

# **Decolonizing NAGPRA**

*Grades 9-12*

For an alternative perspective on issues of collecting and repatriation do the following activities. Read pages 53-66. Do activities on pages 55, 56, 64, 65. James Riding In's chapter "Decolonizing NAGPRA" in *For Indigenous Eyes Only: A Decolonization Handbook*.

Please note: Copyright obtained (Reprinted by permission from "The Peralta-Ordóñez Affair and the Founding of Santa Fe," from *For Indigenous Eyes Only: A Decolonization Handbook*, edited by Waziyatawin Angela Wilson and Michael Yellow Bird. Copyright 2005 by School for Advanced Research, Santa Fe, New Mexico.)

# Decolonizing NAGPRA

*James Riding In*

---

## **A. Repatriation Is Unfinished Business**

## **B. Vision and Purpose**

## **C. The Repatriation Struggle**

## **D. Participants in the Controversy**

## **E. Three Basic Schools of Thought**

## **F. Ways to Decolonize NAGPRA**

## **G. Conclusion**

## **H. Suggested Resources**

## **I. Suggested Readings**

## **J. Glossary**

---

## **A. Repatriation Is Unfinished Business**

Decolonizing the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 is vital for bringing closure to one of the most gruesome, horrific, and divisive chapters in the history of Indians–United States relations. Before NAGPRA, the U.S. government gave the scientific community, along with other grave robbers, virtually complete authority to loot and plunder our graves without fear of punishment under the law. Native Americans, defined by NAGPRA as American Indians and Native Hawaiians, never approved of these acts nor surrendered our dead. The perpetrators disregarded our views, beliefs, and rights because colonialism instills the colonizer with a notion of absolute entitlement—a notion that denies the colonized the respect and rights afforded to other humans. An industry composed of museums, the disciplines of anthropology and archaeology, professional organizations, and individual scholars, sprouted and flourished from the sacrilege and desecration. The offenders placed the human remains, funerary objects, and other items in federally funded institutions, of which the Smithsonian Institution is perhaps the most notable example.

Recently, museum attitudes have changed somewhat, because of our resistance to the abusive treatment of our dead and because of our calls for justice. It was during the late 1960s that U.S. society took notice of Indigenous voices of protest regarding the immoral, sacrilegious, and rampant abuses committed against our dead. Our movement conveys a simple message rooted in the language of spiritual outrage: We want our ancestors returned, or repatriated. Our activism challenges the privileged status that archaeologists,

physical anthropologists, museum curators, and others had enjoyed through racism and discriminatory laws. Put another way, our movement is imbued with a decolonization philosophy. Slowly, our efforts changed public attitudes and consciousness, paving the way for national reform. Congress responded to our pleas for justice, burial rights, religious freedom, and repatriation when it enacted the National Museum of the American Indian Act (NMAIA) in 1989 and NAGPRA the following year.

Both NMAIA, which applies to the Smithsonian Institution, and NAGPRA, which pertains to other museums and agencies that receive federal funding, represent major accomplishments in the Indigenous struggle against contemporary colonialism and oppression. Those laws establish a legal avenue for Native Americans to repatriate, or regain legal control over, stolen bodies and funerary objects, and to protect sacred burial sites from non-Indian incursions. The laws also criminalize the selling of human remains. Although Native Americans have repatriated more than twenty-seven thousand sets of human remains, tens of thousands of other ancestral remains still sit on museum shelves out of reach for repatriation because institutions have not assigned them a culturally affiliated status. What this scheme of labeling declares is that human remains from old, isolated, or disappeared peoples have no cultural ties with present-day Indians, and so are not bound by the same ethical and legal standards that govern the treatment of human remains from federally acknowledged tribes. This way of thinking, sponsored by the scientific establishment, encroaches dangerously on Native concepts of kinship and ancestry. Although a few museums have adopted policies that enable Native Americans to repatriate all human remains in their collections, the war clearly is not over.

NAGPRA also enables Native Americans to repatriate some types of cultural objects. This chapter, however, only discusses human remains and funerary objects, not other cultural objects.

## **B. Vision and Purpose**

This chapter has three purposes. First, it focuses on the relationships of Indigenous Peoples with U.S. law

and policy, archaeologists, and museum curators, and how this interaction has affected our burial and religious rights. Second, it examines problems we face vis-à-vis the imperialist assumptions and practices of archaeology when trying to repatriate ancestral human remains classified as “culturally unidentifiable.” These are human remains that supposedly lack a cultural relationship with present-day Indian nations and people. We repatriation activists do not accept this argument because it is our belief that Indians of the present are descendents of those who came before us on this continent. The phrase *imperial archaeology* used in this chapter denotes the intimate links between federal law and policy and those fields of science (that is, archaeology and physical anthropology) that have engaged in repeated acts of grave looting and pillaging. Finally, it offers solutions for resolving the controversies surrounding the disposition of human remains still in museums.

Addressing the shortcomings of NAGPRA in a forceful and culturally sensitive manner is an important mission of the decolonization mission of us Indigenous Peoples. If we accept the notion of scientists that the remains of our ancestors are specimens for study and that we evolved from apes, we will have moved a giant step closer towards assimilation. If the scientists want to argue that they came from apes, I will accept their position without question. When it comes to the treatment of our deceased relatives, many of them have acted in an apish manner. However, all of our nations and Native Hawaiians have stories about our origins and burial traditions that we must honor and respect.

This chapter is primarily about my experiences in and knowledge of the repatriation struggle. You should be aware that grave looting has affected all Indigenous nations throughout the world. This means that there are many accounts and many different views about how this problem should be resolved.

## **C. The Repatriation Struggle**

My involvement in the repatriation struggle stems from my Pawnee citizenship, including the commitment I have for my people’s welfare, my spirituality,

and the environment of protest that challenged this country's racism and oppressive practices during my adolescent years. The reburial and graves protection movement that began during the 1960s had as its core principle the decolonization of laws and policies that sanctioned grave looting. This goal continues to guide our efforts. The philosophical underpinnings of the Indian movement, often called the Red Power Movement, that surfaced during the late 1960s and continues to this day, not only shaped my activist outlook toward life, but it has also influenced my cultural and intellectual development. The movement called for Indians to marry Indians; to reclaim our cultures; to defend our spirituality, lands, cultures, treaties, and sovereignty; and to confront anti-Indianism in all of its racist forms. I have attempted to do these things in my personal and professional life.

These experiences have provided me an outlook that has served me well in the dirty business of decolonizing imperial archaeology and NAGPRA. My involvement with the repatriation movement began during the late 1980s, before the enactment of federal repatriation laws. Before then, I had obtained some

knowledge of the grave looting and plundering operations of archaeologists. While in the service in 1970 during the Vietnam War, I visited the Smithsonian and looked in utter dismay and disgust at its public display of Indian crania. That image sticks with me to this day. As a graduate student at the University of California at Los Angeles during the 1980s, I helped organize campus protests by Indian students and our supporters that called attention to the holding of human remains there. Although few in number, we boldly confronted archaeologists, physical anthropologists, and their supporters at forums convened to convince us that the study of human remains held important information for revealing secrets about the Indian past. We defiantly maintained that oral traditions provided our understanding of our place in the universe, that their immoral and unethical research must cease, and that they should develop a plan for returning the physical remains to the next of kin for proper burial. However, there was no legal mandate in place then that required universities to repatriate human remains. Nothing was done, but we set a tone at UCLA for what was to follow.

---

## **ACTIVITY:**

What is the origin story of your people?

---

---

---

---

---

---

---

---

---

---

In your culture, what are the proper and improper ways to treat deceased relatives? Can these matters be discussed?

---

---

---

---

---

---

How would you feel if someone disrupted the grave of one of your relatives?

---

---

---

---

What would you do if you found out that someone had looted the grave of one of your relatives?

---

---

---

---

---

At about the same time, UCLA administrators developed a plan to move the American Indian Studies Center from the third floor of Campbell Hall, a historic place where student protests during the late 1960s gave rise to the formation of American Indian, Asian American, Chicano, and African American studies, to the basement of Haines Hall, a dreary site where Native human remains had been stored. Native students, faculty, and staff successfully resisted the planned move using the cultural argument that Haines

Hall contained spirits that could harm the living.

As the battles against archaeological desecration and administrative fiat raged at UCLA, the Pawnee Nation had begun to question the Nebraska State Historical Society and Smithsonian Institution regarding Pawnee remains in their collections. My work as a repatriation researcher began when the Native American Rights Fund asked me, on behalf of the Pawnee Nation, to investigate the identity of six human crania at the Smithsonian listed by accession records as Pawnee.

When the Pawnee leadership requested information about those remains, a Smithsonian official denied that the skulls were Pawnees, saying that many Indian raiders had been killed in Kansas and it would be impossible to positively identify the skulls in question as Pawnees. My research acquainted me with the dark, secretive history of white America's treatment of our dead. By examining documentation held at the Smithsonian and the federal archives, my research determined that those remains belonged to six Pawnees, just discharged from the U.S. Army, who had been killed in 1869 by U.S. soldiers and settlers near Mulberry Creek in Kansas. Following a lengthy search for the bodies, a Fort Harker surgeon had the heads severed and sent to the Army Medical Museum for craniometric study. This study was published with other documents and the testimony that contributed to the enactment of NMAIA.

Those experiences at UCLA and the Smithsonian not only revealed the arrogance of imperial archaeology, but they also gave me direction that has influenced my professional endeavors. Through recurring dreams during this time came a clear, resounding message that I should dedicate my life to the Indigenous struggle against scientific inquiry with Indian remains. While at the Smithsonian in 1989, gut-wrenching feelings of anguish, pain, and oppression had overwhelmed me as I walked through an area where thousands of human remains were stored in drawers. At that point, I began to think of my work as "liberation research." Liberation research is a methodical investigation into historical and oral sources for the purposes of decolonizing the law and freeing the incarcerated souls of Native Peoples trapped in an unburied state. Since then, I became a committed activist scholar. Working on behalf of my people, I compiled information about Pawnee objects of cultural patrimony and sacred objects at Chicago's Field Museum, the Denver Art Museum, and the Colorado Historical Society. I have written various studies and given numerous presentations across the nation about NAGPRA and repatriation issues.

## **D. Participants in the Controversy**

NAGPRA leaves unresolved the fate of "culturally unidentifiable" human remains now in museums and federal repositories. Representing perhaps as many as two hundred thousand individuals, these human remains are an ongoing source of friction between the repatriation advocates and our pro-science adversaries. We do not know the exact number of remains still in museums, because many of those institutions with human-remains collections have not completed inventories. Without those lists, furthermore, it is difficult for repatriation initiatives to proceed.

Museums, supported by the scientific community, often claim that present-day Indians are not related to those remains because they want to keep large collections for the purpose of study. That claim, however, is false. Indigenous cultures did not simply live in isolation and vanish. Since the beginning of time, peoples of those cultures intermingled with one another through trading, kinship, marital, war, and social ties. Through these connections, members of those so-called culturally unidentifiable cultures passed their genes and cultures on to us.

At center stage in this controversy is the NAGPRA Review Committee, which was established "to monitor and review the implementation of the inventory and identification process and repatriation activities." The secretary of the Interior appoints Review Committee members from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. From 1996 to 2001, the Review Committee considered four sets of recommendations drafted by the National Park Service (NPS) without endorsing any of them. In June 2002, NPS presented another set of proposed regulations to the Review Committee that prompted new protest from the reburial advocates. If adopted, these regulations would empower individual institutions, without Native consultation, to make the final determination regarding the disposition of all human remains in question in their collections.

---

## ACTIVITY:

How do your cultural values and beliefs shape how you view the issue of culturally unidentified remains?

---

---

---

---

Based on your cultural beliefs and values, do you think it is more important that Indigenous remains are reburied by some Indigenous group, or do you think they should only be reburied by the nation able to prove a direct ancestral line to the remains in question? In other words, would you rather have culturally unidentifiable remains kept in institutions waiting for a time when cultural affiliation might be proven, or have them be reburied earlier by some Indigenous nation?

---

---

Should the United States demand the repatriation of U.S. service personnel who were killed in Vietnam, Korea, and other places around the world? Why do you feel this way?

---

---

---

---

Fearing that this proposal undermines our ability to repatriate and rebury our ancestors by raising the interests of science above those of Native Americans, we protested vigorously, giving testimony at the NAG-PRA Review Committee hearings, writing to the secretary of the Interior, and presenting the matter to the National Congress of American Indians, which responded with a resolution opposing the recommendations. The latest set of proposed regulations now

stipulates that the institutions must offer to repatriate human remains in their collections. Although this proposal is more acceptable than the previous one, there are complex interests and players still involved in the controversy.

### **E. Three Basic Schools of Thought**

Three basic schools of thought come to bear on discussions over the disposition of culturally unidenti-

fied human remains. Representatives of each of them present testimony before the NAGPRA Review Committee and produce scholarship to promote their perspectives. The first camp, to which I belong, takes the position that all human remains and funerary objects in museums and federal agencies must be returned to the next of kin, or to a coalition of Native Americans, for proper reburial. Composed of traditional spiritual leaders, grassroots activists, scholars, and others, we draw our guidance from spiritual beliefs, Native concepts of justice, and a deep awareness of the historical relationship between Indian nations and the federal government. Arising from a 2001 meeting of American Indians at the Arizona State University's College of Law, the Committee for the Disposition of the Culturally Unidentified Human Remains (consisting of Suzan Shown Harjo, Walter Echo-Hawk, Pete Jimerson, Rebecca Tsosie, Mervin Wright, Kunani Nihipali, and Ho'oiipo Kalaena'auao Pa, myself, and a few others) has become a key player in the battle. We emphasize that NAGPRA is Indian law, and that scientific grave looting is immoral, unethical, and illegal, as well as a desecration and a sacrilege. We assert that there is no such thing as culturally unaffiliated human remains and that museums and federal agencies acquired them by acts of theft. The National Congress of American Indians, tribal leaders, and others support our position and efforts.

Members of the second school, which I would call the scientific establishment, argue that human remains and funerary objects are so valuable to scientific study that the repatriation and reburial of those collections would destroy data necessary for unraveling mysteries of the past. These archaeologists, physical anthropologists, museum curators, and professional organizations often characterize us as irrational religious fundamentalists who hold antiscience perspectives. To them, the taking of human remains occurred legally under preexisting policies and laws, and their scientific interest in them trumps any ethical or legal claims made by Native Americans.

They argue that when enacting NAGPRA, Congress sought to strike a balance between the inter-

ests of science and Native Americans. That compromise, they assert, provides only for the repatriation of human remains culturally connected to present-day Native Americans by lineal descent and cultural affiliation. To them, those human remains from older cultures that cannot be linked to modern Native Americans belong to science.

Not only do they reject our positions, but they belittle, mock, and ridicule us as well. During the 1980s, for example, a member of the opposition used the term URPIes (Universal Repatriation Proponents) to slander us. During that same decade, the president of the Society of American Archaeology (SAA), in a tasteless rehashing of the old Indian-killer quip, remarked that the only good Indian is an unrepatriated one. Others attack colleagues who "sell out," or hold a sympathetic (that is, an unscientific) attitude to arguments about universal repatriation. In an August 26, 1999, letter to the NAGPRA Review Committee, G. A. Clark, head of the archaeology division of the American Anthropological Association, blusters:

I have no patience with, nor sympathy for, NAGPRA and the political correctness that underlies it. Moreover, I am deeply embarrassed for, and ashamed of, American archaeology and physical anthropology. One might've thought the various professional societies would've done a better job contesting this lunacy when it was possible to do so. Academics are not very politically adept, however, and when erstwhile Smithsonian Secretary Robert Adams agreed to repatriate the Smithsonian's skeletal collections, it knocked the pins out from under any efforts the SAA and AAPA [American Association of Physical Anthropologists] might've undertaken to prevent it. This is what happens when politics is allowed to take precedence over rational and disinterested evaluation of the credibility of knowledge claims about the human past.

Clark had no fear of articulating his feelings, but others take a more subtle approach.



The 1986 policy statement of the Society of American Archaeology declares: “Whatever their ultimate disposition, all human remains should receive appropriate scientific study, should be responsibly and carefully conserved, and should be accessible only for legitimate scientific or educational purposes.” This position unquestionably favors a policy that would result in the retention of thousands of human remains in museums, leaving the older ones especially vulnerable. Another organization, the American Association of Physical Anthropologists, asserts that “when a clear relationship of shared group identity cannot be traced ...then those remains should be considered part of the biological and cultural heritage of all people.”

The third school advocates a compromise between Indians and science. These academics, museum officials,

and federal agencies hold that culturally unidentified human remains should be subjected to scientific study before they are reburied. Like their counterparts in group two, they often accept the Western worldview of the origins of life and of human migrations into the Americas. They want Indigenous Peoples to accept their views as well. It could be argued that those with this attitude who work in museums with collections of human remains stand for holding our ancestors hostage until we comply with their wishes.

The mainstream media, along with documentary production companies, tends to fluctuate between favoring the views of the second and third groups, while tribal newspapers and the Indian press, especially *Indian Country Today*, often support the view of the first school.

---

## **ACTIVITY:**

Do you feel that those scientists who oppose Indian views on the matter of repatriation understand Native American cultures and beliefs? Do they care about Indian cultures and beliefs the same way that you do? Explain.

---

---

---

---

---

The scientists who opposed repatriation and who favor studying human remains before repatriation occurs have a colonizer’s mindset. Do you agree or disagree with this statement? Why?

---

---

---

---

---

## F. Ways to Decolonize NAGPRA

As Indians, the most basic aspect of decolonization calls for us to accept individual and group responsibility for the fate of our ancestors. Failure to do so suggests that we have either been assimilated by accepting non-Indian intellectual, moral, and legal authority or that we have not acted in an appropriate manner towards ancestors. We will have succumbed to the power of imperial archaeology at the expense of our burial rights and spirituality. We will have become intellectually and religiously colonized. We cannot assume that others, including Indians who work in tribal and institutional settings, will act in a culturally appropriate manner in repatriation matters. In fact, some of our relatives who work in public and private institutions collaborate with the forces of colonialism and imperial archaeology. They, along with their men-

tors, use a “missionary” approach that encourages Native Americans to pursue educational studies and careers in archaeology and physical anthropology, thereby giving these disciplines a kind of surface Indigenism and legitimacy in Indian matters.

We must empower ourselves in this struggle by expressing our traditional knowledge and beliefs. We can never forget that when those who came before us buried their loved ones, our ancestors, they did so with the intent that the bodies would remain forever within the sanctity of the grave. We must reject the use of such terms of imperial archaeology as “archaeological populations” and “archaeological sites.” These expressions imply that our relatives lived for the benefit of future archaeologists, and that our cemeteries are merely rich fields of potential knowledge.

### **I propose that to decolonize NAGPRA, we must:**

- Accept individual and collective responsibility for the fate and disposition of our ancestors’ remains that are in museums, federal agencies, and still in the womb of Mother Earth
- Understand traditional knowledge and customs regarding the proper treatment of our dead
- Comprehend the history of scientific grave looting and its relationship to other aspects of colonialism
- Reject those scientific methodologies and principles that violate our burial rights, values, and beliefs
- Challenge imperial archaeology and colonialism through collective resistance
- Understand NAGPRA and repatriation processes so that this statute will indeed be Indian legislation
- Work cooperatively with our nations and organizations in repatriation initiatives
- Join coalitions whose purpose is to reclaim and rebury our ancestral remains
- Launch protests to attract public attention to the problem if the other methods fail.

There is a way to make NAGPRA work in its current form in terms of repatriating the so-called culturally unidentifiable human remains. This method involves coalitions composed of official representatives of Native nations coming together and making “shared group identity” claims to remains, based on oral history, migration patterns, and geography. In 1998, amid a bitter controversy surrounded by allegations of mis-

treatment and the destruction of human remains at the University of Nebraska, Lincoln, university officials invited Pemina Yellow Bird, a committed Sahnish (Arikara) repatriation activist, and me to serve as NAGPRA consultants on behalf of the university. In this capacity, we attended a meeting with representatives of fourteen Indian nations with a historical connection to Nebraska, and UNL officials. During a

lunch break, with Pemina taking the lead, several of us drafted an agreement calling for the UNL to repatriate all of the human remains and funerary objects in its collections to the Indian nations in attendance by virtue of a shared group identity relationship with those remains. The agreement also called for UNL to cover the cost of research so that Indian nations could determine if they had a cultural affiliation with any of

the remains. It stipulated that a monument be erected near the site where UNL staff had incinerated Indian human remains several decades earlier. Finally, it asked UNL to pay the cost of reburial of the remains. When UNL officials, seeking to end the public relations nightmare surrounding the situation, accepted the terms of the agreement, tribal people in attendance cheered loudly while others sang a Lakota song.

---

## ACTIVITY:

What is your Indigenous nation's tradition regarding contact and/or relationship with the dead?

---

---

---

---

In October 2002, with many Indians and non-Indians in attendance, the monument was dedicated. Its inscription reads:

This memorial honors an unknown number of Native Americans whose remains had been taken from their graves for the inclusion in the University of Nebraska's archeological collections. In the mid-1960s, these remains were incinerated in a facility located near this site, in a manner totally inconsistent with the beliefs and practices of the tribes of the Great Plains. In 1998, UNL Chancellor James Moeser and tribal representatives agreed to set aside this site as a memorial to honor these Native Americans and to remind future generations of this cultural injustice. Memory of these events must be more than symbolic, for people who forget the past are bound to repeat its mistakes. May we learn from this and treat all persons with honor and respect.

Several years later, in northern Nebraska, we reburied more than eight hundred sets of human

remains and funerary objects on a beautiful bluff overlooking the Missouri and Niobrara Rivers. It was a sad and beautiful spring day.

In 2001 in Denver, the Colorado Historical Society (CHS) sponsored a meeting that brought together scholars and tribal leaders, including repatriation officers, to discuss ways in which research could establish a cultural affiliation between the representatives of Indian nations in attendance and more than three hundred sets of human remains, classified as culturally unidentifiable, in the CHS collections. The non-Indians dominated the discussion, so the Indian participants asked them to leave the room. When the non-Indians were invited to return several hours later, tribal representatives presented them with a repatriation accord based on a shared group identity claim they had drafted following the basic model of the UNL agreement. CHS officials accepted the agreement, which stipulated that CHS would cover the cost of the reburial, and a reburial took place several months later.

Despite these successful efforts, the truth is that under NAGPRA, museums and federal agencies have

the last word in matters pertaining to the disposition of Native remains. Not surprisingly, repatriation opponents, whether in federal, state, or private organizations, have negated reburial initiatives. In Nevada, the Northern Paiutes claimed the remains of a ten-thousand-year-old mummified body called Spirit Cave Man, who was found in the 1940s. After hearing the Paiutes present historical, ethnographic, and archaeological testimony, the NAGPRA Review Committee recognized the cultural affiliation of the Spirit Cave Man with the claimants. However, the Bureau of Reclamation, a federal agency under the Department of the Interior responsible for managing millions of acres of federal lands in twelve western states, rejects this determination. As a result, Spirit Cave Man remains unburied in an Idaho repository.

Kennewick Man is another controversy involving a shared group identity claim that has gained widespread media attention. In 1996 near Kennewick, Washington, two men stumbled on a very old set of human remains on lands controlled by the Army Corps of Engineers (COE). The 9,300-year-old bones quickly became the center of an intense legal battle between scientists, who want to study the remains, and the federal government, which had ruled that the physical remains belong to Northwest tribes who claim the remains as an ancient ancestor and want to bury them. When a physical anthropologist declared that the remains had “Caucasoid” features, a media frenzy ensued, including declarations that the man was of European origin and that Indians were not the first Americans. Rejecting this view, the Colville, Nez Perce, Umatilla, Yakama, and Wanapum governments claimed the Ancient One, as they came to call him, on the basis of a shared-group-identity cultural affiliation. Their oral traditions indicate that they had originated in the area where they now live, had always been there, and had once looked different than they do now. Scientists want to study the physical remains to see if it represents some unknown source of migration to North America apart from the dominant scientific theory of a land bridge migration from Asia to North America.

When a few scientists filed a legal suit to stop the

repatriation, a federal judge referred the matter to the Department of the Interior (DOI) for resolution. On September 21, 2000, after reviewing the evidence and congressional intent, Secretary of the Interior Bruce Babbitt held that “Section 12 of NAGPRA recognizes the unique legal relationship between the United States and Indian tribes. Given its purpose and this recognition, DOI construes the statute as Indian legislation. Therefore, any ambiguities in the language of the statute must be resolved liberally in favor of Indian interests.”

Babbitt upheld the COE’s decision, but the scientists, supported by the SAA, AAPA, and others, blocked the repatriation of the Ancient One by filing another lawsuit. Among other legal arguments, they claimed that Babbitt and the COE had violated their First Amendment right because the Constitution allows them the right to study the remains. In *Bonnichsen v. United States*, issued on August 30, 2002, Judge Jelderk launched a scathing attack that denounced the actions of Babbitt and the COE. “Allowing study is fully consistent with applicable statutes and regulations, which clearly intended to make archaeological study information available to the public through scientific research,” he declared. Jelderk insisted that the COE had made a “hasty decision” to recognize the tribal claim to the Ancient One. Evading the intent of Congress, he dismissed the shared-group-identity relations of the claimant tribes with the Ancient One and ordered the federal government to allow scientists to study the remains. Essentially, Jelderk elevated the rights of science beyond the claimant Indian nations in this case, undermining the intent of Congress by refusing to apply the rules of construction to laws involving Indians. In doing so, he staked out a position that has the potential to undermine NAGPRA’s promise to rebury all human remains.

The claimant Indian nations appealed Jelderk’s decision to the Ninth Circuit Court of Appeals, but lost again. The decision prevents five Indian nations who claim the Ancient One as their ancestor from reburying him. Given the conservative makeup of the U.S. Supreme Court, it would be unwise to seek justice there in this matter. Since the 1970s, the Supreme

Court has handed down a series of anti-Indian decisions that have undermined tribal sovereignty and endangered our religious freedom. Others feel that

Congress, which is friendlier to Indians, should amend NAGPRA so that Indian nations can rebury older remains.

---

## ACTIVITY:

In your opinion, who made the correct decision, Babbitt or Jelderk? Why?

---

---

---

---

---

---

---

---

### G. Conclusion

NAGPRA creates a legal avenue for American Indians and Native Hawaiians to reclaim our lost human rights. Museums still hold tens of thousands of Indigenous human remains, along with funerary objects, classified by them as culturally unidentifiable. Through the decolonization of NAGPRA, we demand the right to repatriate the remains and funerary objects of all of our disinterred ancestors held in a state of spiritual imprisonment.

We hold firmly that ancestral remains taken for scientific study is an infringement on our spirituality and burial rights. Some of us feel that the spirit of a deceased individual is associated with the physical remains, and that disinterment disrupts their spiritual journey. Traditionally, relatives and friends often place items considered necessary in the afterlife alongside the body of our deceased loved ones. Realizing that the dead possess a sacredness that encompasses our values and beliefs, our cultures have acceptable ways of acting while in cemeteries and in the presence of the deceased. Our burial places are sacred sites, and tampering with

the dead is considered an act of desecration and sacrilege, if not outright witchcraft. Many of us stress that what affects the dead also impacts the living. We reject the contention that the investigations of scientists using the remains of our ancestors is Indian research, because these studies are rooted in values of Western science that ignore, belittle, and trivialize our traditions and spirituality by placing our history in the context of an evolutionist paradigm.

At the December 2001 meeting at Arizona State University's law school, the Native American participants drafted an affirmative declaration, filled with the decolonized principles of group and individual responsibility, and addressing the issue of our ancestors still to be returned to the womb of Mother Earth, spirituality, and justice. The preamble to these recommendations contains a declaration of Indian and Native Hawaiian ownership of the contested human remains. The recommendations state:

1. Culturally unidentifiable Native American human remains are culturally affiliated with contemporary Native peoples, including federally recognized tribes,

- non-federally recognized tribes, Native Alaskan peoples, and Native Hawaiian people.
2. All Native American human remains and associated funerary objects, including those deemed “culturally unidentifiable,” shall be under the ownership and control of contemporary Native peoples.
  3. All “culturally unidentifiable” Native American human remains shall be speedily repatriated to Native peoples in accordance with procedures to be determined by contemporary Native American groups.

4. All scientific study of “culturally unidentifiable” Native American human remains shall immediately cease.
5. The federal government shall be responsible for funding the costs of this repatriation.

What we ask for is a simple matter of justice. In order for us to decolonize ourselves, it is essential that we learn, uphold, and defend our values, beliefs, and sovereignty.

---

## **ACTIVITY:**

How would you resolve the conflict over the so-called culturally unidentified human remains?

---

---

---

---

---

---

What have you learned about the Native American repatriation struggle?

---

---

---

---

---

---

How might this be applied to your own nation’s struggle with repatriation?

---

---

---

---

---

---

## H. Suggested Resources

The following websites may be helpful in finding out more information about the status of your tribal nation's remains.

**<http://www.arrowheads.com/burials.htm>:** Update of Compilation of State Repatriation, Reburial and Grave Protection Laws (July 1997)

**<http://web.cast.uark.edu/other/nps/nacd/>:** National NAGPRA online database

**<http://www.cr.nps.gov/nagpra/>:** National NAGPRA website

**<http://www.pbs.org/wotp/nagpra/>:** "Who Owns the Past? The American Indian Struggle for Control of their Ancestral Remains"

## I. Suggested Readings

C. Roger Echo-Hawk and Walter R. Echo-Hawk, *Battlefields and Burial Grounds: The Indian Struggle to Protect Ancestral Graves in the United States* (Minneapolis, MN: Lerner Publications, 1994).

Kenn Harper, *Give Me My Father's Body: The Life of Minik, the New York Eskimo* (South Royalton, VT: Steerforth Press, 2000).

Devon Mihesuah, ed., *Repatriation Reader: Who Owns American Indian Remains?* (Lincoln: University of Nebraska Press, 2000).

James Riding In, "Our Dead Are Never Forgotten: American Indian Struggles for Burial Rights." In *"They Made Us Many Promises": The American Indian Experience, 1524 to the Present*, edited by Philip Weeks (Wheeling, IL: Harland Davidson, 2002).

James Riding In, "Six Pawnee Crania: The Historical and Contemporary Significance of the Massacre and Decapitation of Pawnee Indians in 1869." *American Indian Culture and Research Journal* 16, no. 2 (1992):101–17.

## J. Glossary

**anti-Indianism:** hostile feelings and actions by others towards Indigenous Peoples

**archaeology:** the scientific study of the life and culture of the past through the examination of dwellings, graves, tools, and other items, usually dug up from the ground

**canons of construction:** interpreting laws in ways that favor Indians

**Caucasoid:** having characteristics of Europeans

**craniometric studies:** studies conducted in the name of science designed to prove the superiority of white people by measuring the size of skulls

**culture:** beliefs, customs, practices, and social behavior of a particular people or nation

**culturally unidentifiable remains:** human remains that supposedly lack a cultural relationship with present-day Indian nations and people

**cultural patrimony:** a term in NAGPRA that refers to cultural objects that are central to a people's identity and culture

**desecration:** the act of damaging something sacred or do something that is offensive to the religious nature of something

**disinter:** to dig up or take a dead body from a grave

**funerary objects:** items placed in a grave for spiritual purposes

**imperial archaeology:** intimate links between federal law and policy and those fields of science (that is, archaeology and physical anthropology) that have engaged in repeated acts of grave looting and pillaging

**missionary:** somebody who attempts to persuade others to join their belief, cause, or movement

**museum curator:** the head of a museum, exhibit, or collection

**Native American Rights Fund:** a legal organization that defends the rights of Indigenous Peoples in the United States, including Hawaii

**physical anthropology:** a division of anthropology that studies the development over time of human physical characteristics and the differences in appearances of people in the world

**sacred objects:** in NAGPRA, cultural objects that are needed for ongoing religious ceremonies or ceremonies that might be revived in the future

**sacrilege:** the disrespectful treatment, theft, or destruction of something considered holy or sacred

**sovereignty:** the exercise of political authority by a particular people or nation

**treaties:** agreements between sovereign nations

**values:** accepted principles or standards of a group or an individual