

This paper was written for a class called Native American Contemporary Issues

NAGPRA and The Repatriation Controversy

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Much has been said and published in the last ten or so years about NAGPRA, on both sides of the issue. Here is an attempt to summarize the issues facing both the Native Americans and the museums and institutions, thus the anthropologists and archaeologists, involved in the repatriation process. In order to understand the issues one must understand or at least be familiar with the act.

What is NAGPRA?

NAGPRA is the Native American Graves Protection and Repatriation Act of 1990. It was passed in November of 1990 to "provide for the protection of Native American graves and for other purposes" (NAGPRA 1990).

NAGPRA regulates the removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony from federal or tribal lands. It provides a process for the return or repatriation of human remains and other objects, upon request, to the tribes. It also makes trafficking in such items illegal and establishes controls for their excavation. The act also requires any institution, museum, university, etc., that receives federal funding to inventory their holdings and make that inventory available to Native American groups for their input as to the disposition of the inventory (Thomas 1999:

100-1).

"Under the law, museums are required to determine the 'cultural affiliation' of collections under their management. Cultural affiliation is defined as 'a relationship of shared group

identities' between present-day Native Americans and earlier groups. Valid data for creating this relationship include geographical, biological, archaeological, linguistic, folkloric and historical evidence, as well as evidence of kinship and oral tradition" (Schafer 2000: 66).

A significant similarity in the disputes between some anthropologists and some Native Americans is that each thinks the government is unfair; each believes that the passage of NAGPRA has given the other most of the power. "Inconsistent government decision-making has left both communities unclear on the law and unsure of appropriate procedures. If scientists and Native Americans are to work together, government must work harder to insure that public policy is applied in a way that is fair - and that appears to be fair" (Harris 2000: 68).

NAGPRA introduces a fundamental change in the relationship between archaeologists and Native Americans. Archaeologists can no longer ignore Native American concerns, nor excavate sites and remove human remains without reproach. Museums are repatriating items to tribes who, much to the dismay of many archaeologists, are returning them to the ground (Meltzer 1999: 58).

Native Americans and NAGPRA

Among Native American groups, the views regarding NAGPRA and repatriation vary. There is no consensus. The views range from the steadfast supporters such as Vine Deloria Jr. who wrote in 1992, "We have been objects of scientific investigations and publications for so long, and it is our intent to become people once again, not specimens" (1992: 595), and Christopher Quale, an attorney for the Tribes of the Fort Berthold reservation, who claims that NAGPRA is "just the beginning, that sometime in the not-so-distant future there won't be a single Indian skeleton in any museum in the country. We're going to put them [the physical anthropologists] out of business" (Preston 1989: 68-9).

Many Native Americans claim that they do not need to learn their history through archaeology and study, they already know the history that has been passed down through oral traditions. And to many Native Americans, the collecting of their ancestor's remains by anthropologists and archaeologists has been a source of pain and humiliation - "the last stage of a conquest that had already robbed them of their lands and destroyed their way of life" (Preston 1989: 67). Native Americans argue that museums have had many years to study these bones. They also wonder why museums need thousands of skeletons. "To them, the scientific interest in Native American remains smacks of racism, as if they were freaks or curios" (Preston 1989: 67).

In fact, Some Native Americans are not willing to work with archaeologists at all, telling them when asked about issues at sites, "You are not ready to know that yet." or saying to each other, "If anyone knows, don't tell them." (Abatelli 1993: 95).

On the other end of the scale, some tribes choose not to deal directly with human remains at all. "The Eastern Shoshone people on the Wind River reservation in Wyoming did not wish their ancestral remains repatriated because they questioned the accuracy of museum records. The Zuni people asked that the skeletons removed from tribal lands remain under museum curation" (Thomas 2000: 216).

Many Native American groups are not opposed to noninvasive analysis, measurements and photographs, for example. Some even allow analysis which requires that a small amount of bone be destroyed, such as radiocarbon dating or DNA analysis (Carson 1999:84). But, "the extreme indigenous view [is] that permanent curation of any human remains is totally unacceptable" (Bahn 1989:123).

Overall, Native Americans are "frustrated that the language of NAGPRA draws so heavily on the perspective of archaeology and history to determine cultural affiliation" (Thomas 2000a: 233).

NAGPRA's effect on museums thus on archaeologists and anthropologists

It is impossible to talk about how NAGPRA has affected the museum industry without including its effect on anthropologists and archaeologists and how they view it.

Just like with Native Americans, there are many differing opinions about NAGPRA and how it affects the museum and archaeology industries. "This controversy has divided the discipline deeply, some think beyond recovery" (Goldstein 1990: 585).

Clement Meighan questions: "How could I harm any person who had already been dead for thousands of years? How could anything that my studies did with the bones of these ancient people harm any living person?" He also claims that:

"This chilling effect on research is creating an underground archaeology of ill-trained students, dishonest researchers, and intimidated teachers who are afraid to show a picture of a burial to their classes, let alone an actual human bone. Students, who are often more perceptive than their professors, rapidly catch on and change their major or move their archaeological interests to parts of the world where they will be allowed to practice their scholarly profession. There is an increasing loss to American archaeology, and of course to the Indians whose history is dependent on it" (Meighan 1992: 708).

Yet another opposer to repatriation states, "This loss to the world, caused by greed, ignorance and short-sighted zealotry, will unfortunately harm the very people it is meant to help. Custody of remains should be give only to the biologically determined, direct next-of-kin. Others should be kept in perpetuity for study" (Neiburger 1990:297).

While several anthropologists and archaeologists oppose repatriation, the majority of them have accepted it and have resolved to learn to work together with the Native Americans to

protect archaeological sites that are accidentally disturbed and to help them to retrieve the materials that the museums have had for so long.

Joseph C. Winter has much to say about how Native Americans and anthropologists and archaeologists can work together to understand each other. But he also states that "Most of us can appreciate an Indian's request to refrain from disturbing a site when an obvious cultural continuity is involved, but few of us are willing to respond when there are 10,000 or more years of difference and no obvious cultural links" (1980: 125-6).

Many archaeologists share this middle-ground view, not understanding how Native Americans can lay claim to items and remains that until NAGPRA they were not even aware existed. Or how they can lay claims to items such as dog skeletons which to most contemporary people are just dogs (Meighan 1992: 708). This is a case of conflicting cultural norms. And many archaeologists feel that "compromise often can be achieved when there is trust and mutual respect between the parties doing the negotiating" (Goldstein 1990: 588).

On a positive note, some Native American communities are willing to work with the anthropologists and archaeologists in investigating archaeological finds as long as their basic human rights are respected. (Abatelli 1993: 97).

Many archaeologists and anthropologists are forming alliances within Native American groups and learning the cultures they are studying in non-invasive ways. "Indians, have much to offer archaeologists. They can enhance our ability to protect and understand their heritage by explaining the locations and uses of endangered sites" (Winter 1980: 125).

Archaeologists have been and can be very useful to Native American groups. Archaeologists can play a very important part in the preservation of Indian heritage. They possess technical skills and theoretical knowledge that can be useful in tracing the evolution of

Native American cultures. Also, an anthropological background can be an asset in dealing with developers, bureaucrats, politicians and other Anglo-Americans who challenge Native American claims to their heritage and threaten Native American archaeological sites (Winter 1980: 124-5).

When many Native Americans have decided to revive their traditions, they have looked to the museums and anthropologists for assistance. "The museums have the photographs showing how things once looked, the descriptions of sacred rituals, the sacred artifacts and songs. They captured for posterity many things that were forgotten or lost during the time when the government was actively suppressing Indian culture" (Preston 1989: 69). "But the threat of censorship has, in fact, turned some archaeologists away from working with Native American people altogether" (Abatelli 1993: 97).

Ethical considerations

Ethics are discussed in a number of papers and weigh heavily on the outcome in many cases. Cultural conflicts and the ethnocentricity of ethical systems are also to be considered.

Archaeologists and anthropologists must operate within an ethical framework that gives focus and direction while restricting certain activities. To assume that archaeologists and anthropologists have to have total research freedom is naïve; part of the ethical requirements that limit research is a respect for Native American heritage concerns (Winter 1980:127).

"Eliminating sites or portions of sites from excavation or analysis because of the kind of items they contain is not an ethical stance for an archaeologist. [Archaeologists] have a mandate to preserve and protect the past for the future - an obligation to past cultures to tell their story and to future generations to preserve the past for their benefit" (Goldstein 1990: 587).

Archaeologists are not the only ones subject to ethical constraints. Native American people have the ethical obligation to be honest in their dealings with anthropologists as well.

Laying claim to items that are not sacred items or items of cultural patrimony, or items known to them to belong to other Indian groups, are examples of unethical dealings. There have been cases where Native Americans have claimed dinosaur bones as cultural materials, when it is well known that humans and dinosaurs did not co-exist.

Political considerations

Many anthropologists believe that the disputes over NAGPRA are all about politics. It is about control and power. "Who gets to control ancient American History - governmental agencies, the academic community or modern Indian people" (Thomas 2000: xxv).

"If Indian people lose the fight to retain and rebury their ancestor's bones, will they also lose other treaty-guaranteed rights that define their unique, sovereign status under United States law? If archaeologists surrender the right to study ancient human bones and artifacts, will the scientific community have to fear continual censure by the religious beliefs of a few? Should this happen, then mainstream archaeology's views on American origins will no longer carry the clout of authority" (Thomas 2000: xxxix)

Some Indian groups use heritage preservation as a means to obtain political or economic gain. For other Indians, especially those without a land base, such as urban groups, "political action may be the only way to protect the few cultural traditions they have left" (Winter 1980: 126). Many Native Americans will try to use political activity as a mean of expressing their rights within the legal system. Anthropologists are the most visible and vulnerable groups that Native Americans are in contact with, and their activities provide ample opportunity for political confrontation (Winter 1980: 126). Meighan feels that "Archaeologists may well be legislated out of business, and museums may well lose all their American Indian collections, and indeed the Indians have been far more successful than the archaeologists in the political arena" (1992: 706).

The treatment of human remains and Native American sacred objects is a religious and moral issue; "its use as a political football does little to enhance its well-deserved respectability" (Bahn 1989:124).

Kennewick Man

It is difficult to keep a discussion of Kennewick Man out of a discussion about NAGPRA. Because of the Kennewick Man find, there has been an abundance of articles about repatriation in the last few years.

The Kennewick controversy hits NAGPRA at its weakest point. The law requires remains be repatriated to the "lineal descendents" of the individual, but some feel that proving lineal descent at that distance is nearly impossible (Meltzer 1999: 59).

The media coverage about Kennewick Man gives the impression that biological testing such as DNA comparison with present day peoples is the only way to determine cultural affiliation. It isn't. Culture, traditions, folklore and historical research are valid methods of proof for modern people's claims to the remains of a deceased person (Carson 1999: 83-4).

Proposed resolutions to conflicts between Native Americans and archaeologists and anthropologists: Who suggests what and why?

Leah Carson from the Maxwell Museum of Anthropology in New Mexico feels that "Archaeologists can mitigate the limitations of NAGPRA by learning how to conduct good faith consultations with affected groups." In the past there has been no effort to prepare archaeologists for this task. Now some anthropology programs are trying to rectify this shortcoming by combining instruction in excavating techniques with discussions with Native American representatives who talk of their concerns, traditions and cultures (Carson 1999: 84).

And Abatelli states, "If Native Americans establish the ground rules as to which aspects of their culture should be considered off-limits and archaeologists design their research around Native American concerns as well as their own, and both parties have ample opportunity to publicize their opinions and conclusions, then a reasonably fair situation for archaeological study of North America will have been obtained" (Abatelli 1993: 98).

Most people involved in NAGPRA and the repatriation of Native American artifacts agree that some form of compromise is necessary.

Questions raised by NAGPRA

Are remains abandoned property or do they belong to the descendents, even if those descendents are not even aware they exist? What of the remains picked up by army doctors or collectors a hundred or more years ago: who has a right to these? What about cultures with no descendants left to claim the remains? Can present day Native American groups legitimately claim that they speak for the dead of possibly thousands of years ago? (Preston 1989: 68).

When NAGPRA was written in 1990, the issue of ancient human remains was already so complicated that it was deliberately left unfinished. Nine years later it is still unfinished (Schafer 2000:67). The issue has not gotten any less complicated.

Literature available about NAGPRA and repatriation

In general, the articles and papers I have read range from ranting that all archaeologists are evil grave robbers, in it for the money or glory, (Deloria 1992, Klesert 1993) or that the majority of Native Americans are only interested in using the issue as political clout - to get back at Anglo-Americans who suppressed them in the past, to suggesting compromises and alternative research methods that will please both sides (Goldstein 1990).

I have found that no matter what information I find, the author presumes to speak for *all* Native Americans, or *all* anthropologists or archaeologists. Where as there are many differing viewpoints out there on both sides of the issue.

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Annotated Bibliography

Abatelli, Carol

1993 "Ethics of Reburial: Two Cases From Southern New England." *Man in the Northeast*, v.45: 87-100.

This paper explores the problems that archaeologists encountered in attempting to cooperate with Native Americans in two cases where Indian cemeteries were accidentally discovered in southern New England. One case is an example of what can happen if an attempt to collaborate is not honestly undertaken. The second case is an example of a successful effort at collaboration with the local tribal community.

Begley, Sharon and Andrew Murr

1999 "The First Americans," *Newsweek*, April 26, 1999: 50-57.

Discussion of the Spirit Caveman leading to a discussion of reburial rights and to the Clovis first vs. pre-Clovis controversy. Mostly an article about archaeology with little discussion about how cultural affiliation of remains is determined.

Cooper, Karen Coody

1998 "Museums and American Indians: Ambivalent Partners" *American Indian Studies*, Peter Lang Publishing Inc.: New York.

Describes how many museums treated/displayed/stored Native American cultural materials before and after NAGPRA. It describes how tribal museums are now picking up the slack created by NAGPRA and telling the story of the American Indian. Also the difficulties each type of museum is currently facing when dealing with Native American cultural materials and remains.

Goldstein, Lynne and Keith Kintigh

1990 "Ethics and the Reburial Controversy," *American Antiquity*, v. 55: 585-591.

Looks at both sides of the reburial controversy from an ethical rather than political point of view. Suggests a case-by-case review as to whether objects should be repatriated.

Klesert, Anthony L. and Shirley Powell

1993 "A Perspective on Ethics and the Reburial Controversy." *American Antiquity*, v.58: 348-354.

A rather negative article that lumps all archaeologists into the same category, as grave robbers. Makes some rather one-sided suggestions for compromise, but takes the Native American side of the controversy without considering the scientific side at all.

Meighan, Clement W.

1992 "Some Scholars' Views on Reburial." *American Antiquity*,
v.57: 704-710.

Meighan is very much against the repatriation of artifacts and says so in this paper. The paper is a response to Goldstein's and Kintigh's paper Ethics and the Reburial Controversy (1990). Where Goldstein and Kintigh suggest compromise, Meighan is very much against anything that will remove from availability potential items for study.

Native American Graves Protection and Repatriation Act, Public Law #101-601,
November 16, 1990.

Text of the NAGPRA act. Helps one to understand what the controversy is all about.

Schafer, David K.

2000 "Museums Struggle with NAGPRA" *Scientific American Discovering Archaeology*,
January/February 2000: 66.

Very short essay on what issues museums face when dealing with the NAGPRA regulations.

Thomas, David Hurst

2000 "Archaeology for the 21st Century" *Scientific American Discovering Archaeology*,
January/February 2000: 76-77.

An example of how one archaeologist deals with the discovery of human remains determined to be Native American.

2000a *Skull Wars, Kennewick Man, Archaeology, and The Battle for Native American Identity*. Basic Books: New York.

An excellent book mostly about Kennewick Man. Chapters 22 and 23 discuss NAGPRA and repatriation without being biased toward one side or the other. Discusses some of the frustrations being encountered on both sides of the issue.

Winter, Joseph C.

1980 "Indian Heritage Preservation and Archaeologists." *American Antiquity*,
v.45, no. 1, p.121-131.

This paper discusses some of the ways in which productive relationships between Native Americans and archaeologists can be developed. It also analyzes the sources of conflict, namely the preservation of locations important to Native American people. Offers ideas on how to work with Native Americans, on archaeological issues many of which are standard operating procedure under state regulations today. Pre-NAGPRA but shows that even then archaeologists were trying to work with Native Americans.

Additional Resources

Bahn, Paul G.

1989 "Burying the Hatchet," *Nature*, v.342, November 9, 1989: 123-124.

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2000 "The Paradox of Public Policy" *Scientific American Discovering Archaeology*, January/February 2000: 70-71.

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