

# Beyond the Tangible

## Repatriation of Cultural Heritage, Bioarchaeological Data, and Intellectual Property

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Repatriation has most often focused on the return of human remains and cultural patrimony. Only infrequently have the equally important *intangible* aspects of cultural heritage—the preferences, knowledge and know-how that give material property its meanings—been fully considered. Increasingly, intellectual property is recognized in discussions of who should control, have access to, or benefit from cultural heritage, past and present. Achieving a more equitable and satisfying resolution to issues relating to heritage requires that anthropologists grapple with the full range of cultural knowledges, and the meaning and interconnectedness of both the material and the symbolic dimensions of cultural heritage.

One initiative addressing this challenge is the Intellectual Property in Cultural Heritage (IPinCH) project. This international, multi-sectoral research collaboration is designed to provide a foundation of research, knowledge and resources to assist scholars, academic institutions, descendant communities, policymakers and others in negotiating more equitable and successful research, policies and practices. To accomplish this, a team of more than 50 archaeologists, lawyers, anthropologists, museum specialists, ethicists and other specialists from seven countries has been assembled, along with 25 partner organizations, to explore the diverse values that underlie repatriation attitudes, decisions and actions, and work to facilitate fair and ethical exchanges of knowledge relating to cultural heritage. The seven-year project is funded by the Social Sciences and Humanities Research Council of Canada (see [www.sfu.ca/ipinch](http://www.sfu.ca/ipinch)).

This essay proceeds by first noting some of the issues involved in the repatriation of intangible heritage and what's at stake, and then providing examples of successful, community-initiated projects.

### Property Rights (and Wrongs)

In recent decades, questions about who “owns” or has the right to benefit from heritage have emerged as contentious issues in anthropology. There have been spirited discussions on digital information transfers, open access to knowledge movements, cultural marketing, research ethics, intellectual property law, and culture-based rights. In archaeology, controversies have swirled around access, ownership and control in debates concerning the benefits of research activities and the claims of descendant communities to cultural knowledge and information. The specter of scientific colonialism emerges when, for example, benefits go primarily to outsiders rather than the community, as in bioprospecting and cultural tourism.

These concerns affect everyone, but especially indigenous peoples and other heritage-based communities who have historically had limited control over their heritage. Critically, many of these communities do not distinguish between tangible and intangible heritage, or even between cultural and biophysical heritage. Outsiders have appropriated and commoditized images of artifacts, sites, rock art and other iconography. The costs to individuals, clans and communities may be very high: loss of control over proper care of heritage, diminished respect for the sacred, the commercialization of cultural distinctiveness, improper or dangerous uses of special or sacred symbols by the uninitiated. In these examples, quests to exercise control over tangible items define the conflicts less than divergent views concerning the validity and appropriate applications of knowledge.

Although the examples are complicated, the sources of the conflict are not. Scholars want

access to all information; the business community wants the right to commoditize anything that will net profit; descendant and heritage-based communities want, at a minimum, to be centrally involved in decisions affecting their heritage and the intellectual property associated therewith. Whether their orientation is commercial, community or academic, every investigator or advocate is now obliged to determine what constitutes fair and respectful study or use of intellectual and cultural property.

Both Western and customary law and practice provide compelling arrays of protective method and theory (eg, copyright, sacred

Ts'inci. CAFN initiated a community DNA study that identified 17 living relatives of the deceased.

In Arizona, the White Mountain Apache Tribe collaborated with the National Association of Tribal Historic Preservation Officers and the National Park Service to “beta test” the Tribal Tourism Toolkit ([www.nathpo.org/Toolkit/NATHPO.pdf](http://www.nathpo.org/Toolkit/NATHPO.pdf)) and draft a tourism plan. Among the distinctive characteristics of the tribe's tourism development strategy is the emphasis on the conservative use of long-standing and emergent cultural principles to guide governance, to create healthy communities, to represent Apache heritage to visi-

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knowledge), but the effectiveness of each in protecting intangible heritage is constrained, most especially in the global marketplace. Stakeholders seldom can control shared information and they find it difficult to restrict access to esoteric or confidential knowledge and information.

### Promising Cases

If we accept the difficulty of protecting knowledge shared among diverse groups, then the emphasis shifts to ethical and common sense mandates to respect and promote values and preferences held in common at the interface of source and user communities. In northwestern Canada, such a collaboration developed between the Champagne-Aishihik First Nations (CAFN), the British Columbia Archaeology Branch, and the Royal British Columbia Museum to study the remains of Kwaday Dän Ts'inci (“Long-Ago Person Found”), a 550-year-old glacier body. CAFN had a full and equal voice in designing and implementing the study, and in determining what information to release and in what manner (including genetic data in DNA studies). It also took the lead on appropriate ceremonies and, in consultation with members of neighboring First Nations, it oversaw studies related to many of the artifacts/belongings associated with Kwaday Dän

tors, and to foster employment. The tribe's tourism-focused economic development reflects guidance from tribal law and policy, common sense, and cultural and operational principles, including commitments to: (1) respect animals, plants and minerals as parts of a seamless whole; (2) maintain balance between resource use and resource protection or enhancement; (3) protect traditions, sacred sites and places of strictly cultural importance, as well as archaeological and historical artifacts and structures; (4) assure that Ndee people receive all or most of any benefits from resource uses and activities; (5) prioritize quality of visitors and authenticity of visitor experiences over quantity of tourism; and (6) invest in the creation of sustainable jobs and long-term opportunities.

### IPinCH and You?

A more systematic approach has been taken by the IPinCH project, which is sponsoring up to 15 case studies worldwide. In each case, the participating communities identify the issues affecting them, co-develop case studies, and review the results before dissemination to the team for various data analyses. These studies utilize a community-based participatory research approach, and are designed to address the commu-

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nity's needs first, and the researcher's needs second. One study currently underway involves the creation of a multi-layer database to record Moriori elder knowledge, sustainable land-use practices and heritage landscapes in the Chatham Islands, New Zealand. This project, led by lawyer Maui Solomon and archaeologist Susan Forbes, links research on Moriori identity, cultural heritage protection, land use and resource management in culturally sensitive ways. It also promotes economic sustainability and informs land-use decisions in ways that respect Moriori ethics.

A second ongoing project is an Inuit community study of the ownership, access and sharing of information relating to a nineteenth-century collection of objects from the Northwest Territories, Canada, now housed in the National Museum of Natural History in Washington, DC. In November, a group of Inuvialuit elders and youths, along with IPinCH associates Natasha Lyons and Kate Hennessey, traveled to Washington to study and record their knowledge of these items, and to consider ways that cultural knowledge can be restored to the community from distant locations. IPinCH scholar Stephen Loring (Arctic Studies Institute) and others assisted in these efforts.

Through these studies and others planned, IPinCH is assisting descendant communities in developing solutions to intellectual property issues that cannot be solved through legal means alone. The result will be far more satisfying because the studies are co-developed and co-managed by community members, and they are the primary beneficiaries. At the same time, the results of these studies contribute to the larger goals of IPinCH, which are to: (1) document the types of issues arising in response to intellectual property in cultural heritage worldwide; (2) generate more robust understanding of, as well as good practices relating to, these issues; and (3) make these findings available to stakeholders to develop and refine their own theories, principles, policies and practices.

Repatriation is not just about returning things or information to their places of origin, nor does the process presuppose that homecoming will remove those materials from the realm of scholarly study. Instead, both repatriation and efforts to address inequalities in heritage matters can be the opening act in a new age of more equitable archaeology and anthropology. All are invited to learn more and participate in the IPinCH initiative.

**George Nicholas** (*Simon Fraser U*) is director of the *Intellectual Property Issues in Cultural Heritage Project* ([www.sfu.ca/IPinCulturalHeritage](http://www.sfu.ca/IPinCulturalHeritage)). His recent publications include *"Decoding Implications of the Genographic Project for Archaeology and Cultural Heritage"* (with J Hollowell in the *International Journal of Cultural Property*) and *Being and Becoming Indigenous Archaeologists*.

**John R Welch** (*Simon Fraser U*) is *Canada Research Chair in Indigenous Heritage Stewardship*. His work has focused on indigenous stewardship institutions, community and landscape archaeology, and culturally appropriate heritage management practices and policies. He recently co-authored (with J Welch and E Yellowhorn) *"Collaborative Encounters"* in *The Collaborative Continuum: Archaeological Engagements with Descendant Communities*.

**Alan Goodman** (*Hampshire C*) is vice president for academic affairs and dean of faculty, a past president of AAA, and a member of the National NAGPRA review committee. His research focuses on the nutritional and health consequences of racism, poverty and inequality. He recently co-edited *Genetic Nature/Culture with Deborah Heath and M Susan Lindee*.

**Randall McGuire** (*Binghamton U*) works in the realm of indigenous peoples and archaeology, archaeology as political action, archaeological theory, historical archaeology and the archaeology of Northwest México. His books include *Archaeology as Political Action: A Marxist Archaeology*; and *The Archaeology of Class War* (co-edited with K Larkin). ☐

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Anyway?" in *Cosmopolitanism*), and others. Taking as their favorite target the UNESCO world heritage legal framework, which enables repatriation redress but is frequently denounced as an impediment to cultural exchange/free trade, and calculating the relative youth of modern nation-states like Italy or China to compare with the antiquities they are reclaiming, they forget that all identities and their supporting genealogies are forged in the present, and are inseparable from power relations, which is why the "universal" museums' pretense to the self-declared right to own such antiquities on behalf of the world will not fly in Thailand or Ethiopia, where it is more likely to be seen as a self-serving ruse. The historical inequalities that cannot be avoided in contemporary affairs are really the core issue in the repatriation debates, even though they often go unmentioned, or are temporarily defused through neouniversalist argumentation.

Anthropology has an obvious role in the current global debate, because it is ultimately a contest of values over what idea of "universal" culture the people of the world would like to guide them and their identity as humans. Will it be a hollow universalism that perpetuates the power relations of the past, organized in terms of "property" held presumptuously on the world's behalf—or is an alternative universalism possible? Can we move toward a commons approach (such as that sketched by Carman in his *Against Cultural Property*) that can recognize local custody and appreciation as part of a shared responsibility for human creativity inherited from the past?

**Magnus Fiskesjö** teaches anthropology at Cornell University and served as director of the *Museum of Far Eastern Antiquities, Stockholm, in 2000–05*. His main research area is Southeast Asia's borderlands. He recently published *"The Politics of Cultural Heritage"* in *Lee Ching Kwan and Hsing You-tien's Reclaiming Chinese Society: The New Social Activism*. ☐

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uncompromising commitment to the documentation of all repatriated human remains to ensure an enduring reservoir of information for future generations of researchers.

**The Future?**

It is arguable that both NAGPRA and the CMCC policies have their advantages. The funding available through NAGPRA allows for an enviable infrastructure, but the less formal management of human remains repatriation at CMCC encourages dialogue and cooperation. We have found repatriation to be healing for Aboriginal groups and when we are able to facilitate

the process new bonds are forged and relationships established. It will be interesting to see how the two different paths on which Canada and the United States find themselves will influence the nature of future relationships with Aboriginal people, the impact on the discipline of physical anthropology, and our accountability to future generations.

**Janet Young** is a physical anthropologist at the Canadian Museum of Civilization. She is responsible for the creation, implementation and coordination of the institution's human remains documentation program. Her research interests include biomechanical and pathological changes in the human skeleton as they relate to activity patterns and general health outcomes. ☐



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