

Tribal Cultural Resource Management
Module 2/Week 2 Notes
Topic: Cultural Resource Protection Legal Frameworks

This course focuses on “cultural resource management.” Cultural resource management (CRM) generally refers to land. The laws in place that directly address land protection formally begin in 1906 with the passage of the American Antiquities Act and continue through a more inclusive period in the 1970’s with laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Native American Religious Freedom Act, followed 30 years later with a series of Executive Orders that required “tribal consultation” in policies impacting tribes and tribal cultural resources in the late 1990’s and early 2000’s.

In this course, you’re also asked to think about cultural resources in a greater context that includes both the tangible and non-tangible items of tribal culture. This can include material items like beadwork, katchinas, rugs, baskets, pottery, art (which are usually addressed through laws like NAGPRA and the Indian Arts and Crafts Act). You’ll also be asked to consider non-material culture like language, songs, ceremonies, trails, and other indigenous ways of knowing like medicine, gathering and hunting cycles, and preparation of traditional foods.

All are acceptable Final Project topics in the context of this course.

Land Based Cultural Resource Protection Strategies

Sacred site and cultural site protection strategies typically involve three types of laws: 1) historical protection; 2) environmental protection and direct 3) cultural protection (intellectual property/religious freedom). Early on, cultural resource protection laws were not focused on protecting the “totality of a site” with tribal consultation (*input*) for continuing use by a tribe or tribal people. Rather, the focus was on preserving the artifacts associated with that site for study by the broader American public. This is why you see laws begin by focusing on objects. Over time these perspectives widen to address the highly sacred (in the case of remains and objects of cultural patrimony under NAGPRA) and the broader concept of protecting “sites” as a whole, not merely the objects associated with those sites. You’ll see many terms that are somewhat related but slightly different such as “sacred site,” “traditional place,” “tribal traditional cultural property,” “site,” and “landscape.” Note that a site generally refers to a bounded location such as an identified and recorded archaeological site where a landscape includes a greater geographic area that may encompass the specific plants and animals, water resources, “viewscape,” the land below, and the airspace above a particular site. (Your reading highlights this issue.) There’s a growing movement to frame a culturally relevant location not merely as a site but as a landscape. This has reached its greatest definition in California’s cultural resource laws which we’ll discuss in another Module.

As a brief aside, note that these early laws are beset by academic concepts of “social Darwinism,” progress, and civilization.¹ You’ll encounter the term “cultural resource management” (CRM) frequently in this course. CRM refers both to the protection of cultural resources and to the specialized work of anthropologists, archaeologists, historians, and museum staff engaged in the protection of sacred sites and traditional places. While it is beyond the scope of this course, cultural resource protection is an emergent post-1970’s subfield of anthropology and archaeology. Over time, anthropology as a discipline has moved more from “studying” people toward collaborating with them. I would argue that it’s the diligent work of tribal elders, activists, and scholars in making their voice heard through academia, lobbying, and the courts

¹ Social Darwinism is the theory that individuals, groups, and peoples are subject to the same Darwinian laws of natural selection as plants and animals. Now largely discredited, social Darwinism was advocated in the late 19th and early 20th centuries and was used to justify political conservatism, imperialism, and racism and to discourage intervention and reform.

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that has led to these advancements, making the laws more reflective of tribal priorities and views on protection. (See Pages 3-5 of your reading.) Today, many tribal people are cultural resource management specialists or are employed by CRM firms for tribal consultation work.

Significant CRM Laws

- *Antiquities Act of 1906*: Authorizes Federal departments to grant permits for survey and excavation and to enforce protection of archeological sites and objects under their jurisdiction. Also requires that excavated materials be permanently preserved in public museums. This law was helpful in protecting objects but problematic in the sense that many objects went to museums rather than tribes or the tribal people that should hold them. It took many more years before NAGPRA would come along and require the return of artifacts.
- *Reservoir Salvage Act of 1960, (Archeological and Historical Conservation Act of 1974)*: Provides for the recovery and preservation of “historical and archeological data (including relics and specimens)” that might be lost or destroyed as a result of the construction of dams and reservoirs through the National Park Service.
- *National Historic Preservation Act of 1966 (NHPA)*: Directs the Secretary of the Interior to issue regulations to ensure that significant prehistoric and historic artifacts, and associated records are deposited in an institution with adequate long-term curatorial capabilities. Sets inventory, nomination, protection, and preservation responsibilities for Federally-owned cultural properties in Section 110.
- *The National Environmental Policy Act of 1969 (NEPA)*: requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.
- *Archeological and Historic Preservation Act of 1974 (AHPA)*: Extends the application of the Reservoir Salvage Act of 1960 to recover and preserve “historical and archeological data (including relics and specimens)” that might be lost or destroyed as a result of any Federal construction project or Federally-licensed activity or program.
- *The Archaeological Resources Protection Act of 1979 (ARPA)*: Requires that information on the nature and location of resources on public and Indian lands remain confidential if its release may harm the resources. States that archaeological resources excavated from public lands will remain the property of the United States. Authorizes the Secretary of the Interior to issue regulations for the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands.
- *Indian Arts and Crafts Act (1990)*: Prohibits misrepresentation in marketing of Indian arts and crafts products within the United States. Makes it illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization, resident within the United States.
- *Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)*: Provides for Native American tribes and individuals, or Native Hawaiian Organizations, to claim Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that were excavated or discovered on Federal or tribal lands after passage of NAGPRA. Establishes criminal penalties for trafficking in cultural items obtained in violation of the law. Requires Federal agencies and museums receiving Federal funding to review their collections for any items subject to NAGPRA, consult with tribes, determine cultural affiliations, and repatriate such items to tribes and/or individuals.²

² For a complete listing of relevant laws and statutes and links to the actual text of each law visit The Department of Interior’s “Interior Museum Program” website at <https://www.doi.gov/museum/laws-and-regulations>