

A NATIVE AMERICAN REPATRIATION GUIDE

Understanding and Implementing NAGPRA
and the Official Smithsonian and other
Repatriation Policies

*Mending
the
Circle*

**A NATIVE AMERICAN
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“Building a Tribal Repatriation Program: Options for Exercising
Sovereignty” by Dean Suagee, Esq.

“Museum Perspectives from Within: A Native View” by B. Lynne Harlan.

“Reflections of a Native Repatriator” by Richard Hill, Sr.

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ELIZABETH A. SACKLER
Founder and President
The American Indian Ritual Object
Repatriation Foundation

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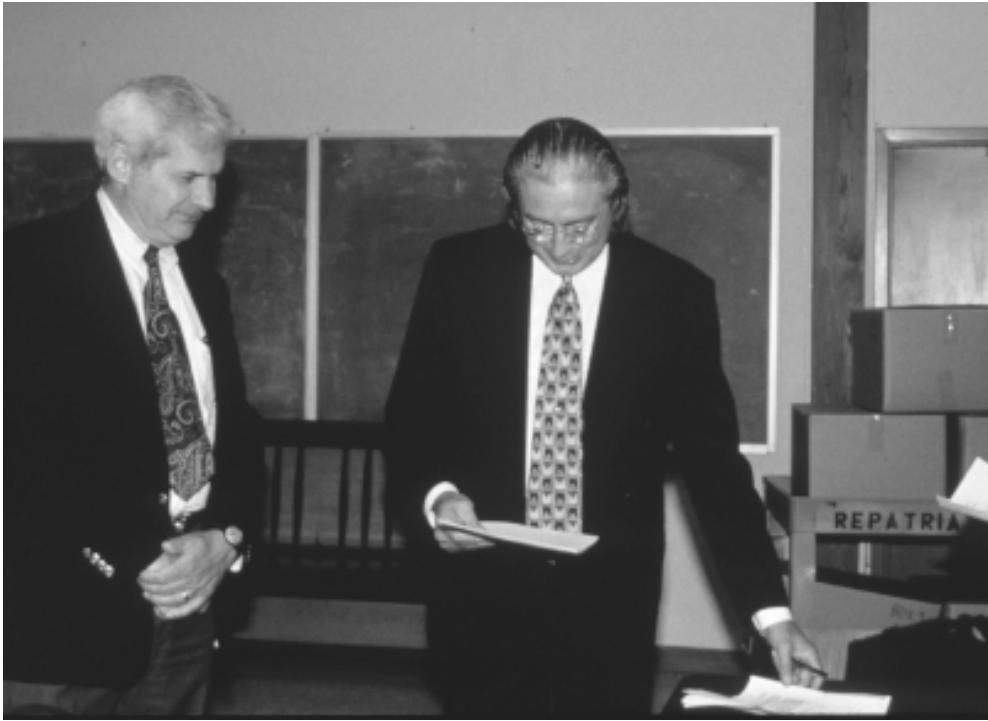
PREFACE

HISTORICALLY, ONE DEFINING PATTERN that characterizes the relationship between indigenous Native people and Non-Indians has been the one-way transfer of Indian property from Native to non-Native hands. This pattern began with New World gold and silver in the time of Columbus; and continued with the relentless acquisition of land, water and other natural resources in the United States during the 1776 to 1900 period. This massive property transfer was not limited to real estate. On the darker side of this pattern, hundreds of thousands of Native dead were taken from North American Indian graves, burial mounds and cemeteries. In addition, movable property, such as cultural objects, sacred objects and cultural patrimony, also left Indian hands by the trainload during this period, including some items which were stolen or improperly sold.

When Congress passed the repatriation provisions of the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act of 1990, it acted, in small measure, to reverse the historic pattern of one-way property transfers. Both laws provide for the return of Native American human remains and funerary objects to proper Native parties; and NAGPRA also includes other cultural items such as sacred objects and cultural patrimony within its provisions.

Like other national human rights legislation (such as the civil rights statutes which were enacted over a generation ago and are still being implemented, with increasing difficulty, today), Native American repatriation laws will take years to fully implement. This is due not only to the sheer magnitude of American museum collections that have accumulated over the centuries, but also because of the time-consuming, sometimes expensive, and always complex federal repatriation processes. Thus, in the coming months and years Indian Tribes and Native leaders must tread through a myriad of complex statutes, procedures and policies in order to thoroughly accomplish the return of Indian cultural items and the reburial of tribal relatives.

The repatriation process can be complicated from the tribal perspective. It is not unusual for a tribal leader, cultural resource staff person, or traditional tribal member to receive voluminous summaries, inventories or other repatriation forms from museums located hundreds of miles away. Yet, the task of reburying relatives or reclaiming tribal property can be of far-reaching importance to present and future generations. To respond to this challenge, repatriation can require expertise in legal, technical, archival and historical, fund raising, cultural, administrative and political arenas in order to develop and implement appropriate programs and strategies for unique Native Tribes and communities. In my view, a sound working knowledge of



Don Ortner, Acting Director, NMNH and Water Echo-Hawk, NARF-*Pawnee* tribe, reviewing deaccession papers. Remains of *Pawnee* Scouts are in the background. *Pawnee* Repatriation, NMNH, June 6, 1995. Photo courtesy of Jane Beck, Repatriation Office, NMNH, Smithsonian Institution.

these issues will help achieve the fullest measure of the repatriation opportunities and rights which are afforded by federal law and which exist in the private sector. In recent years, museums have spent considerable time educating themselves about federal repatriation laws and developing strategies for implementing the legislation. It is important for Tribes to have that same information level in order for an even playing field to exist.

Mending the Circle intends to serve as a helpful educational tool for Indian Tribes and Native Americans. The American Indian Ritual Object Repatriation Foundation hopes the guide provides a resource of helpful information for Native people who are embarking upon the historic task of developing repatriation policies, strategies and programs. The time is long overdue for America to return to its Native peoples that which is theirs.

On behalf of the Repatriation Foundation Board of Trustees, I am honored to convey our thanks and appreciation to the contributors to *Mending the Circle* and to the Foundation staff for lending their hard work, time and expertise.

WALTER R. ECHO-HAWK, ESQ. (*Pawnee*)
Native American Rights Fund
Trustee, American Indian Ritual Object Repatriation Foundation

INTRODUCTION

by SUZAN SHOWN HARJO (*Cheyenne & Hodulgee Muscogee*)

THE MAJOR POLICY ACHIEVEMENT and the hardest-fought battle in the development of the repatriation laws has been the humanization of Native Peoples—the legal recognition that we, too, have the human right to get buried and stay buried, to recover our people and property from those who want to own them, to worship in the manner and with the objects of our choosing. This publication is intended to guide all concerned with matters of repatriation through the maze of pertinent law, policies and procedures to the opportunities and solutions they offer.

The repatriation laws of 1989 and 1990 were intended to further the policy articulated in the American Indian Religious Freedom Act of 1978, which found, in part, that “laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries” and “at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies.” The Act declared that “henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites...” All three laws were intended to provide some small measure of justice for Native Peoples in the modern era for the generational suffering and hardship imposed by policies and practices that outlawed Native religions and violated fundamental rules of human decency.

It is important to know a bit of this history for an appreciation of what led to the need for federal remediation, what formed the backdrop for repatriation efforts and how Native people and materials were collected. The most egregious of these policies were established during the latter half of the past century; their effects will continue to be felt by all involved with repatriations well into the next century, and by Native Peoples aware of history for all of memory. The first of these was the collection of Indian bodies, initially for the study of infectious diseases, by the Army Medical Museum, which was founded in 1862. Museum Curator George A. Otis issued “Circular #2” in 1867, urging field doctors to send “Indian specimens,” stating: “Medical officers will enhance the value of their contributions by transmitting with the specimens the fullest attainable memoranda specifying the locality whence the skulls were derived, the presumed age and sex...”

In January of 1868, U.S. Army Surgeon General Joseph Barnes directed medical officers in Indian country to “augment the collection of Indian crania.” Also in 1868, Otis arranged an exchange with Smithsonian Secretary Joseph Henry, through which the Army Museum would receive osteological remains and give the Smithsonian burial and cultural items, and advertised in newspapers for “crania.” The Army-Smithsonian agreement also built collections at that time in Europe (the Physiological Institute in Berlin, for example) and America, such as the American Museum of Natural History

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in New York, the Field Museum of Natural History in Chicago and the Peabody Museum at Harvard University in Cambridge.

This set in motion a decades-long practice of decapitating Native people, weighing their brains and shipping them as freight to Washington, D.C., for more “study.” The crania were “harvested” from massacre sites, battlefields, prisons, schools, burial grounds (including scaffolds, caves and water, basketry and pottery vessels) and even from hours-old graves. One officer reported waiting “until cover of darkness” and departure of “the grieving family” before “I exhumed the body and decapitated the skull ... which is transmitted forthwith.” Certain officers’ accounts, such as that of the beheading of Apache Chief Mangas Colorado (Red Sleeves), point to the cross-racial comparative aspects of the “study” and leave open the possibility that some Indian people may have been murdered for their heads.

While the Army’s prisoner in 1863, California Volunteer guards woke Colorado, torturing the 72-year-old Chief with heated bayonets and shooting him. When the “dead body fell to the ground,” the officer reported, “I immediately decapitated the head, measured the skull and weighed the brains ... while the skull were smaller, the brain were larger than that of Daniel Webster.” Colorado’s head was scalped, his flesh boiled away and his skull and the “research” documents shipped to headquarters. Two direct descendants of Red Sleeves, Chiracahua sculptors Bob Haozous and his father, the late Allan Houser, recently traced their ancestor’s head to Europe, where it had gone into private hands from the collection of a civilian “scientist” in Pennsylvania, but the trail was lost in Germany.

Complete documentation of the “Indian Crania Study” has not yet surfaced, but the Army transferred some records in 1898 to the Smithsonian, which houses them in its Anthropological Archives. Some 4,500 crania, half of them obtained from the Army in 1898 and 1904, now comprise about one-fourth of the Smithsonian’s National Museum of Natural History collection of Native human remains. Relatives of Modoc Chief Kintpuash (Captain Jack) reported successfully retrieving his skull from the Museum in 1984, prior to enactment of the repatriation laws, from the desk of a resident physical anthropologist who was using it for an ashtray. The Chief had been hanged by the Army in 1873, buried and exhumed in Oregon, exhibited in carnivals throughout the East and “studied” in the Army Medical and Natural History Museums.

The National Museum of Natural History has returned almost 2,500 human remains to some twenty Native Peoples since the 1989 repatriation law. Among these were remains of a few victims of the November 29, 1864 Massacre at Sand Creek of 133 Cheyenne, Arapaho and Kiowa children, women and men. Decapitated and dismembered at the Massacre site, some of the victims’ heads and limbs were freighted to Washington, D.C. for the Army’s “study.” Other body parts, including reproductive organs and fetuses, were displayed by the Colorado Volunteers to cheering audiences at the Denver Theatre as part of its Christmas holiday fare. Many of these remains were turned into jewelry (such as teeth and fingerbone necklaces), scalplock dolls, wall-hangings and other trophies and keepsakes; they and their clothes remain in private and public collections and museums worldwide. Of the Sand Creek victims, only skeletal parts of fewer than one score have been returned to date; no other entities cov-

ered by the laws have admitted to their possession of others, and no private collectors have come forward.

The second category of dehumanizing policies was the long line of religious suppression actions. Throughout the 1800s, it was common military practice to stop Native Peoples from exercising their religions. At the beginning of the 1800s, Congress authorized and appropriated monies for the "Civilization Fund" to re-educate and deculturalize Indians. Christian denominations were given federal funds and franchises on particular Native Peoples for the purpose of conversion to European ways. This practice continued into this century. In 1884, 1894 and 1904, the Secretary of the Interior published *Regulations of the Indian Office*, banning all traditional religious activities, ceremonies and dancing, and mandating the Christian-only/English-only education of Indian children.

The *Regulations* issued on April 1, 1904, under the heading, *Civilization*, imposed stiff imprisonment and starvation sentences for any violation of the "Indian offenses." Each Bureau of Indian Affairs agent was directed, as the "chief duty," to "induce his Indians to labor in civilized pursuit." Agents were directed "to impress upon the minds of their Indians the urgent necessity for a strict compliance with these instructions, and warn them that without this protection they are liable to be looked upon and treated as hostile Indians." Characterization as a "hostile" was tantamount to a death sentence. Periodically in the latter half of the 1800s and early 1900s, lists of "hostile Indians," "fomenters of dissent" and "ringleaders" were circulated among the Army and the Indian Police and were used as the justification, for example, for the murders of Lakota Chiefs Sitting Bull and Big Foot, and Cheyenne Chief Black Kettle; the Massacres at Sand Creek, Washita and Wounded Knee; and the quarter-century confinement of Apache Chief Geronimo.

The *Regulations* outlawed the Sun Dance "and all other similar dances and so-called religious ceremonies." Also outlawed were the "usual practices" of a "so-called 'medicine man' (who) operates as a hindrance to the civilization of a tribe," who "resorts to any artifice or device to keep the Indians under his influence," who "shall adopt any means to prevent the attendance of children at the agency schools" or who "shall use any of the arts of a conjurer to prevent the Indians from abandoning their heathenish rites and customs." If convicted of these "offenses" or "any other, in the opinion of the court, of an equally anti-progressive nature," a religious leader "shall be confined in the agency guardhouse for a term not less than ten days, or until such time as he shall produce evidence satisfactory to the court, and approved by the agent, that he will forever abandon all practices styled Indian offenses under this rule."

Give-away, honoring and any ceremonies involving any exchange or elimination of property were banned. The *Regulations* particularly note that a defense that "the party charged was at the time a 'mourner,' and thereby justified in taking or destroying the property in accordance with the customs or rites of the tribe" was not a "sufficient or satisfactory answer to any of the offenses." Violations of any offenses under the *Regulations* were used to justify confiscation of sacred objects, funerary items and any cultural or personal property. Agents, soldiers and their families benefited most from this property, which was sold and gifted to other collectors, with some transferred to prominent and

obscure museum, university and other institutional repositories. One example of this is the ledger of Cheyenne Dog Soldier Little Finger Nail, which the officer in charge at Fort Robinson had tried to buy. Little Finger Nail declined and always wore the Dog Soldier Society history book strapped to his body under his clothing. He was later killed by one of the officer's soldiers; the deadly bullet passed through the ledger, which was gifted to the officer's brother, who sold it to one who sold it to another, and it ended up in the American Museum of Natural History, which holds it today.

Writer and poet John Collier, who was the Indian Commissioner under President Franklin D. Roosevelt, recounted in his 1963 memoir, *From Every Zenith*, an incident during the mid-1920s involving Interior officials and an "onslaught on the Indian religions." Commissioner Charles H. Burke and Interior Secretary Hubert Work "invaded the Taos Pueblo's Council, to tell them that they were 'half animals' by virtue of their 'pagan worship' ...the Taos Governor and Council refused compliance with an Indian Bureau order forbidding the withdrawal of Indian boys from school for their tribal religious initiation. The Bureau had them arrested — all the governing body, the old men, of the tribe — and confined in a Santa Fe jail. Judge Neblitt of the United States district Court, to whom (Collier's Indian defense group) took the case, publicly rebuked the Bureau, and ordered, 'Take these men home.'"

As Commissioner, Collier issued his own *Circular* in 1934, warning employees of the Indian Service "against interfering with the religious liberties guaranteed by the Federal Constitution." The *Regulations* were revoked in part in 1935, after more than a half-century of vigorous enforcement. However, many of the same practices continued through the Bureau's cash-and-poverty politics and through Native American self-enforcement, force of habit and historic inhibition. After the New Deal Administrations, in the mid-1940s, U.S. Indian policy reverted to that of assimilation and dislocation, and the numbers of traditional Native religious practitioners and sacred and other lands rapidly diminished over the next two decades.

These laws, policies and practices had authorized and resulted in deaths and physical and spiritual damage of unimaginable, incalculable, inhuman proportions, and in the demise of a great many of the traditional religions and ceremonies of Native Peoples. These policies permitted and encouraged the theft of human remains, funerary items, sacred objects and cultural property, which ended up in private collections globally and in America's museums, places of learning, historical societies, research and scientific institutions, amusement and entertainment centers and agencies of governments of all stripes. Policies and practices intended for protection of antiquities, historic sites and the environment — and those designed for economic and industrial development, weapons testing and the disposal of poisons — compounded the problem on a massive scale, resulting in the desecration and destruction of hundreds of thousands of Native American graves and other holy places.

On November 16, 1990, NAGPRA was signed into law. Within a few months after NAGPRA's approval, in 1991, the National Museum's Trustees adopted its Repatriation Policy. NAGPRA set deadlines for summaries and inventories of collections to be sent to Native Peoples. NAGPRA did not apply to the Smithsonian, but the NAGPRA timelines have been adopted Institution-wide. The 1989 law had estab-

lished a Repatriation Committee for dispute resolution within the National Museum of Natural History.

As difficult as implementation of the repatriation policy and laws may be in the non-Native world, the truly complex issues are being examined by Native Peoples, who must arrive at consensus in matters for which most lack specific historical and ceremonial context. Each detail of repatriation, including whether or not to request repatriation, must be worked out within each family, clan, society or nation. As B. Lynne Harlan's contribution to this publication points out, there are numerous details at the institutional end that may not have been contemplated in these decision-making processes at home.

For all the inartful language and requirements of the laws and the awkwardness of agreements and methods for implementing them, repatriations are taking place with increasing frequency to the general satisfaction of participants. Native Peoples are engaged in the real work and benefits of repatriation—settling the spirits; meeting, remeeting and gaining spiritual knowledge and comfort from sacred beings; and empowering future generations with accessible cultural property, history and images. All involved with these worthy tasks have reason to be grateful for and humbled by the privilege.

Aho.

Visiting *Blackfeet* delegation. Photo by Katherine Fogden, Courtesy of NMAI, Smithsonian Institution.

