

RIGHTS OF INDIGENOUS PEOPLES INTEREST GROUP NEWSLETTER

Special Announcement

The editors of the *Springer Global Encyclopedia of Territorial Rights* are searching for authors for a few remaining articles on Indigenous Rights. The project has been ongoing for several years and anticipate the final publication in mid-2025. As some authors have dropped out, there are a few remaining articles on Indigenous Territorial Rights, including several central topics, that require authors.

The deadline for submission would be December 31, 2024 (although earlier submissions are welcome). Articles tend to be between 3000-5000 words in length (although in some cases some have been shorter or longer). All are peer reviewed.

Articles missing authors include:

Australian Aboriginal Rights
Canons of Construction in Australian Aboriginal Law
Navajo-Hopi Land Dispute and New Territorial Paradigms
New Zealand's Maori and Territorial Rights
Nisga'a Agreement
Relocation of Indigenous peoples in Canada
Territorial Rights of Australian Aboriginal Peoples
Territorial Rights of New Zealand's Aboriginal Peoples
The Relocation of Indigenous Peoples in Canada
The Red Power Movement and the Struggle for Indigenous Territory
The Yüe Tribes and Territorial Rights

Nominations, including self-nominations, should be sent to Kevin W. Gray (kevinwgray@gmail.com) and Lavonna Lovern (llovern@valdosta.edu).

Further information about the project is here: <https://link.springer.com/reference-work/10.1007/978-3-319-68846-6>

INSIDE THIS ISSUE

The Soiled History of the Native American Graves Protection and Repatriation Act Taunts the Sanctity of Spirits Buried in Peace, with a Haunting Pulse on Cadavers of the Past

2

Seeking Justice for Indigenous Women: The Involuntary Birth Control Campaign in Greenland

6

Rights of Indigenous Peoples Interest Group

CO-CHAIRS

Jonathan Liljeblad
Yuri Mantilla

EDITOR

Catherine van Kampen

ASSISTANT EDITORS

Ella Dodson
Justin Loveland
Dr. Sophia Murashkovsky Romma
Dr. Elizabeth Zechenter

Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



The Soiled History of the Native American Graves Protection and Repatriation Act Taunts the Sanctity of Spirits Buried in Peace, with a Haunting Pulse on Cadavers of the Past

By Dr. Sophia Murashkovsky Romma

A Crack in the Guardianship of the Native American Spirits

In the Native American culture, one way of reaching the powerful spirit world was through a personal spiritual, religious helper called a Guardian Spirit or a Shaman. There was a belief that this spirit would help guide a person through the hardships of life. The Shaman was believed to have close contact with this spirit world. Legends of gods, spirits, and ancestors were handed down from father to son. These legends unraveled stories of the world before it had people, stories woven from the delicate fabric of the origins of their people and tribes, and tales of tribal heroes. The arrival of the horse, the gun and the white man changed the fate of Native Americans. The Europeans had no interest in the marginal regions, in protecting the sacred entities of the indigenous souls and hence desecrated their way of life, burying an ornate rich past which has yet to be resurrected. The Shamans watched these massacres and wept, hovering over the spirit world in incredulous dread.

The Morose Desecration of the Dead

Throughout a major part of its history, the United States has failed to protect the graves and the dead of Native Americans.¹ While American common law protects the sanctity of the dead by strongly disfavoring disinterment except under the most compelling circumstances,² these protections have generally not applied to Indian burial grounds.³ Racism, curiosity, and desire for profit drove many to acquire, sell, and exhibit Indian remains.⁴ National estimates hold that the remains of as many as two million native people have been exhumed without just

cause or authorization.⁵ Pothunters and looters committed much of this abhorrent desecration on their own accord, but the federal government is also to blame.⁶ In 1868, destruction of Indian burial sites became federal policy pursuant to a Surgeon General's Order directing Army personnel to procure Native American remains for the Army Medical Museum. Congress pursued this horrific course of action by passing the Antiquities Act of 1906, which allowed thousands of Indians remains to be classified as "archeological resources" and exhumed as federal property.⁷ Through much of the twentieth century, it was common for the federal government to treat Native American remains as archeological specimens, property, and exhibits.

Throughout the 19th and 20th centuries, museums, universities and government agencies looted thousands of Native American gravesites and places of worship.⁸ With a stark absence of consultation from local tribes, funerary objects, cultural items and human remains were unceremoniously dug up and transferred to institutions across the country for research and display. The archaeologists and collectors employed words like "excavation" and "field project." In modern times, these words morphed into phrases such as: "grave robbing" or "looting."⁹ In 1990, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA), which requires any federal agency or institution that receives federal funding to complete an inventory of Native American remains and to return such remains to the tribes they belong to.¹⁰ However, more than thirty years later, progress has been haltingly slow. Under federal law, institutions are required to publicly report the ancestral remains in their possession, and which tribes have a cultural connection that makes them eligible to claim those remains.¹¹ After the institu-

—continued on page 3

1 Ritchie, Indian Burial Sites Unearthed: The Misapplication of the Native American Graves Protection and Repatriation Act, 26 Publ. Land & Res. L. Rev. 70, 71 (2005).

2 See e.g., Stastny v. Tachovsky, 132 N.W.2d 317, 325 (Neb. 1964).

3 Ritchie, Indian Burial Sites Unearthed: The Misapplication of the Native American Graves Protection and Repatriation Act, 26 Publ. Land & Res. L. Rev. 70, 71 (2005).

4 Lucus Ritchie, supra, note 1 at 39.

5 Trope & Echo-Hawk, supra note 3, at 39.

6 Ritchie, supra, note 1, at 74.

7 Ritchie, supra note 1, at 74.

8 Ritchie, supra note 1, at 74; Nate Sanford, Local universities work, slowly, to return the stolen remains of Native Americans, Inlander 2023 (<https://www.inlander.com/news/local-universities-work-slowly-to-return-the-stolen-remains-of-native-americans-25345755>).

9 Ibid.

10 Ibid.

11 <https://www.inlander.com/news/local-universities-work-slowly-to-return-the-stolen-remains-of-native-americans-25345755>

tion establishes that cultural connection and publishes the list, the remains are classified as “made available for return.”¹² From that point, tribes can make a claim and physically collect the remains.¹³

Establishing the Authenticity of Native American Remains - A labyrinth of Mysteries.

Establishing Native American Remains is an extensive process and often an intricate labyrinth to navigate through.¹⁴ The remains themselves have to be established to be Native American from the United States. Museums will often not just have gathered remains from all over the country, but from all over the world. It is essential to identify, with particularity, what is being requested and that the requisite falls under NAGPRA. Many museums have remains that are of early settlers and of slaves.¹⁵ It is rare these remains are part of the same collections that are Native American, but this does occur. Another concern among certain museums is if the remains are close to known European burials and/or from areas of co-habitation during historic times. It may be impossible to determine, without absolute certainty, if remains are indeed Indian. But under NAGPRA, 100% verification is not required, only that a preponderance of the evidence is met. That is, it is more likely than not that the remains are indeed Indian.¹⁶ Even if the evidence is 51% in favor of the remains being Indian, 49% not, the preponderance of the evidence has been met. It is a prima facie point, but many times the fact has to be re-established, if what a tribe is requesting are actually Indian remains. Archeological evidence can be a significant benefit in determining if

remains are native.¹⁷ The method of burial is a tell-tale sign in itself. Was the burial in a mound? Was it from a location that was recognized as Indian burial grounds? How deep in the earth were the remains when they were excavated? Burials from certain areas within the soil indicate a specific time period. Associated funerary objects are one of the strongest lines of evidence. Indian burials are known to include very specific, unique items. Any items that are precontact signify an Indian burial. Each tribe has its own history of burial items; therefore, a museum must consult with local tribes to ascertain if affiliation is appropriate.¹⁸ More than three decades after the passing of NAGPRA, hundreds of thousands of Native American remains have not yet been returned to their descendants or laid to rest but instead are locked in storage facilities and research labs across the country. For example, the Tennessee Valley Authority, a federally owned electric utility corporation, maintains the largest collection held by a federal agency.¹⁹ The agency only recently completed a NAGPRA inventory of the remains of nearly 5,000 Native Americans it removed from Alabama, Tennessee and Kentucky, with repatriation set to begin later this month.²⁰ Of the institutions and museums that hold the greatest number of Native American remains in their collections, several are located in the South, where a legacy of settler colonialism and forced migration shapes the politics of tribal recognition — and thus access to NAGPRA protections.

The “Trail of Bitter Tears” Legacy and Search for Indigenous Affiliation²¹

The National NAGPRA Program maintains a Review Committee, which oversees various aspects of the law, including requests from agencies and museums that wish to return Native remains and cultural items to non-

—continued on page 4

12 A search in the HeinOnline Federal Register database yields 564 of such publications by the Department of the Interior in the Federal Register made in the course of 2023.

13 See, e.g., the latest publication dated November 15, 2023 at 88 Fed. Reg. 78386 (2023) relating to the Children’s Museum of Indianapolis’ intention to repatriate a certain cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations.

14 Eric Hemenway Meredith E. Henry Amber L. Holt, *Finding Our Way Home A handbook for Tribes, Universities, Museums and individuals working toward reparation under NAGPRA* (NAGPRA Handbook 2012), p. 26 et seqq.

15 *Ibid.*, at 49.

16 *Ibid.*

17 <https://tbbodawa-nsn.gov/wp-content/uploads/2020/11/NAG-PRA-LTBB-Manual.pdf>

18 <https://www.facingsouth.org/2023/04/repatriating-remains-complicated-for-southeastern-tribes>

19 *Ibid.*

20 Department of the Interior, National Park Service, Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN, 88 Fed. Reg. 18578 (2023), Wednesday, March 29, 2023, pages 18377 – 18955.

21 <https://www.facingsouth.org/2023/04/repatriating-remains-complicated-for-southeastern-tribes>

federally recognized groups. A key component of the law is identifying “cultural affiliation,” which it defines as “a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.”²²

According to the U.S. Government Accountability Office (GAO), as of February 2022 the remains of more than 116,000 individuals are still held by the federal government, of which 95% have not yet been culturally affiliated to a modern-day tribe. Affiliation can be complicated for tribes in the Southeast, a region shaped by the land dispossession and ethnic cleansing that followed passage of the Indian Removal Act of 1830.²³ Thousands of Cherokees, Choctaw, Chickasaw, Muscogee, and Seminole people were forced from their homes and into modern-day Oklahoma because of the act, with many dying along the brutal journey that became known as the “Trail of Tears.”²⁴ “The legacy of forced removal in the southeast has impacted the trajectory of relationships between indigenous communities and state entities,” the group told Facing South in an email.²⁵ “As a result, each state in the United States has specific and slightly differing burial and cemetery laws that allow for varying levels of protection and preservation.”

Efforts to Protect and Repatriate Native American Cultural Objects and Human Remains

Native American cultural possessions—including pottery, weapons, and spiritual sacred artifacts—have been a ceaseless target of theft by those seeking to collect or sell them. Federal agencies and museums have also acquired legendary Native American human remains and funerary objects over the past centuries. Tribes believe these objects to be priceless based on their immeasurable significance to tribal heritage and identity. In many instances, their role in religious or healing practices dating back to the unearthly Shamans, remain as spiritual conduits to the past of this complex and noble indigenous culture. Despite federal legislation calling for their protection and repatriation, cultural artifacts located on federal

and Indian lands remain vulnerable to theft, vandalism, and destruction. Moreover, a 2020 report estimated that there are more than 116,000 Native American human remains still in museums and other collections. There is a movement toward the development of a “tribal cultural property law” that has taken place in the past decade, as Indian tribes are increasing their efforts to protect their tribal cultural property through preservation programs, Tribal Historic Preservation Officers, tribal law, and international advocacy and engagement.” In this way, tribes are standing firm, as they have for hundreds of years, and pushing back against hegemonic forces that continue to threaten tribal cultural survival and the flourishing of the next seven generations. (Angela R. Riley, *Native Nations and Tribal Cultural Property Law*, 16 *Landslide* 22 (2023).)

*Preventing the Theft and Destruction of Native American Cultural Relics*²⁶

Federal laws also prohibit the theft and destruction of Native American cultural items on federal and Indian lands, and federal agencies have a role in protecting these relics by investigating and prosecuting such crimes.²⁷ Regrettably, items continue to be stolen. The US Government’s Accountability office review of agency data revealed that there were hundreds of incidents of theft and damage of Native American cultural resources from fiscal years 2009 through 2018.²⁸ For example, in 2017, seven individuals were prosecuted and sentenced in federal district court for excavating and removing items from an Indian burial mound in Mississippi but remedial measures are seldom undertaken to full effect.

*The Role of the US Government Agencies in Protecting Native American Cultural Resources*²⁹

The US Government’s Accountability Office recommended in 2021 that federal agencies take steps to obtain needed information on the location and condition of archeological sites to help them better protect Native American cultural resources.³⁰ The United States has a

—continued on page 5

22 Ibid.

23 Ibid.

24 Ibid.

25 <https://www.facingsouth.org/2023/04/repatriating-remains-complicated-for-southeastern-tribes>

26 <https://www.gao.gov/blog/efforts-protect-and-repatriate-native-american-cultural-items-and-human-remains>

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.



unique government-to-government relationship with Indian Tribes. Consistent with this relationship, the agency’s 2022-2027 Strategic Plan includes an objective focused on the federal government’s fulfillment of its responsibilities to tribes, their members, and individual descendants.³¹ The plan highlights the need to assess federal efforts to protect Native American cultural, environmental, and natural resources.³² However, agencies did not always have the information they needed to prevent, investigate, and prosecute the theft of items on federal and Indian lands which has stalled initiatives. Therein lies the dilemma.³³ Now, more than ever, however, there are broad movements by Indigenous groups to reclaim their history, return their artifacts, demand a return of their land and bring home their dead.

The Complications of Repatriating are Riddled with Past Unsettled Grievances

There is a lack of remembrance culture which is an important element in the process of “*Vergangenheitsbewältigung und Wiedergutmachung*” (a German term referring to facing and remembering the past and making amends to victims *in personam* or as a cultural, religious or other collective). Education regarding Native American history and the land in which they laid claim to had not been met with nearly as much attention as it has in recent years; but even still, awareness efforts about the atrocities this displaced and forgotten—but certainly not silenced—the demographic is largely attributed to private organizations doing what the United States government should have decades ago.³⁴ Since 2010, Members of the Gabrielino Band of Mission Indians have persisted in their plans to build a \$22-million discovery center on a site they regard as ancestral lands at the Whittier Narrows Wildlife Sanctuary. Since their plan was denounced, including a proposed 14,000-square-foot San Gabriel River Discovery Center, which would be equipped with interactive exhibits, including a 7,000-square-foot model of the San Gabriel River featuring flowing water, the opposition has stated that the recreational center does not teach young children anymore

“about nature from models and replicas than from nature itself.” A deeply lamentable fact and a blemish on civil society.

*Fostering a Culture of Remembrance While Eradicating a Culture of Ignorance*³⁵

The Federal Republic of Germany (FRG) has been a stellar example—no matter their innocence generations later can excuse inaction as it does for the United States—of supporting citizens who are still living under the Holocaust’s impact today and not leaving out any humbling detail of what violent and inhumane barbarity occurred within their nation.³⁶ Next year, Holocaust survivors will be given 1.4 billion dollars by the FRG, with 890 million going to housing services as they advance in age and are over 80 years old. The survivors of the atrocities many Native Americans faced in boarding schools and by police are much younger than that.³⁷ “The survivors receiving these [hardship] payments largely include Jews from the former Soviet Union who were not in camps or ghettos and are not eligible for pension programs,” according to the Claims Conference from a National Public Radio (NPR) article.³⁸ “These survivors fled the Einsatzgruppen — Nazi mobile killing units charged with murdering entire Jewish communities. More than 1 million Jews were killed by these units, which operated largely by shooting hundreds and thousands of Jews at a time and burying them in mass pits.”³⁹ Germany has actively promoted a culture of remembrance while the United States’ silence has promoted a culture of ignorance.⁴⁰ According to the US Department of State, German restitution extends from compensating former owners and heirs for assets wrongfully seized during the Holocaust to making substantial financial contributions to victims’ funds and survivors’ pensions.⁴¹ From 1945 to 2018, the FRG paid approximately \$86.8 billion in restitution and compensation to Holocaust victims and their heirs.

—continued on page 6

31 Ibid.

32 Ibid.

33 <https://www.gao.gov/blog/efforts-protect-and-repatriate-native-american-cultural-items-and-human-remains>

34 <https://pawprintsweekly.org/long-awaited-reparations-for-native-americans-come-from-all-but-the-us-government-itself/>

35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 <https://pawprintsweekly.org/long-awaited-reparations-for-native-americans-come-from-all-but-the-us-government-itself/>



Almost immediately after Hitler's death and the conclusion of World War II, in March 1952, the FRG held negotiations with the Government of Israel and the Claims Conference, which led to two agreements known as the "Luxembourg Agreements" that provided for the payment of approximately \$714 million based on 1952 exchange rates in goods and services to the State of Israel. The German approach has indisputable merits and the United States could benefit from utilizing the German Model (*mutadis mutandis*) in its approach to reparations.

In essence, these looted displaced Native American artifacts and objects are cultural patrimony. They are not objects of art. They have a life, a lineage, and a deeply-embedded ancestral history. When these objects are sold or looted—a piece of the Native American fabric and its family roots are lost to the dust. It is illegal to steal or to vandalize steal artifacts. Archaeological sites deserve respect. In accordance with Native American spiritual beliefs, spirits may never attain rest until the proper ceremonies are executed and they are returned to the land from where they emerged, which is their home. Their home is not in a cage; their home is not in a museum and certainly not in a foreign state where the tribe was removed." Their resting places are where the eternal Shaman souls roam and serve as conduits to preserve the present and pave the path to freedom and harmony for the indigenous and for the marginalized. A sense of guilt is not enough. We are indebted to the Native Americans who have already passed through the hallways of time, to keep and to preserve historical documentation of the land that was once theirs, and those they are survived by who fight to make their presence known today. It is never too late to tread upon the ancestral road to reparations and preservation of a people that ought to never be forgotten, but that challenging endeavor must commence right now, for time is fleeting.

(This article is penned by Dr. Sophia Murashkovsky Romma, International Human Rights Attorney, representing the underserved marginalized communities of the United States and Eastern Europe. Dr. Romma is the Co-Chair of the United Nations Committee of the New York City Bar Association and the Legal Writing Specialist of the Graduate Writing Center at Touro University School of Law.)

Seeking Justice for Indigenous Women: The Involuntary Birth Control Campaign in Greenland

**By Negin Nader Bazrafkan, Fordham Law Student,
Member of the United Nations Committee, New York City
Bar Association**

In a recent revelation, a group of women in Greenland has come forward seeking compensation from Denmark for an involuntary birth control campaign that took place in the 1960s. This campaign, which involved the insertion of intra-uterine devices (IUDs) without the knowledge or consent of the women, has left a lasting impact on their lives. With an official investigation still underway, these women, some of whom are now in their 70s and 80s, are demanding justice and recognition for the violations they endured.¹ Greenland, with a population of 56,609 (2023), holds the distinction of being the largest island in the world.²

The Involuntary Birth Control Campaign

According to a report by Danish broadcaster DR, between 1966 and 1970, approximately 4,500 IUDs³ were fitted into women and girls as young as 13 in Greenland, without their knowledge or consent.⁴ This revelation has sparked outrage and raised questions about the decision-making process that led to such a campaign.⁵ The Danish and Greenland governments have commissioned a team of researchers to investigate the extent of the cases and shed light on the circumstances surrounding this grave violation of human rights.

The Impact on Indigenous Women and the Importance of Indigenous Rights

The involuntary birth control campaign in Greenland has had a profound impact on the lives of the affected women. Many of them have experienced physical and

—continued on page 7

1 <https://www.reuters.com/world/greenland-women-ask-denmark-compensation-over-involuntary-birth-control-2023-10-02/>

2 <https://www.norden.org/en/information/facts-about-greenland>

3 An intrauterine device (IUD) is a long-acting and highly effective form of birth control that can provide protection against pregnancy for up to 10 years or even longer.

4 <https://www.dr.dk/lyd/p1/spiralkampagnen-3510654808000>

5 <https://www.nytimes.com/2023/10/03/world/europe/greenland-indigenous-women-contraception.html>

emotional trauma because of the forced insertion of IUDs. The long-term consequences of this campaign include reproductive health issues, psychological distress, and a loss of trust in the healthcare system. The women are now seeking not only compensation but also recognition for the violations they endured and the lasting impact it has had on their lives.

The case of the involuntary birth control campaign in Greenland highlights the ongoing struggle for indigenous rights and the need for justice in cases of historical injustices. Indigenous communities around the world have faced similar violations of their rights, often at the hands of colonial powers. It is crucial that these violations are acknowledged, investigated, and addressed to ensure that such injustices are not repeated in the future.

The Quest for Compensation

Given the advanced age of some of the affected women, they are seeking compensation without further delay. The women's lawyer, Mads Pramming, has submitted a claim on their behalf to Prime Minister Mette Frederiksen's office, demanding 300,000 Danish crowns (\$42,380) for each woman. This compensation would not only acknowledge the suffering they endured but also provide some measure of justice for the violation of their rights.⁶

The Investigation Process

An official investigation by the governments of Greenland and Denmark is currently underway, with the findings expected to be reported in May 2025. This investigation aims to uncover the full extent of the cases and shed light on the decision-making process that allowed such a campaign to take place. The hope is that this investigation will provide a comprehensive understanding of the events that transpired between 1960 and 1991, when Greenland gained authority over its healthcare system.

Denmark's Troubled History with Greenland

This is not the first time Denmark has faced allegations of misconduct against the people of its former colony. Last year, Denmark publicly apologized for a 1950s experiment in which children from Greenland were taken to

Denmark.⁷ These incidents have highlighted the need for accountability and justice for the victims, as well as a reevaluation of the historical relationship between Denmark and Greenland.

Moving forward: the Road to Healing

As the investigation into the involuntary birth control campaign in Greenland continues, it is essential that the affected women are provided with the support they need. This includes not only financial compensation but also access to healthcare services, counseling, and other resources to aid in their healing process. Additionally, it is crucial that steps are taken to prevent similar violations from occurring in the future and to promote the rights and well-being of indigenous communities.

The involuntary birth control campaign in Greenland has brought to light a dark chapter in the history of the relationship between Denmark and its former colony. The women who have come forward to seek justice and compensation deserve to be heard and their rights upheld. The ongoing investigation and the demand for accountability are important steps towards acknowledging the violations that occurred and working towards a more just and equitable future for all.

Why Does It Matter?

The case seeking justice for indigenous women in Greenland is not only crucial for indigenous rights but also holds broader significance for Greenland's current political landscape. Greenland recently unveiled its draft constitution in early June 2023, which is viewed by locals as a significant milestone in their journey towards achieving independence from Denmark. This constitutional development adds another layer of complexity to the ongoing quest for justice and recognition for the violations endured by indigenous women in Greenland.⁸ ■

6 <https://www.usnews.com/news/world/articles/2023-10-02/greenland-women-ask-denmark-for-compensation-over-involuntary-birth-control>

7 <https://www.theguardian.com/world/2022/mar/10/denmark-pm-says-sorry-to-greenland-inuits-taken-for-heartless-social-experiment>

8 <https://www.gisreportsonline.com/r/greenland-independence/>