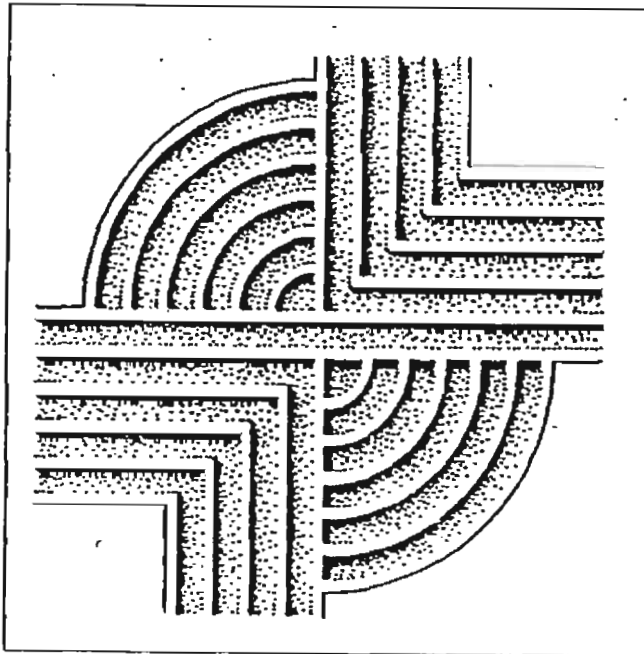


NATIVE AMERICAN BURIAL REMAINS: DOING THE RIGHT THING



RESEARCH CONTRIBUTION 54

© 2001 by Chicora Foundation, Inc. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, transmitted, or transcribed in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without prior permission of Chicora Foundation, Inc. except for brief quotations used in reviews. Full credit must be given to the authors, publisher, and project sponsor.

**NATIVE AMERICAN BURIAL REMAINS:
DOING THE RIGHT THING**

Michael Trinkley

Chicora Research Contribution 54

**Comments Presented at the 1991 South Carolina Museum Federation
Meeting, Charleston, South Carolina**

**Chicora Foundation, Inc.
P.O. Box 8661
861 Arbutus Drive
Columbia, South Carolina 29902**

March 11, 1991

When Fritz Hamer asked me to speak with you several months ago the issues surrounding repatriation were fresh and you could even find a few archaeologists or museum people who were vehemently opposed to the entire concept. I recall sitting in a dingy bar the evening before the first sessions at AAM in Chicago last year and listening in on a conversation at an adjacent table. The principal speaker left no doubt regarding his opinions and the conversation was laced with none too pleasant comments concerning Native Americans in general and Southwestern Native Americans in specific. But perhaps his greatest wrath was reserved for the Smithsonian Institution, who had "sold museums out to the Indians." I could go on, but I am sure that most of you remember the heat of the moment.

The official AAM position is echoed in the articles published early this year in Museum News. Perhaps time has healed some wounds, or perhaps the key to survival is truly the ability to adapt to new environments. Regardless, it has gotten very difficult to find anyone vocally opposed to repatriation. In the long run this situation is, of course, good. However, for the purposes of my comments, it is very difficult to be an ardent spokesperson for an idea whose time has already come and has been enacted into law. It is something like being a staunch supporter of suffrage. On the other hand, we all know that it takes longer to change attitudes than it does to enact laws. For some, perhaps for more than we realize, these changes strike at the heart of an almost religious belief system -- the inherent right and obligation to collect. And certainly as an anthropologist I realize that religious beliefs are among the hardest aspects of culture to change.

In retrospect, it seems that the core of dispute revolved around this issue -- that collection and study is a right, if not an obligation, rather than a privilege. Archaeologists and museum curators marshalled all sorts of relatively convincing arguments that if burials and other Native American artifacts weren't collected they would be lost to future generations. Some went even so far as to suggest that if museums and archaeologists hadn't been digging up everything in sight the Native Americans would not have anything to claim today. Other researchers emphasized the importance of skeletal remains for answering questions concerning paleonutrition, diseases, demographics, and so forth -- again confusing the concept of a right with that of a privilege.

I am firmly convinced that skeletal remains are an important resource for reconstructing the past. But, whose past are we, as anthropologists and curators, reconstructing? And do we, as researchers, have an obligation to the people -- living and dead -- that we are studying? Although the answer has already been provided by federal law, I believe it is still important, even essential, to

arrive at an understanding of the moral and ethical issues involved, rather than simply the legal certainty of repatriation.

I see very few cases where research and collecting are rights. Such activities are more accurately viewed as privileges bestowed by those who are being studied -- or by their descendants. Consequently, the privilege of such research may also be withheld. And while we, as professionals, may bemoan the loss to humanity, we must also be willing to accept the wishes of those being studied.

Some, again in the heat of the battle, have argued that, particularly here in the Southeast, there are few, if any, Native American groups which can *prove*, and these individuals emphasized the word "prove," that they are genetically or culturally related to the groups being excavated. I was at the time, and still am, dismayed that otherwise intelligent and good-hearted people would resort to this sort of intellectual nit-picking. If I should decide to engage in the excavation of a burial plot of a white South Carolina family who has long since died out, I would most likely be stopped by the moral outrage of the community, if not by the sheriff. Why? Because white burials in South Carolina have long been regarded with respect engendered by a moral and ethical fabric, if not by laws. Yet, a generic Native American, unlike a generic white person, seems to have no right to object to the excavation of another Native American. I realize that there are some who would not care if their grandmother was dug up. It doesn't matter that some may feel no moral outrage -- what matters is that others do. In this case the objections, even if they represent the minority, must be respected.

Please do not confuse my comments with some sort of ethnocentrism; I am not suggesting that all Native Americans, or Native American cultures are the same, or even feel the same. I am simply pointing out the intellectual, and even legal, inequalities which existed prior to the passage of P.L. 101-601.

So what does all of this mean to archaeologists and museums in South Carolina? As I assume everyone knows, the repatriation law does not prevent archaeologists in South Carolina from excavating Native American skeletons, nor does it prevent South Carolina museums from curating or even displaying these remains. What is required is that museums receiving federal funds must undertake to inventory or summarize the material in their holdings. The law also establishes standards, conditions, and definitions under which Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony may be repatriated from federally funded museums.

In very simplistic terms, Native American groups will base their claims for repatriation of human remains and funerary objects on "cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological,

anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion." Repatriation of sacred objects and items of cultural patrimony will be based on evidence of lineal descent, or previous ownership or control.

It is appropriate to mention that "funerary objects" includes objects that, as part of the burial ritual, were placed with the human remains either at the time of death or later. This suggests that while pottery vessels and beads placed with a burial are subject to repatriation, artifacts found in the fill of the burial and incorporated by accident are not.

I imagine that the law will apply to many museums in South Carolina since federal funding is rather common. But I suspect that there are very few institutions with Native American collections. Those which have such collections, I trust, are making plans for a thorough inventory in compliance with the legislation. Afterwards it is largely a waiting game -- will any group come forward and claim any of the objects on the inventory. After all of this it may be "business as usual" in the professional community.

Archaeologists may continue to excavate Native American remains, museums may continue to curate these remains, and the letter of the law will have been achieved. But what of the spirit? What of the moral and ethical issues surrounding Native American research?

It is my view that P.L. 101-601 is the first step toward a total re-evaluation of the way that Native American research is conducted. For example, can the archaeologist, in good conscience, excavate a Native American burial which is not threatened by destruction? Can that same archaeologist, in good conscience, excavate even a threatened burial without obtaining the approval and active cooperation of local Native American groups? Assuming that the excavation is conducted, what obligation does the archaeologist have to allow reburial of the remains after study? And what types of study can be morally and ethically defended? What obligation does the archaeologist have to timely publication and public dissemination of the study, particularly to the Native Americans in the region? Can a curatorial facility, in good conscience, accept human remains if the Native American groups in the area have not been consulted prior to excavation? Can a curatorial facility morally defend the display of Native American human remains? And what moral and ethical responsibility do we as professionals have to the hundreds or thousands of Native American remains which may never be claimed? Are they going to continue to sit minimally curated, never examined, in cardboard boxes?

All of these are important questions that I hope this symposium will discuss today, even though they go far beyond the strict provisions of P.L. 101-601. But that is the nature of ethical considerations -- they cannot be constrained by artificial

limits, nor can they be dissolved by "situational" responses.

Public Law 101-601 establishes very general parameters for "doing the right thing." Now it is up to us, as professionals, to put real ethical meaning in our behavior. The authors of the January/February Museum News articles reveal that the repatriation may be one of the best ethical issues to ever face the museum community. Several years ago efforts to integrate Native Americans with museums were virtually unheard of. Today there is a reason for cooperation. Perhaps in time the museum community may even win the respect of Native Americans.

Archaeologists would do well to take a lesson from the museum community. The Native American community can be a valuable ally in the fight to preserve archaeological sites from development and site looting. Both archaeologists and Native Americans have ample reasons to cooperate for the common good. But archaeologists must realize that the years of bad feeling will not dissolve overnight and respect must be earned. Archaeologists must "do the right thing" also and strive to work with Native Americans -- not against them.