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With Bones in Contention: Repatriation of Human Remains

Year

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Description

This case focuses on the issues of repatriation, the return of human remains, the question of desecration, and anthropologist's role in protection of sacred artifacts, as it relates to Native American remains and artifacts.

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Background

Museums across the world hold millions of artifacts collected from Native American graves and other sacred sites. Human remains are abundant in those collections, the result of more than a century of scientific archeology and physical anthropology, not to mention a much longer, overlapping history of gathering by serious amateurs, tourists and grave robbers. Human remains have proven invaluable in piecing together the biological and cultural history of Native American groups. Most scholars with interests in these artifacts deplore the hobbyist collectors and scavengers, but in the past twenty years research scientists and museum professionals have found themselves at the center of intense debates over the continuation of their own activities related to Native American materials. Should they continue to collect human remains, display them, store them in their institutions and subject them to research? Or should archaeologists, anthropologists and curators return human remains and burial artifacts to Native Americans so that they can be reburied with the respect we offer to other deceased human beings?

Some Native American groups represent this issue as one in the long series of political and racial injustices done to the indigenous peoples of this continent. What would happen, ask leaders of Native Indians Against Desecration (NIAD), if *they* excavated graves of whites in Boston or Philadelphia and put those remains in storage boxes or on display under the guise of expanding knowledge or adding to the catalog of nature?Tony Hillerman's novel Talking God (1989) begins with precisely this scenario: A museum staffer of European ancestry receives the bones of one of her own relatives for deposit in the museum's collection. The bones were sent by a Native American to make the point. In reply, researchers claim that these physical artifacts are essential for a unique data set that provides a window into the history, demography and health of aboriginal peoples. Likewise, museum professionals contrast the security and custodial care of their facilities with unprotected (and lootable) reburial sites.

Calls for the return of human remains and sacred artifacts to descendants (the process known as "repatriation") grew loud in the late 1980s and led to Congressional hearings and federal action. When it became law in 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) set a new ethical standard in authority over the disposition of human remains and sacred artifacts. The underlying principles are simple: Burial sites are sacred places that should not be disturbed; removing human remains from graves in any circumstances is an act of desecration; remains that have been removed from graves should be returned to

descendants, who have the right to decide how ancestral remains and sacred artifacts should be treated. At NAGPRA';s regulatory core is the mandate for researchers and museums to return proprietorship of human remains to their closest hereditary or cultural descendants. Those descendants may choose reburial -- "out of museum boxes and back into the ground," as a typical repatriation slogan demands -- or they may choose any other disposition, including preservation in a museum. The point is that the decision is theirs.

The repatriation mandated by NAGPRA is a complicated administrative process, although the ethical foundation is explicit: Museums and universities do not have the right to control remains of human beings; once a grave is disturbed, the closest lineal or cultural descendants assume proprietorship and with it the right to decide how those human remains should be treated. Although most archaeologists and museum professionals concede this basic principle (in the same way they concede "plagiarism is bad"), implementing repatriation on a day-to-day basis draws them into many legal and ethical gray areas. Some of these are explored in this set of case studies. Although NAGPRA constrains activity, and debates over repatriation continue, time is not standing still: Work needs to be done, and researchers need to continue their careers. What limits should be imposed on that work? In the midst of controversial and unresolved issues, what is a researcher to do?

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Issue 1

As a research fellow in the anthropology department at the Museum of the High Plains, Justus has two basic responsibilities. First is her research on native Americans in the Fox River (Illinois) basin. She is investigating the effects of long-term mobility on skeletal features of nomadic peoples in Plains tribes. Second is her assistantship in the museum's repatriation effort. The Macaque band from one of the Plains tribes is suing the museum for the return of nearly three dozen skeletons and associated burial artifacts collected in a 1934 excavation on their reservation. No one disputes that these are ancestors to members of the living band. Justus is helping with the effort to inventory the museum's collections for that lawsuit.

After their collection in 1934, these bones were boxed and placed in storage until someone could work on them. They remained untouched until Justus began her

research because the expedition leader -- the only researcher at the museum who was interested in tribes from this region -- died in 1938 and was not replaced. Justus has spent the last three years assembling the skeletons into nearly complete individuals. She has also put considerable effort into conserving them and has studied their anatomy in minute detail. She believes that this collection represents a discrete population, perhaps a single community within a band. Justus proudly tells her friends that nothing at this level of detail has been done before in this area and that she has just submitted a major paper on her analysis to the prestigious *American Journal for Physical Anthropology.*

Justus believes the skeletal material, as well as some of the other material in the department, should be returned to the Macaques, especially the material that has already been described, analyzed and published. She was surprised to learn that her department head, the famous Dr. Candice Hops, strongly disagrees. Justus hopes to make photographs and high-quality casts of the human remains. She thinks repatriation will eventually occur, and she wants to ensure that her data set is preserved following the reburial of the skeletons. *When the samples are reburied, we'll have no way to verify the research or to push it further,* she writes in a request for funds to support this work. She needs money to buy special resins and film. At this point, she begins to consider some of the ethical problems of such a project.

Discussion Questions

1. If excavating human remains is desecration, does additional work on these remains add to the desecration already done?
2. Would you fund Justus' reproductions? If you could place stipulations on Justus' work when funding it, what would they be?
3. If you were asked to represent the Macaque band, would you support this work?

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Issue 2

Hops, the head of Justus' department, has been slow to respond to requests by the Macaque band for information about the museum's collection. The deadline is long

past for releasing a NAGPRA-required inventory, and administrators at the National Park Service are furious about the delay. Although Hops hasn't said so publicly, last week Justus was told she was waiting for two tasks to be accomplished before releasing information: 1) Justus needs to make her casts and photographs, and 2) another graduate student, Jim, needs to finish his dissertation on the artifacts found buried with the skeletons.

Discussion Questions

1. Is it right for Hops to delay the release of information?
2. Would you prefer remains to be repatriated immediately upon the identification of descendants or have repatriation as an eventual outcome -- i.e.., once research is complete -- for the material Justus is working with? Can there be ethical grounds for delaying repatriation? E.g., should objects in storage be distinguished from objects under active study, so that only artifacts that are not part of an active investigation are returned?
3. Should Justus go around Hops to help the Macaques learn more about the museum's collection? Should she take any action with respect to the material she has worked with?

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Issue 3

During the summer, a field crew from the department collected some material at a construction site along the Fox River near the Macaque band's reservation. While clearing land for a highway bypass, a construction team unearthed a previously unknown burial site. Fearing publicity would freeze the road-building contract, which was already behind schedule, the company called in the museum to quickly (and quietly) assess the site. Immediately, the museum crew recognized the site as a single burial, worked forty-eight hours straight to collect what remains and artifacts they could find, and returned to the museum. In a lunchroom discussion of the work, the crew leader explained that he intended to study the find and cast the bones quickly, and then call in the Macaques' repatriation contact. "Getting those remains out of the construction zone was the best and most prudent thing to do," he tells the

department's lunch group. "Besides, it'll only take a few days for my analysis; then the Macaques can rebury the material and nobody will be harmed by the data collection. If we hadn't handled it this way, the company would have plowed those bones under and not said a word. I'll guarantee that." His research on the remains will include radiocarbon dating that will destroy parts of the material. Because this new skeleton appears to be related to the population Justus recently studied, she is asked to help in the analysis.

Discussion Questions

1. What is the best action for Justus to take in this situation?
2. What would be a clearly inappropriate action for her to take?
3. If the new skeleton turned out to be related to the population Justus studied, would she be justified in adding information gathered from it to her comprehensive data set?

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Issue 4

Some members of the Macaque band suspect the museum of intentionally stalling disclosure of information about human remains. That suspicion underlies their pending lawsuit. Already hot, tempers in the band exploded over the weekend when news leaked of Justus' request for funds to support casts and photography. (A businessman on the museum's board of directors is a member of the Macaque band; he found out about the proposal from a sympathetic secretary.) Tired of this treatment and humiliated by the museum's failure to respect their interests, two of the band's more radical members -- Ten Killer and Strong Jaw -- broke into the department's storage room, a converted horse stable without an alarm, to "reclaim" the remains of their ancestors. They managed to fit half the collection into Ten Killer's truck and moved it to the reservation. They could not find the other half of the material, which was housed in Justus'; office for lack of space in the storage room. This morning, Ten Killer and Strong Jaw began elaborate preparations for ceremonial reburial.

Discussion Questions

1. Were Ten Killer and Strong Jaw justified in their removal of the remains from the museum?
2. Hops might have a legal right to reclaim the material because the repatriation regulations had not been followed properly. Should she try to assert that right?
3. If you were asked to mediate in this case, what would you ask the different parties to do?

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Issue 5

On the morning she discovered the break-in, Justus also received the referees' reports for her manuscript sent to the *American Journal of Physical Anthropology*. One reviewer was overwhelmingly positive. The second thought the data set containing the adult men had been poorly collected and insisted that the original specimens be reexamined. Justus didn't know what to do. She now had only half the collection to work with, although she also had a notebook filled with raw measurements for each of the items she had studied. Besides, she was certain the data had been collected properly, so much so that when a statistician on her dissertation committee raised the same points as the reviewer, she convinced him that her method was sound. Making new original measurements seemed as unnecessary as it was impossible. In addition, her appointment was scheduled to end in the middle of the month, and she already had plenty to do until then.

The second reviewer also wanted the Carbon-14 dating of samples redone, suspecting contamination in the lab. Justus knows that another Carbon-14 measurement would destroy small parts of several remaining skeletons. Publicity from the "expedited reclamation" (as Strong Jaw described his and Ten Killer's action in a television interview) had put heavy pressure on the museum to repatriate immediately what remained of the 1934 excavation. Knowing that what was left of the collection would be reburied within weeks, Justus decided to remove samples of the collection for additional Carbon-14 dating to be done in a Minneapolis lab. Dutifully, she noted the removal in the collection's records. "These measurements

have got to be made," she wrote in her journal that night, "and soon the whole population is going back into the ground. What choice did I have?"

Discussion Questions

1. How should Justus respond to the second referee's report? Is withdrawing the manuscript a reasonable option?
2. What choices did Justus have? Did she make the right choice?
3. In suing the museum, the Macaque band asserted a claim of proprietorship for the 1934 excavation's artifacts. With this in mind, was it right for Justus to send those samples off for analysis without consulting the Macaques?

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Justus' three-year postdoctoral position ended on a sour note in August. The controversy with the Macaque band froze research in the anthropology department, and accidental disclosure of the collection made at the bypass construction did not help matters. Frustrated by the generally hostile state of museum-tribal relations in America, Justus decided to accept a junior position at France's National Museum of Anthropology. The museum has extensive collections of tribal remains from the American Plains, made by French explorers and collectors before the Louisiana Purchase. France has no laws such as NAGPRA, and few Native American tribes can afford the cost of surveying European museums to locate ancestral remains. "Now I can work in peace," Justus thought as she walked through the collections on the first day of her appointment.

Discussion Questions

1. Is Justus' ethical responsibility to repatriation different now that she is working outside the United States (and outside the jurisdiction of NAGPRA)?

Notes

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Contributor(s)

Brian Schrag

Editor(s)

Brian Schrag

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