

COMMENTARY

SCIENCE, PROPERTY, AND KINSHIP IN
REPATRIATION DEBATES*Stuart Kirsch*

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ABSTRACT

A striking feature of debates concerning the disposition of Native American human remains is their invocation of the conventional domains of science, property, and kinship. Strong political claims about repatriation tend to assert the primacy of one domain over the others. Yet in contemporary North American social contexts, these domains have heterarchical relations in which no single perspective dominates, rather than hierarchical relations organized by a fixed ranking system. Resolving disputes in heterarchical systems requires negotiation across domains rather than privileging one domain. This comment examines how the relationships between these domains influence debates on repatriation. It also sheds light on how Americans make political claims. [heterarchy, hierarchy, human remains, kinship, Native American, property, repatriation, science]

A striking feature of debates concerning the disposition of Native American human remains is their invocation of the conventional domains of science, property, and kinship. Strong political claims about repatriation tend to assert the primacy of one domain over the others. Yet in contemporary American social contexts, these domains have heterarchical relations in which no single perspective dominates, rather than hierarchical relations organized by a fixed ranking system.¹ This comment examines how the relationships between these domains influence debates on repatriation.

Let me begin with the domain of science, which offers the primary rationale for preserving Native American human remains in museum collections. In its modern form, science combines knowledge production and particular social roles or professions. Scientific knowledge production is based on a relatively homogenous social process in which participation is restricted and hierarchical. Science and society are treated as separate domains (Nowotny et al. 2001). The normative status of this model is evident in criticism of how the science of global climate change has

become politicized. Scientists value the pursuit of knowledge above most other values and support the principle of open access to information. This is also a core tenet of liberal, democratic societies. As the Russian physicist and political dissident Andrei Sakharov (1968) observed, a society that impedes the free exchange of ideas is doomed to failure. The contemporary academy is modeled on these understandings of science and how it should be practiced.

However, recent discussions of science and society point to a transformation in how scientific knowledge is produced (Nowotny et al. 2001; Ziman 2000). Knowledge production is increasingly dispersed across different kinds of institutions and social settings. It is more heterogeneous, socially accountable, and reflexive. An example is the way in which museums and communities may undertake collaborations that neither could complete on their own. This entails mutual recognition of complementary forms of expertise. Science and society are no longer treated as separate domains; Nowotny et al. (2001) argue that such arrangements produce more socially robust forms of science.

Rules and practices that restrict access to scientific information are commonly viewed as being in opposition to the central values of liberal society. However, values from other domains regularly override this principle. For example, under certain conditions property rights trump access to information. We make exceptions to rules concerning open access to facilitate commerce: authors copyright their work and scientists patent their inventions for limited periods of time. These protections are intended as both stimulus for innovation and reward for the investment of resources. They are a compromise between the ideal of open access and the desire to promote creativity (Lessig 2001; Rose 1993). Similarly, the academy and the archive have not always fulfilled the ideal of open access to information. For example, Native Hawaiians once had difficulty in gaining access to the major repository of *mele*, the poetic verses that accompany hula performances (Stillman 2009). More generally, historians of science and empire have documented the relationship between scientific knowledge production and exclusionary practices of racism, colonialism, and imperialism (Pratt 1992).

The second domain referenced by debates about repatriation is property, which is also a foundational

concept of liberal society, and, in the form of private property, the cornerstone of capitalism. The ownership of property is closely associated with the prevailing form of modern personhood, the possessive individual (Macpherson 1964; Radin 1993). However, there are legal limits on ownership (Kirsch 2004; Rose 1994; Sax 2001). An important example of restrictions on property rights was established by the 13th Amendment to the U.S. Constitution, which abolished slavery; the law no longer recognizes property interests in human bodies. People are still “viewed as having control over their bodies and bodily integrity, but not as the result of the laws of property” (Greely 1998:488). Consequently, scientists who propose to carry out research on human tissue or DNA must obtain the permission of their subjects (Rabinow 1996). Individuals regularly agree to participate in clinical research in the altruistic hope that such studies will lead to scientific breakthroughs that will benefit others; the critical issue is consent. A recent legal settlement addresses these issues. From 1990 to 1994, the Havasupai Indians granted scientists at Arizona State University permission to use their DNA for research on diabetes. However, the scientists later used the DNA samples for projects unrelated to Havasupai health concerns. The university’s decision to settle with the Havasupai plaintiffs who objected to these new studies is considered significant because it suggests that the “rights of the research subjects can be violated when they are not fully informed about how their DNA might be used” (Harmon 2010).

Anthropologists have studied property since the beginning of the discipline (e.g., Maine 1986; Malinowski 1935). Whereas Euro-American law emphasizes private property, the dominant form of ownership in other societies may be collective. However, most societies recognize a variety of individual and collective property rights, as Malinowski (1935: 380) argued in relation to Trobriand Islanders. Colonial history may be characterized in part by the inability or refusal of the colonizers to recognize indigenous property rights (McLaren et al. 2005; Pocock 1992). These debates continue today as indigenous peoples struggle to make collective claims to cultural property through legal systems that privilege individual rights (Brown 2003; Coombe 1998; Hirsch and Strathern 2004). More generally, contemporary understandings of property are being challenged by

the implications of new technologies, including whether and how to assign ownership to genes (Pálsson 2007), human embryos (Strathern 1999), and pollution (Kirsch 2004).

A brief aside regarding the domain of human rights is warranted here, as the participants in repatriation debates may also frame their arguments in these terms (see Trope and Echo-Hawk 2000:140). These principles articulate the fundamental rights of all human beings. However, the law generally lags behind the recognition of human rights, making them difficult to enforce. Consequently, human rights claims often remain aspirational (see Goodale 2009). An important component of human rights claims is that special standing is not required to make a claim; one can object to the desecration of a cemetery, for example, regardless of whether or not one has relatives buried there.

The third domain is kinship. Although Americans say that blood is thicker than water (Schneider 1980:49), anthropologists recognize that kinship claims are more than just blood: they are also social relations (Carsten 2003). Kinship relations may also be legal relationships; the responsibilities of parents are defined by law as well as matters of proper conduct and affect. It is not a coincidence that many of the founders of the anthropological study of kinship were lawyers by training, including McLennan (1865) and Morgan (1870). The courts are also increasingly called upon to adjudicate kinship disputes in the age of DNA testing (Strathern 1999, 2005). For example, the courts have been asked to determine whether or not someone who acted as a social father to a child by making child support payments is legally obligated to continue making those payments even when paternity tests indicate that he is not the biological father (Strathern 1999:74). The affirmative response follows a social rather than exclusively biological view of kinship relations. In this case, the social definition of kinship trumps scientific information.

Although kinship and the law are closely intertwined, the prevailing assumption is that in family matters the courts should defer to kin except under extenuating circumstances (Strathern 2005:16). This is most clearly seen in the restraint exercised by the state with regard to interference with the parental care of children. One instance in which this principle was ignored was the placement of Native American

children into boarding schools, separating them from their family members and preventing them from speaking their own languages; these interventions were subsequently addressed by the Indian Child Welfare Act of 1978 (Smith 2005).

Possession is said to be nine-tenths of the law, but anthropologists recognize that kinship is nine-tenths of ownership through inheritance and succession. In other words, kinship guides many forms of property distribution, including real property in land and things as well as titles, social roles, and, in some cases, occupational status. But kinship and ownership belong to different domains. A husband and wife have certain legal rights *vis-à-vis* one another, but this does not include ownership. Kinship is better understood in terms of responsibility: I may or may not be my brother's keeper, but I am certainly not his owner. To invoke ownership with respect to kin is a category error. Similarly, some Native Americans reject the invocation of property rights with respect to human remains, which they view as kin rather than property.

Kinship claims regarding the disposition of human remains might be compared to how people take responsibility for relatives who are unable to communicate their intentions because they are minors or adults compromised by illness. In the United States, the next of kin have the right to arrange for the burial of the deceased (Greely 1998:488). In the context of repatriation, Native Americans may also see themselves as protecting the interests of their kin. These may be more than secular duties, however, as caring for one's ancestors is often understood as a religious obligation. The extended care and concern with which such responsibilities toward human remains are discharged is well documented for many other societies as well (e.g., Feeley-Harnik 1991; Richards 2010).

Societies vary in how broadly they define the scope of kinship relations. Nuclear families in the United States often maintain relatively shallow genealogies. However, in other societies, even remote ancestors may be regarded as members of one's family; there is no parting of the ways with kin at death. In other cases, such as with Trobriand Islanders, the members of future generations are already members of one's lineage (Weiner 1976). But it would be a mistake to treat these differences as oppositions. Americans can and do recognize lengthy genealogies, especially when they are associated with property and privilege; a Ford

still runs Ford Motor Company, for example. Kinship relations are always subject to telescoping and collapse for various purposes; such flexibility is one of the hallmarks of kinship rather than an anomaly.

Given the racialized history of kinship in the United States (Dominguez 1986), it is not surprising that Native American claims about kinship and relatedness may be retrospectively extended beyond contemporary tribal boundaries in claims regarding the disposition of culturally unaffiliated human remains. Nor can these identifications be separated from the historical contexts in which native peoples have lost land, cultural knowledge, and, in many cases, their languages through historical policies and practices of genocide, dispossession, and forced assimilation (Fine-Dare 2002). Shared histories of oppression have become *de facto* components of indigenous identity in many contexts (Niezen 2003). Repatriation is important to Native Americans both in terms of the proper treatment of their relatives (*writ large*) and as partial reparation for past injustices (Fine-Dare 2002; Mihesuah 2000). Gaining federal recognition, reclaiming tribal lands, revitalizing endangered languages, and repatriating the remains of fellow Native Americans are political responses to the colonial legacy with which Native Americans continue to struggle (Riding In 2000).

As I have indicated, North Americans regularly make reference to all of these domains. The pursuit of knowledge and understanding is not limited to scientific research by students and professors. All members of the state seek protection under the law. Everyone values their families and kin. Americans also regularly invoke more than one of these domains at a time to establish priorities and settle disputes. These interactions must be carefully negotiated as there is no stable hierarchy of values through which claims to the primacy of one domain over the others can be made. Given their heterarchical relations, invoking principles from multiple domains may result in complex and even controversial interactions, as when scientific knowledge about wetlands affects how landowners are permitted to make use of private property, or when estate taxes must be paid on an inheritance.

However, participants in debates concerning repatriation often restrict their claims to a single domain. As scientists, archaeologists may treat human remains primarily in terms of the research questions

they can help to answer. As institutions chartered by law, universities and museums may view the same human remains primarily in terms of property rights governing their disposition, most notably compliance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA). Native Americans tend to view these human remains as ancestors and kin to whom they have important and even sacred responsibilities, but they also value repatriation as a political act of decolonization. The participants in these debates may be looking at the same material artifacts but seeing something entirely different (see Henare et al. 2006). However, there are other ways to think about these issues. Archaeologists increasingly draw on collaborative models of science when working with Native American communities and vice versa (Colwell-Chanthaphonh and Ferguson 2008; Thomas 2000). Universities and museums are actively seeking to improve relations with Native Americans and other minority populations. New rules concerning the disposition of culturally unaffiliated human remains may help to resolve some of the outstanding claims, but given their emphasis on property rights, they cannot be expected to solve all the problems. For example, some archaeologists feel that the new regulations do not sufficiently value knowledge or research about the past (Sinopoli 2010).

Writing about the domains of gender, kinship, and science, Marilyn Strathern suggests that “if a culture consists in established ways of bringing ideas from different domains together, then new combinations—deliberate or not—will not just extend the meanings of the domains so juxtaposed; one may expect a ricochet effect, that shifts of emphasis, dissolutions and anticipations will bounce off one area of life onto another” (1992:3). However, Strathern acknowledges that culture “has its constraints and its effects on how people act, react and conceptualize what is going on around them: it is the way people imagine things really are” (1992:3). Thus it is not unexpected that debates about repatriation bequeath us both impasses and opportunities. By recognizing the way these debates cross heterarchically organized domains, we can treat the resulting negotiations as a source of information about how Americans make political claims. We can also anticipate that these debates will transform future relationships between science, property, and kinship. But proper resolution

of these debates will require participants to attend to relationships across these domains and to understand how and why such claims are made.

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NOTE

1. A classic example of heterarchy is the children’s game of paper, scissors, rocks, in which paper covers rock (thus defeating it), but scissors cut paper, and rocks break scissors. There is dominance without hierarchy. Archaeologists use the concept of heterarchy to describe power relations in societies that lack rigid stratification (Ehrenreich et al. 1995).

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