

## Letters to The Midden

In this issue, we have two responses to Julie Hollowell and George Nicholas' article in the last issue (39[4]) concerning intellectual property. Their article was commissioned after concerns were raised (39[2]) about the publication of Croes' et al.'s initial article about Sauvie Island (38[4]). An update on their excavations on the island is featured in this issue.

### Intellectual Property Issues in Archaeology: A Response

*Šhawash ili?i hayu-kmteks  
bástan-tílixam tæmtæm*

Grand Ronde coming to understand Euro-American Thoughts

Eirik Thorsgard

In the recent article by Julie Hollowell and George Nicholas (*The Midden* 39[4]) they write about the complex interactions between the Confederated Tribes of the Grand Ronde Community of Oregon Cultural Resources Department (CTGR) and South Puget Sound Community College (SPSCC) Professor Dale Croes in relation to an archaeological site known as the Sunken Village Site. In their attempt to analyze the communications between these two groups of individuals in relation to a few articles written in *The Midden* the authors missed the opportunity to question anyone involved in the situation or even look at other literature and conference materials that were provided by both groups in unison. The main points of the article attempt to understand the thoughts of the Tribe in relation to several issues which the authors coin under the term Intellectual Property Rights. Without understanding that this issue had more to deal with a misstep in communication and a desire for consultation and collaboration between SPSCC and CTGR, Hollowell and Nicholas attempted to analyze the situation under intellectual property rights. While a lofty goal the situation surrounding the Sunken Village Site was most likely not the best

area to use as an analysis platform regarding this issue. The interactions between the Tribe and Dr. Croes revolved around consultation, respect, and co-management (collaborative archaeology), rather than one based in the concept of Intellectual Property Rights. This misunderstanding however is not without its merit, as the Tribe attempts to answer the questions posited by Hollowell and Nicholas.

In order to adequately grasp the situation lets look at some of the issues that are presented by Hollowell and Nicholas:

#### **(1) Who owns the copyright to the images that were published?**

When the subject matter deals with a collaborative effort, good faith measures should be taken to understand what collaboration means. Consultation and collaboration are things that Tribes are actively striving for yet the academic community has neglected their ethical responsibilities upholding their end in creating and maintaining a dialogue between Indigenous groups and themselves. When Dr. Croes asked the Tribe to assist in the management of the Site during the archaeological project he initiated a form of hyper-consultation (as in having more than a open dialogue, he took into consideration all of the effects of every conversation and thought of the people involved in the project) that most archaeologists in the United States are hesitant to enter. This consultation often means taking into consideration concepts that are often not part of the training or even interaction that most archaeologists are familiar with. That means during the process from excavation to publication constant interaction and considerations were given to the Tribe that in most cases are not part of normal archaeological work. However, in the changing picture of archaeological consultation more scientists are learning this new model and have become proactive in collaborating with tribes in their research.

#### **(2) Did the Grand Ronde have a policy in place covering these issues that archaeologists should have been aware of and followed?**

In this case Grand Ronde did have a policy for these situations, and when Dr. Croes asked for the Tribe to assist in the co-management he took on the obligation to follow the cultural and procedural rules that the Tribe desired to have applied in this research project. In most cases archaeologists tend to disenfranchise the Indigenous communities from their work, which is a marked difference from the methodology employed by Dr. Croes. Now this comment about standard archaeological practice may seem harsh but if one simply asks any Indigenous community about how their perspectives or thoughts are incorporated into archaeological research, one quickly finds that archaeology sits outside of the discipline of anthropology in its attempts and methods of collaboration with communities that have a stake in a given project. This lack of co-management is truly the result of archaeologists not entering into a deeper dialogue with Indigenous communities and taking into consideration their concerns and thoughts regarding excavation methodology, curation practices, interpretation, and presentation both to the academic community and general public.

#### **(3) What policies on permissions and attributes do publications typically adhere to?**

This is question that has no bearing on this subject. The fact was that an agreement was made between the Principal Investigator of this site and the Indigenous communities that have a relationship with this area and both agreed to adhere to ethical concepts that are beyond legalistic concepts and language. In this case the intent is an open dialogue and mutual respect.

#### **(4) What is the ethical course of action?**

This question is another subject that is self-relevant. Dr. Croes and the Tribe have worked on their lines of communication in regards to the Sunken Village Site and how it is interpreted, presented, and published. Actions after the initial correspondence from CTGR actually show how this development was conducted, but the authors of this paper did not ob-

tain the information in order to answer this question. The questions posed were based on legal interpretations of cultural perspectives; therefore they were unable to adequately answer this question. Use of the SAA's format on ethics is useful, to a certain degree, but is actually not as useful in this arena. The SAA does not have a good interaction with Indigenous communities that can be supported as a good working model, ethical rules or concepts that would be more appropriate would be those from the World Archaeological Congress, a body that has a more meaningful interaction with Indigenous communities worldwide.

**(5) What was the nature of the relationship between the author(s) and Grand Ronde Tribe?**

This information presented by the authors actually does nothing to answer this question. No contact was made either with Dr. Croes or with the Confederated Tribes of the Grand Ronde Community of Oregon regarding this issue. So speculation by the authors makes superlative claims about the relationship with no factual basis.

The last two questions posited by the authors are ones that are much more important in this situation, and detail the authors' lack of knowledge regarding Indigenous communities. In effect, the authors are committing the same error that Dr. Croes committed by not initiating an open dialogue with the Indigenous communities in regards to publication. Instead they are writing about, and making assumptions about, cultural issues without consulting the culture bearers.

**(1) Whose land is the site on?**

This question is not answered by the authors. They mention the use of ceded lands, which are the lands that certain rights and ownership were ceded to the federal government during treaty negotiations. This lack of knowledge about Indigenous or Indian Law makes the interpretation of the authors seriously in question. Ceded Lands are defined as: lands that tribes have agreed with the United States federal government to cease to own or occupy in exchange for monies, goods, and services as agreed upon in treaty. The exception is the reservation where the land is held in trust

by the federal government for the tribe. This trust was created for tribes to occupy and otherwise inhabit (Wilkins 2007). Exceptions to this are rights that were not expressed in treaties or were reserved. The U.S. Supreme Court has held that reserved rights such as hunting and fishing as well as unexpressed rights such as gathering or in some cases hunting and fishing, if not expressly ceded in treaty were held by tribes (Wilkins 2007). The idea of ceded lands in a native or Indigenous concept is that these lands are the responsibility of a given tribe to manage for their livelihood. The Tribe also often had stories regarding the creation of the world and the people intrinsically associated with features in the landscape. As such ceded lands as understood from a traditional Indigenous perspective revolve around responsibilities, spirituality, tenure on the land, and the more accustomed perspective of familial or tribal connection to the land.

Keeping this in mind, ceded lands are homelands that required certain individuals from that area to maintain the land by accustomed management techniques and the required ceremonies or prayers that are tied to specific landforms. The loss of this land created a sense of loss that cannot be fully understood by us today. How can the authors analyze and interpret an interaction without understanding the basic legal and cultural concepts that describe the relationship between Tribes and the ancestral homelands? This creates a new question, in the Treaties negotiated between the Confederated Tribes of the Grand Ronde Community of Oregon and the federal government (and any Tribe) rights, responsibilities, and ownership regarding burials, and ancestral material were never ceded; as such who truly owns the archaeological material? In this case the answer is the Tribes' although there is some differing opinions from federal and state agencies who exercise authority over these things.

**(2) What was the relationship between Dale Croes's team and the development corporation, the U.S. Army Corps of Engineers, and the Confederated Tribes of the Grand Ronde? Who has jurisdiction, and who was employed by whom?**

Both elements of this question again

speak to the authors' lack of interaction with the participants in the situation. Dale Croes and the Confederated Tribes of the Grand Ronde Community of Oregon along with the Confederated Tribes of the Siletz Indians and the Confederated Tribes of Warm Springs worked together to complete archaeological investigations on a site that was under the jurisdiction of a Army Corps of Engineers permit to facilitate the placement of rip rap to ensure that a levee did not fail. Again the lack of interaction with the participants and lack of research into the other available literature surrounding this area display the authors' lack of research into this issue.

The main issue that needs to be addressed is that, irrelevant of the federal or state nexus, the Confederated Tribes of the Grand Ronde Community of Oregon are the descendants of the communities that lived on Sauvie Island prior to Euro-American settlement of this landscape. Under duress, the Tribes confederated and negotiated Treaties with the federal government, giving up certain things in order to ensure peace and prosperity for their descendants. The Tribes never ceded their rights, responsibilities, or ownership of other things including the remains of their ancestors and their associated goods (i.e., the archaeological record). So when a researcher takes the ethical step of including an Indigenous community into their research regarding the ancestors of that group, and takes on the associated responsibilities, they have made an obligation that far exceeds that of the average researcher. Having said that, the other thing of note is that the interaction between Dale Croes and the Confederated Tribes of the Grand Ronde Community of Oregon has been beneficial and supportive to both sides. Whatever attempts are made to analyze the situation, or try to portray it, the Tribe looks forward to working with the team from South Puget Sound Community College in the future.

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Wilkins, David E.  
2007 *American Indian Politics and the American Political System*. Rowman & Littlefield Publishing, Inc.