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### Amending the Native American Graves Protection and Repatriation Act: Human Rights, Sovereignty, and Cultural Sustainability

Maddie Mulcahey

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# Amending the Native American Graves Protection and Repatriation Act (NAGPRA): human rights, sovereignty, and cultural sustainability

Maddie Mulcahey

Anthropology '24



# Research Questions and Goals

*What are the collection and archaeological histories of Natrium Mound (case study) and how does this site fit into the NAGPRA landscape?*

Goals: situate case study into the legal landscape of NAGPRA, discuss recent NAGPRA amendments, and provide an overview of Indigenous frameworks of knowledge and law

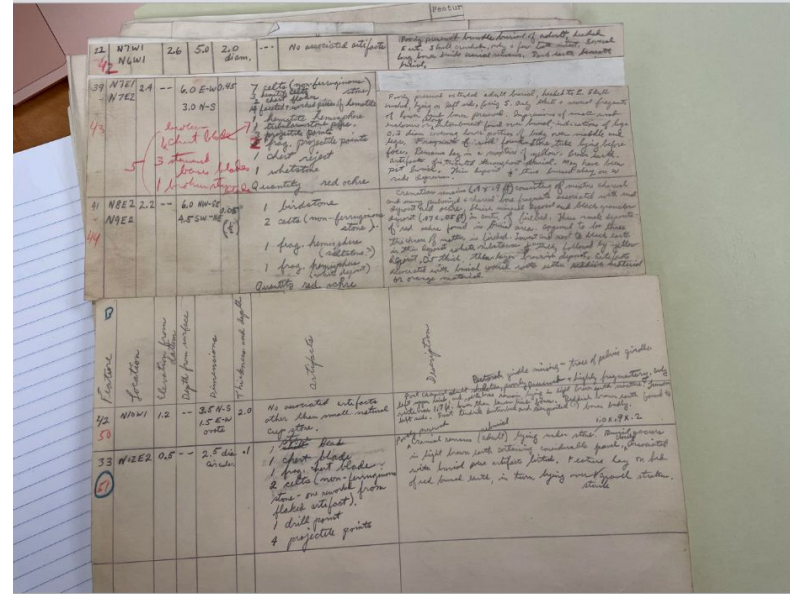
# Methods

## NAGPRA:

- Analysis of act, recent amendments, and scholarly articles and books
- National NAGPRA Listening Session

## Natrium Mound:

- Scholarly articles and books related to Natrium Mound and the Adena culture complex
- Archival research on primary source material
- Google Earth Pro



Site notes, National Anthropological Archives

# What is NAGPRA?

- Native American Graves Protection and Repatriation Act (1990)
- Intentions were to protect Native American cultural property: **human remains, associated and unassociated funerary objects, and objects of cultural patrimony** (Fine-Dare, 2002)
- All museums and agencies that receive federal funding
- Established formal guidelines for the repatriation process, criminalized the trafficking of Indigenous cultural property, and outlined procedures for future excavations involving discovery (Riley, 2002)

# What is included under NAGPRA?

- **Human remains:** refers to any part of the physical body of a Native American person
- **Funerary objects:** are connected to death rites or ceremonies placed intentionally with or near human remains
- **Object of cultural patrimony:** has ongoing historical, traditional, or cultural importance central to a Native American group, according to traditional knowledge (National Park Service, 2024)

# NAGPRA Influences

- Long history of inhumane treatment of human remains
- Grave preservation laws
- American Indian Movement (AIM) of the 1960s
- Archaeological Resources Protection Act and American Indian Religious Freedom Act (Fine-Dare, 2002)



Pawnee attorney Walter Echo Hawk at 1989 Congressional Hearings, Getty Images

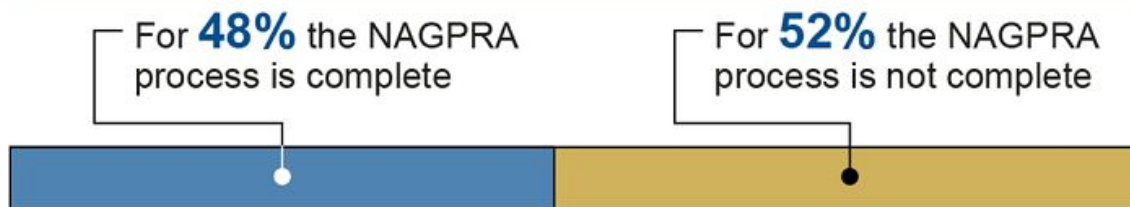
# NAGPRA Accomplishments

- Facilitated the return of Native American human remains and cultural property
  - \$56 million in NAGPRA grants (NPS, 2023)
- More critical look at archaeology, biological anthropology, museum studies
- Self-determination and sovereignty
- New dialogue internationally



# NAGPRA Limitations

Of the 208,698 Native American human remains reported since 1990



Of the 2,619,951 Native American associated funerary objects reported since 1990



Source: GAO analysis of National Native American Graves Protection and Repatriation Act (NAGPRA) Program data as of September 2023. | GAO-24-106870

# NAGPRA Limitations ctd.

- Written from an Anglo-American legal perspective, without meaningful tribal consultation
- Lack of clarity in specific terminology
  - Cultural affiliation
- Process can be time-consuming and expensive
- Varying death work beliefs

# Applying NAGPRA: Natrium Mound

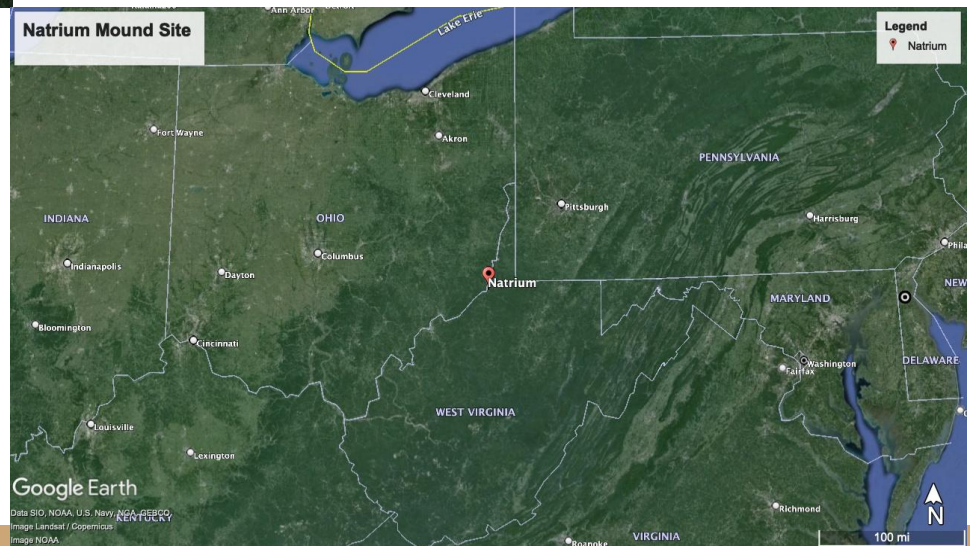
- Explore the unique archaeological and collection histories of the site
- Illustrate what the NAGPRA process looks like in practice, and give tangible examples of NAGPRA's limitations





## 46-Mr-2 Marshall County, West Virginia

Along Ohio River near  
WV-OH border



# Natrium Mound

- Excavated in 1948–1949 by Ralph Solecki
- Pittsburgh Plate and Glass Company

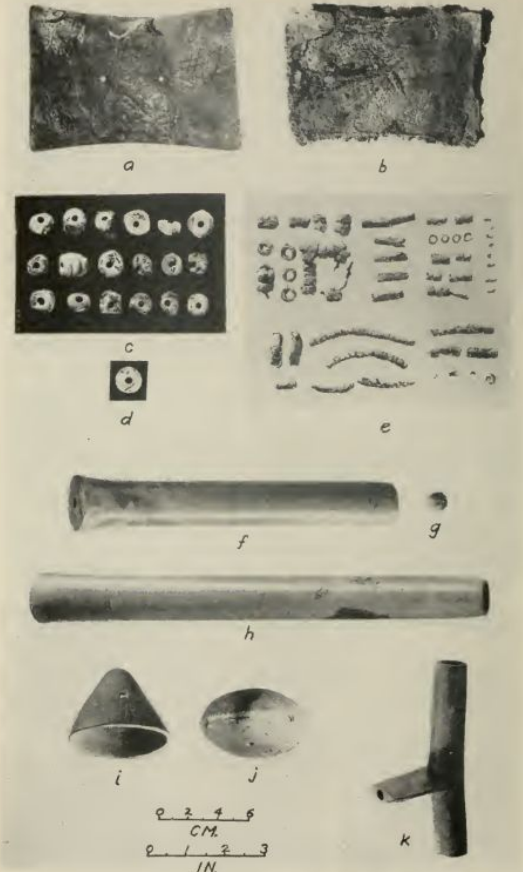


(Solecki, 1953)

# Natrium Mound

- 51 features and 1,241 artifacts
- Five artifact groupings: polished stone artifacts, rough stone artifacts, chipped stone artifacts, and miscellaneous
- Interesting: effigy birdstone, bear canine tooth, preserved textile, 708 copper beads, 36 pearl beads

(Solecki, 1953)



NATRIUM MOUND ARTIFACTS.  
(For explanation, see p. 393.)

# Natrium Mound

- Most features situated in the “primary mound”
- Capped by secondary mound
- Could have spanned multiple generations/occupations

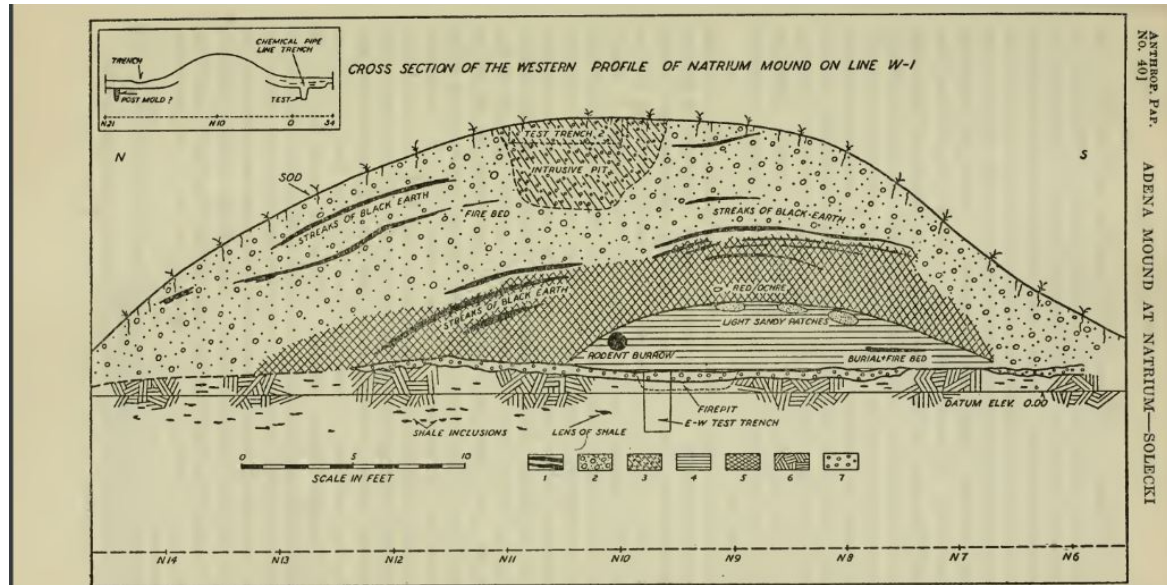
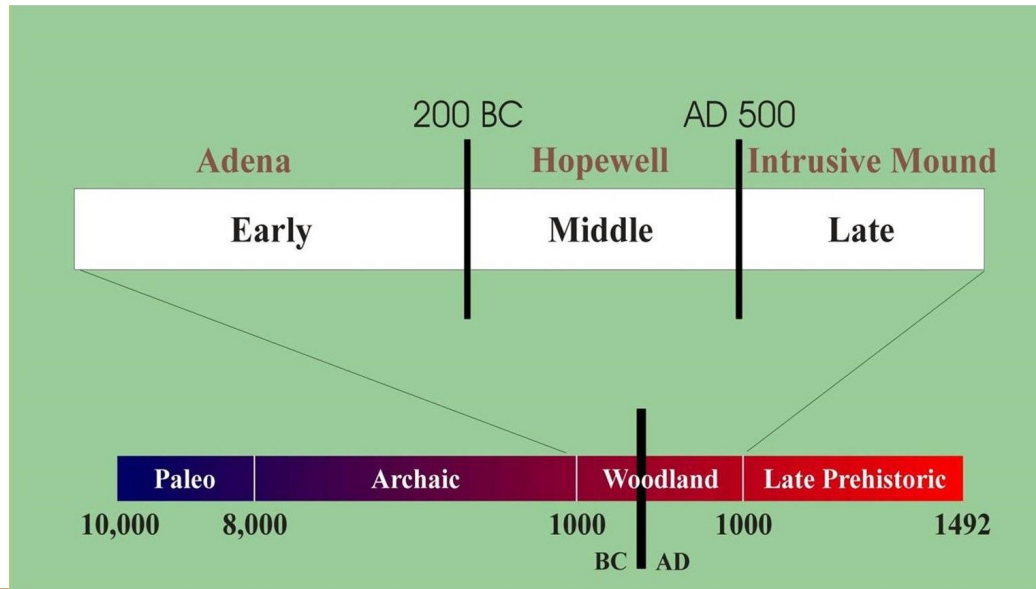


FIGURE 16.—Cross section of the western profile of Natrium Mound on line W-1. Explanation of numbered symbols: 1, Linear streaks of black earth stains. 2, Earthy gravel. 3, Mixture of light-colored gravelly soil. 4, Dark mixed earth. 5, Streaked earthy gravel mixed with charcoal. 6, Sterile gravelly subsoil. 7, Coarse yellow sandy loam (sterile).

# Adena Culture Complex

- Natrium Mound constructed towards end of Adena culture complex (Solecki, 1953).
  - Ranges from ~1000 BC - 200 BC
- Early Woodland Period

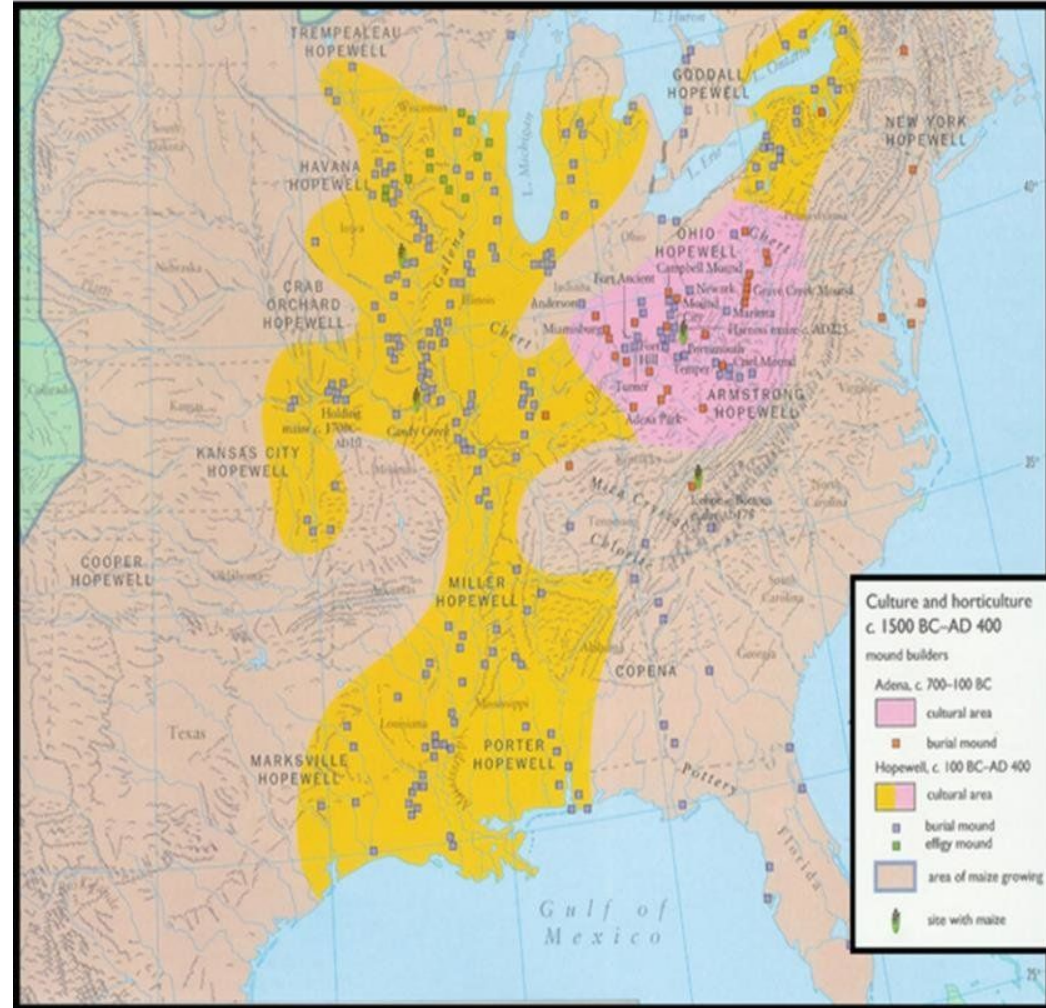


(National Park Service, 2019)



# Adena

- Central Ohio Valley from eastern Indiana to Western PA
- Shared basic core of material traits and social customs (Webb & Snow, 1945)
  - Natrium matched 74 (Solecki, 1953)



(Dragoo, 1976)

# Adena

- Significant site elements: large earthwork enclosures, ceremonial circles, accretional burial mounds, and post “houses”
- Gradual exploitation of plant foods
- Flint blades, projectile points, copper beads, fireclay pipes (Clay, 1998)

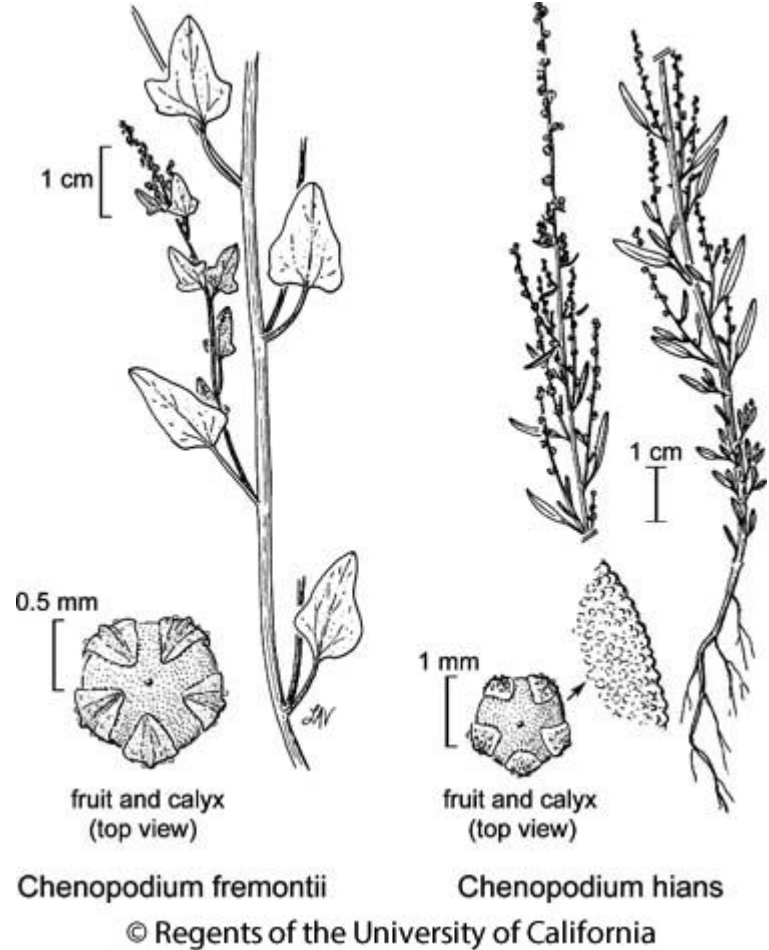




Figure 8. The ceremonial circle, 15GP8, the Biggs Circle, prior to excavation. Also an example of "replacement": a small burial mound has been started in the open center of the circle obviating its further use. More than one ceremonial circle became "submerged" by an accretional burial mound. (William S. Webb Museum of Anthropology Negative Number #3192, courtesy of Director, Dr. Mary L. Powell).



Figure 6. The essential paired-post circular structure, 15BE20, the Crigler mound. (William S. Webb Museum of Anthropology Negative Number #5618, courtesy of Director, Dr. Mary L. Powell; see also Webb 1943b:Figure 10a).

# Moundbuilding

- Indicate sedentary or semi-sedentary population
  - Evidence of social and religious structure
  - Religious and ceremonial significance, social cooperation
  - Hierarchy/ differentiation
  - River plain location
- (Solecki, 1953)



Grave Creek Mound

# Disagreement

- More recently, scholars have questioned previous interpretation of Adena sites
- Lack of data for domestic contexts
- Complexity of ritual elements and variability invites unchecked speculation
- Argue against applying broad interpretation to encompass Adena/Hopewell

Clay (1998, 2014), Henry (2017)

# NAGPRA Process

- Facilitated by National Park Service (DOI)
- Compliance documents include itemized lists, inventories, Notices of Inventory Completion, summaries, and Federal Register Notices
- Steps:
  - Compiling itemized list, completing inventory/summary, submitting Notice of Inventory Completion
  - Tribal consultation
  - Notice of Intent to Repatriate

**Itemized List of Native American Human Remains and Associated Funerary Objects in the Possession or Control of {1. MUSEUM or FEDERAL AGENCY}**

*Itemized Record-Spreadsheet*

Record ID	State	County	Site Name	Collection ID	Acquisition history	# of individuals	# of associated funerary objects	Age/Culture/Cultural affiliation	Additional info or hazardous substances

*Itemized Record-Table*

State	
County	
Site Name	
Collection ID	
Acquisition history	
# of individuals	
# of associated funerary objects	
Age/Culture/Cultural affiliation	
Additional info or hazardous substances	
Comments	

*Itemized Entry-Paragraph*

**Item:**  
**Accession #:**  
**Catalogue #:**  
**Description:**  
**Site Name:**  
**Geographical Location:**  
**Acquisition History:**  
**Number of individuals:**  
     **Description:**  
     **Accession #:**  
     **Catalogue #:**  
**Number of associated funerary objects:**  
     **Description:**  
     **Accession #:**  
     **Catalogue #:**  
**Age/Culture/Cultural affiliation:**  
**Additional information or hazardous substances:**  
**Comments:**

{Use only for **unassociated funerary objects, sacred objects, or objects of cultural patrimony** after a receiving request for repatriation **from an Indian Tribe or Native Hawaiian organization** (see [43 CFR 10.9\(d\)](#), *Step 4 – Receive and consider requests*) and appropriate response (see [43 CFR 10.9\(e\)](#), *Step 5 – Respond to requests*).

Use this template to complete [43 CFR 10.9\(f\)](#), *Step 6 – Submit a notice of intended repatriation* no later than 30 days after responding to a request for repatriation that meets the criteria for a request. The museum or Federal agency may include in a single notice all cultural items with the same requestors identified in item 6 below.

**Insert the following six pieces of information** in the appropriate places in this template, indicated by **{#}**, **Required information and additional instructions**. Provide **ONLY** the information requested.

1. Museum or Federal Agency. *Full name can be abbreviated or referred to by initials after the first instance, i.e., Museum of Natural Science (MONS).*
2. Authorized representatives' name and direct contact information.
3. The {number} of cultural items.
4. The {number} of {pick appropriate terms - unassociated funerary objects, sacred objects, objects of cultural patrimony}.
5. A **BRIEF** abstract of information from the compiled summary.
6. *The Indian Tribes or Native Hawaiian organizations requesting repatriation.*

Do **NOT** make any changes to the headings or other sections, especially to the [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. This instructs the *Federal Register* to calculate the date upon publication. The notice must conform to the mandatory format of the Federal Register and include the required information listed above.

**Before submitting a notice, REMOVE** these instructions, highlighting, italics, and {braces}. **VERIFY** all information, especially any numbers or addition. The National NAGPRA Program does not review or validate the content of your notice and is not responsible for the determinations in the notice.

**Submit a notice** by sending it to any consulting party and to the Manager, National NAGPRA Program, (nagpra\_info@nps.gov) for publication in the Federal Register.

No later than 21 days after receiving a notice, the Manager, National NAGPRA Program, will either:

- Approve it for publication in the Federal Register, or
- Return it to the museum or Federal agency. No later than 14 days after the submission is returned, the museum or Federal agency must resubmit the notice to the National NAGPRA Program.

# Natrium Mound Repatriation

## Issues

- Incomplete legacy collections
- Establishing cultural affiliation
- Time

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Historic burial  
archaeological  
excavation  
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Bob Athey.



## OPERATION BURIAL MOUND

**Columbia's Natrium Plant Helps the Smithsonian Institution  
Uncover Clues about an Ancient People of the Ohio River valley**

mystery that surrounds prehistoric America, Colum-  
plant at Natrium, W. Va., recently assisted the Smith-  
n opening a thousand-year-old burial mound located  
erty. Inside the mound were found the mouldy bones  
people and enough of their handiwork to satisfy the  
project had been a success.  
at important find was a scrap of cloth, miraculously  
a thousand years in the damp earth of the burial  
ist Ralph Solecki of the Smithsonian surmises that  
had been placed in the mound wrapped in cloth. All  
ay except the part next to a copper plate, which be-  
pper salts and was preserved. It should reveal (after  
hat kind of fibre the mound builders used and how  
weavers.  
s and skeletal remains, excavators found ornaments,  
king pipes, and about 20 pounds of red ochre powder  
of separate burial places within the mound.  
r valley is dotted with prehistoric mounds which  
emical plant, for a brief time, became partner in an  
edition. Two of these humps of dirt sat like warts  
erty. One of them was in the shape of an oval 50 feet





# NAGPRA Amendments

- December 2023, White House Tribal Nations Summit
- Goal: streamline the requirements for institutions to inventory and identify Native American human remains and cultural property in their collections
- Tribal consultation
  - Over 1,800 comments (NPS, 2024)



# NAGPRA Amendments ctd

- Strengthens tribal entities' authority by deferring to Indigenous Knowledge
- Requires institutions to obtain “free, prior, and informed consent” before allowing access to, research on, or exhibition of Native American human remains
- Eliminates “culturally unidentifiable” category, replacing it with geographic origin (TDAT)
- Requires institutions to consult and update inventories of human remains and associated funerary objects within five years (NPS, 2023)

# Indigenous Frameworks of Knowledge and the Law

- NAGPRA has sparked discussions about the compatibility of Indigenous frameworks of knowledge and the American legal system
- The disparity between the intentions of NAGPRA and its results prompted international discussion
- Intellectual property and traditional knowledge



Calls For Input

REPORT

## Repatriation of ceremonial objects and human remains under the UN Declaration on the Rights of Indigenous Peoples: report

ISSUED BY

Expert Mechanism on the Rights of Indigenous Peoples

PUBLISHED

21 July 2020

## Panel Discussion on NAGPRA

Friday, October 22, 2021 - 12:00pm

Virtual conference.

Register at this page: <https://decolonizingmuseums.com/register-for-the-conference/>



SETTLER COLONIALISM, SLAVERY, AND THE PROBLEM OF DECOLONIZING MUSEUMS

A hybrid international conference organized by the Center for Experimental Ethnography and hosted by the Penn Museum, 20-23 October 2021

Over the past several decades, scholars and practitioners have critically reconsidered the role of ethnographic museums in the

# Indigenous Frameworks of Knowledge and the Law

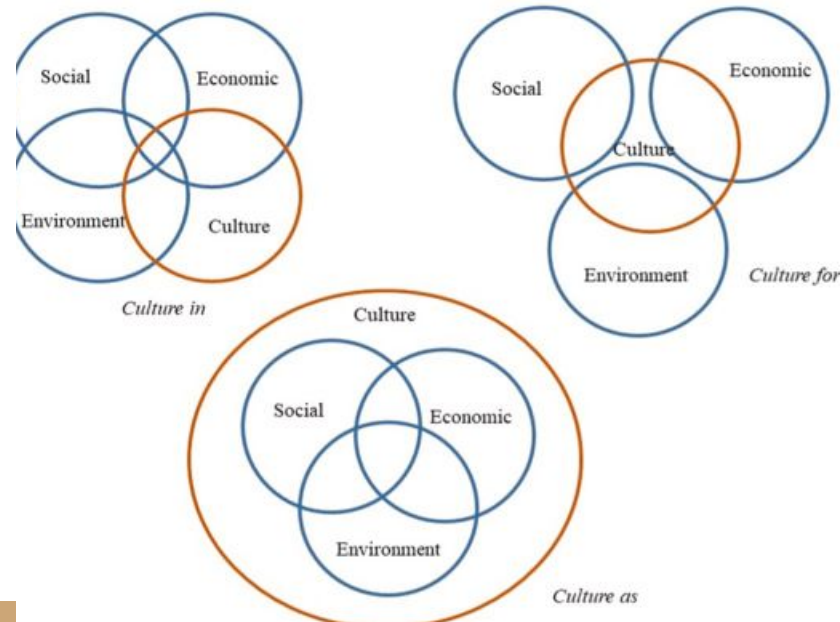
- Several scholars offer literary narratives and poetry as opportunities to re-imagine NAGPRA, contrast “bureaucratic sterility,” and explore the human qualities of repatriation (Kelsey & Carpenter, 2011; Caison, 2019).
  - Blood Run (2006), Shell Shaker (2001), Bone Game (1994)
- Others call for more interdisciplinary conversations, transparency, respect, human decency, and humility (Caison, 2019)

# Indigenous Frameworks of Knowledge and the Law

- Limits in Western Anglo-American legal language to encompass the lifeways and Traditional Knowledge of Indigenous Peoples
- Indigenous perspectives and knowledge have been largely absent in the United States' legal framework
- Movements that people have made towards incorporating Indigenous Knowledge into legal frameworks (incl. NAGPRA) can strengthen the sovereignty of tribal nations and make us more resilient to facing our future's most pressing issues.

# Cultural Sustainability

“Just as culture and creativity can help us recognise our environmentally destructive behaviours, they can also inspire creative solutions and stronger policies. And together, we can build a more resilient and sustainable future for all (UNESCO, 2023).”



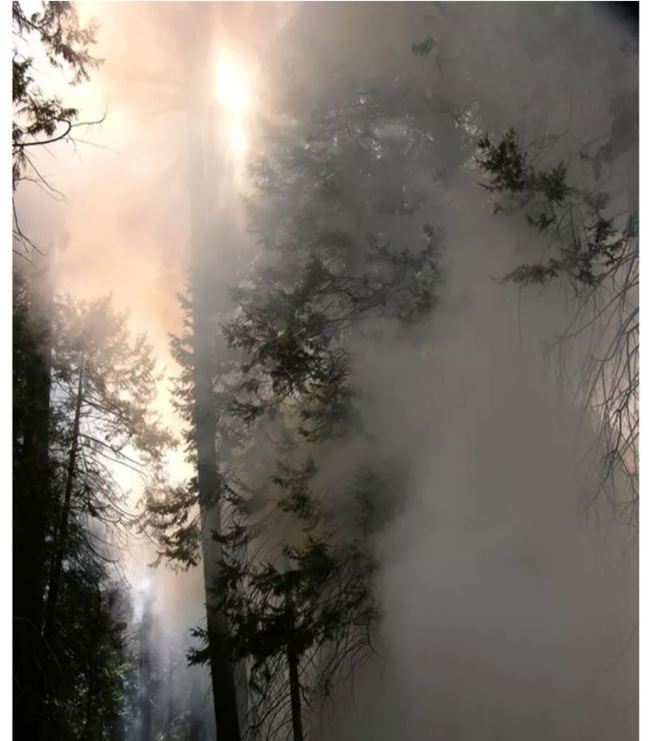
## Indigenous Fire Practices Shape our Land

### - Example: TEK and cultural burning in wildfire management (NPS, 2022)

For many millennia, fire was integral to many Indigenous peoples' way of life. Native Americans, Alaska Natives, and Native Hawaiians used fire to clear areas for crops and travel, to manage the land for specific species of both plants and animals, to hunt game, and for many other important uses. Fire was a tool that promoted ecological diversity and reduced the risk of catastrophic wildfires.

"Cultural burning" refers to the Indigenous practice of "the intentional lighting of smaller, controlled fires to provide a desired cultural service, such as promoting the health of vegetation and animals that provide food, clothing, ceremonial items and more" (Roos, 2021). According to Frank Kanawha Lake, a research ecologist with the USDA Forest Service, and a wildland firefighter of Karuk descent, "[Cultural burning] links back to the tribal philosophy of fire as medicine. When you prescribe it, you're getting the right dose to maintain the abundance of productivity of all ecosystem services to support the ecology in your culture" (Roos, 2021).

In many areas, cultural burning took a hiatus during the era of fire suppression in the 20th century due to land management agencies' enforcement of differing practices. However, this has been changing over the past few decades and cultural burning is again becoming an accepted practice for land management in some areas. Learn more about [Cultural Interpretations of Fire and Human Use](#).







# International models ctd.

- United Nations Declaration on the Rights of Indigenous Peoples
- Create consistent protocols for engaging with and incorporating Indigenous Knowledge into Canadian legislation
- Based on recognition of rights, respect, co-operation, partnership and renewed nation-to-nation relationships

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