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NAGPRA, CUI AND INSTITUTIONAL WILL

D. Rae Gould

Introduction

Having been engaged in the Native American Graves Protection and Repatriation Act (NAGPRA) for several decades – both as a tribal representative and a museum/institution representative – I have seen different sides and practices of this US law. I have witnessed examples of both how the law can work and result in repatriation, and how it can be used to retain what some museum professionals and scientists feel are “evidence” or “material culture” needed to further our collective understanding of the human past. Even when officially acting as a museum representative at a major university implementing NAGPRA, I was also always a representative for my tribe¹ and the tribal peoples we engaged with in repatriation efforts. I cannot separate these as distinct responsibilities because NAGPRA’s goal is, first and foremost, to repatriate ancestors, funerary objects, sacred objects and objects of cultural patrimony to tribes they are related to.²

A simple choice of language – that we referenced Native American human remains as ancestors – suggests that at institutions like the University of Massachusetts Amherst a shift was required in how the important issues, practices and physical “objects” are understood, and in relation to the critical and legal debates that still surround NAGPRA. Transitioning from language focused on objects, property and the decontextualized term “human remains” to a working understanding that we were now stewards of tribes’ ancestors re-situates the ongoing relationships to ancestors that exists at every institution with NAGPRA responsibilities. This language also forces reflection on the harm created in the taking of these ancestors (and other NAGPRA-sensitive collections) and for the generations of tribal members affected by these actions. Through NAGPRA we can only try to amend some of this harm and hope to offer some piece of the healing process. What I came to realize through working to repatriate ancestors and belongings, though, was that the circle is never really closed, even though I worked hard to achieve that. Other institutions, unfortunately, may never achieve this shift or work to close the circle, as they continue to work under what I term a “retentive philosophy” of owning and keeping ancestors and objects.

By the time I began my position at UMass, the institution had developed what I term the “institutional will” to *want* to comply with not only the law, but also the spirit of the law in the most genuine way; the end goal always focused on repatriation and return of ancestors

and items to tribes. Much of the development of institutional will at this university was due to a “changing of the guards” resulting from retirements of older faculty members, hiring younger and Native faculty members with different ideals and ethics reflective of trends in academia, and increased engagement of Native graduate students, in addition to increased pressure from tribes to more fully comply with the law and achieve repatriation. For other institutions, however, the internationalist perspective that knowledge and cultural property belong to all and should be controlled by those who “know best” with resources to “protect” these – versus the nationalist perspective emphasizing the rights of specific populations to control their cultural heritage and the human remains and objects associated with that (Merryman 1986) – continues to fuel fierce exchanges with no immediate end in sight.

This chapter discusses one of the major issues in the US repatriation process: the practice of institutions categorizing ancestors as CUI, or “culturally unidentifiable,” to resist repatriation to the rightful tribes. The CUI designation is used to impede repatriation of ancestors, as it can be arbitrarily applied³ and hides the politics of an institution resistant to NAGPRA. Next I provide several case studies that demonstrate how institutional will has developed within many museums and universities, while others continue to practice retentive and more “internationalist” philosophies and resist repatriation of both human remains and funerary objects, clearly contrary to the human rights component intended within the spirit of NAGPRA. Such institutions maintain ideological positions that the benefits of science and knowledge outweigh the rights of tribes to repatriate ancestors and items; in essence, the issue is one of control. The institutions discussed in this chapter with retentive philosophies are continuing colonialist and paternalistic practices based on racism, disrespect and a sense of entitlement that continues to plague museums and institutions rooted in Euroamerican ideals of supremacy that have dominated politics, laws, economics, and social and race relations for centuries.

This chapter offers an analysis of the (all too common) rhetoric institutions and individuals use regarding their support of NAGPRA against the actual practices they engage in. It compares the concepts of institutional will to really comply with the law (in spirit *and* in practice) against the reality and practice of having retentive philosophies, i.e. keeping ancestors at the institution. Using a well-known institution as the primary case study, this chapter identifies a specific mechanism within NAGPRA that allows institutions and museums to maintain a veneer of compliance without actually addressing the purpose of the law: returning ancestors to tribes. One institution – Harvard University – is representational in this practice because it posits itself as a leader in repatriation, as seen in the examples provided. Unfortunately, Harvard and several others mentioned below have used the rhetoric of compliance with NAGPRA, but it is an empty rhetoric as it is not being followed in practice. As many tribes know, weaknesses in the law can be used as a gateway to non-compliance for institutions with retentive philosophies. While the *appearance* of institutional will is publicly performed, a closer look at the actual operation and practice of some institutions reveals a façade that fractures under scrutiny. Using select case studies, this chapter offers a model of how to see through this façade. As Mashpee Wampanoag representative Ramona Peters has noted, if museums and institutions with retentive philosophies are exposed, perhaps they will change their positions. This chapter attempts to address the issue of museums and institutions failing to fulfill their legal and affirmative duties to consult and repatriate.

The chapter begins by providing a brief history of the Native American Graves Protection and Repatriation Act (US 43 CFR Part 10), then highlights key components related to culturally unidentifiable (CUI) human remains, and provides case studies of both positive and negative interpretations of culturally unidentifiable remains. It also addresses some of the impediments

(such as museums determining cultural affiliation) and best practices (such as museums hiring Native Americans) NAGPRA practitioners have outlined recently. Although NAGPRA is a complex law, changing through practice – and through the continued input of Native Americans, archaeologists, museum professionals and other academics and collectors – the discussions remain centered on a simple perspective: museums and institutions can be defined as having the institutional will to do the right thing and seek repatriation, or as having a retentive philosophy borne out of colonialist philosophies which privilege science over the return to tribes of their ancestors. There is no middle ground in this centuries-long battle for the tribes that have waited far too long for the return of ancestors and items that sit on the shelves and in the vaults of museums that purport to “protect” America’s history for us.

A brief overview of NAGPRA

Enacted in 1990, the Native American Graves Protection and Repatriation Act is a federal law applying to tribes, federal agencies and museums (including institutions) in the United States; it has no legal effect on international repatriations or claims by US tribes to ancestors or objects in other countries (although it can work as a model for how non-US institutions could pursue repatriation). The National NAGPRA website (<http://www.nps.gov/nagpra/>) is very user-friendly and provides information for understanding the law, including a glossary of terms and explanations for those working for both museums/institutions and tribes; it’s often a starting point for those just learning about the law as well as an often-used resource for many who have worked with the law for years.

Briefly, the law is intended to provide a “process for museums and Federal agencies to return . . . Native American . . . human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations.” The law also now includes provisions for repatriating “unclaimed and culturally unidentifiable Native American cultural items” (discussed further below) (http://www.nps.gov/nagpra/FAQ/INDEX.HTM#What_is_NAGPRA). Cultural affiliation is central to the process and is a documented connection between human remains and/or objects and a modern-day tribe (or tribes) by a preponderance of evidence standard; tribes are defined as being federally recognized by the Bureau of Indian Affairs (BIA), in addition to Native Hawaiian Organizations (NHOs). A NAGPRA Review Committee aids in monitoring the process and facilitating resolutions of disputes that arise concerning repatriation (usually between tribes and museums failing to work within the spirit of the law), with meetings held twice yearly and open to the public. While a detailed explanation of the law is not possible in this chapter, extended explanations and discussions can be found in Fine Dare (2002), Thomas (2000), Mihesuah (2009) and other articles and publications such as *Mending the Circle* (<http://www.repatriationfoundation.org/mtc.html>), in addition to the NAGPRA website.

All federal agencies must comply with NAGPRA, while the Smithsonian Institution is required to repatriate under a separate law passed a year before NAGPRA (National Museum of the American Indian Act of 1989, 20 USC 80q, Public Law 101-185). Also, any museum or institution with Native American collections and receiving federal funds must comply with NAGPRA and are all defined as “museums” under the Act. Educational institutions such as UMass Amherst, Harvard University, University of Michigan and Indiana University – all discussed in this chapter – are considered museums subject to the law because they receive federal funding and have human remains or objects of Native American origin.

As may be immediately obvious, a number of issues can already be identified within these parameters. First, the law only applies to museums and institutions receiving federal funding and therefore not to local historical societies and museums or private individuals that don’t receive funding but possess Native American collections. Nothing prevents them from engaging in a repatriation process and, in fact, repatriation can sometimes be less onerous outside of NAGPRA, but no federal law compels them to engage in NAGPRA (unless federal land is involved).

A second issue that plagues the repatriation process is that institutions do not always have resources to comply, even if they have the institutional will. Documenting human remains and objects acquired or excavated decades or centuries ago – and often without the detailed information collected in modern times – can be extremely time consuming and research intensive. Once knowledge is gained about remains and objects, submitting inventories (of human remains and associated funerary objects) and summaries (of potential unassociated funerary objects, sacred objects and objects of cultural patrimony) to National NAGPRA and to tribes from across the country and Native Hawaiian organizations requires time, staff and additional resources. And all of this needs to (or *should*) be completed in consultation with those most likely to have an interest in the remains or objects. Identifying these tribes and NHOs sometimes cannot even begin until the history and provenience is known, if possible. When this knowledge cannot be gained due to time-consuming research and resources required to identify all collections, human remains and associated funerary objects (AFOs) are categorized as CUI. Some museums use the CUI categorization, though, to avoid complying with the law, a main focus of this chapter.

Beyond these barriers, some institutions engage in research and regard human remains as scientific resources to study (despite the 27-year-old federal law in place) even if they have been in storage for decades or centuries with little prior interest in their scientific value. For some scientists, such as Douglas Owsley of the Smithsonian’s Museum of Natural History and others, returning human remains is like burning books, resulting in loss of valuable knowledge to both scientists and Native people (Peck and Seaborn 1998). In this more internationalist perspective, scientists remain the knowledge authorities and continue to decide for Native Americans what information is valuable and how best to treat (and study) their ancestors. Sonya Atalay, as a member of the NAGPRA Review Committee, recently noted, “Universities are in the business of researching. And . . . they have benefitted from having these collections in their possession. They’re in the business of educating students, and students work directly with these collections” (National NAGPRA 2015, V1: 176). Scientists and institutions that continue these practices are teaching the next generation retentive philosophies based on regarding ancestors as scientific specimens and are, in essence, disregarding federal law aimed at reclassifying human remains as ancestors rather than as objects of scientific study.

On the tribal level significant hurdles for engaging with NAGPRA often exist as well. Like institutions, tribes also do not always have sufficient resources; they need to investigate locations and curation history of hundreds of thousands of ancestors and objects, consult with museums and institutions that are sometimes hundreds of miles away, and seek repatriation. And if the museum or institution lacks the institutional will to support information exchange, travel costs and time required to complete consultations, the ancestors continue to sit on shelves. Grants from National NAGPRA can help support these efforts and are available to both tribes and institutions, but funding is limited and the grants are competitive. Often tribes don’t have the trained grant writers large institutions like Harvard University do and institutions are awarded the grants over the tribes, but the grant funds do not always result in

repatriation (again, if the institution has a retentive philosophy). So most tribes must absorb the financial burden of repatriation work, one of the reasons so many cases take years or decades to complete. And non-federally recognized tribes have the extra burden that, technically, museums and institutions only *have* to consult with federally recognized tribes. Ancestors (and other NAGPRA items) connected to non-federally recognized tribes (like the Nipmuc Nation) are automatically classified as CUI, providing yet another opportunity for institutions to retain them.

One of the most contested issues with NAGPRA is that of cultural affiliation determination, discussed extensively in this chapter. Most agree that NAGPRA⁴ was (and still is) a compromise. According to the law, museums and institutions determine cultural affiliation, creating an inventory of human remains and associated funerary objects *in consultation with* tribes or NHOs (25 USC 3003(b); 43 CFR 10.9(b)) through a "good faith effort." Even after consultations – or too often without – ancestors are categorized as culturally unidentifiable, and defined as "cultural items" for which no culturally affiliated present-day Indian tribe or NHO can be determined (43 CFR 10.9 (d)(2)). It is clear in reading the regulations that consultation is the heart of the law and the means to successful repatriation, the goal of the law. Museums and institutions are technically responsible for initiating consultation and the National NAGPRA website hosts a database of all inventories submitted, for both ancestors categorized as culturally affiliated and as CUI (<http://www.nps.gov/nagpra/onlinedb/index.htm>).

At the heart of cultural affiliation determination lies the battle to define what and who is Native American. The Kennewick Man case, for example, resulted in a protracted struggle between scientists and tribes from the Northwest to decide whether an individual almost 10,000 years old inadvertently discovered on the bank of the Columbia River in Kennewick, Washington, could still be considered as "Native American" and connected to modern-day tribes. The political implications of an ancestor being too old to be considered Native American have reverberated deeply and at great cost to tribes seeking to repatriate other ancient ancestors and items. The Kennewick Man case (the focus of Thomas 2000) provided further incentive for institutions like Harvard University to deny cultural affiliation based on remains being "too old." This is the focus of the discussion below.

Defining "CUI" ancestors

After 27 years of practice and application, NAGPRA has profoundly changed the ways archaeology is conducted in the United States. Some of these changes include: 1) how Native peoples and archaeologists interact and share knowledge, 2) how cultural knowledge, continuity and property are defined and examined by archaeologists, and 3) the ways archaeologists and anthropologists understand connections between so-called "prehistoric" and contemporary Native peoples. Defining pre-Contact ancestors and artifacts as CUI is a result of the language in the law itself and is used to continue a long history of colonization and historical erasure of Native American peoples; it privileges a certain type of authority to make that designation at the expense of other authorities, often Native, who might offer an alternative view.

The basic definition of CUI is that human remains and associated funerary objects cannot be affiliated through a preponderance of evidence to a modern-day tribe, tribes or NHO. With no universal application of the definition of cultural affiliation,⁵ case by case decisions are made within each federal agency, museum and institution. Even with precedents set by earlier repatriations, institutions with retentive philosophies still make their own cultural

affiliation determinations based on their understandings of the past (examples are provided below). Additionally, if ancestors or items can be connected to a tribe but that tribe is not federally recognized, they are defined as CUI (as noted above). Connections to a documented historic tribe no longer extant (such as the Massachusetts Indians in Massachusetts) would also result in a CUI categorization, as would insufficient evidence of an "identifiable earlier group" ("We don't know who that group was") and connections to a present-day tribe. While the law provides for a wide range of interpretation to help achieve repatriations if a desire to culturally affiliate exists, it also leaves open many possibilities for defining ancestors as CUI.

For the purposes of the legislation, determining cultural affiliation involves using up to ten lines of evidence, all having equal weight: geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral tradition, history and other (see endnote 5). Equal weight means that one line of evidence (such as archaeology or biology) is not considered more valid or informative than another (such as kinship or oral tradition). In theory, tribal knowledge of history, culture and connections in the past known through oral tradition and kinship ties has just as much weight for determining cultural affiliation as information provided by non-tribal archaeologists or anthropologists in written or documented form. Cultural affiliation is established when the preponderance of the evidence (more than 50 percent certainty),⁶ based on any of the lines, leads to *reasonably tracing* connections between past and present-day groups. A museum or institution can also use a legal threshold of "reasonable belief" for cultural affiliation, meaning even less than 50 percent certainty to determine cultural affiliation repatriation. In contrast, other legal levels of evidence (in addition to preponderance of the evidence) are clear and convincing evidence (65–75 percent certainty) and reasonable doubt (85–95 percent certainty).⁷ In legal terms, the threshold for determining cultural affiliation (determined by the museum or institution) is low and "scientific certainty" is definitely not required, and in practice, institutional will to culturally affiliate, using just one line of evidence and choosing to broadly interpret evidence, leads to repatriation. Yet, if a museum does not have institutional will, the burden of proof to demonstrate cultural affiliation lies with tribes, with their often limited resources.

Even with institutional will, available information at times does not support determining cultural affiliation. Sometimes absolutely no information about the original location (or provenience) of ancestors or items exists and it is not possible to determine which modern-day tribes are connected to them. Sometimes museums and institutions want to disclose that they have human remains or objects in their possession they are seeking to repatriate and list publicly on the National NAGPRA database as CUI while consulting to determine cultural affiliation. The University of Massachusetts Amherst took this approach and then changed the cultural affiliation once consultations were complete. Sometimes tribes engaged in consultations indicate that while they are willing to receive ancestors and items, they feel uncomfortable claiming full cultural affiliation if they cannot clearly demonstrate a connection, even if an institution supports a cultural affiliation determination. All of these are valid reasons to categorize ancestors or items as CUI and are done within the spirit of NAGPRA toward achieving repatriation. And not being able to determine cultural affiliation does not mean repatriation cannot occur (see below).

Too often, though, a museum wants to claim CUI due to "no temporal link" to modern-day tribes to avoid repatriation, as with Harvard University. Several case studies presented below reveal how the designation of CUI becomes a deliberate strategy that has worked for museums with retentive philosophies and no intention of repatriating certain parts of their collections.

For museums and institutions with institutional will, the addition of part 10.11 of the NAGPRA regulations effective May 2010 (Disposition of Culturally Unidentifiable Native American Human Remains, often referred to as 10.11 or the CUI Rule) provides a way to achieve repatriation despite lack of cultural affiliation. The heart of this rule relies on the geographic line of evidence to make connections between ancestors and items and modern-day tribes and NHOs. Tribes and NHOs may request repatriation of human remains and associated funerary objects previously removed from their modern-day tribal lands or aboriginal territories. Aboriginal occupancy can be documented by:

- a final judgment of the Indian Claims Commission (ICC) or United States Court of Claims;
- a treaty or treaties;
- an Act of Congress;
- or an Executive Order (43 CFR 10.11(b)(ii)).

Moreover, according to the legislation, "A museum or federal agency official must initiate consultation regarding the disposition of culturally unidentifiable human remains and associated funerary objects within 90 days of a request from a tribe or NHO." The rule is more detailed and can be found in its full text in the Federal Register publication (75 FR 12403, Mar. 15, 2010).

As with the original 1990 Act however, the addition of 10.11 was another compromise for Native Americans. For example, in implementing 10.11, museums *must* consult and repatriate human remains but only *may* repatriate associated funerary objects. For many tribes, receiving the remains of ancestors without the objects buried with them is not an option, so museums with retentive philosophies have yet another way to avoid repatriation even with an established process for returning CUI ancestors.⁸

Clay Dumont (2011) has addressed some of the controversies surrounding the CUI rule and what he refers to as scientific "happy talk" that seeks to explain the development of NAGPRA and 10.11. In their retelling of history, archaeologists and others supported the passing of NAGPRA, which was written to "strike a balance" between scientists and Native people as a compromise where both sides could be equal. According to this narrative, the law adds to a long-standing "respectful" collaboration that has existed between both groups. The passing of 10.11, therefore, undermines the original intent of the law and gets in the way of people working together because it interferes with the collaborative process (theoretically) already present. In other words, according to this narrative, there was nothing wrong with the status quo of how cultural affiliation was being determined (which gave museums and institutions a clear advantage).

A more accurate narrative provided by Dumont is that once it became clear to everyone that NAGPRA would pass, the goal of those with retentive philosophies became to thwart the ability to determine cultural affiliation. Rule 10.11 is controversial because a legal process of repatriating CUI ancestors removes an exit strategy used by museums and institutions with retentive philosophies to comply with NAGPRA. As Dumont notes, the rule "leaves little doubt that the National NAGPRA Program and the secretary of the interior view the purpose of NAGPRA legislation as the return of Native dead [including those classified as CUI] to Native peoples" (2011: 5). The controversy surrounding 10.11 demonstrates that cultural affiliation continues to be a contested "zone" and, therefore, an excellent place for an exit strategy based on either inconclusive evidence, competing evidence, "confusion" or just lack of will.

Harvard University has provided a prime example of this strategy, as detailed in the case studies below. Although Dumont celebrates May 2010 as marking a "significant victory in the centuries-long struggle . . . to protect [Native] dead and their funerary objects," he also acknowledges the rule is "far from perfect" (2011: 5), as would many others engaged in NAGPRA. In 2011, an estimated 120,000 Native American ancestors remained in federally funded institutions (Dumont 2011: 5), due to either being categorized as CUI or simply lack of compliance with NAGPRA. The real victory – the complete return of all ancestors and items – 27 years after the passing of NAGPRA is yet to arise on the horizon. The case studies presented in the following section demonstrate how, several years after implementation of 10.11, institutional will – rather than law or amendments – remains the key factor in determining whether or not repatriation occurs.

Institutional will and retentive philosophy: Examples from Indian Country

The concept of "institutional will" (having the desire and will to achieve repatriation) developed for me after over 15 years of working with NAGPRA, both as a tribal representative and for an institution (UMass Amherst). I watched the university I first developed a relationship with through consultations to repatriate ancestors develop the genuine desire and will to comply with the law over this period. The institution and the people who worked for it believed that the return of ancestors and Native American items was the only ethical and responsible position, and worked hard to make that happen. Only after knowing that they had institutional will to repatriate could I see myself being part of the faculty and team that implemented NAGPRA on behalf of the university. I served as Repatriation Coordinator for UMass from 2010 to 2014 in the first full-time position dedicated to NAGPRA at the university. Creating this position was itself evidence of a desire to return ancestors and items. During this same 15-year period, I engaged in consultations with several institutions on behalf of my tribe, including Harvard University's Peabody Museum of Archaeology and Ethnology, and encountered first-hand the opposite concept: what I call a "retentive philosophy" (resistance to comply with NAGPRA and a desire to retain collections because they are viewed as scientific specimens). Examples of these concepts are shared below through interactions different tribes engaged in the NAGPRA process have had with museums or institutions. The primary example of an institution with a retentive philosophy shared in this chapter is Harvard University, and several case studies demonstrate how this institution repeatedly retains Native American ancestors and items from tribes across the country. Although the institution presents itself as a leader in working with tribes and in repatriation through public statements made at NAGPRA Review Committee meetings⁹ and in other public settings, this façade is clearly visible when details of the exchanges staff responsible for NAGPRA compliance have with tribes are revealed, or in the language staff use to discuss their repatriation work.

For example, tribes from Massachusetts have directly encountered Harvard's retentive philosophy through consultations over the years. During an April 2013 consultation with the Nipmuc Nation regarding CUI ancestors, museum representatives at Harvard informed tribal members (including myself) that their CUI determinations are based on temporal evidence, indicating that ancestors and objects older than 2,000 years lacked the "shared group identity" key to cultural affiliation. When asked what the "evidence" for this arbitrary division was, they were not able to clearly articulate it to the satisfaction of the tribal representatives (also well-versed in the historical and archaeological literature, in addition to tribal knowledge of southern New England). Demonstrating preponderance of the evidence to prove cultural

affiliation thus became the burden of the tribe, although the institution appeared sincere in its attempts to comply with NAGPRA by consulting with a non-federally recognized tribe. The result of the consultation was Harvard University suggesting the tribe submit "additional documentation" to demonstrate cultural affiliation.

Since New England tribes lost much of their land by the eighteenth century, aboriginal land (recognized through an ICC claim, US Court of Claims, treaties, an Act of Congress or an executive order)¹⁰ – the basis of CUI repatriations through 10.11 – does not apply in most cases. The nineteenth-century reservations established for more western tribes also do not exist in this area, although a number of tribes established reservations through land claims and federal acknowledgement in the later twentieth century. Previous consultations with the Wampanoag Repatriation Confederation resulted in similar conversations regarding ancestors from Massachusetts. For this institution, consultations function as a specific means to claim it has "fulfilled" its obligation to complete the *process* required to be in compliance with NAGPRA. These consultations are not, then, genuine consultations. They are mono-directional and the power to say what the evidence is and what it means clearly rests with the institution. Relying solely on meeting the obligations for the process, but not advancing the claims any further, is an example of not operating within the spirit of the law. Without institutional will, the goal of NAGPRA (actual repatriation) will usually not be achieved.

Other tribes from different areas of the country have had similar experiences with Harvard, despite precedent repatriations with other museums for ancestors or items from the same areas or even sites. These cases are becoming well-known for those engaged in NAGPRA who work together and share knowledge of museums and institutions with retentive philosophies. Some of these issues are publicly recorded at the bi-annual National NAGPRA Review Committee meetings, with minutes available on the NAGPRA website (see, for example, the March 2015 meeting minutes at <http://www.nps.gov/nagpra/>).

During an April 2014 Harvard University consultation, MACPRA (Michigan Anishinaabek Cultural Preservation and Repatriation Alliance) tribes visited the university for consultations toward repatriating human remains and artifacts. As part of the visit, the tribes requested a public dialogue in the form of an evening roundtable, which was well-attended and provided a glimpse into the nature of museum-tribal consultations at Harvard. Patricia Capone (Director of Repatriation and Research Services and Museum Curator at Harvard's Peabody Museum of Archaeology and Ethnology) said the museum's focus was on learning and gaining a better understanding of its collections, and that "intentionality" is important.¹¹ To underscore the focus of Harvard's "intentionality," NAGPRA Coordinator Sandra Dong showed the film "Full Circle," a chronicle of the museum's repatriation of a totem pole to Alaska. The backdrop behind the screen was a display of Northwest Coast masks, most likely objects of cultural patrimony. While a nice public performance of "intent" and good will, the feel-good film focused on the return of the totem pole juxtaposed against NAGPRA-sensitive objects most tribes might not want on display was telling for anyone observational in the audience, or who knew Harvard's retentive philosophy.

Dong reiterated Capone's sentiment that NAGPRA offers an opportunity to learn from different people and provides a perspective on American history. Capone explained her initial interest in NAGPRA when it was passed in 1990, and how when she began at Harvard University that became an "inquisitiveness," in addition to an interest in colonialism and physical representations. She added it was a "privilege" to be part of "the process" and work with people on NAGPRA. Neither Capone nor Dong (the museum's primary NAGPRA representatives) mentioned actual repatriation of human remains or objects to tribes as the goal (or even a goal) of their work during this opportunity of dialogue with the tribes and

public. When combined with the experiences tribes have had with the museum's resistance to repatriate, it is clear that a retentive philosophy guides both the rhetoric and the actions of Harvard's repatriation representatives.

In contrast, MACPRA representatives Shannon Martin and Sonya Atalay discussed repatriation not in the context of colonialism or research used by Harvard representatives, but as an opportunity to be good ancestors themselves and to right some of the wrongs that have occurred through this human rights law. Martin, Director of the Saginaw Chippewa Ziibiwing Center of Anishinabe Culture and Lifeways, described the reinterment part of repatriation as a recommitment ceremony (versus a reburial) as the ancestors and objects are being recommitted to the earth¹² and, I would add, the commitment of these tribal members to continue this work reaffirmed with each repatriation effort they undertake.

As part of these discussions, Harvard representatives were asked how they determine if ancestors are CUI and how consultations that are supposed to be part of the cultural affiliation determination (such as with the Michigan tribes) inform that. Capone responded that they follow the process outlined in the law and the steps, all of which are based on an examination of readily available evidence and consultation, and that in some cases "there are conflicts." Martin added that some of these determinations are made through master narratives,¹³ echoing Clay Dumont's assessment noted above.

After three days of consultation, the Michigan tribes were informed by Harvard's "experts" that the ancestors and objects could not be culturally affiliated, despite evidence presented by the tribes demonstrating knowledge of the ancestors and associated artifacts. Perhaps foretelling this result, Shannon Martin shared at the roundtable an example of an effective process they utilized to force repatriation in Michigan. Storming a University of Michigan Board of Regents meeting was a powerful and effective turning point for that institution, which had also maintained a retentive philosophy. This approach resulted in Michigan transforming from "stonewalling" to actively engaging in repatriation of both human remains and objects. In essence, the tribes forced the development of an institutional will now firmly entrenched in Michigan's philosophy regarding NAGPRA. Just as importantly, addressing the university's regents – a powerful decision-making center of the institution – alerted them to the university's responsibilities under federal law *and* that staff were making decisions resulting in non-compliance, which they may not have been aware of. A similar approach with other institutions harboring retentive philosophies may be just as effective.

Although Harvard University repeatedly presents itself as an institution in the forefront of repatriation in public comments at NAGPRA Review Committee meetings and other settings, it continues to hold one of the largest and broadest collections subject to NAGPRA. At the Spring 2015 NAGPRA Review Committee meeting, Capone provided an update on the university's NAGPRA implementation, noting it had "committed significant resources and attention over many years to implement NAGPRA and to cultivate the relationships necessary to this effort." She also noted how the museum has "partnered with Native American communities and other institutions across the United States toward mutual goals of education and research . . . [and] considers the experience to be a privilege. The process has benefited each of [the institution's] missions of education, research and developing relationships with Indigenous communities and scholars" (National NAGPRA 2015, VI: 183–4).

"Implementation" of NAGPRA at Harvard University – decades after enactment of the Act – includes "continu[ing] to refine policies and procedures for sensitive collections and to strive for improved approaches to expanding accessibility to Native American communities whether through NAGPRA or other means . . . [and] respond[ing] to frequent informational inquiries from students or other interested parties," according to Capone. She also noted that

the museum is "grateful for the consultations of NAGPRA and collaborations beyond that have so broadly benefited the institution, and . . . [led] to new ways of understanding through the NAGPRA process" (National NAGPRA 2015, V1: 184-5). In this rhetoric, as at the public setting with the Michigan tribes, no mention of actually returning ancestors or items to tribes was made.

But, to further demonstrate its "significant commitment" to NAGPRA, in Spring of 2015 "a display on NAGPRA in part responding to these interests" opened at the museum and has been "a museum priority," according to Capone. What has clearly *not* been a priority for Harvard University is the return of ancestors and items to Native American tribes. A museum display such as this continues a public rhetoric of compliance, while the reality as demonstrated through completed repatriations demonstrates a significant gulf in what is being said and what is actually being done. Nevertheless, Harvard has pointed out that over the past year the museum had welcomed six in-person NAGPRA consultation visits and hundreds of other exchanges by phone or email with tribes across the country (National NAGPRA 2015, V1: 184-5). Nipmuc representatives experienced one of these in-person consultations with Harvard University in 2013 (noted above), with the same result as the MACPRA representatives: Harvard University "experts" informing the tribes that no cultural affiliation exists between the ancestors they hold and modern-day tribes. Consultations, like museum displays on NAGPRA, become another layer of the façade supporting the rhetoric and appearance of NAGPRA compliance, in essence a strategy to work within a law with weaknesses that allow non-compliance by savvy practitioners.

Other tribes have had similar experiences with Harvard. A few years ago the Wabanaki Intertribal Repatriation Committee claimed ancient remains from Maine, which the university denied with no explanation of why the evidence was not accepted. Bonnie Newsom, Penobscot representative, has stated that "there needs to be a process whereby if a tribe has made a claim, denied or not, [they] have some role in the work . . . done on those remains until the [affiliation] issue is resolved . . . if . . . an institution . . . continue[s] to do study . . . that's ethically wrong until we have an opportunity to present more information or clear up the reasons why we were denied those remains" (National NAGPRA 2015, V1: 206-7). In another claim by the Wabanaki dating to 2011, letters to eight institutions with remains and objects from Maine resulted in one institution denying the claim (Harvard University), again with no explanation of why the evidence was insufficient for cultural affiliation. While Harvard (holding the human remains) denied the Wabanaki claim, the R. S. Peabody in Andover, Mass. (holding the funerary objects) affirmed cultural affiliation and is moving toward repatriation (National NAGPRA 2015, V2: 201-2). Minutes of NAGPRA Review Committee meetings over the past few years document how other tribes across the country continue to experience resistance from Harvard University and similar institutions with retentive philosophies.

Another institution still developing institutional will is Indiana University. The university only began an official NAGPRA "project" in 2013, yet federal grant funds (in the form of an National Science Foundation (NSF) grant) were awarded to this institution, which is just now, after two decades, making progress on a collection that includes thousands of individuals, mostly still classified as CUI.¹⁴ The NSF grant project focuses on how "practicing archaeologists and bioanthropologists prepare future professionals to handle ethical issues raised by NAGPRA . . . using a collegium workshop format" (National NAGPRA 2014, V1: 220). The project will also create a website that will act as a "dynamic hub" for visitors to retrieve information (such as talks or course and media materials) related to repatriation. For tribes, time could be better spent on actually doing the work of NAGPRA: consultations leading to

repatriation. Like so many other institutions, Indiana University had not consulted with tribes before categorizing ancestors as CUI (National NAGPRA 2015, V2: 215-16). In 2015, the university was awarded a consultation grant for over \$46,000, which it plans to use for consultation with at least 10 tribes,¹⁵ indicating that a shift may be happening at that institution after decades of non-compliance. Indiana has publicly expressed a desire and objective to establish lines of communication that will facilitate returning "ancestral remains and funerary objects . . . to appropriate tribal communities" (National NAGPRA 2014, V1: 222) and only time will tell if it has developed genuine institutional will.

Harvard University, University of Michigan and Indiana University are far from the only institutions across the country that have had retentive philosophies or used the designation of CUI to avoid repatriation. As of 2015, almost 18,000 ancestors and over 150,000 associated funerary objects were classified as unidentifiable or unaffiliated, where museums and institutions have not completed (or demonstrated completion of) consultations with tribes that could lead to affiliation and repatriation (National NAGPRA 2015, V1: 48).

There are certainly times when classifying ancestors as CUI is the appropriate (and desired) path, and what tribes prefer, as noted above. For example, UMass Amherst developed institutional will to complete a number of repatriations, partly as a result of conversations with tribes in New England needing the university to fulfill its obligation both to the law and to the communities it worked with. Tribal people from the region have long-standing relationships with the university, contributing to Native Studies courses as guest speakers, attending annual symposia, powwows and other events, and attending as students. Yet the contradiction loomed that while this collaborative relationship existed, the university continued to hold almost 100 ancestors from the area identified as CUI because they were not readily affiliated with any *federally* recognized tribes, but from an area most closely associated with non-extant and non-federally recognized tribes. Thus identifying these ancestors as CUI was appropriate and indicated the institution's commitment to acknowledging the continued presence of the non-extant and non-recognized tribes and continued relationships to the ancestors. This example also demonstrates how any institution can choose to acknowledge, consult with and repatriate to non-federally recognized tribes; nothing in NAGPRA bars that from happening and a process is clearly laid out in the regulations.

Between 2010 and 2014, UMass published five Notices of Inventory Completion (NICs), plus two between 2004 and 2010. The institution initially inventoried some ancestors as CUI on the NAGPRA database to make the information public and then consult with tribes regarding their wishes to either culturally affiliate or have the ancestors remain CUI. UMass's approach has been to consult broadly, and culturally affiliate if possible and *if* that is the wish of tribes.

Both University of Michigan and University of Massachusetts, and now Indiana University, developed institutional will following pressure from tribes to not only engage in the *process* of NAGPRA, but to do so in the *spirit* of the law, with the goal of actual repatriation. These institutions have become examples of positive institutional will over the past decade and now work with tribes to return ancestors and items to the people and homelands they belong to. Other institutions, such as Harvard University, have continued colonial logics that originally governed the collection and theft of ancestors; the need to keep these as university property is tied to ideas of their objective and isolated nature as human remains with scientific value, rather than as ancestors with active relationships to present-day tribes. Even well into the twenty-first century changing philosophies at certain institutions has proven difficult. Only with legal or public pressure will they likely develop the institutional will to repatriate Native American ancestors and items that rightfully belong to tribes.

For example, California tribes have been very vocal about the need for institutions in that state to comply with NAGPRA, and are being heard. In 2014 the University of California, Davis hired Megon Noble as the first full-time staff member dedicated exclusively to NAGPRA compliance. The university – which has approximately 300 sets of remains from 62 sites and 12,000 funerary objects – has made “a conscious decision to embrace both the letter and the spirit of the law with the recent development of the[ir] NAGPRA program” (National NAGPRA 2015, V2: 187), according to Noble. Noble has a reputation for embracing NAGPRA and the spirit of the law, so the university’s decision to hire her is a strong indicator that they intend to repatriate and their words are not just rhetoric.

Impediments and best practices

One of the greatest challenges to the success of NAGPRA is the control museum and institution officials have over the process (mainly, deciding cultural affiliation), and other impediments result in tens of thousands of ancestors still not repatriated. Some of these were discussed at recent NAGPRA Review Committee meetings. Lack of sufficient investigations by National NAGPRA has allowed retentive philosophies to persevere. The law allows for the Secretary of the Interior to assess civil penalties against museums that fail to comply with the requirements of the law, but complaints must first be initiated (usually by tribes) with National NAGPRA. The process and the enumeration of different ways museums fail to comply are in the NAGPRA regulations (Section 10.12), but lack of an investigator during some periods over the past decade (due to lack of government funding) has led to a backlog of cases not investigated for several years. In a five-month period in the 2014–15 fiscal year, NAGPRA received three written allegations of museums failing to comply and one Notice of Museum Failure to Comply was recorded. One Review Committee member suggested that investigations be a public process, as it is an area where transparency would be valuable to both tribes and museums (National NAGPRA 2015, V1: 34–5). Presently, only when investigations are completed are results published by NAGPRA. Even Review Committee members are not informed of on-going investigations and some take well over a year, once they make it to the top of the backlog list. Yet some still believe that forcing investigations of non-compliant institutions and museums has merit. Mashpee Wampanoag representative Ramona Peters recently commented: “I want to encourage tribes who are having these problems to use . . . civil penalties. We were successful . . . Without museums actually paying the fees [civil penalties], there’s no deterrent really . . . they would be more inclined to comply with the law if we actually used or sharpened the teeth of the law” (National NAGPRA 2015, V1: 71–2).

Ryan Wheeler, Director of the Robert S. Peabody Museum in Andover, Massachusetts, described one impediment to his institution’s efforts toward repatriation: the issue of split collections. Historically some institutions kept funerary objects and sent remains to other institutions, or remains of the same individuals or from the same site were split between institutions. For example, the Pecos, New Mexico, collection was split between the Andover Peabody and Harvard Peabody museums, and “the institutions have divergent ideas about the application of the Act,” on cultural affiliation, to be exact (able or *wanting* to culturally affiliate), and the misuse of CUI. Harvard possesses the human remains and refuses to culturally affiliate, while Andover Peabody has chosen to culturally affiliate funerary materials from the same site. This case, in particular, highlights how a lack of institutional will, as at Harvard and others with similar split collections, remains an impediment to repatriation

(National NAGPRA 2015, V2: 176). Many tribes will wait until they can repatriate all of the material to complete the transfer and reinterment processes.

Another impediment remains that have been culturally affiliated but not yet listed in Notices of Inventory Completion (the final step in a museum, institution or federal agency’s legal obligation before final transfer to tribes). As of early 2015, over 3,000 human remains had been culturally affiliated in lists given to National NAGPRA but not yet repatriated. And a number of museums did not provide any evidence of consulting with tribes or NHOs while developing their CUI inventories, technically not complying with the law.

Ultimately, responsibility for delays in completing the process of repatriation lies not with National NAGPRA; the burden is on museums and institutions to draft and submit notices for publication, then return ancestors and items. As Ramona Peters (who has worked on repatriation since before the law was enacted) noted, deterrents such as civil penalties only work if they are exercised, and tribes need to know which the resistant museums are in order to push for investigations and penalties to be enforced (National NAGPRA 2015, V1: 72). The need for both more investigations and more public knowledge of those investigations clearly exists, especially with institutions with retentive philosophies such as Harvard. For tribes with a one- or two-person office managing both Tribal Historic Preservation and NAGPRA duties, resources and manpower don’t always exist to challenge institutions, and formal investigations by National NAGPRA can take several years to complete.

While these and many other impediments to repatriation remain, a number of solutions and best practices developed over the past few decades do help respond to them. Penobscot representative Bonnie Newsom recently expressed a common frustration of many tribes: “decision-making authority relative to cultural affiliation determinations rests with the individuals in positions of power in these institutions . . . We never gave away our rights to care for our ancestral remains or to manage our cultural heritage. I find it extremely unjust that others have taken those rights and responsibilities away from us and that the NAGPRA process perpetuates that by giving non-Native entities decision-making authority about the care of our ancestral remains and cultural heritage” (National NAGPRA 2015, V2: 203). One possible solution, suggested by Review Committee member Steve Titla, is for museums and institutions to employ more Native people in decision-making positions (National NAGPRA 2015, V2: 206). The institutions that have done this (such as UMass) demonstrate institutional will beyond seeking collaborations that benefit the institution “toward mutual goals of education and research,” and/or “new ways of understanding through the NAGPRA process,” as Harvard University has stated its goals and foci to be (National NAGPRA 2015, V1: 183–5). After over two decades of NAGPRA, the goal of *every* museum and institution – especially those that present themselves as at the forefront of the field – can be nothing other than *achieving* repatriation. The goal of NAGPRA is not education, research, new ways of understanding or developing policies and procedures, although these certainly are often part of the process; the goal of NAGPRA is repatriation. But, as Steve Titla expressed it, decisions made by “museums sometimes are not logical, and they are made by non-Natives” (National NAGPRA 2015, V2: 207–8).

And for federal agencies still in control or possession of thousands of ancestors some solutions to the impediments and barriers they face include clarifying definitions in the regulations, requiring museums, institutions and other non-federal repositories (holding collections belonging to agencies) to report on their collections to agencies, and agencies having authority to request information from repositories (National NAGPRA 2015, V1: 176–7). Funding is always an impediment to overcome. Ramona Peters has stated that repatriation is “meaningful . . . [and] important. It’s our human rights being exercised, and it needs to be

better supported by the federal government" (National NAGPRA 2015, V1: 73). Most other tribes would agree.

The Colville, Umatilla, Yakama, Nez Perce and Wanapum tribes have offered several ideas to increase compliance and best practices for consultation, curation and repatriation. For example, knowing which museums have received federal funds and thus are required to comply with the law but have not, would be helpful. No clear understanding of the extent of unaccounted-for Native American remains that could be repatriated under NAGPRA exists. Updated contact lists for key tribal personnel would assist museums, institutions and agencies, who should understand that they cannot dictate who participates in consultations. Consultations can include more than one tribe and non-federally recognized tribes. Tribes appreciate honesty, and consultations should include policy and decision makers who can provide answers and assurances. Consultations should also begin early in a relationship and may not, in fact, have an end; they should be held as often as needed and take as long as needed. Effective consultations build relationships that continue after a project or a repatriation is complete (National NAGPRA 2015, V2: 100-2).

These tribes also offer best practices for curation and management of ancestors and objects, noting first that curation should be respectful for both ancestors and their living descendants and that policies and procedures regarding care and access should involve potentially affiliated tribes. Policies regarding requests for information and research, in particular, should be created with tribes and not solely by institutions and agencies. Best practices for physical transfers include: open communication with everyone involved, providing support for both the museum or agency and tribes, and keeping the best interests of the ancestors and objects in mind (such as location and long-term protection) (National NAGPRA 2015, V2: 102-3).

Concluding remarks

These best practices remind us that beyond the legal obligations museums, institutions and federal agencies in the United States have to comply with the Native American Graves Protection and Repatriation Act, they also have a *moral* obligation to satisfy what is clearly human rights law designed to correct at least some of the offenses committed against Native Americans over the past 500 years. These offenses include genocidal atrocities resulting in the deaths and subjugation of millions over the centuries, and storage and display of ancestors and items by the dominant non-Native culture. Many tribes still face too many obstacles and resistance to repatriation of their ancestors, and funerary, sacred and cultural patrimony objects from museums and institutions that have yet to develop institutional will. At this juncture, we no longer need to ask if and how NAGPRA works. The pertinent question is: How can we create institutional will when an institution or museum refuses to repatriate? Different tribes have used several options: initiating an investigation through National NAGPRA (and hoping it is completed in a reasonable time); requesting a Finding of Fact by the NAGPRA Review Committee regarding details of a case; for the Michigan tribes, storming a board of regents meeting to make them aware of non-compliance at their institution; and using the media and public support to turn the tide.

My experiences working both within and with museums and institutions have been mixed. While the university I worked for developed the institutional will to embrace its responsibilities, others I interacted with to either facilitate repatriation or as a consulting party (with Harvard University) demonstrate that many museums have a long way to go. Harvard University, as one example, often claims "no temporal link" exists between ancestors and modern-day tribes, classifying human remains and objects as CUI even when precedent cases

for cultural affiliation exist. When asked during a consultation why they would want to retain human remains or objects, the university's response was, "Well, we are a museum."¹⁶

This statement clearly defines what the "intentionality" of Harvard University is. As of February 2015, the university had listed on the NAGPRA databases 1,083 culturally affiliated individuals plus 4,067 AFOs, originally published and then updated between 1994 and 2015. Some of these will have been repatriated but it's unknown from the database how many remain at the institution. Beyond that, Harvard has listed 7,048 individuals as CUI, plus 14,473 AFOs, supporting the fact that designating ancestors as CUI is a practice for this institution.¹⁷ While some of these ancestors and items may have little to no provenience, others were taken from specific and known locations that modern-day tribes have clearly expressed cultural ties to. And this list does not include other NAGPRA-sensitive items at the institution (unassociated funerary objects, objects of cultural patrimony and sacred objects) not captured in these databases and only traceable in summary letters the institution may have sent to individual tribes. Many of these NAGPRA items are ethnographic objects (like the Northwest Coast masks noted above) valued by museums like Harvard for artistic and educational value.

This chapter has discussed a key issue in the repatriation process – the practice of institutions categorizing ancestors and items as CUI, or "culturally unidentifiable" – and shared case studies demonstrating how institutional will is changing among some museums and universities, while others continue to practice retentive philosophies and resist repatriation. This philosophy is clearly against the human rights component intended with the spirit of NAGPRA, and using the CUI category is clearly a conscious strategy employed by some institutions to retain ancestors and items subject to NAGPRA. Museums, institutions and federal agencies receiving federal funds and thus subject to NAGPRA have an *affirmative duty* to actively participate in repatriation of Native American remains and objects through consultation with tribes and Native Hawaiian organizations, including previously culturally unidentifiable ancestors through the addition of 10.11 of the NAGPRA regulations in 2010.

As noted in the beginning of this chapter, NAGPRA is a diverse, complex and contested law changing through practice, and through the input of Native Americans, archaeologists, museum professionals and other academics, and collectors. More than anything, though, NAGPRA is Indian Law and Human Rights Law, clearly created to right some of the wrongs that have occurred, as Sonya Atalay noted (personal communication, April 2014). What this chapter encourages is focusing on what we do have the power to change: institutional will. While some valid reasons remain for classifying Native American ancestors as CUI – such as no provenience information, to share information until consultations are complete, or because tribes prefer the CUI designation – this is a designation that should be used only in certain circumstances, and *in consultation* with tribes. According to the law, ancestors connected to non-federally recognized tribes or tribes no longer extant are also considered CUI. Non-Native control of the process, though, often obfuscates both the process and intent of the law.

Ramona Peters has noted that, "for museums in this country that receive federal money, if . . . their names are out there as people who are doing something shameful, then maybe they wouldn't do it" (National NAGPRA 2015, V1: 72-3). This chapter has attempted to respond to this call, but on a limited basis. Too many museums and institutions continue to fail at fulfilling their legal and affirmative duties to consult and repatriate. Without developing institutional will – through either a change of philosophy within or by being "encouraged" through legal processes like investigations by National NAGPRA – impediments will continue to prevent ancestors and items from going home.

The Wampanoag Repatriation Confederation had repatriated 522 ancestors as of Spring 2015, noting it was a long and difficult process to achieve. Ramona Peters has considered these difficulties as primarily involving resistance from museums. After decades she grapples with trying to understand: "I think we're talking about three worlds here, the one where the ancestors walk and they walk in ours and they walk in the museums, and then there is us, the present day walking with the DNA of thousands of years, and then there are people who came here, whose ancestors are from another world, another land, but yet their worldview creates a resistance to cooperating in a good way" (National NAGPRA 2015, VI: 67-8). These remain the core issues surrounding NAGPRA, classifying ancestors as CUI, and the clear need for more institutions to develop the institutional will to achieve the objective of this law: repatriation.

Notes

- 1 Nipmuc Nation of Massachusetts.
- 2 For definitions of these terms, see the glossary on the National NAGPRA website at <http://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>.
- 3 One of weaknesses of NAGPRA is that cultural affiliation is determined by museums and institutions, and many tribes must "prove" connections to ancestors. Harvard University, for example, claims that ancestors older than 2,000 years cannot be culturally affiliated with modern-day Indian tribes, while other institutions clearly recognize connections between older ancestors and modern-day tribes.
- 4 Citations for the Native American Graves Protection and Repatriation Act: 25 USC 3001 et seq. [Nov. 16, 1990], codified in: 43 CFR 10.
- 5 Cultural affiliation is defined as: "A relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group (25 USC 3001 (2)). Cultural affiliation is established when the preponderance of the evidence – based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion – reasonably leads to such a conclusion" (43 CFR 10.2 (e)).
- 6 Defined as: "As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not" (*Black's Law Dictionary*, 6th edition; <http://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>) (accessed 27 March 2017).
- 7 Sherry Hutt, personal communication, NAGPRA Training, Oct. 2010.
- 8 The final rule publication and comments associated with the finalization of rule 10.11 are in the Federal Register, Vol. 75, No. 49, <https://www.gpo.gov/fdsys/pkg/FR-2010-03-15/pdf/2010-5283.pdf> (accessed 27 March 2017).
- 9 See meeting minutes transcriptions at <https://irma.nps.gov/DataStore/Reference/Profile/2193294> (accessed 27 March 2017).
- 10 43 CFR 10.6 (a)(2)(iii)
- 11 Personal communication at the April 2014 public roundtable.
- 12 Personal communication at the April 2014 public roundtable.
- 13 Personal communication at the April 2014 public roundtable.
- 14 As of February 2016 Indiana University reported through the NAGPRA database possession of 75 individuals and 396 AFOs culturally affiliated, plus 5,270 individuals and 9,783 AFOs as CUI (including some excavated in the late 1980s and 1990, the year NAGPRA was passed).
- 15 <http://viewpoints.iu.edu/policy-briefings/2015/08/10/iu-awarded-consultation-grant-for-native-american-graves-protection-and-repatriation-act/> (accessed 27 March 2017).
- 16 Patricia Capone, personal communication, April 2013.
- 17 Some of the CUI listings have been recategorized as culturally affiliated but remain on the CUI listing for record keeping and documenting the transition from CUI to culturally affiliated. Even with some overlap possible for Harvard University, the number of CUI ancestors and AFOs in that institution's possession is exceedingly high.

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