SOME SCHOLARS' VIEWS ON REBURIAL

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[T]here is something inherently distasteful and unseemly in secreting either the fruits or seeds of scientific endeavors.

Judge Bruce S. Jenkins (quoted in Palca 1991:884)

Destruction of archaeological collections through the demands for reburial presents a serious conflict between religion and science. Archaeologists should not deal with these matters by "compromise" alone, but must sustain their rights and duties as scholars.

La destrucción de colecciones arqueológicas debido a las demandas de reentierro presenta un grave conflicto entre religión y ciencia. Los arqueólogos no deberían tratar estos temas solo en términos de "compromiso," sino que deben mantener sus derechos y obligaciones como investigadores.

The above quotation is from a court case having nothing to do with archaeology, yet if we believe that archaeology is a scientific endeavor we must agree that this statement applies to archaeology as well as medicine, chemistry, or other fields of scholarship. The recent increased attention given to the ethics of scientists and scientific organizations, with news accounts almost weekly in such journals as Science, requires archaeologists to examine their basic assumptions about the nature of science and their obligations to scholarship. This is brought forward most forcefully in the debate over the past 20 years about the problems of reburial of archaeological and museum collections.

The discussion by Goldstein and Kintigh (1990) is a valiant effort to unravel some of the strands of conflict inherent in the controversy over the destruction of museum collections in the name of Indian religious beliefs. They seek some sort of middle ground in which scholarly and ethnic concerns can coexist in a constructive way. However, in view of the massive losses of scientific data now legislated by the federal government and some of the states, it needs to be made clear that many archaeologists do not agree with some aspects of the philosophical position taken by Goldstein and Kintigh. In particular, their statement that "We must change the way we do business" (Goldstein and Kintigh 1990:589) is not justified, particularly since their suggestions for change involve the abandonment of scholarly imperatives and the adoption of an "ethical" position that accepts the right of nonscholars to demand the destruction of archaeological evidence and the concealment of archaeological data. Of course, changes in the way archaeology is done will inevitably take place, for both internal (professional) and external (social/legal) reasons. This does not mean that the basic rules of scholarly obligations to one's data should change as well.

Goldstein and Kintigh fall into the anthropological trap of cultural relativism. In asserting that we must balance our concerns for knowledge with "our professional ethic of cultural relativism," they argue that our values are not the only values or ethics, but only one legitimate belief system. The implication is that all belief systems are of equal legitimacy, therefore one cannot make a clear commitment to any particular values as a guide to action. However, most individuals do make a
commitment to the values that will guide their personal action. Recognizing that other people may have other values does not mean that one must accept those values or compromise his/her own ethical standards. Indeed, the dictionary has a word for believing one way and acting another—it is “hypocrisy.”

Those who affiliate with organized groups, whether the Church of the Rising Light or the Society for American Archaeology (SAA), supposedly accept the beliefs and goals of the organization as stated in their by-laws or scriptures. The SAA, as an organization dedicated to scholarly research in archaeology, is bound by the general rules of scholarship that require honest reporting and preservation of the evidence. If the research data are subject to censorship, how can there be honest reporting? If the evidence (collections) is not preserved, who can challenge the statements of the researcher? Who can check for misinterpretations, inaccuracies, or bias? Once the collection is destroyed, we have only an affidavit from the researcher; we can believe it or not, but there is no way that additional investigation or new laboratory techniques can be applied to the collection to gain a better understanding of the evidence. The astounding new methods for medical and genetic research on ancient populations require a piece of the bone—pictures and notes won’t do. Similarly, laboratory advances in dating and determining the source of artifact materials require that the relevant objects be available for study. Since we commonly proclaim that archaeological collections are unique and irreplaceable, how can we ever justify the conscious and acquiescent destruction of our data?

The suggestion of Goldstein and Kintigh that we balance our own values with the professional ethic of cultural relativism by “compromise and mutual respect” is not realistic. Many archaeologists are not going to compromise away their most fundamental scholarly beliefs. Similarly, many Indian activists are not going to compromise away their beliefs (however unsupported by evidence) that every Indian bone of the past 12,000 years belongs to one of their ancestors. There are some instances in which compromise and mutual respect have led to satisfactory results for both sides; there are many more instances in which these valued qualities have been insufficient to prevent or postpone destruction of important archaeological finds. Those who want to do away with archaeology and archaeological collections are of course entitled to their beliefs, and they are also entitled to use whatever political and legal machinery they can to bring about their stated goals. Originally, the goals were modest, but they have escalated every year since this discussion began more than 20 years ago, as reviewed by me in an earlier article (Meighan 1984). The present-day goals have repeatedly been made clear. For example, Christopher Quayle, an attorney for the Three Affiliated Tribes, stated in Harpers (Preston 1989:68–69): “It’s conceivable that some time in the not-so-distant future there won’t be a single Indian skeleton in any museum in the country. We’re going to put them out of business.” The “them” refers in this statement to physical anthropologists, but it is also extended to archaeologists. For example, the recent agreement between state officials in West Virginia and a committee representing Indian viewpoints (a committee which, incidentally, includes non-Indians) states that everything in an ongoing study of a 2,000-year-old Adena mound must be given up for reburial within a year—“everything” includes not only the bones of the mythical “ancestors” of the claimants, but also all the artifacts, the chipping waste, the food refuse, the pollen samples, the soil samples, and whatever else may be removed for purposes of scientific study (West Virginia Department of Transportation [WVDOT] 1991). While the taxpayers are expected to pay for a 1.8-million-dollar excavation on the grounds that it is in the public interest for archaeological data to be preserved, nothing of the tangible archaeological evidence is to be preserved. Meanwhile, Indian activists are paid to “monitor” the excavation, and they were given the right to censor the final report and prevent any objectionable photographs or data from appearing (WVDOT 1991; see also Neiburger 1990).

If there is any doubt about the goals of the anti-archaeology contingent, consider the case of Dr. David Van Horn, charged with a felony in California for conducting an environmental impact study required by law, and being honest enough to report what he found in the site, including some small bits of cremated bone, which required hours of study by physical anthropologists to identify as human (Riverside County Superior Court 1990). Is the reporting of a legally mandated salvage excavation a felony? It can be in California, and there are many who would like to make archaeology
a crime throughout the United States. Archaeologists who accept these situations or treat them as merely local concerns (apparently the position of most scholarly organizations including the SAA), have not just compromised, they have abandoned scholarly ethics in favor of being "respectful and sensitive" to nonscholars and anti-intellectuals. When the current round of controversy is over, this loss of scientific integrity will be heavily condemned.

So there are some situations in which compromise is not necessarily the best approach, and this is one of them. Archaeologists may well be legislated out of business, and museums may well lose all their American Indian collections, and indeed the Indians have been far more successful than the archaeologists in the political arena. Many archaeologists believe, however, that this should not occur with the happy connivance of the scholarly profession of archaeology. Over 600 of them are members of the American Committee for Preservation of Archaeological Collections (ACPAC), which has argued for over 10 years that archaeology is a legitimate, moral, and even useful profession, and that collections that were legally made should remain in museums as an important part of the heritage of the nation. Bahn (1989:123) may have had this group in mind in his news report on the "first international congress on the reburial of human remains," in his reference to "the extremists, who unfortunately did not attend the congress to put the case for rejecting the whole notion of reburial." Who are these extremists? Neither ACPAC nor any individual known to me has stated that no reburial of any kind should take place; everyone agrees that bones of known relatives should be returned to demonstrable descendants. The disagreement is over remains to which no living person can demonstrate any relationship. Museum materials 5,000 years old are claimed by people who imagine themselves to be somehow related to the collections in question, but such a belief has no basis in evidence and is mysticism. Indeed, it is not unlikely that Indians who have acquired such collections for reburial are venerating the bones of alien groups and traditional enemies rather than distant relatives.

If the present attacks on archaeological data were happening in engineering, medicine, or chemistry, they would not be accepted by the general public since destruction or concealment of the facts in those areas of scientific knowledge can lead to disastrous results for many living people. The general lack of public concern about the attack on archaeology arises from the perception that archaeological conclusions really do not matter—if someone's reconstruction of the ancient past is ridiculous or unsupported by evidence, who cares? It will not affect the daily lives of anyone now alive, no matter what we believe about what happened thousands of years ago. However, the principles of scholarship and scientific evidence are the same in all scholarly research, including archaeology and anthropology, and credibility of conclusions is an essential consideration for any field of scholarship, whether or not there are immediate practical effects of the conclusions that are reached.

In one of the polemics put forward by Indian spokesmen in the student newspaper at the University of California (Los Angeles), those of us on the archaeological faculty were accused of participating in an activity that was comparable to the "killing fields of Cambodia." Even allowing for the juvenile rhetoric characteristic of student newspapers, I was dumbfounded at such a statement. How could I harm any person who had already been dead for thousands of years? How could anything that my studies did with the bones of these ancient people harm any living person? The condemnation seems extreme for a "crime" that is merely a failure to invite mythical descendants to control my research and destroy museum collections held in the public interest. When issues of respect and sensitivity are raised, it needs to be pointed out that these work both ways.

SOME LEGAL ISSUES: CONSTITUTIONAL REQUIREMENTS

The first amendment states that Congress shall make no laws respecting an establishment of religion. Most state constitutions have similar clauses; that of California says the state will never pass such laws. Yet California, other states, and the federal government have numerous laws on the books that are specifically written to favor aboriginal tribal religious beliefs and compel others to act in accordance with them. Religious infringement also occurs when archaeologists are excluded from evaluating claims regarding repatriation because they do not hold particular religious beliefs. Until these statutes are challenged and overturned, they remain an opening for other groups to seek
similar legislation making their religious beliefs enforceable by law. Creationists, for example, have been trying for over 60 years to outlaw the teaching of evolution because it is in conflict with their religious tenets.

That there is a science vs. religion aspect is clear in the religious justification for the claiming of bones and “sacred” artifacts, as well as the proclamation of many activists that archaeologists and museums are committing sacrilege in obtaining, storing, and studying archaeological remains. I discuss bone worship elsewhere (Meighan 1990). Tonetti (1990) provides a case study of the situation in Ohio, documenting the religious roots of the anti-archaeology movement. He also reports a survey of Ohio legislators that reveals a frightening ignorance of science in general and archaeology in particular: “As Zimmerman so dramatically stated in his op ed piece in the Columbus Dispatch, he does not want the General Assembly making law dealing with science issues when over 75% do not know what his 5 year old son has known for years—that dinosaurs and humans did not coexist” (Zimmerman [1989], as quoted in Tonetti [1990:22]; recent news reports state that some Indians are now claiming dinosaur bones recovered by paleontologists).

SOME LEGAL ISSUES: CULTURAL-RESOURCE LAWS

There is a serious conflict between the laws mandating return and destruction of archaeological material (not just bones but also artifacts and anything deemed “ceremonial” by the claimants), and those laws mandating cultural-resource management and the study and conservation of archaeological sites and remains. The Van Horn case previously mentioned put Van Horn in the position of doing an environmental-impact report required by law, only to find himself spending thousands of dollars defending himself against a felony charge for violating laws based on Indian religious beliefs about cremated bones. The judge agreed with defense witnesses that there was no basis for a trial, but the state made its point that archaeologists will be heavily punished if “Indians” request it, regardless of the validity of their complaint.

The legal dichotomy between science and religion as it pertains to archaeology may be related, as Goldstein and Kintigh (1990:589) point out, to the fact that public perception does not include Indian history as part of the history of the United States, even though they recognize that public policy and law include the non-European past as an integral part of the history of the nation. That part of American history that is Indian history is largely the contribution of archaeology; all of it prior to 1492 is the contribution of archaeology. This has been recognized and supported by the government since the Antiquities Act of 1906, and it is the basis for all the environmental-impact laws dealing with archaeological remains.

Many opponents of archaeological-resource laws believe that since archaeology has no effect on public health or safety, it ought to be excluded from environmental impact laws. They are given considerable ammunition by laws that state that it is in the public interest to spend a lot of money to get archaeological materials, and then state that such materials are not worth preservation but are to be reburied as soon as possible after they are dug up, in some cases within a few days or weeks of the fieldwork. Further, the belief that archaeology belongs to Indians removes it from the heritage of all of the citizens and makes it less likely that the public will be interested in supporting activities not seen to be in the broad public interest. In these times of stringent budgets, it is hard enough to convince the taxpayers that they should finance archaeological excavations without having to convince them that they should also finance the reburial of the items recovered.

There are major negative results for archaeology in the present situation where not only the federal government, but states, counties, cities, and a plethora of political agencies believe that they should pass regulations controlling archaeological research. These laws and regulations conflict with one another and vary from jurisdiction to jurisdiction. In some states the conduct of archaeological research is a risky business. The smart archaeologist in California does not find certain things. If they are found, they are either thrown away or not mentioned in his/her reports. Field classes are also careful not to expose students or teachers to criminal charges, meaning that students in those classes will never expose a burial or deal with any “controversial” finds. Chipping waste is still a safe area for study.
This chilling effect on research is creating an underground archaeology of ill-trained students, dishonest researchers, and intimidated teachers who are afraid to show a picture of a burial to their classes, let alone an actual human bone. Students, who are often more perceptive than their professors, rapidly catch on and change their major or move their archaeological interests to parts of the world where they will be allowed to practice their scholarly profession. There is an increasing loss to American archaeology, and of course to the Indians whose history is dependent on it.

SOME MUSEUM ISSUES

A negative effect of the ongoing shift to tribalism and the right of anyone to claim anything in museums is already happening. In the past, most of the support for museums came from private donors, who contributed not only money but collections. Donors of collections had the tacit (and sometimes written) agreement that their materials would be preserved in the public interest. Who would contribute anything to a museum if they thought the museum was going to give their material away for reburial or destruction? When even Stanford University and other respected repositories of scientific collections decide that their first obligation is to whatever Indian claimant comes along, the donor who wants his/her material preserved will seek a repository in a state or country that is dedicated to that aim. It is a paradox that the National Park Service is busily developing new standards of curation for government collections at the same time the new National Museum of the American Indian is declaring that it will not keep anything that Indian claimants declare that they want.

Reviewers of this article believe that only a very small part of archaeological collections will be taken away from museums and archaeologists. This is a pious hope in view of the escalation of claims previously noted, reaching the apex in the West Virginia case in which everything recovered by archaeologists is to be given up for reburial. There are numerous cases in which archaeologists or museum employees have given up entire collections rather than negotiate with Indian claimants; for example, one prominent California case (the Encino excavation) included reburial of a number of dog skeletons, not required by any statute. It is true that the Smithsonian and some other museums now have committees to evaluate claims against their collections; perhaps these will protect scholarly and public interests, but it remains to be seen whether they can withstand the political pressures brought to bear. While I am sure that not all collections will entirely disappear, under current legislation all physical remains, all mortuary associations, and all items claimed to have religious or ceremonial significance are at risk—these are the major sources of information in many archaeological studies. When claimants can get museum specimens merely by using the word "sacred," it should be apparent that anything can be claimed by someone. It does happen, it has happened, and scholars can only hope that it will not happen in the future.

CONCLUSIONS

When scholarly classes in United States archaeology and ethnology are no longer taught in academic departments (they are diminishing rapidly), when the existing collections have been selectively destroyed or concealed, and when all new field archaeology in the United States is a political exercise rather than a scientific investigation, will the world be a better place? Certainly the leadership in archaeological research, which has been characteristic of the last 50 years of American archaeology, will be lost, and it will be left to other nations to make future advances in archaeological methods, techniques, and scholarly investigations into the ancient past.

One reviewer of this paper commented that I am engaged in a "futile attempt to resurrect a bankrupt status quo." In this view, not only can nothing be done to improve the present situation, but nothing should be done, and we should all meekly accept the regulations, limitations, and restrictions of academic freedom that are brought forward by politicians and pressure groups. For the last 20 years, those who have attempted to change these restrictions in favor of scholarly ethics and the preservation of collections have been dismissed as a small group of outmoded discontents who cannot adapt to a changing world. This is a mistake; I may represent a minority view, but it is not confined to a small number and is growing rapidly as archaeologists see more and more of
their basic data destroyed through reburial. ACPAC's 600 members (in 44 states) include a sizeable fraction of the leading archaeologists in the United States as well as physical anthropologists, museum workers, and yes, Indians.

I am, however, triggered by the accusation that my comments lead to nothing but intransigence to offer a few suggestions for action other than "compromise," which so far has mostly meant giving in to political demands. My suggestions:

(1) Archaeologists negotiating with Indians or other groups should make an effort to be sure that all factions of the affected group are heard, not merely the group of activists who are first in the door. Many archaeologists have been doing this for years, and nearly all of us can report that we had little difficulty in finding Indians who would work with us in a mutually agreeable and often rewarding relationship that respected Indian interests but at the same time preserved the archaeological collections. Unfortunately, numerous instances can be cited of savage personal attacks on those Indians who agreed to share the archaeologists' task, with attempts to force the archaeologist to use other consultants and claims that the one chosen was not a real Indian (see an example in Tonetti [1990:21]). When money is involved, this is probably inevitable. However, there is no reason for archaeologists to be controlled by enemies of their discipline when they can work with friends. The existence of Indian physical anthropologists, archaeologists, and museum workers, as well as the increasing number of Indian-owned museums with scientific objectives and high standards of curation, should offer opportunities for real collaboration that do not require the destruction of evidence nor the censorship of scientific reporting.

(2) Professional organizations should work to amend the legislation dealing with archaeology to get a time cut-off inserted: Remains older than a certain age should not be subject to reburial. The present laws, which ignore time and assume that everything, regardless of age, is directly related to living people, are not scientifically valid, and the scientific organizations are in a position to make this clear, if necessary in court. The recent reburial of an Idaho skeleton dated at 10,600 years ago should never have happened, but as reported by the State Historic Preservation Office of that state, Idaho law requires no demonstration of any relationship between Indians and archaeological remains.

(3) Professional organizations should point out the disagreements between "preservation" laws and "religion" laws and should try to strengthen the former and eliminate the conflicts. If they are unable to resolve the issue by negotiation, they should support court cases that address the matter.

(4) If scholarly organizations are unwilling or unable to make a clear statement of their position with respect to the giving up of archaeological collections and data, it is left to the individual archaeologist to decide his or her own professional ethics in this matter. A clear review of the moral issues is given by Del Bene (1990). This should be considered, particularly by young archaeologists entering the profession, so that they are consciously aware of the decisions they are making and the consequences for their professional future.

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Received November 15, 1991; accepted July 3, 1992