

**MONTANA'S HUMAN SKELETAL REMAINS
AND
BURIAL SITE PROTECTION ACT:
REPATRIATION AND BOARD REIMBURSEMENT**

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INTRODUCTION

In 1991, with passage of the Human Skeletal Remains and Burial Site Protection Act, Montana joined approximately 35 other states in establishing a policy and procedure for protecting from disturbance or destruction all human remains, burial sites, and burial materials in marked or unmarked graves or burial sites located on state or private lands. The legislation protects burial sites on state and private land, provides a procedure to be followed upon the inadvertent discovery, after 1991, of all human remains, regardless of ethnic origin, burial context, or age, and attempts to recognize and balance cultural, tribal, or religious concerns with the interests of scientists, landowners, and developers. However, Montana's law did not include a repatriation provision to address the discovery and disturbance of burial sites and the removal of human remains that occurred before passage of the Act in 1991.

This memorandum was prepared at the request of the Indian Affairs Subcommittee of the Law, Justice, and Indian Affairs Interim Committee after representatives of the Burial Preservation Board requested research on the following issues:

(1) is a new appropriation or other amendment to the Human Skeletal Remains and Burial Site Protection Act necessary to ensure that Board members are reimbursed for travel expenses to the Board's annual meeting; and

(2) can legislation be proposed to retroactively apply the provisions of the Act to provide for the possible return of human skeletal remains and burial objects recovered from

burial sites prior to the adoption of the 1991 Human Skeletal Remains and Burial Site Protection Act?

Part I of this memorandum will discuss the issue of reimbursement to members of the Burial Protection Board for travel and related expenses. Although the second question was phrased in the context of "retroactivity", Part II will briefly discuss some of the legal theories and arguments that are normally raised in discussing the issue of repatriation, including property rights in human remains, the First Amendment's free exercise clause, and the taking of private property. Part III will provide an overview of federal and state repatriation legislation, and a conclusion will include recommendations related to the possible introduction of repatriation legislation in Montana. This memorandum was intended to provide only general background information and was not intended to provide all possible legal arguments or theories surrounding the issue of repatriation nor to provide an in-depth analysis of existing federal or state repatriation legislation.

PART I:
BOARD REIMBURSEMENT

When enacted in 1991, subsection (1) of section 13 of House Bill No. 131, now codified at section 22-3-811, MCA, provided an account for the deposit of fees, grants, or donation to be used to pay expenses for Board meetings or expenses incurred in conducting field reviews, while subsection (2) statutorily appropriated funds to the Board. The bill also included a \$10,000 biennial appropriation from the general fund to pay expenses for Board meetings or field review expenses. Section 18 of the bill terminated the statutory appropriation effective June 30, 1993, primarily because the legislation did not meet the Legislature's criteria for a statutory appropriation established in section 17-1-508, MCA.

However, section 4(5) of the bill, now codified at section 22-3-804(5), MCA, provides that members of the Board "serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503". Therefore, despite the sunset of the 2-year statutory appropriation, the Board members are statutorily entitled to reimbursement for travel, meals, and lodging. If the account established in section 22-3-811, MCA, contains insufficient funds to pay such expenses, the Department of Commerce, to which the Board is administratively attached, is responsible for the reimbursement for Board members' travel,

meals, and lodging. In a telephone conversation, Board member White suggested that the Board was primarily interested in reimbursement of expenses related to the Board's annual meeting. If so, section 22-3-804(5), MCA, should be amended to reflect that intent.

PART II: **REPATRIATION**

A. PROPERTY RIGHTS IN HUMAN REMAINS

By common law, ownership of objects located below the land surface is vested in the landowner. However, human remains and arguably certain burial material are treated differently than other property under common law. A dead body cannot be "owned" in the same manner as other objects can. Human remains are considered to be "quasi-property". Although an individual can possess certain rights in a dead body, such as control and disposition after death, the individual does not have the whole "bundle of rights" granted to an owner of other property. Under this "quasi-property" theory, the descendants retain certain rights in the dead body, regardless of who owns the land on which the body is buried. The concept that descendants retain such property rights in their ancestor's remains has also been recognized by the courts.¹

Similarly, by common law, a "finder" who takes possession of lost or abandoned property and exercises dominion and control normally acquires title to the abandoned property, regardless of who owns the land. However, neither a landowner nor a finder has title to an object that the true owner never abandoned. Property is abandoned if the owner voluntarily and intentionally relinquishes all right, title, claim, and possession without vesting them in another person. A popular myth among pothunters and private collectors is that objects found in Indian graves belong to the finder. To the contrary, whenever funerary objects are removed from graves, they belong to the person who prepared the grave or to the known descendants of the deceased.

In addition to common law, most states, including Montana, have statutes protecting cemeteries. However, because Indian burial sites are usually not grouped in one well-marked location, historically they have not been statutorily protected as they did not meet the definition of a cemetery under state law. Further, because many tribes were forced by the federal government to evacuate their ancestral lands, many burial locations that may have been considered a "cemetery" have been abandoned.

In the case of Charrier v. Bell,² remains were unearthed between 1968 and 1971 by Leonard Charrier from approximately 150 burial sites on nonreservation private land on the Trudeau Plantation in Louisiana. Charrier attempted to sell the remains to Harvard University's Peabody Museum, which chose to lease the remains because it doubted the strength of Charrier's claim to title in the remains. When Charrier decided to bring suit to quiet title in the remains, the Tunica-Biloxi Tribe intervened, claiming that they properly held title to the remains. In 1986, a Louisiana Court of Appeals denied Charrier's claim to the artifacts, ruling that the common law doctrine of abandonment, which is often applied to Indian burials when tribes were forced by the federal government to evacuate ancestral lands, does not apply to burial materials. The court reasoned that when a body is buried, the survivors do not intend to abandon that body. Rather, the court found that the Tunicas intended the items to remain perpetually buried to serve spiritual or traditional purposes.

B. FIRST AMENDMENT

Under the First Amendment's free exercise clause, American Indians' religious beliefs and practices may be infringed upon when burial sites are disturbed and remains are withheld from burial. Many American Indians, Native Alaskans, and Native Hawaiians believe that disinterment stops the spiritual journey of the dead, causing the affected spirits to wander aimlessly in limbo.³ The affected spirits can wreak havoc among the living, bringing sickness, emotional distress, and even death. Reburial within Mother Earth enables the disturbed spirits to resume their journey.⁴

In 1991, when evidence revealed that existing state law was not providing protection against the extensive disturbance of human remains and burial material in unmarked burial sites, both the First Amendment's free exercise clause and Montana's own constitutional commitment⁵ to preserve the cultural integrity of American Indians provided the legal basis for Montana to expand its statutory protection of cemeteries to include protection of all human remains and burial material located in previously unmarked, unregistered burial sites. These same constitutional provisions can also be applied should the state consider legislation to repatriate human remains and burial materials removed from burial sites prior to 1991.

C. "TAKING" OF PRIVATE PROPERTY

The Fifth Amendment of the United States Constitution provides: ". . . nor shall private property be taken for public use, without just compensation". This limit upon the power of the federal government is applied to the states under the 14th Amendment to the United States Constitution. Article II, sections 17 and 29, of the Montana Constitution prohibit the taking of property without due process and just compensation. These "takings" provisions do not prohibit the taking of private property, but they do place a condition on the exercise of governmental power by requiring compensation. However, no set formula exists for determining when economic injuries caused by governmental action constitute a taking, requiring compensation by the government. Adding to the difficulty of determining if a taking has occurred is the question of what constitutes property. Neither the federal nor state constitution define what is meant by the term "property". Often property is described as a "bundle" of rights, such as the rights to possess, use, and dispose of property. Government actions may adversely affect one or more "strands" in the "bundle" without there automatically being a taking requiring compensation.

The United States Supreme Court applies a two-pronged test to determine if a taking of private property has occurred. The first prong, known as the public purpose test, inquires into the relationship between the governmental action and its purpose. A court will find that there has been a taking if the governmental action is not undertaken to provide for a public use. The second prong evaluates the economic impact of the governmental action and the extent to which it interferes with reasonable investment-backed expectations. A court is likely to find that there has been a taking if the government's interference with the property divests the owner of a "stick in the bundle of property rights", denies the owner all economically valuable use of the land, or can be characterized as a physical invasion.

The Montana Supreme Court, in McElwain v. County of Flathead,⁶ adopted a takings standard similar to the standards established by the United States Supreme Court in various decisions.⁷ In McElwain, a plaintiff challenged as a taking a land use regulation requiring a setback between a drain field and a flood plain. To determine whether a land use regulation was properly invoked, the Montana Supreme Court adopted a standard providing that the regulation must be substantially related to the legitimate state interest of protecting health, safety, morals, or the general welfare of the public and that the regulation must use the least restrictive means necessary to achieve the end without denying the property owner the economically viable use of

the land. Under the McElwain standard, the adoption of a repatriation provision must be reasonably related to a legitimate state interest of protecting the health, safety, morals, or general welfare of the public and must use the least restrictive means to accomplish that purpose.

The courts have not generally granted a taking for claims arising from archaeological site protective measures. In 1990, in People v. Van Horn, a professional archaeologist unsuccessfully challenged California's Native American artifact protection statute on Fifth Amendment grounds, alleging that the statute deprived him of his right to practice his profession.⁸ Similarly, in Thompson v. City of Red Wing,⁹ a Minnesota court held that a city's application of the state's human burial protection statute did not constitute a taking when the city refused to grant a conditional use permit to extract gravel from a portion of private property containing a large Indian burial mound.

In applying this "takings" analysis to the expansion of state law to include a repatriation provision, the question is whether a repatriation provision uses the least restrictive means necessary to provide for the return of human remains and burial material without denying property owners the economically viable use of their property. Both common law and court cases make it unlikely that a landowner can claim a vested property right in human remains and possibly associated burial materials, nor is it likely that a court would find that descendants purposely abandoned a burial site or objects placed in a burial site. As a result, if no legal right to the property exists, a taking of private property cannot occur.

PART III: **FEDERAL REPATRIATION LAW**

In 1986, a number of Northern Cheyenne leaders discovered that almost 18,500 human remains were warehoused in the Smithsonian Institution.¹⁰ This discovery served as a catalyst for a national effort by tribes and organizations to see legislation enacted to repatriate those remains and cultural artifacts to tribes and descendants of the deceased.

In 1990, Congress enacted the Native American Graves Protection and Repatriation Act¹¹ that provides detailed procedures and legal standards governing the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony and that provides for the protection and ownership of materials unearthed on federal and tribal lands after the effective

date of the Act. Under the Act, "tribal land" is defined as all lands within the exterior boundaries of any Indian reservation, all dependent Indian communities, and any lands administered for the benefit of Native Hawaiians.¹²

The Act requires federal agencies, excluding the Smithsonian Institution, and museums, including state and local government and educational institutions, to prepare an inventory of all items within their possession and to return human remains and associated funerary objects at the request of a lineal descendent, Indian tribe, or Native Hawaiian organization. Further, the agency or museum must, to the extent possible, identify the geographical and cultural affiliation of the items. "Federal agency" includes any department, agency, or instrumentality of the United States, while "museum" includes any institution or state or local government agency, including any institution of higher learning, that receives federal funds and has possession of or control over Native American cultural items.

Under the Act, "*associated funerary objects*" are defined as "objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with the individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered associated funerary objects".¹³ If a museum or agency inventory does not establish the affiliation of the human remains or associated funerary objects, the tribe or Native Hawaiian group may still obtain the return if it can prove, by a preponderance of the evidence, that it has cultural affiliation with the item.

Additionally, the Act provides a mechanism for federal agencies and museums to repatriate unassociated funerary objects, sacred objects, and items of cultural patrimony pursuant to a four-step process. Under the Act, "*unassociated funerary objects*" are defined as "objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the human remains are not in the possession or control of the federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of a individual culturally affiliated with a particular Indian tribe".¹⁴ "*Sacred objects*" are "specific ceremonial objects which are needed by traditional Native American religious leaders

for the practice of traditional Native American religions by their present day adherents".¹⁵ The Act defines "*cultural patrimony*" as "an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself".¹⁶ The object must have been considered "inalienable" by the Native American group when the object was separated from the group, rather than property that was owned and transferrable by an individual Native American. Tribal law or custom is used to determine the legal question of alienability at the time that the item was transferred.

As a first step, a claimant must show that the item claimed is an unassociated funerary object, sacred object, or item of cultural patrimony. Once it has been shown that an item is an unassociated funerary object, sacred object, or item of cultural patrimony, step two either requires that the cultural affiliation must be determined or, in the case of sacred objects and items of cultural patrimony, requires that the requesting Native American tribe or organization must show that the item was previously owned or controlled by the tribe or organization or a member of the tribe or organization. A direct lineal descendant may also request repatriation of a sacred object owned by an ancestor.

Step three then requires the claimant to present evidence that, if standing alone before the introduction of evidence to the contrary, would support a finding that the federal agency or museum did not have the right of possession¹⁷ of the items. The definition does not apply in the rare instance when its application would result in a Fifth Amendment taking of private property for a public purpose without just compensation. If there would be a taking within the meaning of the constitutional provision, applicable federal, state, or tribal law would apply. In this instance, however, the party asserting the taking would be required to obtain a ruling from the Court of Claims before federal, state, or tribal laws would be used to replace the statutory standard.¹⁸ In sum, the definition of "right of possession" is designed to ensure that the object did not pass out of tribal or individual Native American possession without appropriate consent.

If a claimant surmounts these three hurdles, the fourth step places a burden upon the museum or agency to prove that it has a right of possession to the items in question. If the museum or agency cannot prove a right of possession, the unassociated funerary object, sacred object, or item of cultural patrimony must be returned unless the scientific or competing claims exceptions apply. The Act does not prevent agencies or museums from entering into agreements with tribes and organizations regarding any object or item. In an attempt to satisfy the scientific

community, which argued that repatriation would adversely affect specific scientific studies, such as paleoepidemiology, while attempting to avoid needless delay in repatriating remains, the Act requires remains to be returned within 90 days after the date on which the scientific study is completed.

As a result, provisions of the federal law require that requests for repatriation come from the Native American community. The crucial questions under the federal Act is whether the item subject to inquiry meets the definition provided under the Act and whether transfer of possession of the object could occur under tribal law at the time of transfer.

In applying the provisions of the law to Montana, the federal Act would apply to all Montana institutions receiving federal funding, including the Montana University System and museums. The Act has no impact on state or private museums not receiving federal funding or on private collections unless "trafficking" or "marketing" of protected items is involved.

STATE REPATRIATION LAWS

Although approximately 35 states, including Montana, have enacted human remains and burial protection legislation, to my knowledge only the states of California, Hawaii, Kansas, Nebraska, and Arizona have enacted repatriation statutes. Three of the statutes were passed in response to specific repatriation and reburial matters and three are considered to be general repatriation laws.

Hawaii

Under its historic preservation laws,¹⁹ the state of Hawaii appropriated \$5 million to purchase a Native Hawaiian burial ground owned by a private developer who had unearthed over 900 remains on a site on which the developer planned to build a hotel. The fact that an appropriation was necessary implies that the state's action to protect the burial site resulted in denying the developer all economically viable use of the land, thus requiring compensation.

Kansas

Similarly, in 1989, Kansas passed implementing legislation concerning a burial agreement between state officials, the owner of a tourist attraction displaying the remains of 165 Indians from a burial ground, and three Indian tribes that provided that the dead would be reburied by the descendant tribes.²⁰ In 1991, Kansas enacted legislation to allow the Kansas Historical Society

to deaccession and to repatriate Pawnee Indian remains in its collection that had been obtained from vandalized graves.²¹

Nebraska

In 1989, Nebraska enacted the nation's first general repatriation statute,²² which required all state-recognized museums to repatriate "reasonably identifiable" remains and grave goods to tribes of origin upon request. Under Nebraska's repatriation law,²³ the Pawnee Tribe repatriated and reburied over 400 Pawnee dead from the Nebraska Historical Society. In addition, Nebraska has adopted a general repatriation policy with two specific provisions related to repatriation. One provision requires any institution, agency, organization, or other entity in the state that receives federal funding or official recognition from the state or any of its political subdivisions and that has in its possession or control any disinterred human skeletal remains or burial goods of American Indian origin that are reasonably identifiable as to familial or tribal origin, regardless of present location, to return the remains and goods for reburial upon request of the relative or Indian tribe.²⁴ The second provisions requires any institution, agency, organization, or other entity in the state that receives a request for the return of human skeletal remains or burial goods to provide the requesting relative or Indian tribe with an itemized inventory of any human skeletal remains and burial goods subject to return.²⁵ However, Nebraska's repatriation provisions do not apply to private land or objects held by private collectors.

Arizona

In 1990, Arizona enacted a statute to repatriate human remains, funerary objects, sacred objects, and objects of tribal patrimony.²⁶ One section of the Arizona repatriation law applies to human remains, funerary objects, sacred ceremonial objects, and objects of national or tribal patrimony that were excavated on state land prior to enactment of the 1990 legislation and that were deposited in the state museum or with one of the state universities before the statutory repatriation rights existed. The same repatriation provisions apply to Indian materials in the possession and ownership or control of the state that were discovered after 1990.²⁷ A second provision in Arizona's law regulates the excavation of certain material on privately owned land.²⁸ The private land provision applies only to excavation and repatriation of human remains or funerary objects. As discussed earlier, it is arguable that human burials provide the strongest case for the state's assertion of authority to control the disposition of material excavated on private property. Arizona attempted to provide a mechanism for the repatriation of human remains and funerary objects taken from burial sites on private land prior to 1990.²⁹ However,

pressure from private landowners and private collectors eventually limited repatriation to human remains and funerary objects excavated after the effective date of the Act.

California

In 1991, California enacted a law that makes it the policy of the state to repatriate Native American remains and associated grave artifacts.³⁰ In announcing passage of the California law, the sponsor stated that:

[N]o other race has had to endure the injustice that the Native American community has had to suffer in knowing that their relatives' and ancestors' skeletal remains are lying in a box in some university or museum, when what they deserve is a proper burial by their loved ones. . . . The passage of this bill is the first step in the settlement of a long-overlooked human rights issue.³¹

CONCLUSION

With passage of the Human Skeletal Remains and Burial Site Protection Act in 1991, Montana joined approximately 35 other states in establishing a policy and procedure for protecting from disturbance or destruction all human remains, burial sites, and burial materials in marked or unmarked graves or burial sites located on state or private lands. The legislation protects burial sites and provides a process for addressing all human remains, regardless of ethnic origin, burial context, or age, that are inadvertently disturbed after 1991. However, Montana's law did not include a repatriation provision for human remains or burial material taken from burial sites before 1991.

The federal government and five states have adopted repatriation laws. The 1990 federal law provides a mechanism for federal agencies and museums receiving federal funding to repatriate human remains and cultural items, but does not apply to those remains or items held by state agencies and museums not receiving federal funds or to items held in private collections unless "trafficking" or "marketing" of protected items is occurring.

From a brief analyses of the five state repatriation statutes, it appears that Arizona enacted two repatriation provisions that supplement the federal act. The first provision requires state agencies and museums to repatriate human remains, funerary objects, and other sacred objects excavated on state land prior adoption of the state's repatriation legislation in 1990 and applies

the same repatriation provisions to Indian items in the possession of the state after the effective date of the Act. A second provision attempted to regulate and similarly repatriate human remains and associated funerary objects excavated on privately owned land prior to 1990. However, pressure from private collectors and landowners resulted in amendments to limit its application to human remains and funerary objects collected after 1990.

Certainly, based on the free exercise clause of the First Amendment, common law, court cases, and Montana's constitution commitment to preserve American Indian cultural integrity, the state of Montana can adopt a general policy addressing repatriation of all human remains and probably associated funerary objects currently in the possession of state agencies and state museums prior to 1991 with little fear of a successful "takings" argument being raised. Curation of Indian remains violates an American Indian's freedom to exercise his or her constitutionally protected religious beliefs because of the strong belief that an unburied body is not at rest. Common law and court cases do not recognize a property right or ownership of human remains and arguably would not recognize a property right in associated funerary objects.

Based on the same constitutional provisions and common law arguments, it is also arguable that Montana can enact a repatriation provision affecting human remains and funerary items that were taken from burial sites prior to 1991 and that are currently held by private museums and collectors without a taking occurring if the repatriation is limited to human remains and possibly associated funerary objects or burial material. Extending repatriation to unassociated funerary objects, sacred objects, and cultural patrimony held by private museums or private collectors may prove more difficult and raise "takings" arguments because of the inability to establish by a preponderance of the evidence that the objects were taken from a burial site.

While drafting of a state repatriation statute is legally possible, I suspect that, as in Arizona, there will be "takings" claims raised by the private collectors and political pressure to protect private holdings. As a result, the repatriation language must be carefully crafted to limit any "takings" argument that can be raised. As a result, if a repatriation statute is proposed for the 2001 Legislature, I recommend that:

(1) Staff and interested persons analyze both the federal repatriation act and other state repatriation laws, with particular focus on the laws of Arizona and Nebraska, for possible guidance and application to Montana.

(2) Staff and interested person review the language in the 1991 Human Skeletal Remains and Burial Site Protection Act to provide any amendments, if necessary, to close existing loopholes and to possibly accommodate a repatriation provision.

While the 1991 legislation is working well, the law was intended to protect unmarked and, as yet, undisturbed burial sites. The purpose of a repatriation provision is to address and hopefully return those human remains and associated burial objects taken from sites disturbed prior to adoption of the Act. As an example, current law defines "burial material" as "any item found *at* the burial site or *with the human skeletal remains* and directly associated with the burial or burial site". The definition may work well to protect a newly discovered burial site from disturbance, but if applied to a repatriation provision, it may create an unintended loophole for items that are "known" to be part of a burial site, but that may have been separated from the original site or from human skeletal remains. Therefore, if drafted to stand totally separate from the current burial site protection law, a repatriation provision may need to include its own definitions. If included as an extension of the burial site protection law, the definitions contained in section 22-3-803, MCA, may need to be amended to make sure that they cover situations arising in the context of repatriation.

(3) Staff and interested persons coordinate with staff in the Attorney General's Office in drafting the language for a repatriation statute to avoid any "takings" claims.

If the statute is challenged, the Attorney General's Office will be responsible for defending the statute against any "takings" claims. That office has already prepared guidelines on takings related to real property for agencies to consider prior to taking state action. Such coordination would ensure that the repatriation provisions and any necessary amendments to the 1991 Human Skeletal Remains and Burial Site Protection Act would preclude any unintended takings arguments.

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ENDNOTES

1. People v. Van Horn, 218 Cal. App. 3d 1378 (1990); Charrier v. Bell, 496 So. 2d 601 (La. App. 1 Cir. 1986), cert. denied, 498 So. 2d 753 (La. 1986).
2. 496 So. 2d 601 (La. App. 1 Cir. 1986), cert. denied, 498 So. 2d 753 (La. 1986).
3. "Without Ethics and Morality: A Historical Overview of Imperial Archaeology and American Indians", Riding In, 24 Ariz. St. L.J. 11, 13 (1992).
4. *Id.*
5. Article X, section 1(2), of the Montana Constitution provides:
(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
6. 248 Mont. 231, 811 P.2d 1267 (1991).
7. See Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978), Agins v. City of Tiburon, 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980), and Nollan v. California Coastal Commission, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed 2d 677 (1987).
8. See People v. Van Horn, *supra* at note 1.
9. 455 N.W. 2d 512 (Minn. Ct. App. 1990).
10. "The Native American Graves Protection and Repatriation Act: Background and Legislative History", Trope and Echo-Hawk, 24 Ariz. St. L.J. 35, 54 (1992).
11. 25 U.S.C.A. 3001 through 3013 (1990).
12. 25 U.S.C.A. 3001(15).
13. 25 U.S.C.A. 3001(3)(A).
14. 25 U.S.C.A. 3001(3)(B).
15. 25 U.S.C.A. 3001(3)(C).
16. 25 U.S.C.A. 3001(3)(D).
17. "Right of possession" is defined as possession obtained with the voluntary consent of an individual or group that had authority of alienation. 25 U.S.C.A. 3001(13).
18. *Id.*

19. Chapter 6E-43.6 Haw. Laws.
20. Kansas Appropriations Act of 1989 (Senate Bill No. 39 & Senate Bill No. 68).
21. Senate Bill No. 7, Kansas, 1991.
22. Neb. Rev. Stat. section 12-1201 (1990). See also "The Legal Basis, Legislative History, and Implementation of Nebraska's Landmark Reburial Legislation", Peregoy, 24 Ariz. St. L.J. 329 (1992).
23. Neb. Rev. Stat. sections 12-1209 and 12-1210 (1990).
24. Id. 12-1209 (1990).
25. Id. 12-1210 (1990).
26. Ariz. Rev. Stat. Ann. Section 41-844, 41-865 (1992). See also "1990 Arizona Repatriation Legislation", Bender, 24 Ariz. St. L.J. 391 (1992).
27. Id. section 41-844(F), (K).
28. Ariz. Rev. Stat. Ann. section 41-865 (1992).
29. Telephone conversation with Lynn Teague, Arizona State Museum, July 25, 2000.
30. California Pub. Res. Code, section 5097.99 (1991).
31. Letter from Richard Katz, California Assemblyman, to Walter Echo-Hawk, Attorney, Native American Rights Fund (Sept. 18, 1991), reprinted in "The Native American Graves Protection and Repatriation Act: Background and Legislative History", Trope and Echo-Hawk, 24 Ariz. St. L.J. 35, 54, footnote 94 (1992).