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Archaeology of Indigenous Peoples in the North

Proceedings from a workshop held in Vuollerim 6000 år, 3-4 December 2005

Editor Anders Olofsson

Department of Historical, Philosophical and Religious Studies

UMEA UNIVERSITY
Legislating multivocality: Drawing on the NAGPRA experience

There is a general consensus today within archaeology and anthropology that we need to reach outside of the disciplinary boundaries and make archaeology and anthropology relevant for people outside of the profession. Multivocality – whether as an abstract theoretical concept, or a practical reality – is becoming more than a buzz-word, and is progressively influencing policies and practices. This situation is especially evident in parts of the world where archaeology and anthropology historically were associated with colonial powers and colonial strategies. In several instances it is also in these parts of the world that we today see the most far-reaching changes in new policies, and where legislation is used to provide a process for multivocality involving especially indigenous peoples in order to fundamentally change the way archaeology and anthropology are practiced. As these issues are becoming increasingly global, it is reasonable to assume that all archaeologists, anthropologists, museum professionals etc, will need to discuss the possible strategies available in dialogue with each other and with other stakeholders. As we continue this discussion we can draw on the experiences in other parts of the world in order to formulate our strategies. This article critically examines an example of one such legislative effort, the Native American Graves Protection and Repatriation Act (NAGPRA) passed in the United States in 1990.

Liv Nilsson Stutz

Introduction

Over the last 20 years there has been an increasing interest in bringing to the fore groups that traditionally have been marginalized within archaeology and anthropology. This development has been stimulated by new interests within social theory in general, and from the recognition
of the legitimacy of minorities and alternative agendas within academia (Meskell 2002). Among the strongest and most established alternative voices within the disciplines today, we find feminist and gender perspectives as well as queer perspectives and, more recently, a focus on race (Dawdy 2005). Another voice that is becoming increasingly stronger is that of indigenous peoples who claim a place in the writing of their history. At the heart of this movement toward self-definition and the right to the past lies the repatriation movement. The claims for repatriation resonate with the internal critique within archaeology and the call for multivocality, but they also raise the stakes for archaeology, since they question not only the interpretations of the past, but also the purpose of archaeology, challenging us to negotiate our role as academics in the contemporary world.

The concept of multivocality has spread through archaeological writings and debates since the 1980s. This internal critique did not develop in a vacuum but was part of a general post-colonial consciousness where archaeology and anthropology became contested, as minorities and indigenous populations all over the world were claiming their right to write their own histories. However, this strife toward multivocality often remained theoretical or experimental, especially in European archaeology during the 1980s and 1990s, where a focus was on the recognition of the subjective nature of archaeological interpretation, a recognition that paved the way for relativism. While there have been a number of attempts to open up archaeology to more multi-vocal practices (with the experiment at Chatal Hüyük being the best known attempt, see Hodder 2000), they have remained limited, and they have tended to maintain a balance of power, where academic archaeology still controls the production of knowledge, the access to the archaeological sites and the resources to research them.

This state of affairs contrasts very drastically with the situation in North America. While the theme of multivocality has not dominated discussions in theoretical archaeology as much as it has in Europe—and then especially with regard to the archaeology of North America—it has been implemented and practiced on a national scale for more than 15 years. This movement, which almost exclusively concerns the integration of the American Indians into the writing of their history as the native population of the continent, has its roots in the civil
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rights movement in the 1960s, but it became a legal and administrative reality in 1990 when the Native American Graves Protection and Repatriation Act (NAGPRA) was passed by the US congress and signed into law by President George H. W. Bush. This law has shifted the balance of power and control over the past in the contemporary United States. NAGPRA provides a process for the return of certain items from museums and research institutions to affiliated tribes, and it regulates excavation. Yet, within certain legally defined limits, it also imposes consultation with Native American tribes as a basic principle for archaeological research into their past.

In this article I will take a closer look at the case provided by the United States as an experiment in applied archaeological multivocality. By considering the discussions that took place in the run-up to NAGPRA, along with the experience of archaeologists participating in its implementation, I want to evaluate the legislation and its effects. I will address the positive outcomes as well as some of the central problems, and I will use this analysis to approach some of the issues that remain to be discussed with regard to repatriation, such as the role and responsibility of science and particularly archaeology and anthropology in society, and the challenges posed by the idea of multivocality, both relating to the debate within our disciplines and to the more general political situation in society in general. The analysis of the effects of a legal construction like NAGPRA is interesting, because it provides an opportunity for us to study what happens when abstract ideals and values are negotiated and transferred into the more concrete legal sphere. Through this process they immediately become tangible and "real," and the consequences illustrate problems and dilemmas that we can study in order to better formulate and understand the problems posed both on a practical and a theoretical level. Because, as I will argue in this article, while the concept of multivocality is sympathetic, it is not unproblematic. A relativist attitude to archaeological knowledge is to a certain extent not only realistic, but also responsible. However, as we rightfully invite alternative voices into the discourse we do not only open the door to indigenous peoples, but also to nationalists, new-age groups, so called fringe archaeologists or pseudo-archaeologists. While this should not prevent us from doing so, we need to be aware of the potential problems. Some archaeologists have chosen to embrace this
new enthusiasm for archaeology and the past (Holtorf 2005) while others, like myself, are more worried about this. Cornelius Holtorf is obviously right when saying that we must cease to dismiss every non-academic interest and interpretation of the past (2005), but at the same time, it is important that we engage critically with these alternative voices so that we do not undermine our authority when the past is used for nationalist or racist purposes (for examples see Kohl & Fawcett 1995; Trigger 1995; Gardell 2003). Most archaeologists would probably agree that we have a lot to learn about the present as well as about the past, from people outside our discipline. But the problem we are facing is where to draw the line between different stakeholders and how to create a place for our own voice in order to be responsible participants in this dialogue. My analysis of the NAGPRA experience is an attempt to formulate some of the fundamental problems in this balancing act.

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An outsider’s view: Good guys and underdogs

For a Swedish archaeologist the development in the archaeology of the United States over the past decades is simultaneously impressive and problematic. The actual repatriation process – or transfer of ownership of certain cultural items including human remains – is only a part of the development, but it has become a central concept in the debates and the negotiations, both because of its powerful symbolical significance and its concrete results. While many European archaeologists have theorized and experimented with alternative perspectives on the past and the right to interpretation, their American colleagues have been negotiating the actual control over the artifacts and human remains that they study, and here, the stakes of multivocality become tangible. This is the reason why this particular issue of ownership and control is so important to discuss, and why I will also use it as a foundation for the general assessment of the development.
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When approaching the repatriation debate in the United States as an outsider, the first thing that strikes you is that it is not a situation with a “good” and a “bad” side. On the contrary, it is a conflict between two sides who not only define themselves as good, but also, to a certain extent, as underdogs.

The Native Americans, who are the victims of hundreds of years of brutal colonization and genocide, see archaeology as part of the same oppressive strategy. Many argue that there is little difference between archaeologists and grave robbers. James Riding In, an associate professor of American Indian Studies, a Pawnee and a very active voice in the repatriation movement in the United States, refers to archaeology as “scientific grave looting” (Riding In 2000:106), and he describes the collection and study of human remains as “one of the greatest atrocities committed against us” (Riding In et al. 2004:171). Devon Mihesuah, a professor of Applied Indigenous Studies at Northern Arizona University, and a Choctaw Indian from Oklahoma, has made this position clear: “[T]o American Indians the only difference between an illegal ransacking of a burial ground and a scientific one is the time element, sun screen, little whisks and brooms, and the neatness of the area when finished” (Mihesuah 1996:223; see also White Deer 1997). Even worse (if possible) is the association between contemporary archaeology and colonialism. Riding In describes a physical anthropologist at the Smithsonian Institute in Washington DC, as someone “who had the legacy of exploiting the remains of our Pawnee ancestors” (Riding In et al. 2004:173), and thus in his argument, he links, through association, archaeology and anthropology to the crimes of colonialism. Archaeology is simply seen as another form of exploitation (Zimmerman 1989:211).

The archaeologists on their side may feel that they are being misunderstood and misrepresented. From this perspective they are no longer part of the “good side,” that cares for, and curates the past. Instead they are lumped together with grave looters, private collectors and land developers that they are used to seeing as a major threat both to the past and living cultures, and to their work relating to them (see for example Renfrew 2000). Maybe some feel betrayed: their love and interest for Native American culture and history simply is not reciprocated. The problematization of the past, the interesting
discoveries and exciting conclusions are rejected by many Native American groups who claim that they have absolutely no interest in archaeology since they already know their history (see for example Zimmerman 1989:213; Forsman 1997:108; Tsosie 1997). To this it may be added that the power balance probably has shifted, and archaeologists and academics may no longer have the same political weight in Washington as other groups, including Native American tribes. With an increasing assault on science – best illustrated by the Intelligent Design movement in contemporary United States and the legal restrictions on stem cell research, many may feel that they are actually losing an increasingly more important battle that has to do not only with archaeology, but also with the responsibility of academia and science as a whole in society. Another interesting problem that emerges when looking at the repatriation movement from a distance has to do with why archaeology has to carry such a heavy load of the responsibility of our past. For example, much of the craniometric studies that have “left a legacy of mistrust of archaeology in general, and of physical anthropology in particular” (Gerstenblith 2002:168) were carried out in medical faculties. Why is archaeology so singled out? Why isn’t medical research subject to the same kind of criticism? A similar situation occurred in Lund in Sweden in 2005, when the Department of Archaeology and Ancient History, and the Historical Museum had to take on the debate concerning a Jewish skull collected by the medical faculty in the late nineteenth century (see for example Orrenius 2005). The reason why the responsibility is placed on archaeology and anthropology are probably complex. Larry Zimmermann suggests that since archaeologists are individuals who excavate, study and take part in displaying bones, they have simply become a convenient target “toward which groups vent their wrath” (Zimmerman 1989:211). Leonard Forsman proposes that one reason could be that “archaeological sites may be the only pristine resource remaining from the aboriginal world that has not been encroached upon by non-Indians. Therefore, Indians see archaeology as a ‘last stand’ in their struggle to maintain their land base, identity and sovereignty” (Forsman 1997:109).

In the debate over the repatriation of human remains and cultural items it is easy to read the collision of cultures: one being the modern
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scientific and positivistic culture, and the other the traditional culture of indigenous or traditional communities. But as the debate has evolved over the last couple of decades it has become clear that this dichotomy is not correctly representing the scientists or the traditional groups (Bray 2001a). The caricatured representations of the conflict, casting it as one involving a cold hearted collective of scientists, weighing their egoistic self-serving worldview against the human rights of an altruistic disenfranchised indigenous community, might be convenient for some of the stakeholders, as they seek support for their views, but is ultimately counterproductive, since it fails to recognize the complexity of both groups, and of the conflict itself. Through an investigation of what values are really permeating the discourse, and by focusing on core problems rather than on political agendas, we might be able to nuance the debate and contribute to a more understanding climate between the stakeholders.

Carrying our sins...responsibly

While the voices quoted in the previous section may not be representative of the entire Native American community in the United States, it is important for us archaeologists and anthropologists to be aware that such opinions exist about our profession (see also Zimmerman 1989). In order to truly understand where this perception of archaeology and anthropology comes from, we need to look into our own history. From a historic and international perspective, archaeology shares its roots with both cultural and physical anthropology (Trigger 1989), and in many parts of the world they are still intimately linked both theoretically and methodologically (this is especially the case in the US, where the four-field system, established by Franz Boas in the nineteenth century, is still practiced through the university structure). It is therefore unavoidable when discussing matters of repatriation, to take into consideration the history of the entire field. Most of the collections of human remains and objects in museums and research institutes are the result of medical, archaeological, ethnographical and anthropological collections dating to the late nineteenth and early twentieth centuries, and the motivations behind the initial collection of these are often varied and mixed.
Today most archaeologists and anthropologists are aware of the heavy burdens of the past of their respective disciplines. Archaeology and anthropology emerged in an era of nationalism and colonialism, and like all social activity, they were heavily influenced by the society around them. In many European countries archaeology became intimately connected with nationalist sentiments as part of the romantic era of the nineteenth century. During this period, archaeology abandoned its previous focus on evolution in favor of an interest in specific peoples. While there were positive sides to this archaeology, the abuses of the relationship between nationalist politics and archaeology, including notions of cultural and racial superiority and the connection between archaeology and questionable political movements, are central to remember, especially since these associations still emerge, particularly in contested areas today (Kohl & Fawcett 1995:4f; Trigger 1995). In other parts of the world anthropology and archaeology got integrated into the colonialist and imperial project of expanding European powers. The research into other cultures and the past of the continents that were being colonized often supplied arguments that justified the actions of the colonizers, by defining the indigenous population as inferior or in “need” of civilization brought by the colonization. Kathleen Fine-Dare has argued that already “by the late eighteenth century, archaeology and warfare were intertwined” (2002:15).

Without trying to escape the responsibility for this past, it is important to understand that this attitude throughout the nineteenth century was by no means limited to anthropology or even to academia, but could be found throughout society. Many collections of the cultural items and the human remains that were accumulated in private and public collections, took place in an atmosphere of naïve fascination with “the other” and with the past. In this climate not only anthropology and archaeology flourished (even if on what we today see as questionable grounds), but also activities such as pot-hunting and trade in cultural objects and human remains. These activities took place on an individual amateur scale, such as the week-end looting of Sámi burials in Norway (Sellevold 2002:60f). They certainly also were carried out in centralized organized ways, such as the collection of Native American human remains by the United States Army (Thomas 2000). In this context it was not uncommon to see desecration of
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ology
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graves from which human remains as well as objects were retrieved, but
the collection also took place on the battle fields of North America,
where the bodies of dead Indians were separated from their clothing
and their objects, the different parts shipped off to become included in
ethnographic and anthropological collections, respectively (Thornton
2002). But the desecration of the dead did not stop there. After the
Colorado Sand Creek massacre in 1864, the human remains of men,
women and children were collected for the Army Medical Museum,
while scalps and women's pubic hair were displayed on the stage of the
Denver Opera House (Thomas 2000:53ff; Fine Dare 2002:32). Living
individuals were also displayed at World Fairs (Fine Dare 2002:22) and
freak-shows. This was obviously not the sole doing of archaeologists
and anthropologists, but our disciplines were part of this activity. In
northern Scandinavia the atrocities following the colonial encounter
were committed on a smaller scale, but similar attitudes can be traced
also here. The fact that until recently, Swedish archaeology almost
completely ignored Sámi prehistory is an obvious example of this
strategy of denial (Zachrisson 2004; Levy 2006). Instead of being
subject to intense archaeological research, the Sámi, precisely because
of their otherness in the Scandinavian context, became of interest for
research in race biology, and many Sámi burials were opened in order
to collect the skeletal remains that were later studied for comparative
studies or sold to collectors (Schanche 2002; Sellevold 2002).

In the United States archaeology and anthropology participated
in the creation of the identity of the native population. In the public
mind, Native Americans were exoticized and idealized as symbols for
the new free land in which the United States were founded. At the
same time, they were also considered to be a nuisance and a threat
that had to be eliminated. Archaeology and anthropology participated
in creating an image of the natives as less civilized, and primitive, and
thus either destined for extinction or in need of civilization (Thomas
2000). The history of the Native Americans was in the hands of
anthropologists and archaeologists who could define their culture and
their bodies as they pleased. Through this research archaeologists and
anthropologists robbed these peoples and these cultures of their basic
human right to define themselves, their culture and their past. They
became a “people without history,” without power over their own
identity. The implications of this have become clear today as minorities, including indigenous peoples, as part of a process of self-definition increasingly are demanding the collective right to their cultural heritage, including the possession of artifacts, sacred sites and human remains. "The control of one's patrimony, cultural heritage and history is seen as a mark of equality and has become a privileged right in today's world" (Barkan 2002:16f). Jonathan Friedman has pointed out the important role of history in these processes of identity production: "it produces a relation between what has supposedly occurred in the past and the present state of affairs" (1994:118). "Self-definition does not occur in a vacuum, but in a world already defined. (...) The people without history in this view are the people who have been prevented from identifying themselves for others" (Friedman 1994:117). To gain control of the past, and of its physical remains, becomes a strategy to extricate oneself from the dominating culture and establish a self-centered autonomy (see Friedman 1994:132). In these processes, the physical remains from the past can become powerful tools. Negotiation of identities often takes place through the medium of cultural property, sacred sites, and even human remains. Claire Lyons, a curator at the Getty Research Institute, argues that since "(s)ustaining identity is not only a matter of valuing heritage but also requires the framing of one's own past against the others through appropriation and possession", then "(t)he collecting of antiquities has been essentially a practice of representation as much as ownership" (Lyons 2002:116; see also Fforde 2002). It is from this perspective that we must understand the claims by indigenous populations for gaining control over their cultural heritage and the human remains of their people. The question of restitution of cultural patrimony goes beyond even the debate of the responsibilities for crimes committed in the past and concerns the fundamental human rights of people living today.

The connection between anthropology and archaeology with the most horrendous crimes of colonialism is well documented and cannot be ignored. However, while we cannot and should not deny the past of our discipline, it remains a fact that most anthropologists today do not recognize themselves in actions of their predecessors. The problem is that many Native Americans do. In many accounts by Native American authors, the image of the contemporary anthropologists
and archaeologists is cast in the mould of the past. It is still common to read texts that make no difference between archaeologists and treasure hunters (White Deer 1997) or grave-lopeters (Riding In 2000). A shocking but recurrent theme in many of these texts is references to anthropologists that use human crania as ashtrays. It is also widely assumed that it is only Native American burials that are being excavated by archaeologists, and Native American human remains that are exhibited, stored and studied in American Museums (see for example Trope & Echo-Hawk 2001:10ff). While there clearly have been cases also in recent years of different treatment in excavation situations, archaeologists and anthropologists also study remains of other groups, including those of historic Anglo-Americans. These instances of guilt by association create real problems for contemporary archaeology. Leonard A. Forsman, an archaeologist and a member of the Suquamish Indian tribe, writes:

This legacy of desecration precedes every archaeologist (…) working in consultation with Indian people and their governments, no matter how sensitive we are to Indian concerns. The study of archaeological material, including human remains, grave goods, and artifacts, has brought a sense of injustice to add to the old feelings of intolerance toward archaeologists. (1997:106)

This attitude, he continues, is also mixed with a suspicion towards academics in general. Higher education is seen as a way to dehumanization, a view that is based on the clash between the traditional cultures rooted in a religious world-view and the position against religion often voiced in favor of pursuing a world-view that recognizes evolution. This is experienced as “callousness toward their spiritual beliefs” (ibid.).

And it is somewhere here that it becomes increasingly difficult for many of us academics to continue to embrace the ideas expressed even if we recognize the suffering of the people that express them. While we have no problem recognizing the atrocious nature of genocide and colonialism, we might have a harder time of letting go of the idea of our right to speak up for the idea of evolution, or our faith in the value of archaeology and anthropology. This notion touches upon a central theme in the practice of anthropology and has to do
with our relationship to the people whose history, culture and society we study. Even if we no longer endorse colonialism, archaeology still operates as if it exists “apart from and outside of the people whose past it studies” (Watkins 2005:432). While archaeologists tend to be respectful of native beliefs, they often find it difficult to accept that the interests of what their research could tell would not outweigh those considerations. And while it may be difficult to accept, it is important to realize that many tribes simply are not interested in learning about the past through archaeology (Forsman 1997:108). While archaeologists and anthropologists see themselves as protectors and discoverers of the past, the Native American tradition emphasizes that the past already is known because it is manifest in the present (Zimmerman 1989:213; see also Tsosie 1997). This points to a significant difference in world view between the different stakeholders (see also Goldstein & Kintigh 1990), and it becomes an efficient way in which to display power: Native Americans obviously do not need archaeologists as much as archaeologists need them. We have nothing to offer. But can we just let go? The problem is complicated by the relationships anthropologists and archaeologists may have with other stakeholders, such as for example fundamentalist Christians in their rejection of the idea of evolution.

And so the critical question emerges: how can we strike a balance between these different interests? How can we embrace multivocality and still make our own voice heard? The greatest challenge for archaeology in this context is to find a balance between recognition of our different responsibilities and allegiances. If we acknowledge the importance of history and cultural heritage for people, and we also recognize that this power can be abused, we cannot resign from our role and withdraw our perspective from the debate. What we might have to do is to speak more clearly. While we cannot and should not argue with the fact that archaeology and anthropology have been a part of colonialism and the associated “genocides, ethnocides, population die-outs, and other forms of mass destruction” of peoples whose “lives, suffering and deaths provide the raw material for much of our work” (Schepers-Hughes 2004:12), we might want to make a statement about what archaeology and anthropology is today. Anthropology and archaeology has a serious responsibility, not only for the past, but also for the future.
Part of owning our past means that we need to find new strategies to cooperate with other stakeholders. In the United States this work has gone beyond theoretical discussions and experiments that we recognize from European archaeology. In the spirit of dialogue, several important books have been published in the United States and Europe, that bring together Native and academic views (Layton 1989; Swidler et al. 1997; Bray 2001b; Fforde et al. 2002,), and in the US, multivocality has entered into legislation.

The Native American Graves Protection and Repatriation Act (NAGPRA): A legally implemented process of multivocality

When the Native American Graves Protection and Repatriation Act (NAGPRA) was passed by the United States Congress in 1990, it was the end of several years of negotiation between different stakeholders including Native American tribes and activists, archaeologists, anthropologists and museum curators. It was a carefully crafted compromise and can be seen as a legislative consensus balancing the interests of the different sides, and as such, it is the product of discussion, negotiation and compromise (Lovis et al. 2004:165). The signing of NAGPRA also marked the beginning of a radical transformation of American archaeological and anthropological practice.

Background and legislative history

The legislative history of historic and prehistoric sites in the United States dates back to 1906 when the Antiquities Act was signed, but it wasn’t until 1990 that American jurisprudence implemented comprehensive provisions for the disposition of Native American human remains and associated artifacts (Richman 2004:216). Up to that point, Native American graves and cultural remains were more or less protected, but mainly as archaeological resources (Trope & Echo-Hawk 2001:12f). Through protective legislation, archaeology appropriated Native American burials, regardless their age, and in this way the
act contributed to defining all Native Americans as being part of an antiquarian past rather than living, equal members of society. State cemetery and burial laws were often inadequate to offer protection for Native American burials. They were constructed around the concepts of the practices of the majority populations, and as a consequence most burial practices in the Native tradition failed to fall within the narrow definitions of what a "grave" or a "cemetery" was (Trope & Echo Hawk 2001:15). In 1979 the Archaeological Resources Protection Act (ARPA) reinforced the protection against looting of archaeological sites, and regulated the practice of archaeology on Federal and Indian lands, requiring a permit from the tribe and of the Bureau of Land Management for excavation (Sebastian 2004:5). But while these laws protected the graves from destruction and looting, they did not provide the possibility of repatriation of human remains and burial goods to native peoples from the museums and institutions where many of them were stored.

During the 1960s and in the context of the civil rights movement in the US, Native Americans along with other minority groups gained an increasing amount of recognition and political influence. As part of this movement, the idea of recovering the remains of the dead from museums gained momentum within the Native American community (Bray 2001a:2). The community was "growing stronger in their own sense of identity, and consequently became more vocal and aggressive in addressing social inequities" (Hill 2001:128). Confrontations between Native Americans and archaeologists became more frequent. From the Native American position, this was not only about taking back what they felt rightfully belonged to them, but the ownership and control of the cultural heritage became a crucial component in the revitalization movement within the native community itself. "Freeing the objects from their ethnological fate came to be equated with the struggle for the Native American Mind and Spirit" (Hill 2001:128). In 1974 the activist group American Indians Against Desecration formed in order to raise awareness and work toward a change of policy by gaining attention from lawmakers, politicians, media and the public (Hammil & Cruz 1989). The voices in favor of repatriation of human remains, grave-goods and objects of cultural patrimony became increasingly strong. Several states passed legislation that regulated repatriation,
and many museums started to repatriate human remains to the Native American groups that claimed them (Ousley et al. 2005:3).

In the 1980s the issue of repatriation took center stage in the national and state legislative agendas, as well as in the internal discussion of museums and among anthropologists and archaeologists (Ousley et al. 2005:3). The first federal repatriation bill was introduced in the senate in 1986, and a series of bills would follow in the subsequent years (Lovis et al. 2004:170ff). As archaeologists, anthropologists and museum professionals entered into the debate, years of intensive discussion and negotiation followed. The Society for American Archaeology (SAA), which is the single one most important professional organization for archaeologists in the US, became a major actor in this process, as it tried to balance the different interests in cultural heritage and human remains, recognizing both the interests of Native Americans and of archaeologists and anthropologists. It is important to notice that the SAA never opposed repatriation, but instead, it accepted the principle as early as 1986, and it entered into the process of negotiation in order to defend the inclusion of some core principles such as (1) the principle of recognition of the legitimacy of Native American and scientific viewpoints, (2) the principle of scientific interest versus strength of affinity, (3) the principle of case-by-case implementation, and (4) the principle of communication and consultation (for more details about these principles, see Lovis et al. 2004). The two main actors on behalf of the Native American interests were the Native American Rights Fund (NARF) and the Association of American Indian Affairs (AAIA). Throughout the legislative process, they were all active parties in sharing their comments, testifying at congressional hearings etc, and they also met in order to work out compromise language (Lovis et al. 2004:173). Toward the end of the decade, in 1989, the National Museum of the American Indian Act passed into legislation. This act is limited to the museums of the Smithsonian Institution, and it regulates the repatriation of human remains funerary objects to affiliated Native American tribes. A year later, in 1990, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA).
Definitions

NAGPRA is a Federal law that provides a process for human remains, funerary objects, sacred objects and objects of cultural significance to be repatriated to federally recognized Native American tribes and Native Hawaiian Organizations who can demonstrate that they are either lineal descendants or culturally affiliated to them. It applies to all US institutions and governmental agencies that receive federal funding. NAGPRA also includes provision for intentional and inadvertent discovery of Native American cultural items and human remains on Federal and tribal lands. It makes it illegal to buy, sell and transport for sale Native American human remains and objects subject to the act.

NAGPRA thus joins the Antiquities Act from 1906, the Archaeological Resources Protection Act of 1979 and other laws that regulate the excavation and research into the history and prehistory of contemporary United States. But NAGPRA is radical in the sense that it transfers the ownership from the museums and research institutions that have been curating these items to the affiliated tribe. It also "shifts the historical authority from the sciences of history and prehistory to a dialogue among anthropologists, scholars, native peoples, museums, federal agencies, and the public at large" (McLaughlin 2004:185). It is in this way that it can be seen as a legally implemented process of multivocality.

The cultural items that are subject to NAGPRA are: human remains, funerary objects (associated and unassociated), sacred objects and objects of cultural patrimony. They are defined in the following way:

*Human remains:* "The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purpose of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered part of that item." [43 CFR 10.2 (d)(1)]
Funerary objects: The legislation distinguishes between associated and unassociated funerary objects. The difference is that funerary objects are considered to be associated when they are in the possession or control of a Federal agency or museum, and unassociated when they are not.

- **Associated funerary objects:** “Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary remains.” [25 U.S.C. 3001 (3) (A)]

- **Unassociated funerary objects:** “Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of a Federal agency or museum and the objects can be identified by a preponderance of evidence as related to specific individuals or families or to known human remains or, by a preponderance of evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.” [25 U.S.C. 3001 (3)(B)] “Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency.” [43 CFR 10.2 (d)(2)(ii)]

Sacred objects: “Specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.” [25 U.S.C. 3001 (3) (C)]
Objects of cultural patrimony: "An object having an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group."

[25 U.S.C. 3001 (3) (D)]

Inventory and affiliation
The repatriation process for all items that fall within the categories outlined above is regulated by NAGPRA, and it places the initial responsibility on the Federal agencies and museums that are in the possession or control of them. All Federal agencies and all museums, public and private, that receive federal funds, must prepare inventories and summaries of cultural items in their control or possession. As part of this inventory they must identify their geographical origin and cultural affiliation. This inventory should be carried out in consultation with Native American representatives. After the affiliation is determined, the museum must notify the tribe, which can then decide if they want to proceed with repatriation.

The most challenging part of this work is related to the issue of affiliation. Cultural affiliation is defined in NAGPRA as:

[A] relationship of shared group identity which can be reasonably traced historically or prehistorically between the present day Indian tribe or Native Hawaiian organization and an identifiable earlier group. [25 U.S.C. 3001(2)]

The affiliation is established according to the principle of preponderance of evidence, which can be based on geographical, kinship, biological, archaeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion which reasonably leads to such a conclusion [43 CFR 10.2 (e)]. Ousley and colleagues (2005) have outlined in detail the many challenges the
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establishment of affiliation faces. The procedure requires (1) the existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under the act (i.e. that is recognized by the Federal government), (2) evidence of the existence of an earlier group, and finally (3) a link between the present day group and the group in the past.

The existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under the act is straightforward to establish in the NAGPRA context. Petitions for tribal recognition are handled legally and bureaucratically separate from NAGPRA. Evidence for the existence of an earlier group rarely leads to dispute among stakeholders – that is, as long as it concerns historical periods. The challenges are greater for prehistoric periods, for which the understanding of the relationships between different groups is often not clear from the archaeological evidence. This challenge is appreciated by archaeologists and anthropologists, but not always relevant for the Native groups that identify with this past and claim to know it from tradition. Finally, the link between the present day group and the past is also rather challenging to argue. Again, for historical periods there are cases where the connection – i.e. affiliation – is clear and straightforward. However, this connection is dependent on how this affiliation is defined. The definition proposed by NAGPRA leaves room for different interpretations, including different interpretations by different Native American tribes. Today, one of the central unsolved issues of repatriation concerns material that has not been affiliated to a present day group. Ousley and colleagues (2005:6) make the point that the emphasis on descent, cultural and biological, is very critical, yet commonly overlooked. However, this interpretation is not shared by all stakeholders and the issue of a shared group identity between the groups in the past and in the present gets to one of the central problems with the whole debate about repatriation. While cultural affiliation is the most frequently cited basis for determining to which group the remains should be offered (Ousley et al. 2005:5), it still remains a subject of confusion and disagreement. The issue of affiliation becomes especially critical when the remains under negotiation are very old, as in the Kennewick litigation process, where the remains of a 9000 year old skeleton have been claimed both by the local tribes.
and by the scientists (and even by a representative for the Asatrú Folk Assembly who claimed affiliation to the remains after a preliminary anthropological study indicated that the skeleton exhibited Caucasian features). While the scientists argued that the remains were too old for a contemporary group to claim affiliation, a collective of five tribes in the area argued that the affiliation was clear since their people always had lived there. A case like this illustrates that we are dealing with fundamental differences in worldview rather than of different readings of a legal document, and I will return to this important case in my discussion below.

Repatriation
When museums have completed their NAGPRA mandated cultural inventories, the items in question are offered to the concerned tribe(s) for repatriation. Repatriation is the most common outcome, but there are exceptions. Even if the ownership is transferred to the tribe, the tribe can decide to retain the museum or Federal agency as repository of the objects or remains. They can then propose how they would like to see the remains stored and curated. Special arrangements, like the use of specific materials or presence of certain materials with the remains in the storage boxes can be arranged, as can the facilitation of the access to certain items for the Native American community (see for example Herlé 1994; Cash Cash 2001). If repatriation is carried out, it can be negotiated in different ways. There are instances where the museum or research institution has negotiated terms for the repatriation, but in many cases the transfer of ownership is complete and on a no questions asked basis. When repatriation is completed, a notice is published in the Federal Register. These notices are compiled twice yearly by the National NAGPRA program. But even if this is the case, there is no single source of information concerning how many items have been repatriated since 1990. On the NAGPRA homepage, www.nps.gov/nagpra/ (consulted March 3rd, 2010), the number of items repatriated on September 30th, 2009 are:

Human remains: 38,671 individuals.
Associated funerary objects: 998,731 (includes many small items, such as beads).
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Unassociated funerary objects: 144,163 (includes many small items, such as beads).
Sacred objects: 4,303.
Objects of cultural patrimony: 948.
Objects that are both sacred and patrimonial: 822.

Discoveries and excavations
Besides regulating the repatriation of cultural items discovered prior to November 16th, 1990, NAGPRA also regulates how discoveries of cultural items, whether planned or fortuitous, are handled. According to NAGPRA, the ownership and control of Native American cultural items that are excavated or discovered on federal or tribal lands shall be given to the lineal descendants (in the case of human remains and associated funerary objects), or in the case that such descent cannot be determined, and in the case of unassociated funerary objects, sacred objects and objects of cultural patrimony, they shall be returned to the Indian tribe or Native Hawaiian organization on whose tribal land the remains were discovered, or the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation. If the cultural affiliation cannot be ascertained and the objects were discovered on Federal land that is recognized as the aboriginal land of some Indian tribe, then the object will befall that tribe. If another tribe, through the preponderance of evidence can show a stronger tie to the remains, then the remains shall befall that tribe. Excavation and removal of Native American cultural items from Federal and tribal land for purposes of research is only permitted if it is carried out pursuant to a permit, and if such items were excavated and removed after consultation with and consent by the appropriate Indian tribe or Native Hawaiian organization.

The legislation regarding new discoveries has an impact on the kinds of projects that are being formulated and carried out as part of planned excavation projects. It is likely that research projects focused on mortuary practices and population studies based on human remains from recently excavated cemeteries, are considerably more limited in the United States today than they would have been without NAGPRA. While archaeologists and anthropologists still may obtain permission to carry out excavations of human remains and
burials by the concerned tribe, it is also likely that most archaeologists simply develop their research interests in other directions. The most practically affected sector is CRM (Cultural Research Management) archaeology. Here, NAGPRA heavily regulates how rescue work is carried out. Some archaeologists in this sector express particular frustration with the legislation, since their everyday work is being so thoroughly affected.

The nature of the law
There is some debate concerning the nature of NAGPRA. How can we understand NAGPRA? What kind of law is it? Is it human rights law, special rights law, or property law? (Richman 2004). The way in which we perceive the law determines to a great extent our attitudes to the process of negotiation.

The Native American side of the negotiation tends to see NAGPRA as a human rights law (see for example Trope & Echo Hawk 2001) that reinstates an equal treatment of Native American burials with all other burials. Other non-Native, and pro-NAGPRA authors have argued along the same lines: “NAGPRA needs to be understood, first and foremost, as civil rights and human rights legislation, protecting the fundamental liberties of the Native American community by recognizing their rights of free exercise of religion and equal protection under the law” (Gerstenblith 2002:170). Others point out that NAGPRA is not so much a human rights law as it is a special rights law, since no other human remains or burials are protected in the same way. It is clear that before 1990, historic and prehistoric Native American burials received strikingly little protection, whether from government agencies, land developers, looters or archaeologists. At the same time, it remains a fact that since 1990, no other group in the United States receives this kind of protection for their dead and their cultural items (this is especially clear when human remains are defined in the law as “the physical remains of the body of a person of Native American ancestry”). Under NAGPRA, human remains of non-Native ancestry are not defined as human remains and the process of repatriation does not concern them. Others might point out that NAGPRA is centered on ownership. It is interesting that NAGPRA is not concerned with remains found on private land in which case
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the artifacts belong to the current owner of the land (the human remains may still be protected by the burial laws of the state in which the property is located). Interestingly, this part of the legislation is less debated in the United States, and this is probably due to the fact that private possession of land – and of cultural heritage – is relatively uncontroversial there. In contrast, in Sweden cultural heritage belongs to the public by definition. Sherry Hutt (2004) has eloquently discussed how these different perspectives on the legislation have limited effective communication among the stakeholders.

A leveled playing field – positive outcomes of the NAGPRA

For an outsider, the mere number of repatriated items from American museums seems almost breathtaking. At first glance this might appear as a sheer loss of information. There is no doubt that as thousands of skeletons are reburied and thousands of items are returned from the museums, research into the past and into these cultures loses what it has regarded as its most valuable sources. But the experience of the implementation of the law also allows us to see several important positive outcomes.

Among the very concrete positive results, the implementation of NAGPRA immediately catalyzed an intense re-study of museum collections. Collections that might have been ignored for decades were analyzed (Zimmerman 1997:47), and the forced inventory improved the knowledge about the collections and also increased the quality of the information about them with regard to identity and affiliation (Ousley et al. 2005:12). While this development is impressive in itself, it is only a very small part of what NAGPRA has accomplished over the past 15 years.

The most groundbreaking change has taken place not in the actual handling of the items, but rather in the relationship between the stakeholders. NAGPRA has “leveled the playing field” and thus created a radically different balance in the relationship between the often disparate groups “whose interests converge in the archaeology and material culture of native North America” (McLaughlin 2004:186).
Where previously the ownership of the physical remains of the past, and the official interpretation of the past, was largely controlled by museums, anthropologists and archaeologists, NAGPRA has shifted the actual ownership of many of these remains, thereby integrating the Native American descendants into the processes of interpretation and curation. As a proactive process, then, NAGPRA has tipped the scales. The transfer of ownership as it is regulated by the law, also became a powerful statement that was of central importance for communication to occur (Downer 1997:32).

How has this shift in the balance influenced the role of archaeology and archaeologists? In my interviews with archaeologists active in the university system and museums in the United States today, the positive effects of NAGPRA are universally recognized. Academic archaeologists especially emphasize the establishment and development of substantially better relationships between archaeologists and Native Americans. Many testify to the importance of the fact that Native Americans now are feeling that they are welcome and respected in museums, and that they are contributing with their knowledge. With the opening of communication, many archaeologists today realize the effects that the historical situation had had on their ties (or lack of them) to Native Americans and that the shift in the balance has now made it possible to redefine them on a more equal basis. Tamara Bray has framed this outcome of the repatriation movement as a “federally mandated ‘zone of contact’ between Native people, archaeologists and museums” (Bray 2001a:3). This zone of contact can be understood as a place for colonial encounters – where people that have been geographically and historically separated meet (ibid.). This perspective emphasizes the encounter, the blending of perspectives and negotiation in the frontier context, rather than the separation and conflict. A more cynical perspective is that NAGPRA allowed archaeologists to “save face” (Zimmerman 1997:47). But while there might be a grain of truth in this, it is still more important to recognize the progress that is being made. Zimmerman has argued that there have been adjustments of attitudes by both American Indians and archaeologists, a process that he describes as syncretism (Zimmerman 1997:45). Many authors on the Native American side also emphasize that NAGPRA has had a real effect of the relationship: “NAGPRA changed everything. No
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longer were archaeologists in a superior position. NAGPRA gives a more than equal status to the other parties in the dialogue" (Downer 1997:25).

The single most important aspect to advance this relationship from conflict to dialogue has been the requirement to consult. Museum professionals, archaeologists and anthropologists have benefited tremendously from the knowledge provided by the tribes in dialogue about the items that they study. The fact that museums and archaeologists have taken into consideration the views and suggestions (for example concerning how various items are stored and handled in the museums) by Native peoples with regard to their past, has laid a foundation for mutual respect and understanding. The increasing number of research projects with an integrative approach (research that includes and engages Native groups) is seen by many as a direct result of the repatriation process (Killion 2001:149). More Native Americans are also becoming archaeologists, even if the relationships are still challenging (see for example Forsman 1997; Lippert 1997).

NAGPRA is the product of a negotiation, and as such it is bound to involve costs as well as gains for all parties. After more than 15 years of implementation, it is clear that there are some regrets on behalf of the archaeological community as they witness the return of unique items that nobody will have a chance to research again. There also remain reservations on behalf of the Native American community, who think that the legislation is not enough (White Deer 1997; Riding In et al. 2004). Yet, over all, the outcome of the legislation is experienced as at least partially positive by most participants, and probably more importantly, most have accepted it as a process and acknowledge the positive outcomes. Steve Ousley and his colleagues at the repatriation office at the National Museum of Natural History have recently stated that “repatriation is, and will continue to be, one of the contexts in which physical anthropology is practiced” (Ousley et al. 2005:28). Statements like these indicate that the process is accepted and has become an integrated part of the research process today, a situation that constitutes a stark contrast to the (lack of) debate in Sweden, for example.
Drawing lines – problems with the legislation and questions to raise

While NAGPRA today is accepted by the involved parties, there are still parts of it that remain controversial and problematic. In the remainder of this article I will focus on some of the problems that emerge as the law is implemented. The purpose of this analysis is not to undermine NAGPRA, but to bring to the fore some of the theoretical problems that we as archaeologists and anthropologists must discuss more openly as the repatriation movement becomes increasingly internationalized and may become integrated into different political, historical and academic contexts. The analysis will be devoted mainly to two issues that have been the subject of intense debate in the United States over the years but still remain issues of contention. The first is the fact that the law implies a significant loss for archaeology and anthropology, since it removes human remains and objects from the realm of research, and it also regulates research and thus affects the academic freedom. The second issue is that of affiliation. This analysis focuses on an interesting contradiction in the process that simultaneously views science in general, and archaeology and anthropology in particular, as absolute, a view of science that is contradicted by the call for multivocality, and that denies the theoretical development within science over the past decades.

Despite the fact that NAGPRA had the effect of actually stimulating research as part of the inventory process, it also has a negative impact on research since it restricts access to the material remains that are the main sources for archaeological and anthropological research. In many instances these sources are lost to science forever, since they are reburied. From this perspective, the gain from the spur of intensified research required by NAGPRA is thus ephemeral, since the repatriation process in a longer term perspective will prevent or at least limit further research. In this sense, NAGPRA challenges the foundation of archaeology and anthropology, not just because it restricts access to our main sources, but also because it fails to recognize the nature of our discipline, i.e. the fact that our research is constantly changing and requires re-testing.
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Many anthropologists and archaeologists have tried to explain why they need access to the actual physical remains in order to carry out their studies and what kind of information, both about the past and of contemporary living human beings, their studies can lead to (Landau & Steele 2000; Baker et al. 2001). They have also pleaded that they at least should get enough time to complete the studies required before the remains are repatriated and reburied (Baker et al. 2001:82). While we as archaeologists and anthropologists can try to communicate the value of our work, we need to realize that in instances like these we tend to speak on completely different levels. While Native Americans argue about freedom of religion, the right to a lasting burial and centuries of oppression, our arguments regarding the information we can extract from studies often fall flat.

While it has become rather uncommon, there are cases in which archaeologists and anthropologists have been more active in defending their position. This is the case in the Kennewick litigation (Thomas 2000; Gerstenblith 2002; Owsley & Jantz 2002). When the remains of what turned out to be a 9000 year old human skeleton were exposed on a river bank in Washington state in 1996, a group of scientists opposed the immediate demand of reburial before any scientific study could be carried out. The loss for science would be too great, the scientists argued, and moreover, the affiliation between this Early Archaic period skeleton and the contemporary tribes in the area could not be convincingly proven. In this case the events led to a long legislative process, when a judge settled the case on the side of the scientists. The main motivation behind this case was the unique nature of the remains — from one of the most ancient human burials in North America — but it also came to illustrate the problems of affiliation of the legislation, a problem to which I return below. Of course, the loss for science is not always that great. We have to recognize that we sometimes need to weigh the interests against each other. The repatriation of the Jewish skull from Lund University in 2005 (Orrenius 2005), or of the well known Native American Ishi’s brain from the Smithsonian Institution (Schepfer-Hughes 2004) didn’t exactly constitute assaults on science and research. The value of these remains was significantly higher in the communities to which they were repatriated than to the institutions that did not even know that they housed them. This underlines the
importance of a consideration implemented on a case by case basis — something that might be provided for by NAGPRA, but which is not always the result.

While the loss of information *per se* has taken center stage in the discussions about the legislation, it is interesting that the argument has not been given more weight in the final legislation. The arguments in favor of science were not considered as equally important as the arguments on the side of repatriation (mainly arguments of human rights) when the legislation was drafted. In retrospect this is understandable, but it is also problematic. The problems arise not only from the loss of information, but mainly because of the view it reflects of science as simultaneously absolute and unnecessary. It is ironic that the understanding of science as a changing process, the very insight that paved the way for multivocality and NAGPRA, is ignored, and that giving up the very basis for how science operates — the possibility to re-study and re-test its assertions — is considered a proper price to pay for the process. This might worry not only the archaeologists and anthropologist protective of their data, but also the archaeologist and anthropologist who want to protect the right of academic freedom and the importance of the ability to contest academic claims made in the past. This might be especially important in disciplines like archaeology and anthropology that are linked to the past and to identity. The sometimes shady history of our disciplines is probably the best illustration of the dangers of what the abuse of the past and of the notion of the uncontestable nature of our assertions may lead to. The idea that the conflict is one between the interests of science on the one hand, and of human rights on the other, is false, since archaeologists and anthropologists should be able to frame their work within the interests of human rights.

Another problem that has received a considerable amount of attention in the debate is the problem of affiliation. Affiliation is a cornerstone in the practice of repatriation and in the process of consultation for new discoveries. But as I have already discussed earlier in this article, this fundamental concept remains open to interpretation, and most conflicts between stakeholders in the process today are linked to how to prove affiliation in cases where the connection is not clear. The
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reasons for this can be that there is no clear connection between a contemporary group and the remains or that there is no indication of what tribe it belonged to. The remains may also be so ancient, as was the case with the Kennewick man, that it is argued that the case for affiliation is considered too weak. According to the law, these remains are not to be returned, and in many instances this has caused conflicts.

As the term was negotiated, archaeologists wanted to make sure that only tribes that were actually descending from the culture that produced the item would be able to take ownership of them. The reasons for this are related to ethical values held by the archaeological community – many feel for a variety of reasons, that it would be unethical to repatriate the remains to a different tribe than the one the remains originated from, others do not want to give the items to what they regard as political activists rather than actual descendants. On the Native side of the conflict, these demands have been met with skepticism, and many feel that the burden of proof is placed on them (Zimmerman 1997:48), or even that the legislation is used as a tactic to delay or even prevent the return of human remains (ibid.).

The conflict regarding affiliation is not fundamentally about differences of the legal definitions, but about differences of world views. The Native American view of affiliation is often based on a traditional understanding, where you “know” your past. This view contrasts with some of the fundamental assumptions of contemporary archaeology and anthropology, whose very core is based on problematizing the past and the present. Lovis and colleagues (2004:169) have argued that anthropology and archaeology have brought it to our attention that not all biological populations from the past have survived, that there has been considerable migration in the past and that cultures change and blend. We also know that there are cases where multiple contemporary groups can be traced to a common origin. To the archaeologist and anthropologist it thus becomes important that cultural affiliation is based on evidence and not on assertions (ibid.).

Different solutions have been proposed to push forward the affiliation of human remains in order to allow repatriation and reburial. In cases where the exact affiliation could not be determined, some tribes have formed collectives in order to claim remains (Lovis et al.
While from one perspective this might be perceived as a creative way around what appears to be a legislative technicality, others may see it as a dangerous grey zone of the legislation. If taken to an extreme, the practice might create a situation where all Native Americans represent a collective in opposition to the academic community – or non-Native America. This is the logic behind some movements to push for the repatriation also of non affiliated human remain (Riding In et al. 2004). Another suggestion to solve this problem has been proposed by biological anthropologists who suggest a stronger emphasis on biological descent (Ousley et al. 2005). While I can see the usefulness for it in order to solve the questions in certain instances, significant problems may arise from the idea of sorting individuals according to biological “type” – a strategy that tends to mask the fact that cultural identity *per se* is a social construct.

Another interesting aspect is revealed in some contradictions of the legislation itself. While on the one hand affiliation is stressed when it comes to human remains, there is an interesting exception if those human remains are incorporated into sacred objects or objects of cultural patrimony. In that case the human remains are repatriated to the tribe to which the object can be affiliated, even if the human remains might originate in another tribe. While this solves the dilemma of the cultural affiliation, it reveals a strange situation; from the construction of the law it thus seems as if the collection of human remains is acceptable as long as it was part of Native cultural practice.

Today, when NAGPRA has been accepted as due process by the majority of the stakeholders, the grey zones remaining in the definitions of affiliation have become an area for these stakeholders to push their respective agendas. The controversy over the so called “unidentifiable human remains” has come to be viewed as a final battle for the human remains of Native America, a battle that is unfolding as this article is being written, and whose outcome is impossible to predict. The stakes are high, not only for the Native American community, but also for archaeology and anthropology. Again, the most fundamental problem is not the loss of data, but the responsibility we as archaeologists have both with relation to the past and the present. It is not responsible to avoid conflict when the past is appropriated uncritically and when objects and human remains are uncritically assigned to a specific ethnic
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group. The experience of the role of archaeology and anthropology, as a part of nationalist projects in for example Europe, with Germany in the 1930s and 1940s as the best known example (Arnold & Hassmann 1995; Eickhoff 2005), illustrate the dangers of this attitude, and it is our responsibility to speak up against it. While there are clear differences in the motivations underlying the claims, as well as historical, social and cultural differences of the stakeholders, the actual problem presents important similarities from the archaeological point of view. Native Americans will never have the power of Nazi Germany, nor will their agendas in any way be similar in terms of the societal projects that the underlying ideology was striving to implement. However, for the archaeologist and anthropologist facing these kinds of demands, the cases share one important similarity and that is appropriation of the past. The challenge for archaeology and anthropology is to strike a balance between recognizing the need for all societies to draw from the past in the processes of identity, and to defend the right for archaeology and anthropology to question these assertions.

A closer look at the debate surrounding NAGPRA and the implementation of the law reveals some interesting and contradictory attitudes to science in general and to archaeology and anthropology in particular. These attitudes might at first glance appear as harmless, but a closer examination reveals a more serious problem that we as archaeologists and anthropologists need to consider carefully, especially if we predict a spread of these kinds of demands throughout the rest of the world and into different historical, academic and political contexts.

Science in general and archaeology and anthropology in particular are cast in a very problematic role in the debate. On the one hand they are still closely identified with their殖民ist past. The crimes committed during this era — and to which archaeology and anthropology were a party — are still providing both arguments against them and fuel for genuine emotional distress. This view completely ignores the ways in which anthropology and archaeology — along with the rest of society — have changed. This is ironic since these changes are part of what has made NAGPRA possible. Without a concern for multivocality in the disciplines, and without a consideration for the interests of
the Native American community, not only by politicians, but also by archaeologists, anthropologists and museum curators, these changes are not likely to have taken place. The opponents of archaeology and anthropology are thus attacking a ghost from the past and not their contemporary partners in negotiation. Moreover, just as contradictory is the view and expectations placed on science. On the one hand, the scientist who knows everything, who is preoccupied only with his or her own “truth” is rejected, but on the other, this is the scientist in demand by the process of establishing affiliation. The fact that there is no understanding for the problematization of the past, the constant questioning, the need for re-study and re-analysis, and for a scientist aware of the changing nature of his or her own knowledge and understanding, is the great misperception behind the debate over the unidentifiable human remains. In this case, many natives believe that doubt on behalf of the scientific community is just used to delay the repatriation. The result of this situation is that there is no way for the archaeologist or anthropologist to win the respect and trust of the Native community. In many ways archaeology and anthropology are entrenched in a two front war where they have to carry the burdens of so called “hard” sciences one minute, to turn around the next and carry those of the so called “soft” sciences. In this context it is also interesting to ask ourselves why we in archaeology and anthropology have been so singled out in the debate. Many of the collections of human remains were also driven by medical faculties. The hard feelings aimed at archaeology and anthropology seem to pass medical research by. Does this have to do with the fact that the benefits of medical research are more tangible to the public in general (and the Native American communities in particular for this specific context)? If the answer to that is yes, then archaeologists and anthropologists need to become better at communicating the benefits of their work to the public, instead of retreating completely by avoiding the conflicts because of the guilt we feel about the crimes committed by our predecessors.

There is also a tendency of academia to respond in different ways to different stakeholders. The Kennewick case provides a good illustration of this as the claims made by the Native Americans were met with more respect than the claims made by the Asatru Folk
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Assembly, which were basically regarded as an absurd joke (for more details of this aspect of the case, see Gardell 2003:149ff). A similar dismissive attitude can be seen in the attitude we archaeologists have toward local patriots or nationalists in Sweden as they claim Swedish cultural heritage. While I completely agree that the claims made by the Asatrú Folk Assembly to the Kennewick Man seem absurd, I need to consider the possibility that they might be real and sincere in the mind of that stakeholder. This also means that we as archaeologists and anthropologists need to engage in a dialogue with them in which we discuss our disagreements. In order for this debate to remain credible, we need to engage in a similar discussion with the Native American stakeholders in cases where we do not agree. Because while there might be a difference in the legitimacy of the claims, and while there is definitely a difference in the political ambitions in many cases, from an archaeological perspective we still need to be able to counter the demands with some kind of consistency. In other words, if we want to be able to protest claims made by a group with whom we might not sympathize politically, we have to speak out also when claims are made by a group that has our sympathies. Otherwise we risk undermining our authority and ignoring our responsibility.

The situation in the United States today makes this especially clear. There is an ongoing attack on scientific research that is motivated by cultural and religious arguments. The most publicized case is the movement to introduce “Intelligent Design” as part of the curriculum of science classes in high-schools across the country. Another example is the attempt to stifle stem cell research by President George W. Bush’s administration. It is interesting that these attacks on science have generated a very strong response by the academic communities across the country. Universities have responded to the Intelligent Design debate by organizing exhibits and lecture series about evolution in order to offer a response to special interest think tanks like the Discovery Institute, which continues to argue that incomplete knowledge about evolution constitutes evidence for a supernatural hand in nature, despite a comprehensive legal decision against its position in Harrisburg, Pennsylvania in December 2005. The mobilization of the scientific community in response to Christian Fundamentalist activism seems to define some non-negotiable positions about scientific inquiry.
and learning. This is in stark contrast to the lack of response when archaeology and anthropology are being questioned within the context of NAGPRA, even if the arguments for a traditional world view and against the academic one are very similar. It thus seems like archaeology and anthropology are facing a challenge of communication. We need to be better at communicating what archaeology and anthropology is about, not only to the public, but also to our academic colleagues. We need to be able to communicate that what we do is not just about telling people whether or not their ancestors ate corn, but about understanding human societies in a long term perspective and of the complex relationships between nature and culture. This does not mean that we can appropriate history, and take identity and self-definition away from indigenous groups. What it means is that we need to take part in the dialogue and explain and defend archaeology. This means that we need to carry the baggage of our past responsibly but still allow ourselves to take responsibility for the contemporary situation. Doing this means to be an active and responsible partner in a dialogue without exoticizing our partners and without changing standards according to which stakeholder is challenging our values. The establishment of relationships is one of the greatest achievements of NAGPRA, but it remains a challenge since the law is formulated to effectuate a process regarding the cultural heritage of a particular group, Native Americans, and thus sets them apart from all other human groups that are part of North American history and contemporary society.

Conclusions

So what lessons have we learned from NAGPRA? Is legislation a productive way to further multivocality? As I argued earlier, to examine legislation is interesting because it turns abstract ideal into a tangible reality, with real consequences and real stakes, as opposed to the more theoretical debate about multivocality that has been part of the Euroepan archaeological agenda. Legislation is also clearly a cultural product, and NAGPRA is no exception. NAGPRA reflects concerns and values in the US, such as the recognition of the colonial situation, but also the recognition of private land and ownership as central concepts. As such, it is hardly in its present form a template for an
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international legislation. However, the experience of the negotiations and the implementation can still contribute to a more general discussion and be an inspiration for what measures we should contemplate taking, as archaeology keeps developing into new directions.

The use of legislation is an effective way to push through a change in society, a change that, by affecting the practices, eventually also affects the structure. NAGPRA is no exception to this either, and the benefits are undeniable. It is clear that NAGPRA has contributed to the stimulation of multivocality and democratization of archaeology and anthropology, through the ways in which it has redistributed the control over cultural heritage and encouraged cooperative encounters between Native Americans and the archaeologists and anthropologists who are curating and researching their cultural heritage. In this sense it has also contributed to at least a beginning in the healing of the wounds of the past. With a few exceptions it is probably true that the parties are closer to each other now than they were 15 years ago before the NAGPRA was signed into legislation.

However, while more perspectives are allowed to become integrated into the research and museum communities, others are closed off. This means that some voices are becoming quieter. The practice of NAGPRA means that archaeology and anthropology no longer are free to formulate their research questions without the consent of the descendants. While many agree that this is reasonable and responsible on a regional and local level, the principle should be worrying for every archaeologist and anthropologist, especially those who are sensitive to the past of their disciplines. What if anthropologists were no longer allowed to research human evolution, or the historic presence of certain cultures in contested areas, or the biological variability of the human species? Where do we draw the line as archaeologists and anthropologists? What is our ultimate responsibility? Neither NAGPRA, nor the debate in the US, has provided a way to hinder this type of abuse of cultural heritage. The reason for this is probably that there has been no real worry for a politically dangerous abuse in the current context. But are we not responsible for protecting our academic freedom in all situations? In the United States (and probably also in many other parts of the world) it seems like there are different standards for how academics communicate with Native
Americans and other indigenous peoples, and how they communicate with for example fundamentalist Christians, New Age groups and ethno-nationalists. This is a problem for mainly two reasons. It tends to exoticize indigenous peoples, a practice that in the long term will not be beneficial for either party since it contributes to a form of extended colonialist attitude. It also tends to undermine the authority of archaeology and anthropology to speak up when cultural heritage, history and human remains are abused by stakeholders that may have a less sympathetic agenda.

So, what is the next step? How do we reach a balance between a respect for stakeholders outside of archaeology and anthropology and the responsibility to our fields? Larry Zimmermann (1997:56) argues that archaeology has to change. This is probably true, but the question is: in what direction? Some might argue that we need to step away from our authority position and let everybody participate in the making of their past and prehistory. While this is a nice idea, it is not necessarily beneficial in the long run. Instead, I propose that we as archaeologists and anthropologists get better at communicating what we actually do. We need to acknowledge our past, but we have to speak out when this past is pinned on us today. To truly embrace the concept of multivocality means that we must see the relationship as a dialogue, where our responsibility is to speak up for archaeology and anthropology. By taking a passive position, we are actually not engaging on equal terms. In a way, we are trying to maintain our position of power while at the same time stepping away from our responsibility. We need to move beyond the power plays and enter into a more constructive relationship with other voices. Rather than dwell on the past, we need to create a future where archaeology and anthropology build professional trust as academic researchers and teachers, in working with a broad public as well as stakeholders who seek a greater voice in writing their histories. In these relationships we need to find an agenda where our interests are allowed to articulate across identity boundaries. Moreover, and equally important, we need to assert the value of archaeology and anthropology. This means that we must be willing to defend our authority and the value of our knowledge. While this does not mean that we need to claim to know everything, we do have something to offer, and this will also make us more attractive
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partners in a dialogue. It will also allow us to speak out against the abuse of the past and of cultural heritage. In our contemporary world, cultural heritage is playing a central role. It is not limited to the fringes of society and to dusty museum cabinets, but it is played out and negotiated, from the most formal political negotiating table to the everyday routine of child rearing and education. What we need to understand is that it is not a special interest or a hobby – it is real politics and it is real life. It is simply too important not to take seriously. And as archaeologists and anthropologists we need to shoulder this real responsibility by defending our position in the dialogue.

NAGPRA is a fascinating experiment in multivocality, and as I have argued above, the consequences are both positive and problematic. When evaluating the NAGPRA experience as an outsider, it is interesting to move away from the most obvious conflicts and look at the consequences beyond the immediate implementation of the law. When negotiating the possession of the artifacts and the human remains, the abstract notions of the role and value of archaeology and anthropology are concretized. The most important lesson that we need to draw from the NAGPRA experience is to be conscious of this underlying current. We need to understand that in this process we need to make choices that are based, not on the fear of losing data, but of the wariness not to lose our credibility and responsibility in society.

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