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# Museum Sector Policy Deficit: Repatriation from United States Museums

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**Keywords** repatriation; museums; United States; human remains; cultural artifacts

**Abstract** With a mission to preserve objects in perpetuity, the museum sector grapples with repatriation and the ethical dilemma posed by some objects in museum collections. This dilemma is highlighted, sometimes on the global stage, when communities or countries petition a museum to return an object, which could have been wrongfully acquired. This article reviews current guidelines within the United States museum sector including those outlined by the American Alliance of Museums, national legislation including the Native American Graves Protection and Repatriation Act, and The Hague Convention 1954, and the 1970 Convention, to analyze what—if anything—guides museums in their legal and ethical obligations for repatriation. Several cases, including the Kennewick Man and the Metropolitan’s Euphronios Krater, highlight the successes and limitations posed by current policy. A case study from the Emory University Museum demonstrates the benefits of establishing pro-repatriation policies. Current policy is not sufficient. The United States museum sector should create industry standards and stronger guidelines that hold museums accountable, and that aid both the museums and source communities seeking repatriation.

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Museums have traditionally been accountable to their founders and benefactors as a sanctuary to house and care for articles from the past. Repatriation, the process of returning artifacts and human remains to the culture or nation of origin, has risen to the forefront of museum ethics, particularly as museums consider their duty to future generations of museum goers and to the global community. Typically, individuals, social groups, or representatives seeking repatriation of an artifact submit a request to a museum collection. It is incumbent on the museum to review whether or not there is a persuasive case to return the artifact, but this review process is usually an ethical judgment rather than a legal requirement. Through repatriation, the museum relinquishes control of an artifact in its collection, meaning that it also waives its original pledge for perpetual preservation, and allows another group or individual to determine the long term fate of the artifact. This is one reason the international museum community remains divided as to whether or not repatriation is the best course of action for disputed objects.

Critics of repatriation argue that returning human remains or cultural artifacts to the cultures of origin could set a precedent that would eventually decimate museum and university collections, and result in a loss of information regarding the history of humanity. Museums, such as those that have signed the “Declaration on the Importance and Value of Universal Museums” (2004), assert that an object does more for the public good in their collections because diverse objects are able to teach society about other cultures, and build appreciation and acceptance through examining multicultural artifacts displayed next to one another.<sup>1</sup>

Proponents of repatriation, however, explain that human remains and cultural artifacts are vital to preserve cultural identity and to the overall success of a culture, “these countries want their own cultural property to contribute to their own process of growing to national maturity.”<sup>2</sup> Other scholars explain that repatriation is more than just making amends for the past; rather it can help heal some of the emotional scars that are passed from generation to generation within these communities today.<sup>3</sup> This paper will examine cases of repatriation from United States museum and university collections highlighting current professional guidelines, national laws, and international treaties. However, current policy addressing repatriation is insufficient. The United States museum sector should establish pro-repatriation practices and guidelines that hold museums accountable and aide source communities and countries seeking the return of their ancestors’ remains or artifacts.

## **Professional Guidelines**

The American Alliance of Museums (AAM), a national advocacy and accreditation organization published the *National Standards and Best Practices for U.S. Museums* (2010), which outlines the ethical code all museums should emulate.<sup>4</sup> Just over 3,200 museums in the United States have pledged to follow the ethical guidelines and standards put forth by AAM.<sup>5</sup> Yet according to the Institute of Museum and Library Services, as of 2014, there are over 35,000 active museums in the United States.<sup>6</sup> Unfortunately, this book of standards and additional documentation related to museum management are only available to member organizations and to paying individuals. Therefore, the majority of institutions in America do not have access to and may not be aware of these ethical standards and best practices.

Within the collections section of the national standards, AAM devotes seven pages to the discussion and guidance regarding the unlawful acquisition of objects from the Nazi era, and how museums should proceed when they suspect an object in their collections could have dubious provenance.<sup>7</sup> Yet, in regard to repatriating human remains, archaeological material, or other cultural artifacts, there is very little guidance; institutions are encouraged to evaluate claims and to engage in “voluntary discussions.”<sup>8</sup> Toward the end of their 2010 publication, AAM states, “the museum field is currently grappling with the ethical dimensions of acquisitions and claims regarding antiquities and archaeological materials. Soon there will be national and discipline-specific standards and best practices guiding museum conduct in these areas.”<sup>9</sup> AAM’s standards were updated in 2010, but seven years later, questions of repatriation are still left to each individual institution to decide.

The guidelines and standards laid out by AAM do not provide enough of a framework to assist museums with possible repatriation claims. Nor do they hold any legal standing or professional consequence. American museums are encouraged to follow the best practices

outlined by AAM, but “shouldn’t be faulted if they can’t.”<sup>10</sup> Further, the International Council of Museums (ICOM), which guides AAM and other national museum organizations, states that in terms of repatriation, “the museum concerned should, if legally free to do so, take prompt and responsible steps to cooperate in its return.”<sup>11</sup>

## **United States Law**

In conjunction with their standards and best practices, AAM maintains that each museum must observe all national laws and international conventions. The United States is a common law country, which means that human remains cannot be legally owned or transferred; close family members are afforded the right of care and disposal of the remains.<sup>12</sup> However, common law states that ownership can be retained if the remains have been preserved in some way like mummification, stuffing, or any other special procedure.<sup>13</sup> Therefore, there is no legal basis for repatriation of preserved remains from museum or university collections. However, in 1990, the United States Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA) to resolve, among several other issues, the question of control or ownership of Native American remains and cultural property.<sup>14</sup> NAGPRA also required museums and other institutions to devote time and resources to inventory their collections. Institutions are instructed to contact relevant Native American groups and notify them of museum holdings of remains or cultural artifacts.

Immediately following its enforcement, NAGPRA reunited members of Native American tribes with their deceased ancestors. In 1993, for example, the Smithsonian Institution’s National Museum of Natural History repatriated remains from 17 members of the Northern Cheyenne tribe.<sup>15</sup> The U.S. Army Medical Examiner had collected the remains from a mass grave to study them following the massacre at Antelope Creek in 1879.<sup>16</sup> The Smithsonian inventoried its collection as a result of NAGPRA requirements, and through collection records the Smithsonian identified the remains and notified members of the Northern Cheyenne tribe. A delegation from the tribe collected the remains from the museum and brought them to their homeland in Montana for a burial ceremony according to their tradition.<sup>17</sup>

NAGPRA also stipulates that museums are required to publish summaries of funerary or sacred objects and other cultural items that are not associated with Native American groups.<sup>18</sup> This published material could allow for repatriation claims from other culturally diverse groups. Segments of the museum industry are concerned that publishing this inventory information will open the door for incessant repatriation claims and could ultimately damage collections. However, this has not been the case thus far; “rather, the unprecedented mobilization of scientific resources needed to identify the appropriate groups that these skeletons belonged to has resulted in unforeseen opportunities to study bones that would otherwise have been forgotten.”<sup>19</sup> This legislation has enabled institutions to study their own collections and has led to a better understanding of their holdings, which has resulted in new discoveries and an increased ability for scholars to access information.

Clauses within NAGPRA do not guarantee and perhaps impede, prompt return of remains and other cultural artifacts to tribes. According to NAGPRA, if a claim is made from a Native American community, the agency or museum must return the remains or artifacts “unless such items are indispensable for completion of a specific scientific study, the outcome of

which would be a major benefit to the United States.”<sup>20</sup> In 1996, human remains were discovered on federal land on the Columbia River near Kennewick, Washington. After in-depth analysis, it has been determined that the remains are roughly 8,400–8,700 years old and are some of the oldest bones ever found in North America.<sup>21</sup> The case resulted in claims for repatriation from five tribes in the Pacific Northwest, all claiming ancestral connection.<sup>22</sup> For almost two decades it was difficult to prove conclusively whether or not the Kennewick man was of Native American descent, and if so, from which modern day tribe he was a likely descendant. In addition, a court noted the value of these remains to science and determined that the remains should be housed at the Burke Museum in Seattle while remaining under the official control of the United States Army Corps of Engineers. Finally, in 2015 after years of research and testing, DNA studies on the remains confirmed that the Kennewick man was Native American.<sup>23</sup> All five tribes have continued to advocate for the return of the Kennewick man, and he will likely now be buried by the group of tribes.<sup>24</sup>

While NAGPRA appears to be an effective tool to assist Native American communities in the fight to bring their ancestors’ remains and artifacts home, the tense relationship between tribal customs and science continues to be an issue. Only institutions that receive federal funding are required to follow NAGPRA, meaning that privately funded institutions or organizations are under no obligation to observe the law. Further, this law does nothing for communities that live outside of the United States. NAGPRA is a step in the right direction toward supporting the process of repatriation, but it is clearly limited in scope.

## International Conventions

As early as 1899, the international community lobbied to protect the world’s cultural artifacts.<sup>25</sup> The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has passed several treaties and conventions aimed at protecting cultural property and preventing further injustices or damage in the future.<sup>26</sup> “UNESCO has declared that repatriation is a basic human right,” explained Janet Marstine, editor of *New Museum Theory and Practice*, “all communities are equal and when any group loses part of its cultural patrimony, all of humankind suffers.”<sup>27</sup> The *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954*, and the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970*, are often cited as key agreements combating the international theft and destruction of cultural property.<sup>28</sup>

Each member state must individually approve an international treaty or convention in order for it to be legally binding in that country, but both of these conventions deny retroactivity, making the date of acceptance even more vital. The Hague Convention of 1954, for example, which grew as a response to the destruction caused by World War II, was only ratified by the United States in 2009.<sup>29</sup> The First Protocol of the 1954 Hague Convention included language around repatriation and restitution, but as of 2016 has not been signed by the United States. Additionally, the 1970 Convention was only signed by the United States in 1983.<sup>30</sup> Article 7 of the 1970 Convention includes rhetoric on repatriation asserting:

*States Parties to this Convention undertake, at the request of the State Party of origin, to take appropriate steps to recover and return*



*any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.*<sup>31</sup>

There are two obvious faults to Article 7 in terms of repatriation: first, the stipulation for importation after the date of entry into force in both countries, could impede effective action and drastically limit the scope of material. For instance, Austria signed the convention in 2015, meaning that only objects imported after that date could potentially fall under the scope of Article 7. Second, the requirement for countries to pay for items that were illegally removed from their country is not only unjust but could also be a deterrent for poorer source countries seeking repatriation. These faults highlight the ineffectiveness of this convention in terms of repatriation.

In 2006, for example, over thirty years since its original purchase, the Metropolitan Museum of Art, New York (Met), repatriated the Euphronios Krater to Italy.<sup>32</sup> The Met purchased the krater in 1972 for \$1 million dollars through a gentleman named Robert Hecht, who represented the owner of the artwork.<sup>33</sup> The krater's purchase was featured on the front page of the *New York Times*, yet within a few months additional articles surfaced suggesting that the krater was illegally excavated from Italy in December 1971.<sup>34</sup> The Met obtained enough documentation to quiet these allegations, so the krater remained in the museum. Years later, the museum's director revealed in his memoir that he had always been suspicious about the object's provenance.<sup>35</sup> It is suspected that the Euphronios Krater was excavated in December 1971, just four months before the 1970 Convention went into force.<sup>36</sup> Further, as highlighted above, the United States did not sign the convention until 1983, so the 1970 Convention did not apply to this object. The museum was not required to repatriate. However, new evidence emerged in the early 2000s that directly linked Hecht and international museums to a larger smuggling and trafficking organization.<sup>37</sup> As a gesture of good will, the Met responded to this new evidence by repatriating the Euphronios Krater to Italy.

The 1954 and 1970 Conventions convey to the international community that our collective cultural heritage is worthy of protection and preservation for future generations. However, the limitations inherent in these conventions beg the question of their effectiveness. While the language used protects future destruction, it does very little in terms of repatriating artifacts. Individual countries and institutions must follow the lead set forth by these conventions and decide whether or not these conventions will weigh into repatriation decisions.

### **Pro-repatriation Standards**

Turning to a country that is currently leading the way in terms of repatriation, Australia provides an alternative viewpoint on how to approach the discussion. Australian museum professionals view NAGPRA, for instance, as "legislative controls [that] impose repatriation on an industry that is clearly not always convinced of the merits of the practice."<sup>38</sup> In their opinion, the United States museum profession follows a federal mandate because it is forced to do so in order to secure future funding, rather than truly believing in the practice. After years of working directly with indigenous communities, Australian museums have strived to change their museum industry by accepting a philosophy of repatriation, which regards repatriation

as an ethical obligation. The Australian museum community has noted, “In recent years the principle of repatriation has been endorsed by federal, state, and territory ministers and governments. This, in turn, has led to provision of improved funding support for repatriation.”<sup>39</sup>

Some United States museums have established pro-repatriation policies independent from current national and sector policy. In 2003, the Michael C. Carlos Museum at Emory University in Georgia repatriated a mummy to Egypt following digital imaging and research which suggested the mummy was Pharaoh Ramesses I. A temporary exhibition of the mummy brought thousands of visitors to the museum, and presumably would have continued to be a significant draw for visitors.<sup>40</sup> However, the museum and university felt they had an ethical duty to repatriate. James W. Wagner, Emory University President, explained, “Emory understood it to be a discovery for the world, which allowed us to do the right thing and return it to its homeland and people.”<sup>41</sup> The university also hoped that this gesture would help persuade other museums around the world to repatriate human remains and cultural artifacts to their countries of origin. A year earlier the university repatriated cultural artifacts that had come from a tomb in Egypt. Emory’s president explained these objects were significant to the history of humanity and should be displayed in their country of origin, rather than a university museum in Georgia. Emory’s continued efforts to repatriate human remains and artifacts to Egypt have strengthened the relationship between the university and Egypt. According to Wagner, the university is now afforded more research opportunities within Egypt, collaboration on exhibitions, and was one of the venues for the international King Tut exhibition in 2009.<sup>42</sup> It is evident that pro-repatriation policies can benefit both the museum and the source community or country.

This article has demonstrated that there are clear gaps in the United States national legislation and international treaties in relation to repatriation. Organizations like the American Alliance of Museums advocate for repatriation when it is called for by national legislation and international conventions, but by not adopting a philosophy of repatriation or advocating for repatriation independent from laws, it could be argued that AAM is violating the spirit of the practice. Despite the positive example of the Carlos Museum at Emory University, it is not sufficient for individual museums to establish pro-repatriation policies on their own because repatriation is “governed by a patchwork of unenforceable institution specific guidelines, subject to change at the discretion of individuals and governing boards.”<sup>43</sup> To create meaningful standards within the industry, the United States museum community as a whole should adopt clearer repatriation standards, emphasizing the museum’s ethical and legal obligations.

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## Notes

<sup>1</sup> “Declaration on the Importance and Value of Universal Museums.” *International Council of Museums News*, Volume 57, No. 1, 2004.

<sup>2</sup> Andrew McClellan, *The Art Museum From Boullée to Bilbao* (Berkeley and Los Angeles: University of California Press, 2008), 225.

<sup>3</sup> Tiffany Jenkins, “Dead Bodies: The Changing Treatment of Human Remains in British



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Museum Collections and the Challenge to the Traditional Model of the Museum,” *Mortality*, 13: 2, 2008:110.

- <sup>4</sup> *National Standards & Best Practices for U.S. Museums*, American Association of Museums (Washington D.C.: The AAM Press, 2010).
- <sup>5</sup> “Museums Committed to Excellence,” American Alliance of Museums, accessed October 28, 2016. <http://www.aamus.org/resources/assessmentprograms/accreditation/accredited-museums>
- <sup>6</sup> “Government doubles official estimate: There are 35,000 active museums in the U.S.,” Institute of Museums and Library Services, accessed October 28, 2016. <https://www.imls.gov/news-events/news-releases/government-doubles-official-estimate-there-are-35000-active-museums-us>
- <sup>7</sup> *National Standards & Best Practices for U.S. Museums*, American Association of Museums (Washington D.C.: The AAM Press, 2010), 50–56.
- <sup>8</sup> *Ibid.*, 58.
- <sup>9</sup> *Ibid.*, 82.
- <sup>10</sup> *Ibid.*, 6.
- <sup>11</sup> “ICOM Code of Ethics for Museums,” *International Council of Museums*, (France: 2013), 10.
- <sup>12</sup> Peter-Klaus Schuster, “The Treasures of World Culture in the Public Museum,” *International Council of Museums News*, Volume 57, No. 1, 2004, 95–96.
- <sup>13</sup> Beat Schonenberger, *The Restitution of Cultural Assets: Causes of Action—Obstacles to Restitution—Developments*. (Berne: Eleven International Publishing, Stampfli Publishers Ltd., 2009), 96–98.
- <sup>14</sup> *Ibid.*, 86.
- <sup>15</sup> Russell Thornton, “Repatriation as Healing the Wounds of the Trauma of History: Cases of Native Americans in the United States of America,” in *The Dead and their Possessions: Repatriation in principle, policy and practice*, ed. Cressida Fforde, Jane Hubert and Paul Turnbull (London: Routledge, 2004), 17.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> *Ibid.*, 18.
- <sup>18</sup> Patty Gerstenblith, “Museum Practice: Legal Issues,” *A Companion to Museum Studies*, ed. Sharon Macdonald (West Sussex: Wiley-Blackwell, 2011), 453.
- <sup>19</sup> Duncan Sayer, *Ethics and Burial Archaeology*, (London: Duckworth, 2010), 111.
- <sup>20</sup> “Native American Graves Protection and Repatriation Act,” 25 U.S.C. 3001 et seq. (Nov. 16, 1990), Section 7.
- <sup>21</sup> “Kennewick Man, The Ancient One,” Burke Museum, May 2, 2015, accessed December 3, 2015.
- <sup>22</sup> Steven Conn, “Science Museums and the Culture Wars.” In *A Companion to Museum Studies*, ed. Sharon Macdonald. (West Sussex: Wiley-Blackwell, 2011), 500–502.
- <sup>23</sup> Carl Zimmer, “New DNA Results Show Kennewick Man Was Native American.” *The New York Times*, June 18, 2015, accessed December 3, 2016.
- <sup>24</sup> Tasneem Raja, “A Long, Complicated Battle Over 9,000-Year-Old Bones is Finally Over,” NPR.org, May 5, 2016, accessed November 3, 2016.
- <sup>25</sup> Although admittedly limited in their scope, The Hague Conventions of 1899 and 1907, for example, were early attempts to prevent destruction of cultural property and illicit export. These conventions had stipulations against the seizure or destruction of cultural objects in an occupied territory. Items seized, therefore, were protected and

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- could be legally repatriated, but only if a member of the armed services committed the act. Items taken by scientists, museums, or collectors would not have been protected by these early conventions. Beat Schonenberger, *The Restitution of Cultural Assets: Causes of Action—Obstacles to Restitution—Developments* (Berne: Eleven International Publishing, Stampfli Publishers Ltd, 2009), 82.
- <sup>26</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict “The Hague Convention” First Protocol, 1954, and Second Protocol, 1999; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970; Convention on the Protection of the Underwater Cultural Heritage, 2001; Convention for the Safeguarding of the Intangible Cultural Heritage, 2003; Declaration concerning the Intentional Destruction of Cultural Heritage, 2003. “Culture—Legal Instruments.” *United Nations Educational, Scientific and Cultural Organization*, Accessed November 2016.
- <sup>27</sup> Janet Marstine ed, *New Museum Theory and Practice: An Introduction* (Oxford: Blackwell Publishing, 2006), 16.
- <sup>28</sup> “Conventions.” UNESCO.org, accessed November 3, 2016.
- <sup>29</sup> As of this publication, the USA has not ratified the First or Second Protocols of the Convention. *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention*. The Hague, May 14, 1954. UNESCO. Accessed October 4, 2016.
- <sup>30</sup> Sophie Lenski, *Ethnological Museums: “Restitution of Ethnological Objects: Legal Obligation or Moral Dilemma,”* podcast audio, *ScienceUncut*, Science Podcast by Volkswagen Foundation, August 14, 2015, accessed November 21, 2015.
- <sup>31</sup> Article 7 (b)(ii), Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970. *United Nations Educational, Scientific and Cultural Organization*, Accessed November 2016.
- <sup>32</sup> Neil Brodie, Euphronios (Sarpedon) Krater, *Trafficking Culture*, 2012, accessed October 12, 2016.
- <sup>33</sup> Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: the Illicit Journey of Looted Antiquities - From Italy's Tomb Raiders to the World's Greatest Museums*, (New York: Public Affairs: 2006).
- <sup>34</sup> Neil Brodie, Euphronios (Sarpedon) Krater, *Trafficking Culture*, 2012, accessed October 12, 2016.
- <sup>35</sup> Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: the Illicit Journey of Looted Antiquities - From Italy's Tomb Raiders to the World's Greatest Museums*, (New York: Public Affairs: 2006).
- <sup>36</sup> Entry into force: 24 April 1972, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970. *United Nations Educational, Scientific and Cultural Organization*, Accessed November 2016. Italy has had national laws protecting their cultural property as early as 1922, meaning that excavation and exportation of an archaeological object was illegal. Prior to the 1970 convention, however, other countries were not obligated to honor Italian laws. See “Law 778/1922,” European University Institute, Academy of European Law. accessed October 16, 2016.
- <sup>37</sup> Peter Watson and Cecilia Todeschini, *The Medici Conspiracy: the Illicit Journey of Looted Antiquities - From Italy's Tomb Raiders to the World's Greatest Museums*, (New York: Public Affairs: 2006).

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- <sup>38</sup> Michael Pickering and Phil Gordon, "Repatriation: the end of the beginning," in *Understanding Museums: Australian Museums and Museology*, Des Griffin and Leon Paroissien (eds), National Museum of Australia: 2011.
- <sup>39</sup> Ibid.
- <sup>40</sup> Andrew W. M. Beierle, ed, "Emory Repatriates Ramessess I," *Emory Magazine*, Winter 2004, accessed December 1, 2015.
- <sup>41</sup> Beierle, ed, "Emory Repatriates Ramessess I."
- <sup>42</sup> Ibid.
- <sup>43</sup> Roger Anyon and Russell Thornton, "Implementing Repatriation in the United States: Issues Raised and Lessons Learned," in *The Dead and their Possessions: Repatriation in principle, policy and practice*, ed. Cressida Fforde, Jane Hubert and Paul Turnbull, (London: Routledge, 2004), 190.

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