



REPATRIATION

Since its passage in 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) has prompted significant conversations on physical and intellectual property rights, identity politics, human rights and professional ethics. This month's commentaries, published in NAGPRA's 20<sup>th</sup> anniversary year, examine a range of repatriation issues, from the challenges of interpreting genetic and cultural affiliation, to tribal heritage programs and museums' consultation processes, to assessing NAGPRA compliance. Contributors also provide international perspectives on repatriation issues and address broader contemporary debates on rights and ownership.

# Remains Unknown

## Repatriating Culturally Unaffiliated Human Remains

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When the Native American Graves Protection and Repatriation Act (NAGPRA) was passed into law in 1990, legislators left unresolved a complex and major problem: the fate of Native American human remains that could not be affiliated with any federally-recognized tribe. In the last 20 years, some

consult with every possible tribe associated with these remains and attempt to arrive at a consensus about disposition. This agreement is then formally presented before the National NAGPRA Review Committee, which in turn makes a recommendation to the US Secretary of the Interior, who has the sole authority to make a final decision on the proposed agreement. This process is as complex as it is drawn out.

decades. The DMNS staff came to understand that it had an ethical obligation to address the fate of these remains, even in the absence of present legal obligations. The institution could not have a future with tribes until it had resolved its past.

Through two National Park Service grants, the DMNS has now consulted with 86 tribes on the unaffiliated human remains in its collection from the greater Rocky Mountain region, and 35 tribes on the remains from the central US. One unique aspect of these consultations is that some of the inter-tribal meetings were held using state-of-the-art video-conferencing technology. For example, one consultation involved nearly 20 tribal representatives communicating with instant video technology from three locations: Phoenix, Santa Fe and Denver. This technology greatly reduced the travel time

ment for the disposition of 16 remains—to be repatriated to a coalition of Pueblo tribes with the Hopi Tribe taking the lead—which was presented in the fall of 2009 to the National NAGPRA Review Committee.

These efforts have been an education about the process of consultation and the unique problems and issues surrounding culturally unaffiliated human remains. Below, are three important lessons learned so far.

### Lessons Learned

First, through additional consultation and revisiting museum documentation, remains that were once designated as unaffiliated may in fact be affiliated with federally-recognized tribes. At the DMNS, a list of unaffiliated remains had been completed some years ago. But when we began this work, the decisions and logic of our predecessors were often ambiguous. If we had not intentionally set out to revisit this issue, it would have been easy enough to simply leave these remains listed in as unaffiliated, and hence in legal limbo. Consultation has played an important role here too, as tribes have provided new information that informs the affiliation process. The culturally unaffiliated designation should thus not be considered permanent and fixed, but provisional and open to revision.

Second, Native American tribes uniformly desire these remains to be repatriated, but not at the cost of tribal sovereignty or their deeply held cultural beliefs. Out of the 121 federally-recognized tribes we have consulted with to date, not a single tribe has objected to repatriation and reburial of their ancestral remains. However, the tribes consistently insist that we acknowledge the rights of tribes in this process. Additionally, much conversation circles around where the remains will be reburied, who will do the ceremonies, and how. Tribal representatives, in other words, want to see these remains

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32,000 Native American human remains have been culturally affiliated under NAGPRA, paving the way for their legal repatriation. But the unaffiliated remains of more than 116,000 individuals and nearly one million associated funerary objects continue to sit on museum shelves, awaiting an unknown future.

The regulations that guide the implementation of NAGPRA—specifically 43 CFR 10(11)—have held in “reserve” the rule that will dictate who can claim these remains, under what conditions repatriation may occur, and reporting requirements. Establishing this new rule has been contentious in large part because some argue that it should compel museums to repatriate all Native American remains, while others contend that the process should be more selective. Other problematic issues include the role of unfederally-recognized tribes, the role of DNA testing, the determination of rights when there are multiple (ie, competing) claims, and whether associated funerary objects are also to be returned.

In the absence of a final rule guiding the repatriation of unaffiliated human remains, over the last two decades museums have only had one legal option to deal with remains in this category. They can

### A Proactive Approach

In 2007, the Denver Museum of Nature & Science (DMNS) staff decided that it had the obligation to proactively address through consultation the future of all the 67 unaffiliated human remains left in its collection. Most of these remains came to the museum in tragic and discomfoting circumstances—burials disturbed out of

DENVER MUSEUM OF NATURAL HISTORY—ANTHROPOLOGY	
Accession No. 147	Received from..... Unknown
	Collected by..... Unknown Date.....
	Locality..... Unknown
Specimen No. 1	Culture..... Unknown Period.....
	Object..... 1 complete Human Skull
Field No.	
	Gift..... X..... Purchase..... Exchange.....
Negative No. NR 13-12	Former Catalog No..... Value.....
	When Received.....
	Storage or Display Location.....
	Remarks..... Old donation to the Museum

The only documentation for an adult female Native American skull, as indicated by non-destructive physical anthropology analysis (DMNS Acc. No. A147.1).

Image courtesy DMNS

idle curiosity, skulls purchased at Indian trading posts. Nearly all of the remains have sat forgotten—unvisited, untouched, unstudied—in the collection for

and funds required by tribal representatives, and increased participation by making the meeting more convenient. This inter-tribal consultation resulted in an agree-

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## Respect

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

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

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

### Repatriation

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

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

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

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## Remains

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

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

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

## Associations

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

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

### Restorative Justice

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

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

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

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