

**Politics of Repatriation:
Formalizing Indigenous Cultural Property Rights
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Abstract

This project will be an empirical study into repatriation as a political practice. This theoretically-oriented project investigates how institutions and cultural values mediate changes in the governance of repatriation policy, specifically its formalization and rescaling in the United States. I propose a critical approach to understanding repatriation; specifically, I will draw together issues surrounding museums, repatriation claims, and indigenous communities throughout the development of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 and current repatriation policy. The interdisciplinary academic narrative I build will explore practices of repatriation and how it relates to the subject of indigenous cultural rights.

Using the University of Pennsylvania Museum of Archaeology and Anthropology in Philadelphia, PA and the Field Museum of Natural History in Chicago, IL as models for the repatriation process, I will show the historic political tensions and later attempts to repatriate culturally significant objects and human remains in the United States. By examining entrenched discourses prior to NAGPRA and what changed to allow a new dominant discourse in the debates over repatriation claims, I will show that culturally-structured views on repatriation and narratives surrounding indigenous cultural property were transformed.

By examining ownership paradigms and analyzing discourses and institutional power structures, it is possible to understand the ramifications of formalizing repatriation. The current binary of cultural property nationalism/cultural property internationalism in relation to cultural property ownership claims does not represent the full scope of the conflict for indigenous people. Inclusion of a cultural property indigenism component into the established ownership paradigm will more fully represent indigenous concerns for cultural property. Looking at the rules, norms and strategies of national and international laws and museum institutions, I will also argue that there are consequences to repatriation claims that go beyond possession of property and a formalized process (or a semi-formalized international approach) can aid in addressing indigenous rights.

I will also ask the question, does this change in discourse develop in other countries with similar settler colonial pasts and indigenous communities, i.e. in Canada, New Zealand, Australia? My work will demonstrate that it does. Essentially, the repatriation conversation does not immediately change in one country and then domino to others. Instead, it is a change that is happening concurrently, comparative to other civil rights movements and national dialogues. The cultural and institutional shifts demanding change appear to have some universal momentum. The literatures to which this research will contribute include: museum studies, institutional practices, material cultural and public humanities, and indigenous right.

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General Audience Abstract

By examining how institutions and cultural values mediate changes in the governance of repatriation policy, specifically its formalization and rescaling in the United States, this project looks at repatriation as a political practice. This dissertation explores the subject of indigenous cultural rights and explores issues surrounding museums, repatriation claims, and indigenous communities throughout the development of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 and current repatriation policy both domestically and internationally. Case studies of institutional practices are developed utilizing the University of Pennsylvania Museum of Archaeology and Anthropology in Philadelphia, PA and the Field Museum of Natural History in Chicago, IL as models for the repatriation process. This will demonstrate the historic political tensions and later attempts to repatriate culturally significant objects and human remains in the United States and abroad.

This research also investigates the current cultural property nationalism/cultural property internationalism paradigm and calls for an inclusion of a cultural property indigenism component to represent indigenous concerns for cultural property more fully. Looking at the rules, norms and strategies of national and international laws and museum institutions, I will also argue that there are consequences to repatriation claims that go beyond possession of property and a formalized process (or a semi-formalized international approach) can aid in addressing indigenous rights.

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I was recently asked why I wanted to write a dissertation on indigenous repatriations—what had led me down this research path? It all began when I worked as a docent in the Field Museum in 2010-2011 leading tours and giving talks on the Ancient Egypt exhibit. Occasionally, museum guests would ask why we had certain objects and how they had made their way into our collection. Had we purchased everything? What had been excavated? And in hushed tones, how much of our collection had been stolen? I readily supplied answers based on the docent training—we had a bill of sale for every object, the collection mostly stemmed from the 1893 World’s Columbian Exposition in Chicago, and the Field Museum was a research institutions and not in the habit of stealing, etc. I felt very sure of the collection. The objects here were helping to spread knowledge about the ancient world, to show us how we are all connected. But then, while exploring the Ancient Americas exhibit, I came across a sign over a boarded-over exhibit explaining why the display could not be viewed by the public according to NAGPRA regulation. I was curious as to why these objects were not just given back to the indigenous community in question. Why did they stay at the museum—hidden behind a wall, but still in the museum’s possession? This question inspired my research into power relationships at the museum and NAGPRA as federal legislation. I want to thank the Field Museum especially for the essence of an idea that became this research project.

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Introduction

Repatriation is a political practice. And as a political practice, it is imperative to study the details of what repatriation accomplishes for the actors involved. This empirical study builds upon overlapping literatures to develop a framework for exploring cultural property narratives. Specifically, the main research question for this project looks at how institutions and cultural values mediate changes in the governance of repatriation policy. The policy at the heart of the project is the Native American Graves Protection and Repatriation Act adopted (NAGPRA) in 1990. How this policy was normalized in the US is important to not only domestic repatriation claims but also influences policies internationally. To analyze its importance, I look at the discursive language surrounding repatriation discussions pre- and post-NAGPRA. Approaching repatriation this way allows me to discuss counter-hegemonic practices and utilize the critical and indigenous methodologies described by Linda Tuhiwai Smith, Joe Watkins, and other indigenous writers to understand how decolonization has occurred in the museum.

My research will examine the transformation of societal and institutional norms that altered power relationships. Utilizing the theoretical foundations on discursive power established by Michel Foucault in *Power/Knowledge: Selected Interviews and Writings, 1972-1977* (1980) and *The Archaeology of Knowledge and the Discourse on Language* (1972) and further discussed by Charlotte Epstein in *The Power of Words in International Relations: Birth of an Anti-Whaling Discourse* (2008), I investigate discourses and narratives of what becomes important, and when, to show how changing power relationships brought

about repatriation legislation. I also examine the perspectives of actors involved in repatriation processes including: museum institutions, the Native American Graves Protection and Repatriation Act (NAGPRA), and indigenous peoples (who may be the current occupants of the return sites, but do not necessarily have any cultural proximity to the objects or human remains).

* * *

In 1927, William Duncan Strong, a young anthropologist and archaeologist employed by the Field Museum in Chicago, Illinois illicitly excavated the remains of twenty-two people from an Inuit graveyard at Zoar, an abandoned Moravian Mission in Labrador, Canada during a fifteen-month expedition (Grande 2017; Mullins 2011). The mission had been abandoned since 1894 and Strong and his assistant were told to collect the remains from the graveyard by their superiors (Grande 2017; Robbins 2016 interview). When the local community found out what he was doing, the police ordered Strong to return the bones. He only pretended to do this and took the bones secretly to Chicago. His field notes ended up in the Smithsonian archives and the grave robbing was hidden from public view for over one hundred years (Mullins 2011). In 2008, an Inuit researcher working in the archives found these field notes and informed Inuit officials. Helen Robbins, the repatriation specialist at the Field Museum, was also made aware of the stolen remains.

The repatriation took several years to complete and Robbins worked with members of the Labrador Inuit (the Nunatsiavut Government) to design a plan to return the remains (Grande 2017; Robbins interview 2016). Planning for this extensive transfer took years to complete and required cooperation between the museum and the Inuit community. The remains were returned and reinterred in 2011. The museum made burial boxes for the

remains and during a ceremony at the museum, Inuit members said prayers. The remains were flown to Nain, Labrador with a letter from John McCarter, the Field Museum president stating:

We are deeply saddened by this incident. While the Field Museum employees of today did not commit this wrong, we recognize that these actions did not comply with ethical and archaeological practices, either past or current (Grande 2017, 271; Mullen 2010).

A Labrador Inuit official responded:

While we can't change the past, we can do the right thing now and ensure that these individuals are returned to their rightful resting place (Grande 2017, 271; Mullen 2010).

The remains arrived in May 2011 and were transported to a location near the original Zoar site and buried in a large grave on June 22, 2011. The ceremony was attended by more than 80 Inuit and Innu people, 2 Canadian Mounties, Helen Robbins and Joe Brennan (Field Museum's general counsel) (Grande 2017). After the reburial ceremony, a letter was presented on behalf of the Nunatsiavut president and its Minister of Culture, Recreation, and Tourism to the Field Museum. The letter concluded with the following:

Throughout the entire repatriation process, the Nunatsiavut Government and the Field Museum have developed a good relationship based on mutual respect. It is our hope that we will continue to build on that relationship.

On behalf of all Labrador Inuit, the Nunatsiavut Government graciously accepts the apology from the Field Museum.

We forgive you.

Grande 2017, 272-273

The relationship established during the repatriation process between the Field Museum and the Inuit community was built on the premise of not trying to bury the past, but accepting it and making restitutions. As seen in the above letter, the ritual of apology and forgiveness between an institution and indigenous peoples also illustrates a non-legal

aspect of “good will” in the process. Repatriation is more than words, it involves actions and a clear plan for change. This can be seen in the development of domestic and international policies and laws to establish a structure for the return of indigenous cultural objects and human remains.

This example shows that repatriation can be considered a symbol for larger claims of past injustices: lost traditional territory, theft of cultural property and ancestral remains, and past practices of assimilation and annihilation by national governments. Arguments can be made that repatriations, specifically, of ancestral remains are a knee-jerk reaction to prove nations want to correct for their settler colonial legacy. Whether this is true or not, we should ask if there are more substantial acts to decolonize our way of thinking and correct past injustices (Smith 2012). This may include the incorporation of indigenous voices at the museum in building exhibition or outreach programs to engage a larger audience and discuss the ramifications of a colonial past. It is important to consider that cultural property claims are framed in western legal constructs, which may limit how we view objects. Therefore, we may need to rethink how we approach claims to intangible cultural heritage. Repatriation of cultural objects and human ancestral remains is an important symbol for larger indigenous claims to sovereignty and territorial rights.

Repatriation claims emerge from, and activate, group memories of a litany of past discriminations, including cultural objects and ancestral remains appropriation, land/resource misuse, and acts of violence in the context of colonial histories. One of the problems in addressing these claims is that they are constructed within a western, neoliberal legal framework that does not necessarily consider indigenous concerns: i.e., communal rights, transnational borders for sovereign nations, and nesting cultural

affiliations. Laws have filtered through broader theories on cultural property ownership to establish norms and rules. Currently, there are two predominant schools of thought on cultural property ownership that fit within this western construct: cultural property internationalism and cultural property nationalism (Merryman 1986; 2005), but I argue that these do not fully address indigenous cultural property ownership, or understandings of stewardship. I propose that cultural property indigenism should be a part of the ownership paradigm since claims over objects and human remains are related to the cultural patrimony of living indigenous communities (Kuprecht 2014).

This theoretically-oriented analysis surveys discussions of the conflicting historical arguments for and against repatriation of indigenous cultural property that ultimately led to the creation of federal legislation in the form of NAGPRA. By looking at the research through ownership paradigms, discourse analysis, and power and institutions it is possible to understand the ramifications of formalizing repatriation. Inclusion of cultural indigenism into the ownership paradigm will more fully represent indigenous concerns for cultural property. The binary of cultural nationalism/cultural internationalism does not represent the full scope of the conflict or other understandings of cultural heritage and stewardship, instead of property ownership. Legal pluralism helps to address the nesting legal concerns within this hypothetical frame. The literatures to which this research will contribute include: museum studies, institutional practices, and indigenous rights.

I begin with the history of museums and settler colonialism and explain why this relationship is important to establish the foundations of my focus in chapter one. Understanding the historical relationships between indigenous peoples and museums establishes the concept of repatriation as a symbol or signifier of something vaster for

indigenous communities, a stand in for other rights claims. Next, I discuss property ownership constructs and why the current model of cultural property nationalism/cultural property internationalism does not fully address indigenous cultural property claims. Chapter two discusses a theoretical framework of a third way of looking at cultural property: cultural property indigenism and how this can help in constructing property ideology specifically aligned with indigenous claims. I will show how this term relates to NAGPRA as formalized repatriation policy and how its normative language on cultural patrimony and heritage are important for possible future international policy development.

Chapter three will detail the methodology of the project and investigate how NAGPRA was used at the University of Pennsylvania Museum of Archaeology and Anthropology and the Field Museum of Natural History (more commonly referred to as the Penn Museum and Field Museum throughout this project), two classic examples of universal survey museums to catalog and return portions of their indigenous collections. I will also discuss why some repatriations are halted and why others take so long to complete. Despite the legal outlines for policy implementation, repatriation is not necessarily a straightforward process.

Understanding museum repatriation practices will be further discussed in chapter four to understand the power relationships at the institutional level and to see how they have changed over time. This chapter asks what the collections of the Penn Museum and Field Museum show us about who we were and who we have become as a society in relation to indigenous rights and repatriation attempts. It will also discuss current exhibitions by indigenous peoples at the museums: *Drawing on Tradition*, Kanza artist Chris

Pappan and Full Circle/Omani Wakan: Lakota Artist Rhonda Holy Bear at the Field Museum and *Native American Voices: The People. Here and Now* at the Penn Museum.

Chapter five examines what NAGPRA, as domestic repatriation policy, means in relation to other countries with settler colonial legacies. Specifically looking at Canada, Australia, and New Zealand, I will address normative trends of repatriation formalization at the international level and will assess current practices of diplomatic bilateral agreements for claims. To conclude the project, I will show how the overlap between the theoretical cultural property indigenism paradigm and NAGPRA policy can be used to enhance the effectiveness of transnational repatriation claims. The continued use of amendments has made NAGPRA a stronger policy in US domestic returns and could be used as a model for other national policies. Domestic formalizations working in accordance will be more effective and could lead to better international ethical standards.

Chapter One: Historical beginnings and how repatriation was formalized in the US

In 2003, The Chicago Field Museum of Natural History returned approximately 150 human remains to the Haida people of Haida Gwaii (Queen Charlotte Islands, British Columbia, Canada). The museum voluntarily repatriated the ancestral remains which had initially been taken during collecting expeditions over a century ago. Although US federal law in compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) requires remains or objects to be returned to tribes within its national borders, museums are not required to make returns outside of the country. However, Helen Robbins, the repatriation specialist at the Field Museum, was quoted in a *Chicago Tribune* article at the time as saying: "We are not required by law to repatriate these remains. But we are doing so because we think it is the right thing to do, ethically" (Mullen 2003). According to the Skidegate Repatriation and Cultural Committee, it was the largest transnational repatriation at the time (Haida Repatriation Committee 2003). But how did the Haida ancestral remains end up in the museum's collection?

George Dorsey, a curator at the Field Museum, said in 1897 that the Haida were doomed to extinction through disease (specifically a smallpox outbreak), assimilation, and warfare. The common thought at the time was to collect human remains and objects as ethnographic salvaging missions to preserve dying cultures. Through expeditions in 1897, 1901, and 1903 on Haida Gwaii, the Haida remains were collected and brought back to Chicago (Mullen 2003).

What is repatriation trying to accomplish today?

Repatriation has become an institutionalized concept within the museum community, often regarded as a decolonizing act for indigenous peoples and, at least in the United States, as the outcome of bipartisan federal legislation. Indigenous peoples' calls for artifact repatriation reflects not only groups' concerns for property rights, but also indicate respect for human and collective rights, as well as cultural rights. As such, repatriation claims are not only about "artifacts;" they are about the restitution for other past injustices committed against indigenous peoples.

Indigenous communities today have a form of cultural pluralism. Unique cultural identities, value systems, traditional practices and religions are nested into values and laws of the larger nation-state. There are legal implications for these communities within the nation-state given the complexity of ownership claims. Culture is constructed and open for debate, challenge, and negotiation (Kreps 2003). This is especially true of culturally significant objects and human remains kept by museums and other institutions, which have contentious histories of appropriation and display. The narrative and public perception surrounding repatriation has changed over time and the repatriation discussion has been shaped by public interest and activism, federal regulations, and ownership claims. Cultural heritage and museums are part of a political history both in the United States and internationally. The indigenous repatriation/restitution agenda has taken great strides since the 1970s to shape federal regulations and international standards, but it has its roots in the settler mentality experienced in the United States and in other colonized areas of the world.

A History of the Settler Mentality¹ in the United States

In the United States, museums and indigenous cultures have a shared, intertwined past dating back to the colonial expansion period. How we view museums today, as well as future curatorial decisions at these institutions, is rooted in this relational past. During the creation of colonies by European nations, groups of people were migrating to new lands and attempting to simulate the homes they left behind. The colonies were translations of what the colonists understood to be “normal,” they were not only attempts at establishing familiar copies of their cultural identity but also controlling/erasing what was there before them. As Benedict Anderson points out, three institutions of power that were utilized to control were the “census, the map, and the museum: they profoundly shaped the way in which the colonial state imagined its dominion—the nature of the human beings it ruled, the geography of its domain, and the legitimacy of its ancestry” (1983, 163-164).

This built upon the campaign that to colonize and exploit the resources of the new areas, they needed to control the indigenous populations. Settler colonialism differs from colonialism in that settler colonialism wants territory and/or land, instead of just labor for economic gains (Wolfe 1999). As Patrick Wolfe points out, “settler colonies were (are) premised on the elimination of native societies...the colonizers come to stay—invasion as a structure not an event” (1999, 2). This is very important to the discussion of repatriation

¹ A settler, or colonial, mentality relates to the idea of how colonizers who settled in areas around the world treat those they colonized. Settler colonialism is different from colonialism in that rather than just taking resources and using the indigenous populations for economic purposes, the colonizers want the territories for expansion and settlement. I use the term here to describe the ideas of the 19th and early 20th century ethnographic survey museums, archaeologists/anthropologists, and scientists who built extensive indigenous collections through appropriated artifacts and human remains from lands taken during expansion of the European settlers in the United States.

rights because settlers continued to spread out and displace Native Americans. It was a long process and not a single event. The process of colonizing the US involved the “movement and reproduction of communities” by the settlers, as well as the “*violent* replacement and/or displacement of indigenous Others”² (Veracini 2010, 75). Due to the Eurocentric, Christian religious beliefs of the settler colonizers, these indigenous populations were treated as inferior and primitive. They believed that the indigenous people they encountered needed to be civilized and brought into the Christian church—a belief that coincided with their economic and expansionist goals, and then continued under the secular guise of Social Darwinism and the principles of hierarchical human development (Redman 2016). The colonizers attempted either to assimilate or eliminate the indigenous populations³ in order to control them:

It takes not only territorial expansion, population growth, and ethnic cleansing to ensure the success of continental expansionism, but also some kind of “mass communication” to convince the public that the possessions of territories, resources, bodies, and property of natives-turned-enemies is justified.

Fine-Dare 2002, 14

Museums as an Expression of Settler Mentality

As stated earlier, public museums became an important institutional power for the settler society as American identity was shaped around the implications of expansion of the nation-state. Cultural artifacts and human remains were collected and sent back to the

² This violence will later need to be reinterpreted and disavowed by the settler colonizers to create a new narrative of a “peaceful” takeover (Veracini 2010). This idea of a new narrative will become important for repatriation discourses.

³ They also incarcerated and displaced indigenous peoples. This includes moving communities to reservations and federal boarding schools in the United States (Veracini 2010). For an expanded explanation of the forms of transfers (i.e. ethnic, narrative, conceptual displacement, etc.) as control of indigenous populations, see *Settler Colonialism* (Veracini 2010).

centers of the empires to show dominion over the peripheries and record what they viewed as dying, primitive civilizations. The nineteenth-century museum was a European public creation utilized for nation-building and the authorization of political structures (Hooper-Greenhill 2000; Luke 2002; Jenkins 2016). It consisted of collections of objects put on display to show pride in the nation-state. Museums essentially started as “cabinets of curiosities...crude exhibits were meant to be theaters of wonder, propaganda, or even displays of personal wealth and power” (Grande 2017, xi-xii). They acted as emblems of unity in the creation of a national identity and nation-building propaganda (Luke 2002). In this way, display was a form of communication to the masses. As Edward Said points out, inventing memories of the past was a way to create a new identity for both political leaders and citizens (2000, 178). But universal survey museums in North America and Europe were in the habit of showing a few artifacts to describe entire peoples or regions. This fragmented the culture and placed it in a vacuum within the museum collection (Vrdoljak 2006). It was assumed that the subjects in the display were gone or absorbed into the larger society. The museum display was therefore showing remnants of Native American culture frozen in the past.

Colonial assumptions of “salvage” ethnography meant that vast quantities of cultural artifacts were collected—haphazardly obtained without permission from indigenous communities—and not necessarily identified properly before being transferred to museums or other institutions for study and display. Early ethnographers believed they were studying lower orders of society when visiting indigenous communities and this established practices that divorced objects from a cultural context through collection methods. Objects and human remains were decontextualized and took on a new narrative

through the lens of western knowledge and aesthetic interpretation (Kreps 2003). Fortunately, this view began to change in North America with the anthropologist Franz Boas in the late 1800s as he restructured cultural anthropology away from the racial evolutionary models of the time (Grande 2017). In 1893, Boas became the temporary curator of anthropology at the Columbian Museum of Chicago (this would later become the Field Museum of Natural History). Although he led the academic fight against scientific racism and hierarchical understandings of culture, he also bought, sold and traded human remains (Grande 2017, 266). When Boas came to the Columbian Museum of Chicago, he brought with him over 400 human remains into the collection.

The construction of indigenous repatriation policies has its basis in the legacy of the universal survey museum. This type of museum was the classic construct of a large collection. It has its origins in the public art museums of the eighteenth century (Duncan and Wallach 1980). Museums in this category include the Field Museum in Chicago, the Penn Museum in Philadelphia, and the Smithsonian Institution in Washington, D.C. The classic universal survey museums⁴ based their displays in the pedagogical framework that knowledge was to be received passively through the exhibit (Hooper-Greenhill 2000). The audience would come to the glass case, read a description about what they were seeing, and move along to the next object. Perhaps they came to the museum with some background education, but it was entirely possible they had no historical knowledge of what they were viewing (Duncan and Wallach 1980). The “best” examples were shown and were often completely divorced from the proper milieu. This contextual disconnect created

⁴ According to Duncan and Wallach, one of the main roles of the universal survey museum was to show the state’s power as well as connect the citizens to a shared society (1980, 457).

by the narrative and display cases was absorbed by the museum visitor and became part of their understanding of other cultures (Luke 2002). These objects took on a new contextual dimension of cultural significance in the museum and gained new meaning outside of the original perspective. Museums, their staffs, and patrons felt a deep connection to the artifacts and displays even if they had no personal, familial relationship to the cultural artifacts—by recontextualizing these objects in the museum setting, they had been appropriated by a different group.

In curation at the historical ethnographic survey museums—also known as universal survey museums—artifacts obtained at the outposts of the empire gave evidence of the exotic “Other” and the perception of Western knowledge being more advanced, and therefore better, than the indigenous cultures. They become “monuments to domination” (Greenfield 1989, 310). Vast collections of human remains, culturally significant objects, and everyday material culture were gathered and studied, or, placed into storage. Many collections in various institutions, like the Smithsonian, were left in storage anonymously decaying until the adoption of NAGPRA legislation, the Native American Graves Protection and Repatriation Act, in 1990 brought them to light in the cataloging of collection inventories. With the adoption of NAGPRA, ancestral human remains, objects of funerary ceremonial importance, and objects with significant cultural patrimony held by federally funded institutions, had to be catalogued and returned (when possible) to lineal descendants or culturally-proximate indigenous communities.

Colonial Practices and Depatriation: Understanding 19th-20th Century US Legislation Related to Indigenous Peoples

How museums became the curators of the objects and human remains is important when considering the appeals being made to repatriation departments today. By understanding how a collection was initially created, it is possible to examine the conditions under which the objects were removed from their original context. If “repatriation” refers to the return of cultural property and human remains, then “depatriation” can reference how indigenous objects and human remains were first taken and placed in museums and other collections. The depatriation of indigenous cultural property occurred over a lengthy period and continued the common practice of taking “spoils of war” by conquering peoples. Throughout the course of colonial expansion, as well as wars and treaties, there is a history of stalemates in the relationship between indigenous communities and the United States. This relationship can be perceived in the appropriation of tangible and intangible cultural heritage by the US and the requests by indigenous peoples to have their history returned for the continuation of their cultural patrimony.

Although the entry point for this research is the 1906 Antiquities Act, it is important to look at the US federal government’s response to indigenous peoples in the nineteenth century. This period in Native American history is especially characterized as a time of upheaval in “economic, political, social and cultural structures” related to loss of traditional lands (Vrdoljak 2006, 119). The 1830 Indian Removal Act, signed by President Andrew Jackson, was a forced relocation program that lasted from 1831-1850 and caused the deaths of countless Native Americans. Nations of Cherokee, Muscogee (also known as Creek), Chickasaw, Choctaw, and Seminole peoples were forced to leave their homes that

were east of the Mississippi River and head to the western Indian Territory (what would later be Oklahoma) taking a route known as the Trail of Tears. Many died before reaching their new territory including fifteen percent of the Chickasaw and Choctaw population and fifty percent of the Cherokee, Creek and Seminole peoples (Stannard 1992, 122-125; Fine-Dare 2002, 49-50). In 1834, the Bureau of Indian Affairs (BIA) was established after the ethnic cleansing in the south and southeast. It then took on a “guardianship” role for defeated tribes by 1849.

Federal legislation starting with the 1851 and 1871 Indian Appropriations Acts are important for understanding the history of depatriation and settler colonization in the United States. The US has a storied history of making treaties with Native Americans that have not always served in the best interest of indigenous communities or have been altered (or ignored) at later times. Understanding these past treaties and legislative acts will help reify the groundbreaking repatriation work NAGPRA made possible. The 1851 Indian Appropriations Act gave funds to the US government to move western Native American tribes to enclosed reservations (USC 1851) and in 1871, Congress decided Native Americans would not be recognized as having independent sovereignty from the US, which essentially negated treaties and made indigenous peoples “wards” of the federal government. In 1879, Congress authorized the founding of the Bureau of Ethnology. This would later become the Bureau of American Ethnology (BAE) and it was tasked with transferring archives, records, and other materials of North American Indians to the Smithsonian Institution (Redman 2016). This was coupled the following year with the decision by the Board of Indian Commissioners to break up tribal territories (Finkelman and Garrison 2009).

On December 29, 1890, the US Army fires on Lakota men, women and children at Wounded Knee Creek, South Dakota, killing more than 346 people. According to Kathleen Fine-Dare, 150 bodies were buried in a mass grave and many possessions of the dead were sent to the 1893 World's Columbian Exposition and museum collections in Europe and the US (2002, 48). For this reason, 1890 is "viewed by some as a trope, symbolizing the final defeat of American Indians at the hands of the United States of America" (Fine-Dare 2002, 49).

At the beginning of the twentieth century, the installation of Indian agents on reservations and the creation of Federal Indian Schools, exacerbated many indigenous communities' attitude to their position in the American narrative and the idea of negative differentiation began to present itself in indigenous peoples' writings (Lomawaima 1993; Cooper 2009). Some indigenous writers wrote in favor of assimilation and integrating into the US system; others rebelled against the Federal Indian Schools and reservation systems. For writers such as Susette La Flesche (1880) of Ponca descent in Nebraska and Andrew J. Blackbird (1900) of the Odawa (Ottawa) tribe in Michigan, it was possible to live within the framework of the American system by obtaining citizenship—the Native Americans would survive extinction by integrating into the larger system. Writing in 1880, Susette La Flesche believed in a simple solution of assimilating into American society. The system of degradation and extermination should not continue as the U.S. policy. For her, citizenship, and all the privileges that came with it, would resolve the problem (Martínez 2010, 114-115). Twenty years later, Andrew J. Blackbird said, "The cure for ignorance must come by direct association with refined, intelligent, well-cultivated people, in order to be taken out of natural barbarism into true civilization" (Martínez 2010, 154). Part of this "civilizing"

was entrusted to the Church, which had been proselytizing in Native American lands for centuries. Henry Roe Cloud (1914) of the Ho-Chunk people, who grew up on the Winnebago Reservation in Nebraska, firmly believed the solution to the problem of integration rested in a Christian education, “every problem that confronts us is in the last analysis a moral problem” (Martínez 2010, 197). For him, segregation was a system of failure. He saw the Native American as having a problem in creating his or her own identity and fitting into the white American ideal mold; to overcome this deficiency, a church-based education was needed (Martínez 2010, 192).

The underlying external structures influencing these writers was the U.S. policy of installing Indian agents who had complete power over the indigenous communities on reservations. Dennison Wheelock (1913) of the Oneida Nation in Wisconsin summed up these agents as “incompetent or dishonest or both” and “men of small caliber, or prejudiced” (Martínez 2010, 187). Also, influential at this time was the U.S. policy of education for Native Americans. Donald A Grinde, Jr. described the U.S. policy as “aimed to obliterate American Indian culture through education” (2004, 25). In the white Americans’ view, the Native American needed to be civilized and acclimated to Western thought. This was to be achieved through the creation of boarding schools that would take the children away from their families and teach them the Christian value system and skills necessary to work within the Western framework (Martínez 2010, 27-29). But the students were placed in the boarding schools as conquered people. They were placed there to experience the state’s power through “a centralized curriculum and accountability” of their actions (Margolis 2004, 74). The state wanted to alter the indigenous children and have them

assimilate so to distance them from their cultural roots. In this way, the “Indian problem” would vanish.

With the continued attempts at assimilating Native Americans through agents and schools, symbols of defiance against acculturation appeared in the narratives of indigenous writers. Carlos Montezuma (1915) of the Yavapai-Apache people warned that the Indian Bureau was creating a society of prisoners and poverty on the reservation incapable of being a part of the larger world (Martínez 2010, 212). This language of resistance overrode the language of assimilation, and the intellectual class began advocating for resistance. The cultural backlash and societal bond against the harsh treatment at the federal boarding schools ultimately led to the failure of educational policies at the schools because they *unified* the people in their resistance (Lomawaima 1993).

Even Dr. Charles Eastman (1858-1939) a Santee Dakota doctor, who was fully acculturated into white American life, thought that Native American culture needed to be recognized by the people of the United States (Cooper 2009). He had been educated at Boston University and gone on to work as a physician on South Dakotan reservations and lectured about reforms across the nation. He anecdotally wove the stories of his people into the narrative of children through Boy Scouts and other youth movements to instill Native American culture into daily use (Martínez 2010, 4-5). In this way, generations of Americans continue to learn certain aspects of Native American culture even if they are not fully aware of the history.

Native American people were being destroyed, both physically and culturally, throughout the history of the United States. During the low point of indigenous population numbers in the early twentieth century, activists wrote of assimilation and citizenship as

the possible solution to survival. But this viewpoint did not last long into the twentieth century. Instead the transformative agency became a culture of defiance and resistance to losing the Native American culture. Andrew J. Blackbird (1900) stated, “After one generation has passed away, eventually all the old ones will be entirely gone, and consequently a new generation, who will be civilized, intelligent and cultivated, will represent the old race of America, once the home of their forefathers” (Martínez 2010, 154). As Lomawaima states, “As individuals and community members, Indian people cling stubbornly to making their own decisions, according to their own values. In the process, they have created spaces of resistance within the often oppressive domains of education, evangelism, employment, and federal paternalism” (1993, 236-237). Through the persistent defiance of the people, culture was preserved. Despite the best efforts of the federal government, it was impossible for a complete assimilation to wipe out the language, heritage and culture of the Native Americans (Martínez 2010).

The history of resistance and preservation of cultural heritage in Native American communities was aided by an early twentieth century federal act. In 1906, the Antiquities Act was enacted to protect public natural areas with historic and prehistoric sites in the United States and end illegal excavations on the land. Important objects and excavated human remains were not returned to indigenous peoples, but were instead shipped to museums, universities, and other institutions for study (Redman 2016). The federal legislation slowed the extensive robbing of graves on federal land by private collections, but since enforcement was ambiguous, human remains were still taken and sold, traded, and collected (Grande 2017). The Antiquities Act did not stop all illegal excavations by amateurs and professionals. Another problem with the act was that it viewed the protected

sites as archaeological sites containing artifacts to be studied by scientists and archaeologists, instead of as ancestral burial sites and religious objects of living indigenous communities (Vrdoljak 2006). Unfortunately, the dispossession of history, culture, and place continued for Native Americans in the United States. Over the course of the twentieth and into the twenty-first century, societal shifts in perception and practice are seen in three areas: cultural understandings, value definitions, and institutional practices. These led to adoptions of repatriation policies on the state and federal level and a better understanding of sovereignty and agency for indigenous communities.

Cultural Shifts that Led to Changes in Repatriation Norms

Looking at historical U.S. federal policies, the nation did not always respect indigenous religious freedom. From the beginning of colonization, Native Americans were treated horribly. As discussed, the policy of assimilation or annihilation was devastating to Native American cultures in its pursuit to “civilize” through the practice of Christian conversions required to remain on lands, boarding schools, and the installment of a Bureau of Indian Affairs (BIA) to name a few (Lomawaima 1993; Fine-Dare 2002, 61; Grinde 2004). The push for religious conversion altered burial practices and “serious and sustained grave looting was carried out by non-Indians for purposes of revenge and robbery” (Fine-Dare 2002, 62).

Early on, the practice of signing treaties with indigenous people occurred as European colonizers expanded in the Americas. Later these treaties were diluted or discredited in order to integrate the people into the US nation, in many ways taking away the sovereignty originally granted (Niezen 2003). Canada had similar legislation, the Indian Act of 1876 which was enacted to “civilize and assimilate” indigenous peoples in the

country (Niezen 2003, 31). In the twentieth century, Indian legal rights began to be defended and federal policies shifted. The Indian Defense League worked to get eastern tribal treaties recognized in both the US and Canada (Fine-Dare 2002, 63). Later, in the 1930s, John Collier, the Commissioner of Indian Affairs under Roosevelt, worked on the creation of the 1934 Indian Reorganization Act (IRA) (Stocking 1992). The IRA allowed for Native Americans to establish tribal governments based on the U.S. version of governance and ended allotment (Fine-Dare 2002, 64; Finkelman and Garrison 2009). The Historic Sites Act of 1935 protected and preserved historic sites, buildings and objects with national significance that were considered to be beneficial to United States citizens.⁵

The 1940s and 1950s saw a few changes in federal policies related to land claims, termination of reservations, and the dismantling of federal administration. The Indians Claims Commission (ICC) Act was passed in 1946 to settle treaty disputes and tribal land claims (Fine-Dare 2002, 68). However, the Commission was not established to *return* territory, only to offer a monetary compensation based on the amount the price per acre cost at the time it was originally taken (Fine-Dare 2002, 68). The ICC Act also did not regulate for other claims, such as cultural property and only referred to land claims. In the late 1940s, Congress was seeking to put parameters in place to end the responsibility of the federal government over tribes and dismantle the reservations. This was claimed as an “emancipation” from federal management to state control; it was viewed by many as the end of federal protections (Fine-Dare 2002, 69; Finkelman and Garrison 2009). In 1954, termination policy came to fruition in the form of the House Concurrent Resolution 108 and later through Public Law 280. Because of the law, federal management ended for 109

⁵ The historic records of the 1935 Act can be found at the following address:
https://www.nps.gov/history/local-law/fhpl_histsites.pdf

tribes (Fine-Dare 2002, 69-70). Due in part to these restrictions, the activists in the 1960s ushered in the Red Power movement which included protests, workshops and other political events (Finkelman and Garrison 2009). Native American civil rights are deeply connected to recognition of sovereignty and self-determination (McLaughlin 2002). State statutes and federal policies began to be more prevalent as civil rights movements gained traction.

In the 1960s, federal acts “put the burden of proof on Native Americans regarding sacred sites, and they emphasized preservation—and then only in exceptional circumstances—rather than repatriation of burial remains and Native American cultural property” (Fine-Dare 2002, 72-73). The National Historic Preservation Act of 1966 was created to preserve archaeological and historical sites in the United States.⁶ The 1966 Act explicitly mentions it as policy to be in cooperation with other nations, local and state governments as well as Indian tribes and private organizations and individuals. In 1968, the American Indian Movement (AIM) was founded in Minneapolis. Other chapters of the organization opened in Milwaukee, Cleveland, and Denver. The AIM worked as an Indian Rights organization and later to highlight Native American issues in the media (Fine-Dare 2002, 75). Activists were working to address many indigenous rights and needs. The Native American Rights Fund was also established in 1970 to provide legal assistance to those in need (Fine-Dare 2002). In March 1978, a Native American protest march began in San Francisco and ended four months later in Washington DC. It was known as the Longest

⁶ A description of the 1966 Act can be found at the following address:

<https://www.nps.gov/history/local-law/nhpa1966.htm>

The National Historic Preservation Act (NHPA) was amended in 1992. President Clinton’s Executive Order No. 13007 of May 1996 was signed to protect Native American sacred sites located on public lands (Gulliford 2000).

Walk and addressed the issues of treaty rights being presented in Congress. Along the way, those participating visited institutions that held indigenous remains and sacred objects (Fine-Dare 2002, 78).

Federal policies in relation to Native American communities did not respect their religious freedom. It was not until the 1978 American Indian Religious Freedom Act (AIRFA) was signed that traditional religious rights and cultural practices were protected under federal law (Public Law No. 95-341, 92 Stat. 469). This was quickly followed by the Archaeological Resources Protection Act (ARPA), which was enacted in 1979 by Congress in response to illegal excavations and the selling of artifacts and human remains (Public Law 96-95, 16. U.S.C. 470aa-mm; Grande 2017). It was also the first legislative act requiring consultation with the indigenous peoples on the land (Watkins 2013). Neither of these acts went far enough to protect indigenous cultural property and ancestral remains, many of which were still held and displayed by museums and institutions across the country.

Fine-Dare states, “the 1980s saw a transition from sieges, occupations, and other types of more direct political protest to legal actions at federal and international levels” (2002, 90). The debates in the 1970s and 1980s ultimately culminated in two legislative acts: the National Museum of the American Indian Act (NMAIA) of 1989 and the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990. It was not until discussions for a new National American Indian Museum in the 1980s, that repatriation claims gained traction and quickly cascaded into federal legislation (Preucel 2011). Even the language norms of discussing repatriation began to change. The idea of returning ancestral remains, or warriors home gained traction in legislative discussions, indigenous advocacy, and conversations at the museum level. As Suzan Shown Harjo, an established

poet, author, human rights activist for indigenous rights said in her interview with Robert Preucel in 2011:

...it took us 22 years from 1967 to 1989 to get the historic repatriation provision in the National Museum of the American Indian Act. And it took us only eleven months to have it apply to everyone else in America. So that's the value of going after king of the mountain (2011, 142).

The realization that the possession of territories and the cultural objects of a colonized people affect both the colonized and the colonizers took hold (Vrdoljak 2006). The culture shifted and the moment of rupture for repatriation arguments tipped the scale with the NMAI Act of 1989, followed swiftly by NAGPRA in 1990. This sudden change occurred after long legal battles and activism in the 1970s and 1980s, which altered the power relationships in the discourses and narratives (Foucault 1972). This altered the foundational understanding of holding sacred objects and human remains in indigenous collections in US museums. As Harjo said, legislative change had a cascading effect once the power relationship narratives changed (Preucel 2011). Essentially, changes in societal and institutional norms altered the power relations at the museum (Luke 2002; Hooper-Greenhill 2000); and, despite vocal opposition by some in the scientific community, there was no going back to a pre-repatriation state at the museums.

Value Shifts: Art or Ethnography?

Cultural values were not the only shifts at the museum and with society at large. A shift in aesthetic and monetary values was also occurring. How society attaches value to something, i.e. monetary, utilitarian, or aesthetic is influential and "taste" accounts for much of the value of objects. When tangible cultural objects began to be viewed as art instead of ethnographic artifacts, they gained monetary value. In fact, it was possible to

limit indigenous communities with cultural patrimonial claims to objects by elevating “Native American cultural objects into the Western art canon” (Vrdoljak 2006, 104). What was considered ‘art’ had changed—indigenous artifacts that had once been considered ethnographic specimens were now being sought as ‘primitive art.’ Also, non-European cultural objects moved from natural science museums to art museums when they began to be seen as a “cultural resource” (Vrdoljak 2006, 103).

Today, indigenous communities work to be involved in how their cultures are displayed within the museum and other institutions. But in the 19th century, museums categorized indigenous arts within the decorative arts and ethnography category (Vrdoljak 2006, 61). This lasted into the twentieth century when the objects were continually treated as cultural resources. Native American objects were viewed as ‘primitive art’ and as Vrdoljak points out, they were “a resource to be exploited in the search for an ‘authentic’ US art movement” (2006, 118). This legislative movement was mainly organized by non-indigenous people who viewed Native American antiquities and art as a tangible representation of their national colonial heritage.

Key Institutional Shifts

Important to the repatriation arguments were the negotiations and political struggles occurring on the national platform. Native American activism in the 1970s and 1980s began to alter the public perception of museum collections. Heritage is a complex inheritance and is at times a source of conflict (Watkins 2013). In the twentieth century, colonized people began requesting restitution or repatriation of objects taken by colonial powers. Repatriation, or restitution, was a symbol of decolonization and a returned autonomy for the oppressed. Human remains and culturally significant objects were now

signifiers and symbols and not only seen as specimens of past civilizations. In their altered role, museums could act as places of cultural diplomacy and political activism.

It is entirely possible for continued colonial categories to affect repatriation efforts. The language used when discussing indigenous peoples still maintains an element of 'othering.' In order to avoid continuing colonial assumptions in scientific research, we need to question what justifies our knowledge claims on indigenous cultural artifacts. This is critical to the development of NAGPRA and other formalized repatriation policies. It is the goal of this project to reify repatriation claims and to bring to light attempts to correct past colonial injustices.

A Shift in Repatriation Discourse

In the 1980s, there were calls to treat repatriations on a case-by-case basis. Museums were afraid that if sweeping legislation was passed, their collections would be emptied. Native Americans developed a coalition with the American Association of Museums and on the other side of the argument, there was a coalition that included many museums (i.e. the Heard Museum of American Indian Art and Culture in Phoenix, Arizona, the museum system in New Mexico, the Field Museum in Chicago, the Denver Art Museum in Colorado) and several universities (i.e. Arizona State, the University of Arizona, UCLA, and UC Santa Barbara) that were calling for 'no national repatriation policy' (Preucel 2011, 139). In future chapters of this research project, how formalization was facilitated will be explored and questions of its structure and possible future improvements will be discussed. Repatriation has scaled up in its formalization and establishment as an institutional practice, which presents the question of whether we should be aiming for

formalization at the international level, or whether present standards and conventions do enough to address indigenous needs.

There has been a strong formalization within the US federal law through the NMAIA and NAGPRA that made control over property and ancestral remains a political issue (Watkins 2013). As translated through institutional practices, individual worldviews have changed regarding repatriation. Putting NMAIA and NAGPRA into systematic use established a formalization of repatriation policy that is compelling and significant in the institutional changes that have taken affect. As Harjo points out, the discourse changed quickly from moral ambiguity to an ethical imperative. Repatriation became a form of moral restitution to counteract the policies and procedures of the 19th and early 20th centuries (Vrdoljak 2006).

The Beginning of Formalized Repatriations: NMAIA 1989

Institutions and cultures mediate the changes seen in repatriation policy. Laws and legislation filter through broader theories on ownership and restitution. The museum culture stems from an ideology of collecting world heritage and history. Today's museum displays are left to deal with this legacy and must work to achieve an equitable and efficient way of dealing with objects and histories. For this reason, repatriation discussions have had a punctuated equilibrium culminating in two domestic repatriation laws that have formalized the process of requesting and fulfilling claims.

George Gustav Heye 's (1874-1957) extensive collection of Native American objects were to become part of a new American Indian museum. Although he acquired most of his collection through legal channels, today's ethical standards would question many of these acquisitions (Force 1999). When the Heye Foundation's Museum of the American Indian

finally moved from New York to the Smithsonian Institution collection in 1989, discussions of museum repatriations took legislative shape (Preucel 2011, Smithsonian Institution 2004). Creation of the National Museum of the American Indian Act (NMAIA), 20 U.S.C. §80q (PL 101-185), began in 1989 with the requirement that the Smithsonian Institution begin efforts to catalogue,⁷ and return whenever possible, important grave goods to indigenous groups from their vast collections accumulated during “salvage” ethnography expeditions (Preucel 2011). This was the first large-scale attempt at repatriation in North America. In 1996, an amendment (PL 104-278) was passed and established deadlines for when inventories and summaries should be completed by the Smithsonian and sent to tribes in the United States: inventories for unassociated funerary objects, sacred objects, and objects of cultural patrimony by December 31, 1996 and inventories for human remains and associated funerary by June 1, 1998. The amendment also required two Native American traditional religious leaders be added to the Smithsonian’s Repatriation Review Committee (NMNH 2012).

In 2004, the National Museum of the American Indian (NMAI) opened on the National Mall in Washington DC; its collection currently houses 825,000 objects from the Americas (Jenkins 2016). The curatorial management at the NMAI have sought to present the Native American narrative in a new way. The Mission Statement of the NMAI states:

The National Museum of the American Indian (NMAI) is committed to advancing knowledge and understanding of the Native cultures of the Western Hemisphere—past, present, and future—through partnership with Native people and others. The museum works to support the continuance of culture, traditional values, and transitions in contemporary Native life.

⁷ When repatriation policies became law, the Smithsonian contained 33,000 sets of human remains, with 19,250 sets of Native American remains identified. Not all remains were available for repatriation under the new guidelines. But, 5,500 did qualify. The Smithsonian has repatriated 3,939 of these human remains (Redman 2016).

The NMAI's role is to "affirm and enliven Native cultures in the present" rather than the more traditional role of other museums (Jenkins 2016, 253). The NMAI has been equated with creating an idealized version of Native American history and privileging the narrative based on ethnicity. Complaints have been raised that exhibitions at the NMAI are "banal and celebratory, rather than informative and exploratory" (Jenkins 2016, 268). One might assume this criticism is stating the pendulum has swung too far in trying to correct for past misrepresentations. In attempting to connect American Indians to their cultural heritage, historical facts and larger narratives are lost.

In a more favorable light, the NMAI is a forerunner for museums grounded in representing a specific identity or ethnicity (Jenkins 2016). It is not a private or tribal museum; instead, it has a foundation in federal legislation. According to the guidelines and procedures for the National Museum of Natural History (NMNH) under the umbrella of the Smithsonian Institution,⁸ the repatriation program at the NMNH works to generate respect and understanding for *contemporary* Native perspectives, which can change. The NMNH also operates according to the National Museum of the American Indian Act (NMAI Act). Interestingly, the NMAI Act did not define cultural affiliation initially and a similar regulation based on NAGPRA's cultural affiliation clause was included later (NMNH 2012). It was specifically enacted in relation to the Smithsonian Institution collection, but was amended after the passage of NAGPRA to more closely align the two (Watkins 2013). The Act also ruled that seventeen of the twenty-five members of the trustee board must be Native American (Jenkins 2016).

⁸ NMNH guidelines were amended in 2012.

Large-scale National Repatriation Policy: NAGPRA

The Native American Graves Protection and Repatriation Act (NAGPRA) was federal legislation that required federal agencies and institutions receiving federal funding to return Native American sacred cultural objects and human remains. For almost twenty-eight years, NAGPRA has detailed regulations for museums and other institutions, as well as excavations, receiving federal funding in relation to human remains and grave goods (Harding 1997; Department of Interior 1990). It also regulates who is allowed to make claims to repatriate. According to the provision in NAGPRA, only those individuals and communities who can prove lineal or cultural proximity claims are considered for repatriation fulfillments, which is often hard to accomplish. The claimants must also be federally recognized and, unfortunately, the government does not accept every community that identifies as indigenous. Essentially, communities are delegitimized on a national level through the denial of indigenous sovereignty.

The present articulation of NAGPRA regulations are extensively outlined for federally funded institutions. The Field and Penn Museums closely abide by the law and both repatriation departments are engaged with the law and the indigenous communities that request objects. There does not seem to be a grudging relationship either; instead the relationships between the repatriation departments, the museums at large, and the indigenous communities are built on trust and respect. The normative aspects of NAGPRA are engrained in the workings of the museums after almost three decades of application and the changes in education and training for students and employees.

General Arguments For and Against Repatriation

Arguments are still made against repatriation but predominantly refer to antiquities and artworks. Well-known authors represented by James Cuno, Michael F. Brown, John Henry Merryman and others in the book *Whose Culture? The Promise of Museums and the Debate over Antiquities* (2009) discuss some of these arguments: 1) assumptions that indigenous communities will be unable to “properly” care for or conserve objects in the western sense of preservation; 2) questions over where the objects will be housed and displayed if institutions and cultural centers do not currently exist in the communities; 3) objections that if the objects are moved to localized communities, or difficult to reach nations, no one will be able to experience the cultural objects outside of a select few; and 4) that the scientific community at large suffers when not allowed to research and study these objects and remains. In tone, some of the arguments against repatriation assume a western worldview towards access, conservation and scientific discovery (Cuno 2010). The assumption that source communities or nations may be unable to conserve and preserve in the “proper” western sense takes away their agency to control their cultural heritage and act as they see fit. James Cuno takes the view that museums can protect and promote cultural heritage to a larger audience, which is also understood as a cultural internationalist interpretation (2008, 2010).⁹ It is a pragmatic reality that sometimes small, community museums or unstable nation-states cannot care for the cultural objects they are requesting from museums and dominant nation-states due to financial restraints or

⁹ Cultural property paradigms will be discussed in chapter two. *Cultural property internationalism* is understood as objects having great historical, global significance should be available to the entire world. *Cultural property nationalism* is the argument for property having national identity significance and belonging to specific nation-states.

political unrest, but whether it is a compelling argument for refusing repatriation requests is debatable.

Proponents of repatriation like Moira Simpson (2009) and Carol A. Roehrenbeck (2010) counter that the objects represent the cultural property of source communities and it is the responsibility of governing bodies to aid in returning cultural heritage that was generally taken through violent, colonizing means. The argument rests on the idea that the source communities and nations deserve to have them back to correct for past injustices created by the “nineteenth-century consolidation and global extension of bourgeois hegemony” (Wolfe 1999, 48). Outside of repatriations, sometimes museums chose to loan artifacts to communities or other museums. The impact of these loans is debatable. Jenkins states that these loans do not address the criticisms of a museum’s collection (2016). Whereas other museum experts state that they improve relationships between museums and indigenous communities (Conaty 2015).

Repatriation Policy in Practice: The Field Museum and Penn Museum

The justification for choosing the Field Museum of Natural History and the University of Pennsylvania Museum of Archaeology and Anthropology for this research project relates to the institutional practices of the museums, the established network relationships between indigenous peoples making claims on the collection and the museum’s curatorial and repatriation staff, as well as a willingness by both museums to discuss the incorporation of NAGPRA compliance into their museums. The rules, norms, and strategies for compliance within the institutions are interesting. The Penn Museum was founded in 1887 and has approximately one million objects in its collection. In 2016, 183,921 visitors came to the museum according to data from the Center City District and

Central Philadelphia Development Corporation. In comparison, the Field Museum opened on June 2, 1894 and has approximately thirty million artifacts and specimens in its collection. According to the *Chicago Tribune*, the Field Museum had 1.65 million visitors in 2016 (Johnson 2017). There are institutional similarities and differences in the Field and Penn museums: both are federally-funded (subject to NAGPRA) with extensive indigenous collections collected at the height of ethnographic expeditions in the 19th and 20th centuries. Although both museums have university involvement and affiliation as well in their research and curatorial narrative, the roles of universities differ.

Repatriation at the Penn Museum

On April 1, 1970, curators at the Penn Museum published the Pennsylvania Declaration. The declaration stated that the museum would not purchase any objects without a detailed provenance. The same year, the 16th General Conference of UNESCO held the Convention on the Means of Prohibiting and Preventing the Import, Export and Transfer of Ownership of Cultural Property, which was adopted on November 14, 1970 and addressed issues of questionable provenance and went into effect on April 24, 1972. On May 2, 1978 the Penn museum reiterated and reaffirmed their dedication to holding and displaying only objects with verifiable pedigree (*Expedition* 1980). Forty-eight years after the Pennsylvania Declaration, the current director at the Penn Museum would go on to write the following letter, pledging a continued practice of NAGPRA compliance:

A Letter from the Director¹⁰

On 17 November 1990, “The Native American Graves Protection and Repatriation Act” (PL 101-601) was signed into law. This act mandates the return of specific kinds of objects to Native Americans, makes illegal their trafficking across state

¹⁰ For other information available to the public about the Penn Museum’s NAGPRA compliance, please see <https://www.penn.museum/about-collections/nagpra>

lines, and is specific about the process and procedures for archaeological excavations. The University of Pennsylvania Museum of Archaeology and Anthropology (Penn Museum) is primarily affected by the first of these three requirements, involving museum collections. Five categories of objects are identified in the law: human remains, associated funerary objects, unassociated funerary objects, objects of cultural patrimony, and sacred objects. Since the passage of NAGPRA, and in compliance with the law, the Penn Museum has mailed over 3000 letters to federally recognized tribes informing them of our holdings and extending invitations to consult with us about our holdings. As of 2017, 48 formal repatriation claims seeking the return of collections have been received and 30 repatriations have been completed resulting in the transfer of 252 sets of human remains, 750 funerary objects, 14 unassociated funerary objects, 21 objects of cultural patrimony, 22 sacred objects and 3 objects claimed as both cultural patrimony and sacred.

In the spirit of the law, Penn Museum's repatriation staff has worked vigorously to accurately inventory and research our collections, and to inform, consult and cooperate successfully with tribes about the items in our care. Observing and listening to native representatives talk about the objects has in several cases been especially rewarding and informative - in a very real sense, it has brought life to the collections.

NAGPRA has simultaneously forced us to face a variety of difficult challenges, some solutions to which are still evolving as the repatriation process unfolds. Finding common ground between native interpretations of the law and those of the Museum has been a particular test, and it is in this area that ongoing discussions with tribes are most often focused.

For more information about NAGPRA please see the National Park Service (U.S. Department of the Interior) National NAGPRA website.

Inquiries about repatriation concerns and procedures should be submitted in writing to:

Contact

Julian Siggers
The Williams Director
University of Pennsylvania Museum of Archaeology and Anthropology
3260 South Street
Philadelphia PA 19104-6324
director@pennmuseum.org

This upfront acknowledgement of past injustices and current, as well as future, repatriations demonstrates an institutional willingness to move forward. It is interesting to

note that the Penn Museum operates within the University of Pennsylvania and is subject to the research and expedition approval decisions through the university.

Repatriations at the Field Museum

Jonathan Haas, curator emeritus and the former vice president of Collections and Research and curator of anthropology at the Field Museum, helped establish NAGPRA repatriation policy in the United States with other archaeologists, Native Americans, activists, and museum officials (Grande 2017). Beginning in the 1990s, NAGPRA compliance meant efforts on cataloging collections and responding to repatriation claims became a common practice in museums. Helen Robbins was hired in 2002 as the Field museum's first full-time repatriation specialist. Jonathan Haas has said,

[Helen Robbins] puts her heart, as well as her academic strengths, into every repatriation project that the museum undertakes. She forges effective connections and communications between the museum and Native American groups, building bridges of understanding through what is often a difficult process. She also works effectively with anthropology curators, who provide necessary consultation on cultural sensitivities, collection significance, and validity of repatriation requests.
Grande 2017, 269-270

Extensive time and effort are put into management of the human remains collection at the museum including legal, conservation, and ethical experts ensuring that the collection is within the parameters of federal legislation. Interpretation of NAGPRA and the needs of indigenous peoples is constantly evolving. One ethically ambiguous part of the collection is the shrunken heads held at the Field. The collection is composed of eleven shrunken heads from the Amazon region in Ecuador and Peru. The heads were made by the Shuar people. The heads were created because the Shuar believe they have magical powers (*tsarutama*). Heads can be made from slain enemies or beloved members of the community. The heads were exhibited to the public until 1997 when it was deemed necessary to remove them

from display. What is interesting to note is that the heads were not requested for repatriation or removal from the exhibit by the Shuar. Instead, the museum staff felt they were an inaccurate portrayal of the Shuar belief system and were instead sensationalizing the practice for the museum audience (Grande 2017, 273-274). The possibility for misinterpretation and creating a spectacle of a religious practice led to the reevaluation by the staff. It is impossible not to draw the conclusion that their work with NAGPRA was formative in creating new display norms for the museum audience.

Museums as Continued Sites of Power

Universal survey museums in the twenty-first century are tasked with new responsibilities in relation to maintaining and caring for their collections. Museums were used to aid in empire-building by relating their display of conquests and bringing it back to centers in Europe initially, and later to major institutions in the United States. There was the assumption that taking or collecting artifacts was a legitimate practice (Jenkins 2016). But no matter how objects and human remains ended up in museums and other institutions, they were initially removed from their original context and location. Looking at configurations of power relations between museums, institutional bodies, and governments, the epistemological failures affecting indigenous repatriation claims can be examined. These failures are representative of others, including territorial claims, sovereignty, resource and cultural rights experienced by indigenous people.

As we grapple with colonial legacies at the museum, determining how to deal with these contentious objects is at the forefront of our minds. Jenkins presents the argument that identity museums separate cultures and with this separation comes institutional walls between cultures (2016). Separating museums and exhibits by identities or segregating

ethnic groups gives a disjointed view of history and could affect future interactions and communications within society. Michael F. Brown also takes issue with identity museums stating they change how we understand Native culture both historically and in current indigenous life (2009; Jenkins 2016). It is not possible to do away with identity no matter how an individual (or community) tries to untangle oneself from colonial power (Said 1993, 210). It is a part of the legacy created and it is necessary to understand when moving forward in engagement with the present and future, especially when deciding how to create new exhibitions in the museum.

The museum should be a place of intellectual engagement and cultural sensitivity—the audience needs to engage in the complete narrative. Depatriation and the original meaning of objects before they were incorporated into the collections needs to be considered and reevaluated. Universal survey museums can remind visitors that many of the indigenous cultures they are seeing are *living* cultures rather than part of a distant past (Cuno 2008). What they may be seeing in the display is merely a moment in their history. How museum visitors view, or understand, objects are not necessarily how they were initially intended to be seen, perception changes over time and understanding is always an approximation.

Chapter 2: Theoretical Frameworks of Cultural Property Ownership

In the summer of 2016, the Penn Museum repatriated two clan hats to representatives of the Tlingit community of Sitka, Alaska. This repatriation occurred under the direction of Stacy Espenlaub, the NAGPRA officer and curators Lucy Fowler Williams and William Wierzbowski. The clan hats had been approved for repatriation in 2010 and on July 17, 2016, the Raven of the Roof Hat and basketry Whale Hat were returned to Harold Jacobs, the Cultural Preservation Specialist with the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA). The hats were accepted on behalf of the L'ooknax.adi (Coho) Clan leader, Mr. Herman Davis, of Sitka.

Clan hats act as political voices for negotiations, marriages, tribal councils, and legal discussions and there are consequences for possessing them. To this day, they are politically important for the communities. The clan hats initially came to the Penn Museum because of Louis Shotridge. A member of a prominent Tlingit family from Klukwan, Alaska, Shotridge was recruited by the Penn Museum in the 1920s to go back to Alaska to conduct research and obtain indigenous objects for the collection.¹¹ There are mixed feelings about Shotridge and his collecting practices since the objects would have been destroyed in the 1940s in a couple of large fires and he was a member of the Tlingit community. However, Shotridge was posthumously liked more for “saving” objects.¹² The objects he collected

¹¹ This repatriation was described in interviews with Lucy Fowler Williams and Jeff Attridge. Additional information about the repatriation can be found at:

<https://www.penn.museum/about-collections/nagpra/repatriations#2016>

¹² For more information on Louis Shotridge and to view his relationship with the Penn Museum, see: <https://www.penn.museum/collections/shotridge/>

remained in the Penn Museum's collection until their repatriation. The clan hats had been naturally preserved and kept in a climate controlled environment at the Penn Museum. When the representatives of the source tribes arrived for the repatriation, everyone interacted with the hats since they have cultural patrimony and are intended to be used. As long as these specific clan hats exist, others cannot be made to replace them. This is another reason for wanting a repatriation of significant objects instead of replicating the object. The clan hats are a *physical* bridge to the past, something replicas cannot do.

The Tlingit community has had a working relationship and a vested interest in the Penn Museum. Previously, the museum staff traveled with the hats to the village. But, it was not considered a loan since museum staff had to physically stay with the hats (on the plane they bought seats for the hats and stayed with them throughout the trip). After six years, the clan hats were taken home to Alaska.

Constructs of Property Ownership: What is Cultural Property¹³ and Why are Repatriation Claims Made?

As discussed in chapter one, how objects and ancestral remains ended up in museum collections, or their repatriation, is an important factor in determining repatriation claims. Legal ownership disputes are not always easily decided and require evidentiary support. Outside of indigenous objects and human remains, debates over antiquities and art also continue around the world. According to James Cuno, antiquities

¹³ For the purposes of the discussion, cultural property includes the tangible objects you can possess relevant to your cultural heritage. Cultural heritage includes a legacy of artifacts and intangible history. It is the connections to history and your community. There are differing opinions in the museum and academic communities on the delineation between cultural property and cultural heritage. This is important for the argument on whether something can be "owned" or if a definition of stewardship is more appropriate to the discussion, especially when considering contested objects.

cannot be owned by specific groups since they represent a common heritage and the debates over their control are political (2008). But there are those who disagree with him and take a different view on ownership. State control and the concept of the nation were influential in the exploitation of lands, peoples, and resources during expansion periods. How property is conceptualized and rooted is important for understanding repatriation claims. Indigenous ideas of cultural heritage may not be the same as western concepts. Culture for indigenous peoples has a kinship relationship between people and the land (and the creatures and spirits living on the land) (Kuprecht 2014, 47). This kinship was disrupted after colonization. Therefore, the conceptualization of cultural property includes many factors and this empirical study builds upon present literatures on the dominant cultural property paradigm to develop a framework for exploring indigenous cultural property narratives. This ownership paradigm stems from the decolonizing movement of property after World War II and the creation of international guidelines for returning illicit objects.

The term *cultural property* “carries a legal and ideological load of goals and theories of property law that stimulate the commoditization of goods and thus overemphasize their commercial value in comparison to the cultural manifestations inherent in cultural objects” (Kuprecht 2014, 42). But histories and cultures overlap and are not limited by present political sovereignties and for this reason, cultural property claims are being based on tangible and intangible heritage claims “and, despite all of the rhetoric of ‘the common inheritance of all peoples,’ more and more of it is being governed by narrower and narrower jurisdictions” (Cuno 2008, 49-50). “Ownership” is, therefore, a highly-contested concept based on cultural commodification stemming from “multiple histories,

colonization, shifting national boundaries, and inequalities in wealth and power...”

(Subramaniam 2013, 147). Controversies over national claims are based on the value of an object or site to *modern* nation-states. This is not necessarily a monetary appraisal, but value as it relates to culture or national identity. What is considered “culture” has a political and public imagination and is woven into national identities. There is also not necessarily a clear continuity or connection to past, ancient civilizations that may have existed within modern national borders. In fact, prior to the mid-twentieth century, culturally significant objects and art were commonly pillaged during wars and military conquests and helped build the ideology of empires.

Today, there are multiple repatriation relationships: 1) Government to government (i.e. “national” treasures returned); 2) government/institution to individual/collective group/institution (i.e. Parthenon marbles request is between nations—England/Greece, but is also between Greece (nation) and the British Museum (institution)); and 3) private collection/auction house to individual/government/institution (i.e. auction houses in Europe holding indigenous artifacts that are claimed by Native Americans). For the purposes of this research, I focus predominantly on institution to individual/collective group/institution repatriations. The reason for this decision is to understand institutional changes that led to indigenous repatriations and the cultural values that influenced legislation and institutional policies. It is possible to see that institutional governance has been influenced by cultural and social factors when looking at international conventions calling attention to indigenous needs and standards. However, these conventions on

cultural property require local or national laws since they have no international enforcement (ethical standards rather than legal parameters).¹⁴

Edward Said states that “narratives are never undisputed or merely a matter of the neutral recital of facts” (2000, 177). This is especially true for indigenous communities who have symbolic attachments to tangible aspects of their collective memory of colonialism and its prolonged legacy. Indigenous cultural property is different from more generalized cultural property in that intangible value is more closely connected to indigenous cultural property and collective, or communal, ownership rights govern management of the property (Kuprecht 2014). Communal rights, cultural affiliation, and cultural patrimony are all important components to consider in indigenous repatriation claims and are not absolutely represented in the existing cultural property paradigm first discussed by John Henry Merryman (1986) prior to the adoption of NAGPRA.

Cultural Property Internationalism and Cultural Property Nationalism— The Cultural Property Paradigm

The current paradigm of ownership helps us understand how property is constructed and how meaning is rooted along the lines of an internationalism/nationalism divide. Laws have filtered through broader theories on cultural property ownership to establish norms and rules when dealing with property claims, both domestically and internationally. Currently, we have two predominant schools of thought on cultural property ownership that fit within this Western ownership construct: cultural property internationalism and cultural property nationalism. The standard property ownership ideology rests in John Henry Merryman’s discussion of cultural property internationalism

¹⁴ Discussions on these conventions will be discussed fully in Chapter 5.

and cultural property nationalism. Merryman states that cultural internationalism asserts important cultural objects represent our shared humanity, our collective past and should be able to traverse transnational borders (Merryman 1986; Prott 2005). This argument would relate to the British Museum's stance on the Elgin Marbles, acquired by Thomas Bruce the 7th Earl of Elgin from the Ottoman Turks in 1801 and later purchased by the British government in 1816. The British Museum states that since more visitors can experience the marbles in London, they are well tended, and they are now part of their *English* history, the marbles should stay (Jenkins 2016). For James Cuno, "[a]ntiquities are the cultural property of all humankind—of *people*, not *peoples*—evidence of the world's ancient past and not that of a particular modern nation. They comprise antiquity, and antiquity knows no borders (2008, 146).

Universal survey museums, or encyclopedic museums as they are sometimes called, show broader connections and a diverse worldview of history. Jenkins believes that repatriations based on national concerns alter our perception of the world: "[b]y appreciating these objects, we can abstract ourselves from our immediate circumstances and understand creations made by anybody, wherever they were from and whenever they were alive" (Jenkins 2016, 217). Internationalism property claims beg the question that since nothing is fixed indefinitely, when does something become a part of *your* identity? Proponents of cultural property internationalism advocate for the end of placing modern national borders on objects with complex histories (Jenkins 2016).

Cultural property nationalism, on the other hand, attempts to create a *national* identity in connection to the ownership of cultural heritage (Merryman 1986). Cultural property nationalism segregates along modern nation-state borders. Cuno states that these

national retentionist claims place national identities onto objects that may have nothing to do with modern nation-state (2008, 124). This is Greece's argument for wanting the Parthenon marbles returned from the British Museum. Modern Greeks feel the marbles were wrongfully appropriated *and* connect the current state to its successful cultural past—even though the Greek state in its current form has only existed since 1830 (Jenkins 2016). In their eyes, the marbles represent their national identity. They see themselves as the descendants of the original Athenians who completed construction on the Parthenon in 432 BCE. Even though, politically, the area was governed by independent city-states rather than a centralized “national” government,¹⁵ modern Greece views itself as the inheritor and rightful owner of the marbles. National governments claim what cultural property defines their nation-state. The past, and its cultural remnants, are used to create the identity of the nation-state. Nation-building has an attachment to antiquity since it establishes a mythology, a legacy for the nation (Jenkins 2016).

Disputes over an object's representation, whether as part of a shared human identity or as demonstrative of renewed national ties, began in earnest after the end of WWII and into the 1950s with concerns over the movement of stolen art and artifacts *and* decolonization in former colonies who wished to reclaim their heritage held in European museums. The internationalism/nationalism archetype is more relevant to disputes over ancient antiquities or artworks held in collections because they are ownership claims based on the appreciation of the past, rather than an ownership, or stewardship, claim based on an affiliation or patrimonial basis. This then opens the ownership paradigm to the

¹⁵ Cultural property nationalism does have some overlap with cultural property indigenism's relationship to the past. However, I view cultural property indigenism as distinct since it also involves cultural patrimony in its affiliation component.

question: how can claims for the return of human remains and objects relevant to the cultural patrimony of living communities be addressed?

One of the problems with cultural property paradigms is that indigenous communities usually have less representation in their national legal systems and “as second-class nations within nations, can indigenous populations hope to find footing equal to that of the dominant government in situations that require judicial or legislative remedies to the problem of heritage appropriation?” (Watkins 2005, 81). This is where the theory of cultural property indigenism, first mentioned by Karolina Kuprecht (2014), attempts to fill the gap between these two views. Cultural property indigenism is placed within the human rights legal framework when considering cultural property laws relevant to indigenous communities and allows for arguments relating to cultural patrimony.¹⁶ The significance of cultural patrimony is not based on lineal time and allows property rights to engage with culture affiliation as a legal component for indigenous peoples (Kuprecht 2014). Since indigenous peoples around the world have similar feelings in relationship to the loss of their cultural objects, it is possible to think of cultural property indigenism as an umbrella legal definition for repatriation claims.

Cultural Indigenism as a Third Component of Cultural Property Ownership

Merryman’s ownership paradigm has been a standard in discussions but there are also those who find fault with his conceptual framework. Lyndel V. Prott states that *cultural property* is a “loaded term” (2005, 225). According to Prott:

protection for Merryman means *protection of the object* or *protection of the international interest*, whereas he terms the policy of states’ protection of objects

¹⁶ Cultural patrimony is defined as objects possessing continual cultural or historical significance to a community.

within their country, *retention*. The word protection in national heritage legislation, however, shows a wide variety of other interpretations: protection of access, protection of education of creative artists and of the public in their own cultural traditions, protection of minority communities' special requirements for the handling of their cultural creations, as well as protection of the object.

Pratt 2005, 226

Pratt prefers the idea of heritage to describe indigenous relationships with objects, which invokes guardianship norms, rather than property. It should be noted that the US tends to use the term "patrimony" to describe these relationship, but this is not seen everywhere else. Also, Merryman's paradigm does not include cultural objects that are communal tradition rather than commodity (Pratt 2005, 226-228). Beyond the dichotomy of national and international property ownership is a possible third group of people seeking control of their cultural property. Joe Watkins calls this group "cultural intranationalists" and describes them as peoples seen throughout the world, i.e. Native Americans of North America, Aboriginal communities in Australia, and First Nations of Canada who live within the nation, but are also separate from it (Watkins 2005, 79). He states that cultural intranationalists "often feel that they should be able to control the heritage materials they see as rightfully theirs" (Watkins 2005, 79). Ownership rights for indigenous peoples are "rarely equivalent to that of the nations within which they exist" (Watkins 2013, 20-21). As Laurie Whitt wrote, subordinated cultures like that of indigenous peoples can be made into commodities (1999). This commodification is not necessarily its marketability but also cultural commodification, or culture as capital. Adding a cultural indigenism component into the ownership paradigm would more fully address cultural and human rights of indigenous peoples. This layering of indigenous rights for communal rights and recognition of cultural patrimony affect cultural affiliation and the development of repatriation

legislation (Kuprecht 2014; Prott and O’Keefe 1989). Inclusion of cultural property indigenism language in discussions of property/heritage control would address concerns beyond property ownership and into human rights law.

The inclusion of cultural property indigenism is most fully understood when looking at United States legislation of two federal repatriation policies: the National Museum of the American Indian Act (NMAIA 1989) and the Native American Graves Protection and Repatriation Act (NAGPRA 1990). These policies do not use the phrase cultural property indigenism but they embody components of this theoretical understanding of property. NAGPRA was written with a cultural affiliation clause and the NMAIA was amended to also contain similar language. The cultural affiliation component of NAGPRA works within the framework of accepted property laws in the Anglo-American legal system (Kuprecht 2012). NAGPRA also requires that sacred objects, or objects with cultural patrimony, have links to traditions today: “Sacred objects additionally have to be necessary for religious practices, and cultural patrimony has to be of ongoing importance to the Native American group” (Kuprecht 2014, 45).

Legal Pluralism and NAGPRA

Indigenous views on property and rights were embedded in Anglo-American law to construct NAGPRA. It has been noted by some scholars that NAGPRA is an example of legal pluralism for indigenous groups because it addresses issues related to civil, human, and cultural rights. Legal pluralism in this sense means that NAGPRA establishes specific rights to Native Americans and Native Hawaiians beyond the federal law of equal rights for all citizens (McLaughlin 2002, 206). This legislation for a specific demographic within the

larger nation-state, recognizes culturally significant needs of sovereign nations within the United States:

NAGPRA implicates legal pluralism because this cultural specificity lies embedded in federal law. To be clear, federal law both participates in and is produced by a pervasive Anglo-American ideology comparable to the native ideologies recognized in NAGPRA. Indeed, the Anglo-American presumption that federal law is an appropriate instrument by which to resolve the underlying issues in NAGPRA goes without challenge in popular media coverage of repatriation conflicts and compromises alike.

McLaughlin 2002, 206

This blending of multifaceted cultural conceptions, differing religious views, and property and communal rights within the Anglo-American legal system is a very interesting legislative statute. Congress enacted a “procedural approach” in order to govern a diverse set of groups and tribes through NAGPRA (McLaughlin 2002, 208). It is pluralistic law because it is going outside the western idea of property and affiliation to include indigenous sovereignty and views on stewardship of cultural property and human remains.

NAGPRA has also been described as a new treaty between sovereign nations by Suzan Shown Harjo and Bob Adams of the Smithsonian (Preucel 2011). Harjo explains that it took 22 years to finally enact the NMAIA and then eleven months for repatriation policy to affect the rest of federally-funded institutions in the United States. She credits this quick turnaround to convincing the Smithsonian Institution of changing their practices: “that’s the value of going after the king of the mountain” (Preucel 2011, 142).

Under NAGPRA (25 USC 3001), museums are identified as institutions receiving federal funding and within the United States (NAGPRA 1990). This stipulation is important since some institutions, like universities, receiving federal money may not realize they are considered a museum based on the definition as presented in NAGPRA. Other than the Smithsonian, museums that receive federal funding are required to inventory objects that

fall into three categories: funerary objects, sacred objects, and objects with cultural patrimony. These inventories are shared with tribes throughout the United States (Finkelman and Garrison 2009). NAGPRA also has a criminal law provision to limit illegal trade and trafficking of indigenous cultural property. Section 18 U.S.C. § 1170 includes penalty provisions related to the sale, purchase and transport (for sale or profit) of human remains and cultural objects:

- (a)** Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.
- (b)** Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.

NAGPRA, Section 18 U.S.C. § 1170 (1990)

This is also seen in other countries and will be discussed more fully in Chapter 5.

NAGPRA is human rights, as well as cultural rights, legislation. It codifies the nested relationships in indigenous cultural heritage claims: kinship, locality, nationality, and humanity and highlights legal pluralism aspects:

The affiliation issue asks whether the legal pluralism of NAGPRA will render federal law comparable to Native American ideologies as a culturally specific and historically contingent ideology or whether this federal law will be seen as an accommodation of certain cultural differences that nevertheless perpetuates the authority of Anglo-American law. This broad question demarcates a limit of democratic governance in the United States. Constitutional principles of due process and equal protection require that the parties to NAGPRA claims be constructed uniformly as citizens, whereas native groups perceive their native identities to be

primary if not dispositive in all NAGPRA matters. Still, NAGPRA operates by the authority of Congress and the force of the law.

McLaughlin 2002, 218

NAGPRA has a seven-member advisory committee to aid in its application and make recommendations to mediate disputes or disagreements over culturally unaffiliated remains. Cultural affiliation is an important part of NAGPRA legislation and repatriation in general. Native Americans must show a relationship of shared group identity with an identified, historical group to make a request. The cultural affiliation statute creates a priority list of who can make repatriation claims: 1) lineal descendants; 2) tribes who currently control the territory where the remains were found; 3) tribes who can show a close cultural affiliation to the remains; or 4) a tribe that litigated through the Indian Claims Commission (ICC)¹⁷ (Finkelman and Garrison 2009).

Cultural Affiliation Component of NAGPRA

The NAGPRA amendment relating to cultural affiliation was adopted in March 2010 under the title 25 USC § 3005:

(a) Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

(1) If, pursuant to section 3003 of this title, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 3004 of this title, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency

¹⁷ The Indian Claims Commission (ICC) was created by an act of Congress in 1946. It was created to address longstanding territory claims of indigenous communities. The commission ended in 1978 under Public Law 94-465. For more information see: *United States Indian Claims Commission, August 13, 1946-September 30, 1978: Final Report 1979*.

or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this chapter shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 3003 of this title, or the summary pursuant to section 3004 of this title, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this chapter.

(b) Scientific study

If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) Standard of repatriation

If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this chapter and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that

the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) Sharing of information by Federal agencies and museums

Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) Competing claims

Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this chapter, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this chapter or by a court of competent jurisdiction.

(f) Museum obligation

Any museum which repatriates any item in good faith pursuant to this chapter shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state ¹ law that are inconsistent with the provisions of this chapter.

¹ So in original. Probably should be capitalized.

25 USC 3001 (2). Pub. L. 101-601, §7, Nov. 16, 1990, 104 Stat. 3054

This amendment was created so that institutions would know what to do with human remains and funerary objects that had no confirmed lineal descendants or culturally affiliated Native American tribes or Native Hawaiian organizations. The amendment states cultural affiliation determination is left to Native American tribes. Museums are not required to repatriate *unassociated* funerary objects or other sacred objects if they can prove they acquired them legally (Finkelman and Garrison 2009). Cultural affiliation is a major component of the Native American Graves Protection and Repatriation Act, or NAGPRA (1990). It is what establishes who will be the owner, or steward, of sacred objects and remains and is determined by the identifiable relationship between individuals or

communities and the object or remains (NAGPRA 1990; Kuprecht 2012 and 2014). This is an important factor of what makes NAGPRA so success. Essentially, NAGPRA is a formalization of repatriation into federal legislation that creates norms and regulations for what counts as indigenous cultural affiliation.

A highly-publicized example of this cultural affiliation¹⁸ argument is Kennewick Man—a set of prehistoric remains found in Kennewick, Washington in 1996 (Guarino 2016). One of the ways NAGPRA addresses this is through a cultural affiliation¹⁹ clause in its legal language. According to NAGPRA, cultural affiliation is defined as:

...a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

NAGPRA, 43 C.F.R. 10.2 (e)

The prehistoric remains were highly contested by the scientific community and tribes. Several tribes claimed him as one of their ancestors even though he was approximately 9000 years old and no direct lineal connection could be theoretically made. To them he was known as the “Ancient One” and he was an ancestor even if they could not directly trace a connection. To sum up very briefly, there was a lengthy legal battle with scientists and the US Army Corps of Engineers stating because preliminary scientific analyses suggested the remains were more closely related to Southeast Asian peoples. However—eventually DNA tests in 2015 proved he was related to modern Native American

¹⁸ In this case, cultural affiliation relates to a cultural proximity claim. Multiple tribes claim him as an ancestor based on geography and oral tradition of ancestors.

¹⁹ This discussion of cultural affiliation will become important when discussing the shortcomings of the cultural property international/cultural property nationalism paradigm.

peoples. He was therefore returned under NAGPRA. His reburial was attended by more than two hundred members of five Columbia Plateau tribes and occurred on February 18, 2017 in the Columbia Basin, Washington in an undisclosed area, ending the 20-year dispute (The Spokesman-Review 2017).

Formalization of Repatriation in the US

So how did we reach the point where the US courts would (and could) decide to return 9,000-year-old human remains based on a cultural affiliation claim?²⁰ Historically, there have been several legislative steps in increasing indigenous rights on a broader scale, but here I will emphasize a few that especially effect indigenous cultural property or heritage site claims. Beginning with the 1906 Antiquities Act, signed by President Theodore Roosevelt, Native American sites began to receive federal attention. The 1906 Act gave Roosevelt the authority to create national *monuments* (not parks) on federal lands. This was significant because it protected prehistoric Native American sites and artifacts on federal lands and private collectors were no longer allowed to excavate objects at these protected locations (U.S.C. 431-433, 1906). The first major step in creating *direct* protection of indigenous remains and sacred objects happened in 1989, when the Smithsonian Institution stated they would begin efforts to catalogue, and return whenever possible, human remains and funerary goods to indigenous groups from their collections accumulated during ethnography expeditions in the nineteenth and twentieth centuries.

²⁰ Other legislation addressed some indigenous rights issues during the 1960s and 1970s, like the American Indian Religious Freedom Act (1978), but the focus of this conference talk will be on legislation beginning in the late 1980s and 1990s.

This was the first large-scale attempt at repatriation in North America and is known as the National Museum of the American Indian Act, or NMAI Act (Preucel 2011).

The following year saw the adoption of NAGPRA, the most progressive legislation concerning the protection of Native American sacred objects and human remains on a national level (NAGPRA, 1990), but even it was limited in its scope and implementation across the country (Harding 1997; Department of Interior 1990; Kuprecht 2012 and 2014). To regulate ownership claims, NAGPRA utilizes a cultural affiliation provision clause²¹ to help determine ownership. Requirements in both NAGPRA and NMAIA were initially problematic, but additional amendments are working to correct these issues (Redman 2016).

NAGPRA treats federally recognized and non-federally recognized tribes different creating political tensions in relation to affiliation claims. For instance, remains that are

²¹ In its entirety, **43 C.F.R. 10.14 (c) Criteria for determining cultural affiliation** states: “Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group: (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to: (i) Establish the identity and cultural characteristics of the earlier group, (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or (iii) Establish the existence of the earlier group as a biologically distinct population; and (3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group” (https://www.nps.gov/nagpra/TRAINING/Cultural_Affiliation.pdf).

affiliated with non-federally recognized tribes are catalogued as “culturally unidentifiable” (Watkins 2013). Essentially, some communities are delegitimized on a national level through the denial of indigenous sovereignty. In 2000, there were 570 federally recognized tribes and 150 unrecognized (Fine-Dare 2002). Over the past eighteen years, this number has changed and the National Congress of American Indians now state that there are 573 federally recognized Indian Nations (NCAI 2018). Tribes also have their own criteria for membership that may differ from the federal stance: “...one person could be recognized as an Indian by the U.S. federal government but not by her own tribe, while another person could be recognized by his tribe but be ineligible for benefits from the U.S. government if that tribe is not federally recognized” (Fine-Dare 2002, 55). Museums are not required to consult with communities that are not federally recognized, but can return human remains or cultural items to non-federally recognized communities if they consult with the NAGPRA Review Committee (NPS, nps.gov). Non-federally recognized tribes can also work with culturally affiliated, federally recognized tribes if they want to make a claim.

Federally recognized tribes are sovereign nations and hold government-to-government relationships with the United States. To be federally acknowledged, a tribe must meet seven conditions: 1) show that they have existed as a community since 1900 to the present; 2) prove that their existence is recognized by those inside and outside of the community; 3) have a governing body over the community; 4) have a governing set of rules; 5) members of the community must be descended from a tribe; 6) the majority of the community must not be attached to a federally recognized tribe; and 7) the termination criterion states that the community is not subject to legislation that has terminated their federal recognition (Neller et al. 2013, 164). Therefore, some non-federally recognized

groups might not have met the Federal Acknowledgement Process (FAP) criteria, were refused recognition, had their status revoked over government infractions, or chose not to sign treaties with the federal government to maintain their sovereignty. There are those who believe working with non-federally recognized groups will result in undermining sovereignty rights of federally recognized groups: “One could say that the ancestors become pawns in the game of tribal politics in a manner similar to the ancestors being used as objects in a scientific study” (Neller et al. 2013, 193). It is interesting to note that before NAGPRA was passed, non-federally recognized indigenous communities that could prove cultural affiliation to human remains were often seen as the most appropriate communities in which to repatriate ancestral remains (Neller et a. 2013).

NAGPRA and Human Remains

Repatriation of human remains from museum collections continues to be a contested issue. Collections of human remains in museums fall into three categories: 1) archaeological (from different sources/time periods); 2) research related to evolutionary theories; 3) ethnographic artifacts (i.e. Egyptian mummies) (Simpson 1996). Scientists have long relied on human remains for the study of cultural and physical anthropology. Bone rooms, dedicated spaces in museums for the storing of human remains, became a common practice that began to be reexamined after the end of World War II (Redman 2016). For example, the Field Museum houses one of Chicago’s biggest mausoleums. The collection includes over 6,000 human remains from varying locations (Grande 2017, 259). Museum visitors around the world have been “enthralled, almost surprised, by the *humanity* of ancient and recent bodies they found exhibited before them” (Redman 2016, 15). According to Grande, the human remains currently held by museums and other

institutions are incredibly important as a scientific resource since regulations and ethical principles prevent the collection of new specimens (2017). But there is also a dehumanizing nature to having indigenous bones in museums for study alongside extinct and ancient objects. Consider that culturally affiliated remains are repatriated, but remains of non-federally recognized or “culturally unidentifiable” remains linger in museum collections (Redman 2016).

Another complication is that NAGPRA places an emphasis on the return of human remains, without necessarily thinking about the complications for communities—some tribes do not wish to touch the remains in the collections and those that do wish to have remains returned, must make ceremonial provisions for interment. A lack of land for reinterment is also a problem for some tribes. If land is not available for reburial, the remains may end up staying at museums or other institutions until a later time (Bernstein 2013; Robbins 2016). For example, when NAGPRA was initially passed the Zuni tribe stated they did not want to claim human remains since there was no reburial ceremonial practice, nor did they want to create one. However, in the early 2000s, Zuni tribes began using intermediaries to rebury ancestral remains and funerary objects: “the Zuni Tribe, along with the Hopi Tribe, Pueblo of Acoma, and the Pueblo of Zia are referred to as the ‘four repatriation Pueblos.’ Jointly they request repatriation of human remains identified as ‘Puebloan,’ ‘Ancestral Puebloan,’ and ‘Anasazi.’ They do this with support of the other seventeen Pueblos” (Bernstein 2013, 277). Before September 2006, the policy at the Bureau of Land Management (BLM) did not allow the reinterment of human remains or cultural items on public lands. New policy was then instated the following month to allow reburials on a case-specific basis (McKeowen et al. 2013). This example shows that

Indigenous religious practices change over time; communities are not stagnant or living fossils, but vital groups creating new religious practices.

Value Changes Over Time

Within the discursive approach, language has the power to produce a change in normative behavior. The social construct of what we view as ethical and moral changes with the very tangible outcome of NAGPRA legislation. Discourse analysis allows us to critique “the social processes by which we construct the world we live in” (Epstein 2008, viii). NAGPRA was enacted because of living Native Americans and the “emotional and cultural brunt of having ancestors and ancestral materials held as components of collections” (Stoffle and Evens 1994, 29). These cultural and institutional value shifts demonstrate the power of language to enact changes to normative behavior (Epstein 2008). The social construction of what we, as a nation, viewed as ethical treatment of indigenous cultural objects and ancestral remains transformed with the creation and implementation of NAGPRA. Before NAGPRA, repatriation claims were handled on a case-by-case basis and determined by the museum’s decision. Fine-Dare relates two examples of repatriations prior to the passage of state and federal regulations: the return of wampum belts to the Six Nations Iroquois Confederation held by the Heye collection and Ahayu:da (War Gods) to the Zunis from multiple institutions, including the Denver Art Museum, Beloit College, and the Smithsonian (2000, 91-97). There was also state-level legislative action that predated NAGPRA. This included the Native American Heritage Commission (NAHC) in California, which regulated burials found on both public and private lands. Similarly, Colorado passed an antiquities act in 1967 and revised the Historic Preservation Act in 1973 and 1990 but only applies to state-owned lands (Fine-Dare 2002, 98-99).

Kansas would later pass the H.B. 2144, Kansas Unmarked Burial Sites Preservation Act in 1989, “which protects human remains and artifacts found on both private and public lands” (Fine-Dare 2002, 101). And finally, Nebraska passed the Unmarked Human Burial Sites and Skeletal Remains Protection Act (LB 340) in 1989:

This law was ‘the first in the country to require public museums to return all tribally identifiable skeletal remains and burial offerings to Indian tribes that requested them for reburial’ (Peregoy 1999, 231). The law became the model not only for similar legislation passed in several other states (e.g., Arizona and Hawaii) but for the federal National Museum of the American Indian Act (1989) and the Native American Graves Protection and Repatriation Act (1990).”

Fine-Dare 2002, 102

After NAGPRA, museums were required to work with indigenous communities, publish inventories of their collections, and address repatriation claims in a more systematic way. Indigenous sovereignty, initially recognized and then disavowed and then recognized again, is wrapped in historic discursive language in the United States. The 1989 NMAIA and 1990 NAGPRA policy shifts show how values have changed over time. There is now a critical distance from the initial NAGPRA legislation to see how its effect has changed over the last 28 years. There has been a dramatic shift in the initial entrenched dominant discourse of how “Native American remains and sacred objects should be on display in museums” to a new governing discourse of “repatriating Native American remains and sacred objects and remains.” This new discourse has become normalized and the dominant entrenched discourse (Epstein 2008).

What Makes NAGPRA Successful?

One of the problems in addressing indigenous claims for repatriation is the western, Anglo-American legal structure, which is constructed within a liberal ownership and property rights framework. This structure does not necessarily consider indigenous

concerns: i.e., communal rights, transnational borders for sovereign indigenous nations, and nesting cultural affiliations (NAGPRA 1990; UNDRIP 2007). There is a need for legal pluralism within the system (indigenous sovereignty within the nation-state) to explore ownership norms affecting repatriation efforts today. NAGPRA legislation is conceptualized and written with Anglo-American philosophical understandings of “property” and “ownership,” which has allowed cultural property repatriations to proliferate more readily throughout the country (Fine-Dare 2002, 113). Recognition of cultural property indigenism into the international cultural property discussion could formalize similar repatriation claims into a worldwide framework and encourage the formulation of cultural property laws that are more relevant to international indigenous communities. This would also allow for arguments relating to cultural affiliation and patrimony to gain legal traction and establish better parameters for dealing with cultural heritage claims.

NAGPRA should be regarded as an instantiation of the cultural property indigenism paradigm. Cultural affiliation, a major component of NAGPRA establishes the owner, or steward, of sacred objects and human remains and is determined by the identifiable relationship between individuals or communities and the object or human remains (NAGPRA 1990; Kuprecht 2012 and 2014). This is an important factor of what makes NAGPRA so successful. Essentially, NAGPRA is a formalization of repatriation policy into federal legislation that creates norms and regulations for what counts as indigenous cultural “affiliation” in the United States. Cultural affiliation can be a subjective variable, given how the United States recognizes tribes and indigenous communities. There exists a binary of rights between communities that are federally recognized or unrecognized by the government. Federal recognition means that the tribe appears on the *Federal Register*

maintained by the Bureau of Indian Affairs (BIA). To be included on the BIA list tribes must 1) have a recognized government-to-government relationship with the US based on a congressional bill passage; 2) have recognition through a judicial ruling in the federal courts; or 3) be recognized by the executive branch or through petitioning for federal status through the federal acknowledgement process (FAP)²² (Neller et al. 2013, 163). Non-federally recognized indigenous groups under NAGPRA have more ambiguous relationships based on their connection to other tribes, their history, and location (Neller et al. 2013, 193).

Lingering Problems and Consequences with NAGPRA Repatriations

Even with NAGPRA and its amendments over the last twenty-eight years, there are still key issues that need to be considered. Available funding to visit museums to view objects and remains, or reclaim them once approved for repatriation is at times hard to find. Grants are available through various sources (National Parks Service, private donors, museums, etc.), but lack of funding is still an issue. Some museum practices of conservation also present a physical problem for community members who interact with the objects or touch the human remains (Bernstein 2013). Objects held by indigenous tribes were not usually preserved for everlasting use; instead, they were allowed to have a life cycle and an end. Also, although NAGPRA recognizes and legitimates oral tradition, museums have been known to discount oral history as evidence and prefer validation through written documentation (Hemenway 2013).

²² FAP was established in 1978, its name was changed to the Branch of Acknowledgement and Research (BAR), later reorganized into the Office of Federal Acknowledgement (OFA), and was eventually moved into the Office of the Assistant Secretary of Indian Affairs in the Department of Interior (Neller et al. 2013).

Many voices, both indigenous and nonindigenous, are still debating the merits of repatriation and its narrative. Some feel that even though NAGPRA was created to protect Native Americans, their ancestral remains, and their cultural objects, the legal frameworks still define concepts and ideas according to the western, Eurocentric template. As Claymont W. Dumont Jr. points out: “In short, we are being told (yet again) to make ourselves ‘meaningful and relevant’ for the anthropologists, archaeologists, and the courts, using terms and concepts they currently value, if we are to continue successfully using a law designed to protect us from these same scientists” (2013, 244). Others view it more positively. Eric Hemenway, a member of the Odawa/Anishnaabek tribe in Michigan, believes that NAGPRA has given an opportunity to reestablish identity through returning cultural objects and remains. It allows conversations between museums and tribes to discuss the narratives portrayed within the museum (Hemenway 2013, 86).

With the adoption of NAGPRA, there was a necessary shift between studying artifacts and human remains outside of the indigenous population to the new idea of intercultural collaboration: repatriation should be “a vibrant indigenous movement and...a ‘public anthropology’ project” (Kakaliouras 2012, 212). Repatriation legislation has led to ancestral remains occupying a state of limbo: some are still in museums, others are in transit to tribally run cultural facilities, and yet others are waiting to be reburied once new burial traditions can be created within the indigenous communities. But, the fact remains that repatriation can be experienced as an emotional and therapeutic practice (Kakaliouras 2012).²³

²³ When discussing policies and practices, it is important to be cautious in making sweeping generalizations for all indigenous tribes since different communities have distinct requirements or requests for repatriation and objects left in museum collections.

“Scaling up” the Formalization of Cultural Indigenism

Arguments can be made that repatriations of ancestral remains and cultural objects are a knee-jerk reaction to prove nations are more than inheritors of a settler colonial legacy. Whether this is true or not, we should ask if there are more substantial acts to decolonize our way of thinking and correct past injustices (Smith 2012). For indigenous people, it is necessary to develop traditions and practices that can heal the past and at the same time increase cultural knowledge within the present generation to gain a sense of pride in cultural heritage (Simpson 2009). Repatriation is a *process* that does not end suddenly with the retrieval of the remains and sacred artifacts from museums. Rather, it continues as the community becomes involved in the preparation and ceremonial development for reburials (Wilson 2009). There is a revival of traditional practices and the invention of new ones that add to the cultural and social aspects of repatriation. In an article published by UNESCO, Moira Simpson discusses the repatriation of human remains and sacred objects as a source of cultural renewal for indigenous peoples. Some of the effects of the trauma created by settler colonialism can be neutralized by the return of artifacts and ancestral bones. She quotes Michael Dodson, a Professor of Indigenous Studies, and former Aboriginal and Torres Strait Islander Social Justice Commissioner, as saying: “As indigenous peoples, we are acutely aware that our survival as peoples depends on the vitality of our cultures” (Simpson, 2009, 123). Revitalizing traditional practices, including reburial of returned human remains, has been proposed by researchers such as Michael Chandler and Christopher Lalonde of the University of British Columbia as a way of combating health and well-being issues that plague many First Nation communities. Since colonization, there has been an increase in suicide rates, higher child mortality and lower

life expectancy, and lower standard of living for indigenous populations. Simpson states that statistics have shown that life expectancy in indigenous populations is five to eight years less in Canada and seventeen to eighteen years less in Australia in comparison with the rest of the population (2009, 123).

It is important to consider that cultural property claims are framed in western legal constructs and this may limit how we view objects. Repatriation of cultural objects and human ancestral remains is an important symbol for larger indigenous claims to sovereignty and territorial rights. As pointed out by Kuprecht, tangible cultural objects cannot be separated from their intangible meaning (2014). The cultural property indigenism framework remains in a western, neoliberal legal structure of ownership and property, *but* would allow for a new way of looking at indigenous stewardship outside of the limiting cultural nationalism/internationalism model.

Conclusion: Adding to the Ownership Paradigm

I argue an inclusion of cultural property indigenism language, could give voice and fill the gap between cultural property nationalism and cultural property internationalism to address indigenous ownership claims. Cultural property indigenism would help validate the narrative for indigenous property claims on an international scale and create a standard method for claims. The NAGPRA model, with its cultural affiliation clause, has been a model for other repatriation policies in countries with indigenous populations like the Torres Strait Islander Cultural Heritage Act of 2003 and the Aboriginal Heritage Act 2006 in Victoria in Australia (LOC 2015); as well as Canada's First Nations Sacred and Ceremonial Objects Repatriation Act of 2000 (FNSCOR), which is legislation affecting only indigenous objects held by museums in Alberta, Canada (Conaty 2015).

There are aspects of cultural property indigenism that overlap with cultural property internationalism and nationalism: cultural property nationalism also relies on a cultural affiliation to the past and cultural property internationalism would allow for indigenous sovereignty crossing transnational borders to maintain traditional, historic territories. How it differs is in the patrimony and continued practices running alongside the affinity claims with historical significance to a community. This significance is not based on linear time and allows property rights to engage with cultural affiliation as a legal value for indigenous peoples (Kuprecht 2012, 37-38). NAGPRA's affiliation clause recognizes a group identity relationship that can be traced between the past and present members of Indian tribes or Native Hawaiian organization.

NAGPRA is embedded into United States courts and legal systems since it is federally regulated, funded (in part), and institutionalized within various organizations in the government and requires the integration of Native American and Native Hawaiian organization perspectives. In this way, NAGPRA acts as human rights legislation as well as cultural property law. NAGPRA looks at what the relationship of rights and culture is within the United States between sovereign (federally recognized) Native American tribes (McLaughlin 2002). Clayton W. Dumont, Jr, who views NAGPRA as a point in "cross-cultural knowledge politics" states that: "NAGPRA is about our very survival as Native peoples. It is about our ability to maintain our own identities, to define our worlds and histories for ourselves, to know and to teach our children who we are. The future of NAGPRA is inextricably tied to Native peoples' ability to resist political, judicial, and epistemological attacks on our status as sovereign peoples. NAGPRA is about power" (2013, 239).

Chapter 3: Understanding the Formalization of Repatriation Policy

Federal Register, Notice of Intent to Repatriate:²⁴

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005,²⁵ of the intent to repatriate cultural items under the control of The Field Museum of Natural History, Chicago, IL, which meet the definition of sacred objects under 25 U.S.C. 3001.²⁶

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3).²⁷ The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Helen Robbins, Repatriation Director, The Field Museum of Natural History, 1400 S. Lake Shore Dr., Chicago, IL 60605, [...] by August 4, 2016. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) may proceed.

The Field Museum of Natural History is responsible for notifying the Big Lagoon Rancheria, California; the Blue Lake Rancheria, California; the Elk Valley Rancheria, California; the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California); and the Cher-Ae Heights Indian Community of the Trinidad Rancheria, California, that this notice has been published.

²⁴ This excerpt is taken from the full notice published by the National Parks Service on July 5th, 2016: <https://www.federalregister.gov/documents/2016/07/05/2016-15843/notice-of-intent-to-repatriate-cultural-items-field-museum-of-natural-history-chicago-il>

²⁵ <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title25/html/USCODE-2016-title25-chap32-sec3005.htm>

²⁶ <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title25/html/USCODE-2016-title25-chap32-sec3001.htm>

²⁷ <https://www.gpo.gov/fdsys/pkg/USCODE-2016-title25/html/USCODE-2016-title25-chap32-sec3003.htm>

Dated: June 20, 2016.
Melanie O'Brien,
Manager, National NAGPRA Program.

The above is a Notice of Intent to Repatriate, published by the National Parks Service (NPS) and can be found in the NAGPRA database. It describes a culturally significant object held by the Field Museum in its collection. A Tolowa buckskin dance skirt was catalogued into the collection in 1916 from the Smith River area of Del Norte County, California. This buckskin dance skirt, along with other artifacts from the collection that belonged to the Tolowa, was purchased by Edward Ayer, a businessman interested in Native American artifacts and the first President of the Field Museum, from the collection of Grace Nicholson, who had a store in Pasadena, California. The initial date of accession into Nicholson's collection is unknown. The Tolowa Dee-ni' Nation has a cultural affiliation with the area in which these objects were first removed and maintain cultural patrimony to the objects. These ceremonial items were returned through consultation with the Tolowa Dee-ni' Nation and extensive research into the history of the museum's acquisition of the objects.

Introduction

When thinking about the research question for this project, it was important to investigate both language and institutional practices over time. In so doing, it was possible to see that the discourse surrounding repatriation arguments quickly shifted to recognize indigenous rights beginning in the 1970s and 1980s. Concurrently, institutional position shifts began to occur at museums around the country with these Native American civil rights movements. It was not one group or another changing position on this issue, it was

multiple actors fighting for, and accepting, repatriation rights for indigenous peoples. There was a rupture in the discursive narrative when individual action and national policy changed, clearly delineated with the passage of NAGPRA. This led to the research question: How do institutions and cultural values mediate changes in the governance of repatriation policy, specifically its formalization and rescaling?²⁸ To answer this, I looked at the rules, norms, and strategies of national and international laws and museum institutions. I examined how laws filter through broader theories of powers structures, cultural property paradigms, and shifts in value. Historic museum culture (curatorial practices, funding, and past collecting practices) along with Eurocentric, western ideology and legal structures are influential in how indigenous peoples make claims on their heritage within the national and international legal structures. Although NAGPRA is progressive legislation recognizing the needs and rights of indigenous people, it is still based in an Anglo-American legal perception of property.

To understand how museums have responded to repatriation claims both before the formalization of repatriation policy with NAGPRA legislation and after its inclusion in required museum standards, I looked at two museums: the Field Museum of Natural History in Chicago, IL and the University of Pennsylvania Museum of Archaeology and Anthropology in Philadelphia, PA. In investigating these two museums, I conducted interviews with key staff members and examined repatriation practices since NAGPRA was enacted in 1990. The initial intent of the project was to develop case studies using specific objects that were requested for repatriation by indigenous communities. This, however, did

²⁸ By using the word “rescaling,” I am discussing the change from repatriation based on a case-by-case basis at individual museums, to institutionalized federal policy, and finally to international norms of practice.

not prove to be possible given several factors involved in the repatriation process which will be fully discussed in this chapter. Since following specific objects was not possible, I looked to the institutional level of NAGPRA compliance to understand the implications of formalizing repatriation policy.

This project explores configurations of power relations and the historical epistemological failures that led to NAGPRA addressing indigenous repatriation claims. These failures are representative of others, including territorial claims, sovereignty and self-determination, and cultural rights experienced by indigenous people. By using the Field Museum and Penn Museum, it is possible to understand how institutions and cultural values mediate changes in the formalization of repatriation policy. These museums, with their vast collections, history as universal survey institutions, and federal funding, represent important conceptual ideas surrounding repatriation. I make the argument that repatriation is a political practice of governance. And as a political practice, repatriation involves many different actors and value systems. Interviews were requested across the spectrum of museums, legal scholars, indigenous representatives, domestic museum governing bodies, national government agencies, and international organizations.

Discursive language is a powerful tool in creating societal norms and dominant discourses change dependent on many factors. This is illustrated when looking at repatriation norms pre- and post-NAGPRA. The accepted practices do not necessarily disappear easily and require institutional structures and policies to replace them in order to function. Discourses show societal norms and cultural values and normalize institutional structures (Foucault 2003; Epstein 2008). Modern power is in many ways determined by the social order. Language creates “sites for the making of meaning” (Epstein 2008, 5). This

shift can be seen with the establishment of NAGPRA and its implications for indigenous peoples and institutions. How the various actors engaged and evolved with the institutional changes has shaped the conversation surrounding claims on indigenous cultural objects and human remains.

Museum Practices before NAGPRA

During the age of collecting in the nineteenth and early twentieth century, human remains were collected for scientific study and placed in bone collections (Redman 2016). The common practice of creating massive bone collections and placing them on display held symbolic significance of power struggles between western knowledge ideologies and the indigenous people displayed. Material culture of Native Americans was collected and displayed as the remnants of vanishing civilizations. In the early twentieth century, although collections were growing, fewer bones were placed on display. At the World's Columbian Exposition in Chicago, the precursor for the Field Museum's collections, human remains were displayed in various contexts in medical and 'dying culture' displays (Redman 2016). Bodies and cultural objects were there to show the "gap" between Native peoples and the civilized Western societies (Fine-Dare 2002, 22-23). Indigenous peoples and their material culture were studied and seen as things, or objects of scientific inquiry. This was an exercise of hegemonic power by the dominant society in the US (Foucault 1977; Epstein 2008).

Samuel Redman points out that the 1906 Antiquities Act was intent on protecting antiquities found on public lands and these sites, therefore, became national monuments to receive federal protection. However, this federal protection was intended for objects, rather than human remains which were sent to institutions for study (Redman 2016). It is

possible to see that early in the twentieth century, objects and heritage sites held more importance in the imagination of the citizenry than human remains. In 1979, the Archaeological Resources Protection Act (ARPA) also sought to protect artifacts without considering cultural patrimony of indigenous communities (McLaughlin 2002). The dominant discourse in the late 1970s therefore, 73 years after the 1906 Antiquities Act, still treated indigenous material culture and remains as museum artifacts and scientific specimens, instead of as part of a living cultural patrimony.

In this chapter, I will show that the desire to protect—and return—human remains and indigenous cultural objects changed over time, especially with the adoption of NMAIA and NAGPRA. For the better part of the last three decades, various actors have worked to standardize the repatriation process. For many years, returning human remains and culturally significant objects was determined on a case-by-case basis with no systematized institutional practice (Trope 2013).²⁹ Individuals in the public and private sector, both indigenous and non-indigenous were working to establish repatriation practices in the 1980s. There were many who felt it was necessary to return ancestral remains and culturally significant objects, but there were also those who felt that scientific data would be lost if collections were returned: “While scientists argued that the Acts jeopardized their research, American Indians claimed that science could no longer operate within a cultural and social vacuum...” (Watkins 2004, 65). The shift in discourse can be seen in the example of the yearlong dialogue at the Heard Museum of American Indian Art and Culture,³⁰ a

²⁹ This case-by-case system is still the status quo response for international repatriation claims.

³⁰ It is interesting to note that the Heard Museum is not a “universal museum” like the Field and Penn museums. It is a private and not-for-profit museum, which illustrates that the

private not-for-profit institution in Phoenix, Arizona known as the *Report of the Panel for a National Dialogue on Museum/Native American Relations* (the “Panel”) in 1990 that helped to provide a structure for NAGPRA legislation (Trope 2013). The discussions for this report were intended to resolve issues raised by the scientific and museum communities about the possible return and deaccession of objects and remains held in collections as well as the response from Native Americans. These conversations were intended to discuss conservation, identification, and ownership of Native American material culture and remains. This example is representative of the fear, held by many in the museum and scientific communities, that the museum storerooms and display cases would be depleted of their valuables. At this point, it was hard to rationalize what the outcome of repatriation policy would entail. Would research be lost or gained? Could repatriation really make amends for past injustices? What would institutions gain by working with indigenous communities?

A Change in the Discourse: The Development of NAGPRA

Discourse analysis is a valid method to study the power changes that occurred within repatriation discussions (Epstein 2008, 167-168). The Foucauldian assumption that discourse is both ordered and powerful helps to create a framework for understanding the changes in museum narratives concerning indigenous remains and artifacts (1971). The

dominant discourse was changing throughout the country and not only at federally regulated institutions. This shift in discourse can be seen in its mission statement: “The mission of the Heard Museum is to be the world’s preeminent museum for the presentation, interpretation and advancement of American Indian art, emphasizing its intersection with broader artistic and cultural themes” (Heard Museum 2018).

cohesive argument for repatriation legislation has materialized into a structured framework in the form of NAGPRA in the United States. The discourse surrounding repatriation created a bound space for discussion and delineated subject-positions for all sides of the argument (Epstein 2008).

In the late 1980s, it was revealed in congressional hearings that over 43,000 indigenous ancestral remains were held in museum collections.³¹ Senator Daniel Inouye³² of Hawaii fought for indigenous rights in the development of NAGPRA legislation and gave impassioned speeches about the necessity of the regulation. He stated that the human remains exhibited at museums and other institutions were not the remains of white, European soldiers or settlers, but were Indian remains. This representation in the display was racist since it was essentially displaying Native Americans as inferior and scientific specimens (Trope 2013, 28-29). The collecting practices of museums, governments and other institutions had acted as continued representations of “territorial deployment[s] of sovereignty” (Epstein 2008, 56). This could, in theory, be corrected with the policy change established in NAGPRA.

NAGPRA regulates three activities in relation to Native American human remains and objects: inventory and summary, repatriation, and excavation. The NAGPRA statute (25 U.S.C. 3001) outlines the framework for repatriation and the regulations (43 CFR 10) details the implementation (NAGPRA 1990; 2012). The Secretary of the Interior oversees NAGPRA, and the national NAGPRA program is under the jurisdiction of the National Parks

³¹ 18,000 of the remains were in the Smithsonian Institution collection but these would be regulated by the NMAI Act of 1989 (Finkelman and Garrison 2009).

³² Senator Daniel Inouye was a US Senator from 1963 until his death in 2012. He made a statement on October 26, 1990 to support the legislation (136 Congressional Record S17174). He was also a speaker at the opening of the NMAI on September 21, 2004. This speech can be viewed here: <https://www.youtube.com/watch?v=BbImvoQ1k1M>

Services. NAGPRA details two processes for returning human remains and cultural objects: a “collection process” for items held in museums and federal agencies and a “land process” for items removed from tribal or federal lands after November 16, 1990 (Sangita and Lavalley 2013, 9). NAGPRA also requires museums and federal agencies to consult with Indian tribes, lineal descendants, or Native Hawaiian organizations before creating inventories of their collections. These inventories are more complex and detailed than the summaries and took extra time to complete (Sangita and Lavalley 2013).

As originally passed, deadlines were mandated: a November 16, 1993 deadline for the completion of summaries and a November 16, 1995 for the completion of inventories. These ambitious deadlines were missed, which was not unexpected since it was estimated that between 100,000-200,000 Native American human remains and 10-15 million cultural objects were held in collections (Sangita and Lavalley 2013, 10). Three federal agencies worked to meet the requirements of the law: the US Army Corps of Engineers, the Bureau of Land Management, and the National Parks Service. The Corps worked to identify objects and remains within its collection; and, defined the location, extent, and content of their archaeological collection and then completed the required summary report. They also still physically inspect and inventory the collection of Native American human remains and sacred funerary objects, while also consulting with tribes to establish affiliation of unidentified remains and objects. To accomplish this, the Corps works within districts across the US to compile the data. The Bureau of Land Management implements NAGPRA through its Cultural Resource Program. It works to inventory and repatriate objects and remains held by museums and other institutions since 1906 as well as overseeing excavations and pursuing criminal violations of the law (US Army Corps of Engineers 2003;

McKeowen et al. 2013, 137-143). In 1989, the National Parks Service (NPS) began a detailed inventory of their Native American human remains due to a request made by the Native American Rights Fund (NARFF). NPS compiled data from all 341 units across the country into one document (McKeowen et al. 2013, 151). The National Parks Service actually completed the summary and inventory by the deadline, which was due partially to the fact that most of its collection of Native American human remains and cultural items were held by the agency instead of in non-federal, scattered storerooms (McKeowen et al. 2013).

The work on repatriation was intended to not only return objects and human remains, but to reclaim cultural connections for a community; yet, implementing the policy required cooperation, patience, and “knowledge of the process” on the part of the tribe (Hemenway 2013, 86). Repatriation claims require a lot of paperwork and hours to complete. Tribes are required to look through extensive inventories across the nation during their work. This is made more efficient today by the NAGPRA databases of all inventoried collections within the United States. Tribes that want to make requests must prove an affiliation which leads to the question of who has authority to make requests and has led to debates in different communities (Gulliford 2000).

NAGPRA was pioneering legislation in that it conceptualized cultural affiliation, “which turned out to be a successful instrument, stimulating a vibrant exchange between scientists, museums and tribes, adding value to many collections and objects” (Kuprecht 2012, 53). Cultural affiliation can be determined based on many different forms of knowledge: kinship, geographical, biological, archaeological, linguistic, folklore and oral tradition, and historical evidence. It should be noted that oral history is sometimes

undervalued as a knowledge source by institutions (Sangita and Lavallee 2013; Hemenway 2013). The law represented many things to indigenous peoples since it was policy that recognized social and cultural changes in the country (O'Loughlin 2013). Cultural affiliation established along a native paradigm uses information in the present to connect with the past. This requires discussion with Native American leaders and experts as well as looking at historic evidence, which is then certified by Native Americans (Stoffle and Evans 1994). However, NAGPRA left the responsibility of determining cultural affiliation with the institutions. This gave a great deal of power to museums and other institutions holding indigenous remains and cultural property. Unfortunately, how some institutions control their collections and interpret NAGPRA is frustrating for Native Americans (O'Loughlin 2013). It is also possible that no tribe will be determined as culturally affiliated with the material in question in accordance with NAGPRA (Watkins 2004).

NAGPRA does allow for scientific study if the "museum deems it necessary for determining the cultural affiliation of human remains (Section 5(b)(2)), or when 'such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States' (Section 79b))" (Watkins 2004, 65-66). Excavations of Native American human remains and artifacts must follow NAGPRA Sections 3(c) and (d) which require compliance with the 1979 Archaeological Resources Protection Act (ARPA). If a tribe has the "permitting authority" for the location of where the remains are found, the tribe can deny the antiquities excavation permit. If the tribe does not have authority, ARPA must consult with the tribe, but may still excavate. The artifacts can become tribal property after the remains and objects are removed and studied (Watkins 2004, 70).

A seven-member advisory committee, the NAGPRA Review Committee, helps implement the policies regulated by the legislation. Its membership is composed of: three members from Native American tribes and Native Hawaiian organizations, with two of these appointees being traditional Native American religious leaders; three members from museums or other scientific organizations; and, the final member of the committee is a person chosen by the other six individuals (Trope 2013, 43). According to C. Timothy McKeown, NAGPRA resolves four areas of federal law: civil rights law (recognizes the rights of Native Americans and their ancestral remains), Indian law (tribal sovereignty and relationships with the US government), property law (recognizes communal property ownership), and administrative law (implementation of the congressional mandate under the direction of the Secretary of the Interior) (2013, 78). NAGPRA codified rights for the return of indigenous ancestral remains. It is interesting to note that this right has been held by other U.S. citizens of their own ancestral remains but was not a right of Native Americans until recent history (Bernstein 2013). Anglo-Americans tend to lose interest in the upkeep of their ancestral grave sites within a few generations, many Native Americans, however, “experience their pasts through arcs of spirituality and human ancestry that connect them to their tribes, families, and lands through media other than histories produced in the Western vein and the economies of growth and development attached thereto” (McLaughlin 2002, 214).

Practices after NAGPRA: Postscript Additions to the Legislation Over the Years

The implementation of NAGPRA, and short deadlines for compliance, underestimated the complexity of the proposed repatriation process: “[t]he past twenty years have required a substantial infusion of resources, including time, money, materials,

training, travel, and expertise, from museums, federal agencies, tribes, and Native Hawaiian organizations to fulfill the goals of the act” (Sangita and Lavalley 2013, 12). The consultation and repatriation process is complicated and can take years to complete: “I wish the consultation process did not take so long, but the reality of the matter is that it can be a terribly complicated process. Being told no so many times can wear an individual down” (Hemenway 2013, 89-90). It can also create conflict between communities and tribes arguing over ownership of remains and culturally significant objects (Gulliford 2000). However, it has required institutional practices to shift decision-making power to Native Americans after tribal affiliation has been established (Kuprecht 2012).

In the 1995 oversight hearing on the implementation of NAGPRA, Kunani Nihipali, a leader of *Hui Malama I Na Kapuna 'O Hawai'i Nei*, a Native Hawaiian organization, called for a clarification of the role of scientific study, asking that NAGPRA “...state that where existing documentation establishes geographic location and cultural affiliation by clear, reasonable belief, or the preponderance standard of evidence, scientific studies of any kind on ancestral skeletal material remains are prohibited” (Nihipali 1996, 158).

Watkins 2004, 66

Given the strides it has made in altering the fate of what is found on federal land, NAGPRA has failed to protect human remains found on private lands. Many feel that since all lands in North America initially belonged to Native Americans, the regulations should extend to all private lands held today (Watkins 2004). This, however, has not happened and it is very unlikely it ever would change considering how private property is treated in the United States. The US emphasis on, and attachment to, private property has been important to developing the national ethos.³³

³³ This attachment to private property is important, especially considering other countries and their differing understandings of property under national property laws. This will be an important avenue of future research into the possible scaling up of NAGPRA law into an international context.

Since the implementation in 1990, the law has worked to make decisions on the fate of unidentifiable human remains still held in collections. The NAGPRA Review Committee issued a “Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains” in 1998 (Watkins 2004). The NPS gave a final ruling on culturally unidentifiable remains on March 10, 2010. In the new rule on the return of culturally unidentifiable remains, it is required that “the lands under which tribes might initiate a claim must have been defined as recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims or a treaty, act of Congress, or Executive Order” (Watkins 2013, 29).³⁴

The US Government Accountability Office published a report titled: *The Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act* on July 28, 2010 to highlight their concern over the unfinished work (GAO-10-768).³⁵ Later in the year, on November 10, 2010 at a public presentation of the NAGPRA Review Committee Meeting in Washington DC, Lauren Miyamoto an intern with the National NAGPRA program³⁶ stated that of the

³⁴ From the 43 CFR 10.11 final ruling: “A final denial of a request from a tribe or Native Hawaiian organization (NHO) for repatriation from the tribe or disposition is final agency action (43 CFR 10.1).

-This rule takes the hold of culturally unidentifiable Native American human remains and moves forward with responsibility federal agencies and museums have for human remains in collections, which can be determined to be Native American but cannot be culturally affiliated to a federally recognized tribe or NHO, given the totality of the circumstances (43 CFR 10.9).

-There is a penalty category #9, failure to transfer control after receipt of claim” (<https://www.nps.gov/nagpra/DOCUMENTS/At-a-glance-43CRF10.11.pdf>).

³⁵ For more information: <https://www.gao.gov/products/GAO-10-768>

³⁶ Institutions included: Phoebe A. Hearst Museum of Anthropology; University of California, Berkley; Peabody Museum of Archaeology and Ethnography at Harvard University; Ohio Historical Society; Illinois State Museum; University of Alabama Museums, Office of Archaeological Services; University of Kentucky, William S. Webb Museum of

eleven institutions holding the largest number of human remains, nine stated that 85% of the remains were culturally unidentifiable (Dumont, Jr 2013; Miyamoto 2010). Eight years later, museums and other institutions are still working to decide the fate of culturally unidentified remains. Updates to the NAGPRA databases show the work is ongoing.

With repatriations of cultural objects back to Native Americans, NAGPRA has encouraged the building of tribal cultural centers and museums throughout indigenous communities in the US (Kuprecht 2012). NAGPRA has, therefore, had a two-fold effect in making museums more aware of what is held in their collections and creating relationships between museum staff and indigenous peoples. In fact, the main fear about NAGPRA depleting collections has been unfounded: repatriations “did not lead to the emptying of collections, and Native American participation in the process has had a highly stimulating effect on all parties involved” (Kuprecht 2012, 45). Given its successes, it is possible to ask, what other rights NAGPRA might trigger for indigenous peoples. It is even possible to envision NAGPRA acting as a model for intercultural relationships between tribes and institutions both domestically and abroad (Capone 2013). Future amendments to NAGPRA may even address other concerns like intellectual property rights (Bernstein 2013).³⁷ Given the history of NAGPRA, it is important to evaluate the continuing work of museums, indigenous peoples, and the NAGPRA office within NPS. The following section gives a brief

Anthropology; University of Tennessee, Knoxville, Frank H. McClung Museum; University of Missouri, Columbia; and, University of Tennessee, Knoxville, Department of Anthropology. For the full presentation by Miyamoto:
<https://www.nps.gov/nagpra/REVIEW/meetings/materials/47th/l.c.7.Large-Museum-Collections-2010.pdf>

³⁷ These intangible expressions of indigenous cultural property are addressed by UNESCO conventions but require national enforcement.

look at details from the most recent Fiscal Year Report from the NAGPRA office and details the current state of the inventories and definitions of the databases (2016).

Specific Details on NAGPRA

The following details from the 2016 FY Report on the NAGPRA program disclose the following:

Inventories (as of September 30, 2016):

Institution	MNI Total	CUI	CA
Museum	148,480	108,593	39,887
Other Federal	33,632	14,534	19,098
Total	182,112	123,127	58,985

*MNI-minimum number of individuals (human remains)

*CUI-culturally unidentifiable remains

*CA-culturally affiliated remains

NAGPRA Databases:

The NAGPRA online databases are broken down into searchable subtopics³⁸:

- **Native American Consultation Database (NACD)** gives contact information for Native American tribes and Native Hawaiian organizations.
- **Summaries Database** records which tribe has received a summary report regarding information on a museum's collection.
- **Notices of Inventory Completion (NIC) Database** catalogs published Federal Register notices.
- **Notice of Intent to Repatriate (NIR) Database** catalogs the published active repatriation claims. These are published when museums accept the claim made by a tribe.

³⁸ For more detailed information on the databases, or to search through the inventories, see <https://www.nps.gov/nagpra/ONLINEDB/INDEX.HTM>

- **Notice of Disposition (NID) Database** catalogs documents published by Federal agencies in newspapers when cultural items are excavated from federal lands.
- **Culturally Unidentifiable (CUI) Native American Inventories Database** is a catalog of human remains that have not been conclusively culturally affiliated with any specific tribe. This list is revised when if/when cultural affiliation can be established.
- **Culturally Affiliated (CA) Native American Inventories Database** catalogs human remains that have been culturally affiliated and details information about the institution in possession of the remains and which tribe(s) is entitled to receive them (Remains listed here are also listed on the Notice of Inventory Completion).

NAGPRA Grants:

Section 10 of NAGPRA refers to the availability of grants for museums through the Department of Interior and Environment Appropriations Act. There are two types of grants: 1) Repatriation grants, which “defray costs associated with the packaging, transportation, contamination removal, reburial and/or storage of NAGPRA-related human remains and/or cultural items;” and 2) Consultation/Documentation grants, which “support the efforts of museums, Indian tribes and Native Hawaiian organizations to consult and document NAGPRA-related human remains and cultural items in non-federal collections” (NPS 2017). In August 2017, it was announced that the National Parks Service would make available \$1.6 million in grant funding for tribes and museums working on repatriation. The grants were awarded to 16 tribes and 15 museums for consultation, documentation, and repatriation (NPS 2017). The grant also listed the Field Museum as a recipient of \$15,000 to aid in repatriation.³⁹

Institutional Implementation of NAGPRA: The Methodology of the Project

For this project, I developed institutional case studies evaluating NAGPRA and

³⁹ For a complete list of recipients, please see: <http://www.nps.gov/nagpra>

examples of the formalization of the repatriation process to document and analyze how artifacts and grave goods are returned to indigenous communities. By studying the legislation and internal museum governance, I have a better understanding of how formalization of repatriation policy became an institutional and societal norm. It is possible to see that with the advent of NAGPRA and its influences on other nation-state repatriation policies,⁴⁰ the scaling up of formalized policy has gained ground over the last three decades.

I examined written documents and interviews attached to objects and human remains to appreciate the symbolic attachment and significance of the requests. NAGPRA's databases, through the National Parks Services, historical details about indigenous artifacts catalogued for possible repatriation and federally recognized indigenous groups that are allowed to make repatriation requests. These summaries and databases were an excellent tool for the development of my case studies. Because museums with federal funding are required to catalog their inventory of Native American remains and funerary objects, it was possible to view records of objects and human remains, geographic locations of where they were found, and the means and period of accession in the collections. I also researched other existing international models of repatriation, specifically looking at countries with colonial histories and indigenous communities in Canada, New Zealand, and Australia. It was the goal of the project to see if these other nations were influenced by NAGPRA as well as look at the development of policies that may have predated US policy.

This empirical study used federally-funded institutions, the Field Museum and Penn Museum, to examine repatriation practices and policies of museums after NAGPRA. These museums were chosen based on their collecting practices, robust state of their repatriation

⁴⁰ These policies will be discussed in chapter five of this dissertation.

departments, publications, and most importantly, their willingness to speak with me. Other organizations and individuals who declined or ignored interview requests, were researched through publically available texts and resources. The following two table shows who, and what organizations, were contacted for interviews and their responses. The first table lists the interviews that were conducted and the dates the interviews occurred. The second table lists those who declined or did not respond to interview requests.

Interviews conducted:

Individual	Institution	Date
Jeff Attridge	Penn Museum, intern	08.08.16
Helen Robbins	Field Museum	10.25.16
Mariah Soriano	NAGPRA, NPS	01.13.17
Lucy Fowler Williams	Penn Museum	02.16.17
Allison Davis	State Department	03.23.17
Subject A*	Penn Museum	11.11.17
Richard Lariviere	Field Museum	11.20.17

*Interviewee did not wish to be identified by name and was therefore given the pseudonym "Subject A"

Declined or No Response:

Individual and/or Organization	Response
Jonathan Haas, Field Museum, Curator Emeritus	Declined Interview
Patty Gerstenblith, Director, Center for Art, Museum and Cultural Heritage Law at DePaul	Declined Interview
William Wierzbowski, Penn Museum Curator	Declined Interview
Richard M. Leventhal, Penn Museum Curator	Declined Interview
Andrew Cohen, State Department	Initially accepted, but then referred me to someone else
Lori Breslauer, General Counsel, Field Museum	Initially accepted and then had to back out of interview
Stacey Espenlaub, Penn Museum NAGPRA Project Coordinator	No Response
National Museum of the American Indian	No Response
Harold Jacobs, Cultural resource specialist for the Tlingit and Haida communities	No Response
Three Representatives with the American Alliance of Museums	No Response from two and a declined invitation from one

Survival International, International Indigenous Rights NGO	No Response
Karolina Kuprecht, Cultural Indigenism Theory Author and Cultural Property Lawyer	No Response
George Papagiannis, UNESCO Representative	No Response
Thomas Kline, Cultural Property Lawyer	No Response

The following sections give brief synopses of the interviews conducted to show the evolving nature of the research. Full interviews can be found in the appendix. I have also included suppositions for why I was unable to obtain interviews with some of my desired participants.

Field Museum interviews

Helen Robbins, the repatriation specialist at the Field Museum, spent time discussing the repatriation claims process at the museum. She admitted that repatriations can take a great deal of time to research and complete.⁴¹ There are also times that a tribe may request to view objects or remains in anticipation of an application, but will hold off making the claim until they are able to accommodate the return, i.e. for reburial, incorporation into the community, or placed in a cultural center. There are other times, tribes or individuals will choose to let the museum hold the object or remains indefinitely. She also stated that repatriations are less difficult now than ten years ago since the reception of repatriation requests and fulfillments is more widely accepted. The interview with Richard Lariviere, the President of the Field Museum, established the museum’s practices in the executive office once the repatriation department has completed its work

⁴¹ This was one of the first red flags for possibly needing to change the project from looking at individual objects to institutional practices. When I first met with Helen Robbins I was still intending on researching individual repatriation cases that were currently “in process.” After my discussion with her, I began to look more closely out how lengthy these cases could be.

and makes a recommendation for or against a claim. He also spoke on two new exhibitions at the museum that were created in cooperation with indigenous artists.

Penn Museum interviews

The interviews with Lucy W. Fowler and Subject A established museum policies and descriptions of the new exhibition incorporating Native Americans in its development. These interviews established similarities between the standardized practices of all museums under NAGPRA; but, also indicated some differences between accession in the Field and Penn collections. The interview with Jeff Attridge, an intern at the Penn Museum, was included for a first-hand perspective of a recent repatriation at the museum. After the discussions with Fowler and Subject A, this project relied heavily on records published by the Penn Museum, including the digital Louis Shotridge collection, to more fully understand the details of repatriations and present display practices discussed during the interviews.

NAGPRA representative with NPS interview

Mariah Soriano, the NAGPRA officer who monitors compliance documents for the office agreed to be interviewed. She discussed at length the roles of the seven databases related to the NAGPRA legislation and the differences between NAGPRA and NMAIA. She stated that she thinks the NAGPRA system works well and mentioned their series of training videos and webinars, which are intended to reach a larger audience working on repatriation claims (as well as the public who can also access the webinars and databases).

State Department interview

After my interview with Allison Davis, at the State Department, I began rethinking what an international model would entail and if it was possible to have an umbrella repatriation policy; or, if it made more sense to continue on a case-by-case basis and allow

diplomatic relationships to mandate transnational repatriation claims. After this conversation, I began to change the structure of the project to look at what makes NAGPRA such a successful policy in the United States. I began to see how it influenced other international policies and could have widespread impact. The development of this research can be found in chapter 5.

No Responses or Declined Interview Requests

Those who declined, or said yes initially and then declined, generally had specific reasons ranging from a lack of available time to being the wrong person to speak with about the project. Several individuals who declined stated they felt I should speak with someone else within their offices or departments and directed me to others who would be willing to discuss practices and implementation of NAGPRA. Others stated they did not have time to be involved in the project. Although this added a degree of difficulty to the project, I was usually able to find other sources of published information.

Two of the American Alliance of Museums (AAM) never responded to my interview requests. The representative⁴² who did felt s/he could not speak to the issue of repatriation. S/he said the AAM supports funding for grants that help with NAGPRA compliance and that the organization has written recommendation letters about appointees to the national NAGPRA committee, but that is the bulk of their involvement at this point. The complete lack of response from some was interesting. I made three attempts to contact the NMAI without any response; however, during a 2018 SAA conference excursion opportunity, I visited the collections of the National Museum of Natural History

⁴² Since the AAM representative did not sign a consent form, I am summarizing our email exchange without identifying the individual.

and heard discussions on repatriation work at both the NMAI and NMNH repatriation offices. All “no response” individuals were contacted at least twice: an initial email requesting an interview and a follow-up email within two weeks. Since I was unable to interview any indigenous peoples involved in repatriation policy or practice, I utilized available voices in publication form.

This project intended to build connections between how repatriation relates to broader indigenous rights issues, power structures, cultural value shifts, and the creation of policy. For this reason, interview questions were structured to better develop my understanding of differing roles and perceptions of the repatriation process by various actors. In the development of the case studies, a theoretical framework was constructed to attempt to understand the formalization and scaling up of repatriation policies. I asked the following broad, open-ended questions. Not all questions were answered by every interviewee, and at times deviations from the questions were asked according to what other statements were made during the interview:⁴³

- 1) What are the political positions of museums/governments/indigenous peoples when it comes to objects that are requested for repatriation by source communities?
- 2) Why are we intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?
- 3) What other issues of indigenous dislocation: land/resource use, sovereignty, acts of violence or oppression, human rights, does the repatriation of cultural objects assuage?

⁴³ All seven interviews conducted for this project can be found in the appendix. These include interviews with key representatives from the Field and Penn Museums, as well as a NAGPRA representative with the National Parks Service and a member of the US State Department working on international repatriations.

- 4) Why does property law trump NAGPRA on private lands (in the US)? What does this say about land use regulations and human/cultural rights in the US?
- 5) How does the perspective on cultural property and ownership change with different agents (auction houses/collectors, NGOs, museums, looters, etc.)?
- 6) How does depatriation (the removal of objects from their original place) and provenance affect specific objects/institutions?
- 7) Do the Canadian and US models of repatriation also work in establishing an international model? Should there be multiple models based on different categories: antiquities, looted objects, indigenous/marginalized peoples' property, etc.?

While conducting interviews, I gained several first-hand accounts of the practice of repatriation. Those who were willing to be interviewed added to the construction of repatriation on many levels. I initially wished to include the Penn Museum, Field Museum, and the NMAI to compare museums regulated under NAGPRA and NMAIA. Unfortunately, since the NMAIA never responded to my interview requests, the focus shifted to institutional practices at the Field and Penn museums.

By reframing theoretical structures of indigenous cultural property ownership and institutional value shifts, I reveal how formalization and scaling up of repatriation guidelines, in the form of NAGPRA legislation and other national repatriation policies abroad, is affected by institutional and cultural value shifts. The research was restructured from the initial intent of focusing on global governance as the rationale for a possible governing international umbrella policy, to looking at the national institutional level and international cooperations because the direction of the findings change. This change gradually occurred following my conversation with the State Department representative who insisted diplomacy and tailored responses for individual claims was more effective than a standardized international policy.

In future research, I feel the inclusion of indigenous voices both from actors working with tribes on claims and the NMAI specifically would make this a stronger project. Interview requests were made to indigenous individuals, known activists, organizations, and institutions; but, no one responded or agreed to be interviewed for this research project.

Epistemological Approach for Project

This project's epistemological approach worked to understand the tensions created by colonial models of appropriation seen in how museums were constructed during settler colonialism and economic expansion. The overlapping methodologies for collecting information instilled a more comprehensive narrative of the problem for the project. The interdisciplinary academic narrative I built looks at practices of repatriation and how they relate to the question of cultural and institutional shifts in creating norms. These norms have political connotations and can fuel friction. Chapter Four will focus on decolonizing strategies in the museum and how institutional power structures changed with the incorporation of NAGPRA. To accomplish this, I will again use the Field and Penn Museums as my case studies and discuss three exhibitions that incorporate indigenous actors in their development, thus showing the long-lasting influence on cultural and political understandings of indigenous peoples in the museum (Ndimande 2012; Smith 2012). This will lead into the discussion of NAGPRA influencing policies—the scaling up of repatriation practices—in other countries in Chapter Five. This final chapter will also detail current transnational practices in relation to indigenous repatriation claims.

Historically, indigenous peoples have been marginalized and abuses of power have occurred in relation to the co-option and display of their cultural property. Repatriation of

indigenous objects and artifacts is representative of larger, universal problems of human and cultural rights. The tensions surrounding repatriation from petitions to regain lost objects by indigenous people, to the desire to maintain those objects within the confines of the museum, will be teased out. By fully developing institutional case studies in this project, we can interpret and critique the practice of repatriation. As pointed out by Norman K. Denzin and Yvonna S. Lincoln, qualitative interpretations are socially and culturally constructed: “The interpretive practice of making sense of one’s findings is both artistic and political...There is no single interpretive truth...there are multiple interpretive communities, each with its own criteria for evaluating interpretations” (2008, 35).

The repatriation examples I utilize throughout the project show the political tensions of “control and resistance” between western frameworks of research and collection in museums and indigenous needs for reappropriating their artifacts and significant cultural past (Thomas 1993, 9). How objects are displayed in the museum is another controlling power structure related to this project. When there is a glass case separating the visitor from the object, knowledge becomes hierarchical: the original Indigenous owners are completely removed from the object unless visiting the museum as a passive audience member, the general public absorbs what information is attached to the display and has been disseminated by the curatorial staff, the curatorial staff has the highest level of “knowing” because the object has been studied through their western lens and been cataloged, categorized, and analyzed. The initial separation severed the bond between the Indigenous peoples and the objects. The past museum models have merely made this distance greater and that is another reason source communities are making

repatriation requests. Reconnecting with important artifacts and objects lessens the cultural hegemony established by imperialism and acts as a way to decolonize the museum.

This project is designed to address epistemological and ontological assumptions based on altering colonial thoughts and processes. For instance, the idea of linear time—that man *progresses* from the prehistoric to western Enlightenment—and what counts as human and capable of knowledge production will be addressed. Tuhiwai Smith states: “History is mostly about power. It is the story of the powerful and how they became powerful, and then how they use their power to keep them in positions in which they can continue to dominate others” (2012, 35) and “[r]esearch has not been neutral in its objectification of the Other. Objectification is a process of dehumanization” (2012, 41). Counter-hegemonic methodologies, including research conducted by indigenous people or in accordance with their guidance, can be used to amend these existing Western power structures both through the act of repatriation and new post-museum models attempting to incorporate Indigenous people in their development of displays and cultural conservation. Culture at the museum is made public and political through display (Geertz 1973). As I will show in chapter four, organization of the display is both very western and patriarchal (Rose 2012, 244). But, at the museum, knowledge production is happening behind the scenes and encompasses all the things the visitor does not see in the archives, libraries, and laboratories (Rose 2012, 249-250).

Conclusion

In my research, it was important to ascertain who the agents are that establish the actual acts of repatriation: Who makes the requests? Who makes the decisions for what gets returned? And who facilitates these interactions? By looking at the research topic

through the lens of institutional and cultural shifts, I make informed assessments and analyses about the discursive changes and attempts at coherent arguments for and against repatriation made by different actors. Power dynamics are evolving and this type of research can be emancipatory for those who have been marginalized or treated as research subjects in the past. The vestiges of conquest and empire are still experienced and repatriation policies work to alter the previous norms of the settler colonial standard.

My chosen qualitative method of building case studies relied on discourse analysis, interviews, and archival research to produce my arguments. Discourse analysis of the initial narratives and descriptions of artifacts and human remains in various museum collections was useful to the critical epistemological approach of my research to understand why, as Foucault has described (1971), some discourses become important at certain times. As Epstein stated, “a *powerful* discourse is, quite simply, one that makes a difference” (2008, 2). This is seen in the language surrounding repatriation discussions in the 1980s that culminated in the passage of NAGPRA.

I found that NAGPRA represents different regimes of rights dependent upon whom you engage in discussion: human, cultural, and civil rights. Fine-Dare writes that NAGPRA was “more than a response to the American Indian Movement that developed in the 1960s, more than a reflection of the parallel critique of anthropology that emerged at the same time, and more than a sign of the triumph of fundamentalist nativism in American life” (2002, 50-51). NAGPRA is also about the initial depatriation, or dispossession, of the cultural objects and human remains that were taken during the colonization of the US and the societal response to this history. How museums move forward in the development of new exhibitions and interactions with indigenous communities will continue to transform

in the twenty-first century. Development in theories on ownership demonstrates the cultural impact of repatriation for both indigenous peoples and the museums that act as storehouses of knowledge and history. Formalization of repatriation policy has had the effect of normalizing a new dominant discourse that returning cultural objects and human remains is an ethical imperative to address indigenous claims.

Chapter 4: Power Relationships at the Museums

In the summer of 2004, the Penn Museum received a loan request⁴⁴ for six objects that were to be used in the Centennial Potlatch to commemorate the anniversary of the “Last Potlatch” of 1904 in Sitka, Alaska. Harold Jacobs, the cultural resource specialist of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA) made the request for the Wolf baton, Eagle hat, Petrel hat, Wolf hat, Shark helmet, and the Noble Killerwhale⁴⁵ hat on behalf of Andrew Gamble, head of the Sitka *Kaagwaantaan* (Wolf) clan. Since the Penn Museum is dedicated to the mission of making the museum’s collection accessible to Native Americans, the request for a loan was granted (Preucel and Williams, 2004).

The potlatches were traditional feasts for clans where possessions were destroyed or given away symbolically to represent prestige or wealth. They focused on “reciprocity and balance as the host clan regales the clans from the opposite moiety with songs, dances, speeches, food, and gifts. Traditionally, they take place in very specific cultural contexts such as a memorial for a deceased relative, the rebuilding of a clan house, or the dedication of a totem pole” (Preucel and Williams, 2004, 11). The potlatch was a complex event meant for attendants to define their relationships within the community, as well as with the past and future generations. The “Last Potlatch” occurred in 1904 as communities in the areas were told to assimilate by the governor, John G. Brady, a former Presbyterian missionary.

⁴⁴ In 2004, this was a request to use the clan hats in the ceremony, rather than a repatriation request.

⁴⁵ The Noble Killerwhale hat and Wolf baton could not be loaned for the Potlatch due to concerns over the fragility of the hat and large size of the baton.

The governor wanted the clan system abolished and for the clans to blend into the larger national society.

During the Centennial Potlatch, Helen Robbins, the repatriation specialist for the Field Museum, also attended and returned a seventh item, the Sea Monster hat, from its collection. This hat was voluntarily returned by the museum to the community. Although the CCTHITA had claimed the hat through NAGPRA as an object having cultural patrimony for the community, it was not returned under the repatriation policy. The Field Museum had determined that the hat did fit the NAGPRA categorization of an object with cultural patrimony, but that it had been legally purchased and did not have to be returned.

However, by way of compromise, the Field returned the hat voluntarily to the community:

Helen thanked her hosts and informed the audience that the Field Museum was very pleased to make the hat available once again to the Tlingit people. She then handed the hat to Harold who, according to Tlingit protocol, transferred it to the appropriate clan leaders on the Raven side. The hat was immediately incorporated into the potlatch activities and was used throughout the remainder of the Centennial.

Preucel and Williams 2004, 16

Understanding Museums: A History of Display and Regulation

Since their inception, museums have created subjects, displays, and realities that are politically charged. Michael F. Brown states that critics of museums see them as “theaters of power” which deploy “their cultural capital and sumptuous architecture to shape attitudes toward everything from artistic taste (thus ratifying the superiority of ruling elites) to the moral standing of the nation-state (thereby mobilizing public sentiment in favor of state power)” (2009, 148). As discussed in Chapter One, the narratives constructed at traditional

universal survey museums⁴⁶ display an understanding of the world through a western framework (Classen and Howes 2006). Today, the mainstream narratives are more inclusive of indigeneity, but are still structured around the settler colonial legacy's connection to indigenous objects. Many objects in museum collections are only there because they were seen as the "best" examples of a culture when collected, with some civilizations viewed as subhuman, primitive, inferior, or dying; or, representative of valorizing the collectors and conquerors who had taken them. Artifacts held in the collection represent cultures who were, at the very least, exploited or destroyed. They were at times taken out of context and merely selected due to their aesthetic—visual, tactile, exotic—appeal (Smallacombe 2000). Their presence legitimized by the accepted practice of displaying the spoils of war, these objects took on a new contextual dimension of cultural significance in the museum and gained new meaning outside of the original perspective of the indigenous people depicted. This resulted in institutions, museum staff, and patrons feeling a connection to artifacts even if they have no personal or lineal relationship to them. Consider that when visiting museums, it is possible to divorce what you are viewing in an exhibition from the past. The display is a sanitized version of history and you are a passive audience. You can read about stolen objects or horrific abuses of power on placards and experience the visual depictions; but, it is difficult to immerse oneself in the centuries-long struggle if the larger picture is not considered from the subjugated perspective.

The interactions between humans and objects and our interpretation is based on the understanding of both the physical properties and the symbolic meanings attached to the

⁴⁶ The term encyclopedic museum could also be used here to reference institutions that exhibit overlapping human histories, cultures, and narratives like the Smithsonian Institution, Field Museum, and Penn Museum in the United States; or the British Museum abroad.

artifacts. Western laws and epistemology mandated indigenous objects and human remains well into the twentieth century, but indigenous peoples want to control their cultural patrimony how they see fit and not necessarily according to western concepts of preservation or display (Wobst 2013). Even with the creation of NAGPRA and other indigenous policies, they are still shaped by a western, Eurocentric framework. The current approach to the problem affects social and moral norms within the institution that are changing toward inclusivity of indigenous communities.

Given the foundations in settler colonial collection practices, it is possible to see relationships of power at the museum between the observer and observed, the curatorial staff and the museum audience, and the host and source communities displayed. What is displayed can be assessed both as commodities and cultural artifacts. But, who gives them value and what value is assigned? Museums are physical spaces of power, representative of a shift in the relationship between indigenous cultures and host cultures. As the location of the repatriation/divide, museums represent multiple interests, both local and global. Curation is a tightly-controlled social and political practice. It is for this reason that museums can shape collective values and social understandings (Luke 2002, xiii). We also see that they are tools to create a unified national identity and space for political propaganda (Luke 2002; Anderson 1983).

The aim of the museum is to produce visual narratives that appear unified and complete (Hooper-Greenhill 2000). The death of the 'grand narrative' affected museums as they worked to incorporate Indigenous movements and overlapping histories that existed outside of the Western normative structure. Objects do not speak, but we interpret and give them meaning. At times, representations can act as spectacle (Schirato and Webb

2010). Museum visitors are essentially tourists visiting distant cultures as displayed within the exhibition and seeing the cultures in language that is familiar to them (Selby 2010). Considering that most of the people throughout history have been excluded from written history, the material culture⁴⁷—the everyday objects they leave behind—give us a picture of distant times and locations we would otherwise not experience. But, the ethical decisions concerning what is displayed has changed over time. For example, the 1893 World’s Columbian Exposition in Chicago displayed race as the “central lens for understanding humanity” (Redman 2016, 45). The display was essentially reinforcing the current idea of race as a defining feature of what it means to be human.⁴⁸

The dominant museum model continues to house objects in glass cases, removed spatially from those viewing them. This visual interpretation, whether it is correctly representative or skewed by preconceived assumptions, gives the audience a version of cultures and societies (Hooper-Greenhill 2000). The tendency for museums to house world culture shows little sign of waning since this type of display increases the worldview of different cultures and societies; but, with the increased involvement of indigenous peoples, transcultural concepts are improving curation and the pedagogy of the museum (Kreps 2003). Museums are potential intermediaries between source communities and the host cultures that control objects within the collections. As intermediaries, they act as conduits of therapeutic cultural practices (Simpson 2009) engaging both sources and hosts in the discussion of cultural representation. This is especially true of indigenous communities

⁴⁷ The term *material culture* was coined by A. Lane-Fox Pitt-Rivers in 1875 and was used to describe objects of everyday life. It included cultural artifacts outside of grave goods or the spectacular finds.

⁴⁸ Much has changed since the 19th century, but organized protests against scientific determinism for the return and reinterment of nonwhite skeletal remains took much longer to develop (Redman 2016).

working with museums on repatriation claims. Museums have a heritage of acting as stewards and conservators of history, and they have evolved their narratives with changing ambitions. Through NAGPRA's inventories, tribes have access to collection data and can discuss with museum specialists how to care for objects and what should be removed from public viewing or stored differently. There are also new projects to create replicas and reestablish sacred object creation through new methods, like 3-D printing (SAA tour 2018). These developments foster collaborations that might not otherwise have occurred if not for NAGPRA.

Today, museums can act as "bridges between governments and citizens, particularly when it comes to understanding and interpreting data...There is a movement towards linked open data among western museums" (Blankenberg and Lord 2015, 215). The accessibility of museum databases and publicity notices increases the public's awareness of what is available in the museum collection. The Field Museum even hosts "Members Night" events that open many parts of the collections, research labs, and storage facilities that are not normally open to the average museum patron. Curation practices have been changing and this is reflected in the museum's narrative and image. The establishment of NAGPRA has allowed for curatorial changes that give Native Americans "hegemony over their own cultural values" (Gulliford 2000, 42). The repatriation claims process is the motivation for the flow of information between tribes and museums to further knowledge production of cultural practices, histories, and uses of objects (Kuprecht 2012, Robbins 2016). Today's museums are working to create more awareness and sensitivities to the identities of all the cultures that make up the world and not just the dominating Western views on societies seen in the past: "Museums thus have the power to remap cultural territories, and to

reshape the geographies of knowledge. These are political issues, concerned with the opening up or closing down of democratic public life” (Hooper-Greenhill 2000, 21).

Social culture is an important factor in creating exhibits. The learning experience is collective and requires the display of objects, prior knowledge the museum visitor has coming to see an exhibit, and the curatorial decisions in showcasing the collection. In new curatorial display objectives, learning is a social process and interpretation, rather than information being presented passively to an audience, is an important aspect. The museum has a history of being a ceremonial monument, a place that is primarily ideological and ritualistic. It is a sacred place of learning and is meant to impress visitors through its spatial design (Duncan and Wallach 1980). The past model was based on a pedagogy of teaching by transmission of knowledge, as if from a teacher to a classroom (Duncan and Wallach 1980; Luke 2002). Nearly twenty years ago, Eileen Hooper-Greenhill discussed what she saw as a model for a ‘post-museum’ that relies on the idea of interdisciplinary study to aid museum visitors in fully understanding the objects they are seeing. In the new post-museum models, displays housing artifacts are not the only means of narration. In their capacity as information centers, museums serve the purpose of educational outreach programs for visitors in the form of cultural events and workshops (Hooper-Greenhill 2000; Luke 2002); they act as educational platforms and entertainment (Rashed 2015; Luke 2002). Since museums have agendas and are political in the display of their collections, they are not simply displaying objects or telling a story. They are spaces for debate, and in many ways, they present narratives that are subjective truths.

What is the role of the institution in relation to indigenous peoples?

Outside of Hooper-Greenhill's model calling for a 'post-museum,' those writing about museums are divided on the role and image of these institutions. Writing a decade apart, examples of two of these arguments are made concerning this role, demonstrating that the role of the museum is still in flux. Vrdoljak states:

The history of museums shows that these institutions have facilitated, justified, and benefited from colonialism and related policies of discrimination, assimilation and genocide. They have also often served to inform and engage broader societal concerns. The present-day 'commitment to righting historic wrongs' by former metropolitan powers and their museums must include the restitution claims of indigenous and other colonized peoples. Museums must be actively involved in reversing and ameliorating the ongoing effects of these policies and practices. This 'open-ended process' should include the education of the general public about colonialism, and discriminatory, assimilation and genocidal policies which support it and its effects on individuals, communities and their cultures. Also, they must provide active support (technically and financially) for the realization of indigenous peoples' right to self-determination and cultural development within and outside the walls of their institutions.

Vrdoljak 2006, 302-303

While on the other side of the argument, Jenkins writes:

My central observation is that our great museums as institutions are struggling to find their place in the new millennium, and that this is an important contributing factor in why they have become the object of scrutiny, and defensive in response. Social changes and intellectual currents have contributed to challenging the foundational purpose of the museum: to extend our knowledge of past people and their lives. Since the latter half of the twentieth century, museums have faced a crisis of conscience and confidence, as an array of social and intellectual shifts—including the ideas of postmodernism and postcolonialism, which question the possibility of knowledge and common understanding—have become mainstream. With the influence of these trends, the institution has become a focus of a relentless critique, castigated for historical wrongs and current social ills.

Jenkins 2016, 9

In relation to Native American concerns, there has been a definitive shift in value meaning for indigenous objects, a monetary value to cultural value. Cultural is capital and

can be used in establishing ownership paradigms: Who owns something? Who has the right to determine its cultural significance? These are important questions for museums trying to determine outcomes for repatriation claims. This is related to the other questions for museums of who decides what is displayed and when? Foucault, as a theorist of power, knowledge, and truth, was interested in the efforts we make to understand power relationships. The museum is an institutional instrument of power with knowledge initially created and disseminated by the settler colonizers. Power continues to be a ubiquitous feature, but we do not always see it or understand it. It is diffused in the museum's display narrative; and, it does not matter if the descriptions are accurate since truth is subjective (Said 1993; Foucault 1980).

When considering the catalog of cultural objects held by museums related to territory seizures and acts of violence against communities, it is possible to see cultural stereotypes continue to be embedded in the universal survey museums. Legacies of looking at the "edges" of the empire are slowly transforming to recognize the subjective truths of imperialism. Objects will always act as instruments, signs, and symbols (Lubar and Kingery 1995), but the current modification in configuration of power relationships shows that museums are addressing past epistemological failures for Native Americans. Repatriations, and the collaborations that stem from it, act as a form of cultural diplomacy, but there are other ways museums can connect with indigenous peoples. When it is decided that cultural property will remain in the institution and is not repatriated, it is very important that indigenous peoples have access to the objects (Kuprecht 2014; Greenfield 2009). Museums like the Field Museum, Penn Museum, NMNH, and NMAI make it very clear in their public

releases and mission statements that they are working to include previously marginalized voices in exhibition developments:

Mission

The Field Museum fuels a journey of discovery across time to enable solutions for a brighter future rich in nature and culture.

You'll notice some big changes happening here at the Field, including a new logo and transformations inside the building. Our brand embodies the forward-thinking scientific leader we've always been and the work we do every day. Fighting climate change. Preserving biodiversity. Celebrating cultures. Championing science and taking action.

Field Museum, March 2018

Our Mission

In March 2014, the Board of Overseers affirmed the following statement of mission for the Penn Museum:

The Penn Museum transforms understanding of the human experience.

Archaeology is the study of our human past through the material remains and environmental data people have left behind. From the first traces of our earliest human ancestors to 21st century buildings, archaeology analyzes the physical remains created or modified by people in pursuit of a broad understanding of our human experience.

Anthropology is the study of humans, past and present. To understand the full sweep and complexity of cultures across all of human history, anthropology draws and builds upon knowledge from the social and biological sciences as well as the humanities and physical sciences. [Definition courtesy of the American Anthropological Association]

Penn Museum, 2014

Our Vision

By 2022, the Smithsonian will build on its unique strengths to engage and to inspire more people, where they are, with greater impact, while catalyzing critical conversation on issues affecting our nation and the world. [...]

Valuing World Cultures

As a steward and ambassador of cultural connections, with a presence in some 100 countries and expertise and collections that encompass the globe, we will build bridges of mutual respect, and present the diversity of world cultures and the joy of creativity with accuracy, insight, and reverence.

Understanding the American Experience

America is an increasingly diverse society that shares a history, ideals, and an indomitable, innovative spirit. We will use our resources across disciplines to explore what it means to be an American and how the disparate experiences of individual groups strengthen the whole, and to share our story with people of all nations.

Smithsonian Institution, 2017

Mission Statement

The National Museum of the American Indian (NMAI) is committed to advancing knowledge and understanding of the Native cultures of the Western Hemisphere—past, present, and future—through partnership with Native people and others. The museum works to support the continuance of culture, traditional values, and transitions in contemporary Native life.

National Museum of the American Indian, 2018

These new relationships between museums and indigenous peoples give a richer understanding for museum audiences and staff (Kuprecht 2014; Jenkins 2016). Variations exist in institutional practices when conceptualizing exhibitions incorporating indigenous peoples, but this cultural value trend is seen around the world.⁴⁹ This increase in inclusion can be traced through practices and legislation throughout the twentieth century.⁵⁰

⁴⁹ Later in this chapter, I will discuss exhibits currently running at both the Field and Penn museums.

⁵⁰ Although for the purposes of this chapter I will be discussing US history of changes in the twentieth century, I will be including other international policy discussions in chapter five.

Indigenous Power: Altering the Cultural as Commodity Concept and Activism That Led to Change

Federal repatriation policy was preceded by several important steps throughout the twentieth century. Beginning with the 1906 Antiquities Act, protections of significant Native American sites began, but it was determined that indigenous human remains were “archaeological resources” and “federal property” and moved to federal collections (Trope 2013, 23). This took away the agency of tribes who wished to keep their ancestors interred and culturally significant objects out of collections. Federal objectification of Native American culture continued into the 1930s. The 1934 American Indian Arts and Crafts Board Act⁵¹ commodified Native American identity through the production of art (Berman 1997). Viewing Native American cultural objects as art rather than ethnographic specimens altered the collection narrative. With the commodification of objects, there was an imbalance in the debate over value. Was this cultural appreciation or appropriation?

It is no coincidence that at a time when the United States was administering various Pacific territories and pursuing an integration policy towards Native Americans, there was an institutionalization of primitive art on US soil and an exponential increase in the US market for non-European cultural objects.

Vrdoljak 2006, 188

In the 1940s and 1950s, integration policies were promoted as decolonizing by the US government; but, in fact, were not since these policies did not allow for self-determination or reversals of territory occupation. A Native American Civil Rights movement was fueled

⁵¹ According to the NMAI, the IACB was a federal agency created to collect and purchase examples of Native American Art beginning in 1935 during the New Deal Era. Its first director was René d’Harnoncourt. The goal of the IACB was “part of what is called the Indian New Deal, a series of federal policies and programs set to reverse assimilative policies towards Native Americans in favor of promoting cultural pluralism and increased tribal sovereignty” (NMAI 2015). The collection was eventually transferred to the Smithsonian’s National Museum of the American Indian (<http://blog.nmai.si.edu/main/2015/08/indian-arts-crafts-board-1.html>)

by regressive national policies that coincided with other Civil Rights Movements seen in the nation (Vrdoljak 2006). In the 1960s, the 'Pan-Indian' movement, which promoted unity between Indian groups beyond tribal affiliations, shows the beginning of a shift in perception on indigenous rights and a new socio-political drive in the US. These advocates were seen as a threat to archaeologists and scientists wishing to maintain access to material and remains for research (Watkins 2004). When Suzan Shown Harjo visited the Museum of the American Indian in Harlem in 1965, she described seeing many things that she felt should not have been on display including the following example:

At the same time, we saw something that later would stay with me for decades as a recurring dream. And that was a Cheyenne girl's dress, with a bullet hole where her belly had been, and rust patterns surrounding that bullet hole. So, there was the dried blood and the buckskin dress, and a dead baby somewhere, a dead Cheyenne baby, so we immediately left that place.

Preucel 2011, 132

Suzan Shown Harjo later spoke of the coalition that met in Bear Butte, South Dakota in 1967 to discuss grievances with the continued influence of settler colonialism: recovering ancestral remains, grave goods, and sacred objects from museums, as well as protecting sacred places like Bear Butte (Preucel 2011).⁵² In the late 1970s, the concept of repatriating human remains struck a chord with military personnel in the US and those in Congress concerned with having deceased soldiers repatriated from American wars overseas. The "returning warriors" discourse was something familiar to the military, especially during wartime (Preucel 2011). The American Indian Religious Freedom Act of 1978 first mandated that a large amount of Native American cultural property had been taken

⁵² The debate over protected sacred places continues today, with President Trump reducing the size of protected monuments, such as Bears Ears in Utah (Price 2017). For more information about this: <https://www.pbs.org/newshour/politics/native-american-tribes-call-trumps-revamp-of-tribal-advisory-commission-a-slap-in-the-face>

throughout the years, but it would take over a decade to finalize policy that would return this property (Kuprecht 2014). The Association on American Indian Affairs (AAIA), National Congress of American Indians (NCAI), and the Native American Rights Fund (NARF) joined in 1988 to form the American Indian Religious Freedom Coalition (AIRFA Coalition) (Trope 2013). Representatives of the Northern Cheyenne had found that the Smithsonian Institution was housing almost 18,500 human remains which helped lead to efforts to repatriate on the national level (Trope 2013). With the creation of the NMIA Act in 1989 and NAGPRA in 1990, federal policies facilitated the return of human remains and culturally significant objects.

NAGPRA was a response to the disenfranchisement of indigenous people in the United States. It was policy that “acknowledged that these collections were the result, directly or indirectly, of values and practices that conflated scientific discovery with ownership, and brought to light the questionable collecting practices that preyed upon impoverished or dispossessed Native Americans” (Sangita and Lavalley 2013, 8). NAGPRA also allowed for claims to be based on previous ownership or control, rather than only on cultural affiliation (Kuprecht 2012). There was an archetypal shift for museums that may have lost scientifically-significant specimens, but also gained the ability to make reparations for past wrongs and develop new relationships between indigenous communities and museums (Redman 2016, 279-280). Suzan Shown Harjo describes the reforms that occurred after NAGPRA to address larger indigenous concerns:

So, we were talking not only about repatriation and sacred places protection, we were also talking about museum reform generally, about our treatment in museums. We used the word ‘museum’ almost as code for everything that was wrong in society, the way we were put in the displays and under the glass cases of museums. Grave robbing was a problem of the museums, because they were the fences for the stolen everything. So, we were talking about museum reform, we were talking about

doing things the way they should be done, we were talking about a cultural center, a museum, that would keep an eye on Congress as they were, and be a reminder to Congress that we were in our countries here, and there were still problems.

Preucel 2011, 132-133

NAGPRA consultations with tribes have the added benefit of increasing the “cultural knowledge shared between Native American and museum communities...NAGPRA has also served since its enactment to enhance and renew Native American cultures and cultural identities” (McLaughlin 2002, 215). According to Joe Watkins (2013), repatriation and consultation make the historical records, archaeological study, and understanding of culture richer. An important outcome of the legislation and creation of repatriation policy has been the increase in “intercultural collaboration, dialogue, and reconciliation” (Kakaliouras 2012, S211). Museums and repatriation staffs are gaining a deeper understanding of cultural knowledges outside western traditions. They recognize that meaning is layered and political, and are adapting their policies to reflect this. Acceptance that concepts of heritage are socially constructed and are influenced by the “historical, political, and social frameworks in which cultural meanings are produced and interpreted” are utilized in making decisions on claims (Anico 2009, 63).

Before NAGPRA was created, state laws did not consider many important issues related to indigenous burial practices (i.e. canoe, scaffold, or tree burials) and did not include provisions for tribes who were removed from their traditional territories and had left burial grounds behind (Trope 2013). Federal policy worked to correct these injustices but it is not an infallible system. Indigenous identity is a contested issue and ‘Who belongs to a tribe?’ is a larger question beyond genealogies and genetics, that does not necessarily have a straightforward answer. Especially considering that concepts of time: past, present, future, and lineage are not the same as in the western tradition (Wobst 2013). This has

created some growing pains for the legislation that has had to be amended over the years. As stated previously, repatriation requests made through NAGPRA in the US must prove objects belong to lineal descendants of *federally recognized* tribes. This is sometimes a huge burden since not all tribes are well-documented or recognized and must rely on help from federally recognized tribes or the museum being willing to repatriate.

Inclusion of Indigenous Voices

The need for increased agency among indigenous communities influenced the social shift in museum structures from the 19th century universal survey model to what we see in contemporary exhibition creation in the 21st century. This museum model attempts to be more interactive with the museum audience and not just a glass-case display with labels. “It is, however, not limited to its own walls, but moves as a set of processes in the spaces, the concerns and the ambitions of communities” (Hooper-Greenhill 2000, 152-153). The conceptualized narrative from indigenous societies’ point of view is prevalent as museums attempt to move beyond their colonizing legacy. Outside of display at universal survey museums, post-museums representing indigenous objects can take many forms, whether it is the development of community cultural centers, or at the other end of the spectrum, to updated displays and exhibits under the umbrella of national and state museums. The new models allow indigenous peoples to experience and stimulate transformation of how they are represented to museum visitors. One of the best examples of this model is the NMAI museum in Washington, DC which has about 825,000 items in its collection, “[r]anging from ancient Paleo-Indian points to contemporary fine arts, the collections include works of aesthetic, religious, and historical significance as well as articles produced for everyday use” (NMAI 2018).

Notwithstanding the curatorial shifts and inclusion of indigenous voices, the narrative is still defined by an inescapable Western framework first established by the universal survey museum. In the creation of the original museum model, power was in the hands of those collecting objects, artifacts, and human remains from the colonized. The museum collection institutionalized the display of vast wealth and power of the colonizers to anyone viewing it. It was observable power used to control subjugated peoples (Foucault 1977). The marginalized became objects of study and dissection by the Western audience and this quiet judgment by the museum audience was an invasive and invisible power—cultural stereotypes were embedded in the minds of those viewing displays. “Power has its principle not so much in a person as in a certain concerted distribution of bodies, surfaces, lights, gazes; in an arrangement whose internal mechanisms produce the relation in which individuals are caught up” (Foucault 1977, 202). The power of the colonizing West was, and is, both observable and hidden in the museum through the normalized behavior of the interpretative gaze of the audience. The omnipresent power is both forceful and quietly controlling the visitors.

So how can power shift at the museum? Restitution is an integral part of cultural renewal for indigenous peoples (Vrdoljak 2006). Part of the restitution process includes the involvement of indigenous individuals and communities in creating exhibition content for museums. These efforts are being undertaken by museums around the world. Advocates for inter-institutional collaboration and exchanges of exhibitions have said more “collaboration and integration” needs to occur at the museum (Grande 2017, 341). Contemporary exhibits are a way of engaging continued cultural patrimony for indigenous peoples within the museum. These exhibitions have the power to reconnect identity and

dismantle institutional boundaries. Since the museum audience views a collection through a specific curatorial perspective, it is interesting to note the change in the narrative when indigenous people lead, or are part of, the design. Discussions and debates surrounding repatriation requests and display development show a form of discursive tradition within the institution and the indigenous community. Discursive tradition is a term coined by Talal Asad in *Genealogies of Religion* (1993) and related to the principle of debating what constitutes a tradition within religion or a culture. The new exhibitions created within the institution are emblematic of this concept since cultural practices are not stagnant and the use of rituals, ceremonies, and culturally significant objects related to indigenous practices can alter within the community. The Field and Penn museums have worked to show the living aspects of indigenous culture in recent exhibitions. These exhibits reveal that practice and art forms change over time and are continuations of tradition.

The Field Museum currently has two contemporary exhibits: *Drawing on Tradition: Kanza Artist Chris Pappan* and *Full Circle/Omani Wakan: Lakota Artist Rhonda Holy Bear*,⁵³ both running from October 29, 2016-January 13, 2019. Chris Pappan's exhibition is illustrated "ledger art." This art form is a contemporary interpretation of the ledger drawings that were done when buffalo hide was in short supply:

Pappan draws with pencil on ledger paper, creating artwork that's at once hyper-realistic and abstract. "The portraits he creates involve distortions—reflections, fish-eye lens effects, things that suggest that the image has been stretched or altered," explains Alaka Wali, the Museum's Curator of North American Anthropology... To complement this theme, and in addition to new and loaned pieces in the exhibition, some of Pappan's artwork will be displayed at The Field as decals applied to the glass cases in the Museum's Native American hall, which the Museum is raising funds to renovate. "Our permanent hall was originally created in

⁵³ For more details on the two exhibitions:

<https://www.fieldmuseum.org/about/press/field-museum-open-two-new-exhibitions-featuring-contemporary-native-american-art>

the 1940s, and while the artifacts remain powerful, they need fresh interpretation,” says Wali. “Pappan’s artwork provides that—by superimposing his drawings over the existing cases, we’re able to show that Native culture is vibrant, alive, and ever-changing.”

Field Museum press release, 2016

Rhonda Holy Bear’s exhibit includes artifacts that inspired her from the Museum’s collection as well as new creations from the artist:

Holy Bear’s artwork consists of intricately carved and beaded Native American figures that depict life on the Plains in the nineteenth century. The exhibition brings together for the first time Holy Bear’s most significant works, including pieces that have been exhibited at world-renowned art museums. Paired with objects selected from The Field Museum’s collection that inspired her, these detailed figures illuminate the depth of Plains cultures. “My figures represent my relatives, past, present, and future,” explains Holy Bear. “Without them, I could not be who I am today. My ancestors and their stories are connected like each vertebrae of my spine. I carry their story with me in my back. It’s a strong place to be.”

Field Museum press release, 2016

These two temporary exhibitions can be compared with the Penn Museum’s *Native American Voices. The people. Here and Now*⁵⁴. This exhibit is a long-term exhibition that explores four themes with contemporary importance: Local Nations, Sacred Places, Continuing Celebrations, and New Initiatives. The exhibit incorporates both new and old objects and is told through Native American voices: “These themes are presented through the lens of several overarching topics, including language loss and revitalization, identity, representation, and on-going political activism in support of sovereignty and self-determination” (Penn Museum, 2017).

This alternative to repatriation can be found in indigenous communities’ involvement in creating exhibition content for museums centered more closely on their

⁵⁴ For more details on the exhibition:
<https://www.penn.museum/sites/nativeamericanvoices/exhibition.php>

interpretation of their history and collections. Exhibitions like this can also be seen internationally in the Te Papatongarewa/National Museum of New Zealand⁵⁵ and the “Indigenous Australians” permanent exhibit at the Australian Museum in Sydney.⁵⁶ Both installations utilized indigenous peoples’ involvement in their creation and implementation within the larger museums’ collections. Attempts have been made to integrate the indigenous societies more within the national image shown to the world. This integration is not an assimilation like what was seen in previous centuries, but a focus on a multicultural identity within the nation-state. The social relationships within the ethnic groups are reflected in the design of the two national museums. Both Te Papatongarewa in New Zealand and the Australian Museum show the dependence between vastly different ethnic cultures for the history of the nations. Te Papatongarewa/National Museum of New Zealand, located in Wellington and opened in 1998, houses over 30,000 taonga (or cultural treasures) in the Taonga Māori permanent collection (Te Papa collections 1998). The Māori cultural treasures are very important in the national identity of New Zealand. The Australian Museum in Sydney opened the permanent collections “Indigenous Australians” exhibit in 1997. (Hooper-Greenhill 2000, 19). It is described as “waiv[ing] the curatorial voice in order to hear the voices of the indigenous Australians themselves” (Hooper-Greenhill 2000: 20). The exhibition displays 40,000 objects and creates a history of Aboriginal culture for its audience. Visitors to the exhibition experience “six themes: spirituality, cultural heritage, archaeology, family, land and social justice” (Australian Museum collections 1997). Western colonization is discussed throughout, showing the

⁵⁵ In New Zealand, both Māori and English are used in naming/labeling. To view the collection: <https://www.tepapa.govt.nz>

⁵⁶ Digital access to the exhibition and collection can be found at: <https://australianmuseum.net.au/section-indigenous-australia>

cultural and ethnic boundary intersections. *Indigenous Australia, enduring civilisation*,⁵⁷ a traveling exhibition organized with the cooperation of the National Museum of Australia, was on display at the British Museum from April 23-August 2, 2015.

The social world is greatly affected when indigenous peoples are involved in presenting heritage and history from their own perspective. They reclaim some of their cultural agency *and* expose museum visitors to a source community's worldview. Experts in the field of decolonization and repatriation in museums believe the post-museum model is a source for changing views on indigenous communities. As Amy Lonetree points out in *Decolonizing Museums*, an exhibit can become a collaborative effort rather than just a showcase of artifacts when the source communities are involved (2012). This allows for a reconnection between past historical culture and scientific study to present-day activities within the community. Moira Simpson states that the post-museum model is a proponent for the support of cultural renewal in indigenous peoples (2009), but this museum model is still considered a process of change. Nancy B. Rosoff, in *Museums and Source Communities*, states that if there is to be collaboration in creating museum exhibits between indigenous communities and the museum, both groups must realize that it is "an ongoing process that will continue well into the next century and beyond" (Peers and Brown 2003, 72). There is no quick path to decolonizing museums, especially considering the predominance of western frameworks and theories in display design. Part of the education process at the museum is accepting the different ways indigenous people respect and care for their cultural artifacts (Peers and Brown 2003). This respect for the practices of indigenous

⁵⁷ Details for the closed exhibition at the British Museum:
http://www.britishmuseum.org/whats_on/exhibitions/indigenous_australia.aspx?fromShortUrl

peoples is one way museums are working to cooperate and create the right environment for study. An opposing argument states that the objects are still being held in colonial institutions and being studied by predominantly western, Eurocentric researchers and audiences; but, there is no way, at present, around this problem.

Despite involvement by indigenous groups, cultural interpretation at the museum is still based in a western theoretical framework. As Foucault points out, "It is on the basis of this order... the interpretation that such an ordering involves, will be constructed. Thus, between the already 'encoded' eye and reflexive knowledge there is a middle region which liberates order itself..." (1970, xxi). The museum is an institution of a dialectical power structure. How we see artifacts collected and displayed make an active statement within the public space. Social understanding at the museum is based on interpretation of the exhibit. This understanding is directly correlated to the decisions of the curator in creating the display. Development of the post-museum allows the curator and museum visitor to cultivate social awareness of what they witness. Considering that museums "have the power to affect lives by opening up or closing down subjectivities, attitudes and feelings towards the self and others" (Hooper-Greenhill 2000, 19), the social awareness of the audience becomes more responsible.

Given the Foucauldian power structures within the museum institution, the question arises of whether indigenous voices are heard in the representations of their cultural property in the museum. Are there overt Western power structures still being utilized within the new exhibitions? Indigenous cultural displays, even within the post-museum framework, are constructed with consideration for the experience of the museum visitor. How the visitor interacts with the display and what knowledge they take away from

it, is the motivating force for its creation. The narrative of the display can be influenced by the indigenous peoples depicted, but the framework of the exhibition will always be a western construct. Grouping objects taken from other dominated cultures in the museum institution is inherently a western idea. But, indigenous-centric displays reflect a more culturally sensitive approach to displaying objects. Indigenous groups that have been the case study models of scientists are now regaining a sense of self and developing exhibitions more representative of their communities, but still within the state and national museums. The disadvantage of this kind of involvement in display creation is the fear of assimilation into the dominating, colonizing culture.

Moving Forward at the Museum

Objects are no longer collected with a complete disregard for the people they represent, and the care and conservation of objects and cultures become more prominent ways of study and display. The collections at museums are vast, with most of the objects residing in storage. How these collections should be treated is being influenced by indigenous peoples and their cultural practices. The objects held in storage at the collections' facility for the Smithsonian Institution are visited by tribal representatives who give guidance and input on how objects should be respectfully stored and conserved (SAA tour 2018).⁵⁸ Repatriation specialists at both the Field and Penn museums also discussed the involvement of communities in discussions on proper collections' storage (Robbins 2016; Fowler 2017). This shows an evolution of thought within the institution, but also raises important questions for the future purpose of the museum:

⁵⁸ During the Society for American Archaeology conference in April 2018, I was able to tour the Smithsonian facility with others and learn about their collaborative practices.

Given the difficult past of museums with respect to collecting, it is right to approach this function with suspicion. Can museum collections—many of which have been built over time on the spoils of war and assumptions of cultural superiority (the soft edge of hard power)—be transformed into soft power tools that recognize the knowledge of the many rather than a few, and are more egalitarian and transparent than in the past? Here are two adaptive strategies: collection development for social equality and tagging participation and accessing data.

Lord and Blankenberg 2015, 212

A voice is being given to the previously marginalized. In indigenous communities, the 'Peoplehood Matrix' has gained popularity as a way of representing kinship identity. This framework defines an interconnection within the community through a shared language, sacred history, territory, and ceremonial cycle (Holm, Pearson, and Chavis 2003). Within the context of the museum, the matrix can be viewed as a way of mapping out important themes within the exhibitions' narratives. This is seen in how the Penn Museum has organized its new long-term exhibit, *Native American Voices. The people. Here and Now*. The *Indigenous Australians* exhibit also shows several of these themes in describing what it means to be Aboriginal. The matrix does not solve the problem of self, but it does help identify needs of the indigenous communities and translates them for the former colonizing nations. It is a construct that gives a visual idea of ways to establish identity: "Peoplehood models, which discuss the interconnected factors of community, language and cultural practices, appear to have some promise for discussing the adaptability and resurgence of Indigenous communities" (Taiaiake and Corntassel 2005, 608). The post-museum model allows for a reconnection to identity for indigenous peoples. The western-constructed wall between the display and the audience created a boundary between the sacred history and the displayed objects (Taiaiake and Corntassel 2005, 609). But, by involving indigenous peoples, there is an attempt at restoring the connection between the object, sacred history, and the community.

Indigenous voices continue to advocate for change within the post-museum model, but the invisible, subtle power of the institution is not going away. Museums were established on the idea of creating grand narratives for their audiences—overarching stories that placed Western/European culture as the height of intellectual achievement. History and social structures were understood based on their relationship to this western narrative. All attempts to repair the damage inflicted on indigenous communities is still conducted within this model. These grand narratives created in the previous centuries were symptomatic of a larger problem of colonization and cultural appropriation. These stereotypical ideas are entrenched in our everyday lives and make attempts to decolonize difficult. However, decolonizing museum spaces and incorporated different perspectives is the only way the dominant narrative changes.

What these museums—the Field Museum, Penn Museum, Te Papatongarewa, Australian Museum in Sydney—do well, is expose audiences to narratives from indigenous points of view that they may have never heard otherwise; unfortunately, the museum still predominantly uses objects collected during imperialism or donated by wealthy individuals. However, the social world begins to alter and agency is partially rectified for indigenous communities, but ambiguity continues to exist. Ultimately, the museum is still in many ways an institution dedicated to cultural restoration within colonized parameters.

Other Alternatives to Repatriation

Given the differing perspectives on what to do with culturally significant objects, new collaborations and forms of return need to be explored. These include restitution, repatriation, and long-term loans (Cornu and Renold 2010). Many museums collaborate with indigenous communities and other institutions to create a model that supports these

approaches. Indigenous communities are being encouraged to incorporate objects currently held in museum collections into ceremonial practices through loans and exchanges of culturally significant objects (Kreps 2003; Conaty 2015). One such example of this cooperation is at the Glenbow Museum in Alberta, Canada, which has an agreement with the local Blackfoot community to include indigenous people in display creations of their culture at the museum and also seeks to grant repatriations and loans of important ceremonial objects.⁵⁹ These long-term loans of ceremonial bundles reintroduce important ceremonies to the Blackfoot community and also instill traditional conservation and usage practices with the objects themselves (Conaty 2015).

Not all indigenous communities want certain objects or human remains returned. Decisions are made by tribal representatives and presented to museums to help curators determine how objects or human remains should be handled, conserved, or allowed to decompose. For example, the NMAI, National Museum of American Indians, in Washington DC, has a human remains vault and ceremonial objects vault to house objects and bones for future repatriation requests; they also hold remains and objects for communities who are currently unable to remove them for interment (NMAI 2014). These vaults are maintained according to specific indigenous community requirements and with the full participation of museum staff. There are situations where sacred objects should not be viewed at all and cannot be touched or returned to tribes. Once the institutions are made aware of these needs, the objects or human remains are respectfully removed from public viewing in cooperation with the tribes' wishes (NMAI 2014; SAA 2018 tour).

⁵⁹ Indigenous communities have not been very receptive of the idea of copies of their objects and make requests for returns or loans of the originals instead (Conaty 2015).

Conclusion

The goal of this chapter was to show that the power relations at the institutional level have shifted to include an indigenous presence in the understanding of displays and collections. The settler mentality at the museum, first seen in chapter one, has changed through counter-hegemonic language and practices. These changes have occurred both on the institutional level at museums, as well as on the national and international level of governance through policy creation and cooperations between transnational institutions. The topic of repatriation is political and has created normative changes in cultural property ownership paradigms and cultural value shifts in society. It has also advanced the conversation beyond returning ancestral remains and culturally significant objects to include conversations about contemporary cultural practices of indigenous peoples and giving indigenous peoples a voice in curatorial decisions.

Museums are postulating their identity for the twenty-first century and beyond when they question what they stand for and their future practices. They must adapt their practices and exhibits to maintain relevance. Considering that culture continues to be a resource controlled by specific narratives it is important to counteract the disempowerment previously seen in collections and at the institutional level. With the inclusion of outside voices, display narratives are more comprehensive.

Chapter 5: What Does This Mean for Repatriation Practices Moving Forward?

The Field Museum houses one of the largest collections of Pacific artifacts in the world. It has a complete Māori meeting house, Ruatepupuke II, in the Marae⁶⁰ Gallery. The meeting house was built on Tokomaru Bay, New Zealand in 1881 and was purchased and moved to Germany before finally being sold to the Field in 1905. The Field worked with people from Tokomaru Bay in 1992 to restore it and create a new exhibition in the Regenstein Pacific Halls (Pridmore 1993).

While this house, or whare, stands inside a museum in Chicago rather than beside the beach at Tokomaru Bay, it is of enduring and deeply felt significance to the descendants of its 19th century builders. The house serves as a national "flagship" for many throughout New Zealand, both as a striking symbol of their cultural pride and values in this distant and foreign land, and as an innovative urban gathering place, or marae, for communicating those values and sensibilities overseas in an unconventional, multicultural setting.

Field Museum Press release, 2007

The Field Museum and Te Papa have a history of cooperating since the early 20th century. The alliance has included the "Te Maori" exhibition at the Field in 1986, as well as a 125th anniversary ceremony held in April 2007 to celebrate the Māori meeting house opening at the Field. Fifty New Zealanders were in attendance for the event.

In September 2007, the Field Museum repatriated Māori human remains to Te Papa Tongarewa Museum (Te Papa) in Wellington, New Zealand. A delegation of seven American Indian representatives from the American Indian Center in Chicago accompanied the

⁶⁰ "Marae" is a Māori custom for a physical space for people to meet; it's a spiritual place for the sharing of history and culture (Field Museum, <https://www.fieldmuseum.org/at-the-field/exhibitions/maori-meeting-house-ruatepupuke-ii>)

remains. The involvement of Native Americans in the repatriation is noteworthy for its transnational indigenous participation. The relationship between the Field Museum and Māori is longstanding and was influenced by the Field Museum's Māori meeting house on display and the American Indian Center in Chicago's close relationship with this meeting house. This was the first repatriation of Māori ancestral remains from a US mainland museum to New Zealand and consisted of mandibles, crania, and a preserved head with facial tattoos (Field Museum 2007). The remains were purchased in 1893 from a New York State scientific supply facility. Although the identities of the remains are unknown, Te Papa was pleased to have them returned. The cultural exchange between the Field Museum and the Māori highlights the importance of cultural diplomacy and its influence on institutional practices, such as returning remains when they are not required to do so by federal policy. This example highlights that repatriation can act as a reparation for past injustices such as human rights violations and seizures of territory across international borders.

Introduction

Previous chapters have addressed the changing discourse on repatriation in the United States. This chapter illustrates the discourse changes occurring in other nations with indigenous populations, specifically looking at Canada, Australia, and New Zealand. Museums have a form of soft power. This influence is not based on military or economic command, but on intangible aspects of persuasion, such as values, culture and knowledge (Lord and Blankenberg 2015). Museums can use this power as a form of cultural diplomacy on the international stage since the larger repatriation discussion does not immediately change with one country and then domino to others. It is a change that is happening concurrently; in stops and starts, which corresponds to other civil rights movements and

national histories. It is based on a change in attitudes that seem to have some universal momentum. This supposition on universal support is grounded in the development of international customary law in the form of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). There is no consensus on the effectiveness of formalization on the international level and what may work on a federal level might be impossible on an international level. But, the questions, “can formalization have a normative aspect at the international level? And, what are the costs and benefits of formalizing cultural property indigenism within this framework?” should be asked. Given the altering power structures between former settler colonial states and indigenous peoples, there is a fundamental need for repatriations worldwide.

The problem of international repatriations is complex since national political concerns, indigenous requests and rights of sovereignty, other challenges, and property laws of individual states need to be considered; however, museums can create a space for “diplomatic relations when political tensions mount between two countries” (Olivares 2015, 50). Claimants have many individuals and groups, such as NGOs, intergovernmental organizations, activists, scientists, and museums, acting on their behalf; however, there are many barriers to fulfilling requests (Kuprecht 2014). Unfortunately, national policies are limited to objects within their borders. This means that NAGPRA does not regulate international claims by Native Americans:

25 U.S.C 3002, Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony— ...

NAGPRA 1990

*Note that NAGPRA only applies to federal and tribal lands in the United States

...NAGPRA explicitly provides that it should not be construed to establish a precedent with respect to foreign governments. Thus, the act avoids extraterritorial effect and any conflict with Native American cultural property state possessions outside the United States. This is in line with the international principle that states respect each other's territoriality and the property rights attached thereto.

Kuprecht 2012, 52

So how can the NAGPRA, federal legislation in the US, impact international formalization? I believe it, in cooperation with other national policies, can act as a framework for an international model.

Normative Aspects of Formalization

Epstein (2008) in her analysis of a change in the dominant whaling discourse (from a pro-whaling discourse to an anti-whaling one) stated it had separate stages and a snowball effect on policies around the world. This can also be seen in the expansion of repatriation discourses across nation-states with indigenous populations. As an institutionalized concept, repatriation requires policy implementation that differs on the national level based on the perception and acceptance of indigenous needs. There has been an increase in individual nation-state involvement for collaborative discussions and international acceptance of these needs is occurring without as much institutional pushback. This is not a blanket response and there are examples of institutions, states, and auction houses not interested in repatriating indigenous property. It should also be noted that enforcement is still an issue in transnational disputes, and requires museums and

institutions self-regulating and cooperating beyond national borders in disputes (Kuprecht 2014).

This chapter looks at two aspects of repatriation: other national policies in Canada, New Zealand, and Australia, as well as other international efforts for transnational claims. This is a small subset of nations with indigenous populations or legislation related to their repatriation concerns, but they are three of the larger nation-states with established practices and settler colonial legacies. Looking at different national models shows what has been done in other states and a comparison of other policies establishes what has been most successful. Interestingly, this network of policies shows a possible normative aspect to formalization. It becomes part of the dominant discourse and changes the social structure of how we view human remains and objects held in museum collections. Many repatriation claims fail at the international level, but this has not stopped those seeking or supporting the claims. There are numerous associations, institutions, and nongovernmental bodies working to create policies and guidelines for repatriation claims. Kuprecht states that “[f]or future law and policy forming, all these normative orders are highly important despite the lack of a legally binding quality” (2013, 17-18).

Cultural value norms at the museum recognize the need to repatriate requested human remains across transnational borders. There is a growing ethical initiative to return indigenous grave goods and human remains worldwide. Jenkins states that these repatriations have included 138 human remains to the Torres Strait Islands from the National History Museum in England, and a Toi Moko (tattooed head) from the Montreal

Museum of Fine Arts to Te Papa Tongarewa in New Zealand (2016, 7).⁶¹ But, one of the main problems with international repatriations is the limit imposed by the nonbinding nature of national laws outside of their borders. These property laws are limited in their scope and application. Normative practices began to prohibit the destruction or removal of cultural property during wartime after WWII (Sandholtz 2007). These calls for protection were eventually made for indigenous cultural heritage later in the 20th and into the 21st centuries. A report in the UK, published by the Select Committee on the Culture, Media and Sport on July 18, 2000, stated that many objects held in collection were taken through “questionable circumstances” (Kuprecht 2013, 106).

Indigenous peoples are participating in the discourse for international repatriations with many advocates advancing their claims. Kuprecht states that indigenous claimants are beginning to organize themselves into private law bodies in order to have stronger, more powerful standings in civil courts (2014, 134). International repatriation requests are often most successful when national governments of the indigenous peoples become involved (Kuprecht 2014; Davis 2016). It should be noted that the costs for indigenous peoples making international claims can be very high. International litigation can be expensive, involving extensive research on the history of the object and a lengthy procedure lasting possibly years (Kuprecht 2014). Considering that many marginalized indigenous peoples are very poor, these claims may be outside of their financial reach.

⁶¹ Jenkins went on to note that 240 other Māori remains have been returned to Te Papa from international institutions, but it’s estimated there are still 650 remains held in other institutions, mostly in Europe (2016, 302).

International Legislation Inspired By NAGPRA: Canada, Australia, and New Zealand

Examining national models in Canada, Australia, New Zealand, and the US establish normative repatriation and restitution trends. International policies on cultural property law have been influenced by work done in the US and the creation of NAGPRA and the NMAIA (Kuprecht 2014); but, nations like New Zealand and Australia have legislation that predates NMAIA and NAGPRA. Museum practices in countries like Canada and Australia also allow for repatriations with laws in place that reflect indigenous rights claims. Formalization, similar to NAGPRA, on an international level might not be replicable, but national models demonstrate normative trends that could be adapted into a more enforceable transnational policy to address Indigenous ownership claims.

Canada

Canada does not have any national legislation, but does have provincial and institutional policies in place in the form of a system of treaties, self-government agreements, and internal policy to resolve repatriation issues (Young 2010). The treaties and self-government agreements are determined on a case-by-case basis between the indigenous groups and the Canadian government. Internal policy negotiations are the most flexible between the Canadian Museum of History (formerly the Canadian Museum of Civilization) and the First Nation source communities. At present, “only human remains, burial goods and sacred objects can be repatriated to an Aboriginal government or individuals establishing a demonstrable link to the material” by the museum (Young, 2010, 10). The Canadian Museum of History has worked diligently in the repatriation of human remains because they feel it allows for healing within the Aboriginal communities and

establishes a bond with the museum (Young, 2010, 12). This differs from legislation found elsewhere in the nation.

Repatriation policy in Alberta, Canada was established in 2000 as the First Nations Sacred and Ceremonial Objects Repatriation Act (FNSCOR). This is provincial legislation affecting only indigenous objects with cultural significance held by museums in Alberta, Canada. Execution of FNSCOR is left up to each individual museum in Alberta to work through repatriation requests rather than having claims resolved through a central office like the NAGPRA division⁶² within the NPS (Conaty 2015). Another difference between the Acts is that whereas NAGPRA makes a distinction between private and communal property when addressing claims, FNSCOR does not and requires proof that the object requested is an important part of a current communal ceremonial practice in order to be considered (Conaty 2015). Under FNSCOR, objects are not repatriated to individuals. They must be returned to communities that have established representative groups to request and carry out repatriations. FNSCOR does not include a provision for the return of human remains and was initially introduced to regulate repatriations of sacred bundles used for ceremonies in the Blackfoot community (Conaty 2015). The Blackfoot community did not wish to touch remains held by institutions since this according to religious customs, this was detrimental to the living. As Frank Weasel Head describes:

...from our perspective, it is very important that our ancestors' remains be reburied on our traditional lands. At the same time, our religious protocols and beliefs forbid any contact with human remains, and so we can't really work with their returns directly. Our opinion is that if a collection institution truly wants to return Blackfoot human remains, they should come forward and make all of the arrangements for

⁶² Museums in the US also have repatriation departments that handle requests, but utilize a national database and system under NAGPRA (for more information of the databases: <https://www.nps.gov/nagpra/onlinedb/index.htm>)

the burials. We will gladly provide whatever space they need. In other words, we definitely want our ancestors returned to their Native land, but in order for that to happen, the collection institutions themselves will have to approach us—admitting their inappropriate history— to arrange proper burials.

Conaty 2015, 161-162

Other repatriation requests in Canada, outside of Alberta, are determined on a case-by-case basis and can be arduous and contentious as there is no national directive handling indigenous claims like the NAGPRA legislation in the US.

These policies demonstrate both institutional and provincial acknowledgement of indigenous concerns for access to their cultural heritage. It is important to consider that cultural property claims are framed in western legal constructs and this may limit how we view objects, cultural heritage, and human remains as *property* one can individually or institutionally own, like bric-a-brac, rather than significant cultural patrimony and ancestral remains. The legal issues that can arise appear prejudiced against the indigenous peoples. The onus is on them to produce convincing documentation that there is a need for the return of their sacred bundles and the law seems to favor keeping objects in the care of museums. This is slowly changing consciousness of the need for the recourses that repatriation of human remains or sacred ceremonial objects establishes, but the western bias makes this difficult in the court systems (Conaty 2015).

Australia

Australia has several state and national legislative initiatives in place to protect its indigenous cultural property. The Council of Australian Museum Associations (CAMA) recognizes Indigenous Australians as the first inhabitants and “owners” of the land in Australia (Vrdoljak 2006). This recognition also works with the multiple levels of governance in relation to indigenous needs. The Return of Indigenous Cultural Property

Program is a government program and is funded by both the State Governments and Commonwealth Government (Truscott 2006; LOC 2015). This program oversees government-funded museums but does not control privately-funded institutions, overseas holdings, or universities. The main goals of the program are: 1) to identify the origins of human remains and secret/sacred objects in collections when possible; 2) notify indigenous communities of human remains and secret/sacred objects in the collections; 3) honor storage requests made by indigenous communities for their human remains and secret/sacred objects; and 4) arrange for repatriations when requested (LOC 2015).

In 2000, the National Museum of Australia established a Repatriation Unit. This department is responsible for human remains held in the National Museum collection and directs repatriation efforts at other museums (LOC 2015). Repatriations of human remains from the National Museum follow strict protocol for the “unconditional return of remains and artifacts to traditional owners and custodians.” The Australian Museum in Sydney has an Aboriginal Heritage Unit to work on the creation of exhibitions (Pickering and Gordon 2011). Individual state legislative acts have been passed throughout the country to address concerns for indigenous cultural heritage⁶³: 1) the Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 in Queensland assert “Duty of Care” provisions and state that indigenous peoples are the “primary guardians of their cultural heritage (EDO NQ 2012; 3); 2) the Aboriginal Heritage Act 2006 in Victoria to protect cultural heritage; 3) the 1974 National Parks and Wildlife Act in New South Wales; 4) the 1988 Aboriginal Heritage Act in South Australia; and 5) the Historic Cultural Heritage Act

⁶³ For a detailed list of Indigenous heritage legislation in Australia, refer to Schnierer, Eloise, Sylvie Ellsmore, and Stephan Schnierer. (2011). *Australia, State of the Environment: State of Indigenous cultural heritage*. Department of Sustainability, Environment, Water, Population and Communities. www.environment.gov.au/soe

1995 to conserve and protect cultural heritage and historic places. In 1984, the Aboriginal and Torres Strait Islander Heritage Protection Act was passed by the Australian parliament protects both objects and areas of significance (Schnierer et al. 2011, 148-153).

The International Repatriation Program is under the jurisdiction of the Department of Families, Housing, Community Services and Indigenous Affairs (LOC 2015). This program is dedicated to returning indigenous human remains held in foreign collections. The program funds research on provenance and acquisitions, consultation with indigenous communities for repatriations, the return and reinterment of ancestral remains, and the care and maintenance of remains that cannot be returned (FaHCSIA 2009). In the last eighteen years, Australia has received more than one thousand indigenous human remains from foreign institutions. It is estimated that there are still more than nine hundred remains held in overseas collections (LOC 2015).

New Zealand

Of New Zealand's 4.2 million people, about 8% of them identify as Māori. In 1975, the country created the Protected Objects Act. Section 1A of the legislation implements the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Cultural Property and would later comply with the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. In relation to protected indigenous objects, the Protected Objects Act works to regulate the export of protected objects and establish the control, ownership, and sales of "ngā taonga tūturu (items related to Māori culture, history, and society) within New Zealand" (LOC 2015). The National Museum of New Zealand Te Papa Tongarewa, handles the requests and return of Māori remains from international institutions. To date, they have secured the cooperation of over

forty foreign museums in this endeavor. Museums in New Zealand receive both government and private funding which is used in maintaining the Karanga Aotearoa Repatriation Programme at Te Papa. The repatriation team works within international institutions willing to return human remains and culturally significant objects. From July 2003 to May 2017, 420 ancestral remains have been returned to Te Papa from overseas (Te Papa 2017).

Repatriation of cultural objects and human ancestral remains is an important symbol for larger indigenous claims to sovereignty and territorial rights. As pointed out by Kuprecht, tangible cultural objects cannot be separated from their intangible meaning (2014, 41-42). These tangible cultural objects also act as representatives of lost sovereignty and territory, as well as other past atrocities. Cultural property indigenism would allow for a new way of looking at indigenous cultural property ownership within the same established legal framework of ownership, *but* outside of cultural property nationalism and cultural property internationalism definitions.

Interest in cultural property claims has become a broader issue due to increased indigenous rights discussions in international circles, especially those with colonial pasts and indigenous collections in their museums. International repatriation claims are made, but not necessarily honored due to several factors, including cultural property nationalism/internationalism debates and varying nation-state property laws. As discussed in chapter one, a repatriation case that is applicable to this discussion is the return of Haida bones from the Field Museum to the community in 2003. The human remains had been taken during an excavation on the Haida Gwaii islands in British Columbia by the Field Museum in the late 1890s after a smallpox epidemic had decimated the island (Mullen

2003; Coukell 2004). NAGPRA legislation (both at the time and to this day), does not require US museums to return indigenous objects and remains outside of the country; however, the Field Museum felt it was ethically the right decision to return the remains to the Haida people (Mullen 2003; Coukell 2004). This is just one example of a case that fell outside of the legal definition of responsibility but was considered the ethically correct response by the museum.

Exploring Present International Governance: A Timeline of International Developments

There is a history of international involvement in addressing indigenous rights and concerns. Beginning in the 20th century, international governing bodies like the ILO (International Labour Organization) and the United Nations began introducing doctrines and declarations to specifically address indigenous concerns. In fact, international calls for indigenous rights began in the 1920s with an address by Deskaheh, leader of the Six Nations Iroquois Confederacy, to the League of Nations to try to prevent Canada from encroaching on their territory (Morgan 2011). This began slowly and gained momentum after WWII, due in part to the massive decolonization of the Third World, the recognition that marginalized groups needed protection against fascism and discriminatory power regimes, and a growing middle class of indigenous peoples who could help fund international efforts to promote their communal agendas (Pulitano 2012). After WWII, indigenous populations really began to mobilize as a way to decolonize (Wobst 2013).

Before 1945 and the Charter of the United Nations, international law did not fully address human rights. The Universal Declaration on Human Rights was later enacted in 1948, establishing ideals on universal rights for humanity. Various treaties and conventions have

been established concerning rights, but none directly addressed indigenous rights. However, the International Labour Organization (ILO) revised the 1957 Convention (No. 107) on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries and would later create the 1989 ILO Convention (No. 169) (Morgan 2011). This convention was criticized for not addressing the right of political self-determination (Vrdoljak 2006). The ILO No. 169 also focused predominantly on Central and South America (Kuprecht 2014).

The 1954 Hague Convention and 1970 UNESCO Paris Convention began to address national cultural property concerns during and after times of conflict (Hague) and when items have been illicitly removed from a nation (UNESCO 1954 and 1970; Merryman 1990). Repatriation as a broader conceptual framework, and not just related to indigenous objects, was established by both of these conventions. There are some differences between the 1954 Hague Convention and the 1970 Paris Convention. The 1954 Convention encourages the salvation of cultural heritage for all of mankind, whereas the 1970 Convention emphasizes property rights for the nation-state (Jenkins 2016). The 1970 Convention “can only offer to help mediate claims between Member States; and on the basis that culture is the property of nation-states” (Cuno 2008, 153). International agreements were meant to create protection norms for culturally significant objects during periods of war (Sandholtz 2007). Given the extensive battles, exploitation, and annihilation over the centuries, these 1954 and 1970 conventions were used by indigenous peoples to show they had been affected by ongoing colonial practices and needed protections (Vrdoljak 2006). The 1954 Hague (and its 1999 amendment) can be viewed as relating to indigenous repatriation concerns:

...military conflicts between indigenous peoples and colonial powers qualify as intrastate conflicts rather than war in the sense of the Conventions. Hence, indigenous peoples' cultural property lost in colonization conflicts, whether violent or not, does generally not qualify as war booty. That is why the Conventions are of little relevance for indigenous peoples' cultural property repatriation claims.

Kuprecht 2014, 93

In 1971, Special Rapporteur José R. Martínez Cobo conducted a study for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities entitled "The Problem of Discrimination Against Indigenous Populations" (Vrdoljak 2006; Cobo 1971). José Martínez Cobo, the leader of the project, published a massive body of work on the state of indigenous populations throughout the world and made recommendations for how to support their claims and needs to prevent discrimination (Anaya 2013, 984; Nettheim 2009). The Cobo report shows the burgeoning interest in international recognition of indigenous concerns. This cause was then taken up by the UN Working Group on Indigenous Populations (WGIP). Another effort for the repatriation of indigenous human remains was the World Archaeological Congress (WAC) in 1986. This global NGO sought changes in how human remains were excavated and held by museums. They lobby to redress global inequalities and the protection of indigenous cultural heritage (Jenkins 2013, WAC 2018). The WAC has continued its work to return cultural property internationally from museums to home countries (Kakliouras 2012).

A draft on a Universal Declaration on Indigenous Rights was created in 1988 by the WGIP with an invitation for comments from both indigenous peoples and nation-states (Vrdoljak 2006). In 1993, the United Nations declared that it was the International Year for the World's Indigenous Peoples. The First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples was convened by nine Māori tribes. The conference had over 150 indigenous representatives from 14 countries. The delegation

passed the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (WIPO 1993; Kuprecht 2014). The 1995 Daes Principles and Guidelines found that nation-states making restitution claims on international institutions usually returned cultural objects to national museums rather than indigenous communities. It was also noted that this was not the current practice in the US or Australia (Vrdoljak 2006). In 1995, UNIDROIT⁶⁴ continued this international law conversation on the illicit movement of property as an intergovernmental organization (Merryman 2005, 29). UNIDROIT Convention 1995 expressly addressed indigenous peoples' cultural property. Of which, Article 3: "privileges indigenous peoples' claims for stolen cultural property in several paragraphs by excluding the absolute time limitation of fifty years for repatriation claims for their sacred or communally important cultural objects" (Kuprecht 2014, 95). In 2014, there was a World Conference on Indigenous Peoples sponsored by the UN—among the statements resulting from the conference:

27. We affirm and recognize the importance of indigenous peoples' religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the Declaration. We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.

UN World Conference on Indigenous Peoples, 2014

Indigenous communities have resiliently withstood assimilation practices throughout the years and hope to achieve some level of autonomy within the nation-states in which they reside. With globalization and the increased focus on international

⁶⁴ UNIDROIT is formally known as the International Institute for the Unification of Private Law. It is an independent intergovernmental organization that works to coordinate private and commercial laws (www.unidroit.org). The 1995 convention concerned the stolen and/or illegal export of cultural objects.

indigenous rights, they have sought aid through international governing bodies, appealing to human rights doctrines and the development of doctrines with language specifically addressing their needs. Repatriation policies saw a discursive shift from a domestic issue for the nation-state to the international level. There has been cooperation but not a set policy of international agreements. As seen with the World Conference on Indigenous Peoples, repatriation discussions—and larger indigenous concerns—have taken on global interest as more peoples and nation-states seek their cultural heritage.

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage was enacted to regulate respect for indigenous customary law; however, it does not address past issues of indigenous cultural property. The broad definition of heritage under the Convention includes cultural property: “According to Article 2.1, the instruments, objects, artefacts, and cultural spaces associated with intangible heritage are covered by the Convention as well” (Kuprecht 2014, 97). This was followed by the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is viewed as a response to the effects of globalization. The convention promotes “cultural development and intercultural dialogue and aims at the protection of states’ autonomy in governing cultural expression” (Kuprecht 2014, 98-99). Also in 2005, the UNESCO Database of National Cultural Heritage Laws was created, and it is possible to search 2,756 laws of the 188 Member States at this time. The accessibility to information regarding the laws enables all actors to be aware of legislation for the protection of cultural heritage (UNESCO 2015).

The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation

(ICPRCP) argues for inventories of museum collections to be made. The inventories help prompt museums to understand the provenance of their collections and review policies concerned with acquisition and possible repatriations (Vrdoljak 2006). It would be interesting to conceive of a large-scale searchable database much like what is used by NAGPRA. The ICPRCP is also involved in cultural property disputes, but it does not speak specifically to indigenous peoples' claims (Kuprecht 2014). Indigenous peoples, organizations, and advocates have worked to develop international awareness of their issues. But, unfortunately, there are no universally binding international treaties that relate to indigenous cultural property. Instead, international repatriations are based on state relationships and nation-states have a vested interest in their *national* identity.

Although UNESCO works to address the concerns of the international community, it does not necessarily succeed without national help in enforcement. National laws can make it very difficult to repatriate cultural property. A law in France, the French Heritage Code “declares public cultural property under certain circumstances inalienable, which renders them out of reach for repatriation” (Kuprecht 2014, 116). One such example of a legal dispute for cultural property occurred in 2013 when the Annenberg Foundation bought twenty-four sacred Native American masks from Eve Auctioneers in Paris. This was done since the auction house refused to take them off the market, despite calls from Hopi and Apache representatives to do so. The Annenberg Foundation returned them to the Hopi and Apache tribes after the purchase (Jenkins 2016; Reuters 2013).⁶⁵ Global norm shifts are based on a network of changes happening on the nation-state level throughout the

⁶⁵ For details on the cultural objects and the auction, see: <https://www.reuters.com/article/us-france-auction/u-s-foundation-buys-hopi-masks-at-auction-to-return-to-tribe-idUSBRE9B80QJ20131211?feedType=RSS&feedName=artsNews>

world (Sandholtz 2007). These norms create a power structure that is working to achieve more rights for indigenous peoples.

Impact of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Historically, there have been serious limitations in the rights indigenous people experience. With the introduction of the United Nations Declaration on Indigenous Rights (UNDRIP), in 2007, indigenous rights were more clearly defined and the focus on the broader rights topic was narrowed to reflect the needs of indigenous populations throughout the world. On September 13, 2007, UNDRIP codified international indigenous rights by addressing concerns related to territory, sovereignty, cultural heritage, and freedom to observe traditional religious/ceremonial rituals (Dahl 2012; Pulitano 2012; Nettheim 2009). Many dominant nation-states resist the logic of collective rights, which are central to many indigenous knowledges (Vrdoljak 2006). The inclusion of collective rights was important for the development of UNDRIP.

The declaration is important because it recognizes issues that are not nationally bound. Indigenous populations across the world are united in their need for universal rights that were not addressed by the UDHR. It is important to understand the impact of UDHR on the *interpretation* of rights, which was designed in a Eurocentric understanding of human rights based on individual needs and not communal requirements, which is a component of many indigenous knowledges. There are two important theoretical assumptions surrounding human rights: 1) they are universal and 2) they are “above, outside, and apart from politics” (Dahre 2008, 42). But human rights are also a social construct, so the idea of universality and how it affects individuals is subjective. It is also impossible to separate human rights from politics since there is some governing body that

ensures rights are respected, which is outside the control of civil society. Because they are a societal construct, human rights can be interpreted differently based on cultural backgrounds. Unfortunately, this can lead to political conflict within international relationships based upon varying perspectives (Dahre 2008). Another issue with universal human rights is that they are understood on an *individual*, instead of *collective*, basis. This affects indigenous communities differently than other groups since collective cultural history and rights are often such important features of their identity.

This declaration was initially rejected by the United States, Canada, New Zealand, and Australia. All four countries eventually signed on, but their initial reluctance is interesting when one considers their indigenous populations and their contentious past in dealing with indigenous rights (Pulitano 2012). In some ways, the doctrine is an empty promise of rights since the UN has no ability to enforce the contents of the declaration. UNDRIP can be viewed as a non-legally binding declaration; it is a policy apparatus. But, if it is understood as an international legal norm, it is possible to see its transformative potential for indigenous rights (Morgan 2011). For instance, Article 11(2) of the Declaration “suggests that indigenous peoples’ participation should even retrospectively be considered, back to the time when a cultural object was alienated” (Kuprecht 2014, 163). This might be difficult to implement when considering varying national property laws. Instead, it must be implemented on the national or local level, something that is not always guaranteed to happen. But a promising factor is the inclusion of Article 12, which was inspired by NAGPRA:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to

the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 12, UNDRIP 2007

International ethical norms related to cultural and human rights establish the basis for a global social policy that directly impacts international regulations and rights (Deacon 2005). Because of the establishment of these norms, it is possible for nation-states to cooperate “beyond their narrow national interests in order to maintain international laws, establish international organizations and develop the international order for the global common good and transnational justice” (Nakano 2006, 34). Given the new collaborative methods of governance, these policies, treaties, and endeavors are not strictly related to the state and engage with civil society and the market to establish global policies. The non-state actors involved in the development of international doctrines like the UDHR and UNDRIP are important for the comprehension of how the documents impact the public. UNDRIP can be viewed as a promotion of an ethical agenda, or as Duane Champagne calls it, the establishment of a “moral high ground” (2013, 10). Because UNDRIP relies on implementation through inclusion in the nation-state’s policies and governing institutions, diplomats and activists have started to work on embedding UNDRIP into nation-state laws (Champagne 2013, 10-11). By doing this, they hope to increase the application of UNDRIP to implement indigenous rights on the national level.

UNDRIP should be considered a foundation to address the continuing issues plaguing indigenous groups. It is a powerful declaration that took years to establish, but it also has no distinct power and must rely on other institutions and nation-states to implement it. UNDRIP has successfully organized the claims of collective human rights into

one document while giving indigenous peoples an international platform (Champagne 2013). The Declaration has the potential to influence national and international political strategies to create a global network addressing indigenous concerns, such as repatriation and cultural property protection. A criticism of the Declaration is that it does not go far enough in advancing indigenous claims or actively affecting policy change outside of the United Nations. It is transnational governance based on nation-states and their ability to answer global concerns. UNDRIP has the potential to bridge boundaries between the nation-state if it is incorporated into the global indigenous narrative to address issues of representation.

Transnational Border Repatriations

International repatriations can be mired in judicial transnational complications of getting objects or remains returned: “In a dispute about moveable cultural property, the private international law of most countries refers to the law of the state where an object is located at the time of its acquisition in order to resolve the property question (*lex rei sitae*)” (Kuprecht 2013, 118). Formalization of cultural property indigenism may help create a common language between nations to address repatriation requests on a transnational basis. Since these claims are governed between nation-states (or institutions) and source communities, a universal model could correct for many of the issues that arise. Currently, there are extensive costs and legal barriers that make repatriation requests difficult for some indigenous groups. A clear example of this problem is the Blackfoot Nation that has traditional territorial and sovereignty claims to both sides of the US-Canadian border. During repatriation requests from either side of the border, help must be given from the citizens of the country holding the object to make the requests based on the national (or

provincial) governance rules. This means that if the US-side of a Blackfoot community wanted to request an object from a Canadian museum, they must seek help making the request from the Canadian citizens and vice versa for it to be a legal request. The problem becomes even more complex when repatriation claims are made on objects outside of North America. Legal experts are required to go through the proper channels to make requests. Then if the claim is accepted, more obstacles, and extensive costs, are in place to get sacred objects or human remains through customs (transnational border crossing issues) and back to the source community. It is possible to euphemize visions of property claims and support continued Anglo views of appropriation. Exploring the intersection of claims and legal frameworks could be enhanced with inclusion of the cultural property indigenism paradigm. Many times, cultural affiliation cannot be established given the amount of time that has passed since the objects or remains were taken. Language and cultural differences can also act as barriers to the process (Kuprecht 2014). Formalized international governing policy could coordinate national laws and aid in requests. Using NAGPRA as a model would aid in reducing the number of sacred objects and human remains held in collections and return them to national museums, like Te Papa or the National Museum of Australia, to be more accessible to indigenous peoples.

International Legal Issues and Cultural Diplomacy

Repatriation claims, although an international concern, have no universal enforcement and are handled differently throughout the world. The International Law Association (ILA) Committee on the Rights of Indigenous Peoples (2006-2012),⁶⁶ with

⁶⁶ It is now known as the Committee for the Implementation of the Rights of Indigenous People (See: <http://www.ila-hq.org/index.php/committees> for details).

other scholars, “took the position that UNDRIP provisions referring to the right to cultural identity, and the right to adequate reparation and redress for suffered wrongs, constitute internationally binding customary law” (Kuprecht 2014, 86).

Most of the present literature explores the past developments of the legal channels necessary for repatriation to exist, with researchers focused on the litigation between museums and institutions that have indigenous human remains and culturally significant objects, and the communities that want them back (Simpson 2009; Harding 1997). Although there is significant documentation of the process of repatriation, most of the literature does not make note of the actual expense of litigation for the source communities. I believe it would aid in understanding the process, if more substantive evidence could be compiled by museums and other institutions with indigenous cultural property and human remains and was made available, much like the UN’s cultural heritage law database and NAGPRA’s databases of museum holdings. The lack of retroactive action on conventions and how national property laws are constructed has hindered international repatriations. The Institute of International Law (IIL)⁶⁷ has proposed altering the standard of *lex rei sitae* (law for where the property is situated) for *lex originis* (law for where the property originates determines ownership) (Kuprecht 2014):

...a *lex originis* clause not only may be able to extend the application of a principally state-internal law like NAGPRA internationally but may even require respect of Indigenous customs or customary law as an integral part of a domestic *sui generis* system.

Kuprecht 2014, 119

⁶⁷ The Institute of International Law (or Institute du Droit International) is composed of international lawyers working outside of national governments. It was founded in Belgium in 1873 (Kuprecht 2014; <http://www.idi-iil.org/en/>).

Cultural diplomacy between nation-states and institutions could work to complete more international repatriations, encourage more loans, and develop traveling exhibitions more inclusive of indigenous voices. As pointed out by Allison Davis with the State Department, cultural diplomacy is an influential factor in the agreements for repatriations between institutions and nation-states. The Cultural Heritage Center within the State Department works internationally to protect cultural heritage. Davis's responsibilities are linked to the 1970 UNESCO Convention and she has been involved in Native American claims on objects held in Europe:

The 1970 UNESCO convention was the major framework for cultural property trafficking followed by the 1983 Convention on Cultural Property Law. We work on resolving cultural property issues through bilateral agreements with other countries to address looting and trafficking issues. There are intense statutory import restrictions in the United States. The State Department uses diplomatic, not regulatory, measures. Part of my job is doing a lot of research but it is up to law enforcement (customs and border protection) to deal with the objects. Homeland Security and the FBI also have cultural protection divisions... Speaking specifically about Native American objects, there has been a new development since I have been in the office: US support of UNDRIP in 2010 created an atmosphere that was open to the topic. But it is not legally binding. It is more a political force or aspirations for how governments should interact, policy guidelines.

Allison Davis, 2017

What Alternatives Exist Outside of Court-Litigated Repatriation Claims and Bilateral Agreements Between Nations?

In many source nations, indigenous cultural heritage is used to fabricate and promote a national identity image to the globalized world (Calhoun 1993). This promotes tourism and goodwill on the global scale through the appearance of a national homogeneity. Comaroff and Comaroff, in their book *Ethnicity, Inc.* (2009), discuss examples of this where the heritage of local populations (i.e. ethno-businesses in South Africa, Zulu ethno-tourism,

Native American casinos, etc.) is commoditized and promoted for tourism and export of goods; or, in Australia and New Zealand where cultural tourism of indigenous communities is heavily promoted and intertwined with the national identity.

Despite the strides in legislation and active involvement in the process by museums and indigenous peoples, there continue to be failures in regulating repatriation claims: 1) difficulty making repatriation claims for indigenous communities not federally recognized in the US or transnationally; 2) national legislation not having an effect outside national borders, and; 3) international doctrines like UNDRIP being in many ways “suggestions” on how to deal with cultural heritage reclamation rather than enforceable laws. But, it is my belief that this is just the beginning of future changes given the effect of progress in institutional and cultural values on repatriation policy. NAGPRA may be 28 years old, but amendments and continued adaptations can exponentially work to meet the needs of indigenous communities.

If some practice of formalization could occur at the international level, bilateral agreements and diplomatic measures on repatriation claims could function more smoothly and quickly. If the cultural property indigenism approach was applied to indigenous claims, it could be used to enhance existing diplomatic relationships and bilateral agreements. With NAGPRA as a formalization template, international legislation could incorporate the idea of cultural affiliation (how closely you are culturally related to an object or ancestral remains) as a marker and move beyond the cultural property nationalism/internationalism dichotomy. Relying on cultural affiliation measures is a large part of what makes NAGPRA so successful and could extend to a more widely used cultural property indigenism theoretical framework. The creation of an international searchable database of indigenous

objects, much like the NAGPRA databases of museum collections, would give communities a starting point for repatriation claims. This would only be the first step since international repatriations would still be expensive, time-consuming, and not automatically assumed to be fulfilled.

How we understand these struggles to govern repatriation allows for new power/knowledge struggles to unfold on an international level. With the introduction of globalization, one also observes an entrenchment in the nation-state and the identity one shares within this citizenship. Tangible solutions for the problem of cultural heritage connections include an understanding of the need for acceptance of cultural duality—the recognition that you have a national, sovereign identity, but also a shared global cultural identity. This is similar to collective rights arguments made by UNDRIP and indigenous peoples everywhere. We can all claim some level of proximity to valued cultural heritage, whether this is through an inherited identity or a larger worldview of history. We need to look at cultural heritage as a cooperative and find ways of sharing and experiencing objects that symbolize a shared cultural past; however, this is not to say that host countries should be allowed to keep all objects in their collections.

We must strike a balance between what is considered knowledge enrichment for humankind and an increased understanding and respect for cultural values we may not share. This is an important facet of the current globalized space in which we live. This problem involves the need to examine individual cultural artifacts to determine whether significance can be attached to a local or indigenous need, a nationally-invested interest, or a larger global connection.

Inclusion of Cultural Property Indigenism into International Formalization

I view cultural property indigenism as a distinct aspect of the cultural property paradigm since it involves cultural patrimony in its affiliation component. The current model looks at cultural property through the lens of international or national concerns but does not address property outside of this dichotomy. The ownership paradigm needs to recognize and validate indigenous narrative claims to objects holding cultural patrimony, ancestral remains, and religious freedom. NAGPRA addresses the idea of cultural affiliation in the United States and could be “scaled up” for claims abroad.

If it were accepted as a viable argument, separate from cultural property nationalism and internationalism claims, cultural property indigenism could become part of the international legal framework for making transnational repatriations of indigenous cultural objects and human remains. As discussed earlier, the new entrenched dominant repatriation discourse seen in the United States is also seen elsewhere around the world in other nations with colonial pasts, like Canada, New Zealand, and Australia.

Conclusion

Institutional practices and shifts in cultural values mediate changes in US repatriation policy and led to the creation of the Native American Graves Protection and Repatriation Act in 1990 (NAGPRA). This formalization into national legislation has allowed federally-recognized Indigenous peoples to make claims on sacred funerary objects, human remains, and items with cultural patrimony held by federally funded institutions. But this only affects objects and remains held within the US, so how are indigenous repatriation claims handled internationally? Current practices involve bilateral agreements and diplomacy between nation-states, auction houses, indigenous groups, and

museums. These institutional and private repatriations are determined on a case-by-case basis with no formal doctrine guiding decisions. This chapter examined how normative practices of repatriation in the US could be rescaled and incorporated into a type of international ethical policy to encourage more cooperation with Indigenous requests.

Given that there are numerous sovereign indigenous peoples with different practices and needs, my research explored what type of theoretical framework could be incorporated to meet their needs. Formalization, like NAGPRA on an international level, might not be replicable but could be adapted into a more enforceable transnational policy to address Indigenous ownership claims. For repatriations involving international claims, NAGPRA has no jurisdiction outside of the US. This is when the state department's cultural heritage department can become involved and will work with other nation-states or institutions on reclaiming Native American human remains or culturally significant objects. The representative I spoke with mentioned that the US support of UNDRIP in 2010 increased the number of interventions (mostly with auction house sales) and although it is not legally binding, UNDRIP is aspirational policy. This reinforces the idea that discursive language surrounding the ethics of repatriation continues to evolve.

So, to conclude, my initial assumptions that some form of blanket formalization of repatriation might be possible to address global indigenous claims is not feasible. The most efficient claims are based on bilateral agreements between nation-states (or institutions) and indigenous communities. I now advocate for national models to work concurrently as a network instead of seeking an umbrella international policy. You can still have the "feel good" organizations like the UN and its unenforceable UNDRIP doctrine acting as an ethical policy, but more tangible national legislation will have a greater impact. This would act as a

kind of treaty system and would acknowledge the multitude of indigenous populations.

National policies are key to creating a coherent network both recognizing indigenous rights and State property laws. The creation and promotion of NAGPRA-like databases and legislation elsewhere and international cooperation could make it more feasible, and affordable, for indigenous groups to make repatriation claims.

Museums have soft power and can act as “symbolic meeting places or as part of a network of relationships with other museums through loaning collections and exhibitions, as well as professional training and exchanges” (Lord and Blankenberg 2015, 22-23). Institutional norms change over time. They do not remain stagnant and are reflective of the world around us. What we place importance on at any given moment affects the decisions we make, the things we strive for, and the ambitions for change. There is room for some kind of formalization at the international level. Even though the argument against it is that there are too many diverse indigenous peoples with different wants and needs to enact an umbrella international policy, it is worth considering NAGPRA-like practices. Yes, there are numerous sovereign tribes in the US, but they still make it work under NAGPRA even if it is not an ideal solution for all. NAGPRA’s cultural affiliation clause could aid UNDRIP and make it an enforceable law. It would still need to set parameters to accommodate for different legal limits in other states (Kuprecht 2014). But as a powerful ideology, it could shape political change.

Conclusion

The United States has repeatedly affirmed that the restitution of cultural objects to their community of origin is an essential element in ensuring its continued contribution to 'the cultural heritage of all mankind.' Yet similar concessions concerning restitution were not made to Native Americans within its own borders. They, unlike other occupied peoples, were not afforded the right of self-determination or the return of their cultural objects from metropolitan museums until the end of the twentieth century. To this day, these rights are guaranteed by international law but are prescribed by US domestic legislation and its national agenda.

Vrdoljak 2006, 159-160

This dissertation has presented the concept of NAGPRA as a formalization of repatriation policy into national legislation in the US and how it has influenced other national policies and international ethical norms. NAGPRA also acts as human rights legislation since it resolves some of the institutional discriminatory practices seen in the past, and has influenced cultural revitalization movements in the US and the preservation of traditions and languages (Preucel 2011). The discourse surrounding repatriation has changed over time and gained substantial ground beginning in the 1980s into 1990. Whereas the public and US government initially accepted the scientific study of Native American remains and sacred cultural objects, perceptions changed, especially when communities included cultural patrimony in their claims and the "returning warriors" narrative. Today's dominant discourse advocates for indigenous rights within museums and other institutions, by both indigenous peoples and museum personnel. Because of NAGPRA, approximately 1.4 million funerary objects, 50,000 ancestral remains, and 14,000 culturally significant objects have been returned (Colwell 2017).

Despite protections given through NAGPRA, there are still unresolved issues surrounding sacred sites and religious rituals for Native Americans (Trope 2013). These are also aspects of cultural heritage and patrimony for tribes. Another legislative drawback is that NAGPRA only affects sacred objects and human remains held by federally-funded institutions and excavations within the United States. This highlights the problem for indigenous peoples around the world of trying to reclaim cultural property and human remains outside of their national borders. A cynical view of NAGPRA would also say it fits into a neoliberal framework of seeking out individual ownership and compensating with the return of the cultural property (Kakliouras 2012, S218). 'Property' as a legally grounded concept does not necessarily encapsulate the needs of indigenous peoples and it might be more productive to include language about tangible and intangible heritage into the legislative discourse. However, this critique should not delegitimize the broader implications of this legislative act. It is human rights legislation that formalizes ethical imperatives. The cultural affiliation clause, a major component of NAGPRA, does have its critics. Jenkins claims this cultural proximity claim, based on biological or cultural affiliation to the past, is not necessarily a good way of determining ownership. For her: "[t]he very idea of fixed groupings and cultural continuity over these many hundreds and thousands of years is unsound. People and geographical location remain stable for no more than a very small period of time" (2016, 305). But this is a polemic argument that does not acknowledge indigenous concepts of time or spatial relationships.

When I began this project, I wanted to see if the normative practices of repatriation in the US could be rescaled and incorporated into a type of international ethical policy to encourage more cooperation with indigenous requests. Given that there are numerous

sovereign indigenous peoples with different practices and needs throughout the world, I have found that no one *single* international policy would work and I propose that the development of a theoretical framework of *networks* based around NAGPRA and other successful national policies could be incorporated to meet their diverse needs. This would require continued work on the national legislation and policy level; followed by an inclusion into an international system, possibly under the umbrella of the United Nations. Housing the system within the UN, an intergovernmental group that operates on the cooperation of nation-states, would rely on the foundation of UNDRIP legislation related to indigenous peoples' rights signed over ten years ago. The revision of the present ownership paradigm (cultural property nationalism/cultural property internationalism) to include a cultural property indigenism component would also aid in this system. Naming and quantifying this type of ownership would make the concept more easily understood by others as something that is a *necessity*—interpreting it as a rights issue for marginalized indigenous peoples. This ownership paradigm would bring the theoretical concept to an already existing template. It is a way of naming what is already happening in the US with NAGPRA policy for an international audience.

My current work on how institutions and cultural values facilitate changes in the governance of repatriation policy looks at discursive changes in language related to repatriation of indigenous human remains and sacred cultural objects, museum practices, and interviews with individuals working on repatriation claims—in museums, at the state department, activist writings, and at NAGPRA—to more fully understand the shifts. With more international involvement in repatriation projects, there is increased awareness of past injustices and attempts to correct them are becoming more prevalent. Museums are

powerful institutions helping to build identity. Since their inception, they have exhibited various narratives and histories, initially as displays to show the power and reach of the empire (Vrdoljak 2006). But they have come to represent something different. Now, they are institutions of soft power and places of cultural diplomacy (Lord and Blankenberg 2015).

The purpose of this project was to examine the institutional and cultural shifts that led to repatriation policy, but I believe the next step is to look at implementing a coalition of national policies to create an international database of indigenous artifacts and remains held around the world. This would help develop better links between museums, institutions, and indigenous peoples and channels for returning remains, funerary goods, and objects with cultural patrimony. There has been exponential growth and acceptance in the US within a few generations; it is possible to move forward internationally as well in these efforts. I do not have a simple solution to the problem because it is a complex issue: problems with enforcement of policy, transnational stakeholders, and prohibitive cost to repatriate/litigate all factor into the problem. Updating international treaties to more accurately reflect what the numerous indigenous communities around the world want and restructuring how indigenous cultural property is understood and the ability to enforce these international customary laws could lead to worldwide changes. For the first incremental step, I would recommend the continuation of database building and cooperation between museums and indigenous communities. There are models outside of repatriation that are already in use that could ease tensions such as museum cataloging projects, 3-D printing of objects, the use of loans, and/or financial restitution.

Epilogue

Each chapter, excluding the conclusion, began with the story of a repatriation to highlight aspects of the process. This was done to indicate future possibilities for repatriations. There are still thousands of indigenous objects and human remains held in collections, both private and public, their fates are as yet to be determined. Since I was unable to follow repatriations currently in process at the Field and Penn museums, I chose to highlight past repatriations at these institutions as introductory statements to the chapters.

The research for this dissertation looked specifically at nations directly affected by western settler colonialism but did not branch out into other areas of the world that also experienced colonialism or appropriation of their cultural heritage (i.e. Egypt, Japan, Turkey, India, etc.). It is the goal of future work to investigate other geographies and repatriation arguments.

Appendix

Interviewees:

Helen Robbins, Field Museum Repatriation Specialist
Richard Lariviere, Field Museum President
Subject A, Penn Museum representative
Lucy W. Fowler, Penn Museum
Jeff Attridge, student intern at Penn Museum
Mariah Soriano, National Parks Service, NAGPRA representative
Allison Davis, State Department

Interviews lasted between 30 minutes and an hour. They were not recorded because of interviewees' preferences. The following are compiled from notes taken by researcher during interviews.

Helen Robbins, Field Museum Repatriation Specialist

1) What is the political position of the museums when it comes to objects that are requested for repatriation by source communities?

The repatriation process is a re-activist approach. This means we are “reacting” to most claims. The claims usually come to Robbins and the repatriation department, the museum President and general counsel, or the deaccession committee. At the Field Museum, they are working to return human remains in the collection. Complete inventories and summaries have been sent to all tribes and it is an ongoing process. They do have grants available for communities wanting to see objects and remains. When this interview was conducted in fall 2016, Robbins mentioned a \$15000 NAGPRA grant for repatriation. She stated there is some budget at the Field for repatriations, but outside money also needs to be found.

At the Field, there is a secure location for human remains in the collections department. The vast majority of the collections are from before 1930. The repatriation team at the Field has two repatriation specialists⁶⁸ dedicated to the project.

Robbins discussed an important repatriation to the Haida in 2003 as well as a Labrador repatriation paid for by the Field Museum.

2) What is the process of repatriation at the Field Museum? How long do repatriations take from start to finish?

Repatriations take time. It is not a reluctance to return objects/remains, it just takes time to go through the process. It is a long process to repatriate, which can strain relationships. We

⁶⁸ As of October 2016 when this interview was conducted.

get steady requests over time and are beginning to get more international inquiries. The history of the collections, the Internet, and increased knowledge of collections increases awareness of what is out there in museums. The context of a repatriation claim determines the repatriation—as an example, look at the Labrador return.⁶⁹

In relation to claims being made, those making claims can be individual lineal descendants or clans acting as a close proxy. Cultural treasures act as ambassadors, and rarely does a group completely agree with each other over what should be done with the object/remains. The fastest repatriation at the Field took one year. During the repatriation process, Robbins's office does research on the history of the object or remains, which is an internal process, can take about 2 months. The tribal process requires lots of back and forth communication and can be affected by possible political changes in the community. The average for the step is 2-3 months.

The repatriation is researching affiliation to determine an authorized claim. This is more difficult internationally. They also need to determine the size of the request—what's being asked for? How many objects? Robbins stated they do prioritize projects when they know a claim may be coming into the office.

3) After the NAGPRA department makes its recommendation. Who ultimately makes the decision on what gets repatriated?

There is a committee consisting of the board and museum staff that make a recommendation to the President.

4) Why do you feel we are intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?

It is less difficult now than it was 10 years ago—repatriation reception has changed. The process is extensive and you do not want to make a mistake. The process is as follows: request to museum—>Notice to Repatriate—>Notice of Intent—> Waiting on the Federal Registry—>Post again⁷⁰

5) What other issues of indigenous dislocation: land/resource use, sovereignty, acts of violence or oppression, human rights, does the repatriation of cultural objects assuage?

⁶⁹ The Labrador return she was referencing relates to the repatriation of the remains of 22 individuals from an Inuit village in Labrador, Canada. The remains were initially taken during the 1928 expedition (Mullen 2010). The remains were taken without permission. http://articles.chicagotribune.com/2010-07-19/news/ct-met-inuit-remains-repatriated-20100719_1_inuit-field-anthropologist-field-museum

⁷⁰ This process is discussed in detail in Chapter 3 on NAGPRA.

Repatriation can act as a stand in—You cannot go after the federal government, so you go after the object. But it is not just about the object, there is a connection to museums, inequality, and a history of colonialism you are addressing.

There is also an issue of conservation—How an object is cared for in the museum does affect when an object is requested.

Interview with Richard Lariviere, Field Museum

1) What is the political position of the museums when it comes to objects that are requested for repatriation by source communities?

We adhere to NAGPRA, we strictly follow it and will not repatriate until all NAGPRA guidelines are met → is the person who they say they are, people that they represent, conforms to the requirements of NAGPRA? Everything in the Field collection has been catalogued but the extent of documentation is uneven given the size of the collection.

2) After the NAGPRA department makes its recommendation, who ultimately makes the decision on what gets repatriated from the Field Museum?

The committee on repatriation consist of board and staff and they have been authorized to act on behalf of the board. Recommendations are made to the committee and they make the decision.

3) Why do you feel we are intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?

I am probably not the right person to answer that. I have only come to know about it in the last 5 years. His personal approach, he has shared with the staff: we really need to understand these requests not from the perspective of the institution but from the perspective of the requestors. We need to understand the perspective. We also have a fiduciary responsibility to respect the collection by validating the claims, this takes time. We want to make sure we are being thorough in our investigations.

4) Recent indigenous exhibits at the Field Museum—Drawing on Tradition, Kanza artist Chris Pappan and Full Circle/Omani Wakan: Lakota Artist Rhonda Holy Bear. When I was last at the Field, I highly enjoyed seeing the involvement of indigenous artists and communities in the museum, are these types of exhibits successful for including indigenous peoples in the museum?

Yes, definitely. Re-exhibit their material in a new way. When working with indigenous communities, objects have been removed from exhibits and are in the storage facility; he does not know the status of their requests. Communities have also decided they want objects kept in storage—should not be viewed, women may not be allowed to handle them, etc. They try to ensure sensitivities to the communities.

Subject A, Penn Museum

****Subject A** did not wish to be identified in the dissertation or future publications

1) What is the political position of the museums when it comes to objects that are requested for repatriation by source communities?

In a North American context, we follow NAPGRA strictly, with a standing NAGPRA committee in the museum. It is a wonderful opportunity to build relationships with indigenous communities—training opportunities, shift in relationships between archaeologists and NA communities, collaborative relationship. We have a Native American Voices exhibition, with 80+ communities consulted. This exhibition shows that they are living communities. This is similar to exhibits at the Field Museum.

2) After the NAGPRA department makes its recommendation. Who ultimately makes the decision on what gets repatriated?

Dr. Julian Sigger, Williams Director of the University of Penn Museum of Archaeology and Anthropology makes the ultimate decision and signs off after the repatriation department makes the recommendation. University trustees make the final decision.

3) Why do you feel we are intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?

There has been more attention paid to the colonial context of collecting and a high level of activism.

You can see NAGPRA influencing other institutions. Like at the Royal Ontario Museum (ROM) in Canada, which is not legally bound by NAGPRA, but they follow it. NAGPRA is influencing other countries, like New Zealand and Australia; returning human remains is a pressing concern, it is deeply important to return home.

Biological anthropology is losing data by giving up human remains; but, the UPENN museum believes very strongly in returning and following NAGPRA

4) What other issues of indigenous dislocation: land/resource use, sovereignty, acts of violence or oppression, human rights, does the repatriation of cultural objects assuage?

NAGPRA is helping bring concerns front and center, but it is not fully addressing those concerns; other legislation will need to be enacted to fully address these issues.

5) How does the perspective on cultural property and ownership change with different agents (auction houses/collectors, NGOs, museums, looters, etc.)?

It is the great museum debates of our time (ownership claims), NAGPRA was instrumental in making it a topic of exploration.

6) How does depatriation (the removal of objects from their original place) and provenance affect the Penn Museum?

It is an unusual museum. The vast majority of the objects are from excavations and come with an enormous amount of provenance—the Chinese collection was mostly purchased. We have an obligation to publish what they have in the collections. New excavations go through the museum and last year they sponsored 23 projects.

The legality for owning the objects within the collection is strong. There were not a lot of things purchased or donated and most of the collection is from excavation projects they have financed and sponsored.

7) Do you think the US and Canadian responses to repatriation requests could work as an international model? Should there be multiple models based on different categories: antiquities, looted objects, indigenous/marginalized peoples' property, etc.?

I am not really sure since the legal positions of countries are very different. If you have legislation with sets of agreements with indigenous populations in your country that would affect it as well.

Lucy W. Fowler, Penn Museum Associate Curator and Senior Keeper of the American Collections

1) What are the political positions of your institution regarding objects requested for repatriation?

We have a NAGPRA committee at the museum. I chair the committee, but I am only chairing in an advisory position for NAGPRA related objects. Repatriation for me is very specific to NAGPRA. Collections at Penn are held by the university in perpetuity. I am following guidelines set up by the university and the states.

The director possibly has a different political take from me on objects. You will see different positions within the museum, but we are all following the law itself. I see NAGPRA law as human rights legislation, correcting issues with the government and museums in the past. We take the law very seriously. We are interested/sympathetic to the law and the history (we are all anthropologists).

2) Why are we intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?

Native Americans have always been activists fighting for their rights. Twenty-seven years of NAGPRA has made it a more acknowledged issue. Within the long view of Native American oppression, requests for repatriation started in the 1950s and 60s (i.e., Alcatraz and Wounded Knee).

3) What other issues of indigenous dislocation: land/resource use, sovereignty, acts of violence or oppression, human rights, does the repatriation of cultural objects assuage?

We as the public do not always see what is happening in the Native American communities. After Wounded Knee, there was a movement amongst the Plains Indians—a walk on Washington. The Hawaiian Senator, Daniel Inouye, really helped get NAGPRA started.

Initially there was the NMAI Act (National Museum of the American Indian Act) in 1989. The NMAI is not under NAGPRA. They have a parallel law, run by native people (to South America as well). The 1989 NMAI predates NAGPRA 1990. The legal aspects for the NMAI are different.⁷¹

4) Why does property law trump NAGPRA on private lands (in the US)? What does this say about land use regulations and human/cultural rights in the US?

Most Americans do not seem to care. Racism is still shockingly bad in the US. There are issues of private land and access to sacred places.

Museums as welcoming space for indigenous peoples. Museums are important spaces to learn about Native people. When you ask, “Where can you go to learn?” Museums and NAGPRA are critical for the changing relationship—this is true of the Penn Museum, if not for other museums. It is expensive to do displays and exhibitions but we have to keep at it! We currently have the Native American Voices-People Here and Now Exhibit

5) How does the perspective on cultural property and ownership change with different agents (auction houses/collectors, NGOs, museums, looters, etc.)?

Museums do not think about monetary value—“regimes of value.” They view it as representative of cultures, and try to attach specific names and regions to make it less anonymous.

Collectors see it as art. They are trying to get it for themselves, ownership of a collection. It is bad to generalize though.

For our collection, the museum/state of Pennsylvania own the collection. Ethically, I need to be clear of my intentions; but, part of my job is telling them an object meets the definition of what should be repatriated (or not). I have to advise the university of what needs to be repatriated. The Penn museum has excellent records, nothing in the collection is stolen. We hold the collection for the state of Pennsylvania, and finding out if the object was ethically obtained is part of my job.

⁷¹ See Chapter 1 for a discussion on the NMAI Act and how it differs from NAGPRA.

6) How does depatriation (the removal of objects from their original place) and provenance affect specific objects/institutions?

We have approximately 160,000 objects in our collection. In 1989, there was a claim on Zuni war god artifacts. The artifacts were collected in 1902 from a shrine. The museum staff agreed that the artifacts should be returned. The war god (Ahuyu:da) and fourteen associated objects were returned to a Zuni community in Pueblo, New Mexico in 1990. This repatriation occurred before the law went into effect.

7) Do the Canadian and US models of repatriation also work in establishing an international model? Should there be multiple models based on different categories: antiquities, looted objects, indigenous/marginalized peoples' property, etc.?

NAGPRA is a good model, but with a caveat relating to other nations. You need to talk with tribes and send pertinent information for them about what is in the collection. I have heard the Japanese are using NAGPRA as a template for their indigenous communities. The framework works well. When there are competing claims, claimants must demonstrate cultural affiliation. When opposing family groups asking for the same thing, we do our best to figure it out. Otherwise, we give it to the community and let them arbitrate their disagreement. Native politics sometimes make it difficult since groups within the communities do not always agree. Also, cultural affiliation can be hard with very old objects and human remains. The way the law is written, geography is very important (who is there now).

Jeff Attridge, VT Graduate Student Intern at Penn Museum

Jeff described his internship at the Penn Museum and a repatriation he observed. The repatriation he discussed is published on the Penn website:

<https://www.penn.museum/about-collections/nagpra/repatriations#2016>

In the summer of 2016, I observed the repatriation of clan hats to the Tlingit community of Sitka Alaska. This was under the direction of Stacy Espenlaub, the NAGPRA officer, Lucy Fowler Williams, and William Wierzbowski. The clan hats had been approved for repatriation in 2010 and on July 17, the Raven of the Roof Hat and basketry Whale Hat were returned to Harold Jacobs, the Cultural Preservation Specialist with the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA). The hats were accepted on behalf of the L'ooknax.adi (Coho) Clan leader, Mr. Herman Davis, of Sitka.

The Tlingit community has a good relationship with the Penn Museum, they have a vested interest in the museum. Previously, the museum staff has traveled with the hats to the village. But, it was not a loan. They physically had to stay with the hats (on the plane they bought a seat for the hats and stayed with them throughout the trip). These hats are objects with living history, the Penn museum is now a part of that, they are listed and seen as conservators. There is an emphasis on balance between the Frog, Bear, and Raven clans.

Clan hats act as political voices for negotiations, marriages, tribal councils, and legal discussions. There are very real consequences for possessing them. To this day, they are politically important. The clan hats came to the Penn Museum because of Louis Shotridge. He was recruited by the Penn Museum in the 1920s to go to Alaska and obtain objects.⁷² There are mixed feelings about Shotridge since the objects would have been destroyed in the 1940s in a couple of large fires. Shotridge was posthumously liked better for “saving” objects.

There is a lot of bureaucracy in returning objects. At the Penn Museum, the University ultimately has control of the collection and the President of the Penn Museum makes the final decision on what is repatriated.

The clan hats were naturally preserved and kept in a climate controlled environment at the Penn Museum. When the representatives arrived, everyone was able to touch the hats. The hats are active objects for political voice. As long as the clan hat exists, others cannot be made. This is another reason for wanting a repatriation of significant objects instead of replicating the object. The clan hats are a *physical* bridge to the past, replicas do not do this.

Interview with Mariah Soriano, National NAGPRA Program Officer

Mariah Soriano only answered questions relevant to her work with NAGPRA.

- 1) Since her office is directly responsible for NAGPRA management and compliance, instead of asking “What are the political positions of your institution regarding objects requested for repatriation?” Mariah was asked to briefly describe what her office does.**

My office facilitates administrative support for the process of returning human remains and objects under NAGPRA. Personally, I think it works as a system, but it can be slow. We have many training videos and webinars accessible on the website that can be helpful as well as grants and funding that help the consultation process.⁷³

- 2) Could you talk a little about the NAGPRA databases?**

There are 7 databases on the NAGPRA website:

- 1) Native American Consultation Database (NACD)—contact information for Native American tribes and Native Hawaiian organizations
- 2) Summaries Database—summary reports of museum collections

⁷² For more information on Louis Shotridge and to view his relationship with the Penn Museum, see: <https://www.penn.museum/collections/shotridge/>

⁷³ Grant award histories are also available on the NAGPRA website: <https://www.nps.gov/nagpra/GRANTS/INDEX.HTM>

- 3) Notice of Inventory Completion Database (NIC)—catalog of published Federal Register notices
- 4) Notice of Intent to Repatriation (NIR) database—catalog of published active repatriation claims
- 5) Notice of Disposition (NID) database—catalog of documents published by federal agencies in newspapers for items found on federal lands
- 6) Culturally Unidentifiable (CUI) Native American Inventories Database—catalog of human remains and funerary objects without cultural affiliation
- 7) Culturally Affiliated (CA) Native American Inventories Database—catalog of human remains with cultural affiliation

The length of time objects stay on the different databases is varies. For example, objects on the NIC database have a 30 day waiting period. The NIR/NIC databases are based of federal register notices published by our office on behalf of the museums and federal agencies. In 1994, the first notices were published. They were not initially available outside our office. They were first scanned into the system. The NID database is compiled of published notices in newspapers by federal agencies.

I have been working on the project since 2008. There are four full time employees working in the following areas: program manager, office, compliance documents (Soriano's role), and clients and notices management.

The National Museum of the American Indian (NMAI) is not under NAGPRA jurisdiction. It is a part of the Smithsonian and is governed by the NMAI Act 1989

On the CUI, all records are there that have been submitted by museums. Affiliation is determined by the museum or federal institution and not by the NAGPRA office. We never remove items from the CUI, sometimes the records may be in both the CUI and CA if originally unidentified and then later culturally affiliated by the museum or federal agency. They can then be put on a federal register notice once cultural affiliation is established.

3) Do you feel NAGPRA is a model that could be adopted outside of the US as an international model?

I do not know. I do not know if it is any better as a system.

Interview with Allison Davis, Cultural Property Analyst for the Cultural Heritage Center at the US State Department

Allison Davis only answered questions relevant to her work with international repatriation claims and her work with the State Department.

1) What does your office do? Could you describe your role?

I work for the Cultural Heritage Center, within the US State Department. We work internationally to protect cultural heritage. I was trained as an archaeologist and started

my career as an academic archaeologist at the University of Michigan. I was in Cusco Peru for 15 years and did a post doc at Brown, Oberon.

I have been in this position for about 3 years⁷⁴ in the position. My primary responsibility is attached to the 1970 UNESCO Convention. I primarily work with South American countries and bilateral agreements. I also work up into Central America and Native American claims in Europe.

2) What is the political position of the State Department in relation to international source communities?

The 1970 UNESCO convention was the major framework for cultural property trafficking followed by the 1983 Convention on Cultural Property Law. We work on resolving cultural property issues through bilateral agreements with other countries to address looting and trafficking issues. There are intense statutory import restrictions in the United States. The State Department uses diplomatic, not regulatory, measures. Part of my job is doing a lot of research but it is up to law enforcement (customs and border protection) to deal with the objects. Homeland Security and the FBI also have cultural protection divisions.

3) Why do you feel we are intervening now? What has changed to make repatriation of indigenous objects a universally acknowledged issue?

Speaking specifically about Native American objects, there has been a new development since I have been in the office: US support of UNDRIP in 2010 created an atmosphere that was open to the topic. But it is not legally binding. It is more a political force or aspirations for how governments should interact, policy guidelines.

4) Does national policy conform to these international agreements?

If you look at Paris auction houses of 2014: starting in 2013 we started to see auctions of Native American sacred objects. Native Americans were standing up and saying these auctions were wrong and that is when US diplomats in France became involved, started resisting and the public outcry that followed.

5) How does the perspective on cultural property and ownership change with different agents (auction houses/collectors, NGOs, museums, looters, etc.)?

Our office does not monitor the domestic market. We are looking at international issues. There is a concentration in Paris, just look at the EVE auction house⁷⁵ in Paris. It is specifically happening more in Paris (Eve auction house in Paris); there is a concentration

⁷⁴ As of the interview in early 2017.

⁷⁵ The EVE auction house recently came under fire for planning a sale of Native American ceremonial objects. Updates on the conflict can be seen in the following article:
<https://www.pri.org/stories/2016-05-27/paris-auction-house-turns-deaf-ear-native-american-appeals>

of objects coming through the auction houses here. Museum collections are different from auction houses.

The trafficking of looted objects changed with the 1970 UNESCO conference but it is not retroactive. It is meant to prevent future (post-1970) trafficking and looting. US law works on this as well. A lot of their work at the auctions are dealing with what is illicitly taken from this date forward. It is a law enforcement issue for things that have been illegally acquired since 1970. They help tribes with things internationally in museums. Diplomatically, embassies may make introductions between the curators and the indigenous communities. You might see a ministry of culture introduction being requested. In Germany, they require a formal diplomatic request from the nation-state rather than from individuals or communities.

NAGPRA guides political positions. There is a spirit to guide international agreements, but it is not a formalized international agreement.

6) Do the Canadian and US models of repatriation also work in establishing an international model? Should there be multiple models based on different categories: antiquities, looted objects, indigenous/marginalized peoples' property, etc.?

We work closely with the Department of the Interior, when we engage on these cases. We let them know what the tribe wants, guide their actions on a case-by-case basis. If they see something up for auction, do they want to purchase it, send a letter stating it is wrong to auction something, do they want a legal case, loans, etc.? There is a lot of variation. Outcomes vary so much I do not see how one international approach would work.

Indigenous sovereignty should trump a standard response.

During the G7 meeting on March 30-31, 2017⁷⁶, they will have a cultural ministerial meeting. The US does not have a minister and will be represented by an under-secretary. Native American cultural property looting and trafficking is one of the topics. So, it is still on the forefront of people's minds.

⁷⁶ For information about the G7 meeting, see the following link about the event:
http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/Contenuti/visualizza_asset.html_1657915625.html

Recruitment Email for Interviews

Good morning,

I would like to invite you to participate in an interview to collect information on repatriation practices. This research project is being conducted as part of my dissertation on the “Governance of Repatriation: Returning History in a Globalized World” at Virginia Tech. The purpose of this research project is to explore global governance and how particular theories and practices relate to indigenous artifact repatriation. Through interviews with scholars, experts, and concerned individuals, I will build a narrative detailing repatriation practices and relate it to the question of whether objects should be returned or allowed to stay in museums and other collections. I will explore how different approaches to thinking about and implementing global governance practices can be used to identify significant but varied relationships between indigenous communities and museums to gain an understanding of their collections’ original narratives. By establishing these conflicted connections between governance, international law, and cultural property/heritage, I will explain why it is important to begin to situate the framing of repatriation practices within the literature of global governance.

As a possible interviewee, you will be helping to build a narrative describing the procedures and possible conflicts surrounding the repatriation of indigenous objects and human remains. As the researcher conducting the interviews, I will ask you a series of questions related to the subject of repatriation of culturally significant objects and human remains. The information collected from you will help develop a well-rounded discussion of repatriation practices. You are invited to participate in this project based on your expertise, known interest, or involvement in repatriation processes. I will be collecting data by both conducting interviews and researching governing practices in museums and other institutions related to indigenous object repatriations. The results from this interview will be included as part of my dissertation and any possible future publications that develop from this initial work.

If you agree to participate, the time commitment will be of short duration. You will be required to sign a consent form before the interview begins. The interview will then last approximately 60-90 minutes and can be done in person, over the phone, or through Skype/FaceTime. If there are any follow up questions after the initial interview, it is possible I will contact you again for a second interview. There is no obligation to answer any or all of the questions. Your participation in this project is voluntary and you will only be identified in the dissertation if you so chose. You will also be given a period of time after the interview is concluded to amend anything you said or add other thoughts. If you would like to participate in this project, please respond to this email. My CV is attached so that you can learn a little more about me. Thank you for your consideration in being a part of this project!

Sincerely,
Ashleigh Breske

Participant Consent Form

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
Informed Consent for Participants
in Research Projects Involving Human Subjects

Title of Project: Governance of Repatriation: Returning History in a Globalized World

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I. Purpose of this Research Project

This project will explore global governance and how particular theories and practices relate to indigenous artifact repatriation. Through interviews with scholars, experts, and concerned individuals, I will build a narrative detailing repatriation practices and relate it to the question of whether objects should be returned or allowed to stay in museums and other collections. I will explore how different approaches to thinking about and implementing global governance practices can be used to identify significant but varied relationships between indigenous communities and museums to gain an understanding of their collections' original narratives. By establishing these conflicted connections between governance, international law, and cultural property/heritage, I will explain why it is important to begin to situate the framing of repatriation practices within the literature of global governance. Findings from this research project will be included in the development of my dissertation.

II. Procedures

Data will be collected from a series of questions devised by the researchers to investigate the practice of repatriation. The interviewer, Ashleigh Breske, will take detailed notes during the process to record the interviewees opinions on the subject. These questions will be adapted for each individual interview and are representative of the main themes of the project. It is the goal of the project to understand the subjects' stances on repatriation from what is both answered and unanswered during the interview process. The interview is intended to be open-ended so that thoughts and assumptions unaccount for can also be explored.

Should you agree to participate in this project, the researcher will interview you for 60-90 minutes. This interview may take place in person, over the phone, or on Skype dependent

on the location of you the participant in relation to the interviewer. If you agree, this interview will be recorded (audio only). The researcher may need to follow up with you at a later point in the project. If this occurs, you will be asked for consent again before the researchers asks any more questions.

III. Risks

There are no foreseeable risks involved with this project. At any time during the interview process you may refuse to answer questions or discontinue the interview. As a safeguard, you will also have forty-eight hours after the interview to decide if you would like your answers to be included in the research project or if you would like your answers to be included but assigned to an alias.

IV. Benefits

Some of the anticipated benefits for you the study participant include good will and public relations for the institutions, individuals, and organizations you represent. The exposure of the findings of this study also could aid in building transparency and relationships between the groups involved.

No promise or guarantee of benefits has been made to encourage you to participate.

V. Extent of Anonymity and Confidentiality

Unless you request to remain anonymous, your name and affiliation will be recorded in this study and could be published in the dissertation. The data collected will remain on file with the researchers until the completion of the dissertation. Files will be securely stored and password protected throughout the project. At no time will the researchers release identifiable results of the study to anyone other than individuals working on the project without your written consent.

The Virginia Tech (VT) Institutional Review Board (IRB) may view the study's data for auditing purposes. The IRB is responsible for the oversight of the protection of human subjects involved in research.

VI. Compensation

No compensation will be given to subject participants.

VII. Freedom to Withdraw

It is important for you to know that you are free to withdraw from this study at any time without penalty. You are free not to answer any questions that you choose or respond to what is being asked of you without penalty.

Please note that there may be circumstances under which the investigator may determine

that a subject should not continue as a subject.

Should you withdraw or otherwise discontinue participation, you will be compensated for the portion of the project completed in accordance with the Compensation section of this document.

VIII. Questions or Concerns

Should you have any questions about this study, you may contact one of the research investigators whose contact information is included at the beginning of this document.

Should you have any questions or concerns about the study's conduct or your rights as a research subject, or need to report a research-related injury or event, you may contact the VT IRB Chair, Dr. David M. Moore at moored@vt.edu or (540) 231-4991.

IX. Subject's Consent

Please check one of the following:

- I give my consent to be identifiable in the dissertation/publications
- I do not give my consent to be identifiable in dissertation/publications

I have read the Consent Form and conditions of this project. I have had all my questions answered. I hereby acknowledge the above and give my voluntary consent:

_____ Date _____
Subject signature

Subject printed name

(Note: each subject must be provided a copy of this form. In addition, the IRB office may stamp its approval on the consent document(s) you submit and return the stamped version to you for use in consenting subjects; therefore, ensure each consent document you submit is ready to be read and signed

The Trump Administration's Withdrawal from UNESCO

The following memo was released concerning the withdrawal of the US from UNESCO by the Trump administration jointly by the American Anthropological Association, the American Cultural Resources Association, the Society for American Archaeology, and the Society for Historical Archaeology

On October 12 [2017], the administration announced that it was withdrawing the U.S. from UNESCO by the end of 2018. While such a withdrawal would not affect U.S. nominations to the World Heritage List, the leading organizations of the Coalition for American Heritage issued a joint statement outlining the reasons for their disappointment with the decision to withdraw.

STATEMENT REGARDING THE WITHDRAWAL OF THE UNITED STATES FROM UNESCO

The undersigned organizations wish to express their concerns about the decision by the current U.S. administration to withdraw the United States from the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

Founded in 1945, UNESCO promotes education, women's rights and many other goals around the world, including the protection of cultural heritage. The foremost UNESCO program in the preservation of cultural resources is the World Heritage List, which is made up of sites identified for their historical, natural, cultural, or scientific significance. They are protected under international treaties.

Questions involving history and culture have always been vulnerable to politicization. This is especially true in deeply divided and contested regions. While UNESCO is not perfect, either as a forum for discussing such matters, or in its cultural resources management policies, it remains the best environment and mechanism there is for transcending international boundaries in order to protect locations important to our shared history and common humanity. Engagement, not withdrawal, is likelier to bring about beneficial change.

We are disappointed with this decision, and hope that the U.S. will rejoin UNESCO as soon as possible. In the meantime, we support the work of UNESCO generally, and stand ready to work with it to improve the organization's ability to meet our common cultural heritage goals.

American Anthropological Association
American Cultural Resources Association

Society for American Archaeology
Society for Historical Archaeology

The concerns expressed by the four associations is echoed in the news as well with concerns over the administrations' removal from global international institutions and treaties. The US decision to leave is indicative of the current political climate in the US and its isolationist policies (Halperin and Kinsella 2017). The repercussions for UNESCO, an intergovernmental organization, are yet to be understood. Given the history and goals of UNESCO as a network for international negotiations and establishment of ethical norms, the implications of this decision to withdrawal may have far reaching consequences. This was not an unexpected decision since the US left previously in 1984 under the Reagan administration citing the organizations pro-Soviet Union stance and rejoined during the Bush Administration in 2002 (Vabulas 2017). Under Obama, the US withdrew its \$89 million in funding, which was about 22% of UNESCO's budget (Halperin and Kinsella 2017). The decision was made when UNESCO allowed Palestine to join in 2011. The US was required to "cut off funding to any UN body that accepted Palestine as a full member. The Obama administration sought unsuccessfully to restore funding, and the US lost its voting rights in 2013 after two years of nonpayment" (Halperin and Kinsella 2017). The 1990 US law referenced discouraged the UN from recognizing a Palestinian nation-state. The US has not given funding to UNESCO since 2011 and has not been a voting member since 2013.

The State Department continues to claim the UN has "anti-Israeli bias." The formal withdrawal will occur at the end of 2018 and the US will be a non-voting observer state. Despite its withdrawal, the US is still bound by the international conventions established by UNESCO for the protection of cultural property. For a more detailed discussion of UNESCO's role as an international platform for cultural and human rights treaties and conventions, see chapter five of this dissertation.

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