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| ANT410 |
| The Road to Repatriation |
| NAGPRA, Its Shortcomings, and the Anthropologist’s Duty |

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A quarter of a century has passed since the Native American Graves Protection and Repatriation Act (NAGPRA) was enacted by the United States government. This act was a major victory for Native American activists who had been lobbying for rights for decades. Despite the monumental turning point for Native Americans that this was, the NAGPRA legislation has been riddled with problems from the start. Issues such as funding, identification, verification of provenance, and a lack of adequate enforcement undermine the goals of NAGPRA and render it ineffective in many cases. Several prominent debates concerning NAGPRA, including that involving Kennewick Man, offer powerful illustrations of just some of the many ways in which NAGPRA has fallen short. The issues both within NAGPRA and those caused by NAGPRA have led to increased tensions between the Native American community and museums. In order for NAGPRA to be strengthened and more effective, the United States government needs to increase its supervision of the program to ensure that guidelines are strictly followed. Furthermore, more funding needs to be allocated to allow for the creation of full-time positions for NAGPRA professionals in order to make the best possible progress toward repatriation. With these adjustments, as well as others taken from state-level repatriation efforts, such as the expansion of NAGPRA to state lands and all cultural affiliations, NAGPRA will become more successful. Until these necessary changes in the NAGPRA framework are made, NAGPRA is by and large failing to bring about the positive change for which it was created.

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**I. Introduction**

“NAGPRA’s greatest flaw may be that it places the ultimate responsibility for accurate reporting in the hands of the very institutions that desecrated and disconnected native gravesites…”

—Margaret M. Bruchac, 2010[[1]](#footnote-1)

A quarter of a century has passed since the Native American Graves Protection and Repatriation Act, or NAGPRA, was enacted by the United States government in November 1990. This act was a major victory for Native American activists who had been lobbying for rights over the course of decades. Despite the monumental turning point for Native Americans that this was, the NAGPRA legislation has been a source of controversy with respect to matters such as funding, identification, verification of provenance, and a lack of adequate enforcement, which have undermined it and even made it ineffective in many cases. Several prominent debates concerning NAGPRA, including the case of Kennewick Man, offer powerful illustrations of just some of the many ways in which this legislation has fallen short. The issues both within NAGPRA and those caused by NAGPRA have led to increased tensions between the Native American community and museums. In order for NAGPRA to be strengthened and made more effective, the United States government needs to increase its supervision of the program to ensure adherence to the guidelines. Furthermore, more funding needs to be allocated to allow for the creation of full-time positions for NAGPRA professionals to improve facilitate progress toward repatriation. With these adjustments, as well as others taken from state-level repatriation efforts, such as the expansion of NAGPRA to state lands and all cultural affiliations, NAGPRA will become more successful. Until these necessary changes in the NAGPRA framework are made, NAGPRA is by and large failing to encourage the positive change for which it was created.

# **II. History and Overview of NAGPRA**

November 23rd, 1990, President George H. W. Bush signed his name approving what was at first seen as one of the most important pieces of human rights legislation of the twentieth century. The passing of this legislation signified “fundamental changes in basic social attitudes toward Native peoples by the museum and scientific communities and the public at large.”[[2]](#footnote-2) This act benefited Native Americans in theory because repatriation was and still is considered crucial for the creation of a proper sepulcher for the deceased ancestors whose remains and funerary objects were to be repatriated. Unfortunately, the museums and other institutions would be forced to return certain objects that they felt were essential to research and education. Historically, this act was a milestone because there has been a longstanding tradition of legal protection of the dead and human remains, with the exception of Native Americans. An estimated one hundred thousand to two million deceased Native Americans have been dug up by anthropologists, archaeologists, collectors, and others for study and display in museums and government agencies.[[3]](#footnote-3)

This attitude toward the disregard of Native American remains can be traced to the 1840s when Dr. Samuel Morton collected massive quantities of Native American skulls and fragments for study. Further, in 1868 when the Surgeon General ordered for the retrieval of Native American body parts for study. During this time, more than four thousand Native American heads were taken from across the country, some of these were even decapitated from the dead at battlegrounds that were never buried.[[4]](#footnote-4) Several decades later, the American Antiquities Act of 1906 was passed by Congress. Although this was a positive development for the protection of archaeological resources, Native American remains became federal property upon being exhumed. Trope and Echo-Hawk wrote in their 2000 examination of NAGPRA, “…it has been the commonplace of for public agencies to treat Native American dead as archaeological resources, pathological material, data, specimens, or library books, but not as *human beings*.”[[5]](#footnote-5) The cultural materials of Native Americans also experienced this same commodification. Throughout the late 1800s and early 1900s, collectors and travelers sought out handmade ceremonial objects and crafts by Native Americans.[[6]](#footnote-6)

By the time [this era of collection] ended there was more Kwakiutl material in Milwaukee than in Mamalillikulla, more Salish pieces in Cambridge than in Comox. The City of Washington contained more Northwest Coast material than the state of Washington and New York City probably housed more British Columbia material than British Columbia itself.[[7]](#footnote-7)

Throughout the later years of the twentieth century, state and federal actions began to reflect the growing desire and pressure for protection of Native American remains. In 1986, Northern Cheyanne tribal leaders discovered that the Smithsonian Institution housed almost 18,500 remains of Native American people. It was also estimated that other departments of the government, universities, historical societies, and other agencies had an additional several hundred thousand remains and millions of cultural objects.[[8]](#footnote-8) From this the idea of a Native American Museum Claims Commission arose as a sort of embryonic NAGPRA. This evolved into the National Museum of the American Indian Act in 1989. This act created a museum within the Smithsonian Institution dedicated to the protection and inventorying of the human remains and cultural items. It also mandated cooperation between museum officials and tribal religious leaders to inventory and identify objects and notify the appropriate tribes of their findings.[[9]](#footnote-9) As a result of this legislation, the scene was set for the expansion of Native American repatriation law and the doors were opened to allow the creation and passage of that monumental piece of legislation titled the Native American Graves Protection and Repatriation Act.

NAGPRA (Public Law 101-601) opens by stating that its purpose is “To provide for the protection of Native American graves, and for other purposes.”[[10]](#footnote-10) Immediately following in Section 2, the key terms used in the act are defined, and these are central to understanding and evaluating the act as a whole. The terms chosen for definition are the ones that have the greatest significance in the legislation and have also led to considerable controversy . The first is, *burial site*, defined as “any natural or prepared physical location…into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.”[[11]](#footnote-11) This includes those below, on, or above ground as well as those that have been disturbed by natural forces.[[12]](#footnote-12) *Cultural affiliation* is used to refer to any shared group identity or relationship which can be traced between a present day Native American tribe or Native Hawaiian Organization and an earlier group to whom the individual’s remains or an object belonged.[[13]](#footnote-13)

Perhaps the term that has been most problematic is *cultural items*, as this is the term that refers to human remains as well as virtually all material culture. Funerary objects are singled out and are divided into two categories: associated and unassociated, both of which are objects that were interred or placed with an individual during their funerary ritual, usually a burial. The difference is that associated funerary objects are those that are in possession of a federal agency or museum, whereas unassociated funerary objects are not. Further, those items that are manufactured exclusively for funerary rituals or to contain remains are automatically considered associated funerary objects by nature of their purpose. Another key group of objects considered to be cultural items under NAGPRA are *sacred objects*. These have been important in the legislation because they carry perhaps the most meaning for present day Native Americans and Native Hawaiian Organizations, as they are defined as objects that play a vital ceremonial or symbolic role in rituals still practiced today. Another important term defined is *Indian tribe*, described as “any tribe, band, nation, or other organized group or community of Indians…which is recognized as eligible for the special programs or services provided by the United States to Indians because of their status as Indians.”[[14]](#footnote-14)

The sections following the definitions outline protocol and plans for conduct once the act was enacted. Section 3, which establishes the ownership hierarchy, is a crucial part of NAGPRA as it defines ownership for artifacts or remains excavated post-NAGPRA. For anything excavated after passage, the item belongs to the Native American tribe or Native Hawaiian Organization on whose lands it was found or to those with the closest affiliation to it. Further, if the remains or artifacts are found on federal lands, they belong to the tribe with aboriginal origins to the area should they choose to make a claim. In addition to this, Section 4 makes anyone who sells, buys, transports for sale, or other trafficking activities with Native American remains or cultural objects subject to federal punishment in the form of fine and imprisonment up to twelve months for the first violation and five years after for repeat offenders.[[15]](#footnote-15)

The three most important sections of NAGPRA are those that deal with Inventory (Sec. 5), Repatriation (Sec. 7), and the Review Committee (Sec 8). These sections make up the bulk of the legislation and affect museums and Native American communities the most. In the inventory section, it is mandated that museums and other institutions must complete comprehensive inventories in cooperation with tribal governments within five years of the enactment of NAGPRA. These inventories must be made available during and after their compilation and a museum must supply all related documents and records pertaining to Native American artifacts or remains upon request to the appropriate tribe(s). Section 7 outlines the repatriation process. It requires that a museum must return items if a claim is made by a direct descendant or tribal association and the place and manner of the delivery will be determined by the museum and Native American tribal leaders. For those objects considered sacred, previous ownership must be proven. If claims are made for an object that is part of a current scientific study or research crucial to the American population as a whole, then it is mandated that the remains be returned no later than ninety days after the completion of research. Further, if more than one group makes a claim to an item or remains, they must either settle on the disposition or go to court and the holding museum will maintain possession until a settlement is reached. The Secretary of the Interior also must create a review committee which is established by Section 8. The committee, which answers to the Secretary, is to be comprised of seven members: three chosen from a list submitted by Native American and Native Hawaiian organizations, three from a list provided by museums and associated institutions, and one agreed upon by all. The committee is responsible for monitoring the inventory process, reviewing findings, facilitating dispute mediations, and more.[[16]](#footnote-16)

# **III. Where NAGPRA Falls Short**

Although NAGPRA was considered monumental when it was enacted and did have positive intentions for the betterment of Native American and museum relations, there are many loopholes, matters left unaddressed, and problem areas throughout the act. Perhaps the biggest issue is that there is no adequate enforcement and hence little accountability, which has led to a pattern of noncompliance by museums. The review committee can only issue advisory opinions that museums can disregard without legal consequences or repercussions.[[17]](#footnote-17) For example, in 2006, members of the White Mountain Apache tribe in Colorado claimed cultural patrimony to a list of thirty-three items at the Denver Field Museum. The NAGPRA review committee made the official recommendation that the Field Museum return the items to the Apache leaders, yet the items still remain in the museum’s collections.[[18]](#footnote-18) The Apache have had similar issues with the Smithsonian Institution and the American Museum of Natural History.[[19]](#footnote-19) NAGPRA must be amended to give the review committee more power to make their decisions legally enforceable and penalties for museums or institutions that do not comply need to be formally established.

Pemina Yellow Bird, a member of the Mandan, Hidatsa, and Arikara Nation, has experienced similar concerns with the unwillingness of museum officials to repatriate. Yellow Bird has worked as a repatriation advocate for thirty years and has seen both pre- and post-NAGPRA eras. In Yellow Bird’s 2010 testimony on the effectiveness of NAGPRA, she discusses how in the then twenty years that she had been working under NAGPRA for repatriation, she had represented her tribe in dozens of repatriation consultations. She also explains that she never participated “in a consultation with any federal agency, museum, or university where a pre-decisional, meaningful, face-to-face discussion took place to determine the cultural affiliation” of objects or remains.[[20]](#footnote-20) Instead, she described how she and other representatives would arrive for meetings and the officials would assert that a decision had already been made as to which tribe an object or remains belonged.[[21]](#footnote-21) Mervin Wright, Jr., the Tribal Vice Chairman for the Pyramid Lake Paiute Tribe of Nevada, has been another active repatriation advocate who has seen firsthand the noncompliance of museum professionals. He posits that the consultation process has not produced the intended, meaningful results due to the lack of supervision or enforcement. Because of this, current government transparency policies, including specifically the Government Performance and Reporting Act, need to be applied to the museums and institutions under the jurisdiction of NAGPRA in order to increase compliance as well as public awareness, which will consequently lead to greater accountability.[[22]](#footnote-22) Eric Hemenway, another tribal representative for NAGPRA, can add to these testimonies. He noted in a 2010 reflection on NAGPRA that, “The discrepancies between how different museums implement NAGPRA are varied to say the least…”.[[23]](#footnote-23) He has encountered museums that refuse to return phone calls and emails, as well as those that insist that remains he has requested are unidentifiable and therefore cannot be repatriated.[[24]](#footnote-24)

In many cases, this unwillingness to cooperate can be attributed from a major disconnect on the part of museum professionals. In an interview with Travis Mercier, a member of the Confederated Tribes of the Grand Ronde in Oregon, he describes his own experiences with museums and they are similar to the aforementioned testimonies. He explains that the museums are concerned with preserving items and remains for study and educational purposes, but asserts that this is not what they are made for.[[25]](#footnote-25) There is a sort of cultural insensitivity seemingly displayed by many museum professionals toward Native Americans and this most likely comes from the vast cultural differences between the Native Americans requesting repatriation and those museums who wish to maintain and improve their collections to fulfill their missions. However, as outlined in NAGPRA, identified objects and remains belong with their respective tribes and museum professionals need to recognize this and respect it. The American Alliance of Museums (AAM) is the official body which sets the precedent for museum ethics in the United States. Their board of directors needs to embrace NAGPRA and its goals and incorporate them into the AAM’s *Code of Ethics for Museums*.[[26]](#footnote-26) Until this occurs, and there is stricter enforcement of NAGPRA at the federal level, museums will continue to disregard the requests and input of Native American communities when it comes to repatriation .

Another major issue not addressed by NAGPRA is biological research and its effect on Native American human remains. When it comes to the repatriation of remains and other artifacts, in many cases, it seems to be too little too late. Often, due to invasive research methods, remains and artifacts suffer irreparable damage. The NAGPRA legislation fails to offer guidelines or methodologies for conducting scientific studies, leading to the continued use of research methods that are often destructive. The problem is exacerbated as a result of the lack of enforcement of, and adherence to the policies that NAGPRA set forth. Pemina Yellow Bird has seen firsthand the acceleration of destructive research efforts since the introduction of NAGPRA as museums and institutions “know that, at some point, they are going to be forced to repatriate.”[[27]](#footnote-27) In order to address this issue, the use of restorative methodologies should be widely implemented to both address previous damage and to prevent future damage. In many cases, the mere removal of the remains and material culture from their original context causes irreparable damage, as this violates the intentions of the people who placed them in the location where they were found.[[28]](#footnote-28) Restorative methodologies could potentially both physically restore a damaged object and spatially restore it to its original resting place. Although this will not completely remediate the damage that has been done, it will show an additional, good faith effort on the part of museums and other institutions towards the goal of making amends for past actions. Consequently, this can improve overall relations between Native American tribes and museums and prevent future damage.

The term “culturally unidentifiable” in NAGPRA has led to contention as well. Under the section establishing the review committee, one of their tasks is to compile “an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains.”[[29]](#footnote-29) According to Wright, Jr., the term was originally intended to be a placeholder in the legislation, to be later amended as the term is highly ambiguous. It was in fact part of a compromise necessary for enactment of the legislation to be expedited.[[30]](#footnote-30) The majority of most remains and objects deemed culturally unidentifiable can in reality be identified by tribes if they are privy to the same information as those holding them. In some cases, Native American tribes have joined forces to file joint repatriation claims in order to regain custody of material considered unidentifiable.[[31]](#footnote-31) In addition to this, NAGPRA requires museums and agencies to base their determinations of cultural affiliation only on information they possess, which means affiliation determinations can vary from museum to museum based on the information at hand.[[32]](#footnote-32)

One of the main issues leading to the aforementioned problem of identification is the fact that Native American oral histories are not considered proof or evidence in a court of law. Oral histories are considered official fact among Native American tribes and the First Nations of Canada.[[33]](#footnote-33) When it comes to Native Americans, as Riddington explains, “they code information about their world differently from those of us whose discourse is conditioned by written documents.”[[34]](#footnote-34) As Yellow Bird wrote in her testimony, “This is our country; we know who lived where. We know whose homelands overlapped. We know who is related to whom. We can put tribal coalitions together…We’ve done it many times, and will continue to do so.”[[35]](#footnote-35) If oral histories were taken as an official method of identification, the term culturally unidentifiable would be virtually obsolete because many more objects and remains would become identifiable and thus able to be repatriated. In Section 7 of NAGPRA, the section outlining repatriation protocol, it is stated:

…such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe…can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information…[[36]](#footnote-36)

NAGPRA clearly states that oral tradition should be considered in the identification of remains and objects, but yet this is not being done. To reiterate an earlier point, closer supervision and greater powers of enforcement by the review committee are required in order to ensure that oral history is properly being taken into account. Further, NAGPRA should amend the legislation to explicitly define oral history to avoid any loopholes or misinterpretation.

An issue not originally foreseen when the NAGPRA legislation was written that can be observed in practice is that repatriation efforts require Native American groups to file for it. Rennard Strickland, a legal historian Osage and Cherokee heritage, describes how deep-rooted tribal beliefs and values make their concepts of property ownership and title to property clash frequently with those presented in NAGPRA and held by the United States legal system. He notes that “NAGPRA’s provisions do not become effective without Indian initiative”.[[37]](#footnote-37) The legal standards of Indian sovereign nations are vastly different from those of the United States justice system. Therefore, it can often be difficult for Native leaders and representatives to most effectively present their case for repatriation. Because of this, tribes wishing to pursue repatriation efforts should be provided an attorney to assist in the claims process to ensure the most just and efficient proceedings.

Perhaps one of the greatest concerns in the implementation of NAGPRA legislation is the lack of available funding. Funding is absolutely necessary for full application and operation of NAGPRA. Section 5 of NAGPRA outlines the inventorying process, which is extensive and research intensive.[[38]](#footnote-38) Because of this large and time-consuming task, a full-time position needs to be created in most museums to address the large volume of Native American artifacts that many of them house within their collections. Under Section 10 of NAGPRA, both museums and Native American or Native Hawaiian organizations are allowed to apply for funding and the Secretary of the Interior is delegated the responsibility of granting that funding.[[39]](#footnote-39) On the current NAGPRA grant application website, it is stated in bold print that “All grant awards are contingent upon available funds.”[[40]](#footnote-40) With limited funding it has become clear that not everyone can get the support needed for NAGPRA initiatives.

If funding is not awarded, one of two things are likely to occur: either an adequate inventory will not be made (if one is made at all), or the task will be assigned to personnel hired to do other things and thus put a strain on other work to be done. In addition, not all Native American tribes have functioning NAGPRA programs nor can they always afford to implement them. Eric Hemenway, a tribal repatriation expert for the Odawa tribe, explains that often “other priorities trump NAGPRA within the administration of a tribal government, such as housing, education, gaming, etc.”[[41]](#footnote-41) He writes that tribes do feel the deep desire and necessity for repatriation, yet it is difficult when they lack the funding and time to focus on their efforts, especially because it is up to the Native American tribes to file for repatriation. This is a large task which needs people focused specifically on tracking items and filing for repatriation.[[42]](#footnote-42) According to Sangita Chari of the National NAGPRA Program, each year approximately two million dollars are awarded in grants to museums and Native American tribes. Although this seems like a large sum, only three percent of this number goes to repatriation grants. The other 97 percent goes to museums for documentation.[[43]](#footnote-43)

In order to remedy this situation, a program should be created under the law which uses both undergraduate and graduate students in unpaid or minimum stipend positions. These positions would be beneficial for many reasons. First, students in fields such as cultural anthropology, archaeology, Native American studies, museum studies, and historic preservation, would get valuable work experience under a federal program. The program would not need a large amount of funding, as students would work under a faculty member or professional advisor associated with the museum or institution for which they are inventorying. The work experience would be a enhance opportunities for participants seeking admission to advanced degree programs and employment in areas such as Cultural Resource Management. In essence, the next generation of repatriation professionals will get an earlier start to their careers. The museums and institutions would benefit immensely, as there would be individuals on hand who could dedicate themselves to inventorying and compiling documents, allowing the other full-time museum professionals to focus on their own duties for the museum or institution. In addition to this, the allocation of funding needs to be more evenly distributed between tribes and museums for both documentation and repatriation.

Another aspect in which NAGPRA falls short is that its jurisdiction only applies to federal and tribal lands, leaving a large percentage of private and state lands unaffected and largely unregulated. Countless burial sites are located on these lands and need to be protected.[[44]](#footnote-44) In order to remedy this situation, the federal government should amend NAGPRA to include those lands and model itself after some state-level responses to NAGPRA. For example, the state of Louisiana passed legislation commonly referred to as the “dedication provisions”, which state that “After property is dedicated to cemetery purposes… [it] shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by judgement of the district court of the parish in which the property is situated…”[[45]](#footnote-45) Because of this clause, any area dedicated as a resting place or grave for human remains is not legally allowed to be disturbed for any reason. If NAGPRA were to designate areas containing burials as dedicated to cemetery purposes and offer them the same protection as remains found on federal or tribal lands, NAGPRA’s reach would grow and thus it would be even more effective.

Another state that has effectively expanded upon NAGPRA is Maine. Shortly after NAGPRA’s introduction in 1990, Maine instituted a law that, combined with their pre-NAGPRA grave protection legislation, made that state a leader in repatriation law. Like Louisiana’s efforts. Maine’s law recognizes all property used for the internment of human remains as a cemetery and can thus not be disturbed. In addition to this, Maine’s statute establishes a sort of buffer zone for any intended excavation or construction near a cemetery site.[[46]](#footnote-46) In order to do either of the aforementioned activities, one must acquire a court order and the Maine Historic Preservation Commission must be made aware of the activities so that it may monitor the activity and ensure adherence to the law .[[47]](#footnote-47)

In addition to the types of expansions Louisiana and Maine instituted, Montana has made similar efforts and has addressed yet another issue with NAGPRA: its exclusive ethnic protection of Native Americans. The Human Skeletal Remains and Burial Site Protection Act, enacted in 1991, asserts that protection is expanded to all “marked, unmarked, recorded, registered or unregistered graves or burial grounds” on both state and private lands.[[48]](#footnote-48) Further, no limitation is placed on the ethnicity or cultural or religious affiliation of remains and mandates reinterment after any sort of study or discovery.[[49]](#footnote-49) Federal NAGPRA legislation should be amended to include all remains to ensure that there is no threat of dispute over whether remains are Native American or not. They should simply be viewed as human remains that deserve a respect and reverence as well as careful handling.

Issues with identification also persist post-NAGPRA legislation. Antiquated archaeological data are often the only data available for some artifacts and remains, and this presents problems when it comes to determination of cultural affiliation. Throughout the late 1800s and early 1900s when collection of Native American archaeological artifacts was in vogue, data on those materials was often riddled with gaping holes as to context. Field notes usually consisted of physical description of the artifact, but offered no contextual or other archaeological details, making the identification process difficult.[[50]](#footnote-50) NAGPRA and museums heavily rely on existing inventories and accompanying data for identification. When these are as antiquated and undetailed as they often are, this process becomes almost impossible and repatriation efforts suffer the consequences. Here is yet another reason why Native American input, including oral histories, need to be taken into full consideration as attempts are made to establish original context.

A major contemporary issue with Native American rights in the United States that affects NAGPRA and hinders its success is the fact that there are hundreds of Native American tribes and bands that are not federally recognized.[[51]](#footnote-51) NAGPRA explicitly defines the term “Indian tribe” as meaning “any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village…which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”[[52]](#footnote-52) In other words, those groups not federally recognized yet still consider themselves biologically and culturally Native Americans are not eligible to make claims for repatriation. This is an issue that needs to be addressed outside of NAGPRA in order for NAGPRA to be made more effective in its repatriation efforts. This can be addressed in several ways, whether it is a matter of getting certain tribes on the list of federally recognized tribes or expanding NAGPRA to include any group that can trace ancestral roots in America prior to European invasion.

One such group facing the repercussions and obstacles of NAGPRA’s exclusion of non-federally recognized tribes are the Gabrielino/Tongva people of Santa Catalina, an island 22 miles off the coast of southern California and the adjacent Los Angeles Basin. Prior to European contact in 1542, the Gabrielino/Tongva community had resided in this area in autonomous villages for centuries. Historically, the Santa Catalina Tongva would trade with the mainland Tongva, trading items such as soapstone artifacts, marine mammal pelts, worked deer bone, and more.[[53]](#footnote-53) The Tongva, later named Gabrielino by Spanish explorers, were supposed to obtain designation of federally recognized after the signing of the Treaty of Guadalupe Hidalgo with Mexico in 1848. However, after lobbying by the local ranch owners who relied on Tongva for the majority of their workforce, the Tongva were stripped of the designation so they would not be relocated to reservations and taken away from the ranches. Today, the Gabrielino/Tongva are facing many more obstacles than the federally recognized tribes as they attempt to file for repatriation of objects from the Ralph Glidden collection, now scattered throughout different museums across the country. Until they receive federal recognition, they will most likely fail to have any objects repatriated despite their well-documented historical connection to the objects.[[54]](#footnote-54)

A final issue with NAGPRA is that there is no official explanation or clarification of rightful possession. Many disputes have arisen between Native American tribal representatives and museums because museums claim that those cultural items which they bought or were given are rightfully theirs to display. However, the major issue with this is that often items that were given to museum officials were given under duress.[[55]](#footnote-55) For instance, there is the case of an Apache healer who was forced to sell his special ceremonial medicine hat to a museum field agent. However, the Apache believe that their items belong to their Holy Beings and no single Apache has the right to sell or give a sacred item to anyone.[[56]](#footnote-56) Because of this pressure from the museum agent and the traditional Apache ownership traditions, the museum would have no right to the object. NAGPRA needs to be expanded to include explicit explanation of right of possession to avoid dispute cases such as these.

**IV. Case Study: Kennewick Man**

On July 28th, 1996, two pedestrians stumbled across human remains on the banks of the Columbia River in Kennewick, Washington. Archaeologist James Chatters was contacted by the Benton County coroner to spearhead the excavation and recovery.[[57]](#footnote-57) Due to a stone point embedded in the hip bone of the remains, it was assumed that they were extremely old. This was confirmed when a small sample of a metacarpal bone was dated using radiocarbon. The remains were revealed to have been from approximately 8,000 to 8,500 years ago and have been named Kennewick Man. This discovery caught the attention and interest of many as the physical characteristics of the individual were inconsistent with the current expectations and thus raised many new questions in the archaeological community. At first, the United States Army Corps of Engineers, which was maintaining the federal land on which the remains were found, took control of them. Since the discovery, Native Americans have been challenging physical anthropologists and archaeologists for possesson of the remains. At first, the Army Corps of Engineers decided the local Northwestern tribes—the Umatilla, the Yakama, the Nez Perce, the Colville, and the Wanapum—who were calling for joint repatriation had rightful claims under NAGPRA’s legislation, and were prepared to deliver them for burial.[[58]](#footnote-58) However, anthropologists rebutted with the argument that the remains yielded great potential for international significance and could shed light on humanity’s origins, thus it was incredibly important that the remains be transferred to the Smithsonian for further study.[[59]](#footnote-59) Since at the time it could not be proven that the remains were indeed Native American, they were transported to the Burke Museum and the DNA has since been extracted and sent to the world’s leading genetics lab in Copenhagen under the direction of Eske Willerslev.[[60]](#footnote-60)

One of the major issues that this case exhibits is the potential damaging effects of biological and archaeological research on remains. Should the remains be determined to be Native American—as the latest research suggests—then the removal of the metacarpal for dating and the extraction of DNA could be detrimental and compromising to the remains in the eyes of the tribe. In addition to this, claims have been made by several scientists that parts of the remains have gone missing, such as parts of the femur.[[61]](#footnote-61) This makes it evident that more careful monitoring is needed and that any research to be conducted must first be approved a NAGPRA review committee. Another issue has resulted from claims based on the form of the skull suggesting that Kennewick Man may not be Native American, but rather is of East Asian origin. If this were found to be true, his remains would not even fall under NAGPRA’s jurisdiction. There is no explicit process in NAGPRA for remains that could *potentially* be Native American.[[62]](#footnote-62) Further, the Kennewick Man case raises the question of whether or not Section 7 of NAGPRA applies to newly found remains. Section 7 outlines the process for repatriation of those objects possessed by museums and other institutions, not those newly discovered.[[63]](#footnote-63) In theory, the handling should be the same as if the remains were in a museum, but there is no legislation explicitly outlining this and thus NAGPRA needs to be amended to address future cases.

Today, the battle for Kennewick Man continues. Members of the Northwest tribes frequently visit the Burke Museum where the remains currently rest and pay their respects to the “Ancient One,” and they continue to petition for his return. However, with new developments in the identification process and genome mapping, Kennewick Man may soon gain a more exact cultural affiliation and the tribes will be able to gain possession should the court rule in their favor. Until then, Kennewick man remains in limbo, belonging to no one.

**V. Conclusion: NAGPRA and the Anthropologist’s Duty**

It should be clear that NAGPRA has a considerable number of shortcomings that need to be addressed in order to increase the effectiveness of the legislation and facilitate positive relations between Native Americans and the scientific community. Anthropologists, as people who study humans in a holistic manner, have a unique perspective that should allow them to bridge the gap between Native Americans and Western-based science. Anthropologists have the power to start the conversation and mediate the dialogues between the two entities as they can see and articulate the value in both sides’ beliefs and priorities. The can speak to the cultural and the scientific significance of contested finds and those already residing in museum collections. Anthropologists need to lead the charge for educating both the current generation and the next generation of scientific investigators on the importance of NAGPRA and how to conduct less invasive research on remains. The formation of a panel outside of the NAGPRA review committee would be of great value as a sounding board of sorts for both constituencies to express their concerns and ideas for the future of NAGPRA. The ideas and special knowledge of a growing number of indigenous archaeologists and descendant communities should be taken into greater consideration in all relevant cases.[[64]](#footnote-64) Further, the American Anthropological Association and the American Alliance of Museums should amend their respective codes of ethics to accommodate NAGPRA. If this were to occur, the internal pressure for museums to cooperate with NAGPRA would be much greater. Unless the changes recommended here occur, NAGPRA will remain incomplete and fail to achieve its full potential.

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