The Native American Graves Protection and Repatriation Act: Federal Protection for American Indian Burials and Sacred Objects

The November-December 2001 issue of Kansas Preservation contained an article on the Kansas Unmarked Burial Sites Preservation Act, which was enacted in 1989 to protect those burials not on federal or Indian reservation land and not covered under existing cemetery laws. In that article it was noted that a similar federal act, the Native American Graves Protection and Repatriation Act (NAGPRA), governs the fate of American Indian human remains and associated burial goods on federal and reservation land. NAGPRA also mandates the return of American Indian remains and sacred objects in federally-funded institutions to their closest living relatives.

Graves of Americans of European descent, most commonly marked with headstones and contained within cemeteries, have been protected by law for many years. But no such protection was offered to burial mounds and other Indian interments, despite the fact that some of these are easily recognizable and are identified on topographic maps issued by the U.S. Geological Survey. An additional affront to American Indian beliefs and traditions was the warehousing and display of skeletons of American Indians in museums and in tourist attractions such as the Salina Burial Pit (see Kansas Preservation, September-October issue, 1989). Because of these concerns, American Indians began actively lobbying government officials during the 1970s for protection of the graves of their ancestors. Several states, including Kansas, passed laws in the 1980s to protect Indian burials or burials not in Euro-American type cemeteries. At the same time, the issue of Indian burials, as well as museum holdings of Indian human remains and sacred objects, was raised at the national level by such well-known individuals as Morris Udall, John McCain, and Daniel Inouye.

The Native American Graves Protection and Repatriation Act became law on November 16, 1990, to serve two purposes. The first is to protect the graves of American Indians on federal or tribal land. The second is to provide for the return of sacred objects, objects of cultural patrimony, and the remains of deceased American Indians—collectively referred to as cultural items—that are in museums or other institutions to their closest identifiable relatives.

Both accidentally discovered burials and known burials threatened with disturbance are protected by NAGPRA. When American Indian burials on federal or tribal land are discovered accidentally, the act requires that the burial site be protected until consultation with kin groups or tribes determines the next step. But there are times when a planned project or natural processes threaten to destroy a known grave site. NAGPRA requires that the agency in charge of the land where the burial is threatened consult with Indian tribes that are likely to be related—either by cultural group or kinship—to the deceased person in the grave to determine the best course of action. The result may be the modification or cancellation of the project, undertaking measures to protect the burial from natural processes, or the excavation of the deceased individual with provision for reburial elsewhere.

For years museums and universities excavated American Indian remains and associated burial goods as part of their research into the past. They also collected objects used in ceremonies, some of which were property of the society as a whole, with no single person having the right to transfer possession. An equivalent situation might be to sell or give away the original Declaration of Independence—an object that belongs to the American people. This document has meaning that takes it beyond individual ownership and control; it is owned collectively and is an item of cultural patrimony. The same is true for some artifacts acquired by museums from tribes, so NAGPRA sets procedures for their return. The act gave agencies and museums five years to compile inventories of the cultural items in their possession. The agencies and museums were then directed to determine the cultural affiliation of the cultural items and to contact the appropriate tribes to initiate consultation on how to repatriate those items.

Since NAGPRA was enacted, the remains of thousands of individuals and thousands of objects important to American Indians have been returned by museums and agencies, including KSHS.

The author, Bob Hoard, is the state archeologist and works with archeologist Randy Thies on NAGPRA compliance for KSHS. They can be reached by calling (785) 272-8681 Ext. 240, or by email at rhoard@kshs.org or rthies@kshs.org. The author thanks Mr. Patt Murphy, NAGPRA representative of the Iowa Tribe of Kansas and Nebraska, for contributing to this article.
For these cases, repatriation to the appropriate tribe is problematic. NAGPRA requires that a relationship be established before repatriation takes place. How can closest kin or cultural affiliation be determined for these items? While direct lineal kinship may be difficult or impossible to establish, a determination that human remains are American Indian prompts efforts to return these remains.

In an attempt to comply with NAGPRA, KSHS and the Kansas University Museum of Anthropology (KUMA) are co-sponsors of a project to create a Memorandum of Agreement between a number of tribes, universities, museums, and agencies in Kansas to transfer possession of these culturally unidentified items to a group of tribes with historical ties to the state. Dr. Mary Adair, interim director of the KUMA, has been instrumental in securing funding for this effort and in arranging for tribal and institutional consultation. Progress has been steady but slow. Not all tribes agree that the cultural items in question are culturally unidentified. There also are differences of opinion on whether scientific studies that have potential to more positively identify cultural affiliation should be allowed. These differences require more consultation before the cultural items can be transferred.

NAGPRA itself has been a controversial issue. For archeologists studying the behavior, diet, and demographics of past cultures, the loss of skeletons through repatriation is the loss of critical data. Some tribal members have countered that these studies have done nothing for them and that the human remains should be given to them. For agencies, museums, and tribes, it can be difficult to commit the time and resources to carry out the consultation needed for repatriation to take place. Finally, not all tribes want their deceased returned to them. While in these cases NAGPRA’s directive to repatriate human remains may worsen an already bad situation, it at least offers the tribe the ability to direct the fate of those remains.

The case of Kennewick Man, a 9,200-year-old skeleton found in Washington state, has received extensive media coverage. The treatment of this individual and claims regarding its kinship have raised significant questions about how NAGPRA applies to ancient remains, the roles and responsibilities of agencies and museums, how kinship and cultural affiliation are determined, when testing of human remains is appropriate, and what constitutes adequate consultation with tribes.

Still, despite cultural and philosophical differences, culturally significant objects and human remains are being returned to tribes in Kansas and across the nation, and ties between institutions and tribes have increased as a result of this process. KSHS and other institutions continue to work to meet the obligations directed by NAGPRA.

Here are some resources that provide more detailed information about NAGPRA:

Web resources:

http://www.cr.nps.gov/nagpra/index.htm
Information on and links to the act and regulations, grants, training, consultation assistance, and current issues and notices.

http://www.sfsu.edu/~nagpra/defs.htm
Good summaries of NAGPRA terms and concepts.

http://www.uiowa.edu/~anthro/reburial/repat.htm
Links to a variety of opinions and editorial articles, state burial protection laws, and laws of other nations similar to NAGPRA.

Books on NAGPRA and related topics:


