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Tradition, Authority and the *Native American Graves Protection and Repatriation Act*

GREG JOHNSON

The *Native American Graves Protection and Repatriation Act* (NAGPRA) was passed into law in 1990 and since that time has been implemented in ways that merit attention from scholars of religion. This article explores the legislative history of the law, analysing Native American appeals to 'tradition' in their quest to establish authority over disputed human and cultural remains. After a preliminary theoretical section that sets out relevant issues and questions, the essay engages a close reading of pivotal legislative hearings and reports, with attention to uses of religious and moral language. Building upon this reading, a dual analysis of Native American 'traditional' rhetoric is developed that examines the persuasive features of minority-specific claims, majority-inclusive claims and the combined force of these. Next, this line of analysis is framed in comparative and historical terms through a consideration of 'revitalisation movements'. In light of this comparison, a case is made for interpreting NAGPRA and related movements as a primary means by which Native Americans manage their relationship to modernity, acting as critical citizens who demand their rights as Indians, Americans and human beings. The essay concludes by arguing for an understanding of social and discursive boundaries that neither limits nor is limited by 'tradition'.

> Ultimately, the language of national or ethnic identity is indeed a language of morality. It is an encoded discourse about inclusion and exclusion.
> —Michael Herzfeld, *Cultural Intimacy: Social Poetics and the Nation-State*, (p. 43)

> Ms Naranjo stated that in the Indian way there is always a prayer at the beginning and the end of the meetings. She suggested planning for this at future meetings and asked Mr Tallbull to provide some guidance. Mr Tallbull noted that in every meeting he had ever attended, Indians always end up doing the invocation.
> —Minutes of the 1st meeting of the NAGPRA Review Committee (National Park Service 1992)

Introduction

The *Native American Graves Protection and Repatriation Act* (NAGPRA) was passed into law in 1990, receiving its final rule and regulations in December of 1995.[1] Fundamentally a form of human rights legislation, the law is largely redressive in intent: it provides a legal framework within which Native Americans can seek the protection of graves on Federal land and the repatriation of human remains and certain cultural objects from Federal institutions. NAGPRA is a landmark law in that it challenges the colonial model of Federal/Indian relations which extends, in various incarnations, from early contact and treaties, through the Marshall Court decisions, to the eras of reservationism, assimilation and termination, to recent Supreme Court decisions.[2] Pursuant to the law, institutions that receive Federal support are required to inventory or summarise their holdings of Native American human remains, funerary objects, objects of cultural patrimony and sacred objects in order to provide Indian tribes with lists of items potentially available for repatriation. Native American representatives in turn are able to request repatriation of items based on a broad definition of 'cultural affiliation' or 'lineal descent' and, in some cases, on the basis of claims espoused by 'traditional religious

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leaders'.[3] As one might suppose, some repatriation claims are met with resistance—sometimes from the institutions holding the items in question but also, at times, from other Native American groups or factions within a group. In this respect, and in several other significant ways, the law is far from problem-free.[4] Nonetheless, since the early 1990s repatriations have been occurring at a significant rate, and many Native American groups are experiencing a cultural fluorescence as a result.[5]

But why should scholars of religion concern themselves with such a law? Native Americans, archaeologists, museum specialists and legal scholars would seem to be the logical interested parties. However, we too should take note, as NAGPRA is about more than palpable remains, whether human or cultural. It concerns our central concepts—religion and culture—in ways at once public and consequential. In short, NAGPRA is as much about the construction and contestation of cultures in the present as about recovery of them from the past. Scholars of religion have much to contribute here—namely, a view of social texts that is less rigid and more detached than the perspectives of many NAGPRA observers—and much to learn, as NAGPRA has become a tremendously rich site of contemporary religious discourse.

A religious studies perspective is especially appropriate for illuminating how NAGPRA gives rise to a rhetorical arena, delineating who can speak authoritatively about tradition, religion and culture, and to what tentative effect. I say tentative because the law allows—indeed encourages—room for counterclaims to every claim. And the protean source of possibilities and paradoxes that makes NAGPRA so pliable for interest groups, frustrating to legislators, administrators and courts, and engaging for observers is the law's remarkably accommodating allowances for evidence, which range from the biological to the mythical.[6] Such radically diverse forms of evidence, of course, are frequently perceived to be at odds, and the law does not explicitly or, at least, consistently privilege any above the other. Legislators' only guidance for assessing competing claims was to proffer the notion of 'a simple preponderance of evidence'.[7] How this is to be achieved was left open, and the history of the law's implementation has been predictably tumultuous as a result.

To gain perspective on these matters, I want to step back from the messy present—e.g., debates surrounding Kennewick Man, escalating tensions in the Southwest concerning conflicting claims over Ancestral Puebloan remains, and disputes over meteors[8]—and focus instead upon the legislative history of the law, which extends from 1987 to late 1990. Four lengthy congressional hearings were held during this time, each largely constituted by the testimonies of various Native American, museum and archaeological representatives. Witnesses generated thousands of pages of testimony, much of it pertaining directly to definitions and examples of tradition and the sacred. As this process moved forward, bills were modified, new issues emerged, positions from various sides were refined, impasses were met and, on occasion, compromises were reached. At the end of the day, so to speak, a watershed piece of legislation was passed into law.

Addressing this context, this article is constituted by four sections. First, I take up several theoretical issues concerning legal and cultural contexts, tradition and authority. The second section is a broad analysis of the legislative history. The following questions guide my analysis: Who offered support for each bill? Who staged resistance? On what grounds? In the third section of this article I analyse more pointedly the rhetoric of Native Americans in this context. Specifically, I explore how native witnesses attempted to reconfigure the *taxonomical boundaries*—in a thoroughgoing sense—by which their bones and objects are held and perceived. In the fourth and concluding section I situate

my analysis in comparative perspective with 'revitalisation movements' and address theoretical issues raised earlier, presenting a case for a modified view of tradition in the process.

Theoretical Considerations

> Men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly found, given and transmitted from the past. The tradition of all the dead generations weighs like a nightmare on the brain of the living. And just when they seem engaged in revolutionising themselves and things, in creating something entirely new, precisely in such epochs of revolutionary crisis they anxiously conjure up the spirits of the past to their service and borrow from them names, battle slogans and costumes in order to present the new scene of world history in this time-honored disguise and this borrowed language.
> —Karl Marx, *The Eighteenth Brumaire of Louise Bonaparte*, p. 595

Does the weight of tradition fuel only nightmares? Can it also inspire dreams? Can slogans be announced with sincerity and 'costumes' worn with dignity? Is the relationship of tradition to the present characterised by farce? Or, as Marx concedes only pages later, can it be that 'the awakening of the dead in those revolutions therefore served the purpose of glorifying the new struggles, not of parodying the old; of magnifying the given tasks in imagination, not of taking flight from their solution in reality; of finding once more the spirit of revolution, not of making its ghost walk again' (Marx 1852 [1978], p. 596).

What can we learn from observing self-consciously 'traditional' speech in a modern context in which speakers invoke putatively traditional religious authority to express minority desires vis-à-vis dominant social and political interests? This question, of course, reaches to matters well beyond the realm of NAGPRA; the constellation of tensions it signals pertains to the *general* possibility of historically subordinate people speaking in 'traditional' terms to historically dominant and politically ascendant audiences who have controlled and continue to control the production and consumption of most representations of the 'traditional' people. Here, then, are more than bones and relics; indeed, a wholly different kind of archaeology seems relevant to the task at hand.

Analysing the Legislative History of NAGPRA

In an odd kind of way, the political and legal arena has taken on one of 'our' old chestnuts: the nature of culture, the traditionalism of tradition.[9] What, we should ask, can we learn when such a debate goes public, is engaged by 'real' people and has dramatic manifestations and consequences? My intention here is to suggest some observations that might help us chart the course navigated by Native Americans who have worked around and with this tension to assert in positive terms the meaning of tradition.

In the project of interpreting salient moments of this rich history, my analysis builds on the proposition that 'tradition' is present-oriented, not embalmed in the past, static or fixed.[10] This is not to say that tradition is independent of the past and wholly invented, self-conscious and strategic.[11] Rather, my point is to observe what many Native American witnesses have demonstrated: tradition is a resource, a fund of cultural values, energies and interests that can be invoked and evoked by various authorities to address contemporary and future needs of the people; tradition is registered as a

culturally unique and politically engaged mode of being contemporary.[12] We can speak of tradition, then, not as a collection of objects on museum shelves but as the spirit of the people who seek to animate those objects in the present. In this way, following Jocelyn Linnekin and Richard Handler, we can say that 'tradition is a process of interpretation, attributing meaning in the present through making reference to the past' (Handler and Linnekin 1984; see also Linnekin 1983, 1990, 1991, 1992; Handler 1985). In the context of NAGPRA this view of tradition is resisted by those who would measure Indians by their likeness to popular and ethnographic images, by those who value essence over instance, past over present and representation over presentation.

That said, matters become rather vertiginous just here. As we will see, 'essentialism' cuts several ways, and so do interpretations of it. On the one hand I reject essentialist claims as intellectually misguided and view them as politically reactionary in many instances. On the other hand we will discover that Native American representatives themselves have actively participated in advancing essentialistic claims in the NAGPRA context, and this for obvious and sincere reasons. Indian essentialists have responded to non-Indian essentialists by saying: we are indeed the traditional people, we are descended from the ancestors, our traditions are timeless and unassailable.[13] The question is: How do we proceed without becoming paralysed by this tension? This is not a rhetorical question, and it is one I struggle with continually. At the present, I have concluded that analysis should move forward without attempting a double treatment of essentialist discourses, i.e., analysing non-Indian claims while deferring to Indian claims. Such an approach is intellectually bankrupt and, ultimately, rather perilous on moral grounds. To seal off some claims from analysis is to participate in mystifying the very processes we proclaim to study. My approach, then, is to proceed. And in doing so we will see that essentialism in NAGPRA contexts has yet another source, non-Indians who are sympathetic to Native American interests.[14]

The Co-Production of Authority

Here I direct our attention to the legal arena as a site of the 'production' of tradition.[15] Native Americans' use of legal and academic categories is quite real and consequential, signalling one of the central ways native peoples emerge from their engagements with modernity appearing, paradoxically, more like their 'traditional' selves. In other words, through acts of legal representation Native witnesses engage in a creative (even procreative) process. It is incumbent upon scholars, then, to recognise the genre of legal and political representations of tradition, attending to its formal qualities and its adversarial features in particular (see Goodrich 1996). In short, this amounts to a micro-historicisation of the matters at hand, foregrounding specific issues: Who is seeking what? Against what counter-discourses do they advance their position? We do well to heed Elizabeth Tonkin's observation concerning the shifting conditions of 'truth' in legal settings and her assessment of adversarially cast accounts of tradition: 'The social context of delivery, its occasion, may be definitive, and not the narrative content' (Tonkin 1992, p. 9).

NAGPRA-related deliberations, in my view, are less about outcomes—Native peoples are not so naive to believe their desires will always be met—than they are about the *process* of contestation and representation itself. No longer passive objects of legal machinations and mystifications, Native Americans have learned to wield and capitalise upon the very real resources of the Western legal system. If outcomes still seldom favor them, they are nonetheless reaching broader audiences and in more compelling ways than ever before, adding momentum to on-going shifts in popular sentiment regarding

the value and place of their cultures. And perhaps more than anything else, political and legal contexts such as the legislative history of NAGPRA motivate Native Americans to remember, research and articulate their traditions. In this way, defending traditions revitalises them.

Coming full-circle, this momentum has had direct legal ramifications at times. While not unambiguously or unanimously supported, laws such as NAGPRA, at least by way of legislative intention if not always in practice, champion contemporary Native Americans and explicitly embrace and celebrate 'culture', 'tradition' and 'religion' in ways that often resonate with indigenous interests. In this way legislators and the processes they enable become co-producers of native cultural resurgence. It is not merely that they create legal forums for cultural disputes to be heard. More radically, legislators, wittingly or not, establish and endorse the grounds from which myriad revived and revised traditions spring.

If not, then, by way of collusion, at least by way of conjunction, Indians and legislators become co-authors of cultural claims.[16] To draw upon Peter Fitzpatrick's trenchant analysis of modern law, we might say that cultural rhetoric and legal definitions elevate each other's status through a joint appeal to tradition and religion that is reflexively tautological (see Fitzpatrick, 1992). The result of this process is the construction of a highly formalised and uniquely authorising sphere. In short, laws such as NAGPRA offer a template upon which authority can be constructed and enacted, specifying who can speak, at what times and in what manners so as to be recognised as culturally and legally authoritative.[17] In the analysis that follows, I seek to demonstrate how this process conduces at times to promote the speech of some 'traditional religious leaders' above rival voices. The moral authority such speakers attempt to command is quite beyond the literal parameters of the law, but judging from audiences' responses, it has been remarkably successful.

I do not mean by the foregoing to suggest that all NAGPRA-related discourse is deliberate and explicitly strategic. Quite the opposite. I read NAGPRA discourse as a 'language' or, better, a dialect of a larger ethnohistorical language wrought from years of social, political and religious conflict with the broader society, an idea to which I return below. This means that while speakers may well have pragmatic mastery of the language, 'rules' of grammar are not always subject to self-conscious formulation. Indeed, I would argue that many speakers would not be able formulate 'rules' outside of the use of them (something most high school students know all too well). As Michael Silverstein has written concerning the unconscious and scripted aspects of communication, speakers in some situations are 'only sometimes clearly acting and agentive parties to their own interactional-textual creation of inhabitable and genred cultural form' (Silverstein, 1997, p. 300). This is precisely one definition of native fluency. This is also why external analysis is rewarding: outside observers can shed light on otherwise obscured or taken-for-granted dynamics of religious discourse.

Legislative History

> As we proceeded in the evolution of this bill, one question popped up quite constantly. that was: Is it appropriate for the Congress of the United States to define the word 'sacred'?
> —Senator Daniel K. Inouye (Senate Hrg 101-952)

What follows is an outline of the legislative history of NAGPRA, with special attention to how human rights language emerged in the various bills and discussions,

and how this trend was enjoined by various parties and resisted by others. The legislative history of NAGPRA began in February 1987, when the Senate Select Committee on Indian Affairs (SSCIA) met for a hearing concerning bill S. 187, the *Native American Cultural Preservation Act*. The record of the hearing opens with a statement by Senator Daniel Inouye, Chairman of the Committee. He introduced the bill saying, 'We gather to discuss a proposal which would accommodate the interests of historical preservation and scientific inquiry while responding to concerns of Native Americans regarding their sacred artifacts and skeletal remains' (Senate Hrg 100-90, p. 1).

In Inouye's brief comments, two themes are signalled that will frame much subsequent testimony and debate. First, he indicates that the legislation seeks to mediate an apparent tension between 'historical' and 'scientific' interests on the one hand and Native American interests on the other. As successful as NAGPRA has been in some respects, it is here relevant to observe that this goal of legislators became, in practice, a self-fulfilling prophecy: the legislation reified the very tension it sought to resolve, setting the terms, boundaries and consequences that in effect forced opposing contingents to emerge from what was otherwise an ambiguous setting of multiple groups with divergent but not always diametric interests. These legislation-driven choices mark 'sides' to the debate and suggest rhetorical templates upon which stark if simplistic 'us' vs. 'them' narratives can be espoused. The second theme signaled by Inouye's comments is a seemingly innocuous trafficking in quasi-scientific language. That is, while asserting that the legislation will balance concerns, Inouye spoke in the lexicon of popular science—of sacred *artifacts* and *skeletal* remains. Already 'tradition' seems securely rooted in the past, if we can assume that hegemonically coded speech patterns offer glimpses of the taxonomic categories that undergird them.

According to the text of S. 187, it was 'to provide for the protection of Native American rights for the remains of their dead and sacred artifacts, and for the creation of Native American cultural museums' (Senate Hrg 100-90, p. 2). Here we have the incipient leverage point of Native American advocates: the guiding language that identifies the *intent* of the legislation springs from human rights discourse, which manifestly pertains to the present even when it refers to the past. Human rights language becomes more explicit in the 'Findings' section of the bill:

> Sec. 2 The Congress finds that—
> (1) numerous museums, universities, and government agencies have considerable Native American collections that include artifacts of sacred nature and human skeletal remains that *morally* should be returned to the families, bands and tribes;
> (2) these artifacts and remains *are* extremely important to Native Americans (emphasis added) (Senate Hrg 100-90, pp. 2–3)

If we take these findings on their face, the intention of the legislation appears to have a moral impetus—specifically, in a moral burden that is a product of improper possession. We also see a modest but tell-tale tense shift in the second finding: artifacts *are* important. The verb here seems to outweigh and effectively undo the 'scientific' noun. Artifacts matter in the present. This idea was given ample expression by various Indian witnesses at the hearing. Consider, for example, the words of Chief Earl Old Person, Chairman and Chief of the Blackfeet Tribal Council:

> Chief Old Person. We have people today that strongly believe that by losing that which they have, the ancestors they have had and have had given to them, it is harmful. I think in the early 1950's people were very reluctant—even in the late

> 1940's—to really practice their Indian way of religion because of the things that had happened to them by the governments, by the people that come and try to keep us from practicing our Indian way of gathering, religious ceremonies. But in the early 1970's I saw where people became very strong, and they came on very strong, in their belief. That is why I believe you see today that they have gone back to wearing their hair long, in braids, and dressing in their native way of life. It shows they want to come back, and they want to retain—they want to bring back and live that life to the best they can, to keep up that ritual, to keep up that religion because our way of life in those days—and hopefully today—we escape to a spirit, hoping they will give us that guidance and a way of life. (Senate Hrg 100-90, p. 34)

As Chief Old Person presented it, the matter here concerns not only the continuity of tradition but the self-conscious resurgence of it. In this process, as he movingly described, religious revival is part of thoroughgoing cultural revitalisation.

With more issues before them than they might have anticipated, legislators turned their attention to another group of witnesses, representatives of various museum and archaeological interests. To be sure, matters became no more clear as new fronts of contention were opened. In particular, some witnesses challenged simple views of the past, problematising the relationship of present groups to the remains in question. The issue, as represented by one Federal witness, was 'deciding on the point at which somebody—a group—had a legitimate cultural interest in the remains in question' (Senate Hrg 100-90, p. 54). Other expressions of resistance to the proposed legislation were registered as well. The following sentiments would find reiteration throughout the legislative history: (1) there is no need for Federal legislation on the issue, as repatriation matters are best addressed at the local level; (2) repatriation efforts must be weighed against 'scientific' interests in whole, coherent collections; (3) various remains in question are part of universal human heritage and should not be subjected to the wishes of individual groups (see Senate Hrg 100-90, pp. 207–8).

S. 187 met with challenges on several fronts, not the least of which was the breadth of its definitions and the lack of feasible implementation. A year and a half passed before the next significant event in the legislative history of NAGPRA. On 29 July 1988 the SSCIA met for a hearing concerning a revised version of the bill, now titled *Native American Museum Claims Commission Act*. In general, the language of this version of S. 187 is much tighter than in its previous incarnation, though the intent appears largely unchanged.

At the hearing concerning the bill, witnesses for museum and archaeological groups continued to express opposition to the legislation.[18] Senator Melcher, surely frustrated that his revised bill was meeting resistance, became agitated by the Smithsonian's position. He had this to say to the museum's representative, Mr Dean Anderson:

> Mr. Anderson. Well, the intent of the legislation, Senator, is something we endorse wholeheartedly.
> Senator Melcher. Well, I'm glad to hear that, because that's what Congress has to deal with—what's proper and correct.
>
> I find it distasteful to have the Smithsonian say, on the one hand say we're in favor of it and on the other hand say we don't think it's necessary. The question of whether it's necessary or not is not one for the Smithsonian or some other museum; it's for Congress to decide. There's plenty of evidence that we have reviewed that indicates all too often the tribes are thwarted . . . by the museums, pushed aside by some procedure.
>
> You have 18,000 skeletal remains, I believe, of Native Americans; is that not correct?
> Mr. Anderson. That's correct.

> Senator Melcher. Well, I'm glad you're in favor of the intent because I think that's what Congress has to determine in their own judgment, whether or not we're going to follow the same procedure as we would with anybody else.
>
> Surely, Mr. Anderson, if it were your grandparents or great grandparents that were involved, you would feel that your family had some rights to reclaim the remains; would you not?
>
> Mr. Anderson. Yes, indeed, and we are actively—
>
> Senator Melcher. Thank you. (Senate Hrg 100-931, p. 53)

Apparent here is Senator Melcher's growing conviction as to the human rights aspect of repatriation and the implicitly universal values upon which his claims are based. As we will see, Native American representatives took up this position in strikingly persuasive ways, amplifying these sentiments and reflecting them back to legislators in ways illustrative of the joint moral authorship of the emergent legislation.

However, parties antagonistic to the legislation were not prepared to concede moral ground. Consider the testimony of Cheryl Ann Munson, a Society of American Archaeologists (SAA) representative, who extended opponents' arguments against the legislation in new directions:

> Ms. Munson . . . Archaeological research provides a voice for peoples and their cultures who would otherwise be silent, yet whose stories enrich our understanding of humanity. Archaeology talks about those peoples who were here before written history or were not interesting to those people writing early accounts. (Senate Hrg 100-931, p. 62)

We see in Ms Munson's claim an emergent theme that will become increasingly central to opponents of the legislation: a morally based narrative voice that is intended to respond to the religious *cum* moral narratives of Native Americans and legislators who champion them. Ms Munson's written testimony is a classic of this genre. She expresses concerns with regard to the future, speaks of national heritage and, most innovatively, invokes First Amendment language in stating her case: the role of archaeology is 'unique and indispensable' and 'essential' to an understanding of the history of the United States (Senate Hrg 100-931, pp. 122–3).

Following this hearing, the SSCIA prepared a report to the Senate recommending that the bill pass. Written by Senator Inouye, the report suggests that Native American representatives were successful in persuading legislators of their positions. In fact, much of the substance of the report relies upon a document provided by a leading Native American advocacy group, the Native American Rights Fund (NARF).[19] In the report the Committee set forth key legal principles in favor of Native Americans: (1) museums have no legal interest in objects taken without Indian consent; (2) common law demonstrates no ownership interests in human remains; (3) Native Americans have paramount rights to control remains when reasonable identification can be found; (4) oral ('traditional') evidence must be accorded appropriate weight alongside other forms of evidence; (5) in resolving issues surrounding objects, the burden should rest on the non-Indian party to demonstrate 'right of possession' (Senate Rpt. 100-601, p. 7).

The report met vigorous rejection by representatives of the SAA, the American Association of Museums (AAM), the Smithsonian Institution and the American Tribal Art Dealers Association (ATADA), all of whom were vocal in communicating their positions to their political representatives. Perceiving the unfavorable climate, the Committee decided to pursue a year-long dialogue on the matter involving central

figures from both sides of the dispute. This dialogue resulted in the *Heard Museum Report*, a seminal document that helped determine the fate of future NAGPRA legislation.[20]

The legislative history of NAGPRA resumed on 14 May 1990 with another hearing before the SSCIA. At this juncture it seems that opponents of the legislation initiated a dual strategy of (1) seeking compromise and (2) battling to gain ground within the terms of the bills. Compromise was expressed in public statements affirming the human rights sentiment of the legislation; battling meant challenging every definition and mechanism. Representative of many groups that had resisted repatriation legislation heretofore, Jerry Rogers, Associate Director of Cultural Resources, National Park Service, opened the hearing by stating that the Department of Interior and the National Park Service wanted to 'make it clearer that we are willing to deal with this as a human rights issue' (Senate Hrg 101-952, p. 31). But even as he conceded the human rights impetus of the legislation, he stated unequivocally that the departments he represents have considerable anxiety regarding 'culturally unidentifiable remains' (Senate Hrg 101-952, p. 33). Indeed, this issue remains a primary stumbling block in the implementation of NAGPRA. Its relevance for us is that it is an issue impinging directly upon 'tradition'. That is, it concerns the boundaries drawn around traditions and the kinds of knowledge deemed legitimate when drawing these boundaries. What sounds on the face of it like a credible scientific category—'unidentified remains'—is invoked as a device meant to preclude 'oral tradition' as relevant knowledge and to exclude all non-scientific information from speaking to the deep past, thereby limiting the claims of Native Americans to a shallow time depth.[21] Consider also the testimony of Willard Boyd, President of the Field Museum of Chicago. He spoke favorably of the legislation in general but moved to challenge the category of 'cultural patrimony', saying that the term 'has a different meaning than we are used to in the museum field and begins to blur into a great number of other objects' (Senate Hrg 101-952, p. 42). At stake here is the taxonomical range of the category; anxiety centers on the mileage that Native American claims might get from nebulous definitions that imply but do not fix boundaries.

Native American representatives were quick to respond with strong statements. Among these, the testimony of Walter Echo-Hawk of the Native American Rights Fund (NARF) stands out:

> Mr. Echo-Hawk. After a 1-year dialog, the panel report mentioned earlier recommended that Federal legislation is in fact needed, and NARF agrees with that recommendation. When fundamental human rights are at stake, Congress has never hesitated in the past to enact laws to protect Constitutional rights. Policies, Mr. Chairman, are no substitute for laws when it comes to these matters.
>
> Protective legislation is even more appropriate in this instance in order to carry out Federal trust responsibilities for Indian tribes and dependent Native communities. Congress has never ceded its guardianship over tribes to non-governmental entities when tribal property rights are at issue or when tribal sovereignty over domestic affairs is threatened. (Senate Hrg 101-952, p. 52)

Adding force to Mr Echo-Hawk's point, the next witness, Norbert Hill, Executive Director of the American Indian Science and Engineering Society, made the following impassioned plea:

> Mr Hill. It is strongly urged that these very significant bills be passed to demonstrate that equality of all races exists in the United States and that we, as a nation, will be entering the 21st Century with respect, honesty, and integrity as fundamental truths.

> The heart of the Indian people lives in the spirit of the past, the past that wells within our hearts and reminds us of the heritage when our ancestors lived in tribes and were close to the Earth. As related by Chief Joseph of the Nez Perce in the hour of his father's death in 1871:
>
> 'My son, never sell the bones of your father, When I am gone, think of your country. You are chief of these people; they look to you to guide them. Always remember that your father never sold this country. You must stop your ears whenever you are asked to sign a treaty selling your home. A few years more, and white men will be all around you. They have their eyes on this land. My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother. I told him I would protect his grave and he smiled and passed away to the spirit-land. . . . A man who would not love his father's grave is worse than a wild animal.'
>
> Thank you very much.
>
> The Chairman. I thank you very much, sir. (Senate Hrg 101-952, p. 56)

The relevant point here is to note the way human rights discourse shapes, indeed determines, possible responses to it.[22] That is, such claims demand assent if one is to class oneself as human; conversely, those who do not assent are 'wild animals'. Opponents of such discourse, I submit, are not anti-human rights oriented; rather, they sense the power of such discourse and are reluctant to embrace it on the grounds that to do so would subsequently undermine their ability to wage coherent resistance to the legislation.

Despite the affective power of Native American presentations, all was not won. The next group of witnesses presented firm resistance to the bill, even challenging the view that it concerns a human rights issue. The SAA and AAM continued their crusade to constrict the range of 'sacred objects', 'cultural patrimony' and 'cultural affiliation'. Clearly alarmed about the role of cultural imagination in the present, these groups were concerned that objects might be newly imagined, that 'tradition' might suddenly rupture its institutional bubble. Similar trepidation was expressed by a heretofore quiet group. Private art collectors and dealers spoke to legislators in the cadenced lingo of a remarkably authoritative kind of speech: the rhetoric of the bottom line. The concern of this contingent, here represented by Sotheby's, was with retroactive 'inventions of tradition'. They demanded that the legislative definition of 'sacred object' be far more limited in order to disallow 'subjective' revaluations of objects. This specific concern led them to reject the legislation as a whole. 'How', they asked, 'can Congress make determinations on these matters?' (Senate Hrg 101-952, p. 563).

Matters moved to the House of Representatives on 17 July 1990 for a hearing on three repatriation bills.[23] At this time opponents of the legislation pushed for constraints upon the criteria and breadth of 'cultural affiliation' so as to leave 'culturally unidentified remains' a correspondingly larger category (House Hrg 101-62, pp. 145–6). Other pressures against the bills came from art collectors and dealers. They were among the only groups explicitly to address the issue in constitutional terms, arguing that the bills would lead to violation of the establishment clause of the First Amendment. James Reid, Vice President of the ATADA, asked:

> Are these materials to be lost to the larger world because they are considered important by a specific group? Is their history not our history, too? And are Native American groups less prone to political abuse than public institutions? Does the history of Native American business ventures suggest that individual tribal entities might better care for the common cultural heritage than the established museum system? And with what broad brush are things painted sacred, and by whom? (House Hrg 101-62, p. 235; see also written testimony of Sotheby's at 246)

Mr Reid concluded by making a patronising comment intended for Native Americans as well as the legislators, saying they must recognize that 'the past cannot be rewritten by the present' (House Hrg 101-62, p. 237).

The next event of the legislative history was Senator Inouye's submission of a report recommending that the bill pass in an amended, substitute form entitled the *Native American Graves Protection and Repatriation Act* (NAGPRA). A key victory for proponents of the legislation is found in the report's discussion of 'cultural affiliation'. Here we find that the SSCIA addresses a major stumbling block: how to interpret the purported continuity of various traditions. Their statement is revealing, opening a horizon towards the past. Specifically, the reports states that Native American claimants need not establish cultural affiliation with 'scientific certainty' (Senate Rpt 101–473, p. 8). They need only demonstrate this relationship by a 'simple preponderance' of evidence. Most crucial for the ongoing life and debate surrounding NAGPRA, the report has this to say regarding kinds and standards of acceptable evidence:

> The types of evidence which may be offered to show cultural affiliation may include, but are not limited to, geographical, kinship, biological, archaeological, anthropological, linguistic, oral tradition, or historical evidence or other relevant information or expert opinion. The requirement of continuity between present day Indian tribes and materials from historic or prehistoric Indian tribes is intended to ensure that the claimant has a reasonable connection with the materials. Where human remains and funerary objects are concerned, the Committee is aware that it may be extremely difficult, unfair or even impossible in many instances for claimants to show an absolute continuity from present day Indian tribes to older, prehistoric remains without some reasonable gaps in the historic or prehistoric record. In such instances, a finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of gaps in the record. (Senate Rpt 101-473, p. 9)

Crucially, tradition here is not assumed to be seamless or preserved in amber. Discontinuities, we are told, should not be taken as necessarily undermining traditional claims. Indeed, the SSCIA language suggests that a modicum of discontinuity is to be expected in repatriation claims. The claims, after all, are pursuing remains that have been missing. Native American representatives had to be pleased, as this document echoed and affirmed many of their hard-fought positions, even while it made select concessions to the opposition.

A similar report was submitted to the House of Representatives. Regarding the definition of 'sacred object', this report also merits quoting at length, as it states in unambiguous terms the Committee's intent with regard to the continuingly vexing issue of renewal:

> The definition of 'sacred objects' is intended to include both objects needed for ceremonies currently practiced by traditional Native American religious practitioners and objects needed to renew ceremonies that are part of traditional religions. The operative part of the definition is that there must be 'present day adherents' in either instance. In addition to ongoing ceremonies, the Committee recognizes that the practice of some ceremonies has been interrupted because of governmental coercion, adverse societal conditions or the loss of certain objects through means beyond the control of the tribe at the time. It is the intent of the Committee to permit traditional Native American religious leaders to obtain such objects as are needed for the renewal of ceremonies that are part of their religions. (House Rpt 101-877, p. 14)

In October, 1990 NAGPRA was debated in both the House and the Senate.[24] Minor amendments were proposed and generally accepted. The bill passed in both the House

and the Senate and was signed into law by President George H. Bush on 16 November 1990.

Traditional Warriors, American Soldiers

> A traditional religious leader from the Cheyenne River Sioux Tribe states that the eleven pipes, six pipe bags, two pipe tampers, four rattles, two eagle bone whistles, and one webbed shield spoke to him and asked to be brought back to the Lakota Nation. —*Notice of Intent to Repatriate*, 4 March 1997 (*Federal Register*, vol. 62, No. 42)

We now leave historical narrative to take up a closer analysis of the rhetoric of Native American witnesses at formative moments in the hearings we have been considering. In what follows I describe how native witnesses sought to persuade the congressional audience of two claims that do not, *prima facie*, reside comfortably together: (1) the speakers have tradition-specific authority; and (2) the speakers' claims have universal moral relevance and thereby exact a redressive response from the United States government with regard to repatriation. I argue that proponents, not necessarily in concert or always consciously, developed a persuasive dual rhetorical inflection of tradition that allowed them at turns to resolve, harness and repress this tension. The first category of claims consists in appeals to culturally specific knowledge, heritage, entitlement and history. Such claims, which above all emphasise religious authority, I will call *minority-specific claims*. The second category includes much broader, even universalistic, claims. These claims, which convey an unmistakable moral appeal, I will call *majority-inclusive claims*.

Minority-Specific Claims

Minority-specific claims serve to establish localised *authority*.[25] Discourse of the sacred in this key meets expectations, popular and academic, of how we might think 'natives' would speak: we find here richly textured expressions of identity, the narrating of history according to ancestors and places rather than by time and events, reflections upon the coherence of community as the highest religious value, expressed desires for balance. For all of its 'otherness', such speech should not be taken as wholly disinterested remembrances of what was, as nostalgic recounting of 'traditional life'. To the contrary, this is an oppositional rhetoric, and it casts native cultural and religious authorities over and against Western discourses of authority and their authors. Such speech seeks to establish the highest claim upon a limited but precious resource: the people's heritage, both as material remains and narrative authority.

The classic indication that a speaker is about to orate in this capacity is when he or she addresses the audience in a native (though not always native to the speaker) language.[26] Together with speaking in a native tongue, witnesses often chant or offer brief prayers, gestures that have instantaneous emotional affects and which constitute a formal reconfiguration of the criteria of authority: they speak not merely *about* their religious authority as witnesses in a hearing; they coopt the genre of the hearing, temporarily putting its typical constraints at bay, so as to speak *in* authority, to speak religiously.[27] In this same mode, speakers often demonstrate and enact their putative authority by means of displaying physical emblems, often testifying in 'traditional' regalia and brandishing ritual paraphernalia.[28]

Another indicator that this genre is operative can be seen in rehearsal of lineages, claims which establish relationships to places, ancestors and the putative authority vested

in these. Reciting one's lineage is a *sin qua non* of Native American speech in the public sphere: it is to narrate oneself into context, into an authoritative position. Bill Tall Bull of the Northern Cheyenne Tribe, for example, situated his testimony with reference to the heritage of the Dog Soldier Society and his family's multi-generational association with it (Senate Hrg 100-90, pp. 28–31). Patrick Lefthand, in his testimony, described his familial connection to the Jump Dance, a ritual he purports to be 14,000 years old (House Hrg 101-62, pp. 123–4). Another classic example is seen in the opening comments of Michael Haney, Repatriation Officer of the United East and Southern Tribes:

> Mr Haney. I am an enrolled member of the Seminole Nation of Oklahoma, and a member of the Newcomer Band. I am a member of the Alligator clan. It is our clan's responsibility to assist with the preparation of the final resting place of our deceased tribal members. I am familiar with the ethical treatment of the dead of our people and the ceremonies used for burial . . . (House Hrg 101-62, p. 110)

Beyond individual accounts of lineage and associations, tribal representatives frequently presented situating narratives on behalf of their people. Consider, for example, this letter from the Wanapum Indian Tribe to Senator Inouye regarding S. 187:

> From time immemorial we, the Wanapum people (river people), have dealt and still live, along the Columbia River that stretches from the well above Priest Rapids to the mouth of the Snake River.
>
> Since prehistoric times we have buried our dead along the lands adjacent to the Columbia River, the lower reaches of Crab Creek, the Yakima River and the Snake.
>
> Without our permission, consent or notification our dead have been excavated and their remains taken to distant lands.
>
> It is our deep spiritual and religious belief that the remains of our ancient ones be returned to the land from which they were taken . . . not to areas far removed from their original burial place . . . to do less, it is our strong belief that their spirits are doomed to unrequited peace and eternal unrest.
>
> In addition, a very important provision with deep spiritual and religious meaning is that those cultural items that were recovered with the burials be returned so that they can once again be buried with the human remains in their own homeland.
>
> We therefore strongly urge that the remains of our ancient forbearers be returned to the land of their original burial. Our desires on this matter are fundamental to our religious and spiritual beliefs.
>
> Sincerely, Frank Buck, Religious Leader, Wanapum Indian Tribe. (Senate Hrg 100-90, p. 236)

Another characteristic of minority-specific rhetoric is storytelling. This genre asserts an epistemological and moral authority that purports to spring from sources untarnished by the modern world and by its mechanisms for assessing truth. And yet the magic of storytelling is found in the way stories themselves usually harbor no explicit threat to the outside world; it is the way the stories are told, the authority the speaker asserts over his or her audience, that makes the most powerful claim. Well-told stories elicit a kind of assent as subtle and mild as asking listeners to imagine another kind of world. And the very act of listening—providing a forum and an audience—accords significant authority to the speaker, especially when that forum is a congressional hearing and the audience legislators (see, e.g., story told by Edward Kanahele in his testimony at Senate Hrg 101-952, p. 400).

Perhaps the most obvious and persuasive way Native American witnesses established their authority was through rendering accounts of specific traditions and objects

(e.g., Zuni Ward Gods, Pawnee and Hawaiian mortuary rituals, and Haudenosaunee wampum). Consider, for example, William Tall Bull's moving description of the role of the Dog Soldier Pipe in Cheyenne culture:

> I come to you as a member of the Dog Soldiers Society, one of the four warrior societies that guard and protect the covenants and that have responsibility to make sure that the rituals are carried out from beginning to end, that everyone comes together at the time of the rituals, that everything is properly in its place, with the fact that the rituals are exacting, are in sequence, and there are no substitutions.
>
> When a ritual takes place and it is determined that an item is missing, it is a duty of the warrior society to seek out that item. If that item cannot be present so that the ritual can continue, then the ritual stops. It has to be determined at this point whether the ritual can continue without this item. If the ritual continues without the item, it is demoralizing to all people that are present in the camp. This is the situation which we find ourselves in. (Senate Hrg 100-90, p. 28)

From chanting and speaking native languages to storytelling and reciting ritual needs, minority-specific discourse was pivotal in gaining sympathy for the legislation. This discourse had a structural effect in this context, which entailed the revaluation of key categories by way of transposition. That is, before the NAGPRA debate, legislators, I assume, valued (at least tacitly) modern, Western claims to knowledge and authority over putatively 'traditional' ones. This can be schematised a categorical opposition:

(−)	(+)
Non-Western knowledge and values ||	*Western knowledge and values*
Tradition	Science
Myth	History
Orality	Textuality
Inalienable property	Alienable property

After the debate, as evinced by the human rights language of various legislators and expressions of legislative intent to that effect, these same categories are in place, but their valuation is reversed with reference to repatriation. This does not represent a total transposition, but rather a transposition of priority: Western knowledge and values remain qualifiedly positive, though subordinate to Non-Western knowledge and values. In this way, minority-specific claims were authoritative (or publicly embraced as authoritative) to a majority audience, if in a limited and politically defined way.

As effective as they are at establishing authority and revaluing structural oppositions, minority-specific claims rely on a strategy of differentiation and segmentary separation, and on an affirmation of cultural relativity (of some variety) on the part of the auditors. In and of itself, this kind of appeal is incomplete in political terms; while carving out a niche of authority and place, it risks alienation, misunderstanding and apathy as reactions from a Western audience. An encompassing strategy would balance minority-specific assertions with complementary gestures of affiliation with—indeed inclusion in broader society. This is precisely the inflection many Native American witnesses gave to their testimonies.

Majority-Inclusive Claims

Majority-inclusive claims open an umbrella wherein localised authority is extended by way of various moral appeals to impugn and make demands upon broader society. These

appeals, however, are cast in terms of affiliation and therefore are meant to be perceived as an *internal criticism* of American society. In this way, shifting from segmentally separated claims of authority to segmentally associated claims of morality, witnesses bridged a daunting divide and mobilised support for their repatriation efforts. Whereas I described minority-specific claims as operating by means of transposing categorical valuations, I would characterise these claims as achieving categorical revaluations by remarking and remaking boundaries of identity. Here Native American witnesses assert claims as American citizens, as (at times) Christians and as human beings. Emphasising their position and status in these terms allowed witnesses to wage critiques of the majority in the majority's terms, to speak, ultimately, of repatriation as a matter of human rights.

To make their case persuasive, Native Americans first had to elaborate upon universal values regarding the dead before they could demonstrate that American government and society have historically and continually violated this 'truth'. NARF's attorneys led this charge, making repeated arguments concerning the universal sacrality of the dead, and linking this argument to their assertion that common law historically has found no property interest in the dead.[29] To fortify their case along these lines, NARF's attorneys included in their written testimony concerning S. 1980 a letter from the Attorney General Office of California that contains the following analysis:

> It has long been the rule that one can have no property interest in interred human remains. The origins of the rule lay deep in Roman Law, which recognized certain categories of things as being exclusively of divine cognizance ('in *divini iuris*') and, therefore beyond human proprietary interest ('in *nullius bonis*'). One such category was '*res religiosae*', things inherently sacred, an example of which was human internment . . . As reflected in the writings of early common law commentators, the exclusion of *res divini iuris* (including *res religiosae*) from the general law of property persisted in early English common law. (Senate Hrg 101-952, appendix)

Beyond NARF's quite academic argument, other witnesses expressed the same basic idea. Norbert Hill of the American Indian Science and Engineering Society (AISES) phrased the matter in this way:

> The reburial and repatriation issues are simple questions of humanity and morality, of reconciling Western scientific ideology and Indian spirituality, and of religious freedom. Based on this the AISES feels that the dead of all races and nations are entitled to protection from arbitrary disturbances and treatment which is offensive to the rights and sensibilities of living communities. All graves and cemeteries should be regarded with a strong presumption of inviolability. (Senate Hrg 101-952, p. 380; see also testimony of Chief Wallulatum of the Wasco Tribe at Senate Hrg 101-931, p. 36)

Other witnesses developed this line of presentation specifically to address Christianity, arguing in effect that Christian and universal values are in agreement with regard to treatment of the dead. In this way, universal, Christian and national values are represented as homogenous in principle, though national values are described as being prone to historical corruption in ways the others are not. Thus, if the nation is demonstrated to have fallen short of universal values, it has likewise violated foundational religious principles. Edward Lone Fight of the National Congress of American Indians expressed this sentiment in the following terms: 'In a Christian nation that reveres the sacredness of death and the rituals that surround the end of life, it is a sad commentary on how we, as a people, continue to be viewed in our own land' (Senate Hrg 101-952, p. 545). Here, and in the statement that follows by William Tall Bull, we see sharp critical force achieved by witnesses reflexively wielding Christian imagery:

> In the only terms that the majority of this country may be able to understand, from the standpoint of antiquity, we refer you to the Bible, the First Book of Samuel, Chapter 4, verses 1–22: 'And she said, "the glory has departed from Israel, for the Ark of God had been recaptured." ' The loss of the Covenant of the Ark resulted in the slaughter of 3,000 Israeli soldiers, so greatly were they demoralized. . . . When medicine bundles and graves are desecrated and objects used in rituals and ceremonies are missing, to that extent the tribe is severely weakened and demoralized.
>
> In extolling the virtues of some religious practices, we hear one persistent theme: 'the family that prays together stays together'. How can the extended families of the Cheyenne stay together for lasting mutual benefit and progress until those objects which we used to pray with are returned to us? (Senate Hrg 100-90, pp. 86–7)

Having presented an account of purportedly universal—and Christian—values regarding the dead and the sacred, witnesses next looked to the national context in order to point out its relative failings. But before witnesses could criticise the values of the nation as insiders, they needed to establish insider status. Here, of course, they spoke in the discourse of citizenship:

> There is a situation in this country where we practice, I believe, among the American people—a belief that we have as our honor system. Over across the river, in Arlington, we pay great respect and tribute to missing soldiers, to people who have served the country in one way or another, and there is a lot of respect and honor bestowed on the dead. We would like to see a commission where the honor can be shared and enjoyed by all peoples. We practice such things as saluting the flag; we pledge allegiance, we do a number of things that express honor, and we would like to have that honor shared so that all people can enjoy it in their own respective manners. (Senate Hrg 100-90, p. 40)

Witnesses demonstrated that Indians are not merely citizens; they include that most dedicated kind, soldiers. Testimony as to the history of Native American participation in the United States military and its engagements worldwide cemented witnesses' claims to inclusion in American society. To reduce multiple witnesses' words to a formula, they said: We have proved our affiliation with you by fighting your wars, being at your side in battles, pursuing freedom and human dignity with you, dying with you. Consider this description of Pawnee Scouts, which was a central component of NARF's testimony:

> By most accounts, Pawnee Scouts provided an invaluable service to the American people. While serving in uniform under white officers, the Scouts performed vital military assignments with dignity, honor, and heroism, paving the way for white settlement in the Great Plains.
>
> The Scouts established a tradition of military service that is carried on today. Hundreds of Pawnee men and women have followed in the footsteps of their ancestors by serving the armed forced during the nation's times of need . . .
>
> Five died while in combat during World War II.
>
> During these wars, Pawnee servicemen received numerous combat awards, including purple hearts, bronze stars, and distinguished service medals. (Senate Hrg 101-952, p. 217)

What higher claim of affiliation could there be? Indeed, invoking military-related sentiments was to call upon a variety of claims as unassailable as religious ones. Museums and scientists could not speak to American honour, pride and duty in this manner.

Once they had established their affiliation with the United States as soldiers, Native American representatives were in position to wage their criticism of the society in earnest. They were prepared to call in debts owed them by the United States, to press their soldierly status one notch further. In summary form, their claim was this: If soldiers

express the highest honour to a country, the highest honour bestowed from a country to a soldier is proper and dignified burial. Conversely, they implored, the most disturbing indignity to a soldier and to the national conscience is to let a body remain 'missing in action' (MIA). Their rhetoric was turned home with a profound conclusion by way of analogy: *Native American remains are MIA*. Consider the moving testimony of Arlouine Gay Kingman, Executive Director of the National Congress of American Indians:

> This past week we learned that the government of Kampuchea, known previously as Cambodia, has offered the United States passage into their country to search for remains of brave servicemen who lost their lives there during the Viet Nam era. Our nation will accept that offer, and at great expense we will seek those remains for return to their grateful homeland. The grieving relatives of those MIAs must surely understand and appreciate how we Native Americans feel about the repatriation of the remains of our ancestors. (House Hrg 101-62, p. 102)

Violated honour was a devastating theme to opponents of the law, and as the hearing process moved forward, Native American witnesses invoked the cases of Tibet, Tienamen Square and World War II (see, e.g., Senate Hrg 101-952, p. 54).

To recapitulate, the logic of majority-inclusive claims works from the specific (Native Americans) to the general (American society) in its first move, allowing for an internally leveraged criticism and asking for rights that apply generally to be applied specifically as well. The next move takes the general in putative ideal form (universal/Christian values) and juxtaposes it with the general in realised form (national practices). Next, the argument makes a moral appeal, an appeal that this discrepancy be redressed. This argument is so persuasive because it entails a proposition wherein assent to that most broad of positive values—human rights—becomes assent to the specific cause in question. In effect, the rhetorical question is this is the one so famously posed by Chief Joseph: Are you human?

Conclusion: Naturalised Citizens

Renewal and Revitalisation

In the context of NAGPRA's legislative history, Native American representatives persuasively legitimated their specific authority and thus the basis for their claims upon human and cultural remains while simultaneously invoking affiliation with broader American society in religious, moral and civic terms. Emphasis upon tribal religious authority and cultural identity established *that* Indian graves and objects are sacred; invoking the notion of the sacred with a Western cadence demonstrated to legislators and the public *how* these things are sacred: they are inviolable, protected by commonly held human rights. And though the moral and religious discourse of American society was adopted at times, this adoption does not demonstrate that they acquiesced to a kind of colonialism but rather highlights their persistent agency in seeking political, cultural and religious autonomy. As we have seen, it is in part Native Americans' ability to traffic in Western sacred images that has become an antidote to Western trafficking in theirs.

Building upon these observations, it is illuminating to situate our findings in a broader historical and comparative context. Specifically, NAGPRA-related discourse suggests comparison with a group of phenomena described by various scholars as revitalisation movements.[30] In native North America these movements include, *inter alia*, Handsome Lake religion (see Wallace 1956, 1969) Ghost Dancing (see Jorgensen 1985; Mooney 1896 [1991]), Sun Dancing (see Jorgensen 1972; Lincoln 1994; Opler 1941), Peyote

religion (see Aberle 1966 [1982]; Smith and Snake 1996; Stewart 1987) and, more recently, pan-Indianism (see Nagel 1996; Steiner 1968), various traditionalisms (concerning recent perspectives on Hopi traditionalism, e.g., see Clemmer 1994; Geertz 1994), agitation for hunting and fishing rights (see Miller 1999; Sullivan 2000), agitation for land rights, with particular reference to putatively sacred places (see Deloria 1994; Vecsey 1991), literary movements (see Gunn Allen 1987; Warrior 1998) and even battles over tribal status (see Clifford 1988). Clearly, this is a wide range of phenomena, and the differences, among the various movements are great indeed. Some are explicitly millennial, others conform to what Jorgensen has described as 'redemptive movements', emphasising passivity toward the dominant society and expecting no imminent apocalypse (see Jorgensen 1985). Some are old, others quite recent. All, however, share features salient to our analysis. All represent self-conscious adaptations of 'tradition', all emerged from contexts of tension with the dominant fraction of society, and all incorporated aspects of the dominant fraction's culture in material and ideological respects. In the terms we have developed, these movements have involved adversarial—as well as friendly—symbolic transactions with the American public and government and have employed minority-specific and majority-inclusive discursive elements.

Precisely through conflict with the broader society, revitalisation movements have mediated between 'Indianness' and Americanness. And through having cut paths of mediation with the broader culture, even while in conflict with it, revitalisation movements have been crucial for the articulation of newly traditional rhetoric, even while being stigmatised by new traditionalists as more Christian or American than Indian. Thus self-fashioned ultra-traditionalists, in a seeming paradox, have as a condition of their possibility the pre-existence of more moderate and moderating voices in their own communities (see Buckley 2000). In NAGPRA this plays out in so far as majority-inclusive rhetoric—pointing to shared sentiments with the broader public reified in universal cum nationalistic terms—was pivotal in establishing the grounds from which renewed traditions in a minority-specific sense could spring.

Another way to express this point is to suggest that revitalisation or renewal movements succeed to the degree to which they are able to manage a two-directional flow of capital vis-à-vis the dominant social fraction. In terms of material capital and the institutional channels that conduce to its accumulation and circulation, revitalisation movements most often demonstrate a pronounced, if qualified, movement towards the habits and expectations of the dominant culture. Revitalisation and renewal, after all, are predicated upon survival. But with symbolic matters the flow of capital is far from unidirectional. As with the use of Christian tropes and practices by advocates of Long House religion, the Shaker Church and Peyotists, not to mention Native American Christians (see Treat 1996), it is clear that the currency of dominant religious symbols is compelling, if with dramatically varying results. But the history of revitalisation movements demonstrates that minority-specific discourses gain greater visibility precisely as the communities of their adherents come closer to merging with the broader culture in other terms.

Regarding NAGPRA-related identity dialectics, we can make the following observations. Once goals have been achieved at the broadest level of segmentary affiliation by way of universal appeals (to the sacrality of the dead, the inviolability of the sacred and the ideological vehicles of these, Christianity and nationalism), i.e., once Indian human rights and religious freedoms are restored, at least in principle, Indian groups tend to retract the scope of their affiliations and identity formations to enjoy their newly won

rights and freedoms not as American citizens or even as Indians but, far more specifically—as, e.g., Utes, Lakotas and Hawaiians. The fruits of critical citizenship are enjoyed at home, as it were.

At the Boundaries of Tradition

I will close by suggesting how the case of NAGPRA illuminates broad theoretical issues concerning tradition, authority and identity. Recall our opening epigraph, which is drawn from Michael Herzfeld's recent work on social poetics: '[u]ltimately, the language of national or ethnic identity is indeed a language of morality. It is an encoded discourse about inclusion and exclusion' (Hertzfeld 1997, p. 43). I sympathise with this claim, though I would emphasise the dynamic element of all identity constructions. As Herzfeld acknowledges, we should not imagine social boundaries to be fixed or stable. They can and do shift, expand, collapse or otherwise reconfigure with surprising frequency and suppleness. This point, of course, has been established by a variety of scholars, with watershed moments represented by Evans-Pritchard's theorisation of segmentary organisation (see Evans-Pritchard 1940) and Fredrik Barth's attention to the social organisation of cultural difference (see Barth 1969; see also Lincoln 1989). Significantly, both Evans-Pritchard and Barth focused upon moments of dispute in relationship to assertions of ethnicity. I am arguing for the same focus here, as the legal setting of NAGPRA is most emphatically one of dispute, as is the larger arena of Native American discursive transactions with the broader society.

However, in order to avoid lapsing into another ilk of essentialism, we should resist reifying any single line of dispute (e.g., Indianness vs. Americanness) as a definitive boundary. As we have seen, even settings that appear oppositional or unified in stark terms may well involve multiple possible lines along which antagonisms and allegiances can be expressed. Another way to state this is to acknowledge that boundary-marking discourses may well have typical patterns, but patterns—however recurrently imprinted—should not be taken as the 'natural' form of social realities. In other words, marking in and marking out are never simple acts of reproducing 'tradition'. Similarly, we should reject the impulse to assign or accept singular imputations of identity, whether couched in terms of tradition, religion or ethnicity. For as our analysis of NAGPRA-related rhetoric demonstrates, Native Americans inhabit multiple identities and are able to enact these in multiple fields simultaneously. Most specifically, we have seen how Indian representatives reconfigured 'traditional' boundaries through their uses of minority-specific and majority-inclusive authority in order to embrace and challenge 'Americanness'. They can do so precisely because they are Dog Soldiers who fight American wars. They are Indians and citizens who can speak within, between and against two worlds as inhabitants of both.

Hearkening to the lessons of NAGPRA shows us that tradition is not so much a thing as a principle and a practice. Appealing to tradition, creative agents can render continuous narratives from torn histories, threading together 'shreds and patches' of disrupted lives and captured heritages. Our observation of NAGPRA-related testimonies illustrates that tradition is articulated in the present with an eye toward the future. Tradition in this way can be manifest in considerably novel forms. And this characteristic of tradition often takes people by surprise. Legislators, I am certain, did not foresee the broad interpretive horizon revealed by their declarations concerning the scope of cultural affiliation and the renewal of traditions. Now Congress, the NAGPRA Review Committee, museums and the courts are reeling in the wake of this language. But what has created turbidity for them offers moments of insight for us—a chance to

see tradition in action, an opportunity to formulate a response to Marx's ruminations. While some may view the self-conscious invocation of tradition as farce and others see revolution, reflection upon contemporary Native American legal struggles shows us that the quest for dignity, autonomy and continuing viability should be added to list. As for the vexing issue of 'authenticity', I am suggesting that authenticity itself is processual and politically embedded, even while its terms are timeless and its histories naturalised.

Notes

1 Public Law 101-601 (25 U.S.C. 3001). The literature on NAGPRA is voluminous and growing daily. This literature is too vast to summarise here. A helpful resource for becoming acquainted with NAGPRA is the volume, 'Symposium: The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation-Related Legislation', *Arizona State Law Journal* 24. See also Thorton (1998) and Welsh (1992).

2 The troubled history of Federal/Indian history has been well-documented and need not be rehearsed in detail here. See, *inter alia*, Deloria and Lytle (1983), Niezen (2000) and Prucha (1984). What merits closer attention is the way NAGPRA appears to represent a new mode in Federal relations with Native Americans in the contemporary context and the ways in which this legislation challenges judicial sentiments expressed as recently as 1988, concerning the use of peyote (*Smith*: Employment Div. vs. Smith, 763 P.2d 146 [Oregon]), and 1990, concerning sacred land claims in the 'High Country' of California (*Lyng*: Lyng vs. Northwest Cemetery Protective Assoc. 485 U.S. 439, 99 L Ed. 2d 534).

3 'Cultural affiliation' is defined in the statute as meaning 'there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group' (25 U.S.C. 3001, Sec. 2). The statute does not define 'lineal descent' or 'traditional religious leader'.

4 Indeed, NAGPRA has instigated all manner of conflicts in its short career. Some of the more intractable issues pertain, for example, to the categorical relation of 'cultural affiliation' and 'culturally unidentified remains', the disposition of ancient remains, and the status of so-called 'unrecognised tribes' under the law. Fortunately, the law provided a pre-legal forum for such issues to be addressed by stipulating the creation of a Review Committee. The Committee is constituted by seven members, three of whom are chosen by Native American representatives, three by scientific and museums interests, with the final member being selected jointly by way of a recommendation from the initial six appointees. The Committee holds several meetings throughout the year, the purpose of which is to address problems in the implementation of the law and to consider disputes and issue non-binding 'findings'.

5 While far more narrow in scope than the *American Indian Religious Freedom Act*, NAGPRA was written in ways that ensure its viable implementation, at least to some degree. That is, the narrow range of the law's concerns—human remains and several well-defined categories of cultural objects—and its limitation to Federally funded institutions, are less than ideal from some perspectives. However, a careful reading of the legislative history reveals that the parameters of the Act were defined according to concerted concessions on the part of many Native American representatives. These concessions were made in order that the law receive practicable implementation and enjoy a modicum of constitutional security. A review of the life history of the law, makes clear that this strategy has succeeded in significant ways. To be sure, some claims have failed, but on the whole—as evinced, for example, by many of the Review Committee's rulings—NAGPRA is being implemented in ways that frequently satisfy Native American interests.

6 See 25 U.S.C. 3001 Sec. 7 (4) (c).

7 25 U.S.C. 3001 Sec. 7 (4) (c). For legislative commentary on forms of evidence and standards of proof for determining cultural affiliation, see House Rpt 101-877 and Senate Rpt 101-473.

8 The ongoing dispute over Kennewick Man is well known. On this fascinating case see Thomas (2000). Less public but equally significant for the career of NAGPRA is the current dispute between various Puebloan groups, notably the Hopi, and the Navajo tribe over 'Anasazi' remains. And the claim of the Clackamas tribe that a 16-ton meteor currently housed by the American Museum of Natural History is a 'sacred object' is interesting for the variety of ways it challenges simple notions of religious meaning.

9 For examples beyond the NAGPRA context see Clifford (1988), Feit (2001) and Povinelli (1998).

10 On this mode of analysis see Abrahams (1993), Anderson (1991), Barth (1969), Bond and Gilliam (1994), Eisenstadt (1973), Hobsbawm (1972) and Wagner (1981).

11 Eric Hobsbawm and Terence Ranger initiated a still-heated discussion of so-called 'invented traditions' with their edited volume, The *Invention of Tradition* (1983). See also Marshall Sahlins' work on tradition in the modern context. Not content to describe how modernity impinges upon cultures, Sahlins is careful to specify the ways modernity is culturally organised (1988, 1992, 1993). See also Keesing and Tonkinson (1982), Thomas (1991), and Wasserman (1998).

12 The notion of cultural uniqueness is here intended to signal contingent, historically produced group affinities expressed through various markers of relationship in place, time and kinship. I do not mean to suggest that cultures are 'unique' in any essential way. Indeed, the idea of 'culture' cannot be treated as an unproblematic category (a move that some scholars of religion routinely make when seeking relief from the categorical debates surrounding 'religion'). On 'culture' as a category see Comaroff and Comaroff (1992), Fitzgerald (2000), Lincoln (1996), Masuzawa (1998) and Williams (1958).

13 On this theme more broadly see Gill (1987) and, more recently, Parkhill (1997).

14 I am here concerned to describe the ways in which Indianness is a dialogical construction, for this allows us to perceive how audience predilections and proclivities are the conditions of possibility for effective ethnic representation on the political stage. In short, if Native American representatives are going to transact business with non-Indians, they must share a common currency. In the case of NAGPRA, as in the case of most successful Native American transactions with the Federal government and the non-Indian public, the most ready currency is jointly authored images of Indianness, the most valued of which are derivations of the Noble Savage. Of course the idea of the Noble Savage has a long history, extending in its American form from the time of 'First Contact' to the present, with especially notable formulations of the idea espoused by Montaigne and Rousseau. What I mean to indicate here is the valorisation of 'Indianness' as a pure and natural form of humanness uncorrupted by society and wholly attuned to the natural world. The primary discursive significance of the concept is its oppositional quality by which 'civilised' society is criticised. Unfortunately, by way of stereotypical backlash, Native Americans themselves have suffered from the concept, as they have been frequently measured by characterisations and not according to historical realities. For recent discussions of this concept see Berkhoffer (1978), Pearce (1988), Sayer (1997) and White (1998).

15 Regarding Native American political and legal resurgence see Cornell (1988), Murray (1991), Nagel (1996). Illuminating examples from outside of the United States are discussed by Appadurai (1981), Govers and Vermeulen (1997), and Ucko (1983).

16 William E. Conklin (1995) has persuasively argued that Western law is defined and controlled by 'authorities'. By its very constitution, in his view, law excludes and marginalises unauthorised voices. I am in agreement with this general line of analysis but point to NAGPRA and similar laws to argue that authority can also be *produced* in the legal arena in ways that legitimate formerly excluded voices and constituents. Therefore, contrary to Conklin's opinion that even human rights legislation is intrinsically alienating of the people it intends to protect, I feel that NAGPRA has provided at least a modicum of protection and authority to Native Americans, if, at times, in unforeseen and unintended ways.

17 This formulation of authority is derived from Lincoln (1994).

18 See, for example, the continued opposition of the Smithsonian Institution as expressed by Under Secretary Dean Anderson (Senate Hrg 101-931:46).

19 This document is the so-called *Bieder Report* ('A Brief Historical Survey of the Expropriation of American Indian Remains'), prepared by Robert Bieder for NARF.

20 Also during this time another event occurred that entailed significant ramifications for NAGPRA. Perceiving the disposition of the SSCIA in the above-detailed hearings, the Smithsonian decided to preempt the consequences of general legislation and to this end sought limited legislation specific to their museums. This process eventuated in the *Museum of the American Indian Act of 1989*, which included repatriation guidelines for the Smithsonian and upon which many of the mechanisms for the implementation of NAGPRA were modeled. However, conspicuously absent from this legislation was any direct definition or specification of procedures regarding 'sacred' or 'ceremonial objects'.

21 In this context it is should be noted that the *Heard Report* states that 'after a tremendous amount of discussion that the human rights principle applies even there [to so-called 'unaffiliated remains']' (see Senate Hrg 101-952, p. 31).
22 In this respect, human rights discourse can be viewed as a form of ritualised speech, the primary characteristic of which is the way in which it limits possible responses to it. On this topic see Bloch (1989).
23 The three bills were: H.R. 1381, the *Native American Burial Site Preservation Act of 1989*; H.R. 1646, the *Native American Grave and Burial Protection Act*; and H.R. 5237, the *Native American Graves Protection and Repatriation Act.*
24 See *Congressional Record*, 22–6 October, for reporting concerning the debate and passage of NAGPRA.
25 Concerning the relation of authority and tradition see Bell (1992), Bloch (1989), Bourdieu (1993), Fustel de Coulange (1980), Lincoln (1989, 1994, 1999) and Ortner (1973).
26 Edward Lone Fight, for example, opened his testimony regarding S. 1980 in this manner (see Senate Hrg 101-952, p. 49). I have witnessed this practice at many NAGPRA-related events and have come to expect it when native speakers address a non-native audience in academic or political contexts.
27 See, for example, the testimony of Norbert Hill (Senate Hrg 101-952, p. 56).
28 Such cultural performances have been taken a step further in the implementation history of NAGPRA. Claimants on several occasions have enacted rituals during Review Committee meetings as a way to instantiate their claims upon 'sacred objects' in real time.
29 See extensive NARF testimony throughout legislative history, particularly at House Hearing 101-62.
30 Helpful discussions of revitalisation movements include Bordewich (1996), Buckley (1997, 2000), Clifton (1990), Irwin (1997), Kroeber (1994), Martin (1991), McNickle (1973), Niezen (2000), Vizenor (1994) and Wallace (1956, 1969).

Bibliography

Aberle, David 1982 — *The Peyote Religion Among the Navajo*. 2nd ed. Chicago: University of Chicago Press.

Abrahams, Roger D. 1993 — 'Phantoms of Romantic Nationalism in Folkloristics', *Journal of American Folklore* 106:3–37.

Anderson, Benedict 1991 — *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. New York: Verso.

Appadurai, Arjun 1981 — 'The Past as a Scarce Resource', *Man* 16:201–19.

ASU Law Journal 1992 — 'Symposium: The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation-Related Legislation', *Arizona State Law Journal* 24:1–562.

Barth, Fredrik (ed.) 1969 — *Ethnic Groups and Boundaries: The Social Organization of Cultural Difference*. Boston: Little, Brown.

Bell, Catherine 1992 — *Ritual Theory, Ritual Practice*. New York: Oxford University Press.

Berkhoffer, Robert 1978 — *The White Man's Indian: Images of the American Indian from Columbus to the Present*. New York: Knopf.

Bieder, Robert E. 1990 — 'A Brief Historical Survey of the Expropriation of American Indian Remains', reprinted in Senate Hearings on S.1021 and S.1980, pp. 273–363.

Bloch, Maurice 1989 — *Ritual, History and Power: Selected Papers in Anthropology*. London: Athlone.

Bond, George C., and Angela Gilliam (eds) 1994 — *Social Construction of the Past: Representation as Power*. New York: Routledge.

Bordewich, Fergus 1996 — *Killing the White Man's Indian: Reinventing Native Americans at the End of the Twentieth Century*. Garden City, NY: Anchor.

Bourdieu, Pierre 1993 — *The Field of Cultural Production: Essays on Art and Literature.* Ed. by Randal Johnson. New York: Columbia University Press.

Buckley, Thomas 2000 — 'Renewal as Discourse and Discourse as Renewal in Native Northwestern California', in *Native Religions and Cultures of North America: Anthropology of the Sacred*, 33–52. Ed. by Lawrence Sullivan. New York: Continuum.

Clemmer, Richard 1994 — 'The Hopi Traditionalist Movement', *American Indian Culture and Research Journal* 18:125–66.

Clifford, James 1988 — *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art.* Cambridge, MA: Harvard University Press.

Clifton, James (ed.) 1990 — *The Invented Indian: Cultural Fictions and Government Policies.* New Brunswick: Transaction Publishers.

Comaroff, John, and Jean Comaroff 1992 — *Ethnography and the Historical Imagination.* Boulder: Westview Press.

Conklin, William E. 1995 — 'Human Rights, Language and Law: A Survey of Semiotics and Phenomenology', *Ottowa Law Review* 27:131–73.

Cornell, Stephen 1988 — *The Return of the Native: American Indian Political Resurgence.* New York: Oxford University Press.

Deloria, Vine, Jr 1994 — *God is Red: A Native View of Religion.* Golden: Fulcrum.

Deloria, Vine, Jr, and Clifford M. Lytle 1983 — *American Indians, American Justice.* Austin: University of Texas Press.

Echo-Hawk, Walter 1986 — 'Museum Rights vs. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources', *Review of Law and Social Change* 14:437–53.

Eisenstadt, S. N. 1973 — 'Post-Traditional Societies and the Continuity and Reconstruction of Tradition', *Daedalus* 102:1–28.

Evans-Pritchard, E. E. 1940 — *The Nuer.* New York: Oxford University Press.

Feit, Harvey 2001 — 'Hunting, Nature and Metaphor: Political and Discursive Strategies in James Bay Cree Resistance and Autonomy', in *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community*, 411–52. Ed. by John Grim. Cambridge, MA: Harvard University Press.

Fitzgerald, Timothy 2000 — *The Ideology of Religious Studies.* New York: Oxford University Press.

Fitzpatrick, Peter 1992 — *The Mythology of Modern Law.* New York: Routledge.

Fustel de Coulange, Numa Denis 1980 — *The Ancient City: A Study on the Religion, Laws, and Institutions of Greece and Rome.* Baltimore: Johns Hopkins University Press.

Geertz, Armin 1997 — *The Invention of Prophecy: Continuity and Meaning in Hopi Indian Religion.* Berkeley: University of California Press.

Gill, Sam 1987 — *Mother Earth: An American Story.* Chicago: University of Chicago Press.

Goodrich, Peter 1996 — 'Antirrhesis: Polemical Structures of Common Law Thought', in *The Rhetoric of Law*, 57–102. Ed. by Austin Sarat and Thomas R. Kearns. Ann Arbor: University of Michigan Press.

Govers, Cora, and Hans Vermeulen (eds) 1997 — *The Politics of Ethnic Consciousness.* New York: St. Martin's Press.

Gunn Allen, Paula 1987 — 'Bringing Home the Fact: Tradition and Continuity in the Imagination', in *Recovering the Word: Essays on Native American Literature*, 563–79. Ed. by Brian Swann and Arnold Krupat. Berkeley: University of California Press.

Handler, Richard 1985	'On Having a Culture: Nationalism and the Preservation of Quebec's Patrimone', in *Objects and Others: Essays on Museums and Material Culture*, 192–217. Ed. by George Stocking. Madison: University of Wisconsin Press.
Handler, Richard, and Jocelyn Linnekin 1984	'Tradition, Genuine or Spurious?', *Journal of American Folklore* 97:273–90.
Herzfeld, Michael 1997	*Cultural Intimacy: Social Poetics in the Nation-State*. New York: Routledge.
Hobsbawm, Eric 1972	'The Social Function of the Past', *Past and Present* 55:5–17.
Hobsbawm, Eric, and Terence Ranger (eds) 1983	*The Invention of Tradition*. Cambridge: Cambridge University Press.
Irwin, Lee 1997	'Freedom, Law and Prophecy', *American Indian Quarterly* 21:35–55.
Jorgensen, Joseph 1972	*The Sun Dance Religion: Power for the Powerless*. Chicago: University of Chicago Press.
1985	'Religious Solutions and Native American Struggles: Ghost Dance, Sun Dance and Beyond', in *Religion, Rebellion and Revolution: An Interdisciplinary and Cross-cultural Collection of Essays*, 97–128. Ed. by Bruce Lincoln. New York: St. Martin's Press.
Keesing, Rogers, and Robert Tonkinson (eds) 1982	'Reinventing Traditional Culture: The Politics of Kastom in Island Melanesia', *Mankind* 13:297–374.
Kroeber, Karl (ed.) 1994	*American Indian Persistence and Resurgence*. Durham: Duke University Press.
Lincoln, Bruce 1989	*Discourse and the Construction of Society: Comparative Studies of Myth, Ritual and Classification*. New York: Oxford University Press.
1994a	*Authority: Construction and Corrosion*. Chicago: University of Chicago Press.
1994b	'A Lakota Sun Dance and the Problematics of Sociocosmic Reunion', *History of Religions* 34:1–14.
1996	'Theses on Method', *Method and Theory in the Study of Religion* 8: 225–27.
1999	*Theorizing Myth: Narrative, Ideology and Scholarship*. Chicago: University of Chicago Press.
Linnekin, Jocelyn 1983	'Defining Tradition: Variations on the Hawaiian Identity', *American Ethnologist* 10:241–52.
1990	'The Politics of Culture in the Pacific', in *Cultural Identity and Ethnicity in the Pacific*, 149–74. Ed. by J. Linnekin. Honolulu: University of Hawaii Press.
1991	'Cultural Invention and the Dilemma of Authenticity', *American Anthropologist* 93:446–49.
1992	'On The Theory and Politics of Cultural Construction in the Pacific', *Oceania* 62:249–63.
Martin, Joel 1991	'Before and Beyond the Sioux Ghost Dance: Native American Prophetic Movements and the Study of Religion', *Journal of the American Academy of Religion* 59:677–701.
Marx, Karl 1952 [1978]	'The Eighteenth Brumaire of Louis Bonaparte', in *The Marx-Engels Reader*, 594–617. Ed. by Robert C. Tucker. New York: Norton.
Masuzawa, Tomoko 1998	'Culture', in *Critical Terms for Religious Studies*, 70–93. Ed. by Mark C. Taylor. Chicago: University of Chicago Press.
McNickle, D'Arcy 1973	*Native American Tribalism: Survivals and Renewals*. New York: Oxford University Press.

Merril, William L., Edmund J. Ladd, and T. J. Ferguson 1993 'The Return of Ahayu:da: Lessons for Repatriation from Zuni Pueblo and the Smithsonian Institution', *Current Anthropology* 34:523–67.

Miller, Jay 1999 'The Shell(Fish) Game: Rhetoric, Images and (Dis)Illusions in Federal Court', *American Indian Culture and Research Journal* 23:159–73.

Mooney, James 1996 [1991] *The Ghost-Dance Religion and the Sioux Outbreak of 1890*. Lincoln: University of Nebraska Press.

Murray, David 1991 *Forked Tongues: Speech, Writing and Representation in North American Indian Texts*. Bloomington: Indiana University Press.

Nagel, Joane 1996 *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture*. New York: Oxford University Press.

Niezen, Ronald 2000 *Spirit Wars: Native North American Religions in the Age of Nation Building*. Berkeley: University of California Press.

Opler, Marvin K. 1941 'The Integration of the Sun Dance in Ute Religion', *American Anthropologist* 43:550–72.

Ortner, Sherry 1973 'On Key Symbols', *American Anthropologist* 75:1338–46.

Parkhill, Thomas C. 1997 *Weaving Ourselves into the Land: Charles Godfrey Leland, 'Indians,' and the Study of Native American Religions*. Albany: State University of New York Press.

Povinelli, Elizabeth 1998 'The State of Shame: Australian Multiculturalism and the Crisis of Indigenous Citizenship', *Critical Inquiry* 24:575–610.

Prucha, Francis Paul 1984 *The Great Father: The United States Government and the American Indians*. Lincoln: University of Nebraska Press.

Sahlins, Marshall 1988 'Cosmologies of Capitalism: The Trans-Pacific Sector of "The World System" ', *Proceedings of the British Academy* 74:1–51.

1992 'The Economics of Develop-Man in the South Pacific', *Res* 21:12–25.

1993 'Goodbye to Tristes Tropes: Ethnography in the Context of Modern World History', *Journal of Modern History* 65:1–25.

Sayer, Gordon M. 1997 *Les Sauvages Americains: Representations of Native Americans in French and English Colonial Literature*. Chapel Hill: The University of North Carolina Press.

Silverstein, Michael 1997 'The Improvisational Performance of Culture in Realtime Discursive Practice', in *Creativity in Performance*, 265–312. Ed. by R. Keith Sawyer. Greenwich: Ablex Publishing Corporation.

Smith, Huston and Reuben Snake (eds) 1996 *One Nation Under God: The Triumph of the Native American Church*. Santa Fe: Clear Light Publishers.

Steiner, Stan 1968 *The New Indians*. New York: Delta.

Stewart, Omer 1987 *Peyote Religion: A History*. Norman: University of Oklahoma Press.

Sullivan, Robert 2000 *A Whale Hunt: Two Years on the Olympic Peninsula with the Makah and Their Canoe*. New York: Scribner.

Thomas, David Hurst 2000 *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*. New York: Basic Books.

Thomas, Nicholas 1991 *Entangled Objects: Exchange, Material Culture and Colonialism in the Pacific*. Cambridge, MA: Harvard University Press.

Thorton, Russell 1998 'Who Owns Our Past?: The Repatriation of Native American Human Remains and Cultural Objects', in *Studying Native America: Problems and Prospects*, 385–415. Ed. by Russell Thorton. Madison: University of Wisconsin Press.

Tonkin, Elizabeth 1992 *Narrating Our Pasts: The Social Construction of Oral History*. Cambridge: Cambridge University Press.

Treat, James 1996 *Native and Christian: Indigenous Voices on Religious Identity in the United States and Canada*. New York: Routledge.

Ucko, P. J. 1983 'The Politics of the Indigenous Minority', *Journal of Biosocial Science, Suppl.* 8:25–40.

Vecsey, Christopher (ed.) 1991 *Handbook of American Indian Religious Freedom*. New York: The Crossroad Publishing Company.

Vizenor, Gerald 1994 *Manifest Manners: Postindian Warriors of Survivance*. Hanover: Wesleyan University Press.

Wallace, Anthony 1956 'Revitalization Movements', *American Anthropologist* 58:264–81.

1969 *The Death and Rebirth of the Seneca*. New York: Vintage Books.

Wagner, Roy 1981 *The Invention of Culture*. Chicago: University of Chicago Press.

Warrior, Robert Allen 1998 'Literature and Students in the Emergence of Native American Studies', in *Studying Native America: Problems and Prospects*, 111–29. Ed. by Russell Thorton. Madison: University of Wisconsin Press.

Wasserman, Jurg (ed.) 1998 *Pacific Answers to Western Hegemony: Cultural Practices of Identity Construction*. Oxford: Berg.

Welsh, Peter 1992 'Repatriation and Cultural Preservation: Potent Objects, Potent Pasts', *University of Michigan Journal of Law Reform* 25:837–65.

White, Richard 1998 'Using the Past: History and Native American Studies', in *Studying Native America: Problems and Prospects*, 385–415. Ed. by Russell Thorton. Madison: University of Wisconsin Press.

Williams, Raymond 1958 *Culture and Society: 1780–1950*. New York: Columbia University Press.

Government Documents

NAGPRA 1990 *Native American Graves Protection and Repatriation Act*. Public Law 101-601 (25 U.S.C. 3001).

National Park Service 1992 'Official Summary of the First NAGPRA Review Committee Meeting'. Washington, DC. www.cast.uark.edu/products/NAGPRA/DOCS/rms001.

House Hrg. 101-62 17 July 1990 'Protection of Native American Graves and the Repatriation of Human Remains and Sacred Objects', hearing before the House Interior and Insular Affairs Committee on H.R. 1381, H.R. 1646, and H.R. 5237.

House Rpt. 101-877 15 Oct. 1990 House Report 101-877 on H.R. 5237, 'Providing for the Protection of Native American Graves'.

Senate Hrg. 100-90 20 Feb. 1987 'Native American Cultural Preservation Act', hearing before the Senate Select Committee on Indian Affairs on S. 187.

Senate Hrg. 100-931 29 July 1988 'Native American Museum Claims Commission Act', hearing before the Senate Select Committee on Indian Affairs on S. 187.

Senate Hrg. 101-952 14 May 1990 'Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report', hearing before the Senate Select Committee on Indian Affairs on S. 1021 and S. 1980.

Senate Rpt. 100-601 21 Oct. 1988 Senate Report 100-601 on S. 187, 'Establishing the Native American Museum Claims Commission'.

Senate Rpt. 101-473 26 Sept. 1990 Senate Report 101-473 on S. 1980, 'Providing for the Protection of Native American Graves and the Repatriation of Native American Remains and Cultural Patrimony'.

GREG JOHNSON is Assistant Professor of Religious Studies at Franklin and Marshall College. His research and teaching interests include Native American religious traditions, the comparative study of religion, and religion and literature. This article is

drawn from his recently completed dissertation, 'The Terms of Return: Religious Discourse and the *Native American Graves Protection and Repatriation Act*' (University of Chicago). An earlier version of the article was presented to the Native Traditions in the Americas Group of the American Academy of Religion at the 1999 annual meeting.

Department of Religious Studies, Franklin and Marshall College, Lancaster, PA 17604-3003, U.S.A. E-mail: gjohnson@fandm.edu