

Constructing Indigenous Associations

Protocols of Recognition and NAGPRA Compliance

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U CONNECTICUT-AVERY POINT

Imagine a world where one's right to property (including possession of one's own body parts) is predicated upon having politically powerful relatives. Those who



lack such kin are routinely disinterred and scientifically dismembered after death. When their relatives seek to recover their bodies, they encounter bureaucratic reconstructions of their identities. Who would tolerate such injustices? Now, imagine this scenario within the context of the NAGPRA legislation. NAGPRA procedures were intended to remove indigenous ancestral remains from museum control and facilitate their repatriation. Yet, thousands of deceased individuals remain separated from their relatives, trapped by modern constructions of identity and association.

The Unidentifiable

To date, the National NAGPRA website reports that US museums and other institutions subject to NAGPRA have identified and repatriated more than 31,900 sets of human remains—along with more than 669,500 associated funerary objects, 118,200 unassociated funerary objects, and 4,500 sacred and/or patrimonial items identified as belonging to federally recognized tribes (www.nps.gov/history/nagpra/FAQ/INDEX.HTM#How_many). Nearly four times as many “culturally unidentifiable” remains—over 124,300 individuals, along with 916,400 of their funerary objects—are as yet unrepatriated, held captive in the collections of US museums (unknown numbers are unreported, or in private collections). Why are there so many unidentifiables?

During the first decades of NAGPRA, many archaeologists and physical anthropologists argued vociferously that all unidentifiable objects and ancient remains should be retained for study. The

Bonnichsen decision (357 F[3] [d] 962, 9th Cir 2004), which set temporal boundaries on the classification of “Native American” remains, appeared to bolster this opinion, but in 2005 the Working Group on Culturally Unidentified Human Remains successfully argued that NAGPRA's working definition of “Native American” was intended to encompass *all* of the indigenous peoples of America, regardless of their level of association with a present-day federally-recognized tribe. The definition of “tribe” however, remains flawed by virtue of its association with federal policy.

The problem here is that NAGPRA uses federal constructions, rather than vernacular or historical constructions, to discern indigeneity, tribal identity and association. An “Indian Tribe” is recognized as such *only* if they are “eligible for the special programs and services provided by the United States to Indians because of their status” (25 USC 3001[7]). “Cultural Affiliation” as “a relationship of shared group identity” is applicable *only* to remains traceable to a “present day Indian tribe” (25 USC 3001[2]). Remains that cannot be traced to a federally recognized tribe must be classed as “Culturally Unidentifiable” (43 CFR 10.9[d][2]). Although some collections truly have little to no identifiable provenance, many so-called unidentifiables are, in fact, associated with historical tribal nations that hold the disadvantaged status of not being federally recognized today.

Constructing Indigenous Claimants

In effect, NAGPRA positions “Indian” identity as a protected status that dates not from indigenous North America prior to European conquest, but from the era of contemporary tribal recognition. The top rank of potential NAGPRA claimants, therefore, consists of 564 indigenous tribes, bands and nations within the contiguous United States and Alaska recognized by the Bureau of Indian Affairs (www.bia.gov), and Hawaiian nations. The

lowest rank of potential claimants consists of approximately 300 non-federally recognized tribes, including at least 226 that have applied for recognition. An unknown number of other tribes have divorced themselves from the federal process of establishing sovereignty.

These differences in federal status do not accurately reflect the unique (in some cases, ethnocidal) historical circumstances of each tribal nations' federal relations over time. Their present lack of federal status means, bluntly, that their ability to claim their own ancestors depends entirely upon the generosity (and honesty) of museums and federally recognized tribes. Museums are expected to weigh tribal status amid a preponderance of evidence to establish likely claimants, but procedural hurdles make repatriation to the non-federally recognized difficult. For example, museums and federal tribes need only reach agreement among themselves to draft a “Notice of Intent to Repatriate.” Museums that intend to repatriate to non-recognized tribes must apply to the NAGPRA Review Committee for special permission, must meet very high standards of evidence, and must be prepared to negotiate with any federal tribes that might seek to make a competing claim.

in order to speed repatriation; others appear to have concealed documentation or avoided



consultation to prevent repatriating collections that are too old (or too interesting). In such cases, Native nations have limited access to museum records and little recourse, apart from complaints to National NAGPRA staff and the NAGPRA Review Committee (which serves only in an advisory capacity). NAGPRA, furthermore, empowers museums to behave like federal agents; if there are any unresolved disputes over identification and association, museum officials are the final arbiters.

Locating and Associating Objects

NAGPRA constructions similarly govern the classification of indigenous funerary possessions, which are determined to be “associated” based on the circumstances of their excavation and curation (regardless of indigenous patterns of deposition), and “affiliated” based on the political status of their tribal nation (regardless of indigenous constructions of sovereignty). The dead are considered to be associated with funerary objects *only* if both are present in a museum's collections, and only if they have been identified and curated as though they were associated. Orphaned funerary objects must be identified as “unassociated” (25 USC 3001[3][a]).

One might presume that excavators and curators have historically taken pains to keep burial assem-

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The recent promulgation of regulations concerning the unidentifiable has not eased this process, nor has it fixed loopholes in the legislation. NAGPRA dictates that museums must maintain possession of unidentifiables until a federally acceptable form of identity can be determined. Many unidentifiables were found in the known historical territories of non-federally recognized tribes, but NAGPRA does little to encourage consulting with these tribes, and some recognized tribes have begun extending their influence into these territories. As a direct result, some museums appear to have re-classified “unidentifiables” as “identifiables”

blages intact, but collecting practices during the early days of US anthropology were far from organized. It was routine for different archaeologists to collect different objects, even different body parts, from the same site. The practice of sifting skeletal remains from soil resulted in a re-ordering of burial context, and the loss of materials such as related soil, red ochre and cremains. In some cases, disarticulated skeletal elements from the same body, having come to rest in different collections, have been identified as belonging to different tribes. Curators, when confronted with poorly documented collec-

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temporal and spatial distributions of Caddo pottery found in burials; to determining the importance of maize in the prehistoric Caddo diet; and to bioarchaeological analysis of human crania, especially the distinctive Caddo practice of cranial modeling.

The Repatriation Committee makes its recommendations of support or opposition to these proposals and analyses on a case-by-case basis. Oftentimes, a researcher may presuppose that the Repatriation Committee will deny any request involving the analysis of human remains; however, this historically has not been the case. Any types of destructive analysis of human remains (for purposes of radiocarbon dating or isotope analysis) certainly tend to be taboo, but there have been several instances where the Repatriation Committee has approved destructive analysis.

Through this collaborative process, researchers who plan to work with collections that are culturally affiliated to the Caddo quickly learn they must communicate effectively, be ready to ask and answer many questions, and be prepared to consult appropriately about their specific research interests. They must also be prepared to share their results with the committee, and to have their findings scrutinized by the CPD and our archeological consultants. This collegial process of consultation and information-sharing helps to not only better prepare graduate students for their future in the discipline, but also to better prepare our staff and committee members for understanding the variety of complex research approaches being proposed by universities and repositories continuing to work with collections affiliated with Native American tribes.

Repatriation

The actual repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony has been variable. In some cases putting all the pieces of a NAGPRA puzzle back together, such as finding which institution has human remains and which institution (that just happens to

be a thousand miles away) has associated funerary objects, is a daunting task. We have completed NAGPRA repatriations that took years of careful negotiation to accomplish, and we have also repatriated skulls and funerary objects while standing in a parking lot. In that particular non-NAGPRA case, the human remains and objects had been given to an individual from a known looter, who then returned them to us.

We have also repatriated human remains and funerary objects under the National Museum of the American Indian Act from the Natchitoches National Fish Hatchery in Louisiana, and have collaborated with a wide variety of other government entities on repatriation efforts in recent years. Working in conjunction with representatives of the Federal Highway Administration and the Texas Department of Transportation, after five years of consultation the Caddo were able to see that 27 individuals and their associated funerary objects, recovered in excavations at a sixteenth- and seventeenth-century Caddo cemetery, were reburied in a local cemetery in Mount Pleasant, TX. These repatriations are milestones for the Caddo people. Having ancestral Caddo remains and funerary objects finally treated with some modicum of respect is a large part of what the CPD, the Repatriation Committee and the Caddo Nation strive to achieve.

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returned to the ground, but returned in the right way.

Third, fully addressing these remains through consultation will be expensive and labor-intensive. Considering that 20 years of NAGPRA has resulted in the affiliation of 32,000 individuals, and there are upwards of 116,000 remains left in collections, it is clear that the work of NAGPRA has only started. Unlike affiliated remains, which often entail working with a handful of tribes, culturally unaffiliated remains require consulting with scores of tribes concurrently. As demonstrated in our projects, some of the associated time and costs can be mitigated with technology, but this effort requires an investment of time and financial resources.

In 2007, a proposed rule for 43 CFR 10(11) was published. Public

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tions, may simply class these as non-funerary and unidentifiable. Such gaps could potentially be addressed by demanding more historical research, better tracking of collections, and more inclusive consulting, but it is doubtful that curators would embrace yet more work.

In addition, there has been no reckoning of the many indigenous remains and objects held captive by private collectors, art dealers and foundations. These groups do not receive any federal funding and are not, therefore, required to comply with NAGPRA; their collections number in the millions, in both quantity and monetary value on the open market.

Restorative Justice

I doubt that the founders of NAGPRA fully foresaw the chaos in collections or the dangers of retroactively legislating indigeneity. So, I offer a few questions for reflection, twenty years after the act's passage. Is a federal agency the most appropriate venue for restoring indigenous relations to the dead? Does NAGPRA depend

comments were received, and the rule was revised. The rumor mill churns, hinting that the final rule's publication is imminent. Our efforts at the DMNS demonstrate the importance of taking a proactive stance, rather than reluctantly implementing the rule. With concerted effort, these human remains can and will find a way home. Museums must take up this challenge, embracing the spirit of NAGPRA, to find equitable and just solutions to the tangled legacy of museum collecting. The rule's publication is not the end to these problems; in a sense, it is the very beginning of a solution. Even 20 years after NAGPRA's passage, the work has just begun.

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too heavily on property law rather than human rights legislation, especially given the control it affords to museums? Should museums—as the descendants and beneficiaries of those who created these collections—be compelled not only to repatriate, but also to institute measures to avoid further harm, both to Native gravesites and Native peoples? Why do we allow the federal government to define not only who is Indian in the present, but who was Indian in the past, in a world that predated federal recognition? Could a different agency, or international authority, assist indigenous peoples in reclaiming their dead? In the long run (if they could, of course, set aside their differences in federal status), might Native nations be the best arbiters of indigenous identity and association?

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