

The Dead and their Possessions

The repatriation in principle, policy and practice



Edited by Cressida Fforde, Jane Hubert and Paul Tumbull

ONE
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43

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THE DEAD AND THEIR POSSESSIONS

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POSSESSIONS

Repatriation in principle,
policy and practice

Edited by

Cressida Fforde, Jane Hubert and Paul Turnbull

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Contributors

Michael Aird, Keeaira Press, Southport, Queensland, Australia

Roger Anyon, Heritage Resources Management Consultants, Tucson, Arizona USA

Edward Halealoha Ayau, Hui Mālama I Nā Kūpuna © Hawai'i Nei Honolulu, Hawaii, USA

María Luz Endere, INCUAPA, Universidad Nacional del Centro de la Provincia de Buenos Aires, Olavarría, and Institute of Archaeology, University College London, London, UK

Martin L. Engelbrecht, Cape Town, South Africa

Cressida Fforde, Institute of Archaeology, University College London, London, UK

Warren S. Fish, c/o School of Marketing, Curtin University, Perth, Australia

Deanne Hanchant, The Old Adelaide Gaol Museum, Thebarton, Australia

Jane Hubert, St George's Hospital Medical School, Dept of Psychiatry of Disability, University of London, London

Barbara Isaac, Peabody Museum, of Archaeology and Ethnology, Harvard, Cambridge, USA

Rosemary A. Joyce, University of California, Berkeley, USA

Merata Kawharu, James Henare Maori Research Centre, Auckland University, Auckland, New Zealand

C. Timothy McKeown, National Park Service, Washington, DC, USA

Francis P. McManoman, National Park Service, Washington, DC, USA

Rodolfo Martínez Barbosa, President of the National Integration of Descendants of American Indigenous Peoples, Montevideo, Uruguay

Svinurayi Joseph Muringaniza, Natural History Museum, Bulawayo, Zimbabwe

Yossi Nagar, Israel Antiquities Authority, Jerusalem, Israel

Tshimangadzo Israel Nemaheini, Cradle of Humankind World Heritage Site, Department of Agriculture, Conservation, Environment and Land Affairs, Johannesburg, South Africa

Walter Palm Island, Gabulbarra Reference Group, Townsville, Queensland, Australia

Neil Parsons, Department of History, Faculty of Humanities, University of Botswana, Gaborone, Botswana

Audhild Schanche, Nordic Sami Institute, Kautokeino, Norway

Alinah Kelo Segobye, Department of History, Faculty of Humanities, University of Botswana, Gaborone, Botswana

Berit J. Sellevold, NIKU – Norwegian Institute for Cultural Heritage Research, Department of Archaeology and Landscape, Oslo, Norway

Moirá Simpson, Museums Australia, Adelaide, Australia

Paul Tapsell, Maori Auckland War Memorial Museum, Auckland, New Zealand

Russell Thornton, Department of Anthropology, University of California, Los Angeles, USA

Paul Turnbull, Department of Humanities, James Cook University, Townsville, Australia

Ty Kawika Tengan, Department of Anthropology, University of Hawai'i at Manoa and member of Hui Malama i Na Kupuna o Hawai'i Nei

Joe Watkins, Bureau of Indian Affairs – Anadarko Agency, Anadarko, OK, USA

Larry J. Zimmerman, American Indian and Native Studies, University of Iowa, USA

Foreword

One World Archaeology is dedicated to exploring new themes, theories and applications in archaeology from around the world. The series of edited volumes began with contributions that were either part of the inaugural meeting of the World Archaeological Congress in Southampton, UK in 1986 or were commissioned specifically immediately after the meeting – frequently from participants who were inspired to make their own contributions. Since then WAC has held three further major international Congresses in Barquisimeto, Venezuela (1990), New Delhi, India (1994), and Cape Town, South Africa (1999). Other, more specialized, 'Inter-Congresses' have focused on *Archaeological ethics and the treatment of the dead* (Vermillion, USA, 1989), *Urban origins in Africa* (Mombasa, Kenya, 1993), *The destruction and restoration of cultural property* (Brac, Croatia, 1998), *Theory in Latin American archaeology* (Olavaria, Argentina, 2000), and *The African diaspora* (Curacao, Dutch West Indies, 2001). In each case these meetings have attracted a wealth of original and often inspiring work from many countries.

The result has been a set of richly varied volumes that are at the cutting edge of frequently multi-disciplinary new work. The series provides a breadth of perspective that charts the many and varied directions that contemporary archaeology is taking.

As series editors we should like to thank all editors and contributors for their hard work in producing these books. We should also like to express our thanks to Peter Ucko, inspiration behind both the World Archaeological Congress and the One World Archaeology series. Without him none of this would have happened.

Martin Hall, Cape Town, South Africa
Peter Stone Newcastle, UK
Julian Thomas, Manchester, UK
November 2001

Preface to the paperback edition

Since the publication of *The Dead and their Possessions* in 2002 there have been a number of significant developments which promise to alter what has been termed the repatriation debate, in the UK and elsewhere.

CHANGES IN INDIVIDUAL MUSEUMS' POLICY AND PRACTICE

In January 2002 the Royal College of Surgeons of England announced its new policy relating to its collections of Australian, New Zealand and North American human remains. This required the college to consider seriously repatriation requests made by indigenous groups from these areas and, as a result, in 2002 it returned its holdings of Tasmanian Aboriginal human remains, and a year later returned its remaining collection of Australian Aboriginal human remains. The Manchester Museum and the Horniman Museum, London, also returned Australian human remains in 2003. These actions were characterised by an atmosphere of partnership with those indigenous representatives involved in the identification and researching of provenances of human remains, as well as in the actual organisation of repatriations. The Director of the Manchester Museum stated at the hand-over ceremony:

The Manchester Museum cannot atone for the wrongs of our own forebears at a time when different values prevailed. Nonetheless, by returning these remains now, we hope to contribute to ending the sense of outrage and dispossession felt by Australian Aborigines today, and trust that we can begin to build a more rewarding relationship based on mutual understanding and respect between our peoples in the future.

(<http://museum.man.ac.uk/information/newsarchive.htm>)

However, when the Aboriginal delegation which came to collect the human remains from Manchester Museum travelled on to talk to representatives of the Natural History Museum in London, this meeting was described by the delegation as adversarial, and the museum officers 'hostile', an accusation that was strongly denied by the museum itself (*The Australian* 30.7.2003). The Aboriginal delegation then picketed the Natural History Museum as a response to its continuing refusal to repatriate their human remains to Australia.

Human remains have not only been repatriated by some museums in the UK. In France, new legislation has enabled the repatriation from the Musée de l'Homme of the remains of Sara Baartman to South Africa (see Introduction) and the remains of the indigenous Uruguayan, Vaimaca Piru, are also to be returned by the museum concerned (see Chapter 16).

THE DEPARTMENT OF CULTURE MEDIA AND SPORT (DCMS) WORKING GROUP ON HUMAN REMAINS

Perhaps the most significant development in the UK has been the publication, in November 2003, of the report of the DCMS Working Group on Human Remains (www.culture.gov.uk). The Working Group (comprised of leading museum professionals, lawyers and a professor of social anthropology) was set up following recommendations of the UK government Culture, Media and Sport Committee report: *Cultural Property: return and illicit trade* (DCMS Seventh Report, July 2000 www.culture.gov.uk) (and see Chapters 5 and 15), with the comprehensive brief to examine the status of human remains and associated cultural material held in publicly funded museums and galleries in England and Wales. Fossils and sub-fossils were excluded, and also human remains acquired through post-mortem or medical intervention, which are the remit of the Retained Organs Commission (see below). The Working Group's brief included examination of the legal status of human remains, institutional powers to de-accession, the desirability of a Statement of Principles and supporting guidance relating to the care and safe keeping of human remains, and the procedures for considering requests for their return.

Since the publication of the first edition of *The Dead and their Possessions*, the repatriation debate in the UK proceeded within the context of the anticipated report of this working group. Fuelled also by the ongoing debate on the Elgin Marbles, 18 museum directors signed a joint statement against the de-accessioning of objects (a move that was widely criticised by various institutions, including the Museums Association, ICOM and the Australian Museums Association). In May 2003 articles appeared in the national media which extensively quoted the views of leading scientists against the repatriation of human remains (e.g. *Independent* 16.5.03, *Financial Times* 16.5.03, *The Daily Telegraph* 16.5.03), stressing the scientific importance of remains for the analysis and understanding of human origins and diversity, as well as for their potential in understanding the history of diseases. Other arguments, such as the claim that no Tasmanian Aboriginal people existed any more, were repeated. The response from Australian Aborigines was clear: 'Aborigines were not put on this earth for British scientists to do research on' (ATSIC Commissioner for Tasmania, Rodney Dillon, quoted in *The Observer* 1.6.03).

Other repetitions of older arguments repeated the claim for the absolute authority of scientific interests in these matters, but now widened the argument to identify the repatriation debate as part of a new emphasis on relativism, with the claim that the repatriation debate was merely a development in Western intellectual discourse.

The Working Group's Report became public in November 2003 and has yet to receive a government response. It makes extensive recommendations, and the Working Group was unanimous in its conclusion that the current situation regarding collections of

human remains in the UK must be changed (though with dissent from the Director of the Natural History Museum on a number of specific recommendations). The report does not recommend the enactment of legislation, at this stage, for the mandatory return of human remains, but does recommend the rescinding of legislation which prevents an institution from repatriating human remains. This has particular relevance for those museums governed by the British Museum Act 1963 and may be addressed by Clause 49 of the Human Tissue Bill, introduced into the House of Commons in December 2003. If passed, Clause 49(2) will enable nine English bodies (including the Trustees of the British Museum and the Natural History Museum) to 'transfer from their collection any human remains if it appears to them to be appropriate to do so for any reason, whether or not relating to their other functions' (the full text of the Bill can be found at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmbills/009/04009.i-v.html>).

While accepting the contribution to various areas of knowledge that scientific analysis of human remains has provided, the report has moved away from arguments that have dominated the repatriation debate in the UK, and instead focuses on the issue of consent. In this, it reflects the principles proposed by the Retained Organs Commission (ROC 2002 <http://www.nhs.uk/retainedorgans/thecommission.htm>), which was set up following public reaction to the Alder Hey scandal and its repercussions (see Introduction).

The Working Group's focus on consent is illustrated in the following recommendation (unanimous except for point 2 which is a major recommendation):

No institution shall retain, or perform any other act in relation to, human remains where it knows or has compelling reason to believe:

- a that the original removal of remains occurred without the consent of the deceased person or that person's close family and,
- b that the present retention and other proposed act is without the consent of :
 - 1 close family or direct genealogical descendants of the deceased person; or
 - 2 where no such family or descendants are identified those who have within the deceased person's religion or culture a status or responsibility comparable to that of close family or direct genealogical descendants.

(Working Group Report 2003: 156)

The report also recommends that holding institutions must be proactive in seeking consent, making their 'best endeavours' to do so. The Working Group clearly believed that any progress in the repatriation debate must involve meaningful, mutually respectful and transparent dialogue between the 'stakeholders'. This sentiment echoes the terms of the Vermillion Accord, which was drawn up by the World Archaeological Congress in 1989 (see Chapter 7).

Cressida Fforde, Jane Hubert and Paul Turnbull
November 2003

Preface

This book derives from papers given at four symposia in the session *The Dead and Their Possessions: variety and change in practice and belief* at the fourth World Archaeological Congress held in Cape Town, South Africa in January 1999. We are very grateful to those who contributed to these symposia, and to those who funded their participation, not least the Australian Institute for Aboriginal and Torres Strait Islander Studies, the Institute of Archaeology at University College, London, the World Council of Churches and the World Archaeological Congress itself. The symposia would not have been possible without the work of the sub-session convenors: Deanne Hanchant, Barbara Isaac, Tim McKeown, Lyndon Ormond Parker, Ben Rhodd, Audhild Schanche, Paul Turnbull and Larry Zimmerman.

The issues surrounding 'reburial' and 'repatriation' are central to the archaeological discipline. Thus, the 'reburial debate' has been a central subject of interest for, and has been debated widely by, the World Archaeological Congress. *Conflict in the Archaeology of Living Traditions* (Layton 1989), the eighth book in the *One World Archaeology* (OWA) series, derived from papers given at the first World Archaeological Congress in 1986 considered this subject. The current book shows how the issue has developed since the mid 1980s, and, like *Conflict*, is committed to a global perspective.

Many people have helped in the compilation of this book. Many thanks to Deanne Hanchant for her assistance in Australia, to Ben Alberti and Maria Luz Endere for their translating skills and to Rhoda Louw for ensuring the inclusion of some of the South African chapters. Particular thanks are due to Peter Ucko for acting as Academic Editor for this volume.

Cressida Fforde and Jane Hubert
London, June 2001

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Layton, R. (ed.) (1989) *Conflict in the Archaeology of Living Traditions*. London: Unwin Hyman.

Introduction: the reburial issue in the twenty-first century

JANE HUBERT AND CRESSIDA FFORDE

The past 30 years have witnessed the emergence of what has been widely, and loosely, referred to as the 'reburial' issue.¹ Australian Aborigines, Native Americans and, increasingly, indigenous peoples from other parts of the world, have campaigned for the right to determine the future of the human remains of their ancestors. In many cases they are also claiming grave goods, sacred objects and other culturally significant items. In particular, this campaign has contested the ownership of human remains housed in museums and other institutions, and has commonly demanded that such material be returned to the cultural group in the area from which the human remains originated for final disposal. In addition, indigenous groups have sought to ensure that human remains found today, whether through archaeological excavation, construction work or other chance discovery, are returned to them. In the past it was often standard procedure for indigenous remains to be automatically assigned to museum collections, whereas 'white' bones would be taken away to be buried immediately (Zimmerman 1989).

The reburial issue has been widely represented as an indigenous issue, but it is not only indigenous people who wish for the return of their dead. People all over the world are concerned about the fate of the bodies of their kin and those of significant members of their cultural group. When wars end, the families of those who were killed often want their bodies brought back to them so that they can be buried at home and properly mourned. In 2000, during the first visit of an American president to Vietnam since the Vietnam war, Bill Clinton collected the partial skeletal remains of one of the American troops killed during the conflict and previously deemed 'Missing in Action' so that they could be buried at home. Currently, forensic archaeologists are finding, excavating and trying to identify the remains of the 'disappeared' in many countries (for example, in Africa, South America and Eastern Europe), so that they can be returned to their families, and thus, to some degree, heal the wounds of the trauma of history (and see Thornton Chapter 1).

Indigenous groups request the return of the human remains of their ancestors for a number of reasons, but primarily on the grounds that their ancestors must be accorded funerary rituals appropriate to their cultural beliefs. Some consider the

retention of remains in museums as spiritually dangerous. As is well known, all societies have some kind of death rituals, though they vary in form and function, and funerary activities have been of great interest to social anthropologists for many years. Such rituals have various functions. Some of these are for the spirit of the dead – to disentangle the soul from the body, to enable the spirit to be free, to help it reach another destination, or to enable resurrection, and so on. For the living, the rituals serve to formalize the death, to make the break between life and death visible and help people come to terms with the death, and enable them to mourn their dead. Death rituals may serve to reaffirm cultural beliefs, but they may also be, or form part of, a display by the living of their own standing and aspirations in society.

People in different cultures perceive and manage the boundary between life and death in different ways (Hockey 1990). In many societies death is not believed to occur at a single point in time but is a process from one world to another, a journey over time, and enveloped in a body of rituals to bring this about. Thus without funerary rituals the process of death is considered incomplete. In some societies, if appropriate rituals are not carried out, a person's spirit is believed to be doomed to wander in limbo for eternity, or will return to the community bringing sickness or death (see Hubert 1989).

The need to mourn and dispose of the dead with appropriate rituals is one of the reasons why people want the bodies of their dead returned to them, but the demand for return of human remains has other dimensions. It is also a means by which people – especially those who have been dispossessed – can assert their pre-eminent right to make their own decisions regarding what should happen to their ancestors' remains. In this way they can lay claim to their own pasts and determine what should or should not be part of their cultural heritage.

This can also work in the opposite direction. In Zimbabwe, for example, there is a group who are demanding the disinterment, and exile from the country, of the human remains of an erstwhile national hero, Cecil Rhodes (Muringaniza Chapter 28). To some contemporary Zimbabweans Rhodes' grave – which draws thousands of tourists every year – represents the colonial past and should not be considered part of Zimbabwe's national heritage. The current debate is about perceptions of Zimbabwe's cultural heritage, and how it is to be managed in the aftermath of colonial occupation. It is also about the wishes of the living, not the dead – Rhodes had specifically requested that he be buried in the Matopos hills.

It is in countries that have been colonized that the issue of the remains of the dead has acquired an added significance of its own. This is partly because the beliefs and practices of colonized people are known to have been ignored and denied over many generations. The colonizers have not only taken over their lands but have often deliberately tried to destroy their cultures and religious beliefs, as well as physically removing the human remains of their dead. What is now called the 'cultural heritage' of colonized peoples was plundered, and among the many things that were taken back to Europe were skeletons (especially skulls), mummified bodies, limbs, shrunken heads and various other anatomical specimens.

There are also other contexts in which human remains are removed from their resting place: for example, in the building of roads, bridges, railways, housing and commercial developments. Human remains have also been removed by archaeological excavation, to be studied by archaeologists and physical anthropologists, and to be stored and displayed in museums and university departments.

Many accounts of the colonists' treatment of the bodies of indigenous people from the late eighteenth through to the early twentieth centuries are shocking, but it should be remembered that in Britain, for example, as recently as the early nineteenth century, surgeons and anatomists were employing people to dig up the graves of the British poor to provide bodies for dissection by medical students. Although the Anatomy Act of 1832 made the practice of grave-robbing illegal, over 50,000 bodies of poor people who died in institutions are said to have been used for dissection up until the 1930s (Richardson 1987). Clearly, those sections of the British population who were too poor to pay for proper burials, and as a result were interred in shallow graves, were considered sufficiently 'other' (by those who had higher status, power and authority) to be treated with what would normally be considered disrespect and inhumanity.

The reburial issue emerged from what was seen as a fundamental clash of interests, and by the 1980s it had become the subject of intense debate, which has continued into the twenty-first century. There is no need to reiterate in detail here the well-known arguments on different sides (see, e.g. Hammil and Cruz 1989; Hubert 1989, 1992; Mulvaney 1991; Swidler *et al.* 1997). Briefly, various indigenous groups have put pressure on museums and other institutions to disclose their holdings of human remains and funerary objects, to remove them from display and to return them to the communities concerned. Many museums have done so, sometimes being forced to do so by legislation (see Anyon and Thornton Chapter 14), but some are still unwilling to disclose their holdings, let alone return human remains, in spite of repeated representations to them.²

It is worth noting that as long ago as 1990, *The Times* wrote in an editorial devoted to the subject of the return of Australian Aboriginal skeletal remains: 'No curator can rest easy in his mind about holding on to such items.' Yet in spite of this support, as Fforde (Chapter 2) observes, museums refuse to return human remains, and the implications of one cultural group assuming the right to carry out scientific research on the bodies of another group are profound. The scientific analysis of the 'Aboriginal body', comparative anatomy and physical anthropology 'fashioned an identity for Aborigines, the effects of which reached far beyond the boundaries of the laboratory' (Ibid.). Fforde looks in detail at the way in which collecting and repatriation are intricately linked with identity, a connection also clearly expressed in this volume by Palm Island (Chapter 17), Martinez Barbosa (Chapter 16) and Engelbrecht (Chapter 19).

Although some suggested arrangements such as Keeping Places (see Aird Chapter 26 and Hanchant Chapter 27) allow for the possibility of future access to human remains, cremation or reburial mark the loss to science of a unique source of information about the past. Indigenous claims for the return of their ancestors' remains have thus been opposed by many who study and curate such items. With

present techniques human remains can provide archaeologists and biological anthropologists with data about such things as past diseases, diet, social practices, population movement and human evolution (see, for example, *World Archaeological Bulletin* 6, 1992). With the development of such techniques as DNA analysis scientists are now able to elicit even more information from human remains, even perhaps from the most ancient ones.

Although the potential of future research has been, and still is, a common argument put forward by scientists who wish to retain skeletal material, this argument has sometimes been undermined. For example, evidence from the analysis of a large number of bodies from the crypt of Christ Church cemetery in Spitalfields, London, in the 1980s, whose age and date of death were known, raises significant questions about the reliability of standard – and hitherto presumed to be accurate – osteological techniques. Estimations of age at death using these techniques, for example, were found to be inaccurate when matched with the written records. This led some of the researchers on the project to conclude (Molleson *et al.* 1993: 213) that: ‘The lesson from Christ Church must surely be that it is extremely dangerous to make assumptions about populations from skeletal samples.’ Another example is the controversy (*Sydney Morning Herald* 05.05.01) among archaeologists and physical anthropologists regarding the date of Australia’s ‘most ancient skeleton’, Mungo Man, resulting from differing interpretations of DNA samples taken from the remains.

The history of the study of skeletal remains has produced many ‘truths’ which have been subsequently disproved, rejected or qualified. Yet what is held to be the primary reason for the retention of remains – their potential importance for future scientific research – is asserted without question. Those requesting the return of remains say that, in any case, scientists have had long enough to study them, and if they have not done so already – and in many cases collections have lain unused for decades – these remains should not suddenly be deemed crucial because of their possible use for future research.

Another argument frequently voiced against the return of human remains is that the study and curation of such items was not an issue among indigenous populations until their political organizations campaigning for reburial began to gain international publicity. This is refuted by Turnbull (Chapter 5), who considers that the scientists’ claim to moral ownership is at best tenuous. He presents documentation of a long history of concern and care for human remains among Australia’s indigenous people which not only demonstrates their determination to prevent the desecration of burial sites and the removal of human remains and funerary objects but also that this was widely recognized by the Europeans involved. Indeed, Turnbull (*Ibid.*) reveals that in mid-nineteenth century colonial Australia, the British government legally recognized the right of indigenous people to own and control land when it was used for mortuary ceremonies. The British law of the land drew no distinction between the protection it gave to indigenous and settler dead. Turnbull discusses the profound implications of the colonial British recognition of Aboriginal burial sites and also draws attention to the central, and frequent, accounts about mortuary rites and ceremonies that have been ignored by the wider community, and which could be invaluable to

those making decisions about repatriation today. So far, these have been very largely ignored.

The confrontation between indigenous people and scientists in the context of the reburial issue has frequently appeared in the media. Joyce (Chapter 8) suggests that 'much discussion of the impact of repatriation has centred on a false polarity pitting native people against scientists, as if either category were a real unity'. Although the polarized views of many archaeologists and indigenous people have emerged strongly in the 'reburial' issue (and see Zimmerman Chapter 7), this book shows that neither group is an homogenized, undifferentiated whole, in which all share the same views.

The recent ongoing disputes between Australian Aborigines, Hawaiians and other indigenous peoples, and institutions such as the Natural History Museum in London, demonstrate that 'ownership' of human remains continues to be claimed by scientific institutions. However, Simpson (Chapter 15) is optimistic that many museum curators in Britain (though by no means all) are beginning to change their attitudes. Whether or not this is so, in 2000 the issue of the return of indigenous human remains entered the national political agenda in Britain. A joint Australian/UK prime ministerial statement was issued, agreeing 'to increase efforts to repatriate human remains to Australian indigenous communities'.³ A Parliamentary Select Committee was set up later that year (see Simpson Chapter 5), followed by a working group on human remains in March 2001. This movement of the reburial issue into national politics echoes a similar shift that occurred in Australia and the United States 10 to 15 years ago.

It is clear that it was not a change in the attitudes of academics which brought about widespread repatriation but the intervention of politicians and the development of legislation, perhaps also aided by exposure in the media. It will be interesting to see whether a similar development occurs in the UK. As Anyon and Thornton (Chapter 14) note in their analysis of what can be learned from repatriation legislation in the USA: 'to guarantee that repatriation will occur, and occur in a structured manner, it is essential that repatriation legislation be enacted. Relying purely on the goodwill of institutions or individuals to implement repatriation often promotes ineffective, inadequate, and arbitrary efforts.'

The development of legislation does not mean that the attitudes of specialists necessarily change. Nagar (Chapter 6), for example, records his own lack of agreement, as an archaeologist, with the recent (1994) reinterpretation of Israel's Antiquities Law by the orthodox Jewish leadership in Israel. This law demands that *all* human remains that are uncovered, whatever their faith, must be immediately reburied. Thus in Israel *every* human remain is reburied, no matter what its cultural affiliation, to ensure that all bones that might possibly be of Jewish ancestry are reinterred. In this example, the identification of past cultural affiliation is not a pre-eminent criterion in deciding what to do with excavated remains. In other examples discussed in this book, identifying the origin of human remains is of crucial importance, and the question of how to deal with unprovenanced remains, or those whose cultural affiliation is unclear or contested, has emerged as one of the most difficult aspects of decisions about what to do with repatriated items.

The symbolic power of the return of human remains to a formerly oppressed people is vividly described by Thornton (Chapter 1), both in personal and historical terms. It is claimed that the return of human remains and important cultural objects from traumatic events of the past can begin to heal the wounds of the people as a group, and help them to come to terms with the past. The ability for repatriation to heal past wrongs is echoed in this volume by Sellevold (Chapter 4) (and see also Martinez Barbosa Chapter 16), who describes the first Saami reburial ceremony of two skulls as a 'symbolic rectification of past and present oppression, both against the families of the deceased and against the Saami people by the Norwegian authorities'. In Chapter 3, Schanche describes the history of the exploitation of the Saami people, both dead and alive, who were perceived as static, doomed and 'primitive', and even as an 'alien inland people' who had moved westward, rather than as the indigenous inhabitants of Norway. Currently Saami representatives are negotiating the return of a large collection of skulls from the Institute of Anatomy in the University of Oslo (and see Ucko 2001 for further details of the factors involved in Saami claims).

The retention of human remains in museums, against the wishes of claimants, is frequently seen as a continuance of the attitudes and perceptions which oppressed indigenous groups throughout colonialism. Those in control of collections deny this accusation, and assert that they are not responsible for the actions of early collectors, even though they now curate items collected during the colonial period.

The reburial issue was brought into international archaeological focus at the first World Archaeological Congress (WAC) in 1986, where archaeologists were drawn into debate with indigenous participants – Native Americans, First Nation people from Canada, Indians from South America, Australian Aborigines, Inuit, and Saami people – about their claims for the return of the remains of their ancestors. This led WAC, in 1989, to draw up a position statement, the Vermillion Accord, which called for respect for the mortal remains of the dead, irrespective of origin, race, religion, nationality, custom and tradition, and for the wishes of the local community and relatives of the dead, as well as respect for the scientific research value of human remains. It also stipulated that agreement on the disposition of human remains should be reached by negotiation on the basis of mutual respect for the 'legitimate concerns of communities, as well as the legitimate concerns of science and education'. (See Zimmerman Chapter 7 for the full text of the Accord.) Zimmerman (*Ibid.*) discusses the impact of the Accord and suggests that it may even have been one of the factors that influenced the United States Congress to finally make decisions about how the federal government should treat human remains and funerary goods.

The Native American Graves Protection and Repatriation Act (NAGPRA) and the National Museum of the American Indian Act (NMAI Act) are by far the most significant pieces of legislation developed so far regarding human remains and funerary goods, and their enactment in the early 1990s has proved a powerful influence far beyond the United States. Because of NAGPRA's central importance, a number of chapters in this book are devoted to it, including its mandate (McKeown Chapter 9), implementation (Isaac Chapter 12; Ayau and Tengan Chapter 13; McManamon Chapter 10) and implications (Watkins Chapter 11; Joyce Chapter 8; Ayau and Tengan Chapter 13; Anyon and Thornton Chapter 14; Thornton Chapter 1). McManamon

(Chapter 10) reports that in spite of concerns about adequate financial and staff resources and other various problems encountered, 'thousands of government, museum and academic professionals in hundreds of museums and agency offices have been able to arrive at acceptable resolutions to hundreds of NAGPRA cases with thousands of Native Americans'. Anyon and Thornton (Chapter 14) discuss NAGPRA's ramifications, while Joyce (Chapter 8) examines the relationships which emerge from it regarding concepts of academic freedom.

Isaac (Chapter 12) presents a case study of the problems encountered, as a result of NAGPRA, by museums that contain very large collections. Thus the Peabody Museum of Archaeology and Ethnography (PMAE), because of a lack of financial resources, has found it difficult to meet the imposed deadlines for summaries and inventories. Only recently has the museum found the money to improve the situation. The process of repatriation is considerably slowed by the fact that there are vast quantities of previously uninventoried human remains and funerary objects in the PMAE. This unprofessional state of affairs is evident in other museums as well. For example, the Natural History Museum in London is only now beginning to catalogue its large and very long-standing collection of indigenous material. This situation severely undermines claims that the material is held by museums because it is a source of important information for use by researchers.

The process of repatriation from the PMAE is also delayed because disagreements may arise between Native American groups about which of them are more closely affiliated to specific human remains or objects. As noted above, there is also controversy regarding the disposition of *unaffiliated* human remains and associated funerary goods. Some Native American groups consider that unprovenanced or poorly provenanced material should be reburied in the general area of origin, whereas others would prefer that the remains are retained by the museum. This situation is also found in other countries. In Australia, for example, Hanchant (Chapter 27) persuaded her family to keep (what was assumed to be) their relative's skull in the South Australian Museum until she had conducted further archival research to try and locate the related post-cranial material. The skull proved not to be that of her relative, and was therefore no longer claimed by her family.

This highlights a number of important points: first, museum records cannot always be relied on for their accuracy; second, the repatriation process requires detailed archival research to determine or validate provenance; third, relatives may, in some instances, choose to keep remains (temporarily or permanently) in museums; and fourth, the return of human remains may not always result in harmony within the group receiving them, but dissension.

Hanchant (Chapter 27) recommends that remains whose cultural affiliation is unknown be kept in a National Keeping Place until decisions about their disposition are made – by Aborigines. She suggests that wide consultation would be required to establish agreement among groups who may in fact have very different ideas about what should happen to the remains. As McKeown describes (Chapter 9), in the USA the NAGPRA Review Committee considers matters regarding items with little or no associated cultural affiliation information. Their role is potentially highly important since, as Watkins (Chapter 11) suggests, in instances where cultural

affiliation is unclear or contested museums may play one tribe against another, and in this way retain control over grave goods and cultural artefacts.

As reflected in a number of chapters in this volume, when cultural affiliation is unclear, the question of who should have authority to determine what should happen to returned material – and the decision making process which takes place to make such a determination – is of vital concern. It is not only lack of provenance information which can lead to uncertainty as to cultural affiliation of remains, but this also may occur when remains are uncovered in an area where the modern community has no apparent biological or cultural connection to them. For example, in South Africa, Fish (Chapter 22) describes a fifteenth-century archaeological site which, from archaeological evidence, appears to relate to pre-Venda, Sotho-speaking peoples, whereas the contemporary community is almost entirely Venda. This community did not wish to claim the remains, and this, as well as the fear that traditional healers might dig up the remains in order to extract medicinal substances from them, contributed to a decision to take the remains to the Anatomy Department of the University of Pretoria.

Another excavation in South Africa, at Thulamela, led to initial disagreement between two different local groups because of the alleged lack of clear cultural continuity of the site to modern communities (see Nemaheni Chapter 21). Because of this uncertainty, when the remains of two bodies were found at the site, problems arose about who should rebury them. Neither group wanted to be ‘associated with the dead’, and also no one wanted to be seen to be associated with ‘other people’s ancestors’. After debate, the reburial went ahead, although those who undertook the ceremony were later criticized for erecting Christian crosses on the graves. As Nemaheni describes, the challenges made explicit by the Thulamela reburial have informed more recent projects which have, consequently, been less problematic.

The first reburial, in any cultural group, is by definition a totally new experience. Decisions have to be made about what rituals are the appropriate ones to carry out. Thus new traditions are developed. For some, being given the responsibility to carry out a reburial involves intense training in traditional values. Ayau and Tengan (Chapter 13) describe the difficulties that young Native Hawaiians had learning the necessary cultural protocols from the Elders for carrying out their first reburial ‘due to our weakness in speaking our native language and understanding traditional values and practices as a result of our Western upbringing’, and, for some, there was the added difficulty of reconciling this training with their Christian values.

Even if the provenance of remains is known there may be other problems when the remains are returned. As Fforde describes (Chapter 18), the reburial of Yagan’s skull has been delayed while archaeologists, on behalf of Aborigines, try to locate the exact position of his post-cranial remains, buried in an unmarked grave following his murder in 1833.

Decisions about what should be done with repatriated human remains and grave-goods when they are returned may not be straightforward. Failure to immediately rebury remains may evoke criticism – and the suggestion that such delays reflect indifference to ancestors – and demonstrates an overwhelming political agenda. However, as Ucko (2001: 231) points out: ‘It is too easy for those opposing the repatriation of

human remains to ignore the need for lengthy considerations of the appropriate way to handle the new situation which has created unprovenanced mixtures of ancestral remains.'

Whatever the political contexts of repatriation demands may be, and however complex the issues involved, there can be no doubt about the depth of feeling involved in such demands. This aspect of the reburial debate is well represented in this book, and to many of the people concerned this is indeed the most fundamental of issues. Some chapters are short, heartfelt appeals for the return of the remains of a significant leader of the past.

One of these is Engelbrecht (Chapter 19), who writes from the perspective of those people in South Africa descended from the Khoisan and Griqua people who were classified as 'Coloureds' by the apartheid regime. They have claimed the remains of a Griqua chief, Cornelis Kok II, who is seen as part of a heritage denied to them by apartheid policies – 'we want to return to our roots'. The repatriation of Kok's remains must, he states, be under Griqua control, and the necessary funding supplied, as the group demands that they should no longer be 'neglected and excluded in major decisions and budgets that will heal our people'. Thus in this case there are two linked, but different, agenda. The demand for the return of human remains is one component of a demand for recognition, and a degree of autonomy. It also represents the re-emergence of an 'ethnic group' which had been submerged by group ethnicities prescribed by the apartheid regime.

Martinez Barbosa (Chapter 6) also describes a claim for the return of a named individual, a Uruguayan Charruas leader, who died while being exhibited in a circus in France, and whose remains are held by the Musée de l'Homme in Paris. Like Engelbrecht, he sees the return of this former leader as 'an historic expression of justice for a dispossessed people ... [which would recognize] the identity of indigenous descendants as part of their own heritage, despite their minority status'.

Walter Palm Island (Chapter 17) reports on the return of the remains of his great-great-uncle Tambo, a Manbarra man from Palm Island, Australia, who had been taken to the USA, also to be exhibited in a circus. He describes how this repatriation gave the young people on Palm Island a sense of identity: Tambo 'has become an ancestor for all the Palm Island people, not only the Manbarra'. In this case, Tambo's return appears to have established a new cultural identity and cohesion for a heterogeneous people who had not all originated from Palm Island – the island had been a penal settlement in which 'Aborigines of different tribal cultures and customs ... were thrown together' (Rosser 1994). The cultural cohesion brought about by Tambo's return, at least temporarily, was even more poignant because those who had been sent to Palm Island had been forbidden by law to carry out any of their own cultural practices or ceremonies (Ibid.; see also Fforde 1997).

For Parsons and Segobye (Chapter 20) the struggle to repatriate the body of a stuffed 'bushman' (popularly known as 'El Negro') exhibited in a Spanish museum also raises many issues (and see Jaume *et al.* 1992) such as how peoples are represented, how human remains are perceived and how the identity of individuals can be appropriated (and these issues are clearly intertwined). Identified simply as 'El Negro', his body appears to have been displayed, without any explanatory label, in order to

represent the 'African race'. The display also conveyed multiple implicit messages about how Africans were viewed by the society that made his body an exhibit, not least perceptions of 'primitiveness', 'savagery' and 'inferiority'.

In the days prior to his return, the Spanish authorities reduced the body of El Negro to skeletal remains. This act of desecration removed the final vestiges of his human form, and may have been intended to confirm his status as 'object'. Arriving in Botswana as bare bones in a small box, his identity as El Negro was then in doubt. Despite criticism that he should have been reinterred in his place of origin, the Botswana government buried him in the Tsholofelo Park, Gaborone. His burial place has become a national monument, his identity now appropriated by Botswana as a national symbol.

Ayau and Tengan (Chapter 13) narrate the struggle, or 'journey', to repatriate Native Hawaiian human remains and grave goods under the auspices of the NAGPRA process. They describe the repercussions of this struggle in terms of the strengthening of cultural values, and the heightening of awareness of the damage wreaked by colonization: 'The disturbance of our burials is intimately tied to colonization – the complicated processes by which Euro-Americans appropriated our lands, exploited our resources, disenfranchised our people and transformed the very way we think about who we are.' For Ayau and Tengan, repatriation and reburial are the means to re-establish harmony between the living and the dead, and the land, and to restore mana to Native Hawaiians.

From these accounts there is no doubt of the immense spiritual and material significance of these remains and objects. Repatriation from this perspective is not only a question of regaining ownership of property, though possession and control are fundamental requirements, it is also seen as a process towards the re-creation of the wholeness of the people receiving the remains of their ancestors.

Although members of a community may be united in their desire to have the human remains and grave goods of their ancestors returned, there may be disagreement among them about what happens when they are. Among the Native Hawaiian people who have struggled to get their human remains returned (Ayau and Tengan Chapter 13), there are serious ongoing disagreements over the disposition of some grave goods (though not the human remains, which all are agreed should be buried). Some groups opposed the burial of these funerary objects, arguing that they should be preserved for future generations. Those who rebury them consider that the wishes of the ancestors and traditional values necessitated this action. It seems that those who oppose the reburial of grave goods are concerned more with the preservation of cultural markers for the future and less with conforming to traditional ways of managing these objects.

The Hawaiian example serves to demonstrate that communities may differ in what they feel should be done with significant items of cultural property. Similarly, Watkins (Chapter 11) describes an example where two separate groups could lay claim to funerary objects from the Spiro Mounds in Oklahoma, USA, one considering that repatriated grave goods, although sacred, should be 'proudly displayed', and the other that grave goods should be buried 'away from the sight of individuals who had no right to view them'.

In New Zealand, claims of ownership of cultural objects have resulted in successful partnerships between Maori groups and museums. Some traditionally oriented Maoris working with museums are rejecting 'repatriation' in favour of the establishment of museum Maori advisory groups, which are involved in the decision-making process regarding the trusteeship and resource management of Maori cultural objects (Kawharu Chapter 25; Tapsell Chapter 24). Tapsell suggests that such claimants may be attempting to 'redefine [ancestral treasures] and human remains as pan-Maori identity markers' in order to gain 'wider access to Crown controlled resources'.

Aird (Chapter 26) describes the loan (not return) of cultural objects by the Museum of Queensland to Australian Aboriginal groups who can demonstrate that they are culturally affiliated to the objects. He sees this loan as a form of repatriation, an example of 'cultural knowledge' being returned to the community. As a museum curator, he also sees it as an opportunity to build a relationship between Aboriginal groups and the museum. It also illustrates that the reburial issue is at times one process through which the 'divide' between indigenous people and museums can be bridged to the mutual benefit of all those involved.

Endere (Chapter 23) raises important issues regarding the disposition of repatriated remains in relation to concepts of identity, in particular the nature of ethnicity and indigeneity within the nation-state. In 1990 the remains of a Ranquel chief, Mariano Rosas, were released for repatriation by the La Plata Museum, Argentina. The Secretary of Culture of La Pampa decided to build a monument in the capital city of La Pampas, to house Rosas' remains, as well as the remains of chiefs from other indigenous groups. This was to ensure that the nation's history would appear more pluralist: 'we are trying to rescue the Pampean identity and the indigenous peoples are part of this identity' (Endere Chapter 23). However, the Ranquel people contested this attempt to appropriate the identity of their chief, saying that his resting-place should not be a monument for tourists: 'our ancestors should lie in peace in their own land'. In contrast, a small sign outside the mausoleum containing the returned remains of another Argentinian chief, Inakayal, 'welcomes' visitors, although it is not known whether it attracts tourists (see Endere Chapter 23: Figure 23.6). Significantly, the mausoleum is not located in a capital city but in the open country, close to the area where Inakayal lived.

Issues of identity permeate the whole concept of repatriation. Individual cultural groups may oppose the merging of their identity with other cultural groups whom they regard as distinct from themselves, but where there has been comparatively recent oppression and destruction of a nation's indigenous population, there will, perhaps inevitably, be a perceived need to create a pan-indigenous identity within a national population. As Fforde (Chapter 2) writes, 'the perception and construction of Aboriginal identity play a significant role in both repatriation requests and argument put forward by those who have opposed them'. Repatriation can 'not only articulate, strengthen and construct local Aboriginal identity but Aboriginality as a pan-Australian commonality'. Thus repatriation can create a 'commonality' between cultural groups that did not exist in pre-colonial times but has become relevant and necessary in the face of the legacy of colonialism. The process can change the cultural

identity of a group, and the way that members of the group see themselves (and see Ucko 2000).

This book clearly shows that although repatriation of human remains has become policy in many places, there continues to be a great divide, at least in some parts of the world, between those who excavate them, curate them in museums, and draw up legislation about them, and those whose ancestors they are believed to be, to whom they are being repatriated. This is demonstrated by the way that different interest groups talk about human remains; thus, for example, Walter Palm Island (Chapter 17), when his ancestor, Tambo, came home, said that a Nyawaygi speaker was needed 'because it was crucial to be able to address Tambo's spirit in a language he would understand – to identify us as people from his own region, to tell him that he was being brought home'. All the indigenous accounts of repatriation and reburial reflect the perception of the remains of their ancestors as 'living' people – even if only a skull or other scant remains have come back to them. This contrasts with the language of scientists and museum curators, which articulates the perception that remains are objects, labelled and classified components of a collection, and of the lawyers, who write about them as objects of negotiation.

However, the contrast in language and approach between cultural groups and those who study and curate human remains is not impermeable, and the scientific approach to remains is not always consistent with the view that human remains are primarily data. Named individuals, or those who have known descendants, are frequently the first 'types' of remains to be returned by institutions (in countries where repatriation legislation for all human remains does not exist). There is no scientific basis for this distinction (and see Pardoe 1991). It may be that those in charge of museums in fact agree with the indigenous perception of named remains as 'dead people', and thus believe that burial is an appropriate course of action. On the other hand, refusal to return 'anonymous' bones implies that unnamed remains are not similarly considered, despite cultural beliefs that state otherwise. It may be that the anonymity of remains-as-data is central to their positioning as 'objects'.

Significantly, modern DNA analysis now appears to have the capacity to identify the modern relatives of ancient remains. When DNA analysis of the 5,000-year-old 'Iceman', a frozen body recovered from the Italian Alps in 1991, identified a living relative, Marie Moseley, the scientist responsible for this discovery Professor Bryan Sykes (Institute of Molecular Medicine, Oxford University) noted that:

Marie began to feel something for the Iceman. She had seen pictures of him being shunted around from glacier to freezer to post-mortem room, poked and prodded, opened up, bits cut off. To her, he was no longer the anonymous curiosity whose picture had appeared in the papers and on television. She had started to think of him as a real person and as a relative, which is exactly what he was.

(The Sunday Times 20.5.01)

The Iceman's anonymity was eroded, for Moseley, by the authority of science, which 'proved' that he was her distant ancestor. For indigenous groups claiming ancient remains as their ancestors, the authority lies in cultural beliefs.

The decisions that are taken by museums about which human remains should be returned appear to be determined more by how the dominant society defines what (or who) constitutes 'the dead' than by the needs of science. The wishes of indigenous groups are certainly not of primary concern, as many requests make no distinction between named or unknown individuals, post-colonial remains or fossils.

In fact, not all museums distinguish between named and unnamed individuals. The University of Edinburgh, UK has agreed to return all the remains in its collection 'when so requested, to appropriate representatives of cultures in which such remains had particular significance'. On the other hand, the Musée de l'Homme in Paris does not allow the return of named individuals, such as Sara Baartman to South Africa, (Skotnes 1996) or Vaimaca Pirú to Uruguay (Martinez Barbosa Chapter 16).

Perhaps it is the nature of the study of human remains itself that requires something similar to 'medical detachment' which produces an attitude towards the human body, whether alive or dead, that appears to differ from that held by society at large. Judging by the public support for repatriation (see Simpson Chapter 15), and the outrage that follows desecration of the bodies of their own dead (see below) and of graveyards (Hubert 1989), the wider society generally appears to have respect for the dead, and acknowledges the right of relatives to accord them appropriate treatment.

Such 'medical detachment' would perhaps explain why early scientists with close indigenous friends felt able to deflesh their bones as soon as they died, and incorporate them into museum collections (see Endere Chapter 23) or take their organs for research purposes (e.g. Miklouho-Maclay 1982: 127–31). In such cases the interests of science appear to have been paramount, overriding any feeling of affection, or fulfilment of the responsibility to carry out funerary rituals and dispose of the body according to cultural expectations.

Since the chapters in this book were drawn together, the complexity and inconsistencies of perceptions and attitudes have exploded into the consciousness of the British public. A scandal has erupted about the treatment of the bodies of their own dead, and the removal and retention of human organs in British hospitals without the knowledge and permission of relatives. A Government inquiry (Department of Health 2000) reports that over 54,000 organs, body parts, still-births or fetuses had been retained from post-mortems by NHS pathology services, many without fully informed consent.

Until this scandal arose, it was generally assumed that the bodies of the dead were treated with respect by doctors and those staff whose responsibility it was to care for them between the moment of death and their return to relatives for disposal through burial or cremation. Furthermore, central to this assumption is the belief that it is the relatives who should make decisions about what happens to the dead. Now it appears that, without consent, many bodies, including those of babies, have been stripped of their organs, which have then been kept in jars, stored in cupboards or in some cases sold. In Alder Hey hospital, in Liverpool, for example, some 3,000 organs of dead babies are alleged to be stored without parents' knowledge. In cases such as these the

'body' that parents had buried and mourned was, to all intents and purposes, simply an 'empty shell'. Since this was discovered, some parents have felt the need to carry out two or three subsequent burials of body parts which were later returned to them, such as the hearts, lungs and brain of their child, in the original grave, with funerary rituals. On the face of it this desire to bury the remains of a relative appears to echo the responses of indigenous people, who have for many years been trying to take home the various human remains of their own dead to dispose of them with due rituals. Until now, it was not envisaged that parents in Britain would find themselves in a position of having to bury different body parts on separate occasions. Just as for colonized peoples, who are successful in securing the return of human remains, this is a new situation that has arisen, necessitating the creation of new ceremonies and rituals, to encompass these subsequent burials of body parts.

Another example in Britain concerns the families bereaved by the sinking of the *Marchioness* pleasure boat in the Thames in 1989. Relatives have recently learned that, in addition to the hands of many of the victims having been chopped off 'for identification', all the bodies were stripped of their organs – lungs, brains, livers, kidneys, hearts, spleens, tonsils and others – without the relatives' consent. Some bodies were returned to their families in sealed body-bags (*Independent on Sunday* 11.03.01).

These recent events in Britain demonstrate that the contrast between the treatment of the human remains of 'others' – kept for possible future evolutionary and other research purposes – and the supposedly humane treatment of the bodies of the dead in British contemporary culture, is less clear-cut than was thought before. In some cases doctors and hospitals appear to have been paying only lip service to what the public believes to be appropriate respect for the dead, their wishes and the wishes of their relatives. These practices, accepted as normal among at least some doctors and scientists, may reveal that some look upon patients and their relatives as 'other' – that there is an established culture of 'us' and 'them' that permits such disregard for what is considered ethical practice.

Whether or not the circumstances and contexts of attitudes to the disposal of the dead are similar, the same or different, it is to be hoped that the horror and disgust of the British public at the revelation that parts of bodies were separated, without permission, from the whole dead person, will lead to a greater understanding of attempts by indigenous people to repatriate the human remains of their relatives.

The chapters in this book, from a wide range of different geographical areas and cultural groups, demonstrate that social meanings are inextricable from perceptions of the human body, in life and in death. Those who curate and study human remains, against the wishes of those who seek their repatriation, may seek to deny, ignore or devalue these social meanings. A perceived duty to retain collections inherited from the past – by definition 'objects' to be curated – has often overridden social and cultural meanings. The reburial issue, however, as illustrated throughout this book, has demanded that social and cultural values *are* acknowledged and responded to. During the past two decades this has gained sufficient strength to change the very nature of museums and what they were originally created to do.

In some countries the acceptance of cultural beliefs and values, and a desire to right the wrongs of the past, has resulted in repatriation legislation. In other countries this

is only now being developed, and in yet others the repatriation debate is still in its early stages. This book documents these developments from a range of perspectives, bringing together the voices of indigenous peoples, archaeologists, museum curators and others concerned with the principles, policies and practice of the reburial issue throughout the world.

ACKNOWLEDGEMENT

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NOTES

- 1 The term 'reburial' is commonly used in the debate regarding the return of human remains to countries or cultures of origin and is therefore used throughout this book. However, it should be noted that cultural practices relating to disposal of the dead often do not include burial at all (see Turnbull Chapter 5) and human remains may have been initially collected before they underwent any funerary rites (e.g. see Fforde Chapter 2 and Palm Island Chapter 17).
- 2 Memorandum submitted by the Foundation for Aboriginal and Islander Research Action (FAIRA) to the House of Commons Culture, Media and Sport Committee: Cultural Property: Return and Illicit Trade 2000.
www.publications.parliament.uk/pa/cm199900/cmselect/cmcmumed/371/0051002.htm
- 3 10 Downing Street Press Notice July 2000.

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1 *Repatriation as healing the wounds of the trauma of history: cases of Native Americans in the United States of America*

RUSSELL THORNTON

On the morning of Friday, 9 October 1993, a small group of Northern Cheyenne arrived at the Smithsonian Institution's National Museum of Natural History. They had come for their dead. Almost 115 years earlier, on 9 January 1879, at least 83 members of Dull Knife's (aka Morning Star) band of 149 Northern Cheyenne had been massacred by US Government soldiers near Fort Robinson, Nebraska, after a final, desperate attempt at freedom by the Cheyenne. They had fled toward their homelands in Montana, after having been moved to a reservation in Oklahoma to live with the Southern Cheyenne in 1877. They were captured, however; they were then held in the stockade at Fort Robinson with little food, water or even heat. They attempted to escape after two weeks. At least 57 Northern Cheyenne were killed during the escape; 32 others escaped but were trapped on 22 January at the edge of Antelope Creek: 26 of them were killed during the resulting massacre. Most of those killed in the escape attempt were buried near the fort; those killed at Antelope Creek were buried nearby in a mass grave. The bones of 17 of the Northern Cheyenne were collected after their brutal deaths for scientific study by the US Army Medical Examiner. Nine of these were obtained from the mass grave at Antelope Creek which was exhumed in 1880. The bones – mostly crania – had been later transferred to the Smithsonian's National Museum of Natural History. The bones were from Cheyenne ranging in age from 49 years old to a three-year-old child massacred at Antelope Creek. All were now being returned to their people in a joint repatriation with the Peabody Museum of Archaeology and Ethnology at Harvard which also had some skeletal remains from the Antelope Creek massacre, collected by a museum curator about a month before those at the Army Medical Museum.

At the ceremony the human bones were officially turned over to the Northern Cheyenne delegation. The delegation was impressive; the Northern Cheyenne were represented by the tribal chair, the Crazy Dogs society of warriors, the Elk Horn society, Sun Dance priests, four women who were fourth-generation descendants of Dull Knife and, most important, James Black Wolf, Keeper of the Sacred Buffalo Hat. The remains were carefully arranged on small Pendleton blankets; a pipe ceremony was performed, words and prayers were said, and a drum was played and songs

were sung. Each person's bones were then wrapped in a blanket and interned in cedar boxes for the journey home to Montana and final rest. During the ceremony, it was discovered that a shattered lower part of a skull from the Harvard museum matched an upper part of a woman's skull from the Smithsonian. Either at death 115 years earlier or afterwards, the woman's head had been shattered into two pieces, with each piece ending up at a different location. She was collected as two different people, one part of her going to the Army Medical Museum and the Smithsonian, the other part going to the Peabody. On that day, 9 October 1993, not only was the young Northern Cheyenne woman reunited with her people, her skull itself was reunited.

After the ceremony, a young native man from the Smithsonian came up to me and told me about the three-year-old's skull. 'The child was a little girl. I saw her. She was dressed in white and had yellow ribbons in her hair. I told the Cheyenne I had seen her, and that she was now happy. They were very pleased. They thanked me for telling them.'

After the ceremony in Washington, the remains were taken to Montana for burial. A stop was made on 12 October at Fort Robinson, Nebraska, for ceremonies. The journey then continued to Busby, Montana, where a wake, giveaway and offerings to the dead took place. A small teddy bear was given to the little girl and placed on the cedar box with her remains. Her remains and those of the other massacred Cheyenne were buried shortly after noon on 16 October 1993, on a hill near Two Moon Monument. A permanent memorial near the graves will be established.

I attended the ceremony in Washington DC, as I was chairman of the Smithsonian Institution's Native American Repatriation Review Committee, which was created by the Congress of the United States to oversee the return of Native American human remains and grave objects held at the Smithsonian Institution. It was an even more meaningful ceremony for me than it would ordinarily have been. My mother had died a few days before; I had stopped in Washington to attend the ceremony while on my way to Vian, Oklahoma, for her funeral the following day. At the ceremony in Washington, I kept thinking that my mother would be laid to rest only a few days after her death, but that these Northern Cheyenne had waited in museums for over a century before they could be buried. I also thought that my mother had a long, full life and had died peacefully. The Northern Cheyenne men, women and children had short-lived lives, ended by violent, cruel deaths during the Fort Robinson Massacre.

During the repatriation I also kept thinking about how the return of their ancestors had appeared to have brought some measure of healing to them for the atrocities committed at Fort Robinson. As described in their language, *Naevahoo'ohitseme* (We are going back home). In this chapter, I examine the repatriation of Native American human remains and cultural objects as a process of 'healing', whereby Native Americans are finally able to achieve closure on painful events in their histories.

REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND CULTURAL OBJECTS

It has been estimated that skeletal remains of from 'tens and tens of thousands' to 'hundreds of thousands' of Native American individuals are held in various universities, museums, historical societies and even private collections in the United States: one number frequently given is 600,000 (although that may be excessive). Skeletal remains of Native Americans are also held in other countries. Whatever the actual figure, the estimates indicate a sizeable problem. How many objects belonging to Native American groups obtained from graves and other places are held in these collections is pure speculation. It is also estimated that the skeletons, or more typically pieces of them, of several hundred Native Americans and countless objects buried with them are uncovered every year in highway, housing and other types of construction (estimates taken from Marcus Price 1991: 1).

Collecting human remains and objects

Some of the human remains and objects subject to legal repatriation were obtained appropriately, with the permission if not actual support of Native Americans at the time. However, many were not. That many of the human remains and objects were obtained by 'grave robbing', theft and fraudulent acts adds to Native American discomfort as well as further legitimizing claims for repatriation. That many remains and objects were obtained from atrocities committed against Native Americans during the past several hundred years of European colonialism not only furthers the discomfort but has prevented Native Americans from fully resolving or coming to terms with the psychological pain produced by events of their history.

The repatriation movement

Native American views that repatriation must occur are typically despite any scholarly or even general public good which may be derived from the study or display of the remains and objects. For example, scholars and others assert that the scientific and public values of the remains and cultural objects outweigh claims Native Americans may have on them. They argue that the scientific value is important not only to the public at large but also to native peoples themselves as scholars attempt to reconstruct histories of Native Americans. A related view is that the remains and objects now housed in museums and educational institutions belong not to Native Americans but to all Americans, even to all peoples of the world. They are part of the heritage of all people, not only Native American people. Another view is that scholars are keeping and studying remains because Native Americans do not know what they are doing when requesting repatriation. 'Some day', they say, 'Native Americans will want this knowledge (and see Zimmerman Chapter 7). It is up to us to preserve it

for them.' Such an attitude, of 'saving the Indians from themselves' is both patronizing and insulting.

Native Americans, conversely, assert that other factors outweigh science and education, and point out that society places all sorts of restrictions on appropriate types of research. Obviously, research that physically harms humans (and animals also but to a lesser extent) is prohibited. There are also ethical standards, however, whereby one must get 'informed consent' from the subjects whereby they are aware of the nature and implications of the research. The research must not harm the subjects psychologically, and subjects may not be identified without their permission. Studying the human remains of their ancestors causes great pain, Native Americans argue.

Particularly important, Native Americans point out, is that skeletons obtained from battlefields (as many of those in the Army Medical Museum were, that were later transferred to the Smithsonian Institution) are remains of Native Americans who died defending their homelands, since what is now the United States of America was all Native American land. American society has given much attention to returning to the United States the remains of American servicemen killed in World War II, the Korean Conflict, the war in Vietnam and other wars. Should society owe less to those defending America against the Europeans and the Euro-Americans, who took the land from the Native Americans? Are Native American warriors killed in battle less deserving of an honorable burial than American servicemen and women who died for the United States? (And what about 'civilians' killed in battles and massacres?) Most Americans strongly support efforts to repatriate the remains of all fellow Americans who died in Vietnam and elsewhere. What would the reaction of American society be if Vietnam refused to return the skeletal remains of American service men and women killed there? What if they said: 'We want to keep them and study them. They have much scientific value'?

Native Americans have attempted to legally prevent the collection of their human remains and cultural objects for at least more than a century (see Cole 1985: 121). Recently, Native Americans have increasingly demanded that ancestral remains and sacred objects be returned to them for proper disposal or care. The repatriation of Native American human remains as well as the repatriation of funerary objects (part of burials, or specifically for burials, or designed to contain human remains) and other cultural objects identified as 'objects of patrimony' (something owned by the entire people), e.g. wampum belts, or sacred objects, e.g. medicine bundles, is occurring today because of determined efforts by Native Americans to achieve legal changes in American society (see Thornton 1988 for discussion of this history, and McKeown this volume, Chapter 9 for details of such legislation).

Repatriation and the trauma of history

Psychologists have conceived a 'trauma of history' (Duran *et al.* 1988; Duran and Duran 1995). By this is meant events in the history of a people which cause a trauma to that group much in the way that events in the lives of individuals may cause a trauma to them. Moreover, 'if a person is traumatized, the trauma must be resolved for

the person to be psychologically healthy' (Duran *et al.* 1988: 62). Similarly, when a people are traumatized, the trauma must also be resolved; if not, the group psyche remains wounded. Without resolution, some have even argued that the effects of historical trauma are 'intergenerationally cumulative, thus compounding the mental health problems of succeeding generations' (Duran *et al.* 1988: 64).

Many of the arguments for historical trauma and its need for resolution come from studies of the Nazi Holocaust (e.g. Bergman and Jucovy 1990), and analogies have been made between Jews and the Holocaust and Native Americans and their experiences with the events of colonialism. According to Duran *et al.* (1988: 66), these include 'difficulty in mourning over a mass grave, the dynamics of collective grief, and the importance of community memorialization'. Moreover, European Jews live 'among the perpetrators and murderers of their families' (Fogelman 1991: 94) which has not allowed them the more healthy grieving process of American Jews (Fogelman 1991: 94 and see Duran *et al.* 1988: 66). 'Native Americans live in a colonized country where similar patterns of grief have emerged' (Duran *et al.* 1988: 66) and which also has hindered a healthy grieving process.

Healing the trauma of history

Native American groups in the United States have attempted in various ways to heal the historical traumas they have experienced.

The so-called 'Sioux Uprising of 1862' of the Dakota Sioux in southern Minnesota resulted in numerous Sioux deaths, including that of Little Crow; it also resulted in the largest, single formal execution in US history: the mass hanging of 38 Sioux at Mankato, Minnesota, on 26 December 1862 (Thornton 1987: 105). Later, after 125 years, the Dakota Sioux established a 'year of reconciliation' whereby they attempted to deal with the events of 1862 and 'come to terms with what happened, and move on with our lives, but not forget' (personal communication).

The forced removal of the Cherokee Indians from the Southeast into Indian Territory during the late 1830s is well known in United States history. It was such a tragic event and caused so much pain and death that it was named '*nunna daul tsuny*', literally 'the trail where we cried', and has become known as the 'Trail of Tears'. The event stands as the single most significant event in the history of the Cherokee Nation of Oklahoma, and a carving depicting a Cherokee woman carrying a child on her back is often presented as a symbol of the Cherokee Nation. As an effort to deal with this trauma and confront the pain it caused, the Cherokee have established a Trail of Tears Association, where the event is commemorated annually and the graves of those who were removed are marked with a special medallion. This is our attempt to 'heal the wounds of the trauma of history'. 'We are lucky in this regard', I said at a presentation to the 1998 meeting of the Trail of Tears Association. 'We have confronted this sad part of our history, have recognized it and have been able to heal some of the hurt it caused us as a people. Other Indian groups are not so fortunate.'

On 29 December 1890, several hundred Sioux men, women and children were massacred by troops of the First Squadron of the Seventh Cavalry¹ at Wounded Knee

Creek. Earlier, a band of 350 Sioux had fled their reservation in order to practice their new religion – the Ghost Dance – when the cavalry captured them. The massacre occurred when the troops were attempting to disarm the Sioux prior to taking them to Pine Ridge Agency for shipment back to their reservation. The Cavalry left with their dead and wounded after the massacre, and sent out a burial detail a few days later. In the meantime, other Sioux learned of the massacre and collected some of the dead. When the burial detail arrived on 1 January 1891, a heavy blizzard had covered the remaining dead bodies under snow. Eighty-four men and boys, 44 women and girls and 18 children were collected and buried in a mass grave. Seven generations after the Wounded Knee Massacre, the Sioux ‘undertook a communal memorialization through the Tatanka Iyotake (Sitting Bull) and Wokiksuye (Bigfoot) Ride, which traced the path of the Hunkpapa and Miniconju massacred at Wounded Knee’ (Duran *et al.* 1988: 72). It was time for them, they said, to put the event behind them and go on with their lives, but not forget.

Repatriation and healing the trauma of history

The repatriation process helps Native American groups to achieve some closure on traumatic events of their history, a closure which was not possible as long as human remains and cultural objects associated with these events were held by museums and other institutions.

For example, some of the Sioux massacred at Wounded Knee had been wearing sacred Ghost Dance shirts; they were stripped of these shirts before being dumped into a mass grave. Six of these shirts ended up at the National Museum of Natural History (and see Simpson Chapter 15); one was displayed in a museum exhibit with the caption that it was taken from the Wounded Knee ‘Battlefield’. In the fall of 1986, I was a fellow at the National Museum of Natural History. I remember vividly going with a curator into the attic of the National Museum of Natural History building to examine some of their North American Indian collections. He volunteered to show me these shirts. He pulled out a drawer from a large cabinet; then, there they were. Almost a hundred years after it occurred, I was a witness to a remaining legacy of the massacre at Wounded Knee. The shirts have bullet holes and are stained with blood; some still have medicine bags attached.

The Smithsonian officially had 29 ‘objects’ taken from those massacred at Wounded Knee. In addition to the six Ghost Dance shirts, they included a blanket from ‘a dead body’, a pair of boy’s moccasins, and baby jackets and caps. The return of the ‘objects’ to the descendants of the men, women and children at Wounded Knee occurred in September of 1998. The Cheyenne River Sioux Tribe represented them in the request. As chair of the Smithsonian Institution’s Native American Repatriation Review Committee, I became involved in the request and ultimate decision to return the objects to the Lakota Sioux. ‘This is part of our healing process’, the repatriation officer for the Cheyenne River Sioux Tribe informed me.

A massacre of Cheyenne Indians occurred at Sand Creek in southeastern Colorado in 1864. In it, a village of 400 to 500 people, mostly women and children, were attacked by the Colorado militia led by Colonel John Chivington; some 150 Cheyenne were killed. It was a terrible event: unborn babies were cut from their mother's stomachs and thrown on the ground; breasts and sexual organs – male and female – were cut from bodies and displayed by the soldiers (see Thornton 1987: 119–20). Remains from some of the Cheyenne massacred at Sand Creek were obtained by the Army Medical Museum and later transferred to the Smithsonian; in 1993, they were repatriated to the Southern Cheyenne. Tears were shed; words were spoken about how, at last, the people were being brought home and some of the pain of the Sand Creek Massacre could be eased.

SUMMARY AND CONCLUSION

There is a trauma of history whereby groups must be healed from the wounds of traumatic events, much as individuals must be healed from traumatic events during their lives, if they are to achieve psychological well-being. That human remains and important cultural objects from traumatic events in their history in the United States have been kept in museums and other institutions has hindered if not actually prevented Native Americans from coming to terms with the atrocities of their histories. It is only now, through repatriation of ancestors and objects associated with these events that many Native American peoples may reconcile themselves as peoples with these histories. They will undoubtedly never forget them (nor probably should they), and scars surely will remain, but perhaps there will be no more open wounds and their collective mental health will improve.

NOTE

- 1 The Seventh Cavalry was the regiment commanded by General George A. Custer, who was defeated by the Sioux, Northern Cheyenne and other tribes on 25 June 1876 in the Battle of Greasy Grass or, as more well known, the Battle of the Little Big Horn.

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2 *Collection, repatriation and identity*¹

CRESSIDA FFORDE

INTRODUCTION

Perceptions and constructions of identity saturate the history of the collection and interpretation of Aboriginal human remains. Scientific analysis of such material in the nineteenth and early twentieth centuries sought to identify and measure racial characteristics, constructing an Aboriginal identity expressed in quantitative terms and reifying a pre-existing perception of Aborigines as inferior to the colonizers. This identity was constructed in comparison and conjunction with that of the 'superior' European, itself measured and reified in the anthropological laboratory. The two were dependent upon each other.

Perceptions and constructions of identity are also central to the reburial debate, and are significant products and components of the reburial issue and repatriation events. Analysis of the history of the collection and repatriation of human remains illustrates how concepts of identity have been used as elements of empowerment and disempowerment, and demonstrates how this history has been embedded within, and contributed to, the relations of power between the West and Australia's indigenous population.

COLLECTING METHODS

Indigenous human remains were widely procured during the colonial era for scientific research conducted within the race paradigm. Research was undertaken by phrenologists, comparative anatomists and, later, physical anthropologists, by those advocating monogenism, polygenism and Darwinian evolutionary theory. Fundamental to the analysis of human remains was the assumption that race could be distinguished and identified through quantitative measurement of skeletal (and, later, soft tissue) material. Until the mid-twentieth century, each approach always assumed a fundamental connection between biology and culture, and this adherence to the concept of biological determinism helped to attach what was perceived as human 'worth' to physical characteristics.

Because Australian Aborigines were frequently perceived as the 'lowest' order of mankind, their remains were highly valued and much sought after within scientific circles. By the late nineteenth century the human remains of Aboriginal people were housed in most, if not all, of the major collecting institutions throughout Europe, as well as numerous local museums and university departments. The larger institutions aimed for representative collections of all the human 'races' in order to describe and quantify humankind, and by the end of the nineteenth century most contained the remains of peoples from all around the world (see Fforde 1992a, 1992b, 1992c, 1992d, 1997), including Europe (e.g. see Flower 1907).

Australian Aboriginal bones were collected and sent to museums in the West from the very earliest years of European settlement. One of the first skulls to reach European shores was that given by Sir Joseph Banks to J.F. Blumenbach in 1793. Perhaps foreshadowing the often violent history of colonization of Australia in which the collecting and interpretation of Aboriginal remains is situated, the skull was that of a young man who had been killed by English settlers at Botany Bay (Spengel 1874: 77).

Collectors took remains from the wide variety of places in which the dead can be found. Sometimes discovered by chance, perhaps through construction work,² but more often by design, by far the majority of remains were taken from areas in which Aboriginal people had placed their dead. Thus, collections contain remains taken from caves,³ removed from trees⁴ or, most commonly, dug up from burial grounds.⁵ However, a smaller percentage of remains were acquired before they had passed through funerary rites. For example, hospital morgues and university dissecting rooms were accessible to members of the medical profession interested in acquiring 'specimens'. One of the best known cases is the skull of the so-called last 'full-blooded' male Tasmanian, William Lanne, taken by Dr William Crowther from Lanne's body as it lay in the Hobart Hospital morgue in March 1869 (Ellis 1981: 133–44; Ryan 1981: 214–17; Fforde 1992e). Less well known is that in Adelaide in the late nineteenth and early twentieth century a number of Aboriginal and non-Aboriginal skeletal remains and body parts were taken from the hospital morgue and university dissecting rooms and donated to collections overseas.⁶

Other Aboriginal human remains procured before burial include those of some individuals killed by settlers⁷ or executed on the scaffold,⁸ and obtaining the remains of people who had died in violent circumstances seems to have been viewed as an acceptable practice. The Anthropological Institute of Great Britain and Ireland advised travellers that the heads of 'natives' could be readily obtained after battle or 'other slaughter' (*Notes and Queries* 1874: 142).⁹ It appears that some collectors deliberately sought out massacre sites as a source of Aboriginal remains,¹⁰ and remains from such places were sent to UK collections.¹¹ UK institutions and collectors also received the preserved heads or skulls of 'hostile' Aboriginal leaders. The earliest known example is that of Pemulwoy from the Sydney area whose preserved head was dispatched to Sir Joseph Banks by Philip Gidley King, Governor of New South Wales, in June 1802 (Fforde 1992a: 24). Other examples include the preserved head of Yagan from the Swan River settlement in Western Australia which reached Britain in 1834¹² and the skull of Jandamarra (Pigeon) from the Kimberley which is believed to have been sent to the UK soon after he was shot in 1897 (Pedersen 1995).

Museums were also sent the remains of Aboriginal people infamous for their alleged role in the murder of well-known Europeans.¹³

ABORIGINAL RESPONSE

As Turnbull describes (Chapter 5), settlers were aware of the sanctity of Aboriginal graves. While some collectors appeared unconcerned at the prospect of removing human remains and grave goods, others did so with trepidation. But it is also clear that even those collectors who regarded grave-robbing as perhaps less than morally correct believed such actions were justified in the name of science. This tension between respecting cultural mores and fulfilling the 'needs of science' is demonstrated in separate records of an incident in 1817 during an expedition led by John Oxley (the Surveyor General of New South Wales) along the Lachlan and Macquarie Rivers. During the expedition, Oxley opened two Aboriginal 'tumuli' and while recording their details in his diary expressed his reservations at opening the second 'tomb' in which he discovered the partly decayed body of a middle-aged man:

I hope I shall not be considered as either wantonly disturbing the remains of the dead or needlessly violating the religious rites of an harmless people in causing the tomb to be opened that we might see its interior construction.... Having satisfied our curiosity the whole was carefully reinterred and restored as near as possible to the state in which it was found.

(NSWSA AO Fiche 3278)

But at the same tomb another member of the expedition, botanist Allan Cunningham, recorded in his diary, 'this skull Mr Oxley intends to take with us, as a subject for the study of craniologists' (NSWSA mf 6034). If this account is correct, the scientific value of the skull seems to have outweighed Oxley's concerns about grave-robbing, concerns that appear to have been strong enough to make Cunningham misrepresent this incident in his diary.

Many accounts record the objection or horror of Aboriginal people to the disturbance and removal of the dead. Herbert Basedow, an anthropologist who collected skeletal material in north west Australia in 1903 commented that:

The fact that I had collected a native's skull, which had been disinterred by the dingos at Opparinna Spring, was quite sufficient to induce an old black-fellow and family camped close by to desert the locality in terror.

(Basedow 1904: 35)

There are also recorded incidents in which Aborigines reacted with hostility to the actions of collectors (see Klaatsh 1907: 69; Stehlik 1986: 62).

Resistance to collecting by local people appears to have been so frequent that this activity was recognized as hazardous. While advising travellers that 'native skeletons

and especially skulls, should be sent home for accurate examination' (Tylor 1889: 373), the Royal Geographical Society also warned potential collectors of the violent opposition they might encounter. Some years earlier, craniologist Carl Vogt even suggested that indigenous resistance was a major reason why collections in European museums were, he believed, so inadequately provisioned:

Many naturalists, like Blumenbach at Gottingen, Morton in America, and others, have devoted much of their time to the formation of collections of crania, representing the various types of races of mankind. Even here the difficulties we meet with are great. It is hardly feasible in the times we live in to cut off the heads of the living; and to despoil the graves of the dead is in most civilized countries considered a crime, and severely punished. Pious ignorance even now declaims against dissection, and it is not so very long since English anatomists were driven to employ resurrection men, and were directly the cause of murders being committed. We must, therefore, not wonder that the procuring in uncivilized countries is not unattended with danger, and that we succeed only in exceptional cases in collecting a sufficient number of skulls of any stock to enable us to draw just inferences from comparison.

(Vogt 1864: 8–9)

There is also evidence that Aboriginal people went to various lengths to stop collecting from happening and even to ask for remains back (and see Turnbull Chapter 5). Truganini, the so-called 'Last Tasmanian', was so distressed by the prospect of her remains becoming scientific specimens that seven years before her death in 1876 she asked a friend, the Rev. Atkinson, to throw her remains into the deepest part of the d'Entrecasteaux Channel (see Ryan 1974: 2).¹⁴ In 1903, revelations concerning the treatment of Aboriginal corpses in the Adelaide Hospital were reported by the Secretary of the South Australia Aboriginal Friends' Association to have 'created anxiety amongst the natives at Point McLeay mission station, and they are manifestly disinclined to be sent to the Adelaide Hospital in case of sickness' (*Adelaide Advertiser* 25.9.1903). Presumably prompted by an approach from the Point McLeay community – in what may be the earliest recorded example of a request for the repatriation of remains – the Secretary of the Friend's Association wrote to the Government asking that the remains of one named individual, whose head and unmacerated skeleton were taken from the morgue by the coroner, William Ramsay Smith, and sent to Edinburgh University, 'should, if possible, be recovered for burial in South Australia'.¹⁵

INTERPRETATION

These accounts of specific collecting events and the responses of Aboriginal people contribute to our general understanding of the history of Australian settlement. They also inform our understanding of the broader relationship between the colonized and the colonizers. As has been observed with reference to ethnographic

objects, the collecting and scientific use of Aboriginal remains did not take place by 'historical accident' (Stocking 1985: 3). Instead, this practice was embedded within large-scale historical processes, namely imperialism and colonial domination. Several authors have explored the relationship between anthropology and colonialism (e.g. Stocking 1968; Asad 1973; Huizer and Mannheim 1979; Fabian 1983; Thomas 1994), and it is now almost a truism that the development of anthropology was rooted in an unequal power encounter between the West and what might now be called the Developing World. Indeed, Asad's (1973: 17) observation that the 'basic reality which made pre-war social anthropology a feasible and effective enterprise was the relationship between dominating (European) and dominated (non-European) cultures' is even more applicable to physical anthropology, given the frequent, but largely unsuccessful, indigenous opposition to the removal of human remains.

The collecting and study of human remains was firmly situated within power relations that already existed between the West and its colonized peoples. Hence, the association between collections of Aboriginal human remains and relations of power is of course far more complex than one which stems solely from their status as expropriated 'items'. Imperialism and colonialism were not simply techniques of accumulation and acquisition executed on a grand scale but wide-ranging political processes which, as Said commented in his analysis of orientalism, were sustained and

perhaps impelled by impressive ideological formations that include notions that certain territories and people *require* and beseech domination, as well as forms of knowledge affiliated with domination: the vocabulary of classic nineteenth century imperial culture is plentiful with such words and concepts as 'inferior' or 'subject' races, 'subordinate peoples', 'dependency', 'expansions' and 'authority'.

(Said 1994: 8)

Thus, while in a practical sense colonialism facilitated the acquisition of Aboriginal human remains, and this practice contributed to the oppression of Aboriginal people, an essential association can also be found in the inter-relationship between the interpretation of such material and the 'ideological formations' which supported and helped shape the colonial enterprise.

Scientific analysis of European and non-European human remains provided copious amounts of data for the description and categorization of human diversity, information which appeared to demonstrate that human groups were of unequal cultural, physical and intellectual status and could be assigned a place within an apparently 'natural' hierarchy according to allegedly distinctive morphological characteristics. Although a superficially reformist stance was adopted by the phrenologists and some early comparative anatomists, to all intents and purposes scientists of the day compared Aboriginal human remains to those of Western Europeans and concluded that the Australian race was inferior by virtue of its biology and that its status in nature was innate and immutable.

Analysis of human remains also substantiated the widely held European perception that colonized peoples were as remote in time as they were distant in space: that

so-called 'primitive' societies continued to occupy a position in the past through which the West had already developed (see Fabian 1983). As Darwin (1871: 404) looked upon Tierra del Fuegians and remarked 'such were our ancestors', so others scanned the 'lower' races for physical and cultural evidence that they were the modern representatives of past European populations that had been 'expelled and driven to the uttermost parts of the earth' (Sollas 1911: 382). Thus, for W. J. Sollas (1971: 70, 171, 271–306), Professor of Palaeontology and Geology at the University of Oxford, Tasmanians were survivors of an 'eolithic' (pre-palaeolithic) race and Australian Aborigines were the 'Mousterians of the Antipodes'. Archaeology provided what was then seen as corroborative evidence, demonstrating how the material culture of modern 'primitive' races compared with artefacts from the European palaeolithic (e.g. Dawson 1880; Tylor 1894).

Designated a position on the lowest rung of this temporal-cultural ladder Aborigines, along with Australia's flora, fauna and geology, were considered to be survivals from the primeval past (see Stafford 1990: 81). While voyages to Australia were equated with time travel (see Stocking 1968: 26–27; Jones 1992), so physical characteristics of Aboriginal human remains were 'located', a process which demonstrated the 'early' morphological status of Australia's indigenous population. Thus in 1907 Daniel Cunningham (1907: 51), Professor of Anatomy at Edinburgh University, concluded that the outline of the preserved head of an Aboriginal man recalled that of a Neanderthal, and that to a small degree his ear exhibited 'certain anthropoid characters'.¹⁶ This type of analysis effectively denied Aboriginal people a place in the contemporary world, while Darwinism was taken to further corroborate the notion that colonization was a 'natural' and indeed biologically necessary, process. Nineteenth and early twentieth century analysis of collected human remains therefore appeared to provide 'hard' evidence that the colonized races required European government because they were biologically unable to attain a higher level of civilization – and thus to govern themselves. Such analyses provided a justification for colonialism as well as appearing to relieve imperial powers of moral responsibility for the decimation of indigenous populations. As the ardent polygenist and major British private collector Joseph Barnard Davis wrote of skull 1261 in his collection:

This skull is an excellent exemplification of Australian peculiarities, and most decidedly opposes the depreciators of craniological science. The superficial portions of the brain are very imperfectly developed in the race, and this gives rise to all their marked properties. Hence they have been rendered, by nature, utterly devoid of the power to receive that which is designated 'civilisation' by Europeans, i.e. an extraneous and heterogeneous cultivation, for which they have no taste or fitness, but which has to be thrust upon them by the high hand of presumed philanthropy, and under the influences of which their own proper endowments are constantly injured, and they themselves are inevitably destroyed.¹⁷

(Davis 1867: 265)

However, as we now recognize, such research was far from the objectivity it espoused, and was instead carried out within conceptual limits prescribed by European assumptions about human difference which had been in existence well before the advent of

comparative anatomy. The measurement of skeletal remains provided alleged objective 'fact' of the inferior identity of Aboriginal people, but while analyses purported to achieve independent and unprejudiced conclusions, they were as much a product of colonial ideology as they were integral to its existence. By reifying pre-existing notions of race and racial order, science effectively constructed the indigenous body as different and inferior to that of the 'normal' and 'superior' European. A potent method of dividing 'Us' from 'Them', the analysis of human remains sustained a perception of immutable division which was fundamental to imperialism's ideology (Said 1994: xxviii). However, although perceived as essentially opposite to, and radically different from, one another, the categories of 'Us' and 'Them' were not separate, isolated entities, but were instead co-dependent and constructed through comparison. The definition of one race would always be dependent upon the definition of others.

As has been considered by, for example, Foucault (1970: 46–77) and, particularly in reference to Australia, by Attwood (1992), the making of European identity since at least the early eighteenth century has been identified as intricately linked with the construction of an antithetical 'Other'. Because the identity of the 'Other' was defined by those in the privileged position (see Wiss 1990), it was consistently devalued in its difference to what was perceived as the normal European 'Self' (see also Urla and Terry 1995). Thus the relationship between 'Us' and 'Them' was not only mutually supportive but nearly always hierarchical (Attwood 1992: iii). In this way, the Aboriginal identity prescribed by science was forever 'attached' to that of the West as its 'outside and opposite' (Attwood 1992: ii), and could therefore *never* be independent or equal. In essence, the West appropriated Aboriginal identity, subsuming it within its own conceptualization of a superior 'Self'. Such appropriation strengthened European identity, dominance and control over the Aboriginal 'Other' and, as a process of colonization, has been compared to the naming and mapping of the Australian landscape by European settlers and government agents (Attwood 1992: v).

BEYOND THE ACADEMY

How did the interpretation of human remains to the public, carried out within the academy, percolate to the general public and influence the ways in which people thought about and acted towards indigenous people? A variety of different ways can be proposed, for example via personal communication and other media, both popular and scientific, but an obvious example is through museum displays. Entire research collections were rarely open to the public and could be stored/arranged according to a variety of classification systems that were not necessarily based upon racial origin. However the exhibition of human remains in public galleries was commonly designed to illustrate different racial types (in accordance with whatever taxonomy was chosen) and the order of humankind. Thus in 1921 there were seven display cases in the Upper Gallery of the British Museum (Natural History) that contained specimens illustrating the 'Races of Mankind'. Cases 1 and 2 illustrated the 'zoological characters of the Caucasian or White Races', cases 3 and 4 the 'Mongol or Yellow and Red Races', cases 5 and 6 the 'Negro or Black races' (Regan 1921: 11–17). Having thus presented

Homo Sapiens Sapiens to the observer as a tripartite species, the museum exhibited in the remaining case, 'some of the most important structural differences between Man and Apes; and likewise the different types of human skulls, and the mode of measuring the same, with their respective brain cases' (Regan 1921: 15). As evidenced by the following extract from the Museum's guide to the Upper Gallery, this seventh case was designed to represent the racial hierarchy:

Man's skull differs from that of the other Mammals by the great size of the brain-case, and the proportional reduction of the bones of the face, the result of the high development of the brain and the disuse of the jaws and teeth as weapons of offence and defence. It therefore follows that those races of mankind which have prominent jaws and small brain cases are of a lower type than those in which the jaws are more reduced in size and the brain case is larger. Australians and Tasmanians, for example, have a very small brain cavity, thick skull-bones, receding forehead, overhanging brows, flat nasal bones, long and low orbits, very broad and low nasal opening, forwardly projecting jaws, but receding chin, and large teeth: strongly contrasting in each of these respects with the skull of a European.

(Regan 1921: 13)

Displays such as this informed the public that Aboriginal inferiority was a biological fact, a 'truth' demonstrated by science.

ANTHROPOLOGY AND GOVERNMENT

Another area in which scientific knowledge about Aborigines entered the public arena, and one which had perhaps a more immediate impact upon Aboriginal people, was in its relation to the governing of Australia's indigenous population. Although it is easy to identify the importance of colonial structures to the practice of anthropology and to discern the significant role of science in the maintenance of imperial ideology, the *direct* participation of social and physical anthropology in the administration of the colonies appears to have been relatively limited. This was not because anthropologists shied away from the task. Indeed many prominent social and physical anthropologists espoused the importance of their work to the management of colonized peoples (Flower 1898: 236; and see Kuklick 1991: 27–74). But despite various attempts by influential social and physical anthropologists to establish anthropology as an occupation which had practical applications for colonial administration, it appears the British Government declined to engage the services of anthropologists for such purposes.

Nonetheless, if the active role of social anthropologists in the development and implementation of government policy in the nineteenth and early twentieth century appears to have been relatively minor, and that of physical anthropologists even more so, their work greatly contributed to how Aboriginal society was understood by government agents and policy makers (Cowlshaw 1986; Sutton 1986: 47; Beckett 1988: 195–212; Thomas 1994: 6; Cove 1995: 70–139). Although both social and physical anthropologists worked within (and can thus be said to have sustained) the race

paradigm, it was the work of physical anthropologists which contributed most directly to the reification of the notions of race and the racial order. It was these concepts that were increasingly used in the later nineteenth and early twentieth century to develop definitions of Aborigines which were enshrined in Australian legislation (see Gilbert 1977: 5–31; Markus 1988; Attwood 1989, 1992; Hollinsworth 1992; Cove 1995: 70–94). For example, Attwood (1989: 81–103) has provided a detailed account of the ideology and effects of the 1885 Half-Caste Act in Victoria. This Act, in contrast to previous legislation in this state that defined Aborigines predominantly on cultural grounds, categorized Aborigines on the basis of ‘genetic inheritance’. This paralleled a general shift in the late nineteenth to mid-twentieth century towards defining Australia’s indigenes by the percentage of ‘pure’ Aboriginal blood that ran in their veins (Attwood 1989: 81–103; Markus 1988). The Victorian Act legislated that ‘half-castes’ were to be removed from the missions and assimilated into wider European society while ‘full-bloods’ were to remain until, it was believed, they would eventually die out (Attwood 1989: 101–3). Employing categories based upon race, the Half-Caste Act, like successive acts and censuses in Victoria and other Australian states (Markus 1988: 53–69) imposed a definition of ‘Aborigines’ that was very different from (and indifferent to) how members of its target population perceived themselves. Similarly restrictive legislation was not repealed throughout Australia until the mid-1970s (Markus 1988: 56). As Elizabeth Pearce, a woman with Aboriginal and European ancestry who grew up in Queensland, told Kevin Gilbert in 1974 (see also Kennedy 1985):

Everyone who elected to come out from this ordinance of the time was not, in future, to claim they were Aborigines. Therefore they were no longer to be protected. They were virtually free. Now my father and others who had some dignity refused to be ‘protected’. The authorities to this day say to tribal people that when the choice was given to such people – that’s us – that we chose not to be known as Aborigines. It’s not true! They were saying that for their own purposes! It was all caused by that repressive ordinance!

(Gilbert 1977: 9)

Scientific knowledge about the Aboriginal body was therefore fundamental in sustaining and constructing relations of power. Through analysis of the Aboriginal body, comparative anatomy and later physical anthropology fashioned an identity for Aborigines the effects of which reached far beyond the boundaries of the laboratory. However it is crucial to recognize that this is not to place the formation of Aboriginal identity entirely in the hands of Europeans, as this would run the risk of side-lining, or still worse ignoring, the role that Australia’s indigenous people have played in the construction of their own identity(ies) since colonization. The fact that Europeans constructed and imposed the single category ‘Aborigines’ should not be taken to indicate that Australia’s indigenous population perceived and defined themselves in this way. Rather the self-identity(ies) of Australia’s indigenous peoples developed actively in relation to the colonial encounter (see Reynolds 1981, 1990; Cowlshaw 1986, 1987; Keeffe 1988). As Weaver (1984) has suggested, there is a clear distinction between what she has called ‘private’ and ‘public’ Aboriginal identity – the former deriving from indigenous perceptions of self and the latter defined by the ‘outside’, i.e. non-indigenous

Australia. Nonetheless, while 'Aborigine' was only one identity, it had wide-ranging significance because it played a fundamental role in European/Aboriginal relations, imposing on the colonizers 'very real limits on what could be thought, said, or even done about Aborigines' (Attwood 1992: ii, and see Weaver 1984).

REPATRIATION AND REBURIAL

In the late eighteenth, nineteenth and early twentieth centuries, perceptions of identity and identity construction suffused the history of the collecting and interpretation of human remains. At the end of the twentieth century, identity can also be identified as one of the fundamental issues of the reburial debate. The perception and construction of Aboriginal identity play a significant role in both repatriation requests and arguments put forward by those who have opposed them.

In Australia, the beginnings of the reburial campaign can be traced to the late 1960s. At the start of a decade in which Aborigines first held Australian citizenship and which witnessed the emergence of the Land Rights movement, Australian museums, archaeologists and physical anthropologists began to consider Aboriginal concerns regarding the curation and scientific use of sensitive cultural material. In separate campaigns, yet part of a general drive for the restitution of Aboriginal cultural heritage, museums were approached by Aborigines to discuss the future of secret/sacred objects and the Aboriginal human remains housed in their collections (see Lampert 1983, Hemming 1985, Anderson 1986). The 1970s and early 1980s witnessed some changes in museum policies and the return to communities, particularly in Tasmania, of human remains of named individuals (such as Truganini) or those collected in what was widely viewed as unethical circumstances (such as the Crowther Collection).¹⁸ These developments demonstrated that, by the early 1980s in Australia, in general the scientific community would no longer contest Aboriginal ownership of the remains of named individuals, individuals whose cultural or biological descendants could be traced, or those which had been obtained by what was now considered to be unethical means. When Aboriginal bodies (two adults, a young child and a stillborn baby) preserved in fluid in a box at the South Australian Museum came to light in August 1983, there was little question that, after a coroner's inquiry, they would be given to the appropriate Aboriginal community for disposition.¹⁹

However, in 1984 many scientists in both Australia and overseas began publicly and forcefully to oppose Aboriginal claims when it became clear that all Aboriginal human remains, including ancient and fossil remains, might be returned to Aboriginal communities. Such material, they argued, was of great scientific significance and too old to be legitimately claimed by one group of people to the detriment of the world community (see *The Bulletin* 4.9.1984, Kennedy to the editor, *The Bulletin* 9.10.1984). Aboriginal people, on the other hand, argued that such remains were also, by definition, their ancestors, and required appropriate treatment. Despite the return of a significant number of human remains to Aboriginal communities in the previous decade, it was not until the mid-1980s that the debate surrounding reburial and the scientific use of Aboriginal human remains escalated to become a major national and international issue.

Repatriation requests

In the mid-1980s, at a time in which the reburial issue had already caused considerable antagonism between various Aboriginal groups and many archaeologists and physical anthropologists, a consultancy was carried out by Steven Webb on behalf of the Australian Archaeological Association. The results afford a good indication of Aboriginal attitudes at the community level towards the reburial issue at that time. The project aimed to open communication with Aboriginal groups, by consulting with communities, and particularly those with a direct interest in a collection housed at Melbourne University that was contested at that time (the Murray Black Collection).²⁰ Webb found that because archaeologists had rarely, if ever, consulted with Aborigines about the removal or study of skeletal remains, communities were highly suspicious and held the general opinion that researchers 'had little regard for Aborigines, either as the living descendants of the populations whose remains were studied or as people' (Webb 1987: 294). Aboriginal people, shocked at the quantity of remains in collections, the length of time they had been kept in a 'seemingly secretive manner' (Webb 1987: 294), and the way in which they had been collected, frequently pointed out the double-standards in operation, noting that such practices would not have been tolerated if Aborigines had dug up European cemeteries. Some people were disgusted that scientists should even wish to interfere with the dead, and little distinction was made between researchers who analysed remains today and those who had studied and collected the bones in the past. Webb also discovered that some Aboriginal people were genuinely surprised that the majority of anthropologists would not support the campaign for reburial. Coupled with the recent use of the media by scientists and their canvassing of international scholars for support, Aboriginal people were angered by the unsympathetic attitude accorded to the very people 'archaeologists and anthropologists purported to understand and professed to help' (Webb 1987: 294).

Nonetheless, despite the anger and concern which he encountered, Webb also realized that many Aboriginal people acknowledged the importance of archaeological research and were willing to discuss compromises regarding the future of skeletal collections. Primarily, Aboriginal people desired control over the remains, communication with the potential researchers and involvement in future projects (Webb 1987: 295). Webb concluded that the reburial issue could only be overcome with continued and considerable discussion between scientists and Aborigines.

The opinions held by the communities consulted by Webb are also voiced by those who have been at the forefront of the reburial campaign. In addition, central to many arguments for the repatriation of remains has been the contribution made by past scientific research on remains to the construction of an inferior identity for Aboriginal people, and the role that this played in the justification of their oppression by settlers and the Government (e.g. Mansell 1990). As Turnbull (1993: 14) has pointed out, 'in demanding control of remains Aboriginal people were articulating a politics which stressed the degree to which their identity had been forged through the historical experiences of colonialism'. Moreover, the aims and results of modern scientific enquiry have also been questioned by Aboriginal people, who argue that such research can negate Aboriginal concepts of their own history and in doing so continues to prescribe identities for,

and thus to disempower Aboriginal people (e.g. Weatherall 1989: 12). The campaign for Aboriginal control of their ancestors' remains can therefore also be seen to be part of the wider criticism and refutation of the scientific monopoly over 'valid' interpretations of the indigenous past (Langford 1980; Pardoe 1992: 135–6 and see McGuire 1992).

The tension inherent in, and exemplified by, the reburial debate between archaeological and indigenous views about the past, and who should have the authority to interpret it, is shown in the following exchange of letters. These appeared in a leading British newspaper at a time in which the issue of returning ancient and fossil remains was being strongly opposed by members of the scientific community. Don Brothwell, a British physical anthropologist then at the Institute of Archaeology, University College London, wrote:

While we would all wish to honour the thoughts the Aborigines have for their ancestors, it is important to remember that ancient remains, from whatever world site, have international scientific importance and this should take precedent over local issues. Secondly, ancestor claims are more than likely to be based on ignorance of history or pre-history, a state of affairs which archaeological investigation attempts to rectify.

(Brothwell to the Editor, *The Times* 29.8.1990)

And Mandawuy Yunupingu of the Northern Land Council responded:

I am a Yolngu (Aboriginal) person from Australia and I know where my ancestry starts from. We have a living history that we practice, which provides us with information, just like your archaeological investigations. Our history is alive to us. We do not need archaeological investigations to tell us where we came from or from who we are descended. The remains of Aboriginal people must be returned to their rightful people and country. It's only just to do so.

(Yunupingu to the Editor, *The Times* 10.9.1990)

Many of those who opposed repatriation simply could not accept that Aboriginal people were articulating strongly held spiritual beliefs and expressing a deep concern for their ancestors, however ancient the remains were. Instead, some believed such claims to be formulated only to achieve political objectives (Brown to Jones 29.6.1984, reproduced in Meehan 1984:139; *The Herald* 23.7.1984; see also Hiatt to the Editor, *The Australian* 2.8.1990). A British archaeologist, Stuart Piggott, wrote expressing a similar standpoint to that held by Brothwell (see above) which rejected the validity of Aboriginal beliefs, claimed that requests were politically motivated, and upheld the primacy of scientific authority. His letter protested at claims by the Echuca Aboriginal community for the return of the Kow Swamp fossils:²¹

... when emotion mixed with political objectives takes over from common sense and reason, the results can be disastrous. If we are to ignore great men of science such as Emeritus Professor John Mulvaney and Dr Alan Thorne, and act on the radical recommendations of those less knowledgeable, we throw archaeology to the winds in Australia.

(*The Times* 18.8.1990)

Not all Australian archaeologists who opposed the reburial of all remains questioned the validity of Aboriginal beliefs or the motivation of governments which acceded to Aboriginal requests (see Meehan 1984). The fact that some changes had taken place throughout the 1980s was demonstrated by the fact that at the time of the Kow Swamp issue some archaeologists and anthropologists had become sympathetic to Aboriginal opinion and highly critical of the views expressed by their colleagues (e.g. Bowdler to the Editor *The Australian* 3.8.1990; O'Brien and Tompkins to the Editor *The Australian* 5.8.1990; McBryde to the Editor *Melbourne Age* 1.9.1990). For example, Webb's consultation with communities had convinced him that although the reburial issue was sometimes used as a political platform, the argument that it was entirely politically inspired by individuals or organizations 'opposed to "white" science' (Webb 1987: 295) was facile and simplistic.

Many of the Aborigines who have been the most visible in the requesting and receiving of ancestral remains from institutions in the 1980s and 1990s have been those who are perceived as 'non-traditional' or 'urban' people. This is, of course, not to say that such people are not indigenous (Aboriginal or Koori, Murri, Noongah etc.), but only that they may not conform to common outside perceptions of the culturally 'pristine' Australian Aborigine. Accusations that requests for the return of remains were solely political in nature were commonly, explicitly or implicitly, conjoined with the assertion that such requests were invalid because they had no basis in 'traditional' beliefs and were being made by 'non-traditional' people. Given that spiritual concerns have been the overriding grounds for requesting the repatriation of ancestors, it is perhaps unsurprising that arguments employed to oppose these requests have sought to deny their authenticity.

The reburial campaign is clearly saturated with political issues and is in itself a modern development. However over and above the testimony heard from a broad cross-section of Australia's indigenous community (as, for example, described by Webb 1987), there is ample historical evidence of Aboriginal opposition to the removal of their ancestors' remains (see p. 35 and Turnbull Chapter 5). Furthermore, particularly in the context of the issues raised in this chapter, discussions about the legitimacy or otherwise of Aboriginal claims are deceptive, as they mask what has been a significant sub-text in the reburial issue: a widely held common distinction made between 'traditional' and 'non-traditional' Aboriginal people, and the frequent denial of legitimacy to the latter.

Although Australian legislation no longer employs definitions of Aboriginal people based on genetic inheritance, it has been argued that an assumed association between biology and culture continues to exist. There is a frequent popular and academic (and not exclusively non-Aboriginal (see Myers 1994: 690)) division made between 'traditional' and 'non-traditional' or 'urban' Aborigines, and the perception that only the former are somehow 'real' Aborigines. Such perceptions deny Aboriginality to those who do not exhibit what is perceived to be a 'pristine' (i.e. pre-contact) Aboriginal culture (see Gilbert 1977: 5-31; Chase 1981; Langton 1981, 1993; Cowlshaw 1986, 1987, 1988, 1992; Beckett 1988; Eckermann 1988; Jacobs 1988; Hollinsworth 1992; Attwood and Arnold 1992). Modern anthropological discourse has frequently been at least complicit with the accordance of greater legitimacy to 'traditional' Aborigines. Chase (1981: 24) and Cowlshaw (1986, 1987, 1988, 1992) argue, amongst others, that this stance can be partly attributed to the implicit retention by modern social anthropology of some of

the fundamental tenets of nineteenth-century physical anthropology. Cowlshaw, for example, has shown how, even after social anthropology began to disassociate itself from theories of racial classification in the 1920s, and finally rejected them in the 1940s and 1950s, a 'submerged or implied definition of Aborigines as a race was retained' (Cowlshaw 1992: 23) and the Aboriginal 'race' came to be equated with 'traditional' Aborigines. The almost exclusive interest of early physical anthropologists in the remains of 'full-bloods' was therefore perhaps echoed in the concentration by social anthropologists on the study of 'traditional' groups. So-called 'non-traditional' groups have often found themselves in a catch-22 situation: while (and because) they are the most dispossessed they are the least able to claim the return of their heritage on 'traditional' grounds, as is often required by the wider Australian community.

The questioning of the legitimacy of Aboriginal claims for remains which are made by people that are not perceived as living 'traditional' lifestyles can be seen as an expression of a continuing denial of an 'equal' Aboriginality to 'non-traditional' groups. Such perspectives not only deny the very real spiritual concerns of many Aboriginal people today but disempower those who are not seen to follow a 'traditional' lifestyle, regardless of how they perceive themselves. Arguments opposed to repatriation on these grounds presume an authoritative knowledge about Aboriginal culture, past and present, and consequently impose identities upon Aboriginal people. They also illustrate what appears to be a continuing manifestation of the ossification of 'true' Aboriginal culture in a static and timeless past, and thus the denial of truly authentic Aboriginality to many people living today.

In his analysis of the reburial debate in the US, McGuire (1989) identified a similar relegation of American Indians to 'the pages of history books'. He noted that one reason why there was a distinctly different attitude held by the white population towards disturbing white burials and those of indigenes was that only the former were perceived to be part of an ongoing culture. Such a stance appears to contend that authenticity is static, that mutability and tradition are mutually exclusive. However, one thing that the reburial debate demonstrates is that 'tradition' can and does change. Indeed, in the case of reburial, science can be said to have been instrumental in the development of new cultural practices: the many reburial ceremonies that have occurred since the late 1970s would never have taken place without the acquisitive practices of scientific scholarship in the first place.

Repatriation and reburial are loci for processes which both construct and reaffirm Aboriginality, empowering its participants by enabling them to assert, define (and thus take control over) their own identity – often in a very public manner. One way in which this occurs is through their focus on persisting pan-Aboriginal spiritual concerns to accord the dead appropriate treatment. The use of traditional elements in most reburial ceremonies also articulates Aboriginality and at the same time is felt to be appropriate for the individuals interred. Moreover, the identification of collected remains as ancestors confirms the descent of modern 'urban' communities from individuals from the traditional past, thus confirming their Aboriginal identity by virtue of descent. Nowhere has the 'descent' factor perhaps been more apparent and more significant than in Tasmania, a state with a history of denying Aboriginal status to its indigenous population, usually on the promulgated fiction that Truganini (see p. 28) had indeed

been the 'last Tasmanian' (Cove 1995: 86, 102–39). As Cove observes, by demanding the return of Truganini's remains in 1970 'for her descendants', the Aboriginal Information Centre effectively challenged the State Government's grounds for denying Tasmanian Aboriginality at a time when establishing an outwardly 'acceptable' basis for such an identity was crucial for the advance of Aboriginal rights in Tasmania:

Truganini provided a basis for self-identification as stipulated in the Commonwealth's definition of Aboriginality. Individuals of Aboriginal descent had probably experienced discrimination which could be readily linked to the dehumanised treatment of Truganini's remains and continued denial of her deathbed request for dignity. Not only was the Tasmanian Aboriginal rights movement based on individual self-identification, there was a need for concrete issues around which mobilisation could occur and acquire external validity. The issue of Truganini's remains spoke to all these dimensions.

(Cove 1995: 150)

The skeletal remains of other nineteenth-century Tasmanian Aborigines have a similar significance for some of today's Tasmanians. As one member of the Flinders Island community reportedly commented about the importance of the discovery of the exact location of Tasmanian Aboriginal graves in the cemetery at Wyballena, 'it's also about our identity – that we are here, that we exist' (*Hobart Mercury* 29.11.1990).

Reburial is one facet of what has been termed Aboriginal 'cultural revival' (e.g. Creamer 1988) that has occurred throughout Australia since the 1970s, but particularly within communities living in more settled areas. Creamer (1988: 57) observes that cultural revival frequently employs knowledge about the traditional past in conjunction with traditional material items and the use of sites of traditional significance to make a 'powerfully symbolic statement about the distinctiveness of modern Aboriginal identity'. Reburial (sometimes comprising parts or all of a traditional burial ceremony), ancestral remains and the reuse of Aboriginal burial grounds can be viewed as a fusion of many of the factors which contribute to cultural revival. They not only articulate, strengthen and construct local Aboriginal identity but also Aboriginality as a pan-Australian commonality. Reburial, while using elements from the past specific and significant to one local group, also clearly differentiates between those who are Aboriginal and those who are not.

However while not to deny the occurrence of the phenomenon it describes nor the vital importance of tradition in the construction of modern Aboriginal identity, 'cultural revival', at least in the case of reburial, may be a misleading term. The term 'revival' ignores the frequent conjunction of modern and traditional concerns that occurs in reburial ceremonies, as well as the fact that reburial has more to do with the shared history of Aboriginal and European society than it does with pre-contact Australia. The contribution that repatriation and reburial make towards the construction of modern Aboriginal identity (locally and/or nationally defined) does not derive only from the revitalization of pre-contact tradition, but rather from the way in which various elements from both the pre- and post-contact past *and* the present are conjoined in the active development of contemporary Aboriginal customs.

CONCLUSION

Throughout the history of their collection and interpretation, and the development of the reburial debate, human remains have accrued a variety of meanings – ancestors, commodities, scientific specimens, fossils, symbols of oppression, data etc. – which have not always been mutually exclusive. The reburial debate has often revolved around control of definitions of these categories, as it has about the control of the remains themselves. As the definition of remains as ‘ancestors’ may be seen as central to Aboriginal identity, so too was the definition of remains as ‘scientific data’ central to the identity of those whose research was threatened by the loss of their primary data. For many scientists remains were primarily viewed as important specimens, the collecting and study of which affirmed and authenticated their own group identity as the authority which produced knowledge about the past. For Aborigines who wished for the same remains to be returned they were ancestors, whose presence and proper disposal were often viewed as essential components of Aboriginal self-identity. Michael Mansell of the Tasmanian Aboriginal Centre, the organization which played a prominent role in the repatriation campaign in Tasmania, asked in the mid-1980s, ‘if we can’t control and protect our own dead, then what is there to being Aboriginal?’ (*Melbourne Age* 5.10.1985). However, because some scientists have viewed repatriation as a symbol of the extinction of physical anthropology as a discipline (e.g. Lewin 1984: 393), they could also have asked, ‘if we can’t control and study human remains, then what is there to being a physical anthropologist?’

From the way that physical anthropologists once ‘constructed’ the Aboriginal body as inferior to that of the European, to the dismissal by some of modern demands for the repatriation of remains made by ‘non-traditional’ Aborigines, Aboriginal remains have been situated within a discourse made hegemonic in part by its imposition of identities upon Aboriginal people. In repatriation campaigns and reburial events, Aboriginal human remains have continued to be a locus for processes that have constructed and articulated Aboriginal identity (whether locally or nationally defined), but the defining has been under Aboriginal control and has been instrumental in the empowerment of Aboriginal people. Repatriation and reburial have challenged concepts that restrict tradition to the practices of a pre-contact past, and demonstrate that tradition is a vital and constantly developing theme within modern Aboriginality.

NOTES

- 1 This chapter is developed from various sections of my PhD thesis (Fforde 1997).
- 2 For example, in 1882 the Royal College of Surgeons, England received from Robert Oldfield the skull of an Aborigine ‘of the Murray River Tribe, South Australia, found while excavating the foundation of a house at Courmamount, 74 miles N.E. of Adelaide’ (Flower 1907: 327). This skull is believed to have been destroyed when the College was bombed in 1941.
- 3 For example, at the turn of the nineteenth century James Smith gave the Kelvingrove Museum, Glasgow three partial crania taken from a cave near Mount Morgan, Queensland. These remains were repatriated to Australia and buried near Mount Morgan in November 1990.

- 4 For example, an Aboriginal skull lent to Joseph Barnard Davis by the phrenologist L.N. Fowler had been found 'in the fork of a tree, a situation in which some tribes dispose of the dead' (Davis 1867: 265). If this skull were not returned to Fowler, it would have passed into the collection of the Royal College of Surgeons, England, and is believed to have been destroyed in 1941.
- 5 For example, in 1907 William Ramsay Smith sent Aboriginal remains to the University of Edinburgh which had been taken from a big burial ground at Lake Victoria. These remains were returned to Australia in 2000.
- 6 Many of the eminent anthropologists in Adelaide were also leading members of the Adelaide medical establishment (see Jones 1987), in particular Edward C. Stirling, Director of the Adelaide Museum and Professor of Physiology at the University of Adelaide; Archibald Watson, Elder Professor of Anatomy at the same university; and William Ramsay Smith who as well as being Chairman of the Central Board of Health, City Coroner, Inspector of Anatomy and a doctor at the Adelaide Hospital was a collector on behalf of the Anatomy Department at his old university in Edinburgh. These individuals took remains from the Adelaide Hospital morgue and the University of Adelaide's dissecting rooms. Aboriginal remains may also have been taken from the Hospital in Melbourne; the British craniologist Joseph Barnard Davis received the skull of a man who had died in this institution (Davis 1867: 261).
- 7 Examples include a skull now in the Natural History Museum, London (Natural History Museum 2000) of 'Jackie', a 'Buckinbah aboriginal' of the 'Bogan River tribe' who was 'killed in a fight with natives' (Hull 1960), that was donated to Oxford University by H.M. Rowland in 1869, and the cranium of a 'man killed by a musket shot' from Kangatong in South Australia which was donated to the Royal College of Surgeons, England by Dr G.A.F. Wilks in 1878 (Flower 1907: 324). This skull is presumed to have been destroyed when the College was bombed in 1941.
- 8 In the early 1880s, the Russian anthropologist Nicolai Miklouho-Maclay procured the corpses of criminals hanged at Brisbane Jail, including the body of the Aboriginal bushranger Johnny Campbell. The scientific importance of Campbell's remains appears to have so greatly outweighed the value placed upon his life that, according to Prentis (1991: 138), the execution was brought forward for Miklouho-Maclay's convenience.
- 9 Foreign battlefields were common sources of indigenous human remains. Thus, 'Dervish' skulls were taken from the Omdurman battlefield and given to the Anatomy Department at the University of Edinburgh (Wellcome to the Secretary 9.12.1901, EADL) and the remains of Zulu warriors killed at Rorke's Drift were sent to the Fort Pitt Army Medical Museum in Chatham, Kent (Williamson 1857: 87). The collection at Fort Pitt (commonly known as the 'Williamson Collection') was subsequently housed at various places and is now in the Natural History Museum, London (Fforde 1992d; Natural History Museum 2000).
- 10 For example, Richard Semon, an amateur naturalist who travelled in Queensland at the end of the nineteenth century, described how he had heard

that in the neighbourhood of Cooktown a quantity of blacks had been slaughtered for some reason or another by the black police, and that their remains had for a long time been left to bleach in the open bush. My humanity did not go so far as to prompt me to exert myself in order to obtain an honourable burial for their bones. On the contrary, I had the ardent desire to secure the remains of these poor victims for scientific purposes, the study of a series of Australian crania being of considerable anthropological interest. I therefore communicated with several people likely to know the whereabouts of the slaughter but all in vain. The bones had been scattered or covered up some way or other – in short we were not able to find anything.

(Semon 1899: 266)

Other collectors were more successful. By 1820 the Edinburgh Phrenological Society had received the skull of an Aboriginal leader named Carnambeigle shot and killed in

- 1816 by soldiers carrying out punitive raids in the Sydney area. Along with the rest of the Phrenological Society's collection, Carnambeigle's skull became part of the collection at the Department of Anatomy at the University of Edinburgh. It was returned to Australia in 1991.
- 11 For example, the Royal College of Surgeons, England was given the remains of two Aborigines from 'the North West Territory ... near the Victoria River shot early in 1900 in a punitive expedition in which forty natives, male and female, were killed' (Flower 1907, annotated copy HMRCS). These remains are now in the Natural History Museum, London (Natural History Museum 2000).
 - 12 Yagan's skull was discovered by the author to be in a Liverpool Cemetery, where it had been buried by the Liverpool Museum in the 1960s. It was exhumed and repatriated to Australia in 1997 (see Fforde Chapter 18).
 - 13 For example, the University of Oxford was given the skull of Gwarinman, who had supposedly been involved in the killings of Fred Panter, James Harding and William Goldwyer in November 1864 as they journeyed in the Roebuck Bay area, Western Australia. The trio's remains were discovered in April 1865. Shortly afterwards, two Aboriginal prisoners implicated in the murders were shot by the Aboriginal guide attached to the search party while reportedly trying to escape. One of these men may have been Gwarinman, whose skull was later transferred from the University of Oxford to the Natural History Museum, London where it still is today (*Perth Gazette and Western Australian Times* 19.5.1865; 26.5.1865; *Illustrated London News* 7.10.1865; Fforde 1992c; Natural History Museum 2000).
 - 14 Against her wishes, Truganini's remains were exhumed and acquired by the Royal Society of Tasmania and were later placed on public display. Requests for her remains to be reburied were first lodged in the 1950s and, after protracted campaigns which began in the 1960s, Truganini's bones were eventually cremated, and her ashes scattered on the d'Entrecasteaux Channel (Ryan 1974, 1981).
 - 15 In 1991, this individual's skull was returned to Australia with other Aboriginal remains in the Edinburgh Collection. In 2000, some, but not all, of his post-cranial remains were also returned. It is not yet known what happened to those remains that are still missing.
 - 16 The head and penis of this man were sent to Edinburgh University by William Ramsay Smith who had, in turn, received them from Professor Archibald Watson of the Anatomy Department at Adelaide University. They have not been located to date. The man, from the Innamincka district in South Australia, had been arrested in 1894 on a charge of lunacy and ordered to the Lunatic Asylum in Adelaide (M. Merry MC 3rd Class, Port Augusta Police Station to Sgt. Field, Officer of Police, Port Augusta. 22.5.1894. SASA GRG 52/1/1894/172). Admitted to this asylum on 23 May 1894, it was recorded that he was married and aged about 36 (Adelaide Lunatic Asylum. Male Case Book 15.12.1890 to 24.3.1896, GHM). On 12 June 1894, he was transferred to another asylum in Adelaide where his mental state was described as, 'Melancholia with stupor. Takes no notice of anything. English very imperfect, impossible to know what his ideas are' (Parkside Lunatic Asylum. Male Case Book 12.3.1853 to 5.11.1898, GHM). After 11 years in the Asylum, he died on 13 June 1905 of 'brain disease and debility' (Admission Papers, Parkside Lunatic Asylum, GHM). The Resident Medical Officer, Dr W.L. Cleland, applied for a license to remove the body to the School of Anatomy, University of Adelaide, for dissection. In his application, Cleland certified that neither this man, nor his wife or nearest relative had ever requested, either in writing or verbally, that his body should not undergo anatomical examination (Lunatic Asylums Office File 82, SASA GRG 34). Whether Cleland had ever tried to ascertain the wishes of the deceased or his relatives is not recorded. The license was granted by Joseph Vardon, Chief Secretary, on 19 June 1905, but, demonstrating the mere formality of the procedure, the body had already been received at the Anatomy School by Watson five days earlier (Receipt for Body, Admission Papers, Parkside Lunatic Asylum, GHM). By August 1905, the man's penis had been given by Watson to Ramsay Smith who sent it to Cunningham in Edinburgh. Two years later, in January 1907, Ramsay Smith sent Cunningham the man's head preserved in formalin. Again, Ramsay Smith had been given the head by Watson, although the acquisition date is not known (Ramsay Smith to Cunningham 13.3.07, ELSC Ms 605).

- 17 This skull belonged to a skeleton from South Australia given to Davis by his brother-in-law, the Protector of Aborigines, Dr Matthew Moorhouse. Davis, like other UK collectors, invested considerable time in maintaining a network of friends and acquaintances (and in this case, relatives) in the colonies who would collect skeletal remains on his behalf. Davis's collection was purchased by the Royal College of Surgeons of England in 1867 (see Fforde 1992a, 1997). This skull is believed to have been destroyed in 1941 when the College's museum was bombed by enemy action.
- 18 In 1909, William Crowther (grandson of Dr W.L.H. Crowther, who had removed the skull of William Lanne in 1869 (see Ryan 1981; Fforde 1992e), accompanied by other medical students, had dug up a number of graves in the Christian cemetery at Oyster Cove, a settlement on the D'Entrecasteaux Channel which, from 1847 to 1868, had been the final home for many of the so-called 'last' Tasmanian Aborigines (Ryan 1981: 182–221). Crowther bequeathed these remains to the Tasmanian Museum and Art Gallery which, after housing them for some years, officially received them in 1963 (Clark 1983: 18). After lengthy campaigning by the Tasmanian Aboriginal Centre (TAC), the State Government legislated in 1984 that the Crowther Collection and all other Tasmanian Aboriginal remains in the collections of the Tasmanian Museum and Art Gallery, Hobart and the Queen Victoria Museum, Launceston should be returned to representatives of Tasmania's Aboriginal community.
- 19 In August 1985, the adults were buried at Ooldea by the Kokotha people and the child and still-born baby interred at Raukkan (Point McLeay) by the Ngarrindjeri (*AAP News Report* 3.8.1985).
- 20 The Department of Anatomy, University of Melbourne housed over 800 remains, most of which had been collected from Aboriginal cemeteries along the Murray river by George Murray Black between 1931 and 1951. This included late Pleistocene remains of some 70 individuals discovered at Coobool Creek, widely considered to be 'one of the most important collections of this type in the world' (Brown, University of New England, to Jones, Federal Minister for Science and Technology, 29.6.1984, reproduced in Meehan 1984: 139). The Australian Archaeological Association and the Australian Vice-Chancellor's Committee both expressed deep concern that the Victorian collections might be lost to science (Meehan 1984; *Canberra ANU Reporter* 12.10.1984).
- 21 The Kow Swamp fossils comprised the remains of some 40 individuals dated to between 9000 and 15000 BP. Some were rediscovered by Alan Thorne in store at the Museum of Victoria in 1967, and the rest were uncovered during his later excavations at Kow Swamp in northern Victoria between 1968 and 1972. The fossils represented the world's largest collection of late Pleistocene/early Holocene human remains from a single site, and contributed unique information to the debate about human evolution in Australia (Thorne 1971; Thorne and Macumber 1972).

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3 *Saami skulls, anthropological race research and the repatriation question in Norway*

AUDHILD SCHANCHE

Between 1850 and 1940, Saami skulls, whether from pre-Christian burial sites or Christian graveyards, were much sought after by many scientific institutions in Norway, other European countries and the United States. The general thesis was that the Saami were a primitive, undeveloped and static human type, one of the 'leftovers' of evolution. Apart from the bones, most researchers did not consider that grave finds contributed any valuable archaeological or prehistoric information. Since the Second World War this attitude has changed, mostly due to the Saamis' own struggle for cultural and political rights. Today, there is a growing acceptance that Saami prehistory is a legitimate field of study in its own right and that the formulation of research policies and ethics is the responsibility of the Saami themselves. One of the ethical issues is the treatment of graves and burial finds.

This chapter examines the history behind the collection of Saami skeletal remains at the Institute of Anatomy at the University of Oslo. Shifting views of the Saami past and Saami identity can be seen to reflect developments on the political and economic scene. The last part of the chapter considers the question of repatriation and how the repatriation issue has been dealt with in Norway.

1800–60: THE SAAMI AS NORWAY'S PRIMITIVE STONE AGE PEOPLE

An important issue for early Scandinavian anthropology/archaeology was whether inhabitants of Scandinavia during the Stone Age were of the same tribe or race as those who lived in later periods. The belief that race consisted of permanent types made it impossible for Norwegians and Swedes to be the descendants of 'primitive' Stone Age people.

In the 1800s a theory arose that the Saami were the indigenous people of northern Scandinavia, perhaps even northern Europe. They were a remnant of a primitive Stone Age population that lived in Scandinavia before the immigration of metal-using Germanic people (Nilsson 1838–43, cf. Storli 1993). The theory based its conclusions

upon specific skull measurements. Hence it was a precursor of later methods of skull index measurements.

The suggestion that the earliest inhabitants of Scandinavia were the forefathers of the Saami quickly created a demand for Saami skulls in order to compare them with skulls from south Scandinavian Stone Age graves. This was the start of a practice which would eventually, and with shifting rationales, develop into a veritable trade in Saami skulls and the defiling of Saami burial grounds.

1860–1900: THE SAAMI AS PRIMITIVE FOREIGNERS AND IMMIGRANTS

With the intellectual and political climate emerging in Europe after the 1850s came the breakthrough of the idea of the nation state, with its ideal of historical, cultural and social uniformity. At the same time, earlier colonial policy was replaced by imperialism, and Romantic nationalism was replaced by a nationalism bearing overtones of social Darwinism and cultural racism. In Norway this led to a shift in the policy towards the Saami. By the end of the century a Norwegianization policy, aiming at the elimination of Saami culture and language, was introduced (Eriksen and Niemi 1981).

One of the directions in social Darwinism was the anthropo-sociological school, which studied characteristics of race based on physical anthropology. Researchers from this school argued that the properties of a race were permanent and that natural selection would ensure the survival of those types of race which were best adapted. The features selected as the most important racial characteristics were body height and the shape of the skull, in addition to the colour of skin, eyes and hair. The shape of the skull took on special importance, particularly the cephalic index which measured the relationship between the height and the width of the skull, and distinguished between dolichocephalic and brachycephalic 'elements', i.e. 'long skulls' and 'short skulls'. A set of psychological characteristics was assigned to the index. Theories claimed that the blond long skulls, the Nordic race, were the supreme product of evolution both in a corporeal and spiritual sense.

The nationalist and social-Darwinist ideas emerging after 1860 contributed to the advent in Scandinavia of new interpretations of the oldest history. Darwinism gave credence to the idea of development from 'primitive' to 'civilized'. Given the appropriate racial 'potential', a people might move from the Stone Age and towards civilization on their own. Races without the proper characteristics would, on the other hand, remain primitive. It could now be reasoned that the Stone Age had been sustained by Germanic long skulls, and that the Saami had arrived at a far later date. Thus the Saami were excluded from Scandinavian pre-history, while also being portrayed as a static, doomed and dying element from the past, with no ability for independent development.

Once science had established that contemporary Scandinavians had Nordic Stone Age blood coursing in their veins (Montelius 1874: 152), and that the so-called blond long skulls were the real indigenous population of the entire country, archaeological interest in Saami burial grounds evaporated. However, the interest in Saami skeletons was maintained by the growing physical anthropology movement and this discipline's

interest in characterizing and surveying races. In the period before the turn of the century it was fairly common that tradesmen, travellers and government officials would spend their summers looking for and disinterring Saami burial sites in order to offer skeletons for sale in the southern parts of the country (Holck 1990: 46). The availability of Saami crania led anthropologists in a number of countries to focus on the issue of Saami race affiliation.

1900–40: THE SAAMI AS AN UNSPECIALIZED OR DEGENERATE RACE

At the beginning of the twentieth century strong racist movements emerged in Europe. The contention, based on Darwin's theories, was that races were still in a process of formation and that race segregation was therefore the ideal (Banton 1967: 46). Ideas of racial prejudice as an inherited characteristic of human thought were not new. What social Darwinism added was that racial prejudices worked in the service of evolution (Banton 1977: 100). By actively defending the privileges of the so-called 'higher' races, and by suppressing 'inferior' nations, development would be promoted. In Norway, one of the effects of this ideology was that the Norwegianization policy hardened and became more ruthless.

In addition to measuring the relationship between the length and width of skulls, an elaborate set of standardized measurements for the cranium, face and jaws was established. Skull measurements gained particular importance after race research shifted its focus from other regions of the world to distinguishing and characterizing European races. Based on average skull measurements and a handful of other features, a number of different systems were devised for the main races, sub-races and variants of sub-races. This categorization also served as an evolutionary scale which placed the Nordic race at the top.

Most race typologists acknowledged that the actual appearance of persons rarely corresponded to the ideal types. Instead of admitting that their typology therefore was fictitious, deviations were explained as the bastardization of originally 'pure' races. Around the turn of the century a number of countries launched large-scale studies aiming to categorize the racial distribution of their populations and the different physical and psychological characteristics of these races. Racial hygiene was also established as a separate branch of research. Western European states and the USA introduced measures to promote racial hygiene and racial improvement. Germany was the leading country in race research, and served as the model for the anthropological categorization activities of other countries.

In Norway, the Norwegian Advisory Board for Racial Hygiene was appointed by The Medical Association in 1908. This board was a member of the International Federation for Eugenic Organizations, and the first major aim of the board was to establish a laboratory for biological and racial hygiene. The outcome of these efforts was the establishment of the Vinderen Biologiske Laboratorium, which received state financial support from 1916. From 1919 until the middle 1930s the laboratory published the periodical *Den Nordiske Race* (The Nordic Race).

In 1904 a national committee for the categorization of Norwegian national anthropology was established at The Scientific Society in Christiania (Oslo). One of those with a particular interest in Saami skulls was the military physician Halvdan Bryn. He was a member of this national committee, and also of the Advisory Committee for Racial Hygiene. One of his works (Bryn 1922) is an examination of the anthropology of Troms county in northern Norway, in which one of his aims was 'to prove anthropologically that even the so-called pure Norwegian population in Troms exhibits indications of being impure, mixed' (Bryn 1922: 4, translated by A. Schanche). According to Bryn, this was explained by 'impure elements married into formerly pure Norwegian families, the outcome being that the Norwegian race in Troms county becomes more and more polluted by alien elements with each passing year'.

A problem for Bryn, as for most other race researchers, was that the appearance of the majority of Saami people did not correspond to the 'typical' Saami as defined by their studies. Bryn ends with the rather odd conclusion that his and other researchers' findings on Saami skull shape, facial shape, height, nose profile, orbits, colour of hair, skin and eyes cannot be representative. After 'filtering' out a group of 'Nordic-looking' Saami and a group bearing 'features from various quarters', he ended up with a small group with 'a completely alien appearance'. The fact that this was the smallest group did not prevent it from being construed as the most 'typical' Saami. According to Bryn, one of the explanations for only a small percentage of Saami exhibiting 'typical' characteristics was the willingness of the women in primitive groups to mate with 'superior' races such as the Nordic race. This allowed Bryn to solve the common difficulty for most race researchers of isolating clear race features that would distinguish the Saami as a separate race. By establishing a fictive set of special Saami racial features it could be maintained that the present appearance of the Saami people, i.e. those that did not look 'typically' Saami, was the result of bastardization.

The idea supported both within and outside the academy in the early 1900s was that the Saami were an 'alien' inland people who had migrated westwards with their reindeer herds late in history. Furthermore, it was claimed that at least two human types were represented among Scandinavians and that they differed both psychically and physically. The original race was 'the vestland short skull type', later to be displaced by the military and in other ways superior blond long skulls, the Aryan race. This contributed to providing an 'acceptable' explanation of the features of both prehistoric and contemporary 'Norwegian' skull shapes that did not coincide with the Aryan ideal type but confusingly rather resembled those defined as 'typically' Saami. In this way the equally fictive content of the 'Nordic race' could also be maintained. The many Scandinavians who did not satisfy the ideal race characteristics either did not have Aryan blood or were bastards.

In 1908 Kristian Emil Schreiner was appointed Professor of Anatomy and the head of the Anatomical Institute in Oslo. Schreiner shared Bryn's primary interest in historical anthropology, particularly issues concerning Saami descent. In the years leading up to 1940 the Anatomical Institute, under their direction and with the assistance of students at the medical school, arranged systematic collections of Saami skeletons. Their efforts focused both on old Saami burial grounds and Christian Saami graveyards. Hundreds of skulls were sent to Oslo. Excavations were carried out in

part by Schreiner himself, and in part by local district doctors and medical students. Churchyards in Saami communities in Finnmark were raided in spite of objections from the local population. After one of the cemeteries had been excavated, a local doctor wrote that the Saami were 'ridiculously superstitious', and that they had 'shown much dissatisfaction as they think their forefathers were not allowed to rest in peace' (letter from B. Skogsholm to K.E. Schreiner, 13 August 1913, archives of the Institute of Anatomy). In the village of Karasjok he was forced to ask for the assistance of the local police to find workmen who were willing to do the digging. The clergy of the Norwegian State Church offered no objections to excavations in churchyards, and did not support the local protests. Only the local church leaders of the Russian Orthodox congregation at the east Saami community, Neiden, close to the Russian border criticized and even banned the excavations.

In his large monograph on Saami osteology, Schreiner (1931, 1935) examined Saami race affiliation, following the same lines as his precursors. He assumed that the most 'typical' race features must be those that most strongly deviated from the ideal typical features of 'the Nordic race'. Thus his starting point was not the actual range of variations in the groups he studied, but rather the ideal typical race definitions with their fictive content. According to Schreiner, the features explained by Virchow in 1875 as degeneration were caused by the fact that the Saami belonged to a primitive (non-specialized) indigenous race that had remained primitive because evolutionary forces had come to a halt. The Saami belonged to the 'childhood' of humanity, and the infantile features could also be found in the Saami psychological being (Schreiner 1935: 286).

Even if Schreiner concluded that the Saami were primitive in a racial context, it was not part of his agenda to prove that the Saami were inferior people, as Bryn had done. Moreover, it must be pointed out that Schreiner was quite far removed from, and also in opposition to the emerging Nazi race ideology of his day, where racial conflicts and racial wars were furnished with a biological explanation, and development theory was used in race-hygiene propaganda. Schreiner did not allow himself to be associated with the race-hygiene laboratory at Vinderen, nor did he submit any contributions to the periodical *Den Nordiske Race*. However the thesis of the superiority of the Nordic race was implicit in the schemata within which he expressed himself. He was part of a research tradition which could only produce outcomes that we today cannot characterize as anything else but racist.

Then, as later, indigenous population groups aroused the most interest in researchers seeking historical information on the human physique and biology. The idea that the 'primitive' culture of indigenous populations was decided by and assumed a physical identity, and that the indigenous populations represented remnants of the human past, i.e. living examples of something that elsewhere were extinct, created expectations for major scientific breakthroughs about human evolution.

Today we can only marvel at the fact that serious researchers so wholeheartedly embraced the idea that major scientific breakthroughs would be made by performing elaborate measurements on skulls. According to Banton (1967: 39) the anthropo-sociological school is a mix of racial prejudice and 'bad luck'. The features these scientists

chose to study appeared to them as self-evident and they did not know in advance that their efforts would yield so few reliable findings. But even as early as 1931, Hankins pointed out the meagre and hardly tenable scientific findings of this line of research, noting that the outcome of its inherent racial prejudice was of a more serious nature:

They seemed to themselves to have placed the doctrine of the social superiority of the long headed blonds among the statistically demonstrated facts of social anthropology. If they had deceived themselves only little harm would have resulted. But they greatly strengthened doctrines upon which have been based pernicious forms of racial arrogance in Germany, England and the United States. They assisted the inflation of Teutonic chauvinists and Pan-Germanists; they lent air and comfort to Anglo-Saxon imperialists; they gave a sense of moral righteousness to the spirit of racial intolerance.

(Hankins 1931: 139–40)

THE POST-WAR PERIOD: NEW IDEAS, OLD FRAMES

In an international context decolonization is a prominent feature of the post-war period and it enabled formerly colonized peoples to speak with their own voices in the global community. At the same time, ethnic minorities and indigenous groups in Europe, Canada and the USA were organized and had become more visible, an outcome which had consequences for the way they could be described by the cultural and social sciences.

The doubtful scientific findings of the anthropometric school led researchers to virtually abandon skull measurements after the war. However, the inheritance from the inter-war years' physical anthropology continued to linger, and in part still does to this day. A common conception is that racial research was discredited after the war in reaction to the Nazi race ideology and its consequences. This is only partly true. European anthropology in the 1950s and 1960s continued to use old typologies and to propose new, equally fictive typologies (Geipel 1969: 262–5). The connection between culture and race, the belief in originally 'pure' races and the idea that some peoples were more 'primitive' than others had been established as scientific 'truths'. These 'truths' formed the very underpinning of the knowledge inheritance of physical anthropology, the knowledge on which the subject was built. In Norway it was primarily the racial distinction between the Saami and Norwegians that survived the war. The racial typing of Norwegians, such as 'the vestland short skull' and 'the viking type' largely disappeared.

Although there emerged a new acknowledgement of ethnic relations, and researchers distanced themselves from race as a theme, views on the Saami as a distinct racial entity lived on. There was a clearer acknowledgement that culture, race and ethnicity were not synonymous. Nevertheless, up to the 1970s there was a lack of an alternative set of concepts that could translate this acknowledgement into new theories. Even when these new theories on ethnic identity and ethnic relations appeared, the view that the Saami were a distinct racial entity lived on.

In 1947 Johan Torgersen took up a position at the Anatomical Institute. He was also interested in skulls from Saami graves (Torgersen 1968, 1972). The great variation and lack of individual correlation among Saami features caused him to reject the theory of an original Saami type (Torgersen 1968). He found instead that the amount of variation among Saami people both in the present and the past indicated that Saami culture was created among groups that were heterogeneous, also in a physical sense, and that the complex genetic composition made the concept of race difficult.

However, the legacy of race-based physical anthropology made it difficult for researchers to abandon the vocabulary of race typology. In his 1972 article Torgersen again returned to the issue of the physical-anthropological background of the Saami. His contention was still that the Saami had their origin in groups that were different. But instead of separating the ethnicity concept from racial typologies, he solved his classification dilemma by going in the opposite direction: the designations 'east Baltic', 'Nordic' and 'Saami' were no longer to be seen as pertaining to culture. They were to be perceived merely as skull typologies for particular physical features. A skull having a 'Nordic' form thus should not be understood as signifying that this person had belonged to a particular people. Nevertheless, the outcome is that Torgersen reverted to the concept of original types. In his historical interpretations of these types, race and culture merge into a barrier that he is unable to transcend.

Iregren (1997), a Swedish osteologist, also studies ethnic identity as a biological phenomenon, based on a definition of biological ethnic identity and cultural ethnic identity as separate academic areas. Through a physical-anthropological analysis of skeletons from a pre-historic burial site in northern Sweden she posits the ethnic affiliation of individuals. Skeletons are characterized as Swedish (S), Norwegian (N) or Saami (L) although it is emphasized that the typology does not refer to cultural identity. This becomes particularly paradoxical when her work forms part of a book in which the modern ethnicity concept and new theories on the origins of Saami ethnicity are given a great deal of attention.

A decisive break with earlier research in physical anthropology and its racial classification of 'Saami features' is Skrobak-Kaczynski's treatise (1984, 1987) which documents how the body height, head shape and other morphological features of the north Finnish east Saami have been subjected to marked changes since the 1930s. His explanation is that some of the assumed 'typical' features arose relatively quickly, in answer to changing living conditions. The changes cannot be ascribed to the introduction of new genes or genetic changes but rather to the ability of the human body to undergo a 'plastic phenotypic response' to changed living conditions. A case in point is how increased body height will also cause other body dimensions and proportions to change. Boas, the founder of modern American cultural anthropology, and one of the first to point out that differences in mental and intellectual capacity were not affiliated with race (Klausen 1981: 61), had made comparable observations as early as 1912. He created a storm of protest among American race researchers when he proved that the physical character of immigrants (including skull shape) was subjected to marked morphological changes in their new environment; parents with round skulls had children with long skulls. According to Barth (1948: 8-9), Ewing and Erich found similar changes in their analyses of the so called 'Dinaric-Armenian race',

which had been defined by its extreme degree of 'shortskulledness', demonstrating that American children of Armenian parents had completely different average skull measurements from their parents. The reason suggested was that babies no longer slept in a special Armenian type of crib but on soft mattresses.

Others still engaged in the classification of skulls paid little credence to Skrobak-Kaczynski's findings. For example, Holck (1990: 79) noted that the best preserved Stone Age skulls from northernmost Norway have Nordic features, and that this confirmed the theory of an original Nordic Stone Age population in Finnmark.

There are grounds to suspect that the reason why it has been particularly difficult in northern Europe to admit to the fictive content of race typology may be that it was here that the doctrine of the superiority of the Nordic race gained its widest acceptance. An example is the local history book for Land, a district in south Norway. It was edited by two university professors, and was published in 1948. According to Klausen (1981: 146, translated by A. Schanche), when Bryn penned his racist descriptions, the editors found no reason to weed them out: 'The major role of the Nordic race in the Greek-Roman civilization is certain, and currently the importance of a people is almost exactly equal to the number of blond long heads contributing to the formation of the leading level of the people.'

It is interesting to note how differently Klausen, the social anthropologist, and Holck, the physio-anthropologist, assess Bryn's research efforts. Klausen (1981: 146) considers Bryn's research as an expression of German race ideology that he would prefer to ignore in silence. According to Holck (1990: 58), Bryn's production 'both as to quality and quantity is fairly unique', and he was only slightly 'tempted to overestimate Nordic man in a racial sense'. It is easy to understand that Schreiner was restricted by the perceptual framework of his contemporary period. It is far more difficult to accept that the same limitations should be given validity in today's society.

It is also difficult to agree that the fairly ruthless defiling of the churchyards of local Saami populations can be justified by the fact that the Anatomical Institute's collection of Saami skulls is 'the largest of its kind in the world' (Holck 1990: 68). Such attitudes disregard other values than those directly concerned with a restricted academic field, and even the research-historical context of the material. The hunt for Saami skulls and for skull and other measurements of the living population was not a minor event in the contemporary humiliation and active suppression of the Saami population. It was a distinct part of this, both because it lent scientific legitimacy to suppression and because of the specific acts undertaken in the name of data collection. Using the collection at the Anatomical Institute to justify the hunt for skulls in fact maintains the lack of respect that allowed this to happen in the first place. It not only ignores the fact that the collection represents more than value-neutral research material but also that the material was not the only result of this field of research. It contributed strongly to a massive debasement of the Saami people. The ideas produced, among them the idea that Saami identity can be defined in biological terms, have proven to be extremely durable.

FROM SKULL MEASUREMENTS TO GENETICS

While the meagre findings of anthropometry caused researchers to lose interest in skull measurements, innovations in studies in heredity and genetics shifted the focus from the external shape (phenotype) toward the transfer of genetic information (genotype). Such issues gained particular prominence in the 1990s, in parallel with a general growing interest in social biology.

A prominent feature of the interest of some scientists in Saami genetics is that it adopts the concepts of culture and social sciences, but without even attempting to acquire the theoretical developments of the last 20 years. Instead, the starting point is that ethnicity is a biological identity. Race and ethnicity are seen as being synonymous, issues regarding mixing racial components are raised and the old idea of greater homogeneity the further back in time we look still persists. On this basis, DNA analyses of samples from the collection of skeletal material from Saami burial grounds have been initiated (Dupuy and Olaisen 1996). This must be seen in relation to the American Human Genome Diversity Project, one of the aims of which is to collect DNA samples from indigenous groups all over the world, or in the project's own words: from 'Isolates of Historic Interest' (Tokar 1999). The project's rationale is that hundreds of ethnic groups are in danger of becoming extinct, either by intermarriage or through hunger and disease, and that it is thus important to collect and store the information embodied in their genes. The project has encountered strong protests from indigenous people, and in 1993 the World Congress of Indigenous Peoples' (WCIP) seventh international conference adopted a resolution expressing strong disagreement with the project.

Genetic research with an historical basis is, needless to say, not in itself negative, nor is the measuring of skulls. The remarkable thing is that while new medical methods are elaborate and sophisticated, the issues they have managed to raise appear to have changed very little over the years. The purpose of adopting these methods may thus appear to be to find 'final solutions' to old questions. No doubt is raised as to the validity of the issues or the attitudes and perceptions that lie behind them. The outcome is that the inheritance from the inter-war years is perpetuated, and this is occurring while others are raising questions about the *cultural* legitimacy of minorities and indigenous peoples.

There are no grounds for claiming that genetic research in itself is not decisive; the danger only arises from how the findings are actually used. Nor are the issues raised in medical research born out of indifference, and both the purposes and findings are communicated through language. Behind scientific concepts and the use of terms lie dynamic acknowledgements, not static definitions and understandings. Without an awareness of this fact, and without the will to acquire knowledge about the knowledge–theory context of the concepts in the past and the present, we may become bogged down in antiquated ideas with extremely unfortunate inherent consequences.

THE QUESTION OF REPATRIATION OF SAAMI SKELETAL REMAINS IN NORWAY

In Norway, the question of the repatriation of Saami skeletal remains first arose in 1984, when Niilas Somby demanded the return of the head of Mons Somby for burial (see Sellevold Chapter 4). At the same time, the Council of Saami Heritage, a body under the Saami Parliament, questioned the treatment of the rest of the collection of Saami remains at the Institute of Anatomy in Oslo, where skeletal remains of more than 1,000 Saamis are stored. The university decided that in co-operation with the Council of Saami Heritage, a committee with the mandate to propose principles and guidelines for the management of the collection should be appointed.

The committee's proposals for the Saami part of the collection, later to be approved of by the Saami Parliament and also the University of Oslo, were (in short):

- 1 to conduct a systematic registration and documentation of the collection, including the identification of the Saami remains;
- 2 to store the Saami material separately, and with restricted access;
- 3 that dispensation from restrictions as well as research permissions must be obtained from the Saami Parliament;
- 4 that relatives have the right to have returned remains that can be identified by name;
- 5 that the Saami Parliament has the right to have returned all or part of the Saami collection for replacement.

The guidelines do not use the word 'reburial'. 'Replacement' does not exclude reburial, but at the same time it does not presume what the Saami Parliament will decide. Also, the guidelines do not deny the rights of other Saami organizations to claim remains that have been repatriated, but they define a channel for such claims. I was a member of the Committee, which aimed at developing mutual trust rather than confrontation and conflict.

This trust has been challenged by the person in charge of the collection at the Institute of Anatomy who in interviews and writings persistently argues against the role that the Saami Parliament has been given, insinuating that by accepting this role other scientists are 'losing their heads' (Holck 2000). This confrontational attitude and denial of curation and management on terms the Saami Parliament can accept is a threat to those who wish to maintain the collection at its present location and to have permission to study it. That this has not yet been articulated by Saami politicians demonstrates the tolerance and patience often required of indigenous groups in their struggle for influence. The unwillingness to accept that Saami perspectives are valid on their own terms is only part of the problem. In addition, the decades of degradation and suppression of Saami culture and identity still leads to a hidden but present doubt that the Saamis are capable of reasonable and responsible decisions.

The 'Draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples', formulated by the Working Group of Indigenous Peoples at the United Nations Commission on Human Rights is generally acceptable. Yet, when it

comes to the guideline stating that ‘Human remains and associated funeral objects must be returned to their descendants and territories in a culturally appropriate manner, as determined by the indigenous peoples concerned’, some may take a different view. To transport remains may even be felt by some to be an additional disturbance, potentially harmful both to the living and the dead. If groups requesting remains want to solve the question by claiming back authority and control, then this should be their right. This includes the right to determine and control how collections are kept and treated, to perform religious ceremonies at the site of safekeeping and also the right to *permit* studies, taking into account both general and specific ethical standards and procedures.

The question of repatriation is dual. On the one hand it is a question of a legitimate allocation of authority and rights. On the other, it is a question of what decisions should be made, and how they are to be carried out. Only after the first is solved, can the second be debated under fair conditions, provided that the recognition of rights is not an empty statement but carries with it opportunities to develop organizational tools and capacity. The strengthening of indigenous organizations and institutions is an important part of democratization towards self-determination. This is sometimes overlooked when the repatriation issue is discussed.

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4 *Skeletal remains of the Norwegian Saami*

BERIT J. SELLEVOLD

A BURIAL

In Norway, two population groups, the Norwegians and the Saami, have coexisted for perhaps as long as two thousand years. The ethnic group called Saami are concentrated in the north of the country, mainly in the counties of Finnmark and Troms, with smaller groups distributed to the south, in the middle part of Norway.

In November 1997 an unusual funeral took place near Alta in Finnmark. Two tiny coffins shaped like miniature reindeer sleighs, each containing a skull, were buried just outside the Kåfjord churchyard fence. The funeral was attended by hundreds of people: relatives of the deceased, local citizens, and representatives of the Norwegian State and the Norwegian State Church. The burial of the skulls took place 145 years after the deaths of the individuals.

The skulls were the remains of two Saami men, Mons Somby and Aslak Hætta. They had been the leaders of an uprising by a group of Saami against the Norwegian authorities in 1852. During the struggle, two Norwegians, a merchant and a law officer, were killed. Somby and Hætta were tried, convicted, received the death penalty and were decapitated on 14 October 1854 (Zorgdrager 1997).

After the execution, the headless bodies of the two men were buried outside the churchyard fence at Kåfjord church. The heads were sent to the University of Oslo where they were placed in the anthropological skull collection of the Institute of Anatomy. Here they remained until 1997.

In a letter to the Institute of Anatomy, dated 7 February 1985, a relative of Mons Somby, Niilas Somby, requested that the skull of his grandfather's brother be returned to the family for burial (Bull 1996). The institute refused to surrender the skull and asked the Faculty of Law at the University of Oslo to evaluate the legal aspects of this claim. The legal expert concluded that the skull should be released for burial. But the Institute of Anatomy still refused to give up the skull. The person in charge of the anthropological skeletal collection claimed that the skull was a very valuable scientific specimen, and that Niilas Somby, who had requested the release, was not a direct descendant of the deceased and therefore had no rights to the skull.

The question of repatriation was not resolved until 1997, when the grandchildren of the other executed person, Aslak Hætta, joined Niilas Somby in demanding the surrender of the two skulls. After a legal debate between the Saami parliament, the Department of Justice, the Department of Church, Education and Research and the University of Oslo, the Institute of Anatomy was finally ordered by the university administration to yield up the skulls for burial.

The burial ceremony became a symbolic rectification of past and present oppression, both against the families of the deceased and against the Saami people by the Norwegian authorities. Representatives of the state and of the church apologized to the Saami people for the injustices perpetrated by the Norwegian authorities against the Saami throughout the years which had culminated in the bitter controversy over the release of the skulls.

This is a very abbreviated version of a long and difficult story. The burial of the two skulls in 1997 is not the end of the story but constitutes the first step of an ongoing process concerning the future disposition of all Saami skeletal material in Norwegian collections (see Schanche Chapter 3).

THE SKELETAL COLLECTION AT THE INSTITUTE OF ANATOMY, UNIVERSITY OF OSLO

In the 1800s, historical research in the Nordic countries was concerned with the question of the racial histories of population groups. It was a generally held belief that the physical appearance of individuals defined their racial affinities. This was in tune with the prevailing European research interest in classifying humankind into disparate racial groups. Skeletal parts from graves were systematically collected in order to obtain research material for establishing the racial origins of population groups (Næss and Sellevold 1990). It was especially skulls that were collected, since it was believed that racial characteristics were most strongly expressed in skulls. Sizeable skull collections came into being (see Schanche Chapter 3).

Until 1970/1980, archaeologists and physical anthropologists provided definitions of the Saami from a physical anthropological point of view. In this context, the skeletal remains from graves were important as source material for research (and see Schanche 1997).

In Norway, the first Saami skulls were collected in the second half of the nineteenth century. The first publication dealing with Saami skulls appeared in 1878 when Professor of Anatomy Jacob Heiberg published a description based on measurements of 14 skulls (Heiberg 1878). Of these, 11 skulls were from the collection at the Institute of Anatomy, while three were from the private collection of the Norwegian merchant Nordvi at Mortensnes in Varangerfjord in Finnmark. Nordvi collected skeletal material from pagan Saami graves on a large scale. Some he kept for his private collection, some he sold to universities and museums throughout Europe.

Towards the end of the nineteenth century, many people were investigating pagan Saami graves in Finnmark. Spending their summers collecting skulls and selling them

to interested parties seems to have been almost a hobby for the Norwegian gentry living in the region: tradesmen, church officials, local law officers and others.

The collecting of Saami skeletal material continued on a large scale in the 1920s and 1930s. The principal Norwegian researcher of Saami skeletal biology was Professor of Anatomy Kristian Emil Schreiner, who was head of the Institute of Anatomy from 1912 to 1945. Schreiner's 'favorite research objects' were the 'ethnic minorities' in Norway, that is, the Saami (Holck 1990). By the time his work on the Saami started, almost all pagan Saami graves in Finnmark had been plundered. In order to get material for research, Schreiner therefore sent his medical students to Finnmark to collect skulls from eighteenth and nineteenth century Saami churchyards. This activity was pursued in spite of the very strongly voiced protests of the local Saami. But Schreiner had received approval for his project from the Norwegian parliament, and did not heed the protests (Bull 1996).

The largest collection of Saami skeletal remains in existence is the Schreiner Collection at the Institute of Anatomy at the University of Oslo. There are 922 registered units from Finnmark, mostly skulls, but also some complete skeletons. The number of individuals represented in the collection is larger than 922, however, since a given find unit may consist of the remains of several individuals. The major part of the material derives from Schreiner's investigations of Saami churchyards (Sellevold 1991).

All Saami skeletal remains are unburned. Most of the material is rather well preserved, and in some cases there are even remains of hair and nails. However, the provenances of the finds are often poorly and incompletely documented, since so much of the material stems from non-archaeological investigations.

CONCLUSION

The plundering of Saami graves and churchyards is a thing of the past. Policy and procedures are being put in place to give control of collections to the Saami parliament (see Schanche, Chapter 3). Consulting with Saami people may enable archaeologists to study graves and skeletal remains. Recently, an experiment was carried out by the archaeologist Schanche who designed and tested a new approach in the archaeological and anthropological investigation of pagan Saami graves and skeletal remains. The first step in her project was to obtain acceptance for her proposed research by the Saami section of the Tromsø Museum, then in charge of the protection of Saami monuments and sites. The next step was to get the approval of the Saami living in the vicinity of the graves she wanted to investigate. In order to obtain their consent she informed them about her project, explaining the aims of her research and her proposed plan for investigating the graves. The research plan necessitated a close co-operation between the archaeologist and the physical anthropologist: upon opening a grave, the anthropological and archaeological investigations were carried out, and all data were collected on site. After the investigations were completed, the skeletal material was reinterred, and the grave was restored to its former appearance. This approach proved to be satisfactory to the archaeologist, the anthropologist and to the Saami community.

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5 *Indigenous Australian people, their defence of the dead and native title*

PAUL TURNBULL

In July 2000, the indigenous peoples of Australia achieved significant progress in their struggle to regain ownership and determine the fate of ancestral remains preserved in western museums and medical schools. That month, a Select Committee of the British House of Commons recommended that the Department for Culture, Media and Sport

initiate discussions with appropriate representatives of museums, of claimant communities and of appropriate Governments to prepare a statement of principles and accompanying guidance relating to the care and safe-keeping of human remains and to the handling of requests for return of human remains.

(Culture, Media and Sport Select Committee 2000)

This was less than the representatives of indigenous Australian people, who appeared before the committee, had hoped for, but they still saw this recommendation as an important step towards resolving an issue which has long caused anguish in Aboriginal and Torres Strait Islander communities. In submissions and evidence before the committee, museum administrators acknowledged the distress that the continued preservation of remains caused. Regrettably, there were items in their custody that had been procured in historical circumstances which were wholly at odds with contemporary ethical standards governing the conduct of scientific research. Even so, their testimony reflected the unease within scientific communities at the prospect of returning remains and having them lost to science through reburial. For example, Neal Chalmers, representing the Natural History Museum, argued that the Museum would find it extremely difficult to agree to repatriation, believing that it had

a duty to the nation to retain those objects and we have a duty to the scientific international community to use them as a very valuable scientific resource. We would find it extremely difficult to return any such objects if there was any doubt at all about their continued safety and their accessibility.

(Culture, Media and Sport Select Committee 2000)

Chalmers also told the Committee that the museum was now prepared to release information relating to its collections of human remains, but a balanced discussion of their fate was complicated by its having little or no information about many items, and being forbidden by its governing act to de-accession items legally acquired.

This came as little surprise. Most of the British curators and scientists I have spoken with over the past decade do not wish to see skeletal material surrendered for reburial. Like Chalmers, they have questioned the wisdom of repatriation of human remains on a combination of scientific, ethical and legal grounds.

By far the most common argument for continued preservation is that new technologies, such as computer-based comparative examination of bone shape, and DNA extraction, are beginning to yield hitherto unknown facts bearing on the course of human evolution and prehistoric migration (see, for example, Stringer 1992; Poinar 1999; Hawks 2000; Hoss 2000). As new technologies for analysing bone structure and composition evolve, new information about the origins and early history of humanity may be disclosed through examining indigenous Australian remains. When Chalmers spoke before the Commons Committee of the Natural History Museum's 'duty to the nation', what he probably meant was that the Museum had a duty on behalf of the British people to behave ethically, and not deny the world new scientific knowledge out of deference to the cultural sensibilities of any particular one nation or ethnic group.

The problem with this reasoning, however, is that while indigenous remains might be used to enrich our understanding of the course of human history, the cost is devaluing cultural practices which are fundamental to the indigenous Australian continuum of self, life in the land and eventual return to the realm of the spirit. As such, it presents a dilemma familiar to scientists and ethicists: by what criteria is it permissible to conduct research which promises to benefit many but is likely to hurt particular individuals or communities? Generally, the production of knowledge is judged unacceptable if it endangers life, inflicts cruelty or abrogates what are generally agreed to be inalienable human rights (Singer 1994). Curators and scientists who oppose repatriation justify continued preservation and use of indigenous skeletal material on what seem to be unduly narrow grounds.

It is not as if British researchers have not been challenged to explore the complexities of the problem. Since 1990, few if any institutions within the United Kingdom that remain opposed to repatriation have not been visited by representatives of indigenous Australian organizations, or delegations including senior Elders. Often curators and scientists have heard directly from Elders how they are obligated to ensure the re-incorporation of remains within ancestral country by customary law (Poignant 1992; Turnbull 1995/96). However, the response of institutions such as the Natural History Museum, and England's Royal College of Surgeons, has been to explain to indigenous Elders and activists the benefits they are likely to gain from the continuation of research on remains. They have argued that communities will almost certainly learn more about how they came to live in their ancestral country, and that they might well come to enjoy better health from analysis of remains resulting in improved medical procedures. Rarely if ever have these arguments been tempered by consideration of the benefits to health and well-being arising from the expression and enjoyment of

cultural heritage. Reading Chalmers' testimony would suggest that indigenous Australians are uninterested in what western science might discover; whereas in fact what they have consistently maintained is that they want the freedom to assess and employ new knowledge in ways they see as culturally appropriate, and the right to ensure that scientific research does not denigrate truths they see as essential to personal well-being (Langford, R. 1983; Fourmile 1988).

What is perhaps most troubling about the arguments British museum and scientific personnel have advanced in favour of continued scientific use of remains is the way that they depict indigenous Australian societies. They present them as having experienced such profound disruption and change since 1788 that, with the exception of a small number of communities spread across remote northern Australia, calls for the return of remains on cultural grounds have little real substance. The presumption is that where there has been a long history of cross-cultural interaction, extensive and widespread adoption of European beliefs and practices has occurred. Indeed, privately, several curators and researchers have said that they find it hard to accept that younger indigenous activists demanding the surrender of remains are motivated by other than the desire to embarrass the Australian government into making concessions on land rights. When pressed on this point, they have suggested that scientific preservation of remains was never an issue prior to the late 1970s, when demands for the repatriation of skeletal material and grave goods by Amerindian political organizations began gaining wide international publicity.

Two curators with whom I spoke confessed that they felt their suspicions in this regard confirmed through talking with indigenous delegations. They recalled that the Elders they met said little beyond explaining the spiritual significance of ensuring the burial of the dead in accordance with customary law, and said little when the case for scientific preservation was put to them. The younger men and women accompanying community Elders responded differently. They said that by continuing to preserve remains for scientific use researchers were no different from those students of racial science of the last third of the nineteenth century who had advocated that the colonial state should eradicate indigenous life-ways and culture. Indeed, the experience left one researcher convinced that the political aspirations of indigenous Australians were so thoroughly informed by radical strands within contemporary western political thought that the controversy could only be resolved by the application of western ethical and legal criteria.

However opponents of repatriation would do well to take account of how the conceptual vocabulary of western political thought has been reworked through the agency of indigenous culture. Australia was typical of colonial situations in that the colonizers assumed they were inherently superior to the colonized. Even so, over two centuries the lives of European settlers and indigenous people became interconnected and thereby changed in obvious and many subtle ways. Often wider cultural forces shaping indigenous-settler relations were mediated by discursive and material factors peculiar to specific localities. Until very recently, relationships between indigenous and non-indigenous peoples grounded in senses of affinity or equality were rare, with the result that the things that mattered most to indigenous people were kept hidden from the prying eyes of settlers. One of the most striking aspects of the belated recognition

of native title by the Australian High Court in 1992 has been how the procedures established for resolving title claims have revealed to non-indigenous Australians the continuing strength and vitality of indigenous culture (Rowse 1993). What has equally become clear is that even though indigenous Australian culture has been constantly refashioned through the play of a myriad discursive and material forces, historically, concern for the ancestral dead has been a continuing and profoundly influential determinant of indigenous identity, politics and memory (Langford, R. 1983; Fourmile 1992; Fesl 1993; Langford, G. 1994).

‘THEY BURY THEIR DEAD WITH NEATNESS’

Let us consider some of the more salient aspects of the history of Indigenous care for the dead, beginning with a short ethnographic account of the Aboriginal peoples of King George Sound, read in 1832 by Dr Scott Nind to the Royal Geographical Society of London. Nind, the medical officer at the new European settlement on the sound, wrote of having encountered carefully constructed graves, surrounded by strange and intricate figures, carved high in the bark of surrounding trees. Settlers told him how mourners always took great care to perform ceremonies on approaching and leaving the grave (Nind 1832: 46–51).

Nind’s paper was one of many communications on the subject of Australia’s indigenous inhabitants heard by European learned societies during the first half of the nineteenth century (Greenway 1963). It was also typical in that his account of funerary custom was offered as a corrective to the popular assumption that Aboriginal people were nomadic savages with no sense of property or attachment to country.

Perhaps the most striking illustration of how the indigenous dead challenged British colonial ambition by their presence dates from September 1824, when James Brewer arrived in the Gulf of Carpentaria aboard *HMS Tamar*. His mission was to establish the Port Essington settlement and formally proclaim British sovereignty over the northern coast of Australia. Brewer reported to the Admiralty that the peoples his party encountered were more civilized than those they had met with on the eastern coast of Australia, describing in detail a burial place discovered on Bathurst Island. ‘The situation was one of such perfect retirement and repose,’ wrote Brewer, ‘that it displayed considerable feeling in the survivors, who placed it there, and the simple order which pervaded would not have disgraced a civilized people.’¹ Brewer’s views circulated far beyond naval circles, thanks to Henry Ennis, the purser on board the *Tamar*. Ennis used Brewer’s despatches as a basis for a series of articles he wrote for the *Monthly Magazine*, similarly depicting the peoples of the region as more civilized than those met with in New South Wales by virtue of their care for the dead (Ennis 1983: 19).

Like most of their contemporaries, Brewer and Ennis subscribed to the theory of human origins and diversity supported by Johann Friedrich Blumenbach, and greatly popularized by subsequent writers, notably James Cowles Prichard. According to these authorities the peoples of New Holland and Van Diemen’s Land were descended from one or more of the tribes of pastoral nomads whose early history was partly recorded

in the later chapters of Genesis. Some tribes had been forced to seek new grazing lands, with the result that they migrated far beyond the plains of Shinar. Some had adopted agriculture; others had eventually found themselves in country so inhospitable that they were forced to abandon pastoralism for hunting and gathering. The 'life of the chase' was seen as having left these peoples neither time nor resources to preserve more than the barest rudiments of civilization and true religion (Turnbull 1987).

Ethnographic inquiry was consequently understood as a salvage operation, in which indigenous belief and custom warranted recording not as ideas and practices with their own socially contingent meanings and values but as the remnants of life-ways and institutions inherited from the ancient civilizations of the middle-east and northern Europe (Stocking 1987). How far, and in what respects, this past could be recovered was a matter of debate, and one assumed to have been rendered all the more uncertain by the effects of degeneration upon indigenous bodies, minds and culture. Yet, within ethnographic discourse, funerary culture assumed great salience, seeming to be an aspect of indigenous life from which it might still be possible to derive positive conclusions about the origins and antiquities of the Aborigines.

In published accounts of their journals, Australian explorers of the first half of the nineteenth century all drew the attention of their readers, some albeit tentatively, to affinities they saw between the burial practices of Aboriginal people, funerary ceremonies recorded in the Old Testament and those described by leading antiquarian scholars of the European Enlightenment. The resemblances they pointed to were in turn taken up by influential metropolitan ethnographers, such as James Cowles Prichard (Prichard [1813] 1973). But perhaps a greater sense of how death came to be seen as the key to understanding indigenous origins and culture can be gained from the works of lesser figures, such as Thomas Inman, a Liverpool medical practitioner, phrenologist and prominent figure in that city's Literary and Philosophical Society. Drawing on the authority of explorers George Grey and Thomas Mitchell, Inman argued in a paper read to the society in 1846 that the seeming lack of indigenous material culture – what he and fellow phrenologists diagnosed as the 'absence of constructiveness' – had mistakenly 'led many of the first writers on the subject to consider the natives the very lowest on the human scale. More extended observation,' he maintained, 'had shown that they were by no means deficient in this attribute.' Among other things, Inman (1846: 21) reported that while indigenous burial grounds were uncommon, 'some had been found of most romantic beauty' and in Northern Australia, 'large cairns had been found ... evidently of great antiquity'.

Travellers and settlers who believed in the literal truth of Scripture were often less circumspect in reconstructing the course of post-biblical history. Eager to see indigenous peoples reunited with the ways of providence, they pointed to land being set aside for the dead as evidence that the experience of 'savagery' had not entirely extinguished faith in the existence of the immortality of the soul. For example, John Henderson, the Baptist missionary and geologist, was convinced that remnants of Hindu custom were practised by indigenous communities, and readily credited reports that peoples in present day North Queensland and the Northern Territory possessed 'a much fairer complexion than even the inhabitants of the Indian islands'. Henderson (1832: 149) wrote of having learnt from missionaries at the Wellington Valley that while the people had no settled

place of residence, 'the limits of their respective hunting grounds appear[ed] to be distinctly recognized'. So too when they came to bury the dead, they selected 'a spot near a clear portion of the forest' and afterwards symbolically carved 'the nearest tree, which serves to indicate the particular tribe to which the individual may have belonged'.

Missionaries were not the only observers of Aboriginal funerary custom during the first half of the nineteenth century who were struck by the fact that while indigenous communities lived by hunting and gathering, and did not set aside land for the construction of permanent dwellings, they nonetheless took great care to erect substantial structures on land reserved for burial. Written and visual records of funerary structures came to figure in the records of inland travel compiled by early surveyors and explorers. John Oxley, the first NSW Government Surveyor, was intrigued by the elaborate form burial took along the upper reaches of the Lachlan River in 1817. The strength of curiosity was such that he directed the opening of a mound grave discovered near one campsite (Oxley 1820: 139); although as Fforde (Chapter 1) notes, Oxley was troubled as to the morality of excavation, and hid the fact that he kept the skull for phrenological study. Similarly, during his 1835 exploration of the course of the River Darling, his successor, Thomas Mitchell, encountered elaborate burial places situated on low hills adjacent to the river's flood plains, one 'consisting of a circular trench of about 30 feet in diameter, the grave ... covered by a low mound in the centre'. As was commonplace in European cemeteries, graves appeared to have been dug where possible in the highest parts of the hills (Mitchell 1839: 1, 235). Travellers unconnected with the colonial establishment similarly found the pains indigenous communities took in respect of the dead remarkable. W.H. Breton, a naval officer on half pay, was one of many professional men who travelled inland districts out of scientific curiosity, with a view to capitalizing on metropolitan interest in the natural history and indigenous inhabitants of Britain's growing empire by publishing an account of their travels. In the early 1830s Breton examined a number of burial mounds at a 'very pretty spot' on the Wollombi River, recording in detail the way in which the bodies of four men and two women had been carefully laid to rest. The 'neatness and precision' of the graves' construction seemed 'very remarkable'. 'Such evident pains and labour to make a place of sepulture', he wrote, 'struck me as being not a little extraordinary in a people so very indifferent about most other matters'. However, he was unable to elicit information from local Aboriginal people as to the meanings of their funerary practices, finding them unwilling to speak of the dead (Breton 1834: 180).

Other contemporary observers of Aboriginal burial custom combined science with more commercial interests in the land they traversed. Joseph Hawdon, pastoral entrepreneur, who, with Charles Bonney, in 1838 drove the first cattle overland from Port Phillip to Adelaide, likewise thought it 'rather singular' that the peoples they encountered when travelling south along the Murray River made 'better houses for the dead than for the living, the latter being composed merely of sheets of bark'. On two occasions, Hawdon stopped to examine and sketch these structures. Discovering a complex of burials on flats adjacent to the Murray south of what is now Lake Bonney, he removed clay mourning caps found within several of some 30 well-defined graves, which he noted were 'evidently kept with much care and in neat order' (Kain 1991: 47, 57).

Europeans also knew that indigenous peoples' obligations to the ancestral dead extended beyond reuniting them within the land. Of the numerous accounts of the Aboriginal way of death written by colonial officials and pastoralists during the first two-thirds of the nineteenth century, most acknowledged the care Aboriginal people took to avoid burial places, except in clearly defined ceremonial contexts.

Explorers found the Aboriginal people they employed to help them travel and live off the land equally unfamiliar with the country they passed through, and anxious to gain the permission of its owners to do so. When the burial sites of unknown peoples were discovered, Aboriginal guides sought to persuade their European companions to leave quickly without disturbing anything. In his account of his exploration south of Perth in early 1839, George Grey recalled the 'concern and uneasiness' of Kaiber, the party's principal guide, on the discovery of a newly made grave on the upper reaches of the Harvey River. Grey asked Kaiber the meaning of various features of the grave.

His answer, – 'Neither you nor I know: our people have always done so, and we do so now.' I then said to him, 'Kaiber, I intend to stop here for the night and sleep.' 'You are deceiving me,' he said: 'I cannot rest here, for there are many spirits in this place'.

(Grey 1842: 1, 323)

Keen to present himself as the intrepid explorer, Grey wrote in his published account of the expedition how he laughed at Kaiber's fears. Even so, he agreed to the party journeying for several miles beyond the site before making camp for the night.

Kaiber in all probability knew but would not reveal matters of law to Grey. However, it would seem that occasionally Aboriginal travellers were as mystified as Europeans by the traditions of distant tribes. In his account of the 1836 Murray–Darling expedition, Thomas Mitchell wrote of finding on a plain, near the junction of the Lachlan and Murrumbidgee Rivers, 'a large, lonely hut, of peculiar construction ... that ... stood in the centre of a plot of bare earth of considerable extent ... enclosed by three small ridges'. Entering the hut and thrusting his sabre into the rush-covered floor, Mitchell found that he had disturbed a grave. 'Tommy Came-first', one of several Aboriginal guides with the expedition, entered the site with Mitchell and 'pronounced this to be the work of a white man' (Mitchell 1839: 2, 71).

While Mitchell sketched the burial place, a woman had appeared, called Tommy over to a nearby wood, and warned him that they were intruding on the grave of her husband. Tommy refused to come back to the site. Conscious of his distress, Mitchell retired 'anxious that no disturbance of the repose of the dead should accompany the prints of the white man's feet' (Mitchell 1839: 2, 71).

Graves were known to be routinely visited by relatives. Mitchell, for example, learnt from the widow whose husband's grave he had inadvertently desecrated, that the rushes covering the floor of the tomb 'were actually the nightly bed of some near relative or friend of the deceased' who stayed with the body until it had been fully reincorporated within the country (Mitchell 1839: 2, 71).

In 1857, two decades later, William Blandowski, the geologist and naturalist, visited the same region, having been contracted by the Victorian Board of Public

Lands and Works to collect specimens for the Victorian museum. On his return to Melbourne, he reported to the Board that he was only able to make 'the most deplorable statements concerning our natives.' 'Extermination', he wrote, had proceeded 'so rapidly, that the regions of the Lower Murray are already depopulated, and a quietude reigns there which saddens the traveller who visited those districts a few years ago.' Even so, Blandowski reported, customary forms of burial were still practised. Structures continued to be built over graves, and 'the female relatives of the departed enter the tomb every morning before daybreak, giving expression to the most melancholy lamentations' (Blandowski 1858: 137).

Similarly revealing are the reminiscences of the wife of the manager of Keera station, west of Baraba in New South Wales, during the mid-1850s. Shortly after their arrival they learnt that a burial place lay close to the homestead. After several fruitless attempts to find it, they pressured a local senior law man to reveal its whereabouts (Macpherson 1860: 225). 'He shuddered', she wrote, 'and literally turned *pale* when we broached the subject.' They persisted however in 'questioning him as to which of his former acquaintances were interred'. With food scarce and more of his people arriving at the station malnourished and sick, the Elder gave in. Making sure none but the white people heard, whispered their names 'scarcely above his breath, at the same time looking around fearfully'. Pressure was similarly applied to younger men in the station camp, one of whom guided them to within a kilometre of the site, where 'he stopped abruptly, pointed with his hand to a very tall tree, some few yards off, and darted away like an arrow, unwilling to linger near the terrible spot'. They continued on, to discover a number of burial mounds surrounded by trees adorned with intricate carvings. One in particular 'bore the appearance of being tended with no little care'. Both were struck 'that however much they dislike to name the dead or visit their last abodes, they do not allow the tombs of their friends to suffer from their neglect' (Macpherson 1860: 226).

Similar customs were reported by explorers, travellers and pastoral entrepreneurs in many other parts of the continent. For example, E. W. Landor, a young surgeon, visited the upper Swan River district of Western Australia in the early 1840s. Landor learnt that when local men died a 'hut' was built over the grave, a fire tended and that a wife or close relation if they subsequently passed the grave would repair the structure and sing the spirit of their loved one to rest. 'Nothing,' Landor reported, would 'induce a stranger to go near a new grave or to mention the name of the departed for a long time after his death' (Landor 1847: 213–4).

Not all encounters with burial places were marked by peaceable diplomacy between mourners and strangers, as the surviving testimony of several would-be grave-robbers makes clear. As mentioned previously, Joseph Hawdon discovered numerous graves when driving along the course of the Murray in 1836, and opened a number to procure skulls. While he dug, Aboriginal people, knowing the weaponry the white men possessed, stood by 'aloof, looking very solemn, but without uttering a word, and manifestly disapproving of my curiosity' (Kain 1991: 57).

Similarly, when John Lort Stokes surveyed Australia's coastal waters, between 1837 and 1843, he entered the lands of peoples who had experienced violent clashes with armed parties from naval and merchant vessels for nearly four decades (Stokes 1846).

In early 1838, Stokes and his men were surprised in seeking to extract remains from a burial place near Point Cunningham in the Kimberley region of Western Australia. Stokes was well aware of the outrage they were committing, but unsure why local clansmen failed to attack his party. In his journal he was to explain why local men kept their distance not to fear of white fire power – the likely reason – but to his party being seen as spirits come to give the dead new white bodies, or ‘deeming us indeed profane violators of that last resting place of suffering humanity, which it seems an almost instinctive feeling to regard with reverence, they left the office of retribution either to the spirit of the departed, or more potent ... [spirits]’ (Stokes 1846: 1, 116). These remains were eventually presented to the Royal College of Surgeons.

Where it would most likely have been fatal to confront Europeans desecrating graves, indigenous people could employ other tactics. In the Flinders River region of Queensland, for example, fires were lit to prevent Stokes’s party from desecrating a burial place. Stokes wrote in his journal (Stokes 1846: 1, 296–7),

it would appear that ... as in other parts of the continent, spots where the dead lie are kept sacred.... The method they used to lure us away from the neighbourhood of the dead was simple and ingenious, and might have proved successful had not the interposing ledge of rocks prevented our further progress. To effect their purpose they must have burnt up a very large space, as the smoke that arose obscured all that quarter of the heavens. We observed also that the ground about the burial tree had been submitted to the flames, as if to keep away the few kangaroos that visit this spot.

On occasion, communities sought to enlist the help of sympathetic Europeans. From 1825 there survives a diary entry by the missionary Lancelot Threlkeld, recording his attendance at the funeral of a Lake Macquarie woman at the request of her kin. After the grave was filled, one of the mourners approached Threlkeld and ‘in broken English begged I would not disclose where the body was laid’. In his diary, Threlkeld wrote,

on enquiry for the reason of this injunction they told me that they were afraid that white fellow come and take her head away. They were assured it should not be disclosed by me and apparently satisfied they departed to their camp. The exposure of New Zealander heads for sale at Sydney no doubt is one of the causes of their fear.²

Threlkeld was subsequently to write that he feared ‘many a grave had been opened’ because of the value Aboriginal skulls had acquired in phrenological circles (Gunson 1974: 1, 84). Stripped of protection by family and kin, the dead themselves could still deter would-be plunderers by virtue of their location in ritually defined space, and of course their physical condition. In December 1850, Edward Snell, a young engineer and artist newly arrived in Adelaide, set out with a friend to steal skulls from an Ngarrindjeri burial place in scrub near the mouth of the Murray River. Unnerved by moving amongst the dead they nonetheless succeeded in

capsizing one platform and tore the head off the corpse, but 'it was too stinking to carry away' (Griffiths 1989: 187–8).

There is much more evidence that could be presented documenting European recognition of the care indigenous Australian communities took to bury their dead in specific parts of their ancestral country. Even when communities had lost their land and had no option but to bury loved ones in European cemeteries, soil and natural objects of spiritual significance would be added to the grave (Byrne and New South Wales. National Parks and Wildlife Service 1998). However, the point to be stressed here is that by the mid-1830s, Europeans were well aware that indigenous communities reserved land for burials, and that this was a custom that should be respected. In fact, in 1836, events took place in London that were to enshrine the right of indigenous peoples to use land for burial in accordance with their traditions in British law.

RECOGNITION OF RIGHTS TO CARE FOR THE DEAD

Britain entered the nineteenth century as the world's most advanced capitalist economy but remained governed through a complex of patrician institutions, many of which had existed since the early sixteenth century and proved remarkably adaptable to change (Porter 1982). However, by the end of the first third of the nineteenth century, the challenges and uncertainties attending the rise of industrialization had led to the creation of new state agencies and associated legislation. The character of these innovations in governance, moreover, reflected the faith that Britain's increasingly powerful middle classes placed in the idea of humanitarian reform (Bebbington 1989).

This spirit of moral reformism had complex origins in eighteenth-century British society, but gained much of its impetus from the opposition of leading Evangelicals and non-conformist Christians to slavery (Walvin 1986). By the early 1830s slavery was only one of numerous aspects of the contemporary world that humanitarians had identified as demanding reform. Concern about the impact of colonial settlement on indigenous peoples was an early manifestation of the reformist impulse. In the case of Australian settlement, the influence of leading Evangelicals such as Beilby Porteus, Bishop of London, had significant weight in governor Phillip receiving instructions specifically charging him to establish peaceful relations with the peoples he encountered (Frost 1987). The welfare of the 'aboriginal natives' became a matter of particular concern in humanitarian circles with the establishment of missionary ventures in Canada, Australia and various parts of Oceania which in turn resulted in a steady stream of information about the plight of indigenous peoples. However, like slavery, it was an issue for which support rose and fell as other domestic and international issues assumed importance in political and intellectual circles.

On the formation of the Melbourne ministry in 1835, Charles Grant, later Lord Glenelg, was appointed Secretary of State for the Colonies, while James Stephen, who had served as Counsel to the Colonial Office since 1813, became permanent under-secretary. Both men were devout Christians who had been active in securing the political successes of the anti-slavery movement during the first years of the decade. Resolutely opposed to both slavery and the exploitation of indigenous labour, they

nonetheless understood Britain's acquisition of colonies as designed by providence. As Scripture made abundantly clear, it was the divine will that colonial possessions be governed so as to secure the material improvement and spiritual salvation of both settlers and those indigenous peoples over whose lands the British Crown had gained sovereignty (Reynolds 1987: 90–1). Stephen especially saw his duty as a divinely bestowed charge to use his office to advance empire but also to mitigate, if not prevent, the impact of settlement on the lives of indigenous peoples (Stephen and Stephen 1906). The brutalities of the Tasmanian 'Black War' of the late 1820s and the subsequent removal of the Island's native peoples to reserves caused him and Glenelg particular anguish (Reynolds 1987: 99).

However, Stephen and Glenelg, in common with many humanitarians of the 1830s, combined faith with pragmatic realism. They viewed the expropriation of native land as both a moral evil and the primary cause of violence between black and white. But they also understood the process as one with parallels in British history. The native tribes encountered in Australia appeared to hold and enjoy tracts of territory in much the same way as the ancient Britons and Anglo-Saxons. Moreover, from the history of the common law it seemed that while the sovereignty of the Crown may have had origins in conquest, it owed more to gradual assumption of the role of legal guarantor and impartial judge of traditional rights and privileges in respect of land. The alleviation of the plight of indigenous peoples in British colonies, irrespective of whether they were claimed by right of discovery or conquest, was seen to lie with the Crown asserting its duty of care. This meant the Colonial Office ensuring mechanisms existed to assess, and protect when required, the rights of the Crown's indigenous subjects. One important step in this direction was to support those of their fellow humanitarians active within parliamentary circles to establish a select committee into the condition of the Aborigines of the British empire in February 1836 (Great Britain: House of Commons 1836).

Even so, Stephen, Glenelg and their political allies were far from confident about the imperial government's ability to protect native rights in the Australian colonies. They knew well the strength of opposition the Governor of New South Wales and his officers would meet from pastoralists and their political representatives if they sought to enforce any policy favouring indigenous rights. Their assessments were also greatly informed by events in Tasmania, and also the wealth of testimony that many indigenous communities within the boundaries of mainland settlement were likely to suffer extinction. Their initiatives were thus largely designed to protect those peoples who remained, and to assimilate them within settler society by encouraging schemes for their conversion to Christianity and education in farming techniques.

Yet, in one respect there appeared the chance to do more. On taking office, Glenelg assumed responsibility for resolving the administrative complications attending the establishment of the new colony of South Australia. The colony had been approved by Act of Parliament in 1834, after several years of lobbying and political manoeuvring. The Act reflected various compromises made on the part of government and the colony's commercial sponsors, but was regarded by Glenelg, Stephen and their political allies as still seriously flawed in that it gave overlapping and contradictory powers to the colony's Governor and the Board of Commissioners, who would be

responsible for the sale of land and emigration. Also, the South Australian Act contained no measures to protect indigenous rights but represented the land within the proposed area of settlement as 'waste and unoccupied'. As Glenelg informed the Commissioners on 15 December 1835,

if the utmost limits were assumed within which Parliament has sanctioned the erection of the Colony it ... might embrace in its range numerous Tribes of People whose Proprietary Title to the Soil we have not the slightest ground for disputing. Before His Majesty can be advised to transfer to His Subjects the Property in any part of the Land of Australia, he must have at least some reasonable assurance that he is not about to sanction any act of injustice towards the Aboriginal natives of that part of the Globe.³

Glenelg made clear through various channels that settlement would not proceed without measures for protecting native proprietary rights. In doing so, he intimated that should this be done, the Colonial Office would not further delay settlement by requiring the administrative shortcomings of the 1834 Act be resolved.

The Commissioners, realizing that Glenelg's demand 'amounted to a veto on the establishment of the colony', responded by offering to create and administer an office of Protector of Aborigines along the lines of that established several years before in Tasmania (Torrens 1849: 70). By this time they faced severe pressure from investors. Some colonists believed that the indigenous Australian peoples had no rights to the land, though several important backers of the colony believed in principle they did, and viewed Glenelg's concern as just and humane.⁴ The principal duties of the Protector would be to ensure that where Aborigines were in 'occupation or enjoyment' of land; it would not be put up for sale by the Crown without the consent of its customary owners. Where Aboriginal people refused to alienate their land, the Protector would uphold their legal right to do so.

Accepting the offer, Glenelg made it clear that the Commissioners would also have to agree to the office of the Protector being placed under the jurisdiction of the Governor, and invested 'with the necessary powers to enable him to give effect to the objects contemplated in his appointment.'⁵ Otherwise they risked settlement being indefinitely postponed by the Colonial Office referring the 1834 Act back to Parliament for amendment. Again, the Commissioners had no real option but to agree.

When Glenelg and Stephen spoke of the protecting Aboriginal proprietary title to the soil in the context of South Australian settlement, they implicitly assumed those rights to encompass burial in accordance with tradition. The official instructions given to William Wyatt, on his appointment as *ad interim* Protector, in August 1837, make this clear. Wyatt was instructed that:

If, on becoming acquainted with the habits and customs of the Aborigines, you should find that in any part of the country they are in the practice of making use of land for cultivation of any kind, or if they have a fixed residence on any particular spot, or if they should be found to *appropriate any piece of land to funereal purposes*, you are required to report such fact to the

Colonial Government without loss of time, in order that means may be taken to prevent its being included in the survey for sale [my italics].

(*South Australian Gazette* 12 August 1837)

The Ngarrindjeri, Walkandi-Woni and Merkani peoples of south-eastern South Australia differed from many other Australian indigenous communities in that the fertility of their country allowed them a much more sedentary way of life. Vegetable foods were gathered and stored for eating at those times of the year when hunting was difficult. Seeds were also used to replenish the country for future seasons. As the anthropologist Ronald Berndt learnt of the Ngarrindjeri in the 1940s, these 'people [had] lived in well-known surroundings, hallowed by mythic associations and traditions, as familiar to them as their own close kin (Berndt *et al.* 1993: 17).' Indeed, one of the first problems Wyatt recorded confronting as Protector was settler anxiety over the determination of the Wakandi-Woni clans to re-erect substantial bark shelters on land claimed for grazing.

During the two years he served as Protector, Wyatt appears conscientiously to have sought to understand the language and culture of the peoples of south-eastern South Australia. He was a medical practitioner who, like many of his profession in the colonial sphere, was keenly interested in ethnology. Yet, in his quarterly reports to the Governor through 1837–8, Wyatt was silent on the question of whether specific parts of their country were used for the purposes outlined in his instructions. Wyatt held office temporarily, and was concerned not to jeopardize his future prospects in the colony by placing himself at odds with the Resident Commissioner and prominent colonists, the majority of whom were determined the survey and sale of land would proceed without hindrance.

By May 1839, Wyatt was ready to state publicly that 'it ... appeared that the natives occupy no lands in the especial manner' described in his instructions. He therefore 'felt it of no avail to keep my attention directed to it' (*South Australian Gazette* 13.5.1839). Even so, Wyatt's assessment of traditional land usage seems odd in one particular respect. This is his silence about land used for funerary purposes. The ways in the Ngarrindjeri, Walkandi-Woni and Merkani reincorporated the dead within ancestral country differed from clan to clan. Many ceremonies involved slowly smoke-drying the body, followed by its enshrouding in matting and placement in a tree, on a specially constructed wooden platform, in a rock shelter or under an earth burial mound. Some clans laid the dead in trees or on platforms until their bones started to fall to earth, at which time they would be buried in clearly marked earth graves. Close kin might keep the skull and use it as a water container (Berndt *et al.* 1993: 267–80).

As many early South Australian colonists recorded, land was set aside to receive the dead, irrespective of the particular form ceremonies took. Indeed, Wyatt became well acquainted with indigenous funerary customs during his time as *ad interim* Protector, as did Matthew Moorhouse, his successor. Towards the end of his life, in the late 1870s, Wyatt was invited to contribute a chapter to a book documenting the life-ways and customs of the South Australian tribes as they had been at the time of the colony's foundation (Woods *et al.* 1879). In his chapter, Wyatt described in detail the ceremonies for a man of the Wilipi people culminating in earth burial.

PLACES OF HORROR, AND ELEGIAC REFLECTION

How then, are we to explain the failure of Protectors Wyatt and Moorhouse to inform the Governor of the South Australia and the Colonial Office that land was used for funerary purposes? It seems probable that their silence owed much to a reluctance to oppose the ambitions of their fellow settlers. However, other more subtle, but equally persuasive, cultural forces may have worked against recognition of indigenous rights in respect of burial places.

In this regard, the book, *Native Tribes of South Australia* (1879), merits scrutiny. This was the volume within which Wyatt wrote at length about Wilipi funeral custom. The book contains accounts by several other early observers of local indigenous culture and language which similarly document mortuary practices. These accounts of death amongst the Ngarrindjeri, Walkandi-Woni and Merkani emphasize those aspects that would have seemed most barbarous and shocking to European sensibilities. Woven within these ethnographic reports are laments that disease and social anomie have so afflicted the colony's indigenous communities since the establishment of the colony that racial extinction is inevitable.

The representation of indigenous ancestral burial places and associated ceremonies as the last vestiges of primordial savagery was in fact a prominent trope within colonial and metropolitan ethnographic imagery from the 1840s until well into the early twentieth century. It was, moreover, a trope that gained wide discursive currency through the successive reproduction and mutation of what, originally, were early depictions of burial platforms to the south of Adelaide, notably several sketches and a small watercolour of a burial platform at Myponga Vale, on the Fleurieu Peninsula, executed by Samuel Gill in 1842 (Appleyard *et al.* 1986: 63).

Well before the end of the 1840s, these images began to be shorn of their localized significance. Gill, for example, was employed by Edward Eyre to produce illustrations for his *Journals* (Eyre 1845). The engraving of the Myponga Vale burial came to appear in Eyre's *Journals* over the title, 'Mode of disposing of the dead at the Lower-Murray', when in fact the modes of burial amongst the peoples of this region differed widely. In the meantime, Gill's watercolour of the site had been exhibited in Adelaide, where it was seen and copied by George French Angas, Gill's artistic rival and son of George Fife Angas, a leading figure in the South Australian Colony. The younger Angas included his version of the Myponga burial among the South Australian scenes he exhibited in Adelaide in 1845, and at the Egyptian Hall, in London, the following year (Tregenza and Art Gallery of South Australia 1980: 17). Angas then incorporated an engraving based on the painting in his book (Angas 1847), accompanied by recollections of having encountered similar burial platforms on the fringe of Lake Alexandrina, to the south east of Adelaide.

In 1845, in *South Australian Sketches* (Angas and Libraries Board of South Australia 1969), Angas included engravings of the Lake Alexandrina burials and grouped earth grave mounds he had encountered at Moorundi, accompanied by a brief survey of the different ways in which the peoples of southeast South Australia reunited the dead with their country.

Engravings of platform burials originally derived from engravings by Gill and Angas came to be widely reproduced in various learned and popular ethnographic works during the course of the second half of the nineteenth century. They first appeared under titles which broadly specified their locality, such as native graves of the Murray River region (Appleyard *et al.* 1986: 63) (Figure 5.1). But by the end of the century, they had been completely divested of reference to the indigenous peoples of South Australia. They had become imaginatively refashioned into images which claimed to depict the mode of burial typically found amongst the Australian Aboriginal natives. Perhaps the most influential work in this visual transformation of Ngarrindjeri beliefs and practices into the archetypal indigenous Australian mode of burial was Gustav Doré's reworking of Gill's 'Lower Murray' engraving for Louis Figuier's *L'homme primitif* (1870) (Figure 5.2). Figuier was a French chemist and author of numerous popular scientific works. His *L'homme primitif* was widely republished in most major European languages until the early 1900s, when its appeal waned due to a growing public interest in ethnographic photographs.

Most importantly, the Doré/Figuier reworking of Gill's engraving marked a significant shift in the internal composition of platform burials' imagery towards emphasizing the horror and savagery of the treatment of the dead amongst the Australian natives. Doré's engraving is noteworthy for its intensification of visual elements present within earlier reproductions serving to excite fascination and horror in the viewer. Indeed, some indication of the likely impact of Doré's engraving on his contemporary audience can be gauged from the fact that it was reproduced on the cover of the *New York Review of Books* in 1998 to publicize a lead article on the torture and murder of Bosnian civilians.

Interestingly, while ancestral burial places came to be portrayed within ethnographic texts and travel narratives as the gruesome practices of primordial savages, they were also represented in colonial engravings, poetry and prose through the second half of the nineteenth century in ways that emphasized the humanity of the indigenous dead, and lamented that they should be destined to extinction. Moreover, these elegiac reveries often encompassed speculation on the causes of the passing of the native race into historical memory. Generally extinction was explicitly attributed to the operation of providence, but many authors were still moved to absolve or accuse settlers of complicity in the destruction of indigenous societies. In some instances, gothic and humane sensibilities were mingled in uneasy contradiction. When, for example, George French Angas exhibited his vivid and disturbing depiction of the indigenous funerary practices encountered at Myponga Vale, at the Egyptian Hall, the caption accompanying the picture included elegiac prose written by 'Mr. Miles, a Sydney friend of the artist'. 'T'was here a tribe,' Miles had written in the closing stanza of his elegy,

have placed a chieftain in his once canoe; he rests the sleep of time on the
branches of minor shrubs flowering in their beauty, on the land which
the white man has left uncurled by misery, slaughter, and corruption, to the
savage in the wild.

(Angas and Libraries Board of South Australia 1969: 1, 71)



Figure 5.1 Samuel Thomas Gill's depiction of burial on parts of the Murray River, South Australia, early 1840s. By permission of the National Library of Australia

During the second half of the nineteenth century, numerous poems on the indigenous dead and burial places appeared in regional colonial newspapers and national journals. Many rehearsed entrenched racial perceptions of indigenous men and women, but nonetheless held settlers in some measure responsible for the despair and social anomie caused by the loss of ancestral country. For example, in the verses *An Aboriginal Funeral*, first published in the *Sydney Bulletin* in 1883, its anonymous author claimed to have been inspired by a rural newspaper report lamenting the 'melancholy sight' of the funeral procession through Gunnedah of an Aboriginal man, said to have died a Christian. 'A Christian', fumed the author,

...with no monument eternal
 To tell his virtues, as an open book;
 His pit had opened on the pit infernal,
 But for the merest fluke.
 Had he but held the way of his ancestors
 And raked opossums out of hollow logs,



Figure 5.2 Dore's gothic reworking of Gill's depiction of Indigenous Burial on the Lower Murray for Figuier's *L'homme primitif*

He too, had gone to (editors are jesters)
 The 'inevitable dogs.'
 And slowly conquering his heathen passion
 For grilling lizards, and exhuming grubs,
 He learned to slouch, in genuine Christian fashion,
 About the doors of pubs.
 And here some Vineyard groper, fat and gracious,
 Found him (as men have found the present bard,
 Half-mad), and silenced him with Athanasius
 And won him to 'the Lard'.

By far the most common way indigenous burial places were presented in colonial poetry was as sites of elegiac reflection and lament that settling the land had inevitably been accompanied by the destruction of the native race. The graves of senior male Elders were especially favoured subjects for poetic reverie (the burial places of woman of high degree appear to have failed completely to inspire the colonial muse). Verses in this genre generally wove together three elements with varying poetic skill. First, the grave was invariably described as located in a quiet and picturesque spot, usually in bush adjacent to lands turned into pasture. Second, its occupant was portrayed as a man well known and respected by local settlers, and the last of his tribe fully initiated into their traditions and law. Finally, the causes of the extinction of the native race were explored. Some poems more or less openly acknowledged that land had been violently won for pastoralism and agriculture, though most sought to absolve settlers from complicity in the extinction of indigenous society. Typical in this respect were the lines composed in October 1880 by 'N.R.', after seeing an engraving of the *Burial Place of the Last of the Native Kings at Wallerang*, in the *New South Wales Agriculturalist and Grazier*:

They have all passed – the pale-face conqueror came –
 He slew them not, nor challenged them fight,
 That they are gone, then, can he be to blame
 If more his energy and more his might;
 The fields he has obtained were his by right.
 The grain of wheat is better than nardoo,
 It nourishes far more, while to the sight
 Its blade is much fairer of the two,
 And should their oxen starve to feed the kangaroo?

What is striking about this body of colonial poetry is that indigenous burial places were presented as worthy of preservation less because they marked the final resting places of individuals than because they memorialized the passing of a race. What is also noteworthy is that the dead were often styled 'ancient' or 'of long ago'. Within these verses indigenous people were consigned to a past having no connection with the present. This past ended with the establishment of European civilization and the transformation of the land through pastoralism and agriculture. As one elderly long-time

resident of the Goulburn district in the New South Wales southern highlands, writing at the turn of the twentieth century, was moved to reflect

the Aborigines of the Tablelands have departed, and a cairn or pillar might fitly be built to their memory marked with the inscription – WE, the Australian Aborigines are no more. Civilisation killed us, and dug our grave: may a kindlier Civilisation flourish o'er our bones.

(MacAlister 1977: 91)

‘THEY COMPLAIN BITTERLY ABOUT THE OUTRAGE’

In reality, the dead over whom civilization ‘flourished’ were in all probability those of persons who had not died in ancient times, or ‘long ago’, but in the time since their country had been taken by settlers. Nor had the kin of the dead vanished. If not confined to government reserves or mission stations, they lived alongside settlers. For example, in 1879, K.H. Bennett, a resident at Moolah in New South Wales wrote to Edward Pierson Ramsay, then Curator of the Australian Museum:

You say that Aboriginal relics (mortuary in particular) a very valuable [sic]. – by a strange chance it so happens that within 100 yards of the front door of my house there are about a dozen aboriginal graves and which partly from a disinclination to handle these evidences of mortality and partly from a dread of displeasing the sable descendants of these to us ‘nameless dead’ I have refrained from desecrating. But on the receipt of your letter, and for the cause of science I took pick & shovel ...⁶

Also in the Australian Museum correspondence is the following letter written in late 1892 by H.J. McCooey, an amateur ethnologist and collector of ‘Aboriginal curios’ living at Burrangong. McCooey informed Robert Etheridge, then assistant curator of the museum:

The Aborigines of Burrangong are terribly annoyed about the remains of that blackfellow which Mr. Etheridge dug up and took to Sydney some few weeks ago. They blame me for doing it; but I can prove I was in Goulburn at the time. They complain bitterly about the outrage – and they undoubtedly regard it as such – and have threatened to do personal violence to whoever committed it. In matters of this kind even the most sensible or ‘tame’ aborigines are singularly morose, superstitious, and treacherous – more so, in fact, [sic] than Europeans. They have gone to Picton to see the Police Magistrate ...⁷

Etheridge wrote on the letter: ‘Seen – Mr. McCooey appears to be indignant over a very small matter. I am quite prepared to return to the District & investigate several other interesting occurrences known to be there.’

However, Etheridge either knew it was not so very small a matter, or had come to learn so by 1910. For in April of that year, he received a letter via T.W. Edgeworth

David, Professor of Geology at Sydney University and one of the museum's trustees, telling of a mound grave in the Molong district said to be that of a 'king or great chief' who had been buried with various artifacts. In the letter, two twelve-year-old girls had inquired of the professor whether 'the government would pay someone to dig them up and if so, would they let us have just one thing for our collection'.⁸ Etheridge annotated the letter:

It will be as well if Prof. David inform his lady correspondents that 'disinter-ring a dead body' is a misdemeanor at Common Law, & punishable by fine or imprisonment, or *both*. It matters not whether it be an *old* or recent burial. The clause applies to both & I am personally acquainted with a case in which an individual was fined for disinterring aboriginal remains.⁹

Possibly in 1892 Etheridge was not aware that procurement of indigenous remains was illegal. Certainly, there is no record of the Police magistrate at Picton acting on complaints by local indigenous people, and the remains in question remained at the museum until 1992.¹⁰ But irrespective of whether at the time Etheridge knew he was acting illegally, the fact remains that exhuming remains from traditional burial places was a misdemeanour at common law as much as stealing bones from a European cemetery.

Much additional evidence could be presented to show that indigenous communities sought to protect the dead from scientific grave-robbers long after being dispossessed of their ancestral lands. Indeed, it is possible to trace the history of indigenous care for the dead up until the vigorous campaigning for the return of remains we have witnessed since the 1970s. For example, when Ronald Berndt undertook field-work with the Ngarrinndjeri people in 1943–5, he quickly learnt that Albert Karloan, Pinkie Mack and other senior men and women had been 'outspoken about those who excavated burial mounds and camp sites, and sharply criticized Aborigines who helped Europeans in such activities' (Berndt *et al.* 1993: 16). The museum world, moreover, could hardly claim to be unaware of the anguish excavations caused. Ronald and Catherine Berndt subsequently achieved international reputations for their research and played a prominent role in the reform of Australian museum policies governing the preservation of remains and objects of profound religious significance. Also, indigenous artists and intellectuals involved in the post-war land rights movement sought to protect the dead. From the late 1960s until her death in 1993, the distinguished poet and Noonuccal Elder, Oodgeroo, drew public attention to the anguish caused by the continued excavation of traditional burial places in southeast Queensland (Walker, 1992: 100). Amongst indigenous people living in Brisbane, the Queensland Museum was long known as the death house because of the skeletal material it housed and, until the early 1980s, openly displayed.¹¹

ANCESTORS OR SPECIMENS?

To date, curators and researchers opposed to the return of remains to indigenous hands have argued for their retention of remains on scientific, ethical and legal grounds. They have stressed, rightly, that in recent years technological change has

raised new and exciting possibilities that remains may advance knowledge of the course of human evolution and prehistoric migration patterns. They have pointed out that the remains they hold were originally acquired in times when, tragically, indigenous Australian people were perceived as racially inferior beings, and consequently accorded little or no rights.

However, what the historical record in fact reveals is that by the 1830s it was widely known by European procurers of remains that Aboriginal care for the dead involved the reincorporation of the body within ancestral country through the performance of complex funerary ceremonies. Testimony relating to ceremonies for the dead, the discovery of elaborate funerary structures and artwork adorning burial places, as well as the reactions of Aboriginal people to the threat of desecration, challenged the colonialist assumption that Australia was *terra nullius* – land in which the ‘native inhabitants’ had no sense of permanent attachment to particular tracts of country. It was widely accepted that indigenous burial places were sites of great spiritual significance requiring respect, protection and ongoing ceremonial obligations. So much so, the rights of Aboriginal people to treat the dead as their customary law dictates were legally recognized by the imperial government in the 1840s as evidence of native title; though, like other rights to the land, they fell victim to the inability or unwillingness of the Crown and its colonial representatives to curb colonial ambition.

From the 1840s onwards, burial places acquired new meanings and values in the European imagination that served to downplay or erase consciousness of continuing indigenous religious and cultural affiliations with ancestral country. However, as evidence from the late nineteenth century suggests, indigenous communities whose native title rights had been drained of legal force nonetheless still sought to employ the framework of British law to protect the ancestral dead. And on this point, the question arises as to what legal protection the dead enjoy due to other rights in respect of ancestral lands and culture being belatedly acknowledged by the Australian High Court in 1992.

The practices and products of today’s scientific communities are radically different from those which, in the colonial era, resulted in the desecration of burial sites and the defilement of the indigenous dead. But this does not justify discounting the significance of indigenous demands to be reunited with the bones of their ancestors. Curators and scientists who remain opposed to repatriation would do well to assess the ethical and legal implications of the wealth of historical evidence documenting the determination of indigenous Australian communities to protect the dead, and imperial recognition of their right to do so. For the ethics and perhaps legality of resisting demands for repatriation may not so clearly outweigh the beliefs held by indigenous Australian people who can prove affiliation with these relics by descent, or by cultural traditions pertaining to the ancestral dead which are as strong now as they were a century ago.

NOTES

- 1 Public Records Office (UK): Admiralty Records, Adm. 1/1572/B.111/5.
- 2 School of Oriental and African Studies, University of London: London Missionary Society Records, Australian Journals. Lancelot Threlkeld, *Lake Macquarie Journal*, 16 October 1824–July 1825, ff. 4–5.

- 3 Public Records Office (UK): Colonial Office Series, CO 13/3.
- 4 State Library of South Australia: Diary of John Brown 1 February 1834–3 July 1836, entry for 4 January 1836.
- 5 Public Records Office (UK): CO 396/2.
- 6 Mitchell Library (Sydney): E.P. Ramsay Papers, K.H. Bennett to Ramsay, Moolah 2 October 1879, MSS 563/5/9.
- 7 Australian Museum (Sydney): Archives, Series 9/M/1892/42.
- 8 Australian Museum (Sydney): Archives, Series 9/1910/D/5.
- 9 Australian Museum (Sydney): Archives, Series 9/1910/D/5.
- 10 Personal communication, Phil Gordon, Aboriginal and Torres Strait Islander Liaison Officer, Australian Museum, April 1994.
- 11 Personal communication, Bob Anderson, Queensland State Government Aboriginal and Torres Strait Islander Cultural Property Reference Group, January 1995. In 1975, I heard firsthand from Oodgeroo that in trying to stop the excavation of dune burials on the Gold Coast, to the south of Brisbane, she had arrived to find several archaeology students involved in the project were Roman Catholic nuns. This led her to try and halt the work by informing local reporters that unless digging ceased, she would take a shovel to Brisbane's Toowong cemetery and dig up the remains of a Catholic Archbishop.

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6 *Bone reburial in Israel: legal restrictions and methodological implications*

YOSSI NAGAR

Evidence of human occupation in Israel begins about 1.5 million years ago. In its more recent history, this area has faced a number of wars, conquerors, national entities, religious movements, and mass immigrations. Nearly 28,000 archaeological sites have already been identified in Israel. Taking into account the very small size of the country and the fact that roads and houses are being constantly built, approximately 300 new sites are uncovered each year and have to be excavated quickly.

Human (and ancient hominid) bones are found in about 30 per cent of excavations (see Table 6.1). Among them are the bones of early *Homo sapiens* and Neanderthals, Natufians, pagan Can'anites, Nabateans, Jews, Christians, Arabs, and many others. Of the hundreds of boxes of bones sent for reburial each year, those with Jewish ancestry represent but a small fraction of the total.

The 'Halacha', the Jewish religious law, allows the movement of human bones from one site to another if the burial area is needed for various purposes, such as city expansion or the building of new roads.¹ Moving bones from their original burial site because of such reasons was common practice during the Hellenistic and Roman periods in Israel (Broshi *et al.* 1983). These days, burial sites are only excavated by the Israel Antiquities Authority when necessary, as part of salvage operations.

However, the orthodox Jewish community in modern Israel, led by an association named Athra-Kaddisha, opposes even such salvage operations. They demand that absolutely no excavations be carried out in burial grounds. No scientific study of bones is welcomed, nor any other action which might disturb the dead from their peaceful rest in the ground. The Moslem and Christian communities, on the other hand, do not intervene in this debate.

The roots of this 'orthodoxy versus archaeology' controversy lie some 150 years ago, when scholars began searching for archaeological evidence of biblical traditions. Whereas the orthodox propaganda is continuously published (e.g. 'A grave crisis in Israel' 1998) archaeologists rarely refer to this issue (see e.g. Reich 1996: 33). After years of political debate, sometimes accompanied by violence at grave sites, the situation today is such that all newly excavated bones are sent for reburial. In the majority of cases, this is done direct from the field.

The law in Israel defines osteological remains as antiquities if they are: 'Zoological remains from before 1300 AD' (Israel Antiquities Law 1978: paragraph 1). In 1994, the

Table 6.1 Number of boxes of bones sent for reburial in Israel (1995–7), and their supposed ethnicity (%)

| <i>Year</i> | <i>Total</i> | <i>Jews</i> | <i>Christians</i> | <i>Moslems</i> | <i>Others or unknown</i> |
|-------------|--------------|-------------|-------------------|----------------|------------------------------|
| 1995 | 480 | 9.4 | 16 | 10.6 | 64 |
| 1996 | 316 | 1.6 | 38.3 | 22.5 | 37.6 |
| 1997 | 220 | 9 | 13 | 50 | 28 |
| Total | 1016 | 7 | 22 | 23 | 48 |

Government's Legal Advisor defined human remains as not being included within the term 'zoological'. Therefore, ancient human remains in Israel are no longer considered 'antiquities', and it is illegal to study them in the laboratory.

The Athra-Kaddisha is not satisfied with the present situation. For them, every bone found in Israel may be a Jewish bone, and they alone have the right to decide what to do with it. Their decision, nearly always, is not to excavate at all. Of course, whenever human remains are found, further excavation of other archaeological remains, constructions, or artefacts, placed beneath the bone layer, becomes impossible.

The Archaeological community in Israel protested against this situation. However since public opinion is still, in general, indifferent to the issue, the media covers the violent demonstrations without any serious discussion of the subject.

CASE STUDY: THE EXCAVATION AT 'TEL-FUL', NORTHERN JERUSALEM

In the 1990s, a new neighbourhood was built in Northern Jerusalem and a newly paved highway (Road No. 1) was nearing completion to connect it to the city. Unfortunately, five Christian Byzantine burial caves and a few scattered graves were found while cutting through the mountains along the planned route of this highway. The administration of the city and important Rabbis from Jerusalem came to an agreement: the excavators would only be religious workers, and the bones would immediately be buried 20 m under the road surface in sealed ceramic jars.

Under these restrictions, in 1997, the burial caves were excavated by archaeologists of the Israel Antiquities Authority. It was impossible to carry out any anthropological study of the remains. Despite this, the Athra-Kaddisha was not pleased with the compromise and, declaring the caves and graves Jewish, they opposed any excavation. After the excavation of the last two graves had taken place early in the morning under heavy police protection and without their knowledge, Athra-Kaddisha representatives appeared and forced the return of the bones to their original graves (see Figure 6.1).

METHODOLOGICAL IMPLICATIONS

Since laboratory analysis of human remains has become nearly impossible in Israel, research efforts have been shifted on-site. Physical anthropological data are collected



Figure 6.1 (a) Putting excavated bones in ceramic jars

Photograph: Tsila Sagiv



Figure 6.1 (b) Preparing the jars for reburial

Photograph: Tsila Sagiv

by means of a standardized, short and efficient field manual. This includes tables for the estimation of age by various methods, skeletal measurement forms, and lists of epigenetic traits. Since in the majority of the sites the skeletal remains are very fragmentary, pathological findings are extremely rare.

Changing to analysis on-site has reduced the time spent on the physical examination of skeletal remains, the later laboratory processing, and the writing of anthropological reports. In two years, the overall average time of field data collection and the later publication of the anthropological report has been shortened by six months. The proportion of sites studied has increased, since the work has to be fast enough to finish before the bones are reburied, and the quality of the reports has inevitably become more superficial. Computerization and the adoption of standardized working forms (modified from Buikstra and Ubelaker 1994) has been a major contributor to fast laboratory data processing.

CONCLUSIONS

Politics and religion pose a great threat to the possibility of future study of human skeletal remains in Israel. Although the Israel Antiquities Authority buries all the human skeletal remains which are excavated, ancient hominid fossils (early *Homo sapiens* and Neanderthals) and other important prehistoric remains which are kept in museums are still available for exhibition and study. To ensure that physical anthropological study in Israel survives, work has to be fast, and many excavations must be undertaken simultaneously. Vital to working under these conditions is the standardization of anthropological field studies.

NOTE

- 1 'a grave which disturbs the public, its transfer is permissible' (Karo, Y. 'Shulkhan Arukh', Yore De'a chapter, p. 364, paragraph 5.). The Shulkan Arukh was compiled by Rabbi Yosef Karo (1488–1575) and is still the standard legal code of Judaism.

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7 *A decade after the Vermillion Accord: what has changed and what has not?*

LARRY J. ZIMMERMAN

In 1989, the World Archaeological Congress (WAC) held its first Inter-Congress, 'Archaeological Ethics and the Treatment of the Dead', in Vermillion, South Dakota. Some 200 delegates came from more than 20 countries and included indigenous people from 27 American Indian nations, as well as from Australia, New Zealand, Scandinavia and Africa.

The WAC Inter-Congress was not the beginning of co-operation between Indians and archaeologists on the issue. Archaeologist Roderick Sprague and anthropologist Deward Walker had worked closely with Indians in the state of Idaho, repatriating remains in the late 1960s. Several meetings to discuss the matter had occurred in Iowa, South Dakota and other states before 1989. Nor was it the first time indigenous people and archaeologists had come together to talk about the issue on an international level. That was at the first World Archaeological Congress in Southampton, UK in 1986. However, the South Dakota Inter-Congress was the first time indigenous people and archaeologists were able to come to agreement on working toward real solutions (see *World Archaeological Bulletin* 4 for more information about the Inter-Congress).

There were constant tensions at the Inter-Congress. Few came knowing what to expect. Some archaeologists worried about the impact of working with indigenous people on the archaeology they held dear, others boycotted the meeting altogether. Indigenous people worried that they might come into conflict with other indigenous groups. Indeed, there was open disagreement, and there were many behind the scenes meetings, some to plan strategy and others to salve hurt feelings or to privately chastise outspoken individuals. In the end, however, people began to see the import of the discussions.

The results of the meeting were many, but the most notable was the Vermillion Accord, a document which showed that mutual understanding and respect were possible between indigenous people and archaeologists. In the relatively short time since the Accord, much has changed in the relationships between indigenous people and archaeologists, although many attitudes, stereotypes and fears remain deeply entrenched.

The Vermillion Accord

- 1 Respect for the mortal remains of the dead shall be accorded to all irrespective of origin, race, religion, nationality, custom and tradition.
- 2 Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
- 3 Respect for the wishes of the local community and of the relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
- 4 Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
- 5 Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
- 6 The express recognition that the concerns of various ethnic groups, as well as those of science, are legitimate and to be respected will permit acceptable agreements to be reached and honoured.

The most obvious single element of the Accord is that the word ‘respect’ appeared in every clause. For indigenous people, this concept was crucial. For the first time, it elevated their concerns to the level of a discipline with deep colonial origins. For scientists, it meant that indigenous people recognized the importance of scientific values and archaeology.

WHAT HAS CHANGED?

The effects of the Vermillion Accord have been far-reaching in some ways, marking a sea change in the direction of archaeology and its interactions with indigenous people. But with any change of general direction, there remain ripples and waves that go against the flow. The directions of the change in archaeology have been mostly positive, with some beginning almost immediately after the Inter-Congress.

Many of the delegates participated in a reburial of remains near the Wounded Knee massacre site a day after the meeting ended. The ceremony helped to forge a bond between many of the archaeologists and indigenous people. The reburial and the Vermillion Accord made national and international news, with a story on the front page of the *New York Times*. Within a few days, the first reaction from some archaeologists and human osteologists was anger. There were accusations that archaeologists had ‘sold out’ and that the organizers of the meeting had fixed the outcome by not inviting dissident voices. Nothing was further from the truth. Many people who were against reburial had been invited, but most had chosen not to come.

The other immediate impact of the Vermillion Accord was the pressure it placed on the archaeological profession and the United States Congress to reach an agreement on how the federal government should treat human remains and grave goods. Within a month, Congress passed and the president signed into law the National Museum of the American Indian Act (NMAI). That law provided that a new museum be built as part of the Smithsonian Institution (now scheduled to open in 2004) and more importantly that the Smithsonian should work with tribes to inventory and repatriate human remains and grave goods within its collections. In no way did the Vermillion Accord cause the law to be passed; negotiations between Congress, the scientific community and American Indian organizations were in progress for several years before the Inter-Congress. However, the accord put intense pressure on the scientific community to come to terms with the developments. Simply put, Congress saw that a world archaeological organization could reach an agreement, and wondered why much of the US scientific community could not. The accord won WAC few friends in the United States archaeological community.

In other places, the Vermillion Accord saw levels of acceptance, with Canadian and Australian archaeological organizations passing similar versions. The Society for American Archaeology (SAA) remained intransigent. Within a year, WAC took a second step at its 1990 Congress in Venezuela, where an indigenous delegation proposed WAC's First Code of Ethics, consisting of a set of principles and rules to which WAC members were to adhere (see Zimmerman and Bruguier 1994 for an account of the code and its passage). The Canadian Archaeological Society and the Australian Archaeological Association accepted slightly modified versions of the code soon thereafter. The code of ethics became an important element in the United States when the Native American Graves Protection and Repatriation Act (NAGPRA) became law in late 1990 (see McKeown Chapter 9). NAGPRA put oral tradition on an equal footing with scientific evidence, with the law overseen by the National Park Service and adjudicated at the first level by a national review board consisting of both scientists and native peoples.

In the United States, NAGPRA had a major impact on the power relations between American Indians and archaeologists. Until NAGPRA, most archaeologists presumed that they were in a relatively more powerful position than Indians. After all, they reasoned, everybody loved science and archaeology.¹ However, they vastly underestimated the support for repatriation and the American public's emotional understanding of it. Many were extremely supportive of American Indian concerns. Congress essentially told the archaeological community that if they could not reach agreement with Indians, Congress would solve the problem for them, so they passed NAGPRA. With the law enacted, many archaeologists were angry.

Long-term impacts and attitudinal changes

The archaeological community has been slowly going about 'remythologizing' its relationships with indigenous people (and see Zimmerman 1997). As part of the process of acceptance of the power shift, some have gradually changed their views so

that they seem to suggest that they really supported indigenous people all along. There are even similar statements from indigenous people who are willing to say that they really felt that archaeology could be of some benefit but had to wait until they had a role in setting research agendas in archaeology. No doubt this is part of an inevitable process of change, a sort of syncretism where beliefs of two groups in contact begin to coalesce.

The results have been startling in the United States. At least two organizations offer major scholarships to Native people who wish to learn something about archaeology or anthropology. The Plains Anthropological Society offers a Native American Student Award for a Native student wishing to study at the graduate level.² The SAA offers the Arthur C. Parker Scholarship for Native Americans and Native Hawaiians who wish to learn about archaeology for use in their home communities. The SAA also administers National Science Foundation Awards for additional scholarships to First Peoples in the US and Canada.³ The SAA finally produced a set of ethical principles and included a statement on working with communities. Their second principle, Accountability, states that:

Responsible archaeological research, including all levels of professional activity, requires an acknowledgement of public accountability and a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved.

(SAA Ethics in Archaeology Committee 2000)

The fourth principle on Public Education and Outreach actually names Native Americans as groups to whom archaeologists are responsible.⁴

NAGPRA has forced vastly more consultation with Indian peoples, and the interaction has been productive. In spite of what many scholars had feared, the repatriation and reburial issues did not spell the end of archaeology or research on human remains. Instead, such studies became a bit more complicated. Consultation with indigenous people, without question, is usually difficult. Most archaeologists know little of traditional forms of authority or governance of the people with whom they work, and fewer still know the complications caused by the imposition of colonial governments on traditional structures. This is especially the case with American Indians. For example, if archaeology and questions of affiliation are raised by a federal agency, American Indians must be dealt with on a nation to nation basis. This usually forces consultation with a Tribal Council that sometimes does not reflect the wishes of more traditionally oriented people. Frameworks of time shift, and projects simply cannot be done on the schedule most scholars or granting agencies would like.⁵

At the same time, consultation has generated a wide range of new information. In the US, NAGPRA evidentiary requirements raised the stature of oral tradition as a form of useful evidence. A number of scholars have begun to look at subaltern narratives of the past, not just archaeological data and their own constructed pasts of indigenous peoples. Native Americans have been interested and involved in the process as well. A recent editor of *American Antiquity* solicited and published an article

by Pawnee historian Roger Echo-Hawk (2000) on oral tradition and its utility to archaeology when studying the distant past. Echo-Hawk demonstrates that there can be concordance between the archaeology record and oral tradition, but that there are limits, and that contemporary peoples can manipulate the past for political purposes.

What can come of this is a new way of looking at the past in which the way a people processes its own past is as interesting as archaeological questions regarding the material evidences of their past. To do this requires working directly with the people themselves, and involving them in the setting of the research agenda. In some cases this is completely under their control, as with several tribal archaeology programmes with the Hopi, Zuni, and Navajo in the US. In Australia, consultation with Aborigines was established some years ago (for recent examples see Davidson *et al.* 1995). In Canada, Nicholas and Andrews (1997) describe a wide range of examples of ethnocritical archaeology.

These projects are not the same as ethnoarchaeology, in which the archaeologist develops and executes the research design. In ethnocritical archaeology the archaeological past is negotiated, recognizing that the past is many-threaded and many purposed. Essentially it looks at historical memory and its formation, recognizing the limits and benefits of each viewpoint, rather than considering any one of the threads to be 'objective' truth as processual archaeology seems to desire.

In the US, there are some groups working to develop ethnocritical archaeology, and some universities have established programmes that work directly with tribes on projects. One example is the University of Iowa's field school, Archaeological Field Methods and American Indian Concerns, where a national board of American Indian people helps set curriculum with research plans directly engaging local Indian people in their construction. Students have direct contact with many native people and hear their concerns.⁶ The intent is to train future archaeologists about the many issues involved in working with the pasts of descendant communities and to give many of them their first contact with people from those communities.

It cannot be asserted that all these developments have happened because of the Vermillion Accord. The Accord was a culmination of campaigns and discussions begun many years before by many archaeologists and many indigenous people, and it helped to accelerate the process. Archaeologists had worked successfully with indigenous communities as partners well before the South Dakota Inter-Congress. Others worried about the ethical questions regarding human remains. Indigenous people were often more tolerant of archaeologists than they probably should have been, and vastly more patient.

WHAT HAS NOT CHANGED?

Many in the archaeological community are still extremely negative about the repatriation and reburial issues and about working with indigenous peoples. Many of these people have seldom worked with indigenous peoples. Most scholars who work effectively with First Peoples are those who work where there are substantial, traditionally oriented, resident populations, usually in the western states or provinces.

Where there is little direct contact, scholars seem to be more adamant about protecting academic privilege.

Furthermore, archaeologists who are processual and positivist in orientation are more likely to discount validity and utility of indigenous versions of their own pasts. Two letters to the SAA Bulletin may substantiate this. In 1996 Geoffrey Clark (1996: 3) wrote, 'It is simply a fact that knowledge of most pre-contact aboriginal cultures of the New World would have vanished without a trace were it not for archaeology.' In that same piece, he comments that 'we are all the losers if for reasons of political expediency, Native Americans rebury their pasts'. He likens Indian views of their pasts to belief in a demon-haunted world. Clark would probably be typical of archaeologists who apparently think all Indians are dead, as McGuire has noted (1997). Ronald Mason, in an even more appalling statement, contends that archaeology

by its very nature must challenge, not respect, or acknowledge as valid, such folk renditions of the past because traditional knowledge has produced flat earths, geocentrism, women arising out of men's ribs, talking ravens and the historically late first people of the Black Hills upwelling from holes in the ground.

(Mason 1997:3)

Indeed, even as *American Antiquity* published Echo-Hawk's article on oral tradition, the journal also published a lengthy and complex companion article by Mason (2000) examining the utility of oral tradition, with a mostly negative assessment. With positivist thinking there can be only one true past, and the only way to know it is through archaeology.

This hard-core attitude has been nowhere more apparent than with the discovery of the Kennewick skeleton in the state of Washington in 1998. The skeleton has been widely discussed by the media, but in summary, James Chatters, the archaeologist who first studied the remains, first thought they were from an early Euro-American pioneer due to what he called 'Caucasoid' traits. When he discovered a Paleoindian tradition spear point in the bone and obtained a radiometric date of around 9,000 years he was puzzled. He requested help from the Smithsonian Institution, but the bones were confiscated by a federal agency when the Umatilla nation claimed them under NAGPRA. Several scientists requested an injunction to stop the repatriation, and control of the remains has been in court ever since (see Thomas 2000 for a summary of events). The unfortunate use of the term 'Caucasoid' created a media frenzy, especially among those who were more Eurocentric and part of a long tradition in the US of wanting a European history of the hemisphere. An outrageous segment of the television show *60 Minutes* on CBS went so far as to imply that if Kennewick turned out to be Caucasian (sic), the Indian past would be overturned and would challenge their priority on the land, negate treaty rights and even their rights to lucrative casinos (and see Zimmerman and Clinton 1999 for further discussion).

Scientists have been able to do most of the studies of the remains they requested. The results indicate that the individual has deep Asian roots, similar to the roots of the Ainu. NAGPRA says, and the National Park Service agrees, that even if DNA results indicate the remains are of different stock than modern Indians, they are still Native

American. The tribes say the DNA simply doesn't matter to them; they have been here since the beginning, made by the Creator. The tribes distrust an archaeological science, pointing out that at one time archaeologists believed in a lost race of Moundbuilders, then the idea that Indians came over the Bering Land Bridge, then along the coasts, and now they say that others were here before the Indians. The way science works is neither understood nor trusted, something Deloria (1995) makes abundantly clear. The gulf remains substantial between belief systems.

Another concern arising from the Kennewick case was the efforts by many to declare that the archaeological past is a public heritage. Many scientists believe that Kennewick and other early remains are an American heritage, not that of any particular group. The SAA 'Principles of Ethics' states that archaeologists are the stewards of that past (and see Kehoe (1998) for further discussion). As the Kennewick media frenzy peaked, a number of members of Congress worked hard to amend the law, hope to constrain repatriation of important scientific specimens to allow for scientific study. Although some archaeologists and a few Native Americans consider NAGPRA bad law, what is intriguing is that even some of the scientists in the case made no mention of overturning NAGPRA, only amending it to allow for 'proper research' to be done. Thus, Native American claims to their ancestors have finally been recognized as legitimate.

What mostly have not changed since the Vermillion Accord are attitudes about the primacy of scientific approaches to the past, accompanied by some rearguard actions. Kennewick is a battle that is not likely to change the outcome of trends surrounding repatriation and greater positive interaction between indigenous people and archaeology.

NOTES

- 1 To a degree they are correct. Several archaeological organizations including the SAA recently commissioned a Harris organization scientific poll in which 60 per cent 'believed in the value to society of archaeological research and education'. A 96 per cent majority supported laws to protect archaeological resources, with fewer supporting laws to protect sites on private property. At the same time, 64 per cent felt that archaeological objects should not be removed from a foreign country without that country's permission. Indeed, this figure is much the same as that found by the *Omaha World Herald*, a Nebraska newspaper seeking to assess the level of public support for the return of remains of the Pawnee nation from the Nebraska State Historical Society. Nearly 69 per cent of Nebraskans, in a relatively anti-Indian state, supported return of the remains (Peregoy 1992: 160). For more detail on the Harris poll, go to <http://www.saa.org/Education/publiced-poll.html>
- 2 See <http://www.uiowa.edu/~osa/plainsanth/NASAward.htm> for details.
- 3 See <http://www.saa.org/Education/ac-parker.html> for more information.
- 4 See <http://www.saa.org/Society/Ethics/prethic.html> for a listing of the principles and Lynott and Wylie 1995 for accompanying discussions of the ethics code.
- 5 This actually played an important role in the ongoing Kennewick skeleton dispute. In trying to contact the Umatilla nation to request permission to study the remains, a Smithsonian osteologist allowed only two weeks for the tribe to respond to a letter. Receiving no reply, he and several colleagues requested an injunction to keep the remains from reburial. This escalated into a full-scale legal dispute and ongoing media event.
- 6 For more detail, go to <http://www.uiowa.edu/~ainsp/fschool>

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8 *Academic freedom, stewardship and cultural heritage: weighing the interests of stakeholders in crafting repatriation approaches*

ROSEMARY A. JOYCE

The United States has now experienced a decade of life under the new conditions inaugurated by the passage of the Native American Graves Protection and Repatriation Act. NAGPRA legislation forced a long-overdue engagement of archaeologists and museums with native peoples, an engagement that continues to unfold, both as a source of enrichment in perspectives, and as the origin of dilemmas that go to the heart of understandings of concepts which many consider basic to democratic societies.

VALUES IN CONFLICT

The claim that repatriation is a violation of academic freedom is often heard within the museum, anthropology, and archaeology communities, and when the spectre of infringement of academic freedom is raised in the academy, it is a very powerful weapon. In the US, most academics remember that academic freedom was endangered during the Cold War by public sentiment that some political opinions were too dangerous to be allowed. Political censorship and the price academics have paid for having unwelcome opinions have been major features of late twentieth-century university life, whether the oppression of free speech came from the political left or right, in the form of unemployment, forced institutionalization, or violent assaults and assassinations.

However, those who invoke academic freedom in the context of the implementation of repatriation laws or broader based repatriation approaches are ignoring, for rhetorical effect, the actual nature of academic freedom. It cannot be denied that these individuals feel a deep sense of loss in their own research lives, nor that they may be forced to abandon lines of research that might have been of personal value to them, and of broader interest to some publics. Indeed, the WAC Vermillion Accord calls for respect for the research interests of scientists (see Zimmerman Chapter 7). However, many of the existing limits on academic freedom that we accept in our everyday practice as prices we pay for the privilege of conducting research are in fact applicable to the issues raised by repatriation.

My views are influenced by my own research biography. I am an archaeologist who works primarily as a foreign national in another country. Honduras, where I have undertaken research for over 20 years, is among those countries around the world which asserts that remains of past societies, both pre-Colombian and colonial, are a cultural patrimony which cannot be alienated by individual land-owners, government representatives, or scholars. As a result, my entire research career has taken place under the assumption that working on specific issues, sites, or materials is a privilege subject to the approval of others, granted in return for responsible action, where the definition of what constituted responsible action was not mine to determine. Honduran government agencies have not, of course, necessarily come to terms adequately with the claims of native peoples within Honduras to determine what is made of their pasts. This is not to criticize my host country but to reflect on the fact that I, like many other archaeologists around the world, have long accepted the regulatory authority of others without legitimately claiming that it was an infringement of academic freedom.

Academic freedom is not an absolute right to study anything one wishes in any way one wishes. It is meant to be a guarantee that researchers will not be persecuted by those with power over them for the content of their research results. The principle that some research is unacceptable is firmly established in many ways, perhaps most dramatically in the treatment of the results from Nazi experimentation on unwilling human subjects. Here, the idea that the conditions of the research tainted the results so that they are not to be used is based on one of the most fundamental kinds of limits on academic freedom that is accepted within the academy: the ethics of dealing with human subjects (Jones and Harris 1998: 261).

In universities, research proposals by students and faculty are routinely reviewed for their impact on human subjects (and see Ames 1999). The questions that are pertinent in most of these reviews are those that deal with consequences of research, present harm that might be done. Efforts to protect human subjects from injurious consequences of research, and to inform them in advance of potential injurious consequences, are required. Research review panels may suggest changes in methodologies in order to better inform human subjects of consequences or to avoid the possibility of consequences, even when these changes may create costs in terms of the research proposed. Such review panels even have the right to block research programmes if potential concerns cannot be allayed.

Academics who seek to conduct research on human remains or cultural properties in museum collections that are connected to living traditions have not traditionally thought of themselves as bound by concerns with the consequences of their research for human subjects. But one outcome of repatriation efforts, in my view, should be the realization that these concerns are not foreign to such research. The guiding principle of reviews of impacts on human subjects is one of actively avoiding conditions that have the potential to harm the subjects of study. Archaeologists have long offered examples of how our research will benefit descendant communities; how often do we ask what harm we might do? This question opens a door to dialogue that can respect alternative views of causality and values other than those of science without sacrificing the fundamental empirical orientation that underwrites most archaeological work.

As Layton (1989: 14–15) notes, one of the tensions in reburial discussions has been the insistence that human remains are solely biological, when in fact the circumstances of their placement in the earth, as documented by archaeologists, make it clear that past human remains are also cultural. If academics accept the fact that human remains are cultural, not solely biological residues, then we must also accept the fact that such remains have cultural significance and cultural impacts. Understanding these significances and impacts can be framed within an understanding that research goals cannot take precedence over human rights to decide how and to what degree a person or group will risk potential harmful consequences of research. In a democratic society, the determination of what will be harmful consequences in cultural transactions must include the views of those with less power, because it is those with less power who require legal and procedural routes to ensure that they are not endangered by majorities (and see Layton 1989: 4). Human subjects reviews, a commonplace in academic life in North America, invest the responsibility to safeguard those with less power in peers of researchers who examine proposed work. These review panels require that researchers develop means to insure informed consent by communicating goals and methods of research to proposed subjects, and they do not allow researchers to proceed with work that might be harmful without such consent, even if the reasons for failure to give consent are not framed in terms of academic understandings of objective consequences of research.

When there are human populations connected to museum collections and curated human remains whose cultural understandings suggest that harm may be done to them by certain research procedures, existing conventions for weighing the protection of human subjects as a limit to academic freedom might be considered to apply. Researchers within the academy accept such limits for two reasons: because they acknowledge that research results cannot justify research procedures that are harmful to human subjects (as in the rejection of results of Nazi experimentation), and because they acknowledge that the ability to conduct research is a treasured privilege, not a natural right.

The forms in which academic freedom is mitigated within the academy of course do not stop with human subjects reviews. They also include concerns with treatment of animals, work with potentially hazardous substances, and restrictions on the use of recent human remains. An analysis of limits on academic freedom applicable to repatriation of human remains might be based on the latter parallel (see, for example, Jones and Harris 1998), where such issues as consent of the deceased and/or survivors, definition of the specific research use allowed, and agreement on timing and nature of final disposition are all subject to approval by those who allow the privilege of research in return for the responsibility of acting according to agreed limits.

Even that most sacrosanct of academic freedoms, the right to disseminate results through publication, is not unmitigated in contemporary practice (and see Ames 1999). Within archaeological circles, the right of agencies commissioning work under cultural resource management programs to define the terms of publication is well established. The suppression of specific site location information in publication is widely accepted as a required step in site preservation, and may be required legislatively or by contract without arousing cries of subversion of academic freedom (and see Chippindale and

Pendergast 1995: 48). Agreements with agencies allowing foreign nationals to conduct archaeological work, like those I accept in Honduras, often define time frames for exclusive rights of publication or require initial publication in national media and national languages. Agreements with native groups that require submission of works in progress for review, and that limit publication of certain kinds of information, should be viewed no differently (Ames 1999; McBryde 1997: 82). They are reasonable, responsible actions in return for the privilege of carrying out research.

In the above, two linked terms have been used to describe the situation archaeologists, anthropologists, and museum researchers find themselves engaged in when repatriation is accepted as a principle and enacted through legislation or policy. These terms are responsibility and privilege. They contrast with the usual language in which these debates over values have been framed, that speaks of the right to knowledge and the imperatives created by a scientific way of knowing. While privilege and responsibility are less commonly mentioned, they have made encouraging inroads in recent discourse on repatriation, inroads which have significance even beyond this crucible of contemporary archaeological practice.

STEWARDSHIP AND STAKEHOLDERS

To envision research as a privilege rather than a right is to acknowledge a different place in a global economy of knowledge, not as the owner of the means of knowledge production and its products but as one among many stakeholders in knowledge production. Rights are inherent; privileges are granted on stated conditions that create responsibilities. Contemporary archaeology is deeply embroiled in a transformation from the language of rights to one of responsibilities. In the US, this transformation is signified vividly by shifts in the understanding of archaeological stewardship in the Society for American Archaeology (SAA), the professional organization with the broadest cross-section of members working in different sites of archaeological practice (Lynott and Wylie 1995; Wylie 1996: 183–7). The new concept of stewardship emerging from this debate owes much to repatriation initiatives, which have forced substantial reflection within the archaeological community. Implicit in the new concept of stewardship is a realization that archaeologists do not occupy a special position with greater detachment that warrants the reservation of decision making to them. Instead, archaeologists are one of many groups of stakeholders that require recognition in a democratic society (see Leone and Preucel 1992).

The discussion of revised ethical principles for the SAA centred on the notion of stewardship, a principle of long standing for the society. As Wylie (1996: 166, 185) notes, however, the discussion of stewardship exposed an underlying assumption that archaeologists uniquely were prepared, or were authorized, to exercise control over decision making about the material remains of past peoples and even, it appears, the interpretation of those material remains in the form of constructions of the past (and see McGuire 1992: 817; Zimmerman 1995). Wylie identifies two concerns in the SAA code of ethics that relate to this underlying assumption, both with implications for the engagement of archaeologists in repatriation activities and the development

among archaeologists of differing views of what constitutes ethical practice with respect to repatriation.

On the one hand, there has been an increasing emphasis in the SAA on the idea that archaeology should be aimed at preserving material remains of past peoples, conserving them as a resource for future research on human pasts (Lynott and Wylie 1995: 30–1; Wylie 1996: 156–67). This emphasis has developed under at least two formational pressures. One of these is the rapid pace of site destruction, the worldwide loss of access to undisturbed deposits of material stemming from past human activity. Site preservation has achieved urgency as a goal in the face of bulldozing of even unique sites to make way for commercial and residential development. A second pressure for a preservation ethic came from the rapid pace of new methodologies to extract information from formerly mute deposits, often through new technologies. The preservation call, however, as is made clear by examination of its roots, has been justified by the consequences for academic researchers, not by engagement with other groups (Wylie 1996: 180–3). While there may be coincidental concurrence when local or native groups wish to preserve a site, this may be based on very different notions of the disposition of the site after the preservation battle is won.

At the same time, many constituencies have become newly vocal about their claims on either the material remains of past peoples or the interpretations of such remains. Scrutiny of public funding for all research in the US, debates about access to historic monuments typified by controversies surrounding Stonehenge in Great Britain, discussion of the costs and benefits of archaeological work required prior to development, debates about the legitimacy of private collecting and commercialization of archaeological materials, and claims of alternative understandings of the past by popular groups such as the Goddess movement have risen in visibility at the same time as demands from nation states for the return of significant cultural properties held in other countries, and from native peoples for repatriation and reburial of collections representing those from whom they have descended. As Zimmerman (1995: 65) has noted, contrary to the views of some archaeologists, non-archaeologists care deeply about the past and contest the presumption of privileged control over the production of knowledge about the past that has been a constitutive assumption of academic archaeology (and see McBryde 1997: 79–80). Academic archaeologists have based their claim to authority on special access to the mechanisms of science and a preference for the scientific mode of knowing over other procedures. McGuire (1992) suggests that, while archaeologists do have special competence in the craft of deriving knowledge from the material remains of past people that should be valued and respected (and see Wylie 1996: 187), claims of authority based on the use of scientific procedures can only be seen as an ideological preference for a specific way of knowing the past.

Understanding these embedded assumptions in the concept of stewardship facilitates a new view of what it means for archaeologists to be stewards. Instead of having a unique right to act as stewards, contemporary archaeologists must realize that we share the privilege and responsibility of stewardship with many others who have interests in the past and its material traces. Decisions about what constitutes acceptable practice cannot simply favour those actions that benefit one group – especially the

group to which the decision maker belongs. The consequences to archaeologists of decisions are no longer sufficient justification for choice (see Wylie 1996: 182).

Implicit in this reformulation is the recognition that archaeologists are not disinterested parties but rather are interested stakeholders in the use of material remains of past peoples. Archaeologists have interests, and thus conflicts of interests, whenever situations arise in which one decision will make access to the sources of knowledge production easier or will increase the status gained through their control of knowledge production. The archaeological future must be one of negotiation among stakeholders, with the possibility that negotiations will not allow some proposed line of research accepted as a normal price paid for participation in knowledge production in democratic societies. Once archaeologists cede their unique authority to make these decisions, or to arbitrate when negotiation reaches an impasse, the process of stewardship can be envisioned as one of responsible advocacy in dialogue with all stakeholders who have the right to be represented.

ARCHAEOLOGICAL GOODS AND REPRESENTATION

Who is a stakeholder, and how do stakeholders earn the right to act as joint stewards (Brown 1998: 205)? In the past, archaeological statements of ethics assumed that academic training conferred special status like that denoted by the term stakeholder. But as the debates over standards and practices necessary to define the Registry of Professional Archaeologists have demonstrated, there is no consensus on what kind of academic training is sufficient to justify a voice in representing the past. For many archaeologists, the most controversial part of Deloria's (1992) quinqucentenary commentary on archaeology was his endorsement of the work of Fell, who while not trained in archaeology did have prestigious academic credentials. Deloria is not alone in his wonderment at the ease with which academic archaeologists reject others in the academy who purport to speak about the past in ways that are not accepted by a majority of archaeologists (see, for example, Bernal 1998). Members of the general public who find stories about trans-oceanic contacts appealing are often startled by the strong tone of rejections of such ideas by academic archaeologists. Clearly, academic training is not enough to confer the status of steward that academic archaeologists hold dear. And it is not simply those whose disciplinary training is outside archaeological traditions who may be viewed as suspect; internally, archaeology as a discipline is often torn by disputes that implicitly or explicitly question the competence of academically trained and qualified archaeologists.

If other criteria are tacitly operative in the accord archaeologists give to claims of stewardship within the academy, then these might also reflect on the claims of other potential stakeholders. One concern with academics from outside archaeology who speculate on the past is that they do so without full responsibility to the material remains documented by archaeologists. Their accounts may be selective and ignore material that would contradict their preferred interpretations. Archaeology, then, requires, in addition to competence, responsibility (and see Layton 1989: 4; Wylie 1992: 593). Other concerns about speculative historians similarly reflect a deeply embedded, if not

always articulated, sense of responsibility within academic archaeology. Often raised in response to suggestions of trans-oceanic interventions in early civilizations of the Americas, such concerns center on the loss of a significant past that is important to living people, as for example in claims of trans-oceanic interventions in early Olmec culture in Mexico (Haslip-Viera *et al.* 1997). Sometimes derided by critics of archaeology, these concerns are heartfelt, and they suggest that archaeologists recognize that connection with a past tradition is a legitimate ground for a voice in the present representation of that tradition.

The stake that archaeologists hold in the material remains of the past and their present interpretation, however, is dual. On the one hand, academic archaeologists do feel a sense of responsibility to an accurate portrayal of the full extent of knowledge about material remains they have documented, and of responsibility to the present-day descendants whose past these materials represent. On the other hand, archaeologists have a stake as professionals whose livelihood is dependent on the existence and use of material remains of past people. Archaeologists share this stake with other scholars and museum staff whose livelihood depends on interpretation of such materials. But archaeologists also share a stake with others who feel a sense of responsibility to the material remains of past peoples and their present-day representation, including descendant groups, the publics who provide financial support for archaeology and for museums, and local, regional, national, and global populations curious about the nature of the past of our species (see McManamon 1991; McBryde 1997). Archaeologists, then, are inherently in conflict as stakeholders because there is no guarantee that their interests in their livelihood and in their responsibilities to the past will always be without conflict.

Repatriation is the single circumstance that most exposes this internal conflict in the archaeological community, often a conflict experienced by individual archaeologists. The potential loss of what are seen as the raw materials of scholarship threatens the stake that archaeologists (and other researchers and museum staff) have in earning their livelihood. And it also threatens the ideal of responsibility to the full documentation and full presentation of information about the past that generates a positive sense of responsibility among archaeologists. Two paths lead out from these conflicts, offered here not as resolutions but as beginnings to movement forward.

As long as archaeologists continue to conceive of the production of knowledge as something that is dependent on the acquisition and control of collections of things, they will be threatened by any loss or limit to such access. On the one hand, as argued above, archaeologists already live with limits to access. Two further examples illustrate this. First, principles of preservation that are increasingly important within archaeology demand that archaeologists limit their investigation of the material remains of past peoples to the minimum necessary to generate specific knowledge valued at a specific point in time due to specific, historically contingent circumstances (Lynott and Wylie 1995: 30). Archaeology is thus limiting itself, and archaeologists are both expected to monitor themselves and, through granting and publication processes, to be monitored by others. Second, archaeologists have never had access to all the remains of past human behaviour, nor will they ever have, because of conditions inherent in the deposition and transformation of materials over time. These limitations, over and above

those stemming from the present-day requirements for reviews and permitting of archaeological projects, should free archaeologists from the false notion that the security of their knowledge of the past is dependent on unrestricted access to all things used in the past. More data will never suffice to bring closure to the creation of archaeological knowledge.

Realizing this, contemporary archaeologists could cease insisting that specific material remains of past peoples are indispensable to resolving questions about the past. Indeed, resolving questions can be seen from both broadly processual and post-processual positions as a false goal, one haunted by ideas of uniform cultures with no change through time and space that need simply to be exhaustively described and placed in a universal chronological chart. Framing questions that can be addressed through continued research on materials that are accessible (Lynott and Wylie 1995: 30, 32), a procedure not unfamiliar to archaeologists required to seek funding, permits, and university approvals of research, will continue to generate knowledge, and the knowledge that is deferred should not be given undue weight. Responsibility for the full consideration of the partial documentation that is all archaeology ever has had or ever will have is not impeached by accepting cultural limits on what can be documented.

The second path speaks to the sense of responsibility that archaeologists feel to representation of the past in the present. Here it must be said that archaeologists could devote much of their energies to providing other stakeholders with both knowledge about the past and archaeological methods used in producing this knowledge (Adams 1984; Fagan 1993). And here also rests responsibility for the vast archives of information that remain unpublished or underpublished, the vast collections that remain unstudied or understudied in museums. While repatriation will result in the removal from collections of much material, no one believes that everything currently in museums will be repatriated; as yet there has been no flood of students sent to work on the orphaned collections resulting from past research. Some collections that are repatriated will continue to be held as trusts by native groups, accessible for research as and when the newly empowered stakeholders are convinced that research is in their best interests. If archaeologists, in their new understanding of their role as stakeholders whose stewardship is negotiated with other stakeholders, take the responsibility of that position seriously, then the future along this path is potentially unbounded.

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9 *Implementing a ‘true compromise’: the Native American Graves Protection and Repatriation Act after ten years*

C. TIMOTHY McKEOWN

INTRODUCTION

Standing before the United States Senate on 26 October 1990, Senator John McCain asked the approval of his colleagues to consider H.R. 5237, the Native American Graves Protection and Repatriation Act (NAGPRA). ‘The passage of legislation marks the end of a long process for many Indian tribes and museums. The subject of repatriation,’ stressed McCain, ‘is charged with high emotions in both the Native American community and the museum community. I believe this bill represents a true compromise’ (Congressional Record 1990: S17173). The Senate passed the bill by voice vote. The House of Representatives passed the bill by unanimous consent the next day.

The United States Congress was not acting unilaterally in supporting NAGPRA. Passage of the bill was supported by national organizations representing museums, archaeologists, physical anthropologists, cultural anthropologists, preservationists, Indian tribes, civil libertarians and eighteen religious denominations (American Association of Museums 1990, American Civil Liberties Union 1990, Friends Committee on National Legislation 1990, Society of American Archaeology 1990). Despite the fact that the Department of the Interior did not support the bill (US Department of the Interior 1990), Bush signed NAGPRA into law on 16 November 1990 (United States Code 1990a).

The long process of which McCain spoke began in 1986 as Congress sought to reconcile four major areas of federal law. As civil rights legislation, Congress wished to acknowledge that over the nation’s history, Native American human remains and funerary objects suffered from differential treatment as compared with the human remains and funerary objects of other groups. They also wanted to recognize that the loss of sacred objects by Indian tribes and Native Hawaiian organizations to unscrupulous collectors negatively impacted on Native American religious practices. As Indian law, Congress founded their efforts on an explicit recognition of tribal sovereignty and the government-to-government relationship between the United States and Indian tribes. As property law, the Congress wanted to clarify the unique status of the dead as well as highlight the failure of American law to adequately

recognize traditional concepts of communal property still in use by some Indian tribes. Lastly, as administrative law, Congress would direct the Department of the Interior to implement Congress's mandate, including the promulgation of regulations to ensure due process, awarding of grants and assessment of civil penalties. In all, 26 separate bills were proposed or introduced over a four-year period as a compromise on these multiple issues was negotiated.

The final statute reconciled these various concerns by establishing three sets of provisions. Following an introductory section and definitions, section 3 established procedures in the United States Code for the discovery and, if necessary, excavation or removal of Native American human remains and 'cultural items' (including funerary objects, sacred objects, or objects of cultural patrimony) on federal or tribal lands after 16 November 1990 (United States Code 1990a: 25 U.S.C. 3002). Section 4 made it a crime to traffic in Native American human remains or cultural items under certain conditions (United States Code 1990b: 18 U.S.C. 1170). Sections 5 through 10 established procedures to allow lineal descendants, Indian tribes and Native Hawaiian organizations to repatriate Native American human remains and cultural items from museum and federal agency collections (United States Code 1990a: 25 U.S.C. 3003–3008).

Interpreting NAGPRA or any other law is guided not by continued compromise but by established canons of interpretation. The legal effect of a statute must be determined by either the defined or ordinary meaning of the words used in the text. Every word must be given legal effect. A word used several times in a statute must be interpreted the same in each place while different words used in a statute may not be interpreted to mean the same thing. Where an ambiguity is identified in the statutory language, the legislative history may be used to resolve the ambiguity. The sequence of changes in a statute prior to enactment provides strong evidence of the meaning of the enacted statute. Newer or more specific usage of a word prevails over older or more general usage. Ambiguous words may not be interpreted in a way that would bring the constitutionality of the statute into question. Statutes passed for the benefit of Indian tribes must be construed in favour of Indian interests.

Responsibility for implementing NAGPRA was assigned to the Secretary of the Interior (McKeown 1995). The following overview of NAGPRA's provisions is based on the final rule promulgated by the Department of the Interior and published in the Code of Federal Regulations (1995, 1997a, 1997b: 43 CFR 10), as well as other administrative and judicial opinions over the ten years since NAGPRA became law (see American Association of Museums 2000).

WHO MUST COMPLY WITH THE STATUTE?

Questions of jurisdiction are usually the first asked of any legislation. Congress chose to place the responsibility for compliance with the statute upon two broad categories of institutions: (1) federal agencies, and (2) museums that receive federal funds.

The statute defines a federal agency as any department, agency or instrumentality of the United States. This definition includes all components of the executive, legislative and judicial branches of the United States government that either manage land or

hold collections of Native American human remains or cultural items with one exception, the Smithsonian Institution. The legislative history of the statute indicates that the exclusion was made at the last minute to accommodate concerns raised by the Senate Committee on Rules and Administration (Congressional Record 1990: S.17173). Separate legislation to apply some NAGPRA terms and procedures to the Smithsonian was introduced as S.3217 immediately prior to NAGPRA's passage in 1990 (US Congress, Senate 1990b) and eventually became law in 1996 (United States Code 1996: 20 U.S.C. 80q).

All federal agencies, except the Smithsonian Institution, are responsible for completing summaries and inventories of Native American collections in their control and with ensuring compliance regarding inadvertent discoveries and intentional excavations conducted on federal or tribal lands. Federal agencies are responsible for the appropriate treatment and care of all collections from federal lands being held by non-governmental repositories.

A museum is defined in the statute as any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains or cultural items and receives federal funds.¹ The application of federal laws to institutions that receive federal funds is common, being used with such recent legislation as the Americans with Disabilities Act (United States Code 1990c: 29 U.S.C. 706). NAGPRA applies to certified local governments. The statute covers tribal museums if the Indian tribe of which the museum is a part receives federal funds through any grant, loan or contract (other than a procurement contract). The Secretary of the Interior is authorized to assess civil penalties on museums that fail to comply with provisions of the statute (United States Code 1990a: 25 U.S.C. 3007 and Code of Federal Regulations 1997a: 43 CFR 10.12).

While an earlier bill would have required private individuals that receive federal funds to comply with the repatriation provisions (US Congress, Senate 1989: S.1980 (2)(13)), the final statute and regulations do not apply to private individuals or institutions that do not receive federal funds or are not part of a larger entity that receives federal funds.

WHO HAS STANDING TO MAKE A REQUEST?

The regulations provide certain individuals and organizations the opportunity to request Native American human remains and cultural items. Lineal descendants, Indian tribes and Native Hawaiian organizations may request Native American human remains, funerary objects and sacred objects. Only Indian tribes and Native Hawaiian organizations may request objects of cultural patrimony. The criteria needed to identify who has standing to make a request are outlined below.

Lineal descendant is not defined in the statute. The statute does make it clear, however, that lineal descendants have priority over Indian tribes or Native Hawaiian organizations in making requests for human remains, funerary objects and sacred objects. Lineal descendant is defined by regulation as an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system

of the appropriate Indian tribe or Native Hawaiian organization or by the American common law system of descentance to a known Native American individual whose remains, funerary objects or sacred objects are being requested (Code of Federal Regulations 1995: 43 CFR 10.2 (b)(1)). The necessity for a direct and unbroken line of ancestry between the individual making the request and a known individual is a high standard, but one that is consistent with the preference for disposition or repatriation to lineal descendants required by the statute. Reference to traditional kinship systems in the definition is designed to accommodate the different systems that individual Indian tribes and Native Hawaiian organizations use to reckon kinship.

Indian tribe is defined to mean any tribe, band, nation or other organized Indian group or community of Indians, including any Alaska Native village as defined in or established by the Alaska Native Claims Settlement Act (United States Code 1971: 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programmes and services provided by the United States to Indians because of their status as Indians (Code of Federal Regulations 1995: 43 CFR 10.2 (b)(2)). This definition was drawn explicitly from the American Indian Self Determination and Education Act (United States Code 1975: 25 U.S.C. 450b), a statute implemented since 1976 by the Bureau of Indian Affairs to apply to a specific list of eligible Indian tribes and Alaska Native villages and corporations. The definition within the American Indian Self Determination and Education Act precludes extending applicability of NAGPRA to non-federally recognized Indian groups that have been terminated, that are current applicants for recognition or that have only State or local jurisdiction legal status. Earlier repatriation bills would have provided standing to both state recognized Indian groups and federally terminated Indian tribes (US Congress, Senate 1986: S.2952 (3)(5) and 1987: S.187 (3)(5)).

Native Hawaiian organization is defined as any organization that: (1) serves and represents the interests of Native Hawaiians; (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and (3) has expertise in Native Hawaiian affairs. The statute specifically identifies the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei as being Native Hawaiian organizations (Code of Federal Regulations 1995: 43 CFR 10.2 (b) (3)). An earlier bill (US Congress, Senate 1990a: S.1980 (3)(6)(C)) included a provision requiring Native Hawaiian organizations to have a membership of which a majority are Native Hawaiian. This provision was not included in the statute, however, and the legislative history must be interpreted to mean that Congress considered the additional criterion and decided it should not be included.

Non-federally recognized Indian groups do not have standing to make a direct disposition or repatriation request under the statute. That is because these groups, though they may comprise individuals of Native American descent, are not recognized as eligible for the special programmes and services provided by the United States to Indians because of their status as Indians. Human remains in federal agency or museum collections for which a relationship of shared group identity can be shown with a particular non-federally recognized Indian group are considered 'culturally unidentifiable.' Federal agencies and museums must retain possession of culturally unidentifiable human remains pending promulgation of regulations, unless legally

required to do otherwise, or recommended to do otherwise by the Secretary of the Interior (Code of Federal Regulations 1995: 43 CFR 10.9 (e)(6)). Federal agencies and museums that hold culturally unidentifiable human remains may request the Native American Graves Protection and Repatriation Review Committee to recommend disposition of such remains to the appropriate non-federally recognized Indian group. Details of this process can be obtained from the National Park Service.

WHAT OBJECTS ARE COVERED?

The regulations apply to four types of Native American items: (1) human remains; (2) funerary objects; (3) sacred objects; and (4) objects of cultural patrimony. A particular item may fit more than one category. The term 'Native American' means of, or relating to, a tribe, people or culture indigenous to the United States, including Alaska and Hawaii (Code of Federal Regulations 1995: 43 CFR 10.2 (d)). The Department of the Interior has subsequently clarified the term to apply to all tribes, peoples and cultures that occupied the United States prior to historically documented European exploration (US Department of the Interior 1997). The term is used only to refer to human remains and cultural items. It is not used in the regulations to reference any individual or group with standing to make a request. This usage was first introduced by Representative Udall in H.R. 5237 (US Congress, House 1990a: H.R. 5237 (2)(11)). Earlier bills had used the term to identify present day Indians, Eskimo, Aleut and Native Hawaiians (US Congress, Senate 1990a: S.1980 (3)(1)).

Human remains means the physical remains of a body of a person of Native American ancestry (Code of Federal Regulations 1995: 43 CFR 10.2 (d)(1) as amended 1997b). The term has been interpreted broadly to include bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues. The regulations make no distinction between fully articulated burials and isolated bones and teeth. The term applies equally to recent and ancient Native American human remains. The term does not include remains, or portions of remains, freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. Purposefully disposed human remains should not be considered either freely given or naturally shed. For the purposes of determining cultural affiliation, human remains incorporated into funerary objects, sacred objects or objects of cultural patrimony are considered as part of that object. This provision is intended to prevent the destruction of a cultural item that is affiliated with one Indian tribe but incorporates human remains affiliated with another Indian tribe. Human remains that have been repatriated under NAGPRA to date include complete and partial skeletons, isolated bones, teeth, scalps and ashes.

Funerary objects are defined as items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be determined as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. The term 'burial site' means any natural or prepared physical location, whether originally below, on or

above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains were deposited. Burial sites include rock cairns or pyres, which do not fall within the ordinary definition of grave site (Code of Federal Regulations 1995: 43 CFR 10.2 (d)(2)). Items that inadvertently came into contact with human remains are not considered to be funerary objects. Certain Indian tribes, particularly those from the northern plains, have ceremonies in which objects are placed near, but not with, the human remains at the time of death or later. These items should also be considered as funerary objects. Funerary objects that have been repatriated under NAGPRA to date include beads of various types; pottery jars, bowls and shards; tools and implements of wood, stone, bone and metal; trade silver and other goods; weapons of many types, including rifles and revolvers; and articles or fragments of clothing.

Sacred objects are defined as specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Traditional religious leaders are individuals recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial or religious practices. While many items, from ancient pottery shards to arrowheads, might be imbued with sacredness in the eyes of a given individual, this definition is specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony (Code of Federal Regulations 1995: 43 CFR 10.2 (d)(3)). Sacred objects that have been repatriated under NAGPRA to date include medicine bundles, prayer sticks, pipes, effigies and fetishes, basketry, rattles and a birchbark scroll. Some earlier bills had included much broader definitions of 'sacred object' (see for example US Congress, Senate 1986: S.2952 (3)(10)). Other earlier bills included narrower definitions of the term, such as a requirement that sacred objects not only be needed currently for religious practice but also were devoted to a ceremony in the past (US Congress, Senate 1990a: S.1980 (2)(3)(C)). The term was amended to its final form shortly before passage (US Congress, House 1990b: H.R. 5237 (2)(3)(C)).

Objects of cultural patrimony are defined as items having ongoing historical, traditional or cultural importance central to the Indian tribe or Native Hawaiian organization itself rather than property owned by an individual tribal member. These objects are of such central importance that they may not be alienated, appropriated or conveyed by any individual tribal member. Such objects must have been considered inalienable by the affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group (Code of Federal Regulations 1995: 43 CFR 10.2 (d)(4)). Objects of cultural patrimony that have been repatriated under NAGPRA to date include a wolf-head headdress, a clan hat, several medicine bundles and ceremonial masks of varying types.

It should be stressed that the definitions of human remains, funerary objects, sacred objects and objects of cultural patrimony simply define the applicability of the

regulations and do not in any way attempt to restrict other concepts of ‘sacredness’ or ‘patrimony’. Further, the four categories are not mutually exclusive. Items fitting both the sacred object and object of cultural patrimony definitions that have been repatriated under NAGPRA to date include Zuni *ahayuda* (also known as War Gods), a Sun Dance wheel, ceremonial masks of several types and functions, and a tortoise shell rattle.

WHAT ACTIVITIES ARE REQUIRED?

The NAGPRA regulations bring together federal agencies and museums that receive federal funds with lineal descendants, Indian tribes and Native Hawaiian organizations to resolve the complex issues surrounding custody of Native American human remains and cultural items. The regulations outline two sets of activities to ensure the proper disposition or repatriation of these objects. The first set of activities provides a mechanism for federal land managers to consult with Indian tribes and Native Hawaiian organizations and come to a determination regarding the appropriate disposition of Native American human remains and cultural items that are or might be excavated or discovered on federal or tribal lands. The second set of activities provides a mechanism for federal agency or museum officials to consult with and, upon request, repatriate Native American human remains and cultural items in their collections to lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations. The activities for dealing with excavations or discoveries on federal or tribal lands are different than those for dealing with museum and federal agency collections (see Table 9.1).

Provisions that apply to intentional excavations² and inadvertent discoveries³ went into effect on 16 November 1990, the date the statute was enacted. These provisions generally apply only to federal lands and tribal lands. These provisions do not generally apply to private, municipality or state lands, even when an undertaking involving federal funds is being conducted pursuant to the National Historic Preservation Act (United States Code 1966: 16 U.S.C. 470 et seq.). However human remains or cultural items obtained through such an undertaking may fall under the summary or inventory provisions once the items come under the control of a federal agency or museum. Earlier bills had applied to all lands (US Congress, House 1989: H.R. 1381 (3)(b)).

Eight civil cases involving NAGPRA’s excavation and discovery provisions have been filed in federal court over the last ten years (Hutt and McKeown 1999). In *Abenaki v. Hughes*, the court affirmed that the excavation and discovery provisions of the statute apply only to federal and tribal lands, and not to federal undertakings conducted on municipal lands (US District Court 1992a). The latter situations are typically covered by state and local burial laws. In *Four Corners Action Committee v. Bureau of Reclamation*, the court enjoined the federal agency from conducting archaeological testing on federal land until it conducted the required consultation with affiliated Indian tribes (US District Court 1992b). In *Klamath Tribes v. Bureau of Land Management*, the court dealt with a complicated situation involving the inadvertent destruction of Native American burial sites on federal lands as part of a federally permitted undertaking on adjacent private

Table 9.1 Provisions of NAGPRA

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

All provisions apply to:

- (1) lineal descendants, Indian tribes, and Native Hawaiian organizations.
- (2) Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

| | | |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Specific provisions for: | Planned excavations and inadvertent discoveries on federal or tribal land | Collections held by federal agencies or museums that receive Federal funds |
| Term for transference of control: | Disposition | Repatriation |
| Deadlines: | Effective November 16, 1990 | Summaries: November 16, 1993 Inventories: November 16, 1995 |
| Priority of control: | <ol style="list-style-type: none"> 1. lineal descendant 2. Indian tribe land owner 3. culturally affiliated Indian tribe 4. Indian tribe with other cultural relationship 5. Indian tribe that aboriginally occupied the area 6. unclaimed | <ol style="list-style-type: none"> 1. lineal descendant 2. culturally affiliated Indian tribe 3. culturally unidentifiable |
| Due process notice(s): Reference: | Newspaper(s) 25 U.S.C. 3002 (§ 3) 43 CFR 10 Subpart B (§ 10.3–10.7) | Federal Register 25 U.S.C. 3003–3005 (§ 5–7) 43 CFR 10 Subpart C (§ 10.8–10.13) |

land (US District Court 1995a). In *Monet v. United States*, the court dismissed a former land owner’s request to disinter Native American human remains from land sold by the Internal Revenue Service as part of a foreclosure sale (US District Court 1995b). In *Bonnichsen v. United States* (US District Court 1996a) and *Asatru Folk Assembly v. United States* (US District Court 1996b), the court vacated the United States Army Corps of Engineers’ decision regarding the disposition of human remains believed to be over 9,000 years old and remanded it back to the agency for reconsideration. The Corps of Engineers delegated responsibility for the decision to the Department of the Interior, which recently affirmed the Corps of Engineers’ earlier decisions that the remains are Native American, are culturally affiliated with several Indian tribes and were found within the aboriginal territory of the Umatilla tribe (US Department of the Interior 2000). In *Idrogo v. United States Army* (US District Court 1998) the court dismissed claims by an individual and a non-federally recognized Indian group to disinter the remains of Geronimo from his burial site on federal land. In *Yankton Sioux Tribe v. United States Army Corps of Engineers* (US District Court 1999) the court enjoined the agency from raising the level of a reservoir until inadvertently discovered human remains could be removed. Provisions of the Archaeological Resource Protection Act were waived by the

court. Finally, the court affirmed that the statute must be considered Indian law with any ambiguities construed in favour of Indian interests.

The statute also requires federal agencies and museums to inform Indian tribes and Native Hawaiian organizations of human remains and cultural items in their collections. Distribution of this information is achieved through two types of documents: (1) summaries, and (2) inventories.

Summaries are written descriptions of collections that may contain unassociated funerary objects, sacred objects or objects of cultural patrimony. 'Unassociated' funerary objects are those funerary objects for which the associated human remains are not in the possession or control of the federal agency or museum. Summaries must have been completed by 16 November 1993, and amount to a simple notification to each Indian tribe and Native Hawaiian organization of the nature of the collections held by the federal agency or museum. The summary was intended as an initial step to bring Indian tribes and Native Hawaiian organizations into consultation with a federal agency or museum. Consultation between a federal agency or museum and an Indian tribe or Native Hawaiian organization was not required until after completion of the summary. Identification of specific unassociated funerary objects, sacred objects or objects of cultural patrimony must be done in consultation with Indian tribe representatives and traditional religious leaders since few, if any, federal agencies or museums have personnel with the expertise necessary to make such identification. Copies of the summaries must also be provided to the National Park Service. To date, summary information has been received from 1,058 federal agencies and museums. Regulatory requirements for summaries are detailed at 43 CFR 10.8 (Code of Federal Regulations 1995). A section has been reserved in the regulations to outline the continuing responsibilities of federal agencies and museums (Code of Federal Regulations 1995: 43 CFR 10.13). Pending promulgation of that section, federal agency and museum officials should periodically review their summary submission to make sure it is accurate and updated to reflect new acquisitions, information and newly recognized Indian tribes. The requirement to produce summaries was not introduced until one month before NAGPRA became law (US Congress, House 1990b: H.R. 5237 (6)).

Inventories are item-by-item descriptions of human remains and associated funerary objects. 'Associated' funerary objects are those funerary objects which are in the possession or control of an agency or museum. Unlike the summaries, inventories must have been completed in consultation with Indian tribes and Native Hawaiian organizations and represent a decision by the museum or federal agency official as to the cultural affiliation of particular human remains or associated funerary objects. Inventories must have been completed by 16 November 1995 and provided to the culturally affiliated Indian tribes and Native Hawaiian organizations as well as to the National Park Service by 16 May 1996. Regulatory requirements for inventories are detailed at 43 CFR 10.9 (Code of federal Regulations 1995). To date, inventories have been received from 820 federal agencies and museums. For the National Park Service, 103 parks completed inventories that comprised 5,996 human remains. The total number of human remains in the possession or control of all federal agencies and museums is still not known with any precision. In 1990, the Congressional Budget Office estimated that approximately 200,000 Native American human remains were in the possession or control of federal agencies and museums (Congressional Budget Office 1990). More

recent estimates of the number of individuals represented have been based on information received from museums applying for grants or inventory extensions. These data are consistent with the earlier 200,000 estimate.

Inventories of 'culturally unidentifiable human remains' – human remains for which no lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization can be determined – were provided by the National Park Service to the citizens review committee which is charged with making recommendations regarding the disposition of culturally unidentifiable human remains (United States Code 1990a: 25 U.S.C. 3006 (c)(5)). While the total number of culturally unidentifiable human remains is also not known, the fact that approximately 25 per cent of the 5,996 Native American human remains held by the National Park Service were listed as culturally unidentifiable indicates that at least 50,000 of the estimated 200,000 human remains in federal agency and museum collection will be determined culturally unidentifiable. A section has been reserved in the regulations to outline the continuing responsibilities of federal agencies and museums (Code of Federal Regulations 1995: 43 CFR 10.13). In the last ten years, the review committee has considered 18 requests from museums and federal agencies regarding the disposition of specific culturally unidentifiable human remains. Ten of these recommendations involved the disposition of human remains to non-federally recognized groups, including the Mashpee Wampanoag, Nansmond, Salinans, Abenaki, Chinook, Nipmuc, Monacan and Puyallup. Others have used treaty rights as the basis for an Indian tribe's claim. Still others have used applicable state burial laws as the basis for repatriation. After long deliberation, in 2000 the review committee issued its recommendation regarding a more general process for the disposition of culturally unidentifiable human remains and requested the National Park Service to prepare the required regulatory section (Review Committee 2000b). Pending promulgation of that section, federal agencies and museums should periodically review their inventory submission to make sure it is accurate and updated to reflect new acquisitions and newly recognized Indian tribes.

While the statute provided for grants to assist Indian tribes, Native Hawaiians and museums, funds were not appropriated for this purpose until 1994. Since that time 178 grants have been awarded to Indian tribes and Native Hawaiian organizations, accounting for a total \$9.8 million. An additional 114 grants were awarded to museums, accounting for \$5.6 million.

The statute also authorized the Secretary of the Interior to assess civil penalties on museums that failed to comply with NAGPRA's provisions. Regulations implementing these provisions were published in 1997 (Code of Federal Regulations 1997a: 43 CFR 10.12). Since this time, six museums have been determined to have failed to comply and were granted limited periods of forbearance from civil penalty. Another eight allegations of failure to comply are currently under review or investigation.

Six civil cases involving NAGPRA's collection provisions have been filed in federal court over the past ten years (Hutt and McKeown 1999). In *California State University-Long Beach v. Department of the Interior* (US District Court 1993) the court ordered the university to complete its inventory of culturally unidentifiable human remains and requested the review committee to make recommendations regarding their disposition. In *Nā Iwi O Na Kūpuna O Mokapu v. Dalton* (US District Court 1995c) the court ruled that documentation of human remains and associated funerary objects was

required to complete the required inventory but that the statute could not be used as authorization for additional scientific studies once the inventory was completed. In *San Ildefonso v. Ridlon* (US District Court 1995d) the district court mistakenly dismissed a case involving the collection provisions on the grounds that the items were not recovered from federal or tribal lands. The district court's opinion was reversed on appeal and remanded back to the district court for reconsideration. In *Monet v. Hawaii* (US District Court 1996c) the court dismissed as not ripe an individual's claim of lineal descent pending completion of the inventory by a controlling federal agency. In *City of Providence v. Hui Malama I Na Kupuna O Hawai'i Nei* (US District Court 1996d) the court ordered settlement talks between the parties after the Native American Graves Protection and Repatriation Review Committee issued an advisory finding regarding a sacred object in the city's collection. The parties eventually reached a settlement and the item was transferred to the Native Hawaiian organizations. In *American Museum of Natural History v. the Confederated Tribes of the Grand Ronde Community of Oregon* (US District Court 2000), the parties reached a settlement after the museum sought declaratory relief regarding its title to a meteorite claimed by the tribe.

One of the key requirements of the statute is that museums and federal agencies must consult with lineal descendants, Indian tribes and Native Hawaiian organizations prior to making decisions regarding the disposition or repatriation of Native American human remains and cultural items. Consultation is defined as a process involving the open discussion and joint deliberations with respect to potential issues, changes or actions by all interested parties (US Congress, House 1990c: 16). Midway between the traditional standards of notification and obtaining consent, consultation requires an ongoing dialogue (McKeown 1997).

HOW DO YOU EVALUATE A REQUEST?

Upon the request of a lineal descendant, Indian tribe or Native Hawaiian organization, the federal agency or museum must expeditiously return human remains or cultural items if all of the following criteria apply: (1) the claimant has standing; (2) the object being claimed conforms to a class of objects covered by the statute; (3) lineal descent or cultural affiliation can be established between the claimant and an object in federal agency or museum possession or control prior to 16 November 1990. For objects excavated or discovered on federal or tribal land after 16 November 1990, claims may be based on lineal descent, tribal land status, cultural affiliation, other cultural relationship or aboriginal territory; and (4) none of the statutory exemptions apply. The criteria needed to evaluate requests for the disposition or repatriation of human remains or cultural items are outlined below.

1. Does the request come from a party with standing?

Lineal descendants, Indian tribes and Native Hawaiian organizations have standing to request human remains, funerary objects and sacred objects in federal agency and

museum collections or excavated or discovered on federal or tribal lands. By definition, only Indian tribes and Native Hawaiian organizations have standing to claim objects of cultural patrimony.

Lineal descendants have standing to claim human remains, funerary objects and sacred objects. Objects of cultural patrimony, which are by definition communal property, cannot be claimed by a lineal descendant. To date, nineteen individuals have repatriated human remains, funerary objects or sacred objects from museum or federal agency collections.

There are currently 758 'Indian tribes' – including 319 Indian tribes in the lower 48 states, 227 Alaska Native villages, 199 Alaska Native village corporations and 13 Alaska Native regional corporations – that have standing to make requests under the statute. The current list of Indian tribes is available from the National Park Service. Each Indian tribe has full authority to select a representative of its choice, as well as to co-operate with other Indian tribes of its choice. Some tribal representatives are not members of the Indian tribe. Care has to be taken to ensure that an individual claiming to represent an Indian tribe is authorized to make such a request. If there is any doubt, the tribal chair, governor or president should be called to verify that the individual is acting on behalf of the Indian tribe or Native Hawaiian organization. Some Indian tribes have banded together to establish organizations to act on their behalf. The Wabanaki Tribes of Maine was established in 1992 to represent the repatriation interests of the Penobscot Indian Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac. In 1995, all nine Apache tribes signed an agreement authorizing an individual tribe to make requests on behalf of any of the others. In other situations, the traditional property owning entity – such as a clan or society – does not have standing to make a request but acts through the appropriate Indian tribe. Thus, in 1993 the Yanyeyidi clan requested a clan hat as its cultural patrimony through the Douglas Indian Association, the federally recognized Indian tribe to which the clan members belonged.

The statute specifically identifies two Native Hawaiian organizations – Hui Mālama I Nā Kūpuna O Hawai'i Nei (see Ayau and Tengan, Chapter 13) and the Office of Hawaiian Affairs – and provides criteria to determine if other claimants have standing. To qualify, the organization must demonstrate that it: (1) serves and represents the interests of Native Hawaiians; (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and (3) has expertise in Native Hawaiian affairs.⁴

2. Does the object fit a category?

Four types of objects can be claimed under provisions of the statute: human remains, funerary objects, sacred objects and objects of cultural patrimony. Native American human remains can generally be identified based on their morphological characteristics and the context in which they were recovered. Funerary objects can generally be identified based on the context in which they were recovered. Identification of sacred objects requires confirmation by a traditional religious leader that the specific object is needed for the practice of a traditional Native American religion by its present-day

adherents. Objects of cultural patrimony require confirmation by Indian tribe or Native Hawaiian organization that the object is of ongoing historical, traditional or cultural importance, along with anthropological, folkloric, oral traditional or historic evidence that the object was considered inalienable at the time the object was separated from the group.

3. Is there a documented relationship between the object and the requesting party?

An individual or organization with standing must establish one of five possible relationships with the human remains or cultural items being requested: (1) lineal descent; (2) tribal land ownership; (3) cultural affiliation; (4) other cultural relationship; or (5) aboriginal occupation. The criteria for establishing a valid relationship vary depending on whether the objects are part of federal agency or museum collection or are excavated or discovered on federal or tribal land. Only (1) lineal descendants and (3) culturally affiliated Indian tribes and Native Hawaiian organizations have standing to request the repatriation of objects that were part of federal agency or museum collections on 16 November 1990. All five categories of relationships are valid in requesting the disposition of objects excavated or discovered on federal or tribal land after that date.

An individual claiming lineal descent must document his or her ancestry from the individual whose remains, funerary objects or sacred objects are being claimed. The line of descent must be direct and without interruption according to the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent. An Indian tribe or Native Hawaiian organization can often provide information on its traditional kinship system to assist in verifying claims of lineal descent. Lineal descendants have priority in requesting human remains, funerary objects and sacred objects in federal agency or museum collections as well as those excavated or discovered on federal or tribal lands.

The land-owning Indian tribe is second in priority, after the lineal descendent, in determining the custody of human remains, funerary objects and sacred objects, and first in priority for objects of cultural patrimony, that are excavated or discovered on tribal lands after 16 November 1990. Tribal lands include all lands within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States. This may include some federal, state or private lands that are within the exterior boundary of a reservation. In and of itself, reserved rights to tribal lands do not provide the Indian tribe with authority to request human remains or cultural items that were in federal agency or museum collections prior to 16 November 1990.

Cultural affiliation is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. A wide variety of evidence can be introduced to document such a relationship, including geographic, kinship, biological, archaeological, linguistic, folklore, oral tradition, historic evidence

and other information or expert opinion. Unlike claims of lineal descent in which the relationship between the claimant and the individual whose remains or objects are claimed must be direct and without interruption, determination of cultural affiliation should be based on an overall evaluation of the totality of the circumstances and evidence and should not be precluded solely because of some gaps in the record. Culturally affiliated Indian tribes may claim human remains and cultural items in federal agency and museum collections as well as those excavated or discovered on federal or tribal lands. Cultural affiliation is used in slightly different ways in the collection and excavation provisions of the statute. The concept is used as a categorical variable in dealing with collections – museums and federal agencies must determine if human remains and associated funerary objects are either clearly culturally affiliated, reasonably culturally affiliated or culturally unidentifiable. Cultural affiliation is used as a continuous variable in determining the disposition of cultural items that are excavated or removed from federal lands after 16 November 1990 – federal agencies must determine the closest culturally affiliated Indian tribe or Native Hawaiian organization.

Indian tribes with some other cultural relationship are fourth in priority – after the lineal descendent, tribal land owner and culturally affiliated Indian tribe – in determining the custody of human remains, funerary objects and sacred objects, and third in priority for objects of cultural patrimony, that are excavated or discovered on federal or tribal lands after 16 November 1990. This term is not defined in the statute or regulations but clearly constitutes a weaker relationship than those previously listed. In and of itself, this other cultural relationship does not provide standing to claim human remains and cultural items in federal agency or museum collections prior to 16 November 1990.

The aboriginal occupant of an identified territory is fifth in priority – after the lineal descendent, tribal land owner, culturally affiliated Indian tribe and Indian tribe with some other cultural relationship – in determining the custody of human remains, funerary objects and sacred objects, and fourth priority for objects of cultural patrimony, that are excavated or discovered on tribal lands after 16 November 1990. Of particular use in identifying aboriginal lands are decisions by the United States Court of Claims and the Indian Claims Commission. Between 1883 and 1947, the United States Court of Claims considered approximately 220 claims by Indian tribes against the United States. Fifty-seven of these cases were decided in favour of an Indian tribe, with many of these cases involving compensation for aboriginal land (Smith 1976). Tribal claims were shifted to the Indian Claims Commission in 1946. The final report of the Indian Claims Commission summarises the 617 dockets considered by the commission decisions and includes a map of those areas determined to be the aboriginal land of particular Indian tribes (US Congress, House 1980). The map does not show the commission's final determination in all cases. With the termination of the Indian Claims Commission in 1978, Indian claims were again referred back to the United States Court of Federal Claims.

Other determinations of tribal aboriginal lands have been made by Congress. The Court, the Commission and Congress considered a wide range of information, including oral history and anthropological evidence, in reaching their decisions. Their findings provide a valuable tool for identifying areas occupied aboriginally by a present-day Indian tribe. Other sources of information regarding aboriginal occupation should

also be consulted, particularly the original treaties between the United States and various Indian tribes (Royce 1899). In and of itself, aboriginal occupation does not provide standing to claim human remains and cultural items in federal agency or museum collections prior to 16 November 1990.

In some cases, more than one lineal descendant, Indian tribe or Native Hawaiian organization may request particular human remains or a cultural item. The federal agency or museum faced with this situation should assess all claims in light of the priorities of custody discussed above.

4. Do any exemptions apply?

A federal agency or museum may retain control of Native American human remains or cultural items that would otherwise be repatriated or disposed of to a lineal descendant, Indian tribe, or Native Hawaiian organization under the regulations if any of three exemptions apply: (1) there are multiple disputing claimants; (2) the federal agency or museum has right of possession to the item; or (3) the item is part of a federal agency or museum collection and is indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States.

A federal agency or museum may retain control of human remains or cultural items that are discovered, excavated or part of a collection if there are multiple disputing claims and the agency cannot determine by a preponderance of the evidence which requesting party is the most appropriate recipient. While a museum or federal agency may determine that there are multiple lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations, this exemption is only triggered in the face of two or more equally valid requests for disposition or repatriation. The disputed items may be retained until such time as the requesting parties mutually agree on the appropriate recipient or the dispute is otherwise resolved pursuant to the regulations or as ordered by a court of competent jurisdiction. There is no set time limit during which such multiple claims must be resolved. In a dispute before the review committee, the Oneida Tribe of Wisconsin challenged a determination by the Field Museum that a wampum belt was culturally affiliated with the Oneida Nation of New York. Ultimately, both Indian tribes agreed to withdraw the dispute from consideration by the review committee and the belt remains in the possession of the Field Museum.

A federal agency or museum may retain control of human remains or cultural items that are discovered, excavated or part of a collection if the federal agency or museum has right of possession to the items. Right of possession means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed or otherwise obtained with the full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains and funerary objects. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an

individual or group with authority to alienate such object is deemed to give right of possession to that object. In a dispute before the review committee, representatives of the Phoebe Hearst Museum persuasively demonstrated its right of possession to a Kiowa shield by producing a copy of a letter written shortly after the death of the last Kiowa to possess the shield referencing a will that outlined his wishes for disposition of the item.

A federal agency or museum may also retain control of human remains or cultural items that are part of a collection if the items are indispensable to the completion of a specific study, the outcome of which is of major benefit to the United States. The statute did not clarify what type of study might meet the major benefit standard. However, the context makes it clear that such a study would necessarily be of sufficient importance to overcome the rights of a child to claim a parent's body, a standard generally reserved only for situations involving a public health hazard, national security or criminal investigation. Such a determination would also necessarily be made by the United States, most likely by the Secretary of the Interior. This exemption has never been applied, but if it ever is the items must be returned to the appropriate lineal descendant, Indian tribe or Native Hawaiian organization no later than ninety days after completion of the study. This exemption does not apply to human remains or cultural items that are discovered or excavated on federal agency lands after 16 November 1990.

WHAT ADMINISTRATIVE PROCEDURES ARE REQUIRED?

Final administrative decision

After careful consideration of all of the available evidence, the federal agency or museum official must decide whether a valid claim can be made for human remains or cultural items under his or her institution's control. The preponderance of the evidence represents the standard of proof needed to evaluate claims made under the statute. Claimants do not have to establish aspects of their claims with scientific certainty.

The timing of this decision depends upon the type of object being considered and when the object came under federal agency or museum. Decisions regarding the repatriation of human remains and associated funerary objects in a federal agency or museum collection prior to 16 November 1990 were required to be made by 16 November 1995, with notification of the decision going to the appropriate lineal descendants by 16 May 1996. Copies of the completed inventories were sent to each lineal descendant and each culturally affiliated Indian tribe and Native Hawaiian organization, as well as to the National Park Service. Copies of listings of culturally unidentifiable human remains were referred to the Native American Graves Protection and Repatriation Review Committee.

Unlike the inventory decisions that are driven by a statutory deadline, decisions regarding the repatriation of unassociated funerary objects, sacred objects and objects of cultural patrimony acquired before 16 November 1990 are claim driven. Many Indian tribes and Native Hawaiian organizations have responded to the summaries by requesting additional documentation and visiting the collections. Regulations stipulate that repatriation of unassociated funerary objects, sacred objects and objects of

cultural patrimony must take place within ninety days of receipt of a valid request. Decisions about the disposition of human remains and cultural items excavated or discovered on federal lands need to be made expeditiously upon receipt of a valid request. Prior to the repatriation of human remains and cultural items in federal agency or museum collections, the Secretary of the Interior is required to publish a notice in the Federal Register.

A Notice of Inventory Completion summarizes the contents of a completed inventory of human remains and associated funerary objects in sufficient detail so as to enable other individuals, Indian tribes and Native Hawaiian organizations to determine their interest in claiming the inventoried items. Repatriation of human remains and associated funerary objects may not occur until at least thirty days after publication of the Notice of Inventory Completion in the Federal Register. In the ten years since NAGPRA became law, 411 Notices of Inventory Completion had been published accounting for 22,261 human remains and 446,243 associated funerary objects.

Roberts (2000) reviewed the 353 affiliation decisions made by museums and federal agencies between 1990 and the end of 1999 for human remains and associated funerary objects in their collections. Some Notices of Inventory Completion included multiple affiliation decisions. Seven affiliation decisions were based on lineal descent. Three hundred and forty-two affiliation decisions were based on cultural affiliation, with the number of culturally affiliated Indian tribes or Native Hawaiian organizations ranging from one to 22. The average number of affiliated Indian tribes and Native Hawaiian organizations in each decision was 2.731. In addition, four affiliation decisions were based on a recommendation of the review committee for the disposition of cultural unidentifiable human remains.

A Notice of Intent to Repatriate describes unassociated funerary objects, sacred objects or objects of cultural patrimony being claimed in sufficient detail to enable other individuals, Indian tribes and Native Hawaiian organizations to determine their interest in the claimed objects. Repatriation of unassociated funerary objects, sacred objects and objects of cultural patrimony may not occur until at least thirty days after publication of the Notice of Intent to Repatriate in the Federal Register. In the ten years since NAGPRA became law, 165 Notices of Intent to Repatriation had been published accounting for 50,887 unassociated funerary objects, 898 sacred objects, 237 objects of cultural patrimony and 383 items fitting both the sacred object and object of cultural patrimony categories. Nine of the Notices of Intent to Repatriate were based on claims by lineal descendants, with the remaining 156 notices being based on claims by culturally affiliated Indian tribes or Native Hawaiian organizations.

Notification prior to the disposition of human remains and cultural items excavated or discovered on federal or tribal lands after 16 November 1990 is guaranteed through newspaper notification. The notice must be published two times, at least one week apart, in a newspaper of general circulation in the area in which the human remains or cultural items were excavated or discovered and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations now reside. Disposition of human remains or cultural items may not occur until at least thirty days after publication of the second notice. Copies of the newspaper notice with information on when and in

what newspaper it was published must be sent to the National Park Service. In the ten years since NAGPRA became law, 26 pairs of Notices of Intended Disposition have been published in local newspapers accounting for 75 human remains, 46 funerary objects, no sacred objects and 5 objects of cultural patrimony. One pair of notices was subsequently rescinded as part of ongoing litigation (US District Court 1996a and 1996b). Of the remaining 25 Notices of Intended Disposition, 22 dealt with claims based on cultural affiliation and three dealt with claims based on aboriginal land.

Notification is not meant as a primary means of communication with potential claimants but as a last chance for any legitimate claimants that may have been inadvertently overlooked to voice their concerns. Likewise, notification does not necessarily mean that disposition or repatriation of the cultural items has been completed, only that the museum or federal agency has come to a decision that particular lineal descendant, Indian tribes or Native Hawaiian organizations have a right to claim the items.

Appeals

In some cases, it may not be possible for the federal agency or museum and the interested individuals, Indian tribes and Native Hawaiian organizations to agree on the disposition or repatriation of particular human remains and cultural items. A lineal descendant, Indian tribe or Native Hawaiian organization may decide to present more evidence following a federal agency or museum's decision not to dispose or repatriate particular objects. This situation is most likely to arise regarding the repatriation of human remains and associated funerary objects in federal agency or museum collections since, because of the statutory deadline for inventory completion, some information may not have been readily available at the time the decision was made. Such additional evidence has to be given full consideration by the federal agency or museum, and the decision regarding disposition or repatriation revised if necessary.

The Native American Graves Protection and Repatriation Review Committee is charged with facilitating the resolution of disputes among lineal descendants, Indian tribes, Native Hawaiian organizations, museums and federal agencies relating to the return of human remains and cultural items. The review committee will consider requests to facilitate the resolution of a dispute from any of the involved parties. If the review committee decides to attempt to facilitate resolution of the dispute, it will initially request written documentation regarding the dispute from all involved parties. This information will be reviewed and, if appropriate, the disputing parties will be invited to appear before the committee. Review committee recommendations, which are made to the Secretary of the Interior, are not binding. To date, the review committee has issued recommendations in four such disputes. In one, the committee recommended the holding institution revise its determination of cultural affiliation and repatriate human remains to a Native Hawaiian organization (Review Committee 1993a). In a second dispute, also involving a Native Hawaiian organization, the information was less convincing, and the review committee recommended the holding institution transfer human remains to another institution where the issue of cultural affiliation could be

better addressed (Review Committee 1993b). In both cases, the institution complied with the review committee's recommendations and the remains were ultimately repatriated. In the third dispute, the review committee found that a carved wooden figure fitted the definition of 'sacred object,' and recommended it be repatriated, again to Native Hawaiian organizations (Review Committee 1997). In this latter case, the holding institution responded to the committee's recommendation by resorting to federal court. However, the situation has since been settled by agreement between the institution and the Native Hawaiian organizations. In a fourth dispute, an Indian tribe objected to the process used by a federal agency to determine cultural affiliation. The review committee recommended the federal agency reconsider its process (Review Committee 2000a).

Disposition or repatriation

Disposition or repatriation of human remains and cultural items has occurred when the control or custody has been transferred from the federal agency or museum to the appropriate lineal descendant, Indian tribe or Native Hawaiian organization.

When transferring control or custody, the federal agency or museum must ensure that the human remains and cultural items are deaccessioned according to federal agency or museum procedures, including assigning deaccession numbers, updating accession and catalogue records, completing a deaccession form and filing all documentation in the accession or optional deaccession file (McKeown *et al.* 1998).

Preparation for disposition or repatriation must also involve additional consultation with the appropriate lineal descendant, Indian tribe or Native Hawaiian organization to determine the place and manner of delivery (United States Code 1990a: 25 U.S.C. 3005 (a)(3)). Museum or federal agencies officials are required to inform the recipient of cultural items of any presently known treatment with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects (Code of Federal Regulations 1995: 43 CFR 10.10 (e)). In one of the largest repatriations to date, five different museums and federal agencies returned the remains of over 2,000 individuals to the Pueblo of Jemez. The human remains were reburied at Pecos National Historical Site near the spot from where they had originally been excavated between 1915 and 1929.

TRAFFICKING IN NATIVE AMERICAN HUMAN REMAINS AND CULTURAL ITEMS

Section 4 of the statute makes it illegal to traffic in Native American human remains and cultural items. Subsection (a) stipulates that whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains shall be fined or imprisoned, or both (United States Code 1990b: 18 U.S.C. 1170 (a)). In the ten years since NAGPRA became law three individuals have been convicted under this provision. All pleaded

guilty to the charges. One case involves Native American human remains from a National Park Service unit. On 19 January 1994, Richard Phillip Maniscalco knowingly transported and sold a variety of items taken from Little Bighorn Battlefield National Monument. One of the items sold was a Native American leg bone. No permit had been issued to excavate or remove the items from the monument. Maniscalco pleaded guilty to trafficking of Native American human remains without right of possession (United States Code 1990b: 18 U.S.C. 1170 (a)) and trafficking archaeological resources illegally excavated, removed and obtained from federal property (United States Code 1979: 16 U.S.C. 470ee). On 21 December 1995, Maniscalco was sentenced in Alexandria, VA, to one-year probation and fined \$1,500. Maniscalco also paid \$1,500 to facilitate repatriation of the human remains to the culturally affiliated Indian tribe.

Subsection 4 (b) of the statute stipulates that whoever knowingly sells, purchases, uses for profit or transport for sale or profit, any Native American cultural items obtained in violation of the statute shall be fined or imprisoned, or both (United States Code 1990b: 18 U.S.C. 1170 (b)). In the ten years since NAGPRA became law, seven individuals had been convicted under this provision, one twice. Of the eight convictions, six resulted from guilty pleas.

One of the cases that went to trial involved the trafficking of a Navajo medicine bundle. On 23 August 1993, Richard N. Corrow knowingly purchased and transported 22 Navajo Yei'i Be Chei masks. On 9 December 1994, Corrow attempted to sell the masks to an undercover federal agent. The masks were identified as objects of ongoing significance to the Navajo Nation that could not be alienated by any individual (object of cultural patrimony). Corrow had not been given permission by the Navajo Nation to remove the masks from tribal land. On 26 April 1996, Corrow was found guilty of illegal trafficking of Native American cultural items obtained in violation of NAGPRA (US District Court 1996e). On 3 July 1996, Corrow was sentenced to five years probation and 100 hours of community service to benefit the Navajo Nation. The masks were transferred to the care of the Navajo Nation. Corrow subsequently appealed his conviction to the 10th Circuit United States Court of Appeals who affirmed the conviction on 11 July 1997. Corrow's subsequent petition for a writ of certiorari was denied by the Supreme Court.

The second trafficking case that has gone to trial involved the trafficking of six Hopi ceremonial masks and Roman Catholic robes, vestments and other liturgical items from the Pueblo of Acoma. From April to October 1996, Rodney Phillip knowingly purchased six Hopi ceremonial masks from Ernest Wendell Chapella, a resident of the Hopi Indian reservation. Tidwell subsequently sold the masks. The masks were identified as objects of ongoing significance to the Pueblo of Hopi as a whole that could not be alienated by any individual (object of cultural patrimony). On 18 June 1996, Tidwell knowingly purchased, transported and sold robes, vestments and other liturgical items believed to have belonged to a Roman Catholic priest who died during the Pueblo Revolt in 1680 and currently in use by the Altar Society at Acoma Pueblo. The robes, vestments and other liturgical items were identified as objects of ongoing significance to the Pueblo of Acoma as a whole that could not be alienated by any individual (object of cultural patrimony). Tidwell was not given permission by either pueblo to

remove the objects of cultural patrimony from tribal land. On 11 December 1997, a jury found Tidwell guilty of illegal trafficking of Native American cultural items obtained in violation of NAGPRA (US District Court 1997). Tidwell was also found guilty of conspiracy, theft of tribal property and trafficking in unlawfully removed archaeological resources. On 16 March 1998, Tidwell was sentenced to 33 months' imprisonment and fined \$12,000. Tidwell's conviction was affirmed on appeal. Chapella, who was charged along with Tidwell, took his own life prior to trial.

CONCLUSION

On 26 October 1990, McCain's co-chair on the Senate Select Committee on Indian Affairs, Senator Daniel Inouye also addressed the members of the Senate:

When human remains are displayed in museums or historical societies, it is never the bones of white soldiers or the first European settlers that came to this continent that are lying in glass cases, it is Indian remains. The message that this sends to the rest of the world is that Indians are culturally and physically different from and inferior to non-Indians. This is racism. In light of the important role that death and burial rites play in native American cultures, it is all the more offensive that the civil rights of America's first citizens have been so flagrantly violated for the past century. Mr. President, the bill before us today is not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights.

(Congressional Record 1990: S.17174)

Taken together, the system of subject parties, parties with standing, purview and processes outlined by the statute provide a workable compromise for resolving the complex and potentially contentious issues surrounding the disposition of Native American human remains and cultural items that are excavated or discovered on federal or tribal lands or held in federal or museum collections. Returning control of these human remains and funerary objects to lineal descendants, Indian tribes and Native Hawaiian organizations remedies years of unequal treatment. Acknowledging the communal property systems traditionally used by some Indian tribes not only returns those objects of cultural patrimony to their rightful owners but reinforces the complex social webs in which they serve. Neither idea is very new, both reflecting the guarantee of equal protection under the law imagined by America's founding fathers and codified in the Constitution of the United States. In some ways it is sad that a law is needed to remind us of those ideals.

NOTES

- 1 The term 'possession' as used in this definition means having physical custody of such objects with sufficient legal interest to lawfully treat them as part of the museum's collection. Generally, a museum would not be considered to have possession of human remains

or cultural items on loan from another individual, museum or federal agency. The term 'control' means having a legal interest in human remains or cultural items sufficient to lawfully permit the museum to treat the objects as part of its collection, whether or not the objects are in the physical custody of the museum. Generally, a museum that has loaned human remains or cultural items to another individual, museum or federal agency is considered to retain control of those objects. The phrase 'receives federal funds' means the receipt of funds by a museum after 16 November 1990, from a federal agency through any grant, loan, contract (other than a procurement contract) or other arrangement by which a federal agency makes or has made available to a museum assistance in the form of funds. Procurement contracts are not considered a form of federal-based assistance but are provided to a contractor in exchange for a specific service or product. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered federal funds for purposes of these regulations. For example, if a museum is a part of a State or local government or private university that receives federal funds for any purpose, the museum is considered to receive federal funds.

- 2 'Intentional excavation' means the planned archaeological removal of human remains or cultural items found under or on the surface of Federal or tribal lands. Federal land managers are required to take reasonable steps to determine whether a planned activity may result in the excavation of human remains or cultural items. The intentional excavation of human remains or cultural items on federal lands can only occur after consultation with the appropriate Indian tribes and Native Hawaiian organizations and in accordance with the requirements of the Archaeological Resources Protection Act (ARPA) (United States Code 1979: 16 U.S.C. 470aa *et seq.*) and its implementing regulations (Code of Federal Regulations 1984: 43 CFR 7). In the case of tribal lands, intentional excavation of human remains and cultural items can only proceed with the consent of the appropriate Indian tribe or Native Hawaiian organization. Proof of consultation must be shown to the federal official responsible for the issuance of the required permit. Regulatory requirements for intentional excavations are detailed in the Code of federal Regulations (1995: 43 CFR 10.3). Earlier bills had required the consent of the appropriate Indian tribes and Native Hawaiian organizations prior to excavations of federal lands as well (US Congress, House 1990a: H.R. 5237 (3)(c)(2) and US Congress, Senate 1990a: S. 1980 (5)(a)(2)).
- 3 'Inadvertent discovery' refers to the unanticipated detection of human remains or cultural items found under or on the surface of federal or tribal lands. Any person who knows, or has reason to know, that he or she has inadvertently discovered human remains or cultural items on federal or tribal lands after 16 November 1990 must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible federal land manager. Inadvertent discoveries on tribal lands must be reported immediately to the responsible Indian tribe official. If the inadvertent discovery occurred in connection with an on-going activity, the person must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains or cultural items. As soon as possible, but not later than three working days after receipt of the written confirmation of notification, the federal land manager must notify the appropriate Indian tribes or Native Hawaiian organizations and begin consultation about the disposition of human remains or cultural items. The activity that resulted in the inadvertent discovery may resume thirty days after certification by the federal land manager of receipt of the written confirmation of notification. The activity may also resume in less than 30 days if a written, binding agreement is executed between the federal agency and the affiliated Indian tribes or Native Hawaiian organizations that adopt a recovery plan for the excavation or removal of the human remains or cultural items. The disposition of all human remains and cultural items must be carried out according to the priority listing in the statute. Regulatory requirements for inadvertent discoveries are detailed at 43 CFR 10.4 (Code of Federal Regulations 1995).
- 4 Other organizations that have been identified in published Federal Register notices as culturally affiliated with Native Hawaiian remains and cultural items include: the Alapa 'i Havapi, Association of Hawaiian Civic Clubs, Department of Hawaiian Homelands, Hawaiian Civic

Club, Hawaiian Genealogy Society, Hawaiian Island Burial Council, Ka Lahui Hawaii, Kamehameha School, Kau/Ni'ihau Island Burial Council, Keohokalole 'Ohana (family), Kekumano'Ohana (family), Lili'uokalani Trust, Maui/Lanai Burial Council, Molokai Island Burial Council, Molokai Museum and Culture Center, Naha 'Olelo O Kamehameha Society, Na Papa Kanaka O Pu'uukohola Heiau, Nation of Hawaii, Native Hawaiian Advisory Council, O'ahu Island Burial Council, Pa Ku'i-a-lua, Pu'uhonua O Waimanalo, Royal Hawaiian Academy of Traditional Arts, and the Van Horn Diamond 'Ohana (family).

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10 *Repatriation in the USA: a decade of federal agency activities under NAGPRA*

FRANCIS P. McMANAMON

INTRODUCTION

Since its passage in 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) has created a new relationship between Indian tribes, Native Alaskan groups, and Native Hawaiian organizations and federal agencies and museums that receive federal funds (e.g. Goldstein and Kintigh 1990; Goldstein 1992; McManamon 1994, 1998; Ferguson 1996; Rose *et al.* 1996; Dongoske *et al.* 2000). This chapter focuses on how Federal agencies are implementing the law and the challenges they are facing. Although museums are not considered in this chapter (but see Isaac Chapter 12), it is important to note that most museums in the United States receive public funds and have the same responsibilities as agencies regarding the collections they hold. In some instances, specific agency offices and museums are working closely because agency collections are held by many museums.

IMPLEMENTING NAGPRA: SUCCESSES AND CHALLENGES

Since 1990 a national system of regulatory procedures and guidance has been developed from scratch to deal with situations that are often difficult and emotional. These cases sometimes place anthropologists, archaeologists, curators, historians, and other educators and scientists in conflict with American Indians, Native Alaskans and Native Hawaiians. Perhaps the most striking aspect of what has happened regarding the implementation of the law is that thousands of government, museum and academic professionals in hundreds of museums and agency offices have been able to arrive at acceptable resolutions to hundreds of NAGPRA cases with thousands of Native Americans.

As of December 2000, 421 Notices of Inventory Completion and 292 Notices of Intent to Repatriate had appeared in the *Federal Register* announcing the willingness or intent to repatriate from museums or federal agency repositories Native American human remains or cultural items covered by NAGPRA. These notices cover 22,522 sets of Native American human remains, nearly 455,352 associated funerary objects, 50,888 unassociated funerary objects, 898 sacred objects and

237 objects of cultural patrimony (NAGPRA Update, 7 December 2000). Most of these notices and the items covered by them indicate that agreement has been reached between the museum or public agency that holds the remains and items and the lineal descendent(s) or culturally affiliated tribe(s) about the definitions of the objects and the cultural affiliation. It is fortunate that many examples exist of agreement, because there also are cases in which disagreements regarding implementation of the law have developed. As is often the case, the controversial situations receive the most public attention. Such controversies must be faced and dealt with, but it is important to remember that there are many more examples of positive relationships developed and appropriate repatriations carried out.

SUMMARIES OF FEDERAL AGENCY ACTIVITIES

Section 6 (25 U.S.C. 3004) and Section 5 (25 U.S.C. 3003) of NAGPRA requires all federal agencies to provide Indian tribes and Native Hawaiian organizations with written summaries of their collections if these collections might include unassociated funerary objects, sacred objects and objects of cultural patrimony with which Indian tribes or Native Hawaiian organizations may be culturally affiliated. Federal agencies and museums also must compile item by item inventories of Native American human remains and associated funerary objects in their collections and, in consultation with Indian tribes and Native Hawaiian organizations, determine the cultural affiliation of those items.

In addition to these requirements, federal agencies that manage public lands are required to consult with Indian tribes and Native Hawaiian organizations regarding the disposition of human remains, funerary objects, sacred objects and objects of cultural patrimony discovered or excavated on federal lands.

In January 1998, representatives of many federal agencies responsible for carrying out NAGPRA presented summaries of their agency activities to the Native American Graves Protection and Repatriation Review Committee, a national committee authorized by the law and established by the Secretary of the Interior to provide advice and recommendations related to aspects of implementing NAGPRA. At the December 2000 Review Committee meeting, several agency representatives again provided information for the committee on agency compliance with the law and discussed issues with the committee members. The summaries of agency compliance presented in the following sections are taken directly from or based upon the original agency reports, with updates as they have been made available by the agencies (NAGPRA Review Committee 1999).

For the Department of the Interior, which contains the most bureaus required to comply with NAGPRA, the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service and the National Park Service provided summaries.

The Bureau of Indian Affairs (BIA)

All Native American human remains and cultural items recovered from land under BIA control are held in non-federal repositories. The agency has funded a four-year

study by the Arizona State Museum to assess a collection of between three and four thousand human remains and the associated funerary objects. BIA is also undertaking a pilot project with the Museum of Northern Arizona to assess repatriation costs. Indian tribes are being consulted in each of these efforts.

The Bureau of Land Management (BLM)

The prime responsibility of the BLM is to manage public lands. It is the largest federal land-managing agency, with 270 million acres or approximately 41 per cent of all federal lands under its control. Constant land transfers in and out of federal control have complicated the search for NAGPRA materials.

Since 1812, individuals and institutions have been conducting scientific expeditions on public lands, excavating and collecting millions of objects, which were then transported to hundreds of non-federal repositories, including universities, museums and historical societies. Since 1906, permits for archaeological excavations on public land were issued under the Antiquities Act. BLM has had authority to issue permits for excavation on its own lands since the mid-1980s. Research indicates that it is responsible for one of the largest artefact collections of any agency within the Department of the Interior, but due to the vast number of excavations undertaken in the past, the exact number of human remains and funerary objects in BLM control is not now known. The BLM is currently working on a process to determine where its collections are located. Once collections have been traced to a particular repository, there is also the problem of segregating those under BLM control from those controlled by the institution.

The BLM has limited resources with which to accomplish NAGPRA tasks. To date, it has completed work toward the potential repatriation of 453 human remains and 7,167 objects. This task has required thousands of hours of inventory and analysis by non-federal museums and BLM staff, as well as tribal consultation, and has involved interaction with over 200 museums and approximately 150 Indian tribes and Native Alaskan villages and corporations. Representatives estimated that decades of work will be necessary to know the extent of NAGPRA-related BLM collections and consider that non-invasive study will be necessary to help determine cultural affiliation.

As of 20 November 2000, BLM reported publication of 25 Notices of Inventory Completion and two Notices of Intent to Repatriate, as well as 28 public notices in local newspapers related to the disposition of inadvertently discovered or excavated remains found on BLM lands. The agency has been informing Indian tribes of all NAGPRA-related items discovered on BLM lands and is proactively contacting them to begin consultation.

The Bureau of Reclamation (BRec)

BRec was founded in 1902 to develop irrigation projects. That responsibility evolved over the years to include flood control in municipal, rural and industrial water supplies. Most of the archaeological collections under its control originated from large development projects starting in the 1940s. Responsibility for NAGPRA compliance rests with BRec regional or area directors.

BRec submitted an agency-wide NAGPRA summary in November 1993 which described the BRec collections generally and identified specifically 18 unassociated funerary objects, one sacred object and one object of cultural patrimony. NAGPRA inventories were submitted by each of its five BRec regions and covered collections from several surrounding states. The inventories include 67 individual human remains and 1,100 associated funerary objects identified as being culturally affiliated with one or more Indian tribe, as well as 1,497 individual human remains and approximately 60,000 associated funerary objects considered to be culturally unidentifiable. Inadvertent discoveries and planned excavations have mainly occurred on tribal lands and are dealt with on a case-by-case basis. Approximately 80 tribes were consulted by the BRec as part of the NAGPRA inventory process.

The Fish and Wildlife Service (FWS)

The FWS has a primary mission to protect and restore the Nation's wildlife populations and their habitat. Two key FWS programmes are directly involved with NAGPRA: the land management aspect and the law enforcement division. It has field offices in every state and most territories and possessions of the United States, encompassing over 92 million acres of land. Like the other Interior bureaus, FWS is a decentralized organization with most of the decisions being made at the regional office level or lower. Day-to-day responsibility for compliance with NAGPRA rests at the regional office level with funding coming from general funding for maintenance of museum collections.

FWS fulfilled the NAGPRA summary and inventory requirements by 1996 but recognizes that the excavation and discovery requirements of the statute create ongoing responsibilities. There has been some problem in determining which Indian tribes should be consulted, particularly in the southeast United States. The lack of information regarding existing collections is also a problem.

The National Park Service (NPS)

Roles and responsibilities of compliance with NAGPRA by NPS officials are dispersed at different management levels. Superintendents have responsibility for ensuring that their NAGPRA inventory and summaries are correct. Following the NAGPRA regulations and using appropriate evidence, superintendents make determinations of cultural affiliation, ensure that NAGPRA definitions are properly applied and ensure that appropriate consultation with proper Indian tribes or Native Hawaiian organizations is undertaken. NPS staff at regional offices and support offices provide technical assistance with the tasks assigned to the superintendent. At the national level, staff at the Archaeology and Ethnography programme provide technical assistance in drafting Federal Register notices and other matters. This staff also develops national level guidance when needed.

There are 103 NPS units which control and/or possess Native American human remains and associated funerary objects. Included in these collections are 4,501 culturally

affiliated Native American human remains (approximately 75 per cent of the total). Culturally unidentifiable Native American human remains numbering 1,495 (approximately 25 per cent of the total) account for the remainder. The total number of sets of individual remains inventoried is 5,996, plus 82,368 associated funerary objects.

As of the beginning of December 2000, 31 NPS units have published 35 Notices of Inventory Completion (NICs). This is approximately 30 per cent of all parks reporting remains and objects covered by NAGPRA (31/103 total units). Of the 70 NPS units reporting culturally affiliated remains or objects, 44 per cent have published NICs (31/70 units). Draft NICs are drafted and pending from 41 NPS units.

These NICs account for 3,169 sets of Native American human remains (approximately 53 per cent of the total Native American human remains cared for by the NPS and approximately 70 per cent of the culturally affiliated Native American human remains cared for by NPS units). Also included are 38,125 associated funerary objects (approximately 46 per cent of all the associated funerary objects cared for by NPS units).

As of the beginning of December 2000, seven National Park units had published 9 Notices of Intent to Repatriate. The notices published cover 26 unassociated funerary objects and 328 sacred objects. Currently, 80 NPS units have indicated that they may possess unassociated funerary objects, sacred objects or objects of cultural patrimony. Four NPS units have published five public notices in local newspapers which represent five sets of Native American human remains, 135 associated funerary objects and two objects of cultural patrimony.

The NPS has met deadlines for completion of NAGPRA summaries and inventories. A single summary was compiled for the entire agency and was distributed to all Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations in October 1993. Bureau guidance providing detailed step-by-step instructions for compliance with the statute have been sent to all parks superintendents. A video and workbook have also been completed and sent to parks and Indian tribes.

The Forest Service (FS)

Three bureaus within the Department of Agriculture also provided summaries of activities at the January 1998 meeting. Of these, the FS has the largest responsibilities under NAGPRA. It currently manages 191 million acres of public land and is divided into nine regional offices with approximately 120 forest administrative units.

The majority of FS collections from prehistoric sites came from permitted activities, such as museums and universities undertaking research. In the mid-1980s, the FS initiated a nationwide effort to identify all agency collections. Collections were identified in approximately 135 museums in the United States and elsewhere, including some collections in Russia, Switzerland and Sweden.

In the 1998 report, NAGPRA summaries and inventories had been completed for all but six National Forests. The largest number of human remains – approximately 5,500 individuals – were identified in the southwest Region. Repatriation efforts are underway for approximately one-third of these remains, including 450 human remains recovered during the Roosevelt Dam construction in the 1920s. Approximately 1,100

human remains have been excavated since 1990. Consultation has been conducted with 52 Indian tribes in preparation for determining cultural affiliation and proper disposition.

The California Region has 150 human remains and has consulted with 40 tribes in the repatriation process. Half of these remains have been repatriated. The Alaska Region has identified 42 human remains and is prepared to repatriate them to the culturally affiliated Alaska Native villages and corporations. Lack of response and intertribal conflicts have delayed any repatriation of these remains. The remaining regions have relatively small numbers of human remains. Intermountain Region identified no human remains or cultural items. Region One identified one individual. Great Basin Region identified 17, of which half were repatriated and the remainder are in process. Pacific Northwest Region identified fewer than 12 human remains. These human remains are primarily in museum collections, which in some cases is the cause of the delay. In Alaska, a number of human remains were repatriated directly from the museum to the tribes.

The FS has almost completed its NAGPRA responsibilities for summaries and inventories, and is well on the way to repatriating the human remains and cultural items that have been culturally affiliated and requested by Indian tribes. The FS has fiscal concerns regarding NAGPRA, for example in Alaska, where due to tribal requests to rebury human remains in caves on agency land, prior to reburial the FS is responsible for ensuring reburials will have no effects on other *in situ* cultural resources. The estimated cost for the FS to finance the reburials of human remains was \$5.5 million.

As a result of problems regarding tribal consultation within the FS, a set of consultation guidelines are being drafted to strengthen performance at the field level, including the need for decision-making FS personnel at consultations. FS has a NAGPRA training course for their Heritage Specialists which they are trying to offer in every region.

The Department of Defense

The Department of Defense includes several bureaus with substantial NAGPRA responsibilities. The US Army Environmental Center is concerned with the cultural and natural resources on the 12 million acres managed by the Army. In 1994, it initiated a centrally funded nationwide programme to bring the Army into compliance with the summary and inventory requirements of NAGPRA. Of the 167 installations investigated, 97 required preparation of summaries, which were completed in September of 1996. These reports included listings of Indian tribes potentially interested and affiliated with NAGPRA items. Twenty installations required inventory reports, which were completed in September of 1997. Individual installations were responsible for initiating consultation and effecting repatriation to the appropriate tribes. In an effort to comply with NAGPRA, the Army developed Army Regulation 200-4, directing installation commanders to comply with NAGPRA requirements as well as the full range of statutory and regulatory requirements of concern to Native Americans.

The Army Corps of Engineers (COE) also presented a summary. Its primary mission includes navigation, flood damage control, recreation and environmental management, and it manages roughly 10 per cent of total Federal lands. The Corps reviewed an estimated 141,000 cubic feet of archaeological collections with an estimated 3,660 skeletal remains. One of the biggest jobs related to the NAGPRA process is locating the collections within the various curation facilities around the country. To date, all Corps collections have been identified in the western and central parts of the country, and slightly more than half have been identified in the eastern part of the country.

In December 2000, COE officials reported that NAGPRA inventories were underway at 93 per cent of the districts that had collections requiring compliance and that one-third of these districts had completed their NAGPRA inventories. The Corps is working on consultation guidelines similar to those of the Army, designed to promote better understanding within the individual districts regarding consultation and developing consultation processes.

The COE curation center has taken on a wider role in NAGPRA compliance by also providing assistance with summaries and inventories for other defense agencies and agencies outside the Department of Defense also. The Corps has contracted to undertake curation and NAGPRA-related work for federal agencies, including the BIA and the BLM.

The US Navy

The US Navy is a decentralized organization, with NAGPRA responsibility delegated to the commanding officer at each installation. The majority of Navy collections containing NAGPRA items are in the western United States and most of these had completed inventories as of January 1998. At that time, the eastern United States had yet to be inventoried, although it was expected that there would be very few objects applicable to NAGPRA.

As of December 2000, between 19 and 22 NAGPRA cases could be identified by the Navy. NAGPRA inventories by the Navy have identified approximately 2,300 sets of Native American human remains. Of these, 1,597 sets of remains have been repatriated in three different actions.

The Department of Energy (DOE)

This department has a comprehensive cultural resource management programme, including responsibilities related to NAGPRA. The Federal Historic Preservation Officer for the DOE is responsible for managing this programme, including compliance with NAGPRA. Site management mechanisms have been developed to provide tribal representatives with information regarding all site activities. Where multiple tribes are affiliated with a site, tribal committees are developed to deal with NAGPRA-related decisions. The DOE currently has Memoranda of Agreements (legal documents stating that two (or more) organizations will cooperate on some

project or programme) with tribes regarding the Nevada, Idaho and Washington sites, and comprehensive archaeological survey work must be undertaken in order to discover locations of archaeological sites and likely locations of burials in the early planning stages of any land-use decisions. On-site monitors at many sites include tribal representatives. The DOE attempts to identify Indian tribes and Native Hawaiian organizations that might have affiliation with an area that could be disturbed by a project. DOE has provided guidance and cultural sensitivity training for all personnel, in most instances with tribal representatives participating in the training.

CHALLENGES FOR FEDERAL AGENCIES IN COMPLYING WITH NAGPRA

There are several common themes running through the summaries of agency actions and the concerns about implementation. There are many concerns about obtaining adequate financial and staff resources to accomplish the requirements, particularly given the deadlines established by the law (and see Isaac, Chapter 12 with regard to museums). With government reductions in workforce during the past decade and declining funding, agencies have had to reallocate staff and funding resources into these activities. Some progress is reported by all agencies, but the extent varies substantially with some officials placing more emphasis on compliance with NAGPRA than others.

In some instances, individuals or organizations have rushed to implement NAGPRA, overlooking appropriate procedures or ignoring the need for careful gathering, recording and sifting of various kinds of evidence. Sometimes these overly zealous efforts have been well intentioned, but in other instances, they have been hasty attempts to quickly rid an official or organization of a seemingly intractable, complex problem. In both cases, the law has been misused or abused. In still other instances, inappropriate foot-dragging has held up proper resolution of cases that need to be resolved.

What was learned from these bad examples is that quick is not necessarily best, or even good. Issues related to determining whether remains or objects fit the definitions used in NAGPRA, determinations of lineal descent or cultural affiliation, or whether a museum has the 'right of possession' of an object that otherwise would be subject to a repatriation claim, can frequently be complex and thorny. Careful consideration by all parties is appropriate in working through them and reaching the reasonable, well-based conclusions called for by the law. Striking a balance that takes into account all the appropriate perspectives and rights under NAGPRA may be time-consuming but leads to a better common understanding in the end.

Several agencies reported difficulties in specific aspects of implementation such as how consultation with tribes and other groups should be carried out. NAGPRA calls for specific kinds of consultation, both relating to existing collections and to new excavations and discoveries. However, other laws and regulations also call for consultation with Indian tribes in certain circumstances. All of these kinds of consultation vary. In addition, individuals' interpretations of the requirements, the level of participation and how the consultation is conducted frequently also vary. Miscommunication and misunderstanding can easily follow in such situations.

Disagreements about whether objects fit NAGPRA categories or whether or not a modern tribe is culturally affiliated with certain remains and objects are other sources of concern. Congress foresaw that disagreements would exist among the parties implementing the law and provided for two specific mechanisms to resolve such conflicts. One of the functions of the Review Committee established by the law is to facilitate the resolution of disputes by reviewing the facts of individual cases in light of the law and making recommendations for resolution. The other means of resolution is the federal court system, an expensive proposition that is encouraged only as a last resort. The consultation procedures required by the law, and face-to-face meetings encouraged by the regulations and guidance beginning at the initial stages of NAGPRA compliance, should also help in establishing good relations that foster mutually acceptable resolutions rather than disagreements.

With a decade of experience and hundreds of examples of application of NAGPRA's definitions and procedures, comparative analysis of how decisions regarding repatriation are being made is possible. A recent quantitative review by Roberts (2000), for example, noted differences between museums and agencies in the kinds of evidence used for making decisions about cultural affiliation. He notes that it also would be useful to compare decision-making by particular institutions within these two categories and examine differences. Mudar (2001) has summarized the growth in formal repatriation activities under US laws. She notes the substantial activities and cooperation among agencies, museums and tribes. She also notes that the federal agencies overseeing these activities have expanded and shifted the national administration of the procedures to accommodate the growth in activity and concerns raised during the first decade of work.

BALANCING REPATRIATION AND OTHER RESPONSIBILITIES

All of the agencies whose activities are described here have primary missions unrelated to repatriation and also must adhere to other laws that require certain kinds of cultural and natural resource stewardship. NAGPRA is a law that imposes some constraints on certain kinds of archaeological, anthropological, and historical research and other activities. These constraints are part of the balance established by the law to address grievances that many Native Americans have raised, quite legitimately, about the treatment of the burials and human remains that are, or that they believe are, associated with their ancestors.

The drafting and negotiating that led to enactment of NAGPRA involved a series of compromises that attempted to balance competing perspectives and values. These divergent perspectives and values included: (1) long-standing Native American concerns about how human remains, funerary objects and other special objects associated with their ancestors have been treated by museums and scientists (Beider 1986; Riding In 1992; Trope and Echo-Hawk 1992); (2) the legitimate educational mission of museums; and (3) the legitimate research mission of archaeologists, physical anthropologists and other scientists. In implementing the law, guidance and regulations have

been created that attempt to promote the balanced approach to achieving the social goals envisaged by the law while meeting its legal requirements (McManamon 1992, 1994, 1998; McManamon and Nordby 1992; McKeown 1995; Naranjo 1995; Ravesloot 1995; Worl 1995).

NAGPPA is not unique in creating constraints on publicly funded or licensed activities in the US. For example, scientific research in many disciplines is subject to legal restraints and government regulation. Recently the debate about the need for legal prohibition on human cloning and associated research was prominent in the national news. In fact, human subject research in many scientific fields that is funded or sponsored by federal agencies must comply with an extensive set of regulations and guidelines. There are sets of federal regulations, sometimes referred to as the 'common rule' (e.g. 32 CFR 219 for the Department of Defense, 10 CFR 745 for the Department of Energy, and 45 CFR 46 for the Department of Health and Human Services) that control the kinds of activities allowed in human subject research. Generally, these regulations enforce a federal requirement that researchers who plan to use human subjects for their studies obtain approval from an institutional review board, fully inform the potential human subjects and obtain written agreement to participate from the subjects.

Since 1906, the federal government has regulated archaeological research on public and Indian land in the United States through the Antiquities Act. This regulation and federal oversight of archaeology on public lands was championed by prominent representatives of the nascent anthropological, archaeological and museum professions at the beginning of the 20th century (Rothman 1989; Lee 2001). From this initial declaration of a special public interest in promoting the proper scientific treatment of archaeological remains, the breadth and scope of government interest in archaeological and historical resources has broadened and deepened (McManamon 1996). From the late 1940s through the 1980s, archaeologists, historians and historic preservationists laboured to strengthen federal regulation of public and private activities and the treatment of shipwrecks that would or were likely to impact on archaeological and historic properties (e.g. Brew 1961; Davis 1972; McGimsey 1972; Friedman 1985; Jennings 1985; Glass 1990). By and large, these laws, regulations and programmes have benefited the scientific research and educational goals of archaeologists, physical anthropologists, museums and others who hold and promote the values associated with research and education. Of course, regulation also has meant limitations and constraints on some aspects of research done under these legal authorities. The methods and techniques used in research projects, as well as the execution and results, have been open to public scrutiny.

The laws and regulations that protect archaeological sites on federal and Indian lands in the United States, the Antiquities Act and the Archaeological Resources Protection Act require that proposals for archaeological investigations on federal land meet certain standards. In order to receive a permit to carry out archaeological research, federal regulations (e.g. 43 CFR 7.8) specify that applicants must show they have appropriate experience and training. It is required that the proposed work be 'undertaken for the purpose of furthering archaeological knowledge in the public interest ... [including] scientific or scholarly research, and preservation of archaeological data' (43 CFR

7.8(a)(2). Also, the proposed work must not be inconsistent with any management plan or policy, a report must be provided at the conclusion of the work, notification of Indian tribes may be required and any recovered artefacts and data must be adequately curated. While most of these requirements are consistent with contemporary archaeological research goals, there are also non-archaeological requirements: in particular, the consistency with management plans and policy that must be met for the research to be permitted.

Research in many fields also is constrained by professional ethical principles. In 1996 the Executive Board of the Society for American Archaeology adopted 'Principles of Archaeological Ethics.' Principle No. 2 states that 'responsible archaeological research, including all levels of professional activity, requires ... a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved' (Society for American Archaeology 1996: 451). The Code of Professional Standards of the Archaeological Institute of America (Archaeological Institute of America 1997) calls for professional members to carry out their research in a way that takes into account 'the legitimate concerns of people who claim descent from, or some other connection with, cultures of the past'. The standards note that such concern must be balanced with the scholarly integrity of proposed research, but that a mutually acceptable accommodation should be sought. These are two examples; other ethical standards, for example those of the American Anthropological Association, the Registry of Professional Archaeologists, the Society for Historical Archeology and other organizations, also address such issues. As these various legal, regulatory, and ethical requirements show, the constraints based upon the requirements of NAGPRA are hardly unique or the first constraints on archaeological and anthropological research.

Although it does constrain some kinds of scientific research, NAGPRA does not prohibit research on Native American human remains, funerary objects or other cultural items covered by the law. In fact, effective implementation of the law requires some kinds of research. For example, in order to determine the appropriate cultural affiliation of certain Native American human remains, scientific investigation, analysis and interpretation of certain kinds of data are required.

As already noted, NAGPRA was formulated and enacted, in part, to correct past wrongs in the treatment of Native American burials. Many of the early proponents of the legislation that led to NAGPRA denigrated the value of scientific analysis and understanding gained from the study of Native American human remains and cultural items (e.g. Riding In 1992). Of course, not all of the 'science bashing' was accepted, but a considerable amount occurred (see Meighan and Zimmerman 1994; Watkins 1997). However, in this way, the discussions about repatriation of American remains and cultural items reflected more general debates in modern American society in which the challenges to the importance and utility of science have become much more common.

In anthropology, archaeology, history and related fields, critical analysis has shown how cultural and social bias can colour scientific application and interpretations. This kind of questioning of the scientific approach among professionals in the natural, physical and social sciences has overflowed into society at large. Public disagreements

among scientists concerning methods, techniques, the appropriateness of some kinds of research, access to data and other topics suggest to some non-scientists that the scientific enterprise has serious flaws and is untrustworthy (e.g. Begley and Rogers 1997; Marshall 1997). Critiques of science and reports about this phenomena have appeared in public discourse across the country and in popular magazines, as well as in more professional publications (e.g. Morell 1995; Williams 1995; Gibbons 1996; Begley and Rogers 1997; Blackhawk 1997; Tacon 1997; Wehrfritz 1997).

During the debate on the legislation that became NAGPRA, political and public sympathy seemed to attach to the grievances expressed by Native Americans and their advocates. Archaeologists and physical anthropologists were not able to rally wide support from Indian tribes or other Native American organizations for either the long term museum curation or scientific study of human remains, funerary objects or other items covered by the legislation. Indeed, although a score or more of Indian tribes have professional archaeology and cultural anthropology programmes, ambivalence or scepticism (e.g. some articles in Biolsi and Zimmerman 1997; Swidler *et al.* 1997; Watkins 1997) and, in some cases, hostility (e.g. Deloria 1995) towards a scientific approach continues to be widespread.

There are many recent co-operative efforts at archaeological investigations underway and bearing fruit between archaeologists and Native Americans (e.g. Hall 1995; Mills 1996; Cohen and Swidler 1997). Unfortunately, the longer history of American archaeology displays a general failure to develop enduring working relationships, including co-operative research programmes, with Native Americans. This lack of attention and communication with the people whose ancestors many American archaeologists and physical anthropologists study is understandable in an historical context (e.g. Trigger 1980, 1983; Ferguson 1996: 63–9). However this does not excuse the past approaches or make the much greater effort being placed on involvement of Native Americans (Ferguson 1996: 69–75) any easier to accomplish.

Since the enactment of NAGPRA, the Department of Interior has worked with representatives of Indian tribes, Native Hawaiian organizations, national museum organizations and national scientific organizations to implement the law in a balanced way. The regulations (43 CFR 10) issued by the department in December 1995 provide guidance and procedures for study and repatriation of human remains. In addition to meeting the requirements of NAGPRA and its regulations, any excavation or removal of Native American human remains or other cultural items covered by the law must be conducted according to the provisions of the Archaeological Resource Protection Act, cited in section 3(c)(1) of NAGPRA and its regulations (43 CFR 10.3(b)(1)). The use of contemporary, professional scientific archaeological methods and techniques is required. Proper professional recording, examination, interpretation and reporting of the results of the excavation or removal must be carried out by the responsible agency before any disposition of the remains occurs.

NAGPRA does not prohibit new scientific studies, but it cannot be used as authorization for such studies which are carried out as part of the documentation for inventories of Native American human remains and funerary objects held in public agency or museum collections. Investigations needed to describe remains and objects adequately and to reach decisions about cultural affiliations are permitted, in consultation

with tribes which have known or potential cultural affiliation with the remains being investigated. Public agencies and museums that hold such remains and objects also are permitted to undertake or allow new studies under the Archaeological Resources Protection Act and other statutes and regulations. In the case of museums, they are permitted to undertake or allow new studies according to their articles of incorporation, statements of purpose or other legal statements under which they were established.

In fact, certain kinds of studies are needed for effective implementation of NAGPRA. For example, making determinations of cultural affiliation for Native American human remains and other cultural items in their collections requires agency and museum staffs to investigate a wide range of scientific, historical and administrative information. The statute identifies ten specific kinds of evidence that should be considered when evaluating whether or not a relationship of cultural affiliation exists: 'geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion'. The process of gathering, evaluating, interpreting and reaching a decision about cultural affiliation requires study. Similarly, the new excavations and inadvertent discovery requirements of NAGPRA incorporate the conduct of study through use of modern archaeological methods and techniques for excavation, analysis and reporting.

The legislative history of NAGPRA includes several statements recognizing the importance of educational and scientific information derived from investigations of these kinds of remains and cultural objects. For example, in the Committee report for the legislation that became NAGPRA, the House of Representatives noted, 'the Committee recognizes the importance of scientific studies and urges the scientific community to enter into mutually agreeable situations with culturally affiliated tribes in such matters' (United States House of Representatives 1990: 15). The Senate committee report also recognizes the educational value of scientific research: 'The Committee intends this legislation to allow for the development of agreements between Indian tribes and museums which reflect an understanding of the important historic and cultural value of the remains and objects in museum collections' (United States Senate 1990: 5-6).

CONCLUSION

Federal agencies play a major role in implementing NAGPRA and the repatriation activities it calls for. In addition, federal agency officials are responsible for the management of archaeological sites and collections, control access to these resources and oversee their use for scientific, educational and other appropriate purposes. Agencies are also attempting to develop long term positive, co-operative relationships with Indian tribes and other Native Americans, even if agreement is not achieved the first time or every time (McManamon 1997).

Effective communications with all of the parties interested in repatriation – educators, Native Americans, scientists, and others – are an important part of the actions that must be taken by federal officials. The positive personal relationships that can grow out of regular communication and sharing of ideas and perspectives, even if they

are different, can lay the groundwork for future agreements. Furthermore, a willingness to be understanding and act with respectful regard must be adopted toward those who represent different, even opposite, sides in the consultation (e.g. Goldstein and Kintigh 1990; Goldstein 1992; McManamon 1994; Ferguson 1996; McKeown 1997).

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11 *Artefactual awareness: Spiro Mounds, grave goods and politics*

JOE WATKINS

Indigenous populations and archaeologists have long been at odds over the excavation and retention of human remains. However, it is important to understand that human skeletal remains are not the only objects of importance to indigenous populations. While American Indian protests between 1969 and 1979 (Watkins 1994: Appendix B) showed that their distrust of archaeology and archaeologists revolved primarily around the perceived threat to their ancestors' human remains, tribal groups also began addressing the desire for the repatriation of artefacts. With the 1971 disruption of archaeological excavations at Welch, Minnesota, by the American Indian Movement and the occupation of the Southwest Museum in Los Angeles in the same year, American Indians were trying to force scientists to recognize American Indian concerns that their human remains and sensitive cultural material were treated by some scientists as nothing more than mere specimens to be excavated, analysed, displayed and then forgotten.

CULTURAL PROPERTY, GRAVE GOODS, AND SACRED ARTEFACTS

Probably the first organized attempt at regaining cultural property by an American Indian group began in 1969 with the Onondaga attempt to regain their wampum belts from the State Museum of New York. The conflict was reported in newspapers such as the *Watertown Daily Times* and the *Akwesasne Notes*, as well as in scholarly journals such as the *American Anthropological Association Newsletter* and *The Indian Historian*. Anthropologists were on both sides of the conflict.¹

The Onondaga eventually did receive the belts from the museum, when the New York State Assembly voted for their return and after an Indian-owned and controlled museum had been established for their protection and curation (Anonymous 1971: 5). But the battle over the control of these belts shook many professionals whose livelihood depended upon the American Indian, from anthropologists and archaeologists to those in the museum professions.

The fight over the wampum belts was one of the first salvos from American Indian groups for the control of their own history and cultural artefacts. American Indians were no longer content to allow the anthropological or museum communities to determine what was to be displayed, how the material was to be interpreted, and the limits of Indian involvement in the entire preservation process. And, although American Indian groups attempted to recover other sacred items of cultural importance, most issues have dealt with those items associated with human remains (funerary objects or 'grave goods').

LOOTING, SCIENTIFIC EXCAVATION, AND OTHER DESECRATIONS OF THE GRAVE

In the United States, the sanctity of the grave is an important issue. Burial protection statutes in the United States vary greatly (cf. Price 1991; Yalung and Wala 1992), but most provide criminal punishment for the intentional disturbance of graves and associated funerary objects. A distinction between 'grave robbing' and 'archaeological excavation' has often been made, but does such distinction have relevance to American Indians? Riding In has stated:

Individuals who violate the sanctity of the grave outside of the law are viewed as criminals, Satan worshippers, or imbalanced. When caught, tried, and convicted, the guilty are usually incarcerated, fined, or placed in mental institutions. Yet public opinion and legal loopholes have until recently enabled white society to loot and pillage with impunity American Indian cemeteries. Archaeology, a branch of anthropology that still attempts to sanctify this tradition of exploiting dead Indians, arose as an honorable profession from this sacrilege.

(Riding In 1992: 12)

While Riding In and most American Indian authors focus primarily on the removal of the skeletons, the theft of objects associated with the burials is also important. It is interesting to note that archaeologists tend to view the looting of archaeological sites for burial goods as 'pillage' but the archaeological excavation of such sites as 'science'. Mihesuah (1996: 229) offers an analysis of the ethical, religious, and political differences between the orientation of American Indians, anthropologists, and pothunters concerning protection of the Indian dead.

Part of the American Indian problem in protecting grave sites and funerary artefacts is the fact that American Indian grave localities have often not been considered 'cemeteries' under the common law statutes of states, because they are without visible grave markers (see Price 1991). If a cemetery is abandoned, it is often no longer afforded protection. Many American Indian grave sites have been considered 'abandoned', even though the abandonment might have been involuntary.

But not all courts have held that involuntary abandonment is just grounds for the excavation of human remains. From 1968 to 1970 a private collector named Leonard Charrier excavated numerous graves of Tunica Indians from the eighteenth-century town of Trudeau in Louisiana. Trudeau was well known as a Tunica Indian village, but

its location had been lost over time. Charrier located the site and began 'excavating' graves to obtain the artefacts that had been buried with the dead but without the consent of the landowners. He offered the collection – which became known as the 'Tunica Treasure' – for sale to the Peabody Museum of Archaeology and Ethnology at Harvard, and acquisition proceedings were undertaken until halted by the question of legal ownership of the artefacts. The landowners wanted the artefacts back, since they had not known of, nor given permission for, their excavation. Ultimately, Charrier sued the landowners for rights to the collection of grave goods, claiming that the grave goods had been abandoned by its previous owners (the Tunica) when they abandoned their graves at Trudeau, and that under Louisiana's Treasure Trove law, he was the rightful owner since he had 'found' the abandoned property.

But under *Charrier v. Bell*, (496 So. 2d 601, La. Ct. App.), the Louisiana Supreme Court found that a burial ground discovered on private land was not to be considered abandoned, and allowed the descendants to prevent the disinterment of their deceased relatives. Essentially, the court said that if something is lost, the previous 'owner' still has title, but if it is abandoned, the claim to title is given up. The court ruled that funerary and other items found at the burial site had not been 'abandoned' because the tribes that left them there did not do so with the intent that anyone could come later and lay claim to the objects. The result of ruling otherwise would have been that people could dig up graves the moment after they had been filled. The artefacts were considered property of the sovereign (the tribe itself), not the individuals of the tribe. For more background on the discovery and description of the collection, along with a discussion of the Louisiana court's initial decision see Brain (1979).

Arguments about the scientific importance of funerary objects, the insecure nature of many American Indian-owned museums, the insecure nature of determining ownership (individual v. tribal; tribal v. tribal; and so forth) and the legal status of museum ownership were first analysed by Blair (1979), who ultimately stated that the best way to protect Indian artefacts was to stop their removal from tribal lands by preventing excavation or protecting against looting (see King (1972) for a similar viewpoint concerning the protection of tribal cultural properties).

In 1971, James Nason, then Curator of Ethnology at the Thomas Burke Memorial Washington State Museum at the University of Washington, discussed the relationship between museums and American Indians and suggested the return of cultural specimens to indigenous peoples after certain conditions have been met, among them that the items are culturally significant, that an adequate facility is available for their storage and protection, that trained personnel and funding is available, and that the materials would revert to museum stewardship should any of the previously mentioned conditions no longer be met (Nason 1971: 17). By contrast, T.J. Ferguson, archaeologist and past Director of the Zuni Archaeology Program at the Pueblo of Zuni, New Mexico, contends that 'one of the key ethical issues involved with the management of sacred cultural resources is making sure that the people responsible for the religious artefacts or sites participate in the decisions made about them' (Ferguson 1984: 233–4). The Zuni believe that when there exists a conflict between the religious use of an artefact and its scientific or artistic use, the religious value supersedes all others. It is also understood that, among the Zuni, some things must remain secret in order to retain their sacredness.

REPATRIATION LEGISLATION IN THE UNITED STATES

In the penultimate decade of the twentieth century, Congress passed two important pieces of legislation that gave American Indian tribes the rights to claim human remains and items important to the various tribes: the National Museum of the American Indian Act (NMAIA) in 1989 and the Native American Grave Protection and Repatriation Act (NAGPRA) in 1990 (Watkins 2000; and see McKeown Chapter 9; McManamon Chapter 10).

When the 101st US Congress passed the NMAIA (PL 101–185) in 1989, and established the new National Museum of the American Indian, it also required the Smithsonian to inventory, document, and, if requested, repatriate culturally affiliated human remains and funerary objects to federally recognized Native groups. In 1996 the NMAI Act was amended to add new categories of objects subject to repatriation and to establish deadlines for the distribution of object summaries and inventories of the Smithsonian's collections to the tribes. Definitions of the object categories subject to repatriation generally follow the language of NAGPRA. Categories of materials that are eligible for return under the NMAI Act include: (1) human remains of individuals whose identity is known; (2) culturally affiliated human remains; (3) associated and unassociated funerary objects; (4) sacred objects; and (5) objects of cultural patrimony. In addition, under long-standing Museum policy, tribes may request the return of objects transferred to or acquired by the NMNH illegally or under circumstances that render the Museum's claim to them invalid.

Associated and unassociated funerary objects are defined as items that, as part of the death rites of a culture, are believed to have been intentionally placed with an individual of known affiliation at the time of death or later. The only distinction between whether a funerary object is considered unassociated or associated is whether or not the Museum has the human remains with which it was originally interred. 'Sacred objects' are specific ceremonial objects that are needed by traditional Native American religious leaders in order to continue practising their traditional Native American religions. While many items might be imbued with sacredness in the eyes of an individual, NAGPRA regulations are specifically limited to objects that were devoted to a traditional tribal religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.

Objects of cultural patrimony are more difficult to define and vary among tribes. In general, they are cultural objects that were originally owned by the entire tribe rather than a single individual, and which have an ongoing historical, traditional, or cultural importance to the Native group. Because the objects were tribally owned rather than individually owned, they cannot have been alienated, appropriated, or conveyed by any individual at the time they were acquired.

Under the statute, lineal descendants, Indian tribes, and Native Hawaiian organizations may claim Native American items covered under the Act. While 'lineal descendant' is not defined in the statute, the statute makes it clear that lineal descendants have priority over tribal groups in making claims. Regulations require an individual to trace ancestry, directly and without interruption, by means of a traditional kinship system or by the American colonial law system of descendency to the

Native American individual whose remains, funerary objects, or sacred objects are being claimed. Reference to traditional kinship systems is designed to accommodate various systems that tribal groups might use to reckon kinship.

SPIRO MOUNDS: A STUDY IN TRIBAL AND REPATRIATION POLITICS

The Spiro Mounds complex in the Arkansas River valley in eastern Oklahoma is one of the best known mound complexes in the southeastern United States (Fagan 1995: 444). As Bense (1994: 223) notes, 'Spiro is well known to southeastern archaeologists for two reasons: the extraordinarily rich litter burials of the elite and the shameless looting of the burial mounds during the Depression.'

In 1935, the landowner leased 'mining' rights to two men who formed the 'Pocolo Mining Company.' They hired unemployed coal miners to dig craters and tunnels into the mounds in search of artefacts, and even resorted to dynamiting the mounds in an attempt to gain quicker access to the graves within them. As word spread of the rich archaeological materials being found, private collectors and museum agents converged on the site, with artefacts often being sold on the spot. In reaction to such wholesale looting, the Oklahoma State Legislature passed the state's first antiquities preservation law in 1936, the same year that professional excavations were begun at Spiro by Forrest Clements of the Department of Anthropology of the University of Oklahoma (Gilbert and Brooks 2000: 72). Phillips and Brown (1978) offer perhaps the best summary of the looting and the artefacts found at Spiro. The artefacts, often exceptional in their size and workmanship, include monolithic stone axes, engraved shell cups and gorgets, beads of shell and copper, freshwater pearls, carved stone pipes, fabric robes, and even embossed copper plates. Originally found with burials, these artefacts are funerary objects and grave goods even though it may now be impossible to associate them with the human remains to which they belong.

Political implications

On 23 February 1996, the University of Oklahoma held a ceremony that marked the official groundbreaking for the construction of the new Sam Noble Oklahoma Museum of Natural History on the campus of the University of Oklahoma. This new museum was constructed to replace the aging structures that made up the University's Stovall Museum of Natural History and to provide a new showcase for the artefacts that made up its collections. Many archaeologists regard the artefacts from Spiro Mounds as perhaps the 'crown jewels' of this collection.

The Stovall Museum, as an institution that receives federal funding, was responsible under NAGPRA for identifying all the artefacts in its collections that could be considered funerary objects or sacred objects. While their inventory included artefacts in the Spiro collection, the museum questioned which current-day American Indian tribe

(if any) could be considered as culturally affiliated with the humans interred at Spiro Mound. Various clues exist. Wyckoff (1980) notes that the assemblages from the Caddoan occupations in the Arkansas valley (of which Spiro is a part) show marked cultural change some time around AD 1400. Prior to this date, villages and ceremonial centers were occupied by mound-building horticulturists whose artefactual complex resembled those of the Caddoan societies to the south and east. After AD 1400, the material suggests more cultural contact and relationships with the neighbouring Plains societies to the west (Wyckoff 1980: 512), even though pottery, house patterns, and burial practices, in his analysis, provide evidence for cultural continuity. Wyckoff (1980: 522–30) suggests that this cultural change came about more as a result of climatic changes (increased drought conditions) rather than as a result of population pressures from external culture groups. Wyckoff (1980: 533) also recognizes that, 'the post-AD 1400 remains from the Arkansas Basin are markedly different from those found along the Red, Sabine, and Neches rivers' – sites attributed to the Kadohadacho, Hasini, Natchetoches, and Nasoni communities known as the historic Caddo Indians – and suggests that 'one or more of the Wichita tribes appear to the most likely descendants of the Arkansas Basin Caddoans' (Wyckoff 1980: 534). Rohrbaugh (1982: 238–9) agrees that the people who had flourished at the Spiro cultural complex were likely a band of the Wichita – most likely, 'the historic Kichai, a linguistically distinct group associated at various times with both the southern Caddo and the Wichita' (emphasis added). Wright's compendium of the histories of Indian tribes in Oklahoma also notes the Kichai were 'one of the member tribes of the early Caddoan Confederacy ... but later were identified with the Wichita Confederacy' (Wright 1979: 164).

The Kichai ('Keechy') were recognized in a treaty with the United States on 15 May 1846. The Treaty of Council Springs in Texas was between the United States and the 'Comanche, I-on-i, Ana-da-ca, Cadoe, Lapan, Long-wha, Keechy, Tah-wacarro, Wi-chita, and Wacoe tribes of Indians and their associate bands' (Kappler 1904: 554). The Kichai were among the Indians living along the Brazos River in Texas who were moved north to Indian Territory in 1859, where they allied themselves with the Wichita, eventually settling near present-day Binger, Oklahoma. While there may be individuals who may recognize their 'Kichai' heritage, the Kichai are no longer recognized as a distinct political body but are a part of the Wichita and Affiliated Tribes (referring, but not limited to, the Wichita Proper, Tawakoni, Waco, Keechi, Iscanis, Taovayas, Tawehash, Kitsai, Ouisita, Jumanus, and Teyas).

Because of the complex question of cultural affiliation, the Sam Noble museum was placed in a dilemma. If the descendants of the Spiro Mounds were indeed the Kichai, which modern tribe should have the authority to determine the use of funerary objects associated with Spiro Mound in the new museum exhibits – the Caddo Tribe or the Wichita and Affiliated Tribes?

Tribal consultation

On 10 December 1996, the Chairman of the Caddo Tribe, the President of the Wichita Tribe, and other elected officials of each tribe met with the President of the

University of Oklahoma, and the Director and Curator of Anthropology of the Sam Noble Oklahoma Museum of Natural History, regarding the disposition of artefacts from Spiro Mound that were in the museum's possession. As Agency Archaeologist for the Bureau of Indian Affairs office which provides technical assistance to both the Caddo and Wichita Tribes, I attended the meeting to act as both an intermediary between the tribes and museum officials and to answer any technical questions that the Tribes might have regarding NAGPRA and its applicability to the matter.

The President of the University and the museum personnel made it known that the museum wished to exhibit the artefacts as part of the proposed 'People of Oklahoma Gallery' of the new museum, and went on to outline the ways that they felt the museum and the tribes could co-operate. The pronouncement was met with mixed response.

The Chairman of the Caddo Indian Tribe of Oklahoma noted that the artefacts were indeed rare and special but that they were grave goods and therefore sacred (although they did not meet the definition of 'sacred object' under NAGPRA (see McKeown, Chapter 9)). They were subject to repatriation under NAGPRA, he argued. He indicated that the Caddo Tribe felt they could establish cultural affiliation with the pre-contact inhabitants of Spiro Mounds and that they would eventually request the return of the artefacts for exhibit within the Heritage Center of the Caddo Tribe sometime in the future. He said he felt that the artefacts demonstrated the high level of accomplishment of the Caddo Tribe in the past, and could be a source of pride to contemporary tribal members, and should be proudly displayed in the Caddo Tribe's Cultural Heritage Center near Binger, Oklahoma.

The President of the Wichita and Affiliated Tribes agreed that the artefacts were representative of special skill and also agreed with the Chairman of the Caddo Tribe that they were grave goods and subject to repatriation. However, he felt that these grave goods should not be exhibited but reburied. It was his opinion that the artefacts were not meant to be in a museum display but were meant to be buried away from the sight of individuals who had no right to view them. He also indicated that the Wichita Tribe would someday initiate a repatriation request for the artefacts.

Museum officials and the President of the University left the meeting with an idea of the complexity of options available to American Indian tribes regarding the disposition of grave goods and other artefacts under NAGPRA, and the American Indian idea that those grave goods were sacred objects to the tribe. But they also left with the control of the Spiro artefacts still within their purview.

Under NAGPRA, a tribe must be able to demonstrate 'cultural affiliation' to a set of human remains or artefacts, and this must be determined before a museum can repatriate those items. A museum reviews information submitted by a tribe and, if they agree that the claim for the material is valid, the museum can initiate repatriation. In the case of competing claims by two or more tribes, the museum can retain the artefacts and request a hearing and recommendations from the NAGPRA Review Committee, a group of seven private citizens charged with making recommendations concerning any questions regarding the implementation of NAGPRA regulations and the disposition of these remains.

Each tribe has valid arguments concerning their historic relationships with the Kichai. The Caddo could argue that its association with the Kichai Tribe in the early historic period of this area should take precedence over the Wichita because of chronological proximity to the occupation of the Spiro area. The Wichita Tribe could argue that its association with the Kichai should take precedence because it is the federally recognized legal representative for those who are known to be Kichai. In fact, the present-day Wichita and Caddo Indian tribes (along with the Pawnee and Arikara further north) were probably at one time in the past a single group. Hoijer (1967: 86–7) recognizes that their languages are ‘Caddoan,’ indicating a common linguistic origin.

In this case, since neither tribe has made a formal request for the repatriation of the Spiro artefacts, the question of cultural affiliation remains convoluted. If one agrees with archaeologists that the Kichai are indeed the descendant group of those individuals who produced the Spiro materials, it still remains problematic as to which modern tribal group should speak for them. Since both the Caddo and the Wichita can demonstrate cultural affiliation to the Kichai, the choice of either tribe as the recipient of the Spiro grave goods is full of political and ethical considerations. The museum is placed in an ethical dilemma – whether their goal should be the protection of artefacts of such international importance or compliance with repatriation legislation. The role the museum takes in the determination of cultural affiliation under NAGPRA – whether to remain a ‘neutral’ party (letting the facts speak for themselves) or an active participant (interpreting the facts and choosing one group over another) – will influence the ultimate disposition of the artefacts. If the materials are repatriated to the Caddo Tribe, the artefacts would likely be displayed in a tribal museum or cultural center and available for viewing and possibly for scientific research. They would not be lost to the public, but the possibility of theft from such a rural location is high. If the materials are repatriated to the Wichita Tribe, they would likely be reburied and unavailable for viewing or research. They would be protected from theft, but they would be essentially lost to the public.

Legally, perhaps the Wichita have a stronger claim to the Spiro material, since the Kichai are not a tribe but are recognized by the federal government as being under the political umbrella of the Wichita and Affiliated Tribes. The museum can maintain a politically neutral stance by allowing the Caddo and Wichita tribes to reach a decision on the cultural affiliation issue, and then by working with the tribe that can demonstrate the strongest relationship. But the risks of being politically inactive are substantial, since the museum stands to lose the core of its collections more if the Wichita are determined to be culturally affiliated to the Spiro artefacts than if the Caddo are determined to be so. Additionally, museum involvement in the determination would impact the political relationships between the tribes, since museum support of one tribe over another runs the risk of not only souring relationships between the museum and the ‘losing’ tribe but also enhancing the political status of the ‘winning’ tribe by its recognition as the ‘owner’ of the Spiro heritage.

Until the tribes decide their next course of action, the Sam Noble Oklahoma Museum of Natural History at the University of Oklahoma campus in Norman,

Oklahoma will retain the artefacts and continue to display them (or reproductions of them) to the general public. The artefacts will continue to be the centerpiece of the museum's collections, and will continue to intrigue generations concerning the culture that was Spiro. Tribal groups are allowed a voice in the manner in which the artefacts are displayed to an extent, but the tribes do not control the artefacts themselves.

SUMMARY

With the passage of the NMAI Act in 1989, items in the Smithsonian Institution were subjected to repatriation legislation, and on 4 March 1991, policy on the repatriation of Native American human remains and cultural materials committed 'the museum to the disposition, in accordance with the wishes of *culturally-based* Native Americans, of human remains ... funerary objects; and objects transferred to or acquired ... illegally ... or under circumstances that render the museum's claim to them invalid' (American Anthropological Association 1991: 1, emphasis added). In October of 1990, with the passage of NAGPRA, Congress established procedures which allowed American Indians to request material held in museums and federal agencies. Following a designated ranking of 'affiliation', material culture recovered from a marked or unmarked grave becomes the property of the affiliate.

It is incorrect to believe that only human skeletal remains retain importance to American Indian groups. Objects buried with the body (the funerary objects) are of similar importance to tribal groups. To many American Indian tribal groups, it makes no difference whether the disturbance is caused by grave looters or by qualified archaeologists; 'to them, the only difference between an illegal ransacking of a burial ground and a scientific one is the time element, sun screen, little whisk brooms, and the neatness of the area when finished' (Mihesuah 1996: 233).

The result is the same: the loss of sacred items intended to accompany the dead and the disruption of the spirit's journey beyond. And with the processes established under NAGPRA, museums may be able to retain control over grave goods and cultural artefacts that are important to more than one tribe by playing one tribe against another.

NOTES

- 1 Jack Frisch and Robert Thomas of Wayne State University (1970: 35), Anthony Wallace of the University of Pennsylvania in Philadelphia (1971: 9) and Jeanette Henry, anthropologist and editor of the *Indian Historian* (1970: 15–17) supported the return of the wampum belts to the Onondaga while The Council on Anthropological Research in Museums (1970: 13–14), which was comprised of William Sturtevant of the Smithsonian Institution, Donald Collier of the Field Museum of Natural History, Philip Dark of the University of Southern Illinois–Carbondale, William Fenton of the State University of New York at Albany and Ernest Stanley Dodge of the Peabody Museum at Salem decried the return.

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12 *Implementation of NAGPRA: the Peabody Museum of Archaeology and Ethnology, Harvard*

BARBARA ISAAC

INTRODUCTION

This chapter addresses compliance by museums – that is, the *process* of repatriation, and is premised on an acceptance that, given that the bones of the dead are to be rendered back to their relatives,¹ repatriation should be a *seemly process*.² I write mainly from my experience in overseeing the efforts of the Peabody Museum of Archaeology and Ethnology at Harvard (hereafter PMAE), one of America's largest anthropology museums.

THE BACKGROUND TO COMPLIANCE

What was the magnitude of the original problem? In the United States, the numbers of human remains in museums, university departments, historical societies and federal agencies were estimated by McKeown³ to be 100,000–200,000 individuals, ranging from collections of one or two individuals to ten or twelve thousand or more in the major teaching and research museums, suggesting that a few institutions hold a large fraction of the whole. NAGPRA set a deadline of November 1995 for completing inventories of these remains, but by that date the National Park Service had not received all the notices due. Fifty-eight institutions requested an extension of time to complete their inventories: 35 museums and institutions received one year, 11 two years, and 12, including the PMAE, three years. Six institutions will not be able to meet their extended deadline, and will request more time. For comparison, in January 1998, over 20 Federal Agencies reported to the overseeing Review Committee⁴ that few of them had reached compliance as of that date.

In order to be granted an extension in 1995, the applicant had to demonstrate to the Secretary of the Interior a good faith effort to complete the inventories and have sound reasons for not being able to meet the deadline. Needed in the application were a letter from the governing body giving the reasons for the anticipated failure, a description of the collections citing place of origin and current location, an estimate of the number of human remains and associated funerary objects, a list of all tribal

officials and religious leaders who had been consulted, and finally a detailed plan for completion. In its application, the PMAE gave the following reasons (Letter from D. Pilbeam to F. McManamon, February 21, 1995):

- 1 The Peabody Museum has osteological and archaeological collections that are amongst the largest in the US: *c.*12,000 individuals, together with their associated funerary goods. (It may be that only the Smithsonian Institution and the Phoebe A. Hearst Museum of the University of California at Berkeley have larger collections of human remains.⁵)
- 2 These collections are geographically extremely diverse: they originate from 46⁶ of the 50 states. (In contrast, most other large collections come from a much more limited geographical region.)
- 3 Both the archaeological and osteological collections cover the full range of American prehistory, and therefore deal with the maximum number of 'archaeologically defined' cultures.
- 4 The collections were made over one of the longest museum histories in the US, from 1866, with additional material donated from institutions with even older collections.
- 5 The first two directors of the Peabody Museum, Jeffries Wyman and Frederic Putnam, were leaders in the development of early professional standards who insisted on collecting everything in an archaeological assemblage rather than just a cranium or skeleton. The assemblages therefore are often very diverse and complex, as is the accompanying documentation.
- 6 The museum has no single cataloguing system: the Peabody system evolved through the 128 years of its history, and some large collections retain under one Peabody accession number the internal structure of their original collector's cataloguing. Often the artefacts that had been associated with human remains were given separate accession numbers, thus scattering the records. Also, the attributions given by the original researchers or cataloguers are often archaic and outdated.
- 7 The storage of the human remains has been almost entirely separated from the storage of archaeological material and there is minimal physical association.
- 8 The documents that contain information relevant to identifying and collating these assemblages are scattered not only through the Peabody Museum but also across other Harvard archives, and at times are actually to be found in the archives of other entirely autonomous institutions that at one time had shared expeditions and interests.
- 9 Only a very small fraction of our collections are from federal lands and therefore subject to support from the respective agencies.
- 10 As we work through the approximately 8,000,000 archaeological items to identify funerary goods, both associated and unassociated, we are still identifying the fragmentary remains of individuals often within the original container.

This, then, describes the situation obtaining at the PMAE in 1990. However the letter quoted above was written early in 1995 when only a few of our collections had

Table 12.1 Responses to 117 letters (dated February–November 1995) sending written inventory information on c.100 human remains and a written request for consultation to as many tribes, followed by a telephone call, tabulated September 1996

| <i>Nature of response</i> | <i>Number of responses</i> |
|----------------------------------------------------|----------------------------|
| Not ready to act | 12 |
| Preliminary reply, but not followed up | 11 |
| Procedural problems resulting in no further action | 2 |
| No interest in repatriating | 1 |
| 'Not ours' | 4 |
| No response | 80 |
| Consultation initiated | 3 |
| Inventory completion | 4 |

reached inventory completion, and when, after five years of assessing the state of collections, the staff were more aware of the complexity and magnitude of the task. We were also aware that these factors militated against the rapid return of culturally affiliated remains and were concerned about the impact of the delay. Increasingly, however, as we engaged with more federally recognized tribes,⁷ we saw a tension between the need to finish reporting by the deadline and delays because of the lack of response from the tribes with whom we were consulting (see Table 12.1). Thus compliance with NAGPRA becomes a delicate negotiation, in which the law is mediated through both the actions of the museum and the tribes for the benefit of those receiving the dead.

Compliance involves three sets of players – the legislators and regulators who create the formula and oversee its implementation, those who control the collections, and the tribal officials who are consulted and whose people benefit. Each of these is bound by the rules and expectations of their profession or world. In the U.S. system of government, the professionals (including scientists and museum administrators) and the tribal peoples are able to interact with their legislators to affect the way the law and its governing regulations are written.

Two years later, 14 tribes are in the process of consultation; one more tribe has reached inventory completion. Repatriations have been made on behalf of nine tribes, and one individual has been reported as culturally unidentifiable. Developments were in all cases preceded by visits funded by the National Park Service grants to PMAE or to the tribes, or where we knew representatives from other contexts.

FACTORS EMBEDDED IN THE LEGISLATION

Perhaps impelled by a sense that repatriation had been delayed enough, there were unrealistic expectations by the drafters of the bill as to how long it might take to assemble the requisite information for cultural affiliation through demonstration of shared group identity. Neither tribal members and lawyers, nor key legislators were willing to accept that consulting and attributing cultural affiliation would require a

time-consuming (and therefore expensive) exploration of the record available. The complaints by major museums about time and funding estimates were seen as delaying tactics. Some institutions, in order to meet the deadlines, returned reports that were superficial in their findings, and needed to be done again. So-called 'compliance' either leads to inaccuracy in cultural affiliation or to an excess of culturally unidentifiable listings.

The museums are not alone in needing extensions. Federal Agencies are projecting the need for more time for comparable collections. It seems sensible that some accommodation should be made for the largest collections, and fortunately the National Park Service, which is the regulating agency, has been able to make exceptions. Nonetheless the PMAE estimated needing eight years beyond 1995 and was only granted three. The original estimate still stands after three years of hard work.⁸

In contrast with specific yet unrealistically precise requirements, other sections of the legislation and regulations, despite assurances to the contrary, read ambiguously, or as representing compromises that are not clearly (and therefore effectively) interpretable. The following examples do not exhaust the ambiguities: (1) over the last eight years, PMAE staff members have discussed with various constituencies – Harvard's Native American students, tribal representatives, elders and anthropologists – about what is meant by 'sacred' as defined in the law (see McKeown Chapter 9). In practice, this means that museum staff need to acquire knowledge of some hundred belief systems. We are too early in the process to know whether responsibility for clarifying what is sacred will end up in secular courts. (2) It is mandated that we return culturally affiliated remains: yet what should happen to those individuals from postcontact contexts who have no culturally defining grave goods but whose morphology may indicate mixed blood? The law is silent. What about those individuals of Afro-American/ Native American ancestry? So far, the PMAE has not received any contending claims by Afro-Americans. These concerns are not just ours. Only one of the tribes with which we have consulted has wanted to repatriate 'other' persons, and it is important for officials and elders to be assured that measures have been taken to ascertain that affiliation is as sound as possible. (3) We have not yet had to examine closely what is meant by 'associated funerary objects'. But there is likely to be further discussion when we turn to cultural objects found in man-made mounds where burials also occur. (4) Major unresolved issues are the – as yet – unregulated process for the disposition of culturally unidentifiable human remains and the exclusion in both the legislation and regulations of funerary objects associated with unidentifiable human remains. Scientists see this exclusion as part of the original compromise; Indians see it as an oversight in the law. A recent attempt to look at the history of the legislation has not thrown much light on this. At this point, there is not even a process to establish a process.

Most seriously, in terms of embedded problems, there is the issue of the unfunded mandate. Museums of archaeology and ethnology are the most understaffed in relation to the size of their collections. The yearly amount allocated by Congress to National Parks to give grants to both museums and tribes is \$2.5 million and (as \$2.3 million) was only available in 1994, after the first museum deadline for completion of summaries in 1993. The PMAE has been fortunate in receiving three grants from

the National Park Service to bring to inventory completion or to report as culturally unidentifiable 657 remains from New England, (this total excludes Maine), 392 individuals from the mid-Atlantic States, and 1909 from Pecos Valley, New Mexico. Unfortunately, grants from the National Park Service provided only a fraction of what was needed. Additional support from Harvard made it possible to finalize work on the 2,958 already mentioned. The PMAE also completed work on a further 429 individuals (from the States of Hawai'i and Maine, and 22 tribes elsewhere). We estimate the overall costs for inventory completion alone to be over \$7m. The Smithsonian, with an annual subvention of \$1m from Congress over six years, has during that time reported on, or brought to cultural affiliation, *c.* 6,000 individuals, and inventoried the remainder of its collections. This inventory however was not intended to include the time-consuming process of consultation which often results in cultural affiliation, and which now will be done.

To summarize, there are three issues embedded in the law: arbitrary deadlines; a lack of clarity leading to lengthy discussions; and the necessary and expensive procedure of a proper examination of the archival record that is minimally funded for both the tribes and the museums.

FACTORS PARTICULAR TO THE PMAE AND OTHER LARGE MUSEUMS OF ETHNOLOGY AND ARCHAEOLOGY

Some of these factors, such as the collection's scope and complexity versus staff size, have already been mentioned, although what has not been made explicit is that the functions of repatriation extend into every department of the museum: the collections management, the registrar, the conservator, the financial administrator, the technology support, the director, all face an added burden; repatriation-related duties may absorb anywhere from 5–50 per cent of their working hours.

The complexity of the archival information has also been noted: in a research museum such as the PMAE a very large quantity of records are available, especially detailed notes of field work. Also, where tribes moved across territories, where they divided or amalgamated, or for other reasons, oral traditions as well as archaeological information need to be examined, and searches through the literature may need to be carried out. At the PMAE this has fast-forwarded the acquisition and adaptation of a database originally intended for fine art collections but which we now use for archaeological, osteological, and ethnographic material, with several levels of resolution (for site or human individual or cultural object, or element thereof). However, databases do not spring like Athena with knowledge in place: ours is still being modified and the inputting of data and its verification (the resolution of conflicts in the identification of objects, different versions of site names, or tribal names, etc.) against several archival sources is also demanding in time.⁹ Finally, there is the appalling fact – made apparent as staff prepared preliminary inventories of archaeological material by state – that not everything has been catalogued. Some collections still need to be processed: in some cases, incoming material had received accession numbers, and then been

shelved, quite literally. These archaeological collections have now to be catalogued in order to identify associated or unassociated burial objects – a process for which NAGPRA funds are quite rightly not available; nor are funds forthcoming from other bodies if it is thought that much of the collection will be repatriated. The compilation of the database will, of course, result in an immeasurably useful research tool, and it is an expense that must mainly be borne by the museum, even though such large collections could not have been efficiently processed for NAGPRA without computers.¹⁰

Another factor is the complexity of the constituency that a museum such as the PMAE must consult. Sent out were 757 summaries of collections which might contain sacred objects, objects of cultural patrimony, and unassociated funerary objects; and eventually the museum will have to work with at least five hundred tribal groups. However, it will not be a simple five hundred discussions – each collection entity requires different information to be elicited from perhaps a different set of tribes, depending on geography. For the remains of three Sioux individuals, recorded as coming from Fort Stevenson, four Cuthead Bands of Yanktonai Sioux needed to be contacted on separate reservations. The remains of nine Flathead individuals resulted in consultation with eight tribes. In the repatriation of a Seminole Chief, three federally recognized tribes and a non-federally recognized group were brought into the discussion, because of the location of the burial. The PMAE collections come from 1,120 different sites, some more complex than others. Each consultation demands specific knowledge of territory and custom; the process may be likened to having diplomatic relations with hundreds of nations. The museum has already consulted with about two hundred tribes from 31 states. Finding the requisite time to work with each group with the patience and thoroughness that each deserves is a challenge, and much of our success so far must be attributed to the patience, good humour, and understanding by tribal officials that the museum is indeed making a good faith effort to meet its obligations.

FACTORS EMERGING AS THE PROCESS DEVELOPS

In the best of all worlds, lawmakers and their executors would have a good understanding and the necessary support to perform their task, regulations would be issued promptly, Review Committees would be appointed in a timely fashion, publications in the Federal Register would follow soon after receipt at the office (the present wait list is six months or longer), and notification of grants received would be prompt. Because I understand why my own museum is not meeting the deadline, despite our best efforts, I also understand why the regulating agency within the US Interior Department is not able to adhere to the mandated timetable (lack of money simply equals a lack of staff).¹¹ The effect that this has had on compliance by the museums has been to compound our own difficulties: the lateness in the regulations meant that some ambiguities in the law were not clarified until publication in December of 1995, after the second deadline, and even then, some sections (i.e. §10.11 Disposition of Culturally Unidentifiable Human Remains) were not finalized.

It has also become apparent as the PMAE works with different tribal groups that for many of them there are reasons to urge delay in the publishing of final inventories

(see Table 12.1). Many tribes still do not have staff members dedicated to NAGPRA and therefore request a delay of consultation and attribution of cultural affiliation until such an official is on hand. For others, there is an unwillingness to recognize that the reporting of individuals as culturally unidentifiable is not a finality: more work, in particular more scientific analysis or more reporting of oral tradition, might change unidentifiable to affiliated. (This is one reason why some tribes, such as the Choctaw Nation and the Wichita and Affiliated Tribes, do not wish the unidentifiable remains to be summarily reburied.) Others quite simply find it hard to accept that any human remains are anything other than affiliated – ‘they are all our relatives.’ When the PMAE has had a working relationship over two years with a particular tribe, it is hard but necessary for us to override requests for delays and to insist that we have to report a certain number as unidentifiable as the law prescribes. Yet in order to comply with the law, we have to do this.

Another delay results when, although the affiliation originally seemed clear, at some point in the process it is contested by a second party. In one instance at the PMAE one tribe does not wish to bring spiritual anguish to the spirits of the dead by squabbling over them, but neither will it allow a second group to rebury. In consultations such as these, the PMAE has done its best to urge the two parties to reach an accommodation. To repatriate to either group risks a lawsuit.

Then there are the instances where affiliation is so complex and so contested, as in the southwest between certain Pueblos and the Athabascan tribes, that all efforts to publish meaningful inventories seem doomed: either affiliation is so multitudinous as to be meaningless, or it is so simplified that it suffers counterclaims. The PMAE has some of the largest collections from Arizona and New Mexico, and is just about to start on the process of consultation in these areas. Until the affected tribes can come to terms, it seems almost masochistic to expect museums to construct inventories with meaningful cultural affiliation.

Finally, there are new questions which are raised as the process is developed. For instance, who pays for the cost of repatriation? The regulations already allow for tribes to submit for grants to cover expenses, but some have insisted that the museums should be forced to bear the expense as a form of reparation – the museum as scapegoat. In response the National Park Service has created grants that will be available for museums to fund repatriation costs in addition to grants already available to the tribes. However, our own experience has taught us to be aware that the act of repatriation and reburial is a private and sacrosanct one, and such a transfer of responsibility to the museum takes away from the tribe the responsibility for making final choices. The PMAE has made every effort to reduce the cost of repatriation to receiving tribes and always offers to provide information needed to write a grant request: such as details on packing, transportation and insurance. This new discussion, however, is yet another complication adding to the daily sum of tasks.

DISCUSSION

The last eight years have been an extended workshop with staff continually examining the law and exploring strategies and techniques to meet it. We have kept

informed about developments across the country and, as we engaged in discussions with colleagues, lawyers, and tribal members, the articulation of the sections and subsections of the Act and its regulations became much more clear, although ambiguities persisted. This prevented us from making too many unwise or pressured decisions in the heat of the moment and allowed us to be able to explain the reasons for making some decisions that are unpopular but nonetheless required by the law, as in the retention of culturally unidentifiable remains until the process for disposition is clarified. We have attempted to avoid adding bureaucratic delay to the other delays built into the process. In this we have been blessed with directors and a university attorney who maintained a sustained interest and open minds. For claims which raised issues not clarified by the regulations, we created an internal review committee involving faculty members with specific expertise. This has meant that once information on a claim is gathered, any outstanding questions can be reviewed effectively and promptly.

Without impeding the ongoing work too much, we try to disseminate information on our progress and on NAGPRA: in 1991 the director formed a Committee of Native Americans from Harvard and the northeast to which we report twice yearly. As well as passing on information to the wider native community, committee members alert us to sensitive issues and remind us to be as swift as possible.

The need to provide a plan to the National Park Service in order to receive an extension to the 1995 deadline has underlined the need for clear thinking. What was drawn up three years ago has been enormously helpful in developing our strategy for coping with huge collections, numerous consultations, and office records that increase exponentially. We have had to maintain a clear accounting of what has been done and continually assess what is still needed.

We have endeavoured to raise as much funding as possible, both from the National Park Service and from Harvard's President's Fund. No other sources are available.¹² We cut costs as much as possible.

Finally, at the risk of being homiletic, we have kept before us the need to remain undaunted by the numbers and optimistic about the outcome, as well as the need to be courteous and honest at all times.

CONCLUSION

In looking back over eight years under NAGPRA, I would comment that, given our initial, and quite correct, fears of the complexity of implementation, added to the polarization of some of the players, much more has been achieved than I would have thought possible – not just in physical return but also in clarifying and understanding the parameters of the challenges that face us. Tribes, in making claims, have become aware of the information and knowledge that archaeologists and anthropologists have to offer. Museums and associated scholars are recognizing that much is to be learned from tribal elders and historians, and that much more orderly and accessible collections are resulting. However, for the larger institutions and agencies the progress is indeed slow, and this slowness can cause irritation and impatience among those who would argue that they have waited long enough. But a fuller acquaintance with what

is happening suggests that not only is the process now irreversible but that it is developing its own pace governed by the factors discussed above. Despite legislative inadequacies, problems are being resolved, and once a tribe is involved in consultation, legislative deadlines become less important than ensuring proper process.

From what has been written here, it might be thought that the process is a dry and impersonal one. Nothing could be further from the truth. There is a severe emotional burden on those individuals who come to claim their dead. Those of us at the museum who work in the Repatriation Office cannot escape, even if we wanted, from an exposure to this raw intensity of feeling. It can express itself in two ways: initially often in anger towards us who represent those who – in the view of many tribal members – have desecrated the dead; and then, when the dead are being rendered back to their kin, a sense of awe and exultation accompanied by heartfelt thanks. In the month preceding the writing of this, staff have been personally subjected to more than one instance of severe castigation because they care for collections made generations previously. But we have also been allowed to share in the overwhelming joy of the first repatriation ever to be made by a group disunited for the last two hundred years, and now brought together in this most important of rites.

The disposition of unidentifiable remains, particularly for the most ancient ones, will continue to be a hotly debated issue. But I have absolutely no doubt that in returning affiliated remains, we are engaging in an act that is necessary, humane, and overdue.

POSTSCRIPT, JULY 2000

The PMAE, along with five other institutions, did not receive the second extension it had requested to enable it to reach inventory completion in good order. National Indian organizations had pressured the Secretary of the Interior to impose civil penalties on those institutions that they claimed were not in compliance. At a meeting in April 1999 between representatives of the museum, the university, and the Department of the Interior that was requested by Harvard, the Assistant Secretary for Fish and Wildlife and his staff evaluated the record and stated that the museum's record on repatriation was excellent, but the process was not happening fast enough. A period of forbearance was installed – the PMAE would have until 31 May 2001, divided into four quota periods of six months each, to reach a stated percentage of reporting within each period. After further meetings and telephone conversations, the other five institutions were also given an extension calculated to their needs. No more grants would be made available – all expenses would have to be met by the institutions themselves.

It was pointed out to the assistant secretary that the shortened process time and the lack of funding would mean that consultation so important to the tribal NAGPRA officers and the National Review Committee would necessarily be abbreviated or, as in the case of tribal visits to collections, virtually eliminated. In addition, the museum would no longer be able to send out the reports of culturally unidentifiable human remains, which it had been doing up to this point as a courtesy but which is not required by the law. The tribes will now have to wait until the backlog of

published notices is processed by the NAGPRA office, and the data on the culturally unidentifiable remains is somehow circulated by that same office.

The PMAE received the necessary financial assistance from President Rudenstine of Harvard and was able to increase staff working directly or indirectly on tasks supporting the production of Inventory Completion Notices and reports of culturally unidentifiable human remains to eighteen. The work is divided into three activities: (1) the examination and assessment of MNI (Osteology); (2) shelf checks and preliminary inventories (Collections Management); (3) data verification and assessment of cultural affiliation (Repatriation).

PMAE has successfully met its first three quota periods, reporting as follows:

| | |
|-----------------------------------------------------|--------|
| Culturally affiliated human remains | 3,006 |
| Culturally affiliated associated funerary objects | 1,297 |
| Culturally affiliated unassociated funerary objects | 857 |
| Unidentifiable human remains | 5,426 |
| Unidentifiable associated funerary objects | 8,293 |
| Non-native | 59 |
| (Transferred, primates, casts, etc.) | 1,138) |

During these three quota periods, the staff consulted 2,836 times, by telephone, fax, e-mail, or letter. Reporting is now finished on 39 of the 45 states represented in the PMAE collections, unless more material is identified in storage.

It has been anticipated that unless there are unforeseen problems, reporting will have been finished by the due date of 31 May 2001. PMAE, along with all other institutions, will then face the process of disposition of culturally unidentifiable human remains, the regulations for which are believed to be being drafted by the staff of the Department of the Interior. There is now concern lest these regulations pressure for hasty and untimely repatriation and reburial of unidentifiable human remains before attempts to affiliate them are exhausted.

ACKNOWLEDGEMENTS

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NOTES

- 1 Relatives are defined in NAGPRA either as lineal descendants or as an Indian tribe with shared group identity. Native Americans consider it illogical and disrespectful to treat any human remains in the Americas, however old, as not kin. Hence, the distinction recognized in the law between culturally affiliated and unidentifiable is unacceptable, although it was drafted as a compromise between Native American and archaeologists' viewpoints when the law was being written.

- 2 The legislation springs out of human rights concerns, but NAGPRA does not deal with the manner of the process except to say that it should be prompt and should include consultation, which itself may be limited in extent (CFR Part 10 sec 10 9 comments, p. 62151).
- 3 NAGPRA Program Officer in the National Park Service of the Department of the Interior, the regulating agency.
- 4 The seven-member Review Committee was appointed by the Secretary of the Interior to (among other duties) monitor the various processes, review cultural affiliation, facilitate the resolution of disputes, and consult with the Secretary of the Interior on the development of regulations.
- 5 On final counts, PMAE collections of human remains are second only in number to those held at the Smithsonian Institution.
- 6 Now established to be 45.
- 7 The final regulations include a statement identifying the secretary as responsible for creating and distributing a list of Indian tribes for the purpose of carrying out the Act.
- 8 By 1998, of 11,587 estimated MNI, 2,458 had reached inventory completion (with cultural affiliation) and 417 were near completion, 478 had been reported to the National Park Service as unidentifiable, 13 were to be reported as such, and 21 had been found to be non-Native American.
- 9 We have arranged for the inputting of *c.* 300,000 records to take place outside the museum to save on skilled staff time.
- 10 The completed inventory and report on the 1909 Pecos individuals are approximately 3,400 pages, to be circulated to five recipients.
- 11 It should be noted here that in the meeting of the National Review Committee in Portland, June 1998, this funding shortfall was so apparent to members of the committee that a resolution was tabled to ask the Secretary of the Interior for increased funding. It is hoped that this will mean an increased subvention and not subtraction from funds available to museums and tribes.
- 12 Collections originating from federal agency lands may be inventoried by the holding institution assisted by funds from the appropriate agency. Unfortunately the PMAE has very few, and then only small, collections that fall into this category.

13 *Ka Huaka‘i O Nā ‘Ōiwi: the Journey Home*¹

EDWARD HALEALOHA AYAU
AND TY KĀWIKAWIKA TENGAN

HO‘OMAKA – TO BEGIN

For generations, Native Hawaiian ancestors traversed the Pacific Ocean in double-hulled canoes known as *wa‘a kaulua*. Navigational techniques were based on keen observations of the stars, the formations of waves, winds and clouds and the presence or absence of birds – and always coupled with *pule* (prayer). Understanding these natural tools helped navigators locate destinations and return safely to their *kulāiwi* (homeland). The long seafaring journeys caused immense hardships and challenges to the crew. At times these trips resulted in reaching desired destinations. At other times, the results were tragic.

Contemporary Native Hawaiians seeking to repatriate *iwi kūpuna* (ancestral human skeletal remains) and *moepū* (funerary objects) liken our efforts to the seafaring legacy left by our ancestors. Repatriation journeys were long and filled with what seem like insurmountable obstacles. Nonetheless, we navigated through these challenges using cultural values and practices as a guide. These efforts led to the successful return of many *iwi kūpuna* and *moepū*. By undertaking these journeys and overcoming the numerous challenges, we gained in-depth insight into our cultural values and ourselves. In addition, we came to realize certain difficult truths about the devastating toll that colonization has taken on our cultural identity.

The following is an *ulana* (weaving) of portions of journeys taken by members of *Hui Mālama I Nā Kūpuna O Hawai‘i Nei* (*Hui Mālama*), a Native Hawaiian organization established to care for *iwi kūpuna* and *moepū* through repatriation and reburial. It is told as a *mo‘olelo* (story) that centres around a journey taken in November 1997 whereby members of *Hui Mālama* sailed approximately 1,200 nautical kilometers to the remote Northwestern Hawaiian islands of Nihoa and Moku Manamana to rebury *iwi kūpuna* and *moepū* removed from these places.

Ke ‘aui nei ka lā, welo, welo.² The sun is setting, fluttering, fluttering.

The wind is blowing briskly and the *kāhea* (calling) of the ocean is unmistakable. It is the end of the day, the time to remember the *kūpuna* (ancestors), to honour their

journey to Pō (darkness). It is also the beginning of the journey home for the iwi kūpuna of Nihoa and Moku Manamana with unknown challenges awaiting the ship's crew.

Ka manu kāhea i ka wa'a e holo. The bird that calls to the canoe to sail.

HO'OMĀKAUKAU – PREPARING FOR THE JOURNEY

The food menu is carefully planned, and the gear is checked and loaded. Containers of precious water are stowed; twice the amount necessary in case of emergency. There is no wa'a kaulua available for the journey. The vessel that will be used instead is a fully equipped 51-foot French built motorized sailboat complete with satellite phone link and global positioning system. In addition, an inflatable zodiac and outboard motor are loaded for accessing the two remote islands.

The carefully selected crew of men include members of Hui Mālama and the Protect Kaho'olawe 'Ohana (PKO),³ a representative of the US Fish and Wildlife Service, and two experienced ship captains. Hui Mālama will be responsible for the conduct of all cultural protocols and PKO for all decisions relating to ocean safety once the zodiac is launched. The government representative will determine whether ocean conditions will allow safe access onto each island and his word will be final. Finally, the precious cargo of pū'olo moe (burial bundles) is loaded aboard for the ride home. Family and friends come to the harbor to wish the crew well. Several prayers are offered for a safe and successful journey. The mooring lines are untied and the pū (conch shell) is blown announcing our departure. The crew is now completely in the realm of Kanaloa.⁴

As with any long journey, preparation is a key element. For members of Hui Mālama, preparation began in 1989 with training in Hawaiian cultural values and practices relating to the care and protection of iwi kūpuna and moepū. The kumu (cultural teachers) are Edward Kanahele and Pualani Kanaka'ole Kanahele. Before work with the iwi kūpuna could take place, traditional pule (prayers) and oli (chants) had to be learned and perfected.

For many Hui Mālama members, the efforts required to learn the cultural protocols were difficult, intimidating, and humbling due to our weakness in speaking our native language and understanding traditional values and practices as a result of our Western upbringing. For some, difficulty also centred on reconciling this training with already established Christian values. Despite these obstacles, we worked hard and remained focused. When the initial training was completed, Hui Mālama members were prepared to enter the realm of the kūpuna and 'aumākua.⁵

Another event that helped pave the way for repatriation journeys was the passage in 1990 of the Native American Graves Protection and Repatriation Act (NAGPRA) (see McKeown Chapter 9). In addition to cultural protocols, Hui Mālama members implemented the provisions of NAGPRA and successfully repatriated iwi kūpuna and moepū from institutions in the continental United States and Hawai'i.⁶ Lacking NAGPRA jurisdiction abroad, Hui Mālama had to rely on assertion of its international

human right to care for ancestral remains, favourable museum repatriation policies, and good faith as the basis for returning iwi kūpuna from institutions in Canada, Australia, Switzerland, and Scotland.⁷

HOLO KA WA'A: UNCHARTED WATERS

For those of us unsure about being at sea, the growing stress is unnerving. Given the kaumaha (heaviness) of the trip's purpose, my⁸ anxiety is increased exponentially. The boat sails west toward the setting sun with only a few hours of daylight remaining. Dinner is being served, but I cannot eat because my stomach is in knots. The wind is at our backs as we pass the leeward coast of O'ahu. Fears run wild through the empty compartments of my mind. Have we prepared adequately? What unforeseen obstacles lie out there? Will we hit rough weather, especially this late into the north swell season? Was it right to ignore the warnings not to go in mid-November? Was our faith misplaced in the rush to return the iwi home? Are the 'aumākua pleased with our efforts? Will I be able to handle the challenges presented during this trip?

There is so much that is unknown. Did I make the right decision to come along? Darkness begins to set in. The wind noticeably picks up and the sails have to be trimmed. The bow is hitting the waves harder, constantly pounding, again and again. I'm not sure how much of this I can take. Windbreakers are put on as sea spray comes flying over the bow. The darkness exacerbates my fears as the moon begins to rise and we settle in for a long night.

Under the cover of darkness, Hui Mālama members arrive at the Museum of Natural History in Washington, DC in July 1990. It is the first repatriation effort, the first time we will work hands on with the iwi kūpuna and conduct the protocols in the presence of the ancestors. Are we ready? Have we each prepared ourselves properly? The level of anxiety is naturally high, but there also seems to be a calm familiarity that begins to set in as the protocols are conducted.

The inventory is reviewed and matched against the actual human remains present, and the unforeseen happens. The inventory list and one of the iwi kūpuna, a skull, do not match. Which is wrong? Should we ignore it and just take the iwi home? What if it belongs to an ancestor from another tribe? But our na'au (guts) tell us that this skull is that of a Native Hawaiian. Or what if it is Native Hawaiian and we mistakenly leave it behind? Isn't it best to err on the side of our families and take the iwi home at the risk of offending someone unrelated to us? What is the pono (correct) thing to do here? If we make the mistake of taking the wrong iwi, have we not committed the same hewa (wrong) as those who collected it? We need insight as to how best to proceed. The protocols provide the necessary mechanism to request assistance:

| | |
|----------------------------------|----------------------------------------------|
| E hō mai ka 'ike mai luna mai ē | Grant us knowledge (insight) from above |
| O nā mea hūnā no'eau o nā mele ē | The things of knowledge hidden in the chants |
| E hō mai, e hō mai, e hō mai ē. | Grant us, grant us, grant us. |

With unmistakable comfort, a sense of calmness and familiarity begins to take over. The correct path reveals itself. Assistance from museum staff is requested, the problem explained and immediately addressed. It is clarified that the inventory list is incorrect, and the skull is in fact Native Hawaiian. Other discrepancies are clarified and the storm passes without harm. Yet despite these events occurring after we conduct our pule (prayers), the source of this confidence is unclear. What should otherwise be apparent is nonetheless difficult for us to recognize and understand.

It is 4:00 a.m. and six hours pass since the work began. What was initially a nervous, inexperienced group is now a focused body acting in concert and bound together in prayer. Connections to the 'aumākua have been made; for what else could explain our high level of performance? All the tools necessary to prepare the iwi kūpuna are collectively requested and granted. Our 'ike (insight) grows from this first experience.

KE AO HOU: THE NEW DAY COMES INNOCENTLY ENOUGH

An uneasy first night at sea comes to an end. Sleeping one hour at a time, I am mindful of the ship's motion. Unable to sleep in the cabin, I opt for fresh air on deck. It is wana'ao, the time when the sun's rays first show. My fears begin to dissipate. We pass the majestic sand dunes of Mānā and Polihale on the leeward coast of Kaua'i. These dunes contain sacred burial grounds. A base now occupies the dunes, an incessant reminder of the US military presence and the negative impacts on the iwi kūpuna. Next we pass the proud island of Ni'ihau rising high above the sea. Lehua, the westernmost point of the principal Hawaiian islands is seen up close. This is where the 'uhane (spirit) goes following death, just prior to the jump to Pō,

Nāpo'o ana i lalo, ka moku 'o
Lehua.

To find rest below, to the island of
Lehua.

I am not quite acclimated to the movements of the ship, as my so-called 'sea legs' have not yet taken root. Nonetheless, the main benefit of the new day is that the speedy but rough crossing of the Kaua'i Channel is now complete. The ride is much smoother, the wind breezy but not too strong. My confidence begins to return, slowly. First, I need to have my appetite restored. I still cannot eat. It is strange how one can be on a ship with others and still be alone in the vast realm that is Kanaloa. The open ocean has a way of isolating one's mind and humbling one's thoughts to the realization that we are but a small, insignificant part of the greater world. I have but my thoughts to comfort and scare me. The skies are overcast with heavy rain clouds looming in the distance. The ocean starts to churn. It is time to be maka'ala (alert). We sail on.

The second chest is loaded onto a United Airlines flight bound for Honolulu from O'Hare Airport. The cargo is iwi kūpuna repatriated from the American Museum of Natural History in New York City and the Field Museum of Natural History in Chicago. It is June 1991 and two Hui Mālama members, weary from the long hours

of travel, now find a newly realized strength in knowing that iwi kūpuna representing sixty ancestral Native Hawaiians are on their way home for reburial. Two months later, we are successful in repatriating a mummified child⁹ from the University of Pennsylvania Museum of Archaeology and a skull from Brigham Young University. The following year, seven additional repatriation efforts are successfully undertaken involving six institutions and approximately one hundred iwi kūpuna. Much effort is directed at organizing families and community organizations to help with reburial.

All remains are ceremonially reburied, including 47 iwi kūpuna removed from the island of Molokai¹⁰ that were repatriated from the Bernice Pauahi Bishop Museum (Bishop Museum). For this effort, a pair of twelve-seater passenger planes is rented to transport the iwi kūpuna and participants home and to do a flyby of the Keonelele sand dunes where many of the iwi originated. After we arrive an oli kāhea, a chant requesting permission to enter the proud and famous lands of Molokai is offered. An oli komo is chanted in response to welcome us to the island and to welcome the kūpuna back home.

Through what can only be described as a relentless approach, Hui Mālama is able to combine its protocol training and understanding of NAGPRA to effectively identify institutions with collections of iwi kūpuna and moepū, participate in the NAGPRA consultation process, and successfully complete repatriation and reburial. The number of iwi being returned and reburied is growing as is the list of cooperative institutions. The original anxieties associated with the conduct of the cultural protocols have blossomed into strong expressions of Native Hawaiian pride and a renewed sense of cultural identity.

An important lesson is learned. The protocols not only serve to respect the iwi kūpuna but also to guide the living as long as we remain open to the communication that flows back to us on the spiritual level. It is the ancestors who direct and inspire us by providing the requisite knowledge, strength, and confidence.

| | |
|------------------------------------|-------------------------------|
| Na mākou e mālama i nā iwi o | We will protect the bones of |
| ko mākou kūpuna | our ancestors |
| Na nā mo'ō e mālama i ko mākou iwi | And our children will protect |
| | our bones |
| A ho'omau ka lōkahi o kākou. | As we continue this |
| | interdependency. |

LELE KA 'IWA: WE ARRIVE AT NIHOA

It is day three at sea. The night was kinder as sleep comes in bunches. My sea legs are half-way here. We are greeted in the new day by a royal air force of 'iwa (frigate) birds soaring majestically above. Off the bow we can see Nihoa in the distance. One 'iwa hovers just about the main mast and turns its head to look at me for an instant. At that very moment, I see the face of Parley Kanaka'ole, the deceased brother of our kumu and an original founding member of Hui Mālama. I am comforted by this 'ike pāpālua (vision; spiritual communication). I know then that no matter what challenges await



Figure 13.1 Nihoa Island

Photograph: Mark J. Rauzon

us today, all will go well for we are being guided. Preparations begin for the launching of the inflatable zodiac. We also begin to prepare ourselves. From a distance the news is not good for a ring of white water can be seen circling the island. This means the waves are breaking along the shoreline as there are no reefs to provide protection. A major obstacle clearly presents itself. The representative from the US Fish and Wildlife Service expresses reservations regarding present ocean conditions.

As the ship sails closer to the island, the deep echoes of large waves hitting the rocky shoreline is unmistakably heard. Anxieties are up. There appear to be large hands waving slowly from atop a hill. These are loulou, native fan palms moving rhythmically in the wind as if to welcome us. We've come so far; we have to try to land. Discussion between the PKO crew and the representative are positive. The plan is to launch the zodiac, study the shoreline conditions up close, and report back for a final decision.

After a half hour, the PKO crew returns and explains the proposed plan. A landing site is located, the sets of waves are counted, timed, and sized. A rope will be secured to the rocky shoreline and anchored off shore allowing the zodiac to be hand guided in to land safely. However, the waves are steadily increasing. The representative agrees to the plan but allows only an hour to conduct reburial. He is concerned that the waves will get larger and make departure too dangerous. The PKO crew agrees. Safety first. The pū'olo moe (burial bundles) are carefully loaded into the zodiac and we pule (pray) again.

The approach to the island is indescribable. I am filled with pride. We are able to safely access the island, but the ground is rocking back and forth or so it seems. It

takes a while to acclimate. We are standing on the island just as our ancestors did generations earlier. Uninhabited by humans for years, Nihoa was invaded by Dr Kenneth Emory from the Bishop Museum in 1923 and 1924 who removed so-called 'archaeological resources' for study (Cleghorn 1987), including iwi kūpuna. We have now returned the iwi in order to help undo this hewa (wrong).

The zodiac returns to sea but stays in contact. 'You have one hour to complete reburial. Be careful, but be quick,' is the message we hear over the radio. We again join together in prayer, humbled by our safe landing. Finding a trail leading ma uka (toward the upland), we scale the steep incline and find an appropriate site overlooking the bay. The sailboat bobs up and down in the rough ocean and the zodiac cruises just off shore. The reburial site is constructed from stone and the iwi kūpuna ceremonially returned to the bosom of the Earth Mother Haumea. The watchful 'iwa birds soaring above are given the kuleana (responsibility) to protect the pū'olo moe (sleeping bundles):

| | |
|-----------------------------------|---------------------------------------------------|
| Ho'okahi wale ka maka kia'i | There is only one watchful eye |
| Nā 'iwa e 'iolana nei i ka lewa | 'Iwa birds are soaring quietly above |
| Ho'olewa ho'omalū i nā pū'olo moe | Floating above to protect the sleeping bundles |
| Ho'omoe ho'ohohonu i ka poli o | Put to rest deep within the bosom of |
| Haumea. | Haumea. |

We quickly return to the shoreline and the pū is blown to announce our departure. The PKO crew is ready, as it has been just over an hour. The waves are larger now, but it is still deemed safe. The departure goes smoothly and we are back on the sailboat. Despite the numerous challenges posed by the ocean conditions, we are able to complete our mission. The practice of the protocols grants us intelligence, strength, and confidence to make the right decisions and carry them out. My sea legs have arrived. Starving now, I am finally able to satisfy the god that resides within me. The sunset is picturesque with red and black colors streaking across the sky in a large 'V'. A victory sign perhaps, certainly another 'ike pāpālua. The ancestors are pleased and we are blessed. It is an appropriate time for in-depth reflection.

It is through personal and collective struggles and journeys that we have come to understand who we are, not only as Native Hawaiians but as Kanaka 'Ōiwi, one of the traditional ways of identifying ourselves as the indigenous people. While Kanaka is a generic term for people, 'Ōiwi metaphorically means 'Native' but literally translates as 'of the bone.' This identification is a result of the belief that iwi contain our personal mana (spiritual essence) even after death. Likewise, our homeland is referred to as kulāiwi (literally, 'bone plain') indicating a connection between the land and the people, as our homeland is defined as the place in which the bones of our ancestors and eventually ourselves and our descendants are buried.

The deeper understanding of who we are is further enhanced each time we kanu. The word 'kanu' means both 'to bury/a burial' and a 'to plant/a planting.' The first



Figure 13.2 Blowing a pū (conch shell), Nihoa Island

Photograph: Mark J. Rauzon

kanu in the mo'olelo (oral traditions) of our people was the burial of Hāloanaka, the stillborn child of the akua (gods) Wākea and Ho'ohōkūkalanī. From that spot grew the first kalo (taro), our staple food. Their next son was also named Hāloa and it is from he that the Hawaiian people descend (Malo 1987: 159; Puku'i 1983: 241). This mo'olelo (history) establishes the interconnection between the gods, the land, and the people. The burial of iwi results in the physical growth of plants and the spiritual growth of mana. The living descendants feed off the foods of the land and are nourished spiritually by the knowledge that the iwi kūpuna are well cared for, and in their rightful place (Ayau 1995: 24–7).

The po'e kahiko (people of old) understood well the importance of protecting and caring for the iwi kūpuna. Each family identified those who carried the kuleana (responsibility) of ensuring that all iwi received kanu pono – a proper and righteous burial. This meant that the iwi were buried with a great deal of ceremony, and treasured possessions needed in the spiritual realm were ho'omoepū 'ia (laid to rest) with the iwi. Secrecy went into the hiding of the iwi and moepū for those who sought a person's mana would seek the bones to appropriate its spiritual power (Malo 1987: 68–70; Kamakau 1870: 1). The tranquillity of a person's spirit depends on the level of protection provided to his/her iwi.

Conducting proper burials was especially important for Kanaka 'Ōiwi because of the belief that ancestors became 'aumākua (guardians) of living descendants and that these 'aumākua must be cared for in order to maintain the pono (balance and unity) of the family. The kuleana to care for iwi kūpuna was the same as the responsibility to

maintain harmony between the living, the dead, and the land. At the level of the ali'i nui (ruling chief), the ability to maintain the tranquillity of the kingdom was dependent upon the degree to which the ali'i cared for the akua (gods) and 'aumākua. This was evidenced in part by the condition of gravesites throughout the islands. When there was peace in the kingdom, the people were buried properly; when there were treacherous rulers, the bones were dug up (Kamakau 1870: 1). These revelations lend themselves to an understanding of how the disturbance of our burials is intimately tied to colonialism¹¹ – the complicated processes by which Euro-Americans appropriated our lands, exploited our resources, disenfranchised our people and transformed the very way we think about who we are.

For the Kanaka 'Ōiwi, repatriation is intimately tied to the struggle to reclaim our collective mana as a people. Colonialism alienated us from our 'āina (lands), mo'olelo (histories), 'ōlelo (language) and akua (gods) and included the desecration of gravesites. As a part of these larger processes, colonizers 'collected' iwi kūpuna and moepū for:

- 1 scientific studies which often posited a racial superiority of Europeans and Americans over primitive natives;
- 2 sale in the curios market or to educational institutions;
- 3 use in anthropological studies of a 'disappearing race'; and
- 4 eviction as part of the urban sprawl transforming the landscape (Mihehua 1996: 153–63).

However in recent years our people have voiced opposition to the taking of our iwi kūpuna, lands, and sovereignty. As Kanaka 'Ōiwi nationalist and recording artist Keli'i Skippy Ioane (1999) states:

We still recovering, colonial discovering
 Steal the soul of the man, you steal the life of the land
 American sugar, pilgrim descendants
 Broke the tribal laws of their own Ten Commandments
 Thou shall not lie, thou shall not steal
 From peaceful, friendly nations who's gods are real – touch that!
 Ha'ina 'ia mai ana ka puana, o ka po'e i aloha i ka 'āina – touch that!

In recent years, some Kanaka 'Ōiwi have attempted to articulate strategies for decolonization and have found that the care and protection of iwi kūpuna is an important element in this effort (Cachola-Abad and Ayau 1999: 74–82). At least for the moment, the ability to reclaim our cultural identity is reaffirmed by the 'ike pāpālua revealed in the skies at Nihoa. Onward to Moku Manamana.

It is May 1992 and Hui Mālama initiates NAGPRA consultation with the Museum at the University of California, Berkeley following confirmation that four sets of 'Hawaiian remains' are identified in the Museum's collections (Norick 1992: 1; Ayau 1992: 1). Following a request for immediate repatriation, the museum responds that

it is unable to comply, citing concerns with an unclear Federal process that prevents it from addressing the matter in a timely fashion. Hui Mālama continues to request repatriation citing the applicable provisions of NAGPRA. This is the first case in which we encounter strong resistance to repatriation. Prayers are offered requesting the assistance of the ‘aumāku for guidance. The University administration is now handling the matter. Officials clarify that the list identifying ‘Hawaiian remains’ was intended only as an assessment and not the formal determination required by NAGPRA. Both parties then agree to follow a process that would expedite the determination of the cultural affiliation (25 U.S.C. 3002(2))¹² of four sets of human remains from the Hawaiian islands (Cerny 1992: 1).¹³

Following review, the university determines that two sets of remains meet the NAGPRA reasonable belief standard and are culturally affiliated with Native Hawaiians. However, it is unable to reach conclusions as to the cultural affiliation of the two others¹⁴ (Fabbri 1992: 5). Hui Mālama is able to convince the university to repatriate the first two iwi kūpuna which takes place on 11 September 1992. The preparation ceremony is difficult knowing that we would be leaving iwi behind. A mihi (remorse) ceremony is conducted whereby apologies are offered to the ‘uhane (spirit) of the two kūpuna being left behind, and a commitment is made to return for them. At our direction, a university official explains to the ‘uhane that he is responsible for preventing their return which grants us some peace. Nonetheless, it is with happiness and heaviness in our na‘au (guts) that we return home:

| | |
|-------------------------------|---------------------------------|
| E ke Akua mau loa ki‘eki‘e | To the God of the most high |
| a me nā kūpuna o mākou | and also to our ancestors |
| E aloha mai ‘oukou i nā mea i | Be kind to us who are |
| kaumaha ‘ia | burdened. |
| E nā mai ko ‘oukou inaina | Let your anger be appeased |
| me ko mākou ha‘aha‘a | by our humility this day. |
| E maliu mai ‘oukou | Look with favor upon us. |
| E ho‘ōla iā mākou i nā mea | Grant life to us in the |
| Hawai‘i kūpono | true Hawaiian sense. |
| E ho‘āla iā mākou i ka na‘au | Awaken within us the true depth |
| pono no kēia hana. | of this work. |

The point of contention continues to be a disagreement over whether the evidence satisfies the applicable NAGPRA cultural affiliation standards (25 U.S.C. 3005(a)(4))¹⁵; Black 1979: 1064). The university maintains it is unable to reach any such conclusions. Hui Mālama contends that the reasonable belief and preponderance standards are satisfied. The parties submit the dispute to the NAGPRA Review Committee to make formal findings and non-binding recommendations toward resolution. The strain of not knowing if the iwi kūpuna will return home weighs heavily on us as the months drag on. The committee holds a hearing and Hui Mālama asserts that the iwi kūpuna left behind are Native Hawaiian based on documentary evidence (Ayau 1992: 1–14) and ceremonial connections. Characterizing the latter testimony as

'spiritual evidence,' the committee gives it appropriate weight and finds cultural affiliation for the iwi from Waimānalo but rejects the documentary evidence for the second iwi, a fragmented skull, despite recognition of the spiritual evidence. The recommendation is to repatriate the first and transfer the second 'to a museum in Hawai'i for further consideration of cultural affiliation' (NAGPRA Review Committee 1993: 1988–9).

Hui Mālama returns to Berkeley to repatriate and transfers the fragmented skull to the Bishop Museum (Transfer and Acknowledgment of Human Remains 1993.) On 29 September 1993, an archaeologist calls with good news. Following examination, the skull is determined to be culturally affiliated with Native Hawaiians. 'You folks were right,' she happily exclaims. But a sadness comes over author Halealoha, for all of our efforts could not prevent this last indignity. Nonetheless, we are able to connect with the 'aumākua and reburial of all the iwi kūpuna is completed. We have overcome the challenges of the first NAGPRA dispute by placing our faith in cultural practice and relying on insights gained as the basis for our arguments.

KAI KO'O: THE CHALLENGE OF LANDING ON MOKU MANAMANA

I greet day four with confident enthusiasm given our success at Nihoa, my acclimation to being at sea, and my newly found appetite. We should reach the island by 1:30 p.m. The winds are blowing particularly hard. Then we see Moku Manamana as the 'iwa and other birds greet us. The white ring of water surrounding the island looks far worse than Nihoa. We can hear and feel the pounding from a greater distance. The US Fish and Wildlife Service representative studies the conditions intently and is visibly concerned.

We are now up close to the island, carefully studying the situation. The representative determines that the conditions are too dangerous and refuses to authorize access. The PKO crew request to launch to study the conditions more closely before a final decision is made. They return with a plan and are able to gain authorization to attempt a landing. However, only one person will be allowed to go. The conditions are so intense that there is only a twelve-second window of opportunity for the zodiac to get in, off load, and get out safely. The Hui Mālama member from Kaua'i is selected to go. He is the strongest and best skilled person to try. We pray together for his safety and success.

| | |
|--------------------------|--------------------------------------------------|
| E hō mai ka 'ike | Grant us knowledge |
| E hō mai ka ikaika | Grant us strength |
| E hō mai ka akamai | Grant us intelligence |
| E hō mai ka maopopo pono | Grant us true understanding |
| E hō mai ka 'ike pāpālua | Grant us a vision, an avenue of communication |
| E hō mai ka mana. | Grant us spiritual essence, power. |

The PKO crew wait patiently for an opening. Then the inflatable zodiac speeds to the coral-faced shoreline and the Hui Mālama member leaps onto a large coral head and scampers up just as a large wave hits.

Numerous attempts are then made to toss him a rope. This is finally done and the container with the pū'olo moe hoisted safely in. Unexpectedly, another member of Hui Mālama leaps off the zodiac and onto the island. The pounding by the sailboat eases and is reduced to a rocking as the wind dies down. The two ascend the cliff reaching the top of the island where they build the reburial site as the 'iwa provide protection. The ceremonial protocols are conducted and the iwi kūpuna replanted. The waves subside in the time that passes, making for a safe departure. All return to the sailboat triumphantly:

| | |
|----------------------|---------------------------------------|
| I kū mau mau! | Stand up in couples! |
| I kū wā! | Stand at intervals! |
| I kū mau mau! | Stand up in couples! |
| I kū huluhulu! | Haul with all your might! |
| I ka lanawao! | Under the mighty forest trees! |
| I kū wā! | Stand at intervals! |
| I kū lanawao! | Stand up among the tall forest trees! |
| I kū wā! | Stand at intervals! |
| I kū wā huki! | Stand at intervals at pull! |
| I kū wā kō! | Stand at intervals and haul! |
| I kū wā a mau! | Stand in place and haul! |
| A mau ka ēulu! | Haul branches and all! |
| E huki e! | Haul now! |
| Kūlia! ¹⁶ | Stand up my hearties! |

That evening, we share a satisfying meal and humbly give thanks for another successful effort. Despite the harsh conditions, our faith remains focused. The captain warns that the return trip will require us to head into the wind and the ride would be the roughest yet. We tell him we aren't worried for the kūpuna will do their part to take care of us.

The next day we catch two 'ahi (tuna) and have fish steaks and poke (raw diced fish) for dinner – a gift from the kūpuna. For the rest of the days, the wind blows softly and the water is glassy flat – a gift from Kanaloa. The captain runs the motor and steers straight home. After each day he promises that the great conditions will worsen, as he has never experienced consecutive days like this in twenty-five years. As the last day dawns and we are just off the coast of O'ahu, the captain exclaims he is a believer. Tanned and excited we set foot back on land and give thanks for a safe return:

| | |
|--------------------------------|----------------------------------------|
| I nā kūpuna o mākou | To our ancestors |
| I noho ai i kēia pae 'āina | Who lived on these islands |
| I ho'okū ai ko 'oukou 'aumākua | Who established your gods |
| A me pulapula i kēia pae 'āina | And your progeny upon these islands |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 'O mākou nō, 'o mākou nō, nā pulapula a 'oukou E hea ana mākou iā 'oukou E kuhikuhi iā mākou e holomua Me ka mana'o a 'ike a 'ōlelo | It is us, it is us, your offspring Inviting you To direct us to progress With one thought, vision, expression |
| A na'au ho'okahi no kēia pae 'āina 'O ka 'āina mākou 'o nā 'aumākua 'oukou E hui na'auao kākou no ke ola o kēia pae 'āina No 'oukou nō, no mākou nō, no ka pae 'āina nō He pono! | And awareness for these islands We are the land, you are the gods Let's join with wisdom for the life of these islands For you from you, for us from us, for the land from the land It is good! |

It is the year 2000 and it has been seven years since we began working on the repatriation of iwi kūpuna and moepū from Kawaihae, Hawai'i. In 1905, a district judge and two other haole (white) 'discoverers' (D. Forbes to W. Brigham 7.11.1905, Bernice Pauahi Bishop Museum Archives) looted a burial cave in this area.¹⁷ A number of ancestral remains and funerary objects including ki'i 'aumākua (images of ancestor deities) and other personal possessions of an ali'i nui (ruling chief) soon end up in the collections of the Bishop Museum.¹⁸ Former Museum Director William Brigham knew when he acquired these iwi kūpuna and moepū that they had been stolen from a burial cave¹⁹ (W. Brigham to D. Forbes 11.11.1905, Bernice Pauahi Bishop Museum Archives), yet he still appraised their value and acquired the items for the museum²⁰ (W. Brigham to D. Forbes 21.11.1905, Bernice Pauahi Bishop Museum Archives).

As part of the NAGPRA process, four Native Hawaiian organizations take formal positions requesting the Bishop Museum to expeditiously repatriate all iwi kūpuna and their moepū based in part on a report prepared by Hui Mālama (Kanahele and Ayau 1999: 1–14).²¹ As a result of these positions and our expertise, Hui Mālama is allowed to transport the iwi kūpuna and moepū home. In seeking to return the cultural items to a state of pono, we rebury them securely in the area they originated from.

News of the reburial draws immediate and often intense criticism. Factions of the Native Hawaiian community are outraged, not because the iwi kūpuna were reburied but because the moepū (which they considered to be 'artefacts') were. These people feel that Hui Mālama has buried a part of their past which can serve as a valuable symbol and icon of Hawaiian identity, as well as an important educational tool. Some even question the funerary nature of these so-called 'artefacts,' citing speculations that the ki'i were placed in the caves for temporary storage at a time when ki'i were being destroyed due to the advent of Christianity. Others go as far as to deny the very fact that these images were even placed together with the iwi.²² The criticisms reach an

apex when Hui Mālama is accused of thievery through reburial of the ‘artefacts.’ In the months that follow, we come to learn that criticisms by our people are far worse than any challenge a museum could present.

A number of issues arise. One is that there is an enormous discrepancy between the ways in which these items are viewed: either as masterpieces of indigenous craftsmanship and knowledge (i.e. works of art) meant for all to see or as the inalienable possessions of the deceased (i.e. funerary objects) meant to be put away. This disparity reflects a difference between the Western way of objectifying the objects as artefacts and the ‘Ōiwi way of understanding them as kapu (sacred), possessing mana (spiritual essence, power) and vital to the pono (well-being) of our ancestors and us, their living descendants.

In an attempt to educate our people and the general community, Hui Mālama issues a public statement which asserts that the existing evidence clearly indicates that the items are moepū. Moreover, the real issue is that the moepū belong to the iwi kūpuna and both belong to the kulāiwi (homeland) where they were originally placed. We are mindful that our ancestors left us with the kuleana (responsibility) to care for their well-being. While they also left us cultural items upon which we maintain our cultural identity and through which we continue to be educated and inspired, this does not include their iwi and moepū, for those belong to them. Finally, that no one has any right to the iwi and moepū, no matter how significant the items are deemed to be:

| | |
|--------------------------------------------|-----------------------------------------------------|
| Mai lawe wale i nā mea i ho‘omoepū ‘ia. | Don’t wantonly take things placed with the dead. |
|--------------------------------------------|-----------------------------------------------------|

Instead, the iwi kūpuna and moepū belong to pō‘ele‘ele, the darkest of darkness and to the Earth Mother Haumea. We must respect our kūpuna and the items they reserved to themselves, and this should be the main point that guides us as we strive to restore pono. Once information about this case is shared publicly, many come to support our actions.

Nonetheless, the case strikes an extraordinarily sensitive nerve for some who demand that Bishop Museum recall the ‘artefacts’ it loaned to us despite the fact that this would result in redisturbance. In addition, others call for Bishop Museum and Hui Mālama to be sanctioned. As with Moku Manamana, we are embroiled in the worst conditions.

Reflecting upon the various arguments put forth by those who want the ‘artefacts’ to be returned and those that want the ‘moepū’ to remain buried, it is the authors’ opinion that the emotionally and politically charged nature of the debate speaks to the various struggles we face as a colonized people seeking to reclaim our cultural identity. What were once fundamental values and beliefs to our ancestors regarding burial practices are now foreign to many in our current generation. Many Native Hawaiians now look to books and artefacts to learn about their past and forge an identity today.

The problem here is that Western institutions such as the school and the museum are primary sites for the colonization of our people (Smith 1999). For the last

hundred years, schools have worked to devalue Native Hawaiian identity and socialize us to be good Americans (Benham and Heck 1998). At the same time, museums have presented our culture to us as if it were a frozen relic of the past. While this fact is being increasingly recognized and critiqued today, what is not always recognized is that the ways in which knowledge itself is transmitted are structured by colonial ways of knowing; more specifically, schools and museums teach us to privilege the written word over the spoken, supposedly because it is a more accurate form of recording information. Even more authoritative and less susceptible to change is the physical evidence left behind by a people – their material culture or 'artefacts.'

While these are valid and important ways of knowing, there are other ways. Meyer (2001) argues that 'Ōiwi ways of knowing were and still are based on spirituality, physical place, multiple layers of sensory perception, relationships with others in the physical and spiritual realm, practice and utilization, language and the spoken word and the unification of the mind and body. These ways of knowing are all delegitimized in the Western systems of education. The result is that we come to know our history (which has predominantly been written by white men) and our culture (which is displayed to us behind a glass case and for a fee) primarily through Western eyes trained to read books and look at objects.

Our exclusive reliance on these epistemological frames prevent us from more fully understanding who we are as Kanaka 'Ōiwi. This makes the challenge of recapturing our cultural identity that much more difficult when we are confronted with situations that demand we expand our senses in the ways that Meyer (2001) talks about. Such is the case in relearning our burial practices. Decolonizing and reclaiming identity is a process that entails pain, yet it is only by dealing with this pain that we heal the historic wounds inflicted upon our families and our people.

It is this pain and confusion that marks the current debate. Those who see these objects as 'precious artefacts' that need to be preserved for future generations are, like us, seeking to reclaim their own identities. However, the notion that culture and identity is only to be learned in the museum and in school is one that perpetuates our colonization by reifying the idea that our culture is a thing of the past. Contrary to what we are taught in Western educational systems, 'Ōiwi culture is still thriving and being practiced outside of enclosed buildings. While there is much that can be learned in the writings of our ancestors and in the study of our material culture, this should not prevent us from putting those teachings into action. Indeed, knowledge is meaningless unless practiced.

One of the most important lessons passed down by our kūpuna is that the pono (balance) of all things in this world are dependent upon the pono of our kūpuna, 'aumākuā, and akua in the spiritual realm. As more of our people become engaged in repatriation efforts, they are forced to reconcile their Westernized ways of thinking with 'Ōiwi ways of being. Often, as is evidenced in the current controversy, this results in confusion, pain and sorrow. Nonetheless, we are confident that as more of our people practice protocols and connect to the 'aumākuā, they too will have culturally enlightening experiences.

Hui Mālama strives to address harsh conditions in order to seek the care and protection of the Kawaihae iwi kūpuna and moepū. This is a result of a commitment to

cultural values that seek to return the pono of our people. Hui Mālama is humbled by the knowledge and insights gained during our decade-long efforts to repatriate and rebury our ancestors and their possessions. Many of these journeys are challenging and do not always turn out as planned. Nonetheless, we maintain that an appropriate means by which to navigate through the harsh, often tragic realities of colonization undermining our cultural identity is to practice the teachings of our kūpuna and follow the guidance of our ‘aumākua:

| | |
|-------------------|-------------------------------------------|
| E iho ana o luna | That which is above shall be brought down |
| E pi‘i ana o lalo | That which is below shall be lifted up |
| E hui ana nā moku | The islands shall be united |
| E kū ana ka paia. | The walls shall stand upright. |

This chant represents a prophecy that foretells of the loss and return of the Hawaiian government through the unification of the people to form the walls of the restored nation. The efforts of Hui Mālama serve to restore the ancestral foundation in hopes of unifying our people both past and present, to form the walls of the Hawaiian nation. Imua kākou! Forward together!

NOTES

- 1 This mo‘olelo (story) is dedicated to our Kumu Edward Lavon Huihui Kanahale and the legacy of contemporary Hawaiian spiritual practitioners he trained, including the authors. E moe, e moe, e moe me ka maluhia (Rest, rest, rest in peace).
- 2 The indented Hawaiian text and translations utilized throughout this writing represent portions of prayers, traditional sayings, chants, and a prophecy. None are the original thoughts of the authors. Due to the sensitive nature of these words and our desire to be able to best convey these experiences, we have decided not to cite any source.
- 3 A Native Hawaiian organization established in the 1970s to end the US military bombing of Kaho‘olawe and restore the island to health through planting and cultural use.
- 4 Kanaloa is the Hawaiian deity of the ocean and one of four principal Hawaiian gods.
- 5 Family or personal gods including deified ancestors who might take the form of animals, plants, or other natural phenomenon.
- 6 Iwi kūpuna and moepū were repatriated from many institutions including the following (an asterisk denotes cases where Hui Mālama supported the efforts of other organizations; information in brackets supplies date of repatriation and the minimum number of individuals and funerary objects): American Museum of Natural History (June 1991, 32); Field Museum of Natural History (June 1991, 28); University of Pennsylvania Museum of Archaeology (Aug. 1991, 1); (Nov. 1996, 62); (Oct. 1997, 8); and (Sept. 1999, 3), Brigham Young University Museum of People and Cultures (Aug. 1991, 1), Milwaukee Public Museum (Feb. 1992, 1); (Jan. 1999, moepū), San Diego Museum of Man (Feb. 1992, 1), Sacramento Science Center (Feb. 1992, 1), Bernice Pauahi Bishop Museum Molokai (Apr. 1992, 47 and moepū); Waimānalo (Aug. 1992, 46 and moepū); Kaho‘olawe* (July 1993, 7 and moepū); Ft. DeRussy (July 1995, 25); Lāna‘i* (Oct. 1995, 212 and moepū); Maui* (June 1997, 65 and moepū); Kaua‘i (July 1997, 89 and moepū); Ft. Kamehameha (July 1997, 97 and moepū); Hawai‘i (Sept. 1997, 108 and moepū); Nihoa (Nov. 1997, 7); Moku Manamana (Nov 1997, 2); Maui* (Feb. 1998, 20 and moepū); O‘ahu (Nov. 1998, 1,026 and moepū); Origin unknown (Nov. 1998, 95); Hawai‘i (Dec. 1998, 35 and moepū); Kaho‘olawe* (Jan. 1999, 10 and moepū);

- Hawai'i (Feb. 1999, 3 and moepū); Mōkapu* (Apr. 1999, c. 3,000 and moepū); Molokai (June 1999, 3 and moepū); Kaua'i; (Aug. 1999, 3 and moepū); Kaua'i (Aug. 1999, 1); Origin unknown (Sept. 1999, 21); and O'ahu (Sept. 1999, 13 and moepū), Phoebe Hearst Museum University of California Berkeley (Sept. 1992, 2); (Aug. 1993, 1); and (Sept. 1993, 1), University Oregon Museum of Natural History (Nov. 1992, 2), Peabody Essex Museum (Feb. 1993, 1); (Aug. 1993, 1); and (Oct. 1997, moepū), Harvard University Museum Archaeology and Ethnology (Mar. 1994, 167), Yale University Peabody Museum of Natural History (Mar. 1994, 116), University of Alaska Museum (Jan. 1995, 1), Dartmouth College Hood Museum of Art (June 1995, 3), Earlham College Moore Museum (June 1995, 2), Los Angeles County Museum of Natural History (July 1995, 1); and (Nov. 1996, 1), Reading Public Museum (Nov. 1996, 2), University of Arkansas Museum (Nov. 1996, 2), University of Kansas Museum of Anthropology (Nov. 1996, 3), University of California Los Angeles Fowler Museum (Nov. 1996, 7), Cal. State Fullerton Department of Anthropology (Nov. 1996,16), California Academy of Natural Science (Nov. 1996, 1), Santa Cruz Museum of Natural History (Nov. 1996, 1), Springfield Science Museum (Oct. 1997, 1), and the National Museum of Health and Medicine (Oct. 2000, 3). In addition, the National Museum of the American Indian Act authorized Hui Mālama to repatriate iwi kūpuna from the Smithsonian Museum of Natural History (July 1990, 80); (Aug. 1991, 129); and (Aug. 1993, 2).
- 7 These institutions include the University of Zurich (Mar. 1992, 1), Royal Ontario Museum (Aug. 1992, 1), South Australian Museum (Aug. 1992, 2), and the University of Edinburgh (Oct. 2000, 49).
 - 8 All instances in which the singular personal pronouns are used in reference to the journey to Nihoa and Moku Manamana are the reflections of author Halealoha.
 - 9 The child is from Hanapēpē, Kaua'i, as are the Holi family who escort her home. After her return, the child is claimed by another family based on her 'ehu (reddish tinge) hair, a distinct family trait. She is given the name Tauanomeha and ceremonially buried.
 - 10 Author Halealoha's family is from Molokai and this effort was undertaken following a request from his tūtū wahine (grandmother), the Rev. Harriet Ahiona Ayau Ne. Although Mrs. Ne entered the Kingdom of God before reburial was completed, she did help assure the safe return of the iwi kūpuna. Aloha ke Akua i nā mea apau (God loves all things).
 - 11 Some Hawaiian language scholars have recently (Kalani Makekau-Whittaker, pers. comm. 3/17/01) conceived of colonization through the word 'koloniao,' the very apt metaphor of a 'crawling' (kolo) 'pinworm in your rectum' (naio).
 - 12 Defined to mean 'that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.' 25 U.S.C. 3002(2).
 - 13 '[W]e are accelerating the second phase of the inventory for these particular remains and have begun an investigation of cultural affiliation' (J. Cerny to Hui Mālama, 20.5.1992).
 - 14 'Our assessment has established that specimens 12-7488 and 12-5255 may reasonably be determined to be affiliated with Native Hawaiian peoples. In good faith, the University of California at Berkeley is prepared to repatriate these remains to your organization ... We are unable to reach any conclusions regarding specimens 12-5456 and 12-10738-39' (L. Fabbri to Hui Mālama 13.8.1992).
 - 15 NAGPRA specifically provides that where cultural affiliation of Native American human remains and funerary objects has not been established clearly or by a reasonable belief, 'such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion' (25 U.S.C. 3005(a)(4)). 'Preponderance of evidence' is defined as, 'evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence as a whole shows that the fact sought to be proved is more probable than not.' (Black 1979: 1064).

- 16 This chant talks about dragging a large tree trunk from the forest to make a canoe. It recognizes that great feats can be accomplished when everyone works (pulls) together.
- 17 'Enclosed you will find a print of some Hawaiian relics which two friends and myself have been fortunate enough to uncover a few days ago from a cave in this neighborhood' (D. Forbes to W. Brigham 7.11.1905, Bernice Pauahi Bishop Museum Archives). More accurately, David Forbes, William Wagner, and Friedrich Haensch looted the iwi kūpuna and moepū from their intended final resting-place.
- 18 Further looting of this cave and a second burial cave in this area was conducted by J. Everett Brumaghin in 1935 and Keith Jones and Kenneth Emory in 1939. The stolen items were sold, exchanged, and donated to the Museum and Volcanoes National Park.
- 19 'Your find is of great interest and importance, but is impossible to put a price upon the articles without a careful inspection ... In the meantime, keep the matter quiet for there are severe laws here concerning burial caves, and I shall not make the matter public, of course, until you say so. If you should wish to keep the collection or part of it, the coming from this place [Bishop Museum] would throw any suspicious persons off the scent.' (W. Brigham to D. Forbes 11.11.1905, Bernice Pauahi Bishop Museum Archives).
- 20 By letter dated 21 November 1905 (housed at the Bernice Pauahi Bishop Museum Archives), Brigham provides Forbes with appraisals for each stolen item.
- 21 Hui Mālama submitted a report to each organization documenting the evidence and demonstrating that all of the identified cultural items clearly satisfy the NAGPRA definitions of 'human remains' and 'funerary objects' (Kanahela and Ayau 1999: 1–14).
- 22 The most compelling evidence of the funerary nature of the objects is a sketch plan of the interior drawn by David Forbes of what is called 'Forbes Cave' which depicts a cavern where iwi kūpuna and moepū including all four ki'i (images) are placed together and sealed. The sketch plan appears in a 1906 Bishop Museum publication (Brigham 1906: 3).

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14 *Implementing repatriation in the United States: issues raised and lessons learned*

ROGER ANYON AND RUSSELL THORNTON

SELECTED REPATRIATION ISSUES

In this chapter, we review selected issues that have arisen during the first decade of repatriation implementation in the United States. Based on these issues, we make some suggestions that may prove useful for the development of repatriation legislation in other countries.

Implementing the repatriation provisions of the NMAI Act and NAGPRA (See McKeown Chapter 9) has raised a multitude of legal, ethical and moral issues (see McManamon Chapter 10). The issues to be addressed here are those which we believe have implications for the development and implementation of repatriation legislation beyond the United States. The issues we address are: (1) the need for repatriation legislation, (2) the need for flexibility in the interpretation of definitions, (3) the need for consistency in cultural affiliation determinations, (4) the need for protection of privileged and confidential information, (5) the need for adequate and flexible time frames, (6) the need for an independent national review committee with decision making capabilities and (7) the need for adequate funding to implement repatriation.

Repatriation legislation

Perhaps the most fundamental issue raised by the enactment of the NMAI Act and NAGPRA is the absolute need for repatriation legislation. The legislation provides a uniform set of rules that all parties must abide by. While this may seem an obvious point, it is clear that without legislation repatriation would most probably be governed by a patchwork of unenforceable institution specific guidelines, subject to change at the discretion of individuals and governing boards. Repatriation is being successfully implemented in the United States because of the laws. Museums and other institutions have legal obligations to provide information to tribes,¹ and are legally required to repatriate items and remains when a set of established conditions has been met. Tribes have clarity about their rights to repatriate items and remains, and know their responsibilities in the repatriation process.

When the repatriation laws were being developed, and at the time they were enacted, museums and tribes had somewhat dissimilar views of what the legislation would mean for them. Many museum officials were initially fearful that repatriation would empty their buildings. Many tribes, on the other hand, were initially under the impression that repatriation would be a simple process: a claim would be made, followed soon thereafter by the repatriation of ancestral remains and cultural objects. In reality, neither has turned out to be the case. Museums have not been emptied. Tribes have, for the most part, made culturally appropriate requests and claims that are modest and legally supportable. Some disputes have occurred between museums and tribes, and between tribes, many of which have been settled between the parties, so far with remarkably few disputes resulting in legal action. Perhaps for the tribes, one of the more frustrating aspects of repatriation is the amount of time the process takes and this means that repatriation is not yet concluded. Even so, the legally mandated repatriation process is working. Thousands of human remains and cultural items have already been successfully repatriated from museums to Native American tribes throughout the United States, and many more repatriations will occur in the coming years.

Interpretations of definitions

Both the NMAI Act and NAGPRA provide a set of definitions for cultural items as part of the legal standards that must be used when implementing these repatriation laws. Cultural items, which are subject to potential repatriation, include human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony. While the definitions in these laws may seem self-evident at first glance, the experience of implementing repatriation has demonstrated that they can be interpreted in many ways. When different cultural values are applied, the meaning of the definitions is often different. The issue of interpretation of the definitions manifests itself in a number of ways. Here we discuss two aspects of this problem: the initial identification of sacred objects and disagreements regarding what constitutes a sacred object.

Sacred objects are defined as specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. How, then, is a sacred object identified? Both laws require that museums provide identifications of sacred objects in their holdings, after consultation with tribal representatives. But just identifying sacred objects can be a daunting task. Take, for example, what this means for the Pueblo of Zuni in New Mexico. Zuni is a community of around 10,000 people, with over a hundred traditional religious leaders. These religious leaders are members of many Zuni religious entities, including six *kiva* groups, 14 clans, numerous medicine groups and various priesthoods. Within any religious group each religious leader holds only a portion of the religious knowledge. Consequently, the identification of Zuni sacred objects requires consultation between many Zuni religious leaders and requires that the appropriate religious leaders be consulted. The scale of the task of identifying

sacred objects becomes apparent, even when only one museum is considered. The Smithsonian Institution National Museum of Natural History contains over 5,300 Zuni ethnographic objects, any one of which could be considered a sacred object by a Zuni religious leader.

Traditional religious leaders may regard items as sacred objects that initially may not seem to be sacred to non-Indians. This is exemplified by the request for repatriation by Cochiti Pueblo, New Mexico, of some projectile points excavated from an ancestral archaeological site in Bandalier National Park. Cochiti Pueblo religious leaders stated that these projectile points are sacred objects, according to their definition of 'sacred'. The superintendent of Bandalier National Park, while sympathetic to the classification by the Cochiti religious leaders, expressed concerns about where the line is drawn between sacred objects that are subject to repatriation and other objects that are not subject to repatriation. These projectile points did not meet his criteria for the definition of sacred objects.

Cultural affiliation

Determining the cultural affiliation of cultural items is a key component of the repatriation process. Cultural affiliation means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day tribe and an identifiable earlier group. The basic idea underlying the determination of cultural affiliation is to ensure that cultural items are repatriated to the communities with which the items are culturally connected. However, as with sacred objects, the interpretations of cultural affiliation vary widely. Establishing cultural affiliation is one of the more complex aspects of implementing the NMAI Act and NAGPRA, and is a focus of much debate and disagreement.

Even the basic method of establishing cultural affiliation can be radically varied. It is usual for museum officials to apply their knowledge by working from the past to the present. Using this approach, the earlier identifiable group may be an archaeological culture. Tribes, on the other hand, tend to have the opposite approach, working from the present to the past. In this case the earlier identifiable group is likely to be a clan or some other meaningful group. Different starting points, and different views of how the past was structured, can result in dramatically different views of cultural affiliation.

Take, for example, ancient materials that are found throughout the southwestern United States. Archaeologists classify these materials as being of different archaeological cultures. Archaeologists, working from the past to the present, see the identifiable earlier group as the archaeological culture and the present-day group as a modern-day tribe such as the Hopi Tribe. For the Hopi Tribe, working from the present to the past, a critical component of how they view their history, and how they came to live where they live today, is rooted in clan history. The Hopi Tribe regards ancient materials in the American southwest as the physical manifestation of the Hisatsinom and Motisinom, who are Hopi ancestors. The Hopi Tribe traces much of its history through ancestral clan migrations. Each clan is believed to have migrated over huge geographic areas on the journey to Hopi. Migration traditions are complex. During the migrations, clans did

not necessarily move as a single unit: they split up, converged and reconstituted themselves, often many times over, before they reached Hopi.

For the Hopi people, the critical identifiable earlier group is the clan, the same group that exists today at Hopi. The Hopi believe they are culturally affiliated with all the prehistoric archaeological remains in the American southwest. Not surprisingly the Hopi view of cultural affiliation is inclusive and far-reaching. This is in contrast to museums and federal agencies which tend to have a more restricted view of cultural affiliation, both geographically and temporally.

Certain ancient material remains found in the Tonto Basin of central Arizona, which are known to archaeologists as the Salado archaeological culture, exemplify the difference between an agency and Hopi view of cultural affiliation. The United States Forest Service initially determined that these Salado materials were culturally affiliated with four tribes from southern Arizona: the Gila River Indian Community, the Salt River Pima Maricopa Indian Community, the Ak-Chin Community and the Tohono O'Odham Nation. The Hopi Tribe, which is presently located in northern Arizona, was not initially listed by the Forest Service as being culturally affiliated with the Salado. As the Hopi Tribe brought additional information to bear on this determination, the Forest Service modified its position and eventually agreed that Hopi is also culturally affiliated with the Salado of the Tonto Basin.

Under the NMAI Act and NAGPRA, it is the museums and federal agencies that are responsible for determining cultural affiliation, although consultation with tribes is required. In practice, this means that cultural affiliation is being independently ascertained by hundreds of museums and agencies. There is no legal requirement that these determinations are consistent, and this can create absurd and confusing circumstances. For example, the Forest Service has determined that the Mimbres archaeological culture of southwestern New Mexico cannot be culturally affiliated with any present-day tribe. The National Park Service, on the other hand, has determined that the Mimbres archaeological culture is culturally affiliated with a number of present day tribes. This situation means that the culturally affiliated tribes are able to claim and repatriate Mimbres human remains and other cultural items presently under the control of the National Park Service, but not those controlled by the Forest Service.

A major issue in the determination of cultural affiliation is the kinds of information that are used to make a determination. The repatriation laws provide for a wide range of information sources, including: geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical and other relevant information. A preponderance of the evidence determines cultural affiliation. However, a serious drawback of many cultural affiliation determinations is that they have been made by museums and agencies, often with limited or no input from tribes. Consequently some lines of evidence are rarely used to their full potential. Two examples follow of issues that arise when existing information is not used to its full potential: Steed Kisker and Chaco Canyon.

Steed Kisker is an archaeological culture found in the central plains of the United States. When the Smithsonian Institution's National Museum of Natural History investigated the cultural affiliation of the Steed Kisker archaeological materials in its collections, the determination was made that no cultural affiliation could be reliably

assigned based on available information. The Pawnee Tribe disputed this finding. In a hearing before the Smithsonian Institution Repatriation Review Committee, the Pawnee representatives provided previously unavailable oral traditions. This information proved to be enough for the Review Committee to recommend that the preponderance of the evidence showed the Pawnee Tribe to be culturally affiliated with the Steed Kisker remains. The committee also suggested that additional tribes may also be culturally affiliated and these tribes should be brought into the discussions. The National Museum of Natural History agreed. The end result of this process was that other culturally affiliated tribes were identified. An agreement was made between all these culturally affiliated tribes, and the Steed Kisker remains were repatriated to this group of tribes.

Chaco Canyon is a remote geographic locale in northwestern New Mexico that contains many spectacular ancient pueblos. Today, Chaco Canyon is managed by the National Park Service and is an area surrounded by Navajo Nation lands. In making their cultural affiliation determination for the ancient pueblos and other archaeological sites in Chaco Canyon, the National Park Service gathered a great deal of information. Oral tradition was one source of information. The National Park Service determined that cultural affiliation was with a large number of tribes, including the Hopi and Navajo. The Hopi Tribe, supported by other modern-day puebloan tribes, disputed the National Park Service determination. The Hopi Tribe stated that the National Park Service determination was flawed and its conclusion was in error, because many relevant Hopi oral traditions and other information was not used to determine the preponderance of the evidence. The NAGPRA Repatriation Review Committee concurred with the Hopi position, and recommended that the National Park Service redo its cultural affiliation study. The National Park Service summarily dismissed this recommendation, and the issue is, at present, unresolved.

Protection of privileged information

The protection of privileged and confidential information has emerged as a critical issue for tribes. As already described, in many tribal religious structures each religious leader holds only a fraction of the entire esoteric knowledge of the tribe. When combined, this compartmentalized information constitutes the whole body of sacred knowledge held by the tribe. Traditional knowledge is usually esoteric and cannot be revealed to those who are not privileged to hold this knowledge, even other members of the same tribe. This creates inherent conflict with the requirements of the repatriation legislation.

Both the NMAI Act and NAGPRA require that sacred objects and objects of cultural patrimony are identified, and establishing this often requires that tribal members reveal esoteric information. To demonstrate that an object is sacred by providing esoteric information is anathema to those who hold this knowledge. This creates a paradox. If esoteric knowledge is revealed, sacred objects may be repatriated and thus provide the traditional practitioner with items necessary for religious observances. On the other hand, if esoteric knowledge is revealed, the traditional practitioner violates

sacred oaths not to reveal this information, and is faced with consequences no one can foretell. Such is the paradox that the religious leaders of Cochiti Pueblo faced in their request for the projectile points excavated from the archaeological site in Bandalier National Monument, described above. In this instance the religious leaders chose not to provide esoteric information, even to the political leader of the Pueblo who was given the responsibility of requesting the repatriation of these projectile points.

Neither the NMAI Act nor NAGPRA are specifically exempted from the Freedom of Information Act (FOIA). FOIA is designed to allow citizens access to government documents and records that are not specifically protected because of national security concerns. Consequently, any information provided and recorded as part of the repatriation process is potentially available through the application of FOIA. Tribes are rightfully concerned about this aspect of repatriation, and in many instances choose not to reveal information to prevent any damage to the integrity of tribal religion. One means of circumventing the problems created by FOIA is for tribes to provide oral information to museum officials in a situation where there is no recording or documentation of any kind. This method has been successfully applied in at least one case at the Smithsonian Institution National Museum of Natural History.

Adequate and flexible time frames

Adequate and flexible time frames, for both museums and tribes, are an essential component of repatriation legislation. The NMAI Act and NAGPRA have some built in time frames, especially for museums and agencies to prepare the inventories and summaries discussed above. In some cases these deadlines have proven to be far too restrictive. Fortunately, there is no time limit on the overall repatriation process: tribes have unlimited time to make claims and museums can repatriate items and remains at any time.

Under NAGPRA, all non-Smithsonian museums in the United States were given three years to provide each tribe with a summary of any culturally affiliated unassociated funerary objects, sacred objects and objects of cultural patrimony in the museum's control, and five years to provide an inventory of Native American human remains and associated funerary objects. These deadlines were set from the date of NAGPRA's enactment. Museums with very few holdings and museums containing millions of catalogued items were given the same amount of time to prepare their summaries and inventories. While the time frames were adequate for many museums, they were entirely unreasonable for the largest museums in the country (and see Isaac Chapter 12).

The lack of a deadline for the conclusion of the overall repatriation process is an important aspect of the NMAI Act and NAGPRA. Unlimited time for tribes to make claims means that they can fully assess collections, and take as much time as is necessary for them to make culturally appropriate decisions about repatriating certain objects and remains. For example, the Zuni Tribe continues to wrestle with the issue of repatriating from museums human remains that were taken from ancestral sites on the Zuni Indian Reservation. According to Zuni religious leaders, one problem they

face is that there is no traditional Zuni ceremony for the reburial of repatriated ancestral human remains from museums throughout the country. Consequently, they continue to consider how they can receive and rebury repatriated human remains in a culturally appropriate manner. The lack of a legal deadline for repatriation is providing the Zunis with the time it will take for them to resolve this dilemma.

Inflexibility in applying time frames can create serious problems for tribes, especially when a tribe needs to respond to a museum or agency determination of cultural affiliation. Once a museum or agency has made a determination of cultural affiliation for certain remains or items under NAGPRA, and has published a notice of intent to repatriate in the Federal Register, other tribes not listed in the notice, but which believe they are affiliated, may take a counter claim within 30 days of the publication date. This short time frame can cause problems. For example, the Hopi Tribe filed a counter claim with the Forest Service concerning the Salado materials from the Tonto Basin (discussed above). The Forest Service reported that they received this counter claim a day or two after the deadline, and these remains and items were repatriated to another tribe. Since this repatriation occurred the Forest Service has amended its cultural affiliation statement and now includes Hopi as culturally affiliated to the Tonto Basin Salado. In addition, the Hopi Tribe has now assembled its own documentation showing Hopi cultural affiliation with Salado materials. Nevertheless, the completed repatriation remains unchanged.

Advisory committees

Two advisory committees have been established, one under the NMAI Act and the other under NAGPRA. Each committee is charged with reviewing and monitoring the repatriation process, and facilitating the resolution of repatriation disputes: the Smithsonian Committee for all museums within the Smithsonian Institution and the NAGPRA Committee for all other museums and agencies. The Smithsonian Committee is administratively housed within the National Museum of Natural History. The NAGPRA Committee is administratively housed within the National Park Service. Some tribes have questioned the independence of these committees and cited their administrative locations as potentially creating conflicts of interest. Tribes have noted that having the Smithsonian Committee in the same museum that houses most of the repatriatable human remains and other cultural items could potentially create a conflict of interest. Similarly, tribes have noted a potential conflict of interest because the NAGPRA Committee is administratively housed within the National Park Service, and it is this agency that has primary responsibility for administering many cultural resources for the federal government. Nevertheless, both committees have demonstrated their independence by making recommendations that would, if implemented, reverse a decision of the organization within which they are administratively housed.

One limiting aspect of these committees that cannot be overcome, however, is the fact that they are advisory only. They have no decision-making powers. They are legally mandated to facilitate the resolution of disputes, for example, but they are not

provided the authority to act as an arbitrator to settle disputes. Consequently, their advice and recommendations can be either accepted or rejected by any affected agency or tribe.

Funding

One of the great failings of repatriation legislation in the United States is the lack of provisions for adequate funding to effectively implement repatriation. Some funding is available to the Smithsonian Institution, and some to the National Park Service to provide grants to tribes and museums, but it is woefully limited. The lack of adequate funding has placed enormous financial burdens on tribes and museums. The burden is, however, proportionately far greater on tribes, many of which have no ability to fund repatriation activities. To expect tribes to fund their own repatriation activities, when the goal of the process is to right the wrongs of past museum and agency actions, adds insult to injury. Inadequate funding has adversely affected all aspects of repatriation.

SUGGESTIONS FOR REPATRIATION LEGISLATION

While there are problems in the implementation of the national repatriation laws in the United States, these laws are, on the whole, working well. Both the NMAI Act and NAGPRA serve as examples of how repatriation legislation can be constructed in other countries. Based on experience in the United States, some suggestions are offered that could make other legislation more effective:

- To guarantee that repatriation will occur, and occur in a structured manner, it is essential that repatriation legislation be enacted. Relying purely on the goodwill of institutions or individuals to implement repatriation often promotes ineffective, inadequate and arbitrary efforts.
- Definitions of cultural items that may be subject to repatriation should be flexible enough to allow latitude in their interpretation. The definitions should explicitly provide for the application of different cultural values as part of the repatriation process.
- Use of the cultural affiliation concept is a good idea. But, to make the concept effective and consistent, it is advisable to establish the general framework of cultural affiliation between present-day and past groups before beginning repatriation implementation. When repatriation is implemented, it is best done on a case by case basis. A general framework of cultural affiliation should provide consistency, while allowing flexibility in actual repatriation implementation. Development of this framework will require the equal participation of indigenous peoples and museum professionals. The general cultural affiliation framework, when established, must be made available to everyone, indigenous groups and museums alike.

- It is necessary, as part of legislation, to provide a framework for the protection of confidential and privileged information. It is unwise to assume that other laws will provide such protection in a culturally sensitive manner.
- Place reasonable time frames on museums to provide information concerning their holdings to indigenous groups, and provide reasonable and flexible time frames for museum responses to indigenous requests for repatriation. Do not place deadlines on indigenous peoples to make claims or complete repatriation, because this can be unworkable and unreasonable for these communities. It is more important for repatriation be done correctly than concluded in an arbitrary time frame.
- Establish an independent national repatriation review committee. As is the case in the United States, this committee should monitor and review the implementation of repatriation and deal with disputes between museums and indigenous groups and disputes between different indigenous groups. In addition, it would be useful to provide the committee with the option to arbitrate disputes, if the parties agree to such measures, to negate the need for legal actions. The committee should be composed of indigenous people and scientific and museum professionals, and should be housed in an administratively neutral agency to alleviate any potential conflict of interest. This committee should have decision-making authority.
- Legislate that the ongoing process of repatriation will be provided regular and adequate monetary resources for both indigenous groups and museums. This is critical and is a necessity if repatriation is to be successfully achieved.

NOTE

- 1 In the interests of brevity, we here use the term 'tribes' to refer to Native American tribes, Native Alaskans and Native Hawaiians.

SOURCES

Much of the information regarding the issues discussed here can be accessed through the following World Wide Web sites: the National Park Service NAGPRA web site (www.cr.nps.gov/nagpra/) and the Smithsonian Institution Museum of Natural History Repatriation Office web site (www.nmnh.si.edu/departments/anthro.html/repatriation/).

15 *The plundered past: Britain's challenge for the future*¹

MOIRA SIMPSON

In the United Kingdom, repatriation from museum collections has recently become the focus of government and professional scrutiny. This attention reflects a broader international concern with the trade in illicitly exported works of art and antiquities, the restitution of art works looted during the Holocaust and the Second World War, and indigenous claims for the repatriation of human remains and cultural heritage removed during the colonial era.

The main professional organizations in the United Kingdom with responsibility for museums have commissioned research, formed working groups to examine the issues and published guidelines and statements of principles (Simpson 1994; Simpson 1997; NMDC 1998; MGC 1999; Brodie *et al.* 2000; Leggett 2000; MGC 2000; NMDC 2000). At government level, a House of Commons Select Committee was established to examine the issues associated with the return and illicit trade of cultural property (House of Commons 2000a).

Over the past 2,000 years, the ethics of collecting and owning cultural heritage, and questions of repatriation and restitution, have been debated by historians, politicians, poets, writers and, more recently, by those with a professional involvement: archaeologists, anthropologists and museum curators. For centuries, loot was considered to be a legitimate prize in warfare, and victorious soldiers returned home with artefacts stolen from the bodies of their opponents, or plundered from private homes, religious buildings and state institutions. However, there have also always been those who have spoken out against looting or expressed concerns about the destructive effects of collecting. Thus, the Greek historian, Polybius, writing two thousand years ago, said that:

it would be impossible to attain universal dominion without appropriating (gold and silver) from other people in order to weaken them. In the case of every other form of wealth, however, it is more glorious to leave it where it was, together with the envy which it inspired, and to base our country's glory not on the abundance and beauty of its paintings and statues but on its sober customs and noble sentiments. Moreover, I hope that future conquerors will learn from these thoughts not to plunder the cities subjugated by them, and not to make the misfortune of other peoples the adornment of their own glory.

(cited in Kowalski 1996: 6)

For many centuries, the looting of precious objects from defeated opponents was regarded as a justifiable prize for the conquering army. Throughout the colonial era, the acquisition of treasures motivated many expeditions to travel deep into unknown territory. The Spanish, searching for the mythical El Dorado, returned from the New World with vast quantities of gold artefacts, many of which were then melted down and remodelled by Spanish craftsmen, their original craftsmanship lost forever. The appropriation of Indian property was opposed by the Spanish theologian and jurist Francisco de Victoria, who argued that the Indians were 'in peaceable possession of their goods, both publicly and privately. Therefore, unless the contrary is shown, they must be treated as owners and not be disturbed in their possession unless cause be shown' (cited in O'Keefe and Prott 1989: 803).

It was the results of colonialism – the occupation of Greece by the Turks – and the declaration of war by Turkey against France which enabled Lord Elgin to remove carvings from the Parthenon in Athens and other sites, in the early years of the nineteenth century. As Greece was then part of the Ottoman Empire, it was from the Turks, not the Greeks, that Elgin sought permission to undertake his studies of the monument and to remove certain pieces of stone – which Elgin later claimed gave him permission to remove such material.

The craftsmanship and display of classical beauty were extolled when the marbles reached London, but some were appalled by what they perceived to be an act of wanton destruction of a masterpiece of classical architecture. Byron, for example, in both *The Curse of Minerva* and *Childe Harold's Pilgrimage*, attacked the plundering of Greek antiquities.

Elgin's subsequent bankruptcy forced him to offer the marbles for sale to the British Government (Hitchens 1997: 41), and they were later transferred to the British Museum where they are regarded as one of the most significant components of the museum's collection. Demands for their return to Greece continue to attract worldwide attention and increasing support from the public.

While Elgin was acquiring the Parthenon Marbles, Napoleon Bonaparte was amassing a collection of artworks. Napoleon instituted a systematic collecting programme which confiscated artworks from his enemies and even appointed experts to organize and document the process. He also introduced a system of inclusion of a legal document to the treaty process in which noted works of art were transferred by the conquered governments to the French, thereby enabling the French to assert that they were legally acquired.

After Waterloo, those defeated during the Napoleonic Wars demanded the return of their art works, but the French argued that they had been legally acquired and had been given as part of the peace treaties. The British Prince Regent suggested that the Louvre collections should be divided amongst the allies – a means by which Britain, as one of the only allies that had not been invaded by Napoleon, could acquire art works from this collection (St. Clair 1998: 221–2). However the Allies decided that the art works in question should be returned to the countries from which they were removed, but, not all Napoleon's former foes agreed with this course of action. Leyten (1995: 14) recounts that when offering recaptured Spanish art treasures to the Spanish king, Wellington received the reply: 'His Majesty, moved by your consideration, does

not wish to deprive you of what has come into your possession by such just and honourable means.'

The restitution of Napoleon's art collection was the first time that a large-scale restitution had taken place of property plundered during warfare, and it marked the future direction of international law as it related to the protection of cultural property. Examples include the Lieber Code: Instructions for the Government of Armies of the United States in the Field (1863), the Brussels Declaration (1874) regarding the laws and customs of land warfare and the Hague Laws of War of 1899. In the twentieth century there were continuing efforts at an international level to protect cultural property during times of war. Both the 1907 Hague Convention Concerning the Laws and Customs of War on Land and the 1943 Treaty of London attempted to lay down rules for the legal protection of cultural property during periods of armed conflict. However it was not until 1954 that it was formalized in the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention). The Hague Convention established the rights and responsibilities of military and occupying forces, specifying that armies may only take as booty objects which were military in function, such as weapons, uniforms, military vehicles etc.

Before this, however, systematic looting of art works and antiques had been undertaken on a grand scale by the Nazis since the 1930s (see, for example, Feliciano 1997; Nicholas 1994 and Petropoulos 2000). Although the Allies undertook a programme of restitution at the end of the war, portions of the Nazi collection fell into the hands of the Soviets and others. Indeed, the Soviet Union had its own programme of art acquisition undertaken by teams of military personnel and art specialists specifically assigned to this task (see Akinsha and Kozlov 1995). Today, a large collection of art removed from Germany at the end of the war is still held in the Hermitage Museum in St Petersburg, Russia. Repeated repatriation requests and international appeals for return of the collection have been rejected. Nazi loot stolen from Jewish homes and from private and public buildings in the occupied countries has become scattered across Europe and North America. In recent years, museums and galleries world-wide have begun researching their collections to identify any artworks that may have been plundered from European Jews by Nazis during the period 1933–45.²

Despite the Hague Convention, the theft and destruction of one nation's treasures by an enemy power or occupying force continued in the latter half of the twentieth century. Religious and cultural material in Nepal has been appropriated, destroyed or exported under Chinese occupation. During the period of the Khmer Rouge regime in Cambodia (1977–9) and the country's occupation by the Vietnamese in 1978, Khmer art works were lost from the national collection and from various archaeological sites. Similar stories are repeated throughout the world.³

The international art market continues to fuel the trade in illicitly excavated and exported antiquities and stolen works of art. For looters the incentives are great, particularly in parts of the world where poverty is rife. In some countries, such as Nigeria and Afghanistan, museum collections are under threat of theft by corrupt officials or by the activities of rebels and soldiers during civil war. Objects are then smuggled out of the country for sale to dealers, many of them in London and New York. Today, the international trade in stolen or illicitly excavated and exported

works of art and antiquities is one of the most lucrative international criminal activities, estimated to be second or third only to the drugs trade for the financial rewards involved (Conforti in House of Commons 2000, vol. II: 151). The devastating effects of such activities are destroying some of the world's finest archaeological sites, disfiguring ancient architectural structures and robbing nations of their cultural heritage.

Efforts to halt the illicit trade at an international level have been met only partly by international treaties. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was limited in its effectiveness by differences in national laws in the states which have signed the Convention. Furthermore, it applies only to illicit activities which occur after a state has acceded to the Convention.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was designed to ensure that there was uniformity in national laws which would support and enable implementation of the international treaties and laws. Britain has failed to sign the UNIDROIT Convention but, in early 2001, signed the UNESCO Convention following recommendations made by the Illicit Antiquities Research Centre (Brodie *et al.* 2000: 6) and by a Ministerial Advisory Panel on Illicit Trade (DCMS, 2000: 23).

Ninety-five countries are now parties to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, but the USA and Great Britain are not amongst them. A Second Protocol to the 1954 Hague Convention was adopted on 26 March 1999. The new protocol requires occupying powers to prohibit and prevent the illicit export, removal or change of ownership of cultural property and defines new crimes in relation to the protection of cultural property. It also strengthens and clarifies the sections dealing with conflicts within nations. The protocol will have to be ratified by individual states and supported by the introduction of national laws, but there is also a provision for universal international jurisdiction enabling crimes to be prosecuted in other countries than those in which they were committed (UNESCO 1999).

COLONIALISM

The treaties outlined above do not cover the acquisition of items taken in past centuries as the result of colonial expansion. Conflicts between colonizers and the colonized were rarely regarded by the former as war. Instead, the arrival of European military personnel and settlers was regarded as discovery, though to the indigenous population it was, more often than not, invasion. In contemporary records – and even in the recent past – indigenous peoples defending their land, culture and lives were not described as soldiers or warriors but as savages or natives.

The histories of Britain and its former colonies are inextricably linked, and conflicting views of artefacts and events have raised complex questions of interpretation and preservation, ownership and control. In Britain's national museums, encyclopaedic collections are held in trust for future generations as evidence of environmental development and human origins, records of world history and artistic achievement, and

objects of national heritage. These collections provide an historical record of Britain's scientific endeavours and colonial activities during a period of rapid expansion. As such, they are a part of the historical and cultural heritage of the British people. Yet, that history has another side; there are other stories to tell, other histories from which these objects originate, other religions that these objects served. Colonial activities often involved military domination, economic exploitation, cultural imperialism and religious intolerance. The antiquities and ethnographic objects held by many British museums are a part of other peoples' cultural heritage, other peoples' histories, as well as those of the British people. These other stories have been told less frequently but are no less potent and valid. Indeed, the contexts in which some of these items were made and used elevate them above mere historical artefact and raise issues involving concepts such as ritual care, ceremonial significance, traditional custodianship and intellectual property rights.⁴ From these differing viewpoints, the artefacts may be seen as trophies of a proud colonial history – or as loot plundered during acts of cultural domination.

Cultures around the world have been affected to varying degrees by collecting activities; in some regions, little physical evidence remains of the historic past and cultural heritage of the indigenous community. In these areas, the activities of settlers, traders, missionaries and others began the process; later, salvage collecting resulted in the wholesale removal of vast quantities of ethnographic material to private collections and to major museums in Europe, North America and elsewhere. Little moral concern was given to the methods of acquisition. While some artefacts were acquired through purchase, trade or gifts, others were excavated from archaeological sites, confiscated by missionaries and government agents, looted from burial sites or shrines or removed from bodies after battles or massacres. In 1973, the UN General Assembly (UNGA) expressed strong disapproval of the 'wholesale removal, virtually without payment, of *objets d'art* from one country to another, frequently as a result of colonial or foreign occupation' and suggested that 'the restitution of such works would make good the serious damage suffered by countries as a result of such removal' (UNGA Resolution 3187, cited in O'Keefe and Prot 1989: 831).

In the major museums, extensive collections have been compiled which are intended to reflect the diversity of the natural world and human productivity, and to provide comparative material for research purposes. However, Mturi (1983) has argued that 'Some exceptions apart, the British Museum and similar museums cannot claim to house fair and representative samples of the assemblages of the diversified cultures and civilizations of this world. In most cases what they hold are the masterpieces of such cultures and civilizations, which in the first instances attracted the collectors and treasure hunters.' Consequently, many cultural groups retain little of the truly valuable cultural material of their ancestors and now seek the return of significant examples.

Requests for repatriation may be driven by a variety of interests including ownership and control, local and national politics, religion, education and economics. Increasingly, the cultural and political climate has enabled individuals to take pride in their ethnic identity in a way that political policies and societal attitudes did not allow in the late nineteenth century and the first half of the twentieth century. Indigenous communities

are now seeking to preserve the evidence of their cultural past and to teach younger generations about the lives and achievements of their ancestors and also to take control over the interpretation of their histories and cultures to others. This, combined with economic needs, may fuel the desire for the development of a community museum or cultural centre, but such a facility will be limited in the extent to which it can fulfil these functions if it cannot gain access to examples of cultural heritage.

Over the years, Britain's national museums have led the chorus of voices opposed to repatriation, arguing instead that artefacts of great artistic and cultural worth are of international importance, that they are a part of world heritage and belong to all of humankind; as such they must be preserved intact for future generations of researchers and museum visitors. It is also claimed that artefacts collected during the colonial era are a part of the heritage of the collecting nation as well as that of the nation from which they originated: 'The effect on our culture of the acquisition and display of exotic cultural material has been enormous and is a very significant aspect of our cultural history. To this extent the material is our cultural property also' (Locke 1979, cited in O'Keefe and Prott 1989: 848). As such, it is argued that they should be preserved in the world's greatest museums such as the British Museum in London, the Louvre in Paris and the Metropolitan Museum of Art in New York. Sir David Wilson, formerly director of the British Museum, has warned that: 'The British Museum ... is a considerable element in the cultural heritage of the world; to start to dismantle it by bowing to unthinking, if understandable, nationalistic demands would be to start a process of cultural vandalism which would make the politicization of art in the 1930s in Germany look like a petulant child's destruction of its dinner' (Wilson 1990: 116). However these arguments have been refuted both by indigenous people seeking the return of human remains and cultural items, and by museum professionals who have been actively involved in the development of more sensitive and proactive repatriation policies overseas.

Furthermore, while some people do hold polarized views about the issue of repatriation, most seek only the return of those objects that hold the greatest cultural significance to the culture of origin or are required for the continuation of religious practices. As explained by Stétié:

when we say that objects should be returned, we do not mean all objects. It would be wholly unrealistic, impossible and improbable for the hundreds and thousands of objects and works that are currently scattered among the large museums of Western Europe, the United States of America and Eastern Europe to be returned overnight to their countries of origin. Our concern is simply to recover any particular object which is considered to be sufficiently important for a given cultural tradition, to the extent that, without that object, the cultural tradition cannot be explained, above all, to those who have inherited it.

(Stétié 1981: 9)

Another argument frequently put forth by those opposed to the notion of repatriation is that of the legality of the museum's acquisitions. Sir David Wilson (cited in O'Keefe and Prott 1989: 844) spoke about this in 1981, stating that: 'The British Museum was founded in 1753 and I think it is wise to remember that we have been collecting for

225 years ... It has collected ... legally in the light of the period during which the material was acquired: so that in 1781 we were collecting legally, in 1881 we were collecting legally and in 1981 we are collecting legally.' However, such arguments were rejected by UNESCO's Venice Committee of Experts to Study the Restitution of Works of Art which stated in 1976 that: 'The present legal status of an object should not be an obstacle to negotiation for its return' (UNESCO 1976: 5, cited in O'Keefe and Prott 1989: 845). It is also a view that is now being challenged by legislation in the USA, where the primary rights and customary laws of indigenous peoples are being recognized, and in Australia, where customary law has gained some limited recognition with the passage of the Native Title Bill.⁵

RECENT DEVELOPMENTS IN THE UNITED KINGDOM

With the end of the British colonial era, former colonial nations have sought the return of artefacts from Britain's museums. This reflects similar developments between other nations in Europe and their former colonies. Similarly, there have been significant developments in Australia, Canada and the USA where indigenous populations have grown in cultural and political strength, and through persistent effort have placed repatriation, land rights and other indigenous political issues firmly on the agenda of domestic politics (see McKeown Chapter 9, Aird Chapter 26, Isaac Chapter 12). However indigenous peoples in overseas countries wield little or no political power with the British Government and, consequently, the Government was able to assign the matter directly to individual museums. In 1993, a spokesperson for the Department of National Heritage⁶ stated that repatriation was 'entirely a matter for the institutions in whose collections the items are held, since they are independent of government and are free to decide what to do with their own property' (O'Mara 1993).

Museums Association research projects

The growing need to address the issue of repatriation was recognized by the Museums Association in the mid-1990s, when it commissioned two research projects to investigate the policies and experiences of museums and museum staff in relation to the handling, display and repatriation of human remains and objects in museum collections in the UK. The initial project involved a survey of museums and sought information relating specifically to human remains and sacred objects (Simpson 1994: 28–32). The second project dealt with other categories of material than human remains (Simpson 1997).

The results of the first survey (which had 24 respondents) showed that all had, or once had, human remains in their collections and 19 still had some on display, largely in the areas of archaeology and Egyptology. None displayed Native American, Australian Aboriginal or Maori material of human origin. Seventeen of these 19 museums had removed human remains from display in the past, almost half as a result of changes in staff attitudes (in one case this led to a change in official museum policy) and four as

a direct result of external pressures. However, ethnographic material from other regions, which was composed at least in part from human remains, did continue to be displayed. Nine museums employed special measures in caring for human remains and sacred objects, such as separate storage or restricted access. In one case, Maori tattooed heads were kept separate from other material and had been blessed by a Maori elder. Eight respondents had written policies relating to the repatriation of human remains, while a further ten had unwritten policies. Nineteen indicated that they supported the development of repatriation policies in overseas countries, and 17 agreed that museums in Britain should develop similar types of policies.

Information from this survey and other sources indicated that, prior to 1994, 15 museums had received requests for repatriation and, of these, 12 had returned items. In most cases these were individual items or small groups of items that served no significant purpose in the museum collections concerned. The exception was a large collection of Aboriginal skeletal material returned to Australia by Edinburgh University in 1991. Since then, there have been two or three additional cases of human remains being repatriated, again individual items or partial skeletons, and, in 2000, the return took place of a second large collection of Aboriginal skeletal remains from Edinburgh University.

The second project commissioned by the Museums Association dealt with all other categories of material in museum collections excluding human remains (except where these formed part of an ethnographic artefact). Two surveys were undertaken, one that sought the personal opinions of museum staff and one which gathered data concerning the policies of museums and their experiences of receiving and responding to repatriation requests. Data was collected regarding the policies of professional organizations in Britain with an interest in the issue of repatriation, such as the Museums Association, the Museums and Galleries Commission,⁷ the Museum Ethnographers' Group and the Society of Museum Archaeologists. This was compared with similar data gathered from professional organizations and government agencies in other European countries (see Simpson 1997).

The codes and guidelines of organizations in the UK made little reference to the repatriation of material other than human remains. Those of specialist groups generally referred to the Museums Association's Code of Practice for Museum Governing Bodies which at that time made little reference to repatriation *per se* (Museums Association 1996). It was clearly stated that the responsibilities of museums, as defined by these organizations, are to the public (past, present and future), including donors and the ethics of acquisition were seen to relate primarily to questions of legal title. References to donors of the collections clearly refer not to traditional owners but to collectors, purchasers and others who acquired the items and subsequently gave them to the museum. Likewise, the public for whom museums are seen to hold material in trust is primarily the public of the UK and overseas visitors; traditional ownership, traditional knowledge and traditional property rights do not feature prominently.

Considering the value allegedly being given to the public interest, public opinion in the UK has shown significant sympathy for the concept of repatriation. A visitor survey conducted by Birmingham Museum and Art Gallery found that, while the ethnographic collections were valued, there was overwhelming support (93 per cent)

for the repatriation of objects of importance to the culture of origin (Jones 1993: 99–105). In 1998, a MORI poll showed that 39 per cent of the 1,823 members of the public questioned said they would vote for the Elgin Marbles to be returned, while 15 per cent said would vote for their retention. The remainder either would not vote (18 per cent) or did not know how they would vote (28 per cent). Furthermore, out of 91 members of Parliament interviewed, slightly more favoured return (47 to 44 per cent). A majority of Labour MPs favoured return (57 to 33 per cent) while 83 per cent of Conservative MPs favoured retention in the British Museum as opposed to only 9 per cent who favoured their return to Greece (MORI 1998).

When the current Labour Government was still in opposition, the Labour Party leader, Neil Kinnock, made repeated requests for the return of the marbles to Greece promising, in 1984, that this would occur if he became prime minister. In addition, Labour members of the European Parliament signed a letter supporting the Greek Government's claim to the Elgin Marbles. However once in government, the Labour Party, under the leadership of the new prime minister, Tony Blair, changed its policy and announced that the Elgin Marbles would not be returned to Greece.

Public opinion also proved strong in support of repatriation when the future of a Ghost Dance shirt in the collection of Kelvingrove Museum was debated at a public meeting in Glasgow in November 1998. Followers of the nineteenth-century Native American Ghost Dance Religion believed they would drive out the colonizer and that their shirts would protect them from the white man's bullets. Amongst the followers of this religion were the Lakota Sioux, of whom 250 men, women and children were massacred by the Seventh Cavalry at Wounded Knee in December 1890. The Ghost Dance shirt in the collection of the Kelvingrove Museum was acquired by the museum from a member of Buffalo Bill's Wild West show which visited Glasgow in 1892 (and see Thornton Chapter 1).

In 1992, the shirt was seen on display in the Museum by a Cherokee lawyer. This led to a formal request being submitted to the Museum in 1994 by the Wounded Knee Survivors' Association for the return of the shirt and four other Lakota items (this latter request was later rescinded). The request was originally refused on the basis that the shirt was not unique and there were several others in the US, some of which had already been returned to the Lakota. The Kelvingrove shirt was the only one in the UK and it was felt by museum staff that the shirt provided a potent vehicle for telling the story of the massacre of Wounded Knee to museum visitors in Scotland. However, following the Museums Association seminar 'Point of No Return?: Museums and Repatriation' in November 1997, which launched the report *Museums and Repatriation* (Simpson 1997), the Museum reviewed its policy on repatriation and a member/officer group was established to consider individual requests for repatriation in the future.

The matter of the Ghost Dance shirt was re-examined early in 1998 and a public hearing took place in November 1998. Of the 150 written submissions considered, only six argued for the retention of the shirt in Glasgow (Glasgow City Council 1998: 2). Presentations were given by museum staff and by members of the Lakota Sioux. The official museum view was that the museum had legal ownership of the shirt and was under no legal obligation to return it; however, Mark O'Neill, head of



Figure 15.1 Lakota Elders viewing the Ghost Dance shirt for the first time, at a ceremony at Eagle Butte

Photograph: Glasgow Museums

curatorial services, explained in his presentation that the decision should be made upon consideration of humanitarian concerns:

If museums represent our better selves, our humane values, then we have to admit to the possibility that there may be other values, which are more important than that of possession. Possession is not an absolute value. If our values lead us to preserve an object because of what it tells us about the history of a particular human group, then it is inconsistent not to give that group the respect of at least taking their views seriously.

(O'Neill 1998: 1)

Glasgow City Council's Arts and Culture Committee took the decision to return the shirt to the Lakota Sioux on the condition that the shirt would be displayed in a place where the story of the Lakota Sioux and the shirt's history in Glasgow could be told; and that the shirt might be taken back to Glasgow for public display at times agreed to by both Glasgow City Council and the Wounded Knee Survivors' Association. It was also agreed that the Council and the Association would explore opportunities for developing educational and cultural links. The City Council also declared that the



Figure 15.2 Members of the Wounded Knee Survivors' Association unfolding the Ghost Dance shirt at the site of the mass grave at Wounded Knee, with a piper (playing a specially composed pibroch) in the foreground

Photograph: Glasgow Museums

decision to return the shirt did not bind the Council to return other artefacts from its museums, and thus no precedent was set.

At the hearing, Marcella LeBeau, a Lakota tribal elder presented Glasgow City Council with a replica shirt that she had made. Today, this shirt is on display in the Kelvingrove Museum with the full story of its donation by the Lakota, the history, acquisition and repatriation of the original Ghost Dance shirt and Wounded Knee massacre. The original Ghost Dance shirt was formally handed over to the Wounded Knee Survivors' Association in a ceremony in Glasgow and, when the shirt was returned to South Dakota, a spiritual ceremony called the 'Wiping of Tears' was held at the site of the mass grave of the Wounded Knee victims. Initially, the shirt will form part of an exhibition at the Cultural Heritage Center in Pierre, South Dakota, and later will be placed on permanent display in a museum which is to be built at Wounded Knee to commemorate the massacre.

These examples demonstrate the public support for repatriation in this country. But what of the opinions of those who actually work with the collections? They might be expected to be opposed to repatriation, holding a strong desire to preserve the status quo and to retain their collections intact. On the contrary, the Museums Association

Table 15.1 Circumstances under which repatriation might be acceptable (Simpson 1997)

| <i>Statement</i> | <i>Acceptable</i> | <i>Frequency (%)</i> |
|------------------------------------------------------------------------------------------------------------|-------------------|----------------------|
| The item is a significant part of the cultural heritage of a living people | 90 | 75 |
| The item will be housed in a museum or other secure facility within the community in question | 83 | 69.2 |
| The item is required by a living culture for the practice of continuing religious traditions | 79 | 65.8 |
| The item was endangered at the time of removal but can now be well-cared for by those seeking repatriation | 77 | 62.2 |
| The item is of a secret/sacred nature and is not supposed to be viewed by, for example, the uninitiated | 59 | 49.2 |
| The item was removed at a time when the collector and the culture of origin were at war or in conflict | 65 | 54.2 |
| The item was communally owned and should not have been given away or sold by any individual | 61 | 50.8 |
| The item was removed from a grave or other burial site | 52 | 43.3 |
| Other | 18 | 15.0 |

surveys showed that the vast majority of respondents accepted the notion of repatriation, acknowledging the validity of a number of arguments for the return of cultural property. Of the 123 respondents to the attitude survey of individual Museums Association members, only three were categorically opposed to repatriation.

However comparison of the results from the two surveys provides clear evidence that although there is sympathy for the issues which motivate requests for repatriation, the views of individual staff remain, for the most part, untested by experience. The results of the institutional survey showed only eight out of 164 museums which responded to the survey had received requests for repatriation, although it must be noted that some of the nation's largest museums, and those museums that have had the most direct involvement in repatriation discussions in the past, did not participate in the research. The British Museum, for example, did not contribute to the research project but in a recently submitted memorandum to the House of Commons Select Committee on Cultural Property: Return and Illicit Trade stated that over the past 30 years it had received 27 foreign requests for repatriation whose nature and source varied considerably: 'Some bids have been government to government, some have been government to British Museum, others have been less formal, involving individual politicians, cultural leaders or museum services' (House of Commons 2000a: vol 2: 219).

The results of the Museums Association surveys highlighted the fact that a dichotomy exists between institutional policies in museums in the UK (very few of which had written policies relating to repatriation) and the personal views of their staff, among whom there was almost unanimous agreement that repatriation from museum collections was acceptable in certain circumstances (see Table 15.1). Consequently, a tension may exist between the individual staff members' professional responsibilities to enforce museum policy and their personal views. This tension has been articulated by Schuyler Jones (in an interview with the author, 19 September

1996), former director of the Pitt Rivers Museum. When dealing with requests by the Zuni for the return of a war god which they considered authentic, despite it having been made by an American anthropologist (Coote 1997), Jones stated that as an anthropologist he sympathized with the Zuni, but as a museum director he had to protect the integrity of the museum's collections.

While repatriation is not an issue that has directly affected many museums in Britain, it is nevertheless a subject of considerable interest within the museum profession. It is clear that while museum staff recognize it as an issue that must be addressed, it is a subject with which many staff feel they are ill-equipped to deal. Many survey respondents indicated their wish to know much more about this complex subject and the need for guidance should they ever be faced with such a request. Consequently, the recommendations made in the 1997 Museums Association report related directly to this and were designed to facilitate the acquisition of more detailed information, the identification of sources of expertise and advice, as well as professional guidance on the handling of requests.

POLICY DEVELOPMENTS IN THE UK

The first recommendation made in the Museums Association report (Simpson 1997) was that a set of guidelines should be established to assist staff in their handling of repatriation requests. In 1998, guidelines were commissioned by the Museums and Galleries Commission (MGC), in association with the National Museums Directors' Conference and the Museums Association. A detailed framework was drawn up of issues to be considered and actions to be taken by governing bodies, museum directors and staff when they receive a repatriation claim (Legget 2000). Nonetheless, the MGC points out that the guidelines 'do not instruct museums on whether or not to return objects from their collections. The MGC believes that responsibility for decisions on such requests should lie with museums' governing bodies, which are best placed to examine the validity and consider the merits of each request' (MGC 2000).

In responding to a request for the repatriation of an item, the guidelines advise museum staff to, for example, explore and clarify the status of those requesting repatriation, and to understand the reasons for the request being made, such as cultural renewal, respect for human remains or sacred objects, completion of burial rites, retrieval of property that was wrongfully taken, research requirements, museum collection acquisition, and also political motivation at a national or local level, or commercial advantage. Members of staff are also asked to consider the proposed future of the material if it is retained and if it is returned (see Legget 2000 for further details of these guidelines).

Museums Standing Advisory Group on repatriation and related cultural property issues

The National Museums Directors' Conference in conjunction with the MGC and the Museums Association established the Museums Standing Advisory Group on Repatriation and Related Cultural Property Issues in 1999. The group was conceived

as a forum for the exchange of information and views on restitution and repatriation, and one of its initial tasks was to respond to the recommendations made by the Museums Association 1997 report. The group acknowledged the necessity for providing museum staff with a source of information and advice in dealing with repatriation requests, over and above the repatriation and restitution guidelines which were in preparation at that time. It also supported the establishment of an advisory body and resource centre and resolved that the matter of funding would be pursued with the Museums, Libraries and Archives Council (now known as Resource) and the Department of Culture, Media and Sport (DCMS) (MSAG 1999 a, b, c).

In early 2000, the Standing Advisory Group submitted evidence to the House of Commons Select Committee which, amongst other things, emphasized the complexity and breadth of repatriation issues and commended the MGC's guidelines (Legget 2000) as providing a consistent framework for museum staff to follow in handling a request. They also recommended that the British Government accede to the UNIDROIT (1995) and UNESCO (1970) Conventions or 'at the very least to consider what equivalent measures might be put in place' (Museums Standing Advisory Group 2000: 99–103).

The Illicit Trafficking of Cultural Property Working Group

In 1999, a steering group was established to look into matters relating to the international trade in illicitly excavated and exported cultural property. The group included representatives of the International Council of Museums (ICOM) and the Museums Association, who also commissioned the Illicit Antiquities Research Centre in Cambridge to undertake research into the matter. Their report (Brodie *et al.* 2000) made various recommendations for action to be taken by museums to ensure that they comply with professional standards and international laws when acquiring items or when dealing with enquiries concerning unprovenanced material. The report also called for the formation of a central advisory point, the establishment of a central register of advisers, and the formulation of 'a set of guidelines to be used by museums with small acquisition budgets that are faced with large quantities of unprovenanced material brought to their attention by treasure hunters'.

The various calls that have been made for the establishment of a centre to provide advice on relevant issues have been answered by Resource, which, in early 2001, was preparing an application for funding from the European Commission's 2000 programme to finance a European cultural property advice centre. This would probably be formed within an existing organization such as the Museums Association or the Museum Documentation Association.

House of Commons Select Committee on Cultural Property

In late 1999, the British Government announced that it was establishing a House of Commons Select Committee to examine cultural property issues. The DCMS then invited written submissions of evidence relating to the illicit trade in cultural property

and methods of counteracting it, including European legislation (House of Commons 2000a: liv). They also sought evidence concerning

claims for the return of items of cultural property which were historically removed and not necessarily acquired as a result of the illicit trade; the policies and advice for museums relating to such claims, including solutions other than return; guidance and advice for museums from central sources on acquisition and return; current legislation relating to return and others solutions to claims and arguments for and against legislative change.

(House of Commons 2000a: liv)

In response it received submissions from numerous organizations and individuals representing the antiquities and art trades, auctions houses, museums and galleries in Britain and Europe, indigenous groups, diplomats, police, customs and other interested parties.

In its report, the Select Committee recommended (House of Commons 2000a: li–liii) that the Home Office establish ‘a national database of stolen cultural property and cultural property exported against the laws of countries concerned under national police control’ and ensure that it is ‘compatible with the wider international development of a database of stolen and illegally exported cultural property’ (House of Commons 2000a: xv–xvii). The committee recommended that the Government ‘introduce legislation creating a criminal offence of trading in cultural property in designated categories from designated countries which has been stolen or illicitly excavated in or illegally exported from those countries after the entry into force of the legislation’ (House of Commons 2000a: xxix). If these recommendations were implemented, it did not feel that the United Kingdom should sign the 1970 UNESCO Convention but did recommend signing the 1995 UNIDROIT Convention and facilitating early ratification (House of Commons 2000a: xxix).

In its initial response to the report, the Government referred these matters to an Advisory Panel which was established in May 2000 to consider matters relating to the illicit trade in art and antiquities and which would review both legislative and non-legislative options for action (House of Commons 2000b: iv). The panel did not recommend that the government should sign the UNIDROIT Convention, but instead recommended accession to the 1970 UNESCO Convention. In March 2001 the United Kingdom became the 92nd nation to sign the Convention.

The committee welcomed the publication of the MGC’s guidelines and commended the procedures previously adopted by Glasgow City Council for handling claims for the Ghost Dance shirt (House of Commons 2000a: xxxiv–xxxvi). While ruling out the introduction of legislation which would give greater powers of disposal generally to the directors and governing bodies of national museums, the committee felt that, where a special case could be made, it would be appropriate for new primary legislation to be enacted if sanctioned by Parliament. This was supported by the Government in its initial response to the report (House of Commons 2000b: v).

With regard to access to museum collections and documentation, the committee directed that information should not be ‘unreasonably withheld from those with a legitimate interest, including claimants and potential claimants’ and that ‘in setting

priorities for the conduct of research on collections and making information about these collections accessible, museums should give consideration to the interests of originating communities' (House of Commons 2000a: xxxiv).

The committee considered a submission from the Foundation for Aboriginal and Islander Research Action (FAIRA), in Queensland, Australia and took oral evidence from one of its researchers who had for some years been involved in researching and documenting Aboriginal human remains and cultural property held in museum collections (House of Commons, 2000a: 88–98). This evidence explained the strong motivation felt by many Aboriginal communities to seek the repatriation of their ancestors' remains.

The committee agreed with arguments that human remains should be seen as an issue distinct from the broader issues of repatriation of cultural property and felt that the MGC guidelines on restitution and repatriation did not give enough weight to the issue of human remains. It recommended that the DCMS (House of Commons 2000a: xlii) 'initiate discussions with appropriate representatives of museums, of claimant communities and of appropriate governments to prepare a statement of principles and accompanying guidance relating to the care and safe-keeping of human remains and to the handling of requests for return of human remains'.

It also recommended that the DCMS should 'seek commitments from all holding institutions in the United Kingdom about access to information on holdings of indigenous human remains for all interested parties, including potential claimants'. Furthermore, it recommended that consultation should be undertaken regarding the terms of legislation which would permit the trustees of national museums to remove human remains from their collections with a view to early introduction of such legislation.

In its initial response, the Government agreed with these recommendations (House of Commons 2000b: v) and in July 2000 had already announced a joint statement with the Australian Federal Government in which both governments agreed to increase efforts to repatriate human remains to Australian indigenous communities. Recognizing the need for such issues to be dealt with sensitively and according to the wishes of indigenous communities, the statement noted that 'more research is required to identify indigenous human remains held in British collections (and) extensive consultation must also be undertaken to determine the relevant traditional custodians, their aspirations regarding treatment of the remains and a means of addressing these ... The governments agree to encourage the development of protocols for the sharing of information between British and Australian institutions and indigenous people'.

In early 2001, the British Government established a working group on human remains to examine the legal status of human remains in museum collections and to consider the desirability of legislation relating to the de-accessioning of human remains from the collections of museums and galleries governed by statute. The circumstances under which 'material other than, but associated with, human remains might properly be included within any proposed legislative change in respect of human remains' would also be explored. The working group was also asked to consider 'the desirability of a Statement of Principles (and supporting guidance) relating to the care and safe-keeping of human remains and to the handling of requests for return (and) if the Panel considers appropriate, to draw up the terms of such a

Statement and guidance' (Terms of Reference for Working Group on the Potential Return of Human Remains. House of Lords, Hansard 10 May 2001).

The committee also considered that cultural property taken during the Holocaust and the Second World War was worthy of special treatment. It emphasized the need for the removal of legislative barriers in cases where a claim had been upheld and restitution proposed. (House of Commons 2000a: xlvi–l). After further consultation with the NMDC, the Museums Association, the Museums Standing Advisory Group on Repatriation, the Tate Gallery, and Resource, the Government is exploring the means by which the Trustees or Boards of National Museums and Galleries would be able to return items which were wrongly taken during the period 1933 to 1945, a procedure which might be facilitated by means of a Regulatory Reform Order under the Regulatory Reform Bill which was put before Parliament in early 2001.

The role of museums is undoubtedly undergoing significant changes as increasing recognition is given to the rights of traditional owners and the responsibilities that museums have to them as well as to museum visitors. These recent developments are, without doubt, just the first steps in the process of addressing the complex issues that entwine the lives and histories of colonizer and colonized, victor and conquered. For all the benefits of colonialism, the legacy of its destructive impact continues to affect us today, resulting in complex political, economic and social issues, some of which remain unresolved in domestic and international political arenas. Likewise, despite the benefits of museums in terms of preservation and interpretation, the impact of past collecting activities has resulted in complex and intertwined histories of artefacts in museum collections leading sometimes to contested ownership questions. The resolution of the repatriation debate, and the related issues of looting and the illicit trade in antiquities, remains one of the greatest challenges facing modern museums. Despite the earlier inertia – even resistance – within the museum profession in Britain to actively engage with these issues, it seems that they are at last being addressed by museum management, policy makers and government.

NOTES

- 1 Portions of this text have been used in the epilogue of the revised paperback edition of *Making Representations: Museums in the Post-colonial Era* written by Moira Simpson, published by Routledge in 2001.
- 2 Various organizations have made efforts to address the issue of the restitution of art stolen during the Nazi, Holocaust and World War II period. These include, in 1998, an international conference on Holocaust-Era Assets which formulated the Washington Conference Principles on Nazi Confiscated Art to guide future transactions, exhibition and international exchange of artworks and to establish co-operative efforts to trace, publicize and resolve claims of ownership. In Britain, in 1998, the Working Group on Spoliation of Art (established by the National Museum Directors' Conference) published a Statement of Principles regarding this issue (NMDC 1998) which was followed in 1999 by a parallel statement for non-national museums issued by the Museums and Galleries Commission (MGC 1999). Also in 1999, the UK Department of Culture, Media and Sport established a Spoliation Advisory Panel to consider and advise on claims for cultural property stolen during the Nazi era and now believed to be in the collections of a museum in the United Kingdom.

- 3 See the ICOM series 'One hundred missing objects' in which separate volumes detail works of art currently missing from various countries or continents.
- 4 For detailed discussion of these issues see part 3 of Simpson, M. (1996/2001) *Making Representations: Museums in the Post-colonial Era*. London: Routledge.
- 5 See the Native American Graves Protection and Repatriation Act, Public Law 101-601 25 USC 3001 *et seq.* 16th November 1990 in the USA; 'Previous Possessions, New Obligations: Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples', Melbourne: Council of Australian Museum Associations, 1 December 1993; and the Native Title Act, Commonwealth Government of Australia 1993. For further detailed discussion of these and related issues see: Simpson, M. (1996/2001) *Making Representations: Museums in the Post-colonial Era*. London: Routledge.
- 6 The Department of National Heritage at that time was the government department responsible for cultural and heritage issues including museums and art galleries; it has since been replaced by the Department for Culture, Media and Sport.
- 7 The Museums and Galleries Commission has since been replaced by Resource: The Council for Museums, Archives and Libraries, which combines the previous responsibilities of the Museums and Galleries Commission and the Library and Information Commission.

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16 *One hundred and sixty years of exile: Vaimaca Pirú and the campaign to repatriate his remains to Uruguay*

RODOLFO MARTINEZ BARBOSA

INTRODUCTION

The population of Uruguay is comprised of indigenous people and immigrants, and although Spanish is spoken, the language inherited from the first inhabitants is still used throughout the country. However acknowledging our indigenous roots should not be interpreted as adopting an attitude of exclusion towards other, non-indigenous, Uruguayan people.

The mortal remains of Vaimaca Pirú are in a foreign country. He received incomprehension, degradation and exile as 'reward' for assisting in the formation of Uruguay as an independent state and died in terrible circumstances one and a half centuries ago.

Over a decade ago, many Uruguayans joined together to form an organization called Integrador Nacional de los Descendientes de Indigenas Americanos (National Integration of Descendants of American Indigenous Peoples). Immigrant communities from Europe also have their own institutions which they maintain in order to rescue and re-create the traditions of their grandparents, and there are also organizations for Uruguayans who are recovering the cultural values of their African ancestors.

My own grandparents were not only indigenous but also European and African, and I am very proud of all my ancestors. I do not reject my Caucasian or African roots, nor do I pretend to be the voice of Uruguay's indigenous people.

VAIMACA PIRÚ

Vaimaca Pirú was one of many indigenous people who fought for the independence of Uruguay. The indigenous people of Uruguay actively participated in the formation of the current republic. They built the first urban settlement in Colonia del Sacramento, part of which was declared a world heritage site by UNESCO, and they erected the walls and began the construction of Montevideo, the current capital of Uruguay. Indigenous Uruguayans formed the first patriotic army, as well as the first marine force under the direction of Pedro Campbell, the *gaucho irlandés* (Irish

gaucho). As well as fighting in the war of independence, indigenous people have played an important role in the defence of Uruguay's sovereignty.

Vaimaca Pirú was identified as a *cacique* or headman of the indigenous group known generally as the Charruas. He was born in the Banda Oriental, in the current national territory of Uruguay, in about 1790. According to Maruca Sosa (1957), Pirú was honest, knew how to be just and had confidence in his own strength, which enabled him to become chief of his tribe with the agreement of his people when he was only 30 years old (see also Martínez Barbosa, 1996: 69).

Vaimaca Pirú fought alongside Uruguay's most important national hero, José Artigas, and demonstrated his bravery, honesty and fidelity. When Artigas was defeated, Vaimaca went on serving in the army of independence. Vaimaca and his people were responsible for the recovery of Western Missions under the command of General Fructuoso Rivera, accelerating the definitive independence of the republic.

However the attachment of Vaimaca and his people to their land, and their fidelity to the cause of independence, later worked against them. In 1831 they were called by their old commander, General Rivera (who was then the new constitutional president of the country), to rejoin the army once again and fight for their homeland near the Salsipuedes River. The loyal indigenous soldiers did not realize that this 'call to arms' was an ambush until it was too late. The ambush was deliberately planned to exterminate men, women and children and can be compared with the massacre of the Lakotas at Wounded Knee in the United States (see Simpson Chapter 15, and Thornton Chapter 1). However, in this case, people were killed when they were on their way to fight for a newborn country.

The massacre at Salsipuedes, which was not taught in schools until very recently, took place on 11 April 1831. The 'day of the Indian' is commemorated on this date annually in order that this tragic event should not continue to be concealed.

The few people who survived, most of them women and children, were later delivered as slaves to white families who received them on the understanding that they would be converted to Catholicism and denied the right to speak their own language. What was done to these people was a clear example of ethnocide. Vaimaca also survived the massacre, but he was a defeated man who drifted around the streets of Montevideo.

In the early 1830s a French citizen named François De Curel, who had already been brought before the court in Buenos Aires, Argentina, for pretending to be an academic, visited Uruguay and sent many letters to the government asking for some 'aborigines' to take to France. In one such letter (25 November 1832) he wrote stating his wish to present some indigenous Uruguayans to the king of France, scientific societies and other distinguished persons (Maruca Sosa 1957; Acosta y Lara 1989; Martínez Barbosa 1996: 61). In another letter (14 February 1833) he wrote saying that French law would not allow someone to be removed against their will and that, for this reason, it was necessary for the Uruguayan government to make the Charruas sign a formal declaration which stated their agreement to follow him to France and spend two years there, on the condition that they were provided with all they needed during their stay, and were later given a means of living in Europe or wherever they chose to live (Martínez Barbosa 1996: 62).

De Curel himself asked for the agreement of the indigenous people in order to obey the French laws, but none of these legal conditions were complied with. Certainly, the indigenous group was not even asked before being transferred to the ship and one of them (Laureano Tacuavé Martínez) had to be carried aboard in chains.

On 25 February 1833, four indigenous people left Montevideo in the ship *Faicon* against their will. Vaimaca Pirú, Senaqué, María Micaela Guyunusa – who was five months pregnant – and Laureano Tacuavé Martínez arrived at St Malo on 7 May of the same year (see De Curel 1833).

An anecdote related by the scientist Pierre Dumotier (Maruca Sosa 1957: 57), demonstrated that De Curel's intentions may not have been as he described to the Uruguayan government. On one occasion Vaimaca Pirú asked for an interview with the King of France, Louis Philip (the one person in France whom Pirú would have considered of comparable status to him) to request a ship and 40 men in order to return to Uruguay to avenge the honour of his destroyed tribe (Maruca Sosa 1957; Martínez Barbosa 1996: 70). De Curel never allowed this interview.

On 13 June 1833, the group was exhibited as part of an absurd re-creation of the Western Hills environment of Uruguay. A five-franc ticket, later reduced to two francs, was the price that the public paid for seeing this spectacle. But it was obviously not as attractive as De Curel had imagined it would be. During this time the starving group were forced to eat raw flesh in public to demonstrate their supposed savagery.

The behaviour of De Curel was criticized by the French press who considered him a 'speculator', and he is said to have been criticized by famous personalities such as Heine, George Sand, Frederic Chopin and the musician Cherubini, who witnessed the situation of the indigenes.

On 26 July 1833, Senaqué, the oldest of the group and close friend of Vaimaca, died in Paris. The cause of his death was described as consumption, caused by starvation and extenuation. Vaimaca Pirú died on 13 September of the same condition. The reaction of French public opinion was so strong that the judiciary intervened, ordering that the remaining indigenes be returned to their homeland.

At that time, De Curel decided to change the names of the survivors (Laureano Tacuavé Martínez and María Micaela Guyunusa) in order to sell them to a circus on condition that they were taken abroad. The circus arrived in Lyons, avoiding the police control. Guyunusa, who had given birth to a daughter a week after Vaimaca's death, died in this town. Tacuavé escaped with Guyunusa's daughter, whose name is unknown. There is no further record of them, although their poor state of health suggests they would not have survived very long.

While Guyunusa was buried in a common grave in Lyons without any identification, the remains of Vaimaca and Senaqué were taken to the Musée de l'Homme in Paris. At present only the remains of Vaimaca are in this museum, because bombing during the Second World War destroyed the remains of Senaqué.

Vaimaca and his colleagues were taken to France without the required legal conditions having been complied with. They were taken against their wishes and were subjected to degrading treatment that provoked the sympathetic reaction of French public opinion and the intervention of the French judiciary.

In the name of those maltreated people, in particular Vaimaca Pirú who is still a prisoner in France, I am requesting the return of Vaimaca Pirú's remains to Uruguay.

Even though 166 years separates these events from the present, there is still time to deliver justice.

So far, the Musée de l'Homme has not responded to approaches requesting the return of Pirú's remains to Uruguay. The Uruguayan ambassador to France has been informed that the museum's contents are the patrimony of the French people.

The return of Vaimaca Pirú to his homeland would be an historic expression of justice for a dispossessed people. It is still possible to recover at least the dignity of their memory, fulfilling the desire for justice and recognizing the identity of indigenous descendants as part of their own heritage, despite their minority status.

ACKNOWLEDGEMENTS

I want to express my gratitude to those who made possible my participation in this Congress, particularly the World Council of Churches for providing financial support. I would like to thank Maria Luz Endere and Ben Alberti for translating this chapter.

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17 *Tambo*

WALTER PALM ISLAND

Great Palm Island, or Burriguman, is the largest Island in the Palm Island group which lie about 25 km off the Queensland coast, east of Ingham and northeast of Townsville, in Australia (see Figure 17.1). The Palm Island Aboriginal settlement was formed in 1918 when the local mission at Hull River was destroyed in a cyclone. Aboriginal people were sent to Palm Island from all over Queensland, mainly as punishment for 'offences'. Until the 1970s, strict control was exercised over these people by a series of white superintendents.

A Community Council was formed in the 1970s, initially with limited power as it was largely controlled by the white management. This control diminished throughout the 1970s through the concerted efforts of members of the Palm Island community. In 1986 the Palm Island group became a Deed of Grant in Trust (DOGIT) under the trusteeship of the Community Council.

The different tribal groups used to live in separate areas (known as 'sides') in the community, and these areas retain the names of the places from which these groups originated (e.g. 'Cooktown side', 'Halifax side'). However, the islands were already occupied before the influx of mainland people in 1918. The islands are the traditional country of the Manbarra. From the 1850s, their population declined, due mostly to contact with *bêche de mer* collectors. With the establishment of the settlement in 1918, the Manbarra played a central, and often mediating, role. They were respected as traditional owners of our country and this continues today.

The Palm Island community is now composed of those who are descended from people brought to the island in historical times (who call themselves Bwgaman) and the Manbarra (some of whom are named 'Palm Island'), who also now live on the mainland as well.

TAMBO IN THE NINETEENTH CENTURY

In the 1880s a group of six Manbarra (three men, two accompanied by their wives, and one child) and three men from the nearby island of Hinchinbrook were taken overseas as part of Barnum and Bailey's circus and never returned alive. One of these people was Tambo, my great great uncle.



Figure 17.1 View of Palm Island settlement

Photograph: C. Fforde 1995

I had always known that an ancestor of mine had been taken overseas. In the genealogy told to Norman Tindale in 1938 by my grandfather, Dick Palm Island, it says that he had an ancestor who went to the United States and never came back. However now we know more about what happened to him and the other members of the group (see Poignant 1993, 1997a).

In 1883 Robert Cunningham, an agent of P. T. Barnum, took the Manbarra and Hinchinbrook people to form a travelling stage troupe that would tour in North America as part of Barnum and Bailey's 'Greatest Show on Earth' in the 'Ethnological Congress of Strange and Savage Tribes'. The show consisted of displays of different peoples from around the world. First exhibited in New Zealand and the South Pacific, they arrived in North America in May 1883. At the end of the circus season, Cunningham exhibited the group in various North American dime museums until they arrived in Cleveland, Ohio on 23 February 1884. That night, Tambo died of pneumonia.

Without Tambo, and another of the troupe who is thought to have died in America, the surviving members of the group were taken to Europe. Here they were placed on public display and billed as 'ranting man-eaters' and 'the lowest order of mankind' (original flier reproduced in *The Townsville Bulletin* 30.10.1993). They were also exhibited to numerous anthropological societies. In Paris, they were described by Houzé and Jacques (1884) who also recorded some of their language (which was exactly the same as the Manbarra language that my father taught me). This language proved conclusively that the group had originated from the Palm Islands.

After Tambo died his companions tried to carry out the correct funerary rituals (Houzé and Jacques 1884: 140), but Cunningham stopped them and arranged to have Tambo's body embalmed and then displayed in the local dime museum where it stayed for 36 years. When that museum closed down, Tambo's body went to a succession of funerary parlours but remained in Cleveland. In 1993, almost 80 years later, the Australian ambassador's office in the USA was informed about the existence of Tambo's body by a Cleveland undertaker. The body was clearly identified by accompanying documents.

News of the discovery quickly spread. I became aware of it through an article that appeared in the *Townsville Bulletin* and contact was quickly established with Roslyn Poignant, who was at that time undertaking research in the United States to retrace the steps of Tambo's group. She flew to Cleveland to assist with organization at that end. In Australia I was inundated with media interest: journalists and TV crews turned up at my house in Townsville. The importance of the discovery was broadcast widely in Australia, the United States and other countries. We quickly made the decision to bring Tambo's body home. Funds were made available for the trip by the Aboriginal and Torres Strait Islander Commission (ATSIC). Some funds were also provided by the Queensland State Government, and \$10,000 was raised by the Palm Island community to fund the burial and celebrations that would accompany Tambo's return.

In December 1993, a delegation from Palm Island flew to Cleveland, Ohio. The delegation consisted of a distinguished Bwgaman elder, a Nyawaygi speaker, who has since died. Nyawaygi is a mainland language closely related to Manbarra which is no longer spoken (although we do know many words and phrases). This is important because it was crucial to be able to address Tambo's spirit in a language that he would understand – to identify us as people from his own region, to tell him that he was being brought home and to conduct appropriate ceremony.

When we arrived in Cleveland, Tambo's remains were still at the funerary parlour. Our delegation went to see him and identify ourselves to him. We did not feel out of place or uncomfortable in his presence. Instead, I felt a strong spiritual connection with my ancestor and was filled with a sense of peace and serenity. Tambo was not a stranger to us.

Later, a handover ceremony was conducted, initially by a American Indian elder from the Cleveland region who released Tambo's spirit from the area in which he had died, and afterwards by our delegation as we called upon Tambo's spirit to accompany his remains back to Palm Island. We flew back to Townsville with Tambo's body on 10 December 1993.

While we had been away the Palm Island community had begun organizing and preparing for the celebrations that would accompany Tambo's burial on 23 February 1994. This was done through the Manbara–Bwgcōlman [Manbarra–Bwgcōlman] Tribal Elders' Council and the Justice Group (a community organization) on Palm Island. About 120 young people and a considerable proportion of the rest of the Palm Island community helped with the large amount of planning and organization such an event required. The Island would be inundated with guests, media and dignitaries, not to mention having to cater for our own community.

The Palm Island Council itself was reluctant to get involved. Some councillors cautioned against the return of Tambo's remains, arguing that it might be spiritually

dangerous. This was not a view shared by the Bwgaman community elders. Although the council was not supportive and was sometimes even obstructive in the beginning, because we had the support of the Elders Council and the Justice Group, most of the councillors became part of the events in the end.

The Elders Council discussed the details of where we should bury Tambo. We decided not to bury him in the modern cemetery, but instead in Palm Island Side, the area which had been associated with our family when the settlement was divided into sections according to tribal groupings. I consulted with elders on Palm Island and the mainland, particularly the elders on my mother's side who had lived with the old people when they were young. They recalled the appropriate burial ceremony, one that the Nyawaygi speaker had also witnessed when he was a small boy.

The burial ceremony and accompanying celebrations took place on 23 February 1994. Over 2,000 people – the Palm Island community, invited guests (including the American ambassador and the Australian minister for Aboriginal Affairs) and media – stood silently waiting as Tambo's body was brought to Palm Island by boat. Met by dancers and prominent members of the community, Tambo's casket was carried down the jetty between two lines of young people who, wearing specially made uniforms, assisted throughout the day. The casket was taken to Palm Island Side where a traditional burial took place, followed by a Christian ceremony conducted by all of the denominations on the island. As the ceremonies finished, torrential rain began to fall as is to be expected at the funeral of an important elder.

Speeches, celebrations and food then followed. Children from the Palm Island schools put on dances and a gala (see Figure 17.2). Everyone felt that it was an important event that an ancestor had come back from overseas. I was surprised that so many people were involved. It was unprecedented. There was a strong sense of unity in the community and the Palm Island people felt a powerful sense of belonging: affirmation of their identity as Palm Island people. Participating in the event gave people confidence because for many the history of Palm Island had up to now eroded and confused their sense of identity.

When I was growing up, my father's generation told their children who they were and where they came from. I knew that Palm Island was my traditional country. Other people knew where their traditional country was as well – whether they were, for example, Kalkadoon or Birri Gubba from the mainland. But in many ways this stopped happening with the passing of that generation, and the young people today do not know their real identity or are confused as to where they belong. This is significant because it contributes to the social problems that we have on Palm Island today. Participating in Tambo's return and reburial affirmed the identity of Palm Islanders as Aboriginal and as Manbarra or Bwgaman, and gave people a sense of belonging to Palm Island. Tambo has become an ancestor for all the Palm Island people, not only the Manbarra. His return reaffirmed Manbarra traditional association with the area but also confirmed that those who had arrived in historical times (the Bwgaman) belonged as well.

Tambo's return strongly established the Manbarra identity, and, at the same time, it confirmed my sense of belonging to my traditional country. I feel that, because of Tambo's return, Manbarra links to our traditional country have been strongly



Figure 17.2 Dancers at the ceremony to commemorate the return of Tambo to Palm Island

Photograph: Wayne Coolwell, February 1994

established. Tambo's return showed that our language and our stories are important to us and that our belief system is still strong. Tambo embodies our link to a time before European contact. His return accorded a renewed respect to the Bwgaman elders and traditional forms of authority on the island.

As in most communities, there are strong Murri (a term for indigenous Australians who come from the northeast of the continent) politics on Palm Island. The Palm Island Council is frequently criticized and disunity is common, despite the efforts of many people. The Palm Island situation is a complex one which derives from many factors, not least the social history of the settlement. The great importance and significance of Tambo's return was demonstrated by his ability to bring the community together, although this could never be maintained at that level indefinitely. People talk

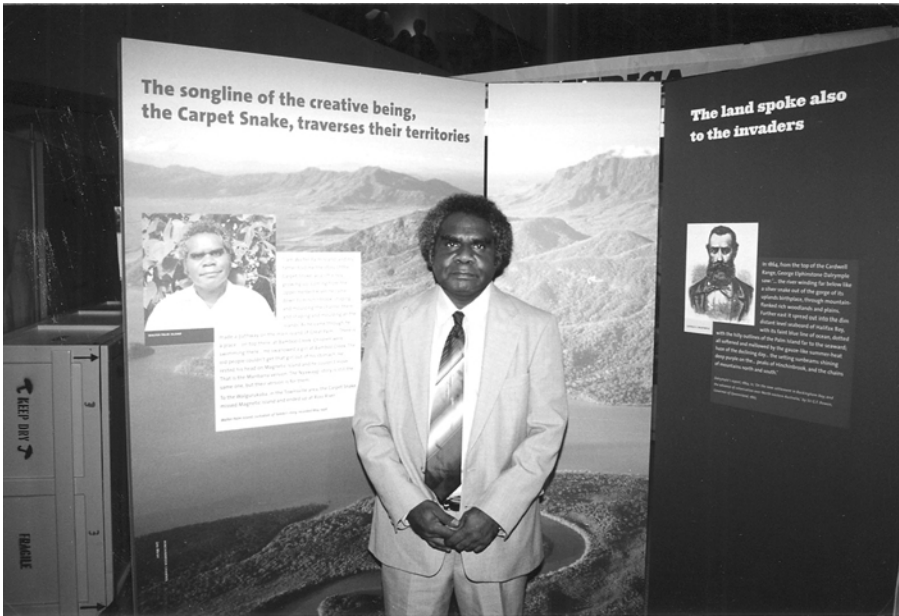


Figure 17.3 Walter Palm Island with the entry panel of the Captive Lives exhibition

Photograph: Michael Aird, 15.4.1998

about that sense of unity as one of their main memories of 23 February 1994. Another is the way in which the Island, so long represented in a negative way, shone positively in the media spotlight. Tambo is important for teaching other people respect for our traditions.

Although my father taught me traditional ways and how to use and make traditional tools, this information is being lost to many of the younger generation on Palm Island today. Tambo provides a way of opening the door for our children to learn about their own history and identity.

CONCLUSION

Before Tambo was discovered I often wondered what had happened to all the Manbarra people who lived on Palm Island before 1918. I knew that many had died at the Hull River mission, of European diseases and malaria. But there was also my grandfather's genealogy which told of an ancestor going overseas and not returning. Like a jigsaw, these pieces are coming together. It is an incredible history.

Since Tambo's return, the remains of 11 other Manbarra people have been discovered on Palm Island in an area in which sand was being extracted. The Manbarra were not involved in the agreement for the extraction and, reflecting continuing politics on the island, the Palm Island Council did not notify us that it was to take place. The remains were scattered over the mined area because of the action of the machinery.

I felt very disappointed that the council had not informed the traditional owners that the extraction was to take place, or directly when the remains were uncovered. Eventually, the sand extraction was stopped permanently and sand was imported from the mainland instead. We are planning to revegetate and reforest the area. We collected the remains and took them to Townsville where we asked a specialist to look at them. He reported that they were very old and definitely pre-contact in date.

Since Tambo returned, an exhibition called 'Captive Lives: looking for Tambo and his companions', which tells their story, opened at the National Library in Canberra and then toured Australia. The exhibition, curated by Roslyn Poignant, was developed in collaboration with me and the Palm Island communities (Poignant 1997b, forthcoming 2002). It has been widely praised and through it many people have come to know about part of this Manbarra history (see Figure 17.3). The exhibition is now permanently housed in the Townsville branch of the Queensland Museum.

ACKNOWLEDGEMENTS

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18 *Yagan*¹

CRESSIDA FFORDE

On 31 August 1997, the skull of Yagan, a young Aboriginal man killed by white settlers in 1833, was traced to an English cemetery, and repatriated to Australia. The story of Yagan's death and the circumstances relating to how his preserved head was taken to Britain in the nineteenth century, and his skull returned to Australia over 160 years later, illustrates many of the common themes, histories, complexities and challenges which surround the repatriation issue.

YAGAN: BEFORE 1833

Yagan lived in the region of the Swan River district, close to Perth. He was the son of Midgegooroo who, according to Hasluck (1961: 33), was chief of the tribe in the district of Beeliar – an area bounded by Melville Water and the Canning River in the north, by the mountains in the east, by the sea in the west and by a line due east from Mangles Bay in the south.

Little is known of Yagan's history before the early 1830s, but by this time his name begins to appear in connection with some of the increasing number of violent clashes between the settlers and the local Aboriginal population (Moore 1884; Uren 1948; Hasluck 1961; Green 1984). For the alleged murder of two settlers in June 1832, Yagan was decreed an outlaw with a reward of £20 offered by the Government for his capture (Green 1984: 80). He and two companions were apprehended in September of that year (Dale 1834: 16) and exiled to an island about eight miles off shore from Fremantle. Six weeks later, the three Aborigines escaped in an unattended dinghy (Hasluck 1961: 35) and the warrant for Yagan's arrest appears to have been dropped (Green 1984: 81; Hasluck 1961:39).

Not all reports of Yagan were in reference to violent incidents. In January of 1833 Yagan is reported to have requested a meeting with two King George's Sound Aborigines, Gallypert and Manyat, who had recently arrived in Perth aboard the Government schooner *Champion*. The meeting was facilitated by Lieutenant Robert Dale of the 63rd Regiment (who was later to take Yagan's preserved head to England) and took place on the shores of Monger's Lake. It is described as lasting for about four

hours during which, amongst other things, 'a corroboree was danced, followed by an interchange of names and spears' after which 'a trial of spears ... took place between Gallypert and Yagan' (Hasluck 1961: 40). Similarly a corroboree was also danced in Perth at the beginning of the following March, at which Yagan was 'master of ceremonies'. This was attended by Lieutenant Governor Frederick Irwin and other influential citizens of Perth, as well as by Gallypert and Manyat (Hasluck 1961: 41; Green 1984: 82).

In early 1833, despite these meetings, there was an increase in violence directed against the Aborigines which prompted the lieutenant governor to issue a proclamation condemning such violence and ordering the district magistrates to find the culprits, 'military and civil, and have them committed for trial at the next quarter sessions' (Green 1984: 82; *Perth Gazette* 1.6.1833). Despite this proclamation, conflicts between settlers and Aborigines escalated. In April 1833, Yagan's brother, Domjum, was killed,² and the next day, Yagan, Midgegooroo and another Aborigine named Munday were implicated in the deaths of two settlers.³ In response, Lieutenant Governor Irwin issued a proclamation on 1 May 1833 which declared Midgegooroo, Munday and Yagan outlaws, with £30 placed on the capture of Yagan 'dead or alive' (*Perth Gazette* 4.5.1833). Soon afterwards, Midgegooroo was arrested and, by 22 May, seemingly without a formal trial, he was tied to the Perth jail door and executed (Hasluck 1961: 43; Uren 1948: 187, *Perth Gazette* 13.6.1833). According to Uren (1948: 187), Midgegooroo was buried the same day and, a short while later, a number of Aborigines were surprised by a sentry in the act of trying to remove his body. The sentry 'taking the matter of punishment into his own hands, made the natives fill in the hole' (Uren 1948: 187).

During June and early July, Yagan was spotted at various locations along the Swan River but managed to elude capture by the 'band of resolute men' (Moore 1884:193) which had been sent by the Government to apprehend him. The posse stayed a while at Mr Bull's farmstead on the upper Swan, an influential settler and magistrate who advocated peaceful relations with the Aborigines (e.g. Moore 1884: 199–200). Bull was anxious to avoid another Aboriginal death, and gave strict orders to his employees not to shoot Yagan (*Perth Gazette* 13.7.1883).

On the morning of Thursday 11 July, two young employees of Bull, the brothers William (18 years) and James (13 years) Keates (*Perth Gazette* 13.7.1833), met Yagan and a group of Aborigines as they approached Bull's farmstead for some flour. The *Perth Gazette* (13.7.1833) notes William Keates' 'frequently expressed determination to kill Yagan' (despite his employer's direct orders) which, according to Roe (1982: 24), was because the brothers 'wanted the reward of £30 for Yagan's head to pay passages to England'.

According to the testimony of James Keates, given at an inquiry on 12 July 1833, the two brothers, both of whom were friends of Yagan's, had persuaded Yagan to turn back from Bull's farmstead and accompanied him for almost the remainder of the morning (*Perth Gazette* 13.7.1833). The brothers then:

went on to the place where the other natives were making dampers, where they remained a short time; when the natives accompanied them over to the river [the Swan], Yagan then refused to go any further with us and became

vexed, – threw his fire brand and digging stick down, and put himself in a threatening attitude. I then said to my brother if you wish to shoot him, now is the time, but he refused and allowed him to join the rest of his party. On reaching them my brother cocked his gun, and laid it over his arm, pointing the muzzle towards Yagan's head, and almost immediately pulled the trigger – the man directly fell.

(*Perth Gazette* 13.7.1833)

Yagan had been shot through the head and 'must have died at once' (Moore Diary, BLP mf 263a), whilst in the following fight, William Keates was killed outright and another Aborigine, Heegan, was mortally wounded.

A local settler, George Fletcher Moore, recorded in his unpublished diary that two soldiers passed by the area shortly afterwards and 'frightened the natives (I supposed) or they would have carried off the bodies' (Moore Diary BLP mf 263a). Men from Bull's estate then arrived on the scene (*Perth Gazette* 13.7.1833) and shot the 'groaning' Heegan. One of the men cut off Yagan's head, 'for the purpose of preserving [it]', and 'flayed' (Moore 1884: 206) the distinctive cicatrice from his back. Yagan's head was then taken to Bull's house where it was seen by Moore (1884: 206), who noted that 'possibly it may yet figure in some museum *at home*', and sketched the head a number of times in his unpublished diary (BLP mf 263a) (see Figure 18.1).

The circumstances of Yagan's death seem to have been regretted by many of the settlers. The *Perth Gazette*, for example, published a long article on the 'treacherous act', and its possible effect upon future relations with the Aborigines:

What a fearful lesson of instruction have we given to the savage! – We have taught him by this act, to exercise towards us, deceit and treachery, which, in him, we have daily reprov'd....

We do not remember to have heard of one instance, in which the aborigines of this country have abused our confidence, when we have encountered them in the bush; we must therefore again deplore an [act], which it appears to us will annihilate the surest road to perfect amity – mutual confidence. We must remember that Yagan was killed after spending the morning in company with the youth, who shot him, and when upon the point of taking his frugal repast, a portion of which he would not have withheld from the hand that slew him. We are not vindicating the outlaw but we maintain it is revolting to our feelings to hear this lauded as a meritorious deed. It was a rash, and unadvised adventure of youth, which we should regret to see held up, by children of larger growth, as a laudable example of courage to our rising generation.

(*Perth Gazette* 20.7.1833)

The bodies of Yagan and Heegan are said to have been buried a short distance from where they had been killed (O'Connor *et al.* 1985: 69; Dallas 1986; Von Hugel, [1833–4] 1994), while that of William Keates was buried in the local churchyard (Moore 1884: 205). By 10 August, James Keates had received the reward of £30 'for



Figure 18.1 Yagan's head sketched shortly after death by the settler George Fletcher Moore

Photograph: Courtesy Battye Library – Private Archives 263A

Yagan's head' (*Perth Gazette* 10.8.1833) and was reported as being on his way to Fremantle in order to board the *Comwallis* for passage, presumably, to England. This may have been in fulfilment of his, and his brother's, wish to return to England, or may have been under the advice of Mr Bull, who believed that Keates would soon be speared by the Aborigines in retaliation for the deaths of Yagan and Heegan (*Perth Gazette* 10.8.1833).

Yagan's head was preserved by a smoking process, in which it was 'suspended ... for three months in a hollow tree, over a fire made with the wood of the Eucalyptus' (Dale 1834: 17). Lieutenant Robert Dale, who had known Yagan personally (Hasluck 1961: 40–1), then brought the head to England in September 1833.

YAGAN: 1834–1993

Initially, Dale tried to sell Yagan's head, asking £20 although considering it to be worth 'double that sum' (Dale to Mangles 15.3.1834, BLYU Pettigrew letters, box 14). He lent it to Thomas Pettigrew, a surgeon and antiquarian, who on 2 April 1834 exhibited it at one of the *conversazione* for which he was renowned:

The rooms were crowded, and many objects of exceeding interest were exhibited to his [Pettigrew's] scientific visitors. Among others we noticed a head peculiarly preserved, which was said to be that of Yagan, the celebrated chief of the Swan River settlement.... His features are well preserved, his skin is a deep jet black, and the hair on his chin very crisp – that of his head is soft and thick. A very interesting panoramic drawing of the settlement accompanied this curious specimen of the natives of Swan River.

(*Morning Herald* 5.4.1834)

While in Pettigrew's keeping, Yagan's head was examined by phrenologists, who remarked upon the 'extensive fracture' caused by the fatal musket shot which extended across the back of Yagan's head (Dale 1834: 18). The phrenologists' findings were published by Dale (1834: 18–20) in his account of the Perth area, the frontispiece of which is a colour aquatint of Yagan's preserved head, drawn by George Cruikshank and engraved by R. Havell.

At the beginning of October 1835, Pettigrew returned Yagan's head to Dale, who was now living in Liverpool. On 12 October, Dale presented the head, together with a panoramic view of the Swan River settlement, to the Liverpool Royal Institution (SJLLU Royal Institution archive 45), an establishment founded in 1817 'for the promotion of literature, science, and the arts' (Hunt 1973: 15).

While at the Royal Institution, Yagan's head may have been displayed in a case with three other preserved heads and various wax models which illustrated cranial anatomy (Anon. 1844: 21). In 1894, the Royal Institution's collections were dispersed (Hunt 1973: 15), and some items, including Yagan's head, were lent to the Liverpool City Museum (Royal Institution Deposit 1894, LM), which by then contained a growing collection of other human remains. Although the head may have been part of this collection, there is no evidence to suggest that it was either displayed or studied, and by the 1960s it was kept in store (Keeper of Ethnology to Chief Assistant in Administration 12.3.1964, LM).

In March 1964, the Liverpool Museum's Keeper of Ethnology requested permission to destroy the 'head of Yagan, Chief of the Swan River, Australia', together with an unidentified 'Aboriginal head'⁴ and a 'Peruvian Mummy'. He wrote to the Chief Assistant in Administration:

The Keeper of Conservation considers that treatment would be difficult, costly and without guarantee of success. We both feel that such treatment would be justified only if the specimens were of exceptional importance;

and I find nothing in the records to indicate that this is the case. Slow decomposition is making the specimens disagreeable room mates, and I recommend that they be destroyed.

(12.3.1964, LM)

The Chief Assistant in Administration answered:

I have obtained the authority of the Chairman of the Libraries, Museums and Arts Committee for the disposal of the human remains detailed in your memorandum.

The Town Clerk has been consulted on the method and legality of the disposal of these specimens and I have been informed that there are no legal requirements to be fulfilled. I have accordingly arranged for the remains to be buried in a public grave at Everton Cemetery [sic] on Friday, 10th April, 1964.

(8.4. 1964, LM)

On 10 April 1964, the remains, packed in a plywood box built for the purpose, were interred in Everton Cemetery's General Section 16, grave number 296.

During September, November and December 1968, 20 stillborn children and two children who had lived for less than 24 hours were buried in the same grave, above the museum box (LPL 352/CEM/7/4/104-105).

YAGAN'S SIGNIFICANCE TODAY

Yagan is a famous historical figure throughout Australia but is of greatest significance to the Noongah (also spelled Nyungar, Nyungah, Noongar, Nyoongar) people of Perth and the southwest region. A statue of Yagan was erected on Heirisson Island in the early 1980s, and he was also given prominence in the second Kyana Corroboree held in Perth in 1993. This festival, arranged by the Dambartung Aboriginal Corporation, was attended by over 50,000 people (Aboriginal and non-Aboriginal) and featured exclusively Aboriginal performers in a wide range of artistic activities – dance, story telling, music, poetry, handicrafts etc. Part of the official Kyana promotional material reads as follows:

KYANA originated from the Blood and Dust of the oppression of the south-west Noongah people. We believe that from the origins of this experience, the guiding hands of our ancient ancestral elders, through our symbols of strength, protect and nurture our growth. Our respected tribute for this, the 2nd KYANA CORROBOREE, is both the warrior spirits of YAGAN and MIDGEGOOROO.

(reproduced in Neuenfeldt 1995: 28)

Amongst others, Ken Colbung, a distinguished Noongah man who identifies Yagan as an ancestor,⁵ had been prominent in promoting Yagan's history and importance since at least the 1970s. For example, Colbung was instrumental in organizing the erection of Yagan's statue on Heirisson Island. On the instruction of his elders, Colbung began looking for Yagan's head in the 1950s, a search which has been of great personal significance. Colbung notes:

It has long been the wish of those people who consider themselves to be connected to Yagan through blood lines, whether directly or indirectly, to have his head brought home to Western Australia and interred with [the] rest of his remains, for ceremonial burial with full Aboriginal ritual. Only then will Yagan's spirit be complete and free to enjoy eternal life which, for the Aboriginal, involves reincarnation.

(Colbung 1996: 13)

In Britain, various unsuccessful attempts to locate Yagan's head had been carried out since at least the early 1980s. In December 1993, what had happened to Yagan's head after its exhibition at Pettigrew's *Conversatione* over 150 years previously was eventually discovered.

ATTEMPTS TO RETURN YAGAN TO AUSTRALIA

In April 1994, Colbung began the process of applying for permission to exhume Yagan's head under Section 25 of the Burial Act 1857, as advised by the Home Office. Home Office procedure developed to implement this Act required that if any other remains less than a hundred years old are to be disturbed during the course of an exhumation, then consent must be given by their next of kin. On 27 April, Colbung's solicitors wrote to the Home Office asking that it waive the requirement of obtaining consent from the parents of the children buried in the same grave as Yagan's head. It was argued that, apart from the difficulties presented by identifying the remains and then identifying and tracing any relatives, the exhumation was an exceptional case which was not only of great personal significance to Colbung and other descendants of Yagan but was considered of national importance by the Australian Government, which was making strong representations to both the Home Office and Parliament to have Yagan's head returned to Australia (ATSIC, Perth Office, file 94/20.2).

The application for an exhumation licence also had to be submitted to the Manager of Cemeteries and Crematoriums at Liverpool City Council. The manager wrote to the Home Office in August 1994 explaining that consent had not been obtained from the relatives of the children buried with Yagan's head [in fact, consent had not been sought at that time] and that a complaint had been recently received from an Aboriginal man in Perth who had objected to Colbung's involvement.

Colbung's role in the return of Yagan's head was questioned by the Nyungah Circle of Elders (e.g. Bropho to the UK Prime Minister 7.4.1994), such objections reflecting long-held divisions which existed within the Perth Aboriginal community.

However, despite debate within this community about who should have the authority to claim Yagan's head, all wished for it to be repatriated. As a forum for the local community to discuss how the return, and repositioning, of Yagan's head should be managed, a public meeting was held in Perth on 25 July 1994. At this meeting, all agreed that their differences should be set aside to ensure that the return of Yagan's head was a 'national success'. A Steering Committee was established to co-ordinate the repatriation process, and Colbung's application to exhume Yagan's head continued to be supported by State and Federal Governments.

Colbung only received a response to his application in early 1995. On 16 January, the Home Office answered that it could not entirely waive the necessity of acquiring the consent of the relatives of the children but had decided, 'exceptionally', to communicate individually with the five relatives whose addresses were known. On 30 June, the Home Office informed Colbung, the Premier of Western Australia, the Australian High Commission and the Yagan Steering Committee in Perth that the application for an exhumation licence had been refused. It was explained that unconditional consent for the disturbance of the children's remains had only been received from one of the five relatives contacted. Another had refused, one wished to know in advance when the exhumation would take place, and two attached 'conditions' as to reinterment which, according to the Home Office, 'could not be complied with for practical reasons' (Flaschner 30.6.1995). It later became clear that none of the parents had known of the location of their children's remains until the arrival of the Home Office letter, which had caused great distress. Colbung was particularly concerned that he had been unable to explain his reasons for asking the parents to consider the temporary disturbance of their children's remains.

Despite the Home Office's decision, Colbung and others in the Perth Aboriginal community remained adamant that Yagan's head must be returned for appropriate burial in the Perth district. The Yagan Steering Committee met on 21 September 1995 to discuss possible further action, and decided to approach British and Australian politicians to secure their assistance in enabling the return of Yagan's head. In February 1997, such pressure led to the British High Commissioner in Canberra extending an invitation to Colbung to visit the UK, at the British Government's expense, although making it clear that 'while the British Government is more than willing in principle to respond positively to the request for exhumation of Yagan's head so that it may be returned to Western Australia, the practical obstacles are, in the short term at least, insuperable' (Carrick to Colbung 10.2.1997).

Colbung arrived in the UK on 20 May 1997, and his visit attracted considerable media attention,⁶ through which, amongst other things, Colbung tried to make contact with the parents who had objected to the exhumation of Yagan. He asked them to make themselves known to an intermediary so that sensitive discussions could take place to resolve the issue. Meanwhile, an alternative strategy was followed. An archaeological survey was undertaken to assess the feasibility of exhuming Yagan's head without moving the remains of the children buried in the same grave. This survey identified the most likely location of the museum box within the grave, and suggested that the box could be reached from the side of this grave via the adjacent plot, without disturbing the remains buried above it (Bates and Bates 1997). The survey



Figure 18.2 Australian Prime Minister John Howard with Ken Colbung on ANZAC day, Battersea Park, London, UK

Photograph: C. Fforde, 1997

report went to the Home Office which, on 26 June discussed the issue with representatives from the British Foreign Office and Australia House. Meanwhile, Colbung had secured the support of John Howard during the Australian prime minister's visit to the UK (*The Perth Daily Telegraph* 22.6.1997; *The Sydney Morning Herald* 23.6.1997; *The Western Australian* 30.6.1997, 2.7.1997). (see Figure 18.2)

According to the Australian High Commission's report of this meeting, there were three main concerns to be addressed before the Home Office could consider the matter further: first, the survey report had to be validated; second, further details had to be obtained of the burials in the plot adjacent to Yagan's grave; third, the Australian Government had to be consulted as to whether Colbung was the correct person to apply for the exhumation licence – despite the Home Office's acceptance of Colbung's initial application in 1994.

Despite many letters from Aborigines and non-Aboriginal Australians in support of Colbung and his campaign, including over 1,625 signatures on an internet petition, the Home Office said it had also received an undisclosed number of letters from members of the Noongah community who objected to Colbung's involvement. Colbung asked his elders to instruct ATSIC to inform the British Home Office that he was indeed the 'correct' applicant, should a new application to exhume Yagan's head need to be submitted (Colbung to Harris 20.6.1997; K. Colbung personal communication). His request appears to have prompted ATSIC in Perth to convene a

meeting with members of the local community, including some of those who had apparently objected to his involvement. At the meeting it was resolved that, amongst other things, Colbung should apply for an exhumation licence on behalf of the Noongah people.

Meanwhile, Colbung continued to request the British Home Secretary to use his powers to issue an exhumation licence before the 164th anniversary of Yagan's murder which could then be an occasion for a joint British-Australian celebration of the imminent return to Australia of the remains of this famous Noongah ancestor (e.g. Colbung and Ucko to the Editor, *The Independent* 4.7.1997). His request was not met, and Colbung travelled to Everton Cemetery on 11 June 1997 to conduct a short memorial service at the burial plot in which Yagan's head then lay. The support of the Liverpool public was evident in the number of people who turned up to the service, the tone of local radio and media reports, and the comments of Liverpudlians encountered in the street. A Liverpool family of Aboriginal descent were particularly supportive, providing help with transport and accommodation. Colbung returned empty handed to Australia on 15 July 1997.

Without Colbung's prior knowledge, Yagan's skull and the rest of the remains in the museum box were exhumed from Everton Cemetery via the adjacent plot, the necessary licence having been issued by the Home Secretary to the Australian High Commission on 14 April 1997. The following day, a forensic palaeontologist from Bradford University positively identified the skull as that of Yagan by the nature of the gunshot wound with radial fractures which was evident on the left hand side of the back of the cranium. These correlated with the head wounds described in Pettigrew's 1835 phrenological report. Evidence of Yagan's decapitation was to be seen on vertebra which exhibited a vertical cut, which must have been struck from the back, together with a small 'nick' on the skull base (Kitto 1999). Yagan's skull was kept at the museum until the 29 August when it was delivered to the Liverpool City Council which had a casket especially made to hold it.

On Wednesday 27 August 1997 a Noongah delegation consisting of Ken Colbung, Robert Bropho, Robert Wilkes and Mingli Wanjurri-Nungala arrived in the UK to collect Yagan's remains. They had united to bring Yagan home. The delegation was initially to have been larger, but at the last moment Commonwealth funding was withdrawn. Despite overwhelming support from the Perth Aboriginal community and ATSIC for the repatriation of Yagan's skull, a last minute injunction application to block the repatriation of Yagan's skull was lodged on 26 August by a Perth elder claiming sole authority over Yagan on the basis that he was Yagan's closest living relative (Supreme Court Action CIV 1920 of 1997 – Yagan). The elder objected to Yagan's exhumation, arguing that it had been undertaken illegally and was against Aboriginal custom. He threatened in the press to deliver a traditional punishment to the delegation should they return with the skull (*The West Australian* 26.8.97). On 29 August, the court refused the injunction application. Factors taken into account in reaching this decision included the claimant's previous agreement to an application for the exhumation in 1994 and affidavits from another Aboriginal elder and an anthropologist which refuted the claim to sole authority over Yagan.

In general, the media greeted the court proceedings by highlighting the dispute within the Perth Aboriginal community. *The West Australian* (27.8.97) commented that such disputes would provide 'ammunition to the critics of Aboriginal aspirations'. A Sydney talkback radio show on 2UE illustrated the negative popular views that the Noongah had to contend with:

Personally I find this whole saga beyond belief. I mean, why do we need to send a delegation of Aborigines to London to retrieve the skull in the first place? I mean, you know, why couldn't the Brits just send it back via air mail? Put a stamp on it, on the forehead, and just send it straight back through the air mail...

(Transcript of Broadcast Item, Sydney, 2UE Radio,
Stan Zemanek, 8.40 p.m. 27.8.97)

On 31 August, the Aboriginal delegation received Yagan's remains at a handover ceremony at the Liverpool Town Hall organized by the Liverpool City Council. The town councillor who presented the casket containing Yagan's skull to the delegation did so with the hope that his return might make amends for some of the pain caused to indigenous people in the era of British colonialism.

Returning to a press conference at Perth International Airport, Colbung reportedly spoke forcefully of the necessity for unity and the ability for Yagan to bring the community together (*The Australian* 3.9.97). These comments were overshadowed, however, by articles in the media which alleged that at the same press conference Colbung had linked Princess Diana's recent death with that of Yagan's (e.g. *The West Australian* 3.9.97). This sparked a national media furore (e.g. *Herald Sun* (Melbourne) 3.9.97, *The Australian* 3.9.97) and a stream of letters to various papers expressing the public's shock. Colbung replied, stating that his comments had been misinterpreted (K. Colbung press statement 2.9.97; K. Colbung personal communication). Later that week, continuing the high profile of the return, news broke that Yagan's statue on Heirisson Island had been beheaded (*The Sunday Times* 7.9.97; *The Sunday Morning Herald* 8.9.97; *The Guardian* 8.9.97). A British loyalist was later reported as claiming responsibility for the act in retaliation for Colbung's alleged comments linking the death of Diana with that of Yagan.

Yagan's skull was subsequently placed in a secure place while discussion continued about where and how to bury it. In September 1997 a committee comprising community representatives and elders, members of the Aboriginal Affairs Department and other relevant organizations such as the Metropolitan Cemeteries Board took on the responsibility of locating the burial place of Yagan's post-cranial remains, with the intention of reuniting the skull and skeleton. In 1998 a remote sensing survey was undertaken in an area on the upper Swan River (Lot 39) which had been linked to Yagan's burial site by oral history and historical documentation but was unable to locate it. More recently (2000) an archaeological survey of the area has been undertaken, which also proved unsuccessful at locating Yagan's post-cranial remains (M. Pasqua personal communication).

CONCLUSION

The history of Yagan illustrates significant components of many other repatriations: the collecting of the remains of indigenous leaders; the long held wish for remains to be repatriated and the determination of those who seek their return. As in other repatriation claims, questions arose as to who, in fact, had the right to make those claims. It also demonstrated how governments become involved in repatriation, and showed the wide public support (both in Australia and the UK) that reburial campaigns attract.

In the case of Yagan, the media played a significant role in persuading the British Home Office to issue an exhumation licence, demonstrating not only the power of the press, but the interplay between public interest, the law and politics in the UK. Yagan's history after 1993 illustrates the wide-ranging influence of repatriation demands, which in turn ultimately demonstrates the great significance widely attributed to returning human remains to their place of origin. The story of Yagan's repatriation also demonstrates that even when remains are eventually returned, many decisions still need to be made regarding who should rebury remains, how it should be done and, in Yagan's case, where his remains should be reburied.

Yagan's story is unique yet it provides insights into some of the seemingly contradictory attitudes about the dead which the reburial issue highlights. For example, it is the only known case in which a museum decided to bury indigenous remains in a cemetery. Once interred in the Liverpool cemetery, Yagan's head was no longer an object that could be freely moved, examined or destroyed – as it would have been if it had still been part of a museum collection – but was instead subject to all the restrictions accorded by the British legal system to the treatment of dead bodies.

The British Home Office refused to grant an exhumation licence on the stated grounds that parents of some of the children buried above Yagan objected to the temporary disturbance to these remains that an exhumation would probably cause. This clearly demonstrates that, in this exceptional case, it was the Home Office's respect for the wishes of local British bereaved relatives that initially *prevented* the return of an Aboriginal skull to Australia. For if Yagan's head had stayed in the collections of the Liverpool Museum, it is highly likely that this institution, because the head was that of a known and named individual, would have agreed to its repatriation.

NOTES

- 1 This chapter is developed from a case study in my Ph.D thesis: *Controlling the Dead: an analysis of the collecting and repatriation of Aboriginal human remains*. University of Southampton 1997.
- 2 Domjum was shot whilst attempting to take some flour from a store. According to Green (1984: 82), Domjum's head was 'hacked off by a settler named Hall, and in 1837 it decorated a shelf in Nairne-Clarke's office at the *Swan River Guardian*'.
- 3 According to Moore (1884:183) these killings occurred at the same spot where, some time previously, the murdered settlers had been present when a man from Tasmania had opened fire on a group of Aborigines (who happened to be in his way), saying 'Damn the rascals, I'll show you how we treat them in Van Diemen's Land.'
- 4 No further information about this remain has so far been located. An undated list of items in the Liverpool Royal Institution has an entry with no accompanying information which

may refer to this remain. In the exhumation licence provided by the British Home Secretary, it is referred to as a skull of probable New Zealand origin.

- 5 Ken Colbung is a nationally renowned Aboriginal figure. He is a Justice of the Peace (1980), was awarded an MBE (1980) and Membership of the Order of Australia (1982). Amongst other posts, Colbung was Deputy Chairperson of the Australian Institute of Aboriginal and Torres Strait Islander Studies from 1978 to 1984, and then its chair. For details of Colbung's interest in Yagan and his search for his ancestor's head, see Colbung (1996)
- 6 For example: *The Evening Standard* 20.5.1997; *The Daily Mail* 21.5.1997; *The Guardian* 21.5.1997; *Daily Telegraph* 21.5.1997; *The Independent* 11.5.1997, 21.5.1997; *The West Australian* 30.5.1997; *The Liverpool Echo* 21.5.1997, 22.5.1997, 23.5.1997; *The Daily Post* (North West Merseyside and Wirral) 22.5.1997.

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Abbreviations

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BLYU: Beinecke Library, Yale University.

LPL: Liverpool Public Library.

LM: Liverpool Museum.

SJLLU: Sydney Jones Library, Special Collections, Liverpool University.

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19 *The connection between archaeological treasures and the Khoisan people*

MARTIN L. ENGELBRECHT

The Griquas are one of the aboriginal South African tribes, known to have lived along the West Coast, neighbouring the Namaquas in the north and the Goringhaiqua in the south. Much later these tribes became known as the Khoisan, a combination of the word for the Khoi-khoi ('Hottentots'), and the San (Bushmen).

It was claimed by the former apartheid government that the so-called Khoisan people had ceased to exist. Such racist propaganda was created to justify illegal colonial land occupation and land piracy in South Africa. The state eradication of Khoisan identity continued – in 1955 the then government embarked on a campaign to alienate indigenous Khoisan tribes by forcefully reclassifying them as Coloureds or Cape Coloureds. Apartheid separated the Khoisan from their heritage and placed their descendants in confusion. Through the education system, former governments went to great lengths to erase the memory of Khoisan ancestry from the minds of so-called Coloured children, to ensure that they would not know the true identity of their ancestors. Major efforts were made to erase the Khoisan memory by dispossessing them of their land and identity.

Steps must be taken to reconcile the past with the present, and archaeology can play a role in this. The items that can reconnect the so-called Coloureds to their heritage are archaeological artefacts. The archaeological findings of early domestic tools in the Northern Cape and elsewhere give the impression of a far remote period and an extinct people, but such implements were used relatively recently by our grandfathers.

However today these stone tools are foreign to their Khoisan heirs, like the mortal remains of Cornelis Kok II and his other royal kinsmen which were exhumed during the 1960s and are now in a university collection. We view every new archaeological finding in South Africa as a step closer to our Khoisan past, which will eventually reveal our future. Archaeologists must understand that within South Africa everything they excavate will bring us closer to our past, a past which has until now been denied to us as we have been forcibly divorced from our heritage. Khoisan peoples must be empowered to appreciate archaeology and be fellow custodians of this proud heritage.

As part of this empowerment, in 1994 we started a campaign to tell the world and particularly the new South African Government that we as Griquas are anything but

extinct, only endangered. During the campaign we set up the South African Griqua Research and Development group. It was this research group that discovered the mortal remains of Cornelis Kok II and other skeletons in what can be described as a 'Whites Only' closet.

THE REMAINS OF CORNELIS KOK II

Cornelis Kok II (1778–1858) was one of the sovereign leaders of Griqualand-West, head of the hereditary Kok family and chief of the Campbell Lands. He was acknowledged and recognized by international powers such as Britain and the Dutch Republics and his staff of authority is still kept in Cape Town Cultural Museum. Many land quitrents (land certificates for leaseholds) in Griqualand-West bear his signature and are testimony of sovereignty. Cornelis Kok II and the Campbell Lands were central to the Diamondsfield dispute which took place in 1870 and 1871 between the two Boer Republics (Orange Free State and Transvaal) and the Batlapins who claimed the Griqualand-West Diamondfields as their own.

The graves of Cornelis Kok II and some 35 other Griqua people were excavated between 1961 and 1971 from an early historic cemetery about 4 km north-west of Campbell and west of Papkuil Road. The site was not marked as a graveyard, but it was believed to be the resting place of early dignified and important Griqua leaders (Morris 1992: 58). The evidence suggested (see Morris 1992: 60–2) that the Campbell graveyard contained burials of adults and children who died between 1815 and about 1862, thus clearly falling into the historic period.

These remains were then kept in secrecy until we accidentally traced them and began the process of repatriation. The remains of Cornelis Kok II need to be reburied appropriately. The Khoisan risk diminishing the importance of Cornelis Kok II to Khoisan heritage if his remains are kept in an institution or simply dumped in a hole with no dignity or honour. Cornelis Kok II must therefore be reinterred with real respect and dignity, in remembrance of his stature and the leading role he holds in binding us to our proud past. To do this requires funds, funds to buy back the land from which he was exhumed, to organize the South African people and especially the Griquas to facilitate the re-interment ceremony, and to build the proposed Cornelis Kok II Memorial House and Garden.

CONCLUSION

Cornelis Kok II is a connection, or link, for the Griqua people. Like a link in a chain, he binds Griquas to the past. He links us to our heritage, not only to the more recent past but also to the Stone Age, a time which sounds so terribly distant and remote. Because we have been forced to drift far from our past and our memories, we believe that all efforts must be made to re cement connections to our heritage and history, and one of the appropriate ways to do so is through reburial.

The exercise of the reinterment of Cornelis Kok II will contribute to the final reconciliation of the violated South African nation as a whole, and it is therefore

important that South Africa participates as a nation in this event. The reinterment of Cornelis Kok II requires the respect and assistance of the new governors of this country, and of those who were responsible for the initial exhumation.

As Coloureds we feel out of Africa, while every one around us is either African or Afrikaner. As Coloureds we were made to feel that we were only a mixed and bastard breed of people with no real ties to Africa, while the so-called Bantu people connect to Africa as Africans and the South African Europeans connect to Africa as Afrikaners. As Coloureds our history is overlooked and our children are effectively alienated from the reality of our proud heritage and first nation past.

We want to return to our roots and to retrieve our Khoisan identity. We no longer want to feel neglected and excluded in major decisions and budgets that will heal our people. The violated Khoisan and the remains of Cornelis Kok II deserve better treatment. The appropriate reinterment of Cornelis Kok II would be a first step towards acknowledgement and acceptance of the Khoisan people.

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20 *Missing persons and stolen bodies: the repatriation of 'El Negro' to Botswana*¹

NEIL PARSONS AND ALINAH KELO SEGOBYE

On 4 October 2000, the human remains of a man who had become known as 'El Negro' were flown into Sir Seretse Khama airport in Botswana. They arrived in a small plane accompanied by the Spanish ambassador to Namibia and a museum official from Spain. The plane was greeted by crowds of people who had travelled to witness the arrival of 'El Negro', who was to be buried the following day in Tsholofelo Park in the city of Gaborone. The remains arrived amidst great controversy which was only to increase in the course of the week which followed.

WHO WAS 'EL NEGRO'?

'El Negro' is the popular name given to the stuffed body of an African man which had been the central exhibit of a small municipal museum (the Darder Museum) in the town of Banyoles, Catalonia, Spain since 1916.

He stands about 130 cm high, wears a flat leather apron and carries a small spear. Some parts of him appear to be naturally desiccated, others seem to have been filled or reconstituted with wire and plaster. His large glass eyes concentrate fiercely on some invisible prey. There is no explanatory legend.

(Robertson 1993: 3)

The man's skin had been blackened using boot-black. A CAT-scan conducted in 1993 found that the body consisted of mummified flesh, with only the skull and leg and arm bones intact inside; the rest consisted of iron support rods and grass or hay stuffing.²

The body had been collected at some time between 1829 and 1831 by Jules (1807–73) and Edouard Verreaux (1810–68), French natural scientists in the Cape Colony. Jules Verreaux worked as a taxidermist supplying a Paris shop run by his father and brothers. The Parisian shop, 'Maison Verreaux', supplied numerous exhibits to museums.

The two brothers travelled to an area later described as being between the Orange and Vaal Rivers on the border of the Kalahari in what is now South Africa. Around this time there were small groups of BaTlhaping (the mostly southerly Tswana or 'Bechuana') living on the lower Vaal near its junction with the Orange. Since about 1800 the area had come under the general sovereignty of the Griqua republic, which lay to the north of the Cape Colony frontier along the Orange River. To the north of the Griqua republic lay independent BaTlhaping and BaRolong kingdoms. The area of the Orange–Vaal junction seems to have been a major centre for the sale and processing of wild animal skins.

The brothers dug up the body of a 'Betjouana' man the night after its burial, and took it back to Cape Town, where the body was stuffed. By 15 November 1831 the body was forming part of an exhibition of taxidermia by the Verreaux brothers at the Paris emporium of 'le baron Benjamin Delessert'. A French newspaper reported the lifelike body of a 'Betjouana' man, who wore antelope fur clothing, carried a spear and had a leather bag with glass beads in it.³

Jules Verreaux appears to have started auctioning the contents of Maison Verreaux after the deaths of his brothers Edouard and Alexis in 1868.⁴ Francesc Darder, a Catalan naturalist, bought the remains of the collection including the body of the 'Betjouana' in 1880, and exhibited his new acquisition at the Barcelona Universal Exposition in 1888. Judging from the drawing of 'El Betjouanas' in the catalogue, the antelope fur in which he had presumably been buried had disappeared, as had the little leather bag with its beads. But he is shown standing erect, carrying an hourglass-shaped shield and a very long, barbed spear. Bird feathers adorned his head.⁵ These accoutrements would have been characteristic of a Tswana warrior c. 1830. The barbs on the spear, making it into a kind of harpoon, are unusual; but a harpoon would have been necessary for the extremely dangerous sport of hunting hippo (*kubu*, 'sea-cow') along the Orange and Vaal Rivers. A famous sketch by Thomas Baines portrays the young chief of such 'Bechuana' as were living on the Vaal around 1850, surrounded by his mates and elders, all sewing *karosses* (furs) while they conversed in the *kgotla* courtyard (Parsons 1983: 42–4, 80–9; see also Willcox 1986).

In 1916, the whole of Darder's collection was bequeathed to the town of Banyoles and the collection became known as the Darder Museum.

HOW 'EL NEGRO' BECAME CONTROVERSIAL

In December 1991, some months before Banyoles was due to be the venue for water sports at the 1992 summer Olympics, Alphonse Arcelin, a medical doctor practising in the town of Cambrils, began to protest about the degrading exhibition of 'El Negro' in the Darder Museum. Arcelin wrote to the national daily newspaper *El País*, demanding that the exhibit be removed before it caused offence to Olympic visitors and African athletes (see also Jaume *et al.* 1992):

It is incredible that at the end of the 20th century, someone still dares to show a stuffed human being in a show case, as if it were an exotic animal.

Spain is the only country in the world where this occurs. If the man is not moved, I'm willing to ask all black athletes not to participate in competitions in a place where such a racist statement is made even worse: it is a man stolen from his grave.

(cited in Robertson 1993: 2–3)

The townsfolk of Banyoles responded with outrage at the slight to their municipality: 'He is our African, and we are very fond of him' (Robertson 1993: 3). Both conservatives and socialists on Banyoles town council responded with a mixture of bewilderment and defiance. They voted to keep 'El Negro' on display in his glass box as before. According to Councillor Carles Abella, who was also the Darder Museum's curator: 'El Negro is our property. It's our business and nobody else's. The talk of racism is absurd. Anyway, human rights only apply to living people, not dead.' Abella was backed by the socialist mayor, Juan Solana (*The European* 5.3.1992).

Later, Abella justified the retention of the exhibit as an integral part of the thematic 'unity' of the museum:

The black man of the [Darder] museum forms part of the city's popular culture taught in school ... of course we don't consider it [racist] ... this is a museum that shows different races and cultures with adequate respect. It is a racial exhibit, ... racism or morbidity may be a personal attitude from visitors....

(*Lagos Daily Times* 11.3.1992)

The Nigerian ambassador in Madrid expressed his dismay that 'a stuffed human being can be exhibited in a museum at the end of the 20th century.' He added: 'I have already consulted with other African countries and we are making a protest at the highest levels of the Olympic Organising Committee in Barcelona and the Spanish Foreign Ministry' (Ramsay 1992a).

By March 1992, the matter was before the International Olympic Committee (IOC), where it was raised by the Senegalese vice-president of the IOC who argued that 'El Negro' was exhibited 'in such a way that it might cause offense'. An American member of the IOC was quoted as saying: 'It is unbelievable. I can't imagine that a country hosting the Olympic Games can be so inhumane and insensitive. It's time for Spain to join the modern world.' The International Olympic Committee reportedly 'ordered an urgent investigation after African diplomats in Madrid threatened to boycott the [Olympic] games unless the mummy is removed' (*The European* 5.3.1992: 1). It was around this time that 'El Negro' started to become known as 'Il Bosquimano', the Bushman. Abella believed that, according to skull shape, the man was a 'Bosquimano' from the Kalahari rather than a 'Negro'.⁶

Media interest ran high. European newspapers reported that 'El Negro' was a 'Kalahari bushman'. The London *Observer* (8.3.1992) published, under a photograph of the man in his glass box, a piece titled 'Dead African who haunts the Barcelona Olympics'. The newspaper also caused some confusion by stating, incorrectly, that the man had been dead for 104 years, i.e. since 1888.⁷ The headline in *The European*

(5.3.1992) ‘Mummified bushman sparks Olympics storm’, appeared under the front-page title banner of the newspaper, and reported that he had become ‘Banyoles’ most famous celebrity’: ‘Keep El Negro’ T-Shirts are on sale in the town and the number of visitors to the museum has increased dramatically’ – to 70,000 in 1992. Under the headline of ‘Row over stuffed black man in Spanish museum’ the Lagos *Daily Times* in Nigeria reported that ‘he was chief of a Bechuana tribe in Bechuanaland, currently Botswana’.

In March 1992, the Botswana government, through its embassy in Brussels, began to prepare a statement for Gaborone to release during the week of Monday 9 March, on the return of the body to Botswana.⁸ Meanwhile, not only were T-shirts and balloons, with slogans like ‘Banyoles loves you El Negro. Don’t go!’ on sale, but the citizens of Banyoles were treated with ‘El Negro’s’ likeness in bite-sized Easter chocolates.

The Botswana media were divided in their views on the possible return of the Banyoles body. In his *Midweek Sun* (Gaborone) column (3.4.1992), Sandy Grant was forthright about the irrelevance of a Kalahari Bushman who had died so long ago in the face of a recent report to the Botswana Christian Council on the current human rights status of Basarwa (‘Bushmen’ or Khoisan) in Botswana. The report carried allegations of police and game guard brutality and torture towards people who tried to stay on their ancestral land in a proclaimed game reserve and to hunt there for their subsistence.

Jeff Ramsay, the *Mmegi/The Reporter* columnist, remonstrated with Grant (8.5.1992). The ‘mummified Mosarwa’, he said, might have caused ‘greater concern in Lagos and London than in Lehututu (his possible hometown)’, but ‘both controversies are about the same issue: the continued marginalization of this region’s Khoisan-speaking communities’.

The first academic discussions of the case were published in 1992–3 (Jaume *et al.* 1992; Robertson 1993), but despite this, and all the media attention at this time, the issue appears to have been more or less forgotten for the next five years. Certainly, there were no moves to repatriate the body during this time. However, in 1997, the matter was brought to the attention of the Organisation of African Unity (OAU). The representatives of the Republic of Botswana were urged to receive and lay the body of ‘El Negro’ to rest. In the *Botswana Gazette* (Gaborone) of 9 July 1997, the Permanent Secretary in the Department of Foreign Affairs, Ernest Mpofo, was quoted as saying, ‘whether we like it or not, people are saying that the remains are that of a Motswana. We have no choice.’

Mpofo used the term ‘Motswana’, which had been adopted since independence in 1966 to cover any citizen of Botswana regardless of original ethnicity. The Botswana government, Mpofo said, was willing to accept the body from the Spanish government, and would then bury it. The *Gazette* then suggested to Mpofo that the body was only being accepted ‘because of the pressure put on the government by some West African countries’. Mpofo denied this but added that Africans wanted the body repatriated from Spain, and the Botswana government was doing ‘what we can do as Africans’.

Two and a half years later, in January 2000, the issue of repatriating ‘El Negro’ resurfaced in Banyoles. By this time, the socialists were now in opposition to a newly

elected conservative municipal government. Jaume Camprodon, Bishop of Girona, the capital of Catalonia, argued for the repatriation of the body on the grounds that all degrading human exhibits in museums should be removed from display, and that there was a need for cultural sensitivity in the new pluralism of his diocese, which included new mosques and other non-Catholic places of worship.

Opposing the repatriation, Joan Domenech, the Provincial Minister for Cultural Affairs in Girona, argued that, 'politicians would better concern themselves with live black people than dead'. He reserved particular ire for Haitian-born Arcelin, the originator of the controversy, as having given 'the impression of a grievance about having been born black' and being 'incapable of understanding the rationale behind the Darder Museum [representing] another way of thinking, pertaining to another time'. As for 'the bushman warrior', he would be no better off if repatriated and 'will not [then] revive either' (*La Vanguardia* 25.1.2000, 3.2.2000, 4.2.2000).

The majority view in the Banyoles town council, however, was in favour of repatriation. The deputy mayor, Jordi Omedes, insisted that 'the return of the soldier to his country of origin is the most satisfactory solution', and the position on the municipal governing party on 'the repatriation of the body of il bosquimano' would 'not change' – whatever the opposition parties did.

The matter was then taken up by the Spanish national government which welcomed the decision of the Banyoles Council after such extended debate. The responsibility for the actual repatriation was then handed over to the Spanish ministry of foreign affairs (*La Vanguardia* 25.1.2000, 3.2.2000, 4.2.2000).

IDENTITY IN DOUBT

In 2000, the combined efforts of investigative journalists and academics in Barcelona and Gaborone brought to light information that had been available in 1992 but had been, it seems, largely ignored. The information showed not only that the body had been stolen in about 1830, some 58 years earlier than had previously been widely believed, but confirmed that it belonged to a 'Bechuana' and had probably been taken from a place near the Orange and Vaal rivers, on the border of the Kalahari desert, in what was now South Africa. The intervention at this late date of information that showed 'El Negro' was not, in fact, from Botswana threatened to muddy the 'clear waters' of repatriation for the politicians and bureaucrats. The ministries of foreign affairs in Madrid and Gaborone sounded less than pleased. The Spanish Secretary for Foreign affairs, Julio Nunez, responded somewhat testily when confronted by *La Vanguardia*:

The government's hope is that the bushman's body may go to Botswana. If they don't want it back there – something which is difficult to [arrange] – we will look for another place where they have ethnic groups similar to the body which was exhibited in Banyoles. Besides I talked last week with the Botswanan secretary of foreign affairs, Mr Ernest Mpofo, who said that his government will prepare for 'El Negro' the ceremony that it deserves when

there is an agreement with the Spanish government for its return. He seemed willing to accept the return of the body. More than this, he said it will be something symbolic for the whole [of] Africa.

(reported in *Mmegi* 3.3.2000)

However, although the location of the most likely group of 'Bechuana' and their descendants could be identified in South Africa, no initiative was forthcoming from the South African side to claim the body of 'El Negro'.

Mpofu reiterated (*Mmegi* 3.3.2000) that as far as the Botswana government was concerned, 'El Negro' was, as mandated by a resolution of the Organisation of African Unity, 'a bushman from Botswana'. With a Spanish general election imminent, the authorities of Banyoles and Girona delayed their final decision on 'El Negro' until after April 2000. Over the next five months there were other procedural delays on the Spanish side, but the National Museum in Madrid took possession of the body from the Darder Museum in Banyoles around August 2000. A last ditch attempt by the Darder Museum to stop the repatriation argued that since 'El Negro' was really a Kalahari 'Bushman', the Botswana government should be punished for the maltreatment of people in the Kalahari today by withholding the body from repatriation. The museum's attempt failed, and arrangements were made to transport 'El Negro' to Botswana.

ARRIVAL IN GABORONE, OCTOBER 2000

The eight years of campaigning for the return of 'El Negro', and the controversy that surrounded it, ensured that the eventual arrival of 'El Negro' in Botswana would attract great public and media attention. Crowds of people converged on the Sir Seretse Khama airport, to greet the arrival of 'El Negro'. However, it became clear as soon as the remains were taken from the airplane that the controversy would continue. The first startling revelation was that the remains were contained in a plain wooden packing case measuring approximately 1.5 × 1.5 m. Immediately, members of the public present at the airport began asking why 'El Negro' was not in a coffin. The box was received by a small guard of the Botswana Defence Force who draped a flag in national colours over the box and carried it to a hearse for immediate transport to the Gaborone City Hall. Here the remains were to lie overnight for public viewing.

The doors to the city hall opened shortly after four in the afternoon for the public to view the body. Hundreds of people had come to witness this event. To their horror, instead of the expected body of 'El Negro', a bare skull was all that was displayed in the glass window of a square box, the dimensions of which suggested that it did not contain the complete stuffed body of 'El Negro' as had been displayed standing up in the Darder Museum. Over the next few days, the intense public dismay and perception that Botswana had been 'hoodwinked' was conveyed in the media and via talk shows, phone-in radio programmes and other public forums. Of overriding

concern was the question of what had happened to the rest of the body, and its corollary, how could anyone be sure that the skull was really that of 'El Negro'? There were no immediate answers to these questions. What would emerge later in a statement from the Spanish museum professionals who had been responsible for preparing the body for transportation was that during this process they had taken the liberty of scraping the skin from the bones and removing all other accessories and material culture which had been displayed with 'El Negro' for more than a hundred years. The statement suggested that this had been done because of the Botswana request for 'remains' (*masalela*), which had been interpreted to exclude any material culture, which, they argued, was Spanish property. While 'accounting' for the lack of artefacts, this statement clearly did not explain why the body had been reduced to a skull and a few bones.

Public dismay in Botswana was fuelled by the disappointment expressed by Arcelin who had spent over eight years fighting a lone battle in Spain to see the body returned to Africa. Having travelled all the way from Spain, he was shocked to see the skull and indicated that there was no way of now telling whether or not it belonged to 'El Negro'. The public was outraged at the extreme insensitivity of the Spanish officials who had, as they claimed, reduced 'El Negro's' body to a skull. Callers to Radio Botswana's RB 2 station pointed to the double standards involved, by questioning whether Spanish people treated their dead with similar disrespect.

Burial

The burial ceremony, held on the morning of 5 October, was a sombre affair attended by large crowds. As they would for a normal funeral, women wore scarves on their heads and shoulders and men wore jackets. Clergymen performed Christian burial rites and the minister of external affairs presided over the ceremony as declared uncle and chief mourner. This was in accordance with the custom of funerals in Botswana where an uncle of the bereaved family speaks on their behalf. 'El Negro', of course, had no known family to speak for him.

The insensitivity of Spanish officials continued at the funeral. During his address, the Spanish ambassador announced that his government could not be held responsible for the tragedy surrounding 'El Negro's' departure from Africa since the people who took him were not Spanish. Instead, he suggested that by bringing the body back, his country had done more than enough. These words provoked the reaction of the Senegalese diplomat who represented the OAU, who had also travelled to attend the reburial. He noted that it was not the action of the Spanish *per se* that was being atoned for by the ceremony, but the collective wrong of any nation which had indulged in the inhuman act of trading in human beings whether alive or dead. As such it was wrong for Spain to argue its innocence by claiming it had merely displayed the body and not stolen it from Africa in the first place. He noted that Botswana's offer to rebury 'El Negro' was an equal act of collective goodwill because of the continuing uncertainty of 'El Negro's' origins.

Government involvement

A joint committee comprising the Ministry of External Affairs (which was coordinating the event), the Ministry of Home Affairs (represented by the Department of Culture and the Botswana National Museum), the Office of the President and the Ministry of Finance made the decision to bury 'El Negro' in Tsholofelo Park. This in itself raised public outcry, as concerns were raised that by choosing the park, Botswana was simply continuing the public display of 'El Negro'.

Tsholofelo Park was chosen as a symbolic burial ground because of its central location in Gaborone, but many people felt that the body should have been buried in a proper burial ground. People also thought that given the 170 years of waiting for a proper reburial, it would have been best to wait a bit longer and trace his kin so that he could be buried properly amongst his people. The park was also chosen from a diplomatic point of view as a neutral place where people other than Batswana could easily visit the burial place, as 'El Negro' had become a Pan-African citizen. 'El Negro's' burial place has thus become a national monument and, as such, falls under the jurisdiction of the Botswana National Museum.⁹

The inclusion of Christian rites at the burial ceremony was also questioned by people who felt that they detracted from the occasion of the return of a true son of Africa. Traditional doctors (*dingaka*) were not invited to officiate at the ceremony, and many people felt that failing to carry out the appropriate funeral rites would cause calamities, such as poor rainfall. They argued that while Botswana's decision to accept the body for reburial might be honourable, the government had not fulfilled its responsibilities to 'El Negro'. Traditional ceremonies, such as cleansing ceremonies conducted for soldiers who had died in war, or hunters who perished in the bush, would have been more appropriate for someone such as 'El Negro', whose actual identity was unknown. The reburial of the remains returned by Spain highlighted many issues hitherto not debated in the public domain in Botswana.

The decision to treat the repatriation of El Negro as a 'foreign affairs matter' meant that the whole exercise was not handled with the sensitivity it deserved. The exclusion of the Department of Culture and the Botswana National Museum in the preparations for repatriation, and the treatment of the body as a diplomatic exchange process, resulted in failure to take into account fundamentally important cultural issues. Spanish indifference may be explained by the negative attitude of relevant museum officials. In Botswana, the intense diplomatic sensitivity of the matter meant that the government wanted to get the whole thing finished and done with as quickly as possible, instead of taking time to pay attention to the cultural issues involved.

Context

At the time of 'El Negro's' repatriation, there were two major issues in the news. They provide a context for the public response to the reburial. Both are sensitive issues which highlight perceptions of identity and status in Botswana society.

Mistreatment of 'Bushmen'

The first was the case of a stay of execution, and a retrial, granted to two Basarwa ('Bushmen') men who had been sentenced to death for murder. The retrial was ordered after much publicized lobbying by the Botswana centre for human rights, Ditshwanelo, which had argued that the accused had been poorly represented because of their identity as Basarwa. Ditshwanelo also alleged that the men had been tortured, and had been the victims of human rights abuses carried out on Basarwa generally by the police, prisons officials and other officials of the Botswana government. With this case in mind, concerns were raised that the return of 'El Negro' might distract Botswana from considering 'more immediate horrors'. It was questioned whether Africa as a continent could validly maintain its high moral position over the 'El Negro' issue given its own history of human rights abuses.

Ritual murders

The second focus in 2000 was on ritual murders. Historically, the ritual murder of (mostly pre-pubescent) youths was carried out by traditional doctors at times of adversity to invoke the gods to overcome calamities such as severe drought. In more recent times, ritual murder has been increasingly associated with commercialized 'traditional' medicine to advance the fortunes of powerful or would-be powerful individuals. In the last few years there have been a number of well-publicized cases of young people disappearing and their mutilated bodies recovered with organs missing. The choice of organs such as genitals, heart, tongue and brain is thought to link these murders to rituals associated with achieving or restoring potency. At the same time as 'El Negro' was buried in the Tsholofelo Park, the mutilated body of a young man, who had disappeared a decade before, was found a few kilometres away in a shallow grave. Similar cases occurred in Mochudi.¹⁰ Most of the people who have died have been from poor families. The return of 'El Negro' to Botswana brought these issues to the fore. The history of 'El Negro' demonstrated the mistreatment of 'Bushmen' people and highlighted the continuing human rights issues in Botswana. The return of only the partial remains of 'El Negro' highlighted the continuing practice of ritual murders in Botswana and common jealousy of the newly rich and powerful. It has made Botswana aware of the need to question more critically incidences of disappearances of people, and the common lack of follow up by law enforcement agencies.

CONCLUSION

The case of 'El Negro' stands as an example of a lingering belief that bodies of 'the Other', in this case an African, can still be treated as objects that can be justifiably displayed in a museum collection. While the existence of 'races' as biological entities has been refuted for decades, the popular perception of humankind in both Europe and Africa is often framed in racial classifications largely abandoned by the scientific community. This popular view was supported by the exhibition of 'El Negro' in the

Darder Museum which served also to promulgate the view that a display of this kind was morally acceptable.

The history of the treatment of 'El Negro's' body has raised questions that have come to be asked by ordinary Batswana about the differential treatment accorded to the living people of different identities, 'races' and social classes. In particular, the arrival of bones, and not a body, from Spain and the controversy that ensued, showed that while Spanish authorities had agreed to return the remains of 'El Negro', their fundamental attitude towards him had not changed. 'El Negro' continued to be perceived as a museum object, to the extent that, as a final act of abuse, his skin, nails, hair and penis were removed. It is still impossible to confirm whether the bones buried in the Tsholofelo Park are actually those of 'El Negro'. The insult to Botswana caused deep resentment and supported a perception that Spain's lack of sensitivity towards 'El Negro' pointed towards a similar attitude towards Africans in general.

The *New York Times* described the feelings of a nurse who had waited for hours to see the remains of 'El Negro' as they lay in state in Gaborone City Hall:

She struggled to recognize the lines of his cheekbones and the breadth of his brow. 'he has got a small forehead like me' [she said], her voice breaking. 'This part of southern Africa where they say he is from, I have kin there, and when I saw him, I saw a person. Not a skull – a human being. I felt like crying because of the belief that he might be related to me. And it makes you wonder, how many people have been stolen like this?'

(*New York Times* 6.10.2000)

NOTES

- 1 This chapter was originally presented as two papers at the University of Botswana Workshop on the Repatriation of 'El Negro' on 24 May 2001, held at the Department of History (which includes an Archaeology and the Museum Studies Unit), University of Botswana.
- 2 Post-mortem report summarized for participants at a meeting in the Ministry of Foreign Affairs conference room, 26 Sept. 2000; personal communication to author from Miquel Molina, n.d. See <http://ubh.tripod.com/afhist/elnegro/eln-pm.htm> for this summary.
- 3 *Le Constitutionnel, Journal du Commerce, Politique et Littéraire* (Paris), Nov. 1831 (copy courtesy of Jacinto Anton).
- 4 Australian National Botanic Garden web-site on Verreaux, J.P. citing A. E. Orchard (n.d.) *A History of Systematic Botany in Australia*, 1.
- 5 Catalogue in Spanish for Darder exhibit at Barcelona Universal Exposition, 1888 (partial copy courtesy of Miquel Molina).
- 6 When the CAT scan was conducted on the body in 1993, the lawyer-anthropologist among the gathered scientists pronounced that the man was a Bushman.
- 7 This information led to initial speculation that the body might have been stolen by a notorious grave-robbler called 'Scotty Smith', who was active between Kimberley and the Molopo River. See Frederick Charles Metrowich (1962/1970), *Scotty Smith, South Africa's Robin Hood*, Cape Town: Books of Africa, 1st and revised editions.
- 8 At that time information in Botswana was limited to what had been in the *European* and the *Observer*. The former said that 'El Negro is said to have been taken from a grave in

Bechuanaland (now Botswana) and brought to Banyoles in 1916', while the latter told us that 'El Negro has been dead since 1888'.

- 9 Until 'El Negro's' remains were buried, they fell within the jurisdiction of the National Monuments and Relics Act because of their age. It is doubtful whether they remain under this jurisdiction now that they are buried.
- 10 Six years previously, also in Mochudi, a young school girl had also been found murdered, and the case remains unresolved. Rumours spread like wildfire about who the murderer or murderers might be. Violent riots by students and the unemployed erupted in Mochudi and Gaborone after her death, and the government invited Scotland Yard to assist with the case. (Unfortunately the findings of Scotland Yard remain confidential.)

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21 *The reburial of human remains at Thulamela, Kruger National Park, South Africa*

TSHIMANGADZO ISRAEL NEMAHENI

The Cultural Heritage Management Unit (CHMU) was set up with the establishment of the Social Ecology Department towards the end of 1995. The responsibilities of the Unit vary. New heritage sites are documented and conserved and developed for the sake of cultural tourism. By doing so, the unit generates considerable income. Affected communities are involved in this process throughout the project. The developments at Thulamela, which began long before 1995, served as a pilot project, south of the Limpopo River, to involve affected communities in the conservation and development of heritage sites.

Thulamela is a heritage site situated on top of a hill in the far northern part of the Kruger National Park (the Pafuri area). Kruger National Park is the largest park in South Africa, and in Africa as a whole. In 1983, a ranger at Pafuri found the remains of stonewalling at Thulamela. A few days later, an *in situ* investigation found that the area was probably a Late Iron Age site associated with habitation during the previous century. It is known that the Lembetu/Rembetu clan (presently found among the Venda) have the closest affinity to the Thulamela people.

COMMUNITY INVOLVEMENT AND EXCAVATIONS

The process to excavate and reconstruct the old walled settlement of Thulamela started in 1993. The discovery of the site marked the beginning of a partnership project between the Kruger National Park and neighbouring communities of the Venda and Tsonga Cultural Groups. This process led to the establishment of the project committee comprised of representatives from the local communities and the National Parks Board (now South African National Parks). As a result, two sub-committees were established with specific responsibilities: the Technical Working Group and the Environmental Education Working Group. Both sub-committees had representatives from the local communities.

The Technical Working Group was responsible for the excavations and reconstruction work. The work was carried out by members of the local affected communities of the Venda and Tsonga Cultural Groups, and a contract archaeologist. All discoveries

made were reported and discussed with the Project Committee. When two graves (male and female) were discovered at Thulamela, the Project Committee was immediately informed, and broader community representation was sought in order to decide what should happen to them. The University of Pretoria was given permission to excavate further by the Project Committee on condition that the bones would be brought back for reburial in a traditional way.

REBURIAL AND ITS PROBLEMS

A problem of ownership of the site was experienced from the beginning of the project. Tsonga-Shangaan-speaking project members did not want the site to be seen to be exclusively associated with Venda-speaking members. The Venda-speaking members did not want the project to be seen to be exclusively associated with Tsonga-Shangaan speakers. The reason behind this disagreement was that the Thulamela people settled in the area between AD 1200 and AD 1600, and there was no continuity of settlement at Thulamela after this time. The story could not be traced through oral history of either the Venda or Shangaan communities/cultural groupings.

The reburial of the two human remains at Thulamela was scheduled for 31 May 1997. The Project Committee agreed upon this date. A decision had to be taken as to who should perform the reburial rights. This is where problems started to arise and people began to doubt themselves. Many did not want to be associated with the dead. As a result the Project Committee decided that the Makahane clan (one of the few descendants of the Lembetu, who are one of the Venda clans) should perform the reburial rites in a traditional way, because they have closest affinity to the Thulamela people.

The reburial of human remains at Thulamela also caused problems among the Venda communities bordering the Kruger National Park because, according to their cultural lore, the dead are to be respected and should not be tampered with. These kinds of concerns were expressed by the elderly of these Venda communities. The young ones did not share these concerns because they were looking forward to the occasion of the big ceremony. After the reburial date was announced, I was requested by the Thulamela Project Committee to invite these communities to come and pay their last respects to the Thulamela human remains during the reburial day. Most of them did not want to come because they did not want to have bad luck. I was also warned at home that I should not tamper with the dead. Others were also asking whose bones were going to be reburied. Elders in the area still hold the belief that people should not associate themselves with other people's ancestors. Most people who are not related to the Makahane felt that it was the Makahane royal family who should rebury the remains.

THE REBURIAL

During the reburial day there were some traditional dances performed by the communities involved (both Venda and Shangaan). National Parks provided animals for

meat to the communities. Because people agreed that the reburial should be done in a traditional way, a black goat was killed and its blood was spilled on a shrine comprised of three stones. The dances took place far away from the grave site because the management was concerned about the fragility and vulnerability of the site due to the unexpectedly large number of people who converged on the park and attended the function. In addition, it is not traditional for either the Venda or Shangaan for two different cultures to perform dances during the burial period.

The belief that people should not associate themselves with other people's beliefs is still held by many communities in this area, and was significant in the decisions about how to rebury the Thulamela remains. A Shangaan Inyanga (traditional doctor) threw her bones down and predicted that the Thulamela site belonged to the Vendas, not to the Shangaans, and was thus part of Venda culture. She urged the Makahanes to continue with the ritual at the same time each year.

Even though there were some celebrations, the reburial did not go well. Most people thought the reburial was not done in a traditional, and thus proper, way. In particular, people began to get cross with one another when those giving reburial rites transferred the bones from the boxes they were returned in, into small coffins. Project Committee members and other individuals within the larger group of representatives felt that the Makahane royal family was not proceeding according to tradition by putting the bones in coffins. They felt that they were doing something that was inappropriate.

People were particularly uncomfortable at the erection of Christian crosses on the graves. Most felt that the Thulamela people should not be associated with Christianity because research has shown that they believed in ancestral spirits. The Makahane communities surprised many by bringing the crosses, which had not been asked for by the Project Committee. On the contrary, the Makahane royal family were given a directive by the Project Committee that the reburial should be conducted in a traditional way.

The presence of these crosses has also subsequently caused problems for guides explaining the site to visitors. During the interpretation of the site, guides talk about the spiritual beliefs of the Thulamela people, but when they arrive at the reburial sites the crosses are present. Tourists ask about the relevance of the crosses at the grave site, and normally the guides are unable to respond except to say that the Makahane know the answer. Except for the crosses there was no other Christian element to the reburial ceremony. I personally confronted the Makahane royal family about interpretation problems that we were coming across on a daily basis. Eventually they agreed to remove the crosses in June 1999.

Apart from differences in opinion among the communities themselves, there was also confusion created about the reburial by archaeologists and the media. For example, when the two human remains were uncovered they were given the names 'King Nngwe' and 'Queen Losha'. The media and archaeologists alleged that when the female remains were uncovered, she was found in the Losha position (slightly bowed, palms together under left temple) and thus she was called 'Losha'. It was also alleged by an archaeologist that the day the male remains were uncovered a leopard was seen – hence the name 'Nngwe' or leopard. The naming of these remains caused confrontations

within the Project Committee, particularly, because the names used were Venda and not Shangaan-Tsonga words. The media aggravated the issue.

It should surely not be acceptable archaeological practice to name excavated remains. The naming of the remains prompted questions from all over the country, such as: Who was the king of the new kingdom discovered in the Kruger National Park? How do we know that it was a kingdom? Why are white people claiming to know the history of black people in South Africa? It was the naming of the human remains which caused this interest. When the names appeared in the newspapers, people thought that a real kingdom had been found. Even to the local people the names became real. Wherever I travelled, people used to ask me about King Nngwe and Queen Losha.

The morning after the reburial, newspapers had headlines such as: 'The Reburial of the King and Queen of Thulamela', or 'King and Queen Laid to Rest' (e.g. *The Star* 7.8.1996). I stopped buying newspapers because people were always writing letters to the editors complaining about the way the Thulamela reburial was conducted. According to most people a cultural ceremony such as the reburial of human remains is something which should not be exposed to the public, but the Thulamela reburial was seen world-wide.

CONCLUSION

According the dead appropriate treatment is extremely important, and communities attribute great significance to reburial. On a more personal level, the whole question of the reburial of human remains reminds me of an incident in my childhood. Elders at home used to tell me that my uncle passed away in 1964 (three years before I was born) and that he was buried next to the river where they used to stay. In 1975 my mother passed away and she was buried where she was born, i.e. in her brother's plot. Two years later when I visited the grave site I realized that there was a pile of stones next to my mother's grave. When I asked my uncle about the meaning of these stones, he told me that it was his brother's grave (my late uncle). In fact the grave did not contain human remains, but my uncle had killed a goat and performed the appropriate rituals. He had done this because he had been worried that his brother had been left alone in the bush and because all was not well in his brother's family.

It must be acknowledged that communities know what they are doing, and their beliefs should be respected. The challenge is upon archaeology as a discipline as to how archaeologists should approach communities and involve them in the process of any decision about how human remains should be handled.

Some of the lessons learned at Thulamela were very important. Gone are the days when archaeologists entered the field like vultures to start excavations without consulting the relevant stakeholders. Thulamela provided an example for subsequent projects and an opportunity to avoid the pitfalls which it experienced. Now, there are many more sites where consultation take place, like the Mapungubwe site, which is now applying for World Heritage Site listing. Thulamela also gave a warning of the

power of the media when dealing with sensitive issues like human remains, and the consequent need to handle the press effectively.

A good example of what has been learned is the recent uncovering (by a flooded stream) of some human remains at the Nwanetsi Ranger Section of the central part of the Kruger National Park. After the discovery, communities who had lived in the area before they were forcibly removed were sought out and brought to the site to see if the remains belonged to them. They refused to be identified with these remains, which were therefore taken to a laboratory in Pretoria for investigation. The report concluded that the remains had been buried between 400 and 500 BP. When it was finished, the report was given to the Mnisi community.

22 *‘Ndi nnyi ane a do dzhia
marambo?’ – ‘who will take
the bones?’: excavations at Matoks,
Northern Province, South Africa*

WARREN S. FISH

Repatriation has led archaeologists to rethink excavation strategy, and institutions to review collection management. Communities affected by the repatriation of human remains from archaeological sites have become increasingly involved in the process, and relationships between these communities and archaeologists and/or institutions can be strained.

The Matoks Archaeological Project is an example of the difficulties that arise in the repatriation of human remains. The National Department of Transport decided to upgrade the National Road between Pietersburg and Louis Trichardt in the Northern Province, South Africa (see Figure 22.1). No environmental or archaeological assessments were undertaken prior to the commencement of construction. It is of great concern that the client, the National Department of Transport, did not request such a survey, in spite of the fact that the National Monuments Act requests archaeological assessments to be undertaken prior to development. A poor (and perhaps illegal) example was thus set by the very government responsible for the protection of South Africa’s archaeological and cultural heritage.

Various archaeological sites were impacted upon during the course of construction, and human remains were encountered. The provincial heritage authority conducted an archaeological investigation and as much as possible was salvaged, but these were rescue excavations in the true sense of the word. Numerous problems were encountered with the developers, and much archaeological information was destroyed as a result. For example, developers excavated gravel ‘borrow pits’, and used the excavated material in the basal layers of road construction. These borrow pits extend to four hectares and are usually excavated to a depth of three metres. Destruction of archaeological sites situated on borrow pits can therefore be wholesale (see Figure 22.2). One particular un-utilized borrow pit was identified as an archaeological site, and assurances were received from the management team (project manager included) that the site would not be used until the archaeological excavations were complete. However when archaeologists returned two days later, heavy earthmoving equipment had removed much of the borrow pit. Human remains were exposed, and all specimens had been impacted upon to some degree by construction activities. It is unknown whether or not any human remains are in fact presently located in the basal layers of the new National Road. This, at the very least, is an unsatisfactory state of affairs.

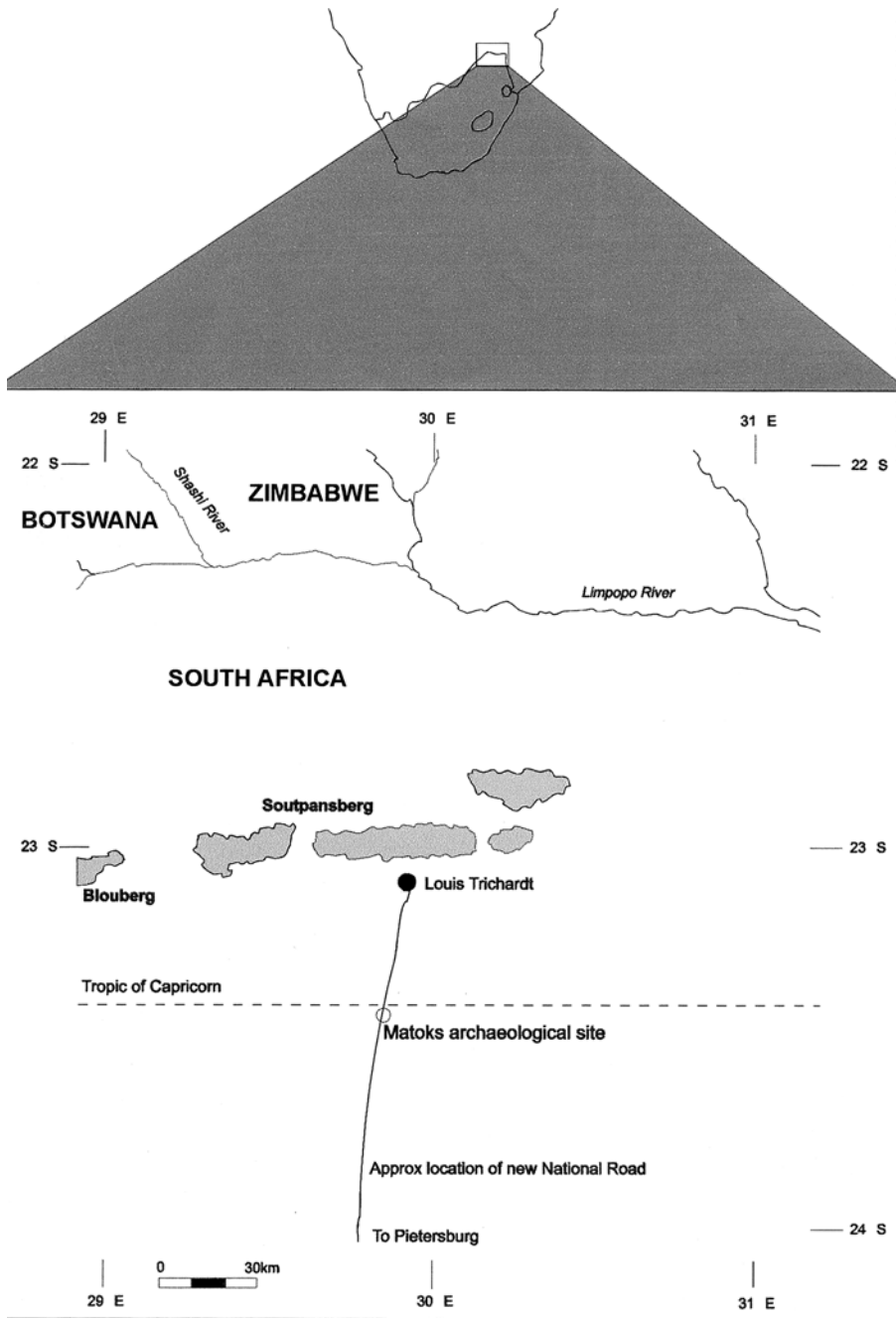


Figure 22.1 Map identifying location of Matoks site

Source: W. Fish



Figure 22.2 Wholesale destruction of Matoks site by earthmoving equipment

Photograph: W. Fish

The Matoks archaeological site has been radiocarbon dated to the early fifteenth century AD. Ceramics excavated belong to the Moloko Tradition, which is broadly associated with Sotho-speaking peoples. Settlement pattern study shows that these people lived in what is called the ‘Central Cattle Pattern’, also associated with Sotho-speaking groups (Maggs 1976; Evers 1984; Mason 1985). The focus of these settlements is the cattle byre, which is located in the centre of the settlement. Cattle are important features of Sotho-Tswana life as they are representative of status. Cattle are used in bridewealth transactions and also feature prominently in idioms and songs (Kuper 1980, 1982). Important males are buried in the cattle byre. A court is associated with the cattle byre, and it is here that important decisions are made. Huts are arranged in a circle around the byre and court according to strict hierarchical principles.

There is a large local community living in the Matoks area, so repatriation of human remains would have seemed not to pose too many problems. But this was not the case. The community living in the area are part of a Venda group. The only Sotho-speakers living in the area are a few recent immigrants.

Although considered a distinct ethnic group, Venda language and culture are considered to be an amalgamation of Sotho and Shona. Shona-speakers, identified by a ceramic style called ‘Khami’, migrated from present-day Zimbabwe to the Soutpansberg area at about AD 1450, after the breakup of the Great Zimbabwe and Khami Empires (Huffman 1986a, 1986b; Huffman and Hanisch 1987; Loubser 1991).

Sotho-speakers had been living in the Soutpansberg area for some time, and are identified by Moloko Tradition ceramics. By AD 1600 the two ceramic styles had merged and evolved into a distinctive ceramic style that Venda-speakers still make today. Thus, the Venda ethnic group is considered to have been created by the merging of two previously discrete cultures (Loubser 1991; Fish 2000).

According to this analysis, the archaeological site excavated at Matoks belongs to the Moloko Tradition, a pre-Venda group of Sotho-speaking people who were later to interact with Shona-speakers to form the foundation of the Venda nation. There are no extant Sotho-speaking communities living in the area that can be directly linked with the archaeological site, or indeed with the Moloko Tradition in the area. This raises a problem for repatriation.

Discussions were held with local communities, and it became evident that Venda communities living in the area had no connection with the site. In fact, no communities had any knowledge whatsoever of the site. Interest in the human remains was virtually nonexistent. When the question of reburial was discussed, the local communities showed a total lack of interest.

As descendants of the community who originally occupied the archaeological site were no longer recognizable, it was decided not to repatriate the human remains to the local community. Virtually the only interest shown in the human remains was by local *inyangas*, or traditional healers, who wanted the remains to use for *mutti*, or medicine. Human remains make some of the most powerful *mutti*, this fact being highlighted by some particularly gruesome ‘*mutti murders*’ having been committed in the area. It was decided that repatriation or reburial would serve no purpose whatsoever. In fact, it was felt that any reburied remains would probably be subjected to systematic pillage for the reasons given above. The remains are presently being curated and studied at the Anatomy Department of the University of Pretoria.

Some professionals have been guilty of repatriating human remains when not enough is known about either the archaeological context or the community involved, or both. This has the same potential pitfalls as not repatriating at all. In some cases, the repatriation of human remains can be used as a public relations tool by institutions in order to gain favour by being seen as being ‘community-friendly’, or by professionals to gain access to data or material that they would otherwise not be privy to. This could have an immensely negative impact on the archaeological profession in the medium to long term.

On the other hand, some communities have used issues related to human remains as a tool to further political or financial aims. Granted, there have also been many projects where repatriation has benefited all parties concerned: for example, despite initial difficulties, the Thulamela project concluded on a note that seemed to satisfy all concerned (see Nemaheni Chapter 21).

Another successful South African repatriation case concerned the human remains of Nontetha Bungu. Bungu, seen as a prophet by various religious sects, was involved in a number of rebellions during the first and second decades of this century. As a result of this Bungu was incarcerated by the Smuts Government in the 1920s. The government then declared her insane and she was moved to Weskoppies Mental Institution, where she died in 1935. Her next-of-kin were not notified and Bungu

was given a pauper's funeral in Pretoria. In the 1990s her descendants sought her remains for reburial. Bungu's probable grave was located and the remains were exhumed and studied by the University of Pretoria Anatomy Department. The remains were found to be most probably those of Bungu, and were then taken to Bungu's native Eastern Cape, where they were reburied (Nienaber and Steyn in preparation).

Excavations at Matoks have highlighted a few of the problems associated with the repatriation of human remains in Southern Africa. If no modern community has known links to excavated human remains, to whom should the remains be repatriated? Is it always necessary to repatriate?

The new South African Heritage Resources Act makes provision for the repatriation of human remains. Any community with bona fide claims to human remains has the right to approach the institution holding the remains to secure their return. If a dispute is declared, the community concerned may refer the matter to the National Minister of Arts and Culture for arbitration. The obvious question that has not been adequately addressed is the definition of 'bona fide claims'. This is the subject of much debate and will hopefully be clarified in the near future. Until then, the repatriation of human remains will continue to be a most contentious issue in South Africa.

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23 *The reburial issue in Argentina: a growing conflict*

MARÍA LUZ ENDERE

In 1994, an amendment to the National Constitution replaced the previous ethnocentric statement about indigenous people in Argentina. Recognizing ‘the cultural and ethnic pre-existence of indigenous peoples’, guaranteeing ‘respect for their identity, ... the ownership of land’, and insuring ‘their participation in the management of their natural resources and other matters of their interest’ (art. 75, clause 17), this amendment has implications for indigenous participation in the management of their own cultural heritage, including human remains.

However, Congress still has to sanction a whole set of new laws to put into practice these new constitutional rights and guarantees to the indigenous natural and cultural heritage. Furthermore, a complete change in the social way of thinking is necessary to revalue indigenous people as protected ethnic minorities. So far, politicians, archaeologists and curators seem to be unwilling to make this new commitment.

As this book shows, over the last three decades a growing number of indigenous groups world-wide have been trying to take control of their ancestors’ human remains – whether they are held in museums or yet to be excavated. The so-called ‘reburial issue’ as it emerged in the USA and Australia and, later, in other parts of the world (Hubert 1992), has not yet developed in the same way in Argentina. Although the remains of famous indigenous chiefs were requested from the La Plata Museum in the 1970s, it was not until the late 1980s that these claims started to be seen as a threat to museums.¹ So far, there has only been one successful case in which indigenous human remains have been returned by a museum for reburial. This was the case of Chief Inakayal (see p. 271) whose remains were reburied in his traditional lands.

At first sight, therefore, the reburial issue does not appear to be a significant one in Argentina. However two important aspects must be taken into account. First, this situation cannot be considered without an understanding of the indigenous population’s current position overall in Argentina. Second, there are many legal problems that must be solved before indigenous peoples’ right to repatriate their ancestors can be made effective.

It can be predicted that claims for the return of well-known indigenous chiefs who died as a result of the conquest of their territories in the nineteenth century has, and will continue to, become a vehicle for local government and communities to reinforce their own roles in the nation’s history.²

BACKGROUND

The present territory of Argentina has been inhabited by humans for over 11,000 years. At the time of the Spanish conquest of America, Argentina was occupied by over a million inhabitants (Magrassi 1987), belonging to many different ethnic groups. Sedentary farmers had settled in the Northwest, the Central Range and the Cuyo Region. Hunter-gatherers inhabited the Chaco Region, Mesopotamia, Pampa and Patagonia, and Tierra del Fuego, and the so-called 'canoe people' occupied the south coast of Tierra del Fuego (Aizen and Muro 1995).

Today, with the exception of two which have no living descendants in Argentina, these ethnic groups live in very small portions of the lands that they traditionally occupied (Aizen and Muro 1995: 12). The size of the current indigenous population living in communities has been estimated at between 342,445 (Asociación Indígena de la República Argentina (AIRA)) and 446,600 (Equipo Nacional de Patoral Aborigen (ENDEPA)). After those who live in urban and suburban areas are included, the indigenous population can be estimated to be 952,730 (ENDEPA).

Despite the obvious continuing existence of indigenous groups, at the end of the nineteenth century it was assumed that there were no more 'Indians' in Argentina.³ The national government would not recognize indigenous groups as 'peoples' for 'fear of promoting geographical and political fragmentation' (Balazote and Radovich 1992: 17–18). The construction of a unique national culture was considered necessary to consolidate national unity (see also Slavsky 1992: 72). In this construction, indigenous people had no role to play. They were the savages who had to be defeated to ensure the birth of a new nation populated by European immigrants (Politis 1995: 199). And after being defeated they were considered legally incapable, and dependent on government assistance (e.g. National Decree 1899).

The legal status of indigenous people in Argentina began to change in the second half of the twentieth century. Their status was recognized by law (14.932/59) in the 107 Agreement of the International Labour Organisation (ILO) concerning the protection and integration of the indigenous population. In 1961, a special council was created to deal with indigenous matters, and the first and only official census of the indigenous population was carried out in 1966. However, the arrival of the military government in 1976 frustrated the recognition of rights claimed by indigenous movements generated during the early 1970s (see Serbín 1981).

It was not until the return of democracy in 1983 that it became possible to approve Law 23.302/85 concerning 'Indigenous Policy and Support to Indigenous Communities'. This law introduced a complete change in the status of indigenous groups, anticipating criteria later adopted by the amendment of the National Constitution in 1994. The law recognized the legal status of indigenous communities⁴ and declared the interest of the national government in their development and participation in the social, economic and cultural process of the country. It recognized their right to obtain ownership of land, the need to reinforce their identity and preserve their cultural values, as well as the importance of improving their health and educational services and implementing bilingual education. The Instituto Nacional de Asuntos Indígenas (INAI) was created in order to carry out national policies and achieve the objectives of the law. Indigenous communities may participate in these

policies through a non-decision making consulting council (see Decree 155/89 arts. 7 (i) and 10).

According to the new policies, discrimination based on ethnic or racial motivation is punishable by law 23.592/88. The 169 Agreement of the ILO concerning Indigenous Peoples and Tribal Peoples in Independent Countries, which introduced a wide range of indigenous rights that must be respected by governments, was also recognized by Argentinian Law (N° 24.071) in 1992. However, it did not come into force until 2000, when the newly elected federal government listened to indigenous associations claims and ratified the legislation.

A number of provinces with indigenous populations have also enacted specific legislation about indigenous matters in the last few decades. These laws mainly deal with the possession of land and social and economic necessities (Slavsky 1992: 76–7). The preservation of indigenous cultural heritage is briefly considered under these laws and is normally limited to the provision of bilingual education and the protection of indigenous traditions.

In 1994, the National Constitution was amended and its outdated and ethnocentric statement about aborigines was replaced by a ruling that provides wide recognition of indigenous rights. According to the new text (art. 75, clause 17) the National Congress is:

to recognise the cultural and ethnic pre-existence of the indigenous Argentine people. To guarantee respect for their identity and their right to a bilingual and intercultural education. To recognise the legal status of their communities as well as the community possessions and ownership of the land they traditionally occupied; and to regulate the delivery of lands suitable for human development; none of them may be sold or seized. To insure their participation in the management of their natural resources and other matters of their interest. The provinces may exercise these attributions concurrently.

The recognition of indigenous communities by Argentina's highest legal authority, the Constitutional Assembly, opens up a whole range of new possibilities in indigenous affairs. Moreover, the decision of Congress to insure indigenous participation 'in the management of other matters of their interest' may be interpreted as conceding to indigenous groups the possibility of participating in cultural resource management when indigenous human remains, sacred objects and places or items of their cultural heritage are involved, and might also include the right to rebury their ancestors. This interpretation would not be inconceivable considering the wide recognition that this right has had in other countries in the last decade (see e.g. McKeown Chapter 9).

However, in spite of this, due to the lack of decisive and co-ordinated policies between national government and provinces, the condition of indigenous peoples has not significantly changed. Furthermore, Congress still needs to pass a whole set of new laws to put into practice these new constitutional rights and guarantees that relate to indigenous cultural heritage.

COLLECTIONS IN DISPUTE

Although collections of indigenous human remains are kept in many museums around the country, the most important is in the La Plata Museum. By 1891, the gallery of Anatomical Anthropology in the Museum displayed over 1,000 skulls and 80 skeletons (Podgorny and Politis 1992: 74; Podgorny 1993). Some skulls were collected from battlefields, others removed from indigenous tombs. The remains of indigenous prisoners who had died in jail were also included. Even those remains which have not been displayed since the 1940s are considered by the museum to be an important part of its collections. For this reason La Plata Museum has always been the target of repatriation requests, and it has played, in some way, a leading role among museums in taking a position on this subject due to its academic and scientific prestige and importance.

Callfulcurá, Gherenal, Indio Brujo and Chipitruz (claims from 1973–76)

The first recorded claim for indigenous human remains was in 1973 when a non-indigenous historian, José Mayo, from the town of Trenque Lauquén, Buenos Aires Province, informally requested the Division of Archaeology of the La Plata Museum to return the skulls of the Mapuche chiefs, Callfulcurá, Gherenal, Indio Brujo and Chipitruz ‘for their custody’ (Podgorny and Politis 1992: 76; Podgorny and Miotti 1994: 18). This claim received the support of the local government, which donated a place in the local cemetery to build a ‘mapuche pantheon’ to hold these remains. However the project was never carried out, probably due to the establishment of a military regime in 1976 and subsequent changes to the local authorities (see Podgorny and Politis 1992; Podgorny and Miotti 1994).

Callfulcurá, Gherenal, Indio Brujo and Chipitruz (claims from 1987–92)

In 1987 the indigenous community ‘Cacique Pincén’ asked the La Plata Museum to return the skulls of the same Mapuche chiefs. Its leader, Lorenzo Cejas Pincén, argued that the skulls of their ancestors were ‘war trophies of the Argentine nation. Due to the lack of indigenous flags they took their heads which did not receive Christian burial’, and compared them with the main national heroes of Argentina⁵ (Podgorny and Politis 1992: 77; see also Podgorny 1991).

In 1992 the Superior Council of La Plata Museum refused to hand over the remains of the chiefs, arguing on legal grounds that the archaeological collections in the museum were public property which belonged to the Nation and therefore could not be claimed as if they were of private dominion (see Podgorny and Politis 1992: 77).

Callfulcurá, Mariano Rosas, Manuel Guerra, Gherenal, Indio Brujo and Chipitruz (claims from 1996)

In 1996 the Secretary of Culture of the La Pampa Province presented a claim for the restitution from La Plata Museum of the skulls of Araucanian Chief Callfulcurá and the Ranquel Chief Mariano Rosas. Local historian José Depetris also played an active role in this claim (Depetris, personal communication). The request was informally rejected by the La Plata Museum, who cited the previous legal impediment (Civil Code, art. 2340 clause 9) (see *Clarín* 09.12.96). The dispute has continued between the La Pampa government and the museum authorities. Included in the claim is a request for the remains of other famous chiefs such as Manuel Guerra, Gherenal, Indio Brujo and Chipitruz.

Norma Durando, Secretary of Culture of La Pampa, commented that ‘we are trying to rescue the Pampean identity and the indigenous peoples are part of this identity’ (*Clarín* 09.12.96). The province has a project to build a ‘monument to the three cultures of La Pampa’: aborigines, criollos (Spanish descendants born in Argentina) and immigrants, and to deposit the remains of the indigenous chiefs there. However, indigenous descendants who live in La Pampa have argued that the province has no right to claim their ancestors’ remains. Germán Canuhé, president of the Ranquel Foundation Willy Kalkin, comments that it shows: ‘a lack of respect for our historic and cultural values. The right to claim [these ancestors] only belongs to their direct or indirect descendants’ (*Clarín* 27.01.97). Even when descendants agree to requests for the return of their ancestors, they do not concur with the idea of building a monument: ‘we do not agree that their remains should be taken to a museum or a monument for tourists ... our ancestors should lie in peace in their own land’ (Germán Canuhé, *Clarín* 27.01.97).

In 1998 the Ranquel Foundation also presented a request to La Plata Museum for the return of the remains of Mariano Rosas. In July 2000, after difficult negotiations, the return of the remains of Mariano Rosas from the La Plata Museum to the Ranquel Community of La Pampa Province was approved by National Congress itself (law 25.276). According to this law, The Instituto Nacional de Asuntos Indígenas on behalf of the Nation-State should be in charge of the return proceedings (art. 1). The remains of Mariano Rosas – named also in the law by his indigenous name, Panquiruz Gner – will be delivered to Leuvucú, La Pampa province, by the National authorities. The return will be carried out in an official ceremony of ‘reparation to the Ranquel people’ in which military honours will be given to the chief (art. 4).

This law did not address a key point: where and how the remains of the chief would be deposited. It only stated that the Sub-Secretary of Culture of La Pampa province, after consultation with the leaders of the Ranquel Community, would decide where the remains of Mariano Rosas would be buried (art. 3).

Cipriano Catriel (claims from 1994–7)

In 1994 a request to recover the skull of the Chief Cipriano Catriel was presented to the Town Council of Olavarría, Buenos Aires Province by two local historians, Carlos

Paladino and Pablo Ormázabal. They demanded the support of the local authorities to claim the remains of Catriel which were in the Museo de la Patagonia Francisco Moreno of Bariloche, Río Negro, in order that they be buried in the local cemetery. This request was made ‘in recognition of the rights of the local indigenous community’ and was supported by the local authorities (Exp. 083/94).

The director of the museum, which belongs to the Administración de Parques Nacionales (similar to a national parks service), answered that according to the report of the Administration’s Legal Department, the claim could only be made by the direct descendants of the chief. The director also pointed out that the skull had not been on display since 1985 ‘because we do not consider the remains of any member of aboriginal cultures [to be] “archaeological pieces”’ (Lic. Girgenti, note sent to the local authorities of Olavarría, 10.06.1994). However, even after many descendants of the Catriel family signed a note supporting the claim, it was again rejected, this time on the grounds that they were not considered to be the legal heirs (report signed by Dr Luis Terán Frías on 12.05.97).

In April 1998 the descendants of Chief Catriel as well as other indigenous descendants who live in Buenos Aires province decided to create an association to campaign for their rights. They emphasized their decision to claim the skull of Cipriano Catriel as well as to recover information to locate the remains of other ancestors (*El Popular* 21.04.98).

LEGAL OBSTACLES

Many of the above claims foundered on legal obstacles which impeded the restitution of human remains by the museums. Two different legal issues were used as the basis for refusing the claims:

- 1 The need to prove that claimants were legal heirs (Legal Department of Administración de Parques Nacionales, Case Catriel).
- 2 The need for a specific law to change the legal status of collections of indigenous human remains. According to current legislation, archaeological sites of scientific value – and therefore collections deriving from them – belong to the public domain of the National State or the Provinces (Civil Code, art. 2340 clause 9) and cannot be claimed by any person on the basis of private interest. The Civil Code has the authority of a national law, and its rulings can only be modified by legislation. In other words, a collection’s legal status cannot change unless a specific law orders its exclusion from the public domain.

INAKAYAL: THE FIRST CASE OF RETURN (1989–94)

Chief Inakayal (in Mapuche, ‘Inyakal’ means ‘who follows other off-spring’) was born in Tecka, Chubut Province, in about 1833 (Vignati 1942). He controlled important lands in the Patagonia region, where he used to give hospitality to famous naturalists

and travellers such as Guillermo Cox, George Muster and Dr Francisco Moreno. In October 1884, when 'the conquest of the desert' was over, Chief Inakayal and Chief Foyel attempted to negotiate with Commander Lasciar, but they and their people were taken prisoner and their camps destroyed. They were then transferred to the prison of El Tigre Island, in Buenos Aires province. After 18 months, Moreno, Director of La Plata Museum, obtained permission from the government to give accommodation to Inakayal, Foyel and their families and servants in the museum (Politis 1994).

While in the museum, Inakayal was studied by Ten Kate who described him as being, 'reserved, distrustful and resentful'. He was 'unable to show his feelings and thoughts unless he was drunk', and was 'dirty and without care of himself' (Ten Kate 1904: 43). Ten Kate (1904: 11) also remarked, 'when he became furious he used to call the Argentines "gringos" (foreigners)' and 'once he said "I Chief, son of this land, white thieves killed my brothers, stole my horses and the land where I was born, they made me prisoner and then unhappy"'. In this moment his face showed the greatest sadness'.

Moreno gained permission from the government for Foyel to return to Patagonia and be given land. But Inakayal was not allowed to return home and died in La Plata Museum on 24 September 1888. Clemente Onelli (1908: 571) described how Inakayal sensed his death beforehand: helped by two of his men, he went out of the front doors of the museum and performed his last ritual: 'he bared his golden torso, and waved his arm towards the sun and then towards the south and he spoke unknown words'. That night he died. Vignati (1942: 23) estimated he was around 55 years old, although Onelli (1908: 571) remarked that 'he looked like an ancient man, who seldom abandoned his chair'. He was not buried. His bones, brain, scalp and death mask became part of the museum's collection (Politis 1994: 46; see also Lehmann-Nitsche 1910: 85). His lands were later sold by the Government.

Requests for Inakayal's remains

Many indigenous organizations and leaders (e.g. the Centro Indígena Mapuche-Tehuelche) have attempted to achieve the return of Inakayal's remains, as well as the bodies of other Patagonian chiefs housed by La Plata Museum. In 1990 the National Senator Hipólito Solari Yrigoyen presented draft legislation requesting the return of Inakayal's remains to his homeland, Tecka. This draft proposal listed the following justifications for the proposed new legislation: that Inakayal had helped in the exploration of Patagonia; had protected scientific travellers such as Musters in 1869, Guerrico in 1872 and Moreno in 1875, when the latter was persecuted by Chief Saihueque; had the Argentine flag in his camp, as recognition of the national government; was in favour of progress because he taught his people how to farm; was unfairly taken prisoner; and that it was a matter of justice and respect for human dignity to recognize the right of indigenous communities to keep their lands and the human remains of their ancestors.

Various indigenous organizations disagreed with the Senator's justifications, noting instead that: Inakayal's remains, along with those of other chiefs whose territory was

invaded and dispossessed, should be buried in their own land – including those of Chief Saihueque (Asociación Indoamericana of Argentina (Aindara), the Centro Cultural Tinkunaku and the Movimiento Nuestras Raíces); that indigenous nations predated the Argentinian state and that Argentinian history began 20,000 years ago, not in 1810 with emancipation from Spain (Centro Cultural Tinkunaku); that Inakayal had never resigned his right to the land in spite of flying the Argentine flag (Centro Cultural Tinkunaku); that the colours of the Argentinian flag are also the colours of the old Mapuche flag (Gran Parlamento Indígena Nacional); that it was a matter of human rights to return all indigenous human remains (Aindara, Movimiento Nuestras Raíces); that Inakayal should be considered a national hero (Aindara).

In May 1991 the senator's draft legislation became law N° 23,940 after being approved by the National Congress. According to its terms, the national government would transfer the remains of Inakayal from the La Plata Museum to the town of Tecka where they would be buried after receiving military honours. However, the necessary decree (N° 2391) was not signed until November 1993. Several claims made by the Senator and Congress to the Home Office, as well as a lawsuit filed for failure to comply with Law 23.940, were necessary to force the governmental authorities to respect the decision of Congress. Three months before the decree was passed, the Superior Council of La Plata University had unanimously approved the restitution of the mortal remains of Inakayal, changing its prior criteria (see Miotti 1994). The director of La Plata Museum declared that: 'the Museum had refused the returning of Inakayal in the past because there was no guarantee of the destination of his remains' (*Clarín* 16.04.94). It was Senator Solari Yrigoyen's view that the La Plata University authorities 'were forced to change their mind because they became conscious of their legal responsibility' (S. Yrigoyen, personal communication).

The return to Tecka

On 19 April 1994, 'The Day of the Aborigine', the remains of Inakayal were returned to his homeland in a National Air Force airplane, accompanied by national and provincial authorities as well as Dr Gustavo Politis of the La Plata Museum. At Esquel Airport, Inakayal received military honours from the Argentine army, the same army that had deceived and captured Inakayal a century before (see Figure 23.1). However the involvement of the army was welcomed by the indigenous people as 'it meant that his status as chief was finally recognised' (Rosa Chiquichano, personal communication).⁶ Inakayal's remains were carried by indigenous descendants, while the *Machis* (indigenous women with particular religious roles) started the funerary rituals called *rogativas*. Then the procession went to the town of Tecka (see Figure 23.2). From there, the urn was carried by foot to a mausoleum, while some seeds of wheat and water were thrown as part of the mortuary ritual. Each stage of the ceremony had been previously agreed with the local indigenous people. The remains of Inakayal were deposited in the mausoleum, the Argentine flag was placed over the urn and it was covered in stones in the style of an indigenous *chenque* (Araucanian tomb) (see Figure 23.3 and Figure 23.4).



Figure 23.1 Indigenous descendants carrying the remains of Inakayal at Esquel Airport while receiving military honours by the National Army

Photograph: G. Politis

It was explained that (Rosa Chiquichano, personal communication)

part of the honour [shown] to a chief is [for him] to be buried with the Argentine flag. This flag is something very significant for our community, it symbolises the land, it means this land. We are the real Argentine people, because we are the descendants of those who were related to this.

A great number of indigenous descendants participated in the whole ceremony. The local authorities estimated that there were over 2,500 people at Esquel airport (Osorio Pisco, Secretary of Government of Tecka, personal communication) and many of them accompanied the procession on horseback up to Tecka. Each school-hostel of the province that had indigenous pupils sent a delegation to Tecka.

An indigenous descendant, Casiano Calauquir, explained the importance of the return of Inakayal to the indigenous community and their feelings that day: 'We were very happy. Chief Inakayal was highly respected. Never before had so many indigenous people come together as when his remains were returned' (C. Calauquir, personal communication). 'For the indigenous people it was as if Inakayal had died this same day, they were feeling the same emotion' (Osorio Pisco, personal communication).

The return of Inakayal was given wide coverage in the national press. The main newspapers (e.g. *Clarín*, *La Nación*, *Página 12*) presented the news as an historic reparation for the unfair treatment given to Inakayal in the past. The La Plata local paper also reported on the debate surrounding Inakayal's case. Some scientists were worried about the loss of 'valuable pieces' from the museum, and the damage to the cultural



Figure 23.2 The Mayor of Tecka, the great-grand-daughter of Inakayal and an indigenous leader receiving the coffin of Inayakal at Tecka

Photograph: G. Politis

and scientific heritage that these kinds of claim might produce. People surveyed in the streets held the opposite view and considered that the remains of indigenous chiefs should be returned to their descendants (*El Día* 15.04.94).

After the return of Inakayal

For the local indigenous people the mausoleum is considered a sacred place, where they go to leave a stone or wild flowers. 'Each time I pass by the place, I leave a stone, as a sign of respect to the Chief'⁷ (Rosa Chiquichano, personal communication). Visitors are also welcome; today there is a small sign which invites passers by to visit the mausoleum (see Figure 23.5).

The indigenous people of Quichaura colony, 70 km from Tecka, remarked that, 'the return of Inakayal meant that the colony started to be taken into account ... since he came everything became better' (Dalmacio Catrilo, president, personal communication).



Figure 23.3 Inakayal's Mausoleum at Tecka, July 1998

Photograph: M.L. Endere

Casiano Calauquir (personal communication), an old man from the community, noted

we should perform a second *camaruco* to Inakayal, we can do it whenever we want. Today the people are daring to make *camarucos* but before [during the military government] they were prohibited ... we had to ask for permission from the Gendarmería [boundary military authority].

Rosa Chiquichano (personal communication) considered that

the return of Inakayal was an acknowledgement of his personality and an act of justice, although, unfortunately, it is an isolated case. The indigenous people do not know of the existence of the human remains of other chiefs in museums. Our parents did not tell us many things, they did not teach us the traditions as a way to protect us against discrimination.

THE CONCEPT OF REPATRIATION

In general, indigenous people in Argentina consider the return of their ancestors' remains as recognition of their own identity and their own past. However they identify themselves as Argentinians, they respect the national flag and they compare the



Figure 23.4 Inside Inakayal's Mausoleum at Tecka, July 1998

Photograph: M.L. Endere

historical importance of their Mapuche and Tehuelche chiefs with the heroes of national independence such as San Martín. The notion of building monuments (pantheons or mausoleums) in public places or in catholic cemeteries is based on a desire to be recognized by the national, mainly white, society, in order to secure an honourable place in the nation's history.

These types of claims cannot really be seen as acts of 'repatriation', understood as returning to the homeland from somewhere considered a foreign place. Indigenous people in Argentina consider themselves part of the Argentinian nation. 'Reburial' or 'return' are more apt terms.

The indigenous community of Quilmes consisting of 451 families, descendants of the Calchaquí people, who live in Tafi del Valle, Tucumán province, in the northwest of Argentina. In 1666, after 130 years of resistance against Spanish domination, their ancestors were finally defeated and transferred to Buenos Aires Province as a way of



Figure 23.5 View of Inakayal's Mausoleum and sign welcoming visitors from the national route used by tourists to go to the Esquel Sky Centre

Photograph: M.L. Endere

avoiding new insurgencies (see Ottonello and Lorandi 1987). Two hundred families of Quilmes and Acalianos peoples were sent to the religious mission Reducción de la Exaltación de la Santa Cruz de los Quilmes, and these people were the first inhabitants of the town of Quilmes. As part of a process of recovering their own past, in 1995 the community agreed to have archaeologists Z. Quatril and M. Cereda excavate historic places in the town where some of their ancestors were buried, and to return them to Tucumán. Even when they failed to get permission to excavate the atrium of the cathedral, which was the responsibility of the Catholic bishop, they supported the Quilmes archaeological research project and have established good relations with the archaeologists in charge (Z. Quatril, personal communication; Comunidad India Quilmes, personal communication). This constitutes an interesting example of how archaeology can assist in rescuing the indigenous past and reinforcing the relationship between researchers and indigenous groups.

THE LEGAL BATTLE

The first attempt to enact new legislation concerning the restitution of indigenous human remains was made by Senator Olijuela del Valle Rivas, who presented a draft proposal to the National Congress in 1996 (S. 2679/96: 3132). In spite of being approved by the Senate in 1997, this proposal has still failed to become law, having been with the Chamber of Deputies for two years awaiting consideration.

According to its terms, the ethical treatment of indigenous human remains in museums will be guaranteed, and the right of their descendants to claim them will be recognized. The draft intends to eliminate the current legal obstacles which impede the restitution of remains to descendants. However this legislation would only be applicable in a very few cases, because the status of 'descendant' is only recognized in civil law as those who have a 'close relationship' with the deceased (Civil Code art. 3545). Furthermore, written proof of birth, marriage and death through official certificates must be provided to prove the status of legal descendant. In most cases, this kind of documentation is impossible to obtain. There is as yet no move to admit new kinds of evidence to prove, for example, 'cultural affiliation' (as in NAGPRA, see McKeown Chapter 9).

Thus, the draft legislation only recognizes the rights of individual direct descendants and not indigenous communities to claim their ancestors' human remains, despite the fact that the new National Constitution gives specific recognition to such communities. In practical terms, this lack of recognition makes a great difference. Most of the human remains kept in museums are not catalogued by their names but by their ethnic characteristics. Consequently, if the law only recognizes the rights of direct descendants, only some famous chiefs may be repatriated, whilst most of the collections will remain unclaimable.

CONCLUSION

The small number of claims made in Argentina and their lack of success cannot be explained exclusively in terms of legal impediments. There are more important reasons which can only be understood when all the challenges facing Argentina's indigenous population are considered.

Today, indigenous communities are focusing their efforts on claiming their lands and gaining better standards of education for their people. Although the right to own their traditional lands was recognized by the National Constitution in 1994, there have been serious difficulties in obtaining ownership due to a legal and historical problem. After the 'conquest of the desert', indigenous territory was legally considered 'land without owner'⁸ and therefore became part of the private dominion of the State (Civil Code art. 2342 clause 1) who sold it to white settlers (see Balazote and Radovich 1992: 15).

Only a small amount of land was assigned to indigenous reservations and religious missions (Federal Law of Immigration and Colonisation N° 817/1876) or given to some indigenous chiefs and their families (e.g. Manuel Namuncurá in 1894; Valentin Saihueque in 1899) in order to stem public criticism of the government for its unfair treatment in subjugating aborigines (Lenton 1992: 49–50). It is in these small portions of land that indigenous communities have been living until recently. These communities can only obtain ownership of land which is still the property of the national or provincial states. In fact, communities have also had difficulties in obtaining ownership of state land. In the last few years, provincial governments have sold land to private investors, lands which were in the process of being claimed by indigenous

communities (e.g. Mapuche lands in Pulmarí, Department of Aluminé, Neuquén Province, see Resolution of the EU on March 1997, DOC. ES/RC/322542).

Cultural heritage concerns are probably only going to become pre-eminent when the most crucial needs of indigenous communities have been satisfied. Furthermore, indigenous people show an evident lack of knowledge about existence of their ancestors' human remains in national and foreign museums.

The return of the remains of Inakayal had a psychological impact on archaeologists and physical anthropologists and acquired a symbolic meaning in Argentina. It was also a precedent for legislators, researchers and museums that cannot be ignored in the future. International experience has shown how significant these cases have been to the development of repatriation policy (see e.g. Hubert 1989; Bray and Killion 1994; Fforde 1997). The case of Inakayal represents the first steps toward the general recognition in Argentina of the indigenous right to claim back their ancestors' human remains. The agreement to return the remains of Mariano Rosas, although this has yet to be carried out, is clear evidence that things have begun to change.

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NOTES

- 1 The starting point was in 1989, when the Centro Indígena Mapuche–Tehuelche (represented by Pedro Antilef and Héctor Gil) claimed the remains of the Tehuelche chiefs during 'The Workshop for the Use of the Past' at La Plata Museum (see Miotti 1994: 6–7).
- 2 The nation-state and the provinces have been involved in a legal conflict with regard to Argentina's archaeological heritage for decades (see Endere 2000). This conflict was solved by an amendment to the National Constitution in 1994 which recognized provincial ownership over archaeological heritage and established that the nation-state holds responsibility for developing policies of management and protection of this heritage in co-ordination with the provinces (art. 41). However most archaeological collections taken from the provinces remain, for the time being, in national museums.
- 3 In 1879 the national government decided to carry out 'an offensive war' against the indigenous people of Pampa and Patagonia (see Levene 1934; Martiré and Tao Anzoategui 1981, Oszlak 1982). This military action was known as 'the conquest of the desert'. As a result, more than 14,000 indigenes were killed or taken prisoners, according to official records (Informe Oficial de la Comisión Científica 1881, XI). After its conclusion, the conquest of the Chaco region started in the northeast of the country.

- 4 Indigenous communities are defined by law 23.302/85 as 'groups of families that recognize themselves as indigenous, due to the fact of being descendants of the peoples who inhabited the national territory at the time of its conquest or colonisation' (art 2 par. 2). This definition follows the criteria established in Agreement 169 of the International Labour Organisation (art 1).
- 5 In the second half of the nineteenth century, the Mapuche and Tehuelche peoples had organized a complex cultural, political, economical and military system. There were three great indigenous chiefdoms: the Ranquel chiefdom led by the Güor family (Manuel Rosas) in the central Pampa; the 'Salinas Grandes' Chiefdom led by the Curá family (Callfulcurá); and a chiefdom in the Andean region (Neuquén), named 'the apples' land', and led by Saihueque. During 1850 and 1860 all the chiefdoms formed a great confederation led by Callfulcurá in order to fight against the national army (Mandrini and Ortelli 1992: 148–68; Hernández 1992).
- 6 Rosa Chiquichano is the great-granddaughter of Nahuelquir Chiquichano, one of the last Tehuelche chiefs. She is studying law and has participated in many indigenous organizations.
- 7 The English traveller J. Musters described the Tehuelches in 1869 and recorded that they used to add a stone when they passed near a tomb of a hero or a distinguished chief ([1871] 1979: 254). The mortuary rituals among the Tehuelche and Araucanian peoples have been described by many travellers in their chronicles (e.g. Falkner 1974; Armaignac [1882] 1976; Musters [1871] 1979; Zeballos [1881] 1994). These accounts do not always agree with one another because they refer to practices carried out in different periods at different places. Mandrini and Ortelli (1992: 149–50) remarked that amongst the Araucanian people of the nineteenth century, 'the tomb of a chief used to be bigger and more complex than that for other people'.
- 8 The right of the State to acquire the property of 'lands without owner' as recognized in the Civil Code (art. 2342 clause 1) is based on Spanish colonial legislation. In 1493, Pope Alexander VI gave to the Crowns of Spain and Portugal, through the Bull *Inter Caetera*, the dominium of the lands discovered in America. Therefore, at the time of Independence, all those lands which did not belong to private owners, with legal titles, were considered to be the property of the National or Provincial States (Borda 1970: 55), even when those lands were occupied by indigenous peoples.

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24 *Partnership in museums: a tribal Maori response to repatriation*

PAUL TAPSELL

This chapter provides a perspective for international museums and repositories of cultural material to better understand the advantages of forming long-term relationships with the local indigenous kin groups, upon whose ancestral lands their institutions stand.

I normally circumvent the subject of repatriation because, in my experience as a curator, most elders consider the majority of 'Maori' demands for the return of ancestral treasures, or *taonga*¹ and human remains² a red herring that distracts from the need to address other partnership initiatives. During the many returns of museum-held *taonga* to my tribal homelands (I am a descendant of the Arawa tribes of Aotearoa New Zealand) the word 'repatriation' was rarely used. Many elders enter into negotiations seeking pathways of mutual benefit for all involved, and for them, the concept 'repatriation' seldom finds context or currency as it can invoke reactive rather than proactive interactions. This chapter, therefore, is not about repatriation but instead about partnership. To demonstrate the benefits of such an approach I will use the Auckland Museum's 1997 unencumbered return of the great cultural artefact Pukaki as my example. This unprecedented gesture of institutional goodwill sets an example for other museums worldwide. Pukaki's homecoming heralded the beginnings for Auckland Museum and its tribal partners, Ngati Whatua O Orakei, of an exciting new journey down a pathway of partnership regarding long-term management of all things indigenous within its four walls.

Pukaki is a very large wood carving of a famous Ngati Whakaue – Te Arawa ancestor, named Pukaki, who lived some ten generations ago in the central North Island's geothermal district of Waiariki (see Figure 24.1). He was carved in 1835 as a protecting gateway to the main village (Ohinemutu) on the shores of Lake Rotorua before being modified in the 1850s to resemble the present statue-like figure recognized today as Pukaki. In 1877 certain Crown agents somehow acquired Pukaki and then presented him to the Auckland Museum as their own personal gift, where he resided for the next 120 years. Pukaki gained international recognition when he became one of the most popular attractions of the 'Te Maori' exhibition which toured the United States and New Zealand from 1984 to 1987. Not surprisingly, when he returned home he was greeted as a national icon and has since featured in numerous



Figure 24.1 Pukaki just after arriving in the Auckland Museum *c.* 1878
Image courtesy of the author

publications, upon thousands of posters and was even reproduced upon New Zealand's 1990 commemorative twenty-cent coin.

Absent from all the publicity, however, was any account of the actual events which allowed Pukaki to leave Rotorua in the first place. This omission was discovered by Hamuera Taiporutu Mitchell, who was part of the large elders' contingent (comprised of representatives from the tribes of Te Arawa, Mataatua, Tuwharetoa and Taitokerau) invited by the Crown to participate as spiritual specialists, helping open 'Te Maori' while in the United States. When Hamuera and other Ngati Whakaue elders ritually greeted Pukaki in St. Louis, it represented the first time ancestor and descendants had been formally reunited since 1877. But their happiness was soon replaced by confusion because the associated label made no mention of why Pukaki left home. Instead it stated that the carving was a personal gift to the Auckland Museum by a famous

nineteenth-century Auckland Judge, Mr Justice Gillies. This caused great consternation amongst my elders, especially Hamuera, who had no knowledge of such a person. He was taught by his old people that Pukaki had been presented to the Crown as a seal of trust after it promised ownership of the planned township lands would remain with Ngati Whakauae in perpetuity. Unfortunately the resulting 1880 treaty (Fenton Agreement – later enacted as the 1881 Geothermal Springs Act) collapsed in 1893 when the Crown compulsorily purchased Ngati Whakauae's township shares. It was no coincidence that my people soon after suffered poverty and hardship. It was not until 23 September 1993 that the Crown finally acknowledged its breached promises and delivered a full and final settlement to Ngati Whakauae ('Agreement ...' 23.9.93). The 1993 compensation package included land and other measures, but the direct association of Pukaki to the township formation remained obscured.

After the signing of the 1993 Agreement, while I was still the curator of the Rotorua Museum, Hamuera asked if I would research the full history of Pukaki. Sixteen months later I was able to report back to him and the tribe the actualities surrounding Pukaki's 1877 acquisition. This I later presented as an M.A. thesis titled 'Pukaki: *Te Taonga o Ngati Whakauae ki Rotorua*' (Tapsell 1995). In it I demonstrated the political manoeuvres associated with Pukaki's collection by one particular Auckland Museum official, Judge F.D. Fenton, who was conducting land negotiations throughout the Rotorua District in 1877. During one of these negotiations he ceremonially received Pukaki from Ngati Whakauae in his capacity as representative of the Crown. However, rather than shipping the carving to his political masters in Wellington, Fenton instead arranged for Pukaki to be personally gifted to the new Auckland Museum by his colleague and president of the Auckland Institute and Museum, Mr Justice Gillies. Thereafter, the details of the acquisition were hidden so as to prevent Wellington rivals from learning otherwise. It appears that the motivation of these Auckland judges was personal – they did not want to surrender such a museum prize to their southern political adversaries – and by obscuring Pukaki's acquisition, not only Ngati Whakauae but the rest of New Zealand remained ignorant of the true circumstances. That was until the 'Te Maori' exhibition finally brought descendant elders face to face with their ancestor, Pukaki, after a century of separation.

In 1996 my thesis was given to the Auckland Museum to inform them of these historical facts. On 4 April 1997 a delegation of Ngati Whakauae elders met with the Auckland Museum. As the result of the meeting, the museum not only accepted and agreed with the research findings but, after consultation with its home tribe – *tangata whenua*³ – advisors (Ngati Whatua O Orakei), took the initiative by acknowledging Ngati Whakauae as still the 'owners' of Pukaki. The meeting, which was held under the customary authority – *mana*⁴ – of Ngati Whatua O Orakei, concluded with both sides expressing a strong desire to meet again and work towards forming a long-term partnership. In effect, the museum was offering to present Pukaki back to his original custodians.

On 15 June Ngati Whakauae met amongst themselves to discuss the situation. The elders consequently issued an invitation to the museum to visit Te Papa-i-Ouru Marae⁵ – ritual courtyard – in Rotorua, on 2 October 1997: the 120th anniversary of Pukaki's original presentation to the Crown (Judge Fenton). Upon receiving

confirmation that the Auckland Museum would be presenting Pukaki back to Ngati Whakaue on 2 October 1997, the elders decided that what was begun in 1877 could now finally be completed: i.e. the original gifting of Pukaki to the Crown as the paramount *taonga* associated with the original formation of Rotorua Township.

Pukaki's homecoming was a memorable all-day occasion. It began at dawn in the Auckland Museum when Ngati Whatua O Orakei, Auckland Museum officials and Auckland-dwelling Ngati Whakaue descendants met with Pukaki to escort him home to Rotorua. The early rituals were interrupted for half an hour by an urban Maori protester who tried to physically prevent Pukaki's removal from the museum. He was under the impression that Pukaki was in fact someone else and should not be removed. After some earnest discussion the protester finally stepped aside and allowed Pukaki's trip home to proceed. Three hours later Pukaki arrived at Te Papa-i-Ouru Marae, the exact place he had originally departed from 120 years earlier, and about 2,000 people gathered to welcome him. With due ritual he was escorted up to the *marae* entrance by Ngati Whatua O Orakei and then passed into the care of his descendants, Ngati Whakaue. The following ceremonial speeches, conducted between the hosts and visitors sitting on opposing sides of the *marae*, allowed the Auckland Museum Trust Board Chairman to officially present Pukaki back to Ngati Whakaue (see Figure 24.2). Thereafter, both sides of the *marae* joined as one in the ritual of the *hongi* – pressing of noses so as to share the breath of life – which symbolically ended the ceremony and allowed his many waiting descendants to flock around their ancestor to greet him in person.

A short while later the Governor General of New Zealand arrived upon the *marae* and his visit climaxed when Ngati Whakaue presented Pukaki to him along with the signed memorandum of understanding. Thereafter, in his capacity as the foremost representative of the Crown in New Zealand, His Excellency declared, 'I have great pride and great joy in accepting this gift on behalf of the nation' (Tapsell 1998: 332). Pukaki was then escorted by Ngati Whakaue warriors from Te Papa-i-Ouru Marae in Ohinemutu along the main road of Rotorua named Fenton Street, across Pukaki Street and into the Rotorua District Council buildings. Upon arrival he was ritually placed on display in the Council's upstairs gallery from where he can once more oversee his customary lands and descendants (see Figure 24.3).

As the result of a meeting between the Crown Minister in Charge of Treaty of Waitangi Negotiations and the elders of Ngati Whakaue, a memorandum of understanding was drafted and later ratified by the New Zealand Government. The Auckland Museum had also demonstrated partnership qualities in moving towards fulfilling its 'core mission – to represent what is correct in history, and correct in culture and science' (Chairman, Auckland Museum Trust Board, Television Three News Item, 2 October 1997). Ngati Whakaue's elders persuaded the Crown that it was only right to also include the museum as a signatory to the memorandum alongside the Crown, the Rotorua District Council and Ngati Whakaue. The memorandum details the reasons behind the gifting of Pukaki, future guardianship on behalf of the nation and outlines the formation of the Pukaki Trust.

Today, Pukaki is revered as a *taonga* who belongs to all the people of New Zealand. Accordingly, he is now managed by the Pukaki Trust – representing the nation – on



Figure 24.2 Pukaki finally home upon his *marae*, ‘Te Papa-i-Ouru’, after a 120-year absence

Photograph: Hamish MacDonald

which sits a representative from Ngati Whakaue, the City of Rotorua, the Auckland Museum Trust Board and is chaired by the Minister for Culture and Heritage, who happens to be the Prime Minister of New Zealand.

The Pukaki example aptly demonstrates a positive outcome when museums are proactive regarding the future management of items in their collections, especially those which may have arrived via dubious circumstances. In the future, however, commitment by museums to proper research and scholarship of their indigenous collections will allow them to take similar initiatives where *taonga* ought to be returned. If negotiations of any potentially contestable items originate from museums, rather than tribes, it will undoubtedly foster a sense of goodwill, trust and partnership. It will also ensure inappropriate repatriation demands by non-mandated persons are dealt with accordingly.

In New Zealand, it is protocol for tribes visiting museums beyond their territory (to discuss museum-related issues) to establish contact with the *tangata whenua* (home people) in order to give appropriate recognition to their customary authority over the land upon which the museum stands (*mana o te whenua*). Generally, *tangata whenua* ritually receive their guests, or *manuhiri*,⁶ onto their *marae*. Central to such meetings are genealogical ties, past interactions and the reason for visiting; certain *taonga* held within the local museum. The *tangata whenua* carry the responsibility of being spiritual and customary guardians – *hunga tiaki*⁷ – of the land and all that dwells upon it,



Figure 24.3 Pukaki today watching out over his lands and descendants of Rotorua
Photograph: Hamish MacDonald

including *taonga* that rest in a metropolitan museum. Thus, where *manuhiri* learn that the local museum is obstructing the *tangata whenua's hunga tiaki* role, there are also implications for the *manuhiri* whose particular customary responsibilities lie in respect of individual artefacts. Given the interconnected guardianship obligations of both groups, the *manuhiri* inevitably supports the *tangata whenua* to seek resolution where trusteeship accountabilities are threatened.

Tribal elders throughout the country consider it highly important to focus upon museum – *taonga* issues in terms of forming partnerships through the museums' home tribes. This was aptly demonstrated during Pukaki's return. They recognize that since the signing of the Treaty of Waitangi (1840), tribes and the Crown have become inescapably entangled in the development of New Zealand as a nation. Only since Te Maori, however, have museums sought to include nationhood narratives and *taonga* interpretation from Maori perspectives. It appears that the museums which have been most successful in achieving this have begun from the ground up – *mana o te whenua*⁸, namely, developing working partnerships with their home tribes as opposed to any 'Maori' who are not necessarily from the local group. Transferring responsibility for

all things Maori back to the *tangata whenua* allows them to invoke an appropriate customary platform (*marae* space) upon which all outside kin groups can interact with the museum.

In 1996–7 the Auckland Museum considered wider issues than the politically emotive repatriation threats of the time (see Tapsell 1998: Section III for examples) and recognized the positive long-term implications of developing and maintaining a partnership with the home tribe, Ngati Whatua O Orakei. The acclaimed 1997 presentation of Pukaki back to Ngati Whakaue verified the wisdom of this decision.

In other circumstances, some young urban-based Maori have differing opinions on process, policy and practice regarding Maori involvement in museums. These younger leaders are financially winning urban Maori support, through Crown-sourced funding, and in the process convincing many of them that tribally ordered knowledge, and all it represents, no longer has any context in urbanized Maori New Zealand (see, for example, John Tamihere's comments in Melbourne 1995: 109–18). Skilled in using the media, these individuals are attempting to redefine *taonga* and human remains as pan-Maori identity markers in an emotionally charged political game of gaining wider access to Crown-controlled resources. Consequently, kin-based partnership initiatives regarding metropolitan museum-held *taonga* (like the Pukaki example) are being overshadowed, and not surprisingly the word 'repatriation' dominates the media. Unfortunately, some New Zealand museums continue to negotiate with non-tribal urban authorities/individuals in reaction to this urban-driven political rhetoric of repatriation. Consequently, *tangata whenua* upon whose land these institutions stand are often excluded from such discussions, inevitably leading to non-customary actions being endorsed by museums at the home tribe's expense. The end result is an increase in repatriation demands, withholding of customary knowledge by tribes, community division and non-cooperation from *tangata whenua* – all of which museums can no longer afford to ignore if they wish to remain vital.

If, however, home tribes (*tangata whenua*) are awarded proper recognition at museum governance level, the future vitality of museums across the planet should flourish. By laying down a firm policy foundation of partnership that is appropriately managed and resourced, and by facilitating collaborative research of indigenous collections under the customary authority of the home kin groups, there is no reason why museums, with urban descendants beside them, could not embark upon proactive journeys of meeting and engaging with elders upon their homelands – perhaps on the other side of the world – from where ancestral items held within their collections originated. Thereafter, so long as all parties – the museum, its local kin group and the outside kin group genealogically associated with the ancestral treasure in question – have the same common goal: the dynamic perpetuation of culture and identity, then options regarding the future of such items can be properly negotiated at the required kinship–office leadership level that ancestral items symbolically represent. As long as policy is firmly in place and goodwill continues to exist on both sides, the likely result will be sustainable development of long-term partnerships through collaborative research, conservation, collection, exhibition, presentation and storage of many tribes' most valuable items by which everyone – ancestors, urban-based descendants and unborn generations and non-Maori – can prosper.

Since Pukaki's return in 1997 the Auckland Museum has not only consolidated its Maori advisory committee of *tangata whenua* representatives (*Taumata-a-Iwi*), adopted a guiding Maori charter (*Kaupapa*) and hired specialist Maori staff in upper and middle management, it has also embarked upon a proactive pathway of developing Maori policy and procedure throughout the whole organization. Indeed, by adhering to the traditional values of its local kin group the Auckland Museum has maintained the intercultural momentum set by Pukaki's auspicious return and continues to grow – from the ground up – as an international institution committed to forming sustainable long-term partnerships with indigenous peoples.

NOTES

- 1 *taonga*: any tangible or intangible item, object or thing that represents a Maori kin group's genealogical identity in relation to its estates and resources and is passed down through generations (see Tapsell 1997 for a detailed discussion concerning *taonga* and associated kin group values).
- 2 Human remains: *whakapakoko* (mummified bodies), *uru-moko* (cured heads) and *koiwi* (scraped bones adorned with red ochre). Apart from some flutes, ancestral remains are never referred to as *taonga*. Up until the acceptance of Christian burial practices, these remains and the most restricted *taonga* were either secured in *whare koiwi* (special store houses) or hidden upon the kin group's land. The term *moko mokai* refers to preserved heads of enemies captured in battle who were thereafter used as objects of degradation.
- 3 *tangata whenua*: people of the land; home tribe; local people; descendants of a specific Maori kin group organized according to a common ancestor. Kin group which holds exclusive customary authority over specifically defined estates.
- 4 *mana*: authority; power; prestige; status; integrity; self-esteem; source of energy from the gods transmitted through ancestors; ancestral power embracing people and their estates.
- 5 *marae*: meeting ground; central courtyard; plaza; communal meeting place in front of an ancestral house; three-dimensional space extending beyond a tribal meeting house or a war canoe prow; political, social and economic focus of tribal lands; a place where kin group elders receive visitors, perform ritual and conduct oratory.
- 6 *manuhiri*: visitors; outsider; guests welcomed onto *marae* by home people (*tangata whenua*). Any person(s) visiting/living/dwelling upon a home kin group's ancestral land (*mana o te whenua*) to which they have no direct genealogical connection.
- 7 *hunga tiaki*: (Te Arawa dialect for *kaitiaki-kaitiakitanga*) guardian – spiritual and or physical – who acts under the authority of the *tangata whenua*; trustee; manager of *taonga* (and estates) on behalf of wider kin group; protector; custodian (male or female); a customary role fulfilled by or delegated by members of the *tangata whenua* tribe's senior family, i.e. elders (*rangatira*) and their priests (*tohunga*). Term may be applied to wider kin group.
- 8 *mana o te whenua*: authority from the land, authority of the land: exclusively exercised by the *tangata whenua*.

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25 *Indigenous governance in museums: a case study, the Auckland War Memorial Museum*

MERATA KAWHARU

Customary Maori principles of trusteeship and resource management encapsulated by the term *kaitiakitanga* find relevance widely in tribal development in New Zealand. In the context of museums, *kaitiakitanga* is no less important. It is a principle exercised by tribal groups who maintain customary authority (*mana whenua*) over a specified geo-political territory. Such groups or *tangata whenua* have inherent responsibilities associated with the region – with lands and environmental resources, as well as material treasures, many of which are housed in museums located upon these lands.¹ In recognizing the importance of local groups exercising their particular *kaitiakitanga* responsibilities, the Auckland Museum has, through its Act (The Auckland War Memorial Museum Act 1996) established a forum called the *Taumata-a-Iwi* (The *Taumata*). The *Taumata* provides advice to the governing Trust Board regarding management of the treasures (*taonga*) held within the Museum. This chapter explores the Auckland Museum's governance structures and the strengths and weaknesses of policy and practice in order to understand the range of museum-related issues with which Maori are primarily concerned. In particular, it focuses on the *Taumata* and the exercise of *kaitiakitanga*. The context out of which the *Taumata* has arisen is also discussed. While the museum's governance model is unique nationwide, if not internationally as well, it nevertheless follows similar joint partnership trends elsewhere in New Zealand, developed particularly since the mid-1970s as a result of the Treaty of Waitangi claim process and legislation protecting Treaty guarantees.

KAITIAKITANGA

Preliminary comments about the meanings of *kaitiakitanga* are provided as background for understanding the relevance of the principle to Maori. *Kaitiakitanga* is not an old word, but the values it represents have found centrality in customary life since time immemorial (see Kawharu 1998). *Kaitiakitanga* literally means guardianship and trusteeship but also has broad interpretations including resource management or sustainable development. Shades of meaning vary depending on occasion and purpose. However, a common element is that all resources – human, material and

spiritual – are managed by *kaitiaki*, managers or guardians – either the *tangata whenua* group or its individual members. In the process, innumerable relationships between the sacred and profane, between the past and present, and between groups, are protected. An underlying incentive for ensuring assets and people are managed is to provide a sustainable, economic and cultural base for future generations. Customary Maori epistemologies do not see a separation between the sacred and profane because all elements in the universe are structured and interrelated according to the organizing principle *whakapapa*. The term literally refers to the ordering of layers. More simply, *whakapapa* is genealogy. Ideas associated with *whakapapa*, namely kinship and descent, which provide structure and order in the social world, are likewise applied to the natural environment. *Whakapapa* defines both linear (time) and lateral (space) relationships between all things.

A guiding principle underpinning the many relationships between these human, non-human and material layers is the ethic of reciprocity. Careful and wise management by a kin group of these relationships promotes survival in political and socio-economic terms. Customary philosophies and practices of managing *taonga* and the environment are similar to Western notions of sustainable management, but a key difference lies in defining the nature of management which, for Maori, transcends time. Present processes of management are prescribed by past association to lands, by ancestral links to prior *kaitiaki* and by the maintenance of those links. Tribal groups who once lived in an area but relinquished those rights by removal (forced or otherwise) do not have *kaitiakitanga* rights in any general sense. They may retain certain responsibilities in respect of a particular site, but they will always be tempered by the overseeing trusteeship role of the *tangata whenua*. More simply, *kaitiakitanga* is the preserve of those holding *mana whenua*. It is both a right and responsibility acquired not only by being a member of the *tangata whenua* group, but equally by proving an ability to give effect to trusteeship and management.

Kaitiakitanga is selfless, yet selfish. It is intimately intertwined with customary authority (*mana whenua* and *rangatiratanga*). Exercising resource management affirmed customary rights to an area. Likewise, protecting a tribal territory affirmed rights to apply *kaitiakitanga*.

KAITIAKITANGA AND THE AUCKLAND MUSEUM

These basic tenets underpin the rationale for *tangata whenua* groups in Auckland to engage in relationships with the Auckland Museum. The Museum stands within the *mana whenua* area of *Ngati Whatua* (see Figure 25.1). Whilst the reality of the kin group is different to that of pre-contact times, particularly where opportunities and challenges are new, and where many tribal development directions are constrained by market forces, the fundamental concern to maintain political authority – *mana whenua* – over an area still remains. Goals and aspirations of tribal entities continue to focus on sustaining and reinforcing tribal identity and promoting opportunity for socio-economic development in the face of what may otherwise be considered as adversity if indicators in health, housing, employment and crime are taken into account.



Figure 25.1 Aerial view of Auckland War Memorial Museum, Auckland city centre and waterfront located within *Ngāti Whātua o Ōrākei*'s customary territory

Photograph: Auckland War Memorial Museum

Protecting *mana whenua* is essential to any tribal groups' continued survival within the wider community.

Exercising resource management practices in relation to lands, other *taonga* and people is a fundamental way of securing those rights and of securing political and social sustainability. In relation to the Auckland Museum, two sets of 'resources' are managed according to *kaitiakitanga* principles: *taonga* (treasures) within museum collections (either on display or stored), and second, the people who have direct relationship with the *taonga*.

Relationships mediated by the *taonga* are of two main types. The first focuses upon a custodial role that the *tangata whenua* have over all items held in the collections. The second association with *taonga* is that by the items' artists or custodians of items which were gifted but have since gone to the museum. They may not be the legal owners of such *taonga* but continue to have a direct guardianship responsibility even where the history of each *taonga* is not fully known. There are many examples in the museum where tribal groups maintain symbolic but also practical links with *taonga*. Recognition of such links was reflected most recently by the museum's consultation programme with various groups concerning their *taonga* held in the museum for the museum's refurbishment and new Maori gallery plans. Whilst the consultation process was not without problems, it nevertheless underlined the importance placed by the

museum on their responsibilities to protect the varied relationships Maori people have with *taonga* held in the museum's care.

POLICY DEVELOPMENT

The proper application of *kaitiakitanga* requires *tangata whenua* involvement in museum governance. Although this was an obvious strategy for the *tangata whenua* since it was based on customary obligations, the museum did not recognize the relevance of such concerns while undergoing policy development in the early 1990s. Their priorities for considering Maori input were different. The museum, by its very nature, has a range of policy objectives of which Maori concerns are only one. Nevertheless, this wider policy context presented an opportunity for a 'Maori dimension' to be drafted into the review. The result saw the museum, through its governing legislation, the Auckland War Memorial Museum Act 1996, establish a Maori Committee called the *Taumata-a-Iwi* (*Taumata*) (section 16 (1)).

The *Taumata* consists of membership from *tangata whenua* groups of the wider Auckland isthmus. In recognizing the *mana whenua* of the local group upon whose land the museum stands, there are three members from *Ngati Whatua* in the committee, while there is also one member each from the *Tainui* and *Ngati Paoa* tribes who hold *mana whenua* interests more generally in Auckland. Through this committee, interests of other groups nationwide are represented. Presently, election within *Ngati Whatua* is based upon recommendations from elders and supported by the *Orakei* Maori Trust Board, the body who represents all *Ngati Whatua* descendants from the *Orakei* community who hold *mana whenua* in Auckland. The Museum Trust Board has formalized procedures for election and office tenure (sections 3, 4 and 13 of the Act), but criteria for *Taumata* membership and tenure are not specified in the Act. Currently, the Trust Board has the power to determine *Taumata* composition. In fact, the Act allows for any Maori to offer representatives for the *Taumata*, although the obligations of the *Taumata* can only be carried out by *mana whenua*.

BROADER RECOGNITION OF MAORI INTERESTS

Bicultural practice coincides with similar joint partnerships established with a range of organizations and local and central government that are premised upon the same principle of sustainable management and *kaitiakitanga*. This broader political-legal context nationwide provided the framework for the museum to consider such initiatives. Maturity in policy and practice regarding Maori interests has developed since the Treaty of Waitangi Act 1975 which established the Waitangi Tribunal to inquire into Maori Treaty grievances. It is against this claim settlement process that Treaty guarantees have been incorporated in legislation. The Conservation Act 1987, The Crown Forests Act 1989, the State Owned Enterprises Act 1987, The Resource Management Act 1991, the Historic Places Act 1993, *Te Ture Whenua* Maori Act 1993 are some examples. Progress is not always at an ideal pace, but as a result of these and other acts,

a range of Maori-orientated policies have been undertaken (establishment of *kura kaupapa*, *kohanga reo*, recognition and provision of Maori resource management interests, the establishment of Maori health funding providers and so on). Specific events within the museum industry have contributed to *kaitiakitanga* being considered, most notably the Te Maori exhibition of 1984 which toured the United States and New Zealand.

THE TREATY OF WAITANGI AND THE AUCKLAND MUSEUM

Although many Maori development programmes are Treaty-based, the question may be asked what does the Treaty have to do with museums? After all, the Treaty was signed in 1840 between Maori and British Crown representatives (the ‘partners’), and concerned the establishment of government (Article One) in exchange for the protection of customary authority (*rangatiratanga*) of *hapu* (subtribes) over their lands and estates (Article Two). As the nation’s founding document, the Treaty outlined what rights Maori and the Crown would enjoy.

While the museum is not the Crown and, therefore, it may be argued that the museum has no Treaty obligation, the contrary has shown to be the case. In order to understand how it has certain responsibilities relating to the Treaty, reflection on key issues developed separately from the scope of museum-specific concerns is necessary. In particular, the Resource Management Act 1991 (RMA) considers the relevance of the Treaty in contexts that extend beyond the Crown–Maori partnership. It affirms that all administering that Act shall take into account the principles of the Treaty of Waitangi (section 8). That means that the customary authority – *rangatiratanga* – of local tribal entities cannot be undermined by anyone. The responsibility to ensure *rangatiratanga* is protected is not exclusively the Crown’s. The RMA thus provides insight into the broader application of Treaty guarantees as intended across many sectors of society where Maori (in particular *mana whenua*-based) interests are concerned. According to this rationale, which is adopted widely not only at the legislative level but also by Maori people themselves, the museum has an obligation to ensure the *rangatiratanga* of Maori groups is not undermined.

In addition to the general obligation to protect *rangatiratanga*, a specific imperative outlined by Article Two of the Maori text relating to *taonga* (treasures) also impacts upon museum responsibilities. It states:

Ko te Kuini o Ingarani ka wakaritea ka wakaae ki nga Rangatira ki nga Hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa ...

Translated, this means:

The Queen of England arranges [and] agrees to the Chiefs to the subtribes to people all of New Zealand the unqualified exercise of their chieftainship over their lands over their villages and over their treasures all ...

(Kawharu 1989: 319f):

Taonga does not solely refer to treasured physical objects but also includes intangibles such as the knowledge used to create *taonga*, language, and lore itself. Important statements in the Treaty claim process have highlighted the broad interpretation of *taonga* (for example, the Kaituna River claim (Waitangi Tribunal 1984), the Manukau Harbour case (Waitangi Tribunal 1985), the language claim (Waitangi Tribunal 1986), the Orakei claim (Waitangi Tribunal 1987) and the Ngawha Geothermal claim (Waitangi Tribunal 1993). Not only must the physical objects in a museum be protected but also the lore and knowledge associated with them.

Arising out of this Treaty rhetoric are ‘principles’. They have developed from the New Zealand Maori Council (NZMC) *kaupapa* written in 1983, as well as a result of Waitangi Tribunal reports and Court cases. ‘Partnership’ has been established as the leading principle, not only in the major court case concerning State-owned assets brought by the NZMC (see NZMC v. Attorney General [1987] 1 NZLR 641) but also more generally in other legal (courts and legislation) and political forums.

MUSEUM RECOGNITION OF MAORI INTERESTS

The museum itself recognizes Treaty guarantees and although it is not a Treaty partner, it considers itself in very similar terms as specified by its own policy: ‘Museum policies will reflect the aspirations of both Treaty partners ...’

It does not appear that partners in this context are referring to a Crown – Maori partnership but rather a museum – Maori relationship. Further, section 12 (2)(c) is intended for a Treaty-based partnership between museum and Maori: ‘To observe and encourage the spirit of partnership and goodwill envisaged by the Treaty of Waitangi, the implications of *mana* Maori and elements in the care of Maori cultural property which only Maori can provide.’ Taken in the context of wider policy aspirations and the governing legislation, these two directions are weighty.

The museum has gone further in its recognition of Treaty imperatives, not resting upon principles alone, but also actual Treaty words. Regarding functions of the *Taumata*, Section 16 (8) provides that:

To assist the Board to ensure that the Board’s policies in relation to the matters set out in paragraphs (a) to (d) of this subsection accord properly with Maori values *as well as matters provided for in the Treaty of Waitangi*, the *Taumata-a-Iwi* shall review proposed policies and make recommendations to the Board in relation to those matters (my emphasis).

As demonstrated by these examples, there is wide scope for Maori interests to be addressed and acted upon by the museum. The most observable and transparent recognition of Maori interests is the museum’s own Maori policy. Known as the *kaupapa*, it provides the directives for substantiating the meaning and application of *kaitiakitanga*:

PRINCIPLE I: The Right to Advise

The Auckland War Memorial Museum Act 1996 empowers the *Taumata-a-Iwi* to give advice on all matters of Maori protocol within the Museum and between the Museum and Maori people at large (section 16(9)).

Museum policies will reflect the aspirations of both Treaty partners by acknowledging that existing and proposed policies (section 16(8)) will be reviewed by the *Taumata-a-Iwi* and recommendations to the Auckland Museum Trust Board will be made accordingly.

PRINCIPLE II: Partnership

Both the Auckland Museum Trust Board and the Auckland Museum *Taumata-a-Iwi* will act reasonably and in the utmost good faith by observing and encouraging the spirit of partnership and goodwill envisaged by the Treaty of Waitangi, the implications of *mana* Maori and elements in the care of Maori cultural property which only Maori can provide (section 12(2)(c)).

PRINCIPLE III: *Iwi* Expectations

The *Taumata-a-Iwi* recognizes the right of *iwi* to expect the *Taumata-a-Iwi* to monitor the care and management of their *taonga* within the Museum on their behalf.

PRINCIPLE IV: Active Protection

The *Taumata-a-Iwi* will provide advice to the Auckland Museum Trust Board, and the Trust Board will protect the rights of Maori in the museum by:

- (i) safeguarding the lore of Maori
- (ii) providing appropriate custody, care and development of all *taonga*
- (iii) taking affirmative action in recruitment and training programmes, which will lead Maori people into professional careers in New Zealand's bicultural museums (section 16(8)(b)).

PRINCIPLE V: Redress for past misunderstandings

The Museum Trust Board acknowledges that there may be misunderstandings from the past related to *taonga* that need to be addressed and that there is a responsibility to seek advice from the *Taumata-a-Iwi*, and to:

- (i) objectively explore and assess each example as it comes to light
- (ii) put in place practices that minimize and eliminate future needs for redress.

The *kaupapa* has provided direction for both the Trust Board and the *Taumata* in their respective responsibilities. For the *Taumata*, the *kaupapa* and the Act prescribe general criteria for inter-relating not only with the Museum Trust Board and management but also with the wider community, with the *tangata whenua* and other *tribe* groups who have *taonga* in the museum, as well as other indigenous communities.

TAUMATA RESPONSIBILITIES

Many issues impact upon the management of *taonga* and people, not only those that concern 'lore' or 'protocol' but also economic considerations and the application of finance. While applying *kaitiakitanga* is primarily a protocol issue, other political, economic or perhaps legal factors affect the scope of exercising *kaitiakitanga* and are, therefore, important for the *Taumata* to consider. Customary resource management and authority has always involved considering a range of inter-related economic, political and social issues. The provision of further resources for developing the Maori collection data base through research is one of a number of ways that will enable *kaitiakitanga* to be exercised more fully and is one of a number of concerns facing the *Taumata*. One crucial area that the *Taumata* has input is in considering the annual plan and the ten-year plan. It has been responsible for numerous developments, acting as liaison between Maori and the museum. The *Taumata* has also facilitated the return of *taonga* to communities (see Tapsell, Chapter 24, and Tapsell 1998).

IMPLEMENTATION OF GOVERNANCE POLICY: SOME DILEMMAS

While the Act and the *kaupapa* are fundamental developments, policy itself cannot guarantee partnership. It remains that being bicultural is no easy task, particularly where precedent is lacking and personnel including some Trust Board members do not fully understand Maori interests or, indeed, the *kaupapa*. However, the *kaupapa* itself has not been specifically defined, causing some difficulties at the operational level not only for the Board but also the *Taumata*. Terms of reference regarding management and governance have been blurred and duties have even overlapped.

Another related concern is limited exercise of *kaitiakitanga* by the *Taumata*. As primarily an advisory body, the *Taumata* has minimal decision-making powers in comparison to the Board. *Kaitiakitanga* cannot be fully exercised where customary authority is subservient to that of the Board. Despite the Act requiring the Board's policies to accord properly with matters provided for in the Treaty (section 16 (8)), and despite principles two and four of the *kaupapa* relating to partnership and active protection of Maori interests, little by way of equal partnership exists. However, the Act did not intend there to be a 50/50 arrangement. This is demonstrated by, for example, sections 16 (2) and 16 (7) concerning the Board's determination of *Taumata* terms of office and *Taumata* rates of remuneration respectively and section 16 (8) concerning the *Taumata's* advice to the Board regarding the latter's policies.

Were the *Taumata* to assume a more authoritative role in certain decision-making, the Board would be able to devote attention to other areas of concern. Not least, it would give fuller substance to partnership.

Perhaps one of the effects of an inequitable partnership and the lack of policy development stemming from the *kaupapa* is inaction of the Trust Board on some *Taumata* advice. The *Taumata* may constantly advise the Board on the same issue, and

although the Act requires the Board to take due regard of the advice given (section 12(2)(g)), it may nevertheless fail to deal adequately with the matters at hand. Consequently, the *Taumata* may find itself in a reactive position. Further, there are no stipulated methods for measuring the Board's performance regarding Maori interests or, indeed, what remedies must be taken. While the *Taumata* is accountable externally to the people it represents and internally to the Trust Board, a reciprocal accountability relationship does not exist from the Trust Board to the *Taumata*. Consulting the *Taumata* on matters affecting Maori interests but without two-way accountability undermines the principle of partnership that the Board itself adopted via the *kaupapa*.

Inaction by the Board on issues raised by the *Taumata* can seriously affect the ability of the *Taumata* to adequately fulfil its own responsibilities. At the worst, this may result in loss of confidence in the *Taumata*, if not the whole system of governance itself, by the *tangata whenua* and, through them, all Maori groups.

Resolution of grievances against the Board by the *Taumata* may not focus on recourse to the courts but on other means of a political rather than a legal nature. Exposing the Board to public (*iwi*) scrutiny may result in the Board being held accountable and being pressured to address issues identified by those aggrieved. The powers of the *Taumata* may be largely limited to powers of persuasion, but in a grievance situation, these can be effective. The Board has been held accountable in these terms during a meeting in mid-1999 between museum officials, Board members, the *Taumata* and tribal representatives from the East Coast. Among other concerns, one issue focused on the lack of consultation and the perception by *iwi* of the museum's general lack of adherence to principles of good faith.

Accountability of the Board and *Taumata* to each other can be measured in other ways. A joint committee of *Taumata* and Trust Board members has been established which highlights a true model of partnership and can be compared with the 'public court' option above. The committee is a proactive rather than reactive vehicle of partnership.

CONCLUSION

The governance structures within the Auckland Museum set a precedent unknown in the museum industry in New Zealand for involving *tangata whenua* and, through them, wider Maori tribal groups. Maori issues of concern in the museum have, in recent years, focused on partnership and a sharing of governance. Importantly, policy development and implementation are crucial to substantiating these objectives. Scope does exist for the exercise of customary principles of resource management and custodianship, but operational problems continue to paralyse the implementation of *kaitiakitanga* fully. Despite these difficulties, the museum provides a model of joint indigenous-museum commitment and is one that offers insights for other institutions and indigenous groups both in terms of its strengths and weaknesses.

NOTE

- 1 This chapter should be read in tandem with Tapsell (Chapter 24), who gives a tribal perspective on issues of partnership between museums and kin groups. Tapsell also focuses upon a recent example of a partnership between the Auckland Museum and *Ngati Whakaue*, descendants of the great ancestral carving 'Pukaki', as well as *Ngati Whatua*, the local tribal group, in returning Pukaki to *Ngati Whakaue*.

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26 *Developments in the repatriation of human remains and other cultural items in Queensland, Australia*

MICHAEL AIRD

This chapter highlights some of the historical events that Aboriginal people have experienced, and describes some of the achievements that have been made in gaining control of aspects of cultural heritage. I begin writing from a personal point of view about the process that I have been through as an Aboriginal person wanting to find out more about my family history. I then move on to discuss my role as curator in a museum (until recently I held the position of Curator of Aboriginal Studies at the Queensland Museum in Brisbane).

Fifteen years ago I would look at photographs taken in the last century of Aboriginal people from the area where I live and wonder if I might be related to them (see Figures 26.1a and 26.1b). Since then I have been fortunate enough to find out a great deal about my own family's history and can now identify the relationships between my family and many of the people that appear in these old photographs. By knowing who my grandparents' relatives were, I can now identify relationships between people who appear in these photographs.

My great great grandmother, Sarah Drumley, is a very important woman within my family history. At the turn of the twentieth century Sarah, along with the families of her children, Billy, Emily and Jenny, was amongst only a few people from her tribal group still living within our traditional lands. Sarah's daughter Jenny married a non-Aboriginal man, Andrew Graham, who was the harbour master of Southport. They had a large family of which my grandmother was the youngest, born in 1899. Today the descendants of Jenny Graham are a large family group that has maintained close links to our tribal region despite living through a period when many Aboriginal people were removed from their traditional lands by government officials and sent to missions or reserves.

In 1984 the Graham family began negotiating to have almost two hundred human remains returned from the University of Queensland, where they had been held for a quarter of a century (Haglund 1976). We claimed a relationship to the remains on the basis of our relationship to the land where those remains came from. We were then faced with having to prove that we had a relationship to the remains. Because my relatives had maintained a relationship to the region that we lived in, and because we were recognized by other Aboriginal groups as being the original people from that region, we were able to make this claim without being challenged.



Figure 26.1(a) Coomera Bob and Tommy Andrews with Jimmy, Milly and Polly Boyd photographed near the Nerang River, 1981

Photograph: Will Stark, courtesy of John Oxley Library, Neg. 5808



Figure 26.1(b) Aboriginal people from the Logan and Nerang River region photographed near the Albert River, 1893

Photograph: Will Stark, courtesy of the John Oxley Library, Neg. 42673



Figure 26.2 Representatives of the Graham family after reburying human remains at Broadbeach. Mibrie Heath is standing in the centre holding a time capsule that was buried with the remains

Photograph: Rory O'Connor

In 1988 these human remains were reburied at Broadbeach, less than a kilometre from the original burial ground. An agreement was reached with the local council for our family organization, the Kombumerri Aboriginal Corporation for Culture, to have control and a long-term lease of the area of park land in which the remains were reburied.

The reburial provided an important opportunity for my relatives to come together for the first time publicly as a recognizable Aboriginal group. We had lived through a hundred years of restrictive and oppressive Aboriginal 'Protection' policies which made denial of Aboriginality virtually a tactic of survival. It was the reburial issue that brought the descendants of Jenny Graham together publicly as an Aboriginal community. We went through the whole process of dealing with the institutions to carrying out the reburial ceremony, while also incorporating aspects of traditional knowledge and culture that had survived within our family. In 1988 the Graham family were one of the first Aboriginal groups in Australia to successfully repatriate human remains from an institution (see Figure 26.2).

In 1989 I attended the World Archaeological Congress (WAC) Inter-Congress in Vermillion, South Dakota. This was at a time when in many ways I was still working through issues of my own identity and Aboriginality, so to be invited to such an event was quite an honour. While at the Inter-Congress I realized that at that time very few indigenous groups from around the world had actually been involved in the repatriation of human remains. It was quite strengthening to me to be assured by members of the WAC Executive and various indigenous representatives that the Kombumerri were at the forefront of the repatriation issue.

In 1990 I completed a university degree, a Bachelor of Arts in Anthropology. Since then I have worked extensively on the photographic history of my family from the 1860s to the present. I have worked on numerous photographic projects, including the curation of a travelling exhibition and a publication entitled 'Portraits of Our Elders'. Another project I worked on was the organization of a large collection of Aboriginal photographs held by the Queensland Museum. After completing several contracts with the Queensland Museum, I secured the position as curator in charge of the Aboriginal collection. In 1994, I took over the responsibility for a collection of 10,000 artefacts, over 7,000 photographs and 400 human remains. I was soon to learn how inter-related the three collections are, as no single aspect of indigenous culture can be treated in isolation.

Amongst the museum's collections was a child's skull that had been collected in 1901 by Walter Roth in the far north of Queensland. Roth was a government official who collected a huge collection of Aboriginal material from north Queensland around the turn of the twentieth century. The Napranum Community knew that this skull came from the Embley River, Cape York, but they wanted to know exactly where on the Embley River it was collected. The exact location was important to the Napranum people, as this would identify to which one of the three clan groups it belonged. Unfortunately we could not tell them where exactly the skull was collected. Ownership was given to the Napranum Community and a senior woman from each of the three clan groups visited the museum to collect the skull.

One of these senior women was Alice Mark-Andrews, the eldest person from the Napranum Community. On arriving at the museum she went to where the remains were stored and spoke to the child's skull to say that the journey back home was soon to begin. While looking at the museum's photographic collection, Alice found a photograph of herself as young child. She was thrilled to find the photograph, and copies were supplied to her (see Figure 26.3).

Alice then went on to look at the artefacts that were held in the museum's collection. She found a shell necklace, and stated that when she was six years old her father had made her one just like this and that she had not seen one for so long. Alice was so excited to find the necklace, and she asked if she could take the shell necklace home for the burial ceremony. This placed me in a difficult situation as a curator, but I agreed to lend her the necklace on a three-month agreement. It was wonderful to see that Alice had maintained knowledge of an aspect of her culture that was not known to others in the community. The other women with her had not seen shell necklaces like the one that Alice's father had made her.

Alice Mark-Andrews wore the shell necklace at the burial ceremony and the museum was sent a photograph of her wearing it. As an institution we took a risk in lending a hundred-year-old artefact to a community. But the trade-off was worth it, especially considering that we now have a photograph of the item being used in a ceremony and we have knowledge about the importance of this item to an Aboriginal community.

The loan of this artefact was a form of repatriation, even though the item was later returned to the Queensland Museum. It was an example of cultural knowledge being returned to a community. It was also an opportunity for a community to build up a relationship with the museum, and this relationship is ongoing. Recently the museum

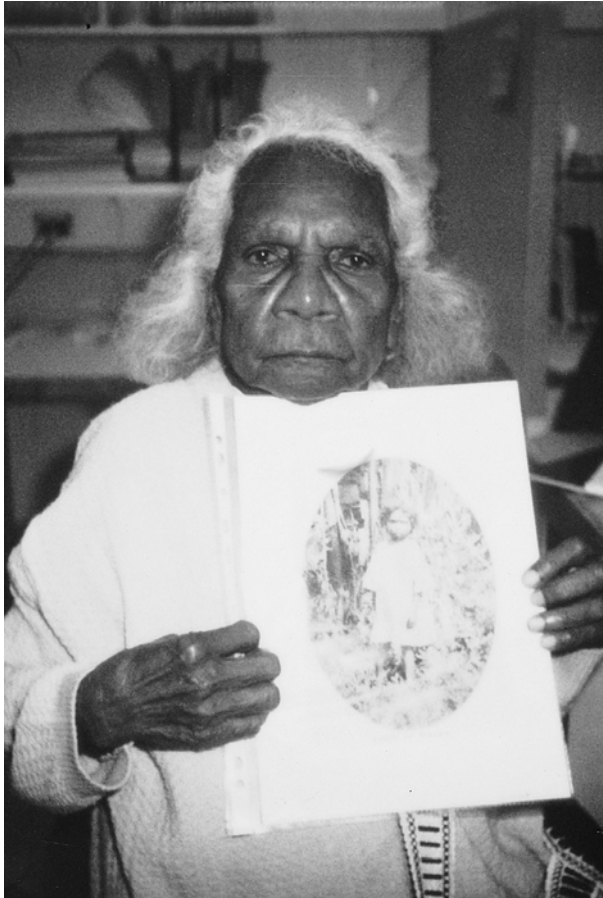


Figure 26.3 Alice Mark-Andrews from Napranum, North Queensland, holding a photograph of herself as a young child at the Weipa Aboriginal Mission

Photograph: Michael Aird

loaned 19 artefacts to the Napranum Community to be used in a cultural project. Considering that the first item lent to them was returned safely there was no hesitation in lending this community more items.

As a result of the return of the skull to Napranum, a traineeship was organized for a community representative to work in the museum for 12 months. Also, a weekend basket-weaving workshop was organized involving Thancoupie, one of Australia's most famous Aboriginal artists. These are all examples of the various ways both museums and Aboriginal communities can benefit from the repatriation process.

In 1996, ownership of several skeletal remains from North Stradbroke Island in the museum's collection was given to the elders of that community. The elders wanted to bury the remains in the old mission cemetery with a simple burial and the unveiling



Figure 26.4 Dancers at the ceremony to commemorate the return of human remains from the Queensland Museum. The keeping place had been built near the Springsure local cemetery to house the remains

Photograph: Cynthia Rowan

of a plaque, followed by a gathering at a nearby park with a lunch of sandwiches and cups of tea. Several of the young men of Stradbroke Island objected to the elders' intentions, as they wanted to bury the remains in the bush and re-enact traditional ceremonies. The decision as to how and where to rebury the remains was finally resolved after several months of conflict when the young men agreed to respect the elders' wishes.

In 1997, for the first time, the Queensland Museum had an Aboriginal community requesting burial bundles. These consist of a complex arrangement of cultural items wrapped up with the bones inside a bark container that may be elaborately decorated and tied up with string. These types of items are considered of immense importance to historians, scientists and private collectors. Fortunately, there was no criticism of them being returned to an Aboriginal group. Once again the overriding issue was the fact that the burial bundles contained human remains that should be returned to the Aboriginal community.

Ownership of the burial bundles was given to the Aboriginal community of Springsure in central Queensland and from then on the fate of these items was up to the community to decide, not the museum. Prior to this return the community had organized for a solid brick and concrete keeping place to be erected near the local cemetery. The building was well constructed and provided a secure place for the remains (see Figure 26.4.). Here was an example of a community wanting remains



Figure 26.5 ‘Wearing Culture’ exhibition, Queensland Museum, South Brisbane, Australia

Photograph: Mick Richards

returned, while also taking the responsibility of ensuring that the remains would be protected from theft, damage or decay. This was the community’s choice, and not a condition placed by the museum on the return of remains.

At the ceremony to mark the return of these remains, they were laid out on tables for all to view them. I was surprised to see the remains on the television news. This was organized by the Aboriginal community, and it was their decision to publicly display the remains. In contrast, institutions in Australia do not publicly display Aboriginal human remains and generally do not display images of remains in publications and other media. We often have members of the press calling the museum in the lead up to a reburial, requesting photographs of human remains, and the answer is always no. In this case, it was the Aboriginal community that organized the public display of the remains to the press.

In 1998 I curated an exhibition entitled ‘Wearing Culture’. The exhibition raised questions about the role of museums: why do museums exist as collecting institutions? And do they have the right to collect indigenous cultural material? It was an exhibition about one item in the collection, a T-shirt. The T-shirt was placed in a cabinet in the centre of the exhibition and treated with great reverence, as a hundred-year-old elaborate artefact would be (see Figure 26.5). Not everybody would agree that a T-shirt is an important cultural item, especially considering that it was only five years old. The exhibition attempted to educate the public that items such as T-shirts are currently

being collected by museums and that in a hundred years future generations will be able to see them.

The T-shirt relates to an artist's conference that was held in 1993 at Woorabinda, an Aboriginal community in central Queensland. The entire exhibition was constructed around the T-shirt, and each item and image in the exhibition relates to it. A Saami knife and a selection of photographs were included in the exhibition to document that two Aboriginal artists from Queensland had visited Saami communities in Finland and Norway prior to the conference and that two Saami representatives attended the conference in Woorabinda.

Within the exhibition is another T-shirt that was given to the museum by the photographer that I worked with on the exhibition. He had stolen the T-shirt from a popular local Aboriginal person who was involved with the establishment of the arts organization that ran the conference. The person from whom the shirt was stolen was not interested in having the shirt returned to him and laughed when told the shirt was to be included in a museum exhibition. In fact anybody who knows the two people involved laughs when told the story. To make an issue of the shirt's history, it was identified in the exhibition as a 'stolen item', and even the names of the people involved were identified. In one sense the shirt was a relatively insignificant item with an amusing story, but it can also be viewed as a stolen cultural artefact. Stolen indigenous cultural material is serious museum politics, yet in this case a serious issue has been addressed in an amusing way.

An issue that museums have to deal with is the accusation that they 'lock up' Aboriginal cultural material. The T-shirts and other items in this exhibition were all locked up in cabinets, thus demonstrating this issue as well as illustrating that this is something museums have to do to protect items for the future.

A group of school children from Woorabinda visited the museum in 1998. Surprisingly none of the children could recall ever seeing a T-shirt like the one featured in the exhibition. The shirt was produced to commemorate a conference at their community and the shirts were in abundance five years previously. I admit that the existence of these T-shirts was a relatively insignificant aspect of that community's history, but sadly after only five years these children had no knowledge of them, demonstrating the need for museums to preserve particular items for future generations.

Each time the museum undertakes an Aboriginal cultural project it means that an increasing number of Aboriginal people come into the museum. In a sense this creates a problem in relation to repatriation. As Aboriginal people become satisfied with what is being done within the museum they may then say 'you are doing a good job looking after our materials, they can stay here a bit longer', instead of being angry and demanding that material be returned.

At the Queensland Museum, we take every opportunity to encourage Aboriginal people to visit the museum. Much of our time is spent getting information out to Aboriginal people. Whenever possible, we ask that these people take the information back to their communities and discuss what they would like in relation to repatriation.

Once people are aware of what is held in the museum we can only wait for them to make requests, in a sense it is a reactive way of operating. Our main aim is to have as much information as possible in perfect order, so that if a request is made we can

turn on a computer and provide the relevant information within a few minutes, and follow this up with letters or faxes. I see no reason why human remains, hair samples, old artefacts or contemporary items should be treated differently in relation to a person's right to state an interest in the ownership of those items.

It is important that indigenous people are able to approach museums and state what their interests are in relation to cultural material, and in most cases this does not involve the return of items. To most Aborigines, it is the acknowledgement of traditional relationships, access and the feeling of control of cultural material that are the most important elements of the repatriation process.

REFERENCE

- Haglund, L. (1976) *The Broadbeach Aboriginal Burial Ground: An archaeological analysis*. Queensland: Queensland University Press.

27 *Practicalities in the return of remains: the importance of provenance and the question of unprovenanced remains*

DEANNE HANCHANT

Between February 1995 and March 1997 I worked as the Archival Researcher on the National Skeletal Provenancing Project in Australia. The purpose of the project, based at the South Australian Museum, was to locate the original provenance of the many Aboriginal and Torres Strait Islander Ancestral Remains held in Australian museums. Determining original provenance is crucial in facilitating the return of remains to communities. Unprovenanced remains numbered more than 1,000, which represented about one fifth of the remains held in such collections. The project used archival research in conjunction with biological comparison of unknown to known remains. During the course of the project, archival research (using sources such as museum correspondence, police and coroner records, collectors' diaries etc.) provenanced 180 remains whose origin was previously unknown, and 'unprovenanced' approximately 20 remains which had previously been considered to be 'provenanced'. The project highlighted the need for archival research to be carried out before remains are returned to communities for reburial, not least because it brought to light a number of 'mistakes' in earlier provenancing.

ARCHIVAL RESEARCH

There are many examples, such as the cases of Yagan (see Fforde Chapter 2) and Tambo (see Palm Island Chapter 17), in which archival research has yielded results. My work on the National Provenancing Project has confirmed that the importance of conducting archival research before remains are returned to a community, even where the institution 'thinks' it has all the information, cannot be over-estimated. For example, in the course of the project, the discovery of additional archive information changed the provenance of a number of remains. In one instance, it was revealed that while remains had been collected from one area (and their provenance recorded accordingly), the individual represented had in fact come from another locality. After a request from the New South Wales Aboriginal Land Council for the repatriation of remains to NSW communities, considerable research was undertaken to check and cross reference a wide range of records to ensure that all provenanced

skeletal material was returned. In the course of this research it was discovered that a cranium purchased early this century and listed as being Barkindji (a group from New South Wales) was found instead to be European.

During the project, archival research in the South Australian, Australian and Shellshear Museums caused previously provenanced remains to be moved 'back' into the unprovenanced category. Thus, for example, remains listed as being from Nukunu, South Australia, were found actually to have come from an unknown locality in the Northern Territory. While disappointing, the results of this type of research are a positive outcome of the project, as they ensure that remains are not returned to the wrong community and thus cause unnecessary distress. One very personal example in this category involved a skull in the South Australian Museum which was believed to be that of Herbert Spender, the younger brother of my great grandfather. The family had asked for the skull to be repatriated on several occasions but agreed to let me undertake further research to see if we could locate his post cranial remains. This research led to the discovery that the skull's donor was from India, as described in a pencilled note which read, 'Given to Mr Anderson of Tehore, India by a gentleman who recognized the skull to be that of an Australian Native – 1895'. I became more and more convinced that this was not Spender's skull and asked the physical anthropologists to examine it without providing them with the information I had found. They reported that the skull seemed to be of (Asian) Indian descent, and of someone much older than Herbert would have been at the time of his death. They also reported that the skull was possibly female. Elders and other interested members of the family were invited to the museum and told of the findings and agreed that the skull could not have been that of our relative. Whether or not our relative's skull is actually in the South Australian Museum collection remains a mystery. However, by conducting the research we avoided burying the wrong person in our country – a very serious issue.

Overseas collections

Comprehensive archival research on a collection should be carried out before remains are returned. Two methodologies could be considered. First, the holding institution has the responsibility of conducting the necessary archival research. However, I doubt whether all museum authorities would undertake this task, which would be both time consuming and costly, and pursuing this option therefore runs the risk of never having remains returned, especially if management or policies change within institutions or countries. Second, the necessary research is carried out by Australian Commonwealth Government funded consultants based in the country holding the remains. However, this option requires a genuine commitment by the government to adequately fund the required research. In addition, terms of reference would need to be drawn up with a research methodology clearly outlined and agreed to by Aboriginal and Torres Strait Islander people. This is especially important if any scientific research to identify the remains was conducted, and this should only be done with indigenous community backing.

Funds provided by the Aboriginal and Torres Strait Islander Commission (ATSIC) have already enabled the Foundation for Aboriginal and Islander Research Action to

undertake research to locate and document Ancestral Remains in Australian and overseas institutions. Although I support this project, I would suggest that one organization be formed to represent all Australian indigenous interests. From a central point, a National Co-ordinator could employ and co-ordinate consultants overseas and in other States or Territories as necessary. Co-ordination from a central point is important as many references to unprovenanced remains in Australian collections lead to overseas sources and vice versa. Contact between researchers is therefore essential because it maximizes efficiency. In my own experience, several chance conversations have led to the discovery of relevant information. For example, in one Australian university museum there were references to remains which had been sent to a university in the UK. Some of these remains could be provenanced and there were references to at least one known individual. While conducting this research, I was told by a member of the university that they had seen one of the skulls which had been sent to the UK. By combining this information with the archive documentation, the skull has been identified and its presence in the UK collection confirmed.

There may be instances when it is not possible to undertake the research to identify and provenance any or all the remains in a collection. In such cases, I believe that the existing ATSIC policy on the return of Ancestral Remains should be amended to encourage overseas collecting institutions to return skeletal remains which are unprovenanced or poorly provenanced.¹ It is far more important that Ancestral Remains at least 'come home' rather than be left overseas. Once returned, funds should be made available to a national organization to co-ordinate further research with regard to provenance.

NATIONAL KEEPING PLACE

My work on the National Provenancing Project led me to consider the issues involved in the establishment of a National Keeping Place for those Ancestral Remains which cannot be provenanced to any one area or state. Currently, most remains recovered from overseas institutions come from one museum only to go into the collection of another museum (the National Museum of Australia in Canberra).² This is not an appropriate long-term solution for unprovenanced remains. One solution would be the establishment of a National Keeping Place for those remains which are completely unprovenanced, and possibly a similar arrangement on a state by state basis for those remains provenanced only to a state level.

The notion of a National Keeping Place was raised when the first part of the Edinburgh Collection was about to return to Australia in 1991.³ At the time, members of the group which accompanied the remains home mooted the idea of a central place for the reburial of unprovenanced remains – possibly Uluru with the permission of the Elders in that country. And yet, one of those people (an elder from the Kimberleys who has recently passed away – hence I do not use his name) would not bury remains which were provenanced to a general area in his country until it was known exactly where the remains had come from. The Uluru Elders did not want them either. The issue is not a simple one. We want the remains home, but we need to come to terms with what we will do with them once they are here.

An example of a similar problem at a much more local level is provided by the case of remains repatriated in 1989 from the South Australian Museum to the Borroloola community in the Northern Territory. The repatriation was carried out after lengthy negotiations with Elders from the community. However, when I visited Darwin in 1996, I found these remains were held in the offices of the Aboriginal Areas Protection Authority. The Borroloola community do not want the remains buried in their area because they do not know exactly where they come from or who they are. A provenance of 'Borroloola' is not good enough for the majority of the community at this time.

One of the biggest issues holding up the establishment of a National Keeping Place (other than monetary implications) is just where it will be and who will manage it. It has been suggested that the Australian War Memorial in Canberra would be an appropriate site. However, its location at the seat of Federal Government, which is considered to take many decisions that have been harmful to indigenous people, is off-putting. Other localities, such as South Australia, have been suggested, but there has been no resolution of the problem.

The question of whether scientific research should be undertaken on remains highlights the need for a National Keeping Place to be managed by a group with the authority to make decisions as to what happens to the remains. I am not against scientific research on remains, but believe that it needs to be done with the permission of the relevant indigenous community. At present, if unprovenanced remains are returned to Australia, scientific research can be carried out on them without indigenous consent as there is 'no one to ask'. This should not be the case.

In 1997 and 1998, several meetings to consider the issue of a Keeping Place were organized by the Aboriginal and Torres Strait Islander Commission (ATSIC), Museums Australia and the Department of Communication, and took place in Canberra and with communities in Northern Australia. Almost all ended in stalemate with no agreement about the actual site or who should be on the management committee. As indigenous people we do need to make some decisions and compromises so that we can address the issue in a positive manner. But no satisfactory decision can be made unless the powerbrokers consult the 'grass-roots' community people.

CONCLUSION

The question of what to do with unprovenanced remains will not go away and it must be dealt with as soon as possible, as it is an issue which requires lengthy consultation with indigenous groups across Australia. There is bound to be a range of opinions amongst the Aboriginal community and it will take wide, sensitive and meaningful consultation to resolve this issue. This is a hugely sensitive subject and the consultation process will cause much grieving as people come to realize the full extent of collections held in both Australia and overseas.

A number of indigenous and non-indigenous people have argued against Keeping Places because of the difficulties in acquiring and managing appropriate buildings and employing appropriately skilled people. They have argued that setting up Keeping

Places is basically just decentralizing museums and have suggested that until indigenous communities have sufficient funds and facilities then museums should remain as the custodians. For some individuals and communities this is an option, but for others it is not. Although it could be argued that by setting up Keeping Places we are simply establishing 'satellite museums'; in my view, in the case of Ancestral Remains, Keeping Places are memorials to those who have gone before.

When I walk into a human biology store, I am immediately struck by the fact that hundreds or thousands of individuals surround me, each with their own unique story. When my position on the project finished, the saddest thing I had to do was to say goodbye to the 'old' people. While many people might say that this is sentimental, to me and many others it is not. We do not want to see our ancestors in boxes on shelves in museums. If they can't be reburied, then at least let us put them in a place where they can have some dignity.

NOTES

- 1 The relevant section of ATSIC's *Policy for the Protection and Return of Significant Cultural Property* (as endorsed by the ATSIC Board of Commissioners in April 1998) states that:

Where ownership cannot be satisfactorily determined, ATSIC holds the position that, generally, sensitive cultural material should not be resumed from collecting institutions. Nonetheless, ATSIC recognises, with respect to cultural property in overseas institutions that particular circumstances may make it preferable to return remains to Australia for temporary safekeeping rather than leave it overseas indefinitely.

- 2 The National Museum of Australia in Canberra is the only 'prescribed authority for safekeeping' of ancestral remains in accordance with section 21(1)(c) of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.
- 3 Further Aboriginal remains from Edinburgh University were returned to Australia in 2000.

28 *Heritage that hurts: the case of the grave of Cecil John Rhodes in the Matopos National Park, Zimbabwe*

SVINURAYI JOSEPH MURINGANIZA

I admire the grandeur and loneliness of the Matoppos in Rhodesia and therefore I desire to be buried in the Matoppos on the hill which I used to visit and which I called the 'View of the World' in a square to be cut in the rock on top of the hill covered with a plain brass plate with these words thereon – 'Here lie the remains of Cecil John Rhodes' and accordingly ... afterwards to keep my grave at the expense of the Matoppos and Bulawayo Fund hereinafter mentioned.

(Extract from the Will of C.J. Rhodes in Baker and Stead, 1977: 4)

INTRODUCTION

The will of Cecil John Rhodes was granted on 10 April 1902 when his body was interred on the massive dwala that forms the centre of what he named the 'View of the World' (see Figure 28.1). This chapter presents the current debate in Zimbabwe as to whether or not Rhodes' grave should remain on the View of the World, a hill that is known locally as Malindidzimu and was, until its desecration in 1902 when Rhodes was buried there, sacred to the local people. Sangano Munhumutapa, a Harare-based pressure group comprised mainly of Shona-speaking youths, is calling for the removal of the grave from Malindidzimu and Rhodes' bones to be either thrown into the Zambezi River or repatriated to the United Kingdom. The questions 'why Rhodes' and 'why Matopos' provide important insights into perceptions of cultural heritage in Zimbabwe today.

HISTORICAL BACKGROUND

Two major factors prompted the colonial government to establish the Historical Monuments Commission through the Monuments and Relics Act (Chapter 70 of 1936). The first was to curb the wanton destruction of cultural remains by, especially,



Figure 28.1 The grave of Cecil John Rhodes

Photograph: S.J. Muringaniza

fortune seekers. The second, though not overt, reason was to honour or acknowledge the achievements of certain individuals such as Rhodes. The stated objectives of the Commission were:

To provide for better preservation of ancient, historical and natural monuments, relics and other objects of aesthetic, historical, archaeological or scientific interest and to provide for the payment of pensions and other benefits to members of the staff of the Commission for the Preservation of Natural and Historical Monuments and Relics and for other matters connected therein.

The first properties that were accorded national monument status fell into four categories: natural reserves and features, stone ruins, colonial relics and rock paintings. Among these were Victoria Falls Reserve, Zimbabwe Ruins, Khami Ruins, World's View (where Rhodes was buried) in Matopo Estate, Nswatugi Cave and the Shangani Battlefield. The stone-built settlements were conferred National Monument status because early researchers, who were predominantly white, believed that these sites had been built by races either from Europe or the Middle East, particularly the Phoenicians, who were believed to be superior to the Bantu, a belief that validated the occupation of Zimbabwe by the early white settlers. Until 1942, when Mzilikazi's grave was made a national monument because it was under threat from fortune seekers, the achievements of the local African people were never acknowledged.

The young Africans in post-independent Zimbabwe are now asking how ‘national’ the heritage selected for preservation during the colonial era really was. Despite the new political order, there is no change in the composition and representativeness of Zimbabwe’s national heritage. The moral and political justification for the continued existence of Rhodes’ grave on a sacred site, in an independent Zimbabwe, is now being questioned.

THE MATOPOS HILLS

The Matopos Hills area, or Matojeni, is a geological scenic landscape with hill–valley combinations throughout its 100–km length and 40–km breadth. Its resources have served as an attraction to human occupation of the hilly area. The San, who left behind scores of rock art sites, are known to have occupied Matopos 12,000 or so years ago. It is generally believed that these stone-using communities were displaced and replaced by iron-using communities, the Bantu, in the second millennium AD. During the Mfecane period, Nguni ethnic groups from the south invaded the indigenous people to the north causing massive enforced migrations. Shona speaking communities were annihilated and subdued by Nguni groups of people who were migrating north away from the harsh rule of Tshaka, the King of the Zulu nation in Natal. It is during this phase that King Mzilikazi (who died in 1868 and was interred, at his request, in the Matopos) founded the Ndebele nation in western Zimbabwe.

The so-called 1893 and 1896 Ndebele and Shona Rebellions culminated in the defeat of the Ndebele, the disappearance of King Lobengula and the demise of the Ndebele Kingdom. It is at this point that part of the Matopos National Park became Rhodes’ farm (World’s View Farm) which then became a national monument after his death. Today, part of Matopos is a National Park, part is a commercial farming area and the rest is communally owned land. This last is land initially established as Native Reserves which then became Tribal Trust Land and, finally, Communal Land after 1980 when Zimbabwe attained majority rule.

World’s View was sacred to the locals and was known as Malindidzimu, ‘the home of the spirits’, long before it was selected by Rhodes as a burial place (Nobbs 1956: 97; Baker and Stead 1977: 7). The most popular shrines include Njelele, Dhula and Zhilo/Konsi, none of which are in the National Park. Near Zhilo on the eastern edge of Matopos is an 1896 cemetery with more than ten graves of white settlers killed during the so-called Ndebele Rebellion of 1893. The call by Sangano Munhumutapa is only to remove the remains of Rhodes although there are many graves of early white settlers in the area.

Cecil John Rhodes

Understanding the way people perceive Rhodes within the present socio-political context will enable a greater insight into the current call for the removal of Rhodes’

remains 96 years after his death and 18 years after Zimbabwe's attainment of political independence from the British.

Rhodes (1853–1902) died an extremely rich man due to his achievements in business and politics. Subsequently regarded as an 'unscrupulous financier and an arrogant and blatant imperialist' (Baker and Stead 1977: 8), Rhodes founded the De Beers Company, the Gold Fields of South Africa and the Chartered Company of Rhodesia (Baker 1934: 155; McDonald [1927] 1971: 110; Baker and Stead 1977: 8). Rhodes and other settlers sequestered land and placed the locals in near enslavement as they worked in the mines, on farms and in the industrial and commercial sectors.

Rhodes was instrumental in the introduction of rail transport and telegraphic services, which were aimed at facilitating the effective occupation of Zimbabwe. Targeted at those areas which had exploitable resources, communication lines were not built to particularly, if at all, serve the needs of the local population. However both facilities continue to play a central role in Zimbabwe's economy and national and international communication.

Rhodes' money does benefit many nations and individuals. For example, students, both black and white, are recipients of Rhodes Scholarships. However whatever good that results from Rhodes' financial success is overshadowed by his legacy of oppression. The laws and policies enacted and followed by Rhodes and other settlers resulted, for example, in the redistribution of land from the local population to the colonists – indeed that is how the View of the World came to be Rhodes' personal property. Having been independent, indigenous people became dependent upon selling their labour to the settlers for a meagre wage.

While Rhodes' grave is an inspiration to many of the white population, it is a reminder and thereby a symbol of the economic, social, religious and political difficulties faced by the majority of people in Zimbabwe. Perhaps unsurprisingly Rhodes' legacy is being attacked from a number of different fronts: while Sangano Munhumutapa wants Rhodes' grave removed from World's View, other groups are demanding such things as the economic empowerment of Blacks in Zimbabwe, greater recognition for the Ndebele Kings and land redistribution. The call to remove Rhodes' grave should therefore be seen in the context of a wide range of demands currently being made in Zimbabwe.

Sangano Munhumutapa

Sangano Munhumutapa is perceived in Zimbabwe as a Harare-based (*Chronicle* 19.2.98), Shona-dominated pressure group and as representing the wishes and concerns of only a small percentage of the Shona population. The implication is that it is not national either in its composition or its representation.

Formed at the University of Zimbabwe in 1994 as a forum for some of the University-based Shona-speaking students, Sangano's earlier thrust was the selection of student leaders and the mobilization of student support for a preferred candidate. However, with the expulsion of its founder and leader, Lawrence 'Warlord' Chakaredza, from the university for inciting students to strike against the administration, the voice

of dissent is now emanating from somewhere outside the campus. Chakaredza has since called and proclaimed himself Munhumutapa III, a move that has generated opposition from many, including Aeneas Chigwedere, a renowned historian and a Member of Parliament (*Chronicle* 20.9.98).

In February 1998 (*Chronicle* 19.2.98), Sangano announced its intention to remove or cause the removal of Rhodes' remains from the View of the World. Sangano argued that the grave lay on 'the holy and revered shrine in whose caves the nation's pre-colonial Kings were laid to rest' (*Chronicle* 19.2.98). With the alleged support of several spirit mediums and activists, Sangano claimed that the 'economic and social upheavals dogging Zimbabwe are a result of dissatisfaction by spirits of the land over the lack of initiative by the living and the ruling to redress some of the sacrileges committed against the indigenous people of the land'. Rhodes' grave, it alleges, is above those of King Chabata Matosi and the other subsequent Mutapas, who were laid to rest in the holy caves of the Matosi-Po shrines. According to Sangano, Matopos was known as Matosi-Po in honour, presumably, of King Matosi. However, in a radio interview, this claim was refuted by Aeneas Chigwedere.

There is a high probability that Sangano is misrepresenting history, and its reliance on spirit mediums as sources for its information is misleading. Matopos is believed to be a corruption of 'matombo', a Shona word (used by the Kalanga as well) which means 'stones' (Beach 1980). Mutapas are not attested to in oral or other historical sources in the Matopos area, and the claim that King Chabata and subsequent Mutapas were buried there is not supported by any material or historical evidence (see Beach 1980 and Pikirayi 1993). A few individuals and groups have rallied behind Sangano. For example, the Affirmative Action Group (a pressure group campaigning for the economic empowerment of Blacks in Zimbabwe) are convinced that Rhodes' remains, 'are an insult to the [Malindidzimu] shrine' and therefore, 'a constant thorn in the side of the locals' (*Chronicle* 24.8.98).

In its statement (*Chronicle* 19.2.98) Sangano refers to the 'holy caves of the Matosi-Po shrines' in the plural. Malindidzimu (the View of the World) might have been, and certainly still is, sacred to the local indigenous people, but this is not because it is where the pre-colonial kings were buried. Although burial caves are found in the Matopos area (e.g. at Nswatugi cave about 7 km southwest of the View of the World (Walker 1995: 73)), an inspection of the Malindidzimu rock outcrop did not reveal any cave suitable for a royal burial place. However, several shrines existed and still exist in the Matopos today (see Orpen 1896: 190, Beach 1980: 248).

In April 2000 I visited the 80-year-old spirit medium Gogo Nqcatu Ncube (now deceased), then custodian of Njelele shrine, to find out if she had been consulted by Sangano and to ask her opinion on the exhumation of Rhodes' grave. She had not been consulted but was aware, through the grapevine, that young activists were demanding the removal of Rhodes' bones. She rejected the idea and challenged Sangano to prove to her that there is a credible spirit medium in Zimbabwe who would support such a sacrilegious act. She asked, 'When did members of Sangano and those who accuse Rhodes' remains of depressing the spirits last brew beer for the propitiation of their own ancestors?' and 'How does throwing Rhodes' bones in the Zambezi River bring foreign currency, which is needed in order to improve balance

of payments and pay our foreign debt?' Gogo Nqcatu Ncube wanted to know if Sangano was aware that several settler graves lie on land that was revered by the local people, not only in the Matopos but all over the country. Sangano, she said, appeared to be focusing on Rhodes' grave alone and yet the remains of Leander Starr Jameson, Charles Coghlan and Allan Wilson and his regiment are also on the View of the World. Her feeling was that Sangano might not be aware of the existence of these other graves, an indication that they may not have conducted proper research.

Brezhnev Malaba (*Chronicle* 18.8.98), carried out a survey amongst villagers in the Silozwi and Gulathi communal areas bordering the Matopos National Park to find out their opinions regarding the fate of Rhodes' remains. Most villagers were totally opposed to the removal of Rhodes' grave, and one of them, a 76 year old, said, 'Whoever wants to remove Rhodes' grave from the park should first tell us where we would get another source of livelihood. As this area is arid and the rainfall erratic, we depend on selling sculptures, baskets, mats and wall hangings to tourists who visit the grave for a living'. The few who wished for Rhodes' grave to be removed did not share Sangano's motives. One man wanted the grave to be removed so that the National Park could be given back to the community. In 1951, he observed, the colonial regime evicted hundreds of families from their ancestral land in the park area and relocated them on infertile soil (see Ranger 1989: 217–49 and 1999: 69–89). The point to note is that none of the villagers mentioned the sacredness of the hill as the reason why Rhodes' grave should be removed.

Members of the public who have contributed to the debate through the media have given various reasons why Rhodes' grave should remain *in situ*. One correspondent argued that 'the country will, anyhow, have been occupied by either the Boers or the Portuguese even if Rhodes had set his fingers off Zimbabwe' (*Chronicle* 19.8.98). Another (*Chronicle* 7.3.98) wrote that 'It is not only Rhodes' grave that stands as a reminder of what happened to this country and in most [of] Southern Africa in the second half of the nineteenth century. What are we going to do with the rail line that still connects us to other countries?' Still others argue that Rhodes' grave is part of Zimbabwe's heritage (*Chronicle* 13.8.98).

The position of the National Museums and Monuments of Zimbabwe (NMMZ) was summarized by the Executive Director of the statutory body who said that:

There is no way a national monument can be removed just like that. That grave was designated a national monument... and is protected by the National Museums and Monuments Act Chapter 25: 11. This Act is the only piece of legislation in Zimbabwe that protects ancient monuments, national monuments, ancient workings, historic buildings and sites as well as relics. The Act protects any ancient monument; or area of land which is of historical, archaeological, palaeontological or other scientific value or interest; or has a distinctive geological formation; or waterfall, cave, grotto, avenue of trees, old tree or old building or remaining portion of an old building; or other objects, whether natural or constructed by man, of historical, archaeological or other scientific value or interest.

(*Chronicle* 26.2.98)

Table 28.1 View of the World: visitor record, July 1997 – December 1998

| <i>Period</i> | <i>Locals</i> | | <i>Non Residents</i> | | <i>Free admission</i> | | <i>Totals</i> | <i>Revenue (Z\$)</i> |
|---------------|---------------|---------------|----------------------|---------------|-----------------------|---------------|---------------|----------------------|
| | <i>Adults</i> | <i>Minors</i> | <i>Adults</i> | <i>Minors</i> | <i>Adults</i> | <i>Minors</i> | | |
| July–Dec 1997 | 9,251 | 6,091 | 17,207 | 1,060 | 5,266 | 470 | 39,345 | 486,435 |
| Jan–June 1998 | 7,784 | 1,695 | 11,388 | 443 | 952 | 323 | 22,585 | 443,083 |
| July–Dec 1998 | 16,866 | 6,090 | 28,623 | 1,423 | 19 | 598 | 53,619 | 1,482,725 |

The View of the World is of historical interest and was declared a national monument under the provision of the National Museums and Monuments of Zimbabwe (NMMZ) Act and can only be removed when the NMMZ is satisfied that it has lost the qualities for which it was originally accorded national monument status. The NMMZ would then advise the government to de-proclaim it. Rhodes is still considered to have played a significant part in the history of Zimbabwe and his burial place thus remains a national monument.

In July 1997 the NMMZ introduced a nominal entry fee to the View of the World to generate funds with which to improve the conservation of rock art sites on the Matopos and other sites nationwide. The decision to charge visitors was taken when the government of Zimbabwe granted the NMMZ a mandate to use the resources under its care to generate income and reduce its dependence on the central national budget. Table 28.1 illustrates the economic value of the View of the World to the NMMZ, and through it to the entire nation, since NMMZ looks after the cultural and natural heritage for Zimbabweans and visitors from other countries.

As can be seen in Table 28.1, in spite of the call by Sangano, the number of people, both local and non-resident, who have visited the grave site increased from 39,345 in the period from July to December 1997 to 53,619 in the same period of 1998, and revenue almost trebled. However, it should be noted that high visitor figures between July and December mainly comprise thousands of whites from South Africa and Zimbabwe who pay a pilgrimage to Rhodes' grave in commemoration of 'Rhodes and Founders Days' on the 11 and 12 July and of the Unilateral Declaration of Independence on 11 November 1965 when the colonial government severed its ties with the British government.

The bones of a capitalist, colonizer and imperialist are being put to profitable use by earning Zimbabwe revenue which is then ploughed into the preservation of other sites. In 1998 (*Chronicle* 30.8.98), the President of the Republic of Zimbabwe said that Munhumutapa III wanted the bones removed but that he thought the bones 'do not do us any harm'. He continued, 'but the bones there, we would want them to pay taxes'. The NMMZ is doing just that, promoting tourism in Matopos with the grave of Rhodes featuring prominently in its marketing strategies. The Minister of Home Affairs issued a warning to Sangano and others with similar intentions against tampering with the site.

However, perhaps it is time for the NMMZ to reassess its policy on the national monument status of cultural properties in Zimbabwe. The present situation is fraught

with imbalance, and there is a clear over-representation of colonial monuments and history. In the Bulawayo area alone, six properties associated with Rhodes are national monuments (Cooke 1971: 32–54). In comparison, in the whole of Matabeleland, only four cultural properties are attributed to Kings Mzilikazi and Lobengula. While more than 20 sq m of displays in the Natural History Museum are devoted to the life of Rhodes, only 5 sq m are dedicated to Kings Mzilikazi and Lobengula.

CONCLUSION

The NMMZ should seriously consider conferring national monument status on indigenous cultural properties in order to enhance their profile in Zimbabwe's history. The museum displays on Rhodes should also be reconsidered with a view to recognizing that without the participation of local leaders, Rhodes would not have achieved what he is purported to have achieved. Recently, the government of Zimbabwe, through its Public Sector Investment Programme, has made funds available to the NMMZ to build an interpretive centre at the View of the World where the exhibits currently in the Natural History Museum in Bulawayo will be relocated.

Historical, scientific, educational and cultural values depend on what the present society collectively decides to preserve. As icons representing the activities of people in the distant and recent past, it is up to the extant people to interpret these physical remains. Our understanding of past events depends in part on the nature of the remains and in part on the socio-political orientation of those attempting a reconstruction.

The call by Sangano Munhumutapa to have Rhodes' grave removed from Matopos Hills questions the whole essence of national heritage. Whose heritage is Rhodes' grave? The same question can be extended to all other cultural properties in Zimbabwe. There is real danger of fragmenting Zimbabwe's cultural heritage. Zimbabwe is a multi-cultural nation and there are many different perceptions of its cultural remains. Sangano Munhumutapa represents only a small sector of Zimbabwean society. The white, Indian, Ndebele, Kalanga, Venda and Nambiya and indeed many Shona communities in Zimbabwe do not subscribe to the call by Sangano Munhumutapa for the removal of the remains of Rhodes from Matopos.

The current call from within Zimbabwe for Rhodes' bones to be returned to the UK is, in a sense, the reverse of other repatriation demands throughout the world. However, in common with these other demands, it is bound up with the reaffirmation of cultural identity. However, although the majority of black Zimbabweans regard Rhodes' legacy and icons as 'heritage that hurts', most admit that he cannot be simply wished away. Perhaps instead of tampering with Rhodes' grave, the people of Zimbabwe will urge their government to tamper instead with the constitution and policies to bring about a meaningful balance in the ownership of resources in this country. When such a balance has been achieved, there may be less anger about what is seen as the glorification of Rhodes through the protection of his burial place.

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