■ Native American Graves Protection and Repatriation Act

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Author: 101st Congress of the United States; Representative Morris Udall
Genre: Legislation

Summary Overview

The Native American Graves Protection and Repatriation Act (NAGPRA) caused hundreds of museums and educational institutions across the United States to examine their collections of Native American human remains and cultural items. As a result of the law, by 2015 the remains of more than 50,000 individuals were repatriated to Native American tribes and more than 1.4 million artifacts were returned to the tribes, including more than 5,000 items categorized as having significant sacred status. Representative Morris Udall (D–AM) sponsored the legislation, signed by President George H.W. Bush, which legally transformed the way in which Native American artifacts were viewed and treated. For decades, there had been a growing awareness that the manner in which the first inhabitants of North America and Hawaii had been treated was not acceptable in modern society. As the civil rights movement expanded to include people from all minority groups, it came to incorporate native cultures as well. Thus, in 1990, the time had finally arrived for the United States Congress to address the need to protect Native American culture.

Defining Moment

As the global movement for the equality of all people grew in the twentieth century, there was a rising awareness that this also had implications for their cultures and cultural artifacts. Within Europe and North America, the understanding grew that white people and the Western, Judeo-Christian-based heritage were not inherently superior to peoples of other colors and backgrounds. Colonialism, in all its forms, diminished around the world. Within the United States, this meant that a new view developed regarding the people who had arrived in North American prior to European settlers. Toward the end of the century, this included a new understanding of the significance of Native American cultural items and sites and the need to be respectful of these and the culture they represented. NAGPRA was an attempt to end the desecration of Native American burial sites. It also was an attempt to transform the manner in which most Americans viewed cultural objects previously taken from Native American sites, from primitive curiosities, to be bought and sold at will, to important, and sometimes sacred, tribal artifacts on which the living tribal community had a legitimate claim, in addition to the human remains being those of the tribal members' ancestors.

As the civil rights movement for African Americans gained strength and achieved victories, other minority groups, such as the Native Americans sought full equality as well. Laws, such as the Indian Civil Rights Act, advanced the cause of living Native Americans, but not necessarily their history or culture. Activism by leaders in the Native American community increased throughout the 1960s and 1970s. In 1971, an incident at a construction site in Iowa, where remains of white people were treated differently from Native American remains, gave a specific situation that people could clearly see and understand. As a result, in 1976, Iowa passed a law similar to NAGPRA. In 1987, destruction of burial mounds in Kentucky, including looting artifacts and desecration of human remains, brought the issue to the forefront of many Indian and political leaders. These events, among others, created the pressure on Congress to pass this national law in 1990. Morris ("Mo") Udall, a liberal Democrat from Arizona, had supported several Native American causes in the past and came to understand the need to immediately work to preserve tribal cultures. After a series of hearings, Udall introduced the bill which became NAGPRA, shepherding it through Congress in just over four months.

Author Biography

The 101st Congress (1989–1990) had a membership of 55 percent Democrats in the Senate and approximately 57 percent Democrats in the House. Overall, political analysts would categorize it as a moderate-to-liberal Con-

gress, which worked fairly well with President George H.W. Bush. Just prior to passing NAGPRA, the 101st Congress passed the Native American Languages Act of 1990, which officially transformed the federal government's policy toward Native American languages from one of suppression to one of protecting and promoting these languages.

Representative Morris Udall (1922–1998) was elected fifteen times to the United States House of Representatives from southern Arizona, as a liberal Democrat. Prior to entering Congress, he was a practicing attorney. In Congress, he was a strong supporter of environmental legislation, as well as legislation related to Native Americans, including the bill which legalized Indian casinos.

HISTORICAL DOCUMENT

[Note: The legal citations in this excerpt are no longer up-to-date. We have retained this original version for its historic value and for the context it provides about these laws. For up-to-date legal citations and links to the current text of federal historic preservation laws, visit http://www.nps. gov/history/laws.htm.]

SEC. 3. OWNERSHIP.

(a) NATIVE AMERICAN HUMAN REMAINS AND OBJECTS. The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed)

(l) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgement of the Indian Claims Commission as the aboriginal land of some Indian tribe

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS. Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community.

(c) INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS. The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, con sent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph

(2) is shown.

(d) INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. The activity may resume after a reasonable amount of time and following notification under this subsection.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) RELINQUISHMENT. Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

SEC. 4. ILLEGAL TRAFFICKING.

(a) ILLEGAL TRAFFICKING. Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 1170. ILLEGAL TRAFFICKING IN NATIVE AMERICAN HUMAN REMAINS AND CULTURAL ITEMS

"(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

"(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both."

SECTION. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.

(a) IN GENERAL. Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or federal agency, identify the geographical and cultural affiliation of such item.

(b) REQUIREMENTS.

1) The inventories and identifications required under subsection (a) shall be

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or federal agency shall supply additional available documentation to supplement the informa-

tion required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

Document Analysis

Although reading NAGPRA is dull for many people, it is a document that has engendered strong feelings and lively debates among museum curators, archeologists, and members of the general public, as well as members of Native American communities. It attempts to balance the need to respect Native American and Hawaiian cultures, against the value of retaining artifacts for scholarly research, as well as for tools in educational endeavors. Historically, unlike non-Indian cemeteries, there was virtually no protection for Native American burial sites or for the cultural artifacts that had been taken from graves. Ultimately, through the passage of this law, the government of the United States comes out on the side of respect for Indian culture and the dignified treatment of the remains of Native Americans' ancestors. The hope is that the equality of Native Americans, as with all Americans, is demonstrated through the manner in which the remains and possessions of their ancestors are treated. Thus, educational institutions are mandated to catalog all their artifacts and return many to those with a legitimate claim upon them.

A key provision in the law is that the "lineal descendants" of those buried in a particular location should have ownership not only of their ancestors' remains, but of anything else found at that location. While most people see this as a reasonable statement of law, the controversy comes from the fact that Native American tribes did not come to North America thousands of years ago and live in the same location from that time forward. While the law normally gives possession of remains and artifacts to the tribe most recently in that area, if the remains or artifacts are extremely old, many archeologists argue that there is virtually no relationship between the people who lived in the area then and those who lived there in the nineteenth or twentieth centuries, and that whoever their descendants are can never be known. Those on the other side of the issue, including the federal government in this law, argue that while the modern tribe may not be the direct descendant of those buried in a specific location, they are more closely related than non-Native Americans and act as custodians of the remains and cultural artifacts. The Department of the Interior and the Indian Claims Commission have consistently fulfilled the mandate of this law, siding with Native American claims as regards ownership of disputed items.

While the law was passed in 1990, it took many years to be fully implemented. One aspect that is still being implemented after more than two decades, is the provision that all federal agencies and all institutions that have received federal money (for any reason) must catalogue all Native American and Hawaiian remains and artifacts and through the Department of the Interior and attempt to contact the appropriate tribe for consultation regarding the items acquired prior to the passage of the law. Because, historically, most of these items were acquired via questionable means, ownership of the majority of the remains and cultural items would then be granted to the appropriate tribe. It should be noted that private individuals with such pre-1990 items are not required to do this. Also, only federally recognized tribes can file claims for repatriation of items from burial sites. Since 1990, archeological digs have to have permission from the local tribe or the Department of the Interior.

Essential Themes

Within Western culture, the idea that a conqueror was justified in taking and keeping spoils of war had faded during the beginning of the nineteenth century. However, this change of philosophy did not seem to apply to what was happening in the United States as the nation grew from the eastern seaboard to the Pacific. While, initially, there were some interactions and treaties that might have indicated equality and respect between the

Indians tribes and the United States government, after President Jackson's removal of the tribes from the southeastern United States in the 1830s, treatment of the tribes—and Native Americans generally—as equals was only a façade. As the number of states in the United States grew to forty-eight, Native Americans were marginalized, and many attempts were made to destroy their culture. Religious and secular missionaries destroyed some burial sites and funerary items as a part of the "Westernization" process, while others were looted by private or public expeditions gathering "primitive" artifacts for museums, educational institutions, or private collections. These sites were not respected in the same way as Christian cemeteries. While some museums and educational institutions purchased some artifacts, these instances were exceptions. NAGPRA was the instrument through which ownership of Native American and Hawaiian items is clearly granted to their tribal communities and which outlines a process by which these items are to be returned.

Similarly, with the push for civil rights in the last half of the twentieth century, Native Americans and Hawaiians claimed not only political equality, but their heritage. In response, the federal government and most of society finally accepted them as a real part of the ethnic and cultural mix which is the United States. Although previous laws had decreed that Native Americans were full members of American society, they were seldom treated that way. As full citizens, then it followed that items taken from burial sites should be returned, just as stolen property, when found, is returned to its rightful owner. While it is obvious that the past cannot be changed, NAGPRA is an attempt to recognize historic injustices and to insure that, as regards items taken from burial sites, some benefits of past injustices do not continue. This reflects the ideal that full civil rights means more than just political and economic opportunities; it grants, within very broad limits, individuals and groups cultural recognition, freedom and respect.

—Donald A. Watt, PhD

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