

## Indians, Archaeology and the Changing World

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*In recent years, Indians have started to reclaim their heritage as it is represented by the archaeological record. They have begun to assess the merits of archaeological theory and to influence the discipline. This article examines the nature of the relationship between archaeologists and Indians. It is argued that shifts in Indian demographic profile, education and average income account for the changes in that relationship. Historical practices are no longer sustainable and archaeologists must recognize the need to reconcile their efforts with Indians' aspirations if they are to gain the trust and co-operation of the people whose heritage they manipulate.*

*De nos jours, les Autochtones ont commencé à reprendre leur héritage tel qu'il est représenté dans les archives archéologiques, à évaluer le mérite de la théorie archéologique et à influencer cette discipline. Cet article examine la nature de la relation entre les archéologues et les Autochtones. Il est avancé que les modifications dans le profil démographique des Autochtones, l'instruction et le revenu moyen sont attribuables pour les changements dans cette relation. Les pratiques historiques ne sont plus viables et les archéologues doivent reconnaître le besoin de reconcilier leurs efforts avec les aspirations autochtones s'ils veulent se mériter la confiance et la coopération du peuple dont ils manipulent l'héritage.*

### Introduction

Archaeology is portrayed as an objective search for human antiquity, so it is promoted as the logical means for exploring the undiscovered history of the Americas. When the question of Indian origin is discussed in archaeological texts, the accepted theory posits that prior to 12,000 years ago small bands of Mongoloid people began colonizing northeast Asia and

eventually migrated across Beringia to settle in America. Morphological similarities common to modern Asian and American Indian populations are accepted as proof of a common ancestry. Radiometric dating techniques coupled with biological analysis create a plausible scenario that is appealing to a secular palate. Relying heavily on scientific methods, archaeologists, perhaps inadvertently, have presented society with the "original immigrants" theory of Indian origins, without regard for the social and political consequences. This, of course, challenges the Indians' own version of their origin: as Aboriginal people they were fashioned *in situ* by a benevolent creator. Countering scientific arguments, Indian scholars, perhaps not surprisingly, have shied away from the methods of their archaeological adversaries and instead appeal to legal and social reasoning.

These tenets represent the poles in the debate between Indians and archaeologists; in between is the constituency of interested parties, who are cognizant of the utility of scientific methods but are compelled by conviction to do the right thing. Scholars on both sides have staked out their ideological terrain and in the process have exerted their influence on the manner in which the discipline is evolving. Opposing schools labelled by their particular "ism," such as nativism versus scientism, processualism versus post-processualism, modernism versus post-modernism, identify the parties involved in this intellectual commotion. Each denounces the other as anti-Indian, anti-science, anti-modern, anti-intellectual, etc. Their rhetoric may seem a distant rumbling emanating from the ivory tower, but the stakes are high when this noise translates into social policy. It is the intention of this paper to step gingerly into the fracas and examine the progression of this debate as it is articulated in science, politics and Native studies.

## A Brief Look Back

Archaeology as a discipline has its historical roots firmly set in the related field of antiquarianism, as indicated by publications like *The Canadian Antiquarian and Numismatic Journal*, first published in Montreal in 1872. An arcane tradition, it consisted of collecting materials of exotic origin; typically aficionados of this practice were unconcerned with provenance, since their main goal was the unusual. Antiquity was a chaotic land where the travellers had no local guidebooks, or maps, to direct their visit; antiquities were sought as souvenirs for curiosity cabinets, rather than for academic or educational value. When the dilettantish collecting of antiquarians gave way to a more systematic study of the past, time became the variable against which material remains were contrasted and cultural traditions were measured. Eventually archaeology evolved into a learned

endeavour, complete with professional accreditation and recognition in university programs.

Willey and Sabloff (1993) provide a broad scheme of the development of archaeology in America from the colonial era to the present. Beginning with the Speculative period (1492–1840), ranging from discovery to the mid-nineteenth century, it could just as easily be labeled the “wildly speculative” period. Their sequence continues on to the Classificatory-Descriptive period (1840–1914), followed by an initial Classificatory-Historical period (1914–1940), its preoccupation being with relative chronology. The second Classificatory-Historical period (1940–1960) was more concerned with context and function, though subsidiary goals sought to understand settlement patterns and the interface between cultural and natural environments. Finally, the Modern period (1960 to the present), describes the advent of the “New” archaeology and its fixation on cultural process. The archaeologists’ categories recapitulate the trends that dominated the field in their respective eras, each period being guided by authors whose work most influenced the discipline as a whole. While the research methods and theoretical perspective changed with each successive period, the Indian subject of their investigation remained constant, even if the researchers did not always appreciate it.

Speculation over the extinct “Mound-building” culture defined the earlier periods of American archaeology; it was an archaeological paradox that would endure throughout the nineteenth century. This enigmatic culture was thought to be descended from a race distinct from the Indians, since their impressive earthworks demanded a level of industry beyond that exhibited by local Indians. Especially influential were the writings of Atwater (1820), Squire and Davis (1848), the Reverend S. D. Peet (1878; 1879) (as editor of the journal *The American Antiquarian*) and Cyrus Thomas (Willey and Sabloff, 1993), who finally laid the myths to rest in 1894 when he demonstrated that the mounds were the work of an autochthonous culture. Witnessing the debate in the republic to the south, Canadian archaeologists would contribute, with alacrity, their share of personalities in the likes of Daniel Wilson (1855), professor of history and English literature at the University of Toronto; D. Boyle (1885), curator of the Canadian Institute’s collection; Charles Bell (1886), of the Manitoba Historic and Scientific Society; and J. C. Hamilton (1889). As members of the Canadian Institute, all were devotees of natural history and promoters of science. Assiduous contributors to the society’s official publication *The Canadian Journal*, they frequently engaged in their own wild speculation about the prehistory of their country. The founding of the Royal Society of

Canada, in 1882, laid the foundation of a truly professional approach to archaeological study in Canada (Cole, 1973). By this time the Aboriginal cultures in North America had gained the dubious reputation as the "Vanishing Race." Marginalized in their own country and isolated on reservations, they posed no threats to the nation-states that enveloped them.

Developments in archaeology during the twentieth century were reflected in the revised objectives of research, the utilization of innovative methodologies and a love affair with novel technologies (Patterson, 1986; Willey and Sabloff, 1993). Professionalization of the discipline mirrored the increased secularization of American society and the influence of natural sciences on cultural studies, particularly the advances made in Pleistocene geology and evolutionary biology; gone was any mention of Noah's Ark and largely forgotten was Acosta's impetus for initially proposing the Indian's route to America. Instead, descriptive cultural histories of specific geographical regions dominated the literature, and the theological debates were replaced by questions of "early man" and "his" appearance on this continent. Arguments for a human presence in Ice-Age America, though initially dismissed, were explicitly resolved with the discovery of projectile points in direct association with extinct fauna near Folsom, New Mexico. The earlier Clovis fluted-point tradition was subsequently discovered, also in eastern New Mexico, and became the archetypal horizon for comparative chronologies (Bordes, 1968).

Science became the great arbiter of antiquity as a result of the carbon-14 technique discovered by Willard Libby in 1949. Thereafter, archaeologists became preoccupied, some would say obsessed, with absolute chronologies as a whole series of radiometric dating techniques were invented, each professing to provide ever-more-accurate dates on smaller samples. Since then, it has become standard practice to subject every organic smear and strand to some form of radio-isotope analysis; indeed, a site has not been thoroughly investigated unless and until it has been certified with a radiocarbon date. Perhaps as an indicator of its progress away from sacerdotalism, archaeology has even introduced a new datum of time, BP (before present), to replace the relics of Christian time-keeping (the B.C./A.D. dichotomy). More recently, a trend toward biochronology (Greenberg et al., 1986; Merriwether et al., 1995) has entered the fray and, if nothing else, promises to make the debate over Indian origins more interesting and muddled (Weiss, 1994; Pluciennik, 1996). Whether biochemical analysis will prove any more successful at linking Indians with modern Asian populations than traditional approaches remains to be seen.

Reliance on scientific methods was paralleled by the adoption of

theoretical paradigms that allied archaeology with anthropology and sought a task beyond the descriptions of regional cultural horizons (Binford, 1962). Described as the Modern period, its birth and maturation coincided with the post-war baby boom and the tumultuous social changes of the civil rights era. Practitioners became convinced that devising proper methods of study based on the raw data of artifacts would allow them to discern processes of culture change. By the 1970s, the initial confidence was giving way slowly to critical evaluations by a jaded, post-modern society (Wylie, 1994; Kaye and Thacker, 1994). It was argued that methods applied to artifact recovery only seemed innocuous and draped the cloak of objectivity over the science of culture, but also disguised the subjectivity inherent in the exercise of theory-building (Rush, 1994). Finally, the last element added to the debate was the long-silenced Indian voice; inspired by the activism of Black Americans, Native people spoke out as advocates of the Aboriginal past, which had been, for too long, the exclusive domain of archaeologists. Lost in the rush to provide logical explanations for the cultural detritus that comprises the archaeological record was the fact that construction of theory could be harmful to extant Native people (Hammill and Cruz, 1989). Ignoring Indian concerns may have been symptomatic of their marginalization, but the deleterious effects are by no means irreversible (Deloria, 1992a and 1992b).

Perhaps because so few Indians have written about the profession (Johnston, 1977; Mayer and Antone, 1986; Yellowhorn, 1993; Linklater, 1994), there has been no attempt to establish an equivalent scheme for the involvement of Indians in archaeology. If there were it would look something like this: There would first be an initial, Aboriginal phase; it would be delineated in chronological terms from time immemorial to the end of the nineteenth century, when Indians stopped living in their purely traditional lifeways; it would be defined by the creation of the archaeological record. There would be a Dormant phase, extending from the beginning of the twentieth century until 1970; it would be defined by a cultural hiatus during which time Indians were not appreciably involved in creating or manipulating the archaeological record. There would be a Reactivist phase, beginning in 1970 and marked by the emergence of Native activists reacting to their exclusion from their heritage. It would be synonymous with requests for repatriation of artifacts, the legal challenges to the cultural *status quo* and the demand for a new relationship with mainstream archaeology. It would last until the present. Lastly, there would be a Nationalist phase like that described by Trigger (1984); beginning in the present, it would extend into the foreseeable future and be defined by the increasing presence of Indians

working as archaeologists and serving the goals of the Indian community. It would foster a pan-Indian identity and appeal to the imagined communities of the Fourth World.

## Contemporary Issues

It will be some time before a critical mass of Indians becomes active in the discipline of archaeology, but the days are gone when they were merely passive recipients of archaeological knowledge. One thing is certain, however, and that is that all this science has not appreciably improved the quality of life for most Indians. There exists, within Indian communities, widespread scepticism, mistrust, doubt and suspicion about the validity of archaeological theory that purports to explain the Indian's past. Indians are not stumbling over themselves to hear the latest scientific discovery that announces a new method of inquiry, largely because of their deliberate exclusion from participation in their past. The perception is that, once again, the scientific agenda is being advanced on the backs of Native people, that the science of the past is inconsistent with the ideology of the past and for this reason the so-called dialogue of the present will continue to resemble a harangue. Indeed, the Indian reaction has been to embrace the fringe elements of pseudoscience, and most have demonstrated an incomplete understanding of physical processes that support archaeological theory (Deloria, 1995). For the most part Indian activists have pursued their cause in a legalistic environment primarily because most of them are trained as lawyers rather than as archaeologists, even though they have succeeded in grabbing the attention of the archaeological profession.

Realizing that "business as usual" was no longer feasible, in 1992 the Canadian Archaeological Association (CAA) assembled the Aboriginal Heritage Committee, comprised of eleven members, including five from the First Nations, and gave it a mandate to consult with all interested parties, to solicit input on specific issues of concern and to develop guidelines for ethical archaeological practice. This initiative was to foster communication between archaeologists and Indians and to ensure the active involvement of Aboriginal people in the profession. From its inception, this committee sought input from federal and provincial government archaeologists, academics, Aboriginal organizations and consultants. Finally, in 1994 the draft *Statement of Principles for Ethical Conduct Pertaining to Aboriginal People* was produced and widely distributed to interested parties (Nicholson et al., 1997). It was debated at the 1995 national conference of the CAA and returned to the committee for revision. In 1996 the revised statement was presented to the members for a vote and accepted by an overwhelming

margin; since then it has been adopted as an official accord by the CAA. Although it espouses the principle of involving Aboriginal peoples, it does not define the nature of that involvement or any methods of recruitment. It is really up to Native communities to decide upon the scope of their involvement since they are in the best position to specify their concerns.

For their part, Native people have identified contentious issues that continue to plague relations and, like unwanted visitors, will remain so long as they are not addressed. The flashpoint with the highest profile has been the controversy surrounding the disposition of human remains recovered in an archaeological context; because of the successful repatriations, the creation of legislation and the changes in public institution policy, it has become the standard by which to measure gains made by Native people in other segments of the discipline. Ancillary matters related to the above topic include the ownership of archaeological collections and funerary objects (McManamon and Aubry, 1990), and protection of sacred sites and graves (Moore, 1991; Walker, 1991). Collateral affairs encompass the repatriation of artifacts, traffic in cultural property and the treatment of archaeology in land claim settlements. In light of the initiatives taken by archaeologists, the following discussion will examine the status of these issues.

### *Archaeological Artifacts as Cultural Property*

There are assumptions applied to objects of ancient provenance: that if they exist, then someone must own them; and that discovery bestows ownership. This has prompted amateur collectors and pot-hunters to invest hours scouring the land looking for unclaimed artifacts. It has also prompted governments to lay claim to undiscovered cultural property and international agencies to devote considerable energy to limit trafficking in it. Canada has a *Cultural Property Export and Import Act*, but there is no national legislation that specifically addresses antiquities, which severely limits the effectiveness of protecting Native heritage, especially on federal Crown lands, where protection relies on isolated statutes (Burley, 1994; Walden, 1995). Provincial legislation partly fills this void by curtailing individual claims to property of unknown origin, even on private land, such that the finders cannot transfer greater title than they can legitimately claim (Bell, 1992a). However, these laws vary from province to province, and provincial legislation cannot be applied to federal lands within their borders, like national parks and Indian reserves.

Although admirable, national laws are motivated by national interests and tend to be ineffective once an object leaves the country of origin. In response, international agreements have attempted to control the movement of antiquities across national boundaries, but scholarly interest may legitimate

the export of certain objects, and the illicit traffic typically works outside official channels. Complications arise in that differentially applied laws may posit subjective aesthetic priorities that discriminate against objects that may be considered poor quality, or not of exceptional standard, and national laws vary; moreover, although some international agreements require export permits or certificates, they do not oblige signatory nations to impose import controls (Bator, 1981; Schneider, 1982; Nafziger, 1983; Burke, 1990). Following the celebration of the International Year of Indigenous People in 1993, the United Nations requested the preparation of a report on protecting the heritage of Indigenous peoples (Daes, 1994). The report endorses the return of moveable cultural property, including human remains and associated funeral objects, to their traditional owners, and it proposes that national governments sponsor legislation to support the rights of Indigenous people to their heritage. The situation is complex in a way that only legal scholars can appreciate.

Aggravating this tangled web is the emerging definition of Aboriginal rights in national laws where nation states have imposed their boundaries upon Aboriginal peoples. In Canada this has implications for treaty lands and areas with unextinguished Aboriginal title. Paradoxically, artifacts found on reserves become Crown property in right of Canada, and those recovered in their customary lands become Crown property in right of the province where they are found, while in neither case are the Indigenous people recognized as the traditional owners. Since antiquities are not mentioned in treaties and no test cases have yet gone before the courts, it is an ambiguous situation, but one in which a compromise may be achieved through negotiation (Pullar, 1995; Walker and Ostgrove, 1995). When Canadians hear the word "repatriation," they automatically think of constitutional affairs rather than human remains or cultural patrimony, but physical repatriation may become the accepted means of resolving future cases (Bell, 1992b; Paterson, 1995; Prott, 1995). Land claim agreements negotiated in northern Canada explicitly declare the rights of Indigenous populations to control their heritage (Canada, 1993a and 1993b). They may provide the model for future directions because they speak of co-management, rather than surrender or ownership. Materials recovered from archaeological sites have become a point of contention because they are the product of human labour, in this case the ancestors of modern Indians. Their anonymous origin does not diminish traditional ownership, which must be communal since no individual can make a claim to the material, and communally owned material is inalienable cultural property.

Alienating "inalienable cultural property" in previous eras has inevitably

led to the current crisis in museums, since in most cases the items were never intended to be the property of one person. An early quest in the United States, by the Onondaga, set the precedent in the debate regarding cultural property and human remains (Blair, 1979). The case for the repatriation of several wampum belts began with their sale to the New York State Museum in the closing decade of the last century. Subsequently, in 1907, a lawsuit to recover these items of tribal patrimony was brought before the courts by John Boyd Thacher on behalf of the League of the Haudenosaunee. His arguments, and those of the museum, mirror, almost to a word, the controversy currently surrounding unidentified human remains. Thacher argued that the belts were culturally significant and could not be sold by any individual, that they were sacred and essential to a viable culture. The museum argued that they were legitimately collected and only institutions, like museums, had the necessary facilities for their safe-keeping. Much later they would also question the motives of the claimants, denouncing them as publicity-seeking adventurers, and portraying the Indians as self-serving ahistorical militants, seeking to alienate the nation's heritage. Ultimately, the effort to recover the wampum belts was successful, and in 1989 the long quest resulted in the recovery of Haudenosaunee heritage (Barriero, 1990; Hill, 1990; Williams, 1990).

The parallels between this case and those dealing with human remains are not trivial, since both question the mandate of public institutions. Typically the reactions resound with accusations of anti-scientific and irrational behaviour on the part of Indians. As Hill (1994, p. 184) notes:

American Indians seeking the repatriation of remains and objects have not infrequently been labeled as acculturated militants, and their requests categorized as political rather than religious in nature. . . . This type of defensive reaction on the part of museums is a way of discrediting the moral basis of the repatriation request.

However, as Indians continue to insist, it is a spiritual matter to preserve the integrity of human ritual, and legal means only provide a remedy (Echo-Hawk, 1991; Loesch, 1993). Cultural property may be the appropriate definition for inanimate objects taken from the ground, but it cannot be expanded to include the physical remains of their ancestors.

#### *Physical Anthropology and Indian Activism*

Physical anthropology, the branch of the discipline concerned with the study of human remains, has become the lightning rod for much of the controversy that has erupted between science and Indians. It is a high-profile topic, one that arouses passions and emotions on both sides; while

some scientists may genuinely regard the Indians as akin to Luddites, the polemics have come to represent the disregard that scientists have toward Aboriginal peoples. Juxtaposed on this thorny issue is the discrimination that Indians have experienced from the larger society which sponsors and condones the work conducted on their ancestors (Cybulski, 1977; Hubert, 1989; Hammill and Cruz; 1989; Vivian, 1990). Research in this field, it is claimed, displays only insensitivity, and represents the type of hegemony that is responsible for the marginalizing of Indians. Although this debate has been played out primarily in the United States, resulting in the passage of statutes like the *Native American Graves Protection and Repatriation Act* (Killion and Bray, 1994), it has international significance, as indicated by reports from South America (Condori, 1989) and Australia (Richardson, 1989; Pardoe, 1991). Similar travails have been noted in countries like Israel, where ultra-orthodox Jews have forced Israeli scientists to rebury human remains regardless of provenance and antiquity.

Disinterring human remains has an early-nineteenth-century vintage that started from the interest displayed in the nature of the races and the comparative analysis of the peoples encountered during Europe's "Age of Discovery." Early modern science was intrigued by the question of race, its origins and the variation observed in human populations (Bieder, 1986 and 1992). The presence of an entire continent, previously unknown, and teeming with inhabitants, was of particular interest; their origin was a perplexing issue that meant they had to be incorporated into the known universe within the context of Christian traditions. Musing on the evidence, the ethnologist Albert Gallatin (1845) opined that they were descended from the original couple, that they were related to Asians and that they had reached American shores within five hundred years after the biblical flood. Given the popular understanding of human history of his day and the absence of secular thought, it was not an unacceptable conclusion. Equally vociferous in the campaign was the physician Dr. S.G. Morton, who began his own research into the known races culminating in the publication of his tome *Crania Americana* (1839). His intent was to cast light upon the meaning of race, and the physical and moral character exhibited by the "Five Races of Men." An erstwhile proponent of comparative physiognomy, he amassed human crania with alacrity, having been invited to lecture in an introductory course in anatomy, and left smarting that he could "neither buy nor borrow a cranium." The paucity of available specimens was the stimulus that led to his mission and sixteen years later he proudly proclaimed having deposited in the National Academy of Science, "a series embracing upwards of seven hundred human crania" (Morton, 1848, p. 217). His

exhaustive treatment was more an exercise in subjective conviction than in scientific scrutiny, nevertheless his conclusions and methods would influence the discipline of physical anthropology for the rest of his century and beyond.

Taking his cue from Morton's work, Daniel Wilson (1855) promoted a similar endeavour for Canada, going so far as to provide instruction for the careful removal of human remains. He discussed methods of retrieval and advised against using cruder implements, such as picks and shovels, noting that finer tools, like hand trowels, were more appropriate for this delicate task. He mentioned the importance of field notes and careful observation of the placement of bodies, advising excavators to "trust nothing to memory" since provenance was important for later reconstruction of the site. Special mention was made of grave goods that might be included, since this was a "common practice among the savage races." He was not about to let his American cousins leave him behind, and it was important for Canadian institutions to keep up their end of scientific investigation. It was imperative that this practice be reserved for trained archaeologists, who alone were deemed capable of appreciating the extent of knowledge that could be gained from human crania, though lack of governmental support, woeful funding and inadequate personnel conspired to limit their effectiveness. They could not possibly monopolize the practice so long as they faced competition from pot-hunters, though they grudgingly acknowledged the contribution of amateur societies.

Although governments have sponsored policies set in public institutions, scientists have not always had governmental support in amassing human skeletal remains. Isaac (1993) illustrates this point by including two laws passed by the nascent government of the Colony of British Columbia in the mid-nineteenth century: the *Indian Graves Ordinance* (1865) and the *Indian Graves Ordinance* (1867). These two statutes extended protection to Indian graves and grave goods, ostensibly for the preservation of the public peace. However, the sanctions were not meant to establish the rights of local Indians; instead, the items mentioned were described as Crown property. Illegally collecting antiquities, including human remains, was a criminal act against the Crown, rather than against Indians. These statutes specifically prohibited collecting bones, and associated articles, and imposed a penalty of up to 100 pounds and six months' incarceration for a first offence; a second offence was punishable by twelve months hard labour. The revised statute halved the penalties for incarceration, but not the fine. However, it did not stop anthropologists from pursuing their objectives as scientists; it only required of them to be more surreptitious.

The case of collecting for the sake of collections was the major rationale for disinterring Aboriginal skeletons and, as the nineteenth century rolled into the twentieth, very little had changed. Human crania were still in demand for comparative collections, so physical anthropologists were encouraged to seek new burial grounds (Hrdlicka, 1916). While the discipline of physical anthropology evolved, its methods and techniques being refined with ever-increasing sophistication, its objectives remained conspicuously static. It seems the only innovation was the reworking of the vocabulary, such that researchers came to speak of "synchronic skeletal groups [displaying] discriminating suites of traits [of] unknown groups of prehistoric provenance" (Heathcote, 1986, p. 3). There was no discussion of the utility of this information to Aboriginal peoples; the interests of the discipline took priority and the case was still being made for the "importance of collecting complete cemetery populations" (Charles et al., 1988, p. 6).

Just as collecting skeletal material finds its origins in the nineteenth century, so too does Native protest over this same practice. Peet (1883) describes the case of Black Hawk, the famous Sauk warrior who led the ill-starred attempt to push the Americans back to the east side of the Mississippi River, and more recently the spiritual mentor to a professional hockey team. His grave was desecrated and his bones were set on display in a museum at a medical college in Keokuk, Illinois; however, after much protest on the part of his descendants, the remains were finally returned to his community. He was promptly reburied, but not at the original gravesite. Instead, he was buried in a secret ceremony to ensure that his final resting place would remain hidden from prying eyes. This isolated incident foreshadowed by nearly a century the debate that is currently playing itself out in cultural institutions in North America. Contemporary Native protests can be traced to the civil rights movement in the United States during the tumultuous decade known simply as "the sixties" (Echo-Hawk, 1991; McGuire, 1992). For most of this century Native people have lived on the fringes of North American society. Their reality was neglected by, or dismissed as irrelevant to, a modern world, until the idea of pluralism took hold in the mainstream. Liberalizing society brought out the old grievances, which were finally debated in a public forum (Vizenor, 1990; Zimmerman, 1992). Far from their grievances being a recent phenomenon, in vogue because we live in a politically correct time, their late recognition only points out the reluctance of the larger society to explore options that favour its marginalized segments.

Native groups have relied more on legal and political means to secure remedial action, but the political will to activate statutes remains a serious limitation (Peregoy, 1992). Compounding this is the fact that human

remains cannot be defined under the auspices of cultural resources legislation commonly instituted by governments for two reasons. First, by definition, deliberate interment of a skeleton, and the associated grave goods, is not equal to relinquishment. Laying a body in the final resting place is a perpetual act that does not diminish with time, so the ritual objects must be exempt from the principle of "finders keepers," since they were never lost. Second, the full extent of Aboriginal rights has not been explored; it is possible that residual rights exist, and if they can be successfully argued on religious grounds, then the original intent of burial must be respected (Bell 1992a; 1992b; Walker and Ostrove, 1995).

Settlement of Native land claims exhibits one area where negotiations have successfully resolved the issue of human remains with the creation of a prescribed formula embedded in the legal text. In the Council for Yukon Indians Umbrella Final Agreement (Canada, 1993b), the fourteen Native groups in Yukon have agreed to a standard procedure in the event that human remains are discovered. The favoured scenario is one of avoidance, where burials are left undisturbed in order to respect their dignity. Situations arise in which development causes the discovery. In this instance the remains are brought to the community in whose traditional territory the burial is discovered. Where a burial is found on the border between two adjoining groups, the case is subject to the dispute resolution mechanism described in the agreement. In all cases, reburial is the accepted result and the affected group can apply its discretion as to whether or not any scientific examination occurs.

Comparative collecting may have been sufficient in prior eras to rationalize disinterring human remains, but in the present era it is simply not good enough. The modern generation of Indians began voicing their displeasure with enough volume that governments eventually heard their complaints. Legislative bodies compelled publicly funded institutions to assess the merits of their collections (Rosen, 1980; Zeder, 1994) and, where possible, to consider repatriation as a remedial policy (Canadian Museum of Civilization, 1992; Hill, 1992; McGuire, 1992). While some researchers may have expressed dismay with this proposal, feeling their rightful claim to the data would be undermined, others felt the discipline need not view this as a loss to science. Hence it may have had the effect of making scientists review their activities and social responsibilities (Klesert and Powell, 1993). The rhetoric surrounding collections had the echo of a battle cry, and some even went so far as to refer to this debate as a battle between Indians and museums (Blair, 1979; Higginbotham, 1982).

Referring to the Over Collection, which was excavated between 1946 and 1969 in South Dakota as part of the Missouri Basin Project and slated

for reburial in 1986, Ubelaker (1994, p. 391) described the "crisis atmosphere" over the future of "threatened collections" that would no longer be available for scientific examination. As the decade came to a close, the museum community felt it had lost the battle and resigned itself to hoisting the white flag. The silver lining was that it provoked scientists into salvage research to recover as much data as possible before collections were handed over for reinterment. Coming in the midst of Amerindian activism, one can surmise that the archaeologists were "digging in" for the final round.

Notwithstanding the research crisis, nineteenth-century attitudes seem to be abating and it is now generally acknowledged that Native concerns are not subordinate to scientific ones. Anthropologists who assume that the reburial issue is merely the petulant exercising of the meagre power available to a marginalized people grossly underestimate the resolve of Indians. Cultural institutions have begun interdisciplinary study of their collections prior to repatriation and publication of the results (Owsley and Jantz, 1994; Bray and Killion, 1994), so it would seem the effect of Indian activism has been to drag the discipline into the late twentieth century. As was noted, the "repatriation laws mandated the development of a whole new set of guiding principles, the adoption of which forever altered the way in which scientific research may be conducted" (Killion and Bray, 1994, p. 5). Belatedly, scientists are showing how the study of human remains can provide some useful insights into the health and diseases of Aboriginal peoples (Herring, 1992; Ortner, 1994a; Williams, 1994), and they are also more aware of Native concerns and are amending attitudes to be more responsive to their social responsibilities (Ortner, 1994b; Sockbeson, 1994). It may not be such a bad thing, since evolving attitudes at public institutions might yet reveal the human face of archaeology that has remained hidden for so long (Trigger, 1990).

### *Archaeology on Indian Lands*

In the broadest sense, all American archaeology is conducted on Indian lands; however, the current reality suggests a more modest use of the phrase. Where archaeology is concerned, Indian lands fall into four distinct categories: reserve lands, traditional lands, the sacred landscape and, as Native people settle land claims, a fourth category will be added. Reserve lands encompass most Indians communities in modern times and these are often defined by treaty. Traditional lands are those surrendered by treaty, and in some cases these have been bisected by international or provincial boundaries. Native people can still exercise certain rights within their traditional lands; for example, in Canada treaty Indians are able to hunt and fish on unoccupied

Crown lands under provincial jurisdiction. Court rulings, as in the case of *R. v. Sioui*, have expanded the rights of Indians to pursue traditional practices, such as religious ceremonies (Miller, 1991). The full extent of these rights has not been defined and, as more cases are tried, or through negotiations, greater clarity may result.

Archaeology, when it is practised on reserve lands, can fall under local government, but on traditional lands it must heed provincial- or state-level government. Competing claims may foment uncertainty, but that has not stopped the creation of protocols and co-operative arrangements where the law falls silent (Nicholson et al., 1997). Models, or options, for co-management are being defined in land claims settlements through negotiation, as in the Nunavut Final Agreement which has provisions for Inuit involvement (Canada, 1993a). Specific cases that have gone before the courts indicate that the judiciary acknowledges Native claims, but is ambivalent in its protection of them (Blair, 1979). Their specific nature revolves around interpretations of treaty rights. Treaties signed in the nineteenth century are vague and have not been updated to respond to an evolving society. As novel situations arise, like development or use restrictions, consideration must be given on their benefit, or harm, to Native use rights. Frequently, Native activism is stirred by other users trampling on treaty rights on traditional lands, and individual acts of civil disobedience have become a common expression of protest.

Reviewing the literature reveals that the First Nations in Canada lag far behind their counterparts in the United States in the realm of heritage management on Indian lands (Klesert and Downer, 1990; Anyon and Ferguson, 1995). This situation is due primarily to the U.S. federal government's initiatives, beginning with enactments such as the *Antiquities Act* in 1906, which extended nominal protection to prehistoric ruins and monuments on Indian lands. However, even though well-intended, in its 73-year history only one person was ever charged under this act and he was eventually acquitted because of the vague definition of historical resources (Cooper, 1976). However, it made the American Indians aware early on of the value of these unique structures and led to their use in expanding the limits of Indian governments (Yapko, 1987). In more recent times superseding legislation such as the *National Historic Preservation Act* of 1970 (Saugee and Funk, 1990), the *American Indian Religious Freedom Act* of 1978 (King, 1990) and the *Archaeological Resources Protection Act* of 1979 (McManamon and Aubrey, 1990) have clarified existing ambiguities and enabled Indians to become active players in managing their cultural patrimony. Coupled with the self-governing model of tribal government,

individual Native groups have enacted their own home-grown statutes to provide direction for conducting, or limiting, archaeology on their lands (Navajo Nation, 1988).

In contrast, the only Canadian attempt to produce comprehensive federal legislation, the proposed *Archaeological Heritage Protection Act*, presented to the federal parliament in 1991 as a discussion paper, died at the committee stage as a result of the objections of provincial representatives (Burley, 1994). It may be a moot point now, but if it had been adopted and passed into law, it would have had implications for archaeology on Indian lands since these fall under federal jurisdiction. Thus, the default legislation is still the much-maligned *Indian Act*, whose potential for accommodating archaeological management on Indian reserves would require little more than political will (Yellowhorn, 1993). Federal legislation prior to 1990 concerning Indian lands was notable for its silence about heritage matters; statutes like the *Indian Act* were mostly about administrative details. Since then, the policy of including articles recognizing Native interest in the archaeological record have become standard elements of land-claim agreements.

The third category is the sacred landscape, those obscure, esoteric landscapes that are as real as they are imaginary. Although Indians control only a minor portion of their ancestral customary lands, they continue to be conscious of their former territories, especially those places that have spiritual or ritual significance (Reeves, 1994). The sacred landscape maintains a strong grip on the imagination of Native people in spite of the fact that developments like hydroelectric dams have flooded large tracts (Linklater, 1994). In other instances, they retain the oral history that associates certain features of the landscape with transformer sites, spirit residences, vision quest rituals and ceremonial areas (Mohs, 1994). Unlike other archaeological sites, ritual sites may not be readily identifiable through artifactual data since, by their very nature, the activities surrounding them may not leave tangible elements. Offerings form an integral part of Native ceremonies, but these tend to be organic and, ultimately, biodegradable. Also, avoidance of areas such as burial grounds or ceremonial areas because of prohibitions or cultural bias would select against any deposits of secular origins. In such cases it is the extant traditions of contemporary Native people that are represented, and these are extended into Aboriginal times. Accepted definitions of archaeological sites may be too exclusive, and too artifact-dependent, to accommodate this category, and in the long run it may mean that those definitions will have to be expanded.

Finally, twenty-five years have elapsed since the landmark ruling that

brought land claims into the lexicon of modern Canada, and in that time government policy has recognized claims to be of two types, specific and comprehensive claims. Specific claims result from cases where reserves established by treaty had lands improperly surrendered or alienated, and residents may now apply for redress. Comprehensive claims involve vast tracts of land that were never ceded, by treaty or other legal means, to Canada, and therefore Aboriginal title was never extinguished. The theatre for the comprehensive claims is primarily in the northern part of the country, those lands north of 60° N latitude, as well as northern Quebec and British Columbia. Unlike their nineteenth-century equivalents, modern land claims do not result in reserved lands; rather, they construct agreements that cover a broad range of interests. Although land inevitably is negotiated, it is only one of many concerns that the affected Native group addresses. Archaeology has become one of those concerns; in the current generation of land claim agreements, it is woven into the text as heritage, but there are implications for the conduct of fieldwork and the disposition of artifacts (Canada, 1993a; Canada, 1993b).

According to Native people, ambiguity may exist in the minds of archaeologists about cultural continuity, but the legal environment demands certainty; thus, Natives view the archaeological record to be evidence of their use and occupancy of lands and resources. In this context, making explicit statements about ownership of artifacts is a reality and a necessity. The archaeological record is not simply a field laboratory that allows scientists to test their latest theories: it has spiritual, cultural, religious and educational significance for Native people (McClellan, 1987). Recognition of their Aboriginal association with the archaeological record is expressed as special rights, interests and responsibilities in the conservation, management and development of their heritage. These are manifested by their participation in developing government policy and legislation concerning archaeology; in creating heritage trusts to ensure the safekeeping of cultural property; in establishing permitting systems to facilitate research on settlement lands and traditional lands; by accepting, with government, co-ownership of specimens; and by taking an active role in mitigating the impact of development.

## Discussion: Towards a New Millennium

Society places a great deal of emphasis on anniversaries: witness the commotion regarding the quincentenary of the Columbus incident, then the arrival of John Cabot and soon the new millennium. The fact that a number of years has elapsed from the date of an event is cause for celebration that we have seen that many years expire; or a chance to reflect on what has

transpired; to consider what lessons have been learned; to take stock of our attitudes; to gauge how much, or how little, has changed in our world-view. Like divining in the entrails of chickens, it is somehow hoped that all that analysis and retrospection will conjure up some profound meaning, displace the regret, or provide a context to make sense of the details. It is hoped that, somehow, we will all be better for having lived the experience, that we will be stronger and more able to face whatever transpires until we reach the next milestone. Approaching the new millennium provides another anniversary to celebrate, another pause for reflection, but anticipating it also gives cause for predicting the trajectory of inchoate trends that may offer some insight into future relations.

In archaeology this means examining the influence that Indians will exert on the discipline, because their motivations will invariably affect the conduct of archaeologists and their work. Given the limited number of professionals and academics of Native origin, this is a career option that is still in the gestation stage, but one with a lot of opportunity. The demand for a skilled labour pool for fieldwork and the desire of band leaders to have their members participate effectively in the wage economy ultimately will fulfil the goal of involving Native people in the profession. This has started in some Native communities where consulting archaeologists have been retained to supervise the training of band members, but the fact that this expertise must come from outside their communities only underscores the paucity of Indians active in the discipline. The growth of consulting archaeology may be a direct spin-off from cultural resource management legislation, but it exhibits the greatest potential for creating the requisite labour force. Consultants do provide the field experience that can be a valuable foundation leading to formal training. Presently the trend is to employ Indians as labourers at archaeological sites (Anyon and Ferguson, 1995; McMillan, 1996) or to consult Native elders for their traditional knowledge (Hamilton et al., 1995). While this may be laudable, it leaves an imbalance that will not be remedied until more Native people opt for careers in archaeology.

Consulting is not without its hazards, and it best illustrates the dilemma of the modern archaeologist. It is a business that satisfies legal obligations of development, but on the one hand Native people may see an ulterior motive to this practice. The industry may see it as too sympathetic to the Native cause (Hamilton et al., 1995). Being pulled in too many directions by details like who the client is, what the development is and who the developer is impinge on the consultant's freedom; often consultants are forced to take sides and in doing so are tainted with accusations of bias.

Credibility becomes a factor by causing future clients to wonder if a particular consultant would be able to produce an objective report because of his or her past associations. Exacerbating the situation is the client's concern with confidentiality, so that much of this work is lost to the discipline and is rarely available for research. It is enough to cause one to wonder if the business landscape is really the proper place for archaeology. Nevertheless, the archaeological consultant with an Indian clientele seems to be replacing the ethnographer as cultural mediator and in some instances such consultants have become advocates for Indian bands, especially in the context of litigation and land claims.

The greater challenge lies in examining the ideology of the past, and paying closer attention to archaeological research and the theories derived from it. The construction of theory is typically seen as a hallmark of academic freedom, but unrestrained theory-building can be hostile to the well-being of Native people who find their past being manipulated for goals unrelated to their concerns. In particular, Native academics have pointed directly to the theory that posits colonizing populations crossing the Bering land bridge to America as just one more attempt to demote the Indians from Aboriginal peoples to merely original immigrants (Churchill, 1995; Deloria, 1995). Despite the elaborate scientific window-dressing to support it, it remains a reiteration of the immigrant story that lies at the heart of the dominant culture – the implicit message being, if the wielders of the reins of power are an immigrant culture, then everyone must be an immigrant. For this reason, these Native academics are inclined to dismiss archaeologists as little more than the intellectual puppets of the body politic. This may be the reactivist rhetoric of post-modern, or post-processual scholarship, but a Native presence may serve to make archaeologists more aware of the social and political implications of their theories, not because these individuals will act as censors but because they will have the intellectual faculties to challenge archaeologists' ideas with critical analysis rather than emotional polemics.

One trend that will have an impact will be the emergence of an Indian middle-class, particularly when considering Indians as producers and consumers of the cultural industries. Some Indians have established well-deserved reputations for themselves as artists, and therefore as producers in the cultural industries, but unfortunately little attention has been paid to them as consumers. Access to disposable income, cultural tourism and Indians as cultural tourists will cause a profound re-evaluation of conventional archaeological interpretation. As builders of heritage parks or museums, Indians will draw on their own heritage, aesthetics and sense of

self to promote their own visions of reality, visions that do not necessarily rely upon standard academic discourse. As consumers they will pick and choose whose version of the past they will accept. There is already a growing network of Aboriginal heritage parks and tourist facilities, and a national Aboriginal tourist association even presents awards of excellence to their operators. Certainly the allure of the "powwow trail" is a popular staple in Indian communities and the images they present to visitors challenge the stereotypical representations associated with the usual roadside attraction. The growth in cultural tourism may eventually have its parallel among Indian families who choose to spend their vacation dollars on substance rather than appearance. As consumers of cultural products, after the initial euphoria, Indian tourists may become disenchanted with the Disneyland holiday and hanker for an alternative that educates while at the same time catering to their cultural traditions.

One trend associated with increasing Native awareness of archaeology will lead to the emotional elements that are part of the symbolic currency of nationalism (Dietler, 1994). Already, the perennial spectre of Indian activism has caused institutions like museums to re-evaluate their policies regarding the curation of Indian patrimony (Merrill et al., 1993). It is also causing the review of attitudes that professional archaeologists hold in their mandate as stewards of the Native heritage. Activism is symptomatic of an ongoing struggle against the reality of the colonial experience, but the undercurrent of nationalism will inspire a search for the heterogeneity of Aboriginal America. It may start with reclaiming tribal names to counteract the homogenization of Indigenous cultures, but ultimately the construction of identity will broaden to include the past. When that happens, it will be the archaeological record that will be the source of inspiration for a Native heritage. Undoubtedly, there will be a political motive for allying extant cultures with ancient ones, since it will serve as an antidote to the "original immigrant" scenario espoused by archaeologists. When it comes to portraying the past it may just as easily be artists who will be the purveyors of antiquity, and their images will be infused with the concepts borne of their spiritual connection with the creators of the archaeological record.

Finally, Indians now recognize they have a stake in the trust-like relationship that exists regarding cultural patrimony and their concerns must be incorporated into future management schemes (Knudson, 1995). Unfortunately extant approaches still insist on employing the resource management model, as opposed to a legacy or collective inheritance (Le Master, 1995). Although this may seem little more than semantic word-play, there is a valid difference, since the perception remains that all resources exist to be exploited. When this is extended to archaeological

material, especially human remains, it promotes the unpalatable terminology of resource extraction (Brady et al., 1993). Even when Indian communities become involved in heritage management, they inevitably adopt the language of this resource paradigm, precisely because the qualified managers are recruited from the larger society where the pervasive concept has never been challenged. There is a lesson to be learned here, since part of the current repatriation debate with museums was precipitated by Indians themselves when prior generations converted their objects of culture into saleable resources and the ownership of "inalienable cultural property" passed from their hands to collectors and museums. If a true fiduciary obligation is inherent in their stewardship, then Indians must accept their responsibility, assess their role and extricate themselves from the resource mentality. An alternative concept, one that resembles a cultural estate, would be a valuable contribution to the discourse on heritage management that Indian archaeologists could make.

Certainly an exhaustive discussion of the impact that Indians are likely to have on archaeology is yet to be articulated. In the dialectics of academe there are no concluding arguments, and archaeologists and Indians will move beyond their current positions. It may also be the case that unanticipated events or discoveries will add new intrigue to the debate, but that is the nature of the trade. In any event, those who assume that Indians will divert their attention to bigger and better things are deluding themselves. It is, after all, their heritage, and their affiliation will not be of the dilettantish, antiquarian variety. It is far more likely that they have only begun to cogitate upon the issues that they would like to address and that they will voice their concerns as they arise.

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