



Native American Graves Repatriation Act turns 30

Despite federal law ordering their repatriation, thousands of ancestors remains still languish in boxes and basements

MARY ANNETTE PEMBER • NOV 21, 2020

FILE: On May 5, 2017, participants depart the first reburial ceremony of one ancestor's remains at the newly established Sacred Springs Reburial Grounds in San Marcos, Texas. (Photo by Paula Manley, courtesy Miakan-Garza Band of the Coahuiltecan)

Mary Annette Pember

[Indian Country Today](#)

An antique Cheyenne girl's dress spotted with blood in a natural history museum's display case.

A cabinet of skulls in the Smithsonian museum with labels identifying them only by tribal affiliation.

These are a few of the gruesome sights that galvanized Native American advocates to advocate for creation of the Native American Graves Protection and Repatriation Act ([NAGPRA](#)) that was passed 30 years ago this month.

The law was enacted to require federal agencies and institutions such as schools and museums receiving federal funding and holding collections of Native American remains and cultural items to engage in a process to transfer these items to lineal descendants, tribes, Alaska Native or Native Hawaiian organizations.

The Indian Legal Program at Arizona State University recently organized a webinar, "NAGPRA: 30 Years and Beyond," to explore the history and future of the law.

Presenters included advocates who helped bring the law forward including Suzan Harjo, Cheyenne/Hodulgee Muscogee, writer, curator, policy advocate and president of the Morning Star Institute and James Riding In, Pawnee, founding member and associate professor, American Indian Studies at Arizona State University.

Shannon Keller O'Loughlin, a citizen of the Choctaw Nation of Oklahoma, is executive director and attorney with the Association of American Indian Affairs, which has built a national and international effort assisting U.S. tribes and communities with domestic and international repatriation. He also presented.

The passage of NAGPRA has helped tribes create an infrastructure in order to carry out the work of repatriating remains and cultural items held by institutions.

Before the law was enacted, the examples of the Cheyenne girl's dress and cabinet of skulls were common sights in museum display cases all over the U.S.

Native American remains as well as their funerary (or grave goods) and cultural items were viewed by scientists and the public as resources to be collected and studied at will.

"Our ancestors were commodified and thought of as someone's property that could be owned like a butterfly collection," said Harjo.

The skulls in the cabinet from Riding In's memory were likely collected during the 19th century as part of that era's scientific cranial studies that sought to compare the skull size of different races and assign superiority to Caucasians, who supposedly had larger skulls.

The U.S. Army Medical Museum, now known as the National Museum of Health and Medicine, authorized military medical officers, physicians, scientists and explorers to collect specimens, such as skulls, from the bodies of deceased Native Americans. The skulls and other remains were subsequently identified by tribal affiliation and may have included information about or the name of the donor but not the identity of the person.

According to Harjo and Riding In, they learned that some of the skulls included in federal collections were stolen from children's graves at Carlisle, Haskell and Chilocco Indian boarding schools.

"We are dealing with things that most of the country has no idea happened," Harjo said.

Convincing museums and the federal government that repatriation was not a property question but a human rights issue, however, began changing everything according to Paul Bender, moderator for the webinar.

Bender is professor of law and dean emeritus at the Sandra Day O'Connor College of Law at Arizona State University.

“Requiring tribes not only be heavily involved in deciding what happened to Native remains but that they also had the last word is one of the defining principles of the law,” Bender said.

According to Harjo, she focused on the language of NAGPRA in order to move repatriation work forward.

“We got rid of the colonial language of commodification, such as “grave goods” that were used in old laws about pirate treasure; some scientists still hang on to that term. We had to convince them to use the term human remains,” Harjo said.

During the webinar, Riding In shared his experience working with the National Museum of the American Indian to repatriate the skulls of Pawnee scouts who were discharged from the U.S. Army in 1869.

“The scouts were shot and buried. An officer at Ft. Harker later dug up their remains and sent their skulls to the Army Medical Museum,” Riding In said.

Riding In’s research on the case helped convince the museum to repatriate the Pawnee ancestors’ remains.

“We can’t compromise over the fate of our ancestors; we can’t let people come in and hoodwink us,” he said.

Repatriation of remains and items from the Smithsonian Institution is governed by a separate federal law, Public Law 101-185. Under this law, the National Museum of the American Indian was created. The act also requires the Smithsonian to create and carry out an institution-wide repatriation policy for its other organizations such as the National Museum of Natural History and the National Museum of American History.

According to O’Loughlin, tribes have often relied on institutions to work with them in good faith, believing institution leaders understood that items in their collections were looted from the graves of their ancestors.

“Unfortunately, many institutions used the law as an excuse to do more research on remains; they acted as though they were losing something that was theirs,” O’Loughlin said.

“We soon found that we couldn’t rely on good faith. We need to understand how NAGPRA works as a law and remind them that the outcome is repatriation.”

One of the biggest sticking points for institutions has been the disposition of what they classify as unidentified or culturally unaffiliated remains.

Institution leaders wanted to use their own measures to determine tribal affiliation rather than allowing tribal communities to determine if remains and items belonged to their ancestors.

“They (holding institutions) have to stop being judges of what is sacred to us. We have a lot of gatekeepers who think they are entitled to make those decisions for us. That’s a declaration the people themselves should make,” said Harjo.

According to Harjo, many institutions have used the excuse that items and remains were culturally unaffiliated in order to hold onto their collections and conduct further testing and research.

“We stopped that and forced the National Park Service, against their wishes, to make information available to tribes,” she said.

O’Loughlin agreed. “NAGPRA is a law not a research project.”

“We reject the term “culturally unaffiliated or unidentified”; we know more about our ancestors than these museums,” Riding In said.

According to O’Loughlin, 93 percent of ancestors who have still not been repatriated by institutions because they’ve been declared unaffiliated do in fact have enough associated information to be repatriated.

“The only requirements for repatriation under the law are geography and tribal consultation,” she said.

In the last 30 years, 199,933 individual Native remains held by institutions have been identified according to O’Loughlin.

Of those, 83,076 have been repatriated.

“116,857 individuals, our ancestors, are still held in boxes and basements,” O’Loughlin said.

Unfortunately, according to presenters at the webinar, there are few penalties for institutions failing to follow NAGPRA.

“We need stronger language, bigger penalties and more ability to enforce the law,” Harjo said.

The federal law only applies to federal and tribal lands and institutions that receive federal funds and does not apply to state or private lands or institutions.

Only a handful of states have enacted laws offering protections for Native burial sites according to O’Loughlin.

“There is no national protective scheme to protect Native American graves,” she said.

“NAGPRA has helped us get a lot of things done to protect our ancestors and that is really important. But there is still so much to do,” Harjo said.

Mary Annette Pember, a citizen of the Red Cliff Ojibwe tribe, is a national correspondent for Indian Country Today.

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