

SECTION I  
THE NATIVE AMERICAN  
GRAVES PROTECTION  
AND REPATRIATION ACT



Repatriated *Northern Cheyenne* remains awaiting reburial. Photo by John Warner, St. Labre Indian School, courtesy of Repatriation Office, NMNH, Smithsonian Institution.

## SECTION I

# *Chapter 1.* THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

by JACK TROPE, ESQ.

**O**N NOVEMBER 16, 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) became law. This law (sections 3001 through 3015 of Volume 25 of the United States Code):

- Establishes procedures and legal standards for the repatriation of human remains, funerary objects, sacred objects and cultural patrimony by federal agencies and certain museums, educational and other institutions, and state and local governments.
- Recognizes certain tribal, Native Hawaiian, and individual rights in regard to burial sites located on federal and tribal lands.

In general, the Act is based upon the unique relationship between Native Americans and the federal government.<sup>1</sup>

## WHO AND WHAT IS COVERED BY NAGPRA

### *Indian tribes, Native Hawaiian Organizations and Lineal Descendants*

NAGPRA provides various repatriation, ownership and control rights to Native American individuals and families who are the lineal descendants of a deceased Native individual and to Indian tribes and Native Hawaiian organizations.

“Indian tribe” is defined as “any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”<sup>2</sup> In the only court case interpreting this provision in NAGPRA to date, a Federal District Court found that this definition includes both tribes recognized by the Secretary of the Interior and other “aggregations” of Indians which have been receiving funds and assistance from other departments of the federal government.<sup>3</sup> In addition, an overall reading of the law suggests that any culturally-distinct tribal entity with the authority to decide traditional cultural issues would probably be considered “an Indian tribe” for the purpose of making claims under NAGPRA, even if that tribal entity has joined with other tribes or sub-groups of tribes for the purpose of secular self-governance.<sup>4</sup>

“Native Hawaiian organization” is defined as an organization which:

1. Serves and represents the interests of Native Hawaiians;
2. Has a primary purpose of providing services to Native Hawaiians; and
3. Has expertise in Native Hawaiian Affairs.

The Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai’i Nei are specifically included as Native Hawaiian organizations.<sup>5</sup>

### *Museums and Federal Agencies*

NAGPRA’s repatriation, inventory and summary requirements are obligatory for federal agencies and museums.

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The term “federal agency” includes all federal governmental entities except the Smithsonian Institution, which is the subject of a separate law, the National Museum of the American Indian Act of 1989 (“Museum Act”), as explained below.<sup>6</sup>

The term “museum” means any institution receiving federal funds which possesses or controls Native American cultural items. This definition includes not only those institutions commonly thought of as museums, but also state and local governments, educational and other institutions.<sup>7</sup>

### *Cultural Items*

NAGPRA deals with the issue of ownership and control over Native American “cultural items”. “Cultural items” are defined to include human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony.<sup>8</sup> The meaning of each of the categories of items is as follows:

**1. “Associated funerary objects” includes two categories of objects:**

- Objects “reasonably believed to have been placed with individual human remains either at the time of death or later...as part of a death rite or ceremony” where both the human remains and objects are presently in the possession or control of a federal agency or museum. The remains and objects need not be in the possession or control of the same agency or museum—only in the possession or control of a museum or agency so that a connection between the objects and remains is possible.
- Objects “exclusively made for burial purposes or to contain human remains.”<sup>9</sup>

**2. “Unassociated funerary objects” are those funerary objects which were found with human remains where**

- The objects can be related to specific individuals, families or known human remains or to a specific burial site of a culturally affiliated individual; and
- The human remains are not presently in the possession or control of a federal agency or museum.<sup>10</sup>

**3. “Sacred objects” are those objects which are**

- ceremonial in nature, and
- needed by traditional Native American religious leaders for the present day practice of traditional Native American religions. This includes both the use of the objects in ceremonies currently conducted by traditional practitioners and instances where the objects are needed to renew ceremonies that are part of a traditional religion

The definition recognizes that the ultimate determination of continuing sacredness must be made by the Native American religious leaders themselves since they must determine the current ceremonial need for the object.

**4. “Cultural patrimony” are those objects which**

- Have “ongoing historical, traditional, or cultural importance central to the Native American group or culture itself”<sup>13</sup>, and
- Are the cultural property of a tribe, or a subgroup thereof such as a clan or band, and could not have been sold or given away by an individual.

Congress intended cultural patrimony to refer to items of “great importance” such as Iroquois wampum belts.<sup>14</sup>

## ITEMS POSSESSED OR CONTROLLED BY MUSEUMS AND FEDERAL AGENCIES

### *Responsibility of Museums and Federal Agencies to Identify Items*

#### **Inventory of Human Remains and Associated Funerary Objects**

NAGPRA requires museums and federal agencies to complete item-by-item inventories of human remains and associated funerary objects they own or possess. In conducting the inventories, museums and agencies must consult with Native American governmental and traditional leaders and the NAGPRA Review Committee (see below).<sup>15</sup> The inventories must be completed by November 16, 1995.<sup>16</sup> Extensions may be granted by the Secretary of the Interior for good cause,<sup>17</sup> but the inventory process is not intended to delay any pending actions on repatriation requests.<sup>18</sup>

As part of the inventory, the museum or agency is required to identify the geographical origin and cultural affiliation of each item, to the extent possible, based upon information currently within its possession; it must also provide information about how and when the item was acquired by the museum or agency.<sup>19</sup> Museums and agencies are not required to conduct “exhaustive studies and additional scientific research to conclusively determine” cultural affiliation,<sup>20</sup> nor is the bill considered to be authorization for such studies.<sup>21</sup>

Museums and agencies must provide notice of culturally affiliated objects they identify in their inventories to culturally affiliated tribes (or Native Hawaiian organizations) “throughout the process”—not merely after completion of the entire inventory.<sup>22</sup> Final notice must be sent within six months after the completion of the inventory to all tribes that are reasonably believed to be culturally affiliated with human remains or associated funerary objects owned, held or controlled by the museum or agency.<sup>23</sup>

Notices will:

- identify each human remain and associated funerary object;
- state how, when and where it was acquired;<sup>24</sup>
- provide one list of those remains and objects whose tribal origin is clearly identified;<sup>25</sup> and
- provide another list of those remains and objects whose tribal affiliation is not clearly identified, but which are believed to be of a particular tribal origin based upon how, when and where they were acquired.<sup>26</sup>

A tribal organizational entity that receives, or should have received, notice may request additional background information from the museum regarding these issues.<sup>27</sup>

The requirement that museums perform this inventory does not depend upon a museum receiving federal funds from the NAGPRA grant program.<sup>28</sup>

The Museum Act of 1989 places a similar requirement upon the Smithsonian. It requires the Smithsonian, in consultation with Indian tribes and traditional Indian religious leaders, to inventory human remains and funerary objects in its possession or control.<sup>29</sup> The requirement extends to both associated and unassociated funerary objects and, in this respect, the inventory requirement placed upon the Smithsonian exceeds that placed upon other federal agencies and museums by NAGPRA.<sup>30</sup> The purpose of the inventory is to identify the origins of such remains based upon the best available scientific and historical documentation.<sup>31</sup> If the tribal origin of remains or objects is identified by a preponderance of the evidence, the Smithsonian must promptly notify the appropriate Indian tribe.<sup>32</sup>

## *Summary of Unassociated Funerary Objects, Sacred Objects and Items of Cultural Patrimony*

Museum and agencies must provide summaries of unassociated funerary objects, sacred objects and items of cultural patrimony instead of object-by-object inventories. These summaries must “describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.”<sup>33</sup>

These summaries should have been completed by November 1993. Indeed, many museums and federal agencies have already sent summaries to Indian tribes as required. After a summary is completed, there should be a consultation process with Native American governmental and traditional leaders.<sup>34</sup> All tribes and Native Hawaiian organizations are entitled to obtain data from federal agencies and museums pertaining to geographical origin, cultural affiliation and acquisition and accession of the objects in the summaries.<sup>35</sup> This information must be requested by the tribal organizations or entities.

As noted earlier, under the Museum Act, the Smithsonian is required to inventory unassociated funerary objects, but it is NOT required to inventory or summarize sacred objects or items of cultural patrimony in its possession or control.

## *Repatriation or Other Treatment of Cultural Items*

### **Repatriation of Human Remains and Associated Funerary Objects under NAGPRA**

NAGPRA requires federal agencies and museums to return human remains and associated funerary objects as quickly as possible in the following instances:

1. Upon request of a direct descendent of the deceased, or
2. Upon request of an Indian tribe or Native Hawaiian organization where the tribe or organization has a “cultural affiliation” with the human remains and associated funerary objects.

#### **In order for “cultural affiliation” to be established...**

- it must be determined that it is likely that the remains are those of a member of a particular tribe or group which existed at the time the deceased lived; and
- based on all the circumstances and evidence,<sup>36</sup> a reasonable connection (“shared group identity”) must be shown between the present-day tribe or organization making the request and the earlier tribe or group.

Cultural affiliation can be determined by a museum through the inventory process or proven by a tribe or Native Hawaiian organization.<sup>37</sup> Many types of evidence can be used to prove cultural affiliation, including “geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.”<sup>38</sup>

Upon request, federal agencies and museums must provide available documentation to Indian tribes and Native Hawaiian organizations who may be culturally affiliated with certain items.<sup>39</sup> Available documentation includes “a summary of existing museum or federal agency records, including inventories or catalogues, relevant studies, or other pertinent data.”<sup>40</sup>

Two exceptions exist to the requirement that human remains and associated funerary objects be “expeditiously returned” after cultural affiliation has been determined:<sup>41</sup>

1. Where the remains or objects are “indispensable for completion of a specific scientific study,

the outcome of which would be of major benefit to the United States”, in which case the items must be returned within 90 days after the completion of the study;<sup>42</sup> and

2. Where more than one tribe, Native Hawaiian organization or descendant makes a claim and the federal agency or museum “cannot clearly determine which requesting party is the most appropriate claimant”.<sup>43</sup> In such a case, the federal agency or museum may retain the item until the parties agree or a court decides who should receive the items.<sup>44</sup>

As for human remains and associated funerary objects whose cultural affiliation cannot be determined, the Review Committee created by NAGPRA (see below) will make recommendations, “in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups”, as to how these remains and objects will be handled.<sup>45</sup>

### ***Repatriation of Unassociated Funerary Objects, Sacred Objects, and Items of Cultural Patrimony under NAGPRA***

There is a four-step process for repatriating unassociated funerary objects, sacred objects and cultural patrimony.

#### ***Step 1. Identification of the Item***

The claimant must show that the item claimed is either an unassociated funerary object, sacred object or item of cultural patrimony.<sup>46</sup>

#### ***Step 2. Cultural Affiliation/Prior Ownership or Control***

Cultural affiliation of unassociated funerary objects must be established as described under “*Repatriation of Human Remains and Associated Funerary Objects, under NAGPRA*” (see page 4).<sup>47</sup>

For sacred objects and items of cultural patrimony, either cultural affiliation must be established or the requesting tribe or Native Hawaiian organization must show that the object was previously owned or controlled by the tribe, organization or a member thereof.<sup>48</sup>

In order for an individual to claim a sacred object, that individual must show that he or she is a direct descendant of the person who owned the object.<sup>49</sup>

If a tribe or Native Hawaiian organization is making a claim based upon prior ownership or control by a tribal member rather than by the tribe, the tribe must show that there are no direct descendants of the individual who owned the object(s) or that the descendants have been notified and have failed to make a claim.<sup>50</sup>

#### ***Step 3. Right of Possession—Evidence Presented by Claimant***

Once it has been determined that a tribe, Native Hawaiian organization or individual has a valid claim for the object, the tribe, organization or individual must present at least some evidence indicating that the federal agency or museum did not have the “right of possession” of the items.<sup>51</sup> “Right of possession” means possession obtained with the voluntary consent of an individual or group that had the right to sell or transfer the object.<sup>52</sup> In most cases, whether the initial transfer of the item out of tribal control was consensual would probably be governed by tribal law or custom.<sup>53</sup>

There is only one instance where this definition of “right of possession” would not apply. This would be in the rare case when a lawsuit is brought before the United States Claims Court and the Court finds that an unconstitutional Fifth Amendment taking of private property without just compensation would result from the return of an object. If such a ruling were obtained,

other property laws (federal, state or tribal) would apply to the object(s) in question as if NAGPRA did not exist. It is not expected that this will be a significant problem.

In gathering evidence to make an initial showing that a museum or agency had no right of possession, a claimant should be aware that:

- a. The museum or agency must make available “records, catalogues, relevant studies or other pertinent data” in their possession relating to how the museum or agency obtained the item and who has held it since it left tribal possession<sup>54</sup>, and
- b. Although the statute is not specific in regard to the type of evidence needed, the claimant should consider presenting oral traditional and historical evidence, as well as documentary evidence.

#### **Step 4. Right of Possession: Museum or Agency Burden of Proof**

Once the claimant has satisfied Steps 1-3, the burden is shifted in Step 4 to the museum or federal agency. In Step 4 the museum or agency must prove that it has a right of possession in regard to the items in question.<sup>55</sup> If the museum or agency cannot prove right of possession, the unassociated funerary object, sacred object or item of cultural patrimony must be returned—unless the scientific study or competing claims exceptions discussed earlier apply.

#### ***Repatriation of Items under Other Legal Authority***

NAGPRA makes clear that its repatriation provisions are not meant to limit the general repatriation authority of federal agencies and museums which may have already existed.<sup>56</sup> Thus, a museum or agency may repatriate an item without strict compliance with NAGPRA procedures if it would have been legally able to do so prior to NAGPRA.

In addition, as previously noted, a separate law pertains to the Smithsonian Institution.<sup>57</sup> Under this Museum Act of 1989, upon request by a descendant of the deceased or by a culturally affiliated tribe, the Smithsonian must return human remains and funerary objects associated with those remains as quickly as possible.<sup>58</sup> Unassociated funerary objects which can be identified “as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe” must also be returned to the tribe upon request.<sup>59</sup> Sacred objects and cultural patrimony are not covered by the Museum Act.<sup>60</sup>

#### ***Alternate Treatment of Cultural Items by Museums or Agencies***

If an Indian tribe or Native Hawaiian organization chooses not to immediately repatriate items to which they have a claim, the tribe or organization and the museum or agency may enter into an agreement regarding any Native American objects owned or controlled by the museum or agency.<sup>61</sup> Such an agreement might establish guidelines as to how the museum or agency should “handle” such items. Agencies or museums are not required to enter into such agreements, however.



*Wasco-Warm Springs* religious leader Larry Dick preparing human remains for shipment. Photo courtesy of Jane Beck, Repatriation Office, NMNH, Smithsonian Institution.

## BURIAL SITES ON FEDERAL AND TRIBAL LAND

### *Procedures Required before Excavation may Occur*

#### **Intentional Excavations**

Whenever a party intends to excavate a burial site for any purpose:

1. That party must obtain a permit pursuant to the Archeological Resources Protection Act of 1979 (“ARPA”).<sup>62</sup> An ARPA permit may be issued by the agency managing the land upon which the burial site is located if

- the applicant is qualified,
- the undertaking is designed to advance archeological knowledge in the public interest,
- the resources will remain the property of the United States and be preserved in an appropriate institution, except where NAGPRA provides for tribal ownership or control, and
- the activity is not inconsistent with the applicable land management plan.<sup>63</sup>

2. If tribal lands are involved, the items may be excavated only after notice to, and consent of, the tribe or Native Hawaiian organization.<sup>64</sup> Tribal land is defined to include

- all lands within the exterior boundaries of a reservation, whether or not the land is owned by the tribe, Indian individuals or non-Indians,
- all dependent Indian communities, and
- any lands administered for Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920, as amended, and the Hawaii Statehood Bill.<sup>65</sup>

3. If federal lands are involved, the items may be excavated only after notice and consultation with the appropriate tribe or Native Hawaiian organization.<sup>66</sup> “Federal land” is defined as non-tribal land controlled or owned by the United States, including lands selected by, but not yet conveyed to, Alaska Native corporations and groups pursuant to the Alaska Native Claims Settlement Act of 1971.<sup>67</sup>

#### **Inadvertent Discoveries**

Where imbedded cultural items have been inadvertently discovered as part of another activity, such as construction, mining, logging or agriculture:

1. The person who has discovered the items must temporarily cease activity and notify

- the responsible federal agency in the case of federal land;
- the appropriate tribe or Native Hawaiian organization in the case of tribal land; or
- the Alaska Native corporation or group in the case of Alaska Native Claims Settlement Act lands still owned by the Federal government which have been selected by, but not yet conveyed to, the Alaska Native corporation or group.<sup>68</sup>

When notice is provided to the federal agency, that agency has the responsibility to promptly notify the appropriate tribe or Native Hawaiian organization.<sup>69</sup>

2. Activity may resume thirty days after the Secretary of the appropriate federal department, the Secretary of the Interior if authority has been delegated or the Indian tribe or Native Hawaiian organization certifies that notice has been received.<sup>70</sup>

The intent of this provision is to “provide for a process whereby Indian tribes and Native Hawaiian organizations have an opportunity to intervene in development activity on Federal or

tribal lands in order to safeguard Native American human remains, funerary objects, sacred objects or objects of cultural patrimony...[and to afford] Indian tribes or Native Hawaiian organizations... 30 days in which to make a determination as to appropriate disposition for these human remains and objects.”<sup>71</sup>

### *Tribal Ownership and Control of Imbedded Cultural Items*

Under NAGPRA, Indian tribes, Native Hawaiian organizations or descendants of the deceased will usually have ownership and control over human remains and cultural items which may be discovered or excavated on federal and tribal lands in the future, regardless of whether such discovery or excavation is intentional or inadvertent. Any direct descendant of a buried person has the initial right of ownership or control of that person’s remains and funerary objects associated with the remains.<sup>72</sup> Where descendants of the human remains and associated funerary objects cannot be determined and in the case of unassociated funerary objects, sacred objects and items of cultural patrimony, NAGPRA establishes the following rules:

1. The tribe or Native Hawaiian organization owns or controls all cultural items discovered on tribal land.<sup>73</sup>
2. In the case of federal land, the tribe or Native Hawaiian organization with the closest cultural affiliation to the items has ownership or control.<sup>74</sup> Agreements between tribes regarding disputed items are possible and the NAGPRA Review Committee may serve as a mediator if there is an intertribal dispute.<sup>75</sup>
3. Where cultural affiliation of the items cannot be established, but the objects are discovered on federal land which the Indian Claims Commission or United States Court of Claims has determined to be the aboriginal land of a particular tribe, the tribe which obtained the judgment has the right of ownership and control over the items unless another tribe can show a stronger cultural relationship.<sup>76</sup>

## **PENALTIES FOR VIOLATION OF NAGPRA AND OTHER MEANS OF ENFORCEMENT**

### *Prohibitions Against Trafficking*

1. NAGPRA prohibits all trafficking in Native American human remains for sale or profit unless the remains have been “excavated, exhumed or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization.”<sup>77</sup> This prohibition applies to human remains wrongfully acquired at any time, whether before or after the enactment of NAGPRA.<sup>78</sup>

2. NAGPRA also prohibits trafficking in funerary objects, sacred objects and items of cultural patrimony obtained in violation of the act.<sup>79</sup> This provision in NAGPRA applies only to wrongful acquisitions after the date that NAGPRA was enacted (November 16, 1990).<sup>80</sup> Of course, existing state or federal law involving theft or stolen property would be applicable should an individual or entity have obtained possession of a cultural item by such means before or after the enactment of NAGPRA.<sup>81</sup>

3. Violators of the trafficking prohibitions are subject to a fine of up to \$100,000 and up to one year in jail for a first offense and a fine of up to \$250,000 and a maximum of 5 years in jail for subsequent offenses.<sup>82</sup>

### *Sanctions against Museums*

The Secretary of the Interior may assess civil penalties against museums that do not comply with NAGPRA.<sup>83</sup> The amount of the penalties is determined by

1. The archeological, historical or commercial value of the item involved;
2. The economic and non-economic damages suffered by an aggrieved party; and
3. The number of violations.<sup>84</sup>

### *Enforcement of the Act by a Private Cause of Action in the Courts*

An Indian tribe, Native Hawaiian organization or individual or other entity with protected rights under NAGPRA can file a law suit to enforce the provisions of NAGPRA if there is a violation of the Act.<sup>85</sup> Tribes, organizations and individuals also retain any pre-existing legal rights which they may have possessed before NAGPRA.<sup>86</sup> If a museum repatriates an item in good faith, however, it cannot be sued if it has made a mistake.<sup>87</sup>

## **IMPLEMENTATION OF NAGPRA**

### *The NAGPRA Review Committee*

The Secretary of the Interior has appointed a NAGPRA Review Committee, as provided for in the Act, to monitor and review the implementation of NAGPRA.<sup>88</sup> The Review Committee consists of seven members

- Three are Native Americans who have been appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations and traditional Native American religious leaders (the statute requires that at least two of the three be traditional Native American religious leaders)
- Three have been appointed from nominations submitted by national museum organizations and scientific organizations; and
- One person has been chosen from a list compiled by the other six members.<sup>89</sup>

The Review Committee's function is:

1. To monitor the inventory and identification process;<sup>90</sup>
2. Upon request, to make findings relating to the cultural affiliation and return of cultural items and to help resolve disputes between interested parties<sup>91</sup> (the Review Committee may make non-binding findings which may be used as evidence in a court proceeding);<sup>92</sup>
3. To compile an inventory of culturally unidentifiable human remains and make recommendations as to an appropriate process for their disposition;<sup>93</sup> (the Review Committee has in fact issued draft recommendations for comment that take the position that the ultimate decisions about such remains "should rest in the hands of Native Americans");<sup>94</sup>
4. To consult with the Secretary of the Interior in the development of regulations to implement NAGPRA;<sup>95</sup>
5. To make recommendations as to the future care of repatriated cultural items;<sup>96</sup> and
6. To submit an annual report to Congress.<sup>97</sup>

## *Grants to Museums, Indian Tribes and Native Hawaiian Organizations*

NAGPRA authorizes the Secretary of the Interior to make grants to museums for the compilation of inventories and the summaries.<sup>98</sup> Tribes and Native Hawaiian organizations may also receive grants to assist them in repatriating cultural items.<sup>99</sup> In Fiscal Year 1995, \$2.3 million was appropriated for grants to museums, tribes and Native Hawaiian organizations.

### *Promulgation of Regulations*

The Secretary of the Interior is authorized to issue regulations to carry out NAGPRA's provisions.<sup>100</sup> A draft of proposed regulations was published in the Federal Register on May 28, 1993.<sup>101</sup> Final regulations have not yet been approved. When they are approved, a supplement describing their specifications will be published.

## CONCLUSION

The Native American Graves Protection and Repatriation Act provides Native American people and tribes with the right to recover and exercise control over human remains and various cultural items. Although it will not result in the return of all items that could be returned or the complete protection of all grave sites, it does provide Indian tribes, Native Hawaiian organizations and certain individuals seeking to reclaim their ancestors and heritage, or protect grave sites, with a number of enforceable legal rights. NAGPRA recognizes that Native American human remains and cultural items are the remnants and product of living people, and that descendants have a cultural and spiritual relationship with the deceased. After NAGPRA, human remains and cultural items can no longer be thought of as merely "scientific specimens" or "collectibles." For the first time, the federal government and non-Indian institutions must consider what is "sacred" from an Indian perspective.

### ENDNOTES

1. 25 U.S.C. 3010.

2. 25 U.S.C. 3001(7).

3. *Abenaki Nation of Mississquoi v. Hughes*, 20 I.L.R. 3001 (D.Vt. 1992).

4. For example, the Confederated Salish and Kootenai tribes govern the Flathead Reservation jointly. However, the Salish and Kootenai have their own distinct cultures and separate mechanisms for making decisions regarding traditional matters. The most reasonable interpretation of the definition of "Indian Tribe," read in conjunction with the remainder of the statute, would be an interpretation that permits both the Salish and Kootenai to make independent claims under NAGPRA.

5. 25 U.S.C. 3001(11).

6. 25 U.S.C. 3001(4); 20 U.S.C. 80q-9.

7. 25 U.S.C. 3001(8).

8. 25 U.S.C. 3001(3).

9. 25 U.S.C. 3001(3)(A).

10. 25 U.S.C. 3001(3)(B).

11. 25 U.S.C. 3001(3)(C).

12. H.R. Rep. No. 877, 101st Cong., 2nd Sess. (1990), at 14.

13. 25 U.S.C. 3001(3)(D).

14. S. Rep. No. 473, 101st Cong., 2nd Sess. (1990), at 7-8.

15. 25 U.S.C. 3003(b)(1)(A) and (C).

16. 25 U.S.C. 3003(b)(1)(B).

17. 25 U.S.C. 3003(c).

18. See 25 U.S.C. 3009(1-4).

19. 25 U.S.C. 3003(a) and (d)(2).

20. Senate Report 101-473, *supra* note 13, at 12.

21. 25 U.S.C. 3003(b)(2).

22. Senate Report 101-473, *supra* note 13, at 12.

23. 25 U.S.C. 3003(d)(1).

24. 25 U.S.C. 3003(d)(2)(A).

25. 25 U.S.C. 3003(d)(2)(B).

26. 25 U.S.C. 3003(d)(2)(C).

27. 25 U.S.C. 3003(b)(2).

28. 25 U.S.C. 3008(b) permits, but does not require, the Secretary of Interior to make grants to museums to conduct the inventory and summary required by the Act.

29. 20 U.S.C. 809q-9(a)(1).

30. *Id.*; "Funerary object" is defined as "an object that, as part of a death rite or ceremony of a culture, is intentionally placed with individual human remains, either at the time of burial or later." 20 U.S.C. 80q-14(4).

31. 20 U.S.C. 80q-9(a)(2).

32. 20 U.S.C. 80q-9(b).

33. 25 U.S.C. 3004(a) and (b)(1)(A).

34. 25 U.S.C. 3004(b)(1)(B) and (C).

35. 25 U.S.C. 3004(b)(2).

36. 25 U.S.C. 3001(2); House Report 101-877, *supra* note 11, at 14.

37. 25 U.S.C. 3005(a)(1),(4).

38. 25 U.S.C. 3005(a)(4).

39. 25 U.S.C. 3005(d).
40. 25 U.S.C. 3003(b)(2).
41. 25 U.S.C. 3005(a)(1) and the portion of 25 U.S.C. 3005(a)(4) applicable to human remains and associated funerary objects refer only to subsections (b) and (e) of 25 U.S.C. 3005 as exceptions to the repatriation requirement.
42. 25 U.S.C. 3005(b).
43. 25 U.S.C. 3005(e).
44. *Id.* Section 3005(e) also provides that the dispute may be settled “pursuant to the provisions of this Act”. *Id.* This refers to the authority of the Review Committee created by 25 U.S.C. 3006 to “facilitate[e] the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable.” 25 U.S.C. 3006(c)(4). Although any findings of the Committee are admissible in a court proceeding, the Committee has no binding authority upon any of the parties. 25 U.S.C. 3006(d). Thus, while the Committee can certainly play an important role in resolving these disputes, ultimately the disputes must be resolved by agreement or judicial determination.
45. 25 U.S.C. 3006(c)(5) and (e).
46. *See generally* 25 U.S.C. 3005, 3001(3).
47. 25 U.S.C. 3005(a)(2) and (4).
48. 25 U.S.C. 3005(a)(2) and (5).
49. 25 U.S.C. 3005(a)(5)(A).
50. 25 U.S.C. 3005(a)(5)(C).
51. 25 U.S.C. 3005(e).
52. 25 U.S.C. 3001(13).
53. Trope and Echo-Hawk, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, 24 *Ariz. St. L.J.* 35, 67-68 (1992).
54. 25 U.S.C. 3004(b)(2).
55. 25 U.S.C. 3005(c).
56. 25 U.S.C. 3009(1)(A).
57. 20 U.S.C. 80q-1-80q-15.
58. 20 U.S.C. 80q-9(c).
59. 20 U.S.C. 80q-9(d).
60. The National Museum of the American Indian (“NMAI”) has adopted its own repatriation policy which provides for the repatriation of communally-owned property and sacred objects pursuant to certain criteria. Most of the NMAI, however, consists at present of those Indian remains and cultural objects that were part of the Heye collection in New York prior to the absorption of the Heye collection by the Smithsonian Institution. See 20 U.S.C. 80q-2. It does not include the Smithsonian Institution itself, which possesses a large number of cultural items.
61. 25 U.S.C. 3009(1)(B).
62. 25 U.S.C. 3002(c)(1). ARPA is located at 16 U.S.C. 470cc.
63. 16 U.S.C. 470cc(b).
64. 25 U.S.C. 3002(c)(2).
65. 25 U.S.C. 3001(15). The citation for the Hawaiian Homes Commission Act of 1920 is 42 Stat. 108; the Hawaii Statehood Bill is P.L. 86-3.
66. 25 U.S.C. 3002(c)(2).
67. 25 U.S.C. 3001(5).
68. 25 U.S.C. 3002(d)(1).
69. *See* Senate Report 101-473, *supra* note 13, at 10.
70. 25 U.S.C. 3002(d)(1) and (3).
71. Senate Report 101-473, *supra* note 13, at 10; *see also* 136 Cong. Rec. S17176 (daily ed., Oct. 26, 1990) (statement of Senator John McCain, Republican from Arizona).
72. 25 U.S.C. 3002(a)(1).
73. 25 U.S.C. 3002(a)(2)(A).
74. 25 U.S.C. 3002(a)(2)(B).
75. Senate Report 101-473, *supra* note 13, at 9.
76. 25 U.S.C. 3002(a)(2)(C).
77. 18 U.S.C. 1170(a), as amended by section 4(a) of P.L. 101-601; 25 U.S.C. 3001(13).
78. Senate Report 101-473, *supra* note 13, at 11.
79. 18 U.S.C. 1170(b), as amended by section 4(a) of P.L. 101-601.
80. *Id.*
81. 25 U.S.C. 3009(5).
82. 18 U.S.C. 1170(a), as amended by section 4(a) of P.L. 101-601.
83. 25 U.S.C. 3007.
84. 25 U.S.C. 3007(b).
85. 25 U.S.C. 3013.
86. 25 U.S.C. 3009(3) and (4).
87. 25 U.S.C. 3005(f).
88. 25 U.S.C. 3006. The Committee ceases existence 120 days after the Secretary certifies that its work has been completed. 25 U.S.C. 3006(i).
89. 25 U.S.C. 3006(b)(1).
90. 25 U.S.C. 3006(c)(2).
91. 25 U.S.C. 3006(c)(3) and (4).
92. 25 U.S.C. 3006(d). *See also* Senate Report 101-473, *supra* note 13, at 13.
93. 25 U.S.C. 3006(c)(5).
94. 60 Fed. Reg. 32163 (1995).
95. 25 U.S.C. 3006(c)(7).
96. 25 U.S.C. 3006(c)(9).
97. 25 U.S.C. 3006(h).
98. 25 U.S.C. 3008(b).
99. 25 U.S.C. 3008(a).
100. 25 U.S.C. 3011.
101. 58 Fed. Reg. 31121-31134 (1993).