

MUST BE TREATED WITH RESPECT:  
EVOLVING ETHICS AND CURATION OF MESOAMERICAN HUMAN REMAINS

by

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ABSTRACT OF THE THESIS

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This paper explores the ethical protocols for the handling of human remains sourced in Central America and stored in academic collections within the United States. Although all such institutions profess a commitment that osteological remains “Must be treated with respect,” the definition of what constitutes “respect” is often subjective. My research and data collected will draw upon the international mandates that govern the exportation, storage, study, and conservation of human remains with attention to three aspects that contribute to the legal framework in which human remains fall: 1) The laws and where they originate; 2) The organizations that maintain these laws; and 3) The extent by which these laws are applied and enforced. I will compare varying internal policies directed towards the conservation and handling of human remains in four academic institutions. As these policies and practices are necessarily institution-specific, they will be compared to demonstrate areas of significant alignment and areas of contrast. The ultimate goal is to establish how following ethical guidelines can become a sustainable feature in archaeological practice by crafting a framework in which ethical principles are designed

in such a way that they can have a positive impact on the quality of scientific data. This position is supported by a demonstration of how standardization in ethical issues has consequences for the standardization in the scientific method and long-term conservation of remains. Other improvements discussed include the possibility for enhanced international cultural diplomacy to impact the overall discipline of archaeology in the public perception of its role as a steward of important cultural heritage.

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## **Introduction**

Since the 1990s, cultural heritage and human rights legislation, such as the Native American Graves Protection and Repatriation Act (NAGPRA), have attracted greater attention to the issue of ethics in archaeology, particularly those raised by the collection and curation of human remains.<sup>1</sup> While this legislation establishes regulations regarding the treatment, study, repatriation, and disposition of physical remains and funerary objects<sup>2</sup>, the federal protections and mandates expressed in NAGPRA do not explicitly extend to human remains not culturally affiliated with any federally recognized Native American peoples. The purpose of this thesis is to demonstrate a lack of standardized, enforceable ethical platforms at United States academic institutions collecting and studying Mesoamerican human remains dating from 250 A.D. to the middle of the 19th century, excavated from Mexico and Belize. This thesis will show how this situation causes damage to the scientific record, inhibits scientific and cultural diplomacy, and causes harm to the public image of anthropologists, archaeologists, academic institutions, and museums as stewards of human history. The nations of Mexico and Belize present a unique case for the study of legal and curatorial practices in collecting and maintaining human remains by institutions based in the United States. Specifically, this thesis will compare the evolution of cultural heritage legislation regarding human remains in the US, Mexico, and Belize, as well as international conventions, professional organizations' codes of ethics, and institutional policies. I will demonstrate how the political, historical,

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<sup>1</sup> McKeown, C. Timothy, "Implementing a 'True Compromise': the Native American Graves Protection and Repatriation Act After Ten Years", *The Dead and Their Possessions*, ed. Cressida Fforde, Jane Hubert and Paul Turnbull (Routledge, New York, 2002), 108-114.

<sup>2</sup> Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3005 (1990).

cultural, and legal differences complicate efforts to establish standard procedures regarding the distinctive ethical issues surrounding conservation and study of human remains. However, institutions responsible for collections containing human remains must establish a minimum standard of curation that ensures protection, preservation, and respect. Finally, recommendations will be made for creating sustainable ethical policies that address long term curation, academic accountability, and establishing dialogue with stakeholders.

*Human Remains: the Discourse of “Respect”*

Human remains are nearly ubiquitous in institutional archaeological collections around the world. According to the Human Remains Report survey conducted in 2002 by the Department for Culture, Media and Sport in London, 90 percent of English cultural institutions (132 out of 146) possess human remains, totaling approximately 61,000 individuals.<sup>3</sup> Although no survey has been done in the United States to date, it is highly probable that the number of human remains is far larger in this country, in part due to the estimated 200,000 Native American remains that are held in federally-sponsored institutions and the greater number of museums and academic institutions in the U.S.<sup>4</sup>

Despite their ubiquity, however, conservation of human remains lacks a systematized approach to their collection, analysis, and curation distinct from that of art and other objects from antiquity. Among the ethical issues relevant to modern

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<sup>3</sup> Working Group on Human Remains, Department for Culture, Media and Sport, London, “Human Remains Report”, <http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/NR/rdonlyres/D3CBB6E0-255D-42F8-A728-067CE53062EA/0/Humanremainsreportsmall.pdf>: 11, accessed February 12, 2012.

<sup>4</sup> Cassman, Vicki, Nancy Odegaard, and Joseph Powell, “Dealing with the Dead”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 1.

archaeology, made more prominent through the passage of legislation addressing human remains in the United States including NAGPRA and CFR 79<sup>5</sup>, is an increased sensitivity to the fact that human remains possess qualities that differentiate them from art and other objects manufactured in antiquity. Human remains have an inherent quality that commands dignity, reverence, and respect in the processes of excavation, storage, study, and display. Skeletal remains are not specimens, they were people – they are individuals.<sup>6</sup> Adoption of this sentiment is visible in the ethics or practices statements of institutions involved in activities surrounding human remains. According to the guidelines that these groups set for themselves, human remains “Must be treated with respect.”<sup>7</sup> The field, however, lacks objective definitions for “respect,” and cultural differences between the communities whose ancestral remains are studied constitute diverse definitions of respect for the dead. These subjective research models and diverse reactions from native peoples make inconsistencies in practices between institutions the natural result.

What does it mean to act with respect? The ways in which societies have identified respectful treatment of the dead are enormously diverse and the ways in which those remains have been treated in practice are even more varied.<sup>8</sup> Katherine Goodnow, a Professor of Museum Studies at the University of Bergen in Norway, discusses why no

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<sup>5</sup> 36 CFR Part 79, September 1989.

<sup>6</sup> Cassman, Vicki and Nancy Odegaard, “Examination and Analysis”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 49.

<sup>7</sup> Peabody Museum of Archaeology and Ethnology at Harvard University, “*Osteology Lab Protocol*”, <http://www.peabody.harvard.edu/node/476>, accessed March 11, 2011; State University of New York – Plattsburg, Department of Anthropology Handbook 2010-2011, <http://web.plattsburgh.edu/files/348/files/anthropology-handbook-f10-s11.pdf>, Accessed March 30, 2011.; University of Pennsylvania Museum of Archaeology and Anthropology, “Making Use of the University Museum Collections: A Guide for Researchers”, [http://www.penn.museum/documents/education/research\\_access\\_policy.pdf](http://www.penn.museum/documents/education/research_access_policy.pdf), accessed February 15, 2012.

<sup>8</sup> Teauge, Lynn S., “Respect for the Dead, Respect for the Living”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 245.

single set of rules apply to the handling of human remains. Specifically, one cannot assume (a) human remains always matter to native peoples and descendent populations, (b) that everyone wants them back, (c) that their cultural, emotional, and psychological significance is the same for all people, even within a single cultural group, (d) that all bodies are of equal significance, or (e) that all meanings are static.<sup>9</sup> Given these differences, it is therefore impossible to speak of “respectful treatment” as if it were a single set of practices that, if adopted, would place the researcher beyond a reproach both scientifically and ethically when dealing with any human remains source from any cultural community. Archaeologists, however, if they are expected to follow “respectful treatment,” will require a minimum curation standard to accommodate varying perspective on the treatment of all ancient skeletal remains, not just to those items in federally funded institutions of from federal or tribal land.

### **Case Study: Mexico, Belize, and the United States**

Mexico and Belize present a unique case study looking at the legal and curatorial practices in collecting and maintaining human remains by academic institutions in the United States of America. Belize and the southeastern corner of Mexico serve as modern and historical homelands of Maya populations that have inhabited this region from the 1000 BC until today. The Maya area is located within larger region known as Mesoamerica, where over 3,000 years many different cultures developed, rose to prominence, and collapsed within this diverse land. In the Gulf coast of Mexico during

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<sup>9</sup> Goodnow, Katherine, “Why and When Do Human Remains Matter; Museum Dilemmas”, *Human Remains and Museum Practice*, ed. Katherine Goodnow (United Nations Educational, Scientific and Cultural Organization, 2006): 16.

1500 – 400 BC<sup>10</sup>, the Olmec people developed a complex civilization, and are often associated with the colossal head stone sculptures weighing more than 7 tons.<sup>11</sup> They were followed by other cultural groups such as the Zapotecs from 200BC to 700BC, the Teotihuacanos, Toltecs and Aztecs in the Valley of Mexico during the 400 BC to AD 300<sup>12</sup>, and the Tlaxcalans during the AD 1350 to 1550 on the east coast<sup>13</sup>. The Maya people, who were contemporaries of all these great nations, settled and developed in the southeast, in an area that includes the modern countries of Belize, Guatemala, El Salvador, western Honduras, and the Mexican states of Tabasco, Chiapas, Yucatan, and Campeche.<sup>14</sup>

The archaeological legacy of the Maya is one of the most well known in the world and archaeological tourism provides a major source of income in historically Maya regions of Mexico and Belize.<sup>15</sup> Despite similarities in the historical backgrounds Belize however, developed its cultural resource legislation over a century after Mexico. The following section will detail what protections exist for cultural heritage and associated artifacts; including human remains unearthed during archaeological excavation, in the countries of Mexico and Belize. U.S. legislation regarding human remains will be addressed later in this thesis. Furthermore, there are fundamental legal, political, and cultural differences that distinguish Mexico and Belize from the United States, notably

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<sup>10</sup> Diehl, Richard, *The Olmecs: America's First Civilization* (Thames & Hudson: London, 2004), 9.

<sup>11</sup> *Ibid.*, 14

<sup>12</sup> Demarest, Arthur, *Ancient Maya: The Rise and Fall of a Rainforest Civilization* (Cambridge University Press: Cambridge, United Kingdom, 2004), 15-19.

<sup>13</sup> Schmal, John P. "The History of the Tlaxcalans", Houston Institute for Culture, <http://www.houstonculture.org/mexico/tlaxcala.html>, accessed April 7, 2012.

<sup>14</sup> National Institute of Culture and History, Institute of Archaeology, "Mayan Setting", <http://www.nichbelize.org/ia-archaeology/mayan-setting.html>, accessed March 11, 2011.

<sup>15</sup> Arden, Traci, "Where Are the Maya in Ancient Maya Archaeology Tourism? Advertising and the Appropriation of Culture", *Marking Heritage: Archaeology and the Consumption of the Past*, ed. Yorke Rowan and Uzi Baram (Alta Mira Press: New York, 2004), 104-105.

the lack of existing legislation regarding the handling and administration of human remains sourced from these countries and stored in a foreign institution.

*Central American Law vs. United States Law*

The history of legislation concerning antiquities in the United States contrasts with the legal histories of federal patrimony in Central America due to the historical and colonial antecedents of these countries' legal frameworks. Legal systems in Central America are based on their antecedents in the colonial Spanish governments, which derived from Roman law as interpreted through medieval Spanish law.<sup>16</sup> Under this framework, individuals could own land, but anything beneath the surface was property of the Spanish crown, as were any bodies of water. In Spain's American colonies, this meant that the royal government immediately possessed precious metals, minerals, and antiquities. Upon independence in 1821, as in Mexico, this claim to patrimony passed from the crown to the national government. The United States, in contrast, derives its legal tradition from Saxon law, as modified by British law, which segregates properties among individuals and therefore places emphasis on private ownership and territorial boundaries. This attitude bequeathed the modern American value of protecting private property against trespassers and the stigma of eminent domain associated with public works projects. It also means that private citizens may own, buy, and sell the rights to land as well as any known or unknown resources (including antiquities) beneath it.

Historically, this legislation only covers federal and tribal lands, while cultural resources

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<sup>16</sup> Garcia-Barcena, Joaquin. "Law and the Practice of Archaeology in Mexico." *The SAA Archaeological Record*. November 2007: 14.

discovered on private property remain unprotected under United States law.<sup>17</sup> Only recently is this beginning to change with the 1990 passage of the Native American Graves Protection and Repatriation Act (NAGPRA), as will be explained in the following section about antiquities legislation in the United States.

### *Patrimony Laws in Mexico*

For centuries, the rich archaeological record in Mexico has intrigued professional anthropologists, art historians and amateur antiquarians alike.<sup>18</sup> In consequence, Mexico has developed strong protections for its national heritage, beginning with tight controls over material culture imposed by the colonial Spanish during the sixteenth century appropriated into a nationalist cultural agenda after independence in 1821.<sup>19</sup> In 1827, Mexico established the Antiquities Conservatory to curtail looting and prevent the illegal export of monuments and antiquities.<sup>20</sup> This approach remains essentially in effect today. The policy was reaffirmed in 1868 when President Benito Juárez proclaimed that all antiquities found in Mexican territory, even materials discovered on privately-owned land, belonged to the nation. While encapsulating an important political message as part of Juárez's progressive reforms, the law was also responding to the fledgling field of archaeology, which followed colonial practices of appropriating native antiquities for foreign study.<sup>21</sup>

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<sup>17</sup> *Ibid.*, 15.

<sup>18</sup> Golden, Charles W. and Greg Borgstede, *Continuities and Changes in Maya Archaeology* (Routledge: New York, 2004), 3.

<sup>19</sup> Garcia-Barcena, Joaquin. "Law and the Practice of Archaeology in Mexico." *The SAA Archaeological Record*. November 2007. p.14

<sup>20</sup> Morfin, Lourdes Márquez and Ernesto González Lincón, "Mexico/México," *The Routledge Handbook of Archaeological Human Remains and Legislation* (New York: Routledge, 2011), 543.

<sup>21</sup> Mangas, Maria Teresa Castillo, "Archaeological Curatorship and Material Analysis at INAH", *SAA Archaeological Record* 7, no. 5, 35.

The late 19<sup>th</sup> century became a focal point in Mexico's growing self-awareness of the international importance placed on its antiquities. During this time, formal academic practitioners also began to influence the direction of the field of scientific field archaeology in Mexico including Byron Cummings, William Holmes, Zeila Nutall, and Marshall Saville.<sup>22</sup> The beginning of the twentieth century saw a proliferation institutionally-sponsored research in Mexico and other parts of Mesoamerica,<sup>23</sup> when Franz Boas helped to establish the International School of American Archaeology and Ethnology in 1911 and served as its first director. The German-American Boas infused his school with the latest trends in American anthropology, which at the turn of the century was focusing on strengthening the methods and goals of anthropology as a professional and academic field. Despite the school's short life—it was closed in 1914 on account of the Mexican Revolution—it facilitated the adoption of rigorous anthropological research methods in Mexico at this relatively early date.<sup>24</sup> A need to derive and protect high-quality scientific data from archaeological field studies in Mexico became a significant factor in national legislation regarding the protection and oversight of archaeology and anthropology in Mexico. However, no direct statement on the specific treatment of human remains was established during this era. It was also during the beginning of the twentieth century that Mexican archaeologists began initiating large

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<sup>22</sup> García, Nelly M. Robles, "The Practice of Archaeology in Mexico", *The SAA Archaeological Record* 7, no. 5: 9.

<sup>23</sup> Golden, Charles W. and Greg Borgstede, *Continuities and Changes in Maya Archaeology* (Routledge: New York, 2004), 3-5.

<sup>24</sup> Gordy, Ricardo, "Franz Boas and his plans for an International School of Archaeology and Ethnology in Mexico", *Journal of History and Behavioral Sciences* 13, no. 3: 228-42.

scale excavations of Pre-Columbian sites in Central Mexico including Monte Alban, Xochicalo, and Teotihuacan.<sup>25</sup>

Promulgated on December 31, 1938, the law, Organic Act for the National Institute of Anthropology and History (*Ley Orgánica del Instituto Nacional de Antropología e Historia*), was the first major legislation that set the foundation for Mexico's current approach to its archaeological remains. The basis of the law was the establishment of National Institute of Anthropology and History (Instituto Nacional de Antropología e Historia, INAH) as a federal organization responsible for regulating all archeological excavation done within Mexico. INAH remains the primary national body for the protection, conservation, and diffusion of paleontological, archaeological, and historical patrimony in Mexico. Although the law does states INAH should work jointly with the states and municipalities to establish manuals for the protection, conservation, and restoration of historic and pre-historic material, the treatment of human skeletal remains is not explicitly stated.<sup>26</sup>

The Council of Archaeology, was established under INAH to regulate and approve all archeological projects in Mexico, as well as, ensure that research is conducted in accordance with federal laws. Three departmetns were established within the Council of Archaeology responsible for oversight of human remains: the Dirección de Antropología Física (DAF), INAH Centers, and the Escuela Nacional de Antropología e Historia (ENAH). The council maintains strict policies concerning the use of remains in

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<sup>25</sup> Golden, Charles W. and Greg Borgstede, *Continuities and Changes in Maya Archaeology* (Routledge: New York, 2004), 5.

<sup>26</sup> Instituto Nacional de Antropología e Historia, "Academic Research", <http://www.inah.gob.mx/index.php/academia/investigacion>, accessed March 12, 2011.

scholarship. Requests for research must justify the use of a collection, time required for study, and the type of analysis being undertaken. There is no standard procedure for invasive research other than permission must be obtained before testing takes place. Finally, a report of all research activities must be submitted at the end of the investigation. In spite of the historical and cultural value of human remains, there are no physical anthropologists represented in the Council of Archaeology, the central administrative body overseeing fieldwork throughout Mexico. While there is currently no legislation regarding the disposition of remains, skeletal remains are kept in archival containers and stored in a designated INAH facility as a matter of protocol.<sup>27</sup>

In Mexico, fieldwork and research initiatives increased significantly under the guidance of foreign scholars. Archaeologist Charles Golden notes the roots of academic archaeology in Mesoamerica lie in the nineteenth century: “Dilettantes, explorers, and gentleman scholars brought forth the field in an era of continuing exploration and colonialism.”<sup>28</sup> To increase the contribution of Mexican scholarship in the field of archaeology, one of the objectives of INAH was specifically addressed this issue:

To teach in the areas of anthropology and history, conservation, restoration and museography, at the levels of technical graduate, post-graduate, and extended education, and to credit studies to confer titles and corresponding degrees.<sup>29</sup>

Formal anthropology academic education in Mexico began in 1938 when students could earn a two-year bachelor’s degree at the National School of Biological Sciences

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<sup>27</sup> Morfín, Lourdes Márquez and Ernesto González Lincón, “Mexico/México,” *The Routledge Handbook of Archaeological Human Remains and Legislation* (New York: Routledge, 2011): 546-547.

<sup>28</sup> Golden, Charles W. and Greg Borgstede, *Continuities and Changes in Maya Archaeology* (Routledge: New York, 2004), 3.

<sup>29</sup> *Ibid.*, 5.

(Escuela Nacional de Ciencias Biológicas). Currently in Mexico, the only institution offering a bachelor's degree in physical anthropology is The National School of Anthropology and History (ENAH). It wasn't until 1996 that a master's program was established and the first generation of a doctoral program in 2004. The mandated segregation between disciplines has resulted in a lack of archeological excavation courses in the physical anthropology curriculum at ENAH.

The 1970 Law for the Cultural Heritage of the Nation and the 1972 Federal Law for Archaeological, Artistic and Historical Zones and Monuments, built upon the original 1868 proclamation that all antiquities excavated within Mexico were national property. The 1972 law defines archaeological property as that from “cultures preceding the establishment of the Hispanic culture on national territory”, and for the first time explicitly lists human remains as archaeological property.<sup>30</sup> Additionally, the exportation of any cultural property from Mexico's past or present is strictly prohibited, except in cases where samples require specific scientific testing not available locally. The duration of such loans is discretionary. The law also strengthened INAH's role as the authority entrusted to enforce the law concerning cultural patrimony.<sup>31</sup>

### *Patrimony Laws in Belize*

Belize, a small nation on the Caribbean coast of Central America, occupies part of the territory in which the Maya civilization flourished during the 1st millennium A.C., with an apex in the Classic Period of 250-900 A.C. The political history of Belize over the past 200 years as a British colony (known until 1973 as British Honduras), and now

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<sup>30</sup> Federal Law for Archaeological, Artistic and Historical Zones and Monuments 1972, Chapter III, Article 27-28-BIS.

[http://www.unesco.org/culture/natlaws/media/pdf/mexico/mx\\_law\\_archeological\\_monuments\\_engtof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/mexico/mx_law_archeological_monuments_engtof.pdf).

<sup>31</sup> Federal Law for Archaeological, Artistic and Historical Zones and Monuments 1972, Chapter 1, Article 16.

[http://www.unesco.org/culture/natlaws/media/pdf/mexico/mx\\_law\\_archeological\\_monuments\\_engtof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/mexico/mx_law_archeological_monuments_engtof.pdf).

as an independent nation, has engendered a history of archaeological research distinct from that in the Spanish-speaking countries that comprise the remainder of the Maya area (Mexico, Guatemala, Honduras, El Salvador).<sup>32</sup>

The history of patrimony legislation in Belize begins in 1894, when the British colonial government passed the Ancient Monuments Protection Ordinance effective in British Honduras.<sup>33</sup> Such ordinances appeared throughout the British Empire around the turn of the 20<sup>th</sup> century, intended primarily to stop looting by colonists plundering the local ruins for export to Europe.<sup>34</sup> Prior to these ordinances, companies such as the Ancient Ruins Company, Limited in British South Africa stripped antiquities from ruins with complicity from governors such as Cecil Rhodes.<sup>35</sup> The ordinances established legal definitions for antiquities, prescribed means by which the colonial governor could compensate discoverers of antiquities, provided funds for controlled excavations, and crafted penalties for offenses against the law.<sup>36</sup>

Following the 1894 ordinance, the Ancient Monuments and Relics Ordinance of 1924 addressed research conditions at an excavation site.<sup>37</sup> These ordinances provided a foundation for the protection of cultural patrimony in Belize, but influences of the Colonial era are reflected in the legislation. Unlike the nationalist agenda of

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<sup>32</sup> Hammond, Norman, "The Prehistory of Belize", *Journal of Field Archaeology*, Vol. 9, No. 3 (Autumn, 1982): 349.

<sup>33</sup> National Institute of Culture and History, Institute of Archaeology, "History of the Institute of Archaeology", <http://www.nichbelize.org/ia-general/history-of-the-institute-of-archaeology.html>, accessed March 30, 2011.

<sup>34</sup> For instance as in Zimbabwe, recounted in Corsane, Gerard. *Heritage, museums and galleries: an introductory reader*: 163-164.

<sup>35</sup> Kuklick, Henrika. "Contested Monuments: The Politics of Archeology in South Africa." *Colonial situations: essays on the contextualization of ethnographic knowledge*. Ed., George W. Stocking: 142.

<sup>36</sup> Society of Comparative Legislation. *Journal of the Society of Comparative Legislation, Volume 1*. Ed., John MacDonell and Edward Manson. John Murray, Albemarle Street. London, 1899: 160

<sup>37</sup> Branche, W. "The Consolidation and Preservation of Ancient Monuments: The Case of Belize", *Memorias del Primer Coloquio Internacional de Mayistas* (Universidad Nacional Autónoma de México Ciudad Universitaria: Mexico, 1987), 100-102.

archaeological patrimony laws in Mexico, antiquities did not need to remain in British Honduras. Under the 1924 laws, around half of all finds could become the property of the individual archaeologist or institution. Many Belizean monuments ended up in institutional collections or museums in Britain, Canada, and the United States, even after 1928 legislation that required groups to get written permission from the governor to export antiquities.<sup>38</sup>

It was not until the Ancient Monuments and Antiquities Ordinance of 1971 that all Belizean antiquities were declared property of the state, which could not be legally possessed, sold, or exported without a license.<sup>39</sup> The law did not, however, contain rigid requirements concerning the treatment of cultural property when it is studied or stored abroad and no specific guidelines were given regarding storage and handling specific to human remains. Archaeologists in possession of remains were not required to report annually on their examination findings and methods of study. Furthermore, there were no standards set to govern how remains under long-term, multi-year loans must be handled or maintained.

Belize did not enact legislation that reflected the strict policies of Mexico until long after independence from Great Britain in 1981. In 2000, the Ancient Monuments and Antiquities Ordinance was repealed and effectively replaced by the National Institute of Culture and History (NICH) Act.<sup>40</sup> NICH represented a broad reorganization of

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<sup>38</sup> National Institute of Culture and History, Institute of Archaeology, "History of the Institute of Archaeology", <http://www.nichbelize.org/ia-general/history-of-the-institute-of-archaeology.html>, accessed March 30, 2011.

<sup>39</sup> Ancient Monuments and Antiquities Ordinance 1971.

<sup>40</sup> National Institute of Culture and History, Institute of Archaeology, "History of the Institute of Archaeology", <http://www.nichbelize.org/ia-general/history-of-the-institute-of-archaeology.html>, accessed March 30, 2011.

Belizean ministries governing cultural activities into a cohesive umbrella organization. Of the departments created by the act, the Institute for Research and Management of Material Culture (IRMAC) is responsible for the regulation of research, preservation, and management of Belize's material culture. The federal regulations and protocols handled by IRMAC represent a distinct move towards strict regulation of the analysis, removal, and curation of antiquities. The exportation of remains is not allowed except in cases where testing is necessary and the required facilities are not locally available; remains must be returned immediately after the examination.<sup>41</sup> The laws do not address indigenous rights, differentiate between artifact and human remains, or require indigenous consultation regarding studying or handling. The definition of "antiquities" covered by NICH is confined to material culture "manufactured or worked by man" and does not explicitly mention human skeletal remains.<sup>42</sup>

Despite their differences, the governments of Mexico and Belize are moving towards developing strong cultural heritage legislation. Both countries stipulate that all antiquities are property of the state, with explicit export restrictions, and no distinction is made between human remains and other categories of historical materials. Both countries have incorporated or been influenced by elements of their colonial heritage, and each is working to establish a more relevant paradigm for archaeological research and conservation. Finally, it is important to note that there is no special consideration given to any specific ethnic or cultural backgrounds of artifacts or remains; all simply are national property.

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<sup>41</sup> National Institute of Cultural and History Act. Laws of Belize, Chapter 331.

<sup>42</sup> *Ibid.*, Section 33.

### *Cultural Patrimony Law in the United States*

Much as early antiquities laws in Belize were in response to looting, at the turn of the 20<sup>th</sup> century officials in the United States were also combating widespread looting of Native American graves and artifacts, particularly in the areas of the southwest. A late example was the collection by white soldiers of Native American artifacts after the 1890 massacre at Wounded Knee in South Dakota. Personal items from the slain and later appeared in museums and the 1893 World's Columbia Exposition in Chicago.<sup>43</sup> From 1850 to the early twentieth century, the settlement of the West and expansion of the railroad also played a role by spurring discovery and allowing looters to easily transport objects. Furthermore, the opening of remote areas in the Southwest and plains caused a increase of collecting for museums, and the proliferation of private curio collectors and tourists.<sup>44</sup>

To protect federal and tribal lands from further looting, the Antiquities Act was passed by the U.S. Congress and signed into law by Theodore Roosevelt in 1906 to re-address archaeological resources on these lands. The Act provided very basic guidelines for how the government would identify and protect such cultural property, granted powers to issue permits for the legal excavation of identified sites, and stipulated penalties for illegally excavating or damaging sites and remains.<sup>45</sup> Rather than bringing excavation to a halt, the law was intended to establish that sites be regulated requiring

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<sup>43</sup> Fine-Dare, Kathleen S., *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, (University of Nebraska Press, Lincoln 2002):48

<sup>44</sup> Hutt, Sherry and Jennifer Riddle, "The Law of Human Remains and Burials", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 233.

<sup>45</sup> Antiquities Act of 1906, (16 U.S.C. 431-33) [http://www.cr.nps.gov/local-law/FHPL\\_AntiAct.pdf](http://www.cr.nps.gov/local-law/FHPL_AntiAct.pdf).. accessed February 28, 2012.

permits conduct excavations to prevent amateur archaeology and for-profit plunder.

Although human remains to be protected in-situ, the protection was limited to the sites themselves, rather than regulating the movable objects found in designated areas.<sup>46</sup>

Discoveries were channeled through professional archaeologists and directly to study and storage spaces in academic institutions and museums.<sup>47</sup>

The Archaeological Resources Protection Act (ARPA) replaced the Antiquities Act in 1979, increasing the ability of federal agencies to manage archaeological sites as well as expanding the powers of law enforcement to penalize illicit trade in archaeological remains<sup>48</sup>. ARPA expanded the definitions of prohibited activities and made punitive measures more severe, in keeping pace with the increasing profits of black market activity. The law also prescribed more progressive techniques for managing protected lands, keeping the locations of new discoveries confidential, and directing the share of information between archaeologists and the government to enhance record-keeping.<sup>49</sup>

#### *Native American Graves Protection and Repatriation Act*

The passing of Native American Graves Protection and Repatriation Act (NAGPRA)<sup>50</sup> in 1990, triggered by the increasingly forceful posture of Native American

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<sup>46</sup> Hutt, Sherry and Jennifer Riddle, "The Law of Human Remains and Burials", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 233.

<sup>47</sup> Fine-Dare, Kathleen S., *Grave Injustice: The American Indian Repatriation Movement and NAGPRA*, (University of Nebraska Press, Lincoln 2002):62.

<sup>48</sup> To see statue text online, visit <http://nps.gov/archaeology/TOOLS/LAWS/ARPA.htm>

<sup>49</sup> McManamon, Francis P. "The Archaeological Resources Protection Act of 1979 (ARPA)." *Archaeological Method and Theory: An Encyclopedia*. Edited by Linda Ellis. Garland Publishing Co. New York, 2000.

<sup>50</sup> The Native American Graves Protection and Repatriation Act 1990(Public Law 101-601; 25 U.S.C. 3001-313, <http://www.nps.gov/archeology/tools/Laws/NAGPRA.htm>, accessed March 30, 2011.

and indigenous groups<sup>51</sup> has led to a drastic reassessment of the ways in which academic and museum professionals curate, handle and preserve skeletal remains.<sup>52</sup> The perspective of NAGPRA towards archaeological remains has added human, civil, and cultural rights concerns to cultural resource legislation in the United States.<sup>53</sup>

Following the NAGPRA defines the rights of Native Americans and Native Hawaiians with respect to the treatment, repatriation and disposition of human remains, funerary objects, and objects of cultural patrimony, with which they can show a relationship of lineal descent or cultural affiliation.<sup>54</sup> A primary intention of this legislation is to require Federal agencies and institutions receiving Federal funding to provide a written inventory of Native American human remains and cultural items as well as, consult with stake holders to reach an agreement on their curation or repatriation<sup>55</sup>. There are several important limitations to the application of these laws. In general, they apply only on lands owned or controlled by the national government or Native American Tribal lands, accounting for about a third of the country.<sup>56</sup> However, they do not apply to privately owned land or to the land owned by states.

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<sup>51</sup> Killion, Thomas W. and Tamara L. Bray, *Reckoning With the Dead: the Larsen Bay Repatriation and the Smithsonian Institution* Smithsonian Institution Press: Washington, D.C., 1994)

<sup>52</sup> See Introduction by Brian Fagen, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): xviii.

<sup>53</sup> McLaughlin, Robert H., "Rights, Remains, and Material Culture", *Truth Claims: Representation and Human Rights*, ed. Mark Philip Bradley and Patrice Petro, (Rutgers University Press: New Brunswick, 2002), 205-208.

<sup>54</sup> McManamon, Francis P., *Archaeological Method and Theory: An Encyclopedia*, ed. Linda Ellis (Carland Publishing Co., New York and London, 2000).

<sup>55</sup> To see the statue text online, visit <http://www.nps.gov/archaeology/TOOLS/LAWS/NAGPRA.htm>

<sup>56</sup> McManamon, Francis P., "Policy and Practice in the Treatments of Archaeological Human Remains in North American Museum and Public Agency Collections," *Human Remains and Museum Practice*, ed. Jack Lohman and Kathleen Goodnow (United Nations Educational, Scientific, and Cultural Organization, 2006): 50.

A vital distinction of NAGPRA is that it applies to collections held by all museums and institutions that receive federal funding no matter where in the U.S. the objects were recovered or how little or much funding they receive. However, this law only applies to human remains and objects of cultural patrimony that are culturally affiliated with federally recognized Native American or Native Hawaiian. Remains of other ethnic groups or are not culturally affiliated are not subject to NAGPRA and its regulations.

### *Repatriation*

A point of disagreement and debate with the application of NAGPRA is the requirement of cultural affiliation, “a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day tribe and an identifiable earlier group”<sup>57</sup>. However, the interpretations of cultural affiliation vary widely. This makes the repatriation of remains difficult for those tribes who cannot establish a historical link between the remains and themselves. Further, human remains that cannot be identified or determined to have a cultural affiliation to any federally recognized tribe are not applicable under NAGPRA. Arguments for repatriation are often vigorously contested by those who maintain that human remains are essential research material, and that repatriation of vital evidence would be a great loss to science.<sup>58</sup>

Academic institutions housing Mesoamerican remains should continue to establish an on-going dialogue with source nations/descendent populations to determine long – term

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<sup>57</sup> Anyon, Rober and Russle Thornton, “Implementing Repatriation in the United States”, the Native American Graves Protection and Repatriation Act After Ten Years”, *The Dead and Their Possessions*, ed. Cressida Fforde, Jane Hubert and Paul Turnbull (Routledge, New York, 2002), 190-194.

<sup>58</sup> Jenkins, Tiffany, *Contesting Human Remains in Museum Collections: The Crisis of Cultural Authority* (Routledge: New York, 2011), 32-35.

treatment and disposition of the collection. Current collections should be periodically re-evaluated not only to ensure the quality of curation, but to determine if there is a continued academic and scientific need for the remains. Once research on the skeletal remains has been completed, the collection should then be repatriated back to the appropriate governmental agency. Repatriation is a sovereignty issue, as such, Mesoamerican and Native Americans have a say in the disposition of human remains.<sup>59</sup>

*39 CFR Part 79 - Curation of Federally-Owned and Administered Archeological Collections*

Established in 1989, 39 CFR 79<sup>60</sup> was created to provide procedures and guidelines for the use, access, management, and preserve of federal collections. Additionally, the federal regulation details standards to determine when an institution had the ability to properly maintain and curate collections. In order to properly care of federally-owned and administered collections, Federal, State, local, or tribal repositories are required to:

- 1) Provide a catalog list of the collection contents to the responsible party (i.e., Federal Agency Official, Indian landowner, or Tribal official);
- 2) Periodically inspect the physical plant to monitor physical security and environmental conditions;
- 3) Periodically inspect the collection and associated records to monitor their condition;
- 4) Periodically inventory the collection and associated records;
- 5) Provide a written report of the results of inspections and inventories to the responsible party; and
- 6) Make the collection available for inspection by the responsible party.

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<sup>59</sup> Riding In, James, Cal Seciwa, Suzan Harjo, and Walter Echo-Hawk, "Protecting Native American Human Remains, Burial Grounds, and Sacred Places", *Native American Voices*, ed. Susan Lobo, Steve Talbot, and Traci Morris (Pearson: , 2010), 185- 193.

<sup>60</sup> The complete text of the regulation is available online at <http://www.cr.nps.gov/aad/tools/36cfr79.htm>.

NAGPRA cultural items excavated or removed from Federal or tribal lands after November 16, 1990 are not considered to be “collections” under 36 CFR 79; however, Federal agencies should adhere to the standards of 36 CFR 79 in providing care for such cultural items prior to their disposition.<sup>61</sup> Similar to NAGPRA, human remains are explicitly listed as a material remains, “Human remains (such as bone, teeth, mummified flesh, burials and cremations).”<sup>62</sup>

NAGPRA and 39 CFR 79, explicitly detail standards and regulations on the storage, study and disposition cultural objects and human remains. However, they are limited to collections only acquired from US federal lands. This legislative segregation puts those collections housed in United States academic institutions that are determined unidentifiable, without verifiable cultural affiliation or sourced from other nations, at a greater risk of losing scientific integrity and straining diplomatic relations between nations.

#### *International Conventions and the Law of Nations*

Since 1956, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has provided the international community with the foremost conventions on topics other than war. Such conventions guide international policies towards cultural issues including historic preservation and curation, widely affecting countries around the world. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property has become the

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<sup>61</sup> 36 CFR Part § 79.5, September 1989.

<sup>62</sup> 36 CFR Part § 79.4, September 1989.

primary means by which the international community guides the prohibition on international trade in human remains.<sup>63</sup> The resulting accord details the responsibilities of participant countries in regulating archaeological investigations, setting up permit protocols, passing legislation to promote cultural heritage, and requiring all excavators to publish their findings to promote public education.<sup>64</sup>

While the 1970 accord intends to be comprehensive, the specific consideration of human remains as cultural property is only implied, as seen in articles a-c and f:

- a) Rare collections and specimens of fauna, flora, minerals and anatomy and fossils;
- b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- c) Products of archaeological excavations or of archaeological discoveries;
- f) Objects of ethnological interest

Furthermore, the accord is specific in how participating governments should create a robust administrative framework for regulating cultural property within and along their borders. Article 5 of the convention requires signatories to provide federal policy, financial means, institutions, and services for the protection of cultural heritage, with sufficient staff to carry out the necessary functions of these policies and services. However, UNESCO ultimately does not supersede state sovereignty and therefore provides no direct support for the enforcement of these rules.<sup>65</sup> Although the accord

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<sup>63</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html), accessed February 20, 2012.

<sup>64</sup> Hutt, Sherry and Jennifer Riddle, "The Law of Human Remains and Burials", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 224-225.

<sup>65</sup> Hutt, Sherry and Jennifer Riddle, "The Law of Human Remains and Burials", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 224-225.

implies human remains are included as cultural property, remains are not specifically addressed in the terminology.

### **Comparing Legal Perspectives**

The laws of many countries, as a function of economic globalization and instantaneous communication, are also experiencing globalization that includes bringing disparate policies between countries into greater agreement.<sup>66</sup> Such alignments facilitate standardization to encourage the sharing of information, including scientific data related to cultural property. Fundamental differences between the United States and governments in Central America lay within the areas of archaeological patrimony, indigenous peoples' rights and representation, and the differentiation (or lack thereof) between human and other archaeological remains.

Archaeological patrimony is treated uniquely in the United States when compared to countries in Central America and most other nations. As previously mentioned, governments in Mexico and Belize consider any archaeological finding the automatic property of the state. In the United States, discovered antiquities revert to owners dependent upon the ownership classification of the property on which they were found. Artifacts discovered on privately owned land usually revert to the property owner, regardless of who made the discovery; discoveries made on public land are more likely to fall under immediate national ownership. One result of this situation has been the creation of the Archaeology Conservancy or similar groups; these private organizations buy

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<sup>66</sup> Boule, Laurence. *The Law of Globalization: An Introduction*. (Aspen Publishers: Frederick, Maryland, 2009): 11-12

important archeological sites. In Mexico and Belize, these sites would be under federal jurisdiction and the government's responsibility to protect the site.<sup>67</sup>

The second difference in policy between the United States and Central America is the emphasis on, and, implementation of indigenous peoples' rights and representation. In the United States, indigenous groups have developed a strong voice in the processing of archaeological remains, especially human remains. This is due to the unique status of federally recognized Native American groups as sovereign dependent nations with strong legal claims to their established patrimony, which can be effected in accordance with America's private property laws. However NAGPRA is not universally extended to all Native American populations, as not all native groups are federal recognition by the United States Bureau of Indian Affairs. Human remains in collections where cultural affiliation or identification cannot be established, like Mesoamerican remains, are also ineligible for the application of NAGPRA. The absolute federal control over cultural patrimony in Central America lessens the ability for indigenous peoples, such as the Maya, to participate in the national conversation over cultural heritage conservation and study. These communities have less power in dictating how finds are exploited, creating less pressure on scholars when pursuing tests or temporary export of archaeological finds. Furthermore, since remains are considered national property, an initiative like NAGPRA would be unsuccessful in a country like Mexico. NAGPRA's success in repatriating remains and connecting Native American communities with archaeologists ironically results from the strong private property laws of the US.

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<sup>67</sup> Herscher, Ellen, "International Control Efforts: Are there any good solutions?", ed., Messenger, Phyllis Mauch, *The Ethics of Collecting Cultural Property: Whose Culture? Whose Property?* (University of New Mexico Press: Albuquerque, 2003.)

The third difference that sets apart the US from these source nations is both legal and cultural, and that is the special legal consideration and cultural sentiment for human remains versus other archaeological remains. These special considerations exist in the United States, not only in formal legislation such as NAGPRA, but specifically in the cultures of the individuals and groups that developed the legislation and fought for its passage. The Maya in Central America have less political clout than federally recognized Native American tribes in the U.S., and furthermore have different perspectives towards the remains of the dead. These attitudes are reflected in Central American law, in which there are no additional accommodations made for osteological remains as opposed to other artifacts. An additional reason for this difference is these source nations' struggles with looters<sup>68</sup>, who are typically uninterested in the osteological remains found in plundered grave and tomb sites, making the protection of these materials less dire from the perspective of government officials.

In addition to any economic realities that hinder Central American source nations from more rigorous policing of their heritage, there is a distinct cultural difference between Native American peoples and modern communities of indigenous heritage in Mexico and Belize. It was the intense interest of Native American peoples that brought NAGPRA into the national conversation and demanded an explicit legal path to follow upon any discovery of Native American remains. The relative indifference of indigenous communities from Central America is not due to lack of education or finances, but rather a culture that places less emphasis on human remains.

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<sup>68</sup> Saving Antiquities for Everyone, "Say YES to Belize", <http://www.savingantiquities.org/Belizemou.php>, accessed March 12, 2011.

### **Case Study: United States Academic Institutions**

In the United States, many public museums and academic institutions that curate human remains have developed independent procedures for those who wish to study the remains. Comparing the various institutions to follow below has shown the degree of rigor found in the policies differs broadly, and some institutions have not yet implemented any policies in response to developments in legislation such as NAGPRA. For this study, I surveyed laboratory policies and procedures, collection maintenance and curation, and the ethical statements (or lack thereof) regarding the handling, study and storage of physical remains from the University of Houston, State University of New York – Plattsburg, Harvard University Peabody Museum, and University of Pennsylvania Museum. The subjective and un-policed interpretation of international ethical agreements is apparent in the manner in which each university houses and allows study of their collections.

#### *University of Houston*

The University of Houston's human osteological collection is currently stored in a 15' by 20' unlabeled room lined with brown filing boxes. The human remains stored in the laboratory were excavated from a site in the pre-historic wetlands of K'axob in northeastern Belize during the early 1990s by Dr. Rebecca Storey and University of North Carolina's Dr. Patricia McAnany.<sup>69</sup> Originally housed at the University of North Carolina, Chapel Hill, the K'axob collection was relocated to the University of Houston over a decade ago. During an interview with Dr. McAnany, she explained that she was

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<sup>69</sup> McAnany, Dr. Patricia, "K'axob", Boston University, <http://www.bu.edu/tricia/kaxob/index.shtml>. accessed March 30, 2011.

technically still in charge of the collection, as she was listed on the excavation application in Belize as the project lead archaeologist. However, to date Belize, has not been notified of the move of the collection.<sup>70</sup> Because it is an unofficial research space, the laboratory is not required to file any federal paperwork. The collection contains the skeletal remains of 100 men, women, and children; the remains range from 2,000 to 1,500 years old and vary in condition of conservation. Inside the brown filing boxes the skeletal remains are housed in labeled plastic Ziploc® bags and foil wrappers. Each box is stacked according to project and the enclosed progress sheet is updated each semester and reviewed by Dr. Storey.<sup>71</sup> The temperature, light, and humidity are not regulated for the storage of archaeological materials. The laboratory room is climate controlled as if any other office or classroom in the academic building where it is located. No special security or safety measures are taken to protect visitors or the remains themselves, and the space is often used as a walk through between offices. The term “laboratory” is a subjective term. These remains at the University of Houston are not found in a space designed to encourage scientific work. There are no specialized instruments for studying remains, and the remains are not stored in containers designed for sensitive and fragile objects, much less for archaeologically sensitive materials.

In addition to reconstructing and re-articulating the remains, Dr. Storey has been studying the collection since their excavation in hopes of establishing sexual dimorphism based on dental analysis. However, this collection is not only used for demographic research, but also as an academic tool in the classroom. Graduate and undergraduate anthropology students are welcome to study the remains with prior verbal permission.

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<sup>70</sup> Personal interview with Dr. Patricia McAnany, 2011.

<sup>71</sup> This description stems from my own personal experience working as an undergraduate student in 2007.

The guidelines and requirements for working with the remains are much more informal than the other institutions included in this study. All study outside of classroom instruction is conducted in the Bone Lab on a 5x3 table in the middle of the room. There are no written standards detailing how remains are to be handled or studied. Student researchers are not required to wear gloves, lab coats or masks, or require direct supervision. The only requirement for working with the collection is the completion of an undergraduate-level physical anthropology and human osteology class.

*The State University of New York – Plattsburg*

The State University of New York – Plattsburg's anthropological collection currently includes remains of approximately 600 Maya from the Colonial Period (1530 AD) known as the Tipu, from Belize. Between 1983 and 1988, Dr. Mark Cohen and his team excavated what was the largest Mayan burial site in the world in Tipu. The Tipu Collection is comprised of 176 male, 119 females, 249 juveniles, and 41 genders unknown.<sup>72</sup> In an interview, Dr. Cohen, Distinguished Professor of Osteology, noted that he and his team worked closely with the local Maya community and Belizean government during his excavation, and both groups were very supportive of the excavations and his interest in studying the remains.<sup>73</sup>

Recently, the department's work conducted on the DNA of these remains has gained international attention for the information gathered in the movement of

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<sup>72</sup> Marie Elaine Danforth, Keith P. Jacobi and Mark Nathan Cohen (1997). Gender and Health Among the Colonial Maya of Tipu, Belize. *Ancient Mesoamerica*, 8: 13-22

<sup>73</sup> Dr. Mark Cohen (Distinguished Professor of Anthropology, State University of New York – Plattsburgh), interview by Randi R. Ragsdale, April 30, 2011.

populations across the region during colonial occupation.<sup>74</sup> Much of the research being done on the remains at SUNY involved extracting DNA from the remains and learning about the effects of European diseases on the health of the Mayans as well as social relationships and movement patterns. However, Dr. Cohen acknowledged there was no formal request made to conduct the DNA research beforehand. Additionally, there were no curation or handling policies established by the Belizean government prior to the exportation of the collection. The collection was brought to the United States<sup>75</sup> The skeletons are currently housed in an academic building at SUNY. Each numbered human bone is strategically placed among “a collection of femurs, teeth, pelvic bones and fingers.”<sup>76</sup> The collection is used as a teaching tool for undergraduates and graduate students. However, no protocols regarding handling the collection are listed in the anthropology laboratory handbook online.<sup>77</sup> Like the University of Houston’s housings, the Tipu collection was initially kept in labeled file boxes and plastic bags. Recently, the collection was moved to an upgraded facility. The remains are now housed in foam-lined containers in custom made shelving units. Similar to Dr. Storey and the K’axob remains at the University of Houston, Dr. Cohen is not required to report on the status of study or condition of the collection. During the interview, he mentioned that he had not updated any Belizean archaeological officials since acquiring the collection in the mid-eighties. Furthermore, unless he planned on moving the collection, notifying the Institute of Archaeology in Belize was unnecessary.

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<sup>74</sup> SUNY Plattsburgh, “Undergraduate Students Sequencing DNA”, <http://web.plattsburgh.edu/about/profiles/students/mayandna.php>, accessed March 30, 2011.

<sup>75</sup> Dr. Mark Cohen (Distinguished Professor of Anthropology, State University of New York – Plattsburgh), interview by Randi R. Ragsdale, April 30, 2011.

<sup>76</sup> Thompson, Christine, “Skeletons at SUNY Plattsburgh,” *All Points North* (2008), [http://www.apnmag.com/winter\\_2008/thompson\\_skeletons.php](http://www.apnmag.com/winter_2008/thompson_skeletons.php), accessed March 30, 2011.

<sup>77</sup> State University of New York – Plattsburgh, *Department of Anthropology Handbook 2010-2011*, <http://web.plattsburgh.edu/files/348/files/anthropology-handbook-f10-s11.pdf>, Accessed March 30, 2011.

*Harvard University – Peabody Museum of Archaeology and Ethnology*

As one of the oldest collecting institutions in the United States, The Harvard Peabody Museum has an osteological collection loosely numbered of between 100 and 500 individuals from over fifteen sites across the Maya region alone.<sup>78</sup> The osteological collection falls under the supervision of the Curatorial/NAGPRA Department, specifically the Associate Curator of Osteology. Of the three universities, the Peabody Museum has the most encompassing protocols and the highest quality housings for the collection. Those interested in studying the collection are required to fill out an Inquiry and Request form on the museum's website in order to conduct research. In addition to their contact information and affiliation, the applicant must specify the collection type, geographical area, and course relationship.<sup>79</sup> The handling of the remains is further addressed by detailing how to individually handle and study the collection. Guidelines posted online under "Osteology Lab Protocol" detail six requirements that each researcher must follow when working with the collection. This protocol includes:

- 1) Respect the integrity of the remains;
- 2) an Osteology staff member must accompany each researcher;
- 3) Potentially damaging substances such as food is not allowed, additionally, pencil use is preferred for taking notes. Pens and markers are prohibited;
- 4) it is also required that everyone working with the collection wear gloves, lab coat and mask to prevent damage to the remains;
- 5) Researchers should handle and move the remains as infrequently as possible and support the bones with both hands at all times;
- 6) Finally, examine only one catalogue or individual at a time to prevent co-mingling.<sup>80</sup>

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<sup>78</sup> Peabody Museum of Archaeology and Ethnology at Harvard University, "Osteological Collections", <http://www.peabody.harvard.edu/node/42>, accessed March 30, 2011.

<sup>79</sup> Peabody Museum of Archaeology and Ethnology at Harvard University, "Peabody Museum Inquires and Request Form", <http://www.peabody.harvard.edu/node/44?q=node/104>, accessed March 30, 2011.

<sup>80</sup> Peabody Museum of Archaeology and Ethnology at Harvard University, "Osteology Lab Protocol", <http://www.peabody.harvard.edu/node/476>, accessed March 11, 2011.

Each numbered piece is housed in archival, acid-free containers customized for the temperature controlled museum space. The collection is stabilized in conjunction with the Conservation Department.<sup>81</sup> Notably, this is the only interdepartmental collaboration I found in the curation of remains at any of the schools included in this study.

Despite the strict protocol for the handling and storage of Mexico's human remains, the relationship between Harvard University and Mexico is forever strained due to the repatriation issues associated with the Edward Thompson collection. Thompson was an early American archaeologist whose excavations in Mexico were sponsored by the Peabody Museum. From 1904 to 1910, Thompson and his team extracted Maya artifacts from the floor of the Sacred Cenote, a water-filled sinkhole attached to the Chichen Itza complex with a strong connection to sacrificial rituals, including human sacrifice. Thompson's methods included using a clam-shell to dredge the floor of the cenote and adapting sea diving techniques and equipment to directly explore the cenote and extract artifacts by hand. His findings were considered sensational and included gold disks, sculpted jades, and human remains, including a child's skull that had been fashioned into an incense burner. After several decades of work in Mexico, Thompson was chased out of the country in the 1920s by revolutionary forces and charged by the Mexican government with theft and illegal exportation of patrimony. He was also sued by the Mexican government for more than one million pesos, with Harvard and the Peabody Museum named as accomplices. While the civil suit was dismissed in 1944, nine years after Thompson's death, and a handful of significant pieces of the 30,000 objects in the

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<sup>81</sup> Peabody Museum of Archaeology and Ethnology at Harvard University, "Osteological Teaching Collection", <http://www.peabody.harvard.edu/node/42?q=node/299>, accessed March 11, 2011.

Thompson collection have been repatriated, the Mexican government has never again allowed a Peabody excavation in the country. The strict cultural heritage laws in Mexico and the stain of the Thompson collection are reflected in the low occurrence of Pre-Columbian remains collections sourced from Mexico.<sup>82</sup>

*Penn Museum of Archaeology and Anthropology at the University of Pennsylvania*

The Penn Museum of Archaeology and Anthropology at the University of Pennsylvania in Philadelphia curates extensive skeletal human and primate collections from around the world. In total, approximately 10,000 individuals are housed with both historic and archaeological materials.<sup>83</sup> The following guidelines for researchers have been established at Penn for University and visiting scholars. The Research Access Policy is available in PDF form online and describes specific requirements for studying at Penn.<sup>84</sup> The opening statement explains that researchers not following the guidelines may be asked to leave, making it the only institution in this study that so visibly incorporates enforcement into its policies. Formal access must be requested by filling out a Research Request Form, researchers are required to wear name badges, and use disposable gloves when handling objects as a safety measure to protect the handlers. Material analysis is allowed under the Museum's Scientific Testing Policy. Only museum staff may move objects from storage to viewing areas. Visitors must submit any publications resulting from their research at the museum. In an effort to prevent hands-on

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<sup>82</sup> Burke, Spencer, "Envoy: From Deep to Dark", *The Harvard Advocate* (2011), <http://www.theharvardadvocate.com/content/envoy-deep-dark?page=show>, accessed March 1, 2012.

<sup>83</sup> Penn Museum of Archaeology and Anthropology at the University of Pennsylvania, Physical Anthropology Section, <http://www.penn.museum/about-our-collections/460-physical-anthropology-section.html>, accessed February 1, 2012.

<sup>84</sup> University of Pennsylvania Museum of Archaeology and Anthropology, "Making Use of the University Museum Collections: A Guide for Researchers", [http://www.penn.museum/documents/education/research\\_access\\_policy.pdf](http://www.penn.museum/documents/education/research_access_policy.pdf), accessed February 15, 2012.

research, the Museum also maintains a CT scan database with high-resolution sub-millimeter scans of human remains in the collection.<sup>85</sup> Janet Monge explains:

“ORSA—The Open Research Scan Archive is a collection of high-resolution CT scans of human and non-human cranial (cranium and mandible) and post-cranial (everything bone from the neck down) remains. The archive is now supported by a multi-year National Science Foundation grant (number 0447271) to Tom Schoenemann (James Madison University) and Janet Monge (Penn Museum), this online database (<http://monge01.anthr.upenn.edu/~ctdata/base/pennct>) provides worldwide access to scholars interested in comparative CT scan data.”<sup>86</sup>

The University of Pennsylvania also houses one of the most famous collections of human skulls in the world, the Samuel George Morton Cranial Collection. Its presence in Philadelphia is the result of the collecting activities of naturalist and physician Samuel George Morton (1799–1851), who had amassed nearly 1000 human skulls by the time of his death in 1951, that number later growing to more than 2000 crania.<sup>87 88</sup> Researchers continue to use the collection, which has been stored in the Physical Anthropology Section of the Museum since the mid-1960s. The collection has a controversial history due to the classification of the crania and the way in which Morton interpreted the data he collected. Morton’s research focused on measuring the volume of internal cranial surfaces and correlating this capacity with racial identity and intelligence,<sup>89</sup> which

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<sup>85</sup> University of Pennsylvania Museum of Archaeology and Anthropology, Open Research Archive, <http://plum.museum.upenn.edu/~orsa/Welcome.html>, accessed March 1, 2012.

<sup>86</sup> Monge, Janet, “ORSA: The Open Research Archive”, *Expedition*, Vol. 50, 3, 2011, <http://penn.museum/documents/publications/expedition/PDFs/50-3/reuschler.pdf>

<sup>87</sup> Renschler, Emily S. and Janet Monge, “The Samuel George Morton Cranial Collection: Historical Significance and New Research”, *Expedition*, Vol. 50, 3, 2011, <http://penn.museum/documents/publications/expedition/PDFs/50-3/reuschler.pdf>, accessed February 15, 2012: 31.

<sup>88</sup> Penn Gazette Blog, June 20, 2011 <http://penngazetteblog.com/2011/06/20/the-debunker-debunked-samuel-morton-class-of-1820-is-vindicated/>, accessed April 7, 2012.

<sup>89</sup> Penn Gazette Blog, June 20, 2011 <http://penngazetteblog.com/2011/06/20/the-debunker-debunked-samuel-morton-class-of-1820-is-vindicated/>, accessed April 7, 2012.

contributed to a perception of scientific racism.<sup>90</sup> Around 1980, biologist and science historian Stephen Jay Gould examined Morton's data collections methods and determined the scientific methodologies employed by Morton were not racially biased.<sup>91</sup> Modern measurement techniques further demonstrate that Morton's measurement data was incredibly accurate.<sup>92</sup> In contrast to the long public relations battle over the ethics of Morton, the Museum took a very active approach to the passage of NAGPRA, under which over 200 objects from the Morton Collection have been repatriated to recognized Native American groups.<sup>93</sup> Since 1990, the Penn Museum has had a full-time NAGPRA coordinator as well as a NAGPRA committee dedicated to handling requests related to objects of Native American origin, and the museum publishes lists of repatriated objects on the website.<sup>94 95</sup> The current collection of over 1500<sup>96</sup> human crania contains 41 skulls from various sites around Mexico, including four gathered from Mexican soldiers slain at the Battle of San Jacinto during the Texas Revolution.<sup>97</sup>

Both the University of Houston and SUNY Plattsburg differ from the research dynamic of the Harvard Peabody Museum and the Penn Museum. The University of

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<sup>90</sup> Fabian, Ann, *the Skull Collectors*, (The University of Chicago Press, Chicago, 2010): 93.

<sup>91</sup> Lewis JE, DeGusta D, Meyer MR, Monge JM, Mann AE, et al. (2011) "The Mismeasure of Science: Stephen Jay Gould versus Samuel George Morton on Skulls and Bias". *PLoS Biol* 9(6): e1001071. doi:10.1371/journal.pbio.1001071.

<sup>92</sup> Penn Gazette Blog, June 20, 2011 <http://penngazetteblog.com/2011/06/20/the-debunker-debunked-samuel-morton-class-of-1820-is-vindicated/>, accessed April 7, 2012.

<sup>93</sup> Fabian, Ann, *the Skull Collectors*, (The University of Chicago Press, Chicago, 2010): 2.

<sup>94</sup> Renschler, Emily S. and Janet Monge, "The Samuel George Morton Cranial Collection: Historical Significance and New Research", Vol. 50, 3, <http://penn.museum/documents/publications/expedition/PDFs/50-3/reenschler.pdf>, accessed February 15, 2012: 37.

<sup>95</sup> University of Pennsylvania Museum of Archaeology and Anthropology, NAGPRA, <http://www.penn.museum/nagpra/871-repatriations.html>, accessed April 5, 2012.

<sup>96</sup> Fabian, Ann, *the Skull Collectors*, (The University of Chicago Press, Chicago, 2010): 2.

<sup>97</sup> Renschler, Emily S. and Janet Monge, "The Samuel George Morton Cranial Collection: Historical Significance and New Research", Vol. 50, 3, <http://penn.museum/documents/publications/expedition/PDFs/50-3/reenschler.pdf>, accessed February 15, 2012: 32.

Houston has no research outreach component or facilities to support additional research of the remains. Dr. Cohen of SUNY Plattsburgh states that he encourages outside researchers to utilize the collection in order to derive useful information from the materials. Several master's theses and doctoral dissertations have been completed using the Tipu Collection. Harvard and Penn, unlike the other two schools, have online support and standardized protocol to research the remains in house and well designated facilities that are oriented towards independent research for both university and outside scholars.

### **Codes of Ethics**

Ethics in archeology represent guidelines that “help a specialized profession operate in the ever more complex and rapidly changing world.”<sup>98</sup> A solid code of ethics should not only guide the practice of biological anthropology in terms of scientific value, but also be an opportunity to promote international diplomacy and dialogue<sup>99</sup>.

According to Alfonso, et al., establishing a code of ethics is necessary to:

- 1) Define acceptable behaviors;
- 2) Promote high standards of practice;
- 3) Provide benchmarks for members to use in self-evaluation;
- and 4) Establish a framework for professional behavior and responsibilities<sup>100</sup>

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<sup>98</sup> Lynott, Mark, “The Development of Ethics in Arhcaeology”, *Ethical Issues in Archaeology*, ed., Larry J. Zimmerman, Karen D. Vitelli, and Julie Hollowell-Zimmer, ed., (Alta Mira Press: New York, 2003), 17.

<sup>99</sup> Wylie Alison, “On Ethics”, *Ethical Issues in Archaeology*, ed., Larry J. Zimmerman, Karen D. Vitelli, and Julie Hollowell-Zimmer, ed., (Alta Mira Press: New York, 2003) 3-14.

<sup>100</sup> Alfonso, Marta P. and Joseph Powell, “Ethics of Flesh and Bone, or in the Practice of Paleopathology, Osteology, and Bioarchaeology”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 8, as cited in Macdonald, Chris, *Guidance for Writing a Code of Ethics*. Electronic document, <http://www.ethicsweb.ca/codes/coe3.htm>, accessed February 28, 2012.

To address the gray areas that result from gaps in the legal structures protecting the ancestral rights of indigenous peoples, several US and international groups have created ethical statements to which they expect individuals and organizations in fields related to archaeological conservation to conform. These vary in their focus on research, display, and treatment of remains. Rather than serving as a complete set of guidelines that are intended to govern all professional behavior in the research and curation of archaeological remains, such codes are more appropriately starting points from which to develop targeted policies specific to an institution's or project's needs. Similarly, they provide a base level of awareness for new scholars in the field or new professional staff in museums or other institutions where culturally sensitive materials, including but certainly not limited to human remains, are on display or available for study.<sup>101</sup>

The 1989 Vermillion Accord, drafted by the World Archaeological Congress at the WAC Inter-Congress, details six criteria to ensure that cultural sensitivity, indigenous involvement, and respect is maintained when studying and displaying human remains.

These criteria include:

- 1) respecting the mortal remains of the dead, irrespective origin, race, religion, nationality, custom or traditions;
- 2) Respect for the wishes of the dead concerning disposition;
- 3) Respect for the community and relatives wishes when possible;
- 4) Respect for the scientific research value of the remains;
- 5) Address legitimate concerns of science and education, and reach agreement on disposition if legitimate concerns arise; and finally
- 6) honor agreements with groups concerning the handling and study of human remains.<sup>102</sup>

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<sup>101</sup> Cassman, Vicki, Nancy Odegaard, and Joseph Powell, "Policy", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 27.

<sup>102</sup> World Archaeological Congress, "The Vermillion Accord on Human Remains, 1989", <http://www.worldarchaeologicalcongress.org/about-wac/codes-of-ethics/168-vermillion>, accessed March 30, 2011.

Additionally, The Society of Historical Archaeologists Guidelines for Curation and UNESCO share similar perspectives on the dignified and respectful handling of skeletal remains. In addition to treating human remains in a respectful, dignified manner, these statements specifically claim that the wishes of the local community should be actively addressed through consultation and collaboration, and any display should be culturally appropriate and in accordance with the permission and consultation of said communities.

The American Anthropological Association (AAA) Code of Ethics, structured around a series of “responsibilities,” gives the most space to Section A, which addresses the responsibility of anthropologists to the people and animals with whom they work and whose lives and cultures they study. Significantly, among the ethical obligations listed is a duty to consult affected individuals or groups and to ensure a working relationship that is mutually beneficial. The AAA Code of Ethics is especially strong in establishing the propriety and importance of ethics in the field of anthropology, given its practitioners’ unique positions and relationships with subjects and objects of study. For that reason, the code recommends that every proposal for anthropological fieldwork should include a specific section on potential ethical issues and responses. There are no specific criteria for archaeological or human remains in this code.<sup>103</sup>

The Archaeological Institute of America (AIA) publishes a very brief Code of Ethics as well as a longer Code of Professional Standards. Both of these records focus on

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<sup>103</sup> American Anthropological Association, “Code of Ethics”, <http://www.aaanet.org/committees/ethics/ethcode.htm>, accessed March 16, 2012.

the responsibilities of the archaeologist towards the field: publishing, distinguishing the reputation of the discipline, and maintaining the archaeological record. There are no ethical propositions regarding cultural sensitivity for the sake of affected communities, religious practices, or beliefs. There are also no distinctions made between any categories of remains. Human remains are not specifically mentioned, as are no other types of archaeological materials.<sup>104</sup>

In general, guidance from professional museum associations is minimal in regard to human remains.<sup>105</sup> However, the International Council of Museums (ICOM) has established a comprehensive code of ethics that doubles as a manual of working principles for museum practitioners to maintain a minimum standard for professional practice. The ICOM Code of Ethics is meant to contain the necessary principles required to ethically run a museum even in a country where there is no satisfactory legal or regulatory standard over such institutions. Human remains are discussed in points 2, 3, and 4 of the code, together with culturally sensitive materials and objects with sacred significance. Museums are advised that the collection, storage, and excavation of such material, especially human remains, must be done with tact and dignity, and must incorporate the interests and beliefs of any community or group from which such objects derive, if that information is known.<sup>106</sup> The latter clause acknowledges that such information is not only not always available, but can also be irrelevant from a legal

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<sup>104</sup> Archaeological Institute of America, “Code of Ethics and Code of Professional Standards”, [http://www.archaeological.org/pdfs/AIA\\_Code\\_of\\_EthicsA5S.pdf](http://www.archaeological.org/pdfs/AIA_Code_of_EthicsA5S.pdf) and [http://www.archaeological.org/pdfs/AIA\\_Code\\_of\\_Professional\\_StandardsA5S.pdf](http://www.archaeological.org/pdfs/AIA_Code_of_Professional_StandardsA5S.pdf), accessed March 1, 2012.

<sup>105</sup> Cassman, Vicki, Nancy Odegaard, and Joseph Powell, “Policy”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 21.

<sup>106</sup> International Council of Museums, “Code of Ethics”, <http://icom.museum/what-we-do/professional-standards/code-of-ethics.html>, accessed March 16, 2012.

standpoint; such is the case for antiquities in Mexico and Belize, which are the property of the state and not legally identified with any particular living community.

### *Enforcement and Impact*

In order to make codes of ethics relevant, Alfonso et al. posit that professional societies must take the responsibility of auditing and penalizing members who are not following or applying the code. Effective administration of a code would ideally include a section of the code of ethics that describes how allegations of misconduct are to be investigated and potential consequences should be outlined. Mandating that ethics education be a component of membership is a further step that organizations and societies can take to ensure that their policies remain relevant and valuable to the discipline in promoting ethical practices that enhance the scientific pursuit of anthropology and archaeology.<sup>107</sup>

### **Importance of Properly Preserving Human Remains**

Human remains are a resource that we must preserve (housed in permanent collections or not) in a way that ensures the information they do possess remains intact. The entire reason behind the analysis of these collections is to learn more about a civilization, community, or people who lived before us. We study these remains as direct connections to the past. Researchers and curators alike attest to the ever evolving scientific technology being used by archaeologists that is constantly shedding light on the past. These collections often serve as “databases” of information. Discoveries of new

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<sup>107</sup> Alfonso, Marta P. and Joseph Powell, “Ethics of Flesh and Bone, or in the Practice of Paleopathology, Osteology, and Bioarchaeology”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 9.

techniques to analyze bone and tissue have been made over the past several decades. The intended purpose of museums is not only to be a repository for artifacts of current study but for whatever research may be conducted in the future. As no one can predict what future research might be, it is vital that we ensure all collections are maintained for maximum information retention.

The passage of NAGPRA in 1990 has led to a drastic reassessment of and, challenge to, the ways archaeologists, anthropologists, curators, and conservators handle, study and preserve all institutionalized human remains in the U.S. Additionally, other native indigenous groups have also been influenced by the act including the Australian Aboriginals and the Maori of New Zealand.<sup>108</sup> It has become vital that stakeholders and scientists alike work together to improve the conditions under which skeletal remains currently exist, ensure information is preserved for posterity, and that the dead are treated with respect. Preservation, protection and respect are the baselines for consideration in the development of storage recommendations for Central American human remains collections in United States Institutions.

#### *Need For Standardization of Ethical Considerations*

Working with nations to develop a standard for curation of current and future collections in accordance with international and professional standards of ethics could have additional diplomatic benefits for researchers, a line of thought that will be highlighted in the recommendations below. Scholars and source nations share the

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<sup>108</sup> Lohman, Jack, Human Remains and Museum Practice, ed. Katherine Goodnow (United Nations Educational, Scientific and Cultural Organization, 2006), 11.

responsibility of preserving remains for posterity and ensuring that the ancient dead are treated with the respect they deserved and expected when they died.

### *NAGPRA as a Model*

Ethical behaviors for the care and treatment of ancient remains in an academic or museum institution do not always exist cross-culturally and from country to country.

There is a need for standardized ethical procedures that take into account the rights of affected descendent populations regardless of the different value systems between these groups. It is important to identify a minimal set of ethical treatment protocols.<sup>109</sup>

Incorporating culturally appropriate guidelines in the care and treatment of ancestral remains is critical. For evolution towards institutions becoming more conservation conscious to occur, institutional reflection and a greater awareness by those working with ancient skeletal collections as to how their ethical practices can and do affect the indigenous community.<sup>110</sup>

Although NAGPRA has been critiqued for only impacts Native American finds associated with federally recognized tribal affiliations, this reappraisal of cultural collection practices can extend to remains sourcing beyond the borders of the United States. Deciding who is biologically or culturally related can be an extremely complex matter, especially when the remains are of great age, as in the case of the Kennewick Man. The discovery of one of the oldest skeletons found in this country, over 9,000 years old, launched a messy legal battle between eight anthropologists and five independent

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<sup>109</sup> Sadongei, Alyce and Phillip Cash Cash, "Indigenous Value Orientations in the Care of Human Remains", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 97.

<sup>110</sup> *Ibid.*, 99.

tribes. After six years of litigation, the courts determined that tribes did not adequately identify a prior group to which the Kennewick Man belonged as NAGPRA requires. Therefore, the Kennewick Man skeleton is not subject to NAGPRA and giving scientists the right to study ancient the remains.<sup>111</sup>

Current standards in codes of ethics can appear to break down where there is no clear association of heritage with a modern community. For example, Mexican and Belizean governments have appropriated all authority over all archeological cultural heritage objects and human remains in their respective counties. The Maya are not federally recognized as a sovereign entity with ability to establish cultural guidelines for the handling of human remains. Additionally, it is likely not possible to determine cultural affiliation with remains from ancient Maya civilizations dating to 2,000 years ago. But what does not change is that fact that the dignity of human remains are still at stake in these situations. Steps should therefore always be taken to involve indigenous populations and community organizations in the development of sets of ethics, even though some groups may not require any involvement—and other groups may ask that researchers cease their work or repatriate objects. Such practices would be in full agreement with established international conventions regarding cultural heritage and better aligned with the professed goals of professional codes of ethics than are the current minimum acceptable standards in the field today.

Furthermore, consultation with indigenous populations and communities should not be seen as a finite process leading to a conclusion and the termination of the relationship. Rather, archaeologists and anthropologists have an opportunity to develop

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<sup>111</sup> Thomas, David Hurst, *Skull Wars* (Nevraumont Publishing Company: New York, 2000), *xvii-xxiv*.

dialogue with indigenous cultures to include osteological analysis relevant to their own queries about their own heritage. A resolution between the Pueblos of Zuni, Acoma, and Hopi tribes was reached regarding the proper treatment and level of osteological analysis allowed by the tribes. Out of respect for the Zuni and Acoma, the Hopi tribe agreed to more conservative parameters of study, ultimately forgoing their request to produce dentation casts for curation and genetic studies.<sup>112</sup> Codes of ethics, standards of scholarship, and institutional policies should encourage and reflect an ongoing dialogue. Stewards of cultural property should receive education and training in cultural diplomacy to be able to effectively address the needs of both institutions and indigenous peoples and communities in creating policies mutually beneficial to these groups. For example, in 1989 the collaborative relations between the Hopi Tribe and the Peabody Western Coal Company resulted in sponsorship to support extensive documentation of archeological sites as well as the ability to perform reburial ceremonies on excavated remains.<sup>113</sup> Such education and reinforcement should be intended to have long-term benefits contributing to diplomatic relations between institutions and source communities, and subsequently between research nations and source nations.

### **Standardizing Conservation in US Institutions**

At present, conservation stands at the margins of the archaeological world. Financial issues are such a common influence on museum practices that the American Association of Museums (AAM) issued a position statement on the critical need for

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<sup>112</sup> Dongoske, Kurt E. "NAGPRA: A New Beginning, Not the End, for Osteological Analysis – A Hopi Perspective" Repatriation Reader: Who Owns American Indian Remains? ed., Devon A. Mihesuah (University of Nebraska Press: Lincoln and London, 2000), 290.

<sup>113</sup> *Ibid.*, 291

funding organizations to meet the budgetary expectations of all cultural institutions associated with universities. Universities, especially public universities, are currently experiencing both temporary and permanent budget cuts with no resolution in sight. The essential need to meet the funding requirements of university museums is primarily to ensure that the institutions can continue to conserve acquisitions at industry standards, which are set in order to extend the life of objects for the study and enjoyment of future generations.<sup>114</sup>

Collecting institutions continues to be low key on the curation of human remains, despite the increased attention to remains with the passage of NAGPRA. Some institutions are unsure of how to proceed in this new climate, and some suspect that less attention can be drawn if collections remain hidden behind scholarly barriers to entry<sup>115</sup>; in either scenario, the scientific value as well as the culturally appropriate respect is denied to remains due to neglect, whether willful or benign. This is in stark contrast to the explicit documentation many institutions provide related to the curation and conservation of art.<sup>116</sup> Efforts need to be made immediately to preserve and protect these valuable collections.

Biological anthropology faces unique challenges when it comes to ethics. This discipline, however, shares certain characteristics with other fields of study derived from the application of the scientific method. The principles of the scientific method include

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<sup>114</sup> Alfonso, Marta P. and Joseph Powell, "Ethics of Flesh and Bone, or in the Practice of Paleopathology, Osteology, and Bioarchaeology", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 9.

<sup>115</sup> Cassman, Vicki, Nancy Odegaard, and Joseph Powell, "Policy", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 21.

<sup>116</sup> *Ibid.*, 21.

(1) observation; (2) questioning, which generates (3) the formulation of a testable explanation; (4) testing, which must be clearly recorded and reproducible; and (5) reporting of the findings.<sup>117</sup> The methodical adherence to the scientific method ensures standards in which one's findings can be either proven or disproven upon further research. However, if human skeletal remains became damaged during through improper storage or handling, the validity of the data and ultimately the collection itself could be compromised. Natural history conservator, Dr. Stephen Williams explains the concept of “destructive preservation” as the cumulative damage experienced by natural history specimens and how this negatively impacts on the value and possible use of such specimens. Considering the non-renewable nature of archaeological resources, there is a need to safe guard collections against “destructive preservation” and guarantee, at least in practice, that future generations of archeologists will be able to build on past and current research, as is expected per the scientific method and procedure of reporting. Williams attributes the “destructive preservation” of natural history collections to three fundamental factors including:

- 1) Collection disuse and obsolescence, 2) failure to apply proper management principles to collections, and 3) lack of qualified personnel to provide management, care, and use of collections.<sup>118</sup>

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<sup>117</sup> Alfonso, Marta p. and Joseph Powell, “Ethics of Flesh and Bone, or Ethics in the Practice of Paleopathology, Osteology, and Bioarchaeology”, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997):8-9, cited by Gower, Barry, *Scientific Method: A Historical and Philosophical Introduction*, (Routledge: New York, 1997).

<sup>118</sup> Williams, Stephen L., *Destructive Preservation: A Review of the Effect of Standard Preservation Practices on the Future Use of Natural History Collections*, (Göteborg, Sweden: Acta Universitatis Gothoburgensis, 1999), 136.

Curators and other stewards of these resources also therefore bear a substantial ethical responsibility in conserving the past for the future. Williams proposes a set of solutions to address the challenges of conserving natural history collections including:

1) recognizing the problem; 2) developing awareness for the strengths and weaknesses of natural history collections; 3) maximizing the use and value of existing collections; 4) researching preferred preservation treatments; 5) developing high standards of practice; 6) expanding education and training relevant to collection related positions; and 7) promoting professionalism among individuals directly affiliated with collections.<sup>119</sup>

How do we make conservation central to study of ancient human remains not excavated from the United States? As archaeological excavation by its very nature is destructive, careful research designs should incorporate both short term and long term conservation as a basic strategy. There are no publicly available storage standards for human remains, nor has there been any unspoken minimum of standards agreed on by the diverse communities that have a stake in the issues surrounding the study, ownership, and disposition of human remains. An evaluation of appropriate storage methods is often difficult to ascertain due to a lack of communication with in institutions and decedents, if any exist or can be identified.<sup>120</sup> University of California Professor Emeritus of Archaeology, Dr. Brian Fagan, suggests integrating conservation into the very fabric of all research involving human remains. He proposes a series of recommendations including:

1) Intensify interactions between archaeologists and the conservation community with the objective of a massive revamping of basic anthropological

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<sup>119</sup> *Ibid.*, 136.

<sup>120</sup> Cassman, Vicki and Nancy Odegaard, "Storage and Transport", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 103.

training, making conservation strategies central to research. Introducing researchers to such issues as stewardship and stakeholders as part of basic academic training; 2) require all doctoral dissertation proposals make conservation the centerpiece of proposed research. Further, insist that government and private granting-agencies encourage conservation plans as a high priority in all funding proposals; and 3) full publication of all fieldwork would be required before future excavations and surveys are funded. Publication should include specific actions to preserve both the field records and the finds from the excavations.<sup>121</sup>

While human remains may not be a part of the institutions' collections indefinitely, conservation has to plan for remains to be stored in perpetuity. This may prove to be scientifically unfeasible however; it does not pardon researchers from incorporating plans for perpetual storage into their conservation guidelines from the beginning when the collections are sourced abroad.<sup>122</sup>

#### *Role of Respect to Improve Scientific Data*

Institutions struggle to establish what is appropriately entailed by definitions of respect.<sup>123</sup> The definitive purpose of ethics as a sustainable feature in archaeological research is the ability for ethical practices to have a substantial impact on the quality of scientific data. By using ethical behaviors as a standard against which all practices are measured, there will be tangible improvements to the scientific method as well as greater standardization in the quality of data between institutions throughout the United States and worldwide.

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<sup>121</sup> For additional recommendations, see Brian Fagan, "Forward", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): xviii.

<sup>122</sup> See Introduction by Brian Fagen, *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): xviii.

<sup>123</sup> Teauge, Lynn S., "Respect for the Dead, Respect for the Living", *Human Remains: Guide for Museums and Academic Institution*, ed. Vicki Cassmann, Nancy Odegaard, and Joseph Powell (Alta Mira Press: Lanham, 1997): 245.

## **Recommendations**

Information brought to light in this paper makes it apparent that there are currently no reliable ethical standards in place concerning Mesoamerican human remains in the United States. While the legal, cultural, political, and historical differences between countries and cultures make establishing universal standards difficult, if not impossible, there are steps that can be taken to ensure minimum ethical standards are met while also guaranteeing that ethical practices are explored. To accomplish this, recommendations will be made that address human remains at four different points where change can be implemented to fundamentally alter the ethical landscape regarding human remains. These recommendations will concern conservation, academics and funding, scientific diplomacy, and public education.

*Recommendation 1: Establish explicit conservation standards for human remains.*

As demonstrated above, human remains in American institutions are found in vastly different storage conditions; extreme cases of neglect or careless storage can be found within many museums and institutions throughout the United States. These circumstances alone are not conducive to the ethical study of human remains. Minimum standards of conservation should be established that applies to all skeletal remains and must be followed in order to actively preserve the future scientific value of artifacts. Remains must be storage in a facility designed expressly for the purpose of preservation, under controlled environmental conditions, using archival storage materials, and while enforcing strict policies concerning handling, storage, and transportation of

remains.<sup>124</sup> Institutions must incorporate funding for such storage facilities if they wish to continue to maintain collections of human remains. Establishing and enforcing preventative conservation standards would create research contexts that appropriately represent “respect” and would provide an essential foundation for ethical approaches to the study of human remains.

*Recommendation 2: Ethics need to become a critical component throughout the academic lifecycle, including curricula, graduate student bodies, research funding, and publishing.*

The size of the academic community and auxiliary organizations involved in archaeological research and the dissemination of information presents many opportunities for individuals and groups to hold one another accountable for ethical standards in the field. Small changes in a variety of academic niches have the potential to cause sweeping effects regarding the ethical treatment of human remains, starting with the archaeology curriculum. More general textbooks should be required to explicitly address ethical issues that arise regarding human remains and offer tactics with which researchers can respectfully participate in ethical dialogues and work to solve ethical dilemmas. Graduate curricula should require students to take courses focused on ethical issues in the field. These early lessons will best shape scholars to take appropriate ethical actions when participating in or initiating research later in the career.

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<sup>124</sup> For additional guidance on collection storage, see Rose, Carolyn L. and Amparo R. de Torres, ed., *Storage of Natural History Collections: Ideas and Practical Solutions* (Society for the Preservation of Natural History Collections: US, 1995)

As recommended by Cassmann, et al., ethical considerations must become fundamental to the design of archaeological fieldwork, conservation strategies, research funding, and even the number of doctoral students in order to effectively enforce ethics in academia. All research should be made subordinate to goals of preservation and conservation, with conservation strategy central to research method as taught by universities. Research grants and other sources of financial support should be contingent on the inclusion of long-term ethical and conservation considerations made part of any grant application. Dissertations in appropriate fields need to have preservation, conservation, and ethics as required components. Academic and scientific journals must demand statements of ethical approaches before accepting for publication any paper that concerns human remains.

*Recommendation 3: Research institutions and source nations/descendant communities must establish open dialogues.*

Individual researchers and their institutions are obligated to keep source nations informed about any cultural patrimony held outside their borders. Using NAGPRA as a model, source nations and US institutions must initiate greater cooperation in to ensure ethical practices are followed whenever an institution possesses foreign patrimony. Source nations may choose to create stronger laws specifically protecting human remains as distinct from material cultural property. Preservation facilities should be required to inventory foreign patrimony and repatriate such artifacts when the research need in the United States has ended.

*Recommendation 4: Increase public education and awareness regarding ethical issues.*

Ethics needs to be broadly inserted into the public dialogue about archaeology in order to bring more attention and public interest to this topic. The success of NAGPRA came not from power entrenched within the fields of archaeology and cultural heritage, but from passionate communities of people who initiated change in US laws. As both owners and consumers of cultural heritage, the public warrants greater opportunities to learn about and impact ethical practices that affect the quality of research and the longevity of remains for study and enjoyment. By approaching the public through digital media, books, exhibitions, lectures, and other engaging forms of scientific activism, proponents of ethics can influence the mass opinion that effects real change. Examples from the popular media show that even non-academics in journalism (*Chasing Aphrodite*)<sup>125</sup> and documentary filmmaking (*Super Size Me*)<sup>126</sup> can have tremendous impact on the public dialogue surrounding the issues that their media cover. Engaging the public through these familiar channels can have significant impacts on details of the hard science pursued in the laboratories and museum storage rooms across America.

Despite differing views towards human remains, there must be a minimal universal standard for “respect” and dignified treatment. This standard should create an open dialogue between the scientists who rely on remains for their work and the interested communities who may be affected by the treatment and study of these remains. By working together to overcome the cultural practices, politics, and history that have

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<sup>125</sup> Felch, Jason and Ralph Frammolino, *Chasing Aphrodite: The Hunt for looted Antiquities at the World’s Richest Museum* (Houghton Mifflin Harcourt Publishing, New York, 2011).

<sup>126</sup> *Super Size Me*. Dir. Morgan Spurlock. Perf. Bob Smith, Tony Smith and John Smith. Lionsgate Films, 2000. Film.

disconnected these groups in the past, researchers and the public can benefit from studies that are ethically as well as scientifically sound. This ensures that generations to follow can know that scientists and institutions have maintained a commitment that all humans “must be treated with respect.”

### **List of Abbreviations**

AAA	American Anthropological Association (US)
AAM	American Association of Museums (US)
AIA	Archaeological Institute of America (US)
ARPA	Archaeological Resources Protection Act (US)
ENAH	Escuela Nacional de Antropología e Historia (National School of Anthropology and History) (Mexico)
ICOM	International Council of Museums
INAH	Instituto Nacional de Antropología e Historia (National Institute of Anthropology and History) (Mexico)
IRMAC	Institute for Research and Management of Material Culture (Belize)
NAGPRA	Native American Graves Protection and Repatriation Act (US)
NHPA	The National Historic Preservation Act (US)
NICH	National Institute of Culture and History (Belize)
UNESCO	United Nations Educational, Scientific, and Cultural Organization

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