
Editorial

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Cultural heritage involves the question of cultural identity. Cultural property is the physical manifestation of what a society, a community or a group of people thinks of itself. The way a society treats its cultural property and what it defines as part of its cultural heritage tells how it chooses to identify itself. Among those groups which are still searching to control their own cultural identity and history, the Native Americans of the United States have struggled during the past decade, first to achieve the legal recognition of their right to this control and, in more recent years, to make the control which they achieved through the enactment of the Native American Graves Protection and Repatriation Act [NAGPRA] in 1990 a reality.

Dr. Morris Fred, in his article "Law and Identity: Negotiating Meaning in the Native American Graves Protection and Repatriation Act," explores the ramifications of the implementation of NAGPRA on the formation and control of the cultural identities of not only the Native American tribes but also of the museum communities and scientific communities which have long studied, curated, displayed and explained Native American cultures to the broader American society.

In an astounding discovery, which occurred too late to become part of Dr. Fred's article and the story of which is far from finished, a skeleton (called the "Kennewick man") was accidentally discovered in the summer of 1996 along the bank of the Columbia River in the state of Washington in the northwestern part of the United States. The skeleton is that of a middle-aged man with a stone spearhead embedded in the pelvis. Radiocarbon dating of bone samples indicates that the skeleton is approximately 9,300 years old. What is particularly surprising is that in a brief forensic study of the skull, anthropologists concluded that it displayed "Caucasoid" characteristics, based on measurements of its width, the eye and nose cavities, and the teeth. As *The New York Times* article reporting the discovery explained:

In the world of old bones and educated conjecture about the first Americans, the Columbia River skeleton is a riveting discovery. It adds credence to theories that some early inhabitants

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of North America came from European stock, perhaps migrating across northern Asia and into the Western Hemisphere over a land bridge exposed in the Bering Sea about 12,000 years ago, or earlier, near the end of the last Ice Age.¹

According to NAGPRA, once it was determined that the skeleton was of Native American ancestry, it is supposed to be returned to the Native American tribe which can reasonably trace a relationship of shared group identity with the human remains. However, before the Army Corps of Engineers returned the skeleton, several conflicting claims were made and litigation among a variety of parties, including a group of anthropologists, ensued. Among the interesting claims presented, the anthropologists sought to prevent the restitution and reburial of the skeleton before further studies could be completed. In June 1997, the federal District Court ruled that the anthropologists did have standing to maintain the suit and vacated the decision of the Army Corps of Engineers to turn over the skeleton to the Native American tribe.²

While the final results of this litigation are still in the future, we should perhaps pause to consider the possible impact of this incident. It has already been suggested in Congress that NAGPRA be revised so that human skeleton remains which are this old would no longer fall under NAGPRA's dictates. In part, those who have suggested this change would argue that, while restitution of more recent human remains is appropriate and long-overdue, a skeleton of that age is not part of the cultural history of any extant Native American tribe as it is constituted today. Furthermore, there is considerable concern in the scientific community that a find that could rewrite our understanding of the archaeology of North America and the ancestry of both Native Americans and Caucasians would become entirely lost to such further study.³

The Native Americans, on the other hand, would argue that this is their heritage and their religious beliefs that are at stake. It is against their traditional beliefs to engage in the destructive, scientific study of human remains; rather, these must be reburied as quickly as possible. Furthermore, the Native Americans' myths and history say that they have been in North America from the beginning of time.⁴ Finally, the preliminary identification of the skeleton as "Caucasoid" seems like an attempt to remove the far-distant past from their control and their identity. Any significant change in NAGPRA's provisions would seem like a retraction of the recognition of Native American control, which was so long contested and only recently won.

Yet, how does one resolve such a conflict between a group's self-definition of its own cultural identity⁵ and the definition of that identity granted by a larger but external community. Such clashes are numerous throughout the field of cultural property and most have no easy resolution. We see that conflict between a group's self-definition and the definition conferred by an external group involves the

question of significance. If one adopts a test for restitution of cultural objects based upon a determination of cultural significance to the nation or group seeking restitution, who will be the arbiter of that “significance”? While we might advocate a goal which permits each group to determine and to control its own cultural identity, there will be inevitable overlaps. It is with problems such as these that we who work in this field must struggle and, while there are never easy answers, it is even the posing of these questions which permits us to pursue this study with greater sensitivity to the needs of the very diverse cultural groups whose interests are at stake.

Notes

- 1 Timothy Egan, *Tribe Stops Study of Bones That Challenge History*, N. Y. TIMES, Sept. 30, 1996, at A12.
- 2 *Bonnichsen v. U. S. Army Corps of Engineers*, 969 F. Supp. 614 (D. Or. 1997), 969 F. Supp. 628 (D. Or. 1997). The magistrate remanded to the Army Corps of Engineers for further consideration and asked the Corp to consider a series of wide-ranging questions focusing on such issues as the definition of “Native American,” “indigenons,” and biological and cultural affiliation.
- 3 For example, scientists would like to conduct additional DNA studies so as to compare this skeleton with the few other known skeletons of similar date. Several other controversies concerning the disposition of skeletons which are approximately 10,000 years old have occurred in the past few years not only between anthropologists and Native American tribes but among various tribes as well. George Johnson, *Indian Tribes’ Creationists Thwart Archeologists*, N. Y. TIMES, Oct. 22, 1996, at A1.
- 4 Sebastian LeBeau, repatriation officer for the Cheyenne River Sioux, a Lakota tribe based in Eagle Butte, South Dakota, explained:
 We never asked science to make a determination as to our origins. We know where we came from. We are the descendants of the Buffalo people. They came from inside the earth after supernatural spirits prepared this world for humankind to live here.
Id. Larry Benallie, a tribal archaeologist for the Navajo Nation, said, “There’s a real feeling that we’ve been here forever. The Bering Strait theory makes logical sense, but it doesn’t override the traditional belief at all. That comes first.” *Id.*
- 5 The Proposed American Declaration on the Rights of Indigenous Peoples, approved by the Inter-American Commission on Human Rights on February 26, 1997, and reproduced and discussed by Siegfried Wiessner later in this issue, explicitly recognizes the right of indigenous peoples to “freely preserve, express and develop their cultural identity in all its aspects” (Article V). Indigenous peoples also have “the right to their cultural integrity, and their historical and archeological heritage, which are important both for their survival as well as for the identity of their members.” (Article VII, 1).

