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CONTESTED PHYSICAL CULTURE



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I
THE POLITICS OF ARCHAEOLOGY
Heritage, Ownership, and Repatriation



Joe Watkins

IT IS PROBABLY safe to say that everyone has an opinion on the repatriation legislation that came out of Congress in 1989 and 1990, the National Museum of the American Indian Act (NMAIA) and the Native American Graves Protection and Repatriation Act (NAGPRA), which require U.S. government agencies and federally funded museums to return cultural items, including human remains, to Native American tribes, and also established procedures governing the excavation of Native American sites on federal or tribal land. Some anthropologists saw the legislation as an opportunity to further their field of study, noting that “NAGPRA will allow bioarcheology to emerge as a vigorous and possibly more publicly relevant and responsible profession,” while others, such as Robson Bonnicksen, saw it as a threat to archaeological anthropology, arguing that “repatriation has taken on a life of its own and is about to put us out of business as a profession.”¹ These two federal laws injected even more politics into what has always been a political situation concerning heritage and its control. Prior to the legislation of repatriation, archaeologists were constrained primarily by the terms they could negotiate with the tribal groups or federal land managers; after the establishment of strict legal repatriation guidelines, archaeologists have had to renegotiate access to the heritage of local groups.²

As an Indigenous archaeologist (I am a member of the Choctaw Nation

of Oklahoma), I have always had difficulty seeing the threat to archaeology that Bonnicksen felt. To me, repatriation has created opportunities for archaeologists to draw from the Indigenous knowledge held by those people whose ancestors created the archaeological record we write about. It has opened up hitherto untapped pools of knowledge that can help inform archaeological understanding of the numerous pasts we encounter by legislating consultation and by suggesting the usefulness of Native American involvement in a shared program of heritage investigation.

Archaeology as a Humanist and Scientific Endeavor

Archaeologists are generally united in the understanding that archaeology is a science that uses the scientific method to tease out information about the cultures that existed in the past. It is, as Jeremy Sabloff, a former president of the Society for American Archaeology, notes, “one of the broadest intellectual endeavors in the scholarly world, as it straddles the physical and natural sciences, the social sciences, and the humanities; in its techniques, methods and theories.”³ But even though its subject is *the past*, archaeologists do not work in the past. The descendants of those cultures that the archaeologist studies exist in the present and are faced with contemporary issues that archaeology often does not address, including the struggle to maintain relationships with their ancestral past.

Elizabeth Brumfiel, a past president of the American Anthropological Association, draws attention to the relationship between contemporary, living cultures and the cultures that archaeologists study. She writes that “identities are frequently grounded in socially constructed understandings of the past, and this is true of those identities ascribed to others by outsiders and those identities embraced by individuals for themselves.”⁴ In this manner, people in the present develop inclusive or exclusive characteristics that can be applied to differentiate archaeological cultures of the past.

The problem is that archaeological cultures often bear no true relationship with contemporary cultures, even though archaeologists might treat them as if they do. As Kurt Dongoske and his colleagues observe, “It is ironic that today many southwestern archaeologists continue to conceive of archaeological cultures in essentially ethnographic terms, considering them to be tribal groups that are synonymous with ethnically distinct

groups of people.”⁵ In essence, archaeologists create “cultures” out of pieces of stone, bone, and pottery and then act as if those cultures were people, not the *products* of people. This disconnect causes archaeologists to have more difficulty understanding relationships between ancestral populations and today’s living groups and makes them less likely to recognize the connections between their artificially created cultures with the living cultures of today’s groups.

What is it that anthropologists such as Sabloff, Brumfiel, and thousands of others study? Anthropologists study culture, which can be defined in many different ways. Culture is a shared, learned, symbolic system of values, beliefs, and attitudes, which shapes and influences perception and behavior. It is patterned and mutually constructed. It is arbitrary, in that it is not based on “natural laws” external to humans but is created by humans. It is, as Sir Edward Tylor wrote in 1871, “that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.”⁶

In this sense, the past that archaeologists study is composed of evidence of cultures left for others to uncover. Archaeological artifacts are only a minor portion of the items created by humans to help them deal with their environments. These artifacts *in and of themselves* offer little information about the people who put them to use—it takes other humans to interpret the information contained therein. These interpretations are invariably influenced by the background and culture of archaeologists and suffer or benefit from the experiences they bring to their work, an issue H. Martin Wobst, in his essay elsewhere in this volume, also ties to the Indigenous knowledge that has been either offered to and declined by archaeologists or was known but ignored by the discipline.

As I noted earlier, archaeologists generally use the scientific method to try to reconstruct information about the past. The techniques vary within archaeology and among its practitioners, but information can be gathered through many different procedures, ranging from pedestrian surveys (to look for and record manifestations of archaeological sites) to complete archaeological excavations (to gather information on a particular archaeological manifestation for in-depth or comparative research). In this manner, archaeologists hope to create additional information about human cultures that existed in a particular place at a particular time.

The scientific method is composed basically of four distinct steps:

observation; formulation of a hypothesis to explain the observation; prediction based on the hypothesis; and experimentation to test the validity of the prediction. It is, as Brian Fagan succinctly defines it, a “disciplined and carefully ordered approach to acquiring knowledge about the real world using deductive reasoning combined with testing and retesting.”⁷

Archaeologists are at somewhat of a disadvantage in that they cannot ask the participants in the culture being studied about the culture; they can only make educated guesses (hypotheses) about the culture that resulted in the materials being investigated. These educated guesses can be based on personal experience (technical training or experimentation), historical information (historical description of an area or similar areas), ethnographic examples (ethnographic analogy), or any of several other sources of information about human beings and their cultures.

“Managing” Culture and Heritage

Heritage is many different things and has many different definitions. While heritage can be seen to have ties with the past, it is also often the source of conflict within contemporary cultures, as Margaret Speas (see her essay in this volume) and others have shown.⁸ Heritage is the product of societies, is inherited, and is often complex. John Tunbridge and Gregory Ashworth have noted that “not very long ago the word ‘heritage’ had a simple and generally accepted primary meaning; it was the collective generalization derived from the idea of an individual’s inheritance from a deceased ancestor.” Others argue, however, that such definitions may serve to oversimplify “heritage” in conjunction with other concepts.⁹

While archaeologists might be comfortable with separating “culture” from “heritage” as I have done above, it might not be quite so easy to other researchers. Tolina Loulanski recognizes that “the main controversy in defining heritage seems to originate in its uneasy duality of being both a cultural and economic subject, possessing both cultural and economic values, and performing both cultural and economic functions.” And as Tunbridge and Ashworth observe, it often becomes difficult to recognize that there are “distinctions between the past (what has happened), history (selective attempts to describe this), and heritage (a contemporary product shaped from history).” Similarly, Frans Shouten writes: “Heritage is not the same as history. Heritage is history processed through mythology,

ideology, nationalism, local pride, romantic ideas, or just plain marketing, into a commodity.”¹⁰

Because of the definitions we use, “heritage” can be seen as a resource in need of protecting, preserving, or managing. It can have multiple levels of value to multiple groups, and its management may be undertaken by individuals, by groups large and small, and by various branches of local, state, or national government. The reasons for heritage management may vary as well. Peter Larkham writes that when one takes into consideration the “value” of heritage, one should consider *preservation*, “the retention, in largely unchanged form, of sites or objects of major cultural significance”; *conservation*, “the idea that some form of restoration should be undertaken to bring old buildings and sites into suitable modern use”; and *exploitation*, which “recognizes the value of heritage sites, particularly for tourism and recreation, and encompasses the development of existing sites and new sites.”¹¹

Heritage might be somehow seen as benign, but even the intangible aspects of heritage, such as language revitalization or documentation, can become highly problematic because of power imbalances between researchers and community members (see Margaret Speas’s essay in this volume). As a result, Graeme Aplin sees heritage as “both intensely personal and intensely political,” and he adds that “in effect, these two elements go hand in hand, as heritage is hotly contested because we each have our own views on what represents heritage, and what is worth conserving.” And because of this, issues can arise when it is put to use in particular ways, especially when this is done by larger political bodies. David Harvey calls attention to this aspect: “Heritage should be understood as a process, related to human action and agency, and as an instrument of cultural power.”¹²

Nations (or particular subsets of nations) can therefore use heritage as a symbol of group ethos and to increase relationships within a population, or it can also be used to exclude other portions of the population—those economically, politically, philosophically, or socially on the fringes of the dominant culture—purposefully or inadvertently. Oriol Pi-Sunyer and Susan DiGiacomo’s example of the deliberate exclusion of Catalan cultural patrimony in Spain elsewhere in this volume calls attention to ways that heritage can be a distinctly political weapon. Again, Aplin writes, “National heritage is sometimes used by a government or dominant group in society as a concept to legitimize the state, to help define it, and

to advance individuals' identification with it." Nationalistic constructs of a shared heritage thus serve as a method of developing a structure within which the past can become a political weapon, creating out of many pasts a singular one around which people can rally. "Social solidarity," as Andrew Smith points out, "requires a sense of cultural unity based on a myth of common ethnic descent and shared vernacular codes."¹³

This political aspect of heritage and its management can have a strong impact on local and Indigenous groups within a nation. Lynn Meskell and Lynette S. M. Van Damme have examined the sorts of issues that arise when heritage environments change as a result of social and political upheavals, focusing on "sets of relationships between descendant communities and a familiar arm of the government in the form of national parks" in South Africa.¹⁴ Such issues are not encountered only in the so-called Third World, but also in First World countries such as Australia and the United States.¹⁵

The Politics of Archaeology as Public Heritage

In the United States, archaeological resources on public land are considered to be a subset of the American heritage. Three aspects of the Antiquities Act of 1906 can be seen as the foundation for public archaeological and historic preservation policies: "(1) archaeological resources are public resources and their uses should be regulated publicly for a public benefit rather than for private commercial or personal gain; (2) the primary values of archaeological resources are educational and commemorative; and (3) archaeological resources should be investigated and interpreted by qualified professionals using the best historical and scientific methods and techniques."¹⁶ Later, the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 extended these policies to a much wider range of cultural and historic resources as well as to nonpublic lands. In short, the Antiquities Act of 1906 established the policy that archaeological remains and manifestations of archaeological cultures "belong" to the American taxpayer; remains on public land belonged to the nation, regardless of whether any specific subset of that public agreed to share ownership.¹⁷

I have discussed elsewhere the apparent conflict between various schools of thought concerning the rights to control cultural heritage, and I will not repeat that here.¹⁸ But the point still remains: the right of

Indigenous groups to the ownership and control of their archaeological and cultural heritage is rarely equivalent to that of the nations within which they exist. We, as archaeologists, contribute to that inequality as we set ourselves up as the “experts” on the archaeological and cultural heritage under study. As Sandra Scham notes, “the archaeology of the disenfranchised can be defined as a unique combining of culture with current and past political realities,” and she adds that “to the extent that archaeologists in all societies typically place themselves in the role of mediator between the past and the present, . . . it is disingenuous to suggest that popular views do not affect our work.”¹⁹

The history of the relationship between American Indians and archaeologists is one of strife and mistrust and has been recounted by too many authors to list here.²⁰ But Larry Zimmerman makes an important point about the conflict: “It is difficult to see the historical relationship between archaeologists and Native Americans as anything but scientific colonialism”—a process in which, as Dell Hymes writes, knowledge about a people is acquired and then “exported” out of the “country of origin” to be used for “processing” into intellectual material.²¹

It is within this culture of “scientism” that American Indian concern with the free practice of archaeology came to a head in the 1970s. Perhaps in response to the social and political unrest of the times, American Indians began showing their distrust of archaeology and archaeologists. These protests revolved primarily around what American Indians perceived as a threat to the human remains of their ancestors. In 1971 the American Indian Movement disrupted excavations at Welch, Minnesota, and a group of Indians occupied the Southwest Museum in Los Angeles in an attempt to get American Indian human remains and sensitive material out of public displays.

These political actions created discomfort between archaeologists and American Indians, but they served to create an awareness of archaeology as a political action as well as a science. The anthropologist Bruce Trigger was one of the first to recognize that science does not operate within a vacuum but rather is an integral part of the social and culture milieu within which it is practiced: “Problems social scientists choose to research and (hopefully less often) the conclusions that they reach are influenced in various ways and sometimes to a highly significant degree by the attitudes and opinions that are prevalent in the societies in which they live.”²²

The practice of American archaeology changed slowly from the 1970s onward (especially within the academy), but change was quicker within those areas of archaeology affected or controlled by federal legislation. In 1979, with the passage of the Archaeological Resources Protection Act, archaeologists who conducted work on federal lands were required to consult with American Indian tribes concerning archaeological excavations. So powerful was the anthropological and scientific hold on America's past that this was the first legislated mandate that *required* such consultation prior to conducting excavations of sites on tribally owned or controlled lands. While this was a great step forward, the act itself defined human remains as archaeological resources, something the tribes held as unfathomable.

While the excavation of American Indian archaeological sites has been seen by some as disruptive to contemporary populations, perhaps the most discussed, analyzed, and highly publicized conflict between anthropologists and American Indians has been over the excavation of American Indian human remains. In 1973, the archaeologist Eldon Johnson listed the excavation of burials first among four recurrent themes of protests by American Indians, and ended with the hope that those themes would "be dealt with collectively by responsible members of a professional society and that the issues will not continue to be met *post hoc* by individuals and single institutions as reactions to protests." But his article was not the only reaction to the call for the cessation of archaeological excavations of American Indian graves.²³

Anthropology has generally been political as it has dealt with American Indians over the last one hundred years in the mistaken belief that the Native cultures would soon disappear. Working from this myopic perspective, anthropologists saw it as necessary to gather—to salvage—as much information as possible about those cultures while practitioners of them were alive. Native cultures did not and have not disappeared, but anthropologists and archaeologists continue to operate as if "salvaging" is still necessary. As Stuart Fiedel has written, "Anthropologists whose livelihoods and passionate interests require unfettered access to prehistoric sites, artifacts, and skeletons are threatened by legislation that awards primary control of these data to Native Americans."²⁴ But it is not only the control of the "resource" that apparently threatens anthropologists.

NAGPRA and Repatriation

To many American Indians, “the only difference between an illegal ransacking of a burial ground and a scientific one is the time element, sun screen, little whisk brooms, and the neatness of the area when finished.” While illegal excavators of burial grounds might face legal punishment if they are caught, the products archaeologists produce, as Wesley Bernardini points out, “increasingly have legal and ethical implications that affect descendant communities.” In this regard, as many authors have indicated, repatriation has had and will continue to have an impact on the practice of archaeology.²⁵

As I mentioned at the beginning of this chapter, the repatriation legislation of 1989 and 1990 created a mechanism whereby federally recognized Indian tribes, Alaska Native corporations, and Native Hawaiian organizations could petition federal agencies, federally administered museums, and other museums that receive federal funds for the return of human remains and particular classes of artifacts. The National Museum of the American Indian Act (NMAIA) of 1989, which deals specifically with the Smithsonian Institution, was the precursor to the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990, which covers all other federal agencies and museums. Following the passage of NAGPRA, amendments to NMAIA brought the two legislative acts more in line with each other.

A great deal has been written about NAGPRA from legal perspectives as well as anthropological ones—too much to warrant discussion here.²⁶ But American Indians hailed the passage of NAGPRA as “civil rights legislation” aimed at providing protection to American Indian human remains and associated grave furniture equal to that afforded “white” Americans, along with a mechanism for their return and the return of sacred objects and objects of cultural patrimony.²⁷ Some anthropologists have drawn attention to the fact that “reburial and repatriation have been thorns in the side of archaeology . . . , pitting Native American against archaeologist and archaeologist against archaeologist. This conflict apparently revolves around one central issue: whether archaeology’s claim on human remains and items of cultural patrimony as scientific data outweighs Native American ones based on ancestry and cultural affiliation.”²⁸

At the time of the passage of these two repatriation acts, archaeologists

were on both sides of the discussion. On one end of the spectrum was Clement Meighan, who argued that “it is ironic that evil Whites are making every effort to preserve the evidence of Indian history and communicate it to the citizens, while some Indian activists seem to be doing their best to destroy and conceal collections and prohibit any further studies from being conducted (except by politically safe and government-controlled bureaucrats).” Others, such as Andrew Gulliford, saw an appropriate opportunity: “As cultural barriers fall and the hegemony of whites over the curation and interpretation of native objects lessens a new kind of museum may emerge.” It is likely that the perspectives of archaeologists and American Indians on archaeology and repatriation fall somewhere between these two extremes. The historian Devon Mihesuah, herself American Indian, wrote that “Indians are curious about their histories, and they do not believe that all scientific and social scientific studies are worthless”; even in the midst of the Kennewick situation (discussed in the following section), Don Sampson, former chairman of the Confederated Tribes of the Umatilla, pointed out, “We do not reject science. In fact, we have anthropologists and other scientists on staff, and we use science every day to help in protecting our people and the land.”²⁹

Anthropologists have continued to press for concern. Doug Owsley and Richard Jantz believe that “NAGPRA was a compromise to resolve potentially conflicting interests including those of American Indians, museums and scientists, and the public.” Shirley Powell, Christina Garza, and Aubrey Hendricks write, “Archaeologists believe so strongly in the importance of knowledge and their responsibility to contribute to that knowledge that not to do so would be unthinkable and unethical.” One biological anthropologist also comments that “the reburial of remains detracts from the ability of anthropologists to scientifically study humankind. In fact, the ideology surrounding reburial threatens freedom of scientific inquiry.”³⁰

American Indian authors believe that “the political goal of reburial opponents is to make Indian ways of knowing ‘religious’ and to make all religion into the ‘religion’ that reasonable people will be happy to be rescued from by science.” Owsley and Jantz see the political climate differently: “The original intent [of NAGPRA] is being replaced in some quarters by politically expedient decisions that favor some American Indian interests to the detriment of sound scientific inquiry and the

public's right to information about the past."³¹ The "politically expedient decisions" that concern Owsley and Jantz are part of the changing relationships between "science" and American Indian groups who are no longer politically powerless. Repatriation is by all means a political action, but so too is the *retention* of the items under question, and nowhere was politics more apparent than in the Kennewick Man court case.

The Politics of Repatriation: Kennewick Man as Epitome

There is no need to recount in depth the nearly eight-year-long legal battle over the prehistoric human remains known alternately as "Kennewick Man" and "the Ancient One," which were discovered in 1996 along the banks of the Columbia River in Kennewick, Washington.³² Because this case presents many rather complex issues, I will focus only on particular aspects of the controversy that relate specifically to the political situation regarding the renegotiation of the past. The case is, as Susan Bruning, an attorney and archaeologist, points out, "a prominent, yet enigmatic, icon of the ongoing struggles over controlling ancient human remains."³³

First, the failure of the courts to recognize the initial inhabitants of the North American continent as "Native American" under NAGPRA politicized the idea of American Indians as this continent's "Indigenous inhabitants." I have discussed the case itself in more detail elsewhere, especially the ways that the decision carries with it political implications far beyond the rights of scientists to study this particular set of human remains.³⁴

Second, when Kennewick Man's skull was mistakenly identified in the newspapers as "of European descent," it set off a series of events that struck at the heart of American Indian sovereignty issues.³⁵ I focus here on three of these—the first by a right-wing journalist, the second by a nonprofit organization reflective of the scientism I discussed earlier, and the third by several anthropologists.

Lowell Ponte, a reporter for the online conservative journal FrontPage Magazine, wrote that the Kennewick Man case might prove that "some of the first 'Native Americans' had white skin and European ancestry."³⁶ This, Ponte suggested, would have continuing implications: "If evidence shows that white-skinned Americans were exterminated by invading

ancestors of today's Indians, then this genocide could give Caucasian Americans a claim to victim status even stronger than that of Native Americans. Had such genocide not taken place, the argument would go, perhaps most of America's population and territory would have been Caucasian. Columbus might have been greeted by natives with faces whiter than his own."

According to this nonsense, based as it was on a mistaken identification, American Indians would not have been the first settlers but rather second-wave immigrants. That is, if the Indians killed off "white-skinned Americans" and stole their land, then the European actions since 1492 are much more easily justified. American politicians need no longer honor treaties, because the treaties were unnecessary to regain land stolen from white ancestors. Another of Ponte's statements summarizes this scenario succinctly: "The European invasion of the past five centuries, in this potential revisionist history, merely reclaimed land stolen 9,000 years earlier from their murdered kin."

The second political incursion into the Kennewick situation was by a nonprofit organization called Friends of America's Past. Dedicated to "promoting and advancing the rights of scientists and the public to learn about America's past," it was organized in 1998 to "alert the public to the issues and implications of the Kennewick Man lawsuit"; its mission is "to keep the door of scientific inquiry open and to work to maintain the integrity of scientific inquiry in this country."³⁷ The organization was active in the Kennewick Man case and in the similar Spirit Cave Man case, but has been relatively inactive since 2006, with only minor postings and action. Their "target," according to their website, is "the threat to a factual understanding of what actually happened in the past." In reality, however, the "past" this group wants to promote is constructed with a Western ideology firmly implanted at its core, one that refuses to acknowledge Indigenous voices or allow them to be heard and fails to recognize that there are alternative ways of knowing (or constructing) the past.

The implication of the Friends of America's Past statement is that only archaeologists can provide a factual understanding of the past, and that researchers have a "right" to investigate anything that intrigues them, including the Indigenous dead.³⁸ This is not unexpected, given that archaeologists, as Brumfiel notes, "seem prepared to speak out assertively against what they perceive to be the misuse of prehistory, and the material

nature of archaeological data seems to give archaeologists a degree of public credibility.”³⁹ It is this credibility as “scientist and expert” that creates much of the power differential between Indigenous groups and researchers, but Indigenous groups are becoming more active in challenging this power by drawing attention to the seemingly “racist” practice of excavating Indigenous human remains for scientific “knowledge.”⁴⁰

The third political aspect of the Kennewick Man controversy was the claim by a number of anthropologists that the tribes were afraid that the scientific study of the human remains would “disprove” their religious stories and origin myths. Elizabeth Weiss wrote that the Umatilla wanted to “bury evidence regarding the prehistory of the Americas to prop up myths” about tribal origins; Clement Meighan called for the power of archaeology “to discriminate those tales which are entirely mythical from those which can be confirmed by scientific truth.”⁴¹ American Indian authors reacted as could have been anticipated. Responding to a *New York Times* article patently in favor of repatriation of the Kennewick Man skeleton, Jace Weaver noted that the “fear among many Natives about scientific testing is not that it will contradict or disprove sacred accounts concerning tribal origins but that it will further desecrate the remains.”⁴² More recently, D. S. Pensley put the situation in blunter terms: “Despite media claims to the contrary, Native American demands for the repatriation of human remains and funerary objects are unrelated to fears that scientific study or DNA testing will disprove stories of tribal origins. Put simply, Natives are generally uninterested in findings generated via archaeological curiosity because their own oral traditions adequately explain the past.”⁴³

Culturally Unidentifiable Human Remains

One aspect of NAGPRA that has also been greatly politicized is the disposition of remains that can’t be easily or clearly affiliated with particular cultural groups. The disposition of this class of human remains is addressed in one section of the act, but they are defined as remains that cannot be identified as affiliated with any particular Indian tribe or Native Hawaiian organization. An important point to remember is that “Indian tribe,” as defined within this regulation, means “any tribe, band, nation, or other organized Indian group or community of Indians . . .

which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”⁴⁴ Thus, if the remains are not from *federally recognized* Indian groups, they are considered to be “culturally unidentifiable.” This is but one of the issues related to this class of remains that are deeply political.

This circumstance pits “federally recognized tribes” and “non-federally-recognized tribes” against one another. While a lot of tribes agree that many non-federally-recognized tribes are likely to be (and to have always been) Indians, they are afraid that repatriating human remains will give some level of “recognition” to those tribes *outside* of the federal recognition process.⁴⁵ Some of these federally recognized tribes believe that the human remains should be repatriated to a recognized tribe, which can then return the remains to the non-recognized tribe.

But this sort of disagreement by American Indian groups serves to enhance the arguments by non-Indians that human remains are being used merely as pawns in a game of politics. The politics of federal recognition surely have an impact on each and every tribal group—recognized and non-recognized—in different ways, but the use of the skeletons of dead ancestors as “bargaining chips” is odious. Whether “recognized” or not, the dead deserve to be reburied, even if in a cultural pauper’s grave. But this is not the only (or even the most political) issue in relation to culturally unidentifiable human remains.

The initial writing of the NAGPRA regulations reserved a section for culturally unidentifiable human remains. The National Park Service published “draft principles” to address the disposition of these remains on July 29, 1999; the Park Service’s NAGPRA Review Committee provided these as a “beginning point for consideration of this topic” and as a means of initiating discussion on the ultimate regulations regarding these items. On June 8, 2000, the Review Committee published a proposed rule in the *Federal Register*.⁴⁶ On October 16, 2007, a proposed rule on the regulations for the disposition of culturally unidentifiable human remains was published. It was also within this proposed rule that the NAGPRA Review Committee identified three distinct categories of culturally unidentifiable human remains: (1) those for which cultural affiliation could be determined, but the appropriate Native American group is not federally recognized as an Indian tribe; (2) those that represent an identifiable earlier group, but for which no present-day Indian tribe has been identified by

the museum or federal agency; and (3) those for which the museum or federal agency believes that evidence is insufficient to identify an earlier group.⁴⁷

The political implications relevant to the first category I have already addressed. Categories 2 and 3, however, further continued the politicization of NAGPRA. One area of particular concern to anthropologists in relation to category 2 was the proposal to expand the rights of tribes to claim human remains that come from a geographical area with which the tribe claims a “cultural affiliation,” or allow tribes from the geographical area within which the museum or federal agency is situated to claim the remains if no geographical location for the human remains is known.⁴⁸ At issue is whether the mere fact that a museum or federal repository is located within a geographical area (but not necessarily where the human remains in question might have originated) is sufficient to allow the American Indian group to gain control over those remains.

The defining limits of the geographical areas under consideration have been created by actions of the United States government and are not as capricious as it might initially seem. The section of the new rule on the disposition of cultural unidentifiable human remains requires that the lands under which tribes might initiate a claim must have been defined as recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, act of Congress, or Executive Order. While anthropologists might believe this requirement to be biased toward American Indian interests, it seems consistent with international law, which allows for the repatriation of military dead from the field of battle—a somewhat implicit parallel given the “Indian Wars” waged by the United States against American Indians.

Ryan Seidemann, an attorney and archaeologist, has published an in-depth discussion of the attempts by the National Park Service’s NAGPRA Office to create the final rule on the disposition of the culturally unidentifiable human remains still held in museums and federal repositories, including other actions by the Review Committee not discussed here. Seidemann believes his analysis supports a finding that the Department of the Interior, the parent agency of the National Park Service, “lacks the authority to promulgate regulations for culturally unidentifiable human remains” and that “the 2007 Draft Regulations are also inconsistent with the legislative history of NAGPRA.”⁴⁹ In part, Seidemann believes that,

since NAGPRA is silent on the issue of culturally unidentifiable human remains, the Department of the Interior has no authority to create regulations on them—in essence, that such an action would be creating “new” aspects of the law without legal authority to do so.

In spite of this, the National Park Service issued a Final Rule on culturally unidentifiable human remains on March 10, 2010.⁵⁰ Would this rule create a mechanism enabling tribes to rebury all the human remains within museums and federal repositories, or would the political aspects of the rule lead anthropological and archaeological associations to return to the courts for a legal decision regarding the right of tribes to obtain the human remains that have resided in archaeological and museum collections?

Indigenous groups would argue that the intent of NAGPRA is to return human remains and associated funerary objects to the cultural groups that can demonstrate affiliation with them. The regulations concerning culturally unidentifiable human remains mirror that intent. As a scientist I can understand the hesitancy to return items that can give information about the “human” past of the western hemisphere, but I can’t continue to support the scientific colonialism that has plagued archaeology and anthropology. While the dead have no “rights,” living people have obligations toward the dead that are spelled out within contemporary cultural mores.

The new regulations have reignited the fear in archaeologists and anthropologists that museum collections will be wiped clear of human remains. These “resources” are deemed to be irreplaceable specimens from which to gather bits of knowledge to help us understand humanity’s rise on this planet. It might be a valid concern, but the historical and political aspects of such a perspective must be considered as well. Science has always weighed the social consequences of data acquisition in relation to human rights; for example, the information gathered from experiments conducted by German scientists during World War II would be beneficial for cold-water (hypothermia) survival studies, but the world has agreed that to use the data would give a blush of respectability to the experiments themselves.

As a member of the Choctaw Nation of Oklahoma and an archaeologist, I believe that American Indians recognize the scientific advances that provide additional information from human populations in the past.

I also believe that those groups, on an objective level, understand why scientists feel the need to gather such data. On a personal and societal level, however, I recognize that American Indian groups feel more of a need to exercise their responsibilities to provide those human remains with a quiet and undisturbed “rest” than to continue to contribute to a science that more and more acts to divest contemporary groups of their collective past.

The ultimate fate of the National Park Service’s Final Rule is uncertain. Some notable archaeologists have indicated privately that litigation is imminent and perhaps necessary in order to “protect” the resource from repatriation and reburial; others have indicated that while repatriation is expected and a logical outgrowth of the original legislative intent, they believe the proposed rule will create an undue burden on the museums and federal repositories as well as on the tribal groups involved. Still others see this as a purely political means of trying to legislate archaeology and physical anthropology out of business. Regardless, almost all see this as a political response to an unwieldy problem, one that will require continual negotiation and renegotiation as individual situations dictate. As American Indian groups garner more political power, archaeologists will need to recognize the extent to which negotiation will be in their best interests.

Repatriation legislation has further politicized a volatile situation that threatens to erode any positive relationships between anthropologists and American Indians, and it has also influenced the development of a cadre of professional archaeologists who are working to find ways to expand the collaboration between their work and Indigenous groups of North America. In 2001 Tamara Bray observed: “At the dawn of the new millennium, American archaeology finds itself at the threshold of a new, more humanistic orientation toward the past. . . . [This] somewhat reluctant turn toward a more self-conscious, inclusive and humanistic approach to the construction of knowledge about the past has been accelerated by the passage of repatriation legislation.”⁵¹

In some ways, repatriation is part of the renegotiation of the relationship between American archaeologists and American Indians that is taking place.⁵² Bray’s linkage of the development of a more humanistic approach to the construction of knowledge about the past to the passage of repatriation legislation is an interesting interpretation of the trajectory

of contemporary archaeology. Today's practitioners of archaeology are renegotiating not only their constructions of knowledge about the past but also their very access to that knowledge.⁵³ Such collaborations are not without pitfalls, however, as both H. Martin Wobst and Margaret Speas note in their essays in this volume.

But even though archaeologists are moving toward sharing the construction of knowledge about the past, not all anthropologists see this as a necessarily good thing. Elizabeth Weiss believes that repatriation legislation grew out of a concerted effort by an anti-science coalition: "Native Americans alone would not have had the political power to create or enforce NAGPRA. In getting it enacted, they received help from some very unlikely allies, including agencies of the government, Christian fundamentalists, and liberal activists." Others see that "the reburial and repatriation conflict did not just pop out of thin air but instead rose from long-held attitudes toward the place of American Indians in the greater society of the United States."⁵⁴

Some archaeologists and anthropologists suggest that it was religious concerns that fueled the passage of NAGPRA, or even the putative fears American Indians have about science, but such suggestions are unfounded, given that more than 130 American Indian tribes actively manage the archaeology on their tribal lands.⁵⁵ Meighan writes of NAGPRA that "while much of this legislation is intended to legislate 'respect,' its justification is always given in religious terms and the word 'sacred' is abundantly used to justify confiscation of research collections." Mark Tveskov, perhaps more realistically, identifies conflicts such as the one over Kennewick Man, or more generally over repatriation laws such as NAGPRA, as "fundamentally battles over slippery concepts of social identity, cultural rights, and political power."⁵⁶ In my opinion, it is time for archaeologists to realize that the past can no longer be claimed by any one person or group, but that contemporary politics require renegotiation of the social contracts under which we operate.

Wherever repatriation leads archaeology, or wherever the sometimes strained collaboration between archaeologists and American Indians takes us, there will always be an uneasy truce between the scientists who study "the past" and those whose ancestors created it. NAGPRA is here to stay, and it will likely create more issues as the courts continue to review it and as further legislative actions expand (or decrease)

its purview. Regardless of whether those complaining about NAGPRA are archaeologists or American Indians, the sociologist Clayton Dumont warns, "These political attacks on NAGPRA can only be successful if they succeed in convincing law-makers and their publics that scientific claims are made in the pursuit of what is 'truthful,' 'objective,' and thus *extrapolitical*, while native arguments are conversely rooted in the 'irrationality' of 'myth,' 'superstition,' and 'religion.'"⁵⁷

Politics abound in all things, even within so-called "objective" science, and to believe otherwise is naive, as H. Martin Wobst demonstrates elsewhere in this volume. Recognition of the political aspects of the issues should, if anything, prepare archaeologists for the need to renegotiate with American Indian groups about access to the material culture of the past. American Indian groups are not totally opposed to the practice of archaeology, but they are more actively seeking to become equal partners in the construction of information about the past. In this regard, the practice of archaeology in the twenty-first century can benefit from listening to voices other than those of its practitioners.

NOTES

1. Jerome C. Rose, Thomas J. Green, and Victoria D. Green, "NAGPRA Is Forever: The Future of Osteology and the Repatriation of Skeletons," *Annual Review of Anthropology* 25 (1996): 82; Bonnicksen quoted in George Johnson, "Indian Tribes' Creationists Thwart Archeologists," *New York Times*, October 22, 1996.
2. As the term is used by anthropologists in the United States, 'archaeology' refers to a subfield of the broader discipline of anthropology, and I will use the two terms more or less interchangeably throughout this chapter.
3. Jeremy Sabloff, *Archaeology Matters: Action Archaeology in the Modern World* (Walnut Creek, CA: Left Coast, 2008), 28.
4. Elizabeth M. Brumfiel, "It's a Material World: History, Artifacts, and Anthropology," *Annual Review of Anthropology* 32 (2003): 207.
5. Kurt Dongoske, Michael Yeatts, Roger Anyon, and T. J. Ferguson, "Archaeological Cultures and Cultural Affiliation: Hopi and Zuni Perspectives in the American Southwest," *American Antiquity* 62 (1997): 602.
6. Edward B. Tylor, *Primitive Culture* (1871; repr., New York: Harper, 1958), 1.
7. Brian Fagan, *Ancient Lives: An Introduction to Archaeology* (Upper Saddle River, NJ: Prentice-Hall, 2000), 403.
8. See Joe Watkins, "Cultural Nationalists, Internationalists, and 'Intra-nationalists': Who's Right and Whose Right?," *International Journal of Cultural Property* 12.1 (2005): 78–94.

9. John E. Tunbridge and Gregory J. Ashworth, *Dissonant Heritage: The Management of the Past as a Resource in Conflict* (London: John Wiley & Sons, 1996), 1; Joe E. Watkins and John Beaver, "What Do We Mean by 'Heritage'? Whose Heritage Do We Manage and What Rights Have We to Do So?," *Heritage Management* 1 (2008): 10–15.
10. Tolina Loulanski, "Revising the Concept for Cultural Heritage: The Argument for a Functional Approach," *International Journal of Cultural Property* 13 (2006): 209; Tunbridge and Ashworth, *Dissonant Heritage*, 20; Frans Shouten, "Heritage as Historical Reality," in *Heritage, Tourism and Society*, ed. David T. Herbert (London: Mansell, 1995), 21.
11. Peter Larkham, "Heritage as Planned and Conserved," in Herbert, *Heritage, Tourism and Society*, 86.
12. Graeme Aplin, *Heritage Identification, Conservation, and Management* (Melbourne: Oxford, 2002), 358; David C. Harvey, "National Identities and the Politics of Ancient Heritage: Continuity and Change at Ancient Monuments in Britain and Ireland, c. 1675–1850," *Transactions of the Institute of British Geographers*, n.s., 28 (2003): 475.
13. Aplin, *Heritage Identification*, 16; Anthony Smith, "Culture, Community and Territory: The Politics of Ethnicity and Nationalism," *International Affairs (Royal Institute of International Affairs 1944–)* 72.3 (1996): 458.
14. Lynn Meskell and Lynette Sibongile Masuku Van Damme, "Heritage Ethics and Descendant Communities," in *Collaboration in Archaeological Practice: Engaging Descendant Communities*, ed. Chip Colwell-Chanthaphonh and T. J. Ferguson (Lanham, MD: AltaMira, 2008), 131.
15. Watkins, "Cultural Nationalists," 87–89. H. Martin Wobst's essay in this volume explores this political aspect of heritage management of Indigenous heritage by former colonial nations.
16. Francis P. McManamon, "The Foundation for American Public Archaeology: Section 3 of the Antiquities Act of 1906," in *The Antiquities Act: A Century of American Archaeology, Historic Preservation, and Nature Conservation*, ed. David Harmon, Francis P. McManamon, and Dwight T. Pitcaithley (Tucson: University of Arizona Press, 2006), 153.
17. See Joe Watkins, "The Antiquities Act at 100 Years: A Native American Perspective," in Harmon, McManamon, and Pitcaithley, *The Antiquities Act*, 187–98.
18. Watkins, "Cultural Nationalists."
19. Sandra Arnold Scham, "The Archaeology of the Disenfranchised," *Journal of Archaeological Method and Theory* 8 (2001): 190.
20. See, among many others, Alice Beck Kehoe, *The Land of Prehistory: A Critical History of American Archaeology* (New York: Routledge, 1998); Randall H. McGuire, "Archeology and the First Americans," *American Anthropologist* 94 (1992): 816–36; James Riding In, "Without Ethics and Morality: A Historical Overview of Imperial Archaeology and American Indians," *Arizona State Law Journal* 24 (1992): 11–34; Bruce Trigger, "Archeology and the Image of the American Indian," *American Antiquity* 45 (1980): 662–76; Jack F. Trope and Walter R. Echo-Hawk, "The Native

- American Graves Protection and Repatriation Act: Background and Legislative History," *Arizona State Law Journal* 24.1 (Spring 1992): 35–77; and Joe Watkins, *Indigenous Archaeology: American Indian Values and Scientific Practice* (Walnut Creek, CA: AltaMira, 2000).
21. Larry J. Zimmerman, "Usurping Native American Voice," in *The Future of the Past: Archaeologists, Native Americans, and Repatriation*, ed. Tamara Bray (New York: Garland, 2001), 169; Dell Hymes, "The Use of Anthropology," in *Reinventing Anthropology*, ed. Hymes (New York: Vintage, 1974), 49; see also Lawrence A. Kuznar, *Reclaiming a Scientific Anthropology*, 2nd ed. (Lanham, MD: AltaMira, 2008), 89.
22. Trigger, "Archaeology and the Image," 662.
23. Eldon Johnson, "Professional Responsibilities and the American Indian," *American Antiquity* 38 (1973): 129–30; for further reactions see Watkins, *Indigenous Archaeology*, 11–17.
24. Stuart J. Fiedel, "The Kennewick Follies: 'New' Theories about the Peopling of the Americas," *Journal of Anthropological Research* 60 (2004): 77.
25. Devon A. Mihesuah, "American Indians, Anthropologists, Pothunters, and Repatriation: Ethical, Religious, and Political Differences," *American Indian Quarterly* 20 (1996): 233; Wesley Bernardini, "Reconsidering Spatial and Temporal Aspects of Prehistoric Cultural Identity: A Case Study from the American Southwest," *American Antiquity* 70 (2005): 47; T. J. Ferguson, "Native Americans and the Practice of Archaeology," *Annual Review of Anthropology* 25 (1996): 63.
26. For legal perspectives see Renee M. Kossalak, "The Native American Graves Protection and Repatriation Act: The Death Knell for Scientific Study?," *American Indian Law Review* 24 (1999/2000): 129–51; Kieran McEvoy and Heather Conway, "The Dead, the Law, and the Politics of the Past," *Journal of Law and Society* 31 (2004): 539–62; and Peter Welsh, "Repatriation and Cultural Preservation: Potent Objects, Potent Pasts," *University of Michigan Journal of Law Reform* 25 (1992): 837–65. For an overview of anthropological perspectives, see Susan B. Bruning, "Complex Legal Legacies: The Native American Graves Protection and Repatriation Act, Scientific Study, and Kennewick Man," *American Antiquity* 71 (2006): 501–21.
27. Sherry Hutt, "Illegal Trafficking in Native American Human Remains and Cultural Items: A New Protection Tool," *Arizona State Law Journal* 24 (1992): 135–50; Sherry Hutt, Elwood W. Jones, and Martin E. McAllister, *Archaeological Resource Protection* (Washington, DC: Preservation Press, 1992).
28. Shirley Powell, Christina Elnora Garza, and Aubrey Hendricks, "Ethics and Ownership of the Past: The Reburial and Repatriation Controversy," *Archaeological Method and Theory* 5 (1993): 2.
29. Clement W. Meighan, "Another View on Repatriation: Lost to the Public, Lost to History," *Public Historian* 14 (1992): 43; Andrew Gulliford, "Curation and Repatriation of Sacred and Tribal Objects," *Public Historian* 14 (1992): 31–32; Mihesuah, "American Indians, Anthropologists, Pothunters, and Repatriation," 231; Don Sampson, "(Former) Tribal Chair Questions Scientists Motives and Credibility" (1997; www.umatilla.nsn.us/kman2.html), quoted in Watkins, *Indigenous Archaeology*, 149–50.

30. Douglas W. Owsley and Richard L. Jantz, "Archaeological Politics and Public Interest in Paleoamerican Studies: Lessons from Gordon Creek Woman and Kennewick Man," *American Antiquity* 66 (2001): 571. Powell, Garza, and Hendricks, "Ethics and Ownership," 3–4; Elizabeth Weiss, "Kennewick Man's Funeral: The Burying of Scientific Evidence," *Politics and the Life Sciences* 20 (2001): 16.
31. Clayton W. Dumont Jr., "The Politics of Scientific Objections to Repatriation," *Wicazo Sa Review* 18 (2003): 109; Owsley and Jantz, "Archaeological Politics," 571.
32. Many articles and books have been written about this situation; a good (if minimal) review of the basic facts is available through a National Endowment for the Humanities website that uses the situation as part of a lesson plan for grades 9–12: "Kennewick Man: Science and Sacred Rights," <http://edsitement.neh.gov/lesson-plan/kennewick-man-science-and-sacred-rights>. For an overview of the case see "Kennewick Man Virtual Interpretative Center," *Tri-City Herald* (Kennewick, WA), available at www.tri-cityherald.com/kman/.
33. Bruning, "Complex Legal Legacies," 519.
34. Joe Watkins, "Becoming American or Becoming Indian? NAGPRA, Kennewick, and Cultural Affiliation," *Journal of Social Archaeology* 4 (2004): 60–80.
35. The misidentification was reported in Dave Schafer, "Skull Likely Early White Settler," *Tri-City Herald* (Kennewick, WA), July 30, 1996.
36. Quotations in this and the following paragraph are from Lowell Ponte, "Politically Incorrect Genocide, Part 2," *FrontPage Magazine* October 5, 1999, <http://archive.frontpagemag.com/readArticle.aspx?ARTID=22976>.
37. Quotations in this paragraph are from the website of Friends of America's Past, www.friendsofpast.org.
38. McEvoy and Conway, "The Dead, the Law, and the Politics," 546.
39. Brumfiel, "It's a Material World," 213.
40. The Ipperwash Inquiry (2004–2006; led by Justice Sidney B. Linden) noted the importance of burial sites to Aboriginal peoples of Ontario (www.ipperwashinquiry.ca/); Paul Turnbull and Michael Pickering's *The Long Way Home: The Meaning and Values of Repatriation* (Oxford: Berghahn, 2010) offers discussion of the value of human remains and the process of repatriation to Australian Aboriginal groups; Brian Hole's "Playthings for the Foe: The Repatriation of Human Remains in New Zealand," *Public Archaeology* 6 (2007): 5–27, offers New Zealand Maori perspectives on such issues.
41. Weiss, "Kennewick Man's Funeral," 17; Meighan, "Another View," 41.
42. Jace Weaver, "Indian Presence with No Indians Present: NAGPRA and Its Discontents," *Wicazo Sa Review* 12 (1997): 21. The original article was George Johnson, "Indian Tribes' Creationists Thwart Archaeologists," *New York Times*, October 22, 1996.
43. D. S. Pensley, "The Native American Graves Protection and Repatriation Act (1990): Where the Native Voice Is Missing," *Wicazo Sa Review* 20 (2005): 52.
44. Native American Graves Protection and Repatriation Act Regulations, 43 CFR Part 10.2(e)(2) and Part 10.2(b)(2).

45. See Joe Watkins and Tom Parry, "Archeology's First Steps in Moccasins," *Common Ground* 2 (1997): 46–49.
46. Notice of Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains—Extended Date for Comments," *Federal Register* 64:145 (July 29, 1999): 41135–36, quotation on 41135; "Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains," Notice, *Federal Register* 65:III (June 8, 2000): 36462–64.
47. "Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains. Proposed Rule," *Federal Register* 72:199 (October 16, 2007): 58582–90, paraphrased material on 58584.
48. "AAA Comment Letter re: Proposed NAGPRA CUHR Regulations," American Anthropological Association, www.aaanet.org/issues/policy-advocacy/upload/Draft-AAA-Comment-Letter-re-NAGPRA-CUHR-Regulations-Final-121907.pdf.
49. Ryan M. Seidemann, "Altered Meanings: The Department of the Interior's Rewriting of the Native American Graves Protection and Repatriation Act to Regulate Culturally Unidentifiable Human Remains," *Temple Journal of Science, Technology & Environmental Law* 28 (2009): 1–45, quotation on 24.
50. "Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains; Final Rule," *Federal Register* 75:49 (March 15, 2010): 12378–405.
51. Tamara Bray, "American Archaeologists and Native Americans: A Relationship under Construction," in *The Future of the Past: Archaeologists, Native Americans, and Repatriation*, ed. Bray (New York: Garland, 2001), 1.
52. See Chip Colwell-Chanthaphonh and T. J. Ferguson, eds., *Collaboration in Archaeological Practice: Engaging Descendant Communities* (Lanham, MD: AltaMira, 2008), as well as Jonathan Kerber, ed., *Cross-cultural Collaboration: Native Peoples and Archaeology in the Northeastern United States* (Lincoln: University of Nebraska Press, 2006).
53. See, for example, Colwell-Chanthaphonh and Ferguson, *Collaboration in Archaeological Practice*; Kerber, *Cross-cultural Collaboration*; Stephen W. Silliman, ed., *Collaborating at the Trowel's Edge: Teaching and Learning in Indigenous Archaeology* (Tucson: University of Arizona Press, 2008); and Swidler, Dongoske, Anyon, and Downer, *Native Americans and Archaeologists*.
54. Weiss, "Kennewick Man's Funeral," 17; Powell, Garza, and Hendricks, "Ethics and Ownership," 17.
55. National Association of Tribal Historic Preservation Officers website at www.nathpo.org/map.html.
56. Meighan, "Another View," 40; Mark A. Tveskov, "Social Identity and Culture Change on the Southern Northwest Coast," *American Anthropologist* 109 (2007): 431.
57. Dumont, "Politics of Scientific Objections," 122.