



Grassroots Social Action and the National Museum of the American Indian

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Citation	Edwards, Alison Jane. 2015. Grassroots Social Action and the National Museum of the American Indian. Doctoral dissertation, Harvard Graduate School of Education.
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Grassroots Social Action and the National Museum of the American Indian

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Charles Vert Willie
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A Thesis Presented to the Faculty
of the Graduate School of Education of Harvard University
in Partial Fulfillment of the Requirements
for the Degree of Doctor of Education

2015

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To the many generations of activists whose work led to the creation and continued vitality of the NMAI, and to the extraordinary leadership, staff, trustees and supporters of and contributors to the NMAI, past, present and future, whose work brings it to ever-changing life.

I acknowledge here the debt I owe to so many, from whom I have learned so much. To begin I am grateful to and inspired by all those who appear in these pages and who so generously allowed me access to their important work. My heartfelt gratitude to my incredible committee Shari Tishman, Charles Willie and John Collins for their invaluable support and guidance and to Gary Orfield for his early invaluable support and direction. I am deeply thankful to Lawrence E. Sullivan, formerly the director of the CSWR, and to all the brilliant leaders, scholars, students, artists and colleagues we were blessed to gather and to first work with, learn from and publish there during the religion and the arts research initiative and the museum of religion project, to the many NMAI staff and advisors that I have been so lucky to work with, with a special thank you to Terry Snowball, to Ronne Hartfield, Kimberly Patton, and all my life-changing mentors and teachers, my ever-generous friends and colleagues, to my amazing husband, son and our extended family.

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Abstract

Museums are educational institutions that, historically, have often reflected dominant-culture biases in their treatment of religious artifacts and human remains from Native societies (Bal, 1996; Bieder, 1986, 1996; Bilosi & Zimmerman, 1997; Bray, 1995; Cornell, 1988; Edwards & Sullivan, 2004).

In 1989, the National Museum of the American Indian Act became law after years of sustained activism to protect basic human, cultural and civil rights for Native peoples, including the rights to religious freedom and equal protections for the sanctity of Native graves and Native dead. The Act established the Smithsonian National Museum of the American Indian (NMAI), recognized Native rights to specific categories of sensitive materials, and required Native participation and agency in the new organization, whose mission includes supporting the health and vitality of contemporary Native cultures.

This dissertation is a case study of the grassroots social action of Native Americans that uses Charles Vert Willie's theory of grassroots social action to illuminate how and why the grassroots social action of Native Americans was successful in fulfilling the goal to reform museum practice through the enactment of federal law (Willie, Ridini, & Willard, 2008). My overarching research interest is how public educational institutions can transform themselves in response to the legislative demands and court orders for social justice initiated by grassroots population groups.

This historic case, examined through the lens of a well-formulated theory and involving the agency of grassroots social action and the transformation of museum policy, is of value and interest to many types of grassroots movements, both in education and in other social systems. In particular, knowledge of what obstacles activists faced and may continue to face, what strategies have successfully been employed to meet these obstacles, and what

lessons have been learned by those involved in this unique case, can be of value to others who similarly seek to transform institutions in order to promote civil and human rights.

Introduction

In 1989, the National Museum of the American Indian Act (hereafter the Act) became law after years of sustained grassroots activism catalyzed by what I will refer to as the Native American human and cultural rights movements of the 1970s and 1980s (Fine-Dare, 2002; Gerstenblith, 2002). Native activists sought protections for basic human, civil and cultural rights for Native peoples, including rights to religious freedom and equal protections for the sanctity of graves of deceased Native people (Echo-Hawk & Echo-Hawk, 1994; Fine-Dare, 2002; Force, 1999; Harjo, 2004; Riding In, Seciwa, Harjo, & Echo-Hawk, 2004).

The usual conventions of U.S. museum practice regarding Native human remains and sacred objects have often been classified as desecration by Native peoples (Drumheller & Kaminitz, 1994; Harjo, 1992; Pepper-Henry, 2004; Smith & Wobst, 2005). Museum possessions such as human remains, objects of cultural patrimony, sacred objects, and funerary objects are important to tribes for religious and cultural reasons (Clavir, 2002; McMaster, 1995; Pepper-Henry, 2004). The display and/or preservation of these sacred items in museums, some Native Americans believe, is an act of spiritual violence and cultural warfare against them and their religions (Greenberg, 2004; Harjo, 1992). Moreover, tribes have found it exceptionally difficult to access or obtain information about sacred objects and human remains held in museum collections (Harper, 2000; Hurst Thomas, 2000; Trope & Echo-Hawk, 1992). Reforming these practices has been foremost among goals of the Indian human and cultural rights movements (Champagne, Johnson, & Nagel, 1997; Means, 1995; Perry, 1996; Steiner, 1968).

The passage of the NMAI Act is a direct extension of Native grassroots activism leading to the successful passage of the 1979 American Indian Religious Freedom Act (AIRFA) and involved an array of tribal and pan-tribal groups, including Native traditional religious leaders and Native legal and policy experts, working with allies within academia and the US government. This battle took place against a backdrop of a wave of Native activism across the country that called attention to racial bias in U.S. law and policy toward Native Americans through protest actions, legal actions and initiatives such as expanded Native studies programs on university campuses (Bray, 2001). This wave of activism originated from many points at once, from political and traditional leaderships across Indian Country and urban movements in cities throughout the U.S.

Native activists seeking equal protection of Native graves and the respectful and just disposition of cultural objects held by museums gained power in the 1970s and 80s by transitioning from an emphasis on protest actions to litigation (Trope & Echo-Hawk, 1992). Lobbying and litigation were supported by the wider Native rights movement's previous efforts to uncover rights violations and by new scholarship emerging from academia documenting abuses (Bray, 2001). Activists' lobbying efforts and litigation led to multiple state laws protecting unmarked graves and regulating museums (Trope & Echo-Hawk, 1992).

The 1989 Act was the first federal repatriation law. The Act established the Smithsonian National Museum of the American Indian (NMAI) by transferring title of the extensive collections of the former Museum of the American Indian (MAI) in New York to the Smithsonian. Previously, MAI's trustees had sought to transfer the MAI's collections of over 800,000 objects to other museums due to ongoing financial challenges; talks with the American Museum of Natural History and others had failed. Influential activists on the MAI

board worked with the trustees and many others, including their strong ally U.S. Senator Daniel Inouye, then Chairman of the Senate Committee on Indian Affairs, to move the MAI to the Smithsonian. Native activists testified before Congress that the legislation authorizing the transfer should include requirements that Native Americans be represented and included in decisions about the disposition—and potentially the repatriation (the transfer of ownership to tribes)—of Native American human remains, funerary objects, sacred objects, and cultural patrimony (Echo-Hawk, 2004; Pepper-Henry, 2004; West, 2004). The 1989 Act as amended by the Senate incorporated these requirements for the Smithsonian. It was followed a year later by the Native American Graves Protection and Repatriation Act (NAGPRA), which included the same requirements noted above but applies to all federally funded institutions, which includes most museums and universities in this country.

The successes of Native activists may be attributed in part to a larger political structure, the civil rights movement, in which this issue is situated. The civil rights movement was concerned with social change regarding racial injustice in the United States. The Native American activism working toward the passage of the NMAI Act focused strategically on reform in museums and universities holding collections of sacred objects and human remains of Native Americans. But importantly, this agenda represents just one of many sets of priorities for the wider Native Indian Rights movement, which include (but are not limited to) equal access to quality health care and education for Native peoples, protection of sacred sites, and upholding the terms of treaties.

Some NMAI trustees and staff were influential in the activism leading to the passage of the law; many staff are sympathetic to the goals of the movement. The movement not only successfully catalyzed a shift in museum practice broadly, in effect, it appropriated a national, federal museum through the creation of the new NMAI. The NMAI, much-

discussed in the museum field for its innovative practices and known in the literature as the “museum different,” (Kaminitz, 1992; Cobb, 2005) is thus largely the product of the movement, and consequently identifies with the movement.

This dissertation uses Charles Willie’s theory of grassroots social action to interpret a case study that illuminates how and why the coalition of activists working toward the passage of the NMAI Act was or was not successful in fulfilling its goal to reform museum practice through the enactment of federal law.

In *Theories of Human Social Action* (1994) and *Grassroots Social Action*, Willie and his associates (Willie, Ridini, & Willard, 2008) define grassroots organizations as “any group with limited resources and restricted access to the community’s bureaucratic structures” (p.x), and assert that such activism is fundamental to the functioning of a healthy society (p. ix). The theory outlines a menu of three critical stages that are essential in successful community reform and explains how movements can successfully move through the stages. The three major stages of effective grassroots social action are designated as: *initiation* (identify goals and select leaders), *legitimation* (build allied relationships and broker conflicts), and *implementation* (create institutional change by implementing law or establishing new public policy) (Willie, 1994; Willie et al., 2008).

In this dissertation study, I examine a single case study using these stages of social action to determine how and why the grassroots action of Native Americans toward the passage of the NMAI Act was or was not successful. I will consider if the federal Act that was a result of the movement and the museum’s initial policies reflect the movement’s central goals.

Willie’s recent work on grassroots social action focuses on educational and political issues. Several elements make this theory particularly suited for an analysis of what I am

terming the Native American human and cultural rights movement. First, the museum field has identified education as a central concern in all museums' missions (American Association of Museums, 1992; American Association of Museums, 2000;¹ AAM Standing Professional Committee on Education, 2002 and 2005; Garcia, 2010; Eger, 2014). Second, the movement identifies the achievement of human, cultural and civil rights aims for Native Americans as central goals in redirecting museum policy and practice. Third, the theory focuses on the interrelationships and interdependencies of events that take place from the beginning of a grassroots movement to its closure. The theory points to specific criteria for success in the three stages it defines for grassroots social movements: *initiation*, *legitimation* and *implementation* (See *Figure 1* on pages 14–15 of Chapter 2). This makes it a valuable tool for understanding and interpreting historic events.

As is true for any theoretical framework, because the theory focuses attention on a set of specific criteria (in this case including but not limited to criteria associated with the movement's leaders, goals, strategies and allies) other dimensions of the rich and complex movement are left out of this particular narrative. Many others employing alternate theoretical frameworks will create many different and valuable contributions to the understanding of the movement. Further, because the movement is broad and diverse, I cannot begin to capture the movement's many significant leaders, actors, and events in the limited space of this dissertation. I rely instead on the analysis of individual and organizational exemplars to present one facet of a complex set of circumstances. Countless

¹ "Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited" (American Association/Alliance of Museums, 2000, para. 2).

people contributed to the movement's successes, and their stories will continue to be told in myriad ways by many others to the enrichment of all.

The NMAI is a uniquely significant site for education research. It is the first and only national museum in the United States whose founding federal legislation mandates that groups culturally affiliated to its collections should be included in decisions about the disposition—and potentially the return—of cultural materials. My overarching research interest is to discover how a public museum, as an educational agency, can transform itself in response to the legitimate demands of some of its patrons for social justice. The historic and unique nature of this case, examined through a well-formulated theory, may be of interest and value to leaders of grassroots social movements, museums, and other cultural institutions who similarly seek to reform public institutions in order to promote civil and human rights.

Chapter Two: Research Design

Gaps

Lack of attention to grassroots social movements

Willie et al. (2008, p. 13) argue that education researchers have “given insufficient attention to grassroots social actions and their different kinds of adaptations,” and that this serious omission should be addressed in new research. In a review of the museum studies literature I find a similar lack of attention. Recent museum theory does redefine museums as primarily educational institutions with a civic responsibility to uphold social justice and lead social change (Gurian, 1990; Kurin, 1997; Weil, 1999; West 2004), and much attention has been devoted to educational outreach (American Association of Museums, 1992; Williams, 1996), museum-community partnerships (Bernstein, 1991; Boyd, 1999), and the creation of culture-specific museums (Loukaitou-Sideris & Grodach, 2004). Still, museum educational research has rarely been focused on the grassroots social movements that can transform pre-existing museum policy and practice. This case study focuses on how grassroots social movements among Native Americans led to the creation and implementation of significant change in policy. This study on museums as educational agencies and their policy-making processes that are becoming more culture-sensitive will contribute to current research.

Gaps in research regarding the Native American Cultural Rights Movement

Unlike other U.S. human and civil rights movements, Indian Rights grassroots movements seek to affirm tribes’ status as sovereign nations as intended in the terms of treaties made between tribal governments and the U.S. government. At the same time, Indian Rights grassroots movements are similar to human and civil rights movements launched by other minority groups that seek equality and equal protection under existing U.S. laws.

The Indian Rights movements of the 1960s, 1970s and 1980s, building upon centuries of resistance by Native people, sought to affirm and protect their rights to religious freedom, to enforce equal protections of laws, including laws pertaining to graves, and recognition of tribes' status as sovereign nations with attendant rights to self-governance and cultural continuity (Champagne *et al.*, 1997; Cornell, 1988; Harjo, 2004; Mandosa, 1993). Recently, equal access to cultural property is also defined as a human right (Hutt & McKeown, 1999). Within the broader context of the broader Indian Rights movement, what is generally described in the literature as the repatriation movement, but that I will refer to as the Native American cultural rights movement, builds momentum during the late 1970s and the 1980s. The movement focused on Native human, cultural and civil rights—including religious freedom—through reform within museums and the academy (Echo-Hawk & Echo-Hawk, 1994; Trope & Echo-Hawk, 1992).

In reviewing the repatriation literature, I found scholarly attention to the historic context that led to the cultural rights movement, to the movement's goals, and actions taken. Activists in the Native American cultural rights movement, including a coalition of tribes and pan-tribal agencies, testified in support of new legislation governing museums and universities. These were their objectives (Fine-Dare, 2002; Riding-In *et al.*, 2004; Trope & Echo-Hawk, 1992):

- Recognize the human rights violations perpetuated by the U.S. government that led to the removal of human remains and cultural objects from the oversight of tribes.
- Return Native remains in museum collections to tribes and institute new standards for appropriate care such that Native human remains are treated respectfully as the remains of human beings, not scientific specimens.
- Return sacred objects to tribes, including those important to the survival of Native

cultures, religions and languages.

- Recognize Native worldviews as vibrant knowledge systems that are not “primitive” or inferior to Christian beliefs or Western scientific knowledge.
- Recognize that Native cultures continue to survive and flourish today and uphold Native human and cultural rights.

However, I found that the literature did not often address aspects of the movement’s leadership corresponding to the theory, including their leadership qualities, and the process leaders followed to identify goals. This case study addresses these gaps.

Gaps in research regarding NMAI’s policy formation

Due to its historic precedent and programmatic innovations, there is an expanding body of literature specifically devoted to the NMAI. However, I find that although many authors have focused upon the NMAI’s mission, exhibition planning process and content (Smith 2008; Cobb, 2005; Evelyn & Hirsch, 2006; Hinson, 2005; Ostrowitz, 2005; Phillips, 2008; Rader, 2011), the design of the new building and the consultations that informed that work (Erikson, 2008; West, 2004), education programs, new methods for conservation and community partnerships (Archuletta, 2008; Drumheller & Kaminitz, 1994), the formation of the museum’s policies have not been a major focal point in the literature. Since the museum’s policies inform every aspect of its programmatic life and interactions with its constituencies, this case study addresses this gap by analyzing the museum’s founding legislation, first mission statement, architectural program, early collections management policy; and first repatriation policy.

Research design

This case study has three parts, following the framework of Willie's theory, which outlines three stages of development. For this explanatory single-case study, my unit of analysis is the cultural rights movement itself. In terms of the theory, the movement's formation corresponds to the *initiation* phase, the establishment of the Act corresponds to *legitimation*, and the creation of the museum's policy corresponds to *implementation*. The theory provides the logic that links the data to my proposition and to the criteria for interpreting my findings.

Research questions

My research questions for this study correspond directly to the three stages of the theory of grassroots social action. Given that the Act is the result of activism directed by a social movement, and also of collaboration, cooperation—and compromise—between Native peoples, representatives of Congress, and leaders of museums and academia, my questions are:

1. How does the Native American cultural rights movement leading to the establishment of the NMAI meet the criteria Willie identifies for success during the *initiation* phase?
2. How does the movement meet the criteria Willie identifies for success during the *legitimation* phase?
3. How does the movement meet the criteria Willie identifies for success during the *implementation* phase?

Theoretical lens

In *Grassroots Social Action* Willie et al. (2008) use a case study approach to describe the dynamics of social movements leading to bureaucratic reform in educational institutions.

Willie's theory of grassroots social action builds on his previously-articulated theories of human social action (1994), which describe a democratic society shaped by a constant interplay between what he terms dominant and subdominant people of power. Willie describes dominant people of power as oriented to serving the needs of the wider community, and subdominant people of power as oriented to serving the needs of the least privileged in society. Both dominant and subdominant actors are needed to create social transformation through interactions of ongoing societal division and cohesion (Willie, 1994).

Within this cyclic system of division and cohesion, Willie defines three sequential stages of decision-making within movements: *initiation* (the identification of leadership and formation of goals of the movement), *legitimation* (which involves building allied relationships and brokering conflicts) and *implementation* (institutional change through the implementation of law or policy) (Willie, 1994; Willie et al., 2008).

Movements may progress from one stage to another in accordance with the theory's overarching principles of inclusion and interdependence. While a few individuals may be involved in all stages of grassroots social action, each stage requires a different group. Activities of a new stage may begin before all activities of a past stage are finished (Willie, 1994; Willie et al. 2008). However, we may note that:

- A movement may progress from stage one to stage two if it identifies strong leaders and builds consensus among its membership to agree upon specific goals and action steps.
- A movement may progress from stage two to stage three if opposition is neutralized and allied support and approval for the movement's goals are secured.
- A movement can succeed in stage three if the implementation of policy or law meets the initial goals for justice articulated by the movement.

Criteria the theory identifies for success in each of the three stages are outlined below in *Figure 1*.

Figure 1: Theory of Grassroots Social Action: Stages and Criteria for Success

<i>Stage</i>	<i>Criteria for success</i>
Initiation	<p>Leadership:</p> <ul style="list-style-type: none"> • Complementary ability to work for both social change and social stability • Multicultural life experience • Commitment to ideals • Skills including the ability to listen, to set reasonable goals, and to broker consensus <p>Identifying goals:</p> <ul style="list-style-type: none"> • Identifying common interests • Agreeing on shared goals • Building consensus on actions to be taken
Legitimation	<p>Inclusion:</p> <ul style="list-style-type: none"> • Involving stakeholders • Continuing to build consensus • Refining the movement's goals and strategy <p>Horizontal and vertical connections:</p> <ul style="list-style-type: none"> • Gaining allies • Building coalitions • Developing access to resources <p>Neutralizing opposition:</p> <ul style="list-style-type: none"> • Successful mediation • Principled negotiation • Flexibility regarding tactics
Implementation	<p>Inclusion. The implementation of reform includes:</p> <ul style="list-style-type: none"> • Those who initiated the movement • Those in society that it sought to protect <p>Elements of earlier stages are continued:</p> <ul style="list-style-type: none"> • Horizontal and vertical linkages to retain allies and needed resources • Mediation of conflict • Planning & resources devoted to implementation, so that the movement remains mobilized <p>Sources: Willie, 1994; Willie et al., 2008</p>

Site Selection: The Smithsonian National Museum of the American Indian

As noted earlier, as the first and only U.S. national museum whose founding federal legislation mandates the inclusion of groups culturally affiliated to collections in decisions about the disposition—and potentially the return—of cultural materials, the NMAI is a uniquely significant site for education research.

The NMAI seeks to fulfill its educational mission through many activities. It educates the general public about Native cultures through exhibitions and educational programs and develops and delivers curricula to schools to educate children nationwide regarding Native cultures (NMAI, 2008). It preserves and perpetuates Native cultural knowledge by teaching Native languages, establishing programs of repatriation and traditional care for collections, producing and publishing new scholarship that advances knowledge and trains new specialists in the field, and serving as a forum for the articulation of living cultural practices and art forms (Hirsch, 2006; West, 2004).

Data Collection

All data for my study were collected, with IRB approvals when applicable, between January 2001 and September, 2009. My research questions guided the selection of my data, as outlined below.

Figure 2.

Research Question	Data to be analyzed
Research Question 1 (<i>initiation</i>)	<p>Documents of the Native American Rights Fund, including:</p> <ul style="list-style-type: none"> • annual reports • internal memoranda • video <p>Interviews with individuals affiliated with the movement.</p> <p>Indian Rights and “Repatriation Movement” literature.</p>
Research Question 2, (<i>legitimation</i>)	Documents including:

	<ul style="list-style-type: none"> • 15 Congressional hearing records (see Appendix B) Indian Rights and “Repatriation Movement” literature.
Research Question 3, (<i>implementation</i>)	Documents including: <ul style="list-style-type: none"> • The 1989 Act • The museum’s first mission, program and policies Interviews with museum staff.

Interviews. I conducted interviews with two groups of informants.

Group one is individuals associated with the movement. These include members of the Native activist community and the museum community, as well as officers of the Smithsonian. For this study I interviewed key individuals representing each of the above groups who also testified in the legislative hearings leading to the Act’s passage or its oversight. All but one of these interviews were recorded and transcribed verbatim. In one instance the interviewee preferred that I not record our interview; in this case I took detailed notes. (These individuals and their biographies are in Appendix G. My interview guide for group one is in Appendix F, and IRB approvals are in Appendix A).

Interview group two consists of museum staff. As part of a collaborative research project I facilitated with three museums (see Appendix I), I conducted interviews with primary colleagues at the museum regarding their policy development process, and drew on this material as needed.

All staff interviews were recorded and transcribed verbatim.

Documents.

In this case study I analyzed: transcripts of fifteen Congressional hearings; the museum’s 1990 mission statement, 1990 architectural program; 1995 collections policy, 1991

repatriation policy; internal memoranda and publications from the Native American Rights Fund; and the text of the 1989 Act.

The fifteen Congressional hearings I reviewed are listed in Appendix B. I reviewed early versions of the museum's policy documents, mission and architectural program and due to my focus on the initial creation of the museum did not seek to evaluate changes over time. I reviewed documents of the Native American Rights Fund (NARF), whose lawyers played a leading role in framing the Act. In May, 2008 I visited the NARF law library in Boulder, CO. I collected memoranda, annual reports, newsletters and videotapes documenting the organization's participation in the movement. Finally, I review the text of the 1989 Act itself.

Data Analysis

I analyzed my data in specific ways to answer my three research questions, as outlined below:

Research Question 1: How did the Native American human and cultural rights movement leading to the establishment of the NMAI meet the criteria Willie identifies for success during the initiation phase?

In response to Research Question 1, I reviewed the Indian Rights and what is termed the repatriation literature and interviewed key individuals associated with the cultural rights movement. An interview guide is included in Appendix F.

My analytic questions for the initiation section of the study draw directly upon Willie's theory of grassroots social action. They are:

1. How do members of the movement describe the process of identifying common interests among group members? Do members agree on shared goals? If so, how do

they arrive at this agreement?

2. Do members build consensus on actions to be taken? If so, how?

To answer these questions, I reviewed the existing literature and conducted interviews with activist leaders.

Interview transcripts were coded using both thematic and line-by-line coding. I developed and employed deductive codes derived from the criteria for the initiation phase and identified inductive codes that emerged from recurring concepts as I reviewed the data. I composed analytic memos for each interview subject that summarize and organize their perceptions as they correspond to each of my analytic questions for initiation; this allowed me to compare my subjects' responses as they directly address my research agenda (Maxwell, 2005).

I also compared my interviewees' perceptions of the issues captured by the analytic questions to the corresponding information when available in the literature; this process allowed me to identify emerging patterns or contradictions within my data and the literature. I then developed narrative profiles for each subject corresponding to my analytic questions but using only the subject's own words as directed by Seidman (1991, p. 91); this allowed me to both interpret and reduce my data. Finally, I developed narrative summaries corresponding to each analytic question that integrate my subjects' responses, in order to synthesize my findings thematically (LeCompte & Schensul, 1999).

Research Question 2: How did the movement meet the criteria for success during the legitimization phase?

In response to this question, I analyzed fifteen Congressional hearings and, as for Research Question 1 above, reviewed the Indian Rights and repatriation literature and drew upon my interviews with key individuals associated with the cultural rights movement.

Hearing sample selection

In all, 26 repatriation bills were proposed from 1987–1989 prior to the passage of NAGPRA and the NMAI Act. In this study I analyzed the transcripts of legislative hearings for bills leading to the passage specifically of the NMAI Act and NAGPRA as identified by the Congressional Information Service, (ten in all).

Since proposed amendments to the two laws reflect important issues arising from the implementation of the laws in practice, I also reviewed key oversight and amendment related hearings (five in all). The list of hearings I reviewed is outlined in Appendix B.

Hearing Analysis

To begin my analysis of the select group of hearing transcripts, I first identified the ranking members and special interest groups who were invited to testify at each of the hearings, tracking changes in the balance of those groups represented over time and any changes in specific individuals representing those groups. The first hearing takes place in 1987, the final hearing in 2005. I note what stakeholders are represented at each, and if any are excluded or added over time, as this indicates the balance of power within which the debates take place, specifically: which interest groups are powerful within the structure of the government.

The analytic questions for my review of the Congressional hearings, drawn from Willie's theory, are:

1. How are the movement's goals described in hearing testimony?
2. What support for these goals are reflected in the hearing transcripts, and by whom?

3. What major points of opposition to these goals are reflected in the hearing testimony, and by whom?
4. How are these points of opposition addressed?
5. What negotiating strategies are employed?

To answer these questions, the hearing transcripts were coded using both thematic and line-by-line coding. I developed and employed deductive codes derived from my analytic questions and identified inductive codes that emerged from recurring concepts as I reviewed the data.

Four broad themes associated with the human, cultural and civil rights goals of Native social movements² emerged in my review of the hearing transcripts. They are:

1. What is sacred—or integral and essential—to a culture?
2. Who has the expertise—or the right—to determine that?
3. What specific legal rights and basic rights must be considered when addressing these questions?
4. What process—of inclusion, consultation, partnership, representation—should be instituted to ensure that these basic rights are met?

These four major themes, and the sub-themes I identify for each, illustrate major divergences in positions related to the human, cultural and civil rights goals of the Native American Cultural Rights Movement. The answers to my analytic questions are therefore organized using these four emergent themes as my framework. In my analysis, I locate key terms used in relation to these four overarching emic themes to identify varying concepts provided by different speakers for each. Comparing definitions for key terms also plays a

² As noted earlier, these include the right to religious freedom; recognition of tribes' sovereign status and thus tribal rights to self-governance and cultural continuity; protection of the dead; and equal protection by U.S. laws.

role in my review: in some cases different special interest groups define the same term differently, and in other cases different special interest groups may have a different term for the same thing (i.e. “human remains” vs. “grave goods”). Both types of variance are important to my analysis and are tracked.

Research Question 3: How did the movement meet the criteria for success during the implementation phase?

In response to this question, I examine whether and how the museum’s 1989 founding legislation, architectural program, first mission statement, early collections management policy, and first repatriation policy exemplify the criteria for success in *implementation*, using a series of seven analytic questions drawn directly from the theory, and from the grassroots movements’ goals that I identify in my analysis for *initiation* and *legitimation*, below:

1. To what extent, if at all, do these documents address the question of how Native rights activists are included in the institutional implementation stage—for example as trustees, staff, or through institutional/civic partnerships?
2. To what extent, if at all, do they address the question of the activists’ roles and the decision-making power they hold?
3. How, if at all, do they address the question of what process the museum will follow to identify individuals for consultations and institutional partners in the communities?
4. How, if at all, do they address the question of who will serve in the role of institutional mediator if this role is necessary? How, if at all, is this role defined?

To answer these questions, I analyze the above documents as well as transcripts of interviews I conducted. My analysis of the interviews employs the same coding methods and

analytic strategies as for Research Question 1, including analytic memos, narrative profiles, and narrative summaries corresponding to each analytic question. I reviewed the above documents to learn if their language specifically exhibits both the major goals and themes identified in my review of the transcripts and essays, and the criteria for success in *implementation*: first, that the policies ensure that the implementation of reform includes those who initiated the movement and those in society that it sought to protect; and second, that horizontal and vertical linkages to retain allies and needed resources are retained, mediation of conflict is continued, and planning and resources are devoted to implementation, so that the movement can remain mobilized. I then review the Act itself, as above using the theory's criteria for success and the activists' goals identified in Chapter Four and as identified in my analysis of the hearing testimony to assess whether and how the language of the law reflects the goals of the movement. Finally, I compare the major themes I identify for each data source, to confirm patterns or identify discrepancies.

Validity

I addressed threats to the validity of my study by employing several strategies inherent to the case study method (Yin, 2003).

To begin, following Yin's suggestions, I attended to construct validity by triangulating multiple sources of data.

To address descriptive validity, I transcribed all but one interview (which as requested by the interviewee could not be recorded) verbatim to reduce the likelihood of error, and have stored all transcriptions.

To address interpretive validity, I draw on Miles and Huberman (1994) and developed analytic memos, narrative profiles, and narrative summaries, and shared my raw

data and cross-checked codes with fellow doctoral candidate Joie Jaager-Hyman. I consulted with my committee regularly as I developed preliminary findings. I developed a case study database (Yin, 2003, pp. 102–3), which includes categorized case study notes (including original protocols, transcriptions, and analytic memos) and an annotated bibliography of sources I consulted (including Congressional hearings and documents).

Limitations and Implications

This case study focuses on the creation of the Museum, and cannot encompass its continual evolution. My analysis is intentionally limited to the content of the 1989 Act, initial mission, program, policy documents and exemplar leadership profiles, and does not seek to present all movement leaders nor to analyze the many and evolving ways in which policy has been revised over time or has been variously interpreted in practice, or to fully identify the many important leaders of the movement.

By limiting my analysis to policy and leadership exemplars, I attend to an area that has received much less attention in the relevant literature, yet influences all functions of the museum's programming: from the design of interpretation and education programs, to staffing issues, museum partnerships, conservation practices, and research of the collections; and I allow leaders whose overwhelming focus has been on the mission and goals of their life work to also share valuable insights about their individual leadership.

Chapter Three

...Indians had little realistic hope of a fair hearing in American courts. Just as racial oppression against African Americans was justified by the United States Supreme Court decisions such as *Plessy vs Ferguson*, similar decisions characterized Indians “as an inferior race of people, without privileges of citizens.” It was not until 1879 that a federal court ruled that an Indian was a “person” within the meaning of federal law. Moreover, Indians were not granted citizenship until 1924. (Trope & Echo-Hawk, 1992, p. 46)

Prior protections

Prior civil and human rights protections and laws enacted by the U.S., as written or as enforced, did not equally protect Native peoples’ rights to religious freedom as they did for non-Natives, did not provide equal protection for Native dead and failed to recognize tribes’ rights to self-governance and cultural continuity in accordance with past treaties or international law. Prior protections related to these aims and consequently the jurisdiction of NAGPRA and the NMAI Act include the United States Constitution, the 1906 Antiquities Act, the 1966 National Historic Preservation Act, 1978’s American Indian Religious Freedom Act, and multiple state laws protecting unmarked and marked graves.³ I use three key goals of Native grassroots activists reflected in the NMAI Act to thematically organize my review of the above legal precedents:

³ Additional laws that are not specifically discussed in this paper include: 1970 - Nixon’s “Special Message on Indian Affairs.”; 1972 - Indian Education Act; 1975 - Indian Self-Determination and Education Assistance Act; 1987 - California v. Cabazon Supreme Court decision; 1990 - Native American Languages Act; 1994 - Native American Free Exercise of Religion Act (which is an amendment to AIRFA); 1994 - President Clinton’s Executive Memorandum, April 29th; 1996 - Executive Order on Indian Sacred Sites.

- Recognition of tribes' sovereign status and thus the protection of tribal rights to self-governance and cultural continuity
- Equal protection for the right of religious freedom
- Equal protections for the sanctity of Native dead

In this paper I discuss the Native American human and civil rights objectives of the cultural rights movement using the following definitions. *Human rights* are generally understood as those guaranteed to an individual by simply being born, not those granted by a nation to its citizens, and include: the right to life and liberty; freedom of thought and expression, which would include religious and cultural thought and expression; and equality before the law. *Civil rights* are those guaranteed by laws of various nations, including laws that offer protections for the categories of human rights listed above. Civil rights movements thus seek the human right to equal protection under national laws.

Within the paper I also use the terms Native American, Native peoples, indigenous peoples and Indian or American Indian interchangeably. Native American and indigenous are commonly used in academia; Indian and American Indian are also commonly used by American Indians.

UNITED STATES CONSTITUTION

First Amendment protections. The United States outlawed the practice of Native American religions in 1894 and 1904⁴. Although the U.S. Constitution's First Amendment protects United States citizens' rights to religious freedom, Indians were not granted citizenship until the Indian Citizenship Act of 1924, enacted as part of assimilation policy at that time (Cornell, 1988) while whites were automatically granted citizenship by virtue of being born in

⁴ As noted by Suzan Shown Harjo (1992) "In 1894 and 1904, the United States Department of the Interior issued Regulations of the Indian office, specifically outlawing Native religious practices" (p. 322).

the U.S. Throughout the 19th century and up until the mid-20st century, Native religious ceremonies were outlawed, and religious objects were confiscated during raids by government and church officials; many of these objects were sold or donated to museums (Deloria, 2000; Hurst Thomas, 2000; Sullivan & Edwards, 2004; Trope & Echo-Hawk, 1992). Both the removal and the desecration of sacred objects in museums prevents Native people from practicing their religions (Harjo, 2004).

Today, the constitutional guarantee to religious freedom continues to be denied to Native people in several ways. The desecration of Native graves, both ancient and recent, marked and unmarked, continues, and access to and protection of sacred sites continues to be impeded (Gulliford, 2000). Although many human remains and sacred objects held in museums have been returned or are being cared for as requested by tribes, there are still human remains and sensitive materials that remain in museum collections in violation of tribes' religious practices. For example, the 2013 National NAGPRA Final Report shows 166,582 human remains, both those affiliated to tribes and those that have not yet been affiliated to tribes, and 1,889,883 associated funerary objects still in federal or museum collections (FY 2013 National NAGPRA Final Report, p. 18). The Final Report also notes that in FY 2013,

an investigation was completed regarding twelve (12) counts of failure to comply alleged against four (4) different museums. Of the completed investigations, seven (7) of the alleged counts (or 58.3% of the counts alleged) were determined to be substantiated and five (5) of the alleged counts (or 41.7% of the counts alleged) were determined to be unsubstantiated. Also during FY 2013, investigation had begun, but had not been completed, regarding three (3) counts of failure to comply alleged against one (1) museum (FY 2013 National NAGPRA Final Report, p. 28).

Additionally, complications such as toxic pesticide residue, or the lack of international protections for tribes when objects have left the U.S., may hinder tribes' efforts to repatriate sacred and sensitive materials. The Hopi, for example, continue to work for the return of many sacred items including Katsinam, or kachina masks, which the Hopi also refer to as "friends." In Hopi theology, Kachina friends do not simply represent spiritual concepts, but are living beings, imbued with spiritual presence.

Katsinam in American museums have often been treated with toxic pesticides, which desecrates them. Because of this, and because the toxic nature of the poisons pose a risk to Hopi people, the tribe has issued a moratorium on accepting the return of toxic masks until they can be treated to remove the poisons. Terry Snowball, who oversees the repatriation office of the NMAI, relates that there are friends masks that the NMAI "has deaccessioned, but cannot be returned until the technique or process to treat them and remove the pesticides has been developed" (Snowball, personal communication, June 8, 2014). And in other countries around the world, these masks continue to be bought and sold in violation of the Hopi's beliefs and wishes, and, the Hopi charge, without legal title. For example, in December 2013, the French auction house EVE put 24 sacred Katsinam on auction over the sustained protests of the Hopi. In a dramatic and positive intervention reflecting the seriousness of the situation, a majority of the sacred masks offered for sale were secretly bought by the (American) Annenberg Foundation, which successfully hid its identity and intentions during the bidding process to purchase the objects and return them to the Hopi (Mashberg, 2013).

Fifth Amendment protections. Native peoples were also denied Constitutional protections under the Fifth Amendment, which includes a provision that the government will not take

citizens' property without just compensation. Prior to attaining citizenship Native people are not protected at all from governmental seizure of land and property. After attaining citizenship they are still not afforded equal protection, as both land and cultural objects continue to be confiscated by the government (Fine-Dare, 2002).

14th Amendment protections. Native peoples have been deprived of equal protections under the law and due process promised by the 14th amendment. In addition to the above examples of unequal protections, according to Jack Trope and Walter Echo-Hawk, “an Equal Protection claim may arise if governmental agencies treat Indian graves or remains differently than the dead of other races. Overt discrimination, such as the 1868 Surgeon General’s Order” (to amass Indian crania through a bounty issued by the Army Medical Museum) “could not pass muster today under the Equal Protection Clause” (Trope & Echo-Hawk, 1992, p. 48–49).

The Marshall Trilogy

The foundation for Indian law today was established by three Supreme Court cases known as the Marshall Trilogy, presided over between 1823–32 by then Chief Justice John Marshall. These cases both reaffirmed tribes’ status as nations to be recognized by the federal government (and particularly ruled that all relations with tribes were to be held directly with the federal government, unmediated by the states) but also diminished their status as independent sovereign nations by defining them as dependent nations, establishing a trustee/ward relationship between the U.S. and tribal governments.

1906 Antiquities Act

In response to the popularity of looting and widespread excavation of burial sites, the 1906 Antiquities Act regulated the exhumation of unmarked graves and other historic sites by requiring permits for excavations. It did not seek to protect Native human rights by

equally protecting the sanctity of Native graves as for non-Native grave sites, and did not recognize the religious beliefs of tribes regarding the proper treatment of Native dead. Rather, the Act defined Native human remains as archaeological resources that upon excavation became federal property. Regarding Native human remains as property is contrary to the human rights agenda of Native social movements. “While the act served to greatly reduce amateur archaeological looting on public and Indian lands, it reinforced the idea that the Native American past belonged not to Natives but to scientists” (Fine-Dare, 2000).

National Historic Preservation Act

The National Historic Preservation Act of 1966, among other functions, established a National Register of Historic Places and State Historic Preservation Offices—but did so without provisions for Native input in identifying and/or determining the necessary stewardship of significant historic sites. It was not until 1986 that regulations were added that stipulated that “Indian tribes (and their ‘traditional cultural leaders’) be given ‘the opportunity to participate as interested persons’ if traditional cultural properties (TCP’s) were to be affected by undertakings on federal lands. This requirement was strengthened in 1992 (post-NAGPRA and the NMAI Act) by an amendment providing that ‘a federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches cultural and religious significance’ to a TCP that falls under the act” (Fine-Dare, 2002, p. 71–72)

1978 American Indian Religious Freedom Act

As noted earlier, Native peoples’ rights to freedom of religion were not protected by the U.S. Constitution. The suppression of Native American religious and cultural practices

continued unabated through the reservation and termination policy periods⁵ (Cornell, 1988). Children were forcibly separated from their families to attend boarding schools where they were forbidden from speaking Native languages. Religious ceremonies were raided by government agencies and sacred and ceremonial objects were confiscated, preventing the continuity of religious practices.⁶

The 1978 American Indian Religious Freedom Act (AIRFA) was intended to reaffirm the religious freedom rights that tribes should already have enjoyed under the U.S. Constitution's 14th Amendment. AIRFA specifically addressed Native rights violated through prior U.S. laws and policies that barred Native access to sacred sites, interfered with Native religious ceremonies, and confiscated Native religious objects (Harjo, 2004). However, some authors argue that issues which have arisen in its interpretation and implementation have narrowed, rather than affirmed, tribes' religious freedom rights. As a prominent example of the narrowing of AIRFA, in *Lyng v. Northwest Indian Cemetery Protective Association*, the Supreme Court ruled that a logging company could build a road on territory sacred to three tribes, the Karok, Tolowa and Yurok. In the court opinion, the economic good for society was valued above the religious rights of tribes (*Lyng v. Northwest Indian cemetery protective association*, 1988). As anthropologist and historian Kathleen Fine-Dare (2002) has noted:

⁵ These periods encompass the late 19th century up to the 1960's.

⁶ As activist Suzan Shown Harjo (1992) has noted, "Throughout this era, and into the 1950's and 1960's the federal government began to sever its ties with Native nations under the termination and assimilation policies. Many of the country's most extensive collections of Native human remains and sacred objects were acquired by federal, state, and private museums, educational institutions, and agencies, as well as by private collectors, primarily in Europe during this era. Religious materials confiscated by agents on the reservations, and at the federal boarding schools, were sold on the open market; the hidden sacred items of religious leaders who had gone underground were found and traded by those without authority to do so. (Harjo, 1992, pp. 324-325).

... when cases were tried, it became clear that, ironically, the application of the law has often served to reduce rather than expand the free exercise of religious practices for Indians, particularly in the higher courts.... This has happened when it was interpreted that although the government must consult with Indians regarding a potentially harmful practice, it need not defer to them... this has happened when it was interpreted that Native practices should not impede the government's control over its land." (p. 82)

State laws

In addition to federal laws and court decisions, all U.S. states have statutes that "comprehensively regulate cemeteries and protect graves from vandalism and desecration. Criminal laws prohibit grave robbing and mutilation of the dead... disinterment of the dead is strongly disfavored under American common law except under the most compelling circumstances, and then only under carefully prescribed permit requirements, which may include judicial consent" (Trope & Echo-Hawk, 1992, p. 39). However, many propose that these state and federal laws protecting graves have not been applied equally to protect Native graves.

Common law goes to great lengths to protect the sanctity of the dead. Unfortunately, ... legal protections—which most citizens take for granted—have failed to protect the graves and the dead of Native people. Massive numbers of Indian dead have been dug up from their graves and carried away. National estimates are that between 100,000 and two million deceased Native people have been dug up from their graves for storage or display by government agencies, museums, universities and tourist attractions. The practice is so widespread that virtually every Indian tribe or Native

group in the country has been affected by non-Indian grave looting. (Trobe & Echo-Hawk, 1992, p. 39)

Scientific practices and Native American rights

It is ironic that anthropology and its subfields (physical, cultural, and linguistic anthropology) have been involved in both the creation and the demise of the concept of race.

Yolanda Moses, President of the City College of New York, 1997 (as cited in Hurst Thomas, 2000, p. 102)

In 1998, the American Anthropology Association published a “statement on race” proposing “that human populations are not unambiguous, clearly demarcated, biologically distinct groups” (American Anthropological Association, 1998, para. 1). However, some reports suggest that more than half of physical anthropologists believe in the concept of race as a biological construct.⁷ Contemporary scientific theories about race and the populating of the Americas with very specific implications for repatriation law are passionately debated within and between various scientific disciplines, including physical anthropology, anthropology and molecular biology (Feldman, Lewontin, & King, 2003; Jantz & Owsley, 2003; Owsley & Jantz, 2002; Vanvark, Kuizenga, & Williams, 2003). These ongoing contemporary debates center on the biological and cultural relationship of early populations of the Americas to contemporary Native tribes—ie, the relationship of Native peoples to pre-contact history—and, by extension, Native identity and Native rights. Key concepts

⁷ “Slightly over half of all biological/physical anthropologists today believe in the traditional view that human races are biologically valid and real. Furthermore, they tend to see nothing wrong in defining and naming the different populations of *Homo Sapiens*” (Gill, 2000).

disputed in the current repatriation literature echo historic conflicts in Native Americans' relations with anthropologists and museums, including the measurement of body parts to assign racial schema and the proposition that the historic inhabitants of the Americas are not related to contemporary Native peoples (Bieder, 1986; Gould, 1996; Mann, 2003).

Anthropology was founded in an ideology of the inequality of the races of man. The very concept of race was a means for articulating a belief in the superiority of White, European ancestry; in their research, scientists sought to measure this assumed superiority (Gould, 1996; Hurst Thomas, 2000).

Samuel Morton, 1899–1951, the originator of the American School of ethnography, linked the measurement of attributes of the human body, in particular skull size and shape, to qualities such as intelligence and morality, establishing what is now referred to as scientific racism. Morton, in addition to later influential figures such as Louis Aggasiz and Ales Hrdlicka, among others, collected thousands of skeletons, the overwhelming majority of which were Native Americans, and developed a taxonomy of race based on cranial capacity and head form.

In the 1840's, Samuel Morton relied almost exclusively on cranial capacity as an indication of human intelligence. Pre-Civil War Americans believed that Morton had scientifically proved that Caucasians had bigger brains (and hence were more intelligent) than American Indians. Because the African skulls in Morton's collection had the smallest brains of all, they were judged to be the least intelligent of the human races.

Nineteenth-century skull science also relied on a second measurement, head form, to trace the origins and distribution of peoples. Known more formally as the "cephalic index," head form is simply the ratio of maximum skull breadth to

maximum skull length. The cephalic index reflects whether a skull is round-headed (brachycephalic), long-headed (dolichocephalic), or in between (mesocephalic).

Negroid skulls are supposed to be long and narrow, Mongoloid crania are traditionally considered to be broader, and so forth. During the late nineteenth century, the cephalic index gradually came to supplement cranial capacity as the measurement of choice, because, after all, head form could be readily calibrated from a living specimen (Hurst Thomas, 2000, pp. 102–103).

Native American dead were defined in the young science's literature as specimens rather than human remains, and Native religious objects were viewed as sacreligious, not sacred (Fine-Dare, 2002).

Such scientific beliefs and practices continued to support human rights violations. Scientific theories and Christian teachings supported the collection of Native American sacred objects and human remains as part of a governmental campaign of genocide and cultural genocide (Mihesuah, 2000). Artifacts were collected through the banning of religious practices and forced confiscation of sacred objects. Bodies and body parts were collected through grave looting, which continues today, on battlefields and through acts of war—including the execution of prisoners—and through a government bounty on Native crania for the Army Medical Museum (Riding In, 1992; Trope & Echo-Hawk, 1992).

Early archeologists and anthropologists believed that “all human groups might eventually attain civilization and therefore history” (Conn, 1998, p. 95). Human beings were understood to evolve from a savage (Native) to a civilized (white, or Western) state. Contemporary Native people were not believed to be related to ancient inhabitants of the continent.

Hand in hand with scientific exploration was the belief in a discontinuity between ‘ancient’ Indians and the Indians living during the eighteenth and nineteenth centuries. The burial mounds and antiquities found on the American continent held considerable fascination for the early colonists and pioneers, but these archaeological materials were not thought to be associated with living Native Americans (Gerstenblith, 2002, p.167).

As artifacts of the primitive origins of civilized man, Native Americans were seen to be pre-historic—literally without their own history. History—the past—belonged to non-Natives.

Museum practice and Native American human rights

Your memory is getting in the way of my history

Anonymous

Many scholars who have studied museums refer to these institutions both as places and as *processes*, wherein history is not only ‘presented’ through its displayed objects, but is revised and even forgotten...

(Fine-Dare, 2002, p. 21)

Museums have consistently reflected bias in their practices for the treatment of artifacts and human remains from Native societies (Bal, 1996; Fine-Dare, 2002). The first American museums were intended to civilize an immigrant nation through education; the educational message they presented reinforced the power base of those who founded them. As educational institutions, museums have served to misinform and perpetuate stereotypes

about Native peoples to the public. Cultural objects and human remains have frequently been retained and employed by museums to portray Native peoples and Native cultures in ways that were not only offensive to, but destructive to Native people. Furthermore, the normal conventions of U.S. museum practice regarding Native human remains and sacred material culture have often been seen as desecration by Native peoples and would be seen that way if applied to white communities (Drumheller & Kamenitz, 1994; Harjo, 1997; Pepper-Henry, 2004; Smith & Wobst, 2005).

Beginning in the 19th century, authoritative museum displays of Native bodies and artifacts taught mass audiences the latest scientific theories about the human “races.” Educational exhibitions of Native peoples’ remains in natural history museums claimed to present remnants of the “vanishing Indian” (Bal, 1996) and, often, mistakenly identified the function and purpose of cultural materials.⁸

Today’s museums still reflect the outdated roots of anthropology as an academic discipline through inherited taxonomies. This occurs, for example, by: including Native remains and artifacts in natural history museums; organizing museums collections into categories named for the individuals who collected the objects rather than the individuals who made the objects; or excluding information about individual artists in galleries even when the names of these individual artists are known (Bal, 1996; Duncan, 1995; Hooper

⁸ For example, in a 2006 Smithsonian National Museum of the American Indian video short by videographer Mark Christal, Marty Kreipe de Montaña, the first Native American intern at the Museum of the American Indian, Heye Foundation (the precursor to the Smithsonian National Museum of the American Indian) discusses her reaction at seeing four blouses, “sachkin,” installed backwards in the museum’s galleries. Three were installed flat on walls, with the fronts pinned facing the wall, and a Potawatomi example was installed backwards on a mannequin. Pins that were meant to be worn on the front of the blouses were set to the side, in a separate area. She commented later: “when I first saw the blouse, I thought, ‘Have I been wearing my blouse wrong?’ After that initial doubt, I realized that these people didn’t know what they were doing. But the initial reaction to a museum is, they are the authority” (Kreipe de Montaña, personal communication, March 12, 2008).

Greenhill, 1992; Kreps, 2003). These issues compromise museums as educational institutions, as noted below:

What do Indian skulls that are displayed alongside pottery in museums tell visitors?
Is this a message that Indians are inferior beings, items for display, just like animals?
Since other Americans are not on view like Indians are, there is without question a double standard at work: non-Indian burials are left alone, and those accidentally uncovered are immediately reburied, but archeologists and pothunters deem it good and necessary to dig up Indians and display their remains and funerary items.

(Mihesuah, 1996, p. 230–231)

Further, many artifacts and human remains in museums' possession, particularly human remains, objects of cultural patrimony, sacred objects, and funerary objects are important to tribes for the continuity of Native American religious and cultural practices. From a cultural perspective, these sensitive materials may require ritual or specialized care. Certain artifacts should not be in museums and may be needed for religious observances by the community to whom they are affiliated, or may require a specific environment or isolation from handling by non-initiates (Clavir, 2002; McMaster, 1995; Pepper-Henry, 2004). From a theological perspective, if such objects are not handled correctly the community can suffer harm; their proper care and disposition is necessary to foster healthy communities and individual lives (Gulliford, 2000; Pepper-Henry, 2004). For these sacred materials, which include human remains, desecration through the Western conventions of museum display and preservation is an act of spiritual violence and cultural warfare as damaging as the violence that inappropriately brought them into museums in the first place (Greenberg, 2004; Gurian, 1999).

The NMAI Act identifies the following categories of materials that can be repatriated:

Human remains. There is consensus among Native people that disturbing a grave is a desecration that can interrupt the spiritual journey of the deceased, and this desecration and disturbance has ramifications for the living community. This concept will be discussed in further detail in an analysis of Congressional hearing testimony in Chapter Five.

Funerary objects. This category includes all objects that were placed with human remains either at the time of burial or later, and containers for human remains.

Sacred objects. These are defined in the Act as “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.” For example, the wooden and cornhusk medicine masks of the Haudenosaunee, sometimes referred to as False Face masks, are sacred. The theology of these sacred objects requires that they cannot be exhibited, sold, or photographed, and information regarding their sacred nature should not be published. The Haudenosaunee have issued a policy stating that all masks, “regardless of size or age” are sacred, and that:

by their very nature, masks are empowered the moment they are made. The image of the mask is sacred...Masks should not be made unless they are to be used by members of the medicine society, according to established tradition... Individuals who make masks for sale or sell masks to non-Indians violate the intended use of the masks, and such individuals must cease these activities as they do great harm to the Haudenosaunee. The commercialization of medicine masks is an exploitation of Haudenosaunee culture. (Grand Council of the Haudenosaunee, 1995, paras. 3-4)

Cultural patrimony. Objects of cultural patrimony are defined in the Act as “having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native.” They therefore can never be sold by an individual but belong to the group. One example of cultural patrimony are the Zuni War Gods, or Ahayuda, which are carved statues that are placed outdoors in sacred sites, where they are meant to be exposed to and return to the elements. If they are removed and thus prevented from completing their lifecycle, they are understood to have the potential to act destructively, causing sickness or disruptions affecting the Zuni people (Hill, 1997; Suro, 1990). Other examples of cultural patrimony include the twelve historic wampum belts returned in 1989 to the Onandaga Nation of the Iroquois Confederacy. Martin E. Sullivan, who acted as the principal negotiator for the New York State of Regents, described the belts as cultural patrimony “as important as the Declaration of Independence, the Constitution, and the Bill of Rights” (Sullivan, 1992, p. 286). Wampum belts are “strings of clamshell beads woven into patterned belts as mnemonic devices to record important events, treaties, and legal codes... Elders read the belts to recite the beliefs and history of their clan” (Sullivan, 1992, p. 286).

In addition, for the same reasons as above, intellectual property can also be sensitive, including recordings of sacred ceremonies, photographs, and transcripts and documents that articulate private cultural practices acquired without consent. Just as medical records or financial information regarding donors to an institution may be restricted, access to information regarding sacred practices may be restricted, or requested to be restricted, by cultural leaders. However, not all requests for specialized care for objects or documentation of sacred objects and ceremonies still in museum collections can be accommodated by museums; for a thoughtful discussion of balancing institutional capacity and cultural

protocols see James Pepper Henry's "Challenges in Maintaining Culturally-Sensitive Collections at the National Museum of the American Indian" in the 2004 volume *Stewards of the Sacred*.

It has been exceptionally difficult for tribes to access or obtain information about sacred objects and material held in museum collections (Sackler, Echo-Hawk, & Trope, 1996). The large majority of cultural materials in museums were never exhibited. Once acquired, many objects disappeared into storerooms and archives, and a much smaller percentage were inventoried, fewer still conserved and studied, and even fewer displayed. Institutions have often guarded their collections of Native American materials with an extraordinary level of secrecy and refused tribes' access to physical collections of Native American materials or even to information about the collections (Hurst Thomas, 2000; Mihesuah, 2000). In many cases when tribes have sought access to collections of Native American material, museums did not have complete inventories of their collections, and so did not, in fact, fully know what they had (Edwards & Sullivan, 2004). In other cases, representatives lied about museums' and universities' holdings to tribes or withheld information (Harper, 2000; Robbins, 2002; Safer, 2004). Until the last two decades, and as is still true in most major institutions today, Native peoples were not on museum staffs, or were very sparsely represented.

Reforming these practices was a consistent goal of the Indian social movements since first contact (Perry, 1996).

Chapter Four: Initiation

American Indian activism in the U.S. began at first contact. Native American activists have always sought to ensure the wellbeing of Native peoples and have resisted efforts by the U.S. government to eradicate or diminish tribal nations and Native cultures. More recently (from the 1960's onward), Indian Rights movement activists from many different tribes and backgrounds gained power by meeting with one another, in both Indian Country and urban settings, sharing their experiences and agreeing on shared goals, forming coalitions, in some cases staging protests, and ultimately using U.S. law to redress inequities in U.S. law. In the 1980s, what I will term the cultural rights movement gained power as one aspect of the wider Indian Rights movement. The push to establish the National Museum of the American Indian is one aspect of the cultural rights movement, and the NMAI is both a reflection of and a result of this activism.

The first section of this chapter will present a high level snapshot of the evolution of the multi-faceted Indian Rights movement of the 1960s onward and the emergence of the cultural rights movement. The cultural rights movement will also be discussed in more detail in Chapter 5.

The *initiation* phase of a grassroots social justice movement includes the selection of leaders of the movement. The movements involved numerous individual leaders working on many different fronts, too many to summarize in one chapter. The second section of this chapter will therefore profile one prominent exemplar leader: MAI and NMAI trustee and activist Suzan Shown Harjo (Chapter Five will feature legal expert Walter Echo-Hawk, and Chapter Six will introduce NMAI founding director W. Richard West, all of whom testified during one or more Congressional hearings for proposed repatriation legislation).

In his theory of grassroots social action, Charles Willie identifies the following qualities of leadership as criteria for success: a *complementary ability to work for both social change and social stability*; *multicultural life experience* as a member of both dominant and subdominant sectors of society; a *commitment to ideals* such as fairness, equity, nonviolence and to actions that protect members of a community from harm; and skills including *the ability to listen, to identify common interests, to set reasonable goals, and to broker consensus* (Willie, 1994; Willie et al., 2008). A movement may progress from the *initiation* stage to stage two, or *legitimation*, if it identifies strong leaders and builds consensus among its membership to agree upon specific goals and action steps. As previously noted (Willie, 1994; Willie et al., 2008):

- Leaders must be able to act as a bridge to outside groups. Leaders with multicultural backgrounds are particularly suited to this role because they understand the ways of life of different cultural groups. Leaders should be committed to social justice ideals and should learn how to harmonize the incongruent goals of different population groups.
- Goals should reflect common interests and ideals. Goals and plans for action cannot exclude members of the community. If the dominant group fails to take into consideration the interests of the whole community, effective subdominant groups will then tend to propose action to benefit the general welfare of the total community.

In part two of this chapter I therefore use the above aspects of Willie's theory of grassroots social action for the initiation phase to profile Suzan Shown Harjo as an exemplar leader of the movement, showing how her experience and leadership successfully meet criteria Willie outlines for success in the initiation stage of a grassroots movement.

In section three of this chapter I identify three types of exemplar pan-tribal organizations and coalitions to introduce the wider movement, using Willie's criteria for initiation to organize a review of the selected organizations, including their leadership, goals and mission, obstacles they faced, and strategies they employed to overcome obstacles. This review will show that the exemplar organizations successfully meet the criteria for the initiation stage Willie identifies in his theory of grassroots social action.

This chapter concludes with a summary overview of the goals of the cultural rights movement, which, in keeping with Willie's theory of grassroots social action, will be important to subsequent chapters' discussions of the legitimation and implementation stages of the movement.

Background

As noted previously in Chapter Three, the relationship between colonists—and later the U.S. government—and Indian tribes, although often adversarial, was initially conducted on a nation-to-nation basis. However, as the new United States' power grew, and the U.S. sought to acquire more land controlled by tribes, the U.S. began to violate treaties and establish policies to eradicate Indian cultural and religious practices. Tribes lost both land and freedoms, and, as noted earlier, Native peoples were not accorded basic civil and human rights under United States laws or the Constitution (Dippie, 1982).

Historian Stephen Cornell outlines six major historic periods in tribal/U.S. relations:

- The “market period” beginning at contact and continuing into the late eighteenth century
- The “conflict period” lasting until the early 1800s, during which many tribes were pushed from their homelands
- The “reservation period” continuing into the 1930s, during which time tribes were

forced onto reservations and their self-governance severely limited

- The “Indian Reorganization Act (IRA) period” lasting until the late 1940s, during which the IRA was implemented, establishing federally-supported tribal governments and support for reservation economies
- The “termination period” lasting until 1960, during which the U.S. government moves to dissolve tribal governments and disperse reservation lands as a means to assimilate Indians
- The sixth period Cornell does not name, but could be termed the cultural rights period, beginning in the 1960s and continuing to the present day, characterized by Native Americans’ demands for the recognition of tribes’ sovereign status, rights to self-governance, and the recovery and continuation of cultural practices. (Cornell, 1988, p. 12).

Native American grassroots activism in the 1960s was energized by, and took place against the backdrop of, the civil rights movement. Many of the prominent leaders involved in the cultural rights movement and the successful push to establish the NMAI came of age in the civil rights era of the 1960s. Walter Echo-Hawk, who worked for the Native American Rights Fund (NARF) for over thirty years, was one of the most important activists involved in the framing of the repatriation provisions of the NMAI Act. He recalls both how he became involved in the Indian Rights movement, and how the civil rights movement inspired a new generation of Indian activism:

During the 1960s, the civil rights movement arrived in Indian Country. After years of heavy paternalistic role by the Bureau of Indian Affairs, Indian tribes began to awaken to the possibility of emancipation from the dark side of federal guardianship and to the need to reclaim Native pride, culture, land, and sovereignty. I came of age

in rural Oklahoma, and among Native youth then, our hero during the birth of the Red Power movement was the Ponca Indian activist Clyde Warrior. He rejected the stamp of inferiority impressed upon American Indians by the mass media and mainstream society by proclaiming, “the sewage of Europe does not run through these veins.” Though his life was cut short, the awakening in Indian Country was carried forward by his organization, the National Indian Youth Council, and the generation of tribal leaders, activists, and lawyers who recast the civil rights movement into a Native American tribal sovereignty movement that more closely reflects the aspirations of America’s indigenous peoples. That movement led to the rise of modern Indian nations. (Echo-Hawk, 2010, p. 3)

Often, Native American activists emerging in the 1960s and 1970s were the first in recent generations not to attend state-sponsored boarding schools with repressive assimilation policies. This new generation coming of age in a period of activism was instructed by the legacy of Native resistance. Native activists sought to reclaim their cultural heritage by: learning languages that their parents and grandparents had been forced to abandon; establishing Native educational institutions; working to enforce the terms of treaties, including land rights; and fighting to uphold the religious freedoms of Native peoples by protecting sacred sites and access to sacred sites (Champagne *et al.*, 1997; Cornell, 1988).

Indian activism in the 1960’s and 1970’s led directly to the passage of the 1978 American Indian Religious Freedom Act (AIRFA), which, as noted earlier, has not been adequately enforced, but which did establish a foundation for repatriation law (Harjo, 2004).

Although the successes of the Indian rights movements were supported in part by the larger political structure of the civil rights movement, there are important differences between the two:

Native social justice movements are similar to civil rights movements in that they seek equality and equal protection under existing U.S. laws (Hutt & McKeown, 1999). Both movements are concerned with equal protections for basic human rights and seek to create social change regarding injustice in the United States. Native American reform movements, however, are distinct from other U.S. social justice movements in that they seek to affirm tribes' status as sovereign nations as reflected in the terms of treaties made between tribal governments and the U.S. government. Further, as NMAI founding director W. Richard West Jr. argues, the Indian rights movements, beyond the protection of legal and political rights, sought to protect Native cultures, which continue to be threatened, not only in the past, but also in contemporary life.

One year before the passage of the NMAI Act, which established the new National Museum of the American Indian, in May of 1988, President Ronald Reagan, speaking overseas to a university audience in Moscow, commented:

Let me tell you just a little something about the American Indian in our land. We have provided millions of acres of land for what are called *preservations*—or *reservations*, I should say. They, from the beginning, announced that they wanted to maintain their way of life, as they had always lived there in the desert and the plains and so forth. And we set up these reservations so they could, and have a Bureau of Indian Affairs [BIA] to help take care of them. At the same time, we provide education for them—schools on the reservations. And they're free also to leave the reservations and be American citizens among the rest of us, and many do. Some still

prefer, however, that way—that early way of life. And we’ve done everything we can to meet their demands as to how they want to live. **Maybe we made a mistake.**

Maybe we should not have humored them in that wanting to stay in that kind of primitive lifestyle. Maybe we should have said, no, come join us, be citizens along with the rest of us. As I say, many have, many have been very successful.

(Reagan, 1988, p. 1) (emphasis added)

This particular quote from the then-President of the United States starkly captures racism and revisionism in play, including his assertions that: reservations were set up to help Indians preserve their way of life; Indians need to be taken care of by the BIA; Indian cultures are primitive; assimilation equals success; and, most significantly for this discussion, Indian cultures should not be retained. *Contra* this, West asserts that protecting human rights for Indians without protecting culture is meaningless:

. . . the protection of legal and Constitutional rights for Native peoples becomes something of an abstraction, if it doesn’t have . . . cultural result and the protection of cultural community . . . Culture is the protection . . . of ways of life, of ways of living, of ways of seeing the world, of cosmology, of ceremonial practice . . . If the ultimate outcome of legal initiatives and protecting the constitutional rights of Indian tribes to exist as separate governments . . . doesn’t result in the protection of the cultural capacities of contemporary Native communities, then I’m not sure where it ends up.

He continues:

And the way you tie that to the National Museum of the American Indian is that some of the keys to the protection of this cultural continuity, namely our cultural patrimony, sat in museums, not with us. And . . . one had to figure out a way to

assure that there was connection between contemporary native communities and these powerful and important sources of continuing cultural meaning that sat in museums. That's why . . . the impact of the movement and this articulation of both political and cultural perspective in the late '60s and early '70s native community resulted in legislation that: A) talked about repatriation in the context of creating the National Museum of the American Indian and: B) talked about a National Museum of the American Indian that was constituent-driven and rested on the viewpoint, in many respects, of the Native community itself. (W. R. West, personal communication, February 26, 2009, p. 3)

Native activism for civil and human rights can be understood as inextricable from the cultural rights—including the right to continue cultural and religious practices, to speak languages, to pass on cultural knowledge to new generations—that establish culture. A museum that advances these priorities is thus an instrument for Native civil and human rights.

The cultural rights movement: 1970s and 1980s

The movement to create the NMAI sits within the cultural rights movement, which, using the American Indian Religious Freedom Act of 1978 as a precedent, emerges from the broader Indian Rights movement as a reaction to the widespread desecration of Indian graves and the alienation of cultural property and sacred objects through acts of cultural oppression and genocide.

The desecration of Native graves has taken place since first contact. As Jack Trope and Walter Echo-Hawk related in their 1992 legislative history of NAGPRA, an account from *Mourt's Relation: A Journal of the Pilgrims at Plymouth, 1622* states that “the first . . . exploring party returned to the Mayflower with . . . items removed from a grave.” (Trope

and Echo-Hawk, 1992): “We brought sundry of the prettiest things away with us, and covered up the corpse again” (Winslow & Bradford, 1621).

Desecrating and looting Indian graves became a popular disciplinary pursuit for early nineteenth century scientists, then it became federal policy

. . . with the Surgeon General’s order of 1868. The policy directed Army personnel to procure Indian crania and other body parts for the Army Medical Museum . . . over 4000 heads were taken from battlefields, burial grounds, POW camps, hospitals, fresh graves. . . government headhunters decapitated Natives who had never been buried (including) victims of Colorado’s Sand Creek Massacre and defeated Modoc leaders who were hanged and then shipped to the Army Medical Museum. (Trobe and Echo-Hawk, 1992, p, 40–41)

While a government bounty did not persist, grave desecrations did, and as discussed in Chapter Three, Native graves were not protected by U.S. laws protecting non-Native graves. As a result, as James Riding-In has written:

(The) legacy of grave robbing, postmortem head hunting, and unethical research engendered in the 1970s a relatively successful nationwide Indian burial rights movement. Indian objections stem from spiritual, legal, moral, historical, political, and ethical beliefs. Influential groups such as American Indians Against Desecration, the National Congress of American Indians, the Association of American Indian Affairs, the American Indian Science and Engineering Society, and coalitions of tribes have taken part in the fight to stop the abuses committed against dead Indians. During the 1980s, the Native American Rights Fund emerged as an important legal organization that fought for and gained historical burial and repatriation legislation at the state and federal levels (Riding-In, 1992, p. 25).

Equal protection for the right of religious freedom and for the sanctity of Native dead were prominent goals in grassroots activists' fight to reform museums and the academy. As Walter Echo-Hawk has noted, "If you desecrate a white grave, you wind up sitting in prison. But desecrate an Indian grave, you get a Ph.D. The time has come for people to decide: Are we Indians part of this country's living culture or are we just here to supply museums with dead bodies?" (Hurst Thomas, 2000, p. 210)

The Native American activism working toward the passage of the NMAI Act focused strategically on reform in museums and universities holding collections of sacred objects and human remains of Native Americans, seeking equal respect and humanity for Natives and non-Natives. It is important to note, however, that the key leadership of the cultural rights movement did not confine its efforts to this focus on repatriation and reburial issues, or even the fight for religious freedom. Instead, they and the organizations they led were involved in fights on all fronts, from treaty issues to environmental protections, from ensuring quality health and education to protecting sacred sites, and much more (Echohawk, 2013; NARF Legal Review, Summer 1985). The major victories these activists won affecting museum reform may have been, to some scientists working in anthropology and museums, some of the most significant events affecting their careers (Zimmerman, 1994 pp. 60–67). But it is impossible not to conclude that, to the activists, these victories were aspects of only one priority on a very long to-do list.

I refer to the push for repatriation and burial legislation that built momentum in the 1970s and 1980s as the cultural rights movement since activists' demands for reform in museums, universities, or federal agencies were not only about repatriation, or the return of Native human remains, sacred objects, and communal property. Rather, activists' demands reflected the broader goal to preserve Native rights and cultures, and demands specific to

museums and scientific organizations also included diversifying trustees and staffs of these institutions, changing the research and educational programs of these institutions to reflect Native knowledge, and supporting contemporary cultural expression and evolution (S. S. Harjo, personal communication, January 26, 2009; *National American Indian Museum Act*, 1987, p. 45 and p. 47; *Establishment of the National Museum of the American Indian*, 1989, p. 3; West, 1997).

As West has pointed out, the concept of repatriation has always meant more to Native activists than returning things to Native people, even sacred things and human remains: “Repatriation was about objects, yes, but it was about returning or repatriating control over culture to native communities in a far broader respect” (W. R. West, personal communication, February 26, 2009). He describes the concept of repatriation as being a “restitution to or a repatriation to contemporary Native communities of controlling their own story and sustaining contemporary native culture into the future.” He notes that “an institution like the National Museum of the American Indian, particularly being a part of the Smithsonian, particularly sitting on the National Mall, could have amazing power in accomplishing that broader aim” (W. R. West, personal communication, February 26, 2009, p. 6).

Repatriation understood in this broader sense, with an emphasis on the role that culture plays in strengthening and sustaining Native people, can more appropriately convey the aims of what we will term the cultural rights movement. And, the importance of presenting Native cultures and the history of Native and non Native interactions without perpetuating racism—whether overt or implied—in a national museum holds the potential to correct biases that compromised museums and universities as educational institutions. As will be discussed further in Chapter Five, a primary belief of Native activists working to

establish the NMAI is that education holds the potential to dislodge racial bias and prejudice in the general population and to strengthen and inspire pride among Native people and especially Native youth, who are disproportionately at risk for suicide and substance abuse (*National American Indian Museum Act*, 1987, p. 45; Harjo,[video] n.d.).

Chapter Five will trace the development of the specific focus that emerged from the cultural rights movement in the 1980's to create the NMAI, including how coalitions were formed, who served as allies, what obstacles the activists faced, and how these obstacles were overcome.

Leadership profile: Suzan Shown Harjo

Suzan Shown Harjo is Cheyenne and Hodulgee Muscogee, and a citizen of the Cheyenne and Arapaho Tribes.⁹ Harjo's multicultural life experience prepared her to be adept at serving as a bridge between Native and non-Native contexts and between traditional Native religious and non-traditional people, between tribal groups, as well as at connecting institutional cultures and professional disciplines.

Throughout her career, Harjo took on leading roles in four key professional contexts critical to the passage of repatriation legislation and the establishment of the NMAI: the media, the federal government, leading Indian Rights organizations, and museums:

- Harjo worked with the media in multiple contexts as a producer and director of the drama and literature department in the 1960's at WBAI- FM New York—where her radio program, “Seeing Red,” also aired—and as News Director of the American Indian Press Association.

⁹ Her Tsistsistas (Cheyenne) name is Vanaheo'o. She is Wind Clan, Nuyakv Ceremonial Ground, and her Muscogee name is Fuswv Cvmpe.

- She also worked for two of the most influential Indian Rights organizations, the Native American Rights Fund (NARF) and National Congress of the American Indian (NCAI), moving back and forth between them as she took on various roles. She worked for NCAI several times, including as Executive Director. Early on, as Communications Director and Legislative Assistant, she worked toward the passage of the Indian Health Care Improvement Act and the Indian Child Welfare Act; she worked for NARF several times as well, directing its legislative program.
- Harjo worked for the Carter presidential campaign, and subsequently served in 1978–1979 as Special Assistant for Indian Legislation in the Office of the Secretary of the Interior, where she was responsible for overseeing the implementation of the American Religious Freedom Act, (AIRFA), which she had had a leading role in creating. “As coordinator for the Task Force on American Indian Religious Freedom, she prepared the President’s response to Congress, pursuant to P.L. 95-341 (Report of August 1979). She also prepared the federal Indian report on U.S. compliance with Principles VII and VIII of the Helsinki accords” (NARF Announcements, Winter 1979, p. 10). She ultimately served as a founding trustee of the Smithsonian NMAI, a federal agency.
- Harjo served as a trustee of the Museum of the American Indian, Heye Foundation (MAI), which was transferred by the NMAI Act to the Smithsonian to become the NMAI collection and archive. She also served as an NMAI trustee, as noted above.
- She is also a poet, writer, lecturer, and curator.

Harjo’s commitment to her ideals has defined a career devoted to promoting Native American cultural, human and civil rights. Harjo is a powerhouse who has been a highly visible leader within many prominent organizations, as described above, and who has played

a public role in crafting and implementing legislation that includes, but is not limited to, the 1978 American Indian Religious Freedom Act (AIRFA), the 1989 National Museum of the American Indian Act, the 1990 Native American Graves Protection and Repatriation Act, and the 1996 Executive Order on Sacred Sites.

In addition to this highly visible work, she describes a more private level of organizing work among traditional tribal people that began in Bear Butte in South Dakota in June of 1967 and which led directly to the creation of the NMAI. This behind-the-scenes coalition did not have a name, “We didn’t name our group . . . We built a coalition out of visions that we had of it.” (S. S. Harjo, personal communication, January 26, 2009, p. 1). The group, beyond bringing together traditional people from multiple tribes, included young people and elders, Harjo recalled, “and it was left to those of us who were younger at the meeting to do what our elders were saying: ‘Write that up,’ they would tell us, ‘Write that up’” (S. S. Harjo, personal communication, January 26, 2009, p. 1).

Initially prompted by dreams and nightmares to act to protect sacred sites and burial grounds, Harjo reports that the group immediately and literally envisioned a new Indian institution on the National Mall.

There were a number of people, Cheyenne and Lakota and Arapaho people who had been having dreams and nightmares about . . . the need to protect sacred places, including burial grounds. The need to protect our ancestors. The need to gain respect for Native People in general society. Once we began talking in detail about some of these dreams and thoughts . . . we began to put form to it so that, at our meetings and after ceremonies at Bear Butte, we actually envisioned this place that

we're in right now.¹⁰ What we envisioned was what we called a cultural center. We didn't call it a museum. We called it a cultural center that faced east, and it was right by the U.S. Capitol, so that the policy makers, the lawmakers would have to look us in the face when they made laws about us. (S. S. Harjo, personal communication, January 26, 2009, p.1)

The coalition would meet regularly to concretize their initial vision. Harjo described this process as follows:

. . . for the next nearly twenty years, we made that more detailed and more concrete. But it was envisioned, it was a fact. It was a goal that we were working toward, and we wanted to build something from the ground up so that we could do things . . . because we knew what was being done was wrong. (S. S. Harjo, personal communication, January 26, 2009, p.1)

Harjo notes that they “were trying to address a lot of issues at the same time,” but that the issues all fell under the rubric of religious freedom and cultural rights (S. S. Harjo, personal communication, January 26, 2009, p.1).

Over time, the initial group met with more and more traditional leaders from other groups, and as they met they continued to define and refine their goals and strategies:

We had lots of meetings. One of the first places we went to was the Pueblo of the Zuni, and made the Zuni people part of our coalition. They wanted to join, and we said, “Yes.” That was auspicious. We had a focus there on our relationship to migratory birds and our use of bird parts, and bird feathers, and that coalition effort turned into a change in regulations: an exemption for Indian use of bald eagle and

¹⁰ Our interview was conducted at the NMAI in Washington, D.C.

other protected migratory bird parts and feathers that was very important, essentially that native people could use, possess, exchange . . . (This was in) seventy or seventy one. At the same time, we were working with different people around the country, with the Yakama Nation for example, to try to get Mt. Adams returned. They were successful in that. We did a lot of specific land recovery efforts. (S. S. Harjo, personal communication, January 26, 2009, p. 3)

The group was concerned not only with the desecration of sacred sites and remains, but the disrespectful display and treatment of these sacred materials in a carnival atmosphere that promoted racism in the wider culture. As Harjo noted:

. . . we were most concerned with what was happening to our people and to our reputations, and to our things, our property, in museums. . . . We were concerned about . . . the care and treatment of materials and human beings, not only in museums but in the educational institutions, in federal agencies, in private shops, in roadside attractions, which you had anywhere you would drive. East of the Mississippi, we would have billboards saying, “Come see the tomb of the dog or two headed pig, and the Indian mummy.” It was always there. . . . It was the display of our people and our body parts. (S. S. Harjo, personal communication, January 26, 2009, p.1)

The meetings continued regularly for decades. When they began, Harjo was working at WBAI. Later, when she worked with NARF and NCAI, these institutions also hosted some of the coalition’s meetings. She recalls that:

. . . from what became our coalition from our first post-ceremonies meetings in ‘67, throughout this whole period, would meet sometimes at NARF, sometimes at NCAI conventions. The Cultural Concerns Committee became the largest committee in

NCAI and we'd have separate meetings around the country. We'd meet at Affiliated Tribes of Northwest Indians conferences, at Warm Springs in California. (S. S.

Harjo, personal communication, January 26, 2009, p, 21)

Harjo's multicultural dexterity, or what Willie has referred to as marginal status, which he defines as "a new kind of marginal person who understands different cultures and, therefore, is able to bring all sorts and conditions of people together to peacefully pursue joint endeavors" (Willie et al., 2008, p.19), applies equally to institutional cultures and disciplinary cultures. She has taken on major roles in numerous cultural and institutional contexts, meeting objectives within one arena, then flipping to a new role and new context that allows her to pick up the thread and continue working, to the same end, relentlessly, from a new angle. Each arena or context built upon the previous work she did. WBAI had given her the opportunity to meet people from across Indian Country, and she continued to travel and to meet with the coalition of traditional leaders working to protect religious freedom and cultural rights. This gave her intimate access to many groups, knowledge of their priorities, and the time and means to build consensus, all of which are process components Willie identifies as criteria for success during the initiation stage of a grassroots social movement (Willie et al., 2008, p. 16).

Building on this foundation, Harjo left New York and WBAI for Washington D.C. when her friend, Dick LaCourse, called to ask if she would take his job as news director for the American Indian Press Association. Her husband and son had been in several life-threatening situations in New York, and when the opportunity came to move her family she walked through the open door. Within a few short weeks, she had moved to take on the position (S. S. Harjo, personal communication, January 26, 2009, p. 5).

Harjo had not expected to work in Washington, D.C, but saw that she could again serve to bridge a gap, saying:

It didn't take me long at all to see that because there were no Indians working on Indian legislation, there were no advocates. It was a bunch of white guys making Indian law, getting the Indian stuff wrong. I thought, it's going to be easier for me to understand the legal side of it than it is for them to understand the Indian side of this. (S. S. Harjo, personal communication, January 26, 2009, p. 5)

In 1975 she began working for the NCAI doing advocacy work and serving as their communications and legislative director. She recalls that, "I really learned the hard way. Because it was my beat, I learned first because I was reporting on it, how you get around, and that there was not just one way to do things" (S. S. Harjo, personal communication, January 26, 2009, p. 5). She adds that:

. . . it was within a very decadent white culture in the context of alcoholism, and drugs, and prostitution, and all of these things. But we were doing this really important work, including legislation generally, but also that had been identified as priorities by the membership of NCAI. Then I was pushing very hard on the religious freedom agenda. The Ford administration, as had the Nixon administration before I moved here, said that what we had in mind for an American Indian religious freedom act would be veto bait. That it was unconstitutional because it would be establishing a religion, which was ridiculous. It just shows what an ass the law is, and many of those who practice it. How can the United States establish a religion that predates the establishment of the United States, as all our religions do? . . . So I decided to be a part of the group that would change that and change those positions. (S. S. Harjo, personal communication, January 26, 2009, p.5)

To do so, Harjo joined the Carter campaign, on which she was the only Indian. She had direct access to him during the campaign, and he became a strong ally. She recalls

... one meeting that he had in October of 1976 with Native people where I got to script both sides of the meeting. One of the questions was, "Would you sign into law the American Indian Religious Freedom Act?" He said, "Yes." He was very sweet. He said, "And I'll tell you why." (Oh, no, don't tell us why, it wasn't in my script.) He said, "Because my Bible tells me so." Of course, it doesn't, but it was a charming thing for him to say. His understanding of his Bible was that you respected all people and all religions, which I thought was wonderful. That's what he believes. That was his philosophy. Good for him, and good for us. We had a commitment from the person who the following week became the President. (S. S. Harjo, personal communication, January 26, 2009, p. 5)

Following Carter's election, Harjo flipped contexts again, this time joining the administration in the transition period to get major appointments set for Indians in Indian Affairs. Once this was accomplished, she once again changed contexts, going to work for NARF to push for the ultimately successful passage of AIRFA. Before the Act had even been signed, she rejoined the Carter administration in 1978 and notes that she was able to implement the legislation she had helped write as an advocate:

When you're demanding these things be done, you never contemplate that you're the one that's going to have to do it. I was in charge of coordinating the fifty plus agencies' implementation of the Religious Freedom Act as principal author and organizer of the President's Report to Congress, which was mandated by the Religious Freedom Act, to be delivered to Congress on Religious Freedom one year

after enactment of the law. (S. S. Harjo, personal communication, January 26, 2009, p. 6)

Harjo sees her extensive work toward the successful passage in 1978 of AIRFA as directly leading to her prominent role in the 1980's developing two repatriation laws: the NMAI Act, which establishes the NMAI, and NAGPRA, which applies to all federally funded museums. In particular, she noted that AIRFA allowed them to put forward Indian religious freedom interests and test the strength of the opposition, saying:

There's no reason, as we discovered during the first year's implementation of the AIRFA, that the Indian religious interests should not be accommodated, even in the context of a national security interest, or Freedom of Information Act interest, or a scientific interest, or, or, or. We had all of those kinds of tests that we worked through and documented that, indeed, the Indian Religious Freedom interest can be accommodated even in the face of these things that usually stop discussion when they are raised, like national security. It need not. That's what I meant, and we had a very thorough examination of those issues. (S. S. Harjo, personal communication, January 26, 2009, p. 9)

This strategy of testing the strength of the opposition through legal action is discussed by Willie in his profile of the Montgomery bus boycott, which he includes as an example of principled negotiation that led the Montgomery movement to success (Willie, 2008, p. 32). In the case of testing the legal strength of Indian religious freedoms, this breakthrough was extremely helpful to Harjo and other activists as they turned their attention toward the framing and passage of the repatriation and reburial legislation with the knowledge that they had a strong legal position.

During this period, as she had earlier in her career, she was able to continue her role as a multicultural leader with “one foot in one culture and the second in another” (Willie et al., 2008, p. 18), pushing the repatriation legislation forward by working in multiple arenas: as the executive director of a leading Indian Rights advocacy organization, NCAI, and as a trustee of the Museum of the American Indian, whose collection was transferred to the Smithsonian to create the NMAI. As Willie has illustrated, successful leaders of grassroots movements are people who have experience within both dominant and subdominant communities, and he proposes that “since they understand the culture of both groups, they are better negotiators than others who may understand their own culture well but know little about the complementary culture of another group...and have a better chance of negotiating a settlement...between different power groups. “ (Willie et al., 2008, p. 18). Harjo’s work is a strong example of this aspect of Willie’s theory (and also of his principles for negotiation, to be discussed in more detail in Chapter Five):

Later, and separate from repatriation, but not excluding repatriation, I was one of the people that he (Secretary Adams) was dealing with in negotiating the terms, even down to square footage of the museum. We negotiated this museum. We negotiated the Custom House in New York City and the research center in Suitland, Maryland, and here on the Mall. Everything was negotiated, literally down to the square foot. That was another long process. I was representing Indian country. I was the lead spokesperson for the National Congress of American Indians in the eighties. Then representing the MAI in some respects, and then representing both in some respects. (S. S. Harjo, personal communication, January 26, 2009, p. 25)

This ability to go back and forth from context to context while single-mindedly and relentlessly pursuing an unchanging goal not only illustrates her cross-cultural dexterity, but

is evidence of a second quality Willie identifies as critical to grassroots social justice leadership, which is the complementary ability to work for both social change and social stability. Throughout her career, Harjo was able to put pressure on dominant-culture institutional systems by working outside those systems as an advocate representing subdominant populations, and, also, importantly, by transitioning to work for social change from within the very dominant culture institutions and institutional systems she sought to transform. Often, she was the first or one of the first Indians to have meaningful agency within those systems. Advocacy groups may more frequently excel at dismantling oppressive practices for the purpose of promoting social change. However, new practices must be instituted in place of those that are dismantled. By working within dominant culture systems such as museums and the federal government, Harjo was able to frame legislation and then continue to work toward its implementation, effectively creating social stability.

Willie's theory of grassroots social action also describes a necessity for grassroots movement leaders to possess skills including the ability to listen, to set reasonable goals, and to broker consensus. Harjo describes her early experience traveling around the country, talking to Indian people of many different tribes as

a rich education . . . in . . . broadening . . . my own ideas about who other Native peoples were. Just going from place to place and talking about very serious things, and always having their food, and going into their ceremonies, and then talking again, and really understanding what it was they were saying. (S. S. Harjo, personal communication, January 26, 2009, p. 4)

She describes a respectful, deliberate, and time-consuming process for refining goals and arriving at consensus regarding next steps.

I take all of this very, very seriously and just don't allow it to be trivialized by people who are trying to demean us in any way, or to make fun of our beliefs, or create an atmosphere that makes it difficult for people to feel comfortable enough to say very important things. You throw out an idea. Someone will say, "Why don't we do this? This seems like a good time to do this." People will think about that and everyone may think it's a good idea, but then someone will say, "I just have a bad feeling about that. I don't know what it is. I don't know why. But I have a bad feeling about doing that." Everyone would kind of pull back and say, "Okay. We'll see." Usually there would be something that would make you think down the road . . . that, "Oh, it's really a good thing that we didn't do what we were thinking about doing," because someone had a bad feeling about it, or someone had a dream or it was something like that, and it was clear indication not to do this thing. If somebody was just uneasy about it for some reason that they couldn't even articulate, or it didn't even seem reasonable that they were feeling that, still we would abide by that. (S. S. Harjo, personal communication, January 26, 2009, p. 34)

When asked to characterize her leadership style and strategy, Harjo responded:

Teaching and learning and listening. Cheyenne people say something that . . . is our Cheyenne way to listen to every small voice of Creation, that you listen to everyone and what they think, no matter how redundant, how silly, how uninformed. When you least expect it, you're going to hear some really wise comment that's going to set you on a really good road. That's what I really try to live up to, is to make sure that I listen long enough to hear that small voice that has just the answer you're looking for. Usually it comes from truly the most unexpected corner. There's that. (S. S. Harjo, personal communication, January 26, 2009, p.34)

As will be discussed in more detail in Chapters Five and Six, the reforms Harjo and many other Native activists sought benefited not only the subdominant, or Indian group, they benefited the integrity and academic quality of dominant, white controlled institutions, whose research and educational functions were compromised by the exclusion of Indian knowledge and participation in decision making. As Willie has noted, “A grassroots leader is required to work diligently toward eliminating that which harms anyone in the community and toward maintaining that which helps everyone in the community” (Willie et. al., 2008, p. 19).

Indian Activist Organizations

The Indian Rights and cultural rights movements involved numerous organizations, too many to summarize in one chapter. I therefore identify key institutional players in the cultural rights movement to introduce them and contextualize their efforts within the wider Indian Rights movement. I review these key exemplar organizations and their respective goals using elements of Willie’s theory. Doing so offers important understandings of processes Willie identifies for success in his theory of grassroots social action, including identifying strong organizational leaders, agreeing on goals, neutralizing obstacles, building coalitions, and retaining allies at multiple levels.

The fight to establish the NMAI involved a coalition of tribes and activist organizations. (See Appendices C, D and E for a list of tribal and other groups that participated in the 15 Congressional hearings leading to the passage of the NMAI Act and NAGPRA). The most influential of these on the activist organization side were the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI), and the American Association of Indian Affairs (AAIA), which together established the

American Indian Religious Freedom Coalition in 1988 in the thick of the repatriation battles and brought over 100 tribes and organizations together in support of the Coalition and its goals (Cooper, 2008, p. 63).

These three organizations will have prominence in a discussion of the push to establish the NMAI, to follow in Chapter 5. They, in comparison with urban activist groups such as AIM, worked more closely with tribal governments and created coalitions composed of tribal organizations. They and their leaders were directly involved in not only lobbying for, but also in framing the legislation along with strong allies in the federal government (S. Harjo, personal communication, January 26, 2009; McKeown, 2012).

In addition, other activist organizations less directly involved in the legislative push for repatriation nonetheless set the stage for a legislative victory by contributing to the momentum of the broader movement: exposing injustices; inspiring Indians to speak out and to be proud of their heritage; educating the general public through public action; and catalyzing media coverage of Indian Rights issues (Johnson, Nagel, & Champagne, Eds., Chicago, University of Illinois Press, 1977). I therefore profile prominent examples of such organizations following my discussion of AAIA, NCAI, and NARF to provide important context for their development.

Association of American Indian Affairs (AAIA)

The AAIA was very influential in advancing the legislative successes of the cultural rights movement in the late 1980s, along with the NCAI and NARF. Its current executive director, attorney Jack F. Trope, is an expert on repatriation legislation and the author of many authoritative articles on the subject; he has also coauthored works with legal heavyweight Walter Echo-Hawk, who spent over 30 years of his career with NARF (Trope and Echo-Hawk, 1992). Trope, along with current AAIA board member and previous

executive director Jerry Flute, testified before Congress regarding various repatriation bills. He also took a leadership role, along with the NCAI's Suzan Harjo and NARF's Echo-Hawk, in negotiating agreements with, and applying pressure on, stakeholders such as the Smithsonian, the Society of American Archaeology, the American Association of Museums, and others to support repatriation bills before Congress.

The AAIA grew out of an earlier organization, the Eastern Association on Indian Affairs, which was started by a group of non-Indian white New Yorkers in 1924 in response to legislation passed by the Senate¹¹ in 1922 that threatened Pueblo people's land rights. It remained primarily a white organization until the 1950s. The EEIA was seen as moderate in comparison to other groups supporting EEIA's efforts to protect Pueblo interests. For example, the American Indian Defense Association, directed by John Collier, the future Commissioner of Indian Affairs, was aggressively critical of the U.S. Indian administration system.

The EAIA became the Association on American Indian Affairs (AAIA) in 1937. Today, the AAIA is a wholly Indian organization, both at the level of its staff and its trustees. It defines itself as "the oldest Indian advocacy organization in the United States" and as an independent organization that receives very little federal funding and is devoted to issues, including sacred lands protection and Native language preservation, that "do not receive the attention that they otherwise deserve" (AAIA, n.d.).

Strategically, the AAIA describes itself as working both at the grassroots and national levels with a long-term commitment toward solving social issues, "generating successes step by step through our persistent efforts (AAIA, n.d.). AAIA provides "legal assistance . . . programming, cash grants and scholarships to Indian tribes, organizations and students" and

¹¹ S. 3855

its mission is to “promote the well-being of American Indian and Alaska Natives by promoting the health, education and welfare of children and youth; sustaining and perpetuating tribal languages and cultures; protecting tribal sovereignty, religions and natural resources; and advocating for tribal constitutional, legal and human rights” (AAIA, n.d.).

National Congress of American Indians

NCAI’s leadership, along with that of NARF and AAIA, was intimately involved in negotiations leading to the passage of both NAGPRA and the NMAI Act, and worked closely with Congressional and Senate leaders and their staffs in the framing of the legislation.

Two of NCAI’s leaders,¹² Vine Deloria, Jr. and Harjo, were also trustees of the Museum of the American Indian, Heye Foundation (MAI, whose collections are transferred to the Smithsonian to establish the NMAI); Harjo also became a trustee of the NMAI. Vine Deloria, Jr., served as Executive Director of NCAI from 1964–1967, and Harjo served as Executive Director of NCAI from 1984–1989, encompassing critical years when a flurry of repatriation bills was being drafted and presented to Congress. During her tenure, the NCAI was one of the most influential organizations working toward the establishment of repatriation and burial protection legislation and the creation of the NMAI.

Harjo first testified before the House Interior Appropriations Subcommittee on March 6, 1986, that the Smithsonian National Museum of Natural History (NMH) was in possession of 17,000 Native American human remains (McKeown, 2012). This led to Smithsonian Institution Secretary Robert McCormick Adams’ subsequent Congressional testimony in February of 1987 that 18,500 Native remains were then in the Smithsonian

¹² NCAI’s Executive Committee consists of four elected officials: the President, 1st Vice President, Recording Secretary, and Treasurer, which are elected by the entire membership and serve for two-year terms. The executive director positions are not elected and do not have term limits.

collections. These previously unpublicized statistics proved to be a critical catalyst for activists' gaining of additional allies and public support, as will be discussed in Chapter Five.

The NCAI was initially founded in 1944 to fight against U.S. termination policies that sought to dissolve tribal nations. NCAI brought tribal groups into a powerful coalition to strengthen their abilities to collectively protect treaty and sovereign rights and Native cultures and ways of life, and to generally promote the betterment of the quality of life of Native people.

A guiding proposition of NCAI is that “the governmental status of tribal nations is at the heart of nearly every issue that touches Indian Country. Self-government is essential if tribal communities are to continue to protect their unique cultures and identities” (NCAI: Policy Issues, Tribal Governance, n.d.).

The 1944 Preamble to the Constitution of the National Congress of American Indians, Denver, Colorado, states that NCAI therefore seeks “... to secure to ourselves and our descendants the rights and benefits of the traditional laws of our people to which we are entitled to as sovereign nations” (NCAI: By-Laws, Rules of Order, n.d.)¹³.

NCAI's mission is to: “Protect and enhance treaty and sovereign rights; Secure our traditional laws, cultures, and ways of life for our descendants; Promote a common understanding of the rightful place of tribes in the family of American governments; and Improve the quality of life for native communities and peoples” (NCAI: Mission and History, n.d.).

The NCAI presents its founding principles as:

To secure and preserve American Indian and Alaska Native sovereign rights under treaties and agreements with the United States, as well as under federal statutes, case

¹³ This article was last amended in 2007.

law, and administration decisions and rulings; To protect American Indian and Alaska Native traditional, cultural, and religious rights; To seek appropriate, equitable, and beneficial services and programs for American Indian and Alaska Native governments and people; To promote the common welfare and enhance the quality of life of American Indian and Alaska Native people; To educate the general public regarding American Indian and Alaska Native governments, people, and rights. (NCAI: Mission and History, n.d.)

By forming a coalition of tribes to advance Indian rights, NCAI addresses a primary obstacle tribes face if advocating for reform alone, namely that their requests are more easily dismissed by the U.S. Government. And, importantly, in addition to creating tribal coalitions, NCAI creates wider coalitions of allies: “As a unifying entity, NCAI has the ability to bring government, private, and public sector partners together to take on some of Indian Country’s greatest challenges” (NCAI Initiatives, n.d.).

NCAI leadership has noted several additional obstacles to tribal self-governance “based on three thematic areas that have been identified in recent years: (1) outmoded bureaucratic processes; (2) lack of federal agency coordination; and, (3) regulations and laws that prevent tribal governments from equitable access to federal programs on par with state and local governments” (NCAI: Policy Issues, Tribal Governance, n.d.). In response to these obstacles, NCAI has “...identified an array of no-cost or low-cost opportunities for the Administration and Congress to reduce administrative burdens and recognize parity among tribal and state governments” (NCAI: Policy Issues, Tribal Governance, n.d.).

Native American Rights Fund

The Native American Rights Fund (NARF) is a nonprofit law firm established in 1970 to fight for the sovereignty rights, human rights and cultural rights of Native tribes and

peoples. The organization played a critical leadership role in advancing Native religious freedom and repatriation legislation leading to the creation of the NMAI (Deloria, 1989; Echo-Hawk, 1989; Moore, 1987; Sockbeson, 1987). NARF legal experts Henry Sockbeson and Walter Echo-Hawk testified before Congress as advocates for the repatriation laws and, as noted previously, Echo-Hawk worked directly on the framing and the language of the legislation in consultation with Senate and Congressional staffs and representatives of allied organizations AAIA and NCAI. More details of their work and testimony, along with a profile of Echo-Hawk, will be included in the following chapter.

NARF's agenda extends well beyond religious freedom and repatriation issues. This agenda is as broad as the interests of tribes and Native peoples, and NARF has won major battles to protect land claims, fishing rights, gaming, and the protection of natural resources. Its first major initiative was representing the Menominee tribe in the successful battle to restore its federal recognition, which had been dissolved by the federal government as part of a movement to terminate tribal status and assimilate tribal members into society (Echohawk, 2013).

NARF describes its mission as the: "preservation of tribal existence; protection of tribal natural resources; promotion of Native American human rights; accountability of governments to Native Americans; and the development of Indian law and educating the public about Indian rights, laws, and issues" (NARF: Mission, n.d.). Co-founder John Echohawk, who has been described as the Thurgood Marshall of the Indian Rights movement (Targ, 2006, p. 25), was the first Native American attorney to graduate from the University of New Mexico School of Law's special program for Indian lawyers (Targ, 2006) and is the NARF's Executive Director. He has written that NARF was created when "tribal leaders and lawyers recognized the need to start a national Indian legal organization that

could take on the most important legal fights for Indian rights” and that “for Indian people, asserting their civil rights meant asserting their Indian treaty rights and other Indian rights under federal law” (Echohawk, 2013, p. 19).

Echohawk relates that NARF was created through the financial support of the Ford Foundation, “which had been active in starting legal defense funds for other minority groups during the Civil Rights Movement of the 1960s,” (Echohawk, 2013, p. 19) and was an extension or outgrowth of the Indian legal services programs that had started in the 1960’s through the U.S. government’s Office of Economic Opportunity (OEO) as part of the war on poverty. He recalls:

One of the most important programs of OEO was the creation of legal services programs across the country to provide, for the first time, legal representation for poor people in civil matters. Some of these legal services programs had begun on Indian reservations; the young Indian legal services lawyers had to learn about the obscure field of federal Indian law in order to serve their Indian clients. They discovered that Indians had substantial rights under the treaties, rights that needed to be asserted. (Echohawk, 2013, p. 18–19)

NARF began taking on cases for tribes in areas of the country that the federal Indian legal services programs did not serve (Echohawk, 2013, p. 19).

NARF describes its priorities as follows: “the preservation of tribal existence;¹⁴ the protection of tribal natural resources; the promotion of Native American human rights;¹⁵ the

¹⁴ Including “the rights of self- determination necessary to preserve traditional customs and ways of life” (NARF, n.d.).

¹⁵ Including education, health, housing and religious freedom rights (NARF, n.d.).

accountability of governments to Native Americans;¹⁶ and the development of Indian law and educating the public about Indian rights, laws, and issues” (Native American Rights Fund, n.d.).

Allied organizations during the repatriation and religious freedom battles included: NCAI; AAIA; hundreds of tribes; government officials; religious groups; and some allied individuals in museums and scientific organizations. Throughout its existence, NARF has partnered with countless other Indian organizations and successfully gained support from outside groups. NARF is extremely active politically, socially and legally. Any important fight for Native peoples’ rights will either get funding or other support from NARF.

The primary obstacle to the fulfillment of NARF’s mission, according to Walter Echo-Hawk, has been the racist foundations to Indian law in the U.S. He has noted:

In the very first case to come before the United States Supreme Court involving a significant Native American issue, Chief Justice John Marshall ominously described the American judicial system as “the courts of the conqueror.” Thus clothed, the Supreme Court handed down a sweeping opinion that appropriated legal title to the United States, even though most of the continent was still owed and occupied at the time by Indian tribes. Since that fateful decision in *Johnson vs M’Intosh* (1823), American law has often worked against Native Americans, legitimizing the appropriation of their property and the decline of their political, human, and cultural rights as indigenous peoples at the hands of the government. (Echo-Hawk, 2010, p. 3)

¹⁶ Further, “NARF focuses much of its efforts on guaranteeing that the federal and state governments are accountable for the proper recognition and enforcement of the many laws and regulations which govern the lives of Indian people” (NARF, n.d.).

He points to cases still on the books and used by the courts as precedents that refer to Indians as “savages” who are racially inferior to whites and adds:

Even though colonialism was rejected as repugnant by the international community shortly after World War II, the legal underpinnings of colonialism remain implanted in the domestic law of the United States. In addition, the Supreme Court continues to rely upon legal doctrines infected with bare race-based notions as it decides contemporary Indian cases, long after the ideology of race has been discarded by virtually every other governmental institution in the country. Thus, the legal system ironically remains one of the last to perpetuate a form of racism. These fundamental problems in federal Indian law have prompted a call for reform. (Echo-Hawk, 2010 p. 5)

To combat this legacy, NARF’s strategy has been to employ U.S. law to reform U.S. law. As Echo-Hawk states: “That strategy worked well in the courts of the conqueror. . . . The successful use of law to solidify the presence of Native America is a great testament to the vitality of the American judiciary” (Echo-Hawk, 2010, p. 4).

Other obstacles have included limited access for Native people to legal training and the legal system, a lack of knowledge about federal Indian law, and difficulty accessing what limited knowledge existed. NARF’s literature describes its staff discovering

. . . that in the past, no single person or institution had collected information on the many lawsuits filed affecting Indians. There had been no concerted effort in communicating the existence of such lawsuits, or other significant developments in Indian law, and this had been detrimental to the restoration of Indian rights. The efforts of those few attorneys who had been involved were uncoordinated, and the results of their litigation had not been known to others working in the field. Many

attorneys had been unable to represent Indians due to the difficulty of researching Indian law and tracking current developments. The task had either proven too great for the attorney, or it was cost prohibitive for the Indian client. (Native American Rights Fund: History, n.d.)

To answer this need, NARF established a library devoted exclusively to and serving as a central clearinghouse on Indian law. Lawyers researching cases can find information on lawsuits filed affecting Indians and significant developments in Indian law, as well as consult with NARF research librarians. To strengthen the library and archive, NARF researchers created the General Index to Indian Law, which originally encompassed more than 380 legal subject headings for what would become the NILL collection. Funding for the library came again from the Ford Foundation. In 1972, the library entered into an agreement with the U.S. Indian Claims Commission to catalogue, index, and distribute previously difficult-to-access Indian Claims Commissions Decisions. In 2000 an internet version of the catalog containing 10,000-plus titles was launched. The library is used by past and present NARF staff and trustees, Indian Legal Service attorneys and attorneys in private practice, tribes (government officials and tribal courts), scholars, the press, other libraries, state government staffs, Indian organizations, and any number of individuals, including prisoners (Native American Rights Fund: History, n.d.).

American Indians Against Desecration

American Indians Against Desecration (AIAD) defines itself as a coalition of “traditional religious leaders from many Indian nations (who) share basic religious beliefs concerning the sanctity of our graves” (Hammil & Cruz, 1989, p. 195). In a 1986 presentation to the World Archaeological Congress (WAC) held in Southampton, England, the proceedings of which were published in 1989, representatives of AIAD stated that they

are given guidance by elders and traditional people from many different tribes. In preparation for the WAC, several elders and traditional leaders they consulted asked the presenters to bring a message to the archaeologists at the conference that “Those bones are our ancestors, and our ancestors are sacred. By disturbing the ancestors’ graves and spirits, they have caused many problems and hard times for our people . . . You tell them that the bones of our ancestors must be returned” (Hammil & Cruz, 1989, p. 200).

AIAD is an outcome of the International Indian Treaty Council, which initiated the protest action “The Longest Walk” in 1978. During The Longest Walk, activists traveled across the country, from the Indian-occupied Alcatraz island in San Francisco to Washington, D.C., to draw attention to sovereignty issues. During the cross-country journey, caravans of Indian activists visited universities and museums and were shocked by what they discovered:

As we crossed the country and visited the universities, museums, and laboratories, we found the bodies of our ancestors stored in cardboard boxes, plastic bags, and paper sacks. We found our sacred burial places stripped and desecrated, the bodies and sacred objects buried with our dead on display for the curious and labeled ‘collections,’ ‘specimens,’ and ‘objects of antiquity.’ (Hammil & Cruz, 1989, p. 195)

In response to what they saw and learned, some of the activists participating in the Longest Walk formed the group AIAD.

The AIAD’s goals are to prevent the desecration of human remains, of graves, and of sacred ceremonial and funerary objects, to return these materials to Indians for proper care, and to rebury human remains. The obstacles they faced included difficulty accessing collections and basic information about collections, which museums and universities did not

make accessible. Additionally, museum records were incomplete and sometimes incorrect, and materials were scattered across multiple institutions.

AIAD strategies to reach their goals have been varied. Some actions have been protests. Some included litigation. Some involved alliances with archaeologists, including attending and presenting at archeological conferences, such as the previously noted WAC in 1986. Other alliances include, for example, a coalition of AIAD, International Indian Treaty Council, and AIM members together attending meetings of the Society for American Archaeology (SAA) in 1982 with ally and archaeologist Larry Zimmerman. For Zimmerman, who at the SAA meeting supported the coalition's goal to promote a reburial resolution, the experience "taught me . . . our concern for those we study is minimal, and . . . I believe we are sometimes very racist as a profession" (Zimmerman, 1994 p. 63).

Other actions involved the media. For example, in 1983, members of AIAD successfully protested the display of human remains including two skulls at the Fort Worth Museum of Science and History. The protesters contacted the media and successfully got their story and perspective in the newspapers. The museum complied and removed the human remains from exhibition (Cooper, 2008, p. 41).

Finally, AIAD leaders have pledged that, "to ensure our objective's success, we are training our children and grandchildren in locating and securing the return of our ancestors and sacred items . . . we are prepared for a very long war against those enemies that seek to destroy Indian religious practices, customs and traditions" (Hammil & Cruz, 1989, p. 195).

National Indian Youth Council

In 1961, a young Clyde Warrior (Ponca) and Melvin Thom (Paiute) became disillusioned with tribal leaders' positions at the American Indian Chicago Conference, held at the University of Chicago. "460 Indians representing 90 tribes drafted a 'Declaration of

Indian Progress” (Grossman, 1996, p. 447) at the conference, and this Declaration was later presented to then-President John Kennedy. Warrior and Thom, along with several members of the Southwest Regional Indian Youth Council (SWRIYC) were frustrated by what they felt were conservative and unworkable ideas and became disillusioned and vocal in their critique of the tribal leaders’ positions (Smith & Warrior, 1996).

In part influenced by militant wings of the civil rights movement, the students subsequently formed a group first called the Chicago Conference Youth Council and later renamed the National Indian Youth Council. The original founders included a coalition of both men and women who came from many tribal backgrounds, including Tuscarora, Navajo, Ute, Potawatomie, Paiute, and Ponca (Fluharty, 2011).

The NIYC strategies, including public protests and successful actions such as the 1968 “fish-ins” to defend Northwest Coast tribal fishing rights protected by treaties, the group’s dexterity in generating media coverage, and their projects and programs such as the newspaper *ABC: Americans Before Columbus*, inspired future leaders, including but not limited to, attorney and author Walter Echo-Hawk as we have noted previously (Echo-Hawk, 2010, p. 3), George P. Horse Capture, who would later become a curator at the NMAI (Horse Capture, 1994), and Suzan Harjo (Walker, 2014).

NIYC was originally a militant group, but it became more moderate in the 1970s. The organization presents the evolution of its priorities as follows:

In the 1960’s, NIYC was an Indian civil rights organization, spearheading the movement for the preservation of treaty rights to fishing in the Northwest. In 1968, we were the Indian coordinator for the Poor People’s Campaign. In the 1970’s, NIYC was chiefly an Indian environmental organization filing massive lawsuits for Indian communities that did not want coal strip mining and uranium mining and

milling on their land. We achieved international recognition for halting the \$6 billion coal gasification plants on the Navajo Reservation. NIYC is still concerned with these matters, but our activities today reflect a changing world. (NIYC History, n.d.)

Today, the organization defines its primary goal as “the survival of Indian people . . . NIYC believes that the Indian way of life is valid and that Indians have a right to their culture. Through NIYC, Indians and non-Indians join hands to create a more just and humane world” (NIYC History, n.d.). Priorities to that end include: defending Indian freedom of religion; protecting voting rights and promoting participation in voting; protecting treaty rights; improving public education; participating in international forums and actions defending indigenous rights; and promoting job placement and training.

American Indian Movement (AIM)

AIM is an urban Indian organization founded in 1968 in Minneapolis and still active today. Its goals are to protect Native American rights and dominant groups’ rights equally under U.S. law, and also to seek the enforcement of treaties between Native tribes and the U.S. government. AIM began as the Minneapolis AIM Patrol, whose members sought to combat police brutality by filming police interactions with Indians using cameras bought with resources provided by the Urban League (Bellecourt, 1992).

Early AIM members were associated with some of the black militant groups within the civil rights movement. They also engaged student activists on university campuses. The organization gained momentum as its founders began attending American Indian conferences with their materials, meeting others and expanding their membership. In 1970 they held their first national meeting in St. Paul, Minnesota (Cooper, 2008, pp. 9–10).

As the group grew, its goals also grew to encompass the protection of treaty rights and the preservation of spirituality and culture, as well as the promotion of new services to

Indians by creating schools, housing, and employment support. Although some AIM activists were allied with black and Hispanic activist groups, “unlike the American civil rights movement . . . AIM has seen self-determination and racism differently. Desegregation was not a goal. Individual rights were not placed ahead of the preservation of Native Nation sovereignty” (Wittstock & Salinas, n.d.).

Several of AIM’s most recognized leaders are Dennis Banks, brothers Clyde and Vernon Bellecourt, and Russell Means. Vernon Bellecourt (Chippewa) has written about the experiences he and his brother Clyde had in prison, and how, after Clyde had given up hope, he began a hunger strike. During the hunger strike,

. . . he met a young Ojibwa brother who was from a medicine family, a family of spiritual leaders, and this man was also a spiritual leader . . . he’d come by my brother’s cell and ask him to eat. But Clyde wouldn’t eat. Then one day he started quoting literature, telling about the Ojibwas and our proud heritage. And finally one day . . . my brother picked up a piece of this literature and started reading about us. And he finally recognized he wasn’t the dirty Indian he’d been told he was by White students at school. . . . (Bellecourt, 1999, p. 373)

After Clyde Bellecourt got out of prison, he attended a meeting of inner-city Indians who wanted to organize to fight police harassment and brutality, and, at this first meeting, he was asked to lead the group (Bellecourt, 1999).

AIM is considered to be the most militant of Indian activist groups, and its strategies of resistance frequently involved staging large, well-publicized occupation or takeover protest actions. Some well-known events include the 1972 action Trail of Broken Treaties, after which demonstrators took control of the national headquarters of the Bureau of Indian Affairs, or the 1973 occupation of Wounded Knee on the Pine Ridge Reservation that

culminated in armed conflict with police and federal agents. This penchant also served to distance them from other Indian Rights organizations. As historian Peter Nabokov writes:

Some of its members were urban Indians and ex-prison inmates with little patience for non-violence and carrying placards. As with more militant black and Hispanic rights organizations, AIM preferred armed self-defense and direct confrontation. As they protested police excess and other urban Indian problems, they also tried to support reservation Indians in their struggles. But their threatening, theatrical style could cause differences between them and the more conservative rural peoples they sought to serve. (Nabokov, 1999, p. 372)

Suzan Shown Harjo, who, as Executive Director of NCAI, played a leading role in developing and implementing legislation including AIRFA and the NMAI Act, states that AIM was not directly a part of the coalition and movement to establish and implement the repatriation legislation, and that:

They were all city people who didn't have anything to do with their tribes or their cultures. They knew how to say sovereignty and they knew how to say culture, but they didn't know what it meant. They didn't exercise their treaty rights. These were all foreign views to them. A lot of them were prison guys and that was their focus. They did a real good job in their area, but they were not part of our movement, if you will, until later, and then only as individuals. (Harjo interview 2009, p. 2)

Anthropologist David Hurst Thomas notes the tension between AIM and other advocacy groups such as NCAI, saying, "the largely reservation-based constituency of the NCAI . . . had problems with the urban activists and their confrontation politics, and a split of sorts developed between the two perspectives." (Hurst Thomas, 2000, p. 202)

Founding NMAI director Richard West and current NMAI director Kevin Gover have proposed “that while AIM ‘probably never had the influence in the Indian community that the American media believed it had, it did reflect accurately the frustration and anger felt by all Indians, at least to some degree’” (quoted in Hurst Thomas, 2000, p. 203).

Conclusion, initiation

As an exemplar of leadership, the profile of Suzan Shown Harjo illustrates principles of leadership outlined by Willie in his theory of grassroots action. Willie identifies the following qualities of leadership as criteria for effectiveness: a *complementary ability to work for both social change and social stability*; *multicultural life experience* as a member of both dominant and subdominant sectors of society; a *commitment to ideals* such as fairness, equity, nonviolence and to actions that protect members of a community from harm; and skills including *the ability to listen, to set reasonable goals, and to broker consensus* (Willie, 1994; Willie et al., 2008).

The profile of Harjo illustrates that her experience and leadership are strong examples of these four criteria: multicultural life experience, which in Harjo’s case includes dexterity in crossing institutional cultures; the ability to work for social change and social stability, which describes Harjo’s dual capacity to fight against oppression but also create new, inclusive structures; a commitment to ideals, which has driven her work to protect the cultural and human rights of Indian people; and the ability to listen, set goals, and broker consensus, which was beautifully illustrated by her discussion of the Bear Butte group dynamics.

Willie also notes that the initiation stage of a movement may begin with “a convergence of interest among people in the community who have similar feelings and beliefs about a problem . . . By way of group discussion, ideas [of individuals] are

transformed into specific proposals of action for the community . . .” (Willie 1994, p. 57).

The profile of Suzan Shown Harjo as an exemplar activist leader provided an excellent illustration of this principle in action through her discussion of the Bear Butte coalition formed in 1967 to protect Native American religious freedom and cultures. She describes the process the group followed to make decisions and decide on goals and actions. They included (but are not limited to): each member of the group sharing what he or she has learned since the last meeting;¹⁷ listening to and respecting all participants (“you listen to everyone and what they think, no matter how redundant, how silly, how uninformed”); being willing to articulate and act on gut feelings, such that if anyone had a troubling feeling about the course of action, it would be tabled; and brokering consensus.

Additionally, the organizational exemplars profiled in this chapter for the Indian rights and repatriation movement successfully meet the criteria for the initiation stage described by Charles Vert Willie’s theory of grassroots social action. Each exemplar provides insight into the repatriation movement that is one aspect of, and is intertwined with, the broader, complicated and messy Indian Rights movement. The movements include many different actions orchestrated by hundreds of individual tribes and numerous coalitions led by: Native traditional religious leaders; Native legal and policy experts; or tribal government leaders, and including urban organizations. Each of these subsets is complex.

¹⁷ “What we would do when we would meet is we would always learn from our host first. Then we would talk to each other about what we had learned since the last meeting. People would just sort of do a recapping. We started over here with our Cheyenne ways, or Lakota ways, or Arapaho ways, and some other people with us. Then we went to Zuni. We would go through this whole litany of where we had been and how we had gotten to this point, so that people didn’t have to ask questions like, “How did you get here?” (S.S. Harjo personal communication, 2009, p. 33)

For example, there are more than five hundred fifty federally recognized existing tribal groups in the U.S., encompassing a diversity of cultures, religious traditions, and languages, as well as many groups that are not recognized. Tribal resistance and activism frequently has been, and continues to be, led by tribes' political leadership. In addition, within various tribes, traditional leaders—those representing the religious traditions of the group—may differ from the political leadership of the tribe, and in some cases traditional religious authorities led, and continue to lead, actions that may or may not be aligned with the political structure. The many actions by tribes are beyond the scope of this chapter; some key events are discussed in Chapter Five.

Therefore, this chapter discussed several types of pan-tribal coalitions and organizations by profiling three types of exemplars:

- Pan-tribal coalitions orchestrated by organizations, such as the influential National Council of American Indians (NCAI), bring tribal groups together to advocate for shared interests. Strategies include public protests, governmental lobbying, and legal challenges. In addition, publicity campaigns both inspire and galvanize Indians as well as educate and gain support from a wider public.
- Other pan-tribal coalitions of traditional religious leaders have led acts of resistance not meant to be visible to others, involving restricted practices and knowledge. Harjo discusses one such group that began convening in 1967 in Bear Butte.
- Urban organizations, some centered in university settings, rather than bringing together tribal governmental leaderships, have tended to involve individuals from many different backgrounds. In some cases, tribal or pan-tribal groups have viewed urban movements as successful in drawing attention to issues but less effective in fostering systemic and institutional change.

The exemplar pan-tribal organizations and coalitions profiled in this chapter provide a window to processes Willie identifies as criteria for success during the initiation phase, including the need to establish internal organization between people with a common interest, identify common goals and propose appropriate action for the achievement of goals held in common (Willie, 1994, 57–58). Each successfully organized, identified shared goals, and agreed on actions. In all three of the above-noted spheres of pan-tribal groups, Native grassroots activists fought, and continue to fight, for the recognition of tribes' sovereign status and thus the protection of tribal rights to self-governance and cultural continuity, including enforcing the terms of treaties, and protecting human and civil rights. These rights include equal protections for both the right of religious freedom and for equal protections for the sanctity of Native dead. Protecting these cultural, human, and civil rights has included, and continues to include, various and specific actions involving education and resistance as a means to: protect sacred sites, graves, the environment, or traditional hunting and fishing rights; ensure access to quality health care and education; seek education reform for the nation as a whole so that racism is not perpetuated in the wider culture; strengthen cultural knowledge and practices including language preservation; repatriate human remains, sacred objects, and communal property; end police harassment of Native people; address unemployment, suicide, and addiction issues in Native communities, and more.

Finally, within the narrower focus of the cultural rights movement, there was consensus regarding goals of the movement. Native grassroots activists strategically sought to sustain Native American cultures through the following goals in their negotiations with museums, universities, and government agencies (Harjo interview, 2009; National American Indian Museum Act, 1987, p. 45; Riding In, Seciwa, Harjo, & Echo-Hawk, 2004; Trope & Echo-Hawk, 1992; West interview, 2009):

- Recognize the human rights violations perpetuated by the U.S. government that led to the removal of human remains sacred material and cultural patrimony from the oversight of tribes.
- Return Native remains in museum collections and sacred objects and cultural patrimony—including those important to the survival of Native religions and languages—to tribes,
- Institute new standards for appropriate care and interpretation such that Native human remains are treated respectfully as the remains of human beings, not as scientific specimens, and Native material culture is collected, cared for, interpreted, and published ethically and accurately.
- Recognize Native cultures and worldviews as vibrant knowledge systems that are not “primitive” or inferior to other religious, such as Christian, beliefs, or Western scientific knowledge, and that are valuable to the project of knowledge in general.
- Recognize that Native cultures continue to survive and flourish today and uphold Native cultural rights.

The following chapter will refer to Charles Willie’s theory of grassroots social action to discuss how cultural rights movement activists gained support for and neutralized opposition toward these goals.

Chapter Five: Legitimation

Building on the previous chapter's discussion of the wider Indian Rights movement, this chapter will show how activists leading the cultural rights movement (described by Rick West as "returning or repatriating control over culture to native communities" (W. R. West, personal communication, February 26, 2009, p. 5), working toward the creation of the NMAI, moved their agenda forward and were ultimately successful in securing the passage of the NMAI Act, which established the museum. This corresponds to the legitimation stage in Charles Willie's theory of grassroots social action.

Willie states that "the legitimation stage has two parts: obtaining approval and, if necessary, neutralizing opposition" (Willie, 1994, p. 58). I will therefore use Willie's theory of grassroots social action to continue to describe how coalitions were formed, who became allied with the movement, which obstacles and opposition the activists faced, and how they successfully neutralized that opposition. To do so, in this chapter I first present a profile of an exemplar activist leader who plays a major role in the legitimation stage of the movement: legal expert Walter Echo-Hawk. Second, I present an analysis of Congressional hearing testimony to further highlight the Native activists' and their allies' goals, their opponents' agendas, and the strategies and arguments activists employed to overcome resistance from opponents. Third, I use Willie's theory of grassroots social action to highlight events and strategies employed by grassroots activists that led to the passage of the legislation in a chronological narrative.

Leadership profile: Walter Echo-Hawk

Walter Echo-Hawk (Pawnee) is a giant in the field of Indian law who has devoted his career to fighting for Indian sovereign, cultural, and human rights. He believes that “lawyers should try to use their life . . . to work for justice” (W. Echo-Hawk, personal communication, October 18, 2007). Echo-Hawk is a formidable activist leader of the Native American sovereignty movement that led to the rise of modern Indian nations (Echo-Hawk, 2010; Harjo, [video] n.d.).

Echo-Hawk began his legal career at the Native American Rights Foundation (NARF) in 1973 and worked at NARF for over 35 years, focusing on the areas of religious freedom, including repatriation and reburial issues, and treaty issues. NARF’s leadership was extremely effective in realizing two key functions essential to the legitimization phase of a movement in Willie’s theory of grassroots social action: first, gaining allies’ approval of, and support for, the movement’s goals and, second, neutralizing opposition.

To gain approval and support from allies, NARF’s leaders successfully built Native coalitions and also coalitions that brought together many non-Native allies in support of Native causes (McKeown, 2012). To neutralize opposition, NARF lawyers employed U.S. law to reform injustice within U.S. law (Echohawk, 2013; Echo-Hawk, 2010). Walter Echo-Hawk was one of the key actors within NARF leading this work, and the subject of his life and work as an exemplar activist leader is particularly suited to a discussion of the legitimization phase of a movement.

Echo-Hawk is a powerful speaker (and is sought-after for speaking engagements internationally), a prolific author, a law professor, and a tribal judge, and he continues to practice law. He is “admitted to practice law before the United States Supreme Court, Colorado Supreme Court, Oklahoma Supreme Court, U.S. Courts of Appeals for the Eighth,

Ninth, District of Columbia, and Tenth Circuits, and a host of federal District Courts”

(Harjo, [video] n.d.). He is a member of the Pawnee tribe and has represented Indian traditional religious leaders and Indian tribes throughout his career (Echo-Hawk, Foster, Parker, & Coffey, 2004). His short biography is included in Appendix G.

Echo-Hawk’s legal training, extensive professional experience, including as a tribal judge, and multicultural background have made him a powerful bridge between Native tribes and the U.S. legal system. In addition, his specialized experience working with religious leaders has made him an effective mediator between religious leaders and others, both Native and non-Native. To give just one example, in a 2004 panel discussion regarding the implementation of the American Indian Religious Freedom Act (AIRFA), he discusses the difficulties of defending religious freedom when a religious tradition is secret, giving as an example a case NARF won on behalf of the Kootenai. Echo-Hawk led the case, and the Kootenai were successful in protecting a sacred waterfall site from being destroyed by a proposed dam. Echo-Hawk, however, sees this case as being of limited value as a precedent because it was necessary to get a confidentiality order to seal the case records, including even the case decision, since Kootenai religion is secret and it was “painful for them to testify” (Echo-Hawk et al., 2004, p. 158). He noted that judges seem to have particular difficulty in understanding and protecting Indian religious freedoms, and that without religious freedoms, Indians are irrevocably harmed, stating:

in my view, you can enjoy all the tribal sovereign rights to govern over land and water . . . all of the bundle of rights that we enjoy as Native people, but if we lose our religion, then none of these other rights makes any difference at all. It’s our religious rights, our spiritual rights, that give meaning to the rest of the legal bundle of rights that we enjoy as Native people and tribes—this is what we’re all about. I’ve been

fortunate and privileged in my career as an attorney to represent traditional religious practitioners in court—religious leaders, Indian tribes, and organizations such as the Native American Church. (Echo-Hawk et al., 2004, p. 156)

Echo-Hawk's role serving as an intermediary for the Kootenai, as someone who understands both the legal and religious context, was essential to this painfully won victory; this capacity to bridge cultures is a perfect example of the multicultural dexterity Willie defines as a criteria for success in his theory of grassroots social action (Willie et al., 2008).

In addition, Echo-Hawk's commitment to religious freedom and his belief in the power of education to transform society are persistent themes in his work, illustrating another principle of Willie's theory: a commitment to ideals. In a recent National Park Service film, "The Development of NAGPRA," Echo-Hawk states two "important lessons" he has learned. First is an awareness of ". . . the spiritual power of our ancestors, who in my mind guided our efforts at that time as we went into the halls of Congress"; second, is that "Americans are fundamentally a fair people and once they are informed about a problem and given the facts at hand, they more often than not act to do the right thing. This was certainly the case for NAGPRA" (National NAGPRA Program, 2011).

Echo-Hawk's commitment to his ideals was inspired early in his life by his family and by Native activists in the 1960s. Echo-Hawk became a lawyer because, as he has written:

My folks urged me to go to law school in the late 1960s to help correct problems in our Pawnee tribal community. Heeding their advice, I followed the moccasin tracks to law school by visionaries such as F. Browning Pipestem (Otoe-Missouri/Osage), Urban Bear Don't Walk (Crow), John Echohawk (Pawnee), and others. (Echo-Hawk, 2010, p. 3)

Although he follows in the footsteps of these leaders, he notes that:

At the conception of the sovereignty movement, only a handful of American Indians were lawyers, perhaps a dozen, even though the condition of Native Americans has always been highly dependent upon the courts (Echo-Hawk, 2010, p. 3).

He further describes his work as a legal activist as inspired by the need to fight the dark side of Indian law and to “root out racism, colonization, and injustice that is found in some of the doctrines of federal Indian law” (Harjo, [video] n.d.). He notes that:

Only rarely in US history has the law served as a shield to *protect* Native Americans from abuse and to further their aspirations as indigenous peoples. The law has more often been employed as a sword to *harm* Native peoples by stripping away their human rights, appropriating their property, stamping out their cultures, and, finally, to provide legal justification for federal policies that have, at times, resorted to genocide and ethnocide. (Echo-Hawk, 2010, p. 4)

Further, he states that:

the Supreme Court continues to rely upon legal doctrines infected with bare race-based notions as it decides contemporary Indian cases, long after the ideology of race has been discarded by virtually every other governmental institution in the country. Thus, the legal system ironically remains one of the last to perpetuate a form of racism. (Echo-Hawk, 2010, p. 5)

...and that today it is necessary “rethink the doctrines that underpin this national embarrassment” (Echo-Hawk, 2010, p. 5).

Echo-Hawk was also inspired to become an activist by civil and Indian rights activists including the NIYC’s Clyde Warrior (Echo-Hawk, 2010, p. 3). In turn, Echo-Hawk hopes to inspire other young Native people to become lawyers (Harjo, [video] n.d.). He also seeks to inspire and educate the general public, and sees the lack of education about Native

cultures and bias within education systems (that educate both Natives and non-Natives), of all the issues he has fought for, as *the most significant problem* facing Native people. He believes that this problem can only be addressed by education reform. He states that:

...the number one problem facing Indian tribes in the U.S. today is a lack of reliable information about our Native peoples. I seek to correct that lack of understanding in my public speaking because they teach us nothing in the public school systems about Native Americans. Most Americans have never met a Native American, have never been on a reservation. I believe most Americans are fundamentally fair, and once they have been given the facts about Native people they have been increasingly acting to do the right thing. So that's my belief, and I hope to bring that kind of understanding of our contemporary peoples and our justice issues through public discourse (Harjo, [video] n.d.).

Echo-Hawk played a critical role in the development and passage of the NMAI Act and NAGPRA. In the 1980s, at the height of the repatriation movement, his legislative work included:

(a) precedent-setting legislation in Nebraska (1989) and Kansas (1988) directing museums to rebury dead bodies and return grave objects to Tribes of origin; (b) the 1989 reburial agreement with the Smithsonian Institution enacted into the National Museum of the American Indian Act; (c) the 1986–1990 legislative campaign culminating in the passage of Native American Grave Protection and Repatriation Act (NAGPRA) (Harjo, [video] n.d.).

Echo-Hawk held an influential role in negotiating and framing the repatriation and reburial agreement in the NMAI Act, along with Suzan Shown Harjo of NCAI, Jerry Flute of AAIA, and others to be discussed in more detail to follow in section three of this chapter. This

group of allies met frequently to agree on the repatriation and reburial issues they would advance (McKeown, 2012). To reach their shared goals, Echo-Hawk and his allies successfully employed process components Willie describes, including principled negotiation, creating coalitions of powerful allies, and pursuing or threatening to pursue legal action.

For example, in his theory of grassroots social action, Charles Willie points to the work of William Ury, who defines principled negotiation as a process whereby participants focus on interests rather than positions and in which issues are decided on their merits. Hard negotiation is defined as a contest of wills, and soft negotiation is exemplified by nonviolence (Fisher & Ury, 1983). In his 2008 article, “A Perfect Grassroots Moment: the Montgomery Bus Boycott,” Willie offers the following example of principled negotiation: initially, the black community offered a compromise solution to the white leaders. However, the white community “rejected this proposal and did nothing to protect black citizens,” (Willie, 2008, p. 32) after which the black community filed a case in federal court. Willie states that “. . .by filing a case in federal court rather than in an Alabama court, the black community was seeking a solution . . .that would be fair . . . because it would guarantee equal protection . . . for all” (Willie, 2008, p. 32). Similarly, Echo-Hawk and his allied colleagues first agreed on strategy and goals. They then met with representatives of museums and scientific organizations and aggressively pressed their agenda by presenting these representatives with evidence of unethical practices and disparities as well as, when this did not produce all results needed, pursuing legal action and the threat of legal action to neutralize opposition.

NARF’s legal actions won many victories at the state and federal level that then set the stage for passing repatriation legislation, as did the continued negotiations with scientific

organizations, which were carried on as a parallel process. As Willie has noted, “the wisdom of using multiple action strategies is that they tend to be more effective than sequential strategies used in the past in which one action is tried and then eliminated if it does not work in favor of another action” (Willie, 2008, p. 36).

As a result of dialogue with activists, in some cases, museum leaders and scientists changed their minds¹⁸ (S. S. Harjo personal communication, January 26, 2009; McKeown, 2012). However, as will be discussed more fully in the second section of this chapter, it can be concluded that dialogue alone was not sufficient to achieve the Native activists’ goals, and legal action was also an important tactic.

Willie further notes that ending oppression of subdominant groups by dominant groups benefits dominant groups as well, by “freeing people of all races from false positives and false negatives in their self-conceptions (and this is of) . . . mutual benefit (to all)” (Willie et al., 2008, p. 36.) Because Echo-Hawk and his colleagues are negotiating based on their interest of human rights for Native peoples, this is a shared interest for all. However, it is still necessary to fight to push forward such an agenda, even though it will benefit both groups. For that reason Echo-Hawk states that laws are more powerful than self-regulation or even policy.

When human rights are at stake, you need a law that has teeth in it, a law that is enforceable and requires courts to protect human rights. Martin Luther King and the black civil rights leaders did not rest on a mere policy when it came to protecting the

¹⁸ Suzan Harjo describes coming from the funeral of her younger brother to a meeting at the Heard for the National Dialogue meetings. She remembers that Willard (Sandy) Boyd, then-director of the Chicago Field Museum, upon thinking about his own family, agreed that the language used to describe Native human remains by scientists was offensive (S. S. Harjo, personal communication January 26, 2009). McKeown cites comments by then-VP of the American Association of Museums Dan Monroe stating that following the Dialogue meetings he, and, initially, a small number of others, realized that “the Indians were right”(McKeown, 2012, p. 91)

human rights of African Americans against centuries of ingrown racial discrimination and segregation. A simple policy does not work that kind of social sea change, and so they went forward and obtained civil rights laws that had teeth in them. (Echo-Hawk et al., 2004, p. 155).

Echo-Hawk's work included creating coalitions of Indian organizations that shared common goals to strengthen their collective power, as well as creating expanded coalitions with non-Native organizations. In meetings with Senate Committee staff and elected officials, Echo-Hawk and his colleagues cultivated allied support and trust based upon longstanding connections and relationships. Echo-Hawk's and his colleagues' actions illustrate an aspect of Willie's theory of grassroots social action that dictates that a movement successfully gains support and approval through building coalitions with horizontal linkages (by bringing together allied tribes and Native organizations) and vertical linkages (by bringing together dominant people of power in leadership positions within government or other influential organizations who act as allies to the movement). Willie notes "the vertical linkage of a group or community to aggregations or collectives beyond the locality may be essential in grassroots action. Resources derived from external sources may have decisive effects upon local actions" (Willie et al., 2008, p. 5). In the case of the repatriation movement, allies in the federal government were essential to the success of the movement's goal to pass human-rights-based repatriation legislation.

In summary, Echo-Hawk exemplifies criteria Willie has identified as critical to leaders of grassroots social movements in many important ways. He is committed to ideals. His extensive knowledge of the law, his years of experience working with Indian religious leaders and tribes, and his passion for and commitment to justice for Native people make him an extremely powerful and principled negotiator and orator. His multicultural life

experience allows him to serve as a bridge between tribes and the U.S. legal system, between religious leaders and others, and to educate the general public about Native issues. Further, he believes that educating the general public has the power to transform society by gaining public support for Indian rights. He works to successfully build support and cultivate allies by creating both horizontal and vertical coalitions. And he seeks to inspire other Native Americans to become lawyers and continue to reform Indian law, although he adds that “I hope that people will look back on my legal work and know that I was just one of many foot soldiers in this Native American sovereignty movement” (Harjo, [video] n.d.).

I will turn next to an analysis of hearing testimony to provide additional insight into activists’ goals, allies, strategies and obstacles. This will be useful to a subsequent review, in Chapter Six, of the NMAI’s policies, which exemplify the implementation phase, since an important criteria for success in implementation is realizing the goals and ideals identified as priorities by the movement.

Hearing analysis

As we have seen, between 1987 and 1989, multiple bills were introduced in Congress to protect Native gravesites, prohibit the trafficking of cultural items and sacred objects, and repatriate human remains. In the following section, I analyze the transcripts of legislative hearings for bills leading to the passage specifically of the NMAI Act and NAGPRA as identified by the Congressional Information Service (ten hearings in all, held in relation to eight bills). Since proposed amendments to the two laws reflect important issues arising from the implementation of the laws in practice, I also reviewed key oversight and amendment-related hearings for the two laws (five hearings in all). The full list of fifteen hearings I reviewed is in Appendix D. Within the text, as I cite speakers, I include their

names and affiliations within the dialogue; full titles and professional affiliations are also listed in the appendices.

A hearing is not a neutral process—it is an orchestration of arguments. Those who are called to testify generally represent constituencies that wield influence at the national level. According to the *Congressional Practice and Procedure: A Reference, Research and Legislative Guide*, the committee chair (or subcommittee chair) and his/her staff “dominate the tone of the hearing” (Tiefer, 1989, p. 153). They determine the topic of debate, select the witnesses who will testify, and determine the order in which they will appear. They decide what is said in the chair’s opening statement and the timing of the hearing. Prepared statements from those invited to testify must be submitted in advance, although this reference guide notes that in practice witnesses will often wait until the last minute to do so to “forestall advance preparation of questioning” (Tiefer, 1989, p. 155).

Given the above, and as reflected in the hearing testimony, Senator Daniel Inouye was one of the most influential actors in these hearings. Senator Inouye presided at hearings for six of the eight initial bills leading to the passage specifically of the NMAI Act and NAGPRA as identified by the Congressional Information Service. Following the passage of the two laws, Senator Inouye also presided over four of the five oversight and implementation hearings related to NAGPRA and the NMAI Act; the other was led by Senator John McCain.

Fifteen additional elected officials participated in the hearings and provided testimony (See Appendices C, D and E). After the chairs of the committee, as we have noted, the most important of these to highlight are Congressman Ben Nighthorse Campbell, Senator Morris Udall, and Senator John Melcher. Melcher had previously served, in 1979, as the chair of the Senate Select Committee on Indian Affairs and continued as ranking

minority member after the Senate transferred to Republican control. Senator Melcher drafted the first repatriation bill.¹⁹

The professional groups and associations wielding the most influence, as reflected by the level of their participation in the hearings, were the Society for American Archaeology and the American Association of Museums. The museums most consistently represented at the hearings were the Museum of the American Indian, Heye Foundation and the Smithsonian, a federal agency. Of the Native American organizations participating in the hearings, the National Congress of American Indians and the Native America Rights Fund were the most influential, followed by the Association of American Indian Affairs. Tribes prominently represented included the Onondaga Nation, the Northern Cheyenne, and the Blackfeet Tribal Council.

In order to provide a snapshot of these prominent groups, but also all of those testifying over the course of the hearings, I prepared a matrix including all participants and their institutional affiliations by hearing, which appears in Appendices D and E.

The stakeholders testifying during the 15 hearings, including oversight hearings, devoted to the NMAI Act and NAGPRA that I reviewed for this study include elected officials and multiple interest groups, including government agencies, museums, professional organizations, Native American organizations, and Indian tribes. My review of Congressional hearing testimony recorded in the transcripts of Congressional hearings reveals how the cultural rights movement leaders successfully meet the criteria Charles Willie outlines for success in his theory of grassroots social action, including how activists

¹⁹ “An undated draft was circulated in August 1986 under the title Native American Archaeological Resources and Development Protection Act. An alternative title seems to have been the Bridge of Respect Act....On the last day of the 99th Congress, Melcher formally introduced his bill, now called the Native American Cultural Preservation Act” (McKeown, 2012, p. 5).

advocating for the bills advanced their goals and framed their arguments, who served as their most powerful allies, who were their powerful opponents, what were the obstacles and arguments the repatriation activists faced from these opponents, and how the activists effectively countered and neutralized these opponents' arguments.

Four broad emergent themes associated with the human and civil rights goals of Native social movements²⁰ were identified in my review of the hearing transcripts. They are:

1. What is sacred—or integral and essential—to a culture?
2. Who has the expertise—or the right—to determine that?
3. What specific legal rights and basic rights must be considered when addressing these questions?
4. What process—of inclusion, consultation, partnership, representation—should be instituted to ensure that these basic rights are met?

These four major themes, and the sub-themes I identify for each, illustrate major divergences in positions related to the human and civil rights goals of the cultural rights movement. My overview of the Congressional testimony associated with the 26 bills is therefore organized around these four questions.

Question 1: What is sacred—or integral and essential—to a culture?

In my review of the hearing transcripts I identify four sub-themes related to the major theme “What is sacred—or integral or essential—to a culture?” These are: questions concerning *who has the right to define what is sacred*; debates regarding the appropriateness of *scientific terminology*; the concept of *desecration*, and the concept of *responsibility*. In my discussion of each, Native activists' goals to end the desecration of Native graves, human remains, and

²⁰ As noted earlier, these include the right to: religious freedom; recognition of tribes' sovereign status and thus tribal rights to self-governance and cultural continuity; protection of the dead; and equal protection by U.S. laws.

sacred objects, to repatriate human remains and sacred objects, and to reform scientific and museum practices are framed in terms of Native human rights. Activists assert the humanity of Native dead, the right to equal protections, and the right to religious freedom.

1. Who defines what is sacred?

One of the most disputed issues in the hearing testimony involved who has the right or expertise to define sacredness. A tension emerged between those who felt sacred must be defined *by* Native people and those who felt it could, at least in part, be defined *for* Native people.

Many from the museum and scientific community felt that the concept of sacred could be defined, at least in part, external to Native traditions. They proposed that the bills contain a limited, rather than a broad, definition for what is sacred; they expressed concerns that deferring to Native definitions of Native sacred objects could lead to the repatriation of a large percentage of materials held in museums and universities. Keith Kintigh, representing the SAA, testified that:

It is my understanding of many Native American cultures that there is not as well-defined a distinction between sacred and profane, between the public and the sacred . . . I think the fear is that in the extreme cases, somebody could say, “well, gee, almost anything has some sacred character” (*Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report*, 1990, pp. 73–74).

Richard Stamps, an associate professor of anthropology at Oakland University, similarly argued that:

Although there is a vocal group that is requesting the return of skeletal remains, it is not a foregone conclusion that all public interest groups agree . . . I have been told

that all artifacts from the earth are spiritual and should be returned. Where do you draw the line? (*Establishment of the National Museum of the American Indian*, 1989, p. 276)

However, Native activists, including Suzan Harjo, then-Executive Director of the NCAI, argued that, “sacredness is always defined by the practitioners and the religious leaders. There is no other religion that would have anything identified for it as to its sacred nature . . . it is all self identification and must be so here.” (*Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report*, 1990, p. 83)

Defining sacredness in a law is inherently fraught, since U.S. law is external to and not solely controlled by Indian religious authorities. Additionally, defining what is sacred in a law whose language is public can raise conflicts between revealing information that is normally restricted to religious authorities and putting in place some enforceable method of identifying sacred materials to be returned to tribes. Consultation is a key element activists identify to address this tension. Echo-Hawk of NARF testified that, to be effective, the legislation must include a definition, and that this definition therefore must be developed in consultation with Native religious leaders:

. . . some of the traditional religious leaders and practitioners have a great concern about anyone defining the sacred aspects of their religions. However . . . because the same practitioners are also requesting the return in limited instance of sacred property . . . we do have to grapple with some kind of definition . . . hopefully that will be done in a . . . sensitive manner in consultation with representatives of these religious leaders, that they might be satisfied that it is done only for purposes of the particular statute, to carry out their own desires and wishes and not for purposes of defining what is sacred to them. (*Native American Grave and Burial Protection Act*

(*Repatriation*); *Native American Repatriation of Cultural Patrimony Act*; and *Heard Museum Report*, 1990, p. 58)

Additional testimony by a breadth of tribal representatives during the hearings revealed that, despite the rich cultural diversity among the many tribal nations and Native peoples of the United States, there was a strong general consensus among tribes that human remains, religious ritual objects, and gravesites are, and should be defined as, sacred, and, furthermore, that then-current conventions of Western science and of museums desecrated these sacred things.

2. *Debates regarding scientific terminology*

A second significant issue regarding the concept of sacredness also centered on definitions, in this case the inappropriateness of existing scientific terminology. In response to: 1) U.S. law that defined Native remains as *archaeological resources* and *property*; and 2) institutional policy that referred to Native human remains²¹ as *data* or *specimens*, Native activists advocating human rights for Native peoples referred to human remains as *human beings*, as *deceased*, as *ancestors*, as *persons*. This change in language emphasizes that Native dead are not property, but remains of human beings. As such, they are sacred. Echo-Hawk explained:

We share the same universal sentiments. These deceased that are across the street here in the Smithsonian . . . were tenderly buried in accordance with the best Native religious traditions, and they were not donated to science. They are not data. They are not specimens. And they are not trophies for the unbridled use and unregulated

²¹ In order to compare the various terms and definitions I had to arbitrarily choose one, and for the purposes of this paper I will use the term human remains.

perusal of a few persons that are interested in racial biology. (*Establishment of the National Museum of the American Indian*, 1989, p. 152)

Others, such as then Smithsonian Secretary Robert McCormick Adams, carefully used the term *ancestor* to refer only to those human remains whose living lineal descendants could be identified. In his testimony, Adams continued to describe remains that he felt could not yet be affiliated to living American Indian descendants—according to research already conducted²²—as *scientific resources*, *scientific* and/or *historical materials* and *national collections*. That is, only those remains that can be related to living descendants through museums' standards of legal affiliation are *ancestors*. Other remains are *scientific resources*, as he described it:

. . . where descendants with a reasonable degree of probability . . . can be identified for individuals in question, I have no problem with recognizing their prior right to reclaim their ancestors. . . . on the other hand, where . . . there are no such individuals . . . yet . . . identified—and I will not say that may not happen in the future with the new genetic techniques, but where they have not yet been identified—these are scientific materials comparable to other scientific and historical materials in the Smithsonian's collections. I'm not prepared to see them forever lost . . . we would resist this course of action very strongly. (*Establishment of the National Museum of the American Indian*, 1989, p. 265)

Since remains that can be affiliated to living descendants are generally not the more ancient remains, this framework limits the affiliation of ancient remains to contemporary peoples unless actual lineal descendants can be established. This also means that those

²² Many collections of remains had not been researched or even inventoried prior to the laws' passage. See *Stewards of the Sacred*, 2004.

human remains of people without living descendants would remain in the collection of the museum.

In the case of the Smithsonian, human remains were defined as belonging to the American public, as seen below in an exchange between Secretary Adams and Congressman Faleomavaega of Samoa:

Congressman Faleomavaega: . . . I'm talking about human beings. And would you say that . . . the remains of human beings are considered proprietary, personal property, belonging to the Smithsonian Institution?

Secretary Adams: These are not personal. This is the national collection.

(Establishment of the National Museum of the American Indian, 1989, pp. 266–267)

In additional testimony throughout the hearings, human remains in museums were characterized as scientific resources, which, as museum property, more broadly belong to all of humanity.

3. Desecration

A third significant theme in testimony concerning notions of sacredness was the repercussions of the desecration of sacred material for both deceased and contemporary Native people. Native advocates testifying throughout the hearings all agreed that the proper treatment of sacred materials is important to the health and vitality of Native communities.

Chairman and Chief Earl Old Person of the Blackfeet Tribal Council in Browning, Montana, explained that the return of improperly alienated sacred or cultural materials presents an opportunity to recover vital traditions that benefit tribes:

I believe that . . . our people today . . . should be given every opportunity, every chance to practice and to be able to carry out an Indian way of life as far as religion is concerned. . . . Today, we have very few of our old timers . . . And one of the

reasons that it's very important that we have some of these items that are missing . . . come back to the reservations, come back to our people, is because while these old-timers are still living that have the authority, they may be able to relay a message or may be able to show our young people and the people who are interested today in carrying out our Indian way of life, that they may show them how those ceremonies are conducted, or what that particular item stands for. This is very important to my people at this time. (*Native American Cultural Preservation Act*, 1987, p 32)

There was definite consensus among Native political leaders, religious leaders, legal experts, and academics testifying at the hearings that in Native theologies broadly, to disturb a grave and the human remains and funerary objects interred within a grave is an act of desecration. Disturbing graves interrupts the soul's spiritual path. Further, descendants are responsible for protecting the graves of their ancestors. The reburial of disinterred human remains is a way to help the spirits of those whose graves were desecrated. Jerry Flute of the AAIA explained this:

. . . there was total support that the spirits of these skeletal remains have been disturbed and have been viewed by many tribal people as being held by the Smithsonian as spiritual hostages, but these spirits will not rest until the skeletal remains are properly reburied. (*Establishment of the National Museum of the American Indian*, 1989, p. 183)

Further, Native activists testified that the desecration of graves or other sacred material can harm not only the spirits of those ancestors who were violated but also the affiliated living community. This desecration of Native remains is understood to be seriously damaging to contemporary Native peoples in several ways. At the most basic level, advocates charged that the way museum and universities treat Native dead—without respect for Native

peoples' wishes and in violation of their cultural beliefs—represents Native peoples as less than human to the public. They argued that this is—and promotes—racism. (I explore this theme more fully later in this chapter when I discuss the concepts of knowledge and expertise).

In addition, advocates testified that desecration has spiritual repercussions that not only can disturb the spirits of the dead but also bring harm to the living. This concept is discussed in the literature on the care of sacred material culture, and is sometimes termed “cultural risk” (Pepper-Henry, 2004). To misuse sacred objects or human remains can cause harm to the person mishandling an object and to the community affiliated with the object. A sacred object entrusted to a community must remain in that community's care, handled by an individual qualified to oversee its care and use; otherwise there is a risk of harm to living tribes. Chief Old Person explained that “. . . people today . . . strongly believe that by losing that which they have, the ancestors they have had, and have had given to them, it is harmful” (*Native American Cultural Preservation Act*, 1987, p. 35).

Thus, from a theological perspective, harm can fall upon contemporary Native people who have taken no part in the actual desecration. Harm could fall not only on those affiliated to desecrated material, but, regardless of affiliation, to anyone who comes in proximity to it, no matter their intent. In their testimony, some of the activists attempted to communicate the seriousness with which they regarded this risk to themselves and to others. For example, Harjo said, “in the Indian way . . . all the people who are sitting here on this panel . . . believe that we personally are at risk and that all of you are. In talking about these things, some of us feel extremely constrained about even entering the premises of the Smithsonian. (*Establishment of the National Museum of the American Indian*, 1989, p. 225)

Some Native representatives testified that desecration can carry such serious repercussions that in certain rare cases tribes are not willing or able to accept returned desecrated materials, or would prefer that those responsible for desecrating the materials take responsibility for reburying them. Harjo further explained, “most of that material would not be requested for return. Many of the Indian nations have decided that the human remains have been desecrated beyond anyone’s ability to do anything about it. And they would not want them back.” (*Establishment of the National Museum of the American Indian*, 1989, p. 225)

Although a state of desecration that causes a tribe to be unable to reclaim sacred materials is a devastating outcome, some of those testifying at the hearings did not understand or recognize that concept. Serious misunderstandings occurred. At the same hearing, following the above testimony, Smithsonian Secretary Adams regarded some tribes’ unwillingness to reclaim all such remains as encouraging:

... even though some very harsh things were said, I came away somewhat encouraged. ... The phrase that struck me most positively perhaps was ... Suzan Harjo ... conceded, if I heard her properly, that she did not believe that ... most of the collection of the Smithsonian would be returned to individual tribes. It seems to me, when we approach that element of realism, we are talking to one another in a way that will indeed permit us, not easily, but will permit us to come to an agreement ... (*Establishment of the National Museum of the American Indian*, 1989, p. 228)

4. *The concept of responsibility*

A third significant theme regarding sacredness in the hearing testimony centered on the concept of responsibility. Given the consequences of desecration, Native representatives spoke about their responsibility to protect both their ancestors and their current

communities from harm. Meanwhile, many members of the scientific and museum communities spoke of their responsibility to a wider public, which they saw as being in conflict with the interests of Native people.

Given the repercussions of desecration to both the living and the dead, and given museums' and scientists' general lack of traditional knowledge regarding the theologically proper treatment of sacred material, Native representatives spoke of their responsibility to properly care for the sacred. Nelson Wallulatum, Chief of the Wasco Tribe in Portland, Oregon offered this:

Many of the remains now held by the Smithsonian are my relatives or the relatives of my people, and as chief of the Wasco tribe, and as a community religious leader, they're my direct responsibility . . . All tribes have ceremonies for the deceased at the time of death . . . of a religious nature and . . . normally carried on continuously for a period of several days. Within the tribes there are only certain persons who are permitted to handle the bodies of the deceased . . . because the bodies must be handled properly in preparing them to make the journey to their creator . . . Even after the funeral ceremony . . . the tribes still believe that the deceased person remains a part of the living. Because there is an ongoing relationship with the deceased, the tribes retain an interest in the remains of the deceased. The tribe attempts to physically keep their people, both living and deceased, together. It is common for tribes to remove the remains of their people to a common area so that the tribe can remain together. When the remains are removed, the same religious rituals are observed. (*Native American Cultural Preservation Act*, 1987, pp. 36–37).

Tribal representatives testified that the responsibility to care for remains or sacred objects, and even more so for desecrated material of any kind, is not undertaken lightly. Vicki

Santana testified that:

As an attorney . . . I have tried to study the laws that . . . my tribe has regarding the care and transfer of religious articles . . . they are vastly more complex than even the IRS . . . when we take back an object. We have many, many rules that have to do with the preparation . . . with the thoughts you can think while you are in the ceremony . . . with the treatment of other people. I just want for this committee to be aware of the fact that this is not something that any tribe would do lightly, taking back any religious object, that we are well aware of the responsibilities and the burdens upon us when we do these kinds of things. It is not a simple thing. (*Native American Cultural Preservation Act*, 1987, p. 34)

Also concerning the concept of responsibility, but in contrast to the tribal perspectives, representatives of museums spoke of their fiduciary responsibility to protect public property.

For example, Secretary Adams said:

I have the responsibility as custodian of the national collection to not disperse them, except for legitimate cause. And . . . where we cannot identify . . . the probable line of descent coming down to someone who can make a claim today, I don't—I don't see that that comes under the same category. (*Establishment of the National Museum of the American Indian*, 1989, pp. 266–267)

Some of those testifying argued that anthropologists and archaeologists have the responsibility to all of humanity to represent the truth about cultures past and present. This position in some cases included a perceived responsibility to speak for Native people. For example, Associate Professor of anthropology Stamps argued:

Anthropologists work for the enlightenment and benefit of all humankind. . . . First, we are accountable to the people themselves, those who are preserved in the archaeological record. . . . not just to . . . their descendants who happened to be here 10,000 years later. . . . Second, we are accountable to a segment of the wider public at large who may or may not be descendants of those preserved in the archaeological record, in this case the modern Native Americans. . . . A third community is the public at large. These are often the people who are paying for the archaeological research being carried out, directly as contractors or indirectly as taxpayers. . . . We need to ask, **who speaks for past generations? Who speaks of the past for future generations? The community of the professional anthropologists has the responsibility to speak for them.** (*Establishment of the National Museum of the American Indian*, 1989, p. 276) (emphasis added)

The concept of responsibility was also raised in relationship to contemporary institutions' responsibility—or not—for rights violations of the past. I address this more fully in this chapter's discussion of rights.

Question 2: Who has the expertise—or the right—to determine what is sacred?

Discussion of expertise and knowledge systems reflect activists' goals to end racial bias in Western science and museums, so that errors about Native people and cultures might be corrected, and that, more broadly, Native knowledge systems can contribute to an intercultural project of knowing the world. Activists wanted museums to stop housing dead Indians—which perpetuates the narrative of Indian cultures being dead, of the past—and rather be places where Indian artists and scholars teach about flourishing contemporary

Native cultures—to be places where Indian children can take pride in their rich heritage and the general public can learn something valuable about Indian cultures. Museum reform through the power of inclusive knowledge production and education can address social problems and inequities. In particular, activists and their allies wanted a new national museum to serve as a living monument to Indian people, and a testament to the future of Native people and cultures, on the National Mall.

In my review of the hearing testimony, I identify three sub-themes related to the question “Who has the expertise—or the right—to determine that?” The first is *Western vs. indigenous knowledge*. A tension emerged in the hearing testimony between those who argued for the recognition of Native knowledge systems and those arguing that Western knowledge has more validity and is of value to all humanity. Native representatives and other advocates challenged some academics’ argument that Western scientific knowledge benefits all of humanity. They countered that Western research of Native peoples has not benefited Native people, and, in fact, has seriously harmed them.

In addition, Native advocates proposed that Native knowledge of the world is of value to all people, not just to Native people, and that, by excluding Native knowledge, Western knowledge systems are inherently compromised.

A second sub-theme encompasses the *consequences of bias*, including stereotypes, loss of knowledge, and, again, desecration.

A third sub-theme centered on the issue of museums claiming large collections of human remains should be retained for *future scientific studies vs. honoring Native rights and beliefs*. Some scientists framed this tension as religion vs. science.

I discuss each sub-theme below.

1. *Western vs. indigenous knowledge*

Some tension emerged over whether the project of knowledge regarding Native cultures—or wider knowledge of the world—should include Native knowledge systems or depend exclusively upon Western knowledge systems.

Native advocates charged that Western science operates in isolation from Native knowledge systems and discounts indigenous knowledge. For example, Van Horn Diamond said: “Not all knowledge resides in Western scientific methodologies, modalities and even eschatology.” (*Transfer of the U.S. Custom House in New York City to the Museum of the American Indian*, 1987, p. 44)

Many Native advocates, such as Echo-Hawk, testified that Western sciences involving the study of Native peoples and cultures have been compromised because they are racially biased, and they have harmed Native people:

The Smithsonian is America’s largest Indian graveyard, in possession of almost 19,000 dead bodies and their associated burial possessions, and has been withholding many of these dead people from reburial . . . it has been estimated nationally that as many as 600,000 Native American bodies have been dug up and carried away by non-Indians for various reasons. Some of the documented original historic motives for this were, in fact, to harm, not help the red man, by developing scientific proof that the Caucasian civilization and intelligence are superior to that of the American Indian, in order to justify the taking of Indian lands. (*Establishment of the National Museum of the American Indian*, 1989, p. 150)

Many of those testifying charged that a racial bias in anthropology supported racism in the wider culture, and that racism perpetuated by policy and practice in the academy and in museums continues today. Flute of the AAIA described the work of Samuel Morton:

Morton . . . in the mid-1800s . . . concluded that the Indian skull was, on an average, 3 cm smaller than the Caucasian skull. And because of his findings, he concluded also that the American Indian could never advance intellectually beyond being a savage. And his study, I'm sure with many others like it, fanned the fuel of fire, where this country moved throughout the West and literally stole American Indian lands. Many of the attitudes were that Indians were subhuman and it was of no moral consciousness to worry about when you took the lands, exploited the graves and attempted to kill the language and religion. And we feel that many of the anthropologists who support the Smithsonian's position continue to maintain that type of attitude, the attitude of Samuel Morton. (*Establishment of the National Museum of the American Indian*, 1989, pp. 183–184)

Many of those testifying proposed that Native systems of knowledge are not only important to Native cultures; they are also essential to fostering true intercultural knowledge. They argued that museums currently misrepresent Native cultures by excluding Native perspectives, and that this exclusion is a continuation of past racism. According to artist and scholar Rick Hill:

We have a problem between Indians and museums. . . . It is not the Smithsonian's job to give us a sense of pride. What they have given us is a sense of frustration at not being able to express that pride in our own terms to the world. . . .What we are talking about here is a new perspective: what can Indians bring to the world to help the world understand us better? If we do the same thing that we've done for 100 years in the museum, it is not going to happen. All of these tens of thousands of visitors that come to Washington are going to get the same ethnocentric view of who

Indians are. They are not going to get our view of who we think we are. (*National Memorial Museum of the American Indian*, 1989, pp. 48–49)

In contrast, others suggested that Native knowledge systems are inadequate, and that Western disciplines offer a truer picture of both past . . .

Secretary Adams: . . . we must begin by recognizing that for the study of North American Indians in the period up until the arrival of the whites, the only information available comes out of archaeology. (*Native American Cultural Preservation Act*, 1987, p. 66)

. . . and present.

Senator Evans: Turn for a moment to the religious artifacts. Do you believe, also, that in the case of religious artifacts it should be today's view of what is or isn't a religious artifact? If we get to the point where we're talking about returning those to the descendants of tribes . . . Which should determine? The time it was made or the time of our view today?

Mark Leone, SAA: Ultimately, if it were made a matter of determining what the object was long ago, it would probably be weighted in favor of an anthropologist or archaeologist who would probably have greater access to proving the original meaning. (*Native American Cultural Preservation Act*, 1987, p. 64)

Some scientists argued that anthropologists had a responsibility to accurately portray cultures of the past for the benefit of all peoples, including contemporary Native peoples, whose own understanding of the past, being religious in nature, might be a distortion of history. They also challenged the characterization of the Smithsonian's collections of human remains as predominantly Native. For example, Associate Professor of anthropology Richard Stamps referred to "the current rewriting of history in China" over "the recent Tienanmen

massacre,” and said “some would like to rewrite history by removing a large portion of what happened. . . . Somebody in generations to come is going to try to improve on the work.”

However, he continued,

Our attempt as archaeologists is to interpret the past. And if we have removed the database from which they study, how will they do it? And I would say that we would be well served to conserve a small percentage. . . . And there are 19,000 remains in the Smithsonian. But not all of them are Native Americans. It is a small percentage.

(Establishment of the National Museum of the American Indian, 1989, p. 277)

Later testimony from Secretary Adams revealed that Stamps’ assertion about the small percentage of Native remains was false.

Some testimony emphasized how museums could benefit Native people by teaching them museum practices. Secretary Adams proposed that:

. . . the main emphasis that seems necessary is . . . the training function that permits American Indians to come to know what this material is, to come to know how to work in the archives on it, to come to know how to curate it when it goes back to their communities. . . . we] can have the most constructive effect on modern Indian communities. . . . *(Native American Cultural Preservation Act, 1987, p. 68)*

Other museum representatives discussed not only teaching Native people but learning from Native peoples in a process of partnership. Museum of the American Indian, Heye Foundation trustee Julie Kidd commented that “the Indians on the Heye board have opened the eyes of the rest of us to a world and to issues we are just beginning to understand.”

(National Memorial Museum of the American Indian, 1989, p. 33)

2. *The consequences of bias*

Some scientists, including Mark Leone of the SAA, argued that returning collections to Native people would prevent scientists from combating racism by studying remains and Native cultures in order to present a positive view of Native peoples to the public.

. . . it is extremely important . . . to address the oppressors . . . all of whom are Western . . . and the materials to address the oppressors . . . sometimes (can) effectively be addressed through the practice of science, through prehistoric archaeology, through historical archaeologists and through anthropology. And the data essential for those kinds of sometimes effective contra balances to modern racist statements comes through the use of the collections. Data under debate and consideration now. (*Establishment of the National Museum of the American Indian*, 1989, p. 272)

Native advocates charged that, by working in isolation from Native people, Western institutions perpetuate stereotypes. As a result, contemporary research and educational institutions lack non-stereotyped information about Native cultures—or museums’ documentation and research is often compromised. For example, materials may not be identified properly, as Harjo described: “One of the tribes that asked for their people back found that, in the identification, they were almost given a German woman instead of one of their tribal citizens, a man. We don’t believe the existing data in the Smithsonian . . . “ (*Establishment of the National Museum of the American Indian*, 1989, p. 225). She also testified that Western scientists’ lack of Native cultural knowledge can lead to desecration:

We understand that, as we speak, there are flesh-eating beetles that clean the skeletons before they’re put in the boxes to be studied at some future time, by some

later developing technology. . . . The establishment of the National Museum of the American Indian is the stuff of dreams, but the existence of . . . boxes of skeletal remains of our people is the stuff of nightmares. And one that I don't think we will be able to erase in our lifetimes. (*Establishment of the National Museum of the American Indian*, 1989, p. 225)

Ultimately, Native activists and allies retained faith in the power of education shaped by inclusive practices and consultation to positively serve Native people and solve contemporary problems. Specifically, museums and a new national museum could address social inequities. Native advocates described many past and ongoing human and civil rights violations due to museum and scientific practices, yet they still felt that a museum, if created and operated inclusively and respectfully, could support and strengthen Native people.

Advocates including Buffy Sainte-Marie expressed the need for a museum that would serve as a source of accurate information to the media, educators and others whose work shapes mass consciousness, because “so little . . . points to Native American contributions to which I can direct students, journalists, movie companies, and travelers from throughout the world when they want to know about Native American culture.” Sainte-Marie pointed to “stereotyping . . . throughout the world in the educational system, in the movies and TV” and said that “when a teacher or movie director comes to me and asks me, where can I find this or that” resources they will “have the same kind of trouble as I had . . .” (*National American Indian Museum Act*, 1987, pp. 45–46)

These advocates argued that, rather than archiving dead Indians, museums devoted to Native cultures should seek to foster knowledge of rich contemporary Native cultural knowledge and artistry. Although museums must return sacred objects and human remains inappropriately held in their collections, they said, this does not mean museums devoted to

Native cultures should no longer exist. Rather, museums must change; they must avoid representations of Indians that are racist or desecrate Native heritage and instead represent the arts and achievements of Native people. This should include attention to present artistic practices, not only those of the past. Again, Buffy Sainte-Marie said:

Museums that house only dead Indians work against us. Many children actually still believe that Indians are all dead and stuffed in museums . . . that we vanished and that their parents are to blame because they did not fight hard enough, or because they were terrible people. In honoring our past, please honor our present and future generations as well or the new Indian Museum appears to become little more than just another collection of loot stolen from a vanquished people by a nation of thieves and grave-robbers. Surely there can be more to it than that, if we make it more. And surely the time to do it is now. Native people want to make some more contributions to American society as participants in this plan, and as artists, of course. [At] the National American Indian Museum and Memorial . . . I want to see a lot of live Indian people, artists, curators, students, guides and visitors. (*National American Indian Museum Act*, 1987, p.47)

Activists and representatives such as Lloyd Kiva New of the Institute of American Indian and Alaska Native Culture and Arts Development in Santa Fe, New Mexico, proposed that as an institution established to address human rights issues, a new national museum must above all serve the needs of Native peoples:

Would the new museum program be concerned with helping the social problems of Indians? Or would it concentrate on the simple display of their precious cultural expressions for the mere entertainment and edification of its potentially vast and non-Indian audience? (*National Memorial Museum of the American Indian*, 1989, p. 45)

With regard specifically to the creation of a new National Museum of the American Indian, there were differing conceptions of the primary service the museum should provide, centered upon whom the museum should serve as its primary constituency. Some, like Secretary Adams, argued that the museum's primary purpose was to serve the needs of the general public: "This is . . . above all, a Museum for all of the American people and, in fact, all people everywhere" (*National Memorial Museum of the American Indian*, 1989, p.30.). In contrast, Native activists such as artist Rick Hill argued that the museum must be responsible above all to those people whose cultures it seeks to represent: "What is the responsibility of the museum to Indians, to our culture, and to our national patrimony? . . . it is our view that matters the most." (*National Memorial Museum of the American Indian*, 1989, p.49).

Advocates for the legislation such as Harjo of NCAI argued that a new national museum, using inclusive policies and resulting processes of operation, would create new knowledge of Native cultures and thus serve as a living monument to contemporary Native peoples' continued and future vitality.

Indian people want this collection in Washington on the Mall, and want to have say-so about the collection, and want to have a monument, a living monument to Indian people past and present, and Indian nations past and present, and want to have something that suggests that we, indeed, have a future as Indian people. (*National American Indian Museum Act*, 1987, p. 42)

Harjo, speaking at another hearing two years later, said that museums, including a new national museum, must depart from harmful stereotypes and correct racist scientific practices of the past.

...it is not enough for us to establish a National Museum of the American Indian. It has to be something that is different, something that does not further the process of

colonization of Indian people...this panel...is here to say that we are not here to be instruments of our own oppression. (*Establishment of the National Museum of the American Indian*, 1989, p. 224)

Echo-Hawk testified that to contribute to the vitality of contemporary cultures, a new museum must support—not suppress—cultural practices through its internal policies and practices. In so doing, the museum will not perpetuate racism through its education of the public but, rather, will strengthen and enhance its research and educational projects:

The National Museum here in Washington, D.C. need not violate the religious beliefs and the cultural integrity of the very Native cultures that it seeks to preserve. It is possible, entirely possible, to educate the public and the world about the American natives without digging them up and carrying them away. The proposed museum need not alienate the American Indian. We have here today an excellent opportunity, Mr. Chairman, to correct past and pending injustices on an extremely appropriate occasion. And I feel strongly that now is the time for Congress and the Smithsonian to officially reject popular notions that: “The only good Indian is a dead Indian.” And that: “Native groups are fair game for trophy hunters; that dead Indian bodies are valuable only as specimens; and that Indian burial offerings belong to finders as keepers.” These repugnant notions are vestiges of racism, Mr. Chairman, that originated in the past century and should be rejected today. (*Establishment of the National Museum of the American Indian*, 1989, p. 153)

Many of those testifying proposed that the new museum must instill pride by promoting knowledge of the cultural achievement of Native people. For example, Congressman Ben Nighthorse Campbell spoke of a crisis for many Indians who lack pride and a sense of identity.

Perhaps some of that pride was lost when Indian people were ordered not to speak their language or when children were forcibly placed in schools away from their families. Or maybe it was lost when certain religious ceremonies were ruled illegal by the government and could not be held. Perhaps if there is a museum that emphasizes past and present accomplishments, that honors the Indian culture, it will help to strengthen Indian self-esteem. (*Establishment of the National Museum of the American Indian*, 1989, pp.1–2)

Advocates proposed that instilling pride in Native cultures through museum reform and a new national museum's power to educate the public would help meet the contemporary needs of Native people, and this could help to combat serious social issues. Senator Inouye spoke of then-current intolerable statistics:

. . . while this nation suffers from the unemployment picture of 5.3, the Indians have an unemployment number is 57%. As the chairman knows very well, in some reservations, the unemployment is as high as 95%. Now and then, you go to other places, like the villages in the Arctic Circle, and you find certain villages where over 90% of the adult population are alcohol abusers, where men between the ages of 20 and 24 have the suicide rate 22 times the national norm. Something is terribly wrong. Steps must be taken, and I think this is an important step toward that end, to give that Indian a sense of identity and a sense of pride that we have denied them.

(*Establishment of the National Museum of the American Indian*, 1989, p. 102)

Many agreed that the new museum should seek to support contemporary cultural expressions of Native peoples.

Secretary Adams: I think the richness of the collection, when it is properly displayed, will come as an enormous surprise to most of the people in this country. And I see

that it could very well contribute to a cultural renaissance among American Indian people as well. Certainly, the intention of the Smithsonian in taking responsibility for the collection is to develop that potential to the fullest. I would add that we of course intend to work in close alliance with American Indian representatives are trying to do so. (*Establishment of the National Museum of the American Indian*, 1989, p. 3)

Advocates such as Vine Deloria, Jr. proposed that, in addition to supporting the flourishing of Native cultural expressions, a new museum must play a significant role in establishing the next generation of Native scholars and leaders:

I think that a number of us who put in our years (as trustees) at the Museum of the American Indian would at that point be willing to step aside and encourage the appointment of a whole new generation of Indians who are now educated and actively working in various forms of Indian antiquities at the present. I, for one, would like to see a lot more Indians involved in the arts and entertainment and communications media going aboard, because what we really need to talk about at this point is the viability of Indian culture and not the achievements of four generations removed. (*Establishment of the National Museum of the American Indian*, 1989, p. 19)

3. Future scientific studies vs. honoring Native rights and beliefs.

Charged with stockpiling non-inventoried and non-researched remains, scientists and museum leadership responded that as science develops and new techniques emerge, they will learn more in the future from new study of remains.

To begin, testimony throughout the hearings confirmed that a majority of the remains in museum collections, of all ages, were not only not researched, but also not inventoried. Secretary Adams said that:

. . . the collection . . . transferred to the Smithsonian between I believe 1898 and 1904, at between 3,000 to 4,000 Indian skeletons from the Army Medical collection . . . the fact that they were taken in was consistent with museum collecting policies at the time, which put them on a shelf and assumed that they would be of interest to someone at some time, and . . . quite often kept the records in several different places. But that doesn't mean that they've been studied at this point...

Senator Melcher: The fact is, very few of those skeletons can be identified for whatever era they came from.

Mr. Adams: All right.

Senator Melcher: You will agree with that?

Mr. Adams: Very few is a relative term. Let's accept that a considerable proportion may be of very limited use to science; I would agree that that's probably so.

Senator Melcher: Let's be more basic. There are very few out of those 18,000 that have been identified in any way, shape, or form as to what era they came from.

Mr. Adams: Well, I would be unable to answer that. . . . (*Native American Cultural Preservation Act*, 1987, p. 70)

Some museum leaders and academics, including Secretary Adams, argued that to concede ownership and rights issues to Native people would result in a loss of knowledge that is needed to benefit all humanity:

We also are well aware that the advancing tide of research in this area has good promise in it in the years immediately ahead of taking us further, by a factor of 10 times or more, than we have managed to go in the last century. And I have to be conscious of the scientific loss that would be occasioned by the course of action you are describing. (*Establishment of the National Museum of the American Indian*, 1989, p. 266–267)

Museum leaders asserted that these un-researched remains could ultimately be researched and also would be of use when future scientific advances allow new, as yet undefined, scientific study. Dean Anderson, then-Under Secretary of the Smithsonian Institution, argued that collections should be maintained for this purpose: “Competent scientists would say . . . that they ought to be maintained indefinitely for the information that is remaining locked inside of them to be uncovered by future generations.” (*Native American Cultural Museum Claims Commission Act*, 1988, p. 51)

Advocates challenged the proposal that such study, past and future, would be of equal or higher importance to the need to redress Native human rights violations.

Chairman Inouye . . . Two warrior chiefs, supposedly for crimes committed against the United States were hanged . . . and their skeletal remains, via the U.S. Army, found their way to the Smithsonian, so they are now found in boxes are on shelves at the warehouse. These skeletal remains have been duly identified, they have been named. Who should have title to this? The tribe, or the Smithsonian?

Mr. Leone . . . there ought to be a negotiation between the institutions of the people who have a legitimate claim. I'm not entirely sure I agree that it's going to be reasonable to challenge the legal basis for the museums holdings...

The Chairman. As an archaeologist or anthropologist, what purpose would the Smithsonian have in insisting on retaining possession of these two skeletal remains?

Mr. Leone. The justification for large collections, Senator, lies in their coherence.

The Chairman. In their—

Mr. Leone. Coherence. In other words, skeletal series, or materials in large numbers that are alike, to provide the basis for scientific experiments --- let us say, for chemical composition. . . . As you know, pollution is a very serious problem. . . . Skeletal collections of long series to provide the basis for establishing, at a particular time in the past, what the chemical composition is. . . . one can have a foundation for measuring changes in chemical distribution in human bodies today. That, of course, this is usually thought to be beneficial. Now, I recognize that some people would not agree with that. . . . With regard to the two skulls, the two skeletal fragments that you're talking about, so far as I could tell they should be given back with all due dispatch. I can't defend holding those because I don't know anything about them.

The Chairman. But you are defending the holding of 18,000?

Mr. Leone. In principle.

The Chairman. Then if that's the case, why don't we have museums with 18,000 Chinese skeletal remains, 18,000 Japanese skeletal remains, 18,000 Caucasian skeletal remains? Do we have any museum around here that maintains a collection of 18,000 Caucasians skeleton remains of the last 200 years? Do we?

Mr. Leone. I beg your pardon? Do we have --- I've never heard of such a thing. There is no question that you could construct that question to be a racist statement, and no doubt --- ---

The Chairman. Isn't this a racist situation? . . . (*Establishment of the National Museum of the American Indian*, 1989, p. 57)

Question 3: What specific legal rights and basic rights must be considered when addressing these questions of what is sacred and who has the right or expertise to define what is sacred?

In my review of the hearing transcripts, three sub-themes emerged around the major theme of "What specific legal rights and basic rights must be considered when addressing these questions?" I identify three sub-themes, all of which address human and civil rights, but frame them slightly differently.

The first major point of dissention concerning human and civil rights in the hearing testimony is a tension between the *concept of human rights vs. the concept of compromise*. Are the bills under consideration primarily human rights laws providing remedial protection for an

oppressed group, or are they primarily laws that create a compromise, balancing the needs of multiple groups? Native activists and their allies defined the bills as remedial human and civil rights legislation. *Contra* this, many others sought to define the legislation's primary intent as compromise.

The hearing testimony thus illustrates significant differences in *how* the proposed laws are emphasized, either as primarily remedial legislation related to human rights and civil rights, or as laws that achieve compromise through a balancing of interests—although these two qualities are not mutually exclusive. While few of those testifying deny the violation of Native rights in the past and the need to redress these human and civil rights violations, and few deny the nature of the laws as brokering compromise at some level, the question is which of these two “trumps” at the present moment.

It should be noted that the U.S. does not adhere to international human rights laws (in which, where questions of interpretation arise, such questions are resolved to favor the injured party), but instead looks to the Constitution to protect its citizens' basic human rights. However, as discussed earlier, Indians were not granted citizenship by the U.S. until 1924. Other than the body of Constitutional law, there is no formal category of U.S. domestic human rights law as there is, for example, a category of Indian law. Thus, those testifying during the hearings refer to human rights principles, human rights violations, and to the Constitution.

A second sub-theme, also related to civil and human rights, therefore focuses on specific opposing interpretations of *Constitutional protections*. Civil rights—the issue of equal protections under existing law—is invoked by all sides using conflicting arguments, all of which claim Constitutional rights addressed by the First, Fifth, and Fourteenth Amendments.

A third sub-theme involves disputes around *the violation of contemporary Native peoples' rights*. As I mentioned earlier, there is generally agreement that human and civil rights violations took place in the past, but disagreement over whether and how Native peoples' human and civil rights are violated in the present.

I discuss each sub-theme below.

1. Human rights vs. compromise

Sponsor Senator Inouye clearly and repeatedly defined the proposed laws' primary purpose as addressing human rights and civil rights:

I believe that we all recognize the value of the work carried out by the museums. . . . Museums enhance our quality of life. As enlightened people, we welcome scientific inquiry and the opportunity to know more about ourselves. Accordingly, we welcome the preservation and scientific purposes that museums fulfill. Our discussion this afternoon is therefore not about the validity of museums or the value of scientific inquiry. Rather, this discussion is about human rights. (*Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report*, 1990, p. 1)

Inouye affirmed that the laws would address human rights violations of Native peoples, including genocide carried out as part of U.S. national policy.

Some anthropologists believe that there were at least 50 million Indians residing in these United States. I think it is noteworthy to recall that, at this moment, there are less than 1.5 million Native Americans residing in these United States. Now, these Indians have suffered more than any other ethnic group in the United States. They have been the victim of a national policy of the United States in the mid-1800s of extermination. And here we come across . . . the tragic history of the Trail of Tears.

When one goes to Oklahoma and sees the tribes that once flourished in the Carolinas in Tennessee and Kentucky, you know that something is wrong. And when one looks around the city and realizes that 200 years ago, there were dozens of tribes living in the Maryland, Virginia, New York, Pennsylvania area . . . and where are they today? Well, that is part of the national policy. (*Establishment of the National Museum of the American Indian*, 1989, p. 101)

But some testifying, including Secretary Adams, argued that contemporary museums do not bear full responsibility for redressing past national policy that fostered racism:

Even though some very harsh things were said about . . . what, in fact, was our national policy for the course of a century and a half, for which I do not think we need to bear full responsibility, but which we fully have to acknowledge as a policy that was racist in some of its most fundamental implications . . . (*Establishment of the National Museum of the American Indian*, 1989, p. 228)

However, Inouye specifically invoked the concepts of remedial action and equal protection under U.S. law. “Remedial” means that, as is true in the case of international human rights law (to which the U.S. generally does not adhere), where a question arises in interpretation, the interpretation should favor the injured party. Although Native peoples were not protected by the Constitution before they gained citizenship, in subsequent testimony Inouye referred to equal protections as a primary concept imagined by the founders of the U.S. He also explicitly referred to NAGPRA as Indian law, and said that, similar to international human rights legal frameworks, when questions arise in interpretation, we must favor Native peoples.

In an oversight hearing held ten years after NAGPRA passed, Inouye stated:

“... we are told that one of the key people charged with implementing the act has stated that the Native American Graves Protection and Repatriation act is not an Indian law. As a primary sponsor of this act in the Senate, I wish it were true. I wish that we had never had cause to have to enact a law providing for the return of the human remains of Native people of this land (*Native American Graves Protection and Repatriation Act oversight hearings*, 2000, p 1).

In contrast to this emphasis on the concept of remedial law addressing civil and human rights, others characterized the laws primarily as compromise law, a balancing of interests that inherently does not overly favor one or the other of multiple stakeholders. Speaking at a later oversight hearing, Patricia Lambert of the American Association of Physical Anthropologists contends that:

NAGPRA was crafted to balance the disparate interests of many different groups of Americans in archaeological remains. NAGPRA’s specific instructions regarding the composition of the review committee makes this balance of interests very clear. (*Native American Graves Protection and Repatriation Act oversight hearing on a proposed amendment*, 2005, p. 27)

However, W. Richard West, the founding director of the National Museum of the American Indian, and also representing the AAM in his testimony, in an earlier hearing argued that the laws primarily affirm Native cultural and human rights, and that any compromise is an outcome of this radical shift:

You’ve heard today . . . that the NAGPRA legislation was a compromise between the scientific interests, on the one hand, and the Native communities’ interests, on the other hand, [but] the fact is that this compromise represented a paradigm shift along the line, and the legislation really is reflective of a much-heightened consideration on

the part of the Congress in support of Native cultural and human rights. (*Native American Graves Protection and Repatriation Act oversight hearings*, 2000, p. 43)

2. Constitutional protections

A second point of contestation in testimony related to the concept of rights centered on conflicting interpretations of the U.S. Constitution. Various stakeholders invoked Constitutional protections differently. Among these are rights protected by the *First Amendment*, which includes protections for freedom of religion and freedom of speech; the *Fifth Amendment*, which includes a provision that the government will not take citizens' property without just compensation; and the *14th Amendment*, which forbids the states from limiting citizens' rights to due process and the equal protection of the law.

First Amendment rights. Many advocates pointed to the First Amendment's guarantee to religious freedom as protection for the sanctity of Native dead according to religious practices. Walter Fleming, then-Acting Director of Native American studies at Montana State University put it this way:

Human remains are often the object of religious exoneration by the genetic and/or the cultural descendants of the deceased. Hence, actions that adversely affect such remains or adversely affect the ability of the descendants to practice their religion may infringe upon the constitutionally protected free expression of religion and must be considered with great care. (*Establishment of the National Museum of the American Indian*, 1989, p.292)

In contrast, some scientists invoked the First Amendment to support interests conflicting with tribes' religious freedoms in two ways. Some charged tribes with seeking to impose their religious beliefs on the majority by seeking to repatriate sacred material; if their religious view prevailed, they argued, this forces the majority to adhere to religious guidelines they do

not share, thereby violating non-Native people's religious freedoms. A second opposing argument regarding the First Amendment invokes its protection of freedom of speech. In these initial hearings, and also in later hearings following the passage of the NMAI Act and NAGPRA, some also claimed the right to have access to study Native remains under the First Amendment's protection of free speech.²³

In response, many suggested, as did Sherry Hutt, then a judge for the Maricopa County Superior Court in Phoenix, Arizona, that "... there is no private right to study on federal land, and only those who meet NAGPRA requirements have standing to claim ... remains." (*Native American Graves Protection and Repatriation Act oversight hearings*, April 20, 1999, p. 17) Harjo of the NCAI argued that access to study human remains is not a Constitutionally protected right, whereas archiving Native human remains violates Native peoples' religious freedom, and should fall under Constitutionally guaranteed protections:

Nowhere in the Constitution does it guarantee the scientific right of anthropologists and archaeologists to study Indian remains. It does talk about religious freedom.

And, the collection and display of human skeletal remains is violative of our religious freedom. (*National American Indian Museum Act*, 1987, pp. 42–43)

Fifth Amendment rights. Many museum leaders argued that museums hold collections in the public trust and cannot legally give away public property. They proposed that the great majority of objects now in museum collections were purchased in good faith by museums or given by donors. They also proposed that returning remains and sacred objects to tribes is a

²³ Lawyer Paula Barran said: "Our battle with the government has never been over an effort to exclude the tribes from this process. But we had an anthropological treasure found in this country and it was going to go back into the ground without ever allowing us to teach anything." (*Native American Graves Protection and Repatriation Act Oversight Hearing on a Proposed Amendment*, 2005, p. 55)

financial hardship to museums, which should be guaranteed compensation for the loss of property under both common law and the Fifth Amendment:

Secretary Adams: . . . We're talking about objects that may be in private collections, and private museum collections, in many different places. And . . . we find ourselves embedded in the common law there somewhere . . . have you given some thought to how this might be resolved?

Senator Melcher: Well, I believe we are embedded in common law, and the parallel is not the same at all. The procedures that were followed through the Indian Land Claims Commission . . . seemed to be practical . . . and in fact did work . . . This is entirely different . . . And in my judgment . . . based on common law, the right is very strong for Native Americans. (*Native American Cultural Preservation Act*, 1987, p. 73)

In contrast, advocates for the laws argued that sacred objects and communal objects were the property of Native people and were stolen—illegally removed from their care and oversight. Museums cannot hold legal title to stolen property. The artist and author Rick Hill said:

We don't have access to the cultural legacy of our people . . . But you have to realize that what got us to this point is not sharing; it usually was theft, and it usually was the denial of our responsibility and our right to those objects. That's why they end up in these collections. (*National Memorial Museum of the American Indian*, 1989, p. 49)

Fourteenth Amendment rights. Many advocates raised Fourteenth Amendment rights.

For example, Senator Inouye said:

When human remains are displayed in museums or historical societies, it is never the bones of white soldiers or the first European settlers that came to this continent that are lying in glass cases. It is Indian remains. The message that this sends to the rest of the world is that Indians are culturally and physically different from and inferior to non-Indians. This is racism . . . (136 Cong. Rec S 17174, 1990)

In contrast, some scientists and museum leaders invoked the *rights of humanity* as equal to or superior to upholding Native rights, creating a tension between the rights of the majority and remedial action for Native rights. They argued that scientists serve the general public by studying world cultures, and that this service, and the medical benefits that future, as yet undefined, scientific study might gain for future generations, are more important than contemporary Native interests. They argued that given these benefits to the wider public, they had the right to have access to remains. In a later oversight hearing, lawyer Paula Barran said:

We never walked into court wanting to fight with the tribes with whom we have incredible respect. Our clients study their culture. But we did walk into court saying that our clients, our scientists should be treated fairly in this process and we all, as Americans, should have the right to learn about Kennewick Man. (*Native American Graves Protection and Repatriation Act Oversight Hearing on a Proposed Amendment*, 2005, p. 37)

3. Violations of contemporary rights

There was a significant divergence in points of view during the hearings regarding the acknowledgement of past rights violations and of continued violations in the present. While most agreed that rights violations took place in the past, there was no consensus on the degree to which they continue in the present.

Many activists testified that human and civil rights transgressions for Native people continue in the present. These speakers linked examples of continued rights violations in the present to continued racism in the wider culture. Artist and activist Buffy Sainte-Marie said:

Skeletal remains, both ancient and recent, end up in Indian museums throughout the world. Even today wherever I go, Indian people are aware of some contractor or other who just dug up one of our “churchyards,” sold the remains to some museum where the bodies are stripped of their beads and feathers and then put away in a vault in case somebody wants to study them later. Of course, it is illegal, but it still does happen. . . . it is grisly, and most would say it is unholy. And some would say that it is racist and, unfortunately, typical of America at its worst. (*National American Indian Museum Act*, 1987, p. 46)

Testifying in 1990, professor of law Paul Bender states “. . . this is a human rights issue . . . because museums . . . have this material as the result of human rights violations . . . (and) continue to keep them over the objections of tribes from which they were taken” (*Native American Burial and Grave Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony act; and the Heard Museum Report*, 1990, p. 38). Congressman Ben Nighthorse Campbell pointed out that violations of the civil and human rights of Native people are not confined to the circumstances that bring remains to museums; rights are violated and racism is perpetuated through museum displays:

And I might mention just in passing, too, a personal experience . . . my grandfather died at the age of 90 in about 1980. And he told me one time that the most frightening experience he ever had in his life was when he visited a museum in the Midwest and saw mummified remains of a man he knew, he had known as a youngster. And the experience that he must have gone through viewing those

mummified remains, must have been just a terrible thing to go through. But I guess that is a special kind of viewpoint that Indian people have that maybe nobody else has, those kinds of tragic things. (*Establishment of the National Museum of the American Indian*, 1989, p. 181)

Others suggested that although rights violations took place in the past, such abuses are no longer prevalent. Some also argued that museums preserved Native material culture at a time when their cultures were under attack due to U.S. national policy, keeping them safe when they could otherwise have been destroyed. Some acknowledged that museum displays do shape public consciousness, but argued that museums have combated, not promoted, racism through their educational role in society. Tom Livesay, Director of the Museum of New Mexico in Santa Fe, testified on behalf of the American Association of Museums:

The standards and practices of museums 90 years ago bear little resemblance to the standards and practices of museums today . . . At a time when Native American art and cultural material was widely considered to be nothing more than curios by the general American public, museums exercised social leadership by collecting objects they recognized as art and important and significant cultural materials. By exercising such leadership, museums helped preserve Native American culture and eventually helped change social attitudes toward Native Americans. (*Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report*, 1990, p. 61)

Native advocates argued that, having contributed substantially to racism in the wider culture, museums now have a responsibility to support the health and needs of contemporary Native people by changing inappropriate displays of sacred material or

remains to feature programming and exhibitions that reflect Native realities and Native accomplishments and serve contemporary Native needs. Buffy Sainte-Marie said:

The best Indian museums are responsive to, and involved with living Indian people, not just dead ones . . . Native people do not have any connections into the system or things to be proud of. They read the same empty history texts as other American kids do. They are proselytized by churches, ripped off by energy companies, and they know far more about the Renaissance and European history and heroes than they know of our own. Our reality is invisible in the mainstream. And our suicide and mental health problems are a growing tragedy. (*National American Indian Museum Act*, 1987, p. 45)

Question 4: What process—of inclusion, consultation, partnership, representation—should be instituted to ensure that these basic human and civil rights are met?

Discussions related to process highlight activists' and their allies' goals to create the NMAI as an inclusive institution that has Native representation at the staff and trustee level, one that consults with Native people to ensure that it provides outcomes Indian people want and need. Activists sought reform not only for Smithsonian museums, but for museum and academic practices more generally. Throughout the testimony, activists asserted that museums and academic institutions cannot self-regulate, but, rather, must be transformed and held accountable.

Sub-themes I identify in hearing testimony related to the question of "What process should be instituted to ensure basic rights are met?" include *self-regulation* vs. *legislation*, *representation*, the *disposition of unaffiliated remains*, and *consultation* on multiple levels, including

what processes museums should follow in its governance, research, programming, and care of and repatriation of collections to serve Native people and the public.

1. Self-regulation vs. legislation is the first issue. Should there be a law at all, or should institutions simply regulate themselves?

Although he noted that a policy was not yet in place, then-Secretary Adams argued that such a policy, when developed, would be sufficient to resolve current conflicts, and that therefore the legislation under consideration was not needed:

Let me state the position of the Smithsonian as it now exists in my own understanding . . . Where we can identify . . . living descendants of any of the individuals in our skeletal collections, we do not need any legislation. We do not need anything other than our own sense of the existing pattern of rights and responsibilities to return materials from our collections to those . . . living descendants. I'll go further and say that the policy, which we haven't yet formally enunciated but which it seems to me we are moving toward is that wherever we can identify . . . living tribal groups who are descendants of—in all probability, of individual skeletons that are in our collections, we are again prepared to negotiate with those tribes over the return of those materials. (*Establishment of the National Museum of the American Indian*, 1989, pp. 228–229)

Native advocates objected to the proposal that museums, universities and scientific organizations regulate themselves because they argued that these institutions do not represent or serve Native interests, and therefore their proposal to self-regulate is inherently a conflict of interest. They argued that this conflict included the process of inventorying and potentially affiliating remains.

As Echo-Hawk said:

...if Congress in this bill will not affirmatively protect our dead and are helpless to rebury our dead, then at least at the very minimum, I feel that there is a compelling need in the interest of fundamental fairness for an impartial body, not in a clear-cut conflict of interests, to conduct a study and to make the recommendations so that the study that is envisioned will not be taken from the outset by what is very obviously a clear-cut conflict of interest. (*Establishment of the National Museum of the American Indian*, 1989, p. 151)

Also in response to the suggestion that institutions should self-regulate, Native advocates argued that current ethics guidelines were not successfully regulating conduct in either the scientific disciplines nor in museums, and that these disciplines and institutions must still live up to their existing ethics guidelines involving the *consent* of Native people as objects of study. Echo-Hawk quoted the principles of professional responsibility espoused in 1971 by the American Anthropological Association: “In research, an anthropologist’s paramount responsibility is to those he studies. When there is a conflict of interest, these individuals must come first” He also quoted the code of ethics of the Society of Professional Archaeologists: “An archaeologist shall be sensitive to and respect the wishes of the legitimate concerns of groups whose cultural histories are the subject of archaeological investigations.” He followed this by saying:

It is absolutely critical, Mr. Chairman, with regard to the scientific interest in these collections, that racial biology be conducted with the full consent of the people that are, in fact, being studied, and also that it be done in accordance with the applicable controlling scientific ethics, because, otherwise, we are all in danger of fundamental human rights violations in this area, as the world recognizes by virtue of the case of

the Nazi doctors. (*Establishment of the National Museum of the American Indian*, 1989,p. 152).

Also on the concept of self-regulation, in testimony after the passage of NAGPRA, members of the museum community, Native American groups, and universities testified that the biggest stumbling block to implementing the law was the lack of full compliance by federal agencies and the oversight by the Park Service, which could be seen as a conflict of interest. On July 25, 2000, Senator Inouye said:

It has been almost 10 years since this act was signed into law. . . . With a decade of experience, we would customarily anticipate . . . substantial progress . . . in the repatriation of Native American human remains, funerary and sacred objects, and items of cultural patrimony, but our hearing in April of last year indicated that such progress had not been realized. And that more and more tribal representatives who deal with these matters have experienced an increasing hostility on the part of the department when it comes to repatriation. . . . (Native American Graves Protection and Repatriation Act hearings, 2000, p. 1)

2. Representation

Museums have traditionally excluded Native peoples from their staffs, boards, and leadership. In response to Native demands that Native people be significantly included in leadership roles in a new National Museum of the American Indian, several advocates for the scientific and museum communities argued that this could create systemic bias against scientific interests. For example, Mark Leone of the SAA argued:

. . . the way the board is set up . . . it's a foregone conclusion, if you look at the numbers of the board, that there are more Native Americans than there is of

anybody else. As I remember, there is no museum professional on the board . . . it cannot be a discussion and dialogue. It may, in many cases, be a foregone conclusion. . . .it is quite possible for some groups to say that they want everything back. . . .(*Native American Cultural Preservation Act*, 1987, p. 59)

In fact, Leone was incorrect, as there would not have been a Native majority if the bill was enacted, which was pointed out in later testimony.

During testimony at the May 12, 1989, hearing, Harjo testified that the Department of Justice had advised that mandating Native representation on a federal museum's board of trustees could violate the 14th Amendment. But Native representatives argued that their mandatory inclusion is as a political, not a racial, group. Harjo said:

There is one weed in the second paragraph: "I do not think it appropriate to mandate a specific inclusion of any group or groups of people in any number, because doing so automatically requires the exclusion of others. Furthermore, we are advised by the Department of Justice that this provision may establish an unconstitutional racial classification." The other statement: "I cannot, in good conscience, undertake a massive fundraising program that must be broadly based, if it is perceived that the Museum is owned by or for the benefit of a narrow segment of our population." . . . We understand why the Smithsonian is resistant to the full involvement of Indian people and to having input in the law very clearly. We take exception, of course, to the Smithsonian and Justice Department interpretation of a law as a racial classification. Treaties form the basis of the nation-to-nation relationship between Indian nations and the U.S. government. Federal Indian law is founded in this political relationship, and Indian status, under federal law, with the exception of some social programs and specific other federal laws, derives from our

political status, not a racial status. . . . the U.S. Supreme Court in 1974 affirmed this long-standing federal Indian law principle that it is our political status, not a racial status that sets us apart. (*National Memorial Museum of the American Indian*, 1989, p. 63).

Native activists argued that Native representation on boards and in positions of leadership at museums devoted to Native cultures is a minimum requirement. Artist Rick Hill argued:

The fact that there are no Indians on the Board of Regents of the Smithsonian indicates part of the problem . . . We are looked at as suppliers of culture, not managers of cultural development. . . . what we're asking for here is a significant voice within the development of this, and that . . . has to start now. . . . And it cannot be an occasional meeting. Really, if you think about it . . . Indians should be consulting with the museum field, not the other way around. We should be the ones in charge of the development of these institutions. (*National Memorial Museum of the American Indian*, 1989, p. 51)

3. Unaffiliated or unidentified remains

The disposition of unaffiliated or unidentified remains was a topic of significant dissent. In general, Native spokespeople favored respectful reburial of all remains. They suggested that where affiliations could be made, those remains should be returned to the specific tribes, and, when affiliations could not be determined, these unidentified remains must also be treated with appropriate respect and reburied.

Legislators such as Congressman Nighthorse Campbell struggled to reconcile the evident lack of existing documentation identifying many collections of human remains in museums with Native requests to respectfully rebury human remains:

Many of the skeletal remains in the Smithsonian can be identified by tribe obviously through some letters or documentation. There are also many that probably can't, but I don't think they know where they came from, which tribe they belonged to, and so on. How would you address that, the return of the skeletal remains, when you don't know where to return them?

Flute of the AAIA responded:

We know that, in South Dakota, Mr. Chairman, there were unidentified remains that were reburied in a common grave. And this was decided by spiritual leaders of the tribe, that even though there is not a definite (identification) . . . our teaching is essentially that you give respect to all skeletal remains. (*Establishment of the National Museum of the American Indian*, 1989, p. 195)

Some of those testifying sought to limit Native rights to claim remains and sacred objects solely to cases in which direct descendants could be identified. They also proposed that the scientific organization in possession of the disputed material would lead the efforts to identify remains that might have living descendants. Once this work had been done, they would then ask tribes for help in locating actual descendants. Secretary Adams said the “Smithsonian recognizes that descendants have an unquestionable claim on the remains of their known ancestors in that collection” and said the museum was “actively engaged in an identification process” and that they would soon “turn to tribal organizations for assistance in locating descendants of the people with whose remains we have been entrusted. . . .” (*National American Indian Museum Act*, 1987, p. 29).

Native activists argued that there should be repatriations even in cases when no direct descendants could be identified; further, to require scientific certainty in affiliating

remains would stall progress, as scientists do not agree on such issues. Henry J. Sockbeson, the senior staff attorney of NARF noted that:

The native village of Larsen Bay, had an ancient burial ground located immediately adjacent to the village. In the 1930s, the Smithsonian went in there, without permission of the Elders of the village, and excavated the burial site. They took away over 800 human remains and associated funerary objects. . . . The village . . . asked that they be returned for immediate reburial. To this point, the Smithsonian has refused. The Smithsonian has . . . asked for . . . scientific certainty with respect to showing that those remains are definitely related to the village of Larsen Bay. . . . In response to that, we had to hire two experts at great expense to come in and review the existing academic material that related to those remains . . . one thing we found about these academics is that they can never agree on anything. One will say that yes, these people are the same; there's total continuity within the various strata of remains, and that shows cultural continuity between the various levels of various ages of the remains. But then another archaeologist will say well, maybe that's not true. . . . If you require scientific certainty in this legislation, museums will never want to return any of these collections, because they are in the business of keeping their collections. (*Protection of Native American Graves and the Repatriation of Human Remains and Sacred Objects*, 1990, p. 54)

Some scientists, such as Stamps, argued that museums' primary purpose is serving the wider American public, and that if museums bow to demands by Native Americans to repatriate, they will be abrogating their responsibilities to science, to the general public, and to future generations of the general public. In his comments he also affirmed the property rights of landowners and collectors:

There is a genuine interest in the lay public to know, “who were these people?” “How old are they?” “Where did they come from?” “How did they live?” “What happened to them?” “How are we related?” It is because of a desire to answer these questions raised by the lay public that I strongly support this proposed National Museum of the American Indian. This community and the owners of private lands are also the owners of many cultural resources. I feel it is important to point out that this community should include not only those alive today, but also generations to come. Future generations will surely ask of us: what did you save or destroy of the archaeological record? I hope we will not be remembered as the Spanish conquerors who burned the records of the local people as part of the conquest, but instead as a generation that preserved whatever data was available. (*Establishment of the National Museum of the American Indian*, 1989, p. 276)

4. Consultation

Consultation is a meta-theme that arises in connection to myriad topics in the hearings. Earlier in this chapter’s discussion of defining what is sacred, I noted that Native advocates suggested that consultation be written into the laws’ definitions sections so that Native authorities would be recognized in the process of creating definitions.

Many Native activists and their allies also suggested that museums should consult with Native people to conduct research, to develop programs, and to inform policy. Although many of those testifying for the scientific community and museums proposed to work with Native people directly, Native and other advocates testified that in the past consultation and even responses to requests for information had been either non-existent or inadequate.

Some testified that when tribes had requested information from museums in the past, they were either ignored or received unhelpful, bureaucratic responses. Harjo said:

Many of the Indian nations are struggling with this, many of our elders, many of our medicine society people, the people who were clear about what should be done and who do wish that the materials, as they are so delicately referred to in the scientific professions . . . be returned. They are not receiving communications from the Smithsonian. The Smithsonian, when responding to those requesting Indian nations, is responding in vague and extra procedural terms. (*Establishment of the National Museum of the American Indian*, 1989, p. 224)

Native representatives, including Chief Oren Lyons of the Onondaga Nation, testified that requests for information were answered months or years later, and that the institution simply denied the tribes' claims without undertaking any process of consultation or negotiation:

On April 11 of this year we made a formal request to the Museum of the American Indian for the return of sacred masks . . . We have attached this letter as part of our documentation to your committee; as of this moment, we have had no reply. In 1987, we made a similar request to the Smithsonian Institution and received a reply dated July 12, 1988. We were told—and I quote from the letter: “Our information suggests that the . . . Shawnee Council of Chiefs at the Onondaga Nation, New York, is not the successor or official representative of the individuals or communities from whom these were acquired. Therefore, these materials would appear to fall outside the scope of your request.” This was signed by Mr. Anderson, acting Secretary. This attitude is what makes us apprehensive of more of our cultural patrimony going into the hands of the Smithsonian. It is important for the committee members . . . to understand the intensity of feeling the Indian people have

against museums who hold the bones of our ancestors and our national cultural treasures. These angry feelings of frustration are exacerbated by responses like a letter from the Smithsonian Institution. It is obvious to us that we need laws to protect our human and group rights. (*National Memorial Museum of the American Indian*, 1989, p.58)

In contrast, museum leaders testified that museums had made good-faith efforts to reach out to tribes but had received no response. Secretary Adams spoke about a pipe that was important to the Dog Soldier band of the Northern Cheyenne:

Our curator made it plain then, and we make it plain again today, that we are prepared to arrange for the return of that material. It was said at the time that we would meet the expenses for a properly chosen group coming to Washington to work through our Northern Cheyenne collection. That promise was made well over one year ago; and we are waiting for it to be followed up. (*Native American Cultural Preservation Act*, 1987, p 67)

In response, tribal representatives testified that many museum communications were confusing, sent to the wrong parties, or simply inadequate. Harjo spoke of a letter from the Smithsonian:

. . . a communication to Indian country, which was vague, which contained confusing information, which was broken down by state, not by Indian nation. And I'm sure many people who have received that now two years ago are still puzzled by it: what does it mean? (*Establishment of the National Museum of the American Indian*, 1989, p. 224)

Artist and author Hill testified that tribes' access to information and objects was not only difficult but expensive:

We don't have access to the cultural legacy of our people. It went so far . . . that even to borrow one object from the Museum of the American Indian could run you up to \$1200 in expenses. Just to borrow it and bring it out to the reservation. There were a lot of stumbling blocks put up in our way as to why we can't have these things . . . because you have all the materials. . . . (*National Memorial Museum of the American Indian*, 1989, p. 49)

To the chagrin of Native activists, even following the laws' passage, these issues continued to be identified in testimony. Pemina Yellowbird, cultural preservation officer for the three affiliated Tribes of the Fort Berthold reservation, discussed dissatisfactory interactions with agencies in 2000:

Instead of consulting with our nation in good faith, they told our nation they would inform us of their decision whether to violate our ancestors to study if we requested in writing. Instead of consulting with us on a government to government basis, they told us we had 30 days to respond to their letter, although there are no NAGPRA deadlines for tribes and although we received their letter five days after their . . . legal deadlines had expired. (*Native American Graves Protection and Repatriation Act hearings*, 2000, p. 17)

Hearing analysis: summary

My analysis of the hearing testimony illustrates that without the work and efforts of Native American social activists and their allies, the NMAI Act and NAGPRA most likely would not have existed at all, or if legislation was passed would not have mandated the inclusion of Native people in decisions regarding the disposition of cultural materials and human remains and representation of Native people in the leadership and ranks of a new

national museum devoted to Native cultures. As evidenced by the opposition to these laws, neither law would have emerged from the academy or museum field independently.

It is interesting to note that major divergences in positions expressed during the 1987–2005 hearings echo key themes within historic conflicts between Native Americans and whites. These include: contested scientific definitions of race that are dependent upon measurements of the human body; questioned relationships of past populations of the Americas to contemporary Native people; tensions between the needs and rights of contemporary Native people—including religious freedom—and scientific priorities and practices; and dissent regarding the degree of Native self-determination or inclusion in decisions most important to their lives. In hearings held after the passage of the laws, these divergences continued and in some cases increased.

Chronology of the cultural rights movement leading to the creation of the NMAI

The story of the events leading to the creation of the NMAI has two threads: the cultural rights movement's evolution and the story of the Museum of the American Indian, Heye Foundation (MAI), which was ultimately transferred to the Smithsonian to form the basis of the NMAI's collection. The following chronology highlights significant ways in which the cultural rights movement activists successfully meet criteria Charles Willie identifies for success in his theory of grassroots social action, including by: adeptly creating horizontal linkages by building coalitions and linking to allied partners; establishing strong vertical linkages to powerbrokers and leaders sympathetic to the movement; employing flexibility regarding strategies; using principled negotiation; and employing veto power.

The MAI was founded on May 10, 1916, by George Gustav Heye, who has often been described as an avaricious, obsessive collector; his collecting has even been characterized as an “addiction” (Force, 1999, p. 6). It has just as frequently been noted in the literature that Heye was arrested for grave robbing in 1914. Although he was caught in the process of excavating a burial site in New Jersey with a crew of workers, he fought the charges, and eventually won. (Force, 1999, p. 6).

The MAI historically did not employ Native Americans, nor did it appoint Native trustees. In the 1970s, in the context of increasing Indian activism, that began to change, but slowly. Soon after the first meetings in Bear Butte Suzan Shown Harjo describes attending in 1967, NARF was founded (1970) and began its legal defense of Indian cultural rights. And, importantly, the 1970’s saw many protests by tribes and pan-Indian coalitions for the protection of graves and the return of sacred material and cultural patrimony. As examples (Source: Fine-Dare, 2002, p. 77):

- Students at the University of Minnesota’s American Indian Student Association wrote a National Science foundation proposal requesting funding to excavate a pioneer cemetery.
- Remains were repatriated to the Narragansetts of Rhode Island and ceremonially reinterred.
- Indian protests at the State Historical Society of Iowa led the governor of that state to order that all Indian remains be taken from public exhibition.
- Between 1971 and 1977, California stopped excavations of Indian burial sites less than 200 years old
- In 1974 the (Six Nations) Council of Chiefs prohibited the sale of any religious objects or objects of cultural patrimony (whether historic or contemporary) such as

sacred masks or wampum.

- Wampum were repatriated in 1975 to the Onondaga Nation that had been held by the Buffalo and Erie County Historical Society.

But, also in 1975, the MAI ran into trouble, and not as a result of demands from Native activists to return sacred material. Rather, the New York attorney general charged the museum with failing to perform a museum's most basic responsibility: to adequately care for the museum's collections. The MAI was accused, among other things, of failing to provide safe storage and adequate records for the collection (Weil, 1982, p. 50–51). Additionally the director was charged with improperly deaccessioning materials, for questionable prices, and without informing the trustees (Blair, 1979, p. 129). As a result of the investigation, the museum was ordered to perform a thorough inventory, the director was dismissed, six trustees stepped down from the board and the MAI board was legally dissolved²⁴ (Cooper, 2008, p. 67; Force, 1999 p. 43). Unfortunately the inventory that was subsequently developed by court order was placed on computer tapes that were then erased and/or lost (Force, 1999, p.47–48).

It was not until 1977 that Native Americans Vine Deloria Jr. and George H.J. Abrams were appointed to the MAI Board of Trustees (Force, 1999), becoming the first Native MAI trustees. The following year, in 1978, Native Americans John C. Hunt, Dr. N. Scott Momaday, and Harold Pruner were also appointed to the Board. (Force, 1999, p. 466). That same year, the Zuni demanded the repatriation of their War Gods, and a coalition of activist organizations including the NCAI and NARF won the passage of the American

²⁴ On September 4, 1975, "the court approved an interim agreement filed by the Attorney General of NY State which required a comprehensive inventory to determine what is missing. The agreement removed all powers of administration from (the MAI director, and) . . . the MAI board was dissolved under a 1975 consent decree"(Force, 1999 p. 43).

Indian Religious Freedom Act. The Act, as we have noted, was intended to reaffirm the religious freedom rights that tribes should already have enjoyed under the U.S. Constitution's 14th Amendment; the Act served as an important precedent for the passage of repatriation legislation in the 1980s.

Also in 1978, MAI trustee Deloria's close NCAI colleague Suzan Shown Harjo was appointed to the position of Special Assistant for Indian Legislation in the Office of the Secretary of the Interior, where she was responsible for overseeing the implementation of AIRFA, which she had helped create.²⁵ Harjo countered institutional ambivalence and resistance to the implementation of AIRFA by bringing in teams of Native legal and policy experts to develop parallel evaluations. She said:

... I got the Bureau of Indian Affairs to contract with the American Indian Law Center and with the Native American Rights Fund [NARF], and a few people, Vine Deloria, Jr. and Roger Buffalohead, to do a parallel study. While the agencies were doing a self review, the contractors came in to see if they would reach different conclusions, if they would gather different information, if they were getting the same kind of information that I was getting from the federal agencies. Doing it that way actually brought all the processes together in a way that really worked quite well. I was very pleased with that. (S. S. Harjo, personal communication, January 26, 2009, p. 6)

While Harjo worked from within the Carter administration and NARF continued to litigate cases, The Longest Walk, a national protest event organized by the Red Power Movement

²⁵ "She served as coordinator for the Task Force on American Indian Religious Freedom, prepared the President's response to Congress, pursuant to P.L. 95-341 (Report of August 1979). She also prepared the federal Indian report on U.S. compliance with Principles VII and VIII of the Helsinki accords" (*NARF Announcements*, Winter, 1979, p. 10).

also took place in 1978, when hundreds of Native activists caravanned and marched to Washington, D.C. to assert treaty rights and civil rights, symbolically evoking the painful history of Native Americans being forced from their homelands (Josephy, Nagel, & Johnson, 1999, p. 2). During the Longest Walk, activists visited universities and museums and saw boxes upon boxes of human remains in storage. As a result of what the activists saw and learned on these visits, they formed the group American Indians Against Desecration (Fine-Dare, 2002).

AIM leader Dennis Banks noted that a week after the activist delegations arrived in Washington, D.C., the AIRFA was passed, but also that President Carter refused to meet with any members of the activist groups (Banks, n.d., para. 2). Carter's refusal to meet with the activists lay in stark contrast to activist Suzan Harjo's ultimately joining his Administration to assist in its implementation and having direct access to him. The ability to create strong vertical linkages to powerbrokers while also building horizontal coalitions is a criteria for success Willie outlines in his theory of grassroots social action. In addition to establishing vertical linkages, before joining the administration, Harjo worked directly on the passage of AIRFA in her legislative roles with NARF and the NCAI. The Longest Walk activists on the other hand were primarily successful in building horizontal coalitions and raising awareness of issues concerning the movement.

Soon afterward, in 1979, the Archaeological Resources Protection Act was passed, but it still designated Native remains and cultural patrimony as federal property. Also in 1979, Native Americans Dr. Clara Sue Kidwell and Dr. Robert E. Powless were appointed to the MAI Board of Trustees (Force, 1999, p. 466). These continuing appointments of Native scholars and leaders to the MAI board are also examples of key vertical linkages established by the movement.

In the 1980s, the repatriation movement gained steam. NARF litigation regarding Kansas cemetery exhumations used as tourist attractions led to new state laws in fourteen states regarding burial rights, and the Pawnee Nation successfully recovered human remains from the Nebraska State Historical Society (Trope & Echo-Hawk, 1992). And the Museum of the American Indian, Heye Foundation (MAI), weakened financially, was in search of a new home and financial support. Talks had been initiated with New York's American Museum of Natural History (AMNH), but the slowly diversifying group of MAI trustees never felt that the AMNH was negotiating in good faith regarding the size of a facility and in retaining the MAI as a distinct collection. They believed that the MAI should not be merged with a natural history museum collection of dinosaurs, animals, plants, rocks, etc., since presenting Indian culture and history in a natural history museum promotes racism. Betraying the accuracy of these concerns, in December of 1984, AMNH president Bob Goelet wrote in a memo regarding a potential merger "... I felt their board was divided between those who felt our deal was a reasonable and advantageous one and those who felt that a pantheon for the noble savage freestanding was required" (Force, 1999, p. 235).

Around the same time in 1984, MAI trustee Charles Simon proposed to the other MAI trustees that they approach Ross Perot about bringing the museum to Texas. He and MAI Chairman Conable wrote to Perot in November 1984. The MAI trustees met with Perot on January 7, 1985, and, at that meeting, Perot expressed his willingness to do so (Force, 1999, p. 251–253).

Suzan Harjo relates that Perot was brought in as an ally, a strong example of creating creative vertical linkages to strengthen the MAI's bargaining power with New York City and the Smithsonian:

Charles Simon from Salomon Brothers...was saying, "What we really need is a bidding war." Well, yeah, what do you mean? He says, "Well, you know, if New York's not interested and Washington's not interested, we need someone to be interested who would start a bidding war between the two." We said, "Yeah, that's right." Who? What? He said, "I have an idea about this. I hear that Ross Perot is interested in building a world class museum outside of Dallas, and he's not particular about the class." I said, "We have a world class museum collection." Isn't this wonderful?...I wouldn't have thought of that. Vine wouldn't have thought of that. Peter Kreindler wouldn't have, but Charlie Simon from Salomon Brothers thought of it because that's what he thinks about all day, all night, is putting deals together...We're saying, "That's so brilliant. If he did that, everyone would fall over themselves to try to keep him from doing it and it would start the bidding war... But you have to tell him that he would be the laughing stock. Make sure he knows what his role is in that." Charlie Simon called him, told him that he was being used as a buffoon, and he said, "Fine." (S. S. Harjo, personal communication, January 26, 2009, p. 17–18)

The activists on the MAI board leaked this information to the press, then gleefully sat back and watched as their strategy succeeded. As Harjo recalled:

Vine said, "In Washington and New York they all went crazy thinking that Ross Perot was going to spill barbecue sauce all over the collection." It did exactly that. Ed Koch was Mayor and he came out publicly and said, "This is a New York treasure and it can't go to Texas." People in Washington were saying, "This is a national treasure, it's not just a New York treasure, and it can't go to Texas." We had the beginning of our negotiation. That's how we got a negotiation involving New

York State, New York City, and Washington (S. S. Harjo, personal communication, January 26, 2009, p. 17–18)

In this instance, the movement's allies MAI trustee Charles Simon and Ross Perot have clear access to multiple levels of society, allowing them to know what dominant group interests were in the mix, to bring people on board given their shared interests, and equally to know what would make dominant population opponents react, all of which Willie points to as important criteria for success at the legitimization stage of a movement (Willie et al., 2008).

Also in 1984, the Select Committee on Indian Affairs was first established as a permanent Senate Committee, and Harjo became Executive Director of NCAI. In another example of building critical access to vertical power, after being appointed as Executive Director, Harjo soon requested a meeting with the newly-appointed Smithsonian Secretary Robert McCormick Adams. She recalls:

I requested a meeting with him that would lead toward negotiation regarding care and treatment of the Indian collections in the Smithsonian, and the way they were exhibited, and would also negotiate Indian presence, Indian programming, Indian consultation, just the whole range of issues affecting the Smithsonian affecting Native peoples. Part of this was a negotiation on repatriation terms, sort of a continuation of the AIRFA agreements that we had gotten with the military, that the Smithsonian was a part of but had always remained distanced from . . . (S. S. Harjo, personal communication, January 26, 2009, p. 20)

Adams agreed. They began meeting in 1985, and continued to meet in 1986, 1987, 1988, and 1989 (S. S. Harjo, personal communication, January 26, 2009, p. 20). She also noted that:

He was the first Secretary of the Smithsonian who had met with any Native people who weren't employees since Secretary Henry met with my great-great-great

grandfather's brother, Cheyenne Chief Lean Bear. His brother, Lean Bear, was the head of the Cheyenne delegation that came here, Washington, to the White House at the request of President Lincoln as part of the delegations from all the southern plains nations. They entered into an unwritten treaty, which the southern plains nations kept, which was at Lincoln's request for neutrality in the Civil War. They met in 1863 and it wasn't until 1985 that another Secretary of the Smithsonian met with our people. Isn't that something? It's quite amazing. (S. S. Harjo, personal communication, January 26, 2009, p. 20)

As Harjo began meeting with Adams in 1985, she was also appointed to the MAI Board of Trustees (Force, 1999, p. 466). She relates that Vine Deloria demanded the other trustees bring her on, and she went to NYC not knowing if she would be welcomed, or if Deloria would go to the press.

...my friend, Vine Deloria... called me and said, "You have to come on this Board, because I don't have any backup." Our friend, Scott Momaday, who's a nice guy and who'd say yes if he showed up... wasn't strongest on these issues. He was a free vote but not the backup that Vine felt he needed. He found that the trustees were reluctant to bring me on, and so he called me one night and said, "Can you come to New York tomorrow morning?" I said, "Yeah, I could. What's up?" He said, "Well, either you're going to be a member of this Board of Trustees or I'm having a press conference and you're going to be there saying why they wouldn't put you on the Board." Okay. I went to New York not knowing which it was going to be, and I was very graciously welcomed to the Board of Trustees for the museum. I didn't like the Museum of the American Indian and didn't want to do this, but Vine was on the Board and he made a very good point, which was that our whole effort would be

greatly enhanced by inside experience, and just being on that end of it that we would be better equipped . . . that was brilliant. (S. S. Harjo, personal communication, January 26, 2009, p. 16)

Also that year, Vine Deloria wrote several letters regarding the proposed partnership of the MAI with the AMNH. In the first letter, he declined an invitation to speak at the AMNH, saying “your people have steadfastly refused to consider American Indian membership on the board of trustees of the new institution” (Force, 1999, p. 237). In a separate letter, Deloria replied to the New York City Commissioner of Cultural Affairs, Bess Myerson, who had written to the MAI trustees to say New York Mayor Koch encouraged a joint venture with AMNH and MAI and “has pledged considerable city resources to achieving such a merger.” Deloria replied with similar directness:

Your letter . . . comes as a complete surprise. Until the news broke that some people at the MAI were talking to people in Dallas the city of New York never gave a tinker’s damn about the MAI. . . . It is my impression that they (AMNH) intend to keep stalling until the Museum (MAI)... is so financially weakened that there is a chance the collection will fall into their hands by default. . . . Further, the present posture of the AMNH toward American Indians is degrading and derogatory. It conceives of Indians as part of the fauna and flora of North America and therefore destined to be exhibited between the fish and the birds... the Indian trustees of the Museum . . . do not intend this situation to occur in whatever final disposition is made of the collection . . . Presumably if Mr. Perot’s name had not come up there would still be no interest in the MAI. (Deloria, cited in Force, 1999, p. 277–278)

This action by Deloria is also an illustration of a principle Charles Willie describes in his theory of grassroots social action. As he has written, “It is appropriate to recognize

subdominant people of power as a corrective component in a community controlled by dominant people of power that has forgotten its mission and lost its way.” Additionally, “it is meet and right for subdominant people of power to demand the opportunity to participate in community decision-making when they are left out and not consulted” (Willie et al., 2008, p. 14). The demands by Native grassroots activists to participate in community decision-making consistently included appointing Native trustees and staff to key organizations. As Willie has also written, “since the tendency to exclude most frequently . . . is a local phenomenon, the requirement to include is best guaranteed at a higher decision-making level” (Willie, 1984, p. 33).

Also in 1985, the MAI received pressure about its own program, when “. . . Michael Bush, the executive director of the American Indian Community House, NYC, called upon the Museum of the American Indian to provide access to Indians or to give the collections back to the Indians” (Cooper, 2008, p. 67).

The following year, in 1986, the NCAI, under Harjo’s directorship, issued a repatriation resolution, as she and others sought to uncover how many human remains were held in the Smithsonian’s collections. Harjo wrote to Adams requesting the data:

I asked him for just a simple inventory of how many Native human remains were in the Smithsonian, and what tribes they were. Then I distributed that. As soon as I got it, I distributed it throughout Indian country. That’s when a lot of people started contacting their lawyers and saying, “We have lawsuits right now.” I was able to say at our next meeting, “What we’re going to have is lots and lots of lawsuits unless we have a legislative agreement, so we best start working on a legislative agreement.” . . . The numbers were pretty shocking. There were four thousand five hundred skulls from the “Indian Crania Study.” There were eighteen thousand five hundred human

remains that were directly attributable to North American United States Indian tribes, and many more that were culturally unidentified. Many more than that were of different tribes from different countries. (S. S. Harjo, personal communication, January 26, 2009, p. 21)

Based on initial numbers coming from Smithsonian staff, on March 6, 1986, Harjo initially reported to the House Interior Appropriations Subcommittee that 17,000 human remains were in the Smithsonian Museum of Natural History (McKeown, 2012, p.10). These figures would soon be revised upward.

Until Harjo requested this information, the Smithsonian had not compiled such an inventory (Harjo interview, n.d., p.23). This point is contrary to the general public perception of museums. It is often generally assumed that objects in museum collections are not only inventoried but researched, conserved, and ideally, written about for publication. However, this was not always the case. As former MAI director Roland Force has noted regarding the formation of the MAI collection, research and documentation was not always a priority:

Heye often has been criticized for his lack of emphasis on documentation. This is correct. Heye was a collector, not a scholar. If a piece came with data, fine, but he treasured a fine piece without a provenance or history on its own merits. U. Vincent Wilcox (a staff member at MAI prior to his Smithsonian affiliation) has noted . . . Heye would secure detailed information when money was plentiful. When his wealth was reduced, he didn't wish it spent on such a time-consuming endeavor. (Force, 1999, p. 6)

Force adds, "Possibly, some of the best documentation of the collections, such as at the Smithsonian, occurred where scholars were federally funded" (Force, 1999, p. 7).

This was not only true for MAI. Historically, more things were collected than could be researched due to limited staff or financial constraints. This has been true for conservation as well; not all objects in museum collections have been conserved or even properly stored. As one example, several years ago, a former colleague, Erin Hasinoff, worked at the American Museum of Natural History (AMNH) during her Ph.D. program and was assigned the job of opening, for the first time, boxes of artifacts Margaret Mead had shipped to the museum in the 1970s from Melanesia, carefully removing tiny eggs left behind by insects that had already destroyed many of the objects. Consequently, the repatriation legislation NCAI and others advanced required institutions to inventory the collections in their care.

Until then, museums were, in effect, fighting to retain ownership of many things that they did not even know they had.

On October 18, 1986, Democratic Senator John Melcher of Montana introduced the first repatriation bill, the Native American Cultural Preservation Act, on the last day of the 99th Congress. Senator Melcher had been successfully lobbied by a Northern Cheyenne delegation that had been searching for an important Dog Soldier pipe, and had finally located the pipe in the possession of the Smithsonian. During their tour of the massive Smithsonian storage facilities, the members of the Northern Cheyenne delegation came to realize that thousands of Native human remains were stored there (McKeown, 2012, p. 3–4). Senator Melcher's bill, the Native American Cultural Preservation Act, introduced on February 20, 1987, was co-sponsored by John McCain of Arizona, Bill Bradley of New Jersey, Senator Quentin Burdick of North Dakota, and the new Select Committee Chair, Daniel Inouye. Again, this example illustrates Native activists' power to create not only horizontal, but, also, vertical linkages to allies who are dominant people of power and have

leverage in dominant social organizations, in this case the federal government (Willie et al., 2008).

The Melcher bill included amendments to ARPA and would establish a Native American Museum Advisory Board “composed of fifteen. . . . members to be appointed by the president, including six Indian elders, spiritual leaders or traditional cultural authorities; one Native Hawaiian elder and spiritual leader; two anthropologists or archaeologists; two museum representatives; two members of the House of Representatives; and two members of the Senate” (McKeown, 2012 p. 6).

By 1987, Senator Inouye was Chairman of the Committee on Indian Affairs. Inouye was a champion for the protection of human rights broadly, and, as the chair of the Committee on Indian Affairs, he saw his role as upholding Native American human rights and was a critical ally to the movement. In this capacity, he supported both the creation of the NMAI on the National Mall and broad reform for museums, universities, and federal agencies holding Native American human remains, sacred objects, and community property in their collections. Inouye had initially conceived of the need for a national memorial monument for Native Americans.²⁶ Harjo recalls that Inouye had been

. . . one of my original sponsors of the American Indian Religious Freedom Act. . . . By the time he took over the chairmanship of the Indian Affairs Committee he had really dedicated himself to a process of working with Native peoples to accomplish Native American legislation. It was within that context that we brought him into things, and he really had a feel for it. He really wanted to be a part of it. (S. S. Harjo, personal communication, January 26, 2009, p. 28)

²⁶ At the grand opening of the museum in 2004, he was introduced by Colorado’s Senator Ben Nighthorse Campbell (Northern Cheyenne) as “the man who, in my view, is singularly the most responsible person for this magnificent structure” (Hill, 2014, pp. 27–33).

She added that his staff were strong allies as well, noting that

...when he became Chairman he had called me and asked who we wanted to be his staff director. We had already supported Alan Parker, and so he hired Alan Parker. We worked very closely. I worked very closely with Alan Parker (Chippewa-Cree) on these issues from '86 on. Alan and I had worked together, too, on the Religious Freedom Act. If you had to pick two main authors, we were it, although other people had their say and were part of it, but we were the main ones. In crafting the repatriation with the Indian Museum Act, Alan was right on it from the mid-1980s. Later, Committee Counsel Patricia Zell did a fair amount of negotiating at the bureaucracy level, like with GSA. (S. S. Harjo, personal communication, January 26, 2009, p. 28)

In keeping with Charles Willie's theory of grassroots social action, gaining the support and approval of the new chairman of the Committee on Indian Affairs was a critical step, and this advance was further enhanced by Native activists' ability to lobby for Committee appointments so that Native people became more powerful within the dominant people of power's societal structures (Willie, 1994). The Native activists' alliance with Senator Inouye, a Japanese-American war hero, was likely strengthened by Inouye's own multicultural background and experience as a subdominant person of power.

February 20, 1987's hearing on Melcher's revised bill, S. 187, was pivotal. Then-Secretary of the Smithsonian, Robert McCormick Adams, testifying before the Committee on Indian Affairs, reported that the Smithsonian was holding approximately 18,500

Native American human remains in its collections²⁷, this information catalyzed an even stronger firestorm of tribal protests and advocacy. As Senator Inouye has written:

. . . during a Select Committee hearing on a bill to provide for the repatriation of Indian artifacts, Smithsonian Institution Secretary Robert McCormick Adams indicated that of the 34,000 specimens currently in the Institution's collection, approximately 42.5% or 14,523 are the remains of North American Indians, and another 11.9% or 4061 of the specimens represent Eskimo, Aleut, or Koniag populations. Tribal reaction to Secretary Adams' testimony was swift. In the months that followed, Indian tribes around the country called for repatriation of those skeletal remains that could be identified as associated with a specific tribe or region for their permanent disposition in accordance with tribal customs and traditions, and for the proper burial elsewhere of those remains of North Americans that could not be identified. (Inouye, 1992, p. 1)

In March of 1987, at the Congressional Awards Banquet of the National Congress of American Indians (NCAI), Senator Inouye was honored as chair of the Senate Select Committee on Indian Affairs. In his remarks, Inouye shared an idea that he had to place tribally unaffiliated Native American skeletal remains from the Smithsonian in a memorial to be constructed for the National Mall (Force, 1999, p. 371).

On April 20, 1987, soon after the Senator's remarks, Inouye, his aide Dr. Patricia Zell, General Counsel for the Committee (Navajo), and Alan Parker, Committee Staff Director (Cree and Sioux), visited the MIA Manhattan museum and the Bronx Research Branch. Then MIA director Roland Force writes that he and MAI Chairwoman Julie Kidd

²⁷ (and 33k skeletal remains overall, including Native Americans)

joined them for the tour (Force, 1999, p. 375). Harjo also recalls this or perhaps an earlier visit:

It was frightening. The first time we took Senator Dan Inouye there in the mid-eighties, we wanted him to see how bad it was. There was a heavy rain the day before, and a flood during the night. When we went in about 11:00 a.m., we saw the staff madly laying out the inventory cards. They were on recipe cards, index cards. That was the inventory information. They were curled up like big Fritos and they were on top of every surface. Some of them had been hand written and the ink was running. Some of them were not intact, because they had been pulled from here and there. The beautiful dresses, their buckskin fringe was soaked. There were wharf rats visible, big water bugs, it was horrible. It was a nightmare. (S. S. Harjo, personal communication, January 26, 2009, p. 17)

These visits were part of the lobbying efforts Native MAI trustees and their allies on the board used to convince Inouye and his staff that the collection should be transferred to the Smithsonian and that the inclusion of repatriation and civil and human rights protections should be included in any legislation that accomplished this goal. In 1987, Native Americans W. Roger Buffalohead, Joseph B. DeLaCruz, Norbert Hill, Jr., Lois Risling, and Hon. Thomas R. White were also appointed to the MAI Board of Trustees, further strengthening activists' abilities to advocate for these goals (Force, 1999, p. 466).

As context for the meetings and negotiations taking place with Native activists and government and Smithsonian representatives, in 1987 the Smithsonian also repatriated four sacred objects to the Zunis, which had been taken by a Smithsonian expedition in the 1880s. The four objects included two wooden statues of the archangels Saint Michael and Saint Gabriel and two Ahayu:da, or War Gods (Fine Dare, 2002 p. 97). Yet also that year a

Kentucky farmer accepted ten thousand dollars to allow private individuals to recklessly excavate a burial site on his land. They used a tractor to plow through over 650 graves, mixing the remains with one another and leaving them exposed on the site while removing funerary objects for sale (McKeown, 2012, p. 45).

Back in New York, on May 21, 1987, amid the continued uproar sparked by Ross Perot's interest in the MAI, and consequently in opposition to the MAI's possible departure, Senator Daniel Patrick Moynihan introduced a competing bill to transfer the Custom House to the MAI to keep the museum and collection in New York. This bill was also *contra* Inouye's known plan to bring the collection to the National Mall (Force, 1999, p. 379).

Soon after, however, on September 25, 1987, Senator Inouye introduced the National Museum of the American Indian Act, S. 1722. The bill included requirements for the Smithsonian to complete an inventory of skeletal remains within five years and unaffiliated remains to be "interred in a memorial at a site on the National Mall" (McKeown, 2012, p. 31). (The concept of a mass grave was ultimately rejected by Native activists and subsequently was changed.) On the very same day, the Smithsonian Natural Museum of History denied the Larsen Bay tribal council's request to repatriate 800 Alutiiq remains taken from a Larsen Bay site by Ales Hrdlicka in 1932–1936 (McKeown, 2012, p. 32).

On October 1, 1987, Congressman Weiss introduced a bill in the House intended to be an alternative to Inouye's S. 1722. The bill had 26 cosponsors, no repatriation provisions, and was not drafted in consultation with Native Americans. In an example of the inroads being made by activists to change how business was conducted regarding Indian issues at the federal level, Senator John McCain told Weiss that "it is a practice on this committee.... that we don't take action unless the Indians are fully consulted" (McKeown, 2012, p. 33).

On October 13, 1987, Congressman Morris Udall introduced H.R.3480, sister bill to Inouye's. Soon afterwards, on November 5, 1987, New York politicians opposing the Smithsonian transfer, represented by Moynihan, Alfonse D'Amato, Charles Rangel, Weiss, Mario Cuomo and Edward Koch wrote to Inouye to ask him to alter his planned bill so that the MAI would stay in New York City in a new location at the Custom House and retain its trustees and ownership of its collections. They suggested that the Inouye bill should still create a new NMAI on the Mall that had liberal borrowing privileges from MAI but would not own the MAI collection (Force, 1999, p. 400). On November 12 and 18, Senator Inouye oversaw hearings for S.1722, the NMAI Act and S. 1723, the American Regional Museum Act sponsored by Senator Jeff Bingamin of New Mexico. During the hearings, the New York opposition threatened to block the Inouye bill, and following the hearings amendments were drafted to reflect the New Yorkers' proposal to retain the ownership of the collections by MAI (Force, 1999, p. 405–407). At the same hearing, Secretary Adams continued to defend the Smithsonian's retaining collections of Native human remains.

On April 12, 1988, Secretary Adams wrote to Inouye to reject the compromise amendments keeping the MAI collections in New York but available for loan to the Smithsonian (Force, 1999, p. 431). Inouye subsequently said he would simply rewrite the bill so that the new NMAI would be run not within the Smithsonian but “as an independent federal agency under the jurisdiction of the Secretary of the Interior.” This counter move by Inouye put added pressure on Adams and the Smithsonian by threatening to bypass the Smithsonian altogether (Force, 1999, p. 432).

On May 25, 1988, Senator Melcher introduced the Native American Museum Claims Commission Act, a new version of S. 187 that specifically referred to the provisions of

AIRFA. In this version, the previous 17-member advisory board was renamed and reduced to 3 members, at least one of whom should be Native (McKeown, 2012, p. 16–17).

On September 8, 1988, Adams called Inouye to ask that Inouye resume negotiations with the Smithsonian before moving forward with any alternate proposals (such as Inouye's threat to establish the NMAI under the Secretary of the Interior) (Force, 1999, p. 432).

On September 23, 1988, the Senate Select Committee on Indian Affairs “unanimously recommend(ed) a third version of S-187 and reported the bill to the full Senate on October 21, 1988, the last day of the 100th Congress.” The new bill would establish a five-member committee, two Native Americans and two museum professionals, anthropologists, or archaeologists. These four could then jointly recommend a fifth member (McKeown, 2012, p. 25).

At the July 29, 1988 hearing for the Native American Museum Claims Commission Act, sponsored by Melcher, the legislation was opposed by the Smithsonian, the American Association of Museums (AAM), and the Society for American Archaeology (SAA). During his testimony, Mike Fox, then the director of the Heard Museum and also representing the AAM, proposed that the legislature delay enacting the bill in order to allow for a year of dialogue between academics, museums, tribes, and other stakeholders.

Other important developments in 1988 included:

- Supreme Court ruling: *Lyng v. Northwest Indian Cemetery Protective Association* (No. 86-1013). The Yurok Indians of Northern California had charged that building a logging road in the Six Rivers National Forest would destroy their sacred sites. The Supreme Court found that construction of the road did not violate their freedom of religion.
- The Pawnee tribe requested that hundreds of remains be repatriated by the Nebraska State Historical Society, and the Society refused. NARF took on the case and

successfully lobbied for state repatriation legislation.

- On September 28, 1988, North Dakota's Byron Dorgan introduced H.R. 5411, the Indian Remains Reburial Act, which would apply only to the Smithsonian.
- On October 18, 1988, Georgia Senator Wyche Fowler introduced S. 2912, the Comprehensive Preservation Act which would allow for the reburial of human remains found on federal or tribal land (McKeown, 2012, p. 43).
- And, on November 8, 1988, Melcher lost his Senate seat.

1989 similarly saw a flurry of events related to repatriation, including:

- Inouye was appointed to the MAI Board of Trustees (Force, 1999, p. 466).
- The Nebraska Unmarked Human Burial Sites and Skeletal Remains Resources Act was passed, becoming the first law in the US to require repatriation of identifiably affiliated remains. On September 11, 1990, the Pawnee repatriation took place (Fine-Dare, 2002; Cooper, 2008).
- Harvard University Peabody Museum repatriated the Omaha Sacred Pole and the Tunica treasure (Cooper, 2008).
- The Iroquois successfully negotiated the return of twelve historic, sacred wampum belts from the New York State Museum (Hill, 1996; Sullivan, 1992, 2004).
- The Chicago Field Museum adopted a repatriation policy (Fine-Dare, 2002, p. 107).
- The American Archaeological Association formed a Commission, which included Native people, on Native American Remains and issued a report against repatriation (Fine-Dare, 2002, p. 107).
- On February 27, 1989, Byron Dorgan introduced a revised version of his H.R. 1124 (McKeown, 2012, p. 56).

- On March 9, 1989, Ben Nighthorse Campbell chaired a hearing of the House Committee on Interior and Insular Affairs regarding the proposed merger of the MAI with the Smithsonian.
- On March 15, 1989, Florida's Charles Bennett introduced H.R. 1381, the Native American Burial Site Act, "to establish a national system for dealing with the discovery and exhumation of Native human remains" (McKeown, 2012, p. 45).
- On March 16, 1989, MAI Chairman of the Board of Trustees signed a Clarified Memo of Understanding (MOU) joining the MAI and the Smithsonian; Robert McCormick Adams of the Smithsonian signed the MOU on May 8 (Force, 1999, p. 450).
- In March, 1989, the Native American Graves and Burial Protection Act, H.R. 1646, was introduced by Udall in the House. The bill "was significant in that it brought together three sets of provisions previously dealt with separately—those dealing with collections, new excavations, and trafficking—into one comprehensive bill" (McKeown, 2012, p. 47). NARF lobbied to support the bill. The SAA and the AAM) were against the bill (McKeown, 2012, p. 49).

Soon afterwards, on April 1, 1989, the proposed dialogue, The Panel for a National Dialogue on Museum/Native American Relations, with museum, academics, tribal representatives, and other stakeholders, began its first of three meetings at the Heard museum. Park Service veteran Tim McKeown writes that

Participants tried a number of techniques to facilitate dialogue, including discussion of a list of key issues, formulation of a proposed statement of good practice for museums, and use of a case study. In addition to the fourteen participants, six congressional staffers attended one or more of the meetings. ... Dan Monroe, VP of

the American Association of Museums, later characterized the dialogue findings as achieving a modicum of progress toward guiding repatriation principles, but they were not the breakthrough some hoped for. An unintended consequence of the dialogue was the shocking realization by some in the museum community that the Indians were right. “To me and to, at first, a comparatively small number of museum professionals,’ Monroe recalled . . . ‘the ethical position museums sought to defend was very questionable with respect, especially, to Native American human remains.’” (McKeown, 2012, p. 91).

Before the panel issued its report, however, the National Museum of the American Indian Act was introduced by Senator Inouye on May 11, 1989, and, on May 12, 1989, the NMAI Act Senate bill S.978 hearing in Indian Affairs Committee was held.

Following the May 12 hearing, “a teleconference brought together leaders of the three major national Native American organizations—the Association for American Indian Affairs (AAIA), the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). Representatives of all three groups were very supportive of the establishment of the NMAI. However, Jerry Flute of the AAIA was adamant that stronger repatriation provisions must be included... (and) he advocated that the Indian community must take a unified position and be willing to kill the whole bill” (McKeown, 2012, pp. 59–60) if the repatriation provisions were not strengthened. The group of allies agreed, and protested as a unified group. By creating coalitions of allies and negotiating as a group, the movement leaders again met criteria Willie identifies as critical for success in the legitimization stage of a movement, including maintaining strong horizontal linkages and employing flexible tactics and principled negotiation. These tactics worked, and eventually, the provisions were strengthened.

At the same time, the activist leaders continued to develop vertical linkages to dominant culture leaders who could aid their progress by neutralizing opposition. For example, during other critical negotiations prior to the NMAI Act's passage, MAI Board members reached out to powerful politicians, including George Bush. As Harjo recalls,

(MAI board chair) Barber Conable was very instrumental. (MAI board member) David (Rockefeller) and Barber both talked to . . . (George H.W.) Bush and got his agreement to sign this if we could get it through all the hoops on the Hill. We didn't really have to do much. We had friends in high places and didn't have to deal with a lot of the people who were obstructionist in this plan. Then we had very important people on the Hill. Rep. Sidney Yates (D-IL) who was Chairman of the Interior Appropriation Subcommittee that funded the Smithsonian. Rep. Charles Rangel in whose district the MAI was, lots and lots of people who really did a lot . . . Barber Conable was Chairman of the Museum of the American Indian Board in New York, when he was tapped by President George H. W. Bush to be head of the World Bank. You're supposed to give up all your board positions. He asked for agreement to remain as Chair of the Indian Museum board, and got that. It was already known with his employers, and most importantly the President, that this was a big deal to him. He was really instrumental in that. Charlie Rangel was really helpful and he was right with us on repatriation issues. (S. S. Harjo, personal communication, January 26, 2009, p. 17–19).

On May 1, 1989, the SAA formed a new task force on repatriation and reburial issues.

On July 20, 1989, House hearings on NMAI counterpart H.R. 2668 were held. At the hearing, NARF's Echo-Hawk, AAIA's Flute and attorney Jack Trope, National Indian

Education Association's Dr. Mike Doss, and Harjo of NCAI strongly urged Congress to strengthen the repatriation provision, among other points (McKeown, 2012, p. 62).

On August 5, 1989, Senator Fowler introduced S. 1579, the National Historic Preservation Policy Act of 1989, a revision of his previous S. 2919.

In August of 1989, Ben Nighthorse Campbell organized a meeting between Secretary Adams and Native activist leaders to discuss repatriation. The position of the Native activists was that the Smithsonian would not get the MAI collection unless the NMAI Act included a strong repatriation provision that would apply to the Smithsonian's other museums. The meeting was set for a location in Santa Fe for Secretary Adams, Harjo, Echo-Hawk and Ben Nighthorse Campbell. However, on the way in on the plane, Harjo reviewed documents she had brought for the meeting, and found the bill of lading for Cheyenne and Arapaho crania collected by soldiers from the Sand Creek Massacre. As Harjo recalls:

Bob Adams and I had an agreement that when I got to Albuquerque I would call him. He was at his home in Colorado. I called him and I said, "I just think we're out of time to talk about this. I don't think I can talk with you any more about this. We have to have an agreement on our repatriation policy, and we have to have it very soon." I said, "Are you aware that you're the Secretary of an Institution that has the heads of my Cheyenne relatives and other relatives from Sand Creek Massacre?" He said, "Oh, my god. No." I said, "I'm looking at the bills of lading right now, and I know where they are. You've inventoried them. They're in your Institution. . . . I said, "We're just not going to be able to continue this. We're going to have to have a policy, and if we don't then we're just going to have to turn loose our attorneys, and you'll have a lot of Indian lawsuits on your front door." He said, "How long do I

have to think about this?” I said, “An hour.” He said, “Okay. I’ll get back to you.” (S. S. Harjo, personal communication, January 26, 2009, p. 27)

After Harjo hung up with Secretary Adams, she

. . . called Ben Nighthorse Campbell. . . and . . . Walter Echo-Hawk, and I said, “I think we’re going to court, boys. Here’s what I just did.” Walter said, “Well, good. Good. We’ve played around with them long enough.” Ben said, “Okay.” He was just going to back us because he knew that we put things together in such a way that if we thought it was the end, then it was the end. Another phase. Adams had already been told by members of Congress that there wouldn’t be any further movement on the National Museum of the American Indian without a repatriation agreement. Everything was ready to go. We had everything committed to writing on repatriation. That’s where we were and he [Adams] called back and said, “Okay. We have an agreement.” (S. S. Harjo, personal communication, January 26, 2009, p. 27)

This was a major victory for the movement. On September 12, 1989, this Santa Fe agreement was incorporated into an amendment to H.R. 2668 (McKeown, 2012).

On November 13, 1989, the revised H.R. 2668 (with the Santa Fe agreement additions) was passed.²⁸ The House then took up S. 978 and replaced the Senate bill’s language with the new version of H.R. 2668 that included the Santa Fe agreement. The next day, on November 14, 1989, the Senate passed the NMAI Act. Chairman Inouye singled out

²⁸ Also, close to that time, On October 5, 1989, H.R. 3412 was introduced by Bennet, Sam Gejdenson, and George Brown.

Harjo and Echo-Hawk to praise them for their efforts.²⁹ The NMAI Act was signed into law by President Bush on November 28, 1989, as Public Law 101-185.

However, this was not the end for the push for repatriation. As noted on page two in the 101st Congress' Senate Report 101-473, submitted by the Select Committee on Indian Affairs, the NMAI Act "established a precedent for further legislative action" (*Providing for the protection of Native American graves and the repatriation of Native American remains and cultural patrimony: Senate report*, 101st Cong., 1990).

Just before the NMAI Act was signed into law, on November 21, 1989, Senator Inouye introduced S. 1980, the Native American Graves Protection and Repatriation Act, which extended the purview of the NMAI Act legislation in several ways, including by expanding it to apply to all federally-funded organizations, including all federally-funded museums and universities.

And immediately following the victorious passage of the NMAI Act, in December 1989,representatives from NARF, AAIA, NCAI, and Association for American Indian Affairs met to develop a legislative strategy for the second session of the 101st Congress...in planning its lobbying efforts for the next year, the coalition identified six categories of people and groups that needed to be contacted or organized, including legislators and their staffs, Indian tribes and organizations, media, potential allies, federal agencies, and 'enemies.' Potential allies included the World Archaeological Congress, which had recently adopted guidance sympathetic to repatriation, museums that had already implemented repatriation policies, church groups; the Jewish and black community; and the third world diplomatic community.

²⁹ Passed November 13 in the House, November 14 in the Senate, and signed by President Bush on November 28 (Force, 1999, p. 441, 445). Also, the House bill originally sponsored by Udall in 1989 got a new chief sponsor, Congressman Nighthorse Campbell (Force, 441).

...Identified opponents of repatriation legislation included the Army Medical Museum, National Park Service, and the SAA, the last specifically described as an ‘anti-Indian group’” (McKeown, 2012, p. 83).

Soon afterwards, in January 1990, a group convened that was composed of representatives of organizations Indian activists considered opponents, including the Society for American Archaeology (SAA), American Anthropological Association, National Conference of State Historic Preservation Officers, the AAM, National Park Service, and Advisory Council on Historic Preservation, met to strategize and build consensus regarding a position on repatriation. “It was agreed that the group would meet periodically as the No-Name Alliance.” (McKeown, 2012, p. 83)

Only after the passage of the NMAI Act did The Panel for a National Dialogue on Museum/Native American Relations issue its report, in February of 1990. Harjo had viewed the Dialogue as “a delaying tactic,”

. . . a slow down or kill effort. That was called the National Dialogue on Museum and Indian Relations, which I called a halt to at one point without telling the other side. We just didn’t go back for another meeting, and we came back to Washington and got the historic repatriation provision in the National Museum of the American Indian Act. We just stopped the nonsense of the National Dialogue and got the NMAI Act and the repatriation provision done. Then went back. They didn’t know what hit them. They couldn’t believe that we had already gotten this law. Then we said, “Okay, now we’re back to talk with you.” (S. S. Harjo, personal communication, January 26, 2009, p. 12)

Others held a different view. Despite having presided over the enactment of the NMAI Act, which set the legal precedent for NAGPRA, Inouye ultimately characterized the Panel report as being foundational for NAGPRA. As he wrote:

The museum community requested a delay in congressional action on repatriation legislation for a one-year period to provide museums and Indian communities time to initiate a dialogue on matters sensitive and critically important to both communities. Discussions ensued, and in February of 1990, the Report of the Panel for a National Dialogue on Museum/Native American Relations (“Report”) was issued to the public and to the Congress. The Report agreed on certain fundamental principles of human rights as they relate to issues of repatriation of human remains and objects of religious worship, funerary objects, and tribal cultural patrimony. This unprecedented cooperation between museums and Native American communities fostered ongoing discussions with the Congress to develop comprehensive legislation addressing repatriation issues and culminated in the enactment of Public Law 101-601, the Native American Graves Protection Repatriation Act (“NAGPRA”). The provisions of this new federal law provide for the return of Native American human remains, funerary objects, sacred objects, and cultural patrimony to the care of living native descendants. (Inouye, 1992, p. 1)

The Panel for a National Dialogue on Museum/Native American Relations members reached consensus on many issues, but not on the disposition of unaffiliated human remains.

The National Dialogue on Museums/Native American Relations (“Dialogue”) recommended that the principles of the agreement with the Smithsonian and international human rights standards be applied to Native repatriation legislation for federal and federally funded museums, agencies, and educational institutions. Three

non-Indian archaeologists and physical anthropologists, however, dissociated themselves by name in a footnoted reference to the treatment of Native human remains. (Harjo, 1992, p. 327)

A majority of the panel members stressed the importance of human rights taking precedence over scientific aims. However, the same minority who dissented from the majority on the issue of unaffiliated remains also disagreed that human rights should take precedence over science in all cases, preferring to advocate for a balance of scientific and human rights interests:

The Report's recommendations come from the perspective of a presumption of dominance, and we would instead argue that the objective is equality. . . . All of our "footnotes" in the Panel's Report reflect our attempt to argue for equality. Making Native Americans the dominant power might make people feel better initially, but will do nothing in the long run for the heritage of the country or for Native Americans. . . . While we agree that there are cases in which such claims may be seen as human rights issues, we do not agree that such a determination mandates in all cases following the wishes of a nation or group (once again, the problem of dominance). (Goldstein et al., 1990, p. 15)

In the spring of 1990, other allies to the Native activists joined forces to support passage of a second repatriation law. Important events included:

- On May 11, 1990, the Friends Committee on National Legislation urged Congress to support repatriation legislation in a letter signed by representatives of the: American Baptist Churches, American Ethical Union, Baptist Joint Committee on Public Affairs, Church of the Brethren, Church Women United, Evangelical Lutheran Church in America, Friends Committee on National Legislation, Episcopal Church,

Jesuit Social Ministries, Mennonite Central Committee, Presbyterian Church, Unitarian Universalist Association of Congregations, United Church of Christ, and the United Methodist Church (Hutt & McKeown, 1999, p. 99).

- On May 14, 1990, the Senate Select Committee on Indian Affairs held a hearing on the amended S. 1980, NAGPRA, S. 1021, the Native American Repatriation and Cultural Patrimony Act, and the National Dialogue held at the Heard Museum. Witnesses represented the Heard dialogue, Native American groups, museums, and the Department of the Interior.
- On June 1, 1990, W. Richard West was appointed NMAI Founding Director.
- On July 10, 1990, Representative Udall introduced H.R. 5237, with the same name as S. 1980—NAGPRA. This bill applied to all museums and federal agencies, including the Smithsonian.
- On July 17, 1990, a House hearing, led by Rep. Eni F.H. Faleomavaega, Charles Bennett, and Campbell, was held before the Committee on Interior and Insular Affairs regarding grave protection and repatriation bills H.R. 1381, H.R. 1646, and H.R. 5237.
- On August 3, 1990, a letter opposing the various repatriation bills was sent to Inouye, supported by: the Harvard Peabody Museum, the American Museum of Natural History, the Field Museum, Denver Museum of Natural History, Los Angeles County Museum, and the University Museum of Philadelphia (McKeown, 2012, p. 137).

Later that same month, on August 30, 1990, Jack Trope of AAIA, representing Native activists, and Keith Kintigh of SAA, representing scientists, met by telephone to discuss points of potential agreement regarding S. 1980 (McKeown, 2012, p. 140). This

negotiation was followed on September 6, 1990, in a meeting including “representatives of the SAA, NARF, and AAIA (who) met in Washington... to develop a joint set of recommended changes to S. 1980” (McKeown, 2012, p. 141). Then, on September 12, 1990, ...final recommendations were sent to the Select Committee on Indian Affairs staff on September 12, 1990. Signing for their respective organizations were Keith Kintigh, SAA, Gay Kingman, NCAI, Walter Echo-Hawk and Henry Sockbeson, NARF, and Jack Trope, AAIA. Echo-Hawk also faxed a copy to the AAM’s Dan Monroe and Martin Sullivan and to... Suzan Harjo, explaining that the proposed amendments focused primarily on SAA’s interests in burials still in the ground and the definition of cultural affiliation. The agreement was also passed on to Marie Howard with the House Interior and Insular Affairs Committee for consideration in revising H.R. 5237 (McKeown, 2012, p. 142).

On September 27, 1990, negotiations continued when “(Dan) Monroe, Martin (Sullivan) and AAM President Ellsworth Brown met in Washington, D.C. with Echo-Hawk and Harjo. The AAM offered the Native American negotiators an alternative bill that dealt only with human remains and funerary objects.” However, this did not win the Native activists’ approval (McKeown, 2012 p. 150). So, on September 30, 1990, Dan Monroe and Ellsworth Brown of AAM met with Echo-Hawk and Harjo again in Washington D.C., beginning days more of continued negotiations. The parties reached an agreement on repatriation language on October 4 and shared this draft with legislators regarding H.R. 5237. And, on October 12, 1990, a letter of support for the bill was sent from SAA, NARF, AAIA, and NCAI to legislators (McKeown, 2012, p. 156).

With opposition to NAGPRA effectively neutralized, Native activists added additional allies to support the bill. On October 17, 1990, the ACLU sent a letter supporting

H.R. 5237, also signed by: representatives of the American Baptist Church, American Jewish Committee, American Jewish Congress, Central Conference of American Rabbis, Church Women United;, Episcopal Church, Friends Committee on National Legislation, Mennonite Central Committee, National Council of Jewish Women, Presbyterian Church, Union of American Hebrew Congregations, Unitarian Universalist Association of Congregations, United Church of Christ; and the United Methodist Church.

On October 22, 1990, in a first victory, H.R. 5237 was passed by the House. Then, in a second triumph, on October 26, 1990, H.R. 5237 passed in the Senate by a voice vote.

On November 2, 1990, a letter was sent to the Bush administration in support of H.R. 5237 because the administration had opposed an earlier version of the bill. The letter, on SAA letterhead, was signed by: SAA, American Anthropological Association, American Association of Physical Anthropologists, Archaeological Institute of America, Association for American Indian Affairs, NARF, National Conference of State Historic Preservation Officers, NCAI National Trust for Historic Preservation. Preservation Action. Society for Historical Archaeology, and Society of Professional Archaeologists.

A final victory was won November 16, 1990, when George H. W. Bush signed the NAGPRA into law. This law, based in large part on the precedents of the 1989 NMAI Act, requires all institutions that receive federal funds to inventory their collections of Indian human remains and artifacts in consultation with tribes to provide inventories of, and potentially return, Native human remains, sacred objects, funerary objects, and cultural patrimony to Indian tribes. This second victory is inextricably tied to the success in creation of the Smithsonian NMAI through the 1989 NMAI Act.

Conclusion: Chapter Five

This chapter included a leadership profile of legal expert Walter Echo-Hawk, an analysis of hearing testimony, and a narrative chronology of the cultural rights movement. Each of these demonstrate that the movement successfully meets the criteria for success in the legitimation stage as defined by Charles Willie's theory of grassroots action.

My analysis of the hearing transcripts reveals that, clearly, without the influence of Native American social activism, the NMAI Act and NAGPRA either would not have existed at all, or would not have required the inclusion of Native people in crucial decisions. These decisions included those regarding the disposition of cultural materials and human remains and the inclusion of Native people in all levels of leadership guiding the creation of a new national museum devoted to Native cultures. As was true for previous state laws,³⁰ neither federal law would have emerged from the academy or museum field independently.

Further, as noted previously, the analysis of hearing transcripts reveals that key divergences in positions expressed during the 1987–2005 hearings are related to prominent themes of historic conflicts between Native Americans and whites. Some that I identify include: disputed and questionable scientific definitions of race that incorporate measurements of the human body; arguments about whether past populations of the Americas are related to contemporary Native people; tensions between the needs and religious freedom rights of contemporary Native people and scientific or institutional priorities and practices; and differences of opinion regarding Native agency, self-

³⁰ "Increased activism—particularly in the Indian reburial movement, which developed in the 1970's and received recognition and political power in the 1980s . . . caused a reevaluation of the protection laws regarding Native American remains. This movement forced changes in the laws of many states so that human remains, burial sites, and sites with religious significance would no longer be treated as suitable subjects for scholarly research and display; instead, they would be regarded as deserving appropriate respect" (Gerstenblith, 2002, p. 169).

determination and inclusion in deciding issues critical to their lives and cultural survival. In hearings following the passage of the laws, these divergences did not resolve but continued and in some instances increased.

The above chronology of the cultural rights movement leading to the creation of the Smithsonian NMAI reveals that the movement successfully meets the criteria for success in the legitimization stage of a movement as defined by Charles Willie's theory of grassroots social action.

To begin, Native activists adeptly created horizontal linkages to allied partners, and vertical linkages to powerbrokers and leaders including:

- Dominant people of power in business, such as Ross Perot or MAI trustee Charles Simon, a lawyer who reached out to Perot when the MAI could not find acceptable offers to save the collection. Other allies in business included MAI trustee Barber Conable, at the World Bank, who lobbied George Bush to pass the NMAI Act legislation.
- Dominant people of power in philanthropy³¹, including MAI trustee David Rockefeller, who provided important links to New York politicians and secured the Custom House building in Battery Park for the new NMAI's New York facility.
- Dominant people of power in the state and federal government, most prominently the mighty Senator Daniel Inouye, Chair of the Committee on Indian Affairs and champion for the need to bring the MAI collection to the Washington National Mall, but also including Inouye's strong staff, Dr. Patricia Zell and Alan Parker, Senators

³¹ Other examples of funding and other critical support past and present by funding institutions were noted earlier in this paper involving the Ford Foundation, the Urban League, the Ritual Object Repatriation Foundation and the Annenberg Foundation.

Melcher and Udall, President Carter, who had initially supported the AIRFA, and of course many others. State officials assisted the repatriation movement across the country in the many individual actions and cases brought by individual tribes or coalitions of tribes. As one prominent example, Martin Sullivan has written about his experience as the principal state negotiator for the New York State Board of Regents leading the repatriation of twelve historic wampum belts to the Onandaga Nation (Sullivan 1992, 2004) and also playing a role in negotiating terms for the federal repatriation legislation.

Additionally, Native grassroots activists successfully employed multiple flexible strategies, including both principled negotiation and concurrent legal action. Because legal actions had been so successful at the state level, Native activists strategically argued that it was in the interest of museums, federal agencies and scientific organizations to support federal legislation and “get in the game,” as it were, to participate in the framing of that legislation rather than contend with tens of thousands of individual lawsuits. Additionally, over many meetings, activists negotiated with dominant people of power representing museums and scientific organizations to arrive at language and terms that met the activists’ goals.

In some cases activists employed what Willie terms as “veto power” by stepping out of negotiations when, for example, key issues such as representation of subdominant people of power were not being advanced. As one example, Vine Deloria, Jr., refused to engage with the AMNH when it became clear that the AMNH would not support a requirement for Native trustees on the museum board. Similarly, at a critical stage prior to the passage of the NMAI Act, a coalition of leaders from the NCAI, NARF, and AAIA demanded stronger repatriation provisions for the Act and were willing to kill the bill if these were not included

(McKeown, 2012). As Charles Willie has written, “the processes implemented to attain a public good should not require any person or group to participate in its own oppression” (Willie et al., 2008, p. 9).

Finally, although dialogue was not always sufficient, nor satisfactory to all involved, it is interesting to note that, even in the case of the National Dialogue, which many participants wished could have been even more productive, minds were changed and some people adopted new positions. As Dan Monroe, then VP of the AAM and currently director of the Peabody Essex Museum, noted, he came to the realization in the Dialogue meetings that he did not agree with the museum coalition’s positions and agreed in many cases with the Indians’ positions (McKeown, 2012). Although this Dialogue did not lead directly to all the reforms Native activists sought, it strengthened activists’ position in future negotiations. And ultimately activists gained the allied support of the organizations that had previously been obstacles to the repatriation legislation.

There were several significant obstacles the movement contended with—and fought—during the legitimization stage. One principle enemy of the movement was the existing museum establishment’s desire for autonomy. For example, as artist and activist Tom Hill has written: “the President of the American Association of Museums suggested that instead of requiring museums to provide proof of ownership, Native groups should be required to provide proof that the objects in question had been taken without consent (Hill, 1996, 83).” That the establishment figures were so powerful was also a significant obstacle. Opposition to repatriation included powerful scientific professional associations for archaeologists and physical anthropologists, governors and other political leaders, university presidents, museum directors and curators.

Additionally, obstacles included a racist foundation for Indian law and for scientific disciplines including archaeology and anthropology (Trope & Echo-Hawk, 1992) and a continued resistance to the indigenization of law and science. In such an indigenization, Native knowledge and culture could be included to strengthen these disciplines, not melded to other ways of knowing, but, as Willie et al. describe, as a metaphoric “salad bowl” (2008, p. 14). As they explain:

While dominant people of power need subdominants even as subdominant people of power need dominants, it is a mistake to assume they wish to merge together and become indistinguishable in a metaphorical “melting pot.” Subdominants prefer to use the ‘salad bowl’ metaphor to describe an effective pluralistic society rather than the ‘melting pot’ metaphor that dominant people of power seem to prefer.

Subdominant people tend to understand better than some dominant people the significant benefit of diversity and the difference principle in social organizations.

As previously noted, Willie has written that “the legitimation stage has two parts: obtaining approval and, if necessary, neutralizing opposition” (Willie, 1994, p. 58). Willie further, as outlined in Chapter Two, describes the following principles and criteria as essential.

(Sources: Willie, 1994; Willie et al., 2008):

- *Inclusion, including: involving stakeholders; continuing to build consensus, and refining the movement’s goals and strategy.* The Native activists leading the repatriation movement, as exemplified by the leadership of the NCAI, NARF, and AAIA, continued to work together to refine the movement’s goals and strategies.
- *Building horizontal and vertical connections, including: gaining allies, building coalitions; and developing access to resources.* As discussed following the narrative chronology of the repatriation movement in section two of this chapter, Native grassroots activists won

powerful allies in state and federal government, business, and philanthropy and created vertical connections to the highest reaches of each of these spheres, including two Presidents (Carter and H.W. Bush), billionaires (Perot), and the president of the World Bank.

- *Neutralizing opposition, including: successful mediation and principled negotiation.* As discussed in this chapter, and also in Chapter Four, Native grassroots activists successfully mediated conflict, successfully negotiated agreements, participated in ongoing dialogue, and used U.S. law to reform U.S. law.
- *Flexibility regarding tactics.* Tactics employed by Native grassroots activists included, as we have seen, cultivating strong allies and resources, protest actions and the use of veto power, and legal actions, allowing them to employ U.S. law to redress inequities in U.S. laws, political lobbying, and public relations work. Creating pan-tribal coalitions and coalitions with powerful allies took time to build over many, many meetings and resulted in building relationships and neutralizing opposition. This demonstrated flexibility was a key to the Native grassroots activists' success.

The following chapter will review the implementation of reform and creation of the NMAI.

Chapter Six: Implementation

This chapter will discuss the implementation of reform through the creation of the NMAI by reviewing the original 1989 NMAI Act, the NMAI's initial mission, its architectural program planning document, "The Way of the People," its first repatriation policy statement, its early collections policy, and a profile of the founding director of the museum, W. Richard West. This implementation will be viewed through the lens of Charles Willie's theory of grassroots social action and linked to the goals of the cultural rights movement identified in Chapters Four and Five.

Charles Willie identifies several key elements as critical to success in the implementation stage of a grassroots social movement. The first of these is inclusion. The successful implementation of reform for a grassroots social movement must therefore include both the people who initiated the push for reform and the people in society whose interests the movement sought to protect. This strengthens the movement's ability to realize goals set forward in the initiation stage and refined throughout the initiation and legitimation stages.

In addition, elements present in the initiation and legitimation phases of the movement must be maintained. They include sustaining horizontal and vertical linkages to allies, retaining access to needed resources, and continuing to mediate conflict successfully.

Also, during the implementation phase of a movement, resources and planning are devoted to the implementation of reform, so that a new system reflecting the goals of the

movement replaces the oppressive system the movement sought to reform (Willie, 1994; Willie et al., 2008).

The following chapter's discussion will show that the first constitution of the NMAI successfully met the criteria for implementation as described in Charles Willie's theory of grassroots social action by reviewing its founding legislation, repatriation policy statement, mission, architectural program, and leadership. Each of these manifest some if not all the criteria Willie identifies as critical to success in the implementation phase of a movement. Together they satisfy all criteria Willie outlines for success.

Given space constraints for this doctoral dissertation study, I limit the scope of my discussion in this chapter to the NMAI as it was first constituted by looking at the first iteration of these documents and do not evaluate how policy has evolved over time, which I hope to take up in a later project.

I organize this chapter by discussing each document in turn, followed by a profile of NMAI founding director West.

Founding legislation: the NMAI Act

The NMAI Act as it was first signed into law successfully met key criteria Charles Willie describes as essential for success in the implementation stage of a movement, namely: the *inclusion of activists who pushed for reform and those the movement sought to protect* during the implementation stage through the representation of Native people; *maintaining access to needed resources*; and the *mediation of conflict* (Willie, 1994; Willie et al., 2008).

Cultural rights activists sought the recognition of human rights violations and the reform of practices that violated human rights, including the desecration of cultural materials. They therefore fought for the repatriation of human remains and artifacts and

respect for Native knowledge systems. The legislative history of the NMAI Act, as discussed earlier in Chapter 5, clearly establishes the law's intended purpose to protect Native American religious freedoms and human, cultural and civil rights. The law, however, does not use the terms religious freedom, human rights, or civil rights in its language. Rather, it references important goals, provisions and concepts that Native activists requested to uphold those rights, including: representation, access, and an emphasis on Native needs and interests as a priority.

Inclusion and access

Representation is a critical component of the principle of inclusion highlighted in Willie's theory of grassroots social action. The NMAI Act honors this principle by dictating that 7 of the museum's 23 initial appointments to the Board of Trustees be Indians, and 12 of the 23 subsequent appointments to the Board of Trustees be Indians (Pub. L. 101-185, Sec 5, Nov 28, 1989, 103, Stat. 1337). By including Indian leaders at the highest level of the Museum's governance, the Act meets Willie's criteria for the inclusion of subdominant people of power in the implementation stage of a movement. It is important that Willie does not advocate that a power structure consisting of only dominant people of power be replaced by a power structure solely inhabited by subdominant people of power. Rather, he advocates for a balance of representation that includes both groups. He writes:

Dominant people tend to be concerned more with identifying general principles that are helpful to all people and that enhance the functional effectiveness of the whole community or collective. Subdominant people of power tend to be concerned more with identifying specific practices that are harmful to any person and that impair the functional effectiveness of the whole community or collective. These complementary actions are essential in promoting the general welfare. Based on this analysis, we

should realize that an effective community or collective needs both dominant people of power and subdominant people of power to achieve a well-ordered society. The two categories of people are complementary. (Willie, 2008, p. 8).

The Act creates this balance by ensuring that there is a critical mass of Indian representation at the trustee level. Indians will then have agency on a board that also includes non-Indian representatives. It is also important to note that the Act in no way limits the number of Indians who may be appointed as trustees. Rather, it establishes a minimum number.

Similarly, in establishing a special Smithsonian committee to “monitor and review the inventory, identification, and return of Native American human remains and funerary objects,” the law mandates that three of the five committee members will be appointed from nominations by Indian tribes and organizations, with the other two members named by the Smithsonian Secretary (Pub. L. 101-185, Sec 12, Nov 28, 1989, 103 Stat. 1344).

However, the 1989 Act does not specify that the NMAI staff will similarly include the appointment of Indians. Rather, it establishes “programs to enhance the opportunities for Indians in the areas of museum studies, management and research” and an Indian Museum Fellowship program to “provide stipend support for training in museum development and management” (Pub. L. 101-185, Sec 10, Nov 28, 1989, 103 Stat. 1342). Staff diversity was nevertheless a significant priority for the NMAI leadership; this will be discussed further in a profile of Founding Director W. Richard West later in this section.

Willie highlights the importance of access to needed resources as a criterion for success in the implementation phase of a movement in his theory of grassroots social action (Willie, 1994, p. 59). The principle of access is reflected in the NMAI Act in several significant ways.

Cultural rights movement activists recognized this principle by seeking broad and meaningful access for Native people and children to Native cultural heritage. Some activists pointed out during hearing testimony that many Native Americans would not easily have access to the museum's East Coast venues. The NMAI Act is responsive to these needs for access beyond Washington, D.C., and the related principle of access for which activists fought. The Act makes multiple references to creating and supporting the costs for traveling exhibitions with a priority given to traveling exhibitions to be received by Native organizations (Pub. L. 101-185, Sec 2, Nov 28, 1989, 103 Stat. 1336); (Pub. L. 101-185, Sec 14, Nov 28, 1989, 103 Stat. 1345); (Pub. L. 101-185, Sec 15, Nov 28, 1989, 103 Stat. 1345). This ensures that the assets of the museum are accessible directly to Native people outside the institution, not solely those who physically visit the Museum.

In addition, the law protects this access by specifically prohibiting bureaucratic “delaying actions on pending repatriation requests, denying or otherwise affecting access to the courts” and also by requiring the “expeditious” return of objects to tribes. (Pub. L. 101-185, Sec 11, Nov 28, 1989, 103 Stat. 1343). These prohibitions ensure that the Museum cannot deny access to Native people indirectly through bureaucratic foot-dragging.

The law also specifies that the special committee to review repatriation cases have full and free access to remains, funerary objects, or any other form of documentation, research or evidence they request. (Pub. L. 101-185, Sec 12, Nov 28, 1989, 103 Stat. 1344). In so doing, the NMAI policy differs significantly from the state of affairs reflected in the testimony of activists, in which it was exceedingly difficult to access information and records held by museums regarding sensitive collections.

Repatriation is of course itself an aspect of the principle of access, since it gives Native people complete ownership and access to material to which they had previously been denied access, often for many generations.

Repatriation also points to the principle of the protection of Native human and civil rights through the return of human remains and funerary objects, a primary objective of Native activists and their allies who sought to establish the Act. This fulfills Willie's criteria regarding access to needed resources during the implementation stage of a movement. Specifically, the Act requires the inventory, identification, and, when requested by affiliated tribes, the repatriation of Indian and Native Hawaiian human remains and funerary objects in the museum's possession.

The Act provides access to funding support for tribes to pursue such claims, as well as grants to support renovation and repairs to exhibition facilities in Indian institutions, again fulfilling Willie's emphasis on access to resources. (Pub. L. 101-185, Sec 14, Nov 28, 1989, 103 Stat. 1345). Funding is designated in the Act to award grants to Indian tribes to assist them in making repatriation agreements with the Smithsonian or other federal or non-federal entities. (Pub. L. 101-185, Sec 14, Nov. 28, 1989, 103 Stat 1345). The law also provides funding to support "programs to serve Indian tribes and communities" such as (but not limited to) "in cooperation with educational institutions, including tribally-controlled community colleges...programs to enhance the opportunities for Indians in the area of museum studies, management, and research." (Pub. L. 101-185, Sec. 10, Nov. 28, 1989, 103 Sec. 1342). And the law establishes budgetary support, land, and existing facilities to support the creation and operation of the three museum buildings: the Washington D.C. Mall museum, the Suitland CRC, and the George Gustav Heye Center in Battery Park, Manhattan

(Pub. L. 101-185, Sec.8, Nov. 28, 1989, 103 Stat. 1341) (Pub. L. 101-185, Sec. 7, Nov. 28, 1989, 103 Stat. 1339).

Conflict mediation

Charles Willie also points to the importance of processes for mediating conflict during the implementation stage of a grassroots social movement. The Act creates the beginning of a process to mediate potential conflict through the creation of a committee that will, in part, “ensure fair and objective consideration and assessment of all relevant evidence” and “facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return” of remains or objects. (Pub. L. 101-185, Sec 12, Nov 28, 1989, 103 Stat. 1344).

On yet another level regarding conflict resolution, the repatriation provisions of the law mediate the historic conflict over the disposition of human remains and funerary objects. This occurs by virtue of the fact that, since the Act was enacted into law, the Smithsonian is bound by the provisions of the law to repatriate applicable materials without unnecessary delay. The Act also, in places, refers to “priority . . . given to Indian people with respect to certain agreements”—such a provision does not necessarily mediate conflict but in some cases could help avoid conflict by making this priority understood from the outset (Pub. L. 101-185, Sec 10, Nov. 28, 1989, 103, Stat. 1342).

Although my analysis of the NMAI for the implementation stage of a movement is limited to the initial manifestation of the institution, I will add that the Act was expanded to even more fully realize activists’ goals in 1996, when the 1989 Act was amended to require the inventory and repatriation of objects of cultural patrimony, sacred objects, and unassociated funerary objects. The amendment incorporated the definitions of these objects

from the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) legislation, which applies to all federally-funded institutions.

Summary: NMAI Act

In conclusion, the NMAI Act succeeds in fulfilling key criteria Charles Willie identifies as necessary for success in the implementation stage and also succeeds in honoring specific and related demands for reform made by Native activists. It does so by: requiring the representation of Native people within the museum and its structures; providing funding and needed resources to tribes and Indian people to facilitate access to the museum and its contents; recognizing Native peoples' human and civil rights through the repatriation of human remains and funerary objects; and creating committee structures to mediate conflict.

As will be discussed in the following section, the NMAI's first repatriation policy and its architectural program the Way of the People realize even more fully and significantly activists' goals presented in the legislative history.

Mission statement

The National Museum of the American Indian shall recognize and affirm to Native Communities and the non-Native public the historical and contemporary culture and achievements of the Natives of the Western Hemisphere by advancing, in consultation, collaboration, and cooperation with Natives, knowledge and understanding of Native cultures, including art, history, and language, and by recognizing the Museum's special responsibility, through innovative public programming, research and collections, to protect, support and enhance the development, maintenance and perpetuation of Native culture and community.

(Mission statement adopted by the new NMAI's board, which first convened in January 1990.)

The NMAI Act was signed into law on November 28, 1989. On June 1, 1990, Rick West was hired as the museum's director. In January, the Museum's new trustees approved the above mission statement.

Mission statements are usually one paragraph, sometimes two, in length, and encapsulate an organization's guiding purpose. The inaugural mission statement of the NMAI clearly states the institution's "special responsibility . . . to protect, support and enhance the development, maintenance and perpetuation of Native culture and community." This statement thus immediately commits the NMAI to avoid practices that would violate Native cultural principles and beliefs. Desecrating human remains and sacred materials does not protect Native culture, it damages Native culture. The mission statement supports Native human and civil rights, including freedom of religion and equal protections for Native dead, thereby honoring activists' objectives to repatriate human remains and objects that are improperly in museums or desecrated by museums, and to institute new standards regarding sacred materials that are culturally appropriate.

Further, this single sentence, by committing to "enhance the development, maintenance and perpetuation of Native culture" commits the NMAI to actively support the evolution and expression of Native *contemporary* cultures, which was a priority for Native repatriation activists. Such a commitment is a strong departure from traditional museum

missions to “collect, conserve, research, exhibit, publish and interpret” collections without mention of the rights or responsibilities to communities affiliated with cultural property.³²

The use of the word *support* also indicates an intention for the institution to be guided by Native peoples in “the development, maintenance, and perpetuation of Native culture and community.” And the mission commits the NMAI to working in “consultation, collaboration, and consultation” with Native peoples in order to receive this guidance. This meets activists’ goals for the NMAI to recognize and incorporate Native knowledge into the institution and to represent Native people in assignments of positions of power and/or decision-making processes.

The end of the NMAI’s initial mission statement recognizes that the NMAI must communicate both “to Native Communities and the non-Native public the historical and contemporary culture and achievements” of Native peoples. This fulfills several of the activists’ objectives: that the NMAI would affirm to the public and to Native peoples that Native people and cultures indeed continue today, and that the NMAI would not perpetuate but rather would correct harmful stereotypes about Native cultures and people through advancing, “in consultation, collaboration, and cooperation with Natives, knowledge and understanding of Native cultures, including art, history, and language.”

Summary: NMAI’s first mission statement

The NMAI mission in this short form therefore powerfully succeeds in meeting criteria Charles Willie describes as essential for success in the implementation stage of a movement by mandating the inclusion of both activists who pushed for reform and those

³² For example, the mission of the Metropolitan Museum of Art is “to collect, preserve, study, exhibit, and stimulate appreciation for and advance knowledge of works of art that collectively represent the broadest spectrum of human achievement at the highest level of quality, all in the service of the public and in accordance with the highest professional standards.” (<http://www.metmuseum.org/about-the-museum/mission-statement>, accessed October 6, 2014.)

the movement sought to protect during the implementation stage, and by honoring goals set forth by activists to support the continuation of contemporary Native cultures, which by extension is a commitment to protect Native human and civil rights.

The way of the People

“The way of the People” was created by Venturi, Scott Brown and Associates, Inc. for the Smithsonian Office of Design and Construction as a master facilities program document to plan the three NMAI facilities. I review sections of two versions of the document: the 1991 “The way of the People: National Museum of the American Indian: master facilities programming, phase 1: revised draft report” and the 1993 “The way of the People: National Museum of the American Indian: a detailed architecture program: Museum on the National Mall, Washington, DC, phase 2 final report.” The 1993 document has three volumes. Volume 1 and 3 are dated September 15, 1993 and Volume 2 is dated April 23, 1993; Volume 3 contains detailed maps and is restricted for security reasons. Both the 1991 and 1993 versions do not circulate and one copy of each are kept in the NMAI Suitland Vine Deloria, Jr. Library. Another copy of each is in the archives. Throughout my discussion of the program I refer to each document’s internal organization or pagination.

The program was commissioned to guide the work of the architectural firm ultimately selected by NMAI to build the museums, a role for which Venturi, Scott Brown and Associates, as the firm commissioned to develop the program, was not eligible. As context, the NMAI’s first Board of Trustees and first director, West, assumed their roles in 1990. The firm Venturi, Scott Brown and Associates was hired in April 1990 and began work in April of 1991 (TWOTP, 1993, p.12). The “The way of the People” planning document also successfully meets key criteria Charles Willie describes as essential for success in the

implementation stage of a movement: the inclusion of activists who pushed for reform and those the movement sought to protect during the implementation stage through the representation of Native people; maintaining access to needed resources; and the mediation of conflict.

Inclusion

Both Charles Willie's theory of grassroots social action and Native repatriation movement activists identify the importance of inclusion. In Willie's theory, the implementation phase of a movement must include the activists who initiated the movement. As outlined in earlier hearing testimony analysis, repatriation movement activists described the inclusion of Native people and Native knowledge in the design and operation of the museum as critical. The "The way of the People" program emphasizes inclusion in several important ways.

Most significantly, the program strongly recommends that the NMAI collaborate with and consult with Native people. The program narrative states that it was created "in support of NMAI's collaborative activities with Native communities" and itself was shaped by consultations with "mostly Native American representatives of regional, urban and museum-related specialist groups" (TWOTP, 1991, p. 1) to tap "the ideas and expertise of a wide range of Native and non-Native constituents, staff and consultants to establish institutional goals and corresponding architectural design criteria for its facilities" (TWOTP, 1993, p. 13). The program describes more than a dozen consultations, including but not limited to Native people, each one to two days in length, as informing its final recommendations. The program further describes the participants in these consultations as including "communities it can serve and will learn from, especially . . . Native communities who have the most at stake in this effort," with a specific emphasis on including "mostly

Native specialists in professions related to the museum” and casting the net widely across Native tribes and groups by holding “regional meetings with both tribal leaders and city dwellers” (TWOTP, 1991, p. 5).

The “The way of the People” document further emphasizes that the extensive consultations informing its own development are “only phase one and more consultations will be needed as the museum is created and then operated,” adding that “it is the intention of the Museum that the design teams include substantial Indian representation” (TWOTP 1991, p. 5).

The program document places special emphasis on the Cultural Resources Center (CRC) in Suitland, which was built before the Mall museum and houses the collections and a majority of staff. Suitland contains a campus of equivalent buildings for the various Smithsonian museums on the Mall, since the Mall buildings are devoted primarily to exhibition and program space. The design and operation of the CRC, since it houses the collections, has great impact on the NMAI’s ability to fulfill activists’ goals for access to and respectful care of artifacts. The CRC is described as requiring 139,920 gross square feet of space, with an estimated project cost of \$55 million, to “house collections, serve as the center for tribal and international programs, and support the public facilities on the National Mall and in New York City” (TWOTP, 1993, II., p.12). NMAI collections staff working from the CRC include those within the “Curatorial, Repatriation, Registration, Collections Management, Conservation, Film, Video and Audio, Photographic Services, Archives, and Library Departments” (TWOTP, 1993, p. 15).

The “The way of the People” program document notes that:

it quickly emerged that, while the NMAI Mall museum will be the centerpiece of the outreach effort to the primarily non-Indian public, the Cultural Resources Center at

Suitland will be the hub of exchange with its Native American constituency, as well as the home of its collections. (TWOTP, 1993, p.13)

and that:

unique among Smithsonian Institution facilities, [the CRC] will redefine the way the museum functions and will redefine the role of Indians from an audience of the museum to its constituency. The idea to title this architectural program “The way of the People” reflects this fundamental change in museum relationships and the participatory process that generated the extraordinary vision it documents.”
(TWOTP, 1993, p. 12)

The architects acknowledged that their task was in many ways unprecedented:

It is easier to say what this place is not—a warehouse, fortress, temple, suburban government office building, high-tech laboratory—than to say what it is, as it has few successful architectural precedents and must meet apparently contradictory needs. Its spatial qualities and imagery must be Native American, yet the architectures of the Indian Nations are multiple and a single, generic Indian architectural form or style does not exist. It must give precedence to the needs of visitors, yet also provide high-level care for its collections and a sympathetic and adaptable work environment for its committed and creative staff. (TWOTP, 1993, p. 21)

Access to needed resources

The document also touches on the familiar concept of access, an issue clearly related to inclusion and consultation. Echoing testimony during the Congressional hearings decrying museums’ previously denying Native people access to collections, The “The way of the People” document states that “Native and non-Native visitors will be welcomed to Suitland

in a special hospitality area, regardless of whether they have called in advance for an appointment” (TWOTP 1991, p. 7). It notes that “visitors will come to Suitland to conduct research, collaborate on exhibitions, films, oral history and collections documentation, find artistic inspiration in the collections, give and receive training through internships and fellows programs” (TWOTP 1993, p. 19). And it mentions that additional activities could also include cultural and ceremonial practices.

All of these activities are translated into physical space or programmatic reach in the “The way of the People” architectural program:

Spaces that serve primarily to increase access to NMAI’S collections and human resources include a Visitors’ Entrance Lobby, Hospitality Lounge and Reference Center. The Reference Center provides electronic and physical access spaces for library, archival, photographic, artifact, film, video and audio collections. It includes a ceremonial room related to an outdoor courtyard, and a workshop for visitors’ use of the collections. (TWOTP, 1993, p. 19)

The program further notes that in addition to specifically designated spaces, more generally the entire building should foster communication and access not only for visitors, but, also, for staff across departments:

The organization and design of interior spaces should facilitate the access policies of the museum while minimizing the need for staff supervision. Spatial arrangements should provide flexibility for a staff organization that is still in formative stages and will always require that the building adapt to changing needs and projects.

Circulation spaces should include places for informal discussions; administrative and departmental boundaries should be virtually imperceptible. (TWOTP, 1993, p. 21)

By creating spaces for, and assigning and training staff to support visits from, affiliated Native people, whether scheduled or unexpected, and by supporting the cultural practices of visitors,

The Suitland facility will play a role in redefining the museum for the twenty-first century. Here NMAI aims to foster broad, balanced relationships with peoples represented by its collections, to encourage the participation of communities and individuals, and to incorporate their viewpoints in its policy decisions and processes, including those related to collections, research, exhibitions, and care of objects.

(TWOTP, 1993, p. 13)

Since many Native people may not easily travel to Washington, DC to access collections and programs, the program notes that they

will be reached by hemisphere-wide outreach programs that bring collections and human and technical resources to and from both urban and reservation-based Indians through traveling presentations and exhibits, computer and telecommunications technologies, publications, educational programs and materials, and collaborative training and research projects. Those Indians who do come to the Museum will be especially welcomed and honored. Many will come to collaborate on research and outreach projects, to use and care for the collections, and to train for museum careers. (TWOTP 1991, p. 3.)

“The way of the People” proposes that these virtual and “extensive outreach program and networks—dubbed ‘the Fourth Museum’ by the Educators’ Consultation” —will also be based at the CRC, and that the access this Fourth Museum provides is so important that “the Native and Museum communities will judge NMAI as much on the success of its Fourth Museum as on its general policy and interpretive programs” at the Mall museum in

D.C. or the Heye museum in New York City (TWOTP, 1991, pp. 7-8). The program notes that:

Thousands will participate from remote locations through electronic access to collections... Others will be reached through technical assistance projects and traveling exhibitions as well as at tribal, cultural and educational institutions.

Suitland's on-site and electronic collections access...will facilitate a two-way transfer and will provide the museum with constituency feedback and cultural resources information. (TWOTP, 1993, p. 19)

Language preservation, which earlier chapters of this dissertation noted was a significant priority to activists testifying before Congress, was also raised as a priority in consultations informing the "The way of the People" document and are described as an aspect of both on-site and virtual programming work:

Among the museum's services to its Native constituents will be programs that help communities to preserve their languages and record and learn from their oral histories. Trained linguists, loans of recording equipment and inspirational programs for young people are required. Over and over again Native groups at consultations said there were few people left speaking a particular language and that assistance programs were needed even before completion of the building. Spaces and people in the building that would contribute to this effort and encourage dance and music include audiovisual production facilities, Community Services staff with expertise in cultural development, bilateral educational training programs and facilities for interns, fellows, and other visiting collaborators. (TWOTP, 1993, p. 20)

Contemporary Native cultures

Another important goal of activists revealed in earlier-discussed interviews and hearing testimony was to affirm and convey publicly that Native cultures are neither primitive nor extinct. In keeping with this priority, the “The way of the People” document notes that although the NMAI collections will in part decrease in number due to repatriation, the collections will also increase in number through the acquisition of contemporary art, which is an important vehicle to convey the vibrancy of Native living cultures. Additionally, the permanent collection can be augmented by loans. Thus the document specifies:

While the Heye Foundation collection will be the basis of many exhibitions, they will not be the exclusive subject and will sometimes be mixed with materials from other collections and with contemporary art. NMAI will also encourage and assist in creating exhibitions developed by Indian communities on a rotating basis (TWOTP, 1991, p. 9).

Specifically, the program document notes that the NMAI collecting plan will emphasize the “expansion of contemporary art and traditional forms, preservation of oral histories, language and music,” as well as acquisitions that will extend the existing collection’s range of ethnographic and archaeological materials” (TWOTP, 1993, p. 15), and that “the Heye Foundation collections are expected to be joined by new collections, particularly in the area of contemporary art” (TWOTP, 1991, p. 7). Significantly, the architectural program describes spaces devoted to a contemporary fine art gallery for “traditional and non-traditional artists,” (TWOTP, 1993, p.14) and also artists’ studios (TWOTP, 1991, p. 11). All of the above creates a vibrant presence for contemporary works, including performance, music, film, and other media, to affirm the ongoing vibrancy of Native cultures. This is an

important way to ensure that living artists and cultural authorities are included in the museum's program and honors activists' demands for reform by calling attention to contemporary cultural expressions.

Another significant priority for activists, in addition to the respectful treatment of Native peoples, was the respectful care and, ultimately, the return of sacred materials. In keeping with the theme of respect, the CRC is described by "The way of the People" as:

a home, not a storage warehouse, for its objects, library, and archival collections...collections will be cared for in ways carefully designed to meet tribal and museological requirements for conservation, access, environment and orientation, and to be respectful of the life that exists in them. Some items in the collection will return to their communities through implementation of the Museum's repatriation policy... (TWOTP, 1991, p. 7).

Overall, the document affirms that:

the design of the building must above all reflect NMAI's dynamic relationship with the general public and with its Native constituency. Building and site designs must fit harmoniously within and emphasize relationships with the natural landscape and with those areas designated for ceremonies and demonstrations.

(TWOTP, 1993, p. 20)

Specifically, to accommodate the ritual or ceremonial needs of visiting delegations, "The way of the People" describes "private ceremonial spaces (that) will have access to the sky and the outdoors and will permit the safe use of fire and smoke" (TWOTP, 1991, p. 7).

Further, the document describes Native peoples' concern regarding respect for the sacred as extending beyond highly charged objects that might properly be restricted to prohibit access by the public. Native people also sought to create sacred space as part of a

public experience, where access is not restricted, to help foster wider respect for and greater understanding of aspects of Native cultures. In consultations cited within the document, the description of sacred space often was correlated with living space. So, for example, some of those consulted in the meetings held to inform “The way of the People,” suggested that at the Mall museum, performances take place throughout the museum (TWOTP, 1991, p. 9); some consultees suggested consecrating the site or the building through ritual or through symbolism, including creating an opening to the sky within the buildings, using living materials [wood versus stone], or incorporating gifts from tribes in the buildings. Some quotes included in “The way of the People” document include:

The youth and people can bring this place to life. That will be important. (TWOTP, 1991, p. 16)

The museum is being given birth not planned . . . the land where it will sit has a spirit . . . this Museum has to be connected not only to us as the people but to our children—reconnecting the umbilical cord of our children. (TWOTP, 1991, p. 16)

If this place does nothing else but be a living entity that transmits human respect and sensitivity, then all the work we do and will do will be a success. We cannot compare this to other museums. We should create it. (TWOTP, 1991, p. 18)

It should touch children and have the blessing of spiritual leaders. One should feel the love of Indian people for who they are. These things are alive and part of today. (TWOTP, 1991, p. 18)

The ground should be blessed before construction. (TWOTP, 1991, p. 18)

Reflecting the principles of contemporary culture as well as principles of inclusion and respect for human rights and indigenous knowledge, which are of course all intertwined, the “The way of the People” document clearly also reflects priorities emphasized in my earlier analysis of repatriation activists’ goals, including the enfranchisement of Native people in formerly non-Native bureaucracies, such that they have a degree of control within the system and can act to serve Native priorities. The program states that:

NMAI is committed to assisting local Indian communities in their cultural development, on their own terms. The Museum will serve as a facilitator of programs, activities, and resource sharing that will enable the Indian community to determine for themselves what is the best relationship to NMAI that will achieve their cultural, educational, and artistic goals. (TWOTP, 1993, p. 19)

Here the language of the program clearly places the NMAI in a supporting, facilitating role for Indian people to direct their own cultural preservation and development. This respect for Native peoples’ authority extends also to the museum’s responsibility to educate non-Native people about Native cultures. As has been discussed in earlier chapters, activists sought to communicate to the wider public that Indian cultures are neither primitive nor extinct. Activists also expressly recognized the iconic power of the educational messages conveyed by a national museum on the National Mall in the nation’s capital. Echoing Suzan Harjo’s vision in the 1960s of an institution that would face and confront the nation’s capital, the “The way of the People” program states that:

The measure of the Mall Museum will be the success with which it communicates, with Native voice, Indian stories, values and culture to millions of individual visitors

through a multi-sensory experience that reaches people, not only through visual media, but through smells, sounds, touch, and for some, taste as well.

This begins with the powerful interaction between the Museum and its context. This Native American cultural institution will be located at the foot of the nation's capitol. The inclusion of (sic) the Mall of the Native American cultural heritage, amidst historic museums that are the communicators and guardians of our national heritage, is an event of great political and historic importance and an educational opportunity for all. (TWOTP, 1991, p. 8)

This recognition of the power and resonance of the NMAI's physical and spatial context underlies Native activists' and other Native peoples' concern for what messages are conveyed to the public about Native people. For the many Native people throughout the US or the rest of the Western Hemisphere who will never visit the museum, for those who are not even engaged directly by the museum's programmatic "Fourth Museum," it is important what is conveyed to the public. The Native peoples recognize that what is physically there, and how it is explicitly interpreted, or implicitly treated, can promote or dispel racism or respect toward Native people. Native people do not themselves have to visit a museum to care deeply about what is represented there and what experiences people have in them. The "The way of the People" document recognizes museums' social agency, stating that:

The Museum is propelled by a social and moral consciousness—it is an instrument of social change addressing and reaching beyond misconceptions and stereotypes of Native American cultures and peoples. It will forcefully advance the contributions of past and present Native American people, including artists, scientists, philosophers,

politicians, and religious leaders. This institution will illuminate Native Americans' perceptions of their place, spiritually and physically, in the universe. These perceptions will join with those of other Americans to form a dialogue on the future of our nation. (TWOTP, 1991, pp.3–4)

That power to shape knowledge of, and combat racism toward, Native cultures is recognized in the program as extending to an international audience:

[The NMAI's] international audience may have great enthusiasm for the Museum but minimal knowledge of Indian history and stereotyped images of Indian cultures. NMAI's exhibitions and programs will speak to this audience in Indian voices and seek to further more accurate perceptions for the benefit of all. (TWOTP, 1991, p. 3)

However, the document acknowledges that this is a complicated challenge:

Welcoming visitors and preparing them to learn about and respect Native cultures has emerged as the single most important architectural and operational challenge. Indians and non-Indians alike must sense that they have entered a precinct where 'Indian customs and etiquette govern.' . . . Indian people will welcome visitors into a Museum whose entrance and multisensory messages recall Indian traditions, forms, and hospitality, while at the same time gracefully accommodating and intellectually orienting the expected crowds. (TWOTP 1991, p. 8)

Summary: NMAI's initial architectural program

In conclusion, "The way of the People is a remarkable document that successfully meets the criteria Charles Willie identifies as critical to success during the implementation stage of a movement:

To begin, the entire document is a description of the physical resources and buildings needed to implement the museum.

Secondly, the principle of inclusion is represented in the document through the recognition that Native people must be enfranchised in the institution, which must act to support their priorities. The program strongly recommends that the NMAI achieve this through collaborating with and consulting with Native people, recognizing its responsibility to supporting the health of contemporary Native cultures. And the program narrative was created “in support of NMAI’s collaborative activities with Native communities” and itself was a product of extensive consultations.

Third, inclusion is also represented in the document through the concept of *access*: to collections, to staff, to information, and to physical spaces. As an architectural program, the philosophy of spaces receives special attention, such that the various spaces should foster communication and welcome visitors as well as foster respect. Access was also described as being realized through programmatic outreach via the concept of ‘the Fourth Museum,’ which serves constituencies who may never visit the physical buildings.

Fourth, mediation of conflict is addressed in part through the discussion of the consultative process that the authors followed to create the document. The program authors note that there are many differing opinions among tribes on various issues relevant to the design of the museum. They suggest that while there will be many cultural differences between tribal practices and religions, and not all issues can be resolved through consensus, it is possible to identify principles and priorities that are agreeable to all, and “The way of the People” begins to do precisely that.

Finally and importantly, the authors echo Suzan Harjo’s 1960’s vision of an institution in the nation’s capital with the symbolic power to shape knowledge of and

combat racism toward Native cultures by affirming that Native cultures are not primitive nor extinct. The program sets the goal to create public space that would foster respect for and greater understanding of Native cultures. This protects the health of Native cultures as well as the dominant culture.

1991 Repatriation Policy Statement

Several months after the passage of NAGPRA, NMAI's board of trustees adopted a repatriation policy, dated February 19, 1991. The NMAI's first repatriation policy, like its mission statement and "The way of the People," clearly succeeds in meeting key criteria Charles Willie describes as essential for success in the implementation stage of a movement.

The repatriation policy was drafted by a committee; HGSE Ed.D. Manley Begay provided key leadership to this committee and its task to develop the policy statement.

The NMAI repatriation policy significantly expanded the scope of repatriation in practice for the NMAI by adding more categories of objects eligible for repatriation than were in the original NMAI Act.³³ The 1989 Act identifies human remains and funerary objects as eligible for repatriation. The 1991 repatriation policy expands the categories of eligible objects. To the original categories of human remains and funerary objects, it then adds the additional categories of: a) communally-owned Native American property; b) ceremonial and religious objects; c) objects acquired illegally; and d) duplicate or abundant objects.

Inclusion and access

³³ A 1996 amendment to the NMAI Act imported NAGPRA's expanded repatriation scope into the Act.

Repatriation is itself of course a standard of access. Further, the policy documents an inclusive process to achieve success in repatriating human remains and funerary objects to Native people. The principles of inclusion and access are therefore reflected throughout the repatriation policy statement. As just one example, in the Procedures section numbered IV, B, the policy statement affirms that the NMAI will consult extensively with Native peoples, and then proceeds to elaborate on the elements of successful consultation practices:

During the inventory process and following its completion, the Museum will consult widely with Native American peoples. The Museum will disclose all relevant information pertaining to collection objects identified in the inventories, and curatorial staff will be available to respond to additional requests for information. Physical access to materials will be provided, as requested. In addition, a special area will be made available for Native American peoples to view or otherwise inspect their culturally affiliated materials. Every effort will be made to reach agreement through informal consultation and cooperation. Where issues remain after good faith discussions, those pertaining to human remains, funerary objects, and other objects covered by this policy will be referred to a Special Review Committee established by the Board of Trustees. (IV. Procedures, B. Consultation)

The policy statement thus emphasizes its responsibility to be open and forthcoming in its disclosure process. As was revealed in Chapter Five's analysis of Congressional hearing testimony, activists argued that even information about museums' holdings and certainly access to the artifacts themselves were previously largely or wholly inaccessible to Native people. The policy commits the Museum to devote significant staff time to the consultation process, and by extension serves as a commitment to properly orient Museum staff to their roles so that they proceed respectfully in this work. This counters a major obstacle Native

peoples described when seeking access to collections or information regarding collections—that staff had no time, nor did they have the budget to devote time, to interacting with requests from the public and did not see this as their job. For example, as I noted earlier, former MAI director Roland Force has written about the early days of the MAI saying that staff time was not directed sufficiently even to creating a responsible inventory, to properly conserving objects, or to researching and documenting collections. Consultation was not even on the list of these most basic functions that Force described as unattainable (he saw these failures as being due to budgetary constraints or to the overriding emphasis of leadership on acquisitions). The NMAI policy statement commits not only staff time but also physical building space to the consultation process. Most importantly, the paragraph cited above signals the Museum’s desire to make every effort to reach consensus through consultation. And it identifies a process for mediating conflict should this be necessary.

Outlined in the policy are important principles that clearly seek to remedy past violations of Native human and civil rights. The policy, unlike the law, specifically references “Native American religious freedom.” (II. Background, p. 2) And in the Preamble, the policy statement states expressly that “the wishes of Native American peoples with respect to human remains and funerary objects of their own ancestors must be honored” and “the wishes of Native American peoples with respect to access to and treatment and use of ceremonial and religious materials needed in the practice of their religion must be granted” (I. Preamble, p. 1).

Indigenous knowledge

The policy statement makes yet another important extension by referring not only to Native rights regarding access to and ownership of physical objects, but also by recognizing Native rights of ownership regarding what it terms as the culturally-specific affiliated

information associated with repatriable collections. Such information or documentation might include, for example, interviews, photographs, and recordings. The policy statement affirms that:

all Native American materials, including human remains, funerary objects, ceremonial and religious objects, and communally owned property, *together with all culturally-specific information*, must be treated as the sole property of the affected Native American culturally-affiliated group, and with *the utmost respect* by scholars and interpreters of those cultures, whether in collections research, scientific study, exhibitions, or educational programs.” (I. Preamble, p. 1, emphasis added)

The policy thereby extends the institution’s responsibilities not only regarding sensitive objects, but also regarding the affiliated culturally-specific information on file regarding these artifacts in several revolutionary ways. One, as noted above, is simply the extension of rights to refer beyond objects to culturally-specific information. An example of this could include, for example, a recording of a sacred ceremony affiliated with an object in the collection, or a transcript of a ceremony. Some ceremonies, according to the theology of that tradition, should not properly be made public. Second, the policy recognizes the responsibility of the Museum to return documentation to tribes. Third, the policy inherently recognizes that in making such a judgment of what knowledge is restricted and what constitutes respectful practices, Native knowledge systems are valid and must be considered at least equally if not more authoritative than Western knowledge and common museological practices. Fourth, the policy recognizes that all activities of the Museum are subject to considerations regarding what it terms culturally-specific information, from “collections research, scientific study, exhibitions, or educational programs.” The repatriation of knowledge extends beyond the ownership and return of objects and research files associated with these objects to guide

how the Museum conducts new research, conserves objects, exhibits them, and interprets them to the public. The policy describes a standard of “utmost respect” for scholars and interpreters toward Native people and cultures to guide their work in this section and elsewhere. For example, it states that “respect for Native American peoples and cultures and principles of law” prohibit the retention of illegally acquired materials in the collections (I. Preamble, p. 1).

Access is also specifically addressed in the first NMAI repatriation policy statement with regard to the Native American community’s right to “broad access to and use of information pertaining to collection materials...” (I. Preamble, p. 1). The policy statement further requires that repatriation procedures be “expeditious” (I. Preamble, p. 1) and that Native groups have ongoing access to museum staff through “continuous dialogue” (I. Preamble, p. 1).

Contemporary Native cultures

Activists in Congressional hearing testimony described their goals for the Museum to support and expand the flourishing of contemporary Native cultures. As Buffy Sainte-Marie said:

Museums that house only dead Indians work against us . . . In honoring our past, please honor our present and future generations as well or the new Indian Museum appears to become little more than just another collection of loot stolen from a vanquished people by a nation of thieves and grave-robbers. Surely there can be more to it than that, if we make it more. And surely the time to do it is now. Native people want to make some more contributions to American society as participants in this plan, and as artists, of course . . . (*National American Indian Museum Act*, 1987, p. 47)

The repatriation policy statement honors this priority, stating that “the goal of the Museum’s repatriation policy is to support the continuation of ceremonial and ritual life among Native American peoples” (I. Preamble, p. 1). As has been noted previously, the policy consistently affirms the priority to support and respect indigenous knowledge systems, including the goal...”to foster and support the study by Native Americans of their own traditions” (I. Preamble, p. 1). In so doing, the Museum might generate new research, exhibitions and art forms that express living cultures, not only past cultural achievements.

Conflict mediation

The policy frequently uses language such as “in accordance with the wishes of” Native peoples (III. Policy, p. 2) to affirm its goal to respect Native rights and to be guided by affiliated Native tribes’ needs and judgments. It also recognizes the complexity inherent in achieving this goal; in the preamble the policy statement describes its approach as seeking to balance legitimate interests and needs of both Native peoples and the museum community by forging “consensus among the Museum and Native American communities while accounting for and balancing the interests of each” (I. Preamble, p. 1). When it comes to implementation of groundbreaking law and policy, there will be ongoing adjustments in practice to find the most appropriate methods for complying with the law or policy. The repatriation policy clearly conveys that while respect for Native human and civil rights will take precedence, new practices will be defined through a process of engaged consultation and consensus whenever possible in order to, among other goals, mediate conflict.

Summary: NMAI’s first repatriation policy

In summary, the NMAI’s initial repatriation policy document successfully meets criteria Charles Willie indicates are critical factors to the success of a movement’s implementation phase. It ensures: the *inclusion* of activists who pushed for reform and those

the movement sought to protect during the implementation stage and affirms the Museum's responsibility to *contemporary cultures* (through the representation of Native people, for example through consultation); *access* to not only objects but documentation (in part through recognizing cultural rights regarding *indigenous knowledge*, another goal set forward by activists) and *access to needed resources* such as staff time or physical spaces; and the mediation of conflict.

1995 NMAI Collections Policy

The collections policy of the museum is critically important to the implementation stage of the movement and creation of the museum. In this section I review the early (1995) Collections Policy to understand how the Museum initially interpreted the NMAI Act and expanded the mandates of the Act to apply to museum practices that include, but are not limited to: acquiring objects; repatriating objects; conserving objects; research and documentation, including photography; lending and borrowing; access to collections; exhibition and display of collections; care of collections (including handling, conservation, and storage), and security. Like the 1991 Repatriation Policy Statement, the collections policy governs not only the treatment of physical things but also of knowledge. I will show that the 1995 Collections Policy seeks to respect Native cultural knowledge and preferences, ensure access to institution staff and holdings, and recognize Native ownership of repatriable collections, both physical and intellectual.

The 1995 Collections Policy includes a collecting plan, which guides the direction of, and establishes priorities for, the development of the collections. The 1995 Policy also includes nine appendices, including: the NMAI Policy Statement on Native American Research in the National Museum of the American Indian; and the Care and Handling Procedures for NMAI Collections.

The collections of the NMAI include six collection types: “the artifact collection; photographic collection; film, video and audio collection; archives collection; education collection; and library collection” (Collections Policy, 1995, p. 2). The “collections” thus include much more than objects; they also include research and documentation related to artifacts, comprising written and recorded interviews, songs, documentary photos or film, photos and film that are works of art, publications, and more.

The following analysis will show that the NMAI’s 1995 Collections Policy successfully meets criteria Charles Willie identifies as critical during the implementation stage of a grassroots social movement.

The broadest of these, as previously noted in my discussion of the preceding documents, is the principle of inclusion, whereby the implementation stage of a movement includes those who fought for reform and those the movement sought to protect. I will discuss aspects of the principle of inclusion by organizing my review of the 1995 collections policy using the following categories: Native human, civil and cultural rights; indigenous knowledge; consultation; contemporary Native cultures; access; and conflict resolution.

Native human, civil and cultural rights

Because of its legislative history, the Act creates a mandate to protect Native human and civil rights, including religious freedom. Through adherence to the spirit and letter of the Act, (and due also to the inclusion and representation of Native peoples who, as the Act requires, participated in framing the policies), practices that support Native rights are explicitly outlined in the NMAI’s policies, mission and program.

The 1995 collections policy specifically recognizes a responsibility of the Museum to protect Native American religious freedom. For example, it states that “certain items in its collections are needed by traditional Native American religious leaders for the practice of

Native American religions. The Museum is committed to a policy of repatriation of these and other objects of cultural patrimony” (Collections Policy, 1995, p.13).

Furthermore, the collections policy affirms that:

- The wishes of Native American peoples with respect to access, treatment, and use of ceremonial and religious materials needed in the practice of their religion must be granted.
- The Native American community must have broad access to the collections and use of information pertaining to collections to help ensure that informed decisions can be made regarding the interpretation, treatment, and disposition of Native American materials.
- All Native American materials that have been duly identified for repatriation, including human remains, funerary materials, ceremonial and religious materials, and communally owned property, together with all culturally specific information, must be treated as the sole property of the affected Native American culturally affiliated group and with the utmost respect by scholars and interpreters of those cultures, whether in collections research, scientific study, exhibitions, publications, or educational programs. (Collections Policy, 1995, p. 1)

These three bullet points cover a lot of ground, from respecting cultural knowledge and preferences, to ensuring access to institution staff and holdings, and finally to recognizing Native ownership of repatriable collections. These principles are reflected throughout the collections policy, in alignment with the earlier, 1991 repatriation policy statement and with the 1989 Act. For example, the policy states that:

The Museum shall not acquire archaeological or ethnographic materials that it has reason to believe have been unethically collected or alienated from their original owners or sites, even if such acquisition would not violate any laws. The Museum shall consult with the appropriate parties before acquiring materials that may be culturally or religiously sensitive. (Collections Policy, 1995, p. 8)

The collections policy extends the categories of objects that are subject to repatriation, in agreement with the 1995 amendment to the Act, to include ceremonial and religious objects and communal property. It says:

The National Museum of the American Indian is committed to the disposition, in accordance with the wishes of culturally-based Native Americans, of a) Native American human remains of known individuals, b) human remains of individuals who can be identified by tribal or cultural affiliation with contemporary Native peoples, c) funerary objects, d) communally owned Native property, and e) ceremonial and religious objects as defined below. (Collections Policy, 1995, p.11)

And elsewhere the Policy states that, to protect Native peoples' rights, the Museum will ensure the direct and meaningful participation of Indian people in its work, and respect the "cultural protocols of Indian people" including "cultural and religious sensitivities, needs and norms," "the utilization of cultural knowledge and information" and restrictions outlined by tribes (Collections Policy, 1995, p. 1).

Indigenous knowledge

The collections policy addresses the Museums' dual responsibility both to protect Native cultures and Native rights as well as to educate the general public. These need not be seen as in conflict.

Educating the public by ensuring the respectful presentation of Native cultures, by countering inaccurate biases and stereotypes, and by integrating Native knowledge into the teaching of Native cultures also protects Native cultures by fostering intercultural understanding and tolerance, as well as by instilling pride in Native young people.

At the same time, incorporating Native knowledge rather than excluding it enhances the educational value of the Museum. Native activists testified before Congress that existing research and documentation for artifacts collected by the Heye Museum or in the Smithsonian Museum of Natural History was not only insensitive to Native cultural or religious practices, but it was also inaccurate and/or incomplete because it was developed without Native participation. In contrast, the 1995 Collections Policy states that:

Religious and ceremonial objects shall be exhibited or displayed only after consultation with the appropriate culturally affiliated group. Planning of an exhibition's format and content shall be done in consultation with Native American representatives of the tribe and/or culture involved to assure historical and cultural accuracy in the presentation of all information and materials and to avoid desecration, insensitive treatment, and inappropriate interpretation of religious or ceremonial materials. Exhibitions shall use the self-designated name of the tribe.

(Collections Policy, 1995, p. 17)

The inclusion of Native people through consultation is strengthened by the policy's recognition of Native authority—in this case, both to determine whether and how potentially sensitive collections of religious or sacred materials may be appropriately exhibited and interpreted, and to “assure historical and cultural accuracy.”

The policy, by ensuring the use of “the self-designated name” of tribes, respects Native knowledge systems at the most fundamental level of self-identification.

Also in contrast to activists' critique of past museum practices, in which objects were collected without documentation or with inaccurate information, the collections policy requires the NMAI to rigorously document new acquisitions and to collect "well-documented specimens or materials that hold the potential for good documentation through research." The policy defines "good documentation" as including customary information such as the "Native word or expression for object" or "Function and cultural/historical context." In addition, it asks for the "name of original Native maker or owner of object"—information often included in American art museums' American or European art galleries but often excluded through convention in art museums' galleries of African and Native American art. And the policy requests additional documentation to include "sensitivity or feelings of Native Community of origin about Museum possessing, photographing, publishing, and/or exhibiting object" as well as "special requirements for handling, management or curation, due to physical, cultural or other reasons" and "commentary by Native peoples" (Collections Policy, 1995, p. 4). This additional documentation is an innovation and not previously a standard for museums.

Incorporating indigenous knowledge into the Museum's work thus achieves two primary goals of activists: to protect Native rights and to enhance the educational and research function of the Museum. A third goal related to indigenous knowledge that activists put forward during Congressional hearing testimony was ensuring the availability of special training for Native tribes to support their cultural preservation work, including but not limited to the curation of material culture. The collections policy fulfills this goal by stating that "The Museum also is committed to a policy of offering American Indian tribes technical assistance in the care, preservation, use, and disposition of materials. Such assistance may encompass advice and training programs to tribal museums" (Collections Policy, 1995,

p.14.). Elsewhere in the collections policy, it states that “the Museum will actively encourage Native peoples to use the collections to help document their own history and culture. If they can also provide information about cultural materials and contexts, this information will be added to the Museum’s documentation” (Collections Policy, 1995, p. 14).

The principle of inclusion that is emphasized as a criterion for success in Willie’s theory of grassroots social action is the foundation for all of the above processes or directives that ensure indigenous knowledge is integrated into the work of the Museum and support Native research and cultural preservation efforts.

Consultation

Consultation is another important manifestation of the principle of inclusion. Consultation is referenced throughout the collections policy as a requirement for multiple processes involving sensitive materials, including but not limited to: creating inventories for objects subject to repatriation; determining whether and/or how sensitive religious or cultural materials can be exhibited or interpreted; requesting permission for researchers to access sensitive materials, records, or other documentation; reproducing or photographing objects; approving conservation methods to avoid the desecration of sacred or sensitive materials; documenting repatriated materials; approving loans; entering trust-holding agreements; or determining care and handling protocols (Collections Policy, 1995, p. 14; Collections Policy, 1995, p. 13; Collections Policy, 1995, p. 16; Collections Policy, 1995, p. 17–18; Collections Policy, 1995, p. 20; Collections Policy, 1995, p. 12).

Contemporary Native cultures

Also underlying the principle of inclusion is an emphasis on contemporary Native cultures and the cultural needs of contemporary Native people. As has been noted in earlier chapters and in earlier sections of this chapter, Native activists testified before Congress that

the NMAI must reflect and support contemporary Native culture and must dispel misguided notions in the wider public that Native people are extinct, or that Native cultures are primitive.

The collections policy reflects a commitment to support contemporary Native cultural practices and cultural development in several important ways.

The repatriation of human remains and sensitive material culture to Native tribes recognizes that their desecration and/or the alienation of these materials from contemporary Native religious adherents is destructive to contemporary Native cultures.

Consultation practices, as previously discussed in more detail, represent the NMAI's commitment to and inclusion of contemporary Native peoples' and tribes' cultural authority when determining practices for access, exhibition, research, interpretation or care.

The collections policy also references professional training, support for tribal museums, traveling exhibitions, and virtual and other outreach services, all of which, as previously noted, also reflect a commitment to sustaining and supporting the development of contemporary Native cultures.

In addition, the collections policy affirms that the acquisition of "contemporary as well as historical and archaeological materials" are a priority for the NMAI. Specifically, the policy references a large scope for acquisitions to include, in addition to artifacts, "recordings of music, language and other sound recordings, photographs, film and videos, objects suitable for public handling, archival materials (e.g. field notes, manuscripts and correspondence) books, periodicals and automated databases" (Collections Policy, 1995, p. 6). This breadth of material ensures that contemporary cultural expressions will be highlighted through the acquisitioning or commissioning of contemporary artwork, and that tribes and Native communities will have access to diverse collections that support cultural

preservation and development efforts, such as the documentation and preservation of languages.

Access

Access to resources, another dimension of inclusion, has many aspects. As has been discussed in Chapter Five, access to resources including: collections; information documentation and records; museum staff; funding; and programs and services were all identified as goals by Native activists testifying before Congress prior to the passage of the 1989 Act. Native activists also testified that access to some sensitive materials and information, such as human remains, sacred or otherwise sensitive materials, and certain cultural or religious knowledge or practices, must be restricted when access by non-initiates would desecrate the materials or otherwise violate Native religious and cultural traditions. For example, in one discussion regarding human remains in the Smithsonian collection, Jerry Flute, of the Association of American Indian Affairs, said that "... the spirits of these skeletal remains have been disturbed and have been viewed by many tribal people as being held by the Smithsonian as spiritual hostages" and that "these spirits will not rest until the skeletal remains are properly reburied" (*Establishment of the National Museum of the American Indian*, 1989, p. 183). Activists said that in order for Native cultures and religions to be supported, Native people must have access to their own cultural heritage as well as the power to restrict inappropriate and unwelcome access by researchers or the public that can damage Native culture and religions.

Access is therefore a primary focus within the NMAI 1995 collections policy, and it is not limited to objects, as was also the case with the 1991 Repatriations Policy Statement. Native access to both physical and intellectual materials is addressed throughout the collections policy, from repatriation to consultation. As one example, the collections policy

states that “access to the Museum’s collections is integral to its mission. Access can be physical (examination and handling) or intellectual (exhibits, publications, or electronic media)” (Collections Policy, 1995, p. 14).

The policy affirms that “access for the performance of ceremonies by appropriate Native people will be widely permitted in facilities that will be constructed within the Museum and/or under its auspices” (Collections Policy, 1995, p. 14). The policy thus specifically restricts such ceremonial activity to “appropriate Native people” designated by the tribe or group, so that the Museum’s role is to accommodate access for the designated cultural authority, who remains the authority in such matters. As Vicki Santana testified before Congress:

As an attorney . . . I have tried to study the laws that . . . my tribe has regarding the care and transfer of religious articles . . . they are vastly more complex than even the IRS . . . We have many, many rules that have to do with the preparation . . . with the thoughts you can think while you are in the ceremony . . . with the treatment of other people . . . we are well aware of the responsibilities and the burdens upon us when we do these kinds of things. It is not a simple thing. (*Native American Cultural Preservation Act*, 1987, p. 34)

The collections policy further details this commitment to access for the purposes of ceremonial practices as follows:

Subject to Museum policies regarding care, risk management, and security, access to the collections will be provided to appropriate Native peoples, on an individual or group basis, wishing to perform rituals using collection objects in a specially prepared area.

Any request to alter the physical appearance of an object for religious or ceremonial purposes (which may include such activities as smoking pipes, feeding masks, wearing clothing, or playing musical instruments) will be reviewed by the Curatorial Council and a recommendation will be given to the director for approval by the Collections Committee on behalf of the Board of Trustees. Altering the physical appearance of an object is understood to mean: removing elements, adding or replacing missing elements; disassembling and reassembling components; or anointing objects by the physical appearance of any substance.

(Collections Policy, 1995, p. 15)

Note that while a commitment to ceremonial access for objects that have not been repatriated, or perhaps are in the process of being repatriated, is affirmed, the 1995 collections policy seeks to balance this commitment with other Museum responsibilities regarding “care, risk management and security” for example if it involves altering the physical object.

Consistent with the language of the 1989 Act and the architectural program, another aspect of access addressed in the 1995 collections policy is the expanding of access to the physical and intellectual holdings beyond the walls of the NMAI. This can include virtual access: “the Museum will document its collections through interactive media to maximize the ability of Native peoples in their own communities to examine objects and determine research projects” (Collections Policy, 1995, p. 14). This expanded virtual access is in alignment with activists’ goals to make the resources of the NMAI available to Indian people throughout Indian country, since, as discussed previously in this chapter, the costs for travel to the East Coast would prohibit many Native people from being able to interact with the NMAI collections.

In addition to these and other principles of expanded access to Native people, the 1995 collections policy in some cases restricts access to physical and intellectual collections by researchers or the public unless the appropriate Native tribal authority has granted permission for such access. A commitment to restricted access is represented throughout the collections policy, including within the sections of the policy devoted to: care and maintenance; access; repatriation; lending and borrowing; and security.

To begin, the policy states that:

when there is conflict between the desire for public or scholarly access to materials, and the request by a Native group that access to the material be restricted because of its sacred nature, the wishes of the Native group in most cases will have priority over other considerations. Such cases will be reviewed by the Research Committee and the Collections Committee. (Collections Policy, 1995, p. 14)

The policy thus, while noting that such instances will be decided on a case-by-case basis, clearly affirms that Native interests shall predominantly take precedence. Here “materials” can, as noted earlier in the policy, include physical or intellectual materials.

As an example of restrictions on intellectual material, “access and use of some archival materials may also be subject to restrictions placed by and consultation with relevant tribal communities” (Collections Policy, 1995, p. 16). For example, a recording of a sacred ritual, or photographs of exhumed human remains might meet with restrictions.

The NMAI 1995 collections policy also specifically addresses the care and handling of physical objects. Tribes might, for example, not only restrict access to the public, but also request that NMAI staff handle materials in a certain way:

If a Native group requests that certain materials be restricted from handling, the Museum shall, to the extent possible, honor the request. If a Native tribe or

organization requests that the Museum retain custody of religious, ceremonial, communally owned, or other tribal property eligible for repatriation, it shall inform the curator and other appropriate staff regarding permissible methods of handling, care, and protection of such articles. (Collections Policy, 1995, p. 20)

Here the policy again weights Native wishes above other interests, but it also recognizes that other responsibilities may need to be balanced. For example, if a tribe requested that a gender restriction apply to the handling of certain objects, the Smithsonian would most likely be unable to comply. It is subject to federal regulations that would not allow the Museum to prohibit one or another gender from performing certain job functions. The Museum could, however, make such a request known, and staff could voluntarily abide by the request in some cases.³⁴

Sacred materials are not the only category of materials restricted by the NMAI. In fact, most if not all museums generally restrict access to certain donor information, financial

³⁴As a federal institution, NMAI cannot require its staff to honor every care protocol, nor can it accommodate every request it receives. As former NMAI Associate Director Jim Pepper Henry has said: "We're all civil servants and we abide by federal rules and regulations and personnel regulations. And so, we can't discriminate based on race or gender or age or anything else, so—or religion. And so, everything we do is done on a voluntary basis. What we say to staff is, the community has requested that we do things in a certain way, and it's up to you to decide if you want to honor their request. ... But I think everybody here is pretty sensitive to the concerns of our constituency, and for the most part have honored the requests of these communities. Now, we consider these requests. Not every request is a reasonable request. And so, we don't always say yes right away. ... Sometimes we have to consider what the tribe is asking us. And so, if there's something that we can't follow through with, we always ask, is there an alternative? You know, we don't have the resources to do this, we don't have the man-power to do this. Is there something else that we can do that either can approximate what you're asking or at least, on the most minimal level, be respectful to that particular object? So, we don't always do what has been requested of us by a community. We have to consider these things. And that's why it's important for us to establish a working group or a working committee to consider these requests and for us to articulate to ourselves and to them what we will do and what we won't do in that particular situation and to inquire if there's any alternatives, if we decide we can't do something for a particular reason. That's why it's important to consider these things rather than having the burden of these decisions placed on one individual in the museum. (James Pepper Henry, personal communication, December 3, 2003, p. 10)

information, or the specific locations of objects. The NMAI policy section devoted to security concerns states that:

Certain types of information shall be considered privileged and will not be divulged, except under authorization of the director, to anyone other than those with the right to know:

1. the names and/or addresses of lenders or donors who have requested anonymity
2. addresses or telephone numbers of any lenders or donors
3. specific storage locations or maps of facilities
4. valuations of any artifacts
5. information regarding pending repatriation or legal proceedings

(Collections Policy, 1995, p. 21)

In addition, elsewhere the policy states that “authors of manuscripts, field notes, translations, and other research records that are the result of their own creative efforts may restrict public access during their lifetimes,” and that the NMAI “staff is under no obligation to facilitate access to the collections for purposes that are inconsistent with or conflict with the purposes of the Museum and/or the Smithsonian” (Collections Policy, 1995, p. 16).

Restrictions on access are also relevant to loans. The 1995 collections policy specifies that Native groups seeking loans to support the practice of their religions will receive preference (Collections Policy, 1995, p. 17). And, “materials that are subject to active repatriation proceedings or for which the Museum’s legal ownership has been challenged shall not be loaned except for special circumstances for ceremonial purposes” (Collections Policy, 1995, p. 17). In other cases, the policy states that,

when appropriate, the borrower must demonstrate active consultation with the culturally affiliated group/s for the objects or other materials requested for loan. The

Museum may require the borrower to provide written recognition and sanction from the appropriate Native American tribal authorities for the loan of culturally sensitive or religious material. (Collections Policy, 1995, p. 17–18)

Finally, with regard to documentation of collections the Museum “may request permission from the Native American owners prior to repatriation to photograph, commission a replica, or conduct scientific analysis” (Collections Policy, 1995, p. 13). For example, “photographs (flash only) may be taken for research or study purposes only with . . . compliance with any Indian protocols and other restrictions that may be required . . .” (Collections Policy, 1995, p. 14).

In summary, access, a dimension of inclusion, when applied to protect Native human rights and civil rights such as protection of religious freedom and equal protections for Native dead, recognizes Native ownership of or cultural rights connected to certain cultural material. Materials may mean physical or intellectual collections. Access may involve constituents who will never visit the physical museum. It may involve the ceremonial use of objects. It may involve restricting access to some materials to those who do not have permission from the appropriate tribal authority to do so. Such restrictions are consistent with comparable institutional practices restricting access to salary, donor-related, or security-related information.

Conflict mediation

Charles Willie’s theory of grassroots social action also identifies the ability to mediate conflict as critical to the implementation stage of a grassroots social movement. As was discussed at length in the earlier section devoted to the NMAI repatriation policy, the very structure of the NMAI, through its representation of subdominant people of power—in this case Native peoples—including as trustees, who, supported by staff and committees, form

policy for the institution, ensures the representation within the institution that is needed to mediate conflict.

The policy states that:

Every effort will be made to reach agreement through consultation or cooperation.

Where unresolved issues remain after good faith discussions, they will be referred to a special review committee established by the Board of Trustees. (Collections Policy, 1995, p. 12)

and that

The Board of Trustees, upon being notified by the Museum director or the American Indian claimant that the discussions concerning repatriation have reached an impasse, shall, within fifteen (15) days, constitute a Special Review Committee...to present its findings and recommendations to the Collections Committee within thirty (30) days. The Collections Committee ...shall, within fifteen (15) days, submit a recommended course of action to the Board of Trustees for its consideration in accordance with the provisions of Public Law 101-185, Section 5 (C) (B) Sole Authority. (Collections Policy, 1995, p. 13)

Summary: NMAI's early collections policy

The above analysis demonstrates that the NMAI's 1995 Collections Policy successfully meets criteria Charles Willie identifies as critical during the implementation stage of a grassroots social movement.

As noted earlier, the broadest of these is the principle of inclusion, whereby the implementation stage of a movement includes those who fought for reform and those the movement sought to protect. The 1995 collections policy ensures the inclusion of

subdominant people of power through specific policy governing museum practices that: protect Native human, civil and cultural rights; incorporate indigenous knowledge into the institution's research, operations, and education programs; require consultation with Native people; recognize the existence and authority of contemporary Native cultures; both ensure and protect access in ways that protect Native cultures; and guide conflict resolution. In so doing, the policy realizes goals set forward by the movement in the initiation stage, including: repatriating human remains and sensitive collections; instituting culturally-sensitive protocols guiding the Museum's work from research and education to archival and conservation procedures; incorporating Native knowledge into the institution; appointing Native people in positions of power and/or decision making processes; and foregrounding contemporary native cultures (through, for example performance or contemporary art) while supporting their continuation and growth. And as has been noted previously, these goals are connected to and consistent with Willie's emphasis on inclusion in the implementation stage.

Leadership profile: W. Richard West, Jr.

As outlined previously, Charles Willie identifies the following qualities of leadership as criteria for success in his theory of grassroots social action; *multicultural life experience* as a member of both dominant and subdominant sectors of society; a *commitment to ideals* such as fairness, equity, nonviolence and actions that protect members of a community from harm; a *complementary ability to work for both social change and social stability*; and skills including *the ability to listen, to identify common interests, to set reasonable goals, and to broker consensus* (Willie, 1994; Willie et al., 2008). These criteria are illustrated in the life experience and career of NMAI founding director W. Richard West, Jr.

West is a member of the Cheyenne and Arapaho tribes and is a Peace Chief of the Southern Cheyenne. He became the founding director of the Smithsonian Institution's National Museum of the American Indian in 1990, at age 47, following the passage of the NMAI Act in 1989 that established the museum. He served as its director for 18 years. During that time, he led the development of the museum's staff, directed the museum's architectural and program planning, raised over \$100 million from the private sector, and oversaw the successful design, construction, and operation of three separate museum facilities: the NMAI museum in Washington D.C. on the National Mall; the Cultural Resources Center which houses the collections and staff in Suitland, Maryland; and the George Gustav Heye Center in Battery Park, New York City, which is a second exhibition space and also houses the New York staff and a library/resource center.

West's personal background, academic work, and professional career all contributed to his multicultural life experience and uniquely prepared him for the role of founding director of NMAI, an institution whose roots are in the worlds of Indian law, Indian activism, Indian history, and Indian arts and culture.

To begin, his father, W. Richard West, Sr., was a distinguished American Indian artist, and his mother, who was non-Indian, was a pianist. His father made sure he and his brother were involved with their Cheyenne tribal community, grounding him in the arts and in Cheyenne culture (W. R. West, Jr., personal communication, February 26, 2009, p. 15). West noted that his father made a special effort to do so:

... because that hadn't happened with all of his brothers. He had four other brothers, all of whom were alive when I was growing up, and they and their children did that to varying degrees, some of them not at all, some of them almost as much as my dad did. (W. R. West, Jr., personal communication, February 26, 2009, p. 15)

Building upon this early foundation, after graduating from college in the 1960's, West sought to make a forceful contribution to the Indian Rights movement, which he saw as not only a political movement, but also one with cultural and legal dimensions. He recalls that these many touch points of the movement “were political, they were legal, they were cultural, and I wanted to touch them all if I could before I departed this mortal coil” (W. R. West, Jr., personal communication, February 26, 2009, p. 15).

To prepare himself to participate in the movement on all three fronts, he first went to graduate school at Harvard and received a Master's degree in American history, but he recalls that his experience there “wasn't quite close enough to the barricades” for him. He subsequently left Harvard for Stanford “with a specific objective of being involved in the Indian Rights movement” (W. R. West, Jr., personal communication, February 26, 2009, p. 15). After receiving his law degree, he worked in Washington, D.C., for fifteen years and was the first Indian to be named a partner at a national firm. His mentor was Arthur Lazarus, who in his extensive work in Indian law involving major Supreme Court decisions, among other accomplishments, won the case for the Sioux' Black Hills land claim. West then briefly worked in a boutique Indian-owned firm in Albuquerque where he focused solely on legal problems that affected Indian interests, including protecting sacred sites and other issues involving religious freedom and the preservation of Native cultures (W. R. West, Jr., personal communication, February 26, 2009, p. 15).

Before leaving Washington, D.C., for Albuquerque, West was a member of a special Cultural Education Committee of the Smithsonian Secretary's office, where he met and worked with then-Smithsonian Secretary Robert McCormick Adams. West recalls that the Committee “was set up to expand the audiences of the Smithsonian, to diversify it, which I

thought was a legitimate and important objective... and so I got to know the Institution.” (W. R. West, Jr., personal communication, February 26, 2009, p. 16).

In addition to direct access to Smithsonian leaders, West, through his legal work and activist networks, had access to and knowledge regarding government insiders generally. He testified before Congress regarding the repatriation legislation before becoming the NMAI director, and was allied with Suzan Harjo and other prominent activists pushing for the establishment of the NMAI.

West recalls that at the point that the question of who should lead the new institution arose, he learned that Secretary Adams, in conversation with the assistant secretary who had been coordinating the Cultural Education committee on which West had served, commented to the assistant secretary that he'd love to hire “someone like Rick West (who) just left recently for Albuquerque.” When the Smithsonian assistant secretary relayed this conversation to West, West recounts that he thought “Why just somebody just like me? How about me?” and threw his hat in the ring. He recalls that “it just seemed to me perfectit was the crystallization of almost my entire life . . . my family life, my upbringing, my professional training” (W. R. West, Jr., personal communication, February 26, 2009, p.1).

West saw the position as an opportunity to use his knowledge of Indian culture, history, arts, and legal issues to continue to advance the human, civil, and cultural rights goals of the movement, reflecting that:

Everything I've done in terms of my career has been driven by personal passions about what's the right thing to do and how one serves something larger than himself or herself. And that was true in going into Indian law, and it was true in seeking the position of being director of the National Museum of the American Indian. (W. R. West, Jr., personal communication, February 26, 2009, p. 15)

West believed that the movement was not concerned simply with political or legal rights but with cultural survival, and that the NMAI offered the opportunity to make progress on the critical cultural front of the movement. As he has said:

if protecting the legal rights of Indians is about anything, it has to be about protecting also their cultural viability going into the future....my legal career focused on . . . one part of it, even though some of my legal work there had involved the protection of religious and ceremonial rights too, but the NMAI was a . . . new institution . . . that in the context of repatriation and the philosophy of repatriation might do something significant for contemporary Native communities. And so for me, it was a logical step to go from one to the other, because they're connected. (W. R. West, Jr., personal communication, February 26, 2009, p.15)

Protecting the rights of Indian tribes and communities, as noted previously, is still a critical need today. To use one well-known contemporary example, the currently prominent Occupy Wall Street movement frequently refers to the wealthiest 1% of American society; it is not well known that the poorest 1% in America are Indians (Kristof, 2012).³⁵ With that statistic as context, as founding director of the National Museum of the American Indian, West and his team successfully raised over \$100 million of private money above and beyond federal funding in order to build and program the museum, requiring him to balance the interests of donors, Native and non-Native, with the interests of a broader representation of Native peoples, many of whom fall within this vulnerable 1%.

³⁵ "This sprawling Pine Ridge Indian Reservation is a Connecticut-sized zone of prairie and poverty, where the have-nots are defined less by the money they lack than by suffocating hopelessness. In the national number line of inequality, people here represent the 'other 1 percent,' the bottom of the national heap . . . The latest Census Bureau data show that Shannon County here had the lowest per capita income in the entire United States in 2010. Not far behind in that Census Bureau list of poorest counties are several found largely inside other Sioux reservations in South Dakota: Rosebud, Cheyenne River and Crow Creek." "Poverty's Poster Child" (Kristof, 2012)

In addition to balancing the reality of economic disparities and the complicated tangle of relationships important to fundraising, the museum's director must engage with and balance interests of a huge number of distinct cultural and political groups, since the National Museum of the American Indian represents the many hundreds of Native tribes and cultures of the Western Hemisphere. As noted in Chapter Four, there are more than five hundred and fifty federally-recognized existing tribal groups in the U.S. alone (and many more groups who are not federally-recognized), encompassing a diversity of cultures, religious traditions, and languages.

Further, as the museum's director, West used his knowledge of U.S. law, including Indian legal issues, his familiarity with Washington, D.C., political actors, and his connections and relationships within Indian Country to bridge Washington politics and law with Indian politics and law.

Finally, as a leader of an institution that established the precedent of repatriation and mandated the inclusion of Native people in the formulation and running of the museum, West used his knowledge of academic disciplines such as anthropology, archaeology, or museology—and the history of their development—to effectively challenge the disciplinary status quo when needed in order to effect reform.

It was essential to the NMAI's founding director to have experience in these multiple contexts, to be able to know and understand each one, and then to create links and bridge them. As West notes,

. . . the director/leader as bridger (is) terribly important. That (includes) . . . communicating to various audiences, but it also has to do with not just bridging in the sense of communication, but bridging in the sense of thinking things through and bringing things together in a way that may come from different places, and

where there is inherent conflict sitting in those various places . . . It could mean that you're in the middle, but it also meant that you were out at the front of it trying to talk about it, trying to push it and frame it. And going along with that, one needed to be quite articulate about it, and quite articulate about it to multiple audiences. It could be . . . within the museum, it could be lots of externalities, it could be the native community outside the museum, it could be collectors outside the museum, it could be potential donors to the museum outside the museum. You had . . . to be able to have a . . . clarity of mind in describing the place, that you could communicate it and what it is you were trying to do to multiple . . . audiences of the museum. (W. R. West, Jr., personal communication, February 26, 2009, p. 22)

Bridging different groups can be difficult when seeking agreement on decisions, which takes time, can be messy, and often requires compromise. Leadership can thus require making decisions that do not please everyone. West notes that in these cases, leadership “required a certain amount of courage...you had to have a certain force of personality... because it wasn’t always accepted” (W. R. West, Jr., personal communication, February 26, 2009, p. 22).

One of West’s highest priorities was to ensure that Native knowledge systems and Native expertise was respected and incorporated into the institution along with Western academic approaches. He describes this priority as flowing “not out of some misguided commitment to spongy romanticism and sentimentality but because... cultural life and experience... brings authentic, definable, hard knowledge to our audiences that is different from what equally worthy other disciplines and systems of knowledge may bring to the very same subjects and objects” (West, 1997). This position reflects an important priority of Native cultural rights activists who, as previously discussed, testified before Congress that

Native knowledge systems must be respected, and, further, that these knowledge systems had much to offer the wider world.

The legislative history has shown that NMAI was conceived of as an instrument for social change, a mandate that West embraced in his work. He has said,

the Smithsonian National Museum of the American Indian, an institution of living culture, has moved explicitly and specifically to redress the historical relationship that has existed between the museum and Native communities. Native peoples have been involved extensively and systematically in the planning and the development of the NMAI, from the design of its facilities to the nature of its programs. The Native voice consciously has been included in the representation and interpretation of Indian cultures, past and present, on the exhibit floor and in public programming. Through its Department of Community Services, the Museum also will recognize and affirm internationally its obligation, as reflected in governing policies and the NMAI mission statement, to use its material and human resources to support contemporary Native life, community, and culture. (West, n.d., p. 1)

As discussed in Chapter Five, activists sought to establish Native voice and authority in the NMAI because they believed this would foster social change. West strongly agrees that the NMAI holds the power to transform society. As he put forward in a 1992 public speech, two years into his tenure,

What if the new museum and I could become instruments of change for the entire world's perception of the cultural and artistic contributions of the Native peoples of this Hemisphere? What if we could put the lie, finally, to the stereotypes that have dogged us? What if we could plan and build a museum in the nation's Capital that reflected Native peoples and their cultures not as dead or, at best, transitory and

dying, but as a vibrant cultural continuum with a productive and creative past, a living and dynamic present, and a potentially rich and diverse future? (West, 1992, p. 3)

In his article “A perfect grassroots movement,” Charles Willie discusses the resistance activists faced in the Montgomery bus boycott from whites, resistance that he describes as “get tough” practices (Willie, 2008, p. 30). This resistance arises from dominant people of power facing legitimate demands for social change from subdominant people of power. For example, West noted, one year after the NMAI’s inaugural exhibitions opened to the public, that when:

...interpreting Native cultures and objects...in the current political climate, at least in Washington, D.C., anyone who wishes to keep his Director’s chair beneath him must be aware of, while not being ruled by, certain risks. ...The risk of which I speak is exemplified by a review of the NMAI’s exhibit, “Stories of the People” which opened last year...made up of the personal selections of objects and associated commentary of seven individuals, about half of them on our own staff and half of them not, but all of them Native. ...The critic proceeds to make the following statement about the seven curators of the exhibit:

“Each of the six parts of the exhibition was prepared by a ‘selector’ who is a member of the tribe or ethnic group concerned, rather than by a professional curator.”

Among the seven Native curators, all were college graduates, and most had degrees in museology, anthropology, or archaeology. The group also had amongst its number eight graduate degrees, including three Ph.D.’s in the areas of ethnomusicology,

anthropology, and archaeology. ... When the talking stick is passed, do not expect those who previously held the stick to sit quietly and idly by.

For these reasons, I see my principal intended gift to the National Museum of the American Indian as being the capacity to adhere faithfully to a principled interpretive approach that has genuine substance and validity, while always keeping close at hand a quiver full of infinite political agility. (West, 1997, pp. 8–9)

As director of the NMAI with the above noted social justice commitment, West was responsible for pushing both social change and new models of practice, and in many instances he faced strong resistance on a number of important fronts. He describes his strategy for working through such resistance as:

... engaging the opposition in ways that if it was legitimate, you dealt with it and accepted it and even changed some things that you did. But if it was half-baked, you found out other ways of tipping it on its head in ways that neutralized ... what it could do to you and do to the institution ... You pick your battles, and you don't expend a great deal of energy or time opposing the ridiculous. You simply move on. You'll engage that which does matter, but you're done. (W. R. West, Jr., personal communication, February 26, 2009, p. 28)

Not surprisingly, one particular point of resistance and opposition centered on repatriation. As NMAI's director, West saw the repatriation provisions of the NMAI legislation as strengthening Native cultures and thereby strengthening the ability of the museum to be a stable platform for the preservation of Native cultures and the promotion and understanding of cultural vitality. He did not see a conflict between building a new museum that would conduct research into and exhibit a rich diversity of objects, on the one

hand, and, on the other hand, return certain categories of objects to Native people. During his tenure, he had to defend this notion repeatedly. He relates that he heard often from detractors who charged “you’re going to gut the very collection that you created by establishing the National Museum of the American Indian.” He recalls that his response to such criticism was that,

Look, the fact is I see them as not inconsistent at all. The repatriation part of our legislation is a legislative directive by the Congress of the United States which says this is about protecting contemporary Native cultures, and one of the ways that you do that is by taking things out of museums that sit close to the spiritual life of what makes Indian communities different, and you return them to the communities. And on the other hand, again, my own view of it was that the National Museum of the American Indian was in many important respects not a museum in the conventional almost 19th or 20th century conception of things a museum, but was very much an international institution of living cultures. And if that’s what you are as a museum, then you have a vital stake in protecting the cultural future and integrity of contemporary Native communities. The two things married each other, as far as I was concerned. One way you do that is by putting in their hands again the cultural patrimony that allows them to sustain themselves into the future, and then on the other hand, you have an institution whose mission in life is to articulate, present, represent, interpret, and talk about and preserve the research obviously in public, but to protect the capacity of Native communities to do that. Because if Indian communities don’t sustain themselves into the future, and you’re in effect an international institution of living cultures, you don’t have much future if the constituents on which you’re relying and to whom you’re looking don’t have a future

themselves. That's how I saw the two parts of our legislation as being utterly consistent with one another and not at all opposite. (W. R. West, Jr., personal communication, February 26, 2009, p. 7)

A primary tenet of this response to opposition and West's articulation of the NMAI's philosophy, therefore, was to include Native peoples in a process of integrity—not to speak for them, but to serve as a facilitator for their participation in service to their priorities.

This philosophy is reflected in West's early decision to delay the design and construction process of the museum in order to consult with Native communities and others to determine what the life of the museum should be, so that its design would flow clearly from its unique history and purpose. Extensive consultations took place over two years across the U.S. and Canada, with Latin American Native groups flown in to DC for consultation meetings. As director, West saw this as an early and major corrective action from his leadership. He recalls:

Upon my arrival at the NMAI, one of my first visitors was a . . . representative of the Smithsonian's Design and Construction office who was eager to tell me about the plans underway for the engineering and design of our buildings. . . . I asked, "Well, has anyone yet decided what it is that will be going on programmatically in these spaces?" (West, 1997, pp. 4–5)

West subsequently added two years to the construction schedules to create the opportunity for the Museum to, as he describes:

. . . consult in a meaningful way with Native peoples and others about the substance and content of the National Museum of the American Indian...this...consultative approach has been used by the NMAI in connection with the design of our buildings

and the development of the Smithsonian Master Plan for our Mall Museum installations. (West, 1997, pp. 4–5)

Again, the importance of inclusion in Willie's theory, in which those who initiate the movement are part of its implementation phase, is echoed by West's adoption of the specific goal of repatriation movement activists that Native people would be represented on their terms. This mandate is additionally furthered by West's commitment to include Native people on the new museum's staff at every level, a stark contrast to previous staffing at the MAI. As he describes this process in a 1997 panel discussion for the American Association of Museums,

I was the third Indian among a staff, largely inherited from the old Heye foundation (MAI), of approximately 70. I moved as quickly as I could to add a greater number of Native people to the mix of staff at senior, middle, and entry levels. At the present time the staff of the NMAI is approximately 30 percent Native, a percentage that holds also at all levels of staff. I view this initiative not as an act of political consciousness but, instead, as an act of cultural association that is critical to the substance of our work. I know that the staff of the Museum probably will continue to be predominantly non-Native, but I believe that the presence of a critical mass of Native people on the staff adds a vital element of highly relevant cultural history, experience, and knowledge (West, 1997, pp. 3–4)

The inclusion of Native Americans on the staff, at all levels, similar to the inclusion of Native people as NMAI trustees (the latter was written into the text of the NMAI Act itself), clearly reflects both a critical tenet of Willie's theory and a primary goal of Native activists who fought to create the museum, as has been outlined in chapters Four and Five. And the

NMAI created internships and opportunities for training that brought new Native museum professionals into the leadership pipeline.

Charles Willie has written that “a common way of life is maintained in communities or collectives through the complementary actions of the members they serve and their sacrifices for the public good” (Willie et. al., 2008, p. 8). This element of sacrifice is present in a bridging role and when pushing reform; in both instances there can be resistance and backlash.

As West prepared to retire from his directorship, The Washington Post aggressively attacked West for his extensive travel, its editorial board and reporters questioning why the director of a Smithsonian museum devoted to Native cultures of the Western hemisphere would have reason to travel frequently or widely. For example, they wrote:

West’s travel often took him far from American Indian culture: Auckland and Wellington, New Zealand; Athens; Bali, Indonesia; Sydney and Brisbane; London; Singapore; Florence, Rome and Venice; Paris; Gothenburg, Sweden; Seville, Spain; Seoul; Vienna; and Zagreb, Croatia. (Grimaldi & Trescott, 2007)

A full analysis of the media’s coverage of West, and, more broadly, of NMAI, is beyond the scope of this project. But I think it is helpful in the context of this profile of West to briefly albeit narrowly consider the issue of his international travel picked up by the media, since it illumines dominant culture views in the U.S. of Indians and Indian culture during West’s tenure as the first Native director of a Smithsonian national museum. In this instance, the two Washington Post reporters cited above question why West might travel extensively, “far from American Indian culture” as part of his professional role as director of a national museum. Yet implying that the Indian director of an Indian museum should stay in Indian

country is, unfortunately, racism at play. Museum directors travel internationally, and NMAI has a western hemispheric focus and strong presence internationally. As just one example related to Venice, a destination cited in the Post, the NMAI presented acclaimed contemporary artist James Luna at the 2005 Venice Biennale (Townsend-Gault, 2006).

Beyond its hemispheric scope, NMAI's collections, research and museological approach are of interest internationally for several reasons. As was discussed in Chapter 5, the NMAI's founding legislation addressing indigenous rights and including repatriation provisions set an historic precedent for museums. Many museums around the world also collect and exhibit and publish Native American material culture, and these museums work with one another, developing and hosting exhibitions, conferences, and publications, loaning objects, hosting researchers, interacting with colleagues in education, conservation, development, and so on. Auction houses around the world continue to sell Native sacred artifacts; these practices would be prohibited by U.S. law if they were in the United States. Museums around the world have also collected sacred objects and human remains from indigenous people representing many different places and cultures—for example, in Cambodia, Mali, Chile, Taiwan, etc.—and can benefit from exposure to the NMAI's experience and example in developing policies and practices that include the participation and perspective of groups affiliated with sensitive materials. In other instances, progressive museums such as the Te Papa museum in New Zealand and the National Museum of Australia offer exciting examples and precedents for working successfully with indigenous communities that are equally of value to NMAI.

For the reasons cited above, there was and is great international interest in the NMAI. As noted in Chapter Three, there is a substantial and growing body of literature on the work of the NMAI, including its conservation practices, repatriation policies,

partnerships with communities, exhibitions, and programs. As West has noted, an important aspect of the NMAI director's work connected to his bridging role concerned the ability to communicate the NMAI's mission and the philosophy behind its practices. The criticism of West's international travel in the *Post* provides insight into dominant society misguided views of Indians and the standing of the NMAI as a national museum of significance internationally to the museum field.

As the founding director, West was charged with leading the process of implementation. Implementing the founding legislation to create the museum required the museum's trustees and West to set up processes to generate the growth and living operations of the new institution. The earlier sections of this chapter focusing on the museum's mission, architectural program, and policies discussed how the principles used to set in place the processes they describe—inclusion, and mediation—are reflected in the primary goals of the movement. As previously noted, activists sought to create an institution that would include Native people, Native knowledge, and Native culture in the constitution and consciousness of the institution, sustain cultural life and growth, and educate Native and non-Natives about Native culture. This role is an inherently mediating one.

These same principles of inclusion and mediation set forward as goals by movement activists are primary principles Willie outlines for the implementation stage of a movement, in which implementation includes those who sought reform and also continues to maintain, or mediate, vertical and horizontal relationships and connections to resources. Certainly West sees the principles of inclusion and mediation as essential to leadership. He states:

Leadership . . . happens in terms of identifying goals, inclusion . . . an aggregation of thinking that then begins to take institutional form. And it takes institutional form . . . through the establishment of a clear mission. The NMAI during the entire time I

was there, I'm reasonably comfortable, was a mission-driven institution. Whatever other beefs they had, nobody misunderstood what the institution was about, and they were quite clear about that and the policies that go along with that. That's part of the institutionalization process. (W. R. West, Jr., personal communication, February 26, 2009)

West noted that he sought to create an institution with "inclusiveness (and) mediation capacities" that embodied horizontal and vertical connections in its structures. In addition, these horizontal and vertical connections were fostered through staff retreats, which he felt "extended the life of the organizational formulation of the institution as well as its intellectual formulation, mission, and policies, and gave it additional life" (W. R. West, Jr., personal communication, February 26, 2009). He added, "And we were the model for purposes of doing strategic plans," and continued by saying:

But those are all ways that you lead, and it's how you shift the components of your leadership. Some things remain inconstant, whether it's inclusion and vertical and horizontal connections, but the place where you're doing that being somewhat different. Development is one place, locking it in place organizationally and institutionally, intellectually. Those go together. And then the refreshing of all of that running forward is that you have to have a process which continues to include, continues to listen, and continues to act. And it could be any number of different vehicles, but the vehicle we chose which I think worked reasonably well was the strategic plan and operating mechanisms that actually came out of that....(There) was always great collectivity in (what) we did. (W. R. West, Jr., personal communication, February 26, 2009, p. 29)

In effect, a primary role of both West's directorship and the role the NMAI plays in the wider world is to include and to mediate. Importantly, a key path to successfully include constituencies is to establish and facilitate a process of mediation.

Like Suzan Harjo and Walter Echo-Hawk, West's multicultural life experience allowed him to successfully serve as such a bridge: between Native groups and the museum; between Native groups and one another; between Natives and non-Natives; between Native activists and Smithsonian leadership; and between traditional Native knowledge systems and academic theories, and to navigate the vicissitudes of Washington, D.C., academic, and Indian politics. Through speeches, writing, and the output of the new museum, he worked to make visible historic and contemporary problems influencing museum practice while forging ahead to develop and promote, along with his colleagues, in effect, a new museology. This exemplifies Willie's points regarding the complementary ability to work for both social change and social stability. West is a person who is driven to push for change, which is to say, a breaking of existing patterns, yet at the same time is a very orderly, precise and organized person who did not simply oppose an existing system but created a generative new system to take its place.

Conclusion: Chapter 6

In summary, a review of documents including: the NMAI's founding 1989 legislation, architectural program, early mission statement, repatriation policy and collections policy, and a profile of the Museum's founding director, reveals that the implementation stage of the movement successfully meets criteria for success outlined in Charles Willie's theory of grassroots social action. At a primary level, this success is easy to assess and can be summarized in a few key sentences: The law was passed and required Native representation and participation in the new institution—in myriad ways enumerated in this chapter, from

consultation practices to the appointment of Native trustees, from incorporating Native knowledge institutionally to developing practices that sustain rather than violate Native cultures, from reflecting contemporary Native cultures to fostering intercultural understanding—fulfilling Willie’s call for inclusion during the implementation of a grassroots social movement. Resources and allies needed to sustain the movement during implementation were secured, another criterion Willie identifies, and as a result the museum exists. Further reflecting the tenets of Willie’s theory, in the face of continued opposition, by sustaining vertical and horizontal connections to allies and partners and by mediating conflict, the trustees instituted a mission and policies that further expanded Native inclusion and agency in the museum’s processes.

Willie also notes that a movement is successful in its implementation stage when it realizes the goals established in the initiation stage and refined throughout the initiation stages. As summarized in Chapter Four, Native activists and their allies identified the following goals during the initiation stage:

- Repatriate human remains and objects that are improperly in museums or desecrated by museums;
- Recognize and incorporate Native knowledge into the institution;
- Represent Native people in positions of power and/or decision-making processes;
- Respect sacred objects and institute new standards of care that are culturally appropriate; and
- Reflect the reality that Native cultures are alive today and support a renaissance for their continuation and growth

The new museum as it was first constituted, as revealed by a review of its initial legislation, first key policy documents, and a profile of its first director, significantly meets these goals,

which are of course ongoing, iterative, complex—not “check the box” goals, but objectives to be improved on over time. Nevertheless, this review reveals that the first stage of life for the institution began the repatriation, internationally, of sacred materials, communal property, funerary objects, artifacts acquired through illegal acts, and human remains. It developed radical innovations in all aspects of its operations that incorporate Native knowledge and are grounded in respect for Native cultural practices and rights. It included Native representation on the board of trustees and at all levels of the staff, and required consultation with Native communities. In keeping with activists’ strong directives, NMAI sought to sustain and showcase contemporary Native cultures, and conceived of itself as a forum for the exchange of ideas and expressions of plurality.

Chapter Seven: Conclusion

This is a dissertation study submitted to the Harvard Graduate School of Education; it concludes that activists in the grassroots social action movement fighting to pass federal legislation to establish the Smithsonian National Museum of the American Indian successfully meet the criteria for success outlined in Charles Willie's theory of grassroots social action (Willie, 2008; Willie et al., 2008), which builds on his previously-articulated theories of human social action (Willie, 1994). (This does not mean that it is perfect, or finished. Fulfilling the mission of the institution is ongoing work and each successive leadership and staff will bring the museum forward in new ways.) The various ways in which movement activists meet Willie's criteria for success that have been previously outlined in Chapters Four, Five and Six are discussed in this concluding chapter as well as the significance of this success.

Museums are educational institutions, and their educational role or impact is not limited to the content of their educational materials and programs. Museum exhibitions educate whether they communicate information explicitly, for example through label copy or gallery tours, or implicitly, for example through the architecture of gallery spaces or the location of certain types of collections in relationship to one another (Bal, 1996; Duncan, 1991; Hartfield, 2004).³⁶ As one prominent example, exhibiting Native American collections in natural history museums is fraught. As MAI trustee Vine Deloria wrote to then-city commissioner of cultural affairs Bess Meyerson regarding a proposed merger with the American Museum of Natural History in the mid 1980's, "the ... posture of the AMNH

³⁶ As Hartfield has written, "museum *exhibition* is itself an educational tool" (2004, p. 51).

toward American Indians is degrading and derogatory. It conceives of Indians as part of the fauna and flora of North America and therefore destined to be exhibited between the fish and the birds . . .” (Deloria, cited in Force, 1999, p. 277).

Historically, museums have perpetuated bias and violated human rights in their treatment of artifacts and human remains from Native societies. Desecrating cultural materials compromises museums as both research institutions and educational institutions (Edwards & Sullivan, 2004; Greenberg, 2004; Newsome, 2004; West, 2004). As Douglas Greenberg, currently professor of history at Rutgers (where he has also served as a dean) and previously president of the Chicago Historical Society and executive director of the USC Shoah Foundation has noted:

It is sometimes said that museums are sacred places because we place in them the objects that matter most to us as a culture or the objects we believed mattered to other cultures. It is also, of course, for that reason that we regard conservation as an ethical obligation of museums. But museums and libraries can also be arenas of profanity, and conservation can be an insult if we do not engage communities in the preservation and interpretation of their own cultural life and fail, in consequence, to respect the meaning that those communities attach to the artifacts and documents they produce. This is not a theoretical matter, either; in a culturally diverse society whose institutions of art and memory are multiple and occasionally conflicting, those that fail to accompany the conservation of objects with a conservation of meaning will themselves fail from their own stupidity and irrelevance. (Greenberg, 2004, p. 44)

The conventions of U.S. museum practice that Native peoples found discriminatory would be seen that way if applied to white communities. Examples discussed in this paper

include equal protection of the dead and religious freedom. Indian activists consistently sought to reform museum practices that violated Native rights, and they won major victories in the passage of the NMAI Act that successfully advanced many of their critical goals. The discriminatory practices they fought were not limited to prior generations; the Act was not passed until 1989. Clearly, without the push by activists and their allies, the NMAI's founding legislation would never have been enacted. As evidenced by strong opposition to the laws, federal agencies, museums and universities would not have effectively reformed their existing practices, which Native activists and others considered harmful and biased, through self-regulation.

As UCLA Civil Rights Project/Proyecto Derechos Civiles (formerly Harvard Civil Right Project) co-director Gary Orfield has written:

In a society where racial inequality has always been a central fact, it is easy to accept the status quo as natural, or even to become blind to it, unless the contradictions are illuminated by contrasting the realities with what we claim to believe. (Orfield, 1999, p. 13).

Orfield further notes that:

The most common form of contemporary discrimination . . . arises from a denial of the continuing impact of the history of racism against a group and passive acceptance of institutional practices and policies that intensify or perpetuate the impact of discrimination and unequal opportunity. (Orfield, 1999, p. 18)

This observation is relevant to the context within which Native activists and their allies fought for institutional reform and to establish the Smithsonian NMAI as a model for that reform. As was discussed previously in Chapter 5, activist Walter Echo-Hawk suggests that a primary role of an activist is to educate. Given that both the history of and contemporary

instances of injustice are, as Orfield notes, not always recognized by the dominant culture, Echo-Hawk sees that his work is “to correct that lack of understanding” through education, as an antidote to what Orfield has described as blindness, denial or passive acceptance (Harjo, [video] n.d.). For example, Echo-Hawk states that “...the number one problem facing Indian tribes in the U.S. today is a lack of reliable information about our Native peoples” (Harjo [video] n.d.) and that:

...most Americans are fundamentally fair, and once they have been given the facts about Native people they have been increasingly acting to do the right thing. So... I hope to bring...understanding of our contemporary peoples and our justice issues through public discourse (Harjo, [video] n.d.).

Museums, which educate implicitly and explicitly, are places that facilitate this public discourse, and the cultural rights movement saw museums as a tool to transform society.

I refer to the push for legislation that builds momentum in the 1970s and 1980s as the cultural rights movement, since activists’ demands for reform in museums, universities, or federal agencies were never simply about the repatriation of Native human remains, sacred objects, and communal property. Rather, their demands reflected the broader goal of preserving Native human, civil and cultural rights by: ensuring the inclusion and agency of Native people in institutions holding Native cultural and intellectual property; changing the research and educational programs of these institutions to reflect Native knowledge; and supporting contemporary cultural expression and evolution (S. S. Harjo, personal communication, January 26, 2009; *Establishment of the National Museum of the American Indian*, 1989, p. 57, p. 150, p. 152; pp. 266–267; *Native American Cultural Preservation Act*, 1987, p. 34, 36–37; *National Memorial Museum of the American Indian*, 1989, pp. 48–49; *National American*

Indian Museum Act, 1987, p. 47; *Native American Grave and Burial Protection Act (Repatriation)*; *Native American Repatriation of Cultural Patrimony Act*; and *Heard Museum Report*, 1990, p. 1).

Specific focus

In this dissertation, the following limitations apply:

I provide only a snapshot of the museum as it was first constituted; I do this through profiles of exemplar actors, Congressional hearing testimony, the text of the 1989 Act, and the Museum's initial architectural program, mission, and 1991 repatriation policy statement.

I do not address the law's amendments, revisions to the repatriation policy, or the much-amplified 2008 collections management policy. These will continue to evolve as the implementation of law and policy make clear all of the issues that were not thought about as the movement's goals were translated into policy with the backing of federal law. I hope to include this analysis of changes over time in a later project.

In the analysis of the movement's initiation phase, I discuss the broader, complicated and messy Indian Rights movement that takes place on many fronts across the country by profiling exemplar organizations and leaders. As was discussed in Chapter 4, more than five hundred fifty federally-recognized tribal groups are in the U.S. alone, representing myriad cultures, religious traditions, and languages. There are also tribal groups without federal recognition. The movement is too broad to capture fully in one chapter, and includes many different actions orchestrated by hundreds of individual tribes and numerous coalitions led by Native traditional religious leaders, Native legal and policy experts, or tribal government leaders, and including urban organizations. Similarly, it is not possible to profile the many leaders of the repatriation movement in one chapter or even one book.

In this study, my analysis for implementation is intentionally limited to the initial legislation and policy documents and does not seek to analyze the many and evolving ways

in which policy is carried out. By focusing on written policy, I attend to an area that has received less attention in the literature, yet influences all functions of the museum's programming, from the design of interpretation and education programs, to staffing issues, museum partnerships, conservation practices, and research of the collections.

It is very important to note that while I analyze the text of the legislation, program, mission and policy documents, there are many things that I intentionally do not do. I do not wade in to critique how the on-the-ground implementation of operational policy was handled, which in all situations and organizations is complex and messy and changes over time. Each aspect of the NMAI's operations is a rich and fascinating window into how the law and these documents and policies were interpreted and implemented. For example, the conservation staff have published a large body of papers and presented widely on precedents in their work related to the implementation of policy (see for example Harrison & Kaplan 2011; Kamentiz & West, 2009; Madden, Johnson, & Anderson, 2010; McHugh, Boxley, & Gunnison, 2010; Smith, Austin-Dennehy, & McHugh, 2010) A large number of staff and advisors have published, presented, or written dissertations to address how the museum has implemented policy in various departments, including, of course, in repatriation, as well as exhibition development, education programs, the use of virtual tools, and many more areas, so many that I have compiled a bibliography of select examples (See Appendix H).

I neither address nor critique NMAI's inaugural exhibitions and programs, which have been expansively addressed in the literature, for example in collections of articles (Archuletta, 2008; Berry, 2006; Cobb, 2005; Evelyn, 2006; Lonetree & Cobb, 2008; Phillips, 2006; Phillips, 2008) and book chapters (Rader, 2011; West, 2004); the examples I provide here are only a small selection of myriad expressions that express a diversity of particular, forcefully held, and opposing perspectives.

Within NMAI there exists a comparable diversity of perspectives. A recent monograph (Shannon, 2014) by a former NMAI assistant curator digs into internal politics as it argues for a particular institutional structure. The 2005 collection *The Native Universe and Museums in the 21st Century: the significance of the National Museum of the American Indian* contains essays expressing diverse reflections from NMAI trustees (Hirsch & Pickworth, 2005). Former Deputy Director Doug Evelyn, writing alone and with a colleague, responded in 2006 to initial critiques of the inaugural exhibitions with a compelling reminder and broad view of how exhibitions are just one aspect of the collaborative approach of a museum that established a national precedent for repatriation law (Evelyn, 2006; Evelyn & Hirsch, 2006).

Countless thousands of people with differing views on myriad issues played a role in the creation of the NMAI, including the extraordinary staff, board of trustees, and members of special committees, those who served as special consultants and advisors, as donors, as partners, as members of professional and cultural communities who participated in consultations, legislators, and activists. I have been blessed to know and to learn from a large number of past and present NMAI staff and consultants, and my use of only one exemplar per stage of the movement does not allow me to discuss and represent this incredible constellation of dedicated people essential to NMAI's success.

I define what I—and Willie—mean by success in the discussion to follow.

Theoretical lens

The choice of a theoretical lens determines what is the focus of an analysis and what is not. My choice to frame this study with Charles Willie's theory of grassroots social action allowed me to emphasize aspects of this story that I might not have otherwise and that perhaps have received less attention in the literature. For example, Willie's attention to qualities of leadership and strategy allowed me to interview movement leaders and draw

from them perhaps more personal reflections on their leadership approach and experiences. These reflections, centered as they are on criteria Willie identifies as significant, (for example the complementary ability to work for both social change and social stability; strong mediation and consensus-building skills enhanced by multicultural life experience as a member of both dominant and subdominant sectors of society) are helpful to others who are interested not only in what happened but in how this movement can be a model for other human rights activists who seek to transform educational institutions (Willie, 1994; Willie et al., 2008). Some of the subjects I interviewed commented to me that Willie's theoretical framework was both interesting and valuable to them in shaping their own reflections and helped them to see themselves in a new light.

However, given the breadth of the movement, to use this theory I chose to profile exemplar leaders and organizations, and was not able to capture a multiplicity of voices in my analysis. I hope that this particular narrative may help others enter this conversation and create other narratives. My goal is to make a contribution using this framework in the happy anticipation that others will use this or other frameworks to enlarge the picture, reflecting many other insights about the successes of this complex movement and its countless leaders and actors that will add to our collective understanding of the movement.

Charles Vert Willie describes a democratic society shaped by a constant interplay between *dominant* and *subdominant people of power*. *Dominant people of power* gravitate toward serving the needs of the wider community, and *subdominant people of power* seek to serve the needs of the least privileged in society. Willie's theory further proposes that both dominant and subdominant actors are needed to create social transformation through interactions of ongoing societal division and cohesion. He defines three sequential stages of community decision-making within this process of societal division and cohesion: *initiation* (the

identification of leadership and formation of goals of the movement), *legitimation* (the building of allied relationships and the brokering of conflicts) and *implementation* (institutional change through the implementation of law or policy) (Willie, 1994; Willie et al, 2008). Willie adds that a single group of people cannot alone fulfill all stages of grassroots social action. Although some people may be involved in all stages of grassroots social action, each stage requires a different group. The stages may overlap. But in general, Willie proposes that:

- A movement progresses from stage one (initiation) to stage two (legitimation) by identifying strong leaders and building consensus among its membership to agree upon specific goals and action steps.
- A movement progresses from stage two (legitimation) to stage three (implementation) when opposition is neutralized and allied support and approval for the movement's goals are secured, including by establishing horizontal and vertical linkages within and to organizations and their leaders.
- A movement succeeds in stage three (implementation) when this final stage includes those that initiated the movement as well as those the movement sought to protect; when horizontal and vertical linkages are maintained; when resources remain stable; and, more generally, when implementation in great measure meets the initial goals for justice articulated by the movement.

The repatriation movement successfully meets the criteria for success outlined for each of the three stages defined in Charles Willie's theory of grassroots social action as follows:

Stage One: Initiation

Before the passage of the 1978 American Indian Religious Freedom Act, which itself was inadequately enforced, United States laws did not equally protect Native peoples' rights

to religious freedom, protect Native dead or adequately recognize tribes' rights to self-governance and cultural continuity in accordance with past treaties or international law.

Indian Rights movement activists fought for reform on these human and civil rights issues.

In the 1980s, the cultural rights movement emerged as one front within the wider Indian Rights movement. The push to establish The National Museum of the American Indian (NMAI) is in turn only one piece of the cultural rights movement. Importantly, the NMAI is both a reflection of and a result of this activism.

During the initiation stage of the grassroots social movement, corresponding to criteria outlined in Willie's theory of grassroots social action, activists gained power by meeting across tribal and cultural boundaries to "establish internal organization between people with a common interest, identify common goals..., and propose appropriate action for the achievement of goals held in common" (Willie et al., 2008, p. 17). In addition to identifying *shared goals*, and *forming coalitions*, Willie also points to the quality of *leadership* as a final significant criteria for success during the initiation phase.

Each of these criteria was successfully met by the grassroots social movement as follows:

Shared goals

During the movement's initiation phase, the grassroots social movement leaders identified the following shared goals:

- Recognize the human rights violations perpetuated by the U.S. government that led to the removal of human remains and cultural patrimony from the oversight of tribes.
- Return Native remains in museum collections to tribes and return sacred objects and cultural patrimony to tribes, including those important to the survival of Native

religions and languages.

- Institute new standards for appropriate care and interpretation such that Native human remains are treated respectfully as the remains of human beings, not as scientific specimens, and Native material culture is collected, cared for, interpreted and published ethically and accurately.
- Recognize Native cultures and worldviews as vibrant knowledge systems that are not “primitive” or inferior to other religious, such as Christian, beliefs or Western scientific knowledge, and that are valuable to the project of knowledge in general.
- Recognize that Native cultures continue to survive and flourish today and uphold Native human, cultural and civil rights.

Forming coalitions

Chapter Four profiled three types of successful coalitions formed within the wider grassroots social movement:

- Pan-tribal coalitions that brought tribal groups together to push for shared interests. Successful strategies included public protests, governmental lobbying and legal actions. Public relations campaigns inspired and galvanized Indians while also (re)educating and gaining support from a wider public.
- Pan-tribal coalitions of traditional religious leaders led acts of resistance involving restricted practices and knowledge.
- Urban organizations won success in drawing attention to issues, but they have been seen by some leaders in the push to establish the NMAI as less effective in creating new institutional models.

Leadership

Willie identifies the following qualities of leadership as criteria for effectiveness: a *complementary ability to work for both social change and social stability*; *multicultural life experience* as a member of both dominant and subdominant sectors of society; a *commitment to ideals* such as fairness, equity, nonviolence, and to actions that protect members of a community from harm; and skills including *the ability to listen, to set reasonable goals, and to broker consensus* (Willie, 1994; Willie et al., 2008). Chapter Four's profile of exemplar activist leader Suzan Harjo demonstrates her success in meeting these four criteria. Subsequent exemplar leadership profiles of Walter Echo-Hawk in Chapter Five and W. Richard West in Chapter Six also demonstrate their success as exemplars of grassroots social movement leadership.

Stage Two: Legitimation

Willie states that the "legitimation (or second) stage has two parts: *obtaining approval* and, if necessary, *neutralizing opposition*" (Willie, 1994, p. 58). Movement activists were successful on both counts. To follow, I detail specific strategies for each.

Obtaining approval includes successfully employing the following principles and criteria (Sources: Willie, 1994; Willie et al., 2008):

- The principle of *inclusion*, which involves: *involving stakeholders*; *continuing to build consensus*, and *refining the movement's goals and strategy*. Native activists, illustrated in Chapter five by the leadership of the NCAI, NARF, and AAIA, continued to partner with one another to define and refine the movement's goals and strategies.
- *Building horizontal and vertical connections, including: gaining allies, building coalitions; and developing access to resources*. As discussed following the narrative chronology of the repatriation movement in Chapter 5, Native grassroots activists won powerful allies in state and federal government, business, and philanthropy and created vertical

connections to the highest reaches of each of these spheres, including two Presidents (Carter and H.W. Bush), philanthropists and billionaires (Rockefeller, the Ford Foundation, Annenberg, the Urban League, Perot), the president of the World Bank, and Senator Daniel Inouye, among many others.

Neutralizing opposition involves successfully employing the following criteria Willie identifies for success during legitimation (Sources: Willie, 1994; Willie et al., 2008):

- *Successful mediation and principled negotiation.* Native grassroots activists were successful in mediating conflict, negotiating beneficial agreements, shaping and joining ongoing dialogue, and using U.S. law to reform U.S. law. Successful legal actions at the state level gave Native activists the power to argue it was in the interest of museums, federal agencies, and scientific organizations to support federal legislation instead of contending with thousands of individual lawsuits. Activists skillfully negotiated with dominant people of power to arrive at language and terms for the NMAI Act that met the activists' goals. Activists also employed what Willie terms as "veto power" by stepping out of negotiations when key goals were being compromised (Willie et al., 2008, p. 9). Even in negotiations that activists found unsuccessful, it is possible to conclude that, for example in the case of the National Dialogue, some people opposing the activists' goals adopted new, more supportive positions. In other negotiations, activists gained the allied support of the organizations or that had previously been opposed to the repatriation legislation, including the SAA and AAM. And the movement gained the support of influential allies initially opposed to federal repatriation legislation, including Smithsonian Secretary Adams, who has expressed the following:

... [We] move decisively from the older image of the museum as a temple with its superior, self-governing priesthood to ... a forum ... committed not to the promulgation of received wisdom but to the encouragement of a multi-cultural dialogue.

This is a national museum ... [that] takes the permanence ... the authenticity ... the vitality and the self-determination of Native American voices ... as the fundamental reality ... it must represent.

(West, 2004, p. 1)

- *Flexibility regarding tactics.* Native grassroots activists employed many disparate tactics, including cultivating strong allies and resources, protest actions and the use of veto power, legal actions, political lobbying, and public relations.

Chapter five also concluded that divergences in positions held by activists and those opposing reform during the 1987–2005 Congressional hearings echo key aspects of historic conflicts between Native Americans and whites, including: contested scientific definitions of race that are dependent upon measurements of the human body; questioning the relationship of past populations of the Americas to contemporary Native people; a tension between the needs and rights of contemporary Native people—including religious freedom—with scientific priorities and practices; and dissent regarding the degree of Native self-determination or inclusion in decisions most important to their lives.

Stage Three: Implementation

Charles Willie identifies several criteria critical to success in implementation, the third and final stage of a grassroots social movement. The broadest principle he points to is inclusion. Successful implementation of reform in a grassroots social movement must

include both activists who initiated the push for reform, and those whose interests the movement sought to protect. As a carryover from the initiation and legitimization phases of the movement, elements including sustaining horizontal and vertical linkages to allies, access to needed resources, and continued mediation of conflict must be maintained during implementation. As a final priority, during the implementation phase of a movement, adequate resources and planning must be brought to the implementation of reform, so that a new system reflecting the goals of the movement can be established (Willie, 1994; Willie et al., 2008).

As was outlined in Chapter Six, the first constitution of the NMAI viewed through its 1989 legislation, 1991 repatriation policy statement, 1990 mission, initial architectural program, 1995 collections policy and an exemplar of its founding leadership successfully met the criteria for implementation as described in Charles Willie's theory of grassroots social action. They also successfully address activists' goals I identify in Chapter Four, cited above.³⁷

At a primary level, these successes are easy to recognize and can be summarized in a few key sentences: The law was passed and required Native representation and participation in the new institution. Resources and allies needed to sustain the movement during implementation were successfully secured. The museum exists.

³⁷ To review, these goals are:

- Recognize the human rights violations perpetuated by the U.S. government that led to the removal of human remains and cultural patrimony from the oversight of tribes.
- Return Native remains in museum collections to tribes and return sacred objects and cultural patrimony, including those important to the survival of Native religions and languages, to tribes.
- Institute new standards for appropriate care and interpretation such that Native human remains are treated respectfully as the remains of human beings, not as scientific specimens, and Native material culture is collected, cared for, interpreted, and published ethically and accurately.
- Recognize Native cultures and worldviews as vibrant knowledge systems that are not "primitive" or inferior to other religious, such as Christian, beliefs or Western scientific knowledge, and that are valuable to the project of knowledge in general
- Recognize that Native cultures continue to survive and flourish today.

Each of the documents I reviewed were drafted with the participation and leadership of Native people and allies who are sympathetic to the human and civil rights goals of the movement and each document furthers the movement's goals. Reflecting the tenets of Willie's theory, and in the face of continued opposition to the movement's goals, the trustees nevertheless instituted a mission and policies that further expanded Native inclusion and agency in the museum's processes. The new museum as it was first presented preserved vertical and horizontal linkages; it included Native representation on the board of trustees and at all levels of the staff, required consultation with Native communities, and maintained key relationships with powerful allies.

NMAI began the repatriation—internationally—of sacred materials, communal property, funerary objects, artifacts acquired through illegal acts, and human remains. In keeping with activists' strong directives, NMAI includes a focus on contemporary Native cultures, conceived of itself as a forum for the exchange of ideas and expressions of plurality, integrated Native knowledge in its research and education systems, and created operational policies to protect and sustain Native cultures and cultural practices.

For all of these reasons, the movement successfully meets the criteria for success Willie outlines for the third (and final) implementation stage of a grassroots social movement.

Implications

Two interesting and broad themes emerge from this study that I wish to trace briefly here.

A first theme centers on the question of the value of institutional reform, reform that was catalyzed by Indian Rights activists, but is of value not just to the subdominant group, but also to the dominant culture. As just one example of operational policy, the collections

management policy seeks to balance two general responsibilities of the NMAI. Museums are educational and research institutions with a special responsibility to generate knowledge and communicate this knowledge to a wide public. At the same time, the NMAI's founding legislation and mission clearly outlines the Museum's "special responsibility, through innovative public programming, research and collections, to protect, support and enhance the development, maintenance, and perpetuation of Native cultures and communities" (NMAI initial mission, 1990).

These two areas of responsibility may be seen by many as competing or contradictory: Is the museum responsible primarily to the wider public, or to Native people? On the one hand, museums and universities cannot adopt all cultural protocols requested by Native groups, for example gender restrictions that violate federal law. On the other hand, often, however, upholding Native human rights through institutional reform can enhance museums and universities' research and educational value to benefit the general public. This claim is supported by many points revealed in this study.

As one instance, until the 1989 Act, and, subsequently, the national NAGPRA legislation was passed, basic inventories of objects in museums were sometimes incomplete and/or deeply flawed. Many collections in U.S. museums were not inventoried until required by NAGPRA. Such collections were not always safely stored and conserved. Museums and universities fought to retain items in their collections that they did not even know they had. For those collections that had not been inventoried, it can be concluded that they were also not researched, exhibited, published or interpreted to the public—despite these functions being primary to most traditional museum missions.

As a second example, museums' exhibiting items in ways that violated their Native founding culture, such as exhibiting human remains or sacred materials, cannot be said to

successfully educate publics about these cultures. Rather, this presents and perpetuates a biased, distorted dominant culture view.

Some reform requests that honor Native cultural protocols may have been viewed as irregular and without precedent. But this is not always so; there are precedents for museums creating similar practices albeit for different reasons. For example, Native communities may restrict access by those who do not have permission from the community to handle objects, view documentation of objects, and in general access cultural knowledge. Such restrictions might be compared to commonplace restrictions museums place on access to: donors' names and contact information and to financial information associated with donors if they request anonymity; an author's work, if requested, during his or her lifetime; department of human resources information and personnel medical information within the museum's files.

Additionally, Native communities may request that objects not be desecrated by generally accepted conservation practices such as the use of toxic pesticides. Or tribes might also request loans or repatriation of objects for ceremonial use that could include playing musical instruments, wearing clothes, smoking pipes, feeding masks, consecrating objects through the anointing of substances to the object, taking objects apart and reassembling them, allowing objects or parts of objects to decay, or replacing parts of objects (NMAI collections policy, 1995). Traditionally, anthropology museums and other museums collecting Native material culture have viewed this as tantamount to destroying collections and have sought to preserve the physical object over the conceptual integrity of the object. Yet Native communities or tribes testified before Congress that conventional museum practices desecrated objects. Toxic chemicals, for example, were understood to poison both the living mask, and any potential wearer of the mask (*Establishment of the National Museum of the American Indian*, 1989). Some items are meant to be used or to decay. The conservation of

the physical object thus violated the conceptual integrity of the object. This is also true, for example, for Tibetan Buddhist sand mandalas, and museums such as the Newark Museum or the Art Institute of Chicago, among many others, have hosted Buddhist groups who build and dismantle elaborate and beautiful three dimensional sand mandalas; the public is invited to join in a final procession to a nearby body of water where the sand is dispersed as part of a closing ritual. Preserving the mandala in epoxy would violate its conceptual integrity and underlying theology.

In Western museums presenting contemporary art this concept is even more broadly understood. Contemporary art museums are very accustomed to protecting the conceptual integrity of an artwork vs. the physical integrity of an artwork. Take, for example, the work of the late artist Felix Gonzales Torres. One famous piece, “Untitled (Portrait of Ross in L.A.),” consists of a large pile of cellophane-wrapped candies that audience members are encouraged to eat. The label copy explains that “the installation is comprised of 175 pounds of candy, corresponding to Ross’s ideal body weight. Viewers are encouraged to take a piece of candy, and the diminishing amount parallels Ross’s weight loss and suffering prior to his death. Gonzalez-Torres stipulated that the pile should be continuously replenished, thus metaphorically granting perpetual life” (Art Institute of Chicago, n.d.).

This piece therefore requires that it be staged over and over again with new candy for each installation. If the original company that made the candy initially selected by the artist goes out of business or changes the candy formula or changes the cellophane packaging then the curators must decide what constitutes the object and how to stage the work with new components. What would be the result if, to conserve this Gonzalez-Torres piece, the Art Institute of Chicago chemically treated the original candy to prevent decay and pest infestations but at the same time rendered the candy poisonous? No one could take the

candy and eat it. This action would preserve the exact candy formula and wrapper—from pests or decay—but would irrevocably alter the candy to preserve it. This act of conservation would not preserve the artwork.

A second theme that I want to trace begins with a conception of the museum as a space of mediation. There is no “check the box” or blanket prescription for how to respect and preserve Native cultures. They are plural; they are all different. Within each there are differences of opinion. NMAI as constituted through its founding legislation and policies is therefore a process for mediating this diversity, a central quality highlighted in Willie’s theory of grassroots social action. This mediating role balances the various priorities and responsibilities of the institution, which have been discussed above. It is very, very important to note that NMAI policy, in keeping with the role of mediator, does not allow staff or any other individual to take on the roles or responsibilities of Native religious or cultural leaders. Ceremonies are performed, for example, both at the request of and directly by those authorized by the tribe.

The act of mediation is inherently interstitial, to be between. As Willie has written in *Theories of Human Social Action*,

The basic analytical method of situation analysis is the dialectic. In the Platonic tradition, the dialectic is truth seeking through discussion or dialogue. Dialogue is possible only between autonomous individuals. Yet dialogue implies mutuality. And mutuality is synthesis, the coming together of antinomies—the coming together of the thesis and antithesis, to use Hegel’s words.

The dialectic method favors neither the thesis nor the antithesis but concerns itself with the synthesis—”The sphere of between”—which Martin Buber has called the

primary category of human reality. This sphere has to do with human interactions in various kinds of situations, including interaction between individual and individual, between aggregate and aggregate, and between aggregate and individual (Buber, 1955, p. 203) cited in (Willie, 1994, p.165)

The themes of inclusion and the interstitial nature of mediation have also been referenced in the writings of James Clifford via a dynamic that he called the “museum as contact zone” (Clifford, 1997, p. 192). Museums can thus be seen as a kind of border territory, and exhibitions, programs and other museum activities—including research—as border language that is generated by and for cross cultural communication. As an operationally multicultural institution, NMAI embodies these ideas.

This mediating and convening process can be related to understandings of ritual. Carol Duncan has famously and importantly written of art museums as ritual sites “that publicly represent beliefs about the order of the world, its past and present, and the individual’s place within it” (Duncan, 1991, p. 8). Lawrence Sullivan has linked these ideas to his own comparisons of museums to ritual objects. He notes that:

Museums are divinatorial spaces . . . that function as micro-worlds, as ritual spaces do. Museums are carefully pieced together, like the ritual objects and spaces they often display, from swatches sampled from the spaces and times of the larger material and social world. (L. E. Sullivan, personal communication, October 12, 2014)

Sullivan describes ritual or ceremonial objects as being “composed of material items that symbolize, *pars pro toto*, powers that are demonstrably effective in the cosmos” (L. E.

Sullivan, personal communication, October 12, 2014).³⁸ From a theological perspective, ritual objects have the power to “shape the world at all levels” by “constantly recombining symbolic elements” that represent “larger elements of our wider world.”³⁹ He explains that “ritual... carries forward the past...in ways that ceaselessly create new, significant recombinations, and new understandings” through “the display of consecutive discordances that provoke a process of reflection and abstraction about the myriad differences that must be arranged in fruitful patterns to generate and sustain life in the world” (L. E. Sullivan, personal communication, October 12, 2014). Religious rituals thus allow paradox and oppositions to be expressed within them, and not only reflect culture, but also generate new forms of cultural expression.

Sullivan further notes that:

The museum itself—with its various showcases, installations, galleries, exhibit halls, and backroom storage bins—carefully arranges material culture in significant orders, with correspondences that radiate outward in time, space, and meaning. At any given moment on any given day, visitors step into this meticulous order, like dice cast

³⁸ He adds, “the colorful iridescent red feathers of fledgling birds placed in a ceremonial headdress, for example, make present the primordial flames that once destroyed the world in a cosmic conflagration but now represent the periodic fires of the dry season when those birds were conceived and hatched. They represent as well the creative powers at work in the eco-zones where those fledglings thrived, as well as the ordering powers of the seasonal starry constellations that preside over the sky in that season and the power of the fertilizing winds that help pollinate the plants in the zones where the fledglings feed and grow. They represent the cultural acumen of the fledgling hunter who gathered those feathers to demonstrate his prowess and readiness for the initiation ceremony in which he will wear the feather bonnet. The feathered headdress, and many other ritual objects composed of multiple materials from birds, animals, mineral and vegetable life, juxtaposes series of consecutive discordances, which are deliberate microcosmic arrangements of differences found throughout the world and displayed to provoke reflection on the piebald nature of the greater cosmos” (L. E. Sullivan, personal communication, October 12, 2014).

³⁹ Sullivan notes: “...each miniscule element in a ritual object is a metonym representing, *pars pro toto*, the larger elements that compose our wider world. The display of consecutive discordances provokes a process of reflection and abstraction about the myriad differences that must be arranged in fruitful patterns to generate and sustain life in the world. Rituals constantly recombine symbolic elements that represent these differences, sometimes in ritual objects themselves, producing elegant, creative orders. These set in motion the recombinant process that generates new life, through ritual, in the world at all levels, from the personal, to the social and cosmic dimensions” (L. E. Sullivan, personal communication, October 12, 2014).

randomly onto an exquisitely designed divination board. Though the appearance of a museum visitor may at first appear random, it need not remain so. Ritual ferrets out deeper meanings from such first appearances by treating gestures and signs and interpreting their heretofore hidden deeper meanings. As visitors proceed through the space of the museum and take in the arrangements of the various material and ritual objects set out there, they also come to grips with their cultural meanings and situate their own lives within these new frameworks. (L. E. Sullivan, personal communication, October 12, 2014)

It is therefore interesting to me to consider how the introduction of religious or cultural worldviews and ritual practices into museums such as the NMAI has reshaped museums at every level of their functioning, from the inside out. Rather than the objects' meanings only being cropped or co-opted by the museum's narrative about history and cultures, which most certainly has been true, there is also a resilience and subversive power being exerted via the objects held in museums, so that these powerful collections, through interactions they catalyze that bring together affiliated communities and others, explode through or interrupt the dominant culture narrative and syncretically reshape and reform the museum's structures around them.

In the case of the NMAI, the movement consciously strategizes to appropriate the power Duncan (1992) describes in her discussion of museums as ritual spaces that both reflect and shape society anew in order to reform society. As Shari Tishman has written, "even the simplest objects reflect the social and physical contexts in which they were created as well as the contexts in which they continue to be used and appreciated (Tishman, 2008, p.

44). Museums are thus being reshaped through the agency of audience response—responses engendered by powerful, significant, often consecrated or “living” objects.⁴⁰

Thus it is possible to compare a museum like the NMAI to a ritual or consecrated object. The NMAI as it was first established is meant to be a living institution, consecrated, as it were, by living cultural expressions as well as history. Many of those consulted during the architectural program process for the NMAI expressed their hope that the NMAI could be, literally, blessed, and convey a sense of the sacred to, and engender respect from, the public. Founding director West has commented that during the opening ceremonies, he was inspired most not by the building or exhibitions, but by the procession of Native peoples that brought 25,000 Native people along with 80,000 other attendees to the National Mall (W. R. West, Jr., personal communication, February 26, 2009). The NMAI is a living institution: because it brings people together in powerful ways, exemplified by the opening procession of Native peoples, because it includes as a priority the protection and support for the evolution of contemporary Native cultures, and because the museum is more importantly a process, not a static thing or collection of objects.

This is why the processes the initial mission and policies of the museum and its leadership established for the NMAI’s subsequent re-creations and continued development are most important to consider. A museum is ephemeral. Collections change, exhibitions change, programs change, events take place and then end, visitors come and go, staff come and go, but the mission and policies (which of course will also evolve) are intended to perpetuate guiding principles and an inherent philosophy as the museum rearticulates itself again and again in new and recombinant ways.

⁴⁰ And cultural actors are developing new forms of religious practices both to accommodate the return of sensitive objects to the community and to care for objects still residing in museums.

The NMAI, by succeeding in meeting activists' primary objectives, such as incorporating Native knowledge and ensuring Native representation and agency within its structures, establishes a new model for museums. Gary Orfield has observed that, in organizational terms, an excellent way to get a really new set of values, incorporated relatively rapidly, is to create a new organization (personal communication, October 5, 2005). That is what happened here, and this strategy was effective. Yet at the same time, and equally an asset to activists' goals, the NMAI also emerges from within the established Smithsonian system, which is of course not a new institution. Because of its prominence and position as a U.S. federal museum it has the iconic power to influence other museums. Because its founding legislation was applied throughout the Smithsonian and adapted in the subsequent NAGPRA legislation to apply to all U.S. funded institutions, it also sets a legal standard.

Thus, although one can certainly argue that the organization or society that is the target of reform can blunt or obstruct efforts for reform—as founding director West noted, “when the talking stick is passed, do not expect those who previously held the stick to sit quietly and idly by” (West presentation, April 27, 1997) at the same time the movement in this case syncretically inhabits and co-opts the iconic power of the Smithsonian Institution and the National Mall, which can shape dominant societal beliefs. This is why it matters deeply to Native people how Native cultures are presented to the public, whether they themselves ever even plan or want to step foot in the museum themselves.

As founding NMAI director West has said, by acting as “forums for vigorous and rigorous discussion and debate of a wide range of social and cultural issues” and through “diversity in their hiring, collecting and programming . . . museums may well . . . become genuinely proactive agents of education, cross-cultural understanding, and, ultimately, reconciliation” (West, n.d., p. 1). His colleague Elaine Gurian, after contributing to the

shaping of many national museums around the world, concurs: “I . . . firmly believe that public spaces, especially museums, can be sites of reconciliation between strangers who are wary of, but curious, about one another” (Gurian, 2004, p. 89). The value of museums’ potential to catalyze productive interactions between many different kinds of people is strongly in keeping with Willie’s insistence in his theory of grassroots social action that “we should realize that an effective community or collective needs both dominant people of power and subdominant people of power to achieve a well-ordered society. The two categories of people are complementary” (Willie et al., 2008, p. 8).

It is possible to draw a connection between the multicultural NMAI’s interstitial qualities and Willie’s theory as it relates to leadership for individuals. The qualities of leadership Willie identifies, including a multicultural background, the ability to broker consensus, and the ability to push both for change and social stability, are also tied to his emphasis on synthesis, or the sphere of “between.” As a mediating space of dialogue, representation and exchange, NMAI as an institution and West as a leader can both be understood to embody this concept.

Hegel describes synthesis as conceived in the space beyond thesis and antithesis. Synthesis solves the opposition between the two not by combining all aspects of each position into one stew. Rather, it reconciles what can be reconciled yet also eclipses both positions by creating a new thesis. Following Willie’s reference to Hegel, West also describes NMAI as a new model, not simply post-colonial, not only a reaction to what went wrong, but a new and innovative paradigm.

INT: You’re conscious of the sacrifices of the past.

R: You are.

INT: And you want to take it forward.

R: Correct. In a way, you almost have to not see the world exactly as the generation immediately before you saw it, even though you fully appreciate it.

(W. R. West, Jr., personal communication, February 26, 2009, p. 24)

Elaborating on this idea further, West recalls a discussion during a planning meeting for an exhibition when:

...the discussion got tangled up in colonialism, post-colonialism, etc. And (curator) Jolene (Rickard) said, "Look, those are two stages. There's a third stage.... You have to perceive beyond that. You respect it and you appreciate it fully, but you have to go past that somehow to get to a new place and to transcend it. Not ignore it, but transcend it." (W. R. West, Jr., personal communication, February 26, 2009, p. 25)

In his theory of grassroots social action, Charles Willie identifies the complementary ability to work for both social change and social stability as an essential criterion for movement leaders. As the museum's director leading the NMAI's development, West is inherently an agent of change and yet also of stability in his own leadership. In keeping with Willie's theory, West agrees that one aspect of his personality is "all about pushing and changing" yet an equally strong aspect of his nature is "ordered and reasonable and stable... these both sit in me in significant dimension...this notion of having an appreciation of both, I think, is important for leaders" (W. R. West, Jr., personal communication, February 26, 2009, p. 23).

In fact, the very law itself, the NMAI Act that establishes the museum, is a perfect embodiment of these two dimensions in relation to one another. The law requires the

Smithsonian to repatriate specific categories of human remains and sacred materials, which correlates to the impetus for social change, and the law mandates the creation of a new museum that is an extension of the cultures and peoples it represents, which represents a new and inclusive form of social stability.

Converting a social movement into a piece of law is making an instrument of some sort, and this process is often rough. The law in question here, the NMAI Act, is then used to create a museum, again a process that involves experimentation and adjustments.

A museum is not static; it is an ever-changing and evolving institution, guided by its mission, policies, and leaders.

This project has shown that desecrating Native human remains and cultural materials not only violated human and civil rights, including religious freedom and equal protections for the dead; it also compromised museums and universities as research and educational institutions.

Consultation and partnerships with communities has led to a reordering of and questioning of museological practices that have implications for how museums recognize and construct knowledge as well as teach. As Martin E. Sullivan has noted, “throughout the world, indigenous cultural rights are guiding stewardship and consultation policies for all kinds of collections” (Sullivan, 2004, p. 2).

Museums’ educational roles allow them to serve as a tool for social transformation, as do their policies governing research, hiring, acquisitions, conservation, repatriation, exhibitions, publications, etc. The movement successfully won the enactment of federal legislation to create the NMAI: an instrument that supports the human rights goals of

movement activists to support the health and continuation of Native cultures and to heal and transform society.

Museums, rather than being static places for the preservation of the past, and in keeping with a primary goal of activists who fought to establish the NMAI, can be vehicles and catalysts for the expression of living culture and generators of future cultural expressions. They can do so by being places of paradox, contradiction, and negotiated practices between many ways of knowing the world.

I hope this dissertation conveys useful knowledge of what obstacles the movement faced, what strategies were successfully used to overcome obstacles, and other insights shared by exemplar leaders of this grassroots social movement that are of value to those who also seek to transform public educational institutions in ways that promote civil, cultural and human rights.

APPENDIX A: IRB APPROVAL

HARVARD UNIVERSITY
COMMITTEE ON THE USE OF HUMAN SUBJECTS IN RESEARCHFederal Wide Assurance (FWA) 4837
IRB Identification # 109ALFONSO CARAMAZZA
*Chair*KENNETH L. CARSON
*Research Officer*ROOM 534
50 Church Street
Cambridge, Massachusetts 02138
617-495-9829**REPORT OF COMMITTEE ACTION**

Application Number: F16690-101

Investigator: Alison Edwards

Project Title: The Native American Museum reform movement and the creation of the Smithsonian
National Museum of the American Indian

Funding Source: None

ACTION TAKEN

This project as presently conceived has been determined to be exempt from the requirements of review by the human subjects committee. Exemption from the requirements of committee review does not relieve the investigator of any responsibilities relating to the research subjects; equal care must still be taken to ensure that subjects experience no harm to themselves or to their legitimate interests. Should the project change, you should check with this office to determine if review and approval will be required.

46.102(f)

for the committee,

Kenneth L. Carson
Research Officer

Date: 10/22/2008

cc: Shari Tishman
Joelle Mottola

APPENDIX B: HEARINGS REVIEWED

- S. Hrg. 100-82: Transfer of the U.S. Custom House in New York City to the Museum of the American Indian: Hearings before the Senate Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on the Environment and Public Works, 100th Cong., (Feb. 12, 1987).*
- S. Hrg. 100-90: Native American Cultural Preservation Act: Hearings before the Select Senate Committee on Indian Affairs, 100th Cong., (Feb. 20, 1987).*
- S. Hrg. 100-547: National American Indian Museum Act (Part 1): Hearings before the Senate Select Committee on Indian Affairs and the Senate Committee on Rules and Administration, 100th Cong. (Nov. 12, 1987).*
- S. Hrg. 100-547: National American Indian Museum Act (Part 2): Hearings before the Senate Select Committee on Indian Affairs and the Senate Rules and Administration Committee, 100th Cong. (Nov. 18, 1987).*
- S. Hrg. 100-931: Native American Museum Claims Commission Act: Hearings before the Select Senate Committee on Indian Affairs, 100th Cong. (July 29, 1988).*
- Serial no. 101-53: Establishment of the National Museum of the American Indian: Hearings (on H.R. 2668) before the House of Representatives Committee on Interior and Insular Affairs, the Subcommittee on Libraries and Memorials of the Committee on House Administration and the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation, 101st Cong. (Mar. 9, 1989).*
- Serial no. 101-53: Establishment of the National Museum of the American Indian: Hearings on H.R. 2668 before the House Interior and Insular Affairs Committee; the Subcommittee on Libraries and Memorials, House Administration Committee; and the Subcommittee on Public Buildings and Grounds, House Public Works and Transportation Committee, 101st Cong. (July 20, 1989).*
- Serial no. 101-62: Protection of Native American Graves and the Repatriation of Human Remains and Sacred Objects: Hearings on H.R. 1381, H.R. 1646, and H.R. 5237 before the House Interior and Insular Affairs Committee, 101st Cong. (July 17, 1990).*
- S. Hrg. 101-203: National Memorial Museum of the American Indian: Joint Hearing before the Senate Select Committee on Indian Affairs and the Senate Rules and Administration Committee, 101st Cong. (May 12, 1989).*
- S. Hrg. 101-952: Native American Grave and Burial Protection Act (Repatriation); Native American Repatriation of Cultural Patrimony Act; and Heard Museum Report: Hearing before the Select Senate Committee on Indian Affairs, 101st Cong. (May 14, 1990).*
- S. Hrg. 103-198: Native American Graves Protection and Repatriation Act: Hearings before the Select Senate Committee on Indian Affairs, 103rd Cong. (May 27, 1993).*
- S. Hrg. 104-399: Implementation of the Native American Graves Protection and Repatriation Act: Hearings before the Senate Committee on Indian Affairs, 104th Cong. (Dec. 6, 1995).*
- S. Hrg. 106-57: Native American Graves Protection and Repatriations Act: Hearings before the Senate Committee on Indian Affairs, 106th Cong. (April 20, 1999).*
- S. Hrg. 106-57: Native American Graves Protection and Repatriations Act: Hearings before the Senate Committee on Indian Affairs, 106th Cong. (July 25, 2000).*
- S. Hrg. 109-297: Native American Graves Protection and Repatriation Act (P.L. 101-601): Oversight Hearing on a Proposed Amendment (S. 536, Section 108) before the Senate Committee on Indian Affairs, 109th Cong. (July 28, 2005).*

APPENDIX C: LIST OF THOSE TESTIFYING WITH CORRESPONDING ABBREVIATIONS

(Note: the following categories are permeable, with some individuals representing multiple affiliations. I use them only to give a basic snapshot of special interests represented at the hearings. Appendices D and E use the abbreviations noted below for institutional affiliations.)

Elected Officials:

Hon. Robert Abrams, Attorney General, New York (Abrams)
 Senator Daniel Akaka, Hawaii (Sen. Akaka)
 Congressman Eni Faleomavaega of Samoa
 Martin C. Barendt, Chancellor, New York State Board of Regents (Barendt)
 Charles Bennett, U.S. Representative, Florida (Rep. Bennett)
 Jeff Bingaman, U.S. Senator from New Mexico (Bingaman)
 Senator Ben Nighthorse Campbell from Colorado (Sen. Campbell)
 Diane Coffey, Chief of Staff, Office of the Mayor, New York City (Coffey)
 William J. Diamond, Regional Administrator, General Services Administration (Diamond)
 Byron L. Dorgan, U.S. Representative from the State of North Dakota; later the Vice Chairman, Committee on Indian Affairs (Rep. Dorgan)
 Steven Flanders, Circuit Executive, Second Circuit (Flanders)
 Cornelius J. Foley, Deputy Secretary to Gov. Mario M. Cuomo (Foley)
 Wendell H. Ford, U.S. Senator from Kentucky, Chairman Rules and Administration Committee (Ford)
 Miriam Friedlander, Councilwoman, The City Council of New York (Friedlander)
 Senator Daniel K. Inouye, Hawaii, Chairman of the Select Committee of Indian Affairs (Sen. Inouye)
 Pamela Mann, Director, Office of Charities, Office of the Attorney General of the State of New York (Mann)
 Senator John McCain, Vice Chair, Select Committee on Indian Affairs (Sen. McCain)
 Senator John Melcher, Montana (Sen. Melcher)
 Stanley E. Michels, Councilman, The City Council of New York (Michels)
 Senator Daniel Patrick Moynihan, New York (Sen. Moynihan)
 Charles B. Rangel, U.S. Representative from the State of New York (Rep. Rangel)
 Ted Weiss, U.S. Representative from the State of New York (Rep. Weiss)

Government Agencies:

Cecil Antone, Director, Land Use Planning Commission (L.U.P.C.)
 Clarence Ching, Trustee, Office of Hawaiian Affairs (O.H.A.)
 Paul Hoffman, Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior (D.I.)
 Lonnie Revels, Sr. Chairman, North Carolina Commission on Indian Affairs (N.C.C.I.A.)
 Jerry L. Rodgers, Assistant Director, Cultural Resources, National Park Service (N.P.S.)
 Katherine H. Stevenson, Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service (N.P.S.)

Gilbert Tauber, Chairman, Committee on Cultural Facilities (C.C.F.)

Museums:

George H.J. Abrams, Trustee, Museum of the American Indian (M.A.I.); Director/Curator of the Seneca Museum

David C. Acheson, Board of Regents, Smithsonian Institution (S.I.), Washington, DC

Robert McCormick Adams, Secretary, Smithsonian Institution (S.I.), Washington, DC

Dean Anderson, Smithsonian Institution (S.I.), Washington, DC

Paul Bender, Trustee, Heard Martin E. Sullivan, Director, Heard Museum (Heard)

Willard Boyd, President, Chicago Field Museum (C.F.M.)

Jonathan Haas, Vice President, Museum Affairs, Field Museum of Natural History (C.F.M.), Chicago, Ill.

George Horse Capture, Buffalo Bill Historical Center (B.B.H.C.), Cody, WY

Edward Costikyan, Attorney, Museum of the American Indian (M.A.I.), Heye Foundation, NY

Vine DeLoria, Member of the Board of Trustees, Museum of the American Indian (M.A.I.), Heye Foundation

Donald Duckworth, President and CEO, Bernice P. Bishop Museum (Bishop)

Dr. Roland Force, Executive Director, Museum of the American Indian (M.A.I.), Heye Foundation, NY

Wilmot H. Kidd, Chairperson, Board of Trustees, Museum of the American Indian (M.A.I.), Heye Foundation, NY

Dan L. Monroe, Executive Director and CEO, Peabody Essex Museum (P.E.M.); Member, NAGPRA Review Committee.

William J. Moynihan, President, Milwaukee Public Museum (M.P.M.); also representing American Association of Museums.

Helen Maynor Scheirbeck, Development Director, North Carolina Indian Cultural Center (N.C.I.C.C.)

Elizabeth Tatar, Chairwoman, Bishop Museum, Hawaii (Bishop)

Myron Thompson, Trustee, Bishop Estate (Bishop)

Philip Thompson, Director, Museum of Northern Arizona (M.N.A.)

Carroll L. Wainwright, Jr., Trustee and Counsel, American Museum of Natural History (A.M.N.H.)

Richard West, Director, National Museum of the American Indian (N.M.A.I.); and also representing the American Association of Museums.

Professional Organizations:

Paula Barran, Attorney, Barran and Leibman (B.L.), LLP

Paul Bender, Professor of Law, Arizona State University (A.S.U.) College of Law

Walter Fleming, Acting Director, Native American Studies, Montana State University (M.S.U.)

John Fowler, Acting Executive Director, Advisory Council on Historic Preservation (A.C.H.P.), Washington, DC

Mike Fox, American Association of Museums (A.A.M.), Heard
 Richard Hill, Artist, Sanborn, NY (Hill)
 Keith Kintigh, Chair, Task Force on Reburial and Repatriation, Society for American
 Archeology (S.A.A.)
 Duane King, Executive Director, Middle Oregon Indian Historical Society (M.O.I.H.S.)
 Thomas King, Director, Cultural Resource Preservation (C.R.P.)
 Patricia M. Lambert, American Association of Physical Anthropologists (A.A.P.A.), Utah
 State University
 Mark Leone, Chairman, Governments Affairs Committee Society for American Archaeology
 (S.A.A.), Washington DC
 Tom Livesay, American Association of Museums (A.A.M.), Director, Museum of New
 Mexico
 James Reid, Vice President, Antique Tribal Art Dealers Association (A.T.A.D.A.)
 Alan L. Schneider, Director, Friends of America's Past (F.A.P.)
 Richard B. Stamps, Association Professor of Anthropology, Oakland University (O.U.),
 Rochester, Michigan
 Martin E. Sullivan, CEO, Historic St. Mary's City (H.S.M.C.); NAGPRA Review Committee.

Raymond H. Thompson, Director, Arizona State Museum, appearing on behalf of the
 American Association of Museums (A.A.M.)
 Rebecca Tsosie, Professor, Law, Arizona State University (A.S.U.), Tempe.
 Rosita Worl, President, Sealaska Heritage Foundation (S.H.F.); also representing Sealaska
 Corp.

Indian Organizations:

Cecil F. Antone, Lieutenant Governor, Gila River Indian Community. (G.R.I.C.)
 Elizabeth Blackowl, President, Pawnee Tribe of Oklahoma (P.T.O.)
 Tall Bull, Elder and Religious Leader, Northern Cheyenne Tribe, Inc. (N.C.T.) Lame Deer,
 MT
 Michael Doss, Board Member, National Indian Education Association (N.I.E.A.)
 Alan S. Downer, Director, Navajo Nation Historic Preservation Department (N.N.H.P.D.)
 Walter Echo-Hawk, Attorney, Native American Rights Fund (N.A.R.F.)
 Edward Lone Fight, National Congress of American Indians (N.C.A.I.)
 Jerry Flute, Acting Executive Director, Association of American Indian Affairs (A.A.I.A.)
 Robert P. Gough, attorney, Estate of Tasunke Witko; also representing Rosebud Sioux Tribe
 (R.S.T.) NAGPRA Committee.
 Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation
 (T.A.T.F.B.R.); also representing Aberdeen Area Tribal Chairmen's Association.
 Michael S. Haney, Chairman, Repatriation Committee of the United Indian Nations in
 Oklahoma (R.C.U.I.N.O.)
 Susan Shown Harjo, Executive Director, National Congress of American Indians (N.C.A.I.)
 Russell P. Hartman, Navajo Tribal Museum (N.T.M)
 Vincent Johnston, Onondaga Nation (O.N.)
 Kina'u Boyd Kamali'i, Board Chairperson, Committee on Land and Sovereignty, Hawaii
 Office of Hawaiian Affairs (OHA).
 Edward L. Kanahale, President, (HUI)

Jefferson Keel, Lieutenant Governor, Chickasaw Nation (C.N.)
 A. Gay Kingman, Executive Director, National Congress of American Indians (N.C.A.I.)
 Lloyd Kiva New, Founder and Acting President Institute of American Indian (I.A.I) and
 Alaska Native Culture and Arts Development, Santa Fe, NM
 Patrick Lefthand, Councilman, Confederated Salish and Kootenai Tribes of the Flathead
 Nation (C.S.K.T.F.N.)
 Oren Lyons, Chief Onondaga Nation (O.N.)
 Lydia Mai'oho, chairperson, Native Hawaiian Historic Preservation Task Force
 (N.H.H.P.T.F)
 Charles Maxwell, (HUI)
 Armand Minthorn, Board Member, Confederated Tribes of the Umatilla Indian Reservation,
 (C.T.U.I.R.) NAGPRA Review Committee.
 Tessie Naranjo, Chairperson, NAGPRA Review Committee (NAGPRARC)
 Earl Old Person, Chairman and Chief Blackfeet Tribal Council, Browning, MT (B.T.C.)
 William Parker, Southern Cheyenne (S.C.)
 Vicki Santana, Legal Council, Blackfeet Tribal Council (B.T.C.), Browning, MT
 Lonnie Selam, Secretary, Cultural Committee, Yakima Tribal Council (Y.T.C.)
 Henry J. Sockbeson, Senior Staff Attorney, Native American Rights Fund (N.A.R.F.)
 Ernie Stevens Jr., Member, Business Council, Oneida Tribe of Wisconsin; representing
 National Congress of American Indians (N.C.A.I)
 Dean B. Suagee, representing Keepers of the Treasures: Cultural Council of American
 Indians, Alaska Natives, and Native Hawaiians (C.C.A.I.A.N.N.H.).
 Jesse Taken Alive, Chairman, Standing Rock Sioux Tribe Tribal Business Council
 (S.R.S.T.T.B.C.); representing North Dakota Intertribal Reinterment Committee.
 Jack F. Trope, Staff Attorney, Association of American Indian Affairs (A.A.I.A)
 John T. Vance, Indian Claims Commission (I.C.C.)
 Nelson Wallulatum, Chief, Wasco Tribe (W.T.) and tribal council member, Confederate
 Tribes of Warm Springs, Representing the Affiliated Tribes of Northwest Indians,
 Portland, OR
 Thomas R White, Gila River Indian Community
 Pemina Yellow Bird, Cultural Preservation Officer, Three Affiliated Tribes of the Fort
 Berthold Reservation.

APPENDIX D: HEARINGS REVIEWED FROM 1987–1990

Elect ed Officia ls	02/12/1987 Transfe r of U.S. Custom House to M.A.I	02/20/1987 Native Americ an Cultura l Preserv ation Act	11/12/1987 Nation al Americ an Indian Museu m Act	07/29/1988 Native Americ an Museu m Claims Commis sion Act	5/12/1989 Nation al Memor ial Museu m of the Americ an Indian	5/9/1989 7/20/1989 Establi shment of the Nation al Museu m of the Americ an Indian	05/14/90 Native Americ an Graves and Burial Protecti on Act	07/17/90 Protecti on of Native Americ an Graves and Repatri ation of Human Remain s and Sacred Objects
		Sen. Melche r		Sen. Melche r				
		Sen. Inouye, S.C.I.A .	Sen. Inouye, S.C.I.A .	Sen. Inouye, S.C.I.A .	Sen. Inouye, S.C.I.A .	Sen. Inouye, S.C.I.A .	Sen. Inouye, S.C.I.A .	
					Sen. McCai n, S.C.I.A .		Sen. McCai n, S.C.I.A .	
						Rep. Dorgan		
						Sen. Campb ell		
						Rep. Weiss		
						Rep. Rangel		
	Sen. Moyni han				Sen. Moyni han			
	Foley							
	Michel s							
	Friedla							

Government Agencies
 National Park Service
 Committee on Cultural Facilities
 North Carolina Commission on Indian Affairs
 Land Use Planning

nder							
				Sen. Bingaman			
				Sen. Ford, R.A.C.			
				Mann	Mann		
				Coffey	Coffey		
Abrams							
Flanders							
Diamond				Diamond			
Barell							
							Rep. Bennett
							Sen. Akaka
						Rodgers N.P.S.	
Tauber, C.C.F.							
				Revels, N.C.C.I.A.			
						Antone, L.U.P.C.	

Commission Office of Hawaiian Affairs Museums Smithsonian Institution Smithsonian Institution American Museum of Natural History Heard Museum Chicago Field Museum Bishop Museum North Carolina Indian Cultural Center Buffalo Bill Cody Historical							
						Ching, O.H.A.	
		Adams, S.I.	Adams, S.I.	Adams, S.I.	Adams, S.I.		
			Acheson, S.I.				
	Wainwright, A.M.N.H.						
						Bender, Heard	Sullivan, Heard
						Boyd, C.F.M.	
						Tatar, Bishop	
					Scheirbeck, N.C.I.C. .C		
					Capture, B.B.H. C.		

Center Bishop Museum Museum of Northern Arizona Museum of the American Indian Museum of the American Indian Museum of the American Indian Professional Organizations Society for American Archaeology Society for American Archaeology American							
						Thompson, Bishop	
						Thompson, M.N.A	
	Abrams, M.A.I.		Kidd, M.A.I.		Kidd, M.A.I.	DeLoria, M.A.I.	
	Force, M.A.I.		Force, M.A.I.				
			Costikyan, M.A.I.			Costikyan, M.A.I.	
		Leone, S.A.A.				Leone, S.A.A.	
						Keith Kintigh, S.A.A.	Keith Kintigh, S.A.A.
			Fox, A.A.M.			Livesay, S.A.A.	Thompson, S.A.A.

Association of Museums						A.A.M.	A.A.M
				Hill, Artist			
Montana State University					Fleming, M.S.U.		
Oakland University					Stamps, O.U.		
Middle Oregon Indian Historical Society					King, M.O.I. H.S.		
Advisory Council on Historic Preservation		Fowler, A.C.H. P.					
Cultural Resource Preservation		King, C.R.P.					
Antique Tribal Art Dealers Association							Reid, A.T.A. D.A.
Indian Organizations							
			Vance, I.C.C.				
Nation				Harjo,	Harjo,		

al Congre ss of Americ an Indians					N.C.A. I.	N.C.A. I.		
Associ ation of Americ an Indian Affairs						Flute, A.A.I. A.		
Associ ation of Americ an Indian Affairs						Trope, A.A.I. A.		
Nation al Indian Educati on Associ ation						Doss, N.I.E.A .		
Navajo Tribal Museu m				Hartma n, N.T.M.				
Ondon ga Nation				Johnsto n, O.N.				
Ondon ga Nation				Oren Lyons, O.N.	Oren Lyons, O.N.			
Souther n Cheyen ne				Parker, S.C.				
Norther n Cheyen ne Tribe		Tall Bull, N.C.T.						
Native Americ				Echo- Hawk,		Echo- Hawk,	Echo- Hawk,	

an Rights Fund				N.A.R. F.		N.A.R. F.	N.A.R. F.	
Native Americ an Rights Fund								Sockbe son, N.A.R. F.
Nation al Congre ss of Americ an Indians							Fight, N.C.A. I.	
Nation al Congre ss of Americ an Indians								Kingm an, N.C.A. I.
Gila River Indian Comm unity							White, G.R.I.C .	
Native Hawaii an Histori c Preserv ation Task Force							Mai'oh o, N.H.H. P.T.F.	
Repatri ation Comm tee of the United Indian Nations in Oklaho								Haney, R.C.U.I .N.O.

ma							
Confederated Salish and Kootenai Tribes of the Flathead Nation HUI							Lefthand, C.S.K. T.F.N.
HUI							Kanahele, HUI
							Charles Maxwell, HUI
Blackfeet Tribal Council		Old Person, B.T.C.					
Blackfeet Tribal Council		Santana, B.T.C.					
Wasco Tribe		Wallulatum, W.T.			Wallulatum, W.T.		
Yakima Tribal Council					Selam, Y.T.C.		
Institute of American Indian				Kiva New, I.A.I.			

APPENDIX E: HEARINGS REVIEWED FROM 1993–2005

	5/27/1993 Native American Graves Protection and Repatriation Act	4/20/1999 Native American Graves Protection and Repatriation Act	12/6/1995 Implementat ion of the Native American Graves Protection and Repatriation Act	7/25/2000 Native American Graves Protection and Repatriation s Act	7/28/2005 Native American Graves and Burial Protection Act, Oversight Hearing on Proposed Amendment
Elected Officials		Sen. Inouye, S.C.I.A.	Sen. Inouye, S.C.I.A.	Sen. Inouye, S.C.I.A.	Sen. Inouye, S.C.I.A.
	Sen. McCain, S.C.I.A.				Sen. McCain, S.C.I.A.
			Rep. Dorgan, S.C.I.A.		Rep. Dorgan, S.C.I.A.
	Sen. Campbell		Sen. Campbell		
		Hutt			
Government Agencies National Park Service	Rodgers N.P.S.				
Department of the Interior Office of Hawaiian Affairs					Hoffman, D.I.
Museums	Kamali'I, O.H.A.				
Chicago Field Museum	Haas, C.F.M.				
Bishop Museum		Duckworth, Bishop		Duckworth, Bishop	
Museum of the				West, M.A.I	

American Indian Peabody Essex Museum Milwaukee Public Museum Professiona l Organizatio ns Society for American Archaeology Barran and Leibman LLP Arizona State University Arizona State University Friends of America's Past American Association of Physical Anthropolog ists Historic St. Mary's City Sealaska Heritage Foundation National Park Service National Congress of American Indians Native American Rights Fund					
			Monroe, P.E.M.		
			Moynihan, M.P.M.		
		Keith Kintigh, S.A.A.		Keith Kintigh, S.A.A.	Keith Kintigh, S.A.A.
					Barran, B.L., LLP
					Bender, A.S.U.
				Tsosie, A.S.U.	
					Schneider, F.A.P
					Lambert, A.A.P.A.
				Sullivan, H.S.M.C.	
		Worl, S.H.F.		Worl, S.H.F.	
			Stevenson, N.P.S.	Stevenson, N.P.S.	
				Harjo, N.C.A.I.	
					Echo-Hawk, N.A.R.F.

Native American Rights Fund Confederate Tribes of the Umatilla Indian Reservation Chickasaw Nation Three Affiliated Tribes of the Fort Berthold Reservation Navajo Nation Historic Preservation Department Rosebud Sioux Tribe National Congress of American Indians Gila River Indian Community Pawnee Tribe of Oklahoma Standing Rock Sioux Tribe Tribal Business Council NAGPRA Review Committee Keepers of the Treasures: Cultural Council of	Sockbeson, N.A.R.F.				
		Minthorn, C.T.U.I.R.		Minthorn, C.T.U.I.R.	
				Keel, C.N.	
		Hall, T.A.T.F.B.R.		Yellow Bird, T.A.T.F.B.R.	
				Downer, N.N.H.P.D.	
		Gough, R.S.T.		Gough, R.S.T.	
		Stevens, N.C.A.I.			
			Antone, G.R.I.C.		
			Blackowl, P.T.O		
			Taken Alive, S.R.S.T.T.B. C.		
	Naranjo, NAGPRAR C		Naranjo, NAGPRAR C		
	Suagee, C.C.A.I.A.N .N.H.				

American Indians, Alaska Natives, and Native Hawaiians				
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APPENDIX F: INTERVIEW GUIDE

Interview guide for repatriation movement leaders Harjo, Echo-Hawk and West.

1. When do you see the social justice movement that leads to the passage of the NMAI Act and NAGPRA emerging from the Indian Rights social justice movements? Some point to the late 70s through the 80s—would you agree?
2. Can or should one differentiate between this movement and the broader Indian Rights social justice movements? If yes, how?
3. How did you come to assume your role as a leader of the social justice movement that leads to the passage of the NMAI Act and NAGPRA?
4. Who else assumed the early leadership of the movement (with you)? How were these leaders selected? How would you characterize their leadership?
5. How did the leadership of the movement change over time, if at all?
6. What qualities of leadership do you think are most valuable?
7. How would you describe your leadership style?
8. What existing groups became part of the wider movement?
9. How did pan-tribal coalitions form?
10. What additional alliances with outside groups did the movement foster?
11. How, if at all, were you involved in building alliances, and with whom?
12. What were the initial goals of the movement?
13. Who decided what these goals should be?
14. How were these goals agreed upon by the group?
15. Did these goals change over time? If so, how?
16. Were there disagreements about the movements' goals? If so, how were these disagreements resolved? What compromises were developed, if any?
17. What do you think were the strategic victories of the movement?
18. What weaknesses might you identify in the movement's organization? How were these addressed?
19. What of the movement's goals were fulfilled by the words contained within the NMAI Act?
20. What goals remain unfulfilled re the above?
21. What of the movement's goals were fulfilled by the implementation of the NMAI Act through the creation of the museum, as reflected in its operating policy?
22. What goals remain unfulfilled re the above?
23. What are the primary goals of the movement today?

APPENDIX G: INTERVIEW SUBJECT BIOGRAPHIES

Walter Echo-Hawk is a lawyer, tribal judge, scholar and activist. His legal experience includes cases involving Native American religious freedom, prisoner rights, water rights, treaty rights, and reburial/repatriation rights. In 1989, as a senior staff attorney of the Native American Rights Fund, he negotiated a national reburial agreement with the Smithsonian Institution, which was enacted into law as the NMAI Act. In 1989–1990, he helped lead a national campaign for passage of the Native American Grave Protection and Repatriation Act—an important human rights law. In 1994, he represented the Native American Church of North America to secure passage of the American Indian Religious Freedom Act Amendments of 1994 to protect religious use of peyote by Indians. Presently he represents the Klamath Tribes of Oregon to quantify treaty-protected water rights in Southern Oregon in a highly publicized and controversial set of federal and state litigation. A prolific writer, his publications include an award-winning book *Battlefields and Burial Grounds* (1994). He has received various awards, such as, the American Bar Association “Spirit of Excellence Award” for legal work in the face of adversity and the “Civil Liberties Award” from the ACLU of Oregon for significant contributions in the cause of individual freedom. Since 1995, Walter has served as a member of the Carter Center’s International Human Rights Council. He is admitted to practice law before the United States Supreme Court, Colorado Supreme Court, U.S. Courts of Appeals for the Eighth, Ninth, and Tenth Circuits, and a host of federal District Courts. Walter is a member of the Pawnee Nation, belonging to the Kitkahaki Band, born on the Pawnee reservation in Oklahoma. He received a political science degree from Oklahoma State University (1970) and law degree from the University of New Mexico (1973).

Suzan Shown Harjo (born 1945) is one of the leading Native American activists in the United States. She has raised public awareness about issues of concern to Native Americans by working on legislation to protect their rights, preserve their languages and traditions, reduce their high levels of poverty, alcoholism and unemployment, and safeguard their sacred lands. Through a multitude of activities—lobbying legislators, speaking to the media, and writing numerous articles for general circulation and Native American publications—Suzan Shown Harjo has been able to exert her influence and raise the consciousness of a not-always-receptive public. Her most important activity, however, is serving as president and director of the Morning Star Institute in Washington, D.C., the oldest and largest Native American advocacy group in the country. That organization, which Harjo founded in 1984 in memory of her late husband, Frank Harjo, reminds the federal government of the treaty rights promised in return for land cessions. It also tries, in the face of constant budget cuts to get the government to honor the education, housing, and health benefits promised to Native Americans. In addition, Harjo is a founding trustee of the National Museum of the American Indian, which opened its first facility in New York City in 1994. The main museum will be built in Washington, D.C. on the Capitol Mall sometime after the year 2000. To educate young Americans about Native American concerns, she helped develop “Red Thunder,” a Native American rock band, and Indian rock music videos, including “Makoce Wakan: Sacred Earth,” a special that runs often on VH-1, a music video cable station. Harjo has appeared on the *Oprah Winfrey Show*, *Larry King Live*, CNN’s *Talkback Live*, C-SPAN’s *Washington Journal*, and many others.

Martin E. Sullivan served as director of the Smithsonian’s National Portrait Gallery. Previously he was the chief executive officer of the Historic St. Mary’s City Commission in Maryland, a position he held since 1999. He oversaw museum research,

interpretation and site preservation of Maryland's first capital (1634–1695), a National Historic Landmark. Sullivan also coordinated master planning, facility development and academic programs in public history and museum studies with St. Mary's College of Maryland. Sullivan was director of the Heard Museum, an internationally renowned museum of American Indian cultures and art in Phoenix, from 1990 to 1999. From 1983 to 1990, Sullivan served as director of the New York State Museum in Albany, N.Y., and as assistant commissioner for museums in the State Education Department. Sullivan has chaired three national boards concerned with advancing museum standards, ethics and practices: the Accreditation Commission of the American Association of Museums; the U.S. State Department's Cultural Property Advisory Committee; and the review committee overseeing compliance with the Native American Graves Protection and Repatriation Act. Currently, he is co-chair of an American Association of Museums ethics task force on antiquities. In 2006, Sullivan was named to the Centennial Honor Roll of the American Association of Museums, which recognizes outstanding efforts in advocacy and leadership. Sullivan received a doctorate degree (1974) and master's degree (1970) in American history from the University of Notre Dame and a bachelor's degree (1965) in history from Siena College in Loudonville, N.Y.

W. Richard West a citizen of the Cheyenne and Arapaho Tribes of Oklahoma and a Peace Chief of the Southern Cheyenne, is director of the Autry National Center. He is founding director of the Smithsonian's National Museum of the American Indian, and retired in 2007. West has devoted his professional life and much of his personal life to working with American Indians on cultural, educational, legal and governmental issues. Before becoming director of the National Museum of the American Indian, West was a partner in the Washington, D.C., office of Fried, Frank, Harris, Shriver & Jacobson, and,

subsequently, in the Indian-owned Albuquerque law firm of Gover, Stetson, Williams & West, P.C. He served as general counsel and special counsel to numerous tribes and organizations. As director of the National Museum of the American Indian, West was responsible for guiding the successful opening of the three facilities that will comprise the National Museum of the American Indian. He oversaw the creation and completion of the George Gustav Heye Center, the museum's exhibition facility, which opened in New York City on October 30, 1994. He supervised the overall planning of the museum's Cultural Resources Center, which houses its vast 800,000-object collection, and is located in Suitland, Md. West's philosophy and vision for the museum have been critical in guiding the architectural and program planning of the Mall museum. Established in 1989, through an Act of Congress, the National Museum of the American Indian is an institution of living cultures dedicated to the life, languages, literature, history and arts of the Native peoples of the Western Hemisphere. The museum includes the National Museum of the American Indian on the National Mall, the George Gustav Heye Center, a permanent exhibition and education facility in New York City, and the Cultural Resources Center, a research and collections facility in Suitland, Md.

APPENDIX H: SELECTED NMAI STAFF PUBLICATIONS

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APPENDIX I: Policy Meetings

Starting in 2003, as Project Director of the Religion and the Arts Initiative (RAI) at Harvard's Center for the Study of World Religions (CSWR) I worked with partners and colleagues to create a three-year collaboration between three museums—the Smithsonian National Museum of the American Indian, Harvard's Peabody Museum of Archaeology and Ethnology (PMAE), and the Alutiiq Museum and Archeological Repository in Kodiak, Alaska. The CSWR served a worldwide constituency of scholars, religion leaders, policy makers, and concerned individuals through comparative, historical and cultural study of the world's major religions and spiritual traditions. The Religion and the Arts Initiative was a five-year program of the CSWR that encouraged the study of religion through the arts, and addressed key ways in which the study of religion is critically important to museums. The museum collaboration was one project within the larger Religion and the Arts Initiative.

The three-year museum collaboration's goals were to record, disseminate, and develop new policy and models for museum/community partnerships and planning in the care, exhibition, and interpretation of religious and/or culturally sensitive material. This collaboration is uniquely suited as one source of data for the proposed case study for several reasons. It involved nationally-prominent museums with the two most extensive collections of Native North American collections in the nation, the Smithsonian National Museum of the American Indian and Harvard's Peabody Museum of Archaeology and Ethnology, along with another nationally-recognized tribal museum, the Alutiiq Museum. The collaboration was designed to allow the museums' directors and key staff to inform one another's work to develop new policy at each institution. Final policies and related essays from the collaboration were published in a 2004 publication, *Stewards of the Sacred*. Meeting agendas are reproduced, below.

*Roundtable Discussion Series:
Care and Handling of Sacred Materials in Museums*

*Partner institutions:
Alutiiq Museum and Archaeological Repository
Smithsonian National Museum of the American Indian
Peabody Museum of Archaeology and Ethnology, Harvard University
Center for the Study of World Religions, Harvard University*

Premise:

The experience of these three institutions with NAGPRA and the NMAI Act has led to innovations in collection management, access, and interpretation that are guided by a deeper sense of stewardship for the sacred and spiritual heritage of living communities, and for this reason their experience may be of value to many other collection-holding institutions.

Conversation one: Partnerships and policy development

Peabody Museum: April 7, 2003

National Museum of the American Indian: September 30, 2003

Alutiiq Museum and Archaeological Repository: July 8, 2003

I. Partnerships and consultation: Initiating a dialogue and developing a relationship between the institution and the concerned culture/community.

Why is consultation important or necessary? What are the elements of a successful consultation? How have consultations broken down?

What are your institutional guidelines and procedures for consultations with Native communities? Are they clear, consistent, and followed uniformly by staff?

Who is responsible for initiating/facilitating consultation (both parties)?

How is the information from the consultation managed and who manages it?

How do you combine repatriation consultations with opportunities for dialogue on research protocols, exhibitions, and educational programs?

What specific innovations have you developed to build partnerships and relationships with tribes that are inspired by but extend beyond specific guidelines in the NAGPRA legislation?

II. Access: Providing access to collections and records, and sharing information between parties.

Who is granted access to collections and archives? Can access to certain types of collections and information be restricted from the public?

What is considered cultural property? What obligation does the institution have to protect the integrity of cultural property associated with the community?

III. **Developing policy: Implementation of protocols and guidelines to consider and/or facilitate the requests of the culture/community.**

What should be the guiding principles and key considerations for forming policy at your museum with regard to sacred objects, knowledge, and ceremonies? And who, both inside and outside the institution, should be part of the planning process?

What is the current process by which procedures are created for managing culturally sensitive collections, and who is involved in this process?

What are potential incompatibilities between established museum collections management policy and requests for alternate and/or extraordinary care and handling of materials by the culture/community? How are these incompatibilities mitigated?

Who is responsible for implementing and maintaining new protocols and guidelines? What structure is currently in place to consider and act upon these concerns?

What factors or elements could your institution add to this structure that would improve your ability to respond to requests regarding the care and management of culturally sensitive collections?

Conversation two: Applied policy and outcomes

Alutiiq Museum and Archaeological Repository: July 9, 2003

Peabody Museum: September 9, 2003

National Museum of the American Indian: December 2, 2003

I. **Evolving museum policies and practices**

What new guidelines and procedures have emerged from your policy development and planning processes regarding care and handling (also including conservation, display, interpretation, research, publication, etc.) of culturally sensitive collections and information that are not dictated by NAGPRA, but were developed as a result of your institution's experience with NAGPRA?

What process was followed to create these guidelines and procedures?

How has the understanding generated by such new policies and procedures animated your museum's programs, courses, publications, web material, exhibitions, or other educational venues? How might they further imbue your museum's programs and functions—or drive them—in the future?

How could existing processes your museum follows to create guidelines and policy be improved? And how could the current guidelines be improved?

How could these procedures relate to collections beyond Native North American collections?

II. **Religious practice in museums**

If a community makes a request to perform religious ceremonies or ritual practices in the museum, how has this been accommodated by your institution?

What conditions would allow objects to be removed for ceremonial observance by affiliated communities and then returned to the museum?

How might your museum consider caring for objects at the request of the community that have been legally repatriated?

Inter-institutional Dialogue, December 16, 2003

NMAI Cultural Resources Center, Washington, D.C.

Directors and staff from the NMAI, the Peabody Museum, and the Alutiiq Museum and Archaeological Repository present for discussion their internal draft guidelines for the care, handling, and interpretation of culturally sensitive collections and associated knowledge.

Publication: Transferable Innovations, May 2004

Stewards of the Sacred: Sacred Artifacts, Religious Culture, and the Museum as Social Institution, co-published by CSWR and the American Association of Museums

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