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### The Red Jacket Peace Medal and Ethics of Repatriation

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Museum Studies Thesis

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5-2023

The Red Jacket Peace Medal and Ethics of Repatriation

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The Red Jacket Peace Medal and Ethics of Repatriation  
A Thesis in  
Museum Studies  
By  
Nicholas O'Connor

Submitted in Partial Fulfillment  
Of the Requirements  
For the Degree of  
Master of Arts

May 2023

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## **ABSTRACT OF THESIS**

### **The Red Jacket Peace Medal and Ethics of Repatriation**

Native Americans have had a long and arduous past. Many generations of tribal nations within the geographical and political context of the United States have experienced genocide, forced relocation, had their land seized, and cultural artifacts and remains stolen since the fifteenth century. Museums have become the primary institutions now owning the majority of variously acquired artifacts of Native American cultural heritage and displaying them in pursuit of scientific study. For the long overdue injustices done to Native Americans, the Native American Graves Protection and Repatriation Act (NAGPRA) was established in 1990, under the President George H.W. Bush administration, to aid federally recognized Native American tribal nations to facilitate the repatriation or return of their artifacts being housed in these institutions.

This thesis will do a deep dive into NAGPRA and what it represents to help understand the repatriation of a historically significant artifact known as the Red Jacket Peace Medal back to the Seneca Nation from the Buffalo History Museum. This paper will also expand on the issues of repatriation, review of the law of NAGPRA, along with some historic accounts of other tribes within the State of New York, and lastly, to disclose the ethics of repatriation, along with the importance of objects and case studies affiliated with NAGPRA law and cultural patrimony.

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## **Chapter 1: Introduction**

Native Americans have inhabited the Americas for millennia. Their time here was devastated by the European invasion during the fifteenth century. Most scholars of Native American history know well the mistreatment and destruction of their culture and land. We are diving into a historic relic of the Seneca Nation, who are located in what is now Western New York, known as the Red Jacket Peace Medal. Throughout this thesis I will be working on the topic of issues of repatriation of contested Native American objects, specifically the Red Jacket Peace Medal. I wish to explore the arguments from both parties (the Seneca Nation and The Buffalo History Museum) to determine the merit of ownership. I wish to help any readers to understand that the decision to repatriate contested objects, like the Red Jacket Medal, is viewed accurately between repatriation positions of the Buffalo History Museum and the Seneca, ensuring that emotion and sentimentality doesn't define the course of action.

### **Seneca Chief Red Jacket**

There have been many Native Americans who are well known in history and many of them were chiefs who have helped shape the lives of their tribes and pursued peace with colonists. One such Native American was from the region that would become Central and Western New York and was a renowned orator for the Seneca Nation. He played a pivotal role for peace between the Haudenosaunee (Iroquois) Confederacy and the newly formed United States. Author Jadviga da Costa Nunes believes that Red Jacket was one of the most fascinating leaders at the turn of the eighteenth century.<sup>1</sup> He was born around 1750 and would live to be around 80 years old upon his death in 1830. The author cites several examples of Red Jacket

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<sup>1</sup> Jadviga da Costa Nunes. *Red Jacket: The Man and His Portraits*. American Art Journal 12, no. 3 (1980): 5–20. <https://doi.org/10.2307/1594231>. Page 5.

being a brilliant orator. He tried to stop the growing tide of white settlers upon his tribe's territories and attempted to reclaim their lands after the Revolutionary War. Through Costa Nunes research, she has mentioned that Red Jacket's intellectual side stunned the white men of his time. They couldn't believe that an "illiterate primitive" could have such literate powers.<sup>2</sup> Red Jacket was born a Seneca (Onödowa'ga), one of the six nations of the Haudenosaunee Confederacy, and, arguably, one of the most powerful tribal nations in the Northeast American region.

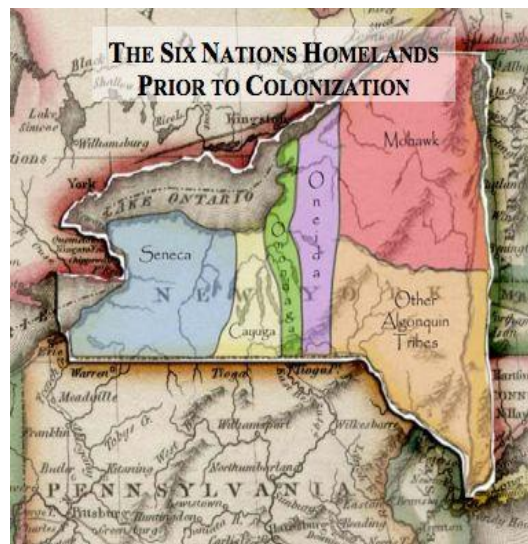


Figure 1 Map of Six Nations before colonization.

Some research suggests that the Seneca came from Algonkian tribes inhabiting the Northern Americas dating back over five thousand years ago, from which was called the third Algonkian period.<sup>3</sup> The Seneca formed later around the Genesee regions of Western New York. The Genesee area was their original homeland to which author Arthur C. Parker claims they loved as a sacred place.<sup>4</sup> The Seneca were known as the "Keepers of the Western Door." Their lands stretched to the western slopes of the hills that were east of Seneca Lake, northern

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<sup>2</sup> Ibid

<sup>3</sup> Parker, Arthur C. (Arthur Caswell). *The History of the Seneca Indians*. Port Washington, N.Y: I.J. Friedman, 1967. Page, 13.

<sup>4</sup> Ibid.

boundaries of Tioga and Chemung rivers and further into western parts of modern-day New York, even touching down to the borders of modern-day Pennsylvania.<sup>5</sup> The name Onödowa'ga actually means "People of the Hill" and they used to live on a certain great ancestral hill, that too is believed to be the birthplace of their nation, called Genundewa Hill which allowed them to protect the western borders of the Haudenosaunee Confederacy.<sup>6</sup>



Figure 2: Chief Red Jacket

Red Jacket was born into the Wolf clan. His Seneca name was Sagoyewatha meaning "He keeps them Awake," for his great orator skills that he acquired later in his life when he was elected a Sachem (Chief) of the Seneca Nation.<sup>7</sup> Author John Niles tells us how Red Racket became to be in his book *An Account of Sagoyewatha, or Red Jacket and His People*, where it is described how he got nicknamed Red Jacket during the Revolutionary War. On the outbreak of the American Revolution, Chief Joseph Brant and Cornplanter of that time led a majority of the Haudenosaunee on the side of the British. Red Jacket had served as a runner at Niagara, that

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<sup>5</sup> Ibid, Page, 33.

<sup>6</sup> Hubbard, John Niles. *An account of Sa-go-ye-wat-ha, or Red Jacket and his people, 1750-1830*. Albany: J. Munsell's Sons, 1886. Page 25-26.

<sup>7</sup> Ibid, 36.

because of his swift feet and agility he was gifted a red British coat for his services.<sup>8</sup> With this gift he would derive the term Red Jacket. However, he wasn't popular amongst his tribe as they valued a warrior and not someone who avoided battle. Stories circulated and he gained a nickname by Chief Joseph Brant with a humiliating title, "Cow Killer," as it was rumored Red Jacket was slaughtering cows to feed his own family while other Haudenosaunee were dying on the battlefields.<sup>9</sup> After the revolution, the British had abandoned the Haudenosaunee, and Joseph Brant fled to Canada. With the Six Nations divided and the Seneca as well, Cornplanter had no choice but to make peace with the Americans.

A peace treaty was made in 1784 at Fort Stanwix, in which the Ohio regions and selected parts of New York were surrendered. From the loss of land and defeated sense of morale of the times, Red Jacket with his orator skills stepped up into leadership and capitalized on Cornplanter's failures.<sup>10</sup>

Even though the American Revolution was lost with the British defeated, Red Jacket appeared to have taken pride in wearing the red coat, that even after old ones worn out, he would be gifted another.<sup>11</sup> With his oratory skills in the English language, he would rise to be one of the most notable Native American Chiefs. Author John Hubbard claims that Red Jacket wasn't liked by many and that his name was synonymous with the Revolutionary War. Mr. Hubbard informs us that it he believes in the justice of the memory of Chief Red Jacket.<sup>12</sup> With the end of the American revolution there were prominent peace talks with the Americans and the Six Nations, especially with regard to border disputes, even the borders that were determined from the Treaty

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<sup>8</sup> Jadviga da Costa Nunes. Red Jacket. *The Man and His Portraits*, Page 5.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Hubbard, John Niles. *An account of Sa-go-ye-wat-ha, or Red Jacket and his people*. Page 36.

<sup>12</sup> Ibid, 38.

of Fort Stanwix in 1784. The book *The Collected Speeches of Sagoyewatha, or Red Jacket*, has detailed the many meetings and speeches from Red Jacket and his adventures as the orator Sachem of the Seneca. “If any reader wishes to find more information on the rest of treaties and efforts of Red Jacket, read the book from given footnote.”<sup>13</sup> One such treaty that is covered in the book was the Treaty of Canandaigua in 1794, that brought peace between the United States and the Haudenosaunee. Two years prior Red Jacket had received a gift from George Washington, the first sitting President of the United States, and that was a Peace Medal.

### Red Jacket and His Medal



Figure 3: Red Jacket Silver Peace Medal from the Buffalo History Museum.

In 1792, George Washington was in peace talks with the Haudenosaunee and met Red Jacket as one of the Sachems of the Seneca. In honor of the meeting, he presented to the Chief a

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<sup>13</sup> Red Jacket, and Granville Ganter. *The Collected Speeches of Sagoyewatha, or Red Jacket*. Edited by Granville Ganter. 1st ed. Syracuse, N.Y: Syracuse University Press, 2006.

medal that was seven inches in diameter and made out of silver, and on it was a depiction of Red Jacket and George Washington shaking hands. Author and editor for the *Democrat and Chronicle*, Adria Walker states that this medal was to commemorate the chief that led preliminary discussions that would culminate in the treaty meeting at Canandaigua in 1794.<sup>14</sup> The medal is not just a material object; it is of cultural significance to Haudenosaunee history. Christopher Densmore, author of *Tioga Point to the Canandaigua Treaty, 1790–1794*, describes detailed accounts of the events from 1790 leading up to the Canandaigua Treaty in 1794. In detail he describes the Philadelphia meeting March 23, 1792, placing Washington in the events of ensuring peace between the Haudenosaunee and the newly formed America. The President has been described as giving Red Jacket a silver medal for his orator experience in communication at this meeting, and also described that Red Jacket was very proud and honored to wear it. The message it was meant to convey was of peace and prosperity, with Native Americans adopting farming techniques, so they didn't need to own a lot of land for themselves, leaving more for settlers.<sup>15</sup>



Figure 4 Painting of a depiction of the Trail of Tears

<sup>14</sup> Walker, Adria. *Red Jacket's Peace Medal returned to Seneca Nation after 116 years at Buffalo Museum*. *Democrat and Chronicle News*. Published June 3<sup>rd</sup>, 2021.

<sup>15</sup> Densmore, Christopher. *Tioga Point to the Canandaigua Treaty, 1790–1794*. In *Red Jacket: Iroquois Diplomat and Orator*, 29–45. Syracuse University Press, 1999. <https://doi.org/10.2307/j.ctv32nxz53.11>. Page , 37.



History has not been kind to the Native people of the Americas. They have had their share of destruction of land and culture. We have discussed the loss of territory beforehand in this paper at the treaty at Fort Stanwix in 1784, and that treaty stripped the Senecas, Cayuga, Onondagas, and the Mohawks of their land in the Erie triangle and the Ohio Country. The Americans often saw Native Americans as enemies of war.<sup>16</sup> A major loss for Natives was in May of 1830, when Congress passed the Indian Removal Act, which was a power of law under the President to remove Natives off their land. From it a discourse was created between property rights, tribal sovereignty, and the governments jurisdiction, which still sits uneasy in today's society.<sup>17</sup> Author John P. Bowes, believes this was an act of violence, as it involved countless lives to be lost in the removal of Natives.<sup>18</sup>

A terrible American atrocity was the Trail of Tears. The tribes affected by this act were the Chickasaw, Cherokee, Choctaw, Creek and Seminole.<sup>19</sup> Other eastern Native Americans would be forced or coerced to make the trek west across the Mississippi. In the 1850s, many state governments had forbidden Natives with mingling with whites and denied them legal protection of the U.S. law. They even were not recognized as independent nations.<sup>20</sup> Other forms of cruelty against Native Americans can be found in later years of the early nineteenth century involving stolen artifacts, and the graverobbing of sacred remains, which is viewed as a terrible desecration of ancestors.

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<sup>16</sup> Ibid, 29.

<sup>17</sup> John P. Bowes. *American Indian Removal beyond the Removal Act*. Native American and Indigenous Studies 1, no. 1 (2014): 65–87. <https://doi.org/10.5749/natiindistudj.1.1.0065>. Page, 65.

<sup>18</sup> Ibid , 66.

<sup>19</sup> Trail of Tears: Definition, Date & Cherokee Nation - History. <https://www.history.com/topics/native-american-history/trail-of-tears>.

<sup>20</sup> Raines, June Camille Bush. *One Is Missing: Native American Graves Protection and Repatriation Act: An Overview and Analysis*. American Indian Law Review 17, no. 2 (1992): 639–64. <https://doi.org/10.2307/20062568>. Page 640.

Author D.S. Peisley's article "The Native American Graves Protection and Repatriation Act (1990): Where the Native Voice Is Missing," details to some extent the great troubles of what Native Americans have gone through, even the many accounts or horrendous acts.<sup>21</sup> The article goes on to describe how institutions had been an issue with mistreatment of Native Americans and their culture. Burial remains of Natives have become an issue for Indigenous people, and these objects have often been taken through violent acquisitions and wrongfully placed into institutional storage. An example the article describes was that of human remains from an Omaha tribal ancestor that was found in a Taco Bell wrapper in the University of Nebraska's laboratory,<sup>22</sup> which shows the lack of ethics towards these ancestral remains. There is justifiably strong criticism that the author uses in the article, with words such as "egregious" or "gruesome," to describe the mistreatment of these sacred remains.<sup>23</sup> Upon further reading, the author mentions how scientists would stuff Native skulls with mustard seed to examine the capacity they hold, in order to compare their intellectual capacity to that of Europeans.<sup>24</sup>

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<sup>21</sup> D. S. Pensley. *The Native American Graves Protection and Repatriation Act (1990): Where the Native Voice Is Missing*. *Wicazo Sa Review* 20, no. 2 (2005): 37–64. <http://www.jstor.org/stable/4140286>. (read article).

<sup>22</sup> *Ibid*, 43.

<sup>23</sup> *Ibid*, 44.

<sup>24</sup> *Ibid*, 46.

## The Definition of NAGPRA



Figure 5 Logo of NAGPRA

The Native American Graves Protection and Repatriation Act or NAGPRA, was a law passed by the United States government in 1990, for the Native Americans to have a fighting chance towards museums and other institutions in having stolen artifacts, remains and objects of cultural patrimony returned to the original owners of ancestral right, or in basic terms called repatriation.<sup>25</sup> In Chapter 24 of *The Oxford Handbook of American Indian History*, Scott Manning Stevens describes that museums for many Native Americans are places to avoid, as their culture and past have been misinterpreted and also alienated from certain communities. Importantly, he also states museums are a part of everyday life of the modern world — even as children we were taken on school field trips to museums.<sup>26</sup> He claims that museums have portrayed the Native American culture inaccurately.<sup>27</sup> Not just objects, but mainly the Natives themselves have been misinterpreted. James A.R. Nafziger, author of *The Protection and Repatriation of Indigenous Cultural Heritage in the United States*, agrees that NAGPRA bestows

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<sup>25</sup> Merryman, John Henry. *Two Ways of Thinking About Cultural Property*. The American Journal of International Law 80, no. 4 (1986): 831–53. <https://doi.org/10.2307/2202065>. Page 832.

<sup>26</sup> Hoxie, Fredrick E. Stevens, S. Manning *The Oxford Handbook of American Indian History*. Oxford University Press, 2016. Page 475.

<sup>27</sup> Ibid.

rights upon Native Americans and Indigenous Hawaiians to the ownership and control of human remains and cultural objects on federal and tribal lands.<sup>28</sup> This means that objects with cultural patrimony are no exception, like the Red Jacket Peace Medal that has been repatriated back to the Seneca Nation in May of 2021. With that being said, NAGPRA, after so many years since its passing in 1990, has seen proposals in 2023 to revise it. In 2023, legislation was proposed to ratify recent changes to this law. This paper will discuss this in deeper length later on.<sup>29</sup>

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<sup>28</sup> Nafziger, James A.R. *The Protection And Repatriation Of Indigenous Cultural Heritage In The United States*. Willamette Journal of International Law and Dispute Resolution 14, no. 2 (2006): 175–225. <http://www.jstor.org/stable/26211228>. Page 184.

<sup>29</sup> CCP Staff - January 8, 2023. *NAGPRA: Major Changes Proposed for 2023 to Native American Repatriation Law*. Cultural Property News, 9 Jan. 2023, <https://culturalpropertynews.org/nagpra-major-changes-proposed-for-2023-to-native-american-repatriation-law/>.

## Chapter 2: Literature Review

### Museum Interpretation of NAGPRA Law and Requirements

In today's world, Native American artifacts and traditions have become misplaced in the last two hundred years due to Native American removal especially within New York. We focus now on the law of NAGPRA, and the claims made by institutions and or museums to return objects and artifacts lost to Native tribes, like the Buffalo History Museum and the Red Jacket Peace Medal. We have come to understand the ethics presented in a repatriation process with Native American artifacts, along with the controversies that arise to counter those efforts. The Native American Graves Protection and Repatriation Act was signed into law in 1990 by George H.W. Bush, and it has been an enlightenment for how museums, federal agencies and anthropologists do business.<sup>30</sup> The article *Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation*, explains that NAGPRA urges and directs federal agencies and museums to initially make the determination of requested items for repatriation efforts. There is a need for evidence, and so there is a list of categories for determining the proof and authenticity of Native American antiquities. They are geographical, kinship, biological, archaeological, anthropological, linguistics, folklore, oral tradition and historical.<sup>31</sup> Under article 3001(3)(D) of NAGPRA, objects of cultural patrimony (Red Jacket Medal) are of importance to a tribal nation as they see it as an ongoing symbolic use for the nation's needs and that cannot be owned by a single entity. The National Park Service defines cultural patrimony as having objects symbolizing ongoing traditional, historical, or cultural significance central to the Native tribe or Native Hawaiian organization itself, that it cannot be

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<sup>30</sup> Schillaci, Michael A., and Wendy J. Bustard. *Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation*. Political and Legal Anthropology Review 33, no. 2 (2010) Page 353.

<sup>31</sup> Ibid, 354

owned by an individual tribal or organization member. The objects are of such vital importance that they should not be alienated, appropriated, or conveyed by any individual tribal or organization member. These objects must have to be considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group in order for the repatriation process to occur.<sup>32</sup>

NAGPRA has guidelines, that any institution receiving federal funding must comply with that law or suffer civil penalties. The National Parks Service describes that there are requirements that must be followed for proceedings of repatriation of any Native American artifact. These requirements have actions based on where burial remains are located and cultural items whether on federal land or tribal. Any federal agency has to follow a process for digging or discovery of cultural items since the passage of NAGPRA (1990).<sup>33</sup> On private or public land, any digging or a discovery is governed first by local or state laws. If human remains, or a cultural item has been removed from private or public land, it may be subject to NAGPRA as a holding or collection, depending on what institution is in control of them.<sup>34</sup> Author Myra Giesen, explains further requirements of NAGPRA in her book *Global Ancestors: Understanding the Shared Humanity of our Ancestors*. She describes that not only are the agencies and federal museums responsible for the return of the artifacts or cultural patrimony objects, but they are also responsible for the legal protection of any objects or burial remains along with the knowledge and information of set items within their possession.<sup>35</sup>

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<sup>32</sup> National Parks Service, Glossary, *Cultural Patrimony definition*. Accessed February 19, 2023.

<https://www.nps.gov/subjects/nagpra/compliance.htm><https://www.nps.gov/subjects/nagpra/glossary.htm#ocp>

<sup>33</sup> National Parks Service. *Compliance*. Accessed February 19, 2023.

<https://www.nps.gov/subjects/nagpra/compliance.htm>

<sup>34</sup> Ibid.

<sup>35</sup> Giesen, Myra. *The Protection and Repatriation of Native American Cultural Items in the United States*. In *Global Ancestors: Understanding the Shared Humanity of Our Ancestors*, edited by Margaret Clegg, Rebecca Redfern, Jelena Bekvalac, and Heather Bonney, 34–49. Oxbow Books, 2013. Page, 36.

NAGPRA is also known to set deadlines for returned possession of items, even when they are lineal descendants and or culturally associated with those exhibitions.<sup>36</sup> A part of the requirements involves council of the tribe associated with the claim of repatriation. It is of importance for any institution to invite tribal representatives and consult with the museum or any federal agency of that collection. There is a specific time limit to which a museum must consult with owners or a tribe. They have 90 days to adhere.<sup>37</sup> Myra Giesen, however, states that there have been disputes and discourse of repatriation of items with cultural affiliation as well.<sup>38</sup> Consultation is one of the guidelines of repatriation and is a huge factor for Natives today. It's considered a part of the democratic process and how museums can be subject to the public. The definition of the public are people that are categorized as children, minorities, working class, and handicapped.<sup>39</sup>

NAGPRA had made many victories for Native Americans, as the result of the repatriation mandate to federal agencies and museums. The mandate provides a large scale of public benefits which helps make these institutions better at their jobs.<sup>40</sup> NAGPRA has put forth tax subsidies for museums and institutions for those that implement better care and better access for Native Americans and their cultural property. NAGPRA has been a good thing for everyone, including Native Americans. The implications of this result have been widespread and allows for debates on repatriation.<sup>41</sup> It has been observed that the repatriation expressed in NAGPRA helps improve the museum's care of cultural objects. However, there are often arguments brought forth that are

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid 40.

<sup>38</sup> Ibid.36

<sup>39</sup> Archambault, JoAllyn. *American Indians and American Museums*. Zeitschrift Für Ethnologie 118, no. 1 (1993): 7–22. <http://www.jstor.org/stable/25842291>. Page, 8.

<sup>40</sup> Eynon, Alexandra. *The Public Values of Repatriation in the Native American Graves Protection and Repatriation Act*. Yale Law & Policy Review 38, no. 1 (2019): 229–64. <http://www.jstor.org/stable/45284530>. Page, 231.

<sup>41</sup> Ibid, 232.

for and against repatriation.<sup>42</sup> Pro repatriation critics may be a helpful and want to care for the rights of the Indigenous people. They too have to be mindful of whether it's for the common good and public interests. In May of 2010, a new rule was added to the law of NAGPRA, rule 10.11, which is titled the recovery of culturally unidentifiable ancestors.<sup>43</sup> The new rule initiates that museums and institutions to move forward and setting up consultations with Native American tribes. However, many scientists and scholars oppose the new rule, giving cause that there are issues with repatriation.<sup>44</sup>

### **Issues of Repatriation**

There are some disputes about repatriations of artifacts from tribes that are on a societal level. However, a great number of disputes are linked to burial remains to where there can be issues with returning the deceased. Such an example can be of Pueblo of Zuni tribe in New Mexico that don't necessarily reclaim burial remains because of the decades it took to return such remains, because there was no way to deal with reburial, especially if a person's clan was unknown.<sup>45</sup> However, recently in 2020 under the Trump administration with the help of NAGPRA, the American government after seventy years of communication finally had an agreement with Finland in returning unearthed Zuni Pueblo remains from southwestern Colorado that happened to have been unearthed illegally in 1891, by a Swiss archeologist. There were twenty or so remains and two dozen funerary objects re-buried at the Mesa Verde region in Colorado about one hundred years later.<sup>46</sup>

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<sup>42</sup> *ibid*

<sup>43</sup> Clayton W. Dumont Jr. *Contesting Scientists' Narrations of NAGPRA's Legislative History: Rule 10.11 and the Recovery of 'Culturally Unidentifiable' Ancestors*. *Wicazo Sa Review* 26, no. 1 (2011): 5–41. <https://doi.org/10.5749/wicazosareview.26.1.0005>. Page, 5.

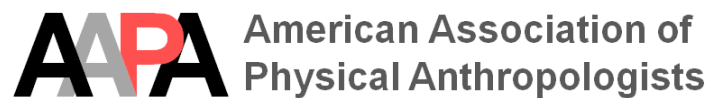
<sup>44</sup> *Ibid*, 6.

<sup>45</sup> *Ibid*. 36

<sup>46</sup> "Native American Remains and Artifacts Returned to Colorado after 130 Years." CBS News, CBS Interactive, 17 Sept. 2020, <https://www.cbsnews.com/colorado/news/native-american-remains-artifacts-returned-mesa-verde-colorado/>.



From interpreting the article *Repatriation and the Radical Redistribution of Art*, Erich Hatala Matthes, an associate professor of philosophy at Wellesley College and director of an environment center, introduces his case and view of repatriation.<sup>47</sup> Many museums have acquired their antiquities through unjust means, stealing and coerced exploitive transactions. Erich believes that these injustices should be rectified.<sup>48</sup> But, there is a process that must take place before any artifacts are repatriated. Philosophy, law, and anthropology tie in together the repatriation proposal. Erich claims that issues stem from the continuity of culture groups and determining whose object goes to who.<sup>49</sup> Like Native Americans for example, there are many tribes and cultural backgrounds and without proper knowledge, can make it harder for a repatriation process. He says that if a descendant or original owner of a cultural object is still alive, then repatriation is straightforward. When referring to a case of unjust acquisition of an artifact further in the past and the old owner is deceased, then museums tend face a problem, hence lacking repatriation efforts.<sup>50</sup>



*Figure 6 The Association of Physical Anthropology Logo.*

The Association of Physical Anthropology is a group of scientists that have subsequently sent a letter to the rules of NAGPRA in the mid-2000s on repatriation of burial remains. Their leaders stated in the letter, that if remains or funerary objects were not culturally identifiable, then repatriation should not happen even according to the guidelines of NAGPRA.<sup>51</sup>

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<sup>47</sup> Erich Hatala Matthes | Wellesley College. <https://www.wellesley.edu/philosophy/faculty/matthes>

<sup>48</sup> Matthes, Eric. *Repatriation and the Radical Redistribution of Art*, <https://doi.org/10.3998/ergo.12405314.0004.032>. Volume 4, No 32, 2017. Pg. 931.

<sup>49</sup> Ibid, 932.

<sup>50</sup> Ibid, 938.

<sup>51</sup> Clayton W. Dumont Jr. *Contesting Scientists Narrations of NAGPRA's Legislative History*: Page, 7.

Chip Colwell in his article *Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures*, explains how whenever a museum finds the claims of repatriation legitimate, they still control how the language is used and what is made public.<sup>52</sup> More so when a museum had rejected a claim, they have had no requirements to divulge their decisions and their justifications publicly. Museums do feel threatened by repatriation and the fact it affects their public image, which they have had to uphold. Most museums during the 19<sup>th</sup> century were for the elite and the wealthy that were a part of the private organizations ... and there has been this dynamic battle for museums to expose Native American artifact secrets for public interests.<sup>53</sup> The process of repatriation doesn't just harm the museum's loss of an object, but also how much cultural information that's been kept from the public gets exposed. Colwell leaves a question of whether museums are in it for the best interest of the public and the trust of the communities, if they try to control the information.<sup>54</sup> For reasons like this is why NAGPRA was proposed to congress to aid Indigenous people and help them reclaim their lost artifacts and ancestral remains. The process of the law can also be described by the U.S. Army Corps of Engineers who were a part of the enacting of the legislation in 1990. The U.S. Army Corps was devised in 1802 and consisted of 38 offices throughout the U.S. and 11 million acres of public land at the time. Archeological investigations have been a requirement on Corps land, and they have recognized the importance of this legislation. The Army Corps had put forth efforts in funding NAGPRA

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<sup>52</sup> Colwell, Chip. *Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures*. *Current Anthropology* 56, no. S12 (2015): S263–75. <https://www.jstor.org/stable/27108580>. Page, S266.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid, S268.

that they were a part of the program's process for ensuring compliance with non-compliant institutions, with a step-by-step process for them to follow (read foot note for more details).<sup>55</sup>



Figure 7: Kennewick Man at the Burke Museum in Seattle, Washington.

An example of the desire of museums and archeologists to want to prevent repatriation can be seen in the case study of the Kennewick Man of 1996. Author Susan Bruning in her article *Complex Legal Legacies: The Native American Graves Protection and Repatriation Act, Scientific Study, and Kennewick Man*, does a deep dive into the study of these old remains. On July 28, 1996, was the discovery of human remains alongside the Columbia River that was located near Kennewick, Washington. Benton County then contacted the local archeologist, James Chatters, to help determine and exhume the remains of the man.<sup>56</sup> By using radiocarbon dating they determined the remains to be between 8,000 to 8,500 years old.<sup>57</sup> The discovery had

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<sup>55</sup> Chari, Sangita, and Lavallee, Jaime M.N., eds. *Accomplishing NAGPRA: Perspectives on the Intent, and Future of the Native American Graves Protection and Repatriation Act*. Corvallis: Oregon State University Press, 2013. Accessed January 31, 2023. ProQuest Ebook Central. Page, 137.

<sup>56</sup> Bruning, Susan B. *Complex Legal Legacies: The Native American Graves Protection and Repatriation Act, Scientific Study, and Kennewick Man*. *American Antiquity* 71, no. 3 (2006): 501–21. <https://doi.org/10.2307/40035362>. Page, 503.

<sup>57</sup> Ibid.

stirred the interest of scientists, Native Americans, and the media. Since the remains were found on federal land the U.S. Army Corp of Engineers claimed control of the body. The plan was to ship it off to the Smithsonian for study, until claims of local Native Americans under the law NAGPRA stepped in and proclaim ownership, which halted the moving and gave NAGPRA control over the remains for identifying the tribe it was associated with.<sup>58</sup> However, the Army Corp then giving NAGPRA associates ownership, refused to allow further scientific studies on the remains, upsetting the scientific community. In response, the scientific community sued the U.S. government in the district of Oregon for seeking to further study the remains and not be returned to the Native tribes. This became known as the case *Bonnichsen v. The United States*.<sup>59</sup> In 2002, the district of Oregon ruled in favor of the scientists giving them access to the Kennewick remains to study at the Burke Museum in Seattle, Washington. This case was the first to ever test NAGPRA and show the young law as insufficient for protecting human remains of Native peoples.<sup>60</sup>

Erich Hatala Matthes claims that property is defined usually by a culture and not an individual and that culture's property is owned by that set culture. James O. Young, another mind of cultural property, is a professor of philosophy at the University of Victoria, agrees with Erich's claim. He believes to be skeptical on repatriation efforts of object ownership being based off of cultural inheritance and not individuality, as most of these objects have been wrongfully obtained.<sup>61</sup> Although, as Native American cultures would like their objects returned, Young does

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Will R. Ripley, *You're Not Native American - You're Too Old: Bonnichsen v. United States Exposes the Native American Graves Protection and Repatriation Act*. *Journal of Gender, Race & Justice* 9, no. 1 (Fall 2005): 137-160. Page, 139.

<sup>61</sup> Young, James O. *Cultures and Cultural Property*. *Journal of Applied Philosophy* 24, no. 2 (2007): 111-24. doi:10.1111/J.1468-5930.2007.00359. X. Pg. 111.

state that a culture does not need to be an institution in order to own its own cultural property. He describes the Zuni being an example again as to the ethics of returning objects.<sup>62</sup> He argues though, that intellectual property or stories alone hold little appeal to inheritance of properties, but traditional practice items of ceremonial purposes are of a different matter.

As a case issue, many objects and artifacts have been looted throughout Native American history from burial grounds and from communities.<sup>63</sup> Erich Mathes describes further in his article “Repatriation and the Radical Redistribution of Art,” there is an issue for NAGPRA, where there can be the lack of evidence of ownership of remains or objects for some cases for Native Americans. With the lack of documentation or knowledge of claims, it makes it harder for Native tribes to demand acquisitions of their sacred items.<sup>64</sup> Objects obtained by institutions must be returned to their artists if verified to be of cultural use and of importance.<sup>65</sup> There is one primary example being that the Peace Medal of Red Jacket which shows cultural patrimony to a set culture and the medal represented peace between Washington and Seneca tribal leader Red Jacket in 1792, which will be in discussions further in this paper. The medal was recently returned in May of 2021 to the nearby Seneca Nation of Indians by the Buffalo History Museum. The artifact was used and worn by the Seneca chief but its return from the museum was of more importance to the tribal nation rather than an individual, hence the conclusion of repatriation of the medal back to its cultural owners.<sup>66</sup>

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<sup>62</sup> Ibid, 112.

<sup>63</sup> Matthes, Eric. *Repatriation and the Radical Redistribution of Art*, page, 948.

<sup>64</sup> Ibid

<sup>65</sup> Young, James. 115.

<sup>66</sup> Staff, Editorial, and About Editorial Staff Stories written under the Editorial Staff byline are drawn from press releases and other notices. Submit your news to New York Almanack here. “Red Jacket Peace Medal Returned to Seneca Nation by Buffalo Museum.” New York Almanack, 4 Jan. 2022, <https://www.newyorkalmanack.com/2021/05/red-jacket-peace-medal-returned-to-seneca-nation-by-buffalo-museum/>.

The article “Objects of Controversy: The Native American Right to Repatriation” by Steven Platzman, believes that Native American cultural objects exhibited and stored in museums are of vital importance to the Native communities. These objects being held by museums are seen as sacred religious elements and for religious ceremonies, that with them on display hinders their abilities to perform their ceremonies as a piece of their cultural integrity.<sup>67</sup> From understanding this article, it is clear that the author is examining the efforts of NAGPRA along with what has been exposed about a majority of institutions on how they have acquired Native American artifacts being stolen from their original owners. He explains that Native Americans have been rather unsuccessful in their efforts of recovering lost objects. These institutions claim to use methods like hiring and organizing professionals to fully observe whether objects should be returned. Those who wish to reclaim any artifact must indicate proof of such authenticity and demonstrate prior ownership of it.<sup>68</sup> Another example for the issue of repatriation can be explained by Platzman. He shows the reader a dispute between the Larsen Bay Village of Kodiak Island in Alaska and the Smithsonian Institution, on burial objects that have been extracted since the 1930s from ancient burial grounds. However, what’s interesting is that since 1986, the island has been in communication with the Smithsonian for the return of these objects. But a deadlock between the two has caused controversy, the Smithsonian unable to recognize whether the existing villages claim and if they had possessed these items before.<sup>69</sup> What’s unique is that witnesses have testified on behalf of the Larsen Island people, but the Smithsonian does not see validity of these claims. Steven Platzman claims that institutions

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<sup>67</sup> Platzman, Steven. *Objects of Controversy: The Native American Right to Repatriation*. American University Law Review 41, no.2 (1992): 517-558 Page , 519-520.

<sup>68</sup> Ibid, 535.

<sup>69</sup> Ibid 527-528.

sometimes can be ignorant of their property or the identity of the recent predecessor and some common rules of the court of law protect the current possessors from litigation.<sup>70</sup>

NAGPRA was created to address the concerns of Indigenous people allowing to return what has been stolen, especially challenging the lack of ethical practices of researchers. Many authors or editors of *Chaco Canyon Dig Unearths Ethical Concerns*, explain how there's failure to consult with tribes, leading researchers to ignore the tribal studies which make problems in objectifying language. Also, uses of carbon dating and DNA extraction methods have become destructive techniques towards ancestral remains.<sup>71</sup> The authors of this article seem to believe that there's a need for respect when identifying Native remains and referred to or viewed as individuals, not just disaggregated body parts.<sup>72</sup> This particular article shows us the archeological side of the repatriation processes, and the behavior which researchers need to exhibit during excavations of cultural objects. There was one phrase that was mentioned in the article that is very applicable, "past research indiscretions have created a history of mistrust and many Native American communities."<sup>73</sup>

With a deeper dive into understanding repatriation of remains and items, there's actually recommended steps for the process. Author Renee Kossalak in her article "The Native American Graves Protection and Repatriation Act: The Death Knell for Scientific Study?" shows the readers these steps as being consultation, written summary and inventory procedures, notification, repatriation, and disposition.<sup>74</sup> What was troubling from this reading was how she

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<sup>70</sup> Ibid 534 -535.

<sup>71</sup> Katrina G. Claw, Dorothy Lippert, Jessica Bardill, Anna Cordova, Keolu Fox, Joseph M. Yracheta, Alyssa C. Bader, et al. *Chaco Canyon Dig Unearths Ethical Concerns*. Human Biology 89, no. 3 (2017): 177–80. <https://doi.org/10.13110/humanbiology.89.3.01>. Pg, 178.

<sup>72</sup> Ibid, 178.

<sup>73</sup> Ibid.

<sup>74</sup> Kossalak, Renee M. *The Native American Graves Protection and Repatriation Act: The Death Knell for Scientific Study?* American Indian Law Review 24, no. 1 (1999): 129–51. <https://doi.org/10.2307/20070624>. Pg, 140.

describes those museums and agencies who aren't really required to repatriate funerary objects associated with cultural heritage.<sup>75</sup> The author then gives a list of how any object under claim must demonstrate the following process (see page 140).<sup>76</sup> The author does seem to criticize the effects of NAGPRA and the failures to specify the types of studies that should be used on human remains to help link claimants for present Native tribes.<sup>77</sup> From what was addressed earlier on in this paper was that sometimes-returning objects can be difficult if a clan is unknown, the author seems to agree with that understanding. She goes on to explain that at times different tribes have occupied the same certain geographical areas at different times in the historic past, and that descendants that are affiliated with those tribes may no longer exist.<sup>78</sup> With that being the case, it becomes an issue for repatriation efforts and institutions to ethically return remains or objects.

### **Institutional Compliances**

What's demeaning to any Native American culture group is when museums and institutions protest against repatriation efforts. Ann M. Kakaliouras studies anthropology and received her Ph.D. from the University of North Carolina. Her article, "An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice," shows an example of how U.S. archeologists and physical anthropologists have voiced their concerns in academic literature against the efforts of repatriation. This is one of the quotes from one of those scholars taken from the article:

I explicitly assume that no living culture, religion, interest group, or biological population has any moral or legal right to the exclusive use or regulation of ancient human skeletons since all humans are members of the same species, and ancient skeletons are the remnants of unduplicatable evolutionary events which all

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<sup>75</sup> Ibid, 140.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid



living and future peoples have the right to know about and understand. In other words, ancient human skeletons belong to everyone.<sup>79</sup>

The author claims that from her research and this quote, that science relating to archeology would have an irreversible loss because of repatriation.<sup>80</sup> With these issues of artifacts and repatriation, NAGPRA has set up a list of compliances or guidelines for museums and federal, state and local agencies to follow to aid in repatriation. Under National Park Service's law, first and foremost all institutions whether they are museums, state or local governments and universities who receive federal government funding, have to comply with NAGPRA.<sup>81</sup> Federal agencies have to follow a process for any type of digging or unearthing cultural items or remains whether they be on federal or tribal land. All discoveries must go through local and state laws, however, if items are removed from private or state lands, then it is subject to NAGPRA. If Native American cultural items are housed and stored in museums or any institution, then all inventory must be compiled, and summaries written on each item they may have in their possession.<sup>82</sup> Under NAGPRA it is important for museums to consult with lineal descendants of Native tribes and Hawaiian organizations. They have to also evaluate any repatriation requests and make sure to give public notice of the repatriated artifacts.<sup>83</sup> Returning to author Chip Colwell and his article "Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures," he shows a table of NAGPRA and is placed for readers to see the law of NAGPRA and sections of compliance for museums. (see Figure 8).<sup>84</sup>

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<sup>79</sup> Kakaliouras, Ann M. *An Anthropology of Repatriation: Contemporary Physical Anthropological and Native American Ontologies of Practice*. *Current Anthropology* 53, no. S5 (2012): S210–21. Page, S211.

<sup>80</sup> Ibid.

<sup>81</sup> National Parks Service. Compliance. Accessed February 24, 2023.  
<https://www.nps.gov/subjects/nagpra/compliance.htm>

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Colwell, Chip. *Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures*. Page, S267.

Mechanism	Description	Legal citation
Complete information	Museums must make inventories (for human-remains-associated funerary objects) and summaries (for unassociated funerary objects, sacred objects, and communally owned objects) that identify the geographical context and cultural affiliation of each cultural item	25 USC 3003.5(a); 25 USC 3003.5(b)(1)(B); 25 USC 3004.6(b)(1)(C); 43 CFR 10.8(b); 43 CFR 10.9(c)
Share information	Inventories and summaries must be made available to lineal descendants, Indian tribes, the National NAGPRA Program, and the NAGPRA Review Committee	25 USC 3003.5(b)(2); 25 USC 3004.6(a); 43 CFR 10.8(a); 43 CFR 10.9(a)
Consultation	For inventories, affiliations must be completed in consultation; for summaries, consultation may follow the completion of this step; for culturally unaffiliated human remains, museums must initiate consultation	25 USC 3003.5(b)(1)(A); 25 USC 3004.6(b)(1)(B); 43 CFR 10.8(d)(2); 43 CFR 10.9(b)(2); 43 CFR 10.11(b)
Share information	Museums must make a range of information about the inventory process itself available to consulting parties, including lists of tribes consulted, general descriptions, projected time frames, and additional documentation used for cultural affiliations	43 CFR 10.9(b)(3); 43 CFR 10.11(b)(3)
Share information	All records, catalogs, relevant studies, and pertinent data must be made available to the potential lineal descendants and officials and traditional religious leaders of potentially culturally affiliated tribes as well as to the National NAGPRA Program and Review Committee	25 USC 3003.5(b)(2); 25 USC 3004.6(b)(2); 43 CFR 10.8(d)(3); 43 CFR 10.9(e)(5)(i)
Share information	Museums must share all information they possess about cultural items to assist Indian tribes to make a claim	25 USC 3005.7(d)
Share information	Museums must inform recipients of cultural items of any known treatments that used pesticides, preservatives, or other substances that could be harmful to humans	43 CFR 10.10(e)
Public information	Documentation supplied by a federal agency is considered a public record	43 CFR 10.9(e)(5)(ii)
Public information	Repatriation and dispositions may not proceed until the National NAGPRA Program has been notified and until 30 days after a notice has been published in the Federal Register, the official public journal of the US government	25 USC 3003.5(d)(3); 43 CFR 10.8(f); 43 CFR 10.9(e)(7); 43 CFR 10.10(a)(3); 43 CFR 10.10(b)(2); 43 CFR 10.11(d)

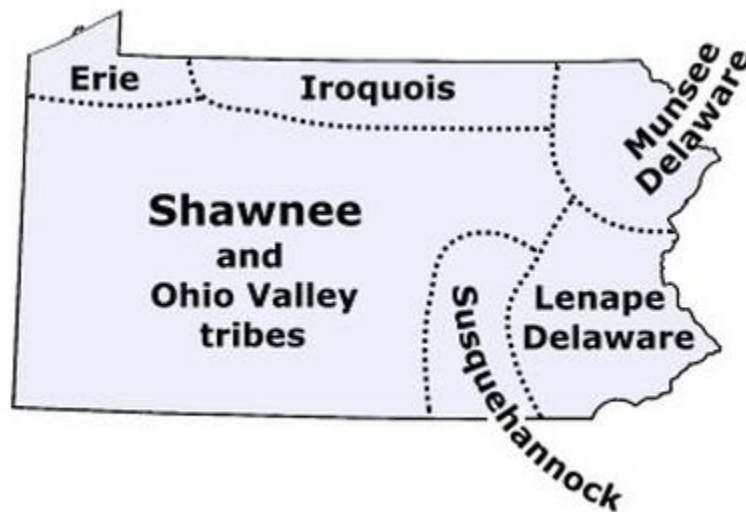
Figure 8 Clip taken from Colwell article.

An example of institutions complying with NAGPRA demands were Binghamton University and the New York State Museum in Albany, NY. April Beisaw in her piece of writing “Memory, Identity, and NAGPRA in the Northeastern United States,” describes a case of Engelbert’s Susquehannock Cemetery near Susquehanna Valley around the border of Pennsylvania and New York, about burial remains.<sup>85</sup> Throughout the article, the author explains more of the history surrounding the cultural tribe of the Susquehannock. (For further details on the Susquehanna read the article page 247).<sup>86</sup> In 1967-68, staff from Binghamton University in New York, had carried out excavations of burial remains at Engelbert Susquehannock Cemetery, which were identified as belonging to a now extinct nation of Native Americans that lived near the border of the Haudenosaunee (Iroquois Confederacy). Not only remains but large amounts of artifacts were recovered, and excavations would proceed until around the 1990s. When

<sup>85</sup> Beisaw, April M. *Memory, Identity, and NAGPRA in the Northeastern United States*. American Anthropologist 112, no. 2 (2010): 244–56. <http://www.jstor.org/stable/40801777>. Page, 247.

<sup>86</sup> Ibid.

NAGPRA was enacted, Binghamton's members had to relinquish control of the objects to the New York State Museum.<sup>87</sup> Since the New York State Museum and Binghamton University were state institutions, they were obligated by NAGPRA to comply with documenting and inventorying the remains for the public and of public knowledge. Binghamton was able to finish documenting their collections in 1996, and the New State Museum finished in 1998.<sup>88</sup> Then Binghamton University went to further consult with Native American tribes of similar origin to determine a cultural affiliation and efforts of repatriation for the remains and artifacts, but came up with no answer.<sup>89</sup> The author describes that the Haudenosaunee under NAGPRA, may have cultural affiliation of those that were protectorates, like the Susquehannock, of the burial remains, which the tribe that had lived around the Haudenosaunee territory.<sup>90</sup>



*Figure 9 Map of Where Susquehannock Tribe had lived.*

When museums, state and local governments manage to fail in complying with NAGPRA law, there are certain civil penalties that are made aware to these institutions. Under the National

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid, 248.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

Park Service, they inform the public and institutions of the repercussions on failure to comply with repatriation. Their website states that anyone can be assessed for civil penalties under law if and when they fail to comply with NAGPRA.<sup>91</sup> All allegations first must be reported in writing, identifying the parties responsible, what sections of NAGPRA that were broken and proof of documentation. Upon reviewing the allegations sent in, a NAGPRA coordinator will then reassess the situation and make a formal investigation on the matter.<sup>92</sup> Once the investigation is complete the museum or institution will receive a letter from the coordinator giving them notice of the failure of compliance. Once that's arranged, the museum has about four different choices in how to proceed with civil claims, and the National Park service describes these options:

1. The museum may accept the proposed penalty and pay the penalty as assessed.
2. The museum may request informal discussions with the Assistant Secretary for Fish and Wildlife and Parks.
3. The museum may file a petition for relief to the Assistant Secretary for Fish and Wildlife and Parks.
4. The museum may request an administrative hearing on the amount of the penalty.<sup>93</sup>

A very good example of noncompliance with NAGPRA was at the Effigy Mounds National Monument in Iowa back in July of 1990. Thomas Munson was an employee for the National Park Service from 1964 to 1994, and in 1971 he would serve as superintendent of the Effigy Mounds. He was in charge of protecting and preserving this sacred site. In July of 1990, Munson would be found and tried for having at least 41 burial remains and artifacts taken from the museum's collection and from the Effigy Mounds burial mound, which were inside garbage bags in the garage of his house. In a statement he would make in court saying he did that to stray

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<sup>91</sup> Civil Penalties, National Parks Service. <https://www.nps.gov/subjects/nagpra/civil-penalties.htm>. Accessed February 28, 2023

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

away from the mandates of NAGPRA and he felt it was a bad law.<sup>94</sup> Within court he had testified that NAGPRA allows modern day Native American tribes to unscientifically affiliate themselves with historical Native remains. By refusal to comply with NAGPRA mandates, Munson was sentenced to jail for 10 consecutive weekends, with a 12-month probation, a \$3,000 fine, and long hours of community service with a restitution pay of over \$100,000.<sup>95</sup>



*Figure 10: Aerial view of Effigy Mounds in Ohio*

Another case that had happened with a museum failing to comply with NAGPRA would be the State Illinois Museum. Since the mid-1990s, they have refused to return Native American remains and establish any cultural affiliation, which most of these remains date back to the mid-seventh century.<sup>96</sup> With the time period that long ago, some archeologists explain that the remains now are prehistoric with no factual records. Brooke Morgan, the museum's curator of anthropology mentions that the museum's past approaches were due to the weakness of NAGPRA.

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<sup>94</sup> "Former Effigy Mounds National Monument Superintendent Sentenced to Serve Federal Jail Time." Northern District of Iowa | *Former Effigy Mounds National Monument Superintendent Sentenced to Serve Federal Jail Time* | United States Department of Justice, 12 July 2016, <https://www.justice.gov/usao-ndia/pr/former-effigy-mounds-national-monument-superintendent-sentenced-serve-federal-jail-time>.

<sup>95</sup> Ibid.

<sup>96</sup> Jaffe, Logan, et al. *America's Museums Fail to Return Native American Human Remains*. ProPublica, 11 Jan. 2023, <https://www.propublica.org/article/repatriation-nagpra-museums-human-remains>.

Academic institutions are not exempt from NAGPRA, especially renowned Harvard University. In February of 2021, the Association of American Indian Affairs had sent a letter to Harvard president, Lawrence S. Bacow addressing that the university had been in violation of NAGPRA.<sup>97</sup> The letter accused the Peabody Museum of Archeology of ethical missteps handling Native American human remains and cultural objects, along with failing to consult with tribal leaders and nations when inventorying their collections. Harvard has had a record of not always consulting with Native American tribes that have possible connections to cultural objects. But the AAIA chief executive and attorney Shannon O'Loughlin, of the Choctaw Nation in Oklahoma, stated that despite their lack of following NAGPRA guidelines, Harvard gets to keep the remains solely because no claims of evidence were presented for the remains and cultural objects.<sup>98</sup>

### **Institutions Keeping Native American Antiquities**

With these mandates under NAGPRA law, institutions tend to keep their artifacts and we need to wonder about their motives in doing so. Author Clement Meighan in his article “Another View on Repatriation: Lost to the Public, Lost to History,” goes on to claim that museums have been only known as looters and destroyers of Native American culture. He further argues that the repatriation process eliminates time, in which the age of all antiquities somehow is owned by that set culture regardless of proof and the length in time of artifacts.<sup>99</sup> However, museums like to think of themselves as not just looters for holding Native American antiquities but to be seen as doing their civic duty. It has been described that a museum isn't just about its collections, rather

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<sup>97</sup> *Native American Nonprofit Accuses Harvard of Violating Federal Graves Protection and Repatriation Act*: News: The Harvard Crimson.” News | The Harvard Crimson, <https://www.thecrimson.com/article/2021/3/12/nagpra-peabody-letter>.

<sup>98</sup> Ibid.

<sup>99</sup> Meighan, Clement W. *Another View on Repatriation: Lost to the Public, Lost to History*. The Public Historian 14, no. 3 (1992): 39–45. <https://doi.org/10.2307/3378226>. Page,40.

it's a place of ideas and how humans get to interact with remains and artifacts describing the past.<sup>100</sup> Simply displaying objects can be a controversial topic, however museums tend to go above and beyond in displaying their exhibitions in hopes to stimulate and educate minds.<sup>101</sup> During the twenty-first century, museums have seen themselves as the center for learning on the world which we live in, that are organized in the collections of material culture, art, and natural sciences.<sup>102</sup> Technically museums like to look inwards amongst its peers for guidance and understanding, to find anything outside their circle for evaluation and innovation, has been deemed as unprofessional.<sup>103</sup> Author Willard Boyd in "Museums as Centers of Controversy," asks if museums should be allowed to let outsiders in on the decisions about their collections. Asking also if museums should have a responsibility consulting to certain cultural groups of a collection.<sup>104</sup> He believes museums must consult and be willing to listen and allow change when merited. How and what a museum collects have been solely based on the judgement of the curator, however that judgement has now been called into question with NAGPRA regulations to set a precedent for these institutions.<sup>105</sup>

It seems that museums collect because they felt it was never enough, like a need or drive to keep having new things within their collections. Author Steven Lubar in his document "Into the Storeroom," shows an example of the needy museums. At Brown University's Museum of Natural History (Jenks Museum) in Providence, Rhode Island, it was the curator John Whipple Potter Jenks who started his museum in 1871. Jenks was a naturalist and an educator, and by the

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<sup>100</sup> Boyd, Willard L. *Museums as Centers of Controversy*. Daedalus 128, no. 3 (1999): 185–228.

<http://www.jstor.org/stable/20027572>. Page, 185.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid, 185-186.

<sup>103</sup> Ibid, 187.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid, 188.

1890s, at the apex of his museum, he had housed over 50,000 objects and specimens. His museum was packed with display cases and crates in the basement for storage, that even within his annual reports it was claimed he still desired more.<sup>106</sup> There was a report in 2004 the author mentions, that about two-thirds of museums had substandard storage conditions, thirty percent had not cataloged their artifacts and many never had plans of keeping track of what came in.<sup>107</sup> In today's world, lots of museums have over 95 percent of their collections in storage, and then when they need a set collection for display, they remove them from storage.<sup>108</sup>

There have been instances where repatriation eventually does come around, however sometimes it takes a generation for things to be done and that is why they hold onto these objects and remains. The University of North Dakota is an example of why institutions hold onto these Native remains for so long. Over thirty years ago, Congress passed NAGPRA, which targeted educational institutions as well. The University of North Dakota had collected Native American remains from common archeological digs.<sup>109</sup> The efforts of repatriation have been so long and slow that it's been a whole generation since any attempts have been made. It has been noted that many institutions like to drag out the process for believing that Natives don't have enough concrete evidence for these claims, and disputing whether to return these artifacts, like the University of North Dakota Collecting Native remains by archeologists and academic institutes has been for the pursuit of knowledge and deeper into research of the past.<sup>110</sup>

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<sup>106</sup> Lubar, Steven. *Into the Storeroom*. History News 72, no. 4 (2017): 15–19. <http://www.jstor.org/stable/26446184>. Page, 16.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid, 17.

<sup>109</sup> Smith, Mitch, and Julie Bosman. *Congress Told Colleges to Return Native Remains. What's Taking so Long?* The New York Times, The New York Times, 15 Sept. 2022, <https://www.nytimes.com/2022/09/15/us/native-american-remains-university-of-north-dakota.html>.

<sup>110</sup> Ibid.



The Smithsonian to this day holds the largest collection of Native American objects. By their estimation they hold over 18,500 skeletons of Native Americans and over 600,000 remains.<sup>111</sup> Native American remains have also been as far away as London, Great Britain. Yet, museums are not the only places to keep Native antiquities. Universities have been known to maintain collections of sacred objects too.<sup>112</sup> Museums and other institutions have been known to have an unwillingness to return Native American antiquities or remains to descendants who may have had a claim on them. Like the Smithsonian who has lacked in returning claimed Native relics, have argued that they only wish to make sure that these objects can receive the best care when leaving their collections. Author June Raines, Vice Chairman for Health, and Science Administration of Provost at the University of Oklahoma Health Sciences Center, finds it ironic that a museum cares for the protection of artifacts and remains when in question are their own storage rooms and unstable care for these objects as well.<sup>113</sup> She also claims that even the archaeologists at the Smithsonian fear that returning remains or artifacts may change or end the scientific study, and the loss of science is irreversible once items are repatriated.<sup>114</sup>

NAGPRA has been a conflict between religion and science along with the ethics of respect, and these have been tough decisions with the governments involved from both sides with creating legislation. Both parties involved are always concerned with keeping the human identity that defines ourselves in the universe.<sup>115</sup> Science uses deductive reasoning, using the facts to identify the repatriation processes of certain artifacts, and whether they are necessary to

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<sup>111</sup> Raines, June Camille Bush. *One Is Missing: Native American Graves Protection and Repatriation Act: An Overview and Analysis*. American Indian Law Review 17, no. 2 (1992): 639–64. <https://doi.org/10.2307/20062568>, Page, 643.

<sup>112</sup> Ibid, 644.

<sup>113</sup> Ibid, 644-645.

<sup>114</sup> Ibid, 645.

<sup>115</sup> Cryne, Julia A. *NAGPRA Revisited: A Twenty-Year Review Of Repatriation Efforts* American Indian Law Review 34, no. 1 (2009): 99–122. <http://www.jstor.org/stable/25684264>. Page, 99.

return. This viewpoint is that of the scientists and archeologists, where they value these remains and artifacts for scientific and historical studies. They also believe that they can also provide a vast array of information about the past and present with the evolution of mankind.<sup>116</sup> The other viewpoint is religion, whereby Native Americans' beliefs factor into repatriation with the understanding that there needs to be greater awareness and sensitivity for their cultural traditions. For Native Americans, the conflicts that take place usually reside with the religious value of human remains, funerary objects and objects of cultural patrimony which are defined within the laws of NAGPRA.<sup>117</sup> They also in their perspective, have viewed human remains as a once living, breathing person who should be endowed with the respect of proper burials. Failure to treat the remains and sacred objects as such has social consequences for museums and federal agencies.<sup>118</sup>

Authors Jack Trope and Walter Echo-Hawk, in the book, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, have stated that a good reason for scientists and archeologists to want to keep Native remains and cultural objects is because of the educational value these items hold, which is why it must be preserved at all costs.<sup>119</sup> The early interest of collecting Native American artifacts and mostly body parts started long before the Civil War. The authors make note of the father of American anthropology, Dr, Samuel Morton, who in the 1840s, collected large numbers of Native skulls. Through his endeavor it was his goal to study the skulls and prove that the Natives were inferior to whites.<sup>120</sup>

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<sup>116</sup> Ibid, 101.

<sup>117</sup> Ibid, 100.

<sup>118</sup> Ibid.

<sup>119</sup> Trope, Jack F. and Walter R. Echo-Hawk. *The Native American Graves Protection and Repatriation Act: Background and Legislative History*. In *Repatriation Reader: Who Owns American Indian Remains?*, edited by Devon A. Mihesuah, 123-168. Lincoln: University of Nebraska Press, 2000. Page, 37.

<sup>120</sup> Ibid, 40.

In 1868, under the U.S. Surgeon General's orders, finding Native body parts was now a government task, to which was claimed by Morton that the Natives were a vanishing race and doomed to extinction.<sup>121</sup> Through this kind of thinking it also allowed for the government to justify removing Natives off of their land and conducting various forms of genocide to Natives.<sup>122</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

### **Chapter 3**

#### **NAGPRA and Repatriation from Native American Perspective**

##### **Proof Falls on the Tribes**

After NAGPRA had passed, many Native Americans jumped on board to use this law to help them reclaim their lost cultural property. Author June Raines again mentions the issues of tribes with the law, that when bringing institutions to court, there must be substantial proof in which courts could recognize the case for repatriation.<sup>123</sup> Native Americans have spiritual beliefs that they are connected to these objects when making repatriation claims. Chip Colwell says that Natives are responsible for compiling evidence, but at the expense of exposing their private selves or their personal life.<sup>124</sup> An example he uses was the dispute between the Western Apache NAGPRA Working Group and the American Museum of Natural History. Ramon Riley, an Apache traditionalist, went before a NAGPRA board in claiming medicine items that were considered holy, were being held by the museum. He showed the board his personal medicine bag, saying that the museum items are necessary for use to this day. But with no documentation, he went before the board in terms of oral expression and concern with the bag which he showed as proof.<sup>125</sup> Museums mostly call upon documented physical verification that the tribes must present their claim under NAGPRA law. But what is hard is when there isn't definitive proof for these claims, as a lot of Native Americans have relied on oral traditions. Since the passing of NAGPRA, many Native American tribes have started to assert their cultural rights of intellectual property. They should do so rightfully, and as one author would be keen to understand the reasons why. It's not just about cultural property, it's the intellectual property that matters as

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<sup>123</sup> Ibid, 646.

<sup>124</sup> Colwell, Chip Page, S270.

<sup>125</sup> Ibid.

well in the ethics of repatriation. Richard A. Guest, author of the article “Intellectual Property Rights and Native American Tribes” describes that intellectual property encompasses the non-physical objects pertaining to a repatriation process. Essentially meaning the “right to do certain things, to authorize others to do certain things, and to prevent others to do certain things.”<sup>126</sup> He does well to use examples like how the U.S. government uses laws on copyright and patents to protect the original expressions, and there’s no difference between Native American tribes as they express their cultural identity and Indigenous heritage. Other expressions of their intellectual property would be rights to knowledge of medicine, the embodiment of religious ceremonies and oral traditions, all tied into that property.<sup>127</sup> This article is unique in its way of offering a difference between cultural property that’s been so highly regarded for repatriation, versus intellectual property as it has been limited from the stories that most tribes people can rely on without concrete proof. The communication aspect is indeed important for both sides in the repatriation process. The author does well to address the many differences between the two categories. Speaking that today’s laws underly the protection of physical objects by societal values deeming objects as sacred which is categorized as cultural property. To the author’s knowledge, he contrasts with intellectual property again stemming from the free enterprise and economic values and so forth.<sup>128</sup> There’s more to what the author distinguishes, however it’s a long deep explanation of his point of view. It’s best for the reader to actually look at the complex language the author uses on how he differentiates the two concepts.

Speaking of oral traditions, some Native American tribes have always had issues with institutions in facilitating their demands of repatriation. The understanding in this next article is

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<sup>126</sup> Guest, Richard A. *Intellectual Property Rights and Native American Tribes*. American Indian Law Review 20, no. 1 (1995): 111–39. <https://doi.org/10.2307/20068786>. Pg, 113.

<sup>127</sup> Ibid, 113-114.

<sup>128</sup> Ibid, 115-116.

to help determine validity of oral traditions, with archeology as a source of proof for repatriation efforts. Author Ronald Mason of “Archaeology and Native North American Oral Traditions,” argues that oral traditions of Natives are facts of “traditional knowledge” as it helps explain past events concerned with the preservation of traditions.<sup>129</sup> James Young argues that case and identifies that “a cultures claim to intellectual property such as stories and songs does not appeal to the inheritance.”<sup>130</sup> Returning to Mason’s argument, he further explains oral traditions as a repository of crucial knowledge of the past, along with being a part of religious beliefs. Yet Mason confirms what James Young states, archeology is a part of acquiring Native antiquities and has little to no relevance for supporting Native knowledge.<sup>131</sup> Mason does not seem to support that basis, but it’s clear from his work that he does support intellectual property or oral traditions as necessary for preservation of Native traditions.

There is another author who is a Pawnee tribal historian and has worked to preserve the oral traditions and history of the Pawnee, who can claim the relevance of oral traditions. Roger C. Echo-Hawk, being a member of the Pawnee does correspond Mason’s argument with the basis of oral traditions. The article, *Ancient History in the New World, Integrating Oral Traditions and the Archaeological Record in Deep Time*, explains that without a doubt archeology has played a major role in the process of repatriation and although there is need for formal evidence of claims, NAGPRA does state oral traditions as a necessary source of cultural connections.<sup>132</sup> From Echo-Hawk’s work, he makes sure to include NAGPRA’s concepts on oral traditions as necessary for cultural contexts. Echo-Hawk’s mindset, from his research, states

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<sup>129</sup> Mason, Ronald J. *Archaeology and Native North American Oral Traditions*. American Antiquity 65, no. 2 (2000): 239–66. <https://doi.org/10.2307/2694058>. Pg 240.

<sup>130</sup> Young, James O. *Cultures and Cultural Property*. Pg, 115.

<sup>131</sup> Mason, Ronald. Pg, 240

<sup>132</sup> Echo-Hawk, Roger C. *Ancient History in the New World: Integrating Oral Traditions and the Archaeological Record in Deep Time*. American Antiquity 65, no. 2 (2000): 267–90. <https://doi.org/10.2307/2694059>. Pg, 267.

that since the twentieth century, scholars began forming more interest in oral literature and traditions, along with using oral stories for information on ancient events.<sup>133</sup> It turns out that this type of interest is a new practice and although it's now just being understood, the author remarks that for institutions, there still has to be a certain amount of written evidence along with oral validation for the human history.<sup>134</sup> Essentially, the federal agencies are the judges and NAGPRA can only aid and offer claims on repatriation. The article claims again that all oral stories, to be considered as evidence, must support the culture affiliation, and be based on connected opinions in order to favor any claims.<sup>135</sup> Now that seems to be in favor of institutions that use this against repatriation claims. The objective of the author is to convey that oral stories are evidence enough and should equate to a degree with written documents.

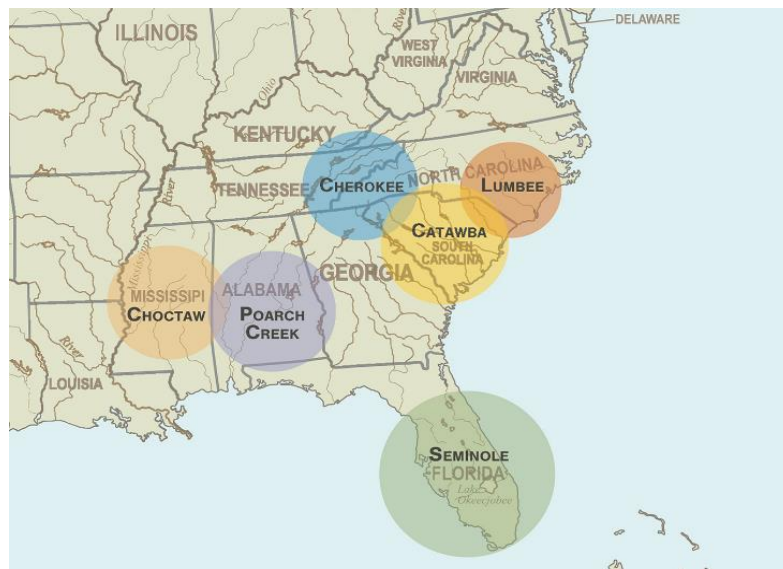


Figure 11 Tribes represented by the UF Oral History program.

Oral histories are particularly important to a tribe's lineage and heritage. Author Joseph Kays, in his article "Native Voices: Oral Histories Help Preserve Indigenous Heritage," did

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<sup>133</sup> Ibid, 268.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

research on Florida University, which did a study in the 1960s of Native American oral heritage.<sup>136</sup> University of Florida historian Samuel Proctor lead a team of volunteers who scoured around the southwestern regions of the U.S. to study Native oral history. The program had interviewed around 1,000 Native Americans tribes of that region, and they were the Seminole, Cherokee, Choctaw, Catawba, Creek and Lumbee tribes, from 1966 to 1975.<sup>137</sup> The program was funded by philanthropist and tobacco heiress Doris Duke, who felt the need to preserve Native cultural traditions, and oral histories. The program received \$170,000 for the studies to tape record the stories of these tribes. The article states Duke's argument, that the libraries are full of Native history books written by non-Natives. A tape recorder would give these tribes the opportunity to share their stories by talking of their rich past.<sup>138</sup> Samuel Proctor believed that their program had saved a lot of history that otherwise would have been lost.<sup>139</sup>

What happens to the care of remains or artifacts that cannot be returned to the original owners? That question appears to be answered by Kay Mathiesen and her work *A Defense of Native Americans' Rights over their Traditional Cultural Expressions*. For in the article, it states that since 2006 scholars from a mix of librarians, archivist, curators, and representatives of about First Nation tribes, Native Americans, and other Aboriginal peoples, came together to draft a document. This document entails Protocols for Native American Archival Materials (PNAAM), which has now become a practice of handling and dealing with traditional Native American expressions and knowledge.<sup>140</sup> These knowledges are referred to as the transcripts and recordings

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<sup>136</sup> Kays, Joseph. *Native Voices: Oral Histories Help Preserve Indigenous Heritage*. Explore Magazine, 5 Dec. 2022, <https://explore.research.ufl.edu/native-voices-oral-histories-help-preserve-indigenous-heritage.html>.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Mathiesen, Kay. *A Defense of Native Americans' Rights over Their Traditional Cultural Expressions*. The American Archivist 75, no. 2 (2012): 456–81. <http://www.jstor.org/stable/43489632>. Pg. 456.



of songs, chants, community histories, or histories, folklore, and myths.<sup>141</sup> The ethics of maintaining these documents or remains is needed to preserve Native historical culture to the fullest extent, especially with the values of oral stories being overlooked for documentation. This article does state that PNAAM does believe in balancing the responsibilities between tribal and non-tribal information. They also believe in respecting the moral rights of others and following those principles within an institution's storage.<sup>142</sup> PNAAM has suggested to librarians and archivists to recognize Native American rights as they get to limit or deny the amount of access of oral stories, images, and any other kind of information. The author has made good use of information on ethical necessary practices of people. Also, the work states that PNAAM disagrees with mainstream practices and believes that there's an ethical code for archiving such delicate objects.<sup>143</sup> There are numerous ethical responsibilities for archivist in preserving historic objects, along with the most important as the privacy of any subjects of archival records.<sup>144</sup> This author and article do not show us anything of repatriation, yet the ethical standards of archiving within these institutions on Native American objects is mentioned greatly, especially the remains that are not returned.

### **Not all Tribes are Recognized**

When under NAGPRA and a claim of repatriation has been made, some can speculate who can actually reclaim artifacts and what Native American tribes have access to that law. There are some Native American tribes that are not even recognized by the United States government. One thing we can try to understand that under federal law, each Native tribe that's

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<sup>141</sup> Ibid, 457.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid, 458.

<sup>144</sup> Ibid, 459.

been recognized has a legal standard of whether who is a recognized and who is not.<sup>145</sup> With the aid of the federal courts, tribes have the power to decide who can be recognized members of NAGPRA, and the government played a key role in that decision.<sup>146</sup>

There are over 567 recognized Native tribes broken down into 48 states of America that have affiliation with the laws of self-governance and recognition of the federal government. Back in 2016, President Barak Obama held the eighth National Conference for Native Americans and only the recognized tribes were invited.<sup>147</sup> The purpose of the conference was that tribes could participate in discussion of various issues with the federal government, however, not all were recognized and invited to the conference. About 50 different tribes which represent tens of thousands of people, were not included in these discussions as the government either denies, disputes or has yet to accept proposed bills of admitting new tribes in the recognized nations list.<sup>148</sup> Native Americans that are not federally recognized have the prolonged and difficult tasks for federal acknowledgement from the Bureau of Indian Affairs, Part 83 of the article.<sup>149</sup> The criteria is considered to be tough so that the tribe becomes distinct and autonomous. For most tribes, its actually expensive to compile the list of historical data, which makes it hard to gain that sovereign status under the United States. But there are less ways to be a community than to seek recognition, as the process is considered broken from the National Congress of American Indians, where cases are taking up to thirty years for approval.<sup>150</sup>

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<sup>145</sup> Fletcher, Matthew L.M. *Tribal Membership and Indian Nationhood*. American Indian Law Review 37, no. 1 (2012): 1–17. <http://www.jstor.org/stable/41940639>. Page, 1.

<sup>146</sup> Ibid,

<sup>147</sup> Furshong, Gabriel,. *Some 'Unrecognized' Tribes Still Waiting after 130 Years*. YES! Magazine, 26 Nov. 2019, <https://www.yesmagazine.org/democracy/2016/12/19/some-unrecognized-tribes-still-waiting-after-130-years>.

<sup>148</sup> Ibid.

<sup>149</sup> www.browsermedia.com, BrowserMedia -. *Federal Recognition*. NCAI, <https://ncai.org/policy-issues/tribal-governance/federal-recognition>.

<sup>150</sup> Ibid.



*Figure 12 Site of where the Montauk Tribe used to live.*

There is a tribe within New York who are trying to get state recognition as a nation within the United States, and they are the Montauk Indian Tribe. This issue is not new and there have been accounts of their legislation not being passed through state government. The Montauk Indian Tribe had at one point resided along Long Island in New York, and they have been around for a long time. Records don't give us an exact date of their existence; however, history tells us that since 1648, the tribe had lost lots of their land due to unjust purchases from settlers and colonialization.<sup>151</sup> In 1910, they were stripped of their recognition in the state of New York, as the last of their lands have been bought and taken. There has been legislation to help get them recognized as a nation once again. They have no sacred land to fall on, as their tribe is scattered in the cities around New York and other parts of the state.<sup>152</sup> Now multiple bills were sent through to the state legislatures for recognizing this group of Natives as a nation, and none have been successful. The first bill was introduced back in 2013, then back in 2017, following up again in 2018, which Governor Andrew Cuomo had vetoed each bill claiming there's not

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<sup>151</sup> "Home: Montauk Tribe of Indians." Montauk Tribe of Ind, <https://www.onemontauknation.org/>.

<sup>152</sup> Ibid.

sufficient documentation or proof of their demands.<sup>153</sup> The latest bill was passed in 2022, and sits for Kathy Hochul, the latest Governor of New York, but was denied later at the end of the year.



*Map 1. This is a composite of several maps that have been widely reprinted in textbooks, Chamber of Commerce brochures, and on restaurant placemats. Map by David Bunn Martine (1992).*

*Figure 13 North portion shows the location of the Matinecock Tribe.*

There is another New York tribe still waiting to be recognized federally which are the Matinecock Tribe of Long Island. Like the Montauk Natives as well, they too have been forced from their lands, however they were a tribe where they first encountered the Dutch. They are known to have been located on the north shore of Long Island that stretched to Newtown on the west and to the Nissequogue River on the east. Through sources they are not federally recognized as they have been scattered by colonists since the mid-seventeenth century.<sup>154</sup> Their territory had stretched to what is now Oster Bay on Long Island. The Matinecock has had long struggles for recognition. In 1995 up to today they have had claim of Fort Totten on Long Island, New York, as it was land stolen and there is belief to have sacred burial grounds underneath.

<sup>153</sup> Secrist, Clare. *Montaukett Tribe Waiting on Governor Hochul to Sign Bill to Recognizing Their Sovereignty*. WSHU, WSHU, 24 May 2022, <https://www.wshu.org/long-island-news/2022-05-24/montaukett-tribe-waiting-on-governor-hochul-to-sign-bill-to-recognizing-their-sovereignty>.

<sup>154</sup> History of the INC.. Village of Matinecock - [Matinecockvillage.org](http://www.matinecockvillage.org). <http://www.matinecockvillage.org/Documents/HistoryofVillage.pdf>.

They believe the land belongs to them by right, however they are not recognized by the state of New York or the federal government.<sup>155</sup> Without their recognition, they are not covered by the NAGPRA protection. In order to receive that recognition, the tribe must first apply and show proof of that claim said Donald Sutherland, who was the principal archaeologist for the Bureau of Indian Affairs in Washington, DC.<sup>156</sup> Matinecock's former chief, Osceola Townsend, had stated that the tribe has not reached a verdict if they should apply for official government recognition, as there has been mistrust with the Bureau of Indian Affairs.<sup>157</sup>

Another tribe that has been unrecognized as a nation federally can be found in the state of Montana. The Little Shell people are a mixture of Chippewa, Cree, Assiniboine, and European descent (see Figure 14).<sup>158</sup> They too have struggled for acknowledgement as a nation, but in 2003, the state of Montana actually signed them into law as a Nation. They are recognized as the Metis up in Canada, but for 37 years the Bureau of Indian Affairs has remained undecided with the Little Shell tribe of Montana,<sup>159</sup> meaning that Little Shell isn't federally recognized so far. There are still many more tribes out there seeking recognition as Nations under federal law for so many years. These two cases were just examples of the difficulties that some Natives have to go through to be whole again.

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<sup>155</sup> Lii, Jane H. "Neighborhood Report: Bayside;Matinecocks Lay Claim to Fort Totten, Citing Burial Ground." The New York Times, The New York Times, 26 Nov. 1995, <https://www.nytimes.com/1995/11/26/nyregion/neighborhood-report-bayside-matinecocks-lay-claim-fort-totten-citingburial.html#:~:text=The%20Matinecocks%2C%20the%20indigenous%20inhabitants%20of%20the%20area,so%20they%20are%20not%20covered%20by%20Federal%20protections.>

<sup>156</sup> Ibid.~

<sup>157</sup> Ibid.

<sup>158</sup> Furshong, Gabriel. *Some 'Unrecognized' Tribes Still Waiting after 130 Years.*

<sup>159</sup> Ibid.

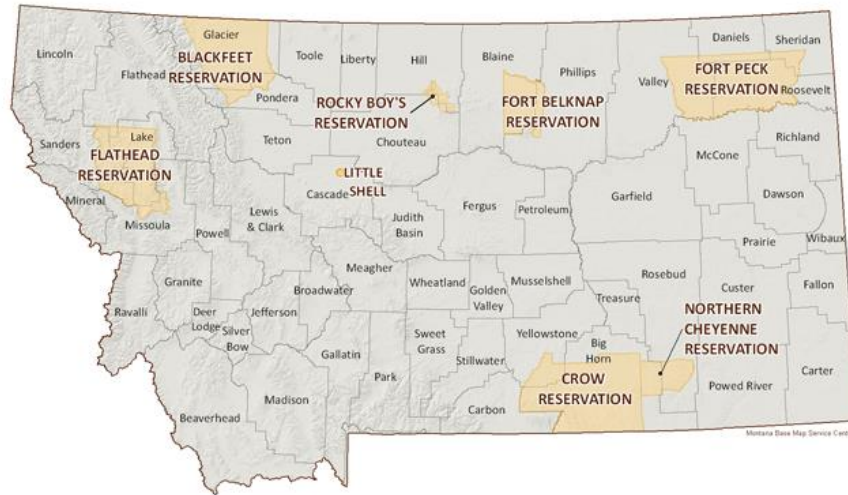


Figure 14 Little Shell Territory in State of Montana

Author Joanne Barker in her article “Recognition,” discusses that the reason why one-third of Native tribes have not received recognition is that they have not made treaties with the United States, meaning that they were never ratified through congress which is why they may be unknown.<sup>160</sup> Also, another reason of unrecognized tribes that can be similar to the Montauk Tribe was in 1953 when the House Concurrent Resolution (HCR), or also known as the Termination Act, was passed and 110 Native American tribes lost nation status.<sup>161</sup> Sixty-two tribes spread from the states of Montana, Oregon, Wisconsin, Kansas, Nebraska, North Dakota, and Oklahoma have been terminated of federal recognition. A similar state bill was passed in 1958, in California, in which forty-one tribes’ nation statuses were terminated.<sup>162</sup> A study was done about the termination of the tribes from the Termination Act of 1953, which in 2001 the study revealed only 37 out of the 110 reclaimed nation status.<sup>163</sup> Federally recognized tribes play

<sup>160</sup> Barker, Joanne. *Recognition*. American Studies 46, no. 3/4 (2005): 133–61. <http://www.jstor.org/stable/40643894>. Page, 135.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

a critical role in Indian law, as they are benefited with the immunities and privileges that come with a government-to-government relationship with the United States.<sup>164</sup> For tribes on the eastern sea board of the U.S. that might not be federally recognized, it could be due to the treaties that they made before the United States was a nation, while signing away their status.<sup>165</sup> The Montaukett tribe has been a good primary example of this coercion, signing away their land and status since the mid-seventeenth century.

For several reasons, federal recognition has been important to Native American tribes. Typically, a tribal government that is extended that recognition gets a sense of sovereignty as a nation.<sup>166</sup> If a tribe is not recognized they can still form tribal organizations but will not have any sovereign powers. They can, as non-recognized tribes also own land as a corporate entity but are not protected from non-Natives by the government. Another instance to want to be recognized, is that their lands are protected under federal law and cannot be purchased or taken by non-Natives.<sup>167</sup> Even if the tribes are not recognized with sovereign authority, they still keep their tribal traditions. To have this acknowledgement means that the United States now recognizes these tribes as sovereign states.<sup>168</sup> Also, being federally recognized means a tribe can now make foreign policy with other nations as they are independent sovereign nations.<sup>169</sup>

The Seneca Nation based here in Western New York received their federal recognition back in 1848. Due to the American Revolution, the Seneca lost territory under the Treaty of Big Tree in 1797. In 1848, they established an elected form of government with the which today has

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<sup>164</sup> Riley, Lorinda. *When a Tribal Entity Becomes a Nation: The Role of Politics in the Shifting Federal Recognition Regulations* American Indian Law Review 39, no. 2 (2014): 451–505. <http://www.jstor.org/stable/43857889>. Page, 451.

<sup>165</sup> Ibid, 452.

<sup>166</sup> “Federal Acknowledgement or Recognition.” Milwaukee Public Museum, <https://www.mpm.edu/content/wirp/ICW-104>.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

a about eight-thousand citizens.<sup>170</sup> The Tonawanda Band of Seneca near Akron, New York, have maintained their traditional chiefs and clan mothers form of governance and have 1,200 citizens. There is also the Seneca-Cayuga Nation in Oklahoma who trace their legacy back to the Senecas and Cayugas who lived in Ohio and in 1830 were forced from their lands and migrated west of the Mississippi River.<sup>171</sup>

### **NAGPRA Only Applies to the Federally Funded**

As has been stated before NAGPRA requires agencies that are federally funded to return cultural items and burial remains to Native Americans. Some agencies would agree to assist in Native American repatriation efforts, while others would claim it as a way to put non for profits out of business.<sup>172</sup> Author Joe Watkins puts forth an article delving into the pros and cons of repatriation. In the article, a man named Robson Bonnicksen was mentioned, who sees the efforts of repatriation as having a life of its own and would put museums out of business. He believes that the new federal laws of the National Museum of American Indian Act and NAGPRA injected more political issues with what's already been an issue.<sup>173</sup> Joe Watkins is an Indigenous archeologist and a member of the Choctaw Nation, and he appears to not agree with Bonnicksen, as he firmly believes repatriation has helped archaeologists to draw from Indigenous knowledge. What's sad but true from what the author states is that the problems with archeology does not bear any relations to the cultures, even if they attempt to.<sup>174</sup> It's hard when archeologists don't connect with living cultures, for the lack of communication is a detriment to

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<sup>170</sup> Smithsonian Institution. *Keeper of the Western Door*. Smithsonian Institution, <https://www.si.edu/spotlight/collections-naa-si-edu-seneca>.

<sup>171</sup> Ibid.

<sup>172</sup> Watkins, Joe. *The Politics of Archaeology: Heritage, Ownership, and Repatriation. Negotiating Culture: Heritage, Ownership, and Intellectual Property.* In *Negotiating Culture: Heritage, Ownership, and Intellectual Property*, edited by Laetitia La Follette, 15–37. University of Massachusetts Press, 2013. <http://www.jstor.org/stable/j.ctt5vk9x7.4>. Page, 15.

<sup>173</sup> Ibid 15.

<sup>174</sup> Ibid 16.



any repatriation process. Repatriation is one of the sensitive and political issues for Native Americans to this day, that after decades of study of Native Americans by archeologists and scientists, the tribes of America have now the right to voice themselves and say “no.”<sup>175</sup> Authors Michael A. Schillaci and Wendy J. Bustard, in their article “Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation,” describe under NAGPRA that any remains or cultural affiliated objects that are held within federal agencies and museums must be returned to a federal recognized tribe.<sup>176</sup> But it does go to say that tensions between federally funded institutions and Native tribes have been apparent for some time now, and many of these disputes have centered around cultural affiliation of funerary objects and cultural patrimony objects in the care of museums and agencies.<sup>177</sup>

Author Karin Edvardsson Björnberg from her case *Historic Injustices and the Moral Case for Cultural Repatriation*, describes that from NAGPRA and repatriation, one common ground argument that Natives give to repatriation from museums and agencies is a need for corrective justice of the crimes committed in the past.<sup>178</sup> She makes an interesting argument of the past: “The individuals to whom the injustice was done are no longer around to enjoy compensation, and those who are around to pay compensation are not the ones who have committed the injustice.”<sup>179</sup> Then it is grounds for cultural repatriation based off of what has happened in the past, and perhaps it helps benefit stronger relationships from both sides.<sup>180</sup> But,

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<sup>175</sup> Simpson, Moira G. *A Grave Dilemma: Native Americans and Museums in the USA* Journal of Museum Ethnography, no. 6 (1994): 25–37. <http://www.jstor.org/stable/40793552>. Page 25-26.

<sup>176</sup> Schillaci, Michael A., and Wendy J. Bustard. *Controversy and Conflict: NAGPRA and the Role of Biological Anthropology in Determining Cultural Affiliation*. Political and Legal Anthropology Review 33, no. 2 (2010): 352–73. <http://www.jstor.org/stable/24497718>. Page, 356.

<sup>177</sup> Ibid.

<sup>178</sup> Björnberg, Karin Edvardsson. *Historic Injustices and the Moral Case for Cultural Repatriation*. Ethical Theory and Moral Practice 18, no. 3 (2015): 461–74. <http://www.jstor.org/stable/24478633>. Page, 461.

<sup>179</sup> Ibid, 462.

<sup>180</sup> Ibid.

Björnberg again goes to claim that the injustice of those who have suffered from someone else's wrong doing deserve repatriation or feel entitled to that compensation.<sup>181</sup> There is so much literature concerning the laws of NAGPRA that scholars and Native Americans have put forth in determining the actions and legalities of the law. That such law proved to be a great significance, for after its passing that Natives began claiming their sacred item and allowed control of their interpretation and representation within museums.<sup>182</sup>

Turning back to NAGPRA, repatriation mostly implies to museums and federal agencies. The law actually pertains to those tribes that are federally already recognized and allowed special services and programs.<sup>183</sup> Author Moira G. Simpson with her article, "A Grave Dilemma: Native Americans and Museums in the USA," goes on to state that museums have considered ways to make their collections more accessible to Natives. There was a case in 1982 (before NAGPRA) where the Wheelwright Museum in New Mexico lent out medicine bundles to the Navajo Community College at the Ned Hatathli Museum in Arizona. They have been on loan as it was requested by the Navajo, and they could then continue their rituals and ceremonial practices. The loans would renew every six months.<sup>184</sup> If there has been evidence of historic injustice, then there is an agreement that the injustice should be corrected, and reparations be given to the descendants and victims.<sup>185</sup>

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<sup>181</sup> Ibid, 464.

<sup>182</sup> Babbit, Thomaira. *NAGPRA as a Paradigm: The Historical Context and Meaning of the Native American Graves Protection and Repatriation Act in 2011*. University of Central Oklahoma. Article. Page 61.

<sup>183</sup> Cottrell, Courtney. *NAGPRA's Politics of Recognition*. American Indian quarterly 44, no. 1 (2020): 59–85. Page, 61.

<sup>184</sup> Simpson, Moira G. *A Grave Dilemma: Native Americans and Museums in the USA*. Journal of Museum Ethnography, Page, 30.

<sup>185</sup> Babbit, Thomaira. *NAGPRA as a Paradigm*, Page 470.

## Smithsonian Exempt from NAGPRA?

The Smithsonian has been known as the attic of the United States for its thousands of Native American burial remains and funerary objects in their collection. The Natives learned of the museum being the single largest collector and holder of their artifacts back in the summer of 1986. For it was a group of Northern Cheyenne chiefs who visited the Smithsonian, after their tour and realization of the many skeletal remains held at the Smithsonian, they prompted a national movement to address the issue.<sup>186</sup> A year before NAGPRA became law, in 1989 the United States Congress passed the National Museum of American Indian Act (NMAI) known as Public Law 101-185. The act was amended in 1996 from the original, however, the act didn't include definitions of sacred objects and cultural patrimony.<sup>187</sup> In contrast, NAGPRA as we've discussed earlier in this work, does indeed hold the definition for sacred objects and cultural patrimony objects. NMAI law created a new museum within the Smithsonian that was to devote their resources to Native American collections of the Heye Foundation in New York City.<sup>188</sup> It has been said that NMAI Act was incorporated to help return funerary and cultural objects in the care the Smithsonian to lineal descendants and these repatriations were to be monitored by a five-person review committee that were recommended by Native American tribes. But NAGPRA gave Native Americans control and ownership of their cultural property, and any museum or federal agency were given five years to inventory all their artifacts pertaining to Native Americans.<sup>189</sup>

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<sup>186</sup> "NARF Legal Review." NARF Legal Review 16, no. 1 (December 1, 1990). <https://jstor.org/stable/community.28040988>. Page, 1.

<sup>187</sup> "NMAI Act." n.d. Association on American Indian Affairs. Accessed May 19, 2023. <https://www.indian-affairs.org/nmai-act.html>.

<sup>188</sup> "Native American Graves Protection and Repatriation Act ." Dictionary of American History. . Encyclopedia.com. (February 22, 2023). <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/native-american-graves-protection-and-repatriation-act>

<sup>189</sup> Ibid.

NAGPRA also made it mandatory that every institution create a seven-person review committee that is set up to monitor the activities and monitor the provisions of the act. The Secretary of Interior has the power to appoint these committees to which three of them must be Native American traditional leaders.<sup>190</sup> In the previous sections of this paper there has been discussion of legal penalties and civil lawsuits to those institutions who are breaking NAGPRA law, and the Secretary of Interior enforces this law. However, what's shocking is that the Smithsonian is exempt from this act because it operates under its own conditions of the NMAI Act which was amended in 1996.<sup>191</sup> The Smithsonian with its own act has actually returned a tremendous amount of remains, funerary objects and cultural objects. Some cases of their repatriation were several thousand remains to Alaska and Native communities on the Kodiak Island and St. Lawrence Island.<sup>192</sup> The Smithsonian had also returned remains associated with major massacres of the nineteenth-century to Native Americans, examples such as the Sand Creek Massacre of Southern Cheyenne and other Natives along with the Fort Robinson Massacre of Northern Cheyenne. Also, the Smithsonian has repatriated more remains, even the brain of Ishi, which was a well-known California native. Sitting Bull's braid, that was cut off of him in his autopsy, is still at the Smithsonian, but has been offered for repatriation. So many cultural objects have been repatriated by the Smithsonian, including the famous Ghost Dance shirts and other artifacts that were obtained from the Lakota Sioux, who were massacred at Wounded Knee Creek. Smithsonian's National Museum of the American Indian have given back many sacred objects and objects of cultural patrimony to their rightful owners.<sup>193</sup>

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<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

## Chapter 4

### Case Study: The Red Jacket Medal

#### Significance of the Medal

The Onödowa'ga:' (Seneca), like the majority of the nations of the Haudenosaunee Confederacy, had sided with the British during the American Revolution. One of Natives was Red Jacket who derived his name from wearing red coats during the war and scouted for the British.<sup>194</sup> But after the war and the British had been removed from the new colonies of America, and now the tribes of the Iroquois have to contend with a new possible enemy.<sup>195</sup> Through his knowledge of English language and efforts, Red Jacket worked his way up to be chief of the Seneca, but during times of negotiations Red Jacket stepped up as an orator for the Iroquois Confederacy. In the book *Life and Times of Sa-Go-Ye-Wat-Ha or Red Jacket*, by author William M. Stone, Red Jacket can be quoted in saying, "I am an orator! —I was born an orator"<sup>196</sup> Stone states that he was an orator who had an exalted sense of commanding power when he spoke.<sup>197</sup> During the 1790s, there was plenty of discontent between the Native of the Iroquois and the new United States, that even Natives were unrestful from the treaty of Fort Stanwix (covered in the introduction).<sup>198</sup> With the failed treaties beforehand, a new council for a new treaty was set in hopes the Seneca can reclaim lost territory.

The significance of the medal had been tied to the importance of what a treaty represents to any external bodies of government in the pursuit of peace. Author Gorden Anderson, in his article "The Elusive Definition of Peace" describes that there are unique concepts of peace, and

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<sup>194</sup> "Localhost." Red Jacket Defends Native American Religion, 1805, <https://historymatters.gmu.edu/d/5790/>.

<sup>195</sup> Ibid.

<sup>196</sup> Stone, William L. (William Leete). *Life and Times of Red-Jacket, or, Sa-Go-Ye-Wat-Ha : Being the Sequel to the History of the Six Nations*. New York;: Wiley and Putnam, 1841. Page 1.

<sup>197</sup> Ibid, 2.

<sup>198</sup> Ibid, 19-20.

that there are a variety of meanings from multiple cultures. In a state of war, peace usually comes after such affairs.<sup>199</sup> Like the war that was between the United States and the Seneca during the American Revolution, that the Red Jacket Medal after the war held value at the treaty of Canandaigua in 1794. On November 12, 1794, the United States issued for peace with the Haudenosaunee, that in the eyes of the Six Nations this treaty defined the relationship between them and the United States.<sup>200</sup> The treaty thus symbolizes a way of life and aids the Seneca in their sovereignty.<sup>201</sup> The medal was the symbolic forefront of the treaty which to this day keeps the peace between the United States and the Seneca Nation.

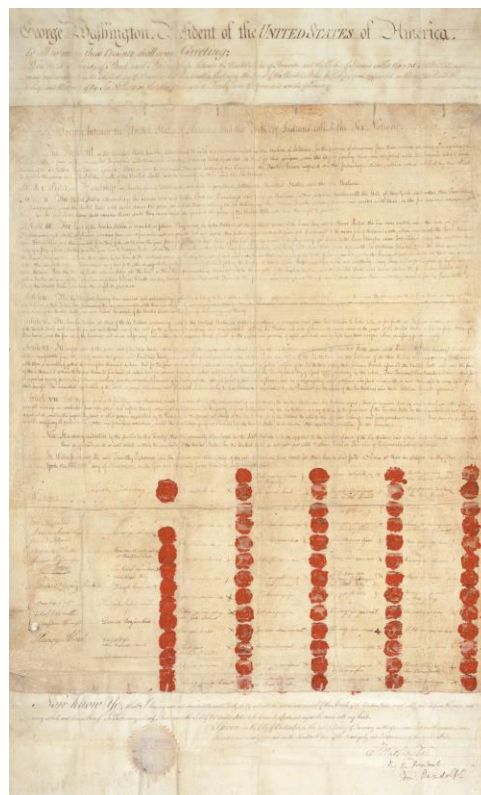


Figure 15 Screen shot of the articles (Treaty of Canandaigua) NMAI Exhibit.

<sup>199</sup> Anderson, Gordon L. "THE ELUSIVE DEFINITION OF PEACE." *International Journal on World Peace* 2, no. 3 (1985): 101–4. <http://www.jstor.org/stable/20750942>, Page, 102.

<sup>200</sup> Campisi, Jack, and William A. Starna. "On the Road to Canandaigua: The Treaty of 1794." *American Indian Quarterly* 19, no. 4 (1995): 467–90. <https://doi.org/10.2307/1185560>. Page, 467.

<sup>201</sup> *Ibid.*

Red Jacket arrived in Philadelphia being of one of the fifty chiefs present.<sup>202</sup> Red Jacket from displaying his tone and voice during this meeting would receive a silver medal by George Washington. As a tribute to the session in Philadelphia, that medal would pave the way for the peace treaty of Canandaigua. Under that treaty there were seven articles listed that were contained within it (see Figure 15).<sup>203</sup> However, the treaty would never be kept as promised and had been broken numerous times, with examples of Kinzua Dam and the Oneida nation. The Kinzua Dam in western Pennsylvania was an incident where the treaty of Canandaigua was breached by the U.S. government with the Seneca Nation in the early 1960s, as the dam was built on Seneca territory. There was cry and uproar and it was appealed to the U.S. government, but to no effect through the Eisenhower administration and the Kennedy administration.<sup>204</sup> Another example was when New York, without consulting congress had under several treaties asked for more Oneida territory, receding their acres in over 200 years.<sup>205</sup> Today, they only retain thirty-two acres of the treaty land that once was theirs.<sup>206</sup> The Red Jacket Medal in a way is the acknowledgment and expression of this treaty that, even though it had been violated, has lasted 270 years.<sup>207</sup>

The Red Jacket Peace Medal is said to hold a great significance to the Seneca Nation as it was worn by a leader who was pivotal for the peace between the Haudenosaunee and the United

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<sup>202</sup> Ibid, 68.

<sup>203</sup> Association of Registrars and Collection Specialists. *Red Jacket's Peace Medal Returned to Seneca Nation after 116 Years at Buffalo Museum*. ARCS, <https://www.arcsinfo.org/news-events/entry/6453/red-jacket-peace-medal-returned-to-seneca-nation-after-116-years-at-buffalo-museum>.

<sup>204</sup> "The Kinzua Dam, the Cold War, and US Treaties | JFK Library." n.d. [www.jfklibrary.org](http://www.jfklibrary.org). Accessed May 19, 2023. <https://www.jfklibrary.org/learn/education/teachers/curricular-resources/the-kinzua-dam-the-cold-war-and-us-treaties>.

<sup>205</sup> "City of Sherrill v. Oneida Indian Nation of N. Y., 544 U.S. 197 (2005)." n.d. Justia Law. Accessed May 19, 2023. <https://supreme.justia.com/cases/federal/us/544/197/#materials>.

<sup>206</sup> Association of Registrars and Collection Specialists, *Red Jacket's Peace Medal Returned to Seneca Nation after 116 Years at Buffalo Museum*

<sup>207</sup> Ibid.

States. In previous sections of this topic, there was the discussion of cultural patrimony that falls within the laws of NAGPRA. After Red Jacket's death the medal had been moved around a lot until it would be in the possession of the Buffalo History Museum for over 125 years and then repatriated to the Seneca Nation. Many media outlets have come to digest the importance of this object as it symbolized peace and friendship between the two nations.<sup>208</sup> Editor Jenna Kunze of the *Native News Online* has mentioned that the object was of cultural patrimony under federal law that represented the relationship with the Seneca (along with the Haudenosaunee) and the United States as an active treaty of Canandaigua to this day since 1794.<sup>209</sup> Evidence and documentation was presented from the Smithsonian acknowledging this peace treaty ensuring its cultural heritage. Seneca Nation President Matthew Pagels made a statement during the repatriation ceremony that took place in May of 2021:

This medal represents what lives inside each and every Seneca, the heart of a sovereign people and our rightful recognition as such.... This is our identity as a Nation. It cannot be owned, bought, or sold. It belongs to all of us and is passed from generation to generation so it can live forever.<sup>210</sup>



Figure 16. Seneca President. Mathew Pagels

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<sup>208</sup> Kunze, Jenna. *Red Jacket Peace Medal Welcomed Back Home to Seneca Nation*. Native News Online, 20 May 2021, <https://nativenewsonline.net/currents/red-jacket-peace-medal-welcomed-back-home-to-seneca-nation>.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.



The Red Jacket Medal could also hold true as a sacred object under the NAGPRA law as the specific medal was an object considered for the context of daily use and practice.<sup>211</sup> James Young (presented earlier in this paper) claims that a culture usually owns its cultural property, and can range from stories, composed music, sculptures, ritual, religious, and historical significance.<sup>212</sup> Jana Thompson in her article “Cultural Property, Restitution and Value,” seems to agree with Young that cultural property of any object is owned by the collective group not individual members. The objects must play a political, religious and ongoing purpose to have legitimacy,<sup>213</sup> just as the president of the Seneca Nation had confirmed that Red Jacket Peace Medal’s value is of importance and an ongoing symbol of a signed treaty between two nations. During George Washington’s presidency a few of these silver medals were crafted and given to Native American leaders. The presidential seal is on the reverse side, and the front showed Washington and a Native sharing a peace pipe.<sup>214</sup> Thomas Jefferson who was Secretary of State in 1793 said that:

[Giving such medals] has been an ancient custom from time immemorial. The medals are considered as complimentary things, as marks of friendship to those who come to see us, or who do us good offices, conciliatory of their good will towards us... They confer no power and seem to have taken their origin in the European practice of giving medals... to the negotiators of treaties.<sup>215</sup>

NAGPRA aims in protecting items that fall within the cultural patrimony definition. The definition of the term under law is explained that it is an object with historical and traditional

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<sup>211</sup> D. S. Pensley. *The Native American Graves Protection and Repatriation Act (1990)*: Page, 50.

<sup>212</sup> Young, James O. *Cultures and Cultural Property*. Page, 111 (repeat).

<sup>213</sup> THOMPSON, JANNA. *Cultural Property, Restitution and Value*. *Journal of Applied Philosophy* 20, no. 3 (2003): 251–62. <http://www.jstor.org/stable/24355054>. Page, 252.

<sup>214</sup> Indian Peace Medals with Great Seal given by President George Washington, <https://greatseal.com/peace/indianmedals.html>.

<sup>215</sup> Ibid.

values that center around Native American culture groups. Also, it means repatriation of ethnographic objects which are tangible material items, like the Red Jacket Medal which had been portrayed in such manner.<sup>216</sup>

### **Timeline of Ownership**

If scholars want to get technical on the first ownership of the Red Jacket Peace Medal, then it started in the hands of George Washington. However, the first owner of the medal, as historians may have stated, was that of Red Jacket himself. Previously in this paper we have discussed deeply who Red Jacket was and his Native name. Author Jadviga da Costa Nunes explains the timeline a bit of Red Jacket of his early years of his birth in the 1750s, to him receiving the medal, to the War of 1812, and his final days upon his passing in 1830.<sup>217</sup> Red Jacket did play a role in the War of 1812. Author Alan Taylor, in his work *The Divided Ground: Upper Canada, New York, and the Iroquois Six Nations, 1783-1815*, describes in length and details the events leading up to the war of 1812.<sup>218</sup> Red Jacket with his orator skills, from the outbreak of the war confided with the Haudenosaunee to join sides with the United States against the British, he fought also at the battle of Fort George (1813) and Chippawa (1814). From the gruesome conflict of fighting, he then encouraged Natives from both sides to cease from the conflict all together.<sup>219</sup> Returning to Jadviga da Costa Nunes, she describes that in his final decades of his life, he had watched many of his people convert to Christianity, including his wife, and sell their land to the Americans. The men were no longer hunters and had to adapt to

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<sup>216</sup>Dawn Elyse Goldman, *The Native American Graves Protection and Repatriation Act: a benefit and a burden, refining NAGPRA's cultural patrimony definition*. International Journal of Cultural Property 8, no. 1 (1999): 229-244, Page, 230.

<sup>217</sup> Jadviga da Costa Nunes. *Red Jacket: The Man and His Portraits*. Page, 1-8.

<sup>218</sup> Ibid. 60-70

<sup>219</sup> "Red Jacket (Sagoyewatha)." n.d. Npg.si.edu. Accessed May 19, 2023. [https://npg.si.edu/object/npg\\_NPG.2002.69](https://npg.si.edu/object/npg_NPG.2002.69).

farming. Alcohol abuse was a terrible strain on Seneca communities, and Red Jacket strived to continue his traditional values as best he could, despite his own weaknesses when it came to alcohol.<sup>220</sup> During his last days it has been noted that, with his wife, he wanted to be buried in his peoples' tradition, and that his grave was not to be made by a white man. Red Jacket would pass January 20, 1830, at the possible age of 80<sup>221</sup> It been said that Red Jacket wore the medal every day up until his death.<sup>222</sup>



*Figure 15 image of Jimmy 'Sos-heo-wa' Johnson*

After Red Jacket's passing, the medal would be passed down to his descendant nephew, Chief Sos-heo-wa (Jimmy Johnson).<sup>223</sup> It was said he was born in 1774 at Canawagus (also spelled Ganowauges in some accounts) which was near present day Avon, NY, and was a member of the Seneca Wolf Clan. He has been shown to be wearing the peace medal that was given to Red Jacket. Nothing is conclusive but what can be determined is that the National

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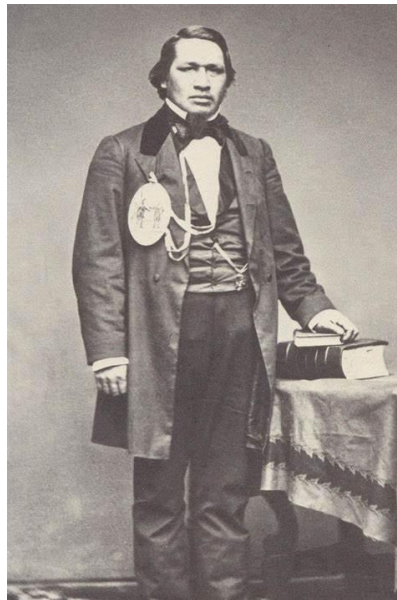
<sup>220</sup> Jadviga da Costa Nunes. 8.

<sup>221</sup> Ibid.

<sup>222</sup> Walker, Adria. Red Jacket's Peace Medal returned to Seneca Nation after 116 years at Buffalo Museum. Democrat and Chronicle News

<sup>223</sup> "Jimmy Johnson, Seneca Wolf Clan." *geni\_family\_tree*, 12 Nov. 2022, <https://www.geni.com/people/Jimmy-Johnson-Seneca-Wolf-Clan/6000000037628057386>.

Museum of the American Indian (Smithsonian) in its collection holds a club that had been documented to be the former property of Chief Red Jacket. By the passing of Red Jacket, the club passed down to Jimmy Johnson as it's been recorded.<sup>224</sup> Understanding that if the club was handed down to Jimmy Johnson, then the medal must have passed to him as well. Under publication from the Buffalo History Museum, in their records is proof that Sos-heo-wa was the nephew of Red Jacket.<sup>225</sup> In 1851, Jimmy Johnson was said to have attempted to sell the medal to the New York Museum, however his own grandson, Ely Parker, a U.S. officer and another descendant of Red Jacket, would prevent the sale and own it.<sup>226</sup>



*Figure 16 Ely Parker shown wearing Red Jacket's Medal*

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<sup>224</sup> "Club: National Museum of the American Indian." Club | National Museum of the American Indian, [https://americanindian.si.edu/collections-search/objects/NMAI\\_147040](https://americanindian.si.edu/collections-search/objects/NMAI_147040).

<sup>225</sup> Buffalo Historical Society, Publications of the Buffalo Historical Society, Volume 25  
Publications of the Buffalo Historical Society, Buffalo Historical Society (Buffalo, N.Y.)  
Volume 25 of Publications, Buffalo Historical Society (Buffalo, N.Y.), published Bigelow Brothers, 1921, the  
University of Michigan. Digitized: Feb. 2<sup>nd</sup>, 2007. Page 241-42.

<sup>226</sup> Association of Registrars and Collection Specialists. "Red Jacket's Peace Medal Returned to Seneca Nation after 116 Years at Buffalo Museum." ARCS

Ely S. Parker was born a Seneca on the Tonawanda Indian Reservation in Western New York in 1828, he was also the grandson of Jimmy Johnson. When he was an adult, he took the name Do-ne-ho-ga-wa, or “Open Door,” although his white name was Ely Parker. Growing up he was excellent in school and became fluent in English. He as a teenager also had the opportunity to meet President James K. Polk and voice his concerns about Native grievances.<sup>227</sup> In 1851 he was the Sachem for the Iroquois Confederacy and of the Seneca. Parker had possession of medal and wrote that the medal is “evidence of the bond of perpetual peace and friendship entered into between the people of the United States and the Six Nations of Indians at the time of its presentation [by] the great Washington.”<sup>228</sup> Yet, he studied more to become a lawyer, as he found that law was a way he could try to save his people. When that failed, he took up engineering to work with construction and canals, however, it didn’t last as in 1857 he was assigned to the Treasury Department to supervise the construction of a custom house and the marine hospital in Galena, Illinois. From this adventure was when he met Ulysses S. Grant.<sup>229</sup> Soon the Civil War broke out and in 1863 he would be assigned to General Grant’s personal staff and then later became his military secretary. Ely Parker would be the secretary present for the treaty of Appomattox and copy the signed surrender of Robert E. Lee with the Confederate defeat of the Civil War.<sup>230</sup> Throughout his adventure Ely Parker would wear the Peace Medal for most of his career, and even was noted that Abraham Lincoln held the Red Jacket medal the day before his assassination in 1865.<sup>231</sup> As Abraham Lincoln passed, Andrew Johnson was the next president until 1869. Then Ulysses S. Grant became the next president of the United States. Grant

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<sup>227</sup> Ibid.

<sup>228</sup> Will. *The Red Jacket Peace Medal, 1792*. Stories in Time, 12 Sept. 2015, <https://storiesintimewny.wordpress.com/2015/09/12/the-red-jacket-peace-medal-1792/>.

<sup>229</sup> Ibid

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

didn't forget Ely Parker from his services, so he appointed him Commissioner of Indian Affairs. However, it didn't last as he was discharged for misusing federal funds.<sup>232</sup>



*Figure 17 Portrait of Minnie Sackett Parker*

Ely Parker was both leader of the Seneca and of the American society. Parker was married in 1867 to Minnie Sackett who was a white woman at 18 years old. She even was considered young enough to be his daughter, and she was the daughter of a prominent U.S. colonel. When Ely Parker passed in 1895, Minnie Sackett was left with few financial resources, and Parker being a war veteran only gave Minnie a government pension of eight dollars a month. With lack of resources, she started selling off his papers and items from his library, along with the Red Jacket Peace Medal to the Buffalo Historical Society.<sup>233</sup>

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<sup>232</sup> Ibid.

<sup>233</sup> PBS, Public Broadcasting Service, <https://www.pbs.org/warrior/content/bio/minnie.html#:~:text=Ely%20Parker%27s%20death%20in%201895%20left%20his%20wife,archives%20of%20the%20Buffalo%20Erie%20County%20Historical%20Society%29>.



*Figure 18. Front of the Buffalo History Museum*

The Buffalo History Museum, originally known as the Buffalo and Erie County Historical Society, was founded in 1862 as an organization that collected paintings, photographs, many artifacts, and manuscripts, in the hopes of sharing them with the public and researchers. For the growing organization and expanding their purpose, architect George Cary created the New York State Building, which hosted the 1901 Pan American Exposition, and has now remained the permanent home for local Buffalo history. They even housed the Red Jacket Peace Medal as the next owners of the item.<sup>234</sup> A prized artifact, it conveys a great deal of symbolic imagery of the coexistence between the United States and Native Americans.<sup>235</sup> With its prominence and historical presence, in 1957, the Buffalo Historical Society created the Red Jacket Award program to nominate and recognize those who have continued an unbroken civic process and has helped in maintaining awareness of local Buffalo heritage in enriching upon the future.<sup>236</sup> Every year the museum nominates a new individual for the award, that it has become significant to the process of community in Buffalo. The latest 2022 award was given to a

<sup>234</sup> “About Us.” The Buffalo History Museum, 7 Mar. 2023, <https://buffalohistory.org/about-us/>.

<sup>235</sup> “Red Jacket Awards.” The Buffalo History Museum, 7 Mar. 2023, <https://buffalohistory.org/red-jacket-awards/>.

<sup>236</sup> Ibid.

recipient named Shelley C. Drake, who was a Buffalo banker and a leader in the city's Hispanic community.<sup>237</sup> How the Red Jacket Medal ended up at the History Museum was because of Ely Parkers widow didn't want possession and she was left with a terrible financial situation, so she believed it best to sell the medal.

### **Repatriation Back to the Seneca**

The Buffalo History Museum has had possession of the Red Jacket Medal for at least 126 years, and in 2021, with the aid of the Native American Graves Protection and Repatriation Act, the Seneca Nation has been repatriated the medal. With the information of this historic moment, news outlets from all over have come to broadcast this moment in time. From Post Journal News, it has stated that the nation leaders, state law makers, and museum officials were present for the ceremony at the Onöhsagwë:de' Cultural Center. The medal is now officially housed at the cultural center and on display there.<sup>238</sup> U.S Senate majority leader, and Senator for New York Charles Schumer stated in a news article that, “[t]he importance of returning these artifacts to



*Figure 19 Charles Schumer United States Senator*

their rightful custodians is also a tremendous opportunity...It is incumbent upon all of us to

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<sup>237</sup> Red Jacket Award Recipients - Buffalohistory.org. <https://buffalohistory.org/wp-content/uploads/2023/03/Red-Jacket-Award-Former-Recipients.pdf>.

<sup>238</sup> “Seneca Nation Repatriating Red Jacket Peace Medal.” Post, Post Journal, 19 May 2021, <https://www.post-journal.com/news/community/2021/05/seneca-nation-repatriating-red-jacket-peace-medal/>.



ensure the contributions to our national culture and heritage are preserved and well-understood.”<sup>239</sup>

State Senator Sean Ryan of New York applauded the Buffalo history museum for their action to repatriate the medal, and that with the effort put in, helps keep strong and meaningful relationships with the Native Americans.<sup>240</sup> For some thought, personally I have been scrolling



*Figure 20 New York State Senator Sean Ryan*

through the web in hopes to find similar cases of cultural patrimony like the Red Jacket Medal, as it has clearly become important for museums that remains and objects be returned to Native original owners. As noted previously, in the past, there were strong viewpoints have mostly thought differently about rightful possession. The Harvard University Gazette, in March of 2021, had an interview with Philip Deloria, who is the Leverett Saltonstall Professor of History and chair of the NAGPRA Advisory Committee, also the past chair of the Repatriation Committee at the Smithsonian Institution’s National Museum of the American Indian. The Gazette questioned why it is important to return the remains and objects of Native Americans. Philip Deloria replied that there has been traditional sense of western ideology of when a person dies, they no longer hold ownership of that body, but for Native traditions they carry a far greater sense of

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<sup>239</sup> /the-press-pool/red-jacket-peace-medal-welcomed-back-to-rightful-home-with-seneca-nation.

<sup>240</sup> Ibid.

significance. It is a spiritual practice of these objects and remains that revitalizes their traditional values.<sup>241</sup> He also exclaims that through his many repatriation efforts that a lot of these Native American objects don't just get returned to be placed in another museum, they are being used once again for sacred and religious purposes.<sup>242</sup>

The repatriation of the Red Jacket Medal was the second time recently that the Seneca got back a significant piece of cultural property. Chief Cornplanter's Pipe Tomahawk was repatriated March 14<sup>th</sup>, 2019. Chief Cornplanter was born a Seneca of the Wolf clan in the village of Conewaugus. He was known in the Seneca language as Kaiiontwa'kon or



*Figure 21 Depiction of Cornplanter*

Gaiänt'wakê, however, his name from the Europeans was Cornplanter.<sup>243</sup> He was born to a Seneca Woman and a Dutch Trader named John Abeel and lived from 1732-1836, which would

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<sup>241</sup> Siliezar, Juan. "Peabody Museum's Repatriation Efforts Encounter Complications." *Harvard Gazette*, Harvard Gazette, 30 Mar. 2021, <https://news.harvard.edu/gazette/story/2021/03/peabody-museums-repatriation-efforts-encounter-complications/>.

<sup>242</sup> Ibid.

<sup>243</sup> Martin, Chezney. "Six Nations Students Watch as Cornplanter's Pipe Returned to Seneca Nation." *Two Row Times*, 15 Jan. 2020, <https://tworowtimes.com/news/national/a-gift-of-peace-returned-cornplanters-pipe/>.

make his life at 104 years old when he passed. This pipe tomahawk had been a symbol of peace given to Cornplanter by George Washington in 1792 as well.

According to some accounts, Cornplanter, who fought in the French and Indian War and the American Revolution, had an opportunity to kill George Washington sometime but did not, and Washington was set free.<sup>244</sup> A *Buffalo News* source said the Pipe Tomahawk had been passed down to many other Seneca Chiefs after him. In 1810, Cornplanter gave the Tomahawk to Small Berry who became the next Chief of the wolf clan, until 1835. Ely Parker became Chief in 1835 but wouldn't be given the relic till 1844 as Small Berry's widow held onto the object, he then replaced the maple handle with silver inlay. He then in 1849 sells the Tomahawk to his friend Lewis Henry Morgan, who then sells his collection along with the relic to the State Museum in 1850. It would stay there until it was stolen from the New York State Museum in Albany.<sup>245</sup> It was stolen in 1947 from a locked display case and the leads led up till 1950, when the case went cold. For 70 years the tomahawk was missing, and no one knows who or why it was taken, however in 2018 the Tomahawk would be passed down from private collections then re-appear in 2018. A collector from Portland Oregon with a lawyer contacted the Buffalo History Museum about the tomahawk, after that a year later the Seneca under NAGPRA law article 3001(3)(D), public law 101-106 would receive the tomahawk in 2019.<sup>246</sup>

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<sup>244</sup> Ibid.

<sup>245</sup> O'Brien, Barbara. 2020. "Missing Cornplanter Tomahawk from 1700s Returned to Seneca Nation." Buffalo News. January 9, 2020. [https://buffalonews.com/news/local/missing-cornplanter-tomahawk-from-1700s-returned-to-seneca-nation/article\\_787d6bbf-4337-5f41-8dd9-70f0ae52f093.html](https://buffalonews.com/news/local/missing-cornplanter-tomahawk-from-1700s-returned-to-seneca-nation/article_787d6bbf-4337-5f41-8dd9-70f0ae52f093.html).

<sup>246</sup> National Parks Service, Glossary, Cultural Patrimony definition.

## Chapter 5

### Interview at the Buffalo History Museum

Native Americans today strongly assert their rights and that the rest of American society should respect their culture and sovereignty. With the political and cultural assertions happening through NAGPRA, museums have found themselves in almost uncomfortable situations.<sup>247</sup> A common analysis of museums in the United States has been that they are out of touch with society and only cater to the elite. What is even more common are the ignored grievances of the ethnic communities of how their attempts to have roles of representation within museums.<sup>248</sup> A most common claim by Native Americans regarding museums is that most believe that their objects in museums had been stolen, that with this tension of stolen artifacts was how NAGPRA came to be.



*Figure 22 Photo of Melissa Brown, Executive Director of Buffalo History Museum.*

The Buffalo History Museum had been in possession of the medal for so long that the Senecas looking to regain their cultural heritage and items from the museum and have voiced their pleas to repatriation efforts even if there was or was not injustice. Earlier in this paper,

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<sup>247</sup> Archambault, JoAllyn. *American Indians and American Museums*. Page, 7.

<sup>248</sup> Ibid.

we've discussed how the Red Jacket Peace Medal ended up at the Buffalo History Museum, along with the repatriation of the medal back to the Seneca Nation. However, we have got to understand their reasonings and motives during the repatriation ceremony and the claims made. Melissa Brown, who is the Executive Director at the History Museum, was present during the Red Jacket repatriation ceremony. Asking for an interview was not accessible as she felt she wouldn't have enough information on the subject matter. However, in reviewing news sources, it was clear she was adamant about the repatriation efforts.

From the *Democrat and Chronicle* news outlet used in the introduction of this thesis, Adria Walker, the author and editor of the news source, quotes Melissa Brown at the repatriation ceremony stating,

Reassessment is not enough, action is imperative to ensure that any artifacts of cultural (importance) are returned — in this instance Red Jacket's revered medal — to the collective stewardship of the Seneca Nation...Our relationship, the museum's relationship, with the Seneca Nation does not end here. In fact, this is a new beginning. Much like what the Peace Medal represents, this is a sign of friendship and connection between us and the Seneca Nation.... We are honored for this opportunity, really. Sorry that it has taken this long.<sup>249</sup>

From this interpretation the Buffalo History Museum saw no issues with repatriating the Red Jacket Medal, and they saw this as a new beginning between the museum and the Seneca Nation. Through the news source Native News Online, Melissa Brown is also mentioned as promising that the museum will always collaborate with Natives with reassessing their collections in helping to return cultural significant artifacts.<sup>250</sup> She is also quoted saying,

Much like what the Peace Medal represents, this is a sign of friendship and connection between the Museum and the Seneca Nation...As we move forward, we look to collaborate with the Nation to ensure the legacy of Red Jacket and the

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<sup>249</sup> Walker, Adria. Red Jacket's Peace Medal returned to Seneca Nation after 116 years at Buffalo Museum. *Democrat and Chronicle* News.

<sup>250</sup> Kunze, Jenna. *Red Jacket Peace Medal Welcomed Back Home to Seneca Nation*. Native News Online

history of the Seneca Nation throughout our future exhibits, programs, and community events.<sup>251</sup>

This has shown the cooperation of the History Museum in the laws of NAGPRA, also the ethics of repatriation that Melissa Brown has demonstrated for us.

Although not getting an interview with Ms. Brown, she referred me to Walter Mayer who is the Senior Director of Museum Collections at The Buffalo History Museum. Through a phone interview with Mr. Mayer and asking questions about the museum's standpoint with the repatriation of the Red Jacket Medal, if there were any form of discontent between the two parties? Mr. Mayer stated that there were no issues on the museum's standpoint. He also commented that it went smoothly with following the laws of NAGPRA under article 3001(3)(D), objects of cultural patrimony.<sup>252</sup> Another question for Mr. Mayer was whether the museum had previous forms of repatriation claims on the medal even before NAGPRA, he commented that there were no records of such claims.<sup>253</sup> He was quoted by Indian Country Today that he had been honored to have been the overseer of the medal over thirty-one years and to have it rightfully returned. Also, he felt as that the medal was a historic relic from 1792 and of cultural patrimony.<sup>254</sup> Walter Mayer did explain that although the Buffalo History Museum did return the medal, however they may have lost some foot traffic in the future, for the Red Jacket Peace Medal was a part of the museum as well.<sup>255</sup>

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<sup>251</sup> Ibid

<sup>252</sup> Mayer, Walter. Interview by Nicholas O'Connor, March 13, 2023. Red Jacket Peace Medal Repatriation discussion.

<sup>253</sup> Ibid.

<sup>254</sup> Red Jacket Peace Medal Welcomed Back to Rightful Home with Seneca Nation. <https://ictnews.org>.

<sup>255</sup> Mayer, Walter. Interview by Nicholas O'Connor, March 13, 2023. Red Jacket Peace Medal Repatriation discussion.

## Proof of Provenance



Figure 23 Photo taken of Red Jacket Medal from phone, October 17, 2019.

As noted, throughout the course of many years the Buffalo History Museum had ownership of the Red Jacket medal. There's another term for it, which is called provenance.<sup>256</sup> A good way to understand the term is from Alberto Antonioli's article *What Is Provenance and Why Is It Important?* The article states that provenance is the history of the ownership of an item and its conduction into the museum.<sup>257</sup> Also to note is that the term also includes ownership through dealers, galleries and even auction houses. The author states that experts find provenance of an item important because a well-documented item shows the authenticity and value.<sup>258</sup> Any form of lack of documentation of ownership whether it was stolen or missing, means the possibility of forgery. On the museum website under their records is the book *Publications of the Buffalo Historical Society, Volume 25*, which holds the documentation of provenance of the Red Jacket Medal. Here It describes the historic event with George

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<sup>256</sup> Antonioli, Alberto. *What Is Provenance and Why Is It Important?* Collectory Art, 8 Nov. 2021, <https://www.collectory.art/post/what-is-provenance-and-why-is-it-important>.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

Washington and the events in Philadelphia, which would lead to the treaty of Canandaigua. In 1792.<sup>259</sup> Further on in the book are the accounts of ownership with detailed firsthand records.<sup>260</sup>

### **Interview with Cynthia Conides**

More questions about the repatriation ceremony of the medal, lead to Dr. Cynthia Conides, former program coordinator at Buffalo State University for the Museum Studies Program. Also, she was the former Director at the Buffalo History Museum. Following up with the same questions as Walter Mayer, Dr. Conides stated, that she was not a part of the repatriation, as it was long before her time as Director from 2006-2010.<sup>261</sup> With a direct question if the Museum ever faced previous repatriation claims of the medal well before NAGPRA, Dr. Conides said she never recalled that ever happening or to her knowledge at the museum.<sup>262</sup> She does make an interesting claim though, before the Native exhibit display was re-done in 2013, the medal sat in storage for some time and during tours the medal would be taken out and shown to the public. Most of the tours were of the indigenous Seneca Nation, along with the director of the Seneca Iroquois National Museum, who were very excited for the tours. However, she noted that she had no more information to divulge, and she recommended talking to Melissa Brown.<sup>263</sup>

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<sup>259</sup> Buffalo Historical Society, Publications of the Buffalo Historical Society, Volume 25 Publications of the Buffalo Historical Society, Buffalo Historical Society (Buffalo, N.Y.) Volume 25 Page, 233.

<sup>260</sup> Ibid, 233-243.

<sup>261</sup> Cynthia Conides. Interview by Nicholas O'Connor, February 13th, 2023. Red Jacket Peace Medal Repatriation discussion.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.



## Interview with the Seneca-Iroquois National Museum (SINM)



*Figure 24 Dr. Joe Stahlman Director Seneca-Iroquois National Museum (SINM)*

The Buffalo History Museum has followed its role successfully if assuring the Red Jacket Medal has been returned to the Seneca. Now turning the focus to the Seneca-Iroquois National Museum (SINM). Dr. Joe Stahlman is the Seneca Nation's Seneca-Iroquois National Museum-Onöhsagwë:de' Culture Center and is of Tuscarora descent. For the research I had acquired time with him for a phone interview. The first question was if there were any past accounts of the Seneca Nation trying to claim ownership of the Red Jacket Medal years before NAGPRA.<sup>264</sup> Mr. Stahlman states that they have had repatriation claims on other items in the past, but not the medal.<sup>265</sup> He mentions that some people don't understand what can be repatriated by the way society is, he exclaims that, "when the Buffalo History Museum puts the medal on display every day for over a hundred years there's an assumed ownership of it, and to the Seneca people there hasn't been a lot of legislation or language of sorts to allow the Indigenous people to lay claims

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<sup>264</sup>Joe Stahlman. Interview by Nicholas O'Connor, March 21st, 2023. Red Jacket Peace Medal Repatriation discussion.

<sup>265</sup> Ibid.

to these sort of things.”<sup>266</sup> Dr. Stahlman mentions as well “there is an assumption on the Seneca end that those objects held by institutions are done so in legitimate ways. So over time the Seneca felt that the medal was a part of their community. That it wasn’t until someone like me coming on board to have realized we can just get it.”<sup>267</sup>

To follow up with the next question, of whether there had been any form of discontent from the ceremony between both parties involved, and if people believed it still belonged to the Buffalo Museum, or it should be repatriated? Dr. Stahlman confirms that “everyone was on board and supportive, he also says that he is not behind closed doors with the Buffalo Museum board, but I really talk more to the directors and the curators.”<sup>268</sup> The next question referred to whether there were other items in which if the Seneca were trying to have returned from the BHM? He conveys that they still are trying to do so, he says he is working on something even now to repatriate from the museum, unfortunately he couldn’t divulge that information. But he wanted to let the BHM know that he has a list of objects lined up and that they are not cherry picking by any means. But with Covid he felt has slowed his progress but kept him busy, now with the decline of Covid he plans on doing another repatriation.<sup>269</sup>

### **Repatriation Request**

The Request for repatriation of the Red Jack Peace Medal was filed back in October of 2020, under NAGPRA law article 3001(3)(D), public law 101-106.<sup>270</sup> Under the Federal Register of the National Archives, is the proposed *Notice of Intent to Repatriate Cultural Items: Buffalo History Museum, Buffalo, NY*. The document contains detailed summary of the National

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<sup>266</sup> Ibid.

<sup>267</sup> Ibid

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> National Parks Service, Glossary, Cultural Patrimony definition. Accessed March 23rd, 2023.

Park Services request with the intent to have the Red Jacket Medal repatriated.<sup>271</sup> The notice was made February 9<sup>th</sup>, 2021, and addressed to Walter Mayer, Sr. Director of Collections, Buffalo History Museum.<sup>272</sup> Also, the document describes in detail the artifact in question for repatriation. From news source Many-news, Dr. Stahlman had been quoted from when the repatriation claim was made, that he hoped to not diminish the stewardship of the BHM, but felt it was necessary to claim what was originally a Seneca object.<sup>273</sup> He said that the BHM responded effectively and fast to the claim itself, Melissa Brown commented “We wanted to follow the federal process and we wanted to be sure that we were doing our due diligence.”<sup>274</sup> The BHM goals are about moving forward and establishing better relations with the Seneca-Iroquois National Museum.<sup>275</sup>

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<sup>271</sup> “The Federal Register.” Federal Register :: Request Access, <https://www.federalregister.gov/documents/2021/02/09/2021-02611/notice-of-intent-to-repatriate-cultural-items-buffalo-history-museum-buffalo-ny>.

<sup>272</sup> Ibid.

<sup>273</sup> Eves, Megan. *Repatriation and Reconciliation: The Seneca Nation, The Buffalo History Museum and the Repatriation of the Red Jacket Peace Medal*. Museum Association of New York - Repatriation and Reconciliation: The Seneca Nation, the Buffalo History Museum and the Repatriation of the Red Jacket Peace Medal, 25 May 2021, <https://www.nysmuseums.org/MANYnews/10559296>.

<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

Under the Federal Registry, the National Park Service filed another repatriation request from the Seneca to the BHM for three other cultural items that are housed at the museum. January 20, 2022, was the latest publication of repatriation and the BHM had determined that the cultural items listed in their records had met the description as a sacred object. They have complied with NAGPRA in following this request.<sup>276</sup> The items in question are, one sash worn on all ceremonial occasions by Delos Big Kettle, one turtle rattle, and one child's turtle rattle made by Delos Big Kettle's son, Richard Big Kettle.



*Figure 25 DELOS BIG KETTLE—SAINOWA.*

The history is that in the late nineteenth to twentieth century, was a Seneca Chief known as Delos Big Kettle, who presented these items to an adopted member of the Seneca Bear Clan, George Tucker, in 1918 as gifts. In 1931 The Buffalo Historical Society purchased the items from George Tucker. Chief Delos Big Kettle was known as Chief Soinowa and lived from 1868-

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<sup>276</sup> “The Federal Register.” Federal Register : Request Access, <https://www.federalregister.gov/public-inspection/current>.

1923.<sup>277</sup> He was the leading Chief of the Cattaraugus Seneca Wolf clan and was known as a man of great influence in the Buffalo area.<sup>278</sup> Unfortunately not a lot of records are available on this particular person, however he is a descendant of the noted Seneca leader Big Kettle. The contemporary descendant Richard Big Kettle, also a Seneca from the Cattaraugus Territory, had requested the repatriation of these artifacts to be used again in practicing ceremonies.<sup>279</sup> Under NAGPRA law the BHM found these items were tied to article 25 U.S.C. 3001(3)(C), which describes of traditional sacred objects stillbeing used today as part of the cultural heritage. The items were also tied under article 25 U.S.C. 3001(2), which proof of lineal heritage had been made.<sup>280</sup>

### **Red Jacket Peace Medal Repatriation Ceremony and Summary**



*Figure 26 Onöhsagwë:de' Culture Center*

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<sup>277</sup> Ibid.

<sup>278</sup> Parker, Arthur C. *Seneca Myths and Folk Tales*. The Project Gutenberg EBook of Seneca Myths and Folk Tales, by Arthur C. Parker, 22 Feb. 2020, <https://www.gutenberg.org/files/61477/61477-h/61477-h.htm>. Page, 58.

<sup>279</sup> “The Federal Register.” Federal Register : Request Access, <https://www.federalregister.gov/public-inspection/current>.

<sup>280</sup> Ibid.

The repatriation ceremony was May 17<sup>th</sup>, 2021, and was held at the Onöhsagwë:de' Culture Center in Salamanca, NY which the Medal will be housed and displayed from now on.<sup>281</sup> The ceremony went very well, with hundreds in attendance including many public officials. Melissa Brown and Seneca President Mathew Pagels are shown in figure 29 as holding the Peace Medal. On May 16<sup>th</sup>, Buffalo News reporter Robert McCarthy described that the ceremony with the use of NAGPRA, helped define again the ownership rights of the Red Jacket Medal. Joe Stahlman was mentioned, making a final statement noting that the transfer of the object built new awareness for the voices of those of the non-majority population to be heard.<sup>282</sup> To sum up the details, the Red Jacket Medal will sit on display at the Onohsagwe' Culture Center, being available to the public to view for generations to come.<sup>283</sup>



*Figure 27 Melissa Brown and Seneca President Mathew Pagel at Red Jacket Ceremony*

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<sup>281</sup> Staff, The. *Red Jacket's Peace Medal Returned to the Seneca Nation*. Two Row Times, 19 May 2021, <https://tworowtimes.com/news/red-jackets-peace-medal-welcomed-back-to-seneca-nation/>.

<sup>282</sup> Reporter, Robert J. McCarthy News Political. 2021. "Red Jacket Medal's Long Journey Ends at Seneca Museum." Buffalo News. May 16, 2021. [https://buffalonews.com/news/local/red-jacket-medals-long-journey-ends-at-seneca-museum/article\\_e58abce0-b653-11eb-9765-dfb7bd73568c.html](https://buffalonews.com/news/local/red-jacket-medals-long-journey-ends-at-seneca-museum/article_e58abce0-b653-11eb-9765-dfb7bd73568c.html).

<sup>283</sup> Ibid.

## Chapter 6: Conclusion



Figure 28 Matthew Pagel and Melissa Brown handling and care of the medal.

After the repatriation ceremony outside the cultural center, Melissa Brown and Mathew Pagels went inside and put on gloves to handle the medal and officially put the object on display.<sup>284</sup> Some might wonder the reason why it took so long to repatriate the Red Jacket Medal. Philippe de Montebello, author of *And What Do You Propose Should Be Done with Those Objects?*, explains that a museum's mission is to conserve and acquire objects, display them, and publish their research findings.<sup>285</sup> Most museum's goals are about providing the most possible access of that knowledge to the public. He deeply explains that access to cultural objects and art are of value to a museum and they are vital piece of history and heritage for all people.<sup>286</sup> Also, that a collection typically defines a museum, and the better the collection within a museum, the better the museum, which is better for the public.<sup>287</sup> Just like discussed in the interview with

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<sup>284</sup> Gabriel Pietrorazio( Indigenous Affairs Reporter ) *Repatriation of Red Jacket Peace Medal Returns to Seneca Nation*. Fingerlakes1.Com, 22 May 2021, <https://www.fingerlakes1.com/2021/05/22/repatriation-of-red-jacket-peace-medal-returns-to-seneca-nation/>.

<sup>285</sup> Montebello, Philippe de. *And What Do You Propose Should Be Done with Those Objects? In Whose Culture?: The Promise of Museums and the Debate over Antiquities*. edited by James Cuno, 55–70. Princeton University Press, 2009. <http://www.jstor.org/stable/j.ctt7pgrk.7>. Page, 55.

<sup>286</sup> Ibid, 56.

<sup>287</sup> Ibid, 57.

Walter Mayer, he exclaimed that the museum loses a piece of itself and would lose foot traffic for the future. This could possibly be an instance to why museums take so long, that its due to a the how a collection affects the museum and its societal standings.

Kathleen Dare, author of *Grave Injustice: the American Indian Repatriation Movement and NAGPRA*, explains another reason why museums take a while to officiate the return of objects. Archeologists, historians, and scholars have a certain guide to all their types of work. With the stacks of NAGPRA files and list of compliances, along with the research needed for the digestion of the law for museums, as Kathleen, author of *Grave Injustice the American Indian Repatriation Movement and NAGPRA*, states that it should be easy for Natives to understand this process.<sup>288</sup> This could be another reason why repatriation took a couple of months after the initial request made for the Red Jacket Medal. Although the relic was returned to its original owner, now what is the plan going forward with the BHM? Well from the interview with Joe Stahlman, it was clear that the Cornplanter's Pipe and the Red Jacket Medal was just the beginning of repatriation and there is still more for the BHM to do. Also, learning that in 2022 a new request had been made on behalf of the Seneca for three more artifacts that were once owned by Chief Delos Big Kettle, more information was not available for that particular new case. As for plans of a fake or surrogate replacement for the medal, there has been no new recent developments by

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<sup>288</sup> Fine-Dare, Kathleen S. (Kathleen Sue). *Grave Injustice : the American Indian Repatriation Movement and NAGPRA*. Lincoln: University of Nebraska Press, 2002. Page, 187.



the BHM, which would be a nice addition for them to keep their Native American exhibition active even if the medal was a replica.



*Figure 29 Logo of the U.S. Department of Interior*

From the enduring struggles of Native Americans for repatriation claims of their remains and sacred objects, the Native American Graves Protection and Repatriation Act of 1990 is now undergoing some modifications to help do more for tribes seeking repatriation claims. NAGPRA is administered by the Department of the Interior (DOI). In 2021, Deb Haaland, a member of the Pueblo of Laguna, became the first Native American to serve as a cabinet secretary when she became the US Secretary of the Interior. The DOI was created March 3<sup>rd</sup>, 1849, with the seal of a Buffalo standing on a prairie. The Buffalo was represented for the endangerment of the species. The organization aides in the protection of the nation's natural resources and heritage which is operated by the Secretary of Interior.<sup>289</sup> In October 2022, DOI posted proposed revisions to NAGPRA for public review and comment<sup>290</sup>. There is a systematic process of the law for

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<sup>289</sup> "US Department of the Interior." All About Bison, 13 Jan. 2023, <https://allaboutbison.com/us-department-of-the-interior/>.

<sup>290</sup> "Interior Department Takes Next Steps to Update Native American Graves Protection and Repatriation Act." U.S. Department of the Interior, 13 Oct. 2022, <https://www.doi.gov/pressreleases/interior-department-takes-next-steps-update-native-american-graves-protection-and-1>.

returning any funerary objects, cultural remains, sacred artifacts, and objects of cultural patrimony to Native Americans, Alaskan Natives and Native Hawaiian organizations.<sup>291</sup> The new changes would make it a mandated requirement for museums, institutions, and federal agencies to list and compile their Native American collections under the law. The Assistant Secretary for Indian Affairs Bryan Newland stated that NAGPRA law is important to help Natives heal from the past which has been painful to endure and to also encourage them to protect what is sacred.<sup>292</sup> He feels that these changes are long overdue, and this will help enforce the law in repatriation efforts.

National Park Service Director Chuck Sams, who was the first Native to hold this position, made a statement as well, describing how repatriation is a sacred justice for the Indigenous people of the Americas and is a responsibility to have which allows for the return of stolen items. The Department of Interior consulted with 71 different Native Tribes and Hawaiian groups and came with over 700 new comments for a proposal, the intention of the revisions are as follows,

- Strengthening the authority and role of Tribes and Native Hawaiian organizations in the repatriation process
- Addressing barriers to timely and successful disposition and repatriation
- Documenting and addressing requests of Tribes and Native Hawaiian organizations when human remains or cultural items are discovered on federal or Tribal lands before items are further disturbed,
- Increasing transparency and reporting of holdings or collections<sup>293</sup>

These proposed changes would enhance requirements for museums and federal agencies to inventory and identify human remains and cultural items in their collections.<sup>294</sup>

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<sup>291</sup> Ibid.

<sup>292</sup> Ibid.

<sup>293</sup> Ibid.

<sup>294</sup> Ibid

Jennifer Shannon in her article *Collections Care Informed by Native American Perspectives: Teaching the Next Generation*, believes on educating collection managers and curators to help them learn the different interpretations of the best needed practice and care for Native American collections. She goes to explain further that collection that originated of Native American communities that are held in the United States means addressing the Native American Graves Protection Act. Understanding of course that even though museums may have ownership of Native artifacts, they have to recognize the original owners of the historic tribes. She has stated that historically both the dead and living Indigenous people were seen as nothing more than specimens to museums and anthropologists. Many artifacts of the deceased were either bought or were taken illegally and were sacred objects to many different Native tribes and communities.<sup>295</sup> It is sad to understand what becomes of these sacred artifacts and remains. BHMs. Shannon expresses her strong commitment to the value of the Native ways and any collections care.

Author Bowen Blair is another woman who in her book *Indian Rights: Native Americans versus American Museums: A Battle for Artifacts* describes that religion is imbedded within artifacts as it is a part of everyday Native American life. Therefore, she believes that artifacts should hardly be separated from the religion.<sup>296</sup> Also, it is necessary understand Native Americans in general fear their sacred objects could be deaccessioned indiscriminately to private collectors.<sup>297</sup> The Red Jacket Medal has so far shown its significance and was not stolen yet was sold to the Buffalo Historical Society at the time and was in their care from 1895 up to its

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<sup>295</sup> Shannon, Jennifer. *Collections Care Informed by Native American Perspectives: Teaching the Next Generation*. *Collections: A Journal for Museum and Archives Professionals* 13, no. 3-4 (2017): Page, 205

<sup>296</sup> Blair, Bowen. *Indian Rights: Native Americans versus American Museums: A Battle for Artifacts*. *American Indian Law Review* 7, no. 1 (1979): 125–54. <https://doi.org/10.2307/20068101>. Page 126.

<sup>297</sup> Ibid, 129.

repatriation in May of 2021. However, the Seneca believe that Ms. Parker, widow of Ely Parker (last descendant of Red Jacket), had no right to hand such a cultural patrimony artifact over to the Historical Society.<sup>298</sup> From understanding the process through NAGPRA and authors, it is important to say that the medal belongs to the Seneca as a collective rightfully.

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<sup>298</sup> Haynes, Hayden. *Chief Red Jacket Peace Medal Repatriation Ceremony*. Seneca Official Newsletter. May 28th, 2021. <https://sninews.org/2021/05/28/chief-red-jacket-peace-medal-repatriation-ceremony/>

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