

How the Native American Graves Protection and Repatriation Act Affects Archaeology at Ocmulgee

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Abstract

The excavation of Native American sites has generated significant controversy in recent decades, especially regarding sites involving ceremonial and burial activity. The persistent mistrust between Native American Nations and scholars has produced disagreements trying to reconcile the demands of historical research while maintaining respect for the preservation of Native American rights and culture. The Native Graves Protection and Reparations Act (NAGPRA), currently one of the most influential statutes to limit the destruction of Native burial sites, has molded much of the current scholarly practice in this regard. This essay explores how these guidelines shape archaeological practices at the Ocmulgee complex in Macon, Georgia. It also examines how NAGPRA informs the interactions between the modern Creek Nation and archaeologists working at the Ocmulgee complex. The research concludes with an explanation of the Muscogee Creek Nation's connection to the site, and how NAGPRA has influenced their response to scholarly work at the site. While NAGPRA does not offer a perfect solution for the damages of past exploration, and exploitation, of Native American sites, it has allowed the people of the Muscogee Nation to maintain substantial connections with and influence over their heritage in Middle Georgia.

Keywords: NAGPRA, Archaeology, Ocmulgee National Monument

1. Body of Paper

Situated on the eastern fringes of Macon, Georgia are the majestic mounds of the Ocmulgee National Monument. Though the serenity of the site today offers visitors a tranquil view of the Southeast's natural beauty and rich past, the scene at Ocmulgee has not always been so quiet. In the 1800s the construction of two separate railways disrupted the serenity, while in the 1930's large scale excavations began at the Ocmulgee National Monument, funded by the Works Progress Administration (WPA).¹ The rail lines and archaeological explorations each did irrevocable damage to both the site and the trust of the Muscogee Creek Nation.² In the ensuing years there has been a growing movement, spurred on through countless protests and lawsuits by various Native American nations, among both the American government and the archaeological community, to help protect the right of native nations to determine the destiny of sacred items, and sites, from their past.

Archaeology faces many unique moral and ethical issues that have plagued the discipline of anthropology since its inception as a means of understanding the human condition. The early years of this study were rife with what today is considered grave robbing and cultural theft. Many early archaeologists attempted to create a dissonance between contemporary Native American populations and their prehistoric ancestors, effectively cutting off Native peoples from the right to protect their ancient past.³ Though many of these early archaeologists had no way of accurately measuring any modern cultural affiliation with prehistoric human remains, grave goods, and ceremonial objects, the divide between modern and ancient that they orchestrated remained largely intact in the study of Native American archaeology well into the twentieth century.

Native American's push for greater autonomy over their heritage has led to many acts and laws attempting to limit the disruption or abduction of sacred artifacts from Native lands (both past and present), the strongest one yet being the Native

American Graves Protection and Repatriation Act (NAGPRA). NAGPRA was adopted in 1990 and seeks to protect undisturbed Native graves and ceremonial objects, as well as return items, which have already been confiscated, back to their rightful guardians.⁴ According to the National Parks Service's NAGPRA information webpage, "NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, or objects of cultural patrimony -- to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations".⁵ This paper focuses on how NAGPRA has affected Ocmulgee National Monument.

Located on 702 acres in eastern Bibb County, Georgia, the Ocmulgee National Monument is at first glance a refreshing speckle of green in what is otherwise the sea of pavement known as Macon. When first entering the Monument, visitors find themselves following a winding paved road leading to a modest parking lot and a small museum. This two story structure houses exhibits, a visitor center, and a gift shop on the top floor, and a small archive, lab, and administrative facilities on the bottom floor. Walking past the museum, over a small wooden bridge, and up a gentle slope leads to the Earthlodge, a reconstruction of what archaeologists once thought that a tribal council house should look like. In reality, this reconstruction is based on a building technique used mainly by some Plains Indian nations, instead of the earth covered wattle and daub model, the original council house at Ocmulgee was likely built with timber walls supporting a thatch style roof. Inside this reconstruction is one of many features that make Ocmulgee unique: the original burned clay floor, the only one of its kind on display anywhere in America, which is thought to be around 1000 years old.⁶

Continuing down the maintained trail leads hikers over another bridge, this one over railway tracks, an unfortunate permanent scar on the landscape, and onto the plateau that houses the largest earthen mound at this site: Mound A, or the Temple Mound. This mound, rising some fifty feet above the plateau, appears an even more impressive ninety feet tall when viewed from the Ocmulgee River to the south, thanks to a building technique which took advantage of the area's topography, while minimizing labor.⁷ Adjacent to the Temple Mound is the smaller Mound B or Lesser Temple Mound. Walking east from the Temple Mound leads visitors to Mound C, or the Funeral Mound. It is in this mound that archaeological excavations in the 1930's found and removed both human remains and grave goods, many of which remain unreturned to their rightful keepers.

These are the "main attractions" that many tourists come to see, but taking a walk along the approximately six miles of trails leads to other mounds, such as the McDougal Mound, as well as areas that showcase various stages of Native habitation through the ages on the plateau.⁸ Two miles south and east of the main mound complex, the National Park Service also maintains what is known as the Lamar Village. This site represents a later settlement than the original mounds on the plateau proper, and is home to another one of a kind archaeological find in this area: an earth mound with a spiral earthen ramp leading to the summit.

This region represents several thousand years of human occupation; a tantalizing reminder of the land's ancient populations is a Clovis point from the Paleo-Indian period, approximately 5,000 to 9,000 B.C.E. found during the 1930's dig at the site.⁹ Throughout the years, the Macon Plateau has been occupied by groups representing almost all of the major American Indian periods, including the Archaic, Woodland, Early and Late Mississippian, and Modern.¹⁰ The impressive earthen mounds along the Ocmulgee River have inspired awe in visitors since their construction during the Early Mississippian period, approximately 900-1200 C.E.¹¹ The layout of the mounds represents different periods of settlement across the plateau; an analysis of pottery sherd distribution shows at least five main phases of habitation during the Mississippian period.¹² After the Early Mississippian cultures abandoned building in the main plateau area, development at the Lamar site began. Habitation at the Lamar site persisted until Hernando De'Soto's expedition of 1540 made contact with what they described as the Ichisi culture there. The resulting spread of foreign diseases, and occasional skirmishes with Europeans, ultimately led to the death of approximately seventy to eighty percent of the total population in the region.¹³ In an attempt to survive after such a decimating death toll, the remaining peoples banded together in the genesis of what is today the Muscogee (Creek) Nation.¹⁴

Once the land was vacant of its Native inhabitants, due to the wholesale Indian removal policies of the American government in the early 1800s, a series of several disastrous events befell the Ocmulgee Mound site. In the 1840s and 1870s two separate railway paths were carved through the plateau, the first one cutting into the Lesser Temple Mound, and the second removed large sections of the Funeral Mound.¹⁵ The next event that maimed the Ocmulgee National Monument came in the form of the archaeological excavations carried out under the direction of Dr. Arthur Kelly starting in 1933.¹⁶ Dr. Kelly's archaeological research was sponsored by the Smithsonian Institute and staffed with around 800 workers from the WPA, the Civil Works Administration, and the Federal Emergency Relief Administration between the project's beginning and 1936, when the site became a national monument.¹⁷ The Kelly excavation yielded an estimated 2.5 million artifacts, many of which are still left uncatalogued either on-site or at the Southeast Archaeological Center (SEAC) in Tallahassee, Florida.¹⁸ Though there were many significant archaeological finds associated with this massively scaled archaeological exploration, there was never any thought given to seeking permission from any Native communities, nor was there ever any question as to whom those finds belonged to. Many important ceremonial objects were either placed in collections at the Ocmulgee National Monument museum or taken to the Smithsonian for further study. Cultural insensitivity, unfortunately, did not stop with the seizure of artifacts. As late as the 1960's the Ocmulgee National Monument had human remains on display, some in Plexiglas-topped pits along the trails.¹⁹

The seizure, study, and display of funerary or ceremonial artifacts has long been a point of contention between Native

Americans and the academic community. For centuries the leading school of thought placed prehistory in the context of an un-claimable past, with no direct connection to modern life in an area.²⁰ This method of approaching human remains and ceremonial goods does not agree with many Native American nations' world views concerning their origins, or what is considered sacred. The Native American Graves Protection and Repatriations Act is the newest in a long line of failed or semi-successful legislative attempt to strike a balance between respecting the wishes of Indigenous communities and the academic study of Native American cultures and their histories. NAGPRA takes great strides forward in limiting the excavation of burial sites by mandating a consultation with and consequential consent from all Native groups that can claim cultural affiliation with a site.²¹ Furthermore NAGPRA is a great asset in the repatriation of items already in the collections of many museums. Items that fall under NAGPRA legislation include: human remains, funerary objects, sacred objects, and objects of cultural patrimony.²²

While NAGPRA has the potential to positively affect the relationship between these two groups, as well as allow for the return of thousands of sacred items and human remains, this legislation has some damning limitations that must be overcome. For an artifact to be subject to a Native American Graves Protection and Repatriations Act request, said artifact must be in the holding of an establishment that receives federal funding or is part of the government itself (e.g. a site in the care of the NPS).²³ For a burial site to be protected it must likewise be on land owned by a federal agency or an institution which receives federal monies. Beyond these extremely narrowly defined stipulations lie the need to prove reasonable (as defined by the United States government) cultural affiliation with objects or sites. Only federally recognized Native tribes can make claims on burials and artifacts under NAGPRA.²⁴ While this statute is easily met with burials and grave goods that are part of the Modern period, the issue of stewardship becomes very murky as it stretches deeper into the past.

The process begins when a museum or federal agency comes into possession or contact with Native American remains or other culturally significant items listed above. At this point it is the responsibility of the organization to contact any potential culturally affiliated (and federally recognized) Native tribes. The organization will then hold a consultation with any notified Native nation that is interested in perusing a claim to the items. It is then up to the museum or federal agency to determine which tribes actually have cultural affiliation. If no affiliation can be determined, the burden of proof falls to the interested party/ies. Under NAGPRA regulations, to be culturally affiliated with objects of earlier origin a Native entity must prove: they are a federally recognized Native entity, evidence of a distinct earlier group living at the site in question, and evidence of shared group identity between the modern group and the earlier one.²⁵ If more than one Native nation makes a NAGPRA claim to the same item/s, the rightful possession is determined by a hierarchical system beginning with direct lineal descent, then to the Indian tribal landowner of the site. Next priority is given to the closest culturally affiliated Indian tribe, and lastly to the closest tribe that can show historic occupation of the area that an object or remains came from.(e.g. a tribe which occupied that region before forced Indian removals).²⁶

There have been several noteworthy cases in which courts have ruled against Native nations in repatriation suits on the grounds that the remains that they are seeking to re-inter can not be adequately ascribed to the modern Native culture. Perhaps the most famous case concerning cultural affiliation to prehistoric remains is found in the ongoing court battle for the skeleton nicknamed the Kennewick Man. This skeleton was discovered in Washington State in 1996, on land belonging to the U.S. Corp of Army Engineers.²⁷ The initial interpretation made by James Chatters, whose examination focused mainly on the suspected phenotypical implications of the bone structure, was that this skeleton represented the remains of a "Caucasoid", or someone of European descent.²⁸ This interpretation was challenged by local Native nations, and after years of court decisions and reversals, eventual DNA testing results, reported in 2015, proved the closest living descendants of the "Kennewick Man" are Native Americans. While this evidence proves that the remains, known to Native Americans as the Ancient One, represent a distinct group of peoples whose descendants are modern Native Americans, the skeleton remains in the possession of the Burke Museum.²⁹ The ultimate decision regarding the fate of these remains lies with the Army Corps of Engineers, as under NAGPRA regulation they are the entity with custodial power, who have promised a commitment to a swift resolution of this decades old dispute.³⁰

Fortunately, Ocmulgee National Monument suffers from no such ambiguity in who has NAGPRA claim rights to the many cultural, ceremonial, and funerary finds made at the monument. While there are twelve tribes that currently have established Native American Graves Protection and Repatriation Act rights to the Ocmulgee site, there is one modern Nation to which the others defer all culturally important decisions: the Muscogee (Creek) Nation (incidentally, the current name of the nation combines both Native and English terms for the nation and they are often used interchangeably).³¹ By the time Europeans began to settle into middle Georgia, the remains of the Lamar civilization, as previously discussed, had banded together with other groups to form a powerful confederacy that became known to them as the Creeks. While the Muscogee Nation never claimed to be the architects of the enigmatic earthen mounds at the Ocmulgee National Monument, even during early European contact they referred to this site as the location where their ancestors first settled after a migration from the west.³² At this time, an Anglo-Indian trading post was established at the Ocmulgee site, the remains of which can be seen in the form of a outlined rectangular shape along the main trail to the Temple Mound.³³ During the Indian removals of the early 1800's, the Creeks were steadfast in their attempts to retain control of the Ocmulgee mound site, until in 1825 William McIntosh, a Lower Creek leader, relinquished these lands in the Second Treaty of Indian Springs.³⁴ This move ultimately resulted in his death. McIntosh was branded a traitor for ceding lands without the consent of the entire Creek Nation and was executed

shortly after.³⁵

Today, the Muscogee Creek Nation enjoys a membership of approximately 76,000 citizens, and has a national government seat in Okmulgee, Oklahoma.³⁶ Though they no longer live in the region of the Macon Plateau, the Muscogee peoples still hold this area as culturally significant to their heritage and history. Former Cultural Heritage Preservation Officer of the Muscogee Nation Joyce Bear makes clear the connection that her people have with this area, stating “When our people were forcibly removed into Indian Territory...we brought the culture and traditions of the old Mississippian world with us.”³⁷ Since the catastrophic damage caused by the railways in the 1800's and the massive archaeological excavations of Dr. Kelly in the 1930's, and after the passage of NAGPRA and other protective legislation, the amount of involvement offered to Native nations at the Ocmulgee National Monument has increased dramatically. The National Parks Service (NPS), the government stewards of Ocmulgee National Monument, takes pride in their inclusion of the Muscogee Creek Nation when considering additions, renovations, or alterations to existing structures, even extending as far as consideration for new pathways on the Monument grounds. Jim David, the NPS Superintendent at the Monument, reaffirms that “all work that pertains to the Muscogee heritage at Ocmulgee is done with the consent of the Nation.”³⁸

In the mid 1990's the National Parks Service, in connection with the Southeastern Archaeological Center (SEAC) division of the NPS, conducted a series of consultations with the Muscogee Creek Nation in an attempt to establish an open line of dialogue between the NPS and the Creek Nation.³⁹ Part of these discussions pertained to the proposed building of a new ramp leading to the top of the Temple Mound. The Muscogee Nation did not initially want to build a set of stairs allowing access to the top, but the NPS informed them that due to lack of staff they would be unable to keep trespassers off of the mounds. Without an easy way to the top, the Park Service warned, these trespassers would do irreparable damage to the mound. Faced with this, the Creek Nation agreed to a new ramp, and the NPS agreed to use the location and materials of the Nation's choice.⁴⁰ In 2007 the on-site museum received a major renovation to its layout and exhibits. During this process the NPS engaged the Muscogee Creek Nation in all aspects; from architectural design to the content and context of the exhibits, nothing was approved without consent from the Muscogee Nation.⁴¹

While there are no active archaeological excavations at the Ocmulgee National Monument, the last of such activities adhered strictly to NAGPRA protocols. In 2012 Dr. Daniel Bigman, then a graduate student at the University of Georgia, presented his dissertation, *An Early Mississippian Settlement of Ocmulgee*, for doctoral consideration. His research combined noninvasive techniques, including GPS topography, electromagnetic conductivity, and electroresistivity, along with a slightly more invasive posthole and magnetic susceptibility testing to attempt to explain the settlement patterns on the Macon Plateau during the Early Mississippian period.⁴² Prior to conducting these surveys, Dr. Bigman and the NPS contacted the twelve Native nations with NAGPRA rights to invite them to a consultation; however, only the Muscogee Creek Nation responded.⁴³ The Creek Nation had no issues with the proposed survey, and gave consent for the work to move forward.⁴³

Along with offering a chance for the Muscogee Nation to actively engage in aspects of maintenance of the site, the ways in which their history is presented, and any archaeological exploration of the Ocmulgee National Monument, NAGPRA legislation has also led to the notification of Creek Nation to the National Parks Service's possession of remains constituting nine individuals from the main mound complex, as well as 37 funerary objects from the Lamar site at Ocmulgee National Monument.⁴⁴ The National Parks Service and the Muscogee Creek Nation are currently in the process of repatriation of these remains and objects.⁴⁵ Though the NPS is subject to NAGPRA, another institution that holds some human remains and other culturally significant objects from Ocmulgee National Park is not bound by this legislation. The Smithsonian Institute holds many of the human remains, funerary objects, and sacred artifacts uncovered during the 1930's Kelly expeditions. Although repatriation of these objects are not mandated through NAGPRA, as the Smithsonian Institute is subject to the National Museum of the American Indian Act⁴⁶, the Institute, the NPS, and the Muscogee Nation are currently in discussion of possible repatriations.⁴⁷

During an interview Jim David expressed his appreciation for the input that the Muscogee Nation has had with the Monument during his long career at Ocmulgee. He also communicated “that he and the National Park Service staff at the Ocmulgee National Monument feel that this land is sacred”, echoing the sentiments of the Muscogee Creek peoples.⁴⁸ The removal of the Creek Nation from this area of Georgia did a lot to distance these people from their connection with this ancient site. In addition, much damage has been done to this sacred complex since the United States took control of traditional Creek lands, from the huge swaths cut from the Lesser Temple and Funeral Mounds by railways to the disruptive excavations of the 1930's. While the Native American Graves Protection and Repatriation Act may not be a blanket piece of legislation that will fix all of the problems associated with the decades', if not centuries', worth of damage that archaeology and anthropology has done to Native America, at the Ocmulgee National Monument it has provided a more balanced path forward. When comparing past archaeological work and the contemporary level of Native American involvement, through modern surveys, publications, and personal interviews, NAGPRA gives the Muscogee Nation, and the eleven other affiliated tribes, assurances that further exploitation of their ancestral remains and cultural objects will be halted, and offers them a chance to participate in the future usage, exploration, and direction of their sacred lands.

Though the Muscogee peoples have been long removed from the area of the Ocmulgee National Monument, the area has not been removed from their consciousness. Any discussion of this ancient site can not be complete without exploring the Creek Nation's remarkable connection to their cultural heritage. The small scope of this project has greatly hindered my ability

to devote the time needed to do justice to these people, the hardships that American imperialism has brought to them, and their amazing will to preserve as a sovereign nation. Through everything that the Muscogee Nation has endured, the collective memories of their past remain. When the Creeks were forced from their homelands they took not only their earthly possessions, but also their ancient traditions; past second Chief Alfred Berryhill make this point exceptionally clear: “We Creeks are proud of our tradition of mound building. In our homeland each ancestral town had its own mounds...Soils and mementos of these mounds were carried west...from these heirlooms, new smaller mounds were started in our new towns.”^{4 9} Further evidence of the deep connection between these ancient mounds and the modern Muscogee Nation can be found in interviews with Joyce Bear, she recalls: “my mother used to talk about huge mounds that were in Alabama and Georgia, which were referred to as the Old Homelands...she had only about a tenth grade education, but she knew about them because she was taught through oral tradition.”^{5 0} The Native American Graves Protection and Repatriation Act is one small step in ensuring that the Muscogee peoples (and other tribes at countless other sites), who possess such a deep rooted relationship with Ocmulgee National Monument, can maintain their connection with their past.

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