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Who Owns the Past?

The federal government should fix or drop new regulations that throttle scientific study of America's heritage

By The Editors | March 27, 2012 | 23

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A rare set of nearly 10,000-year-old human bones found in 1976 on a seaside bluff in La Jolla, Calif., may soon be removed from the custody of the University of California, San Diego, and turned over to the local Kumeyaay Nation tribes. The Kumeyaay have long sought control over the bones, which they contend are the remains of their ancestors. In accordance with new federal regulations, the university has initiated the legal process to transfer the remains to the Kumeyaay in the absence of other claimants. The Kumeyaay have said they may rebury the bones. Being some of the oldest human skeletal remains in North America, the bones could help scientists piece together the peopling of the New World. The excellent preservation of the specimens hints that they might contain DNA suitable for analysis with techniques geneticists have recently developed—the results of which could yield crucial insights into where early Americans came from. Such studies may never come to pass.



Image: Courtesy of Jan Austin/Santa Monica College

Some might consider a loss of knowledge an acceptable trade-off to right the historic wrongs that the Kumeyaay and other Native peoples have suffered. Archaeologists and anthropologists of yore treated Native Americans disgracefully, looting their graves and using the remains to argue for the intellectual inferiority of Native Americans to peoples of Caucasian descent. But what makes this case disturbing is that the Kumeyaay claim is based on folklore. The physical evidence indicates that the La Jolla bones are not affiliated with any modern tribe, including the Kumeyaay, who moved into the area only within the past few thousand years. The new federal regulations are blind to this evidence. In effect, they privilege faith over fact.

The original intention of the Native American Graves Protection and Repatriation Act (NAGPRA), passed in 1990, was to facilitate the return of Native American bones and



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sacred objects to descendants and culturally affiliated groups. NAGPRA sought to balance the rights of Native Americans to reclaim ancestral remains with the right of society as a whole to learn about our collective past. By and large, the law was succeeding. In recent years scientists and representatives of Native peoples have been working together to everyone's gain. For example, archaeologist Alston Thoms of Texas A&M University has been consulting with Native Americans about their cooking techniques, to gain insights into the subsistence strategies of people who lived on the South Texas plains thousands of years ago. Members of the Tap Pilam Coahuiltecan Nation—who consider themselves the descendants of those ancient Texans—have, in turn, been learning about ancestral foods and incorporating them into their diet to counter the high rate of diabetes in their population.

Many Native Americans do not object to studies per se but to analyses that destroy remains. Respecting this concern, anthropologist Ventura Pérez of the University of Massachusetts Amherst, who studies violence, has developed techniques for making high-quality replicas of cut marks on bone that leave the skeletal material intact and allow it to be repatriated, while creating a permanent record for future scholars.

To be sure, not all was well. Many tribes worried that museums were stalling on identifying remains to avoid having to return them. In May 2010 the U.S. Department of the Interior responded with regulations that allow tribes to claim even those remains whose affiliation cannot be established scientifically, as long as they were found on or near the tribes' aboriginal lands. These rules nudge museums to get on with evaluating their collections, but they have too broad a brush. They upset the balance that NAGPRA had achieved and foster antagonism, not just between tribes and scientists but also among tribes with conflicting claims. The La Jolla case is just one example. Thousands of remains could be made inaccessible to researchers. In our view, the new regulations should be repealed or, at least, revised to distinguish different classes of unidentified remains.







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1. [ncaumanns](#)
12:17 PM 3/23/12

Past the point of readily apparent and established connections to actual living persons, all human remains and artifacts should belong to all of humanity as a record of our common journey from stone age until today.

Certainly remains found in Greece, whether it be a paleolithic skull or the Parthenon are within the boundaries of the current

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Grecian government and people but rather than owning the remains they hold a responsibility to all people around the world to preserve, study, and make available for study all such remnants of our common human history.



A relic taken from, let's say, Egypt in 1820 dated 2000 BC belongs no more to the current Egyptian political manifestation than it does you or I; it belongs to all of us equally. Whomever holds the article is responsible for it's proper use in preserving and understanding our past.

After all, if my point is not correct, why was the world outraged when the Taliban destroyed ancient non-Islamic artifacts in Afghanistan? If we all believed the articles belonged to the that regime we would have happily watched them blow up historical monuments.

Similarly, the remains in lLa Jolla belong to everyone, especially as there is no direct or provable connection a person living. I would expect my remains, if of interest in 1000 years from now, to be considered likewise.

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2. berta

07:38 PM 3/26/12

No one owns a human being! Human are not materials. My understanding is that the Native American Indians migrated to North American some 30 thousand years ago. Therefore, these 10,000 years old human bones are of some Native American tribes. Their cultures is to buried the died and let them return to mother earth. not display them. If some people do not have their tradition landuage and culture anymore, it is harder for them to understand. The federal government has already destroyed so much history along with American Indians way of life, so they need to quit messing around with any new regulations. The area were the Kenwick man was found was destroy and covered. what does that tell you. So much earth mounds in Ohio, Wisconsin or the east were cover up and lost. So much lost history with all the mounds back east.

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3. BillR

08:42 AM 3/27/12

I do not see why we cannot make the needed DNA tests on the remains and then return them to whatever native American tribe that is the closest genetic match to the remains. I do not think it is respectful to the person who's remains we have dug up to drag these tests out. But at the same time, I wonder what the actual religious beliefs of this person were and if they even relate to the current religious beliefs of the current indiginous tribes.

I wonder what will happen some 10's of thousands of years from now when someone digs up my bones and wants to study them. I personally do not mind. I won't be around to complain about it anyway. And if it will give society a better understanding of this portion of history so they can learn from it, fine. Of course, hind sight shows that man has never really learned any real lessons from history. We always feel we are different and that could not happen to us. So when future scientists are studying my bones to understand what was happening during that period of history known then as the decline and fall of the American empire, they will also be thinking that this could not happen to them because they are different.

4. Jerzy New
09:13 AM 3/27/12

10,000 year old skeleton didn't belong to any modern tribe! Non-industrial cultures change over time, often not slower than industrial nations. Languages evolve, dresses and other cultural artifacts disappear and appear, new tribes colonize, often violently taking over old ones.

Ironically, Native Americans propagate the same myth which was used by racists: that they are primitive examples unchanged for millenia.

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5. MadScientist72
09:16 AM 3/27/12

If the aim of the new laws is to prevent museums from stalling on testing & returning remains, then wouldn't a deadline for conducting that testing make more sense than forced "repatriation" of those remains to a people who might not even be the true descendants? For example:

- 1) A Native American Nation (NAN) claims a set of remains as their ancestor.
- 2) The museum has 30 days to formally contest the claim.
- 3) If the museum contests, they have to send samples to an independent testing lab within 30 days of filing their objections.
- 4) The testing lab has 90 days to complete the necessary testing.
- 5) (a) If the results show that the remains are ancestors of the claiming NAN, they must be returned within 30 days. (b) If the results show that the remains belong to another NAN, the museum has 30 days to contact that NAN to determine their wishes. (c) If the results show no affiliation with any NAN, the museum keeps the remains. (d) If the results are inconclusive, the museum has 30 days to submit additional samples to the testing lab.

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6. GG
11:23 AM 3/27/12

This is political correctness gone nuts. We do not want to offend various ethnic groups, and therefore we do not question their dubious claims. Scientific facts and logic do not matter anymore; primitive tribalist politics does.

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7. rsantis
11:54 AM 3/27/12

It is better not to burden scientist with decisions regarding matters such as respect and dignity. It is not part of their job, and, unfortunately, many times they've failed doing so, with horrible consequences.

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8. ElderSage
11:55 AM 3/27/12

Political correctness is a form pride, which does not have integrity. It is based in arrogance and denial.

Political correctness is always going nuts, because that is its true nature.

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9. AutismDad
02:03 PM 3/27/12

The article does not tell us details, but why should the Interior Department's response to political pressure have the force of law? It sounds like Congress did not change the underlying law, so why would the bureaucracy get to radically change it's application? But the real bottom line here seems to be

cowardice from judges, who should simply say "the science shows it's really unlikely this was your ancestor, sorry you don't get him" per the original laws, but instead give in to even the most spurious claims.

It makes me wonder, if someone did a dig at the Little Big Horn, and found a bunch of human remains, can the natives there, (Lakota maybe?) claim the remains are theirs? After all, they are unidentified remains found on their land. Must be my ancestor, I'll put them in the traditional burial ground. I don't think great great Grandpa would WANT to have Custer buried next to him.

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10. David Russell
02:29 PM 3/27/12

This is why I am going to be cremated and have my ashes spread in the Gulf of Mexico and the Wekiva River. It is where I found peace, love and meaning so I hope to recycle some of it back. I also want people to remember me when they are there not on a piece of land in a box that may be dug up in 10,000 years and fought over. I just want to go back from where I came.

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