

Has NAGPRA Helped or Hindered Relationships Between Native Americans and Anthropologists?¹

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Abstract

In 1990 the Native American Graves Protection and Repatriation Act became law. Opposition to this law was widespread and vocal prior to its passage. Today, five years later, opposition remains strong, but has become more "passive-aggressive" than the active-vocal opposition voiced during the debate of the proposed bill. This paper will highlight how NAGPRA has fundamentally changed the way museums and Federal agencies manage museum collections and conduct archaeology on Federal lands, and how NAGPRA has changed the relationships between Native Americans and anthropologists.

Introduction

In 1993 we wrote an essay entitled "To Bury the Ancestors: A View of NAGPRA" which was then published the next summer in *Practicing Anthropology* (Stoffle and Evans 1994). That essay was based on our experience with two National Park Service NAGPRA projects that involved cultural affiliations at six western National Parks and one actual NAGPRA consultation (Evans, Dobyns, Stoffle, Austin, and Krause 1994; Stoffle, Evans, Zedeno, Stoffle, and Kesel 1994). Based on those experiences and on our lengthy associations with American Indian cultural resource projects we made a number of NAGPRA assessments and projections.

In the three years since we wrote that article, we have been deeply involved on the national and local levels with NAGPRA issues. Mike Evans has worked with the National Park Service helping to prepare agency guidelines for implementing NAGPRA and has become aware of and often been responsible for responding to hundreds of NAGPRA issues. Rich Stoffle has continued to work at the local level with the applied ethnographic team at the University of Arizona in the Bureau of Applied Research In Anthropology (BARA). The BARA team has worked on issues like the foundations for cultural affiliation of contemporary Indian tribes with Casa Grande Ruins National Monument (Zedeno and Stoffle 1995), and conducted a conference focused on cultural affiliation with Hohokam, Salado, and Sinagua artifact collections (Zedeno and Stoffle 1996). Perhaps our most important BARA contribution has been facilitating a three-year long NAGPRA consultation between seventeen tribes and organizations and the Department of Energy - Nevada

Operations regarding materials taken from the Nevada Test Site (Stoffle, Zedeno, Austin, and Halmo 1996).

In the "To Bury the Ancestors" article, we stated our opinion that NAGPRA was about "relations" more than it was about "collections" and that it was about the "future" more than it was about the "past." We believed then that NAGPRA defined a watershed between collections professionals and Native Americans. We believed that the way people deal with NAGPRA issues will influence the future of their relationships for a very long time. Today, more than ever, we believe in these assumptions and predictions.

Relations v. Collections

NAGPRA has at its very heart a need to address past mistakes or what we have called "cultural errors." We do not believe that archaeologists were at fault within their cultural systems when they removed from the earth bodies, associated funerary objects, sacred objects, and objects of cultural patrimony. Quite the contrary, these actions were stimulated by the archaeologists' professional ethics and national laws designed to protect these human remains and objects from damage and preserve them for science. Within the dominant US culture these actions were positively valued. From the standpoint of most Native American cultures, the removal of bodies from the graves, objects from the bodies, objects from shrines, and objects from the control of the group constituted horrid violations. The fact that these actions were conducted without consultation and often over the protests of the Indian people themselves was interpreted as yet another direct assault on the Native people, their culture, and their sovereignty.

Congress passed NAGPRA to protect Indian people. The Indian people viewed it as a validation of the Native cultural view in opposition to the U.S. cultural view. Therefore, the behavior of Federal agencies and collections professionals regarding NAGPRA should be and are evaluated from the Native view of cultural errors. New relationships between collection professionals and Federal agencies and Native Americans can emerge to the extent that the NAGPRA process recognizes that this law was designed to be sensitive to Indian perceptions rather than focused on protecting the bodies and artifacts.

In another article entitled "Holistic Conservation and Cultural Triage," we say that Native peoples know that "others" have the potential for determining the outcome of consultations when the "others" have almost exclusive power to structure the rules of the game and then fund and conduct the process of play. Even though one effect of NAGPRA is to shift power (in terms of financial resources and control over decisions) towards Native Americans, NAGPRA and the implementing regulations fundamentally fail to specify how and the extent to which this power will be shifted. Thus many NAGPRA situations where Federal agencies and collections professionals "loaded in their favor" NAGPRA consultations. Bias occurs in three primary ways (1) by limiting the funds available for NAGPRA consultation, so that a culturally appropriate consultation is not possible unless the tribes have the funds themselves, (2) by limiting access to collections by defining NAGPRA lists and inventories without consultation, and (3) by pitting Native American ethnic groups against one another, knowing that under NAGPRA any tie goes to the agency.

Limiting Funds

The most common way for institutions to bias the process stipulated by NAGPRA is to claim they have no funds to conduct consultation with Native American tribal representatives. Frequently, museums claim that because they did not receive a grant to cover the NAGPRA work they are required to do, or they feel the grant they received was inadequate, they should not be required to carry out consultation. If the money appropriated by Congress each year for the NAGPRA grant program (approximately \$2 million per year) is seen by museums as the only mechanism to fund consultation, then there are bound to be shortfalls. However, consultation in most cases does not cost

millions – it usually involves only travel and per diem costs for the tribal representatives. Museums and Federal agencies often try and load all of their NAGPRA costs into the equation, however, in order to show that compliance is an unnecessary hardship. So, they add the costs of staff time, benefits, overhead, cataloging time, removal of items from display, etc. These costs, even if they are real, should not be used by museums and Federal agencies as reasons not to conduct consultation. It is not the tribes' fault that a collection is so poorly documented that additional staff time is needed to find out basic information as to where the items came from, when, and how. It is not the tribes' fault that collections are stored in boxes, high on shelves, or deep in basements, and it takes time to locate where they are. It is not the tribes' fault that Federal agencies sanctioned the excavation of archaeological materials, but did not require adequate information management, storage facilities, or curatorial procedures for those items dug out of the ground. In most cases where museums and Federal agencies are still holding back on conducting consultation it is because staff are afraid of talking to Indian people, either because they have never done it and do not know how (a type of institutional shyness), or because they are afraid of what they will hear.

Limiting Access

NAGPRA did not require an item-by-item summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony. The summary that was due in November of 1993 was to be an estimate that would presumably be expanded and corrected after consultation. Unfortunately, the law did not include any requirement that such updates should be made. Consequently, many summaries from museums and Federal agencies are still just those initial estimates. In most cases, these estimates were not made in consultation with Indian people. The estimates were based on existing catalog records or the best-guess assessment of topical experts, who were frequently archaeologists. Some of these archaeologists gave their best-guesses with the obvious intention of limiting participation of Native Americans. Others actively consulted with tribal representatives both before and after the summaries were due.

The inventory of Native American human remains is, however, supposed to be an item-by-item list constructed in consultation with potentially affiliated

native groups. The record of how much consultation occurred during the construction of these lists is spotty, at best. Done correctly, within both the letter and spirit of the law, museums and Federal agencies invited representatives from potentially affiliated groups to visit the collection storage facilities, listened to what these representatives had to say regarding possible cultural affiliation, and then made cultural affiliation determinations based on all the evidence they had at hand, including the information derived from the consultation meetings. Many of the museums and Federal agency offices that met the November 1995 deadline for the inventories followed a similar procedure, and now that civil penalties are in effect for museums that do not comply with NAGPRA, the remainder undoubtedly will attempt to do so.

So where is the limited access? Access is often limited from the very first step of the process--by declaring that there is not enough information to decide who should be consulted about the human remains. Some collections are so poorly documented that the museum or Federal agency does not know where it came from or when. Some collection holders claim that the human remains date so far back in time that no contemporary tribal group could possibly be affiliated. On this latter point, tribal assertions of cultural affiliation with these prehistoric remains are not seen as valid evidence by the archaeologists and museum staff making the cultural affiliation determination.

Divide and Conquer

Numerous cases exist of a museum or Federal agency claiming that they do not know who to consult with (therefore they will not consult, or will not repatriate) because there is more than one tribe potentially affiliated with the items or the human remains. There is nothing in NAGPRA that requires there be only one affiliated native group. In fact, most of the repatriation cases that have been published in the Federal Register list several tribes as being culturally affiliated. At it's worst, this strategy of trying to pit one tribe against another results in delays, ill feelings, and raises the specter of lawsuits. While often carried out by museums who are trying to retain control of their collections, Federal agencies, including the National Park Service have also used this strategy to delay the NAGPRA process.

Future v Past

It is the theme of this paper, however, that positive strategies which attempt to set right past cultural errors, build trust, and establish partnerships can be carried out through the NAGPRA process. Ferguson (1996) documents how archaeology, as a scholarly discipline, is changing in response to decades of Native American input and Federal and State legislation regulating archaeological activities. Our experience dealing with NAGPRA issues on a daily basis leads us to believe that while progress has been made, there is still a long way to go, especially in the training of students (both Indian and non-Indian), and in the incorporation of Native American oral history into the interpretation of the archeological record. There is still a widespread belief among archaeologists, that is being transmitted to their students and therefore being perpetuated, that Indian people can only know about the past through the study of archaeology because "they never wrote it down." Despite this view of the omnipotency of archaeological data, our experience shows us that when a NAGPRA process involves a rethinking of past relationships and a recognition of the Native American cultural view, new and more positive relationships have emerged.

We have chosen to illustrate the results of positive strategies with one case, the American Indian NAGPRA consultation on the Nevada Test Site. This is but one among many examples that highlight the positive side of NAGPRA.

NAGPRA On The NTS

NAGPRA compliance consultation occurred between the Department of Energy/Nevada Operations Office (DOE/NV) and the American Indian tribes and Indian organizations that make up the Consolidated Group of Tribes and Organizations (CGTO). The consultation focused on artifacts and a body removed from the Nevada Test Site (NTS). These materials were either curated by the Desert Research Institute (DRI) in Las Vegas Nevada or the Nevada State Museum in Reno, NV. Consultation actions and recommendations occurred in compliance with the Native American Graves Protection and Repatriation Act (NAGPRA), which was signed into law on November 16, 1990. The Proposed Rule (43 CFR Part 10) for carrying out the Act was published in the Federal Register on May 28, 1993 (58 CFR 31122) and the Final Rule was published in the

Federal Register on December 4, 1995. The Final Rule for NAGPRA took effect on January 3, 1996.

The DOE/NV NAGPRA compliance consultation began in March of 1994, thus its design and implementation was responsive to both NAGPRA itself (1990) and to the proposed rule (1993) for carrying out the Act. Although the Final Rule for NAGPRA changed some wording and is more instructive as to the intent of Congress regarding some language in the Act, a complete reading of the Final Rule indicates that the DOE/NV NAGPRA is in full compliance with both the spirit and the letter of the Act.

The DOE/NV consultation with the American Indian tribes and Indian organizations involved a number of activities which are viewed as phases of the NAGPRA consultation. All of these activities were designed to comply with NAGPRA. This overview of the phases discusses a few key aspects of the Act and Final Rule, with reference to how the DOE/NV consultation activities are in compliance with these rules.

Consultation (Section 10.9.b)

The Final Rule discussed what is appropriate consultation (Pages 62150 - 62152). The Act specifies that museum and Federal officials must consult with the following kinds of people: 1) Lineal descendants of individuals whose remains and associated funerary object are likely to be subject to the inventory provisions of these regulations; and 2) Indian officials and traditional religious leaders and groups who have one of the following characteristics:

- C from whose tribal lands the objects originated;
- C that are, or are likely to be, culturally affiliated with the objects; and
- C from whose aboriginal lands the human remains and associated funerary objects originated (Emphasis Added).

The DOE/NV NAGPRA consultation involved American Indian tribes and Indian organizations who currently represent Indian people having aboriginal and historic ties to lands currently occupied by the NTS. No NAGPRA human remains or objects were determined to be connected with lineal descendants, so consultation was conducted with Indian groups who

are either culturally affiliated or recognized as being the aboriginal occupants of the NTS.

The NAGPRA consultation was initiated during an on-going DOE/NV consultation which includes almost a decade of project-specific and general consultation efforts. By law the NAGPRA consultation is separate from previous consultations, however it significantly builds upon them and will eventually contribute to the DOE/NV understanding of American Indian cultural resources on the NTS. As a result of past consultations, the NAGPRA consultation was able to build on well established relationships and extensive cultural resource understandings. Like previous consultations, the NAGPRA consultation was conducted on a government-to-government basis. Within this context, tribes and Indian organizations sent their more knowledgeable representatives to identify and evaluate potential NAGPRA objects from the NTS collection of more than 450,000 artifacts. This consultation clearly meets the rules specified in section 10.9.b.2 regarding "Initiation of Consultation" and section 10.9.b.3 regarding "Provision of Information."

Cultural Affiliation (Section 10.14)

The Final Rule specifies that determinations 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 (Federal Register 1995:62155). The Final Rule further states that "A standard of scientific certainty is not consistent with Congressional intent (Federal Register 1995:62156)."

The initial arguments for involvements of American Indians in the identification and assessment of cultural resources on the NTS were first developed in 1986 based on existing documents, and then presented as part of an essay prepared for the Yucca Mountain Project (Stoffle 1987). This essay was later refined and published in Policy Studies Journal (Stoffle and Evans 1988) and more recently the essay has been reviewed and reprinted in the book Native Americans and Public Policy (Stoffle and Evans 1992). Systematic interviews with Indian people documented the connection of one additional Western Shoshone tribe, which was soon added to the list of consulting culturally affiliated tribes. Fundamentally then, arguments for the involvement of American Indians at the NTS have withstood the test of time, additional professional

review, and the oral testimony of Indian people; so with the slight modification of one additional tribe, the 1986 cultural affiliation essay remains the basis of all cultural resource consultation on the NTS.

Joint Claims [Sections 10.10 (a)(1)(ii), (b)(1)]

The Final Rule responded to a request for additional language that would specifically allow several Indian tribes or Native Hawaiian organizations to make joint claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony. But the drafters of the Final Rule concluded that the original language of the Act permits joint claims (Federal Register 1995:62152). Those sections of the Act which permit joint claims basically state that these are allowed if all the criteria are met for establishing the cultural affiliation of the unassociated funerary, sacred, and objects of cultural patrimony in question [10.10 (a)(1)(ii)] or for human remains and associated funerary objects [10.10 (b)(1)].

The American Indian tribes and Indian organizations who have worked together for the past decade to represent their cultural resource concerns to the DOE/NV, decided to formally define themselves as the Consolidated Group of Tribes and Organizations (the CGTO). They decided to identify themselves by a common term in order to emphasize their desire to "Speak With One Voice" (see Halmo 1994). The CGTO is formed by two representatives from each tribe and organization that desires to participate in consultation with the DOE/NV. The CGTO works for the tribes and organizations it represents, so all CGTO recommendations are subject to final approval by the governments of the member tribes and organizations. The CGTO has recommended that there be a joint claim made for those objects in the DOE/NV collection.

The Concept of Sacredness in NAGPRA Legislation [10.2.d.3]

Sacred objects are the most common type of NAGPRA objects identified by the Indian people participating in this consultation. As a result, sacred objects have become the focus of this NAGPRA study. Thus both the objects and the Indian perception of them should be explained. The NAGPRA Act and resulting regulations (Federal Register 1995:62159 -62160) have fundamentally the same definition despite attempts by Indian people to broaden the definition in

the regulations (Federal Register 1995:62138) and as a part of this NTS NAGPRA consultation. The final definition reads as follows:

Sacred objects means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony (43 CFR Part 10 Subpart B 10.2).

The Indian people who have participated in this NTS NAGPRA consultation expressed the opinion that whenever they engage in an activity that requires a religious ceremony and involves an object, then a sacred object is created. There are many circumstances which produce a sacred object. For example, when a group of Shoshone hunters kill a deer the death breaks the deer's life cycle and potentially threatens the relationship between humans and deer. In order to restore spiritual order, one of the hunters will conduct a ceremony that expresses regrets over the death of the deer, thanks the deer for giving itself so that Shoshone people can live, and requests that the deer appear in the same location to be killed again by the hunters. As a part of this ceremony, the hunter cuts the end of the deer's tail and buries it where the deer was killed. The deer tail becomes a sacred object because it is the central component of this ceremony. The deer tail must remain where it was placed because while in that spot it maintains the spiritual connection between humans and deer.

Human life-cycle ceremonies also produce sacred objects. At all major times in the lives of these Indian people there are ceremonies, and sacred objects are produced. Birth, puberty, marriage, having one's own children, curing serious illness, near death experiences, and death itself are accompanied by ceremonies. People who know how to conduct the ceremony will do so. This may be a father at the birth of a child, a religious leader at a naming ceremony, a mother at puberty, a herbal doctor at a serious illness, or the whole tribe at the time of a funeral. All of these events

involve the potential for breaking the life cycle, so the ceremony is designed to reverse any threat to the life cycle itself and to reestablish the spiritual connection when a breach has occurred. Sacred objects are produced when the afterbirth is buried, the cradle board is hung in a tree, hair is cut and placed in the ground, and tools of everyday life are offered to the person who has gone to the supernatural. In general, all of these objects are transferred from secular to sacred status through their participation in the life cycle ceremony. All of these objects tend to be placed somewhere in or on the ground as a covenant that must remain where it was put so that it can keep the spiritual connection intact.

These examples of how a sacred object is created illustrate that (1) most ceremonies are conducted by spiritual people who have other secular roles in the society, (2) most sacred objects had other uses before they were transformed by ceremony, and (3) most sacred objects must remain where they were placed in order to have an ongoing function in the continued observance of the ceremony. Many Indian people are spiritual people, and by this it is understood that they have been taught both the why and the how of appropriate ceremonial practice. People tend to be limited in the extent to which they know certain ceremonies. Hunters will know the ceremony needed to maintain the spiritual connection between humans and deer. Mothers know the ceremony needed to help a daughter through her first menses. A medicine person will tend to know either spiritual or herbal curing ceremonies. There are therefore many spiritual people; each is recognized by the tribe as the appropriate person for conducting a specific ceremony.

Most sacred objects began as ordinary objects. Through their participation in ceremony they become sacred objects. When these objects are placed on or in the ground as a part of a ceremony their ongoing role in this ceremony is to remain where they were placed. The sacred object functions as a "spiritual glue" to repair tears in and maintain the order of the world. Therefore, when these sacred objects are removed from where they were ceremonially placed, the order of the world is threatened. This situation can only be rectified by returning the sacred object to where it was originally placed and to conduct a "forgiving ceremony" in the hopes that the sacred object will once again be restored to its original and ongoing religious function.

Reburial

In September 1996 an American Indian Reburial Subcommittee of the CGTO composed of religious leaders and "strong diggers" picked up a body and associated funerary items from the Nevada State Museum in Carson City and identified NAGPRA items from the DRI curation facility in Las Vegas. After appropriate prayers, these objects and the human body were transported to the Mercury on the NTS. The next day the group moved to a previously selected place identified by the CGTO over time as being culturally special to Indian people. The group was permitted to excavate a place for reburial and to camp overnight near the place. Before dawn the next morning, prayers were said and the objects and human remains were taken to the reburial location and placed in the earth.

Conclusion

Today, the CGTO and the DOE/NV are planning an extensive site-wide NTS study of the Tumpituxwinap (which means storied rocks in Southern Paiute) what archaeologists call rock art. An American Indian subcommittee of the CGTO has worked with the UofA ethnographers and the DRI archaeologists to prepare a mutually acceptable study design. DRI archaeologists have funds from the agency to scientifically record the rock art and associated artifacts. Indian monitors work with the DRI archaeologist on this rock art survey project. In the spring dozens of elders will visit these places and share information. They and their tribal governments will participate in this study because over the past ten years the DOE/NV has supported their requests to have certain types of studies conducted in culturally appropriate ways. Further the DOE/NV has kept away from public knowledge certain types of information deemed most culturally sensitive, while at the same time using shared cultural knowledge to afford maximum protection to Indian plants, animals, and places. The 3 years of NAGPRA consultation was just another step in existing and increasingly complex relationships. Today, Indian people, the DRI archaeologists, and the DOE/NV are working together and NAGPRA consultation has produced positive feelings of trust and stewardship, and of course, the ancestors have been reburied.

Notes

1. An earlier version of this paper was presented at the 1996 American Anthropology Association meeting in San Francisco, California.
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