15 CARING FOR AMERICA'S CULTURAL HERITAGE

LEARNING OBJECTIVES

AFTER READING THIS CHAPTER YOU SHOULD BE ABLE TO ANSWER THESE QUESTIONS:

1. What federal policies help protect cultural resources, including archaeological sites?
2. What are the important elements of the 1906 Antiquities Act, the 1966 National Historic Preservation Act, and the 1979 Archaeological Resources Protection Act?
3. Is there an international black market in antiquities? If so, what can be done about it?
4. Why is the Native American Graves Protection and Repatriation Act of 1990 important to archaeologists? How does it differ from other archaeological legislation?
PREVIEW

This chapter describes how archaeology helps conserve America's cultural heritage. Threats to this heritage come from those who loot archaeological sites for personal gain and from relentless development across the country. Over the years, the federal government has passed various laws to protect the nation's cultural heritage in archaeological sites, historic buildings, and landscapes.

These laws created an important new direction for archaeology, generally known as cultural resource management. Linked with construction, development, and federal agency activities, cultural resource management requires new ways of thinking about archaeological standards, principles, ethics, and training. The cultural resource management framework today dominates the practice of archaeology in America.

Another body of law safeguards the rights of indigenous peoples and regulates the repatriation of human skeletal remains and certain cultural objects to Indian tribes and Native Hawaiian organizations. Still more laws attempt to stop the flow of illegally acquired antiquities. Although this chapter focuses on the United States, many other countries have similar laws that try to preserve their cultural heritage, stop looting, and protect the rights of indigenous peoples.

INTRODUCTION

Commercial development goes on all around us. Nearly everywhere you look, you see bridges, dams, roads, pipelines, power lines, and buildings under construction. Such development destroys as much as it constructs. Roads pave over the American past. As new houses spring up, artifacts are carted away in dump trucks. As power lines go up, archaeological sites are bulldozed into rubble. Most people benefit from improved transportation, better hospitals, and more efficient communication services, but at the same time, these projects destroy America's cultural heritage. So this leaves us with a critical question: What part of our past must we save, and what part can we do without?

This problem is not unique to the United States. Most modern nations try to balance economic development and heritage preservation through laws and regulations. In this country, cultural resource management (CRM) is the field that conducts activities related to compliance with legislation that protects cultural resources.

It is difficult to overemphasize the importance of CRM to contemporary archaeology. Prior to the 1960s, nearly all American archaeologists worked for universities and museums. Today, the number of archaeologists in the United States not only vastly exceeds those working in the 1960s, but well over half of them earn a living by working in the framework of cultural resource management. In fact, CRM projects account for about 90 percent of the field archaeology conducted in the United States today. How did this change come about?

THE DEVELOPMENT OF CULTURAL RESOURCE MANAGEMENT

The threat to America's cultural heritage did not begin with strip malls and interstate highways. In fact, a concern with historic preservation extends to the earliest days of the United States. In 1789, for example, wealthy...
Bostonians formed the Massachusetts Historical Society in response to the destruction of John Hancock's house. The society became a watchdog to ensure that other historically significant properties were not lost. And in 1813, the federal government ordered the preservation of Independence Hall in Philadelphia. However, a systematic concern for preserving America's cultural heritage developed rather slowly, as part of a broader environmental preservation movement.

America's environmental movement can be traced to such late-nineteenth-century writers as Henry David Thoreau, John Muir, and Ernest Thompson Seton, each of whom inspired generations to take notice of the natural world and the human impact on that landscape. Some people, appalled at the needless slaughter of the Great Plains bison in the late nineteenth century, worked to save the continent's indigenous wildlife. Others, called to action by George Perkins Marsh's widely read *Man and Nature* (1864), worked to stave off the wholesale environmental degradation evident around the world.

President Theodore Roosevelt was particularly sensitive to Marsh's plea that disturbed environments should be allowed to heal naturally or be restored by specific conservation management plans. Roosevelt insisted that large areas of forest and grazing land be set aside in the United States, to protect timber supplies for future use and development. About the same time, John Muir (founder of the Sierra Club) argued for leaving large tracts of western lands untouched for their aesthetic values. These two often-conflicting philosophies remain with us today and have profound effects on modern historic preservation.

**Early Efforts to Preserve America's Heritage**

Archaeology and the preservation of cultural and historic properties were swept along with the conservation movement nearly from its beginning. In 1880, the Archaeological Institute of America (formed in 1879 and a major international archaeological organization today) sent Adolph Bandelier (1840–1914) to New Mexico to explore pueblo ruins there. Bandelier discovered that a local rancher had dismantled the roof of the Spanish church at Pecos Pueblo in 1858, recovering adobe and timber to construct outhouses. "Treasure hunters" had ripped out the mission's carved lintel beams and made boxes of them; they also looted graves inside the mission compound. The destruction of America's national heritage was well underway by the mid-nineteenth century.

Reports of this destruction aroused concern among wealthy patrons of the Archaeological Institute. In 1882, several influential members tried to pass legislation in Congress that would allow the government to withdraw some lands containing important sites from public sale. But the bill went nowhere.

Where Congress refused to act, however, private citizens stepped in. One of the first sites to be protected was Ohio's Serpent Mound (see Figure 2-4 on page 27). By the 1870s, treasure hunters had heavily damaged the site; it was probably not pristine even when Squier and Davis (the Moundbuilder investigators whom you met in Chapter 2) mapped it some 40 years earlier. Frederic Putnam (1839–1915), of Harvard University's Peabody Museum, realized that the nation would soon lose this unique site. So, with the help of wealthy Bostonians, he saved it the old-fashioned way: He bought it. Harvard University owned the site until 1900, when it transferred title to the Ohio Historical Society, which owns and maintains the site today. (This "old-fashioned" approach still saves sites today through the Archaeological Conservancy, which has preserved more than 400 sites in 41 states.)

Private efforts continued to lead the way for preservation in the late nineteenth century. In 1889, several Boston Brahmins petitioned the federal government to save Casa Grande, an important pueblo site that contains a massive four-story adobe structure in southern Arizona. Their efforts paid off—first when Congress appropriated $2000 for the site's repair in 1889, and three years later when President Benjamin Harrison withdrew the site's 480 acres from future sale, thus creating the nation's first archaeological "reservation."

**The Antiquities Act of 1906**

Although the concern for preserving the past was sincere, the late-nineteenth-century approach was piecemeal, and the looting and destruction of archaeological sites proceeded at an alarming pace. The cliff dwellings in the Mesa Verde area of southwestern Colorado were especially hard hit. Tucked beneath massive arches in sandstone cliffs, the large pueblos of the Mesa Verde region—and the tens of thousands of well-preserved artifacts they contained—had been protected from the elements since the dwellings were abandoned in the late thirteenth century.
This fact did not escape the notice of skilled looters working the area. They tore the roofs off structures and blasted holes through the stone and adobe walls to let sunlight in. Six-hundred-year-old roof beams disappeared in the looters' campfires. Hundreds of purloined pots appeared on an expanding curios market, and long-sacred kivas were damaged beyond repair.

One digger aroused special concern, even though his excavations were more careful than most—and directed at acquiring knowledge rather than curiosities for sale. Swedish scientist Gustaf Erik Adolf Nordenskiöld (1868–1895) traveled to Mesa Verde in 1891, and worked with Richard and Alfred Wetherill, local ranchers and archaeological "guides" (who had excavated innumerable sites and supervised excavations at Pueblo Bonito in Chaco Canyon; Southwestern archaeologists still debate their legacy). Nordenskiöld dug extensively at Cliff Palace (Figure 15-1), the largest of Mesa Verde's pueblos, excavating a huge artifact collection that he exported to Sweden (which eventually landed in Finland's National Museum, where it remains today).

Although archaeologists admired Nordenskiöld's lavishly illustrated publication, The Cliff Dwellers of the Mesa Verde (1893), many were angry that lax American laws could not stop such an important collection from leaving the country. Again, private citizens stepped in. In 1902, the Colorado Cliff-Dwellings Association, a women's organization based in Denver, raised funds to rent portions of the Ute reservation that contained pueblo ruins. Such action by citizens, especially wealthy ones who had clout with their congressional representatives, encouraged Congress to provide formal protection of archaeological sites.

Although a number of sites, such as Mesa Verde, were legally protected between 1902 and 1906, a systematic, nationwide program eluded legislators. Then came Edgar Lee Hewett (1865–1946), a fair archaeologist but a brilliant administrator and lobbyist.

Born in Illinois, Hewett moved west as a young man to become superintendent of schools in Colorado. Pueblo ruins fascinated him, and he began excavating in 1896. Eventually, he earned a doctoral degree from the University of Geneva in Switzerland and became president of the School of American Archaeology (now the School of Advanced Research) in Santa Fe, New Mexico. In 1905, the American Anthropological Association made him secretary of a
committee charged with working toward antiquities legislation.

Hewett helped hammer out the first draft of the Antiquities Act, which, after considerable lobbying and rewriting, was signed into law by Theodore Roosevelt in 1906. The Antiquities Act contained three important provisions:

- The act made it illegal to excavate or collect remains from archaeological sites on public lands without a permit from the relevant government agency.
- The act stipulated that permits would be granted only to museums, universities, and other scientific or educational institutions "with a view to increasing knowledge" and that objects gathered would only be "for permanent preservation in public museums."
- The act invested the president with the authority to create national monuments on federal lands containing "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" and to "reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."

Roosevelt used the act immediately to designate Devil's Tower in Wyoming and Montezuma's Castle in Arizona (a pueblo cliff dwelling inaccurately named after the famed Aztec leader) as national monuments in 1906. (That same year, Mesa Verde became a national park, the first park created for its archaeological significance.)

The Antiquities Act became the foundation of all future archaeological legislation. But note that the act is not limited to archaeological sites, but includes "objects of historic or scientific interest." In fact, the first monument, Devil's Tower, falls into this category. Why? Legislation is always a compromise. Key congressional sponsors of the Antiquities Act were eager to create legislation that would allow protection of "natural wonders," such as Arizona's petrified forest (which became the fourth national monument)—hence the expansion of the Antiquities Act to include more than archaeological sites.

The River Basin Surveys

The Antiquities Act was a compromise in another way as well. Hewett knew that Congress preferred not to proclaim policies (no matter how well intentioned). Instead, legislators like to begin by "solving" problems and, if the solutions appeal to the electorate, to then affirm the policies behind the solutions. Knowing this, Hewett shrewdly refrained from suggesting that the federal government was responsible for the protection of archaeological sites. Hewett instead highlighted the problems of looting and crafted the Antiquities Act to address this problem by (1) creating a permit process and (2) establishing a mechanism for protecting land. The resulting Antiquities Act thus implied that the government had a responsibility toward sites on federal land. Although this was progress, without solid affirmation of that policy, archaeological sites remained vulnerable to development.

Beginning in the 1930s, archaeologists became increasingly involved with site preservation as the federal government began constructing dams around the country to generate electricity, irrigate land, and control floods. Many sites were excavated during the Depression as part of the Civil Works Administration and Works Progress Administration. These government-sponsored work programs were disbanded when the United States entered World War II in 1941. But dam construction continued to threaten sites. Largely due to the unrelenting efforts of a small group of archaeologists called the Committee for the Recovery of Archaeological Remains, the National Park Service worked with the Smithsonian Institution to create the River Basin Survey program. Although archaeologists often had to cobble together funding, river basins were surveyed prior to inundation, and many archaeological sites that would have disappeared beneath the waters were recorded and excavated.

Historic Preservation Comes of Age

The River Basin Survey program amounted to admission that the federal government was responsible for the effects of its projects on archaeological sites. This statement of policy became codified during the turbulent years of the 1960s and 1970s, when concern for resource conservation reached a critical point.

In the 1960s, a large portion of the American public—many aroused by Rachel Carson's Silent
Spring (1963)—recognized that wilderness and wildlife refuges alone could not stem the effects of pollution. By the early 1970s, an environmental movement was in full swing. The voter appeal of these popular movements was not lost on legislators, and many of them became “conservationists” as well. In fact, sufficient power came down on the side of the ecologists for laws to be drafted protecting the nonrenewable resources of the nation.

When most people think of nonrenewable resources, they think of redwoods, whooping cranes, and baby seals. Others relate more to energy-related assets, such as oil, coal, and uranium. But most legislators have a legal background, and in the course of legally defining national resources, they realized that properties of historic value must be included. After all, they reasoned, how many Monticellos do we have? Aren’t archaeological sites nonrenewable resources too?

The concern with historic preservation was largely about the destruction of historic buildings through urban renewal and the construction of national highways in the 1950s and 1960s. Nonetheless, archaeological sites were included in historic preservation legislation and are now considered cultural resources, to be legally protected just like redwoods, whooping cranes, and shale oil fields. This legal protection came through various laws that established the framework within which archaeology in the United States operates today. The most important of these is the National Historic Preservation Act of 1966.

The National Historic Preservation Act

The Antiquities Act is a short, one-page piece of legislation, intelligible to just about anyone. The National Historic Preservation Act (NHPA), on the other hand, is lengthy, tedious, and shot through with bureaucratic jargon. But every archaeologist working in the United States must be intimately familiar with its details.

The NHPA formally stated the policy that lay behind the 1906 Antiquities Act: “It shall be the policy of the Federal Government . . . to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony.” Three years later, Congress made this policy even more explicit in the National Environmental Policy Act (NEPA): “it is the continuing policy of the Federal Government to "preserve important historic, cultural, and natural aspects of our national heritage."

Whereas previous legislation approached historic preservation in a piecemeal fashion and was largely reactive, the National Historic Preservation Act created a systematic, nationwide program of historic preservation. It has therefore had far-reaching effects on American archaeology. The act created State Historic Preservation Offices, headed by State Historic Preservation Officers (SHPO, or “shippo” in archaeological slang), and the national Advisory Council on Historic Preservation. Subsequent amendments created Tribal Historic Preservation Offices on Indian reservations as well; many tribes, such as the Cherokee, Hopi, Zuni, and Navajo, now have large and successful historic preservation programs.

Historic preservation offices are tasked with creating state (or reservation) inventories of archaeological and historic properties, assisting federal agencies in complying with the State Historic Preservation Act, evaluating national register nominations (we’ll discuss these in the following), and maintaining databases, such as state site files.

The NHPA requires that the government inventory federal lands for archaeological and historic sites. As a result, many archaeologists now work for federal agencies—in Bureau of Land Management field offices, for instance, or the National Park Service. No agency has been able to enumerate all of its holdings because inventories require a 100 percent pedestrian survey (of the kind that we described in Chapter 3), and the federal government manages millions of acres of land. By the late 1990s, less than 10 percent of all federal lands had been surveyed. But because NHPA mandates an inventory, federal agencies continue to whittle away at it, often by working jointly with local college and university research programs.

Anyone who becomes an archaeologist in the United States will almost immediately hear talk of “Section 106.” This is an important part of the NHPA, one that governs much of the field research done today, so we need to devote some attention to it here.
Section 106: The Government Must Consider the Effects of Its Actions on Historic Properties

Section 106 is very short, but it has had far-reaching effects. Here is what it says in its entirety:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

In other words: If you want to build something on federal property or modify that landscape, or if you want to construct something that requires federal funding, licenses, or permits, regardless of whose property you will build it on (all of these are what is meant by the term "undertaking"), then you must determine whether the project will adversely affect any sites "included in or eligible for" the National Register (we'll get to this later). If it will, you must mitigate the impact of the project. What does all this mean?

In the worst case, a project's "effect" might mean "destroy"—but it might also mean altering a site in a way that detracts from what made it significant in the first place. For example, constructing an addition to a historic building that is not compatible with the building's style could be an adverse effect, even if the original building remains intact. But note that Section 106 does not say we must protect sites at any cost; it just means that the government must understand and consider the value of prehistoric and historic sites in agency planning and activities.

If a site is deemed significant, then the contractor is obligated to mitigate the project's impact on it. Mitigating the impact of a highway, for example, might mean scientifically excavating the sites along the right-of-way. Or it might mean moving the road a little to one side. The choice made depends largely on the costs of the options.

The National Register and Archaeological Significance

Section 106 applies to sites that are "included in or eligible for inclusion in the National Register," which is a list of significant sites and places that are historically important. If an archaeological site is not "significant," the law says it does not get studied, sampled, excavated, or protected. In other words, when the bulldozers come through, the site is history. Thus, the concept of significance is crucial to the protection of sites. What does it mean?

Archaeologists use the term "significant" in two very different ways. Usually, they follow common English usage: "Blackwater Draw might be the most significant Paleoindian site in North America." "Significant" in this case is equivalent to "important," "intriguing," or "consequential." But many contemporary archaeologists use the term in a special, legalistic way that requires some explanation.

The National Historic Preservation Act authorized creation of the National Register of Historic Places, a listing of districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture. More than 70,000 properties are listed on the National Register. Just because a site is on the register or eligible for it does not mean that it can't be altered or destroyed (although it makes it more difficult). It does mean, however, that the federal government must consider the impact of undertakings on sites that are on or eligible for the register.

According to NHPA's regulations, an archaeological site is significant if it meets one or more of the following four criteria:

- Association with events that made important contributions to broad patterns of history, prehistory, or culture
- Association with important people in the past
- Possession of distinctive characteristics of a school of architecture, construction method, or characteristics of high artistic value
- Known to contain or likely to contain data important in history or prehistory

Legal significance is based strictly on these four criteria. Consequently, it's difficult to get a site listed on the National Register. It's not just the archaeologist
who decides, but also the responsible federal agency, the SHPO, the state review board, and the Keeper of the National Register. But note that Section 106 of NHPA does not say that a site must be on the register to be protected, only that it must be eligible for inclusion.

Archaeologists involved with CRM are responsible for helping to determine which sites are eligible and which are not. Exactly what standards archaeologists follow in determining significance is often a matter of heated debate. Some tribes argue that many sites are significant under the first criterion, but in the past most archaeologists sought eligibility under the fourth. In this case, the archaeologist must clearly define which research questions a site will help answer. And the nature of those questions will determine which sites are eligible and which are not—therefore, which sites are studied and which are destroyed.

Archaeologists often feel conflicted in making these judgments. Many of us think that a small scatter of waste flakes from stone tool manufacture is "significant"—in fact, Kelly's research in the Carson Desert (Chapter 3) was based almost entirely on such sites. But it would be hard to argue that those sites individually were significant under the NHPA's definitions.

Compliance Archaeology

Before a site's significance can be determined, you first have to find it. We learned about finding sites through sample survey in Chapter 3. CRM surveys are a little bit different.

In general, compliance with Section 106 begins with a review of the available literature and SHPO site files to see what is already known about the proposed project area. This is followed by a systematic survey, conducted according to state standards. In the parlance of CRM, the area surveyed is called the area of potential effect (APE). This includes the area directly affected by the construction project but also areas that are anticipated to be affected by the project after its completion. For example, the APE for a reservoir project might include not only the inundation zone and dam construction site, but also areas that will be developed for recreation, such as campgrounds, boat launches, or associated hiking trails.

In research survey projects, the research question determines what the survey area will be. But in CRM, the construction project is in the driver's seat. This gives CRM surveys a different character from the kind of surveys we discussed in Chapter 3. First, since the survey area is defined by the construction project, the APE can take on an odd shape. The APE of a fiber optic cable or gas pipeline, for example, might be 100 feet wide and hundreds of miles long. In other cases, the areas that can be seen from a significant site—known as viewsheds—are considered part of the APE.

The preservation of historic trails, such as the Oregon and California Trails, might require that an energy company place oil-drilling rigs far enough away or tuck them behind hills so that a hiker's enjoyment of a historic trail is not compromised. It is challenging, but archaeologists must devise research questions that can be addressed with such samples.

Second, the APE is often surveyed in its entirety, 100 percent. The objective is not to sample, but to make sure that no significant site will be destroyed. Significant sites may be very rare and because sample surveys sometimes miss the rarest of sites, full-coverage surveys can be necessary.

If sites are located during the survey, then the archaeologists might conduct test excavations of those sites to assess their significance. Those that are determined eligible for the register and that cannot be avoided by the project might be slated for "data recovery"—extensive excavations and associated analyses of the artifacts, ecofacts, and sediments. The construction project will receive the necessary clearance and permits only when the SHPO and agency have decided how to resolve a project's adverse effects on significant sites.

Private CRM firms carry out most of these compliance projects. If you are wondering who pays for these projects, it's the highway construction company, the mining company, the fiber optic cable company, or the government—whoever is doing the construction. Ultimately, of course, we all pay when we use the new facility—through tolls, Internet costs, telephone charges, and taxes. But put this into perspective: Although millions of dollars are spent each year on compliance archaeology, the sum is a fraction of total construction costs. The archaeology for the average pipeline, for example, is less than 1 percent of the total construction cost. In return, you are assured that irreplaceable cultural resources will be there for your grandchildren and that those
WHAT COURSES PREPARE YOU FOR A CAREER IN ARCHAEOLOGY?

The modern archaeologist is the last of the Renaissance scholars: a jack-of-all-trades and master of one. As you near the end of this text, you might be thinking about what courses would best prepare you for a career in archaeology. First, we suggest you major in anthropology and take courses in biological, linguistic, and cultural anthropology. Thereafter, consider the following:

- Introductory courses in geology, biology, and chemistry
- Geomorphology and pedology (soils)
- Advanced chemistry (if stable isotope analysis interests you)
- Vertebrate anatomy (if zooarchaeology appeals to you)
- Ecology and paleoecology (for instance, palynology)
- An introductory business course (this will come in handy if you go into CRM)
- Math and statistics—all you can handle
- Geographic information systems and computer modeling
- Technical writing
- Humanities (philosophy of science, historiography, ethnohistory, history)
- At least three semesters of a foreign language, especially if you wish to work overseas

Other useful skills include database manipulation, computer graphics, word processing, website construction, digital photography, use of total stations, and basic map reading. Spend summers working on archaeological projects (starting with a field school); seek internships with local CRM outfits and federal agencies.

THE ARCHAEEOLOGICAL RESOURCES PROTECTION ACT

The Antiquities Act made it illegal to collect and/or excavate a site on federal property without a permit, and the penalties for violators were pretty stiff for 1906: "a sum of not more than five hundred dollars" and/or imprisonment "for a period of not more than ninety days." But these sanctions mean little in today's world, where a single Mimbres painted bowl or Mississippian vessel can fetch thousands or even tens of thousands of dollars on the illegal antiquities market. Under the Antiquities Act alone, modern looters saw the penalties as nothing more than a small cost of "doing business." In fact, prior to 1979 there were only 18 convictions under the Antiquities Act.

So, despite the Antiquities Act's intentions, looting and site vandalism continue to destroy America's cultural heritage. The federal government estimates that of the 2 million archaeological sites presently recorded in the American Southwest, between 50 and 90 percent have already been looted to some degree. And as
off-road sports become more popular and open up access to remote regions of federal land, looting is accelerating. As shown in Figure 15-2, large-scale looting of archaeological sites is a major threat to the preservation of America's cultural heritage.

The Archaeological Resources Protection Act (ARPA) of 1979 tried to change this, making it a felony "to excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage or otherwise alter or deface any archaeological resources located on public lands or Indian lands" without a permit. ARPA also made it illegal to sell, receive, or transport artifacts illegally removed from federal lands. The penalty for violating ARPA is a fine of up to $250,000 and/or up to 5 years in prison. (Collecting arrowheads from the surface, however, was specifically exempted and is not a punishable activity in the act.) The government can also confiscate any equipment used to loot the sites, including vehicles.

ARPA also allows judges to assess civil penalties that can take into account what it would have cost to professionally excavate a damaged site. This can result in large penalties. Looters can move more dirt in a weekend than an archaeologist would excavate in an entire season, or two or three. Add to that the cost of dates and of faunal, macrobotanical, and geoarchaeological analyses and the "archaeological value" can be high.

These penalties may seem stiff to some people. But looted sites are lost forever—they cannot be replaced—and it is difficult to put a value on such a loss. Consider also that many looters are involved in other illegal activities as well—fencing stolen goods, drugs, burglary, and so on. Some have been videotaped looting sites with automatic rifles slung over a shoulder. ARPA, in fact, has proven to be a way to track down some serious criminals (see "Looking Closer: ARPA and Elephant Mountain Cave").

Even with the added protection of ARPA, policing millions of acres of federal land is difficult and looting continues to destroy the nation's cultural heritage. Numerous federal and private agencies have taken aggressive anti-looting measures, such as site monitoring (using motion-sensitive cameras in some cases), fencing, and more diligent law enforcement. The successful "Adopt a Site" program pairs motivated avocational archaeologists with particularly vulnerable sites that benefit from continued monitoring. Still, vandalism and looting are probably the major threats to American archaeology today.

What about State and Private Land?

ARPA applies to federal land. And some states have laws that cover cultural resources on state land. But these laws do not apply to private land. Many private landowners are wary of archaeologists because they believe that if they find something significant on their
LOOKING CLOSER

ARPA AND ELEPHANT MOUNTAIN CAVE

The police didn't know what to make of the mummified remains of two decapitated Indian children. But there they were, buried in Jack Lee Harelson's backyard.

In the 1980s, Harelson was an insurance agent, but his passion was looting archaeological sites. For years, he looted a cave on Elephant Mountain, on federal land in an isolated region of Nevada's Black Rock Desert. There he devastated a 10,000-year record of human occupation, stealing things such as 10,000-year-old sandals (among the oldest dated footwear in the world). Harelson also unearthed two large baskets, later radiocarbon-dated to 2000 years old, that contained the bodies of two young children, mummified in the dry desert cave. He looted the burials of rabbit nets, coiled baskets, ceremonial obsidian blades, and deer-hoof rattles. Harelson then decapitated the two children, saved the skulls, and buried the remains in plastic bags in his backyard.

Harelson's ex-business partner and his ex-wife tipped the police off to the grisly scene. In 1996, an Oregon court found Harelson guilty under ARPA and assessed a civil penalty against him. In that assessment, the BLM argued that "of the 36,000 archaeological sites recorded in Nevada, only four contain 10,000-year-old stratified records; Elephant Mountain Cave would have been the fifth and the only one in western Nevada. Harelson destroyed all of this potential and should be liable for the full civil penalty." In 2002, a federal administrative law judge agreed and used the archaeological value of the resources—that is, the cost to professionally excavate and analyze what Harelson had ripped from the cave's fragile sediments—as the basis for the assessment. His decision: $2.5 million.

But the story doesn't end here. After his conviction, Harelson turned to illegal gun sales and continued to loot sites. More important, undercover agents learned that Harelson was planning to kill five people: his ex-wife, two former business partners, an Oregon police sergeant, and the judge. In 2002, an Oregon trooper posed as a hitman, and Harelson offered him $10,000 to kill his ex-business partners. When the "hitman" brought Harelson proof—a doctored photo of one of the partners—Harelson paid him $10,000, and the SWAT team moved in.

Looters can be dangerous. If you see someone looting a site, notify the authorities; do not try to stop the looter yourself.

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property, the government can confiscate the artifacts or even their land. In some countries, this is true. In England or Mexico, for example, so-called "treasure laws" give the government ownership of all subsurface historical resources. But this is not true in the United States. No matter how significant or remarkable a site may be, if it is on private property, it belongs to the landowner. The government cannot take it away. The only exception concerns human burials. In some states, the intentional destruction of a burial, regardless of its age, is a violation of state law—even if that burial is on your property.

The sanctity of private land in the United States can be frustrating because it means that the commercial mining of terrestrial (and underwater) sites for artifacts is often completely legal or subject to only a minor penalty. As a result, important archaeological sites on private land can be rapidly destroyed. Archaeologists in Kentucky learned this lesson the hard way.

**The Slack Farm Incident**

Slack Farm sits on a pleasant stretch of rich bottom-land along the Ohio River in northern Kentucky. In the fifteenth century, the Ohio River Valley was the center of a thriving chiefdom society, supported by maize agriculture. Several large sites, complete with flat-topped temple mounds such as those we described at Moundville (see Chapter 11), were the centers of large populations. Some of these Mississippian communities may have been even larger than the small towns that lie along the river today.
Outrage in the Native American community and the public at large brought a halt to the looting, and archaeologists tried to assess the damage and retrieve some information (all the skeletal remains were reburied in 1988). But because the crime was only a misdemeanor, no one would prosecute, and all ten men walked away. As a result, Kentucky revised its burial laws, upgrading the penalty for intentionally desecrating a grave (including those on private property) from a misdemeanor to a felony.

Figure 15-3 Several hundred burials at the Slack Farm site, a fifteenth-century Mississippian burial ground, were looted and destroyed in the 1980s.

Prior to 1987, the Slack family knew of and protected a large fifteenth-century Mississippian site on their property. But when they sold the farm, the new owner was uninterested in protecting the site; in fact, he leased the property for 6 months to two men for $10,000. These two individuals, in turn, subleased portions of the land to eight others. The lessees’ intent was not to grow tobacco or maize, but to mine artifacts.

Using everything from shovels to bulldozers, the ten men mined their shares and paraded the skulls and pots they recovered from the 500-year-old cemetery around town. Within a few weeks, the field looked like a war zone—pockmarked with craters (Figure 15-3). Human skeletal remains were strewn about alongside beer cans as the looters made a mad rush for valuable artifacts.

Someone in town finally alerted the police, but they could only charge the men with “desecration of a venerated object,” which at the time carried a penalty of $500 and a maximum of 6 months in prison. Some of the pots they had found were probably sold on the black market for thousands of dollars, so the fine was a mere annoyance. Archaeologists later determined that although only about 10 to 15 percent of the cemetery had been disturbed, more than 600 graves had been disinterred.

Some countries today demand the return of their artifacts; Yale University, for example, under threat of a lawsuit by Peru, has agreed to return artifacts excavated in the early twentieth century from the Peruvian site of Machu Picchu (see “What Does It Mean to Me? Should Antiquities Be Returned to the Country of Origin?”).
The world's major museums contain artifacts that come from many different countries. The majority of these were acquired through legal channels. But some pieces have more checkered pasts. Among these are the Parthenon marbles.

The Acropolis is a limestone plateau that overlooks modern Athens. Temples and shrines adorn the plateau, among them the Parthenon, built between 447 and 438 BC and dedicated to the goddess Athena. It has been a sacred place in Greek culture for 2500 years and has served as a Catholic church, a mosque, and even a weapons depot.

The current problem began about 1800, when Thomas Bruce (better known as Lord Elgin) was British Ambassador to Turkey (at the time, Turkey ruled Greece as part of the Ottoman Empire). Elgin removed statues and portions of the 75-meter marble frieze from the Parthenon, sending them to England.

Elgin was later captured by the French and spent two years in prison, during which time the marbles were kept at his English estate, sometimes in the coal shed. Elgin spent most of his fortune removing the marbles and other Greek art treasures. Divorced, ill, and in debt, he sold the marbles to the British Museum in 1816 for a fraction of what they cost him. He died penniless in 1841.

Greece has demanded the return of the marbles ever since. The late Greek minister of culture, Melina Mercouri, argued that they symbolize Greece itself, and many Greeks feel that the sculptures belong in Greece.

The British Museum has countered that the museum acquired the marbles legally, has done nothing wrong, and that any return of antiquities smacks of "cultural fascism." It is true that the museum purchased the sculptures legally, and Lord Elgin always claimed he had permission from the Turkish government to remove them.

But Greece points out that the Turks, as occupiers of Greece, did not have the right to give Greek patrimony away. And, in fact, the surviving paperwork suggests that Elgin had permission only to draw, make casts, and do some small excavations; other evidence suggests that Elgin abused his political position and used bribes to remove the marbles. The British Museum counters that Elgin saved these priceless treasures from the
decay that political violence and pollution have visited upon the statues that remain on the Acropolis.

Britain argues that the marbles are now part of global, not just Greek, patrimony and that they deserve to be in the British Museum, where people from around the world can enjoy them. If it returned the marbles to Greece, the British Museum argues, the floodgates would open, myriad countries would demand the return of art objects, major museums would be empty, and the world would have far less access to these cultural treasures.

Greece points out that pollution is now under control in Athens and that conservation measures protect the sculptures (and that, in fact, the British Museum itself damaged them decades ago by using harsh cleaning solutions and chisels on them). The marbles themselves would be housed in a museum at the base of the Acropolis, as open to the world as the British Museum.

Should treasures like the Parthenon’s marbles be removed from “your” museum and returned to their country of origin? Should we take into account the (often nefarious) ways in which artifacts were acquired in the past, or are we generating a tidal wave of litigation that will ultimately serve no one well? Do we consider whether the country of origin is capable of caring for artifacts by itself? Do we consider current national borders or those that existed at the time of the taking? Returning treasures to the country of origin seems to encourage a balkanization of the ancient world that will not serve archaeology or humanity well. And consider this: Seeking to defend the British Museum’s claim to the marbles, the Parliamentary Assembly of the Council of Europe passed a resolution stressing “the unity of the European cultural heritage.” Does keeping the marbles in Britain achieve this goal better than keeping them in Greece?

Because the conservation of archaeology has been linked to the environmental movement, you might think a public sensitive to issues such as global warming, forest conservation, and biodiversity would be similarly aware of international trading in looted artifacts. But this is not the case. While the sound of chain saws killing distant rain forests has been successfully linked to the personal lives of millions of Americans, the looting of foreign archaeological sites has not. There is no mistaking the scale of this problem. Thousands of graves are looted in China each year (despite the fact that the Chinese government has stiff penalties against grave robbing). Maya stelae are cut apart with rock saws and the glyphs sold individually. Thieves cut or chip rock art off caves and cliffs in North and South America, Australia, and Africa and hustle them away to waiting buyers. Armed looters ransack Peruvian tombs for gold; Spanish shipwrecks are plundered for silver; graves of World War I’s dead are robbed of medals and military paraphernalia. There is literally no place in the world safe from looting. At the present rate, there will be precious little left by the end of this century.

Responsible museums today refuse to accept artifacts illegally imported from the country of origin or to display illegitimate artifacts already in their collections. Many, in fact, have returned artifacts in their collections that the museum discovered had been acquired illegally. The American Museum of Natural History forbids curators from authenticating or appraising artifacts, its Museum Shop does not sell antiquities, and the museum’s Natural History magazine will not accept advertising for antiquities.

Like the drug trade, the illegal trade in antiquities is hard to stop as long as there is a market. We’ve learned this lesson many times, most recently in Iraq.

The Thieves of Baghdad

The power of the illegal international antiquities market was driven home on April 11, 2003, a few days after the U.S. military entered Baghdad. Although the Pentagon had promised to protect Iraqi cultural institutions, they left the Baghdad Museum unguarded. The looters smashed some artifacts, and destroyed much of the documentation. Although museum personnel had moved many of the more precious artifacts—most of the gold, for example—to secure bank vaults, many irreplaceable artifacts were stolen (Figure 15-4).

An investigation headed by Colonel Matthew Bogdanos, USMC (whose book on the looting gives us the title to this section), concluded that 40 items were stolen from the main galleries, and more than 13,000 items from storage rooms. As of March 2008, many
artifacts had been recovered, most through an amnesty program (and Syria just returned more than 700 pieces), but others were found through raids or customs inspections in Iraq, Jordan, Italy, Great Britain, and the United States. Many of these items were outside of Iraq within days of their theft. And some 4000 to 7000 artifacts are still missing (the precise number is unknown since many records were destroyed). Incidentally, fearing similar looting, Egyptian citizens linked arms to form a human barrier around the famed Egyptian Museum in Cairo during the 2011 anti-government protests.

Although the museum was ransacked by local people looking for anything they might sell, Bogdanos’s investigation found evidence of professional thieves with intimate knowledge of the museum—and keys. It was an inside job, and the thieves were selective in what they took. In the basement, for example, the only storage room entered was that containing a huge collection of ancient coins. Fortunately, the thieves dropped the keys to the cabinets and lost them in the unlit room (the electricity was off by this time; Bogdanos later found the keys). The looters lit a fire for light and, before the smoke drove them out, snatched 103 boxes that contained some 10,000 cylinder seals, pins, beads, pendants, and necklaces.

Other Iraqi museums were also hit, and archaeological sites were attacked by armed looters; many now look like bomb-scarred battlefields. One can hardly blame a poverty-stricken Iraqi farmer for exploiting an opportunity to make ten years’ worth of wages in a night of digging. Instead, the blame rests with wealthy buyers in developed nations. They are the ones who drive this destruction, who encourage a country to rob itself of its cultural patrimony and to destroy irreplaceable records of human history.

**What Can Be Done?**

To stop the global traffic in illegally acquired antiquities, many nations (including the United States) have signed the UNESCO Convention of 1970 with the unwieldy but accurate name of “Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.” The 100 countries that have signed this convention agree, among other things, to put into place the legislation and administration to:

- Regulate the import and export of cultural objects
- Forbid their nations’ museums from acquiring illegally exported cultural objects
- Establish ways to inform other nations when illegally exported objects are found within a country’s borders
- Return or otherwise provide restitution of cultural objects stolen from public institutions
- Establish a register of art dealers and require them to register

In keeping with the convention, the United States has passed laws such as the 1983 Cultural Property Implementation Act and signed treaties with several countries that specifically prohibit the importing of artifacts without established “pedigrees” into the country. Some of these treaties “grandfather in” artifacts

**UNESCO Convention of 1970** Requires that signers create legislation and the administrative structure to (1) regulate the import and export of cultural objects, (2) forbid their nations’ museums from acquiring illegally exported cultural objects, (3) establish ways to inform other nations when illegally exported objects are found within a country’s borders, (4) return or otherwise provide restitution of cultural objects stolen from public institutions, and (5) establish a register of art dealers and require them to register.
excavated before the treaty's date; this means that an importer must now prove that artifacts were excavated prior to a treaty's date or were otherwise obtained in ways not prohibited by the treaty. As more countries establish such treaties, it will become increasingly difficult for someone to import illegally acquired antiquities. And these treaties do work. In 2003, an appeals court upheld the conviction of Frederick Schultz, an art dealer who had been convicted under the National Stolen Property Act of conspiring to sell artifacts acquired illegally from Egypt, including the head of a statue of Amenhotep III, which he had sold for $1.2 million.

War presents special difficulties for the protection of cultural resources, but even here, the world has worked out some agreements—most notably the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Developed after the massive destruction of antiquities during World War II, this treaty lays out wartime behaviors toward heritage resources such as museums and sites. In plain language, the Hague Convention states that an occupying force should do everything it can to prevent the looting and destruction of sites that often occurs in the chaos of war and its aftermath. Although Congress never ratified this treaty, the U.S. military has abided by it. And with good reason: During the first Gulf War, Saddam Hussein used museums and archaeological sites as military installations. As a result, some sites were bombed; for example, 400 artillery shells hit the 4000-year-old Ziggurat at Ur, in southern Iraq. After the war, sites were looted and artifacts sold on the black market. In early 2003, when war with Iraq appeared inevitable, archaeologists feared that bombing would again damage Iraq's archaeological sites, museums, and cultural institutions. Several organizations, including the Society for American Archaeology and the Archaeological Institute of America, lobbied the Pentagon for the protection of sites and museums. In response, the Pentagon drew up a "no-strike" list that contained more than 4000 archaeological sites and cultural institutions.

Still, war is messy, and, as anyone familiar with the drug trade knows, as long as somebody is willing to pay high prices for merchandise—whether it's heroin or Iraqi antiquities—someone will smuggle it across borders. The only way to stop the trade is to stop the desire for the objects. And that task, sadly, seems almost insurmountable. Archaeologists hope that by continuing to educate the public and by strengthening laws, we will eventually reduce the population of buyers to the point where the market will collapse.

Archaeology and International Development

The illegal antiquities market is just one aspect of archaeology and national borders. Machu Picchu is perhaps the most dramatic example (Figure 15-5). Perched on a knife-like ridge at an elevation of 2300 meters (7546 feet), Machu Picchu overlooks the Urubamba River more than 300 meters below. Beside it rises a sugarloaf mountain that is daily shrouded in fog. Many people claim the site has special spiritual qualities; one woman claims she encountered an alien spaceship there. Such gibberish masks the truth about Machu Picchu—"old mountain" in Quechua, one of the native languages of Peru. Built in the fifteenth century, it was a retreat for Inka rulers who otherwise lived in the capital of Cuzco, 100 kilometers away. Massive stone structures, plazas, terraces, and canals cover every inch of the ridge's 13 square kilometers and are made
with typical Inka precision and a lack of mortar. The ridge's sides are covered with stone terraces where maize and other crops were grown.

An innkeeper in the nearby town of Aguas Calientes led explorer Hiram Bingham (1875–1956) to the site in 1911. Since that time, the site has become a tourist mecca, drawing more than 300,000 visitors each year. You can get there by walking several days from Cuzco along the old Inka road or by taking a four-hour train ride from Cuzco. From the valley door, you ride a bus up the winding switchbacks to the site. Though well worth the effort, the trip to Machu Picchu is not easy. And Peru would like to make it easier.

Peru is a poor nation. Two-thirds of its population lives in poverty. Tourism will help the local economy, and the Cuzco–Machu Picchu area is the country's best attraction. Peru wants to build new hotels near Machu Picchu, and a high-speed railroad to bring day-tourists from Cuzco.

Peru also wants to build two cable cars to haul tourists up the mountain. Geologists have determined that the site's dramatic location places it at risk of landslides: in fact, several slides have temporarily closed the road up to the site. The proposed cable car towers will be in particularly sensitive areas and could create vibrations that could destabilize Machu Picchu's stone walls. The towers would also mar the vista that is one of the site's most attractive qualities. UNESCO, which made Machu Picchu a World Heritage Site in 1983, opposes the cable cars. Although Peru has dropped the proposal, it has suggested that it might revive it.

Peru's government is obliged to help the nation. If tourist dollars are a source of income, why should Peru suffer just so the rest of the world knows that Machu Picchu will remain pristine for their viewing pleasure? On the other hand, if tourism destroys the site, Peru loses what should have been a sustainable tourist resource. Archaeologists want people to know about the past, but we obviously don't want to see sites destroyed or their value and beauty compromised. How do we balance the need for development with the need to protect precious archaeological resources?

Many nations face this question. In some cases, sites have simply been placed off-limits. Today, you must view Stonehenge in England from a distance. Likewise, France's famous Paleolithic cave site of Lascaux (see Chapter 12) is off-limits to the public to protect its 17,000-year-old paintings from the damaging effects of humidity caused by tourists' breath.

Solutions to these problems are not cheap. France spent millions to clean Lascaux (and renewed growth of fungus will require still more cleaning) and to build a remarkably accurate scale model for visitors. And Britain has proposed building tunnels over the highways that run near Stonehenge.

But many important sites exist in poor countries that cannot afford such luxuries. If their sites are indeed "world" heritage resources, then should the international community pony up and make tourism viable in a way that maintains a site's integrity and scientific value? But if the international community has a financial and cultural interest in archaeological sites, can it also assert a proprietary interest? In early 2001, the Afghani Taliban used cannons and explosives to destroy the 175-foot-tall, 1500-year-old Bamiyan Buddhas, huge statues carved into a mountainside, because the Taliban's brand of Islam prohibits idols (Figure 15-6). The world reacted with shock and disgust, and many countries condemned the act (and some are now trying to rebuild the statues). At what point does the world's interest in its global heritage...
override national sovereignty? Should the “world” have the authority to tell Peru what it can or cannot do at Machu Picchu, what the British can do with Stonehenge, or what the Taliban can do to statues in (what was) their country? Questions of this sort will become more common as development around the world continues unabated, and as developing nations capitalize on the economic potential of their archaeological resources.

The Native American Graves Protection and Repatriation Act of 1990

So far, we have discussed government responses to the need to conserve cultural resources. But in 1990, a piece of U.S. legislation was passed whose purpose was to re-bury some of the very cultural resources that other legislation protects and preserves. The Native American Graves Protection and Repatriation Act (NAGPRA) moves cultural resource law away from the area of preservation into the field of human rights legislation.

In 1988, the American Association of Museums told the Senate Select Committee on Indian Affairs that 43,306 individual Native American skeletons were held in 163 museums in the United States. Some of these were skulls removed from battlefields—including heads taken from the 1864 Sand Creek Massacre in Colorado, where soldiers and militiamen massacred some 150 Cheyenne and Arapaho, mostly women and children. Native Americans pointed out that although Indian people represent less than 1 percent of the U.S. population, their bones constitute more than 50 percent of the skeletal collection in the Smithsonian Institution.

Many senators were shocked—as they should have been. Although archaeologists had nothing to do with decapitating fallen Indian warriors, they had been aware for 20 years that many Native Americans were upset by the excavation, analysis, and display of their ancestors’ skeletal remains. Walter Echo-Hawk (Pawnee) said, “We don’t expect everyone to share our beliefs; but it doesn’t take the wisdom of Solomon to understand that our dead deserve to rest in peace… All we’re asking for is a little common decency… We’re not asking for anything but to bury our dead.” Such statements spurred the Senate into action and brought an end to decades of wrangling that pitted museums, universities, and federal agencies against Native American tribes. In 1990, NAGPRA was signed into law.

NAGPRA provides for the protection of Indian graves on federal and tribal lands and prohibits the commercial sale or interstate transport of Native American bodies or body parts. It developed some very specific rules about who owns Native American remains excavated after 1990. It also required that all institutions that receive federal funds inventory all human skeletal remains held in their collections. Those inventories showed that American institutions held more than 117,000 sets of human remains, most from Native American burials. This inventory covered not only skeletal remains but also funerary objects (objects placed with a body as part of funerary ceremony), sacred objects (ceremonial objects necessary for current practice of traditional Native American religions), and objects of cultural patrimony (objects that have ongoing cultural importance to a tribe and that were “inalienable” at the time they left the tribe’s possession—that is, no one had the right to give them away).

Once the inventories were completed, NAGPRA then required institutions to consult with appropriate Native American tribes determined to be “culturally affiliated” with the remains and objects regarding their repatriation. According to the national NAGPRA office, as of November 2010, the Federal Register has published 1400 Notices of Inventory Completion, representing “a little over 40,000 individuals and over one million associated funerary objects.” Further, 520 “Notices of Intent to Repatriate” have been published, representing between 100,000 and 150,000 unassociated funerary objects and “a little over 4,000” sacred objects. Critical to the disposition of these remains and those found in the future is the definition of “Native American” and the concept of “cultural affiliation” in the law.

Native American Graves Protection and Repatriation Act (NAGPRA) Passed in 1990, this act (1) protects Indian graves on federal and tribal lands, (2) recognizes tribal authority over the treatment of unmarked graves, (3) prohibits the commercial selling of native dead bodies, (4) requires an inventory and repatriation of human remains held by the federal government and institutions that receive federal funding, (5) requires these same institutions to return inappropriately acquired sacred objects and other important communally owned property to native owners, and (6) sets up a process to determine ownership of human remains found on federal and tribal property after November 16, 1990.

Native Americans and Cultural Affiliation

NAGPRA recognizes the possibility, however slim, that European peoples visited North America before AD 1500, when Columbus’s voyages opened the New World to European colonization. We know, for
example, that the Vikings had a short-lived settlement in Newfoundland around the year AD 1000 (archaeologists have found and excavated the site of L'Anse aux Meadows, which is mentioned in Viking sagas). Neither tribes nor archaeologists wanted non-Indian remains repatriated to Indian tribes, so NAGPRA explicitly defined "Native American" for the purposes of the law: "Native American means of, or relating to, a tribe, people, or culture that is indigenous to the United States."

Once an institution determines that remains and covered objects are Native American, they then have to decide if they are to be repatriated. But to which tribe? Many tribes expressed a desire to have only their specific tribal ancestors returned to them. The Eastern Shoshone on the Wind River Reservation in Wyoming do not wish their ancestral remains repatriated because they question the accuracy of museum records. The Blackfeet do not want remains returned unless the museum is absolutely positive the remains are Blackfeet because they don't want responsibility for the remains of a traditional enemy.

And tribes have different ideas about what should be done with the remains. The Zuni asked that skeletons identified as Zuni remain under museum curation. California's Chumash, after having reclaimed their ancestral remains through repatriation, elected to preserve them in their own repository. Many other tribes rebury or cremate repatriated remains. These differences of opinion meant that the government needed a procedure to decide which tribes have control over which remains.

That decision rests on the concept of cultural affiliation. Tribes that are culturally affiliated with particular burials, funerary and sacred objects, and objects of cultural patrimony are entitled to those burials and objects repatriated to them.

How do we determine cultural affiliation? NAGPRA was quite explicit: Cultural affiliation means that there is "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group." It is determined by a "preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral traditional, historical, or other relevant information or expert opinion." If remains or objects cannot be culturally affiliated under the law, then they are classed as "unaffiliated." Regulations passed in 2010 provide a process for repatriating those remains to the closest culturally affiliated tribe. Determining cultural affiliation is not impossible, and it has been done in many instances. But it is often very hard to reasonably trace identity from an identifiable earlier group to an extant tribe.

There are several reasons why this is so. The archaeological and historical record shows that many Native American tribes have migrated, often from distant places. The Navajo and Apache, for example, are the only speakers of Athapaskan in the American Southwest. Given that most speakers of Athapaskan live in northwestern Canada and central Alaska, archaeologists are confident that the Navajo and Apache migrated into the Southwest (although no one is sure exactly when, it was probably not before 1000 BP). So, are human skeletal remains from Chaco Canyon culturally affiliated with the Navajo, on whose traditional lands the site sits, or with Puebloan peoples? And if the latter, which? Zuni? Hopi? Taos? San Lorenzo? Acoma? All of these peoples have moved around the landscape and developed over time into the people they are today.

We also know that some tribes formed as a result of colonialism. The Spanish introduction of horses to the Great Plains after AD 1530, for example, helped create the complex mosaic of horse-mounted bison-hunting tribes like the Lakota, Crow, Cheyenne, Comanche, and Arapaho. In the face of such radical changes in lifestyle, archaeologists often find it difficult to "reasonably trace a shared group identity" from an identifiable earlier group to an extant tribe for remains that are more than a few hundred years old.

The vast majority of archaeologists recognize that NAGPRA has forced a long overdue dialogue. But this does not mean that answers come easily. We introduced this text with a description of the discovery of "Kennewick Man," a 9400-year-old human skeleton in Washington. In that case, a judge eventually decided that the individual was not Native American as defined in the law, and that even if he were, he could not be culturally affiliated with the tribes who claimed him. This ruling points out how difficult it is to implement NAGPRA, and the importance of the intersection of scientific data and legal arguments. So, let's look more closely at how the judge arrived at his decision.

**Is Kennewick Native American?**

Most people would probably assume that a 9400-year-old skeleton was Native American. In fact, the **cultural affiliation** in NAGPRA, "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group."
PROFILE OF AN ARCHAEOLOGIST

A CULTURAL RESOURCE MANAGEMENT ARCHAEOLOGIST

William Doelle is the president of Desert Archaeology, Inc., a cultural resource management firm in Tucson, Arizona, and the Center for Desert Archaeology, a nonprofit corporation that promotes the study and preservation of archaeological sites in the American Southwest.

“Holy cow!” It was the only appropriate response to the cream-colored stone tool that had just caught my eye.

I was walking the centerline of a half-built road. It had been under construction, but representatives from the Tohono O’odham Nation in southern Arizona had protested when they observed road machinery cutting through a buried Hohokam village (“Hohokam” means “those who have gone” in the O’odham language and refers to village sites dating after AD 700). Work was halted, and the slow legal process of compliance begun.

A competitive bid process awarded an archaeological contract to my young firm. We were in our second week of fieldwork when the cream-colored tool—a Clovis point—was found. Unable to identify any intact Clovis-age deposits, however, we concluded that Hohokam farmers who lived at what we called the Valencia site had encountered this spearpoint in their fields and brought it back to their village.

This first work on the Valencia Site on Tucson’s south side took place in 1983. Despite the construction, our excavations yielded some 25 intact Hohokam pithouses. In the last 20 years, I have conducted six additional projects at this site, each one expanding our knowledge of the Valencia community between AD 400 and 1200. An overview of that work provides a cross section of the diversity in modern cultural resource management, or CRM—the professional area where I have made a living since 1974.

Our 1983 fieldwork was constrained to a narrow strip less than 20 meters wide and some 500 meters long. While we were in the field, we focused on that limited space because we had a great deal to accomplish in a very brief time—the bulldozers were waiting for us to finish. After the fieldwork, three of us volunteered to complete a map that put the site in a fuller context. I had been aware that

Department of Interior concluded that Kennewick Man is Native American simply because he predates European colonization of the New World.

But recall NAGPRA’s definition of Native American: “of, or relating to, a tribe, people, or culture that is indigenous to the United States.” This definition, the judge said, means that age is not sufficient evidence to determine that a burial is Native American under NAGPRA. Consequently, the judge ruled that the Department of the Interior was wrong to use age alone to establish that Kennewick was Native American.

For the judge, the keyword in the definition, believe it or not, is the word “is” in the phrase “that is indigenous.” Although acknowledging that “the requirements for establishing ‘Native American’ status under NAGPRA are not onerous,” the judge also argued that the phrase requires showing a “general relationship to a present-day tribe, people, or culture” (emphasis added). Kennewick, he pointed out, had no artifacts associated with it; and because it had eroded from a riverbank, the nature of any burial ritual, which is a cultural act, is gone. Thus, the judge concluded that the culture of Kennewick Man “is unknown and apparently unknowable.”

This leaves Kennewick’s skeletal remains. As we pointed out in the Introduction, Kennewick’s cranial morphology—the shape of his skull—is different from
there was a prehistoric ballcourt just 50 meters from our excavation, but only with the complete map did the full settlement plan make sense. There was an open, central plaza, surrounded by low trash mounds that were the surface indications of residential areas.

It wasn't long before we conducted an intensive surface collection of the entire site, refined our initial map, and did further excavations to define the site's southern boundary. Archaeologists had improved the ceramic typology, and we used it to plot distributions of ceramics by time periods as short as 50 years. It was clear that initial settlement had clustered around the ballcourt and plaza, but around AD 1000 the community became more dispersed, with houses scattered along a mile of the Santa Cruz River. Two decades later, there is still debate about the reasons for this change. Were ballcourts abandoned around AD 1000, or did they last for another century? Regardless, the pattern at the Valencia Site has since been shown to hold at all other ballcourt villages in Tucson.

The next big research opportunity came along in 1991. The local community college planned a new campus in an area that we thought was outside the Valencia Site, but reexamination showed that to be wrong. So, we carried out a surface collection and testing program to provide information for the college. As it turned out, this area held an earlier, more subtle pithouse site, almost certainly the ancestral village for Valencia. Our work in 1991 helped planners to place high-impact features like new two-story buildings off the main occupation area. In the winter of 1997–98, when we conducted preconstruction excavations, we documented more than 100 early pithouses and projected a total of around 400. The arrangement of houses around a large central plaza provided the excavators with information to develop a refined model of early Hohokam villages.

My company had grown from one full-time employee in 1983 to 35 in 1997. Thus, I was largely an observer in the research process. I work on management issues like an open house for the community college, tours by the cultural committees from the Tohono O'odham Nation, and writing grant proposals so that things like storm sewers do not destroy archaeological sites. I keep watch over the rapid development of Tucson and work with various groups—such as the community college, the city, the Tohono O'odham, the archaeological community, park planners, and landscape architects—to develop plans to preserve archaeological sites.

I have found that the opportunities to be creative are tremendous in CRM, and I plan to pursue at least another decade as head of my CRM firm before retiring. These opportunities are further enhanced through the nonprofit Center for Desert Archaeology. Through grants, endowment building, and a membership program, this institution pursues a mission of preservation archaeology. We balance research, public outreach, and stewardship in our programs in the American Southwest and Mexican Northwest. Archaeology in the private sector presents unique challenges, but I have found it to offer great rewards.

that of later Native Americans. No matter how you measure it, the Kennewick skull looks more like that of southeast Asians, Polynesians, or Japan's Ainu, not other Native Americans. For this reason, the judge declared that Kennewick was not Native American and the Ninth Circuit Court of Appeals upheld this ruling.

Some archaeologists disagree with these rulings. Although the authors of NAGPRA used the present tense in the definition of NAGPRA, they certainly did not intend to exclude Native American groups that, for reasons of tragedies or warfare, left no descendants (cultural or biological). The judge even acknowledged this fact. Perhaps the key term in the definition, then, should not be the word "is," but the word "indigenous." And by any standard definition of that term, Kennewick is indigenous because he clearly lived in the United States before another colonizing population arrived.

Others point out that the cranial attributes that jointly set Kennewick apart—a steep nasal bone, projecting cheekbones, a long and narrow skull—are found individually among later Native Americans, suggesting some gene flow between Kennewick's population and later Native Americans. And this means that Kennewick meets NAGPRA's definition of Native American: "of, or relating to, a tribe, people, or culture that is indigenous to the United States."
Can Kennewick Be Culturally Affiliated with Modern Tribes?

Assuming that Kennewick is Native American, the next question is whether he can be culturally affiliated with the tribes who claim such affiliation. Recall NAGPRA's definition of cultural affiliation: "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day tribe or Native Hawaiian organization and an identifiable earlier group." This is a far more rigorous definition than that of "Native American."

Cultural affiliation requires that we establish an identifiable earlier group. But with only one burial and no grave goods, it is impossible for archaeologists to identify Kennewick's social group. That alone means that Kennewick cannot meet the requirement of cultural affiliation under the law.

In addition, the law stipulates that we must show shared group identity and reasonably trace that identity over time. As we have said, this becomes more difficult the older a burial is because we have to trace the "shared group" relationship over a longer time span. The Secretary of the Interior originally decided that Kennewick was affiliated with the tribes who requested him—the Umatilla, Colville, Yakama, Nez Perce, and the Wanapum Band—based largely on the continuity of the archaeological record in the region where Kennewick was found and on oral traditions.

It is true that people have lived in the Columbia Plateau for the past 13,000 years. The law, however, does not state that cultural affiliation is based on evidence of continuity. It instead specifies a "shared group identity which can be reasonably traced" over the period of occupation. The archaeological record of the Columbia Plateau shows tremendous cultural changes over time—in the style of projectile points and houses that were used, in burial rituals, in economy and trade patterns. In fact, evidence of sedentary occupation of the region doesn't appear until 3000 years ago—6000 years after Kennewick Man died. In this particular case, archaeology cannot reasonably trace shared group identity over time.

But if archaeology can't, can oral history? We discussed the difficulty of using oral history as a way to reconstruct ancient events in Chapter 12. It is not possible to decide beforehand whether oral traditions are more or less reliable than archaeology. Each case must be decided on its own merits.

In the Kennewick case, the oral traditions of the Umatilla and other plateau peoples describe three periods of time. During the earliest time period, monsters roamed the world, and animals acted like humans. In the second time period, Coyote transformed the landscape and created people.

The third time period includes humans. Traditions associated with this period describe a lifeway that is similar to the ethnographic present; it includes hunting and gathering, salmon fishing, pit-houses, and food storage. But archaeology tells us that lifestyle did not begin until well after 6000 years ago. The lifeways described in the oral traditions do not include what we know, from archaeology, of pre-6000 BP lifeways.

In some cases, the oral traditions describe natural events that could refer to the early Holocene—that is, to Kennewick Man's day. For example, there is a story of a battle between the "warm weathers" and the "cold weathers," set in a time when people died from the cold and the Columbia River froze. This might refer to the late Pleistocene environment. But it could also refer to the Little Ice Age, a global cold period from about AD 1500–1800. The same can be said of accounts of volcanic eruptions, floods, and other events or animals. Their presence in oral traditions does not unambiguously mean that the tradition encodes 9400-year-old observations.

Oral traditions can preserve eyewitness accounts through the use of metaphors that add power to stories and make them a memorable storehouse of moral laws. For example, oral traditions among Columbia Plateau tribes include tales in which bison turn to stone or mythical beings create valleys and hills by dragging huge fish across the landscape. But clearly, these tales do not relate eyewitness accounts, and thus they could be explanations of how a landscape came to be using observations made on that landscape long after the natural events that formed it actually took place.

Taking all these data into account, the judge decided that, under the requirements of NAGPRA, Kennewick cannot be culturally affiliated with the tribes who claimed affiliation.

What Does NAGPRA Mean by "Identity"?

Some archaeologists point out that NAGPRA is problematic because it employs the Western notion that "identity" is fixed at birth (and hence immutable). In Western culture, one is Irish or English, Spanish or Basque, French or German—implying an ethnicity with hard boundaries, both spatially and temporally. Assuming that such boundaries were "natural," the American government created them among Indians through the treaty and reservation process.
Such hard boundaries are now codified in NAGPRA. It was not the judge's place to decide whether NAGPRA was right or wrong in its definition, but only to determine how that definition ought to be implemented in the Kennewick case. Given the law's definition and the available evidence, there is no “preponderance of evidence” to argue in favor of a cultural affiliation between Kennewick and the tribes who claimed identity with him.

But NAGPRA does not define what is meant by “identity,” and this creates some discordance between conclusions reached under NAGPRA and Native American sensibilities.

NAGPRA assumes that human groups have a distinct point of formation; yet few actually do. Cultures change over time, even if we ignore the effect of migrations. NAGPRA further assumes that as one moves back in time, there is a point at which shared group identity is lost. It is lost not because the archaeological record is too poor to trace it (although that is often the case): it is lost because the differences between the modern tribe and the past group are so numerous or large that members of the modern and ancient groups would not share an identity—the ancient and modern peoples, if they could somehow meet one another in time, would not see each other as being the same.

But what is enough cultural change for the archaeologist to cut the tie of cultural affiliation between the past and the present may not be enough for Indians. Many Native Americans feel affiliated with any burial in their traditional territory, no matter the burial's age. In these cases, Indians feel betrayed—given that the purpose of NAGPRA was to allow tribes to bury “their” dead. In a legal sense, feelings of betrayal don’t matter; the law is what it is. But such feelings do matter if we see NAGPRA as a way to do the right thing ethically. For this reason alone, Kennewick, and other cases like it, will continue to challenge archaeology and Native Americans alike.

**CONCLUSION**

Archaeology is a nonrenewable resource. Once we excavate a site, we can't dig it again. Once a site is looted, we can never get it back. Therefore, archaeologists today excavate only what they must in order to answer a research question and work to protect archaeological sites from development and theft. Archaeologists are willing to make some concessions to development; they will make no concessions to looting, within or outside the United States. From these twin concerns has grown the large field of cultural resource management and the many legislative acts designed to protect archaeological sites.

But these efforts are not enough. Without strong public support for archaeology, we will fight a losing battle against development and looting. We hope that through this textbook you have seen how much archaeology can learn from mere scraps of rock, bone, charcoal, pottery, and dirt. Archaeology needs your support if it is to succeed in saving the past for the future. Report site looting to local authorities. Raise a cry if someone is looting burials. Speak out against the sale of artifacts on the web and in flea markets. Stand up and be counted if a developer plans to destroy a site to put in a mall. If it seems like a daunting task, just remember the words of anthropologist Margaret Mead (1901–1978): Never underestimate the power of a small group of committed people to change the world. Indeed, it's the only thing that ever has.

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**SUMMARY**

1. **What federal policies help protect cultural resources, including archaeological sites?**
   - Although the United States has been concerned with preserving its cultural heritage for a long time, protection of cultural resources did not become policy until the National Environmental Policy Act.

2. **What are the important elements of the 1906 Antiquities Act, the 1966 National Historic Preservation Act, and the 1979 Archaeological Resources Protection Act?**
   - The 1906 Antiquities Act required that individuals acquire a permit from the government before excavating archaeological sites, and gave the president the authority to create national monuments.
   - The 1966 National Historic Preservation Act required that the government inventory cultural resources on its properties and ensure that develop-
ment projects consider their effects on significant archaeological sites. The act established the National Register of Historic Places and State Historic Preservation Offices.

- The 1979 Archaeological Resources Protection Act provided further safeguards against the destruction of archaeological sites on federal and tribal land by increasing the penalties for excavating without a permit.

3. Is there an international black market in antiquities? If so, what can be done about it?

- Yes, in fact this problem may be second only to drug trafficking. The United States and many nations around the world are working to stop the flow of illegally acquired antiquities. Although many measures have been put into place, most countries still find it difficult to stop antiquities from entering a country where buyers are willing to pay high prices for them.

4. Why is the Native American Graves Protection and Repatriation Act of 1990 important to archaeologists? How does it differ from other archaeological legislation?

- The 1990 Native American Graves Protection and Repatriation Act, often seen as human rights rather than archaeological legislation, ensures that human remains, funerary objects, sacred objects, and objects of cultural patrimony are offered for repatriation to culturally affiliated tribes and Native Hawaiian organizations. This process is still underway for most of the nation’s museums and universities.

- This act differs from others in that it returns materials for reburial, rather than preserving them for the future.

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**MEDIA RESOURCES**

- **Doing Fieldwork: Archaeological Demonstrations CD-ROM 2.0**

  This CD, developed by the authors, shows professional archaeologists involved in various digs, many of which are referenced in the text. The presentation is organized by the main techniques used on an archaeological dig, reinforcing concepts and techniques via live examples. The CD takes you through each step automatically, or you can navigate to any point via the navigation bar. After reviewing a step in the dig process, you are taken to Check Points, which are concept questions about each step of the dig. Then you can see the answers, receive your score, and even send your scores to your instructor.

- **The Companion Website for Archaeology, Sixth Edition**

  [www.cengagebrain.com](http://www.cengagebrain.com)

  Supplement your review of this chapter by going to the companion website to take one of the practice quizzes, use the flash cards to master key terms, and check out the many other study aids that are designed to help you succeed in your introductory archaeology course.