This is the published version of a chapter published in *Archaeological intervention on historical necropolises: Jewish cemeteries*.

Citation for the original published chapter:

Colomer, L. (2013)
The archaeology of ancient Jewish burial grounds: between the demands of religion and the *res publica*.
In: Laia Colomer (ed.), *Archaeological intervention on historical necropolises: Jewish cemeteries* (pp. 335-345). Barcelona: Museu d'Història de Barcelona, Ajuntament de Barcelona

N.B. When citing this work, cite the original published chapter.

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La intervenció arqueològica a les necròpolis històriques. Els cementiris jueus

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La intervención arqueológica en las necrópolis históricas. Los cementerios judíos

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ISBN: 978-84-9850-432-3
Dipòsit legal: B.32667-2012

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The Archaeology of Ancient Jewish Burial Grounds: between the Demands of Religion and the res publica

Laia Colomer i Solsona, Barcelona History Museum (MUNBA)

The treatment of human remains is probably one of the most sensitive and complex issues in the practice of archaeology. Archaeology investigates and interprets the history of humanity based on material remains (artefacts) produced and made by human beings. Human osseous remains are one of the few precious sources of information about human activity in the past, and also about the nature and the circumstances of these humans. It is what is known as "the archaeology of death". Nonetheless, viewing the human remains of our ancestors as "cultural material", as cultural objects from the past useful for scientific study in a laboratory is something that not everybody, because of their religious beliefs or moral orientations, is prepared to accept. The discomfort of certain people grows beyond the excavation period, especially when one talks of the conservation and custody of these archaeological objects in a museum's conservation centre.

In parallel with this, an increasingly globalised and multicultural world, but also one conscious of the political and cultural disorder produced by western colonialism and therefore aware of political and cultural minorities, has raised demands and claims for political rights which are also applicable to the practice of heritage management. In archaeology, the most controversial issues emerge in the ambit of the politics of indigenous minorities and Orthodox Judaism, and these have affected two very specific areas: the excavation of cultural sites pertaining to contemporary indigenous communities and the excavation of ancient Jewish burial grounds. Both communities insist that their dead not be disturbed by science (obstructing every type of palaeoanthropological and archaeological study) and they demand their immediate reburial in accordance with the religious and cultural rituals of these contemporary communities. From the scientists' viewpoint, this is seen as an illegal interference with their profession and contempt for the historical knowledge that science brings. The approach of these two worlds, the arguments wielded by the two sides, the solutions adopted, as well as the legal and cultural context within which it has operated, have provided us with an accumulation of experiences and knowledge that should allow us to approach compromise solutions and working agreements. In the case of indigenous communities, the debate began at the end of the 1980s, and agreements were much easier to establish, or at least the positions, in general, were less hardened. This has allowed compromises and working agreements to be found between archaeologists and minority communities. In the case of ancient Jewish burial grounds, the debate is much more delicate because we find ourselves with polarised positions that hardly help in the search for working agreements that combine scientific research with private, religious sensibilities. The seminar Archaeological Intervention on Historical Necropolises. Jewish Cemeteries debated this latter case of the archaeology of death with the aim of bringing both sides closer to each other and finding solutions.

Barcelona has an important ancient Jewish burial ground in Montjuïc, part of a significant Sephardic past, and today the city has a growing Jewish community of international origin. The Montjuïc site is probably one of the most extensive medieval Jewish burial grounds known. However, from the archaeological point of view,
it is only partially documented. Ferran Puig, in his paper, detailed all the interventions carried out there, while Oriol Clos explained municipal proposals to re-model the mountain as a green space for Barcelona. The latest proposal, made in 1996, was a landscaping project that would allow the dilapidated zone comprising the burial ground site to be rehabilitated. The plan sparked controversy, with interventions by pressure groups and a media and consulate campaign seeking the shelving of the project, arguing the inviolable nature of the sacred site. Currently the project is on hold and the area has been declared a Cultural Asset of National Interest (in Catalan, BCIN), one of the highest grades of heritage protection permitted under Catalan law, but it is necessary to find working formulas that allow obstacles to the recovery of a heritage site of such importance to the city to be removed. Barcelona, however, is not a unique case in the geography of a controversy that has touched and touches medieval Jewish burial grounds in Catalonia and Spain. Since the 1990s cases have arisen in Girona, Valencia, Lucena, Tarragona and Toledo, to name a few. Incidents during excavations, the interference that has taken place, agreements or not to scientific research and subsequent heritage management, as well as the reinterment protocols followed have been of a very diverse nature, always depending on the Jewish pressure groups and the attitude of the relevant public administration. The seminar brought together four specific cases (Sagunt, Tarragona, Lucena and Seville) with different peculiarities and outcomes that illustrate not only the historical reality of the Sephardic world in the Iberian Peninsula and the window on new historical information that the excavation of burial grounds provides, but also the administrative obstacles encountered by archaeologists when Jewish pressure groups demand the application of the Halakha within heritage projects. In fact, the absence of clear directives, and too often the fear of being labelled anti-Semitic, has led to the adoption of solutions (hardly Solomonic) that have irreparably affected a common European historical heritage: Jewish heritage. The seminar also aimed to raise legal and scientific precedents and the issue of respect, so that actions giving rise to conflict would not occur in Montjuïc.

The controversy, like all controversies, arises from a lack of understanding and respect for the scientific, legal and religious frameworks governing the management of Jewish archaeological heritage in Europe. That is why we believe that an in-depth debate is necessary, not from the scientific side, but rather from the viewpoint of broad-spectrum heritage management, so that all the kaleidoscopic aspects of this issue be aired and combined into a single, multi-faceted agreement. What is needed is, firstly, to understand the arguments of both parties (the Halakha and archaeological research); secondly, to understand the limits of the claims (the legal position of the Halakha in Europe) and what it means to be responsible for heritage from the public domain; and finally, to comprehend the private (religious beliefs and collective (historical knowledge as a cultural asset) sensibilities involved. The seminar placed everyone in a single debating space, in order to help pedagogically, to promote agreement from all sides, and thus to achieve better debating tools for mediation in future conflicts.

Nevertheless, before making way for the conference papers, the debates and the conclusions generated during the seminar, we believe that it is important to give some key points useful for understanding the context of the papers presented, as well as the objectives and the structure of the conference programme. For this reason we would like to present these introductory comments about the context and the policies currently applied in the archaeology of death when excavating ancient cemeteries in an atmosphere of conflict.
Repatriation and the excavation of indigenous cemeteries

In the framework of global debate about respect for and the vindication of indigenous communities, especially those marked largely by contemporary European colonialism, two issues directly affect museums and archaeology: the repatriation of human skeletons and the excavation of burial sites belonging to these communities. The debate begins when the indigenous communities’ claims to identity and nationalism invade the field of archaeology. There is condemnation of the insulting behaviour of Westerners, who, throughout the 19th and the early part of the 20th centuries, excavated and despoiled indigenous cemeteries, for the most part still in use at that time; these were actions carried out with the impunity of the victor and with the lack of regard of those who considered themselves culturally superior in terms of their customs, beliefs and collective ethics. The Native Americans raise their voice against the federal government of the USA, while the Australian Aboriginal peoples and the Maoris clamour against the governments of Australia and New Zealand, and, historically retroactively, against the UK government. Thus there have been repeated accusations of the erosion of their rights as a minority both with regard to the anthropomedi cal study, the storage and exhibition of their ancestors in museums and medical institutes, and with regard to the archaeological excavation of sites sacred to the indigenous peoples. As a result of these accusations, due to the 1990s, many scientific institutions which had stored these archaeological or palaeoanthropological materials returned them to their original owners so that they could be reinterred according to Aboriginal or Native American burial rites (Layton 1989, Murray 1996, Bray 1996, Jones and Harris 1998, Fjord, Hubert and Turnbull 2002).

Repatriation and reburial, however, took place at the cost of no little conflict with the scientific community. For example, skeletons from archaeological sites over fourteen thousand years old have been returned to the Australian Aboriginal community on the basis that they are their cultural descendants, assuming that the same Aboriginal cultural identity had lasted more than ten thousand years, something that would be obviously difficult to admit in European Paleolithic. In Virginia, in 1991, the State Highway Commission and the local Native American committees agreed that all archaeological remains from a two-thousand-year-old site that had to be excavated would be handed over for their reinterment according to traditional Native American customs. “All the remains” meant not just the burnt bones recovered, but all the objects, the remains of preserved foods and the palaeoenvironmental samples. In addition, the Native American activists enjoyed the right to veto the inclusion of certain photographs and scientific information in the archaeological report. As a result, no material evidence currently remains of the site, which raises doubts about the scientific veracity of a (supposed) archaeological excavation funded with public money.

Thus, the administrative criteria on which some repatriations have been carried out create justifiable scientific concerns amongst archaeologists and anthropologists. In the best case scenario, these concerns have led to scientific studies being conducted very thoroughly in order to achieve absolute scientific certainty that the claimed anthropological and cultural affiliation is the correct one, as laid down in the Native American Graves Protection and Repatriation Act (NAGPRA), applied exclusively in United Sates federal territory since 1990. At an archaeological level, NAGPRA stipulates that the excavation of archaeological sites in Native American territory requires the permission of the tribe and, if necessary, the reinterment of human remains after the archaeological dig in a site determined by the tribe descended from
the original one. For this reason, the law establishes minimum criteria to evaluate which tribal group has the most legitimate claim for custody of particular remains, based on the cultural affiliation between the human remains and their artefacts and the Native American tribe claiming custody. Such was the case with the over nine-thousand-year-old human bones that were found in 1996 in Kennewick, Washington, which the Umatilla Native American tribe claimed were legally theirs. Certain Caucasian features of the skeleton, as well as doubts as to whether Umatilla communities occupied the region much before the European colonisation, led the federal authorities to launch an extensive programme of genetic and taphonomic studies, carbon-14 dating, organic and sedimentological analysis, archaeological studies of the cultural material associated with the remains, as well as a vast ethnographic, archaeological, biological and linguistic examination of the tribes then occupying the region to determine precisely their affiliation with the archaeological remains uncovered. In 2004, the judge in charge of the case ruled that no reliable link had been established between the remains found and the contemporary indigenous communities, reinterment was refused and thus, subsequent exhaustive studies were permitted; studies that have allowed hotly debated issues with regard to the arrival of the first human beings on the American continent some twelve thousand years ago to be clarified.

The controversy surrounding the ethics and practices of indigenous archaeology, together with the growing clamour from the communities involved, means that the reinterment of human remains has become a sufficiently important issue for the establishment of professional protocols and a few legal regulations in Anglo-Saxon countries. The profession’s recommendations on practice, favouring the interests of scientific research, comprehend that it is also necessary to have respect for the sacred values of indigenous communities. Thus the World Archaeological Congress (WAC) has adopted four ethical codes: one concerning the practice of the profession in relation to indigenous communities around the world (Code of Ethics for Indigenous Peoples, 1990); another about the treatment of human remains (the Vermillion Accord, 1989); a third concerning the exhibition of human remains and sacred objects (the Tamaki Makau-rau Accord, 2005); and finally, one concerning the indigenous peoples of the Amazon (Code of Ethics for the Amazon Forest Peoples, 1994). Along similar lines, various national, professional bodies, such as the American Anthropological Association, the Society for American Archaeology, the Register of Professional Archaeologists, the Australian Archaeological Association and the British Association for Biological Anthropology and Osteoarchaeology, have drawn up their own codes of ethics.

At the government level, aside from the above-mentioned case of the USA, the UK has also brought in legal regulations and a whole series of recommendations and protocols for professional behaviour, accessible on the Internet, the most important of which, Guidance for the Care of Human Remains in Museums (2005) was drawn up by the UK Department of Culture, Media and Sports (DCMS), but was inspired by and developed out of the Human Tissue Act (2004), concerning the treatment of human remains. This law seeks to harmonise the rights of the deceased and their relatives with the general interests of science, education and medicine, and covers the legal situation of hospitals and medical research centres, but also of museums with regard to repatriation. As a result of the new legal context and the DCMS’s recommendations, the majority of museums in the UK have adopted codes of ethics dealing explicitly with the care and exhibition of human remains, and the repatriation of Australasian human remains has taken place from significant insti-
tutions, including the Science Museum, the Natural History Museum, the British Museum and the Pitt-Rivers Museum (see also Lohman and Goodnow, 2006 and Swain, 2007).

In the Antipodes, the federal Australian and New Zealand laws are, little by little, also recognising the historical rights of their indigenous populations. Thus the Australian Native Title Act of 1993 establishes complete protection of Aboriginal areas, making it an offence to conduct any excavation without the permission of the Aboriginal authorities and declaring that all remains dating from before 1770 are, by definition, Aboriginal and as such must come under the control of the Aboriginal authorities. In New Zealand, the Maori community is very active with regard to settling the final resting place of the human remains of their ancestors and of all the cultural items related to them. Both government permission and the consent of the Maori peoples are required for their excavation.

The excavation of ancient Jewish burial grounds

So far we have talked about the West's current treatment of the Other, of how the culture affiliated with Europe, with regard to its colonial past, is paying its moral debt to other cultures. But the debate concerning the care of human remains in archaeological contexts has also had an impact on more "domestic" areas, within Europe itself, especially when preventive archaeology has had to take place in former Jewish cemeteries. Here the debate is not about our relationship with the Other, but rather it concerns what kind of relationship we are establishing today with "our" past, on the one hand, and on the other, professional ethics, the humanitarian treatment of the deceased and inter-faith respect. In the archaeological excavation of former cemeteries (whether pagan, Christian, Muslim or Jewish) we are confronted directly with our present, we are obliged to consider our respect for our ancestors, but above all the relationship we are (re-)establishing between contemporary religious communities and a res publica that has been legally secularised since the beginnings of modernity.

What, then, are the arguments in the conflict? Firstly, the interpretation of religious laws, their "translation" to contemporary life and their application in secular states; in other words, the adaptation and ease with which religiousness itself is experienced in a legal and political order defined by common law; and, secondly, the humanistic respect with which work on human remains, in general, and on those demonstrating a direct devotion to a religious faith, in particular, is approached. The complaints and observations surrounding this last point concern minorities (and sometimes act as a smokescreen for religious issues), but this consideration has not prevented archaeology and paleoanthropology from engaging in self-reflection on their professional practice (O'Keefe 1992, Scarre 2006, Tarlow 2006, and Alfonso and Powel 2007). The result is a series of publications and recommendations that, since the beginning of the 1990s, have tackled the issue of the ethical and professional care of human archaeological remains during the excavation process and in their subsequent processing, using laboratory evaluations and scientific research, as well as the legal and ethical debates arising from them (Cassma et al., 2007). Eulàlia Subirà, in her contribution during the round table discussion, also explained it this way and talked about her experience with the specific cases of Tarrèga and Lucena (to name only those presented during the seminar).

By contrast, the contemporary relationship between religious affairs and the management of Jewish historical heritage is more fraught and virulent because it is mixed up with religious and secular arguments, together with fear of anti-Semitism. Max Polonovski's paper explained
succinctly how from the 1990s onwards, if not before, there has been a substantial increase in opposition from orthodox and ultra-orthodox Jewish groups, on an international scale, to the excavation of ancient Jewish burial grounds in Europe. This conflict, as Renée Sivan also established in her paper, is extensive in Israel; a modern country that recognises the importance of scientific research to archaeology (see also Shay 1992 and Naga 2002). The argument in both cases is the same: according to the Halakha (Jewish religious law) the human remains of Jews cannot be disturbed. However, the Halakha, rather than being a rulebook, is a guide to everyday practices and religious beliefs, the strict observance of which depends on the community and the branch of Judaism that interprets it. Orthodox and ultra-orthodox groups favour a literal reading, conservative communities observe it less strictly, while for the reformists it is an important guide, but not a prescriptive one. There are even small Jewish communities that do not accept it at all and believe that the law comes exclusively from the Bible. The Halakha is, in addition, interpretative; in other words, each issue can be consulted and reinterpreted by a rabbi who makes a public statement on it. Therefore – and this is important in the light of our norm-based, Romano-Christian cultural affiliation – there is no one Halakha, a unique interpretation that allows the stipulation of a code or a dogma to be complied with, but rather answers to dilemmas depend on the branch of Judaism that the rabbi follows, and it is possible to see that answers on contemporary issues published by conservative rabbis might not be accepted by orthodox or ultra-orthodox communities. In contrast to Catholicism, Judaism does not include absolute laws collated into a canonical code of law, but rather questions, discussions and opinions that shape (and enrich) guidelines on the everyday practice of Judaism. This diversity of rabbinical opinion can be seen to be behind some of the conflicts to have emerged around European archaeological excavations, such as Jewbury or Vladislavova, where certain international orthodox groups intervened offering more dogmatic readings of the Halakha compared with local rabbinical solutions closer to the civic reality of the countries involved.

The current increase in controversies surrounding the management of historical Jewish funerary heritage is not due to an idiosyncratic interpretation of Jewish religious law, but rather it is possibly due to the apogee of extremist religious positions around the world and their interference in the realm of politics and secular civic life (see also Sharkansky, 1996). An example of this reality is to be found in the state of Israel, where orthodox and ultra-orthodox religious parties, despite never having achieved significant electoral majorities, have become linchpin parties with which other parties must reach a pact in order to form a government. In the last decade, these political pacts have lead to the modification of laws concerning archaeological heritage, to the extent of seriously restricting the excavation of burial grounds. Renée Sivan's paper, as well as her contributions to later debates, provide an excellent explanation of how the union between civil legislation and religious state that governs the life and professional practice of Israelis has affected the archaeology of death in Israel to a large degree. To this legal clash between historical heritage professionals and Orthodox political groups, needs to be added the interpretative nature of the Halakha and it is then that it is possible to understand the paradoxical scenes of ultra-orthodox Jews attacking both religious archaeologists and Jewish religious iconography, as Renée Sivan has described. Paradoxically, then, the difficulty in reaching agreements on working with professionalism and respect exists not only between Jews and non-Jews (with the consequent danger of being accused of anti-Semitism, or of being disrespectful to the beliefs of a minority community), but also between secular Jews and
religious Jews, and even between Jews belonging to different branches of Judaism. To complete this overview, it is advisable to read Talia Einhorn's 1997 article, which concludes that, given the interpretative nature of the religious laws (and also their application in a diversity of burial rituals stretching across centuries), these laws could be interpreted nowadays with greater flexibility and consensus, with the aim of recognising the current, social, scientific and democratic reality prevailing in Israel.

In Europe, by contrast, the gap between religion and the State is significantly more formalised. Christianity has played a historically important role in the political structure and organisation of various European countries and empires. Nevertheless, after centuries of theocratic government, during which religious moral codes, as well as certain obligations to the Church, formed part of the civil and constitutional laws, the European Enlightenment, taking up the principles of secularism, managed to mark the limits between the dogmas of faith and the civil norms that governed the common good, between the Church and the *res publica*; a segregation between divine and terrestrial power expressed in the division between religious law and public law (whether continental European or Anglo-Saxon) creating a legacy of which the contemporary legal and constitutional norms of European countries are the heirs. The separation between Church and State varies depending on the country, with varying degrees of religious freedom and tolerance (and obstruction) in conjunction with each specific political culture; but in general we can say that modern continental Europe is characterised by a legal framework emanating from legislative and executive powers — and therefore with democratic legitimacy —, interpreted and applied through judicial power and to which all citizens must answer (duties and rights), regardless of their religious beliefs. In no case do the religious laws dictate the civil actions of the State and its citizens.

Laicism in the modern Western state is, then, the basic key to reading and understanding the legal logic that defines Jewish historical heritage and its management. The seminar had the chance to hear from Joan Josep López Burniol, who established with the authority of a notary the guiding principles of the law, the public nature of historical heritage and the historical discontinuity in legal effects. We also consider it opportune to include in the present publication an appendix written by Joaquim Tornos, professor of Administrative Law, which (in the form of a legal opinion) goes in greater depth into the existing legal repertoire concerning historical heritage, relationships with religious faiths and the status and the treatment of ancient burial grounds: the Spanish Historical Heritage Law (Law 16/1985), the Catalan Cultural Heritage Law (Law 9/1993) and the cooperation agreement with the State subscribed to in November 1992 (Law 25/1992) by the Federation of Israeli Communities in Spain (now known as the Federation of Jewish Communities in Spain, FCJE). We believe — and on this point everyone at the seminar coincided — that the inclusion of legal references allows everybody to know the regulatory framework governing the archaeology of Sephardic burial grounds. Moreover it also allows us to argue the mistaken nature of demands to apply the Halakha to this Jewish historical heritage within the tradition of the continental legal framework and its expression in the contemporary Spanish and Catalan social and legal reality.

It is precisely this inadequacy that we believe is at the root of the conflicts in Spain concerning the management and excavation of ancient Jewish burial grounds. The seminar, apart from the theoretical papers, included the presentation of four practical cases of archaeological excavations: Sagunt (Valencia), Tarragona (Catalonia), Lucena and Seville (Andalusia). In all cases, the excavation was presented alongside a summary of the archaeological results obtained,
but above all the episodes of conflict with certain Jewish religious groups (except in the case of Seville) and their subsequent resolution were explained. These are cases, then, where the application of the Halakha in the management of the archaeological heritage has been demanded; a demand that has on occasions been met. With the best intention of avoiding new conflicts, in 2008 the FCJE drafted and sent to many Spanish town councils a protocol to be followed for the exhumation of human remains from historical Jewish burial grounds. This protocol, and this is made perfectly clear, aims to complement "Halakhic norms" with regard to ancient Jewish burial grounds. Following exclusively the Halakha, the protocol at first interprets these archaeological sites as "religious" sites, understanding by this their contemporary validity as Jewish cemeteries, and directly applies to them article 2.6 of Law 25/1992. In other words, following the thread of the argument, the historical burial grounds are first defined under Jewish religious law and then, as a consequence, they become subject to the legislation relating to ecclesiastical rights (the 1992 cooperation agreement), and not to the authority of public law (the LPHE – the Spanish Historical Heritage Law and its expressions in the autonomous communities). The regulations agreed between Spain and the Federation of Jewish Communities in Spain govern social activities of religious origin of contemporary citizens of the Jewish faith, and they suppose the civil recognition of religious acts celebrated nowadays by this community, such as marriages and burials. From a legal standpoint, there is no indication that the Halakha must be applied to ancient Jewish burial grounds because, if this were the case, we would be incorporating precepts derived from a religious law into common law. All this without taking into account the legally mistaken argument the protocol seeks to make about the historical continuity of ownership and use of burial grounds that were abandoned and ceded more than five hundred years ago.

Going beyond legal specifics, the current regulations in Western states include an important idea with respect to the management of historical heritage, and that is that heritage is a cultural asset within the public domain. Ancient burial grounds form part of the common historical heritage because they give credit to the participation of past generations in their creation, as well as providing a window on the values and human activity of a period of history of which we are all heirs. In this sense, Jewish historical heritage forms part of the religious past of Jews but transcends the very boundaries of the Jewish community because it is a reflection of this shared past, the medieval period, of which everybody today is a cultural, social and spiritual heir. If we consider Jewish heritage of exclusive interest to, and the sole responsibility of, the contemporary Jewish community we run the risk of ghettoising the past and the present. As a consequence, it is the responsibility and duty of public administrations to care for, conserve and publicise this common Jewish history for all the citizens.

Does an unambiguous biological, cultural and religious affiliation exist?

Underlying many of the accounts presented here is the argument of a link to a direct relationship, be it biological, cultural or religious, between the past communities claimed and the present claimants’ communities. It happened this way in the cases of the Kennewick man, the fourteen-thousand-year-old Aboriginal Australians and the medieval Jewish burial grounds. A direct line of biological, cultural or religious consanguinity is argued that converts the individuals of the past and the products of their culture – in other words, the actual historical heritage – into the direct property of their descendants, that is, of their contemporary representatives. So, in the face of a history throughout which migrations and racial mixing have been a constant, is it legitimate to ask how many generations have
to pass for a people to become *indigenous* to a place? Or rather, in a human history in which cultural "essences" are diluted, transformed and redefined with the passage of time, and adapted (and reinterpreted) in accordance with new socio-economic realities, what criteria need to be employed in order to culturally encompass a contemporary individual and all their ancestors? In short, bearing in mind the plural nature of human beings and their cultural projection, can we really set ourselves up to allege direct relationship links, as descendents or representatives of any particular ancient human remain?

This notwithstanding, the issue of cultural and religious continuity was one of the arguments wielded during the seminar in support of the legitimacy of the claim and the "ownership" of this kind of heritage. However, this equation is difficult to maintain in historiographic, biological and cultural terms. Jordi Casanovas and some other participants at the seminar showed that, from the historiographic viewpoint, Catalan Jewish medieval sites, property falling under royal jurisdiction, following the expulsion in 1492 reverted to royal usufruct or were ceded to third parties by the community itself. After the expulsion, some Jews left the Iberian Peninsula, but many converted and remained. One way or another they either mixed, or did not, with other cultural and religious groups. Contemporary Jewish generations present on the Iberian Peninsula are in some cases heirs of this Sephardic world, but there are also some of Ashkenazi origins. Later we also saw how the liturgical expressions of the same religion change over time and according to geography, the general drift of historical circumstances, the religious schools themselves and neighbouring influences. The papers read during the seminar illustrated this circumstance for us with regard to European and Israeli Jewish burial grounds, but it was very interesting to see it within the ambit of the Sephardic world itself, in Lucena, Seville, Tàrrega and Barcelona. Different funeral practices took place that perhaps relate to different rituals, to different social or economic statuses, to differences in the political relationships of the Jewish communities with the local political powers, the Catalan-Aragonese Crown, the Kingdom of Castile or Al-Andalus, or to the different religious influences of rabbis such as Alfasi, Nahmanides, Ben Adret, Asher and Maimonides. In fact, what became very clear is that we have more questions than answers. Going beyond the history of the Talmudic schools and the historiographic and palaeographic contributions, information is needed about these ancestors of ours, their material culture, their social reality and their religious rituals, to see the territorial similarities and differences, and to place everything in the context of our knowledge of the European medieval Jewish world. Archaeology, and more specifically the archaeological study of ancient burial grounds, could become a highly valuable tool in improving knowledge of the Iberian Peninsula's Sephardic past. The historical information retrieved from scientific excavations, as can be seen from the Lucena and Tàrrega digs, is of paramount importance to complete our knowledge of our Jewish past. This is also true of other historical sites of such great importance as Toledo and Barcelona.

**Realities and sensibilities**

We believe the seminar *Archaeological Intervention on Historical Necropolises. The Jewish Cemeteries* will be useful for highlighting these contradictions. Therefore, there were three realities shaping the debate surrounding the excavation of ancient Jewish burial grounds: the regulatory, historical and religious. We also believe that arguments and working mechanisms, based on which the future management of archaeological Jewish funeral heritage will be possible, have been built.

Ancient Jewish burial grounds fall legally within very specific regulations related to the
cultural (historical) heritage. The framework of the competencies of heritage legislation affecting Jewish burial grounds cannot be determined (or annulled) by religious laws and rules because religions in Spain, as stated in the Constitution, may not question the autonomy of the democratic powers by dictating the rules by which citizens live together. As heritage, the burial grounds form part of a common cultural property of public interest and within the public domain, and in terms of local geography they are material witnesses to the history of the city in which they are located (and which, in the first instance, is legally responsible for them) and of all the citizens that lived, lived and will live there. Similarly, their historical importance as part of the medieval Sephardic reality on the Iberian Peninsula transcends culturally, religiously and historically not only the limits of the contemporary Jewish community, but also of Spain, to become a heritage asset of international interest.

The historical reality that the seminar has allowed us to see is that, beyond the politico-religious discussions, we have very little knowledge of the medieval Sephardic world. Traditionally there has been a division between methodologies of study that should not be followed in the future: on the one hand, the Sephardic religious tradition, the source of knowledge about the doctrines and various interpretations made by Sephardic rabbis in the medieval period; then, Hebrew palaeography and epigraphy, which have been the key documentary source for finding Jewish burial grounds all over the Iberian Peninsula; and finally, archaeology, which is contributing material data about the people buried, burial rites and traditions, the circumstances, the chronology, the social, political and economic context of the cemeteries and their occupants. It would be appropriate, then, to work together, so that Sephardic religious knowledge of the Jewish community could help historians to interpret the existing documentary and material evidence. The key to success lies in invoking a common interest in knowledge, conservation and diffusion of this shared, Jewish cultural heritage.

Finally, the question of the religious reality remains. During the seminar, attention was paid to the issue of respect for human remains and the ritual customs of religious communities. In reply to this, for some time archaeologists and paleoanthropologists have publicly declared not only the ethical principles governing their actions, but also the care and the respect with which they act when handling the excavation of religiously and politically sensitive human remains. The established protocols do not just take into account this sensitivity but they are also adapted to existing public regulations. However, another issue is the claim for religious rights: the willingness to allow the interests of those respecting the original intentions of the deceased, the religious precepts and their rituals and advocating no-disturbance policies to prevail. We have already seen how the secular arm of the modern, Western state guarantees the liturgical and spiritual practices of many different faiths. We have also seen how religious claims cannot be retroactive. Therefore, if one wishes to reach an agreement that brings together religious sensibilities (but not rights), it will be necessary to do so in the first instance on the basis of the the current, legal framework and then by consulting all the competent parties in accordance with the laws currently in force. In fact, the religious and scientific positions are not (or should not be) non-negotiable, provided that the mediation seeks to make room for the sensibilities and interests of minorities on the principles of not discriminating against the common law of all the citizens and respecting the public domain of cultural assets.

An imaginative example of this mediation is the so-called principle of custody applied to cultural heritage of indigenous origin. In this case, indigenous groups act as custodians of the
heritage and not as exclusive owners. This practice allows the traditional nature of the indigenous community to be harmonised with the scientific philosophy of archaeology, providing answers about the biological and cultural origins of the indigenous population and facilitating the participation of the non-scientific communities in the management of historical knowledge. Under this agreement, archaeology can conduct the relevant studies because it has the recognition, the trust and the permission of the indigenous community, while that community looks after the heritage asset in so far as the scientist respects indigenous sentiments and beliefs. The principle of custody is possible because the extremist positions have disappeared: on the one hand the former colonial countries have accepted the blame for discriminating against and segregating native communities, and on the other, the indigenous communities have seen that their heritage is also the heritage of everyone. As Neil Silberman pointed out in his paper, both sides have assumed the duties and responsibilities that their claims bring, as well as the legal framework in which they move. In short, it concerns the acceptance on the part of the authorities and archaeology management professionals of the right of indigenous communities to take responsibility for the control and management of their own cultural heritage. Also, however, the acceptance by these same communities of the duties their responsibility brings in connection with general scientific knowledge and their management on behalf of all humanity of a common property of scientific and cultural interest stretching beyond the borders of their minority community.

We believe that the seminar has served to clarify the legal precedents, professional practices and religious policies affecting ancient Jewish burial grounds. We have all become aware of the value, the obligations and responsibilities that our practice and our claims bring with them. We believe that we have marked out the limits so that future mediations will allow Jewish heritage to be managed successfully. The spirit of this has been brought together in the Barcelona Declaration, a document that has emerged from the seminar's deliberations, but which we would like to see extended to national and international ambits for future deliberation and approval. The speeches and the discussion that led to its drafting will help understanding of the framework and the future projection which have given rise to the Barcelona Declaration.