

Artifacts, Remains and Intellectual Property: Controversies and Laws

Content is suitable for College, High School and advanced Middle School students. Many activities require research and several Web site resources are listed here.

Objectives:

- State why NAGPRA was enacted by Congress in 1990.
 - Debate some of the issues surrounding NAGPRA and its enforcement.
 - Compare and contrast scientific methods of recording history with the oral tradition of recording history.
 - Locate information on historic preservation legislation.
 - Describe the issues surrounding controversial archaeological sites.
 - Define a plan to recognize the intellectual property and creative contributions of Native Americans.
 - Find out what local museums are doing to comply with NAGPRA.
 - Locate information about state laws protecting burial sites.
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"I think the irony of our being called savages is really in looking at the actions of the United States Army, especially during the latter part of the 1870's and 1880's when they were decapitating Indian people and shipping the heads back to the War Department in Washington where they were collecting them. And those became the property of the Smithsonian and this whole era of the collection of human remains begins with the archaeologists and amateur archaeologists who follow, and the whole science of anthropology. And the study of us, who, as individuals are less *than, and are not the civilized ones... therefore justifies the study of our evolution and development.* And I think that's really ironic that we are the ones who are called the savages, and we have never carried out any sort of campaign like that in amassing human remains."

G. Peter Jemison
Faithkeeper, Cattaraugus Seneca Nation
Member, Haudenosaunee Standing Committee
on NAGPRA issues

Some Native Americans compare archaeologists with pillagers and grave-robbers, who earn professional fame and economic bonuses from the excavation of human remains and spiritual articles from Native burial sites. Indian leaders contend that the "grave robberies" continue only because they are practiced on non-white societies. In recent years laws have been enacted to curb objectionable practices. NAGPRA, the [Native American Graves Protection and Repatriation Act](#), was signed into law in 1990. The act provides protection to existing burial grounds and repatriation, or return of remains and funerary objects from collections in museums and universities to their proper cultural home.

Yet the controversy continues and it revolves around differences in world-views. Scientists believe that human remains and materials offer clues about the past that cannot be found elsewhere and can help them answer a number of questions: When did humans first occupy the Americas, and from where did they come? How did various groups of people relate to each other and how did groups disperse throughout the Americas and when? How are human populations in ancient America related to other groups of people throughout the world? For a number of archaeologists and anthropologists, NAGPRA is a controversial law that prevents scientific investigation.. Many museum professionals also contend that Native artifacts they display or archive in climate controlled environments, are better cared for than they would be if returned to Indian nations.

Many Native People feel they are the caretakers of the past and of the people who have lived before them. In their world-view, people who have passed on should not be disturbed after they have been buried. When they are disturbed, their spiritual journey has been disrupted. Their method of understanding the past is through oral tradition, where cultural history, practices and beliefs are passed down from one generation to another. Indian leaders say invasion of their burial sites is not an issue of "science," but of human rights, and their campaign has begun to yield some important attitudinal changes in non-native groups.

- Early anthropologists referred to Native American oral history as myth or legend. Now, more anthropologists and historians consult with Native American people to record information from their oral tradition in recognition that both science and oral history are ways of knowing; one is not better than the other. For many Native Americans the oral tradition is complete and archaeology is a controversial topic.
 - Imagine that you are a Native American who reads an archaeologist's account of findings about your culture that conflicts with what you have always been told by other Native Americans in your tribe. What might be your response in order to ensure that this situation be handled better in the future?
 - List various methods used to record history. Critically analyze strengths and weaknesses of each method. Is one method more accurate than another?

- In recent years legislation has been enacted to ensure historic/cultural preservation. Archaeologists and historians apply their expertise to investigate areas that will be disturbed by construction of roads, buildings or mines. This program is called "cultural resource management." CRM studies involve the systematic study of materials and written records to identify and document information about cultural resources for the purpose of protection of resources. A variety of conservation and preservation techniques are used and the generally accepted practice is to leave archaeological remains where they are found.
 - What legislation protects historical and archaeological sites? Are consequences defined for violators?
 - Look for articles in newspapers, magazines and the Web about controversial Native American archaeological sites. Discuss the issues involved. Were NAGPRA and Preservation Act rules followed? What has been done well and what should have been done differently? What do you believe are the rights of scientists to investigate the ancient past? What do you believe are the rights of indigenous groups to keep burial grounds and cultural artifacts intact?
 - Why are certain archaeological findings controversial? Examples include Kennewick Man or recent finds in South America.
 - Check with museums in your region to see what they are doing to comply with NAGPRA. Ask if they have had problems trying to comply with the law.
 - Does your state have laws to protect burial sites? Do these laws apply to all burial sites?

- Scientific careers have been advanced by the publication of information freely given by indigenous peoples. Today, many anthropologists and historians compensate Native Americans for assisting them in their work with documenting oral history. Native Peoples are also demanding protection of their own intellectual property, Indian stories, designs, and hand crafts, which have been freely copied without permission, and used by non-Natives to manufacture profitable products.
 - Outline a plan to recognize the contributions of Native Americans. What policies would you create to protect the creative and intellectual property rights of Native Americans?

- DEBATE: Divide the class into groups, each of which represents a different profession involved with investigating the past (i.e., archaeologists, historians, anthropologists, educators, curators) or Native group who represents materials housed in museums, universities, art galleries and private collections. Use the internet and other resources to investigate the viewpoints of each group. Then debate the issues. Debaters represent their group with answers to the following questions:
 - What are your views about NAGPRA? Why do you feel NAGPRA was enacted?
 - What problems do you perceive about this legislation, and what would you do to resolve these problems?
 - What are the important issues?

Look for information about the recent exploration of the Titanic and discuss the following questions.

- What types of scientific and historical findings have come from the research into the Titanic site? Are these findings important enough to disturb the materials of those who died in the disaster? Or, should the site be left in place as a memorial?
- Should the materials be displayed at museums? Why or why not?
- Who "owns" these materials? If some of the materials are put up for sale, does this turn a nautical gravesite into a souvenir store?

ON-LINE RESOURCES

NAGPRA text on ArchNet

<http://archnet.uconn.edu/topical/crm/usdocs/nagpra14.htm>

Links to US Cultural Protection Legislation

<http://archnet.uconn.edu/topical/crm/crmusdoc.html>

Archaeological and Historic Preservation Act of 1974

<http://www2.cr.nps.gov/laws/archpreserv.htm>

Nova - Mystery of the First Americans (Kennewick Man)

<http://www.pbs.org/wgbh/nova/first/>

What is the Kennewick Man case? (See Army Corps questions of the Court)

http://www.friendsofpast.org/kennewick_case.html

Lists of states that have enacted laws to protect burial sites:

<http://www.arrowheads.com/burials.htm>

Society for American Archaeology

<http://www.saa.org/>

National Archaeological Database: NAGPRA

<http://www.cast.uark.edu/other/nps/nagpra>