

In 1986, a group of North Cheyenne Indian chiefs discovered, quite by accident, that the remains of 18,500 Cheyenne people were being warehoused by the National Museum of Natural History. The chiefs had travelled from Montana to Washington, D.C. to review cultural materials stored in the Library of Congress, and while in the capitol, they decided to have a look at the Smithsonian's Cheyenne collection. As Clara Spotted Elk, a Northern Cheyenne Indian and legislative assistant to former Montana senator John Melcher later explained to *Harper's* magazine: "Quite casually, a curator with us said 'Oh, this is where we keep the skeletal remains,' and he told us how many—18,500."

According to Walter Echo-Hawk, a Pawnee and staff attorney with the Native American Rights Fund in Boulder, Colorado, this disturbing discovery spurred Indian organizations to press for federal legislation requiring museums to return human remains and cultural objects to Indian tribes and descendants of the deceased. Along with other proponents of legislation, he argued that remedying such massive repatriation problems through the courts would be too unpredictable and costly. And besides, he maintained, such human rights legislation was long overdue.

"The problem has been that we have been looked at as property," explains Suzan Shown Harjo, president and director of the Washington-based Morningstar Foundation, an advocacy organization for the cultural and traditional rights of native peoples. Legislation like the 1906 Antiquities Act had encoded the view that Indians buried on federal land were "archeological resources," transforming Indian remains exhumed from federal land into "federal property"—even though American common law has long held that a dead body is not property. "We

Native American and human rights activists urge museums and collectors to learn the difference between archeological displays and sacred relics

BY HOLLY METZ

were the butterfly collection," says Harjo, a Cheyenne/Creek Indian. And like all such collections, she adds, "the point was great numbers." (The Congressional Budget Office later reported that federal museums and agencies possessed the skeletal remains of as many as 200,000 native Americans. No estimate was made of the number of human remains held by state and local museums, universities, and laboratories.)

In making repatriation requests, some native groups have asserted that disinterment is a fundamental violation of their First Amendment free exercise rights. Like most other religions, native American religions have specific practices and principles for the treatment of human remains and burial sites. Others argue that the main issue is equality under the law: native Americans simply want their dead accorded the same protections and respect as the dead of other races. During an early Senate repatriation hearing, Dr. Rennard Strickland, an Osage/Cherokee and director of the University of Oklahoma's Center for the Study of American Indian Law and Policy framed the issue succinctly. Referring to a question put to a museum professional, he asked, "What would you think if we had your grandmother's bones in the Smithsonian?"

Panic overtook many in the museum

community as congressional support for repatriation legislation burgeoned. Repatriation bills introduced in the 99th and 100th Congresses were vigorously opposed by the Society for American Archeology, the Smithsonian, and the American Association of Museums. One observer recalled an archaeologist begging, "Please don't let them take my profession away!" Other museum professionals argued that the application of new biomedical techniques to human remains could yield important information about the lives of ancient peoples; reburial meant such potential gains would be lost forever. A few museums contended that they legally owned the human skeletal remains in their collections, even claiming, as the Nebraska State Historical Society did, that they had received a bill of sale.

But was title actually transferred? "Unless they have the signature granting right of possession and title from the person whose bones or whose burial pots they are, or their nearest of kin, I don't believe they should be entitled to that," says Harjo. "And I don't know anyone who has that kind of letter." Furthermore, tribal attorneys note, under common law, a landowner can only hold human remains in trust for the deceased's descendants.

"The fear of the archaeologists in the museums was that the Indians would drive up a moving van and empty the place out," says Paul Bender, an Arizona State University law professor who became the facilitator of an impasse-breaking panel discussion between native American leaders and museums. The panel's report helped shape the final federal legislation, the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). "Most archaeologists and museum people knew this stuff had not been voluntarily alienated by Indians," Bender says. "There may have been a few cases where people had the right to do so, sold or bargained for its removal. But everyone knew most of it had been taken by force, deception, or just taken, without any agreement."

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Dr. Martin Sullivan, director of the Heard Museum in Phoenix, notes that in the past, ethnographers assembled their collections from indigenous cultures thought to be rapidly vanishing from North America. "What we know today," he says, "is that the native American communities are still here, many of the traditional practices have continued, or in some cases have been revived." There are currently almost 600 federally-registered Indian tribes in the United States. Sullivan remarks that "the whole paradigm of museums as intellectual exercises is changing—from one of simply collecting and preserving the objects of others, to working in partnership with those communities to help them to sustain their way of life through interpretation and education."

Recognition of native American tribes as "legal, living cultures with vital ongoing lifeways rooted in a rich traditional heritage" became the basis

of NAGPRA, Strickland notes in the *Arizona State Law Journal's* Spring 1992 symposium issue on repatriation legislation. Preceded by the 1989 National Museum of the American Indian Act—a provision of which establishes procedures for the Smithsonian's return of requested human remains and associated burial offerings to culturally-affiliated tribes—the 1990 remedial legislation went even further. NAGPRA not only protects materials excavated from federal and tribal lands, and creates a national standard and process for the return of native remains and funerary items by federally-funded museums and agencies (except the Smithsonian), it also establishes repatriation procedures for sacred objects needed by traditional religious leaders for currently-practiced ceremonies (or for the renewal of such ceremonies) and for objects of "cultural patrimony." The statute describes the latter as ob-

jects "having ongoing historical, traditional, or cultural importance central to the [tribe] or culture itself," which "cannot be alienated, appropriated, or conveyed by any individual," even if that person is a tribal member. Congressional sources estimate that between 10 to 15 million sacred objects and items of cultural patrimony are being held by museums covered under the Act.

NAGPRA is unique because the statute makes traditional native American conceptions of sacredness the controlling national standard for the first time, notes Echo-Hawk. To start the repatriation process, for example, NAGPRA requires museums to compose and to share with tribes general summaries of sacred objects and items of cultural patrimony, and to produce archival inventories of human remains and associated funerary objects. "In the process of consultation," says Sullivan, "many museums have had the experience of discovering that certain objects we thought were sacred—because they were labelled in our catalog as such—are not. That [definition] was just a romantic fiction invented by a collector. And other materials, which we thought were everyday items, have very deep spiritual meaning. We're not in a position to know those things, whereas the people from those cultures are."

Yet even terms like "sacred" or "secular," as non-Indians use them, are conceptually unfamiliar to native Americans, whose world view is holistic, explains Strickland. Many objects identified by museums as works of art, such as Hopi Katsina masks, are not objects, he says, but "lifeforms, the body of the gods." Like "a piece of the cross or a body of a saint," he adds, these sacred icons of native American culture are not marketable. There is no title to convey.

NAGPRA's repatriation provisions extend only to museums, however, not to private collectors and dealers, unless they receive stolen property or buy protected items from a museum after the law's passage. They have no repa-

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triation obligation under the federal law. So when the Hopi and Navajo Nations protested a 1991 Sotheby's auction of two Hopi Katsina masks and a mask attributed to the Navajo, the auction house replied that the sale was legal under NAGPRA and refused to call it off.

The masks sold for more than \$39,000; but amazingly, the purchaser, Elizabeth Sackler, a daughter of philan-

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thropist and art collector Dr. Arthur M. Sackler, announced that she had bought the "physical manifestations of life-spirit" with the intention of repatriating them to the two tribes. "One should not—cannot—auction off sacred material of a living culture," Sackler explains.

She has since founded the American Indian Ritual Object Repatriation Foundation (AIRORF), a non-federally funded, not-for-profit organization that facilitates the return of sacred objects from private collections to American Indian nations. Sackler established the foundation—which has an equal number of native and non-native members on its board—to "create a bridge between two cultures." AIRORF is not only a conduit for sacred objects' return "in accordance with ceremonial requirements," says Sackler; it also acts as a liaison, on request, between museums and tribal leaders when authentication for repatriation is required or when an appropriate representative is needed "to ensure [the materials']

proper escort home." No funds are available to purchase objects, Sackler notes, because the foundation "doesn't want to reward the art market." Rather, the foundation provides collectors with information, through its researchers, about the cultural and spiritual significance of the objects they possess. "Our hope is that the foundation can concentrate on educating private collectors about the spiritual nature of these goods," says Martin Sullivan, who is on the AIRORF board. "I use the analogy of drinking and driving: It's very hard to legislate that kind of prudent behavior. But social values change, and hopefully an awareness on the part of dealers—that you're violating the human rights and religious rights of a people—may close the market down."

In the meantime, states have preceded to pass laws that close other NAGPRA loopholes: Thirty-four have enacted unmarked burial-protection statutes, since the federal statute only protects burial sites on federal and tribal lands. Most of the state legislation applies to excavations on state lands, although Arizona has also passed a law requiring appropriate notification and treatment when human remains and funerary objects are discovered on private property. California, Arizona, Kansas, Hawaii, and Nebraska have passed their own repatriation statutes, some of which cover public institutions not effected by NAGPRA.

With this new federal and state legislation, it seems clear that repatriation and protection issues will continue to be addressed well into the next century. The established processes, notes Suzan Shown Harjo, will require much discussion about topics that are, for native Americans, essentially unspeakable. "You see," she says, "no one ever committed that kind of barbarism—grave robbing, stealing of religious objects—until the Europeans came to North America. No one ever did that. So there's no Indian language in North America that has words for things like 'reburial,' 'repatriation,' or 'cultural patrimony.' It just didn't happen." ■