



# Continued Disembodiment: NAGPRA, CAL NAGPRA, and Recognition

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## Abstract

Tribes in California have a long and complicated history fighting for the repatriation of their ancestors and cultural items from institutions, more specifically universities and Anthropology departments. With the passing of the Native American Graves Protection and Repatriation Act (NAGPRA) (1990), Cal NAGPRA (2001), and the United Nation Declaration of Rights for Indigenous Peoples (UNDRIP) (2007), many Tribes continue to ask the question, why are basic human rights not afforded to them? These policies, created out of Indigenous human rights initiatives, are a façade that hinders full repatriation efforts. The university is an appendage of the settler state and reproduces epistemological violence by continuing to mark California Indians as white possessions (Morton-Robinson 2015). Tribes continue to advocate for their ancestors' return home from these universities, repositories, museums, despite the inadequacies of repatriation laws. Repatriation laws, while sometimes useful in returning Native ancestors to back tribes, are limited in scope and fail to satisfy basic human rights for Indigenous people.

## Introduction

The legacy of archaeology, anthropology, and repatriation loom large within the California landscape. After all, UC Berkeley is where Alfred Kroeber, the famed and acclaimed anthropologist of settler-colonial California began his Anthropology program in earnest with the assistance of Phoebe Hearst, benefactor of UC Berkeley and under the mentorship of Franz Boas, "the Father of American Anthropology." There is much debate within anthropological and California Indian circles about Ishi, the Yahi man who Kroeber is most closely associated with, and the ethics about his treatment both in life and after death. It is difficult to ever fully know what Ishi felt about these interactions and without him here or any true record of his feelings, it is unethical to suppose his attitudes of his new surroundings. At a time when World's Fair Exhibitions captured national and international imagination, Ishi was struggling to survive after the destruction of his people, the Yahi along with other Native American people and their assimilation to the white man's wilderness.

Ishi's story has been told and retold many times. Ishi was the "last of his people" after a massacre of his tribe by white settlers and the death of his family while hiding near Deer Creek, in what is now known as the Ishi Wilderness in Lassen Na-

tional Forest. He, out of desperation, traveled to Oroville, CA, and after was claimed by Alfred Kroeber to study and exploit for professional gain. During this time white onlookers held competing views of Native Americans, before and after Ishi traveled to Oroville. There remained the genocidal attitudes of Indian hunters as well as the anxieties of white onlookers who were horrified that Indian death, as embodied by Ishi's struggle, destroyed their romanticized view of Native Americans fading into the sunset. This horror in "polite society" did not translate to the ethical treatment of Ishi's remains after his death nor ethical treatment in life. Ishi spent his remaining years as a living museum exhibit at a UC Berkeley building in San Francisco under the eye of Alfred Kroeber and his anthropological team.

One of the most famous cases of repatriation is that of Ishi's brain. It is well known to California Indian people working in NAGPRA/repatriation spaces and it is an example of the continuation of violence toward California Indian people after our deaths. After Ishi's death in Berkeley, those who cared for Ishi in his later life and, knowing the custom of the Yahi to keep the body intact after death, sent his brain to the Smithsonian Institution in 1917. This act defied all proper mortuary customs for the Yahi. The brain was lost by the Smithsonian until it was found in 1999 after Art Angle (Konkow Maidu) as well as representatives from Pit River and Redding Rancheria, launched a search for his remains. Ultimately, his brain was returned to the Redding Rancheria and Pit River tribes who were determined by the Smithsonian Institution

as being Ishi's most likely descendants—this repatriation included both federally and non-federally recognized tribes in collaboration with each other. The tribes jointly reburied Ishi in a place where he could no longer be disturbed; far from the shelves of the Smithsonian Institution or any other research repository (Curtius 1999). He was allowed to finally rest. The same cannot be said for many ancestors who remain in research centers, universities, and museums.

William Bauer, Jr. (Round Valley Indian Tribes), details the role that Kroeber's benevolent violence and research have wrought to California Indian people to the present (2014). Kroeber's relationship with Ishi was not physically violent but it was also not benign. Kroeber's anthropological research depicted California Indians as primitive, echoing the racist ideas of the nineteenth century. Kroeber created essentialist categories about California Indian identity that denied Ishi and other Native people's modernity (Bauer 2014). This legacy has continued into the narratives of California Indian people today. In many spaces, even those well-intentioned spaces of social and environmental justice, we have "disappeared" and continue to be relegated to a past that we did not design nor ask for. We remain the primitive Indians, to more than we care to admit, who can only be found within the archeological record, in museums, in exhibits in remote visitor centers, and in brief mentions on interpretive plaques.

Neil G. W. Curtis in "Universal museums, museum objects and repatriation" writes how "...archaeology and anthropology are the outcomes of colonialism" (Curtis 2006:##). To many we

are “researchable”; our bones are the bones that must be radiocarbon dated for the good of humanity, for the good of all, making the California Indian into a tangible white possession. Challenging this assumption is of utmost importance for California Indians in attempting to repatriate our ancestors and other objects held in museum facilities. We are not merely research subjects nor should we resign ourselves to that. We are still arguing about who gets their ancestors back, using antiquated settler notions of Indian identity—detailed further in this article. This is why it is fundamentally important that Indian people become the deciders of their own fate and outcomes—a point made by many Indigenous scholars, but never taken into full consideration within settler-colonial law.

Many California Native ancestors and cultural items reside in non-Native repositories, museums, universities, private collections, etc. across the United States today. Native communities are often left with few resources when fighting for repatriation, with the exception of the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) and 2001 California NAGPRA (Cal NAGPRA). Yet, NAGPRA is reaching its 30th anniversary and continues to be critiqued by Natives scholars for its endless flaws, lack of legal teeth, and loopholes which often ends in devastating outcomes for Native communities (Hemenway 2010). In fact, CalNAGPRA has never been fully implemented. This article looks beyond the façade of NAGPRA as a well-intentioned law, but in essence made by the settler state as weak which in turn benefits them and allows for continued structural violence to take place. The settler state’s Native American oste-

ological collections reproduce a physical archive of Native bodies. This archive is not only grotesque, through Native Americans constant repatriation efforts, but allows this consistent accessibility to Native bodies. By continuing to use and keep Native bodies, it reproduces settler epistemological narrative of Manifest Destiny. We want to go further and problematize these issues of possession and authority, and ask to what degree are Native people granted basic human rights, self-determination over ethical codes for the treatment of their deceased, and the ability to practice our culture when so much of our cultural “artifacts” are not in our possession? (Lumsend 2016). Centering the article on California, weaves together the egregious ways the settler state is formed in a place that is home to over 200 federally and non-federally recognized Tribes and their experiences with the NAGPRA and the CalNAGPRA (Echo-Hawk 2016).

### **UNDRIP and Geneva Convention**

The most comprehensive overview of Indigenous human rights, as it relates to policy and international development, is found in the United Nations Declaration on the Rights of Indigenous People (UNDRIP). UNDRIP draws from existing international human rights laws. The UNDRIP is not a treaty but rather a strong “authoritative” statement that reaffirms the human rights of Indigenous people through an international lens (Echo-Hawk 2016). Indigenous scholar, Walter Echo-Hawk, writes that human rights are “as American as Apple Pie” and speaks to the “home grown language that Americans are familiar



with.” He argues that because Americans understand the basic tenets of human rights, they would readily support UNDRIP as a way to reframe the American legal system to support Indigenous human rights. However, human rights within the contexts he explains, the Bill of Rights and the American Revolution, were largely to the benefit of a white, male, landowning population not the Indigenous, Black, or Brown population (Echo-Hawk 2016). Familiar narratives of justice and equality under settler colonial laws and declarations are used to continuously subjugate Black and Brown bodies in the name of “justice.”

Although this has been defined by the United Nations as a solution and strategy for tribes to uplift their rights—the success of such reaffirmations in the U.S. legal setting, not to mention other western nations, is suspect. Ultimately, while a strong policy statement UNDRIP is not enforceable under international law. Which begs the question, what is the overarching goal of unfunded mandates internationally, nationally, and locally and how do we, as Indigenous people, move beyond this within repatriation cases?

A significant component of UNDRIP is Article 12. Article 12 details the rights of Indigenous people through the access and repatriation of ceremonial objects and human remains as detailed below:

Article 12:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to

the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned (United Nations 2011).

Like many unenforceable mandates this definition is left vague and the process to which “States shall seek to enable access” is unclear. To place the onus of ethical treatment of sacred objects, ancestral remains, as well as items of cultural patrimony within different settler colonial states is unreliable. The collection and continued care of those objects and ancestors have long been done without the input of tribal nations and communities throughout California.

Hupa scholar, Jack Norton argues that the violent treatment of Native Americans is in keeping with the definitions of genocide and ethnocide in the United Nation’s Treaty on the Geneva Convention for the Prevention and Punishment of the Crime of Genocide. Norton asserts that under the Treaty crimes such as ethnocide, defined as the “purposeful and willful intent to destroy in whole or in part, a social, ethnical, cultural group by means of murder, propaganda, imposing harsh socio-economic-medical conditions, and transferring children outside of their culture” are punishable by international law (Norton 1979). Similar to Echo-Hawk’s argument, Norton insists that Indian people should call upon international law to pursue justice within the United States and gain reparations

for the violence that has continued into the present day. The UNs Definitions of Genocide and Ethnocide could certainly be applied to the treatment of California Indian ancestral remains and items still held in trust by various museums and research centers throughout the state, nationally, and internationally. Genocide is not something relegated to the past, it is a systematic and continuous act that is inflicted on California Indian and other Indigenous people to this day.

The wholesale removal and re-search of Indian people to museums and research centers was done without consent and is a form of continued genocide. Jack Norton, in writing about the violence that Indian tribes of Northwestern California endured was one of the first scholars to pull in international human rights laws as a means to find justice within the United States. UNDRIP and the Geneva Convention should be used to highlight the fundamental cultural rights of Indigenous people that the U.S. government continually ignores. As Norton puts it, "There is no statute of limitations in the crime of genocide. Just as there is no statute of limitations in the crime of murder. The guilty must stand trial before the court of justice, one way or another" (Norton 1979:107). The fundamental questions remain, however, can international law such as UNDRIP and the Genocide Conference be used to successfully return ancestors, sacred objects, unassociated/associated funerary objects, and objects of cultural patrimony?

### **NAGPRA**

"No act was regarded as more degraded or spiritually dangerous to all...than in-

sulting the dead' - Julian Lang (Karuk)" (Platt 2011:85).

The Native American Graves Protection and Repatriation Act is a federal law intended to mandate repatriation of ancestors and culturally sacred objects back to federally recognized Native American Tribes and Native Hawaiian organizations (1990:101-601). NAGPRA, in a nutshell; only applies to federally funded institutions, leaving many private establishments to continue to house and possess Native items. The law allowed for institutions to inventory their collections and publish their findings to the national NAGPRA office, housed under the National Park Service (Cooper 2008). Following the announced inventories by federally funded institutions, Tribes could then access and request their ancestors or items that fall within the intricacies of the law for repatriation. As stated above, "NAGPRA is, first and foremost, human rights legislation. it is designed to address the flagrant violation of the 'civil rights of America's first citizens'" (Trope and Echo-Hawk 2000:139). Much of this rhetoric is from centuries of disregard of Native lives and their deceased by white settlers. Below is one story to preface the passing of national NAGPRA.

Prior to the NAGPRA passing, the rights of the deceased were few and far in-between especially for Native Tribes. Tony Platt, American academic, writes in *Grave Matters Excavating California's Buried Past*, "[b]eginning in 1854, California enacted legislation to 'protect the bodies of deceased persons,' making it a crime to 'disinter, mutilate or remove the body of any deceased person,' but Native bodies were in practice exempt from

protection of law" (2011:86). Yet, Native graves continued to be looted and left largely unprotected as "[s]ite looters have a variety of procedures and imagined justifications. They often attempt to achieve legitimacy..." (Mihesuah 2000:65). Walter Echo-Hawk, Pawnee scholar and author of *In The Courts of The Conqueror*, describes *Wana the Bear v. Community Construction* (1982) court case as one of the ten worst ever decided. Echo-Hawk explains how the Miwok Indians of central California, were forcibly removed from present day Stockton, California "...as miners systematically drove the Miwok Indians from their lands between 1850 and 1870, forcing them to leave their burial grounds behind" (2012:237). Over one hundred years later in 1979 a housing project was approved through the Stockton City Council for a final subdivision (p. 237-238). The residential housing tract began building and unearthed "well known graves" of 200 Miwok in the process. *Wana the Bear*, Miwok, claimed that California's law (1854) determined a cemetery is constituted by six or more people buried in one area. Yet, a huge human right violation the California Court of Appeals unfortunately "...held that the Miwok burial ground is not a cemetery under California Statutes since it was not used continuously as a graveyard without interruption for five years" (Echo-Hawk 2012:237). In the discussion of the lawsuit detailed how, "[t]he central issue in this case is whether the burial ground achieved a protectable status as a pub-

lic cemetery under the 1872 cemetery law by virtue of its prior status as a public graveyard. We hold that it did not" (*Wana the Bear v. Community Construction*) The Miwok, experienced brutal genocide from the city and state, forced removal, land theft, disenfranchisement, seen as "vanished" by the court (not using the cemetery consistently) and powerless over their ancestors fate of being post mortally unearthed for white housing. These settler laws and policies continue to reinforce themselves, in this case Native bodies were removed for development for white residents. NAGPRA is passed eight years after *Wana the Bear v Community Construction*. Acquainted to Native activism.<sup>1</sup>

NAGPRA's 30-year journey holds many successes for Tribes with repatriation and in some cases positive relationships with departments and staff. Edward M. Luby, and Melissa K. Nelson wrote, "More than one mask: The context of NAGPRA for museums and Tribes," how "...many museums and tribes only began to interact once NAGPRA consultation was mandated. As a consequence, for some museums and tribes, NAGPRA has truly been a transformative experience, though certainly not all of it has been positive" (Luby and Nelson, 2008:##). But there remain profound loopholes that unfortunately seem to keep Tribes constantly spinning their wheels. Some of these loopholes include; no clear definition of the term "consultation" within the law. This leaves many miscommunications and missed oppor-

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1. There is an abundance of literature that discusses NAGPRA and its history in detail. This article only captures a small piece of this history. See Devon Mihesuah, James Riding In, Walter Echo-Hawk, to name a few who write extensively on the NAGPRA.

tunities between Tribes and institutions. The term “Culturally Unidentifiable Human Remains” (CUHRs) is applied to signify the remains or items can not be identified for repatriation, thus allowing the institution ownership. The CUHR issue is centered in power, who gets to make the final determination who is- and who is not- CUHR. Often-times, it is not the Tribes making those decisions. There are many cultural items in foreign countries’ museums. To bring it back to a very familiar loophole within the NAGPRA, is the idea of Tribal recognition. The NAGPRA only applies to recognized Tribes, thus leaving approximately 85 non-federally recognized tribes in California not able to access the law (Office of Federal Acknowledgement). There is always the issue of funding, time, and organization on both Tribal and institutions to figure out logistics. For example, where to rebury remains so they will not be re-disturbed, does the Tribe have land and access to bury, are the remains contaminated (often time sprayed with chemicals for preservation) meaning they can not go into the ground. There are grants offered through National NAGPRA, but the burden is on the Tribes to apply. One issue that is out of the scope of the NAGPRA, but one worth mentioning as it applies to the colonization of California Indians, is the confiscation of Indigenous remains and cultural items by foreign countries such as Spain, Mexico, and Russia prior to the United States formation. This is not an exhaustive list of loopholes but pointing to some of these weaknesses within the law demonstrates the way California Native Tribes can easily be “left” out of the conversations or continuing to fight for their ancestors. Native people should

possess the power of their deceased, a basic human right.

### **Cal NAGPRA**

Cal NAGPRA or Assembly Bill (978) is an attempt by the state of California to close some of the loopholes left by federal NAGPRA namely, the exclusion of non-federally recognized tribes in the repatriation process. While repatriation laws are touted as the ideal way of gaining ancestral remains, items of cultural patrimony, sacred objects, and associated/unassociated funerary objects back to tribal communities, it is increasingly important to assert the inherent rights that California Indian tribes have over items that were collected through dubious circumstances and genocidal acts of violence. The act of collecting itself is a manifestation of violence. Most, if not all, archaeological digs and expeditions were done without the expressed consent of California Indian tribes or tribal representatives. When this is the legacy of many collections in federally and state-funded museums, it is difficult for those spaces to continue holding, or justifying that hold of, our people and objects without our knowledge or consent.

Cal NAGPRA was signed into law in 2001 and reads almost exactly like the federal NAGPRA regulation, with the exception of “state-funding” replacing “federal-funding,” in legislative text. While there is scant information on the original development of the law, there are a few details regarding its creation which are generally known. Then Senator Darryl Steinberg, currently Mayor of Sacramento, sponsored the bill (AB 978) with several California Indian tribes in the hopes of closing the federal NAG-



PRA loophole that excluded non-federally recognized tribes in that process (AB 978 2001). The law remained dormant for seventeen years until 2018, then Governor Edmund G. Brown signed Assembly Bill (AB) 2836 sponsored by Todd Gloria (D)-San Diego, a member of the Tlingit Haida Indian Tribes of Alaska, that required the University of California to develop a systemwide repatriation oversight committee, greater consultation with the California Native American Heritage Commission (NAHC) regarding repatriation, and two audits (2019 and 2021) to review NAGPRA/CalNAGPRA compliance within the UC system (AB 2836 2018). Another bill, AB 1662 sponsored by James Ramos (D) of Serrano/Cahuilla tribes and Gloria, signed into law by Governor Gavin Newsom, included further provisions to the systemwide repatriation oversight committee that required three members be from California federally recognized tribes and one from a non-federally recognized tribe (AB 1662 2019).

Finally, in 2019 AB 275, another CalNAGPRA amendment bill was proposed by Assembly member Ramos, used the definition of non-federally recognized tribes that was included in AB 978, the original CalNAGPRA legislation to determine non-federal status in California. The AB 275 legislative update included a narrow definition of non-federally recognized tribes that was in direct opposition to existing law, AB 52 (2014), that requires consultation with both federally and non-federally recognized tribes in the California Environmental Quality Act (CEQA) process and SB 18 (2004) that requires tribal consultation in the CEQA General Plan Update process. The new (old) non-federally recognized tribal

definition in AB 275 included the following language: The act defines “California Indian tribe” as a tribe that either meets the federal definition of Indian tribe or that is indigenous to California and is not recognized by the federal government, is listed on the Bureau of Indian Affairs (BIA) Branch Acknowledgment and Research petitioner list, and is determined by the commission to be a tribe that is eligible to participate in the repatriation process under the act (AB 275 2019).

This effectively meant that only four tribes would be included on the non-federally recognized tribal lists under the existing CalNAGPRA definition. This was because only four non-federally recognized tribes in California were seeking federal recognition through the BIA process. After massive pushback from non-federally recognized tribes including the Winnemem Wintu, Ramos pulled the bill from legislative consideration. The original CalNAGPRA (2001) legislation is still in effect along with the older definition of non-federally recognized tribes. This effectively creates two separate definitions in existing law through later passage of AB 52 (2014) and SB 18 (2004).

CalNAGPRA is an Indigenous human rights law with little to no funding behind it. As defined in AB 2836, the “United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of Indigenous peoples to the repatriation of their human remains, and recognizes that states shall seek to enable the access or repatriation of ceremonial objects and human remains through fair, transparent, and effective mechanisms developed in conjunction with the Indigenous peoples concerned.” The inclusion of repatriation



definitions from the UN Declaration on the Rights of Indigenous People, considered a human rights doctrine with a focus on Indigenous people globally, in AB 2836 supports CalNAGPRA as a human rights law. Unfortunately, without funding attached to CalNAGPRA maintaining compliance with the law is increasingly difficult for NAGPRA/CalNAGPRA practitioners. Funding for NAGPRA/CalNAGPRA programs often come from administrative core budgets, if available and advocated for by leadership, NAGPRA grants, or granting processes through tribal governments and councils. There is no direct funding for NAGPRA/CalNAGPRA programmatic functions across institutions as provided by the legislation.

There are no defined processes associated with CalNAGPRA, despite being active and in California statute for nineteen years. The California Native American Heritage Commission (NAHC) is currently working to change that through consultation efforts with California Indian Tribes and a wholesale overhaul of the University of California (UC) NAGPRA and Repatriation Policies. In June 2020, the California State Auditor released an independent report as required by AB 2862, that highlighted the inadequacies of NAGPRA/CalNAGPRA implementation in the UC system and through the NAHC (Auditor of the State of California 2020). In particular, the audit highlighted the continued disjointed nature of NAGPRA/CalNAGPRA compliance between the UCs; there is no standardized process for repatriation between the campuses creating unnecessary confusion for tribes. It also highlighted the competing definitions of non-federally recognized tribes in CalNAGPRA (2001),

SB 18 (2004), and AB 52 (2014). Additionally, NAHC has not according to the audit, developed a viable list of both federally and non-federally recognized tribes eligible for repatriation—most likely due to the state inconsistencies over non-federally recognized tribal status. Ultimately, the audit was meant to highlight the discrepancy in the implementation of NAGPRA/CalNAGPRA that has been ongoing for decades due to lack of funding, unclear processes, and inadequate communications with tribes. The original law was long considered dormant by those who were paying attention to it. More recently there has been a call to revitalize and create viable funding mechanisms and regulations for the law as well as address issues surrounding the definition of non-federally recognized tribes (“California Indian Tribe” 2019).

Most sources on CalNAGPRA define it as a “well-intentioned” law with few financial resources attached to it making compliance difficult. As Hupa scholar, Stephanie Lumsden notes: “Well-meaning things are often cloaked in White Supremacy” (Heidegger 2018). Expectation that unfunded mandates, such as federal NAGPRA and Cal NAGPRA, should fulfill their intended purpose with little to financial, or tribal support directly negates the “good-intentions” of the laws. These human rights laws without adequate regulation or funding mechanisms often fade from public view and breed distrust within tribal communities. Rather than looking to laws and regulations to define Indigenous people’s human rights in California and beyond, it is fundamentally important for California Indian people to assert their inherent sovereignty and self-determination. Human rights, as a field and subject, has

long been the subject of policy, legislation, and state processes; often depending on these structures to provide justice to marginalized people. Human Rights as a whole is defined by neoliberal political institutions and is inadequate in addressing the scope of California Indian worldview.

California Indian cultures have long held the concepts of reciprocity, restorative justice, and equity within their traditional structures. Practicing inherent sovereignty and self-determination means both asserting tribal rights through settler laws as a necessity to returning ancestors home as well as maintaining traditional governing structures of reciprocity. Tribes supporting each other in seeking the return of ancestral remains and cultural items through a process of cooperation and coalition building is a necessity in navigating the complexities of CalNAGPRA/NAGPRA. We are still arguing about who gets their ancestors back, using antiquated notions of Indian identity, ill defined by state laws—as evidenced by competing definitions of tribal status in both federal and state law. This is why it is fundamentally important that Indian people become the deciders of their own fate and outcomes—a point made by many Indigenous scholars, but never taken into full consideration within settler-colonial law.

### **Structural Violence**

The construction of the University of California (UC) system began in 1855 through the inequitable Morrill Act 1862, allowing for public lands to be sold in the idea of opening a college for agriculture and mechanical arts, now known

as land grant colleges (Committee on the Future of the Colleges of Agriculture in the Land Grant University System 1995). UC Berkeley, being the first of the UC System that obtained land through this act, soon opened its doors in 1869. 150 years later, the UC system now encompasses ten campuses. Yet, the UC System as a whole continues to ignore the way land was acquired through the genocide of California Indians, and how this system still holds possession of countless Native American remains and cultural items. It is not a coincidence that UC Berkeley, being the first university, is known as one of the largest offenders of collecting with zero repatriation to Tribes. Currently, from the last updated enrollment records, shows how the American Indian population within all of the UC System was approximately .6% of the entire student population (Fall Enrollment At a Glance 2020). If Native peoples are not present in these research focused institutions, the same institutions that are built atop of Native removal, genocide, and build (often white heteronormative male) careers atop these practices to erase Natives from this land is structural and systematic violence.

Structural violence defined Johan Galtung (Norwegian sociologist) in many ways throughout his article but this definition directly points to the violence we see here in the university upon Native individuals, “Personal violence is meaningful as a threat, a demonstration even when nobody is hit, and structural violence is also meaningful as a blueprint, as an abstract form without social life used to threaten people into subordination” (1969:172). The literal possession of Native remains and items for the purpose of academic research (often with-

out consent from their descendants), is structural violence and a remaining blueprint from the original university's construction. This violence is also an appendage of the university under the settler state (which supports each other) and is predicated on privileging certain knowledge over others. For example, when the belief or study, can only discover new information or unlock past evidence through destructive DNA assessments, proves to be a violent act and a reinforcement of settler epistemologies. Like Kim TallBear (Sisseton Wahpeton Oyate) scholar writes in "Genomic Articulations of Indigeneity,"

The scientific cosmology -or world view at work- of one global human history and set of migrations contrast with a view of time bifurcated into a colonial 'before-and-after' that structures [I]ndigenous peoples' views of history. When genome scientists make claims to indigenous biological resources according to their own continuous, global worldview, this challenge [I]ndigenous peoples' own anticolonial, anti-assimilationist views and their efforts to control their biological and other resources (TallBear 2015:134).

TallBear gives a wonderful example of these competing claims of cosmologies, and how scientific cosmology reinforces the settler state, therefore by design disregarding Native cosmologies.

Another example of structural violence from land grant universities, is the case of *White v. University of California*. To briefly cover the case, on December 3, 2013, three white anthropologists fought to keep two La Jolla ancestors within the UC repositories for research after they were unearthed during an excavation of the Chancellor's residence at the University of California, San Diego.<sup>2</sup> The Plaintiffs (White, Schoeninger, and Bettinger) opposed the repatriation of the La Jolla ancestors back to the tribe claiming "...declaration that the remains were not 'Native American' within the meaning of NAGPRA" and how "...the panel held that NAGPRA does not abrogate tribal sovereign immunity because Congress did not unequivocally express that purpose" (2013). This already speaks to many layers this article has already laid out, white possessive logics of dispossession of land for a University, excavation for construction, allowing the removal of La Jolla ancestors from their burial site, and fighting against returning them. This case exploded and unveiled the institutionalized racism and violence, who stood with Native repatriation and who did not. The U.S. Court of Appeals, Ninth Circuit decided in 2014 that, "[w]e conclude that NAGPRA does not abrogate tribal sovereign immunity and that the affected tribes and their representatives were indispensable parties. Therefore, we affirm the district court's judgment" (*White V. University of California* 2013). Allowing of repatriation

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2. Within this case, we see the already egregious structural violence in building a physical structure over La Jolla land and graves, for a university, and for the icing on the cake, the literal structure is for residence of a chancellor.

happened in this case but oftentimes it does not, as stated in the introduction, the egregious case of Ishi.

### **Making California Indian a White Possession**

Why do Natives remain so powerless over their deceased? We do not see Native peoples possessing white bodies in collections to be studied and displayed. Basic human rights are not always given in a settler nation, this is purposeful. But where does this power live, within heteronormative white men who continue to benefit from structural violence. Aileen Morton-Robinson, Indigenous feminist scholar, theoretical framework of *The White Possessive* critically examines how patriarchal white sovereignty is formed and maintained in Australia, although can easily be applied to the United States. Morton-Robinson defines “[p]atriarchal white sovereignty [as] a regime of power that derives from the illegal act of possession....” and discusses how this illegal act of possession is performative through a generative,

“... sense of belonging and ownership produced by a possessive logic action” (Morton-Robinson 2015:34-35). Manufacturing white possessive logics as given and rationalized, becomes the foundation of a settler state. It is through these regimes of power; federal, state, county, which create policies and laws that protects, enforces, and re-affirms the philosophies of belonging and ownership through actions of imputative removal of California Indian peoples.<sup>3</sup> For example, by “...staking possession to Indigenous lands, white male bodies were taking control and ownership of the environments they encountered by mapping land and naming places, which is an integral part of the colonizing process” (Morton-Robinson 2015:34-35, 191). We see this procedure executed in California; construction laws and policies ensuring Indigenous dispossession of land by white men for the state is doing the same labor in nation making overall.<sup>4</sup> Gendering this project is rooted in patriarchy and white supremacy which the United States is built on. By removing the Indigenous peoples (liv-

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3. Throughout this article, the authors will go back and forth on the terminology of Native American, Indian, American Indian, and Indigenous. All hold very politically different meanings. When we discuss the broader inclusion of Tribes the use of Native American is used, but when talking about Tribes in California, we will utilize California Indian due to the political grouping under federal law and policy in previous groupings. There is however a re-appropriation of “California Indian” that brings back the power in saying these numerous Tribes survived genocide here in this state, now called California.

4. Laws such as Section of Chapter 133- Act for the Government and Protection of Indians (legalizing California Indian slavery), April 22 1850, Anti-Vagrancy Act in 1855 (allowing the state to arrest “Vagrant Spanish and people with Indian blood) and Foreign Miners Tax Act (taxing foreign miners such as Chinese and Latinx). These acts all work cohesively to oppress non-white people within the state of California.



ing and deceased), taking ownership of land, renaming places, making their own narrative of this experience by silencing Indigenous voices and legalizing each effort is what Moron-Robinson asserts as “the white possessive.”

Cutch Risling Baldy (Hupa, Yurok, Karuk scholar) *We are Dancing For You* writes about the formation of the Anthropology department and salvage ethnography methods used at the University of California, Berkeley in 1901 (Norton 1997; Mihesuah and Hinsley 2000:45; History of the Department of Anthropology at Berkeley). The use of patriarchal white sovereignty and possessive logic is affirmed and made utterly clear, by the anthropology department’s founder, Alfred Kroeber. Kroeber was the director of the Anthropology museum for 38 years and amassed a largely grotesque collection of California Indian remains and sacred items. This now infamous collection was built through the department’s endeavors by archaeologist, ethnographers, private collectors and philanthropists such as Phoebe Hearst, and donations by amateurs and hobbyists. The Anthropology department’s ties to patriarchal white sovereignty, “... Kroeber believed that after contact with white European settlers, Native peoples and their cultures had become fragmented...” that his voice became “...often see the western male perspective as the best informed and most trusted voice in anthropological discourse” (Risling Baldy 2018:74-75). California Indians continue to witness limitless performative acts by patriarchal white sovereignty and possessive logics, justifying the dispos-

session of Indigenous authority over their knowledge (epistemological and ontological), bodies, deceased, land, even recognition. Creating California as a white possession, can be explained in the following account of the Wiyot Tribe, Tuluwat, and UC Berkeley.

Wiyot territory is located on the coast of Northern California (Wiyot Tribe). Tuluwat is an island in Humboldt Bay and a significant ceremonial place of the Wiyot Tribe. In 1855, only six years after the discovery of gold in Northern California, the Wiyot Tribe and many surrounding Tribes, were rounded up by white settlers onto the Klamath reservation (Norton 1997:74). In 1860, the Wiyot Tribe conducted their world renewal ceremony, a sacred ceremony that rebalances the world which undoubtedly seemed very necessary during this tumultuous time.<sup>5</sup> During the renewal ceremony, white settlers came onto Tuluwat and brutally massacred many of the Wiyot people, only leaving a few survivors. This unspeakable act is the first wave in physically using violence to remove Indian people from the land. Soon thereafter, the forced removal of the remaining Wiyot from the area, to surrounding reservations. The removal of Indian bodies led to Tuluwat being stolen by white settlers and renamed as “Indian Island.” The land was later sold to the City of Eureka in 1950 (Active NorCal). But before Tuluwat was sold to the city, and in 1923 the dentist of Eureka H.H. Stuart (1855-1976), decided he would aid in making the island void of Indians completely. Stuart “...secured a lease from a private landowner on In-

5. This is taking place during the crux of Native massacres in California.

dian Island [Tuluwat] and became the legal occupant of the Wiyot site. 'I had no trouble getting permission to dig in it,' he later recalled. During his extensive excavations on the island...Stuart dug up 382 graves" (Platt 2011:93). Only 63 years removed from the massacre on Tuluwat, the Wiyot dead were desecrated and unearched by a hobbyist dentist. Making the land a white possession here is obvious but to make our Native ancestors into an archive, possessed by non-Native institutions is part of settler colonialism.

Through settler conceptions of Native people as extensions of the land, Andrea Smith, American academic, writes how "...Native peoples have become marked as inherently violable through a process of sexual colonization. By extension, their [Native] lands and territories have become marked as violable as well" (2015: 55). Natives become dehumanized objects and made into white possessions through the settler state's creation. This theft is a performative use of power and a recurring act. Often enacted with impunity because creating and reinforcing a white male narrative of belonging included taking land, removing Native bodies, holding power over the narrative of this encounter, thus creating a white possession. Through this process, simultaneously reinforces the idea that Indians are no longer "around" and the stereotype of vanished is continued.

The Wiyot have yet to see justice in the way of repatriation from UC Berkeley. But because of activism and fighting for their sacred sites and homelands, Tuluwat was repatriated back to the Wiyot in 2019, over 160 years since it was stolen. We know that making California a white possession was a goal for land theft, ca-

reer building in academic settings, further relieving settler guilt through false narratives of erasure, but because of Native resilience, that will never happen. "It wasn't about what had happened there [massacre at Tuluwat] but what would happen there...I know that our ancestors knew that one day this day would come" said Cutcha Risling Baldy in a speech at the ceremony for the return of Tuluwat (Greenson 2019). Native futurity is powerful, what to come for Wiyot and Tribes in California is powerful. The Wiyot requested its return in the 1970s and was met with laughter at the time, but it was those relatives who could see the future, no matter how grim. But here is the point, Native peoples are resilient, and we are coming for repatriation of our land, ancestors, and cultural items.

## Conclusion

Settler-colonialism in California works to erase and deter California Indian tribes, both federally and non-federally recognized, to engage fully within the repatriation process. Whether through the archiving of California Indian bodies in research centers or by false standards of tribal membership, settler colonialism works from the past to the present, to erase through genocidal practice, Native people off the landscape. Memorialization of dead Indians, in these ways that settlers can readily access Native peoples' bodies is an act of genocide. The way structural violence continues to allow Native Americans to be researched, studied, while in turn erased and marginalized resumes to this day.

Jack Norton uses many examples of settlers terrorizing Native people through physical, mental, and spiritual

violence. Through this disruption and complete devastation, Native people survived—we lived. Now the ancestors of those survivors fight for the repatriation of those ancestors who lived and died during and before colonization. We see this struggle as exhausting, continued, but necessary for our cultural survival.

Human rights considerations are often ignored in literature concerning NAGPRA and repatriation law rather choosing to focus on the lack of sources available on NAGPRA in action and the need to continue research on NAGPRA collections from settler scholars/researcher's perspectives. A recent letter from the Society for American Archaeology (SAA), highlights continued settler control over Native bodies, objects, and items kept in museums or in archaeological sites. The letter was sent out to SAA members condemning the UC's approach to NAGPRA/CalNAGPRA arguing that the SAA has long been involved in repatriation efforts and are sympathetic to tribal concerns but "nevertheless, the UC document describes a process wherein repatriation is the only goal, with all other potential objectives merely footnoted....Putting the entirety of California's cultural and natural heritage in the hands of a politically appointed UC committee is unwarranted, may completely eliminate the study of California prehistory at the UC and may even eliminate teaching and instruction on California's rich cultural and natural past" (Barton and Hale 2020). The mention of the UC Committee is important to note here because the committee will include at least four California Indian members. While the letter was widely condemned by California Tribal Preservation Officers and later retracted by the

SAA itself, the overarching and continued theme of settler control is evident.

This marks a fundamental issue in narratives that discuss repatriation law. While many researchers write about the practicality, or outright contempt, of such mandates and regulation to include tribes in the repatriation process—very few uplift Indigenous perspectives of these laws or the practicality of them from a tribal view. This is especially important in California with its long history of genocidal violence, murder, and removal—as well as limited Indigenous considerations in repatriation standards. This is because few Native people are involved with the development, implementation, and regulation of the law. What are the practicalities of creating law when limited resources are given to them by federal, state and local officials? There is both the baseline theory as well as the actual mechanisms of decolonizing repatriation that must be considered by all who are involved in repatriation—non-Native and Native alike.

Below is a list of a few suggestions for California Indian people looking to engage in the NAGPRA/CalNAGPRA process—this list is not exhaustive nor decolonial— but a necessary first start toward working with museum institutions to get our ancestors back:

1. Regional collaborations between local tribes (both federally and non-federally recognized) to make repatriation requests to different institutions who hold your tribes' collections;
2. Request all inventories of NAGPRA/CalNAGPRA collections within different repositories. If no

- inventories have been completed, request to do so and to be a deciding partner in the process;
3. Request the creation of a Native Advisory Board within Institutions to be a part of the decision-making process if none are in place—many state and federal agencies do this already;
  4. Ensure that institutions have NAGPRA/CalNAGPRA policies and procedures that recognize the importance of California Indian oral history, traditions, culture, etc. at the same level of colonial sources of knowledge.
  5. Request the history of each collection, if collections have been separated or loaned, who has researched collections (have academic papers been produced, etc.) and for what purpose;
  6. Place holds on the ability to research your tribes' ancestors, sacred objects, objects of cultural patrimony within the institutions;
  7. No research should be done on NAGPRA/CalNAGPRA collections without the expressed consent of tribes.

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