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**OLD NAGPRA-NEW RULES: THE NATIVE AMERICAN GRAVES PROTECTION &  
REPATRIATION ACT IN CONTEXT**

by

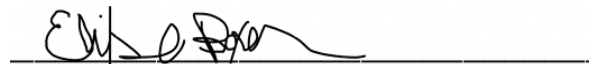
Nicholas Kennedy

A Thesis Submitted in Partial Fulfillment  
Of the Requirements for the  
University Honors Program

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Department of History  
The University of South Dakota  
May 2024


The members of the Honors Thesis Committee appointed  
to examine the thesis of Nicholas Kennedy  
find it satisfactory and recommend that it be accepted.



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## ABSTRACT

### OLD NAGPRA-NEW RULES: THE NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION ACT IN CONTEXT

Nicholas Kennedy

Director: Dr. Elise Boxer, Phd.

The Native American Graves Protection and Repatriation Act is a federal law that provides a legal avenue for repatriation among federally recognized tribes. Although NAGPRA was passed with support from American Indian Tribal Nations, there has often been disagreements about how NAGPRA is intended to benefit American Indians and Anthropological Scholars. This thesis will explore some of the themes present in the NAGPRA discourse starting after the Archaeological Resource Protection Act was passed, up until the second decade of the 21st century.

Keywords: NAGPRA, Repatriation, Culturally unidentifiable, Blackfeet, Pawnee, Anthropologist, 2024 NAGPRA rule.

### **Acknowledgements/Dedication**

I would like to extend my gratitude and appreciation to my committee members and advisors, Dr. Elise Boxer, Dr. Tony Krus, and Dr. David Alexander. Their immense support, advice and critical reviews and analysis has contributed much to my development as a graduate of the University of South Dakota.

I would also like to acknowledge my family, who has provided unwavering support and guidance for my Honors Thesis. I would like to acknowledge my ancestors who also have provided much direction in my life, I grew up knowing my grandparents who were the link to our past.

## POSITIONALITY STATEMENT

My name is Nick Kennedy and I am a first-generation registered descendant of the Blackfeet Nation. My father is Jay Kennedy who is an enrolled member of the Blackfeet Nation. My mother is from Minnesota and has Czech and German heritage. The Blackfeet Nation is located in Northern Montana along the Canadian Border and in the province of Alberta. I am also a descendant of the Confederated Salish-Kootenai Tribes in Western Montana. My grandfather is the late Charles Kennedy, whose parents are William James Kennedy Sr. and Mary Matte. On my Blackfeet side, my ancestors and relatives are the late John W. Kennedy Jr, Yellow Snake, Mary Pablo-Potts, Iron Breast, Charlie Potts, Night Shoot, Charlie Iron Breast, John B. Kennedy, Esther Kennedy, George Nequette, the late Helen and Jack Edmo, and Hildagarde Monroe. On my Salish-Kootenai side I am descended from the Matt's and Finley's families primarily.

I grew up in Lawrence, Kansas, including attending K-12 in public schools. Lawrence is also home to Haskell Indian Nations University, originally a boarding school that opened in 1884. In my early years, I remember going to powwows at Haskell Indian Nations University and participating in various community events. When I was in high school, I had the opportunity to learn the Blackfoot Style of Prairie Chicken Dance, which is a powwow dance category that originates from the Blackfoot Confederacy. This would eventually lead me to study abroad at the University of Calgary in Fall 2022, where I was able to participate in more Blackfoot Confederacy community events. As a result of my study abroad experience, I have become more knowledgeable about Blackfoot culture, beliefs, and philosophy. Although I will never be an expert on Blackfoot Culture, beliefs and philosophy, I cherish the opportunity to learn more everyday. My honors thesis is in service to my community in hopes that I will one day be able to use my skills for my community.

## METHODOLOGY

I characterize this historiography as “Old NAGPRA-New Rules”, because over the course of my Honors thesis, I have found several fundamental differences in legislation that have remained consistent since NAGPRA was enacted in 1990.

After reviewing NAGPRA literature, several themes emerged, preservation of cultural patrimony and ancestral remains before NAGPRA legislation, and issues in the passage and implementation of NAGPRA that continued until the present day. For the purposes of this historiography, I picked out vital journal articles from the 1990s, literature immediately published after the passage of NAGPRA and subsequent twenty-five years, and everything that is recent (less than 5 years old). After selecting these key articles, I created a master list that compiled all of their secondary sources to better understand the literature these scholars cited and used to frame their work. Out of these references, I chose all articles that were mentioned at least twice by different scholars, these articles then formed the foundation of this historiographic review.

I primarily focus on articles that were written before NAGPRA was passed in 1990 and the period following implementation of policy. This segment of scholarship shaped the direction of the field in the 1990s and the thematic approach taken by other scholars leading to the present-time period. I also wanted to determine if those themes persisted into the present day. For this review, I chose articles written between 2000 and 2019 based solely on whether they were mentioned by more than one scholar in a journal article, or whether they added to the previously identified themes in the paper



One major theme that I found is that NAGPRA is viewed differently between American Indian scholars and non-Indigenous anthropologists. Anthropology as a discipline has gone through several reforms since its inception in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Anthropology was founded in the late 19th century in North America and was utilized to categorize human evolution, material objects and understanding of the world. Before the first anthropologists, individuals such as Samuel Morton, chose to collect skulls from American Indians in order to compare them for racial hierarchical analysis.<sup>1</sup> Before anthropology became an academic discipline, it was a collector's hobby, oftentimes for wealthy individuals to collect and curate their personal collections. Today's anthropological discipline is firmly rooted within the "STEM" or Science, Technology, Engineer, Math curriculum, which requires empirical data to support hypotheses and proven claims. Within anthropology, archaeology has gone through several massive changes in the disciplinary approaches. One of those changes is relying more on statistics and utilizing the scientific method to analyze data, such as the size of tipi rings or the depth of hearths. Before archaeological analysis revolved around material objects themselves and not the context they were located in, whereas this new approach, processual archaeology, is now standard in the discipline. This way of knowing reflects the worldview of anthropology which requires data to prove what is or isn't true.

Native American belief systems cannot be standardized into one common belief system or standard traditional practices. There are over 574 federally recognized tribes in the United States. There are hundreds if not thousands of more individualized bands, clans or families within these tribal nations, not mentioning Canada and Indigenous people in Central and South America. While some tribal nations may eat fish as their primary food source, other tribal

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<sup>1</sup> "Chapter 1: Collecting Bodies for Science," in *Bone Rooms: From Scientific Racism to Human Prehistory in Museums*, by Samuel J. Redman (Harvard University Press, 2016), 23-24.

nations may abstain due to cultural reasons. Some tribal nations may even have different ways of conducting ceremonies, even within their own communities. There is not a one size fits all approach to tribal nations. However, with the broad plenary power of Congress, NAGPRA has to serve as a conduit for all tribal nations, regardless of cultural competency or practices. It is not the purpose or goal of this paper to explain American Indian Religious beliefs, as each tribal nation has a process for learning and understanding. My thesis will demonstrate the various themes that have emerged in the discourse over NAGPRA since its passage in 1990. One of the major themes is how American Indian belief systems have been ignored in discussions surrounding NAGPRA.

Generally speaking Native American communities rely heavily on knowledge that has been passed down and experienced by previous generations. In some instances, American Indian scientific knowledge has been dismissed by the wider academic community because of its inability to utilize the scientific method and approach. However, American Indian scholars have often demonstrated through transfer of Indigenous knowledge from previous generations the empirical knowledge that is often found when conducting such methods. A conflict that oftentimes occurs in the NAGPRA discourse is whose explanation of culture is correct under the law.

I determined that within the literature: NAGPRA requires anthropologists to assert definitions upon Native American tribes that do not align with tribal knowledge, such as oral history. In 2010, NAGPRA was amended to strengthen tribal requirements to assert a claim based on geographic proximity to cultural patrimony and ancestral remains. In addition, NAGPRA falls short for non-federally recognized tribal nations under this specific rule who cannot make any claims under NAGPRA.

## THEORY

Native American Studies is not an interdisciplinary field but rather its own discipline that was founded by American Indian scholars in the 1970s. Student activism was the catalyst for Native American Studies at universities. Students demanded that academia create a space for Indigenous knowledge. The purpose of Native American Studies is to act in service to American Indian tribal governments, individuals and organizations that support American Indian Nations to advance and protect tribal sovereignty. .

The purpose of this historiographic essay is to provide yet another perspective to the Native American Studies field and NAGPRA. This thesis will contribute to the growing number of NAGPRA articles authored by American Indian scholars in the 21st century. In particular, I hope this thesis can provide an avenue for tribal governments, scholars and allies to identify systematic barriers that continue to prevent equal representation before the law and implementation of NAGPRA.

My approach to this thesis is not from an American Indian religious or Blackfoot traditional perspective, but rather I have approached this topic from a Pan-Indian perspective. Because Native American tribes are unique and complex, and oftentimes lack basic similarities, the definition of Pan-Indian has been created. Pan Indian is when one cultural practice overlaps with varying degrees to other tribal communities, for example the powwow circuit. Powwows are events that are held throughout North America and bring tribal nations together, for singing, dancing and socialization. They are often held on an American Indian reservation, at a university or within a city. While powwows originate on the Great Plains, they are utilized and celebrated by numerous tribes many of which did not historically use powwow or powwow regalia. For example, Southwestern tribal nations such as the Navajo, have traditionally not been

part of powwow dance culture. The late Blackfeet scholar and language activist and visionary, Darrell Kipp, provides an early quote discussing Pan-Indianism:

Who we are comes from the language, not from the Indian culture. What is culture? That Indian culture could be construed as beat-up old pickup trucks, buckskin jackets, and powwows. Sure, in fact, that is contemporary Indian culture today—we are living it. We are not using the word culture. Culture is too vague, too consuming, and too volatile. Never use the word. It's meaningless. It's debatable, a loaded word. Use the word language. The culture comes from the language.<sup>2</sup>

As Darrell Kipp explains in this previous quote, powwows have become generic aspects of Indian culture that have been construed to include all tribal nations. When writing this thesis, I have been careful not to elicit American Indian religious beliefs or traditions that could be construed to reflect all tribal nations. But rather, I have taken the approach to writing this thesis from a Pan-Indian perspective that highlights different American Indian and anthropological scholars who work within the frame of NAGPRA.

This paper will be beneficial to tribal nations because it will provide several key themes that can aid in determining whether NAGPRA is effective in its implementation. This paper will contribute to the discipline because there has not been a historiographical analysis of NAGPRA into the 2020s. As you may be aware, there have been several uses of different terminology in this paper already. Definitions such as American Indian, Native American, Indigenous, etc. all refer to the same people. The original peoples of North America, which for this definition, I am including Canada as well. American Indian is the legal term used in courts and legal proceedings and by some American Indians themselves in the United States. Native American is a more contemporary “Pan-Indian” term that originated out of the 1970s Native American

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<sup>2</sup> Kipp, Darrell R. *Encouragement, Guidance, Insights, and Lessons Learned for Native Language Activists Developing Their Own Tribal Language Programs*. (St Paul: Grotto Foundation Inc, 2000), 6.

activist period, often shortened to Native by anthropologists. Indigenous is a more global and modern term that refers to Indigenous peoples wherever they may be living internationally.

There will be no photographs accompanying this thesis, due to the nature of the topic. American Indians have long had their material objects exploited for monetary and cultural gain by academia. The context for which these objects have long been used for has oftentimes been misinterpreted by outsiders. While I use the term outsider, I really hope that American Indian tribes can coexist with anthropologists and develop meaningful and beneficial relationships. This thesis will discuss some of the conflicts that have occurred in the past, with a hope for a better future under cross-cultural collaboration.

## INTRODUCTION

The Native American Graves Protection and Repatriation Act is a federal law passed in November, 1990. Over the course of this paper and historiography, I have learned that scholars have contextualized NAGPRA not on the basis of religion but rather within property and human rights law. There is a general consensus among 21st century scholars both within American Indian communities and anthropology on the need for more accountability and transparency with NAGPRA and the cultural resources management field. Some American Indian scholars believed that opponents to NAGPRA believed it was founded on the basis of religion, and thus would be incompatible with federal law, which prevents the establishment of a state religion under the first amendment to the U.S constitution.<sup>3</sup> James Nafziger, writes about how the courts could get entangled in fundamental religious doctrinal questions... *“In addition, NAGPRA’s general protection of Native American but not other sacred material might be seen as an even more sweeping violation of the establishment clause. The apparent preference for Native American religion may be justified, however, as a rectification of past wrongs that resulted in wrongful takings of such items.”*<sup>4</sup> Despite Nafzigers 1999 article mentioning a possible weak point of NAGPRA due to religious claims, NAGPRA is firmly a property law and has not been substantially altered on the basis of religious grounds in the courts since its inception.<sup>5</sup>

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<sup>3</sup> James Riding In, “Repatriation: A Pawnee’s Perspective.” *American Indian Quarterly* 20, no. 2 (1996): 246.

<sup>4</sup> James A. R. Nafziger and Rebecca J. Dobkins, “The Native American Graves Protection and Repatriation Act in Its First Decade.” *International Journal of Cultural Property* 8, no. 1 (1999): 98.

<sup>5</sup> Nafziger, “The Native American Graves Protection and Repatriation Act in its First Decade,” 98.

## HOW DOES NAGPRA WORK? WHAT DOES IT REQUIRE?

The Native American Graves Protection and Repatriation Act is a federal law that was signed by President George H.W. Bush on November 16, 1990. The preceding year, the National Museum of the American Indian Act was signed into law, opening an avenue for repatriation from various Smithsonian facilities in Washington, D.C. NAGPRA as it is commonly known, is a legal requirement that ensures Native American Remains and objects considered sacred by Native American Tribes are to be available for return to lineal descendants and or tribal communities. There are two primary aspects to the law, one that emphasizes Native American Human remains and funerary objects and another that emphasizes objects considered sacred and an object of great significance to a tribal community (Object of Cultural Patrimony). There are various requirements to the law, such as providing a written summary report for sacred objects and a notice of inventory completion for human remains held by institutions. The purposes of these reports are for tribal officials to review and eventually pursue a NAGPRA claim if they desire.

NAGPRA has historically been difficult to implement at various facilities because of the lack of documentation by institutions regarding the origins of Native American ancestors and objects. New regulations, such as those released in 2024, have clarified requirements concerning ancestral remains deemed “culturally unidentifiable.” NAGPRA being a legal requirement has historically and presently required federal institutions to prove rightful ownership claims regarding Native American objects and ancestors. NAGPRA only applies to federally-funded institutions and federal lands which oftentimes includes universities, museums, military bases, national parks, etc.

Once a claim has been initiated by a tribal nation, there is a legal process under NAGPRA described as a consultation. This allows for discussion between tribal nations and the institutions that are complying with NAGPRA, in order for tribal nations to provide information on NAGPRA eligible items. Beginning in 2024, these meetings must be free and have informed consent from tribal nations. NAGPRA only applies to federally recognized tribes in the United States and does not extend across international borders. Once an institution engages in a consultation with a tribal nation under NAGPRA, reviewed the evidence, and determined that the object or ancestor meets definitions within NAGPRA, a notice for repatriation to the national register must be posted. This is to remain in effect for 30 days or until a competing request from a different tribal nation or individual is received. Once the 30 days have elapsed, the repatriation is considered official and the sacred object(s) and ancestor(s) are to be given back to the tribal nation.



## CHAPTER ONE

### NAGPRA AS PROPERTY LAW:

Because the first amendment of the U.S constitution prohibits the United States from establishing a state religion, laws governing, sanctioning and prohibiting religious practices have to be narrowly tailored in nature, NAGPRA is no such exception. Court decisions have deemed human remains as “property” and not subject to the same constitutional protections as living persons.<sup>6</sup> NAGPRA only applies to Native American ancestors found on federal property and does not apply to Native American ancestors within state or private property. Prior to NAGPRA, there were various state-level protections for Native American remains that helped serve as a catalyst for repatriation, even when no federal law existed. In addition, various federal acts and statutes provided legal penalties for theft of archaeological objects from federal lands. Some of the acts passed into law before NAGPRA include the 1901 Antiquities Act, the 1966 National Historic Preservation Act, the 1979 Archaeological Resources Protection Act, among others. There was no legislation that could legally return or repatriate Native American remains and objects of cultural patrimony found on federal property.

One of the most significant laws passed to protect objects of material culture and human remains on federal lands before NAGPRA is the 1979 Archaeological Resources Protection Act. ARPA as it is commonly known is important because it provides the ability to levy criminal charges against an individual if they are found to have illegally removed objects from federal lands either knowingly or unknowingly. Scholar Lawrence Rosen provides an example of the robust nature of the Archaeological Resources Protection Act in his article, “*The Excavation of American Indian Burial Sites: A Problem in Law and Professional Responsibility*”, Rosen states:

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<sup>6</sup> Walter Echo Hawk. “Wana the Bear v. Community Construction: Taking the Dead.” in *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Wheat Ridge: Fulcrum Publishing, 2010), 251-253.

The new act replaces the term “object of antiquity” with “archaeological resource” which is defined as “any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act.” All such items must be at least 100 years of age. The statute specifically cites graves and human skeletal materials as examples of archaeological resources. Permits to excavate on Indian lands “may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.” Moreover, the exchange or ultimate disposition of materials is subject to Indian consent. The statute also increases existing penalties for violation of the law and even provides reward for information leading to convictions.<sup>7</sup>

Rosen’s article is significant because it was published in 1980, nearly 1 year after ARPA was signed into law which allows criminal penalties for objects that are trafficked out of federal lands that are older than 100 years. Although ARPA and other statutes address the issue of trafficking in antiquities and objects of material value outside of federal boundaries, there are no criminal penalties for anthropologists and archaeologists who legally (with permission from the federal government) excavate Native American remains and potential sacred objects from federal lands. Rosen writes about this potential conflict with the 1979 Archaeological Resources Protection Act, he writes, “*Permits to excavate on Indian lands “may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.”*<sup>8</sup> In this quote, the term “jurisdiction” only refers to permits being available for excavation on all lands that are managed solely by a Native American tribe and does not apply to significant sites outside the control of a Native American community such as National Parks, National Monuments, etc. Therefore, ARPA does not require permission from tribal nations when archaeologists or anthropologists are working on federal lands not managed by an Indian tribe,

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<sup>7</sup> Lawrence Rosen, “The Excavation of American Indian Burial Sites: A Problem in Law and Professional Responsibility,” *American Anthropologist* 82, no.1 (March 1980): 12.

<sup>8</sup> Rosen, “The Excavation of American Indian Burial Sites: A Problem in Law and Professional Responsibility,” 12.

which can create conflict. While there have been more recent protections, like ARPA and eventually NAGPRA in 1990, there has not always been protection for Native American ancestors, funerary objects, and sacred objects that are stored in museums. Oftentimes, these were unethically stolen in the late 19th and early 20th century. Walter Echo-Hawk writes about early collectors who robbed Blackfeet Graves at the end of the 19th century in his book, *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided*:

I collected them in a way somewhat unusual: the burial place is in plain sight of many Indian houses and very near frequent roads. I had to visit the country at night when not even the dogs were stirring...after securing one [skull] I had to pass the Indian sentry at the stockade gate which I never attempted with more than one [skull], for fear of detection...On one occasion I was followed by an Indian who did not comprehend my movements, and I made a circuitous route away from the place intended and threw him off his suspicions. On stormy nights—rain, snow & bitter cold, I think I was never observed going or coming, by either Indians or dogs, but on pleasant nights—I was always seen but of course no one knew what I had in my coat...The greatest fear I had was that some Indian would miss the heads, see my tracks & ambush me, but they didn't. I regret the lower maxillae are not on each skull, I got all I could find, and they are all detached save one. There is in the box a left radius & ulna of a woman, with the identical bracelets that were buried with her. The bones themselves are nothing, but the combination with the ornaments makes them a little noticeable.<sup>9</sup>

There is no doubt based on this quote, that individuals who unethically sourced Native American ancestors and objects, did so knowingly and against the wishes of Native American communities. While this dark history has been acknowledged with the passage of NAGPRA, implementing more equal and fair rights for Native American claims to retrieve their ancestors have led to more conflict and a call for a more humane approach.

Anishinabe scholar Gerald Vizenor in *Bone Courts: The Rights and Narrative Representation of Tribal Bones*, proposes a bone court, where equal rights for Native American bones (that are often treated differently from their non-Indian counterparts) are given full and

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<sup>9</sup> Echo Hawk, "In the Courts Of The Conqueror," 248.

equal consideration under the law.<sup>10</sup> Vizenor writes... *“Human remains, tribal bones, have rights, human rights, protected by a creative and pragmatic interpretation of the Bill of Rights which forbids the taking of life, liberty, or property, without due process of law.”*<sup>11</sup> Vizenor argues that Native American human remains have not been treated equally under the law, even to the extent of denying life, liberty, or property. One major difference has been about the classification of cemeteries. Western law often has a definition for what is considered a cemetery. However, over time Native American communities have also defined the boundaries and locations of their dead. Lawrence Rosen who wrote extensively about cemeteries and the rights afforded to Native American burials explains that both state and federal property law require the location in question to be considered a “cemetery”. Rosen highlights one major difference in determining the status of an Indian cemetery versus a non-Indian cemetery:

Of greater significance to the Indian situation is the question whether a cemetery has been abandoned. Once abandoned, the protections that courts afford recognized burial grounds no longer attach. As long as a cemetery is preserved in such a fashion as to indicate the existence of graves therein, or as long as the public recognizes it as a cemetery, the site will not be considered abandoned. The fact that no burials have been made for some years and no further burials are possible does not mean that a site has been abandoned. However, if the graves have been allowed to lose their identity, if the public no longer recognizes the site as a graveyard, or if all the bodies have been removed, the cemetery may be judged abandoned (Supreme Court of Missouri.)<sup>12</sup>

What Rosen proposes is that due to forced removals and relocations of Native American communities, they have not been able to maintain their “cemeteries.” Thus, the court has been unequal in interpreting the law in favor of Native American cemeteries. When this article was published ten years before NAGPRA, the discourse was about what rights are afforded to Native American cemeteries when compared to non-Indian cemeteries.

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<sup>10</sup> Gerald Vizenor. “Bone Courts: The Rights and Narrative Representation of Tribal Bones.” *American Indian Quarterly* 10, no. 4 (1986): 321.

<sup>11</sup> Vizenor, “Bone Courts,” 321

<sup>12</sup> Rosen, “The Excavation of American Indian Burial Sites,” 7.

## CHAPTER TWO

### DOES FEDERAL LEGISLATION PRIVILEGE THE ANTHROPOLOGIST?

Native American scholars have long said that NAGPRA was written to benefit the anthropologists and archaeologists who comply under NAGPRA.. Lawrence Rosen writes in *“The Excavation of American Indian Burial Sites: A Problem in Law and Professional Responsibility”*, that archaeological relationships had somewhat been mended around 1980, which contradicts early scholarship published shortly after NAGPRA was enacted in 1990. This “mended relationship” was presumably referring to ARPA that was passed in 1979. Rosen writes about how archaeologists allegedly consulted with Native American tribes prior to NAGPRA...*“when considering the excavation of a site that may contain human remains of interest to contemporary Indians, a great many archaeologists have consulted with them and been sensitive to the concerns of the local Indian population.”*<sup>13</sup> However, the direct passage of NAGPRA has demonstrated that Native American burials had not been treated adequately prior to 1990. In 2010, a new rule was added to NAGPRA that clarified the process for obtaining “culturally unidentifiable remains” under NAGPRA. Some scientists and organizations argued that ancestors who were culturally unidentifiable were ineligible for repatriation under NAGPRA. Because NAGPRA requires a federally recognized tribe to repatriate ancestors, some ancestors have not been linked to present-day descendants. However, an addition to the law in 2010, clarified the requirements for repatriation of culturally unidentifiable ancestors in hopes of resolving conflict between federal institutions and tribal nations hoping to repatriate ancestral remains and cultural patrimony.

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<sup>13</sup> Ibid, 6.

In a 2011 article, American Indian scholar Clayton Dumont in “*Contesting Scientists’ Narrations of NAGPRA’s Legislative History: Rule 10.11 and the Recovery of ‘Culturally Unidentifiable’ Ancestors*”, criticized the Society for American Archaeology (SAA) and other leading anthropological organizations for avoiding cooperation and discussions for a legal avenue for repatriation. Dumont criticizes the SAA perspective (similar to Rosen’s “mended relationship”) which states Native Americans and Archaeologists have had a cooperative relationship and writes... “*The recorded legislative history shows this is simply untrue. Overwhelmingly and persistently, scientific lobbies opposed Native efforts to secure passage of repatriation legislation.*”<sup>14</sup> Clayton Dumont reiterates that repatriation policy efforts have frequently been dismissed with the argument that Native Americans and anthropologists have indeed had a cooperative relationship: “*Ironically, the boast that scientists and Indians are good friends with a longstanding partnership in protection of Native interests is a mainstay of the scientists’ attack on repatriation legislation. The specific details of these narratives are often “stunning” ...The claims that NAGPRA “was passed with SAA’s active support,” and that “we (SAA) were part of the coalition of Native American and scientific groups that worked for the passage of the Native American Graves Protection and Repatriation Act” (AAPA) are only the most recent expressions of this much older political tactic.*” Dumont and other Native American scholars, like Walter Echo-Hawk, criticize anthropology for its position in interpreting Native American culture under NAGPRA; as NAGPRA was supposed to be a compromise where archaeologists and Native Americans would have equal weight in the legislation.<sup>15</sup> However, since NAGPRA became law, there has been a disproportionate number of institutions that

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<sup>14</sup> Clayton W. Dumont Jr. “Contesting Scientists’ Narrations of NAGPRA’s Legislative History: Rule 10.11 and the Recovery of ‘Culturally Unidentifiable’ Ancestors.” *Wicazo Sa Review* 26, no. 1 (Spring 2011): 9.

<sup>15</sup> Dumont, “Contesting Scientists Narrations of NAGPRA’s Legislative History,” 6; Chip Colwell, “Can Repatriation Heal the Wounds of History?,” *The Public Historian* 41, no. 1 (February 2019): 92.

determine the ultimate destination and possible repatriation of Native American ancestors and cultural patrimony.

Chip Colwell writes about the passage of NAGPRA in his article, “*Can Repatriation Heal the Wounds of History?*,” as a form of restorative justice in which “*the history of disrespect would be replaced by respectful repatriations.*”<sup>16</sup> Colwell emphasizes that the initial draft of NAGPRA legislation was titled, “Bridge of Respect Act” in which Congress “*followed this approach of finding a middle ground between the disparate interests of the native and museum communities in which history could be overcome by replacing an emphasis on the fundamental need to respect native rights, beliefs, and practices.*”<sup>17</sup> Before NAGPRA was passed in 1990, there were several discussions between anthropologists and Native Americans about whose interests would best be represented under NAGPRA. Anthropologists, and more specifically osteologists (those who study human remains using the scientific method), argued that important scientific information about diet, lifeways, etc. would be lost without scientific study of Native American ancestors. Native American scholars argued that their un-repatriated ancestors were not in a state of peace, and both themselves and their ancestors were being discriminated against further by allowing institutions to make decisions for them.

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<sup>16</sup> Chip Colwell, “Can Repatriation Heal the Wounds of History?,” *The Public Historian* 41, no. 1 (February 2019): 92.

<sup>17</sup> *Ibid*, 92.

## CHAPTER THREE

### NAGPRA FOR SCIENCE- CAN NAGPRA BE FOR SCIENCE?

Before NAGPRA was passed there were many discussions among American Indian communities, collectors, anthropologists and other stakeholders about how a potential repatriation law could be implemented. Lawrence Rosen theorized in 1980 that a repatriation conflict could occur in the future over Indigenous human remains. Not long after NAGPRA was passed, an intense argument between some members of the scientific community and several tribal nations arose over the Ancient One, or popularly known as the “Kennewick Man”. Rosen argued that a future discovery, such as “Kennewick Man,” could fall outside the legal purview of Native American interests. Rosen argued that a contestation over ancestors would likely be due to the issue of culturally unidentifiable remains:

In borderline cases where the remains are neither of great antiquity nor clearly those of an identifiable tribal group, one other legal device is available. If the Indians cannot bear the burden of demonstrating relationship, the burden might then be shifted to the archaeologist to show that what he might learn from these remains cannot be learned from casts, pictures, or other reproductions, or from similar remains already in collections. If the archaeologist cannot make a sound argument for probable scientific value, the Indians would be accorded control of the remains.<sup>18</sup>

When NAGPRA was first passed in 1990, some osteologists were upset that valuable scientific data would be lost if human remains are transferred back to tribal stewardship.<sup>19</sup> Zoe Niesel, a Wake Forest Law Student, wrote a comment to the Department of the Interior, regarding the 2010 amendment to NAGPRA, which again threatened repatriation of Native American ancestral remains. Niesel explained that the original NAGPRA of 1990 allowed scientific research as follows: “*NAGPRA provides flexibility in the repatriation process by allowing repatriation to be*

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<sup>18</sup> Rosen, “The Excavation of American Indian Burial Sites,” 19.

<sup>19</sup> Ann M. Kakaliouras. “When Remains Are ‘Lost’: Thoughts on Collections, Repatriation, and Research in American Physical Anthropology.” *Curator The Museum Journal* 57, no. 2 (April 2014): 215.



*suspended for ninety days when the remains requested are indispensable for the completion of a scientific study that would be of major benefit to the United States.*”<sup>20</sup> Thus, “Kennewick Man” undoubtedly fell under the clause for “major benefit to the United States.” Kennewick Man was an ancient individual in good osteological condition, whom the anthropological and scientific community argued would be the only suitable candidate for further study, knowledge, and research based on his age.

The argument from anthropologists and osteologists against the repatriation of “Kennewick Man” back to tribal communities was that tribal affiliation could not be determined according to a strict interpretation of NAGPRA legislation. Scientists argued that because Kennewick Man seemed to be culturally unidentifiable, his remains were not eligible under NAGPRA. However, several tribes in the local area of his discovery eventually gained custody under NAGPRA, due to his geographical area of discovery, but only after a ruling by a federal judge. Similar to Kennewick Man, Lawrence Rosen proposed a similar theory called “Judicial Approach”, that would perhaps allow a tribal community to sue institutions and collectors to gain control of their cultural property and ancestors. Rosen writes:

Establishing a tie with those whose graves are involved is often a difficult matter. If, for example, archaeologists have opened the grave of a known Indian or of an unknown person buried in land near which an Indian community has continued to live since before the person's death, it may be relatively easy to show a connection between the deceased and those who share with him a common tie of kinship or tribal identity. But when the case involves ancient remains or plaintiffs who have not resided in the area for generations, if ever, the connection necessary to achieve legal standing becomes far more tenuous.<sup>21</sup>

Rosen’s article foreshadows the repatriation debate in many ways. In 2010, there was an eventual addition to NAGPRA which allowed for NAGPRA claims of “culturally unidentifiable”

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<sup>20</sup> Zoe E. Niesel. “Better Late than Never - The Effect of the Native American Graves Protection and Repatriation Act’s 2010 Regulations,.” *Wake Forest Law Review* 46, no. 4 (2011): 846.

<sup>21</sup> Rosen, “The Excavation of American Indian Burial Sites,” 9.

remains based on geographic proximity. However, the determination of cultural affiliation and identity was still within the decision making power of various institutions.

#### NAGPRA AS ANOTHER METHOD OF DEFINING INDIANS/CULTURE

One of the most obvious and tenacious issues that has been present with NAGPRA is the issue of tribal affiliation. In the 1990s, it was unclear whether tribes would be able to assert control over “unidentified” ancestors. It became an oxymoron for tribal communities to prove under NAGPRA and other anthropological methods their connection to ancestral remains and sacred objects. In some cases, communities such as the Omaha, consented to destructive DNA testing to confirm the validity of their claims under NAGPRA.<sup>22</sup> NAGPRA requires several criteria to be met in order for a repatriation to occur. One of those criteria is that it must be associated with either a federally recognized tribe or a lineal descendant. A lineal descendant perhaps is the strongest claim under NAGPRA, but it must be proven using the western written record.

One might ask where and when most of these Native American ancestors and objects entered these various institutions. An article titled “*NAGPRA is Forever*” provides some context from 1993, when the first ancestor inventories were being conducted. The authors Jerome C. Rose, Thomas J. Green and Victoria D. Green, suggested that the majority of Native American human remains were sourced from the Works Progress Administration of the 1930s and from unintentional discoveries by construction workers.

The Great Depression contributed significantly to the collection of human osteological remains. Works Progress Administration (WPA) funds were used to hire unemployed archeologists and local laborers to excavate on a “heroic” scale

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<sup>22</sup> Jerome C. Rose, Thomas J. Green, and Victoria D. Green. “NAGPRA IS FOREVER: Osteology and the Repatriation of Skeletons.” *Annu. Rev. Anthropol.* 25 (1996): 97-98.

(24, 50). Thousands of human skeletons were excavated from hundreds of mortuary sites. In Arkansas and Louisiana, for example, 22.2% of the excavated skeletons were acquired during the Depression (51). Few osteological analyses were conducted by WPA personnel. A rare example is Goldstein's (21) publication on cranial deformation in the *American Journal of Physical Anthropology*.<sup>23</sup>

It was estimated that there were hundreds of thousands of ancestors held in storage around the United States before the passage of NAGPRA. As Walter Echo-Hawk noted, many of these remains have not been studied under academic scholarship that many anthropologists assert. In a popular *Propublica* article, "*America's Biggest Museums Fail to Return Native American Human Remains*", released in 2023, nearly 100,000 Native American ancestors were still held in museums. NAGPRA did not automatically guarantee repatriation, however it did allow a legal avenue for tribal nations to request consultations, yet, the majority of ancestral remains remain in federal institutions.<sup>24</sup>

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<sup>23</sup> *Ibid*, 83.

<sup>24</sup> Chip Colwell, "Curating Secrets Repatriation, Knowledge Flows, and Museum Power Structures," *Current Anthropology* 56, no. 12 (December 2015): 267.

## CHAPTER FOUR

### NAGPRA FROM THE ANTHROPOLOGICAL WORLDVIEW

It is a valid point to question for whom and what purpose research is being conducted for, and the literature has often exemplified this point. In the previously mentioned article, “*NAGPRA is Forever*”, scholars Jerome C Rose, Thomas J Green, and Victoria D Green, make the argument that osteological collections in the United States do not contain solely Native American remains. Rose, et al. write...“although the vast majority of the skeletons are Native American, those of European, African, and Asian descent are well represented.”<sup>25</sup> It is not clear if these other remains were located in known cemetery locations. It would be a reasonable question in comparison to NAGPRA to ask whether these were voluntarily or involuntarily acquired. And if so, were they repatriated? It is not entirely clear how many non-American Indian remains are represented in their data or institutions overall. Although it has been argued that the expedient nature of human remains removal from their place of burial has not allowed for any scholarly research. Rose et al, discuss the issue of funding as it relates to scientific inquiry compared to other sites:

Owing to lack of time and funds, many skeletons in the southern overview remain unstudied. Funding agencies, including those available in the CRM process, did provide resources for excavation, but they expected that anthropology students would analyze the skeletons for theses and dissertations. Some of this did occur, but there were never enough students to keep up with the huge quantity of curated skeletons. To show how extensive osteological analyses can be, the approximately 1050 skeletons excavated from the Dickson Mounds site located in Fulton County, Illinois, have been the subject of at least 57 theses, dissertations, meeting papers, and publications.<sup>26</sup>

Pawnee historian, James Riding In, criticizes locations such as Dickson Mounds in Lewiston, Illinois, for their inability to repatriate ancestors that are being utilized for academic study.

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<sup>25</sup> Rose et al, “NAGPRA IS FOREVER,” 84

<sup>26</sup> Ibid, 86-87

Riding In, has spoken in favor of repatriation, as early as 1993 to tribal nations, he criticized Dickson Mounds...“Even after NAGPRA became law, Dickson Mound, a state-funded museum and tourist attraction in Illinois that displayed over a hundred Indian bodies, continued business as usual.”<sup>27</sup> Anthropologist Ann Kakolious wrote about how osteologists are oftentimes worried about losing scientific data, and thus funding since NAGPRA was passed. It was only a few years later that Dickson Mounds would no longer allow scientific research on the human remains there. NAGPRA has been beneficial for both tribal nations and anthropologists. NAGPRA allows for institutional reform and anthropologists should better organize their collections and create inventories to align with NAGPRA processes. Wendy Teeter, et. al. provides a specific example of this from UCLA:

When co-author Wendy Teeter was hired to assist with the compliance of NAGPRA at UCLA, the archaeology collections were stored on old wooden trays, objects were directly inked with a catalog code, and hand-written field catalogs were the only reference to where objects came from and where they were stored within the museum. Items at times dropped behind the trays and were only discovered during a move in 1999. At that time, human remains were also found stored inside an unused air duct. Prior to 1990, collection items that were “loaned” for research, destructive analysis, or class projects were recorded on loan forms and kept separate from collection files with little follow-up to ensure their return. No investment beyond a halftime graduate student assistant was provided for these collections. NAGPRA and the Archaeological Collections Regulations mandated staff support to inventory, rehouse, chase down loans, locate old reports and missing items, and review excavation permits and other basic acquisition data in order to provide required information to begin consulting with tribes. The care of collections at UCLA at that time was typical of both small and large universities. Unless there was initiative and funding to comply, either from the university or departmental leadership, compliance was not going to happen.<sup>28</sup>

Teeter, et al describes how archaeological curatorial practices were not always uniform prior to NAGPRA and thus changed as a result of NAGPRA compliance, “*This situation changed with*

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<sup>27</sup> Riding in, “Repatriation,” 244.

<sup>28</sup> Wendy Giddens Teeter, Desiree Martinez, and Dorothy Lippert. “Creating a New Future: Redeveloping the Tribal-Museum Relationship in the Time of NAGPRA.” *International Journal of Cultural Property* 28, no. 2 (2021): 203.

*the passage of the Curation of Federally Owned and Administered Archaeological Collections Regulations in 1990, which established standards and guidelines for the management and preservation of collections from federal lands in both federally owned and public or private repositories that held federal collections.*"<sup>29</sup> Kakaliouras made a similar argument that NAGPRA fundamentally changed the recording of information in the discipline of osteology, thus requiring a more thorough documentation strategy:

It was clear at the time that most physical anthropologists collected data in ways defined by the traditions of the academic institutions where they were trained. Little consonance existed between one university, college, or museum and another. The Field Museum supported a workshop in 1991 that invited experienced physical anthropologists from many different research specialties to work together on producing a volume focused on these efforts. The result was *The Standards*, a comprehensive "how-to" guide for students and researchers, covering a huge range of skeletal data collection methods.<sup>30</sup>

Teeter et al., makes an opposing argument, stating that researchers affiliated with institutions did not properly study the human remains and objects before NAGPRA, when institutions were purported to have the right of possession.<sup>31</sup> This is similar to Ann Kakaliouras who explained that osteologists working under NAGPRA had very little time for research due to their compliance responsibilities with NAGPRA...*"There is no doubt, too, that many more productive and respectful working relationships exist between Native people and physical anthropologists than are represented in the professional literature; the daily work of consultations and preparing human remains for repatriation can leave little time for publishing."*<sup>32</sup> For osteologists like Ann Kakaliouras, the study of human remains is believed to provide confirmation through analysis that cannot be determined based on oral tradition alone, "For bioarchaeology—the study of

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<sup>29</sup> Ibid, 202.

<sup>30</sup> Kakaliouras, "When Remains Are 'Lost,'" 215.

<sup>31</sup> Teeter, "Creating a New Future," 203.

<sup>32</sup> Kakaliouras, "When Remains Are Lost," 214.

human remains from archaeological sites—this translates into, ideally, doing research on collections, since research serves to fit them meaningfully into larger biocultural and population contexts.”<sup>33</sup>This argument about gathering data that could be useful for studying historic populations gained momentum before and after NAGPRA was passed in 1990. Conflicting this argument is Native American spiritual beliefs and knowledge about the lifeways of their ancestors.

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<sup>33</sup> Ibid, 217.

## CHAPTER FIVE

### NAGPRA FROM THE NATIVE AMERICAN WORLDVIEW

The academic discipline of osteology requires analysis of data from human remains in order to advance the discipline. This conflicts with American Indian beliefs about the afterlife. Some Native Americans argue that osteologists in the 1990s were worried about losing their salary and funding as a result of the passage of NAGPRA. In his 1969 book, *Custer Died For Your Sins: An Indian Manifesto*, Vine Deloria Jr, reiterated a standard argument among American Indian scholars that anthropology doesn't necessarily benefit American Indians in the same way that it does non-Native American researchers.

Over the years anthropologists have succeeded in burying Indian communities so completely beneath the mass of irrelevant information that the total impact of the scholarly community on Indian people has become one of simple authority. Many Indians have come to parrot the ideas of anthropologists because it appears that the anthropologists know everything about Indian communities. Thus many ideas that pass for Indian thinking are in reality theories originally advanced by anthropologists and echoed by Indian people in an attempt to communicate the real situation.<sup>34</sup>

James Riding In also explains how osteological data collection harms his community. Riding in cites Pawnee President Lawrence GoodFox Jr. on the Pawnee belief and philosophy regarding the disturbance created by anthropological testing:

Unlike archaeologists who see Native remains as specimens for study, my people view the bodies of deceased loved ones as representing human life with sacred qualities. Death merely marks the passage of the human spirit to another state of being. In a 1988 statement, then Pawnee President Lawrence Goodfox Jr. expressed a common perspective stressing the negative consequences of grave desecration on our dead: "When our people die and go on to the spirit world, sacred rituals and ceremonies are performed. We believe that if the body is disturbed, the spirit becomes restless and cannot be at peace."<sup>35</sup>

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<sup>34</sup> Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto*, (Norman: University of Oklahoma Press, 1969, 82.

<sup>35</sup> Riding In, "Repatriation," 240



Riding In provides his credentials from a cultural, academic and personal standpoint, he writes... *“The foundation of my perspective concerning repatriation is derived from a combination of cultural, personal, and academic experiences.”*<sup>36</sup> Another example of anthropological testing that does not directly benefit tribal communities with oral traditions, is the analysis of historical diets for Indigenous communities. Walter EchoHawk criticizes osteologists for studying Pawnee burials and coming to conclusions that can already be confirmed by oral history:

Many tribes have been sorely disappointed in the lack of significant relevant information produced by the mass disinterment of their cemeteries. For example, after nearly a century of secretly studying thousands of dead taken from Pawnee graves, without the knowledge or consent of the Pawnee nation and without permits normally required by state law, leading scientists proclaimed that pawnees ate corn. We could have told them that. They also concluded that pawnee have lived in the region a long time, but they do not know for how long, or where we came from. We could have told them we were placed in the Great Plains by the creator during the creation and have lived there ever since. But then, the secular mind dismisses the sacred and demands proof that religious beliefs are true.”

These experiences, both cultural and personal, are not just unique to EchoHawk. Many other American Indian tribes and individuals find purpose and unity from the repatriation debate. As Riding in explains... *“When anyone denies us our fundamental human rights, we cannot sit idly by and wait for America to reform itself. It will never happen. We have a duty not only to ourselves, but also to our relatives, our unborn generations, and our ancestors to act.”*<sup>37</sup>

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<sup>36</sup> Ibid, 240

<sup>37</sup> Ibid, 240.

## CHAPTER SIX

### NAGPRA- IS THERE ROOM FOR COLLABORATION?

There is absolutely room for anthropology and Indigenous worldviews to collaborate and learn from one another. Walter EchoHawk, although critical of anthropology, does not entirely dismiss assistance that may be offered from anthropologists and other academics. Instead, EchoHawk advocates for a more human rights centered approach where anthropologists and Native American communities can coexist.<sup>38</sup> Apache Nicholas Laluk works within the anthropological field (Cultural Resources Management) and his work often brings him in contact with his own Apache communities. In the article, *“The Indivisibility of Land and Mind”*, Laluk writes about his experiences with archaeology, time and place... *“These thoughts caused me to reach out to Apache elders and colleagues, to learn how the landscape becomes mind through observing and doing. These thoughts ultimately led me to consider broader questions about transforming the practice of archaeology.”*<sup>39</sup> Laluk’s perspective is important because it is shaped by his own cultural and personal experiences. It is not based on assumption, but in facts grounded in Indigenous ways of knowing. Laluk writes about how an untrained anthropologist might disregard a specific site as Apache because the Apaches naturally cleaned their campsites after they left. This made it harder for anthropologists to determine cultural affiliation. Laluk writes *“For example, when asked about historical-period site placement strategies and what are better ways to identify Apache sites on the landscape, Mescalero representatives indicated that because past Apache groups were so “neat” and “cleaned up” in reference to leaving no trace on the landscape, their sites are often misinterpreted.”*<sup>40</sup> In another instance, an Apache

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<sup>38</sup> Echo Hawk, “In The Courts Of The Conqueror,” 261-262.

<sup>39</sup>Nicholas C Laluk, “The Indivisibility of Land and Mind: Indigenous Knowledge and Collaborative Archaeology within Apache Contexts.” *Journal of Social Archaeology* 17, no. 1 (2017): 100.

<sup>40</sup> Laluk, “The Indivisibility of Land and Mind,” 103

representative explained the natural landscape, which included a high vantage point that allowed previous Apaches to watch for any enemies nearby.<sup>41</sup>

While Tribal Representatives and Tribal Historic Preservation Officers are well-equipped with cultural knowledge, there may be instances where organizations or institutions oppose a tribal nation's NAGPRA claim for an object or ancestor. For example, Courtney Cottrell is the equivalent of a Tribal Historic Preservation Officer for a non-federally recognized tribe known as the Brothertown Indian Community, removed to Wisconsin from New England. Cottrell was upset that inquiries with the Yale Peabody Museum, did not stop an outside museum consultant from making a NAGPRA decision without tribal consultation, one that determined an object did not fit the criteria under NAGPRA:

During my visit to the YPM in New Haven in February 2017 to discuss a possible loan, the YPM staff clarified that since the pipe had not been used, evidenced by its cleanliness, it was not considered sacred. I did not mention that many museums once practiced cleaning procedures on their artifacts because I had hoped to bring a group of tribal council members to see the pipe the next morning while the museum was closed and did not want to create tension....The categorization change illuminates a problem with NAGPRA's definitional basis. Nontribal institutions hold the authority to change an item's category within their collections. It isn't about whether or not a claim by a tribe is deemed legitimate, as I was attempting to establish with Lester Skeesucks's tribal affiliation. Even if I had gathered information to make a case for the pipe's sacredness, the likelihood the YPM would have considered changing the category is slim<sup>42</sup>

Chip Colwell, a prominent NAGPRA and anthropological scholar reiterates a similar argument about what information a museum chooses to share with either the general public, tribal nations or just themselves. Colwell challenges such complacency by museums and other federally funded institutions... *“Such powers, sanctioned by US law, ultimately serve to reinforce—rather than rearrange—a colonial power structure set in place more than a century ago in which*

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<sup>41</sup> Ibid, 99.

<sup>42</sup> Courtney Cottrell, “NAGPRA's Politics of Recognition: Repatriation Struggles of a Terminated Tribe,” *American Indian Quarterly* 44, no. 1 (2020): 75-76.

*museums are in near exclusive control over what Native American culture in museums is public and private.*"<sup>43</sup> Both Colwell and Cottrell argue based on NAGPRA's definitions, that museums are inherently public serving institutions.

In a recently published article "*Collaborating Beyond Collections: Engaging Tribes in Museum Exhibits*" published in 2019, Museum curators from History Colorado revolutionized the way in which their institution seeks to serve the public, by including Native American perspectives and voices in willful participation from communities:

In early 2012, when HC was ready to move forward with the exhibit, it contacted tribal leaders of the 21 modern-day Pueblos in New Mexico, Texas, and Arizona, informing them that HC was planning a new exhibit on the environmental history of Colorado and that the museum would like to include a section on the Mesa Verde region. The HC team solicited their opinions, asking if there was interest in collaborating with the museum on developing it. Although Living West was not a NAGPRA project, HC approached it that way, going to the tribal leaders after the decision to work together was made and asking them whom they would like HC to work with. In most cases, it turned out to be the NAGPRA representatives. Because of HC's NAGPRA work, a trust relationship had already been established that enabled HC to move forward more easily.<sup>44</sup>

History Colorado's efforts to work with affiliated American Indian Tribes is a precursor to the new NAGPRA regulations released in 2024. In December 2023, the department of the interior announced several new rules that would go into effect under NAGPRA. One of those rules is free and prior informed consent from federally recognized tribes. An excerpt from the 2024 ruling states:

We have not added the requested requirement for consultation to this paragraph but have, nevertheless, provided that lineal descendants, Indian Tribes, and NHOs must consent to any analysis of human remains and associated funerary objects. As provided in this paragraph, museums and Federal agencies must identify the number of individuals in a reasonable manner based on the information available.

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<sup>43</sup> Chip Colwell. "Curating Secrets," 266.

<sup>44</sup> Sheila Goff, Betsy Chapoose, Elizabeth Cook, and Shannon Voirol. "Collaborating Beyond Collections: Engaging Tribes in Museum Exhibits." *Advances in Archaeological Practice* 7, no. 3 (2019): 226.

No additional study or analysis is required to identify the number of individuals. If human remains are present in a holding or collection, the number of individuals is at least one. We have made changes to § 10.1(d) Duty of care to require museums and Federal agencies obtain consent from lineal descendants, Indian Tribes, or NHOs prior to conducting any research on human remains or cultural items. “Research” includes any activity to generate new or additional information beyond the information that is already available, for example, osteological analysis of human remains, physical inspection or review of collections, examination or segregation of comingled material (such as soil or faunal remains), or rehousing of collections. “Research” is not required to identify the number of individuals or cultural items, or to determine cultural affiliation.<sup>45</sup>

While NAGPRA has returned hundreds of thousands of remains and associated objects, there are some tribal communities who explain that NAGPRA can never fundamentally fix the past. One of those tribal communities is the Zuni Pueblo of New Mexico:

The Zuni of New Mexico exemplify this position: after being informed that the Museum of New Mexico was holding human remains and grave goods collected on Zunilands, the tribe decided that reburial would be deeply troubling to tribal members, who would be uncertain of the clan identities of the deceased and therefore unable to choose appropriate reinterment rituals. The Zuni stated that the materials should remain in the museum as long as they were treated respectfully-meaning, among other things, that they should not be put on public display.<sup>46</sup>

A fundamental difference Colwell argues between the Zuni worldview and the worldview of anthropologists, is that of religious tradition. As a compromise, the Zuni Pueblo had consulted with museums to ensure that their ancestors would be properly cared for within the museum context. Although it is important to note that the Zuni did not acknowledge permission for what anthropologists have done in the past Anthropologists, museums and collectors had viewed the intricately carved religious objects known to the Zuni as “War Gods” as beautiful objects, whereas

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<sup>45</sup> U.S Department of the Interior ,Final Rule: Native American Graves Protection and Repatriation Act Systematic Processes for Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,” December, 2023, [0.2/1213/2023-27040/native-american-graves-protection-and-repatriation-act-systematic-processes-for-disposition-or/#h-21](https://www.federalregister.gov/2023/12/13/2023-27040/native-american-graves-protection-and-repatriation-act-systematic-processes-for-disposition-or/#h-21)

<sup>46</sup> Michael F. Brown and Margaret Bruchac. “NAGPRA From The Middle Distance: Legal Puzzles and Unintended Consequences.” In *Imperialism, Art and Restitution*, 193–217. (Cambridge: Cambridge University Press, 2006): 209.

in contrast the Zuni know them to be religious objects.<sup>47</sup> Colwell provides a quote on the significance of the Zuni War Gods... “To the Zuni people, the War Gods are living beings that cannot be “owned” in a Western sense of private property; they are made and cared for by religious leaders on behalf of the entire tribe. The Priesthood of the Bow was losing members, it was true, but this made the protection of the War God shrines more important, not less so. They insisted that the shrines had never been—could never be—abandoned.”<sup>48</sup> Ultimately the Zuni repatriated these religious items and were able to bring them back to the community, free from looters and others who are interested in stealing them.

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<sup>47</sup> Colwell, “Curating Secrets,” 263.

<sup>48</sup> Colwell, “Curating Secrets,” 264.

## CONCLUSION

While NAGPRA took several years of dialogue to construct properly, there were several flaws still evident in the Act. NAGPRA did have to balance the interests of scientists and Native Americans which lead to conflict over whose interpretation of the natural world was more accurate. NAGPRA also still relied heavily on museums and other agencies to determine cultural affiliation without tribal consultation. However, steps have been taken in the repatriation discourse notably by American Indian scholars to better reflect an equal relationship under the law. There are now American Indian scholars in the anthropological field who assist in removing old stereotypes and building new connections with tribal communities. There are also new interpretations proposed and learned by including American Indian community members in exhibit design and implementation. While the old rules of NAGPRA have been frequently cited in the discourse as problematic, there appears to be a new trend in the literature, towards a new NAGPRA.

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