict],” that is, the politician (Albarella 2009: 108; see also Hamilakis 2003a: 107). Thus, archaeologists should refuse to collaborate with military institutions in conflict to “send a message” (Albarella 2009: 108). Albarella then concludes his defense of de facto disengagement with a provocative observation. He suggests that archaeology’s willingness to engage with the military during armed conflict is a “measure of our level of sympathy with the victims,” (Albarella 2009: 112) that is, the local populations. It would be fair to say, that according to Albarella, the more those populations are like “us,” the less likely that archaeologists would seek engagement with the invading and occupying military.

Malin-Boyce and Trimble (2009) fashion a spirited response to Albarella’s position of disengagement. They disagree with Albarella’s disengagement ethic (what the authors call his “ideological position” (Malin-Boyce and Trimble 2009: 115)) and assert that archaeologists have carefully delineated and demanding roles to play in war. In fact, certain IOs contemplate archaeological involvement.

Organizations including UNESCO, ICOM, ICRC, AIA, and ANCBS have formalized systems and symbols (such as the Blue Shield) to indicate sites with basic and enhanced protection status as provided within the Second Protocol. The US military has implemented training on cultural property protection, and service personnel and contractors are advised to observe laws on the protection of historical and cultural properties in Iraq and Afghanistan. Archaeologists, historians and
anthropologists provide the guidance that assures the military has training tools that effectively prepare soldiers and civilians to observe those laws (Malin-Boyce and Trimble 2009: 115).

Law, like politics, is an essential part of context. Absent archaeological and cultural expertise in the area of conflict, the military would have little guidance in preparing soldiers and civilian contractors to preserve the life, culture, and history of an area of conflict. And it is the invading and occupying military force upon which the primary role of protection of cultural heritage and property is imposed by international law and convention. As intellectuals and experts, archaeologists can inform and aid military personnel in the latter’s internationally mandated legal duty to protect cultural heritage and property as discussed in chapter 5 of the thesis (Malin-Boyce and Trimble 2009: 115-116). To fail to perform that role, according to Malin-Boyce and Trimble, would be to turn “our collective professional back on the people or cultural heritage at risk” (Malin-Boyce and Trimble 2009: 115).

Albarella (2009) responds to Malin-Boyce and Trimble (2009), stating that he generally agrees with their observations that people and cultural property should be protected in a war zone (Albarella 2009: 117). However, he would impose that obligation on “independent international organizations,” not on the “offending countries” (Albarella 2009: 117). That, however, is not the law. The law imposes such duties on governments and military personnel involved in the conflict (see generally chapter 5). Military personnel can be court marshaled and convicted of offenses involving the appropriation or destruction of cultural property. To be sure, law is not the measure of ethics, as this thesis has already asserted. However, even acts of civil disobedience require that one acknowledge the unjust law in question and then overtly and notoriously violate it. Here, Albarella does not suggest that archaeologists engage in an act of civil disobedience. He also does not appear to be aware of the legal mandate
directed at warring armies and not independent IOs. To hold military personnel criminally liable for certain specific acts in violation of the lives of people and cultural property and, simultaneously deny such personnel the specialized cultural and archaeological information to make informed decisions seems, well, unjust.

Both Mourad and Albarella have contributed (and continue to do so) to the political ethical debate of the proper role of archaeology in armed conflict. Their de facto disengagement ethic falls short, at least as it would apply to cultural protection and management, largely because it fails to square with international law and convention mandates imposed directly on military personnel in conflict zones. Their critiques, however, do have much to say about other roles played by archaeologists in armed conflict, especially in target selection and HTTs, both of which thrust the archaeologist into military structure and make them, either directly or indirectly, part of the “kill chain.”

Mourad builds a strong case for the need of professional skepticism. This is especially the case where archaeologists play historical roles as agents of conquest and colonialism. She convincingly reminds us – and we do need reminding – that you cannot divorce the present from the past. As a profession, we must engage in a collective emphatic shift. We must consider the “other,” no matter how different the “other” may be.

Albarella also advances a related criticism. The fundamental kernel of his thesis is that “our preparedness to engage with the militaries of warring countries is inversely proportional to the disgust we feel for their actions” (Albarella 2009: 117). At one level, this is an empirical claim; Albarella should be put to the test to prove it. On a more subtle level, it is an intuitively powerful proposition – one worthy of our utmost attention as we continue this important debate.
6.5 Controversy of Embedded Social Scientists

In both the Iraq War and Afghanistan War, the military has employed HTTs as part of its HTS program. The HTS is one of the more controversial of the military’s counterinsurgency programs as delineated in the US Army’s Counterinsurgency Field Manual (FM 3-24; Suchard 2011: 172-173). The HTS program was created as both a near and long term solution to the DoD’s – more specifically the Army’s – lack of an infrastructure that assists planners and actors in understanding the 21st century American opposition, often found among civilians in civilian clothing and mounting operations from civilian locations. Social scientists, including archaeologists and anthropologists, are embedded in tactical military units to assist with operations (Emberling 2008: 448).

As the HTS concept has grown, *culture* has become a buzzword of sorts in the military, especially among junior officers and senior enlisted men. The past appointment of General David Petraeus to command of the Central Command or CENTCOM, with jurisdiction over the conflicts in Afghanistan and Iraq, and as Director of the Central Intelligence Agency, has also launched the importance of cultural awareness as an integral part of the US military’s counterinsurgency missions. General Petraeus’s appointment to the Director of the CIA has solidified cultural importance to conflict preparedness and intelligence gathering.36

Outside of the military sphere, the academic world heatedly debates the nature and ethical dilemmas posed by the use of HTS in its many forms. While the published goals of HTS are admirable, difficult ethical issues arise about the presence of archaeologists and other scientists on the battlefield. Often times, these professionals dress like warfighters, accompany warfighters on missions, and may be armed. In fact, it is often

36 Petraeus resigned his CIA position in 2012.
near impossible to identify and separate the cultural expert from the warfighters in theaters of operation. Although they may serve in support roles, US government officials have also stated publicly that cultural experts may feed the “kill chain,” a use that thrusts the cultural expert into the role of a warfighter himself.

HTS is a controversial program. Clear lines of thought have been drawn. On one side of the debate, one group of social scientists (McFate, Jackson, Suchard) assert that social science support for the HTS program is consistent with ethical constraints. To its credit, this group generally eschews the convenient and self-serving answer that social scientists should be involved because the military would engage in that type of system anyway and without the expertise that the social scientist can bring to the task, thus compounding harm and damage. Rather, this group confronts the ethical challenge head on and concludes that engaged anthropology (and archaeology) does not render such activity unethical per se.

On the other side of the debate, groups, including the AAA, have opposed the use of anthropologists and, by extension, any social scientists in a war zone. It is its opinion that the social scientist forfeits the distinction of scientist when he or she inserts herself in the military chain of command, a position not only echoing the criticism launched by Boas during the First World War, but also actually expanding that criticism. Recall that Boas did not advocate disengagement or embedding in military units; rather, Boas rejected the role of scientist as cover for clandestine and intelligence roles. Thus, being part of a military chain of command cannot square with the ethical requirements of being an anthropologist and, by extension, an archaeologist.

First developed in 2005, the HTS program was implemented in 2007. The HTS “was designed to meet the military’s requirements for socio-cultural knowledge across the spectrum of operations the US may encounter in today’s world” and “seeks to integrate
and apply socio-cultural knowledge of the indigenous civilian population to military operations and support the commander’s objectives” (HTS official website). The present HTS mission is a result of over ten years of irregular warfare, counterinsurgencies, and stability operations (Bartholf 2011: 4). Since the attacks by al Qaida directed at the US on September 11, 2001, the DoD, US Army, and US Marine Corps have recognized the immediate need by field commanders for SMEs, sociocultural information collection and management, and training for military personnel (Bartholf 2011: 4). The evolution from a more conventional nation-state war paradigm to an asymmetrical model where understanding and management of the human terrain (“HT”) becomes essential to all phases of military operations is clearly reflected in various government studies and US Army field manuals over the relevant time period (Bartholf 2011: 4-6).

The HT expert provides tactical and operational support through direct engagement with the local populations (Chill 2011: 11). Other components contained in a robust HT program include some form of reach-back capability, data collection, and information and analysis sharing capability (Chill 2011: 11).

Theoretically, the HT need is effectuated through the HTS program. There are three pillars to the HTS program. The first pillar is the HTTs and HTATs (Diana and Roscoe 2011: 21-22). The second pillar is the Reachback Research Centers (“RRC”s) (Diana and Roscoe 2011: 21-22). The third pillar is the Social Science Research and Analysis (“SSRA”) (Diana and Roscoe 2011: 21-22). Two other components of the HTS are the Theater Coordination Element (“TCE”) and the Theater Support Office (“TSO”) (Diana and Roscoe 2011: 21-23). These components are presently located in Kabul, Afghanistan, and serve as the link between the HTS headquarters in the US and the HTTs/HTATs in the field (Diana and Roscoe 2011: 21-22). The TCE provides HT
research and data to military leadership and theater-wide support for the thirty other HTS teams in Afghanistan (Diana and Roscoe 2011: 21). It operates as a fusion center. The TSO provides administrative functions and logistic support to the HTS projects (Diana and Roscoe 2011: 21)

The HTS mission is to recruit, train, deploy, and support an embedded, operationally focused sociocultural capability; conduct operationally relevant, sociocultural research and analysis; and develop and maintain a sociocultural knowledge base (Hamilton 2011: 1; Bartholf 2011: 10). The HTS’ purpose is to support operational decision-making, enhance operational effectiveness, and preserve and share sociocultural institutional knowledge (Hamilton 2011: 1; Bartholf 2011: 11). To effectuate this purpose, the HTS deploys and operates in direct support of deployed commanders and staffs (Hamilton 2011: 1). HTS tasks include conducting operationally relevant sociocultural research and preserving and sharing sociocultural institutional knowledge (Hamilton 2011: 1).

HTS is a US Army capability that is designed to support more than one military branch of service (Chill 2011: 12). The HTS generally deploys in a war zone through HTTs and HTATs (Hamilton 2011: 1). The first HTT deployed in Iraq in 2007. The US officially left Iraq in December 2011. Military operations are still ongoing in Afghanistan, where the US Army acknowledges 23 HTTs, 7 HTATs, and 1TCE operating (HTS Website 2013).

In 2010, TRADOC transitioned the HTS from a contractor-based “proof of concept” program to an “enduring capability” program (King et al. 2011: 16) populated by military personnel, US Department of the Army (“DA”) civilian personnel, and contractors capable of support in all phases of military operations, including Phase 0 (pre-conflict) missions (Hamilton 2011: 1; Chill 2011: 13; King et al. 2011: 16; see also Figure 6.1 for Military Operations Phases). HTTs and HTATs have also included
reserve duty and retired military personnel among civilian team members (Chill 2011: 13).

The military perceives a distinct advantage by using DA civilian employees, including social scientists, in its HTTs. In fact, although most closely identified with the discipline of anthropology, the HTS program draws from all social sciences, including archaeology (King et al. 2011: 16). The civilians, although embedded in military units serving alongside military personnel, are not required to wear a military uniform with clear markings when they interact with the indigenous populations, thus building a rapport without being seen as a member of the occupying military, gather information that the military may miss or not be able to collect, apply unique skills based on social science training and experience, and, if having prior military service, efficiently integrate into the military staff structure (Chill 2011: 13). Although these observations provide strong evidence that the HTS program appears to be a success, the use of civilian social scientists embedded but not necessarily identifiable with military units in an effort to collect sociocultural intelligence to be used in all phases of military operations falls victim to the criticisms launched by Boas during the First World War. This practice is unsettling and problematic.
The HTS is here to stay as it reflects the clear development in military doctrine that emphasizes sociocultural competence (Chill 2011: 12) both to support all phases of military operations (Hamilton 2011: 3; Bartholf 2011: 9; Doherty and Calvin 2011: 24) and to reduce the need for, or scope of, future military intervention (Bartholf 2011: 5). The field commanders in Iraq and Afghanistan repeatedly request operational support from the HTS and use sociocultural information and analysis across the spectrum of military phases (Doherty and Calvin 2011: 24). The HTS program is perceived by the government in general, and the military in particular, as a far from perfect but very successful program that remains in need of constant modifications and adjustments as more experience is developed and processed. The HTS program is also presently coordinating with the militaries of Canada, the UK, and Australia/New Zealand to enhance the country’s own sociocultural capabilities (King et al. 2011: 19).
HTS candidates presently undertake a rigorous training cycle. They begin as contractors and upon graduation become DA civilian employees (King et al. 2011: 16, 18). Among various training modules, an HTS candidate receives ten hours of ethics training and an additional twelve hours of ethics if that candidate is a social scientist (King et al. 2011: 18). All candidates are exposed to the historical background and role of IRBs (King et al. 2011: 17) and the concerns of human subject research. Upon graduation, additional advanced training is received in military environment, culture and language, combat lifesaving, driver training, weapons familiarization, and working in urban and rural environments (King et al. 2011: 18).

Presently, there is US Army Human Research Protections Office (“AHRPO”) oversight of any Army-supported or conducted human subject research (King et al. 2011: 18). Many HTS activities that involve human subject research need not be approved by an IRB. HTS activities are separated into operational support activities and human subject research activities (King et al. 2011: 18). Operational support activities, what we may most closely associate with HTTs wherein social scientists serve in an embedded capacity, do not undergo an IRB process (King et al. 2011: 18). In contrast, some but not all human subject research activities may be subject to IRB approval (King et al. 2011: 18).

The AAA has undertaken the most thoughtful and soul-searching examination of the HTS. In 2007, it issued the following preliminary conclusions as it continued to undertake further study of HTS.

[T]he Executive Board of the American Anthropological Association concludes (i) that the HTS program creates conditions which are likely to place anthropologists in positions in which their work will be in violation of the AAA Code of Ethics and (ii) that its use of anthropologists poses a danger to both other anthropologists and persons other anthropologists study. Thus the Executive Board expresses its disapproval of the HTS program.
In the context of a war that is widely recognized as a denial of human rights and based on faulty intelligence and undemocratic principles, the Executive Board sees the HTS project as a problematic application of anthropological expertise, most specifically on ethical grounds. We have grave concerns about the involvement of anthropological knowledge and skill in the HTS project. The Executive Board views the HTS project as an unacceptable application of anthropological expertise.

The Executive Board affirms that anthropology can and in fact is obliged to help improve U.S. government policies through the widest possible circulation of anthropological understanding in the public sphere, so as to contribute to a transparent and informed development and implementation of U.S. policy by robustly democratic processes of fact-finding, debate, dialogue, and deliberation. It is in this way, the Executive Board affirms, that anthropology can legitimately and effectively help guide U.S. policy to serve the humane causes of global peace and social justice (AAA Executive Board Statement 2007).

The AAA Statement on the HTS does not appear to be a *per se* prohibition against the use of anthropologists on HTTs (Suchard 2011: 173). Specifically, the AAA identifies five ethical concerns posed by an anthropologist’s role on an HTT (AAA Executive Board Statement 2007).

First, HTS anthropologists will have difficulty disclosing their role as anthropologists to the local population because they are dressed no differently than the soldiers the anthropologists accompany when they interact with the local population. This inability to differentiate themselves places a significant constraint on their ability to fulfill their ethical responsibility as anthropologists to disclose who they are and what they are doing (Vine 2009). The confusion and lack of disclosure of identities is the foundation for the AAA’s four other grievances.

Second, HTS anthropologists work in a war zone under conditions that make it difficult for those with whom they communicate to give “informed consent,” as required by the AAA Code of Ethics, without coercion, or for this consent to be taken at face value or freely refused. The presence of soldiers with guns is likely to intimidate the local people
and may change behavioral patterns among the population. Opponents of HTS make historical comparisons of today’s anthropology in the military to the past mistakes that provided the reasoning for much of the AAA’s Code of Ethics in the first instance.

Even if Human Terrain Teams ask for some form of permission to speak with locals, how could the requests be anything but coercive when anthropologists are armed or accompanying armed troops? Indeed, the work begins to resemble the tragic case of anthropologists in World War II who worked in, and assisted in the operation of, Japanese-American internment camps, where prisoners had no say in being studied (Vine 2009).

Third, the AAA Board is concerned that an HTS anthropologist must interact with the local population in ways that go further than mere research for understanding.

Fourth, an HTS anthropologist provides information and counsel to US military field commanders that may conflict with his obligations to those he study. HTS members have the task of negotiating relations among a number of groups, including both local populations and the US military units that employ them and in which they are embedded. As a result, HTS anthropologists may have responsibilities to their US military units in war zones that conflict with their obligations to do no harm to those they study (Vine 2009). The requirement that an HTS member provide information and counsel to military field commanders poses a risk that information provided by HTS anthropologists could influence tactical or strategic operations that identify specific groups as targets of US military operations.

An anthropologist’s work as an HTS member may require the scientist to engage in negotiations or data gathering that is covert or secretive, tripping the concerns voiced by Boas almost a century ago. Anthropologists are constantly gathering data that is taken from them and entered in the HT-Map Toolkit database system. At this point, the anthropologist who gathered the data likely does not know the extent to which the data
he gathered will be used. However, the US military states that HTT’s do not proactively seek or collect actionable intelligence from the local civilian population (HTS FAQ 2013).

Furthermore, the collection of data by anthropologists is reminiscent of the Phoenix Program, operating through the Civil Operations and Revolutionary Development Support (“CORDS”), from the Vietnam War and the WWII-era studies on Japanese-Americans held in American internment camps. The HTS website even recognizes the “shadow” that these programs cast on the role of the wartime anthropologist (HTS FAQ 2013). The Phoenix/CORDS program, among other methods, used anthropologists to identify individuals that were likely to be sympathetic to the communist Viet-Cong opposition. The Phoenix/CORDS Program resulted in the detention or death of 81,740 Viet-Cong between 1968 and 1972, with 26,369 of this neutralized group killed (Andrade and Wilbanks 2006: 20).

While there is much controversy among academics about the ethical issues associated with Phoenix/CORDS and even whether or not it was actually successful, the military community seems to think the program was a success in terms of a counterinsurgency strategy (Andrade and Wilbanks 2006: 22; see also Kipp et al. 2006: 10). “Where CORDS was effectively implemented, enemy activity declined sharply” (Andrade and Wilbanks 2006: 22). Proponents cite that a key factor in CORDS success depended on an effective collection and reporting infrastructure to catalog data from ethnographic, economic and cultural sources (Kipp et al. 2006: 11). Insiders at HTS headquarters within Fort Leavenworth, Kansas, USA, have even called HTS a “CORDS for the 21st Century” (Kipp et al. 2006: 11).
Interestingly, anthropologist David Vine proposes that while HTS members may be assisting in a better battlefield understanding of the local culture, the larger effect is that HTS members prolong war.

It represents an effort to forestall bringing troops home — on the assumption that if only we could understand the culture of the people in Iraq and Afghanistan, we could fight smarter and be victorious. This at a time when a growing consensus here and abroad understands that there can be no military solution, that only diplomatic, political, and economic efforts will end the wars. And that is precisely where anthropologists and other social scientists could be most helpful. Not on the battlefield, not assisting in combat operations, but in offering their skills in understanding other peoples and the social, political, economic, and historical contexts in which those peoples live in an effort to aid the search for diplomatic solutions (Vine 2009).

Similarly, the AAA does encourage its anthropologists “to help improve US government policies through the widest possible circulation of anthropological understanding in the public sphere” (AAA Executive Board Statement 2007).

Unfortunately, soldiers are the local level diplomat in the war torn regions of Iraq and Afghanistan. Policy level cultural awareness is an absolute necessity, but the tool that carries out the policy must just as well understand how to carry out that policy directive. This is not to say that the soldier must know why he is carrying out a course of action, but just like the combat training he receives, the soldier must also receive the diplomatic training that provides him with the cultural awareness necessary to complete an objective (HTS FAQ 2013). For example, soldiers in Iraq operating checkpoints on roads when the US first invaded in 2003 used the classic western stop command – arm straight, palm out – to signal approaching vehicles to stop. Unfortunately, this gesture in Iraqi culture means “welcome.”

Finally, the AAA is concerned with the general safety and public perception of anthropologists around the world because of the relationship between US military
operations and anthropologists. Given the existing range of globally dispersed understandings of US militarism, anti-American sentiment may create serious difficulties for, including grave risks to the personal safety of, many non-HTS anthropologists and the people they study.

In December 2008, the Executive Board of the AAA asked the Commission on the Engagement of Anthropology with the U.S. Security and Intelligence Communities (“CEAUSSIC”) to thoroughly review the HTS program, so that the AAA might then formulate an official position on members’ participation in HTS activities. On October 14, 2009, CEAUSSIC issued its 72-page final report on the US Army’s HTS “proof of concept” program (“CEAUSSIC Final Report”). The CEAUSSIC Final Report was submitted to the executive board of the AAA. In the CEAUSSIC Final Report, the CEAUSSIC reached five primary findings regarding the HTS program.

First, the CEAUSSIC Final Report acknowledged that the HTS is becoming a “greater fixture within the US military” (CEAUSSIC Final Report 2009: 3). Thus, the movement of the HTS program into a more permanent position as to the military’s mission in Iraq and Afghanistan amplifies and accelerates the need to address the important issue of the treatment of human subjects (CEAUSSIC Final Report 2009: 3).

Second, the CEAUSSIC Final Report discovered that the HTS program’s mission appears to be ambiguous. The CEAUSSIC Final Report recognizes multi-missions that have been tasked to the HTS program, including research, managing data, serving as a source of intelligence, and performing a tactical function in counterinsurgencies (CEAUSSIC Final Report 2009: 3). Mission confusion poses a real concern to social scientists dedicated to discharging their duties in accordance with any applicable professional ethics system.
Third, the CEAUSSIC Final Report found a real risk that HTS research and data collection will be used by the military as intelligence for tactical and strategic operations (CEAUSSIC Final Report 2009: 3). This finding was reached notwithstanding the fact that the military has taken the position that the HTS program is not an intelligence asset. Notwithstanding the protests of the US military, HTS is being used as an intelligence asset to support military operations across the full spectrum of operational phases (Hamilton 2011; Bartholf 2011; Chill 2011).

Fourth, the CEAUSSIC Final Report found that because the HTT/HTAT operate in a war zone for the purpose of collecting sensitive sociocultural data, and the belief that such data may be used to support combat operations, the “program places researchers and their counterparts in the field in harm’s way” (CEAUSSIC Final Report 2009: 3).

Finally, the CEAUSSIC Final Report concluded the very characteristics of the HTS program are inconsistent with the “legitimate professional exercise of anthropology” (CEAUSSIC Final Report 2009: 3). Specifically, the CEAUSSIC Final Report found that the HTT missions are determined by the military, are not subject to external review, involve action within a war zone, are part of the counterinsurgency strategy of a belligerent nation state, and take place in a coercive environment (CEAUSSIC Final Report 2009: 3).

In conclusion, the CEAUSSIC Final Report concluded that the HTS program is inconsistent with the AAA’s disciplinary ethics. However, the CEAUSSIC Final Report stressed that “constructive engagement between anthropology and the military is possible” (CEAUSSIC Final Report 2009: 3).

The CEAUSSIC Final Report specifically addressed the question of HTS and \textit{anthropological} ethics, even though the HTS program draws on all social sciences,
including archaeology. Initially, the CEAUSSIC Final Report observed that because of the lack of clarity with the, or the existence of a multi-purpose, mission, the HTS program could encourage ethical indeterminacy (CEAUSSIC Final Report 2009: 47). Lacking mission clarity, the CEAUSSIC Final Report identified the various missions that might be assigned to the HTS program and discussed those missions within the context of ethical issues. For example, if the mission of the HTS program is research, then the CEAUSSIC Final Report takes to task the HTS program because of its apparent failure to comply and address human subject research protections (CEAUSSIC Final Report 2009: 47). The CEAUSSIC Final Report also has problems with the lack of a robust HTS ethical protocol, including the lack of IRB-like processes in place (CEAUSSIC Final Report 2009: 48).

In 2010, the US Congress demanded a moratorium on the HTS pending a thorough investigation on, among other things, its effectiveness. The Office of the Under-Secretary of Defense for Intelligence (“OUSDI”) commissioned a private contractor to conduct a study to satisfy the congressionally directed action (Clinton et al. 2010).

The OUSDI Report reaches a number of findings and conclusions. First, the OUSDI Report identified the HTS program as an operational and tactical success. “It is a unique and dynamic program, and its leadership and staff have been able to generate a new and innovative capability within a bureaucratic environment that is not always open to such initiatives” (Clinton et al. 2010). Second, the OUSDI Report acknowledged that the HTS program is quite controversial. Part of this controversy “appears to stem from specific incidents and poor decisions that have occurred within the program, such as sending unqualified personnel in combat zones” (Clinton et al. 2010). Third, real problems exist within the HTS program, including the relationship between TRADOC and its HTS subsidiary (Clinton et al. 2010).
The HTS has not been perceived by everyone as a success. Connable, a Major in the US Marine Corps, asserts that it is time to terminate HTS (Connable 2009: 64). Connable argues that HTS is a “quick fix” program that has sapped the financial and personnel resources of almost all cultural programs in the military (Connable 2009: 64). Connable argues that the internal problems it creates far outweigh any benefits derived from the program. First, HTS damages long term military needs because of the excessive focus the DoD has placed on HTS (Connable 2009: 58). Second and similar to one of the AAA’s primary concerns, HTS creates conflicts of interest among academics, who think they are there to provide intelligence as data that is separate from military intelligence (Connable 2009: 59), and the intelligence staff, which is “by doctrine, specifically designated to collect and analyze cultural data” (Connable 2009: 63). The idea of separation of the academic data and military intelligence makes it easier for HTS hiring staff to “sell the terrain team to academia and to recruit social scientists. If HTS is not related to military intelligence, then the fraught concept of applied academics seems more palatable” (Connable 2009: 63) to the academics they seek to hire.

Further, according to Connable, HTS creates redundancies and overlaps in current personnel. For example:

According to the 15 July 2008 HTS briefing, the HTT is staffed by at least two officers or enlisted soldiers with FAO [Foreign Area Officers], CA [Civil Affairs], Special Forces, or intelligence backgrounds. The team is led by an experienced combat arms officer. Why is it necessary to create a separate program, costing (at a minimum) tens of millions of dollars, to assign these personnel to the very staffs at which they were trained to serve? What do the Human Terrain Team FAO and officer bring to the table that organic and CA officers do not? If HTS can find these qualified officers, why can’t the U.S. military services? (Connable 2009: 61).
Additionally, Connable argues against the external effects HTS creates (Connable 2009: 61). HTS damages relationships with academia because of the split the program creates among academics who are for the program and those, like the Network of Concerned Anthropologists, who are against social scientists in a war zone. Furthermore, the anti-HTS establishment is even less likely to assist the DoD in developing ways to use social science to find a solution to the problems abroad (Connable 2009: 63).

Connable concludes by proposing that academics should be employed with the military, but their capacity should be in the pre-deployment training of personnel (Connable 2009: 64). “In this role [the social scientists] do not risk endangering their research subjects, provide no direct input into targeting cycles, and they do not provide antimilitary elements within their own community any substantial ammunition with which to undermine the military-academic relationship” (Connable 2009: 64). This method seems to solve the ethical dilemmas associated with forward operating social scientist and fulfills the AAA’s directive to “help improve US government policies through the widest possible circulation of anthropological understanding in the public sphere” (AAA Executive Board Statement 2007). However, the effectiveness of a few days of cultural training to military personnel likely pales in comparison to the support and advice provided by an on-site social scientist. Nonetheless, the DoD would likely find it advantageous to implement more influential front-end programs such as the one proposed by Connable.

6.6 Observations

War is a political activity that employs the legitimate use of purposeful violence to achieve political objectives (Howard 1994). War seeks to achieve political objectives once normal political diplomacy has failed (Howard 1994). It should not surprise us that a professional ethic that seeks to be meaningful on the fundamental questions of
what an archaeologist ought to do and how a profession ought to act must live in a political and social context. Facts and circumstances matter. The reasons for war, the steps undertaken to avoid it, its legal legitimacy, the history among the warring nation states, the role sought for the archaeologist, the obligation to protect relationships, and the ability to build and maintain relationships are a small sampling of the questions an archaeologist and his or her profession must confront. The *de facto* disengagement camp goes too far. In fact, it undertakes a position well beyond what Boas advocated for social scientists after World War I. Whereas Boas would reject the role of a social scientist in espionage where science and profession serve as cover for clandestine activities, the *de facto* disengagement camp would generally reject any role within the military structure for archaeologists, distinguishing the profession from others like the chaplainry (Trauner 2008: 14; Chandler 2011) or medical corps (Allhoff 2011: 50-53) who have developed roles within military structures during armed conflict that are consistent with their professional ethical systems.

The deliberate engagement camp presents the better argument. There is no distinctive feature in archaeology that makes it different than other professions called upon to provide a unique service in armed conflict. However, what that role may be, and how that role is ultimately performed, are ethical questions that cannot live outside of political and social influences. The facts and circumstances of each assignment carry with it part of the context necessary to resolve the ethical issues. The remaining chapters turn to the lasting ingredients of a robust context in which these ethical issues may be addressed by the profession and professional.
CHAPTER 7: THE ASSAULT

7.1 Introduction

Many professions have struggled with a professional ethic that provides action guidance to its individual members while maintaining the profession’s collective integrity (e.g., American Bar Association Model Rules of Professional Conduct 2012). As previously discussed, these professions have sought comfort in elaborate codes of conduct that purport to regulate and inform members of the profession and, simultaneously, protect the integrity and separateness of the profession (e.g., American Bar Association Model Rules of Professional Conduct 2012).

Archaeology is no different. Numerous archaeological organizations have crafted elaborate codes of conduct, fascinating artifacts in their own right, to inform, and in limited formal means, regulate members of the profession. These professional codes generally emphasize an archaeologist’s interaction with the archaeological record, preservation or stewardship of sites and the record, and human interaction (Tarlow 2006, 2001). As previously shown, these codes of conduct are largely deficient because they fail to provide a robust dynamic in addressing ethical issues founded on human relationships and not “things,” fail to provide consistent and coherent action guidance, and fail to maintain the separateness and integrity of the profession. These failures have been amplified by the roles played by archaeologists in OEF and OIF, as well as in the GWOT. A new approach is needed.

Generally, virtue ethics is accepted as one of three competing approaches in normative ethics. The two other approaches are deontology and consequentialism (Baron et al. 1997: 1-2).

Deontology emphasizes duties and rules (Baron 1997: 10-13). An illustrative example of a deontological archaeological ethical system is that promulgated by the RPA with its
thirty-two rules of conduct. Of course, a deontological system need not be rule-bound – think, for example, of a system that required a person do unto others as how they would like to be treated – but the curse of multi-dimensionality is ever present.

Consequentialism emphasizes the consequences of actions (Pettit 1991: 230-233). Utilitarianism, one of the more famous types of consequentialism, seeks to maximize well-being through action (Goodin 1991: 242). Often times, embedded in archaeological codes of ethics that fixate on conservation and stewardship of the archaeological record are strong currents of consequentialism (see, e.g., SAA Code of Ethics 1996). Archaeologists maximize well-being, for example, by being good stewards of the archaeological record.

Both deontology and consequentialism primarily focus on the actions of humans; character or motives are either irrelevant or derivative. In contrast, virtue ethics emphasizes virtue or moral character (Baron et al. 1997: 1-2). As an ethical system, it focuses on what makes a person good, rather than what makes an action good (Slote 1997a: 176-179). As a character-centric normative ethic, virtue ethics provides the basis for the development of a dynamic and organic ethical process that informs and guides an archaeologist and the profession in the panoply of human relationships that make up the praxis of archaeology. Virtue ethics revolves around questions of character, and places emphasis not on professional codes that rest on deontological or utilitarian foundations, but on the subjectivities of social and political interactions (Slote 1997a: 177-179; Crisp and Slote 1997: 24). In sum, the most universal concept of the many varieties of virtue ethics is the primacy of character or virtue where action guidance is derivative.

The specific goal of this thesis is a modest one – to commence the development of a conceptual and pragmatic virtue-based ethical construct that may guide an archaeologist
individually and archaeology as a profession through the challenging issues raised by archaeological practice. The prism through which this thesis chooses to address the ethical challenge is the role of archaeologists in modern human conflict. The context is emotive, polarizing, confrontational, and inherently political. It is this furnace that best tests the mettle of contemporary archaeological ethical systems. The results suggest that present archaeological ethical systems, based primarily on codes of conduct or ethics, are not up to the task. Archaeological practice, permeated by many relationships and various potential beneficiaries, is simply too complex to be meaningfully informed by codes that are static by nature, and that contain within them a neo-colonial overhang that propagates vestiges of Western superiority, intellectual elitism, and localized political values that are not directly confronted. If codes of ethics are themselves artifacts, then they do not speak well of our present archaeological community.

Specifically, this thesis asserts that there is an immediate need for a new professional ethic, particularly now where archaeologists are serving in a variety of roles within military structures from target selection, to cultural heritage protection, to being embedded in occupational military forces. This thesis questions the position that as a profession, archaeologists should refuse any meaningful role in armed conflict. The thesis further questions the position that as a profession, archaeologists should serve only as civilians, a status in armed conflict that is a Western legal construct unrecognized by many cultures and legal regimes (Aboul-Enein and Zuhur: 2004). The resolution of such ethical problems is not self-evident; that is why such issues are problematic. A model that rests on deontological or consequentialist themes is unhelpful at the margins and necessarily false. Of course, a model that largely eschews deontological and consequentialist themes and embraces virtue as a primary influence on action guidance as to what a good archaeologist ought to do and should refrain from doing is also necessarily false.
“All models that attempt to depict reality are false; some just happen to be useful” (Box and Draper 1987: 74, 424). A virtue model based on the virtue of trust – a virtue both fundamental and near-universal to any profession – is useful. Such a model draws from the character of an archaeologist that is both trustworthy and trusting. It demands a focus on relationships with human beings. It does not ignore the importance of the record, but clearly makes the interest in the record indirect and deeply subordinate to any human relationship. At its base level, it seeks to answer the question of how does an archaeologist and the profession build trust with the trustor, that is with relevant human beings.

7.2 Short History of Virtue Ethics

Virtue ethics may be traced back to at least ancient Greece, beginning with the writings of Plato and Aristotle (Pence 1991: 251-252). In his *Republic*, Plato (Pence 1991: 251) devotes considerable discussion to four cardinal virtues that make good moral character. These virtues are courage, temperance, wisdom, and fortitude (Pence 1991: 252). Central to his moral theory, Aristotle engages in a discussion of virtues (Aristotle 1998: 11-17, 28-47, 63-78, 137-58). The stoics then apply a body of knowledge developed by a consideration of virtues as indicators of good moral character to their philosophy on ethics. Meanwhile, during the scholastic period, Christian thinkers, particularly St. Thomas Aquinas in his *Summa Theologiae* and his *Commentaries on the Nicomachean Ethic*, embrace Aristotle’s virtues as essential to Christian moral theology (Pence 1991: 252).

After the stoics and the passing of the scholastic period, virtue ethics as a form of normative ethics largely moved into a period of neglect (Slote 1997a: 175-176). During this time, other forms of normative ethics eclipsed its importance. Virtue theory was not considered a viable ethical theory for over 2000 years (Slote 1997a: 175-176).
Recently, because of the perceived fundamental inadequacies of other ethical theories, virtue ethics has experienced a rebirth of sorts, particularly in the context of the development of a meaningful professional ethic (Duff 2006: 90-104; Swanton 2006: 207-224; Oakley and Cocking 2001: 71-94; see generally Anscombe 1981; MacIntyre 1981).

7.3 The Ethics Landscape
As mentioned, professional ethics is presently framed with reference to two competing camps of influence: deontology and consequentialism (Solomon 1991: 354). The differences between deontology and consequentialism can best be seen by imagining that they are each represented by the flavor and stereotypes of distinct professions. To play with this illustrative example, assume that deontologists grow up to be accountants and that consequentialists grow up to be lawyers. Deontologists, like accountants, have their rules in the form of accounting principles and standards, their rules do not conflict, and their rules dictate ethical behavior (Davis 1991: 205-217). Accountants, being dutiful deontologists, engage in actions within the rules of play (Davis 1991: 205-217). The accounting profession as a whole, through its accrediting and regulating organizations and boards, focuses on rules of ethics, usually through codes, that regulate conduct (Davis 1991: 205-217).

In contrast, consequentialists, like lawyers, apply a complex, rigorous calculus before engaging in actions (Pettit 1991: 230-241). This calculus emphasizes the importance of an understanding of the full consequences of a lawyer’s actions (Pettit 1991: 230-241). A lawyer then extrapolates from the likely spectrum of consequences whether an action is ethical, taking into account the various code provisions, consequences, and policies underlying a certain action (Pettit 1991: 230-241). Collectively through committees of various bar associations, lawyers self-regulate themselves through model codes of
professional responsibility (Pettit 1991: 230-241). These model codes are adopted through consensus, with the concomitant strengths and weaknesses of that process evident.

Deontologists have their inviolable rules that cannot be broken, even when breaking them might have better consequences (Davis 1991: 209). It is imperative to understand that these duties apply universally to all; yet, the consequences of these duties will differ for each person (Davis 1991: 209). For example, take two people who refrain from murdering an innocent baby (an ethically good action). No two babies are the same and so this decision will have different consequences. Now, suppose that the babies are Adolf Hitler and Mother Theresa, respectively. The consequences of not murdering now became much different. In one instance, a “good” outcome arguably arises, but the decision to refrain from murdering Baby Hitler is by no means intuitive. Nevertheless, deontologists will refrain from murdering Baby Hitler. This is so because there is a rule that states that it is wrong to murder babies. To understand a deontologist’s firm adherence to universal rules requires an understanding of their conception of rules in the first place.

Deontological ethics comes in many shapes, forms, and sizes (Kamm 2007: 48-78). Broadly speaking, though, they can be divided between agent-centered (duty based) and victim-centered (rights based) theories (Kamm 2007: 48-78). Under agent-centered theories, agents have both permissions and obligations that give them reasons for acting in a certain manner (Kamm 2007: 48-78). These reasons create objective obligations to perform, or refrain from performing, certain actions (Kamm 2007: 48-78). The key, though, is that the reasons center on the agent at all times. The concept of the agent takes on central importance here. The idea is that the agent himself is responsible for keeping himself moral (Kamm 2007: 48-78).
Victim-centered deontological theories, by contrast, emphasize rights rather than duties and obligations (Kamm 2007: 48-78). The central right that victim-centered deontological theories protect is the right to not be used for the benefit of another. These theories protect an individual’s autonomy (Kamm 2007: 48-78). The benefit of these theories is that they can explain certain morally intuitive, but conceptually tricky, paradoxes. Take, for instance, a rather famous example: the trolley and “mean” man example (Kamm 2007: 48-78).

In the trolley example, a trolley is running down a track; it will kill five innocent men without human intervention. A person, however, can switch the tracks, saving the five innocent men, but killing one mean man. Many people would consider it morally permissible to switch tracks and kill the mean man. In the mean man example, though, suppose that a mean man could be pushed in front of the trolley to stop the train from killing one innocent man. Many people would consider it morally permissible to switch tracks as provided above; however, it would evoke universal condemnation to push a mean man against his will in front of the train.

Victim-centered approaches can account for our moral intuitions (Kamm 2007: 48-78). In a victim-centered approach, the mean man has no right to be used for the betterment of society against his will (Kamm 2007: 48-78). This is the fundamental feature of victim-centered approaches. In an agent-centered deontological theory, there is not as clear cut a prohibition against pushing the mean man into the train (Kamm 2007: 48-78). For instance, one could create a moral duty to save as many lives as possible, which would permit someone to push a mean man in front of the train.

Consequentialism is, in some sense, an opposite of deontological theories (Pettit 1991: 231). In its classical form, utilitarianism, one of the more common types of consequentialist theory, holds that an act is morally permissible if and only if its
consequences maximize the best consequences (Goodin 1991: 242). Utilitarians will weigh all the positives and all the negatives of an action; then, they will decide whether the positives outweigh the negatives in determining whether or not to act in a certain manner that leads to the best consequences (Goodin 1991: 241-243). In examining the advantages and disadvantages (often framed in terms of benefits and costs), classical utilitarians will often times expand the accounts to include social benefits and costs to weigh whether an action is morally permissible or not (Goodin 1991: 244-245).

This may appear to be conceptually simple, but practically difficult. In other words, it appears easy to assert that an action depends on its consequences. But then the difficulty arises in actually assessing those consequences (Goodin 1991: 244-245). Unfortunately, neither the practical application nor the conceptual approach is easy. The conceptual difficulty arises in deciding which consequences to evaluate. Some strains of utilitarianism will only evaluate actual consequences as opposed to all possible consequences (actual utilitarianism) (Pettit 1997: 98-102). Others may evaluate only those consequences that bring about pleasure and pain (hedonism) (Goodin 1991: 244-245). Some theories will hold that all people count equally in the calculus (Goodin 1991: 242), while other theories will place premiums on certain key stakeholders (Goodin 1991: 245). In addition to the perplexing question of what factors or interests should fall in the benefit and cost accounts, there is the baffling question of how to “weight” the conflicting interests. In practice, those who weigh often have their thumb on the scale, knowingly or unknowingly (Williams 1994).

The most obvious feature of consequentialism is that an act must depend on the consequences (hence, the name of the theory) (Pettit 1991: 232). A less obvious feature is whether the theory should be agent-neutral. There is presently no consensus on that condition of the theory. Certain philosophers argue that any consequentialist theory
should be deemed to be agent-neutral (McNaughton and Rawling 1991; Howard-Snyder 1994; Pettit 1991). Others, however, have argued for a broader conception of consequentialism that does not have to be agent-neutral (Bennett 1989; Broome 1991: 5-6; Skorupski 1995).

7.4 Rebirth of Modern Moral Philosophy

Modern virtue ethics has an identifiable beginning; it is found with the work of Anscombe (1981: 26-42; see also Colwell-Chanthaphonh and Ferguson 2006: 118). Although she does outline a virtue ethics theory, that is not what other commentators have found of interest. Rather, her influence lies with her critiques of utilitarianism – arguably the dominant philosophical position in the mid-20th century – and through that critique, her resurrection of virtue theory (Slote 1997a: 175).

By confronting the dominant ethic and challenging the intellectual comfort of those that espoused it, Anscombe was essentially climbing a glass mountain (Crisp and Slote 1997: 4-9). For Anscombe, the historical concepts of morality – of “ought” – were incomprehensible to her contemporaries (Pence 1991: 250). The politics where the notions of morality made sense had dramatically changed (Anscombe 1981: 26). To Anscombe, virtues without an understanding of context, were “anchorless children” (Anscombe 1981: 26). These notions, no longer understood by a new generation, did more harm than good.

Anscombe asserted that Aristotle’s use of terms like “should,” “ought,” and “needs” carry both a non-moral and moral sense (Anscombe 1981: 29-31). For example, the non-moral sense occurs when someone says “a car needs oil” or “you ought to go to sleep now” (Anscombe 1981: 29). The moral sense occurs when someone says, “You **SHOULD** not murder someone” (Anscombe 1981: 29).
According to Anscombe, Christianity, however, imbibed a new sense into these terms: a legal sense or law conception of ethics (Anscombe 1981: 30). “Ought” no longer connotes only the right thing to do, but now is intimately tied to the notions “is obliged,” “is bound to,” or “is required to” (Anscombe 1981: 30). She asserts that Aristotle’s usage of the term “ought” lacked this legal conception of ethics. Anscombe cites to a Greek word, which translates roughly into “missing the mark” or “going wrong” (Anscombe 1981: 29). She follows on with reference to the Latin word peccatum, which again roughly corresponds to the present day notion of “ought” and which was also associated with the Latin word culpa or guilt (Anscombe 1981: 30). The word culpa is a juridical term (Anscombe 1981: 30). A law conception of ethics deals exclusively with obligation and duty. Thus, Christianity, with its legal conception of ethics, has subtly altered the language of ethics (Anscombe 1981: 31). As a consequence, according to Anscombe, no secular ethical theory can still hold onto the words “ought” or “should” (Anscombe 1981: 34).

Anscombe’s criticism that our concepts of ought and should must be jettisoned, follows from her point that the language of ethics is simply outdated. She argues that instead of saying X was wrong, we should say X was unjust or X was dishonest (Anscombe 1981: 39). These statements or declarations are overt appeals to virtue (Anscombe 1981: 40).

Anscombe’s stinging critique of consequentialism and deontologism, as depending upon theological notions of a divine lawmaker and, thus, makes little sense in a secular world, resonated with her contemporaries. To Anscombe and her followers, virtue ethics is the only secular theory of ethics that can effectively ground our notions of morality. Anscombe’s critique of “theological notions of a divine lawmaker” was also persuasive because, under the prevailing approach, there is a universal (eternal) outside...

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37 Instead, another word meant, “is obliged to.”
referer for right and wrong valid for all time (Anscombe 1997: 30). Rather, she offered up the beginnings of a practice-based ethic that is necessarily heavily contextual and always provisional.

Rather than legal concepts of ethics, Anscombe called for a return to a different way of doing philosophy inspired by the Greeks that made character and virtue signposts in a moral ethic (Anscombe 1997: 40). Anscombe’s recommendation that we place character and virtue more centrally in our understanding of morality resonated with her contemporaries. The resulting body of theories and ideas has come to be known as modern virtue ethics.

Anscombe’s most provocative proposal in her paper, however, met with much less enthusiasm than her challenge to Mills and Kant. Based on the misused notions of moral morality, her proposal was to curb moral philosophy until an adequate philosophy of psychology could be developed (Anscombe 1997: 30). While her attack was influential, it is at this critical juncture that other philosophers separated from her theory. Ethics is still being done without what many would consider an adequate philosophy of psychology; importantly, though, the main virtue ethical thinkers will universally discuss practical rationality at great depth in their works (Crisp and Slote 1997: 4-9).

7.5 Virtue Ethics Critique

Virtue ethics is currently one of three major approaches in normative ethics. Its defining characteristic is the primacy of virtues, or moral character, in contrast to other normative ethical approaches. Most modern versions of virtue ethics are “neo-Aristotelian” because they draw from three essential concepts: arete (virtue), phronesis (practical wisdom), and eudaimonia (flourishing) (Hursthouse 1999).
Understanding the historical development of modern virtue ethics is essential to understanding the current debate. Initially, virtue ethics attacked both deontologism and consequentialism as fundamentally incapable of serving as a ground for morality in a secular world. The initial modern thinkers in virtue ethics did not expound their own theory of virtue ethics, but rather criticized the other competing ethical theories and suggested that perhaps virtue ethics might be a better approach. Thirty years passed before the first full-fledged virtue ethical theory in a modern sense was developed.  

Many contemporary ethicists have tackled the strengths and weaknesses of virtue ethics. Most scholars concede that one area of deficiency in the virtue ethics model is in the applied ethical context (Hursthouse 1999). Generally, the reason attributed to this perceived deficiency lies in the history of virtue ethics, which found its initial contemporary foothold on a rather theoretical attack of the other two theories. Finally, as an aside, one sociological theorist has noted that the virtue of honesty has received surprisingly sparse attention from philosophers (Hardin 2002).

Several themes may be teased out of these articles critiquing virtue ethics. First, philosophy abstracts out the particulars of a certain theory to operate in the most general of settings, and the general philosophical project of virtue ethics defines and clarifies the concept of “virtue” in the abstract. Second, philosophers have viewed virtues as a specific form of knowledge and then have sought to explain what that form of knowledge “is.” Third, philosophers sought to ground virtue ethics in some non-traditional form of practical rationality. “Practical reason is the general human capacity for resolving, through reflection, the question of what one is to do” (Wallace 2003). Reconciling virtue ethics within a particular account of practical rationality has been a central focus among contemporary philosophers. Perhaps this is due in part to virtue

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38 MacIntyre’s work in the field is recognized as holding this honor.
ethics’ original attack on practical rationality as dependent upon a God figure (Anscombe 1981: 26-42)

7.6 Virtue as Morality

Williams does not fit squarely in the virtue ethics camp; however, he raises serious objections to deontologism. These objections have greatly influenced many virtue ethicists who have adopted in the construction of their virtue ethics models many of his observations (Williams 1985: 174–196). Williams characterizes deontologism as “the morality system” (Williams 1985: 174). This morality system generates all moral obligations, which are defined as obligations requiring certain actions from an ethical agent (Williams 1985: 174–176). Moral obligations, as opposed to other obligations, impose duties and, correspondingly, assign culpability or blame (Williams 1985: 176). For example, the moral commandment not to murder imposes a duty on agents not to intentionally kill another human being and assigns blame to those that become murderers (Williams 1985: 176).

Williams levels two criticisms against the morality system. First, he asserts that the morality system cannot handle considerations outside of the moral domain (Williams 1985: 178–180). Second, he maintains that blameworthiness depends upon the suspect’s notion of free will (Williams: 1985: 185–194). I contend that this second criticism is too abstract to be of any importance in any applied setting and, thus, is beyond the scope of this thesis.

Williams notes that the morality system is a “closed system;” that is, the morality system is inherently designed to handle ethical obligations only (Williams 1985: 177–180). Such a closed system does not always accord with our intuitions (Williams 1985:

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39 Kant happens to be the primary exponent of the morality system.

40 The ethical agent is a fancy way of saying a human.

In this scenario, A breached an obligation to B without another obligation trumping. A had no obligation to help the organization because people do not always have an obligation to help an organization that they support at all times.41 One might like to say that A has an obligation to help in an emergency, but no emergency was present. The morality system here would hold A blameworthy because he broke a promise without an adequate justification.

Our moral sentiments, however, do not necessarily assign blame to A for breaking his promise. According to Williams, to accommodate properly our moral intuitions, the morality system must incorporate two notions: (i) importance and (ii) deliberative priority (Williams 1985: 182–184). Importance is the ability to see that certain other considerations will weigh into the debate (Williams 1985: 182). Deliberative priority is the importance that we will grant to other systems (Williams 1985: 183–184). Williams asserts that the morality system imposes importance and deliberative priority on moral obligations to the exclusion of all other considerations (Williams 1985: 183). For example, the morality system cannot handle emergency situations because it lacks any notion of importance (Williams 1985: 183). Only moral obligations are important, but other non-moral emergencies might arise that frustrate the moral obligations (Williams

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41 This is akin to the “no duty to act” theory in tort law.
1985: 184). It is fundamentally a closed system (Williams 1985: 184). Williams argues that a virtue ethics system can more adequately allow for importance and deliberative priority, but he fails to elaborate the proposition (Williams 1985: 184–186).

Although Williams’ essay has not been as influential as Anscombe’s work, Williams’ work did fill an intellectual gap in Anscombe’s arguments in favor of moving towards virtue ethics. Recall that Anscombe argued that consequentialism is vacuous; thus, ethics must be grounded on virtue. Unfortunately, Anscombe did not fully consider the challenge of deontologism. Her arguments against deontologism are uncharacteristically dismissive and artificial. Thus, Williams’ thoughtful and expansive arguments against deontologism on largely virtue ethics grounds provide important illumination for the proposition that virtue ethics can support more general ethical considerations.

7.7 Observations

The primacy of character is the core concept of modern virtue ethics theories. Of course, that does not mean that there is one type of primacy; in fact, there are many different understandings of primacy. However, diversity does not detract from the fundamental role character plays in virtue ethics.

The primacy of virtue may also help us understand the significant differences among the competing moral philosophies from which we draw professional ethics – deontology, consequentialism, and virtue ethics. We can portray these differences among the rival theories by isolating what is basic and what is derivative. By basic we mean what is primary or has priority in a hierarchy of attributes. By derivative we mean what is secondary or subordinate in a hierarchy of attributes.

The usual story is that deontological theories take deontic concepts [e.g., duty, rightness, and obligation] to be basic, and virtue and value concepts
to be in some way derivative. Consequentialist theories are held to take some idea of goodness (of states of affairs) as basic, with virtue and rightness derived from that goodness. Finally, virtue ethics is held to take virtue concepts as basic, with concepts of rightness and obligations, and value as derivative. Thus, ‘primacy of the virtues’ is the way we are commonly asked to understand what virtue is (Baer 2005: 10 (internal citations omitted)).

Thus, according to the application of rival theories, one of three types of concepts is given priority and the others are derivative. Primacy then takes on an explanatory function (Baer 2005: 11). Applying this idea to virtue ethics would lead us to the following: Because virtue is primary, what is basic is the question of how is it best for a person to be (Baer 2005: 11; Watson 1978). Based on the primacy of virtue, we can then determine what is proper conduct (Watson 1990: 451). Furthermore, “the moral status of acts depends entirely on whether they would be performed by morally good persons or are manifestations of virtue” (Montague 1992: 54).
CHAPTER 8: VIRTUE ETHICS

8.1 Introduction

The prior chapter discussed Anscombe’s and Williams’ confrontational critique of the two dominant camps of normative ethics. They disposed of both camps – deontology and consequentialism – by exposing the theories’ common reliance on a legal concept of morality driven by an eternal lawgiver. For Anscombe, a more robust and meaningful moral philosophy must be driven by a consideration of character and virtue. Her arguments in favor of virtue theory launched a new philosophical movement where virtues were central to an understanding of moral philosophy. It would be left to McIntyre and others to build the virtue theory model on Anscombe’s theoretical foundation.

8.2 Meta-Virtue

MacIntyre’s work is uniformly considered to be groundbreaking in the development of virtue ethics (MacIntyre 1981: 169–190). His book, entitled AFTER VIRTUE, was the first to develop a modern theory of virtue ethics. In his book, Macintyre provides an underlying, unifying account of various historical conceptions of virtue well worthy of consideration in attempting to resolve the ethical issues faced by archaeologists and by the profession (MacIntyre 1981: 103–168).

MacIntyre embraces a meta-approach to his analysis of virtue ethics, seeking to unite the various historical theories of virtue ethics under his own generalized concept of virtue (MacIntyre 1981: 103–168). Macintyre initially describes the differences that have existed between several historical virtue ethics thinkers. He discusses Homer, Aristotle, the New Testament, Jane Austen, and Ben Franklin (MacIntyre 1981: 169–173). Contrasting Homer with Aristotle, MacIntyre asserts that Homer extolls the physical virtues such as strength and physical prowess; whereas, Aristotle extolls the
virtues of the mind such as patience and love (MacIntyre 1981: 173). Aristotle’s account of the virtues differs in important respects with the New Testament’s account (MacIntyre 1981: 172). Aristotle states that some virtues such as magnanimity cannot be had without money (MacIntyre 1981: 172). Thus, by implication, a fully virtuous person cannot be poor (MacIntyre 1981: 172). The New Testament, by contrast, reserves the virtuous life for the poor, humble, and enslaved (MacIntyre 1981: 172). To MacIntyre, the New Testament seems to suggest that the rich cannot be virtuous (MacIntyre 1981: 172).

Two thousand years after Aristotle, according to MacIntyre, Jane Austen extolls still another set of virtues. She extolls constancy and military courage. Aristotle and Austen quarrel over whether agreeableness and military courage are virtues. Aristotle found agreeableness a virtue; Austen surmises that it is a simulacrum of a virtue. Ben Franklin extolls an entirely different set of virtues: cleanliness, silence, and industry. These differing conceptions of virtue demonstrate the great variety of accounts of virtue, a result consistent with Anscombe’s vision that there is no eternal lawgiver and that virtues are re-made with each generation. Of course, many virtues may be intergenerational, although their meaning may nonetheless change.

On this historical canvas, MacIntyre sought to unify the various accounts of virtue. He defined virtue as “an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which prevents us from effectively achieving any such goods” (MacIntyre 1981: 178). This overarching definition of virtue poses several questions worthy of addressing.

MacIntyre highlights the importance of practice to the virtues (MacIntyre 1981: 175–180). To him, virtue is located entirely within a practice. Macintyre defines practice as “a coherent and complex form of socially established cooperative human actions
through which internal goods are realized” (MacIntyre 1981: 175). That definition, like the previous definition for virtue, is again not self-evident. Examples best illuminate the notion of a practice from MacIntyre’s perspective. Bricklaying, for MacIntyre, is not a practice, but architecture is (MacIntyre 1981: 175). Football is a practice, but throwing a ball is not (MacIntyre 1981: 175). Digging is not a practice, but archaeology is. Farming, the sciences, history, and the humanities are all practices (MacIntyre 1981: 176-177).

For MacIntyre, the distinction between internal goods and external goods contains the key to understanding both the definitions of virtue and of practice (MacIntyre 1981: 178). External goods are goods that when achieved, remain property of the individual (MacIntyre 1981: 179). Money, prestige, and other tangible rewards are all external goods derived from undertaking some particular practice (MacIntyre 1981: 180). In contrast, an internal good is the excellence of the product itself and from living out one’s life in furtherance of the practice (MacIntyre 1981: 178-180). The internal goods are more ephemeral (MacIntyre 1981: 178-180). It is only in the internal goods, however, that one finds the virtues.

To illustrate the concept of an internal good, consider the medieval practice of portrait painting (MacIntyre 1981: 181). The internal goods come from two sources. First, internal goods are found in the excellence of the product itself. An excellent product will help to further the progress of the practice as a whole. Second, internal goods come from “living out her life as a painter.” By living life as a painter, the portrait painter lives her life knowing that she helped to sustain and possibly further the practice of portrait painting. *A virtue now can be understood as those character traits that enable humans to achieve these sorts of internal goods within certain practices.*

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42 Prestige and power can be thought of as personal goodwill.
MacIntyre, however, warns that practices are not to be confused with institutions (MacIntyre 1981: 183). For example, the bar association is different from the practice of law (MacIntyre 1981: 183). Institutions are there to help protect the practice; they are not the practice itself (MacIntyre 1981: 184). They do, however, have an influential role in shaping the virtues of the particular practice (MacIntyre 1981: 183). The remainder of his account of virtue ethics is spent distinguishing his ethical theory from Aristotelian ethical theories (MacIntyre 1981: 185-189).43

Thus, MacIntyre provides an underlying account of the virtues. Although he does not claim this in his work, his theory of the virtues presumably unites all previous accounts of virtues. The differences between the various historical thinkers derive from the different practices and shared human goals under which each works. Homeric society set physical prowess as a goal and derived virtues of strength from that goal. Then, by the time of Aristotle, the focus had turned more inward to the mind. The New Testament, as a religion for oppressed groups initially defined those virtues that could speak to the poor. The mental traits of magnanimity were not included because they were not a goal of the shared group of individuals to which Christianity spoke. In this way, MacIntyre provides the first modern account of virtue and the foundation stone for the development of virtue theory as applied to professional ethics.

8.3 Virtue and Reason

Rather than providing an underlying account of the virtues, McDowell does construct an account of how to recognize a virtue in a virtuous person (McDowell 1998: 50-73). Initially, McDowell reminds us that under an ancient conception of virtue, virtue was a form of knowledge (McDowell 1998: 50-52). Spotting the virtuous person meant spotting a form of knowledge (McDowell 1998: 51). This knowledge is not

43 MacIntyre’s attempt to distinguish his account of virtue ethics from Aristotle is beyond the scope of the thesis.
propositional knowledge – meaning someone cannot state, “I know virtue” and recite a complete list of all the virtues (McDowell 1998: 57-65). Virtues are too contextual. Instead, within a person, virtue is the quality of understanding how to act in a certain manner when certain facts call forth the need to exercise a certain virtue (McDowell 1998: 57-65). Virtuous people possess a certain knowledge or sensitivity to the importance and influence of exigent facts and circumstances surrounding a situation, a condition inconsistent with an eternal lawgiver motif; virtuous people appreciate context (McDowell 1998: 57-65).

The historical problem for identifying virtue as knowledge has been that a person may recognize that a virtue requires a specific response, but still fail to act virtuously (McDowell 1998: 57-65). For example, a person possessing the virtue of kindness may recognize that he should be kind in a particular situation, but nevertheless fails to act kindly. Virtue cannot be merely recognition of certain sensitivities (McDowell 1998: 57-65). The natural answer to this question is that the person weighs reasons for and against, and decides against kindness. Unfortunately, this weighing of reasons for and against actions may devolve into utilitarianism or other forms of consequentialism, falling victim to the criticisms attendant thereto.

To avoid this balancing, McDowell revives Aristotle’s distinction between continence and virtue (McDowell 1998: 54-56). The continent person needs to overcome other reasons to act virtuously (McDowell 1998: 57-59). The virtuous person does not have any such need, but instead the virtue silences all other considerations (McDowell 1998: 57-59). For example, suppose that a person on the battlefield recognizes that courage is required, but nevertheless chooses to run and hide rather than fight courageously (McDowell 1998: 57-59). In this situation, it is easy to say that the person simply balanced the need for courage with the need for his life and chose the latter. Aristotle
would call this person a continent person. The person possessing courage will not weigh reasons for and against acting in a certain manner, but rather the virtue (courage) will silence all other considerations (McDowell 1998: 57-59).

Another more serious objection leveled against virtue theories has been that people do not act merely on reasons, but also on appetitive or instinctual desires (McDowell 1998: 56-57). To assume that these appetitive desires are merely part of our practical rationality is to impose the fairy tale of sense of purpose onto the world. The appetitive desires that govern our actions are also needed to explain fully our actions. To answer this objection properly, McDowell cleverly rephrases the entire debate.

One might think of acting virtuously as a syllogism represented as follows:

(Major premise): Universal perception of a virtue.

(Minor premise): Specific factual situation that calls forth a particular virtue.

Yields

(Conclusion): Acting in a virtuous manner (McDowell 1998: 57).

The problem can now be seen a bit clearer. All that is ever perceived is the minor premise – the specific factual situation at hand (McDowell 58-59). As McDowell (1998: 52) states:

Knowledge of the major premise, the objector might say, is nothing other than the disposition of the will which is required, according to the objection, as a further component in the relevant reasons for acting, and hence as a further component in virtue, over and above any strictly cognitive state.

Thus, the major premise is only perceived as a particular disposition of the will, which is not entirely cognitive, but actually requires something over and above the cognitive state – namely the appetitive desires (McDowell 1998: 61-64).
This problem can be called the problem of the universal premise. It only makes sense if the universal premise is susceptible to codification (McDowell 1998: 65). However, Aristotle consistently reminded us that “the best generalizations only hold most of the time,” thus, implying that this knowledge is not universal and, thus, not susceptible to codification (McDowell 1998: 63, 65-66). Therefore, nobody fully grasps the sensitivities required.

If one attempted to reduce one’s conception of what virtue requires to a set of rules, then, however subtle and thoughtful one was in drawing up the code, cases would inevitably turn up in which a mechanical application of the rules would strike one as wrong – and not necessarily because one had changed one’s mind; rather, one’s mind on the matter was not susceptible of capture in any universal formula (McDowell 1998: 65).

Instead, McDowell looks to Wittgenstein to provide a more accurate account of following a rule. Following a rule is not guaranteed correct by some external vantage point that confers objectivity, but rather is merely grounded in shared human practice. The virtuous person does not apply rigid principles, but rather sees a situation correctly based only upon shared human practice, a politics of humanity developed by engaging in relationships. From this requirement, it follows that the virtuous person’s moral education teaches him not to follow rules, but rather to see a situation correctly from inside a particular vantage point.

If it is only seeing things from a particular vantage point that is principally uncodifiable, how can we still explain virtuous behavior (see McDowell 1998: 66-73)? Taking the example of the virtuous person on the battlefield, his courage can clearly be explained by the fact that he stands and fights as opposed to runs and hides (McDowell 1998: 66-73). We can still explain the courage by use of the practical syllogism above (McDowell 1998: 66-73). Here, we see that the major premise is some universal knowledge about how to live (McDowell 1998: 66-73). Now, though, because of the
uncodifiability of the virtues, any attempt to construe that universal knowledge in a purely non-cognitive fashion, namely as some appetitive desire, fails because of the lack of an external vantage point (McDowell 1998: 66-73). The practices are then explained as a major syllogism with both an appetitive and a sensitivity component (McDowell 1998: 66-73).

In developing a virtue theory model of professional ethics, one may accept a virtue as guidance short of its universal acceptance. Virtues appear to be historically malleable and culturally contextual. Anscombe acknowledges as much in her work. Moreover, there is no universal knowledge about how to live or even an essential human way to live. This thesis asserts that there is no need to force a universal acceptance of ethics. It is not only artificial, but also unnecessary. It is sufficient to address a professional ethic from the perspective of a quasi-universal virtue.

8.4 Natural Goodness

Foot’s work seeks to place the theoretical foundations for virtue ethics on a firmer plane (Foot 1978: 1-18). According to Foot, the theoretical foundation for ethics lies in practical reason (Foot 1978: 1-8). While theoretical reason assesses what is the case, practical reason assesses what should be the case. Specifically, practical reason seeks to assess how we should act. This leads naturally into ethics. Foot seeks to place her account of naturalism within the context of the overall moral landscape (Foot 1978: 3-5). Foot, like Hursthouse, takes virtues to be those traits that allow us to flourish (Foot 1978: 3-4). Both thinkers also espouse a naturalistic foundation for their virtue theories (Foot 1978: 1-8; Foot 2001: 21-37). Foot, however, departs from Hursthouse in the scope of her understanding of practical reason (Foot 2001: 17-19).

Practical reason, for Foot, encompasses a broader scope than other philosophers would prescribe to it. Anscombe, for example, distinguishes between two types of “should” –
the moral sense and the nonmoral sense (Anscombe 1981: 29-31). Anscombe only considers the moral sense of “should” and largely ignores the nonmoral sense. Other thinkers have followed her steps (although, often implicitly) (Davidson 1980: 21-42). Foot rejects this dichotomy and asserts that any theory of practical rationality must encompass both forms of “should.”

For Foot, the “shoulds” of moral judgment are no different than the “shoulds” of other judgments that previously defined practical reason (Foot 2001: 56-65). However, she clearly thinks that some abstract idea of practical reason will be inapplicable to rational beings because it does not account for the essential features of human life. She then argues that these essential features of human life can be viewed and evaluated as we do when other animals act. She states, “I am therefore, quite seriously likening the basis of moral evaluation to that of the evaluation of behavior in animals” (Foot 1978: 16). The criteria that we use to judge whether animals are “good” or “bad” should be used to judge a species to which it belongs (Foot: 16-19; 25-50). From this, Foot derives the virtues of human life to be those that we consider necessary to fulfilling human life qua human beings in society.

8.5 Action Guidance

Hursthouse presents a mature accounting of virtue ethics and is often classed as a neo-Aristotelian. She presents one of the best known contemporary virtue ethics accounts, an account that recognizes primacy of character (virtue), that is agent-centered, that provides for right action, and that allows for role ethics (Hursthouse 1999: 69-72).

Virtue ethics (in its account of right action) is agent-centered rather than consequences – or rules – centered. It is agent-centered in that it introduces the concept of the virtuous agent in the first premise of its account of right action, where utilitarianism and deontology introduce the consequences and moral rule, respectively (Hursthouse 1999: 29).
In her writings, Hursthouse answers the objection that virtue ethics can provide no action guidance (Hursthouse 1999: 25-87). She asserts that virtue ethics can provide action guidance while claiming primacy of character and remaining agent-centered. She bases her defense on several observations (Hursthouse 1999: 25-87). Fundamentally, a person should act as a virtuous person should act (e.g., a person should act with courage, generosity, honesty, justice, etc.) (Hursthouse 1999: 28).

An action is right iff [if and only if] it is what a virtuous agent would, characteristically, do in the circumstances, except for tragic dilemmas, in which a decision is right iff it is what such an agent would decide, but the action decided upon may be too terrible to be called ‘right’ or ‘good’. (And a tragic dilemma is one from which a virtuous agent cannot emerge with her life unmarred) (Hursthouse 1999: 79).

Although this rule might seem a tautology, in fact, humans possess a reasonably good (if intuitive) account of virtue that is necessary to guide actions (Hursthouse 1999: 28-35). Following Aristotle, the moral education obtained at “our mother’s knees” teaches us a reasonably good account of how to act virtuously (Hursthouse 1999: 35-39). This “reasonably good account” will provide sufficient action guidance (Hursthouse 1999: 35-39). Furthermore, the appeal to our moral upbringing helps to resolve apparent conflicts between the virtues (e.g., acting with both justice and charity) because those conflicts merely appear like conflicts to someone who does not have the requisite or moral upbringing (Hursthouse 1999: 43-62). While Hursthouse remains careful not to commit herself to a unity of the virtues theory that McDowell espouses, she does espouse a weak unity proposition (Hursthouse 1999: 153-160). This proposition states that someone who has an understanding of justice cannot be completely ignorant of the other virtues such as charity (Hursthouse 1999: 153-160).

Another major problem for virtue ethicists is that their lack of action guidance means they cannot resolve moral dilemmas (Hursthouse 1999: 63-87). Hursthouse solves this
problem by admitting of the potential for irresolvable moral dilemmas (Hursthouse 1999: 63). Two virtuous agents may come to different decisions about how to proceed and yet both can still be correct and moral (Hursthouse 1999: 68-71). There is not always one moral path out of a dilemma (Hursthouse 1999: 68-71). This leads her to adopt McDowell’s idea that no set of rules will provide us with a complete decision procedure for how to act (Hursthouse 1999: 68-71). Thus, virtue ethics cannot be completely action guiding, but, she argues, no moral theory can be completely action guiding (Hursthouse 1999: 77-87).

No moral theory can resolve irresolvable dilemmas because they are fundamentally irresolvable (Hursthouse 1999: 77-87). For Hursthouse, these tragic dilemmas will unfortunately entail that there are some situations where a virtuous person will not be able to act with virtue. (Although the virtuous person will not act with vice in such situations) (Hursthouse 1999: 77-87). The virtuous person will act with something called “X reasons” (Hursthouse 1999: 129; 129-140). “X reasons” are reasons for acting that will properly lead to human flourishing (Hursthouse 1999: 129). Thus, according to Hursthouse, the judgment of the action depends on our notion of human flourishing (Hursthouse 1999: 129-140). For example, volunteering because “someone had to volunteer” will exemplify the virtue of courage and this will lead to human flourishing (Hursthouse 1999: 129-140).

An account of human flourishing will clarify how actions spring from X reasons (Hursthouse 1999: 163-191). Hursthouse argues that human flourishing is an objective ideal in our ethical theory about the good life (Hursthouse 1999: 163-191). There is only one correct, right way to live. This objectivity is a qualified objectivity, though (Hursthouse 1999: 163-191). Much like McDowell, she argues that ethical evaluation

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44 Williams (1985) was the first to use the concept of X reasons.
only occurs within an ethical standpoint (Hursthouse 1999: 163-191). These evaluations are made with respect to four aspects of an individual – her (1) parts, (2) operation, (3) actions, and (4) desires and emotions (Hursthouse 1999: 163-191). These aspects are evaluated in light of the four ends – her (1) survival, (2) the continuance of her species, (3) her freedom from pain, and (4) the good functioning of her social group. These four ends provide us with a method for determining whether a trait is a virtue because we can assess the trait based on whether it conforms to those four ends (Hursthouse 1999: 163-191).

8.6 From Morals to Motives

Any analysis of the body of knowledge of virtue ethics would be incomplete without a discussion of the work of Slote (2001). Slote presents a mature account of a virtue ethics theory in a form quite distinct from Hursthouse’s neo-Aristotelian theory and themes of naturalism and eudaimonism. His may be the purest form of primacy of virtue. To Slote, the primacy of virtue is closely related to the idea of agent-basing. According to Slote, agent-basing holds that what is basic in morality are judgments about the motives an agent possesses (2001: 68-70). He constructs his primacy of virtue through three related steps. First, Slote asserts that one must identify intuitions about particular motives. Second, he suggests that one then draw inferences about the rightness of actions from those judgments about motives. Finally, Slote asserts that one provide an account both of the well-being and the rationality of action in terms of the prior accounts of right action and admirable motives (Slote 2001: 68-69). For Slote, a primacy of virtue that rests on agent-basing is not the same as a primacy of character (virtue) that is agent-centered, thus distinguishing himself from Hursthouse (Slote 2001: 68). Agent-basing is an assertion of what types of moral judgments are basic and what types are derivative (Slote 2001: 68-70). In contrast, agent-centered introduces the concept of a virtuous agent in the first premise of the account of rightness or right
action; whereas, consequentialism and deontology introduce the concepts of consequences and moral rule, respectively.

Slote’s agent-based virtue ethics rests on the principle that what is morally right must be derived exclusively from the inner state of the agent. Unfortunately, his theory of virtue ethics, as he acknowledges, cannot provide action guidance (Slote 2001: 15-18). Thus, it does not seem clear how Slote’s work could provide a foundation for professional virtue ethics. Notwithstanding the perceived limits to his theory, he elucidates several important distinctions in the vocabulary of virtue ethics that remain important (Slote 2001: 1-29).

He divides virtue ethics into several categories. At the well-spring of virtue ethics is the notion that the theory is agent-focused (Slote 2001: 4). Agent focused means that virtue theory focuses on the inner traits of an individual rather than on laws (deontology) or expected consequences (consequentialism) (Slote 2001: 4).

According to Slote, all virtue ethics are agent-focused (Slote 2001: 4-5). An agent-focused model of virtue ethics may be further subdivided into two subcategories – agent prior or agent based (Slote 2001: 8-10). Agent-prior approaches evaluate actions based on, among other things, independent aretaic evaluations (Slote 2001: 8). Agent-based approaches, on the other hand, evaluate actions based entirely on independent aretaic evaluations (Slote 2001: 9-10). On Slote’s reading, agent-based approaches are a subset of agent-prior approaches (Slote 2001: 8-10). Agent-prior approaches are, in turn, a subset of agent-focused approaches (Slote 2001: 8-10).

An agent-focused approach can be either “cool” or “warm” (Slote 2001: 19-23). Warm theories regard actions as motivated from other virtuous emotions (Slote 2001: 20). Cool theories regard actions as motivated from other non-virtuous emotions (Slote
Warm theories evaluate action based on whether they are an instance of some other altruistic trait such as compassion or benevolence (Slote 2001: 21-22). Cool theories evaluate actions based on whether they properly “care for the soul” (e.g., Plato) or provide “inner strength” (e.g., Nietzsche) (Slote 2001: 23).

Slote prefers warm theories or approaches to cool theories or approaches (Slote 2001: 29-37). He exemplifies his warm theory through the virtue of caring (Slote 2001: 63-140). Warm approaches immediately face a tension as to the scope and range of someone’s compassion (Slote 2001: 23-29). For example, should benevolence be expressed universally by an agent or merely to those close to him? Slote offers a middle ground called “balanced caring,” whereby someone must learn to balance the benevolence or compassion for the world against that which one feels towards those closest to him (Slote 2001: 29-37). This concept of balanced caring requires us to care for all people, but not necessarily in the same way.

Slote’s major contribution to virtue ethics is the idea of agent basing: moral evaluations should be based on certain altruistic emotions such as benevolence or compassion. Unfortunately, this theory focuses too much on the inner thoughts and emotions to provide adequate action guidance. According to Slote, if someone acts with a good heart, then they act in a morally permissive manner, an approach that may be necessary but not sufficient for action guidance.

An example will illustrate another problem with Slote’s model. Suppose that person C adopts Slote’s view of balanced caring. C is in some moral dilemma and C decides that he wants to do what is “right.” C closes his eyes and tries hard to want to do what is right. He generates this emotion within himself. Whatever C chooses to do, it will be wrong. C’s action is not motivated by compassion, but rather is motivated by the desire
to do what is right. Arguably, anyone motivated to do the right thing would be acting wrongly under Slote’s view.

Slote has answers to these objections, but most importantly, he concedes that his view cannot provide a proper grounding for action guidance; rather, his model can only evaluate actions after they have occurred. For a professional ethic, this will not suffice. Practitioners demand a model that can provide *a priori* guidance, even if that model is not universally accepted. However, there is no need for a professional ethic that seeks to answer all questions *a priori*. Such a system is either unduly burdensome or a façade. Rather, a professional ethic may best be served by an ethical dynamic, a matrix of hermiticals, designed to develop an ethical process. Slote’s model may fail only because he seeks a precision that simply cannot exist in practice.

8.7 Observations

Virtue ethics is actually a family of theories. Each theorist has added his or her own distinctive features to the development. There are, however, several central or fundamental attributes largely shared by modern virtue ethics theories that may be helpful in building a professional ethic for archaeology that may aid in addressing the complex issues posed by armed conflict. First, virtue ethics holds to the fundamental principle of the primacy of character or virtue. Thus, a professional ethic based on virtue is primarily concerned with how a virtuous archaeologist ought to act, or refrain from acting, in any given situation. Second, virtue ethics is agent-centered and not rule-or-consequence-centered. Thus, the focus is on the agent, that is, the archaeologist and his or her profession. Third, although agent-centered, any suggestion that virtue ethics is not action-based as well lacks nuance. Actions matter but only in a derivative and not primary manner. Thus, a professional ethic based on virtue ethics has something to say about *why* an archaeologist did what he or she did and *what* he or she did and the
consequences thereof. Under this approach, an action is right if and only if that action would be undertaken by the ideally virtuous agent (Hursthouse 1999: 28). Therefore, the near universal core concept that unites the vast majority of virtue ethics theories is the primacy of virtue and the derivative nature of action. “An ethics of virtue is not a particular claim about the priority of virtue over right conduct but the more general claim that action appraisal is derivative from the appraisal of character” (Watson 1990: 452 (emphasis in the original)).
CHAPTER 9: VIRTUE THEORY AND OTHER DISCIPLINES

9.1 Introduction

The movement to applied virtue ethics has been hesitant and slow. Only a small cadre of philosophers has entered the applied arena. The virtue theory approach, however, is developing a following in, among other disciplines, business and law. Before the thesis turns to the application of virtue theory models to specific disciplines, a detailed analysis of virtue ethics and professional roles is in order.

9.2 Virtue Ethics and Professional Roles

Oakley and Cocking have developed the fullest account of the application of virtue ethics in a professional setting. They begin their analysis by elucidating what they take to be the six essential hypotheses of virtue ethics.

1. *An action is right if and only if it is what an agent with a virtuous character would do in the circumstances (Oakley and Cocking 2001: 9).* This hypothesis captures Hursthouse’s position of the primary of character: “An action is right iff [if and only if] it is what a virtuous agent would characteristically (i.e., acting in character) would do in the circumstances” (Hursthouse 1999: 28). For example, saving the life of someone who values life shows the virtue of benevolence (Oakley and Cocking 2001: 9-11). Additionally, revealing a hurtful truth to another may demonstrate the virtue of honesty (Oakley and Cocking 2001: 9-11). Character takes primacy over consequences or moral commandments. This is Hursthouse’s point in contrasting virtue theory with consequentialism and deontology (Hursthouse 1999: 39). Moreover, character is essential to determine right and wrong action (Oakley and Cocking 2001: 9-11). This is essentially Slote’s (2001; 1997b) point that virtue ethics theories are agent-based (Oakley and Cocking 2001: 9-11).

2. *Goodness is prior to rightness (Oakley and Cocking 2001: 19)*
3. **Virtues are irreducibly plural intrinsic goods** *(Oakley and Cocking 2001: 20)*

The second hypothesis essentially concludes that rightness or right actions can only be defined in terms of the “good” or “human flourishing” *(Oakley and Cocking 2001: 19)*. Derived from the second hypothesis is the point that each virtue is valuable in and of itself and not in relation to other virtues *(Oakley and Cocking 2001: 19)*.

The third hypothesis, that virtues are irreducibly plural goods, is by no means axiomatic and is controversial *(Oakley and Cocking 2001: 20)*. Plato held that there was only one real virtue and, thus, virtues were not plural. More recently, McDowell has accepted the unity of virtue thesis *(McDowell 1979)*. Hursthouse has argued for a weaker unity thesis that one virtue cannot be known without knowing the other virtues *(Hursthouse 1999: 153-157)*. Thus, it is somewhat surprising that Oakling and Cocking would elevate this proposition to the level of an essential tenant or axiom of virtue ethics given its controversial nature.

4. **The virtues are objectively good** *(Oakley and Cocking 2001: 21)*

5. **Some intrinsic goods are agent-relative** *(Oakley and Cocking 2001: 23)*

The fourth and fifth hypotheses imply that there are two types of virtues: agent-neutral and agent-relative *(Oakley and Cocking: 20-23)*. An example of an agent-neutral virtue would be justice *(Oakley and Cocking 2001: 23-24)*. What is just for someone to do in a given situation does not depend on the person or the relationship. An example of an agent-relative virtue would be friendship *(Oakley and Cocking 2001: 23-24)*. I can do something for my friends as opposed to doing something for someone else’s friends *(Oakley and Cocking 2001: 23-24)*.

6. **Acting rightly does not require that we maximize the good** *(Oakley and Cocking 2001: 24)*
The virtue of excellence does not require the notion of maximization (Oakley and Cocking 2001: 24-25). Someone is not required to have maximum friendships, but rather excellent friendships (Oakley and Cocking 2001: 24-25). Someone with merely a few excellent friendships displays more virtue than the person with 100 mediocre friendships (Oakley and Cocking 2001: 24-25).

Oakley and Cocking then introduce the notion of a regulative ideal, an attribute that is used to provide action guidance (Oakley and Cocking 2001: 25-31). Aristotle and most virtue ethicists after him claimed that we learn how to act by a process of internalization (Oakley and Cocking 2001: 29). We internalize the virtues to such an extent that we can adjust motivation and conduct so that it conforms to that standard (Oakley and Cocking 2001: 25-31). According to Aristotle, to learn how to act requires following and imitating virtuous people or exemplars (Oakley and Cocking 2001: 29). This mimetic process continues until the virtues are learned (Oakley and Cocking 2001: 29-31). It requires many repetitions until an agent can break out of the mimetic structure to begin to apply the virtues on his or her own (Oakley and Cocking 2001: 29-31). Once done, though, the virtues have truly been internalized (Oakley and Cocking 2001: 29-31). These six hypotheses along with the regulative ideal refinement encompass the theoretical framework for Oakley and Cocking’s theory of a virtue-based professional ethic.

After framing out their ethics model based on the series of hypotheses expounded above, Oakley and Cocking turn to how virtue ethics helps to explain the concept of a profession (Oakley and Cocking 2001: 74-94). They define a profession as something that plays a certain strategic role in living a flourishing life for human beings (Oakley and Cocking 2001: 79). Peculiarly, Oakley and Cocking limit the professions to lawyers, doctors, and priests. According to them, these are the only positions that serve
strategic roles. These three professions all share a commitment to a key human good that, according to Oakley and Cocking, constitutes the necessary requirements for being a profession. Oakley and Cocking reject any attempt to elevate accountants, actuaries, nurses, or others into the status of “profession” primarily because they lack the strategic role in helping societies flourish (Oakley and Cocking 2001: 79-83).

Based on Oakley and Cocking’s model, anthropology or archaeology may not qualify as a profession because these endeavors lack any strategic role such as justice, health, or salvation. However, that supposition is made without great confidence. Archaeology, for example, seeks the understanding of human beings prior to and congruous with recorded history. Human understanding, one may argue, appears to be a strategic role. Thus, Oakley and Cocking’s strained (and overly formalistic) definition of profession is vulnerable to attack. Notwithstanding the rejection of a more expansive characterization of the professions, much of their analysis and approach may be used for archaeology. For Oakley and Cocking, fulfilling good professional roles involves being a part of a good profession.

Oakley and Cocking make several salient points about virtue ethics and professional ethics. First, virtue ethics can capture the distinctive traits of each profession. Thus, the particular set of virtues that each profession collectively pursues (law pursues justice, medicine pursues health, archaeology [and history] pursues understanding of history, and anthropology pursues understanding of culture) defines that profession. As stated above, the virtues in various professions will be those shared strategic goals that further the interests of society. Second, virtue ethics explains why professionals refuse to act in certain manners that would otherwise seem to others (e.g., the public) to be good. Professionals may act in otherwise morally unscrupulous manners because their specific role requires them to do so (e.g., a lawyer refuses to divulge information about a murder
by his client because his role in the profession privileges the lawyer-client relationship higher than the ordinary virtue of honesty). If the profession is perceived good, roles will be perceived as good or at least forgiven by the public for the greater good.

In summary, virtue ethics must account for the specific roles that professionals play. Professional ethics can often conflict with ordinary ethics. Interestingly, while this point has been dogma in legal professional ethics circles, the point remains contentious within philosophical circles. Good professional roles must fundamentally derive from good professions. Importantly, if a profession is a good one, then society will forgive the professional from deviating from shared social norms.

A professional virtue ethics theory will try to assess the performance of a role with reference to how well those roles serve the proper ends of the profession. Taking lawyers as an example, conventional wisdom provides that a lawyer zealously representing clients best fulfills the lawyer’s role within an adversarial system. But the question becomes where do you draw the line within a virtue ethics approach? For example, lawyers obviously cannot bribe a judge or murder opposition witnesses. The imperative does not derive from the fact that it is illegal here, but from the fact that it is unethical. On the other hand, some commentators argue that lawyers can allow witnesses to perjure themselves on the stand (e.g., in a criminal case allowing the defendant to testify falsely).

Oakley and Cocking argue for an understanding of the lawyer’s ethical duties based on the virtues. They argue that “the lawyer as advocate of their clients’ legal rights is pictured as engaged in a moral enterprise, since the lawyer is the advocate of rights resulting from and resting upon the moral framework of the rule of public reason” (Oakley and Cocking 2001: 128). This account does not permit lawyers to substitute their own ethical judgments regarding their client’s morality, but it also avoids much of
the excesses such as the use of questionable or unduly prejudicial evidence or unnecessary delaying tactics often found in modern litigation.

Oakley and Cocking do not hold that the virtues of a profession and the virtues of ordinary life will always coexist peacefully; rather, they observe that often times a profession may require professionals to perform otherwise morally reprehensible actions. Their theory of virtue ethics allows these conflicts to exist because the virtues are inherently defined as being within a particular profession or role (cf. McFate 2005: 44).

9.3 Business Ethics

Swanton applies virtue ethics to a better understanding and construction of business ethics (Swanton 2006: 207–224). Along with Hurthhouse and Slote, she presents a mature but distinct virtue theory. Like Slote, Swanton is not a neo-Aristotelian. She has done much to clearly define virtue theory as separate from the other competing moral philosophies, particularly consequentialism.

Swanton is one of the first of a small cadre of philosophers to enter applied ethics with a virtue ethics approach (Oakley and Cocking 2001). She initially notes that some philosophers argue that there can be no conflict between role ethics and virtue ethics (Swanton 2006: 207). Indeed this is one of the biggest hindrances to deontology in the field of professional ethics. Deontology, with its universal nature, cannot seem to account for conflicting roles between professional (or role) ethics and everyday human ethics. Virtue ethics, by contrast, with its fundamentally contextual nature, accommodates the tensions between role ethics and human ethics. She, along with Oakley and Cocking, emphasize the idea that virtue ethics needs to play a fundamental role in the shape and structure of society. To that end, Swanton bifurcates ordinary human ethics and specific role ethics into prototype virtues and role virtues (Swanton
Prototype virtues are those virtues that specify to a high degree of generality the ideal understanding of the human *qua* human (Swanton 2006: 211). Role virtues then differentiate those prototype virtues into actionable intelligence (Swanton 2006: 211-216). She gives three examples of how role virtues contour prototype virtues:

(1) Politeness as a prototype virtue needs to be contoured by cultural features if a full understanding of the virtue is to be gained. As a virtue, politeness (like hospitality) has considerable but not indefinite cultural latitude. For example, what is required by politeness in one culture may be considered rude and disrespectful in another (Swanton 2006: 215).

(2) Generosity as a virtue is heavily contoured by the narrative structure of an individual’s life. However, this latitude is not boundless. In particular, the personal latitude given to an individual in her generosity is sharply curtailed when she acts in a role, such as managing director of a business firm. A managing director whose charitable business donation mirrors a personal desire to reward a local organization that saved the life of his father-in-law may legitimately be chastised by his overseas boss (Swanton 2006: 215).

(3) Loyalty as a virtue is strongly contoured by role contexts. Indeed it is claimed that in some roles, loyalty as a virtue ceases to exist. John Mitchell, the (ex) coach of the All Blacks rugby team, after dropping an icon of New Zealand rugby, was quoted as saying, “Loyalty is a great word, but it does not exist in professional sport” (Swanton 2006: 215).

Regarding the third example, Swanton would argue that this quote is essentially correct, but nevertheless does not negate virtue entirely. Merit may be the only official criterion in selection, but loyalty still exists with respect to “emotional and cognitive dispositions possessed and expressed on dropping a player who has served brilliantly over a long period and the manner of approaching the dropped player.” This is surely simply missing the qualifying category. Refining further, what Mitchell presumably meant is that there is/should be no personal loyalty, because loyalty towards the team/nation takes priority. This presents an interesting twist on loyalty, and loyalty’s shifting beneficiaries.
Following in the footsteps of other thinkers, Swanton argues that prototype virtues are learned via “mother’s knees” rules (Swanton 2006: 214–215; see also Hursthouse 1999). They are characteristically unsophisticated and vague, but these deficiencies are expected of prototype virtues. Take, for instance, the prototype virtue of loyalty. Loyalty does not prescribe rules. For instance, it is by no means clear that from the prototype virtue of loyalty, you can derive a rule such as “you should stay with your employer for three years.” Moreover, the understanding of “telling the truth” in business ethics will be contoured by particular situations. For example, telling the truth will entail entirely different actions in a marketing context (no false or deceptive advertising) versus a legal context (the truth, the whole truth, and nothing but the truth) (Swanton 2006: 214-216).

Virtue ethics avoids two common mistakes often found in business ethics (Swanton 2006: 218-223). First, often the prototype virtues are incorporated into a business in such a way that the fundamental goals of the institution are lost (Swanton 2006: 218). Second, the constraints of prototype virtues are so stringent that they cannot be applied properly (Swanton 2006: 218). This second mistake comes in two forms (Swanton 2006: 218-219). One, “the internal goals of institutional practices are thought not properly to be part of the domain of morality, but are merely ‘practical,’ and since the moral is thought to override the non-moral, the constraints provided by prototype virtues are regarded as highly stringent.” Two, “though institutional goals may seem as part of the moral domain, the constraints are understood as part of a deontological ethics, functioning as absolute or near absolute ‘side constraints’ on the realization of goals.”

Swanton argues that virtue ethics avoids the first mistake because the goals of an institution are implemented in such a manner that they are maximized. Virtue ethics,
with its eye towards the middle way, avoids the extreme of maximization that often leads to an institution’s losing its fundamental goals. Virtue ethics avoids the second mistake because the various prototype virtues are not sufficiently constraining to cause a business to lose sight of its practical function.

9.4 The Virtues and Vices of Virtue Jurisprudence

Duff does a persuasive job in outlining virtue’s role in a theory of jurisprudence based on virtues (Duff 2006: 90–104). Recently, virtue jurisprudence scholars have argued that the law should make someone virtuous (Solum 2003: 181). Duff instead argues for virtue to play an auxiliary role in the law and that the law should ask what virtues citizens need to comply properly with the law (Duff 2006: 90–91). To Duff, legal notions of virtue only make sense when couched within a particular domain of the law (Duff 2006: 91–93). For example, he outlines a virtue-based theory of provocation and duress within the context of criminal law (Duff 2006: 93–95). What Duff is calling for here is simply recognizing that virtue in jurisprudence requires an understanding of specific substantive context.

The obvious criminal law cases where duress clearly applies (e.g., when one has a gun to one’s head to force what would otherwise be a criminal act) do not adequately demonstrate the notion of virtue (Duff 2006: 93–95). Rather, it is in the unobvious cases – where the defendant should properly have withstood the threat – that clarify the notion of virtue (Duff 2006: 93–95). Duff uses the English common law definition of duress, which states: “According to English law, one who acts under such a threat has a defence only if ‘a sober person of reasonable firmness sharing the characteristics of the defendant’ would have acted as she did in response to such a threat” (Duff 2006: 94). Here, Duff argues that we can ascribe an Aristotelian notion of virtue to the reasonable person (Duff 2006: 94–95). For Duff, a defendant acts reasonably within this context
when she is motivated by a type of emotion that plays a proper part in human life and that was reasonably felt on this occasion (Duff 2006: 99). Moreover, the reasonable emotion must reasonably and properly motivate something like what the agent actually did (Duff 2006: 99). Additionally, the agent may not necessarily display vice, even though she did not necessarily display superhuman excellence (Duff 2006: 99). Finally, the emotion that she properly felt is one, that when strong, is apt to destabilize, that is, to disturb our rational deliberation (Duff 2006: 99). Thus, the emotion’s motivational power is liable to exceed its rational authority.

For example, suppose someone commits perjury because she has been presented with the very real possibility of bodily injury. First, she is presented with a proper emotion, that is, fear. Fear plays a proper part in human life. And fear was reasonably felt by our actor on this occasion. Second, the emotion would properly have motivated her to lie (or in more general terms to avert the threat). Third, while she did not display superhuman excellence, she also did not display a vice. Fourth, her emotion, fear, properly destabilizes someone into not acting rationally. Duff provides an account for provocation that works along the same lines.

Duff finally explores other areas of research for virtue jurisprudence (Duff 2006: 102-105). In doing so, he readily acknowledges that many flaws may exist. For example, Duff’s account privileges emotion and fear (Duff 2006: 102-105). But why stop there? Other emotions may similarly deserve to be privileged (Duff 2006: 102-105). What about parents who steal not food, but rather computers for their children’s education? The parents here feel distress, which was proper under the circumstances. That distress or love of one’s children might properly motivate them to steal. The parents did not display any vice in trying to provide for their children’s education, at least as “vice” is defined by Duff (Duff 2006: 103). Moreover, the distress that the parents felt may
properly have destabilized them. Duff acknowledges here that there is another element that may be required, that is, that the agent may have seen no other way around the situation (Duff 2006: 103). If these elements can be met, then perhaps, under a virtue theory of reasonableness, the agents should be granted a partial exemption (Duff 2006: 104-105). That may come in the forms of absolution or of mitigation.

9.5 Observations
A professional ethic may be constructed on a foundation of virtue ethics. Synthesizing the authorities on the application of virtue ethics to professions, one may deduce several key principles. First, a professional ethic, like human ethics, must rest on the primacy of character or virtue. Hursthouse’s axiom that “[a]n action is right iff [if and only if] it is what a virtuous agent would characteristically . . . do in the circumstances” (Hursthouse 1999: 28) applies equally well within a professional ethic as it does in a human ethic. Second, either Hursthouse’s agent-focused or Slote’s agent-basing model also applies equally well within a professional ethic as it does within a human ethic (Slote 2001). Third, a professional ethic may be agent-relative or agent-neutral, depending on the context. Agent-relative virtues focus on relationships, the type of virtue that holds more promise in a professional ethic. Agent-neutral virtues exist irrespective of relationships, that is, they transcend any relationship. “Justice” as a virtue would serve as a common example of an agent-neutral virtue. Fourth, a professional ethic provides a robust setting within which agents may identify exemplars, that is, those members of the profession that can help agents to internalize virtues. The profession may also encourage, nurture, and reward exemplars. Fifth, a profession plays a unique, specific, and strategic role in the flourishing of life. As a theory of ethics, virtue ethics, with its focus on the importance of context, may capture the distinctive nature of a profession and both explain and justify why we do and refrain from doing certain things. Sixth, virtue ethics accommodates role ethics as distinct
from human ethics. Thus, archaeological ethics, as role ethics, may be different than human ethics. In fact, what may be questionable or even reprehensible in human ethics may be permissible if not virtuous in role ethics.
CHAPTER 10: TRUST AS ACTION GUIDANCE

10.1 Introduction

In constructing a professional ethic for archaeology based on the virtue of trust, in addition to affirming the importance of character or virtue, my professional ethic must meet several challenges. First, it must provide \textit{a priori} action guidance. Second, it must enhance the integrity, distinctiveness, and separateness of the profession. Third, it must be consistent with the turn from the importance of the archaeological record to the paramount importance of people and a consideration of multiple relationships between archaeology and various stakeholders. Fourth, it must consider the importance of politics to an ethical system, even one based on the virtue of trust. In confronting these challenges, the model borrows from the law of trusts, where the stakeholders (living and dead people) trust the fiduciary (archaeology) to exercise through its members its specialized expertise in collecting, managing, protecting, preserving, and understanding the archaeological record(s) in a dynamic and engaged process through multiple relationships that seeks to develop truths across time and humanity.

10.2 Virtue Theory and Present Ethics Systems

Present work in the area of virtue-based ethics provides a pragmatic key to the recurring and broad spectrum of ethical issues an archaeologist may confront in armed conflict \textit{(see, e.g., Colwell-Chanthaphonh and Ferguson 2006; Cooper 2006)}. In particular, the multiple dimensions of trust, often lacking when an indigenous or local people confront a conqueror or previous colonial power over cultural heritage, must sit at the center of any robust and pragmatic system of ethics, especially in the war context \textit{(Colwell-Chanthaphonh and Ferguson 2006: 122-123)}. Virtue ethics places character and the virtue of trust front and center. This primacy of character is agent-centered, not consequences - or rule-centered \textit{(Hursthouse 1999: 72)}. The virtuous agent is the focal
point of the ethic. However, just because primacy is agent-centered, does not mean that actions have no meaning. The primacy of character allows for virtue ethics to develop an account of rightness or right action (Hursthouse 1999: 69).

In archaeology, present ethics systems, largely embodied in codes, are not sufficient to address the needs of archaeologists working with or for an invading or occupying military force in exercising their special expertise in an effort to protect, preserve, maintain, and restore cultural property, burial grounds (ancient and contemporary – including sites of possible evidence of war crimes and genocide), and cultural heritage. Moreover, these codes of conduct fail the individual archaeologist and the profession in general for a number of related, but independent, reasons.

Pollock (2008: 359) elegantly captures the failure of ethics when practicing archaeologists need an ethical system most.

In broaching these topics, it is important that we not limit ourselves solely to theoretical reflections; rather, we must engage at the level of praxis – by putting theoretical knowledge into practice. The praxis of archaeology involves everything from choosing a site to investigate, deciding whether “investigation” involves excavation or some other approach, formulating the questions that guide our research, structuring day-to-day work in the field, allocating publication rights and responsibilities, distributing available financial resources, teaching, organizing conferences, and so forth. In other words, we need an activist archaeology, in the sense of an archaeology that works toward ethical and political awareness and engagement at all levels of theory and practice.

Moreover, codes stifle discussion in the classroom, boardroom, or field by implying right answers to ethical questions without consideration of specific attributes of the conflict (Zimmerman et al. (eds.) 2003: xii.). Codes bring less spontaneous exploration of alternative scenarios. Thus, codes may be counterproductive because they suggest inertia of thought that serves the profession poorly (Colwell-Chanthaphonh and Ferguson 2006: 116). Ethics are not static rules; rather, they must represent an engaging
and dynamic discussion, examination, and debate about archaeological praxis, history, politics, and humanity.

Present ethics systems are either utilitarian or deontological, wherein consequences or moral rules, respectively, are primary. Virtue ethics embraces the primacy of character or virtue. It is an agent-based ethic where character is primary and action is derivative but nonetheless important (Colwell-Chanthaphonh and Ferguson 2006: 120-121). An ethical system wherein the interests of numerous constituencies across both time and space must be accommodated without the foundation stone of virtue is bound for failure. Such a system lacks a moral compass. For a professional virtue, a basic or primary virtue – if not the most basic or primary – is the virtue of trust.

Generally taken for granted, trust is a necessary component of a robust professional ethics model. In fact, trust is fundamental to the relationship between a profession and society. According to Colwell-Chanthaphonh and Ferguson (2006: 123), there are five dimensions of trust that play a central role in a virtue-based ethical system: (1) professional or collegial trust; (2) public trust (further refined between the actively involved public and the disinterested public); (3) descendant trust; (4) governmental trust; and (5) generational trust. Cooper (2006: 131) further elaborates on a virtue theory model of ethics when he argues for “truthfulness” and “inclusion” in archaeology. Paraphrasing Bernard Williams, Cooper acknowledges that truth is a pair of virtues – “accuracy” and “sincerity” (Cooper 2006: 134).

Taken together, Colwell-Chanthaphonh and Ferguson (2006) and Cooper (2006) craft the beginnings of an archaeological ethic that orbits around what a virtuous archaeologist is like and how that archaeologist is expected to act. Central to this ethical system is the virtue of trust and, within trust, truth and other attributes of trust. From a foundation based on the ideals of virtuous conduct in a cultural context, these
commentators have developed an exciting research process in which participants shared power, responsibility, and value for the work even when they perceived little benefit from archaeology. In a very real sense, these archaeologists have created an “ethic of collaboration” (Nicholas and Hollowell 2007: 72), another attribute of trust. This virtue-based ethical dynamic has helped to erase actual and perceived boundaries, a hallmark of postcolonial archaeology (Nicholas and Hollowell 2007: 72).

In this thesis, I now construct a professional ethic based on trust where the archaeologist seeks to be a trustworthy professional, possessing a specialized expertise, within a profession committed to trust-making. Many attributes or “badges” of trust, such as “truth,” “accuracy,” “sincerity,” and “collaboration,” are embedded in a virtue of trust, at least from the perspective of an organic and dynamic archaeological professional ethic. Further, trust is formed through relationships with people and not things. However, when I speak of relationships with people as the foundation stone to the professional ethic offered in this thesis, I do not confine my scope to the living. Rather, I argue that an archaeologist has a direct relationship with present people and an indirect relationship with past people (that is, the dead). Although the archaeological record remains important, it is no longer central to the discussion of a professional archaeological ethic, and is deeply subordinated to the relationships with human beings (both living and dead). Moreover, although the archaeologist is vital, it is his role as trustee (and not steward) for the direct benefit of the living and the indirect benefit of people of the past that is essential to an engaged professional ethic based on the virtue of trust as implemented through trust-making actions. These attributes of the trust relationship based on the virtue of trust are discussed below.
10.3 Trust as Virtue

A virtue theory of trust may take several forms. The model that I employ seeks to build trust through trust-maintaining and trust-making action. In essence, trust is a function of relative power. Thus, this theory must take into account the relations of power among the stakeholders, including the archaeologist.

Potter suggests that trust has been largely neglected in moral philosophy (Potter 2002: ix), citing Baier (1994: 249-252) for the proposition that:

Modern moral philosophy has concentrated on the morality of fairly cool relationships between those who are deemed to be roughly equal in power to determine the rules and to instigate sanctions against rule breakers. It is not surprising, then, that the main form of trust that any attention has been given to is trust in governments, and in parties to voluntary agreements to do what they have agreed to do. The domination of contemporary moral philosophy by the so-called Prisoner’s Dilemma problem displays most clearly this obsession with moral relations between minimally trusting, minimally trustworthy adults who are equally powerful.

Potter refocuses the subject of trust by making central our responsibility to be trustworthy (Potter 2002: xi). Potter suggests a “moving out of adversarial frameworks where conflicts in trust may evoke defensive reactions” (Potter 2002: xi). “Framing moral questions in terms of virtue ethics puts dispositions, and not rules, at the center” (Potter 2002: xii).

Trust is a matter of a relation between moral agents. It doesn’t quite make sense, when it comes to virtue, to talk about a moral agent and her motivations as if they are independent of particular trust relations (Potter 2002: xiv). Trust is a risky endeavor (Colwell-Chanthaphonh and Ferguson 2006: 126). Placing trust in another changes the relations of power in that the trusting person becomes vulnerable to another with respect to that valued thing (Potter 2002: xv; Colwell-Chanthaphonh and Ferguson 2006: 122,
Virtue must be particularized; it cannot be universalized; it is relative to situations and persons yet it is not wholly subjective. Trustworthiness, too, has some basic features but cannot be specified in ways that fit all situations or would offer guiding principles. A virtue theoretic framework for trustworthiness, therefore – because it emphasizes ways of being that are contextual and grounded in feeling as well as reasoning – provides a solid ground by which we can begin to perceive harms and vices in the world and to become people who, together, can create a flourishing society with flourishing members (Potter 2002: xvii).

The virtue of trust seeks a middle ground or golden mean between complete trust and absolute distrust (the “Golden Mean”), one that is responsive to context, positionality, and particularity (Potter 2002: 2). Trust is a dynamic relation involving the complex and interwoven perspectives of the trustor, the one trusted, and the object of one’s trust (Potter 2002: 3). Trust is a cooperative activity in which we engage so that we can help each other in the care of things (both tangible and intangible) (Potter 2002: 3). We all have to trust others, to some extent, because we cannot, by ourselves, take care of something we value (Potter 2002: 3). Cooperation, then, is an important aspect of trusting relationships (Potter 2002: 4). To be virtuous, however, one takes care of someone else’s things because it is important or good; not because he will be punished if he does not take care of them (Potter 2002: 5).

Trusting another involves an expectation or belief that the trusted person has good intentions with regard to the care of something we value and the ability to carry through with what is expected of him or her. This definition of trust directs us toward an understanding of its relational nature: when we trust others, we stand in a particular relation to them with regard to some good which we are entrusting to their care. Furthermore, this relation is one of vulnerability. Trust alters power positions (Potter 2002: 9 [emphasis in original]).

Being worthy of another’s trust requires that one take care to ensure that one does not exploit the potential power that one has to do harm to the trusting person (Potter 2002: 9).
10. One exhibits trustworthiness by clarifying what are one’s limits (Potter 2002: 11). The point becomes rather straightforward: one can responsibly cultivate trust by developing a trustworthy character (Potter 2002: 12). Thus, as is central to virtue theory, the concept of character is central and primary to morality (Trianosky 1990; Watson 1990; Slote 2001).

Following the Golden Mean, one is untrustworthy if one’s way of caring about a thing is too excessive or too deficient (Potter 2002: 20). We can care too much, and too little, and in both ways not well. Potter (2002: 17) presents her trust model, thusly:

\[(1) \quad A \text{ trusts } B \text{ to be } x \text{ sort of person with regard to } y,\]

where:

“\(x\)” = (from \(A\)’s perspective) a positive quality of character or way of performing an action and

“\(y\)” = some good that \(A\) values.

In sum, Potter’s model of an ethical system based on the virtue of trust requires a focus on relationships among individuals as anchored by a common interest in a good (I would expand that concept to include a thing, both tangible and intangible), and the acknowledgment that relationships, and therefore, trust, implicate power relations. This is the model that the thesis builds on to construct an archaeological professional ethic based on the virtue of trust.

10.4 Trust-Making as a Professional Ethic

Any system of pragmatic ethics must be built on a foundation of trust among stakeholders, including lineal descendants, indigenous peoples, local people, the living, and the dead (Singleton and Orser 2003: 144-149, discussing difficulty in identifying
descendant communities and other beneficiaries). Although not speaking explicitly in terms of trust, law and ethics have implemented the duty (as opposed to virtue) of trust-making through several cognizable fiduciary duties (care, loyalty, good faith), all of which must be discharged in furtherance of the duty a fiduciary owes a beneficiary. Under the professional ethic constructed in this thesis, these fiduciary duties, therefore, are never prima facie ends in themselves; rather, they constitute values embedded in the virtue of trust.

In certain circumstances, these values may conflict with one another. For example, an archaeologist cannot build trust with stakeholders without a special competence to preserve, protect, enhance, collect, manage, and understand the archaeological record. Without experience, specialized skill, and the like, a person simply invades a site without scientific benefit; he becomes nothing more than a tomb raider. One also cannot build trust with stakeholders if an archaeologist acts in his own best interest, thus eroding the trust that one will act in the best interests of a class or classes of beneficiaries. Finally, one cannot build trust if an archaeologist is dishonest, for trust-making constructed from a bed of lies is itself a construct of deception.

Archaeological ethics is not archaeology; nor is it about archaeologists, nor is it ethics, nor is it about the archaeological record, nor is it about past people, lineal descendants, indigenous populations, local communities, or archaeological associations. Rather, archaeological ethics is defined by the special relationships among the diverse groups that participate in and are affected by the activities of archaeology. The model offered in this thesis, based on special relationships, may be structured, thusly:

\[(2) \quad \text{Trust (virtue) is achieved by Trust-Making (right actions) where:} \]

\[\text{Trust-Making} = \text{Trusting} + \text{Trustworthy behavior}\]
Trustworthy = Values of Trust

(3) \( P \) is trusting of \( A \) in relation to \( r \) where:

\[
P = (\text{Living People } (P_L) + \text{Past People } (P_P))
\]

\[
A = (\text{Archaeologist } (A_A) + \text{Archaeology Profession } (A_P))
\]

\( r = \text{archaeological record} \)

Equations 1 and 3 above can now be restated:

(4) \( A \) is trustworthy of \( P \) in relation to \( r \).

I now turn to a series of figures to show the expansion and elaboration of the virtue of trust and the action guidance that trust and its values may provide to archaeologists in armed conflict. Figures 10.1 through 10.4 represent the general and specific moral attributes or values that flesh out a professional ethic based on the virtue of trust. The general moral values are those that \textit{ought to be done or ought to be} (Cullity 1995: 289). Trust includes both being \textit{trusting} and being \textit{trustworthy}. The specific moral values explain the more general (Cullity 1995: 289). Generally, if an action is wrong, it is wrong in one of the specific respects, that is, one of the immediate or mediate values.

Initially, we begin with the primacy of trust. Trust is agent-based and not consequence- or rule-based. Trust is primary; trust-making through values that are subject to refinement provides action guidance where the actions, however, are derivative. Nonetheless, the virtue of trust has much to say about the rightness of our actions as archaeologists. Figure 10.1 identifies the primary virtue central to an archaeological professional ethic based on virtue theory.
Figure 10.1  Virtue of Trust

Figure 10.2 identifies the initial values of trust that speak to what a virtuous archaeologist and profession ought to do (and refrain from doing). These include the values of truth, candor, and collaboration. If an archaeologist should possess a character of trust, she exhibits that character through initial values manifested through acts that are derivative of that character. Thus, an archaeologist must be truthful, act candidly, and seek collaboration because that is what a virtuous archaeologist ought to do in promoting the virtue of trust. The profession should signal, nurture, protect, and reward both the prime virtue of trust and the initial values manifested through right actions.

Figure 10.2  Initial Values

Figure 10.3 depicts the immediate values derived from the initial values. These values represent further refinements that direct the rightness of archaeological praxis solely because that is how a virtuous archaeologist should act (or refrain from acting). These immediate values include accuracy and sincerity (both implement the initial value of
truth); good faith and kindness (both implement the initial value of candor); and respect and vulnerability (both implement the initial value of collaboration).

Figure 10.3 Immediate Values

Figure 10.4 identifies mediate values.

Figure 10.4 Mediate Values
These values are derived directly from the immediate values and indirectly from the initial values. These value refinements are what, as a profession, we most often internalize through education, experience, mentorships, and learning from exemplars, in achieving a character of trust.

For example, truth exemplifies the values of accuracy and sincerity. In turn, accuracy and sincerity embody the values of competency, objectivity, genuineness, and purity. In a deontological ethical system, these values may be recast and reflected in a fiduciary duty of care or competence. Under a deontological code of conduct, an archaeologist would undertake certain actions because he had a duty to do so, that is, an archaeologist discharges his duty of care to a class of beneficiaries because a rule requires it and the rule is primary. In our virtue ethical system, an archaeologist is competent, objective, genuine, and pure because a virtuous archaeologist should be competent, objective, genuine, and pure in practicing his profession. Archaeological praxis is right action if and only if it increases the virtue of trust through truth.

Each “trust” chain can be analyzed in a similar fashion. Thus, candor exemplifies the values of good faith and kindness. In a deontological system, these values are recast as a fiduciary duty of good faith. An ethical archaeologist would discharge this duty of good faith because the required rule is primary. In a virtue ethical system, however, an archaeologist is honest, acts with integrity, is beneficial, and is sympathetic because that is what a virtuous archaeologist ought to be. Archaeological praxis is right action if and only if it increases the virtue of trust through candor.

Additionally, collaboration exemplifies the values of respect and vulnerability toward others. Respect means to act with humility and loyalty. Vulnerability means to act with sensitivity and openness. In a deontological ethical system, these values may be recast and reflected as a duty of loyalty. An archaeologist would discharge the duty of loyalty
because the rule requires it. In a virtue ethical system, an archaeologist is humble, loyal, sensitive, and open because that is how a virtuous archaeologist ought to be. Archaeological praxis is right action if and only if it increases the virtue of trust through collaboration.

As previously discussed, according to Colwell-Chanthaphonh and Ferguson (2006: 123), there are five varieties of trust that play a central role in a virtue-based ethical system. These varieties include: (1) professional or collegial trust; (2) public trust (further refined between the actively involved public and the disinterested public); (3) descendant trust; (4) governmental trust; and (5) generational trust. Each of these dimensions of trust is driven by the identification of the beneficiary, a concept worthy of further elucidation. Now that I have laid the bedrock of a professional ethic based on the primacy of truth as character, implemented through initial, immediate, and mediate values, I turn to the essential question of “for whom do we do archaeology?”

10.4.1 Beneficiaries

Initially, the model offered in this thesis presupposes that a discussion and examination of the beneficiaries of the ethical virtue of trust be established. This presupposition is clearly shown in Equation 4: \( A \ is \ trustworthy \ of \ P \) in relation to \( r \). That is, a professional ethic must begin with an answer to the question for whom do we do archaeology? The model offered in this thesis concludes that the beneficiaries of an ethic of trust are both the living and the dead. A professional ethic that includes as beneficiaries both the living and the dead does not suggest that each is entitled to the same accommodation; but it does demand that each is relevant.

The archaeologist as trustee acts with the virtue of trust toward a spectrum of direct and indirect beneficiaries. Direct beneficiaries include lineal descendants, those communities with cultural affinity, local communities, those communities with a
national affinity, and the public in general. As Figure 10.5 depicts, the archaeologist’s relationship is strongest with the people of the past under study and with those communities possessing ties strongest to those past people and the communities under study.

The unease is that as the number of beneficiaries increases to include groups more tangential to the core archaeological relationship, the entire notion of moral responsibility becomes blurred. Clearly there is a kernel of truth to the question can archaeology be too ethical (Singer 1995)? The requirement of equitable administration, however, does not necessarily mean equal administration (Scham 1998: 305).

Figure 10.5 Beneficiaries

By the nature of the virtue of trust, any ethical model founded on trust must be relationship-centric: the primacy of trust and its nourishing through relationships must
flow directly to the living and the dead, and the values of trust as *a priori* action guidance must acknowledge this fundamental theme.

Building trust with the dead is a fiction, but a useful one nevertheless. We do use this construct as a proxy when we cannot identify the true beneficiary of the trust relationship and attempt to recognize that issues of justice and representation are longer-lasting than a person, community, or people (Tarlow 2006). This point does not suggest a universal principle or an “off-the-rack” model; far from it. Rather, I adopt what Pollock has referred to as a continuing ethical engagement that takes into account the specific and changing realities of the particular contemporary political nexus in which we work. We need to ask whom our work affects and how, what we can do to mitigate potential harm, and how we can promote understanding through the way we conceive of and conduct our research (Pollock 2008: 359).

An ethical model that focuses exclusively on the living contains several important deficiencies. For example, over time, I have refined my virtue ethics model based on trust and its values, especially after analyzing the data from the HTS program, a program wherein social scientists are embedded within military units in combat zones. The HTS program deploys in theater through the HTTs and HTATs. The HTS deployed programs are perceived by the DoD as operationally successful. But what I have noticed is that with their complete focus on the present (that is, the living), the HTT suffers from “presentism,” and inevitably embraces short-term goals (and values). These programs' slavish preoccupation with the living led them to ignore the future and the past with equal abandon. Although I have argued that there is something incompatible with trust directed at a nonliving thing (such as the archaeological record), I am now quite convinced that one can and should address virtuous behavior toward past people as well as the present and future. I sense the irony, but hear me out.
10.4.2 Archaeological Record

Historically, the question of ethical duties owed by archaeology concentrated on the archaeologist’s relationship to the archaeological record. Traditionally, the profession was quite comfortable with the notion that an archaeologist owed ethical duties to the archaeological record, a thing, and not to any particular group of people, either dead or living. Over time, many began to question the comfortable notion that an archaeologist owed an ethical duty to the archaeological record. A number of archaeologists began to focus on ethical duties from the perspective of people, that is, living people. Specifically, these archaeologists asserted that the ethical duty ran to the benefit of living people including local populations, various subsets of a given population, the general population, future generations, and the public good. The leaders of this movement believed that ethical duties could only be tied to living people.

Among the advocates of this new ethic, there remains disagreement about just what subset of living people should benefit. Great debate has centered on this question. Although some suggest that the indigenous populations are the primary beneficiaries of the ethical duty, who exactly is the indigenous population is not self-evident. Often, indigenous population is used when a more accurate term would be “local” community. Clifford challenges even the notion of local communities where everyone is on the move, that is, “dwelling-in-travel” (2; see also 24, 38, 79). Others suggest a common geopolitical or cultural affinity would be sufficient to moor ethical duties. Still others suggest citizenship or nationality, Western constructs. Some suggests that the beneficiary should be the public in general. Still others point to a duty to future generations.

The concept that an archaeologist owes a duty to a fictional thing, that is, the archaeological record, is not without precedent. For example, in the law, attorneys owe
fiduciary duties to their clients. This is the case whether the client is a human being or legal fiction, such as a corporation. In fact, the disciplinary rules that regulate the relationship of an attorney to his client clearly contemplate the existence and personification of intangible things like the corporation and partnership.

However, if a robust professional ethic is driven by relationships and not duties, the notion of a thing like the archaeological record being central to the ethic is problematic. A relationship between a human and a thing may lead to perverse results. In fact, we have witnessed the perversion of ethics, according to many, in the context of business where clients are legal fictions and their fiduciaries apathetic to the interests of human beings.

Because I suggest that the better approach is to build an archaeological ethic based on relationships and not duties, the focus of the archaeological record as central to an ethical system must be rejected. To be sure, that does not mean that the archaeological record is unimportant. To the contrary, the archaeological record is an important attribute in the overall context in which we build an archaeological ethic. That record (or multiple records), which represents archaeology’s collective body of work, is that which is entrusted by the dead to the archaeologist for the benefit of the dead, living, and future people.

Moreover, the various duties that traditionally have played a role in framing out a fiduciary relationship, and that have played a central if unacknowledged role in the development of how archaeologists view their profession, will remain relevant in my model, not as duties but as values of trust as elucidated above. Thus, competency, good faith, and loyalty continue in the virtue ethics model presented in this thesis as values of trust-making and relationship building. Further, good faith remains an important attribute of trust-making. In sum, an archaeologist acts with competence, in good faith,
and with loyalty to the present and the past because that is what a virtuous archaeologist ought to do as a matter of primacy of character and not because he or she has a duty to do so.

10.4.3 Professional Trust Circle

In building a more robust professional ethic based on the virtue of trust, I have turned to another profession that has struggled with the challenges of administering a *corpus* or *res* and of building trust with both living people and the dead. This profession is the practice of law; the sub-discipline of interest is the practice of wills, trusts, and estates. This legal-based trust relationship focuses the archaeologist’s primary attention on trust-making and relationship building with the living but not at the neglect or expense of the dead. However, the ethical model does not permit dominant dead-hand control; thus, an archaeologist’s relationship with the dead is an indirect one and generally (but not absolutely) subordinate to the direct relationship with the living as explicated above.

Scham sounds the call to return to the idea of an archaeological trusteeship modeled on the legal tradition (Scham 1998: 302). First codified in the Statute of Uses in 1535, English trust law has become one of that country’s most important contributions to the field of jurisprudence. “The trust relationship has very specific duties attached to it, and those duties are the outcome of a conscientious approach to defending the property rights of others” (Scham 1998: 304). The trust is a creation of equity and not ethics. However, the history and tradition of the trust will provide a supple architecture around which this thesis builds its professional ethic.
Figure 10.6 Professional Trust Circle

Figure 10.6 depicts the professional trust circle. In every trust, there is a grantor who creates the trust and who also benefits from the trust relationship. The grantor is analogous to the people of the past who have left behind what may become part of the archaeological record. In every trust, there is the res that is used to populate the trust. The res is analogous to the materials created by humans that comprise part of the archaeological record. In every trust, there is the beneficiary for which the trust is administered and to whom the primary obligations flow. The beneficiary is analogous to past, present, and future people as delineated above. Finally, in every trust, there is a trustee, whose responsibility it is to administer the res of the trust in accordance with the manifested intent of the grantor for the benefit of the beneficiaries. The trustee is analogous to the archaeologist and archaeology. Because the owner of the trust, that is,
the beneficiary, is separated from control by the trustee of the res of the trust, the law has historically imposed a matrix of fiduciary duties on the trustee who controls the res that runs to the benefit of the beneficiaries. The law imposes these duties to ensure that the trustee administers the trust in a competent, good faith, and loyal manner. Under trust law, the trustee acknowledges, is controlled by, and effectuates the intent of the grantor, but administers the trust for the benefit of the beneficiaries. This is very much like how deontological archaeologists have operated where duty is primary; and how virtuous archaeologists ought to practice where character is primary and right action is derivative.

The archaeologist is a trustee. He does not serve as a custodian, conservator, or steward; rather, he is a trustee who is entrusted with the archaeological record, possibly many of them. His duty is to administer the res, that is, the archaeological record. However, the archaeologist owes no duty to the archaeological record and, of course, can build no relationship with a thing. Rather, like a trustee, the archaeologist builds, nurtures, and maintains a relationship with past people, living people, and future generations.

In sum, living people are the direct beneficiary of the trust relationship. This does not end the analysis, however. Recall that a trustee also owes a duty to the grantor to ensure that the res of the trust is administered in accordance with the grantor’s intent. This is no less the case with the archaeologist, not as a form of duty but as a value or attribute of trust, whereby character is primary and right action derivative. Thus, an archaeologist must also build a relationship with people of the past as beneficiaries because, at one point in time, it was once their materials or, in the case of human remains, it was once them.
The challenge, of course, is how to discern intent when people of the past are no longer present. We could simply defer to their descendants, for example, if those descendants can be found and present a strong lineal connection. NAGPRA (1990) largely embraces this approach. Of course, there is the recurring problem of specious lineal claims or no lineal descendants present at all (Singleton and Orser 2003: 144-149, addressing the challenge of identification of descendant communities).

We could also defer to local communities based on the assumption that such folks understand the mind of the past people who once lived within the same geographical space. I have considerable trouble with this proposition because local communities are not equally relevant everywhere, and are but one group in a myriad of groups asserting a specialized claim.

We could leave it to archaeologists, unfettered by present or future people, to discern intent. That is, in effect, what we have done. We hide the assumption and role by reference to the importance of the archaeological record. In fact, what we presently do is embrace the premise that the intent of people of the past is to be known through their hands, if you will. Thus by stating the importance of the archaeological record, we are actually reaffirming our role as sole (historically) or primary (modern) arbiter of past intent. I am uncomfortable with this proposition for reasons I have previously discussed in this thesis.

That leaves us with the intent of the grantor, that is, past people themselves. How do we effectuate their intent in a virtuous way when they are no longer with us? How do we keep the trust with someone who is dead? How do we give people of the past voice?

The law of trusts has addressed this very issue over centuries. Its answer to these questions is found in the legal doctrine of *cy pres comme possible* ("*cy pres*"). *Cy pres*
The doctrine of *cy pres* is a court-fashioned rule of construction designed to save charitable trusts from the nasty fate that would otherwise await them under English common law. It is an equitable saving device constructed to effectuate the intent of dead grantors of existing trusts (Pearson 2006: 136).

The doctrine was first established in the 11th century (Pearson 2006: 127). Equity permitted the establishment of institutions with perpetual existence such as a charitable trust or, in our case, the archaeological record. For example, a human being (hardly perpetual) may create a trust (which may be perpetual) for charitable purposes dedicated to the public good. That person, called the grantor of the trust, transferred to the trust certain property, which is called the *res* of the trust, for the benefit of the public (or a segment thereof) for a charitable purpose. What happened if, long past the life of the grantor, the purpose for the charitable trust no longer existed? Did the trust property revert back to the grantor’s heirs? Did the property escheat to the state? The general answer was no. The doctrine of *cy pres* permitted a court to modify the dispositive purpose of a charitable trust to effectuate the intent of the grantor (Restatement (Third) Trusts 2003; Uniform Trust Code 2005).

A charitable trust is evidenced by the intent of the grantor of the trust (Restatement (Second) Trusts 1959: § 368; Ascher *et al.* 2006: § 375). Numerous badges of intent have developed over the centuries that suggest the creation of a charitable trust. These badges include: grantor intended to create a charitable trust; delivery of specific property that will constitute the *res*; charitable purpose; and indefinite number of beneficiaries (Pearson 2006: 130). Charitable purpose is further refined to include: relief of poverty; advancement of education; advancement of religion; promotion of
health; government or municipal purposes; and other purposes, the accomplishment of which is beneficial to the community (Restatement (Second) Trusts 1959: § 348).

John Stuart Mill noted “no reasonable man, who gave his money, when living, for the benefit of the community, would have desired that his mode of benefiting the community should be adhered to when a better could be found” (Bain 1882: 36).

Essentially, the doctrine of cy pres recognizes that:

Rigid adherence to the letter of the instrument would likely frustrate donative intent of the grantor and efficient use of resources. Because no one can see the future, a rational grantor knows that his intentions eventually may be thwarted by unpredictable circumstances and may therefore be presumed to accept implicitly a rule permitting modification of the terms of the bequest in the event that any unforeseeable change frustrates his original intent (Posner 1992: 509-510).

In summary, through their material manifestations of their deeds (that is, what will become part of the archaeological record), past people teach us beyond the grave. Through their material remains, we learn about change over time and the many truths that emerge through history. If we can accept for the moment this proposition, then legal trust doctrine can enlighten us on the ethical challenges faced by the praxis of archaeology. Past people are akin to the grantor of a trust for the public good. An archaeologist assumes the role of trustee whose role is to administer the trust res for the beneficiaries (the living and the dead).

The archaeologist seeks to effectuate the intent of the grantor to achieve a charitable (“public”) purpose (“good”) in relation to the archaeological record. The archaeologist accomplishes this by acting virtuously, specifically by acting through the virtue and values of trust. Virtuous character is primary; the public good or rightness is derivative. The beneficiaries of the trust are past, present, and future generations. However, the best interests of present and future people must be considered within the context of the
past people’s intent. Therefore, trust as a professional virtue is triangulated among the past (grantor and indirect beneficiary of the archaeological record), the present, and future people (direct beneficiaries of the archaeological record), and the archaeologist (the present day profession that builds a trust relationship with the present and the past).

Under this ethical model, local people, and even descendants of past people, have no special or greater claim as beneficiaries than all living or past people. These specialized groups, however, do provide insight and relevant information as to the probable intent of past people to help guide the actions of an archaeologist as trustee who ought to act towards the beneficiaries in a virtuous way, building trust through initial, immediate, and mediate values as elucidated above.

10.5 Professional Virtue Ethic in Armed Conflict
Conflict has been identified throughout human history and predates archaeology. War, however, has always appeared to include looting, pillage, conquest, misappropriation, and a multitude of other ills that humans have suffered on humans. Archaeology reasonably as a profession does not exist until the later 19th century, and, is then heavily embroiled in colonialism and imperialism. One can argue that social evolution as an idea (along with others) has been influential in archaeology, and before that theology, and both presented notions of the past and cultural superiority of the modern which archaeology and anthropology bought into, and which assisted colonialism, imperialism, etc. (Pluciennik 2005, 2002, (ed.) 2001).

A virtue based professional ethic where character is primary and action guidance is important but derivative must be framed in a contextual manner. Thus, any resolution of professional ethical issues in armed conflict rests in ethics, politics, culture, and history. Borrowing from the work of others, this virtue-based professional ethic
embodies several fundamental tenets when applied to potential archaeological roles in armed conflict.

(1) A professional ethic must maintain the distinctive character of archaeology as a profession. Each profession has a collective responsibility to establish and maintain its relevance. Notice the Trust Circle does not require an archaeologist for the maintenance of a relationship between past and present. That happens, for example, through custom and tradition. It is also incumbent on a profession to identify itself when it seeks to interact with the public. Thus, the archaeological profession must establish what it means to be an archaeologist and what is expected of that professional. Of course, archaeology may speak with many voices on the subject – law and medicine as professions most certainly do – but speak it must. And part of that pronouncement centers on professional ethics. Professional ethics is designed to empower the archaeologist and safeguard the integrity of the profession from erosion, subordination, and irrelevance. The ethical system must develop and nurture virtuous character and provide a priori action guidance through a dynamic and examined process where relationships are paramount. It is an ad hoc, but not unprincipled, process.

(2) Archaeological praxis must consider political context. From the selection of sites, site licensing, excavation, collection, and interpretation, each step has political dimensions and consequences. Private Capital or Government (or both) regularly attempt to influence praxis. Any engagement with Government, Private Capital, or the military must be an examined relationship. The marriage of archaeology to politics is not, in itself, detrimental (Scham 1998: 303). Scham convincingly maintains a distinction between political archaeology and nationalist archaeology. A nationalist archaeology exists to extol nation states and their governments usually at the expense of others (Scham 1998: 303). The key is to be mindful that praxis is transformative and
not apolitical; thus, the profession must examine values and consequences of praxis in an overt and deliberate manner.

(3) A professional ethic must consider the lawfulness of military action as determined by experts in that discipline. Any military intervention must be consistent with international law. International sanction of military action is sufficient, but not necessary (but see Teijgeler 2011). Without international legal legitimacy or worse – with international condemnation – one is left with an inability to act as a virtuous archaeologist ought to act because the unlawfulness of the intervention taints any attempt to build trust.

(4) A professional ethic must consider space. Space refers to pre-conflict, peri-conflict, and post-conflict awareness. Each phase presents both general and unique issues and challenges. Of course, modern conflict is not easily compartmentalized into tidy phases, and there is no assurance that all phases will actually present. However, the awareness of space does help frame and focus the ethical issues and a professional ethic response.

(5) A professional ethic must consider the legal obligations imposed on parties in armed conflict relevant to the specialized expertise of archaeology. The legal obligations are found in international laws and conventions. Distilled, these laws impose upon military personnel duties to protect cultural property in a war zone. The duty to protect includes the duty to secure, preserve, and repatriate. Archaeologists and archaeology have a unique and specialized power and compelling responsibility to aid the belligerent nation states in discharging these duties. Archaeologists generally will have to work through the military in a conflict zone. Thus, even if an archaeologist operates through an IO or NGO, the archaeologist will necessarily have to rely on and coordinate with the invading and/or occupying military.
(6) A professional ethic must consider potential types of damage to cultural property and heritage. Damage may include damage from neglect that predates the pre-conflict phase but may be exacerbated by proposed or actual intervention, damage resulting from conversion of sites into defensive military positions in the pre- and peri-conflict stages, damage resulting from the invading army in the peri- and post-conflict stages, and damage from looting during all three phases. Appropriate responses may include prevention, reaction, and rebuilding. And we demand different archaeological responses based on the facts and circumstances of each challenge.

(7) A professional ethic encourages the recognition that cultural property should include cultural heritage (Stone 2011). Local experts and others should be included in the process of defining and characterizing property and other attributes of cultural heritage. These collaborative actions build trust.

(8) A professional ethic should generally prohibit war zone excavations (except for forensic excavations in furtherance of documenting war crimes) because they appear to elevate the record over the suffering of local people. Moreover, excavations in war zones unnecessarily put at risk archaeologists and their staffs (Teijgeler 2011; see also Second Protocol 1999).

(9) A professional ethic based on the virtue of trust and implemented through trust-making as action guidance would condemn an archaeologist’s use of his or her professional role as cover to conduct clandestine operations. Any attempt to use the profession as a cover for spying directly contradicts the virtue of trust and impedes trust-making (Boas 1919). In short, Boas was correct then and his position remains correct today. Spies exploit trust.
Archaeological codes of conduct should be revisited and substantially revised. They are not up to the task. With their focus on the record, stewardship, and conservation they miss the fundamental tenet that a professional relationship is built on trust (Hamilakis 2007). Present codes of conduct truncate debate; they are tokens of the death of thought. New codes should abandon the vestiges of colonialism (including notions of consequentialism and deontology, themselves, largely Western constructs) and embrace an ethic steeped in the virtue of trust and values of trust-making. Codes should speak to what a virtuous profession and its practitioners ought to do, and refrain from doing, in practice. Character must be primary; action guidance important, but derivative. The necessity of this virtuous ethical “turn” is amplified by and not limited to the challenges of armed conflict. Rather, the elevation of professional character and role virtue over the archaeological record, stewardship, and conservation is the logical progression in the maturation of the profession. It is evolutionary, not revolutionary. It also functions as the foundation upon which cooperation with present people may be established and maintained (Tyler 2011: 1-7, rejecting the myth that people in social contexts are motivated by self-interest and concluding that what is crucial to cooperation is the perception that the authority (i) is benevolent and sincere and (ii) uses fair procedures when making decisions).

10.5.1 Targeting Influence

Other than embedding archaeologists in tactical military units, no other activity has generated as much controversy as archaeologists participating in targeting selection during the Iraq and Afghanistan wars (see Albarella 2009: 108). Emberling writes:

A number of Mesopotamian archaeologists (Gibson 2003; Bahrani 2003; among others) were contacted by the Department of Defense before the war to identify sites of cultural and historical importance, and most worked to provide long lists of coordinates of known sites and shorter lists of the highest profile sites. A number of archaeological organizations, including the Archaeological Institute of America,
registered their concern about threats to cultural heritage with letters and public statements (Emberling 2008: 449 [citations in the original]).

Both Mourad (2007) and Hamilakis (2009; 2003) specifically refer to the role played by Stone, an archaeologist and then chief executive officer of the WAC, in consulting with the military in preparation of the invasion and occupation of Iraq.

He accepted, and started providing expertise on material heritage, liaising with Mesopotamian specialists, participating in various meetings, and even writing an article on the importance of antiquities which was published in Arabic in the newspaper put out by the British in the occupied sector under their responsibility. Although he was not asked to sign a bidding [sic] confidentiality agreement, he had to work, at least in the early stages, in secrecy (Hamilakis 2009: 46 [emphasis in original and citing Stone 2005: 3]).

Stone has not shied from the controversy and has sought to engage in robust debate (Stone 2011: 1-7). Stone (2005; 2009; 2011) has explained his role on several occasions; for this, his position and justifications for that position are worthy in their own right to consider and critique. He has noted that archaeology relates to conflict through excavation evidence of crimes, increases in the unlawful trade in antiquities, and damage to cultural property (Stone 2009: 33). Thus, archaeology has a long history in conflict. Stone perceived his advisory role to the military as mitigating damage to cultural property (Stone 2011; see also Stone and Farchakh Bajjaly 2008 (noting the failure of the Coalition Partners to develop and implement meaningful protections for cultural property before the invasion of Iraq)). Along with several archaeologists, Stone undertook several tasks for the UK government before the invasion of Iraq. He:

(a) Delivered a list of key sites and stressed the vulnerability of all sites and museums during any conflict; (b) Stressed the vulnerability of sites and museums immediately after conflict and before either an interim/new Iraqi authority was in place; (c) Reminded staff in the UK MoD [Ministry of Defense] of the UK’s responsibilities under international treaties—especially, as UK had not, and still has not, ratified the 1954 (Hague) UNESCO Convention on the Protection of Cultural Property in

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the Event of Armed Conflict and its two Protocols of 1954 and 1999, regarding their responsibilities to the cultural heritage under the Geneva Conventions. I understand three further things happened: (1) the sites were located on military maps identified in field orders to avoid if possible; (2) the sites went onto the UK Attorney General’s so-called “no strike” List; (3) all of our information was shared with coalition partners (Stone 2009: 35).

Stone’s most recent explanation for his role may be found in a book he edited in 2011 entitled *Cultural Heritage, Ethics, and the Military*. The book, and Stone’s contribution in particular, is an important and thoughtful contribution to the debate. In the Introduction, Stone elaborates on his role. He writes that he was approached by the MoD to provide assistance “with the identification and protection of the archaeological cultural heritage in Iraq” (Stone 2011: 1 (citations omitted)). There are three interesting points posed by this cogent description of his role in the lead-up to the invasion of Iraq.

First, Stone reacted to a request by the government; he was initially passive and chose to voice his concerns about the protection of cultural property through the MoD and not an NGO or an IO like the Red Cross. Interaction with a neutral IO would appear to accomplish much of the same goals of identifying cultural property accomplished by Stone through direct involvement with the MoD. International or non-belligerent military collaboration would not carry with it the many vestiges of colonialism and imperialism associated with archaeology and war as discussed by Mourad (2007), would have the benefit of neutral non-belligerent organizational support, and could have more directly included local Iraqi archaeological input and expertise. Any concern that the enemy might use the information disclosed and publicized by a neutral IO to their advantage by locating arms, munitions, and combatants in culturally-sensitive areas is unpersuasive. Internally, the identity and location of cultural property is already known by many within the local population. Additionally, cultural property in the theater of operations may already be identified as subject to protection under applicable
international law and conventions. Furthermore, the use by combatants of cultural property or civilian populations for military purposes is a violation of international law and conventions. Anticipating such violation by combatants is too thin a wedge to build archaeological cooperation with the military in identifying cultural property before an invasion.

Second, Stone was asked to provide assistance with both “identification and protection” of cultural property before the invasion. The two tasks are related, but distinct. Identification may suggest a kind of complicity in the aerial attack and invasion of Iraq that may not be associated with the protection of cultural property. To be sure, an archaeologist may advance the argument that identification is the first step in protection, and, therefore, if protection of cultural property is a proper role for archaeology, then identification is proper as well. Moreover, one can advance the argument that education is the program that links identification, awareness of the legal mandate to protect cultural property, and the development and implementation of cultural property management. As mentioned, neutral non-belligerent IOs can serve the role of identifying cultural property through a process similar to that undertaken by a nation state to internationally sanction a conflict, and with a more dedicated approach to the World Heritage List.

That is not the case with cultural property protection. With cultural property protection within a combat zone, archaeology must work with the invading and occupying military if it is to have a voice and active role in theater. It is that military force that provides security, transportation, freedom of movement, and is able to enforce a cultural property protection platform. Reliance on private security poses its own legal, ethical, and logistical problems, and still requires coordination with the military.
Third, Stone provided assistance in order to identify and protect “archaeological cultural heritage in Iraq” (Stone 2011: 1). From a comparative archaeological perspective, that is not the case. Stone was aiding the military in protecting “cultural property” and not necessarily “cultural heritage.” The concepts are not interchangeable (Stone 2011: 11; Prott and O’Keefe 1992). He acknowledges this difference from a comparative perspective, but appears to maintain the distinction (Stone 2011: 11, 13). Cultural property is a subset – a legally mandated subset nevertheless – of cultural heritage. The 1954 Hague Convention protects cultural property and only indirectly cultural heritage. This is a distinction we comfortably make in the West, but is inconsistent with many other cultures, such as in Africa and among Native Peoples in the US and Canada (Folorunso 2011; Rowlands 2011).

In defining “cultural property,” the Hague Convention, article 1 states:

For the purposes of the present convention, the term “cultural property” shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in subparagraph (a) such as these themes, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);

(c) centers containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as ‘centers containing monuments’ (UNESCO 1954).

UNESCO generally defines cultural property to include:
Thus, Folorunso is correct when he states that international conventions focus on cultural property as an element of cultural heritage (Folorunso 2011: 169). This focus on things and not heritage, which is more directly tied to people – storytellers, poets, etc. – is not perceived as innocuous; it is a legally mandated elevation of the archaeological record and poses the problems of preoccupation with the protection of that record discussed earlier in this thesis.

Archaeology should advance a broader narrative of cultural heritage in its full form, recognizing that cultural heritage in the words of Higgins (2010: 1) is “both multi-vocal and politically powerful,” and consider comparative approaches to the concept, and should champion the cause of expanding the World Heritage List and Blue Shield program.

Stone also addresses a corollary to this argument. Some opponents to an archaeologist aiding the military in identifying cultural property in contemplation of an invasion explain that there is no principled way by which to identify that which is worthy of protection and that which is not, particularly from an outsider’s perspective without local archaeological input and collaboration (Curtis 2011; Hamilakis 2009). Stone argues that tough choices must be made when it comes to protecting cultural property and that archaeologists do it regularly (Stone 2011: 12). However, the examples cited by Stone are matters of reflective choice – which sites do we excavate and protect and which sites do we essentially ignore – or natural disaster (see generally Stone 2011: 12). His analysis is not satisfactory, but does focus an important element of the debate.
There is no doubt that the role archaeologists played in target identification and protection did help in militating damage to cultural property, especially in Iraq, but at great expense to the integrity of the profession. These roles also corroborate the view among many of the local population of the archaeologist as agent for the neo-colonialist and neo-imperialist West, concerned more with preservation of the archaeological record than the people who happened to live elsewhere. Stone, echoing Emberling and other important voices, also offers the justification that archaeologists do not make war, but have a special role to play to minimize collateral damage to cultural property, and that if the archaeologist did not perform this role, the bombardment and invasion would go ahead without the profession.

But what should we, as archaeologists, do in times of war? Should we: Walk away because it is too difficult? Walk away because it is too political? Walk away because it is too real? Walk away because we will be accused of legitimising war? Walk away because we will be accused of collaboration? Walk away because people are losing their lives? Or should we accept we have a specific responsibility to the cultural heritage because we spend our time dealing with the past, trying to make sense of it and its importance for the present and the future? (Stone 2009: 36).

This role presents the classic moral dilemma, a choice between two wrong answers. The pre-conflict role of cultural property identification by an archaeologist for an invading or occupying military as opposed to cultural property protection is inconsistent with the virtue of trust and trust-making as action guidance. This is the case whether the archaeological engagement occurs in peace time or on the precipice of war. The role is too close to historical antecedents associated with invading armies and empire. The role appears to elevate the archaeological record encased in the theme of the protection of cultural property and appears to pay short shrift to the protection of cultural heritage and local populations. A professional ethic should avoid even the appearance of impropriety, particularly where there is a lesser professionally invasive
alternative, which is, archaeology’s use of IOs and programs to ensure proper identification of cultural property and cultural heritage.

After reading this analysis in the thesis, however, Stone may assert that he did act ethically by aiding the military in identifying cultural property worthy of protection from aerial bombardment. As an archaeologist, he may maintain that he had a duty to preserve the archaeological record and/or a duty to come to the aid of his country. Initially, a virtue-based professional ethic rejects the notion of duty. A virtuous archaeologist that seeks to build trust does not act out of a sense of duty but because such action is what a trusting and trustworthy professional would do for the benefit of past, present, and future people as it relates to the administering of the archaeological record. Character is primary; actions are important but derivative. Stone may then counter – and it appears that he has – that he did act virtuously because he sought to protect cultural property under international law by aiding his country. But this assertion is largely beside the point and strikes directly at the importance of a professional ethic. Stone’s assertion that he acted virtuously as a human being or as a citizen/patriot does not speak to his virtuous character as an archaeologist. Professional ethics is role ethics. It is not Stone’s trust-making directed at his employer, his country, or even humanity in general, but his trust-making for the benefit of past, present, and future people as it relates to the archaeological record that matters (see Equation 4 and Figure 10.6). To borrow from Equation 4, Stone must be trustworthy of the past and present people of Iraq (among others) in relation to the archaeological record in Iraq. He was not. He engaged in the activity in question in secret, without transparency, with little input from experts in theater or local communities, and without consideration of a lesser intrusive alternative, such as working through IOs and not through the invading and occupying military. In sum, being a virtuous person or a virtuous citizen is not always coterminous with being a virtuous archaeological professional.
However, archaeological involvement with the military in cultural property protection and heritage management is consistent with the virtue of trust and trust-making as action guidance. This is the case whether in peace or war. The knowledge of cultural property and cultural heritage are distinctive characteristics of our profession. To deny governments and their militaries access to that expertise is itself unethical (Stone 2011: 3).

If cultural heritage experts were to complain about the military failing to protect cultural property then surely there was some onus on those experts to work with the military to provide the information with which the latter could protect cultural property (Stone 2011: 2 (emphasis in the original)).

10.5.2 Embedded in Tactical Units

In both the Iraq War and Afghanistan War, the military has employed HTTs as part of its HTS program. The HTS program is one of the more controversial of the military’s counterinsurgency programs, as delineated in its new Counterinsurgency Field Manual (FM 3-24; see also Suchard 2011: 172-173). Social scientists, including archaeologists and anthropologists, are embedded in tactical military units to assist with military operations (Hamilakis 2009; Emberling 2008: 448).

One of the concerns with archaeologists embedded in the HTTs is “cross-dressing” (Teijgeler 2011: 92). Under the Geneva Conventions and Additional Protocols (1949, 1977), the merging of civilian and military roles in a combat zone is prohibited. Furthermore, comparisons with embedded journalists suggest that there is a “high risk of ‘going native’ and thus losing professional objectivity…” (Teijgeler 2011: 101). The primary concern with such a situation is that the archaeologist has in fact (or by perception) lost his ability to preserve his neutrality (Teijgeler 2011: 101, 2008).
This role is the logical extension of archaeological involvement with the military. By placing an archaeologist within an HTT, that archaeologist may give “real time” counsel and may better effectuate cultural property protection and minimize the unnecessary
death of the local population (Suchard 2011). However, there is a concern that an
archaeologist becomes a link in the “kill chain,” doing one up on the notorious Project
Camelot. Emberling asserts that HTS is a “fundamental subversion” of social science
and of the “trust and relationships formed by anthropologists with the local communities
we live in and study” (Emberling 2008: 448).

Nonetheless, the fact remains that, by putting on a military uniform, an
individual definitely abandons neutrality and for embedded colleagues
there remains a high risk of bias. Given this, archaeology should perhaps
give preference to cooperating with the military in future conflicts as
informed civilian experts (Teijgeler 2011: 109).

Rush finds the use of archaeologists embedded in military units in a combat zone
ethically problematic (Rush 2011:143–144). The “mission of the military requires the
use of violence” (Rush 2011: 142). Whereas cultural property protection is generally a
matter of international law and convention, the role of an archaeologist or other social
scientist embedded in an HTT is “driven by military doctrine and tactics, not by laws
and regulations” (Rush 2011: 144). The goal of the HTS program is to provide:

[C]ombat commanders with a sophisticated understanding of the social
structure of the local community where they are performing military
operations. There are serious ethical questions about the role of the
anthropologist in this activity. It is very important to note that this type
of activity is completely different from what a military archaeologist
does. It is also critical to note that military archaeologists use completely
different methods from human terrain team members. Military
archaeology, especially in conflict areas, is a completely transparent
process. Military archaeologists always identify themselves and are
completely open about the nature and goals of their work. There is no
targeting involved. Preservation, avoidance of damage, CPP and
planning for future stewardship are the goals of military archaeology. It
is not unusual for military archaeologist to find themselves in partnership
with members of host nation communities as they pursue these goals
(Rush 2011: 144).

Suchard takes an entirely different view.
The critics of the support of embedded or professional social scientists in a military organization should rather welcome the presence of such professionals, therefore: they are mitigating, perhaps not as much as we would like, but mitigating nonetheless, the damage being done in both the human and cultural spheres. They are, in fact, the human shields, protecting indigenous populations and artifacts from our Armed Forces and protecting our Armed Forces from the consequences of their own potential excesses (2011: 179).

I disagree with Suchard. A role in an HTT makes the archaeologist and, by extension, the archaeological profession subservient and subordinate to the military and political organs of the state. It may also create a state of “dual loyalties,” that is, the “existence of simultaneous obligations which might come into conflict with each other” (Allhoff 2011: 45). Allhoff notes that military physicians are both doctors and officers in the respective armed forces, subject to the chain of command (Allhoff 2011: 45). Allhoff examines the role of a military physician in the development of weapons where his roles may pose an actual conflict. He recognizes several approaches to the dual loyalties issue, each with its attendant strengths and weaknesses. First, we could establish a per se rule that a military physician may not work on weapons development (Allhoff 2011: 48). She is a physician first. Second, we could determine that a physician could work on weapons development because that is what a military officer does and without further consideration of his role as a physician, another per se rule (Allhoff 2011: 49). Third, we could start with a default position that a military physician will not work on weapons development unless there is some weighty and articulated countervailing reason to abandon the default rule and permit a role for military physicians in weapons development (Allhoff 2011: 47). Allhoff also suggests an approach where a military physician could refuse to take the physician’s oath or opt-out of the profession to discharge his military duties and avoid the dual loyalties question in the first instance (Allhoff 2011: 49-50).

Applying his medical ethics knowledge to archaeology, Allhoff asserts that:
Archaeologists should do archaeology and physicians should practice medicine. Archaeologists and physicians should not make claims about what is legal or illegal, but rather should leave those queries to those with legal expertise (Allhoff 2011: 51).

He also observes that military physicians have no choice in participating in armed conflict; archaeologists serve as advisors. Thus, they may be subject to a diluted version of the dual loyalties problem (Allhoff 2011: 52-53). Clearly, an archaeologist has a duty to protect people, cultural heritage, and cultural property. His distinctive expert characteristic is the ability to protect cultural heritage and property. What is the countervailing value? It could be that the archaeologist refuses to participate because of personal convictions, an unjust or unlawful war, or some archaeologically-specific value that participation may not advance the greater good (Allhoff 2011: 52-53).

Chandler responds to this calculus with an observation he makes in the context of the role of clergy in war, but his observation applies with some force to archaeology (Chandler 2011: 56-57).

The principled opinion is only a beginning of the story and the weight of it may lie elsewhere. A war might be judged right or wrong, but the task of a priest, minister or army chaplain does not lie only with that question: it is to offer ministry to the community, the congregation or the soldier-people who have as little actual power over these great matters as they do and who find that they must answer to obligations of their own. If a priest is to protest against the war itself and remove himself from any contact with it, he may satisfy his own conscience but abandoned those who need his ministry in an hour of extremity (Chandler 2011: 56).

Embedded archaeologists present particular problems. There is the risk of an archaeologist going native, compromising neutrality and objectivity, engaging in secret research, losing meaningful control over data and its applications, and cross-dressing.

An archaeologist embedded in an HTT is inconsistent with trust-making. The archaeologist is within the military structure, dresses as would a soldier for the most
part, and is mission focused. In such context, the archaeologist loses any semblance of neutrality, will be associated by the local population as being a member of the occupying force, and will lose any scientific independence. The profession becomes subsumed in and subordinate to the military, invading its structural integrity and confusing its distinctive role in armed conflict.

10.5.3 Cultural Property Preservation in a War Zone

Cultural management is challenging in the best circumstances. It is doubly so when a professional is called upon to engage in such responsibilities in a war zone (Yahya 2008). Damage to cultural property may present itself in a multitude of forms. Curtis identifies several different types of damage to cultural property that may result in a combat zone. These types of damage include damage from the neglect that predates the invasion but may be exacerbated by it, damage resulting from conversion of sites into military defensive positions in anticipation of the invasion or occupation, damage resulting from the invading army, and damage from looting (Curtis 2011: 197–198).

Like the other activities undertaken by archaeologists in Iraq and Afghanistan, cultural management is a double-edged sword. In military invasions, cultural managers work for or with the invading and occupying forces, even where those managers are citizens of the occupied country. Yahya recognizes that modern archaeology is about “collecting contextual data” (Yahya 2008: 502) and not about “discovery and exhibiting objects” (Yahya 2008: 502). However, Yahya, based on experience in Israel and Palestine, warns that archaeologists and the public should refrain from confusing cultural heritage with territorial or religious conflict (Yahya 2008: 503). This confluence of themes makes it difficult to develop a management plan and manage cultural property effectively (Yahya 2008: 503). Archaeologists may be at the front on
these issues; however, they often find themselves as pawns in broader geo-political games, managing culture for one constituency often at the expense of another.

The experiences of Professor Zainab Bahrani are illustrative. Bahrani is a specialist in the art and archaeology of Mesopotamia; she has written extensively on the cultural heritage of Iraq in war (Bahrani 2008a). Born in Baghdad, Bahrani is a professor of Ancient Near Eastern Art and Archaeology at Columbia University in New York City. In the summer of 2003, she traveled to Iraq to assist the Iraq Museum in the aftermath of the looting. On May 25, 2004, Bahrani was appointed to work with the Coalition Provisional Authority (“CPA”) as Senior Consultant for Culture and to the State Board of Antiquities and Heritage of Iraq. Her goal was the protection and preservation of Iraqi cultural heritage, including the reconstruction of the Iraq National Museum and the Iraq National Library. In attempting to achieve these laudable goals, she worked with the occupying militaries and the new Iraqi government. During that time, she conducted a survey of war damage at the archaeological site of Babylon and instigated the nation of Iraq’s official request for the removal of the military base from the site (Bahrani 2008b). She later resigned from her position with the CPA, frustrated by the progress and responses by the coalition forces and the new Iraqi government to the protection and preservation of Iraqi cultural heritage.

Bahrani has observed that it was the occupation of Iraq, and not the initial bombings, that caused irreparable damage to Iraqi cultural heritage (Bahrani 2008b; 2008c; 2006; 2004). She has carefully recounted the looting of the Iraqi museum while occupation forces watched; the building of military camps at ancient Babylon, Ur, and other ancient cities; the damage wrought by heavy equipment and helicopter pads atop archaeological sites; and threats to ancient documents, including the Ottoman records, from flooding, mildew, and harsh conditions caused by sporadic electricity and loss of appropriate
climate control (Bahrani 2008b; 2008c; 2006; 2004). With equal care, Bahrani has chronicled the indifference, if not purposeful neglect, of the coalition forces and the new Iraqi government by failing to secure archaeological sites from looting, building on archaeological sites, and the utter destruction of contextual data (Bahrani 2008b; 2008c). She bears witness to the fact that even with input and effort by courageous archaeologists, protection and preservation of cultural heritage rests primarily with the occupying military both practically and legally.

Cultural property protection and management fall squarely within the specialized expertise of the archaeology profession. These roles are often mandated by international law and convention. An archaeologist undertaking these roles is generally consistent with a trust-making relationship with the present and the past.

10.5.4 Cultural Training of Military Personnel

Archaeologists are educators (Emberling 2008). In fact, international law and conventions contemplate the use of archaeologists by armies to educate military personnel so that countries can comply with the 1954 Convention requirements for cultural protection (Emberling 2008: 445). Armies have sought subject matter expertise from various disciplines to perform better their responsibilities.

Cultural awareness training is designed to help deploying personnel develop, at the very least, a basic knowledge of the culture and practices of the people who live in the area where they are to be posted. From time to time, military Cultural Resource Managers are asked to help with cultural awareness training. Teaching deploying personnel about the archaeology of the host nation in helping them to identify archaeological features could arguably be considered an aspect of cultural awareness training. In fact, it probably should be a part of any cultural awareness curriculum. Cultural awareness training is a transparent educational process and takes place prior to deployment. Archaeologists and anthropologists who teach cultural awareness are basically serving as military education and training faculty. The role is very similar to the role of university faculty members, the difference being, of course, the nature of the respective student populations (Rush 2011: 144-145).
Emberling, a Mesopotamian archaeologist, taught American soldiers about the history and culture of Iraq (Emberling 2008: 451) prior to their cycling through the war zone. He writes of his approach to teaching soldiers (Emberling 2008: 453-455). It is a thoughtful and considerate series of lectures and discussions. He justifies, in part, his role based on pragmatic considerations.

At the time, my colleague and I confronted what we saw as a pragmatic choice, since the program was going to take place whether we were a part of it or not, or whether we supported the war or not. Would it be better to allow distorted ideas and misconceptions potentially harmful to both soldiers and Iraqis to accompany the soldiers going to Iraq, or would it be better to take an active part in this work to present a more positive, balanced, and anthropological perspective, at the risk of having this information misused by the military (Emberling 2008: 452).

Emberling concludes that by educating soldiers, he could “mitigate the effects of the occupation both on cultural property as well as on the people of Iraq, even if those effects can be frustratingly partial” (Emberling 2008: 455). It appears that Emberling sought to avoid any complicity on the order of Vietnam’s Project Camelot. Under Project Camelot, anthropologists worked with the US military to develop counterinsurgency strategies (Emberling 2008: 447). The core of these strategies rested on data developed from fieldwork studying the very military targets (McFate 2005; Berreman 1968). Although Emberling focused on teaching “strategic orientation” and eschewed “tactical intelligence” (Emberling 2008: 456), the gulf is easily bridged by military personnel, who are “educated, intelligent, and thoughtful people” (Emberling 2008: 455). Thus, the education of military personnel as a mitigant against cultural property damage and loss of life itself may be weaponized by the military. The use of cultural education provided by archaeologists and other social scientists, or of cultural property itself as a weapon or force multiplier, has been common and recognized by many local people and academics. “Archaeological sites have not only become a target: taken hostage, they are turned into weapons themselves” (Naser and Kleinitz 2010: 2).
From a disaster management point of view it only makes sense to prepare in peacetime. To assist the armed forces in the pre-conflict phase and help them to fulfill their statutory obligations is a choice some of us make without jeopardizing our neutrality. You do not have to put on a uniform to educate the military. Even the Red Cross and UN, along with other IOs and NGOs, help to educate the military. Most take it a step further by participating in major international military exercises and none of them perceive their neutrality to be compromised. The mistrust of fellow archaeologists, especially of the archaeologist’s objectivity, for those who teach and train the military is to some extent a witness of academic hauteur and conceit (Teijgeler 2011:108-109).

Education falls within the scope of archaeology’s special expertise. It enables a peacetime military, an invading army, or occupying force to discharge their responsibilities under international and domestic law to protect cultural property, fostering trust-making. However, it may also frustrate trust-making if perceived by beneficiaries, particularly local communities, as elevating the record over lives. Thus, the timing, content, and collaborative elements of an educational program are important indicators of its ethical merit.

10.5.5 Stabilizing or Phase IV Activity

Stabilizing or Phase IV activities may include a broad range of roles performed by archaeologists. These roles include acting as SMEs, investigating mass graves, and conducting fieldwork and research to rebuild infrastructure and re-establish communities.

What can be less controversial than an archaeologist interacting with the media to bring attention to the cultural heritage and people at risk in an armed conflict? Such an archaeologist may draw attention to the conflict and the importance of the protection of cultural property, cultural heritage, and people from the devastation wrought by war, including bombing, looting, and the illicit sales of antiquities (Mourad 2007: 152). However, the role of SME to the media is a double-edged sword. Those of us who have found ourselves in this position quickly learn that often the SME loses control over the
message and voice, especially where heavy editing and media agents have an agenda to push. Our focus on people is often marginalized as the story takes on a focus related to “things,” that which the media believe we have a distinctive expertise. “In a way, sites are to be preserved while human lives are shoved into the category of collateral damage” (Mourad 2007: 158). Additionally, “[t]hroughout the invasion of Iraq, sites and monuments were celebrated as landmarks of conquest, and their preservation and survival celebrated as testimonies to military accuracy . . .” (Mourad 2007: 158).

There is no clear demarcation between information and propaganda; and propagandist was a role regularly played by archaeology as part of colonial conquest and imperialism (Mourad 2007: 157-158; Albarella 2009: 110). Moreover, the media focus on things, and the co-opting of archaeology in elevating the protection of culture over people has led to some strange developments. For example, part of the motivation behind the Taliban destruction of the Buddhas of Bamiyan was to use the media to broadcast the regime’s unwavering commitment to a revivalist and puritanical strain of Islam in combat with idols. The image played exceptionally well among wealthy Pakistani and Arabic benefactors who shifted their zakat (“alms giving”) to the Taliban regime.

Forensic archaeologists have been part of investigative teams in Iraq, searching for, identifying, and excavating mass graves (Steele 2008: 414, 422). These graves contain, among others, the Shi’a and Kurdish victims of Saddam’s Baathist regime (Steele 2008: 424). These forensic teams have collected evidence that has been used to try, convict, punish, and, in some cases, execute perpetrators (Steele 2008: 422; Cordner 2005). However, the evidence deduced through these forensic investigations has been used to justify, in part, the invasion of Iraq (Steele 2008: 424; cf. Renshaw 2011). Moreover, access to such evidence may be controlled by the invading armies, access to grave sites selective and restricted. Careful political control of the evidence can be used to
manipulate the narrative in such a way as to promote a particular narrative over others equally viable (Mourad 2007: 157-163; Albarella 2009: 109-110).

At the heart of archaeological praxis is research for the production of a particular type of knowledge, that is, the construction of a historical past to help build and understand large views of the world (Heinz 2008: 462). The quest for knowledge through research (particularly fieldwork) may lead archaeologists into areas of armed conflict. Moreover, archaeologists may already be undertaking research or fieldwork in countries where conflict may breakout. Additionally, archaeologists regularly undertake research in countries that harshly oppress their citizens and marginalize or deny minority histories. Saddam’s Iraq and the Taliban’s Afghanistan are two of many examples.

Up to the First Gulf War of 1991 many international missions of archaeologists had operated in Iraq, attracted by the rich ancient heritage of that country, and hardly discouraged by the brutal and dictatorial regime under which inevitable control they had to operate (Albarella 2009: 107).

Several archaeologists have ventured to ask the question of whether it is ethically appropriate to pursue research in midst of war? (Heinz 2008: 460; Pollock 2008: 357). Heinz recognizes that “[h]istory or historical knowledge is not just ‘out there.’ It is a relation between the past and the present” (Heinz 2008: 462). She is correct in observing that knowledge is not neutral; it can and is often used to build narratives that are far from objective (Heinz 2008: 462). Thus, knowledge building in a war zone may be used by parties to the conflict in building narratives that support political positions, perpetuate prejudices and stereotypes, and justify claims to territory. Pollock (2008) reiterates these points. She challenges archaeologists to remain cognizant of the “continuing ethical engagement that takes into account the specific and changing realities of the particular contemporary political nexus in which we work” (Pollock 2008: 359). Pollock furthers her challenge by insisting that archaeologists ask tough
questions about “whom our work affects and how, what we can do to mitigate the potential harm, and how we can promote understanding through the way we conceive of and conduct our research” (Pollock 2008: 359). Certainly, people living in Iraq and Afghanistan asked these questions of us.

In stabilizing or Phase IV operations, one of the primary roles of the occupying military force is providing security and stability. Control of the terrain allows humanitarian aid workers access to the local populations. It is at this time in the operations that the military in modern conflict often turns to a humanitarian role (Teijgeler 2011: 92). “The greatest contribution … the military can make to humanitarian action is to restore order and security, which will help create a situation conducive to humanitarian activities while at the same time dealing with the causes of the crisis” (Struder 2001: 375). Teijgeler adds, based on his experience, that humanitarian aid may be easier to accept if it is “offered by internationally sanctioned military intervention” (Teijgeler 2011: 93 (emphasis in the original)).

These are the most ethically difficult of the roles performed by archaeologists. Often, these roles include humanitarian endeavors, including the building and maintenance of infrastructure. Archaeologists may bring attention to the horrors wrought by war from a particular vantage point. However, participating in stabilizing operations with military presence poses the problem of de facto embedding (and the problems associated with such roles). Serving as a SME may result in the information provided being used for nefarious purposes. Thus, although the role of archaeologist in Phase IV activities is generally consistent with a trust-making relationship with the present and the past, the ultimate resolution must be left to the facts and circumstances of each activity understood in its appropriate context.
10.5.6 Archaeology within Military Training Camps

Brown (2011) and Rush (2011) remind us that archaeologists have been part of the military structure for many years, both in peace and war. In fact, in the US, several hundred archaeologists are employed by the military (Rush 2011: 137). Brown works for the Defence Estates within the UK MoD (Brown 2011: 129). The UK defence estate includes about 1% of the UK land mass (Defence Estates 2009) and archaeologists with the Defence Estates minister military training sites, among other land masses. These archaeologists are civilian members who work for the military, their employer, and undertake a number of roles, including preserving and protecting cultural property and sites from damage caused by training exercises, the mapping of heritage assets, and anti-looting policing of sites to prevent digging, etc. (Brown 2011: 129, 135-136; 2005: 99-110).

Rush works as an archaeologist employed by the US Army (Rush 2011: 139). She has been a recognized voice for Native Americans and their interests in cultural property and sites within military reservations (Rush 2011: 139-140).

Much may be learned from the present role of archaeologists working for the military on military training facilities and their relationship with local communities with an interest in cultural property and heritage (Rush 2011). Some of the most thoughtful, considerate, and successful examples of local community involvement in all aspects of archaeological praxis can be found among these military archaeologists.

The consultation process between a native community and any DOD installation is often accompanied by a palimpsest of discussions where concerns are aired, reassurances are sought, and, when conditions permit, a working protocol was established. From cordial visits and the sharing of information and the more tenuous process of repatriation of ancestral remains, but challenges remain. However, a continuum based on trust, meaningful dialogue, access to the archaeological sites and stewardship provided by on-site, trained cultural resource managers, form the basis of an effective consultation model…. (Scardera 2011: 152).
This role is consistent with a trust-making relationship with the present and the past. In this situation, ethics and law also converge.

10.6 Observations

Virtues may be out of style, but they are not outdated. This is particularly true with the virtue of trust in a professional role. An archaeological ethic for war must begin with a robust archaeological ethic throughout the entire professional praxis. A robust archaeological ethic ought to begin with the primacy of virtue or character. An ethical profession is one dedicated to nurturing, developing, recognizing, and rewarding virtuous character of its professionals. For an archaeologist, a professional with a specialized expertise, a most relevant virtue is trust. An ethical profession is one that ought to engage in activity that furthers trust through trust-making. Although the virtue of trust is primary, it is not all important. Rightness is also important but derivative. Trust-making, as implemented through the values of trust, provides a priori action guidance necessary to serve as the bedrock of a professional ethic.

There is no such thing as trust in the air. Trust is anchored to relationships. Thus, the question of which relationships are primary and which are derivative becomes important. An archaeologist must build trust with the present. He does this, in part, by maintaining an imputed trust with the past. The virtue of trust requires the preservation, protection, collection, management, and understanding of the res of the trust, that is, the archaeological record (essentially, archaeology’s collective body of work). The Trust Circle provides an architecture that captures best the direct relationship of trust between the archaeologist and present people and the indirect relationship of trust between the archaeologist and people of the past.
CHAPTER 11: CONCLUSION

As discussed in the preceding chapters, the virtue of trust provides the moral compass upon which a trust-making professional ethic may be formed. Such a professional ethic acknowledges that an ethical archaeologist is a virtuous archaeologist who exhibits the virtue of trust. And a virtuous profession is one that develops, nourishes, and rewards trust and trust-making. Such a professional virtue ethic will provide role-specific action guidance to individual archaeologists confronting the challenging ethical questions and imposing ethical dilemmas presented by armed conflict. Such a professional ethic will also ensure independence for and integrity of the profession of archaeology. The professional ethic presented in this thesis does not shy from the political process or the need to identify and debate the political drivers and consequences of archaeological action or inaction. It embraces the politics of ethics and the need for reasoned and impassioned discussion and debate. Further, the professional ethic developed in the thesis focuses on relationships among the archaeologist as trustee of the archaeological record for the benefit of the people of the present and the past.

A professional ethic must accomplish two objectives (Joukowsky 1991: 2). First, a professional ethic must guide us in determining what type of archaeologist we are and what type we ought to be. Second, a professional ethic must guide all of us within the profession in determining collectively what type of profession we are and what type we ought to be. Both objectives must be accomplished before a personal ethic becomes a professional ethic.

A professional ethic that fixates on the archaeological record misses the point of ethics in the first instance. Even if we were to come together as a profession and reach consensus on what we mean by the “archaeological record,” an ethical relationship with a thing is a relationship with nothing. Actually, it is worse. The perverse and twisted
matrix that connects directors, officers, and their agents (such as attorneys) with their corporations stands as a testament to an ethics trail littered with peculiar monuments to human relationships with what the law deems a legal fiction (that is, the modern corporation), and in a manner of which we would fairly characterize as a fetish, demanding that human beings act in the best interests of this fiction even at the expense of other human beings, including employees, the communities in which the corporations operate, and their customers. As a profession, do we seek to travel that same path?

Even as the profession migrates from an archaeological record-centric model to a people-centric approach, a duties-based system, steeped in either rules- or standards-based codes, is simply not up to the ultimate task. Codes escape us just when we need them most. Codes are by nature passive and, when rule bound, represent the death of thought. Codes, especially those that are rule-bound, truncate debate. Passive ethics react to problems as they are presented. Active ethics acknowledge that everything that we do as professionals has ethical implications and each decision is transformative on a micro if not macro level. (Zimmerman et al. (eds.) 2003: xvi).

As I have claimed throughout this thesis, archaeology is more akin to a branch of moral philosophy than it is a classic science. The archaeologist and the archaeology profession swim in an undulating sea of complexities that present difficult moral problems and heartbreaking moral dilemmas. From an ethical perspective, there are no easy excavations. Although the excitement of field work is that we never know what we might find, we do know what is always there – hovering over any excavation, collection, management, and attempt to understand that which we have found; people – those that left that which we study, those that claim a present relationship to those people and things, those that finance our projects, those that use and abuse our findings and research, and those that appreciate the information we collect and manage and the knowledge we add to humanity.
Archaeology is about people and the things they have left behind. It should not surprise us that a professional ethic should be about relationships that an archaeologist and his or her profession seek, establish, maintain, and nurture with people. Once we recognize that our professional relationship with people is the main thing, then a professional ethic concentrated on an entity such as the archaeological record with its handmaidens of conservation and stewardship melts away. The principles of conservation, custodianship, or stewardship, central to so much of our understanding of archaeological praxis, lose much of their significance in a professional ethic based on relationships among humans and trust.

The virtue of trust does provide a sound footing for the development of relationships among human beings. Further, trust-making as action guidance provides the moorings necessary to secure a robust and engaging professional ethic. Much work is needed to develop a working ethical model of trust making. However, a virtue model of professional ethics built on affirmative and active trust-making provides the context in which we as a profession are best equipped to struggle with very difficult ethical issues.

Once we have determined that the foundation stone to a pragmatic and engaging professional ethic is the virtue of trust, then the rich body of fiduciary duties retooled as initial, immediate, and mediate values of the relationship founded on trust are borrowed. Duties of care, good faith, and loyalty all fill the vessel of a relationship-based ethic resting on the virtue of trust and the actions of trust-making. An archaeologist is ethical if he or she acts virtuously where the character of trust is primary, and where right actions are important but derivative.

That leaves the difficult question of a relationship of trust with whom? After the ethical turn of the 1980s, archaeological ethics has concentrated on living communities as the primary or sole beneficary of any ethical system. Great work has been done by a
number of commentators that has explored and probed the meaning of living communities. But difficult questions remain. Do we mean established power structures such as the government, private capital, and military? Do we mean the local populations that may have either a strong lineal claim or a more general cultural or geo-spatial claim? Do we mean those that have been historically disenfranchised, the discrete and insular minorities that have suffered much and have been and continue to be marginalized by contemporary power structures? Do we mean the predators and persecutors? Do we mean the victims? A meta-analysis of the work in this area would suggest that there is no consensus and possibly no need for one. Yet, as Hamilakis and Duke (eds.) (2007) suggest, among others, the answer to each question, in fact the framing and posing of the questions themselves, is inherently political.

The importance of the role and an understanding of politics is no less the case when we expand the beneficiary class to include the dead. Among archaeologists, there is a reluctance to permit any vestige of dead hand control over the modern practice of archaeology. This is traced to a misunderstanding of the meaning of building a relationship based on trust with the dead. In this thesis, I have explicated the need to consider the dead as an indirect beneficiary of a living and vibrant professional ethic. Thus, the virtue-based professional ethic that is constructed in this thesis demands that the archaeologist and his or her profession act virtuously, building trust through acts of trust-making. Archaeologists and their profession build these trust relationships by administering the archaeological record for the primary direct benefit of the living and the indirect benefit of the dead. This is accomplished by considering the intent of the dead – often through those that purport to speak for them with varying degrees of credibility – and the benefit to the living and the dead. Trust and trust-making are ways by which the ethical distance between the dead and living can be bridged.
Notwithstanding the political nature of a professional ethic, there remains an important
place for the virtue of trust and trust-making as action guidance.

As applied to archaeological ethics and war, a more nuanced approach is needed. To
say that there is no place for the archaeologist in war is to elevate this profession over
medicine or the clergy, both of which play an important noncombatant but not
necessarily civilian role in armed conflict. For example, the use of archaeologists to
preserve sites, to educate military personnel in the protection of cultural heritage, to
transmit necessary local cultural information to follow-on forces attempting to conduct
Phase IV operations (those operations aimed at stabilizing an area of operations in the
aftermath of major combat), and to impress cultural responsibility within training camps
generally should be ethical so long as these activities are consistent with a developing
model of trust-making. These activities benefit the immediate living communities, the
country, and the broader general public, and would be consistent with the actual or
imputed intent of the dead. These actions are also consistent with building trust with the
living communities consistent with a professional ethic founded on the virtue of trust.

Of course, an individual archaeologist may decide that such activity is against his or her
own personal code of ethics. In that case, he or she should follow his or her conscience.

But an archaeologist does so without professional cover.

There are, however, limits to the role an archaeologist and the profession should go.
These limits essentially ring-fence the virtue of trust. A virtuous archaeologist and a
virtuous archaeology profession would not engage in these acts because they are
inconsistent with a virtuous character and trust-making. For example, the use of
archaeologists to help avoid the destruction of important historical or cultural sites as
targets generally should be unethical – this role elevates the archaeological record
(actually, one decidedly Western vision of the archaeological record) over living people.
It is difficult to build trust with people who are being killed, in part, by an
archaeologist’s input in tactical military operations. The use of archaeologists to identify leaders for affirmative operations (e.g., killing) should be unethical – this role also compromises trust building. Further, the use of archaeologists embedded in a tactical combat unit, even in a noncombatant role, is unethical because it is inconsistent with trust-making. An archaeologist who engages in the above actions is acting outside a professional ethic based on the virtue of trust; even if the individual concludes that it is personally ethical, the profession has something to say about the conduct. After all, that is one of the fundamental purposes of a professional ethic, that is, a reasoned and deliberate system to hold an account of its members. As importantly, an archaeologist that refuses to participate in such activity would benefit from professional cover.

Like Boas a century earlier and Stone, Hamilakis and others presently, this thesis finds that a professional ethic need not, and should not, force a collective disengagement from the military; however, as a profession, modern archaeology, like Boas’ anthropology, has a responsibility to ensure that it is not co-opted by the government or the military because such a situation (whether overt or covert) strikes right at the heart of a profession, that is, a skilled group of individuals with special expertise acquired through experience, training, or education, which is entrusted to provide special guidance to assist living people in the understanding of the human condition.

There is a Choctaw aphorism that states that ethical wisdom never fails a person; but a person may fail ethical wisdom. It is a sobering reminder that no system, including any thoughtful and robust professional ethic, can be any better than the professionals who toil within that system. For too long, archaeological ethics has been a domain inhabited by one-eyed prophets that fail to engage, let alone appreciate, that which may be offered by all sides of the debate. This has been especially true when it comes to the role of archaeologists in armed conflicts. As a participant in WAC – 6 in Dublin, I heard colleagues hurl an array of epithets. No political camp or ideology possessed a
monopoly on professional courtesy or the lack thereof. As a profession, it was not one of our finer moments.

Paradoxically, war has not caused the ethical issues we are presently confronting in archaeology, notwithstanding the immediacy of those issues in the present wars; war, however, has amplified these ethical issues. They will remain with us long after the wars in Iraq and Afghanistan have ended. These ethical issues are complex and stubborn; they yield no easy answers. Rarely, as archaeologists, whether in the field or in the office, do we have the luxury of choosing between right and wrong; that is the easy call. The praxis of archaeology is more demanding and less forgiving. As a profession, we are regularly called on to decide between two or more right choices or, increasingly at a bewildering rate, two or more wrong choices. Ours is an ethical bramble bush.

We should not be astonished by this predicament. Archaeological praxis is a study in relationships – the dead to the living through their things, the living to the dead through their understanding and respect of the latter’s things, and the archaeologist as the trustee of things for the benefit of both the living and the dead. More so than any other, our profession serves as a bridge between the dead and the living. Steeped in our reality is an inescapable condition that some fail to appreciate and many are grappling with: building a relationship with the living – with neo-colonial overhang, ethnocentric behavior, structural imperatives, xenophobia, misunderstandings, cultural disconnects, language impediments, and the like – is more demanding and fraught with missteps and uncertainties than building relationships with the dead. We are time shifters. Yet it is our calling to construct that bridge. And when we do, when we are at our best as a profession, we uncover more than artifacts, findings, and tells. What we find is always interesting. Sometimes it is also discomforting. We uncover uncomfortable truths that falsify and occasionally shatter myths that are nonetheless clung to the breast of many
living people. Among these uncomfortable truths are that pre-history and history are made not by saints in plaster but by a myriad and mosaic of live and vulnerable people, many who have found no voice in the classical historical texts.

A professional ethic is not easy; neither is the journey to ethical development quick. The path to a professional ethic is travelled one person, one excavation, one generation at a time, never losing heart or forgetting our aim as a profession. A professional ethic without compassion is not human and, therefore, is not ethics. There must be in Carol Gilligan’s phrase, a “different voice” (Gilligan 1982), a voice of empathy, sympathy, attachment, and trust, the values that make us human, if we are to create a profession where ethics has a human face.
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