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NAGPRA: PROBLEMS AND SOLUTIONS FOR SUCCESSFUL REPATRIATION

By

Megan AH Bateman

B. A. Eastern Washington University, 1996

Presented in partial fulfillment of the requirements

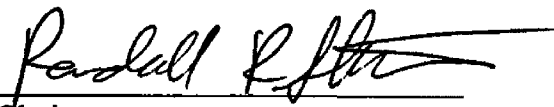
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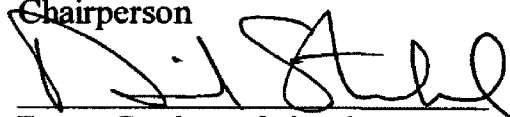
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NAGPRA: Problems and Solutions for Successful Repatriation

Chair: Randall Skelton *RS*

In the past few years it has become abundantly clear that the Native American Graves Protection and Repatriation Act (NAGPRA) has not been successful in its intent to repatriate all Native American human remains, funerary objects and objects of cultural patrimony. Through the use of the results from a survey asking the opinion of anthropologists on subjective statements related to NAGPRA, I will show that it has not been as successful as intended. I believe the failure of the NAGPRA to do as it was intended is due to the fact that it is poorly written and due to a philosophical disagreement between the scientists who work with repatriable items and the Indians who want them back. I will then offer solutions to resolve the conflicts that arise in repatriation cases. *114 p. 2002*

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INTRODUCTION

In February of 1987 new bill was introduced to the Select Committee on Indian Affairs for the US Senate. S. 187 was intended to “ provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American Cultural Museums” (S. Hrg. 100-90). The heart of the bill called for “the deaccession and repatriation” of Native American skeletal specimens and sacred artifacts from museums nation wide (S. Hrg. 100-90), and called for a set of procedures for doing this. Senator John Melcher of Montana explained it best:

“...what the bill will do is set the procedures (for repatriation) and give assurance that (repatriation) is a formal procedure where, when skeletal remains or the religious artifacts can be clearly demonstrated – that is proved – to belong to a band or tribe, that the law will return these items to them.” (Sen. John Melcher, MT S. Hrg. 100-90)

This was the birth of what is now known as the Native American Graves Protection and Repatriation Act, Public Law 101-601 (NAGPRA). NAGPRA was rooted in the growing concern over Indian rights in archaeology and physical anthropology (see Holt 1985, Klesert and Andrews 1988, and Sprague 1974).

Out of this concern came local legislation and museum policies that broke ground for the legislation and proved to be good examples of how the repatriation process can work. In the first senate hearing on the legislation, Robert McCormick of the Smithsonian Institution argued that the legislation was unnecessary because several institutions had already set up a standard for doing what the act would require (1987). This type of policy was uncommon, though. The legislation was designed not only to require repatriation, but also to set up a standard for the process of repatriation and claims. Klesert and Andrews (1988) discuss the complications of this type of policy in their article, “Treatment of Human Remains on Navajo Lands”. It is clear in the article

that the issue of repatriation was (and still is) a sensitive one that needed to be approached with a gentle hand because of heavy opposition to laws of this sort by scientists and strong lobbying on the part of some Indian groups for protection of artifacts and remains.

The Indian lobby was founded on the desire to obtain human rights and to reclaim a history that had been controlled by the “white man” for over a century. In the eyes of the Indians, the history was racist and often conflicting with traditional views. Adding to what was perceived to be a racist history, many of the remains were obtained through atrocious means. House Report 101-877 (October 1990), gives a summary by which the Smithsonian Institution obtained most of its collection of over 2000 Indian crania and assorted bones:

“Museums and other institutions have acquired Native American skeletal remains by a variety of means. The Smithsonian, which holds the most publicized skeletal remains collection, was acquired in part from the Army Medical Museum. The Army started collecting Indian skeletons in 1896, pursuant to an Order of the Surgeon General which required Army Medical Officers to—

Form a collection of Indian craniums to aid in the progress of anthropological science by obtaining measurements of a large number of skulls of aboriginal races of North America.

...It is chiefly desired to procure a sufficiently large series of adult crania of principal Indian tribes to furnish accurate average measurements.

This led to a period of about 40 years of zealous collecting of Indian crania and skeletons...” (H. Representative Udall in H. R. 101-877)

A law that allowed Indians to reclaim their history and the artifacts that were part of a gruesome attack on a single race in the name of science would be groundbreaking for Indian rights activists and was lobbied for in a fierce way. The Indian lobby was met with strong opposition¹. Conversely, the scientific community was lobbying for the right

¹ For supporting lobbying see statements from Bill Tall bull, Chief Earl Old Person, and Vicki Santana in S. Hrg. 100-90, p. 28-36, as well as The National Congress of American Indians in S. Hrg 100-909, p. 108-131 and Walter Echo-Hawk and Russell P. Hartman in S. Hrg. 100-931, p. 45-90. For oppositional;

to study and preserve the remains. The argument, coming mostly from archeologists and a few physical anthropologists, was founded in the idea that the right to study the remains and artifacts and to learn from them was equally as valid as the Indians' rights to the items. This argument is still the primary oppositional argument today. Further, they argued that protection of American heritage should be equally as important. Leslie E. Wildesen of the Society for American Archeology argued in the first hearings on the legislation, that without preservation of these materials, the heritage of these groups would be lost forever. Further, he supported the education of the Indian public and the American public at large through the preservation of these materials. He believes that this is the value that these materials have for future generations (1986). This is not an altogether uncommon argument. Adding to Wildesen's statements, Robert McCormick of the Smithsonian Institution argued that the museums are doing a good deed by preserving the materials (1987). Because of the strong arguments on both sides, it took four years to come up with the final act that we now know as NAGPRA, and another eleven years to pass the final amended Code of Federal Regulations (43 CFR 10) for the Act. The final passage of the act and CFR did not end the debates, though. They continue today and the legal foundations of the act are now being challenged in Federal courts with cases like Kennewick Man and Spirit Cave Man.

The stated purpose of the act is simple: "to provide for the protection of Native American Graves and for other purposes" (PL 101-601, November 16, 1990). It is clear from the wording of the act and its CFR that the true intent is not only protection of

lobbying see statements from Leslie E. Wildesen in S. Hrg. 100-90, p.177, The SAA in S. Hrg. 110-90, p. 176-179, and Dean Anderson, Michael Fox, Cheryl Ann Munson, and Vincent Johnson in S. Hrg. 100-931, p. 45-90.

Indian graves, but also the repatriation of all remains, funerary objects and objects of cultural patrimony. The act gives reassurance that remains will be repatriated, and creates ✓ a framework for a set of regulations that require the repatriation of human remains, funerary objects, and objects of cultural patrimony. 43 CFR 10, the Code of Federal Regulations for the act, was set up to implement laws designed to follow through with the stated intention in the act:

“These regulations carry out the provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub. L. 101-601; 25 U. S. C. 3001-3013; 104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of ✓ lineal descendants and Indian Tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they are affiliated.” (43 CFR 10.1a)

43 CFR 10 sets forth regulations for dealing with four types of objects:

1. Human Remains of Native American Ancestry.
2. Funerary objects defined as “items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains” (43 CFR 10.2d).
3. Sacred objects, that are defined by 43 CFR 10.2d as “items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional religions by their present-day adherents”.
4. Objects of cultural patrimony, which are defined as “items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native

Hawaiian organization itself, rather than property owned by an individual tribal or organizational member.” (43 CFR 10.2d)

These regulations apply to inadvertent and intentional discovery, as well as to items in control of federally funded institutions and museums². In other words, the items covered by 43CFR10 are intended for repatriation to tribes, individuals, or organizations that have a valid claim on the items as defined in 43 CFR 10. The CFR requires that anyone who wants an item repatriated have a legitimate right to claim it. Because of this requirement, the CFR sets up a process for determining who can make a claim. The CFR also sets up regulations for dealing with inadvertent discovery of human remains as well as remains and artifacts already in the possession of federally funded institutions. Within the process of repatriation, the CFR requires inventory and consultation with tribal leaders who plan to have the items repatriated. The consultation process is intended to further support any claim made on items in question and to strengthen the relationship between the institutions and the Indian tribes.

Most individuals and institutions commonly agree that the intentions of 43CFR10 are good, and that the items should be repatriated (see Minthorn 1996, Chatters 1997 and 2000, and Thomas 2000). These people also agree that the law is reasonable. The problem is, that the ultimate goal of the regulations—the goal of repatriation of all items that fall under the categories designated by the CFR—has not been met. There are many cases still in the possession of federally funded institutions, and, as stated before, the law is being challenged in federal courts. If those who deal with them generally agree upon the goals as valid, then why are there still so many items that have not been repatriated?

² This is exclusive of the Smithsonian Institution, under certain conditions.

I believe there are two reasons for this. The first reason for its failure is that 43 CFR 10 is poorly written. The law requires a legitimate claim and gives set of standards by which a claim can be made, but it does not have any regulation that says who can decide if the claim is valid based on the categories provided. It is implied that this will be determined through consultation, but if a disagreement occurs regarding the legitimacy of the claim, the CFR does not offer any solutions to this disagreement. All that is said about disagreements is that their resolution should be attempted through informal negotiations, and if no resolution can be made, the district courts have jurisdiction over the matter (43 CFR 10.17a).

The heart of the Kennewick Man case was founded on an irresolvable disagreement. The scientists argued that the claiming tribe, the Umatilla, did not have a legitimate claim on the remains due to the antiquity of the remains (Chatters 1997). Whereas, the Umatilla believed they had a claim not only because they were the first group that traditionally used the region for hunting and fishing, but also because their oral tradition says that they have been there since the beginning of time (Minthorn 1996). This is an argument that is only partially solved by the CFR, forcing a resolution in federal court. The Umatilla believed they had a case based upon the clause in the CFR that allows for the use of oral tradition in making a legitimate claim on the remains. The CFR allows for the use of oral tradition only in combination with other claiming factors. So the use of the oral tradition combined with the known traditional use of the area where the bones were found was the foundation for the Umatilla claim. The antiquity of the remains brought into question the legitimacy of the claim because scientists have not found evidence for the use of the area by the Umatilla and associated tribes before

approximately 2000 years ago. The remains are over 9000 years old. This brings into question the legitimacy of the claim and challenges the CFR. This landmark case has brought into question the antiquity of some remains being found and their relationship to modern Indian groups. Therefore, this issue challenges the legal foundations set forth in 43 CFR 10. This will have to be an issue that is resolved in a definitive manner in order to avoid further cases of this sort.

In addition to the questions of legitimate claims, the CFR does not offer a solution if items simply are not claimed. It does not explicitly state where the items should go if a claim is not made. The CFR does not provide a set of regulations that offer solutions if the items can be claimed, but are not wanted by the tribe or individual that has a legitimate claim to them (Skelton 2002). The only reference to this type of problem is in section 10.8 where it states that the Secretary of the Interior must publish the items. In addition to these problems, items that could be claimed by tribes and are offered willingly are not being repatriated because of funding issues. The CFR does not set up a regulation for who should pay for the reburial or transport of the items, therefore, the responsibility usually lies on the tribe. It is often difficult for tribes to find funding to transport the material and to rebury it. Often, the transport of the material requires special handling and the reburial requires a complex and expensive funeral ritual. The tribes often simply do not have the money to follow through with the repatriation of the material (Ferguson, et al, 1996). Although the act states that claiming individuals and groups can apply for federal grants for the repatriation of items under the law, there are no provisions for this in the CFR. Further, there is no reference as to how to apply, what grants the tribes may

be eligible for, or where the money will come from. Also, the act and CFR do not consider the cost to the institution that must repatriate the items.

The second reason the law does not work as it was intended to, is that there is a fundamental disagreement between those who currently control the material to be repatriated and those who are claiming it. This argument is founded in the science versus religion debate. “That there is a science vs. religion aspect is clear in the religious justification for the claiming of bones and “sacred” artifacts...” (Meighan 1992). “Most issues regarding the repatriation of artifacts seem balanced around the issue of ‘who really owns the artifact’” (Watkins 2000). The scientists argue that they have a legitimate right to study the material and that the information they obtain can be useful in compiling a cultural heritage for Indians and the American public (Wildesen 1987, McCormick 1987, and Chatters 2000). House Representative Udall, in House Report 101-877 states:

“...The scientific disciplines with an interest in studying human skeletal remains assert that it is critical to maintain such collections for future scientific study and analysis and cite the difficulty which they would face in obtaining similar specimens in the future.”

The scientists believe that they are doing something that is good for all of humanity, especially the Indians. They maintain that the information they gain through study of the remains provides insight into the history and culture of Indian groups. G. Peter Jemison quotes Lorraine Saunders, a physical anthropologist, as contending that her work provides direct testimony from deceased individuals about themselves and their lives (Saunders in Jemison 2001). The scientists also argue that if the material is repatriated, valuable information for future generations will be lost. Lorraine Saunders concludes that “the insights gained from the research of today, and future improvements in methods and technology, will allow an increasingly better understanding of the lives of the earlier

inhabitants of this continent. Therefore, reburial, the destruction of the only means they have to be informants, would be silencing them forever before the whole story has been told.” (In Jemison 2001). Martha Sempowski, an archaeologist, states that, “...If effected on a national scale, the reburial program that’s being proposed, however nobly intended and emotionally satisfying it is, would destroy a very substantial portion of this record of the past for Native Americans” (In Jemison 2001). An even loftier idea is that the scientists, through study of the items, can tell the Indians something about their own culture that may be useful to them. For example, Vine Delora states that the location of artifacts and their antiquity can aid in supporting oral traditions, water rights, and land rights claims (1992).

To further complicate this argument, many scientists believe that some remains of great antiquity (5000 years old and older) are being repatriated to people who are not even related to them. Clement Meighan states,

“Museum materials 5000 years old are claimed by people who imagine themselves to be somehow related to the collections in question, but such a belief has no basis in evidence and is mysticism. Indeed, it is not unlikely that Indians who have acquired such collections for reburial are venerating the ones of alien groups and traditional enemies rather than distant relatives” (1992).

These remains are unique and rare. Scientists value them for the information they may hold about the peopling of the Americas and the challenges they present to the Bering Strait Theory. They look unlike any Indian group currently in the United States and their antiquity presents a significant gap between their age and the dates for the known use of the areas where they are being found. This presents a question as to their relationship to known Indian tribes.

The Indians' response to the scientific arguments has been founded in the idea that repatriable items are sacred and should be reclaimed. They hold a history and belong to the ancestors, not the scientists. Archeology and physical anthropology are viewed as "oppressive and sacrilegious profession(s) that claim ownership over many of (their) deceased relatives, suppressed (their) religious freedom, and denied (their) ancestors a lasting burial" (Riding In 1996). The implication of using science to legitimize the retention of repatriable items makes Indians "appear as if they (are) looting the scientific heritage instead of receiving back the remains of loved ones who have been illegally and immorally taken from them a century or more ago" (Deloria 1992). In the eyes of the Indian what has been done is "scientific grave looting" (Riding In 1996).

The Indian argument is further supported by the belief that they, not the scientists are the ones who can define Indian heritage and history. The oral traditions tell them what they need to know about themselves (Minthorn 1996). Indians reject the attitude that "only scholars have the credentials to define and explain American Indians and that their word should be regarded as definitive and conclusive" (Deloria 1992). Adding to this Deloria goes on to say that,

"We have been the object of scientific investigations and publications for far too long, and it is our intent to become people once again, not specimens.

Science today has the edge in establishing itself as the primary source of truth because of the spectacular success of technology, which, in the minds of the general public, is devised by people in white lab smocks busily providing us with more gadgets. Some scholars, particularly people in California, adopted the attitude that the Indian interest in human remains was purely political and had no emotional or religious substance while they, as scientists, were impartial and stood above the battle" (1992)

Indians believe that the ancestors have already given them all the information they need.

Once a person is buried, they should be left alone. As Geraldine Green, a Seneca

Longhouse leader puts it,

“In our way of life when a person dies, there is a certain funeral address which tells us what to do. We leave them alone, they are through. They have given what information they want. They have done their jobs; we need not bother them anymore. That is why they go to their rest; they have finished their job here, and it is very important to us that we do not disturb hem anymore.” (In Jemison 2001)

“Despite differences in the way archaeologists and Native Americans observe and interpret the world, they both value the archaeological record as preserved in sites. This does not, however, automatically translate into Native Americans valuing the interpretation of the archaeological record by the scientists” (Anyon, et al 1997). So even if the Indians believe there is information to be gained from interpretation of archeological data, they do not always agree with the findings of the scientists. Indians ✓ and scientists interpret the past differently. Indians base their history on an oral tradition that “attains a multiversal understanding of the past that operates on many different levels of meaning” (Anyon, et al 1997). Science seeks universal truths. Therefore, the difference between Indian and archeological interpretations of the past is significant. These interpretations reflect on the greater significance any repatriable items have to each group. Where the material is seen as a gateway to understanding for the scientists, it is ✓ seen as a sacred item and symbol that has little interpretive value for the Indian.

The issues are further complicated by the question of ownership of the remains. Who owns the past? David Hurst Thomas, in *Skull Wars*, quotes Douglas Ubelaker, a biologist with the Smithsonian Institution, as saying,

“I explicitly assume that no living culture, religion, interest groups or biological population has any moral or legal right to the exclusive use or regulation of human skeletons since all human beings are members of a single species. Ancient skeleton are the remnants of unduplicable evolutionary events, which all living and future peoples have the right to know about and understand. In other words, ancient human skeletons belong to everyone.” (In Thomas 2000)

Conversely, Walter R. Echo-Hawk and Roger C. Echo-Hawk state that Indian graves are defined as “nonrenewable archeological resources to be treated like dinosaurs or snails, federal property to be used as chattel in the academic marketplace, pathological specimens to be studied by those interested in racial biology, or trophies or booty to enrich private collectors” (In Thomas 2000:210). The claim is made that “ownership” of human remains is in the best interest of all humanity for the betterment of science, whereas, the Indian perspective is one in which human remains are “owned” by the ancestors and must be returned to the tribe for reburial. It is easy to see why Thomas Jefferson is quoted as saying that the dead have no rights (Thomas 2000:211). The question of “ownership of the remains is in the hands of two groups of people who have entered into a philosophical debate that disregards the fact that the remains are human and that those humans had their own wishes when they were interred. The arguing has shadowed the fact that these are human beings not artifacts. No one can “own” a human being.

As was exemplified by the Kennewick Man case, it is clearly not always the Indians that have the visceral, emotional response to the repatriation issue. It is also clear that, although the Indian side of the argument is religious in its foundations, it is also based in the desire to reclaim human rights and to fight scientific racism. It has been made abundantly clear in the past few years that archaeology and physical anthropology are not exempt from scientific racism. We are quick to forget that “current prejudices (about the disciplines) may influence perceptions (we) have of (our) disciplines’ past” (Trigger 1980).

**“In any treatment of intellectual history, it is easy to ignore minority opinions or to select data to produce a biased view of past realities. Conversely, when the conclusions that emerge from such studies seem unpleasant or controversial, it is tempting to dismiss them as being unrepresentative or polemical. Yet, the variety of views that have been held simultaneously at any particular time in the past should not lead us to ignore the dominant paradigms that have successfully governed research in various disciplines.”
(Trigger 1980)**

In other words, we cannot forget the racist, ethnocentric, and hierarchal intentions of our forefathers, and the Indians have not yet forgiven these sins. The word “savage” has not yet been removed from our vocabulary. This adds to the Indians’ mistrust of science and justifies the fight. So it is clear that the two sides have maintained the age-old argument between science and religion even in discussions about a law that is intended to bridge this gap. Because neither has found a way to interweave the two, the debate will ✓ continue.

NAGPRA in all of its great glory was created to appease an ever growing Indian rights lobby, and to encourage a two-way communication between science and the Indian community. In many ways it has failed in its intent. The discovery of and subsequent repatriation debates over antiquated human remains has sparked a debate about the legitimacy of the law and an even louder debate over the philosophical aspects of the law. It is my intention, in this paper, to show that the basic intentions of 43 CFR 10 are ✎ hindered by both the fact that it is poorly written and by the fundamental philosophical arguments between scientists and Indians.

METHODOLOGY

In order to obtain the opinions of anthropologists who understand and use NAGPRA, I sent out a mail survey that asked questions relating to my hypothesis (see Appendix A). All questions on the questionnaire were worded in the form of a statement. Each statement had a series of five subjective responses, and the respondents were instructed to choose the one that most closely represented their opinion on the statement. Using a Leichert scale, the answers ranged from strongly agree to strongly disagree with a neutral (“don’t know”) in the middle. The answers, then, were given a numerical value of one to five, with one being the strongest response in agreement with the statement. So, the lower the overall score on a response, the more closely the respondents agreed with the statement. There were no negative statements included in the questionnaire. Each question had a positive connection to the hypothesis.

The questionnaires were mailed to 80 university professors, 40 contract archaeologists, 10 contract physical anthropologists, and 20 Indian tribal leaders, in order to survey a variety of individuals who work with NAGPRA. The respondents were randomly selected. I used the Society for American Archaeology list of contract archaeologists and physical anthropologists, and with my eyes closed, arbitrarily opened the page up and placed my finger down. I then sent surveys to every archaeologist listed under the firm my finger was placed on. I used the same methodology to find professors in the American Anthropological Association guide for 2001. Indian tribal leaders were selected by taking a map of the United States and, with my eyes closed, placing my finger on the map. I sent surveys to the reservation that was closest to the right of my finger.

This was an arbitrary methodology for selecting random respondents. The intent was to keep the selection random without complicating the process.

The surveys were color coded in order to be able to distinguish which group of respondents an individual survey belonged to. The colors were arbitrarily chosen as follows: pink for physical anthropologists, green for contracting firms, blue for university professors, and orchid for Indians. This allowed me to make comparisons between groups. I sent out 75 surveys in the last week of March. A letter explaining the purpose of the survey and requesting the respondents' participation in my research accompanied the surveys. I followed up in the first week of April with a postcard requesting that they mail the survey back if they had not already. (See Appendix A for copies of the letter and postcard.) I sent a second batch of 75 surveys and letters out in the second week of April. A postcard was sent to the second group in the third week of April. Each survey was sent with a self-addressed-stamped envelope for return of the survey.

Once I received copies of the survey back, I tallied the results for each question and applied them to the hypothesis. The higher the number of responses with a low score, the more strongly the respondents agreed with the statement. Each statement on the survey is a positive statement that supports the hypothesis. Therefore, the higher the number of low scoring responses, the more likely it is that the hypothesis is correct. For example, question number ten is stated thusly, "The CFR for NAGPRA is poorly written". This relates to the first part of my hypothesis. If 25 out of 31 respondents answered with strongly agree or agree, then 81% of the respondents agree with the statement. I can safely say that most of the respondents agree that the CFR for NAGPRA is poorly written, supporting my hypothesis.

Question twenty was thrown out because it was worded as a double question. Therefore, it is impossible to determine whether respondents were giving their opinion on the ability of native people and curators to communicate, the irresolvable difference between them, or both. So, in order to maintain the integrity of the survey, the question was thrown out.

RESULTS

The following tables show the final scores and tabulations for the survey results.

Table one shows the final number of surveys received for each population and the response rates for them. Table two shows the final scores for each question within each population. Table three gives the over all scores for each group and for the entire survey. Table four gives scores for grouped questions.

Table 1. Final number of surveys returned for each population

POPULATION	SURVEYS SENT	SURVEYS RETURNED	% RESPONSE
Phys. Anthropologists	10	3	30%
Contr. Archaeologists	35	20	57%
Indian tribal leaders	16	16	100%
Professors	89	50	56%
Totals	150	89	59%

Table Two. Final scores for each question within each population

Question and field	Strongly Agree	Agree	Don't Know	Disagree	Strongly Disagree	Total	Score
1 NAGPRA does not meet its intended goal of repatriation of all Native American and Native Hawaiian remains.							
Phys. Anth.	3	0	0	0	0	3	1
Cont. Arch.	11	8	0	12	10	41	2.05
Indians	10	6	0	12	0	28	1.75
Professors	17	18	32	28	15	110	2.2
2 NAGPRA does not meet its intended goal of repatriation of all funerary objects.							
Phys. Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	10	14	0	8	5	37	1.85
Indians	10	10	0	4	0	24	1.5
Professors	10	28	42	28	25	133	2.66

3 NAGPRA does not meet its intended goal of repatriation of all objects of cultural patrimony.							
Phys. Anth.	3	0	0	0	0	3	1
Cont. Arch.	8	10	0	12	20	50	2.5
Indians	10	10	0	4	0	24	1.5
Professors	16	16	39	28	5	104	2.08
4 The Code of Federal Regulations for NAGPRA is hard to understand.							
Phys. Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	10	10	0	12	10	33	1.65
Indians	7	6	0	12	10	35	2.19
Professors	15	12	42	28	40	137	2.74
5 The CFR for NAGPRA is vague.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	11	6	0	16	10	33	1.65
Indians	11	6	0	4	5	26	1.63
Professors	16	18	33	28	35	130	2.6
6 The CFR for NAGPRA does not offer guidance on how to follow through with its rules.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	14	4	0	8	10	36	1.8
Indians	8	8	0	8	0	24	1.5
Professors	19	12	26	24	20	101	2.02
7 The rules set forth in the CFR for NAGPRA are difficult to understand.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	10	10	0	12	10	42	2.1
Indians	7	4	0	24	5	40	2.5
Professors	12	22	39	24	15	112	2.24
8 Interpretation of the rules set forth in the CFR for NAGPRA is difficult.							
Phys Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	7	10	0	8	30	55	2.75
Indians	6	4	0	24	10	44	2.75
Professors	9	18	57	52	25	161	3.22
9 The definitions in the CFR for NAGPRA are difficult to understand.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	9	6	0	16	20	51	2.55
Indians	6	8	0	16	10	40	2.5
Professors	13	30	36	24	25	128	2.56

10 The CFR for NAGPRA is poorly written.							
Phys Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	16	4	0	8	0	28	1.4
Indians	11	4	0	12	5	32	2
Professors	22	8	33	28	30	121	2.42
11 The CFR for NAGPRA should be amended to make it easier to understand.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	14	6	0	12	0	32	1.6
Indians	12	4	0	4	5	25	1.56
Professors	15	16	42	28	30	131	2.62
12 The rules set forth in the CFR for NAGPRA are difficult to interpret.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	9	10	0	16	10	45	2.25
Indians	5	4	0	20	20	49	3
Professors	10	22	30	28	45	135	2.7
13 Interpretations of the rules set forth in the CFR for NAGPRA vary.							
Phys Anth.	1	4	0	0	0	5	1.67
Cont. Arch.	15	2	0	12	5	34	1.7
Indians	13	2	0	4	0	19	1.19
Professors	25	12	33	12	20	102	2.04
14 Varying interpretations of the rules set forth in the CFR for NAGPRA cause disagreements.							
Phys Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	15	4	0	8	5	32	1.6
Indians	12	4	0	4	5	25	1.56
Professors	23	10	45	20	15	113	2.26
15 Arguments surrounding the success of NAGPRA are based in the science versus religion debate.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	15	4	0	8	5	32	1.6
Indians	11	2	0	8	0	21	1.31
Professors	24	16	21	36	10	107	2.14
16 Arguments surrounding the failure of NAGPRA are based in the science versus religion debate.							
Phys Anth.	1	4	0	0	0	5	1.67
Cont. Arch.	11	6	0	8	20	45	2.25
Indians	10	2	0	12	0	24	1.5
Professors	21	22	30	24	15	112	2.24

17 There is a fundamental disagreement between those who curate and study repatriable material and those who will have the material repatriated.							
Phys Anth.	2	2	0	0	0	4	1.3
Cont. Arch.	12	6	0	8	15	41	2.05
Indians	14	0	0	4	5	23	1.44
Professors	14	22	24	36	25	121	2.42
18 There is a fundamental disagreement between Native Americans and those who curate and study repatriable material.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	14	6	0	12	0	32	1.6
Indians	14	2	0	4	0	20	1.25
Professors	20	32	12	36	5	109	2.18
19 There are fundamental disagreements between science and traditional views.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	12	6	0	8	15	41	2.05
Indians	11	4	0	8	0	23	1.44
Professors	13	30	21	32	25	121	2.42
20 Thrown out--double question.							
21 Communication between Native people and curators is hindered by the difference between science and traditional views.							
Phys Anth.	3	0	0	0	0	3	1
Cont. Arch.	14	8	0	4	5	31	1.55
Indians	9	6	0	12	5	32	2
Professors	17	40	12	12	15	96	1.92

Table Three. Overall scores for each group

Field	Score	Survey Score
Phys. Anth.	1.16	
Cont. Arch.	1.93	
Indians	1.8	
Professors	1.95	1.71

Table Four. Scores for grouped questions

Field	Score	Overall Score
Questions one through three		
Phys. Anth.	1.1	1.71
Cont. Arch.	2.13	
Indians	1.58	
Professors	1.65	
Questions four through thirteen		
Phys. Anth.	1.16	1.92
Cont. Arch.	1.95	
Indians	2.08	
Professors	2.13	
Questions fourteen through twenty-one		
Phys. Anth.	1.18	1.56
Cont. Arch.	1.81	
Indians	1.5	
Professors	1.84	

DISCUSSION

The results of the survey show general agreement with the statements in the survey. The final score when all answers are tallied for all questions is 1.71, in the agreement range. Further, there are no scores below 2.43, showing that there is no statement to which the respondents disagreed or showed a neutral response.

For the physical anthropologists, there is overall agreement with the statements on the survey. No question received a score below 1.67, showing strong agreement with the statements on the survey. The Indian tribal leaders' scores reflected agreement with an average score of 1.80. No question received a score reflecting disagreement with any statement. The contract archeologists had a much lower return rate than the Indian tribal leaders, but higher than the physical anthropologists. I believe that the return rate for contract archeologists and physical anthropologists was directly related to when I sent the surveys out. Spring is the time when contracting firms are preparing for Summer work, and it is likely that the contracting archaeologists and physical anthropologists did not have time to answer a survey or were already out in the field. The highest return rate was from Indian tribal leaders, perhaps because they have a stronger interest in the success of NAGPRA. The average score for contracting archaeologists was 1.93, reflecting a general agreement with the statements in the survey. The average score of 1.95 for professors reflects agreement with the statements on the survey, but this does not reflect the individual scores for each question. No question had a score reflecting disagreement with the statements.

It is difficult to say whether the professors' answers to the survey are reflective of experience with NAGPRA or reflective of intellectual opinions of it. Often, in a

university setting, NAGPRA is discussed in an intellectual way, rather than used in practical way. Conversely, in contracting archaeology, within tribes and in contract physical anthropology, NAGPRA is used in a practical way. Therefore, the opinions of professors may reflect their thoughts about the statements rather than reflecting their opinion based upon experience with 43 CFR 10. Further, several surveys were returned with statements on them regarding the nature of the philosophical arguments between Indians and scientists. It was contended that the arguments are often political rather than based solely on religion and science, but it is my belief that the foundations of political arguments between Indians and scientists are based in their belief systems. Politics always reflect ideology, and in the case of NAGPRA debates, the ideology is science versus religion. In other words, what may appear to be an argument that is political in nature, is often philosophical.

The questions on the survey were designed to reflect different aspects of my hypothesis. The first three questions reflect the premise that NAGPRA does not meet its intended goal of repatriation of all Indian human remains, funerary objects, and objects of cultural patrimony. Questions 4-13 reflect the ideas behind the premise that NAGPRA does not meet its intended goal due to the fact that it is poorly written. Questions 14-21 reflect the ideas behind the premise that NAGPRA does not meet its intended goal due to the conflicts between Indians and scientists. The average score for questions one through three is 1.62. This low score is clearly a reflection of the overall agreement with the three questions. Each population alone showed agreement with these statements as well. The physical anthropologists had an average score of 1.1, nearly the lowest score possible. The Indians had the next lowest score, 1.58, and the contracting firms followed with a

score of 1.93. Finally, the professors had a score of 1.95. For questions four through thirteen, the average score was 1.92. This also reflects a general agreement with the statements. The physical anthropologists had the lowest score of 1.16, followed by the contracting archeologists with a score of 1.95. The Indians had a score of 2.08, and the professors had a score of 2.13, almost neutral. All of these scores show agreement with the questions in general, though. For questions fourteen through twenty-one, the average score was 1.56. Clearly, this reflects an overall agreement with the statements. The physical anthropologists, once again, show the lowest average score for the questions. The physical anthropologists' average score for questions fourteen through twenty-one was 1.18. The score of 1.50 for the Indian tribal leaders follows the physical anthropologists. A score of 1.81 for the contracting archaeologists ranks third, and the average score of 1.84 for the professors ranks last. These scores also reflect a general agreement with the statements in questions 14-21.

CONCLUSIONS

In looking at the average scores over all, it can be said that the results of the survey support the hypothesis that the general goal of NAGPRA to repatriate all Native American human remains, funerary objects and objects of cultural patrimony has not been met. The average scores also reflect agreement with the premise that the reason NAGPRA does not meet its implied goal is because 43 CFR 10 is poorly written and because of a general philosophical disagreement between the scientists and the Indians.

There are good reasons for the scientific and academic approach that is so prevalent in anthropology, but in dealing with issues of repatriation, we must step back and look at the basic idea of responsibility to the people we study. According to the Society for American Archeology's statement concerning the treatment of human remains, "it is the ethical responsibility of archeologists to advocate and to aid in the conservation of archeological data" (SAA 1986). The statement goes on to say that,

"Individuals and cultural groups have legitimate concerns derived from cultural and religious beliefs about the treatment and disposition of remains of their ancestors or members that may conflict with legitimate scientific interests in those remains. The concerns of different cultures, as presented by their designated representatives and leaders, must be recognized and respected" (SAA 1986) key

This is clearly in keeping with the idea put forth in the American Anthropological Association's code of ethics that we must be advocates for the people we study while maintaining a scientific focus. These ideas can often be contradictory in their application, especially when repatriation is at issue. NAGPRA is often seen as a hindrance to scientific and academic studies (Hastings 1997). Although the SAA encourages archaeologists to "understand the cultural and religious values concerning the treatment of human remains", it also opposes any legislation that

calls for reburial of human remains and places scientific priority on the resolution of repatriation claims. This is in direct contradiction to the SAA bylaw that requires its members to advocate. How do we resolve this contradiction?

We clearly have a responsibility to pursue our academic studies while continuing to be advocates for the people we study, and this means that we must find a balance between our scientific pursuits and the requests of the people to whom the remains rightfully belong. In order to balance these seemingly contradictory actions, we must begin with creating a working relationship with Indian representatives from the beginning of our research through to its completion. We must show that the research can be mutually beneficial, and attempt to achieve “balance through compromise and mutual respect. By working together, anthropologists and Indians can be mutually benefited by accepting each other’s views. So, in order to work well together, “each must at some level accept the legitimacy of the others” (Goldstein and Kintigh 1990). Trust is key in this. Trust is enhanced through “good-faith interactions” and “the overall perception that all parties are on a level playing field” (Goldstein and Kintigh 1990). In order to gain the trust of our counterparts, we must “conduct ourselves as ethical archaeologists” (Goldstein and Kintigh 1990).

A good example of this type of interaction is the repatriation of the remains from On Your Knees Cave on Prince of Wales Island in Southeast Alaska. The Tongass National Forest zone archaeologist, Terry Fifield and researchers from the Denver Museum of Natural History had already developed good relationships with the local Tlingit of the Craig, Klawock and Kake

communities before any excavation even began. When the remains were discovered, this relationship allowed all parties involved to go through the consultation process much more smoothly. The relationship was based upon mutual respect, which made the Indians more receptive to scientific study of the remains once they were discovered.³ This foundation of mutual respect also allowed for a resolution that pleased both the Indians and the researchers. The researchers were allowed to study the remains as long as they followed the guidelines put forth by the Tlingit, and the Tlingit got their remains back without a fight. Adding to the success of the consultation process, the information gleaned from the study of the remains has created a link between the ancient person and modern Indians by showing that the individual subsisted on the same foods that traditionalist Indians subsist on. This has aided in the Tlingit fight to maintain their rights for subsistence hunting and fishing (Kiss 2001:10). Key!

Examples like this make it clear that we have to change the way we do business as anthropologists. Instead of fighting, give. Show that we really do have good intentions by following through with our responsibilities to NAGPRA and to the tribes we study. Interpret material with “accuracy, sensitivity, and respect, including consultation with living populations whenever possible” (Goldstein and Kintigh 1990). Consultation is the key. Talk. Work with tribal people to create a cooperative effort that can restate findings of importance in terms and language that eliminates cultural bias and attempts to give accuracy to

³ For information on the repatriation of the remains for On Your Knees Cave, see Baichtal 1997, Fifield 1996, Parfit 2000, and Kiss 2001.

what is found (Deloria 1992). It is important to find an avenue to better communication and mutual respect rather than conflict.

Laws that are written better and consider both sides can enhance this. As 43 CFR 10 is written, it shows preference for the rights of Indian groups, at the expense of scientific study. More and more conflicts are rising over the repatriation of remains showing great antiquity and these remains beg questions about the peopling of the Americas, further heightening the arguments. Cases like Kennewick man and Spirit Cave Man are bringing these issues and the law to court. The law needs to be more clearly written when it comes to the claim rights to these remains. This is the only definitive solution to the problem. Further, confusion over legitimacy of claims, funding and unwanted claims must be resolved with clearer laws. Amendments to 43 CFR 10 can result in fewer legal battles and can lead to a jumping off point for good negotiations. The outcome of these changes to the way we communicate with Indians as well as changes to the law would be less conflict and a higher success rate for repatriation.

APPENDIX A
Questionnaire, Letter and Postcard

Survey

Please mark the answer which best corresponds to your opinion on each question

1. NAGPRA does not meet its intended goal of repatriation of all Native American and Native Hawaiian remains.
Strongly agree Agree Don't know Disagree Strongly disagree
2. NAGPRA does not meet its intended goal of repatriation of all funerary objects.
Strongly agree Agree Don't know Disagree Strongly disagree
3. NAGPRA does not meet its intended goal of repatriation of all objects of cultural patrimony.
Strongly agree Agree Don't know Disagree Strongly disagree
4. The Code of Federal Regulations for NAGPRA is difficult to understand.
Strongly agree Agree Don't know Disagree Strongly disagree
5. The Code of Federal Regulations for NAGPRA is vague.
Strongly agree Agree Don't know Disagree Strongly disagree
6. The Code of Federal Regulations fro NAGPRA does not offer guidance on how to follow through with its rules.
Strongly agree Agree Don't know Disagree Strongly disagree
7. The rules set forth in the Code of Federal Regulations for NAGPRA are difficult to understand.
Strongly agree Agree Don't know Disagree Strongly disagree
8. Interpretation of the rules set forth in the CFR for NAGPRA is difficult.
Strongly agree Agree Don't know Disagree Strongly disagree
9. The Definitions set forth in the Code of Federal Regulations for NAGPRA are difficult to understand.
Strongly agree Agree Don't know Disagree Strongly disagree
10. The Code of Federal Regulations for NAGPRA is poorly written.
Strongly agree Agree Don't know Disagree Strongly disagree
11. The Code of Federal Regulations for NAGPRA should be amended in order to make it easier to understand.
Strongly agree Agree Don't know Disagree Strongly disagree
12. The rules in the Code of Federal Regulations for NAGPRA are difficult to interpret.
Strongly agree Agree Don't know Disagree Strongly disagree

13. Interpretations of the rules in the Code of Federal Regulations for NAGPRA vary.
Strongly agree Agree Don't know Disagree Strongly disagree
14. Varying interpretations of the rules in the Code of Federal Regulations for NAGPRA cause disagreements.
Strongly agree Agree Don't know Disagree Strongly disagree
15. Arguments surrounding the success of NAGPRA are based in the science versus Religion debate.
Strongly agree Agree Don't know Disagree Strongly disagree
16. Arguments surrounding the failure of NAGPRA are based in the science versus Religion debate.
Strongly agree Agree Don't know Disagree Strongly disagree
17. There is a fundamental disagreement between those who curate and study repatriable material and those who will have the material repatriated.
Strongly agree Agree Don't know Disagree Strongly disagree
18. There is a fundamental disagreement between Native Americans and those who curate and study repatriable material.
Strongly agree Agree Don't know Disagree Strongly disagree
19. There are fundamental disagreements between science and traditional views.
Strongly agree Agree Don't know Disagree Strongly disagree
20. Curators and Native people do not communicate well due to an irresolvable difference between the philosophies held by each group.
Strongly agree Agree Don't know Disagree Strongly disagree
21. Communication between Native people and curators is hindered by the difference between science and traditional views.
Strongly agree Agree Don't know Disagree Strongly disagree

Letter

Dear respondent,

I am conducting a survey to assist me in determining the reasons why NAGPRA does not always work. This is the subject of my Master's Thesis, and I would appreciate your anonymous participation by giving your opinion on a few statements. This is a short survey, and all participation is anonymous. I have provided a self addressed stamped envelope for you to mail the survey back in. Thank you so much for your participation in my research.

Thank you,

Megan Hurand Bateman

Postcard

Dear Respondent,

I sent a survey to you a week ago regarding NAGPRA.
If you have returned an answered copy, thank you.
If you have not, I would greatly appreciate your help
by promptly returning an answered copy.

Thank you,

Megan Hurand Bateman

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