

Tangled Truths
The Power of Worldviews, Memories, and Material Interests
in NAGPRA Disputes, 1990-2010
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ABSTRACT

Power relations among cultural, socio-economic, and political groups have been dynamic forces shaping American history. Within that changing world, relations between indigenous and non-indigenous groups have been complicated by a fundamental difference often ascribed to Western philosophy versus Native American spiritual traditions. In 1990, Congress codified that difference when it passed the Native American Graves Protection and Repatriation Act (NAGPRA) stipulating that Indian tribes and Native Hawaiians are unique among United States cultural groups. At the same time, NAGPRA began breaking down the Western vs. indigenous paradigm. The legislative process of NAGPRA strongly encouraged cooperation among indigenous peoples and the non-indigenous peoples who had collected their bones and belongings under earlier policies. In a shifting of power balance unusual in federal Indian policy, the NAGPRA legislative process brought together representatives from federally recognized tribes, the scientific community, and museums to effect compromises and reach a consensus with which all could live. NAGPRA required museums and other agencies accepting federal monies to inventory any collections of Native American items with the intent of giving control to tribes over the disposition of culturally affiliated human remains and certain classes of objects. Proponents of NAGPRA touted the law as a hallmark of consensus building. The first twenty years of its implementation proved that largely to be true. This dissertation considers cases that pushed or broke the limits of cooperation fostered by NAGPRA. Ignoring the bones and related funerary objects, this study analyzes

repatriation disputes over cultural artifacts to illuminate changing power relations among cultural groups in the United States. In the rearranging power relations NAGPRA instigated, people maneuvered for power over the “truth,” over whose memory, meaning, and spiritual worldview held authenticity. The repatriation negotiations in which people would not compromise were cases in which there existed strong differences in spiritual worldviews, cultural memories, or material interests. Congress could encourage cooperation, but it could not legislate acceptance of others’ spiritual worldviews, nor could it persuade people to relinquish engrained cultural memories. And without solid enforcement, the NAGPRA process could be outmaneuvered by those intent on pursuing their own material interests.

Dedicated to Jessica and Drew

You have rocked my world since drawing your first breaths.

And in memory of Jeff

Thanks for the desert hikes, the margaritas, and 25 years of conversations.

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PREFACE

When I was in elementary school during the 1960s, the national narrative proclaimed that Columbus had discovered America in 1492. Every October in art class we drew his three ships—the Niña, the Pinta, and the Santa Maria. That I remember those names nearly 50 years later is testament to how embedded that version of U.S. history had become. The dominant national narrative focused on kings and great men—almost invariably white and upper-class. Of course, that was not the whole story, not even the bulk of our story, and the ensuing decades brought tumultuous change in our lived experiences and our scholarship on history. Disparate voices clamored for their places in the United States. The national identity morphed and stretched to include the views and histories of people of color, women, the disabled, gays, and those holding spiritual beliefs beyond the trinity of Protestant, Catholic, and Jewish.

Native Americans, for their part, claimed Red Power. By the time I hit high school, Indians had occupied Alcatraz, Vine Deloria Jr. had written his *Indian Manifesto*, and President Richard Nixon had returned Blue Lake to the Taos Pueblo Indians. Hopis fought Navajos for land they had lost—a hint at the complexity that would arise in reshaping our multi-cultural society. In 1975, Congress ended the decades-old termination policy when it passed the Indian Self-Determination and Education Assistance Act. In the late 1980s, Congress responded to concerns over Native American bones being kept in museums and laboratories by bringing interested parties to the table to help shape a repatriation law. Senators John McCain of Arizona and Daniel Inouye of Hawaii, both deeply

involved in the debates, regarded the process as a sign of a shift toward greater cooperation.¹ This groundswell culminated in the Native American Graves Protection and Repatriation Act of 1990, which reflected compromises from Indians, museum curators, lawyers, and anthropologists. The legislative process of NAGPRA and the law itself shifted the balance of power regarding Indian affairs.

I entered graduate school as a mid-career journalist. During my 21 years at *The Arizona Republic*, I had covered Native American issues ranging from federal policy decisions to local school issues, reporting on events from the Pima-Maricopa reservations near Phoenix to the Hopi Reservation and the vast Navajo Nation encircling it in northeastern Arizona. I reported on the landmark Arizona Water Settlements Act that will bring the water back to the Gila River Indian Tribe after a century with nothing but a dry riverbed to remind them of why they call themselves *Akimel O’odham*, River People.² I visited the Hopi mesas of northeastern Arizona and was privileged to be welcomed to ceremonial katsina dances off-limits to most outsiders. My years as a journalist taught me that the interaction between Native Americans and Euro-Americans continues to be a

¹ See, for example, Daniel K. Inouye, “Repatriation: Forging New Relationships,” and John McCain, “Repatriation: Balancing Interests,” both as forewords to *Arizona State Law Journal* vol. 24, no. 1 (spring 1992).

² The Arizona Water Settlements Act, “To provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes,” became Public Law 108-451, signed by Pres. George W. Bush on Dec. 10, 2004.

juggle of cultures, ethos, and laws. That cultural interaction, sometimes peaceful and accommodating and sometimes colliding and exploding, is what interests me about NAGPRA.

In the 20 years since the law's inception, scholars from various interested groups have published books and articles on aspects of repatriation such as disputes over ancient bones, the problems of removing pesticides from ceremonial objects, and more recently, the religious discourse involved in repatriation. As a historian, I am interested in change over time. A litany of changing federal policies toward Indians over the past 250 years paints a history that sometimes was well-intentioned and other times was openly declared war. Those changing policies, along with the mixing of cultural groups on this continent, caused ramifications that continue to reverberate in reshaped memories, worldviews, and power dynamics.

Chapter 1

INTRODUCTION

Power relations among cultural, socio-economic, and political groups have been dynamic forces shaping American history. Within that changing world, relations between indigenous and non-indigenous groups have been complicated by a fundamental difference often ascribed to Western philosophy versus Native American spiritual traditions. That difference involved Christianity versus dogma-free indigenous beliefs, Enlightenment reason and logic versus intuitive knowledge, and a hierarchical system of life in which man stands at the top versus a life system in which men, women, and children are integral, but not superior, aspects of the larger world. An entire subfield of scholarship exists on that juxtaposition, following Robert F. Berkhofer Jr. and Edward Said's 1978 books. Berkhofer, in *The White Man's Indian*, wrote that "the essence of the White image of the Indian has been the definition of Native Americans in fact and fancy as a separate and single other."³ Edward Said made the concept of "the other" more widely known in his work, *Orientalism*, in which he argued that cultures and histories cannot be understood without studying "their configurations of

³ Robert F. Berkhofer Jr., *The White Man's Indian* (New York: Random House, 1978), xv. See also Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, MA.: Harvard University Press, 1981). Joseph L. Graves Jr., *The Emperor's New Clothes: Biological Theories of Race at the Millennium* (New Brunswick, N.J.: Rutgers University Press, 2001).

power.”⁴ Conversely, one might note that many indigenous groups referred to themselves as “the people,” which implies that everyone not in their group was “the other.”⁵ An aspect that is crucial to the differences between indigenous and non-indigenous ways of seeing the world is how they conceive the notion of power, or more specifically, of what creatures possess what forms of power. Relations of power, Michel Foucault has told us, exist in all societal interactions regardless of whether we are conscious of them. It follows that understanding, or at least acknowledging, the different concepts of power becomes crucial in analyzing relations of power, a central part of this dissertation.⁶

Congress codified that aspect of “other” in 1990 when it passed the Native American Graves Protection and Repatriation Act (NAGPRA) stipulating that Indian tribes and Native Hawaiians are unique among United States cultural groups.⁷ The legislative process of NAGPRA, while acknowledging the anomaly

⁴ Edward W. Said, *Orientalism* (1978; repr., New York: Random House, 1978), 5.

⁵ In this work, I use tribal or band names when writing about a specific group. For broader aspects, I use the terms “Native Americans,” “Indians,” and “indigenous peoples” interchangeably.

⁶ As a person reared in the Catholic faith rather than a Protestant Christian church, research into Native Americans’ concepts of power brought to me a realization that many of their concepts are closer to Western religions than one might want to think. I find parallels between the indigenous concept of supernatural powers and the Catholic hierarchy of the Trinity, the Blessed Virgin, the angels and the saints. With this realization comes an open-mindedness well suited to analyzing the Western versus indigenous paradigm.

⁷ Public law 101-601, 25 USC 3001 et seq., enacted Nov. 16, 1990. Section 12 of the law states: “This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and

of native cultures, strongly encouraged cooperation among indigenous peoples and the non-indigenous peoples who had collected their bones and belongings under earlier policies. In a shifting of power balance unusual in federal Indian policy, the NAGPRA legislative process brought together representatives from federally recognized tribes, the scientific community, and museums to effect compromises and reach a consensus with which all could live. NAGPRA required museums and other agencies accepting federal monies to inventory any collections of Native American items with the intent of giving control to tribes over the disposition of the human remains and associated funerary items of their relatives.⁸ For unassociated funerary items, sacred objects, and objects of cultural patrimony, NAGPRA required those institutions to summarize collections and notify the affiliated tribes. If the tribes requested repatriation, the institution would have to show right of possession to keep the items. The Act also ordered the Secretary of the Interior to establish a seven-member Review Committee “to monitor and review the implementation of the inventory and identification process and repatriation activities.”⁹ The Committee, among its other duties, heard disputes between parties that could not reach a settlement.

should not be construed to establish a precedent with respect to any other individual, organization or foreign government.”

⁸ The final regulations of NAGPRA defines “Native American” as “of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii.” 43 CFR 10.2(d).

⁹ 25 U.S.C. 3006 (a).

Proponents of NAGPRA such as Senators Daniel Inouye and John McCain touted the law as a hallmark of consensus building and termed it human-rights legislation.¹⁰ Key members of the Society for American Archaeology who had been involved in the legislative work wrote that NAGPRA was “a carefully crafted legislative consensus that balances the interests of various parties in human remains and cultural objects.”¹¹ The first twenty years of its implementation proved that largely to be true. This dissertation considers cases that pushed or broke the limits of cooperation fostered by NAGPRA. Ignoring the bones and associated funerary objects, this study analyzes repatriation disputes over cultural artifacts to illuminate changing power relations among cultural groups in the United States.¹² Cooperation requires sharing power, a human behavior that often is limited. I argue that the power sharing intended by NAGPRA requires seeing others as fully human by according their worldview equal respect; it is hampered by past federal policies; and it can be subverted when one considers his or her own material interests to be more important than

¹⁰ See for example, Daniel K. Inouye, “Repatriation: Forging New Relationships,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 1-3; and John McCain, “Repatriation: Balancing Interests,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 5-6.

¹¹ William A. Lovis et al, “Archaeological Perspectives on the NAGPRA: Underlying Principles, Legislative History, and Current Issues,” in *Legal Perspectives on Cultural Resources*, Jennifer R. Richman and Marion P. Forsyth, eds. (Walnut Creek, CA.: Altamira Press, 2004), 165.

¹² I acknowledge that repatriating human remains was the impetus for the 1990 law, but this study sets aside the headline-grabbing issues relating to human remains in order to consider the quieter yet important issues relating to human-made objects and the cultures that created or later owned them.

the tenets underlying repatriation. The historical significance of this dissertation is that disputed repatriations were not about the objects per se, but rather what those objects meant in the larger setting of a culture—they reveal how people understand connections between their past and present. In the rearranging of power relations NAGPRA instigated, people maneuvered for power over the “truth,” over whose memory, meaning, and spiritual worldview held authenticity. The repatriation negotiations in which people would not compromise were cases in which there existed strong differences in spiritual worldviews, cultural memories, or material interests. Congress could encourage cooperation and mandate transfers of objects, but it could not legislate changes in people’s spiritual worldviews, nor could it persuade people to relinquish engrained cultural memories. And without solid enforcement, the NAGPRA process could be outmaneuvered by those intent on pursuing their own material interests.

This ethnohistorical study will discuss various interrelated issues that may have a profound effect on the historical meanings of native artifacts. Issues of power—metaphysical, diplomatic, military, and economic—come out in the testimonies over the artifacts. The NAGPRA dispute process allows negotiations and compromise in its goal of conflict resolution. This dissertation also addresses an updated version of conflict resolution encouraging the tribe and opposing party to come to a consensus, which for some native groups was the traditional way of resolving issues. This study will address tangled truths in different versions of history, even among disagreeing tribes, which can be harder to resolve than tribe-versus-museum problems.

By looking at disputes over cultural artifacts, we have an opportunity to learn some of the ways in which people understood aspects of their own history and cultural practices. NAGPRA created a forum for these narratives, with recorded testimony that offers a look into indigenous points of view, not just about their pasts, but about the effect their pasts have on the present. This allows a deeper understanding, an insider's story, about indigenous history as it relates to the dominant culture. The significance of the iconic artifacts central to this dissertation changed over time because of interactions among different cultures. Those interactions signified changing relations of power—from the obvious power of the federal government to give de facto authority to missionaries, land buyers, and collectors, to the more subtle power of museum curators to display items in their collections as they chose. Before NAGPRA, the non-indigenous culture held the power to define the dominant meanings of those items, meanings which often continued to be linked to a nineteenth-century view of Indians. The large collections of objects acquired from Native Americans during the late nineteenth-century were used to further scientific study, interpret cultural histories, and elicit aesthetic appreciation. The objects, whether in museums or private collections, also to some degree evoked nostalgia for a bygone era in the country's history.

NAGPRA developed from compromises hammered out amidst a growing public clamor, from a realization that power must be shared. The legislative process behind NAGPRA and the repatriation disputes that went before the Review Committee reveal multicultural interactions more complex than the long-

accepted Western versus Indian paradigm that historical scholarship has accepted. Museum directors disagreed over aspects of the law; scientists disagreed with some museum directors; some Native Americans seemed comfortable providing evidence to outsiders to win control of their objects; other Native Americans argued strongly that the powers inherent in the objects forbid people to speak to the uninitiated. NAGPRA's crafters attempted a difficult task, and for the most part should be commended for success in achieving a workable law. Yet its foundation was laid on the detritus of earlier federal policies and on the false notion that cultures are static. These case studies show that not only have cultures been dynamic but that those dynamics played out in degrees of cultural affiliation that resisted NAGPRA's approach. Together, the case studies demonstrate how worldviews, memories, and material interests have been negotiated over time. The interaction of these three concepts under changing power dynamics builds a theoretical model that could be employed beyond NAGPRA.

To analyze the disputes, I adopted a theoretical framework suggested by anthropologist Arjun Appadurai in *The Social Life of Things: Commodities in Cultural Perspective*.¹³ Appadurai, who edits the collection of essays, is useful in two ways: First, he argues for the importance of following the trajectories of the artifacts' pasts (their social lives) because it is "only through the analysis of these trajectories that we can interpret the human transactions and calculations that

¹³ Arjun Appadurai, ed., *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge, UK: Cambridge University Press, 1986).

enliven things.”¹⁴ It is that approach that brings us to the underlying theme of this dissertation, which considers the changing power dynamics of cultural groups in American history. The exchanges of possession and ownership of the artifacts in these case studies illustrates “who is permitted to exercise what kind of effective demand in what circumstances,” which changed depending on the lived realities of the times.¹⁵ Secondly, Appadurai points out that although “contemporary Western common sense” tends “to regard the world of things as inert and mute, set in motion and animated, indeed knowable, only by persons and their words,” he notes that in many societies (and here I would refer to Native American traditional worldviews) “*things* have not been so divorced from the capacity of *persons* to act and the power of *words* to communicate.”¹⁶ We will see in the disputes this friction between the ways Native Americans perceive the objects (at times imbued with life) and the ways the museum representatives see them (as inanimate objects). Another essay from *The Social Life of Things*, “The Cultural Biography of Things” by anthropologist Igor Kopytoff, explains that such a biography is approached in the same way as that of a person. He suggests asking, “what, sociologically, are the biographical possibilities inherent in its ‘status’ and in the period and culture, and how are these possibilities realized?”¹⁷ Most

¹⁴ Ibid., 5.

¹⁵ Ibid., 57.

¹⁶ Appadurai, “Introduction: Commodities and the Politics of Value,” in Ibid., 4. Emphasis mine.

¹⁷ Igor Kopytoff, “The Cultural Biography of Things,” in Ibid., 66.

germane to this dissertation is Kopytoff's theory that when two cultural groups interact, the significance about "the adoption of alien objects—as of alien ideas—is not the fact that they are adopted, but the way they are culturally redefined and put to use."¹⁸ The person creating an item understands its use and meaning according to his or her cultural viewpoint, with perhaps some individuation accorded to it. When someone from another culture acquires that item, he or she may not understand the intended meaning and may appropriate it for an entirely different use. Conversations during the NAGPRA disputes bring out a simple proof of that: People used the term "artifacts" as a general description of indigenous objects in museums, yet more than one tribal member pointed out that the root of that word is "art," and that the items had not been intended as art but as utilitarian to the community's needs.

To illustrate my argument, I analyze disputes over iconic representations of indigenous history: wampum, scalp shirts and other war accoutrements, and ceremonial headdresses. As icons, the items have been miscast over time. Wampum was not merely used as currency, but also was woven into tribal belts denoting diplomatic power in the Iroquoian Confederacy. Lakota warriors designated as "shirt wearers" on the Great Plains wore buckskin shirts fringed in hair given by community members they protected through military prowess, but Euro-Americans often thought the hair had come from the heads of fallen enemies. Western Apache headdresses, thought of as masks by outsiders, were and are considered by the indigenous to transcend human existence and possess

¹⁸ Ibid., 67.

metaphysical power. By studying the artifacts' social lives we learn they were alienated from the indigenous groups during eras of social change, times when power dynamics shifted to create particular realities and mindsets. The different people who possessed such items gave them different meanings, which did not remain static but changed over time. A century or more later, the artifacts continued to reverberate back to those realities, connecting the groups' past and present.

Ruptures in the social status quo invariably make for interesting scholarship. Think revolution, civil rights, industrialization, massive immigration, deep economic depressions—they play as a mental video of the main chapters in history textbooks. Those ruptures are useful to scholars because they throw open the balances of power among different cultural groups and offer a window for analysis. NAGPRA's shift in power balance prompted scholarship from many viewpoints—attorneys, anthropologists, native activists, museum curators—offering a variety of opinions on what the changes meant for the present and the future. Would museums lose their collections? Would anthropologists lose their ability to contribute to research? Would tribal elders be able to resume ceremonies that required specific implements? Would indigenous peoples be considered fully human? Attorney Morris A. Fred writes that NAGPRA provided a legal “culture” which Native Americans, anthropologists, and museum representatives used “not only to resolve repatriation issues but also

to negotiate the boundaries of their respective cultures.”¹⁹ I begin with the premise that NAGPRA is an intellectual forum in which different groups negotiated boundaries, but I extend it back through history to learn what those negotiations reveal about how those cultural boundaries changed over time.

Among the disputes over cultural artifacts, the Western Apache NAGPRA Working Group stands out in that it brought three disputes against three museums, each time consistently arguing its case based on a specific spiritual worldview. The first case study in this dissertation focuses on the Apaches’ dispute against the Field Museum of Chicago, but includes aspects of their disputes against the Denver Art Museum and the American Museum of Natural History. The second case study again involves the Field Museum; however the dispute is not between the museum and a tribe but rather between two tribes of Oneidas over a tribal wampum belt dating to the American Revolution. This case pits conflicting cultural memories and illustrates the reality that federal recognition of tribes was a somewhat arbitrary delineator. The third case study addresses the standoff that occurs when a small museum wants to sell valuable items rather than repatriating them. I analyze the struggle over a nineteenth-century war shirt that Washington College of Maryland had displayed for decades as a “scalp shirt” belonging to Lakota warrior Crazy Horse before selling it in 1996 at Sotheby’s.

Why are the disputes significant to study? In a philosophical sense, what a person is willing to fight for tells us something about that person’s values, needs,

¹⁹ Morris A. Fred, “Law and Identity: Negotiating Meaning in the Native American Graves Protection and Repatriation Act,” *International Journal of Cultural Property* Vol. 6, No. 1 (1997): 199-230.

and desires. The NAGPRA process encourages consultation and discussion. Even at the point when disputants stand before the NAGPRA Review Committee, the committee tries to help them find middle ground. From a pragmatic stance, the testimonies and supplemental written materials produced by the disputants are primary sources, the joy of historians. The meanings of these artifacts, as articulated during the NAGPRA Review Committee meetings, enriches our understanding of American history. The public testimony reveals how far tribes and museums are willing to open their pasts to the public in order to regain or retain something they deem important. Indeed, the need to reveal information usually kept private is perhaps a limiter on these disputes. The Apaches walked a fine line in that area, at times revealing some information (such as personal ceremonial names) but more often, in the three disputes, arguing that they could not and would not offer more explanations.

After Congress passed NAGPRA in 1990, Senator John McCain of Arizona wrote that it reflected a “national consensus” on repatriation issues.²⁰ He thanked participants from the American Association of Museums, Society for American Archaeology, Native American Rights Fund, National Congress of American Indians, and the Inter Tribal Council of Arizona as well as the Trustees of the Heard Museum for their efforts in shaping the legislation. McCain voiced his hope that NAGPRA’s consensus-based process was only the beginning of an era of cooperation among the disparate parties. Those pre-NAGPRA discussions

²⁰ John McCain, “Repatriation: Balancing Interests,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 5.

set the tone for implementing the law and overall, in the first two decades, the process resulted in many positive outcomes. Museums, universities, and other institutions accepting federal funds wrote up summaries of their Native American collections, notified tribes that could be presumed to have cultural affiliations to the artifacts or bones, and entered into negotiations over the proper dispensation of items covered under NAGPRA. Generally, extended conversations and acts of cooperation led to decisions acceptable by the interested parties. There were surprises. Museum curators' early fears that their exhibit cases would be emptied by demands for repatriation did not materialize; in some cases, the tribes did not want the artifacts or bones returned.²¹

In the first 20 years since the passage of NAGPRA, the Federal Register published 520 notices of intent to repatriate objects, representing over 150,000 cultural artifacts returning to federally recognized tribes. These notices only include items being returned. Other negotiations resulted consensually in the artifacts remaining with the museum or other possessing institution. In either outcome, the different groups negotiated, cooperated, or compromised without issue. Cases in which no one would compromise eventually went to the NAGPRA Review Committee for arbitration.²² In the 42 committee meetings from 1992 to 2010, fewer than 20 disputes rose to the agenda, and some of those

²¹ *Oversight Hearing on the Implementation of the Native American Graves Protection and Repatriation Act*, April 20, 1999. (Statement of Senator Daniel K. Inouye, vice chairman, Committee on Indian Affairs).

²² Section 8 of NAGPRA established a Review Committee "to monitor and review the implementation of the inventory and identification process and repatriation activities."

were over human remains rather than cultural artifacts.²³ The overall trend was clear: the vast majority of negotiations were worked out under the guidelines of NAGPRA without need of intervention. These statistics speak to the relative success of the cooperative era that NAGPRA proponents envisioned, but they beg a question: In a process largely marked by cooperation and compromise, what did people feel compelled to fight for?

Like the social ruptures in history, the disputed repatriations open a lens into a richer understanding of intercultural relationships. The Review Committee meetings were where federal Indian policy met culture, as the committee members tried to sort through the disputing parties' assertions about the artifacts in order to reach a recommendation for proper disposition of the items. NAGPRA disputes offer a glimpse of how twentieth-century indigenous elders and tribal officials understood their own histories, customs, and traditions, as well as how they understood their ancestors' interactions with members of the dominant culture.²⁴ The disputes demonstrate the types of conversations—perhaps more strident than some—that go into the ritual of repatriation. The different parties

²³ The exact number of disputes depends upon how one counts. Some disputes were entertained repeatedly, some were discussed but never heard, and others came before the committee once and were resolved. The National NAGPRA Office hired law intern Sally Butts in 2010 to analyze NAGPRA Review Committee Actions; that study was still in draft form at the time of this writing and not for public distribution. However, Ms. Butts shared her draft with me, and though we considered “disputes” somewhat differently, her report is consistent with my statement that fewer than 20 disputes came to the committee.

²⁴ This paper is based on testimony offered publicly during disputes. The artifacts may well have other meanings that tribal representatives were unwilling to discuss in such a forum. Such possible meanings are not part of this study.

negotiated not only the artifacts' dispensation but more fundamentally, their cultural meanings. Such meanings changed over time by the acts of collection, exhibition, and sometimes repatriation. The disputes were over aspects of peoples' histories that remained important to them. The artifacts represented those histories.

The question of what people feel compelled to fight over could as easily be asked by an attorney or sociologist. As an historian, I am interested in understanding the ways in which cultural relationships and power dynamics changed over time. Historians have not paid much attention to NAGPRA's twenty-year history because the 1990 law is relatively new. However, the items being repatriated span our country's history and illuminate aspects of inter-tribal relationships as well as Euro-American-indigenous relationships over the past three centuries. In disputed repatriations, the historical truth was contested, and the parties testified to meaning and identity based on their histories as they understood them. This study contributes to the American narrative (one might say, our collective memory), which until the mid-twentieth century had largely been constructed by white men. The Civil Rights Movement of the 1950s, followed by Second Wave Feminism and Identity Politics of the 1960s and 1970s, prodded open that closed narrative, adding diverse voices and memories. During NAGPRA disputes, Native Americans testify about aspects of their past they might prefer to remain silent on. They testify publicly in order to persuade the other party to relinquish an important artifact. Those testimonies add episodes to our collective history.

Although disputes arose among different indigenous groups and different holders of the artifacts, there were three recurring themes—worldviews, memories, and material interests—around which the disputing parties wrestled for power. The disputes illustrate that people were reluctant to share power by compromising when there remained vital differences in cultural memories, worldviews, or material interests.

The case studies also offer an opportunity to reconsider established historical narratives about the interactions among indigenous and non-indigenous groups. In an essay published two years after NAGPRA's passage, Vine Deloria Jr. encouraged archaeologists and Native Americans "to rework and restate the findings of major importance in terms and language that eliminates cultural bias and attempts to give an accurate summary of what is known." He acknowledged that such an effort might not be possible on a national scale, "but we can certainly consider the beneficial impact such a recasting would create with respect to specific tribes and scholars and perhaps come up with a solution or alternative way of establishing good relations for the future."²⁵ Deloria aimed his remark at anthropologists, but his hope that knowledge could be recast seems just as pertinent for historians. This dissertation attempts to lessen the cultural bias in the narratives by giving equal consideration to the tangled truths of the different

²⁵ Vine Deloria Jr., "Indians, Archaeologists, and the Future," *American Antiquity* Vol. 57, No. 4 (1992): 598.

peoples entwined in history. It presents three case studies exemplifying the disputes brought to the attention of the Review Committee.²⁶

The biannual Review Committee meetings that began in 1992 became the stage where culture and policy met, where the poignancy of life dramatized the institutional weight of law, and a variety of opinions and interpretations surfaced. Tribal representatives, spiritual leaders, anthropologists, museum curators, and attorneys testified about the meanings of specific indigenous artifacts, trying to persuade the seven Review Committee members to find in their favor. Bilingual indigenous speakers struggled to explain concepts in English that they had previously only thought about in their native languages. Anthropologists argued over interpretations of meanings on objects from a century earlier. Museum curators strove to balance their long-held accession practices and fiduciary duties with the new atmosphere that questioned their rights of possession. Members of the public commented on the proceedings, and committee members debated and arrived at decisions on the record. Transcripts and minutes of those testimonies and committee debates, buttressed by supplemental written materials submitted to the committee by the interested parties, comprise the majority of primary source material for this work. The Review Committee's findings published in the Federal Register, and an investigative report by the Federal Bureau of Investigation about a scalp shirt, provide additional primary source material.

²⁶ Other disputed repatriations follow the three themes of worldviews, memories, or material interests, and are summarized in Appendix A.

The first meeting of the NAGPRA Review Committee was held April 29 to May 1, 1992, in Washington D.C. The 42nd meeting was held June 11, 2010, via teleconference. Notices of upcoming meetings were posted in the Federal Register, and meeting minutes were made available through the National NAGPRA Office website. I reviewed minutes of the forty-two meetings to compile a list of disputes over cultural artifacts, and then requested full transcripts of the relevant meetings. Additionally, I obtained copies of supplementary materials that had been submitted by the disputing parties to the Review Committee. All these materials, for the purposes of analyzing the disputes, constituted primary sources.

From the handful of disputes over cultural artifacts that came in front of the Review Committee, I chose these three for a few reasons. First, they exemplified the different themes I found running through the other disputes, so they could speak to those themes. These disputes involve cases in which people tried to push the bounds of NAGPRA or narrow its scope to meet their own interests. But each of these cases also stood out in individual ways and helped define the limitation of NAGPRA's power. The Western Apaches brought three distinct disputes against three different museums to the committee, each time with the same complaint: The museum, by refusing to acknowledge the cultural patrimony inherent in the Gaan, was showing disrespect to those beings and also saying that the Apaches' knowledge of their own cultural past was not as relevant as the museum curators' understanding of that past. The Apaches argued that their community continued to suffer because their ancestors had sold the Gaan

and those forces needed to be appeased. The Review Committee consistently agreed with the Apaches that the items were cultural patrimony (committee members were mixed on whether the Gaan held living beings), yet in none of the cases did the museums acquiesce to the Apaches' terms. The Oneida dispute takes repatriation outside the expected binary of tribe versus museum; the museum wanted to repatriate a tribal belt, but the Oneidas of Wisconsin and New York argued for ownership of it. NAGPRA authorized the Review Committee to determine the "most appropriate claimant," but committee members seemed hesitant to uphold one sovereign tribe's rights over another's. The committee punted the case back to the two tribes to work out between themselves. As of 2011, they had not come to a solution. The first two case studies involve tribes and museums, and debate knowledge of anthropologists, ethnographers, and tribal elders. The third case study considers NAGPRA's limitations in dealing with the collectibles market and a museum whose officials were well aware of the monetary value of the Native American items they possessed. It demonstrates how strongly NAGPRA depends on good faith negotiations; when parties refuse to participate willingly, enforcement depends on the investigative and evidentiary processes of the legal framework. NAGPRA expanded the types of evidence that could be used (such as oral histories of tribes) but when the FBI investigated the Crazy Horse shirt, the agent sought empirical evidence that the U.S. Attorney's Office could use to build a case that would hold up in court. Those rules of evidence are greater and narrower than NAGPRA's.

Taken together, the struggles in these disputes illustrate unwillingness to compromise when there were strong differences in spiritual worldviews, cultural memories, or financial interests. They also span different geographies, eras, and federal policies: Revolutionary times into the Early Republic, when Indian removal began in New York; nineteenth-century Indian Wars on the Great Plains; and early twentieth-century reservations in the Southwest.

The 1990 passage of NAGPRA sparked a growing awareness of the continued relevance of issues regarding proprietary rights of native culture—meaning physical accoutrements as well as intellectual property—and a growing emphasis on questions regarding whose history, whose culture, whose customs they are. This dissertation overlays cultural, legal, and policy views to illuminate the complexity of the past and thus show how intricately entwined the cultures in the United States have become. The history of these artifacts has become a joint history, owned not solely by the indigenous peoples nor entirely appropriated by the Euro-Americans. The artifacts, and the cultures from which they came, became entangled over the course of time through the intervention of people outside those cultures. Their history is now, if not shared, deeply entwined, as impossible to separate from the provenance of the artifacts as the mix of cultures on this continent is impossible to separate. The tangled histories of these artifacts reveal facets of our country's history that are important to our understanding of multi-cultural relationships today.

Globally, the ownership of cultural artifacts taken by imperialists or colonizers is an ongoing, at times contentious issue. Debates center on such

questions as “Whose history is it?” or “Who owns the past?” NAGPRA offers a forum for a deeper look at such questions, with aspects of those discussions apparent in the testimonies before the NAGPRA Review Committee. Yet United States history differs from that of countries where the colonizers eventually withdrew. In the United States, the colonizers remained after severing ties with the colonizing nation, creating a venue for a mixed history. The push westward toward the Great Plains further mingled indigenous groups as well as Euro-Americans. In essence, the shared culture that evolved, with its mixed points of origin, languages, and worldviews, is what people are negotiating during NAGPRA repatriations. Earlier U.S. Indian policies created problems that would complicate NAGPRA. Early Removal Policy forced many Oneidas from their New York homeland, resulting in two federally recognized tribes and a third tribe just across the border in Canada. War Policy spawned the practice of taking spoils of battles and resulted in Lakota cultural artifacts becoming a huge collectibles market. Early Reservation Policy, which required Native Americans to stay within the boundaries unless permitted to venture out, resulted in starvation for the Western Apaches, making them desperate enough to sell Gaan headdresses despite the negative power that action might bring down on their community. These policies contributed to the creation of an entwined history, and the cultural meanings of such iconic items as wampum, headdresses, and scalp shirts changed over time because of the different groups that possessed them. This study demonstrates that the process of creating meaning for these items is more complex than a binary of dominant culture versus indigenous peoples. I do

not engage the debate over the proper disposition of the artifacts in the three case studies. My interest is in the conversations, and what the negotiated meanings illuminate about U.S. history.

The idea that Americans reshape and revise history is not new. But these NAGPRA disputes offer particular lenses through which we can see some of the intricacies, some of the missteps and covering of tracks, involved in refining our country's story. This is important in the United States because it is a nation built of many diverse cultures, ethnicities, religions, and philosophies. Adding voices to our national narrative not only redresses past denials but helps us navigate the diverse world in which we live today. Because culture, a nebulous word at best, is never static. United States history is replete with cultures colliding, intermixing, annihilating, adapting. Much of the literature about NAGPRA focuses on issues of control: over human remains, cultural artifacts, or intellectual property. This dissertation deems the wampum belt, scalp shirt, and Gaan headdress as iconic, yet unlike icons whose symbolism remains clear, in these instances the objects' symbolism became obscured over time, entangled in the politics of the past. The disputes over these artifacts illustrate how identity and meaning are not static but dynamic, shaped by power struggles over conflicting cultural memories, worldviews, and material interests.

The case studies in this dissertation demonstrate that earlier Indian policy had been partially responsible for the repatriation disputes but that cultural differences also had contributed throughout history. Those differences were what pushed these cases into the dispute hearings. Congress could not legislate

changes in peoples' spiritual values or cultural memories; it could only legislate the balance of power.

Historiography

The scholarship that informs this dissertation is a kaleidoscope of three indigenous ethnographies (four when one considers the 1830s split of the Oneidas), NAGPRA policy and cultural meaning, cultural anthropology, religious theory, and memory studies.

Literature regarding NAGPRA is vast, mostly authored by attorneys, anthropologists, scientists, native writers, and journalists from the time of the law's passage. In 1992, the *Arizona State Law Journal* published a special volume of essays by some of the people who had been involved in crafting the law or arguing over it.²⁷ That volume, *Symposium: The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation-related Legislation*, was useful in understanding some views on the legal and political temperament of the time, and is cited in this dissertation.²⁸

The 1996 discovery of the ancient skeleton near Kennewick, Washington, launched an avalanche of literature in newspapers, magazines, books, and journals. That controversy centered on human remains but also gives a sense of

²⁷ *Arizona State Law Journal* Vol. 24, No. 1 (1992).

²⁸ When using this source, the reader should keep in mind that there were always divergent opinions even within the representative groups.

the intense emotions swirling around NAGPRA.²⁹ Some of the literature on NAGPRA specifically, or repatriation more broadly, can be categorized by authors' intents in advancing arguments. Andrew Gulliford, in *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (2000), argues that Native Americans are trying to preserve their life ways. He writes about repatriation but also discusses religious freedom and tribal identity. Joe Watkins offers his thoughts as an archaeologist of Choctaw lineage in *Indigenous Archaeology: American Indian Values and Scientific Practice* (2000). Winona LaDuke, in a collection of essays titled *Recovering the Sacred: The Power of Naming and Claiming* (2005), addresses the reburial concerns from her viewpoint as an Ojibwe and resident of White Earth Reservation in Minnesota. David Hurst Thomas, in *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity* (2000), blames racism for the historic treatment of the indigenous but argues for continued archaeological research that includes Native Americans. Other books present arrays of viewpoints by including essays from indigenous, non-indigenous, museum workers, and scientists. Among those books are *The Future of the Past: Archaeologists, Native Americans, and Repatriation* (2001), edited by Tamara L. Bray; *Native Americans and Archaeologists: Stepping Stones to Common Ground* (1997), edited by Nina Swider; and *Repatriation Reader: Who Owns American Indian Remains?* (2000),

²⁹ There are several hundred books about the Kennewick skeleton. See, for example, David Hurst Thomas, *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*, with foreword by Vine Deloria Jr. (New York: Basic Books, 2000); and James C. Chatters, *Ancient Encounters: Kennewick Man and the First Americans* (New York: Simon & Schuster, 2001).

edited by Devon A. Mihesuah. In 2002, anthropologist Kathleen Fine-Dare published a primer on NAGPRA that looked at the first decade of the law's implementation. Her stated purpose was "to offer a partial retrospective and cautious prospective about the ways the issues surrounding NAGPRA implementation have grown in scope and complexity over the past decade," emphasizing the need for scholars to incorporate Native perspectives into their study of United States history and politics.³⁰

Some of the literature is presented as guidebooks for others approaching repatriation. The National Museum of American History published *American Indian Sacred Objects, Skeletal Remains, Repatriation and Reburial: A Resource Guide* (1990), edited by Rayna Green and Nancy Marie Mitchell. The American Indian Ritual Object Repatriation Foundation published *Mending the Circle: A Native American Repatriation Guide* (1996), edited by Barbara Meister.

Broadening repatriation to the global stage, Cressida Fforde, Jane Hubert and Paul Turnbull edited *The Dead and Their Possessions: Repatriation in Principle, Policy and Practice* (2002) as part of the One World Archaeology series. The book argues that, although reburial has been seen primarily as an indigenous concern, there are other groups who want their dead returned, such as families of those who died in foreign wars, or families of people who "disappear" during culture wars in their own lands. Christine Quigley writes about repatriation, museums, and ossuaries in Europe as well as America in *Skulls and*

³⁰ Kathleen Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement* (Lincoln and London: University of Nebraska, 2002), 7.

Skeletons: Human Bone Collections and Accumulations (2001). *Who Owns the Past? Cultural Policy, Cultural Property, and the Law* (2005), edited by Kate Fitz Gibbon, puts forth “legal, practical, and factual arguments that have been overlooked or discounted” while “critically examining the emotional issues that have clouded the debate” over repatriation around the globe.³¹

Two scholars who use case studies to illustrate their arguments regarding NAGPRA are Roger Echo-Hawk and Greg Johnson. Echo-Hawk, a historian and assistant curator for Denver Art Museum, offers practical advice for people new to the NAGPRA process in *Keepers of Culture: Repatriating Cultural Items under the Native American Graves Protection and Repatriation Act* (2002). Focusing on repatriations involving Denver Art Museum and the development of partnerships with Native American groups, Echo-Hawk writes that he “makes no effort to sketch the history of NAGPRA and repatriation in the United States. Instead, this work illuminates what NAGPRA means in practice.”³² Echo-Hawk, who previously worked as a repatriation consultant for the Pawnee Nation, uses snippets of repatriation case studies to illustrate his points, such as how one determines whether an object is “sacred” under NAGPRA. Johnson, a religious scholar, comes closest to my approach of analyzing disputes before the NAGPRA Review Committee. In *Sacred Claims: Repatriation and Living Tradition*

³¹ Kate Fitz Gibbon, *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, (New Brunswick, New Jersey, and London: Rutgers University Press, 2005), xiv.

³² Roger Echo-Hawk, *Keepers of Culture: Repatriating Cultural Items under the Native American Graves Protection and Repatriation Act*, (Denver: Denver Art Museum, 2002), 3.

(2007), Johnson offers a discourse analysis of arguments raised by indigenous and non-indigenous parties in their disputes—primarily involving bones rather than artifacts. Johnson first observes that “tradition” in NAGPRA discussions was often described “as stable, fixed, unchanging, existing above and beyond the political fray of the contemporary world,” then he argues that “traditions become generative and alive in contexts of political and legal struggle.”³³ Again, his is not a history of NAGPRA or the peoples involved, and he readily acknowledges that the argument that tradition is not static has been discussed by scholars since the days of Franz Boas. Neither Echo-Hawk, with his emphasis on partnerships, nor Johnson, with his textual study of dispute testimony, looks at what conditions spurred parties into disputes rather than into compromises, which is part of what this dissertation considers. For those historical conditions, one looks at tribal ethnographies.

The Western Apaches, unlike their Chiricahua cousins, allowed soldiers, missionaries, and anthropologists into their community in the nineteenth century; some of these outsiders published their experiences and observations of the Apaches at Fort Apache and Cibecue. Albert B. Reagan, who served as administrative officer for the U.S. Indian Service at Fort Apache during 1901 and 1902, published his thoughts in two papers, “Notes on the Indians of the Fort Apache Region” in 1930, and “Archeological Notes on the Fort Apache Region, Arizona” in 1933. Ethnographer Grenville Goodwin began interviewing Apaches

³³ Greg Johnson, *Sacred Claims: Repatriation and Living Tradition*, (Charlottesville: University of Virginia, 2007), 3

in 1929. He lived among them on and off, learned their language, interviewed thirty-four elders to get a historical perspective, and interviewed younger adults for a contemporary view. His article “White Mountain Apache Religion,” published in 1938 in *American Anthropologist*, constitutes a strong source for the repatriation debate about the Gaan in chapter three. Goodwin’s primary work, *The Social Organization of the Western Apache*, was published posthumously in 1942. Anthropologist Keith H. Basso spent decades beginning in 1959 doing fieldwork with the Cibecue Apaches. His book, *Wisdom Sits in Places: Landscape and Language among the Western Apache*, aptly makes the argument of the importance of place to indigenous history and worldview. In the dispute against the Field Museum, the White Mountain Apache Tribe asked Basso to write a position paper for their case. That paper, “Ownership and Possession of Western Apache Gaan Head-Covering,” is cited in the dispute; in another dispute, Basso testifies in person. An unrelated court case provided useful background material in *A History of San Carlos and Fort Apache Indian Reservations: 1873-1950*, by Charles M. Cook. That 1976 report, a copy of which can be found at Sharlot Hall Archive in Prescott, AZ, helped explain testimony during the NAGPRA disputes, such as the reasons for cutting rations on the reservations.

Another notable early source on Apache worldviews is coincidentally also a source for chapter five on Crazy Horse. Army Captain John Gregory Bourke kept diaries of his experience as aide-de-camp to General George Crook from 1871-1883. Bourke’s best-known work *On the Border with Crook* is a paean to his commanding officer but also offers observations on the Apaches and the

Lakotas with whom they came in contact. After Crook's work chasing Geronimo along the Mexico border (but before the Chiricahua chief's surrender), he was put in charge of the Department of the Platte during the Great Sioux War of 1876-77. The Platte encompassed the Black Hills, Fort Robinson, and the Indian agencies where Lakotas moved after surrender. Bourke also wrote his observations of the Apache Gaan in "The Medicine-Men of the Apache," published as part of the *Ninth Annual Report of the Bureau of Ethnology: 1887-1888* by J.W. Powell. In 2003, the University of North Texas Press published a two-volume set, *The Diaries of John Gregory Bourke*, edited and annotated by Charles M. Robinson III. Those books made passages of Bourke's raw diary entries available, with Robinson's explanatory information and clarifications. The full collection of Bourke's diaries is held at the United States Military Library at West Point, NY.

The volatile nature of the Great Plains was not conducive to early ethnographic study. The Lakota bands under Crazy Horse and Sitting Bull remained violently opposed to white acculturation until late in the nineteenth century. Oglala Crazy Horse surrendered May 6, 1877 at Fort Robinson, Nebraska. Hunkpapa Sitting Bull surrendered at Fort Buford, North Dakota on July 19, 1881. The December 29, 1890 encounter between Seventh Cavalry and Lakotas at Wounded Knee Creek in South Dakota, portrayed as a battle in contemporary times but later understood more accurately as a skirmish followed by a massacre, is the event largely accepted as the end of the Plains Indian Wars. Scholars have pieced together Lakota history and culture from Army reports (including Bourke's writings), James Mooney's investigation of the Ghost Dance

a year after Wounded Knee, and the writings of Lakota Luther Standing Bear and Wahpeton Dakota Charles A. Eastman.

Reverend James Owen Dorsey studied the Eastern Sioux groups of Poncas and Omahas, but as Clark Wissler wrote in 1912, very little had been recorded about the Oglalas. Wissler published his observations and theories about the Oglalas in “Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota,” published that same year.³⁴ Physician James Walker, who began working on Pine Ridge Reservation in 1896, met Wissler in 1902 when the anthropologist visited to collect items for the American Museum of Natural History in New York. Walker’s approach to medicine had been to cooperate with the Oglala healers and gain their cooperation. He was so successful that the healers, whom Walker called “holy men,” initiated him into their ranks in 1905 and shared their privileged knowledge on the condition he would not publish it until after their deaths. Walker honored their request. He retired from Pine Ridge in 1914 and worked on several articles before compiling a manuscript on Lakota mythology. In an autobiographical statement he wrote that he had given most of the legends to his instructors to approve but could not do so with all of them because “the holy men ceased to exist before I had prepared the legends.”³⁵

³⁴ “Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota” was published in *Anthropological Papers of the American Museum of Natural History* Vol. 11, Part 1 (1912): 1-99.

³⁵ James R. Walker’s “Autobiographical Statement,” in *Lakota Belief and Ritual*, Raymond J. DeMallie and Elaine A. Jahner, eds., (Lincoln and London: University of Nebraska Press, 1980), 50. The autobiographical statement had not been published by Walker but was among his papers. Walker died December 11,

The Oneidas of New York and Wisconsin have been the subject of scholarship on several topics salient to this dissertation: As allies to General George Washington during the American Revolution, as the subjects of Christianizing by missionaries Samuel Kirkland and Eleazar Williams, the journey of some to Wisconsin or Canada, the land loss in New York and the land claims beginning around 1970. William N. Fenton's *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (1998), in addition to the political history of its title, also discusses spiritual traditions and explains the Condolence Ceremony in which dead sachems are mourned and replaced by "condoling" their position and name onto another man. Jack Campisi and Laurence M. Hauptman edited a collection of essays, *The Oneida Indian Experience: Two Perspectives* (1988), tracking Wisconsin Oneida history from seventeenth century in their New York homeland to the late twentieth century. The "two perspectives" refer to academic and indigenous; the New York Oneidas' perspective is not included. *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860* (1999), takes a similar approach but adds the voices of Oneidas in New York and Canada to those in Wisconsin. It is edited by Hauptman and L. Gordon McLester III, an Oneida. The two men also edited *The Oneida Indians in the Age of Allotment, 1860-1920* (2006), a collection of essays that includes oral histories gathered through the Works Progress Administration Language and Folklore Project of the New Deal. Joseph T. Glatthaar and James Kirby Martin wrote *Forgotten Allies:*

1926; his work on Lakota mythology was not published until 1983. See James R. Walker, *Lakota Myth*, Elaine A. Jahner, ed., (Lincoln and London: University of Nebraska Press, 1983).

The Oneida Indians and the American Revolution (2006), which explains the Oneidas' place in the Iroquois League, the difficulties of trying to remain neutral as Britain and the colonies moved toward war, the dousing of the League's council fire allowing each tribe to go its own course, and the consequences Oneidas suffered as the tribe that sided with General George Washington. *Oneida Iroquois Folklore, Myth, and History: New York Oral Narrative from the Notes of H.E. Allen and Others* (2004), by anthropologist Anthony Wonderly, connects Oneida myths with the peoples' history. George C. Shattuck, the attorney who successfully brought the Oneidas' land claims to federal court, wrote about the process in *The Oneida Land Claims: A Legal History* (1991). This body of work was useful in understanding the arguments the tribes made in their NAGPRA dispute against each other.

Overview of chapters

The three concepts on which this dissertation centers are developed in the case studies in chapters three, four, and five. To set the background for those, chapter two sketches the legislative process of NAGPRA, which led Senator John McCain to say that the law “reflects a national consensus on the issues surrounding the repatriation of Native American human remains and cultural items” and Senator Daniel Inouye to enthuse that he was hopeful that the legislative process behind NAGPRA would “serve as a hallmark for other

cooperative endeavors.”³⁶ The chapter will summarize some of the literature about the law and define certain terms in the law necessary for understanding the case studies. The chapter considers the negotiations and legislative actions in the late 1980s that led to NAGPRA and explains the role of the NAGPRA Review Committee, which arbitrates the disputes. The thesis of the chapter is that the legislative crafting of NAGPRA, although remarkable for its inclusion of different viewpoints, had intrinsic limitations because it still had to function within an established legal system reflecting Western norms. The chapter sets the historical background against which the Western Apaches argued for their spiritual worldview (chapter three), the New York and Wisconsin Oneidas argued against each other’s cultural memories (chapter four), and Washington College acted to protect its material interests (chapter five).

Chapter three primarily analyzes a dispute between the White Mountain Apache Tribe and the Field Museum of Chicago, a case that seems at quick glance what one might expect of a NAGPRA dispute: a tribe battling a museum. Yet the disagreement between the Apaches and the Field Museum was not that straightforward. It landed in front of the Review Committee because, although the Field Museum had offered to return the Gaan headdresses to the Apaches, museum officials would not admit that they had wrongful possession. The museum also insisted the Gaan headdresses were “sacred” but not “cultural patrimony” and that it was going beyond the requirements of NAGPRA by

³⁶ John McCain, “Repatriation: Balancing Interests,” *Arizona State Law Journal* 24, 1 (1992): 5; Daniel K. Inouye, “Repatriation: Forging New Relationships,” *Arizona State Law Journal* 24, 1 (1992): 3.

offering to return them. No one contested the memories of how these objects came to be in the Field Museum's control, but the Apaches and the museum officials disagreed on the validity of the transactions. While museum officials could produce itemized receipts for purchasing Gaan headdresses and related objects from tribal members in 1903, the Apaches argued that the items could not be owned by one man. The Apaches understood the Gaan to be living beings that could wield power over their human caretakers. The Apaches argued that their ancestors had agreed to sell them only to keep from starving, and that the community's social ills in the ensuing decades were a result of that disrespectful act. Their ancestors had feared the immediate power of the U.S. Army, but in 2006, the Apaches used the legal power of NAGPRA to try to appease the metaphysical power of the Gaan. This case study argues that NAGPRA did not legislate a shift in spiritual worldviews on either party, thus they reached the impasse.

We see in the three disputes brought by the Apaches to the Review Committee a progression of assertiveness under NAGPRA. In the first dispute, against Denver Art Museum in 2002, the Apaches wanted the Gaan returned respectfully and under NAGPRA, rather than gifted to them by the museum. The Apache representatives argued that the Gaan had been "spiritual gifts from the Almighty" and the museum had no right to possess, let alone give away, the Gaan.³⁷ In the 2006 dispute against the Field Museum the Apaches also wanted the Gaan returned respectfully and under NAGPRA, but specifically as items of

³⁷ Review Committee Meeting transcripts, June 1, 2002, 72.

cultural patrimony (perceived as a higher stature than sacred items). The Apaches also pressed the Field Museum officials to acknowledge that Charles Owen, the agent who bought the Gaan in 1901 and 1903 for the museum, had acted unethically.³⁸ In 2009, the Apaches did not meet in a formal dispute with the American Museum of Natural History, but appeared before the Review Committee asking its members to declare that the forty-five objects the museum had listed in a notice of intent to repatriate as “cultural items” should be deemed items of cultural patrimony.³⁹ These requests may seem a matter of mere semantics, but they demonstrate the Apaches’ understanding of the power of words. The Apaches’ worldview linked the language used, the respect shown, and the responsibility for alienation of the Gaan items from the tribe. They hoped to appease the supernatural powers of the Gaan by repatriating the items using the proper language and respect, and even better, by absolving their ancestors of responsibility for selling them. The Apache disputes demonstrated strongly the disjoint between their beliefs and mainstream Western philosophy. Vincent Randall, Dilzhe’e Apache Cultural Preservation Director from Camp Verde and former chairman of the Yavapai-Apache Nation, was a frequent spokesman during the three disputes brought by the Western Apache NAGPRA Working Group. In 2006, after repeatedly being asked by Review Committee members why getting their items back as “sacred” rather than as “cultural patrimony” was not sufficient, Randall said “it flabbergasts me that you don’t understand your

³⁸ Ibid., November 3, 2006.

³⁹ Ibid., October 30, 2009.

own language.” He explained once more that the power of the Gaan had to be treated “the right way and in the right circumstances or we will disrespect and anger the holy beings that are in charge of them, which will hurt us.”⁴⁰ To the Apaches’ point of view, the Gaan powers could be beneficent or harmful; they believed the events of a century earlier had brought harm and they wanted to appease the Gaan so that harm would end.

Chapter three illustrates how the Apaches’ knowledge of their own historical interactions with non-Apaches influenced their expectations of NAGPRA. What some of the Apaches pushed for during the 2006 dispute with the Field Museum, the earlier dispute with the Denver Art Museum, and the later dispute with the American Museum of Natural History, was not for converts to the Western Apache worldview, but for a significant show of respect for that worldview. As Vincent Randall told the Review Committee members in 2009, “It seems to me that whenever disputes or anything come up or any laws are written, our perspectives are never taken very seriously. It is always in the due respect of the laws and interpretation of your way of life that came across on the boat.”⁴¹ Yet respect for their worldviews was not the ultimate aim; the Apaches sought to appease the supernatural power of the Gaan in the expectation that their community’s problems might be eased if the Gaan were no longer angry.

Chapter four again involves the Field Museum; however the dispute is not between the museum and a tribe but rather between two tribes of Oneidas. The

⁴⁰ Ibid., November 3, 2006, 103-104.

⁴¹ Ibid., October 30, 2009, 18-19.

Oneida Nations of Wisconsin and New York share language, ancestry, and cosmogony. They share the knowledge that long ago, the Peacemaker united five warring peoples—Mohawks, Senecas, Oneidas, Onondagas, and Cayugas—together under the “great law” as the Haudenosaunee, a unity symbolized by the white pine tree and wampum belts.⁴² But in the last decade of the twentieth century, the Oneidas of New York and Wisconsin could not agree on how to share a tribal wampum belt dating to the time of the Revolutionary War. Their commonality had become a less potent force than the differences that had arisen in the intervening two hundred years. Their disagreement over the wampum belt was indicative of factional rifts that dated to before the Revolution and found early ideological expression through religion. Early nineteenth-century land grabs by New York State pressed some of the Oneidas to sell and leave, adding geographical distance to the rift. Twentieth-century land claims cases that reached the U.S. Supreme Court but remained unresolved by the mid-1990s further widened the distance. When the Field Museum of Natural History offered to repatriate an important tribal wampum belt, the two Oneida nations could not bridge the chasm between themselves.

The Oneida tribal wampum belt dispute offers a glimpse of the complex relationships among modern tribal peoples and demonstrates that the potential healing offered by NAGPRA is not always enough to overcome conflicting

⁴² The Haudenosaunee is also known as the League of the Iroquois, or the Iroquois Confederacy. In the first quarter of the eighteenth century, Tuscaroras fleeing North Carolina to New York became the sixth nation of the Haudenosaunee. In this paper I will use Haudenosaunee and Iroquois interchangeably because sources use both.

cultural memories. Though one might be tempted to cast blame on the New York governor's push for relocation of the Oneidas for their twentieth-century rift, that interpretation oversimplifies the nature of the inner-tribal relationships. From the late eighteenth to early nineteenth century, the Oneidas developed strong differences between the sachems and the warriors; those differences increased with the geographic split. Though the twentieth-century Oneidas shared much of their past, it was the differences—or perhaps the different interpretations of cultural memories—that marked their later interactions. This case study demonstrates the argument that disputing parties with divergent memories were not always willing to compromise under NAGPRA. Inner-tribal rifts, though sometimes worsened by federal policy, could not be fixed by it.

Chapter five demonstrates NAGPRA's reliance on good faith negotiations for compliance. The case study involves the controversial sale of a shirt that Washington College of Maryland had displayed for sixty years as belonging to Lakota warrior Crazy Horse. The Rosebud Sioux Tribe never actively entered the debate, but an attorney representing the Crazy Horse estate and the tribe testified to the NAGPRA Review Committee and the U.S. Senate, trying to stop the sale or at least penalize college officials. Washington College never inventoried or summarized its collection of Native American objects, instead declaring that the collection did not come under the rules of NAGPRA. When the Crazy Horse estate lawyer asked to see the shirt, he was put off. The college sold the shirt at auction in 1996 and argued that it had not belonged to Crazy Horse and did not come under the auspices of the repatriation law. This chapter demonstrates the

challenges of determining the provenance of artifacts from the volatile world of the nineteenth-century Plains. It argues that when parties do not participate in the cooperative approach the law encourages, repatriation disputes fall back on the more common legal framework of investigation and litigation, which has different rules of evidence. Especially in the early years of NAGPRA's implementation, before an enforcement mechanism had really been put in play, organizations more interested in revenue from a sale could avoid compliance.

Chapter six pulls together the cultural and political implications of the disputes. Crafters of NAGPRA lauded its passage as marking a new era of cooperation. Thousands of amicable conversations, negotiations, and compromises over repatriation issues in the first two decades after NAGPRA attest to a limited success. Against this backdrop of thousands of repatriation discussions that went smoothly, these three cases created animosity and controversy. The disputes beg the questions: What was worth fighting for? Why these artifacts? Why these parties? What we learn from the disputed repatriations is that Congress could not craft a law that could always bridge chasms in spiritual worldviews or cultural memories, and without adequate enforcement could not stop people from sidestepping the law in favor of their material interests.

At the center of NAGPRA, of course, is the issue of power. Power inheres “truth,” but *whose* truth? Out of these negotiations emerge tangled truths—not the presumptuous Truth with a capital T, but rather the messy entanglements of different truths wielded against each other in changing power dynamics of United States history. Sharing power means making room for others' memories of

historical events, present-day worldviews, and material interests for ensuring their future. Sharing power in NAGPRA means making live a thing we thought dead and past—redefining artifacts, acknowledging the humanity of Native Americans, and accepting the validity of differing spiritual beliefs. This shifting balance of power under NAGPRA required a reassessment of Western ideas and indigenous ideas, and the mixed backgrounds of Review Committee members allowed for that. The Committee meetings provided a neutral venue where disputing groups testified their historical interpretation. The tribes' interpretations sometimes counter-balanced ethnographic and anthropologic meanings and other times drew upon that Western scholarship. Either way, under NAGPRA they had more power to ascribe meaning to their cultural past and present.

Chapter 2

NAGPRA AND THE REVIEW COMMITTEE

The paving stones outside the National Museum of the American Indian are engraved with rings and globes, depicting the positions of the planets over Washington D.C. on November 28, 1989. On that day, President George H.W. Bush had signed into law the act creating the museum intended to honor the indigenous peoples of the Americas.⁴³ The museum's mission was to advance knowledge and understanding of cultures native to the Western Hemisphere through partnerships with peoples of those cultures. That mission is physically rendered in the museum's architecture and landscaping. The architects eschewed angles or straight edges, instead creating curving lines that seem organic and nothing like the other museums of the Smithsonian Institution. The rough-hewn limestone exterior walls evoke the wind-carved ancient rock of Canyon de Chelly or Chaco Canyon, both places where humans have lived for thousands of years. Rocks from the farthest reaches of the Americas in each direction mark the corresponding cardinal points. To the north, a 3.9 billion year old rock from Canada; toward the east, a piece of Maryland quartzite; south, a rock from Tierra del Fuego; and to the west, the youngest rock, a 300-year-old lava stone from Hawaii. On the north side of the museum, water cascades from the limestone wall and flows into a stream, traveling east in the direction of the U.S. Capitol, the venue from which federal Indian policy has shaped generations of indigenous lives. Almost as if in counter-balance to the past, the museum stands out on the

⁴³ National Museum of the American Indian Act, Pub. L. 101-185

National Mall as a place inspired by indigenous concepts about the world in which we live. On opening day, September 21, 2004, founding Director W. Richard West Jr. told a crowd of thousands on the Mall, “I say to those of you who descend from the native ancestors, who are already here, welcome home.”⁴⁴

The passage of the National Museum of the American Indian Act (NMAIA) reflects changes in cultural sensitivities and a shift in power relations among indigenous and non-indigenous groups that also resulted in NAGPRA. Both laws in many ways were the product of changing attitudes dating to the identity politics of the late 1960s through 1970s, in which different cultural groups (broadly defined) pushed for a stronger voice in politics and society. Changes in anthropological practices—perhaps given a nudge by Vine Deloria, Jr.’s scathing critique in *Custer Died for Your Sins*—contributed to an atmosphere that fostered communication.⁴⁵ NAGPRA, then, was a response to earlier Indian policies and anthropological practices but also reflected changes already occurring in those practices. But the repatriation law would be challenged by realities beyond legislation: concepts of power, worldviews, and memories.

⁴⁴ “The Spirit of a Native Place,” audio tour of the National Museum of the American Indian. Available for download at the museum website, <http://www.nmai.si.edu/subpage.cfm?subpage=visitor&second=dc&third=landscape>

⁴⁵ Vine Deloria Jr., *Custer Died For Your Sins: An Indian Manifesto* (New York: Macmillan Publishing Company, 1969). In Chapter 4, “Anthropologists and Other Friends,” Deloria wrote that “Indians have been cursed above all other people in history. Indians have anthropologists.” (78). The ensuing decades brought improvement, even in Deloria’s eyes. He wrote in the conclusion to a book of essays by anthropologists that “the record is considerably better than what we saw from the anthropological community in the late 1960s.” *Indians and Anthropologists: Vine Deloria, Jr., and the Critique of Anthropology* (Tucson: University of Arizona Press, 1997), 210.

From a pragmatic standpoint, another challenge to NAGPRA would be inadequate funding for ensuring compliance. Without enough enforcement funding, the law could be thwarted by people intent on their personal material interests.

The shifting balances of power leading to NAGPRA entailed human rights and cultural property rights.⁴⁶ From 1987 to 1989, Congress considered several bills relating to repatriation of human remains and curation of indigenous cultural artifacts. Senator Daniel K. Inouye of Hawaii (who initiated NMAIA) and three other Congressmen introduced legislation culminating in the Native American Graves Protection and Repatriation Act of 1990.⁴⁷ Congressional hearings on the bills brought repatriation and burial issues to the attention of a broad audience, and reactions came in from across the country.

In a Senate Select Committee on Indian Affairs hearing in February 1987 regarding a bill that would have established a Native American Museum Advisory Board, Smithsonian Secretary Robert McCormick Adams reported that over half the Smithsonian's 34,000 human remains had come from American Indian,

⁴⁶ The issue of human rights under NAGPRA refers most directly to human remains that had been collected, displayed, or stored in museums, laboratories, and other agencies.

⁴⁷ In 1990, four bills addressed the issues of repatriation and grave protection. Senator John McCain of Arizona, Senator Daniel Inouye of Hawaii, Representative Morris Udall of Arizona and Representative Charles Bennett of Florida each introduced bills that in different ways sought to stop illegal grave excavations. The essence of these measures entered into the final NAGPRA, PL 101-601; 25 USC 3001 et seq.

Eskimo, Aleut, or Koniag populations.⁴⁸ Tribal reactions were strong and quick, with tribes around the United States clamoring for repatriation of human remains that could be traced to particular cultures or geographic areas.⁴⁹

Legislation establishing the National Museum of the American Indian began with a bill introduced in September 1987 by Senator Daniel K. Inouye of Hawaii.⁵⁰ He wanted to build a memorial to Native Americans on the Mall, and learned that the last piece of land had been reserved by Congress for a Smithsonian museum.⁵¹ Inouye pursued the idea of a museum and memorial combined, which led to the 1989 act establishing the National Museum for the American Indian (NMAI). That act transferred title to the holdings of the Museum of the American Indian–Heye Foundation of New York to the Smithsonian Institution; it also regulated the proper treatment and disposition of indigenous remains and sacred objects in the collections.⁵²

⁴⁸ The 1987 bill was S. 187, the Native American Museum Claims Commission Act. It did not pass.

⁴⁹ S. Rep. No. 100-494, at 27-28 (1988), and S. Rep. No. 101-473, at 1 (1990).

⁵⁰ *Report to Accompany S. 1722, The National American Museum and Indian Memorial Act*, S. Rep. 100-494, (1988).

⁵¹ PL 94-74, approved August 8, 1975, reserved the site bounded by Third and Fourth Streets, Maryland and Independence Avenues, and Jefferson Drive for “future public uses of the Smithsonian.”

⁵² There were other compelling reasons for the move of the Heye Foundation collection, but they are outside the focus of this dissertation. For a full background on that, see Roland W. Force, *Politics and the Museum of the American Indian: The Heye & The Mighty* (Honolulu: Mechas Press, 1999).

During committee hearings on legislative bills for NMAIA and NAGPRA, Native Americans testified that they often met resistance from museums over requests for repatriation of objects they believed had been wrongly bought or stolen. Often, tribes lacked the money or legal expertise to fight for items that, in many of the indigenous cultures, represented more than inanimate objects but rather held life forces with needs. Inouye reported in a Senate hearing on NAGPRA that tribal leaders “expressed their outrage at the manner in which Native American human remains had been treated, stored or displayed and the use of culturally sensitive materials and objects in violation of traditional Native American religious practices.”⁵³

In 1988, during further Committee meetings on NAGPRA legislation, officials from the American Association of Museums asked for a one-year reprieve while they consulted with Indian tribes. The Senate granted the request and the Heard Museum of Phoenix, Arizona, sponsored a year-long dialog among representatives from museums, tribes, and scientific organizations “to see if it was possible to arrive at a mutually acceptable resolution to the issue of repatriation.” Inouye added that the resultant *Report of the Panel for a National Dialogue on Museum/Native American Relations* (Feb. 28, 1990) was “very, very encouraging.”⁵⁴

⁵³ Sen. Inouye, S. Rep. 101-473, at 5 (1990).

⁵⁴ *Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report: Hearings on S. 1021 and S.1980, Before the Select Comm. on Indian*

The report's section on human rights reflected the historic division between indigenous and non-indigenous groups, arguing that past practices by museum curators, scientists, and collectors had ignored Native Americans' beliefs and practices. It stated:

Often, these violations have occurred in the name of science, non-indigenous religion, economic development and entertainment, as well as in pursuance of commercial grave robbing. All Panel members deplore this history and agree that future practices must avoid a repetition of such excesses.⁵⁵

The panel report, which Heard Museum trustee Paul Bender presented to the Senate Select Committee on Indian Affairs during a May 14, 1990 hearing, emphasized the human-rights aspect of repatriation, the importance of treating remains and culturally significant artifacts with dignity and respect, and the need for legislation to implement the panels' recommendations.⁵⁶

Inouye later wrote that the yearlong discussion amongst representatives of tribes, museums, anthropology, and archaeology that produced the report had demonstrated "unprecedented cooperation between museums and Native

Affairs, 101st Cong. 2 (1990) (Statement of Sen. Daniel K. Inouye, Select Committee Chairman). (hereafter, *Hearings on S.1021 and S.1980*)

⁵⁵ *Report of the Panel for a National Dialogue on Museum/Native American Relations* (February 28, 1990) Section D(1)(b). (hereafter, *Panel Report*)

⁵⁶ *Panel Report*.

American communities.”⁵⁷ However, the senator’s rhetoric of teamwork overlooked areas of tension among the panel members.

Three scientists who had been on the panel but were not consulted about the final report presented “A Minority View” to the Senate Select Committee on Indian Affairs. Lynne Goldstein, Michael Moratto, and Douglas Ubelaker wrote that the concept of a dialogue was good, but the “process was pressured and hurried, and decisions were made without discussion by or input from all Panel members.” They noted that the Panel Report had footnotes citing the trio as disagreeing, but wanted to clarify that their disagreement was an “attempt to argue for equality” rather than for shifting the dominant power to Native Americans, which the Panel Report had suggested as a way to redress past imbalances of power.⁵⁸ Panel member Willard L. Boyd, president of the Field Museum, also put forth a differing view; he testified to the Senate subcommittee and published his opinion as an open letter in a journal.⁵⁹ Among his differences with the panel were his concerns about its definition of national or cultural patrimony as “inalienable items owned in common by tribes or clans that have historical or governmental importance to present and future generations.”⁶⁰ Boyd

⁵⁷ Daniel K. Inouye, “Repatriation: Forging New Relationships,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 2.

⁵⁸ *Hearings on S. 1021 and S.1980* (The Panel for a National Dialogue on Museum/Native American Relations: A Minority View).

⁵⁹ See “Letter from Panel Member Willard L. Boyd,” *Museum Anthropology* Vol. 14, No. 1 (February 1990): 14.

⁶⁰ *Panel Report*, 17.

said that definition “has a different meaning than we are used to in the museum field and begins to blur into a great number of other objects.”⁶¹

At the heart of NAGPRA and NMAIA lay a desire to end the disparity in the treatment of indigenous human remains compared with remains of other ethnic groups in America. Colorado Representative Ben Nighthorse Campbell urged his colleagues to vote for the House version of NAGPRA by reminding them that the federal government had “done much to retrieve the human remains of our brave service men and women who died during the Vietnam War, sparing little so that the remains of these fine people can be brought home” and that it was “time to extend this stance to Native Americans.”⁶² But NAGPRA, as cultural property law, went further than global trends in that area. Kate Fitz Gibbon, an attorney specializing in cultural-property issues, wrote that NAGPRA “stands in stark contrast to foreign cultural property legislation that places the rights of states over those of their indigenous peoples.”⁶³ The case studies in this dissertation delve into this aspect of NAGPRA.

The intent of NAGPRA, Inouye wrote, was to allow tribes and museums to develop agreements that reflect a better understanding of the cultural value of the artifacts and human remains collected by museums: “The bill before us is not about the validity of museums or the value of scientific inquiry. Rather, it is

⁶¹ *Hearings on S. 1021 and S.1980* (statement of Willard Boyd, president, Field Museum of Natural History, Chicago).

⁶² 136 Cong. Rec. H 31938 (statement of Ben Nighthorse Campbell).

⁶³ Fitz Gibbon, *Who Owns the Past?*, 6.

about human rights. ... For museums that have dealt honestly and in good faith with Native Americans, this legislation will have little effect. For museums and institutions which have consistently ignored the request of Native Americans, this legislation will give native Americans greater ability to negotiate.”⁶⁴ Senator John McCain of Arizona, vice-chairman of the U.S. Senate Select Committee on Indian Affairs, held a similar opinion: “NAGPRA reflects a national consensus on the issues surrounding the repatriation of Native American human remains and cultural items,” he wrote two years after the law passed.⁶⁵

The senators make a valid point that the approach to crafting NAGPRA was remarkable for its inclusion of different viewpoints. The result was a compromise law breaking away from the Western versus indigenous paradigm in United States history. NAGPRA allowed for native oral histories as evidence and, by its requirement that two members of the Review Committee be native traditional leaders, acknowledged indigenous intellectual authority. Nevertheless, the law had to function within an established legal and institutional framework based on Western norms and traditions. Pertinent to the following chapters are the policies of treaty-making, removal, war, reservations, and creating federally recognized tribes. Although missionary work among the different indigenous groups may not have been official federal policy, it at times worked in tandem with such policy and certainly was not hampered by it. Throughout those policy

⁶⁴ Sen. Inouye, 136 Cong. Rec. S17174-17175 (daily ed. Oct. 26, 1990).

⁶⁵ John McCain, “Repatriation: Balancing Interests,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 5.

and cultural changes, people shaped and reshaped meaning according to the relative power they had at the time.

Indians' Unique Role

The history of United States Indian policy begins long before the colonies rebelled against the British. It chronicles changes in relationships beginning with nation-to-nation cooperation and treaties and then spirals down into forced relocation, genocide, attempted assimilation, tribal reorganization, termination, and self-determination, before Native American activism in the 1970s began setting the stage for NAGPRA. It is policy history, but it is just as strongly cultural history on many fronts. And it is a history that, though it includes many cultures, collectively has a particular role in American history.

The crafters of NAGPRA recognized that the relationship between the federal government and Indian tribes, Native Alaskans, and Native Hawaiian organizations was unique. The verbiage of the law specified that NAGPRA “should not be construed to establish a precedent with respect to any other individual, organization or foreign government.”⁶⁶ The United States is a continental community with a multitude of ethnicities, languages, religions, and worldviews. But NAGPRA writers recognized that the indigenous peoples were unique from all of that. It was *because* they were here first and not Christian that many of the later events occurred. It was because they were here first that Euro-Americans grew enamored with myths of the “noble savage” or the perceived penchant for communing with the earth and animals. And, more darkly, it was

⁶⁶ 25 U.S.C. 3010

because they were here first that, in the late nineteenth century Plains Indian Wars, soldiers were told to decapitate dead Indians and send the crania back east for study. The fixation on the indigenous led to grave robbing. The graves were not usually in a marked cemetery like those of the dominant culture that every state legally protected. Rather than quickly reintering Native remains and funerary objects, anthropologists, soldiers, and illegal pot hunters put the items on display.

By 1893, after Wounded Knee had quelled Indian resistance and Frederick Jackson Turner declared the frontier ended, Native America had become a collectible culture. The World's Columbian Exposition in Chicago displayed indigenous artifacts, living Indians in mock villages, and in a particularly grisly twist, even the corpse of a baby killed at Wounded Knee.⁶⁷ Euro-Americans went onto reservations and into homes and kivas, taking photographs of sensitive ceremonies and buying or otherwise acquiring artifacts. Some of those items were for mundane life – everyday pottery, artwork, basketry and rugs. Other items were crucial to traditional practices.

A century later, many of those items remained in museum collections. Representative Morris Udall of Arizona, who introduced the House version of the NAGPRA legislation (H.R. 1646), said the history of the American West had been filled with “heroics and sacrifice and challenge” but also “tragedy and sadness” that needed to be rectified. He argued that NAGPRA's importance went

⁶⁷ Fine-Dare, *Grave Injustice*, 22-29, 47, 48.

beyond repatriation. “It addresses our civility, and our common decency,” he said during a House debate. “It is a good bill, and long overdue.”⁶⁸

NAGPRA countered earlier governmental policies that had suppressed native spiritual practices and beliefs. From the time of the first Spanish explorers to the New World, religion played a role in the relationships between the Europeans and the Native Americans. Catholics, Puritans, and a variety of Protestants held differing versions of Christianity, yet they tended to refer to the indigenous as pagans who needed education and Christianization. Beginning in the Colonial era, Christian ministers partnered with government and private donors to educate and Christianize Indians. Congregational Minister Eleazar Wheelock obtained a charter in 1769 from King George III to found Dartmouth College in New Hampshire to teach Indian youths all subjects “which shall appear necessary and expedient for civilizing & christianizing Children of Pagans.” In 1775, the Continental Congress appropriated funds for Dartmouth. In 1819, Congress passed the Civilization Fund Act authorizing the President “to employ capable persons to instruct Indians in agriculture, and to teach Indian children reading writing, and arithmetic, &c.”⁶⁹ The “capable persons” were reformers and missionaries. In 1879, Richard Henry Pratt turned a military barracks in Carlisle, Pa., into the first off-reservation boarding school for Indian children.

⁶⁸ 136 Cong. Rec. H31940. Udall introduced H.R. 1646 in the first session of 101st Congress (1989).

⁶⁹ U.S. Statutes at Large, 3:516-17.

The focus was on educating and Christianizing them; in Pratt's often-quoted words, "Kill the Indian in him, and save the man."⁷⁰

During the 1880s, federal Indian agents on Sioux reservations forbid the Sun Dance, an annual spiritual ceremony of central importance to their culture. Perhaps the most notorious effort to suppress Native American spiritual practices was the government's reaction to the Ghost Dance in 1890. Army soldiers tasked with keeping the peace on newly established reservations across the Plains referred to the spreading Ghost Dance as a "Messiah craze" and feared that shamans like Sitting Bull would use it to rouse their warriors. On December 16, 1890, while soldiers and Sioux police officers tried to arrest Sitting Bull, the tension erupted into violence that killed Sitting Bull and thirteen others, including Sioux officers. On December 29, 1890, men from the 7th Cavalry killed Big Foot and his followers at Wounded Knee Creek. Most of the warriors were killed in the camp, but investigators found the bodies of women and children strewn across two miles; they had fled only to be chased down and shot.

Non-indigenous people seemed to find indigenous spiritual practices strange at best and, in the case of the Ghost Dance, menacing to the whites' safety. That foreignness was at the heart of their disregard for both the living and the dead Native Americans, and was in a sense codified by the Antiquities Act of

⁷⁰ Christianity was not pressed upon the Western Apaches to the degree it was on many other indigenous groups. They lived widely dispersed in an area of the country where outsiders did not intrude until relatively late.

1906.⁷¹ Although the Act preserved some prehistoric indigenous sites, it also authorized the Secretaries of Interior, Agriculture, or War to grant permits “for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity.” Those excavations were to be “for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions” and would “be made for permanent preservation in public museums.”⁷² The law did not mention indigenous remains, but the lack of excluding them effectively deemed them to be federal property, which runs counter to United States common law that has always held that dead bodies are not property.⁷³ By 1990, when Congress worked toward passing NAGPRA, national estimates ranged widely on how many indigenous remains and associated artifacts had been removed from gravesites. In an article about the legislative background of NAGPRA, Jack F. Trope and Walter R. Echo-Hawk cited sources that estimated as low as 100,000 and as high as two million.⁷⁴ However, the trend had already shifted on the ground during the last half of the twentieth century.

⁷¹ *Antiquities Act of 1906* was signed into law on June 8, 1906 by President Theodore Roosevelt.

⁷² 16 U.S.C. 432.

⁷³ *Ibid.* For more on the Antiquities Act, see Jack F. Trope and Walter R. Echo-Hawk, “The Native American Graves Protection and Repatriation Act: Background and Legislative History,” *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 35-77.

⁷⁴ Trope and Echo-Hawk, “The Native American Graves Protection and Repatriation Act,” 39. As of March 2, 2011, the National NAGPRA Office website reported that 178,250 human remains had been inventoried by museums and federal agencies.

Archaeologists and anthropologists, especially those working in the Southwest, had for the most part worked cooperatively with tribal representatives rather than with the blanket authority originally wielded through the Antiquities Act.

During the twentieth century, a few key pieces of federal legislation set the political stage for NAGPRA. In 1978, Congress passed the American Indian Religious Freedom Act (AIRFA), which guaranteed the Native Americans' "inherent right of freedom to believe, express, and exercise the traditional religions."⁷⁵ The law required an investigation of property that others had obtained from indigenous groups by often illegitimate methods. One result was a task force that reported in part, "Most sacred objects were stolen from their original owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object."⁷⁶ During the late 1970s and 1980s, thirty-four states passed laws protecting indigenous grave sites; at least five states, including Arizona, California, Hawaii, Kansas, and Nebraska, passed laws around the time of NAGPRA requiring repatriation of human remains and associated items.⁷⁷ NAGPRA continues that trend and

⁷⁵ Public Law 95-341, 42 U.S.C. 1996 and 1996a. In 1988, the U.S. Supreme Court held in *Lyng v. Northwest Indian Cemetery Prot. Assn.* (485 U.S. 439) that AIRFA was unenforceable, quoting its sponsor, Representative Morris Udall, as saying it "has no teeth in it."

⁷⁶ *Secretary of the Interior Federal Agencies Task Force, American Indian Religious Freedom Act Report 77, Aug. 1979.* Quoted in "The Native American Graves Protection and Repatriation Act: Background and Legislative History," *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 44.

⁷⁷ Trope and Echo-Hawk, "The Native American Graves Protection and Repatriation Act," *Arizona State Law Journal* Vol. 24, No. 1 (Spring 1992): 52-

encourages a re-evaluation of past practices. “NAGPRA says we were misbehaving and we abrupted the rights of people and will not do that in the future,” explains Sherry Hutt, manager of the National NAGPRA Program, which implements the law and provides staff support to the NAGPRA Review Committee. “As to the past, where we gave permission that we really didn’t have the right to give, we will rectify.”⁷⁸ That rectification required a major shift in thinking toward indigenous peoples, away from the paternalism, prejudice, and romanticizing of early times.

The way NAGPRA was written gives testimony to the necessity of communication; even before the requirements of the law are detailed, there is a list of definitions. “Cultural affiliation” is a relationship of shared group identity that can be traced across time between a present day Indian tribe or Native Hawaiian organization and an earlier group. A “burial site” does not have to be in a Euro-American style cemetery; it is, quite simply, anywhere a body has been laid to rest. “Associated funerary objects” are items that are believed to have been placed with a human body, and the museum has both the remains and the item. “Unassociated funerary objects” are those that are believed to have been placed with a human body, but the museum does not have the human remains. “Sacred objects” are ceremonial objects needed by traditional Native American religious leaders in order to practice those ceremonies today. “Cultural

53. For a summary of states’ laws protecting burial sites, see Catherine Bergin Yalung and Laurel I. Wala “A Survey of State Repatriation and Burial Protection Statutes,” in *ibid.*, 419-433.

⁷⁸ Interview with Sherry Hutt, 2008. Transcript on file with author.

patrimony” identifies any item that historically was not owned by an individual because it had cultural importance central to the Native American group or culture itself. Thus the item could not be alienated or sold by an individual, even a member of the Native group. A “museum” is defined as “any institution or State or local government agency (including any institution of higher learning) that receives Federal funds,” with the exception of the Smithsonian Institution.⁷⁹

Review Committee

Even with as clear categories as NAGPRA planners could create, they realized the need to have an advisory board to contend with culturally unidentifiable human remains and other issues that might arise. Section 8 of NAGPRA established a seven-member Review Committee “to monitor and review the implementation of the inventory and identification process and repatriation activities.”⁸⁰ The committee members were to be appointed by the Secretary of Interior. The Native American community nominated people for three positions (two of those positions had to be filled by traditional religious leaders); the museums and scientific community nominated people for three positions; the six resultant committee members then nominated a seventh person. The first Review Committee comprised traditional religious leaders Rachel Craig, an Inupiaq Alaskan and William Tallbull, a Northern Cheyenne; Tessie Naranjo, of Santa Clara Pueblo; museum directors Martin E. Sullivan and Dan L. Monroe;

⁷⁹ The definitions are in 25 U.S.C. 3001. The Smithsonian Institution is regulated by the National Museum of the American Indian Act.

⁸⁰ 25 U.S.C. 3006(a).

and anthropologist Phillip L. Walker. During their first meeting on April 29-May 1, 1992, the members produced five nominees to send to the Secretary of the Interior from which to choose the final member of the committee. At the second meeting on August 26-28, 1992, Jonathan Haas, an archaeologist and museum curator, joined the Review Committee.

The mix of indigenous and non-indigenous people on the committee seemed to help disputing parties better understand the others' points of view, regardless of whether they swayed the disputants to change their stances. The Review Committee meets approximately semiannually and addresses questions of interpretation, hears disputes, and helps resolve conflicts. It provides an opportunity for both sides to argue their interpretations of evidence including historical oral narratives, anthropological observations, and museum accession records. When Interior Secretary Manuel Lujan, Jr. announced the first seven members of the Committee in March 1992, he acknowledged that expectations of them were high. In a reaffirmation of the consensus and compromise theme of NAGPRA, Lujan said the Committee members must do their job with "a willingness to listen to each side of an issue."⁸¹ The Committee members are not paid but are reimbursed for the time they spend on committee business and their travel expenses.⁸²

⁸¹ Manuel Lujan, Jr., as quoted by C. Timothy McKeown in "A Willingness to Listen to Each Side': The Native American Graves Protection and Repatriation Review Committee, 1991-2010," *Museum Anthropology* Vol. 33, No. 2 (Fall 2010): 219.

⁸² 25 U.S.C. 3006(b).

A limiting factor of the Review Committee's effectiveness was its lack of jurisdictional power. The Committee could make recommendations and findings of fact, but the law did not require the parties to comply. The August 1, 1991 Charter establishing the Committee specified that its duties were "solely advisory" to the Interior Secretary.⁸³ The meetings are held with public notice and recorded; Committee members debate the issues in front of any people who attend. Charter Member Martin Sullivan explained the Committee's role during the Oneida dispute this way: "This is, in no way, a judicial process or a trial. . . . Our task simply is, first, to be fair, as fair as we can be, and that is an obligation, to be open-minded and to be thorough; that is an obligation."⁸⁴

A 2010 Government Accountability Office study on NAGPRA reported that the Review Committee had heard twelve formal disputes brought by tribes or Native Hawaiian organizations since beginning in 1992. In only one of those disputes could the auditors ascertain that the institution fully complied with the Committee's recommendations. In three cases, the agency or museum partially complied; in three cases the status was unknown; and in the remaining five cases the institutions did not implement the recommendations at all. Among the twelve cases, there were four disputes in which the Committee recommended changing the cultural affiliation of human remains or the classification of objects; those recommendations were ignored. Three of the twelve disputes resulted in law

⁸³ Manuel Lujan, Jr., "Charter: Native American Graves Protection and Repatriation Committee," August 2, 1991.

⁸⁴ Review Committee Meeting transcript, November 2, 1996, 81-82.

suits, which the GAO report interpreted as illustrating the Committee’s “difficulties in fulfilling its statutory responsibility to facilitate the resolution of disputes.”⁸⁵ The GAO assessed the Review Committee as more effective in its recommendations for disposition of culturally unidentified remains. Of the sixty-one recommendations the Committee made on disposition of such remains, fifty-two had been implemented after the Secretary of the Interior agreed. The report noted that the Review Committee had been helpful in developing NAGPRA regulations and had recommended several amendments to the law but Congress had not enacted any of them. Additionally, the GAO stated that the Review Committee had duly monitored compliance of NAGPRA and found that federal agencies’ compliance efforts had been “uneven, complex to measure, and lacking in transparency.”⁸⁶ Despite the public emphasis on museum collectors and university scientists, it turned out that the federal government remained the worst offender.

As the GAO noted, the Review Committee spent its first several meetings discussing the regulations for implementing NAGPRA.⁸⁷ Although the original Act defined “sacred,” “cultural patrimony,” and “museum,” it did not define “human remains.” The Review Committee debated a definition at length because many historical artifacts had been fabricated with body parts. One of the crucial

⁸⁵ GAO, *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, GAO-10-768 (Washington, D.C.: July 2010), 36.

⁸⁶ *Ibid.*, 30.

⁸⁷ 43 CFR 10.

items was scalps: Were they considered human remains, sacred, or objects of cultural patrimony? To whom would they be repatriated, if they were? Jack Trope, who represented the Association of American Indian Affairs during the NAGPRA legislative process, told the Review Committee that the people hammering out the wording in the law had not discussed hair and teeth. He thought it was “legitimately a gray area as to whether they’re human remains” and suggested that the Committee follow the advice of the indigenous traditional members.⁸⁸ However, the two indigenous members of the Committee who were present disagreed specifically on scalp shirts and ceremonial items incorporating scalps into them.

Rachel Craig, an Inupiaq Alaskan, said she spoke as an outsider because her people did not scalp. She said the scalp, because it had been part of a person, would be more important than the shirt it decorated; she thought it should be repatriated to the cultural group related to the person who had been scalped.⁸⁹

Tessie Naranjo, of Santa Clara Pueblo, thought a scalp shirt should be repatriated to the cultural group that made the shirt. She said that long ago in her community, they held scalp dances and created a Scalp Society. If another tribe asked for the scalp artifacts, she said, “We would fight for it because it’s become a part of our ceremonies. It’s very, very important.”⁹⁰

⁸⁸ Review Committee Meeting transcript, August 26, 1992, 120.

⁸⁹ *Ibid.*, 112.

⁹⁰ *Ibid.*, 116-117.

The Committee comprised indigenous and non-indigenous members, and discussed the challenge of applying a Western law to Native American traditional laws regarding knowledge of the sacred. Anthropologist Phillip L. Walker commented during the first meeting that it might be difficult for Native Americans to publicly identify some sacred items out of respect or regulations within their community. William Tallbull, a Northern Cheyenne elder, said that he did not always tell museum workers what he knew because he doubted they would believe him. The notion of Western property ownership also was at odds with some tribal traditions. Tallbull and Craig said that in their communities, no objects were individually owned; they all would be considered cultural patrimony. Naranjo predicted that the distinction between sacred objects and objects of cultural patrimony would be “a fuzzy one.”⁹¹

During the three disputes brought by the Western Apache NAGPRA Working Group, that “fuzzy” distinction became the essence of the disagreement. A sacred object could also be an object of cultural patrimony, but one way in which they differed was a sacred object could be owned by an individual who could sell it or give it away. An object of cultural patrimony, by definition in the law, was one that no individual could sell or give away because it belonged to the entire community. The Apaches argued that the Gaan ceremonial items, though used by particular men, were not owned by them in the Western sense. Field Museum officials argued that ethnologist Grenville Goodwin, who lived among the Apaches in the 1930s, had written that the Gaan were the property of one man.

⁹¹ Review Committee Meeting Official Minutes, April 29-May 2, 1992, 9.

NAGPRA Review Committee member Garrick Bailey, a cultural anthropologist, commented that the word “property” had a different meaning in the Western tradition than in some Native American traditions. To say an item was a man’s property, Bailey explained, meant he had authority to do certain things with it but “the term property in itself does not infer ownership or the ability to alienate.” He compared the problem to the practice long ago of government officials finding a “chief” to sign treaties. “I think what we’re doing here is we are imposing an American or European model on the Apache and having them to defend themselves within the context of a Western system.”⁹² The indigenous worldviews held different notions of ownership and power than the Western worldview. And of course, the worldviews all were connected to different languages.

The testimonies during later Review Committee meetings also brought out key concepts at the heart of repatriation, concepts ineffectually explained by words such as “sacred,” “reality,” “place,” “power,” or “respect.” Language became a huge factor in the decisions regarding various cultural items. The Apaches told the Committee that they had never thought of the Gaan items and ceremonies in English before. They struggled to translate specific Apache concepts into a foreign language, and found the word “sacred” as used for objects to be wanting. “That’s your terminology,” former Yavapai-Apache Nation chairman Vincent Randall told the Committee in 2009. “Any interaction and

⁹² Review Committee Meeting transcript, November 3, 2006, 71.

things that coincide with the almighty God or Grandfather Spirit ... is holy.”⁹³

Ramon Riley, a Mountain Spirits dancer, agreed that Gaan items and the beings that lived in them were holy. “Sacred” was a way to think about places, such as their four sacred mountains—Black Mountain to the east, Turquoise Mountain to the south, Red Mountain to the west, and White Mountain to the north—because “that’s where our creation story begins, right in the center of these mountains.”⁹⁴

Different languages, then, represented more than a need for translation. As Bailey explained, “People who speak different languages live in different worlds. They don’t live in the same world with different labels attached.”⁹⁵ The disparate languages were important in the moment but also important as a clue to the worldview of the speakers. The English language is an I-centric language in which objects are inanimate. This reflects the “rugged individualism” of which Americans, at least historically, seem so proud. Other languages, even ones with similar roots such as Spanish, put some responsibility, as it were, onto objects and ideas by using a reflexive grammatical construction. In Spanish, for example, one does not say “I forgot it,” but rather, “It forgot itself to me.” Perhaps that is a way to shirk responsibility, but it also reflects a worldview in which the “I” is not quite the only player. The disparity in the literal translations of English is even greater when compared with languages of Athapaskan or Uto-Aztecan roots, and this

⁹³ Review Committee Meeting transcript, October 30, 2009, 19.

⁹⁴ Review Committee Meeting transcript, June 1, 2002, 20.

⁹⁵ Review Committee Meeting transcript, November 4, 2006, 37-38.

disparity reflects entirely different ways of thinking about the world.⁹⁶ This became a key point Apaches made to the Review Committee.

The blend of worldviews and backgrounds on the committee also at times cooled the rhetoric during a dispute. For instance, during one dispute, Committee member and Robert S. Peabody Museum director James Bradley said “I was very unhappy to hear the discussion yesterday that says, ‘Oh, these guys are moral and these guys are legal.’ Garbage. Everybody here is moral or we wouldn’t be here. And we are trying to operate under a legal structure called NAGPRA. So let’s not have good guys and bad guys. That doesn’t serve this discussion.”⁹⁷

Congress attempted to make NAGPRA workable by including various interested parties in its creation. Democratic Senator Daniel Inouye, chairman of the Senate Select Committee on Indian Affairs, and vice chairman Senator John McCain, a Republican, ran meetings on the legislation in a non-partisan manner, working more as co-chairs than in a hierarchy. Their legislative staffs, as well as Congressman Morris Udall’s staff, worked out compromises among representatives from the Native American Rights Fund (NARF), the Association on American Indian Affairs (AAIA), the museum community, and the scientific community. Public hearings provided opportunities for interested people to testify about their concerns in the wording of legislative bills regarding repatriation. The process produced a law comprising various Western viewpoints

⁹⁶ I owe thanks for this insight into the connection of grammatical construction and worldview to a brief conversation with Arizona State University Regents Professor Alberto Ríos.

⁹⁷ Review Committee Meeting transcript, June 2, 2002, 32.

and various viewpoints of indigenous peoples.⁹⁸ Overall, it was a law all involved parties agreed they could live with, but in practice NAGPRA would hit some points of tension. The case studies following this chapter help to illuminate areas where either cultural viewpoints or effects of earlier federal policy created challenges: federal recognition of tribes, ways of becoming educated, cultural understandings of what is sacred, and testimony about forbidden subjects. The law grants repatriation rights to 564 federally recognized tribes at present who are culturally affiliated with the items or remains stipulated in NAGPRA. Federally recognized tribes are a patently Western construct, superimposed over different indigenous groups that in some instances had no earlier cultural affiliation. Conversely, removal policies had separated some cultures into different geographic localities, resulting in separate tribes.

For the Oneida tribes, removal and federal recognition combined to create a problem still unresolved. Even before President Andrew Jackson began the federal removal policy in 1830, New York pressed the Oneidas to move west. Governor George Clinton negotiated several “treaties” taking the Oneidas’ land in direct violation of the Constitution and the 1790 Indian Non-Intercourse Act. The Oneidas who relocated to Wisconsin formed a tribe under the 1934 Indian Reorganization Act; the Oneidas in New York retained their federal recognition

⁹⁸ For example, the NARF representative was Walter Echo-Hawk, a Pawnee by affiliation and an attorney by training. NARF had been established as a nonprofit legal firm in 1970 to protect tribal interests and natural resources and the human rights of their members. AAIA, a national advocacy group concerned with cultural preservation and education, has an all Indian board of directors from across the country but hires non-Indians such as Jack Trope, who represented their concerns to Congress.

because of valid treaties with President George Washington. When NAGPRA became law in 1990, New York and Wisconsin had long thought of themselves as two distinct tribes. They argued over which tribe should have a tribal wampum belt that had been made when they were one people in New York prior to the American Revolution. That dispute was further complicated by the Oneida Nation of the Thames, which has no standing under NAGPRA because it is in Canada, yet its people also descend from the earlier New York Oneidas.

The Western Apaches managed to stay in their traditional homeland in Arizona, but were rearranged and regrouped within that area according to early reservation policy decisions.⁹⁹ They took a proactive approach to the problem of determining cultural affiliation under NAGPRA. Rather than leave it to museums to determine whether the White Mountain Apache Tribe, the San Carlos Apache Tribe, the Tonto Apache Tribe, or the Yavapai-Apache Nation had the closest affiliation to an object or set of remains, the four tribes formed the Western Apache NAGPRA Working Group to represent them. Ramon Riley, cultural resources director for the White Mountain Apaches, explained that the different groups of Western Apaches “are deeply and extensively interrelated” and that cultural affiliation could not be determined by “bureaucratic, federally imposed boundaries.”¹⁰⁰

⁹⁹ The designation of Western Apache does not include the Chiricahua Apaches, many of whom were sent to Florida after Geronimo’s 1886 surrender. In 1894, they were moved to Fort Sill, Oklahoma.

¹⁰⁰ Letter to Helen Robbins and Lori Breslauer at the Field Museum, November 4, 2005.

NAGPRA exists in a liminal realm that is a blend of different worldviews, types of evidence, and overall approaches to determining cultural affiliation. Native Americans have long fought, on the battleground, in the religious centers, in schools, and in Congress and courts, to define themselves. Part of that definition plays out through cultural artifacts and spiritual practices, but for hundreds of years, those discussions have involved Euro-Americans. In *The Future of the Past: Archaeologists, Native Americans, and Repatriation*, anthropologist Tamara L. Bray borrows a concept from the writings of Mary Louise Pratt on nineteenth-century Western travel, in which Pratt describes “contact zones” where people of different geographic, historic, and cultural affiliations meet and establish relations. Bray notes that a contact perspective differs from the frontier mentality “with its unidirectional implications” because it “emphasizes how subjects are constituted in and by their relations to each other, stressing co-presence, interaction, and interlocking understandings and practices.”

Like Bray, I believe repatriation produces a “contact process” in a newly defined space created by NAGPRA. The *Gaan* headdresses of the Apaches, the wampum belts of the Oneidas, and the Lakota war shirts, are points of entry into a discussion that has wider implications and ramifications than each separate case study. They become, as Bray argues, “sites of political negotiation and occasions for ongoing interaction.”¹⁰¹

¹⁰¹ Tamara L. Bray, *The Future of the Past: Archaeologists, Native Americans, and Repatriation* (New York: Garland Publishing, 2001), 3.

The negotiations in the following three chapters illuminate historical points of contact among these groups; they also reveal the struggle among the disputants over reshaping meaning. Attorney Suzianne D. Painter-Thorne wrote in 2002 that NAGPRA and NMAIA recognized property rights beyond ownership of artifacts to encompass the meaning attached to the objects. She argued that “broadly reading” the two Acts “allows the tribes to reclaim their own culture.”¹⁰² We will see in these disputes that some people possessing disputed artifacts tended to give NAGPRA a narrower meaning. Washington College officials interpreted the law so narrowly that they argued it did not apply to them.

The Western Apaches, in particular, wanted the Review Committee to think in terms of a higher, natural law rather than the federal code. Vincent Randall, Dilzhe’*e* Apache Cultural Preservation Director from Camp Verde and former chairman of the Yavapai-Apache Nation, was a frequent spokesman during the three disputes brought by the Western Apache NAGPRA Working Group. In 2006, after being asked repeatedly by Review Committee members why getting their items back as “sacred” rather than as “cultural patrimony” was not sufficient, Randall explained once more that the power of the Gaan had to be treated a certain way or the “holy beings” would hurt his community.¹⁰³ It was a matter of which law was believed to be stronger – that enacted by Congress or that wielded by the universal order as Apaches understood it.

¹⁰² Suzianne D. Painter-Thorne, “Contested Objects, Contested Meanings: Native American Grave Protection Laws and the Interpretation of Culture,” *U.C. Davis Law Review* Vol. 35, No. 5 (June 2002): 1265.

¹⁰³ Review Committee Meeting transcript, November 3, 2006, 103-104.

“I’m not an expert and I don’t know when the NAGPRA law was enacted,” Randall said. “It’s a baby law compared to our law. Our law is timeless, number one.”¹⁰⁴

¹⁰⁴ Ibid.

Chapter 3

RETURN OF THE MOUNTAIN SPIRITS: WESTERN APACHES

Fort Apache, 1903 — The aged Apache man walked slowly across the dusty earth, carrying a decorated leather shield. He stopped in front of the American collector from a museum and laid the shield face up on the ground with gentle reverence. He had agreed the night before to sell it to the visiting *indà*, but had asked to keep it one last night, seeming hesitant to part with it at all. Now, in the growing light of an Arizona morning, he spoke in earnest to the shield, asking the life force within it for forgiveness. He knew better than to sell it, he explained, but his children and wife were hungry. Beyond hungry, starving. The government agents provided meager rations, and the *ndee* men no longer were allowed to hunt as they had in years gone by. He dared not leave Fort Apache Reservation for fear of being considered a hostile by the Army soldiers garrisoned there. The man begged the *Gaan* not to harm his family in punishment for selling the shield. He sprinkled cattail-flag pollen over the shield as he prayed for forgiveness. The pollen obscured the shield's illustrations and settled into the feather adornments. The old Apache's voice rose as he continued to pray, turning to the four directions, and then addressing the zenith above and the nadir below. Finally he turned the shield face down on the dirt, mumbling "*Tah unzhoda, tah unzhoda,*" too bad, too bad. He took money from the *indà* and left, shaking his

head slightly as he walked away, repeating over and over, “*Tah unzhoda.*” Too bad. But today his children must eat.¹⁰⁵

The Apache man who sold the ceremonial shield in 1903 knew well the power of the *Dilzini Gaan*. Apache worldview held that the Dilzini Gaan, also known as Mountain Spirits, were living beings that had been part of the world since its beginning, instructing Apaches how to live and to heal, and commanding full respect from humans. The Gaan possessed a type of power that was not innately positive or negative—in the same sense that water, fire, lightning, wind, or sun can be helpful or harmful to humans depending on circumstances. The Apaches understood the Gaan to be “powerful beyond human comprehension, and disrespecting them in any way can result in great harm, sickness, or death” for the person or his community.¹⁰⁶ But the U.S. Government wielded another sort of power, one more immediate and physical. The man’s starving children needed food, and he faced the dilemma of incurring either the physical retaliation of Army soldiers or the supernatural wrath of the Holy Beings. He chose the latter.

¹⁰⁵ As described by Albert B. Reagan in “Notes on the Indians of the Fort Apache Region,” in *Anthropological Papers of The American Museum of Natural History* Vol. 31, No. 5 (1930), 305. It is possible that the transaction Reagan witnessed involved Charles Owen of the Field Museum. Owen’s letters to Dorsey made it seem that he was the only collector there at the time, but it is not conclusive evidence. Linguistic terms as found in Grenville Goodwin, *Social Organization of the Western Apache* (Tucson, Ariz.: University of Arizona Press, 1969, 1942).

¹⁰⁶ Supplemental Information Supporting the White Mountain Apache Tribe’s NAGPRA Claim to the Field Museum, November 1, 2005. NAGPRA National Program files.

A century later, the man's descendants in the Western Apache NAGPRA Working Group argued that he and other Apaches who sold ceremonially important items had indeed incurred the wrath of the Mountain Spirits. "Our children are not walking the road that they should be walking," former Yavapai-Apache Nation chairman Vincent Randall said in 2006. "We have alcohol problems, we have drug problems, we have high suicide rates among our children and we have all kinds of problems, and it all stems back" to the loss of the holy objects and the disrespect of the life forces imbued within them.¹⁰⁷ To remedy those ills, the Apaches enlisted the legal power of NAGPRA. The Apaches saw NAGPRA as a means by which to recover those objects and reassert their proprietary rights to their cultures. But what drove them to appear in front of the NAGPRA Review Committee in three separate disputes went beyond cultural rights. The Western Apaches wanted to heal their world and make amends to the metaphysical forces that had been punishing them for the past hundred years.¹⁰⁸

¹⁰⁷ Review Committee Meeting transcript, November 3, 2006, 101.

¹⁰⁸ The designation of "Western Apache" was first recorded in 1930 by ethnographer Grenville Goodwin to refer to all Apache bands who lived or had lived in Arizona except for the Chiricahua bands. Goodwin acknowledged that the Western Apache bands were distinctly separate groups, but their commonality outweighed their differences. Goodwin wrote that the Chiricahua bands differed enough to justify a separate grouping. See Goodwin, *Social Organization of the Western Apache* (Tucson: University of Arizona, 1942, 1969), xvii. Although I would normally refer to specific tribes, in this study I follow the Western Apaches' lead in grouping them as one larger cultural group for the purposes of NAGPRA. I will use "Apache" to mean the Western Apache, and "Chiricahua Apache" to refer to those bands whose differences are acknowledged by indigenous and non-indigenous experts.

The differences in worldviews between the Apaches and the museum personnel can be understood as incongruent concepts of power. The obvious difference was the Apaches' belief that the Gaan encompassed powerful beings, but there also were subtle differences regarding the power of the spoken word. Apaches understood words to be generative, able to invoke the power of the Gaan. They followed proscriptions against speaking about certain aspects of their beliefs and, in pressing museum representatives to refer to the Gaan with certain words, they hoped to obtain forgiveness for their ancestors' acts. Museum representatives approached words differently, pressing for what they felt was necessary documentation on the objects, basing their right of possession on written sales receipts, and refusing to classify objects in the repatriation notice with terminology the Apaches wanted. This is not to argue that the museum representatives did not think words held some power; indeed, they fought against labeling the Gaan objects as "cultural patrimony" because they did not want that wording to set a precedent broadening the category beyond their interpretation of the law's definition.

The White Mountain Apache Tribe, the San Carlos Apache Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation joined together to form the Western Apache NAGPRA Working Group, which handles repatriation issues.¹⁰⁹

¹⁰⁹ NAGPRA specifies that federally recognized tribes have the rights for repatriation. The four tribes listed passed resolutions forming the Western Apache NAGPRA Working Group and authorizing its members to act in their stead. It was on the basis of that authority that the Working Group petitioned and testified to the NAGPRA Review Committee in a 2006 dispute against the Field

The group pressed formal disputes against the Denver Art Museum in 2002 and the Field Museum of Chicago in 2006; they petitioned the Review Committee for a finding of fact against the American Museum of Natural History (New York) in 2009. Although each of the museums had agreed to return the objects, the terms and manner did not satisfy the Apaches. None of the museums would agree that the objects met the NAGPRA definition of cultural patrimony, nor would they concede that they lacked right of possession. The offered returns came as gifts or deaccessions. Nancy Blomberg and Roger Echo-Hawk from the Denver Art Museum (in 2002), and Joseph Brennan of the Field Museum (in 2006), argued that the Apaches' demands exceeded the legal realm of NAGPRA. Absent legal imperative, the curators' decisions had to honor their fiduciary responsibilities regarding their collections. The three museum representatives did not consider the Apaches' items to be cultural patrimony, and they did not at all address the possibility that the Gaan objects had life forces within them.

Joseph Brennan, vice president and counsel for the Field Museum, referred to the Gaan items as sacred but argued that they were not objects of cultural patrimony. However, the main thrust of his argument was aimed not at the Apaches but at the Review Committee. The most important point he wanted to make, he told the committee members, was that "we want to be very clear that we do not agree that this disagreement is a dispute under NAGPRA and we also want to be very clear up front that we believe that this case should not be

Museum. During the 2002 dispute against Denver Art Museum, the Working Group also included the Fort McDowell Yavapai Nation.

considered a dispute by the committee under the authority granted by NAGPRA.”¹¹⁰ Not only were the Gaan not cultural patrimony in Brennan’s view, but the Review Committee had no right to wade in.

Denver Art Museum repatriation coordinator Roger Echo-Hawk did not mention specifics about the meanings of the seven Apache items that were the topic of that dispute. His testimony centered on the museum’s established process for assessing repatriation claims. Echo-Hawk acknowledged that “these items are important to the claimants and we must therefore be sympathetic to their views, to their feelings, but we must also adhere to the law.”¹¹¹ He spoke often of the need for more discussion about the guidelines of NAGPRA and for the Apaches to provide more information about the seven items so museum personnel could approve the claim. The Apaches had already told the Denver museum that they had provided as much information as they could and that their expertise should be sufficient. Nancy Blomberg, curator of Native Arts for the Denver museum, also did not mention specifics about the seven objects. She testified to the museum’s earnest efforts in returning items that the museum had acquired improperly. She talked about the museum’s mission to display Native American objects as fine art and said that museum workers “know that Indians also value cultural preservation and public education, as evidenced by the growing number of tribal museums.”¹¹² Echo-Hawk and Blomberg both stressed the museum’s commitment to work in

¹¹⁰ Review Committee Meeting transcript, November 3, 2006, 40-41.

¹¹¹ Review Committee Meeting transcript, June 1, 2002, 60.

¹¹² Review Committee Meeting transcript, 40.

tandem with tribes and learn more about the objects. What they seemed not to understand was that the Apaches' beliefs prohibited talking to the uninitiated about important ceremonies and the attendant paraphernalia.

In each dispute, although the particulars varied slightly, the Apache representatives made the same argument: The Gaan ceremonial items transcended sacred (they were holy) and were cultural patrimony. By NAGPRA definition, individuals had no right to sell such items, hence the museums did not have right of possession. But Apache spiritual beliefs produced a stronger reason why the Gaan could not be sold. The objects, when blessed for ceremonial use a century earlier, had become imbued by holy beings and could not be owned by any human. Further, the power of the Gaan was not inherently beneficent; the Apaches argued that angering the Gaan had led to the societal ills the people suffered. It would not be enough to simply get the items returned; the Gaan must be repatriated with the appropriate respect to make amends for their having been sold and displayed in museums. The Apaches were not asking for respect in an attempt to convert others to their beliefs; they asked for it in an attempt to neutralize the negative power the Gaans had brought on Apaches because their ancestors had sold the ceremonial items.¹¹³

¹¹³ This belief was expressed by different tribal representatives in all three disputes. See, for example, Vincent Randall's testimony, Review Committee Meeting transcripts, June 1, 2002, 14-16; Keith Basso's testimony, Review Committee Meeting transcripts, June 1, 2002, 23-24; Ramon Riley's testimony, Review Committee Meeting transcripts, November 3, 2006, 26-28; and the recorded testimony of George Starr and Tommy Patton, Review Committee Meeting transcripts, October 30, 2009, 31-32.

NAGPRA, as inclusive as its proponents tried to make it, was cast as a section of United States Code, with definitions and evidentiary requirements that went counter to the Apaches' traditions. The Apache disputes illuminate the ways in which their spiritual beliefs acknowledge powerful entities that are not inherently beneficent. The disputes also bring forth some of the challenges inherent to negotiating across different languages, notions of ownership, and methods of education to reach a mutually acceptable outcome. One of the ways the Apache representatives attempted to bridge the chasm between worldviews was by making comparisons to the Judeo-Christian foundation of Western thought. For instance, Vincent Randall compared the continued social ills among the Apaches to Biblical curses that were visited "upon these people and their children and their children and their children," meaning that the Gaan still actively punished Randall's people for the sin of selling them.¹¹⁴ The chasm between languages was equally broad. Apaches told the Review Committee that the NAGPRA legal term "sacred" did not translate well and that a long-ago ethnographer mistranslated phrases relating to ownership and possession. As to educational expertise, the Apaches argued that their traditional religious leaders, having been educated since childhood in the ways of their world, were more knowledgeable than an outsider with a Ph.D. This chapter focuses primarily on the dispute against the Field Museum, but includes aspects from the other two cases when germane. By tracing the biographies of the Gaan, whether one thinks of them as metaphysical beings or collectible artifacts, we see the shift in power

¹¹⁴ Review Committee Meeting transcript, June 1, 2002, 14.

relations from the beginning of the twentieth century to the beginning of the twenty-first and the ways that Apaches and non-Apaches interacted during those changing times.

The museum representatives during the disputes, like their predecessors of a century earlier, spoke of the Gaan items as art or artifacts. Denver Art Museum (DAM) curator Nancy Blomberg emphasized that her museum had been an early one to collect Native American material culture as art rather than as ethnographic evidence of natural history. In a 1979 book on the museum, then-director Thomas N. Maytham wrote that the 15,000 Native American objects in the Denver Art Museum constituted a collection that was “one of the finest and the first to be selected and displayed as works of art rather than as archaeological specimens.” He added that historically, such objects had been “considered the purview of museums of natural history.”¹¹⁵ From their point of view, they had been more appreciative and respectful of the Apaches’ “fine arts” than other museums that had collected them as “primitive arts.” Although the Denver museum had changed the meaning of the Apache Gaan items from holy living beings just as the Field Museum and American Museum had, its representatives argued that they had elevated them from ethnographic to true artwork. However, the Apaches did not consider the items to be art or artifacts, a point Vincent Randall made more than once. Review Committee member Lawrence Hart, a Peace Chief of the Cheyenne Tribe in Oklahoma, said the Denver Art Museum was “a great

¹¹⁵ Thomas N. Maytham, foreword to *Native American Art in the Denver Art Museum*, by Richard Conn (Seattle and London: University of Washington Press for the Denver Art Museum, 1979), 11.

institution.” But he understood the Apaches’ point because in many indigenous languages, there was no word for art. Things were made for specific uses, and the people making them tended to do so in an aesthetically pleasing manner. Non-indigenous people had “labeled them as art objects and then began to collect them,” Hart said.¹¹⁶ The Apaches wanted the Review Committee to designate the Gaan items as cultural patrimony because the Mountain Spirit ceremonies continued to be central to their culture.

The World of the Gaan

The Apache Gaan dancers approached in a single line, hop-stepping from foot to foot in knee-high moccasins, chanting to the beat of a drum. Their buckskin kilts lifted at the knees with every step, and their headdresses, some shaped like crosses, others like broad fans wider than their shoulders, turned to and fro. The line snaked in front of the gathered community members and at times the lead dancer left his place to face the others, bending into a crouch from the waist, tapping ceremonial wands known as *Gaan bi gish* on the ground. Several women off to the side swayed to the chanting and drumming, and as the dancers passed a fourth time, the women stepped into place and joined the line, each behind a dancer. The Gaan dancers, also known as Mountain Spirits or Crown Dancers, continued a ceremony that had been central to Western Apache culture and cosmology since long before Euro-Americans began taking notes. The dance would be essentially the same, were it happening in a remote woodland

¹¹⁶ Review Committee Meeting transcript, June 1, 2002, 98-99.

camp in distant Apache memory or in a town on the White Mountain Apache Reservation in 2006.

The ceremonies and the worldview remain tied to the White Mountain area of eastern Arizona, a homeland the Apaches managed to retain even after the forced relocation of many indigenous groups to Indian Territory in present-day Oklahoma. At the dawn of the twenty-first century, the White Mountain Apache Tribe held sovereignty over 2,601 square miles in what longtime Chairman Ronnie Lupe called “one of the most choice, beautiful areas of land in this country, and in the world.” It is “the land of the Mountain Spirit Dancers, the eagle feather, Sunrise Dance, the land of the water drum, blue stone, and the sacred yellow powder.”¹¹⁷

It was in this place, near the White Mountain, that these Apaches came to know themselves as *Ndee*, The People. As Lupe explained in 1980:

During these times, supernatural beings existed as people on the earth. Apache traditions have persisted since then and are practiced now just as before. Our Apache language, religion and beliefs are accepted today as a way of life and have changed very little from pre-Columbian times. Many stories about the Apache past are still verbalized dramatically in ceremonial songs and are taught to medicinemen novices.¹¹⁸

¹¹⁷ Ronnie Lupe, introduction to *The White Mountain Apache: Culture ... Sovereignty ... Progress* (Whiteriver, Arizona: White Mountain Apache Tribal Council, 1980), not paginated.

¹¹⁸ *Ibid.*

The pre-reservation era White Mountain, Cibecue, Northern Tonto, Southern Tonto, and San Carlos Apache groups make up what collectively became termed the Western Apaches. Their homelands covered 90,000 square miles of eastern Arizona, an ecologically diverse area ranging from low deserts to the second highest mountain in the state. The Western Apaches hunted and gathered their food, but also grew corn, squash, beans, and other foods. Their hunting included raiding livestock primarily in southern Arizona and northern Mexico, an activity that continued well beyond the establishment of Army forts in the years following the Civil War.¹¹⁹ The Apaches did not follow a ceremonial calendar as some Puebloan Indians did; instead they held ceremonies to appeal to specific metaphysical powers (*diyí'*) for particular requests. The *diyí'* existed in a hierarchy within a variety of sources, including certain plants, animals, stars, planets, lightning, and other, unseen beings such as the Gaan. At the top of the hierarchy was the creator (whose Apache name translates roughly as In Charge of Life or He Who Rules Our Life); the sun was second in importance; Changing Woman controlled fertility and longevity; her son, Slayer of Monsters, was “man’s champion” and had once lived on earth. Below the level of those four supernatural beings existed many others, including the Gaan who had once lived

¹¹⁹ This brief explanation is agreed upon by non-native scholars. For example, see Keith H. Basso, *The Cibecue Apache* (New York: Holt, Rinehart, and Winston, 1970), or Henry F. Dobyns, *The Apache People*, with introductory statement by Apache Tribal Chairman Fred Banashley, Sr. (Phoenix: Indian Tribal Series, 1971).

on earth but had gone in search of eternal life. All the supernatural beings had power over man and “may cause him trouble” if not treated with respect.¹²⁰

Men who would become Gaan dancers were chosen and trained by earlier dancers. Medicine men blessed the ceremonial headdresses and accoutrements so that the gaan diyi‘ would inspire the dancers’ ceremonial work. The dancers prayed to the headdresses, and after donning them were transformed to something beyond human. After the dance, the headdress had to be retired in a hidden location such as a cave, never to be disturbed.

The Army established what came to be called Fort Apache near the White Mountains of eastern Arizona in 1870, and outside influence over the Apaches grew. Ethnologists, archaeologists, anthropologists, museum collectors, and missionaries came and went over the next decades, many of them writing about the importance of the Gaan ceremonies in Apache lifeways.¹²¹

Army Captain John Gregory Bourke referred to the Gaan as the “principal gods” of the Apaches, and noted that when an Apache dancer wore the Gaan

¹²⁰ Grenville Goodwin, “White Mountain Apache Religion,” in *American Anthropologist* Vol. 40, No. 1 (Jan-Mar 1938): 26-27. Some sources equate In Charge of Life with the sun, but Goodwin notes that mythology tells of the sun’s creation whereas In Charge of Life simply always existed. Some more recent sources have conflated the sun and In Charge of Life, referring to that supreme being as *Usen*. However, that name was not used by Goodwin, Bourke, Basso, or the Apaches who testified to the Review Committee. Vincent Randall of the Western Apaches translated it as He Who Rules Our Life or He Who Controls Our Life when testifying at a Review Committee Meeting on June 1, 2002. (See transcript, 12).

¹²¹ For the most part, relations between the White Mountain Apaches and the outsiders were peaceful; indeed, White Mountain Apaches worked as scouts on cavalry expeditions against other Apache groups, most famously the Chiricahua bands led by Cochise or Geronimo in southern Arizona.

headresses and carried the ceremonial implements, “he ceases to be a man, but becomes, or tries to make his followers believe that he has become, the power he represents.” Elsewhere he wrote that the dancers dressed to represent the Gaan “but not content with representing them aspired to be mistaken for them.”¹²² He clearly did not share the Apaches’ belief in the life forces or the metaphysical power of the Gaan. Goodwin wrote in the 1930s that the Gaan “are a people who resided on earth long ago, but departed hence in search of eternal life and now live in certain mountains, places below the ground, as well as living and traveling in clouds and water.”¹²³ He also referred to the Gaan as “a class of supernatural beings prominent in mythology and religion” among the Western Apache.¹²⁴

The most substantial Christian influence among the Apaches came from Lutheran ministers, the first of whom arrived in 1896 near Fort Apache. It was not until 1911 that any serious Christianizing began, with the arrival of Lutheran missionary E.E. Guenther and his wife. They learned the Apaches’ language and began an orphanage for Apache children. Guenther’s success drew more Lutheran missionaries, who arrived to work with him. In 1923, when Guenther opened a new church, Apache Chief Alchesay participated in the dedication

¹²² John Gregory Bourke, “The Medicine-Men of the Apache,” in *Ninth annual report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1887-1888* (Washington, D.C.: Government Printing Office, 1892), 581, 586.

¹²³ Goodwin, “Apache Religion,” in *American Anthropologist* Vol. 40, No. 1 (Jan-Mar 1938): 24-37.

¹²⁴ Goodwin, *Social Organization of the Western Apache*, 64.

ceremony and brought in new converts. Catholic missionaries arrived in 1921, but did not gain as many converts as the Lutherans.¹²⁵

Throughout the twentieth century, the Apaches continued the Mountain Spirits dances, asking the Gaan for aid and guidance. During the 1930s, Grenville Goodwin wrote that there were “some thirty-six” actual ceremonies appealing to the various *diyì*.¹²⁶ Even with the growing exposure to Christian religions and the loss of traditional lifeways, Apaches retained some powerful ceremonies. For example, anthropologist Keith Basso reports that medicine men in Cibecue performed a war dance for seven men joining the military in 1942. The men all returned from World War II alive.¹²⁷ By 1970, many of the ceremonies had been lost, but those that had been retained, such as the girl’s puberty ceremony and curing ceremonies, were performed on a regular basis.¹²⁸ Levi DeHose, an Apache elder from Cibecue, told the Review Committee in 2002 that there were fewer ceremonies than when he was young because power inherent in a ceremony

¹²⁵ Dobyns, *The Apache People*, 62-63. Dobyns writes of one example in which the Apaches combined Christianity with traditional beliefs. A Fort Apache man in 1921 combined aspects of traditional ceremonies with Catholic rites in the Holy Ground movement, which spread across the Apache reservations despite Christian missionaries’ attempts to thwart it. The founder, Silas John Edwards, went to prison in 1933 for killing his wife, but the Holy Ground movement continued. Edwards was released from prison in 1954 and reclaimed his leadership role.

¹²⁶ Goodwin, “Apache Religion,” 26-29.

¹²⁷ Basso, *Cibecue Apache*, 32. Apache elder Levi DeHose also told the Review Committee that when he was young, there had been more ceremonies and the holy men had more spiritual power. See Review Committee Meeting transcript, June 1, 2002, 27-29.

¹²⁸ Basso, *Cibecue Apache*, 47.

could be dangerous and required specific training, something that did not happen as frequently as before outsiders came around. The spiritually gifted holy men understood that they could not discuss the ceremonies with anyone other than those they trained, and a practitioner of one ceremony would not attempt even to gather herbs used in a different ceremony. DeHose, whose first language is Apache, explained the thinking in English this way: “Why you digging when you don’t know and you got in trouble? It give you bad, maybe sick or lose your eyes or maybe your mouth kind of turn and all these thing would happen. So today there’s a lot of ways is now is kind of forgotten.”¹²⁹

Although the variety of ceremonies lessened, the surviving Gaan ceremonies allowed the *Ndee* to remain connected to the supernatural beings that Chairman Lupe mentioned. The dancers and the ceremonial objects they still used at the end of the twentieth century were critical to the continuation of their cultural knowledge. But just as significantly, respectful treatment of the ceremonial objects and the *diyì*‘ they embodied was critical to the Apaches’ harmony and well-being. During the 1960s, Keith Basso reported similar observations about the Cibecue Apaches’ relationships with *diyì*‘, a form of power that he attempted to explain this way:

Beyond the fact that it possesses the attribute of “holiness,” the concept of power resists rigorous definition. Apaches are quite specific about what power does and which things possess it, but they have difficulty explaining just what power is.

¹²⁹ Review Committee Meeting transcript, June 1, 2002, 26.

Basso quoted an Apache informant telling him, “You can’t talk about *diyí* like other things. You can’t hold it with words.”¹³⁰ What is clear is the dual nature of such power and its frequent interaction with humans and other manifestations of power. For instance, when an Apache acts with disrespect toward a power, it may cause illness in that person; the person beseeches a medicine man to use his particular power to “neutralize” the power causing the sickness; the curing ceremony raises the recipient to a level of existence called *gòdiyó*, which Basso translates as “sacred” or “holy” but also as “potentially harmful.”¹³¹ It is that potential harm that the Apaches argued had manifested when their ancestors sold the Gaan headdresses and other ceremonial items rather than retiring them as prescribed.

The World of Museum Curators and Anthropologists

One of the ironies of United States history is that just about the time when the dominant Euro-Americans believed they had beaten the indigenous peoples into submission and then near probable extinction, mainstream America became obsessed with collecting and recording the traditions, clothing, and habits of the peoples they had fought so hard to obliterate. Postmodern anthropologist Renato Rosaldo wrote that members of the dominant culture indulged in “imperialist nostalgia” so they could talk about what they had destroyed without accepting guilt or responsibility for their actions. The imperialist culture assumed this air of

¹³⁰ Ibid, 137.

¹³¹ Keith H. Basso, “Silence in Western Apache Culture,” in *Apachean Culture History and Ethnology* (Tucson, Arizona: University of Arizona Press, 1971), 158.

“innocent yearning,” Rosaldo argued, “both to capture people’s imaginations and to conceal its complicity with often brutal domination.”¹³² Two less caustic and more widely held views attribute Americans’ interest in the indigenous to a growing desire to understand man’s history in the wake of Charles Darwin’s work in biology, and alternately to a discomfort with modernity amid the tremendous changes in society during the late nineteenth century. People saw Indians as the Other, but some thought just maybe the native ways of life held answers eluding non-indigenous society.

Part of the enduring appeal of the Other, Edward Said argued, is that people identify who they are in part by determining who they are not.¹³³ Curtis M. Hinsley, Jr., in his book chronicling the Smithsonian Institution’s role in American anthropology during the nineteenth century, argues that the emerging discipline was “an exercise in self-study by Americans who sensed but were unable to confront directly the tragic dimensions of their culture and of their own lives.”¹³⁴ Living at a time when science had pushed aside earlier beliefs based on

¹³² Renato Rosaldo, *Culture & Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989), 70.

¹³³ Historian Peter Iverson also frequently told his students that “part of who we are, is determined by who we are not” when talking about outsiders’ views of the Navajos, and conversely, Navajos’ views of outsiders.

¹³⁴ Curtis M. Hinsley, Jr., *Savages and Scientists: The Smithsonian Institution and the Development of American Anthropology, 1846-1910* (Washington, D.C.: Smithsonian Institution Press, 1981), 8.

the Bible, anthropologists “found solace as well as aesthetic pleasure in the vision of a progressively evolving humanity.”¹³⁵

Hinsley argues that the systematic work by men such as John Wesley Powell, founder of the American Bureau of Ethnology, went beyond “collecting curiosities.” In particular, Powell understood the interconnected aspects of a group’s “material arts, social institutions, customs, beliefs, and languages” and took anthropology “one important step toward a holistic approach to human society.”¹³⁶

Historians have analyzed Americans’ struggles in adapting to modernity in the late nineteenth century from a variety of angles, from early temperance movements to political reforms.¹³⁷ As to how that discomfort affected some easterners’ views of Indians, Sherry L. Smith’s study on ten writers of popular books on Indians from the 1880s to 1930s found many differences in their approaches and opinions. However, they shared “a deep and abiding passion in things they deemed ‘Indian’” as well as a “pronounced and growing unease with the modern world.”¹³⁸ The down side, as explained by Native Americans in the

¹³⁵ Ibid.

¹³⁶ Ibid., 137, 138.

¹³⁷ See, for example, Norman H. Clark, *Deliver Us from Evil: An Interpretation of American Prohibition* (New York: W.W. Norton, 1976); or Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967).

¹³⁸ Sherry L. Smith, *Reimagining Indians: Native Americans Through Anglo Eyes, 1880-1940* (New York: Oxford University Press, 2000), 214.

latter twentieth century, was that even well-intentioned non-indigenous people had been applying their meanings to indigenous practices and cultural materials.

Even before 1893, when Frederick Jackson Turner famously declared the frontier closed, this process of nostalgia had begun. Anthropologists struggled with languages whose roots had no commonality with English and took notes on everything Indian; archaeologists dug up ruins of past civilizations and marveled at the beautiful creations left behind; across the continent photographers set out to document the last of what Edward Curtis termed a “vanishing race;” and U.S. Army soldiers in the west collected war trophies and sent crania back east for scientific study.¹³⁹ It was during this time frame and with this mindset that the Field Museum began.

In 1893, Chicago hosted the World’s Columbian Exposition, which juxtaposed the White City of civilized man against the Midway *Plaisance* (French for pleasures) exhibiting living peoples from other continents and from among the indigenous of the Americas who were considered to be less civilized than the Euro-Americans. Twenty-five million visitors over a six-month span bought “curiosities” as souvenirs of those “exotic” civilizations while cooing over the placid Esquimaux and marveling at the still fear-inspiring Sioux.¹⁴⁰ Several

¹³⁹ Edward Curtis’s 1904 photograph “Vanishing Race” portrayed the backs of several Navajos riding horses away through Canyon de Chelly. The image became iconic of the dominant culture’s belief that the indigenous peoples would not long survive.

¹⁴⁰ I use the terms “curiosities” and “exotic” here in the manner they were employed at that time. Although the White City earned its name from the white plaster exteriors of the buildings, it came to have a double entendre in cultural

months after the Exposition closed, its Palace of Fine Arts was turned into the Field Museum of Natural History (as it was originally named) under the direction of F.V. Skiff. Approximately 50,000 artifacts gathered in 1891 and 1892 under the direction of Frederic Ward Putnam, Franz Boas, and George Dorsey constituted the new museum's anthropological collection, which became its biggest draw.¹⁴¹

In 1896, Boas left Chicago to work for Columbia University and the American Museum of Natural History in New York City. That museum had been established by Governor John Thompson Hoffman in 1869 and was dedicated to scientific research and education. Boas left the museum in 1905 and spent his life as a professor and anthropologist at Columbia. Although the study of humans and their cultures dates to ancient times, the founding of American anthropology as an academic discipline traces to 1896, when Boas began the first department of anthropology at Columbia University. He shifted the focus from museums and objects to cultures and languages, making ethnology a central component of anthropology. His work and mentoring of students broadened the study of Native

understanding. This characterization of the World's Columbian Exposition can be found in numerous sources, including those on Native Americans, African Americans, and women's issues, as well as Chicago history. See, for example, Gail Bederman, *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago, 1995), 31-41; Kathleen S. Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA* (Lincoln: University of Nebraska Press, 2002), 22-29, 47, 48; or the Encyclopedia of Chicago Web site at <http://www.encyclopedia.chicagohistory.org/pages/1386.html>.

¹⁴¹ Field Museum Web site, www.fieldmuseum.org/research_collections/anthropology/default.htm (accessed September 25, 2010).

Americans in the United States beyond physical characteristics and a belief in racial hierarchy to a relativist approach that looked at cultural diffusion.¹⁴²

In 1901 and 1903, the Field Museum sent anthropologist Charles Owen to Arizona to purchase “authentic ceremonial and otherwise culturally significant materials” from the Apaches and Navajos.¹⁴³ Owen was hugely successful and the museum gained an important boost to its collections. Two of the items he bought for the Field Museum, a medicine cord and a painted wooden figure, were sold to Denver Art Museum in 1936 and became the subject of its dispute with the Apaches.¹⁴⁴ Owen’s purchases included Gaan headdresses that had been worn during Mountain Spirit dances. From Owen’s letters one concludes that he understood the dance to be integral to Apache culture; he seemed intent on preserving what he thought of as the artifacts and symbolism of a fading culture. On his second expedition, he wrote several letters to Dorsey, pressing for more money to buy objects that were not usually sold. He intended to make the Field

¹⁴² Franz Boas writes about his views on cultural diffusion in *Race, Language, and Culture* (New York: The MacMillan Company, 1948). For more on Boas, see Regna Darnell, “Franz Boas: Scientist and Public Intellectual,” in *Visionary Observers: Anthropological Inquiry and Education*, ed. Jill B.R. Cherneff and Eve Hochwald (Lincoln and London: University of Nebraska Press, 2006), 1-24. Information on the American Museum of Natural History from the museum’s web site at <http://www.amnh.org/about/> (accessed February 6, 2011).

¹⁴³ Testimony of Joseph Brennan (vice president and general counsel of the Field Museum), in Review Committee Meeting transcript, November 3, 2006, 43.

¹⁴⁴ Notice of Intent to Repatriate Cultural Items: Denver Art Museum, 68 Federal Register 12372, March 14, 2003.

Museum's collection the best and saw the opportunity under the 1903 conditions.¹⁴⁵

Over the twentieth century, the Field Museum grew to be one of the top tier museums in the country, with twenty million objects from around the world. It still has a large emphasis on anthropology – one of the museum's permanent exhibits is *The Ancient Americas*, which takes visitors back across 13,000 years of human history on this continent.¹⁴⁶ However, the museum curators and others became more sensitive to the handling of Native American material culture. In 1989, the museum enacted a new policy for reinterring human remains and funerary objects, and for considering “the return or loan of specific ceremonial objects which are actively needed for the current practice of traditional religion.”¹⁴⁷ After the 1990 passage of NAGPRA, the museum began an internship program for Native American college students to work in the repatriation program, inventory different tribal collections and do background research on repatriation requests.¹⁴⁸

In contrast to the Field or American museums, the Denver Art Museum (as its name suggests) defined its mission as collecting art rather than

¹⁴⁵ Charles Owen letters to George Dorsey, May and June, 1903.

¹⁴⁶ The Field Museum web site, <http://www.fieldmuseum.org> (accessed November 28, 2008).

¹⁴⁷ Janice Klein, “NAGPRA Consultation and the Field Museum,” *Registrars' Quarterly* (Fall 1995): 7. Klein was registrar for the Field Museum at the time.

¹⁴⁸ The Field Museum 2004 Annual Report to the Board of Trustees, (Chicago: Field Museum Office of Academic Affairs, 2005), 100.

ethnographic specimens. That approach traces back to 1890, when Denver artist Harriet Hayden began Le Brun Art Club in her studio. It became the Artist's Club of Denver in 1893 and eventually became the Denver Art Museum. At the urging of Anne Evans, whose father John Evans had served as Colorado Territory governor from 1862-1865, the museum approached its mission searching for Native American objects as art rather than as archaeological or anthropological specimens. In 1930, Frederic Huntington Douglas became the first full-time curator of the museum's American Indian Department. Douglas did extensive field work to determine which tribes made what sorts of objects. He "worked zealously to build a collection that would rank with the best" while trying to gain national appreciation for the field of Native American art. He worked on the first major exhibitions at San Francisco World's Fair in 1939 and the Museum of Modern Art in 1941.¹⁴⁹

The Denver museum, like the Field and the American Museum, amassed an impressive collection of almost 20,000 objects from indigenous cultures over the century.¹⁵⁰ Although the Denver museum did not become as large as some museums, its representatives have taken pride in their artistic rather than ethnographic approach to indigenous collections. When NAGPRA became law, the three museums inventoried their collections and contacted tribes that might be

¹⁴⁹ Vivian Sheldon Epstein, *History of Colorado's Women for Young People*, (Denver: VSE Publisher, 1997). Richard Conn, *Native American Art in the Denver Art Museum* (Seattle: University of Washington, 1979). Quoted material from Marlene Chambers, editor, *The First Hundred Years: Denver Art Museum* (Denver: Denver Art Museum, 1996), 97.

¹⁵⁰ Review Committee Meeting transcript, June 1, 2002, 38.

culturally affiliated. They began the consultation process to determine proper dispensation of human remains, funerary objects, sacred objects, and objects of cultural patrimony. Although the Western Apaches brought disputes against the three museums, the tribes did not argue that the museums tried to withhold items that should be repatriated. In all three disputes, the Apaches took issue with the museum's manner and wording regarding the items' return.

Trio of Disputes

The first dispute the Western Apache NAGPRA Working Group brought to the Review Committee was in 2002 against the Denver Art Museum, for the return of seven objects associated with Gaan ceremonies. In July 2000, the Working Group had asked the museum to return the items as cultural patrimony, claiming the museum did not have right of possession. In September 2000, the museum denied the request and asked the Apaches for more documentation. After going back and forth, the museum in January 2001 offered to "gift" the items to the Apaches, an offer they refused. When the dispute reached the Review Committee on June 1, 2002, the Apaches said they could not offer more information about the items because their traditional laws forbid discussing certain elements of the ceremonies with the non-initiated. They considered the offer of a gift to be insulting, because in their view the museum had no right to the items. The items had been gifts to the tribe by the creator.¹⁵¹

¹⁵¹ Review Committee members present at this dispute were Armand Minthorn, Garrick Bailey, James Bradley, Lawrence H. Hart, Vera Metcalf, John O'Shea, and Rosita Worl.

Native Arts curator Nancy Blomberg and assistant curator Roger Echo-Hawk represented the Denver Art Museum in the dispute. Blomberg, an anthropologist whose research specialty was Navajo textiles, had worked at museums in Los Angeles and Anchorage before joining the Denver museum in 1990. She and Echo-Hawk were respectful and polite as they argued that to fulfill their duties under NAGPRA they needed sufficient evidence of the items' meaning. Blomberg said they considered the law to be a fair one with specific definitions that required a common understanding. "Indeed, that is the very heart of the dispute today, exactly what types of information does NAGPRA require in a claim," she said.¹⁵² She described Denver's history of working toward relationships of mutual respect with tribes, saying that means not only returning items but also gaining acknowledgement for the museum's mission of curating works of art. To "honor an incomplete claim would undermine the effectiveness of NAGPRA," she said.¹⁵³ If the Apaches could not supply enough information to make what she considered a complete claim, the museum could repatriate outside of NAGPRA by making a gift of the items. Echo-Hawk, a Pawnee who had worked extensively with NAGPRA and had written a book on repatriation based on the Denver museum's case studies, was polite but perhaps condescending. He explained step-by-step to the Review Committee what "realms of information" must be covered in assessing whether an item should be repatriated. Echo-Hawk's realms came directly from the statute: establishing

¹⁵² Review Committee Meeting transcript, June 1, 2002, 37.

¹⁵³ *Ibid.*, 48.

cultural affiliation or lineal descent, demonstrating that an object fits one of the categories for repatriation, and whether the museum has right of possession. He summed up the committee's duties this way: "The basic question to answer is what does NAGPRA require in a claim and has the working group's claim successfully addressed those requirements?"¹⁵⁴ Echo-Hawk also attempted to co-opt the Review Committee's role; on a dozen occasions in his opening remarks he suggested that the Review Committee, museum, and tribe jointly decide the dispute.¹⁵⁵ As might be expected, Apache spokesman Vincent Randall argued against that. He asked the Review Committee later that day, "Who is it that Denver Art Museum has the audacity to make themselves the interpreters of the law? The interpreters of the law are sitting right here in front of me. That's why we chose to come to you."¹⁵⁶

What emerged during testimony offered by both sides and in response to committee members' questions was an impasse over how much information the Apaches must share to satisfy the law's criteria. Blomberg and Echo-Hawk did not say what NAGPRA categories they believed the objects fit into; rather they maintained that they needed specific information rather than speculation about the objects' purpose. Echo-Hawk told the committee:

If it's speculation that this was used in a ceremony and never retired or it was retired and then taken from its place of retirement,

¹⁵⁴ Ibid., 51-54.

¹⁵⁵ Ibid., 54-61.

¹⁵⁶ Ibid., 72.

I don't know that we as a museum can – it won't be a good process for us to rely on speculation as evidence. If we open the door to speculation because we sympathize with the claimants in this case, then we're really opening the door to speculation as evidence.¹⁵⁷

During committee discussion of the dispute, each member offered opinions on the testimonies. Committee member Rosita Worl, a Tlingit Alaskan anthropologist, said that based on the Apaches' testimony, the items were both sacred and cultural patrimony. NAGPRA defines sacred as “specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.”¹⁵⁸ Worl noted that the Denver Art Museum officials wanted names of the religious leaders and the ceremony they would practice. She said that two Apache medicine people had been identified that morning by an affirmation of silence and that the Apaches' written materials described the religious ceremony as “a healing ceremony to channel power from the creation.” In addressing the “needed” aspect of sacred objects, Worl reminded fellow committee members that the Apache ceremony had two phases: “The one, the active, where it was used with prayer, dance and song, and second, the use of the claimed objects when they are put away to benefit all of the Apache.”¹⁵⁹ To qualify as cultural patrimony, the items also had to have “ongoing historical, traditional, or cultural importance

¹⁵⁷ Ibid., 114.

¹⁵⁸ 25 U.S.C. 3001(3)(C).

¹⁵⁹ Review Committee Meeting transcript, June 1, 2002, 162.

central to the Native American group or culture itself, rather than property owned by an individual.”¹⁶⁰ Worl said that the healing ceremonies had been for the benefit of all Apaches in the community and she agreed with the Apaches that the items had been “imbued with supernatural qualities” that continued to have healing powers after being put away or retired. She summed up her opinion:

The removal and absence of these items made for their healing ceremonies have led to serious consequences. And so in my estimation, that demonstrates the central importance of these items as items of cultural patrimony in that they are needed by the contemporary Apache to maintain their health.¹⁶¹

After further discussion, the Committee voted unanimously that the items were both sacred and cultural patrimony and that the museum did not have right of possession. However, rather than recommending that the museum repatriate, the Committee told the museum to re-evaluate the case and report its findings in ninety days. The museum took into consideration the Apaches’ testimonies about the ritual need to retire the items. Although museum officials continued to believe they had right of possession and that the objects were not cultural patrimony, they were convinced that the objects were sacred. The museum de-accessioned the items and returned them to the tribe as sacred items in 2003.¹⁶² Meanwhile, White Mountain Apache Cultural Resource Director Ramon Riley had begun

¹⁶⁰ 25 U.S.C. 3001(3)(D).

¹⁶¹ Review Committee Meeting transcript, June 1, 2002, 162.

¹⁶² Notice of Intent to Repatriate Cultural Items: Denver Art Museum, 68 Federal Register 12372-3, March 14, 2003.

negotiating with Joseph Brennan and Lori Breslauer over Gaan items at the Field Museum of Chicago.

On May 30, 2002, Ramon Riley asked Jonathan Haas, curator of anthropology at the Field Museum, to return thirty-three catalogued items as sacred objects and objects of cultural patrimony under the terms of NAGPRA.¹⁶³ The tribe waited over a year for a response, which came from a museum attorney. Lori Breslauer wrote on June 20, 2003 that “a thorough legal analysis” of “relevant facts and circumstances” led museum personnel to conclude that the objects were sacred but the museum had right of possession.¹⁶⁴ Breslauer offered a compromise of claim in which the museum would return the items after the tribe signed a waiver acknowledging that the museum had true ownership and that if the tribe ever wanted to get rid of the items, it would return them to the museum. It took Riley less than two weeks to respond, refusing the compromise and asking the museum to explain its stance.¹⁶⁵ In a return letter, Breslauer explained that the museum did not agree the objects were cultural patrimony because they had determined “that the requested items are not of central importance to the tribe and that the objects were not commonly owned by the tribe.”¹⁶⁶

¹⁶³ The thirty-three catalogued items represented fifty-six individual pieces, including headdresses, wands, hoops, and other paraphernalia.

¹⁶⁴ Lori Breslauer letter to Ramon Riley, June 20, 2003.

¹⁶⁵ In detailing these correspondences, I am naming the letter writers. However, the writers were not acting on their own; copies of the letters were sent to others in the group they represented.

¹⁶⁶ Breslauer letter to Riley, August 15, 2003.

On June 4, 2004, Breslauer wrote to John Welch in the tribe's Historic Preservation Office and offered to remove the restriction contingent upon the tribe passing a resolution that the items would never be alienated from the tribe. In essence, the museum offered to remove a restriction if the tribe would restrict itself. Correspondence continued back and forth. The Apaches (through Riley) also pushed for the Field Museum to acknowledge that Charles Owen, the collector who had purchased the items in 1901 and 1903, had acted "wrongly and or unethically" and for the museum to accept responsibility "for the harm it has inflicted on Apache people and communities."¹⁶⁷

In 2006, when Riley requested a dispute hearing in front of the NAGPRA Review Committee, the museum asserted that there was no dispute because it had offered to return the items – per its conditions. In a letter to the NAGPRA Review Committee, the museum's president and chief executive officer, John W. McCarter Jr., summed his case up this way:

While the items may be sacred objects under NAGPRA, they are not objects of cultural patrimony, and the Museum has right of possession under NAGPRA. Charles Owen purchased the items for the Museum during trips he made to the White Mountain Apache Reservation in 1901 and 1903, and his purchases were fully legal under U.S. and tribal laws at that time. The Museum's

¹⁶⁷ Ramon Riley letter to Timothy McKeown, National NAGPRA Program, September 29, 2006.

ownership of each of the requested items is based on a transaction that legally alienated the object from its seller.¹⁶⁸

In November 2006, when the matter did come before the Review Committee, Joseph Brennan, vice president and general counsel of the museum, testified that there was no dispute, that the tribe's request was outside the committee's jurisdiction, and that he would give a statement but would not answer questions from the committee. The Review Committee heard the matter over his objection.¹⁶⁹

Transcending the Sacred

When Vincent Randall, Levi DeHose, Ramon Riley, Lenora Robertson, and Steve Titla of the Western Apache NAGPRA Working Group faced Field Museum Vice President Joseph Brennan in front of the NAGPRA Review Committee, no one disputed the events of a century earlier. Both parties' cultural memories matched well enough to agree that the Apaches had been starving, kept nearly prisoner on their reservation, and that Charles Owen bought as many items as he could from them with money from the Field Museum. Thus memories were not contested. However, what those remembered events represented, the thick description of those events, was contested according to very different worldviews

¹⁶⁸ John W. McCarter, Jr. letter to NAGPRA Review Committee, April 18, 2006.

¹⁶⁹ Review Committee members present at the meeting were Rosita Worl, Donna Augustine, Garrick Bailey, Willie Jones, Colin Kippen, Dan Monroe, and Vincas Steponaitis.

and the power dynamics inherent to them.¹⁷⁰ NAGPRA, legislation crafted and implemented in a spirit of compromise, could not bridge the gap between Apaches' spiritual beliefs and the museum officials' view of the Gaan as inanimate collectibles.

The dispute between the White Mountain Apache Tribe and the Field Museum of Chicago revolved around linguistic and legal nuances. Museum representatives as early as 2002 agreed that the thirty-three objects should be repatriated to the tribe, but they would not agree to identify the objects as "cultural patrimony" or to say that the items had been improperly or unethically obtained. They preferred to call the objects "sacred," and wanted to repatriate them outside of any legal obligation under NAGPRA.

When members of Congress drafted and passed NAGPRA, they took precautions against just such linguistic intricacies. Section two of the law provides a list of definitions of terms used including "sacred objects," "cultural patrimony," and "right of possession." According to the law, sacred objects mean "specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents," while cultural patrimony refers to "an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or

¹⁷⁰ I am using "thick description" after Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973).

conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.” The right of possession, as defined by NAGPRA, “means possession obtained with the voluntary consent of an individual or group that had authority of alienation. ... The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.”¹⁷¹

Whether a museum or a tribe has the onus of proving right of possession rests largely on whether the item is sacred or is cultural patrimony. An individual could own a sacred object, so he or she could sell or give it away. The tribe would have to establish by a preponderance of evidence that the museum had not gained it rightfully. Cultural patrimony, however, referred to objects that could not have been owned by an individual, thus the presumption was that an outsider could only obtain the item with the agreement of the entire indigenous group. The museum would have to show that the original collector had gained that agreement.

Field Museum officials contended that the Gaan items were sacred, which meant they could be sold to Owen, and hence, the museum had right of

¹⁷¹ Public Law 101-601. 25 U.S.C. 3001 (2010).

possession. Joseph Brennan explained the museum's case-by-case analysis of objects and said it "was not clear to us" that the Gaan were centrally important to the Apaches, but that there was "clear and significant anthropological and circumstantial evidence that these items could be individually owned and could be sold."¹⁷²

The tribe argued that the Gaan items were cultural patrimony that individual Apaches had not had the right to sell to Owen. Further, the tribe and its elders argued that the Gaan items were more than sacred; they were holy and embodied holy beings. At the beginning of the dispute hearing, Vincent E. Randall, former Yavapai-Apache Nation chairman and the Dilzhe'e Apache Cultural Preservation Director from Camp Verde, tried to explain the discrepancy in interpretation:

That's the greater society's interpretation and semantics of what sacred is to us. The nearest thing that you can understand would be holy, just as much as the Ten Commandments were written on the stones that Moses carried off of Sinai are not sacred. They're holy objects because the almighty God himself wrote those words on those tablets and that's how the objects that we are talking about are holy objects.¹⁷³

The notion of "holy" had not been written into NAGPRA. Review Committee member Garrick Bailey, an ethnohistorian and cultural anthropologist, commented that Christianity had "a different concept of the relation of objects to

¹⁷² Review Committee Meeting transcript, November 3, 2006, 50-51.

¹⁷³ *Ibid.*, 18-19.

God.”¹⁷⁴ He agreed with the Apaches’ definition that sacred things are symbolic of God and that holy items embody the divine presence. “They don’t belong to God; they are God,” Bailey said. “And we don’t have that in Christianity. We don’t have that in our Western constructs. It’s very difficult for me to try to understand that to begin with.”¹⁷⁵ This concept might have been easier to grasp for a Roman Catholic; church doctrine teaches that after a priest blesses the Eucharistic bread and wine, it becomes, or embodies, the body and blood of Jesus Christ and his divine nature.

The concept of ownership also became a point of contention. The Field Museum held that the Gaan headdresses, ceremonial wands, and medicine hats had been purchased from individual Apaches who made the items and therefore owned them. The tribe countered that although individuals created the items, after they were blessed they became more than sacred, and more than a human could own. They became, according to Western Apache traditional beliefs, a form of living being. The traditional healers known as *Dighin* had “custody and stewardship duties” toward ceremonial objects such as the *Gaan bichah* (headdresses), *Dilzini nanai* (sacred crosses), *Gaan bi gish* (ceremonial wands), and *bighast i* (sacred cords used in prayer). Ramon Riley, a respected Crown Dancer and the White Mountain Apache Tribe’s cultural resource director, explained the difference this way:

¹⁷⁴ Review Committee Meeting transcript, November 4, 2006, 39.

¹⁷⁵ *Ibid.*, 42.

In English one might say that they are “his/hers,” and a Dighin’s actions with ceremonial items might lead an observer to superficially conclude that the items are that Dighin’s property. However, in Western Apache they are referred to as “agotsih” meaning “he/she keeps it”; “keep” implying something close to the English language notion of “custodianship.”¹⁷⁶

Riley is a Crown Dancer and trained in how to care for Gaan objects. He examined the thirty-three objects in consultation visits to the Field Museum and at the Review Committee meeting testified to the importance of the items and the need to repatriate them in a respectful manner:

These objects are alive and you can feel the power, powerful presence on them. In Apache law once this object is used it should not have been sold. ... I can’t imagine how my ancestors felt when they parted with these holy objects.¹⁷⁷

Riley described the power the army had over Apaches in the early 1900s, after they had taken away the Apaches’ guns, horses, and way of life, then failed to supply adequate food. He spoke of crooked contractors who made profits on food meant for the Apaches and described the scene of the Gaan sales:

And like I said, the Army was present and we couldn’t do anything but sell these objects. And some practitioners back there, back then, the medicine people, when they sold these objects they were crying. They don’t want to part with it. They want to hold it for several more minutes before they sold it.

¹⁷⁶ Ramon Riley letter as quoted in Alexander B. Ritchie (White Mountain Apache Tribal Attorney), letter to The Field Museum, May 8, 2006.

¹⁷⁷ Review Committee Meeting transcript, November 3, 2006, 26.

Sometimes they took it home overnight and finally they parted with it. And when they sold it they say – they said don't hurt us, don't hurt my family, and that's how – that's what they went through, even the women were crying, screaming, because they know how serious this is. And these are – objects are alive. And like I said, I visited the Field Museum. I've seen these objects. They're powerful. They shouldn't be on display. They shouldn't be in storage. They should be home. They should come home safely to where they belong on the White Mountain Apache Reservation.¹⁷⁸

All the Apaches who spoke or wrote to the committee agreed that the people who sold the Gaan items to Charles Owen a century ago did so under duress, and with the knowledge that they were wrongfully selling them. Documents from observations of outsiders at the time buttress those statements.

'Conditions are Growing Worse'

The early years of the twentieth century constituted a time of extreme hardship among the Western Apache. Restricted to the reservation, under the watch of the U.S. Army, and under pressure to learn the ways of the dominant culture, the Apaches' traditional means of survival—hunting and agriculture—had been all but eradicated. Wild game had been over-hunted and become scarce. The crops that Euro-Americans wanted the Apaches to grow did not do well in their land. By 1901, when Charles Owen showed up with plentiful cash, many of the Apaches were starving and desperate to save their children. Albert B. Reagan,

¹⁷⁸ Ibid., 27-28.

who served as administrative officer for the U.S. Indian Service at Fort Apache during 1901 and 1902, recorded his observations of similar transactions.

In August 1901, Reagan purchased a medicine hat from the chief medicine man at Cibecue. “It was said to be the most sacred of all the medicine objects he possessed,” Reagan recalled. After giving up the hat, “the old man shrieked five times so that every nook and corner in the surrounding hills echoed the hissing, blood-curdling sound. The old man then cried. The old woman made a hissing sound like a bull-snake, followed by a similar hissing by the old man, who, at the same time, waved his hands as if asking the heavens to part and swallow him up.”¹⁷⁹

George A. Dorsey, curator of anthropology at the Field Museum during that time, well understood the importance of the ceremonies and the objects Owen was buying. Dorsey wrote to F.V. Skiff, director of the museum, asking permission to send Owen back for more cultural items from the Apaches and Navajos of Arizona:

I need say no more than that they are among the most interesting Indians among the limits of our country, that they are extremely conservative and as a consequence have preserved in exceedingly pure form a great many rites and ceremonies, all of great importance and all carrying with them an extensive amount of

¹⁷⁹ Albert B. Reagan, “Notes on the Indians of the Fort Apache Region,” *Anthropological Papers of the American Museum of Natural History* Vol. 31, Part 5 (1930): 305-306.

ceremonial paraphernalia, a good representation of which I shall expect Mr. Owen to collect.¹⁸⁰

Director Skiff approved the request. Two years later, when Owen returned for a second shopping trip, he realized that the Apaches were suffering even worse times. “Money must not stand in the way of getting things now,” he wrote to Dorsey on May 3, 1903. “Conditions are growing worse very rapidly, I find. Actually surprised me.” Eleven days later he wrote that the importance of the objects he was buying meant they “cost considerable money but the museum is fortunate to secure them at any price. Here-to-fore they have simply been unobtainable.”¹⁸¹ Owen had such success procuring the items that he wrote for more money to spend, which he received. The records of the Review Committee do not reveal how many items total that Owen bought in those two trips. But he paid as little as one dollar for some items, and only rarely as much as twenty dollars, and had at least \$1,400 to spend.¹⁸²

Contested Ownership

Beyond the nuanced differences of meanings regarding whether the items were sacred, holy, or cultural patrimony, there still existed the issue of whether the museum had right of possession – whether Owen had purchased the items

¹⁸⁰ George A. Dorsey, letter to F.J.V. Skiff, April 5, 1901. Documentation submitted to NAGPRA Review Committee by The Field Museum, pages 66-67.

¹⁸¹ Charles Owen letters to George Dorsey, May 3 and May 14, 1903. Documentation submitted to NAGPRA Review Committee by The Field Museum, pages 57-59. Emphases original.

¹⁸² Based on a review of copies of Owen’s collection receipts, included in the Field Museum’s supplemental materials for the dispute hearing.

rightfully and whether the sellers had owned them. The museum acknowledged that Owen had visited the reservation during hard times but argued that if the Apaches had not been allowed to sell the Gaan items, they would not have done so openly. At the 2006 NAGPRA Review Committee hearing, Joseph Brennan testified:

In 1901 and 1903, the Field Museum sent anthropologist Charles Owen to the Southwest to purchase authentic ceremonial and otherwise culturally significant materials for the museum's collection. As part of that effort, Owen purchased a large and important collection of Apache materials. Owen documented his purchases, recording the amount he paid for each item and where each item was purchased. He made his purchases in the open with the full knowledge of the Apache community in general.¹⁸³

Museum officials based assertions that individual Apaches owned the Gaan ceremonial headdresses on the writings of anthropologist Grenville Goodwin. During the early 1930s, Goodwin lived among the Apaches and took extensive notes about their customs and language. He died in 1940 at the age of 32, but much of his work has been published posthumously. The museum quoted from *The Social Organization of the Western Apache* in which Goodwin wrote, "It is true, however, that ceremonial objects such as a set of gaan masks were referred to occasionally as 'our holy things,' in the sense that, ceremonially, they benefited everyone in the locality. Actually, they were the property of one

¹⁸³ Review Committee Meeting transcript, November 3, 2006, 43.

man.”¹⁸⁴ The Apaches responded with an article by anthropologist Keith Basso, whose life work has centered on the Western Apache. Basso writes in “Ownership and Possession of Western Apache Gaan Head-Coverings” that although the men who make the Gaan headdresses “can be said to possess them – the head-coverings are actually owned by the beings they represent, that is, by the Gaan themselves.” Basso explains that the nuance has no counterpart in Euro-American culture and suggests that the language barrier may be why other anthropologists, including Goodwin, did not report it.¹⁸⁵

Both anthropologists had similar interpretations of the importance of the Gaan ceremonial objects and the practice of retiring them after ceremonies. Goodwin wrote, “Eventually these objects must be disposed of in some cave or rock crevice, with appropriate prayers and under instruction of the shaman who directed their making.”¹⁸⁶ The punishment for not properly retiring the Gaan objects would have been social and spiritual and perhaps physical as well. Former Yavapai-Apache Nation Chairman Randall recalled an incident when an eight-year-old boy touched Gaan ceremonial wands and “his mind was taken away from him. So there are spiritual consequences and there are physical consequences ... also our people, when we talk about Grenville Goodwin, that there are many things that he should have never seen, and as you well know he

¹⁸⁴ Goodwin, *Western Apache*, 374.

¹⁸⁵ Keith Basso, “Ownership and Possession of Western Apache Gaan Head-Coverings,” submitted to the NAGPRA Review Committee by the White Mountain Apache Tribe. Copy on file with author.

¹⁸⁶ Goodwin, “Apache Religion,” 33.

died at a young age. And in our tradition our people say that's the reason why is because he was – he did and recorded and told people about things that were not supposed to be done.”¹⁸⁷

Beyond the desire to use the Gaan items in ceremonies or to properly retire them to their hiding places, tribal elders felt strongly that the holy items needed to come home to restore balance to the *Ndee*. Elder Lenora Robertson told the NAGPRA Review Committee that many of the Apache community's problems go back to the disrespect shown to the Gaan beings. She said that the holy items “need to come home because they are intercessors to a good life for us and to have a good life these – they need to come home.”¹⁸⁸ Review Committee member Willie Jones, a traditional spiritual leader in the Lummi Nation of Washington, became convinced of the importance of the objects. He asked Randall why the tribe would not accept their return as sacred items rather than insisting that they be repatriated as cultural patrimony. Randall responded that such a compromise in how the objects were categorized would mean that the teachings of their elders were less valid than the interpretations of outsiders. “Just getting the objects back is not enough by traditional standards,” Randall explained. “We have to get them back the right way and in the right

¹⁸⁷ Review Committee Meeting transcript, November 3, 2006, 93-94.

¹⁸⁸ *Ibid.*, 31. The quote is as translated by Vincent Randall during the meeting.

circumstances or we will disrespect and anger the holy beings that are in charge of them, which will hurt us.”¹⁸⁹

Over the course of the two-day meeting, the Review Committee heard many emotional statements from tribal members who, like Robertson and Randall, believed strongly that the Gaan objects were items of cultural patrimony under the law and that the museum did not rightfully own them. The Review Committee unanimously agreed and recommended that the Field Museum recognize the disputed items as objects of cultural patrimony and “acknowledge that it lacks right of possession.”¹⁹⁰

In their comments, some of the committee members touched on the challenges posed by different languages and world views. Member Garrick Bailey, who seemed most active in trying to bridge the cultural gap, said the tribe’s insistence on having the items repatriated as cultural patrimony rather than as sacred objects illustrates how ethnocentric every culture is. “There’s an old saying ... people who speak different languages live in different worlds. They don’t live in the same world with different labels attached,” Bailey said. “The Apache world in the language is a totally different world than the English world. Cultural concepts are also quite different. What the Apache have tried to come up with is what best fits Apache concepts.”¹⁹¹

¹⁸⁹ Ibid., 96-97.

¹⁹⁰ Notice of Findings and Recommendations, 72 Federal Register 5738-40, February 7, 2007.

¹⁹¹ Review Committee Meeting transcript, November 3, 2006, 37-38.

NAGPRA is a law that seeks to encourage conversations, yet at the Review Committee meeting, Field Museum Vice President Brennan refused to answer questions – refused to engage in a conversation. Review Committee member Dan Monroe, executive director of the Peabody Essex Museum in Massachusetts, acknowledged that the dialogue “is sometimes extraordinarily difficult and painful, troubling, complex, and often frustrating,” yet he chastised Brennan, saying that “as a member of the museum community and a leader in that community, I am deeply, deeply disturbed that the Field Museum has chosen to my knowledge to be the first party in NAGPRA’s history to refuse to openly respond to questions and queries concerning an issue of vital importance to this committee to a federally recognized tribe. And that for whatever reasons the committee – the Field Museum has chosen to so act, it’s my fervent hope that no other museum in the future adopts a similar posture.”¹⁹²

The Field Museum only partially complied with the Review Committee’s recommendation. On February 7, 2007, museum officials posted a notice of intent to repatriate, but described the objects as “cultural items” and made no mention of their right, or lack of right, of possession. In 2008, the museum applied for and received a NAGPRA repatriation grant of \$13, 636 to pay for packing and shipping the items to the White Mountain Apache Tribe.¹⁹³

¹⁹² Ibid, 79-80.

¹⁹³ Sally Butts, “Analysis of NAGPRA Review Committee Actions Under 25 U.S.C. 3006(c)(3) and (4): Disputes and Findings of Fact.” Draft report, December 6, 2010.

Despite its lack of success in changing the way museums regarded their Gaan, the Apaches approached the Review Committee once more, this time preemptive of a dispute.¹⁹⁴ The San Carlos Apache Tribe and the White Mountain Apache Tribe, through the Western Apache NAGPRA Working Group, asked the Review Committee to make findings of fact related to the identity of 45 objects in the possession of the American Museum of Natural History in New York. The Apache representatives, again led by Vincent Randall and Ramon Riley, were unhappy that the museum had referred to the objects as “cultural items” rather than “sacred items” or “items of cultural patrimony” in its Notices of Intent to Repatriate posted in the Federal Register. As in the two formal disputes, the Apaches again pressed for acknowledgement of the validity of their beliefs and their elders’ education. They made references to Judeo-Christian ideas such as Moses receiving the Ten Commandments. And they stressed again the power of the Gaan and the potential danger to the Apaches.

Vincent Randall, weary of repeating the same argument over the years, told the Committee that it was “difficult and painful for us to accept these items with any doubt cast upon the validity of our statements regarding our own central beliefs.” He said it was imperative to have the museum, or failing that, the Review Committee, “publically acknowledge that Apaches now and at the time of alienation believed that these items are what we claim them to be and that our supporting statements are true. It is dangerous for us not to fight for these

¹⁹⁴ Review Committee members present at the meeting were Dan Monroe, Sonya Atalay, Donna Augustine, Eric Hemenway, Mervin Wright, Jr., and Rosita Worl.

acknowledgements.”¹⁹⁵ As in the earlier formal disputes, the main concern for the Apaches was to assuage the Gaan’s anger.

The Review Committee members, after reassurance from Interior Department attorneys that NAGPRA authorized them to make findings of fact on the categorization of objects, voted unanimously to make a finding of fact that the 45 Gaan objects were both sacred and objects of cultural patrimony.¹⁹⁶ Review Committee acting Chairman Dan Monroe told the Apaches, “I hope this is some modest compensation for the difficulty that you’ve had dealing with this painful matter and we deeply appreciate your willingness to come and go through this again.”¹⁹⁷

The disputes brought by the Western Apaches against the Field Museum of Chicago, Denver Art Museum, and American Museum of Natural History seem at quick glance what one might expect of a NAGPRA dispute: a tribe battling a museum. Yet the disagreements were not that straightforward. The Apaches petitioned the Review Committee because, although museum officials had offered to return the *Gaan* headdresses to the Apaches, they would not do so in a way that satisfied the Apaches’ beliefs about the metaphysical power of the *Gaan*. No one contested the memories of how the ceremonial items came to be in the museums’ control, but the Apaches and the museum officials disagreed on the validity of the

¹⁹⁵ Review Committee Meeting transcript, October 30, 2009, 21.

¹⁹⁶ Section 8(c)(3) of NAGPRA says at a party’s request, the Review Committee has the responsibility to review and make findings regarding “(A) the identity or cultural affiliation of cultural items, or (B) the return of such items.”

¹⁹⁷ Review Committee Meeting transcript, October 30, 2009, 63.

transactions. Differing worldviews cast different meanings on the same events and demanded different outcomes to rectify.

The Apaches involved in the repatriation effort argued that their beliefs remained similar to those of their ancestors a century earlier. Museum officials in 1901 and in 2006 did not agree with the Apache worldview regarding Gaan as a living being. What had changed was who held the power to assert a worldview. The metaphysical power of the Gaan life forces now had the political and legal force of the Native American Graves Protection and Repatriation Act of 1990 behind it. But the Apaches, in seeking affirmation rather than just tolerance of their spiritual beliefs, were trying to stretch NAGPRA beyond what it could accomplish. Some of them argued that the law had not afforded them the equal status that it should have.

“I have now been before this Review Committee for the third time, and every time we have come it always has to be we are never accepted as an equal. We always have to prove something,” Vincent Randall testified in 2009. He said the experience always humiliated him “because evidently you don’t seem to want to understand our beliefs and beliefs to be equal to yours, whatever your beliefs are. And sometimes I wonder myself what you really do believe.”¹⁹⁸

Completing the Circle

Not all NAGPRA discussions involving the Western Apaches were contested. Successful repatriations had already brought some items back to the Apaches by 2009. Jeanette Cassa, the NAGPRA representative for the San Carlos

¹⁹⁸ Ibid., 22-23.

Apache Tribe, shared with the Review Committee her experience of witnessing a Gaan crown being retired. Before getting the set of crowns made by a medicine man back, there were some problems with the repatriation. Then one day Cassa saw a hummingbird come to her window, an event the medicine man seemed to know about: “And we went to see this man who made those crowns and he said, ‘If you had listened to him flap his wings, you would have clearly understood him. He was asking you, you applied for those crowns. How come it has not come back yet?’” Cassa told the Committee that the day the crowns were repatriated was a cloudless day until she and Seth Pilsk, who worked with the elders’ advisory group at San Carlos, approached the medicine man's house, where it was windy and raining hard. The medicine man told Cassa, “Although you are a woman, you represent us. You stand for these crowns. That’s how they come back. You speak for them.” The man asked her to sit with him and he would retire the crowns in front of her. He set the crowns on a blanket, took out his pollen bag and pinched some of the pollen and prayed, then dismantled the crowns. She finished:

It was early in the morning about 4 o’clock in the morning and there was – Seth was standing far from me. He was a white man like you people. He didn’t believe, I guess, but he was working with us. And partially I been raised in the boarding school too so I was sitting there, but to my surprise the hummingbird came again and flitted right there in front of him. And here Seth came running and looked at it and he said, “Well, that’s real, isn’t it?”¹⁹⁹

¹⁹⁹ Ibid., June 1, 2002, 30-32.

Chapter 4

TALE OF TWO ONEIDA NATIONS: NEW YORK AND WISCONSIN

Unknown locale, 1890s — Elijah Skenandoa pulled the wampum belt from its buckskin bag to show the visitor. The man, Walter C. Wyman, seemed pleasant, expressing respect for Skenandoa's responsibilities as a hereditary chief of the Oneida Turtle Clan. But upon seeing the Six Nations Council belt, Wyman pressed to buy it despite Skenandoa's repeated response that it was not for sale. He did not own the belt; it had been entrusted to his care by his people. The belt recorded the Oneidas' history as part of the Haudenosaunee and had been fashioned from purple and white wampum beads around the time of the war for independence from the British. Skenandoa recited the story within the belt for Wyman. Beginning from the right, a rectangle depicting the land of the Mohawks, with a diamond in the middle to illustrate their fire. The Mohawks were the Keepers of the Eastern door, and always the first to deal with tribes between them and the Atlantic Ocean. The next rectangle told of the Oneidas, with a diamond for their fire. The central fire belonged to the Onondagas; it was there that representatives from the six nations would meet, each with his nation's wampum belt as a sign of his truth, to discuss matters of importance to all Haudenosaunee.²⁰⁰ Continuing to the left along the belt were rectangles with diamonds inside for the Cayuga and then the Seneca, who had always been the

²⁰⁰ The Haudenosaunee is also known as the League of the Iroquois, or the Iroquois Confederacy. In the first quarter of the eighteenth century, Tuscaroras fleeing North Carolina to New York became the sixth nation of the Haudenosaunee. In this chapter I will use Haudenosaunee and Iroquois interchangeably because sources use both.

Keepers of the Western door, the first to deal with tribes farther west. Last on the belt was the rectangle and diamond for the Tuscaroras, who had joined the confederacy in the early 1700s after fleeing from North Carolina to New York, where the original five nations resided.²⁰¹

Long ago, the five nations had warred against each other, until the peacemaker Deganawidah and Chief Hiawatha persuaded them to unite in peace. The truth of their words had been solidified in strings of wampum, and since then whenever councils met, each clan chief would bring a wampum string. Wampum belts made from strings tied together signified the larger nation, such as the Oneidas. Any important business in their society required the accompaniment of wampum strings or belts as a physical testament that the bearer spoke the truth. The receiver could accept or reject the truth by accepting or rejecting the wampum. Stories from long ago told of humans with special powers spitting wampum beads or crying tears of wampum. This wampum belt had always been kept by the firekeeper of the Oneida Nation of Chiefs, and no council session could be held without its power of diplomacy and unity.²⁰²

No, Skenandoa explained, he could not sell this belt. He tucked the yard-long belt into the buckskin bag. One end of the bag had been painted red for good

²⁰¹ The reading of the belt is based on a letter from the Oneida Tribe of Indians of Wisconsin to the Review Committee, September 21, 1995.

²⁰² Historical File Accession No. 727: Field Museum of Natural History, December 22, 1900, George Dorsey, curator. Submitted to the NAGPRA Review Committee in 1995. Also Anthony Wonderley, *Oneida Iroquois Folklore, Myth, and History: New York Oral Narrative from the Notes of H.E. Allen and Others* (Syracuse: Syracuse University Press, 2004), 8-11.

medicine, but perhaps that medicine had not been strong enough. Over a century ago, when his ancestor, legendary Chief Skenandoa who had aided General George Washington, had held the belt, the unity it symbolized had fractured seemingly irreparably. It had been a hard era – the first time in generations that the six tribes had not been able to agree on an important issue. As signs of impending war between the British and the colonists had strengthened, the Iroquois had tried to stay neutral, but in reality the war came to them and could not be ignored. Early in 1777, representatives of the six nations met at the Onondagas Longhouse to decide what to do. But they could not agree. In the end, the Council fire extinguished its flame and instructed all the representatives to make their own decisions with their own people. Within the nations, there also had been disagreements, though it was written that the Mohawks, Senecas, Onondagas, and Cayugas had fought with the British, and the Tuscaroras with the rebelling colonists. Skenandoa knew that the Oneidas had not been able to agree among themselves. The hereditary chiefs known as sachems had pressed for neutrality, but the chief warriors, chosen for their skill in hunting and fighting, had been inclined to fight against the British. Against, then, their fellow Haudenosaunee.

Since the Council fire had been doused before the war, the Haudenosaunee had never regained their unity. Even the Oneidas, who had aided the rebelling colonists, had been pushed out of their land almost before the new country had taken shape. Now Elijah Skenandoa, like his forefathers, had grown old without

mending the circle. He wondered what would happen to his people after he passed into the next world.

No, Skenandoa told Wyman again, he could not sell the belt, not even for a sum as large as five hundred dollars. Some things were not for sale, at any price.²⁰³

Elijah Skenandoa died in 1897. On May 8, 1898, Wyman bought the Oneida nation belt from a grandson or great-grandson. Two years later, Wyman sold the wampum belt to the Field Museum in Chicago. In the wake of the Native American Graves Protection and Repatriation Act, the belt's meaning changed from one of unity to one of deep dissent among the Oneidas. As Michael Smith, attorney for the Oneida Nation of New York, told the Review Committee, "The reality is that these two nations are essentially at war. They are at war over matters of political jurisdiction, government, sovereignty, territory, and finances. They are as fundamentally opposed, at this unfortunate moment in time, as they can be. And the wampum belt is a core window into that dispute."²⁰⁴

²⁰³ Interactions of Wyman and Skenandoa are based on information from Historical File Accession No. 727: Field Museum of Natural History, December 22, 1900, George Dorsey, curator. Submitted to the NAGPRA Review Committee in 1995. There is ample scholarship on the Iroquois Confederacy and the Oneidas within it. This interpretation is based on Joseph T. Glatthaar and James Kirby Martin, *Forgotten Allies: The Oneida Indians and the American Revolution* (New York: Hill and Wang, 2006); see also William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998) or Jack Campisi and Laurence M. Hauptman, eds. *The Oneida Indian Experience: Two Perspectives* (Syracuse, N.Y.: Syracuse University Press, 1988).

²⁰⁴ Review Committee Meeting transcript, November 2, 1996, 63.

The Oneida Nations of Wisconsin and New York share language, ancestry, and cosmogony. They share the knowledge that long ago, the Peacemaker united five warring peoples – Mohawks, Senecas, Oneidas, Onondagas, and Cayugas – together under the “great law” as the Haudenosaunee, a unity symbolized by the white pine tree and wampum belts. But in the last decade of the twentieth century, the Oneidas of New York and Wisconsin could not agree on how to share a tribal wampum belt dating to the time of the Revolutionary War. Their commonality had become a less potent force than the differences that had arisen in the intervening two hundred years. Their disagreement over the wampum belt was indicative of factional rifts that dated to before the American Revolution and found early ideological expression through religion. Early nineteenth-century land grabs by New York State pressed some of the Oneidas to sell and leave, adding geographical distance to the rift. Twentieth-century land claims cases that reached the U.S. Supreme Court but remained unresolved by the mid-1990s further widened the distance. When the Field Museum offered to return an important wampum belt under a compromise of repatriation claim, the two Oneida nations could not bridge the chasm between themselves.²⁰⁵

²⁰⁵ Richard Koontz testified that the Field Museum used the compromise of repatriation claim to fulfill its fiduciary duties in cases when an item did not clearly meet all criteria for NAGPRA. See Review Committee Meeting transcript, November 2, 1996, 54. The museum’s Notice of Intent to Repatriate stated in part, “Officials of the Field Museum also recognize that the belt is of ongoing importance central to the Oneida Indian Nation but assert that the museum has right of possession of the belt. The Field Museum however, is willing to return the

The 1996 dispute over this Oneida Nation wampum belt offers a glimpse of the complex relationships among modern tribal peoples and demonstrates that NAGPRA is not always enough to persuade a compromise when two groups' cultural memories differ. The law acknowledges standing under NAGPRA to lineal descendants and tribes, so the crafters must have anticipated competing claims between tribes. But perhaps they did not envision two tribes with such closely entwined histories disagreeing on custody of an object.²⁰⁶ This chapter lays out the background and testimony of the dispute between the Oneidas of New York and Wisconsin in front of the NAGPRA Review Committee in 1996. Although an attorney for the New York Oneidas accused the Wisconsin tribe of fighting for the belt primarily as a way to further its interests in the land claims case, a historical analysis of the Oneidas and the symbolism of the belt produces a more complex story. The ways in which the two tribes selectively applied aspects of their combined history, and argued different cultural memories of that history, make it clear that this dispute extends back much further in time than the land claims cases that began in the 1970s. The Oneida wampum belt dispute illustrates a fundamental flaw in NAGPRA's emphasis on cultural affiliation, defined as

belt under a compromise of repatriation claim." 60 Federal Register 11109 (March 1, 1995).

²⁰⁶ 25 U.S.C. 3005(e) on competing claims states: Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this chapter, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this chapter or by a court of competent jurisdiction.

meaning “a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.”²⁰⁷ The Oneidas of Wisconsin, New York, and Ontario all trace their ancestry to the Oneidas who lived in New York long before it became a colony. But the actions by the tribal representatives in this NAGPRA dispute demonstrated that the very culture they both claim to be most closely affiliated with—a culture of consensus decision-making and unity—no longer existed. That culture, as symbolized by the very belt central to this dispute, had been riven long ago.

The tribes agreed about some things regarding the wampum belt. Everyone, including the Field Museum in Chicago, agreed that the wampum belt under consideration was an important item of cultural patrimony. Jonathan Haas, curator of Native American collections at the Field Museum, sent a letter to both tribes on November 1, 1993 in compliance with NAGPRA’s inventory requirements. The Oneida Nation of New York responded in writing on February 7, 1994. The Oneida Tribe of Wisconsin made a written claim for the belt on October 12, 1994. The Field Museum posted a notice of intent to repatriate the belt to New York in the Federal Register on March 1, 1995. The notice mentioned that Wisconsin had also expressed an interest and asked that any other interested tribes contact the museum. The notice described the belt as being five inches wide by thirty-two inches long, of purple and white beads forming diamond shapes inside oblongs. The belt had been bound in buckskin, with

²⁰⁷ NAGPRA, 25 U.S.C. 3001 (2).

buckskin fringe on the ends. The Field Museum bought the belt in December 1900 from Walter C. Wyman, who had purchased it May 8, 1898, from a descendant of Chief Elijah Skenandoa, who had died a year earlier.²⁰⁸ By 1996, both Oneida nations had presented extensive written documentation to bolster their claims and testified at two NAGPRA Review Committee meetings in attempts to win back the wampum belt.²⁰⁹

Keller George, Wolf Clan representative for the New York Oneidas, argued that the museum should return the belt to them because it had been made in New York “and tells a story in New York.”²¹⁰ The six diamonds on the belt depict the tribes of the confederacy – the five united by the Peacemaker and a sixth, the Tuscaroras, who joined the Haudenosaunee in the early eighteenth century. The confederacy’s homeland had always been in what became New York. Carol Cornelius of the Wisconsin Oneidas argued that the Field Museum should return the belt to Wisconsin because Turtle Clan Chief Elijah Skenandoa had taken the belt there in the 1830s. “The decision was made by our ancestors to bring the belt to Wisconsin, and today we honor that decision of our ancestors,”

²⁰⁸ Notice of Intent to Repatriate a Cultural Item in the Possession of the Field Museum of Natural History, 60 Federal Register 11110, March 1, 1995.

²⁰⁹ Review Committee members at the 1995 meeting were Tessie Naranjo, Rachel Craig, Jonathan Haas, Daniel L. Monroe, Martin Sullivan, William Tallbull, and Phillip L. Walker. Tallbull passed away in March 1996; Lawrence Hart replaced him on the committee. Haas, who worked for the Field Museum, recused himself from voting in decisions but did hear the testimonies.

²¹⁰ Review Committee Meeting transcript, October 17, 1995, 18.

she told the committee.²¹¹ The dispute unofficially involved a third related group, the Oneidas of the Thames in Canada. That group is outside the limits of United States law and so had no standing under NAGPRA, but representatives attended the two meetings at which the Review Committee discussed the Oneida wampum belt.

After hearing from the New York group in 1995 and the Wisconsin, New York, and Canada groups in 1996, the Review Committee decided it could not presume to decide between the sovereign nations and instead encouraged the U.S. tribes to work out a solution and to keep in mind the cultural relationship with the Canadian tribe. As committee member Lawrence Hart put it, “Both groups can put their hearts and minds together based on a great law. And we ought to allow for that; that any further contemplation by our Committee would be an intrusion.”²¹² Several of the committee members expressed an emotional reaction to the conflict. Dan Monroe told the tribal representatives, “This dispute, personally, is very painful for me, because this wampum has to do with the soul of the Oneida people, and they were divided by the force of events outside their control more than a century ago. But they are still connected.”²¹³ Despite the committee’s hopes that the Oneidas could overcome their dispute, as of February 2011, the belt remained at the Field Museum in Chicago, awaiting an

²¹¹ Review Committee Meeting transcript, November 2, 1996, 29.

²¹² *Ibid.*, 119.

²¹³ *Ibid.*, 121.

agreement.²¹⁴ The symbol of Haudenosaunee unity and peace had become a symbol of irreparable differences.

Changing Meanings of Wampum

Wampum is frequently mentioned in Iroquois folklore and creation stories, but it was indigenous peoples on the Atlantic coast who made the beads. The word “wampum” comes from an Algonquian language and describes disc-shaped or cylindrical beads made from the inside of shells found in the waters near Long Island. “Wampum” originally meant only the white beads, but English speakers used it also to refer to dark beads, and the term became generic for the beads, strings of beads, and the belts. The shell beads varied in size from about an eighth-inch in diameter and a quarter-inch long, to one-fourth inch by an inch. The indigenous peoples at Long Island polished the beads, drilled them lengthwise and strung them on hemp or animal sinew. Indigenous groups as far west as the Dakotas traded with the Atlantic groups for wampum, and the beads can be dated at least as early as the mound builders in the Mississippi Valley, where they were found in burials.²¹⁵ The wampum beads were traded as commodities, but the Haudenosaunee peoples elevated the meaning.

²¹⁴ Jonathan Haas, curator at Field Museum of Natural History, personal correspondence.

²¹⁵ Ashbel Woodward, *Wampum, a Paper Presented to The Numismatic and Antiquarian Society of Philadelphia* (Albany, N.Y.: J. Munsell, Printer, 1878); and Wilber R. Jacobs, “Wampum, the Protocol of Indian Diplomacy,” *William and Mary Quarterly*, Third Series, Vol. 6, No. 4 (October 1949), 596-604. The sources do not give an approximate date for the wampum found in the Mississippi Valley, but mound builders traded widely from 1000 to 1400 A.D.

The Haudenosaunee attached language to the physical symbol of wampum. Confederacy members used wampum strings and belts as symbols of the truth of their statements and the importance of an occasion, such as a treaty. The more beads on the item, the more important the occasion or the wampum holder. In mythology, even the greater-than-human creatures offered wampum to humans to prove the truth of their words.²¹⁶ In negotiations between different parties, one would offer a gift of wampum and the other would signal acceptance by taking it or, conversely, refusal by not touching the gift. Wampum represented “the universal bonds of nations and individuals, the inviolable and sacred pledges of word and deed. No promise was binding unless confirmed by gifts of wampum.”²¹⁷

According to Haudenosaunee tradition, the league began with a council of fifty sachems or chiefs chosen from the five nations. The original sachems’ names became attached to the positions, so that when one died, a matron of that group would choose a new chief, who would take the name and continue the office after a Condolence Ceremony.²¹⁸ The Oneidas held nine positions on the

²¹⁶ Anthony Wonderley, *Oneida Iroquois Folklore, Myth, and History: New York Oral Narrative from the Notes of H.E. Allen and Others* (Syracuse: Syracuse University Press, 2004), 136.

²¹⁷ Woodward, *Wampum*, 24. Woodward was a physician and historian living in Franklin, CT.

²¹⁸ For a good historical analysis of the Iroquois Condolence ceremonies, see Denis Foley, “Iroquois Mourning and Condolence Installation Rituals: A Pattern of Social Integration and Continuity,” in *Preserving Tradition and Understanding the Past: Papers from the Conference on Iroquois Research*,

council, three for each of their clans – the turtle, bear, and wolf. Each condolee sachem had a wampum string as his credentials of office. The strings, which were passed along through time, were not regarded as personal property but rather as the “mind of knowledge” that included “duties of the office and, perhaps, the character of the officeholder.”²¹⁹ One such string, last used ceremonially by Turtle Clan Chief Chrisjohn Beechtree in the nineteenth century, later was purchased by the American Museum of Natural History in New York. In 1998, the museum published a notice of intent to repatriate it and in 1999 the museum returned it to the New York Oneidas as an item of cultural patrimony.²²⁰ The Beechtree wampum string posed no challenges under NAGPRA because it clearly had been connected with Oneidas who stayed in New York. In contrast, the disputed wampum belt is a symbol of the entire Oneida nation, a higher level of cultural patrimony.²²¹

2001–2005, ed. Christine Sternberg Patrick (Albany: New York State Museum, 2010), 25-34.

²¹⁹ Wonderley, *Oneida Iroquois Folklore, Myth, and History*, 136.

²²⁰ Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History, 63 Federal Register 58417, Oct. 30, 1998; and Anthony Wonderley, *Oneida Iroquois Folklore, Myth, and History: New York Oral Narrative from the Notes of H.E. Allen and Others* (Syracuse: Syracuse University Press, 2004), 137.

²²¹ The Onondaga Tribe at one point expressed interest in the wampum belt, saying it was a confederacy belt rather than an Oneida tribal belt. However, the Onondaga Tribe did not submit a claim to the Field Museum and the NAGPRA Review Committee did not address any interest by the Onondagas.

Bruce Elijah of the Canadian Oneidas explained to the NAGPRA Review Committee the ceremonial importance of wampum.²²² He spoke of the vast Haudenosaunee confederacy and said that when different nations visited each other, they would build a council fire. “And we would set our condolence cane between two sticks and begin to set out the wampums, the message that we bring. Sometimes it took four days to explain what that was. But it was all in goodness as to how we come together.”²²³

These highly developed rituals had been in place for hundreds of years before European contact, and the newcomers wrote frequently about wampum almost as soon as they arrived in the early seventeenth century. Europeans doing business with the league sought to learn the proper behavior for council fires and handling wampum.²²⁴ The Europeans added a new dimension to the use of wampum. Realizing its desirability by the indigenous peoples in the interior areas rich with beaver pelts, the Dutch, English, and French offered wampum as “the magnet to draw furs from the forest.”²²⁵ Early colonists soon used wampum as currency among themselves rather than bartering. From 1637 to 1661, wampum became legal tender in Massachusetts and Connecticut, and often was the only

²²² Although Bruce Elijah is a member of the Oneidas of the Thames, he attended the meeting in solidarity with the Wisconsin Oneidas and testified in their behalf.

²²³ Review Committee Meeting transcript, November 2, 1996, 19.

²²⁴ William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*, (Norman: University of Oklahoma Press, 1998), 232.

²²⁵ *Ibid.*, 224.

cash listed in inventories of the recently deceased. The Dutch colonies also used wampum for coin, but did not legally regulate its use.²²⁶

Religion and Politics Rend the Oneidas

Although outsiders at first glance might see only the shared history of Oneidas, the rift between those in Wisconsin and New York is one that dates to before the Revolutionary War, an era when the entire Iroquois Confederacy faced challenges. The Oneida political system traditionally had been very inclusive. Individuals belonged to one of three clans: wolf, bear, or turtle. Each clan had three sachems, chosen by clan matrons from their extended families to represent them at council and at the Iroquois Confederacy meetings. Although the sachems had to be approved by the other clans, then by the larger confederacy, matrons (also called clan mothers) held significant power in the community. Matrons also nominated men to be counselors, chosen for their wisdom in managing affairs. In addition to the hereditary sachems, there were chief warriors, chosen by other warriors for their prowess in hunting and fighting, who participated in Oneida discussions and decisions. Governing depended on popular support and always allowed for individuals to go their own way. This attitude held within the six nations of the confederacy, as well.²²⁷

During King George's War (1744-1748) and the Seven Years' War (1756-1763), the confederacy tried to remain neutral overall, but small groups of

²²⁶ Woodward, *Wampum*.

²²⁷ Joseph T. Glatthaar and James Kirby Martin, *Forgotten Allies: The Oneida Indians and the American Revolution* (New York: Hill and Wang, 2006), 15-16.

warriors from different tribes fought as they felt compelled. Such growing interaction among the Europeans and the Iroquois, and the periodic wars, led to a rise in status of the chief warriors at council. For the Oneidas, the warriors and the sachems grew further apart in matters regarding outsiders and war. As Great Britain and the colonies marched toward war, the Iroquois Confederacy for the most part tried to stay neutral, a position that became impossible because the war came into their land. Early in 1777, the Onondagas sent out the message that the “Grand Council Fire at Onondauguas was extinguished.” Each nation had been freed to make its choice in the war.²²⁸

The Mohawks, Senecas, Cayugas, and Onondagas sided with Great Britain while the Tuscaroras and Oneidas largely sided with the revolutionaries. Within the Oneidas, however, war exacerbated existing factional lines between the warrior chiefs, who joined the Revolutionary cause, and the sachem chiefs, who tried to stay neutral. The Oneida warriors’ support proved crucial for the Patriots in New York at the battles of Saratoga and Oriskany. But that support brought them retaliation from Pro-British Iroquois and worsened the warrior-sachem split after the war.

Oneida warriors before the war had become followers of Puritan missionary Samuel Kirkland, while the sachems continued their ancestral spiritual practices. After the war, the Oneidas split into two communities. The Christian Party of warriors, led by Chief Skenandoa, lived at the main village of

²²⁸ Ibid., 44, 133-134. Quoted material, Fenton, *The Great Law and the Longhouse*, 211. The reference uses an alternative spelling of Onondaga.

Kanonwalohale near Oneida Lake and Oriskany Creek.²²⁹ The sachems, known as the Pagan Party, lived farther east at Oriske. Historian Jack Campisi writes that the division within the Oneida nation “found articulation in religious arguments. It pitted Protestant against Catholic, Christian against ‘Pagan,’ and Calvinist against Anglican as the factions sought ideological justification for their opposition.”²³⁰ This internal division put the Oneidas at greater risk from outsiders who wanted their land in the decades following the Revolution.

The ancestral homeland of the Oneidas covered nearly six million acres of what became New York State. Congress alone held the power to deal with Native American nations, but that did not stop New York’s first governor, George Clinton, from brokering major land cessions from the Oneidas in 1785 and 1788. Successive governors followed that lead, and by the end of the century the Oneidas had sold or leased most of their land. In 1805, the state negotiated a treaty dividing the remaining reservation between the Christian and Pagan parties. On March 13, 1807, New York Governor Morgan Lewis made a “treaty” with the

²²⁹ The multi-generational use of the name Skenandoa at times clouds the wampum belt discussion, in part because the Field Museum accession records name two different men without clarification. The man I refer to as Chief Skenandoa fought in the Revolutionary War. He was born a Conestoga Indian in 1706, adopted into the Oneida tribe as a boy, and died in 1816. He lived out his life in New York. His namesake I refer to as Chief Elijah Skenandoa. He was born in 1810 and had the wampum belt when he died in 1897. When the Wisconsin Oneidas say Chief Skenandoa took the belt away from New York, they are speaking of Elijah. See Oneida Tribe of Indians of Wisconsin letter to Review Committee, September 21, 1995.

²³⁰ Jack Campisi, “The Oneida Treaty Period, 1783-1838,” in *The Oneida Indian Experience: Two Perspectives*, Jack Campisi and Laurence M. Hauptman, eds., (Syracuse, N.Y.: Syracuse University Press, 1988), 60.

Christian party to buy two large parcels for \$600. In 1809, the state made two more “treaties,” buying two chunks from the Christian and Pagan parties.²³¹

From 1820 to 1838, many of the Christianized Oneidas moved to Wisconsin with Episcopal missionary Eleazar Williams. From 1839 to 1845, more Oneidas sold their land and moved to the Thames River in Ontario, Canada. By that time, only about 200 Oneidas remained in New York, with a dwindling land base.²³² This dispersal led to three distinct legal entities long before Congress passed NAGPRA in 1990: The Oneida Indian Nation of New York, which had been recognized as a tribal entity since colonial days and was documented in the 1794 Treaty of Canandaigua; the Oneida Tribe of Indians of Wisconsin, formed under the Indian Reorganization Act of 1934 with a constitution adopted on December 15, 1934; and the Oneida Nation of the Thames (Ontario), which has no standing under NAGPRA because it is not a tribe within the United States.²³³

The Oneidas who left New York for Wisconsin settled on land that had been purchased from the Menominee Tribe west of Lake Michigan. Eleazar Williams had been instrumental in securing agreements between the Menominees and the United States for the land. Historian Richard Horsman writes that both

²³¹ Ibid.

²³² Laurence M. Hauptman and L. Gordon McLester III, eds., *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860*. (Madison: University of Wisconsin Press, 1999) 12-13.

²³³ Treaty of Canandaigua was ratified by the U.S. Senate and President George Washington on January 21, 1795. Information about the Wisconsin and Ontario tribes is from an Oneida Tribe of Indians of Wisconsin letter to Review Committee, September 21, 1995.

the Oneidas and the Menominees quickly became unhappy with the situation. The Oneidas had been promised a vast area but the reality was a 65,000-acre parcel at Duck Creek, near the city of Green Bay. The Menominees argued that their land cessions had been unlawful and sought redress from the federal government.²³⁴ Elijah Skenandoa was among the Oneidas who relocated to Wisconsin, traveling sometime after April 1833 and showing on the Green Bay census in 1838.²³⁵ According to sources quoted by the Wisconsin Oneidas during the wampum belt dispute, Elijah Skenandoa lived in Green Bay all his life. Oneida Chief Daniel Bread and sixteen other chiefs also signed treaties with New York that ceded their land before moving to Wisconsin by 1838. They received money and other annuities from New York based on the terms of those treaties.²³⁶

In Wisconsin, the Oneidas set up a political system of twelve hereditary chiefs chosen by clan mothers (in the traditional way to choose sachems), but added a number of pinetree chiefs, chosen from men active in the Christian church for “leadership and oratorical abilities.” Elijah Skenandoa and Bread were not hereditary chiefs; they were pinetree chiefs. By 1870, when the Oneidas began an elected council government, the clan links controlling hereditary

²³⁴ Richard Horsman, “The Origins of Oneida Removal,” in *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860*, ed. Laurence M. Hauptman and L. Gordon McLester III (Madison: University of Wisconsin Press, 1999), 62-65.

²³⁵ Oneida Tribe of Indians of Wisconsin letter to Review Committee, September 21, 1995.

²³⁶ *Ibid.*

sachems had lost their power. Clan identities remained important “mainly in terms of curing, or medicine, societies,” but not in tribal decision making.²³⁷

The Wisconsin Oneidas lost most of their land after the Dawes Allotment Act of 1887, which divided the tribal land into parcels owned by individual men. By 1934, when they formed a new government under the Indian Reorganization Act, their 65,000 acres had dwindled to less than ninety. The tribe asserted its power and by 2006 had a reservation of more than 16,000 acres.²³⁸ Back in New York, their distant relatives lost even more land through allotment.

In 1843, New York State passed a law allowing the Oneidas to hold land in severalty, and by 1888 only one sizeable piece of land remained – a thirty-two acre parcel owned by the Honyosts. They lost that land in 1907 in a mortgage foreclosure to a non-native woman named Julia Boylan. In November 1909, a sheriff’s posse forcibly evicted the two Oneidas living there, William Honyost and his sister, Mary Schenandoah. Their nephew, Oneida William Rockwell, later recalled that the two elders kept going back inside the house only to be carried outside again: “Seven burly sheriffs kept putting these two defenseless

²³⁷ Jack Campisi, “The Wisconsin Oneidas between Disasters,” in *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860*, ed. Laurence M. Hauptman and L. Gordon McLester III (Madison: University of Wisconsin Press, 1999), 78-79.

²³⁸ Laurence M. Hauptman and L. Gordon McLester III, *The Oneida Indians in the Age of Allotment, 1860-1920* (Norman: University of Oklahoma Press, 2006), 279-281.

Indians out in the road until they were completely exhausted so they could not return to their home.”²³⁹

The Oneidas managed to get the federal government to take up their case, and in 1921 the land became theirs again in *United States v. Boylan*.²⁴⁰ The Honoyost land had been part of the original Oneida reservation and as such could not be foreclosed on by the local authorities.²⁴¹ In March 1922, the U.S. attorney for the Northern District of New York told Oneida Chief Bill Rockwell to take possession of the land for the tribe. Rockwell lived there alone until his death in 1960. After his death, Oneidas living in the area or on the Onondaga Reservation began moving back, partly to protect the land from the chief’s non-native widow. They also returned because they still considered it their homeland. Over time, this convergence rejuvenated the Oneida Indian Nation. The migration also set in motion a land claims case that contributed to the later NAGPRA dispute among Oneidas of Wisconsin, New York, and Canada.

In 1970, Oneidas in New York joined with Oneidas from Wisconsin in a lawsuit involving 100,000 acres of land in Madison and Oneida counties in New York.²⁴² Their attorney, George C. Shattuck, filed the claim in Federal Court,

²³⁹ Anthony Wonderley, *Oneida Iroquois Folklore, Myth, and History: New York Oral Narrative from the Notes of H.E. Allen and Others* (Syracuse: Syracuse University Press, 2004), 50.

²⁴⁰ *United States v. Boylan*, 265 F. 165 (2nd Cir. 1920).

²⁴¹ George C. Shattuck, *The Oneida Land Claims: A Legal History* (Syracuse, N.Y.: Syracuse University Press, 1991), 45.

²⁴² The Oneidas of the Thames later joined in on the suit.

Northern District of New York requesting current rental value of the land from the counties.²⁴³ The Oneidas based their claim on their status as a sovereign nation. The federal government had signed a treaty with the Oneidas in 1794 at Canandaigua, guaranteeing them the reservation lands that had been established in 1788. But in 1795, New York negotiated a treaty with the Oneidas that took a large portion of that land and promised to pay rent to the Oneidas. The 1970 lawsuit alleged that New York had no legal right to form treaties with the Oneidas. No federal commissioner had been present at the treaty, and the federal government had never ratified it. Federal Judge Edmund Port in 1977 ruled that New York's 1795 purchase was void because it had violated the Indian Nonintercourse Act of 1790. In his lengthy decision, he stated, "By the deed of 1795, the State acquired no rights against the plaintiffs; consequently, its successors, the defendant counties, are in no better position."²⁴⁴ The U.S. Supreme Court upheld the ruling in 1985, but the land claim issues had not been resolved by 2000.²⁴⁵ The protracted court process and later negotiations with New York State, Madison County and Oneida County, further embroiled the Oneidas of Wisconsin and New York, an issue that simmered just under the surface of the wampum belt dispute in the 1990s.

²⁴³ Shattuck, *Oneida Land Claims*, 26-27. Shattuck writes that he considered the small, two-county case a test case for larger subsequent claims.

²⁴⁴ *Oneida Nation v. County of Oneida*, No 70-CV-35. U.S. District Court, N.D. New York, July 12, 1977.

²⁴⁵ Wonderley, *Oneida Iroquois Folklore, Myth, and History*, 214-217.

New York Oneidas' Case

The NAGPRA Review Committee agreed to hear the wampum belt dispute between the Oneida nations of New York and Wisconsin. The committee asked both tribes to submit their written documentation for review at a 1995 meeting in Anchorage, Alaska. Although both tribes did extensive historical and legal research, which they submitted to the NAGPRA Review Committee, neither tribe shared the information with the other, as the process dictated. Committee members saw this as an indicator that the distance between the tribes was unnavigable. Committee Chair Tessie Naranjo began the discussion by saying that it was a difficult case for her to read because it was a dispute between two tribes about an artifact significant to both of them. Member Martin Sullivan said that “there are very few other Oneida belts, if any, of which I am aware in museum collections. So this – this particular concern has enormous significance to all Oneida people.”²⁴⁶ Sullivan also acknowledged the concern of the Thames Oneidas from Canada, where the traditional Council of Chiefs of the Oneidas resided. The Field Museum had internal repatriation policies that might allow it to send the belt to that tribe, a suggestion that perhaps Sullivan intended as a nudge to the non-communicating Wisconsin and New York groups. “And as a non-native person this may be presumptuous to say, but I feel sad because one of the historical and cultural realities of wampum was as a symbol of unity and a symbol of heritage intended to bring people together rather than to divide them,”

²⁴⁶ Review Committee Meeting transcript, October 17, 1995, 10.

he said.²⁴⁷ Several of the committee members noted that outside circumstances had pushed the Oneidas apart in the early 1800s. Member Dan Monroe voiced a hope that this dispute, rather than further alienating the Oneidas, could ideally “help bring together what was rendered apart more than a century ago.”²⁴⁸

Because of the high cost of attending the Alaska meeting, the committee had told the two tribes and the museum they could wait and attend the next meeting in Myrtle Beach, South Carolina, to make oral presentations. However, four people from the New York Oneidas attended the Alaska meeting and spoke to the committee. Over the span of the two meetings, representatives from Wisconsin and New York testified to the continued importance of the Oneida nation wampum belt offered for repatriation. New York argued that they held the ancestral homeland and thus the museum should repatriate the belt to them. Wisconsin argued that the belt had migrated to their new land, so it belonged there.

Keller George, Wolf Clan representative in New York, told the committee that the central council fire of the Oneidas had never left New York. “And it still burns brightly, and we still carry on the traditions of our forefathers,” he said. Although the New York Oneidas lost all but thirty-two acres of their ancestral homeland, Keller said “our culture, and our heritage, and our traditions still flourish within the Longhouse of the Oneida Nation. This is why this particular wampum belt is so sacred to us and so culturally significant to the practices of the

²⁴⁷ Ibid., 11.

²⁴⁸ Ibid., 14.

Oneida Nation of New York.”²⁴⁹ He argued that when some of the Oneidas left for Wisconsin, they forgot their cultural traditions which held that “when you leave this circle of government, you leave naked and take nothing with you.” The Wisconsin Oneidas, he said, did not establish a Longhouse until the 1970s.

George pointed out that the fringe on the wampum belt and its pouch had been dipped in red, signifying “good medicine” that lost its potency when it left New York. George believed that because the belt was no longer in his tribe’s possession, “trouble has spread and remains there and we have to have that belt, because it is so culturally significant to the people of New York.” Bear Clan Mother Marilyn John said the red on the belt was reminiscent of the blood Oneidas had shed for the United States in every war beginning with the Revolution, at a huge cultural cost. “Since the American Revolution there has been nothing but disarray amongst the Iroquois,” she said. “We cannot seem to pull it together again.” She believed that repatriating the nation’s wampum belt would help heal that disarray.

Brian Patterson, Bear Clan representative from New York, said the land where he lived “has embraced the dust of my ancestors for generations in time immemorial. My people have stayed, suffered, and endured the hardships throughout the past centuries to this present day.”²⁵⁰ He argued that the Oneidas who moved in the nineteenth century had sold their birthright and formed a new

²⁴⁹ Ibid., 19-23. All George quotes in this passage are from those pages.

²⁵⁰ Ibid., 25-26. All Patterson quotes in this paragraph are from those pages.

type of government. He accused the Wisconsin group of trying to undermine the New York government and “put a stop to our business.” Patterson also testified that the Wisconsin group’s conversion to Christianity disregarded the traditional spiritual beliefs still maintained in New York and symbolized by the wampum belt. “What we have is a way of life that exists on a daily basis. And when Oneida Wisconsin, when they left in the 1820s they completely disregarded this way of life. And so the wampum belt can only be of a historical interest to them,” he said. Indigenous items of historical interest are not among those targeted by NAGPRA for repatriation.

After hearing from the New York Oneidas in Alaska, Review Committee members discussed how to proceed on the case and decided not to issue any formal statements because the Wisconsin Oneidas had not had an opportunity to make an oral presentation. The committee debated its role in the dispute; members were cautious about ordering two sovereign nations to do anything, although the members clearly thought the nations needed to get together and work through the issues impeding a resolution. Member Martin Sullivan had been a key figure in returning wampum belts to the Onondaga Nation several years earlier, just before the passage of NAGPRA. He noted that the Oneida dispute, though well within the purview of NAGPRA, also touched on issues the committee and NAGPRA had not been intended to address such as “legitimacy, sovereignty, land claims, many issues that regrettably find themselves in the courts.” He stressed the importance of safeguarding the NAGPRA proceedings from “other ongoing economic, political, jurisdictional kinds of issues that are

way beyond our scope.”²⁵¹ The committee held off on any formal statement after the Alaska meeting in order to hear the Wisconsin Oneidas and a fuller presentation from the New York Oneidas at the next meeting, in Myrtle Beach, South Carolina.

Wisconsin Oneidas’ Case

The Wisconsin Oneidas were first to testify at the 1996 meeting in Myrtle Beach. Carol Cornelius, a Wisconsin Oneida who worked in the cultural heritage office, gave a history of the wampum belt and of the continued cultural affiliation of the Wisconsin Oneidas. She said there was no documentation that anyone in New York had protested in the 1830s when Elijah Skenandoa took the wampum belt and seven treaties to Wisconsin.²⁵² While there, he honored his responsibilities in caring for the wampum belt. “He refused offers from collectors and from the State Historical Society,” she said. “He would not loan them the

²⁵¹ Ibid., 72-73.

²⁵² The legality of the seven treaties has been central to the land claims cases of the twentieth century. The treaties were made with New York rather than with the federal government. Five of the treaties, in September 1788, September 1795, June 1798, March 1802, and June 1802, were made between the state and the Oneida Nation. The last two, in March 1810 and February 1811, were made between New York and the Christian Party of the Oneida Nation. The treaties became part of the Ayer Collection at Newberry Library in Chicago. This information was provided to the Review Committee by the Wisconsin Oneidas in a letter dated September 21, 1995. During dispute testimony, Carol Cornelius told the committee about a January 21, 1898 news article in the *Brown County Democrat* reporting that the original treaties were discovered in a safe at the Oneida Reservation post office in Wisconsin. (Review Committee Meeting transcript, November 2, 1996, 27).

belt. He wouldn't sell the belt for any amount of money."²⁵³ As the notice posted by the Field Museum had stated, Walter Wyman bought the belt from Elijah Skenandoa's grandson after the old chief's death.²⁵⁴ Although there was no solid documentation of where Wyman bought the belt, Cornelius argued that the collector had seen it a decade earlier in Wisconsin and tried to buy it then from Chief Elijah Skenandoa. "There seems to be conflicting reports surrounding where the belt actually went and how it was obtained," Cornelius testified, "but we do know that Wyman did obtain it."²⁵⁵ She conceded that the Field Museum records had listed the belt's locality as New York, but countered that perhaps the person who filled out the collection card had not known there were Oneidas in Wisconsin.

Cornelius recounted that beginning in 1822, the federal government, New York State, the Ogden Land Company, and Missionary Eleazer Williams had exerted tremendous pressure on the Oneidas to move west. "People did not want to move," she said. "This was a horrendous time in our history."²⁵⁶ About half the Oneidas did move to Wisconsin, where they continued to embrace their culture. They established their new land base in the Treaty between the United

²⁵³ Review Committee Meeting transcript, November 2, 1996, 26.

²⁵⁴ In its letter to the Review Committee, the Wisconsin Oneidas said Wyman had more likely bought the belt from the great-grandson of the Revolutionary era Chief Skenandoa. The distinction is not crucial but does illustrate the difficulty in tracking the belt's provenance.

²⁵⁵ Review Committee Meeting transcript, November 2, 1996, 29.

²⁵⁶ *Ibid.*, 34.

States of America and the Six Nations of New York Indians of January 15, 1838. Cornelius told the committee, “The impact of the removal policy, the treaties, and Christianity was devastating to all Oneidas. However, none of these things make any of us any less Oneida. We have maintained our identity.”²⁵⁷ She rebutted comments by the New York Oneidas that her people had not continued their traditional practices. They continued their ceremonies “underground” because of outside religious pressure, but they did not have a Longhouse, the traditional venue for ceremonies, until the 1970s. Since then, the tribe had conducted its yearly ceremonial cycle, maintained its language, and installed six faith keepers acknowledged by the Chiefs Council of the Thames. The entire time they were in Wisconsin, they continued planting corn, squash, and beans, the “three sisters” fundamental to Oneida sustenance. She gave dates of treaties and numbers of chiefs over the span of time they had been in Wisconsin, and argued that the belt belonged there because it had been taken there. However, that aspect of the belt’s history remained in dispute.

Field Museum representative Richard Koontz said museum officials had been unable to determine which tribe’s claim was stronger because the accession record did not give a “clear indication of the origin of the belt” but did frequently mention New York. Although that might lead someone to infer the belt came from New York, Koontz said that given the migration during that time period, it was hard to be certain. References to Chief Skenandoa further clouded the issue, because New York pointed to a Skenandoa who had lived, died, and was buried

²⁵⁷ Ibid., 36.

there, while Wisconsin countered that there were several Chief Skenandoas and that one of them took the belt with him. New York argued that if that were true, the chief took it without authorization. The written evidence, Koontz said, was sketchy and thus it was beyond the museum's ability "to really nail down all of those competing interpretations and make a decision" about which tribe should get the wampum belt.²⁵⁸ And so, the dispute had come before the NAGPRA Review Committee. But the committee realized that there were undercurrents that involved complex aspects of the tribes' relationship, beyond ownership of the wampum belt. At the heart of those issues was a land claim dispute that had been in the courts since 1970.

Beyond NAGPRA's Realm

At the Myrtle Beach meeting, Wisconsin Tribal Chairwoman Deborah Doxtator told the Review Committee that they should think of the wampum belt as belonging to all Oneidas, but that it was most closely identified with her tribe. She acknowledged that the Oneidas of New York, Wisconsin, and Canada were currently "embroiled in a land claim controversy" that had been in the courts for decades. She emphasized that they were not there to discuss that issue, and their efforts at settling the land claim were not behind their request for the wampum belt. "Our claim for the wampum belt arises instead out of our identity as Oneida people and the belt's central role to our heritage and culture," she said.²⁵⁹

Doxtator and other Wisconsin tribal members all stressed that they were still

²⁵⁸ Review Committee Meeting transcript, November 2, 1996, 51.

²⁵⁹ *Ibid.*, 15.

Oneidas and had a legitimate status as a tribe, something that no one had disputed in the meetings.²⁶⁰ The Wisconsin tribe's attorney, Michael Lokensgard, perhaps explained that nuance when he said that New York had referred to Wisconsin as a "new tribe" rather than part of the original tribe. He continued that the Wisconsin community "is recognized as a successor in interest in the original Oneida Nation, in contexts such as land claims, etcetera."²⁶¹ This point brought the conversation into an area outside the realm of NAGPRA but clearly part of the larger issues between the tribes. The federal government recognizes the tribes of Wisconsin and New York as two separate, sovereign nations. But the land claims for New York homeland, if and when they actually were settled, would represent millions of dollars to Oneidas. The question still in the negotiations of the settlement was, which Oneidas? For the Wisconsin tribe, clearly, the answer should be, all of them.

Michael Smith, attorney for the New York Oneidas, said that his tribe had never disputed Wisconsin's existence as a tribe, but that it was a separate tribe, formed later than the one in New York. In legal papers in the past twenty years, Smith said, the Wisconsin tribe had argued that the U.S. Department of the Interior should not recognize the New York tribal government, "that to do so would be an affront to the sovereignty of the Wisconsin Tribe." Along those lines, Wisconsin had argued for a share in New York's casino revenues and in the

²⁶⁰ Wisconsin tribal members Anoki Schuyler, Leander Danforth, Bruce Elijah, and Carol Cornelius also spoke at the meeting.

²⁶¹ Review Committee Meeting transcript, November 2, 1996, 39.

previous month, Smith said, “Bought land on my client’s reservation in New York and is asserting in a letter to the governor the right to govern it as sovereignty, and they’ve asserted the right to govern the entire reservation as a sovereignty.” In the eyes of the New York Oneidas, Wisconsin was not just looking for a share of its land and funding, but wanted to affect a coup. Smith’s testimony implied that the Wisconsin Oneidas had been having a hard time establishing the extent of their connection to the New York land in the legal discussions about the land claims settlement. He said that his tribe did not dismiss Wisconsin’s legitimacy or right to be recognized as a tribe. “But what we emphasize is that there is no dispute in Federal law about our existence forever,” he said. “We state a primary, not a secondary, right to the belt. We describe a direct, and not a derivative, right.”²⁶²

Both the Wisconsin and New York Oneida groups had legal standing under NAGPRA as federally recognized tribes, and the Review Committee agreed that the wampum belt qualified for repatriation as an item of cultural patrimony. NAGPRA defines an item of cultural patrimony as one having ongoing importance central to the Native American group’s culture, rather than property owned by an individual, “and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe.”²⁶³ Everyone agreed that the Oneidas had communally used the wampum belt in New York from about the time of the

²⁶² Ibid., 64-66. All Smith’s quotes in this paragraph are from those pages.

²⁶³ 25 USC 3001, Sec. 2 (3) (D).

Revolution. Wisconsin argued that their ancestors must have agreed in the 1830s to let Chief Elijah Skenandoa take the wampum belt out of New York, an inference that could not be documented. New York countered that no one had yet proven the belt had traveled to Wisconsin, but even if it had, no one had authority to take it away from the community because it had been communal property. “It’s a conceptual hurdle that I don’t think can be jumped,” Smith said. “It’s not enough to say it was communal property in Wisconsin. They have to explain how communal property could be removed from a tribe in New York. I suppose one way to do it is to say, well, there’s really only one tribe, but that is not the law.”²⁶⁴ The “one tribe” reference again touched on the land claims negotiations. Smith’s view was that the Wisconsin Oneidas were fighting for the wampum belt in order to strengthen their standing in the possible bonanza that would come from the court settlement.

Throughout the Review Committee meetings, representatives from both tribes stressed the importance of the Six Nations Council belt to their communities. They sketched the same basic timeline of history from the American Revolution, but key points of their respective cultural memories differed. The New York group said the belt had existed before the Revolutionary War, while the Wisconsin group said the Iroquois fabricated it shortly after the war to solidify the confederacy’s reunion. During the meetings, no one seemed concerned about that discrepancy. It must have been made after 1722, when the Tuscaroras joined the League, because it depicted six tribes rather than just the

²⁶⁴ Review Committee Meeting transcript, November 2, 1996, 68-69.

original five. As the Field Museum's Richard Koontz pointed out, the tribes offered "competing interpretations" of the same limited provenance information. Among the many hours of testimony, two disjointed comments are worth comparing side by side. At the November 1996 meeting in Myrtle Beach, S.C., Carol Cornelius of Wisconsin described her tribe's cultural revival since the 1970s, including a renewal of a ceremony in which other tribes among the Haudenosaunee were invited by sending strings of wampum beads, which they then would carry to the ceremony.²⁶⁵ Keller George of New York had told the Review Committee during the October 1995 meeting in Anchorage that the Wisconsin Oneidas had never invited his New York nation to a ceremony.²⁶⁶ The Six Nations Council belt, were it to be repatriated and put to its original use, would be carried by the Oneidas to official meetings of the entire Haudenosaunee. Yet evidently, the Oneidas of New York and Wisconsin were not attending such meetings together. They spoke at length, poignantly and earnestly, about the importance of the belt to their individual communities. But the wampum belt represented a larger community, one the Oneidas had somehow lost.

After both sides had presented their oral arguments, the Review Committee members debated the wampum belt's fate. After quickly asserting that the belt was an item of cultural patrimony and that both Oneida tribes had standing under NAGPRA, the committee hit the roadblock of the dispute: Which

²⁶⁵ *Ibid.*, 37.

²⁶⁶ Review Committee Meeting transcript, October 17, 1995, 34.

Oneida tribe was “the most appropriate claimant” under the law?²⁶⁷ Committee member Phillip Walker, a physical anthropologist who had been involved in developing NAGPRA’s legislation, said under the law “cultural affiliation is an either/or proposition.”²⁶⁸ He recalled that the anthropological community had tried unsuccessfully to convince Congress that there were “all types of degrees of cultural affiliation.” Walker read the law to say cultural affiliation is binary and that the Oneidas “in my view have equal standing and equal claim.” Smith, the New York Oneidas’ attorney, read NAGPRA differently. “I think the Statute is pretty clear that it contemplates groups with different levels of cultural affiliation,” he told the committee.²⁶⁹ He said the “most appropriate claimant” phrase meant NAGPRA envisioned cases with more than one culturally affiliated claimant. Smith said that such terms in NAGPRA “are operative, and they have meaning, and they have to be applied.” In his role as advocate for the New York Oneidas, he argued that “it’s not a stretch to say that the group which existed for all time is the group that is the most appropriate claimant” for the tribal belt. Despite Smith’s interpretation of the law, the Review Committee seemed hesitant to decide preeminence of affiliation for one tribe, a hesitance that begs the question of why the committee heard the dispute at all. Perhaps the answer to that had less to do with the wampum belt and more to do with the ongoing land issues.

²⁶⁷ 25 U.S.C. 3005(e), Competing Claims.

²⁶⁸ Review Committee Meeting transcript, November 2, 1996, 99-100. Other Walker quotes in this passage are also from those pages.

²⁶⁹ Ibid., 101-103. All Smith quotes in this passage are from those pages.

Before the committee members began their discussion on the belt, member Martin Sullivan noted that both Oneida tribes had cautioned the committee that its findings should not have implications beyond the wampum belt to other matters of dispute such as “land claims, legal issues, court proceedings, in which this Review Committee has no place and no standing.” But Sullivan added that such a caution worked both ways, and asked the tribes “not to rely upon any findings or questions or observations made in this process in any context other than in the context of the wampum belt.”²⁷⁰ The land claims dispute clearly had pervaded the entire dispute process. Yet committee members held hope that the two Oneida groups could find a way past the twenty-five years of court proceedings and two-hundred years of factionalism to reconnect. Committee member Rachel Craig, an Alaska Native, told the two parties that she realized their differences went deep and would be hard to bridge. “But somebody has to step forward and say, we’re doing it for our children because we want them to have a better life, and not be burdened with all this baggage that we have had to carry over the generations,” she said. “Somebody has to do that.”²⁷¹

As the committee worked toward a resolution, both Oneida groups indicated their willingness to try to decide the belt’s disposition through some type of sharing agreement. The committee voted unanimously to step out of the way and allow the Oneida Tribe of Wisconsin and Oneida Nation of New York to come to a solution. Under the “competing claims” section of NAGPRA, the Field

²⁷⁰ Ibid., 82-83.

²⁷¹ Ibid., 104-105.

Museum retained the wampum belt “until the requesting parties agree upon its disposition or the dispute is otherwise resolved.”²⁷² That was November 2, 1996.

An agreement between the tribes remained elusive nearly fifteen years later.

Under the auspices of NAGPRA, the Oneidas of Wisconsin and New York fought over a piece of their history that had symbolized unity and peace. Yet they would not share information as urged under the negotiating practices of NAGPRA. They did not, in their spoken or written testimony, seek a consensual agreement in peaceful respect as the traditional council governing system—encoded in the very wampum belt over which they fought—required. Both Oneida tribes could prove their links to the ancestral Oneidas. But in an irony of NAGPRA’s classification of cultural affiliation, they could not see themselves affiliated with each other. As of February 2011, the tribal wampum belt remained at the Field Museum in Chicago, a symbol of another time.²⁷³

²⁷² 25 U.S.C. 3005(e).

²⁷³ Personal correspondence with Jonathan Haas, curator at Field Museum. February 13, 2011.

Chapter 5

THE PERPLEXING PROVENANCE OF THE CRAZY HORSE SCALP SHIRT

Inside a glass trophy case, tucked in a corner of the library at Washington College in Chestertown, Maryland, a buckskin shirt hung suspended by the shoulders; its front decorated with beads and its sleeves fringed in long tresses of human hair. A placard described it as having belonged to the famed Lakota warrior Crazy Horse and explained that the shirt was “trimmed with human scalps.”²⁷⁴ A nearby display case contained a full-length Lakota war bonnet sporting a double train of eagle feathers, the type of chief’s headdress made iconic by cigar-store Indian statues and other American advertising campaigns. A label on that exhibit said the headdress had belonged to Red Cloud, one of Crazy Horse’s compatriots. These trophies hung on display from about 1933 until 1995, the premier items of Washington College’s Albee Collection of Native American artifacts.²⁷⁵

Visiting poet Lance Henson noticed the scalp shirt and headdress on display in 1992 after giving a poetry reading in the library. Henson, a Cheyenne, was aware of the Native American Graves Protection and Repatriation Act that Congress had passed two years earlier. He commented to the people accompanying him that if the shirt really had belonged to Crazy Horse, the tribe needed to know. He thought it possible that the college should repatriate the shirt

²⁷⁴ Amanda Burt, “Testing the Limits of NAGPRA: Washington College and the Shirt off Crazy Horse’s Back,” *American Indian Report*, October 1999, 8.

²⁷⁵ Federal Bureau of Investigation Case File 198C-NY-259205-1A1, obtained under the Freedom of Information Act. In author’s possession.

to the Lakotas.²⁷⁶ A key provision of NAGPRA was its requirement that any institution accepting federal funding and holding a collection of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony must prepare a written summary of the collection. The summary, which was to be completed by November 16, 1993, should “describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.”²⁷⁷ Washington College does accept federal funding but did not publish a summary or inventory, arguing when questioned that the college did not fall under the dictates of NAGPRA. Despite attempts by an attorney representing the estate of Crazy Horse to see the shirt in 1995, the college sold it in May 1996 at auction through Sotheby’s for \$200,500.²⁷⁸ College officials also said that “an acknowledged specialist in the field” had determined that Crazy Horse had not owned or worn

²⁷⁶ Amanda Burt, conversation with author, 2008. Burt was a student reporter for Washington College’s newspaper, *The Elm*, at the time.

²⁷⁷ 25 U.S.C. 3004(a). NAGPRA is more demanding regarding Native American human remains and associated funerary objects. Section 5 of the law (25 U.S.C. 3003) requires institutions holding such items to inventory and identify the geographical and cultural affiliation in order to facilitate repatriation to the most closely affiliated cultural group.

²⁷⁸ *April 20, 1999 Oversight Hearing on the Native American Graves Protection and Repatriation Act, Before the U.S. Senate Committee on Indian Affairs*, 106th Cong. (1999) (statement of Robert P. Gough, Attorney for the Estate of Tasunke Witko). Review Committee Meeting transcript, December 10, 1998, 231-234 (statement of Amanda Burt). Some newspaper reports in 1996 listed the sale price at \$211,000, but a letter faxed from Robert Gough to Sam Ball of the National Park Service Archeology & Ethnography Program on June 14, 1996, said the auction results had reported \$200,500.

the shirt, so his estate had no rights to it.²⁷⁹ The college offered no explanation as to why it had displayed the shirt for over half a century under the name of Crazy Horse.²⁸⁰ The college also sold some of the less valuable Native American items through the same Sotheby's auction. Sotheby's cleaned the eagle feather war bonnet, folded it within acid-free tissue in a large rectangular box, and told college officials to store it away in a climate-controlled room. The Federal Bureau of Investigation delayed completion of the sale for several months after someone reported that the shirt had a human tongue on it. The medical examiner in New York found no evidence of a tongue or human scalp on the shirt.²⁸¹ In May 1997, the sale went through and the college used the money to buy library resources.²⁸² Newspaper accounts at the time mentioned the war bonnet in passing but never followed up on its disposition, or why the college did not

²⁷⁹ Press release from Washington College, Office of College Relations, August 28, 1996. The college did not identify the specialist.

²⁸⁰ Washington College President John S. Toll, letter to Francis P. McManamon, NPS, June 8, 1998. Press release from Washington College, Office of College Relations, August 28, 1996.

²⁸¹ While NAGPRA specifically refers to the human remains of Native Americans, there are many layers of long-standing laws protecting all human remains. For a thorough discussion of those laws, see Sherry Hutt and Jennifer Riddle, "The Law of Human Remains and Burials," in *Human Remains: Guide for Museums and Academic Institutions*, ed. Vicki Cassman (Lanham, MD.: Rowman and Littlefield, 2008), 223-44.

²⁸² Press releases from Washington College, Office of College Relations, August 28, 1996, and May 30, 1997.

repatriate it. The college still had the eagle-feather war bonnet in storage in July 2010.²⁸³

Robert Gough, the attorney representing the Crazy Horse estate and the Rosebud Sioux Nation, did not let the matter of the scalp shirt end in 1997 with the sale's completion. He petitioned the NAGPRA National Office, the National Park Service, the U.S. Secretary of the Interior, and the U.S. Senate, and in 1999 tried to file a lawsuit in federal court, in attempts to redress what he considered Washington College's violation of NAGPRA requirements. The National Park Service did a cursory investigation into the auction, responded to a few letters from Secretary of Interior Bruce Babbitt and Senator Daniel Inouye of Hawaii, and then dropped the case without follow-up. The federal court dismissed the lawsuit because too much time had elapsed since the auction.²⁸⁴

Washington College is two thousand miles away from the land of the Lakota and the Little Bighorn battlefield in Montana where Crazy Horse and his followers defeated Lieutenant Colonel George Armstrong Custer and his U.S. Seventh Cavalry. The college does not offer a major in Native American studies or an emphasis in Native American history. Why had it displayed these items, especially a shirt labeled as being trimmed in human scalps? Exploring that

²⁸³ Interview with facilities manager at Washington College, July 30, 2010.

²⁸⁴ The information on the possible lawsuit is inconclusive. There were newspaper articles at the time saying Gough had filed suit, however a search of legal databases never found it. I asked Mr. Gough for a docket number or copy of the lawsuit, but he said it had been too long and he could not find that information.

question offers insight not only into continued collectors' interest in Native Americana, but also into some ways in which interacting groups on the Great Plains and later the eastern seaboard shaped and reshaped the cultural meaning of the shirt in reaction to changing federal Indian policy.²⁸⁵ The Crazy Horse Scalp Shirt had morphed from its original intended purpose among a warrior culture to an iconic museum exhibit, then into an item of cultural contention before being commoditized and sold into obscurity to the highest bidder.²⁸⁶ The shirt, now in private hands, lies outside the legal reach of NAGPRA.

This chapter demonstrates how much NAGPRA's implementation depends on good faith negotiations among interested parties. When parties do not participate in the cooperative approach the law encourages, repatriation disputes fall back on the more common legal framework of investigation and litigation. Washington College president John Toll and the college's Board of Visitors and Governors member Alexander Jones sidestepped the negotiating process. They declared that NAGPRA rules did not apply to the college and when speaking to reporters they focused on the narrow issue of whether Crazy Horse had worn the shirt, deflecting the actual NAGPRA violation which was their refusal to summarize the items in their collection and contact tribes that were culturally

²⁸⁵ Terms identifying different groups of Native Americans have changed over time. The U.S. Army referred to the Lakotas as Sioux, and some official tribal names now include that terminology. Within the Lakota (or Sioux) there were always sub-groups such as the Oglalas, of which Crazy Horse was a member. In this chapter, I primarily use the word "Lakota" unless it is specified differently in matter I am quoting.

²⁸⁶ Sotheby's did not release the name of the buyer.

affiliated. Newspaper reporters also focused on the Crazy Horse ownership issue, while the FBI special agent sought evidence that the U.S. Attorney's Office could use in a criminal case. This dispute, then, adds two new elements to the ways of shaping meaning that this dissertation analyzes. The social life of the "Crazy Horse Scalp Shirt" offers a way to look at how indigenous and non-indigenous people on the Plains interacted during the late nineteenth century. It also is a case study of the collectibles and art market that grew out of the Indian Wars, and finally a shifting away from such intense interest in ethnographic artifacts. While the case studies on the Apaches and Oneidas dealt with tribes, museums, and anthropologists, the Crazy Horse shirt involves lineal descendants and private collectors.²⁸⁷ Within the realm of NAGPRA, museum representatives argued that they curate ethnographic collections for public education. Anthropologists and other scientists studied the Native Americans and their remains for what they perceived as the greater human good. Private collectors and auction houses constitute a different perspective and thus a different way of shaping meaning. The controversy over the Sotheby's auction and the federal investigation added two more perspectives on the shirt's history — that of the press and the FBI special agent.

The Crazy Horse case also suggests the importance of tribes getting proactively involved in NAGPRA. Although a reporter told officials in the

²⁸⁷ I refer to the war shirt as the Crazy Horse shirt not by way of arguing that it had, in fact, been his. Rather, I use that term because Washington College displayed it as such for 60 years. It is only because the college displayed it as belonging to Crazy Horse that this dispute occurred; thus its meaning, as defined by the college, is the central point of the dispute.

Rosebud Sioux Nation offices about the shirt, the extent of the tribe's actions was to authorize Robert Gough to act in its behalf. The tribe expressed no direct interest in looking at the shirt to see whether it might be culturally affiliated. It would not be much of a stretch to guess that the tribe had more pressing concerns than claiming a shirt that may have been worn by one of its most infamous warriors.

Nineteenth-Century Lakotas

Among the best-known names in U.S. Indian history is Crazy Horse, a rough translation of the Lakota name *Tasunke Witko*.²⁸⁸ His people, the Oglala Lakotas, considered him a special man during his lifetime, a man who experienced guiding visions and led his warriors to victory in battles. He was the son of a shaman, not a chief, yet the leaders in his band chose him for the esteemed rank of Shirt Wearer because of his bravery and guiding visions. Although a domestic dispute resulted in Crazy Horse losing the rank and returning the shirt to the tribe, there were two documented accounts in the late 1870s of

²⁸⁸ Books on *Tasunke Witko* abound. Two of the best are Mari Sandoz, *Crazy Horse: The Strange Man of the Oglalas*, first published in 1942, (Lincoln: University of Nebraska Press, 2008 3rd edition), and Kingsley M. Bray, *Crazy Horse: A Lakota Life* (Norman: University of Oklahoma Press, 2006). For indigenous accounts of his death, see Edward Kadlecik and Mabel Kadlecik, *To Kill an Eagle: Indian Views on the Last Days of Crazy Horse* (Boulder, CO: Johnson Publishing Co., 1981); and Richard G. Hardorff, ed., *The Surrender and Death of Crazy Horse: A Source Book about a Tragic Episode in Lakota History* (Spokane: Arthur H. Clark Co., 1998).

scalp shirts said to have been his. Photographs and an illustration show them to be two different shirts.²⁸⁹

The rank of Shirt Wearer carried a heavy responsibility. The man, already noted for bravery and strength, was expected to rise even higher by being generous and forgiving. If another man steals a Shirt Wearer's wife, for example, the Wearer must ignore it.²⁹⁰ The Shirt Wearer was expected to protect his community, creating an integral connection in Lakota or Sioux society. Other Shirt Wearers fabricated the vestments following ceremonial instructions intended to imbue the shirt's wearer with power to care for his community in peace and at war.

The people who are often referred to broadly as the Sioux were grouped into three areas before pressing west in the late eighteenth to mid nineteenth centuries. The Tetons, who called themselves Lakota, lived mainly in what is today Nebraska and North and South Dakota, west of the Missouri River. The two other groups considered themselves Dakota. They were the Santees, who lived in Minnesota, and the Yanktons living in western Minnesota and eastern North and South Dakota. They all spoke recognizable dialects of a common language. The Lakotas comprised seven groups, the Oglala, Brulé, Miniconjou,

²⁸⁹ In addition to the shirt donated by George Albee's widow, there was a shirt that Crazy Horse's companion, Little Big Man, gave to John Gregory Bourke. Bourke writes that Little Big Man gave him "a shirt trimmed with human scalps, which was once the property of 'Crazy Horse.'" *On the Border with Crook* 2nd edition (New York: Charles Scribner's Sons, 1892), 415.

²⁹⁰ Clark Wissler, "Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota," *Anthropological Papers of the American Museum of Natural History* Vol. 11, Part 1 (1912): 40-41.

Sans Arc, Two Kettles, Hunkpapa, and Blackfeet Lakota.²⁹¹ Crazy Horse, Red Cloud, and Young Man Afraid of His Horses were Oglala. Sitting Bull, another warrior who gained fame against Custer, was Hunkpapa.

The Lakota world of kinship and relations connected humans to animals and acknowledged the presence of sacred beings. Animals had to be treated respectfully because they were related to people. Animals gave themselves for food and clothing; some gave their powers. The concept of power inhered in the term “wakan,” thought of as the life force of the universe and found in anything. There were many wakan beings who often had human characteristics, but Wanka Tanka, the “great mystery,” was supreme. In the glossary appendix to Mari Sandoz’s study of Crazy Horse, Wanka Tanka is said to be “a concept defined by its incomprehensibility, for it was simultaneously many and one.”²⁹² Wanka Tanka had created the world, and Lakotas recognized the circle as a sacred representation of everything natural. Ceremonies always began with a ritual offering using a sacred pipe that linked the people to Wanka Tanka. The pipe holder would fill the pipe and pray to the cardinal directions, then the sky and earth.

Vision seekers, if successful, would receive a gift of personalized power called wankan. A warrior painted his body and his horse before battle to channel

²⁹¹ Raymond J. DeMallie and Elaine A. Jahner, preface to *Lakota Belief and Ritual* by James R. Walker (Lincoln and London: University of Nebraska Press, 1980), xxv.

²⁹² Board of Regents of the University of Nebraska, glossary in *Crazy Horse: The Strange Man of the Oglalas*, 3rd edit., by Mari Sandoz (Lincoln and London: University of Nebraska Press, 2008), 448.

the power of his wankan. The power was particular to the man, and he would wear a medicine bundle (wopiye) containing items related to his power. Crazy Horse's medicine bundle held the heart of an eagle among other items. He wore an eagle bone whistle (from the same eagle) on a thong around his neck. A man might have medicine but not be what outsiders would think of as a "medicine man" or shaman. Those men were known as wicasa wakans; they had power to intercede on another's behalf and heal. Some sources report that Crazy Horse was a heyoka, a man who dreamed of wakinyan, the thunderbeings. As with other powers conferred on a man, it came with the potential for harm. A heyoka had to do the Heyoka Ceremony or lightning would strike him.²⁹³

Crazy Horse was born around 1840, when intertribal warfare on the Plains was intense. His childhood name was Curly, probably because of his unusually light and soft hair. His mother died when he was a small child; his father, a shaman, took two more wives. Curly grew to be medium height, of slender build, a man who did not speak often and tended to seek solitude. The name Crazy Horse was a family name, passed down by his father when Curly proved himself in war as a teen.²⁹⁴ The younger Crazy Horse soon gained a reputation as fearless in battle against Lakota enemies such as the Crows, and more notoriously against the Army. Accounts from his warriors tell of Crazy

²⁹³ Source for the material on the Lakota ethos and notions of power is from the glossary by the Board of Regents of the University of Nebraska in *Crazy Horse: The Strange Man of the Oglalas*, 3rd edit., by Mari Sandoz (Lincoln and London: University of Nebraska Press, 2008). It is similar to other sources in its explanations.

²⁹⁴ After that, the elder Crazy Horse went by the name "Worm."

Horse instructing them to hold back, while he rode up to the Army troops, racing back and forth across the aim of their firearms, nearly unseen by the smoke from the black powder. In 1868, Crazy Horse was elected to the esteemed position of Shirt Wearer, and given a buckskin shirt fringed in hair to wear as a sign of his office. He would later return the shirt, in accordance with Lakota law, after an incident with another man's wife. Crazy Horse experienced his first vision as a boy, and sought guidance through visions throughout his life. His powers have been attributed in two main ways: as coming from the thunderbeings and as from an eagle or its intermediary, a red hawk.²⁹⁵ He wore a medicine stone against his heart, on a rawhide thong that wrapped over his shoulder and under his arm. Stories that came down through time recounted that when he rode his horse in front of the enemy, he would be sure that the stone stayed between their guns and his heart. Crazy Horse took three wives. He eloped with Black Buffalo Woman, who was married to No Water. Such an act was allowed in Lakota society. When No Water came after her, he shot Crazy Horse in the face and fled, believing he had killed the warrior. After hearing that Crazy Horse had survived, No Water made restitution with horses, and Crazy Horse agreed to send Black Buffalo Woman back to her first husband. Later, when Crazy Horse came upon No Water he chased him for miles, intent on revenge. Such an act was contrary to Lakota

²⁹⁵ Mathew H. King, an Oglala who as a young boy knew old warriors who had fought with Crazy Horse, wrote about the power from the Thunder Gods. Other sources do not dispute that, agreeing that Crazy Horse was a heyoka, thunder dreamer. However they do not describe the warrior acting in the manner heyokas must – as a clown doing things “contrary to nature and expectation,” in Wissler’s words.

ways, especially after accepting the restitution that had been offered. Crazy Horse lost his rank as Shirt Wearer and resumed his duties as a normal warrior. He married Black Shawl and had a daughter, but the child died in infancy. After Crazy Horse surrendered in 1877, he married Nellie Larrabee, daughter of a mixed-blood French trader and a Cheyenne woman.

The Lakotas lived a nomadic life centered on hunting and raiding. They carried their belongings on travois, and lived in tipis that could quickly be set up or struck down when moving camp. The specific needs of this lifestyle led to three main ways for a man to achieve status: as a great hunter, scout, or warrior. Crazy Horse and his mentor, Hump, gained esteem for all three.²⁹⁶ Acclaim as a warrior came from acts of bravery, such as leading one's band in battle, standing ground when attacked, and fighting with hand weapons rather than longer range bows and firearms. Warriors adorned their hair at the crown, the "scalp lock." They knew that if they lost in battle, that part of their scalp would be taken as a prize and paraded around on a long pole. However, not all battles required or resulted in fights to the death. "In Indian estimation the bravest act that could be performed was to count coup on – to touch or strike a living unhurt man and to leave him alive, and this was frequently done," wrote George Bird Grinnell, a zoologist and early conservationist who made annual fossil-gathering trips to the

²⁹⁶ Mathew H. King, as told to Edward Kadlecek and Mabell Kadlecek, *To Kill an Eagle: Indian Views on the Last Days of Crazy Horse* (Boulder, CO: Johnson Publishing Co., 1981), 126. Crazy Horse's father, as a shaman, helped his son understand the visions he experienced. Hump trained Crazy Horse in the ways of a warrior.

West beginning in 1870.²⁹⁷ “Cases are often told of where, when the lines of two opposing tribes faced each other in battle, some brave man rode out in front of his people, charged upon the enemy, ran through their line, struck one of them, and then, turning and riding back, returned to his own party.”²⁹⁸ The Lakotas respected such acts of fearlessness; men who performed them gained esteem among the warriors and had better luck in taking wives. During victory dances after battles, wives carried scalps taken by their husbands, a public acknowledgement of achievement. Warriors could retell their acts of bravery to their people, who believed them because such acts were only validated if witnessed.²⁹⁹

Lakota author Luther Standing Bear, born in the 1860s, described a victory dance his people held after a battle with Pawnees. The wounds of horses and men were painted red, and community members could identify the actions of each warrior in the dance by his regalia. The warriors who had killed an enemy in the battle wore an eagle feather in their hair straight up; if the warrior had been wounded during that action, he painted the feather red. Some men brought scalps;

²⁹⁷ Albert Kenrick Fisher, “In Memoriam: George Bird Grinnell,” *The AUK: A Quarterly Journal of Ornithology*, Vol. 36, No. 1 (January, 1959): 3. Grinnell became enamored of the Plains Indians and wrote extensively about them. Fisher, a friend of Grinnell’s, wrote that Grinnell accompanied Custer on the 1874 expedition into the Black Hills, but a commitment at Peabody Museum prevented him from acting as naturalist on the ill-fated 1876 campaign.

²⁹⁸ George Bird Grinnell, “Coup and Scalp among the Plains Indians,” *American Anthropologist*, New Series, Vol. 12, No. 2 (April-June, 1910), 297.

²⁹⁹ See for example, Anthony R. McGinnis, *Counting Coup and Cutting Horses: Intertribal Warfare on the Northern Plains, 1738-1889* (Lincoln and London: University of Nebraska Press, 1990).

others donned the war bonnets they had worn in battle. “There were no false credits given at this dance, but every warrior received his just merits,” Standing Bear wrote in his autobiography, first published in 1928. His book also testifies to the importance of counting coup by approaching an enemy. When his band took some Pawnee prisoners, a young Standing Bear and his friends enticed one of the imprisoned boys outside to play “just so we could touch him. This was the first opportunity we boys had had to touch an enemy.”³⁰⁰

The Oglalas and other Lakotas traveled in bands, following chiefs they chose for being generous and good. A chief ruled by example and persuasion and in consensus with a council of wise men. Information about the ranks and responsibilities of men just below the chief is somewhat contradictory, possibly due to differences among the bands and to changes between 1890 and the early twentieth century, when outsiders interviewed people on the reservations. Several sources mention two particular ranks, the Akicita and the Shirt Wearers.³⁰¹ Akicita were chosen to keep order in the community, much like police officers. The Shirt Wearers were chosen for their bravery and strength; with their anointment as Shirt Wearers they were expected to put their community ahead of their personal needs. They were expected to use their skills to help widows and children with food and other necessities. The men chosen for this rank often were

³⁰⁰ Luther Standing Bear, *My People the Sioux* (Lincoln: University of Nebraska Press, 1975), 56-57. The prisoners were released before the victory dance, and Standing Bear writes that when he later attended Carlisle Indian School in Pennsylvania, he encountered that same boy.

³⁰¹ Some sources regard Akicitas and Shirt Wearers as the same thing, while some say that the Shirt Wearers were chosen from among the Akicitas.

sons of men who had been chiefs or Shirt Wearers. However, as in the case of Crazy Horse, a man who displayed unusual talents in warfare and hunting might be honored with the rank.

Crazy Horse, by all accounts, was chosen as a Shirt Wearer but had to give up the status and shirt because of the incident with No Water. Authors Mari Sandoz and Kingsley Bray both cite Clark Wissler's 1912 article "Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota" as their source for reconstructing in their books the ceremony in which Crazy Horse became a Shirt Wearer. The shirts were made from two mountain sheepskins by other Shirt Wearers in accordance with ceremonial precepts. The front legs became the sleeves and the rear legs were the sides of the shirt. They were painted either blue on the upper half with yellow below or red on the upper and green below. The shoulders and sleeves were decorated with porcupine-quill embroidery and fringed with locks of hair that traditionally had represented acts of bravery. During the ceremonial making of the shirt, a feast was held and offerings of sweetgrass made to the four directions.³⁰²

Mythologizing the Indian Wars

In American social memory, the nineteenth-century Indian Wars on the Great Plains stand as the most widely mythologized. Crazy Horse and Sitting Bull gained notoriety among whites after the infamous battle of June 25-26, 1876,

³⁰² Wissler, "Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota," 39-40.

known for decades as “Custer’s Last Stand.”³⁰³ The Battle of Little Bighorn (known to Lakotas as the Battle of Greasy Grass) resulted in twenty-four Medals of Honor for the U.S. soldiers involved, and quite possibly sparked later retribution on the part of Seventh Cavalry members against Native non-combatants. The mythology of that battle immortalized Custer, whose “last stand” has been portrayed in numerous films, always gallantly, sometimes overly dramatically, but consistently heroically. The Plains had long been an area of sporadic violence, as indigenous peoples farther east were pressed westward by incoming Euro-American groups. The Lakotas were relatively recent inhabitants of the Black Hills, having migrated from Minnesota and the Dakotas beginning in the eighteenth century. Royal Hassrick, in his 1964 book *The Sioux*, writes that a 1775-76 winter count recorded the Sioux’s discovery of the Black Hills.³⁰⁴ The Lewis and Clark Expedition of 1804-1806 reported some Sioux in the eastern Plains and by the 1830s a larger migration of Lakotas from the Great Lakes area

³⁰³ Charles M. Robinson III, who edited and annotated John Gregory Bourke’s diaries, thought that Bourke’s frequent writing about Crazy Horse and Sitting Bull added greatly to the mythology. Robinson wrote that Lieutenant Clark, who later would accept Crazy Horse’s surrender, better understood that the Lakota bands were not led by one singular chief. See Robinson, *The Diaries of John Gregory Bourke Volume I, November 20, 1872-July 28, 1876* (Denton, TX: University of North Texas Press, 2003), 198-199.

³⁰⁴ Royal B. Hassrick, *The Sioux: Life and Customs of a Warrior Society* (Norman: University of Oklahoma Press, 1964), 61. Hassrick conducted psychological testing on Sioux children for the Office of Indian Affairs in 1942-43; later he worked as curator for the Department of Interior’s South Plains Indian Museum. He was curator of American Indian Art at Denver Art Museum from 1955-1962.

had begun.³⁰⁵ Power struggles among the different tribal groups on the Plains intensified as the Mormon Migration of 1846-47, the California Gold Rush of 1849, and the Klondike Gold Rush of 1867 ramped up the general movement of people across the continent. The Treaty of Fort Laramie in 1868 promised the Black Hills to the Sioux but rumors of gold soon put that treaty at risk. Custer's 1874 expedition into the Black Hills confirmed the existence of gold, and another rush was on, this time into the heart of Lakota land. Discovery of gold in the northern Black Hills in 1875 lured thousands to that area, and in spring 1876 miners established the town of Deadwood on land that was part of the Great Sioux Reservation. That summer, Crazy Horse, Sitting Bull and others defeated Custer, sparking a massive campaign to disarm the Indians and bring them onto reservations. Soldiers in the Indian Wars rode home with souvenirs of the battles, and non-military men in the area collected their own souvenirs, including scalps they took in retribution for Custer.

In the months following the Battle of Little Bighorn, several Oglala chiefs including Red Cloud agreed to peace with the U.S. Army and led their bands into reservation agencies.³⁰⁶ On May 6, 1877, Crazy Horse brought his people in and agreed to give up his weapons and horses and live in a village near Camp

³⁰⁵ Anthony R. McGinnis, *Counting Coup and Cutting Horses: Intertribal Warfare on the Northern Plains, 1738-1889* (Lincoln and London: University of Nebraska Press, 2010). The general time frame of the Lakota western migration is also reported by Robinson, *Diaries of John Gregory Bourke, Volume I*, 131.

³⁰⁶ Sitting Bull and his followers took refuge in Canada, returning in 1880 and 1881 to surrender at Forts Buford and Keogh.

Robinson, Nebraska.³⁰⁷ He resisted pressure from the army to move away from the Black Hills to a reservation on the Missouri River. He resisted also attempts to send him to Washington D.C. with a contingent of his contemporaries including Red Cloud and Little Big Man. And, as far as history can ascertain, he resisted requests to pose for photographs, although people have circulated a few pictures they claimed were of the light-haired Indian. The likelihood is small, since Crazy Horse only went to the Indian agency a few months before he died. On September 5, 1877, the Lakota warrior who had faced down thousands of enemies died at the fort after a U.S. soldier stabbed him from behind with a bayonet. His parents, fearing that people would disturb their son's grave, buried him in a secret location to protect him in the afterlife.

Scalping

Lakota author Luther Standing Bear began life in the 1860s, a time of great transitions and conflict for the peoples of the Great Plains. As a child he went by the name Ota Kte, or Plenty Kill, for his father's prowess in battle. He lived in a tipi, and learned the traditional ways of his culture such as how to take down a buffalo with a bow and arrow. But as a teenager he enrolled in the first class at Carlisle Indian School in Pennsylvania, where he randomly picked the name Luther. Eventually he took his father's name as his last name. Standing Bear was one of the first Native Americans to write his own autobiography, and although he wrote it in his fifties, it offers some glimpses of life on the Plains before all the Lakotas had moved to reservations. He wrote of the victory dances

³⁰⁷ The camp was renamed Fort Robinson in 1878.

they celebrated after battles, and also of the sacrificial Sun Dance ceremony in which warriors pierced their chests with rawhide straps, and then danced around a cottonwood pole pulling until the rawhide tore free from their chests. During the Sun Dance, women could offer pieces of flesh from their upper arms as a sacrifice. As part of the prelude to the main ceremony, an old chief and younger men danced. Standing Bear recalled, “Then an old chief came forward with a scalp-lock tied to a pole. He danced before the others, facing them. When he danced backward, the others danced forward, and vice versa.”³⁰⁸ The nonchalant tone Standing Bear uses in mentioning scalps makes it clear they were a normal part of rituals during his boyhood. Later in life, he defended the practice of scalping. While on a 1928 lecture tour after publishing his autobiography, Standing Bear told a radio interviewer, “My people took scalps only to prove their stories that they had met the enemy and overpowered him. It is no different than the doughboys in the World War bringing back German helmets and other souvenirs.”³⁰⁹

In the mid-nineteenth century, the custom of scalping existed around the world. British ethnographer Sir Richard F. Burton, who traveled to Asia, Africa, and across the American West in the late 1850s and 1860, published his observations and second-hand accounts in the British journal *Anthropological Review*. Burton detailed various scalping practices of the “savages” and, in an

³⁰⁸ Standing Bear, *My People the Sioux*, 119.

³⁰⁹ “Chief Standing Bear, Likens Scalping to Modern Day Trophy,” *Winners of the West*, Vol. 5, No. 9. http://www.dlncoalition.org/dln_nation/chief_standing_bear.htm (accessed March 19, 2009).

irony that perhaps eluded him, revealed his own “civilized” culture’s morbid curiosity about taking a knife to a vanquished foe’s head. His 1864 “Notes on Scalping” described various scalping techniques. Burton warned “curiosity hunters” willing to pay \$50 for a scalp that some people might sell multiple scalp locks from a single head, a practice counter to that of the Native American warriors who sliced off the main scalp lock from the thick crown area. Burton wrote that experienced collectors could distinguish the “real article” from “false scalping” and that “set in a plain gold circlet it makes very pretty brooches.”³¹⁰

Sir Burton wrote his essay in a superior tone, as a “civilized” man who traveled to “exotic” areas and observed the “natives” at work and play. From a twenty-first century vantage point, Sir Burton’s imperialist attitude seems condescending. However, despite improved relations between the dominant culture and Native Americans, interest in scalps and scalp shirts did not disappear in the twentieth century. The Federal Bureau of Investigation in recent years raided auction houses and other businesses after learning of illegal sales of scalp locks – essentially pieces of skin with long tresses of hair still attached, often decorated with feathers or beads. Scalp shirts remain valuable collectors’ items, selling for hundreds of thousands of dollars and dancing on the line of the law against selling human remains because no discernible skin is left. With only hair tied as fringe on sleeves it is impossible to know whether the hair was naturally

³¹⁰ Richard F. Burton, “Notes on Scalping,” *Anthropological Review*, Vol. 2, No. 4 (Feb., 1864), Royal Anthropological Institute of Great Britain and Ireland, 52.

shed, cut from the locks of a willing donor, or as the traditional naming of the shirts implies, taken from scalps of slain enemies.

George Bird Grinnell also wrote about scalping practices based on his travels in the West. He commented:

The general opinion that the act of scalping reflects credit on the warrior has no foundation. The belief perhaps arose from the fact that, when an enemy was killed or wounded, brave Indians rushed toward him. White observers have very likely inferred that those who were rushing upon an enemy were eager to take his scalp. As a matter of fact they cared little or nothing for the scalp but very much for the credit of touching the fallen man. Most people are untrustworthy observers and draw inferences from their preconceived notions, rather than from what actually takes place.³¹¹

Grinnell's article, "Coup and Scalp among the Plains Indians," was not published until much later in his life, after he had spent years visiting and studying different Native American cultures. He had become enamored with the Plains Indians – particularly the Cheyenne, Gros Ventre, and Blackfeet – and advocated for better treatment of Native Americans. Still he, like Sir Richard Burton, wrote with an arrogant air, each positioning himself as a writer familiar with "pure" Native American cultures who therefore understands their "true" meaning. As Grinnell saw it, scalping and counting coup were "very generally misunderstood and are ill defined in the books. It seems the more important to correct existing errors because these customs are no longer practiced and are now

³¹¹ Grinnell, "Coup and Scalp among the Plains Indians," 303.

known only to old men.”³¹² His article gives detailed descriptions of an old man teaching a boy how to carve the flesh from a scalp lock and sew the scalp to a hoop formed from a bent willow twig. He also devotes pages to a daylong scalp dance, still asserting that scalping was not an important practice. What he fails to mention in the *American Anthropologist* article is that men of his culture also took and collected scalps.

After reports of gold in the northern Black Hills, several thousand fortune seekers, merchants, and prostitutes arrived in the area. By 1876 the town of Deadwood, situated illegitimately on the Great Sioux Reservation in Dakota Territory, had 3,000 residents. Among those was Harry Young, who later would publish his memoirs in *Hard Knocks: A Life Story of the Vanishing West*. Young worked as a bartender in Deadwood’s Saloon No. 10 and witnessed Wild Bill Hickok’s murder there during a poker game on August 2, 1876. Four days later, Young scalped a Lakota named Bad Hand about fifty miles northwest of town, another event he considered significant enough to include in his autobiography.³¹³ On July 17, 1876, Buffalo Bill Cody scalped a Cheyenne named Yellow Hair during the Battle of Hat Creek (now known as War Bonnet Creek) in northwestern Nebraska. When Cody became a showman, he re-enacted his version of the scalping for audiences, using the genuine scalp and headdress of the

³¹² Ibid, 296.

³¹³ Notice of Inventory Completion for Native American Human Remains from South Dakota, 61 Federal Register, 51302, October 1, 1996.

man he had killed in what he termed the “First Scalp for Custer.”³¹⁴ The scalp stayed in Cody’s family until 1957, when his grandchildren sold it to the Buffalo Bill Historical Center.³¹⁵ Both Harry Young and Buffalo Bill Cody acted in retaliation for Custer’s defeat that summer at the Battle of Little Bighorn.

Collectibles Market

Crazy Horse’s mystique grew with his death. The era in which he died coincided with an expanding interest in collecting Native American memorabilia. Transcontinental railroads made western lands accessible, and as the Indian Wars ended, traveling seemed less fraught with danger for eastern tourists. Federal geological expedition parties included painters and photographers, whose work introduced easterners to the grandeur and natural beauty of the West as well as producing images of different indigenous groups. In 1896, after barely surviving the nation’s financial panic of 1893, the Santa Fe Railway began a large advertising campaign. The railway’s campaign, writes T.C. McLuhan, used the “heritage of America, the wilderness, and the Indians. With patriotic drama and allure, the railroad’s advertising became a sustained hymn to natural America. The imagination was encouraged to roam into the farthest reach of the wilderness, where an ideal new world was promised – the exotic and simple life of an earthly

³¹⁴ The use of the scalp in his Wild West Show is reported in several sources; some, like Philip J. Deloria’s *Indians in Unexpected Places* (page 58), mistakenly refer to the scalped Cheyenne as Yellow Hand.

³¹⁵ Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Buffalo Bill Historical Center, 65 Federal Register 60974, October 13, 2000.

paradise.”³¹⁶ Hotelier Fred Harvey partnered with the railway, building lodgings along the line and offering Indian Tours to places such as the Hopi mesas or Navajo lands. Tourists came, they saw, they bought. Art historians Ruth B. Phillips and Christopher B. Steiner write in *Unpacking Culture* that collecting offers “an imagined access to a world of difference, often constituted as an enhancement of the new owner’s knowledge, power, or wealth.”³¹⁷ Other entrepreneurs capitalized on the indigenous cultures. Buffalo Bill Cody toured the country and Europe with his Wild West Show, in which Indians played the parts of Indians in battles against Custer.

During hearings preceding the passage of NAGPRA in 1990, representatives from Sotheby’s and from the Antique Tribal Art Dealers Association testified to the continued interest in indigenous artifacts. James Reid, at the time vice president of the Antique Tribal Art Dealers Association, explained it this way:

The appeal of the antique and the exotic is a near universal phenomenon. Through objects, ancient peoples speak across centuries of important lifestyles and aesthetics. The collection and conservation of important objects of antique art is a pursuit that channels man’s natural sense of curiosity and acquisitiveness

³¹⁶ T.C. McLuhan, *Dream Tracks: The Railroad and the American Indian, 1890-1930* (New York: Harry N. Abrams, Inc., Publishers, 1985), 16-17.

³¹⁷ Ruth B. Phillips and Christopher B. Steiner, “Art, Authenticity, and the Baggage of Cultural Encounter,” in *Unpacking Culture: Art and Commodity in Colonial and Postcolonial Worlds* (Berkeley: University of California Press, 1999), 3.

to a high purpose that refines his aesthetic awareness and enlarges his knowledge of history and science.³¹⁸

Reid voiced his group's concerns about defining "sacred" and what that might mean to their customers' collections. "And with what broad brush are things painted sacred, and by whom?" he asked.³¹⁹ Written testimonies submitted at the hearings include a letter by a private collector to Senator John McCain. Richard W. Edwards Jr., a law professor at the University of Toledo, described himself as having been a "serious collector of Plains Indian artifacts" since the age of ten. He wrote that much of his collection comprised medicine bundles or items from those bundles, which all had "religious significance." Among the medicine bundles' contents were a scalp, umbilical cords, a painted human skull, and a war shirt with human hair locks attached. He assured McCain that the items had not been taken from burial sites, and had not been intended for burial. In his opinion, private collectors were largely responsible for accruing the "great public collections" that help educate the public. He and his wife had sold or donated objects that went into museums. "The private collector is a key participant in the transmission of cultural information from one generation to the next," he wrote.

³¹⁸ *Protection of Native American Graves and the Repatriation of Human Remains and Sacred Objects: Hearings on H.R. 1381, H.R. 1646, and H.R. 5237, Before the Committee on Interior and Insular Affairs, 101st Cong. 235 (1990)* (statement of James Reid, vice president of the Antique Tribal Arts Dealers Association). (hereafter, *Hearings on H.R. 1381, H.R. 1646, and H.R. 5237*).

³¹⁹ *Hearings on H.R. 1381, H.R. 1646, and H.R. 5237, 235* (statement of James Reid, vice president of the Antique Tribal Arts Dealers Association).

“Further, some of the best scholarship about Native American art and society has been done by private collectors.”³²⁰

Statements by Reid, Edwards, and other art dealers reflect the continued appeal of Native American artifacts on the private market, which is not directly affected by NAGPRA. However, the sale of certain items by institutions of higher learning who accepted federal funding (such as Washington College) is regulated by NAGPRA. When the Rosebud Sioux tribe (represented by attorney Robert Gough) expressed interest in looking at the shirt, the college should have entered into a conversation. Once the sale of the Crazy Horse Scalp Shirt finalized, the shirt went beyond the jurisdictional reach of NAGPRA.

Nineteenth-century private collectors included army officer George Albee, who earned the Medal of Honor as a first lieutenant in the 41st United States Infantry Regiment. On October 28, 1869, Albee fought against Kiowas and Comanches at Brazos River, Texas. According to the medal citation, Albee “attacked with 2 men a force of 11 Indians, drove them from the hills, and reconnoitered the country beyond.”³²¹ He collected guns, artifacts, and clothing from his service and as gifts from other officers. He donated some of his collection to the Connecticut Historical Society; some of those items later wound

³²⁰ Ibid., 247-251 (letter from Richard W. Edwards Jr. to Senator McCain, July 5, 1990).

³²¹ Congressional Medal of Honor Society, <http://www.cmohs.org/recipient-detail/1540/albee-george-e.php> (accessed February 26, 2011).

up in the possession of Washington College.³²² The provenance of Albee's collection involves two officers whose names, even if not broadly known, were important in the Indian Wars. According to family heirs, Albee received the Indian artifacts in the late 1870s to early 1880s from Colonel Ranald Mackenzie and Captain Henry Ware Lawton, with whom he fought. Military records show that Mackenzie commanded the 41st Infantry, and Lawton served in it, at the time Albee earned his Medal of Honor in that unit. Mackenzie and Lawton transferred to the 4th Cavalry and were posted at Fort Robinson when Crazy Horse surrendered in 1877.³²³

Albee died in 1918, leaving a widow, Fredericka, whom he had married after his first wife's death in 1907. In 1933, an official from Washington College contacted Fredericka and told her that the Connecticut Historical Society was not properly displaying the Albee Collection. He asked the widow to lend it to Washington College. Fredericka agreed, on the stipulation that the college do a better job of curating the collection. The college set up two glass trophy cases in the library with Red Cloud's war bonnet, Crazy Horse's shirt, and other items

³²² To piece together the provenance of Albee's collection, I compared newspaper articles from the time of the sale, statements made by Gough and Amanda Burt to the NAGPRA Review Committee and the U.S. Senate, the text of Sotheby's auction catalog, military records, and the interviews of Albee family heirs in the FBI case file.

³²³ John Bourke, *On the Border with Crook* (New York: Charles Scribner's Sons, 1891). Bourke writes about Mackenzie and Lawton being present at Red Cloud's surrender and then awaiting Crazy Horse's surrender several months later. See chapters 19, 22, 23.

from the Albee Collection.³²⁴ The Sotheby's auction catalog entries for the college collection also listed two Plains Indian dance headdresses, a Southern Plains dance headdress, a Plains dance ornament, "an unusual Southern Plains fringed hide jacket," two Cheyenne tobacco pouches, a Cheyenne belt pouch, "miscellaneous Pueblo pottery," a Navajo blanket, and three Northern Plains beaded pouches for auction at the same time as the shirt.³²⁵ The shirt and war bonnet, along with some of the other items, remained on display throughout most of the twentieth century.

The 1990 passage of NAGPRA gave institutions that accepted federal funds five years to complete summaries of any Native American collections that "may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony."³²⁶ Washington College did not do so. When asked by the National Park Service in a December 24, 1997, letter whether the college had completed a summary or an inventory, college officials requested more time to respond. Washington College President John S. Toll replied on June 8, 1998, that "it has consistently been the position of Washington College that the Native American items in its possession did not fall within the categories" of NAGPRA.³²⁷ Rather

³²⁴ Information on the display cases identified the war bonnet as that of Red Cloud.

³²⁵ *Fine American Indian Art*, catalog published by Sotheby's for the May 21, 1996 auction in New York. Lots 147-149, 168-173, 277, 284, 381. Information on Albee's widow, FBI Case File.

³²⁶ 43 CFR 10.8(a).

³²⁷ John S. Toll letter to Francis P. McManamon, NPS, dated June 8, 1998.

than acknowledging that anything in its collection may have fallen within the law's categories, college officials simply stated that the items did not. This act of self-determination became a key part of Gough's repeated complaints about the college and the lax enforcement of NAGPRA.

If Washington College officials had engaged the NAGPRA process, they and members of the Rosebud Sioux Tribe likely would have debated two key points: What was the likelihood the shirt had belonged to, or been worn by, Crazy Horse; and regardless of ownership, was the shirt an item of cultural patrimony for the tribe? Gough believed that Lakota chief He Dog had owned the shirt and Red Cloud's war bonnet and gave them to Crazy Horse to use as ceremonial exchange items when their band surrendered at Fort Robinson. "If so, these items may be properly deemed objects of cultural patrimony for both our great nations," Gough wrote in a letter to Interior Secretary Bruce Babbitt.³²⁸ None of the correspondence between Gough and the agencies he petitioned goes into detail about why he believed the shirt and war bonnet had been ceremonial exchange items, but news accounts from 1877 offer a plausible scenario. On May 6, 1877, as Crazy Horse led his followers toward surrender at Fort Robinson, Lieutenant William P. Clark led soldiers out from the fort to meet them. Several eastern newspapers ran accounts of that historic encounter. They reported that Crazy Horse's chiefs Little Hawk and He Dog accompanied him as he led his followers to the arranged meeting. But the articles stated that He Dog, not Crazy Horse, presented a shirt and war bonnet to Clark. Some of the news stories do not

³²⁸ Robert Gough, letter to Secretary Bruce Babbitt, June 11, 1997.

state explicitly that the reporter witnessed the meeting, but at least one did see it firsthand. A news correspondent who accompanied Clark's troops to the meeting described the shirt as "heavily beaded and elegantly embroidered."³²⁹ The same correspondent wrote that Crazy Horse said he had given all his personal effects to Red Cloud, the Lakota who persuaded him to surrender. By handing over the shirt, Crazy Horse ceremonially passed the power and responsibility of protecting and caring for the Oglalas to Clark.

Washington College described its "beaded and fringed" shirt in details, but the written reports from 1877 do not offer enough information to compare based on those words alone. The fact that the Lakotas presented a war bonnet and shirt during Crazy Horse's surrender, and the fact that a soldier with connections at the fort during that time period came into possession of a war bonnet and shirt that ended up at Washington College, seems to beg for further investigation.

Regardless of which warrior presented the items, those artifacts were part of a historic ceremony and as such would have strong significance to the Lakotas. In 1995, when Robert Gough, representing Crazy Horse's estate, sought to examine the shirt, Washington College officials did not grant him the opportunity.

When Washington College officials decided to sell the shirt, they consulted an unnamed "acknowledged specialist in the field" who examined the shirt and said it was of Northern Plains or Plateau origin and different in beadwork style from the Lakota war shirts. In this, they were focusing only on the Crazy Horse ownership issue and sidestepping the NAGPRA issue, which is

³²⁹ "Crazy Horse With Us," *Chicago Times*, May 7, 1877.

that the law required the college to write up a summary of its Native American collection and contact tribes that could be culturally affiliated. Setting the shirt aside for a moment, the college's collection included other items that Sotheby's auction catalog advertised with specific affiliations including Cheyenne, Comanche, Hopi, Navajo, and Micmac.³³⁰ The salient point that Gough pursued unsuccessfully was that Washington College never contacted the tribes about its objects. Instead, based on the unnamed specialist and what college officials deemed the absence of evidence that Crazy Horse had worn the shirt, they decided to include the shirt in the auction of the collection's lesser items.³³¹ Their stance implies that they would not have sold the shirt (and possibly repatriated it) if they were certain Crazy Horse had worn or owned it. In May 1996, Sotheby's auctioned the shirt as that of "an important plateau man" without giving Crazy Horse's relatives an opportunity to send their own specialist to examine the artifact. None of the statements issued by the college between 1995 and 1999 addressed the question of why the college had claimed for sixty years that Crazy Horse had worn the shirt.

Scalps and Scalp Shirts under NAGPRA

Scalps were "innately sacred" and had to be treated appropriately in ceremonies, according to a Lakota representative involved in repatriating a scalp

³³⁰ *Fine American Indian Art*, catalog for sale 6853, Sotheby's, May 21, 1996. Several items in the Washington College collection were categorized as Southern Plains or Northern Plains, but never as Sioux.

³³¹ Press release from Washington College, Office of College Relations, April 28, 1996. The release did not identify the "acknowledged specialist."

that the Federal Bureau of Investigation had confiscated during a sale. “Among the Lakota, scalping is a way of showing contempt for an enemy’s prowess in war. The Iwa’kiciwacipi, or scalp dance, was performed to punish the individual from whom the scalp was taken.”³³² But that was only part of the ceremony. The Lakota representative said the scalp needed to be repatriated for a spirit-releasing ceremony and that afterward, it could be sent to one of the tribes that might be culturally affiliated with the victim. The intention seems clear: finish the ceremonial process that would honor the deceased. Disaggregated scalps generally were repatriated under NAGPRA’s human remains designation to the tribe affiliated with the victim, but sometimes they were repatriated to the historically victorious culture that turned the scalp into an object of cultural patrimony.

The language of NAGPRA does not directly address whether a “scalp shirt” falls under a category of repatriation. Sotheby’s Auction House, like Washington College, asserted that the shirt formerly known as Crazy Horse’s did not fall under the NAGPRA rules and the only concern had been whether there were pieces of human flesh attached. But anthropologist Clark Wissler wrote in 1912 that the shirts bestowed on shirt wearers were “owned by the tribe,” which is the essence of cultural patrimony under NAGPRA.³³³ Wissler, who studied the

³³² Notice of Intent to Repatriate a Cultural Item: U.S. Department of Justice, Federal Bureau of Investigation, 68 Federal Register, 68949, December 10, 2003.

³³³ Wissler, “Societies and Ceremonial Associations in the Oglala Division of the Teton-Dakota,” 7.

Oglalas at Pine Ridge Agency from 1903 to 1912, described a hierarchy with a chiefs' society at the top. The chiefs appointed "councilors" to look after the community's welfare. "They are spoken of as the 'owners of the tribe,' but more particularly as the 'shirt wearers' since upon investment in office they are given a special form of hair-fringed shirt. These shirts are spoken of as 'owned by the tribe.' Their owners are the supreme councilors and executives."³³⁴ Likewise, early conversations among members of the NAGPRA Review Committee implied that such shirts could well be items warranting repatriation.

Many of the NAGPRA Review Committee meetings involve repatriating human bones and trying to identify massive collections of culturally unidentified remains. In the early years of NAGPRA, the Review Committee also helped hammer out definitions for the law's legal terms – human remains, funerary objects, sacred objects, and items of cultural patrimony – all of which were subject to repatriation. When considering hair or scalps, the terms "cultural patrimony" and "human remains" overlapped because during the nineteenth century (and possibly earlier), warring indigenous cultures would incorporate hair taken from their enemies – usually as a scalp – into ceremonial garb. The committee debated whether such garments were best considered "human remains" or "cultural patrimony" and whether the garments should stay intact or be rendered.

³³⁴ Ibid.

In the August 1992 NAGPRA Review Committee meeting held in Lakewood, Colorado, committee members took on the task of clarifying the law's definitions to offer better guidance in judging disputes. Committee member Martin Sullivan suggested that the definition of "human remains" exclude teeth or hair taken from a living person and only include teeth or hair taken from a corpse. In that meeting, the subject of scalp shirts came up. Member Tessie Naranjo of Santa Clara Pueblo in New Mexico suggested that museums should repatriate scalp shirts to the culture that made the shirt rather than to the culture whose warriors had been scalped. She mentioned two reasons, one pragmatic and the other spiritual. It would be more feasible to identify the culture that made the shirt than the cultural affiliation of the victim. But just as importantly, once the victors incorporated the scalp into a garment, it took on an important ceremonial role and transcended its status as human remains. Committee Chairwoman Rachel Craig, an Inupiaq traditional leader from Kotzebue, Alaska, disagreed with Naranjo, arguing that the scalps still belonged to the deceased and should be returned to their affiliated tribes. What is notable is that no one on the committee argued against repatriating such shirts—it seemed clear from the conversation that the seven members assumed the shirts fell within the dictates of the law.³³⁵

NAGPRA regulations as amended in 2007 stated that the category of "human remains" for the purposes of repatriation does not include body parts "that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained" and that human remains

³³⁵ Review Committee Meeting transcript, August 26-28, 1992.

“incorporated into a funerary object, sacred object, or object of cultural patrimony ... must be considered as part of that item.”³³⁶ Thus, if a scalp shirt was deemed an item of cultural patrimony, it would be repatriated to the tribe affiliated with those who made the shirt—the victors, not the warriors who had been scalped. That ended the concern of having to tear apart garments, analyze hair, and try to find the affiliated tribe for repatriation, a scenario with low likelihood of success. However, the clarification did not answer whether scalp shirts or pants must always be deemed items of cultural patrimony, defined as “an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American.” The law stated that an item of cultural patrimony, because it was communally owned, could not be sold or given away by an individual, even a member of the particular culture.³³⁷ The shirt that Washington College displayed for decades as the Crazy Horse Scalp Shirt may or may not have qualified as an item of cultural patrimony, but the tribe and the estate never had a chance to fully investigate.³³⁸

³³⁶ The final regulations, 43CFR10, were published October 1, 2007. Quoted material regarding human remains from 43CFR10.2(d)(1).

³³⁷ 25 USC 3001 Section 2(3)(d).

³³⁸ In looking at photos and descriptions of the ceremonial headdresses that Washington College also sold through Sotheby’s, it seems reasonable to surmise that they may have been items of cultural patrimony, much like the ceremonial headdresses of the Apaches. Again, the salient point is that college officials did not engage the process.

Museums still have scalp shirts in their collections and exhibited online. The Cleveland Museum of Art, for example, has a Lakota scalp shirt dated circa 1890 that is viewable at its Web site or through the David Rumsey AMICA Library online. That entry argues that the tresses on such shirts “are not actually scalps. Instead they were usually donated by family members or friends. Each lock represents a war exploit performed by the shirt's owner.”³³⁹ However, such an explanation seems counter to the traditional naming of the shirts and the known penchant for keeping scalps among many cultures. Indeed, the Smithsonian’s National Museum of the American Indian (NMAI) curates a scalp shirt with this catalog entry: “A scalp shirt was worn by the bravest of fighting men. Thus, the making of such a shirt, trimmed with hair from enemy scalps, was both a holy and solemn occasion. Only a warrior who himself possessed a scalp shirt could make one for another warrior. The human hair scalp-locks attached to the shirt have great symbolism. Hair was considered an extension of a person’s soul. For an Indian warrior to acquire hair from another was to add his power and strength to his own.” Although the exhibit credits the photo of the shirt to the NMAI, the Smithsonian’s National Museum of American History displays it as

³³⁹ The AMICA Library, Art Museum Images from Cartography Associates, accessed March 15, 2009, at <http://www.davidrumsey.com/amica/amico10100797-37451.html>. The shirt is not on public view in the museum. A Federal Register search shows no Notices of Intent to Repatriate any item from the Cleveland Museum of Art.

part of a military history exhibit, “The Price of Freedom: Americans at War.”³⁴⁰ The shirt is in the section on “Western Indian Wars” that explains Custer’s foray into the Black Hills to verify rumors of gold, his death at the Battle of Little Bighorn, and the Army’s subsequent reprisals against the Plains Indians. The exhibit makes no mention of cavalry soldiers scalping the Native Americans they killed during that time period.

Other scalp shirts (or as auctioneers refer to them, war shirts) have sold at auction, sometimes garnering hefty prices. The war shirt formerly known as Crazy Horse’s did not bring in a particularly high price at \$200,500. In 2006, a shirt listed by Sotheby’s as “an early and important Upper Missouri River man’s quilled and pony beaded hide shirt, probably Blackfoot,” sold for \$800,000. The catalog listing for that shirt described it as made of animal hides “trimmed with human and horse hair pendants wrapped with quillwork; similar hair pendants down each sleeve.” Further information assured potential buyers that the presence of hair identifies “the wearer as a warrior who has taken scalps.”³⁴¹ Perhaps pieces of scalp had never ornamented the shirt, but the original owner had scalps from which to harvest hair for the fringe.

Washington College never addressed these uncertainties about the Crazy Horse shirt—whether it could have status as cultural patrimony; who, if not Crazy

³⁴⁰ National Museum of American History online exhibit http://americanhistory.si.edu/militaryhistory/exhibition/flash.html?path=6.1.r_676 (accessed March 3, 2009). I saw the museum display in person on June 29, 2010.

³⁴¹ Sold as Lot 183, Sale N08210, New York City, May 8, 2006. http://www.sothebys.com/app/live/lot/LotDetail.jsp?lot_id=4LZ65 (accessed March 13, 2009).

Horse, had worn or owned it; and whether the hair had been from scalped enemies or living relatives. College President John Toll and Board member Alexander Jones focused their remarks on Crazy Horse. The college officials, and Sotheby's spokesman Matthew Wiegman, acted in their material interests, but also were trying to protect the reputations of the school and auction house amidst press interest and a federal criminal investigation.

Sotheby's held its auction on May 21, 1996, in New York. In June, Gough contacted the National Park Service alleging a NAGPRA infraction.³⁴² NPS contacted the Department of Justice, and on June 24, 1996, the FBI assigned the case to New York Division. By mid-August, newspapers began publishing articles about Sioux objection to the sale and the FBI's investigation. Comparing statements given to reporters with FBI interviews during the case illuminates ways in which officials from the college and the auction house tried to shape the shirt's meaning. Sotheby's spokesman Matthew Wiegman told a reporter for *The Baltimore Sun* that the display case label that had touted the shirt as being worn by Crazy Horse was based on bad information. He said Sotheby's checked Albee's military records and his diaries. "If there was a connection to Crazy Horse, it would have turned up in his diaries," the newspaper quoted Wiegman as saying.³⁴³ However, the FBI investigators who looked at the diaries reported that they were from Albee's Civil War years when he was 16 or 17 years old, not his

³⁴² Organizationally, the NAGPRA program is within the National Park Service, within the Department of the Interior.

³⁴³ Dennis O'Brien, "Auction of war shirt angers Sioux leaders," in *The Sun*, August 18, 1996, Maryland & Anne Arundel edition, 14c.

experiences in the Indian Wars of the late 1860s and 1870s. Washington College officials said more than once that the collection had been donated by Albee's widow to the college. The chairman of the Legal Affairs Committee for the college's Board of Visitors and Governors wrote to Robert Gough that it had been "unsolicited gift" in the 1930s, but the FBI file reveals a different provenance.³⁴⁴

In December 1996, the special agent interviewed an heir to the Albee estate, who told the agent that Albee had donated his collection to the Connecticut Historical Society around 1902. According to the heir, someone from Washington College contacted Albee's widow around 1933, saying the items were not being cared for properly and asked whether the college could display the items. Frederica Albee agreed, and the college put the items on display in its library. In 1975, someone in the Albee family learned that Washington College was not caring for the Albee Collection. The family members went to the college, found "documents and guns lying on open shelves but no Indian collection."³⁴⁵ The college explained that the library was under construction and the Indian collection was in storage. The Albee heirs hired an attorney and requested an inventory of the collection items. Washington College provided an inventory, but it did not include the Indian objects. The heirs signed an agreement stating that the college could continue possession of the inventoried Albee Collection items as long as they cared for them properly. In 1977, the heirs heard that the college still

³⁴⁴ Chairman of the college's Legal Affairs Committee letter to Robert Gough, June 8, 1996. The FBI redacted the chairman's name from the letter.

³⁴⁵ FBI agent's notes of interview, December 2, 1996, from the case file.

was not caring for the collection. They went to court, and on July 15, 1977, the court ordered Washington College to return the collection. However, Washington College kept the war shirt, war bonnet, and other Indian items because they had not been listed in the inventory. Reporters probably did not look more deeply into the details of how the college originally gained possession of the collection because the news in 1996 was about the circumstances of the sale and the federal investigation.

Based on the U.S. Attorney's Office, Southern District of New York, agreement "to commit to the prosecution of any and all violators" of NAGPRA if the case produced sufficient evidence, the FBI investigated the likely meaning of the shirt, its history according to the heirs, and potential interest by tribes other than the Sioux.³⁴⁶ The FBI special agent consulted experts at the Smithsonian National Museum of the American Indian and the Smithsonian Museum of Natural History. Both experts, based on descriptions and pictures of the shirt, said it most likely had been made by a Crow, or possibly a Nez Perce. The U.S. Attorney's Office contacted those tribes, asking whether they objected to testing a few hairs on the shirt. Both tribes authorized the tests. Madam Chairman Clara Nomee of the Crow Tribe added a request that "in the event the shirt is determined to be the property of the Crow Tribe of Indians, please notify my

³⁴⁶ Quoted material from FBI letter to Assistant U.S. Attorney, Southern District of New York, October 17, 1996. The letter was to confirm telephone conversations. The names, but not job titles, were redacted.

office as soon as possible.”³⁴⁷ Nothing in the FBI file suggests that the special agent or assistant U.S. Attorney told the tribe that experts considered the shirt most likely to be Crow.

On March 31, 1997, the U.S. Attorney’s Office in New York told the FBI that the “case lacks prosecutorial merit.” In April 1997, the FBI administratively closed the case.³⁴⁸ The college announced that the “investigation has been terminated and the proceeds of sale have been received by the college.”³⁴⁹ Even after the FBI cleared the sale of the Crazy Horse shirt, putting it in private hands and outside the reach of NAGPRA, Gough did not stop pressing the National Park Service to compel compliance of the law. He wrote to Interior Secretary Bruce Babbitt in 1997 and again in 1998, alleging that the shirt and the war bonnet were items of “cultural patrimony” under NAGPRA.³⁵⁰ Gough pressed for the National Park Service to insist on compliance by the college. When nothing happened, Gough appeared before the NAGPRA Review Committee in December 1998 to request that the members “take serious the NAGPRA law and hold the Secretary and the Park Service to a serious enforcement of the law, particularly the

³⁴⁷ Letter to Assistant U.S. Attorney (name redacted), Southern District of New York, January 2, 1997.

³⁴⁸ FBI memo from the special agent on the case to the New York Assistant Director in Charge, April 15, 1997.

³⁴⁹ Washington College press release, May 30, 1977.

³⁵⁰ Robert P. Gough letter to Honorable Secretary Bruce Babbitt, June 11, 1997. Copy in author’s file.

threshold requirements of summaries and inventories.”³⁵¹ Francis P. McManamon, the National Park Service consulting archaeologist who oversaw the investigation of Gough’s allegations against Washington College, responded during the meeting that he had written to the college and received a response, but “we need to evaluate their response more completely.”³⁵² McManamon implied that limited staffing and resources were keeping the Park Service from investigating more quickly. McManamon’s comments did not sit well with Review Committee member Martin Sullivan, who said he was “really steamed about this” because of earlier committee work that had stressed the importance of telling institutions such as Washington College that it was not up to them to determine whether their collections fell under the purview of NAGPRA. They were to publish summaries of their collections so that tribes would have necessary information. Sullivan especially seemed irritated by the way in which NPS had been handling the Crazy Horse case. “I sure would not extend this kid gloves treatment to them very much longer,” he told McManamon.³⁵³

Despite the NAGPRA Review Committee’s support of stronger action, the end result of Gough’s efforts was nil. He testified to the U.S. Senate Committee on Indian Affairs in April 1999 to stress the importance of stronger enforcement of the law in cases where an agency does not voluntarily comply. “Without initial compliance, based either upon the good faith cooperation of the subject

³⁵¹ Review Committee Meeting transcript, December 10-12, 1998, 239.

³⁵² Ibid, 250.

³⁵³ Ibid., 254.

institution, or upon the diligent enforcement by the federal agency charged with carrying out the requirements of this law, all subsequent provisions of this balanced and diligently crafted act are rendered hollow,” he said.³⁵⁴

This chapter illuminates the liminal place that NAGPRA holds between the long-established legal foundations of the United States and the consensus-building approach of NAGPRA’s crafters. The people involved in the legislation acted in good faith and the law relies on others doing so. Most museums in the first twenty years of NAGPRA complied more diligently than federal agencies in compiling summaries and inventories and working with tribes toward a successful resolution. In chapters three and four, one can agree or disagree with the museums’ or tribes’ interpretation of evidence, but they all participated in the process as it had been envisioned. Whatever questions remain about the Crazy Horse Scalp Shirt, it is indisputable that Washington College did not engage in such a conversation. When Gough pursued other legal avenues attempting to force compliance, the negotiations reverted to rules of evidence that differed from NAGPRA.

³⁵⁴ *Oversight Hearing on the Native American Graves Protection and Repatriation Act Before the U.S. Senate Committee on Indian Affairs*, April 20, 1999 (statement of Robert P. Gough).

Chapter 6

CONCLUSION

There is power in truth. We invoke it on solemn occasions, swearing an oath of office, a full disclosure during court testimony, fidelity in marriage vows. In contested repatriations, the question is not necessarily who is speaking the truth, but how to untangle the various truths that are based on respective worldviews and cultural memories, as well as carefully chosen truths used to protect material interests. This dissertation analyzed three disputed repatriations over cultural artifacts in an attempt to better understand the ways different cultural groups have shaped meaning over time in United States history. The identities of the wampum belt, scalp shirt, and ceremonial headdresses in this study touch three arenas in which meaning has been created and contested: history, as mediated by museums; political identity, as hammered out in treaties establishing federal recognition and boundaries; and the marketplace, where non-indigenous interpretations of indigenous cultural identities were often ascribed to artifacts as collectibles. That changing construction of identities offers insight into inter-tribal relations as well as relations between indigenous and non-indigenous cultures. Tracking the histories of the objects revealed concepts of power held by different cultures, changing power relations among the groups, and the beginnings of a shift away from the Western vs. indigenous paradigm. It becomes clear through the case histories that cultural negotiations are at the very core of the repatriation process, and successful negotiations require all sides to try to envision the world from a foreign point of view. NAGPRA's legacy may well be in the

conversations it encourages, facilitates, and sometimes forces among museum curators, Native American traditional leaders, scientists, and cultural preservation officers. Its relative success is evident in the small numbers of disputes that reach the Review Committee.

The 1990 Native American Graves Protection and Repatriation Act gave the White Mountain Apaches, the Lakotas, and the Oneidas of New York and Wisconsin a legal weapon with which to attempt to reclaim items of their heritage. The law, born of compromise and consensus, encouraged conversations among representatives of tribes, museums, universities, and federal agencies. Yet spiritual beliefs are strong components of people's worldviews, and people involved in NAGPRA negotiations, perhaps without consciously being aware of it, acted primarily from their particular worldviews. The law could not change the way people chose to interpret their cultural memories. And, especially in the early years of NAGPRA, insufficient funding and a lack of enforcement allowed people intent on their material interests to bypass the law. The negotiations and conversations during the Review Committee meetings in these disputes offer a glimpse of the challenges in conflicting worldviews, memories, and power dynamics that are embedded in the multicultural history of the United States.

Cultural Memories, Worldviews, and Material Interests

We saw in the dispute between the Oneidas of New York and Wisconsin a poignant truth: They trace themselves to the tribal wampum belt and recognize its significance as a symbol of unity, but after the 1820s their cultural memories diverge and they recount their histories as separate peoples. Though some might

cast all the blame on outside influences of missionaries, nations at war, and land-hungry whites, such influence does not explain why the Oneidas split. There were personalities within the Oneidas during the late eighteenth to early nineteenth century who differed strongly enough not to choose the same course. Some believed their material interests were best met by taking money for their New York land and moving to Wisconsin. Others believed that the best choice was to stay, even though their New York land base dwindled with every person who left. Descendants on either side stand by their ancestors' choices in a zero-sum approach to fighting for the belt. Once a symbol of diplomacy and consensus, the Oneida Tribal wampum belt now symbolizes a fractured people who cannot or will not compromise. The Oneidas have lost the very power of the belt they fight over. They claim connection to its culture yet their actions demonstrate that they are no longer of that culture. They have it backward: They told the Review Committee that the belt would restore their harmony, but the mythology of the original wampum belt tells us that it is a sign of the harmony once warring people had already achieved. One can imagine that if the two tribes ever bridge their disputes over land and money, they might find a way to bring the belt home.

In contrast to the feuding Oneidas, the Western Apaches NAGPRA Working Group presented a united effort of four tribes in securing their native heritage. They, too, remarked that earlier federal policy had separated and tagged them as distinct legal entities, but the Apaches simply told the museums and Review Committee that those delineations meant nothing compared with their

cultural unity. They fought together in hopes of regaining the Gaan items in the correct respectful manner to help ease their social ills. They used the legal power of NAGPRA in an attempt to appease the supernatural power of the Gaan. They also sought to be treated by the museum officials on an equal status. After more than a century of outside anthropologists and government officials holding the power of explaining their reality, the Apaches wanted the traditional education of their elders to be considered as more accurate than books written about those traditions. Appealing to the Judeo-Christian background of some Review Committee members, the Apaches compared their spiritual training and beliefs to the training and beliefs of the Old and New Testaments. Although the power of NAGPRA brought their Gaan home, the Apaches pushed the museums for an affirmation of the Apache worldview. They wanted museum officials to explicitly state that their predecessors had acted improperly in obtaining the Gaan. Their logic seemed to be that if the purchase had been wrongly done, the Apaches' ancestors were not guilty and the Gaan should stop punishing their community.

The Crazy Horse Scalp Shirt case demonstrates the continued interest in indigenous artifacts as collectibles and the necessity of strong enforcement to back the aims of the law. Although the Crazy Horse estate lawyer, Robert Gough, told the Review Committee that he also represented the Rosebud Sioux Nation, no tribal officials acted to acquire the shirt. Based on newspaper accounts from 1992, at least one reporter had contacted the tribe and reported the existence of

the shirt at Washington College.³⁵⁵ Crazy Horse is one of the most well known among Indian names, yet the tribe's web site makes no mention of him in its history. Perhaps outsiders have over-appropriated Tasunke Witko to the degree that he is no longer of the Lakota world. The explanation may be more pragmatic. The Sioux reservation is poor and has serious community problems. Unlike the Western Apaches, who hoped regaining their Gaan items would ease such social ills, the Sioux would have no reason to think regaining a shirt off Crazy Horse's back would aid them.

Negotiating Meaning

As noted in the introductory chapter, this dissertation adopted a theoretical framework suggested in *The Social Life of Things*. In one of the book's essays, Igor Kopytoff notes that in complex societies, a person's social identities are "not only numerous but often conflicting," creating a theme of uncertainty of identity "increasingly dominant in modern Western literature." He argues that the biography of things "reveals a similar pattern" and suggests that societies constrain the world of things and people "simultaneously and in the same way, constructing objects as they construct people."³⁵⁶

³⁵⁵ Amanda Burt, "Cheyenne Poet Questions WC's Rightful Ownership of Native American Artifacts," *The Elm* Vol. 62, No. 23 (April 3, 1992), 1, 5. *The Elm* is the student newspaper of Washington College. Burt reported that she had spoken with Marla Waters on the Executive Board of the Sioux Tribal Nation about the war shirt and bonnet.

³⁵⁶ Igor Kopytoff, "The Cultural Biography of Things," in *The Social Life of Things*, ed. Arjun Appadurai (Cambridge, UK: Cambridge University Press, 1986), 89-90.

Apache medicine people created and blessed the Gaan items for ceremonial uses by trained dancers. They considered the items to embody the metaphysical life force of the Gaan, and when the ceremonial uses had been accomplished, the medicine people retired the items to a cave to return to the earth. Charles Owen saw the Gaan items as “fine old things” that had not been available previously to collectors. He expressed a strong competition with other museums such as the Smithsonian and was convinced that the Gaan ceremonial materials represented a fading culture. Field Museum curator of anthropology George Dorsey agreed with Owen’s characterization of the Gaan items and requested extra funds from museum Director Frederick J.V. Skiff, who approved them. In 2006, Field Museum Vice President Joseph Brennan and attorney Lori Breslauer identified the Gaan items as sacred objects that the museum had legally bought from willing sellers. Changes in public sensitivities precluded displaying such items, and the museum willingly repatriated them but would not agree with the Apaches’ understanding of what the objects meant.

Oneidas in the eighteenth century fabricated a wampum belt to represent their group’s unity with the other five tribes of the Iroquois League. The belt, which their chief head man would take to League council meetings, symbolized the truth of his words and the honesty of his intentions. Other chiefs accompanying him would carry clan wampums, designating them as the diplomatic representatives of the Turtle, Wolf, or Bear clan of the Oneidas. The belt carried the power of diplomacy, truth, and unity. In 1897, Elijah Skenandoa still believed in the belt’s meaning, as evidenced by his continued refusal to sell it

to Walter Wyman. After Skenandoa died, Wyman bought the belt as an investment, selling it two years later to the Field Museum. There seems no evidence that Wyman attributed any sentimental or diplomatic meaning to the belt. A century later, the Field Museum curator understood the wampum belt to be important to the Oneida culture. But as demonstrated by the mutual animosity between Oneidas of Wisconsin and New York, the culture identified by the belt no longer existed.

In 1868, when Crazy Horse became a Shirt Wearer, the shirt identified him as a brave warrior who had the power and responsibility to protect his people in war and in peace. After acting inappropriately toward another man, Crazy Horse relinquished the shirt and the honor. In 1877, when Crazy Horse led his followers in surrender at Fort Robinson, his companion He Dog presented a scalp shirt and a full-length eagle-feather war bonnet to Lieutenant Clark. By handing over the shirt, Crazy Horse ceremonially passed the power and responsibility of protecting and caring for the Oglalas to Clark. Within a few years, two scalp shirts, both alleged to have been worn by Crazy Horse, came into the possession of Army men. Captain George Albee obtained one of them from either Colonel Ranald Mackenzie or Captain Henry Lawton, both stationed at Fort Robinson when Crazy Horse surrendered; Captain John G. Bourke (also at Fort Robinson) obtained the other as a gift from Little Big Man, a longtime companion to Crazy Horse. For the soldiers, the shirt represented a spoil of war, something to take home or give to a friend as a souvenir of victory in the Plains Indian Wars. Washington College sought Albee's collection from his widow and displayed the

items from the 1930s to 1990s. Over those decades, the shirt lost its importance to the general public, according to a College Board of Visitors and Governors member. Alexander Jones told a reporter in 1996 that the shirt and other items in the collection “were just taking up space, gathering dust, and nobody was interested in them anymore.”³⁵⁷ Perhaps visitors to the college library had lost interest, but a strong collectibles market still existed for Native American items. Washington College President John Toll chose to capitalize on the collectibles market rather than risk having to forfeit any of the items to tribes under NAGPRA. Robert Gough and members of Crazy Horse’s family considered the shirt to be a symbol of an important historical event in United States history. Sotheby’s redefined the shirt as Lot 168, An Important Plateau Man’s Beaded and Fringed Hide War Shirt, and estimated its monetary value at \$60,000 to \$90,000. The unnamed buyer offered no public comment on the meaning he or she ascribed to the shirt; what has been ascertained is that the buyer considered the shirt to be worth \$200,500.

The meanings of the cultural artifacts changed over time as different groups possessed them, and those changes also reflected changes in power relations among the cultural groups. The validity of any meaning derives from the reality one considers. Those groups and realities are what this dissertation has addressed.

³⁵⁷ Dennis O’Brien, “Auction of War Shirt Angers Sioux Leaders: Garment reportedly worn by Crazy Horse; FBI Investigates Case,” *The Baltimore Sun*, August 18, 1996, 1c.

Breaking a paradigm

This study has analyzed negotiations in the liminal space that the NAGPRA Review Committee occupies. It is a forum that straddles the Western legal system and the indigenous traditions, with its membership chosen to represent different worldviews and experiences, and with its goal aimed at consensus rather than command.

Beginning with writing the legislation, Congressional sponsors and their staffs sought different voices and viewpoints, and largely succeeded in crafting a law that allowed room for those differences. NAGPRA encouraged extra-legal approaches between tribes and institutions possessing culturally affiliated items. Even when parties could not reach agreement, the law encouraged them to seek resolution through the Review Committee rather than by litigation. These case studies illustrate some of the challenges to bridging the chasms in spiritual worldviews and cultural memories, yet they also show effort and some success in breaking down the long-acknowledged gap between generalized Western and indigenous viewpoints. NAGPRA not only had to bridge that gap but also contend with lingering effects from earlier federal policies of treaty making, removal, war, reservations, and assimilation.

Tracking the histories of the Oneidas, Apaches, and Lakotas demonstrates a suppression of power resulting in a downward trend in tribal identities and cultures until the late 1960s. Then began an upward surge, part of the identity politics groundswell that contributed to the clamor for repatriation rights and the

1990 NAGPRA legislation.³⁵⁸ Soon thereafter, many federally recognized tribes, and some lineal descendants of famous Indians, sought to levy that power against those who held items important to the indigenous groups. NAGPRA did, for the large part, create a mood of cooperation that reflected the already shifting balance of power away from the earlier dominant culture and into the hands of groups formerly considered subaltern. As with earlier social ruptures in history, the change wrought by NAGPRA emanated outward with consequences that may have been unforeseen.

The many people involved in crafting the NAGPRA legislation helped mold it into a law that encouraged consultation, discussion, and negotiation rather than adversarial approaches. In 2006, Rosita Worl, a Tlingit Alaskan serving on the Review Committee, commended people at the meeting for showing respect to others' worldviews. "It is true that we still continue to have differences in our worldview," she said. "But at least we are now at a point in our society where we begin to recognize that perhaps we can have these different worldviews existing side by side. And I think that NAGPRA has facilitated this process."³⁵⁹

At a 2005 meeting of the Review Committee, Timothy McKeown, the NAGPRA federal officer who facilitated meetings, gave a status of dispute resolutions. Out of eleven disputes the committee had acted on, only four times

³⁵⁸ Native Americans were, of course, not the only group to press their needs and desires in the identity politics trend. African Americans, gays, women, and Chicano/as also were among those who sought what they considered an equal place in American society. However, NAGPRA is specific to the tribes.

³⁵⁹ Review Committee Meeting transcript, May 31, 2006, 139-140.

had the parties fully complied with the committee's recommendation. "I don't know if this is a particularly good batting average," he remarked. Vincas Steponaitis, a Review Committee member and Red Sox fan, replied that batting .300 is a good baseball season for a hitter. He argued that because the committee's findings are not legally binding and that they "only see the worst things," batting .300 may not be bad. "Ninety-nine percent of the time things actually get resolved very well before they come to the Review Committee," he said. His point, of course, was that even with the restraints placed on the committee, the overall intent of NAGPRA to foster conversations and cooperation had been successful.³⁶⁰

Relevance

NAGPRA's biggest controversies centered on human remains. The visceral emotional reaction many people have to death, bodies, and bones made that discourse easily exploited for purposes that varied according to the person pressing the issue. In contrast, the cultural items discussed in this dissertation evoked emotional reactions from particular groups, but not from the larger American community. Thus these discussions provided an entry into certain aspects of history that had not been analyzed in quite this manner.

In his book, *The Uprooted*, Oscar Handlin noted, "Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants

³⁶⁰ Review Committee Meeting transcript, November 16, 2005, 50-51. McKeown did not differentiate between disputes involving human remains and not. The germane point is that the overall negotiating process of NAGPRA had been encouraging parties to work things out themselves.

were American history.”³⁶¹ Handlin was half right. But just as one cannot tell the history of America without immigrants, one cannot tell it without the indigenous peoples with whom immigrants clashed, collaborated, and compromised over the centuries. This dissertation provides a multi-cultural study of American history analyzing some of the ways in which indigenous and immigrant groups interacted over time. Rather than following the often polemical writings of scholars debating NAGPRA from one or another “side,” this study, like the law itself, seeks to break the long-acknowledged paradigm of Western philosophies and indigenous beliefs. The relatively few disputes under NAGPRA over cultural objects speak to the law’s success. The disputes that did arise in NAGPRA’s first twenty years illuminate existing tensions in areas of disparate worldviews, cultural memories, and material interests. The case studies define the limits of compromise and illustrate that people sometimes have to stretch beyond their comfort zones to achieve a mutual resolution.

The importance of NAGPRA and discussions of repatriation extend far beyond the United States; this study contributes to that global literature. By demonstrating the shifts in cultural and intellectual property rights, this work considers how we manage our history—how a formerly Euro-American dominant country sought to bring all parties to the table equitably. This is important because the world keeps getting smaller and people interact more frequently with foreign cultures. Whatever insight may be found from looking within could be worthwhile on the global stage.

³⁶¹ Oscar Handlin, *The Uprooted* (Boston: Little, Brown, 1951), 3.

Coda

Several years ago while I was an editorial writer for *The Arizona Republic*, I spent time on the Hopi mesas at the invitation of then-Chairman Ivan Sidney. A few colleagues and I had the privilege of attending katsina ceremonies in the ancient pueblo courtyards as well as witnessing other rites of Hopi life such as a baby-naming ceremony. We also visited Walpi on First Mesa, escorted by a member of the Flute Clan who took us beyond the boundary forbidden to most outsiders. At one point, I walked to the westernmost edge of Walpi and scanned the horizon. It was a rare clear day, and I could see the San Francisco Peaks about a hundred miles to the west, north of Flagstaff. I thought of the Hopis who had lived in that village a thousand years earlier, when every day would have offered untainted air. Looking at the peaks, I thought of how mountains create their own weather systems. I imagined clouds forming around the peaks, as they would, and then traveling toward me on the prevailing winds, and bringing rain to this desert mesa. Hopis believed that the katsinas lived in the San Francisco Peaks and traveled to the mesas in clouds to bring them summer rains. In that moment, their metaphysical worldview made perfect sense to me, given their physical world.

Months later, in a conversation with a Lutheran pastor whom I liked and respected, he mentioned that he was setting up a study group to broaden his congregation's acceptance of other religions. He mentioned several religions, but none of them were Native American. I suggested that, given his church was located only a couple miles from the Gila River Indian Community, he might

consider broadening his congregation's acceptance of Native American spiritual traditions. I shared my experience on Walpi with him, then posited that if a Christian were to step outside the religious dogma for a moment and be truly objective, that Christian might grant that the idea of katsinas living in the mountains, traveling to the mesas and bringing rain is no less believable than the idea of a virgin giving birth to God's son, and that son later rising from the dead. The Lutheran pastor looked at me as though I had transformed into (in the Christian parlance) the devil. He never spoke with me again.

I am not suggesting Christianity be forsaken. Along the lines of scholars Calvin Luther Martin (*In the Spirit of the Earth: Rethinking History and Time*) and Fred McTaggart (*Wolf That I Am: In Search of the Red Earth People*), I am suggesting that other worldviews perhaps make more sense to people willing to step out of the comforting, yet at times limiting, parameters of their own worldviews.³⁶² Anthropologists, despite being the target of activist Indians' wrath, have generally been sincere in their attempts to understand other worldviews by living among people of different cultures. I analyze through the relative comfort of a historian's perch, looking at the history of relations between the Judeo-Christian Western traditions of the dominant society in the United States and the Native American traditions of the indigenous societies who had lived on the continent when the newcomers arrived. It is nothing new to suggest

³⁶² Calvin Luther Martin, *In the Spirit of the Earth: Rethinking History and Time* (Baltimore and London: Johns Hopkins University Press, 1992); Fred McTaggart, *Wolf That I Am: In Search of the Red Earth People* (Norman: University of Oklahoma Press, 1976).

that those differences existed over the time span of my study, from the American Revolution to the turn of the twentieth century. This study of the NAGPRA negotiations in the late twentieth and early twenty-first century demonstrates the endurance of that divide yet also reveals multicultural interactions more complex than the long-accepted Western versus Indian paradigm that historical scholarship has accepted. Native Americans, as the lesser power for most of post-contact history, have had to walk in both worlds. NAGPRA, by acknowledging indigenous cultural and spiritual authority, pushes non-indigenous people to see that there are other ways to be valid and that perhaps, there are other important concepts of power.

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APPENDIX
SUMMARIES OF OTHER NAGPRA DISPUTES

In addition to formal disputes over cultural items, in which both parties appeared and testified, the NAGPRA Review Committee also considered non-formal disputes. In those cases, one or the other side might make public presentations during different meetings, and the Committee would contact both parties to clarify or resolve the issue. These summaries include both formal and informal disputes.

**Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei
versus Museum of Natural History at Roger Williams Park in Providence, RI**

This dispute, like the Crazy Horse Scalp Shirt case in chapter five, involved a small east coast museum and a single item of monetary value to the museum. This dispute also raised some of the same issues examined in chapter three on the Apaches: Who held the power of expertise? Who determined whether an artifact over a century old was considered sacred or secular at the time?

The NAGPRA Review Committee first heard the case in November 1996. The Office of Hawaiian Affairs and the cultural group Hui Malama I Na Kupuna O Hawai'i Nei jointly petitioned for repatriation of a carved wooden figure they referred to as a *Ki'i aumakua* from the Museum of Natural History at Roger Williams Park in Providence, RI. Museum officials referred to the item as a “support figure” for fishing spears, and defined it as utilitarian rather than sacred. The Hawaiians argued that the figure had been created to hold the spears of a high-ranking warrior chief, but more importantly had been a receptacle into which a Hawaiian would have called a deity. As such, the Hawaiians considered it both

sacred and an item of cultural patrimony that could not have been sold according to traditional rules. “To sell the ki`i`aumakua would have been the ultimate act of disrespect, similar to destruction or desecration, and may be looked upon as selling one’s ancestor, which is unthinkable,” explained Lani Ma`a Lapilio of the Office of Hawaiian Affairs.³⁶³ She also noted that early museum records referred to the wooden figure as an “idol,” in contrast with the recent museum description of it as a support figure. The Hawaiians argued that the museum’s expert consultant, William Davenport, had admitted in his own published work that he did not know the ethnology of Hawaiian items. Hawaiian traditional leaders, they argued, understood aspects of the object that Davenport could not comprehend.

Nancy Derrig, superintendent of parks for the city of Providence which oversaw the museum and park, said the Providence Franklin Society had loaned the carving to the museum in 1916. When the Society disbanded in 1922, the museum acquired the carving. Derrig became superintendent in 1985 and discovered that the carving had been stolen. Museum officials recovered it but afterward felt that they could not provide security for a such valuable item, so they kept it in a bank safe. Derrig argued that the “support figure” was neither sacred, nor an object of cultural patrimony, nor an unassociated funerary object, as defined by NAGPRA. Derrig said deciding to sell the support figure had been difficult but necessary for financial reasons. “The decision was made to sell this

³⁶³ Review Committee Meeting transcript, November 3, 1996, 42.

one object so that our stewardship of our other quarter million objects could continue,” she told the Review Committee.³⁶⁴

Museum Director Tracey Brussat countered Lapilio’s comment about the term “idol” by detailing his understanding of the object’s provenance. He said that after Captain Cook’s initial contact with Hawaii in 1778, whalers and merchants began trading in the islands, which led to Hawaiian objects becoming commodities. By 1819, the Kapu system of tradition Hawaiian beliefs and rituals had been disrupted, and Hawaiians carved items to sell—items that may have been referred to as idols. He believed the wooden figure had been traded in that manner. At some point, the museum in Roger Williams Park updated the catalog card to reflect comments by visiting ethnologist Peter Buck, who had been director of the Bishop Museum in Hawaii before his death in 1951. Buck had told museum officials that the carving was not an idol, but rather “a spear rest or support figure that was used for holding fishing poles or spears,” Brussat said.³⁶⁵

Linda Kawai`Ono Delaney, the NAGPRA representative for the Office of Hawaiian Affairs, acknowledged that “it’s very difficult for any of us alive today to fully understand that sacred mind, but it is not scientific.” The culture a hundred years earlier had levels of sacredness. “We’re not saying that this ki`i is the most sacred of objects,” she said. However, “it is carrying a sacredness that was understood by all as being something of ritual performance, that it did have a role of maintaining the sacredness of that world.” Not all items would have had

³⁶⁴ Ibid., 66, 67.

³⁶⁵ Ibid., 100.

such a role or meaning, she said.³⁶⁶ In Hawaii's traditional kapu system of beliefs, rules, and rituals, metaphysical power could be beneficent or harmful to humans. "If there is *hewa*, if there is some kind of transgression or loss of *pono*, compromise of *mana*, whether it is in the construction of the canoe, whether it is in the building of what will hold the spear, there is that sacred essence that must accompany it because they're all so interwoven, that any ignorance of function at any level leaves not only that individual, but his family and his people, vulnerable, both spiritually and physically," Delaney testified.³⁶⁷

Review Committee member Jonathan Haas, an anthropologist for the Field Museum, commended Nancy Derrig for her stewardship of the item, but he expressed concern at using Davenport as an expert. The Review Committee determined that the wooden figure was sacred but not necessarily cultural patrimony. The Committee also decided that the museum did not have right of possession and should repatriate it to the two Hawaiian organizations. However, the dispute did not end there.

At the next Review Committee meeting, in March 1997, both sides brought more experts to testify, including William Davenport. Mr. Kunani Nihipali, President of Hui Malama I Na Kupuna O Hawai'i Nei, argued that only Hawaiian practitioners understood traditions and the meanings cultural items held. Such knowledge had to be gained in part by practice and could not be learned by an outside observer. The Review Committee again recommended that the

³⁶⁶ Review Committee Meeting transcript, November 3, 1996, 136-7.

³⁶⁷ *Ibid.*, 133.

museum return the artifact as a sacred object under NAGPRA, but committee members disagreed on right of possession.

On November 21, 1997, the City of Providence filed suit in federal district court against Hui Malama I Na Kapuna O Hawai'i Nei, the Office of Hawaiian Affairs, and the Department of Interior. The court dismissed the Department of Interior de facto and the other two parties came to a settlement. The Museum of Natural History at Roger Williams Park gifted the carved wooden figure outside the purview of NAGPRA in return for a \$125,000 donation. The museum used the funds to renovate its Pacific Hall and build the Circle of the Sea exhibit for materials from Pacific Islands. The Native Hawaiians consulted on the exhibition, which opened in June 2000.

Chief Satanta Descendants versus Phoebe Hearst Museum at UC Berkeley

This case, similar to the Crazy Horse shirt case, involved lineal descendants of a well-known warrior but did not have the full legal clout of the tribe behind the request. In May 1991, Betty J. Washburn and other lineal descendants of Kiowa Chief Satanta requested permanent loan of Satanta's Sun Shield from the Phoebe Hearst Museum at the University of California at Berkeley. The Satanta extended family, incorporated as the Chief Satanta Descendants in 1987, wanted the shield to be kept in the Fort Sill Museum in Oklahoma, about 18 miles away from Apache, Oklahoma, where Washburn lived on a family allotment. The Hearst Museum denied the request, and in October 1995, the NAGPRA Review Committee discussed written materials submitted by both sides in the dispute. Washburn contended that the museum did not have

right of possession and that the shield was an item of cultural patrimony that had been used in the annual Sun Dance until the United States outlawed it in 1890. The Hearst Museum was willing to offer it on loan, but not a permanent loan.

The committee decided that only the Kiowa Tribe had legal standing to make a claim for the shield as an item of cultural patrimony (compared with a sacred item). While not taking on the dispute, the committee noted that both parties were close to agreement and suggested that they work out an extended loan agreement, which would have to be reviewed periodically. By the next Review Committee meeting in June 1996, Washburn had written to the NAGPRA office saying that the descendants had decided not to pursue the matter.³⁶⁸

Ho-Chunk Nation versus Field Museum

This dispute has aspects similar yet different from the Oneidas and Apaches. Like the Apaches, the Ho Chunk people wanted the Field Museum to return their objects using specific verbiage and without any restrictions. Unlike the Apaches, the Ho Chunks did not stand their ground as long. Much like the Oneidas, the Ho Chunk people earlier had split into two groups because of pressures to leave their land. However that geographic separation did not create the animosity the Oneida groups displayed toward one another. The Ho Chunks long ago had lived in the areas that became Wisconsin, Iowa, Illinois, Nebraska, South Dakota and Minnesota. In 1836, they lost their Wisconsin land but many of

³⁶⁸ Review Committee Meeting transcripts, October 17, 1995, 96-171; Review Committee Meeting minutes, June 9-11, 1996, 4; "Honoring Their Grandfather: Chief Satanta's Descendants Seek the Return of his Shield," *American Indian Ritual Object Repatriation Foundation* Vol. 2, No. 1 (Spring/Summer 1995): 1-3.

them continued returning there throughout the nineteenth century. Others lived in Minnesota, between the warring Lakotas and Ojibwes. They pleaded with the federal government for permission to leave that area and in 1863 were placed on a reservation in South Dakota. Later in the century they were allowed to move to Nebraska, but again some of them kept returning to Wisconsin. Finally the government granted some of the Ho Chunks title to forty-acre tracts of land in Wisconsin. Eventually the Ho Chunks became two federally recognized tribes, the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.³⁶⁹

In 1926, the Field Museum bought a Thunder Clan War Bundle from Winnebago tribal member Oliver La Mere in Winnebago, Nebraska. The war bundle consisted of a club, a pipe and rest, thirteen whistles, animal skins, three small containers, a fire drill, a headpiece, and a rattle. In 1998, under the rules of NAGPRA, the Ho-Chunk Nation of Wisconsin asked for the war bundle. The Winnebago Tribe of Nebraska said that even though the war bundle had been purchased from one of their members, the Wisconsin group had continued war bundle ceremonies and the object should rightfully go there. Field Museum officials agreed to repatriate the war bundle as a sacred object but did not forfeit their right of possession. Instead they wanted the tribe to sign a compromise of claim agreement stating that if the tribe ever wanted to let go of the war bundle, it would return it.³⁷⁰

³⁶⁹ The people are Ho Chunk; the tribal name hyphenates it.

³⁷⁰ Notice of Intent to Repatriate a Cultural Item, 68 Federal Register 11136, March 7, 2003.

Members of the Ho-Chunk Nation petitioned the NAGPRA Review Committee to intervene. At the December 1998 meeting in Santa Fe, New Mexico, they argued that the war bundle was cultural patrimony, hence Oliver La Mere had not had the right to sell it and the Field Museum did not have right of possession. The Ho-Chunk Nation wanted it returned with no stipulations. The Review Committee agreed it was sacred and cultural patrimony and asked the National Park Service representative to write to the Field Museum for clarification on its stance. However, a year later, NPS had not yet written the letter. Ho-Chunk representatives spoke at the November 1999 Review Committee meeting, reminding members about the Thunder Clan war bundle. The Review Committee drafted a letter to Field Museum officials asking what their argument was for asserting right of possession.³⁷¹

The Review Committee planned to hear a formal dispute between the Ho-Chunk Nation and the Field Museum at a November 2002 meeting in Seattle. However, the Ho-Chunk Nation relented on its terms and withdrew its request for a hearing. In 2003, the Field Museum published a Notice of Intent to Repatriate the war bundle based on a November 4, 2002, Ho-Chunk Nation resolution stating that any items repatriated to the tribe would become tribal property and be inalienable.³⁷²

³⁷¹ Review Committee Meeting minutes, November 18-20, 1999.

³⁷² Notice of Intent to Repatriate a Cultural Item, 68 Federal Register 11136, March 7, 2003; Review Committee Meeting minutes, November 8, 2002.

