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Preface

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On his very first day in the New World, Christopher Columbus introduced Europe's long heritage of religious intolerance into this hemisphere. He reported on the native inhabitants he encountered on 12 October 1492:

They ought to be good servants and of good intelligence
I believe that they would easily be made Christians because it seemed to me that they had no religion. Our Lord pleasing, I will carry off six of them at my departure to Your Highnesses, in order that they may learn to speak.¹

Although Columbus did not tarry long to learn more about these native people ("I do not wish to delay but to discover and go to many Islands to find gold"),² his legacy of Old World insensitivity toward the indigenous religions of the Western Hemisphere remains a model of behavior followed by his cultural descendants in their relations with American Indians to this day.

Five hundred years later, Native Americans are still defending themselves against religious intolerance as a matter of cultural survival. Two recent Supreme Court decisions have created a growing crisis in religious liberty throughout Indian Country.³ These cases deny First Amendment protection for tribal religious practices that predate the founding of the United States!

Many people are genuinely surprised to learn from the Supreme Court that no constitutional or statutory protection can be found for native religious freedom under American law. After all,

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our society prides itself on protecting individual liberties, and worship is a freedom that most Americans take for granted. By excluding tribal religions from the First Amendment and placing them in an unprotected class, these two decisions have become benchmarks in the struggle that began on 12 October 1492 between two vastly different cultures. Even now—as tribal leaders prepare to go to Congress to seek statutory protections in the legislative arena—this cultural conflict undoubtedly will cause many Americans to consider whether they want to remain the cultural descendants of Columbus or whether, after five hundred years, they should adopt some indigenous values and become more “native” to the hemisphere in which they live.

This edition of the *American Indian Culture and Research Journal* addresses one aspect of the larger cultural conflict: tribal attempts to reclaim the remains of dead ancestors for reburial. Like no other, the repatriation issue illustrates the religious and cultural conflicts that have characterized Indian-white race relations since the earliest colonial immigrations. When the Pilgrims landed at Plymouth Rock in 1620, their first exploring parties returned to the Mayflower with corn taken from Indian storage pits and articles removed from a grave:

We brought sundry of the prettiest things away with us, and covered up the corpse again.⁴

Since then, untold thousands, perhaps millions, of deceased Native Americans have been dug up from their graves by non-Indians in the United States, without any regard for the impact on Indian religious beliefs or sensibilities. It is as though non-Indians still believe that Indians have no religion at all, as Columbus first reported.

The repatriation problem encompasses a wide array of subjects and issues, including science, religion, ethics, race relations, and law. Archaeologists, physical anthropologists, and museums have strong interests in Native American graves, because much can be learned about North America’s past from the study of native dead. Pothunters, amateur archaeologists, and private art and antiquity collectors also have strong interests in native graves but for a different reason: money. On the other hand, Native Americans maintain strong religious interests in protecting their dead from disturbance or desecration: Humankind has always buried the dead with deep reverence and religious ritual—and native peoples

of the Western Hemisphere are no different in that regard. The manner in which society balances these competing interests tells much about American law, ethics, and relations with native people.

In recent years, society has debated these competing social interests vigorously, as tribes moved to reclaim their dead. The debate has not been confined to conference rooms; it also has included litigation and landmark legislation. One commentator, the well-known folklorist Roger Welsch, characterizes the repatriation debate, with its boycotts, vigils, and campus demonstrations reminiscent of the 1960s civil rights movement, as a "modern day Indian war." His view is an apt one in light of the frequent conflict between Indians' fundamental legal, religious, and political interests and the strong vested interests of federal and state agencies, universities, historical societies, museums, and even tourist attractions that want to retain the bodies of native dead.

In the last couple of years, our nation has been rethinking its treatment of native graves and human remains. These new attitudes have been manifested in state repatriation laws passed in California, Kansas, Nebraska, and Arizona. Over thirty states have passed laws to protect Indian graves. And many archaeological, anthropological, and museum professional organizations and institutions have made significant changes in policies in response to the Native American repatriation movement.

Much of the national debate culminated in November 1990, when President Bush signed into law the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U. S. C. 3001 et. seq. NAGPRA is a sweeping federal human rights law that does four things: (1) It increases protections for Indian graves located on federal and tribal land and provides for native control over cultural items obtained from such lands in the future; (2) it outlaws commercial traffic in Native American human remains; (3) it requires all federal agencies and federally funded museums (including universities) to inventory their collections of dead Native Americans and associated funerary objects and repatriate them to culturally affiliated tribes or descendants on request; and (4) it requires all federal agencies and federally funded museums to repatriate Native American sacred objects and cultural patrimony under procedures and standards specified in the act.

Significantly, NAGPRA, as enacted, was supported by all major museum, anthropology, and archaeology organizations. The museum community appears to be embracing the spirit and intent of NAGPRA, as museum professionals begin informing them-

selves of their duties under the new law. NAGPRA opens a new era for native/museum relations and promises both communities an opportunity to enhance their special historical relationship. However, as in the cases of other important civil rights or human rights legislation, implementation of NAGPRA is likely to be a long process dependent in large measure on the trust, goodwill, and good faith of the affected parties.

This edition of the *Journal* explores the complex, many-faceted repatriation issue through a number of excellent articles. These articles demonstrate that Native American advances in the repatriation debate, as much as anything else, are victories for solid research and scholarship in the areas of Indian history, culture, religion, philosophy, law, and science.

Science and dead Indians are explored in three articles. In "Secularism, Civil Religion, and the Religious Freedom of American Indians," Vine Deloria, Jr. probes the root causes of the repatriation problem. He explores how the dominant society has been able to ignore universal religious concerns with the dead and otherwise disregard native sensibilities on a massive scale by elevating pragmatic secularism over sacred values in Western culture. Brushing with broad philosophical and theological strokes, Deloria's article goes to the very heart of the conflict of values between the indigenous people of the New World and the people who came from the Old World. In "The Collecting of Bones for Anthropological Narratives," Robert E. Bieder—a nationally known historian of the science of anthropology—further probes the science that studies dead Indians, examining the unique perspectives that justify its need for remains and documenting how native remains have been obtained in the name of science. Bieder's article, similar to an earlier work that had a profound impact on congressional policymakers in 1990, furnishes historical background for the repatriation issue. In "Archaeology, Reburial, and the Tactics of a Discipline's Self-Delusion," Larry Zimmerman—a leading Great Plains archaeologist—examines his discipline's need for human remains in order to study North America's past and the ways in which archaeologists have responded to the repatriation issue. As much as any working scientist, Zimmerman is responsible for the marked progress toward socially responsible scientific ethics and practices that has been evident in the archaeology community in recent years; for that, the archaeology and native communities owe him a great debt.

Five articles provide actual case studies of recent repatriation

issues. Clifford Trafzer's article, "Serra's Legacy: The Desecration of American Indian Burials at Mission San Diego," provides a California example of the problem, in which sixty Kumeyaay Indians interred in a mission cemetery were exhumed by the Catholic Church, state archaeologists, and a state university. This article demonstrates the inordinate difficulty and complexity experienced by Indian relatives in repatriating and reburying disturbed Indian remains—an issue of great concern in California, given the staggering number of dead Indians warehoused at the University of California. (The university's holdings of over ten thousand Indian remains far exceed the number of living Indians that will ever attend that institution.) This case study shows the necessity for the new California law that was signed by the governor on 6 September 1991, which makes it "the policy of the state that Native American remains and associated grave artifacts shall be repatriated."⁵ Assemblyman Richard Katz, who sponsored this important human rights law to increase statutory protection, was deeply concerned that California's Indian population should not have to suffer inordinate hardships in trying to exercise rights that all other Californians take for granted: protection of the sanctity of their relatives' graves. In announcing the passage of this new law, Assemblyman Katz stated,

It is unfortunate that this bill is even necessary. However, as you are well aware, no other race has had to endure the injustice that the Native American community has had to suffer in knowing that their relatives' and ancestors' skeletal remains are lying in a box in some university or museum, when what they deserve is a proper burial by their loved ones.

Last year we attempted to address this unforgivable situation with my AB 2577. That bill passed both houses and made it all the way to the governor's desk before being vetoed at the eleventh hour by then Governor Deukmejian. However, this year all of our hard work and persistence has paid off with the passage and subsequent signing of AB 12. The passage of this bill is the first step in the settlement of a long-overlooked human rights issue.⁶

Four other articles document efforts by the Pawnee tribe to repatriate its dead relatives and ancestors in the Great Plains region of the United States. Roger Echo-Hawk's "Pawnee Mortu-

ary Traditions” is an ethnographic piece, filled with oral traditions and historical records, that describes the religious beliefs and practices of the people who actually buried these disputed dead. Echo-Hawk, a Pawnee Indian historian, notes that these mortuary and religious traditions have received only limited attention by scholars—even those archaeologists and physical anthropologists who spend their careers obtaining and studying skeletons as pathological material or data. His article is significant because it is one of the earliest such studies, and it serves to humanize the issue. Historians James Riding In (another Pawnee scholar) and Orlan Svingen submitted articles that reveal the manner in which Pawnee dead were obtained. Riding In documents how heads were taken from slain Pawnee warriors by army personnel under the infamous United States Surgeon General’s Order of 1868. He provides a detailed historical example of the federal policy to take Indian crania, under which over four thousand heads were taken in the latter half of the nineteenth century. Historian Svingen, from Washington State University, examines the manner in which hundreds of Pawnee Indians were disinterred from tribal cemeteries throughout the Pawnee homeland in Nebraska by non-Indians soon after the tribe was removed to its present reservation in Oklahoma. Svingen’s article is an historical account of unchecked, systematic grave disturbance and expropriation on a massive scale—done without the knowledge or consent of the Pawnee tribe and without disinterment permits otherwise required under existing state law. Robert Peregoy, staff attorney of the Native American Rights Fund who helped represent the Pawnee in reclaiming their dead from the Nebraska State Historical Society, recounts the enormous effort required by this Plains Indian tribe to repatriate its dead—including the historic 1989 passage of the very first general repatriation statute in the United States. Peregoy’s article, “Nebraska’s Landmark Repatriation Law: A Study of Cross-Cultural Conflict and Resolution,” not only describes the resolution of this issue in the political arena after negotiations with the Nebraska State Historical Society failed but also includes a sound overview of the legal rights and issues that are relevant to the subject of repatriation.

And, finally, Roger Buffalohead—a Ponca Indian scholar from the Institute of American Indian Arts—has contributed a paper giving his perspective on larger issues raised by the repatriation debate. Buffalohead, who has long been involved with museums and Indian issues on a professional level, served as a valued

member of the panel for a National Dialogue on Museum/Native American Relations sponsored by the Heard Museum in 1989–90. That panel gave pivotal recommendations to Congress on the repatriation issue, paving the way for passage of NAGPRA. Buffalohead's thoughtful and scholarly perspective ties a ribbon on the issue—so that wounds can heal and this issue can begin to rest in peace.

NOTES

1. Quoted in Kirkpatrick Sale, *The Conquest of Paradise* (New York: Alfred A. Knopf, 1990), 96–97.
2. *Ibid.*, 104–105.
3. *Unemployment Division, Department of Human Resources of Oregon v. Smith*, __U. S.__, 108 L. Ed. 2d 876 (1990) [denying First Amendment protection for the Peyote religion of the Native American Church]; *Lyng v. Northwest Indian Cemetery Association*, 485 U. S. 439 (1988) [denying First Amendment protection for worship at sacred sites located on federal lands].
- 4., Dwight B. Heath, ed., *Mourt's Relation: A Journal of the Pilgrims at Plymouth* (Cambridge/Boston: Applewood Books, 1986), 27–28.
5. See Public Resources Code, Sec. 5097.991 (1991 Supp.).
6. Letter from Assemblyman Katz, 18 September 1991.