THE NATIVE AMERICAN GRAVES PROTECTION
AND REPATRIATION ACT:
A NEW BEGINNING, NOT THE END,
FOR OSTEОLOGICAL ANALYSIS--A HOPI PERSPECTIVE

By Kurt E. Dongoske

Before and after passage of the Native American Graves Protection
and Repatriation Act by the United States Congress in November of 1990,
many archaeologists¹ and physical anthropologists² lamented that the act and
its mandate to consult with Native Americans about the treatment and
disposition of human remains recovered from archaeological sites would
have dramatically negative effects on the science of archaeology and on
paleodemographic, paleopathological, and paleogenetic research.

Since NAGPRA was passed, the Hopi Tribe has been involved in
consultations concerning the human remains identified in four large
developmental projects within the Southwest. These projects include the
Transwestern Pipeline, El Paso Gas Pipeline, the Roosevelt Dam Platform
Mound Study, and the proposed Fence Lake Coal Mine and Transportation
Corridor. To date, more than 1,000 burials have been recovered or disturbed
by these projects and the possibility of doubling that number in the near
future is very real.

The tribe’s involvement has caused the Hopi people to evaluate the
benefits that analysis of prehistoric human remains can offer them. This has
generated perspicacious dialogue between the Hopi Tribe and members of the
archaeological and physical anthropological communities. This dialogue
results in a research agenda beneficial for all parties.

With NAGPRA’s passage the furiously debated scientific and ethical
issue of repatriation and reburial became a legal mandate. Consequently,
physical anthropologists and archaeologists, both in academic settings and
in federal agencies, are compelled to work in an environment that is far from
the ways they conducted research before NAGPRA.

Some archaeologists and physical anthropologists find the changes
implemented by NAGPRA hard to swallow. They assert that the treatment of
human remains and associated funerary objects recovered from an archaeo-
logical context should revert to the conventional method of curation without
consultation. Some of these arguments are based on the perceived necessity
to maintain permanent collections for future study in the advent that new
techniques of analyses are developed.³ Others acrimoniously assert that this

KURT E. DONGOSKE IS THE TRIBAL ARCHAEOLOGIST IN THE CULTURAL
PRESERVATION OFFICE OF THE HOPI TRIBE.
is a direct violation of the separation of church and state; Native American traditional religious fanatics and anti-archaeology activists claim that all bones and artifacts are sacred.  

In this paper I contend that the reality for archaeology and physical anthropology is not as hopeless as these malcontents would have us believe. Moreover, this paper argues that now is the time to develop a dialogue between scientists and Native Americans that can and should result in a future in which the concerns and interests of both parties are satisfied. The Hopi Tribe illustrates how one Native American tribe takes very seriously the NAGPRA consultation process and the resultant decisions concerning the treatment and disposition of the remains of their ancestors. As a result of this consultation process the tribe is developing a positive and mutually beneficial relationship with archaeologists and physical anthropologists alike.

The Native American Graves Protection and Repatriation Act was signed into law in November of 1990. The legislation, in part, mandates federal agencies to consult and negotiate with Indian Tribes to manage the intentional excavation and inadvertent discovery of Native American human remains and objects on federal lands. The law requires consultation with traditional Native American religious leaders as well as secular tribal governments. NAGPRA protects Indian graves on federal and tribal land, and its implementation necessitates consultation with Native American groups claiming cultural affinity to the individuals buried in those graves. NAGPRA also requires the repatriation of human remains and associated grave goods found on federal lands when requested by tribes claiming cultural affinity.

Section 3 of NAGPRA defines the “ownership” of Native American human remains and objects, and sets priorities for ownership claims, based on the degree and certainty of affiliation, and land status. The first priority for claims of ownership is given to “lineal descendants.” This term is undefined in the original language of the NAGPRA legislation. However, the Native American Graves Protection and Repatriation Act Regulations (43 CFR Part 10) published in the Federal Register defines lineal descendant as:

an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

In most archaeological cases direct lineal descendants are not available to issue a claim. If the remains are from an archaeological context on Indian lands, the tribe that owns the land is considered the owner of the remains and funerary objects and as such determines the treatment and
disposition of those remains.

If the remains or objects are discovered off reservation and on federally owned lands, then the tribe with the "closest cultural affiliation" is the recognized claimant. Here, the law shifts from individuals as claimants (lineal descendants) to groups (affiliated cultures). 7 "Cultural Affiliation" is specifically defined in NAGPRA as:

a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

It is this form of recognized ownership under NAGPRA that the Hopi Tribe asserts its claims throughout the greater Southwest concerning the treatment and disposition of human remains located on federal lands that are outside the jurisdiction of the Hopi Tribe.

The procedures for making these claims are initiated when the tribes are notified by the federal land managing agency of an intentional excavation and/or inadvertent discovery of human remains and associated funerary objects. The tribe then responds by making a claim of ownership for the remains or objects. As a part of this claim of ownership, the consulting claimant tribe or tribes make recommendations as to how the remains will be handled, what types of analysis will be permitted, if any, and the final disposition of the remains, including repatriation and/or reburial.

All "unclaimed" human remains and cultural items are subject to the NAGPRA regulations, the responsibility for which lies with the Secretary of the Interior.

The ownership rights to remains found on tribal lands continue to be a very sensitive issue for the Hopi Tribe. Under Section 10.6 (a) of the final regulations, 8 ownership rights are vested first in the lineal descendants. Second priority ownership rights in all cases, except on tribal lands, are given to the tribe or organization with the closest cultural affiliation with the human remains or cultural items as determined pursuant to Section 10.14(c).

Only when the remains are found on tribal lands is the ownership vested with the tribe that owns the land, without regard to their cultural affiliation. The Hopi Tribe's opinion is that this is inconsistent with the overall intent and spirit of the law which allows the cultural descendants the option of selecting the appropriate disposition for cultural and physical remains of their ancestors. While the Hopi Tribe recognizes the intent of the regulations to respect individual tribal sovereignty, in doing so the regulations fail to recognize individual tribal histories and the development of Indian Reservations. 9

Historically, many Indians and Native Hawaiians have been relo-
cated several times by the federal government. Reservations are federally
established political boundaries that have been imposed on Indian groups. Little attempt was made to establish these reservations in the tribe’s traditional area. As such, contemporary tribal land ownership often reveals very little about pre-reservation land use by other Native American groups. In many instances, contemporary reservation land ownership is not an appropriate indicator for ascertaining the culturally appropriate treatment of pre-reservation human remains and cultural items.

In the past, the Hopi Tribe actively maintained its stewardship over a far greater area than now currently comprises the Hopi Reservation. As a result of unilateral political actions by the United States Government, much of the Hopis’ ancestral land claim is now contained within the jurisdiction of the Navajo Tribe. Included in this land base are thousands of recognized ancestral archaeological sites and human remains. Unfortunately, the final regulations give ownership rights and the determination of the final treatment and disposition of Hopi ancestral human remains and cultural items to a culturally unrelated tribe.

**NAGPRA and Hopi Consultation**

Since 1991, the Hopi Tribe has been actively consulted regarding the NAGPRA legislation as a result of the intentional archaeological excavations and the inadvertent discoveries associated with a variety of land development projects. The projects in which the Hopi Tribe has participated in the NAGPRA consultation process cover a geographical area extending from southwestern Colorado in the north to southern Arizona in the south, and from east-central New Mexico on the east to the Colorado River on the west.

Hopi consultation on such a large geographical area in the Southwest is based on Hopi accounts of clan migrations relating that the ancestors of the Hopi people passed through many of these areas during their travels that led to the gathering of clans on the Hopi mesas. During these migrations, each clan followed its own route and established its own history. The Hopi people refer to these ancestors as the Hisatsinom. The Hopi people know that the area occupied by the Hisatsinom transcends the cultural areas defined by archaeologists, i.e., some Hisatsinom lived in the Hohokam area of southern Arizona during the migratory period, while others resided in the Mogollon and Fremont areas as well as the Colorado Plateau.

The remains of the Hisatsinom buried in archaeological sites are also of distinct concern to the Hopi people. These ancestors are of great significance in the Hopi religion, and the Hopi people feel strongly that their physical remains need to be treated with respect. The Hopi people believe that their ancestors who were laid to rest at these archaeological sites were intended to—and continue to—maintain a spiritual guardianship over those places.

It is because of these Hopi clan migration histories and the Hopi peoples’ concern for the proper treatment of their ancestors that the Hopi
A Hopi Perspective

Tribe responds to requests for consultation on such projects as the Transwestern Gas Pipeline, the El Paso Gas Pipeline, the Theodore Roosevelt Dam Modification Project, and the proposed Fence Lake Coal Mine and associated Transportation Corridor.

To date, the Hopi Tribe has responded to requests for consultation regarding the treatment and disposition of the remains of 100 individuals in association with the Transwestern Pipeline Expansion Project, a pipeline that extends from Bloomfield, New Mexico, to Needles, California;\textsuperscript{12} 80 to 100 individuals from the El Paso Gas Pipeline which also extends from Bloomfield, New Mexico, to Needles, California;\textsuperscript{13} and approximately 400 individuals from the Roosevelt Dam Modification Project.\textsuperscript{14} In addition, the Hopi Tribe in association with the Pueblo of Zuni and the White Mountain Apache Tribe has recently entered into the preliminary stages of discussions with the Department of Anthropology, University of Arizona, and the Arizona State Museum concerning the repatriation and reburial of more than 600 individuals recovered during 30 years of excavation at the Grasshopper Pueblo, in central Arizona, by the University of Arizona Archaeological Field School.

All NAGPRA consultation with the Hopi Tribe is handled through the Cultural Preservation Office. Assisting the Cultural Preservation Office in decision-making and consultation is the Cultural Resources Advisory Task Team established in 1991. This advisory team currently consists of eighteen men representing the Hopi villages and a number of prominent clans, priesthoods, and religious societies. The organization and functioning of the team is a significant accomplishment because it includes representatives from autonomous villages that decline to send representatives to the Hopi Tribal Council and do not otherwise participate in the activities of the centralized Hopi tribal government.\textsuperscript{15}

Various issues regarding the NAGPRA consultation affect the decisions made by the Hopi Cultural Preservation Office and the Cultural Resources Advisory Task Team. One of these issues is cultural affinity and how it is defined and determined under NAGPRA. The Hopi Cultural Preservation Office realizes that it is one thing to claim cultural affinity and that it is another thing to scientifically prove affinity should a Hopi claim be challenged.

There are also different levels of cultural affinity of interest to Hopis. At a general level Hopis are concerned about all Hisatsinom remains. Hisatsinom remains often can be identified through their associated archaeological context, i.e., by association with Puebloan architecture and certain types of pottery. No osteological analysis is required for this type of identification. Some Hopis are also interested in the genetic affinity between different tribes in the Southwest and what this means for prehistoric migrations. In addition to affinity, the age, sex, and pathologies of disinterred human remains are deemed to be important variables, as well as the associated funerary objects that indicate an individual held a special social status (e.g.,

\textsuperscript{12}...
a priest) that would warrant a specific treatment. Nondestructive osteological analyses and study of artifacts are seen as appropriate means to collect the data of interest to the Hopi Tribe.

The Hopi Cultural Preservation Office in conjunction with the Cultural Resources Advisory Task Team wants to make informed decisions during the NAGPRA consultation regarding the appropriate archaeological or scientific techniques for the study of the remains of their ancestors. For example, in consultation on the Fence Lake Mine Project, the Salt River Project facilitated a meeting with the Cultural Resources Advisory Task Team at which Dr. Charles Merbs, a physical anthropologist from Arizona State University, reviewed the state of the art of osteological analyses and what can be learned using different techniques. This allowed the Hopis to develop recommendations on the appropriate level of osteological analysis for the Fence Lake Mine Project with an understanding of what can be learned and how that knowledge can be gained. For instance, some Hopis think their interest in tribal affinity and clan migrations might be productively pursued through genetic studies that entail destructive analysis of human remains, and are willing to consider this as an analytical option. Other Hopis have a more conservative view, however, and think that such analyses, while interesting, would be culturally inappropriate.

During a unique NAGPRA consultation, the Cultural Resources Advisory Task Team deliberated for more than eight hours in July of 1991 concerning a request from the Office of Contract Archaeology, University of New Mexico, to conduct more detailed, nondestructive laboratory analysis of skeletal remains from two sites associated with the Transwestern Pipeline. The skeletal assemblage consisted of the disarticulated remains of at least 14 individuals characterized by extremely fragmented skeletal material exhibiting evidence of perimortem modification, in the form of green bone fractures, impact marks, cut marks, and burned bone.16 Due to the extremely unusual condition of the remains and their archaeological context (i.e., scattered on the floor and bench of a Pueblo II kiva), the Hopis agreed to the requested laboratory analysis provided that the remains were reburied within four months. The Cultural Resources Advisory Task Team agreed to the time limit, because the number four is sacred and significant to the Hopi people and the premise was that if the spirits of these fragmented remains became aware of the four in the allowed time period, they would recognize the Hopi involvement and find the analysis non-threatening.

Additionally, the Cultural Resources Advisory Task Team agreed to this laboratory analysis in order to establish if the individuals represented by these disarticulated remains were ancestors of the Hopi or if they may have been enemies of the Hopi. The cultural affiliation of these individuals is important to the Hopi, because it would determine the necessary level and nature of any subsequent Hopi involvement in the reburial.

The important point in both of these examples is that the Hopi
cultural advisers and the Cultural Preservation Office are willing to listen to archaeologists' and physical anthropologists' research designs that address specific problems of mutual interest to anthropologists and Hopis, and then make their recommendations on the basis of information presented to them as tempered by their cultural values.

For the Hopi, reburial of human remains is the only acceptable mitigation measure for the disturbance of graves because of the Hopi concepts of death. Hopis believe that death initiates two distinct but inseparable journeys, i.e., the physical journey of the body as it returns to a oneness with the earth and the spiritual journey of the soul to a place where it finally resides. A disruption in the physical journey by the excavation and removal of human remains interrupts and obstructs the spiritual journey. This creates an imbalance within the spiritual world and hence the natural world.¹⁷

The Hopis have a reburial ceremony that they conduct when ancestral human remains recovered in archaeological work are reburied. Several elders on the Cultural Resources Advisory Task Team have traveled extensively to conduct the appropriate rituals as needed on a wide range of recent projects.

NAGPRA, REBURIAL, AND THE FUTURE

The reburial of human remains recovered from an archaeological context, subsequent to some level of data recovery, is an issue at the core of the NAGPRA controversy. As an archaeologist, the issue of reburial and the permanent loss of future research materials is of distinct concern. However, I can not help but take the position that the archaeological community has created this situation through its 100-plus years of insensitivity to the living descendants of the people whose villages and physical remains are the objects of our study. This insensitivity is exemplified by turn of the century photographs taken by archaeologists, like Earl Morris and Jesse Walter Fewkes, documenting the bounty at the end of a field season. In these photographs the archaeologists are all standing in a row, at their feet are the scores of whole vessels and baskets that were excavated from various sites. In front of the whole vessels and baskets are rows of human skulls.

The callous and disparate history of the handling of Native American remains by the archaeological community is unfortunately better illustrated by the excavations of a large unmarked cemetery which had been associated with an eighteenth-century and nineteenth-century Broome County poor farm in New York. The Comfort site, an eighteenth-century Indian village, and an earlier prehistoric Owasco Phase component were at the same location. Construction activities associated with the building of Interstate 81 disturbed both prehistoric and historic graves at the site. There were three episodes of grave removal: 1962-1963, 1969, and 1971-72. The State of New York contracted with a local undertaker for the removal and immediate
reburial of the poor-farm graves. The archaeologists in the field decided what were Indian graves and what were indigent white graves. The Department of Transportation would then call the undertaker to get the white remains. The Native American graves disinterred by the archaeologists were put in boxes and curated; they have never been studied.18

This example demonstrates the attitude some archaeologists have toward human and material remains of Native Americans as archaeological specimens. As data, remains require no special consideration outside of the appropriate curatorial procedures.

Given this example and others, is there little wonder that the Native American and Hawaiian communities were extremely vocal about their support of NAGPRA?

As this paper has tried to demonstrate, the past treatment of the remains of the ancestors of Native Americans and other ethnic minorities by the archaeological community has contributed to the current climate. While it is true that the reburial of skeletal remains is a loss of valuable sources of scientific data for future research, it also may mitigate the negative consequences that the excavations have for traditional cultures.

Consequently, the problem for physical anthropologists and archaeologists is the collection of data before repatriation and reburial. Often the acquisition of this data will be restricted to an in-field analysis; where the conditions can be unfavorable. As a partial solution, physical anthropologists and archaeologists alike need to develop a dialogue with Native Americans to make the various types of osteological analysis relevant to the queries Native American tribes have about their own heritages.

To illustrate this point, in February of 1991, a historic meeting was held between the Zuni, the Acoma, and the Hopi tribes to discuss the proper treatment, level of osteological analysis, and the subsequent disposition of human remains recovered from archaeological excavations associated with the Fence Lake Coal Mine. At this meeting, the Hopi Tribe suggested that casts be produced of all the appropriate dentition, for curation and subsequent genetic studies, as a part of the analysis of the skeletal remains. The Pueblos of Zuni and Acoma maintained a more conservative perspective, and out of respect for the Zuni and Acoma people, the Hopi Tribe agreed to their position.

Another case concerns the Peabody Western Coal Company on Black Mesa, in northeastern Arizona. Between 1967 and 1983 Peabody Western Coal Company sponsored an extensive program of archaeological survey and excavation to comply with Section 106 of the National Historic Preservation Act of 1966, as amended. This program became known as the Black Mesa Archaeological Project. Peabody initially hired Robert C. Euler of Prescott College to conduct the surface inventories, and the contract was eventually transferred to George J. Gumerman at Southern Illinois University in Carbondale.19 By the end of the Black Mesa Archaeological Project’s
fieldwork in 1983, about 2,600 archaeological sites, both prehistoric and historic, had been recorded. Of these, 220 sites were mapped and partially or completely excavated during the project. Thus only 8.5 percent of all the archaeological sites identified within the coal mine lease received some form of data recovery.

In 1989, the Hopi Tribe voiced concern over the expected destruction of the burial sites in the active mining area that had not been worked. After a long litigative process in which the Hopi Tribe used NAGPRA, the Office of Surface Mining incorporated into the mining permit for the Peabody Western Coal Company the sponsorship of a project that would identify those remaining archaeological sites that had a high potential for containing burials (e.g., middens, room blocks, and kivas).

In the spring of 1993, the Hopi Tribe commented on the proposed Reinterment Plan for Prehistoric Human Remains from Mitigated Sites with the Peabody Leasehold, Black Mesa, Arizona, submitted by the Navajo Nation Archaeology Department. The Hopi Tribe requested that proper scientific methods of data recovery be implemented and that high-quality photo documentation of the burials be saved as a part of the project. It was originally proposed that Polaroid photographs be taken and destroyed once the project was completed. The Hopi Tribe also requested the opportunity to perform a reburial ceremony at the time the remains were ready for reburial.

That summer, the Navajo Nation Archaeology Department-Northern Arizona University Branch Office (NNAD-NAU) excavated all sites displaying surface indications (i.e., middens and/or kivas) within the areas to be disturbed by mining. This program integrated the suggestions of the Hopi Tribe and used black and white photographs to document the burials during excavation and color and black and white photographs to document selected skeletal remains after osteological analysis. These latter photographs documented the evidence used to determine age and sex, as well as pathological or anomalous conditions. All mortuary offerings also were photographed. In July 1993, members from the Hopi Tribe performed a reburial ceremony for the 31 individuals recovered.

As a consequence of the Hopi Tribe's involvement in this project the human remains were more extensively documented than had originally been intended. Additionally, the Navajo Nation Archaeology Department recognized the Hopi Tribe's cultural and ancestral affiliation to the human remains by allowing the Hopi Tribe to perform a reburial ceremony on lands within the jurisdiction of the Navajo Reservation.

These examples demonstrate that as a result of NAGPRA, the potential for osteological research opportunities is wider than before the legislation. Moreover, and of equal importance, the potential is greater that these analyses will be funded by federal agencies as a result of compliance with NAGPRA. The key elements are maintaining an honest dialogue with the Native American community and making the study of their ancestors'
remains relevant to their understanding of their heritage. The passage of NAGPRA and its mandates for participation of Native Americans in the decision making process about their ancestors' remains has resulted in a new beginning, not the end, of osteological analysis.

NOTES

3. Ibid., 679.
13. Alan Reed, Division of Conservation Archaeology, San Juan County Museum Association, Bloomfield, New Mexico, personal communication 1993.