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Grave-Robbing, Private Collections and Repatriation: A Case Study on Cultural Heritage in the United States

Ellie Allan

Abstract

This article discusses the 2014 case study of Don Miller, during which over 5,000 artefacts and 2,000 human remains were seized by the FBI's Art Theft Department from the 91-year-old's home in Indiana, US. This case study is presented in the context of changing public and legal opinions of cultural heritage, particularly as it pertains to Native American cultural patrimony and human remains. This case study has been chosen for scrutiny because it exemplifies attempts reckoning of dissonant pasts at a state level through the Native American Graves Protection and Repatriation Act (NAGPRA), while simultaneously unravelling some of the historical factors that make Don Miller's large private collection not so much an outlier as it is symptomatic of social and legal worldviews of the 20th century. Finally, this article hypothesises the increased discovery and inheritance of difficult and tarnished personal collections in the United States. This article advises that the 'Miller' case, while hopefully an extreme, is an example of what may become prolific in the next few decades as generations who are to inherit these collections become increasingly more uncomfortable with their difficult content.

‘NAGPRA is a part of a larger historical tragedy: the failure of the United States Government and other institutions, to understand and respect the spiritual and cultural beliefs and practices of Native People ... [we] hope that the understanding, sensitivity, and moral outrage that gave rise to and is reflected in NAGPRA will likewise result in across-the-board protection and respect for traditional Native American religions—which continue to be under assault in the last decade of the 20th century.’¹

1 The Don Miller Case

In 2014 the FBI’s Department of Art Theft seized over 7,000 objects from the private collection of 91-year-old Don Miller in Indianapolis, Indiana. This raid, led by Tim Carpenter, was the largest seize of illicit artefacts and antiquities recorded in US history and was the result of an anonymous tip that Miller had in his possession a hoard of questionable antiquities. He had previously been reported in 2008 for allegedly owning parts of a nuclear weapon. The report was not entirely false as agents found uranium being stored by Miller in a glass cabinet.² Among the official reports was a passing comment that would be the catalyst for Carpenter’s investigation: Miller ‘had a very large collection of Native American artifacts’.³

After two follow-up visits Carpenter was sure that among Miller’s hoard were many illicit objects including pre-Columbian and Chinese artefacts that were protected by treaties. In 2014, after consulting archaeologists, anthropologists and a vast array of potentially relevant legislation, Carpenter and his 100-man task force knocked on Miller’s door and informed him that they were there to remove some of his collection. Despite the absence of a search warrant, Miller cooperated with the FBI and a six-day removal operation followed to remove 5,000 cultural artefacts.⁴ The process of cataloguing and extracting Miller’s collection was spearheaded by Purdue University Anthropology Professor Holly Cusack-McVeigh and graduate students within the department.⁵ The items included:

¹ Jack Trope and Walker Echo-Hawk, ‘The Native American Graves Protection and Repatriation Act: Background and Legislative History (1992) 24 Arizona State Law Journal 77.

² Josh Sanburn, ‘How the FBI discovered a real-life Indiana Jones in, of all places, Rural Indiana,’ (*Vanity Fair*, Nov 2021) <<https://www.vanityfair.com/style/2021/10/how-the-fbi-discovered-a-real-life-indiana-jones-in-indiana>> accessed 29 Jan 2024.

³ Ibid.

⁴ Sanburn (n 2).

⁵ Ibid.

*'2,500-year-old Chinese jewellery ... an Egyptian sarcophagus ... a dugout canoe that travelled the Amazon River ... dinosaur eggs, a Tibetan cowbell, a fossilized crocodile skull, pre-Columbian weapons, Ming Dynasty vases, shrunken heads, Nazi helmets, Aztec figurines, Celtic axes.'*⁶

Miller was quite open about his collection and the acquisition process, which he admitted included bribing archaeological workers (with a box of cigarettes or a bottle of alcohol) while travelling in the military, on holiday and on mission trips.⁷ Miller opened his home for neighbours, reporters, for the local school children and boy scouts⁸ and by all accounts was a well-liked member of the community. But among Miller's amateur museum there was an assortment of items that turned this avid history buff into a man with a far more troublesome and nefarious pursuit. Found in Miller's possession were around 2,000 bones⁹ taken from indigenous burial sites.¹⁰ The human remains were largely housed in black bin bags.¹¹ Some of the human skulls had hand-hammered arrow heads and bullets lodged into the bone and Pete Coffey (representative of the MHA Nation¹²) noted in Ben Lewis' podcast *Art Bust*¹³ that Miller had carved the top of one skull and used it as a fruit bowl.

Miller's active role in obtaining these remains was later proved by photographic evidence that showed Miller digging in rural burial sites. One image showed his ear-to-ear grin, as he posed next to a child's casket.¹⁴ It is thought that Miller obtained all of these human remains himself,

⁶ Ibid.

⁷ Ibid.

⁸ Samantha Smart, 'Righting a Decades-old Wrong: FBI Art Crime Team repatriates over 450 Haitian Artifacts' (2020) *Columbia Journal of Law & the Arts* <<https://journals.library.columbia.edu/index.php/lawandarts/announcement/view/271>> accessed 29 Jan 2024.

⁹ There is some ambiguity in the reporting of how many full skeletons were made up from Miller's miss-match of remains. For example, the FBI website (2019) (<<https://www.fbi.gov/news/stories/fbi-seeks-owners-of-recovered-cultural-artifacts-022719>>) and *Vanity Fair* (2021) (<<https://www.vanityfair.com/style/2021/10/how-the-fbi-discovered-a-real-life-indiana-jones-in-indiana>>) report that approximately 500 full skeletons were in the collection. *Vanity Fair* report that in 2016, 30 full remains were reburied by the MHA Nation and a 2022 Notice of Inventory Completion by Federal Bureau of Investigation's Art Theft Program made the statement that the remaining 138 skeletons could not be identified. Leading to the conclusion that the original figure of 500 is misleading, and the more likely number is 168.

¹⁰ Sanburn (n 2).

¹¹ Ibid.

¹² Also known as the Three Affiliated Tribes: the Mandan, Hidatsa, and Arikara peoples.

¹³ Ben Lewis, 'Don Miller's Basement Part 1' (*Art Bust, USG Audio*, 2021) <<https://www.everand.com/podcast-show/594459484/Art-Bust>> accessed 6 June 2024.

¹⁴ Smart (n 8).

by decades of grave-robbing across the United States and Mexico.¹⁵ Over the course of the next few years, the human remains underwent osteological analysis to determine whose ancestors they were which resulted in 30 of the remains being affiliated with the MHA Nation of North Dakota and reburied in 2016,¹⁶ leaving the 138 unidentified remains to be reburied by the Pokagon Band of Potawatomi in a mass grave.

By 2019, the FBI had repatriated artefacts to Native American tribes, Indigenous Canadian tribes, and to Mexico, Peru, Colombia, Spain, Cambodia, Iraq and China.¹⁷ The 361 artefacts that were returned to China during an exchange ceremony at the Eiteljorg Museum, and in 2020, over 450 objects were repatriated to the Republic of Haiti make both of these the largest reparations from the US to the respective countries.¹⁸ A year after the 2014 event, Don Miller passed away.¹⁹

2 Scientific Racism and Collecting ‘the Other’

There is not enough space in this article alone to cover the complex web of historic racism that Native American people have been subjected to since the European settlers first stepped foot in Jamestown. All of these factors deserve space to be fully explored and researched in relation to the Miller case study. This article hopes to briefly shed some light on the question of how and why Miller, and others like him, collect in such extremes. The dissonant past and present that shrouds indigenous existence is one reason why addressing historical mistreatment is both incredibly sensitive and vital, as the targeting of Native American heritage is both a symptom of subjugation and at the same time a particular tool of the imperial manifesto to eradicate, control and deny people respect, even in death. In attempting to rectify the past and move forward with productive resources, it is essential to consider cases such as Miller’s for he is not an outlier (although he was an extreme) but rather symptomatic of social worldviews. The Don

¹⁵ Sanburn (n 2).

¹⁶ Ibid.

¹⁷ Domenica Bongiovanni, ‘U.S. Returns Hundreds of Artefacts to China’ *Indianapolis Star* (Indiana, 1 Mar 2019).

¹⁸ ‘FBI Art Crime Team Announces the Repatriation of Over 450 Cultural and Historical Artifacts to the Republic of Haiti February’ (FBI, 14 February 2020) <<https://www.fbi.gov/news/press-releases/fbi-art-crime-team-announces-the-repatriation-of-over-450-cultural-and-historical-artifacts-to-the-republic-of-haiti#:~:text=The%20479%20Haitian%20artifacts%20were,federal%20law%20and%20international%20treaties>> accessed 27 April 2024.

¹⁹ ‘Dr Don C Miller Obituary’ *The Indianapolis Star* (Indiana, 26 Mar 2015).

Miller case is a shocking and uncomfortable example of the changing public and legal opinions on race, history and heritage. Miller was able to grave-rob as prolifically as he did for three primary reasons: first, the mainstream representation of Native American people that presented Indigenous people as racialised caricatures which was reinforced by institutional exhibitions and visual culture,²⁰ second, the long-lasting impact of scientific racism which asserted indigenous inferiority and third, the inadequate legal protection for indigenous heritage which made Native American burial sites easy targets.

A long tradition of collecting the Native American body was well established by the 19th century, which saw the proliferation of digging indigenous graves in the name of science and knowledge production.²¹ The 19th century also saw the Myth of the Vanishing Indian, which narrated the falsehood that Native American people were ‘becoming extinct’, like exotic animals. This myth resulted in the mass collection of both Native American heritage and human remains by both the institution and the everyday person who wished to possess ‘the disappearing race’ for their cabinets of curiosity. This notion was perpetuated in publications, which regurgitated ideas such as:

‘It should be held in dutiful remembrance that [the Indian] is fast passing away from the face of the earth. Soon the last red man will have faded for ever from his native land and those who come after us will trust out scanty records for his knowledge of habits and appearance...’²²

Scientific racism played a fundamental role in the process of subjugation, namely the work of Samuel Morton in the 19th century and later the theories of Madison Grant of the 20th century which were ‘promoted by 20th century polices of assimilation as well as mainstream cultural productions ... (including) the Hollywood industry.’²³ The long-lasting impact of these theories

²⁰ There is a history of representing Native American people in art, literature and film which curates the Native man as a savage, drunken inferior while Native American women are depicted as helpless, sexualised bodies who need saving from the Native man. Native American religious traditions have been fetishised as both mystically curious and backwards, barbarous.

²¹ Bernard Peters, ‘Indian-Grave Robbing at Sault Ste Marie 1826’ (1997) 23 Michigan Historical Review 49.

²² Brian W Dippie, *The Vanishing American: White Attitudes and United States Indian Policy* (University Press of Kansas 1991) 27.

²³ Sophie Croisy, ‘Fighting Colonial Violence in “Indian Country”: Deconstructing Racist Sexual Stereotypes of Native American Women in American Popular Culture and History’ (*Angles*, 2017) 5 <<https://journals.openedition.org/angles/1313>> accessed 6 June 2024.

cannot be emphasised enough. The scientific community sought to provide evidence of Native inferiority, and Morton's theories of polygenism and craniology were used by settlers to maintain the dichotomy of 'us' (civilized Europeans) and 'the other' (uncivilised Natives), to categorise indigenous people as being in need of saving and civilising, because of scientific findings.²⁴ The intention was to produce scientific evidence to back up the superiority of settlers, justifying both the European natural right to settle but also the continued right to govern. Consequently, this time period is marked by a prevalence of grave-robbing continuing through the 20th century. The aftermath is still seen in collections of human remains residing in institutions and private collections like Miller's.

With Native American graves still not adequately protected by law, the 20th century saw the practice of grave-robbing being written about and published in archaeological journals that documented the authors' experiences with looting. Don Miller published two particular articles with the Central States Archaeological Societies Inc entitled: 'Fun on a Sunday Afternoon' (1958) and 'Indiana Collectors Go on Vacation' (1960). The first article narrates Miller and his wife on a typical Sunday outing, scouring the landscape 'looking for likely Indian campsites'.²⁵ The latter article is an even darker confession, where Miller describes exploring the abandoned living quarter of the Sioux tribe of South Dakota, which still had standing but abandoned settlements containing 'furniture, saddles and other living utensils'.²⁶ Miller and his wife dug into pits on the land, that were oftentimes used to preserve grain or to dispose of rubbish.²⁷ Upon finding 'two large human leg bones protrude[ing] from the mud',²⁸ they marked the grave and returned the next morning. Miller describes finding the skeleton in a foetal position, photographing the remains and he noted that '[t]he Indian had had an excellent set of 32 teeth.'²⁹ Miller concludes the article with the following paragraph:

²⁴ The legacy of pseudoscience theories of phrenology, particularly the research conducted by Morton on craniology and polygenism has a violent, murky presence within the context of the institution. Craniology asserted that one can deduce racialised character traits based on an analysis of the human skull, including the size and presence of texture or bumps. Polygenism theorises that each race had been created by God separately with different, and specific characteristics that can be seen through racialised traits.

²⁵ Don Miller, 'Fun on a Sunday Afternoon' (1958) 4 Central States Archaeological Journal 130.

²⁶ Don Miller, 'Indiana Collectors Go on Vacation' (1960) 7 Central States Archaeological Journal 76.

²⁷ Ibid 77.

²⁸ Ibid.

²⁹ Ibid.

*'The Indian today knows nothing of his ancestry or tradition. The government checks come regularly and too often find their way to the local bars where the money is put into circulation again. In many ways one feels pity for a group of Indians like these Sioux who were once a proud nation but now reduced to such a purposeless and uncertain future.'*³⁰

These two articles provide an insight into the racialised worldview in which Miller operated. He relied upon orientalist constructions of race that classified the Sioux Tribe as leeching addicts, lacking in agency and having lost a sense of pride and community. He uses derogatory language and racial stereotypes to justify himself as a righteous vigilante, seeking to find and save buried treasures, an idea that has only been bolstered by *Vanity Fair* comparing of him to Indiana Jones.³¹ The naturalisation of the worldview was so prolific that his work was published, without fear of repercussions.

3 The Remains in Miller's Basement

There is a series of relevant state, federal and international legislation intertwined with this case. Most relevant to this article is the Native American Graves and Repatriation Act 1990 (NAGPRA), as it showcases the fruit of this legislation in action. NAGPRA was the first, serious legislation that sought to address hundreds of years of maltreatment. It reframed the ownership of Native American remains and material heritage as an infringement on human rights. The primary intention of NAGPRA is to 'protect all Native American human remains, funerary sacred objects, and cultural patrimony, as well as return the items found on federal or tribal lands to their respective tribes.'³² The Act also made it unlawful to transport, buy and sell Native American human remains and objects of cultural patrimony without 'the right of possession to those remains.'³³ A violation of NAGPRA can result in a fine and/or up to 12 months' imprisonment.³⁴ This Act enforced a mandatory repatriation of Native American remains and cultural heritage found after 1990 and NAGPRA facilitates restitution of human

³⁰ Miller (n 25) 78.

³¹ Sanburn (n 2).

³² Laura Ruth Talbert, 'Native American Graves Protection and Repatriation Act: Requiring Federal Recognition Digs its Own Grave' (2012) 37 *American Indian Law Review* 197.

³³ *Ibid.*

³⁴ 8 USC § 1170.

remains and objects that individuals and institutions wish to return.³⁵ This made NAGPRA, ‘the first comprehensive approach to treating the Native American cultures as living cultures, worthy of respect for both their past contribution to North American society and their continuing vitality.’³⁶ In this sense, NAGPRA’s passing and its condition that Native American heritage be treated with respect has the purpose not only of restitution, but ‘the ultimate result is the returning to Native American groups the ability to control their own identify, their history and their heritage.’³⁷ NAGPRA is a civil rights based legislation,³⁸ acknowledging the violation of Native Americans First Amendment Free Exercise right regarding Freedom of Religion, as well as the Sovereign rights of Indian Nations.³⁹ The agency for Native Americans to practice religious and spiritual freedoms is a constitutional right which for hundreds of years was grievously ignored.

NAGPRA was also passed in order to address the different treatment given to Native American graves. As discussed by Patty Gerstenblith in her seminal textbook *Art, Cultural Heritage, and the Law: Cases and Materials* (2004), prior to 1990 it was not a criminal offence to loot or destroy Native American burials sites. Gerstenblith notes that ‘[this] different legal treatment of the burials of Native Americans and burials of the dominant European-derived culture was probably the most striking area of cultural inequality.’⁴⁰ The legal reason for this distinction was that grave protection laws only applied to cemetery graveyards and graves that had an identifiable headstone. Gerstenblith outlines this problem as follows:

‘[a]lthough state statutes have long criminalized the desecration or interference with religious structures, human gravesites, and cemeteries, such statutes were rarely, if ever, applied to scientific study of graves. The laws generally require or are interpreted to require that burials had to be in “cemeteries” or had to be marked in order to receive protection. Native American burials are often solitary or in small groups, do not have headstones, and are not placed in enclosed

³⁵ It also served as an anti-trafficking legislation by highlighting specifically Native American antiquities and artefacts as protectable objects.

³⁶ Patty Gerstenblith, *Art, Cultural Heritage, and the Law: Case and Materials* (first published 2004, Carolina Academic Press 2008) 1122.

³⁷ *Ibid.*

³⁸ Trope and Echo-Hawk (n 1) 59.

³⁹ *Ibid* 50.

⁴⁰ Gerstenblith (n 36) 1110.

*cemeteries. Therefore, these state statutes were not applied to prevent or punish casual or even intentional desecration of Native American burials.*⁴¹

The legal battle for equal treatment after death is one example of how late-stage legislation attempts to reverse a long-standing history of discriminatory worldviews.

Due to Miller's own confession, as well as photographic evidence, it was determined that some of the collection did meet the NAGPRA requirements as the remains:

'[c]ame into possession or control after November 16, 1990, and was removed from:

(A) An unknown location; or

*(B) Lands that are neither Federal nor Tribal lands as defined in this part.'*⁴²

Miller cooperated with law enforcements and agreed to turn over all the remains,⁴³ which included those that were in his possession prior to 1990.

It is through the appropriate channels outlined by NAGPRA in sections 43 of the Code of Federal Regulations (CFR) 10.1(d) and 10.10 that newly 'discovered' collections of Native American remains and heritage objects can be resituated to closely affiliated tribes. After coming into 'custody of [the] holding or collection',⁴⁴ the FBI were required to follow the appropriate provisions laid out in NAGPRA.⁴⁵ These provisions are outlined by eight steps, and as mandated by the Act, the FBI were in consultation with tribal officials from the nearest indigenous tribe, the Pokagon Band of Potawatomi, to ensure proper care and treatment of the remains found in Miller's basement.⁴⁶ This included, for example, grappling with the statutory demands of FBI evidence standards, which required the task force to document the human

⁴¹ Ibid.

⁴² 43 CFR 10.8(b).

⁴³ Sanburn (n 2).

⁴⁴ 43 CFR 10.8(b)(2).

⁴⁵ There is not enough space within this article to unpack fully the development of NAGPRA, or to review the legislation in a critical manner. Therefore, I would urge readers to continue their reading into the legislation through other sources. Particularly I would recommend Talbert (n 32) 171–202. This article, while precise in its own way, outlines the development of NAGPRA, its predecessors, as well as offering a critique on its shortcomings.

⁴⁶ Sanburn (n 2).

remains photographically.⁴⁷ This violated the tribal community's perspective of the dignity of the dead, and some find this practice deeply offensive.⁴⁸ In response to this dilemma, Carpenter asserted that:

*'[w]e [the FBI] had to set up a system where we could do that in very tightly controlled private spaces. We had Native American consultants on-site with us. They had the opportunity to do offerings to the ancestors, to do spiritual rituals. We don't normally give that level of access, but we felt it was imperative in this case to do it.'*⁴⁹

The remains were removed from Miller's black bin bags by archaeologists, who cried as they placed children's skulls, and mismatched remains in better storage so they could be transported and undergo an osteological analysis to determine whose ancestors they were.⁵⁰

Although it is difficult to determine exactly how many bones, and full skeletal remains Miller had in his collection due to conflicting reporting, *Vanity Fair* has reported after a year-long process of osteological analysis that around thirty of the remains belonged to the MHA Nation of North Dakota, and the other remains were unable to be linked to a specific tribe.⁵¹ In a 2022 Notice of Inventory Completion by Federal Bureau of Investigation's Art Theft Program, it was noted that there remained 138 skeletons that had still not been affiliated with a tribe. One difficulty faced in this process was determining which remains belonged together, as:

*'Miller had taken pieces from other skulls, a different mandible, someone else's teeth, and bones, and glued it all together, Frankenstein-like. Miller, it turns out, was a stager. He thought less like an archaeologist and more like a storyteller.'*⁵²

⁴⁷ Audie Cornish, 'FBI Struggles to Return Artifacts Seized from Indiana Farm to Their Rightful Homes' (*NPR*, 6 March 2019) <<https://www.npr.org/2019/03/06/700873632/fbi-struggles-to-return-artifacts-seized-from-indiana-farm-to-their-rightful-hom>> accessed 27 April 2024.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Sanburn (n 2).

⁵² *Ibid.*

The FBI's role was to remove the remains from danger, and have them returned safely to their place of resting.⁵³ The Potawatomi agreed to bury the rest of the remains which were unable to be linked to specific tribes 'in a mass grave in Indiana.'⁵⁴

4 Conclusion: What Now?

Miller's home, truly an archive of history, had never been questioned by anyone prior to the FBI seize.⁵⁵ He was of a generation of Americans who grew up when the legacy of scientific and cultural racism was both more pronounced, blatant and ubiquitous. Any legislation that existed during this time or since may have seemed alien or inapplicable to him. Socially, he was considered eccentric, as opposed to problematic.

The passing of NAGPRA signalled a state-level acknowledgment of America's dissonant past and an assertion that the collecting, exhibiting and looting of Native American material heritage needs to be reframed and addressed. In the next few decades, it is possible to hypothesise that there will be many private collections uncovered which are similar to Miller's, full of Native American artifacts, funerary objects and human remains. It is likely that there are many other similar collections to be inherited by children and grandchildren of collectors like Miller. As public opinion continues to evolve around these topics, it is likely that the generations who are to inherit these collections will find themselves increasingly uncomfortable with their content. The restitution of these items will continue to affect Indigenous communities and the slow return of material heritage is but one element that will contribute to Indigenous autonomy and sovereignty. The respectable treatment of heritage and of the dead is a prerogative from which Native American have historically been excluded.

⁵³ Cornish (n 47).

⁵⁴ Sanburn (n 2).

⁵⁵ This article is only able to explore a portion of the Don Miller case, as I have chosen to focus on the role NAGPRA and the human remains found in his collection, the article does not cover the extensive repatriation efforts that have occurred since the seize. Furthermore, the personality of Miller and his life is particularly interesting, and a part of this case, that deserves further exploration. The majority of the reporting on Miller has been conducted by newspapers and by media outlets including *Vanity Fair*, who have produced the most extensive coverage on this case to date. There also remain some unanswered questions, namely if only 5,000 cultural artefacts were seized in the FBI's six-day operation, where is the rest of the collection now and have the other 35,000 objects been investigated further?