Negotiating Who “Owns” Penobscot Culture

Jane Anderson, New York University

ABSTRACT
Museums, archives, and libraries are important places of re-connection and re-animation for Indigenous peoples and communities. Ethnographic collections held within these sites tell very particular histories about the colonial experience, including how Native culture was transformed into forms of exclusive property through practices of research, collecting, and documentation. The Penobscot Nation is one of many tribes grappling with the reality that it is the legal owner neither of the material culture held in institutions nor of the representations of culture, the photographs, manuscripts, and other audio visual materials that were collected by researchers over the long period of colonial engagement. As non-owners of materials that record their images, voices, histories, and ideas, the Penobscot Nation has to negotiate against the weight of powerful legal orders that reflect colonial idioms of control and authority over Native peoples and the representations of their cultures. This article explores the range of strategies that the Penobscot Nation has developed to maneuver around the legacies of legal and social exclusions in access to, and therefore decision-making about, the future uses of these cultural materials. [Keywords: Ethnographic collections, MoUs, property, museums, legal exclusion, negotiation, sovereignty, strategic maneuvering, agreements]
The law is a discourse that operates in historically contingent and meaningful ways, articulated to other discourses ideologically, strategically, and irrationally. It informs the constitution and character of the relations of power and knowledge between Native peoples and the United States, and within Native communities.

—Joanne Barker (2011:7)

Introduction: Museum Encounters

On a cold New York morning in early March 2016, James Eric Francis Sr. and I bundled out of the 81st Street subway stop to go to see the Penobscot collections at the American Museum of Natural History (AMNH). James is the Tribal Historian and Director of the Department of Cultural and Historic Preservation at the Penobscot Nation in Maine. For the last six years we have been working together on various negotiations over the different legal and cultural rights to Penobscot material and immaterial culture held in institutions and universities in the US.

The previous week I had taken my class to the AMNH to experience the legacies of Boas and Mead in the institution in real time instead of through the rich texts that describe the history and the development of the ethnographic halls (Boas 1887, 1907; Levi-Strauss 1943; Jenkins 1994; Jacknis 1985, 2004; Losche 2006; Schildkrout 1988). As museum visitors, my students largely experienced surprise and lingering depression as they navigated the permanent Hall of Northwest Coast Indians and the Hall of the Eastern Woodland Indians. Dim light necessary for preservation purposes, stiff mannequins, inaccurate and misleading labeling, and outdated 19th century classificatory groupings of Native and First Nations material culture added to my student’s sense of unease (Kirshenblatt-Gimblet 1998). The new digital interventions that curatorial staff sensitive to these issues have been developing for the Hall of Northwest Coast Indians to bring Native voices into the space, were not yet in regular operation (Whiteley 2016).¹

I asked my students to spend more time than they would have preferred. Focusing closely on the assemblage of materials on display and the available labels indicating the source communities, they worked to try and connect items of material heritage to collections of early anthropologists and other early field researchers.² This took them off in different directions with resigned purpose; I turned back to the display cases where I found myself facing a selection of material culture, including an un-named chief’s
beaded collar, cuffs, moose hair headdress, and beaded shirt with a small little label next to it just saying “Penobscot.”

Standing outside the entrance of the Museum after finishing with my class I called James in Maine to ask him what he knew about this collection. Our work together has included identifying and inventorying collections in museums and archives, drafting and negotiating memorandums of understanding about conditions for future access conditions with these cultural institutions, legal research on the ownership of specific collections and developing internal tribal documents, protocols, and policy to help support the digital return of collections as well as to establish processes for assessing future research on tribal lands (Newsom et al. 2014; Newsom, Francis, and Anderson 2016; Anderson and Francis 2016). This work has been supported and filtered through four different tribal entities: the Department of Cultural and Historic Preservation, the Penobscot Legal Department, the tribal-wide ten-member Intellectual Property Working Group,\textsuperscript{3} and the Tribal Council. It has offered me a unique position in understanding the complex dynamics of settler-colonialism, especially the polyvalent cultures of colonial law as they continue to be negotiated within Native contexts (O’Brien 1997, Comaroff 2001, Ranco 2005, Deloria 2006, Echo-Hawk 2010, Barker 2011). Penobscot cultural heritage is held in over 30 institutions in the US alone. What the Penobscot Nation has been building is a multi-directional strategy to address and negotiate the reality that in most cases the Penobscot Nation does not have legal ownership or cultural control over this material.

For over 15 years, my research has focused on the interplay between the colonial knowledge gathering practices and the collecting endeavors of specific social-science disciplines like anthropology. My work interrogates how these are understood in light of present day legal and political efforts by Indigenous communities to connect back to, claim, and reanimate a diverse array of ethnographic materials. These are primarily photographs, sound-recordings, films, and manuscripts (Anderson 2004, 2005, 2010, 2013). Consulting in both Indigenous institutions as well as for Indigenous communities in Australia and the US as a legal adviser, my work is embedded within an activist and ethical imperative that takes seriously the current uneven conditions of negotiation around Indigenous engagements with cultural institutions that hold valuable cultural heritage (Low and Merry 2010). As a legal anthropologist doing engaged anthropology, this applied work is invested not only in collaboratively developing

When I called James and explained that I had been standing in front of a set of Penobscot tribal collars and cuffs, he asked, “Oh, from the Heye collection?” referring to the immense collection of Native material assembled by wealthy businessman Gustav Heye between 1897 and 1958, now held at the National Museum of the American Indian in DC and also, in part, in Bowling Green in New York (Carpenter 2005). I hadn’t been clear about which New York institution I was standing outside of and clarified that I was at the AMNH. James paused. He then said that he hadn’t seen the AMNH collection—since he was coming to New York the following week, he asked if I could arrange for him to see it. Several days later James received an email from the AMNH curatorial assistant with the catalogue details of their 259 items of Penobscot material culture in preparation for his visit.

The next week as we walked from the subway towards 77th street entrance, James commented on the size of the institution. “This has that hall in it that Salinger described in Catcher in the Rye, right?” “Yep,” I said and added because of my interest in institutional excesses: “What is unusual about this institution is that it holds almost all its collections here. Only the big stuff like canoes and totem poles are held off-site in Brooklyn.” James raised his eyes and made the characteristic face he does when encountering an obvious incongruity between what is being said and the greater meaning behind it. In this instance, the incongruity was the size of the collections held here and what that means for communities like his. The excessive nature of the collecting of Native material that occurred in the 19th and early 20th centuries and the sheer amount of material that left Native communities is overwhelming and affecting. There are few adequate instruments or frameworks available to understand the scale of amassed cultural heritage materials within institutions, nor the emotional and temporal challenges of its return. As the Penobscot Tribal Historian, James approaches the institution with a deliberate pragmatism: what does it have from his community, how did it come to hold and claim this material, what is culturally significant and should not have left, what kinds of future relationships are possible, how are these to be developed, and how are
they to be recognized as important and nurtured at an institutional level? James’s responsibility in this visit was to locate and connect to his community’s collections and to initiate a dialogue with the institution about the possible future for sharing these with his community as the “public” that should be prioritized for these collections.

Riding the staff elevator to the fourth floor, we exited and walked to the end of a room filled with modular horizontal storage systems. The Penobscot section, within the larger Wabanaki cultural designation, was open and lit. Ash baskets, canoe paddles, and bows occupied the top shelves; sweet-grass combs, engraved pipe bowls and stems, charms, engraved basketing and other tools, knives, engraved powder horns, whistles, birch bark masks, snow-shoes, harpoon points, basswood straps, children’s games, dolls, shell (*wampum*) and bead necklaces, trap scent, smaller birch bark containers (some still with pitch for canoe binding), dried medicines, and other items of material culture were in the 30 or so drawers underneath. The collection had come into existence at the AMNH between 1909 and 1919 from six individuals: William Orchard, Erastus Tefft, J.P. Morgan, Mary Kissell, Frank Speck, and Gabriel Paul, with the bulk of the collection coming from Speck. Adam Watson, the Curatorial Associate for North American Ethnology facilitating our visit, had the catalogue entries open and a pencil to take additional notes that might be forthcoming from James. He asked James and me to put on gloves to touch the materials, explaining that while toxicology tests had recently been conducted on the collections he couldn’t guarantee that some of the fiber items hadn’t previously been treated with preservation chemicals (pesticide or arsenic) and could still be toxic to touch (Ornstein 2010; Odegaard, Sadogeï, and Associates 2005; Simms and McIntyre 2014).

As James proceeded to open tray after tray and pick up each piece, he would sometimes stop and breathe in and then softly explain a certain detail to me. He would point out a design that identified who had been the owner or the family custodians of the material, or how through the form of carving or the type of weave, a Penobscot person or persons could be identified, and then he would often name that person. James had so much more information than what accompanied these objects’ descriptions in the AMNH catalogue. He had knowledge about the relationships and the people that created, cared for, and were still connected to these materials. In this small space of shelves and “collection,” the archive was energized and reanimated as family histories and material objects connected themselves across
time as well as across the different levels of display trays, which were all organized according to type (all the baskets were together). The physical act of touching and holding these materials reactivated long dormant connections of kin and community. In the warmth of James’s hands, the rupture of relationships between persons, things, place, and memory—the disrupted relationality—was temporarily repaired. In this moment, the curator stood back, and James became the person who could speak for, with, and on behalf of this collection, but only while he was present. Then the shelves were closed, the collection in the mobile modular flooring storage was wound shut, locked, and the lights were turned off. We moved on to another part of the collection, in another part of the building holding the intricate bead and design work, including several chief collars and cuffs, that James was especially interested in seeing.

Chief collars and cuffs remain items of cultural significance for the Penobscot community because of the importance of the ceremony inaugurating a new chief and the weight of the responsibilities and obligations that bind the chief to the community and the community to the chief. Collars and cuffs tell intricate stories about families, as well as the many relationships involved in their production. In 2007, tribal elder, writer, and WWII veteran, Charles Norman Shay, had a reproduction of his family’s collars and cuffs made by Penobscot artist Jennifer Neptune. Shay’s nephew had identified the collar in a copy of an old archival photograph of Shay’s mother. James had then located the collar in a collection at the Smithsonian. Following this reproduction, Jennifer created another for the current tribal chief, including the headdress (Neptune 2015). This was based off the set from around the 1870s worn by tribal chief Joseph Nicolar (1911–1912) and Walter Ranco. It is currently held in a glass case for preservation purposes at the Hudson Museum at the University of Maine. “[It] comes out and it visits us when we have tribal inaugurations. So, when the chief is inaugurated, the collar comes from the museum to Indian Island and it’s there during the ceremony. But it’s not—it’s too fragile to wear, so it can’t be a physical part of the ceremony anymore. It’s just there, you know, in spirit” (Neptune 2015). With the reproduction that Jennifer created, a cycle of authority and responsibility connected to the very materiality of the collars and cuffs was reactivated. Because of this work, James is particularly alert to tracking down collars and cuffs reproduced in the archival photographs he has. After looking through all the display trays and the room with the textiles, James asked to see all the material on display in the Permanent
Halls. The atmosphere created through preservation light and display assemblage of the Hall of the Eastern Woodland Indians worked to make this last stop heavy in mood and energy. We walked straight to the cabinet that had precipitated my call to James the week before and looked at the collars and cuffs sitting on one of the various generic “Indian” mannequins (Glass 2010, Wakeman 2008, Harraway 1984). James couldn’t get close enough to really see its detail, and certainly couldn’t see underneath where the intricate stories about its making and community relationships existed. He tried to take a photograph but the lighting made it difficult. James pointed to the shirt next to the chief’s collar and whispered, “I have an old photo of someone wearing that.”

The museum encounter narrated above provides a window into this article’s main agenda, which is to provide an account of one tribe’s process as it has taken on and extended the question: who “owns” Native culture? This question and its implications have been the subject of substantial academic interrogation (Brown 2003, 2004; Povinelli 2002, 2004; Carpenter, Katyal, and Riley 2009; Simpson 2007; Geismar 2013). Interested in the now global social movement to assert control over elements of culture, Michael Brown’s main concern was that if “we turn culture into property, its uses will be defined and directed by law…Culture stands to become the focus of litigation, legislation, and other forms of bureaucratic control” (2003:8). Brown’s book begins and ends with dilemmas of ownership and control over Indigenous cultural materials within the archive. This is an important place for ruminating on the intersection of property and culture and the embedded legal relations that continue to exist therein. Within archives, museums, and libraries around the world, culture circulates as various kinds of property produced through copyright and real property law. However, there is no stopping the action of “turning culture into property,” for what is within these sites is already defined and directed by law in a myriad of ways. For Indigenous material, collectors and researchers who worked in communities are largely responsible for making Indigenous culture into these various kinds of property, especially through the mechanism of copyright. For ethnographic collections within cultural institutions, property is a conceptual organizing force shaping a range of possible relationships between “users,” “owners,” “researchers,” and “subjects.” The Penobscot Nation is one of many tribes in the US grappling with the reality that it is not the legal owner of the material culture held in these institutions, nor the representations of culture, the photographs, manuscripts, and other audio
visual materials that were collected by researchers over the long period of colonial engagement (Fienup-Riordan 2005; Krmpotich and Peers 2013; Brown 2014; Brown, Eccles, and Herle 2016; Brown and Peers 2013). Importantly this is not a US specific issue, but an international conundrum of legal colonial exclusion that conditions a range of Indigenous responses to and within cultural institutions that hold valuable cultural heritage (Peers and Brown 2003, Geismar 2013, Silverman 2015). As non-owners of materials that record their images, voices, histories, and ideas, the Penobscot Nation has to negotiate against the weight of powerful legal orders that reflect colonial idioms of control and authority over Native peoples and the representations of cultures.

This article is focused on how the Penobscot Nation, over the last three decades, has developed a range of strategies addressing the legacies of legal and social exclusions in access to, and therefore decision-making about, the future uses of cultural materials and associated research historically produced and contemporarily conducted on tribal issues and lands. It is an account of how one sovereign Nation in the US has artfully confronted the Western paradigm of property in which so much Indigenous material and immaterial culture is trapped. In response to very specific histories and experiences, and “mobilizing aspects of the introduced legal system to challenge both old and new hierarchies of power” (Merry 1994:40), various initiatives within the Penobscot Nation have worked to develop a dynamic set of mechanisms to address intersections in the legal ownership of collections; the legacies of research that produced some of these problems in the first place; and the ongoing desire to share this heritage in ways that prioritize and respect Penobscot perspectives. Examples of these mechanisms include a tribal intellectual property policy for ownership of future research, a tribal Institutional Review Board\textsuperscript{16} that reviews graduate and professional research involving Penobscot people and conducted on tribal lands, a federal grant to support language revitalization, and two Memorandums of Understanding (MoUs) under negotiation regarding Penobscot involvement in co-curation and access decisions for Penobscot materials that are currently held at the University of Maine and the American Philosophical Society (APS).

As within any community, there are different activities and opinions about how to approach the problem of control over Penobscot heritage. The one that is described here involves a process that has been slowly and deliberately crafted as a direct response to the colonial logics and
legacies of how research and its various products can automatically become a form of property, regardless of intention and regardless of context (Anderson and Francis 2016). Leveraging against the exclusions that this property produces, the Penobscot Nation is actively structuring a future field of action. In doing so, it is influencing and affecting a range of social relationships and realities of engagement around what Penobscot culture is, how it is recognized and cared for by cultural institutions, and how its future use is to be negotiated in terms that are respectful and reflect Penobscot cultural nuance, concern, and authority. As Penobscot academic Darren Ranco notes, “Indigenous forms of legal and political control are often tied to and must be recognized by the settler nation state that surrounds them” (Ranco 2005:241). This work, and the various individuals involved in driving it and bringing it to the community at large, is also considered a necessary part of asserting tribal sovereignty over cultural knowledge that was assembled and collected by others.

1. The Exclusions of Property in the Archive
Ethnographic museums have come under intense scrutiny in the last 20 years as institutions that tell very particular histories about the extent of colonial collecting and/or looting of Indigenous culture (Stocking 1985; Cole 1985; Karp, Kreamer, and Levine 1992; Phillips 2003; Coody-Cooper 2007; Lonetree and Cobb-Greetham 2008; Thomas 2010; Lonetree 2012; Deliss 2015). Few institutions are immune from sharp interrogation about what it holds and how it came to hold what it does. The global reach of the critique of ethnographic museums as well as the material culture entanglements that mark these spaces is extensive (Fourmile 1989; Thomas 1991; Myers 2001; Edwards, Gosden, and Phillips 2006; Evans and Glass 2014; Anderson and Montenegro 2017). Amidst this focus, the institutional archive itself is being opened and questions are increasingly being asked about legitimate authority, consents and contracts, and about the circumstances within communities at the various times materials were amassed and removed. Because the birth of the ethnographic museum is so closely tied to the birth of anthropology as a discipline (Hinsley 1981, 1994; Bennett 1995), this analysis of the making of collections and the ethnographic museum as a particular (knowledge-producing) activity (Thomas 2010:7) continues to offer some important points of reflection for all fields of anthropology, not just the sub-field of museum anthropology.
The reanimation of collections, either physically or digitally, through connection back to the communities from where they derived, has constituted a watershed moment in contemporary ethnographic museum practice (Clifford 1997, 2013; Kramer 2006; Srinivasan et al. 2010; Boast 2011; Bell 2012, 2015; Harrison 2013; Enote 2012, 2014; Christen 2009, 2012, 2015; Jonaitis and Glass 2010; Christen, Bell, and Turin 2013; Rowley 2013; Hennessey et al. 2013; Geismar 2013; Anderson and Christen 2013; Evans and Glass 2013; O’Neal 2015). The reconnection to and reanimation of these collections is happening at multiple scales internationally. Tracking the concomitant relations that are reactivated in processes of connection and engagement illustrate how deep connections run, how significant the ancestors and belongings that left communities are, and how social relationships that were disrupted through the displacements of Indigenous material and immaterial culture can stretch themselves across time and place. In thinking about the reconnection of communities to their heritage, a dual focus on the conditions making the collections possible as well as their ongoing complications in the circulation of memory and meaning in the contemporary moment is necessary.

Important observations can be made about how materials created through anthropological endeavor continue to live in the world and the different kinds of attitudes, ideas, and memories that are mobilized by the multiple actors that encounter them over time. Here there is space for critical thinking about the way in which institutions and their collections have come not only to shape perceptions of the past, but also their role in shaping communities in the present. Cara Krmpotich’s recent ethnography with the Haida Nation in Canada is rich with insight about what the various stages and forms of repatriation of Haida ancestors mobilizes within a community context (Krmpotich 2014, Krmpotich and Peers 2013). As Krmpotich explains, “on Haida Gwaii, the way kin relationships are performed through the use of material culture and remembrance within the process of repatriation reflects a longer legacy of object, memory, and kinship performances occurring across a broad range of Haida cultural practices” (2014:11). Negotiation with institutions over the repatriation of ancestors is long and difficult work. As such, these engagements (and the very politics of return) have inevitably affected a range of relationships as well as how these are interpreted and understood within community contexts.

Other cultural material including photographs, films, and sound materials that represent cultural practices and knowledge are also being
subjected to renewed questions about how they came to be made, as well as what contemporary control and ownership of these materials is and should be (Merill and Ferguson 1993; Lydon 2005, 2012; Glass 2004; Anderson 2005; Nash and Colwell-Chanthaphonh 2010; Isaac 2011; Bell, Christen, and Turin 2013; Gray 2015; Myers 2017). Vine Deloria’s 1978 US Government White Paper calling for Native America’s “right to know” what was collected and assembled about Native peoples and what is now held in the archive, retains its power and resonance because it illustrates just how much information was collected, and how thoroughly Native peoples were subjected to techniques of governmentality, where documentation also functioned as a form of deliberate surveillance and management (Deloria 1978; Kreps 2012; Bennett 2009, 2014; Rowse 2014; O’Neal 2015). Early anthropology is more than implicated in this project (Isaac 2007; Leopold 2013; Bennett, Dibley, and Harrison 2014; Bennett 2014; Harrison 2013). In an Australian context for example, Geoff Gray (2007) has meticulously traced how the formative ideological designs of Radcliffe-Brown, the first Chair of Anthropology at the University of Sydney, to use anthropology to assist in the “administration of native affairs” has underpinned the development of anthropology in Australia. In the US, broken treaties and targeted legislation were instrumental in producing compromised conditions within communities that enabled the study and documentation of Native American lives, languages, and cultures. That relationships between early anthropologists and Federal Indian agents situated on or near tribal territories were central for facilitating fieldwork encounters highlights the interpersonal networks of colonial governance that early anthropology was indebted to and embedded within (Hinsley 1981, Cole 1985, Moses 2002, Hinsley and Wilcox 2002, Hochman 2014, Jenson and Patterson 2015). That past anthropological practices and their research outcomes (material culture, photographs, audio-visual material) have an ongoing legal and political life well beyond the original encounters remains of critical interest to our discipline. The relationships of property that anthropology itself makes is a compelling site of analysis. The nature of these relationships and entanglements need to be more widely understood and investigated. How Native individuals and communities are navigating this ethnographic archival overload—which has the irony of being both culturally important and also extremely overwhelming—tells an important story about time, property, and the entwined nature of the relationships between knowledge, power, people, and things (Tapsell 1997; Povinelli 2002; Peers and
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The return and circulation of cultural material and various forms of documentation animates discussions about origins and production. Reconnection can serve as an important vehicle for challenging interpretations and meaning that have been produced without Indigenous perspectives and input. As Alison Brown and Laura Peers explain in their contribution to the practice of projects of visual repatriation,

photographs—often obtained during times of intense cultural pressures—can inspire the telling of community and cultural histories which are otherwise little documented and difficult to retrieve, submerged as they often are by mainstream historical analyses and by processes of colonialism. (2006:7)

Photographs, but also audio and other visual materials, remain as remarkable sites for the unfolding of intersecting (colonial) histories (Edwards 2001, Bell 2008, Geismar and Herle 2010, Evans and Glass 2013, Fisher 2016).

To take this intersection and twist it a little further opens a space for another remembering: that these collections, tangible and intangible, remain as property with rights that are largely retained by an institution or the researcher who “made” the collection in the first place. This memory of property marks a power differential that can be too easily hidden away, yet continues to exert influence in what kinds of relationships between communities and institutions (and their agents for change) are possible. Krmpotich, Brown, and Peers all encounter the problem of property in their work with the Haida and Kainai Nations respectively. The presumptions and implications of property constitute the prehistory for each; the ethnographic account of repatriation work at a community level is conditioned by this already existing property status. Krmpotich’s work is important because it provides an understanding of the affective agency of repatriation within a community context. The colonial property idiom continues to exert considerable influence. For instance, the intricate undoing of institutional property and possession were crucial to the successful negotiations for the repatriation of Haida ancestors from over ten institutions (Krmpotich 2014:55). Why these negotiations take so long and how they have influenced the
Skidegate Repatriation and Cultural Committee specifically, and the Haida community more generally, are all affects of property. As ancestors return, the tethers of colonial “real” property do loosen, but getting to that point takes energy, time, and perseverance. It also requires an emotional confrontation with the colonial violence of grave robbing and how ancestors taken under these circumstances are remade into stable “objects” of property that are then governed by specific legal logics (Mihesuah 2000, Fine-Dare 2002, Pratt 1992, Benton 2017).

For Brown and Peers (2006), the return of the photographs taken by Beatrice Blackwood from the Pitt Rivers Museum to the Kainai Nation elicit profoundly important connections for the Kainai between the past and the present. Not only is another narrative made possible but missing information from the historical record, like the names of the people in the photographs, are added and redressed. But there are two kinds of entwined property here—copyright in the photographic representations of the Kainai and property proper in the physical copies that the Pitt Rivers Museum holds. They also continue to exert their power as property. Any future researcher has to hold fidelity to these owners in any reproduction permissions and credits. If members of the Kainai Nation wanted to use these photographs, in publications or on their own community website for instance, they too would need to get rights permissions or alternatively get a waiver for use from the institution. The significant work by Brown and Peers to create a different kind of record of this encounter and to bring back people’s names and experiences is a crucial part of decolonizing the archive. But ownership and its cycles of permission and citation, for instance who gets named as the author and who grants permissions for use, remain undisrupted and normative.¹⁹

All ethnographic material finds itself in a property framework (of ownership and legal rights), which is folded into the routine operation of the archive, library, museum. This continues to affect any access and use that a community might want. Property organizes people in relation to each other and as such produces social relationships including networks of obligation (Macpherson 1978; Myers 1989, 2005; Weiner 1992; Strathern 1999, 2005; Verdery and Humphrey 2004). But these obligations do not necessarily move in the same direction because property is always an exerted instance of power. Institutions, which largely hold the legal rights, have no obligations to notify tribes about what cultural material they hold. In the US, federally funded institutions are obligated to notify and return to federally
recognized Native communities their ancestors (human remains) and funerary and sacred items under Native American Graves Protection and Repatriation Act 1990, a unique (sui generis) species of cultural property law. Outside of NAGPRA, as in other non-US contexts, the onus remains on community members to locate their histories, their photographs, and voices of families, their cultural representations, and their material culture. The invisible labor needed to locate collections is substantial. There is no easy way out of this property prism, even if this material should never have been considered or made into property to start with.

The increased digitization of collections by institutions remains an important effort to deal with colonial legacies of access to collections. However, digitization does not undo or dissolve already existing property relations embedded in the material itself. In the movement to the digital, new copyrights are generated which can compound the problems of responding to Indigenous concerns about ownership. At an institutional end, it can also effect what material can be digitized to start with (Hirtle, Hudson, and Kenyon 2009; Torsen and Anderson 2010). Significant collaborative projects like the Reciprocal Research Network (RRN) initiated through the University of British Columbia’s commitment to working with communities (Rowley 2013), the Melanesia Project at the British Museum (Bolton et al. 2013) or even the Field Museum’s 10,000 Kwento Project make material differently available, but they do not address property relations already vested in the material.

While all ethnographic collections are inevitably and securely embedded in the law, the law does not exert itself visibly, consistently, or evenly. For instance, while some cultural material like photographs may now be considered to be in the public domain, which is not a naturally occurring space but one actually made and determined by law (Boyle 2008), an institution can still assert ownership over the physical copies of photographs or lantern slides. In the US, all sound recordings of Native America—even the very first made by Jesse Walter Fewkes with Passamaquoddy tribal members, Noel Josephs, Peter Selmore, and Perle Lacout in Calais, Maine in 1890—are in copyright until 2067. Indigenous communities, if they want some say over these collections, find themselves needing to negotiate around this legal infrastructure. The multiple property regimes that govern cultural materials need to be made more visible because it is knowledge about their operation that is required to maneuver around them. Ethnographic collections, as property, reproduce colonial networks
of relations between persons and things. More precisely, the activity of institutions like museums and archives—as the owners of the “things” and because they have a significant role in producing knowledge about Indigenous people and cultures—condition what kinds of relationships between peoples and things are possible. Thus, institutions continue to organize Indigenous peoples and communities in relationship to this original ownership order. Non-engagement, however, is not an option. Indigenous communities need institutions because this is where belonging and cultural memory is housed. Indigenous peoples, then, remain subjected to the Western institutional logics of ownership, access, and control. The archive is a key technology of rule because of how it organizes, assembles, and produces knowledge about particular peoples (Sekula 1986; Derrida 1996; Stoler 1995, 2002, 2009; Osbourne 1999; Dirks 2001; Hamilton et al. 2002). Consequently, how Indigenous cultural material is positioned and owned inevitably also affects how Indigenous peoples are able to make claims to this material, develop strategies for negotiating shifts in access, refuse the temporal legacies of research, and take control of circulations in meaning.

Locating collections is difficult work at a community level, not only because of the time-consuming nature of navigating the peculiarities of institutional catalogues and developing relationships with institutional archivists, librarians, and curators, but also because of the emotional reach into the collective past that is required to comprehend and engage with these. Here the memory of property is also the remembering of who was in the community at which time and who worked with whom, what relationships were created, and with what consequence. As Ranco (2006:61) has observed, past research practices remain as historical and colonial contexts that continue to effect contemporary Indigenous peoples. The work of remembering these research engagements reveals the diverse range of power imbalances woven into the historical record, as well as embedded within standard institutional practices (Anderson 2013). For instance, catalogue entries routinely place a community name or community individual name, if it was recorded or has even been identified and included, as secondary information. Authorship and therefore legal title is conferred on the researcher, the collector, and sometimes the institution itself, and it is their name that is connected and functions as the primary logic of organization for the museum, library, or archive: the Speck collection, the Fewkes recordings, the Haddon collection, the Curtis photographs, the
Heye collection for example. This is not arbitrary naming. The researcher/collector is the legal liberal individual with rights that the catalogue recognizes and endorses. But this legal title is inflected with colonial relations that the law has produced and normalized, to the extent that we rarely even notice the work that this naming does to instantly confer legal ownership (Comaroff and Comaroff 1991, Comaroff 2001, Merry 2000, Moreton-Robinson 2015). That the collector’s ownership in the act of naming is taken for granted is part of the hegemony of property that remains strong and present. Further, through institutional efforts at digitizing collections, these problems of colonial exclusion are all carried into the newly produced metadata. These naming and authorship practices hint at the deeply institutionalized cultures of legality within these sites, and these are important factors that condition future dialogues and relationships between tribes and institutions.

2. Developing a Strategy for the Penobscot Nation

The Penobscot Nation is a federally recognized tribe in the US with a population of 2,397 whose ancestral territories include, but are not limited to, the entire Penobscot River watershed. Penawahpskewi is the name for Penobscot people, and is a word that connects people to the rocky part of the Penobscot River near Indian Island and Old Town, Maine. This is where tribal governance and infrastructure, including the tribal offices and the Indian Island school (pre K–year 8) is maintained (Newsom et al. 2014). Today, Penobscot territories consist of 123,000 acres, which include trust land and fee land acquired through the 1980 Maine Indian Claims Settlement Act, reservation lands, and 200 islands within the Penobscot River (Newsom et al. 2014, Francis 2015, Prins and McBride 2007, McBride and Prins 2009). The current Chief for the Penobscot Nation is Kirk Francis who has held this responsibility since 2006. The Department of Cultural and Historic Preservation was established in 2004 with Bonnie Newsom as the Director and James Eric Francis Sr. as the Tribal Historian.

The enormous work done in the 1960s and 1970s to secure federal recognition from the US government and the reclamation of traditional lands from the State of Maine activated a renewed policy foci within the Penobscot Nation. Questions of self-determination, community well-being, tribal membership, future educational and development projects, and relations with the non-Indian community were of critical interest. The 1977
grant that Penobscot academic Eunice Nelson-Baumann received from the Maine Council for Humanities and Public Policy addressed the legacies of misinformation and historical biases in how the Penobscot community was perceived and represented. It also sought to examine how this misinformation and historical bias impacted community identity. The grant supported increased capacity for intra-tribal conversations about resolving these issues (Nelson-Baumann 1977). Concerns about representational politics, histories of dispossession, and the development of self-determination and strategies for the recognition of sovereignty continue to inform Penobscot internal and external policy focus (Ranco 2005, Ranco and Suagee 2007, Loring 2008, Prins 1997, Duffield et al. 1999). The current case that the Penobscot Nation with the US Department of Justice is pursuing against the State of Maine—namely that the Maine Indian Claims Settlement Act includes Penobscot sustenance fishing rights within territorial waters—is representative of this continued trajectory of addressing Penobscot cultural rights and sovereign interests post federal recognition (Loring and Mitchell 2016, Sunlight Media Collective 2015).

However, as former Penobscot representative in the Maine Legislature Donna Loring has noted in multiple contexts, and more recently alongside Penobscot international law expert and activist Sherri Mitchell, there remain significant barriers to the inclusion and recognition of Penobscot sovereignty from the Maine State government (Loring 2004, 2008, 2015, 2016; Loring and Mitchell 2016).

Over this same period there have been several incidents that prompted attention to questions about tribal authority, integrity, and sovereignty over tribal knowledge, language, and history collected and recorded by non-Penobscot people. Maori scholar Linda Tuhiwai Smith’s observation about research being one of the dirtiest words in an Indigenous vocabulary maintains its resonance within a Penobscot context (Smith 1999, Tuck and Yang 2014). Distrust of researchers arising from prolonged misrepresentation has had many consequences including deep skepticism of researcher intentions and the deliberate if not also playful obscuring of community traditions (Prins 1998). One incident in 1998 that continues to reverberate at different levels within the community involved the dissolution of a collection of Penobscot material and immaterial culture that had been assembled through research, gift, purchase, and loan to the researcher, Frank T. Siebert, who worked for and with the Nation for over 30 years. The series of events involving Siebert engaged legacies and responsibilities of research within a tribal context, the idiosyncratic personality of an
individual and his own personal past, and the unanticipated and unimagined loss to various institutions and private collectors of valuable material culture and tribal knowledge. Siebert’s research was focused largely on the Penobscot language, and his contribution to its preservation cannot be understated (Prins and Walker 1998, Goddard 1998). Upon his death however, Siebert’s collection and research were inherited by his daughters. Siebert had an estranged relationship with his daughters, and they, in turn had no relationship with the Penobscot community. All this material was taken away from Old Town and Indian Island and transferred to institutions in other parts of the country. Ownership of the language research material was legally transferred to the American Philosophical Society (APS) in Philadelphia where it currently resides as a collection constituting 41 linear feet. The material culture went first on loan to the University of Pennsylvania Museum of Archaeology and Anthropology, then on loan to the Abbe Museum in Maine, and then in 2011, to auction at the behest of one of the daughters. While the Penobscot Nation mobilized and initiated the Penobscot Material Culture Collaborative, an alliance between the Penobscot Nation, the Maine Indian Basketmakers Alliance (MIBA), the Abbe Museum, the Hudson Museum at the University of Maine, and the Bangor Center for History, at the time of the imminent auction, a large portion of important Penobscot material was sold into private collections. Following the sale, none of this material has resurfaced, its locations remain unknown to the Penobscot Nation. The Penobscot Nation, in collaboration with the Maine Indian Basketmakers Alliance was only able to purchase a small number of items in the auction—one of the most important being a basswood bag. Siebert’s daughters, the staff at the APS and at UPenn Museum did not consult with the Penobscot Nation over the future of any of this material. They exerted their legal and socially entitled positions as property owners or managers. This was despite the deep and long-term relationships that Siebert had with the community that had facilitated, contributed, and enabled all his work.

What this incident mobilized was a concern that the Penobscot Nation had no mechanisms to ensure the respectful treatment of Penobscot culture by non-Penobscot people. It also did not have any infrastructure in place for a research permitting process. This prompted a range of internal questions about what was Penobscot culture to start with and what were the appropriate protections or permissions that would be necessary? As a response, the Penobscot Nation created the Penobscot Heritage...
Preservation and Protection Committee, which worked to develop a set of rules for research, publications, recording, and other media conducted on Penobscot lands. The Committee developed policies, procedures, and request forms which stated,

that the Penobscot people have promulgated and passed these rules to protect their rights to privacy and to the Penobscot intellectual resources due to continued abuse, misrepresentation, and exploitation of the rights of our people. It is necessary that guidelines be established and followed so as to protect the rights of the present and future seven generations of Penobscot people. (Francis 2015)

The problem for the first Committee was that there were very real challenges in terms of conceptually working through the intricacies of assessment, approvals, and permissions. Consequently, there was limited community capacity and support, and almost all requests that came to the Committee were denied. As a result, in 2002 the Cultural Historic Preservation Committee was formed, which took over the duties of the Heritage Preservation and Protection Committee. James Francis was the first chairperson of that committee and one of its key functions was to be a supplemental advisory to the new Department of Cultural and Historic Preservation. The department took the rules that were established in the first Committee and began to implement them. Several additional outcomes included the decision to develop a position for a tribal historian. The function of this position would be to also develop research protocols and policies and oversee their implementation. This led to the decision that the Penobscot Nation needed its own Institutional Review Board to monitor and assess research that involved Penobscot people and knowledge. At this point it became necessary for full community engagement; it could not just be the work of one Department in the community (Newsom et al. 2014). As a result, Bonnie Newsom and James Francis set about engaging with a series of intra-tribal dialogues to build consensus as well as explain and identify concerns about this work. As Newsom observed in an interview commenting in this process: “Originally, I envisioned a basic community focus group process but what came out of it was a whole process that was endorsed by tribal leadership and was a product of multiple departments. It went way beyond what I had envisioned” (Newsom quoted in Woods 2014).
In 2008, as an additional support to this larger project of building a community strategy for the varied research engagements with Penobscot culture, Newsom, with collaborators Martin Wobst and Julie Woods at UMass Amherst, initiated a project through the Intellectual Property Issues in Cultural Heritage (IPinCH) project at Simon Fraser University in Canada. The project was designed to “identify issues the tribe faces regarding intellectual property associated with the cultural landscape of the Nation” (Newsom et al. 2014:4). The IPinCH project built upon and extended the community infrastructure that had been initiated by the newly established Committee and Department of Cultural and Historic Preservation. Outcomes included strategies for negotiation around agreements and protocols, a stewardship, a management plan for cultural information. It was another response to ongoing concerns about the sharing of tribal knowledge, which had at this time also been compounded by an incident with an archaeologist who had disclosed sensitive information to a state entity without prior tribal approval (Newsom et al. 2014:3).

The IPinCH project navigated the complex terrain of university and tribal research relationships, the history of archaeology’s exclusion of Native interests, and the increasing question about intellectual property rights and tribal knowledge (Newsom et al. 2014, Woods 2014). Continued tribal engagement was critical for this project and it was built into the project in the design phase. A ten member Intellectual Property (IP) Working Group was set up with a representative from a range of tribal departments including the Child Support Agency, Information Technology, Indian Health Services, and Tribal Planning. This decision to bring different departments together to deal with questions of intellectual property and research has been the glue for much of the work that the Penobscot Nation is now undertaking. Increasing tribal knowledge about intellectual property law and its applications (or problematics) was another key component of the project. It opened an extensive dialogue about sharing tribal knowledge: namely the various kinds of sharing of Penobscot culture that community members envisaged as appropriate into the future (Newsom et al. 2014).

This project and the engagement that it facilitated led to two further internal tribal developments: the establishment of the Penobscot Tribal Research and Resource Board (PTRRB) and the initial development of several MoUs with institutions that are important to the Penobscot Nation because of the collections that they hold. PTRRB is designed to be the primary decision making body for vetting research through the Penobscot
Institutional Review Board which will initially compliment the University of Maine, Orono IRB, and for projects that support the further negotiation of access and control over Penobscot cultural resources—including collections within institutions nationally. With legal ownership of these collections beyond the Penobscot Nation’s control, the only realistic way to recognize the unique nature of Penobscot interests in these collections has been to come at the problem in another, albeit legal, direction. This has been through strategic, direct, and structured relationship building provided through the legal mechanism of MoUs (or Memorandums of Agreement, which are a more formal version of a MoU).

3. The Role of MoUs in Establishing New Relationships
In the absence of legal rights to own and therefore control collections within institutions, the Penobscot Nation has utilized MoUs as a means for establishing new relationships within these sites. As these relationships are being put in place through a very specific legal mechanism akin to contract law, they are potentially reinscribing the power of settler-colonial legal paradigms of negotiation, especially because contract law is largely interested in mediating relations of exchange. This is a paradox that informs the inevitable negotiations that are made to effect a change in the conditions of property that still govern how communities can interact with institutions. But MoUs are also an example of strategic maneuvering, and therefore an active refusal to remain subjected to the logic of property, its historical and contemporary exclusions, and property’s embedded processes of intelligibility and governance (Simpson 2014, Moreton-Robinson 2015). MoUs serve a very specific purpose and are not necessarily an end in themselves. To the contrary, as agreements that are made between any groups of people and/or institutions and organizations, including industry interests, they establish new negotiative frameworks, which can be built on over time (Langton and Palmer 2003, Langton et al. 2006, Langton and Longbottom 2012). MoUs are sensitive to both specificity and temporality. They function as a “switch-point” (Bennett 2013:48) for reorganizing previous relationships of inequity, allowing for new overlapping networks of connection and circulation through negotiation.

An MoU is usually a document that is collaboratively developed that describes the terms of an agreement between two or more parties, as well as the goals of the cooperation. An MoU typically marks the beginning of
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a future relationship on a set project. It is an opportunity for the parties developing the MoU to outline their visions, their expectations, the reasons for coming together, strategies for next stages, and how to resolve issues if they arise. An MoU describes a very broad concept of mutual understanding, goals, and plans shared by the parties. It can define the initial extent of the relationship as well as common interests and objectives. Thus their function is framed around building relationships and adapting to these as they change. For instance, an MoU could initially set preliminary parameters in a tribal engagement with an institution, including identifying the collections of focus, clarification on tribal access, institutional contact points, and goals for reconnecting with the collections. Once these parameters have been met or become the established standard for tribal engagement, a new MoU can be negotiated. A subsequent MoU can extend the recognition of tribal authority in making decisions about the collection, appropriate designation of cultural protocols over sensitive material that has been identified by the tribe through their access, and which will provide support for managing the collection, catalogue reentries that include Indigenous input and, attributions, and/or agreements about future publishing of unpublished material. MoUs cannot change the copyright or real property status embedded within collections, but they can attend to some of the consequences of property’s exclusions—especially in relation to decision-making, tribal attribution, and also amending, changing, and enhancing the historical record produced and circulated by archives and museums. As a result, MoUs have a potential role in changing how meaning within an archive or museum is produced. They can be used as a strategic political tool in epistemic politics and negotiation.

MoUs also facilitate the making of relationships between people and things in ways that have previously been overlooked and/or foreclosed by dominant logics of ownership and possession. This is the potential productive capacity of law (Hunt and Wickham 1994, Coombe 1998, Barker 2011). The formal nature of MoUs can also set specific objectives and actions which can be leveraged by communities who, in instances around the ownership of culturally significant material, might have rhetorical power but do not, and are unlikely to, hold legal title. This can have benefits in terms of establishing new standardized practices for other tribal engagements with institutions and making visible previously unacknowledged power differentials within standard institutional practice. Entering an MoU requires an institution to adhere to the agreement as a matter of law. This elevates
the relationship as one between a tribe and an institution, thus effecting an important recognition and relationship of tribal sovereignty.

The first set of MoUs that the Penobscot Nation negotiated with an institution that held its cultural materials was with the American Philosophical Society (APS) in Philadelphia. The APS holds an extensive collection of Native American material, especially pertaining to language. The Penobscot collections derive from researchers who worked in the Penobscot Nation for over a century, including Mary Haas, C.F. Vogelin, Frank Speck, and Frank Siebert. The MoU was initiated as a requirement from a Mellon Foundation Grant that the APS received to digitize some of their collection (APS 2011).

The second MoU between the APS and the Penobscot Nation came about because of a National Science Foundation (NSF) grant that the University of Maine had submitted with the APS to digitize the Penobscot Dictionary without Penobscot Nation collaboration. This initial NSF grant was rejected and this was when the Penobscot Nation was made aware of it. Ironically, at the same time the Department of Cultural and Historic Preservation was in the process of putting in their own grant to the Administration of Native Affairs (ANA) for a very similar project on language revitalization involving the Penobscot Dictionary. The weekend before the ANA grant was due, it was rewritten entirely to dovetail with the revised NSF grant—as the Penobscot Nation wanted this digitization work done. More pointedly, a new section to the ANA grant—“Protecting Our Voice”—was included that explained its purpose as developing “the knowledge, legal tools, and inter-organizational protocols necessary to protect its inherent intellectual property rights to its indigenous language and all derivative product thereof” (Penobscot Nation 2012). The ANA grant also stipulated the development of MoUs that would establish more formal relationships between the key institutions holding Penobscot language collections. With the aim of creating a sovereign nation to institution relationship, the planned MoUs also sought changes in how the Penobscot Nation would be engaged in future decision-making processes around the use of Penobscot collections. Thus began a new phase in the negotiations over who owns Penobscot culture.

This MoU coming out of the revised NSF grant was only a few pages long, had eight clauses and had realistic outcomes in terms of setting up a new relationship between the APS and the Penobscot Nation. The new relationship that the MoU initiated meant that the APS responded specifically to Penobscot interests in their collections, extending and adding to existing standard policy. From a Penobscot perspective it also served as
an important means to get access and do research on Penobscot collections in ways that had not previously been possible. For instance, digitizing collections for Penobscot use that were not dependent upon travel to the APS in Philadelphia. The MoU recognized that the Penobscot Nation’s interest in their own collections exceeded the APS’s usual “public.” The time-period of the MoU was set for the duration of the NSF and initial ANA grants, with a clear future option for a further negotiated MoU written into the document. The MoU also served APS interests in important ways. In 2013, when the MoU was negotiated, the APS was in the process of establishing a Native American Advisory Board and also developing a protocol for addressing sensitive material within the APS collections. Thus, one clause of the MoU addressed Penobscot representation on this Advisory Board. This clause offered the possibility of an extended collaboration beyond access to Penobscot collections. This also contributed to a differentiated relationship to what had previously existed between the Penobscot Nation and the APS, where the Penobscot Nation had existed as one of over 500 tribes whose material the APS owned and controlled. Yet it is important to note that in both this initial MoU, and in the subsequent Protocols for the Treatment of Indigenous Materials (APS 2014), the APS asserted its legal ownership over these collections. While the MoU functioned as a means of elevating the authority of the Penobscot Nation, ownership in these collections remained normative and property continued as the primary figure for organizing future relationships.

The Penobscot Nation is currently involved in negotiating two further MoUs with the APS and the University of Maine. Taking the first as its point of departure, these negotiations are extending the nature of the expectations and relationships between these institutions and the tribe. In particular, these new MoUs have three substantial subthemes: firstly, the general recognition of tribal sovereignty over Penobscot cultural resources; secondly, addressing Penobscot involvement in the future management and curation of Penobscot collections held in these institutions with clear suggestions for new systems of labeling the collections; and finally, an acknowledgment of the tribal policies and infrastructure now in place to assist in the determination of future research and the conditions under which it will reside within and be shared with an institution. These MoUs are about relationship building: the primary focus of negotiation is making sure that the Penobscot Nation is at the table when decisions about the use of Penobscot collections are to be made. This is not necessarily as “owners.”
Retroactively asserting this legal status can only happen through direct contractual “Transfer of Ownership” agreements. Instead the Penobscot Nation makes its claim as the “relevant cultural authority over these collections” (where it is clear they are Penobscot collections). In this reframing there is a negotiation over what ownership is and means, and also how coming at it from another angle twists the presumptions that are institutionally embedded within ideas of owning and possessing and what kind of authority this confers.

Over the last six years, the Penobscot Nation has elaborated its trajectories for potential interventions into the management of Penobscot interests in its cultural heritage, especially in contexts where ownership is held by non-Penobscot parties or institutions. These trajectories have moved beyond identifying collections—though this always remains important—into deliberate and practical strategies for changing practices in how the Penobscot Nation is engaged and consulted in relation to research and the sharing of tribal knowledge. Some of these strategies deploy legal frameworks to leverage out new negotiative agency. Others are more bureaucratic, setting up tribal infrastructure and decision-making processes that can counter some of the anticipated complications of ownership and tribal rights that continue to arise. One recent example was in the publication of the Penobscot Dictionary reassembled through the NSF grant (mentioned above) by the University of Maine Press. In this particular instance, the Penobscot Nation created an agreement that both the University of Maine Press and the Penobscot Nation held copyright.32

**Conclusion**

In early May 2016, I was sitting with Jennifer Neptune on the floor of the Hudson Museum at the University of Maine, Orono. Jenn was explaining the intricate beadwork on the 1870 set of chief’s collar and cuffs behind the glass—the set that comes to visit for the chief’s inauguration and that she had beautifully replicated in the copy made for the tribe the year before. In looking closely, Jenn showed me the different stitches that had been used indicating it was a work of multiple hands, the sections where certain kinds of beads had run out and had to be replaced by others and the merging of at least two different fabrics underneath the beadwork which had been almost hidden. Next to the collar and cuffs was the basswood bag that the Maine Indian Basketmakers Alliance had purchased.
from the 2011 auction of Penobscot material culture assembled by Frank Siebert. The proximity of these items next to each other folded into our conversation. Jenn had also been one of the tribally designated bidders at the auction. As we were sitting together she retold the story about that day at the auction, how nervous she had been, how important it was and how. As she began to bid, it became clear that she was competing against a private bidder on the phone and that person kept going higher and higher. Jenn knew she couldn’t go any higher than the reserve price, which was the money that the Penobscot Nation and the MIBA had raised, and they were at that limit. Then the private bidder stopped, and she had the winning bid and amidst her relief was also a profound sense of loss for the other material about to disappear into private hands; the emotional confrontation with this ongoing collision of colonial pasts in the present were overwhelming. Jenn finished by saying that what really upset her the most, was that when she went to collect the bag, the auctioneers treated it badly. They just handed it to her and pointed to the recycled plastic bags that she should use to put it in. It was in that moment that Jenn said she really felt the full weight of disrespect: how her community’s heritage and its place within a network of socio-cultural relations was unintelligible. In the transition from Penobscot hands to Siebert, and from Siebert to his daughters, who had decided to capitalize on the economic value of their estranged father’s Native material culture, the basswood bag had been embedded into a complex network of property relations.

Ethnographic collections within institutions and the politics of contemporary research that involves Indigenous peoples are deeply entwined, and this is precisely where the Penobscot strategy has been directed. Not only concerned with past practices, the Penobscot Nation is committed to creating a productive rupture with this tradition so that such colonial practices are not perpetuated into the future. This is because the laws that allowed researchers to be the copyright holders and authors of research produced through relationships of collaboration, trust, and cultural exchange have not changed. It is the Penobscot Nation that has to augment these through tribally developed policy, protocols, agreements, and MoUs within their own sovereign territories and as they directly relate to Penobscot research interests and experiences.

This article presents one part of a larger story of how the Penobscot Nation has encountered the tensions of empire that are regularly mediated by means of law. In this instance it is the forces of property law
and the various kinds of adaptations, innovation, and developments re-
quired at the tribal level to build community-wide and agreed upon gover-
nance structures that both embrace and modify property frameworks for
Penobscot purposes. The strategies that the Penobscot Nation has de-
veloped to address the legacies of legal and social exclusions in access
to, and decision-making about, current Penobscot collections are also in
response to the colonial legal orders that are embedded within cultural
institutions. These continue to play out in a variety of ways. What is im-
portant to understand is that these strategies mark a very deliberate ma-
neuvering around frameworks of institutional control as well as legacies
of research conducted on and with Penobscot people (Smith 1999). How
research was conducted and justified, what kinds of permissions were
required and what kinds of relationships were established are all subject
to colonial politics. It should therefore be of no surprise that taking on the
legal exclusions with regard to access and ownership of materials within
the archive also means reconfiguring how research is to be conducted on
a sovereign Nations’ terms in the present.

The Penobscot Nation’s experience also illustrates how intricate and
time-consuming the work of negotiating new forms of engagement with
the institutions that hold Penobscot histories and cultures can be. The
colonial logics of property and the accompanying exclusionary practices
that travel with ethnographic collections from the moment they are made
are hard to rupture. Reanimating the archive, which is the focus of so
much tribal and institutional collaborative effort of the current moment,
is not only about uncovering the relationships integral to the making of
collections. It is also about rendering visible the larger legal and social
frameworks that were operating at the time collections were made, as-
sembled, and arrived in institutions. For these remain largely unchanged
and integral to any futures (including digital ones) that this kind of material
will have, especially what kinds of rights and responsibilities can be re-
imagined and re-negotiated. For the Penobscot Nation it is a necessary
reassemblage of cultural authority over the extensive cultural histories,
memories, and meanings that continue to live and circulate within non-
Indigenous institutions. It is also an assertion of inherent Penobscot sov-
ereign rights over this material. ■
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Endnotes:

1 The AMNH announced in September 2017 that it had received funding from the Mellon Foundation to begin a multi-year project renovating the Hall of the Northwest Coast Indians. They have begun conducting initial consultations with Pacific Northwest communities (AMNH 2017).

2 This project, called Shadow Lines: Hidden Relationships in Colonial Collecting, was developed in collaboration with Sonya Atalay (UMass, Amherst) and Amy Lonetree (UC, Santa Cruz). Last accessed from www.shadowlines.org on January 20, 2018.

3 This working group consists of: Mark Chavaree, Bonnie Newsom, Darren Ranco, Nick Francis, Awendela Dana, Chris Sockalexis, James Eric Francis, Gabe Paul, Marie Mitchel, and Kirk Francis.

4 Gustav Heye amassed the largest collection of Native American cultural material. He did this by employing anthropologists and other individuals who were in the “field” to “purchase” material when they were able. Upon his death, the collection contained 225,000 catalogue numbers and over 700,000 individual items. In 1989, it was transferred to the Smithsonian and makes up approximately 85 percent of the National Museum of the American Indian’s current object holdings. Importantly, the Heye library, which consisted of over 40,000 volumes, field notes, and other documentation pertaining to the collections, as well as photographs and expedition notes, was moved to the Huntington Free Library in the Bronx in 1930. The collection from the Huntington Free Library (comprising of over 40,000 volumes on archaeology, ethnology, and Native American history, as well as associated field notes and documentation) was not transferred to the Smithsonian in the 1990, despite at least three New York State and federal court cases over 15 years initiated by the Smithsonian to unite the documentation with the material collections. Each time the courts decided that this collection of documentary material had become a separate collection and that the Huntington Free Library was the owner. In 2004, the Huntington Free Library sold this collection to Cornell University Library for $2.5 million. It remains an unprocessed collection.

5 Faye Ginsburg and Peter Whiteley helped organize this visit quickly.

6 Most institutions, including the AMNH, have on public display only ten percent of its holdings. This was true for the Penobscot material. In the permanent halls there were perhaps less than 25 material culture items on public display, but in storage there were 259. We were not seeing the audio-visual collections.

7 William C. Orchard was an anthropologist working as a technician at the AMNH (1895–1909), then University of Pennsylvania (1909–1915), and then at Gustav Heye’s Museum of the American Indian (1915–1940).

8 Erastus Tefft was a collector of Native American cultural material. He was a member of the New York Stock Exchange. His collection was purchased by the AMNH.

9 J.P. Morgan was an American financier and patron to Edward Curtis. He had a holiday home close to Mt. Desert Island in Maine (McBride and Prins 2009).

10 Mary Kissell was an anthropologist who specialized in textiles and basketry (Jacknis and Hasinoff 2014).

11 Frank Speck was an anthropologist who spent the bulk of his career at the University of Pennsylvania. He is the author of Penobscot Man (1940) (Blankership 1991, Bruchac 2015).

12 Gabriel Paul (Maliseet), was a key informant for Frank Speck and lived with Penobscot family on Indian Island (Foster and Cowan 1998, Bruchac 2015, and personal communication with James Francis 2016)

13 Both the Hopi Tribe and Seneca Nation of Indians have had instances (through NAGPRA) in the return of belongings that had been treated with arsenic.

14 Francis’s personal communication, 2015.

15 Collections within institutions can hold Indigenous material culture that was produced by communities for sale to tourists, researchers, or other visitors within the community. Sometimes tribal members
themselves sold important cultural items because of extreme and difficult social and economic circumstances largely brought about through governmental policies. However, because provenance information about collections remains difficult to access, this is hard to assess in any collection.

14A resource for assisting in the development of tribal IRBs. For more information, see http://www.crcaih.org/assets/RKC/CRCAIH_Tribal_IRB_Toolkit.pdf. Last accessed on October 2, 2017.

17The recent 2015 Indigenous Australia: Enduring Civilization exhibition of Aboriginal and Torres Strait Islander cultural heritage at the British Museum (and the necessary parallel Encounters exhibition at the National Museum of Australia) is illustrative of how contentious some collections and some institutions still are.


19See also the impressive project of returning historical photographs of Aboriginal Australians from four European institutions: Pitt Rivers Museum at the University of Oxford, the Cambridge Museum of Archaeology and Anthropology, the Musee Quai Branly in Paris, and the National Museum van Wereldculturen in Leiden. The project website clearly states: “Each of the participating museums is committed to making these images available to descendants. They retain ownership of the images” (emphasis mine). Last accessed from https://ipp.arts.uwa.edu.au/ on October 2, 2017.

20Sound recordings occupy a peculiar position in US copyright law. In the revisions of the 1909 Copyright Act, sound recordings as an emergent form of technology were considered too new to incorporate. They remained protected under common law copyright which was state specific and which saw property protected perpetually. In an amendment to the Copyright Act in 1971, sound recordings became federally protected copyright subject matter. But there remained the problem of how long recordings made prior to this inclusion should be protected for, and how to move them from state based protection into the federal system. Significant lobbying on behalf of interested parties including the recording industry saw the inclusion of a provision for all pre-1972 sound recordings to move from state jurisdiction to federal jurisdiction in 2067, when they will also simultaneously enter the public domain. This means that all pre-1972 sound recordings remain in copyright until 2067(Jaszi and Lewis 2009).


22This case is currently in appeal with US Federal Court of Appeals, First Circuit.

23In his time working with and living close to the Penobscot Nation, Siebert did not exhibit great wealth. He lived in a small house that was full and cluttered. After his death, his rare book collection that he had amassed was sold at Sotheby’s in two parts. The first sale reached a figure of $6 million USD (Lowry 1999), and the second sale making $12 million USD (Sotheby’s Auction House 2000).


25The basswood bag was valuable to the Penobscot Nation for future generations as it is one of the few examples of this kind of weaving technique which will be important in the face of destruction to the ash tree from the Emerald Ash Borer. For more, see http://www.emeraldashborer.info/. The Emerald Ash Borer is destroying ash trees across the country and spreading eastwards to Maine. The ash tree has traditionally provided the primary basket weaving fiber for the Penobscot and other Wabanaki communities. With concern for the loss of this important resource and with it the loss of very specific cultural knowledge, access to historical knowledge about weaving with other fibers, like basswood has become very important. See the collaborative work within Maine since 2009 through this project: Sustaining Maine’s Brown Ash Resource, http://umaine.edu/brownash/.

26For more information, see the project’s website. Last accessed from http://www.sfu.ca/ipinch/ on October 2, 2017.


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28Founded by Benjamin Franklin in 1769, the APS is understood to be one of the oldest archives in the US.

29The Administration for Native Americans grant was called: “Recovering Our Voices” Language Immersion Project.

30This followed, and is indebted to, the important 2007 Protocols for Native American Archival Materials produced by the First Archivists Circle.

31See Article 1, Section C:

The following principles and legal obligations were taken into consideration in developing the Protocols:

1. Recognition of the fact that the materials belong to APS;
2. APS’s mission to provide stewardship, preservation, and free access to its materials for educational and scholarly purposes;
3. Some materials provided to APS by donors have legal restrictions, which APS is legally obligated to comply with;
4. APS’s recognition that some of the materials are culturally sensitive to indigenous tribes of the Americas;
5. APS desires to work in partnership with tribes and give tribes a voice in determining what is culturally sensitive, and to respect the sovereign right of Indian tribes to protect culturally sensitive materials; and
6. APS’s goal of balancing these principles and legal obligations.

32While MoUs and agreements tend to be private, there is growing encouragement to share these between tribes, or to share template versions. The Local Contexts project (www.localcontexts.org) offers an increasing number of template and actual tribal agreements around the sharing of tribal knowledge under its “Educational Resources” tab. Similarly, the IPinCH project has also tried to make as many of its negotiated agreements available to assist other tribes and agencies. In Australia, the Agreements, Treaties, and Negotiated Settlements Project established in 2002 (www.atns.net.au) has a database of searchable agreements between Indigenous communities and a range of industry interests. This project emerged from specific experiences in the development of agreements and negotiated settlements as part of land rights and native title.

33Neptune, personal correspondence, 2016.

References:


Negotiating Who “Owns” Penobscot Culture


JANE ANDERSON


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**Foreign Language Translations:**

Negotiating Who “Owns” Penobscot Culture

[Keywords: Ethnographic collections, MoUs, property, museums, legal exclusion, negotiation, sovereignty, strategic maneuvering, agreements]
协议谁才“拥有”佩诺布斯考特文化

【关键词：民族志的收藏，备忘录，财产，博物馆，法定除外事项，商议，主权，策略操控，同意书】

Переговоры о том, кто «хозяин» пенобскотской культуры

【Ключевые слова: Этнографические коллекции, меморандумы о взаимопонимании, собственность, музеи, легальная эксклюзия, переговоры, суверенность, стратегическое лавирование, договоры]

Negociando Quem “Possui” a Cultura Penobscot

【Palavras-chave: Coleções etnográficas, memorandos de entendimento, propriedade, museus, exclusão legal, negociação, soberania, manobrando estrategicamente, acordos】