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## Repatriation and Cultural Preservation: Potent Objects, Potent Pasts

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## REPATRIATION AND CULTURAL PRESERVATION: POTENT OBJECTS, POTENT PASTS

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Peter H. Welsh\*

Anthropologists and museum workers have cast themselves in the role of culture preservers for most of this century. Today, however, we seem to be challenged from all sides for this self-designation. When the cultural preservation officer of the Hopi Tribe recently declared anthropologists an endangered species,<sup>1</sup> he humorously affirmed what many recognize as a fundamental shift in contemporary cultural preservation programs: Native Americans are taking control of cultural preservation efforts.

In this environment, the public has come to view the work of anthropologists—archaeologists, physical anthropologists, and socio-cultural anthropologists—with considerable ambivalence. On one hand, anthropologists' contributions to knowledge about the cultures of the world and their efforts to combat racist interpretations of cultural difference are regarded highly. On the other hand, anthropologists' characterizations of culture, seen in their writings and museum presentations, increasingly are recognized as insufficient representations of peoples' lives.<sup>2</sup> These conflicting perspectives have prompted considerable self-criticism in anthropology and in museums, leading us to reconsider possible definitions of our role. I advocate cultural preservation that empowers groups to pursue strategies of self-determination and that advances the creation of a more complex cultural landscape. It is important to recognize that, first, cultural preservation has not always had this meaning, and, second, moving in this direction will not be accomplished without ambiguity and conflict.

From the perspective of a museum anthropologist, I will discuss recent initiatives regarding repatriation of certain kinds of museum collections to people representing the cultures or

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1. Leigh Jenkins, Remarks at the Indians Making Museums Conference held at Arizona State University (Nov. 2, 1991).

2. James Clifford, *Introduction to WRITING CULTURE: THE POETICS AND POLITICS OF ETHNOGRAPHY* 1, 6-7 (James Clifford & George E. Marcus eds., 1986).

individuals from whom the objects were acquired originally. Recent federal and state legislation setting definitions, standards, and requirements for the repatriation of Native American cultural property are important expressions of the new approaches to cultural preservation.<sup>3</sup> Because repatriation is part of this larger movement, it should not be considered in isolation. Therefore, Parts I and II discuss the preservation idea itself and the history of museums' participation in cultural preservation efforts. Parts III and IV then look specifically at the repatriation issue, providing some background on initiatives that have influenced peoples' thoughts and actions. Finally, Part V outlines and discusses some of the issues that have made resolution of the repatriation issue particularly complex.

### I. CULTURAL PRESERVATION

Preservation is not passive; it is a program of action. It is the expenditure of energy to impede change. Applied to objects, it entails intervention to stop or slow physical deterioration. When applied to biological systems, preservation involves halting the impact of human presence.<sup>4</sup> When applied to cultures, it often means working to maintain ways of life understood to be "traditional," and minimizing the influence of "modernity." In each of these areas, preservationists direct their efforts toward thwarting change.

This kind of preservation values stasis over change, and it is worthwhile to question who values stasis so highly and why.<sup>5</sup> Values are culturally contingent. For any preservation

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3. For discussions of recent legislation dealing with the repatriation of Native American cultural property, see H. MARCUS PRICE III, *DISPUTING THE DEAD: U.S. LAW ON ABORIGINAL REMAINS AND GRAVE GOODS* (1991); Jack F. Trope & Walter R. Echo-Hawk, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, 24 *ARIZ. ST. L.J.* 35 (1992); and Catherine Bergin Yalung & Laurel I. Wala, *Statutory Survey, A Survey of State Repatriation and Burial Protection Statutes*, 24 *ARIZ. ST. L.J.* 419 (1992).

4. A memorable example of human efforts to preserve a biological system is described in GARY PAUL NABHAN, *THE DESERT SMELLS LIKE RAIN: A NATURALIST IN PAPAGO INDIAN COUNTRY* 89-97 (1982). He shows how the National Park Service's eviction of Papago farmers who had lived for generations at a desert spring dramatically reduced the spring's biological diversity. *Id.* In the interest of preserving a natural setting, natural diversity was reduced.

5. For a discussion which questions the value of stasis in the preservation of non-Western art, see JAMES CLIFFORD, *THE PRECIPITANT OF CULTURE* 200-14 (1988). See also SALLY PRICE, *PRIMITIVE ART IN CIVILIZED PLACES* 56-67 (1989).

program, one should ask whose values are being acted upon and investigate the relations of power among the groups involved in the preservation effort.<sup>6</sup> Anthropologists today often feel ambivalent about cultural preservation efforts because of past programs in which the dominant society imposed its values upon other, less-powerful groups.<sup>7</sup> Current interest in preserving minority cultures stems from a growing societal acceptance of multiculturalism and seems distinct from previous programs aimed at assimilation. Nevertheless, earlier efforts are well-remembered, and contemporary programs to "manage" cultures will be judged in light of their predecessors. Preserving one's own culture and preserving another's culture are two very different things. Preserving one's own culture is an expression of human rights, while working to preserve someone else's culture without their input or participation is, at best, paternalism. Cultural preservation programs can be successful only when those whose cultures are to be preserved play a prominent role in designing and implementing the programs.

Some of the obstacles to the preservation of a vital and living culture arise from the romantic notion that integrating the elements of modernity is corrupting and in opposition to cultural preservation. The preservation of culture cannot simply mean preservation of the outer veneer of a previous way of life, especially if it means continuing activities that have lost their relevance to contemporary people. Approaches to cultural preservation that encourage cultural conservatism among minority groups, but deny individuals the power to choose among alternatives and to overcome the barriers to achieving culturally appropriate goals, are oppression disguised as liberal-mindedness. We must respect the right of individuals to make choices. Some of those choices will be for change; some will favor the maintenance of established ways. The right to decide resides with the individuals living in the here and now. True, people may come to regret their decisions, but a past without regret is an illusion. In its most insidious form, cultural preservation can freeze people in an ahistorical

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6. See Richard Handler, *On the Valuing of Museum Objects*, 16 *MUSEUM ANTHROPOLOGY* 21, 21 (1992) (noting that museum collections are being seen as "historically contingent assemblages of value and meaning").

7. See CLIFFORD GEERTZ, *WORKS AND LIVES* 129-49 (1988); Joke Schrijvers, *Viricentrism and Anthropology, in THE POLITICS OF ANTHROPOLOGY* 97 (Gerrit Huizer & Bruce Mannheim eds., 1979); Louis A. Sass, *Anthropology's Native Problems: Revisionism in the Field*, *HARPER'S MAG.*, May 1986, at 49.

moment. Such an approach to cultural preservation raises visions of dusty shelves filled with murky jars of pickled things. Cultures cannot be preserved that way.

If meaningful cultural preservation for a minority culture must be based on the values of that culture, then encouragement of cultural difference and diversity will mean accommodating a wide range of value systems. This effort may create real challenges for a large, multicultural society.<sup>8</sup> Support for the right of all peoples to preserve their culture and to live in ways that are appropriate in the context of their culture may require endorsement of practices that are incompatible with "enlightened" beliefs. For example, when women are ineligible to participate in government, when the productive economy is oriented toward subsistence rather than surplus, when health care involves treatments whose efficacy seems questionable, or when modern sanitary facilities or externally powered conveniences are unavailable, should the importance of cultural preservation supersede all other concerns? Cultural preservation activities indeed may lead to advocacy for preserving ways of living that, according to Western attitudes, are anachronistic, immoral, or contrary to the concept of individual human rights.

When there is a basic conflict in value systems, which culture's values will prevail? For example, all cultures have their own fundamental concepts of personhood or identity as an individual human being.<sup>9</sup> At what point, and under what circumstances, is personhood acquired or lost? When does a child become a person? How does a being gain or lose human rights? Since this basic question regarding personhood is one to which our majority culture is unable to find satisfactory resolution in the abortion debates, can we expect that views of minority cultures in this matter will be given a respectful hearing?

The Supreme Court recently considered the question of whether such a respectful hearing is necessary. In *Lyng v.*

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8. See generally RELATIVISM: INTERPRETATION AND CONFRONTATION (Michael Krausz ed., 1989) (providing a collection of essays dealing with relativism and the context-dependent nature of values).

9. See FAYE D. GINSBURG, *CONTESTED LIVES: THE ABORTION DEBATE IN AN AMERICAN COMMUNITY passim* (1989) (considering the concept of personhood in the context of the pro-choice and pro-life movements); Igor Kopytoff & Suzanne Miers, *African 'Slavery' as an Institution of Marginality, in SLAVERY IN AFRICA: HISTORICAL AND ANTHROPOLOGICAL PERSPECTIVES* 3, 7-11 (Suzanne Miers & Igor Kopytoff eds., 1977) (discussing "rights-in-persons" in African societies).

*Northwest Indian Cemetery Protective Ass'n*,<sup>10</sup> the question was whether the U.S. Forest Service could permit a logging road (called the G-O Road) to be built through the Chimney Rock section in Six Rivers National Forest in Northern California.<sup>11</sup> The trial court apparently found that the G-O Road would affect negatively the ability of the Yurok, Karok, and Tolowa people to utilize nearby sacred sites for religious purposes requiring "privacy, silence, and an undisturbed natural setting."<sup>12</sup> The Ninth Circuit Court of Appeals ruled that building the road would deny protection of religious freedom to the tribes<sup>13</sup> and found that building the G-O Road would "virtually destroy the . . . Indians' ability to practice their religion."<sup>14</sup> While acknowledging that the appellate court's prediction might come true, the Supreme Court overturned the decision.<sup>15</sup>

To encourage cultural preservation, we must construct a system in which minority viewpoints are accorded greater opportunity to influence the outcome of such cases. Limitations on cultural practices by real or implied force create true barriers to cultural preservation.

## II. MUSEUMS AND CULTURAL PRESERVATION

Anthropology museums have a long history of involvement in what have been regarded as cultural preservation activities and are continuing to seek a meaningful role. In the late nineteenth and early twentieth centuries, museums amassed huge collections of archaeological, ethnographic, and historical objects "salvaged" from what were thought to be vanishing cultures.<sup>16</sup> One may paint the picture more or less

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10. 485 U.S. 439 (1988).

11. *Id.* at 441-42.

12. *Id.* at 442-44 (quoting 1979 United States Forest Service study).

13. *Id.* at 444-45.

14. *Id.* at 451 (quoting *Northwest Indian Cemetery Protective Ass'n v. Peterson*, 795 F.2d 688, 693 (1986)).

15. *Id.* at 451-52, 458.

16. See CURTIS M. HINSLEY, *SAVAGES AND SCIENTISTS passim* (1981) (discussing the history of the Smithsonian Institution and the development of American anthropology); Curtis M. Hinsley, *Collecting Cultures and Cultures of Collecting: The Lure of the American Southwest, 1880-1915*, 16 MUSEUM ANTHROPOLOGY 12, 13-14 (1992) (noting the late 19th-century boom in Southwestern ethnographic collecting as the American industrial economy rapidly expanded).

gloomily, and many are willing to offer opinions that darken or lighten it, but there can be little doubt that many early museum practices gave little consideration to the future interest of those groups who were, at best, sincerely considered to be “vanishing.”<sup>17</sup> At that time, those involved considered this monumental effort to assemble collections a program of cultural preservation.

Many now view that questionable claim in light of the position of museums in the society that sanctions them.<sup>18</sup> As Michael Ames noted: “Museums are products of the establishment and represent the assumptions and definitions of that establishment . . . .”<sup>19</sup> As such, Ames notes, “[a] large public museum may express and authenticate the established or official values and images of a society in several ways, *directly*, by promoting and affirming the dominant values, and *indirectly*, by subordinating or rejecting alternate values.”<sup>20</sup>

A significant aspect of these early collecting programs, with their intent to preserve evidence of ways of life that were quickly changing, was that an artificial historical and ethnographic baseline was established. Museum anthropologists deemed the time shortly before the collector’s arrival in the “vanishing” culture’s community the “traditional” era and the most deserving of preservation. Turn of the century ethnographers desired the “‘old things’”<sup>21</sup> and sought out the oldest members of the community and tapped their recollections of their youth. They avoided collecting mass-produced objects used by the community at that time.<sup>22</sup> Subsequent efforts at cultural preservation made reference to this ill-defined,

17. See THE ETHNOGRAPHY OF FRANZ BOAS 88 (Ronald P. Rohner ed., 1969) (describing the practice of stealing Native American skulls and selling them to museums).

18. See, e.g., Donna Haraway, *Teddy Bear Patriarchy: Taxidermy in the Garden of Eden, New York City, 1908–36*, SOCIAL TEXT, Winter 1984–85, at 20; Anthony A. Shelton, *In the Lair of the Monkey: Notes Towards a Post-Modernist Museography*, in OBJECTS OF KNOWLEDGE 78 (Susan Pearce ed., 1990).

19. MICHAEL M. AMES, MUSEUMS, THE PUBLIC AND ANTHROPOLOGY 8 (Ranchi Anthropology Series, No. 9, L.P. Vidyarthi ed., 1986).

20. *Id.* at 9.

21. DIANA FANE ET AL., OBJECTS OF MYTH AND MEMORY: AMERICAN INDIAN ART AT THE BROOKLYN MUSEUM 59 (1991).

22. See CAROLYN GILMAN & MARY JANE SCHNEIDER, THE WAY TO INDEPENDENCE: MEMORIES OF A HIDATSA INDIAN FAMILY at xi (1987) (noting that anthropologists selected artifacts that did not show cross-cultural contact, while archaeologists generally found mass-produced, manufactured goods).

arbitrary "traditional" period.<sup>23</sup> This designation is problematic. Culture is dynamic, and the division between traditional and nontraditional was actually a reflection of the collectors' nostalgia. The source of this nostalgia has been examined from a variety of perspectives. One commentator has called the idea of tradition, in its most politically charged form, the "sacred weapon" of oppressors.<sup>24</sup>

Cultural preservation that has focused on the idea of a "traditional" way of life and traditional artifacts develops a corresponding problematic concern for "authenticity." These terms are compromised highly outside of the culture or community sustaining its own continuity. Standards of authenticity established by a group or an institution outside the community are irrelevant to internally motivated cultural preservation. Of course, classifying and glorifying authenticity has been going on for decades. The public always has accorded greater value to that which is labelled authentic,<sup>25</sup> and the burgeoning markets for authentic cultural tourism and ethnic arts have helped institutionalize stereotypes of "traditional" art, performance, and behavior in many places.<sup>26</sup>

What is especially troubling about this approach to preservation is that an outsider mistakenly can extend a concept of a culture's authentic objects to defining a supposedly authentic way of life. If authentic objects are only those produced in contexts that somehow are connected to a "traditional" time, the contexts in which people live today are

23. See Kristen Hastrup, *The Ethnographic Present: A Reinvention*, 5 *CULTURAL ANTHROPOLOGY* 45, 50-51 (1990); Roger Sanjek, *The Ethnographic Present*, 26 *MAN* 609, 612-17 (1991).

24. TRINH T. MIN-HA, *WOMAN, NATIVE, OTHER: WRITING, POSTCOLONIALITY AND FEMINISM* 106 (1989).

25. See generally Bruce Baugh, *Authenticity Revisited*, 46 *J. AESTHETICS & ART CRITICISM* 477 (1988) ("[I]t is aesthetically better for works of art to be authentic than inauthentic."); Denis Dutton, *Artistic Crimes*, in *THE FORGER'S ART* 172, 173 (Denis Dutton ed., 1983) (noting that when an admired aesthetic object is revealed as a forgery, it immediately is removed from view in a museum); Sidney L. Kasfir, *African Art and Authenticity: A Text with a Shadow*, 25 *AFR. ARTS* 41, 41 (1992) (noting that the widely held value for authentic African art has been questioned by modern critics and scholars); Jocelyn Linnekin, *Cultural Invention and the Dilemma of Authenticity*, 93 *AM. ANTHROPOLOGIST* 446, 446 (1991) (noting that the concept of authenticity remains entrenched in popular thought).

26. See Barbara A. Babcock, 'A New Mexican Rebecca': *Imaging Pueblo Women*, 32 *J. SW.* 400 (1990). See generally Kenneth Dauber, *Pueblo Pottery and the Politics of Regional Identity*, 32 *J. SW.* 576, 580 (1990) (explaining how the Indian Arts Fund was established to sponsor Pueblo pottery and consequently contributed to the Pueblo regional identity).



seen as inauthentic. Frequently, museum visitors or collectors will try to get me to confirm their belief that “there are no more ‘real’ Indians any more, are there?” The valuing and romanticizing of a past way of life over that of the present distorts the reality of cultural change and ignores or negates the value and respectability of the present. It can turn the “traditional” culture into a commodity, with a wide range of economic and political repercussions.<sup>27</sup> Furthermore, binding minority cultures to past traditions makes it extremely difficult for them to exercise self-determination. Recent repatriation discussions have challenged the authenticity of contemporary cultures.<sup>28</sup> Those resisting repatriation have argued that the people making repatriation claims lack the standing to make such a claim.<sup>29</sup>

Today, the reasons for collecting and preserving objects—the *raison d'être* of museums in many peoples' minds—are not nearly as obvious as they seemed even a decade ago. In museums we often have made the mistake of equating the preservation of objects with the preservation of the ways of life of those who made the objects. The relationships between the objects and the lives of people in the cultures in which the objects were made or used are extremely complex.<sup>30</sup> Simple

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27. For instance, in 1990 Congress enacted the Indian Arts and Crafts Act to regulate Indian-produced goods and to protect Indian artists against misrepresentation of Indian-produced goods and products. Pub. L. No. 101-644, 104 Stat. 4662 (1990); see also James Clifford, *The Others: Beyond the 'Salvage' Paradigm*, 6 THIRD TEXT 73, *passim* (1989) (discussing the ramification of the desire to rescue something “authentic” from the destructive historical changes).

28. William N. Fenton, *The New York State Wampum Collection: The Case for the Integrity of Cultural Treasures*, 115 PROC. AM. PHIL. SOC'Y 437, 458 (1971) (requiring that the modern Onandaga Indian chiefs who were calling for repatriation of the New York Wampum Collection be legitimate heirs of those Indians who produced the wampum belts and show a need for the wampum belts for religious purposes before the belts may be repatriated to the Indian leaders).

29. *Id.* at 457-59.

30. The complexity of this relationship is attracting increasing attention from anthropologists. The following citations give only an indication of the range of work presently being done in this area. See, e.g., GRANT MCCrackEN, CULTURE AND CONSUMPTION 118-29 (1988) (discussing the relationship between the consumer and the objects a consumer purchases); NICHOLAS THOMAS, ENTANGLED OBJECTS *passim* (1991) (discussing the dynamic relationship between cultures and objects); Susan M. Pearce, *Objects as Meaning; or Narrating the Past*, in OBJECTS OF KNOWLEDGE, *supra* note 18, at 125, 125-40 (considering the complex meanings attached to an object with significant historical value); Brian Spooner, *Weavers and Dealers: The Authenticity of the Oriental Carpet*, in THE SOCIAL LIFE OF THINGS 195-235 (Arjun Appadurai ed., 1986) (considering the value placed on “authentic” oriental carpets in the Western World).

preservation of the material elements and technologies of a past way of life is insufficient to preserve or to sustain a culture.

Objectives for collecting and preserving objects in museums also are being redefined with new recognition of the political implications of collecting. Museums are seeking ways to respond to the growing awareness that collecting and preserving objects reflect the collector's cultural predispositions and personal desires, without necessarily serving the needs or objectives of the people from whom the materials originated.<sup>31</sup> Some of this reconsideration makes it obvious now that some kinds of objects should never have been collected by museums in the first place.

In addition to collecting, museums also have developed educational programs—chiefly, exhibits—designed to support the overall mission of cultural preservation. The manner in which museums have represented cultures has come under an extensive critical review in recent years, from both inside and outside the museum profession.<sup>32</sup> For instance, Deborah Doxtator, who played a key role in developing the exhibit *Fluffs and Feathers: An Exhibit on the Symbols of Indianness*, describes the process of appropriation and recontextualization of objects and cultures in museum settings: “it determined how and what objects from Indian cultures were collected; it influenced the way in which Indian cultures were presented; and most importantly, it placed the museum in the role of guardian of authentic symbols of ‘Indianness.’”<sup>33</sup> One of the most obvious forms of the appropriation of objects is their use for purposes other than that for which they were originally intended. In some cases, sacred objects have come to be designated “art,”<sup>34</sup> and tools may be seen arranged in categories that support scientific classifications. Until recently, museums have been comfortably aligned with the set of beliefs that justified colonial expansion and domination and have shown less concern for

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31. For a particularly thorough and provocative consideration of this topic, see CLIFFORD, *supra* note 5, at 187–252.

32. See, e.g., EXHIBITING CULTURES: THE POETICS AND POLITICS OF MUSEUM DISPLAY (Ivan Karp & Steven D. Levine eds., 1991); STEPHEN E. WEIL, RETHINKING THE MUSEUM AND OTHER MEDITATIONS (1990).

33. Deborah Doxtator, *The Home of Indian Culture and Other Stories in the Museum: Erasing the Stereotypes*, 6 MUSE 26, 26 (1988).

34. Fred Myers summarized some of the implications of this shift in categories. See Fred Myers, *Representing Culture: The Production of Discourse(s) for Aboriginal Acrylic Paintings*, 6 CULTURAL ANTHROPOLOGY 26, 48 (1991).

the rights or expressed interests of those who have produced the objects in their collections than they have with assembling and caring for objects.<sup>35</sup> As museums have recognized a need to be more sensitive to peoples of other backgrounds, they have come to face an ethical dilemma: whom do museums represent?

Today, even the most basic museum classifications used to divide collections—fine arts, archaeological, ethnographic, or historical—have become problematic. Into which class would we place needlework made by contemporary Americans of Hmong descent? Or abstract oil paintings by Native American artists?<sup>36</sup> Objects no longer fit so neatly into the standard categories. In a further shift from an artifact orientation, museums, as well as other similar institutions such as cultural centers, have been making efforts to focus on communities rather than objects to highlight cultural diversity and multiculturalism.<sup>37</sup>

Even the notion of museum ownership of objects is being called into question. Museums once claimed, in the interest of science, that cultural objects collected from living and past cultural contexts were properly their possessions as objects of scientific inquiry. Repatriation legislation has forced museums to recognize this as only one point of view and has necessitated new attitudes in museums about their stewardship of the collections in their care.

### III. REPATRIATION

Throughout this Article, I use the term “repatriation” to label a variety of actions to return museum collections to cultures of origin. In general, the collections subject to repatriation requests are called “sensitive.” These collections include human remains, objects associated with funerary observances, objects necessary for the continuation of religious practices, and objects of cultural patrimony.

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35. See generally STEPHEN E. WEIL, *The Proper Business of the Museum: Ideas or Things?*, in *RETHINKING THE MUSEUM AND OTHER MEDITATIONS*, *supra* note 32, at 43–57; Elizabeth C. Welsh et al., *Multicultural Participation in Conservation Decision-Making*, *WAAC NEWSLETTER* (W. Assoc. for Art Conservation), Jan. 1992, at 13.

36. See generally Myers, *supra* note 34, at 48.

37. See Barbara Kirshenblatt-Gimblet, *Objects of Ethnography*, in *EXHIBITING CULTURES: THE POETICS AND POLITICS OF MUSEUM DISPLAY*, *supra* note 32, at 386.

Sensitive collections may be ancient or recent. Objects and remains may be repatriated to those who demonstrate affiliation through kinship or cultural links. Repatriation transfers of these collections from museums to Native American, Native Alaskan, and Native Hawaiian peoples serve a variety of purposes, including reburial, use in religious ceremonies, or other kinds of perpetual custody.

Repatriation has far-reaching implications for all kinds of museums. Beyond day-to-day operations, it goes to the very roots of what we have come to believe that museums and anthropology can or should be. Calls for repatriation have raised many questions about the appropriate care and ultimate disposition of *all* kinds of objects created by people from other places and times, not just those in the sensitive collections. No other issue in recent years has had such an impact on the way that museums see themselves and their purposes. For some, it has created unease, confusion, and resentment, while for others it has revealed new opportunities for understanding the connections between people and things and for reformulating many museums' missions.

The repatriation issue has caused us to recognize some fundamental contradictions in the ethical and philosophical principles that have guided museums. Museums have several objectives. First, they attempt to preserve collections in perpetuity and yet desire to make them accessible to everyone. Second, they strive for new understanding, yet speak in the simplest terms to their audiences. Third, they encourage scientific inquiry, but rarely do it. Fourth, they attempt to foster cross-cultural respect, yet are thrown into turmoil when faced with representatives of another culture calling for the return of an object for use with a religious purpose.

In the repatriation issue there are two clearly stated positions, neither of which museums have felt comfortable embracing. On one hand is the stance that knowledge and the potential for increasing knowledge take precedence over other claims. The respect for knowledge inherent in this position supports the belief that study and curation of human remains is appropriate and respectful.<sup>38</sup> According to this

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38. See Douglas H. Ubelaker & Lauryn Guttenplan Grant, *Human Skeletal Remains: Preservation or Reburial?*, 32 Y.B. PHYSICAL ANTHROPOLOGY 249, 250-55 (1991) (noting that the study of human remains can generate information unavailable from any other source and that some scientists contend that such knowledge benefits all humankind).

view, actions which impede the search for new knowledge by destroying data or access to data lead to ignorance and disrespect for the potential to increase knowledge. The position at the other extreme holds that the continuation of a cultural system, in a manner determined by the people of that culture, supersedes the scientific quest for knowledge.<sup>39</sup>

The attempt to play a mediational role between these two competing positions—making collections available for scientific study while opening their doors to new constituencies—has pulled museums in opposite directions. Many museums no longer wholeheartedly represent the desires of the scientific or academic communities. As they have recognized broader constituencies—constituencies such as Native Americans, who have not been well represented in academia<sup>40</sup>—museums have felt compelled to discover and to serve their needs.

I believe that repatriation offers museums a tremendous opportunity to participate in cultural preservation efforts initiated by native peoples. To take advantage of this opportunity, however, museums must reconcile their long-standing perceptions of cultural preservation with that of native peoples. Lacking such reconciliation, the cultural preservation efforts of all interested groups will be frustrated.

#### IV. REPATRIATION INITIATIVES

##### A. *Legislative Initiatives*

The single most important piece of legislation is the Native American Graves Protection and Repatriation Act (NAGPRA or the Act), which Congress passed in October 1990.<sup>41</sup>

NAGPRA was the result of decades of concern and intermittent action which culminated in an intense period of legislative activity between 1987 and final passage of the bill in 1990.<sup>42</sup> This period of activity began with a bill introduced by Senator

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39. See Walter R. Echo-Hawk, *Museum Rights vs. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources*, 14 N.Y.U. REV. L. & SOC. CHANGE 437, 437-49 (1986).

40. See Verna J. Kirkness & Ray Barnhardt, *First Nations and Higher Education: The Four R's—Respect, Relevance, Reciprocity, Responsibility*, 30 J. AM. INDIAN EDUC. 1, 2-6 (1991).

41. Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990).

42. For an extensive and detailed summary of the events leading up to the eventual passage of NAGPRA, see Trope & Echo-Hawk, *supra* note 3, at 54-58.

John Melcher of Montana.<sup>43</sup> The bill went through several revisions and two titles before the Senate Select Committee on Indian Affairs sent it to the floor as The Native American Museum Claims Commission Act.<sup>44</sup> By the close of the 100th Congress, the bill had not come to a vote, and it died.<sup>45</sup>

In its next session, Congress considered several bills that had direct bearing on the repatriation issue.<sup>46</sup> The desired disposition of the Smithsonian's vast holdings of Native American and Native Hawaiian human remains and other sensitive objects had been the catalyst for much of the federal legislation.<sup>47</sup> The National Museum of the American Indian Act,<sup>48</sup> which established the Smithsonian Institution's newest museum,<sup>49</sup> was the congressional response to the controversy surrounding the Smithsonian's holdings. The new museum incorporated the collections of the former Museum of the American Indian in New York City. A significant component of the Act was its requirement that the Smithsonian Institution inventory its collections of Native American and Native Hawaiian skeletal remains and associated funerary objects and conduct a study on how to best repatriate those materials.<sup>50</sup>

Congressman Morris Udall introduced NAGPRA in the House of Representatives in March 1989,<sup>51</sup> along with a companion Senate bill<sup>52</sup> introduced by Senator John McCain. Extensive negotiation among representatives from museums, the anthropology profession, and Native American groups resulted in the final piece of legislation.<sup>53</sup>

A key element in the negotiation process was the Panel for a National Dialogue on Museum/Native American Relations. The Panel's formation was an outcome of the Senate Select Committee on Indian Affairs' hearings in 1988.<sup>54</sup> The Panel convened

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43. S. 187, 100th Cong., 1st Sess. (1987).

44. S. REP. NO. 601, 100th Cong., 2d Sess. 8 (1988).

45. See Trope & Echo-Hawk, *supra* note 3, at 56.

46. *Id.* at 55.

47. See *id.* at 56-57; Douglas J. Preston, *Skeletons in Our Museums' Closets*, HARPER'S MAG., Feb. 1989, at 66.

48. 20 U.S.C. §§ 80q to 80q-15 (Supp. I 1989).

49. *Id.* § 80q-1(a).

50. *Id.* § 80q-9 to -11.

51. H.R. 1646, 101st Cong., 1st Sess. (1989).

52. S. 1021, 101st Cong., 1st Sess. (1989).

53. For a more complete discussion of this aspect of the legislative history, see Trope & Echo-Hawk, *supra* note 3, at 54-56.

54. PANEL FOR A NAT'L DIALOGUE ON MUSEUM/NATIVE AM. RELATIONS, REPORT OF THE PANEL FOR A NATIONAL DIALOGUE ON MUSEUM/NATIVE AMERICAN RELATIONS (1990) [hereinafter PANEL REPORT], reprinted in 14 MUSEUM ANTHROPOLOGY 6 (1990).

several times in 1989 and 1990 and issued a final report of the results of the meetings.<sup>55</sup> The draft of the bill which eventually passed incorporated and issued a number of the Panel's recommendations.<sup>56</sup> In particular, the Panel stressed that all resolutions be governed by respect for human rights of Native Americans and the value of scientific study and education.<sup>57</sup> The majority of the Panel believed that respect for Native "human rights should be the paramount principle where claims are made by Native American groups that have a cultural affiliation with remains and other materials."<sup>58</sup>

The final stages of negotiation required representatives of museums and Native American groups to agree on key points.<sup>59</sup> After all negotiations had been completed, NAGPRA was eventually enacted.

NAGPRA<sup>60</sup> is certainly the most far-reaching piece of legislation guiding repatriation. The Act defines significant terms such as "cultural affiliation,"<sup>61</sup> "cultural items"<sup>62</sup>—covering human remains, "funerary objects," "sacred objects," and "cultural patrimony"—and "right of possession."<sup>63</sup> It requires museums and federal agencies to complete an inventory of human remains and associated funerary objects in consultation with tribal governments and traditional religious leaders by November 16, 1995.<sup>64</sup> By November 16, 1993, museums must develop written summaries of sacred objects, cultural patrimony, and funerary objects that have been disassociated from human remains.<sup>65</sup> The law specifies that human remains and objects meeting the definitions of cultural items are to be returned expeditiously upon request by culturally affiliated groups, unless it can be shown that they are indispensable for the completion of a specific scientific study.<sup>66</sup> If the museum claims right of

55. *Id.*

56. Trope & Echo-Hawk give a thorough accounting of the Panel Report's influence on the legislative process. They cite, for instance, 136 CONG. REC. H10989 (daily ed. Oct. 22, 1990) (Statement of Rep. Rhodes) ("The report . . . helped immensely to shape the policies contained in the bill."); and S. 473, 101st Cong., 2d Sess. 6 ("The Committee agrees with the findings and recommendations of the Panel for a National Dialogue on Museum/Native American Relations."). Trope & Echo-Hawk, *supra* note 3, at 58 & n.124.

57. PANEL REPORT, *supra* note 54.

58. *Id.*

59. Dan L. Monroe & Walter Echo-Hawk, *Deft Deliberations*, MUSEUM NEWS, July-Aug. 1991, at 55, 56.

60. 25 U.S.C. §§ 3001-3013 (Supp. II 1990).

61. *Id.* § 3001(2).

62. *Id.* § 3001(3).

63. *Id.* § 3001(13).

64. *Id.* §§ 3003(b)(1)(A)-(B).

65. *Id.* § 3004(b)(1)(C).

66. *Id.* §§ 3005(a), (b).

possession, requesting parties must present evidence disputing the museum's right of possession.<sup>67</sup> The bill calls for evidence from the requesting party "which, if standing alone, . . . would support a finding that the . . . museum did not have the right of possession."<sup>68</sup> The museum has the opportunity to present evidence that would overcome the evidence presented by the requesting party.<sup>69</sup> Disputes can be taken before a seven-member commission for resolution.<sup>70</sup> The Secretary of the Interior has authority to assess civil penalties for museums that fail to comply with the requirements of the Act.<sup>71</sup>

NAGPRA's definitions, standards, and requirements continue to be discussed, and procedures for implementation are being worked out across the country. It is the primary piece of legislation that all museums now must consider.<sup>72</sup> Unfortunately, implementation for many other institutions has been stalled because of the Department of the Interior's delay in issuing regulations.<sup>73</sup>

While NAGPRA received a great deal of attention, there also has been a tremendous amount of activity at the state level. A 1989 survey found that twenty-seven states had laws specifically designed to protect Native American remains and that in every state there were laws providing protection under desecration and cemetery statutes.<sup>74</sup> The majority of state laws focus on human remains discovered in the field, rather than in museum collections.<sup>75</sup> The states in which there is the least contention over repatriation are those where the various parties "have established cooperative and enlightened relationships regarding these issues, with or without benefit of statutory mandate."<sup>76</sup>

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67. *Id.* § 3005(c).

68. *Id.*

69. *Id.*

70. *Id.* § 3006(c)(4).

71. *Id.* § 3007(a).

72. The preexisting, but less encompassing, National Museum of the American Indian Act, 20 U.S.C. §§ 80q to 80q-15, deals only with cultural items held by the Smithsonian Institution. Although NAGPRA specifically excludes the Smithsonian Institution from its requirements, 25 U.S.C. § 3001(4), the National Museum of the American Indian Act, which established the Smithsonian Institution's newest museum, has adopted a policy which goes beyond NAGPRA's requirements. See THE NATIONAL MUSEUM OF THE AMERICAN INDIAN, NATIONAL MUSEUM OF THE AMERICAN INDIAN POLICY STATEMENT ON NATIVE AMERICAN HUMAN REMAINS AND CULTURAL MATERIALS (1991), reprinted in 15 MUSEUM ANTHROPOLOGY 25 (1991).

73. As of this writing (late 1992), the Department of the Interior had yet to issue regulations.

74. PRICE, *supra* note 3, at 43, 118.

75. See *id.* at 118-19.

76. *Id.* at 118.



In addition, numerous tribal governments have established policies concerning the treatment of archaeologically recovered materials. In the Southwest, many tribes have developed their own policies or have entered into cooperative agreements with neighboring groups. For instance, four tribes in southern Arizona—Ak-Chin, Gila River, Salt River, and Tohono O'odham—have agreed on a policy of mutual cooperation with regard to remains found in the region.<sup>77</sup>

### B. Professional Organization Initiatives

The pressure to make formal responses that the repatriation movement placed on the various affected professions and their representative organizations was an important part of the repatriation discourse.<sup>78</sup>

Among the recent repatriation initiatives, the American Association of Museums adopted its Policy Regarding the Repatriation of Native American Ceremonial Objects and Human Remains<sup>79</sup> in January 1988. The policy states that museums should review repatriation claims in light of both legal *and* ethical considerations, taking into account that applicable ethics may have changed since the original acquisition.<sup>80</sup> In cases where ethics have changed, the policy emphasizes the need to abide by contemporary ethics.<sup>81</sup>

Other groups have longer-standing policies, including the Society for American Archaeology,<sup>82</sup> the American Association of Physical Anthropologists,<sup>83</sup> and the Paleopathology

77. Ak-Chin Indian Community Council Res. A-26-90 (1990); Gila River Indian Community Res. GR-15-89 (1989); Salt River Pima-Maricopa Indian Community Council Policy Statement (Jan. 11, 1989); Tohono O'odham Legislative Council Res. 277-89 (1989).

78. I want to preface this discussion with the clear recognition that, by concentrating on recent actions, I do not mean to imply that anthropologists and museum workers are just discovering the issue. On the contrary, many of the organizations have had formal policies for nearly a decade, and informal discussion has been going on for much longer. In response to the challenge of action in the legislative arena, however, many groups have revisited the issue.

79. AMERICAN ASS'N MUSEUMS, POLICY REGARDING THE REPATRIATION OF NATIVE AMERICAN CEREMONIAL OBJECTS AND HUMAN REMAINS (1988).

80. *Id.*

81. *Id.*

82. See Lynne Goldstein & Keith Kintigh, *Ethics and the Reburial Controversy*, 55 AM. ANTIQUITY 585, 588 (1990) (concurring with the Society for American Archaeology's policy position).

83. See AMERICAN ASS'N PHYSICAL ANTHROPOLOGISTS, ON THE REBURIAL OF HUMAN SKELETAL REMAINS (1982), reprinted in *Proceedings of the Fifty-First Meeting of the American Association of Physical Anthropologists*, 59 AM. J. PHYSICAL ANTHROPOLOGY 225,

Association.<sup>84</sup> The American Anthropological Association, which previously had no specific policy in this area, formed a special Commission on Native American Reburial in 1989.<sup>85</sup> The report of the Commission, issued in 1991, stressed the complexity of the issue and the diversity of opinions among all groups.<sup>86</sup> The report noted that “[a]nthropologists are no more all of one mind in resisting the return of any remains and grave goods than Indian people are all of one mind as to the return and reburial of all remains and grave goods.”<sup>87</sup>

The work of the Canadian Museums Association is also important. In 1988, the Canadian Museums Association Ad Hoc Committee on Museum and Native Collections published its *Proposed Museum Policies for Ethnological Collections and the Peoples They Represent*.<sup>88</sup> It is a particularly thoughtful and detailed presentation of efforts to explore opportunities for partnerships between museums and native peoples. The proposed policies emphasize the “extra-legal” nature of relationships and, in so doing, shift attention from the adversarial legal environment to a more appropriate one of cross-cultural communication.<sup>89</sup>

Finally, the activity of the United Nations Working Group on Indigenous Populations and its Draft Universal Declaration on Indigenous Rights, although having only indirect application to museums, indicate the broad concern about this issue.<sup>90</sup> The Declaration asserts that native peoples have “[t]he rights to the manifestations of their cultures, including archaeological sites, artifacts, designs, technology, and works of art,” and “[t]he right to manifest, teach, practise, and observe their own religious

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230–31 (1982); see also Ubelaker & Grant, *supra* note 38, at 252 (discussing the American Association of Physical Anthropologists’ concern for the proper handling of human skeletal remains).

84. PALEOPATHOLOGY ASS’N, POLICY ON THE PRESERVATION OF HUMAN REMAINS (1982).

85. See Nancy Oestreich Lurie, *Interim Report, AAA Commission on Native American Remains*, ANTHROPOLOGY NEWSLETTER, Apr. 1990, at 1, 16–18.

86. *Reburial Commission Report*, ANTHROPOLOGY NEWSLETTER (Am. Anthropological Ass’n), Mar. 1991, at 1, 26–28.

87. *Id.* at 1.

88. Michael M. Ames et al., *Proposed Museum Policies for Ethnological Collections and the Peoples They Represent*, 6 MUSE 47 (1988).

89. *Id.* at 47.

90. UNITED NATIONS, WORKING GROUP ON INDIGENOUS RIGHTS, DRAFT UNIVERSAL DECLARATION ON INDIGENOUS RIGHTS (1988), reprinted in Gudmundur Alfredsson, *The United Nations and the Rights of Indigenous Peoples*, 30 CURRENT ANTHROPOLOGY 255, app. at 257–59 (1989).

traditions and ceremonies and to maintain, protect, and have access to sacred sites and burial grounds for these purposes."<sup>91</sup>

### C. *Institutional Initiatives*

While broad legislative, regulatory, and organizational guidelines are being developed, museums and other collecting institutions are addressing this issue almost daily. I mention only a few examples here and restrict my comments to ethnographic collections, rather than to human remains and funerary objects.

Two prominent cases concern the return of wampum belts to representatives of Iroquois groups in the United States and Canada.<sup>92</sup> Wampum belts commemorate important events in Iroquois history.<sup>93</sup> The patterns of purple and white clamshell beads stand as archival records for such events as the founding of the Iroquois confederacy and treaties with other tribes and governments. Each belt is unique and is the property of the entire Iroquois nation, much like, in an often-cited analogy, the Bill of Rights. The Museum of the American Indian in New York City returned eleven wampum belts to the Six Nations Iroquois Confederacy of Canada in May 1988, and in August 1989, the New York State Board of Regents agreed to return twelve wampum belts that had been in the New York State Museum to the Onondaga Nation.<sup>94</sup> The Onondagas are one of the six allied tribes that comprised the League of the Iroquois.

The New York State Museum case is of particular interest because in 1898 the Onondaga chiefs had been persuaded to name the Board of Regents as their official wampum-keeper "forever."<sup>95</sup> Transfer of custody back to the Onondagas was based on a four-point agreement:

1. The belts should continue to be preserved for posterity, using appropriate storage and conservation techniques;

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91. *Id.* at 258.

92. See Fenton, *supra* note 28, *passim*; William N. Fenton, *Keeping the Promise: Return of the Wampums to the Six Nations Iroquois Confederacy, Grand River*, ANTHROPOLOGY NEWSLETTER (Am. Anthropological Ass'n), Oct. 1988, at 3, 25.

93. For a detailed description of wampum and wampum belts, see Fenton, *supra* note 28, 440-46.

94. Martin Sullivan, *A Museum Perspective on Repatriation: Issues and Opportunities*, 24 ARIZ. ST. L.J. 283, 288 (1992).

95. *Id.* at 287 n.14.

2. The belts should not be destroyed, dismantled, or restrung in a way that would change their meaning;
3. Neither party ever should consent to sell the belts. If returned to Onandaga custody, the belts would remain there forever; and
4. The Regents and the Onandaga chiefs have a mutual interest in promoting appreciation and understanding of Native American culture by the general public. The wampum belts are important evidence of Native American culture that should continue to be available for research by qualified scholars.<sup>96</sup>

The ultimate resolution was the result of several years of negotiation between the museum and the Onondaga leaders. The agreement was completed shortly before the passage of NAGPRA.<sup>97</sup>

Another transfer took place before the passage of NAGPRA as a result of often difficult discussions between the Omaha Tribe of Nebraska and the Peabody Museum at Harvard.<sup>98</sup> In 1988, Omaha leaders requested the return of the Sacred Pole of the Omahas.<sup>99</sup> The keeper of the pole, a man named Yellow Smoke, entrusted it along with a number of other religious objects to the museum. Yellow Smoke apparently was concerned that the younger generation would not care for it properly and two anthropologists convinced him to let it go to the Peabody.<sup>100</sup> Review of the museum's records indicated that the objects had been loaned to the museum, rather than given or sold.<sup>101</sup> The Peabody Museum eventually agreed to return the entire Omaha collection to the tribe for them to incorporate into their own museum.<sup>102</sup>

## V. REPATRIATION ISSUES

Repatriation is a complex issue because it involves fundamental principles that are self-evident in isolation, but often seem incompatible when taken together. Yet only by recognizing and describing the ways that these principles are interwoven can we

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96. *Id.* at 288.

97. *See id.* at 285, 289.

98. RETURN OF THE SACRED POLE (Native American Public Broadcasting Consortium 1990).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

find satisfying and lasting resolutions. The following list of principles involved in repatriation discussions—while probably not complete—highlights the multifaceted nature of the issue. These basic principles include:

1. The free exercise of religious expression should not be impeded by the inability to use or possess objects essential for the continuing observance of that religion;
2. Human remains should, at all times, be treated with dignity and respect and in a manner consistent with the wishes of the next of kin;
3. Knowledge of the past, acquired through traditional and scientific means, is fundamental for guiding society's path to the future;
4. Educating the public about the unique and distinctive qualities of the many communities that constitute our society is inherently worthwhile;
5. Communities have a right to participate in the representation and interpretation of their history and way of life to the public;
6. Scholarly inquiry and academic freedom are grounded in the belief that unhindered investigation and expression are necessary to give rise to new understandings.<sup>103</sup>

Repatriation requires application of these principles in combination. The apparent incompatibility of these principles within the context of repatriation has generated a great deal of conflict. In order to highlight and to discuss some of the complexity created by the application of the principles, I reformulate them in a way that seems less self-evident. This second list of statements requires further explication. After listing them I elaborate on each in turn.

1. Humans saturate tangible objects—whether sacred or not—with a quality we can call “potency”: that is, an individual object has the potential to embody and project simultaneously a multitude of meanings and interpretations;
2. Education is an interpretive process, and interpretation is shaped by the culture and understandings

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103. Although some may disagree, I assume in this Article that each of these principles is such a truism that any elaboration here seems unnecessary.

- of the interpreter: that is, interpretation is inherently selective and discriminating, though not necessarily discriminatory;
3. Knowledge is a responsibility as well as a resource: that is, there are things which can be known which should not be shared;
  4. Native people in this country and elsewhere have been “without the power to direct the course of their collective lives”<sup>104</sup> for much of their history of contact with colonizing European nations;
  5. Identifying someone’s motives as “political” rather than “religious” does not make them any less real or significant—it simply shifts the nature of the argument.

#### *A. Objects Are Potent*

As a museum curator and someone who has concentrated on the domain of knowledge anthropologists have called “material culture,” I focus on the objects in attempting to come to grips with repatriation and reburial. As I have listened to native peoples in discussions about repatriation, a recurring issue concerns controlling—and in many cases, changing—the way that objects are understood. Objects that museums once defined and treated as scientific evidence or aesthetic achievements now are recognized as religious objects with spiritual vitality. In this sense, objects are different from words. Objects are multidimensional where text is linear, objects blend functional and conceptual qualities where text is essentially conceptual, and knowledge about objects is fundamentally implicit where text can be understood in terms of explicit definitions.<sup>105</sup>

In discussions about objects, particularly the kinds of objects that might be considered for repatriation, I advocate thinking in terms of the object’s “potency”<sup>106</sup> in preference to words such

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104. Nelson H.H. Graburn, *Introduction* to *ETHNIC AND TOURIST ARTS: CULTURAL EXPRESSIONS FROM THE FOURTH WORLD* 1, 7 (Nelson H.H. Graburn ed., 1976).

105. See MCCRACKEN, *supra* note 30, at 67–70 (discussing the expressive properties of material culture).

106. See Michael M. Ames, *Cultural Empowerment and Museums: Opening Up Anthropology Through Collaboration*, in *OBJECTS OF KNOWLEDGE*, *supra* note 18, at 158, 159 (noting that “objects may be seen as beautiful, practical and spiritual all at the same time”).

as sacred or religious. Calling something potent does not rule out its capacity for sacredness—used in a strictly religious sense—but it does permit dialogue in areas that might otherwise be off-limits. For example, we can agree that objects such as human remains can be extremely potent in the present without demanding the continuity of religious belief that sacredness would imply. We also can discuss how these same objects have potency in other realms—such as being powerful political symbols of one culture’s domination of another.

The notion of “sacred” lies predominantly within the religious domain. Yet the term has many meanings which enable the speaker to communicate simultaneously in several domains—religious, political, emotional, moral, and economic. If we take “sacred” at its face value and argue about the “sacredness” of objects in a particular context, we effectively end the dialogue, and we will have achieved little or nothing, because none of the domains which simultaneously are being invoked can be addressed. In this context, “sacredness” can be a powerful political tool, especially when it reinforces mainstream society’s stereotypes of Native Americans as mystical and spiritual. Successfully invoking “sacredness” effectively establishes the moral and philosophical “high ground.”

Calling something “potent” is a more neutral stance. In the course of their existence, objects can take on, lose, or change potency in different places and in different times. The same objects at the same time can be potent in different ways for people from different backgrounds. Calling something scientifically significant is calling it potent. A similar kind of shift in potency occurs in the appreciation—some say appropriation—of “primitive art.” African masks and Mimbres bowls have a very different kind of potency in a museum gallery than they did in their original setting.<sup>107</sup>

Of course, the potent quality of objects makes museums particularly prominent for drawing the attention of groups wishing to assert political ends. Although museum people sometimes wonder why museums have been singled out when so many institutions are wreaking such damage on native societies, the answer is obvious: we control potent things.

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107. See PRICE, *supra* note 5, at 85–88 (discussing the change in value of “Primitive Art” when it is decontextualized).

### B. Interpretation Is Discriminating

To say that education is an interpretive act addresses many of the issues that already have been raised in earlier discussions of cultural preservation. The position that places a value on education and on increasing knowledge of the past can come into direct conflict with principles that proclaim the right of communities to assert their religious freedom or to control the manner in which their lives are interpreted. Repatriation is certainly not the only arena in which interpretive frameworks are being contested. Awareness of the factors of discrimination that guide the interpretive process has become a fundamental concern of all social and historical analysis.<sup>108</sup> Unquestionably, biases often find their way into interpretation. Much of the so-called "post-modern" revisionism (called "post-processual" by some archaeologists)<sup>109</sup> in the social sciences is a reflection of this platitude.<sup>110</sup>

### C. Knowledge Is a Responsibility

Some critics have said that museums should repatriate certain objects because the museum lacks the knowledge to use, care for, or handle them. What is said less often is that not only does the museum not have the knowledge, but there is no telling what the museum would do with the knowledge if it did have it.

Knowledge about Hopi kachinas is an example that I have used previously,<sup>111</sup> but I am going to repeat it here because of what

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108. Although the literature in this area is large and growing, some of the more influential works include JOHANNES FABIAN, *TIME AND THE OTHER* (1983); DAVID LOWENTHAL, *THE PAST IS A FOREIGN COUNTRY* (1985); EDWARD W. SAID, *ORIENTALISM* (1979).

109. See Ian Hodder, *Post-Modernism, Post-Structuralism and Post-Processual Archaeology*, in *THE MEANING OF THINGS: MATERIAL CULTURE AND SYMBOLIC EXPRESSION* 64 (Ian Hodder ed., 1989).

110. See generally GEORGE E. MARCUS & MICHAEL M.J. FISCHER, *ANTHROPOLOGY AS CULTURAL CRITIQUE* (1986); P. Steven Sangren, *Rhetoric and the Authority of Ethnography: "Post Modernism" and the Social Reproduction of Texts*, 33 *CURRENT ANTHROPOLOGY* 277 (Supp. 1992); Patty Jo Watson & Michael Fotiadis, *The Razor's Edge: Symbolic-Structuralist Archeology and the Expansion of Archeological Inference*, 92 *AM. ANTHROPOLOGIST* 613 (1990); *WRITING CULTURE*, *supra* note 2.

111. Peter H. Welsh, *Exotic Illusions: Museum Exhibits and Cultural Interpretation*, in *PERSPECTIVES ON ANTHROPOLOGICAL COLLECTIONS FROM THE AMERICAN SOUTHWEST* 149, 151-52 (Ann Lane Hedlund ed., 1989).



happened when I used the example in a paper presented at the 1988 American Anthropological Association annual meeting.

The Hopi people live in north central Arizona and practice a religion that includes a large group of beings known as *kachinas*.<sup>112</sup> In Hopi religion, *kachinas* are many things:

*Kachinas* are messengers, carrying the prayers of humans to the spiritual forces that control such phenomena as rainfall. *Kachinas* are spiritual beings that personify all aspects of the Hopi universe—from corn to deer to fertility. *Kachinas* are ancestors who have passed on and who return in the clouds with blessings to ensure the continuity of the living Hopi. *Kachinas* are clouds whose flowing hair touches the earth as falling rain. *Kachinas* are friends who come and reside in the Hopi villages during the winter and the spring and to conduct prayers of dance in the ceremonial rooms called *kivas* and in the outdoor plazas. *Kachinas* are depicted in carvings made as gifts to Hopi babies and girls and now for sale to outsiders.

It is in these last two forms—the *kachinas* dancing in the plazas and especially the *kachina* dolls—that *kachinas* are experienced by outsiders.<sup>113</sup>

Because of the many carved *kachina* figures for sale and because outsiders may attend many of the ceremonial dances in which *kachinas* appear, *kachinas* are probably the element of Hopi religion best known to outsiders.<sup>114</sup>

Although we display and use *kachina* dolls at The Heard Museum to present elements of Hopi religion, there are some things that we do not say or do. We do not say that the dancing *kachinas* are masked dancers. We do not put any disembodied parts of *kachinas*—such as masks—on exhibit. In my original presentation, I went on at some length to give the background of this decision, emphasizing that The Heard Museum should not become an agent of premature initiation for any of the numerous Hopi children who visit the museum.

112. See Robert Breunig & Michael Lomatuway'ma, *Kachina Dolls*, 54 *PLATEAU* 3, 3–4 (1983).

113. Welsh, *supra* note 111, at 151. I am grateful for the assistance of Ramson Lomatewama and Gloria Lomahaftewa in formulating this statement.

114. Within Hopi society, many details and complexities concerning *kachinas* are revealed to boys and girls only at the time of their formal initiation around the age of ten. In particular, the role of initiated Hopis during the public appearance of *kachinas* is made known.

I concluded the example by pointing out that our decision to not disclose certain information forced us to look closely at our educational role. I argued that our role in public exhibits is not necessarily to teach facts about kachinas or other kinds of cultural expression. Our purpose should be to make visitors aware that information is not only power, but also a responsibility and is deserving of respect. Such a shift in the educational missions of museums is a move away from seeing the object as primary and all possible knowledge that cascades from it as necessary.

My example motivated a curator of a major museum to rise from the audience and take the podium to describe a very different attitude toward knowledge about kachinas at his museum. He described a situation in which their museum accepted a traveling exhibit about kachinas, only to discover that this exhibit avoided the topic of "masked dancers." In order to "correct" this oversight, his museum developed an ancillary portion of the exhibit which told the whole story. In describing these events, this curator made a statement that I will carry with me for a long time. He said, "If the Indians do not want things to be known, they shouldn't tell us."

I have some confidence that this does not represent the attitude of all anthropologists. Nonetheless, it is sufficiently representative of a scientific point of view to make Native American people appropriately leery of permitting scientific institutions to become repositories for delicate information.

#### *D. Native Peoples Lack Power*

A statement like the heading of this section is trite enough to be disregarded until we recognize that it rests at the heart of our discussions. Repatriation discussions often have considered the need for "a level playing field" and "equal treatment." More specifically, there is frustration that museums, as outposts of the dominant society, "make the rules." Of course, these are statements about power. We might use terms that seem more neutral, like "equality," but what is equality without the power to ensure that equality is enforced?

How do we construct a truly level playing field? Many museums are concerned that use of the courts and legislatures to achieve leveling is resulting in a tilting in the other direction, away from museums. The perception—real or imagined—by

native groups that direct contact with museums would not lead to satisfactory results led those groups to seek relief on other playing fields—legal and political—where they believed they had a better chance of changing the rules. These were not unfamiliar fields for tribes or for the organizations that represent the tribes. We should not be surprised that they would look for the “home-field advantage.” The unfortunate consequence is that the legal and political arenas are adversarial and therefore geared toward winning and losing. All will lose in the long run if relations between museums and native groups become polarized. But if relations are going to change, museums must change—that much is clear.

Many museums today are attempting to be something different: more involved with native communities and more aware of their institutional responsibilities. In fact, museums have become unique centers for education and communication in our society. They reach a broad spectrum of the public with the authority of an educational institution while simultaneously giving people the freedom to select among varied offerings. It makes a great deal of sense for anthropology museums and native peoples to work to join forces rather than to become adversaries. Museums would benefit from the ability to better meet their missions of appropriately presenting the cultures of the people who made the objects that museums collect. Native peoples could benefit by having authoritative roles in permanent institutions of mainstream society.

Fundamental to such a change is that museums must make serious efforts to incorporate the views of constituent groups in the development of policy and practice in their individual institutions. The form these efforts take—whether as formally organized advisory groups or through informal networks of resource people—is less of an issue than the attitude with which they are implemented. If the attitude is one of genuine interest in reaching mutually acceptable goals (combined with the realization that when these goals cannot be met to everyone’s satisfaction, the factors involved need to be made clear), then we must address productively the conflicts to achieve satisfactory results.

### *E. Politics Is as Real as Religion*

Requests for repatriation often have been dismissed as “only” political. Yet both politics and religion give order to the

relationships in the world around us. As noted previously, while politics is inherently adversarial, its benefit is that in our society we can argue more freely about politics when religion is off-limits.<sup>115</sup> One problem in developing the repatriation issue is that the parties have talked past each other as they based their arguments on completely different premises. Some scientists resisted "politicizing" material that they had understood as neutral data in order to resist giving greater credibility to alternative, religiously based interpretations of the data, such as creation science.<sup>116</sup>

Granted, the political process addresses immediate needs, and the results all too frequently reflect the special interests of small, but politically effective groups. Yet a jaundiced view that focuses on potentially petty motives fails to recognize the opportunity that the political arena offers. It also fails to recognize that outspoken groups asserting themselves in the political arena often represent an extreme view of an issue that is of real concern to a broader segment of the society.

To dismiss an issue like repatriation because it is being championed by people with extreme views ultimately serves the purposes of the extremists. Participation in the political process offers more hope of arriving at a moderate resolution. Thus, there is reason to welcome a shift of this discussion into the realm of politics, for it provides a larger—if not exactly level—playing field.

## CONCLUSION

Throughout this paper, I have tried to show some of the complexities and ambiguities inherent in contemporary programs of cultural preservation. Cultural preservation is not simple. I want to reaffirm my belief, however, that this is a time of enormous opportunity which should not be overshadowed by the inevitable conflicts that are part of the process of cultural preservation. One way we may realize the opportunity is to look beyond immediate issues and develop partnerships in sustaining cultures. I believe that the repatriation issue offers museums just this opportunity.

As I suggested at the beginning of this Article, repatriation brings together some of the most crucial questions that museums

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115. See *supra* notes 105–07 and accompanying text.

116. See COMMITTEE ON SCIENCE AND CREATIONISM, SCIENCE AND CREATIONISM *passim* (1984).

will face for a long time. The ways that we address the issue now will stay with us for years to come. Although repatriation itself is a crucial question which demands honest and forthright resolution, it symbolizes a more fundamental shift in the way that museums function in our society. Institutions that were once bastions of exclusivity now are learning to work with varied and vocal constituencies. It is clear that concerns about sensitive materials in museum collections are indicative of a more fundamental and far-reaching need to reformulate the relationships between mainstream institutions and native communities. Dealing with sensitive materials as an isolated problem is like cutting off the tip of the iceberg: more ice—more expressions of frustration over inequality—will surely float to the surface. As we search for solutions to pressing controversies, we simultaneously must strive to address the larger, more pervasive issues of which these immediate problems are only a part.

Successful resolution of repatriation requests demands knowledge and sensitivity that grows out of long-term involvement with the particular group making a claim. Such expertise is found both among the native people who have specific responsibility for religious objects and ceremonies, as well as among academic specialists who have devoted themselves to understanding other ways of life. This kind of negotiation, and here I write from my own experience, is intimate and personal and requires the sensitivity to understand that, in these circumstances, many voices must be heard. This does not necessarily mean that, left to our own resources, Native American and museum representatives would always find satisfactory solutions to these problems without recourse to the judicial or political process. Not all anthropologists, museum professionals, or Native Americans possess the knowledge, skills, patience, or sensitivity to resolve these situations successfully. I feel strongly, however, that such direct efforts are most likely to produce mutually satisfactory results.

Some have argued that transferring custodianship of objects and human remains from a museum to a native community diminishes the museum by draining its holdings, diminishes science by thwarting the quest for new knowledge, and diminishes society by depleting the heritage held in public trust. I believe, however, that viewing issues of custodianship from a broader perspective will enable us to enrich our museums, our disciplines, and our society.

Many of us who work in museums do so because we are dedicated to the idea that museums are unique educational settings, through which the history and distinctiveness of the many cultures and

communities of this globe can be presented to society at large. A museum that is committed to lasting partnerships with native communities will benefit in many ways. An institution so engaged will be able to refine its roles with regard to its mission and its interpretation and management of collections in ways that are reflective of the concerns of its many constituencies. Such a commitment does not mean that the museum should become the passive vehicle for groups to voice their own points of view; rather, it means that constituent groups will have equal opportunity to contribute their perspective to the museum's message. This kind of partnership would make the museum the setting for ongoing, open dialogue about a range of issues in an environment of mutual respect and commitment to the museum's mission.

In light of this potential, I feel that it is vital to find ways to control contentiousness as we rearrange relationships. If museums and native communities see each other as adversaries, we will all be diminished.

