

# PUBLIC



## Elizabeth Weiss: “There is a real danger we’re going to lose skills essential to medicine”

How a 1990 law written to return Native American bones to tribes is being used to claim a Chinese vase, photographs, and x-rays



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In early 2024, the world-renowned American Museum of Natural History in New York City closed two major halls of Native American objects covering roughly 10,000 square feet. Its president wrote that the halls were “vestiges of an era when museums such as ours did not respect the values, perspectives, and indeed shared humanity of Indigenous peoples.” Around the same time, the Field Museum of Natural History in Chicago, Harvard’s Peabody

Museum, the Cleveland Museum of Art, and others covered or removed Native American displays.

They did so to comply with legislation Congress passed in 1990, the Native American Graves Protection and Repatriation Act (NAGPRA). The goal of the legislation was to end more than a century of museums and collectors digging up and warehousing the Native American dead. For generations, private collectors, museums, and federal agencies had assembled collections of Native skeletons and grave goods taken during expeditions across tribal homelands.

NAGPRA required museums and agencies that take federal money to identify Native remains and cultural items and return them to lineal descendants and affiliated tribes. It was, by design, a compromise. Identifiable ancestors and genuine sacred objects would go home, while ancient or unaffiliated materials would stay available for research and public education.

But the law has spiraled wildly beyond its purpose, says anthropologist Elizabeth Weiss in a new podcast, and now reaches objects no one would call an ancestor. Consider a fragment of a Chinese bowl. The Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, catalogs a Ming dynasty porcelain bowl base fragment made in China around 1595. Its own record says the piece was presumed salvaged from the wreck of the Spanish galleon San Agustin, which sank off Point Reyes, California, in November 1595. The museum files this Chinese trade fragment under its Native California department and has hidden it away.

The law has even led anthropologists and curators to treat photographs and recent books as Native American artifacts. In a notice published in January 2026, the Fowler Museum at UCLA moved to repatriate photographic negatives of petroglyphs from Black Canyon in San Bernardino County. A separate notice that same month listed 146 objects that Turtle Bay Exploration Park in Redding would repatriate, among them Jaime de Angulo's *Indian Tales*, a book the City of Redding bought for a museum reference library in 1981.

Weiss says the skeletal collections now disappearing are what train the people who read bones for a living, the forensic anthropologists who identify crime victims, and the anatomists who teach in medical schools. "There is a real danger," she said, "that we're going to lose some skills that are really essential to medicine, to forensics, and who knows what else."

Crafts meant for sale to tourists are now being appropriated. The Pick Museum at Northern Illinois University announced in 2023 that it would repatriate three traditional masks bought

at a Tucson craft shop in 1981. The artist who carved them sold them openly, and his father, a Cayuga chief, criticized the move to treat pieces meant for sale as sacred.

Tribes are abusing the 2023 rule's "duty of care" clause, says Weiss, which requires museums to obtain tribal consent before doing any research on or display of covered items. Activists are trying to appropriate photographs, X-rays, digital files, and even cryptographic (NFT) tokens.

"There was one meeting," said Weiss, "right before the 2023 final rule was passed, where one of the Native American activists was like, 'What about NFTs? Could those be considered human remains or sacred?'" An NFT is a Non-Fungible Token, a unique digital certificate of ownership of a specific digital asset.

The official running it, she recalled, asked what an NFT was. The activist answered that she was not certain, but believed it involved a computer. She added that images or replicas "can entice the spirits to enter in them, so they could be living."

As a result, Weiss alleges in a new report, research on the Americas' prehistoric past has ground to a halt. Weiss says journals now decline to print photographs of skeletal remains.

What went wrong? Why did NAGPRA spiral out of control?

Congress enacted NAGPRA in 1990 after years of negotiation among tribes, scientists, and museums. It followed the American Indian Religious Freedom Act of 1978, which had established a federal policy to protect Native religious practice.

NAGPRA "was passed with clear understanding that this was a compromise," Weiss says, and "was never meant as a pan-Indian law." It was a way to return specific remains and objects to the modern tribes affiliated with them. By that standard, the law did much of its job in its first years. The federal government reports that agencies repatriated more than 90% of the human remains they could affiliate with a present-day tribe.

But the statute carried two flaws from the start, says Weiss. It allowed oral tradition, including myth, to count as evidence of affiliation alongside documents and biology. And it required that the small Review Committee include traditional Native religious leaders, which built a religious claim into a scientific process.

Even so, she says, research continued for three decades because the law preserved a category for remains that could not be linked to any tribe. The federal government counts more than 116,000 Native American remains still in collections, about 95% of them never affiliated with a tribe.

A pivotal moment came in December 2023, when the Interior Department issued a final rule, effective January 2024, that told museums and federal agencies they “must defer to the Native American traditional knowledge” of tribes. The same rule eliminated the old category of “culturally unidentifiable” remains, which had kept unaffiliated ancient material available for study. Within two weeks, the American Museum of Natural History closed its two major Native American halls.

The law’s moral engine was guilt over real abuses against Native people. For more than a century, institutions dug up Native graves and displayed the dead, often without consent and sometimes as racial trophies. Soldiers, collectors, and scientists shipped skulls to museums and federal warehouses, and the descendants of those dead had no say in what happened to them.

When the bones of an ancient man surfaced at Kennewick, Washington, in 1996, a tribal leader gave the grievance its sharpest voice. “Scientists have dug up and studied Native Americans for decades,” Armand Minthorn of the Umatilla wrote, calling the practice a desecration.

But he went further, rejecting migration science itself. His people’s oral histories, he wrote, place them on this land since the beginning of time, and he said they do not believe they came from another continent as scientists claim.

The law arrived as a revisionist account of United States history was taking over the academy. Its most popular expression was Howard Zinn’s *A People’s History of the United States*, which appeared in 1980 and has sold more than three million copies. Zinn told the national story as one of oppression and resistance, with Columbus and the founders recast largely as villains. Assigned in thousands of high schools and colleges, the book trained a generation to read American history as a ledger of crimes.

Weiss says the repatriation movement rests on a “postmodern woke agenda” and “identity politics” that hold “Native Americans are the victims in this story and we have to atone for all the past evils we did.”

At the same time, the result of NAGPRA is neocolonial because it imposes a single belief — that all remains must be buried — on cultures that did not all hold it. Many Paleo-Indian remains, she notes, were never buried at all but eroded out of riverbeds where people had died. Other societies, including some in Mexico, study and display their dead with pride.

The duty of care can carry a tribe’s religious rules into a public institution, including rules about sex. Weiss argues that by ordering museums to accommodate tribal traditional knowledge, the regulations have imported sex-based restrictions into taxpayer-funded

museums and universities, with some practices barring women from handling certain objects and shutting female researchers out of work their male colleagues can do.

Weiss discovered this the hard way at San Jose State, where revised curation protocols barred “menstruating personnel,” the term the university used in place of women.



In 2020, Weiss published *Repatriation and Erasing the Past*, arguing that NAGPRA undermines science and, by favoring religion, violates the Establishment Clause. In apparent response, San Jose State, where she had served as Collections Coordinator since 2004, in 2021 put the collection under the control of the NAGPRA coordinator and tribal liaison, required written approval for any access, and banned photographs of remains. The dean’s college hosted a webinar titled “What to Do When a Tenured Professor is Branded a Racist,” aimed at her.

The tribe and the university treated faunal bones and X-rays in the curation facility as covered by the law. She sued in 2022 under the First Amendment and in 2023 she settled with San Jose State on favorable terms. The settlement gave her full retirement benefits and emeritus status, and freed her to research and speak without the threat of another campaign against her livelihood.

In 2024 she published *On the Warpath*, an account of her fight, and she has kept writing for a general audience. “There is a small tide turning,” she said, “and hopefully, in the next year or so we’ll see some dial back at least.”

In the end, only Congress can fix what it started, and Kennewick Man shows why it must. Two students found his skull in the Columbia River in 1996, and the skeleton proved to be about 9,000 years old. Eight scientists sued for the right to study him and won in 2004, while five tribes claimed him as the Ancient One and sought reburial.

Tying him to a specific tribe was never well supported by the law’s own standards, but that didn’t change the outcome. In 2016, Congress passed a special provision that bypassed the NAGPRA process and ordered the remains transferred for reburial. On February 18, 2017, five tribes reburied him at an undisclosed location, and the bones are now beyond science forever.