

Article

The Study of California's Past is Dead and Reburied

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Abstract: Repatriation laws, which aim to return human remains and artifacts from past peoples to modern Native American tribes, have recently changed at both the federal and state levels. California has two large public university systems where skeletal collections have been used for both research and teaching. In this paper, I investigate the current availability of human remains collections – both for Native American remains and non-Native American remains – for research in the California State University and the University of California systems. From the responses that I have received and a search of the anthropological literature, it appears that the repatriation process has caused the cessation of human remains research at California's public universities.

Keywords: human remains; Native Americans; repatriation

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Introduction

In 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was passed.¹ The intent of this federal law was to provide a pathway for federally recognized tribes to acquire human remains, funerary objects, sacred objects, and objects of cultural patrimony from federally funded institutions, such as universities, who held these materials in their curation facilities for research. Thereby, universities would be required to inventory, assess affiliation, and repatriate collections to tribes who are related to these materials.

Although many anthropologists and archaeologists supported NAGPRA and other repatriation laws, a few anthropologists were concerned that these laws would result in the cessation of archaeological research and our ability to accurately reconstruct America's past.² In 1996, in the *Annual Review of Anthropology*, Jerome Rose and his colleagues

¹ "Native American Graves Protection and Repatriation Act." [link to the article](#), accessed September 18, 2024.

² "Indian Tribes' Creationists Thwart Archeologists." [link to the article](#), accessed September 18, 2024.

addressed some of the concerns that NAGPRA would destroy the study of prehistoric Native American skeletal remains.³ In their article “NAGPRA is Forever: Osteology and the Repatriation of Skeletons,” the authors argued that more human remains would be studied, more sites would be studied, the number of research articles would increase, and osteological research would be more systematic and standardized. NAGPRA, according to Rose and colleagues, would help anthropological research, not hinder it.

Unfortunately, Rose and his colleagues’ predictions did not come to fruition. In a 2006 study, I examined the trends predicted by Rose and his colleagues and found the opposite occurred.⁴ The number of sites utilized in research went down, the number of articles using Native American human remains decreased, and standardization of methods was not adopted. NAGPRA had a detrimental effect on research into America’s past.

This article takes an updated look at anthropological research on skeletal remains in California’s public universities. It is an especially pertinent time for this updated investigation. NAGPRA’s new regulations, called the “Final Rule,” which were passed in December 2023, have added “traditional indigenous knowledge” as a form of allowable evidence for repatriation, require continuous “collaboration” with tribes, and eliminate the option to categorize collections as “culturally unidentifiable.”⁵ At the state level, California’s main repatriation law (CalNAGPRA [California’s Native American Graves Protection and Repatriation Act]) puts forth that when science and “Native American knowledge” are at odds, deference must be given to the tribal narrative.⁶ And, new California laws AB226 and AB389 are targeting teaching collections that may contain Native American human remains.⁷

Repatriation laws are being misused, and human remains and artifacts are being “repatriated” to tribes (who often rebury them) without evidence of true affiliation to the past peoples. I predict these recent changes to repatriation laws will bury our ability to study human remains in California, and this will spread to the rest of the nation.

California State University

There are 23 campuses in the California State University (CSU).⁸ The CSU is the largest public university system in the U.S., and it has a combined enrollment of about 500,000. There are also about 56,000 employees (about half of whom hold nonacademic positions) in the CSU. The CSU is mainly a teaching system, but research is conducted on each campus. And, in order to obtain tenure, faculty must conduct research and publish their findings. Additionally, the CSU offers graduate degrees, nearly all of which are two-year Masters degrees.

Twenty-two of the campuses offer undergraduate degrees in anthropology and nine campuses offer Masters degrees in anthropology. Anthropology degrees, especially those with biological anthropology and archaeology courses, may prepare students for

³ Jerome C. Rose, Thomas J. Green, and Victoria D. Green. “NAGPRA is Forever: Osteology and the Repatriation of Skeletons,” *Annual Review of Anthropology* 25, no. 1 (1996): 81–103. [link to the article](#)

⁴ Elizabeth Weiss. “NAGPRA: Before and After,” *Friends of America’s Past*, [link to the article](#), accessed September 18, 2024.

⁵ “Final Rule.” December 13, 2023. [link to the article](#), accessed August 8, 2024.

⁶ Elizabeth Weiss. “California Law on Native Americans’ Remains Favors Religion over Science,” *The Mercury News*, August 31, 2021.

⁷ Elizabeth Weiss. “California Buries Science,” *Minding the Campus*, October 30, 2023. [link to the article](#)

⁸ “California State University.” [link to the article](#), accessed August 8, 2024.

forensic anthropology graduate programs, which will result in terminal degrees that lead to careers to help solve crimes. Cultural resource management is a common choice for archaeologists and biological anthropologists who wish to preserve historic and prehistoric cultures through construction site excavation – sometimes referred to as salvage archaeology – and curation of human remains and artifacts. Cultural resource management jobs range from field technician to researcher, but usually require an undergraduate degree in anthropology. And, biological anthropology can be combined with the biology and chemistry majors for careers in medicine, teaching anatomy, and ergonomic-related careers.

A significant part of biological anthropological and archaeological training involves working with skeletal remains; many of these come from archaeological excavations that contain remains from precontact Native Americans. This can take place in human osteology courses, in field schools, and in research, such as in graduate degrees that involve data collection from skeletal collections previously excavated and curated by the university.

In order to investigate the situation in the CSU of access to skeletal remains for researchers, between April 24 and April 26, 2024, I emailed 22 campuses – contacting their NAGPRA coordinators, anthropology professors working with skeletal remains, tribal liaisons, or anthropology department chairs. I did not reach out to San José State University (SJSU) since I am aware of the situation in regard to research collections there. As a professor of anthropology at SJSU, I curated and conducted research on the university's skeletal collections for over 16 years. Multiple SJSU students worked alongside me on research projects and conducted research for their MA theses. Students and scholars from around the world also visited to collect data from the prehistoric California Amerindian collections curated at SJSU. This work was halted in 2021 and no research opportunities using Native American skeletal collections are available at SJSU.⁹

For each campus, I wrote:

Recently, I've been given a grant by Heterodox Academy to investigate the different protocols in place to gain access to human remains (both Native American and non-Native American) for research purposes. I am hoping that you may be able to help me by answering a few questions on human remains collections. Basically, I am wondering whether XXXX has collections of human remains (either Native American or non-Native American) and, if so, I was wondering whether you could provide me with some information about XXXX's protocols in regards to such collections. Basically, I have four questions –

- 1) What collections are available to researchers?
- 2) What are the procedures in place to gain access to those collections?
- 3) What limitations on research hypotheses, methods (or procedures), and publications are in place?
- 4) Have any of these (collections available, methods for access, or limitations) changed as a result of NAGPRA's "Final Rule" or any other recent events?

By August 1, 2024, I received replies from 11 campuses (CSU Bakersfield, CSU Dominguez Hills, Fresno State University, CSU Monterey Bay, Cal State Los Angeles,

⁹ Elizabeth Weiss. *On the Warpath: My Battles with Indians, Pretendians, and Woke Warriors* (Washington, DC: Academica Press, 2024).

CSU San Bernadino, Cal Poly San Luis Obispo, Sonoma State University, CSU Stanislaus, CSU Fullerton, CSU San Marcos). Three of these responses (Sonoma State University, CSU Stanislaus, and CSU Fullerton) referred my request to others who would be better able to answer my questions. I received no further replies from two (Sonoma State University and CSU Stanislaus) of these campuses.

All of the responses I received indicated that no research possibilities on human remains currently exist (see Table 1). Cal Poly San Luis Obispo has never held any research collections consisting of human remains or artifacts; their anthropology and archaeology professors conduct research at other institutions. The inference from other replies suggests that there are also no collections at their campuses, such as CSU Monterey Bay, who wrote that they “conducted a reasonable search for these records under California Government Code §7922.535 [a public records request code] and ha[ve] determined that there are no records responsive” and a search in the CalNAGPRA database indicates that they had not filed any inventory listing. Yet, other campuses, such as Cal State Los Angeles, use the same language, and have inventory completions in both CalNAGPRA and NAGPRA databases that indicate that they have collections. CSU San Bernadino only has teaching collections.

Table 1: CSU System Summary of Results.

Number of Campuses that were Contacted	Number of Replies for Information	Number of Responses Indicating Available Research Collections	Details on Available Research Collection
22	11	1	Fresno State University – Modern Human Remains, not available to outside researchers.

From CSU Bakersfield, I received information that the university has “banned human natural bone material all together along with research about Native Americans involving curated collections, archival notes, information and media.”¹⁰

Some university presidents have memoranda regarding the prohibition on the study and use of skeletal remains. For instance, Cal Poly Pomona’s president put out a memorandum on May 26, 2024 that states:

Effective immediately, Cal Poly Pomona will suspend the collection of, and prohibit the use of, any ancestral remains or cultural items for any teaching, research, or exhibition purposes to comply with state and federal requirements (CalNAGPRA and NAGPRA). Furthermore, Cal Poly Pomona will consult with Tribes prior to access, use, distribution or display of potentially sensitive or proprietary information. This

¹⁰ Email communication, received April 26, 2024.

includes but is not limited to images, renderings, and reproductions of ancestral remains and cultural items that are or have been in a university's collection.¹¹

And, on August 30, 2023, CSU Bakersfield's president put out a moratorium that included:

As part of CSUB's commitment to NAGPRA, CalNAGPRA, and working with Native and Indigenous communities, the university is placing a moratorium on the research, teaching, display, imaging, and circulation of human remains and cultural items (including archival material, notes, movies, and data) that are potentially subject to NAGPRA and CalNAGPRA.¹²

Only one campus seemed to have any opportunity for research. SJSU has a small and very poorly preserved skeletal collection from sixth- to seventh-century AD Carthage (i.e., modern day Tunisia) that may still be available for research. Actions to make this collection unavailable for research were halted when I sued SJSU for retaliatory actions against my views of repatriation.¹³

Since I asked about collections not related to Native Americans as well, I also received information that Fresno State has a modern human skeletal research collection, but it is not available for use by outside researchers, and it is currently undergoing cataloging. Once the cataloging is complete, protocols will be put into place for research requests. It will be interesting to see those protocols once they are in place, since prohibitions against display of human remains are now widespread in museums, regardless of the origins of the remains.

In short, practically no evidence of current research possibilities on human skeletal remains has been discovered throughout the entire CSU. It may be that in one of the other 12 campuses opportunities for such research exists, but my queries were ignored. Professors and staff may have ignored my requests due to my reputation as a critic of NAGPRA and CalNAGPRA; however, I made it clear that my efforts were not to gain access to collections, but to understand how repatriation laws have affected the ability to conduct research.

Although these results may seem surprising, it appears that the federal law changes in NAGPRA, the changes in CalNAGPRA, and the passing of AB389 have stopped scientific research on human remains in the CSU System.

University of California

The University of California (UC) has 280,000 students and 227,000 faculty and staff (over 170,000 of whom hold nonacademic positions).¹⁴ The UC offers PhD programs and has some of world's top research facilities. Seventy percent of UC students engage in original research or creative projects and all 10 campuses offer anthropology degrees; 9 of the 10 campuses offer anthropology PhDs.

Between April 25 and April 26, 2024, I emailed all of the UC NAGPRA coordinators, anthropology chairs, or professors who worked with skeletal remains, with the same

¹¹ Soraya M. Coley. "Suspension of Collection of Native American Ancestral Remains and Cultural Items and Prohibition on Use in Teaching, Research and Display." March 26, 2024, [link to the article](#)

¹² CSU Bakersfield Policy, "NAGPRA/CalNAGPRA Moratorium on Native American Remains and Cultural Items." August 30, 2023, [link to the article](#)

¹³ Elizabeth Weiss, 2024.

¹⁴ "University of California." [link to the article](#), accessed August 8, 2024.

questions that I asked the CSU contacts. By August 1, 2024, I received replies from four campuses (UC Merced, UC Irvine, UC Santa Barbara, and UC San Diego through their Museum of Us). UC Merced and UC Irvine replied that they hold no human remains collections. UC Merced is the only UC without a PhD in anthropology and UC Irvine's faculty conducts research on collections from Greece and Egypt. For UC Santa Barbara, my query was passed on to the NAGPRA director, but I never received a follow-up email. I received a holding reply from the Museum of Us. Table 2 summarizes the results.

Table 2: Summary of Results for the UC System

Number of Campuses that were Contacted	Number of Replies for Information	Number of Responses Indicating Available Research Collections
10	4	0

Due to the lack of responses and making the reasonable assumption that the situation in the UC is likely to mirror that in the CSU, I can only conclude that research on skeletal remains is not currently possible in the UC System either.

California's Native American Heritage Commission

It is difficult to get further information on the state of anthropological collections in California. Upon conducting research into which campuses had collections and what those collections may hold, I examined the Native American Heritage Commission CalNAGPRA database.¹⁵ The only publicly available information is the inventory completion status, the repatriation status, and the cultural affiliations. Any further information, such as number of individuals, site locations, or artifacts associated with the remains, requires an access code that is provided only to tribal members. The response I received, on May 20, 2024, to my requests for further information was:

Thank you for your request for access to the Inventories and Summaries Page of the NAHC CalNAGPRA Database. Your request for access is denied because full access to the database is reserved for California Indian tribes pursuant to AB-275, specifically Health & Safety Code section 8013(d). Section 8013(d) is copied below, for your reference.

Health & Safety Code section 8013

(d) Within 90 days of completing the preliminary inventory and summary specified in subdivisions (b) and (c), the agency or museum shall provide a copy of the preliminary inventory and summary to the commission. The commission shall, in turn, publish notices of completion of preliminary inventories and summaries on its internet website for 30 days, and make the preliminary inventories and summaries available to any requesting potentially culturally affiliated California Indian tribe.¹⁶

¹⁵ "CalNAGPRA Inventories and Summaries Database." accessed September 18, 2024.

¹⁶ "NAHC Cal NAGPRA." Email communication, received May 20, 2024.

Journal Publications

On July 7, 2024, I reached out via email to both CSU and UC professors who recently published on Native American skeletal remains and had graduate students who recently completed research on skeletal remains. I wrote:

I am currently working on a paper about the loss of access to skeletal collections and data in California as a result of CalNAGPRA, AB275, AB226 and AB389. Since you have recent publications that utilized Native Californian remains, I was wondering whether you could tell me:

- 1) Are you still able to access remains for new research? And, if so, what procedures were required to gain access?
- 2) Whether you've had any difficulty using previously collected data?

Only one professor replied to my email, and asked to remain anonymous. The answer provided was:

The UC set out restrictive policies for researchers in about 2021. It makes it difficult to access collections from both UC and other repositories. It is technically possible, but practically very difficult, and requires a lot of administrative signatures and oversight. I haven't tried to access collections since then.¹⁷

He also added that he "hasn't tried to access existing data either." And, he worries that "professional journals will start requiring certain standards, such as letters of approval from descendant communities, that would make it harder to publish existing data I collected many years ago."

His solution is to shift his research to less controversial regions and topics. These concerns regarding journals are valid; top journals, such as those associated with the Society for American Archaeology, have begun implementing requirements to publish that include:

Whenever possible, authors dealing with human remains should provide a statement in their article or report that establishes that permission to analyze and publish data was obtained from appropriate tribal and/or institutional representatives.¹⁸

And, the *International Journal of Paleopathology* requires:

Whenever possible and where applicable, authors should indicate that they have consulted with descendent groups regarding the presentation of research results based on human remains.¹⁹

Research now being published was likely started before these latest repatriation laws – especially AB226 and AB389 – were passed. Still, I examined the content of the

¹⁷ Email communication, received July 10, 2024.

¹⁸ "Editorial Policy, Information for Authors, and Style Guide for *American Antiquity*, *Latin American Antiquity*, and *Advances in Archaeological Practice*." Revised December 2023. [link to the article](#), accessed August 8, 2024.

¹⁹ "*International Journal of Paleopathology* Guide for Authors." [link to the article](#), accessed August 8, 2024.

last nine years of research, from January 2015 through to the end of July 2024, in top peer-reviewed journals: *Bioarchaeology International*, *International Journal of Osteoarchaeology*, *International Journal of Paleopathology*, and the *American Journal of Biological Anthropology*. And what I found is that, although there are a small number of studies (fewer than 10 in all these journals combined) on California prehistoric human remains pre-2020, there have been no articles on Californian prehistoric human remains in *Bioarchaeology International*, *International Journal of Osteoarchaeology*, and the *International Journal of Paleopathology* since 2020. And, in *Bioarchaeology International*, from 2017 to 2020, only three articles on Native American human remains have been published. In the *American Journal of Biological Anthropology*, from 2015 to 2019, there were three articles on California Native American remains, but since 2020 only one has appeared.

Conclusions

Studies on Native American skeletal remains have disappeared in California public universities and in top research journals. When researchers need to go abroad to study collections, students and professors with less means may be unable to choose this area of research. And, research that may help modern people, like forensic research, becomes skewed by looking at only European remains.

Across the CSU, changes to reburial laws have made the study of skeletal remains a near impossibility. These changes include the strengthening of CalNAGPRA in 2021, requiring universities to defer to Native American knowledge and treat Native Americans as expert witnesses, who are not to be questioned.²⁰ Further, the “Final Rule” changes to NAGPRA eliminate the term “culturally unidentifiable” and no longer require a “preponderance” of evidence for repatriation decisions.²¹ And, in October 2023, the passing of AB389 “prohibits the use of Native American human remains or cultural items for the purposes of teaching or research” throughout the CSU.²² This will cause a cessation of MA theses in this field, and result in a loss of research and teaching tenure track positions. In case anyone thinks that this is an academia-only issue with no real-world consequences, this will lead to a generation of California forensic anthropologists who are inadequately trained.

In the UC, which is the public land-grant research university system in California, things are no better. The UC is also affected by NAGPRA and CalNAGPRA; AB389 is specific to the CSU System. However, AB226 is specific to the UC System and although it does not outright prohibit the use of Native American collections for teaching and research, it does state that “[t]he University of California is strongly urged to prohibit use of any Native American human remains or cultural items for purposes of teaching or research at the University of California.”²³ This will hinder students’ ability to conduct PhD research in the state, it will prevent cultural resource management training from being adequate, and it will lead to a lack of research opportunities for those interested in anatomy, forensics, and bone health.

²⁰ Elizabeth Weiss, 2021.

²¹ “Final Rule,” 2023.

²² “AB389.” [link to the article](#), accessed August 8, 2024.

²³ “AB226.” [link to the article](#), accessed August 8, 2024.

One may wonder what limits on access to human skeletal remains would be appropriate. I would draw the line at grave robbing. Grave robbing and looting often results in the destruction of the human remains for material gain.²⁴ Grave robbing from recently deceased individuals, who are usually cadavers rather than skeletons, could hinder the ability to disinter and examine individuals when criminal activity, such as homicide, has been suspected. Yet even with grave robbing, I suggest individuals disinterred illicitly many years ago (say over 100 to 150 years ago) should not be reburied, but rather should continue to be used in labs and classrooms.

Some may suggest families should be able to make decisions about access and treatment of their recently deceased loved ones. This area is grayer than one might expect, and families often argue over these decisions.^{25,26} The decision is often made not by blood-related family, but by spouses, and who is considered family varies greatly.²⁷ Some argue that family is composed of spouses, parents, siblings, and offspring, while others may include cousins, nieces, nephews, uncles, and aunts. The issue gets thornier when looking at ex-partners, common-law spouses, and long-term partners. Complicating the issue, some Native American tribes argue that archaeological collections are made up of family members from hundreds or even thousands of years ago.²⁸ Plus, even when individuals have made known to loved ones their wishes to be buried, cremated, or donated to science, these wishes are often ignored.²⁹ Regardless of these few gray areas, I suggest the benefit of curating and studying real human skeletal remains outweighs the false negative perceptions (such as those associated with grave robbing or the repeated claims that archaeologists are digging up of Native American relatives) of such collections.

The true adverse impact (such as the number of theses and dissertations affected, the research halted, or the publications prevented) of these recent changes to repatriation laws and the ideology behind these laws may take time to show up. As well, the decreasing ability of forensic anthropologists to identify homicide victims from their skeletal remains will be hard to assess. And, non-Native American remains, such as forensic collections and remains from India's bone trade that make up the majority of non-Native American remains in U.S. universities, are being targeted for removal from labs and classrooms.^{30,31} Thus, it appears that in California, research into the prehistoric past has become a thing of the past, but the destruction of anthropological research will continue until all human remain collections are buried.

²⁴ Ricardo J. Elia. "Looting, Collecting, and the Destruction of Archaeological Resources," *Nonrenewable Resources* 6, no. 2 (1997): 85–98. [link to the article](#)

²⁵ Conway, Heather. "Dead, but not Buried: Bodies, Burial and Family Conflicts," *Legal Studies* 23, no. 3 (2003): 423–452. [link to the article](#)

²⁶ Brian L. Josias. "Burying the Hatchet in Bural Disputes: Applying Alternative Dispute Resolution to Disputes Concerning the Interment of Bodies," *Notre Dame Law Review* 79 (2003): 1141.

²⁷ Frances H. Foster. "Individualized Justice in Disputes over Dead Bodies." *Vanderbilt Law Review*. 61 (2008): 1351. [link to the article](#)

²⁸ Clayton Dumont, Jr. "Dead Family or Archaeological Collections?: On the Significance of Native Dead," *Race, Gender & Class* (2002): 8–31.

²⁹ Frances H. Foster, 2008.

³⁰ Sabrina C. Agarwal. "The Bioethics of Skeletal Anatomy Collections from India," *Nature Communications* 15, no. 1 (2024): 1692. [link to the article](#)

³¹ Carlina de la Cova, Courtney A. Hofman, Kathryn E. Marklein, Sabrina B. Sholts, Rachel Watkins, Paige Magrogan, and Molly Kathleen Zuckerman. "Ethical Futures in Biological Anthropology: Research, Teaching, Community Engagement, and Curation involving Deceased Individuals," *American Journal of Biological Anthropology* (2024): e24980. [link to the article](#)

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