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Repatriation: Overview

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Introduction

For most members of the general public in the United States (and some other parts of the world), repatriation or reburial (as applied to anthropology and museums) appears to be a straightforward notion – tribes and/or appropriate indigenous groups or relatives ask for the return of one or more objects or burials that are historically or culturally related to the group and the museum or university gives it back, or should give it back. Some are aware that the process can be a bit more complicated, but most people have little idea of the nature and process of repatriation, or the problems and complications that are associated. This is not to say that repatriation is problematic and should not be done, but rather that all parties are obligated to follow an explicit legal process. The biggest difference between repatriation in the twenty-first century and repatriation in the twentieth century is (1) repatriation of human remains and associated objects is now law in the USA and some other parts of the world, and (2) repatriation of human remains is now widely accepted as something that responsible and ethical institutions do.

Definition

The dictionary definition of "repatriation" is the following: "send (someone) back to their own country, or send or bring back to one's own country." Wikipedia defines repatriation similarly:

> Repatriation (from Late Latin *repatriare*) is the process of returning a person back to one's place of origin or citizenship. This includes the process of returning refugees or soldiers to their place of origin following a war. The term may also refer to the process of converting a foreign currency into the currency of one's own country.

The repatriation and reburial of human remains, funerary, and sacred objects is a special case of repatriation. Groups representing indigenous peoples around the world have requested that human remains and sacred objects originally taken from their respective historical territories be repatriated from museums and other institutions. Sometimes institutions repatriate human remains and items because they agree that they should rightfully be in the possession of the group that is descended from them, other times the return is based on the requirements of specific laws.

One reason that repatriation – as applied to archaeology and physical anthropology – is not a simple process is because the motivation for these requests is about people in the present and their perception of the past in the present. Repatriation claims are often associated with politics, ethnic identity, and other debates or problems in

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contemporary society that have or claim to have a historical link to the object or human remains. Such motivations do not make the claim less valid or less appropriate, but the context of the request can be important to understanding the request. Archaeologists, physical anthropologists, and museum directors do not generally approach repatriation from this perspective; they try to contextualize the materials based on archaeological and historical knowledge and science. It is a discussion that has often led to misunderstandings and differences because the parties are focused on different matters. However, since repatriation laws have come into effect, it is a discussion that is happening in many places, and consequently, museums are getting better at responding to requests, and indigenous groups are getting better at making their requests. Repatriation is most active in the United States, primarily because repatriation laws have been in effect for the longest period of time.

Please note that although the term "archaeologist" is generally used in this entry, the reader should understand that this is a shorthand or simplified way of the encompassing people who are archaeologists, physical anthropologists, human osteologists, museum studies scholars, and those in related fields who deal with human remains, grave goods, and sacred or religious objects. Further, archaeology has historically taken the lead in these discussions about repatriation, so this shorthand approach is reasonably accurate as well.

Historical Background

During the 1960s, 1970s, and 1980s, some US institutions listened and responded to repatriation requests from tribes, subsequently returning human remains and sacred objects before there were specific laws in place. However, there is no question that the passage of two federal laws in the United States – the National Museum of the American Indian Act (NMAIA; 20 United States Code (U.S.C.) 80q et seq.) and the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 et seq.) – dramatically changed the nature and process of repatriation. There is little doubt that the effect of this change in process and change in culture has had international implications.

Buikstra (2006), Lambert (2012), Mihesuah (2000), Trope and Echo-Hawk (1992), and Ubelaker and Grant (1989) provide detailed discussions of the history and some of the problems of repatriation in the United States. During the 1980s, the position held by many institutions, as well as by many national professional organizations, was that the ethics of today supersede those of the past, and museums should consider how to change accordingly. At the basic level, repatriation should be done to living descendants upon request and examination of the claim. As Ubelaker and Grant (1989) note, if a group requested remains where there were no living descendants, that group must demonstrate compelling religious or cultural values that outweigh scientific interests. This position also reflected the position of the Society for American Archaeology (SAA) at the time. However, the SAA increasingly assumed the role of representing the scientific community during the 1980s and their view broadened somewhat.

Since the 1980s, the SAA has been remarkably consistent in their position on repatriation (Lovis et al. 2004). The SAA argued for repatriation, but on a case-by-case basis. Indeed, the SAA Executive Committee passed an initial resolution in 1983, followed by a revised version in 1986, and a reaffirmed position in 1999. The key points of the SAA position include (1) both native and scientific viewpoints have legitimacy, (2) scientific importance must be considered against the strength of affiliation, (3) implementation of repatriation should be done on a case-by-case basis because of the variability in circumstances and histories, and (4) communication and consultation with affected groups is of critical importance. Since 1986, the SAA (Lovis et al. 2004) has recognized the importance and legitimacy of repatriation and worked actively with the Congress to create balanced legislation. Note, however, that tribes did not all welcome the SAA position.

Some native tribes and organizations, archaeologists, and other activists argued that repatriation represented something that was morally and ethically important for the archaeological profession to do, even if archaeology lost access to the remains and artifacts. However, even though several states enacted legislation that in some manner dictated repatriation and/or consultation with native groups, there was no consistent national policy until the 1990s.

During the late 1980s, a number of tribes in the United States argued that repatriation of human remains was a human rights issue – that these were human bodies that had to be treated with respect and respect was not possible if the remains were excavated and placed in a museum. Tribes did not see much difference between archaeologists and looters. One incident that angered many (including many archaeologists) happened in Iowa. A cemetery area was excavated due to road construction. All of the historic white settlers were immediately moved to a new location where they were reburied, and the Native American remains were sent to a museum. The lack of consistency and parity and the continuing idea that Native American remains belong in a museum (in part because they have no clear descendants) represented the perfect example of what was wrong with archaeology and museums. Ironically, it is likely that in the Iowa case, archaeologists and physical anthropologists would have treated all remains the same but would have studied them all before reburying.

A number of issues and events changed archaeological and other perspectives on repatriation. First, there were several instances, like the aforementioned Iowa case, that led many archaeologists to become increasingly uncomfortable over the idea of study and curation. In the 1980s and early 1990s, the archaeologist who perhaps best personified this position was Larry Zimmerman. In one article, Zimmerman reflects on his experiences and the present and future of archaeology (2000). Zimmerman notes (2000: 294-295) that the reburial issue's trajectory has followed classic syncretism, or a coalescing or reconciliation of differing beliefs. Zimmerman (2000: 295) argues that "the problem has been that the belief system of Western science about the past, through archaeology, had imposed itself on belief systems of indigenous peoples about their pasts and those they consider their ancestors." Because archaeologists had little resistance from these indigenous people over a long period of time, they assumed that these people agreed or did not object. The past 25–30 years have demonstrated that archaeologists were wrong. Public discussion – as represented in various polls and forums – demonstrated that the general public supported the Indian position.

As Buikstra (2006: 395-396) points out, another influence on the relationships between archaeologists and indigenous peoples was the development and impact of post-processual theories in archaeology in the 1980s and 1990s. This approach to archaeology moved away from being scientific and was humanistic and contextual in nature, with practitioners arguing for multivocality in interpreting the past (cf. Hodder 1985; Shanks & Tilley 1987). Such an approach was certainly more open and welcoming to resolving repatriation disputes, but not everyone agreed with the approach or the benefit for repatriation.

The first United States law that directly addressed issues of repatriation was the National Museum of the American Indian Act (NMAIA; 20 United States Code (U.S.C.) 80q et seq.), which was signed into law on November 28, 1989. The NMAIA was written and passed primarily to establish a new national museum dedicated to the history, music, and art of American Indian cultures. The collections of the private Heye Foundation in New York formed the basis of this new museum, to be part of the Smithsonian and built on the national mall in Washington, DC.

The new museum opened in 2004. As a part of the new law, Indians had lobbied for a Smithsonian repatriation requirement to be included. In particular, the law affects all collections of American Indian human remains and funerary items held by the Smithsonian Institution (although the vast majority of relevant human remains and funerary objects are in the

Smithsonian Museum of Natural History, the law affects all of the Smithsonian museums, the new Museum of the American Indian, American History Museum, etc.). The NMAIA dictates that all designated items are to be inventoried, and, where possible, the Smithsonian will determine tribal or descendant origins. When the law was passed, the Smithsonian was estimated to have 19,250 sets of Native American remains (Smithsonian Repatriation Office website). As of December 31, 2010, approximately 29 % of this number has been offered for return, and about 20 % of the total has actually been repatriated (estimated from Smithsonian Repatriation Office's website – http://anthropology.si.edu/repatriation/faq/index.htm).

Lambert (2012: 21) makes the point that the NMAIA marks a real "shift in archaeology law from the protection of archaeological resources to the legal acknowledgement of private ownership (or rights of stewardship) by a sector of the American population of a component of the archaeological record."

Legal representatives of appropriate tribes or descendants can request the return of remains and objects. The Smithsonian notifies tribes if they determine an affiliation, but tribes are also encouraged to submit a request for remains to be returned. If there is a disagreement between the Smithsonian and the requesting tribe, the Smithsonian Repatriation Review Committee can examine the case in detail and submit its recommendations to the head of the Smithsonian. The Review Committee is composed of archaeologists, physical anthropologists, tribal representatives, and tribal elders. The tribal representatives on the Committee have one more representative (and therefore one more vote) than the scientific representatives.

One of the most important results of the Smithsonian act is that systematic study of human remains and objects prior to return is a priority, and the law provides funding for a Repatriation Office. As noted by Killion and Molloy (2000), as well as by Ousley et al. (2005), an enormous amount of contextual knowledge and a systematic catalogue have been gained as a result of this law. Data recovered can be used in the future, and data recording has been done in a consistent manner. It is important to realize, however, that the NMAIA *only* affects collections held by the Smithsonian.

The Native American Protection and Repatriation Act was passed on November 16, 1990 (NAGPRA; 25 U.S.C. 3001 et seq.). NAGPRA is a far-reaching law that was crafted as a compromise between Congress, Native Americans, and the scientific community. Note that although NAGPRA does not apply to the Smithsonian, the Smithsonian has generally accepted and incorporated the regulations of NAGPRA, and the NMAIA was amended in 1996 to reflect this incorporation of NAGPRA regulations.

NAGPRA has several components:

1. It applies to federally recognized Native American tribes, as well as native Hawaiian organizations and Alaska native corporations.
2. In addition to human remains, NAGPRA includes the repatriation of associated and unassociated funerary objects (objects clearly part of a burial as well as objects that were likely funerary objects but for which details are unknown), sacred objects (objects required for rituals and ceremonies), and objects of cultural patrimony (objects that are owned by the group and cannot be owned or sold by an individual).
3. NAGPRA requires museums and federal agencies to identify and inventory human remains and associated funerary objects and also produce a summary of unassociated funerary objects, sacred objects, and items of cultural patrimony by November 16, 1995. These inventories and summaries were distributed to the federal government as well as appropriate tribes.
4. NAGPRA established tribal ownership of Native American remains and cultural items recovered from federal and tribal lands after 1990, requiring procedures prior to excavating on such land whether the excavations were inadvertent or intentional.
5. Violation of NAGPRA includes prohibitions against trafficking, sanctions against museums for not meeting deadlines and procedures, and

enforcement of the Act by the ability to go to court.

NAGPRA established a Review Committee similar in composition to the Smithsonian's Repatriation Review Committee, with the balance tilted toward Native Americans. NAGPRA also established some grants to museums, Indian tribes, and native Hawaiian organizations (although these funds have been very small relative to the need), and the law promulgated regulations to make the law work.

As Lambert (2012: 20) notes:

> These laws reveal significant changes in attitudes concerning the scientific value of archaeological human remains over the course of the 20th century, and illustrate the complexities that can arise when secular and religious ethics collide in the conduct of scientific research.

NAGPRA is important – its passage meant that the Federal government was acknowledging that some things in museums were not obtained in a way consistent with modern American ethics, even though the original acquisition may have been legal at the time. Fortunately, NAGPRA was also a legal impetus for beginning conversations between tribes and the scientific and museum communities. Some tribes and archaeologists had already been talking with each other, but NAGPRA mandated such discussions. As Lambert (2012: 22) notes: "In light of the history of disenfranchisement of indigenous people in North America, . . . NAGPRA's passage was an ethical victory that could be shared by all communities impacted by the law."

Key Issues and Current Debates

Archaeologists and museums operating in the USA today adhere to federal laws and policies concerning repatriation. While some were opposed to these laws initially, they now honor the law. More importantly, there has been a significant culture change among the public and among archaeologists and museum professionals, who accept that repatriation is an appropriate federal policy. It is important not to minimize this culture change: repatriation is now considered the de facto result of most burial excavation in the United States.

Under NAGPRA and the NMAIA, repatriation does not have a timetable. Except for specific dates by which museums were required to report their holdings, there is no deadline for the time when repatriations must be completed. This was done deliberately since it was impossible to estimate how long this process would take, and no one wanted to put the burden of a timetable on tribes who were already overwhelmed by the numbers of potentially related remains and artifacts in museums.

A key issue in the passage of NAGPRA was the concept of "cultural affiliation." Cultural affiliation is the basis for decisions about which remains are open to repatriation claims. NAGRPA's definition is "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group" (25 USC 3001, Sec. 2[2]). If there is no clear evidence for such a relationship, NAGPRA specifies establishing cultural affiliation based on a "preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion" (25 U.S.C. 3005, Sec. 7[4]). It is important to understand that preponderance of evidence is a low legal threshold of simply >50 %, and all types of evidence are to be treated equally. The notion of cultural affiliation has been problematic in some cases and is the basis for a number of legal and ethical debates about the meaning and intent of the law.

Many in the public think that the so-called Kennewick Man case legally settled the issue of cultural affiliation, but this is not the case (Thomas 2000). Kennewick Man (found in Washington State) was a legal battle over a very ancient skeleton. A group of scientists and a group of citizens (Friends of America's Past) were on one side, and five Native American tribes and bands from the Columbia River Basin were on the other side (although technically the case was against the USA). Not only did the skeleton

date to a very early time, some physical anthropologists argued that the skeleton had characteristics that were more Caucasoid than Native American in nature. The details of the case can be found in Thomas (2000) and elsewhere. Unfortunately, instead of deciding the case on the basis of cultural affiliation – a finding that might have helped clarify decisions made under NAGPRA – the US Court of Appeals for the Ninth Circuit argued that the Federal Government had failed to prove that the skeleton was Native American and therefore it was not subject to NAGPRA. It was a decision that angered Native Americans and also angered many archaeologists because the decision was based on an idea about which Native Americans and archaeologists generally do *not* disagree – both sides would say that ancient remains found in the USA can generally be considered Native American.

Subsequent to the Kennewick decision, various attempts were made to amend and/or adapt NAGPRA. Most importantly for the present discussion was the Department of the Interior's 2007 decision to address the issue of "culturally unidentifiable human remains" (CUHR). This category includes the largest majority of archaeological human remains in the United States. Included are those remains that museums and federal repositories have not been able to affiliate with a modern Indian tribe or descendant. Following the lines of evidence provided in the definition of "cultural affiliation" (and outlined above), these are remains for which institutions have not been able to assign an affiliation. For the most part, these remains are those of greater antiquity, with fewer ties to the present. Members of the scientific and museum communities had worried about this group of remains from the very earliest repatriation discussions because archaeologists and museums were concerned about the impact of repatriation law on the study of prehistory. Some Native American groups were also concerned about the rule from both practical and legal perspectives.

The final rule for culturally unidentifiable human remains (CUHR) was enacted in May 2010. The original negotiations involved in crafting NAGPRA had carefully maintained a balance between various interests. The new rule ignores that balance and favors native issues over any scientific interests or concerns; it also does not necessarily give tribes much leeway in how they wish to respond to repatriation. It is likely that this rule will be the focus of many future legal challenges.

One issue in the Final CUHR rule focuses on the term "disposition," or the outcome of a repatriation claim. NAGPRA does not mandate the nature or type of disposition for successful repatriation claims, intentionally avoiding use of the term "reburial." The reason for this avoidance is that any particular tribe might or might not wish a particular or mandated outcome. While most tribes would likely wish reburial, if the repatriation decision is that the remains belong to the group, the specifics of the final disposition should also be the group's prerogative. The CUHR Final Rule effectively calls for the reburial of all Native American human remains currently in museums and federal repositories, even if evidence for any relationship of shared group identity is lacking.

Although many contentious issues remain, current debate in archaeology has moved from the question of whether or not repatriation is right or wrong to more complicated issues. Colwell-Chanthaphonh and Ferguson (2006) present one aspect of this new direction. Instead of principles and rules of ethics, they promote the idea of Virtue Ethics. "Instead of beginning with questions of obligations and oughts, Virtue Ethics begins with questions of character, focusing on relationships and the subjectivities of social interaction" (Colwell-Chanthaphonh & Ferguson 2006: 118). They argue that we need to focus on agents and sustained actions, rather than single acts. Effectively, Colwell-Chanthaphonh and Ferguson (2006) argue for a more complex, layered discussion about archaeological practice. They note that archaeologists have a series of unique relationships with multiple interactions, and these interactions have consequences for ethical standpoints.

International Perspectives

In their broad discussion of ethics of bioarchaeology, Larsen and Walker (2004: 114) outline three ethical principles for the study of human remains, whether in the USA or internationally: (1) human remains should be treated with dignity and respect; (2) descendants should have the authority to control the disposition of their relatives' remains; and (3) because of the importance of human remains for the understanding of our common past, human remains need to be preserved when possible so that they are available for scientific research. From the discussions above, it is clear that there may not be universal agreement on these principles.

Canada and Australia share with the United States a basic issue associated with repatriation: the majority of the contested collections derived from minority indigenous populations where treatment of the dead is an important part of broader indigenous rights issues. Most repatriation efforts focus on trying to redress historical wrongs associated with Western colonialism.

Buikstra (2006: 408-409) notes that Canada has no federal legislation similar to NAGPRA, but relationships between First Nations and archaeologists are strong. Why the difference between countries? First, the Canadian archaeological profession voiced their sympathy with First Nation concerns relatively early, with physical anthropologists practicing in situ analyses and reburials during the 1970s. In other words, Canadian bioarchaeologists were collaborating and consulting with First Nations over a decade before US archaeologists, and they did so without being mandated by legislation, producing impressive work with multivocal perspectives. Interestingly, there are multiple examples of First Nations requesting osteological analyses and allowing destructive tests. The National Museum of Canada stopped accessioning human remains in the early 1970s. As Buikstra (2006: 412) notes, "Canadian museums, physical anthropologists, and archaeologists appear to favor mediation over litigation in addressing repatriation issues."

Lambert (2012: 25-26) notes that while the United States, Canada, and Australia have seen repatriation on a national scale coming from indigenous populations and issues relating to colonialism, some similar historical situations exist in Argentina, Norway, and South Africa. However, to date, repatriation efforts in these countries have been limited and generally involve the return of named, historically significant individuals.

In Israel (Nagar 2012: 8), opposition to the excavation of human remains is associated with sites dating to Classical Antiquity and comes from a group of extremist religious Jews who believe that graves of Jewish dead should remain undisturbed; their political power has been successful in gaining some severe restraints on research. Nonetheless, the Israeli Antiquity Authority created and has maintained a human osteological database since 1994; all time periods are included (Nagar 2012).

In Great Britain, considerable dialogue has focused on repatriation and is in part the result of connections to developments in Canada, Australia, and the United States. However, Parker Pearson et al. (2011) provide a recent summary of the issues and concerns. In 2008, "the British government announced that all human remains archaeologically excavated in England and Wales should be reburied after a two-year period of scientific analysis" (Parker Pearson et al. 2011: 1). Not surprisingly, this announcement caused great consternation on the part of museums and archaeologists. As of the moment, it appears that the policy will not be implemented as stated, but Parker Pearson et al. (2011: 3) point out that

> The weaknesses and contradictions in the legal frameworks that govern archaeology are shocking in many respects, and cannot remain unresolved; archaeologists are pulled hither and thither by property law and planning law, while human remains exist in a peculiar (but ethically and morally appropriate) legal limbo in that they cannot technically be owned.

In sum, outside of Canada and Australia, laws regarding repatriation and reburial are scattered and sometimes under debate; they resemble the

issues raised for the United States when there is a similar historical colonial situation. Whether or not the twenty-first century sees an increase in repatriation and reburial remains to be seen.

Future Directions

Larsen and Walker (2004) discuss the ethics of bioarchaeology and their view of the future. They argue that compromise is the key to reaching an ethical solution to skeletal studies of ancient ancestors. Compromise can be legislated, as it originally was for NAGPRA, or it can come about through working together. However, Larsen and Walker (2004: 118) note that this balance achieved through compromise is now endangered with "a perceptible shift in the balance of power toward extremist native perspectives on repatriation." They close their discussion with the comment that "compromise is developed when there is trust between two parties who have invested time and effort in reaching solutions that may not be perfect, but nonetheless attempt to [address] competing interests of different groups" (Larsen & Walker 2004: 118).

The notion of trust is an important one and will continue to be so in the future, both in the United States and internationally. As noted above, Colwell-Chanthaphonh and Ferguson (2006) use the concept of Virtue Ethics to look to the future without specific reference to NAGPRA. They also discuss the concept of trust and the nature of trust in archaeological practice. They draw on the work of Baier (1994) to outline and discuss "Virtue Ethics," citing Baier's contention that goodwill is an essential component of trust. Colwell-Chanthaphonh and Ferguson (2006: 122-124) outline the complex web of categories of trust relationships in archaeological practice, noting that there are not only relationships within categories but also relationships between them. Trust requires goodwill, but each group has to interpret acts of goodwill as benevolent (Colwell-Chanthaphonh & Ferguson 2006: 127). If we wish to develop trust between archaeologists and museums and indigenous groups, all parties must move to a focus on people and actions over time, rather than things and single interactions at one time. Although it takes time to develop and establish trust, the goal has an excellent reward.

Cross-References

- ▶ Archaeological Stewardship
- ▶ Ethics and Human Remains
- ▶ Native American Graves Protection and Repatriation Act (NAGPRA), USA
- ▶ Zimmerman, Larry J.

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