

Exploring International Repatriation between U.S. Museums and First Nations in Canada

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Abstract

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In the absence of international law guiding cross-border repatriation, museums and indigenous peoples must navigate international repatriation on their own. This research explores the process of international repatriation of human remains and sacred objects from U.S. museums to First Nations in Canada. This case study included semi-structured interviews and museum policy analysis for three cases: the Burke Museum and the Stó:lō Nation, the Denver Museum of Nature & Science and the Siksika Nation, and the Field Museum and the Haida Nation.

Results indicate the successful completion of international repatriation hinges on the willingness of those involved to seek out or create pathways for return. While an international framework for repatriation remains undeveloped, this study highlights how museums and indigenous peoples are pushing the field forward by defining new methods to accomplish repatriation across international boundaries.

Keywords: international repatriation, First Nations, museums, decolonizing methodologies

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Table of Contents

Chapter 1 Introduction	1
Chapter 2 Literature Review	6
Chapter 3 Methods	16
Chapter 4 Findings	21
Burke Museum and the Stó:lō	22
Denver Museum of Nature & Science and the Siksika	34
Field Museum and the Haida.....	44
Summary Findings.....	58
Chapter 5 Implications and Recommendations	61
Appendix A	65
Appendix B	67
Bibliography	68

Chapter 1 Introduction

One of the most significant pieces of civil rights legislation for American Indians is the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990. The law addresses a long-standing failure for equal protection under the law: the physical remains of native dead have long been taken without consideration to family or community, for the expansion of museum collections and the name of science.¹ NAGPRA is close to thirty years old and, while imperfect, has served a critical role in mandating the process of consultation and repatriation between museums receiving federal funds and federally-recognized tribes. The categories of museum collections subject to repatriation under the law are human remains, sacred objects, associated and unassociated funerary objects, and objects of cultural patrimony.² The museum field and related disciplines like archaeology and anthropology have experienced a major shift away from the conservative and defensive attitude that repatriation is a threat to the very purpose of collections and scholarship, toward a more flexible and responsive approach considering community, cultural strength, and the interests of living people.³ As museums rise to the challenge of addressing repatriation within this country, they are faced with the dilemma: the scope of museum collections extends beyond international boundaries.⁴ How do museums navigate the repatriation process with indigenous groups in other countries when there is no international equivalent to NAGPRA to mandate, facilitate, or otherwise guide the process of

¹ Walter R. Echo-Hawk, "Museum Right vs. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources," *New York University Review of Law & Social Change*, 14, no. 2 (1986): 437-53.

² C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 25.

³ Holly Flora, "The Quest for the Masterpiece: Traditional Practices of Collecting in American Museums," in *Enforcing International Cultural Heritage Law*, eds. Francesco Francioni and James Gordley (Oxford, England: Oxford University Press, 2013), 231.

⁴ Chip Colwell, "How Indigenous Groups Can Reclaim Stolen Property: The Fight for Repatriation," *Foreign Affairs*, March/April 2017.

cross-border repatriation? In the absence of such guidance, museums and indigenous groups must fare the ambiguities of state, federal, and international regulation on their own to accomplish the difficult but necessary process of international repatriation.

Given the lack of clarity and the potential liability of returning museum collections across international borders, one may ask why a museum would undertake such an onerous process if it is not required by law? The answer to this is in the ethical framework underlying the museum field. Christina Kreps discusses the rising trend since the 1980s and 90s to recognize non-Eurocentric approaches to museological practice and curation.⁵ By considering the systems of value, preservation, and curation from multiple cultures, Kreps argues museologists can deconstruct the assumptions that the museum is solely a Western invention and that museological practice can only occur per Western standards.⁶ Building on the new approaches to decolonizing museum practice, Amy Lonetree underlines the need for sharing authority and control over cultural heritage, its interpretation and representation, which have long been in the domain of non-Native curators and academics.⁷ Through collaborative exhibition design, collections management, and curation involving source communities (whose objects form the body of ethnographic museum collections), museums can play a role in the self-determination and sovereignty of modern Native peoples.⁸ Lonetree also identifies repatriation as integral to changing the dynamics of authority and control over the material and narratives in museum collections.⁹ Repatriation consultation and collaboration, the return of ancestral remains and essential cultural objects, and the opening of relationships and exchanges of knowledge between

⁵ Christina Kreps, "Non-Western Models of Museums and Curation in Cross-Cultural Perspective," in *A Companion to Museum Studies*, ed. Sharon MacDonald (Hoboken, NJ: Blackwell, 2006), 458.

⁶ Ibid. 459.

⁷ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012), 19.

⁸ Ibid. 19.

⁹ Ibid. 33-34.

museums and indigenous groups all contribute to a decolonizing paradigm for museology.¹⁰

Contextualizing the trends in museum practice and repatriation within the landscape of national and international policy, Colwell highlights the inconsistencies of approach to repatriation that exist around the world: former colonial nations like Australia, New Zealand, Canada and the U.S. have responded to the work and activism of their native populations, and drafted law and policy addressing repatriation and museum collections.¹¹ Outside such countries, legislation, policy, and action on repatriation is much more rare.¹² To move the field forward, Colwell argues for a multi-level approach in which institutions have greater dialogue between themselves to standardize practice, new models for resolving claims are developed across the field, and countries legislate stricter laws on the sale and export of cultural heritage property.¹³ Looking across nations, John Scott and Federico Lenzerini note that the rights of indigenous peoples have emerged in recent decades as a priority in the development of international law.¹⁴ Perhaps the ultimate standard setting instrument on indigenous peoples' rights, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007 includes specific language about the right to use and control ceremonial objects and the right to repatriation of human remains.¹⁵ The Declaration is non-binding, but it provides a clear statement of the direction in which the international community needs to move in the future.¹⁶ Museums are

¹⁰ Chip Colwell, "Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures," *Current Anthropology*, 56, no. S12 (2015): S265-S266.

¹¹ Chip Colwell, "How Indigenous Groups Can Reclaim Stolen Property: The Fight for Repatriation," *Foreign Affairs*, March/April 2017.

¹² *Ibid.* 1.

¹³ *Ibid.* 1.

¹⁴ John Scott and Federico Lenzerini, "International Indigenous and Human Rights Law in the Context of Trade in Indigenous Cultural Heritage," in *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues*, eds. Christoph Beat Graber, Karolina Kuprecht, and Jessica Christine Lai, (Cheltenham, UK: Edward Elgar, 2012), 61.

¹⁵ *Ibid.* 70; United Nations, "United Nations Declaration on the Rights of Indigenous Peoples: Article 12," *United Nations General Assembly*, 2007, accessed April 28, 2017. <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

¹⁶ Francesco Bandarin, "International Trade in Indigenous Cultural Heritage: Comments from UNESCO in Light of Its International Standard-Setting Instruments in the Field of Culture," in *International Trade in Indigenous*

guided at the highest level by international norms like UNDRIP, directed by national policy, and propelled forward by professional standards in the field — all while fulfilling their roles and responsibilities in their local communities.

Against this stratified backdrop of hard and soft law, and personal and institutional ethics, this study provides an exploration of how U.S. museums on the ground have navigated the process of repatriating across international borders to First Nations of Canada. Through interviews with professionals involved on both sides of the border, and analysis of the policy and practice of the returns, this study provides an in-depth picture of three repatriations: the Burke Museum of Natural History and Culture in Seattle working with the Stó:lō Nation of British Columbia; the Denver Museum of Nature & Science working with the Siksika Nation of Alberta; and the Field Museum in Chicago working with the Haida of British Columbia. As every repatriation is unique and every museum is situated differently within state and federal regulations, the purpose of this research is not to arrive at a generalized process for how to undertake international repatriation. Rather, the purpose is to explore how the process of international repatriation plays out in the absence of a legal framework, and to investigate the internal and external forces influencing that process. The ultimate goal of this work is to encourage dialogue on the evolving relationships and mutual goals of museums and indigenous communities when it comes to cultural heritage preservation.

As the ethical requirements to address the colonial origins of collections continue to strengthen, and as indigenous groups build capacity and broaden the focus of their repatriation efforts to museums around the globe, there is no better time for museum professionals to invest

energy and thought into accomplishing repatriation across international borders.¹⁷ With the dearth of binding international law, it is the museums professionals and indigenous leaders working on the ground who will shape the tones and trends of international repatriation in the twenty-first century.

¹⁷ Chip Colwell, "How Indigenous Groups Can Reclaim Stolen Property: The Fight for Repatriation," *Foreign Affairs*, March/April 2017.

Chapter 2 Literature Review

Contextualizing this study within the existing body of research, law, and policy on international repatriation, the literature review is organized into three areas: repatriation and the decolonization of museum practice; the fabric of national regulation on repatriation and cultural property in the United States; and the conventions and norms for cultural heritage and indigenous rights on the international plane. The first category gives an orientation to best practice and the role repatriation serves in altering the colonial legacies of museums as institutions. The next category examines key federal laws in the U.S. that regulate the disposition of human remains and cultural heritage objects. The final category explores the international conventions and non-binding instruments on repatriation, cultural heritage, and the rights of indigenous peoples in the world today. Taken together, these categories move the reader from the foundations of the museum field, to the national backdrop of law and practice governing museums, and finally to the international plane where museums and indigenous nations negotiate real and imagined barriers to accomplishing repatriation.

Repatriation and Decolonization in Museum Practice

Many of the world's great museums have a collections history rooted in the colonization of indigenous peoples. C. Timothy McKeown notes that for centuries, governments, universities, and wealthy collectors sponsored the gathering of sacred and everyday objects from cultures around the globe.¹⁸ Ana Filipa Vrdoljak explains that, more disturbingly, ancient and modern remains of individuals were also gathered—used by early anthropologists and academics to build

¹⁸ C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 19.

a hierarchy of races and justify the actions of colonizers.¹⁹ These collecting efforts led to hundreds of thousands of individuals, and many times more cultural objects, filling the storage shelves of museums across North America and Europe.²⁰ Amy Lonetree underlines that while indigenous peoples have been contesting the unscrupulous and often illegal taking of their bodies and objects since it began, they have made significant progress in the last fifty years to shift legal precedence and museum practice in their favor.²¹

Much has been written on the implications of repatriation from museum collections, and on the significance repatriation has as a recognition of the sovereignty of indigenous peoples.²² In considering the formation of the Smithsonian's National Museum of the American Indian in 1989, Lonetree contrasts the painful origins of museums in the colonization process with the potential opportunity for healing that comes from the pursuit of decolonizing methodologies in modern museum practice.²³ Lonetree identifies that successful decolonizing practices assist Native communities "in addressing the legacies of historical unresolved grief."²⁴ As Native and non-Native professionals navigate the developing processes of decolonizing and indigenizing traditionally colonial spaces, Nancy Marie Mithlo is careful to note that simply including Native voice in museums, while failing to acknowledge worldviews and knowledge systems beyond the dominant Western perspective, fails to accomplish the critical task of deconstructing the legacy

¹⁹ Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge, England: Cambridge University Press, 2006), 48.

²⁰ Ibid. 9.

²¹ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012), 4.

²² See Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012); Alessandro Chechi, *The Settlement of International Cultural Heritage Disputes* (Oxford, United Kingdom: Oxford University Press, 2014); and C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013).

²³ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012), 17.

²⁴ Ibid. 22.

of colonialism.²⁵ Such superficial changes to standard practice lend the appearance of decolonization without bringing about meaningful change to how indigenous people shape and define their participation in museum space.²⁶

Perhaps the most important aspect of decolonization, as defined by Lonetree, is telling the truth about the cultural, physical, and psychological violence perpetrated against indigenous peoples, even when that truth telling is painful and difficult.²⁷ Rebecca Tsosie argues further that repatriation is part of a dual process, along with reconciliation, in which museums engage to alter the longstanding dynamics of power and control over cultural heritage objects, narratives, and Native identities.²⁸ The repatriation of ancestral remains, objects, and knowledge from museum collections, and new approaches like sharing authority and building collaborative partnerships are all ways in which modern museums can transform into places for healing, strengthening communities, and restoring dignity and respect among Native peoples.²⁹

National Regulations on Human Remains and Cultural Objects in the U.S.

U.S. museums must necessarily operate within the confines of U.S. law, both at the federal and state levels. While the focus of this thesis work is on international repatriation, it is the domestic repatriation laws and related cultural property legislation of federal and state governments which first define how museums practice and participate in repatriation. In the U.S., the evolution of cultural heritage and human remains protection legislation reflects the slow

²⁵ Mithlo, Nancy Marie. ““Red Man’s Burden”: The Politics of Inclusion in Museum Settings.” *The American Indian Quarterly* 28, no. 3/4 (2005): 744.

²⁶ *Ibid.* 744.

²⁷ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012), 23.

²⁸ Rebecca Tsosie, “Native Nations and Museums: Developing an Institutional Framework for Cultural Sovereignty,” *Tulsa Law Review* 45, no. 1 (2009): 9.

²⁹ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012), 5.

redress of longstanding discrimination against the physical remains and material culture of Native Americans in museum collections and in newly discovered archaeological sites.³⁰

Although every state in the Union has burial laws protecting and identifying the special nature of human remains, Native Americans have long been the exception with archaeologists, museums, and government agencies collecting and retaining Native remains with impunity.³¹ Lynn Marie Alex highlights that the first law in the United States to address the protection of ancient burials and human remains passed in Iowa in the 1970s, largely because of the Yankton Sioux activist Hai-Mecha Eunka (Maria Pearson). During a 1960s highways project, the Iowa Department of Transportation disturbed a pioneer cemetery and disinterred 27 individuals in the course of construction.³² All but one of the individuals were immediately reburied; the one exception was the set of remains identified as Native American, and these were sent to the University of Iowa for further study.³³ Hai-Mecha Eunka's activism in response to this discrimination prompted the State of Iowa in 1976 to pass the first legislation protecting ancient burials in the U.S.³⁴ Several years later the federal government followed suit and passed the Archaeological Resources Protection Act (ARPA) of 1979.

ARPA protects "any material remains of past human life or activities which are of archaeological interest" found on public or tribal land.³⁵ The law continues by specifying those material remains to include among other things, "pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings,

³⁰ C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 7.

³¹ Walter Echo-Hawk, "Repatriation Symposium: Debunking the Top Ten Reasons Given By Scientists to Keep Dead Indians," *Arizona State Law Journal* 44 (2012): 648-649.

³² Lynn Marie Alex, *Iowa's Archaeological Past* (Iowa City: University of Iowa Press, 2000), 28.

³³ *Ibid.* 28.

³⁴ Lynn Marie Alex, *Iowa's Archaeological Past* (Iowa City: University of Iowa Press, 2000), 28.

³⁵ Archaeological Resources Protection Act of 1979, 16 U.S. Code Chapter 1B, Section 3(1), available from U.S. Department of State Bureau of Educational and Cultural Affairs, <https://eca.state.gov/files/bureau/96-95.pdf>.

intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items.”³⁶ As Tsosie and McKeown both emphasize, the law provides teeth for prosecuting those who disturb or destroy the protected materials on both federal and tribal lands, but fails to address the vested interest tribes have in the disposition of those materials.³⁷ All human remains, sacred objects, and other archaeological material from federal land are ultimately defined by ARPA as the property of the federal government.³⁸ Tsosie emphasizes that archaeological sites on federal lands may fall within the traditional or historical territory of tribes, but ARPA does not afford tribes any opportunity to assert authority over the preservation, study, or disposition of excavated sacred objects or ancestral remains.³⁹ This inadequacy of ARPA contributed to the momentum of activists and lawmakers arguing for a new type of legislation that reinvests authority over Native remains and material culture in Native peoples.

During the 1980s, the Smithsonian Institution was a focal point in the push by Native activists for repatriation legislation because of the sheer numbers of human remains within the institution’s collections.⁴⁰ McKeown highlights that of the approximate 33,000 sets of remains in the Smithsonian’s collections in 1989, more than 19,000 were Native American.⁴¹ McKeown emphasizes that by percentage, Native American remains accounted for close to 60% of the Smithsonian’s collections, while the remains of black and white Americans made up just 15%,

³⁶ Archaeological Resources Protection Act of 1979, 16 U.S. Code Chapter 1B, Section 3(1), available from U.S. Department of State Bureau of Educational and Cultural Affairs, <https://eca.state.gov/files/bureau/96-95.pdf>.

³⁷ Rebecca Tsosie, “Who Controls Native Cultural Heritage?: ‘Art,’ ‘Artifacts,’ and the Right to Cultural Survival,” in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 38; C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 42.

³⁸ Archaeological Resources Protection Act 16 U.S.C. 470cc(b) Section 4, available at: https://www.nps.gov/history/local-law/FHPL_ArchRsrcsProt.pdf.

³⁹ *Ibid.* 4.

⁴⁰ C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 18.

⁴¹ *Ibid.* 18; Department of Anthropology, “Questions about Collections,” *Smithsonian Institution’s National Museum of Natural History*, <http://anthropology.si.edu/repatriation/faq/#collect03>.

and remains from Asia, Africa, Europe, and the rest of the world comprised the remaining 25%.⁴² While Native American dead made up more than half of the Smithsonian's human remains collections, at the same time in 1989 Native American people made up only 1% of the entire U.S. population.⁴³ As Congress moved to create a national museum in memorial to Native American history and culture, Susan Shown Harjo, Walter Echo-Hawk, William Tallbull, and other Native leaders pushed hard for repatriation provisions to be included in the establishing legislation.⁴⁴

Following ARPA by ten years, the National Museum of the American Indian (NMAI) Act of 1989 was the first piece of federal legislation to include provisions for the repatriation of human remains.⁴⁵ The law established NMAI as a new national museum within the Smithsonian Institution and defined the repatriation policy for Native American human remains and funerary objects within the Smithsonian's collections.⁴⁶ The NMAI Act does not touch on repatriation requirements to international indigenous groups, but Tsosie highlights that the NMAI itself has defined its mission relative to the Native peoples throughout the Western hemisphere.⁴⁷ Amended and expanded during the 1990s, James Nafziger describes the Smithsonian repatriation process in the original NMAI Act as a precursor to the broader legislation that would follow the next year.⁴⁸

Like nothing before it in U.S. law, the Native American Graves Protection and

⁴² C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990* (Tucson: University of Arizona Press, 2013), 18.

⁴³ *Ibid.* 18-19.

⁴⁴ James Riding In, "Human Rights and the American Indian Repatriation Movement: A Manifesto," *Arizona State Law Journal* 44 (2012): 617.

⁴⁵ National Museum of the American Indian Act P.L. 101-185, available from: <https://www.congress.gov/bill/101st-congress/senate-bill/978>.

⁴⁶ *Ibid.*

⁴⁷ Rebecca Tsosie, "Native Nations and Museums: Developing an Institutional Framework for Cultural Sovereignty." *Tulsa Law Review* 45, no. 1 (2009), 8.

⁴⁸ James A.R. Nafziger, "The Protection and Repatriation of Indigenous Cultural Heritage in the United States," in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 39.

Repatriation Act of 1990 (NAGPRA) sets up a mechanism where federally recognized tribes can petition for the return of human remains, funerary and sacred objects, and objects of cultural patrimony from museums and institutions across the country.⁴⁹ Nafziger notes the United States is one of the few countries in the developed world to have national legislation on the repatriation of indigenous ancestral remains and cultural objects; Canada in contrast, has none.⁵⁰ More thoroughly defined than the original NMAI Act, the categories of material eligible for repatriation via NAGPRA include: human remains; funerary objects associated or unassociated with human remains; sacred objects; and objects of cultural patrimony. The last two categories have particular definition in the law: sacred objects are defined as those ceremonial objects needed by religious leaders for the modern practice of traditional Native American religions; and objects of cultural patrimony are defined as those objects with ongoing historical, traditional, or cultural importance to a group or culture more broadly.⁵¹ The culture-wide importance of patrimony means these objects cannot be bought or sold by individuals, so their presence in museum collections then becomes problematic.⁵² Nafziger notes the NMAI Act was amended in 1996 to more closely resemble NAGPRA and include the additional categories of sacred objects and objects of cultural patrimony.⁵³

NAGPRA prioritizes the repatriation of human remains, which have been the primary

⁴⁹ C. Timothy McKeown, "Considering Repatriation Legislation as an Option: The National Museum of the American Indian Act (NMAIA) and the Native American Graves Protection and Repatriation Act (NAGPRA)." in *Utimut: Past Heritage–Future Partnerships*, edited by Mille Gabriel and Jens Dahl, 134-147. Copenhagen: IWGIA, 2008. 134.

⁵⁰ James A.R. Nafziger, "Protection and Repatriation of Indigenous Cultural Heritage in the United States," in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 81.

⁵¹ Rebecca Tsosie, "Native Nations and Museums: Developing an Institutional Framework for Cultural Sovereignty." *Tulsa Law Review* 45, no. 1 (2009): 8.

⁵² *Ibid.* 8.

⁵³ James A.R. Nafziger, "Protection and Repatriation of Indigenous Cultural Heritage in the United States," in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 39.

concern for Native groups pushing for repatriation since the 1960s.⁵⁴ Catherine Bell and Robert Paterson identify NAGPRA's primary function as human rights law, providing protection for the rights of deceased Native Americans, Native Hawaiians, and Alaskan Natives who have been removed from their burial contexts, and for the rights of their lineal descendants.⁵⁵ As NAGPRA attempts to redress the longstanding disregard for the human rights of Native peoples in the U.S., Bell and Paterson emphasize the broader significance of the national repatriation law:

[NAGPRA] can be fairly described as an instrument of decolonization, self-determination, and reparation; as a vindication of Native American religious and other cultural freedoms; as a means of enhancing cultural revival and transmission of cultural knowledge among tribes and Native Hawaiian groups; as a contributor to self-identity and community solidarity; and as a means for restoring Native American control over pertinent culture.⁵⁶

While McKeown notes NAGPRA in practice is not without flaw, the spirit of the law is a tremendous service to the rights and sovereignty of Native nations. While museums might myopically view NAGPRA only as administrative law governing their collections, NAGPRA has broad reaching implications for the decolonization of museum practice.

Trends on the International Plane

Since its foundation in the wake of World War II, the United Nations has adopted multiple conventions focused on the protection of art, antiquities, and cultural heritage objects, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Alessandro Chechi

⁵⁴ James Riding In, "Human Rights and the American Indian Repatriation Movement : A Manifesto," *Arizona State Law Journal* 44 (2012): 616.

⁵⁵ Catherine E. Bell and Robert K. Paterson, *Protection of First Nations Cultural Heritage Laws, Policy, and Reform* (Vancouver: UBC Press, 2014), 118.

⁵⁶ *Ibid.* 118.

outlines why cultural heritage law on the international plane has proved largely unsatisfactory: existing conventions do not apply retroactively, they are often not self-executing in that adopting nations must then put their own legislation in place to enforce the conventions, and their provisions are characterized by broad or vague language.⁵⁷ Further, John Scott and Federico Lenzerini emphasize the bulk of international instruments gear towards national governments limiting the illegal antiquities trade, but do not address the concerns of indigenous peoples pushing for sovereignty over their ancestral remains and cultural patrimony.⁵⁸ Fortunately, Scott and Lenzerini note parallel to the rise of the United Nations, the political mobilization of indigenous peoples has continued to increase since the 1950s, and recent decades have seen the rights of indigenous peoples emerge, for the first time, as a priority in the development of international law.⁵⁹

In the mid-1980s, before the passage of either the NMAI Act or NAGPRA in the U.S., the United Nations drafted a preliminary version of the Declaration on the Rights of Indigenous Peoples (UNDRIP).⁶⁰ Nafziger highlights Articles 11 and 12 in the declaration, which state the rights of indigenous peoples to practice and revitalize their cultural traditions and religions, to control their own cultural heritage objects, and to repatriate their ancestral remains.⁶¹ These articles also state the obligations of national governments to set up mechanisms redressing the

⁵⁷ Alessandro Chechi, *The Settlement of International Cultural Heritage Disputes* (Oxford, United Kingdom: Oxford University Press, 2014), 1.

⁵⁸ Honor Keeler, Edward Halealoha Ayau, Alyssa Newswanger, and Rachael Dickson. "A Guide to International Repatriation: Starting an Initiative in Your Community," Association on American Indian Affairs, 2015. 8.

⁵⁹ John Scott and Federico Lenzerini, "International Indigenous and Human Rights Law in the Context of Trade in Indigenous Cultural Heritage," in *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues*, eds. Christoph Beat Graber, Karolina Kuprecht, and Jessica Christine Lai, (Cheltenham, UK: Edward Elgar, 2012), 69.

⁶⁰ Nafziger, James AR. "The Protection and Repatriation of Indigenous Cultural Heritage in the United States," in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 45.

⁶¹ *Ibid.* 46.

historical disregard for these indigenous rights.⁶² Nafziger argues the draft declaration of the 1980s paved the way for the passage of federal repatriation law in the U.S. in 1989-1990.⁶³

Though initially drafted in 1985 and completed in 1993, the UNDRIP was revised many times and finally adopted by the United Nations General Assembly in 2007.⁶⁴ Only four of the 144 voting nations opposed adoption of the declaration: the United States, Canada, Australia, and New Zealand.⁶⁵ Honor Keeler notes each of these former colonies initially argued that various articles in the declaration appeared incompatible with their domestic legislative frameworks, but all have since come around and announced their endorsement for the declaration.⁶⁶ While the UNDRIP is not legally binding in itself, the declaration draws directly and indirectly on principles from international human rights law, customary international law, and even from the United Nation's Charter—which are themselves considered legally binding and enforceable.⁶⁷ Scott and Lenzerini describe the UNDRIP to date as “the ultimate standard-setting instrument concerning indigenous peoples' rights.”⁶⁸

⁶² Nafziger, James AR. “The Protection and Repatriation of Indigenous Cultural Heritage in the United States,” in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, eds. James A.R. Nafziger and Ann M. Nicgorski (Leiden, the Netherlands: Martinus Nijhoff Publishers, 2009), 46.

⁶³ *Ibid.* 45.

⁶⁴ *Ibid.* 45.

⁶⁵ Catherine E. Bell and Robert K. Paterson, *Protection of First Nations Cultural Heritage Laws, Policy, and Reform* (Vancouver: UBC Press, 2014), ix.

⁶⁶ Honor Keeler, “Indigenous International Repatriation,” *Arizona State Law Journal* 44 (2012): 703–802. 774.

⁶⁷ John Scott and Federico Lenzerini, “International Indigenous and Human Rights Law in the Context of Trade in Indigenous Cultural Heritage,” in *International Trade in Indigenous Cultural Heritage: Legal and Policy Issues*, eds. Christoph Beat Graber, Karolina Kuprecht, and Jessica Christine Lai, (Cheltenham, UK: Edward Elgar, 2012), 71.

⁶⁸ *Ibid.* 70.

Chapter 3 Methods

Structured as a qualitative descriptive case study, the purpose of this thesis research is to explore the process of international repatriation of human remains and cultural objects from U.S. museums to First Nations of Canada. Three research questions guided this study:

- How do U.S. museums navigate the process of voluntarily repatriating human remains or cultural objects to First Nations in Canada?
- In what ways do existing federal and state laws and international policies facilitate or hinder the process of international repatriation?
- How do internal museum policies and staff philosophies impact the process of international repatriation?

The case study design allows for the in-depth exploration of international repatriation by examining the process at different museum sites, identifying the specific legal contexts for each return, and gathering multiple perspectives from the people involved. With these research questions in mind, this study relied on purposive sampling and semi-structured interviews to shine light on the internal and external forces at play when museums and indigenous groups pursue repatriation across international borders.

Selection Process

To investigate the guiding research questions, this study sought three cases of a U.S. museum repatriating human remains and/or cultural objects to First Nations in Canada. The first step in selection was identifying possible sites on the criterion of having already completed international returns, and the next step was to confirm with museum staff and First Nations

representatives that they were willing to participate in the research study. Exploring completed repatriations, as opposed to ongoing repatriations, was important first because active repatriation negotiations can be sensitive and the ability of participants to share their perspectives can be limited; and second, because the process of repatriation can extend over multiple years, different legal issues may arise as the case evolves. Working with museums and First Nations who have already completed the process minimized the effects of such complications.

Research Sites and Study Participants

The three museums selected for this study are: the Burke Museum of Natural History and Culture in Seattle, the Denver Museum of Nature & Science (DMNS), and the Field Museum of Natural History in Chicago. For each instance of repatriation, 2-3 people from the museum and 1 person from the First Nation were interviewed. The study was designed to gather multiple perspectives on the same repatriation process because perception of the strengths and weaknesses of a return will vary depending on experiences, expectations, and intentions of the different people involved. The purposive sampling method transformed into a chain-referral approach as initial participants recommended others who might be knowledgeable candidates for interviewing. Outlined here are the different cases of repatriation from each museum and the individuals involved in the repatriations who were interviewed.

- **Burke Museum of Natural History and Culture:** in 2006 the Stó:lō Nation (British Columbia) and the Nooksack Tribe (Washington state) worked with the museum to repatriate the stone statue T'xwelátse, which came to the museum in 1904 after being taken from the Fraser Valley in British Columbia.

- Dr. Peter Lape, Curator of Archaeology

- Megon Noble, NAGPRA Coordinator during the repatriation process
- Jess Milhausen, NAGPRA Coordinator after Noble, current Assistant Registrar
- **Denver Museum of Nature & Science:** in 2015, the Siksika Nation (Alberta) and the Blackfeet Tribe (Montana) worked with the museum to repatriate a medicine bundle.
 - Dr. Chip Colwell, Senior Curator of Anthropology and NAGPRA Officer
 - Melissa Bechhoefer, Anthropology Collections Manager and NAGPRA Coordinator
 - Dr. Steve Nash, Anthropology Department Chair and Curator of Archaeology
- **Field Museum of Natural History:** in 2003, the Haida Nation (British Columbia) worked with the Field Museum to repatriate the remains of about 160 individuals who had been taken from gravesites from 1897 to 1903 by anthropologists from the museum.
 - Dr. Helen Robbins, Repatriation Director
 - Dr. Will Pestle, former Anthropology Collections Manager for Osteology
 - Isabel Tovar, former Anthropology Collections Manager for the Native American Ethnographic & East Asian collections
 - Andy Wilson: co-founder of the Haida Repatriation Committee, Haida Gwaii, British Columbia

Methods & Data Collection

This research study used semi-structured interviews as the primary data collection method, supplemented with document analysis of museum policy. Between March and May 2017, semi-structured interviews were conducted in person if proximity allowed, or via telephone or Skype. A comprehensive question guide was refined prior to each interview, taking

into consideration the particular role of an interviewee in an international repatriation, see Appendix A for the comprehensive interview guide. Interviews lasted from 30-60 minutes and were audio-recorded. Informed consent for study participation and audio-recording were obtained from interviewees, see Appendix B for the consent form.

Supplemental to the data collected directly from those involved in repatriation, relevant museum policy documents were also analyzed. These included formal policies on repatriation, collections management, deaccession, and other areas touching on how repatriation occurs at the museum.

Data Analysis

Interviews were transcribed and analyzed for common trends and key themes in the responses. Content museum policy documents were reviewed and relevant portions were integrated into cases to provide supporting context and explanation.

Limitations

For the selection of sites and study participants, the chain-referral method relied on personal and professional connections between people familiar with international repatriation work. While this method can allow a new researcher to tap into a professional network of subject matter experts, it also relies heavily on the recommendations, connections, and experiences of the people who happen to be initially approached to participate.

Limitations also exist for the process of interviewing. For the case of repatriation from Denver Museum of Nature & Science, the representative of the Siksika Nation expressed interested in participating, but was then unable to schedule time for an interview. Not having the perspective from someone on the First Nation side of this repatriation limits the richness of the

data. Additionally, for all sites, perspectives from multiple First Nations representatives were sought, but timing and limited availability resulted in only one interviewee participating for the Haida and the Stó:lō. A final limitation within the process of interviewing hinged on the developing skill of the interviewer to facilitate and maintain the direction of the conversation. Interviews proceeded with increasing smoothness as the interviewer gained experience in the process of in person and telephone interviews.

Chapter 4 Findings

The body of this chapter is divided into three main sections for each case of repatriation between the Burke Museum and the Stó:lō, the Denver Museum of Nature & Science and the Siksika, and the Field Museum and the Haida. Within each case, the findings of the interviews and policy analysis are organized into four subsections:

- Background to the First Nation's Material in Collections
- The Process of International Repatriation for the Specific Case
- The Circumstances of Law and Policy at the Museum
- The Tone of Repatriation at the Museum

The first section provides brief context to the relationship between the First Nation and the museum by highlighting how the human remains and cultural objects arrived in the museum's collections. The next section covers the specific process of international repatriation for the documented case, as experienced by the interviewees. The third section situates the repatriation within the legal and policy frameworks surrounding the museum, noting the particular laws and policies applied in the course of the international repatriation. The final section captures the personal philosophies and perspectives of the museum staff and First Nations representatives who were involved in the process. Their statements on their personal convictions shed light on the atmosphere created through the course of their work on repatriation. Unlike policy and law which formally structure repatriation, the attitudes and actions of individuals, as guided by their personal philosophies, color the process of repatriation in a less tangible, very meaningful way. At the conclusion of the chapter, there is a discussion of the key themes which emerged across the distinct cases of repatriation.

Burke Museum and the Stó:lō

Interviewees	
Peter Lape	Curator of Archaeology at the Burke, came on board after the Stó:lō had approached the museum about the return. Oversaw the repatriation.
Megon Noble	NAGPRA Coordinator during T'xwelátse's repatriation, currently the NAGPRA Project Manager at University of California Davis.
Jess Milhausen	NAGPRA Coordinator after Noble, currently Assistant Registrar at the Burke.
David Schaepe	Senior Archaeologist and Director of the Stó:lō Research and Resource Management Centre.

Background to Stó:lō Material in Museum Collections

When the United States and Canada defined the international border along the 49th Parallel in the 1870s, the arbitrary line cut through the territory of Coast Salish peoples in the Fraser River Valley. The Stó:lō and the Nooksack are among the peoples who shared close linguistic, familial, and cultural ties, but who were suddenly separated by an artificial political boundary.⁶⁹ The late nineteenth century was a time of intense pressure and change for the Native peoples in the region, with Canada enacting harsh Anti-Potlatch laws and other policies making many parts of Native cultures illegal.⁷⁰ At the same time, white Canadian and American miners and settlers aggressively pushed against Native presence in the area, sometimes breaking to outright violence including the lynching of the a young Sumas boy, Louie Sam, in the 1880s.⁷¹ In this scene of shifting colonial government power and European-settler presence, the society,

⁶⁹ David Schaepe and Herb Joe, "Stone T'ixwelátsa Repatriation Report & Supplement Report I," Stó:lō Resource and Research Management Centre, 2005-2006, 30.

⁷⁰ Ibid. 45.

⁷¹ Ibid. 45.

religion, and daily life of the Stó:lō and Nooksack peoples were drastically disrupted.

This is the context in which the caretakers of stone T'xwelátse were compelled to leave him behind as they relocated to safer territory away from the international border. Waiting in a field outside Sumas, Washington, T'xwelátse was eventually located by the Young Naturalists Society and donated to the newly formed Burke Museum in 1888.⁷² In the Coast Salish tradition, T'xwelátse is a man who was turned into stone by Xa:ls, the transformer and creator, because he was arguing with his wife. After the transformation, Xa:ls instructed T'xwelátse's wife to care for him. Among the Stó:lō and Nooksack, the women descended from T'xwelátse are designated to care for him, and then pass on the responsibility to the next generation. Men and women can be chosen to carry T'xwelátse's name and derivatives of the name, and in the Stó:lō Nation today, Herb Joe carries the T'xwelátse name. In the early 1990s, Joe learned about stone T'xwelátse at the Burke from a Stó:lō archaeologist who had been reviewing the museum's collections. The Grandmothers—the network of women in the community who have inherited the caretaking responsibilities for T'xwelátse—encouraged Joe that he must bring T'xwelátse home. And so began the fifteen year process of accomplishing the repatriation across the international border.

The Process of International Repatriation for T'xwelátse

Initially reaching out to the Burke Museum in 1991, Herb Joe expressed his goal to repatriate T'xwelátse back to his family, the lineal descendants of T'xwelátse's caretakers, within the Stó:lō community in Canada. At that time, the curator responsible for repatriation at the Burke was James Nason, and Nason was skeptical about the validity of Joe's claim to the material and the possibility of repatriation across the border. The perceived tripping points for

⁷² Burke Museum of Natural History and Culture, "Accession No. 190 Record," as reproduced in *Stone T'ixwelátsa Repatriation Report & Supplement Report I* by David Schaepe and Herb Joe, 2005-2006, 51.

the case of repatriation included that T'xwelátse was found in a field outside Sumas, Washington, but was being claimed by a First Nation in Canada; that he was found in a field seemed to suggest he had been intentionally abandoned; that there are other similar stones in other museums, so what is the certainty that the Burke's figure is the same T'xwelátse in the Stó:lō tradition; and through what means can a state institution, holding its collections in trust for the people of Washington, deaccession an object and repatriate it internationally without a legal mechanism like NAGPRA facilitating. Eventually through the process of research and consultation, these questions were all addressed, but for close to ten years there was no forward movement on the Stó:lō interest in repatriation.

In the early 2000s the staff and administration at the Burke shifted as the director changed and Dr. Peter Lape came onboard as Curator of Archaeology. Dr. David Schaepe highlighted how the interests of the administration and individuals within an institution have significant impact on the possibility of international repatriation. Describing his impressions of the Burke, Schaepe explained:

For 10 years, that's the way, as I understand it, to characterize the relationship around the repatriation effort: a lack of willingness and opposition from the administration at the Burke at that time. ...There was just a barrier and no real way of communicating, and a lack of willingness to look past that to see this as a legitimate situation and a legitimate case, and ask how can we pursue this [repatriation], what's a way this could work?

The change of museum staff created what Schaepe described as a "new playing field" at the Burke, prompting Joe and Schaepe to broach repatriation again in 2002. While Lape and the new administration more willing to consider the claim, Megon Noble noted the museum was unsure of what a repatriation to the Stó:lō might look like:

We were initially unclear about how the Stó:lō interest would move forward, as a NAGPRA claim, or other type of claim, or a loan. We knew it was really special and had a significant role for community, but we had no precedence for international repatriation.

Indigenous Canadian peoples are not included in NAGPRA, nor is any other international indigenous group, but as is mentioned above, the Stó:lō Nation have close ties to the federally-recognized Nooksack Tribe in the United States.

To accomplish the repatriation, the Stó:lō organized with the Nooksack to have them submit a repatriation request to obtain T'xwelátse via NAGPRA, and then the Nooksack would transfer him across the border to the Stó:lō. Lape noted the museum was not involved in the process of organizing the collaboration between the Stó:lō and Nooksack. Schaepe explained he and Joe worked closely with the Nooksack's tribal executive and Cultural Committee to determine if the tribe would be willing to submit a NAGPRA request and then, after that first repatriation, if they would then be willing to return T'xwelátse across the border to Canada. On the collaboration, Schaepe noted:

The network of Grandmothers [T'xwelátse's caretakers] certainly included members down in Nooksack, so they understood the importance of doing the work, and the importance of being clear that the repatriation to Nooksack was a first step in T'xwelátse's return, he wouldn't be staying there but be resting for a short time and then moving up to a home in the Ch-ihl-kway-uhk community [within the Stó:lō Nation].

Schaepe and Joe were also responsible for handling the research, oral history interviews, archaeological analysis, and everything else going into the repatriation report submitted to the Burke. Despite the strength of the report as acknowledged by Lape, the Burke initially rejected the claim because it claimed T'xwelátse as human remains within the categories of NAGPRA. Lape and Noble both expressed the unexpected claim of stone T'xwelátse as human remains, with Noble noting:

The human remains claim was really interesting because it definitely did test our understanding of the definition of human remains. I absolutely see from a Stó:lō perspective this is a person who was turned into stone, so this is the physical remains of that person. We had to consult with the National NAGPRA Program and consider the legal definition, and we then disagreed, that this was not human remains under NAGPRA, under the law. But we did agree this was an object of cultural patrimony.

The mismatch between the indigenous perception, the museum's perception, and the legal definition of what T'xwelátse is touches on the difficulty of bridging an indigenous worldview and legal system with the dominant Western worldview and legal framework. As Noble described, the Burke gave the repatriation claim and Stó:lō perspective consideration, but ultimately rejected it because it did not align with how the law perceives cultural objects and human remains. After the revised claim was submitted and accepted, identifying T'xwelátse as an object of cultural patrimony to the Nooksack, Schaepe noted:

We met one definition out of two of what we applied for. Object of cultural patrimony was ultimately successful. We still maintain stone T'xwelátse to be ancestral remains, and that's okay, you can disagree with us, we can accept that if this doesn't stop the repatriation from happening. We maintain a different perspective on it all together.

Considering the rejection of the initial report and the rationale of the museum as the process proceeded, Lape emphasized the sensitive position of the Burke as a state museum feeling out a means for an international return:

My thought was this is a precedent, this kind of action with a Canadian connection, and I want to make sure that when this happens, no one can argue against this case. So if someone protests, which could happen, we can show we did our due diligence and that this is a rock solid case. Our thought was, this is going to be high profile because of the transfer across the border, people are going to look at this, and if it's done right, it could help other people in this situation. The other thing was that as much as we supported the claim, we didn't want to do it for them [the Stó:lō and Nooksack], we wanted them to independently make this claim. It could be argued that this was obstructionist, like we're putting up barriers, and I think at some points they felt that way, but that wasn't how we felt. We were going to make this happen, but make it happen correctly, so that it could withstand any scrutiny.

Lape's point that stone T'xwelátse's repatriation provides both example and precedence for other institutions and indigenous groups shows how new a territory international repatriation is. Particularly for state institutions like the Burke, where deaccession policies are extremely limiting and the options for voluntary repatriation (as opposed to repatriation mandated by law)

are very few, T'xwelátse's return to Canada stands as a model. While the Burke's repatriation to the Nooksack was not technically international because the museum returned stone T'xwelátse to a federally recognized tribe, the final destination in Canada was transparently acknowledged throughout the whole process. And indeed, it was the Stó:lō on the Canada side of the border who provided much of the driving force for the return.

The Circumstances of Law and Policy at the Burke

Established by the state legislature as an official part of the University of Washington in 1899, the Burke Museum today stands as the oldest public institution in Washington. As a state institution, the Burke holds its collections in trust for the public. Put another way, the museum is essentially steward to collections owned by the people of the State of Washington. Anytime an object is removed from collections, a careful review and deaccession process is followed to ensure the museum is not wrongfully disposing of significant public property. The Burke's Collections Management Policy, updated in 2016, states: "The deaccession process shall be cautious, deliberate, and scrupulous." Via NAGPRA, the Burke can (and is required to) deaccession and repatriate human remains and cultural objects to federally recognized Native American tribes, but the Burke has few options if it wants to return those same types of collections to indigenous groups not party to NAGPRA. Jess Milhausen reflected on the frustrations resulting from the limitations of state and federal law on the museum in cases where tribes sought the return of objects that did not fit within the narrowly defined categories of NAGPRA. Considering the limited definitions in the law, Milhausen noted:

Under NAGPRA there is a very specific definition for 'sacred object.' For many tribal people, the word 'sacred' means something different than it means in Western, white, anthropologist vernacular. ... This is where the law has been very constrictive.

Where Schaepe noted the mismatch between Stó:lō worldview and the outlook of the museum when it comes to the definition of ‘human remains’ under NAGPRA, Milhausen further highlighted the differences in terminology, definition, and categorization between what the law says and the ways indigenous peoples approach material culture and ancestral remains.

While the Burke and the Stó:lō proceeded with the repatriation through NAGPRA, it should be noted that late in the process, an additional method of return appeared. The Lieutenant Governor of the State of Washington was issuing a formal apology for the 1880s lynching of Louie Sam, and the Governor’s Office approached the museum about the possibility of returning T’xwelátse as part of that apology. The Nooksack repatriation claim had been received at the museum, but not yet evaluated, and the Governor’s Office offered a more expedient and direct means of returning stone T’xwelátse through political channels or special legislative order.

Noble explained the Burke chose not to pursue a direct repatriation to the Stó:lō by way of the Governor’s Office because the NAGPRA process was already underway, and the museum felt it would be inappropriate and legally unsound to suddenly stop a potentially valid NAGPRA claim and then rapidly repatriate to another group via another means. Though the Burke chose a different path, other state museums facing strict regulation on the disposition of collections may benefit from enlisting the support of local and regional policy makers to find legislative or diplomatic channels to accomplish repatriation with international indigenous groups.

The Burke’s Collections Management Policy includes specific appendices for the Native American collection as well as international repatriation. The Native American Collection Policy (Appendix G) consistently emphasizes the museum’s relationships with Native American communities, with the goal “to encourage discussion and partnership in areas of mutual cultural

heritage education and preservation interests.”⁷³ In the policy document, the museum explicitly states pursuing connections with tribal communities furthers the Burke’s broader mission as a museum. Such connections stretch well beyond the minimum requirements of reporting and consultation mandated by NAGPRA, and aspire toward the spirit of the law. The Native American Collection Policy, appended to the main collections policy, states:

We recognize that the successful implementation of our educational and research mission will require a continued commitment for dialogue and cooperation between Museum and Tribal personnel. Through the policies set out here and that may be developed in the future, we seek to encourage discussion and partnership in areas of mutual cultural heritage education and preservation interests.⁷⁴

Rather than identifying tribal interests in opposition to the goals and interests of the museum, the Burke’s policy identifies the common ground between tribes and the museum: protecting and strengthening cultural heritage.

Since indirectly repatriating T’xwelátse to the Stó:lō with the help of the Nooksack, the Burke has completed several direct international repatriations of human remains. The Attorney General counseled the Burke that under U.S. common law, human remains cannot be owned, so the museum does not technically hold title to the remains in collections. This nuance has enabled the Burke as a state institution to return ancestral remains working jointly with the Tsq̓wout and Tseycum First Nations, and with the Heiltsuk in British Columbia. The museum has also repatriated remains to Peru, and transferred Japanese remains to the U.S. Defense POW/MIA Accounting Agency which in turn repatriated them to Japan. Staff noted that the Burke is also currently working with another First Nation in Canada, as well as national institutions in Mexico and the Philippines to repatriate additional human remains.

⁷³ Burke Museum of Natural History and Culture, “Appendix G: Native American Collection Policy,” *Collection Management Policy*, 2016.

⁷⁴ Ibid.

The Tone of Repatriation at the Burke

Those interviewed widely acknowledged that James Nason, longtime Curator of Ethnology at the Burke, laid the foundation for the museum's approach to repatriation. Lobbying for repatriation legislation in the 1970s, Nason propelled the Burke forward in response to the passage of NAGPRA in 1990. The museum was one of the first recipients of a NAGPRA grant to fund research into collections and consultation with tribes. Nason also made it an early priority to bring representatives from all the federally recognized tribes in Washington State to the Burke Museum to see what was in collections. Lape argues that Nason's work with the tribes in Washington, and his work more broadly, better positioned the Burke to grapple with the requirements of NAGPRA:

The Burke has been kind of independent of politics [inside the University of Washington]. That's because of Jim Nason really, he decided that we're going to be proactive about NAGPRA and do things right. So he set the stage for our museum way back when. Being Native himself and helping other tribal museums in the state to get started, he changed the tone of relationships. We started from a position of trust.

Along with the approaches established by Nason for working with tribes and responding to the demands of repatriation legislation, Lape also identified that NAGPRA is an essential step to moving museum practice forward in the new century. Lape argued that before the museum can completely turn its focus towards collaborative projects with tribes and furthering the relationships begun by NAGPRA, the museum must address the colonial roots of its collections:

NAGPRA is the first step the Burke needs to do before we can really start developing deeper relationships with the people whose collections are in our building. It's the reparations step, so it's critical work that we have to get done as soon as we can, and that means helping tribes out to make their claims, helping them write grants, being sure there's always someone there to answer the phone to help process these claims, to not slow things down, to make sure they feel like the Burke is always open, that they own these collections and have a right to come in, that they have the key.

At the core of Lape's argument is the need for the Burke and other museums to change the

dynamics of power and authority that have privileged museums and excluded indigenous presence and voice from the management of indigenous collections. Following these lines,

Milhausen explained how she approaches her own work:

I may be a product of the institutions I've worked at, but I very strongly believe that the originating culture should have a vested interest in their objects, I believe they should have control over their ancestors, and I believe the museum needs to work in a culturally sensitive way to engage those communities, and help those communities, and try to heal the complete lack of culturally sensitivity that has persisted for a very long time.

Each staff member representing the Burke highlighted their own understandings of the significance of repatriating museum collections, whether in the light of respecting tribal sovereignty over care and disposition decisions, acknowledging the distinct and valid worldviews over the value and significance of collections, or attempting to heal the cultural, psychological, and physical violence represented by origins of collections.

Considering the Burke as an institution, Lape gave interesting perspective on how he sees the museum moving forward. In 2018, the Burke is slated to move into a newly constructed and much expanded building. On thinking about transferring the museum's collections into the new space, Lape emphasized:

We are thinking about the move and would really like to not move any human remains into that new building. We're really pushing to get these last few remains out of there [repatriated] so we have a fresh start in the new building.

The efforts to ensure that all known human remains are repatriated from the Archaeology Department before collections move into the new Burke alludes to the charged nature of ancestral remains. The presence of remains in collections is a testament to the legacies of destructive and discriminatory policies against indigenous peoples, and Lape's comments are evidence that the Burke recognizes those legacies and seeks to refigure the museum as a place where indigenous peoples are stakeholders as opposed to study subjects.

The Burke and Stó:lō staff all identified the development of relationships as the greatest outcome of repatriation. While the actual return of objects is of course key, relationships and new lines of communication open the door to future collaborations and opportunities to the benefit of both the indigenous peoples and the museum. In the vein of sharing the authority over collections and histories, Noble highlighted museums are not inherently the best place to preserve and present culture:

We weren't doing this object justice when it was in our possession. We didn't have the history and the cultural knowledge to share the story as passionately as the Stó:lō and Nooksack do. ...T'xwelátse not being at the Burke has revitalized the story that he represents. The thing Herb Joe always tells me is the story of T'xwelátse is learning to live together in a good way, and I think that's really the story of NAGPRA. It's about respect and differences, and I think this particular object—or person—really provides that narrative.

Noble also noted how NAGPRA, beyond its role as federal legislation governing the operation of museums and institutions, can bring about changes to the way museums interact with the peoples whose objects make up collections. Schaepe extended this thought:

International repatriation or otherwise...we work together as family and I think that's what emerged out of the connections and relationships at the Burke. People start to build connections in a way that represents family in a broad sense. The nature of repatriation, I would suggest, requires people to work together as family. If you're doing this work and you're not family, then you're not doing it right because it is something that requires, by the nature of the sensitivities, a broad base of understanding and connection to do this the right way. Literally that was the nature of the connections [of the Stó:lō] to Nooksack, but it extends to the people at the Burke Museum as well.

At the core of Schaepe's argument is the reality that there are many ways to work on repatriation, but not all those represent best practice. NAGPRA requires consultation, but not collaboration; the law can lead to a shift in perspective for museum professionals, but it does not compel such change; and NAGPRA can provide an initial connection, but it does not grow relationships between museum professionals and tribal representatives.

As much as NAGPRA is the law and demands compliance, the experiences of individuals

involved in the Burke-Nooksack-Stó:lō repatriation of T'xwelátse show that NAGPRA is an opportunity that can be fulfilled or missed. For the Burke staff, the process of returning T'xwelátse shows their willingness to acknowledge other worldviews and to look for ways to accomplish an unprecedented repatriation for the state museum. That willingness to see was not always, which accounts for the near decade gap between Herb Joe approaching the museum about repatriation in the 1990s, and the museum finally starting to move on the possibility in the early 2000s. For the Stó:lō, the shift in the Burke's attitude towards the repatriation allowed them to throw their weight into the process, start collaborating with the Nooksack, and accomplish the repatriation in four years. Each repatriation is unique, and T'xwelátse is certainly an uncommon case of cross cultural and cross border collaboration between a state museum, a federally recognized Native American tribe, and a First Nation in Canada. On the repatriation of stone T'xwelátse to his lineal descendants, the individuals involved in the process from all sides, and the policies and practices at the Burke which orient the museum's work around the interests of tribal peoples, made the difference.

Denver Museum of Nature & Science and the Siksika

Interviewees	
Chip Colwell	Senior Curator of Anthropology and NAGPRA Officer
Melissa Bechhoefer	Anthropology Collections Manager and NAGPRA Coordinator
Steve Nash	Anthropology Department Chair and Curator of Archaeology

Background to Siksika Material in DMNS Collections

The traditional territory of the Blackfoot people stretches roughly from the southern portions of Alberta and Saskatchewan, down into the northern ranges of Montana. Bringing about the drastic reduction of their territory, the Blackfoot in Montana first signed a treaty with the U.S. Government in the 1850s and the Blackfoot in Canada signed treaties soon after with the newly-formed Canadian Government in the 1870s. Though peace in the region was a goal of the treaties, other outcomes like the establishment of the reservation system, as well as the significant impacts of disease, missionary presence, and residential schooling greatly disrupted Blackfoot governance and culture. Today the Blackfoot Confederacy consists of four main groups: the Blackfeet Tribe in the U.S. and the Siksika, Piikani, and Kainai Nations in Canada. Arbitrarily divided by reservation and nation state borders for more than a century, the nations in the Blackfoot Confederacy have been actively renewing their connectivity since the 1980s.

Among the Blackfoot and other peoples of the Great Plains, medicine bundles are objects created by sacred societies for rituals and ceremonies. A bundle is a collection of objects that embody spiritual power and are required to complete those specific rituals or ceremonies.⁷⁵ A bundle may be individually or collectively possessed, and can be passed on from one person to

⁷⁵ Seema Bharadia, *The Return of Blackfoot Sacred Material by Museums of Southern Alberta* (University of Calgary, Alberta, 1999), 38.

another after initiation into the power of the bundle and the ritual it represents.⁷⁶ Without the required initiation and knowledge, the power of a bundle is considered dangerous to the people who handle or unpack the objects.

The focus of collectors seeking rare and important material culture, many medicine bundles were removed from their cultural context and use starting in the nineteenth century. Collectors continued to obtain these sacred Blackfoot objects into the mid and late twentieth century, at the same time that the pervasive effects of residential schools and discriminatory government policies in the middle and late twentieth century were diminishing Blackfoot knowledge of rituals and the use of bundles. Mary and Francis Crane are two such collectors so avid they founded their own museum—the Southeast Museum of the American Indian, which was established in Florida in the late 1950s. After some ten years of operation, the Cranes closed their personal museum and transferred the collections to the Denver Museum of Natural History, today the Denver Museum of Nature & Science. Among the donated material was a Siksika medicine bundle from Alberta, which quietly remained in the DMNS collections for approximately thirty years. In 2012, the museum and members of the Siksika Nation began discussing the possibility of repatriating the sacred object across the international border. Though the presence of eagle feathers in the bundle, a strictly controlled material, presented a major hurdle, the repatriation was eventually completed between the museum and the Siksika in 2014 with the help of the Blackfeet Tribe of Montana.

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The Process of International Repatriation for the Bundle

At DMNS, the process for repatriation was initially straightforward. Curator of Anthropology Chip Colwell is responsible for incoming requests for repatriation, either within

⁷⁶ Seema Bharadia, *The Return of Blackfoot Sacred Material by Museums of Southern Alberta* (University of Calgary, Alberta, 1999), 107.

NAGPRA or outside the framework of that law. Medicine bundles affiliated with federally recognized tribes are subject to repatriation via NAGPRA because they are considered sacred objects and objects of cultural patrimony. Colwell and the DMNS staff extended this understanding to the Siksika bundle and determined to repatriate the object across the international border. To proceed with a repatriation, Colwell brings the proposed return before the museum's Curatorial Review Committee—a panel including curators and administrators from across DMNS departments. On the committee's review process, Collections Manager Melissa Bechhoefer noted:

[Repatriations] eventually come before a larger group, and we will have people who question things or have concerns about how we're going about doing things, but because it's a federal law, we have yet to have anything we consider to be a legitimate [NAGPRA] claim be voted down by the committee. It's pretty common for them to have questions or concerns if it's setting a precedent for other places.

For the Siksika repatriation, the committee endorsed the decision to repatriate and the museum moved forward with the logistical planning on how to move the object from Colorado to Alberta. The museum worked with staff at the Blackfoot Crossing Historical Park, a cultural and educational center within the Siksika Reserve, to accomplish the repatriation.⁷⁷

DMNS encountered a major obstacle when the museum discovered the federal legislation controlling the possession and movement of eagle parts across borders. The U.S. Fish & Wildlife Service is responsible for enforcing the federal laws prohibiting the movement of eagle feathers and other parts across the borders, and Bechhoefer noted that while the museum worked closely with the Fish & Wildlife Service, there was no permitting system or other means to get an exception for the unusual case of repatriation. The museum considering repatriating the bundle

⁷⁷ Blackfoot Crossing Historical Park commemorates the Blackfoot Treaty, or Treaty 7, signed in 1877 by Siksika, Piikani, and Kainai Nations and several other First Nations with the Crown of England. Aimed at establishing peace in the region, the treaty also opened up thousands of miles of land to allow the Canadian government to complete the transcontinental railroad. See: Blackfoot Crossing Historical Park, "Treaties," <http://www.blackfootcrossing.ca/treaties.html>.

via NAGPRA to the Blackfeet Tribe in Montana, who could then return the bundle across the border, but eventually decided against this option. More follows in the next section on the federal laws impacting the repatriation and the strategies by the museum and the Siksika to accomplish their goal despite these limitations.

Networking to find other museums with experience in this niche topic, DMNS received guidance from the Blackfeet Tribal Historic Preservation Office and the National Museum of Natural History which had had their own experiences moving eagle parts across international borders. Bechhoefer recalling the process of finding a solution described:

We talked to a couple other institutions that had done this...we eventually worked it out that we were transferring [the bundle] to the Blackfoot of Canada [Siksika], to their tribal museum, but that it would be transported by someone from the Blackfeet of Montana. In the widely accepted interpretation, as per treaties that predate many of these [eagle] laws, they [the Blackfoot peoples] transfer materials back and forth across the border all the time. I think it was the Jay Treaty that they had referenced which predated the eagle laws by a couple hundred years.

The Jay Treaty of 1794 guarantees the right of First Nations and American Indians to freely cross the border, though there is debate among legal scholars about whether this treaty is still the current source of Native rights to free passage, discussed more in the next section. Wanting to avoid any additional obstacles to the repatriation, Bechhoefer noted:

We let U.S. Fish & Wildlife know that was our plan, we more or less went with the ‘no news is good news’ approach and were very transparent about what we were doing. And we never heard back that we were going to be prosecuted! Because we ultimately gave this [bundle] to the Blackfoot of Montana and they helped return it, our understanding with that treaty is that the return is legal and other museums have used it.

All the paperwork for the repatriation was signed by representatives of the Siksika Nation and DMNS, but the physical custody of the bundle was given to the Blackfeet Tribe. The Blackfeet accompanied the Siksika from Colorado to Alberta, so that the bundle could be legally taken across the border. With transportation effectively provided by the Montana Blackfeet, the Siksika

finalized the repatriation with the museum and brought the bundle home in spring 2014.

The Circumstances of Law and Policy at DMNS

Existing under various names throughout its history, the Denver Museum of Nature & Science is a nonprofit institution tracing its roots to the natural history collection of Edwin Carter, a naturalist in the Rocky Mountains in the 1860s.⁷⁸ Led by a President/Chief-Executive-Officer and governed by a board of some thirty trustees, DMNS receives funding from both public and private sources.⁷⁹ Unlike the Burke Museum which is a state institution, DMNS possesses a greater flexibility in determining when it will consider deaccession and repatriation of collections outside the requirements of NAGPRA. Through the definition of policies, the museum has decided its approach and process for the consideration of both domestic and international repatriation requests.

In the DMNS Manual for Collections Policies, updated in April 2017, the museum identifies it has a public trust responsibility to current and future generations, specifically “to acquire natural history, anthropological, and other objects relevant to its mission; to maintain them for use in scholarly research, education and exhibitions; and to preserve them in perpetuity.”⁸⁰ Defining the museum’s responsibility to preserve collections in perpetuity could position the institution in opposition to the goals of NAGPRA and repatriation, but DMNS also clearly defines its approach to repatriation in the same manual of policies. For repatriations under NAGPRA, “the Museum will comply with both the letter and the spirit of the law by

⁷⁸ Denver Museum of Nature & Science (DMNS), “Museum History,” accessed April 28, 2017.
<http://www.dmns.org/about-us/museum-history/>.

⁷⁹ DMNS, “Section 1: Introduction,” *The Manual of Collection Policies from the Denver Museum of Nature & Science*, adopted April 18, 2017, 1.

⁸⁰ *Ibid.* 2.

expeditiously and respectfully evaluating each claim on a case by case basis.”⁸¹ And for those repatriations outside of NAGPRA:

The Museum aims to curate collections that are both legally and ethically held. The principles of respect, reciprocity, justice, and dialogue will be used to guide how the Museum deals with any claims outside the legal boundaries of NAGPRA.

The Repatriation Policy continues by acknowledging that while there are no equivalents to NAGPRA for the human remains, sacred objects, and objects of cultural patrimony acquired from outside U.S. borders, “every effort will be made to enter into equal and open communication with the communities that connect themselves to the objects in the Museum's custody.”⁸² Through the language of its repatriation policy, the museum reconciles its responsibility to collect and preserve material in perpetuity with the legal and ethical responsibilities to repatriate human remains and sacred cultural objects in and outside the U.S.

The DMNS policy on repatriation was only developed recently. Dr. Steve Nash explained that prior to his arrival at the museum, a federal complaint was filed against DMNS in the early 2000s for non-compliance with NAGPRA. Brought on by Nash, Dr. Chip Colwell described the process of developing a new policy for the museum in the wake of that complaint:

I worked with Steve Nash and Collections Manager at the time, Isabel Tovar, and we all came to see things quite similarly, and we committed ourselves to doing the work in a way that was deeply focused on ethics. So, we helped write those policies and then the board approved them without really any flak, pretty much everyone accepted our recommended language and approved it.

The board’s adoption of progressive repatriation policies, which explicitly identify the priorities of justice and dialogue, suggests the museum administration sees ethical and social value in repatriation. This position contrasts with early museum and professional association reactions to the passage of NAGPRA, which colored repatriation as a threat to scientific progress, the free

⁸¹ DMNS, “Section 11: Repatriation,” *The Manual of Collection Policies from the Denver Museum of Nature & Science*, adopted April 18, 2017, 23.

⁸² *Ibid.* 24.

exchange of information, and the very foundations of museums.

The museum established its own policy on how to respond to repatriation requests like Siksika's, but federal law still impacted the process because of the contents of the bundle itself. The eagle feather components of the sacred bundle are strictly regulated by the Migratory Bird Treaty Act of 1918 and the Bald and Golden Eagle Protection Act of 1940. These acts limit the possession, and prohibit the trade, transport, and permanent export of eagle parts. Bechhoefer noted that while the U.S. Fish & Wildlife Service was sympathetic to the goal of the repatriation, the law had no accommodation for the rare circumstance of a cultural object returning to its culture of origin on the other side of the border. Bechhoefer described:

The Fish & Wildlife Service weren't going out of their way to be a roadblock, they totally understood what we were trying to do, and absolutely supported—in theory—this happening, but there were just no legal exceptions that could be made. They couldn't figure out that there was any precedent, the law is the law and they're a federal agency.

Through networking with other museums and working with the Blackfeet Tribal Historical Preservation Office, DMNS determined to use the Jay Treaty of 1794 to overcome the limitations of the eagle protection laws.⁸³ Signed in the wake of the Revolutionary War, the Jay Treaty acknowledges the right of First Nations and Native Americans to move freely across the U.S.-Canada border.⁸⁴ Article 3 of the Jay Treaty includes:

It is agreed that it shall at all Times be free...to the Indians dwelling on either side of the said Boundary Line freely to pass and repass by Land, or Inland Navigation, into the respective Territories and Countries of the Two Parties on the Continent of America.⁸⁵

Because the Jay Treaty was abrogated by the War of 1812 and never reenacted, some legal scholars like Marcia Yablon-Zug argue the treaty is no longer the source of the Native right to

⁸³ US Embassy & Consulates in Canada, "First Nations and Native Americans," accessed April 28, 2017, <https://ca.usembassy.gov/visas/first-nations-and-native-americans/>

⁸⁴ US State Department, "John Jay's Treaty, 1794–95," accessed April 28, 2017, <https://history.state.gov/milestones/1784-1800/jay-treaty>.

⁸⁵ "The Jay Treaty. Treaty of Amity, Commerce, and Navigation, signed at London November 19, 1794," accessed April 28, 2017, available from Lillian Goldman Law Library, Yale University, New Haven, CT. http://avalon.law.yale.edu/18th_century/jay.asp#art3.

free passage.⁸⁶ Yablon-Zug identifies other, later legislation like the Immigration Acts of 1924 and 1952 as providing free passage across the border.⁸⁷ While the source of free passage rights continues to be debated in the legal community, the U.S. State Department continues to list Article 3 of the Jay Treaty as in force today, and DMNS relied on the treaty to support the process of repatriation.⁸⁸

As mentioned in the previous section, the museum briefly considered the possibility of accomplishing the return to the Siksika by repatriating the bundle to the Blackfeet Tribe via NAGPRA. Once returned to the Blackfeet, the tribe could then transport the bundle north of the border to the Siksika. This strategy is reminiscent of the Burke Museum's work with the Nooksack and Stó:lō. Bechhoefer noted that while the museum may have been able to successfully affiliate the bundle with the Montana Blackfeet and repatriate via NAGPRA, this strategy felt inappropriate in the museum's understanding of the law. On the option of using NAGPRA, Bechhoefer explained:

It felt very disingenuous to me, to say that we're going to culturally affiliate with a group to go through this law when we know it's not accurate, we know it's not Blackfeet. ...we know this stuff is Canadian, we know it. Everyone agrees that this belongs in Canada. So it felt really odd like we were sort of undermining the federal process in and of itself because we'd basically have to lie to use the federal process.

While the Siksika and Blackfeet are closely related and both nations are part of the Blackfoot Confederacy, the provenance of the medicine bundle tied it to the Siksika Nation in Canada and DMNS took the position that NAGPRA was not the best option for return. Instead of NAGPRA, the museum relied on the Jay Treaty to accomplish the repatriation with the Siksika.

⁸⁶ Marcia Yablon-Zug, "Gone But Not Forgotten: The Strange Afterlife of the Jay Treaty's Indian Free Passage Right," *Queen's Law Journal* 33 (2008): 572.

⁸⁷ Marcia Yablon-Zug, "Gone But Not Forgotten: The Strange Afterlife of the Jay Treaty's Indian Free Passage Right," *Queen's Law Journal* 33 (2008): 587.

⁸⁸ US State Department, "Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2016," accessed April 28, 2017, <https://www.state.gov/documents/organization/267489.pdf>.

The Tone of Repatriation at the Denver Museum of Nature & Science

Interviewees described the DMNS approach to repatriation as anchored in the principles of ethics and social justice. Colwell emphasized the need for balance between competing worldviews and priorities:

We embrace the need for respectful, equitable dialogue, and really, trying to focus on doing the right thing, on trying to commit ourselves to the principles of justice rather than other competing goods, such as scientific inquiry or the educational value of the collections.

Because Nash, Colwell, and other Anthropology staff were closely involved in drafting the policy statements on repatriation, it follows that their personal ethical convictions are reflected in the formal policy language. Describing his experience coming into the museum and defining the direction of the department, Nash noted:

I wanted to make sure we were ahead of the curve from a collections-based perspective, from having everything catalogued and having intellectual control, and then Chip [Colwell] came in with the ethically grounded approach and we just kind of took off.

Establishing intellectual control over collections and knowing what exactly the museum holds is significant challenge for any museum because of the inconsistent history of record keeping and slowly evolving database capabilities. Bechhoefer noted the early NAGPRA inventories submitted by the museum in the 1990s were wholly inadequate for anyone trying to understand what material might be in collections. Describing entries from those early inventories, Bechhoefer explains, “when you have ‘unknown object name’ gathered from ‘unknown place,’ that is not helpful to anyone.” The perspectives and practices of the Anthropology department reflect a progressive approach to repatriation, but interviewees noted the department’s philosophies are not necessarily uniform across the rest of the museum. On the position of those colleagues opposed to repatriation, Colwell explained:

Their logic, as I understand it, is museums have an obligation to collect everything in the world, and that's the primary ethical mandate and that it will trump any other concern from any other party. ...They also feel that a curator should have absolute control over their own collection, so they don't see it as their place to get in the way of things that I think are best for my own collection. So they don't get in the way of the repatriation and choose to abstain from voting in favor [on the Curatorial Review Committee]. It's unfortunate that there's not more common ground between us, but they don't try to impose their own beliefs on others in the building.

The variation of professional attitudes within DMNS highlights that a museum's official policies can exist separately from the individual philosophies of the museum's staff. At the Denver Museum of Nature & Science, the repatriation philosophies and priorities of the Anthropology department find support in the museum's formal policies and governance. This alignment of approach and practice enabled the department to take action when the Siksika sought the repatriation of the sacred medicine bundle across the international border.

Field Museum and the Haida

Interviewees	
Dr. Helen Robbins	Repatriation Director
Dr. Will Pestle	Former Collections Manager of Human Remains (currently Assistant Professor of Anthropology at University of Miami)
Isabel Tovar	Former Collections Manager of North American Ethnography (currently Associate Registrar at the Denver Art Museum)
Andy Wilson	Co-founding member of the Haida Repatriation Committee

Background to Haida Material in Museum Collections

Along the Pacific Northwest Coast, the islands of Haida Gwaii are the ancient homelands of the Haida people. As European diseases decimated the Haida population in the eighteenth and nineteenth centuries, survivors from around the islands resettled in a few communities, like Skidegate and Old Massett.⁸⁹ The drastic changes in population size and distribution left village sites across Haida territory uninhabited and unprotected. Explorers, collectors, and members of the budding field of anthropology were keen to gather up any and all of the material and human remains of the Haida.⁹⁰

Field Museum Curator George Dorsey sponsored and led collecting expeditions to Haida Gwaii between 1897 and 1903.⁹¹ Like his contemporaries, Dorsey believed the Haida and other native cultures were disappearing and that their physical remains and material culture must be

⁸⁹ Cara Ann Krmpotich, *The Force of Family: Repatriation, Kinship, and Memory on Haida Gwaii* (Toronto: University of Toronto Press, 2014), 31.

⁹⁰ *Ibid.* 31.

⁹¹ Susanne Belovari, "Professional Minutia and Their Consequences: Provenance, Context, Original Identification, and Anthropology at the Field Museum of Natural History, Chicago, Illinois." *Archival Science* 13, no. 2 (2013): 162.

collected and preserved in museums.⁹² Writing about his experiences on the Northwest Coast, Dorsey described the Haida:

“They are a doomed race. Wars, smallpox, gross immorality, a change from old ways to new ways — their fate is the common fate of the American, whether he sails the sea in the North, gallops over the plain in the West, or sleeps in his hammock in the forests of Brazil.”⁹³

This fatalistic and dismissive assessment of Haida culture, and the rest of North and South American indigenous cultures, reflects the frontline of social and scholarly opinion at the turn of the century.⁹⁴ Disciples of the new field of anthropology were focused on exploring the differences between the races and constructing a racial hierarchy.⁹⁵ To these ends, Dorsey and his agents traveled along the coasts of Haida Gwaii and collected skulls, bones, and other material from Haida villages and graves.⁹⁶ For close to a hundred years, these remains were stored in the Field Museum’s collections, until the Haida Repatriation Committee, representing the Haida Nation, approached the museum about repatriation in the 1990s.⁹⁷ The Field agreed to the repatriation request and after extensive negotiation and coordination, the committee and some forty members of the Haida Nation traveled to Chicago in 2003 and escorted the remains of approximately 160 people back to Haida Gwaii.

⁹² Susanne Belovari, “Professional Minutia and Their Consequences: Provenance, Context, Original Identification, and Anthropology at the Field Museum of Natural History, Chicago, Illinois.” *Archival Science* 13, no. 2 (2013): 162.

⁹³ George A. Dorsey, “A Cruise among Haida and Tlingit Villages about Dixon's Entrance,” *Popular Science Monthly* (New York: D. Appleton and Company, 1898).

⁹⁴ Susanne Belovari, “Professional Minutia and Their Consequences: Provenance, Context, Original Identification, and Anthropology at the Field Museum of Natural History, Chicago, Illinois.” *Archival Science* 13, no. 2 (2013): 162.

⁹⁵ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums* (Chapel Hill: University of North Carolina Press, 2012).

⁹⁶ Susanne Belovari, “Professional Minutia and Their Consequences: Provenance, Context, Original Identification, and Anthropology at the Field Museum of Natural History, Chicago, Illinois.” *Archival Science* 13, no. 2 (2013): 162.

⁹⁷ Haida Repatriation Committee. “The Journey” *Skidegate Repatriation & Cultural Committee*, accessed April 28, 2017, <http://www.repatriation.ca/Pages/The%20Journey.html>.

The Process of International Repatriation for Haida Ancestors

Interviewees acknowledged the momentum behind the Field repatriation was provided by the Haida. The Haida Repatriation Committee, in their process of bringing home Haida ancestral remains from the museums and institutions across North America, reached out to the Field in the 1990s. The current Repatriation Director at the Field, Dr. Helen Robbins, came on board after the repatriation had been initiated, and she described her role in the return as a coordinator between the curator responsible for the material, and the collections managers at the time, Will Pestle and Isabel Tovar.

From the Haida perspective, Repatriation Committee co-founder Andy Wilson highlighted the intense planning, fundraising, and cultural preparation that went on in the lead up to the Field Museum repatriation. Working with the Border and Customs Agencies, and later the Department of Homeland Security, the Committee worked to ensure all parties were aware of what was happening for the repatriation. Both the museum and the Repatriation Committee worked with the Canadian Consulate in Chicago and the American Consulate in Vancouver to ensure the transportation of the ancestral remains would go as smoothly as possible. Preparing the remains for travel involved packing them with respect to Haida ceremonial requirements, as well as securing them safely for transport in airline cargo holds, and meeting the rising requirements of post-9/11 airport security and border control. Interviewees all agreed the consulate was essential in facilitating smooth passage through the airport and border security.

The Collections Manager of Human Remains, Will Pestle, noted the museum agreed to provide some of the supplies needed for preparing the ancestral remains for travel, including cotton cloth and cedar chips. Wilson explained that the Repatriation Committee work with the chiefs and elders, and consulted with the Haida public, to determine what the protocols to follow

when preparing the remains for travel and reburial back on Haida Gwaii. The protocols included wrapping the remains in small button blankets, and packing them in cedar chips in bentwood boxes. Burial in bentwood boxes was a historic practice, so the Haida public determined this tradition would be part of the reburial ceremonies. Describing his perspective on the difficulty of determining a reburial protocol, Pestle noted:

Every human culture has rules for how we dispose of our dead. No group has rules for how you rebury your dead after you've already buried them, and they've been picked up and taken away, and stored in a box for a hundred years. This is not a situation for which any group is prepared.

Hundreds of bentwood boxes and button blankets were necessary for the Field Museum repatriation, and the many other returns pursued by the Repatriation Committee from museums across Canada and the U.S. Wilson described the experience of learning to make the boxes from elders in the community, and then having to streamline the process and teach a team of workers what to do. In addition to making the bentwood boxes, each needed to be painted with Haida formline designs. The formline designs provided an opportunity for connection when local teachers and students approached Wilson about getting involved in the process. Wilson noted:

I told them if they were going to do the designs, they can't just come in and paint the boxes, it's really important to learn what the designs mean. You have to learn what your family crest is, you have to approach your parents, your grandparents, and your aunts and uncles about what your family crest is and what it means. ...We really had the students engage with their families. For some of them it was really uncomfortable because it was new. It was new to all of us to be able to do this part of it. And not just the high school students had to learn, but my team of guys working to make the boxes. Remember, most of them were brought up in residential schools or if they weren't, their parents were, so that would be a really uncomfortable part of it. Or they were brought up like me, in the Indian day school, where we weren't allowed to do any of this stuff.⁹⁸

Wilson's experience highlights how the process of repatriation can engage communities and

⁹⁸ Residential and Indian day schools were the compulsory schooling system for indigenous peoples in Canada, similar to the boarding school system for tribes in the U.S. The schools were a targeted effort by the federal government and Canadian churches to erase Native language and culture from indigenous children. The last school closed in 1998. See: Joanna Rice, "Indian Residential School Truth and Reconciliation Commission of Canada," *Cultural Survival Quarterly* 35, no. 1 (2011): 22.

provide a starting point to address the century of cultural, psychological, and physical violence perpetrated by colonial and discriminatory government actions, like the residential schooling system.⁹⁹ The process of the Repatriation Committee working with the community to bring family crests, formline design, and bentwood box making back into people's minds also highlights how repatriation can involve the return of knowledge, as well as objects and human remains. On repatriation as a beginning to the healing process, Wilson explained:

A lot of us in Repatriation had family—parents, brothers and sisters, aunts and uncles—who went to residential schools and we were trying to figure out how we heal this part of it, how we make it okay for people to participate and bring some pride back into things they were afraid to do. ...and I think that a lot of times, as a community consciousness, we [the Repatriation Committee] came up with a lot of processes to deal with the hurt and pain that people felt because of the past and how museums got the ancestors and artifacts in the first place. ...People felt it [repatriation] was a healing process because we were bringing back all the things that were beaten out of us, the songs and dances, and the ceremonies, the artwork on the bentwood boxes and the button blankets, and being able to be proud of who we were, even now, even after we went through all those things.

Wilson's perspectives demonstrate how repatriation is much more than a procedural event where a museum takes boxes off the shelf and people sign paperwork, repatriation has the potential to engage Native and non-Native community members, across generations, and serve as a place for learning, healing, and reconnection.

After several years of planning, close to 40 Haida elders flew down to Chicago with the Repatriation Committee to complete the repatriation. Considering the experience of working with Haida elders in the museum, Collections Manager Isabel Tovar explained how the process impacted her understanding of the importance of repatriation:

There was an individual who was part of the team that came, and working with him one day during the preparation of the remains that were going back, he was holding an individual and...he explained to me that he was from the village that this individual he was holding was from, and it was only a generation or two removed. And how upset he was...I can't defend this. I can't defend any of this to this man. It's his grandparent. ...We can't just separate it as ancient history and say no one should care. No, it matters.

⁹⁹ Ibid. 22.

Tovar emphasized how working on repatriations with the Haida and others shifted her perspective on museum collections, practices, and history. With the help of Tovar, Pestle, and others at the museum, the Haida spent several days preparing the human remains taken a century earlier for their flight home to Haida Gwaii.

The Circumstances of Law and Policy at the Field

The origins of the Field Museum trace to the World's Columbian Exhibition, also known as Chicago's World Fair, of 1893—an event organized to celebrate the 400th anniversary of Christopher Columbus' arrival in the New World.¹⁰⁰ Future Curator George Dorsey was in charge of the fair's archaeology and anthropology exhibits.¹⁰¹ The guidebook to the fair described these exhibits as “intended mainly to illustrate the more primitive or uncivilized phases of the development of the human race.”¹⁰² With the fair's collections in hand, exhibition officials and wealthy citizens in Chicago including Marshall Field joined together to found the museum in 1893.¹⁰³

Today, the Field receives federal and state funding from among other sources, and it is the receipt of federal funding that requires the museum to comply with NAGPRA. Robbins noted that the museum developed its own repatriation policy in 1989, in anticipation of the passage of NAGPRA. This policy identifies the fiduciary responsibility of the museum's trustees to protect and preserve collections for the benefit of the Illinois public. Giving insight into the museum's

¹⁰⁰ Susanne Belovari, “Professional Minutia and Their Consequences: Provenance, Context, Original Identification, and Anthropology at the Field Museum of Natural History, Chicago, Illinois.” *Archival Science* 13, no. 2 (2013): 159.

¹⁰¹ *Ibid.* 150.

¹⁰² *Ibid.* 159.

¹⁰³ Field Museum of Natural History, “History,” accessed April 28, 2017, <https://www.fieldmuseum.org/about/history>.

perspective on repatriation, the policy states:

As with all museum collections, human remains and grave objects have research and educational values that help to increase our understanding of the human condition and cultural development. Removal of such items from any museum collection is a matter of fundamental scientific and legal concern, because we are dealing with the essence of a museum's very being.¹⁰⁴

The policy aligns collecting with the essential purpose of museums. As such, repatriation of any collections materials would inherently threaten the purpose of the Field and any other museum.

Shedding further light on the position of the museum's administration in 1989, the policy

positions the concerns of Native Americans for their ancestral remains as a matter of religion:

In recent years there has been a growing recognition of the Native American belief that the excavation and removal of human remains and grave objects associated with those remains has disturbed the spiritual well-being of the deceased individuals. Following these beliefs, Native American groups have requested that human remains and grave objects should be removed from museum collections in order to return them to their spiritual repose in accordance with traditional religious practice.

That repatriation and the interests of Native American tribes are at odds with research and scientific progress was a common perception in the early days of NAGPRA, and continues in some circles of the museum field today. As Walter Echo-Hawk notes, "name-calling" is still an approach used by scientists and museums to argue against repatriation: "When all else fails, science or museums will say Indians are religious fundamentalists; they are anti-intellectual, they are anti-science, they are being unreasonable, and they want to destroy collections that are very much like libraries."¹⁰⁵ The process of working through the requirements of NAGPRA and building relationships between museums and tribes over the past 27 years has done much to dispel the early fears of museums and scholars. That a policy document from the 1980s reflects early and more conservative reactions to the possibility of repatriation is not surprising—at that

¹⁰⁴ Field Museum of Natural History, "Policy Statement Concerning Requests for Reinternment of Human Remains And Burial Objects," 1989.

¹⁰⁵ Walter Echo-Hawk. "Repatriation Symposium: Debunking the Top Ten Reasons Given By Scientists to Keep Dead Indians," *Arizona State Law Journal* 44 (2012): 651.

point, museums did not yet possess the perspective of time and experience. The striking thing about the policy document is that it is the standing repatriation policy for the Field Museum.

Noting the unaltered state of the policy, Robbins explains:

The 1989 policy really hasn't [been revised] because it's pretty straightforward. The policies and procedures [for repatriation] definitely have changed and been revised, and who it goes through and how it goes through the system in the museum has changed over the years, and presumably will continue to change, but that [1989] policy statement has pretty much stayed the way it is...to deal with everything we need to do.

The policy defines with whom the museum is willing to work on repatriation and places limits on how the returned material can be disposed. The document states that it is specifically written to address Native Americans concerns in re: human remains, associated grave objects, and ceremonial objects for traditional religious practices—roughly the same categories that the federal legislation would define the next year in 1990. While the policy is written for Native American tribes, it also states the museum will consider repatriation requests from other cultural groups on a case-by-case basis. For international repatriations, the requests must come from the descendant communities of the ancestral remains, as opposed to a national government or other institution. Additionally, the Field only considers international requests if the descendant community plans on placing the remains and funerary objects in “permanent spiritual repose.”

Robbins shares her perspective on the purpose of the policy:

We don't want to be working with the [national] government per se, we want to be working with the actual people, and that the remains would be in some kind of spiritual repose, so that means it wouldn't be on display in a museum. ...The idea being that it's something different than what we've already got here. It's not going to go back to Egypt to be on display in Cairo. Part of the purpose of the policy is to recognize the specialness or differentness of human remains to other categories of things, items. In respect to that idea and concept, then the principle would be that we're not just getting rid of our human remains so that they can go into a similar context, [we're returning them] so they would be going to a more appropriate context. and I think that's consistent with this idea that human remains and associated funerary objects exist in most cultures as a separate, special entity or category.

A challenging aspect of the 1989 policy, it effectively allows the museum to have a say in what an indigenous group decides to do with the repatriated collections. In NAGPRA, as a contrast, once the collections have been transferred from the museum, the museum has no rights or control over those objects or human remains any longer. The law reinvests authority in the peoples who have consistently been excluded from the decision-making process in museums.

Current and former Field Museum staff described the museum's approach to repatriation as a mostly reactive process. The museum considers and responds to inquiries and requests for repatriation, but does not generally identify remains or cultural objects that could be repatriated, and then reach out to affiliated groups about the potential for return. Robbins explained:

We're not in a position for a whole bunch of reasons to decide what should or shouldn't be repatriated [and reach out to people], it's really a reactive process so we respond to requests. Sometimes after consultation. Sometimes, we initiate consultation, but mostly it's in response to requests. ...In terms of international [repatriation] we don't seek it out, but we do respond to it. Usually people contact us and I explain what our process is...and that starts the internal process.

At the time of the Haida Repatriation, authority over whether to reject or proceed with repatriation requests was vested largely in the curators of the departments. If a curator were in favor of pursuing a repatriation, the question then went before the museum's general counsel and administration. Summing the nature of the request consideration, one of the former collections manager stated, "These are viewed as museum property, so to return them, the rights and title have to be given up. And those are decisions to make at the highest level of the museum."

The Field's 1989 repatriation policy has provided grounds for curators to move forward with international repatriation. Tovar noted how then Curator of the Americas, Jonathan Haas, made use of the policy to support the repatriation of ancestral remains to the Haida, even without the presence of a guiding legal framework like NAGPRA:

The repatriation policy was written in such a way...that [Curator] Jonathan Haas could

point to the policy to allow the international repatriation even without having to go through NAGPRA. The policy was in place to allow that, but I also remember a separation that we were able to return the ancestral remains, but there are still funerary objects in Chicago that did not go back.

While the policy stipulates the return of human remains and associated funerary objects, in the case of the Haida repatriation, the objects were not returned alongside the remains. Tovar commented that unknown to the current museum staff, the objects had been separated a century ago when everything came into the museum—human remains and ethnographic objects were separated into different collections, overseen by separate staff. On the move of the Haida to not pursue the simultaneous repatriation of the associated funerary objects, Tovar suggested:

At some point it became clear that there were objects associated with the remains, but the Haida Repatriation Committee's focus was on the individuals, so I believe they didn't want to jeopardize the negotiations by also pushing for those objects. And the objects weren't initially known because of the way the documentation had been done, when everything came into the museum in the 1800s, everything had been separated out.

Tovar's perspectives also shed light on the difficulty of establishing strong intellectual control over museum collections when, almost from the first, there have been inconsistent record keeping and cataloguing practices. Wilson noted that when approaching the larger issue of repatriation, the Haida chiefs and elders gave the Repatriation Committee the primary mandate of bringing home the people from museums and institutions across North America, objects were secondary to this goal. As such, when the museum discovered the associated funerary objects in collections, the Repatriation Committee continued to prioritize the return of the ancestral remains rather than also pushing for the return of the objects.

Both former collections managers recalled the ability of the museum to proceed with the repatriation as hinging on the nature of the requested material as human remains. Tovar noted:

For the museum, the board and the curators were able to move forward because these were individuals. These are human remains. They're not owned by us. We can't keep these, we are able to return these. That really, I think, was the main reason they were able

to complete the return. ...We can return them without setting a precedent. And the Field Museum is very good about that.

While the 1989 policy indicates human remains and objects can be returned, the Field in the early 2000s was very cautious about setting a precedent for itself or other museums about when and what it will repatriate internationally. As experience and practice at the Field continues to develop, it will be interesting to see how the museum navigates new types of repatriation requests coming from across international borders.

The Tone of Repatriation at the Field

The Field presents an interesting dynamic of a careful and conservative approach to repatriation in policy, with a receptive and forward-looking staff. Both collections managers interviewed have since left the Field, but their attitudes about the significance and possibility of repatriation complement the initiatives of current Field curators like Alaka Wali and John Edward Terrell. Such current work at the Field includes connecting with the local and international communities whose materials are in collections, sharing authority over curation and collections management, and collaborating with communities on exhibitions that lessen the “othering” or exoticism of the cultures on display.¹⁰⁶ The conservative repatriation policy and the progressive work of curators and other staff suggests that the highest levels of the museum’s governance and administration, the policy-makers, are opposed to repatriation in principle. The curators, collections managers, and other staff who directly work with tribes in the U.S. and communities in and outside this country indicate the value they see in repatriation and

¹⁰⁶ See “Museum Anthropology Leaders: Alaka Wali, Field Museum, Chicago, Part 1,” Interview on February 28, 2014, *Museum Anthropology* blog, accessed April 28, 2017, <http://museumanthropology.blogspot.com/2014/02/museum-anthropology-leaders-alaka-wali.html>; and John Edward Terrell, “Protect, nourish, enjoy: Co-curation & world heritage management,” *Pacific Anthropology at the Field Museum* 2013, accessed April 28, 2017, <https://sites.google.com/a/fieldmuseum.org/pacific-web/Home/partnerships/co-curation>.

collaborative museum practice in the way they pursue their work.

Both collections managers interviewed made the point that museums and related disciplines like archaeology have the longstanding habit of collecting, without necessarily much vision about the long-term disposition of those collected objects. Tovar emphasized the problem of lack of intellectual control over large collections:

“You see this in every museum, there are boxes and boxes of things. People keep digging stuff up, or they keep getting things, and then they just bring them in and leave them there. And then no one knows what’s there. ...I saw it as a privilege to have access to the back side of this, to come into the museum environment as the professional who is going to allow access and clean this up, and make it as clear as possible what is there. It’s just astonishing to me that you could have thousands and thousands of things and they just disappear into this black hole.”

In this way, the notion that the primary mandate for museums is to collect and preserve is called into question. When items are collected, but poorly documented, or poorly described in databases, then the knowledge and information they represent goes unrealized.

The work of individuals like Tovar, who approach collections management as an opportunity to change the nature of accessibility of collections, refines that primary mandate for museums. For them, it is no longer sufficient for museums to collect objects and preserve them, the potential value of collections needs to be realized by connecting people back to those objects, people who can then make meaning with them.

Another key argument against repatriation, that collections need to be kept so researchers can learn from them and further our understanding of human history and the world around us, was deconstructed in Pestle’s experience. As Collections Manager of Human Remains, Pestle observed the distinct lack of researchers using the collection of Haida ancestral remains.

Reflecting on his conversations with the Haida and other groups, Pestle described:

One of the things that’s profoundly offensive to these native peoples is not just that this material was taken—and that it was taken by some pretty underhanded techniques, and

we can all agree that the way it was done was pretty gross and should never be repeated—but so much of the material was just languishing. And very little was done to justify its removal in the first place.

There were many reasons why human remains and material culture of indigenous peoples were collected over the past several centuries, but the argument that museums need to protect these collections now for the benefit of researchers and the advancement of knowledge conveniently overlooks the long history of lack of use of museum collections.

As Tovar noted, a prominent barrier to use of collections has been the lack of accessibility, a product of limited record keeping and cataloguing. At the same time, however, is the reality that archaeologists and other researchers have been conducting their work in such ways that collections continue to grow without simultaneously being used. There are deeper layers to the issues of limited use and continued expansion of collections—for example access has historically been restricted to a minority of museum professionals and academic elites—but the comments of Tovar and Pestle illustrate the reality of experience contradicts many of the theoretical arguments against repatriation.

Repatriation at the Field prompted conversations between interviewees and colleagues about the process of adapting collections management, consultation, and rethinking of practice. Tovar described how she and others working on the North American ethnographic collections would try to accommodate tribal requests for changes in storage practices and handling, even for material not subject to NAGPRA. Explaining the interaction with colleagues, Tovar noted:

To [the other collections managers] it was, ‘Why are you bothering with this? Why does it matter?’ To them, it’s a thing. A thing is a thing, and you just handle it. ...so it was sort of this educational moment, this is the ‘why,’ we are being asked to behave this way because we are the caretakers now.

Tovar’s comments indicate an underlying willingness to acknowledge that the value systems of others, the preferences for how objects are handled and stored, and the very treatment of

materials in collections, are just as valid as the habitual preferences of the museum field. Her thoughts also suggest a reimagining of the museum profession and a reconsideration of for whom and for what purpose museum collections are preserved.

In that vein, Pestle also expressed how his view of the museum profession and the purpose of museum collections shifted with experience in repatriation. Pestle described a resonant moment for him that occurred while touring the Haida collections at the Field with the Repatriation Committee and elders. An elder was admonished by one of the museum staff for shaking a rattle and responded by saying, “It’s a rattle. It’s not doing its job if it’s not rattling. It’s not doing what it was put on this earth to do, if it’s not rattling.” Pestle explained that that perspective had never occurred to him:

And to me that was one of those mind-blowing experiences. This values this piece in a completely different way. This rattle is meant to be played, and it’s sitting on this shelf not moving. The dance mask needs to dance. The drums need to be played. And as a museum person, you sit there and you wear gloves and you move things very gingerly, and you don’t even talk in a loud voice. So that was a whole other world. It was incredibly eye-opening for me, that these things have different lives for other people. And I should have known this! I’m a goddamn anthropologist! I should have been aware.

Though Pestle joked at his embarrassment for not realizing the worldviews and value systems around him, he also emphasized that those complementary systems are a tremendous opportunity for museums. By recognizing, acknowledging, and opening dialogue about other ways of seeing and knowing, museums and indigenous peoples can significantly alter the status quo of collections management, exhibition, and education in museums. Along with the new opportunities for giving the museum purpose, these approaches can also start to address the colonial legacies and history of exclusion in museum spaces.

Summary Findings

Each case of international repatriation involved a unique process for returning human remains and cultural objects across the U.S.-Canada border. While each instance of repatriation proved distinct, certain themes emerged across all the cases reflecting common experiences, perspectives, and attitudes. These shared themes include: a willingness to acknowledge multiple value systems; the definition of institutional priorities; pursuing the letter or the spirit of the repatriation law; and lastly, the relationships and opportunities growing from repatriation. Explored here, each of these themes provides insight into thought and practice across the museum field.

Acknowledgement of Multiple Value Systems. Museum professionals and First Nations representatives all highlighted that building momentum towards collaboration and repatriation involved a willingness on the part of the individuals involved to acknowledge the value systems, goals, and core beliefs different from their own. Important to note is this acknowledgement does mean one individual gives up their own convictions, it simply involves recognizing that another's viewpoints are at least of equal value to one's own. Considering the decolonizing methodologies discussed by Amy Lonetree, Nancy Marie Mithlo, and other authors, making space for alternative worldviews is an essential aspect of deconstructing the vestiges of colonialism within museums.

Institutional Priorities. Considering the progress made thus far on repatriation within the U.S. and the future of international repatriation, interviewees from all sites discussed the limitations and opportunities created by institutional priorities. Repatriation requires many resources, and NAGPRA is an unfunded mandate. Progress occurs when museums dedicate the necessary staff, funding, time, and consideration to the process of repatriation, relationship

building, and collaborative, respectful partnerships. If museum departments and administrations do not set repatriation and potential relationships with indigenous groups as institutional priorities, then forward movement on repatriation efforts and the building of those relationships will be greatly hindered.

The Letter or the Spirit of the Law. Museums and institutions can fulfill the minimum requirements of NAGPRA in the U.S. without rising to the spirit of the law. Depending on priorities and interests of an institution and staff, the process of consultation and repatriation through NAGPRA can be choked and collections made physically and intellectually inaccessible. As civil rights and human rights law, NAGPRA can be a way for museums to contribute to the righting of consistent, systematic discrimination and disregard for Native peoples, cultures, and lives in the U.S. If a museum chooses to view NAGPRA purely as an administrative law regulating the disposition of collections, that museum effectively chooses to ignore the opportunity for healing, cultural revitalization, and affirmation of tribal sovereignty implicit in the spirit of the law.

Relationships and Opportunities. Also linked closely to institutional priorities and the pursuit of the spirit of the law, interviewees defined new relationships as one of the most significant outcomes of the process of repatriation. While the act of returning ancestral remains and objects is of course a primary outcome, interviewees all highlighted how the relationships slowly fostered through the process of repatriation hold tremendous potential for the future of museum practice. For museums, repatriation can be a means of reparation to the indigenous communities, and a means of opening lines of communication with groups historically ignored or excluded from museum practice. The slowly built relationships, respect, and trust between indigenous peoples and museums open the door for innovative projects and collaborations, and

further serve the process of museum decolonization.

While these key themes may not be universal to U.S. museums undertaking international repatriation, they do shed light on issues and concepts that have arisen in different types of institutions working on different types of repatriation. For museums new to the process of international repatriation, these themes can create awareness of important considerations when the benefit of experience does not yet exist.

Chapter 5 Implications and Recommendations

This study revealed varying interpretations by museum professionals on how NAGPRA can be used as an instrument to accomplish international repatriation. These attitudes vary, in part, because of the nature of the museum (state, public, private, etc.) and the related flexibility of an institution to remove material from collections and return it to another group. The conflicting, emerging perspectives on whether or not it is appropriate to use NAGPRA for the ultimate goal of returning material to a non-federally recognized tribe, in or outside the United States, have implications for the museum field as international repatriation efforts gain momentum. A museum can damage relationships and its own reputation if it is seen to misuse a significant civil and human rights law, manipulating the application of the law beyond its original scope and intent. At the same time, absent any other enabling legislation for state institutions, NAGPRA may be the only means for an institution to fulfill the spirit of the repatriation law and return crucial cultural materials to indigenous peoples outside the U.S. For state institutions, working with state governance and legislature could be a new avenue to pursue return through political or diplomatic channels, relying too heavily on special exceptions to accomplish international repatriation could fail to create a strong precedent for return. The political route could also become a mine field if political figures take a strong stance against removing collections from the public domain to return them to indigenous groups. Museums must carefully consider their institutional priorities and the relationships they have and would like to cultivate with the communities whose material forms museum collections. Whether or not a museum defines the letter of NAGPRA as more important than the spirit of the law, the institution must proceed with transparency about their repatriation process.

The use of NAGPRA as a mechanism for international repatriation also has implications for the types of material repatriated to indigenous groups in other countries. As a museum responds to an international repatriation request, it could be an easy extrapolation for the museum to consider the requested material in relation to the categories of material defined in NAGPRA. While the extension of the process and protocols of NAGPRA to international requests might help a museum justifying a proposed repatriation to its administration, relying too much on NAGPRA for an understanding of what should be repatriated can become problematic. The categories of objects eligible for repatriation under NAGPRA are narrow, and even within the U.S., the law does not always facilitate the return of objects that are determined to be inappropriate to keep in museum collections. Over-extending the framework of NAGPRA to limit what is considered for international repatriation creates an ethical gray area for museums.

Really, international repatriation provides an opportunity for museums to develop a wider framework for repatriation which can then inform domestic practice. For example, archival material like photographs, audio recordings, and film are not eligible for repatriation under NAGPRA, but these materials can easily include sacred and sensitive intellectual property of Native peoples. Museums willing and able to work with international indigenous groups on the repatriation of such intellectual property could contribute to the development of a precedent for additional types of materials considered for repatriation domestically. Though the current political climate makes the amendment and expansion of NAGPRA unlikely in the near future, this type of pioneering work could have long-term implications for U.S. repatriation policy.

Considering future research, new studies should investigate the contrast between the processes of repatriation domestically within Canada and the United States. Where museums in the United States operate under federal legislation, repatriation in Canadian museums is guided by a set of recommendations outlined in the 1992 Task Force Report on Museums and First

Peoples. Recommendations allow a greater flexibility in how repatriation can play out, but provides no mechanism to resolve disputes when conversations and negotiations on repatriation break down. Just as problematic, legislating repatriation compels museums to act, but it also removes agency from indigenous groups seeking repatriation. As Amy Lonetree stressed, repatriation is part of a healing process for indigenous communities recovering from the intergenerational trauma of colonialism. Legislation on repatriation forces the process forward without particular deference to that healing process, or to the priorities, interests, or cultural protocols of an indigenous nation. Clearly a balance must be struck between pushing museums to respond to repatriation and respecting indigenous determination of how and when the process proceeds. Future research on the strengths and weaknesses of repatriation in and outside the law could encourage dialogue between indigenous peoples and museums on the development and revision of law, policy, and practice.

From a practical standpoint, museums need to focus on establishing and strengthening relationships with the communities and peoples whose materials make up collections. Trust and relationships create a wealth of opportunities to innovate in and outside the museum, be it through improving collections care and cataloguing, re-presenting cultures on their own terms in museum spaces, fostering the revitalization of traditional skills and knowledge, and more. Both museums and indigenous groups stand to gain tremendously through closer relationships, and repatriation provides a starting point for conversations and connections leading towards those positive outcomes.

As a credit to building those essential relationships, museums need to increase transparency around repatriation. Transparency can be improved through straight forward actions like adding a page to a museum's website on repatriation and highlighting what it is and why it matters, publishing instances of successful international repatriation online with the consent of

the involved indigenous group, and specifying ways people can reach out to the museum to learn more. Museums also need to define, make accessible, and regularly update their institutional policies on collections management and repatriation. Further, museums should draft formal decolonization statements which identify institutional goals and strategies for decolonizing museum space and practice. A decolonization statement moves academic discussions of decolonizing methodologies into a concrete plane where museums are more accountable to their indigenous audiences and themselves. Repatriation is a starting point for museum professionals to elevate their practice.

Continuing the emphasis on the themes of communication, relationships, and transparency, the next steps for museums require engagement in the conferences, symposia, and working groups focused on international repatriation and indigenous rights. The Association on American Indian Affairs has hosted an annual Indigenous International Repatriation Conference since 2015, which brings together tribal elders, Native nations, governments, museum professionals, and others together to debate and strategize about rising issues in international repatriation. Museums need to be in attendance at such meetings to participate in, contribute to, and learn from the discussion.

Indigenous peoples worldwide are asserting their sovereignty over their lives, cultures, resources, and histories within nation states and on the international plane. Nothing requires museums to engage with indigenous groups and rethink their practice for the twenty-first century, but whether they are prepared or not, museums of all sizes will be impacted by the rising movement of international repatriation. It is up to the dedicated individuals on both sides of the conversation to define new policy and practice, and push the museum forward from the roots of colonialism toward a place of respect, empowerment, and opportunity.

Appendix A

Interview Guide

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The following is a guide for semi-structured interviews to be conducted with museum and legal professionals who have been involved in international repatriation efforts from U.S. museums in indigenous peoples internationally. The guide provides talking points and a general sequence for interviews. Not all questions will be asked in an interview, and additional questions may arise during the course of the conversation between the interviewer and interviewee.

Consent section

- [Review the consent form with participant, main points as follows]
 - Study consists of recorded interview lasting approximately 30-60 minutes
 - Voluntary participation, can decline to answer any question

Background

- Describe current role and how repatriation plays into that
- Describe first introduction to the process

Domestic Repatriation

- Logistics
 - How are objects identified for repatriation
 - Who is involved in the process, single person or many hands
 - What has been the average time frame for a repatriation, start to finish
 - What resources that go into making a repatriation happen

International Repatriation

- Outline the basics of the case of international repatriation
- Were things already underway when you came on board
 - Who initiated the return
- In your role as [curator, archaeologist, etc.], how did you approach that process
- After identifying the need for return, were there any unexpected issues that came up, roadblocks
- Did you physically move the object, describe process
- [If multiple international repatriations] Was there difference in the repatriation process for different types of objects
 - Did you use the same legal mechanism to transfer the object
 - How has your approach changed or solidified with increased experience repatriating across international borders
- If you were to repeat the process, is there anything you'd do or prioritize differently

Internal Museum Policy

- Do you have a formal/written policy for either repatriation or collections management
 - How did the policy help/hinder the repatriation process, (or did it not influence process at all)
- Describe any changes to museum collections management resulting from the process
- Has the museum revised or updated any policies either in response to repatriation or in response to stronger relationships and communication

Individual Philosophy

- Training as [curator, archaeologist, etc.] archaeology like so many cultural fields of study has a pretty problematic past of objectifying cultures and people
 - Will you talk about where you're coming from when you do your work as an archaeologist, as a curator, as a professor
 - have your experiences changed the way you do your work
 - have they changed how you think about what NAGPRA is and what it's for
- What does repatriation mean to you
- What's the most important, or some of the most important, outcomes
- What do you see on the horizon for international repatriation
- Anything we haven't touched on that you can share

Appendix B

Consent and Release Form

This study explores the process of repatriation of human remains and cultural patrimony from U.S. museums to First Nations in Canada. Your participation in this study will consist of a recorded interview lasting about 45 minutes. You are not obligated to participate in the interview, you can decline to answer any question, and you are free to opt out of continuing the interview at any time.

Please sign below to indicate that you have read and you understand the information on this form and that any questions you might have about the interview have been answered.

- I agree to participate in the study conducted and recorded by the researcher.
- I understand and consent to the use of the recording by the researcher. I understand that the recording is for research purposes only and that my name and recording will not be used for any other purpose.
- I understand that the recording may be transcribed and quoted with my name in the final research product (master's thesis).
- I understand that participation in this study is voluntary and I agree to immediately raise any concerns to the researcher.

Printed Name:

Signature and Date:

Thank you!

Contact the researcher with any questions:
Elizabeth Wessells [egwess\[at\]uw.edu](mailto:egwess@uw.edu)
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