Native Americans and Archaeologists:
Who Owns the Past?

What would you think if someone told you that in ten thousand years hundreds of people would be arguing over your skeleton? That same question could have been asked of the ancient American man whose bones would become part of the land that, nine thousand years later, has come to be known as Kennewick, Washington. The discovery of “Kennewick Man” occurred just a few years after Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990. This Act is the most comprehensive attempt to date to settle the dispute between Native Americans and archaeologists over who owns the past. Do archaeologists have the right to dig up, study, and display ancient Native American bones and artifacts? Or should Native Americans have the power to completely block archaeologists’ attempts to study remains on the grounds that they have a moral obligation to honor their ancestors by reburying them? While NAGPRA represents what some consider to be “the best compromise that we could have crafted” (Landers, 1991, p. 36), it insufficiently resolves the conflict between archaeologists and Native Americans because it allows for no compromise or middle ground. Although NAGPRA has mediated the conflict in many ways, the United States government should revise the Act so that it focuses more on the needs of future generations, more clearly defines the connection between ancient remains and modern tribes, and better balances the needs of Native Americans and archaeologists.

Problems that led to the development of NAGPRA: Who should control ancient Native American burials?

The conflict between archaeologists and Native Americans stems from a past of insensitivity and misunderstanding and a present governed by competing interests. Since their arrival on the North American continent, white settlers have, generally, thought of Native Americans as “savage,” “uncivilized,” and even as less human than themselves. These conceptions have resurfaced time and time again in the actions and opinions...
of archaeologists. “Archaeologists and anthropologists have been looking at us [and our possessions] as their property...throughout the history of their professions,” says Suzan Shown Harjo, president and executive director of the Morning Star Foundation and, from 1984-1989, executive director of the National Congress of American Indians (as cited in Landers, 1991, p. 35). This tendency to objectify Native Americans has caused archaeologists a lot of problems. Because they assumed that Native Americans were either too uneducated or too uninterested to care about the ancient history of their people, many archaeologists decided they needed to take on the role of “stewards of the past” (McGuire, 1997, p. 64). Ignoring Native American oral histories, the tribal stories about Native American origins and practices that have been passed down from generation to generation, archaeologists saw themselves as the only ones who could preserve an understanding of Native American pasts. They believed that it was only by studying ancient Native American remains, not by learning from Native American groups alive today, that they could gain insight into how prehistoric Americans lived. In a sense, they cut Native Americans out of an effort to help the world understand their own past.

Another result of viewing Native Americans as property was that archaeologists insensitively approached the excavation of Native American remains and burial goods. For example, controversy sprung up in Brome County, New York, in the 1960’s and 1970’s when contractors discovered that their planned highway would run through an area that included an eighteenth and nineteenth century white graveyard, an eighteenth century Native American village, and some prehistoric Native American graves. After archaeologists examined all the burials and determined which were white and which were Native American, the white burials were immediately given to an undertaker to re-inter elsewhere while the Native American burials were boxed up and delivered to a museum for storage (Dongoske, 1996, pp. 293-294). It had seemed obvious to the contractors that they should preserve the sanctity of the white graves by reburying them as soon as possible. Why hadn’t they seen the need to show the Native American graves the same respect? Many Native Americans see this kind of discrimination as blatant racism, and numerous situations similar to this one have added to the tension between Native American groups and archaeologists.

Over decades of archaeological work, thousands and thousands of Native American burials have been excavated and curated in museums. As Native Americans gained more public recognition and began to demand
acknowledgment of their rights, many of their groups requested that remains in museum collections be turned over to the tribes most closely connected with them for reburial. This sparked a new controversy. Opinions about what to do with the remains in museums and how to deal with newly excavated remains ranged from one end of the spectrum to the other. While some Native American groups claimed that “all archaeology is desecration and that all prehistoric aboriginal remains and grave goods should be immediately returned to Native American communities for ceremonial disposition” (Price, 1991, p. 2), others believed that scientific analysis of remains was allowable as long as the remains were ultimately put into the hands of native groups. Many archaeologists countered with the claim that “reburying bones and artifacts is the equivalent of the historian burning documents after he has studied them,” (Meighan, 1994, p. 66). These archaeologists argued that extremely valuable information about population trends in early America, traditions of ancient Americans, and even patterns of disease among ancient tribes could be found through careful study of Native American remains, and that reburying the remains would destroy the chance to learn information that could help scholars, the public, and even modern Native American groups. While not all opinions focused on these polar ends of the issue, it was clear that some sort of compromise needed to be reached between the two groups before the tension reached a boiling point.

NAGPRA: An attempt to solve the conflict

In 1990, President George H. W. Bush signed the Native American Graves Protection and Repatriation Act. This Act was designed to put more of the control of Native American remains and funerary objects into the hands of modern Native American groups and to provide more balance between these groups and archaeologists.

The act has two main purposes. First, “it requires museums and federal agencies to inventory their collections of Native American human remains and associated funerary objects, and then, where a close connection to living Indians or extant tribes can be shown, to return the items to them” (Landers, 1991, p. 36). Second, it states that “Native American remains and funerary objects and certain other cultural objects newly excavated on federal or tribal lands belong to the tribes involved, and...archaeologists must “consult” the appropriate tribes before digging on federal lands.” (Landers, 1991, p. 36)
Because of this act, all federal museums and other facilities had to go through their collections and identify exactly what they had in storage. Where human remains and burial objects existed, the museums had to identify which modern culture the remains were most closely connected to and then had to write and inform the modern groups that they could make a claim on those items if they wanted to. During these proceedings, the museum could conduct only minimal scientific study on the remains, if any study was needed at all, to determine which culture they were most closely associated with. If modern native groups claimed the objects, the museums would have to return them and the groups could rebury them as they saw fit. The same rules applied to new archaeological digs or remains discovered during construction on federal lands. If there were human remains or burial objects associated with the finds, the tribes most closely connected to those objects could take the objects away and rebury them if they so desired. Archaeologists could perform no further study on the remains if Indian groups wanted them re-interred right away.

Problems and Inadequacies of NAGPRA

Just like the varied opinions that led to the development of NAGPRA in the first place, reactions to the Act ranged from complete approval to horrified disapproval. Many Native American groups praised the Act as a “big step forward” (Landers, 1991, p. 36), and “an opportunity to right centuries-old wrongs” (Watkins, 2000, p. 59). However, some believed that the act still didn’t give Native Americans enough control over remains. They were upset by the fact that the law applied only to federal lands and agencies, that Native American groups couldn’t claim ownership over remains until after they’d been dug up, and that there was not a solid definition of what to do with remains that couldn’t be clearly linked to a living tribe or individual (Watkins, 2000).

Archaeologists had equally strong reactions to the act. Clement Meighan, a professor of anthropology at the University of California in Los Angeles, said “the aim [of the measure] is to kill off archaeology, to plow it under as a field. Fifty years from now, people--including Indians- -will look back and say, ‘How could you be so stupid?’ ” (as cited in Landers, 1991, p. 36). Others thought that the act focused too much on repatriation in federal lands and agencies. The real problem, in many archaeologists’ eyes, was the looting, grave robbing, and collection of artifacts going on on private land, a problem not addressed by the Act. Still other archaeologists
believed that the age of remains needed to be taken more into account, that while tribes should have a claim on remains from the historic period, prehistoric bones deserve proper scientific study. Dr. Douglas Owsley, a forensic anthropologist at the Smithsonian Institution’s Museum of Natural History, said, “I can understand the loss of a [museum’s] collection when it relates to the recent past...Certain collections should not have been acquired in the first place. But we’re seeing irreplaceable museum collections that can tell us so much about the prehistoric past lost and lost forever,” (as cited in Johnson, 1996, p. 1).

As cases challenging NAGPRA started showing up in courts across the country, the weaknesses of the act became even more apparent. In two court cases which resulted in opposite rulings, NAGPRA’s inability to form a compromise between archaeologists and Native Americans and its dangerously ambiguous definition of a connection between Native Americans and ancient remains became achingly apparent.

The Kennewick Man case: Scientists challenge NAGPRA

When the remains of a 9,000-year-old skeleton were discovered on the banks of the Columbia River near Kennewick, Washington, in 1996, controversy immediately started raging over who should have control over what came to be known as “Kennewick Man.” Many Native American groups from the area claimed that Kennewick Man was their ancestor and that his remains should be reburied immediately. Under NAGPRA, the US Army Corps of Engineers and the US Interior Department supported the tribes’ claims, but a group of archaeologists and anthropologists sued the tribes. The scientists claimed that the skeleton was not related to the tribe and that studying the skeleton could reveal important information about the ancient inhabitants of North America. Both groups feared that the results of the suit would set a precedent for future cases. Friends of America’s Past, an organization that supported the scientists, even went so far as to say, “If these scientists [in the lawsuit] are successful, there will be a future for archaeology and physical anthropology in this country. If not, the future could be bleak for a scientific understanding of the past,” (Knickerbocker, 2001, p. 2).

The two groups battled the case back and forth for years. Whenever the case seemed about to come to a resolution, the losing group would appeal and the fight would continue. Finally, on August 30, 2002, Judge Jelderks, the magistrate assigned to the case, turned the skeleton over to the scientists for study. Kennewick Man was not Native American and thus could not be claimed under NAGPRA, the judge ruled. The tribes
appealed, but on February 4, 2004, a panel of the Ninth Circuit Court of Appeals supported Judge Jelderks’ decision.

Under the terms of NAGPRA as it was used in this case, neither group could be satisfied unless the other group was left with none of their claims answered. If the Native Americans had proved, under NAGPRA, that the skeleton was an ancestor of theirs and that they had a claim to it, then they would have reburied it and the scientists would have forever lost the opportunity to study this ancient find. But because the scientists had proved that the Native Americans’ connection to the skeleton was invalid, the bones went to the scientists to study and the Native Americans lost the chance to honor what they believed to be one of their ancestors by reburying his remains.

The Pelican Rapids Woman and Brown’s Valley Man case: Ancient skeletons lost?

Another case very similar to Kennewick Man involved two ancient finds in Minnesota: the 7,900 year old bones of “Pelican Rapids Woman,” and the 8,700 year old bones of “Brown’s Valley Man.” Both were part of a large collection of remains in the keeping of Hamline University in Saint Paul, Minnesota. Like Kennewick Man, what little study had been done on the bones found no relation between them and any modern Native American tribe. According to Douglas Owsley, a physical anthropologist at the Smithsonian Institution in Washington, D.C., the bones’ build was “unique in relation to modern populations,” (as cited in Holden, 1999). Still, when Sioux tribes in the area used NAGPRA to make a claim on over 1070 more recent burials in the museum’s collection, the three prehistoric finds were included in their claim. Scientists and observers of the action responded with anxious concern. “There’s so much we could learn from [these remains],” (as cited in Holden, 1999) Owsley commented. Scientists further pointed out that, according to all research that had been done, the Sioux tribes had moved into the Minnesota area less than 1,000 years ago. The bones predated the Sioux’s appearance in the area by thousands of years. As Cleone Hawkinson, President of Friends of America’s Past said, “The Sioux tribes who were slated to receive these remains are probably no more closely related to these ancient skeletons than anyone else living today,” (Hawkinson, 1999). But according to the Sioux’s oral traditions, their people had lived in the area since the beginning of time. Courts supported the Sioux’s claim under NAGPRA, and on October 2, 1999, the two ancient finds were returned to the earth along with the other
remains. In this case, scientists had been able to do only minimal study to determine cultural affiliation of the bones. Then, even though no strong connection between the bones and the modern tribes was found, the bones were turned over for repatriation. Scientists were robbed of any further chances to study some of the oldest bones found on the American continent.

NAGPRA fails to provide a compromise

When NAGPRA is used in court, regardless of who wins the case, one group ends up with none of their desires met. In the case of Pelican Rapids woman and Browns Valley man, Native Americans were gratified with the reburial of their supposed ancestors, but scientists completely lost any chance to study the prehistoric American remains. In the case of Kennewick Man, judges ruled in favor of the scientists’ right to study, but Native Americans were left unsatisfied. And often in NAGPRA cases if one group is left entirely unsatisfied they continue to protest and no one ends up achieving anything. In the Kennewick Man case, though the judges ruled in favor of the scientists’ rights to study the skeleton, Native American groups continue to appeal the courts’ decision. While they appeal, the scientists’ study is postponed. So because a good compromise was not reached, the Native Americans can not bury the skeleton and the scientists can not study it. A solution must be found in which both groups’ needs can be met, because if both are not at least partially satisfied protests will only continue to prevent a solution for either group.

A system that can satisfy both groups

NAGPRA does accomplish many good things. It has set up a system under which archaeologists have to consult with Native Americans before and during digs. This has made the archaeological community much more aware of and more respectful towards Native Americans’ feelings. NAGPRA’s main problems lie in its ambiguity and in its failure to ensure that the needs of both scientists and Native Americans are reasonably met.

Phyllis Mauch Messenger (1999), the director of the Center for Anthropology and Cultural Heritage Education at Hamlin University in Saint Paul, Minnesota, says that the goal of recent legislation like NAGPRA is “to protect American cultural heritage for the enjoyment and benefit of all, while acknowledging the special relationships of Native American and Native Hawaiian tribes to the objects and places of their cultural heritage,” (p. 254). If that is NAGPRA’s goal, the Act falls far short of accomplishing it. Allowing Native
American groups to rebury ancient remains without any study destroys the chance not only for Native Americans but for all Americans to learn more about their cultural heritage. On the other hand, allowing scientific study without requiring reburial afterwards ignores the Native Americans’ special claim to their ancestors bones. We need to focus on preserving the information from remains for future generations of Americans to study and appreciate while still respecting Native American reburial desires.

The first problem with NAGPRA is the vagueness of its definition of cultural connection between living tribes and ancient remains. Because there is no clear definition, Native Americans can make claims like the one in the Kennewick Man case that are nearly impossible to prove. Alaska Representative Don Young, who helped pass NAGPRA, admitted, “I did not envision a 10,000 year-old person,” (as cited in Messenger, 1999, p. 258) being dealt with by the Act. While anyone would be horrified if his great-grandmother was unearthed and studied by archaeologists, he would logically feel much less of a connection to more ancient skeletons. For example, Iceman, a 5,300 year old mummy that was found preserved in the ice of northern Italy, has been extensively studied, but no Europeans have argued that he must be reburied. Kennewick Man and Pelican Rapids Woman are much older than Iceman, and yet Native American groups are still fighting for them as fervently as they would for a close relative. Native Americans should not be able to make claims on remains that are so old that they cannot be genetically or historically linked to the tribe. NAGPRA officials need to establish either an age limit, such as 500 years old, or some defined level of genetic connection needed between the modern groups making the claim and the ancient remains. If such a limit is established then once minimal study has proved that a skeleton is under the year limit or that it is closely related enough, the remains can immediately be turned over to the interested groups.

For skeletons over the year limit a system needs to be set up under which, if a relatively strong connection between the remains and modern Native American groups is found, scientists are still given leave to study the skeletons. The scientists would be given either a specified number of years to study or a certain amount of information that they could recover. After they’d reached that amount or completed that allotted time, they would permanently rebury the remains. Although a few extremists on either side might demand reburial with no study or insist that remains should never be reburied because of their scientific value, this
measure would satisfy most people in both groups. The Society for American Archaeologists (SAA) has stated that “whatever their ultimate disposition, all human remains should receive appropriate scientific study,” (Lovis, Kintigh, Steponaitis, & Goldstein, 2004, p. 178). This has not always been the case with NAGPRA, where bones have sometimes been given back to Native Americans and reburied without further study at all. In most cases archaeologists do not object to reburial if they are given sufficient time to study the remains first. In addition, most Native Americans do not object to some study, they just want the remains to be reburied in the end. In his essay, “Bones of Contention,” Bruce Craig (1990) vehemently opposes the display of Native American remains in museums, but he agrees that if remains were “permanently reburied...[and] no longer...accessible for further scientific analysis,” (p. 17) after they had been carefully studied, that most Native Americans would not object. Such a solution makes sense to him because it treats the remains with respect instead of considering them as “specimens.” If any solid connection between Native American groups and ancient remains is found, the remains should always be returned, but scientists should be given the opportunity to study the remains beforehand. If a find, like Kennewick Man, is so old that a connection can not be found, however, the remains should be preserved so that future generations, including future Native Americans, can study and appreciate that part of their heritage.

Conclusion

The repatriation issue is a delicate and a complex one. It involves tension that has accumulated over hundreds of years of insensitive archaeology and misunderstanding of Native American culture, and it will not be solved overnight. NAGPRA is a good start in addressing this problem, but it doesn’t allow for enough compromise, nor does put enough value on the needs of future generations. If Congress changes NAGPRA so that it more clearly defines a cultural connection between remains and modern Native American groups, so that it allows for some scientific study before reburial of remains that have been solidly claimed, and so that it preserves remains that are too ancient for a definite claim to be made on them for future study, then we will better balance the interests of both archaeologists and Native Americans and we will ensure both the preservation and the veneration of this part of American heritage.
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