
The Act requires federal agencies and institutions that receive federal funding[1] to return Native American “cultural items” to lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties on museums that fail to comply.

NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discoveries or excavations on private or state lands, the collection provisions of the Act may apply to Native American cultural items if they come under the control of an institution that receives federal funding.
Lastly, NAGPRA makes it a criminal offense to traffic in Native American human remains without right of possession or in Native American cultural items obtained in violation of the Act. Penalties for a first offense may reach 12 months imprisonment and a $100,000 fine.

The intent of the NAGPRA legislation is to address long-standing claims by federally recognized tribes for the return of human remains and cultural objects unlawfully obtained from prehistoric, historic, former, and current Native American homelands. Interpretation of human and indigenous rights, prehistoric presence, cultural affiliation with antiquities, and the return of remains and objects can be controversial and contested. It includes provisions that delineate the legal processes by which museums and federal agencies are required to return certain Native American cultural items—human remains, gravesite materials, and other objects of cultural patrimony—to proven lineal descendants, culturally related Native American tribes, and Native Hawaiian groups. Specifically, these types of items which are found and scientifically dated to a time prior to 1492 C.E. are to be turned over to Native American tribes. This would include any future discovery of Viking burials, such as those from Leif Ericson’s lost colony (which is thought to be similar to L’Anse aux Meadows).

Outcomes of NAGPRA repatriation efforts are slow and cumbersome, leading many tribes to spend considerable effort documenting their requests; collections’ holders are obliged to inform and engage with tribes whose materials they may possess. NAGPRA was enacted primarily at the insistence and by the direction of members of Native American nations.[2]

### Tribal Concerns

Tribes had many reasons based in law that made legislation concerning tribal grave protection and repatriation necessary.

- **State Statutory Law:** Historically, states only regulated and protected marked graves. Native American graves were often unmarked and did not receive the protection provided by these statutes.

- **Common Law:** The colonizing population formed much of the legal system that developed over the course of settling the United States. This law did not often take into account the unique Native American practices concerning graves and other burial practices. It did not account for government actions against Native Americans, such as removal, the relationship that Native Americans as different peoples maintain with their dead, and sacred ideas and myths related to the possession of graves.

- **Equal Protection:** Native Americans, as well as others, often found that the remains of Native American graves were treated differently from the dead of other races.

- **First Amendment:** As in most racial and social groups, Native American burial practices relate strongly to their religious beliefs and practices. They held that when tribal dead were desecrated, disturbed, or withheld from burial, their religious beliefs and practices are being infringed upon. Religious beliefs and practices are protected by the first amendment.

- **Sovereignty Rights:** Native Americans hold unique rights as sovereign bodies, leading to their relations to be controlled by their own laws and customs. The relationship between the people and their dead is an internal relationship, to be understood as under the sovereign jurisdiction of the tribe.

- **Treaty:** From the beginning of the U.S. government and tribe relations, the tribe maintained rights unless specifically divested to the U.S. government in a treaty. The U.S. government does not have the right to disturb Native American graves or their dead, because it has not been granted by any treaty.
The Native American Graves Protection and Repatriation Act is a law that establishes the ownership of cultural items excavated or discovered on federal or tribal land after November 16, 1990. The act also applies to land transferred by the federal government to the states under the Water Resources Department Act. However, the provisions of the legislation do not apply to private lands. The Act states that Native American remains and associated funerary objects belong to lineal descendants. If lineal descendants cannot be identified, then those remains and objects, along with associated funerary and sacred objects, and objects of cultural patrimony belong to the tribe on whose lands the remains were found or the tribe having the closest known relationship to them. Tribes find the burden of proof is on them, if it becomes necessary to demonstrate a cultural relationship that may not be well-documented or understood. Nowhere has this issue been more pronounced than in California, where many small bands were extinguished before they could be recognized, and only a handful, even today, have obtained federal recognition as Native Americans and descendants of Native American bands.

Congress attempted to “strike a balance between the interest in scientific examination of skeletal remains and the recognition that Native Americans, like people from every culture around the world, have a religious and spiritual reverence for the remains of their ancestors.”

The act also requires each federal agency, museum, or institution that receives federal funds to prepare an inventory of remains and funerary objects and a summary of sacred objects, cultural patrimony objects, and unassociated funerary objects. The act provides for repatriation of these items when requested by the appropriate descendant of the tribe. This applies to remains or objects discovered at any time, even before November 16, 1990.

Since the legislation passed, the human remains of approximately 32,000 individuals have been returned to their respective tribes. Nearly 670,000 funerary objects, 120,000 unassociated funerary objects, and 3,500 sacred objects have been returned. NAGPRA serves as a limitation, sometimes restricting excavation of American Indian remains and cultural objects, thereby potentially limiting the possible study of these objects.
The statute attempts to mediate a significant tension that exists between the tribes’ communal interests in the respectful treatment of their deceased ancestors and related cultural items and the scientists’ individual interests in the study of those same human remains and items. The act divides the treatment of American Indian human remains, funerary objects, sacred objects, and objects of cultural patrimony into two basic categories. Under the inadvertent discovery and planned excavation component of the act and regulations, if federal officials anticipate that activities on federal and tribal lands after November 16, 1990 might have an effect on American Indian burials—or if burials are discovered during such activities—they must consult with potential lineal descendants or American Indian tribal officials as part of their compliance responsibilities. For planned excavations, consultation must occur during the planning phase of the project. For inadvertent discoveries, the regulations delineate a set of short deadlines for initiating and completing consultation. The repatriation provision, unlike the ownership provision, applies to remains or objects discovered at any time, even before the effective date of the act, whether or not discovered on tribal or federal land. The act allows archaeological teams a short time for analysis before the remains must be returned. Once it is determined that human remains are American Indian, analysis can occur only through documented consultation (on federal lands) or consent (on tribal lands).

A criminal provision of the Act prohibits trafficking in Native American human remains, or in Native American “cultural items.” Under the inventory and notification provision of the act, federal agencies and institutions that receive federal funds are required to summarize their collections that may contain items subject to NAGPRA. Additionally, federal agencies and institutions must prepare inventories of human remains and funerary objects. Under the act, funerary objects are considered “associated” if they were buried as part of a burial ceremony with a set of human remains still in possession of the federal agency or other institution. “Unassociated” funerary objects are artifacts where human remains were not initially collected by—or were subsequently destroyed, lost, or no longer in possession of—the agency or institution. Consequently, this legislation also applies to many Native American artifacts, especially burial items and religious artifacts. It has necessitated massive cataloguing of the Native American collections in order to identify the living heirs, culturally affiliated Indian tribes, and Native Hawaiian organizations of remains and artifacts. NAGPRA has had a dramatic effect on the day-to-day practice of archaeology and physical anthropology in the United States. In many cases, NAGPRA helped stimulate interactions of archaeologists and museum professionals with Native Americans that were felt to be constructive by all parties.

History

Background

The late 19th century was one of the most difficult periods in Native American history in regards to the loss of cultural artifacts and land. With the founding of museums and scholarly studies of Native American peoples increasing with the growth of anthropology and archaeology as disciplines, private collectors and museums competed to acquire artifacts, which many Native Americans considered ancestral assets, but others sold. This competition existed not only between museums such as the Smithsonian Institution (founded in 1846) and museums associated with universities, but also between museums in the United States and museums in Europe. In the 1880s and 1890s, collecting was done by untrained adventurers. As of the year 1990, federal agencies reported having the remains of 14,500 deceased Natives in their possession, which had accumulated since the late 19th century. Many institutions said they used the remains of Native Americans for anthropological research, to gain more information about humans. At one time, in since discredited
comparative racial studies, institutions such as the Army Medical Museum sought to demonstrate racial characteristics to prove the inferiority of Native Americans.\[7\]

**Maria Pearson**

Maria Pearson is often credited with being the earliest catalyst for the passage of NAGPRA legislation; she has been called “the Founding Mother of modern Indian repatriation movement” and the “Rosa Parks of NAGPRA”.\[8\] In the early 1970s, Pearson was appalled that the skeletal remains of Native Americans were treated differently from white remains. Her husband, an engineer with the Iowa Department of Transportation, told her that both Native American and white remains were uncovered during road construction in Glenwood, Iowa. While the remains of 26 white burials were quickly reburied, the remains of a Native American mother and child were sent to a lab for study instead. Pearson protested to Governor Robert D. Ray, finally gaining an audience with him after sitting outside his office in traditional attire. “You can give me back my people’s bones and you can quit digging them up”, she responded when the governor asked what he could do for her. The ensuing controversy led to the passage of the Iowa Burials Protection Act of 1976, the first legislative act in the United States that specifically protected Native American remains.

Emboldened by her success, Pearson went on to lobby national leaders, and her efforts, combined with the work of many other activists, led to the creation of NAGPRA.\[8\]\[9\] Pearson and other activists were featured in the 1995 BBC documentary *Bones of Contention*.\[10\]

**Slack Farm and Dickson Mounts**

The 1987 looting of a 500-year-old burial mound at the Slack Farm in Kentucky, in which human remains were tossed to the side while relics were stolen, made national news and helped to galvanize popular support for protection of Native American graves.\[11\]\[12\] Likewise, several protests at the Dickson Mounds site in Illinois, where numerous Indian skeletons were exposed on display, also increased national awareness of the issue.\[13\]

**Return to the Earth Project**

*Return to the Earth* is an inter-religious project whose goal is to inter unidentified remains in regional burial sites.\[14\] Over 110,000 remains that cannot be associated with a particular tribe are held in institutions across the United States, as of 2006.\[15\] The project seeks to enable a process of reconciliation between Native and non-Native peoples, construct cedar burial boxes, produce burial cloths and fund the repatriation of remains. The first of the burial sites is near the Cheyenne Cultural Center in Clinton, Oklahoma.\[15\]\[16\]

**Controversial Issues**

Archaeologists are concerned that they are being prevented from studying ancient remains which cannot be traced to any historic tribe. Many of the tribes migrated to their territories at the time of European encounter within 100–500 years from other locations, so their ancestors were not located in the historic territories.\[17\] Such controversies have repeatedly stalled archaeological investigations, such as in the case of the Spirit Cave mummy; fears have been voiced.
that an anti-scientific sentiment could well have permeated politics to an extent that scientists might find their work to be continuously barred by Native Americans rights activists.\[18\]

**Kennewick Man**

Compliance with the legislation can be complicated. One example of controversy is that of Kennewick Man, a skeleton found on July 28, 1996 near Kennewick, Washington. The federally recognized Umatilla, Colville, Yakima, and Nez Perce tribes had each claimed Kennewick Man as their ancestor, and sought permission to rebury him. Kennewick, Washington is classified as part of the ancestral land of the Umatilla.

Archaeologists said that because of Kennewick Man’s great age, there was insufficient evidence to connect him to modern tribes. The great age of the remains makes this discovery scientifically valuable.\[19\] As archaeologists, forensic specialists, and linguists differed about whether the adult male was of indigenous origin, the standing law, if conclusively found by a preponderance of evidence to be Native American, would give the tribe of the geographic area where he was found a claim to the remains.\[20\] New evidence could still emerge in defense of tribal claims to ancestry, but emergent evidence may require more sophisticated and precise methods of determining genetic descent, given that there was no cultural evidence accompanying the remains.

One tribe claiming ancestry to Kennewick Man offered up a DNA test, and in 2015 it was found that the Kennewick man is “more closely related to modern Native Americans than any other living population.” However, the remains still have not been released.\[21\]

**International Policies**

![Distinctive Marking of Cultural Property, Hague Convention](https://socialsci.libretexts.org/Bookshelves/Anthropology/Cultural_Anthropology/Book%3A_Cultural_Anthropology_(Evans)/13%3A_Art/13.11%3A_Native_American_Graves_Protection_and_Repatriation_Act)
The issues of such resources are being addressed by international groups dealing with indigenous rights. For example, in 1995 the United States signed an agreement with El Salvador in order to protect all pre-Columbian artifacts from leaving the region. Soon after, it signed similar agreements with Canada, Peru, Guatemala, and Mali and demonstrated leadership in implementing the 1970 UNESCO Convention. The UNESCO convention had membership increase to 86 countries by 1997, and 193 by 2007. UNESCO appears to be reducing the illicit antiquities trade. It is not an easy business to track, but the scholar Phyllis Messenger notes that some antiquities traders have written articles denouncing the agreements, which suggests that it is reducing items sold to them.[22]

An international predecessor of the UNESCO Convention and NAGPRA is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.[23] The Hague Convention was the first international convention to focus on preserving cultural heritage from the devastation of war. Looting and destruction of other civilizations have been characteristics of war recorded from the first accounts of all cultures.

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Figure \(\PageIndex{4}\) - Minik Wallace (Kalaallit) in New York, 1897

On September 30, 1897, Lieutenant Robert Peary brought six Inuit people from Greenland to the American Museum of Natural History in New York, at the request of the anthropologist Franz Boas, in order to "obtain leisurely certain information which will be of the greatest scientific importance" regarding Inuit culture.[24] About two weeks after arrival at the museum, all six of the Inuit people became sick with colds and fever. They began to perform their tribal healing process and were mocked for their bizarre behavior. These people became a form of entertainment for the Americans. By November 1, 1897, they were admitted to the Bellevue Hospital Center with tuberculosis, which they likely had contracted before their trip. In February, the first Inuit died and shortly after that two more followed. By the time the sickness had run its course, two men survived. Minik was adopted by a superintendent of the museum, while Uissakassak returned to his homeland in Greenland. Later, after being lied to and being told that his father Qisuk had received a proper Inuit burial, Minik was shocked to find his father’s skeleton on display in the museum.
In 1993 the museum finally agreed to return the four Inuit skeletons to Greenland for proper burial. Representatives of the Museum went to Greenland that year to participate. In contrast to peoples in other areas, some local Inuit thought that the burial was more desired by the Christian representatives of the museum, and that the remains could have just as appropriately been kept in New York. David Hurst Thomas’ study of the case shows the complexity of reburial and repatriation cases, and the need for individual approaches to each case by all affected parties.

Protecting Cultural Property

In the United States, the Archaeological Resources Protection Act (ARPA) protects archaeological sites on federally owned lands. Privately owned sites are controlled by the owners. In some areas, archaeological foundations or similar organizations buy archaeological sites to conserve associated the cultural property.

Other countries may use three basic types of laws to protect cultural remains:

- Selective export control laws control the trade of the most important artifacts while still allowing some free trade. Countries that use these laws include Canada, Japan, and the United Kingdom.
- Total export restriction laws are used by some countries to enact an embargo and completely shut off export of cultural property. Many Latin American and Mediterranean countries use these laws.
- Other countries, such as Mexico, use national ownership laws to declare national ownership for all cultural artifacts. These laws cover control of artifacts that have not been discovered, to try to prevent looting of potential sites before exploration.

Notes

1. The Smithsonian Institution is exempt from this act, but rather must comply with similar requirements under the National Museum of the American Indian Act of 1989.


18. Jump up^ http://archive.nevadajournal.com/nj9...over_story.htm


25. a b Thomas, David H. Skull Wars, pp. 218-9