

Keeping Their Marbles: How the Treasures of the Past Ended Up in Museums—And Why They Should Stay There, by Tiffany Jenkins. Oxford: Oxford University Press, 2016, 369 pp., \$34.95 hardbound.

Bone Rooms: From Scientific Racism to Human Prehistory in Museums, by Samuel J. Redman. Cambridge, MA: Harvard University Press, 2016, 373 pp., \$29.95 hardbound.

Really Safe Spaces

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Published online: 28 February 2017

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By the middle of the eighteenth century, Western civilization had produced a series of broadly related intellectual movements that we summarize as the Enlightenment,

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which sought to document and analyze all of human behavior, including its non-Western expressions, as well as the natural world that formed its backdrop.¹ By the middle of the nineteenth century, the Enlightenment had taken the form of great public museums, in which any interested person could view the human adventure in all of its manifestations from high art to mundane technology. The public museum was part of a much larger enterprise in which disinterested scholarship, and public inquiry and discussion, were viewed as valuable undertakings that would benefit any thinking person. This enterprise was imperfect, as all enterprises are, but it held up an ideal of objective and disinterested scholarship that inspired several generations of scholars in the sciences, arts, and humanities. Again imperfectly, the idea spread that an intelligent person of any background could appreciate, at some level, the accomplishments of the Enlightenment. In the last few decades, those accomplishments have been challenged and derided as bigoted, even among some professionals who should be their supporters. Two recent books illustrate

¹For the variety of ideas expressed in the Enlightenment, see Gertrude Himmelfarb, *The Roads to Modernity: The British, French, and American Enlightenments* (New York: Vintage Books, 2004) and Crane Brinton, ed., *The Portable Age of Reason Reader* (New York: The Viking Press, 1956).

the intellectual and moral confusion that has resulted: *Keeping Their Marbles: How the Treasures of the Past Ended Up in Museums—And Why They Should Stay There*, by Tiffany Jenkins, and *Bone Rooms: From Scientific Racism to Human Prehistory in Museums*, by Samuel J. Redman.

In *Keeping Their Marbles*, Jenkins, a British sociologist and former columnist on social and cultural issues, is primarily concerned with the large museums that display ancient and non-Western art and that focus on the artistic value of such works. Two subjects dominate *Keeping Their Marbles*: (1) the way these treasures were acquired, sometimes by trade or purchase, sometimes by government-approved archaeological excavations, and sometimes by military force and occupation; and (2) the way contemporary nation states and spokesmen for ethnic groups have demanded that such works be turned over to them under the label of “repatriation.” Specific examples include the Elgin Marbles (acquired under Turkish law from the Turkish government and removed from Athens by Lord Elgin between 1801 and 1812); the Benin Bronzes (seized in 1897 by soldiers from the city of Benin in present-day Nigeria when the British conquered the city); and the Rosetta Stone (found in 1799 by Napoleon’s soldiers in Egypt and extracted from them by the British after Napoleon’s

defeat). The histories of these three treasures illustrate the range of backgrounds to the acquisition of some of the world’s most famous works of art.

They also nicely illustrate the effects that acquisition, study, and display of the works have had. The Elgin Marbles perpetuated and deepened a well-established appreciation of ancient Greek culture among Europeans. The Benin Bronzes, dispersed to several museums throughout the world, brought the public into contact with an artistic tradition previously unknown outside its homeland and inspired modern Western artists. The Rosetta Stone led immediately to the deciphering of Egyptian hieroglyphics and the rediscovery of ancient Egyptian political history, medicine, and religion.²

Jenkins discusses the variety of arguments for repatriating works contained in museums, which can be reduced to two rationales. The first, offered by government officials and appointed or self-appointed spokesmen for ethnic groups claiming that the disputed works are part of their heritage, argues that ethnic affiliation requires that the works be turned over to them. Acquiring these works is essential to affirming their identity,

²Tiffany Jenkins, *Keeping Their Marbles: How the Treasures of the Past Ended Up in Museums—And Why They Should Stay There* (Oxford: Oxford University Press, 2016), 66–142.

their dignity, their self-esteem, their pride, their mental health. To deprive them of these works is to strip them of their rightful heritage and subject them to anguish, trauma, and scars of dispossession.³

The second rationale is the post modernist ideology of individuals who do not claim membership in the traumatized groups, but who contend that the Enlightenment was a fraud. Never about art, science, and scholarship, it was always about power, colonialism, imperialism, and racism. Since museums were complicit in these atrocities, they should give away their collections to the exploited groups and desist from displaying them, or make sure that any displays are approved by the exploited groups and reflect their values and beliefs.⁴

Jenkins rejects both rationales. Her position is that the appeal of outstanding works of art crosses culture, civilization, and nationality, and that large public museums located in major cities provide the best way to offer large numbers of people the opportunity to encounter these works directly. It would have strengthened her argument to include a cost-benefit analysis of the value of such displays,

which recognizes the necessity for evaluating tradeoffs.⁵ A major city and a wealthy country can support display, curation, study, and restoration in ways that a poor country cannot.

The opportunity for collections to be seen and appreciated by millions of people in safety and comfort is a strong argument for Jenkins's position. The recent history of looting and destruction by terrorist groups and opportunists from Afghanistan to Syria, not to mention attacks on visitors to museums and archaeological sites, shows the value of having such collections in Berlin, Paris, or London. This solution is not perfect. The destruction wreaked on European cities by two world wars and various totalitarian regimes cannot be ignored, but the treasures inside these museums generally survived. Although Jenkins does not elaborate, she notes that at one time it was common for European and American archaeologists to agree with a host country's government to some division of the finds recovered, a practice called *partage*.⁶ A revival of this practice would do much to support Jenkins's position.

³Ibid., 169–86.

⁴Ibid., 9, 167–69.

⁵John Henry Merryman has outlined such an approach, centered on preservation, truth, and access, although he recognizes that some other values may be legitimate in particular contexts, in "The Nation and the Object," *International Journal of Cultural Property* 3, no. 1 (1994): 61–76. Reprinted in James Cuno, ed., *Whose Culture? The Promise of Museums and the Debate Over Antiquities* (Princeton, NJ: Princeton University Press, 2009), 183–203.

⁶Jenkins, *Keeping Their Marbles*, 235–36.

As Jenkins explains, art historian James Cuno has refuted the repatriationists in a series of authored and edited books, defending what he refers to as “universal” or “encyclopedic” museums, which exhibit material from a variety of the world’s cultures.⁷ Cuno points out that contemporary policies restricting or forbidding the importation or exportation of cultural property take the form of statutes or decrees issued by one nation state, which the issuer demands other nation states defer to, often on the basis of a treaty drafted by the United Nations or another international body.⁸ These laws exist to prevent looting and destruction of archaeological sites and other repositories of cultural property, but there is no evidence they have been effective, and some countries promulgating them, such as China, are eager to buy Chinese artifacts owned by citizens of other countries, regardless of how they have been acquired. Such policies purportedly meant to preserve artistic and archaeological materials actually serve a “nationalist retentionist” agenda in which a nation state attempts to assert a monopoly of ownership on what it views as the cultural property of its

people.⁹ In a reverse application of the postmodernists’ slogan, Cuno declares, “It’s all a matter of politics.”¹⁰

The most effective portion of Cuno’s argument depends upon the lack of congruence between the contemporary nation state and the peoples or cultures who produced or owned the property at issue. By any consistent definition, what was “China” or “Chinese” fluctuated greatly over the last several millennia. The territory of the present People’s Republic of China includes areas formerly occupied and controlled by a variety of states and tribal groupings, who spoke a great variety of languages and practiced a great variety of religions. Moreover, these areas traded extensively with each other and with cultures that were in no sense Chinese, and borrowed ideas from those foreign sources. It makes no sense to call all of these manifestations Chinese.¹¹

Cuno’s argument is even stronger regarding the cultural property produced around the borders of the Mediterranean Sea. Trade in goods and ideas was ubiquitous, and items that modern nation states consider their cultural property were often produced for sale or gift far beyond the territories where they were produced. An item produced in an ancient Greek city-state and sold or

⁷James Cuno, ed., *Whose Culture? Cuno, Who Owns Antiquity? Museums and the Battle Over Our Ancient Heritage* (Princeton, NJ: Princeton University Press, 2008), and *Museums Matter: In Praise of the Encyclopedic Museum* (Chicago: University of Chicago Press, 2011).

⁸Cuno, *Who Owns Antiquity?* 21–66.

⁹*Ibid.*, 19.

¹⁰*Ibid.*, 18.

¹¹*Ibid.*, 88–120.

traded to Etruscans for burial in an Etruscan tomb, now located in modern Italy, is not exclusively “Greek,” and is even less “Italian.”¹²

Like *Keeping Their Marbles*, Samuel J. Redman’s *Bone Rooms* has a revealing subtitle: *From Scientific Racism to Human Prehistory in Museums*. Most of the book consists of a history of collecting and displaying human bones in museums in the United States in the nineteenth and twentieth centuries. Redman has done a remarkable amount of research in published and unpublished sources relating to the collection and display of bones in natural history and medical museums. He describes major public exhibits of bones in detail, along with the popular response these displays elicited. For anyone wanting to research the topic, the sources cited in the notes are an invaluable starting point.

Redman has a very critical attitude toward the subjects of his study. Those who assembled the bone collections are frequently described as obsessed or frenzied, and engaged in bitter competition with other bone collectors.¹³ The public interest in

human remains is said to be strange, bizarre, macabre, and morbid.¹⁴ In Redman’s view, there does not appear to be any motive to the collection of bones other than the desire to put the dead into categories of race and to justify “scientific racism.” Redman does not attempt to define “race” as used by the subjects of his study, or to describe the variety of meanings behind that word. It was, and still is, a word of a great many meanings, and in the period covered by this book, it was often used to mean something like “a people,” without committing the writer to whether that people was defined by physical type (as expressed, for example, in bones), language, religion, nationality, or tribal affiliation. The variety of meanings given to the term is naturally a problem in studying it, but the same could be said of “culture,” which has been the subject of an entire book of definitions used by anthropologists, not to mention its other usages.¹⁵

Redman appears to attribute a biological meaning to all uses of the word “race,” although it is difficult to be certain, since his polemical treatment of the subject takes precedence over clear definition. Such a procedure can be extremely misleading. The British comparative

¹²Ibid., 38–40, 2, 31, 34–35, 38–40, 125–29, 135–36, 167–69n3. For a documentation of the way in which goods and ideas were transported and blended, see Barry Cunliffe, *By Steppe, Desert, and Ocean: The Birth of Eurasia* (Oxford: Oxford University Press, 2015).

¹³Samuel J. Redman, *Bone Rooms: From Scientific Racism to Human Prehistory in Museums* (Cambridge, MA: Harvard University Press, 2016), 9, 61, 68, 283.

¹⁴Ibid., 127, 133, 154, 177, 179, 284, 286.

¹⁵A.L. Kroeber and Clyde Kluckhohn, *Culture: A Critical View of Concepts and Definitions* (New York: Vintage Books, 1952).

jurist and historian Sir Henry Sumner Maine, writing in the nineteenth century, commented on the traditional Irish Brehon law as follows:

But wherever the institutions of any Aryan race have been untouched by it [Roman law], or slightly touched by it, the common basis of Aryan usage is perfectly discernible; and thus it is that these Brehon law-tracts enable us to connect the races at the eastern and western extremities of a later Aryan world, the Hindoos and the Irish.¹⁶

The context of this statement, when combined with Maine's other writings, makes it clear that he was pointing out the remarkable similarities in the legal systems of two members of what we would call today the Indo-European language family; that he was not using "Aryan" in anything like the sense given to it by German National Socialism, and that "race" did not mean a group defined by its genes.

The ambiguity resulting from Redman's failure to define "race" is compounded by his attribution of "racism" to his subjects.¹⁷ Does he mean by that term an ideology that

practices or advocates discrimination on the basis of race? Does he mean to suggest that those who believe that there really are races in the biological genetic sense are ipso facto "racist"? Evidently it is the latter, but the reader is left to wonder.

The problems described above are expressions of a much larger problem with the book. Redman presents the study of the human skeleton as racist, macabre, bizarre, and generally unhealthy, because he has no sympathy with such study and apparently no knowledge of what it has contributed to our understanding of human beings. He makes references to disputes over how to measure the skull and what measurements are most useful or diagnostic, as well as mentioning DNA testing and imaging devices, but there his discussion stops.¹⁸ In the apparent absence of any genuine knowledge resulting from osteology, its pursuit seems whimsical at best, and more likely, sinister.

In fact, a great deal of valuable knowledge has resulted from the study of the human skeleton.¹⁹ The quantitative analysis of similarities in the morphology of skeletons,

¹⁸Ibid., 205–6, 281.

¹⁹Clark Spencer Larsen, *Bioarchaeology: Interpreting Behavior from the Human Skeleton*, 2nd ed. (Cambridge: Cambridge University Press, 2015). Clark Spencer Larsen, *Skeletons in Our Closet: Revealing Our Past through Bioarchaeology* (Princeton, NJ: Princeton University Press, 2000). Paul Bahn, *Written in Bones: How Human Remains Unlock the Secrets of the Dead*, 2nd ed. (Buffalo, NY: Firefly Books, 2012).

¹⁶Sir Henry Sumner Maine, *Lectures on the Early History of Institutions* (1875; Port Washington, NY: Kennikat Press, Inc., 1966; reprint of 7th ed., 1914), 21.

¹⁷Redman, *Bone Rooms*, 26, 229, 245.

now referred to as “biodistance,” has progressed far beyond the largely qualitative and intuitive racial classifications put forward by anthropologists as late as 1960.²⁰ Several congenital abnormalities of the skeleton are under genetic control, and their study gives valuable clues to genetic relationships among individuals and populations.²¹ The study of prehistoric diets has been revolutionized in the last few decades by the discovery that stable isotopes of carbon and nitrogen and certain other elements in the bones reflect the food consumed by the person whose bones are being studied.²² Also, in the last few decades the ability to extract and analyze DNA from bones has given us an extraordinary genetic window into population history.²³

One of the most valuable aspects of the human skeleton is the way it responds to its environment. Nutrition, stress, communicable diseases, mechanical loading (the

pressure put on bones, joints, and other connective tissue by physical activities), and traumatic injury are all reflected in the skeleton.²⁴ Warfare and other interpersonal violence, and particularly their presence in pre-state level societies, have been a topic of controversy and speculation for hundreds of years.²⁵ The study of the human skeleton gives us a picture of these practices that is available from no other source.²⁶

These studies were primarily conducted in the last fifty years, but even the earlier osteology that is the focus of *Bone Rooms* made valuable scholarly contributions. The study of differences between groups and individuals was generally pursued by using skeletal features to establish “types” or “races.” Variation *within* types or races was generally downplayed or ignored. Such a method would not be acceptable today, but these early students of the skeleton laid the foundation for their own transcendence by their empirical, quantitative analysis of skeletal populations. Moreover, even the

²⁰Larsen, *Bioarchaeology*, 357–401.

²¹Ethne Barnes, *Developmental Defects of the Axial Skeleton in Paleopathology* (Niwot: University Press of Colorado, 1994), and *Atlas of Developmental Field Anomalies of the Human Skeleton: A Paleopathology Perspective* (Hoboken, NJ: John Wiley & Sons, Inc., 2012).

²²Larsen, *Bioarchaeology*, 301–56. Michael Blake, *Maize for the Gods: Unearthing the 9000-Year History of Corn* (Oakland: University of California Press, 2015), 135–53.

²³Larsen, *Bioarchaeology*, 362–68. Anne C. Stone and Mark Stoneking, “Analysis of Ancient DNA from a Prehistoric Amerindian Cemetery,” *Philosophical Transactions of the Royal Society of London B* 354, no. 1379 (1999): 153–59.

²⁴Larsen, *Bioarchaeology*, 7–114, 178–300.

²⁵Lawrence H. Keeley, *War before Civilization: The Myth of the Peaceful Savage* (Oxford: Oxford University Press, 1996). Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Viking, 2011).

²⁶Larsen, *Bioarchaeology*, 115–77. Patricia M. Lambert, “The Osteological Evidence for Indigenous Warfare in North America,” in *North American Indigenous Warfare and Ritual Violence*, ed. Richard J. Chacon and Rubén G. Mendoza, (Tucson: University of Arizona Press, 2007), 202–21.

pioneers of osteology, whom Redman criticizes, produced studies in demography, disease, mechanical loading and stress, and traumatic injuries that led to the more sophisticated studies reviewed above.²⁷

What Redman proposes as the cure for scientific racism is the repatriation of human skeletons to what he calls their “ancestral communities,”²⁸ which is to say, contemporary Indian tribes. Repatriation in the United States is governed by two federal statutes that require federal agencies and institutions receiving federal funds to turn over skeletons and associated artifacts to tribes that are “culturally affiliated” with the deceased person, if both are “Native American.” The obligation to repatriate extends to “sacred objects” and “objects of cultural patrimony.”²⁹

Repatriationists have been extraordinarily aggressive in asserting their right to ancient human remains with few to no discernible ties to any contemporary Indian community. Skeletons that are several thousand years old have been claimed by repatriationists who often receive a sympathetic response from government

agents. Such claims typically include a demand that no scientific study, or no further scientific study, be carried out.³⁰

The saga of Kennewick Man, found along the Columbia River in Oregon in 1996, illustrates the threat posed by the repatriation movement. When the skeleton was dated as approximately 8,400 years old, the United States Army Corp of Engineers seized it from the scientist studying it and announced its intention to give it to a coalition of Indian tribes. The U.S. Department of the Interior took over responsibility for the skeleton, with the same announced intention to repatriate. A team of anthropologists filed suit to prevent repatriation and the issue was joined. The trial court judge ruled for the anthropologists and the Ninth Circuit Court of Appeals affirmed the ruling, which held that the skeleton had not been shown to

²⁷See the excellent collection of historical essays in Jane E. Buikstra and Lane A. Beck, ed., *Bioarchaeology: The Contextual Analysis of Human Remains* (Amsterdam: Academic Press, 2006).

²⁸Redman, *Bone Rooms*, 285.

²⁹20 U.S.C. §§80q-80q-15. 25 U.S.C. §3001 et seq.

³⁰Kennewick Man, ca. 8,400 years old. Two skeletons from La Jolla, California, ca. 9,000 to 9,600 years old. *White v. University of California*, 2012 WL 12335354, *aff'd*. 765 F.3d 1010 (9th Cir. 2014). On Your Knees Cave in Alaska, ca. 10,200 years old. E. James Dixon et al., “Evidence of Maritime Adaptation and Coastal Migration from Southeast Alaska,” in *Kennewick Man: The Scientific Investigation of an Ancient American Skeleton*, ed. Douglas W. Owsley and Richard L. Jantz (College Station: Texas A&M University Press, 2014), 537–48 (an unusual case in which scientific study was allowed before repatriation). Spirit Cave Man, ca. 9,400 years old, from Nevada. *Fallon-Paiute-Shoshone Tribe v. United States Bureau of Land Management*, No. 03:04-CV-0466-LRH(RAM) (U.S. District Court, D. Nev. 2006).

be “Native American” within the meaning of the statute and thus was not subject to repatriation.³¹

After years of delay caused by the hostility of the federal authorities, a team of leading scientists was finally able to view, measure, photograph, and test the skeleton, and the result was *Kennewick Man: The Scientific Investigation of an Ancient American Skeleton*, edited by Douglas W. Owsley and Richard L. Jantz, a magnificent volume of description, analysis, and comparison that shows what would have been lost if the repatriationists had succeeded. From the thirty-two articles in this volume, we learn of Kennewick Man’s date, his way of life and diet, the diseases and injuries he was subjected to (including a spearpoint lodged in his hip bone), and his biological affiliations. Like some other early North American skeletons, one study suggests, his closest biological relatives are not modern American Indians, but rather certain historic and prehistoric populations of Polynesia and Japan, although Kennewick Man is unique and does not fit within any living

human group.³² Evidently peopling the New World was a complex process, the elucidation of which will require rigorous study and preservation of the skeletal evidence.

More recently, a team of geneticists has sequenced his mitochondrial and Y chromosomal DNA and concluded that Kennewick Man is closer to modern Native American populations of the New World than to any Old World population, and that the inhabitants of the Colville Reservation, in the state of Washington, one of the claimants for his skeleton, “seem to be descended from a population closely related to that of Kennewick Man.”³³ The maps and charts published by Morten Rasmussen et al. show that Kennewick Man’s genetic relationships are closest to modern American Indian populations of Central and South America. Indeed, another early skeleton from North America (Anzick 1, 12,600 years old, from Montana), is even closer to

³¹Alan L. Schneider and Paula A. Barran, “The Precedent-Setting Case of Kennewick Man,” in Owsley and Jantz, *Kennewick Man*, 90–107. *Bonnichsen v. United States*, 969 F.Supp. 614 (Dist. Or. 1997). *Bonnichsen v. United States*, 969 F.Supp. 628 (Dist. Or. 1997). *Bonnichsen v. United States*, 217 F.Supp.2d 1116 (Dist. Or. 2002). *Bonnichsen v. United States*, 2004 WL 2901204 (Dist. Or. 2004). *Bonnichsen v. United States*, 357 F.3d 962 (9th Cir. 2004), amended and superseded by *Bonnichsen v. United States*, 367 F.3d 864 (9th Cir. 2004).

³²C. Loring Brace et al., “The Ainu and Jomon Connection,” in Owsley and Jantz, *Kennewick Man*, 463–71. Richard L. Jantz and M. Katherine Spradley, “Cranial Morphometric Evidence for Early Holocene Relationships and Population Structures,” in *ibid.*, 472–91. M. Katherine Spradley, Katherine E. Weisensee, and Richard L. Jantz, “Two-Dimensional Geometric Morphometrics,” in *ibid.*, 492–502. George W. Gill, “Morphological Features that Reflect Population Affinities,” in *ibid.*, 503–18.

³³Morten Rasmussen et al., “The Ancestry and Affiliations of Kennewick Man,” *Nature* 523, no. 7561 (2015): 455.

modern Central and South American Indians.³⁴

Another recently published comparison of Old World and New World ancient and modern DNA shows a very complicated pattern in which some New World individuals have substantial amounts of DNA found principally in ancient Siberians of circa 23,000 years ago, while others show substantial similarities to modern native populations of Australia, New Guinea, and the Andaman Islands. These researchers concluded that Kennewick Man's relationship to modern populations of the New World is "ambiguous."³⁵

From the study conducted by Rasmussen et al., advocates of repatriation and news sources have concluded that Kennewick Man was "Native American."³⁶ That label ignores all of the complicated genetic and morphological evidence concerning early humans in the

New World, and attempts to reduce this very complicated pattern to a label. Ironically, the advocates for repatriation have revived the simple-minded typology of human remains long ago abandoned by physical anthropologists.

The threat posed by the repatriation movement is not only the destruction of archaeological and osteological collections. It is the awarding of a legally privileged position to individuals and groups based upon their ethnicity, race, and religion. After all, it is only "Native Americans" who can claim rights to repatriate. One statute requires the U.S. secretary of the interior to establish a seven-member repatriation committee, "3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders."³⁷

The equal protection clause of the Fourteenth Amendment to the United States Constitution forbids state discrimination on the basis of race, and is made applicable to the federal government through the Fifth Amendment's due process clause.³⁸

³⁴Ibid., figures 1 and 2.

³⁵Pontus Skoglund and David Reich, "A Genomic View of the Peopling of the Americas," *bioRxiv*, June 15, 2016, <http://www.biorxiv.org/content/biorxiv/early/2016/06/15/058966.full.pdf>.

³⁶Sandi Doughton, "First DNA Tests Say Kennewick Man Was Native American," *Seattle Times*, January 17, 2015, http://old.seattletimes.com/html/localnews/2025488002_kennewick_dnxaml.html. At the time of writing this essay Congress has passed, and President Obama is expected to sign, a law turning over Kennewick Man to the tribes that claimed him in the litigation referred to in footnote 31. See Christine Clarridge, "Legislation Enables Transfer of Kennewick Man to Tribes," *Seattle Times*, December 10, 2016, <http://www.seattletimes.com/seattle-news/politics/legislative-enables-transfer-of-kennewick-man-to-the-tribes/>.

³⁷25 U.S.C. §3006(b).

³⁸U.S. Const., amend XIV. U.S. Const., amend V. *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975). *Bolling v. Sharpe*, 347 U.S. 497 (1954).

The Constitution further states that there shall be no religious test for any public office or public trust and that Congress may not establish a religion.³⁹ For an officer of government to evaluate and choose members of a government committee based upon their race and religious ideology is a facial violation of these clauses. Moreover, inquiring into what constitutes traditional Native American religion or who is a traditional Native American religious leader necessitates the sort of “entanglement” of government with religion that is constitutionally forbidden.⁴⁰ The courts would never accept such entanglements with Christianity.⁴¹

A more subtly deleterious implication of the repatriation movement, rarely stated in a candid way, is that Native Americans are rendered emotionally distraught by scientific interpretations that contradict their origin legends or other traditions, and that therefore scientific research should be made sensitive, restricted, curtailed, sanitized, or watered down to

accommodate those beliefs, and that certain topics and interpretations should be avoided. An alternative formulation is that Native Americans have a right not to be offended that other groups, such as fundamentalist Christians, do not have.⁴² Either formulation is disturbing.

Repatriation is one of those radical movements that has produced an ironically reactionary result. The idea that the validity of a person’s views depends upon that person’s race, ethnicity, nationality, or religion was something we thought to have escaped, only to see it return in another form.

⁴²Jenkins, *Keeping Their Marbles*, 62, 169–86. Redman, *Bone Rooms*, 285–90. Elizabeth Weiss, *Reburying the Past: The Effects of Repatriation and Reburial on Scientific Inquiry* (New York: Nova Science Publishers, Inc., 2008), 67–100, and “The Bone Battle: The Attack on Scientific Freedom,” *Liberty* 23, no. 11 (2009): 39–45. In a suit filed by the Havasupai Indians, the plaintiffs alleged that the defendants procured DNA samples with the promise to limit their use to studying diabetes, but actually expanded their research to other topics, on which they published articles. The complaint states, “At least fifteen (15) of these publications deal with non-diabetes subjects, including schizophrenia, inbreeding and theories about human population migrations from Asia to North America, all to the harm and detriment of the TRIBE and its Members, whose religion and culture is based on the premise and profound belief that their origins as a people come from ‘Red Butte’ located in the Grand Canyon and called ‘Wi gidwisa’ in the Havasupai language.” Such actions are alleged to have constituted intentional and negligent infliction of emotional distress. *Havasupai Tribe v. Arizona Board of Regents*, No. CIV-04-1494-PCT-FJM, U.S. District Court, D.Ariz. Second Amended Complaint at 14, ¶55 (2008). The situation is even more severe in Australia. See Sarah Colley, *Uncovering Australia: Archaeology, Indigenous People, and the Public* (Washington, DC: Smithsonian Institution Press, 2002).

³⁹U.S. Const. art. VI, cl.3. U.S. Const., amend. I.

⁴⁰*Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971).

⁴¹See the summary in Kent Greenwalt, *Religion in the Constitution*, 2 vols. (Princeton, NJ: Princeton University Press, 2006). For the sensitivity shown by the federal courts to any suggestion of government endorsement of fundamentalist Christianity, see *Kitzmiller v. Dover Area School District*, 400 F.Supp.2d 707 (M.D.Pa. 2006).