

Author's Commentary on "With Bones in Contention: Repatriation of Human Remains"

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With Bones in Contention: Repatriation of Human Remains

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Issue 1

1. The issue of desecration is complex: Do actions constitute desecration, or do intentions? If remains are accidentally excavated -- e.g., when clearing land for a road -- is collection of that material desecration? Students should consider whether continued work on human remains is ethically justifiable once an interest in repatriation has been expressed.
2. and 3. Encouragement and discouragement play an important role in reinforcing and sanctioning behavior. Likewise, decisions on the allocation of resources are important ways to support or oppose projects. What should we do when we see a colleague entering an ethically gray area? What are our

responsibilities and opportunities? This question allows for something other than an all-or-nothing approach. Stipulations on funding can enforce or encourage certain behaviors while bringing about a compromise. Displays can be prohibited, for example, or sponsors might require the blessing of a tribal shaman or approval from tribal authorities. Many options are available; encourage students to explore them.

3. It is important to note that not all Native Americans demand the return of remains for reburial. Some -- whether few or many is unclear -- are indifferent; some want remains studied then returned; others want preservation in museums if remains are treated with respect. Interaction need not be hostile, and good faith cooperation is common. Joint efforts can lead to mutual benefit, even when tribes and institutions act deliberately in their own interests. For example, research can provide a tribe with cultural identity. Here anthropologists get research material for comparative analysis, and descendants acquire useful knowledge. Eventually, remains can be reburied.

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Issue 2

1. This question raises the issue of foot dragging, a common administrative response by people who disagree with a policy change. How do well-meaning people work in this kind of passive-aggressive environment? It is important here to keep Justus an actor with honest, positive motives but working in an environment (sometimes obvious, sometimes subtle) of less-than-forthright management. This puts a good actor in a difficult but realistic situation where she is an observer of ethical breaches and must respond, probably in a hostile climate.
2. One of the most difficult dilemmas facing researchers who have accepted repatriation in principle is deciding when materials should be returned -- immediately upon request, after detailed analysis, after casting, etc. Arguments can be made to support each position. However, students of this case study should appreciate the potential for paternalism evident in the latter two options: only after a researcher has transferred the value of the material to a cast or data set is cooperation forthcoming. That most researchers support repatriation only in such cases -- i.e., only when the original bones are replaced

with something that keeps the information intact -- can be a point of discussion among students. Likewise, it is not at all clear that transfer of value is an ethically appropriate response to repatriation. Exhibitions, for instance, often substitute copies of bones for originals. However, some critics believe that displaying these copies is equally reprehensible, arguing that copies of things are essentially like the things they replace. Additional arguments, based on spiritual issues, might claim part or all of an object's essence is transferred during the copying process, e.g., photographs might threaten theft of the soul. Simple copying turns out to be a less-than-simple option.

3. This discussion raises the general issues of whistleblowing and combining ethical and prudent actions in a possibly hostile environment. Even though Justus may not be doing anything wrong, she might be in a situation to observe serious ethical breaches. What should a person in this situation do? Be sure to ask students to consider what is at stake for Justus in these circumstances -- to act or not act or to go over her supervisor's head. Encourage them to see the situation through her eyes or to compare similar circumstances in other cases. This case also raises issues of disclosure and the appropriate pace of disclosing information.

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Issue 3

1. By design, this situation brings Justus into increasingly difficult positions. First, she will need to decide if the excavation was legitimate rescue work or unethical guerrilla excavation. If she believes it to be a legitimate rescue, she must decide, now that she is aware of repatriation policies, whether she needs permission from the Macaques to proceed and whether the museum can claim proprietorship of material collected and undisclosed in this way.
2. Sometimes it's easier to decide what clearly should *not* be done than it is to decide what should be done.
3. This discussion explicitly raises the issue of use of data that might be construed as ill-gotten gain. An extreme position in repatriation is that all archaeological and anthropological materials are ill-gotten gain (the result of unauthorized grave robbing), but before exploring that issue, begin with a less extreme example, especially if students believe the collection of this material is

unethical or illegal. Students should be encouraged to consider larger issues of ill-gotten gain: medical experiments where data is collected without patient consent, experiments on prisoners or through torture, art history on stolen or looted art work, etc.

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Issue 4

1. Are felonies ever justifiable? Were Hops' stalling tactics provocative? The point here is to discuss whether her response should be assessed on the basis of the desired effect (return of the material) or on principle (no one contests that the Macaques ultimately have proprietary rights to the remains). Ethical and unethical decisions are not made in vacuums and have real implications for people. Decisions to act -- or not to act -- have downstream effects, and sometimes timing and impressions are crucial. What should be the connections between decisions on ethics (the way we should act) and actions (the way we do act)? Who is responsible when decisions trigger reactions that have negative consequences? Are Hops and the museum victims, or did they get what was coming to them? What about Ten Killer and Strong Jaw? This issue can also be raised in the context of animal rights, with lab break-ins, perhaps also to anti-abortion activism, chemical use, nuclear power, weapons research and medical research relating to HIV.
2. Explicit distinctions are drawn here between the letter and the spirit of the law, and between legal and ethical principles as the foundation for action.
3. Encourage students to separate short- vs. long-term issues and goals. This discussion offers a good opportunity for student participation, perhaps negotiation scenarios and role playing. Be sure also to discuss the different consequences of settling with enforced solutions and those growing from consensus.

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Issue 5

1. Resolving this issue may be more simple than students expect. The original intent of this section was to present a dispute over analysis rather than an issue of misconduct. Justus is confident in her analysis and should defend her expert opinion. Research involves the process of assessing competing interpretations. If Justus has confidence in her analysis and has managed to convince some colleagues, why should she back down? Options -- including some unethical ones -- are available to her, but they need not be pursued if she acts with confidence in her own work.

This point provides an opportunity to discuss power relations between junior (Justus) and senior (editor and reviewers) professionals: what Justus perceives, what her senior colleagues are hoping to impose, what she'll allow, and what she wants to create. Withdrawing the paper would mean total placation of senior scholars. How is the power dynamic at work here? What are student experiences in this regard? How is this situation best negotiated? The power relation is produced by a dialogue of different actors, where perceptions play crucial roles. Junior colleagues should be encouraged to engage in active negotiation regarding power relations, not just remain passive recipients or soldiers.

2. and 3. Justus has a variety of options, but they are constrained by issues relating to the destruction of unique and contested materials, human remains, and the destruction of materials without the explicit consent of those with proprietary rights to the materials.

3. Is Justus the person who should be making this decision, especially now that proprietary rights are contested? Is she willing to stand by her original analysis? Is there an alternative means for dating these samples that does not involve destruction of materials?

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Issue 6

1. This situation again raises the distinctions between the letter and the spirit of the law, and between legal and ethical obligations of researchers and professionals. What are the limits of professional responsibilities? This discussion raises basic issues of artificial boundaries and jurisdiction in human society and their constraints on ethical principles. Do ethical principles transcend geo-political boundaries? If they do, what don't they transcend?

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General Issues

1. If excavating graves is a form of desecration or theft, should data taken from grave sites be banned from use in research? What about use of materials from plundered sites or sites where excavation was sanctioned by descendants? Some people claim that anthropologists' use of data collected from Native American graves is comparable to the Nazi use of data from medical experiments on prisoners. Is this comparison justified?
2. NAGPRA is a federal law and sets a minimum standard applied only to institutions that receive federal funds. (It exempts the Smithsonian Institution, which is covered by other repatriation legislation.) If your research is funded without federal moneys, are you ethically bound to the same principles? Are there circumstances that would exempt you entirely from repatriation's ethical prescriptions? Which standards should determine your obligation: ethical ones or legal ones?
3. NAGPRA applies only to the repatriation of Native American remains and sacred objects. If your research and collections concentrate on other peoples (e.g., Polynesians, Africans, etc.), are you still bound by NAGPRA's ethical prescriptions?
4. NAGPRA mandates the repatriation of only those remains for which specific hereditary or cultural affiliations can be established. For remains that cannot be so identified, a committee of interested parties is empowered to determine disposition. If you sat on that committee, what would you say should be done with remains -- fragments of bones and small fractions of skeletons -- that cannot be clearly identified? Who should assume proprietary rights over those remains? What is your ethical responsibility regarding artifacts and remains that cannot be identified?

5. Of the 500 original nations and innumerable bands of Native Americans, many are now extinct. Who should possess proprietary rights over remains associated with those extinct groups? Are there any circumstances in which researchers' claims for proprietary rights over excavated human remains should prevail over claims made by Native American groups?
6. In considering repatriation, what is the best way to balance 1) the essentially spiritual desire for reburial of human beings and 2) the essentially materialistic desire to acquire empirical knowledge from anthropological artifacts?

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Further Reading

The National Park Service has an office assigned to implement NAGPRA and oversee the federal repatriation process. For information about regulations, policy changes, implementation strategies and updates:

Archeology and Ethnography Program

National Park Service

PO Box 37127

Washington, DC 20013-7127.

[WWW.CR.NPS.GOV]

Publications of professional associations with members directly affected by NAGPRA -- American Association of Museums, American Anthropological Association, etc. -- contain considerable discussion of repatriation issues, as do many Native American-oriented publications. A useful collection of resources and news on recent NAGPRA developments can be found on the WWW site: <http://www.usd.edu/anth/repatriation.htm>.

This site offers the full text of the original NAGPRA law, implementing regulations from the National Park Service and extremely helpful bibliographies of professional and Native American literature on the legislative and operational aspects of the law plus much more.