The Debate on the Repatriation of Native American Human Remains in the United States of America

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Chapter 1

1.1 Introduction

The topic of the repatriation of Native American human remains sparked a controversy in the United States of America (USA). Still, many Native American human remains are not repatriated and a large body of literature and coverage in the media discusses the arguments for and against repatriation. The thesis presents the question of how the debate was framed by different stakeholders and what possibilities exist to overcome the conflict and find common ground.

The debate on the repatriation of Native American human remains in the USA encompasses issues on various levels: religious, ethical, economic, and social (Mihesuah 2000, 10). The political nature of the debate can be seen in the struggle for the recognition of identity, for the scientific community as well as for the Native American communities (Smith 2015, 406). Repatriation is becoming more common in the global context and many cultural groups strive to regain control over their cultural heritage (Kakaliouras 2012, 210). The power imbalance between the Native American communities and the scientific community is based on historical injustice that enabled collection of Native American human remains (Jenkins 2008, 108). Curtis M. Hinsley stated:

> "The heart of the matter, as always, lies in the negotiation between power and respect." (Hinsley 1994 in Gulliford 1996, 121)

The political issues of the debate are linked to the cultural differences between the stakeholders (Smith 2015, 406). The conflict on repatriation can be described in the framework of 'the ethics of cultural conflict', which occurs between different systems of ethics that define the cultural and moral values of different stakeholders (Goldstein and Kintigh 1990, 586).

The legal dimension of the debate can be understood in terms of the human and Indigenous rights perspective (Tsosie 1997, 64). The repatriation of Native American human remains is connected to the realization of their human rights and the consideration of their cultural heritage and identity (Lenzerini 2016, 138). In the USA, a legislative framework is in place for the process of the repatriation of Native American human remains, which is supposed to address the historical injustice Native American

communities experienced in the collection and study of Native American human remains (Lenzerini 2016, 135; Tsosie 1997, 70).

I will examine this debate based on the research question:

> *How was the debate between the scientific community and Native Americans around the repatriation of Native American human remains framed and what are possible solutions to overcome the conflict?*

Chapter 1 will place the thesis as well as the debate on the repatriation of Native American human remains into context by addressing the methodology and the framework that were used to conduct the research. Furthermore, the legislative framework of the debate on the repatriation of Native American human remains in the USA will be examined. For this, the legislative framework (Native American Graves Protection and Repatriation Act) will be introduced, discussed and a summary of the statute will be given.

Chapter 2 will further introduce the debate through describing the historical background and the field of stakeholders. In it, the following sub research question will be addressed:

> *How did the debate on the repatriation of Native American human remains arise and who are the different stakeholders within the debate?*

The first section in Chapter 2 describes the history of the study of Native American human remains. Based on this historical background, the different stakeholders and their opinions will be discussed in the second section of the chapter. The representation of the debate as a false polarity will be discussed and contested through the description of the various stakeholders and their positions and framing of the debate.

Chapter 3 will present the main issues surrounding the debate that were identified during the literature study. In it, the following sub research questions will be addressed:

> *What are the main issues that can be identified within the debate?*
>
> *What are the arguments presented by the different stakeholders within the debate on the repatriation of Native American human remains?*

The different arguments voiced by the stakeholders concerning the main issues will be discussed.

Chapter 4 will examine possible solutions to the main issues that were presented in Chapter 3. These will be illustrated through the analysis of case studies that describe the main issues and approaches that were used to overcome conflicts as well as arguments that can be seen surrounding the issues within the specific examples. In it, the following sub research question will be addressed:

> *What are possible solutions to the main issues surrounding the debate on repatriation?*

The solutions are discussed in connection to the historical background, the theoretical framework, and the legislative framework.

1.2 Methodology

In this thesis, I will conduct a literature study to identify and explore the main issues within the debate on repatriation of Native American human remains. For this, I will select authors that present different issues from various perspectives, including authors from the scientific community and the Native American communities. The debate is often presented with a false polarity that defines Native Americans and the scientific community as two homogenous groups (Hubert and Fforde 2002, 4). It must be noted that these categories are not exclusive and can overlap, for example, in the case of Native Americans who are part of the scientific community.

To establish a balanced overview of the debate, arguments for and against the repatriation of Native American human remains will be shown. The issues on repatriation often have many different dimensions, which will be explored through looking at different authors' perspectives on the same or similar issues. Through a comparison of the different arguments on the issues, one can gain a more in-depth understanding of the issues.

This thesis is intended to cover the debate on repatriation of Native American human remains in the USA. The debate in the USA is especially interesting for its long- standing pan-Indian politics and the implementation of a legislative framework (Native American Graves Protection and Repatriation Act) that addresses the problematic history of the study and collection of Native American human remains, as well as the human rights violations in the past and present. Interestingly, the debate is often represented as polarized between Native American communities and the scientific community, whereas actual opinions and underlying values and concerns are much more varied and manifold.

Another aspect for choosing the USA as the research context is that most sources on the debate are written or translated to English, as opposed to conflicts on repatriation in other countries[1].

1.3 Reflexivity

In this section on self-reflexivity, I would like to describe some factors that are important to position this thesis in the wider discourse. I will reflect on the limitation of the process when writing the thesis and of the thesis itself.

Due to the timeframe in which I wrote this thesis, I had to make a selection of the literature included in the study. In this thesis, I concentrate on the main issues and general debate on repatriation of Native American human remains. I do not claim that I summarized the entirety of the debate within this thesis, I merely give an overview of the most important facets that I detected in this debate.

I was not able to study any texts that are not written in, or not translated to, English or German as these are the only languages I am fluent in and able to understand literature on an academic level. This limited the access, especially to many sources that are published in Spanish. The selection of literature was further limited due to Covid- 19 measures, which restricted the access to library books during the research period.

I do not have a background as Native American. Everything I write about the Native American experience, culture, and belief systems, I gathered from the literature. I do not claim to have a complete understanding of the Native American cultures and beliefs, but I hope to present them as best as possible.

1.4 Theoretical Framework

1.4.1 Native American as a term and concept

In this thesis, the ethnic label 'Native American' will be used, as it is one of the most common terms in the literature written about the debate and the label used in the legislative framework concerning repatriation in the USA. It is important to note that 'Native American' is a generalizing term and may indicate a homogenous understanding of the Indigenous Peoples in the USA (Yellow Bird 1999, 9). Unfortunately, to be able to present an overview of the debate, some points must be generalized. The views

[1] The limitations of this thesis and language barriers will be further discussed in Chapter 1 (Reflexivity).

presented in this thesis are not held by all members of the Native American communities, who are in no way a monolithic group. To prevent the misinterpretation of this thesis and to show respect to the Indigenous Peoples of the USA, the tribal identity of the Native American tribes will be used, when describing specific case studies or when referring to specific groups. Moreover, to show the plurality of Indigenous Peoples, the term Native American communities is used when talking about Indigenous Peoples in the USA in general.

However, the term 'Native American' is not without controversy and implications of the concept 'Native American' shape the debate on the repatriation of Native American human remains. 'Native American' is besides 'American Indian' one of the most common ethnic labels with which the Indigenous Peoples in the USA are described (Yellow Bird 1999, 1). Ethnic labels can have an impact on the debates that they are used in and shape the way in which Indigenous peoples self-identify and are identified by others.

The label 'Native American' is misused by non-indigenous Americans to describe themselves (Yellow Bird 1999, 6). These people claim the status and label as 'Native American' because they were born there, while neglecting the original meaning of the label. This misuse presents the question that is most contentious about the concept 'Native American': What does it mean to be Native American and who the is Native American? (Yellow Bird 1999, 18).

The legislative framework effects all federal recognized Native American tribes, groups, and Native Hawaiian organizations and Native American is applied to a tribe, people or culture that is indigenous to the USA (Native American Graves Protection and Repatriation Act, 25 U.S. § 3001 et seq., § 3005. Repatriation). This definition does not encompass the complexities in defining the concept of indigenous[2], the problems non-federally recognized Native American communities encounter, and the burden of prove of the closest cultural affiliation laid on Native American, in order to obtain control over the human remains[3] (Bruning 2006, 510).

[2] This will be further discussed in Chapter 4 (Case Study: Kennewick Man)
[3] This will be further discussed in Chapter 3 (Unaffiliated Human Remains)

1.4.2 Repatriation

The notion of repatriation describes, within this debate, the return of Native American human remains to affiliated Native American communities. Repatriation as a concept describes the acknowledgment of past wrongs, through "the return or restoration of money, historical artefacts, etc." (www.oed.com). The goal of repatriation can be described as undoing past wrongs to an extent, in which circumstances are created that reflect conditions that would have existed if past wrongs would not have occurred (Lenzerini 2008, 13). The process of repatriation is embedded in a general strife of indigenous peoples for reparations for wrongs done to them and their culture in the past and present. Repatriation presents a specific form of redress that can be interpreted as a practice to establish justice for Indigenous peoples (Lenzerini 2008, 9).

1.4.3 Cultural Property and Ownership

The concept of 'cultural property' is often used in the context of the debate on repatriation. This concept is rooted in a Western understanding of the world, in which knowledge and culture can be understood as property. Most Indigenous peoples do not understand living things and culture in terms of property (IITC[4] 1996 in Xanthaki 2008, 209). Property rights facilitate an exclusive access and right to own objects (Jolie 2008, 196).

Furthermore, the use of the concept of property when applied to human remains is highly problematic for Indigenous and non-Indigenous communities. It is universally agreed upon that dead bodies cannot be owned[5]. This makes the use of this concept within the debate on Native American human remains inappropriate (Tsosie 1997, 66). It is a basic human right that the physical remains of a person should be left undisturbed (Nafziger *et al.* 2010, 432). Still, the debate surrounding Native American human remains takes place within a legislative framework that is supposed to determine control and ownership over human remains.[6]

[4] International Indian Treaty Council (IICT), IICT Discussion Paper on Biological Diversity and Biological Ethics, 30 August 1996, p. 5

[5] The issue of ownership within the debate on the repatriation of Native American human remains will be further discussed in Chapter 3 (Ownership).

[6] The historical background of the transformation of Native American human remains into 'Historical specimens' is discussed in Chapter 2 (History of the Study of Native American Human Remains).

1.4.4 Spiritual Systems of Native American Communities

Native American communities are not a monolithic group and do not share one common belief system. However, many of the Native American communities share basic religious beliefs on the treatment of the dead, sanctity of the grave, and death (Hammil and Cruz 1989, 195). In a statement published by the American Indian Against Desecration (AIAD), representing 97 Native American tribes these shared beliefs are described as following:

> *"We believe in an afterlife. That which is called death, to us, is only a change in life as we continue on a journey to the spirit world and thereby become one with our Mother, the Earth."* (Hammil and Cruz 1989, 195)

Native American communities believe they are responsible for their ancestors. Therefore, they must serve them and protect and care for burial grounds and holy places (Forsman 1997, 108). The AIAD states that the desecration of burials leads to a disruption of the journey of the deceased person to the spirit world, which is considered a violation of personal religious beliefs. Furthermore, the widespread issue of the desecration of Native American graves and the retention of Native American human remains by museums and scientific institutions is understood as a violation of religious freedom (Hammil and Cruz 1989, 195pp). This is part of a wider development in which these actions reflect "a fundamental imbalance between spirit and science" (White Deer 1997, 42).

In many Native American belief systems, the world is composed of spirit and matter, which is a common idea in beliefs around the world. For the debate on repatriation, it is important to note that in Native American belief systems, the earth itself is understood as a living entity. Therefore, burials are considered sacrosanct and specific locations are perceived as holy places. Moreover, certain objects can be used "to mediate between the seen and the unseen[7]" (White Deer 1997, 41).

1.5 Legislative Framework

The Native American Graves Protection and Repatriation Act (NAGPRA), which was issued in 1990, represents the legislative framework in the current debate on the repatriation of Native American human remains (Nafziger *et al.* 2010, 362).

[7] In the debate on repatriation and in the legislative framework these objects are referred to as 'objects of cultural patrimony' (Native American Graves Protection and Repatriation Act, 25 U.S. § 3001 et seq., § 3005. Repatriation; White Deer 1997, 41).

NAGPRA represents a human rights law, which is rooted in the Universal Declaration of Human Rights (UDHR) of 1948. Even though, the right of repatriation is not mentioned in the UDHR, the act is based on ideas represented by the UDHR, including the right of a person, which determines that there should be no interference with the physical remains of a person as well as the collective right to self-determination. These ideas were firmly established by the UN Declaration on the Rights of Indigenous Peoples in 2007, which described the right of Indigenous peoples for the repatriation of human remains (Nafziger *et al.* 2010, 431pp).

NAGPRA does not prohibit the scientific study of Native American human remains in general. Within the legislative framework that the statute provides, Native American communities and the scientific community are supposed to establish collaborative relationships, in order to facilitate the implementation of NAGPRA in terms of "inventory, repatriation and disposition processes" (Bruning 2006, 505). The act was designed to find a true balance between the various interests of the different stakeholders (Bruning 2006, 506). Often the legislation is critiqued by the scientific community as favouring Native American claims because they fear limitations on their research. However, the legislation tries to provide the same rights to Native American communities that non-native people already had in shaping the narrative of their past (Tsosie 1997, 70).

According to some critics, NAGPRA does not recognize Indigenous human rights to a full extent. The legislation only applies to federally funded institutions and projects, which presents a failure to notice non-federally funded projects and (private) collections that hold Native American human remains (Tsosie 1997, 71).

1.5.1 Summary of the Native American Graves Protection and Repatriation Act, 25 U.S. § 3001 *et seq*., § 3005. Repatriation[8]

NAGPRA recognizes the right of Indigenous peoples in the USA to control Native American human remains and cultural objects that were found on federal or tribal land (Nafziger *et al.* 2010, 362). Federal Agencies and museums that receive federal funds must adhere to the measures that are implemented through the statute. Individuals and organizations that have the possibility to request repatriation include lineal

[8] In the following NAGPRA 25 U.S. § 3001 *et seq*., § 3005. Repatriation

descendants, Native American tribes[9], and Native Hawaiian organizations (McKeown 2002, 110; NAGPRA, 25 U.S. § 3001 *et seq*., § 3005. Repatriation).

Four types of Native American items are regulated under NAGPRA, including human remains, funerary objects, sacred objects, and objects of cultural patrimony (McKeown 2002, 112). After the cultural affiliation is established human remains and associated funerary objects need to be repatriated by the museum or federal agency that currently holds them. The repatriation of sacred objects and objects of cultural patrimony can be requested by lineal descendant(s) and Native American tribes or organizations that can prove the objects were controlled or owned by them or a member of the tribe or organization (NAGPRA, 25 U.S. § 3001 *et seq*., § 3005. Repatriation).

The legislation defines processes of consultation to provide a framework for the repatriation and disposition process (McKeown 2002, 114). The act requires museums to establish summaries and inventories[10] of Native American human remains and associated funerary objects. Federal agencies and museums need to share information about objects with lineal descendants, Native American tribes, and Native Hawaiian organizations. The return of cultural objects should be enacted in consultation with the claimant(s) to determine the location and time of repatriation (NAGPRA, 25 U.S. § 3001 *et seq*., § 3005. Repatriation).

According to NAGPRA, Native American items can be claimed if a relationship between the claimant(s) and the human remains or cultural items can be established (McKeown 2002, 110). This relationship or affiliation can be based on one or more of five criteria, including lineal descent, tribal land ownership, cultural affiliation, other cultural relationship and/or aboriginal occupation (McKeown 2002, 120). In case that cultural affiliation is not yet established in an inventory or summary, the claimant(s) must show their cultural affiliation with the human remains through different forms of evidence, including geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other (expert) information that can be relevant to

[9] Native American tribes include all federally recognized tribes, nations, or other organized Native American groups. These were defined by the Alaska Native Claims Settlement Act (United States Code 1971: 43 U.S.C. 1601 et seq. in McKeown 2002, 111). Non-federally recognized groups cannot place claims of repatriation under NAGPRA (McKeown 2002, 111).

[10] Summaries mean written descriptions of the collections that include 'unassociated' funerary objects, sacred objects and objects of cultural patrimony and; inventories mean "item-by-item descriptions" of human remains and associated funerary objects (McKeown 2002, 116).

determine the relationship between the objects in question and the claimant(s) (NAGPRA, 25 U.S. § 3001 *et seq*., § 3005. Repatriation).

Under the following three exemptions the federal agency or museum does not have to repatriate the requested objects directly. First, in case a requested object is essential for the completing of a current scientific study that is of interest for the USA, the object can be retained. However, the object needs to be repatriated within a period of 90 days after the scientific study is completed. Second, if there are multiple requests/competing claimants for the repatriation of objects, the federal agency or museum can retain the objects in question until the claimant(s) reach an agreement or a legal solution was found. Third, if the federal agency or museum can prove the right to possess the object in question, it does not need to be repatriated to the claimant(s) (NAGPRA, 25 U.S. § 3001 *et seq*., § 3005. Repatriation).

Chapter 2: Background of the Debate

In this Chapter, an introduction to the background and complex environment of the debate on the repatriation of Native American human remains will be given. For this, in the first part of the Chapter the history of the study of Native American human remains will be described, which forms the basis for the development of the varied field of stakeholders that will be discussed in the second part of the Chapter. The stakeholders of the debate are often represented as two opposing sites, Native American versus scientific community or religion versus science. To contest this simplifying, and even harmful, representation of the debate, based on the history, the various stakeholders and their opinions will be explored, while placing them in the wider field and background of the debate.

2.1 History of the Study of Native American Human Remains

The collection and study of Indigenous human remains is rooted in colonial history and connected to problematic ideas in the past. The study of human remains and the formation of colonial ideologies are interconnected, as the ideologies made the study of Indigenous human remains possible in the first place and the study of these human remains supported colonial ideologies (Fforde 2002, 29).

The collection and sometimes theft of an extensive amount of human remains was possible in the past, as Indigenous peoples were denied their rights (Jenkins 2008, 108; Rubertone 1989, 34). The collection of Indigenous human remains is connected to a colonial control over the identity of Indigenous peoples and their classification as 'colonised' peoples (Smith 2015, 408). The acquisition of Indigenous human remains is connected to a problematic history and any collection of human remains is based on unequal power structures (Jenkins 2008, 108). Indigenous human remains were acquired when Indigenous peoples had less power and furthermore, they were collected to maintain and legitimize these unequal power structures. The human remains were used in the analysis of racial characteristics that provided the basis for identifying Native Americans as inferior to Europeans (Jenkins 2008, 108). The study of human remains served the description and categorization of the different human races, which was used to place these within a 'natural' hierarchy and to legitimize white supremacy and European colonialism and expansion (Fforde 2002, 29).

Indigenous societies were described as 'primitive' populations that show similarities to the ancestors of Europeans (Fforde 2002, 30). Archaeology was used to support this idea through the comparison of the material culture of these societies and Palaeolithic artefacts found in Europe (Fforde 2002, 30). The control over Indigenous human remains was – and is – important for the construction of an archaeological identity, which can be used to exercise power in the scientific discourse (Smith 2015, 409).

The two most important research topics in archaeology about Northern America in the seventeenth century were those of *colonial archaeology* and *acculturation studies*. Colonial archaeology described the everyday life of European settlers in the Americas in great detail but left out the contact and relation to Native Americans to a great extent or even completely. These scientific studies were based on an ideology that centralized the role of Europeans in the past and neglected participation and contributions of non-Europeans in history. This ideology of exclusion denied the rights of Indigenous peoples and was employed to justify European colonialism on a moral and political basis (Rubertone 1989, 33pp).

Acculturation studies legitimized the idea that Native Americans were undeserving of the land they inhabited and supported land appropriation. Furthermore, acculturation studies described the process of the Native American response to European colonialism, which was framed at the time as *progress*, in which Native Americans adopted European ideas and material culture and eventually assimilated into this dominant culture. Native Americans were described as inferior and, therefore, bound to adopt European culture (Rubertone 1989, 34pp).

In the early nineteenth century, the fields of study *phrenology* and *craniology* advanced. These studies utilized Indigenous human remains to further prove the inferiority of Indigenous peoples scientifically and to legitimize ideas of white supremacy (Mihesuah 2000, 2). Between 1830 and 1851 Samuel George Morton developed a new line of biblical reasoning for the differences between the human races than the theories established by Johann F. Blumenbach and other anthropologists at the time (Thomas 2000, 38). Blumenbach had established racial divisions based on the surrounding environment, describing the monogenic creation. In his theory, the Caucasian skull is described as nearly perfect and therefore, the closest to the creation of God, whereas other races were degraded because of the environment (climate, diet, mode of life, hybridization and disease) that surrounded them (Thomas 2000, 37). In contrast, Morton argued for multiple racial creation, so-called polygenesis, which describes the

creation of various races with their characteristics that are unmodifiable (Thomas 2000, 39). This theory led him to establish the scientific analysis of skull size and shape, called craniometry. Morton argued that brain size and intelligence were directly linked and based on 'objective scientific methods' he derived a racial classification system, in which the 'Indian brain' was determined to be insufficient for civilization (Thomas 2000, 40pp). Eventually, after Darwinian evolution was introduced to the field, the debate on monogenic versus polygenist creation ended. Based on Darwin's theory, the acceptance of a single origin of all humans and the ranking of the human races along evolutionary stages of the species was popularized (Thomas 2000, 43; Walker 2000, 8).

For these studies, the need for human anatomical specimens exceeded the legal supply, which was constituted since the Renaissance by hanged or excavated criminals (Thomas 2000, 39; Walker 2000, 6). At the same time, the value of medical dissection of human remains and the need for specimens for this activity increased. These developments resulted in the acquisition of human cadavers through grave looting, often performed by professional body snatchers, who were referred to as 'resurrectionists'. Grave looting triggered public outrage, visible in public (violent) resistance, which led to the robbing of graves belonging to poor and non-white people (Walker 2000, 6). The non-white people in the case of the USA being African Americans and Native Americans (Thomas 2000, 39).

Furthermore, the organized acquisition of Native American human remains for the archaeological and anthropological study was conducted by the U. S. Army (Nilsson Stutz 2005, 16). From the middle to the late nineteenth century the invasion of Euro-Americans continued and as the territories of the Native American tribes shrank, they were under great pressure. Further developments, like driving the buffalo - one of the main preys of the Native American communities - extinct, brought changes to the environment of Native Americans and forced them into a sedentary lifestyle. The U. S. Army followed these devastating developments with increasingly more campaigns (Thomas 2000, 22). These campaigns had devastating results as many Native Americans were killed in massacres. After massacres like the Sand Creek massacre in 1864 on the Southern Cheyenne the U. S. Army collected human remains, which were then given to the Army Medical Museum (Gulliford 1996, 137, Nilsson Stutz 2005, 17). Furthermore, other sacred objects were taken from battlefields. For example, after the Wounded Knee massacre, in which nearly 300 members of the Lakota Sioux were killed, the Ghost

Dance shirts, which they wore while engaging in religious activities, were taken from the dead bodies and sold to various museums (Moses 2015, 35; web.archive.org).

The acquisition of Native American human remains and sacred objects from battlefields was done by the U. S. Army and furthered the development of representing Native Americans as a vanishing race (Thomas 2000, 23). The collection of Native American human remains was actively encouraged and the urgency of it to create collections for the museums and scientific institutions was stressed (Gulliford 1996, 123pp). The human remains and sacred objects were then introduced to museums and scientific institutions, which further transformed them into objects and Native American human remains into historic specimens (Thomas 2000, 23).

Moreover, the exhibition of human remains in museums and scientific institutions was often used to illustrate the different racial types (Fforde 2002, 31). These exhibitions served the narrative that the inferiority of Indigenous peoples was an objective scientific fact based on biological and morphological markers (Fforde 2002, 32). This is unfortunately still reflected in the collections today. Often scientists refer to their research as including all humans, Anglo-Americans as well as Native Americans (Nilsson Stutz 2005, 20). All human remains are considered important for the study of the past of humankind (Landau and Steele 2000, 75). An exclusion of Native American human remains from the museum collections is regarded as racist by some members of the scientific community. They point out that this would imply that Native Americans did not have any important contributions for the understanding of the past (Walker 2000, 17). However, the number of Native American human remains in the museum collections today seems disproportionate in comparison to other human remains in the collection. Native Americans represent less than 1% of the American population today and similar numbers apply to the past when the collections were established. At the same time, Native American human remains comprise 54.4% of the collection of human remains at the Smithsonian Institution (Gulliford 1996, 126).

The objectifying nature of the collection, study, and curation of Native American human remains in the nineteenth and twentieth century is often criticised for its injustice (Kakaliouras 2012, 216). Clayton W. Dumont Jr. argues that “the only reason Indians and Native Americans have to fight in the present for our dead is because we lost the military confrontations of the past” (Dumont Jr. 2011, 8). The practice of scientific study of Indigenous human remains was historically used for the establishment and maintenance of power structures. Comparative anatomy and physical anthropology

were used to construct an indigenous identity, inferior to Europeans, that served the colonial ideologies (Fforde 2002, 33pp). Native Americans were and sometimes are still perceived "as 'historical resources' and as appropriate objects of scientific study" (Tsosie 1997, 68). The Native American human remains are understood as objects and should be studied, excavated, and curated as part of scientific research (Tsosie 1997, 68).

The scientific community played an important role in the creation of the identity of Native Americans. Through their study, an image of Native Americans as uncivilized and primitive was established. In this process the human right of self-determination was taken from Native Americans and they became "'people without history,' without power over their own identity" (Nilsson Stutz 2005, 17pp). Native American human remains became powerful tools in this process as they provide the possibility of defining the Native American identity. When looking at the debate on the repatriation of Native American human remains, it is important to consider the history of the collection and study of Indigenous peoples' remains. In this context, the debate can be understood as one about basic human rights of self-definition, and the claims for the repatriation of Native American human remains as attempts to reclaim the control over their identity (Nilsson Stutz 2005, 18).

2.2 False Polarity and Different Stakeholders

The repatriation issue is often approached through looking at it as a 'simplistic opposition' (Walker 2000, 12). Framing the conflict, as it is often done, as one between the scientific community and Indigenous peoples, as one between science and religion, can be very misleading. The notion that there is such a polarity is false and neither of the groups is a monolith, nor are these 'groups' the only ones involved in the conflict (Hubert and Fforde 2002, 5). The representation of polarity is counterproductive as the simplification of the conflict and the groups involved does not leave room to show the complexity of the stakeholders and their opinions on the matter (Nilsson Stutz 2005, 15).

The polarity is used to lump together people with the same ideas to reinforce the power of those ideas and the notion of opposition against the other group. This structure can be called the politics of polarity and is used to manipulate the discourse (Echo-Hawk 1997, 101). These methods are not only used by the media, but also by activist groups (Echo-Hawk 1997, 101; Hubert and Fforde 2002, 5). Portraying the conflict as a polarised

argument seemed helpful to many that took part in the debate. However, this characterization of the debate led to conflict between the parties and made it harder to find common ground (Zimmermann 2000, 296). Both groups, the scientific community, and Native American communities, are not homogenous and are constituted of members with differing opinions and approaches on the matter (Hubert and Fforde 2002, 5).

Institutions that commonly hold Native American human remains include museums and university archives (Mihesuah 2000, 1). The most representative in the USA are the Smithsonian Institution, the Peabody Museum of Archaeology and Ethnology, the American Museum of Natural History, the Harvard Peabody Museum of Archaeology and Ethnology, the Chicago Field Museum, the Lowie Museum of Anthropology and the San Diego Museum of Man (Walker 2000, 11). These museums and scientific institutions represent only a few of all the ones that hold Native American human remains. The opinions on the repatriation of Native American human remains vary as much in the scientific community as they do in the Native American communities. The members of the scientific community that are most affected by repatriation include those in the field of archaeology and anthropology. These are studies that are concerned with researching culture within its context, which means the removal of any cultural objects can impact their research (Nafziger *et al.* 2010, 221).

In the Native American communities, the positions and values vary on the topic of repatriation (Mihesuah 2000, 7). They range from advocating for the complete repatriation of human remains to encouraging scientific study for educational purposes and rejecting the repatriation of human remains (Mihesuah 2000, 4). The reasons for these positions differ and are based on complex and often intertwined underlying values. It needs to be noted that the majority of Native American communities do not agree with the narratives that scientific studies produce about their ancestors (Dumont Jr. 2011, 9). However, there is no general opposition against scientific study. The crucial concern is the unnecessary storing and retention of the human remains (Gulliford 1996, 133).

The fear of the consequences that repatriation entails, including time-consuming administrative efforts and the need for staff taking care of the repatriation and reburial process, leads some tribes to the conclusion that they do not want to have any of the human remains repatriated. A reason for the rejection of repatriation can be the

mistrust in the accuracy of provenience keeping in the museums. This results in, for example, the Eastern Shoshone on the Wind River Reservation in Wyoming to reject the repatriation of human remains (Gulliford 1996, 138). Moreover, this reasoning can be connected to underlying religious values that complicate the reburial and/or repatriation of human remains, which then lead to the rejection of these. At the same time, many of the people with these opinions still refuse the study of Native American human remains (Mihesuah 2000, 4). The responsibility of reburial led the California Chumash to a disinterest in repatriation. Members of the Zuni refuse reburial as, for them, the human remains lost their cultural identity when they were taken out of their "home area" (Gulliford 1996, 138 pp).

Some Native American groups want to allow the study of human remains, given that they are repatriated afterwards. A similar approach is favoured by members of the scientific community who argue that they want to return human remains after the scientific study is finished (Mihesuah 2000, 4). Several campaigns and studies were conducted in collaboration with, and as an initiative by, Native American communities. These communities are interested in the information that bioarchaeological data can provide for them and do therefore not reject the scientific study of Native American human remains. Including a project on a 9700-year-old human remains from Prince of Wales in Alaska. The project and study were carried out in collaboration with the Tlinget nation (Nicholas et al. 2008, 238). Another example of these collaboration efforts can be seen in the involvement of the Hopi tribe in a project of the New Mexico University, in which human remains found on two sites on the Transwestern Pipeline should be analysed. The consultation allowed the Hopi tribe to establish a set of recommendations while being informed by scientists on the possible techniques used for the analysis. They settled on laboratory analysis of the human remains with a planned reburial after a research period of four months. Allowing the ancestral spirits to recognize the Hopi involvement based on the number four, which is of significance in the Hopi belief system (Danchevskaya 2016, 66; Dongoske 2000, 288). This consultation allowed finding compromise, which respected the scientific interest in the human remains, as well as the cultural beliefs and values of the Hopi tribe, and allowed the study of the human remains and their repatriation and reburial afterwards (Dongoske 2000, 288).

Other Native American groups emphasize the importance of repatriation and do not want to allow the study of Native American human remains (Mihesuah 2000, 4). The purpose of repatriation can be a process of healing and addressing past wrongs

(Lenzerini 2016, 127). In this case, repatriation can lessen the emotional and other traumatic damage that Native American communities experienced, which manifests itself as the 'trauma of history' in the present. This notion describes the effect traumatic events of the past can have on individuals and groups of the community that was harmed (Thornton 2002, 20). Some museum staff also want the human remains to be repatriated and want to cooperate with the Native American communities to achieve that goal (Mihesuah 2000, 4). In a study conducted by Tiffany Jenkins, 26 of the 34 museum professionals that she interviewed, were supporting repatriation efforts by Native American communities and the primary reason these individuals named for their support was the healing purposes of the repatriation process. A senior member of the Museum Association argued that repatriation "directly benefits their[11] social cohesion, community and healing" and further that it is "a real benefit to living people who will, or could, be damaged without it" (Jenkins 2008, 110). The healing properties of repatriation can be illustrated with the example of the Sand Creek Massacre in 1864, in which approximately 150 members of the Cheyenne tribe were killed. Human remains of the killed Cheyenne were obtained by the Army Medical Museum and then sent to the Smithsonian Institute. When these human remains were eventually repatriated to the Cheyenne tribe in 1993, representatives of the tribe described their relief that finally the human remains were returned, the trauma of the Sand Creek Massacre was addressed, and some of the emotional damaged could be lessened (Thornton 2002, 23).

The history of the study and collection of Indigenous human remains, and the political context shape the position that many members of the Native American communities take. Nowadays, the responsibility for the actions of their ancestors is questioned by many Americans, whereas many Native Americans question if they should still suffer from the consequences of these actions. Native American communities want to regain control over their identity and establish their sovereignty (Forsman 1997, 109). This struggle for power over Indigenous identities is reflected in the introduction of multivocality as a concept in the scientific field in the 1980s. Minorities and Indigenous peoples try to establish control over the narrative of their past. But even though the subjectivity in scientific research is much more acknowledged and despite attempts to practice multivocality in scientific studies, many scientists want to maintain their control over the narrative of the past (Nilsson Stutz 2005, 10). This is related to the idea of archaeologists as advocates of the past. They control the knowledge that is produced

[11] Meaning Indigenous peoples

about the past and want to shape the narrative about the history of humankind according to their practice (Jolie 2008, 190).

Over time, this control of the past by archaeologists triggered resentment against the field of archaeology in Native American communities. The perception of Native Americans as specimens in the past still informs some of their positions today (Lippert 1997, 121). The exhibition of Native Americans and their culture among "the flora and fauna of the natural history museum" represents the treatment of Native Americans as something other than human and rooted in the natural world and in the past rather than as part of the society today (Dumont Jr. 2011, 16). Often contemporary Native Americans are seen merely as the remnants of the glorious ancient Native Americans, which are studied by archaeologists as cultural groups that do not exist anymore, presenting the idea of the 'vanished Indians' (Lippert 1997, 121).

Some members of the scientific community believe that through the process of repatriation scientific research will be harmed and the lack of access to human remains that are considered Native American will result in the loss of knowledge on the past (Owsley and Jantz 2001, 573). This results in some scientists wanting to continue their study on Native American human remains and some museum staff wanting to display human remains without repatriating them at all (Mihesuah 2000, 4). These positions are based on the importance scientists ascribe to the study of human remains and their interest in producing knowledge about the history of humankind. Some argue that repatriation impacts and restricts scientific research in a way that scientists are forced to abandon their research (Bonnichsen and Schneider 2000, 46).

Scientists that argue against the repatriation of Native American human remains often stress the loss of data and knowledge. Mike O'Brien stated that "returning bones is like burning books" (O'Brien in Weiss 2009, 41). A similar statement was made by Robert McCormick Adams, the secretary of the Smithsonian Institution, when he compared Native American human remains with library books that "are reexamined time and time again as research orientation, techniques of investigation, and specific scientific questions change" (McCormick Adams in Dumont Jr. 2011, 13). These opinions are based on the definition of archaeological material, which includes Native American human remains, are "non-renewable resources" (Elia 1997 in Nafziger *et al.* 2010, 252). The loss of archaeological material can have a personal and emotional impact on

scientists and some experience repatriation as “the horror of reburying remains” (Joyce 2002, 105; Weiss 2009, 43).

Chapter 3: Main Issues surrounding the Debate on the Repatriation of Native American Human Remains

In this Chapter, the main issues that were identified during the literature study will be discussed. These issues are based on the historical and political background. They will be analysed in relation to the theoretical and legislative framework presented in Chapter 1. The issues are voiced and addressed by the various stakeholders involved in the debate and authors that analyse and discuss the topic of the repatriation of Native American human remains. The Chapter is divided into five sections that each deal with one of the main issues, including unaffiliated human remains, ownership, scientific importance and academic freedom, differences in worldview and communication gap, and spirituality, religious freedom and Native American identity.

3.1 Unaffiliated Human Remains

A central, legal, and complex problem in the debate and process of repatriation is constituted by Native American human remains that cannot be culturally affiliated with a federally recognised community of Native Americans. The appropriate measures to take for these unaffiliated human remains are unclear (Colwell-Chanthaphonh *et al.* 2011, 27). The process of the disposition of these human remains is not regulated (Isaac 2002, 162). The relationship or affiliation should be established before the human remains can be repatriated, in order to secure repatriation of human remains to the 'correct' community and to prevent distress connected to mistakes in the repatriation process (Hanchant 2002, 313).

One option to ascertain possible affiliations with the human remains in question consists in provenance and archival research. The provenance and archival information that museums obtain often lacks detailed or even correct information (Hanchant 2002, 313). This imprecise or missing provenance information can result in the inability of museums and other institutions to repatriate the human remains (Wright *et al.* 2018, 1). The task of establishing cultural affiliation can be very time consuming and expensive. These factors are often not accounted for, which can result in other issues related to missing provenance research and unaffiliated human remains. Due to the lack of time, some museums might resort to categorizing insufficiently researched human remains as 'unaffiliated', to meet the deadlines determined by NAGPRA for the completion of

summaries and inventories. This can lead to an inaccuracy of the inventory and summary (Isaac 2002, 163).

The different forms to establish affiliation present three main issues that can be described in the definition and establishment of affiliation according to NAGPRA: the definition of cultural affiliation, the establishment of tribal territories, land ownership and aboriginal occupation and establishing genealogical/lineal descent.

(1) Cultural affiliation

Cultural affiliation describes a shared group identity between contemporary Native American communities and historic or prehistoric populations (Colwell-Chanthaphonh *et al.* 2011, 28). This affiliation is based on one or more of the 10 lines of evidence specified in the legislation (Native American Graves Protection and Repatriation Act, 25 U.S. § 3001 *et seq*., § 3005. Repatriation). The establishment of cultural affiliation varies widely, and the term can be ambiguous (Anyon and Thornton 2002, 192). Cultural affiliation is determined by the individual museums and federal agencies, which can result in differences in requirements and processes (Anyon and Thornton 2002, 193).

Different forms of group connection can be identified with past populations (Bruning 2006, 509). Many Native American communities identify different levels of cultural affinity. For example, some members of the Hopi tribe identify all Hisatsinom[12] remains as associated to them, whereas other members prefer to rely on genetic relations, which means they are interested in remains to which they share direct blood relations (Dongoske 2000, 287). The establishment of a group identity and shared identity between past and contemporary Native American communities is very complex. This is a result of changing populations and shifts in social identity, which are complicated to trace especially over long periods of time (Bruning 2006, 509pp). Therefore, the establishment of affiliation is influenced by different understandings of group identity, which generates a complex variety of opinions on the identification of affiliation.

Furthermore, the establishment of cultural affiliation to prehistoric human remains is often criticised based on the notion of cultural continuity, which constitutes an "assumed" relationship between the prehistoric peoples and contemporary Native Americans (Malik 2007, 159). For ancient remains, it would only be possible to speculate

[12] This term describes ancient Pueblo culture (also called Anasazi) which existed approximately AD 100 to 1600. The contemporary Native American tribes that are associated with the Hisatsinom are the Hopi, Zuni, Acoma, and Laguna (www.britannica.com).

about the affiliation with contemporary tribes as cultural affiliation is not traceable for remains that are too old. However, this only accounts for archaeological evidence. Oral tradition and folklore have a rich report of the past, but these lines of evidence, even though they are officially recognized in NAGPRA, are often not trusted as much in court (Bruning 2006, 511).

(2) Tribal land ownership

The definition of tribal land is very difficult and can be misleading. The area in which a tribe was present changed over time and can differ from the tribal land ownership they inherit. This change of territory in precolonial times is based on the migration of Native American tribes. The tribal lands that are in place today might have been much larger or different in the past (Dongoske 2000, 285). The assumption that Native American tribes had continuous settlements in specific regions or even in their contemporary territories can be very misleading (Kressing 2012, 118). Furthermore, in the case of hunter-gatherer societies it becomes complicated because these populations had a very mobile lifestyle, which results in changing territories over time. This makes it unlikely that human remains found in a modern territory of a tribe can be associated to the same tribe (Walker 2000, 22).

Another factor is the displacement of Native American tribes in the nineteenth and early twentieth century. After the War of 1812, a policy of Indian removal was implemented under President Jefferson. Through this policy, Native American tribes from the East could be moved to reservations in the West. Later, Andrew Jackson argued that survival of individual Native Americans depended on their segregation from the mainstream society of America (Thomas 2000, 20). For this, treaties and enforced removal would be needed. Contrastingly, the policy was described as beneficial for Native Americans as the government would purchase territory for them and through this ensure security by giving them territories for hunting and safety from hostile white neighbours (Thomas 2000, 21).

These ideas were followed by the Indian Removal Act of 1830, which was described as a voluntary migration of Native Americans from the East to territories provided by the government in the West. The tribes did not have the means of resistance and even though force was not authorized by the act, it was used and the tribes, including the Cherokees, were assembled, and had to march to the Indian Territory in Oklahoma. This event caused around 60,000 members of Native American tribes to be displaced. Tribes like the Muskogee lost 25 million acres of land in Georgia alone (Thomas 2000, 21).

The removal of tribes did not only cause them to lose land, but many died in the process. For example, during the forced relocation known as the *Trail of Tears* an estimated number of 4000 people (one quarter) of the Cherokee tribe died. The removal of the Cherokee was mandated in the Treaty of 1836. The start of the trail had to be delayed due to droughts in the summer, however, when they left in October it was one of the harshest months of the year. The Trail of Tears is referred to as a "presidentially ordered death march" (Thomas 2000, 21).

(3) Lineal descent

Another possibility to affiliate human remains with a community of Native Americans is presented by genealogical analysis. In the process of repatriation, the analysis of genes (genetic marker sequences) could help to establish affiliation (Wright *et al.* 2018, 6).

In a study of genealogical analysis, Wright *et al.* (2018) suggest that a "local long-term population continuity" can be established (Wright *et al*. 2018, 5). The study was done on local aboriginal groups in Australia. However, it is stated that this method could be used in any country when the ancient and contemporary populations can be historically connected (Wright *et al*. 2018, 7).This notion of biological continuity is reflected in many genetic studies and is a contentious issue. The idea of biological continuity presents Indigenous peoples as genetically isolated and having unaltered genomes over many generations (Kressing 2012, 122). This can be related to evolutionist arguments, which describe Indigenous peoples as isolated communities that carry genetic purity (Kressing 2012, 123).

The rise in genetic studies is related to a new synthesis, which combines genetic, linguistic, and archaeological data. This synthesis can be described as global phylogeny. This idea is often seen as highly problematic as it relates to evolutionist and colonialist ideas (Kressing 2012, 129). These divide populations based on biological, cultural, and linguistic markers, which in combination constitute a 'Volk' (Kressing 2012, 124). Based on the establishment of different groups, a hierarchy was established that in fact served to legitimize white supremacy and colonial actions (Kressing 2012, 127).

The problem that is described in relation to the notion of biological continuity is the establishment of ethnicity or cultural affiliation solely based on genetic studies (Kressing 2012, 131). Wright et al. argue that the method of using mitochondrial DNA should not be used as a single approach but should be used in combination with other methods to establish affiliation (Wright *et al.* 2018, 4). Using only genetic studies in the repatriation

process could result, according to the study done by Wright et al. (2018), in a substantial amount of human remains being repatriated to the wrong community (Wright *et al.* 2018, 6).

Moreover, some scientists believe that there cannot be a proven relationship between contemporary Native American communities and human remains from the older past. According to them, a lineal descendant cannot be shown between the communities and human remains that might be 5000 years old. Ultimately, the Native American communities might rebury "alien groups and traditional enemies rather than distant relatives" (Meighan 2000, 193).

Some members of Native American communities might see genetic studies as a possibility to establish affiliation and movement of tribes. For them, genetic studies can be a possibility for the establishment of cultural affiliation, even if it entails destructive analysis. However, some members of the Native American communities prefer or insist on non-destructive osteological analysis as a method to establish affiliation and study the human remains. Others do not define the method of genetic studies as culturally appropriate and do not support the use of it for the establishment of affiliation (Dongoske 2000, 287).

3.2 Ownership

The legislative framework and the debate surrounding Native American human remains is largely phrased in terms that imply that this debate is about property or ownership of the human remains (Tsosie 1997, 66). This can be very misleading as ownership of the "dead" or human remains might be an inadequate concept in this debate (Tsosie 1997, 67). Connected to the ownership-question of Native American human remains is the question of 'Who owns the past?'. However, no one can really own the past, one can only try to control it and the same is applicable in the context of human remains (Jolie 2008, 196).

Native American human remains have been treated as public property over a long period of time. Public displays and the objectification of human remains are justified by the greater social good that is possibly generated by these actions. This justification relies on the idea of objective discovery, through which ethics and cultural taboos become secondary in the face of the social good (White Deer 1997, 39). It is argued that the public and scientific value exceeds the importance of the interests of Native Americans (Thornton 2002, 19). Native American human remains are still perceived as

"historical resources". They can be studied in scientific research and displayed in museums as objects (Tsosie 1997, 68). The concept of ownership is employed in this context to obtain legal rights over specific objects, in this case Native American human remains. This is again justified by the benefits all people gain from the scientific research (Tsosie 1997, 66).

Furthermore, scientific research is described to be beneficial to Native American communities, as well as the public. Some scientists argue that the idea of repatriation is misleading, and that the human remains should be kept by the scientific community, as Native Americans will desire to access the knowledge generated by the research in the future. Moreover, some argue that the human remains belong to all Americans, or even all humans, and should be considered world heritage (Thornton 2002, 19). Meighan argues that the Native American history predating the colonial period was only studied because of the field of archaeology and should be part of the American history. As such, the archaeological material should not belong to Native Americans, but to all Americans as it is part of the nation's history (Meighan 2000, 195). Therefore, no special control should be granted to any group for public heritage (Zimmermann 1998, 70).

The treatment and definition of Native American human remains as historical objects or public goods is rooted in colonialist ideas and history. Many of the human remains were obtained during the colonial period through taking them from burial grounds without the permission of Native Americans (Thornton 2002, 19). Furthermore, human remains were taken from battlefields (Thornton 2002, 20). These are remains of Native Americans that were defending their homelands against colonialists (Thornton 2002, 19). Native Americans have a particular interest in obtaining these human remains (Thornton 2002, 20).

The concept of ownership in the debate on repatriation of Native American human remains could be seen as highly problematic. The legislative framework describes human remains in some ways as objects that can be owned and therefore repatriated. This concept reifies the colonialists' ideas and actions when taking Native American human remains into possession. The question might not be if the human remains need to be repatriated, but if any institution has the right to own the human remains in the first place.

Native American communities do not attempt to claim ownership rights over the human remains (Tsosie 1997, 67). Ownership of the dead is usually not possible at all (Tsosie

1887, 66). The values of many Native American communities describe a duty of the living to serve their ancestors and to protect them (Forsman 1997, 108). This is reflected in the desire to control sacred and burial sites to fulfil this duty rather than to claim ownership over the dead (Tsosie 1997, 67).

Moreover, for many members of the Native American communities, the attempt to gain control over the human remains is not only about their religious beliefs, but also about regaining control over their identity and public perception. The study of Native American human remains for scientific interests is rooted in colonialist ideas of the human remains and Indigenous peoples as "natural history specimens". These studies were part of racist ideas that classified Indigenous peoples and helped to justify white supremacy and colonial actions. The control over the Native American human remains is therefore crucial for their control over self-determination and public perception (Smith 2015, 408).

3.3 Scientific Importance and Academic Freedom

Three different ways of studying past human populations exist: The study of artifacts, of the living, and human remains (Landau and Steele 2000, 75). The study of human remains offers the advantage of direct evidence to research, which both other ways cannot provide. Artifacts can only show indirect evidence and the study of contemporary populations is context-bound and only reflects the matter of research in today's context and not in the context of past societies (Landau and Steele 2000, 76). Therefore, the study of human remains can, like no other line of study, provide direct evidence for various aspects of prehistoric life, including health, daily activities, and warfare (Landau and Steele 2000, 78). The direct evidence that human remains provide is especially valuable because it is without a cultural bias. Even though it can be interpreted differently, a basic truth about the interaction between past humans and their environment can be established that is not culture-dependent. This makes the evidence provided by the study of human remains a crucial argument in the context of historical revisionists and can help to prevent a reconstruction of the past based on popular political or cultural ideas (Walker 2000, 14).

Osteology depends on the interpretation of anatomical features which, as mentioned above, can serve as evidence for the prehistoric life of individuals and groups (Kakaliouras 2012, 217; Landau and Steele 2000, 78). Through this process of the interpretation of anatomical features an *osteobiography* is established. The osteological "subjects", which can be an individual or a group, are used to reconstruct past human

life. However, these osteological “subjects”, especially ones that are determined based on the study of human remains from the nineteenth and twentieth century, do not resemble the lives of Native American ancestors, in the ways that they are remembered by the Native American communities. Osteological “subjects” are constructed to study the morphological, populational and adaptational aspects of past humans. This presentation led to the desire of many Native American communities to reclaim these osteological “subjects” as their ancestors, who have more facets to them than what is described in osteological studies (Kakaliouras 2012, 217). Many members of Native American communities perceive these archaeological studies as dehumanizing the individual (Forsman 1997, 106).

Another aspect that causes tension is the amount of time that needs to be invested in research and the need for re-study. The research done on human remains does not result in static facts. The results of archaeological research, as in any other scientific field, are under constant change and any research yields new questions and the need for further investigation (Landau and Steele 2000, 82). Moreover, new techniques and ideas can generate the need for re-study, in which old hypothesis and results are tested and different perspectives can produce new results (Landau and Steele 2000, 83). These new ideas and methodologies are important for scientific research as theoretical shifts can provide new frameworks in which research questions can be (re)studied. Therefore, the study of human remains needs to be done in a scientific framework in which old hypotheses and results are constantly re-evaluated and new research questions are proposed, in order to reconstruct the past of humanity as good as possible (Landau and Steele 2000, 84). This requires a long-term access to the human remains (Landau and Steele 2000, 87).

Cecil Antone criticises this position because it is justifying the scientific research, without taking Native American perspectives and beliefs into account. The study of human remains can be perceived as degrading and, as such, can be described as exploitation of Native Americans and their ancestors based on scientific importance (Hubert 1989, 138). This is reflected in statements made by many activists and members of the Native American communities describing the control of bones and archaeological study as a form of exploitation (Zimmermann 1989, 211). Antone further argues that many Native Americans believe that the dead should not be disturbed, which is a globally recognized human right, as their spirits must return to the earth. This cannot happen when they are

kept in scientific institutions and museums. The human remains, he argues, cannot and should not be kept there forever based on the need for re-study (Hubert 1989, 138).

The reburial of Native American human remains is understood by many researchers as an irreversible loss to the scientific research and the public understanding of the past (Kakaliouras 2012, 211). Some even describe repatriation as an assault on academic freedom (Smith 2015, 405). The claim that repatriation is a violation of academic freedom is a powerful argument within the debate (Joyce 2002, 99). This is based on the perception of archaeological material, and therefore also human remains, being irreplaceable. Some argue that the reburial of human remains constitutes a destruction of archaeological data (Meighan 2000, 191). Clearly, the research of many archaeologists can be impacted through repatriation. They might be limited in their studies or must leave out specific lines of research altogether (Joyce 2002, 99). This can result in a deep sense of loss as research that is personally valuable to scientists is impacted. Moreover, the ethical framework concerning archaeological research emphasises the importance of the study of human remains (Joyce 2002, 99). This view is related to the stewardship of the past that many archaeologists perceive. They identify themselves as advocates for the past and as responsible for the preservation of the past for the future (Zimmermann 1998, 73).

Moreover, the archaeological study is seen as most beneficial when it comes to the production of information about the past (Zimmermann 1998, 73). Often archaeologists perceive a sense of responsibility for the most accurate portrayal of past populations (Joyce 2002, 105). Martha Sempowski stated that:

> *"Archaeology, then, from my point of view, offers […] more accurate treatment in history through its potential for more objective documentation of specific events and interactions that took place during a critical interaction between Europeans and Native Americans. […]"* (Jemison 1997, 60)

This is connected to a belief within the profession of archaeology that portrays Native Americans as incapable and unwilling to preserve their own past (Zimmermann 1989, 213).

The goal of archaeologists and anthropologists is the understanding of the past, culture, and evolution of humankind. This results in the importance to study all societies and all available human remains (Landau and Steele 2000, 75). The field of archaeology depends on material remains, and the study of osteology specifically depends on human

remains. This leads researchers to perceive repatriation as threatening to, not only the personal or ethical interest they might have, but also to the pursue of the study of archaeology. If access to these archaeological materials is limited, their ethical responsibility for the portrayal of the past in the most accurate way within their belief system is at stake, as well as their personal livelihood (Joyce 2002, 105).

A major issue for the scientific community is the perception of them by some members of the Native American communities. Some assume that scientists are not working in the interest of the communities (Forsman 1997, 106). However, growth in commitment to understand the Native American ways of perceiving their ancestors, and the underlying traditions and values, can change the way archaeologists are perceived by Native American communities. The archaeological research can be understood much better when the invasiveness of the research is limited and archaeologists present the ways in which it is in the interest of Native Americans (Forsman 1997, 107). The only justification that can be given for the study of Native American human remains is information that is useful for the public, including Native American communities (Walker 2000, 13). It is possible for archaeological work to coexist with Native American interests, if they are on a level playing field and understood by both parties (Forsman 1997, 108).

However, even though a scientific value is attached to the human remains, this does not mean that absolute academic freedom is granted[13]. The scientific freedom should and must be limited when it comes to religious freedom, human rights, and respecting cultural differences, which are all issues within the debate on the repatriation of human remains (Colwell-Chanthaphonh *et al.* 2011, 37). Limitations to the academic freedom occur when scientific research has a negative impact on other humans, which is – as many argue – the case when it comes to the study of Native American human remains (Joyce 2002, 100).

3.4 Differences in Worldviews and Communication Gap

The conflict on the repatriation of human remains is shaped by a failure of communication between the different stakeholders. Some authors argue that progress has been made in closing the communication gap and transform the relationship between the scientific community and Native Americans (Downer 1997, 23). However, the different values and perceptions of the past and beyond remain an issue within the

[13] The differences in the treatment of human remains and graves between white and Native American populations will be discussed in Chapter 3 (Differences in Worldviews).

debate (Tsosie 1997, 65). The narrative of good relations and collaboration between Native American communities and scientists is sometimes even used by some scientists to attack the legislative framework for repatriation, claiming that NAGPRA would damage positive relations that were developed in the past (Dumont Jr. 2011, 10pp). This narrative contrasts with accounts of continuing racism and denial of past wrongs that still influence the debate (Dumont Jr. 2011, 18).

The debate can be described in terms of an ethical debate and conflict between different systems of ethics. The treatment of the dead is culturally determined, which means that no generally correct way to treat the dead exists. As it is culture-bound, one can only argue for a uniquely correct way to treat the dead within one ethical or cultural system. In the context of repatriation, the conflict between two generalized ethical systems takes place, the one of science and the one of Native Americans (Goldstein and Kintigh 1990, 586). In the ethical system of the scientific community, the excavation and curation of human remains is appropriate and even necessary for the scientific study, whereas, for some Native American communities this treatment of the dead might be problematic (Goldstein and Kintigh 1990, 586). There are some tribes that support scientific study of human remains, especially when done in collaboration with, and serving the interest of, the tribe (Nicholas *et al.* 2008, 238). However, many Native American communities argue that human remains should not be treated as property and should not be studied because the individuals that are studied did not give their permission to do so. They believe, the ancestors should be cared for by Native Americans as their spiritual relatives (Goldstein and Kintigh 1990, 586).

Furthermore, even in the same ethical system of the scientific community, differences are made between the graves of white people and Native Americans. The treatment of graves is dependent on power relations. During the past, the sanctity of the grave was denied to Native Americans in numerous ways (McGuire 1989, 171).

As mentioned before[14], so- called 'resurrectionists' specialized in the acquisition of human remains through grave looting, which triggered public outrage and resulted in (violent) resistance. An example of this resistance occurred in 1788 when children witnessed the dissection of human remains done by medical students at the Hospital of the City of New York. One of the dead human bodies turned out to be their recently deceased mother. This event resulted in a riot of three days and eventually 5000 people

[14] Please refer to Chapter 2 (History of the Study of Native American human remains)

stormed the hospital and jail (Walker 2000, 6). The public resistance against the activities of 'resurrectionists' and studies of human remains resulted in the grave looting of poor and minorities, which, in the USA, were African Americans and Native Americans. Due to systemic class and race privileges held by white people over Black and Native American communities, the latter groups had no power or influence on the public to resist the grave looting activities (Walker 2000, 6).

In the Colonial period the dichotomy between graves of white people and graves of Native Americans was established, through the denial of having a Christian burial and the sanctity of the grave (McGuire 1989, 171). Native Americans were described based on their "otherness" in relation to white people and as heathens (McGuire 1989, 170 pp). Even if Native Americans became Christian and, because of that, gave up their Native American identities, they were not treated equally (McGuire 1989, 171).

The protection of human remains belonging to people of white populations in the USA is long established and the importance of the appropriate disposition of those human remains is of great significance. An example of this is the disposition of the physical remains of William F. "Buffalo Bill" Cody, who died in 1917. First, it was decided by his wife that the grave will be located on Lookout Mountain near Denver, despite the popular expectation of him being buried in the town Cody (Wyoming), which was founded by him. This resulted in discussion about the unclarity in which he supposedly changed his choice about his preferred gravesite and the resentment of this choice is visible in the public opinion in Cody. Later, in 1948 another concern arose as it was feared the human remains might be disturbed. As a result, measures to protect the grave were taken by the Denver city officials, who "dug a new tomb, twenty feet deep, lined it with thick casing, installed steel support rails, and poured more than thirty tons of concrete over the grave to prevent its plunder" (Nafziger *et al.* 2010, 429pp).

Contrastingly, Native American graves experience very little or no protection, even if they hold the remains of some of the most important leaders. The disturbance of marked graves is forbidden by law, whereas the disturbance of unmarked graves is not (Nafziger *et al.* 2010, 430). This focus on marked graves negatively affects Native American gravesites as they are often unmarked and are perceived as abandoned (McGuire 1989, 171).

Native American understanding of sanctity of the grave differs from Christian concepts of sanctity of the grave, which are often taken by scientists as a given without the

consideration of power relations and differing concepts concerning the dead (McGuire 1989, 181). Even though Native American communities do not all hold the same beliefs concerning death and the sanctity of the grave, many shared beliefs show opposing ideas to the beliefs presented by the scientific community and white people in general (McGuire 1989, 180). The sanctity of the grave following Native American concepts should always be protected, no matter how old they are or if they are marked and known (McGuire 1989, 181). Blood relations and ancestry are considered as communal and any grave needs to be respected despite the lack of blood relations (McGuire 1989, 180). Contrastingly, Christian concepts of the sanctity of the grave emphasises the importance of leaving the graves undisturbed for secular concerns, the respect that needs to be paid to the family. The burials are, therefore, only of interest for blood relatives and should be left undisturbed only if blood relations and ancestry are known and the graves are marked (McGuire 1989, 181).This belief was established in the modern age when the denial of the death rose and the concern for death in everyday life ceased because of declining death rates (McGuire 1989, 178 pp).

The value associated to Native American human remains is a contentious issue within the debate as the different stakeholders have different perceptions of kinship and relations. In NAGPRA, this issue is addressed by defining that a relationship between the human remains and Native Americans must be of significant cultural or genetic features. This means, the relationship must entail features that are uncommon from all of humanity and specific to Native Americans (Bruning 2006, 508). This definition can lead to problems as different perceptions of kinship do not only exist between the scientific community and Native Americans, but also between different Native American communities (Dongoske 2000, 287).

These ideas of kinship are reflected in the issue of genealogical descent (Smith 2015, 407). To identify a kinship relation within the scientific community and beyond, a traceable biological and genealogical descent is important, whereas direct biological relationships might be less relevant to trace kinship within the Native American cultures (Smith 2015, 407). Other criteria might be used here to identify kinship and ancestral relationships (Smith 2015, 407).

Moreover, conceptual and pragmatic differences concerning the relation between the past and the present exist between the belief systems of Native Americans and the scientific community (Zimmermann 1989, 213). Cecil Antone, the former lieutenant governor of the Gila River Indian Community, spokesman for the Inter-Tribal Council of

Arizona Cultural Resources, and part of the board of the Arizona State Museum and the Archaeological Conservancy, described it as:

> *"They understand the past – but we know the past."* (Hubert 1989, 138; www.archaeologicalconservancy.org)

The scientific community believes the past is related to the present in a linear fashion, contrastingly to the interrelationship between the past, present, and future that many Native American communities believe in. Archaeologists need to study the past in the framework of historical retrospective to understand it. Whereas, generally, Native Americans believe that the past informs the present and vice versa and, therefore, the past is already known. The past in the Native American belief system is known through the oral tradition and spiritual and ritual sources (Zimmermann 1989, 213pp). The understanding of the past is shaped by the underlying values of the different parties. The scientific community follows an approach of objectivity, in which the past is studied for establishing general laws and a universal truth about the past. Native Americans understand the past through oral traditions and spirituality, which offer a "multiversal understanding of the past" (Anyon *et al.* 1997, 81). This allows for an awareness of different meanings and possible interpretations of the past (Anyon *et al.* 1997, 81).

3.5 Spirituality, Religious Freedom and Native American Identity

Native American communities share basic religious beliefs concerning the dead and the sanctity of the grave. This includes the characterization of death as a change in life, or state of life as there is an afterlife, which can be described as a journey to the spirit world and the return to Mother Earth. A disruption of this journey is described by representatives of Native American communities as a violation of personal religious beliefs, and the widespread desecration of burial grounds as a violation of religious freedom (Hammil and Cruz 1989, 195pp). The dead should be left undisturbed because they have given their contributions to this world already and now it is their role to return to the spirit world (Antone in Hubert 1989, 138). In the Native American belief systems, the world is composed of spirit and matter, which describes the world as a living entity. The return to the spirit world when the dead are buried is a central concept within the beliefs revolving around death (Hammil and Cruz 1989, 195). The burials are considered sacrosanct (White Deer 1997, 41). The disruption or desecration of burial is seen as part of a negative process that reflects the imbalance between religious beliefs and scientific beliefs within the world today (White Deer 1997, 42).

Many Native Americans believe that they have the responsibility to take care of their ancestors as spiritual relatives and take on a spiritual guardianship for the burial grounds and the people put to rest there (Dongoske 2000, 286). Native Americans seek control over the burial ground, in order to protect and care for their ancestors (Tsosie 1997, 67). The perception of the relationship between contemporary Native Americans and those of the past is one of spiritual relatives (Goldstein and Kintigh 1990, 586).

The human remains themselves are understood differently and diverse meaning are attached to them by the different stakeholders (Colwell-Chanthaphonh *et al.* 2011, 30). Where the scientific community attaches a utilitarian meaning to the human remains as objects of study, Native American communities identify with their ancestors (Colwell-Chanthaphonh *et al.* 2011, 29pp). As the dead never gave their permission to use their bones within scientific research, Native Americans request that their remains should be taken care of by the Native American communities (Goldstein and Kintigh 1990, 586). The physical remains of their ancestors should be treated with respect (Dongoske 2000, 286). Many of the Native American human remains are not studied anymore within museums and scientific institutions. They are not valuable to the scientific community and based on this utilitarian argument some members believe the human remains without scientific or curatorial value should be repatriated. This argument can be offensive to Native Americans who reject placing a utilitarian value on human remains that represent their ancestors and inherit a spiritual value (Colwell-Chanthaphonh *et al*. 2011, 29).

Native American communities share a basic similar worldview, understanding of life, and cultural values. Part of these shared beliefs is the idea that all beings are spiritually interconnected, including inanimate beings. This notion transforms cultural objects into pieces of the whole that is needed to maintain a balance in the world (Lenzerini 2016, 128). The preservation of their cultural heritage is linked with the upkeeping of their identity, dignity, and the spiritual wellbeing of the community and beyond (Lenzerini 2016, 129). Repatriation in the context of these considerations can be understood as a process of healing, where the loss of cultural heritage resulted in many problems that can only be mended through regaining control over the cultural heritage (Lenzerini 2016, 127). These healing capabilities are also recognized in the context of the repatriation of human remains (Jenkins 2008, 110).

This is connected to the notion of 'trauma of history', which is a trauma that can be caused to a group of people through events in history. This trauma can have an effect on

the lives of individuals within the traumatized community (Thornton 2002, 20). The emotional damage, created by traumatic events in history, can be lessened through repatriation (Jenkins 2008, 109). The process of healing that is achieved through repatriation can help to find a closure on the traumatic events in history (Thornton 2002, 18). This does not mean that these events should or could be forgotten, but the collective mental health of Native American communities could improve (Thornton 2002, 23).

Furthermore, the cultural heritage is connected to the identity of Native American communities (Lenzerini 2016, 128). The preservation of this identity is only possible when they have control over their cultural heritage, which enables Native American communities to preserve their identity and pass it on to future generations (Lenzerini 2016, 131). It is crucial for Indigenous peoples to regain control over their identity and the perception of their identity, in order to be able to take part in negotiations about their sovereignty and land ownership (Smith 2015, 408). Repatriation in this context becomes an important part of the 'politics of recognition', which can serve negotiations on power and control. This can shape the perception of Indigenous peoples by the wider public and provide legitimacy to their identity claims. Therefore, repatriation can be far more than a gesture and can be understood as a symbolic political act of recognition (Smith 2015, 409).

Chapter 4: Possible Solutions

In this last chapter, solutions to the different issues discussed in Chapter 3 will be examined. The solutions will be addressed related to the historical background, the legislative framework, and the theoretical framework. Furthermore, the solutions that are examined will be illustrated and explained through examples reflecting different issues and the approach used to resolve these issues successfully. The Chapter is divided into three sections describing the approaches that can be used, including: Communication and consultation, changes in the scientific study, and acknowledging the past and human rights issues. The examples that will be used to illustrate these approaches are: (1) Case Study: Denver Museum of Nature & Science, (2) Case Study: Kennewick Man, and (3) Case Study: Wounded Knee Massacre. The examples will be analysed based on the different issues and solutions to these issues that are shown within the case study. Lastly, in the discussion and conclusion the ideas presented in this thesis will be examined.

4.1 Communication and Consultation

A constructive outcome of the debate is that the different parties have started to communicate about their values and the issues they see in the current situation. Many positive relationships between the scientific and Native American communities have formed. This happened because of collaboration between the stakeholders, to resolve the conflict (Bruning 2006, 502). The establishment of a dialogue in which the values of all stakeholders are considered can lead to a beneficial relationship for everybody (Dongoske 2000, 283).

Case-by-case determinations can help in negotiations to reach a compromise between all the different interests presented by the stakeholders. This is a valuable process to facilitate better relationships between the stakeholders and growing trust. However, this form of negotiation should not be abused to slow the process, but the scientific community needs to understand their responsibility to take part in negotiation and communication about repatriation and the issues connected to the debate. Case-by-case determination promotes a differentiated debate and finding solutions that support the interests of all stakeholders, whereas an immediate repatriation of all Native American human remains could not facilitate this, nor a good relationship between the stakeholders (Goldstein and Kintigh 1990, 590). This is reflected in the general ideas that

are promoted in the discourse on the solving of the debate (Meighan 2000, 198). The interests of all group must be acknowledged and considered to meet the goal of a true collaboration (Meighan 2000, 198).

4.1.1 Case Study: Denver Museum of Nature & Science

Consultation becomes especially crucial when discussing unaffiliated human remains. The staff of the Denver Museum of Nature & Science[15] addressed the unaffiliated human remains in their collection in 2007. They determined that the human remains do not have museological value and the repatriation of them would require consultation with the Native American communities. Their goal was to find a compromise in which the appropriate disposition of the human remains could be determined (Colwell-Chanthaphonh *et al*. 2011, 29). The consultation was time-consuming and resources needed to be invested to realize the process (Colwell-Chanthaphonh *et al*. 2011, 39). To save on the costs, the DMNS used video-conference technology, which enabled many more tribe representatives to take part in the process without having to travel (Colwell-Chanthaphonh *et al*. 2011, 31). To illustrate their work and issues that arose during the consultation process, some examples of (inter-tribal) consultation initiated by the DMNS will be discussed in more detail.

For the consultation process, the museum prioritized honesty and personal contact with the tribal representatives to foster collaboration and show 'humility, transparency and patience' in the consultation process (Colwell-Chanthaphonh *et al*. 2011, 30). Still, the consultation process showed the impact of the communication gap presented by the different values the museum staff attached to the human remains compared to the Native American communities (Colwell-Chanthaphonh *et al*. 2011, 30). The approach of the museum staff towards the repatriation of the human remains was a rational one. They determined that the human remains lacked museological value and therefore, they did not identify a reason for the retention of the human remains in the museum for study and exhibition purposes (Colwell-Chanthaphonh *et al*. 2011, 29). The tribal representatives rejected this reasoning for the repatriation as the values of the human remains should not be determined by the ways in which they are useful for the museum. A tribal representative criticised that the approach of the museum values the human remains by their utilitarian function as specimens rather than as ancestors that have cultural and spiritual significance (Colwell-Chanthaphonh *et al*. 2011, 30). These

[15] In the following: DMNS

different meanings attached to the human remains are caused by differing worldviews, reflect the issue of the communication gap and can lead to conflict.

The Rocky Mountain West inter-tribal consultation included 15 federally recognized tribes that were represented in the consultation by 20 tribal representatives and was held on was held on May 7th, 2009. They discussed 16 human remains and 17 associated funerary objects. (Colwell-Chanthaphonh *et al*. 2011, 31). The result of the inter-tribal consultation was that the four tribes, Acoma, Hopi, Zia and Zuni, which have the administrative capacity to undertake repatriation and reburial procedures will take on this responsibility. This decision is connected to the inability of some tribes to provide resources that are needed for the reburial process and other tribes undertaking the reburial process on behalf of them.[16] The disposition agreement was then presented to the NAGPRA review committee on October 30th, 2009 (Colwell-Chanthaphonh *et al*. 2011, 32).

The Rocky Mountain East inter-tribal consultation included 12 tribes represented by 20 tribal officials and was held on April 30th, 2009. The consultation process was more difficult. Offensive language use in the museum policy was discussed, reflecting the communication gap between the museum and the tribal representatives. Furthermore, the human remains were identified by museum staff as 'Cheyenne/Arapaho', even though this provenience was ambiguous. The Cheyenne and Arapaho tribes could not take part in the consultation. First, none of the tribes wanted to have the leading role in the repatriation process, despite all representatives wanting the remains to be reburied, because of the great spiritual responsibility and not wanting to rebury the remains of ancestors not related to their tribe. Because of these circumstances, the Ute Mountain Ute tribe took the lead on the repatriation process on the condition that a consultation with the Cheyenne and Arapaho tribes would take place (Colwell-Chanthaphonh *et al*. 2011, 32). After the Cheyenne and Arapaho tribes were contacted, they visited the museum to see the human remains. Then, the tribes decided that they would like to take a leading role in the reburial process (Colwell-Chanthaphonh *et al*. 2011, 33).

Furthermore, during this process they addressed some of the human remains that were previously labelled as culturally unidentifiable (Colwell-Chanthaphonh *et al*. 2011, 33). The consultation process showed that Native American communities can provide

[16] Please refer to Chapter 2 (False Polarity and Different Stakeholders) for more detail on the problem of lack of administrative resources to undertake reburial and repatriation procedures for some Native American tribes.

information that will help the identification process of unaffiliated human remains. Unaffiliated remains can be found to be associated with a federally recognized or non-federally recognized tribe. Human remains that are categorized as unaffiliated should be re-evaluated and should not be fixed within the category (Colwell-Chanthaphonh *et al*. 2011, 39). This became apparent during the consultation with 35 tribes on 8 human remains from Texas, Arkansas, Missouri and Illinois. It was possible to establish a relationship between three of the individuals and the Osage and Quapaw tribes (Colwell-Chanthaphonh *et al*. 2011, 33).

Moreover, tensions arise when the legislative framework is unclear in its definitions. Therefore, NAGPRA needs to be revised and clarified, to present a legal tool and argument that can be used for negotiations and assist in establishing compromise and solutions (Bruning 2006, 519). These unclarities in the law can lead to the retention of the Native American human remains by the institution that holds them currently until the most closely affiliated group is found (Bruning 2006, 510). Especially for ancient remains, identifying affiliation can become difficult based on the definition of 'Native American' given by the law (Bruning 2006, 507). Cultural affiliation and group identities such as 'Native American' are complex (Bruning 2006, 509). Determining cultural affiliation should not depend on the Native American communities proving which one is most closely affiliated with the human remains in question (Bruning 2006, 519).

4.1.2 Case Study: Kennewick Man

One of the most prominent examples within the debate on the repatriation of Native American human remains is the Kennewick Man controversy. The skeleton was discovered on July 28th, 1996 near Kennewick (Washington) and was radiocarbon dated to 8410 BP (Loring Brace *et al.* 2008, 153; Thornberry 2002, 36). The Kennewick Man was within the territory of the Umatilla tribe, who took lead in claiming the human remains in coalition with other tribes, including Yakima, Nez Perce, Wanapum, and Colville (Thomas 2000, xx; Thornberry 2002, 36). In the following events, eight scientists filed a lawsuit to obtain access to the human remains (Thomas 2000, xxi).

Initially, the Kennewick Man was described as 'proto-caucasoid' or 'Caucasian' based on the assumption that the skeletal features did not resemble ancestry to contemporary Native Americans (Loring Brace *et al.* 2008, 156). Based on this notion, some argued that Native American demands for apologies and repatriation for past wrongs are baseless as they must have done wrong to the white race inhabiting the Americans before them

(Thornberry 2002, 36). Newspaper articles furthered this notion, one by The Santa Fe New Mexican stated:

> *"When Columbus came to the New World in 1492 and set in motion the chain of events that led to the decimation of Native Americans, was he unknowingly getting revenge for what was done to his ancestors thousands of years ago?" (Santa Fe New Mexican 1997 in Thomas 2000, xix)*

Current examinations of the skeleton suggest that Kennewick Man is neither Caucasian, nor related to the contemporary Native Americans. Craniofacial analysis has shown similarities to the Ainu and Polynesians (Loring Brace *et al.* 2008, 164; Thornberry 2002, 37). The conflict describes one of the most contentious issues within the debate on repatriation that is constituted by the questions of cultural affiliation and the notion of 'Who is Native American or Indigenous?'.

Based on the debate four interwoven strands of the notion 'indigenous' can be defined:

First, the "association with a particular place", which describes a notion of indigenous in which all humans could be considered 'indigenous' based on having roots in an area (Thornberry 2002, 36). This notion is reflected in the misuse of the term 'Native American' by right wing conservatives claiming the status as they consider themselves native to the USA (Yellow Bird 1999, 6). Some claim that the intertwined nature of place and people threatens land rights in indigenous groups, which is shown in the case of Kennewick Man in the defensiveness expressed by Native American communities. The claims placed by the Umatilla tribe and the coalition were discredited by speculating that they were only fearing for their land rights (Thomas 2008, xxii). Second, the closely related idea of "prior inhabitation" can be meant by 'indigenous'. This idea promotes assumptions of historical priority that were used within the Kennewick Man controversy for claiming ownership rights. Third, the association of 'indigenous' and "original or first inhabitant" is important to discuss. The difference to the idea of "prior inhabitation" is that 'indigenous' describes not the prior but the very first inhabitants of an area. This form of 'indigenous' is difficult to establish as the Kennewick Man reflects, depending on the understanding of the past differences of 'origin stories' can be established. Fourth, the term 'indigenous' can refer to "distinctive societies". This describes societies that share cultural patterns, which differ from the mainstream or dominant society (Thornberry 2002, 36pp).

Due to the antiquity of the skeleton it is part of the origin story of the Americas and, as such, a powerful tool that can produce knowledge over ancient time periods (Burke and Smith 2008, 20). The Kennewick Man controversy can be understood in its political nature, which is expressed by the struggle for control over this past. Each stakeholder believes that their understanding of the past and the way of gaining knowledge of the past is the only right one. It needs to be noted that Native American communities in their understanding of the past are less recognized by the mainstream society (Thomas 2008, xxv). The case seems to show that the scientific interests outweigh the interest in recognizing Native American views of the past (Burke and Smith 2008, 20).

Owsley and Jantz discredit the notion of 'Native American' in the case of ancient skeletal remains, because they argue that there cannot be a "cultural stability over 9400 years" and hence no shared group identity between ancient and contemporary Native Americans that is assumed by the notion of cultural affiliation. They argue that defining any human remains that predate European contact as Native American, which relates to the notion of "prior inhabitation", is problematic as it does not leave room for studies on American origins and human evolution (Owsley and Jantz 2001, 568pp). Bonnichsen and Schneider call for the primacy of science over other ways of understanding the past as they believe in the supremacy of their approach and "Even long-accepted scientific views can be challenges, and truth eventually wins out." (Bonnichsen and Schneider 2000, 42). These views reflect the assumption of the superiority of science compared to Indigenous knowledge (Sirois 2008, 100). However, as Guy F. Moura states:

> *"[…] how could any 9,000- year- old human remains found in the Columbian Basin of Washington State be other than native to America, or Native American?" (Moura 2008, 95).*

On August 30th, 2002 U. S. Magistrate John Jelderks ruled that Kennewick Man is not Native American and, therefore, should be handed over to the eight scientists for study. He argues that NAGPRA does not apply in this case, but Kennewick Man must be understood as archaeological material and, therefore, the Archaeological Resources Protection Act applies in this case (Burke *et al*. 2008, 35pp). The court favoured the morphological data over Native American oral traditions and ancestry claims were dismissed (Kakaliouras 2012, 211). This ruling is related to a long history of the superiority of science in the mainstream society because the narrative of the Native American history was and sometimes still is controlled by the scientific community. This

becomes problematic in cases like the Kennewick Man as the unfamiliar way of knowing the past (Native American oral traditions) is not valued equally to scientific evidence.

4.2 Changes in the Scientific Study

The scientific study of human remains is changing due to the presence of the debate on repatriation. The discourse has shifted towards a more inclusive and intercultural scientific study (Kakaliouras 2012, 211). However, examples like the Kennewick Man show that "[…] academic archaeology still controls the production of knowledge, the access to archaeological sites and the resources to research them." (Stutz Nilsson 2005, 10). Statements that were brought forward by scientists during the Kennewick Man controversy were unethical and even false in some cases (Moura 2008, 94). The field of archaeology needs to alter their ethics and methodology to match the cultural values of the Native American communities to be able to continue their scientific research (Mihesuah 2000, 11).

A possible change in the scientific study would be to make the research relevant to Native American communities. For this, the scientific field needs to be more inclusive and accept the validity of oral traditions. It is possible that through combining archaeological research and oral tradition, both parties could gain a more complete picture of the past (Mihesuah 2000, 11). To build a trusting relationship, the scientific community needs to respect the values of Native American communities and show respect in their attitudes and actions towards them. Moreover, the cultural values of both groups need to be acknowledged, to establish a working relationship (Forsman 1997, 107).

The purpose of scientific research needs to be reconsidered and the ways in which the research can influence Native American peoples in negative ways need to be understood (Lippert 1997, 127). The sharing of information with contemporary Native American communities can and should be part of scientific research (Lippert 1997, 123). Having ongoing communication with the Native American communities can help the scientific research and make the research results relevant to Native Americans and their understanding of their past (Dongoske 2000, 291).

The notion of objectivity in the archaeological research needs to be reconsidered (Layton 1989, 2). The impossibility of achieving a scientific research free of any value and biases should be acknowledged (Layton 1989, 4). Natural sciences are an important way

of knowing and understanding the world. However, it is only one "tradition among other traditions" (Dumont Jr. 2011, 8). The tradition of natural sciences is rooted in European culture and based on the understandings of metaphysics in Greek philosophy (Dumont Jr. 2011, 8). This can become problematic when scientific paradigms and ways of understanding are assumed to be universal, instead of acknowledging in which forms these traditions are biased. Moreover, conflicts arise when then this 'universal' knowledge is presented to be superior compared to other traditions of knowledge, like Native American oral tradition being assumed to be 'speculation' rather than another way of understanding the world (Dumont Jr. 2011, 14).

The assumed superiority of the scientific study can be seen in the claim some scientists present when they argue that scientific study is compared to Native American belief systems able to accept any revision and reshape their narrative of the past completely, whereas, religion origin stories are unreceptive to revision and must be accepted by faith (Bonnichsen and Schneider 2000, 40). Bonnichsen and Schneider claim that a primacy should be given to theories that are based on scientific methods (Bonnichsen and Schneider 2000, 42). These claims can be very harmful when looking at history. Scientific 'truths' might be changed eventually, but even the debate on repatriation is caused by the racial collection of Indigenous human remains that was based on and done for scientific study. Scientific methods are rooted in European culture and cannot claim universal objectivity that is not influenced by culture, tradition, and its own paradigms (Dumont Jr. 2011, 8). It is in this value-system rooted in Western natural sciences, in which some scientists lack the willingness to recognize oral traditions (Dumont Jr. 2011, 22).

It needs to be acknowledged that scientific studies do not happen in a vacuum. Scientific interest and freedom need to be limited by other human interests. Basic human rights, including religious freedom and respect before cultural differences, need to be considered in the debate on scientific study of human remains (Colwell-Chanthaphonh *et al*. 2011, 37).

The field of 'Indigenous Archaeology' has become more relevant and many Native and non-Native scientists take part in the research (Kakaliouras 2012, 211). George Nicholas describes the field of 'Indigenous Archaeology' as "an expression of archaeological theory and practice in which the discipline intersects with Indigenous values, knowledge, practices, ethics, and sensibilities, and through collaborative and community- originated or -directed projects, and related critical perspectives" (Nicholas 2008 in Atalay 2012,

39). Alongside the field of 'Indigenous Archaeology' the community- based or collaborative approach became more popular in the archaeological field (Atalay 2012, 39).

An increasing number of Native Americans take part in the archaeological study. This trend leads to some issues, involving the pressure from the outside placed on individual Native Americans who seek to work in the field of archaeology, as well as professional expectations and personal stresses (Lippert 1997, 120). These problems are reflected in the approaches the academic field offers when studying Native American history. Some academics are not neutral when discussing these matters (Lippert 1997, 122). Still, theories exist that romanticize or mythologize Native Americans as "all-knowing, cooperative, gender-sensitive enterprise", which is a misleading analysis and described Native Americans as "other than human" (Lippert 1997, 123). The archaeological field often fails in connecting the 'prehistoric' Native Americans with contemporary groups and through this disregard fails to acknowledge the importance contemporary Native American communities could have for the study (Lippert 1997, 123).

However, as more Native Americans take part in the scientific research, the academic discourse can become more varied and other perspectives are brought into the research. The perception of kinship many contemporary Native Americans have towards Native Americans of the past can give them a manifold understanding of the study and a feeling of responsibility for the preservation of the stories of their ancestors (Lippert 1997, 125). This understanding does not frame the Native American perspective as superior, but it should be recognised as part of various approaches within the academic field (Lippert 1997, 127).

Native American human remains can be understood in various spaces and times. The human remains inhabit different places and timeframes, bridging the places between being not repatriated, in the process, or repatriated already, as well as the times between prehistoric and contemporary. This is reflected in the changing status of archaeological material. Through the debate on repatriation a new category of archaeological material was formed: 'repatriable' material, which describes an archaeological material that could possibly be repatriated to Native American communities as it falls under the categories of objects described by NAGPRA or is of interest for the Native American communities. 'Repatriable' material is very powerful as it constitutes the main object category in the debate on repatriation (Kakaliouras 2012, 214).

The treatment of human remains has a high symbolic value and the handling of human remains determines the perception Indigenous peoples have of the scientific work. The work with human remains can also have a psychological impact on the scientists that are handling human remains. The impact is caused by the transformation of human remains into data, which leaves little room to acknowledge the emotional impact the work with human remains can have. This can lead in the worst case to mental health problems. Factors like these need to be accounted for in an ethical system constructed to treat the human remains, Indigenous peoples, and the scientific community with respect (Smith 2015, 411). Furthermore, the validity of Native American cultural values and spiritual beliefs needs to be accepted, to establish true common ground. A balance between science and spirituality needs to be found. For this, a new paradigm needs to be established in which both the secular and the sacred are included (White Deer 1997, 42pp).

4.3 Acknowledging the Past and Human Rights Issues

Interestingly, often the main issues that are discussed do not reflect the importance of the historical context of the debate on repatriation. It should be considered. when looking for solutions, that many of the human remains that can now be found in scientific institutions and museums were not taken rightfully. The debate is rooted in historical injustice, which was used for the collection of Native American remains and reified through the scientific study of them.

The legislative framework needs to be more helpful in finding common ground in the debate on repatriation through establishing the positions of the different stakeholders and foster a legal and level ground (Bruning 2006, 519). It needs to be acknowledged that the purpose of NAGPRA is to restore the rights that Native Americans have been denied in the past. Clayton W. Dumont Jr. describes the purpose of NAGPRA as “the return of Native dead to Native peoples” (Dumont Jr. 2011, 5). The repatriation debate reflects a debate on civil rights that have been violated in the past and need to be restored (Dumont Jr. 2011, 31). NAGPRA was established to provide protection from the ‘scientific aggression’ Native Americans experienced for centuries (Dumont Jr. 2011, 16). It is intended to bring measures to the injustice that Native Americans faced in the past (Dumont Jr. 2011, 29).

4.3.1 Case Study: Wounded Knee Massacre

Before the Wounded Knee Massacre, Chief Tatanka Iyotake (Sitting Bull) was killed and the Lakota were then led by Chief Wokiksuye (Bigfoot) to the creek Wounded Knee, to practice their religion, the Ghost Dance (Greenfield 2007, 315; Thornton 2002, 22). As the Ghost Dance movement was perceived as threatening, the seventh cavalry of the U. S. Army was sent after them (Greenfield 2007, 315; Moses 2015, 35). There, almost 300 Lakota Sioux were killed by the U. S. Army during the Wounded Knee Massacre that took place on the 29th December of 1890 (Moses 2015, 35; web.archive.org).

Some days after the massacre, on the 1st January 1891, the burial detail was sent from the U. S. Army. In the meantime, the Sioux were able to retrieve some of the dead bodies. The remaining dead bodies were collected and buried in a mass grave (Greenfield 2007, 313pp; Thornton 2002, 22). Before that, the Ghost Dance shirts and other 'objects' were removed from the dead bodies by members of the U. S. Army (Moses 2015, 35).

Some artefacts from the massacre were taken and later sold and donated to the Glasgow Museums in 1892 by a reporter, called George Crager, who witnessed the massacre (Greenfield 2007, 315; www.returningheritage.com). From 1960 to 1999 the Ghost Dance Shirt was on display in the Kelvingrove Art Gallery and Museum (Greenfield 2007, 315). When the Ghost Dance shirt became part of a special exhibition, the Home of the Brave exhibition at the McLellan Galleries in Glasgow, about the fate of Native Americans, the American lawyer John R. Earl reported to the Lakota (Greenfield 2007, 313; Maddra 1996, 41).

This report was followed by a request for repatriation by the Lakota (Greenfield 2007, 313). Initially, five items associated with the Wounded Knee massacre were requested by the Wounded Knee Survivors Association (WKSA). After this request was refused in 1995, the WKSA concentrated their request on the Ghost Dance shirt. The Ghost Dance shirt was of special importance as it is considered sacred and related to the Ghost Dance religion (Greenfield 2007, 312).

The initial request for the repatriation of the Ghost Dance shirt was declined as the museum argued that they acquired it in good faith. Moreover, the display of the object was justified due to educational purposes (Greenfield 2007, 312).

Even after the repatriation, the former director of the Glasgow Museums, Julian Spalding, argued that the repatriation of the Ghost Dance shirt represents the lack of

recognition of the social role of museums. The Ghost Dance shirt is, in his opinion, part of the world heritage and its meaning is not owned by the Lakota tribe. Moreover, he stresses that the repatriation is part of 'political revisionism of history' (Greenfield 2007, 316). The last argument is part of a scientific argument in which historical revisionists, who use cultural material to reshape the historical narrative according to political ideas, can only be contradicted by portraying history according to objective arguments and facts (Walker 2000, 14).

This argument, though it is relevant and important, might not be applicable in this context. The repatriation of the Ghost Dance shirt is not meant for reshaping history, but as an act of addressing injustice of the past (Greenfield 2007, 316). In the request of repatriation, the Lakota argued that the objects were taken wrongfully. The dead bodies and the field of the massacre were looted and as such the objects that were taken should be considered stolen goods (Greenfield 2007, 315).

The Ghost Dance shirt was not only found in the Kelvingrove Art Gallery and Museum, but in several museums in the USA. Some of the Ghost Dance shirts found in museums in Massachusetts have been repatriated (Gulliford 1996, 141). The Smithsonian Institute owned 29 'objects' that were acquired during the massacre, including six Ghost Dance shirts. One of these was on display at the National Museum of Natural History in 1986, labelled as taken from the Wounded Knee 'Battlefield'. In 1998, the 'objects' were repatriated to the Lakota Sioux and a representative of the Cheyenne River Sioux Tribe involved in the repatriation process described the return of the objects as "part of our healing process" (Thornton 2002, 22).

The repatriation of the Ghost Dance shirts has aided the healing process regarding the Wounded Knee massacre (Gulliford 1996, 142). The case study on the Ghost Dance shirts describes a traumatic historical event and a way in which this can be readdressed. Traumatic events in history can and should be addressed through repatriation, which can then function as a step in the healing process (Jenkins 2008, 109). A closure on events like the Wounded Knee massacre can be found through repatriation (Thornton 2002, 18). When human remains and important cultural objects are kept in scientific institution and museums, it can hinder a healing process that is necessary for the Native American communities to find closure (Thornton 2002, 23). In finding closure on these traumatic events, regaining control over the objects that were stolen can be crucial as it is part of regaining control over cultural heritage and identity (Lenzerini 2016, 127).

Another aspect of acknowledging Native American views on the past would be a more inclusive approach when it come to the notion of ownership. The repatriation process requires a proof of cultural affiliation, which is often equated with ownership. This concept of the ownership of the past cannot be found in Native American worldviews (Jolie 2008, 196). Neither can the concept of property over a dead body be found in indigenous or non-indigenous communities, which makes its use for the debate on repatriation highly problematic (Tsosie 1997, 66). Therefore, disregarding the concepts of 'ownership' and 'property' and implementing other more inclusive concepts like 'stewardship' would be helpful for finding solutions.

The concept of 'stewardship' would allow multiple claims on human remains and does not require the ownership of them by a single stakeholder. The implementation of this concept could facilitate a joint or collaborative stewardship. Based on shared respect for the dead and respect for each other Native American communities and scientists could share the right to access Native American human remains and rather than controlling the past exclusively, the most appropriate stewards for the human remains in questions could collaborate (Jolie 2008, 196pp).

4.4 Conclusion

In the following, the research question will be addressed:

> *How was the debate between the scientific community and Native Americans around the repatriation of Native American human remains framed and what are possible solutions to overcome the conflict?*

This is done by looking at the following sub research questions:

> *(1) How did the debate on the repatriation of Native American human remains arise and who are the different stakeholders within the debate?*

The debate is based on an ongoing struggle for recognition of Native American communities, in their striving to control their identity and narrative of their past. The history of the collection and study of Native American human remains shapes many of the ideas and opinions voiced by the members of Native American communities. Arguments against repatriation are mostly grounded within ethical systems of Western science and society.

The stakeholders of the debate exist on a spectrum on which arguments for and against repatriation can be positioned. The debate is often described by some of the stakeholders, the media, and authors examining the debate as a polarized conflict between Native American communities and the scientific community. This presentation is misleading and can hinder the understanding and resolution of the issues surrounding the debate. It is important to break up this simplifying framing of the debate and concentrate on the different stakeholders, including members of the Native American communities, the scientific community (researchers and museum staff), and representatives of federal agencies, which position themselves into a varied field of opinions and ideas concerning the repatriation of Native American human remains and the issues surrounding this topic.

(2) *What are the main issues that can be identified within the debate?*

The main issues discussed in the debate on the repatriation of Native American human remains that were identified, include unaffiliated human remains, ownership, scientific importance and academic freedom, differences in worldview and communication gap, and spirituality, religious freedom and Native American identity.

(3) *What are the arguments presented by the different stakeholders within the debate on the repatriation of Native American human remains?*
(4) *What are possible solutions to the main issues surrounding the debate on repatriation?*

Problems concerning unaffiliated human remains arise from the complex process to define affiliation as a concept itself and between human remains and Native American communities. The definition of cultural affiliation varies, and different levels can be identified. Some might understand affiliation as relating to all past Native Americans, including ancient human remains, like the Kennewick Man. This understanding of the past is based on oral traditions and traditional knowledge. Identifying cultural affiliation between contemporary Native American groups and ancient human remains is criticised by some scientists based on its notion of 'cultural continuity' (Owsley and Jantz 2001, 568pp). However, oral tradition is recognized by NAGPRA as an equal line of evidence to scientific studies. A primacy of science cannot exist in a conflict, in which different understandings of the past need to be equally valid, to establish a balanced consideration of the arguments brought forward by the stakeholders.

The main argument for the retention of Native American human remains is the scientific importance of the research that can be done based on the study of human remains. These studies can only be justified based on the information and knowledge of the past that they can yield for the public. However, it needs to be recognized that this public includes Native American communities. Therefore, the research done on human remains must recognize limitations to the academic freedom where Native Americans are harmed by the study of Native American human remains.

Changes in the scientific study of human remains can transform the research into a collaborative effort that will provide Native American communities with the opportunity to give recommendations that can make the studies informative and useful to them. Moreover, consultation processes provide the possibility to conduct scientific studies that are not harmful to Native American communities. Some Native American communities are interested in scientific studies that can yield information that will assist and further the understanding of their past.

When it comes to repatriation case-by-case determinations can provide the opportunity to include ideas of all stakeholders in the process of consultation about the repatriation of human remains. The first step in the consultation process must be the establishment of a trusting relationship based on reciprocal respect for the values of all stakeholders. The communication gap between the stakeholders becomes apparent within the consultation process as it can be seen in the Case Study of the Denver Museum of Nature & Science. Differences in the worldviews result in different values that are connected to the human remains and these differences can trigger conflict. Unclarities and differences in the understanding of concepts surrounding the debate can further this conflict. The legislative framework can form a base in resolving issues surrounding unclarities in the conflict.

The debate is often approached using the concept of ownership, which is inappropriate in this context. It is universally accepted that dead bodies cannot be owned, and it is problematic to use this concept then in the debate on repatriation of Native American human remains. It is a human right that the physical remains of a person are not disturbed. The debate on repatriation should be discussed in terms of human and indigenous rights. Many human remains in the collections of scientific institutions and museums today, were collected unrightfully and even if they were, it happened during a time in which Indigenous human remains were used for establishing a scientific base for

claims of white supremacy. The collection and study of Indigenous human remains occurred during a time of blatant power imbalances.

The core of the debate is the power struggle of Native American communities to gain rights over their identity and the narrative of their past through the control over the human remains of their ancestors. Reasons for the retention of Native American human remains might be valid within their cultural framework and scientific ethical system, however, within a multicultural society the same rights need to be given to all people, including the right to control and understand the past in culturally specific ways. Indigenous and human rights need to be recognized and for this, the validity and importance of claims for the repatriation of Native American human remains need to be recognized. The process of repatriation is a great tool to acknowledge past wrongs and human rights. The return of human remains can be a part of the healing process through which Native American communities can find closure on traumatic events of the past.

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