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## Native Nations and Museums: Developing an Institutional Framework for Cultural Sovereignty

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# NATIVE NATIONS AND MUSEUMS: DEVELOPING AN INSTITUTIONAL FRAMEWORK FOR CULTURAL SOVEREIGNTY

Rebecca Tsosie\*

## I. INTRODUCTION

One of the central functions of the modern Museum is to create exhibits that portray diverse cultures through various time periods, thereby introducing “peoples” to one another in the absence of a more personal interaction. There is an entire conversation about the ethics of such portrayals and the role of curators as interpreters of history, telling a story about various peoples and their interactions through the mode of display. One of the primary challenges, of course, is that modern museums serve “multiple publics.”<sup>1</sup> For example, the National Museum of the American Indian serves the “American public” as well as the many Native American nations which constitute the “Indigenous public.”<sup>2</sup> Each of these constituencies has a different appraisal of its history and contemporary identity, sometimes triggering memories of violent political transition or perspectives about current intergroup inequalities. Because “[m]useums in particular are educational tools used to create and perpetuate specific ideologies and historical memories[,]”<sup>3</sup> they are vital to the contemporary effort of Native American peoples to exercise “cultural sovereignty,” reclaiming their own histories as distinct from the “American history” that has been used to portray them as primitive peoples on the path to “civilization.”<sup>4</sup> Therefore, in evaluating the changing relationships between museums and Native American peoples, it is important to examine the contemporary role of museums as institutions that engage in the dual processes of “repatriation” and “reconciliation.” Rick West, the first Director of the National Museum of the American Indian, set the stage for this discussion when he said: “Repatriation is the most potent political metaphor for [the] cultural revival that is going on at this time. Political

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1. Myla Vicenti Carpio, *(Un)disturbing Exhibitions: Indigenous Historical Memory at the NMAI*, 30 *Amer. Indian Q.* 619, 627 (2006).

2. *Id.*

3. *Id.* at 620.

4. See Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 *Stan. L. & Policy Rev.* 191, 200–201 (2001).

sovereignty and cultural sovereignty are inextricably linked, because the ultimate goal of political sovereignty is protecting . . . a way of life.”<sup>5</sup>

Today, there are a variety of museums across America that implicate Native American interests in cultural sovereignty. Primary among these museums are the National Museum of the American Indian and the various tribal museums that are being developed by Indian nations themselves. This essay describes the movement toward “cultural sovereignty” and then engages the role of the museums in fostering cultural sovereignty through their participation in the processes of repatriation and reconciliation.

## II. MUSEUMS AND CULTURAL SOVEREIGNTY

The concept of cultural sovereignty is particularly illuminating for cases dealing with the cultural rights of Native American peoples, which are often misunderstood or even negated within contemporary legal practice. Legal practitioners are trained to focus on the legal and political construction of Native American sovereignty. Our attention is directed toward the historical foundations for Native American sovereignty embodied by treaty relationships and then “domesticated” into Federal Indian law by the concept of the “domestic dependent nation” that emerges from the Marshall Trilogy.<sup>6</sup> In the contemporary era, we often mourn the Supreme Court’s continual diminishment of tribal sovereignty which have increasingly limited the ability of tribal governments to exercise jurisdiction over nonmembers on the reservation and over fee lands within the reservation.<sup>7</sup> The effect of these opinions is to limit tribal jurisdiction, though we often view them as limiting tribal “sovereignty.” However, if we treat the concept of sovereignty as emerging from each Indian nation’s own history, identity, and sense of place, we focus on the “cultural” aspect of sovereignty, which is formed from within, embodied by the group, and changes, if at all, because of the will of the Indian Nation. Unlike political and legal constructions of tribal sovereignty, which are externally defined through federal “recognition” and federal law, “cultural sovereignty” is defined from within. This is the core of the “inherent sovereignty” of Indian nations and is best represented by the efforts of Indian nations and Indian people to “exercise their own norms and values in structuring their collective futures.”<sup>8</sup>

The expression of cultural sovereignty requires “institutional development that . . . builds upon . . . traditional forms of governance, and [also] responds to the contemporary needs of [tribal] communities.”<sup>9</sup> There are a variety of institutions that serve tribal needs, including tribal colleges, tribal courts, and tribal museums. These institutions share a similar form to Western institutions, yet they serve the fundamental needs of Native American communities to educate their members, adjudicate claims, and maintain

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5. Michelle Hibbert, Student Author, *Galileos or Grave Robbers? Science, the Native American Graves Protection and Repatriation Act, and the First Amendment*, 23 Am. Indian L. Rev. 425, 435 (1998/1999) (footnote omitted) (quoting W. Richard West).

6. Coffey & Tsosie, *supra* n. 4, at 192 n. 1 (discussing the three foundational cases in Federal Indian law authored by Chief Justice John Marshall, *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Ga.*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Ga.*, 31 U.S. (6 Pet.) 515 (1832)).

7. Coffey & Tsosie, *supra* n. 4, at 193–194 (discussing cases such as *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978) and *Mont. v. U.S.*, 450 U.S. 544 (1981) which constrain tribal jurisdiction over nonmembers).

8. Coffey & Tsosie, *supra* n. 4, at 196.

9. *Id.* at 209 (footnote omitted).

cultural objects according to traditional norms and values. In this respect, Native American institutions have a different function than Western institutions and this function is vitally linked to the concept of “repatriation.” The concept of “repatriation” recognizes that land, ancestral human remains, cultural objects, and cultural knowledge have been wrongfully appropriated from Native American peoples since the first contact with European peoples. The return of these resources to their community of origin is the function of “repatriation,” and cultural sovereignty is the force that drives this transfer.

As Indian nations define their “sovereignty” from within, in reference to their own concepts of governance and their own understanding of their histories, traditions, and philosophies, this engenders a process of “repatriation” of wisdom (including tribal stories, narratives, oral histories), Native American lands (for example, Taos Blue Lake), and cultural identity.<sup>10</sup> The ethic of repatriation has promoted federal legislation facilitating the return of ancestral Native American human remains and cultural objects held by museums and federal agencies, as well as the restoration of Native American languages.<sup>11</sup> The testimony of tribal leaders and the published work of Native American scholars attest to the pervasive belief that Native American culture forms a dynamic foundation for tribal political sovereignty. This is not some “static” notion of a “traditional culture” frozen in time; rather, it is a dynamic and organic concept that maintains a central core, but is also flexible and adaptive. This notion of cultural survival is a foundational principle for the establishment of the National Museum of the American Indian, which is dedicated to the portrayal of living Native American cultures.

### III. THE NATIONAL MUSEUM OF THE AMERICAN INDIAN: A CASE STUDY IN CULTURAL SOVEREIGNTY

I will use the case study of the National Museum of the American Indian to illustrate the role of cultural sovereignty in shifting the traditional role of the American Museum. As commentators have noted, the role of the museum in America was different from the role of the European museums and its contemporary role is also necessarily different. The British Museum and the Louvre, for example, originated as “stores of imperial plunder” from the rapacious forays of Europeans into Africa, Asia, and the Americas.<sup>12</sup> Today, the British Museum has transformed its collection of Native American cultural objects into a separate gallery: the Chase Manhattan Gallery of North America, which opened in 1999.<sup>13</sup> The exhibit hall is dedicated to a display of objects from North American Native American peoples that illustrate “the processes of contact, resistance, conflict, change, continuity, alliance, warfare, [and] accommodation[.]”<sup>14</sup> The focus is on the experience of Native American peoples in relation to Europeans, and the

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10. *Id.* at 202–208.

11. *See e.g.* The Native Am. Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3010 (1990); The Native American Languages Act, 29 U.S.C. §§ 2901–2906 (1990).

12. Rebecca Tsosie, *Indigenous Rights and Archaeology*, in *Native Americans and Archaeologists: Stepping Stones to Common Ground* 64 (Nina Swidler et al. eds., AltaMira 1997) (quoting Robert Hughes) (citation omitted).

13. Laura Peers, *Native Americans in Museums: A Review of the Chase Manhattan Gallery of North America*, 16 *Anthropology Today* 8 (Dec. 2000).

14. *Id.* at 9.

story is told from the curator's "distanced" perspective as an "expert" and "scholar," interpreting the significance of specific items and events (including the process of the extinction of a group) to an audience primarily composed of Europeans. In France, the Musee du quai Branly opened in 2006 to "honor the arts of the peoples once part of the French colonial empire."<sup>15</sup> This "post-Colonial" museum, like the British Museum, consists of objects assembled under conditions of "colonial domination," but it seeks to carve out a modern space, across from the Eiffel Tower and on a diagonal to the Louvre, to convey that story. At one time, the objects were portrayed as "primitive artifacts" in comparison to the fine art displayed in the Louvre. The new Museum portrays the objects as "art" and illuminates them in stunning isolation amid a darkened hallway reminiscent of "discovery."

In comparison, the role of the Museum in settler states, such as Canada, the United States, New Zealand and Australia, focused on creating a common identity for the new nation, pluralistic in nature, descended from Europe, but located on new lands separated from Europe. In the settler states, there was a similar rapacious plunder of cultural items from the Native American peoples, though, in the words of Robert Hughes, "we call this anthropology, not plunder."<sup>16</sup> Today, the role of the Museum in a settler state is also responding to "postcolonial" norms, but the focus is on celebrating the pluralism and multiculturalism attendant to creating each of these modern nation-states.

#### A. *The Traditional Role of the American Museum*

The traditional role of the American Museum was to acquire objects that could offer knowledge about natural history or cultural aspects of society that were important to scholars and to the general public.<sup>17</sup> As a "public institution," the Museum collected and housed objects that were important to human history, and curators created exhibits that could impart this knowledge and understanding to members of the public. The curators were the "experts" and the way that they categorized objects, labeled them, and displayed them imparted a particular sense of history as "fact" to the observer. So, for example, an art museum would collect paintings and sculptures by the leading artists of the Renaissance period, the Impressionist period, the Modern period, and so on. Fine "art" is associated with European and American peoples, both past and present. Cultural objects, such as carved masks from the Olmec or Aztec peoples of Mexico, were considered "artifacts," and were not housed in "art" museums, but rather in "natural history" museums along with dinosaur bones and Egyptian mummies. Native peoples were the "exotic other," representing a mythical past and transformed by the "civilization" process. These displays, of course, represent much about Native American peoples that many contemporary citizens still believe is "true" and this has become the stereotyped and romanticized image of the "American Indian" who had a "noble" past,

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15. Herman Lebovics, *Post-Colonial Museums . . . How the French and American Models Differ*, <http://www.hnn.us/articles/6939.html> (last updated Sept. 13, 2004).

16. Tsosie, *supra* n. 12, at 64 (quoting Robert Hughes) (citation omitted).

17. The text in this section is supported by the following sources: NMAI, *The Changing Presentation of the American Indian: Museums and Native Cultures* (NMAIU. of Wash. Press 2000); Christina F. Kreps, *Liberating Culture: Cross-Cultural Perspectives on Museums, Curation, and Heritage Preservation* (Routledge Press 2003).

but is either degraded or has vanished in the present.

According to Dr. Claire Smith, an archaeologist and scholar of museum studies, “[t]he development of national institutions such as museums and art galleries coincided with the emergence of colonialism and imperialism, and consequently such institutions were saturated with notions of racial difference and human classification” that were popular in the 19<sup>th</sup> century.<sup>18</sup> In this respect, the museums of Europe and the settler states were in alignment. Theories of human evolution were perpetuated by these displays, which placed European culture at the apex of “civilization” and depicted the “exotic other” as savage or primitive, but a worthy object of study from a “scientific” perspective. This perspective was accompanied by an ethics that differentiated the treatment to be accorded to Native American and non-Native American peoples. So, while archaeologists would never excavate Christian burials in a European or American cemetery, they routinely excavated Native American burial sites (even recent graves or bodies on a battlefield) and collected the bodies and cultural objects associated with them.<sup>19</sup> This hierarchical relationship endures and is beset with a series of “binary” categories, identified by one scholar as “researcher/subject, civilized/primitive, dynamic/static, [and] normal/exotic[.]”<sup>20</sup>

The traditional role of the Museum, with respect to Native American peoples, was to institutionalize a hierarchical relationship consistent with the exploitive tenets of European colonialism and imperialism. In the postmodern era, however, the mission of the Museum is much different. Contemporary theorists have challenged museums to define “whom they are for” and “what their role” should be.<sup>21</sup> Museums are increasingly charged with responding to controversial subjects, including genocide and colonialism. Sometimes, the entire mission of the museum is to engage the darker side of history—the Holocaust Memorial Museum in Washington, D.C., for example. Museums are encouraged to do a better job of representing the interests of diverse groups and to openly engage issues related to race, gender, and sexuality. There are many critiques of Museums in contemporary society as “contested terrains” where different groups come together to engage with the meaning of the past as well as the articulation of contemporary identity.<sup>22</sup> In the United States, the American museum of the 19<sup>th</sup> century sought to establish a homogeneous national identity and a collective public heritage. The contemporary museum, however, engages multiple identities and accounts for the past. This was the genesis of the National Museum of the American Indian.

### B. *The National Museum of the American Indian*

The opening of the NMAI on September 25, 2005 on the National Mall in

18. Claire Smith, *Decolonising the Museum: the National Museum of the American Indian in Washington, DC*, 79 *Antiquity* 424, 424 (2005).

19. See James Riding In, *Without Ethics and Morality: A Historical Overview of Imperial Archaeology and American Indians*, 24 *Ariz. St. L.J.* 11, 12 (1992).

20. Amanda J. Cobb, *The National Museum of the American Indian: Sharing the Gift*, 29 *Am. Indian Q.* 361, 363 (2005).

21. Sharon Macdonald, *Introduction*, in *Theorizing Museums: Representing Identity and Diversity in a Changing World* 1, 1 (Sharon Macdonald & Gordon Fyfe eds., Blackwell Publishers 1996).

22. See e.g. *Museums, Society, Inequality* (Richard Sandell ed., Routledge Press 2002); *Museum Frictions: Public Cultures/Global Transformations* (Ivan Karp et al. eds., Duke U. Press 2006).

Washington, D.C. represented the transformation of the American “public museum” to reflect a separate institution “dedicated to the preservation, study, and exhibition of the life, languages, literature, history and arts of Native Americans.”<sup>23</sup> The NMAI was established by congressional legislation in 1989 in response to Native American activism promoting the repatriation of vast numbers of Native American human remains and certain categories of cultural objects housed in the collection of the Smithsonian Museum.<sup>24</sup>

The NMAI Act, which was the precursor to the Native American Graves Protection and Repatriation Act of 1990, was intended to facilitate repatriation of Native American human remains and cultural objects within the collection of the Smithsonian Museum, as well as establish a separate museum that would appropriately house and display cultural objects that were formerly part of the Museum of the American Indian, Heye Foundation, in New York. Today, the NMAI also incorporates a research center in Suitland, Maryland, and the George Gustav Heye Center in New York City. The NMAI collection consists of over 8,000,000 objects from Native American peoples throughout the Western hemisphere, of which less than 1 per cent are on public display.<sup>25</sup> More than 30% of the collection comes from Central and South America.<sup>26</sup>

The Mission Statement of the NMAI specifies that the Museum is intended to serve both “Native communities and the non-Native public” by recognizing and affirming the “historical and contemporary cultural achievements of the Native American peoples of the Western Hemisphere.” The Museum intends to achieve this purpose through active “consultation, collaboration, and cooperation with Native people”<sup>27</sup> and by engaging in public programming and research that will “protect, support, and enhance the development, maintenance and perpetuation of Native American culture and community.”<sup>28</sup> Importantly, the mission of the NMAI is international and not limited to the United States and it promotes the role of the museum as a “forum” for the interaction of various Native American peoples with each other and with other groups. The focus on the “Western hemisphere” acknowledges that the current political boundaries of nation-states do not map onto the longstanding political or cultural boundaries enjoyed by Native American peoples. Moreover, the mission of the NMAI is to be achieved through collaboration and consultation and the museum is to be a resource within Indian Country and not merely an institution to draw visitors to Washington, D.C.

According to Rick West, the installations at the NMAI were to be designed in accordance with several guiding principles<sup>29</sup> which directly relate to cultural sovereignty. The first principle of “community” acknowledges that Indian tribes are and

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23. Smith, *supra* n. 18, at 426.

24. See Suzan Shown Harjo, *Native Peoples' Cultural and Human Rights: An Unfinished Agenda*, 24 *Ariz. St. L.J.* 321, 325 (1992) (noting that the Smithsonian collection included some “19,000 human remains and uninventoried numbers of sacred objects”).

25. Smith, *supra* n. 18, at 428.

26. *Id.*

27. *Id.* at 425 (quoting the Museum’s mission statement).

28. *Id.* at 425.

29. *Id.* at 426.

always have been sovereign nations. The second principle of “locality” recognizes that the National Museum of the American Indian sits on “Indian land.” The third principle of “vitality” confirms that Indian nations are “here, now” and are not “relics of the past.” The fourth principle of “viewpoint” asserts that Indian nations know the world differently and that Native American epistemologies have value in generating knowledge about the world. The fifth principle, of “voice” employs a dynamic agency over the creation of knowledge, asserting that “these are our stories.” As illustrated by these principles, the NMAI represents the repatriation of land, wisdom, and cultural identity, as well as a revitalization of culture and community. The dialogues between and among groups speak to a process by which to understand the past, define or reformulate “collective memory,” and reach an understanding about the current status of Indian nations in relation to the United States. This is the process of “reconciliation.”

The concepts of “repatriation” and “reconciliation” are key aspects of the changing role of the museum. However, the concepts also pose an interesting and potentially controversial set of issues. After all, the NMAI is fundamentally a *federal* institution. As such, the NMAI takes public funds and is accountable for those funds. How does NMAI relate to tribal museums, which are directly serving the needs of tribal communities to institutionalize cultural sovereignty? Does a collaborative process between NMAI curators and Native American community members represent a “partnership” model? Do Native American peoples have autonomy to direct the representation of Native American culture? Who “owns” Native American culture? Who has the right to tell the stories, possess cultural objects, and decide how and when to “display” them, either in material form (the exhibits) or in virtual form? Who decides if the exhibits will travel or if the collections will be photographed and put on-line? How much information will accompany the objects and to whom will this information be given?

There are, of course, general laws that govern various aspects of museum practice.<sup>30</sup> These laws are not directed toward Native American peoples, yet they may affect their interests. For example, certain laws govern the acquisition of objects. Museums may not buy stolen goods and they may be accountable to the true owner in a replevin action to the extent that they have purchased such objects for their collection. However, is a Renoir painting stolen from the home of a wealthy collector in the same category as a sacred mask or medicine bundle “plundered” from the Native American caretaker? Is this the acquisition of stolen property or is it “anthropology?” Until the passage of NAGPRA, Native American people did not have any right to obtain the return of cultural objects that were wrongfully taken from them, representing a clear distinction between the “theft” of art, which is actionable, and the “plunder” of “artifacts,” which is not. Other laws govern the curation of objects. There is an active discussion about the status of “contaminated collections.”<sup>31</sup> Many cultural objects collected during the 19<sup>th</sup> and early 20<sup>th</sup> century were housed in accordance with prevailing standards emphasizing “preservation,” using pesticides such as DDT and other toxic chemicals to ensure

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30. See generally Patty Gerstenblith, *Art, Cultural Heritage, and the Law: Cases and Materials* 243–299 (Carolina Academic Press 2004).

31. See Rebecca Tsosie, *Contaminated Collections: An Overview of the Legal, Ethical and Regulatory Issues*, 17 Collection Forum 14 (2001) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1401526](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401526)).



preservation. Years later, when sacred objects were repatriated to Indian nations, issues arose regarding the contamination of such objects and the direct health threats to tribal members. There are also laws regarding the deaccession of collections. So, for example, the small regional museums in Oklahoma and Montana that were formerly managed by the Bureau of Indian Affairs and then transferred to the Indian Arts and Crafts Board are still “federal” collections. Several years ago, there was a concerted effort by the Federal government to “get out of the museum business” because it is very costly to manage collections and maintain the various facilities. However, even to the extent that the ownership would transfer to local tribal communities, this would entail a need to deaccession the collection, raising questions about who is the beneficiary of the objects, which were very valuable in monetary terms and represented several different tribal cultures. Were the collections held in trust for all Native American people? Were they part of the “public” trust? The emergent questions were so significant that the effort ceased before it ever got significantly underway.

The bottom line of this discussion is that the law can shape museum practice and can also reshape the relationships between Native American nations and museums. Evaluating museums in the context of repatriation law offers one view of this. Engaging the notion of museums as sites of reconciliation evokes another view.

#### IV. MUSEUMS AND THE EXPERIENCE OF REPATRIATION

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) was the first federal statute to offer affirmative protection for the cultural rights of Native American peoples.<sup>32</sup> NAGPRA is primarily “human rights legislation” designed to redress the dismal history that allowed the desecration of Native American graves and the plunder of Native American cultural objects. By 1990, there were hundreds of thousands of Native American human remains and cultural objects in the collections of museums and federal agencies. There was absolutely no legal mechanism for Native American nations or families to claim possession of ancestral human remains, even for named family members who had perished on battlefields. There was no legal mechanism for Native American religious practitioners to obtain possession of medicine bundles, masks, and other sacred objects, and no way for Indian nations to repatriate items of “cultural patrimony,” such as the Iroquois’ wampum belts, that record the history of the Haudenosaunee nations.

NAGPRA protects Native American rights to four discrete categories of cultural objects: (1) human remains, (2) funerary objects, (3) sacred objects, and (4) objects of cultural patrimony. Sacred objects are “specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents . . . .”<sup>33</sup> Objects of cultural patrimony consist of those cultural items that have “ongoing historical, traditional, or cultural importance central to the . . . group or culture itself, rather than property owned by an individual Native American,” and which could not be validly conveyed by an

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32. 25 U.S.C. §§ 3001–3010.

33. *Id.* at § 3001(3)(C).

individual.<sup>34</sup> The statute implements several legal requirements, covering past wrongs as well as the prospective disturbance of graves. First, the statute increased the protections for Indian graves located on federal and tribal lands and specifies a permit and consultation process for any excavation that interferes with the graves, as well as affirming that the ownership of the remains is in the affiliated Native American peoples. Second, the statute outlaws commercial traffic in Native American human remains or cultural objects. Third, the statute requires federal agencies and federally funded museums to prepare inventories of the Native American human remains and associated funerary objects in their possession as of the effective date of the statute as well as summaries of other protected cultural objects within their possession. They must then send the documents to any tribe that is possibly affiliated to the remains or objects. Finally, the statute describes a process of mandatory repatriation of human remains and cultural objects upon request by a culturally affiliated Indian nation or Native Hawaiian organization.

The Heard Museum in Arizona hosted a dialogue between Native American leaders, archaeologists, and museum officials prior to the enactment of NAGPRA.<sup>35</sup> Initially, there was a high degree of skepticism amongst archaeologists and museum professionals over what appeared to be a political movement to define “ethnic rights” that could jeopardize the interests of scientists and the public in obtaining “knowledge” about the past.<sup>36</sup> However, many archaeologists and museum officials now maintain that the law facilitated a more productive exchange of knowledge through the consultation process attendant to repatriation.<sup>37</sup> The consultation process resulted in the ability to identify the nature of the objects as they were created within their cultural context as well as an understanding of the cultural norms governing ownership and use of the objects. This type of knowledge could only be gained through an interactive process designed to validate Native American rights, rather than the former process, which exploited Native American peoples as “research subjects” or “informants.”

NAGPRA also facilitated the development of an “Indigenous archaeology.” As Choctaw archaeologist Dorothy Lippert notes, “the practice of archaeology” traditionally operated to transform objects from their initial identities (whether as household goods or religious objects) within a particular context, to “objects of antiquity” within a museum collection.<sup>38</sup> The traditional discipline of archaeology worked in tandem with the traditional institution of the American museum. Thus “decontextualized,” the “artifacts” were defined by the relationship that the archaeologist established with them. So, for example, a bowl becomes “a Barton incised bowl and becomes a marker for a certain time and place . . . defined by the archaeologist” and unknown to the maker.<sup>39</sup> Native archaeologists questioned this practice, as well as the overall “authority of the discipline

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34. *Id.* at § 3001(3)(D).

35. See Paul Bender, *1990 Arizona Repatriation Legislation*, 24 *Ariz. St. L.J.* 391, 393 (1992) (discussing the National Dialogue on Museum/Native American Relations, which took place in Arizona).

36. Alan S. Downer, *Archaeologists-Native American Relations*, in *Native Americans and Archaeologists*, *supra* n. 12, at 23.

37. *See id.*

38. Dorothy Lippert, *Building a Bridge to Cross a Thousand Years*, 30 *Am. Indian Q.* 431, 431 (2006).

39. *Id.* at 433.

to effect these transformations.”<sup>40</sup>

NAGPRA facilitated a change in the practice by calling for Native American people to consult with archaeologists in the process of establishing cultural affiliation and requesting repatriation. As Native American peoples spoke about the true purpose and identity of the object within the cultural context that gave birth to the object, they established the indigenous significance and context of the item. They were able to offer the knowledge of what use and care was required for the object. In some cases, such as the Zuni War Gods (Ahayu:da), the objects have tremendous power and must be installed in shrines, where the power dissipates gently over time and is protective, rather than destructive. Housing the items for the perpetual “preservation” in a museum collection would trigger the exact converse of this dynamic and would activate the potentially destructive character of the object. Through NAGPRA, Native American communities have had an opportunity to engage with objects created by their ancestors and have generated an ethic of “traditional care [which] involves balancing the cultural needs of [the] object with the high standards of museum care.”<sup>41</sup> Thus, a law designed to protect Native American cultural rights led to a more nuanced standard of care for museum professionals charged with the appropriate curation of cultural items, as well as the repatriation of ancestral human remains, cultural objects, and traditional knowledge back to the community of origin.

There are, of course, continuing debates between Native American peoples and archaeologists in the context of repatriation law. One of the most intractable debates has been over the status of ancient Native American remains, such as those of “Kennewick Man,” a 9,000 year old skeleton found in the banks of the Columbia River and jointly claimed by five descendant tribes from the region, and those of Spirit Cave Man, another ancient skeleton housed in the collection of the Nevada Bureau of Land Management, and claimed by the Fallon Paiute Shoshone Nation. In both cases, scientists argued that an ancient set of remains could not be “culturally affiliated” to a modern tribal group because the two did not share identical DNA or cultural context. This linear assessment of the ancient “past” and the modern “present” led the court in the *Bonnichsen* case to hold that the ancient remains were not even “Native American” for the purposes of NAGPRA.<sup>42</sup> The implications of this holding are profound. If the ancient peoples of this land were not “Native American,” then who was here first? In the *Bonnichsen* case, this was presented as a question for “scientists,” and the “oral traditions” of the claimant tribes were dismissed as “inaccurate,” a form of mythology rather than a provable “fact.” To this day, this judicially created legal doctrine designates Kennewick Man as the “property” of the federal government, rather than an ancestor of Native American peoples.

Similarly, the Bureau of Land Management (the “BLM”) has taken the position that Spirit Cave Man falls within a vast and unknowable category of Native American human remains designated as “culturally unidentifiable.” The BLM refused to repatriate the remains or even consider the most recent evidence of affiliation that the tribe put

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40. *Id.* at 431 (footnote omitted).

41. *Id.* at 436 (footnote omitted).

42. *Bonnichsen v. U.S.*, 367 F.3d 864, 882 (9<sup>th</sup> Cir. 2004).

forward. The case is currently on remand after a federal court found that the BLM must consider the relevant evidence on affiliation before making a final decision on the matter.<sup>43</sup> After nearly two decades, the Department of Interior issued a final rule on the disposition of "culturally unidentifiable human remains" on March 15, 2010.<sup>44</sup> The rule describes a process that will lead to the ultimate transfer of such remains to Native American groups if the remains are clearly identified as "Native American" and after appropriate consultation with interested claimants. Native American human remains can be designated as "culturally unidentifiable" for a number of reasons. In some cases, faulty curation practices led to storage of hundreds of Native American crania and femurs in random boxes with only a general geographical designation to guide identification. In other cases, the remains are from a tribe that was exterminated or from a tribe that is currently not federally recognized. In the case of Kennewick Man and Spirit Cave Man, the remains predate European arrival and are thus designated as "ancient." Because these remains are not capable of being culturally affiliated to a contemporary, federally-recognized tribe, they have been held in a timeless limbo, housed in museum collections and removed from their places of origin.

There is clearly more work to be done, and the next step of NAGPRA implementation directly engages the relationship between Native American peoples and the United States at a very fundamental level. The media often portrays Native American peoples' efforts to repatriate ancient ancestral remains as based on their "religious" beliefs, while the scientists conducting DNA analysis are in the pursuit of "facts" that will determine who the "first Americans" were. Yet the dispute is far more than a contest over categories of belief. The debate exists at a much more fundamental level. Native American people understand themselves to be the first people of a land that gave birth to their ancestors, with a set of responsibilities and rights that emerge from that relationship. They are the oldest living cultures to have a relationship with the lands that are now called "America." For Native American peoples, that fundamental relationship can and must structure their interaction with the government of the United States.

The government of the United States, on the other hand, constantly seeks to articulate Native American rights in the context of who Native American people are in relationship to European peoples. Since contact, Native American peoples have been defined in the context of their encounter with European peoples, according to European norms, values, and perceptions of who Native American peoples are and "where they came from." That is the primary legacy of the doctrine of "discovery" which has been used to justify the superior claim of Europeans to the lands and governance in the Americas. Through the fiction of discovery in United States jurisprudence, Native American nations have been deemed to be "domestic dependent nations" who maintained a "right to occupancy" on their traditional lands at the will of the European sovereign that discovered and settled the lands, or its successor.<sup>45</sup> Similarly, the court in *Bonnichsen* deems these ancient human remains to be one of the most important scientific "discoveries" in the modern era, with the capacity to tell us about the identity

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43. *Fallon-Paiute Shoshone Tribe v. Bureau of Land Mgmt.*, 455 F. Supp.2d 1207, 1226 (D. Nev. 2006).

44. 43 CFR § 10 (2010).

45. *M'Intosh*, 21 U.S. at 592–596.

of the “first Americans.” The court reasons that, because the remains “predate human history in the New World,” only “science” can establish their identity. Again, European contact is used as the marker of when the documented record of “human history” can begin. The subtext is important. If Native Americans weren’t here first, then aren’t we all just a bunch of equally situated immigrants? The political dimensions of this inquiry are as significant as the cultural implications.

Museums have an important role in recreating the relationships between the national government and Native peoples because they have the capacity to tell stories about the historical encounters of the two groups. Exhibitions are a very powerful mode of storytelling and they carry the capacity to educate, to inform the perspectives held by members of the public, and potentially, to transform social relationships. Perhaps they can even help transform political relationships. This is the topic of a number of articles speaking to the role of museums in promoting a process of “reconciliation” in a “divided society.” The movement toward “reconciliation” is a prominent focus of inter-group relations in South Africa, Ireland, Australia and New Zealand. The term is not widely used in the United States, although it has been used in the Joint Resolution by Congress apologizing to Native Hawaiian peoples for the overthrow of the Hawaiian Kingdom and resultant harms to Native Hawaiian peoples.<sup>46</sup> Certainly, however, Native American peoples and African Americans share experiences related to historic trauma and the impact of unjust laws and policies imposed by the national and state governments. The two groups also continue to experience inequalities. In this respect, the notion of a reconciliation process for Native American and African American peoples links up to the global work on reconciliation. I will draw on the broader literature to explore the potential role of museums in healing relationships with Native American peoples.

#### V. MUSEUMS AS SITES FOR RECONCILIATION

There is a rich literature on the role of museums in the process of “reconciliation.”<sup>47</sup> Because there is not a uniform definition of “reconciliation,” I want to clarify my own use of the term as I explore this literature. I see the process of reconciliation as primarily directed toward promoting a different consciousness in which the members of current societies are called upon to witness the wounds caused by both historical and contemporary governance and are also called upon to heal those wounds. The latter effort is one that I associate with an attempt to transform institutions to achieve “intercultural justice.” The term “reconciliation” is most often employed by nation-states in an effort to describe their attempts to make up for past wrongs and create a more “equal” society. The term is sometimes confused with the concept of “reparations,” but most nation-states avoid any discussion of “reparations” because it invokes questions of monetary payment, while the term “reconciliation” does not carry the notion of making material amends. In this paper, I will use the term to describe a process of healing that

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46. See Pub. L. No. 103-150, 107 Stat. 1510 (1993).

47. See e.g. Lynda Kelly & Phil Gordon, *Developing a Community of Practice: Museums and Reconciliation in Australia*, in *Museums, Society, Inequality*, *supra* n. 22, at 153, 153–174; Fath Davis Ruffins, *Revisiting the Old Plantation: Reparations, Reconciliation, and Museumizing American Slavery*, in *Museum Frictions*, *supra* n. 22, at 394–434.

restores—to an individual, group, or community—a sense of well-being, balance, hope, and peace after an experience of painful trauma and conflict.<sup>48</sup> I believe that the process of reconciliation works on an interior level, which is primarily emotional and spiritual, and also on an external level, which has material social, economic, and political consequences. Thus, I consider the reconciliation process to span a continuum of conduct designed to “make amends” and restore what has been lost, taken, or desecrated.

Based on the work that I have done so far, my initial view is that tribal museums are well-situated to engage the *internal* process of reconciliation for their members, to gain greater understanding of who they are as nations and peoples and what their historic experience has been with respect to other groups. Tribal museums are vibrant repositories for the cultural sovereignty that forms the foundation for political sovereignty. Tribal museums are uniquely situated to interpret the multiple values and context of cultural items, and they are also in the best position to transmit knowledge between generations of tribal members. They are also in the best position to protect aspects of tribal knowledge which are not meant to be shared outside the group. Tribal museums can control access to culture in a way that protects the interests of the community. I believe that the National Museum of the American Indian is in the best position to evoke the *external* process of reconciliation between Native peoples and the United States, as Rick West has indicated.<sup>49</sup> Thus, I will draw upon the global context of museums and reconciliation to explore issues relevant to the work of the NMAI.

#### A. *Museums and Reconciliation: The Global Context*

Much of the work on Museums and reconciliation has been undertaken in countries where the intergroup conflict has had a long and recent history of extreme violence. In some countries, such as Ireland, the conflicts are primarily political and religious and do not involve different ethnicities. In 1998, the Ulster Museum featured an exhibition “Up in Arms! The 1798 Rebellion in Ireland,” that commemorated the bicentenary of the 1798 Rebellion, a form of civil war, which resulted in the birth of a constitutional nationalism and a longstanding division between the “Unionists” and “Nationalists” and between Protestants and Catholics.<sup>50</sup> The divisions activated in 1969 as a “suppressed civil war” in Northern Ireland and lasted until 1996, when the Irish Republican Army agreed to a ceasefire, and then, in 1998, both sides agreed to sign the Belfast Agreement that led to the establishment of a Legislative Assembly for Northern Ireland in 2000. Although the exhibit was controversial, the Ulster Museum is credited as offering “a neutral territory where conventional versions of history can be challenged in a non-threatening atmosphere.”<sup>51</sup> The issue would have formerly been considered “too hot to handle,” but the curators of the exhibit felt that it was important to construct an exhibition that allowed for a full interpretation of the “public history” in the region. Until

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48. Rebecca Tsosie, Keynote Address, *Native Nations and the Spirit of Reconciliation: The Global Context of Indigenous Peacemaking* (Phoenix, Ariz., Oct. 27, 2007).

49. See *supra* n. 5 and accompanying text; see also W. Richard West, Jr., *The National Museum of the American Indian: Perspectives on Museums in the 21<sup>st</sup> Century*, 18 *Museum Anthropology* 53, 58 (Oct. 1994).

50. Trevor Parkhill, ‘That’s Their History’: Can a Museum’s Historical Programme Inform the Reconciliation Process in a Divided Society? 41 *Folk Life: J. of Ethnographic Stud.* 37 (2002).

51. *Id.* at 38.

that time “neither community appeared terribly aware of their own, never mind their shared, 1798 heritage.”<sup>52</sup> The shared history generated knowledge about the larger political context of the event, in relation to what was occurring in other parts of Europe and in the United States, and also included outreach to local communities and an increased “self-understanding” among those communities. Curators described their role as one of education, interpretation, and bringing communities together in a process of “reconciliation” in which long-held historical grudges could eventually be perceived, at least by some, as “negotiable.”<sup>53</sup>

In South Africa, the inter-group conflict was racial and ethnic. Following the 1994 elections, the government of South Africa embarked on a campaign to redress “apartheid versions of history and promote reconciliation” in order to promote nation-building and explored the idea of constructing monuments and museums as one way to engage this process. One proposal was directed toward the site of an 1838 battle between Zulu and European settlers who had left the Cape Colony in an effort to assert independence from British control.<sup>54</sup> The battle at “Blood River” is described as resulting in a “victory” for the Europeans and it became a place of historic record for Afrikaner peoples to celebrate their “triumph” over the peoples that they characterize as “savages” and “heathens.” The same site became a symbol for Zulu people of their historic resistance to European colonization and the resultant apartheid system that divided South Africa for generations. After a long series of discussions about what really occurred at Blood River in 1838 and the meaning of this to the various groups of Zulu as well as the Afrikaners, the government ultimately constructed the Ncome Museum and Monument that is described as “a monument celebrating an enduring warrior nation.” This transformed the state’s ideology of “reconciliation” (to build a common national identity) into a process that acknowledged the historic and continuing “resistance” of the Zulu Nation. Did this effort still result in “reconciliation?” Through the process, the Zulu groups got an opportunity to tell their side of the story and to claim their identity as a “Nation.” Gershick claims that this was not the type of reconciliation hoped for by the national government, “a recognition of a shared history of suffering leading to mutual understanding,” but that it promoted “a form of peaceful coexistence of discrete ethnicities . . . .”<sup>55</sup>

In New Zealand, the process of reconciliation is directed toward healing the relationship between New Zealand and the Maori. The new national Museum of New Zealand Te Papa Tongarewa opened in 1998 with a mission “to harmonise [sic] different historical narratives and to provide a display that reflects the national imagery of biculturalism.”<sup>56</sup> The “bicultural” society in New Zealand is the result of the encounter between the native Maori people and the European settler population, the “Pakeha.” The Museum “offers a new way of imagining the nation,” and a site for “collective self-

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52. *Id.* at 39.

53. *Id.* at 42.

54. Paula Girshick, *Ncome Museum/Monument: From Reconciliation to Resistance*, 27 *Museum Anthropology* 25, 25 (Spring/Fall 2004).

55. *Id.* at 34.

56. Senka Bozic-Vrbancic, *One Nation, Two Peoples, Many Cultures: Exhibiting Identity at Te Papa Tongarewa*, 112 *J. Polynesian Socy.* 295, 295 (Sept. 2003) (footnote omitted).

understanding.”<sup>57</sup> In this process, the “experience” involves a display of the land and natural environment of New Zealand, to show the common geography that is shared by all. The “bicultural” element is featured in displays of the Maori, “those who belong to the land by right of first discovery,” and the more recent settlers of New Zealand who are described as “those who belong to the land by right of the Treaty”—the Treaty of Waitangi between the British Crown and many of the Maori groups.

The effort to portray New Zealand as a “bicultural” society has been criticized by proponents of “multiculturalism” who assert that the processes of exclusion and inclusion that were part of the dynamics of colonialism and assimilation operated not only upon the Maori, but upon less favored immigrant groups, such as the Croatians and Chinese. On the other hand, there were Maori activists who favored the use of “bicultural imagery,” asserting that “multiculturalism” reduced the Maori to just another “ethnic minority” group, whereas “biculturalism” reflects the central political dynamic of colonization that characterizes their lands and the Maori experience. One critic asserts that the Museum has “reconfigured New Zealand’s history” to generate a “representation of New Zealand identity as being in a process of becoming, rather than being stable.”<sup>58</sup> Some cynics have criticized the displays as designed to appeal to tourists rather than “accurately represent” New Zealand’s history. The Museum has been criticized for downplaying the “traumas of the past,” whether the violence inflicted on Maori people or the discrimination toward non-British immigrant groups who were excluded from society, and for attempting to project the “imagined future”—(“who we might become”)—“into the past.”<sup>59</sup>

In Australia, the Australian Reconciliation Council has characterized Reconciliation as a process of “building new relationships between Aboriginal and Torres Strait Islander Australians and the wider community, one that heals the pains of the past and ensures we all share fairly and equally in our national citizenship . . . .”<sup>60</sup> In this process, it is important to acknowledge the first occupancy of the Aboriginal Australian people, as well as the “cycle of dispossession, marginalization and social disadvantage” that ensued from European settlement and “has implications to this day.”<sup>61</sup> The Australian reconciliation effort, however, is designed to build a collective sense of national identity and “equal rights” and is not designed to validate native claims to sovereignty or self-determination. As characterized by Lynda Kelly and Phil Gordon, the public role of the Australian museum is primarily to create a “learning community” that can educate the public and foster “social change” and “inclusion” for aboriginal peoples.<sup>62</sup> The learning community is formed “through the active participation of both parties in a process of change . . . .”<sup>63</sup> In this respect, modern Australian museums act “as facilitators and partners rather than as patriarchal institutions imposing their views

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57. *Id.* at 297 (citation omitted).

58. *Id.* at 312–313.

59. *Id.* at 313.

60. Kelly & Gordon, *supra* n. 47, at 154 (citation omitted).

61. *Id.* (footnote omitted).

62. *Id.* at 153.

63. *Id.* at 163.



and practices on the peoples whose cultural material they hold . . . .”<sup>64</sup> With respect to the “partnership” with native peoples, Kelly and Gordon indicate that Australian museums have begun to acknowledge that the native peoples have rights to their cultural heritage, which imply a continuing right to “access [their] cultural material . . . .”<sup>65</sup>

In the United States, there are several “national” museums. However, the National Museum of the American Indian is the institution which carries the greatest responsibility to depict the relationship between Native American people and the United States government in addition to the many other relationships occasioned by its broad mission and outreach to Native American peoples throughout the Western hemisphere. How should the NMAI depict the process of colonization of Native American peoples on Native American land? Should there be acknowledgment of historic trauma? Can a national museum even mention the word “genocide”? Do Native American peoples and non-Native American peoples have to agree with the mutual assessment of history? Does the United States have to acknowledge wrongdoing? Apologize for it? Issue reparations? Many people would consider repatriation itself as a form of reparations, but the repatriation of culturally affiliated remains and cultural objects is only one aspect of redress for the multiple harms that ensued from European colonization of Native American lands. Some commentators have criticized the NMAI for employing a “linear narrative of progress” to characterize the relationship between Native American peoples and Europeans, rather than acknowledging the brutal and often genocidal experience of colonialism and imperialism which continues to shape the experience of Native American peoples.<sup>66</sup> As Myla Vicenti Carpio observes, “[t]he dehumanizing processes of colonization continues to have far-reaching impacts on Indigenous life[,]” including the array of social problems that beset contemporary Native American communities, such as alcoholism, family violence, homicide, and suicide.<sup>67</sup>

It is interesting at this juncture to compare this dialogue with the one that is occurring in the context of planning for the African-American Museum that will eventually be located in Washington, D.C. Some scholars have queried whether there is an underlying issue common to both Native American peoples and African Americans because they became “Americans” against their will and the whole question of “who are we as Americans” cannot be addressed without portraying the experience that led to “becoming” an American. Much like tribal museums, African American museums have engaged the broader issues within their respective geographic locations. They have become:

a public forum for addressing that which is least comfortable about our collective past. Slavery, although a shared heritage, was not experienced in the same way by whites as by blacks. Nor was the Civil Rights Movement. Yet these subjects allow us to stimulate reconciliation and healing as well as self-knowledge, for black Americans and others who are touched by the common experience.<sup>68</sup>

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64. *Id.* at 156 (citation omitted).

65. Kelly & Gordon, *supra* n. 47, at 157.

66. *See e.g.* Carpio, *supra* n. 1, at 627–628.

67. *Id.* at 628–629.

68. Jocelyn Robinson-Hubbuch, *African-American Museums and the National Conversation on American*

Will this same mission characterize the “National” Museum for African-American history and culture? As Fath Davis Ruffins notes, the Smithsonian’s National Museum of American History consciously omitted African-American slavery from its presentation of American history until the 1980s.<sup>69</sup> Furthermore, the notion that there had been a “holocaust” for Black Americans did not gain traction until 1994 when Howard University hosted a conference on the subject following the 1993 opening of the U.S. Holocaust Memorial Museum.<sup>70</sup> Such depictions of “negative” history were considered destructive of the unitary nature of “American” society, and there were particular implications for social memory at the regional level, given the profound political consequences of American slavery for the Southern and Northern States.

Ruffins makes an important observation that the process of “museumizing slavery” has engendered two “opposite trends”: “one toward the memorialization of slavery and its injustices in order to argue for reparations and the other toward ‘racial reconciliation.’”<sup>71</sup> The first trend is considered supportive of contemporary efforts by African American people to attain financial compensation for the harms of slavery, and thus is considered to “[emerge] from an Afrocentric framework and political base.”<sup>72</sup> The second trend, in comparison, is perceived to focus on a politics of “racial reconciliation” originating “from interracial frameworks and a predominantly non-Black political base.”<sup>73</sup> In either case, the focus is on what is required of the national government in recognition of a bitter history, and a mere “apology” may seem insincere without a commitment of material resources.

The process of “reconciliation” as *healing* involves intra-group conversations as well as inter-group conversations. This function is appropriate for engagement by museums due to the multiple publics that they serve.<sup>74</sup> These discussions operate to acknowledge what happened between groups in specific places and what those events mean in the contemporary lives of descendants. The history of slavery is a brutal one, as is the history of the genocidal encounters between Native American peoples and Europeans. There is an active discussion about how and if museums should even engage the issue of historic trauma.<sup>75</sup> Memorial sites often serve this purpose, but is this consistent with the role of a Museum? There is clearly the opportunity to transform “collective memory” with a broader sharing of stories, between and among groups. However, it is to be expected that the role of the local museum, such as a tribal museum or a museum in a black community, will differ from the role of a national museum. The politics of separatism versus integration, of citizenship versus nationhood, mark the

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*Pluralism and Identity*, 19 *Public Historian* 29, 30 (1997).

69. Ruffins, *supra* n. 47, at 402.

70. *Id.* at 417–418.

71. *Id.* at 416.

72. *Id.* at 416.

73. *Id.* at 417.

74. See e.g. Mia Thornton, *The Museum as an Intercultural Site*, <http://www.museumsaustralia.org.au/dbdoc/Thornton,%20Mia%20-%202005.pdf> (last accessed Oct. 30, 2009) (advocating “reconceptualisation of museums as sites for intercultural exchange”).

75. See Dick Braithwaite & Yun Lok Lee, *Dark Tourism, Hate and Reconciliation: The Sandakan Experience* (IIPT Occasional Paper No. 8, Mar. 2006), (available at <http://www.iipt.org/educators/OccPap08.pdf>).

experience of Native American peoples and African American peoples in different ways, and should be represented honestly by the institutions that serve these multiple “publics.” The experience of Native Hawaiian peoples exemplifies the complexity of those divides.

*B. Museums and Reconciliation: The Native Hawaiian Experience*

One of the most compelling sites for “reconciliation” between Native American peoples and the United States is in Hawaii. Unlike any other Native American groups within the United States, the Native Hawaiian people were once part of an internationally recognized nation, the Kingdom of Hawaii, which maintained simultaneous treaty relationships with the United States and many European and Asian nations and was not subject to the “doctrine of discovery.” However, like other Native American peoples, the incorporation of Native Hawaiians into the United States was accomplished by military force. Hawaii lost its political status as a foreign nation after an 1893 insurrection by a group of American imperialists, assisted by the U.S. Marines, which forcibly unseated Queen Lili’uokalani and imprisoned her in Iolani Palace. Although this action was clearly illegal under international law and U.S. domestic law, the United States ultimately incorporated the Hawaiian Islands as a U.S. Territory through a transfer by the newly created “Republic of Hawaii” and then admitted the territory to statehood in 1959. Although Native Hawaiians never consented to this annexation, they were recognized as citizens of the United States and of the Territory of Hawaii, unlike American Indian peoples, who were not recognized as citizens until 1924, when citizenship was broadly conferred by a Congressional statute.<sup>76</sup>

Although Congress established special programs for Native Hawaiians even prior to statehood and has continued to confer certain benefits under specific statutes that are also applicable to American Indian and Alaskan Native people, they have never been accorded “federal recognition” as a distinct Native people. Congress has in fact delegated most of the responsibility for managing social programs and resources to the state of Hawaii. Today, there is an active discussion about federal recognition in relation to the Akaka bill, which is directed toward a process to establish a “Native Hawaiian governing entity” that could ultimately operate in a similar manner to a federally recognized tribe.<sup>77</sup> The bill is quite controversial. Many Native Hawaiians see this as the only hope to secure their current entitlements to services as Native peoples. This response has been promoted by cases such as *Rice v. Cayetano*, which found that the state Office of Hawaiian Affairs could not exclude non-Native Hawaiian people from voting for trustees to oversee the portion of the ceded lands trust that is reserved for Native Hawaiian peoples.<sup>78</sup> There have been other challenges to institutions that are directed primarily toward Native Hawaiians, such as the Kamehameha Schools which are private schools operated pursuant to a trust set up by the Hawaiian monarchs.<sup>79</sup> The subtext in all of these cases is that Hawaii is a “multicultural state” where no one group ought to have “special” rights. This is an argument for “racial equality” that denies the separate

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76. Pub L. No. 68-175, 43 Stat. 253 (1924).

77. Sen. 1011, 111th Cong. (May 7, 2009).

78. See 528 U.S. 495 (2000).

79. See *Doe v. Kamehameha Schools*, 470 F.3d 827, 829 (9th Cir. 2006).

political status of Native Hawaiians.

There is an active and vehement sovereignty movement in Hawaii that disputes the notion of the “multicultural state” and maintains an adamant commitment to “independence.” Under this view, the Kingdom of Hawaii is under colonial rule after an illegal military coup by the United States and it must be granted the right to “decolonize” and be accorded its former autonomy as a nation-state or at least the right to craft a consensual political relationship with the United States, as has occurred with Guam and Palau.<sup>80</sup>

In 1993, Congress enacted a joint resolution that acknowledged the 100<sup>th</sup> anniversary of the overthrow of the Kingdom of Hawaii.<sup>81</sup> In the Joint Resolution, Congress apologized for the United States’ participation in the overthrow and called for a “reconciliation” process to commence, acknowledging the ongoing work of the Church of Christ, which had engaged a reconciliation process with Native Hawaiians. Native Hawaiians drew on the language in the Joint Resolution to argue for a moratorium on transfers of the “ceded lands” prior to passage of the Akaka bill and recognition of a Native Hawaiian government that could negotiate for the repatriation of lands. The Supreme Court of Hawaii upheld that argument, finding that the Apology Resolution recognized continuing Native Hawaiian land claims and called for a reconciliation process, which imposed a fiduciary duty on the state to avoid selling the contested lands to third parties pending federal resolution of the issues. However, the United States Supreme Court recently reversed that judgment, finding that the Apology Resolution had no effect on Hawaii’s sovereign authority to sell, exchange, or transfer lands within the ceded lands trust, and that Congress has no power, after conferral of statehood, to impose any conditions on lands conveyed in fee simple absolute to the state.<sup>82</sup>

So, what is the role of museums in Hawaii with respect to the themes of repatriation and reconciliation? Let me discuss three important sites for consideration.

The most contested place, not surprisingly, is Iolani Palace. Each year, on January 17, the anniversary of the overthrow, Native Hawaiians hold vigils at the site to commemorate the wrongful dispossession of the Kingdom and the imprisonment of the Queen.<sup>83</sup> Sometimes the protests become violent and there is an active discussion about whether Iolani Palace is a “historical site” or whether it is a site for political resistance as the physical place of the Kingdom of Hawaii. Clearly, any process of “reconciliation” must engage the significance and role of Iolani Palace, which is currently considered the “property” of the state of Hawaii.

The Bishop Museum on Oahu is the site that houses the most extensive collection of Native Hawaiian remains and cultural objects. The U.S. military excavated thousands of Native Hawaiian burials as it established its installations throughout the Hawaiian islands, and many of these remains were transferred to the custody of the Bishop

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80. See e.g. Kunani Nihipali, *Stone by Stone, Bone by Bone: Rebuilding the Hawaiian Nation in the Illusion of Reality*, 34 Ariz. St. L.J. 27 (2002); Dennis Pu’uhonua “Bumpy” Kanahele, *Clandestine Manipulation Toward Genocide*, 34 Ariz. St. L.J. 63 (2002).

81. 107 Stat. at 1510.

82. *Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436, 1443–1445 (2009).

83. See Samuel R. Cacas, *Hawaiian Sovereignty: A Human Rights Issue*, AsianWeek (Mar. 3, 1995) (available at <http://www.highbeam.com/doc/1P1-2310974.html>).

Museum. Native Hawaiians are part of NAGPRA and Native Hawaiian organizations may claim Native Hawaiian ancestral human remains and cultural objects. There are many cases of successful repatriations by Native Hawaiian organizations, such as Hui Malama and the Hawaiian Island Burial Council, from the Bishop Museum as well as other agencies and museums. However, the process is far from perfect. The language of “Native Hawaiian organization” is broad enough to include many groups, even ones of recent creation. This occurred with respect to the controversy over the repatriation and disposition of a set of cultural objects that had been illegally removed from a cave in 1905 by an individual named “Forbes” and ultimately transferred into the collection of the Bishop Museum.<sup>84</sup> The Bishop Museum worked with Hui Malama to repatriate ancestral human remains for reburial. In addition, the Bishop Museum concluded after consultation with Hui Malama and three other joint claimant groups that the so-called “Forbes Cave artifacts” were funerary objects that had been placed in proximity to Native Hawaiian remains. In 2000, the Bishop Museum transferred the objects to Hui Malama in an arrangement that was clearly custodial, but was designated as a “loan.” Hui Malama reburied the objects and the remains, but the Bishop museum “recalled” the loan after protests from other constituencies who argued that the artifacts were “objects of art” and not “funerary objects.” In 2005, a new claimant group filed a lawsuit alleging violations of NAGPRA and asking for an injunction to force Hui Malama to return 83 cultural objects to the Museum. One of the leaders of Hui Malama was actually jailed for contempt after he refused, on cultural grounds, to disclose the site of reinterment.<sup>85</sup> It is reported that, following a court order, a museum team traveled to the cave and used a helicopter to recover the objects.<sup>86</sup> The objects are now in the custody of the museum pending a final disposition, which could take many years. In that process, there were even discussions about whether the Bishop Museum could be accorded the status of a “Native Hawaiian organization” pursuant to NAGPRA.

Finally, Native Hawaiians were invited to participate in the opening of the National Museum of the American Indian and they were part of the legislation that created the NMAI and are prominently featured in the mission of NMAI. According to one Native Hawaiian who participated in the opening ceremonies, the Kanaka Maoli were given the ceremonial duty to represent the West during the ceremonies.<sup>87</sup> Some Native Hawaiians in the Independence Movement protested their inclusion on the grounds that the Kingdom of Hawaii was a nation that had both native and non-native citizens, and that any effort to “indigenize” the understanding of Hawaiian political status would invoke the same history of “dependency” that has subordinated American Indian people as “domestic dependent nations.”<sup>88</sup> However, other Native Hawaiians proudly acknowledged their spiritual connections to the other indigenous peoples of the

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84. See Christopher Pala, *Applying NAGPRA in Hawaii*, 28 *Indian Country Today* 6 (Sept. 26, 2008) (available at <http://www.indiancountrytoday.com/home/content/29790944.html>).

85. See Winona LaDuke, *Hui Na Iwi-The Bones Live: Hawaiians and NAGPRA*, 20 *News From Indian Country* 17 (April 3, 2006).

86. See Girshick, *supra* n. 54.

87. See J. Kehaulani Kauanui, *Contradictions and Celebrations: A Hawaiian Reflection on the Opening of the NMAI*, 29 *Am. Indian Q.* 496, 497 (2005).

88. *Id.* at 501.

Western Hemisphere and observed that the NMAI has incorporated Hawaiian cultural items into its displays and grounds, including a feathered cape and staff that belonged to the Hawaiian royal family as well as an “ancestral rock” from one of the Hawaiian islands that marks the western side of the building.<sup>89</sup> The inclusion of Native Hawaiians into the NMAI marks another site for the intracultural and intercultural dialogues that are the hallmark of reconciliation. Part of this dialogue deals with the notion of “self-determination,” which is an aspiration common to all “peoples,” whether indigenous or not. Indigenous self-determination embodies political and cultural dimensions, and both must be part of any process of “reconciliation.”

## VI. CONCLUSION

All people have connections to the places where they live, work, and play. People form relationships with these places. People define places as good, powerful, and safe. They find comfort by living in these places. There is a sense of belonging that is valued. This sense of belonging is based on the compatibility between the group’s way of life and its environment.<sup>90</sup>

When we think of the National Museum of the American Indian or the Bishop Museum on Oahu, we think of a particular landscape, whether it is Washington, D.C. or Oahu, that is home to many citizens and is also a space for tourism. These places have different meanings for each group. National museums have fostered a sense of “belonging” for the successive waves of immigrants that now characterize the American citizenry. However, these institutions are now engaged in a delicate and interactive process with the Native American peoples who have always been part of these lands, as well as the descendants of African peoples who were brought to these lands against their will, to depict the multiple historical experiences that led to the creation of the United States. This is a process of forming relationships and of recreating memory in ways that are more honest and representative of the “American” experience. For Native American peoples, the museum has an important role in facilitating the process of cultural sovereignty within and on behalf of Native American communities. Museums have the capacity to facilitate a process of inter-cultural and intra-cultural dialogue that can facilitate contemporary justice for Native American peoples through broad recognition of the right of Native American peoples to self-determination.<sup>91</sup> This has been demonstrated by the role of museums in implementing repatriation law and in facilitating the reconciliation process. The process of healing embodies a commitment to acknowledge and restore the political and cultural identity of Native American nations.

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89. *Id.* at 502.

90. William V. Tallbull & Sherr Deaver, *Foreword: Living Human Values, in Native Americans and Archaeologists*, *supra* n. 12, at 9.

91. *See e.g.* Thornton, *supra* n. 74.

