

Modern Approaches to NAGPRA

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Abstract

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The purpose of this study was to identify and describe Native American Graves Protection and Repatriation Act compliance methodologies and how institutions overcame the challenges inherent in the act. The research focused on how professionals performing repatriations perceived their efforts and employed techniques and perspectives, and how tribal representatives who facilitated repatriations for their community experienced the process. Current literature suggested that museums struggle to repatriate human remains and significant objects due to issues of funding, staffing, legal confusion, and lack of relationships with indigenous communities. Literature also suggested tribal communities historically struggled to have their perspectives heard by the academic and scientific communities, and were forced to wait extensively for the return of their ancestors and material culture. Data was collected through semi-structured interviews with repatriation professionals from six museums or universities, and three tribal nations. The results of this study indicated that a collaborative approach to repatriation that prioritized indigenous concerns was an effective way to overcome the challenges found in NAGPRA compliance. This study also suggested that the experience of tribal representatives varied widely between individuals and institutions, and often predicated upon the actions of a few dedicated individuals to be successful. The limitations of this study included the small sample size, a limited pool of contacts, and effects of the national response to the COVID-19 pandemic in terms of efficient communication.

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Chapter 1: Introduction

The Native American Graves Protection and Repatriation Act (NAGPRA) was intended to protect indigenous grave sites and prevent further looting by creating systematic legislation pertaining to the discovery of indigenous remains on Federal and Indian lands. While discoveries on state and private land may be subject to state and local laws, NAGPRA is the most powerful piece of repatriation legislation addressing Federal and Indian lands since the Archaeological Resources Protection Act of 1979.¹ NAGPRA also mandates institutions that receive Federal funding such as museums, universities, and archaeological repositories, to perform a systematic inventory of their collections and repatriate any relevant items or human remains to their identifiably affiliated tribes. In drafting NAGPRA, Congress acknowledged that “human remains and other cultural items must at all times be accorded dignity and respect.”²

The materials that NAGPRA considers relevant (in addition to human remains) are funerary objects, sacred objects, and objects of cultural patrimony.³ After the completion of their inventory, museums and other institutions are expected to publish notices to affiliated tribes to allow them to make a claim on the items or remains.⁴ Because tribes have to prove tribal affiliation to legally claim remains and/or cultural items, museums, universities, and repositories must engage in the consultation with tribes to determine affiliation ensuring this work is done properly.⁵ Failure to perform these duties is a criminal violation of the act, and can result in fines for the institution or

¹ “Enforcement,” Native American Graves Protection and Repatriation Act (U.S. Department of the Interior, October 24, 2019), <https://www.nps.gov/subjects/nagpra/enforcement.htm>

² National Park Service, “Facilitating Respectful Return,” November 22, 2019, <https://www.nps.gov/subjects/nagpra/index.htm>.

³ “NPS Archeology Program: The Native American Graves Protection and Repatriation Act (NAGPRA),” Archaeology Program (U.S. Department of the Interior, March 29, 2020), <https://www.nps.gov/archeology/tools/laws/nagpra.htm>

⁴ Ibid.

⁵ Ibid.

imprisonment of individuals in extreme cases.⁶ Additionally, any individuals (whether they are associated with a museum or not) are subject to fine or imprisonment should they be caught selling, purchasing, or transporting indigenous remains or cultural materials pertaining to NAGPRA's legislation.⁷

Since the passing of NAGPRA over 30 years ago, thousands of objects and human remains have successfully been repatriated and reburied.⁸ However, while many institutions have managed to successfully comply with NAGPRA there are still countless human remains, sacred objects, burial items, and objects of cultural patrimony on the shelves and in display cases of museums, universities, and repositories.⁹ One may wonder how this can be given the expansive nature of the Federal legislation and the threat of legal repercussions. Unpacking this question requires understanding the obstacles pertaining to Federal (and State) policies, indigenous sovereignty, and the actions and inactions of museums.¹⁰ There are three reasons often cited for why NAGPRA-related repatriation work has been too slow or non-existent.

The first challenge, and one of the most often cited by institutions, is funding. Many indigenous communities also cite this as a challenge to their work, as they too may lack the funding necessary to have a dedicated repatriation officer, or travel in person to every institution that publishes inventories with their materials or ancestors, or requests consultation.¹¹ NAGPRA has

⁶ "Enforcement," Native American Graves Protection and Repatriation Act (U.S. Department of the Interior, October 24, 2019), <https://www.nps.gov/subjects/nagpra/enforcement.htm>

⁷ Ibid.

⁸ "20 Years and Counting." American Alliance of Museums, February 1, 2018. <https://www.aam-us.org/programs/peer-review/20-years-and-counting/>.

⁹ U.S. Government Accounting Office (GAO) 2010 Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act. Report to Congressional Requesters, July 2010. <https://www.gao.gov/assets/310/307856.pdf>.

¹⁰ "20 Years and Counting." American Alliance of Museums, February 1, 2018. <https://www.aam-us.org/programs/peer-review/20-years-and-counting/>.

¹¹ U.S. Government Accounting Office (GAO) 2010 Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act. Report to Congressional Requesters, July 2010. <https://www.gao.gov/assets/310/307856.pdf>. 51.

been referred to as “an unfunded mandate” since there were no monies appropriated by Congress for its implementation.¹²

The second major challenge for NAGPRA work is determining tribal affiliation.¹³ While this pertains to the associated funerary objects, sacred objects, and objects of cultural patrimony, it is arguably most pertinent to human remains. Due to many museum’s extensive collections, there is not always proper documentation describing where the objects or remains were excavated.¹⁴ NAGPRA requires a *preponderance of the evidence* standard for cultural affiliation of museum collections, which allows repatriation of remains if the evidence establishes it is “more likely than not” that the remains should go to a particular tribe.

DNA evidence may be used on remains to help ascertain proper affiliation, but the results are often general and make it difficult to discern between geographically proximal tribes such as the Navajo and Ancestral Puebloans.¹⁵ Genetic testing is also frowned upon by many indigenous communities due to the destructive nature of the testing and the symbolic reaffirmation of the act as solidifying western scientific or museological views of indigenous heritage and continuity.¹⁶ Many museums avoid genetic testing for these reasons and instead make use of other types of information, such as folkloric evidence. While the act does not privilege scientific data, it is the burden of the claimant tribes to verify that they are eligible for repatriation by possessing a “shared group

¹² Robert W. Preucel, Williams, Lucy F., and Monge, Janet. "Out of Heaviness, Enlightenment." *Expedition* 45, no. 3 (2003), 25.

¹³ Zimmerman, Larry J. "Epilogue: A New and Different Archaeology?(Repatriation: An Interdisciplinary Dialogue)." *The American Indian Quarterly* 20, no. 2 (1996): 299. Suzianne D. Painter-Thorne, "COMMENT:Contested Objects, Contested Meanings: Native American Grave Protection Laws and the Interpretation of Culture," *U.C. Davis Law Review*, 35, 1261 (June, 2002), 1283-1284.

¹⁴ Bruchac, Margaret M. "LOST AND FOUND: NAGPRA, Scattered Relics, and Restorative Methodologies." *Museum Anthropology* 33, no. 2 (2010), 138-140.

¹⁵ Michael A. Schillaci, and Wendy J. Bustard. "Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation." *PoLAR: Political and Legal Anthropology Review* 33, no. 2 (2010), 366.

¹⁶ James Riding In et al. "Protecting Native American Human Remains, Burial Grounds, and Sacred Places: Panel Discussion." *Wicazo Sa Review* 19, no. 2 (2004) , 171

identity”.¹⁷ The difficulty with culturally unidentifiable remains has been so problematic that the Department of the Interior made a legislative change to NAGPRA in 2010 to allow eligible indigenous community members to make claims on remains and mandating museums return the remains unless they can demonstrate a “right to possession.”¹⁸ The debate surrounding unidentifiable remains has continued to widen the rift between the indigenous and scientific communities, as it encapsulates an ongoing struggle for control and authority in determining the rightful owners of remains and objects.¹⁹

The final challenge to NAGPRA compliance is the complexity of the law.²⁰ One of the largest criticisms of the legal framework of NAGPRA is that it pertains only to Federally funded institutions, leaving non-Federally funded state museums and institutions as well as private collections unaffected.²¹ Additionally, the operation within the Federal framework means that objects relevant to NAGPRA can only be repatriated to federally recognized tribes unless a museum voluntarily repatriates to unrecognized groups.²² This means that if a Federally unrecognized tribe is not notified or solicited by a museum, the unrecognized tribe must rely upon the assistance of a Federally recognized tribe to file a joint claim, or wait for a recognized tribe to receive their cultural objects and remains and repatriate them directly.²³ Variance in state laws present more challenges for the indigenous claimants to navigate, especially in regards to the discovery of human remains. This is true even for states that are geographically close and share recognized indigenous communities. For instance, in “A critique of legal protection for human remains in Idaho with

¹⁷Tsosie, *REPATRIATION SYMPOSIUM: NAGPRA and the Problem of "Culturally Unidentifiable" Remains: The Argument for a Human Rights Framework*, 2012. 817, 819.

¹⁸ *Ibid.*, 840-841

¹⁹ Clayton W. Dumont "The Politics of Scientific Objections to Repatriation." *Wicazo Sa Review* 18, no. 1 (2003) 109-28.

²⁰ Meighan, Clement. "Some Scholars' Views on Reburial." *American Antiquity* 57, no. 4 (1992): 706-708.

²¹ Painter-Thorne, 1285.

²² Angela Neller et al, “NAGPRA’s Impact on Non-Federally Recognized Tribes.” (2013), 193.

²³ *Ibid.*

suggestions for improvement of current legislation," Jenna Battillo described the variance in laws of Washington State and Idaho, wherein Washington mandates that authorities be notified upon the discovery of human remains, and Idaho does not.²⁴

While museums may experience any combination of these challenges, as well as challenges unique to their institution or locality, these complications are well noted among museums and indigenous communities, and are reflected in the current body of literature. The lack of repatriation activities cause an incalculable amount of damage to indigenous communities, as it greatly limits their ability to continue their ways of life and it makes healing from historical atrocities an enormous challenge.²⁵ It also weakens the relationships museums have with the indigenous communities they serve. This creates a lack of knowledge from indigenous consultants, leading to a dearth of firsthand information from source communities.²⁶

The purpose of this study was to identify and describe NAGPRA methodologies of various institutions to see how they have overcome the three challenges mentioned above. This study was guided by three research questions: 1) How did the employee performing repatriations perceive the efforts of their institution? 2) What techniques/perspectives did they utilize when repatriating objects or human remains? 3) What was the experience of indigenous community members who facilitated repatriation for their tribes? This study has the potential to benefit audiences in the museum and archaeological fields. Museum professionals who handle NAGPRA compliances for their institutions may find this information helpful for employing various techniques mentioned in

²⁴ Jenna M. Battillo "A critique of legal protection for human remains in Idaho with suggestions for improvement of current legislation." *Journal of Northwest Anthropology* 46, no. 2 (2012), 189.

²⁵ Steve Titla, and Naomi Thurston. "REPATRIATION SYMPOSIUM: The Apache and NAGPRA." *Arizona State Law Journal* 44 (2012), 174.

²⁶ Edward M Luby, and Melissa K Nelson. "More than One Mask: The Context of NAGPRA for Museums and Tribes." *American Indian Culture and Research Journal* 32, no. 4 (2008): 85-105.

the study, or for finding contacts to consult with if they encounter a challenge. It could also prove beneficial to students of archaeology and museum studies as they gauge the current state of affairs with NAGPRA and museums in their community.

Chapter 2: Literature Review

The problems museums and other collection-based institutions have with enacting NAGPRA processes are complex, and deal with a myriad of historical, legal, and socio-cultural factors. To better understand these issues, an examination of the available literature is necessary to synthesize the views of industry professionals in an attempt to discern the challenges they encounter in NAGPRA work. The current body of literature can be broken down into four thematic sections: a) the history of collecting remains; b) the problems with the legal landscape of NAGPRA; c) the problems with “unidentifiable” remains; d) the importance of collaboration and potential techniques for the future. The following literature review will discuss the common themes of these categories and their effects on NAGPRA repatriation.

The History of Collecting Remains

The fascination with indigenous cultures has led to collecting and display of indigenous remains since the earliest days of American history.²⁷ As noted by authors Bieder, Rose, and Painter-Thorne, the collecting of indigenous remains and culturally significant objects is well-documented and pervasive. When the pilgrims first arrived in North America, they rifled through indigenous graves for treasures and supplies. After a conflict with the Wampanoag, the pilgrims beheaded their chief Metacom and put his head on display for months as a sign of dominance.²⁸ While the disturbance of graves has continued into the present because of urban expansion and individual looters seeking treasures or trophies, the museum industry developed a systematic way of gathering indigenous remains to build their collections and for the purpose of anthropological

²⁷ Painter-Thorne, *Contested Objects Contested Meanings*, 1262.

²⁸ *Ibid.*

study.²⁹ After the conclusion of the Civil War, museums in competition with one another pursued all manner of indigenous artifacts including remains. Additionally, the National Museum of Health and Medicine (formerly the Military Medical Museum) in Washington, D.C., sought indigenous remains specifically as objects of study.³⁰ As Dr. Robert Bieder wrote in his article, “A Brief Historical Survey of the Expropriation of American Indian Remains,”

While the Field Museum, the American Museum of Natural History, the Smithsonian Institution, and other smaller museums sought to collect all aspects of American Indian life and material culture, another Washington museum sought in the second half of the nineteenth century to collect only Indian osteological remains. The Army Medical Museum, founded in 1862, sought human remains of all races but from 1865 through the 1880s gathered primarily Indian remains.³¹

The Great Depression saw a massive spike in the gathering of human remains. Unemployed archaeologists were hired en masse to undertake massive excavation projects as part of the Works Progress Administration.³² The construction of national infrastructure such as the highway system, dams, and housing projects, led to the unearthing of countless indigenous remains throughout the nation that ultimately ended up in museum collections and government storage.³³

While an incalculable amount of grave disturbance has occurred by individual looters, the disinterring of gravesites and the destruction of funerary objects and objects of cultural patrimony have also been caused by urban expansion. This expansion of territory by white settlers coincided with the development of American museums and anthropological practice, leading to the mass excavation of remains for the purpose of study. Birkhold and Riding In note that the eugenic nature

²⁹James Riding In, “Repatriation: A Pawnee Perspective,” in *Repatriation Reader: Who Owns American Indian Remains?* (University of Nebraska Press, 2000), p. 113.

³⁰ *Ibid.*, 113-114.

³¹ Bieder, *A Brief Historical Survey of the Expropriation of American Indian Remains*, 35

³² Rose et al, *NAGPRA Is Forever: Osteology and the Repatriation of Skeletons*, 83

³³ Suzianne D. Painter-Thorne. (2002). *Contested Objects, Contested Meanings: Native American Grave Protection Laws and the Interpretation of Culture*. *U.C. Davis Law Review*. 1277.

of these collections can still perpetuate colonial ideologies and an imbalance of power under the law.

Issues with the Legal Landscape

An enormous amount of human remains still await repatriation in both museums and government storage facilities. As Robert Willingham noted,

Today there are collections of Native American remains all over the country. The Smithsonian's Museum of Natural History has roughly 18,500 sets of remains and the National Parks Service has an estimated 20,000. The number of Native American remains stored in museums, government agencies, and universities is unknown but national estimates are between 100,000 and two million.³⁴

While not all government storage facilities are museums per se, NAGPRA mandates that agencies that receive Federal funding are subject to its regulations. Therefore, state agencies that have indigenous collections and receive Federal funding must follow the same NAGPRA requirements as if they were museums, take inventory of their remains, and make attempts at repatriation.³⁵ However, the variance in state laws pertaining to grave robbing or Federal recognition of tribes makes repatriating activities slow and creates logistical barriers for tribes seeking repatriation.³⁶ This is considered morally unacceptable by many in the museum and indigenous communities; however, there is little that can be done outside the formation of individual lawsuits. As professor of sociology Clayton W. Dumont Jr. noted,

If native peoples cannot sustain a strong defense on both intellectual and public relations fronts, if we are unable to insist on the political nature of scientific claims and to deliver our arguments in forms that are readily accessible to a large and diverse American audience, Granly's assessment that it is wrong to 'interject these unimportant considerations into science' may continue to be taken seriously by too many.³⁷

³⁴ Willingham, *Holding States and Their Agencies Accountable Under the Museum Provision of the Native American Graves Protection and Repatriation Act*, 957.

³⁵ U.S. Government Accounting Office (GAO) 2010 *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*. Report to Congressional Requesters, July 2010. <https://www.gao.gov/assets/310/307856.pdf>. 1.

³⁶ Painter-Thorne, 1274-1275.

³⁷ Dumont, Clayton W. "The Politics of Scientific Objections to Repatriation." *Wicazo Sa Review* 18, no. 1 (2003) 125.

NAGPRA does not apply to culturally significant objects or human remains found on private or state land. The law also does not apply to privately-owned institutions or state-owned museums that do not receive Federal funding. Private holders of human remains, funerary objects, sacred objects, or objects of cultural patrimony are not legally obligated to inventory items or solicit indigenous communities for repatriation opportunities.³⁸ Museums that are beholden to NAGPRA also do not have to enact exhaustive research projects to identify remains that could be repatriated; instead, they are merely required to make a good faith effort.³⁹ There are also the issues created by the act's definitions of material culture, such as associated grave goods, sacred objects, and objects of cultural patrimony. The language of the act creates debates between indigenous communities and museums about what constitutes a "sacred object," often leaving the object's ownership to the discretion of the museum.⁴⁰ A museum's ability to discern what objects are NAGPRA applicable causes strain on the tribes who have to validate their ownership and relation to objects based on Western conceptions of lineage, and this may result in a museum's refusal to return an object.⁴¹ According to the Association on American Indian Affairs, tribes can file a law suit if there is a violation of the act; however, if any institution has performed a repatriation in "good faith" they cannot be sued if they made a mistake.⁴²

³⁸ Painter-Thorne, 1280.

³⁹ Birkhold, Tipping Nagpra's Balancing Act: The Inequitable Disposition of "Culturally Unidentifiable Human Remains Under NAGPRA's New Provision, 2011.

⁴⁰ Painter-Thorne, 1285

⁴¹ Riding In, James., Cal. Seciwa, Suzan Shown. Harjo, Walter R. Echo-Hawk, and Rebecca. Tsosie. "Protecting Native American Human Remains, Burial Grounds, and Sacred Places: Panel Discussion." *Wicazo Sa Review* 19, no. 2 (2004)170-171.

⁴² "NAGPRA Compliance." Association on American Indian Affairs. Accessed January 9, 2020. <https://www.indian-affairs.org/nagpra-compliance.html>.

The pressure for tribes to facilitate the return of their own objects has been a frustration for many claimants.⁴³ Since there is no policing body under NAGPRA to make sure museums and other Federally funded institutions comply with the law, tribes have to file complaints or lawsuits if they believe they had been denied rightful repatriation.⁴⁴ There are procedures for the Department of the Interior to issue fines and other civil penalties to institutions who have failed to comply with NAGPRA; however, this mechanism has been seldom employed over time.⁴⁵ As of May 2018, less than \$30,000 in fines have been issued. These fines are also dependent upon factors such as: the value of the items in question, the economic damage done to the claimants and the number of violations the institution has committed.⁴⁶ In August of 2018, legislation was put forth to increase fines for institutions that fail to comply with NAGPRA, and to move enforcement to the Bureau of Indian Affairs, but the bill remains and is held up in in the committee of Indian, Insular, and Alaskan Native Affairs.⁴⁷

While the proposed legislation would improve the facilitation of legal consequences for museums that fail to comply with NAGPRA, it would not be a cure-all for the act's weaknesses for two key reasons. First, there are still objects and human remains that are being trafficked both nationally and internationally, and the situation is made worse because NAGPRA only pertains to federally funded institutions and disregards the actions of individuals.⁴⁸ This means that while NAGPRA designates grave robbing and trafficking of human remains and cultural objects as a federal crime, it is difficult to police. Second, museums can refuse to repatriate on grounds that the

⁴³ Dumont, 121.

⁴⁴ Jack F. Trope and Walter R. Echo-Hawk, "The Native American Graves Protection and Repatriation Act: Background and Legislative History," in *Repatriation Reader: Who Owns American Indian Remains?* (University of Nebraska Press, 2000), 142

⁴⁵ Ibid

⁴⁶ Unknown, *Few Fines under Native American Graves Protection and Repatriation Act*, 2018

⁴⁷ Scott, *Rokita Releases Bill to Enhance NAGPRA Fines*, 2018

⁴⁸ Bruchac, Margaret M. "LOST AND FOUND: NAGPRA, Scattered Relics, and Restorative Methodologies." *Museum Anthropology* 33, no. 2 (2010): 137-56.

remains are “‘indispensable for the completion of scientific study,’ an exclusion that can be easily abused.”⁴⁹ NAGPRA stipulates that the items or human remains must be repatriated within 90 days of completing the study, but there are no regulated timelines to determine when the study must conclude.⁵⁰

According to Dumont and Riding In, the logistical constraints of the law have made repatriation difficult for both museums and indigenous claimants. The Government Accountability Office report of 2010 corroborated what many indigenous communities had been saying for years, that a lack of financing and varying degrees of Federal oversight led to a lack of repatriation activities from government agencies. Authors such as Trope, Bruchac, Shepard, and Echo-Hawk have all discussed the difficulties indigenous peoples have had when trying to facilitate repatriations, caused both by resistance from the scientific community and unequal recourse to the law. While some of these issues stem more from socio-cultural differences than from strict legal complications, there have been legislative changes over time that have been introduced to address some of NAGPRA’s legislative weaknesses.

Problems with Unidentifiable Remains

The issue of unidentifiable remains pertains to the legal complications of NAGPRA’s language and, because of NAGPRA’s Federal origins, institutions deal almost exclusively with Federally recognized tribes. According to the Bureau of Indian Affairs there are three ways for a tribe to gain federal recognition: by an act of Congress, through administrative procedure, or by

⁴⁹ Shepard, Deborah. “Current Native (and Other) Views of NAGPRA.” *Teaching Anthropology: SACC Notes* 18, no. 1 (2012): 9.

⁵⁰ “NAGPRA Compliance.” Association on American Indian Affairs. Accessed January 9, 2020. <https://www.indian-affairs.org/nagpra-compliance.html>.

decision of a United States Federal court.⁵¹ The National Conference of State Legislatures has identified 574 Federally recognized tribes as of March 2020; however, in a 2018 report the Government Accountability Office determined there are approximately 400 non-Federally recognized tribal entities in the United States.⁵² Although a tribe lacking Federal recognition can still be a consultant on the topic of repatriation, they cannot have remains repatriated directly to them.⁵⁴ Despite a museum's responsibility to report all items eligible for repatriation under NAGPRA, it is an indigenous community's responsibility to determine if they are entitled to receive specific remains or objects.⁵⁵

Birkhold, Tsosie, and Painter-Thorne have spoken about the weaknesses pertaining to unidentifiable remains and the ways museums establish cultural affiliation. Prior to 2010, it was estimated that approximately 80% of remains could be affiliated, but museums have neither the time nor the funding to correctly identify them.⁵⁶ Others in the indigenous community have alleged a more nefarious reason for the lack of repatriation: museums may claim a set of remains are unidentifiable so they have the opportunity to do further scientific research on the remains.⁵⁷ A new regulation added to NAGPRA in 2010 sought to solve this problem by making it possible for indigenous communities to request culturally unidentifiable human remains from museums. This new rule led to over 8,000 remains that were unidentifiable being successfully returned. Some

⁵¹ Bureau of Indian Affairs, "Frequently Asked Questions," U.S. Department of the Interior Indian Affairs (U.S. Department of the Interior), accessed June 11, 2020, <https://www.bia.gov/frequently-asked-questions>.

⁵² National Conference of State Legislatures, "Federal and State Recognized Tribes," List of Federal and State Recognized Tribes (National Conference of State Legislatures, March 2020), <https://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx>.

⁵³ Advisory Council on Historic Preservation, "GUIDE TO WORKING WITH NON-FEDERALLY RECOGNIZED TRIBES," February 2018, <https://www.achp.gov/sites/default/files/whitepapers/2018-06/GuidetoWorkingwithNon-FederallyRecognizedTribesintheSection106Process.pdf>.

⁵⁴ "NPS Archeology Program: The Native American Graves Protection and Repatriation Act (NAGPRA)." Archaeology Program. U.S. Department of the Interior, March 29, 2020.

⁵⁵ Tsosie, *REPATRIATION SYMPOSIUM: NAGPRA and the Problem of "Culturally Unidentifiable" Remains: The Argument for a Human Rights Framework*, 2012.

⁵⁶ Birkhold, 2059.

⁵⁷ Birkhold, 2060.

researchers have claimed that this rule unfairly favors the indigenous stakeholders and makes long-term research more difficult.⁵⁸ The 2010 legislation provided new legal avenues for repatriation by non-recognized tribes. The addition states that if a Federally recognized tribe does not claim remains, the Secretary of the Interior may allow the transfer of the remains to a non-Federally recognized group.⁵⁹

The 2010 legislation is not perfect and allows museums to refuse disposition requests based on claims of a “right of possession” or if the tribe does not qualify under section 10.11.⁶⁰ It still does not solve the problem of unidentifiable remains or cultural affiliation, as some remains are so old they are impossible to affiliate with a current culture group.⁶¹ There is also the issue of shared origin of some groups, such as the Hopi and Zuni, who have distinct cultures and customs but may share common ancestors.⁶² While folkloric information and oral tradition can be used to show common ancestry, these approaches may be too intangible to satisfy critics in the scientific community.⁶³ This further widens the rift between the scientific and indigenous community.

Dumont noted,

Legal action, threats of legal action, and appeals to the foundational lore and documents of the republic are an increasingly popular tactic. This political strategy works to effectively inscribe a foundational ‘common sense’ that evokes a patriotic self-confidence wrapped tightly in the language of scientific rationality—a potent ideological amalgamation that is difficult for Indians to challenge.⁶⁴

⁵⁸ Ibid.

⁵⁹ Birkhold, 2075.

⁶⁰ Tsosie, 840-841. “Possession obtained with the voluntary consent of an individual or group that had authority of alienation.” Legal Information Institute, “25 U.S. Code § 3001 - Definitions,” accessed June 15, 2020, <https://www.law.cornell.edu/uscode/text/25/3001>.

⁶¹ Nilsson Stutz, Liv. “Legislating multivocality: drawing on the NAGPRA experience.” (2011) 27-28.

⁶² Michael A. Schillaci, and Wendy J. Bustard, 366.

⁶³ Painter-Thorne, 1280.

⁶⁴ Ibid.

This claim of supremacy of knowledge makes it difficult for indigenous peoples to assert their legal rights to their remains, as it makes use of Western conceptions of race that some indigenous peoples do not consider valid or relevant.⁶⁵ Opponents to NAGPRA suggest that corroborating indigenous claims based on ontology and tradition will give way to government action favoring the perspectives of indigenous claimants and result in a loss of research potential.⁶⁶ Some members of the scientific community have claimed that retaining human remains as objects of study could benefit indigenous community's knowledge of their past and lineage.⁶⁷ However, this has been dismissed by authors such as historian and University of Kansas Professor Devon Mihesuah in her work entitled, "American Indians, Anthropologists, Pothunters, and Repatriation: Ethical, Religious, and Political Differences." Dr. Mihesuah wrote:

Where is the information anthropologists are supposed to be acquiring that can help present-day tribes? If studies of tribes in the United States are supposed to be important, how are investigations by archaeologists and physical anthropologists serving the needs of Indians today? In dialogues with social scientists, Indians plead for convincing evidence that having the remains of their ancestors scrutinized, then stored for decades in basements and vaults of universities and museums, in addition to being separated from the grave goods with which they were buried, contributes to the well-being of Indian people.⁶⁸

Issues such as tribal recognition, contested evidence, and academic elitism are involved in discussions of biological anthropology and osteological research as the fields are considered the scientific authority for determining affiliation. Some have claimed the reliance on these disciplines is the root of many of NAGPRA's difficulties, as they are predicated upon the misconception of indigenous cultures being homogenous and self-contained.⁶⁹ Others say that due to the legal

⁶⁵ TallBear, Kimberly. "DNA, Blood, and Racializing the Tribe." *Wicazo Sa Review* 18, no. 1 (2003): 90, 93.

⁶⁶ Birkhold, 2079, 2080.

⁶⁷ Clement, Meighan W. "Burying American Archaeology." *Archaeology* 47, no. 6 (1994): 64. Accessed April 25, 2020. www.jstor.org/stable/41766592.

⁶⁸ Mihesuah, Devon A. "American Indians, Anthropologists, Pothunters, and Repatriation: Ethical, Religious, and Political Differences." *American Indian Quarterly* 20, no. 2 (1996): 230.

⁶⁹ Schiallaci & Bustard, *Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation*. 2010.

language of NAGPRA and the inevitability that more human remains will come into state collections due to urban expansion and inadvertent discoveries, relying on osteological research is by default the only tangible solution.⁷⁰ In a sense both critics and advocates of genetic testing may be correct as the lack of osteological research does in fact halt repatriation activities.⁷¹

While osteology and biological anthropology have had an enormous impact on the way NAGPRA is implemented, NAGPRA has also changed the landscape of educational osteology in America. Due to the importance and urgency of the act, many osteological programs shifted their focus after the law was enacted to the identification and study of indigenous remains.⁷² This created a generation of osteologists and biological anthropologists who depend on NAGPRA work and perpetuate the study of indigenous remains. An unforeseen result has been an increase of publications discussing the importance of osteological research, which unfortunately has been used as fodder for the argument that remains should be retained by academic institutions.⁷³ The relationship between NAGPRA and biological anthropology has historically been a volatile one, created by a potent mix of perceived scientific necessity and lack of respect for indigenous viewpoints.⁷⁴

The debate surrounding unidentifiable remains is one of the most complex aspects of NAGPRA. It encapsulates issues of tribal recognition, scientific authority, indigenous ontologies, and the complications of Federal law. Authors Clement and Nilson Stutz have defended the importance of the potential for scientific study and its contributions to both academia and modern indigenous communities. However, writings from Tallbear and Mihesuah (who are also academics,

⁷⁰ Rose et al, 1996

⁷¹ Ibid, 101.

⁷² Kakaliouras, Ann M. "An Anthropology of Repatriation. Contemporary Physical Anthropological and Native American Ontologies of Practice." *Current Anthropology* 53, no. S5 (2012): S216.

⁷³ Ibid.

⁷⁴ Ibid.

historians, and scientists) show how arguments supporting scientific study over repatriation are not only refuted by many indigenous peoples, but such arguments also show disregard for indigenous perspectives on lineage, continuance, and human rights. Tallbear and Mihesuah's claims are corroborated by other authors such as Kakaliouras, Schiallaci, and Bustard, who acknowledge the complexity of these issues, and profess the importance of the scientific community acknowledging the concerns of indigenous claimants.

The Importance of Collaboration

Much of the confusion about the nature of many remains and objects pertaining to NAGPRA could be solved with increased collaboration. This view was reaffirmed by authors T.J. Sullivan, Morrie Abraham, and Desmond J. Griffin in their article, "NAGPRA: Effective Repatriation Programs and Cultural Change in Museums." They noted:

Engaging in the processes of repatriation provides an opportunity to develop collaborative ways of working with native peoples which produces a more inclusive context for museum work, improved interpretive strength and a far greater knowledge of the collections. A shift from an inward, profession-focused perspective to a more outward one should include indigenous people in the process of research and in its outcomes.⁷⁵

This has been a success for some indigenous communities making joint-claims, and in the collaboration of indigenous communities with government entities.⁷⁶ For instance, in Washington State, members of the Wanapum tribe partnered with the U.S. Department of Energy to advocate for the protection of some of their burial sites.⁷⁷ Universities have also hosted workshops for tribal representatives and museum professionals to ask questions and gain insights about how to better approach NAGPRA processes.⁷⁸ Some museums have found success in "propatriation" or replacing

⁷⁵Sullivan, T. J., M. Abraham, and D. J. G. Griffin. "NAGPRA: Effective Repatriation Programs and Cultural Change in Museums." *Curator: The Museum Journal* 43, no. 3 (2000): 238.

⁷⁶ Chari & Lavallee, *Accomplishing NAGPRA : Perspectives on the intent, impact, and future of the Native American Graves Protection and Repatriation Act (First peoples, 7*

⁷⁷ Ibid.

⁷⁸ Luby & Nelson, *More than One Mask: The Context of NAGPRA for Museums and Tribes, 2010.*

repatriated items with new pieces made by indigenous artists that bring attention to issues such as repatriation and decolonization.⁷⁹ However, given the connotations of repatriation and the often-strained relationship between indigenous communities and these institutions, collaboration has not been an option for some institutions. In a survey of changes made by 19 museums due to NAGPRA, it was found that “pressure for change seems to have come from the legislated deadlines rather than any coherently articulated vision by museums’ leadership. The legislated nature of the change also limited the degree of genuine consultation and participation in the change process.”⁸⁰

This is unfortunate considering the American Association of Museum’s 1988 stance, which encouraged museums to give access and primary rights of collections to indigenous people as an alternative to legislative action.⁸¹ While consultation on collections is by no means a rare occurrence, it has been noted by many authors that true change will not occur until an institutional culture shift creates an environment where more museums regularly share, and ultimately relinquish, authority to indigenous claimants.⁸²

Synthesis

Following NAGPRA’s passing in 1990, literature was produced discussing the complexities of the act, as well as its successes and failures. While much was written about the logistical connotations of the act, both in a legal and scientific framework, there was a dearth of recent information based on museum professionals’ view on the subject, as well as indigenous perspectives and experiences on the process and its effectiveness. The literature suggested that when the act was first passed, many museum professionals were vehemently opposed to NAGPRA because it

⁷⁹ Moore, *Possibilities for Art After NAGPRA*, 2010

⁸⁰ Morris et al, *Implementing NAGPRA: The Effective Management of Legislated Change in Museums*, 46

⁸¹ Ibid.

⁸² Ibid.

disrupted research opportunities. Alternatively, they were in favor of the act, but did not know how to enact or improve it. While there were case studies on institutional approaches to NAGPRA, there are few quotes or insights from employees within these institutions indicating if they considered the approach successful or not. There is also a vague understanding that many human remains and sacred objects linger on the shelves of museum's collections, but it is unknown exactly which museums have which objects. This necessitates a more in-depth analysis of the perspectives of museum professionals and the indigenous communities they serve.

Chapter 3: Methodology

Methods

Structured as qualitative descriptive phenomenological research, the purpose of this study was to identify and describe NAGPRA methodologies of various institutions to see how they have overcome the three challenges mentioned above. The phenomenological design allowed for the in-depth exploration of NAGPRA-based repatriation by detailing the experiences and perceptions of museum professionals, analyzing them within the context of their institution or location, and comparing them with the perspectives of tribal representatives. This research was guided by three research questions: 1) How did the employee performing repatriations perceive the efforts of their institution? 2) What techniques/perspectives did they utilize when repatriating objects or human remains? 3) What is the experience of indigenous community members who facilitate repatriation for their tribes? To find participants, the study relied on snowball sampling and semi-structured interviews to glean information on the challenges of NAGPRA.

Selection Process

Interviews were conducted with two kinds of participants: museum professionals who have performed work relating to NAGPRA compliance, and tribal representatives who have facilitated repatriations for indigenous communities. The first step in this process was identifying institutions and personnel (both in museums and in tribal communities) who are performing NAGPRA work. This was achieved in part through online research of the National NAGPRA database, but was largely the result of consultation and recommendations from personnel at the Burke Museum of Natural History and Culture (Burke Museum) in Seattle, WA. The Burke Museum was an effective

source of consultation due to its transparent stance on NAGPRA repatriation and ongoing relationships with indigenous communities.⁸³

The next step was to confirm with the museum professionals and tribal representatives that they were willing to participate in the study. This was done by e-mail correspondence or phone calls to potential interviewees, describing the nature of the study and gauging their interest and availability. Focusing on museum employees and tribal representatives who have performed NAGPRA work was important because their experience demonstrates that they have navigated the challenges inherent in NAGPRA-based repatriation. Additionally, interviews conducted with tribal representatives was instrumental in understanding NAGPRA repatriation, and critical to obtaining more than just a museum perspective on the current landscape.

Research Sites and Study Participants

The museum professionals selected for this study were:

- Anne Amati from the University of Denver Museum of Anthropology, Denver, CO.
- Laura Phillips and Glenys Ong from the Burke Museum of Natural History and Culture, Seattle, WA.
- Helen Robbins from the Field Museum, Chicago, IL.
- Lourdes Henebry-DeLeon from Central Washington University, Ellensburg, WA.
- Megon Noble from the University of California Davis, Davis, CA.
- Lauren Sieg from the National Museum of the American Indian, Washington, DC.

⁸³ “Repatriation.” Burke Museum, n.d.. <https://www.burkemuseum.org/about/our-work/repatriation>.

The tribal representatives selected for this study were:

- Angela Neller from the Wanapum Heritage Center, Mattawa, WA.
- Teara Farrow Ferman and Jennifer Karson Engum from the Confederated Tribes of the Umatilla Indian Reservation, Umatilla County, OR.
- Robert Taylor of the Nez Perce Tribe, Lapwai, ID.

Methods and Data Collection

This research study used semi-structured interviews as the primary data collection method. From February to April 2020, interviews were conducted in person when time allowed, or via telephone or Zoom teleconference software. Two sets of comprehensive question guides were created prior to the interviews, taking into consideration the kind of roles and organizations the individuals occupied. See Appendices for comprehensive interview protocols/ questionnaires. Interviews lasted from 1.5 to 2.5 hours, and were audio or video recorded depending on the format.

Data Analysis

Interviews were transcribed via Zoom or Trint software, and underwent qualitative analysis coding for commonalities and stark contrasts. They were then organized the following a priori themes informed by the literature review: Institutional Approach of Museums Professionals, Relevant Obstacles, The Importance of Relationships, Legal Issues, and Personal Perspectives.

Chapter 4: Responses and Discussion of Results

Introduction

Below are the responses from the museum professionals and tribal representatives. The responses are divided between the two groups and arranged chronologically as they appear on the interview protocol, which can be found in the appendices.

Interview Responses: Museum Professionals

Question 1: What kind of NAGPRA policies has your institution implemented, and what have been the outcomes?

Amati, Ong, Phillips, and Henebry-DeLeon all identified their institutional approach as participating in the spirit of the law. Amati defined this approach as “prioritizing tribal perspectives and sharing authority with descendant communities.” While Amati was the only participant to use this explicit terminology, the four respondents all discussed how incorporating indigenous perspectives and ongoing consultation allowed them to successfully repatriate items and human remains from their collections. They explained the benefits of proactive approach to repatriation, achieved by investigating their collections and systemically reaching out to tribes based on what geographic areas they occupied historically.

At the Field Museum, Robbins explained that much has changed within their institutional policy over the course of her tenure. Many of these changes were derived from discourse with indigenous consultants as well as the evolution of the legal landscape. The policy of UC Davis has also changed several times over the past ten years, as a result of listening to the indigenous communities’ concerns regarding the campus’s use of indigenous remains for study. The university formally adopted a new policy in 2017, and included considerations that addressed claims made by

non-Federally recognized tribes. Noble and others at UC Davis focused on topics such as the repatriation of culturally unidentifiable associated burial objects, in an active attempt to incorporate indigenous voices. Noble said the new policy has resulted in a clear processual approach, and a greater authority for tribes to have input in the decision making process.

The NMAI is unique. Instead of operating under NAGPRA it operates under the National Museum of the American Indian Act, which also created the museum. The museum's founding documentation addressed repatriation as a result of activism by indigenous community members and as a facet of the institution's overall goals. According to Sieg "We also had a governance structure established in our enabling legislation where the museum has its own Board of Trustees, the majority of whom are tribal members. And so there was a deliberate effort from the beginning to create a museum and a place that was guided by a native voice." The NMAI was also performing repatriations and reburials before there was codified language for doing so, and Sieg stated that it was always the museum's intent to mirror NAGPRA in regard to the repatriation of sacred objects and objects of cultural patrimony. She made it clear NMAI does not claim any right to possession, and instead wishes to support native communities and the continuance of their practices.

Question 2: Does your institution have the funding/staff necessary to comply with NAGPRA?

Amati, Robbins, Henebry-DeLeon, Ong, and Phillips listed funding as a major obstacle to NAGPRA work. This lack of financial assistance is due to cuts made to the budget of the National NAGPRA Program. Ong, Phillips, Robbins, and Henebry-DeLeon described these cuts as having been increasingly severe in recent years. Henebry-DeLeon explained that over the years tribes have generously shared resources with Central Washington University to help facilitate repatriation processes, and that CWU understands it is their responsibility to fund NAGPRA work. Robbins expressed that she often encounters incredulity when discussing the NAGPRA budget at the Field

Museum, as people are often under the impression larger institutions intrinsically have more resources for repatriation work. All five respondents mentioned the tribal communities they work with are also under severe financial strain and cannot always allocate funds to repatriation work.

Noble and Sieg also mentioned the realities of a financial barrier to their work, but expressed gratitude for the amount of the financial support their institution affords them. Noble mentioned the provost of UC Davis has been extremely helpful, and that the university's budget is a result of campus-wide discussions centering on repatriation. Sieg explained that NMAI staff cannot apply for NAGPRA grants and that certain projects can exhaust their budget. She cited a repatriation to Canadian First Nations that involved a feathered object which necessitated paid consultation from a third party legal consultant.

Question 3: What is/was the greatest obstacle when trying to comply with NAGPRA?

Robbins, Ong, and Phillips cited funding/capacity as their major issue. They acknowledged that federal funding can fluctuate over time, but cite the current administration's cuts as being severe. Robbins described other challenges such as an extensive collection with varying quality of information, and the difficulty of finding land for reburials. She also discussed the difficulties that come from working with tribes of the Midwest because historical displacement makes consultation challenging. The forced removal that many tribes endured has resulted in incongruences between the lands they historically occupied and their modern Federal reservations and between divided tribes who have a shared ancestry or cultural heritage.

A major challenge for Noble when she first arrived at UC Davis was the strained relationship the university Davis had with the tribes in the area. To try and mend these relationships, she focused extensively on outreach and provided as much transparency as possible. She also mentioned trying to navigate the wishes of tribes who asked for the return of objects that did not fall under the legal

definitions of NAGPRA. Unfortunately, these requests generated opposition from the university, making things more difficult. Noble and other staff members were very concerned with accurately affiliating their materials, and through their efforts they were able to successfully affiliate 90% of their previously unidentifiable materials.

Sieg, Amati, and Henebry-DeLeon explained that navigating the extensive nature of their collections is their greatest challenge. This is due not only to the number of human remains and significant objects they have, but also the sparsity of information that accompanies the remains and objects. Sieg referenced NMAI's concern for contaminated collections items (objects or remains treated with pesticides, mercury, or arsenic as a preservation method), and how the museums has taken deliberate steps to hire consultants who can test and measure toxicity levels. Sieg also mentioned that some of NMAI's documentation is stored at Cornell University in New York, further complicating her repatriation pursuits. Henebry-DeLeon noted that most collections at CWU have split ownership with the Burke Museum, with each institution owning part of the same collection, complicating her repatriation efforts. According to Henebry-DeLeon, the university is not fighting the "big picture" (ownership, responsibility, financing) anymore, "but in retrospect that may have been the easy part of it."

Question 4: Is it less difficult to repatriate objects of cultural patrimony or sacred objects than it is funerary objects or human remains?

Both Amati and Sieg stated that there is no larger or lesser degree of difficulty when it comes to repatriating the funerary objects or objects of cultural patrimony. Instead, they are affected by the other logistical challenges they face such as deadlines, funding, and lack of available information.

Robbins said that culturally unidentifiable materials present significant challenges for her work at the Field Museum, especially in regards to the vague language in the regulations of the act. She specifically mentioned the difficulty of determining “aboriginal land,” and how the current occupation of many tribes differs from their historical lands. This has led to competing claims, and she cited one incident where a non-Federally recognized tribe in Texas didn’t have adequate recourse under NAGPRA.

Noble and Henebry-DeLeon both said they have limited interactions with funerary objects and objects of cultural patrimony, and that their daily work is focused more on repatriating human remains. Noble stated that despite the infrequency with which she encounters these objects, she does think that navigating what NAGPRA defines as a sacred object versus what a tribe may consider sacred can be challenging for all parties. In her experience, many tribes want to pursue human remains repatriation first and then move on to other claims, but every tribe has its own priorities and perspectives. Similarly, Henebry-DeLeon has taken steps during her consultations to identify what may be an object of cultural patrimony while reviewing campus department’s collections (such as Art, or the campus museums) that may have NAGPRA applicable material.

Phillips and Ong explained that when repatriating sacred objects and objects of cultural patrimony the burden is often on the tribe to produce evidence. Ong stated that it can be more difficult to repatriate these items. She said,

It's much easier for us as archaeologists to look at...human remains...from a burial context...We can make our own identification and approach tribes for consultation. But then there's going to be a lot more that...we don't have the expertise to identify them...when people come and visit, and consult, and get to know the collection, and then they notice something that they know as a sacred object or an object of cultural patrimony.

Ong also mentioned the difficulty that comes from the Burke’s inability to discern what is and what is not inalienable for a culture or what is required for that culture’s continuance. The

available evidence for discerning these objects can vary on a case-by-case basis, which can make repatriation difficult, even with consultation from tribal partners.

Question 5: What unique approaches has your institution used in implementing NAGPRA? Or alternatively, are there any unique challenges you have encountered?

Amati said there are no challenges that she considers unique to her institution. However, one distinguishing approach taken at The University of Denver's Museum of Anthropology is Amati's NAGPRA Community of Practice project. The Community of Practice is a cohort of museum professionals and tribal representatives that discusses various approaches and challenges with their NAGPRA work. She has gathered data from these groups in an attempt to disseminate information about the current state of NAGPRA and to establish a network of professionals who can reach out to one another with problems they may be encountering.

Robbins did not define a differentiating approach for the Field, but reiterated her point made previously about the challenge of working with displaced tribe in the Midwest. She also explained similar challenges likely exist in the Northeast, South, and Southeast.

Henebry-DeLeon mentioned working closely with the Columbia Plateau tribes of the Pacific Northwest (Confederated Tribes of the Colville Reservation, Confederated tribes of the Yakima Nation, Confederated Tribes and Bands of the Umatilla Indian Reservation, Nez Perce Tribe, and Wanapum Band of Priest Rapids) to create a visible, participatory process where the Tribes are "at the table" to participate in processes such as inventory and cultural affiliation. She believes it is important to collaborate during every step of the process so "they don't have to take someone's word for it" which helps increase transparency and decrease misunderstandings. She also works with area archaeologists, and incorporates NAGPRA education into her classes at CWU, in an attempt to familiarize students and staff with the perspectives and intentions of the tribes. She has

heard from other departmental members that it is nice to have the tribal relationships established despite pushback from some outside agencies. She said, “I've been told explicitly at times by one particular Federal agency that I'm just way too friendly to the tribes.”

The Burke's status as Washington state's historical museum impacted its staff's initial approach NAGPRA because they had concerns about the way the law empowered them to make decisions on who could appropriately claim ancestors and funerary objects. Fearing the perpetuation of a colonial approach, Phillips made it a point to review the objects and remains in the collection on a county-by-county basis and to contact tribal representatives who had historical presence in those areas as well as neighboring locations. This approach relied on consultation with the goal of bringing in as many tribal members as possible. It enabled tribes not only to make claims, but also to provide knowledge from personal experience. Phillips said,

It really provided some space for tribal members to say, ‘Oh, you know, my cousin is Yakima. And she says that these objects are like this where she comes from’, you know, it just gave us more data to be able to reach out and encourage more consultation and invite people in. So we really were as broad as possible.

The Burke has also facilitated discussion between tribal representatives from various groups to ascertain the best course of action for culturally unidentifiable materials. Similarly, the archaeology department has taken steps to contact agencies whose collections are held in trust by the museum to alert the agencies when their materials (objects discovered during excavations) are subject to NAGPRA. While these approaches are becoming more common, they were seldom used when the act was first passed. Phillips points to a hesitancy by some agencies and museums due to a fear of losing materials or agencies being unaware that certain items may be applicable under the law.

UC Davis has a distinctly bureaucratic system for repatriation consisting in part of a committee which helps make decisions regarding things such as disputed claims. Despite the presence of the committee, Noble described many decisions as being made at the local level. They have also had challenges concerning overlapping tribal territory, which necessitated a group discussion with the involved tribes.

In addition to NMAI's unique guiding legislation, the museum also has a dedicated database system that bundles objects with associated photos and documentation by their origins. Sieg said this makes it easier to show tribes what applicable material the museum may have. She explained it is a goal for NMAI to be as least bureaucratic as possible, especially when trying to facilitate funding for travel and consultations. The museum facilities also have unique features such as a large dedicated space for ceremonies, and is equipped with supplies tribes may need to perform their ceremonies, such as tobacco grown by NMAI staff.

Question 6: How Has NAGPRA influenced your relationships with the indigenous communities you work with?

Amati, Robbins, and Henebry-DeLeon said that NAGPRA has opened a door for relationships that would not be possible without the act. Due to a relationship initiated through NAGPRA consultations, Amati and the University Of Denver Museum Of Anthropology were able to make a collaborative exhibit on the Sand Creek Massacre. Another project for Amati that resulted from a cultivation of trust, was a meeting of 20 tribes to talk about the proper course of action for culturally unidentifiable human remains. All three of the respondents expressed that the opinions and wishes of tribes can change over time, so it is important to keep communication open and maintain the relationship. They also emphasized the importance of recognizing the government-to-

government nature of NAGPRA work, and that each tribe is distinctive and has its own priorities and preferences.

As a product of the Burke's relationships with tribes, Phillips explained the archaeology department developed its own GIS (Geographic Information System) database containing both geographic and ethnographic information. She expressed gratitude that the Burke took a broad approach to contacting indigenous community members, and that the museum did so before it was necessitated by NAGPRA. She said that while it is unfortunate that NAGPRA had to be the impetus to forge some of these relationships, the museum can now move forward and focus on collaboration that is not NAGPRA-related. Ong echoed Phillips' feelings and added that as capacity grows for tribes NAGPRA can still be a starting point for relationships, as some tribes have gained Federal recognition after the act has passed. Similarly, she noted that as museum capacity grows some museums may just be starting their NAGPRA work or discovering they have more work to be done. Ong attributes much of the success of their relationships to a mutual respect and an approach that affords indigenous community members with the time and resources they may need.

Noble described a developing project at UC Davis that will honor the indigenous communities whose lands the university occupies. Noble's relationships with the tribes has allowed staff to gather perspective and input from tribes on issues such as insensitive research or testing methods, and how these methods can manifest historical trauma. She points to UCLA as being ahead of UC Berkeley in some areas, due mainly to the presence of a curator who has spent 20 years focusing on forging relationships. According to Noble, as a result of these relationships, UCLA has been able to repatriate almost all its indigenous remains.

When asked how NAGPRA has affected their relationship with indigenous community members, Sieg declined to respond as she felt her answer would be anecdotal and that the true measure of impact would be better defined by the indigenous community members. She stated, “I think they [the tribes] would be the ones that could articulate that much better than I could. There's a lot going on in communities that we're not privy to and we're just one of the channels in the stream.”

Question 7: How has NAGPRA affected the way your institution stores materials or remains, creates displays, and expresses information?

All seven of the respondents stated that their museum respects the concerns of the indigenous communities they work with in regards to display of items and research accessibility. These considerations are not only rooted in NAGPRA, they explained, but also in the perspectives of staff as well as an overall ethical shift among museums and universities. While the specific accommodations made vary by institution (due to the difference in the cultures of their tribal partners) these accommodations can take the form of: covering certain items, facing items certain directions, storing human remains in special material determined by the tribe, removing sacred items from public display, testing for contamination such as mercury or arsenic, etc. The respondents agreed that having regular interactions with indigenous community members allow them to successfully curate the items and remains.

Question 8: How have NAGPRA compliance processes changed over the past 30 years if at all?

In addition to the development of their notable relationships with their indigenous partners Ong, Phillips, Noble, Amati and Henebry-DeLeon all discussed a general ethical shift among museums and universities. They described a greater desire to incorporate indigenous communities into their work, and a stronger desire among museum personnel to better serve the tribes out of

personal commitment, not solely as a desire to comply with the act. Amati also noted the progression of technology has impacted the way that they perform repatriation work.

Robbins remarked that the understanding of what it means to be in compliance has changed over time. Due to many regulations being published several years after NAGPRA was enacted, many institutions initially pursued a bare-minimum approach to compliance. In some cases, she explained, museums were out of compliance without knowing or acknowledging it. She also mentioned an increased awareness that universities and government agencies are out of compliance, and that it is not only museums that are struggling with NAGPRA. She too described a shift in mentality and awareness, and acknowledged that there is more generally an openness to repatriation and consultation work. Robbins also referenced the influence of technological advancements, and that there is now an abundance of opportunities for discourse, however, she finds that social media debates can often be misinformed or counterproductive.

Sieg noted some substantial shifts in the way the NMAI pursues their repatriation work. She said,

The way that things were done then is very different than how we do it now, where we do a lot more extensive research on the background and how items came into the collection or where human remains were exhumed and the circumstances of that... We also see a much higher level of scrutiny of the work that we do our reports are reviewed internally in our office, and then they're reviewed by other curators and staff and the museum and then by the director and before they ever get to our Board of Trustees, which is the body that makes a decision for the deaccessioning. So none of that existed in the beginning.

At its inception, NMAI prioritized the repatriation of human remains above funerary objects or objects of cultural patrimony but due to its enormous collection, this goal was enormously time consuming. Sieg mentioned while the museum pursued this goal, tribal representatives also expressed an urgency for the return of sacred objects, funerary objects, and objects of cultural patrimony. She said that they have formalized the process for prioritizing and balancing these

claims, but that tribal members may still express frustration about the museum's lack of deadlines contributing to the length of repatriation process.

Question 9: Did the 2010 addendum to NAGPRA make things any easier or more efficient for your institution? Or perhaps more difficult? Did your claimants express that it made things any easier for them?

Since Amati began her NAGPRA career after the 2010 addition to the law was passed, she is not privy to the functionality of the law before then. She did mention that having specific literature and language surrounding the culturally unidentifiable individuals (CUIs) helps her work.

Phillips and Henebry-DeLeon explained that the Burke and CWU were largely unaffected as they had been pursuing the repatriation of culturally unidentifiable materials as part of their daily work. To better facilitate the reburial of the remains with limited provenience the Burke communicated with a consortium of 27 area tribes who agreed on an appropriate resting place, a central location in Washington State that already had indigenous burials on site. Ong mentioned the effectiveness of the proactive approach to attributing cultural affiliation, as many tribes do not like the moniker of "culturally unidentifiable" due to the implication that the museum cannot find a continued presence of a certain tribe. Both Phillips and Ong mentioned that the Burke's relative success with repatriation is due to how colonization in Washington State resulted in many of the tribes having a continuous presence near their tribal lands up to the present day. They acknowledge that areas such as the Midwest, Northeast, and Southeast will have challenges with CUIs due to the history of forced relocation. Henebry-DeLeon also mentioned that the CUI designation has been used in the past as an excuse for some institutions to delay repatriation or shirk their responsibilities.

Regarding the 2010 regulations Robbins said “They're not well written and there are weaknesses in them. They expand the language of the statute. Potentially illegally, but you never know if it's legal or not until somebody either the Government Accountability Office (GAO) or court case tells you it is, but they've expanded what aboriginal land is from what the statute says it is and I suspect that's not legal.” She again pointed to the ambiguity of language as causing problems, especially considering her challenge regarding a lack of information. She also explained that the 2010 rule can leave the non-Federally recognized tribes out of the process.

Noble pointed to the 2010 rule as opening the door for new claims to come to UC Davis, and by the time she arrived in 2014, the focus had shifted to more proactive compliance projects. This resulted in staff revisiting several of their previous consultations to establish contacts and to cultivate their relationships. Noble added that there were several claims the university denied prior to 2010 that were reconsidered and ultimately facilitated because the tribes had a different avenue to access claims.

Sieg elucidated that the language of culturally unidentifiable materials was never part of the NMAI act. Despite this, the GAO recommended that the NMAI create a specific policy in regards to the repatriation of culturally unidentifiable remains. In response, the NMAI created a policy, and according to Sieg, “It was not a super challenging moment for us because we already had that in practice. We went around and did consultations at a series of meetings to get tribal feedback, and then codified it and that was it.”

Question 10: Do your state's laws help or hinder on how you conduct NAGPRA processes? Do you think the state as whole is effective in pursuing these processes?

Amati mentioned that Federal and State agencies that hold land in Colorado have assisted in finding locations for reburial. This is helpful because neither the museum nor the university have any land holdings they can offer the tribes which, in most cases, want to rebury the ancestors as close to their original location as possible.

Robbins stated that the state laws of Illinois generally have no effect on the Field Museum's efforts, unless there is a circumstance where the remains come from the state of Illinois. In the vast majority of cases the Federal nature of NAGPRA supersedes any considerations that would arise from Illinois law. She alluded to other states in the Midwest, such as Wisconsin and Minnesota that have more specific regulations in their laws; these laws can be a helpful guide for repatriation work in those states.

Henebry-DeLeon mentioned that Washington state laws concerning discovery of human remains on state and private land makes the work easier. In addition, Washington has a designated state physical anthropologist who works with the tribes. Phillips also mentioned the efficiency of the state physical anthropologist, Dr. Guy Tasa, and his dedication to repatriating and reburying newly discovered human remains. She also explained the challenge of private citizens who want to donate sacred objects, funerary objects, or human remains.

While indigenous remains in Washington are handed over directly to a state authority, accepting donations of indigenous materials from private (non-indigenous) donors is a potentially problematic circumstance. Phillips stated,

We would only take it if number one if the tribe said that it was okay. And number two, if we got funding to do NAGPRA because it's very expensive. And the problem is, for the tribes, it slows down the process a lot. It's much faster if the private individual donates or returns those objects directly to the tribe. But the problem is that often these private donors, they've inherited something that was from multiple locations around the state or even multiple states.

Phillips further explained that there are also complications for individual donors if their objects have sparse information, as some tribes may be slighted if they believe they had a rightful claim to the objects. In this instance, she said some tribes would actually prefer that the Burke receive the donations, and repatriate them through the NAGPRA process.

Noble said that despite California NAGPRA's passing in 2001, it is not supported by regulations or funding. The act stipulates that all agencies that receive state funding are obligated to repatriate the objects and human remains applicable in NAGPRA. California NAGPRA was passed with the intent to apply the Federal regulations of NAGPRA in a consistent manner with state repatriation policy.⁸⁴ The Native American Heritage Commission is supposed to be overseeing the law and facilitating communication with non-Federally recognized tribes, but Noble stated this has not yet been promulgated. While the intent to help facilitate repatriation to non-federally recognized tribes is a much needed policy in California, Noble explained that there can be more logistical constraints by adding another bureaucracy to the repatriation process. She also said the California Environmental Quality Act impacts the discovery of human remains. From what Noble detailed, when human remains are discovered on private land (not Federal or state land which would fall

⁸⁴ California State Senate, "Bill Text Assembly Bill No. 2836," Bill Text - AB-2836 Native Americans: repatriation. (California Legislative Information, September 27, 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2836.

under NAGPRA or California NAGPRA) the remains are identified by an “MLD” process, or the process of identifying the most likely descendant. The MLD process is facilitated through tribal consultation, which can create an imbalance depending on who serves as the consultant. Noble explained that affiliation is more complex and nuanced than MLD, adding another layer of complications to repatriation work in California.

Sieg stated that local laws have little to no effect on NMAI’s operations, especially considering the museum’s policy to not accept any new donations. She did, however, mention a strange nexus of laws concerning the District of Columbia’s policy on transporting human remains, wherein certain permits are required to transport the remains by car or air travel.

Question 11: If more tribes were Federally recognized, would that make NAGPRA compliances easier?

Amati said that she is unaware of a non-Federally recognized tribe that has a history of occupation in Colorado, and therefore she has not experienced this as a barrier to her repatriation pursuits.

Robbins and Noble spoke about increased tribal recognition in a very positive light, saying it could clarify some of the issues they face, such as who to consult with. While the Field Museum does not have many objects that pertain to non-Federally recognized tribes, it is hesitant to repatriate these objects to Federally recognized tribes items because they do not want to contribute to the disenfranchisement of non-Federally recognized groups. Noble also expressed concern for securing rights for non-federally recognized tribes in California. She said, “Right now there's definitely a disparity between the rights guaranteed to Federally recognized tribes versus non-Federally recognized tribes... You know, some Federally recognized tribes are quite supportive of working

with non-Federally recognized tribes, some are not very supportive. They say ‘we're the real people of this area.’”

Due to the NMAI’s extensive collection, they have interactions with a multitude of indigenous groups, including Canadian First Nations and Latin American communities. In the United States, Sieg explained that out of respect for the sovereignty of Federally recognized tribes, the NMAI would only consult with a non-Federally recognized tribe after consultation with a Federally recognized group.

Henebry-DeLeon described having to learn how to navigate the “big brother & little brother” relationship dynamic among the tribes of Washington State. She referenced the collaboration that occurs between tribes making joint claims, and that while bringing more voices to the table could prove to be beneficial, it may not be a cure-all. Ong thinks that more recognition would be helpful for the area. She said,

“But when that group isn't Federally recognized and you have to look at...the tribal register is a role. What did that Indian agent at the time say? What kind of documentation do we have of people from this band?...some of them went to this reservation, some of them to this other reservation. You get two conversations on who legally represents the ownership interest of that group. It gets litigated in court all the time. Meanwhile, there is, though, an actual group of those people who don't have Federal recognition. When we came out to try and navigate all that, I think if there were more Federally recognized groups...it would be more strict...”

While Phillips agrees with Ong on the basis that more Federal recognition could help facilitate repatriation within the state, she cautions that in certain areas it could make things more complex. She referenced Hawaii as having a relatively loose system of tribal recognition which can lead to many competing claims. Ong raised the point that if a tribe were to gain Federal recognition and be the only recognized tribe in that area (state, region, etc.) then it would be the only candidates for repatriation and this could further perpetuate an imbalance of rights. To summarize, Phillips stated she didn’t want people to think that “more numbers means better NAGPRA.”

Question 12: Are there any tribal laws or customs that help or hinder NAGPRA work?

Phillips, Ong, and Amati did not mention any tribal law or custom that makes repatriation work more difficult at their institutions. They did, however, reiterate the importance of respecting the government-to-government relationship as part of their work.

Robbins and Noble did not cite any complications made by tribal laws or customs, beyond those addressed in their collections management policies. However, Robbins stated that some tribal communities do not apply for NAGPRA funding because they do not recognize the authority of the United States government over their affairs. In cases such as these, the Field Museum writes grants on behalf of tribes to facilitate the repatriation process.

Henebry-DeLeon did not refer to any law or custom as making things more difficult; however, she did emphasize the importance of making accommodations in respect to cultural preferences. For instance, certain tribes may want to know the age, sex, or gender of the person performing any work with human remains. She recalled having to reassign a pregnant woman to another project, as it would be inappropriate for her to handle the remains. There have been similar instances with men who have young children.

Sieg also stated that there is no particular tribal custom or law that affects the NMAI's work, only that some difficulties can arise if multiple tribes have competing priorities. Additionally, NMAI's affiliation with the Federal government can intensify the government-to-government relationship which means that some tribes are hesitant to work with them in any capacity.

Question 13: In your experience, do institutions strive to comply with NAGPRA from legal pressures, fear of fines, or pressure from their indigenous communities? Do you think fines and legal repercussions should be more severe?

Sieg, Robbins, and Amati agreed that fines and loss of reputation can be an effective catalyst for change, especially when it comes to motivating larger institutions. However, Sieg warned that while these consequences may produce more results that “people don’t always move with the kind of deliberation and thoughtfulness that they should.” Generally, she said, these kind of repercussions are for motivating people at the top, and that those performing the daily work generally want to do the right things and pursue compliance in an effective and efficient manner. Since these consequences are inherent in the law, Sieg said they are as valid as, say, a UNESCO violation, but that the greatest results will come from willing work and forging relationships.

Noble and Henebry-DeLeon expressed that the repercussions of NAGPRA are motivational for many. Henebry-DeLeon jokingly said that a common refrain at CWU is, “We haven’t been in the newspaper about any bad NAGPRA stuff, so we have to be doing something good.” She and her cohort are abundantly aware of the power that a bad compliance reputation can have in their area. Given their relationships with the indigenous communities in the area, they fully support the tribes’ ability to publically critique and bring attention to institutions that are not in compliance. She also explained that critiques on social media are often based on misinformation and warned that this is not necessarily an effective approach to encouraging compliance. She mentioned telling the president of her university in the past that NAGPRA compliance is a University requirement, and as the head of the University, “You’re the one that’s going to be sitting in jail because ultimately it is your responsibility.” Noble also explained that prompting those in leadership position has been

helpful in her work. She and Henebry-DeLeon agreed that an increase in fines would be suitable, but because there have been so few issued thus far, it is difficult to tell what the effect would be.

Ong stated that there have been minimal consequences for institutions that have remained out of compliance. She and Phillips are unsure as to why civil penalties have been so slow over the years, but she states that there are institutions that are completely unconcerned with the consequences. They both recognized that there are numerous reasons why NAGPRA work may be difficult to perform such as staff turnover and newly discovered collections. Unfortunately, Ong said, the larger institutions that have no fear of the consequences are often more difficult for tribes to “go after” or file formal complaints.

Question 14: What aspect of NAGPRA would you change or add to if given the opportunity?

Amati was forthright with her suggestion. As she explained, if there are human remains with no cultural affiliation it is not required for any associated funerary objects to be repatriated with the remains. She would make this a codified part of the regulations.

Robbins said that she would like some clarification from National NAGPRA in regards to the vague terminology that defines many of the regulations. Additionally, navigating the legal language, defining aboriginal land, and deciding which legal precedents are valid can be difficult. She suggested some Federal oversight in these matters might help regulate the process of repatriation. Robbins believes the people performing NAGPRA work are dedicated to repatriation and want to do the best work they can, and believes stronger Federal guidance can help with these matters. She explained the situation is made more complex by the current president and his “feud with the National Parks.”

Sieg wants to change the 1996 amendment which she described as a poorly executed graft of NAGPRA language onto the NMAI act. She explained the amendment creates conflicting areas of overlap concerning funerary objects, and that it is not helpful for the museum staff as they don't wish to make a distinction between associated and unassociated funerary objects. Sieg also suggested more funding for bringing in tribal community members as well as consultants for cultural preservation to help identify items and documents in their collection. As a final goal unrelated to changes in the act, Sieg expressed the desire to have more consistent relationships with tribal community members and to develop continuous partnerships.

Henebry-DeLeon would like to see a change to section 5 of the 10.11 regulations so that museums have to practice a more proactive approach to culturally unidentifiable individuals instead of a claim based approach which put the burden on the tribes. This would be similar to Section 10.10 requiring museums to actively contact and consult with tribes about the human remains in their repository. She also explained that more staff for the National NAGPRA program would help facilitate Federal oversight of repatriation, and allow them to more effectively enforce decisions and issue penalties. She said that since the act is currently undergoing possible revisions at the Federal level, that such changes may be underway.

Noble had similar suggestions to Henebry-DeLeon, noting that timelines should be more stringent for museums that have culturally unidentifiable remains and materials. She said in many ways the language surrounding culturally unidentifiable materials are left open ended, and she thinks more of the regulations should apply to the unidentifiable materials. As Noble explained, the broad language of NAGPRA can be circumstantially helpful for responding to hyper specific situations, it can also cause delays in repatriation.

Ong expressed that increased funding for museums as well as for the National NAGPRA program would be helpful. Phillips suggested that NAGPRA should have an acknowledgment that compliance is not as simple as producing an inventory and contacting claimants, but is an ongoing process that will change over time. Phillips explained the lack of such an acknowledgment only delays the process for all involved and prolongs the harm done to the tribal communities.

Question 15: Is there anything else you would like to tell me about NAGPRA or repatriation work?

Amati wanted to highlight her dedicated research with her NAGPRA Community of Practice project. As part of her approach to NAGPRA compliance, she accumulated an impressive amount of quantitative data from museum professionals and tribal representatives concerning the challenges the encounter with NAGPRA compliance. This will not only be helpful to understand the modern landscape of the act, but it will also provide points of contact for those struggling with compliance.

As a final note, Robbins reiterated how difficult it can be navigating the legal ambiguity that envelopes NAGPRA work. She discussed these matters (and other aspect of repatriation) in a publication entitled “Hopi Renewal and (Ritualized) Performance under American Law” co-authored with her colleague Leigh Kuwanwisiwma. She hopes this publication will provide further insights into the challenges and rewards of repatriation work.

Sieg expressed a desire to help facilitate the repatriation of indigenous artifacts and human remains from private collections. Additionally, she would like to initiate the return of indigenous artifacts and human remains from institutions outside the United States. Similarly, she stated NAGPRA should strive to incorporate language that obligates American Museums to repatriate human remains to communities outside the country.

Like the other respondents, Phillips and Ong expressed the importance of creating and preserving relationships in NAGPRA work. They also mentioned that many of the writings about NAGPRA come from the perspective of people who have never engaged in the work. Given the enormous amount of literature on the subject, they caution anyone educating themselves on NAGPRA repatriation to engage with authors who have experience in performing NAGPRA work or engaging with indigenous communities.

Interview Responses: Tribal Representatives

Question 1: In your experience, have museums been courteous, respectful, and prompt when issuing or receiving claims to sacred objects or ancestors?

Neller said that generally the institutions she has worked with have been courteous and respectful. She stated that what is at the core of an effective repatriation experiences are the actions of individuals, and not necessarily the perspectives or policies of their institution.

Ferman and Engum expressed that they generally have not had any issues, but both noted that “promptness with NAGPRA is not something that usually happens.” This is due to the logistical constraints that are part of NAGPRA processes, such as waiting for funding and the need to visit institutions to examine their collections. They referenced an unfortunate experience with the University of California Berkeley and its overly bureaucratic process surrounding NAGPRA creating barriers to repatriation. In their example, they are still waiting while the university creates internal regulations that will facilitate their NAGPRA compliance. Ferman said she is hopeful UC Berkeley will fulfill its repatriation requirements, because it has thousands of human remains that need to be returned to various tribes. Ferman and Engum also explained that the amount of time some institutions take to repatriate their NAGPRA materials can cause staffing turnover. This forces tribal consultants to forge relationships with new employees further delaying the process.

Taylor also said that the individual relationship that exists between tribal representatives and institutional employees is the defining factor for successful repatriation. He specifically referenced universities as having a high bar for cultural affiliation. As he said, “There’s a lot of times that when we come with a university, it’s our burden to prove that the collection belongs to us, and that we were the first people to use the land. And it gets frustrating. Very frustrating.”

Despite ongoing communication between him and university representatives as well as the Nez Perce's Indian Claims Commission (ICC) Taylor said it is often the case that universities will reaffirm their ownerships of the materials and ancestors despite a lack of ongoing research. In a recent case with the University of Connecticut, the Nez Perce were forced to wait for the university to develop a written NAGPRA policy before it returned materials that were clearly labeled as coming from Nez Perce territory. Taylor explained that due to the university's lack of experience with the law, they have had to follow-up regularly with the university to no avail. Despite the progress made with other institutions and the successful relationships the tribe has with area museums, Taylor described experiences such as these as common after 30 years of NAGPRA practice. However, he also mentioned a positive experience with a private historical society (which received no Federal funds and was therefore not subject to NAGPRA) in Vineland New Jersey. While updating their collection and displays, the museum found the skulls of three young women with a note that read, "These three little girls came from where Chief Joseph surrendered in Montana." The museum decided it wanted to repatriate the remains, and reached out to an area university who provided them with Taylor's contact information. After hearing about the situation, he traveled to Vineland, recovered the skulls, and reburied them in Montana.

Question 2: At present, are making claims and facilitating repatriations easier or more difficult than when the act was first passed?

Neller restated her position that in most circumstances the actions of the individuals pursuing repatriation will make the experience more or less challenging. She also explained that the understanding of archaeology has changed over time, affecting the museum's perceptions of repatriation efforts and indigenous relationships. Similarly, the development of various institutions' bureaucracy surrounding NAGPRA repatriations have evolved, but vary in effectiveness. She also

referenced the Army Corps of Engineers (ACE) as being inconsistently helpful when facilitating repatriation or sharing information. During the repatriation of the Ancient One (Kennewick Man) for instance, Neller said the ACE was not committed to collaborating with the area tribes. Despite this experience, she said repatriation is generally easier in the Pacific Northwest due to the presence, history, and recognition of tribes in the region.

Ferman and Engum described being overwhelmed with inventory reports when the act first passed, but they were able to adapt to the demands over time. Ferman said a distinguishing moment in the evolution of NAGPRA was the 2010 GAO report which she defined as “quite the eye opener”. Both she and Engum denoted a general mentality shift among museums and repositories being more comfortable with repatriation and indigenous presence, and that when the act first passed these institutions feared losing their collections. Now, they explained, museums are aware that “tribes are not trying to empty out their collections in the back of a U-Haul.” They also described an increased awareness that many tribes view repatriating ancestors and funerary objects as a top priority and trying to focus on that. However, they also mentioned the opposite is true for objects of cultural patrimony and sacred objects, saying, “There has been more fear and suspicion around that to some degree, because tribes have much more work to do to try and prove something needs to come back to the tribe.”

Taylor explained that one aspect of the evolution of NAGPRA that has made facilitating repatriation easier is having established precedents to refer to. The ability to reference previous claims has helped tribes validate current claims in a legal sense, and provides logistical references for museum personnel to make designations, find consultants, etc. He also mentioned making progress with institutions in regards to accepting new donations, suggesting that they decline to

accept human remains. Instead, Taylor said, institutions should guide the donor to gift the remains directly to the tribe to avoid any of the complications or delays inherent in the NAGPRA progress.

Question 3: How has NAGPRA affected your relationships with museums (in this region or others) if at all?

Neller said that despite the Wanapum's lack of Federal recognition, museums work well with the tribe. She mentioned the tribe is not always included in notices, but museums have not had any problems with their participation or deliberation in repatriation matters. Neller referenced a specific experience with the Museum of Natural History in New York, where the Wanapum worked directly with the museum to consult on the proper preparation and transportation of human remains and funerary objects. While the museum first checked with the Federally recognized tribes in the area, she established a working relationship with the institution and was able to serve as a point of contact.

For the Umatilla, Ferman responded that NAGPRA improved their working relationship with museums in the area. She named Washington State University, Central Washington University, and the Burke Museum of Natural History and Culture as having effective channels of communication and working closely with the tribes. The museums have also helped facilitate communication between repositories and government agencies such as the Army Corps of Engineers. She specifically mentioned how the Burke and Central Washington University helped them present information on the Ancient One, as well as writing the affiliation report. While the Umatilla have the best working relationships with regional and local museums, Ferman and Engum also mentioned having a good working relationship with the Smithsonian, and a successful international repatriation from a museum in New Zealand that was provided documentation by the Department of the Interior.

Taylor noted a change in mentality among university personnel in the area, who try to emphasize NAGPRA education, something he finds lacking on a national scale. Like the Umatilla and the Wanapum, Taylor identified NAGPRA as a learning experience for museums as well as the tribes. Despite the burden of proof that many museums and universities demand for the repatriation process, he again pointed to relationships developed with individuals that make repatriation possible. Similarly, he mentioned that actions of individuals can sour a relationship. He referenced the return of the Ancient One, and said that Senator Maria Cantwell was initially unsupportive of returning the remains to the tribes, despite a sponsorship of legislation by Senator Patty Murray. Despite Senator Cantwell's ambivalence on the repatriation of the remains, Taylor said she was quick to praise the decision of the Ancient One's return, but that "she was no help to us."

Question 4: How has NAGPRA effected your relationship with other tribes (in this region or others) if at all?

The Wanapum and the Umatilla have a strong and lasting working relationship with several other tribes in the Pacific Northwest. According to Ferman, "We work with the Confederated Tribes of Warm Springs Reservation of Oregon, Yakama Nation, The Confederated Tribes of the Colville Reservation, the Nez Perce Tribe, and the Wanapum. We work with all of those tribes very closely because they all very much, I would say, surround our ceded land areas." Ferman explained that several tribal members have common ancestors and historically have shared parts of the same territory. Since this is not always reflected by the boundaries of Federal reservations, the relationships the tribes in the region have help to facilitate joint-claims and consultations. Although Ferman mentioned individuals can complicate repatriation claims, she, Engum, and Neller explained the area tribes have a "collaborative and non-disruptive" mindset.

Taylor made a similar point to Neller, Ferman, and Engum, stating that solidarity among the tribes is the best way to facilitate repatriation, especially when dealing with government agencies. He explained that while the Nez Perce strive to collaborate with the other area tribes, it can be circumstantially more constructive to step back and let the other tribes move forward with their claims. He also described situations in which tribes may need their support or direct assistance to facilitate the reburial of their ancestors. He detailed experiences working with tribes whose beliefs will not allow them to directly handle or take ownership over their ancestor's remains. The Nez Perce have a history of overlapping territory and partnership with this tribe, and often assist with claims and reburial. Taylor explained that in cases such as these, they will always defer to local tribe and follow its wishes concerning reburial. As he said "When we would defer to you, we're not going to dictate to you, and say 'How are you going to do that?' That is, if we defer, then you do, we follow."

Question 5: Are some museums easier to work with than others? (Small vs. Large, or Natural History vs. Anthropology, etc.)

Engum explained that the Umatilla have had "better luck" working with larger institutions that have anthropology or archaeology departments rather than natural history. She attributed this success to a better understanding of the archaeological process and information which helps with discussion on excavations and artifact identification. She also explained that larger institutions are more likely to have adequate funding and more staff, and this helps with the publication of inventories and acquiring documentation. In her experience, smaller institutions often rely on volunteers; this can lead to inconsistencies in communication and quality of work. Ferman said they have had a recent request for assistance from a small museum association in Oregon that was run by one director and a team of volunteers. The museum staff felt they had fallen completely out of

compliance with NAGPRA, and they had to reconfigure their approach to the act. With input from the tribe, the museum planned training exercises concerning NAGPRA, but due to the COVID-19 pandemic these trainings have been temporarily postponed.

Neller and Taylor acknowledged that the size of an institution can negatively affect their work; however, they believe if the right person is performing the work they can still have successful repatriation. They also mentioned that tribes can provide a lot of assistance to museums assuming the museums have proper training and documentation. Unfortunately, Taylor said, smaller institutions can have inexperienced or uneducated employees performing repatriation work. Taylor mentioned that dedicating one's self to education can compensate for the shortcomings of a small budget or limited staffing capabilities. He shared an anecdote from his time serving as a councilman for the Nez Perce and consulting with representatives from Barack Obama's presidential campaign. He helped to inform the campaign officials about indigenous peoples in urban communities and the nature of government-to-government relationships, and reminded them about the Federal government's obligation to keep the promises made in their treaties. While he expressed some frustration about having to constantly remind Federal representatives to be accountable to the tribes, he spoke positively about the campaign's attempt to learn about tribal needs in the present.

Question 6: Have Federal or state agencies been helpful when trying to make claims? Or has their presence been negative or non-existent?

Neller mentioned positive experiences with the Walla Walla Army Corps of Engineers helping the Wanapum find land for reburials. She said, "They've been very open to reburials on corps land, even for remains that aren't coming from their collections." She explained that the ACE archaeologists and the tribal archaeologists had different interpretations of the law. The National NAGPRA program helped guide both parties and offered legal advice which enabled the tribe to

perform the burials. Neller said having input from government officials can help mediate discussion over collections with shared ownership, which she described as common in Washington State.

Ferman and Engum also mentioned Federal agencies being helpful when trying to find land for reburials, and helping to protect the reburials from disturbance. The Umatilla and the ACE have worked with nine tribes in Oregon to help produce a functioning process for joint repatriations and reburials. The National Parks system and National NAGPRA have also been helpful advisors. However, Ferman explained, they are not always able to help directly due limited funding. The Umatilla have noticed increasing cutbacks and backlogs from the federal agencies in recent years, and pointed to the current presidential administration as a direct cause. They also explained Federal agencies do not help the tribes to file claims (besides occasionally providing research) and that the agencies “lay the burden of that solely on the tribe.”

In Taylor’s experience, the helpfulness of government agencies varies greatly and depends mainly on the existing relationship of individuals. He mentioned that The Nez Perce are currently partnering with the Department of Energy and the ACE to develop a memorandum of agreement for protection and repatriation of archaeological sites along the lower Columbia River. Conversely, Taylor referenced his experience with the repatriation of the Ancient One as being particularly tumultuous, and how the tribes had to fight to keep the remains stored in Washington State while the affiliation was determined. He believes that if the Ancient Ones’ remains had been taken to the Smithsonian, they would have never been repatriated to the tribes. He also expressed some frustration regarding the Smithsonian’s lack of formalized deadlines, and the delays this causes with repatriation. Similar to the Umatilla, Taylor said that National NAGPRA can be helpful, and he specifically referenced it making templates for issuing claims widely available and National NAGPRA’s review of claims drafts. Unfortunately, due to the revisions currently in development

for NAGPRA, the website is not fully functional. He also pointed to the current administration, and said that he is unsure whether or not President Trump is in favor of returning human remains.

Question 7: What portion of NAGPRA would you change or add to if given the chance?

Neller said that she would not necessarily alter the law itself, but rather some of the regulations. She specifically mentioned a regulation concerning human remains discovered on Federal lands after 1990. Neller described situations where human remains may go unclaimed or never be adequately affiliated, leaving them to remain in storage indefinitely. She suggested broadening the ability to use other forms of evidence (such as aboriginal territory) to satisfy this regulation. She expressed that “the strict applicability of treaty and ICC claims” was a hindrance during the repatriation of the Ancient One. According to Neller, the courts could not make a decision because multiple tribes were using the area and it was “all the claimant tribes.”

Neller also suggested streamlining other parts of the regulations. For instance, the ability to reclassify an unclaimed collection as a new collection, and then restart the consultation and inventory process. Lastly, she would change the way National NAGPRA presents which museums have not repatriated materials or ancestors. Currently, she explained, National NAGPRA is very helpful with publishing statistics on these matters, but that the information used comes from museums that have submitted inventories. This means if a museum were to fall completely out of compliance, and not publish an inventory, National NAGPRA would be unaware of the items or human remains the museum does or does not have.

The current way National NAGPRA publishes the statistics is inaccurate, and while Neller realizes it would be a difficult undertaking to peruse every museum that receives Federal funding, the current method can be misinforming. Expressing some general frustration with NAGPRA she noted,

You know, I'm Native Hawaiian so my issue with NAGPRA has always been, who has the right to speak for me and objects that I think are important to who I am as a Hawaiian, that I would like to make sure are always going to be there. You end up maybe with a group that makes those decisions and nobody ever sees them again. So how do you ensure then that inalienable object is still accessible to your community from now into the future and doesn't become one group's?

She expressed frustration concerning NAGPRA's applicability to Federally recognized tribes, and explained that the act's attempt to empower certain tribes to reclaim their ancestors has resulted in disenfranchising others.

Based on their experience with the repatriation of the Ancient One, the Umatilla submitted joint testimonies to the NAGPRA review committee in March 2017 concerning the process for inadvertent discovery of human remains. Ferman explained,

Things that we had proposed were that regulations under Section 3 undergo a thorough and thoughtful review process in consultation with NAGPRA practitioners...and we suggested that it could include rewriting the NAGPRA regulations for inadvertent discovery of human remains to the same definitions of aboriginal land as those found in the collection section because the collection section's definition of aboriginal land is broader. It includes land recognized by treaties, acts of Congress, or executive order, where the inadvertent discovery process is restricted to the Indian Claims Commission for us.

The Umatilla also suggested rewriting the response timeline for inadvertent discoveries to match those found in the collection section. Additionally, "...we also asked the Advisory Council on Historic Preservation to develop NAGPRA guidance similar to what they do for the National Historic Preservation Act guidance document. Specifically highlighting sections for inadvertent discovery lines of evidence....We also asked that a detailed training specifically for inadvertent discovery may be how to proceed in a judicious manner." Ferman explained that the Department of the Interior is supposed to review those changes, make recommendations, and send them to the tribes, but due to its limited staff and budget this process has been delayed for years. Ferman and Engum have been told that the current administration want to make things "easier and more streamlined" but they are unsure what specific aspects of the act will be changed.

Taylor expressed some frustration about the ambiguity concerning qualifications for cultural affiliation. He explained the imbalance of powers caused by the qualification, and that a tribe's claim of cultural affiliation can be ignored or refuted by a museum, university, or Federal agency. He mentioned that during the repatriation of the Ancient One, Washington State tribes' claims of cultural affiliation were not adequately addressed, and that it "almost pits us against the university." He also believes that there should be more codified language in the act to encourage deadlines for specific projects, whether it be a few months or several years. Taylor acknowledged that the variance in size and funding will make this difficult for some institutions, especially for museums that do not have staff members dedicated to NAGPRA. However, with further tribal consultation, increased transparency, and a greater willingness to share documentation or other information, he believes project-based deadlines could be constructive. He mentioned some success with this approach working with the Walla Walla district ACE, asking them to go through their entire collections over a five year period. This enabled both parties to apply for grants or other funding, and gave the Nez Perce ample time to publish their claim.

Question 8: What can museums do differently to better serve their indigenous communities?

Neller's response is that museums should be "opening the doors and being equal partners in stewardship." She stressed here the difference between temporary consultation and collaboration, and giving tribal partners an equal voice. She explained that pursuits such as this are part of the decolonization efforts taking form in the museum industry, but that some forms of decolonization may be more effective than others. As she said,

So rather than a museum going out and giving a grant to do this program and then inviting tribes to participate in the program, the museum says to a tribe, 'We want to help you do what you'd like to do. So tell us what you want to do, and we'll support you in whatever way we can. Whether that's opening doors, whether that's you writing a policy for us, whether that's you want to do a project and you need money, we'll help facilitate finding money for you.'

Neller added that, while it is important to bring a tribal perspective into these matters, it is important to understand tribes may not have the capacity to reclaim or care for all of their materials.

Ferman and Engum acknowledged that every museum is different, and their approach to NAGPRA will be affected by their capacity. Knowing this, they said that the more knowledge they have of their collection the better it will be for the tribes making repatriation claims. In their experience, it is not uncommon for museums to consult with tribes without necessarily knowing what objects or human remains they may have that are applicable to their tribal partners. Bringing in indigenous consultants could help museums realize what the object's needs are from a tribal perspective. Ferman explained that many objects carry a spirit, and these spirits may need visitation or feeding to properly be cared for.

Engum mentioned issues over the years with museums having contaminated items in their collection. Historically, items in a museum's collection were treated with arsenic, mercury, and other toxic materials as a means of preservation. These chemical agents can be a health hazard to those who work with them, and impede decomposition processes that are considered natural or essential by certain tribes. Contaminated items can make the repatriation process more difficult, and the Umatilla would like to see more proactive research within museum collections as well as recognition from the National NAGPRA program. Ferman and Engum also expressed that museums can be more vocal about NAGPRA and to create displays or inform audiences of the law and its implications. Ferman mentioned the need for more ethical guidance to staff members developed in coordination with tribes. She mentioned that some programs already exist, but the information should be more widely disseminated, and that universities that engage in indigenous research should offer classes on these subjects. Many museums and universities struggle with ways to incorporate indigenous communities in to their work, and ongoing relationships with tribal partners would be

beneficial to both parties. To address these issues, the Umatilla have made a document for their partners outlining what effective consultation should look like, which is included in the appendices below.

Taylor also expressed that more proactive consultation would be beneficial to the tribes. He mentioned the success of Henebry-DeLeon's efforts at CWU and how it has made tribes more comfortable with interacting with the university. In his experience, the tribes have a desire to meet directly with individual staff members and get them "caught up" on tribal perspectives and issues the community is currently facing.

Question 9: Is there anything else you would like to tell me about NAGPRA, repatriation work, museum relationships or their impacts on you and your community?

As the interview came to a close, Ferman expressed one final point she felt is important for those who perform repatriation work. She said

I just want to share one last thing. Not just one tribal elder, but more than one tribal elder. They say that when our ancestors are unearthed their spirit is not at rest. They're wandering on the Earth here and it causes our tribal community a little bit of mayhem because sometimes the spirits will be angry that they're not in the ground in their resting place and so that...impacts our tribal community in different forms. Such as suicide, alcoholism, drugs use, some of those social impacts because we as a community are all tied together. We are tied to our ancestors and the places that our ancestors went. So sometimes this disruption in the spiritual world causes adverse impacts to us who are living on the land, so those social impacts have sometimes large effects on our tribal communities...When we're finally able to repatriate them and put them back into the ground, their spirit is then at rest again and we may not feel the positive impact of that until later.

Discussion of Results

Institutional Approach of Museum Professionals

As the responses above detail, NAGPRA has had enormous impacts on institutions with indigenous collections. While the act's effects on collections management and exhibits may be expected, all participants also mentioned impacts on administration, finance, institutional policy, and community engagement. Half of the participants explicitly discussed pursuing the spirit of the law; however, all the institutions make attempts to include indigenous priorities and preferences in their repatriation work and general programming. Focusing efforts on the spirit of the law is not in juxtaposition to the letter of the law, rather it seems to be a compensation for the limitations of NAGPRA's language. By emphasizing consultation and indigenous perspectives, the museum professionals are able to bolster the literal text of NAGPRA to properly accord the human remains and cultural items the respect and dignity the act was intended to afford them. These considerations seem most prevalent in collections management, as all seven of the respondents describe regulating their collections based on the beliefs and preferences of their indigenous consultants. A notable finding from the museum professionals is the variety of approaches they employ when complying with NAGPRA, and the diversity of challenges they face caused by a variance in their locality or their institutional structure.

Relevant Obstacles

Repatriation through NAGPRA is a complex matter impacted by a variety of institutional and individual factors. Despite the myriad of complications inherent in the work, funding appears to be the greatest obstacle as it is mentioned several times by all seven respondents. This lack of funding affects both the museums and tribes, and occurs at a national level as well as within their individual institutions. Other problems described by the participants such as large collections with

sparse information, difficulties with the vague terminology of the act, and culturally unidentified materials appear to vary by institution and locality. While challenges caused by culturally unidentifiable materials can often be abetted by consultation from tribal members, this is not always an option as evidenced by Robbins' and Noble's struggle to find continual and abundant tribal partners. It should be noted that despite the obstacles and frustrations faced by museums and university personnel, the true burdens caused by slow or nonexistent repatriation fall upon the indigenous people.

The Importance of Relationships

The relationship the museum professionals have with the indigenous communities they serve is the foundation of their NAGPRA work. While some of the participants (Noble, Robbins, and Sieg) described challenges with forming and sustaining relationships with their tribal partners, all of the participants explained that NAGPRA would not be possible without these relationships. Ongoing engagement with tribal consultants informed the museum and university respondents on how to best care for their collections, and how to identify sacred objects and objects of cultural patrimony.

The relationships the tribal representatives have with museums personnel as well with other tribes are paramount to successful repatriation. The four tribal respondents agreed that the tribes in their areas have created a collaborative relationship based on solidarity, mutual respect, and a shared common goal. This has enabled them tribes to work together to overcome issues of poor funding, the need for Federal recognition, inconsistently helpful government entities, and a lack of available land for reburials. While these concerns will continue, the relationships the tribes have with each other creates a system of support for the region that affords them greater voice and autonomy for

facilitating repatriations under NAGPRA. Since the act's regulations are currently under revision, there is a possibility the suggestions they've made will be addressed in the act's new iteration.

Legal Issues

NAGPRA's status as a Federal act affecting institutions focused on education and curation was bound to cause challenges, as museum personnel may have limited experiences interpreting legal language. While the respondents have adapted well to the obstacles created by NAGPRA compliance, there are complications they encounter that are rooted in the act's legal language and regulations. As Robbins' responses demonstrate, the vagueness of language and circumstantiality of legal precedents can make the proper course of action unclear. This seems especially pertinent when dealing with complex repatriations involving CUIs or non-Federally recognized groups. While the 2010 regulation pertaining to CUIs was intended to help make repatriating these items easier, only Noble and Amati described the regulations as being helpful. Interestingly, four of the participants (Phillips, Ong, Henebry-DeLeon, and Sieg) described being generally unaffected by the 2010 regulation, as they had been facilitating the repatriation of CUIs years before it was mandated. Finally, all of the museum professionals agreed that the penalties associated with non-compliance are good motivational tools for institutions not actively pursuing repatriation work. There is also a consensus that fines and other forms of repercussion are low despite thirty years of the act being in place, and none of the respondents could point to a definitive cause.

The insights detailed by the tribal representatives of interacting with government agencies and navigating the legal framework of NAGPRA revealed a myriad of positive and negative experiences. Given the decades of repatriation work and evolution of both the law and institutional perspectives, this is unsurprising. A commonality among all respondents was a generally positive experience with the National NAGPRA program. While the program is in a state of flux due to the

budgetary constraints mentioned above, all of the respondents mention their helpfulness when filing claims or providing oversight for legal mediation. Additionally, certain districts of the Army Corps of Engineers were described as helpful by all respondents for finding land for reburials or repatriating large collections. Despite these positive interactions, all respondents stress that there are aspects of working with government agencies (such as providing evidence of cultural affiliation) that place the burden on the tribes. This is perhaps best exemplified during the repatriation of the Ancient One, where Federal agencies delayed repatriation of the remains to Washington State.

Personal Perspectives

One of the most consistent answers from all respondents throughout the interview process was the impact that individuals can have on the repatriation process. This can manifest itself in either positive or negative ways depending on the nature of the relationship. The duality can be seen in Taylor's positive experience with the private museum in New Jersey, juxtaposed with the Umatilla's ongoing dispute with the University of California Berkeley. The relationship can also supersede complications that arise from a museum's capacity or area of focus. Interestingly, the Umatilla were the only participants to express that certain museums are easier to work with than others, although their reasoning for this efficiency is logical given the circumstances described. All four respondents mentioned the evolution of ethics in repatriation, both as a result of experience and the benefits of continuous relationships with indigenous communities.

As the tribal representatives have discussed, the efforts of one museum or university employee can be an impetus for change in their institution. Despite the best efforts of the most talented museum, university, or government agency personnel, the tribal representatives also agreed that the burden is always on the tribes in the repatriation processes. It is therefore the responsibility of anyone performing repatriation work to try and ease this burden to the greatest extent possible.

Based on the responses from all respondents, this will only be achievable by sustained and honest communication, and the prioritization of indigenous voices.

Chapter 5: Conclusions, Limitations, and Recommendations

Conclusions

The purpose of this study was to identify and describe ongoing NAGPRA methodologies and practices of various institutions and indigenous communities to learn how they overcame the challenges mentioned above. There are three main conclusions that can be drawn from the research, and a fourth emerging conclusion overall: 1) Museum professionals view their approach as generally successful, but are challenged with certain concepts or logistical constraints. 2) Museum professionals are now utilizing approach informed by the perspectives of their tribal partners when facilitating repatriations. 3) Both tribal representatives and museum professionals stress the importance of relationship-building and how individual personalities within the institutions and tribes influence the outcomes of a repatriation. 4) When museum professionals face challenges during NAGPRA repatriation it is most effective for them to request assistance from tribal partners and to relinquish authority to the indigenous perspective.

Limitations

As previously stated, study participants were identified through a snowball sampling method aided by consultation from staff at the Burke Museum. This led to a dearth of interviews with museum professionals and tribal representatives in the Northeast, South, and Southeast which would have been constructive in the analysis of state and regional differences. Another limitation of this study was the nation's ongoing response to the wave of COVID-19 infections. While the participants in this study were able to adjust to the changes created by the responses to COVID-19, it led to a loss of potential interviewees as their schedules and work conditions were greatly altered.

Recommendations for Future Research

This research generated information based on responses from museum professional and tribal representatives offering insights into the daily work of those who facilitate NAGPRA repatriations. The following recommendations are made in consideration of the information composed in this study. First, more research should be conducted based on the experiences of those who perform NAGPRA to generate a greater sample size for comparative analysis. Second, this research should make use of a regional focus, as the experience of museums professionals and tribal representatives varies greatly depending on local laws and history. Third, future research should further explore the experiences of indigenous communities in NAGPRA work, as their experiences varies greatly and have historically been ignored or refuted.

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Appendix I: Interview Protocol

Interview Protocol

Brady Wolf // Phone: (314) 570-3700 // E-mail: brady.a.wolf@gmail.com // Thesis Advisor: Wilson O'Donnell, Museology Graduate Program, University of Washington// E-mail: wilsonod@uw.edu // Phone: (206) 543-4642

Researchers Statement:

I am asking you to participate in an interview that is part of my Master's Thesis work at the University of Washington. The purpose of this research is to explain how various institutions comply with NAGPRA and the impacts of their efforts. Your participation is voluntary, refusal to participate will involve no penalty or loss of benefits, and you may discontinue participation at any time. This interview will be audio taped for my note taking only. I may use your title and name of your institution in my final paper. If I directly quote you, I will send the quote to you before publication. If you have any questions now or in the future, you may contact me through the information on this document. Do you have any questions? Do you agree to participate in this interview?

Interview Procedures:

The purpose of these research questions is to explain what methods different intuitions employ when dealing with the social, political, and logistical landscape of NAGPRA. This will be a semi-structured interview that will last approximately 45 minutes.

Interview Instrument- Museum Professionals

1. What kind of NAGPRA policies has your institution implemented, and what have been the outcomes?
2. Does your institution have the funding/staff necessary to comply with NAGPRA?
3. What is/was the greatest obstacle when trying to comply with NAGPRA?
4. Is it less difficult to repatriate objects of cultural patrimony or sacred objects than it is funerary objects or human remains?
5. What unique approaches has your institution used in implementing NAGPRA? Or alternatively, are there any unique challenges you have encountered?
6. How Has NAGPRA influenced your relationships with the indigenous communities you work with?
7. How has NAGPRA affected the way your institution stores materials or remains, creates displays, and expresses information?
8. How have NAGPRA compliance processes changed over the past 30 years if at all?
9. Did the 2010 addendum to NAGPRA make things any easier or more efficient for your institution? Or perhaps more difficult? Did your claimants express that it made things any easier for them?
10. Do your state's laws help or hinder on how you conduct NAGPRA processes? Do you think the state as whole is effective in pursuing these processes?
11. If more tribes were Federally recognized, would that make NAGPRA compliances easier?

12. Are there any tribal laws or customs that help or hinder NAGPRA work?
13. In your experience, do institutions strive to comply with NAGPRA from legal pressures, fear of fines, or pressure from their indigenous communities? Do you think fines and legal repercussions should be more severe?
14. What aspect of NAGPRA would you change or add to if given the opportunity?
15. Is there anything else you would like to tell me about NAGPRA or repatriation work?

Interview Instrument- For Associated Recipients

1. In your experience, have museums been courteous, respectful, and prompt when issuing or receiving claims to sacred objects or ancestors?
2. At present, are making claims and facilitating repatriations easier or more difficult than when the act was first passed?
3. How has NAGPRA affected your relationships with museums (in this region or others) if at all?
4. How has NAGPRA affected your relationship with other tribes (in this region or others) if at all?
5. Are some museums easier to work with than others? (Small vs. Large, or Natural History vs. Anthropology, etc.)
6. Have Federal or state agencies been helpful when trying to make claims? Or has their presence been negative or non-existence?
7. What portion of NAGPRA would you change or add to if given the chance?
8. What can museums do differently to better serve their indigenous communities?
9. Is there anything else you would like to tell me about NAGPRA, repatriation work, museum relationships or their impacts on you and your community?

Confidentiality and Research Information:

I want to thank you for taking the time to have this conversation with me. Do you have any questions? If you have any questions, please contact me through the information on this document. Thank you very much for your time.

Appendix II: Consent Form

Current Approaches to NAGPRA Compliance Methodology

Consent Form

Brady Wolf // Phone: (314) 570-3700 // E-mail: brady.a.wolf@gmail.com // Thesis Advisor: Wilson O'Donnell, Museology Graduate Program, University of Washington // E-mail: wilsonod@uw.edu // Phone: (206) 543-4642

Consent to Be Interviewed:

I am asking you to participate in an interview/focus group that is part of my Master's Thesis work at the University of Washington. The purpose of this research is to explain how various institutions comply with NAGPRA and the impacts of their efforts. Your participation is voluntary, refusal to participate will involve no penalty or loss of benefits, and you may discontinue participation at any time. This interview will be recorded and transcribed for my use only, and the information will be deleted after the research is complete. I may use your title and name of your institution in my final paper. If I directly quote you, I will send the quote to you before publication. If you have any questions now or in the future, you may contact me through the information on this document. Do you have any questions? Do you agree to participate in this interview?

Signature: _____

Date: _____

On document left with interviewee:

Current Approaches to NAGPRA Compliance Methodology

University of Washington

Researcher's Name: Brady Wolf

Phone: (314) 570-3700

Email: brady.a.wolf@gmail.com

Thesis Chair: Wilson O'Donnell, Associate Director of the Museology Graduate Program

Phone: (206) 543-4642

Email: wilsonod@uw.edu

Appendix III: Coding Example

Original Passage from Transcript:

Researcher: So what's what is NAGPRA like in your neck of the woods? Has your institution applied any particular NAGPRA policies that are reflective of your mission statement or that are affected by your local governance?

Anne Amati: Yeah, we don't have much written down in terms of policies. I know there's some old policies. **But we very much practice a proactive approach, we were very much in the spirit of the law camp. You know, understanding and knowing and combined with the letter of the law, but then also engaging with the spirit of the law, which, to us, means really prioritizing tribal perspectives, sharing authority with descendant communities, and being proactive in our work. So not necessarily waiting for tribes to come to us to make requests, but being proactive. So, for example, with our CUI dispositions, those were all done proactively where we looked at the individuals that had no cultural affiliation, and we organize them by geographic location, and then consulted with tribes that had a legacy of occupation in those geographic areas. Over the course of a few years, we were able to work through all of the CUIS that we had.**

Notable Themes and Quote(s)

A Priori Themes: **Institutional Approach of Museum Professionals, Relationships.**

Other Themes: **Proactive Approach, Culturally Unidentifiable Remains.**

Quote(s): “engaging with the spirit of the law, which, to us, means really prioritizing tribal perspectives, sharing authority with descendant communities...”

Original Passage from Transcript:

Researcher: All right, so in your experience, have museums been courteous and prompt when issuing or receiving claims for the sacred objects or ancestors? Or has there been a change in tone over the 30 years that NAGPRA been in place? Has much of the burden been on you guys to reach out and try and establish Claims?

Robert Taylor: ...**There's a lot of times that we deal with...a university, it's our burden to prove that the collection belongs to us. That we were the first people to use the land. And it gets frustrating. Very frustrating...In other cases, they've gone very smooth. I think it's all about the relationship, all about the longevity of the people who are running the archaeological side or dealing with these type of things. Like Laura, here at the Burke. It's a relationship that we've worked on with her and she's worked on with us on how we can satisfy each other.**

Notable Themes and Quotes

A Priori Themes: **Relationships, Obstacles.**

Other Themes: **Variance in Tribal Experience.**

Quotes: “It's our burden to prove that the collection belongs to us. That we were the first people to use the land. And it gets frustrating. Very frustrating.”

Appendix IV: Consultation Document from the Confederated Tribes of the Umatilla Nation

The Confederated Tribes of the Umatilla Indian Reservation

Consultation: Government to Government (or otherwise)

THAT IS CONSULTATION.

CONSULTATION. Deliberation of persons on some subject. State District Court of Third Judicial Dist. in and for Powell County, 85 Mont. 215, 278 P. 122, 125. A conference between the counsel engaged in a case to discuss its questions or arrange the method of conducting it. In French Law. The opinion of counsel upon a point of law submitted to them. Black's Law Dictionary, DeLuxe Fourth Edition. West Publishing Co., (1951).

CONSULTATION \,kan(t)-se1-'ta-shen\n 1: COUNCIL, CONFERENCE; *specif*: a deliberation between physicians on a case or its treatment 2: the act of consulting or conferring. Webster's New Collegiate Dictionary, G & C MERRIAM COMPANY, (1979).

Consultation is the formal process of negotiation, cooperation and policy-level decision-making between the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and the United States federal government. As such, consultation is the bilateral decision-making process of two sovereigns: the Confederated Tribes of the Umatilla Indian Reservation and the United States Government.

It is critical to understand that consultation is not just a process or a means to an end. Rather, consultation is the process that ultimately leads up to and includes **a decision. *The most important component of consultation is the ultimate decision.*** Consultation then is the formal effort between two sovereigns of making policy level decisions.

It is equally important to understand what consultation is not. Consultation is not notifying a Tribal government that an action will occur, requesting written comments on that prospective action, and then proceeding with the action. In this scenario the decision is not affected. This is not consultation.

WHAT ARE THE OBJECTIVES OF CONSULTATION?

- a. Assure that CTUIR Board of Trustees understands the technical and legal issues necessary to make an informed policy decision.
- b. Improved policy-level decision making of both CTUIR and federal government.

- c. Bi-lateral decision making among sovereigns (co-management).
- d. Protection of CTUIR lifestyle, culture, religion, economy.
- e. Compliance with Tribal laws.
- f. Compliance with federal Indian law; federal statutes; federal policy.
- g. Develop and achieve mutual decisions.
- h. Improve the integrity and longevity of decisions.

HOW DOES CONSULTATION WORKS

Consultation works through the same procedures and steps that are common-place for most federal agencies: technical meetings and policy meetings. From a practical standpoint, consultation requires an ability to differentiate between technical and policy issues; this allows for proper technical level staff consultation and then policy-level consultation for those issues that remain unresolved or for those issues that are clearly only resolvable at the policy level. Consultation is the process of coming to common understanding of the technical and legal issues that affect or are affected by a decision. Consultation is using this common understanding to make a decision.

Consultation does not portend to mandate a certain decision; most Tribal governments are much more willing to address cooperatively a decision that on the surface is distasteful than if they had not been thoroughly consulted with prior to facing that distasteful decision.

Meaningful consultation requires that federal agencies and Tribes understand respective roles and have a basic understanding of the legal underpinnings of the government-to-government relationship, including the responsibility of the federal government under the Trust doctrine. In addition, federal agencies will benefit from some understanding of tribal culture, perspectives, world view, and aboriginal rights. Tribal governments must understand the policy decision-making authority of the federal agency. Tribal governments must understand the non-tribal politics of the federal agency decision that consultation will affect.

Tribal governments must also understand the federal and state laws within which the agency must operate. In these examples, it is critical to note that a Tribal government cannot understand the politics of the federal agency decision without personal communications. Similarly, the federal agency cannot understand the Tribe's world view unless agency staff meet with the Tribe to discuss that world view. The lesson here is that consultation has a foundation of communication. Without communication, consultation is thwarted and a mutual decision is impossible.

Thus in a hypothetical example, consultation works like this:

1. Federal agency contacts Tribal government to advise of an impending project proposal or to conduct an activity that may or may not impact a tribal resource or issue.¹
2. CTUIR responds back that this issue is important and that it would like to initiate consultation. CTUIR requests federal agency technical experts meet with CTUIR technical representatives (or CTUIR requests a policy level meeting).
3. Consultation has been initiated. Technical staffs meet. Technical and legal issues are discussed; the result is that CTUIR staff understand the proposal and federal agency staff understand at technical level why this proposed activity is of concern. This allows respective technical staff to brief respective policy entities and to provide informed opinions and recommendations.
4. CTUIR staff brief the proper Tribal policy entity. Consultation steps are defined, written down and then transmitted to federal agency.² Agreement is reached upon this consultation process.
5. Additional meetings are held, if necessary, leading up to the decision.
6. Federal agency and CTUIR formulate a decision. Ultimately and optimistically this decision is consistent with federal laws and tribal laws and policies. This means the decision is consistent with applicable natural and cultural resource laws and policies, with the Doctrine of Trust Responsibility and with federal Indian law. For the CTUIR specifically, it means the decision protects the resources to which the CTUIR has specific aboriginal and treaty reserved rights, protects the unique culture and world view and enables continued practice of the Tribal religion.

Most important is that leading up to the decision, the Tribal Government and the federal government have communicated. Mutual understanding and trust have been developed. Without mutual understanding and mutual trust a mutual decision is nearly unthinkable. History is replete with examples of such failures. In any event, the CTUIR perspective regarding the decision to formally consult or not to consult is that those entities required by law or policy to consult with Tribes is obviously to consult, or at the minimum, ask the CTUIR. The consequences of consulting when not required is preferred to the consequences of misjudging and not consulting when required.

¹It is crucial to note here that the federal agency contacted **the CTUIR** because of an impending *decision* that the federal agency will have to make in the near future. Remember, it **is that decision** that consultation is focused upon. **Also** note that, depending upon the issue, the CTUIR could have contacted the federal agency to initiate consultation.

²**These steps** are usually no more complicated **than** additional technical level meetings, later **policy level** meetings, potential mutual measures to obtain additional information, and finally a policy level **meeting to** make the ultimate decision.