

Sovereignty and Cultural Property Policy in Museums, by Craig Howe

Abstract: This paper asks how museums can develop cultural property policies in museums that are based on concepts of tribal sovereignty. It finds that the National Museum of the American Indian Act (1989) and the Native American Graves Protection and Repatriation Act (1990) provide little guidance in these efforts. Both pieces of legislation, however, do recognize two sources of sovereignty within Indian tribes—one political and the other spiritual. Drawing on these two aspects of sovereignty, the paper concludes by suggesting policy guidelines for collections care within a museum.

[DRAFT]

In the past ten years, there have been two major pieces of legislation enacted in response to the presence of Native American human remains and funerary objects in museums and federal agencies. The first, Public Law 101-185, was passed by Congress on 28 November 1989 and is entitled the National Museum of the American Indian Act (NMAIA). The second, Public Law 101-601, was passed on 16 November 1990 and is entitled the Native American Graves Protection and Repatriation Act (NAGPRA).

Public Law 101-185 contained the following findings: 1) "by order of the Surgeon General of the Army, approximately 4,000 Indian human remains from battlefields and burial sites were sent to the Army Medical Museum and were later transferred to the Smithsonian Institution;" 2) "through archaeological excavations, individual donations, and museum donations, the Smithsonian Institution has acquired approximately 14,000 additional Indian human remains;" and 3) these human remains "have long been a matter of concern for many Indian tribes which are determined to provide an appropriate resting place for their ancestors."

In addition to human remains, both pieces of legislation also recognized associated and unassociated funerary objects "that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later" (NAGPRA). Both pieces of legislation directed that the inventory and identification of human remains and funerary objects was to be completed in consultation (NMAIA and NAGPRA) and cooperation (NMAIA) with tribal government officials and traditional Indian religious leaders.

Two interesting observations at this point: 1) that the term "cooperation" was omitted in the NAGPRA wording, and 2) that both Acts recognized the perhaps divergent knowledges and intentions of tribal religious leaders and tribal government officials. The former observation has important ramifications for

the process of conducting an inventory of human remains and funerary objects, but it will not be explored in this paper. The second observation is fundamental to an examination of tribal sovereignty and therefore will be returned to in our discussions of cultural property policy in museums.

Before doing so, however, let's return again to the two pieces of legislation. Both Acts tended to focus on processes whereby museums and federal agencies would return (NMAIA) or repatriate (NAGPRA) human remains and funerary objects to Native Americans and Indian tribes—and rightfully so. Both pieces of legislation were concerned primarily with the process of returning human remains and funerary objects to Indians and tribal communities, but the NAGPRA also recognized "sacred objects" and "objects of cultural patrimony" which, though not mentioned in the NMAIA of 1989, were recognized by the NMAIA Amendments of 1996. These categories of objects fall within the domain of "cultural property" and therefore are relevant to the topic at hand.

This paper focuses on developing policies associated with caring for the collections of the National Museum of the American Indian (NMAI), collections that contain countless objects of "cultural property." The ideas presented herein have not all been implemented as official policy of the NMAI. These are ideas that are being developed in response to the unique situation at the NMAI, but the principles upon which they are built might have applicability in institutions other than the NMAI.

The National Museum of the American Indian is charged with stewardship of a collection of cultural objects, art, photographs and documents from and relating to hundreds of different cultures and spanning thousands of years. The collection itself goes back to the turn of the 20th century. George Gustav Heye, who had recently graduated from Columbia College, was an engineer on a railroad construction job in what is now Arizona in 1897 when he purchased a deerskin shirt from a Navajo foreman and began his life-long passion for collecting Native American materials. Throughout the remainder of his life, his energy and fortune were spent accumulating the largest private collection of Native American objects in the world. While other collectors focused on what they considered to be highly significant objects, Heye often bought every object he could find, shipping them back to his mother's house in New York where he cataloged and stored them.

Upon the death of his mother, Heye moved the collection to his Madison Avenue apartment in New York City. From there it was moved to the Heye Foundation's Museum of the American Indian at 155th Street and Broadway which, by the time it opened in 1922, was too small to hold his ever-expanding collection. A storage facility was subsequently built in the Bronx, which is where the vast majority of the collection is now housed. In 1989 the entire collection of the Museum of the American Indian, Heye Foundation was transferred to the Smithsonian Institution when President Bush signed legislation establishing the National Museum of the American Indian.

There are four facilities that currently constitute the National Museum of the American Indian. One is the storage facility in the Bronx that was just mentioned. The other New York facility is the George Gustav Heye Center in lower Manhattan that opened in 1994. Its primary function is as an exhibition space. The third facility is the Cultural Resources Center in Suitland, Maryland that opened in February 1999. It is the facility that will eventually house all the NMAI collections that are not on loan or exhibition. And the fourth facility is the Mall Museum itself that is scheduled to open on the National Mall in Washington, DC in 2003. When all the collections have been moved to the Cultural Resources Center, a process that is anticipated to take 5 years, the storage facility in the Bronx will be closed.

The enormous process of moving the NMAI collections from the Bronx to the Cultural Resources Center in Suitland has given rise to a number of issues related to cultural property policy. In its efforts to address these issues, the NMAI has attempted to develop policies that acknowledge tribal sovereignty by enabling tribal communities to exercise decision-making authority with respect to the care of their collections. As is implicit in the NMAIA and the NAGPRA consultation process, there are two dimensions to tribal sovereignty, both of which articulate a relationship between communities of people and particular parcels of land. The first dimension is represented by tribal government officials, the second by traditional religious leaders.

Indian communities, for all intents and purposes, are inseparable from federal policies and politics. An Indian community, or tribe, "is simply a group of Indians that is recognized as constituting a distinct and historically continuous political entity for at least some governmental purposes" (Canby 1988: 4). Since the lands within what are now the United States of America were occupied and controlled by tribal peoples, and because the European immigrants could not or would not totally eradicate those tribal peoples, the federal government had to obtain lands through a process that they judged internationally justifiable. Their phenomenally successful (from the viewpoint of non-tribal peoples) acquisition of tribal lands was carried out through treaties and treaty substitutes which often reserved and set aside lands for the "use, possession, and benefit" (Pevar 1992: 19) of a tribe. The reserved lands, or reservations, were "intended to establish homelands for the tribes, islands of tribalism largely free from interference by non-Indians or future state governments" (Wilkinson 1987: 14). The establishment and perpetuation of a tribe's reservation normally ensured that the tribe was officially recognized as such by the federal government. Tribes, then, are political entities possessing government to government relations with the federal government and under this definition their sovereignty rests on legal and political principles.

There is, however, a non-political definition of tribal sovereignty that is not the product of negotiated settlements involving European-derived concepts, though it is evident in those agreements. "At almost every treaty the concern of the Indians was the preservation of the people" (Deloria 1984: 8), a concern that

definitely preceded the arrival of Europeans in the Western Hemisphere. According to Deloria (1984: 8):

The idea of the people is primarily a religious conception, and with most American Indian tribes it begins somewhere in the primordial mists. In that time the people were gathered together but did not yet see themselves as a distinct people. A holy man had a dream or a vision; quasi-mythological figures of cosmic importance revealed themselves, or in some other manner the people were instructed. They were given ceremonies and rituals that enabled them to find their place on the continent. Quite often they were given prophecies that informed them of the historical journey ahead. In some instances the people were told to migrate until a special place was revealed; in the interim, as with the Hebrews wandering in the deserts of Sinai, the older generation, which had lost faith, and the cynics and skeptics in the group would be eliminated until the people were strong enough to receive the message.

We see here an interrelationship between community, land, and religion: "When lands and peoples are both chosen and matched together in a cosmic plan, the attachment to the land by the people becomes something extraordinary and involves a sense of identity and corresponding feeling of responsibility" (Deloria 1992: 31-31). Viewed in this light, tribal communities are "guided by internal prophetic instructions rather than external political and economic events" (Deloria 1992: 32). As such, "the idea of peoplehood transcends the contemporary political organizations and speaks to generations of people, people past and people yet to come" (Deloria 1984: 242). Tribes, then, are spiritual associations with a moral responsibility to continue fulfilling the original instructions given them. Those original instructions constitute the inherent spiritual sovereignty of tribal communities. For purposes of this paper, this spiritual dimension of tribal sovereignty will be referred to as "tribalism" whereas the political dimension of tribal sovereignty will be referred to as "nationalism."

When mainstream institutions deal with Native American cultural property under the NMAIA or the NAPGRA, they are usually more comfortable working with Indians who espouse the political dimension of tribal sovereignty. Such institutions are on familiar ground when they negotiate policy within a legislative framework. They are unfamiliar and uncomfortable, as a rule, when working with Indians who live the spiritual dimension of tribal sovereignty, who make decisions based on their communally held ethics and who are loath to compromise because of the moral obligations they must fulfill. Furthermore, tribal political officials are often more accessible—be it via telephone, surface mail, fax or the Internet—than traditional spiritual leaders. Therefore it should not be surprising that Indian nationalists have more impact and influence within mainstream institutions than do Indian tribalists.

As mentioned earlier, these two dimensions of tribal sovereignty were written into the inventory and identification requirements of the NMAIA and the

NAGPRA. Unfortunately, and often with the best of intentions, rather than consulting with tribal government officials and traditional religious leaders, some institutions instead hired individual Indians to assist with completing the inventory and identification tasks. Because in many cases these individuals were neither tribalists nor nationalists, the inventory and identification tasks were not completed as envisioned by the legislation. Without at least one of the dimensions of tribal sovereignty as the basis for their decision-making, such individuals end up participating (both consciously and unconsciously) in the codification of pan-Indian generalizations pertaining to cultural property policy.

With reference to the care of cultural property in museum collections, this pan-Indianism is problematic. The decision-making authority is vested in particular individuals because they are biologically Indian, not because they were elected to political office or trained in tribal traditions. These individuals often base their decisions on personal feelings, private philosophies and second-hand information. The types of decisions they make include the identification of sacred objects and objects of cultural patrimony, and also what kinds of restrictions to imposed on access to both the objects and to the collections in general.

With regard to the identification of sacred objects, for instance, some individuals have declared that all objects with eagle feathers are sacred. Others have said that any object with red cloth attached to it is sacred. Still others believe that whole categories of objects, such as catlinite pipes, are sacred. These designations may seem innocuous, but they become part of the official record of those objects. If the basis for the designation is not explicitly recorded, future researchers end up granting the designation the same veracity as all other fields of data related to the objects. Conceivably, the knowledge of a tribal official or spiritual leader could be mitigated by such designations during future consultations. At the other extreme, once objects are designated sacred or as cultural patrimony, access to them may be controlled, handling restrictions may be imposed, special care procedures may be implemented, and tribes must be contacted.

Individuals have also imposed all kinds of restrictions on access to objects and to collections in general. There are temporal restrictions, spatial restrictions, and biological restrictions, to name but three. These three kinds of restrictions, of course, crosscut one another. Under the temporal category falls restrictions on menstruating women: which objects (if any) they may handle and where (if anywhere) in the collections facility they may go. The spatial category includes restrictions on areas of the storage facility: some areas are reserved for objects designated sacred or of cultural patrimony, other areas are reserved for human remains and funerary objects, and still other areas are accessible only after a visitor is prepared in some fashion, such as cleansing with smoke from sage or sweetgrass. Biological restrictions include designating some objects or areas of the storage facility women only, men only, or Indian only.

Institutions too have perhaps unknowingly implemented policies and procedures that counter tribal sovereignty. A common example is when they implement everything that a visiting Indian requests, regardless of whether or not that person has been appointed to represent his or her tribal community in these matters. Institutions have also implemented suggestions by Indians from other tribes or even from unverified documentary data on the care of certain collections. This indiscriminant acceptance and incorporation of information results in cultural property policies that have many of the same shortcomings that are associated with pan-Indianism mentioned above-the difference being that the source of information is from outside the institution.

Again, the intentions of the individuals and institutions are good-to care for the collections in a way that they consider respectful and a way that is Indian as opposed to mainstream. In some sense, the designations and restrictions are indeed Indian in that they are not tribally specific. Tribal sovereignty, on the other hand, is grounded in the exercising of decision-making authority by proper representatives from specific tribes. Whether or not individuals and institutions see it as such, the incorporation of pan-Indian policies and procedures is a direct attack on tribal sovereignty.

To address this issue through the way cultural property is cared for in the National Museum of the American Indian, a rethinking of what had been called "traditional care" of the collections was undertaken. As mentioned earlier, these revisions have not all been incorporated nor are they official NMAI policy. They are presented here merely for the sake of initiating discussions concerning tribal sovereignty and cultural property policy in museums.

The first step was to propose that a stable, ongoing, decision-making committee be established that is independent from its own members and from the widely divergent recommendations for traditional care that individuals inside and outside the museum propose. Through negotiations and consultations, the committee will develop two categories of care for the collections: The NMAI Way and The Tribal Ways.

The NMAI Way is the baseline care for the entire collection. It assumes that standard museological practices are followed as long as they do not conflict with the special restrictions developed under its guidelines. Each guideline of the NMAI Way of caring for the collections should meet or exceed the practices of other similar institutions. In addition to guidelines for the care of collections, the NMAI Way also incorporates guidelines for the psychological care of staff who work extensively with the collections. Consideration of the psychological well-being of museum staff is evidence that the NMAI Way recognizes a need to care for the people who work with the collections as well as to care for the collections themselves.

Some staff members feel an extremely high psychological stress as a result of

their work with the museum collections. The sources of their felt stress are many, but a majority of it appears to be the result of pan-Indianism as described above. Some staff believe, or were warned, that to violate the access restrictions would bring harm and misfortune to themselves or to their families. This they believed in spite of the fact that the sources of the access restrictions were unknown, unreliable, unverifiable, or imposed by unauthorized individuals. On the other hand, the collections can have a real impact on the people who work with them, and this must be recognized and accommodated.

Examples of guidelines under the NMAI Way include:

Treat/handle all NMAI collections with care and respect.

Treat all visitors and staff members with respect.

All questions and concerns associated with the handling of objects in the collection are to be submitted to in writing to the committee.

Individual staff members may not impose restrictions of any type concerning the handling, storage, care, access, etc. of any item in the NMAI collection.

Only authorized staff members may conduct outside consultations concerning the care, handling, treatment, etc. of NMAI collections.

Individual staff members may excuse/remove themselves from certain tasks related to object handling by providing a verbal explanation to their immediate supervisor.

Individual staff members may voluntarily participate in regularly scheduled cleansings as they see fit.

Staff may not place any foreign object or substance with any NMAI object or storage/shipping boxes and/or storage areas containing NMAI objects.

Cleansing and blessing of NMAI objects/collections by staff is forbidden.

Job announcements should articulate, and employees honor, the NMAI Way and the Tribal Ways.

Objects opened and unwrapped only with proper authorization.

Collections are housed by tribe to the extent possible.

Potentially sensitive objects are placed as high as possible within their tribal

area.

Blessings are confined to specific areas and are to be conducted by authorized individuals.

Blessings by different traditions should not overlap spatially.

NMAI blessings and cleansings stress local indigenous traditions.

Sage is used for cleansing.

The Tribal Ways are the care restrictions suggested by authorized tribal representatives and accepted by the traditional care committee. Tribal Ways are tribally specific and may impose restrictions on the housing, moving, conserving, feeding, and displaying of specific objects. The Tribal Ways are restrictions that the museum has a moral and ethic responsibility to see are followed as long as the objects to which they are assigned are in its stewardship. They are long-term, institutional commitments that extend beyond the memory or presence of any one individual.

The traditional care committee is the forum within which the NMAI Way and the Tribal Ways are negotiated and decided upon. It will consult widely with staff in developing the NMAI Way, and have mechanisms to encourage that those guidelines are followed. Staff may propose changes to the NMAI Way at any time, and such proposals will be considered by the committee. The process would be similar to that the committee follows for developing the Tribal Ways. Upon being presented with a written request for the care of a specific object, the committee decides whether or not the request fits within the NMAI mission statement and whether or not the museum can honor it indefinitely. Based on their analysis, the committee either incorporates or rejects the request. Regardless of whether it is accepted or rejected, the person making the request is notified and given reasons for the decision and may appeal it if they choose.

The authority to establish cultural property policy rests with the committee, but the policy is developed in consultation and cooperation with tribal government officials and traditional religious leaders. The authority to identify and restrict access to objects of cultural property should be vested in tribal communities, and exercised by authorized individuals. In so doing, tribal sovereignty is recognized and cultural property policy is developed that is respectful of tribal traditions.

