Service Organizations and the Path to Policy:

the American Association of Museums and the case of the

Native American Graves Protection and Repatriation Act (NAGPRA)

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1986 -- Democratic Senator John Melcher from Montana introduced a bill, S. 187, to create a Native American Museum Claims Commission, a federal body which would mediate repatriation disputes between Native tribes and museums.

The bill was opposed by the Smithsonian Institution, the American Association of Museums, and the Society for American Archeology and was not enacted. [1]

This account, found on the National Endowment for the Arts NAGPRA history page, credits the intervention of two national service organizations for thwarting the creation of Senator Melcher's proposed claims commission. As a freestanding piece of information it raises interesting questions about the policy environment and the time period, but also about the presence of non-governmental groups in the process of crafting policy.

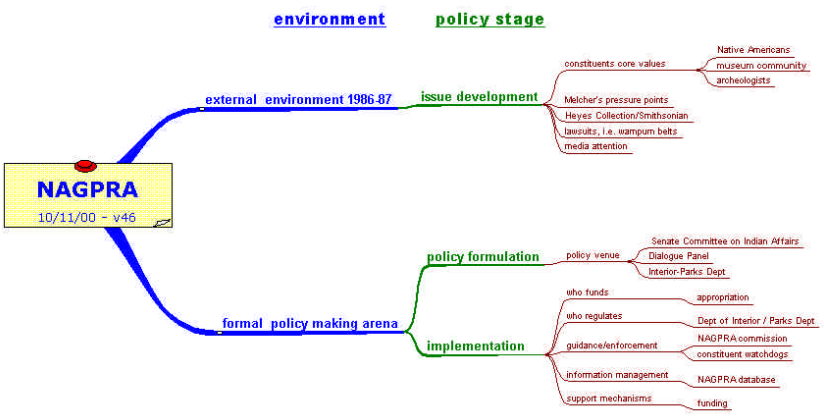
As part of an extensive research project[2] the NAGPRA case study helps illuminate how extensively arts and cultural service organizations, professional and trade associations, and unions participate in informal policy-making. For our purposes "private" policy-making has been defined as "identifying issues of concern for their respective fields; setting standards of professional conduct, management and ethics; and formulating and implementing association policies that respond, react, or forestall official public policy action[3]" Our case focuses on the American Association of Museums (AAM) and their participation in the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA is a legislative construct that provides definitions, structure and funding for the disclosure (in the form of collection summaries) and resolution of claims for repatriation of items of cultural property, as well as enforcement mechanisms for noncompliance. Because the tribes are sovereign nations, the case has implications for international property laws.

POLICY STAGES

The path from the Melcher bill to the drafting and implementation of NAGPRA represents very demanding negotiations in the cultural policy arena. It also stands as an example of how policy making is sometimes achieved "privately," or in informal environments. The example cited above makes reference to a particular moment when the American Association of Museums (AAM) and the Society for American Archaeology (SAA) came forward to advocate that a proposed bill be delayed until the stakeholders could jointly seek a solution outside the venue of committee system. But, in what contexts would this be a valid request?[4]

In the NAGPRA case, the debate over repatriation had developed into a series of contentious arguments in both the formal policy-making arena and the extant environment. The agendas of the three constituent groups (the Native American community, the archaeologists, and the museum community) were being advanced both inside and outside the committee room as the legislators were presenting competing bills (Melcher, D-MT; Inouye, D-HI; McCain R-AZ), the stakeholders were testifying at hearings (AAM, SAA, National Congress of American Indians) and preparing or commissioning opinion pieces and investigative journalism (Walter Echo-Hawk, Suzan Harjo, Geoff Platt, Dan Monroe). This is often called the **issue development** stage. The assumption is that these key players affect the issue definition by bringing their core values and their perspectives into the policy debate, whether that debate is happening on the floor of a senate committee or in the pages of national or industry media.

In the next stage, the **formulation** stage, policy is crafted through the presentation and negotiation of competing formulas, be they bills in the legislative arena or statements of belief in the private sector. In the NAGPRA case, the primary venue for negotiation was the Senate Select Committee on Indian Affairs, the



[1]/ Culture Rules: A Guide to Native Ame
[http://arts.endow.gov/artforms/Manage/N
[2]/ For more information on the Mapping
<http://www.arts.ohio-state.edu/ArtEduca
[3]/ ibid.
[4]/ The Senate Select Committee on Indian
following statement regarding AAM's prop
have an interest in permanent curation are
acknowledged the necessity of respondinc
between tribes and museums to develop r
this activity, provided that the tribes wish
dialogue and development of recommenc
-135 Cong Rec S 5517 , Vol. 135 No. 63.

congressional assembly with the most extensive knowledge and experience with tribal relations. The Melcher bill was directed here, as were all but one of the competing bills.[5] It was here that the constituents presented their testimony, along with various reports, to support their conflicting agendas. In this particular case, once it became clear that this policy venue was not successfully reconciling the conflicting needs of the constituents, the committee supported the stakeholder's request to seek a compromise outside the hearing room.

The Issue Environment

The international policy environment for cultural property began heating up in the late 1960's while America was preoccupied with matters at home. We were more concerned with the National Historic Preservation Act, passed in 1966, then the Berne Convention for the Protection of Literary and Artistic Works, passed in Stockholm in 1967. In 1970 UNESCO entered the picture with their Convention declaration that "cultural property constitutes one of the basic elements of civilization and national culture." The follow-up Convention of 1972 established the *World Heritage Committee, an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value*. The United States, not a UNESCO member, ratified the UNESCO convention in 1973 but delayed implementation until 1980.[6] So, it seems safe to say that in the mid-1980's cultural property law was becoming a hot topic domestically.

In the domestic issue development arena, cultural property policy was being debated by the three most visible stakeholder groups at odds in the repatriation debate: the Native American community, the scientific community and the museum community, although there was also significant pressure from within the Department of Interior.[7] At stake were more than just thousands of items in various collections. For the museums, the issue was the establishment of parameters for claims against property in their possession. The scientific community was struggling to maintain some of the exploratory freedoms their industry had enjoyed for centuries while also avoiding being cast as heartless villains. But the Native Americans had the most extensive agenda: old wounds to avenge, property and ancestors to reclaim, and new parameters for land rights, religious freedoms and property to establish all at once.

By this time, the Native American community had some familiarity with the Senate Select Committee on Indian Affairs. They had been laying the groundwork for their issue through the structure of legislation like the 1978 American Indian Religious Freedom Act[8] and the Archeological Resources Protection Act of 1979. They also had brought a series of lawsuits over disputed cultural property before the courts.[9]

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[5]/ The House Committee on Interior and Insular Affairs (CIIA) reported on H.R. 5237, the only repatriation bill that originated in the House. During the late '80s the CIIA was in the process of a major restructuring, eventually to resurface as the Committee on Natural Resources in 1992 then in 1995 again simplified into the Committee on Resources. The charter lists the jurisdiction starting with item a) forest reserves and national parks. The final item of the lengthy list is p) relations with the Indians and the Indian tribes. (National Archives and Records Administration, Guide to the Records of the U.S. House of Representatives [Record Group 233])

[6]/ In 1980 US implemented the 1972 UNESCO Conventions by way of an amendment to National Historic Preservation Act. (USCCAN (94 stat) 6406). In 1983, the US Convention on Cultural Property Implementation Act (19USC2601) initiated the implementation of the 1970 UNESCO Conventions.

[7]/ Prepared testimony of Suzan Harjo 7/25/2000 states, "In the end, only the Department of the Interior opposed the ACt. In a letter of October 2, 1990, to Representative Morris K. Udall, Interior Deputy Assistant Secretary Scott Sewell objected to several critical sections of the reparation legislation. Over the objections of the Interior Department, the Senate and House unanimously passed the Native American Graves Protection and Repatriation Act"

[8]/ Native Americans had believed that the Act authorized the return of Indian religious artifacts in museum collections, but the bill as passed did not include a return provision and was drafted to apply only to federal agencies. (Phelan, 1993. P. 6-15)

[9]/ One of the longest running suits involved 12 wampum belts and the New York State Museum. The suit was first brought forth in 1893. The belts were eventually returned in 1989 when, Irving Powless Jr., the Onondga's repatriator, was successful in winning the suit against from the New York State Museum in Albany. He had begun that effort in 1986. A detailed account of the "Onondaga Nation's almost century-long struggle to persuade New York State to return twelve wampum belts. " can be found on the NEA webpage titled "Culture Rules: A Guide to the Native American Graves Protection and Repatriation Act (NAGPRA)"

For this Senate Committee debate Native Americans came forth to testify that the spirits of their ancestors would not rest until they are returned to their homeland. They described their belief that this position had never been recognized as valid by the museums that housed the remains and objects. The native community testimony stressed the systematic human rights violations that were just coming to light[10], and the ongoing disparity between treatment of native remains versus non-native remains.[11] Hartman Lomawaima, Associate Professor of the Arizona State Museum and a Hopi native, remembers it as a time of learning, when the Native community was forced to add new ideas and new terms to their vocabulary. Suzan Harjo, director of the Morning Star Institute (MSI) and one of the primary representatives of the Native American community in the repatriation policy development, corroborates this contention, telling of the moment when she accompanied her mother into a museum and discovered the clothes her mother's grandfather had been buried in, clearly taken from the grave. When a reporter called to ask for her views on repatriation, Harjo's mother replied, "You call my daughter, She uses words like that." (Museum News, Sept/Oct 2000, p. 73.)

The Society of American Archaeologists (SAA) had released a Statement Concerning the Treatment of Human Remains in 1986, which clearly stated their position that "conflicting claims concerning the proper treatment and disposition of particular human remains must be resolved on a case-by-case basis through consideration of the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and the strength of their relationship to the remains in question." This constituency was the most defensive, feeling attacked over actions which had occurred long before their control and for which they had no defense. Thus their strategy was to push the attention of the committee toward strong legislation to protect burial sites from being looted or desecrated in the future. In the repatriation hearings, the scientific community came forward to reinforce their dependence on human remains for scientific study, stressing the need for future generations to learn from the past. The scientists testified their concern that if remains were repatriated and subsequently reburied they would be lost to science forever, making the attempt to align their interests with the public good, particularly the good of future populations.

Keith Kintigh, chair of the SAA's Task Force on Reburial throughout the legislative process leading to NAGPRA, remembers "issues on the table on which we disagreed with Native American organizations, [and] others on which we worked together, albeit sometimes unsuccessfully. For example, we were successful in opposing the imposition of deadlines for tribes to make claims for repatriation, and unsuccessful in an attempt to extend NAGPRA to cover planned excavations and inadvertent discoveries of human remains and cultural items on non-federal lands and in an effort to extend the repatriation provisions to the Smithsonian Institution."[12]

The museum community, though, was in the most acute position, legally. As current possessors, museums had become the organizational body with the legal responsibility for resolving any ownership claims. When it came time for the museum community to testify they stressed the commitment it takes to maintain a collection in addition to the contention that they also were working in the interest of the public good by saving the items from avaricious private collectors. They spoke of concern for the complexity of repatriation issues, citing cases with multiple claimants and indistinct trails of ownership. Private art dealers came forward to advocate the position that Native

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10/ Suzan Harjo makes reference to bills of lading filled out by cavalry officers that accompanied the crania of natives massacred at Sand Creek. (Museum News, Sept/Oct 2000, p. 46)

11/ Steve Russell, Assistant Professor, Social and Policy Sciences at the University of Texas at San Antonio and a member of the Cherokee Nation of Oklahoma, contends that the movement toward repatriation laws was inspired by the work of Maria Pearson in Iowa. Interview transcribed at <http://archaeology.about.com/science/archaeology/library/weekly/aa083197.htm> *"In 1976, Maria Pearson, a member of the Yankton Sioux people, was living in a small town in southwestern Iowa, and married to a Iowa Department of Transportation engineer. The Department of Transportation had uncovered a cemetery that contained both white and Indian burials. The white individuals were reinterred; the remains of the single Native American individual were boxed up and taken to the Office of the State Archaeologist. Mrs. Pearson went to then-Governor Robert Ray to protest the differential treatment of the dead, and a struggle over who had control of American Indian remains in the state of Iowa ensued. After a six-year battle, the Iowa Reburial Law was enacted, the first of its kind in the country. Because of the direct influence of Mrs. Pearson, working together with newly named State Archaeologist Duane Anderson, all burials in Iowa have been protected since 1982."*

12/ Posted as "Re: Anthropologists and Native Americans" to NATIVE-L listserv, Tue, 8 Feb 1994 06:46:21 -0700 <http://nativenet.uthscsa.edu/archive/nl/9312/0166.html>

Americans ought not be the sole conservators of their cultural items, again aligning their interest with that of the larger public interest, insisting that all Americans have a right to this history.

Competing interests within the Department of the Interior further complicated the policy development stage. The Smithsonian had become a stumbling block. Once the extensive holdings were reported at over 18,000 items, the collection became a rallying point for the Native American advocates. In addition, the enormous Heye Collection, estimated up to 4.5 million objects, was in the process being accessioned as part of the proposed legislation for a National Museum of the American Indian.[13] Another formidable adversary, the Army Corps of Engineers expressed strong concern about the impact of potential restrictions on federal land use, and raised many legal questions about the structure of the legislation (R. Page letter, House Report 101-877, p. 30).

The Informal Policy Environment

By 1988 Senator Melcher's dream of a claims commission that would have political clout to resolve lawsuits on behalf of the tribes had lost its steam. At this point, the repatriation debate had ground to an uncomfortable deadlock that the Senate committee was having difficulty resolving. The museum community was anxious to avoid the creation of a federal regulatory body, preferring to put independent mediation and professional standards in place. The scientists had already made public their preference for case-by-case mediation. However, not surprisingly, the Indian community had no trust to spare for the museums, the scientists, or the non-native legislators.

Dan Monroe was vice president of AAM and chair of the Advocacy Committee in 1988. He characterizes the situation as a standoff, and an intolerable one. In Monroe's words, neither the archaeologists, the museum community nor the Native American community had much interest in sacrificing their moral stance, but as yet, none had the political clout to overcome the others. (Monroe email, 6/9/2000) Eventually the embattled associations cleaved together in an anxious alliance to ask for leeway in crafting a compromise that would be palatable to all. The Heard Museum Director, Mike Fox, stepped in with a suggestion to mediate the stalemate by convening the group eventually called the National Dialogue on Museum/Native American Relations.[14]

Although the venue was no longer a Senate committee, the Dialogue Panel was still relatively formal and structured. The committee roster was proposed and approved within the Senate Select Committee. The group met over the period of a year and reported to the Senate Select Committee on September 26,1990. Table 1 details the record of the findings of the Dialogue Panel as recorded in Senate Report 101-473.[15]

Table 1: Report of Findings from National Dialogue on Museum/Native American Relations

- The Panel found that the process for determining the appropriate disposition and treatment of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony should be governed by respect for Native human rights. The Panel report states that human remains must at all times be accorded dignity and respect.
- The Panel report indicated the need for Federal legislation to implement the recommendations of the Panel. The Panel also recommended the development of judicially enforceable standards for repatriation of Native American human remains and objects.
- The report recommended that museums consult with Indian tribes to the fullest extent possible regarding the right of possession and treatment of remains and objects prior to acquiring sensitive materials.
- Additional recommendations of the Panel included

13/ <http://www.archaeology.org/onl...e/features/amindian/index.html >

14/ The Barry M. Goldwater Center for Cross-Cultural Communication at the Heard Museum organized and sponsored the Dialogue Panel to allow for a year of discussion, negotiation and compromise amongst the involved constituencies on the topic of Native American materials, their identification, use, care, and ownership.

15/ Senate Report 101-473 is available at the National NAPGRA website <http://www.cast.uark.edu/other/nps/nagpra/DOCS/lgm002.html>

- requiring regular consultation and dialogue between Indian tribes and museums;
- providing Indian tribes with access to information regarding remains and objects in museum collections;
- providing that Indian tribes should have the right to determine the appropriate disposition of remains and funerary objects and
- that reasonable accommodation should be made to allow valid and respectful scientific use of materials when it is compatible with tribal religious and cultural practices

Dan Monroe characterizes these findings as progress toward achieving guiding principals; however, he doesn't describe it as having significantly contributed to a breakthrough. (Monroe email, 6/9/2000) The House report corroborates Monroe's contention, stating, "the Panel was split on what to do about human remains which are not culturally identifiable. Some maintained that a system should be developed for repatriation while others believed that the scientific and educational needs should predominate." (H R 101-877, October 15, 1990, p. 14)

Monroe reports that it was becoming progressively more clear "to me and to, at first, a comparatively small number of museum professionals that the ethical position museums had sought to defend was very questionable with respect, especially, to Native American human remains." While in New Mexico for a conference sponsored by the Smithsonian, a number of participants gathered for drinks after one of the sessions. Monroe was there, along with Suzan Harjo, Walter EchoHawk and other representatives of the Native American community. It was at this informal meeting that the compromise legislation was conceived. From that conversation Monroe's suggestion was that AAM pursue these discussions since in many respects Museums were on the most undefined ethical grounds and "since the political uncertainties continued to grow." This groups met again in Washington DC for an intense fortnight of meetings that resulted in what is now NAGPRA.[16] (Monroe email, 6/9/2000)

Why was this informal meeting successful when the previous negotiations had failed? Monroe indicates that he and Ellsworth Brown took a risk, advocating for a change in the ethical stance to which factions of the museum contingent had been clinging. Once the break was made, others felt there was support in departing from the 'party line' that had been held by museums for many decades. The museum association was, eventually, proud to take what Monroe called "a bold and strong role" in changing the paradigm that was standing in the way of getting to a point of resolve on this highly charged issue. (Museum News, Sept/Oct 2000, p. 46) Geoff Platt later reported in his Government Relations column in AAM's Museum News magazine, "deciding to attempt it [compromise] and confront one's colleagues with that necessity, as happened at AAM, takes courage."(Platt, 1991) Suzan Harjo remembered "at the time, within the Museum community, within AAM, there was a sea of change going on—from a research-and-collection-storage orientation to a public-education orientation."

Advocacy in the Implementation Stage

Bills in contention in the Senate Select Committee on Indian Affairs included S. 187, S. 978, and S. 1021 but it was a version of S. 1980 that became PL101-601. The substitute version of S 1980 that was signed into law establishes four categories of objects (Native American human remains, funerary objects, sacred objects and objects of cultural patrimony), and a variety of definitions that will govern the implementation of the policy. This is one area where substantial compromises were made during the lengthy negotiations. For example, whether or not inventories would be included was a stumbling block until the definition was clarified as "summary lists," a phrase more palatable to the museum contingent. (Museum News, Sept/Oct 2000. p. 49)

Table 2: Summary of P.L. 101-601

[16]/ Monroe characterized it this way, "Ellsworth Brown, myself, Suzanne Harjo, and Walter Echo-Hawk too the lead in these discussions. During an extremely intense nine days or so, we met in DC and hammered out what is now NAGPRA. There were, predictably, hold outs among both museums and Native American groups on many issues or in opposition to any compromise. However, we respectively managed to bring our constituents into consensus-- in many cases by persuading them to terms and conditions that they had adamantly opposed only weeks earlier. Once consensus was reached (or as near it as we could manage), we worked together jointly to get NAGPRA passed by Congress."

•**Clarifies the right of ownership** of Indian, Alaska Native, and Native Hawaiian (Native American) human remains and artifacts, including funerary objects, religious artifacts, and objects of cultural patrimony, found on Federal or tribal lands.

•**Establishes conditions** for the excavation or removal of Native American human remains or cultural artifacts, including the consent of the appropriate tribe or Native American organization.

•**Establishes notification requirements** for the inadvertent discovery of Native American human remains or cultural artifacts on Federal or tribal lands.

•**Establishes criminal penalties** for the sale, purchase, or transport of Native American human remains or cultural artifacts without a legal right of possession.

•**Directs Federal agencies and museums receiving Federal assistance to identify the geographic and tribal origins of human remains or cultural artifacts in their collections, and requires the return of the remains or artifacts to the appropriate tribe or Native American organization upon request.**

•**Establishes a Department of Interior advisory committee** to review the identification and repatriation processes for Native American human remains and cultural artifacts held by Federal agencies and federally assisted museums.

•**Establishes civil penalties** for museums failing to comply with requirements of this act.

These definitions establish important parameters, such as which museums are implicated ("any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items"). Table 2 summarizes the extent of the law as described in the legislative history. The legislation provides for funding to assist tribes and museums with the activities mandated by the law and establishes a committee "to monitor and review the implementation" and sets up parameters for committee representation. However, this committee is not charged with the implementation of the new law or the distribution of the funding. In fact, Public Law 101-601 does not specify the agency or procedure for distribution of the appropriation.

The Secretary of the Interior of the United States became the cabinet member charged by Congress with responsibility for overseeing national NAGPRA compliance. The Departmental Consulting Archeologist was the Department of Interior staff member initially designated by the Secretary as the individual responsible for overseeing national implementation of NAGPRA.

Placement of the National NAGPRA office in the hands of the National Park Service (See table 3) has been criticized, but it brings up an interesting issue of how policy can be affected well into the implementation stage. According to Harjo, "primary implementation of NAGPRA was assigned to the Secretary of the Interior. The Secretary assigned it to the National Park Service, as recommended by the negotiators of NAGPRA. We Native negotiators, in particular, can be blamed for this. We observed the way in which the Smithsonian Institution was implementing the 1989 repatriation law, was disregarding the spirit of the policy, and had stacked its reparation committee against the Native interest. We insisted that implementation of NAGPRA be housed elsewhere."[17]

Table 3: NAGPRA Organizational Chart

Secretary of the Interior
Assistant Secretary for Fish and Wildlife and Parks
Director, National Park Service
Cultural Resources Stewardship & Partnerships
National NAGPRA

One of the most notable aspects of the NAGPRA case is that the involvement of service organizations and constituent interest groups reached long into the implementation stage of this policy, and actually continues today.

[17]18/ From the Prepared testimony of Suzan Harjo, 7/25/2000, before the Senate Committee on Indian Affairs on the implementation of the Native American Graves Protection And Repatriation Act.

Last month, September 2000, NAGPRA turned ten years old, and has been the focus of retrospection, evaluation and analysis. Realization of the policy objectives has been bumpy at times, and disagreements over the implementation have on occasion led back to the courts, as the Kennewick case illustrates[18]. The anniversary of the legislation has been the impetus for a new set of hearings that featured renewed efforts by the constituents to resolve long-standing problems, most notably the push for a change of venue away from the Parks Department due to alleged conflicts of interest.[19]

The Native American community contributed an extensive critique to the implementation process, pushing hard for the change of venue and questioning the mechanisms in place for guidance. Testimony from the Parks department has assumed the defensive tone, justifying controversial actions and delays while pressing for increased appropriation to handle the workload. The archaeologists are aligned with the parks department, pushing for increased funding and less pressure for turnaround on repatriation claims. The AAM also testified on the lack of sufficient funding and the extensive backlogs of the Federal Register.

Conclusion

So, what is there to learn from this case? Generalizing from a single case study can be difficult, but this case raised interesting questions. The most surprising discovery was that the involvement of the service organizations was not limited to the traditional lobbying activity, but instead lasted a decade into the implementation stage. Will this prove to be an anomaly or a characteristic of advocacy by service organizations? Did the level of conflict and compromise in this situation lead to the extended level of activity? Do all service organizations enjoy as much access to the legislative arena or is the AAM more connected than most? As one of the oldest, most established organizations, how does their advocacy activity measure up to newer, less experienced organizations? In what ways are museums inherently different than other artistic industries, and does that factor into the overall characteristics? Did the fact that the NEA was occupied with crises of its own contribute to an environment conducive to "private" policy-making?

Our case has focused on the AAM and NAGPRA, but how does this compare to the evolving policy concerning the Holocaust Era Assets (HEA), specifically as regards the restitution of looted artworks now held in collections around the world.

We should first address the appropriateness of our comparison. Do these two pieces of policy hold up to comparison? As noted in the introduction, NAGPRA is a legislative construct that provides definitions, structure and funding for the disclosure (in the form of collection summaries) and resolution of claims for repatriation of items of cultural property, as well as enforcement mechanisms for noncompliance. Holocaust Era Assets policy is more diffuse, most likely due to the international nature of the situation and the lack of a single formal governing authority. The closest thing to a formal National HEA policy framework was created in 1998 by a Statute

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18/ The Kennewick Man case is described on the National NAGPRA page this way "*The human skeletal remains that have come to be referred to as the "Kennewick Man", or the "Ancient One", were found in July, 1996, below the surface of Lake Wallula, a pooled part of the Columbia River behind McNary Dam in Kennewick, Washington. Almost immediately controversy developed regarding who was responsible for determining what would be done with the remains. Claims were made by Indian tribes, local officials, and some members of the scientific community. The U. S. Army Corps of Engineers (COE), the agency responsible for the land where the remains were recovered took possession, but its actions, following the Native American Graves Protection and Repatriation Act (NAGPRA), to resolve the situation were challenged in Federal court. In March, 1998, the Department of the Interior and National Park Service agreed to assist the COE in resolving some of the issues related to the Federal case.*" <http://www.cr.nps.gov/aad/kennewick/index.htm>

19/ Prepared testimony of Suzan Harjo, 7/25/2000 states "The past ten years have provided numerous examples of NPS's repatriation conflicts and its inherent conflict of interest in implementing a law that specifically benefits Native Peoples. The NPS has refused to publish some Federal Register notices for sacred objects, effectively vetoing agreements made between Indian tribes and museums or agencies, and requiring the parties, such as the Pueblo of Cochiti and the Cheyenne River Sioux Tribe, to appeal for relief to the Review Committee. In determining the ownership of human remains found along the banks of the Columbia River near the town of Kennewick, Washington, the NPS has interpreted the meaning of aboriginal territory in an overly narrow fashion, not only refusing to recognize the binding Treaty between the Umatilla Tribe and the United States, but actually using a vacated decision by the Indian Claims Commission to determine that the remains did not come from Umatilla aboriginal territory."

establishing the *Presidential Advisory Commission on Holocaust Assets in the US* (P.L.105-186). This Commission is charged with examining the issues and making recommendations to the President. The greater policy environment is constructed of statements and documents prepared by international service organizations, such as the ICOM (the International Commission of Museums) Code of Professional Ethics and ICOM Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners the Association of Art Museum Directors (AAMD) Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era and the AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era. The World Jewish Congress hosted policy forums[20] and instituted the *Commission for Art Recovery* (CAR) to identify and locate art stolen during World War II and assist victims and their families or heirs with filing claims.[21] This activity taken as a whole constitutes the HAE policy forum.

Both cases involve museums, objects, and ownership. Both are complex, compelling, and emotionally charged. Nonetheless, the emergent policies appear to have taken different paths—one legislative and one comprised of a number of ethical codes and statements. Why? Why would the interests of a common constituency –museums– get interpreted into two dissimilar formulas? Why would parallel issues be addressed from different standard-setting forums? And how was each process influenced or affected by the interest groups themselves outside the formalized public policy process?

The next step is to employ this same line of inquiry to the policy development surrounding the Holocaust Era Assets. Why are the policy formats dissimilar? Is the primary difference the international angle, even though the NAGPRA policy has aspects of international property law also? Working case by case we can build a convincing portrait of the function or utility of "private" or informal contributions made by service organizations in the making of policy.

20/ Policy Forum No. 16 "The Great Culture Robbery: The Plunder of Jewish-Owned Art" summarized by Hector Feliciano <http://www.wjc.org.il/stud17.htm>

21/ Commission for Art Recovery website <http://www.wjc-artrecovery.org/sub.htm#2>

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Congressional Record Vol. 135 No. 63 S 5517 101st Congress, 1st Session. Statements by MR. MCCAIN on Introduced Bills and Joint Resolutions. Legislative day of Tuesday, January 3, 1989

Congressional Record Vol. 134 No. 75 S 6655 100th Congress, 2nd Session. Statements by Mr. MELCHER on Native American Museum Claims Commission Act; Melcher Amendment No. 2124. Legislative day of Wednesday, May 18, 1988

Congressional Record Vol. 136 No. 149 -- Part 3, S 17173 101st Congress, 2ndSession. Statements by Mr. AKAKA ; Mr. Breaux ; Mr. Chafee ; Mr. Domenici ; Mr. Ford ; Mr. Inouye ; Mr. Mccain ; Mr. Moynihan ; Mr. Simpson on Native American Grave Protection and Repatriation Act . Legislative day of Tuesday, October 2, 1990

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