How To Spot a Masterpiece

Tips from the Experts On Looking at Art—From the Ancient to the Cutting Edge

PLUS: Justice Delayed for Native Americans? Cindy Sherman: The View from the Couch Issey Miyake • A Poem by Robert Pinsky
Native Americans believed it would redress centuries of injustice. Anthropologists warned it would gut public collections. But a law requiring museums to return sacred objects to Indian tribes hasn’t worked out the way its supporters—or its critics—anticipated. By Ferdinand Protzman

A n armored car pulls up outside the National Museum of the American Indian in New York City. Within a short while, Native Americans from the Pueblo of Jemez in New Mexico, under police guard, begin hauling steel-cornered trunks out of the museum to the waiting cars. Inside are 86 ceremonial items, including figurines carved from stone. After decades in the museum, the objects are being returned to the tribe in the Southwest and will be used once again by medicine men in tribal religious ceremonies.

This transfer was the result of controversial legislation called the Native American Graves Protection and Repatriation Act (NAGPRA). The law, passed in 1990, was meant to redress centuries of injustice by establishing procedures allowing Native American tribes and lineal descendants to reclaim human remains, funerary and sacred objects, and items of cultural patrimony from the federal government’s collections and from museums to which it provides funding. It also made trafficking in Indian remains and sacred artifacts a federal offense. “Our dead have been treated historically as if they were curios or scientific specimens,” says Walter Echo Hawk, an attorney for the Native American Rights Fund.

The law was drafted after years of negotiation as a compromise balancing the interests of Native American tribes, museums, and archeologists. But eight years later, that balance appears shaky, and the controversy continues. “For the most part, the museums seem to cooperate. But a few seem to have determined that they have the right of possession because they bought an object or it was donated. They don’t consider the spiritual significance,” says Harold Jacobs, repatriation case specialist for the Central Council of Tlingit and Haida Indian Tribes of Alaska. “I heard a comment from an elder who said, ‘Why do we have to use their laws to get back what was ours to begin with?’ I think a lot of people feel that way.”

When NAGPRA became law, many American Indians believed that they would witness the rapid return of objects that continue to play an important role in their cultural and religious lives. Scientists, on the other hand, warned that the law would gut the nation’s public anthropological collections. Representatives of groups on both sides of the issue say neither scenario has come to pass.

Still, NAGPRA has significantly altered the way many museums operate, send shivers through the market for Indian art and artifacts, and spawned lawsuits and new legislation meant to alter the original statute. As of last February, NAGPRA had led to the return of 296,321 funerary objects, 512 sacred objects, and the remains of some 9,700 individuals, according to government records. Tribal officials say that’s far too few. According to estimates given by the Congressional Budget Office, federally funded agencies and museums possess 10 million to 15 million cultural artifacts and 100,000 to 200,000 human remains. No one can predict how many of those items will ultimately be repatriated.

“I can understand the tribes’ frustration,” says Thomas Killion, an anthropologist who heads the repatriation office of the National Museum of Natural History, a branch of the Smithsonian Institution, in Washington, D.C. “NAGPRA wasn’t the quick fix that some people may have envisioned when the legislation was passed. I don’t think the people who passed the law or the tribes realized how difficult and complex the process would be, if it was going to be done right.”

Bureaucratic complexities are not the only problem with the legislation, according to many in the field. The Society for American Archaeology,
several congressmen and senators, and the Antique Tribal Art Dealers Association have attacked the law’s language and intent. Critics note that it leaves key questions unresolved. For example: what is to be done with the unclaimed remains? Should scientists—or tribes—decide what happens to ancient remains found on federal or tribal lands?

“NAGPRA wasn’t meant to give everything back, but the way it is written gives Native American religion priority over scientific research or anything else,” says Ramona Morris, executive director of the Antique Tribal Art Dealers Association. “But there is no monolithic Indian culture. There are hundreds of different cultures, each with its own religious beliefs. This is about politics, not religion.”

In the latter half of the 19th century, the United States Army “harvested” hundreds of thousands of Native American skulls for medical and anthropological research. Those remains, along with millions of burial and cultural items taken by the military or acquired from private individuals, ended up in prominent museums throughout the United States and Europe. The items ranged from birchbark canoes, tomahawks, and moccasins to sacred medicine pouches, wampum, and headgear. Only a small percentage was ever displayed, and most of the remains weren’t used for scientific research. By the early 1990s, the last public museums had withdrawn Indian skulls or skeletal remains from display out of respect for the tribes’ sensibilities.

That happened after Congress enacted the National Museum of the American Indian Act of 1989 (which covers repatriation from the Smithsonian Institution) and NAGPRA. When the bills passed, the Congressional Budget Office estimated that implementation would cost the federal government between $20 million and $55 million over five years. So far, $10.5 million has been spent.

Experts from the Smithsonian Institution, which budgets around $1 million annually for NAGPRA compliance, has been the quickest at repatriation. Before 1991 there were close to 18,000 Native American and Native Hawaiian remains in the National Museum of Natural History. Since then, more than 3,000 sets of remains and some 500 funerary and sacred objects—items such as wampum, beads associ-ated with burial, and moccasins—have been returned to tribes in the Great Plains, the Pacific Northwest, and Alaska, according to anthropologist Thomas Killion.

The American Museum of Natural History, in New York City, has eight full-time staff members and two part-time employees working on repatriation. Still, the task is monumental, notes Martha Graham, the museum’s registrar for cultural resources. The museum has collections from all 50 states and the District of Columbia, accounting for 120,000 catalogue numbers, which could be assigned to anything from a single arrow to a collection of pots. Last March the museum made one of its first repatriations, returning four San Carlos Apache Gaan painted wood and cloth headaddresses and two sets of wooden wands. The museum has also returned some remains.

The Field Museum in Chicago, according to curator Jonathan Haas, has a repatriation budget of under $20,000 per year. The museum has no full-time staff working on NAGPRA compliance, just interns. The Field has returned two objects and the remains of approximately 50 individuals.

Defining what is sacred and determining which objects belong to which tribes is one of the most difficult and time-consuming tasks, museum officials say. “Since the law passed, we’ve had two or three groups of tribal representatives coming through our collection every month,” says Graham. “It has been a positive experience, but also bittersweet. We’ve had people tell us that the objects they are viewing belonged to their great-grandmother.”

NAGPRA has also resulted in some new ways of handling the Native American collections, Killion says. “The Cheyenne tribe decided to leave their funerary objects here and we worked out a co-curation agreement that takes into account their wishes for the treatment and display of those objects. Repatriation is an evolving process for everyone involved. What we’re all trying to do is make informed, refined decisions about some very complex issues.”

As of early 1998, more than 700 museums and federal agencies had completed inventories of human remains and associated funerary objects in their collections, according to a report made last June to Congress by the Native American Graves Protection and Repatriation Review Committee. The seven-person committee, with members from the Native American, museum, and archeological communities, was established by Congress as part of NAGPRA. It monitors and reviews implementation of the inventory and identification process and repatriation activities.

While the committee praised the efforts of most federal agencies and museums, it castigated the Bureau of Land Management, the U.S. Army Corps of Engineers, and the National Forest Service (with the exception of its Southwest Regional Office) for failing to submit inventories of remains and objects in
their possession by the legal deadline of November 16, 1995. Their "lack of compliance with the simple mandate of meeting a reasonable deadline bodes very poorly for the future of federal compliance with the statute," the report said.

Ironically, it was a compliance effort by the Corps of Engineers that triggered the biggest controversy so far to arise from the law: the case of "Kennewick Man," a 9,300-year-old skeleton discovered two years ago in the Columbia River in Washington. Because the river is on federal land, the bones were turned over to the Corps of Engineers, which notified local tribes. The Umatillas of neighboring Oregon view the land along the Columbia as sacred, and claim the skeleton is that of an ancestor called the "Ancient One." The courts eventually allowed scientists access to the skeleton and the site where it was found. Archeologists now say that the skeleton more closely resembles that of the inhabitants of southern and central Asia than the ancestors of modern Native Americans.

The dispute prompted Doc Hastings, a Republican congressman from Washington, to propose an amendment to NAGPRA that would facilitate scientific study of remains found on Indian or federal lands. The amendment is currently stalled in the House of Representatives. "Congress has a lot of other things on its plate right now," notes Jennifer Scott, Hastings's press secretary. "We may reintroduce the legislation next year. Obviously, the language of NAGPRA must be clarified." The Society for American Archaeology and the Antique Tribal Art Dealers Association are supporting the amendment.

The tribes and the Department of the Interior, which oversees the government's efforts to comply with NAGPRA, oppose it. Working for the tribes, Jack Trope, an attorney with Sant'Angelo & Trope in Crawford, New Jersey, helped draft the original NAGPRA legislation. He believes the proposed amendment is part of a broader political shift against tribal rights. "I think the political mood in Congress in terms of Indian issues has shifted," Trope says. "There is much more of an attitude that is part ignorance and part hostility."

While NAGPRA does not apply directly to auction houses, dealers, private collectors, corporations, or institutions that do not receive federal funds, its trafficking provisions have created uncertainty in the market.

"Dealers have asked us for a list of items that cannot be sold," says Elizabeth Sackler, executive director of the American Indian Ritual Object Repatriation Foundation, a private group established in 1989 to assist in the return of sacred ritual material to American Indians. "But that in itself is quite difficult. Many nations are not interested in telling us what is sacred. Some medicine people just don't talk about that. It's not for public consumption."

Meanwhile, according to Ramona Morris of the Antique Tribal Art Dealers Association, the law has pushed up prices for Indian artifacts. "The perception is that fewer objects will be available in the future," she notes. However, results of a sale of Native American artifacts at Christie's last spring were disappointing, dealers say. They blame this on NAGPRA.

Hadly Freeman, Christie's specialist in American Indian art, says that NAGPRA has changed the way the auction house does business. "First, we have hired an outside counsel who specializes in this arena of law to guide us on material appropriate for sale," she notes. "Second, we have fostered contacts with the Repatriation Foundation organized and run by Elizabeth Sackler." Officials from Sotheby's declined to comment on the legislation.

Dealers and collectors are worried that NAGPRA's trafficking provisions are being used by some tribes and federal officials as a tool for pursuing objects that are in private collections. Morris says. She cited the case of Steve Diamant, a private collector of Native American arts and crafts from Santa Fe.
The Cheyenne have arranged to leave sacred objects—like this funerary assemblage—in the National Museum of American History in Washington, D.C.

Last year, armed Hopi rangers, agents from the Bureau of Indian Affairs, and local police officers searched Diamant’s house and seized more than 100 items from his collection, including new Hopi kachina dolls, contemporary Navajo folk art, wicker plaques, gourd rattles, dance sticks, and medicine bags. Diamant estimated their total value at about $75,000.

Diamant was not charged with any crime. His lawyer filed a motion challenging the legality of the search warrant and requesting that a federal judge order the items returned. Soon after, the Hopi, Navajo, and Jemez Pueblo tribes filed repatriation documents asserting that the seized items were either sacred or cultural patrimony. An out-of-court settlement was reached the night before the hearing. Federal authorities and the tribes returned almost all of the seized items, and Diamant agreed to donate several rattles, wands, and other items to the Hopi and Navajo tribes.

Federal officials say the search warrant was part of a legitimate sting operation and that the settlement avoided the risk of losing all the items by allowing the tribes to retain the objects of greatest sacred or cultural significance. Tribal officials also offered no apologies.

“Our religion has never been for sale and never will be,” says Leigh J. Kuwanwiswa, director of the Hopi Cultural Affairs Office in Kykotsmovi, Arizona. “It’s always been our policy to pursue our sacred objects whether they are in the public or private sectors. So many of our sacred and religious objects have disappeared. We know very well that a black market exists. If we think we know where stolen objects are, we move in.”

Since NAGPRA was passed, there have been ten prosecutions under its trafficking provisions. One such case became a challenge to the legislation. Last year the 10th Circuit Court of Appeals in Denver upheld the conviction of Richard N. Corrow, an Arizona dealer charged with purchasing sacred Yei’l Be Chei masks. Corrow’s attorney appealed to the Supreme Court on the grounds that NAGPRA’s definition of sacred objects was too vague. The justices refused without comment to hear the case. Corrow was sentenced to five years’ probation and 100 hours of community service to the Navajo Nation.

The law has also prompted a number of voluntary repatriations. Last spring, Cincinnati resident Franchot Ballinger saw a photograph in a magazine that looked remarkably like a basket he had at home. Through the American Indian Ritual Object Repatriation Foundation he contacted Dale Anne Sherman, repatriation coordinator for the Yurok tribe of northern California. In July he presented the basket—which he learned was a hat—to the tribe.

Not all the tribes, however, welcome the return of their remains and artifacts. The Zuni, for example, do not have a reburial ceremony, notes Richard Hill, Sr., a lecturer in Native American studies. "They do not know what clan the dead belonged to, what family should take charge, or that the bodies are even Zuni. In short, they have no cultural mechanism in place to address the reburial."

Cultural differences within some tribes also complicate repatriation. Kuwanwiswa points out that the Hopi tribe has 12 distinct villages, 34 existing clans and another 26 that have died out, and 16 religious societies. "Repatriation has to be understood in the context of that complexity," he says. "But the law allows the tribes to use their own cultural standards to determine what should be returned. That's a good thing."

Tribal representatives note that repatriation is not just about recapturing their past but about revitalizing their cultures. "Repatriation has been a positive experience in that some of our sacred objects are coming home, although it is slower than we had hoped," says Sherman. "I believe there is power in our sacred treasures, like utensils used to cook in our ceremonies."

"It's a power that kept us alive despite the government's genocide policy toward native people, and the disease, alcoholism, and poverty that afflict us. My fervent hope is that when this power comes home, we'll be able to anchor ourselves."

Ferdinand Protzman is galleries columnist for the Washington Post.