REPATRIATION, NAGPRA, AND CULTURAL RESOURCE MANAGEMENT:
A CASE STUDY OF THE CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION

By

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A detailed case study of the repatriation efforts of the Confederated Tribes of the Umatilla Indian Reservation adds to the knowledge of tribal cultural protection programs in the Pacific Northwest. This research determined that the Confederated Tribes have used the Native American Graves Protection and Repatriation Act to their advantage by contacting, consulting, providing tribal information, and summarily repatriating human remains and grave goods. Furthermore, gaining a thorough knowledge of national and local archaeological laws and asserting their tribal sovereignty in cultural resource protection matters has enabled the Confederated Tribes to attain national recognition.
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Chapter One

Introduction

Research into the area of repatriation in the last thirty years has focused mainly on the removal of Native American remains and graves goods before and after the passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). This study focuses on The Confederated Tribes of the Umatilla Indian Reservation, and asks the question of whether an application of NAGPRA can yield significant results in the field of Cultural Resource Management. I will answer this question by detailing the successful strategies employed by the Confederated Tribes’ nationally recognized Cultural Resources Protection Program.

Prior to 1990, due to their diminished land base and placement upon reservations, Native Americans were at a distinct disadvantage in their efforts to counter the removal of Native American bones and grave goods by non-Indians. In Chapter Two, I outline this history, demonstrating the scale of the removal and the parties responsible. This history of removal of remains and goods for profit or display, ranged from Spanish explorers in sixteenth century Florida to the era of collecting for scientific study and museum display to twentieth century salvage operations due to highway construction in the American West.

In the second half of the twentieth century, Native Americans collectively voiced their opinion that Indian remains and grave goods should not be displayed and stored in museums. While archaeologists wrote about the need to study Indian bones for the scientific information contained within the skeletal remains, Native American
archaeologists, and some scientists sympathetic to the Native American repatriation cause, wrote articles in support of Native Americans’ sovereign rights to bury their dead. Chapter Three addresses these issues by laying out arguments for both sides in the struggle to control Native American remains. On the one side, Native Americans began to build their case for repatriation by asserting their inherent right to control the human remains of their ancestors. The remains and associated grave goods were the property of the tribes and were not meant to be displayed in museums. Scientists, on the other hand, detailed the need to store Indian remains for the future so that when new techniques became available, the bones would be there to study. Scientific advances that gleaned information from the skeletons were deemed more important than the return of the remains to the tribes.

By the 1980s, sympathy for Native Americans grew, and scientists, as well as the general public, began to address the issue of repatriation, resulting in the passage of NAGPRA in 1990. Since then, The Confederated Tribes have done a commendable job of navigating NAGPRA as evidenced by the success of their Cultural Resources Protection Program, established in 1987. In Chapter Four, I provide a brief history of the Confederated Tribes and then lay out the development of the program and the ensuing struggles and successes. The continued loss and destruction of cultural resources important to the Confederated Tribes motivated tribal members to establish a program from the Native American perspective. The program sought to reverse the damage done to their cultural resources during nearly 150 years of federal government management.

As an example of the Confederated Tribes’ Program goals and strategies, Chapter Five explores the Tribes’ involvement in the Kennewick Man controversy. However, with the
discovery of Kennewick Man, or the Ancient One, scientists were again pitted against Native Americans as the two groups battled for control of the remains. Scientists, believing the remains were a rare find and would provide valuable insights into the past, wanted to study the skeletal remains. Native Americans, including the Confederated Tribes of the Umatilla Indian Reservation, wanted the remains placed back in the ground immediately. The conflict focused on ownership of ancient remains and the weighing of Indian beliefs in regard to examining and testing of remains and the scientific benefit of studying the remains. The Confederated Tribes claim of cultural affiliation and thus ownership of Kennewick Man demonstrated the complexities of NAGPRA. From the money spent by the federal government (an estimated $1,000,000) to determine if the remains were Native American to the debate over how to determine cultural affiliation of such an ancient skeleton, the issues generated by Kennewick Man continue to reverberate through Indian Country as other tribes navigate NAGPRA.

From the Program’s beginning in the late 1980s, to its expanding activities encompassing both reservation and traditional lands, the Confederated Tribes’ Cultural Resources Protection Program has become one of the premier cultural resources management programs among Native American tribes. Chapter Six compares the repatriation efforts and successes of the Confederated Tribes with those of the Confederated Tribes of the Colville Indian Reservation and the Nez Perce Tribe. The chapter uses data mined from the National Park Service and their National NAGPRA databases as well as the Annual Reports of the Confederated Tribes in constructing comparative repatriation numbers. This chapter demonstrates how a successfully implemented Cultural Resources Protection Program can yield favorable results.
Repatriation and NAGPRA has proven successful for the Confederated Tribes, however, obstacles have been encountered and problems will continue to persist in the implementation of NAGPRA. The concluding chapter examines these issues while also providing examples of scientists and Native Americans working together.
Chapter Two
Collecting

One of the most emotional issues facing Native Americans today is the repatriation of human remains. Indian tribes seek the return of their dead from universities, federal agencies, and other institutions in order to properly bury their ancestors. Scientists, government employees, and collectors took these bones from graves or battlefields and sold, traded, or gave the bones to institutions or agencies such as the Smithsonian Institution or the American Museum of Natural History in New York. The remains were further mishandled, according to Native American beliefs, as researchers conducted tests or placed the bones on public view in museum display cases. Other bones were placed in cardboard boxes and kept in storage, an act deemed disrespectful by a majority of Native Americans.\footnote{Armand Minthorn, “Human Remains Should Be Buried,” Confederated Tribes of the Umatilla Indian Reservation, http://www.umatilla.nsn.us/kman1.html (accessed March 27, 2008).} Furthermore, the grave goods that accompanied the dead were, in many instances, separated from the bodies and sold by collectors or placed in institutions.

American institutions, as well as European museums and collectors, acquired thousands of these remains and cultural items. Most tribes now believe their dead have suffered enough through the scientific research conducted on their skeletons and the many years their ancestors have been removed from their traditional homelands.

Until the end of the twentieth century, Native Americans had little recourse in recovering their absent dead and funerary objects. The passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) changed the situation in the tribes’ favor.\footnote{\textit{Native American Graves Protection and Repatriation Act}, U.S. Code, vol. 25, secs. 3001-13 (2000).} NAGPRA established guidelines for the summary, inventory, and eventual
return of Native American remains and cultural items held in American institutions receiving federal funds. The law does not apply to individual collectors, private institutions, or museums outside the United States. The law also protects Native American graves in the event of an inadvertent discovery by granting Native Americans ownership of the contents found in the grave.

Despite its ability to redress past wrongs, the 1990 federal law is not without difficulties for tribes, or for the federal agencies and institutions required to follow its regulations. Lack of funding, limited personnel to process and respond to repatriation notices, and conflicting interpretations of the law have caused delays in the repatriation process. For the Native American tribes, time, money, and other resources must be devoted to the repatriation process. Many of these resources are in short supply and as a result some tribes struggle to balance their immediate needs and repatriating their tribal ancestors.

The Confederated Tribes of the Umatilla Indian Reservation in northeastern Oregon have a relatively long history of protection and repatriation of their cultural resources. The Confederated Tribes established a cultural resource management program in 1987, years before other tribes in the region, and have built on their relationships with the various groups surrounding their reservations and traditional lands. With the passage of NAGPRA, the tribes acquired a new tool to use in their efforts to care for and repatriate their dead.

Since the founding of their program in 1987, the Confederated Tribes have taken a proactive stance in the management of their cultural resources. Armed with knowledge of federal, state, and local laws, the Confederated Tribes have worked with agencies in
their region to better manage their resources. Their program continues to grow while offering help and suggestions to other tribes in their quest for cultural resource management.

I will argue that the program has yielded considerable results in a relatively short period of time. The Confederated Tribes have repatriated human remains and funerary objects from both museums and individual collectors. The Confederated Tribes have increased awareness concerning the inadvertent discovery of human remains in their surrounding community and the need to follow laws designed to protect Native Americans. Programs have been developed to investigate the harm done by the destruction and looting of Indian cultural sites. The Confederated Tribes have learned the intricacies of bidding for government contracts and have used this money to expand and sustain their cultural resource protection program. The Confederated Tribes can now navigate the repatriation process more efficiently than many other tribes and protect their resources for the future.

Europeans have a long history of disturbing areas where Native Americans placed their dead. Beginning at first contact, this disturbance, in most regions of North America, occurred as explorers, grave robbers, amateur archaeologists, and scientists successively encroached on Indian lands. In the sixteenth century, Spanish explorer Hernando de Soto and his men entered Indian temples in present-day Florida and looted its contents. In one temple, fifty pounds of pearls were removed and sent to Havana to show the quality of gems found within the temple walls. ³ Shortly after the Pilgrims landed at Plymouth Rock in 1620, some of their members on an exploring party dug up an Indian grave. Here,

Pilgrims discovered two bundles that contained the remains of a man and a child. Buried with the remains were objects such as bowls and bracelets. The Pilgrims covered up the bones, but removed some of the items from the grave.\textsuperscript{4}

In 1784, Thomas Jefferson cut into an Indian mound in one of the first archaeological digs in North America.\textsuperscript{5} He described the mound and excavation in his \textit{Notes on the State of Virginia}.\textsuperscript{6} The mound was about forty feet in diameter and seven and a half feet in height. As he dug into the mound, he found bones lying in various positions. “These were lying in the utmost confusion, some vertical, some oblique, some horizontal, and directed to every point on the compass, entangled, and held together in clusters by the earth.” The remains were jumbled together as if dumped into the mound and covered with dirt. Jefferson discovered skulls, jawbones, teeth, and leg and arm bones. As he removed the skulls, they were so fragile that they disintegrated into pieces. Jefferson estimated there were close to 1,000 skeletons contained in the mound. He concluded that the oldest remains were placed on the ground and covered with stones and earth. The next batch of skeletons were placed on top of this and similarly covered with earth. As new layers were added, the mound became higher.\textsuperscript{7} His notes do not mention any items taken from the site, so he may have disturbed the grave only to satisfy his own curiosity. During the next century, plenty of scientists and non-scientists would engage in the same activity.


\textsuperscript{5}\textit{Archaeology From the Earth} (Oxford: Claredon Press, 1954; reprint, London: Oxford University Press, 1955), 6 (page citation is to the reprint edition).


\textsuperscript{7}Ibid., 98-100.
An October, 1805 entry in the journals of Lewis and Clark described their desecration of an Indian vault. The party discovered a structure on an island in the Columbia River near present-day Roosevelt, Washington and entered the roughly sixty foot by twelve foot dwelling to examine the human remains, baskets, fishing nets, and other items associated with Native Americans in the region. During the Stephen H. Long Expedition of 1820, two human skulls were found near their camp along the South Platte River near the present-day Nebraska-Colorado border. “...our interpreter informs us, that two years ago, a Pawnee party was attacked at or near this place, by a party of Chayennes, that but one of the Pawnees escaped death – these skulls are supposed to be of the destroyed party – Dr. Say takes one of them to Philadelphia.”

In the early nineteenth century, one of the first American archaeologists, Caleb Atwater, was commissioned by the founder and President of the American Antiquarian Society, Isaiah Thomas, to examine Native American mounds in the Ohio area. The Ohio Valley Mounds were of fascination to 19th century American intellectuals due to their impressive size and geometric construction. The early investigators of these mounds were searching for answers into the peoples that constructed the mounds and earthworks, believing this was an ancient race. Elsewhere in Ohio, Ephraim George Squier and Edwin Hamilton Davis began examining the mounds in the Scioto Valley of southern Ohio in 1845. Terry Barnhart, in his book, Ephraim George Squier and the

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Development of American Anthropology, quotes a letter dated June 12, 1845 written by Squier to his friend Joel Munsell in New York describing the Ohio mounds. Squier was impressed by the size of the mounds and puzzled by the lack of interest in the preservation and examination of the mounds by the local residents. ‘The people don’t seem to care a damn for them, and what with the plough, and grading turnpikes, and making bricks, they are fast passing away!’

While early 19th century archaeologists removed human remains and grave goods, other groups, such as farmers and road workers, reshaped the mounds into fields and roadways. For example, with the completion of the Erie Canal in 1825, farmers moved into the Turner Group of earthworks in Hamilton County, Ohio to grow crops. In roughly twenty-five years the mounds and embankments were lower as farmers plowed the land and planted new crops each year. In 1831, the Flint Ridge Mound in Licking County Ohio was stripped of its stones for use in the construction of a reservoir. The sandstone mound originally stood fifty-five feet with a ring of forty to sixty pound stones atop the embankment while the interior stones weighed twenty to forty pounds each. An estimated ten to fifteen thousand wagonloads of stones were used in the construction of the dam at the reservoir.

By 1896, piles of stones, ten to fifteen feet high, were scattered around the former mound that were later used by homeowners to build their cellar walls. Farmers acquired the stones that were considered too small for use in the project. Local farmers not only

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14Mann, 90-91.
used the stones from the mound but also dug up shells, copper rings, and copper breastplates that were probably sold to tourists. By the 1880s, the mound had been completely torn apart. Stones were also removed from a Shawnee cemetery situated in the middle of an earthwork on the Little Miami River in Warren County, Ohio near the turn of the twentieth century. The stones were hauled away by the wagonload and sold for the construction of buildings. Near Chillicothe, Ohio, a twenty-six foot mound was leveled for farmland near the turn of the twentieth century. The mound was destroyed when the owner, Joseph Froehlick decided to sell the soil to the B&O Railroad for use in their rail embankments and had archaeologists dig at the site as well.15

Similar destruction occurred at the Cahokia Mounds located in Collinsville, Illinois outside of St. Louis, Missouri. Cahokia was a group of mounds and earthworks built by Native American societies as tombs or elevated platforms for temples and housing. These mounds were an extension of the thousands of mounds that stretched from the Great Lakes to the Gulf of Mexico. The structures were an important reminder that populous Native American cities once resided in the Central and Southeastern United States.16 According to a paper published by the Peabody Museum in 1904, farming had taken its toll on the mounds in this area.

At the present time few of the mounds remain in their original condition. Many have been cultivated and plowed for more than fifty years, for which reason it is doubtful whether at the present time they average more than one-third their original height. It is even probable there were smaller mounds, all traces of which have disappeared.17

15Ibid., 92-93.
In 1930, a mound within the Cahokia group was leveled by two brothers who used the
dirt for fill. The Powell Mound, named after the Powell brothers, was situated on their
fifty-acre farm and rose to a height of forty-five feet. The Powell brothers had offered
$3,000 to any museum or university that would excavate the mound and remove the dirt
to a low-lying area about 200 yards away. The brothers did not receive any offers except
from the State of Illinois which offered to buy the mound. The brothers countered with
an offer to sell their entire farm but the state only wanted the mound. In December 1930,
the Powell brothers decided to hire a steam-shovel operator and began leveling the
mound themselves. The following month, the mound was reduced to seven feet.\footnote{Young and Fowler, 40-42.}

Scientists were also responsible for the removal of human remains during the
nineteenth century. Indian skeletal remains were sought by the Army Medical Museum
of Washington D.C. during the latter part of the nineteenth century in an effort to conduct
cranial measurements of the major Indian tribes. The Army Medical Museum, founded
in 1862, needed a large inventory of crania to establish average measurements in its study
of the racial characteristics of Native Americans. Army medical officers had already
contributed to the Morton collection (a collection amassed by Philadelphia physician
Samuel G. Morton who used skulls as a teaching device in his classes at the Philadelphia
Hospital and Pennsylvania College in 1823) and it was hoped the U.S. Army Medical
In September, 1868, the U.S. Surgeon General’s office sent out a circular to U.S. Army medical officers explaining the collection and asking for their help in building the collection. According to the Memorandum for the information of medical officers:

The officers of the Medical Staff are informed that a craniological collection was commenced last year at the Army Medical Museum, and that it already includes 143 specimens of skulls. The chief purpose had in view in forming this collection is to aid in the progress of anthropological science by obtaining measurements of a large number of skulls of the aboriginal races of North America. Medical officers stationed in the Indian country or in the vicinity of ancient Indian mounds or cemeteries, in the Mississippi valley or the Atlantic region, have peculiar facilities for promoting this undertaking. They have already enriched the Mortonian and other magnificent craniological cabinets by their contributions, and it is hoped they will evince even greater zeal in collecting for their own Museum.

It is chiefly desired to procure sufficiently large series of adult crania of the principal Indian tribes to furnish accurate average measurements. Medical officers will enhance the value of their contributions by transmitting with the specimens the fullest attainable memoranda specifying the locality whence the skulls were derived, the presumed age and sex, and in the case of “Mound” skulls, or of those from cemeteries, describing the mode of sepulture, and any traces of weapons, implements, utensils found with the specimens, or any other circumstance that may throw light on their ethnic character.

The military posts in the West were advantageous for the collecting of Indian remains for two reasons. First, the posts were near the fighting between the U.S. Army and western tribes, and the battles often left many Native Americans dead. Secondly, medical personnel were familiar with the tribes with which they were fighting and thus were able to provide good biographical information on the skulls shipped to the museum. For example, a letter written by Surgeon B.E. Fryer from Fort Harker, Kansas and contained in Robert Beider’s report, *A Brief Historical Survey of the Expropriation of American Indian Remains*, mentioned the officer’s attempts at collecting the skulls of dead Pawnee near the fort.

I had already obtained for the Museum the skull of one of the Pawnees, killed in the fight you speak of, and would have had all had it now been that immediately after the

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20Lamb, “Memorandum for the Information of Medical Officers,” quoted in Lamb, 625-626.
engagement, the Indians lurked about their dead and watched them so closely, that the
guide I sent out was unable to secure but one- Until within a day or two the snow has
prevented a further attempt- Yesterday I sent a scout who knows the spot & think[s] I
can get at least two more of the Crania- that number being reported to me as left
unburied by the Pawnee, & it may be that if the remaining five (eight not seven were
killed) are buried or have been hid near where the fight took place- about twenty miles
from here- I can, after a time, obtain all- I shall certainly use every effort-\textsuperscript{21}

The following year, in an attempt to add more osteological material to the Army
Medical Museum, Dr. George A. Otis arranged an exchange with Secretary Joseph Henry
of the Smithsonian Institution. The Army Medical Museum would send ethnological
materials to the Smithsonian Institution in exchange for Indian crania and skeletons.

“This arrangement was made January 16, 1869, the first installment of specimens, 43
skulls, was received March 8 of the same year, and from that time an abundance of Indian
crania was received at the Army Medical Museum by this exchange.”\textsuperscript{22}

By 1880, the museum had collected over 1,000 crania from North, South, and Central
America. Collecting ceased, however, with the founding of the Army Medical School in
1893 and the Spanish American War in 1898, as the medical officers focused their
attention away from the Army Medical Museum. In April 1898, the museum began
transferring the crania and other material to the Smithsonian Institution, beginning with
2,206 crania and ending in January 1904 with the transfer of about 600.\textsuperscript{23}

Native Americans attempted to guard their dead during this period but several
circumstances prevented them from this important task. For example, epidemics caused
such hardships for Indian villages that there were at times no tribal members to stand
watch or bury the dead. Burial sites were often unguarded when members of tribes

\textsuperscript{21}Bieder, 38; “Letter from Surgeon B.E. Fryer to Army Medical Museum, Fort Harker, Kansas, 1869,” quoted in Bieder, 38.
\textsuperscript{22}Lamb, 626.
\textsuperscript{23}Ibid., 628,631.
traveled to hunting or fishing sites to secure food. Many tribes were removed from their traditional homelands by the U.S. government and placed on reservations where they were quite distant from their dead.\textsuperscript{24}

The removal of the Pawnee from their earth lodge villages in Nebraska to Oklahoma in the mid-1870s is an apt example.\textsuperscript{25} The traditional homeland of the Pawnee was the area near the Platte River in Nebraska. The Pawnee erected permanent villages and farmed the land. Although permanent villages characterized the Pawnee, hunting grounds expanded their traditional use areas.\textsuperscript{26}

Conflicts with settlers occurred as homesteads and towns were established after Congress opened the area for settlement in 1854. After signing a treaty with the U.S. in 1857, a reservation was established along the Loup River in Nebraska. When Nebraska became a state in 1868, the Pawnee reservation was almost completely surrounded by settlers.\textsuperscript{27} The Pawnee were removed to their new reservation in Oklahoma shortly thereafter.

The Pawnee endured hardships as their dead were left behind. The Pawnee buried their dead along ridges or hilltops near their villages. The graves contained items useful for the dead after their departure from this life. When the Pawnee left Nebraska for Oklahoma, the graves of their ancestors were meant to remain intact. These were not abandoned cemeteries to be ransacked by looters or archaeologists.\textsuperscript{28} However, soon

\textsuperscript{24}Bieder, 44-45.
\textsuperscript{26}James C. Olson, \textit{History of Nebraska}, 2\textsuperscript{nd} ed., (Lincoln: University of Nebraska Press, 1955); reprint, (Lincoln: University of Nebraska Press, 1966), 21 (page citation is to the reprint edition).
\textsuperscript{28}Svingen, 132.
after the Pawnee moved to Oklahoma, looters removed bones and funerary items from the graves and cemeteries of their abandoned villages. In the twentieth century, amateur archaeologists, followed by the Works Progress Administration and the Nebraska State Historical Society, searched for remains and grave goods on former Pawnee land.²⁹

Anthropologists also bore responsibility for the depletion of Native American remains and cultural items in the nineteenth century. Seeking to build their own collections or as employees of museums such as the Peabody Museum at Yale, The American Museum of Natural History in New York, and the National Museum of Natural History in Washington D.C., anthropologists traveled to Native American lands to acquire anthropological materials. From about 1880 to 1920, anthropologists and private collectors employed by museums, collected Indian material to preserve and study Native American culture. The purpose of the collecting centered on the belief that Indian culture and Native Americans would vanish in the not so distant future. The collectors wanted to maintain a record of North American Indian culture by collecting artifacts for future generations before that information was lost forever. Museums typically sponsored expeditions to a specific tribe or region to gather objects that best represented the daily life of the North American Indian for display in museum exhibits.³⁰

One area of heavy collecting during the latter part of the nineteenth century time was in the Canadian province of British Columbia. Museums, both in North America and Europe, were clamoring for anthropological material to display and funded expeditions to the Northwest Coast to acquire these items. James G. Swan collected the first group of well-documented items in 1875 for the U.S. Centennial Exposition of 1876. The

²⁹Ibid., 121.
collection was later acquired by the Smithsonian. It included a 30-foot canoe and a totem pole collected from the Vancouver Island home of the Kwakiutl Indians. Six years later, The Museum für Völkerkunde in Berlin sent Johan Adrian Jacobsen to British Columbia with instructions to collect Northwest Coast objects. In 1885, Jacobsen met his brother Johan Fillip at Fort Rupert, and the two collected Kwakiutl items while also arranging for nine Bella Coola Indians to return with them to Germany to be put on tour. While in Germany, the nine Bella Coola were studied by scholars and performed for the Geographic Society and the Society of Anthropology, Ethnology, and Prehistory.

The nine Bella Coola completed their tour and headed home, while the objects accompanying their performances, such as masks, blankets, and crest poles, were distributed to various locations. The collection was eventually sold to museums in Germany, Norway, and purchased by a number of private citizens, illustrating the future difficulty in tracking down these items. The Jacobsen collection was one of the last major Northwest Coast collections destined for Europe, as European collectors turned to other areas of the world and American institutions moved into the Northwest to build their own collections.

In 1886, German anthropologist Franz Boas, a major collector of Indian skulls and ethnological materials for U.S. and European museums, made his way to the Pacific Northwest. Boas, was employed at the Royal Ethnographic Museum in Berlin when he

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34Haberland, 368-369.
35Cole, 73.
first encountered Pacific Northwest Native American objects in 1885. The following year, Boas left Berlin on a three month leave to conduct field research in British Columbia and to collect artifacts for the museum. During this leave, he also conducted linguistic studies, charted the ethnography of Vancouver Island, and collected skulls. Boas collected roughly eighty items on this first trip and sold them to the Ethnological Museum of Berlin.

This was the first of many trips to the Pacific Northwest in which Boas acquired artifacts as well as Indian skulls for museums such as the American Museum of Natural History in New York and the 1893 Chicago World’s Fair, later to become the Field Museum. In 1888, Boas traveled to the settlement of Cowichan on Vancouver Island, British Columbia in search of an old cemetery. He was shown the location of the burial ground and acquired two skulls for his collection. This method of obtaining skulls and skeletons was repeated as Boas made contacts with the locals who knew the best places to locate Indian remains. In some instances Boas was not the first person to rummage through the graves. He found several skeletons lacking skulls.

During that same trip, Boas encountered the Sutton Brothers from Cowichan who had a collection of about seventy-five skulls. Boas still needed assurance from the U.S. National Museum in Washington, D.C. of its interest in purchasing skulls. When Boas received a favorable reply from Washington he purchased the skulls from the Suttons. The brothers thereafter gathered skeletal remains from close to 119 individuals and Boas

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38Rohner, 55,57.
40Ibid., 88-89.
paid the brothers in installments for their collection. Most of the skeletal remains came from Victoria, Discovery Island, and the Cowichan Indians in the vicinity of the Koksilah River. Boas had paid $1,600 for the roughly two hundred crania in his collection of which one hundred were complete skeletons. Boas offered his collection to several museums including the American Museum of Natural History in New York where the collection was stored temporarily when he was unable to obtain a buyer.  

In 1891, Boas was offered the position of assistant to Frederic Ward Putnam, director of the Peabody Museum at Harvard, who was heading the Department of Ethnology for the 1893 Chicago World’s Fair. One of his duties was to assemble an exhibit of Northwest Coast tribes. Boas made the Fort Rupert Kwakiutl of British Columbia the centerpiece of his exhibit and included exhibits of nearby tribes such as the Haida, Tsimshian, and Nootka. Boas contacted individuals from the Northwest Coast who would help with the collections for the exhibit. By the fall of 1892, material began arriving in Chicago by the trainload.

The completion of the railroads during the latter half of the nineteenth century facilitated the removal of Indian remains and artifacts by offering an alternative to the wagon in which to ship large collections great distances. The railroads also allowed settlers, scientists, and tourists to travel to sites that were once remote. Ceremonial items, grave posts, memorial columns, stone implements, even a complete Haida house, were shipped to Chicago.

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41 Cole, 120-121.
42 Ibid., 122-123.
44 Cole, 123.
Boas relied heavily on his assistant George Hunt for this endeavor. George Hunt was born in 1854 in Fort Rupert, British Columbia to an English father and Tlingit mother. His father was employed by the Hudson’s Bay Company in Fort Rupert after leaving England in 1850. Hunt sent a complete house in addition to other items related to the Kwakiutl secret societies. Although his collection arrived late due to storms at Fort Rupert and Alert Bay, he was the largest contributor to the fair.

Hunt also brought sixteen Northwest Coast Indians to Chicago in April 1893. The Indians were paid $20 a month beginning April 1st for seven and a half months plus expenses from Alert Bay. Hunt was paid $720 for eight months work plus expenses. Hunt, along with seventeen Kwakiutl, lived in a village constructed on the grounds of the Chicago World’s Fair of 1893. They were put on display to demonstrate crafts and their ceremonies, as Boas collected notes and recorded their songs using a gramophone.

After the close of the World’s Fair in October 1893, Putnam persuaded the leaders of the fair and the city to establish a permanent museum for the exhibits. The Palace of Fine Arts became the home of the new Columbian Field Museum. A number of collections assembled for the Fair were moved to this building, including the skeletal collection of Boas. Boas had sold a portion of his collection to a Berlin Museum before the Columbian Field Museum purchased the remaining crania in 1894. The Field Museum balked at first, but eventually paid Boas his asking price of $2,800. The new Field Museum also accessioned Hunt’s collection of 360 items.

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46Cole, 124.
47Ibid., 126, 335.
48Jacknis, Chiefly Feasts, 183.
49Cole, 121,133-134, 169.
50Jacknis, Chiefly Feasts, 183
Boas, however, did not remain at the new museum to head the anthropological department as he had expected. Putnam had recommended Boas for the top spot, believing Boas the best candidate for the position due to his knowledge of the material housed at the Fine Arts Building. However, his recommendation did not hold much weight. Boas was passed over for W.H. Holmes of the Bureau of Ethnology.\(^{51}\)

Although scientists were responsible for the expropriation of a large number of Indian remains, another group removed Indian remains and grave goods for non-scientific purposes. Looters and pothunters are groups who rifle through Indian graves searching for valuable objects to add to their personal collections or to sell to other collectors. They often seek highly valued funerary items. For example, in the 1930s, pothunters disturbed Indian burials in the Mimbres Valley of New Mexico searching for highly prized Mimbres pottery burial bowls. Native American skeletal remains were thrown aside for the ceramic pottery.\(^{52}\)

Looters continue to cause destruction to archaeological sites as they search for items that can be sold to other collectors. Looters sometimes use bulldozers to strip off the earth and locate the burial pits. The skeletal material is discarded or crushed as the looters attempt to locate funerary items. Archaeologists complain of the destruction to sites because information is lost due to the nature of the excavation. Because the digging disturbs the soil and contents of the site, archaeologists are unable to study the site in its original state.\(^{53}\)

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\(^{51}\)Cole, 134.


Looting of Indian graves usually occurs on public or tribal lands, although private property may also be the target of looters. Because the owner of the property is not aware of the digging, the looters do not need to split the profits with the owner. Working at night, the looters wear camouflage clothing, use radio scanners, and hide their vehicles to avoid arrest.\textsuperscript{54} Looting is not only a crime but it causes distress for many Native Americans today. There are several reasons for the looting of Indian sites, but the ability to profit from Indian sacred objects is a motivating factor.\textsuperscript{55} Items may be sold to art galleries or wealthy collectors who pay cash to avoid taxes.\textsuperscript{56}

In 1988, Bureau of Land Management Special Agent, Lynell Schalk, described the looting problem in the Pacific Northwest in an article for the \textit{Cultural Resource Management Bulletin}.\textsuperscript{57}

Archeologists and law enforcement officers report that thievery and vandalism continue relatively unabated in most regions of the country. No noticeable decline in the extent of the commercial market in American Indian artifacts has occurred. Nor have we seen a decline in the destruction caused by a hard-core group of determined hobbyists, individuals who have spent a lifetime collecting artifacts from the Federal lands. Public education has had a minimal influence on both groups. Numerous trial acquittals and lenient sentences have bolstered the collectors.\textsuperscript{58}

Another issue was the lack of personnel in the Bureau of Land Management and the U.S. Forest Service to manage the large area of public lands in the Pacific Northwest.

According to Schalk, sites had yet to be surveyed and recorded on large swaths of public lands by archaeologists. Objects have the potential to be removed from these public

\textsuperscript{54}Hutt, Jones, and McAllister, 16-17.
\textsuperscript{56}Malloff, 201
\textsuperscript{58}Ibid., 32.
lands before their existence is even known. Added to this is the fact that Northwest Coast artifacts were sought out by dealers and sold in the domestic and international markets due to their demand by collectors.\(^{59}\)

Salvage archaeology has been another means by which museums obtained Indian remains and funerary objects. With the help of the federal government, museums were able to add to their collection of ancient Native American artifacts as infrastructure projects such as dams, highways, and pipelines were constructed. The items were then placed in museums or “salvaged” before the sites were paved over by highways, inundated by the backwaters of a new dam, or destroyed in the construction process.

During the twentieth century, a growing U.S. population and the need for an improved infrastructure has accelerated the removal of Indian remains and grave goods. For example, the construction of hydroelectric dams and the resulting reservoirs in the West meant salvaging the area for archeological remains before construction was complete. The Smithsonian Institute conducted a river basin survey in the McNary Reservoir in 1948 to recover “archeological and paleontological remains” that would be lost to flooding. Two sites were excavated at McNary Reservoir near Umatilla, Oregon, and the material excavated was taken to the River Basin Survey’s laboratory on the University of Oregon’s campus at Eugene. The salvage program was a joint operation between the Smithsonian Institute and both federal agencies and state and local agencies. The River Basin Surveys were designated a unit of the Bureau of American Ethnology with funding from the Department of the Interior.\(^60\) Twelve years later, the U.S. Reservoir Salvage Act of 1960 allowed for the removal of archeological remains due to the destruction of sites

\(^{59}\)Ibid.

during the construction of dams by a federal agency or group licensed by the federal government.

It is the purpose of sections 469 to 469c-1 of this title to further the policy set forth in sections 461 to 467 of this title, by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen’s communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program.  

Salvage operations were also conducted in response to the construction of freeways and highways across the U.S. The Department of Transportation Act of 1966 set guidelines for the Department of Transportation to follow in the construction of highways or other transportation-related projects. Under the Act, the department is required to assess the impact construction will have on historic sites. For example, highway salvage archaeology occurred as roadways were built in the Southwest to meet demand. In 1959, the Arizona State Museum received a request by the Arizona Highway Department to conduct salvage operations along Interstate 40 near the Arizona-New Mexico state line. The salvage operation had thirty days to study and remove archaeological remains before the sites were destroyed. Ten sites were excavated with the help of Navajo laborers and resulted in the discovery of eighteen burials.

Since the passage of NAGPRA, the Hopi tribe has been consulted on several large construction projects that have resulted in the disturbance of more than 1,000 burials. Coal mining and pipeline construction are two such projects. For example, the El Paso

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Gas Pipeline, a pipeline that extends from Bloomfield, New Mexico to Needles, California, uncovered about 90 individuals’ sets of remains during construction in the early 1990s.⁶⁴

In summary, due to the actions of explorers, scientists, looters, and other non-Indians, human remains and grave goods were dispersed to all corners of the U. S., and outside the U.S as well, for study or display. Cultural objects important to Native American tradition were separated from the tribes, while tribal ancestors’ remains were removed from their graves and stored miles away from their traditional homelands. The removal of human remains and other cultural resources created not only hardship for the grieving families but the breakdown of cultural traditions and ceremonies central to tribal life. Non-Indian individuals and institutions built collections of Indian remains and artifacts for many years before Native Americas were able to put forth a concerted effort to restore them to their rightful owners. Realizing the extent to which, federal agencies, individuals, museums, and other institutions collected these items, Native Americans began in the twentieth century to organize and protest the removal and display of their tribal ancestors, grave goods, and objects of cultural importance.

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Chapter Three

Indians and Scientists

After more than 150 years of the collection and display of Native American remains and grave goods held in U.S. museums, universities, federal agencies and other institutions, in 1990, Congress finally passed the Native American Graves Protection and Repatriation Act. The passage of the law was designed to give Native Americans more control over the remains of their ancestors both now and in the future. Before the law’s passage, Native Americans lacked the same rights regarding their dead as those of non-Indians. For the better part of two decades, from the early 1970s until NAGPRA’s passage in 1990, groups such as the American Indian Movement, the National Congress of American Indians, and the Native American Rights Fund pushed for a law to secure protections and equal rights for Indian remains. Since 1990, NAGPRA has been integrated into Tribal cultural resource protection programs as another tool to assert tribal sovereignty by engaging in government-to-government consultations.

During the latter part of the nineteenth century, scientists such as Franz Boas believed that the American Indian would soon vanish. It was this reasoning that led many museums and scientists, including Boas’ mentor, Adolf Bastian of the Museum fur Volkerkunde in Berlin, to assemble representative collections of Indian life including collections of Indian skeletal remains and grave goods.\(^{65}\) However, Native Americans did not vanish, and the push for repatriation and reburial of their tribal ancestors had become an integral part of the Indian rights movement by the 1980s. Native Americans wanted the same rights as other Americans to oversee their dead, in part because making

\(^{65}\)Jacknis, *Storage Box of Tradition*, 20.

Indians have long objected to the desecration of their burial sites. In the century prior to the passage of the NAGPRA, Indian tribes made numerous attempts to return the remains of their dead but met with limited success.\footnote{67}{Congress, House, Representative Ben Nighthorse Campbell speaking for the Native American Graves Protection and Repatriation Act to the House of Representatives, H.R. 5237, 101\textsuperscript{st} Cong., 2d sess., \textit{Congressional Record} 136, pt. 22 (22 October 1990): 31937.} The first documented legal action taken by Native Americans against the desecration of their burials occurred in 1889 by the Cowichan of British Columbia. A complaint was filed with the provincial police and a search warrant issued to search James Sutton’s property. Sutton had sold Franz Boas a collection of about 75 skulls earlier in the year and was collecting more remains to sell to Boas in the future. His property was searched but nothing was found.\footnote{68}{Cole, 120.}

Three years later, U.S. Indian Census Agent General Henry B. Carrington bought four wampum belts from Onondaga Chief Thomas Webster for seventy-five dollars. The belts were then sold to Dr. Oliver Crane who sold the belts in 1893 to the Mayor of Albany, John B. Thatcher, for $500. The Onondaga filed suit against Thatcher in 1899 but lost their case. A lawsuit was brought against Thatcher in 1907 but the judge dismissed the case citing the fact that Webster was not holding the belts in trust for the Onondaga Nation and was within his rights to sell the belts. The belts were later donated to the New
York State Museum in Albany in 1927. On October 21, 1989, the belts were returned to the Onondaga Nation.69

On September 30, 1897, Lieutenant Robert E. Peary arrived in New York Harbor on the ship *Hope*, returning from an expedition to Greenland. Aboard the ship were six Inuit, four adults and two children, whom Peary had brought back to New York.70 The six Inuit were from the Smith Sound region, the area between northwestern Greenland and Ellesmere Island, and were provided housing at the Museum of Natural History while scientists such as anthropologist Alfred Kroeber studied them.71 Unfortunately, four of the Inuit died of tuberculosis and one of the children, Minik, contracted the disease but recovered. The sixth Inuit was sent back to Smith Sound.72

Upon their deaths, the four Inuit, Atangana, Nuktaq, Aviaq, and Qisuk, had their brains removed for study, their bodies used for training purposes at the College of Physicians and Surgeons in New York, and their skeletal remains sent to the Museum of Natural History. In an effort to keep the truth from Minik, the son of Qisik, the scientists at the Museum of Natural History arranged a fake funeral so the boy could visit his father’s grave and perform a ceremony consistent with his traditions in February 1898. Minik eventually discovered that his father had never been buried and that the Eskimo skeleton on display in the museum was his father. Minik attempted to secure the release of his father’s remains from the museum but was unsuccessful. Finally, a century later, the American Museum of Natural History sent representatives to Greenland explaining

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70 Back from the Far North…,” *NY Times*, October 1, 1897, 12.


that the museum would return the remains upon request. On July 28, 1993, the remains of the four Inuit were flown to Greenland on an American military airplane and then transferred to a Greenland helicopter and buried four days later at the community of Qaanaaq.73

Repatriation attempts between the turn of the twentieth century and the 1970s were meager as the American Indian struggled to survive. Statistics compiled by Lewis Meriam and others for the 1928 *The Problem of Indian Administration*74 detailed the living conditions of the American Indian during the 1920s. Native Americans suffered from bad health and lived in poverty. Almost 42% of the nearly 200,000 Native Americans studied for the report had an annual income of less than $1,000 per year. These living conditions did not translate into efforts of repatriation among tribes struggling to find adequate nourishment and jobs, and in improving their economic situations. However, protection and repatriation of Native American remains probably did occur on a limited basis as individual families acted on their own to care for their ancestors’ graves. For example, it stands to reason that families removed and reburied remains as dam construction in the Pacific Northwest during the 1930s through the 1970s inundated burial sites. The historic record lacks evidence of these repatriations possibly due to the fact that some families were still speaking their original tribal languages or did not wish to reveal the reburial locations.

By the 1960s, a new generation of college-educated Indians was beginning to impact tribal governments and in urban centers Indian students formed organizations and worked

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with city governments. In 1961, Sol Tax, an anthropologist at the University of Chicago, organized a conference designed to give Native Americans a chance to voice their opinions concerning their rights. The attendees of the American Indian Chicago Conference stated their preference to retain their Indian values and culture. Part of these values was the protection and respect for their deceased ancestors and the acknowledgement by the non-Indian world that Indian burial practices deserved as much protection as non-Indian graves.

Indian recognition of these rights came to public view during the 1970s as activist groups such as the American Indian Movement (AIM) began to protest and demand equal protection for Indian burials. In 1970, the American Indian Student Association of the University of Minnesota contacted the National Science Foundation and proposed digging up a pioneer cemetery in the interest of science. The proposal was meant to demonstrate to the non-Indian population the feeling and emotions experienced by Native Americans when the graves of their ancestors were disturbed in the interest of scientific research.

Soon thereafter, non-Indian students began an archaeological dig of an Indian village dating from the 1500s in Welch, Minnesota under the auspices of the Twin Cities Institute for Talented Youth. For five weeks the students collected materials. The American Indian Movement went to the site to stop the digging and the disturbance of the

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77 Hill, 86.
AIM members destroyed archeological tools, burned field notes, and exposed rolls of film. Artifacts that were unearthed by the archeologists were confiscated. However, in 1971, the American Anthropological Association reiterated its stance that the anthropologists’ main concern was with those they study. The “Principles of Professional Responsibility,” adopted by the Council of the American Anthropological Association May 1971, required anthropologists to place the individual above the scientific study when there was a conflict of interest. Additionally, the protocol stated that the scientific investigation should be discussed thoroughly with those studied.

Native Americans also continued to raise their voices over displays of Indian remains. In 1972, a group of Native Americans picketed the State Historical Society of Iowa because of its museum display. The Governor of Iowa ordered the institution to remove the remains the same year. At the same time, archaeologists began to question their responsibility to the descendants of those they studied at their excavation sites. Elden Johnson, an archaeologist from the University of Minnesota, recognized four complaints among Native Americans protesting archaeological research in the early 1970s. The most important complaint was the lack of consultation by scientists with Native Americans. A second complaint concerned the excavation of Indian burials from the recent past. A third complaint condemned scientists who studied Indians as if they

80 Deloria, 31.
82 Hill, 86.
themselves were museum pieces and, lastly, the protestors accused the archaeologists of colluding with looters of Native American sites and those that sold the goods found at these sites.\textsuperscript{83}

Johnson acknowledged that some archaeologists took the protests of Native Americans lightly, insisting that their excavations were legal and they had the proper permits to carry out their work. However, other archaeologists realized there was a need to examine their relationship with Native Americans.\textsuperscript{84} As archaeologists discussed their excavations and their responsibility to the Native American community, more groups formed around the theme of Native American burial rights.

American Indians Against Desecration (AIAD) was founded in 1974 to represent Indian tribes and nations in North and South America. The AIAD echoed the feelings of many Native Americans by explaining the Indian belief in an afterlife and the hindrance imposed upon that sacred journey by the disturbance of the graves of their ancestors. The desecration was a violation of religious freedom not only for the individual, whose grave was disturbed, but of his descendants as well, according to AIAD. The individual could not complete the journey to the afterlife and his descendants could not care for his spirit until a proper burial was conducted.\textsuperscript{85}

Native Americans were also concerned with the repatriation of sacred objects, once they discovered that museums were holding these objects as well. However, in the late 1970s, museums argued against the repatriation of sacred objects citing the lack of tribal

\textsuperscript{83} Elden Johnson, “Professional Responsibilities and the American Indian,” \textit{American Antiquity} 38 (1973): 129.

\textsuperscript{84} Ibid.

museums able to care for the objects. At the same time, Native Americans argued that because museums do not understand the significance of certain objects, the artifacts are not handled properly by non-tribal museums. For example, the Zuni believe their wooden carvings representing the twin War Gods, Masewi and Oyoyewi, used in Zuni kivas and later placed on mountain peaks should be left to deteriorate. The museum environment is not conducive to deterioration because the goal of a museum is to preserve. In some cases, the museums attempted to preserve these figures with shellac.

Native American religious artifacts were the focus of a government report in 1979 titled, American Indian Religious Freedom Act Report P.L. 95-341 Federal Agencies Task Force. The report examined the issue of placing these artifacts in museums and made recommendations for a fair resolution between museums and Native Americans. The question of ownership and proper care of religious items were the main topics addressed in an effort to resolve conflict between the two groups. The Task Force found that Native Americans were unable to engage in certain religious activities due to the loss and treatment of some of their sacred objects held by museums. Museums held objects that Native Americans relied on for the protection of their lands or held objects that were not properly cared for. Pipe bundles are an example of sacred objects that were acquired by museums but should never have left the family or tribe. Sacred objects such as wrapped bundles or ceremonial clothing require proper care by the handler of these

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87Ibid., 14, 16.
objects. For example, a ritual may be required before using the object or certain actions may be limited while the object is in use.\textsuperscript{89}

The Task Force questioned the ownership of religious artifacts by museums when problems with some museum accession records were discovered. In several cases, records revealed that sacred objects were not sold by the original owner or owners but were obtained during military battles, or turned over to missionaries or Indian agents when religious practices were banned. Also, objects were acquired from Native Americans who did not have the right to sell the objects. Sacred objects are for the most part owned by the tribe as a whole. Individuals within a tribe may be the keepers of objects but the sacred object is communally owned.\textsuperscript{90} As an example, sacred Blackfeet objects were often sold or pawned to non-Indians as tribal members converted to Christianity or needed money and sold their sacred objects. Tribal members sold family spiritual or cultural objects resulting in a loss of community heritage. Details of the transfer of the objects outside the tribe were apparent when Browning, Montana resident Bob Scriver sold his collection of Blackfeet spiritual and cultural artifacts to the Provincial Museum of Alberta, Canada in 1989 for $1.1 million.\textsuperscript{91}

The handling of medicine bundles was also a source of complaint. The medicine bundle is an important aspect of Plains Indian religion. The bundles are composed of objects seen in a vision and then put together along with a ritual or song. An individual, a clan or society, or a tribe could own bundles. For example, individual bundles had the power to protect the owner from harm while tribal bundles were also cared for by

\textsuperscript{89}Ibid., 76-77.  
\textsuperscript{90}Ibid.  
individuals on behalf of the tribe and helped the tribe in battle or increased the ability to
hunt game.92

For the Blackfeet, untying and opening a bundle requires knowledge of the procedure
to perform the ceremony correctly. Clark Wissler, in an anthropological paper for the
American Museum of Natural History, described how a bundle was properly untied and
opened. “Usually in untying a bundle, in picking up a ceremonial object, in making a
smudge, etc., the officiating medicineman makes three movements with the hand as if
about to lay hold of the object and takes it up at the fourth.”93 Songs are also an
important aspect of the opening of bundles.

As a Blackfoot might express it, every knot and cord is sung off the bundle and the
contents out into view. A smudge is made, the bundle brought down from its place in
the tipi and put into position, each movement coming at certain stages of the songs.
Thus, they proceed gradually until the entire bundle is undone. With very small
bundles, the procedure is usually limited to a smudge and the unwrapping of the
contents. The songs may accompany, or follow, as the case may be, but the conception
is essentially the same for all, i.e., the objects contained therein cannot be exposed
except in the ceremonial way. At the end of a ceremony, however, the bundle is again
tied up without formalities of any kind.94

Native Americans began to question their relationships with archaeologists and
museums during this period. Their ancestors and sacred objects deserved better treatment
than scientists and institutions could afford. Tribes eventually pushed not only for better
treatment, but also for a return to the tribes of their ancestors’ remains and tribal sacred
objects.

By the 1980s, the repatriation movement was attracting more moderate and also more
mainstream and powerful Native American leaders than the Native American activists

92David Finster, “Museums and Medicine Bundles,” The Indian Historian 8, no.2 (1975): 40.
93Clark Wissler, “Ceremonial Bundles of the Blackfoot Indians,” in Anthropological Papers of the
94Ibid., 250.
from the previous decade. These leaders were willing to work with non-Indians in order to develop laws designed to protect Indian burials and repatriate remains. The Native American Rights Fund (NARF) and the National Congress of American Indians (NCAI) were two such groups.\footnote{James Riding In, “REPATRIATION: A Pawnee’s Perspective,” \textit{American Indian Quarterly} 20 (1996): 242.} NARF attorney Walter Echo-Hawk stated in 1989 that some scientific testing would be permitted by archeologists if asked, but noted that scientific inquiry into Native American remains should have been completed long ago. There was also the larger question of whether the studies conducted on the remains were efficacious.

NARF believed the answer was no. It released a letter in 1989 from Emery Johnson, a retired assistant surgeon general for the U.S. Public Health Service, to the Association of American Indian Affairs to further its point. A portion of the letter was printed in a 1989 \textit{Washington Post} article, “Skeletons in the Closet,” by Kara Swisher. Johnson stated that the study of Indian remains in relationship to the health care of contemporary Indians had not produced any medical advantage to the modern Indian. ‘In response to your recent questions about the value of collections of Indian skeletal remains to the present medical care of American Indian and Alaskan Native people, I can only say that I am not aware of any current medical diagnostic or treatment procedure that has derived from research on such skeletal remains. Nor am I aware of any during the 34 years that I have been involved in American Indian/Alaska Native health care.’\footnote{Kara Swisher, “Skeletons in the Closet,” \textit{Washington Post}, October 3, 1989, D5.}

Edward Lone Fight, speaking for the NCAI during the \textit{Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum} U.S. Senate hearing on May 14, 1990, also complained of the study of Indian remains. He believed there was no benefit to the
further study of skeletal material because scientists had stored these bones for years and any inquiry into the remains should have been concluded.

They have these bones in boxes that remained in these places for a number of years. Federal agencies and other entities and museums have had anthropologists and archaeologists on their staff. By now, they should have done what they need to do and completed their tasks, so we do not want any more study or analysis.

What they do in analysis—I don’t know if any of you know here—but they will take the bones and burn them to a crisp. We don’t want this. Then they study with carbon and the other chemicals that go along with it. We do not want that to happen anymore to our ancestors.

. . . They have had 200 years or so to do this and they haven’t done it yet. We don’t want this study because this is based on human rights and also, there is no new data that will be derived from analyzing our ancestors’ bones.97

Scientists were of a different opinion however. They argued that skeletal remains held a wealth of information that could not be extracted by one individual at a single time. Research by different scientists over time was necessary to ensure that all information was gathered from the remains. New methods of skeletal research are being developed constantly so the reburial of remains would limit the application of these new techniques.98 In 1989, Smithsonian anthropologist Douglas Owsley argued that the skeletal collection at his institution was important because it was used by a variety of researchers for different reasons. Doctors and dentists used the collection as well as researchers attempting to solve crimes. Scientists were developing techniques to remove genetic material from the bones to gain insight into early life in North America.99

As the Native American community protested the treatment of their dead and organized an effort to confront scientists and museums in the 1980s, the scientific

97Congress, Senate, Select Committee on Indian Affairs, Native American Grave and Burial Protection Act (Repatration); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report: Hearing before the Select Committee on Indian Affairs, 100th Cong., 1st sess., 14 May 1990, 50.
community continued to deal with the issues surrounding the unearthing of Native American remains. The Smithsonian Institution published an archeology manual titled *Human Skeletal Remains: Excavation, Analysis, Interpretation* in which the author, Douglas Ubelaker, noted the concern of Indians regarding human remains and the need for archeologists to work with these groups before beginning an archaeological dig.\(^{100}\)

Also in the 1980s, the National Park Service removed skeletons from display in all National Parks\(^ {101}\).

Nonetheless, some archaeologists remained firm in their commitment to continue the excavation and study of Indian remains. One such group was the American Committee for Preservation of Archaeological Collections (ACPAC), which, in 1981, advocated the expulsion from their profession of fellow archaeologists who engaged in the reburial of collections. This group also urged members of the archaeological community to boycott projects in which the material “will be given up for destruction.” Destruction in this case referred to the reburial of the skeletal or archaeological material uncovered during an excavation.\(^ {102}\)

Destruction was the term used eight years later to describe the repatriation of remains from Stanford University in the ACPAC newsletter.\(^ {103}\) In 1989, Stanford University agreed to return some 550 human remains to the Ohlone-Costanoan tribe in California.\(^ {104}\)

In response to Stanford’s actions, ACPAC member Clement Meighan commented that

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Stanford was not interested in research because they were willing “to destroy the collections” by giving preference to Indian claims over research. Meighan also made the point that the claimants had not established a direct link to the remains dating back 600 to 2500 years ago. He questioned anyone who could identify the resting place of his or her ancestors from 600 years ago.\textsuperscript{105}

The Society for American Archaeology also saw the identification of Indian remains by modern Native Americans as a concern in the repatriation debate. Slightly before repatriation legislation was passed in 1990, the Chair of the Society for American Archaeology Task Force on Reburial and Repatriation published an article in the \textit{Society for American Archaeology Bulletin} outlining the Society’s stance on reburial and repatriation. Keith Kintigh restated the Society’s view “that determinations of the disposition of human remains should be case-by-case decisions based on scientific and traditional values.” His goal was to alleviate any concerns the Native American community had toward archaeologists and the proposed legislation before Congress. Kintigh believed there were areas of common ground between Native Americans and archaeologists especially in the areas of site protection and the repatriation of known individuals.\textsuperscript{106}

Indians and archaeologists did agree that the protection from looting and vandalism of burial sites and other sites of tribal significance was a worthy goal. There was also a common understanding that the decision regarding the remains of a known individual should be handled by the closest descendants of that individual. Indians and archaeologists were also in agreement over the procedure for determining the group

\textsuperscript{105}ACPAC Newsletter (July 1989), 2.
responsible for the remains. This procedure would involve historical and scientific information as well as utilizing oral traditions.\textsuperscript{107}

However, Kintigh was also concerned about the language of upcoming legislation in respect to the term “tribal origin”. Archaeologists wanted a better definition of “tribal origin” and “cultural affiliation,” fearing that a broad definition would enable claims and reburial of almost any Native American remains. At the same time, Native Americans did not want the definition to become so rigid that remains could not be claimed in simple repatriation requests. Kintigh also argued that scientists should have the right to examine remains that were determined to have no connection to present-day Indians. If the remains lacked a modern descendant, or a link to modern Indians could not be found, Kintigh urged scientific testing to gain knowledge of the past. In Kintigh’s view, information that might be held in the remains should have equal footing with claims lacking sufficient proof in determining disposition of the remains.\textsuperscript{108}

In the debate over which group should have control over Native American remains, the Native American community garnered support for their struggle as the public became aware of the sheer numbers of remains held by institutions worldwide. In the late 1980s, museums, universities, federal institutions, and private collectors held an estimated 300,000 to 600,000 Indian human remains. An additional 500,000 were stored in collections outside the United States.\textsuperscript{109} In a supplementary statement submitted for the record to Congress during the \textit{National American Indian Museum Act (Part 1)} hearing before the Select Committee on Indian Affairs and the Committee on Rules and

\textsuperscript{107}Ibid., 6.
\textsuperscript{108}Ibid., 7.
Administration on November 12, 1987, Robert McCormick Adams, Secretary of the Smithsonian Institution, described the holdings of the Smithsonian’s National Museum of Natural History.

The collection consists of some 34,000 specimens, very few of which represent entire skeletons. Approximately 42.5% (14,523) of the specimens are the remains of North American Indians, most of which date from pre-historic periods. Those of Eskimo, Aleut, and Koniag populations account for another 11.9% (4,061); Blacks, 5.1% (1,744); Whites, 20% (6,829); and all others, 20.6% (7,033). Almost all have been acquired through approved archeological excavations or as the result of salvage operations, i.e., where remains have been exposed as the result of natural processes such as erosion or man-made incursions such as road building.

Most of the contention over our collection centers on approximately 4,000 specimens acquired by transfer from the Army Medical Museum at the turn of the century. Of these, nearly 3,400 are from pre-historic periods. The remainders – about 600 – are from historic times and were assigned tribal identifications by the Army Medical Museum; documentation in our collection lends credence to approximately 270 of those assignments.110

In September 1988, the executive director of the American Association of Museums, Edward H. Able Jr., provided an enumeration of museum holdings of Indian remains in a letter to the Select Committee on Indian Affairs. The letter stated that 163 American museums (excluding the Smithsonian) held the remains of 43,306 Native Americans.111

When asked by Senator John Melcher during the Native American Cultural Preservation Act hearing before the Select Committee on Indian Affairs on February 20, 1987 about the number of Indian remains in museums other than the Smithsonian, archaeologist Thomas King was unable to provide an exact number.

We have no comprehensive inventory, as I believe you know, Senator, so we can’t say for certain how many there are. I’m aware that small museums, colleges, universities around the country with which I’ve worked over the years, many times hold hundreds and thousands of human remains; and of course, many thousand of

110Congress, Senate, Select Committee on Indian Affairs and the Committee on Rules and Administration, National American Indian Museum Act (Part 1): Joint Hearing before the Select Committee on Indian Affairs and the Committee on Rules and Administration, 100th Cong., 1st sess., 12 November 1987, 73.
111Gulliford, 13.
artifacts. I’d be at a loss to figure out an easy multiplier factor to apply there to come up with a comprehensive, nationwide total. But we are certainly dealing with many tens of thousands of entities representing individual human beings, be they single bones or entire skeletons, in museums and academic institutions across the country. Not to mention those that are in private possession and that are being bought and sold by individuals on the open market throughout the Nation, and internationally.  

By the 1990s, an estimated 300,000 to 2.5 million Indian bodies were held in federal agencies, museums, other institutions, and private collections.  

Facing mounting opposition, groups such as the Society for American Archaeology (SAA), the American Association of Physical Anthropologists (AAPA), and the American Anthropological Association (AAA), suggested that local compromises were the best solution to the problems surrounding Indians and the scientific community. Their policy statements, resolutions, and reports reflected this view, but Native Americans disagreed, citing their lack of control over anthropologists on federal land, federal museums, or in states with a low Indian population. Native Americans realized that local agreements would have no standing on human remains stored in federal museums or skeletons uncovered on federal land.  

Eventually, groups such as NARF, AIAD, and NCAI would insist on national legislation. By 1989-90, Congress worked out two significant repatriation laws that would help Native Americans in their efforts to repatriate their ancestors. The National Museum of the American Indian Act of 1989 established the National Museum of the

112 Congress, Senate, Select Committee on Indian Affairs, Native American Cultural Preservation Act, 100th Cong., 1st sess., 20 February 1987, 52.
115 Ibid., 104-105.
American Indian within the Smithsonian Institution. The Heye collection of New York was to be combined with the Washington D.C. museum. The act specified that the museum be governed by a board of trustees totaling 25 members comprised of at least seven Native Americans. The act also established a process for the inventory and repatriation of Native American remains and grave goods. Consultation with government officials of Indian tribes and traditional Indian religious leaders was required of the museum during this process. Determinations were to be made of the tribal origin of the remains or funerary objects so the tribe could be notified and the remains repatriated. If the remains or funerary objects could be linked to an individual or tribe, the museum was to return the remains or grave goods upon request by the descendants or the tribe. The act also established a special committee to gauge the progress of the inventory, identification, and repatriation process.\(^\text{117}\)

The following year, in 1990, the Native American Graves Protection and Repatriation Act was signed into law. Before passage of the bill in 1990, Senator Daniel Inouye described the legislation to Congress on October 26, 1990 as helping Native Americans retain their rights as human beings. While he admitted that museums and scientists play a valuable role in American society, his focus in crafting the bill was to help Native Americans regain their ancestors and cultural objects.

I believe we all recognize the value of the work carried out by museums. When we visit museums and look at remnants of past civilizations, we are really learning about ourselves, and how our societies and civilizations have evolved. Museums enhance our quality of life. As enlightened people, we welcome scientific inquiry and the opportunity to know more about ourselves. Accordingly, we welcome the preservation and scientific purposes that museums fulfill.

Mr. President, the bill before us today is not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights. . . .

Mr. President, I believe this bill represents a major step in correcting an injustice

\(^{117}\)Ibid., secs. 80q (5), 80q-1,80q-3(a), (e)(1)(2), 80q-9(a)-(d), 80q-10 (2006).
that started over 100 years ago. It is appropriate that Congress take an active role in helping to restore these rights to native Americans and I urge the adoption of this measure by the Senate.\textsuperscript{118}

The Native American Graves Protection and Repatriation Act protects Native American remains and cultural items found on tribal or federal land and calls for the return of human remains, funerary objects, sacred objects, and items of cultural patrimony in Federal agencies and museums. Each Federal agency and museum receiving federal funds is responsible for creating an inventory or summary of items in its possession. Tribes are to be contacted no longer than six months after the completion of an inventory. Additionally, a copy of the notice will be published in the \textit{Federal Register}.\textsuperscript{119} The law also states that human remains and cultural items need not be returned immediately if the study of these remains or items is of scientific importance to the United States.\textsuperscript{120}

Even though NAGPRA was enacted to help tribes, the repatriation process can be daunting. At the Makah Cultural and Research Center in northwestern Washington, for example, the process begins when the tribe receives summaries and inventories from museums and federal agencies. These documents may contain detailed information about the affiliated items or simply list the number of objects the museum is holding. Furthermore, these documents may contain vocabulary primarily used in the museum field. Words such as ‘accession’ and ‘provenance’ are two such problematic terms. Numbering systems can be difficult to follow as museums create accession numbers

\begin{footnotesize}
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\item \textsuperscript{118}Congress, Senate, Senator Daniel Inouye speaking for the Native American Graves Protection and Repatriation Act to the Senate, H.R 5237, 101\textsuperscript{st} Cong., 2\textsuperscript{nd} sess., \textit{Congressional Record} 136, pt. 24 (26 October 1990): 35678.
\item \textsuperscript{119}U.S. National Archives and Records Administration, Office of the Federal Register, \textit{Federal Register}; \textit{Native American Graves Protection and Repatriation Act}, secs. 3001-3005.
\item \textsuperscript{120}\textit{Native American Graves Protection and Repatriation Act}, sec. 3005 (b).
\end{itemize}
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differently. While museums, institutions, and agencies can standardize their forms to send to several tribes, a single tribe may receive forms from many places. For example, the Makah received more than 150 summaries.

One of the major issues encountered during the repatriation process has been determining the correct tribe for return of the remains. The cultural affiliation of ancient human remains can prove problematic because populations may have migrated, body types may have changed after a few thousand years, the archaeological record may be incomplete, and linguistic evidence is not useful when dealing with populations thousands of years old.

Other issues with NAGPRA became evident shortly after the law was passed. At the core of the repatriation process was the lack of consultation between the various tribes and the agencies or institutions holding Indian remains or tribal artifacts. In a statement before the Committee on Indian Affairs in the U.S. Senate on July 25, 2000 during the *Native American Graves Protection and Repatriations Act* oversight hearing, Armand Minthorn of the Confederated Tribes of the Umatilla Indian Reservation spoke of the difficulties tribes encountered with the consultation process. Minthorn believed the consultation process as described in NAGPRA seemed to have different meanings for the Department of the Interior, the National Park Service, and Indian tribes. Each group had their own idea of consultation.

There are many problems within Interior and Park Service. One is they have their own interpretation of what consultation is and the tribes have their own. There have

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122 Ibid., 20-21.
been no compromise efforts to reach an acceptable level of consultation government-to-government, and the Kennewick man case is a good example of that.

But I would hope, Senator, that changes within the Interior would truly reflect an action that would look at holding the Park Service and the Interior accountable to not only existing executive orders but to the consultation process as outlined within the NAGPRA law, itself 124

Alan Downer, Director of the Navajo Nation Historic Preservation Department added that in most cases, consultation with a tribe occurred after a Federal agency had already made a decision. A representative or letter would be sent to the tribe for their input after the decision.125 Jefferson Keel of the Chickasaw Nation also testified during the same hearings about the problems he encountered with the consultation process. The Chickasaw Nation often ran into problems in the consultation process between Native Americans and state agencies.

Today, in spite of Federal mandates, many States refuse to recognize the rights of Native American tribal governments to consult on this important issue. State agencies often interpret the law to suit their specific needs, particularly regarding construction projects, such as highway or urban development projects. Our requisitions for consultations regarding the construction projects are often ignored or delayed until construction results in the unearthing of human remains.

When States are unwilling to consult with the tribes, then the tribes must turn to the National Park Service, which is a branch of the Fish and Wildlife Service of the U.S. Department of the Interior, which further delays and disrupts the consultation process. The Park Service is often slow to respond, due to limited staff and the sheer number of requests, possibly lack of knowledge of tribal customs and lack of experience in dealing with Indian tribes.126

At the same hearing, Pemina Yellowbird, Cultural Preservation Officer of the Three Affiliated Tribes of the Fort Berthold Reservation in New Town North Dakota, commented on the National Park Service and the implementation of NAGPRA. Her point revolved around the fact that the National Park Service administered the law while

125 Ibid., 20.
126 Ibid., 13.
at the same time was subject to NAGPRA. “We remain concerned about the inherent
conflicts of interest with the National Park Service staff simultaneously administering the
law while having to comply with it and changing the rules as they go along to promote
and support a scientific research agenda,” Yellowbird told the Senate Committee.
Yellowbird’s other unease with NAGPRA were the ongoing scientific studies of
unaffiliated Indian remains occurring in federal and state agencies, museums, and
universities after NAGPRA was enacted.\textsuperscript{127} Other concerns raised at the hearing
revolved around the amount of money spent to determine the ownership of Kennewick
Man and the need for an increase in grant money for the repatriation process.

The amount of money spent on Kennewick Man, over $1 million by the summer of
2000, could have repatriated and buried all the northern Plains tribes’ ancestors and their
burial property, Yellowbird argued. Yellowbird complained that the federal government
would not spend a quarter of that amount protecting the thousands of burials along the
Missouri River related to her tribe. Instead, the Federal government spent this money on
a lawsuit, staff time and a study that ultimately proved the Ancient One was Native
American. The discovery of ancient remains was of concern to Yellowbird not only
because Kennewick Man consumed federal dollars needed elsewhere, but because future
discoveries would ultimately consume tribal finances and time in their efforts to
repatriate their dead from scientists who may wish to study the remains.\textsuperscript{128}

NAGPRA grants for tribes were deemed insufficient mainly because of the expense
involved in traveling to different institutions throughout the country to look at
collections. Tribes incur expenses in the research and consultation of identifying tribal

\textsuperscript{127}Ibid., 15-16.
\textsuperscript{128}Ibid., 16.
remains and grave goods when a museum determines cultural affiliation. A tribe may have ancestors that were placed in museums around the United States, so travel to these institutions can be expensive. For example, many of the museums holding Indian remains and cultural items are located in the eastern United States. This creates quite an economic strain for western tribes who must travel across the country to meet with museum officials. The average NAGPRA grant totaled $70,000 to $75,000 but was small compared to the tribe’s expenses incurred by travel to institutions to identify and claim remains. According to Yellowbird,

> With that, a tribe can maybe visit 10 institutions in 1 year’s time. But if your tribe is like my tribe and we have our deceased relatives all over the country, that’s not going to really add up to much.129

During the last sixty years, Native Americans have made real strides toward taking control of their ancestors’ remains and funerary objects. With the passage of NAGPRA, tribes large and small have repatriated ancestral remains from museums, universities, and other institutions displaying or studying Indian remains. However, the process can be arduous, with consultation, travel, and financial burdens to factor in once a tribe learns of tribal remains held in one of these institutions.

The following chapter details one program designed to protect and repatriate tribal cultural resources while demonstrating the obstacles faced with such an endeavor. The Confederated Tribes of the Umatilla Indian Reservation serve as an excellent example of how one entity has overcome the many problems associated with repatriation and the protection of tribal cultural resources.

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129Ibid., 22.
Chapter Four

Case Study

In 1987, The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) launched its Cultural Resources Protection Program (CRPP). In a relatively short twenty years, the Cultural Resource Protection Program has established an effective and successful operation to protect and recover tribal resources. Using government documents, tribal documents, archaeological reports, and interviews with the CTUIR Cultural Resource Management Department, this chapter explores the history of that success.

Funded by federal money in the late 1980s, the Confederated Tribe’s staff created a program run from the point of view of the Native American. This focus has helped the Confederated Tribes manage their resources more successfully than the federal government, which had previously been in charge of cultural resource management for the tribes. The program has been at the forefront of Native American cultural resource management programs nationally and has accomplished much in its short existence. The Confederated Tribes quickly learned all aspects of cultural resource management and expanded the program as a result of winning more cultural resource management contracts. The Native American Graves Protection and Repatriation Act, in conjunction with other federal, state, and local laws, is implemented by the CTUIR to protect their ancestors and their cultural resources found on reservation land as well as their traditional lands. These laws aid the CTUIR in asserting their sovereignty, pressing for consultation, and enforcing their treaty rights.
The Confederated Tribes of the Umatilla Indian Reservation are composed of three distinct peoples: the Umatilla, Walla Walla, and Cayuse, whose traditional lands encompass much of present-day southeastern Washington and northeastern Oregon.

Negotiations began in 1855 between the federal government and the tribes in an effort to move the tribes to a reservation and open the ceded lands to non-Indian settlers. Originally the three tribes were to be placed upon the Yakama or Nez Perce reservations, but the Cayuse, who did not want to leave their homeland, rejected this idea. Under the Treaty of 1855 negotiated in the Walla Walla Valley, the three tribes eventually agreed to settle on the Umatilla Reservation, the traditional homeland of the Cayuse. The treaty was signed by thirty-six representatives from the three tribes and executed by Governor Isaac Stevens and General Joel Palmer for the United States. It was sent to the United States Senate for ratification in 1856 and approved three years later.\(^\text{130}\)

The location of the reservation would prove significant in the future, as the three tribes were better able to manage their cultural resources due to the proximity of their traditional land use areas. Unlike Eastern tribes removed from their homelands and placed in Indian Territory, the CTUIR were not deprived of their connection to the cultural resources and burial grounds of their ancestors. The ability of the CTUIR to remain near their homeland, coupled with the fact that the three tribes experienced little migration during their history, has allowed the CTUIR to sustain an unbroken link with the area going back thousands of years.

These deep ties to the land are important in proving affiliation when discoveries are made. However, because the CTUIR lived in such a vast area and intermarried, fished, camped, and settled with other tribes, some repatriation cases require extensive research to determine the affiliated tribe. The history of the three tribes bears this out as is evident from their seasonal migrations to secure food and develop alliances with nearby tribes.

The Umatilla tribe originates from the name of a village at the mouth of the Umatilla River that was an important winter site. Salmon fishing, berry and root gathering, and horse breeding occurred at this location. The Umatilla also had villages on both sides of the Columbia River and on the islands in the river. The Walla Walla can be divided into three groups that lived respectively at the mouth of the Walla Walla River, the Lower Snake, and the lower valley of the Yakima River. The Cayuse occupied the area to the east of the Umatilla on the upper reaches of the Umatilla and Walla Walla rivers. The Cayuse also lived along the Grande Ronde and the Touchet and Tucannon rivers. Villages were not limited to one particular group as intermarriage among Native Americans in the area was common. The Yakama village located at the conjunction of the Columbia and Snake Rivers at present-day Pasco was home to many Walla Walla and Umatilla as well. This was a good fishing site and also served as a trading center.

In the winter, the Umatilla, Walla Walla, and Cayuse lived in villages near the Columbia, Walla Walla, and Umatilla Rivers. Extended families lived in the earth or mat lodges of these villages located near fishing sites, food gathering areas, and wood. As the

133 Ray, 144.
weather changed, bands followed the migration of the fish up the tributaries of the main rivers and toward the mountains. Salmon was gathered from mountain streams and dried from the early summer until October. Deer, antelope, elk, and mountain goat were hunted while berries were picked and roots were gathered. Groups from different bands routinely used the same sites for hunting, fishing, and gathering such as the Grande Ronde Valley frequented by Umatilla, Walla Walla, Cayuse, and Nez Perce. Language was also shared among these groups as one band learned or adopted the language of their fellow Sahaptin speakers.

Interrmarriage between the Umatilla, Walla Walla, Cayuse, and Nez Perce resulted in the Nez Perce language being the lingua franca. The Cayuse language probably became extinct in the 1930s with the passing of the last speakers. Similarly, in 1991, there were an estimated twelve individuals who could speak Umatilla and Walla Walla on the reservation with English the main language and Nez Perce the most prevalent Indian language.

The Umatilla, Walla Walla, and Cayuse managed their cultural resources for thousands of years. Ancestors’ graves were attended to and natural resources such as timber and salmon were used sparingly. Annual migrations of villages to obtain food such as salmon, trout, berries, elk, and deer were unimpeded before the arrival of

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135 Stern, 395.
137 Stern, 395. The Confederated Tribes began a language program in 1994 with tribal elders and some younger speakers to ensure the languages were not lost. In 2004 the Nixyaawii Community High School opened on the reservation and began teaching tribal languages and history. Some tribal elders who attended boarding schools and were told not to speak their tribal languages were enlisted to teach the children at this school.

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Europeans to the Plateau area, except for tribal warfare and conflicts.\textsuperscript{138} For example, the Snakes or Northern Shoshone, Bannocks or Northern Paiute in the south, and the Blackfeet to the northeast routinely attacked the people of the Plateau to obtain food.\textsuperscript{139}

Trade was also an important aspect of tribal life as this allowed for the movement of goods between tribes. The Plateau tribes engaged in trade with neighboring tribes at Celilo Falls, a major trading place on the Columbia River where Plateau people obtained goods from outside their homelands. Goods were exchanged that originated from Vancouver Island, Alaska; the Plateau and Great Basin tribes in Idaho, Wyoming, and Utah; and non-Indian goods acquired from the more than one hundred ships that had sailed to the Pacific Coast before 1800.\textsuperscript{140} Items such as dentalium shells, baskets, buffalo meat, horses, furs, and berries were traded among the different tribes. Sailors’ clothing, kettles, knives, axes, beads, and guns made their way from the Pacific Coast inland up the Columbia River and were traded as well.\textsuperscript{141} However, with the arrival of Lewis and Clark and the eventual migration of Americans into the Plateau region, non-Indians hampered the management of tribal resources for the Umatilla, Cayuse, and Walla Walla.

Meriwether Lewis and William Clark encountered the Plateau people in October 1805 at the confluence of the Snake and Columbia River. In the coming years, a succession of explorers, fur traders, missionaries, soldiers, and immigrants arrived in the homeland of the Umatilla, Cayuse, and Walla Walla.

\textsuperscript{138}Roberta Conner and William L. Lang, “Early Contact and Incursion, 1700-1850,” in As Days Go By, 29.
\textsuperscript{139}Ibid., 32.
\textsuperscript{140}Ibid., 33-34.
\textsuperscript{141}Theodore Stern, Chiefs and Chief Traders: Indian Relations at Fort Nez Perces, 1815-1855 (Corvallis, Oregon: Oregon State University Press, 1993), 22.
\textsuperscript{142}Conner and Lang, 36, 53.
the period between the arrival of Lewis and Clark and the removal of the Umatilla, Cayuse, and Walla Walla from their homeland to a reservation in accordance with the signing of a treaty in 1855.143

Protestant missionary Marcus Whitman established a mission among the Cayuse in 1836 with the goal of converting the Indians to Christianity. Whitman was instrumental in creating a wagon trail over the Blue Mountains and into the valley of the Umatilla River that led to the Willamette Valley. As a result, immigrants and disease arrived in Cayuse country culminating in the Cayuse War of 1848. The Cayuse became alarmed at the number of immigrants settling in their homeland and asked Whitman to close his mission and trading post. The Cayuse accepted Whitman as a teacher of Christianity, but as Whitman pursued his colonization of the region, brought more immigrants to Cayuse country, and spread a deadly measles epidemic, the Cayuse attacked and killed Whitman at his mission in November 1847. From this point, until the five Cayuse men, Clokomas, Kiamasimkin, Isiaasheluckas, Tomahas, and Tiloukaikt, were hanged in Oregon City in 1850, the American militia sought the individuals responsible for the killings at the Whitman Mission.144

The settlers moving into the tribal land of the Umatilla, Cayuse, and Walla Walla pushed the federal government to conduct treaty negotiations and in 1855 a treaty council was held in the Walla Walla Valley.145 The Treaty was ratified in 1859 and the Cayuse were moved to the new reservation in northeastern Oregon by the U.S. Army with the

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143 Minthorn, 62.
144 Ibid., 62-64.
145 Ibid., 65.
Umatilla and Walla Walla soon to follow.\textsuperscript{146} The reservation of 245,699 acres was a small percentage of the 6.4 million acres held by the three tribes prior to the signing of the Treaty.\textsuperscript{147}

Once the three tribes were settled on the Umatilla Indian Reservation, settlers began encroaching on the Reservation almost immediately and compromising the Tribes’ ability to manage their cultural resources. For example, in 1870, an irrigation project was approved that ran through reservation land from the Umatilla River to the City of Pendleton. As water needs expanded, more water was diverted from the Umatilla River, eventually destroying the salmon in the Umatilla River and the nearby tributaries.\textsuperscript{148}

Twelve years later, Congress authorized the sale of 640 acres of reservation land near the City of Pendleton. The Act (August 5, 1882), removed 640 acres of reservation on the western boundary with the City of Pendleton.\textsuperscript{149} In 1885, The Umatilla Allotment Act, or the Slater Act\textsuperscript{150} further reduced reservation land by designating parcels of land to tribal members. Acreage was set aside for tribal use and the remaining, or “surplus” lands, were sold to non-Indians. In 1891, 25,000 acres of the 90,000 acres deemed surplus lands were sold to white settlers. The remaining unsold lands were put up for sale at a private sale by permission of Congress in 1902. The remaining unsold land was restored to the Reservation in 1939.\textsuperscript{151}

\textsuperscript{146}Ronald J. Pond and Daniel W. Hester, “Through Change and Transition: Treaty Commitments Made and Broken,” in \textit{As Days Go By}, 95.
\textsuperscript{148}Pond and Hester, 102-103.
\textsuperscript{149}Ibid., 103-104.
\textsuperscript{150}\textit{Slater Allotment Act, Statutes at Large} 23 (1885).
\textsuperscript{151}Pond and Hester, 105, 108, 110.
The decision to allot the reservation land and move the Indians toward individual homesteads was viewed as an acceptable and much needed alternative to the reservation system. Settlers were in need of land to start farms and readily endorsed this plan. It was hoped that allotment would speed up the government’s late nineteenth century policy of assimilation of Native Americans into non-Indian society. By removing the communal aspect and influence of tribal life and providing land to farm, policy makers believed Indians would adopt an individualist lifestyle similar to their non-Indian counterparts.¹⁵²

Part of this push to assimilate was the federal government’s program to place Native American child in government or public schools to separate them from their parents, the tribal elders, and the traditional teachings of their respective tribes. The goal was to educate the children for their eventual entry into European-American society while distancing the children from tribal traditions. Oral histories, language, and cultural and religious activities linked the children to their tribes but the government strived to sever these links in an effort to transition the children into speaking English and obtaining productive employment in adulthood. For the children on the Umatilla Indian Reservation, this meant day schools on the reservation or being sent to government schools as far away as Pennsylvania.¹⁵³ While at school, children were not allowed to speak their Indian language, their traditional clothing was replaced with Anglo style clothing, and their hair was cut.

These measures had the desired outcome for the federal government as language and traditions eventually waned once the children became adults. The oral traditions and languages diminished during the first half of the 20th century, opening up the three tribes

¹⁵³Pond and Hester, 106, 124.
to the possibility of termination based on their progress toward assimilation. The Bureau of Indian Affairs pushed for termination during this period, and up until the 1960s, as the tribes were monitored for their use or non-use of their tribal culture but also due to the fact the tribes held sizable timber reserves and grazing lands that would presumably enable the tribes to become self-sufficient.\textsuperscript{154}

However, the tribes were able to retain traditions throughout this period and established a tribal government to help with this endeavor. On November 4, 1949 a constitution was adopted by the Cayuse, Umatilla, and Walla Walla. Their goals were to protect their rights from outside sources such as the federal government, to become self-governing, and to protect the interests of the three tribes.\textsuperscript{155} One of the first projects the newly-named Confederated Tribes of the Umatilla Indian Reservation undertook was to challenge state laws regarding hunting and fishing. In the 1950s the Confederated Tribes were victorious in their fight to exempt tribal members from state game laws while hunting and fishing on their reservation. The Confederated Tribes were also able to guarantee salmon fishing to tribal members outside the reservation without the encumbrance of state laws.\textsuperscript{156}

Despite their successes, management of tribal resources had been impeded by the arrival of non-Indians to their traditional lands.

Long before being forced onto their present reservation by the treaty, these three tribes were intimately involved on a daily basis with preservation of their resources. Since Euroamerican contact, however, particularly during the influx of immigrants on the Oregon Trail, the CTUIR were robbed of their ability to manage their natural and cultural resources as they had traditionally done for thousands of years. Over the next 150 years, the CTUIR had little power or influence in how their resources would be managed for

\textsuperscript{154}Ibid., 119,121
\textsuperscript{155}Ibid., 141.
their benefit. Consequently, tribal resources have been vastly diminished or outright destroyed causing great hardship to tribal people.\footnote{\textsuperscript{157} Jeff Van Pelt, Michael S. Burney, and Thomas E. Bailor, “The Evolution of the Confederated Tribes of the Umatilla Indian Reservation’s Cultural Resources Protection Program,” \textit{Journal of Northwest Anthropology}. Memoir no. 6 (2002): 75.}

The people themselves were at a disadvantage in fighting the government or enacting change due to their low population numbers. For example, census figures for the Umatilla and Walla Walla in 1910 show the population at an all-time low due to the lack of health care provided by the federal government to the tribes and the contraction of deadly diseases. 1910 census figures list 272 Umatilla and a similar number of Walla Walla. The Walla Walla had numbered 800 at the time of the 1855 treaty signing in 1855 but by 1910 there were just 397.\footnote{\textsuperscript{158} U.S. Department of Commerce. Bureau of the Census. \textit{Indian Population in the United States and Alaska. 1910.} (Washington D.C.: 1915), 95; Pond and Hester, 96. Numbers for the Cayuse were not mentioned in the 1910 Census count.}

Another example of diminished resources due to the activities of non-Indians was the declining fish stocks from the late 19\textsuperscript{th} century into the 20\textsuperscript{th} century. Farming required water that was diverted from streams and rivers into agricultural land. These tributaries sometimes dried up as the use of water increased impeding the migration of salmon. In other instances, tributaries were blocked by debris as a result of timber harvesting. Rivers were contaminated as pollutants from mining and farming found their way to the Columbia River. Over-harvesting by canneries was another factor that led to low fish populations in the Columbia River.

Dams were yet another reason for the decline in fish stocks. Dams were built along the Columbia River to provide cheap electricity for the white populations of the Pacific Northwest but they prevented fish from migrating upstream to their spawning areas. The Dalles Dam, built in 1957, not only served as a barrier to the fish but covered a traditional
fishing area used not only by the Confederated Tribes but many other tribes in the Pacific Northwest. Celilo Falls was one of the local tribes’ usual and accustomed fishing areas dating back several thousand years. When the dam was opened, Celilo was flooded by the water held behind the dam and tribal fishermen were forced to locate alternative fishing grounds.\textsuperscript{159}

The CTUIR began their tribal cultural resource program as a result of the continued loss, or threat of loss, of tribal resources due to all of these factors.\textsuperscript{160} In 1987, the Cultural Resources Protection Program was initiated with funds provided by the Department of Energy to educate tribes in the field of archaeology in order to develop their own cultural resource programs.\textsuperscript{161} The CTUIR believe that their cultural resources go beyond human remains and stone tools. For the CTUIR, cultural resources include themselves; their lifestyles, and communities; Indian elders with the knowledge of tribal histories; clean air; clean water for the salmon; and the berry-producing areas.\textsuperscript{162} One of the first steps in creating the CRPP in 1987 was to assemble a tribal archives of documents from the Oregon State Historic Preservation Office (SHPO) in Salem, Oregon and the SHPO in Olympia, Washington. Documents such as topographic maps and reports were copied, totaling thousands of pages.\textsuperscript{163} The CTUIR archive and research library in Mission, Oregon now contains historic photographs, oral history recordings,

\textsuperscript{159} John David Tovey, Jr., and friends of the late Michael J. Farrow; “Self-Determination and Recovery,” in \textit{As Days Go By}, 218-219.
ethnographic data, linguistic data, archaeological and historical data, more than 400 U.S.
Geological Survey maps, and sensitive, confidential information. Oral histories are an
important feature of the library as these histories contain information from tribal elders
concerning important places and resources. For example, oral histories identify fishing
and hunting locations in the traditional lands of the Confederated Tribes as well as in
areas used in the past to gather berries or obtain plants used for medicinal purposes. The
histories enable tribal elders to pass along cultural information to tribal members and are
usually required by the CTUIR when cultural resource surveys are undertaken.\textsuperscript{164}

The CTUIR also enrolled four tribal members in a U.S. Forest Service program that
would eventually lead to training and certification in archaeology.\textsuperscript{165} The goal was to
work with the U.S. Forest Service and gain experience for the future when contracts
could be obtained for the Cultural Resources Protection Program.\textsuperscript{166} The tribes’ first
report was written in 1988 reviewing site-specific cultural resource maps of the Columbia
River Gorge. Following this report, the Cultural Resources Protection Program team
wrote and presented their papers to others in the cultural resource management realm.\textsuperscript{167}

Historic preservation is another important component of the Cultural Resources
Protection Program, because buildings and houses on their traditional lands are part of the
tribe’s cultural history. Structures that once housed the Bureau of Indian Affairs or tribal
schools are part of the tribe’s history whether good or bad. School buildings, for
example, symbolize the government’s attempts at assimilating Indian children into
European American society and cutting ties to their traditional way of life. This was an

\textsuperscript{164}\textsuperscript{Pelt, Burney, and Bailor, “The Evolution of the Confederated Tribes of the Umatilla Indian
Reservation’s Cultural Resources Protection Program,” 76.}
\textsuperscript{165}\textsuperscript{Jeff Van Pelt, “The Early Years: 1988-1990,” 2.}
\textsuperscript{166}\textsuperscript{Ibid., 3.}
\textsuperscript{167}\textsuperscript{Ibid.}
important period for the tribe to remember in their history of Indian and non-Indian relations.

In the early 1990s, for example, the Cultural Resources Protection Program became involved in a dispute with the Bureau of Indian Affairs, which wanted to tear down the BIA’s Agency Campus School on the Tribe’s reservation and replace it with a parking lot. The Cultural Resources Protection Program demonstrated their cultural resource management knowledge by insisting that the BIA implement the Section 106 process of the National Historic Preservation Act.\(^{168}\) The Cultural Resources Protection Program was able to prevent the removal of the building because the Bureau did not conduct background research in compliance with the National Historic Preservation Act.\(^{169}\)

The Cultural Resources Protection Program also began developing strategies to achieve their goal of securing governmental contracts at this time. The contracts involved conducting cultural resource studies on areas impacted by the activities of federal agencies. For example, in 1991 the Bonneville Power Administration received federal money to place fish in the Columbia River and hired the Cultural Resources Protection Program to assess the impact of this activity. Studies were conducted on twenty-one sites that the Bonneville Power Administration had planned to restock fish. However, the Cultural Resources Protection Program wanted to obtain more contracts and discovered a way around the federal competitive bid process that allowed them to have contracts set aside. One of the laws governing the competitive bid process stated that contracts could be set aside if unique information could be obtained outside the normal bid process. Outside contractors did not have access to tribal elders and their oral


histories. Because oral histories are mandatory when surveys are completed by the Confederated Tribes, the federal agencies could set aside contracts because of the unique information contained in the histories.\textsuperscript{170}

This advantage helped the Cultural Resources Protection Program win contracts in the early 1990s, but it created a problem within the tribal community because oral histories were to be passed on orally and not recorded. Eventually, it was agreed that the oral histories would be recorded, but would remain the property of the Confederated Tribes. The federal agency requesting the cultural resource study would be sent a report containing the pertinent information, but not copies of the oral histories themselves.\textsuperscript{171}

Since the early 1990s, contracts made between the CTUIR and various agencies, such as the Bonneville Power Administration, the Bureau of Reclamation, and the Umatilla National Forest, give the CTUIR a role as co-managers of their cultural resources and serve many purposes. These contracts enable the CTUIR to enforce their treaty rights, participate in government-to-government meetings, allow the CTUIR and federal or state agencies to discuss matters important to the CTUIR, and provide education, training, and employment for tribal members in cultural resource management.\textsuperscript{172} An important milestone was reached in 1994 when the first large contract with the BIA was awarded to the CTUIR on the Tribes’ reservation. The $40,000 contract called for the CTUIR to survey the area for the Johnson Creek Timber Sale.\textsuperscript{173} As the Cultural Resources

\textsuperscript{170}Ibid., 20-21.
\textsuperscript{171}Ibid., 21.
Protection Program staff gained experience, more contracts were awarded and consultation regarding the tribes’ cultural resources increased.

Using NAGPRA as an example, consultation with Indian tribes was required by museums and federal agencies during the artifact summary and human remains inventory process to establish cultural affiliation. The summaries and inventories were completed by the majority of museums and federal agencies by the beginning of 1996. However, during the identification process, museums and federal agencies failed to consult with the Confederated Tribes, as no requests were made for tribal oral histories or ethnography. Cultural affiliation was established with information created by non-Indians in the form of archaeological field notes, site forms, and ethnographic information. Consultation with the Confederated Tribes would have resulted in more accurate determinations regarding cultural affiliation.174

Consultation is such an important element of the Cultural Resources Protection Program that the Confederated Tribes developed a policy and procedure manual, “Policy and Procedure Manual for the Repatriation of Ancestral Human Remains and Funerary Objects,” specifically designed to deal with NAGPRA and repatriation issues involving the Confederated Tribes of the Umatilla Indian Reservation.

The historic fact that the CTUIR have never had a tradition of un-earthing ancestral human remains, and due to the social, legal and political chronicles surrounding the passage of the NAGPRA, have both compelled the CTUIR to develop fundamental policies and procedures to guide the Board of Trustees in the decision-making process regarding the NAGPRA and repatriation activities.176

176Ibid., 1.
For example, requests for excavations made to the CTUIR are given to the CRPP for consideration. A report is generated and sent to the Cultural Resources Commission of the CTUIR within twenty days of the request. If approved, conditions may be attached to the excavation such as hiring the CTUIR to conduct the excavation or work related to the project. The manual further states that, “It is a policy of the CTUIR to repatriate and reinter all human remains, associated and unassociated funerary objects which have been identified to have originated from ancestral burial sites within the CTUIR’s ceded lands.”

Although NAGPRA applies only to federal and public lands and entities, the CTUIR requires all private museums, universities and colleges, and any other private group to comply with NAGPRA. All human remains, sacred objects, associated and unassociated funerary objects, and objects of cultural patrimony require proper documentation before repatriation to the CTUIR will occur. In the event exposed human remains are discovered, the Cultural Resources Commission, the Board of Trustees, the Umatilla Tribal Police Department, the Oregon State Police, and the Medical Examiners Office must be notified by the Cultural Resources Protection Program.

The procedure for the handling of human remains requires that the remains be labeled as Native American unless proof can be submitted showing another group. The remains should be left “in situ” but in the event this is not possible, the CTUIR must supervise or be part of any removal or identification of the remains. Burials sites require an inspection to determine if the remains are modern or ancient, or if the grave has been disturbed. If the remains are modern, the inspection must cease as law enforcement agencies may have

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177 Ibid., 1-3.
178 Ibid., 3-4.
jurisdiction. Any evidence of a violation under the Archaeological Resources Protection Act or NAGPRA, for example, requires a complete investigation of the site. If the remains are not modern, an inspection should be made to ascertain the origin of the remains. If the remains are Native American, the site should be temporarily protected until the Cultural Resources Protection Program and the Cultural Resources Commission work out a plan. During this inspection, human remains and grave goods must not be handled, removed, or photographed without the consent of the CTUIR. If the remains are discovered during the construction process, the work must stop while an inspection is conducted. Plans should immediately be made for the removal of remains threatened by development or construction.179

The manual also includes language about testing of remains. Under Section 6 of the policy and procedure manual, the CTUIR is quite clear in their desire to avoid destructive testing of human remains. “No methods of study shall be employed that diminishes the integrity of the remains or associated funerary objects.” However, the CTUIR does allow testing in some circumstances with the approval of the Cultural Resources Commission or the Board of Trustees. This testing will be limited to an examination by a physical anthropologist employing non-destructive methods. Additionally, the CTUIR reserves the right to forego scientific testing and immediately move to rebury human remains and associated funerary objects.180

The inadvertent discovery of human remains on federal lands can be challenging to tribes if there are no known descendants. The remains revert to the tribe with the closest connection to the skeleton and which file a claim for the remains. However, if competing

179 Ibid., 4-6.
180 Ibid., 6.
tribes file for the same remains, testing may be needed to determine cultural affiliation. This places the tribes in a position to either authorize the study of the remains to determine affiliation or give up their claim to avoid scientific testing. DNA testing is a possible solution because of the omissions and inaccuracies in museum records. For example, in testimony before the U.S. Senate leading to the passage of NAGPRA, Dean Anderson, under secretary for the Smithsonian Institution, illustrated the difficulty of identifying tribal human remains with accession records. He stated that the Smithsonian could only identify fourteen of the 18,300 sets of remains in their possession by name and only 620 could be linked to a particular tribe. Anderson also mentioned that the records attached to the Army Medical Museum collection contained errors such as listing the remains as male when the remains were actually female.

Once the remains have been identified, the CTUIR follows the procedures laid out in the repatriation manual for the reinterment of human remains. The CTUIR have reserved the right to rebury human remains and grave goods as an internal procedure of the tribe without the involvement of outside entities. Consultation is not required to discuss the reinterment. Additionally, the reinterment should not be made public, as this will alert others to the location of Native American burial sites.

In an effort to preserve traditional cultural resources, the Confederated Tribes use federal Indian law when dealing with federal agencies. Two important principles of federal Indian law, sovereignty, and the reserved rights doctrine guide the Confederated

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Tribes in their dealings with non-Indians. The Confederated Tribes use the Treaty of 1855 to prove tribal sovereignty (the recognition of tribes as a separate entity from the United States) and maintain this sovereignty by engaging in government-to-government meetings with federal officials. These meetings enable the CTUIR to represent themselves as a separate government and to consult on areas of concern involving cultural resources.

The Cultural Resources Protection Program actively engages non-Indians in the consultation process to manage, evaluate, and identify natural and cultural resources. These resources have always been important to Native Americans and that importance will continue for generations of future Indians. Because Native Americans hold a fraction of their former land base, the management of natural and cultural resources must continue in lands owned by non-Indians. Resources located in the ceded lands of the CTUIR require constant management as these resources are now located in non-Indian lands. Salmon and berries are two such resources that thrived in the period before the arrival of Europeans. In many areas these resources are located on former tribal lands outside the reservation boundary.

The CTUIR invoke the reserved rights doctrine, or the rights inherent to tribes before signing a treaty with the federal government, to manage these resources. The reserved rights doctrine states that rights were not given to tribes with the signing of an agreement with the U. S. but rather that all rights were reserved and only those rights in the signing

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of a treaty were lost. For example, tribes did not give up their rights to hunt and fish in their traditional areas as affirmed by *United States v. Winans*.\(^{187}\) This Supreme Court case involved the Yakama Indians and the Winan family who operated a fish wheel and owned land along the Columbia River. The Court determined that the Indians had the right to fish and hunt in non-reservation areas as their ancestors had done for thousands of years. Obstructions to their fishing and hunting areas were forbidden as Indians retained their rights to travel outside the reservation borders to engage in fishing and hunting and cross non-Indian lands to their traditional river fishing sites.\(^{188}\)

For example, during the Columbia River System Operation Review, which began in 1990 to examine the impact of population growth on the river system in the Northwest, the main agencies involved in the review contacted fourteen Tribes in the Pacific Northwest that might be affected by the review. In an effort to include the Tribes, telephone calls were made, letters sent, meetings held, briefings conducted, contracts written, and materials were sent to the Tribes by the main agencies of the Columbia River System Operation Review. Letters were sent by the System Operation Review team to update the Tribes on the System Operation Review and/or set up meetings in 1991, 1992, and 1993. The group and tribal members from eight Tribes met in 1993 at a general coordination meeting and further meetings were held with other Tribes in the following months. The agencies contracted with five Tribes, the Confederated Tribes and Bands of the Yakama Indian Nation, the Nez Perce Tribe, the Burns Paiute Tribe, the Confederated Tribes of the Warm Springs Reservation, and the Colville Confederated Tribes, to


provide information regarding the impact to Native American cultural resources as a result of dam operations.\textsuperscript{189}

One of the main issues that emerged as the Systems Operation Review completed its Environmental Impact Statement was the recognition that Indian Tribes and fish and wildlife agencies were excluded from the decision-making process.

These parties felt that key decisions about the system were dominated by the Federal managing agencies and the region’s utilities in closed processes that did not equitably account for environmental values. This feeling of ‘lacking a seat at the table’ demonstrated much of the need for the Forum and helped lead the SOR agencies to encourage broad participation on the SOR work groups.\textsuperscript{190}

Many of the tribes consulted for the Systems Operations Review study region covering fourteen federal dams on the Columbia and Lower Snake Rivers believed the main federal agencies did not interact with the tribes in a timely fashion during the consultation process. The agencies eventually worked with the tribes but the tribes believed the agencies were hesitant to affirm the tribes’ sovereignty and treaty rights, the government’s trust responsibility to the tribes, and the tribes’ need for government-to-government relations.\textsuperscript{191}

Consultation was a necessity for the tribes because Native Americans have used the Columbia River for thousands of years, leaving evidence of fishing sites, campsites, ceremonial sites, spiritual sites, and human burials. With construction of fourteen dams and reservoirs along the Columbia and Snake Rivers from 1938 to 1975, these burials and other sites have been submerged in water.\textsuperscript{192} The dams and reservoirs not only inundated


\textsuperscript{190}Ibid., 15.


\textsuperscript{192}Ibid.
these sites but continue to threaten or destroy human remains and artifacts due to changes in reservoir levels, wave and wind action, and exposure related to drawdown, or the drop in water level due to dam operations. Vandalism and looting are also factors to consider as reservoirs release water and human remains and cultural resources are uncovered.193

The Tribes were hoping for better communication and consultation with the System Operating Review concerning their cultural resources but were disappointed by the results. However, the Confederated Tribes and other tribes were given additional support in the mid-1990s as President Clinton drafted an Executive Memorandum and signed an Executive Order directing the federal government to consult with tribes in the event projects may damage or impact tribal resources. In 1994, President Bill Clinton outlined procedures regarding the relationship between the United States government and Indian tribes. The purpose was to create a better dialogue between two sovereign governments by outlining the responsibilities of the federal agencies in their dealings with Indian tribes. One of the principles was the need to consult with tribes before engaging in projects that may impact tribes. “Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments.”194

Two years later, President Clinton signed an Executive Order that ensured access to sacred sites by Native Americans. In addition, federal agencies are responsible for the confidentiality of these sites. The order also states that this notice should be carried out

193Ibid.
following the aforementioned Executive Memorandum dated April 29, 1994. This type of consultation would have been welcome during the System Operating Review but it did not occur. Although consultation was lacking during the System Operating Review, the CTUIR have cultivated relationships and cooperated with other Tribes to pass legislation to protect their cultural resources.

The tribes became quite adept at crafting legislation when they drafted Senate Bill 61 in 1995. The bill was supported by seven out of the nine Oregon tribes and called for more involvement of the tribes during the permit process on private lands. The Tribes gained the support of the leaders of the Oregon House and Senate and the bill was pushed through with little opposition. Oregon tribes also worked together in the early 1990s to increase fines for those that disturb graves by raising the penalty from $500 to $10,000 per grave.

The CRPP also worked to strengthen their cultural resource management skills within the Indian community. The Aboriginal Lifeways, Prehistoric Artifact Recognition, and Documentation Certification, began in 1995 with ten tribal members from the Confederated Tribe of the Siletz Indians of Oregon, ten tribal members from the CTUIR, and tribal office employees. This program deals with issues related to treaties with the United States; NHPA; NAGPRA; the CTUIR’s “Policy and Procedure Manual for the

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Repatriation of Ancestral Human Remains and Funerary Objects”; and protection and management of cultural resources and traditional cultural properties.\textsuperscript{198}

In the following years, other tribes joined the Aboriginal Lifeways, Prehistoric Artifact Recognition, and Documentation Certification programs in an effort to gain cultural resource management experience and knowledge for their tribal members. This program was taught by a variety of individuals such as professors, tribal elders, reformed pothunters, collectors and employees of federal agencies.\textsuperscript{199} In the first decade of the program, tribal members from seventeen federally recognized tribes and a few non-native participants registered for the program. The bulk of the students, however, were between eighteen and twenty-five years of age and enrolled members of the CTUIR. The Indian Lake training session differs from the typical university course in archaeology and archaeological excavation techniques because the emphasis was cultural resource management from the tribes’ perspective. However, non-Indian instructors allowed the students to gain invaluable experience related to historic preservation. These two views, the Indian and non-Indian, provided students with a better background in historic preservation.\textsuperscript{200}

Tribal cultural resource management among tribes in the Mid-Columbia River has benefited tribes in many ways. For example, during the cultural resource management process, tribal members may seek the advice of tribal elders concerning a certain area that may be impacted by development. The elder can relate information to the tribal

employee about the area such as the location of archaeological sites, resources and legends associated with the area. As a result, tribal elders can now regain their place in tribal society as teachers by passing on their cultural knowledge. Another benefit to the tribes is the creation of tribal liaisons among those working in cultural resource management. The cultural resource management staff, during their work, will meet with many different types of individuals and groups, both Indian and non-Indian. When working with Indians, the staff learns from tribal elders and helps Indian youth navigate employment in the non-Indian world. When working with non-Indians, the staff may encounter city managers, lawyers, construction crews, and looters. This contact enables the staff to build experience working both in the Indian and non-Indian environments.

The relationships built during these interactions have enabled the CTUIR to develop a successful cultural resource program. Dealings with non-Indians have allowed the Tribes to enforce their rights under NAGPRA for the protection and repatriation of their tribal ancestors.

According to Teara Farrow (Program Manager, CTUIR) and Diana LaSarge (NAGPRA Coordinator, CTUIR), since the passage of NAGPRA the public has become more aware that the excavating, removing, and selling of Native American remains and funerary objects is illegal. “However, it still goes on by those who are trying to profit by this activity.” Farrow and LaSarge also stated that public awareness has increased concerning the removal of Native Americans from their resting places and the storage of these buried remains in paper bags, boxes, plastic bags, and on shelves in American museums and institutions abroad. The public is also aware that the CTUIR is attempting

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to reclaim both the remains of their ancestors and associated funerary objects so that they can be placed in, or near their original resting place.\textsuperscript{202}

One important outgrowth of NAGPRA has been the realization by private collectors that their collections of human remains and funerary objects should be returned to the tribes. Although NAGPRA does not apply to private collectors, the enactment of the law has motivated some individuals to return their collections to the tribes.

One benefit of NAGPRA has been that many people who have held remains and funerary objects in their private collections for many years are now giving them back to the Tribes. This change of heart would probably not have happened without the enactment of the law.\textsuperscript{203}

While some private collectors have returned their collections, it has been, however, a struggle to repatriate items from institutions that are actually covered under NAGPRA. According to Farrow and LaSarge, NAGPRA is sometimes interpreted differently by institutions than the repatriation program at the CTUIR. As an example,

Some institutions see funerary objects as being only those things found touching a body; whereas, it can be objects left on or near the grave by people visiting the grave many years later. Other institutions have been totally oblivious to the meaning of NAGPRA, and regard objects that have possible sacred or funerary use as ‘art’ objects and place them under their ethnographic collections. Others have worked directly with Tribes on determining what type of objects are considered funerary. One institution in particular seems to interpret NAGPRA with a fine tooth comb rather than working within the intent of NAGPRA which is to return these object(s) and ancestral remains back to Tribes.\textsuperscript{204}

\textsuperscript{202} Teara Farrow and Diana LaSarge, email correspondence with author, November 21, 2007.
\textsuperscript{203} Ibid.
\textsuperscript{204} Ibid. The institution in question appears to be the American Museum of Natural History in New York as evidenced by a statement made by Farrow in a November 2007 article titled “Remains returned from NYC” in the CTUIR’s tribal newspaper, \textit{Confederated Umatilla Journal} (November 2007 issue, p. 1). At issue was a collection of roughly 400 stone and bone tools from the Umatilla and Wallula town sites collected or purchased by an individual collector. The museum stated that a cultural determination could not be completed because ‘The documentation does not determine whether some items were collected or purchased, which the Museum says is necessary to determine association.’ Farrow also repeated her statement that when interpreting NAGPRA the museum uses a ‘fine-tooth comb’ instead of the original intent of NAGPRA, which is to repatriate items to the Tribes.
However, objects left on or near a grave by visiting descendants or tribal members are also covered by NAGPRA as stated under section 3001 of the U.S. Code pertaining to NAGPRA, “‘Associated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with the individual human remains either at the time of death or later, . . .”

As of November 2007, the CTUIR had repatriated close to 745 individuals. Roughly 18,000 burial-related objects and 11,000 archaeological objects have been returned to the CTUIR. The majority of the items were removed during the end of the 19th century and made their way to museums and universities around the United States. Repatriations and negotiations have occurred between the CTUIR and institutions in Washington, California, Georgia, Texas, Alaska, Ohio, Minnesota, Missouri, Oklahoma, Oregon, and Washington, D.C.

Museums can build stronger relationships with tribes when items are returned that may not be covered under NAGPRA. For example, the Museum of Western Colorado returned a beaded vest and buckskin dress to Northern Ute families. In return, the Northern Ute donated new beaded items and shared stories and information with the museum. The Museum of New Mexico has a similar repatriation policy that has enabled the museum to learn more about the items in its collection as tribal members examine items in the museum. The museum has built a good relationship with New Mexico’s tribes and avoided the problems other institutions have encountered when implementing NAGPRA.

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207 Guilliford, Sacred Objects and Sacred Places: Preserving Tribal Traditions, 53.
While NAGPRA has led to the repatriation of tribal ancestral remains and funerary objects, the process has created quite a burden for the tribes. For example, tribes assume the responsibility of conducting much of the research proving cultural affiliation. The museums and federal agencies require these documents and want the tribes to perform much of the work. This creates a strain on both time and resources for the tribes.\textsuperscript{208}

However, some museums and institutions have not completed their inventories and submitted these to the tribes.

Many repositories, federal agencies and museum have not completed their NAGPRA inventories even though the extension date has come and pass and been extended. The Tribes are pushing the federal agencies that we work with to get their inventories completed.\textsuperscript{209}

NAGPRA summaries regarding human remains and associated funerary objects were to be “completed by not later than the date that is 5 years after November 16, 1990, . . .”\textsuperscript{210} Once these entities completed their inventories, the tribes then needed to do the work involved in proving cultural affiliation, thereby prolonging the repatriation and reburial process.

\begin{footnotes}
\item[208] Farrow and LaSarge.
\item[209] Ibid.
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Chapter Five

Cultural Affiliation and Kennewick Man

One of the most difficult aspects of implementing NAGPRA is the attempt at matching cultural resources held at institutions or found on tribal or federal land to their descendants. Funerary objects and known ancestors or relatives of Native Americans who were buried in the not so distant past are somewhat easier to connect to their descendents. Museums and other institutions may have accession records stating the name of the individual or the tribe associated with the remains or objects that were forwarded from the excavation site. Although the records may lack credibility, it is a good starting point to determine affiliation. It is far more difficult to determine their connection to modern day ancestors when the remains or objects go back several generations. In this process, cultural affiliation is determined by the institution in conjunction with Native American tribes believed to be the descendants of the remains or objects. To quote NAGPRA, “‘cultural affiliation’ means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.”

Cultural affiliation has been made difficult for the Confederated Tribes because the scientific community has placed the Tribes in the area for a time span that is shorter than the Tribes’ oral history. Archaeologists believe the CTUIR have occupied their traditional homelands from between 7,000 to 12,000 years ago. However, earlier archaeological evidence may have disappeared due to construction, collectors, or floods.

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211 Native American Graves Protection and Repatriation Act, sec. 3001 (2).
that occurred around 13,000 to 14,000 years ago. The Tribes, who believe they have inhabited southeastern Washington and northeastern Oregon since the beginning of time, reject the Bering Strait theory put forth by anthropologists.

There is also the issue of the standard used in making claims under NAGPRA. This standard consists of a non-Indian requirement of proving affiliation by using maps and establishing territorial boundaries. The CTUIR and other tribes in the ceded lands, often intermingled for trade or formed alliances through marriages. The CTUIR’s ceded lands shared borders with other tribes such as the Nez Perce and Yakama. To further illustrate this point, the territorial borders established during the 1855 Treaty signing are incorrect and some of the place names used at that time have been renamed. For example, the treaties with the CTUIR and Yakama define the boundaries of the ceded lands in the area of the Hanford Nuclear Reservation in Richland Washington. Locating this boundary line today is problematic as the islands, creeks, and lakes named in the treaty have either changed names or are difficult to recognize today. Additionally, the Wanapum Tribe could establish a claim in the Hanford area.²¹²

There are other areas of conflict that may arise in the future. The western border of the CTUIR ceded lands along Willow Creek was surveyed incorrectly so claims along this border could involve the Warm Springs Tribe. The Burns Paiute Tribe may have claims along the southern border with the CTUIR and the eastern border overlaps that of the Nez Perce. The CTUIR area outside the ceded lands such as the Gorge and Wallowa Lake may hold an interest for the CTUIR in establishing claims. Moreover, events in the past that impacted the CTUIR such as the hanging and burial of five Tribal members in

Oregon City for the Whitman Massacre could lead to repatriation claims outside their traditional lands. Tribal members were held in jails in Sacramento and Fort Vancouver in the mid 1800s, miles away from their ceded lands. The Big Hole and Bear Paw battlefields involved the CTUIR as a result of their alliance with the Nez Perce. NAGPRA claims at these sites will need to be examined due to the different parties involved.\textsuperscript{213}

Additionally, concerns over the use of tribal information used to prove affiliation has become a valid concern of Native Americans. Sensitive information regarding sacred sites or religious ceremonies was not meant to be shared with non-Native Americans. Indians have had to balance their wish to keep information within the tribe with their need to provide information that proves affiliation.

A discovery in 1996 of an ancient skeleton on the shared traditional lands of the Southern Columbia Plateau Indians is an example of the difficulty in establishing cultural affiliation for the Native American and more specifically, the Confederated Tribes of the Umatilla Indian Reservation. The case also demonstrates the time and costs involved in establishing a claim for ancestral skeletal remains.

Kennewick Man, or the Ancient One, estimated to be roughly 9,000 years old, was discovered near the Columbia River in present-day Richland and claimed by the CTUIR, the Colville Confederated Tribes, The Nez Perce Tribe, the Yakama Nation, and the Wanapum Band. Scientists wanted to study the skeleton but tribal members wanted the remains buried as soon as possible and dismissed claims by scientists that the remains were not Native American. One month after the discovery, Armand Minthorn of the CTUIR argued that because the bones were old, the skeleton was Native American.

\textsuperscript{213}Kellas, 74.
If this individual is truly over 9,000 years old, that only substantiates our belief that he is Native American. From our oral histories, we know that our people have been part of this land since the beginning of time. We do not believe that our people migrated here from another continent, as the scientists do. We also do not agree with the notion that this individual is Caucasian. Scientists say that because the individual’s head measurement does not match ours, he is not Native American. We believe that humans and animals change over time to adapt to their environment. And, our elders have told us that Indian people did not always look the way we look today.\textsuperscript{214}

Minthorn disagreed with the scientists who believed the remains should be studied for the valuable information contained in the skeleton and that re-burial will destroy information related to tribal history. Minthorn did not see the purpose of further studies as their history has been passed down by tribal elders and through their religion and is already known.\textsuperscript{215}

This is one of the most contentious issues between archaeologists and Native Americans as the two groups have different perspectives regarding the past. Archaeologists divide the past into sections in which new developments, such as language change, begin a new era. The past is viewed in a straight line with these divisions until the present time. The archaeologist studies different eras to better understand the past. Indians already know the past through their oral histories and religious ceremonies and incorporate this knowledge into the present. Native Americans feel the study of the past is not necessary and the disturbance of graves to investigate the past is viewed as a violation of the past and upsetting to the present.\textsuperscript{216}

For Native Americans, the past does not need to be researched or studied because the past is already known through oral histories. The archaeologist examines the past and

\textsuperscript{214} Armand Minthorn, “Human Remains….”
\textsuperscript{215} Ibid.
attempts to gain knowledge from its study. Indians view this with suspicion because they deal with the past everyday and do not see any value in the information extracted by the scientist. However, according to archaeologist Clement Meighan, archeologists have a responsibility to document past cultures, more specifically extinct cultures. Without the research of the archeologist, the ancient people fail to have any record of their existence. The archeologist is providing this proof by examining their culture and recording their findings.

Although the two groups have clearly defined views of the past, Indians and archaeologists can benefit from each other’s concept of time. For example, Native Americans can use archaeological data to bolster land claims or answer questions about a tribe’s culture. Archaeologists can use oral histories to augment their knowledge of the past.

For example, William Lipe, President of the Society for American Archeology at the time of the discovery, proposed that Kennewick Man may have been related to an extinct tribe and that scientists should study the remains for further insights into the past. He also stated that affiliation with a modern tribe was difficult to determine. He believed NAGPRA did not address the issue that Kennewick Man could have been related to a

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217 Larry J. Zimmerman, “‘This Has Bothered Me For 500 Years’: The Impact of Concepts of Time and the Past on the Reburial Issue,” in Preservation on the Reservation: Native Americans, Native American Lands and Archaeology, ed. Anthony L. Klesert and Alan S. Downer, Navajo Nation Papers in Anthropology Number 26 (Window Rock, AZ: Navajo Nation Archaeology Department, Navajo Nation Historic Preservation Department, 1990), 412.


population that no longer existed or that the remains may be associated with many Western tribes.\textsuperscript{220}

However, most Indians have a communal view of the dead and assume a responsibility to protect the deceased even though no direct connection is present. Some Native Americans extend this belief to the burials of tribal members while other Indians are concerned with the protection of the larger Indian population.\textsuperscript{221} Kennewick Man may or may not have been directly related to the five tribes but the Indian community was concerned for his welfare after the disturbance of his grave.

The skeleton, found on federal land under the control of the Corps of Engineers and originally intended to be handed over to the Tribes under NAGPRA regulations, became the center of a legal battle between Indians and scientists. Anthropologists and archaeologists argued that the remains were too old to have any connection to modern Indian tribes and should be studied by scientists due to the scarcity of the find. According to anthropology professor Robson Bonnichsen, NAGPRA was intended to repatriate remains of direct ancestors to modern day Indians. ‘But when you start talking about 450 generations among individuals that have characteristics that are not typical of modern people, you’re stretching the limit.’\textsuperscript{222} However, the five tribes held a different view as evidenced by this Armand Minthorn quote in the \textit{Oregonian} two months after the discovery.

The five tribes have come together and have all said the same thing. These remains need to go back into the ground as soon as possible.

Culturally and religiously, our religion tells us that when a body goes into the ground, that body is keeping a promise when time began. And the body is to remain in the ground until the end of time. And because these remains have been exposed, this is

\textsuperscript{221}McGuire, 180.
very sensitive to us because the remains aren’t part of the ground like they should be.  

Minthorn also stated that it is the policy of CTUIR to keep discoveries quiet due to the sensitive nature of the matter and for the protection of the remains. However, Minthorn believed this case could serve as an example to non-Indians in explaining the laws related to the discovery of human remains and tribal beliefs surrounding this issue.

The Native American Graves Protection and Repatriation Act (NAGPRA) and Archaeological Resources Protection Act (ARPA), as well as other federal and state laws, are in place to prevent the destruction of, and to protect, human burials and cultural resources. The laws also say that authorities must notify affected Tribes and consult with tribal officials on how to handle the discovery, as well as protection and preservation. Our Tribe was not properly notified and if we had been, this difficult situation might have been avoided.

Eight anthropologists, Robson Bonnichsen, C. Loring Brace, George W. Gill, C. Vance Haynes Jr., Richard L. Jantz, Douglas W. Owsley, Dennis J. Stanford, and D. Gentry Steele, wished to study the skeleton and filed a lawsuit to prevent the return of the remains. The anthropologists took issue with the fact that Kennewick Man was determined to be Native American based on his age and that returning the remains before studying such ancient remains would be a loss to the United States and the scientific community. However, in 2000, the Department of the Interior eventually determined that the remains were Native American as defined in NAGPRA, preventing the anthropologists from examining the remains.

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223 Ibid., A9.
225 Armand Minthorn, “Human Remains…”
226 Joe E. Watkins, “Beyond the Margin: American Indians, First Nations, and the Archaeology in North America,” American Antiquity 68 (2003): 274. There are two instances in which repatriation under NAGPRA may be delayed. Section 3005 (e) of NAGPRA states that in the case of competing claims in which the Federal agency or museum cannot determine the appropriate party to return the items, the items can be held by the Federal agency or museum until the correct party is determined. The other instance, related to the Scientists’ argument that the remains were unique, falls under section 3005 (b), which
Before this decision by the Department of the Interior, the agency announced testing procedures were to be conducted on the bones of Kennewick Man to determine tribal affiliation. The CTUIR were opposed to the testing for several reasons with one being the destruction of a portion of the bones due to the DNA process.\textsuperscript{227} According to Anthropologists Patricia Landau and D. Gentry Steele, physical anthropologists use a variety of means to collect data from human remains often leading to the destruction of a portion of the bones. Microscopic analysis requires that a sample of the bone, usually the size of a dime, be removed from the skeleton. Other techniques involve the use of chemicals to extract information from the bones.\textsuperscript{228}

The same year, Minthorn also discussed the testing in front of Congress while speaking about Kennewick Man and the problems encountered by his tribe. He again stressed the point that the five tribes were not adequately consulted. The Department of the Interior had made the decision to conduct testing on the skeleton to determine the cultural affiliation without consulting the tribes. Minthorn believed there were instances in which testing may be necessary, but “...the decision must be made with the tribes not for the tribes. Any other avenue removes the tribes from the repatriation process and is contrary to the intent of NAGPRA.”\textsuperscript{229}

Later in 2000, the Department of the Interior made the determination that the remains were affiliated with the CTUIR and should be repatriated.\textsuperscript{230} However, the eight

\begin{footnotesize}
\begin{enumerate}
\item Congress, Senate, Select Committee on Indian Affairs, \textit{Native American Graves Protection and Repatriations Act}, 25 July 2000, 3-4.
\item Watkins, 274.
\end{enumerate}
\end{footnotesize}
scientists continued their lawsuit after this determination and the court battle continued for another two years before a decision was reached by the U.S. District Court in Portland Oregon.

In 2002, the U.S. District Court in Portland Oregon ruled in favor of the anthropologists with a ruling that the Department of the Interior was wrong in its determination that the remains were Native American. John Jelderks, Justice Magistrate of the U.S. District Court, ruled that the remains did not fall under NAGPRA, because the relationship between the remains and a present-day tribe were not met. Jelderks ruled that the government failed to establish this link as required by NAGPRA. The Court used the strict definition of NAGPRA in determining this link by stating that the remains must be connected to a present-day tribe.  

With the decision that NAGPRA did not apply to Kennewick Man because he was not Native American, the issue of cultural affiliation became more clouded. Scientists desired proof of affiliation beyond a shadow of a doubt with ancient remains instead of the preponderance of evidence that the law intended. As anthropologist Joe Watkins noted in reference to the Kennewick Man decision the battle between scientists and Indians may boil down to who has the best legal team in cultural affiliation cases.

The thrust of the decision in this case, then, is that Native Americans might now be required to demonstrate—perhaps on an evidentiary level—the point at which cultures of the North American continent stopped being ‘immigrants’ and became ‘Native American’ in order to establish cultural affiliation with human remains over which they might wish to exert a repatriation claim. Or perhaps scientists will be required to demonstrate the point at which ‘American Indians’ magically fade into ‘immigrants.’

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231 Ibid., Under section 3001, part 9 of NAGPRA, ‘Native American’ means of, or relating to, a tribe, people, or culture that is indigenous to the United States.
233 Watkins, 274.
In February 2004, the 9th Circuit Court of Appeals ruled that Kennewick Man did not fall under NAGPRA but rather ARPA as the government did not prove Kennewick Man was Native American. Scientists were allowed to file for a permit to study the remains. The CTUIR provided documents, expert testimony, oral traditions and still were not given the benefit of the doubt in a law intended by Congress to repatriate ancestral remains and funerary objects.

However, providing this information to prove affiliation is itself one of the concerns related to the repatriation of objects under NAGPRA because of the need to keep sensitive tribal information within the tribe. Proving affiliation means sacred sites and sensitive information are divulged to the public. For example, if two tribes claim control of the same burial object, the group that makes the stronger case will probably receive the object. This may mean divulging tribal information such as burial locations on a tribes’ traditional lands. This is information meant to stay within the tribe to prevent the public from looting burial grounds. Another issue related to sacred sites is the fact that some sites had relatively little use because only certain individuals were allowed to go there. Proving affiliation by continuous use may be difficult in areas where few individuals traveled and left little evidence.

The Kennewick Man discovery demonstrated the complex relationship between Indians and the U.S. government and showed some of the flaws of NAGPRA. What appeared to be a straightforward repatriation evolved into a complicated issue for all.

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parties involved. The 9th Circuit Court ruled the Ancient One was not affiliated with any of the Plateau Tribes so repatriation was not available to the CTUIR.

Other issues have or will surface in cases where determining cultural affiliation is necessary for repatriation. Unforeseen problems such as the overlapping of tribal borders created by the Federal government during the signing of treaties, the removal of tribes from their homelands, and the costs associated with the identification of remains are issues that prolong and increase the time and cost of the identification process.

One example is the completed inventory notice by the U.S. Department of Energy in Richland Washington in 2001 involving five different tribes and bands. The notice was a completed inventory consisting of three sets of human remains and funerary objects such as dentalium shells, chipped stone tools, a bone needle, glass beads, pebble sinkers, and stone flakes. Specialists in archaeology, ethnography and osteology studied the remains, as well as representatives from the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Wanapum Band. Utilizing historic documents, ethnographic sources, and oral history, a determination was made that one of the sites mentioned in the notice was primarily used by the Wanapum Band since precontact.237

The notice also stated that

The treaties of 1855 and other historic documents, ethnographic sources, and oral history identify site 45-BN-128 as located on the ceded lands boundary between the Confederated Tribes of the Umatilla Reservation, Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington, in an area routinely visited by bands associated with both groups. Bands associated with the Nez Perce Tribe of Idaho and the Confederated Tribes of the Colville Reservation,

Washington, are also known to have used the area routinely.\footnote{Ibid.}

A total of three sites were detailed in the notice with a determination that the Wanapum Band was the primary group associated with the three excavated sites. However, all three sites had a connection to a total of four additional tribes of bands. The aforementioned site was in the boundary of the ceded lands of two tribes while the other sites were in the ceded lands of the Yakama Indian Nation and the Confederated Tribes of the Umatilla Indian Reservation respectively.\footnote{Ibid.}

Another issue involves the removal of Native Americans from their homeland. An example is that of the Palus Indians of Washington State. This inventory of human remains and associated funerary objects demonstrates the complexities of determining cultural affiliation when a tribe has been dispersed to different reservations and their cultural items distributed to different institutions. In 1964, human remains were removed prior to dam construction in Franklin County, Washington. Subsequently the remains and objects were placed under the control of the Army Corps of Engineers in Walla Walla, Washington, and housed at the Museum of Anthropology at Washington State University, Pullman, Washington, and the Nez Perce National Historical Park, Spaulding Visitor Center, Spaulding, Idaho. The remains and burial objects were removed from a Palus cemetery by Washington State University and an indeterminate number reburied in higher ground to prevent flooding by the backwaters of the dam. The human remains and associated funerary objects that were not re-interred, were placed at the University of
Idaho, Moscow Idaho and the Museum of Anthropology at Washington State University, Pullman, Washington. \(^{240}\)

In 2000, the human remains and associated funerary objects were transferred to Washington State University from the University of Idaho. An inventory concluded that the collection consisted of ninety-four sets of human remains with four of the individuals identified by name. The collection also contained 6,220 associated funerary objects such as arrowhead fragments, beads, and metal objects. \(^{241}\)

After the Nez Perce War of 1877, several Palus were sent to Indian Territory in Oklahoma. Near the end of the 1800s and on into the 1900s, the Palus began moving onto the Umatilla, Colville, Nez Perce, and Yakama reservations.

Recent studies done by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and Nez Perce Tribe, Idaho, document that each tribe has a cultural affiliation with the Palus Indians as a result of the dispersion of the Palus people to each of the reservations during the late 19\(^{th}\) and early 20\(^{th}\) centuries. The cultural affiliation of all the tribes is further strengthened by living enrolled members that have documented ancestors buried at Palus. \(^{242}\)

In the preceding example, research undertaken by the tribes helped determine the cultural affiliation of the remains and funerary objects and was a necessary step in the process. Once the initial affiliation is determined by the institution, consultation by tribal members is required and incurs additional expenses such as travel and lodging. In a Senate hearing on the implementation of NAGPRA in 1993, the vice-president for the Field Museum in Chicago, Jonathan Haas, explained the costs associated with determining tribal affiliation. Haas, presented the example of the Field Museum’s

\(^{241}\)Ibid., 24755-24756.  
\(^{242}\)Ibid., 24756.
consultation with the Blackfeet Tribe of Montana. The Blackfeet requested the return of their ancestor’s remains from the museum. The museum had records for thirty-five sets of Blackfeet remains but could not positively determine if all the remains were Blackfeet.\(^{243}\)

We had the remains of 35 individuals that were identified as being Blackfeet. Our records on these individuals, however-our museum is 100 years old; these individuals were acquired in 1907. I cannot honestly say how they were acquired. My guess is not by the best of means, and we didn’t have good records on them to identify them specifically as Blackfeet. We talked to the Blackfeet about this. The Blackfeet were very concerned that they only wanted Blackfeet remains returned.\(^{244}\)

Haas stated that the museum was able to find a physical anthropologist who examined the remains free of charge. Thirty-four of the remains were determined to be Blackfeet with the remaining individual of unknown affiliation. The Blackfeet were told of the analysis and traveled to the museum to return their ancestors. The museum helped the Blackfeet prepare the individuals for the train trip to the Blackfeet Reservation. The train was preferred over an airplane because the Blackfeet did not want their ancestors remains to be flown to the reservation. The final cost was about $300 per individual to have the remains indentified, returned to the reservation, and reburied. Haas added that the museum had 1,000 individuals in their collection so the sum total would be close to $300,000.\(^{245}\)

One of the other issues surrounding this case is tribal origin and sovereignty. It was intimated at the time of the controversy surrounding Kennewick Man that if scientists

\(^{243}\)Congress, Senate, Select Committee on Indian Affairs, Native American Graves Protection and Repatriation Act, 103rd Cong., 1st sess., 27, May 1993, 20.

\(^{244}\)Ibid. According to Andrew Gulliford in his book Sacred Objects and Sacred Places: Preserving Tribal Traditions some tribal members are concerned that the repatriated bones may not be those of their tribal members but rather the remains of their historic enemies. Inaccurate record keeping on behalf of the institution returning the remains could result in the wrong bones being sent. The Eastern Shoshone of Wyoming, for example, do not believe the accuracy of museum records pertaining to the bones in their procession and therefore are not in favor of repatriation.

\(^{245}\)Ibid., 20-22.
determined the remains to be Caucasian, Native American’s tribal sovereignty would be jeopardized. In *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*, David Hurst Thomas points out the flaw in this argument. He states that under the aforementioned *United States v. Winans*, tribal sovereignty was retained when signing a treaty with the United States. It was only the specific rights in the treaty that were ceded. All other rights as a sovereign nation were retained before the signing of the treaty. According to Thomas, tribes will retain their sovereignty even in the event that scientists determine Indians were not the first humans living in North America.

It can be argued that Native Americans never relinquished their rights to rebury their dead in areas ceded to the United States by treaty. The remains should be returned to the tribe which ceded the area, because the canons of construction, or the meaning of the treaty language as the Indians would have understood at the time, would indicate the tribe did not sign away the right to protect their dead. This example also applies to the remains of Native American ancestors. Treaty negotiations during 1855 between the Umatilla, Cayuse, and Walla Walla Tribes and Isaac Stevens removed the Tribes from large areas of land but did not separate them from their dead. Only specific rights taken from the CTUIR during the 1855 treaty are in force. The CTUIR are still the caretakers of their dead found on the ceded lands. Kennewick Man was discovered on the traditional lands of the CTUIR ceded to the United States and now occupied by the Army

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247 *United States v. Winans*.
248 Ibid; Thomas, 235
Corps of Engineers.\(^{250}\) However, by 2004, the CTUIR had given up their court battle for the Ancient One’s remains.

The CTUIR decided not to appeal the Ancient One case to the Supreme Court. Several factors influenced the decision. One of the arguments was the possibility that the Court would render an unfavorable decision and the case would become law.\(^{251}\) This was a real fear, as Supreme Court cases involving Indian issues have not fared well recently for Native Americans. According to the Native American Rights Fund, Indian tribes have lost about eighty percent of their cases brought before the Supreme Court in the last twenty years.\(^{252}\)

For example, in *United States v. Lara*,\(^{253}\) Judge Clarence Thomas began questioning the sovereignty of Indian tribes. This 2004 case involved a Turtle Mountain Chippewa arrested and tried by a tribe in which he was not a member. The Spirit Lake Tribe convicted Billy Jo Lara who was later indicted for the same offense in a federal court. Lara claimed he could not be indicted for the same crime because of double jeopardy. However, the Supreme Court ruled it was possible for both courts to prosecute an individual for the same crime. The Court reached this decision by stating that Tribal Governments and the Federal Government are separate sovereigns. With this decision, Judge Thomas began examining the inconsistencies of Indian law and saw that some

\(^{250}\) Thomas, 235-236.


Indian law cases recognized tribal sovereignty while others did not.\textsuperscript{254} Perhaps this was the reasoning for not pressing the Kennewick Man case to the Supreme Court. An unfavorable ruling for one tribe can affect all other tribes in the United States.

Although the Kennewick Man/Ancient One ruling did not favor the Confederated Tribes, the Cultural Resources Protection Program has made large strides in the field of Cultural Resources Protection. The Confederated Tribes have repatriated many ancestral remains and funerary objects while protecting both their reservation lands and the traditional homelands of their ancestors. They have accomplished this by using their knowledge of federal and state laws to hold agencies and institutions accountable for the protection of their cultural resources.

Chapter Six

Pacific Northwest Tribes: A Comparison

A comparison of the cultural resources programs, economic circumstances, and populations of the CTUIR and other Pacific Northwest Tribes demonstrates the effectiveness and savvy of the Confederated Tribes. Two Northwest tribes, the Confederated Tribes of the Colville Indian Reservation and the Nez Perce Tribe, will be used for comparison purposes. In searching the Notices of Inventory Completion (NIC) Database maintained by the National Park Service, the repatriation efforts of the three tribes begin to emerge. The notices published in the Federal Register encompass human remains and grave goods that are held in museums and institutions within the United States.

The Confederated Tribes of the Umatilla Indian Reservation have close to 3,000 enrolled members on a reservation consisting of about 172,000 acres. The tribes have assumed responsibility for the protection of not only the lands within the reservation boundaries but also the 6.4 million acres of lands ceded in 1855 to the United States. Roughly 700 employees work in the CTUIR’s tribal government with a total annual payroll of $35 million and an operating budget of $190 million.

The Cultural Resources Protection Program is a key part of tribal government as their goal is to protect and maintain the cultural resources of the Confederated Tribes now and

257 Ibid.
in the future.\textsuperscript{259} The CRPP has a staff of fifteen that covers NAGPRA issues, investigates site disturbances, and performs archaeological work to name just a few of the responsibilities of the Program.\textsuperscript{260}

One recent accomplishment of the Program was the return of a Jefferson Peace Medal from the Oregon Historical Society to the Confederated Tribes. The Jefferson Peace medals were presented to Indian chiefs by the Lewis and Clark Expedition, with four of the medals mentioned in their journals as given to chiefs in the area of Wallula in October 1805 and April 1806. Walla Walla Chief Yellepitt was one of the chiefs who received a medal and the medal was probably placed in his grave. The Confederated Tribes stated that islands in the Columbia River were used as burial places and that the medal more than likely was dug up from a grave in that location. Although there were different accounts as to the provenience of the medal, the Society, after much discussion, decided to repatriate the medal to the Confederated Tribes. The Society, which uses the medal as their corporate seal, returned an important piece of their collection to the CTUIR. Although this was a one-of-a-kind- artifact for the Oregon Historical Society, and ownership was not positively determined, the intent of NAGPRA was adhered to and the Society eventually realized this was the appropriate action to take.\textsuperscript{261}

By comparison, The Confederated Tribes of the Colville Indian Reservation have more enrolled tribal members and a larger land base to care for. Tribal enrollment is over 9,065, comprising descendants of the twelve aboriginal tribes: the Colville, the


Nespelem, the San Poil, the Lake, the Palus, the Wenatchi (Wenatchee), the Chelan, the Entiat, the Methow, the southern Okanogan, the Moses Columbia and the Nez Perce of Chief Joseph’s Band. The Colville Indian Reservation lands cover 1.4 million acres\textsuperscript{262} while the traditional lands consist of forty million acres in the states of Washington, Oregon, and Idaho.\textsuperscript{263}

The Confederated Tribes and the Colville Indian Reservation are governed by the Colville Business Council at the Bureau of Indian Affairs (BIA) Agency at Nespelem. The Colville Business Council employs from 800 to 1200 individuals in permanent, part-time and seasonal employment. The Council is responsible for a multi-million dollar operation with the History/Archaeology Department an integral part of the organization.\textsuperscript{264} This department is slightly larger than the CRPP, with nineteen full-time employees and nine seasonal employees.\textsuperscript{265}

The Nez Perce Tribe is another Pacific Northwest tribe with similar demographics. As of November 2004, tribal enrollment was 3,363.\textsuperscript{266} Tribal enrollment is similar to the Confederated Tribes of Umatilla, but their ancestral lands are almost three times larger at about seventeen million acres. The traditional areas consisted of north central Idaho, southeastern Washington, northeastern Oregon, and traditional use areas in western

\textsuperscript{264} Colville Tribes, “Facts and Information.”
\textsuperscript{265} National Association of Tribal Historic Preservation Officers, “Highlighted THPO.”
Montana and Wyoming.\textsuperscript{267} The Cultural Resources Program of the Nez Perce Tribe has thirty employees, including one Hanford monitor. This employee is an example of one of the goals of the program; to protect historic sites and cultural properties by enforcing federal regulations.

Notices of Intent to Repatriate give the best clue as to the efforts of tribes and museums in the area of consultation. A cursory look at the National Park Service’s National NAGPRA Notice of Inventory Completion yields data that cover the breath of consultation between the Confederated Tribes and several agencies and institutions. The notices are posted when cultural affiliation has been determined for human remains and/or funerary objects. However, these notices do not state if the remains or funerary objects were repatriated to the affiliated tribes in the notices. Repatriations are not reported to National NAGPRA and the federal government does not have a central bank of information regarding repatriations. However, Notices of Inventory Completion give a clue as to the efforts of tribes and museums in the area of consultation.

Notice publication is a barometer of NAGPRA activity by museums and Federal agencies working with tribes and NHOs to make decisions on transfer of control of Native American human remains and cultural items. Each notice tells the story of historic collection practices and Federal agency and museum actions to consult with tribes and NHOs to resolve interests in cultural items and the disposition of human remains.\textsuperscript{268}

For example, notices have been listed for museums and institutions in Oregon and Washington: Oregon State University, Corvallis, University of Oregon, Eugene, the Oregon Historical Society, Portland, the Burke Museum in Seattle, the Northwest


Museum in Walla Walla, Central Washington University, Department of Anthropology, Ellensburg Washington as well as several federal agencies. The notices also demonstrate the distances involved in the transfer of tribal ancestral remains and grave goods to institutions outside the Pacific Northwest and the travel by the Confederated Tribes to consult and determine cultural affiliation. Some of the institutions outside of the Confederated Tribe’s traditional lands which have posted notices in the Federal Register related to the CTUIR are The Peabody Museum of Archaeology and Ethnology at Harvard University, Arizona State Museum at the University of Arizona, the San Diego Museum of Man, and the American Museum of Natural History in New York.

Using the search term, “Umatilla, Notices of Inventory Completion,” the database returned over 400 results showing consultations between the CTUIR and the holding institutions or agencies as of September 3, 2010. The results also reflect joint consultations between the Confederated Tribes, other tribes and the museums, agencies, or institutions. Similar searches for “Colville” and “Nez Perce,” resulted in 384 and 249 hits respectively.

This is evidence that the CTUIR are in contact and engaged in consultation with numerous agencies and museums. These institutions run the gamet from nearby Pacific Northwest universities such as Oregon State University to the Peabody Museum of Archaeology and Ethnology at Harvard. The Confederated Tribes have also located collections at federal agencies such as the Departments of the Interior, Agriculture and Energy.

Overall, there have been 1,295 notices published since the passage of NAGPRA in 1990, with 150 published in the 2009 fiscal year. These notices account for a total of
38,671 sets of human remains and 998,731 associated funerary objects. The CTUIR have contributed to this list as evidenced by their achievements in their Annual Reports. According to the CTUIR Annual Report for 2009, the CRPP continued making strides as 105 tribal ancestral remains were returned and reburied along with about 7300 associated and unassociated funerary objects. This more than doubled the repatriations from the previous year as 49 sets of remains were returned in 2008. Consultation occurred between the CRPP and two museums, six universities, and the Army Corps of Engineers for the return of their ancestral remains. The CRPP also worked with five tribes for the return and reburial of these remains and 376 funerary objects. The program also quickly reburied twenty sets of human remains and funerary objects that were uncovered in 2008 as a result of inadvertent discoveries.

The previous two years saw the CRPP return 195 ancestral remains in 2007 and 152 sets of remains in 2006 of which 143 of the 152 were repatriated in a joint claim with the Colville, Nez Perce, Yakama, and Wanapum. Reburial occurred in a ceremony on June 16, 2006. Approximately 28,800 funerary objects were returned to the CTUIR from not only museums and federal agencies but private citizens as well during these two years.

The Cultural Resources Protection Program and the Confederated Tribes have consistently strengthened their protection and repatriation efforts in the years since the

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269 Ibid., 3.
Program’s beginning in 1987. The Confederated Tribes are highly skilled in the art of negotiation and forming relationships having learned these skills from their trading days at Celilo Falls, their family connections to other tribes in the region, and their proximity to the city of Pendleton. The fact that their reservation is not as remote as other Pacific Northwest tribes also serves the Confederated Tribes well. The Confederated Tribes at Colville and the Nez Perce at Lapwei are both located away from major metropolitan areas, leaving them out of the spotlight. A working knowledge of federal, state, and local cultural resource laws has enabled the Confederated Tribes to hold agencies, institutions, and private citizens accountable for the return and protection of these resources. This persistence and knowledge has made the Confederated Tribes’ Program one of the most successful in the region.
Chapter Seven

Conclusion

Although there continues to be progress made every year in the effort to repatriate Native American remains, obstacles still exist for the tribes. One of the remaining issues are differences related to the handling of remains by scientists and Native Americans. Despite the animosity toward one another, Native Americans and archaeologists have worked together on projects in the Pacific Northwest as well as outside the region. One example is the joint project between archaeologists and the Northern Cheyenne tribe of southeastern Montana in 1987. The tribe wished to verify its oral history of the tribe’s escape from Fort Robinson in 1879 because the white version of that history differed from their own. In the end, The Northern Cheyenne applied the research of archaeologists to their project and both sides learned to accomplish their goals by working together.

As the previous example demonstrated, archaeologists and Native Americans can both benefit from collaboration. The archaeologist requires access to the lands and material held by the tribes. In return, the tribes will benefit from the knowledge acquired by the archaeologist in such areas as identification and preservation techniques. Additionally, this information can be used by the tribes to reinforce their oral histories. One possible solution suggested by archaeologists is taking measurements and producing casts and videos of the skeletons. Another less intrusive method of gathering research material


\[274\text{Ibid., 77.}\]

\[275\text{Ibid.}\]
is removing small samples of bone for future testing. In both of these examples, the remains could then be returned to their proper resting places.\textsuperscript{276}

The Pacific Northwest is unique in that cooperation between Native Americans and scientists occurred earlier than in other areas of the United States. For example, in 1967, the University of Idaho reached an agreement with the Nez Perce Tribe in which the University agreed to investigate the disturbance of Indian graves. The University would preserve, analyze and return all bones to the Tribe for reburial and would clean, preserve, and return all items found in the graves for either display in a museum or reburial. Additionally, a scientific report would be delivered to the Tribe. The responsibilities of the Tribe would include helping with travel expenses and labor and finding a reburial location on tribal land.\textsuperscript{277}

One other example of tribal and non-tribal groups working together is that of the Makah Tribe, Washington State University, two federal entities, and a business foundation involved in the Ozette Archaeological Project. The discovery of a major archaeological site on the Makah Indian Reservation in western Washington divided tribal members into those who did not want further excavation and those who wished to learn more about their past. An agreement was worked out that called for proper respect of the site during excavation and assured consultation with the Tribe as the project progressed. Furthermore, the Tribe would retain ownership of the materials uncovered during the dig. The Tribe and the University were able to receive funding for a tribal museum on the Makah Reservation. The Environmental Protection Agency funded the building while the Crown Zellerbach Foundation as well as the National Endowment for

\textsuperscript{276}Harris, 200.
the Arts gave money for museum displays. The National Endowment for the Humanities contributed funds for a language program operated through the museum. The museum, which opened June 2, 1979, not only created job opportunities for the Tribe but also allows the Makah to learn more about their history.\textsuperscript{278}

Cooperation between scientists and Native Americans is just one issue that will need to be worked out in the future. As institutions compiled their inventories of human remains and grave goods, a large number of remains could not be linked to a specific tribe. As of November 2010, there were 124,534 Native American human remains and 932,420 associated funerary objects in the culturally unidentifiable database compiled by National NAGPRA. Some 667 museums and Federal agencies contributed to the database. So far, 9,144 of the human remains have been affiliated, but that has barely made a dent in the 124,534 total unidentified remains.\textsuperscript{279} If the institutions and tribes are unable to determine affiliation, who will take ownership of the remains? In cases where affiliation is linked to two or more tribes, who will decide repatriation and the burial location? These are just a few of the questions that will need to be answered as institutions and Native Americans continue the repatriation process.

The Confederated Tribes have been at the forefront of Indian and non-Indian relations in the field of cultural resource management in the Pacific Northwest. The inclusion of NAGPRA in their knowledge base has helped the Confederated Tribes protect and repatriate their tribal ancestors. Their program has helped not only their tribe but other tribes as well. For the Confederate Tribes, knowledge of their rights and asserting their

\textsuperscript{278}Department of the Interior, \textit{American Indian Religious Freedom Act Report}, 79.

tribal sovereignty has proven to be a successful combination in protecting tribal cultural resources.
BIBLIOGRAPHY

PRIMARY SOURCES

Manuscripts


Farrow, Teara and Diana LaSarge. Email message to author. November 21, 2007

Printed


“Back from the Far North…” NY Times, October 1, 1897.


“Indians and Archeologists Battle Over Bones and Burials.” The Amerindian 20, no. 6 (1972): 1, 6.

“Kushan, the Eskimo, Dead.” *NY Times*, February 19, 1898.


*Slater Allotment Act. Statutes at Large* 23 (1885).


_______. Senate. Committee on Indian Affairs. Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report: Hearing before the Select Committee on Indian Affairs. 100th Cong., 1st sess., 14 May 1990.


SECONDARY SOURCES

Books


_______. “‘This Has Bothered Me For 500 Years’: The Impact of Concepts of Time and the Past on the Reburial Issue.” In *Preservation on the Reservation: Native Americans, Native American Lands and Archaeology.* Edited by Anthony L. Klesert and Alan S. Downer, 409-418. Navajo Nation Papers in Anthropology Number 26 (Window Rock, AZ: Navajo Nation Archaeology Department, Navajo Nation Historic Preservation Department, 1990).

Articles


______. “Protecting Cultural Resources on the Umatilla Indian Reservation.” *Journal of Northwest Anthropology*, Memoir no. 6 (2002): 78-81.


Internet Sources


