

**Challenging the “Love of possessions”¹:
Repatriation of Sacred Objects in the US and Canada**

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Abstract

In 1990, the US passed the *Native American Graves Protection and Repatriation Act* (NAGPRA), requiring the repatriation of ancestral remains, funerary, and sacred objects from museums to source communities. Since then, hundreds of thousands of repatriations have occurred, allowing for respectful treatment of ancestors and re-connections to spiritual, communal practice and ceremony. In Canada, repatriation has been recommended by the Assembly of First Nations, the Canadian Museum Association, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but there is no federal law. Does Canada have a functioning alternative? This review provides a comparison of how repatriation differs in the two countries, demonstrating that case-by-case negotiations in Canada currently allow for more flexibility and customization to the needs of different Indigenous communities, but that the transparency, coordination and funding associated with NAGPRA would be a significant benefit to claimants in Canada.

In 1990, the US Senate legislated the *Native American Graves Protection and Repatriation Act* (NAGPRA), requiring the repatriation of ancestral remains, funerary, and sacred objects from federally funded museums and research centres to Indigenous source communities. Since that time, Indigenous communities have repatriated an estimated “50,518 individual human remains; 1,185,948 associated funerary objects; 219,956 unassociated funerary objects; 4,914 sacred objects; 8,118 objects of cultural patrimony; and 1,624 objects that are both sacred and patrimonial,” allowing for respectful treatment of ancestors and reconnections with spiritual practices and ceremonies.² With respect to the repatriation of sacred Indigenous objects, the US is Canada’s closest comparator. Both countries occupy the territory referred to by Indigenous peoples as Turtle Island, both were settled by the British and the French who instituted aggressive assimilationist policies, and some Indigenous nations straddle the international boundary - a fact that has repercussions for the repatriation of sacred objects. For example, the Blackfoot Confederacy, which has been actively repatriating sacred objects from dominant society museums for decades, consists of four nations, three of which are in Canada (the Siksika, Kainai, and Apatohsippiikani) and one of which is in Montana (the Ammskaapiikani).³ Likewise, the border between Canada and the US divided the Six Nations Confederacy, with most members of the Cayuga nation in Canada, the vast majority of Seneca members in the US, and members of the Oneida nation in both countries, which had consequences for the eventual return of several wampum belts to Indigenous peoples in Canada.⁴ Despite the historic similarities between the US and Canada and the shared cultures and traditions of Indigenous peoples in both jurisdictions, Canada has never enacted a law for repatriation at the federal level. Does Canada have a functioning alternative? To answer this question, the article provides a review of some benefits, drawbacks, and opposition to NAGPRA before turning to options available in Canada. The paper concludes that case-by-case negotiations

currently allow for more flexibility and customization to the needs of different Indigenous communities, but that the transparency, coordination, and funding associated with NAGPRA would be a significant benefit to claimants in Canada.

Table 1. Definitions and terminologies related to repatriation	
<i>Ancestors</i>	In the context of Indigenous claims to repatriate, the word ‘ancestors’ is used to describe human remains.
<i>Cultural property</i>	Material of importance to the cultural heritage of a group. It includes artistic, historical, religious, and cultural objects, as well as songs, stories and dances. ⁵
<i>Dominant society institutions or museums</i>	Non-Indigenous institutions or museums. The word ‘museum’ implies a dominant society museum.
<i>Indigenous peoples</i>	People with “the earliest historical record of living in a particular geographic region.” ⁶
<i>Repatriation</i>	“The return of cultural property to the originating country, community, family, or individual.” ⁷ Under NAGPRA, repatriation is defined as “the transfer of physical custody of and legal interest in Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.” ⁸
<i>Sacred object</i>	“Specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.” ⁹
<i>Tribe</i>	A group of American Indians or First Nations “sharing a common language and culture.” ¹⁰ This term is seldom used in Canada but often in the US.

Part One: NAGPRA

The history of museum collecting is for the most part, one of shameful plundering, looting and unethical practices. Some of the most well-known and respected museum collections are based on the theft or illegal gifting or purchase of Indigenous bodily remains and other funerary, sacred, and

cultural objects. Accounts of how museums were established are outside the scope of this discussion, but very briefly, the Smithsonian (est. 1846), the Peabody Museum of Archaeology and Ethnology at Harvard (est. 1866), the American Museum of Natural History (est. 1869) and the Field Museum of Natural History (est. 1893) contain some of the largest collections of Indigenous ancestral remains, funerary, and sacred objects in the US.¹¹ Kuprecht states that it is an “open secret” that public museums and private collections store the largest amount of Indigenous cultural property in the country, and that the period of 1870 - 1920 was a golden age of collecting fuelled by assimilation and relocation policies that threatened Indigenous peoples’ existences.¹² In a very real way, museums (including their expert staff of curators, anthropologists and archaeologists) had an interest in the demise of Indigenous populations, as imminent extinction was used to justify aggressive and dishonest collecting practices.

Though federal legislation in the US relates to “human remains, funerary objects, sacred objects and objects of inalienable cultural property,” this article is most interested in sacred objects because repatriation of sacred objects has the potential to increase the wellbeing of communities and to contribute to healing from colonialism.¹³ Illness, bad fortune or interruptions in identity and cultural or religious practices are often cited among the consequences of loss of sacred objects. “Without these items, adherents of traditional Native American religions find it impossible to exercise their ceremonial rites. The failure to perform these rituals rips at the fabric of Native American culture and inevitably leads to the destruction of the cultural integrity of individual Native American society groups.”¹⁴

Federal legislation to repatriate Indigenous ancestral remains and sacred objects was a result of Indigenous activism, originally at the state level. When road crews began construction of a new highway in Iowa City, Iowa in 1971, the city engineer discovered the human remains of 28 people;

the 26 Caucasian skeletons were dug up, placed in coffins, and sent to a cemetery for reburial, while those of an Indigenous woman and her baby were sent to a museum for study.¹⁵ As a result of this discriminatory treatment, Maria Pearson, a member of the Yankton Dakota tribe, convinced her Senator to introduce a repatriation law, which was eventually passed in Iowa in 1976.¹⁶ The state of Montana soon followed when Senator John Melcher agreed that it should repatriate a sacred pipe belonging to the Cheyenne people.¹⁷ As momentum at the state level increased, activists from the Native Congress of American Indians (NCAI) lobbied for federal law, arguing that archaeology was an integral part of colonization and territorial dispossession. In 1985, the NCAI secured an agreement with the Smithsonian to produce an inventory of its collections of ancestral remains which provided the foundation for NAGPRA.¹⁸

NAGPRA requires all federally-funded agencies and museums to repatriate Native American and Native Hawaiian ancestral remains or cultural objects. All federally recognized Indian tribes, including Hawaiian organizations and Alaskan Native villages may initiate repatriation under NAGPRA, and all federal agencies and museums are required to engage in repatriation, including the US Army Corps of Engineers, universities, state or local governments, libraries, state historic preservation agencies, community colleges, small historical attractions and even local parks.¹⁹ Since NAGPRA became federal law, many benefits have been realized but this discussion is limited to: 1) coordination, transparency and accountability; 2) lowering legal barriers to Indigenous claims; 3) cultural revitalization; 4) influence on museums outside of the US; and 5) increased opportunities for cultural centres (also known as tribal museums).

The National Park Service which administers NAGPRA, publishes a suite of online tools to encourage transparent, accountable repatriation. Seven distinct databases include information regarding Indigenous repatriation claims and how federally-funded institutions have responded.

Museums can also initiate repatriation, but must first determine the cultural affiliation of sacred objects (defined as a “relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group”).²⁰ The *Notices of Inventory Completion* lists sacred objects that have not yet been claimed, alongside cultural affiliation information, enabling Indigenous communities to identify items that may belong to them. These databases are symbolically and materially significant because not only do they assist Indigenous peoples to reclaim their cultural property, they demonstrate the accountability of dominant society museums to Indigenous peoples. Consequently, the information contained in the databases has increased the confidence of US tribes who assert their rights in new ways. For example, at the Arizona State Museum, “tribes became aware of ASM holdings, and increased their understanding of the museum’s accountability to them. They saw the law broadly, and the confidence it gave them encouraged tribes to initiate discussions on aspects of ASM practice that were not strictly related to NAGPRA materials,” suggesting that NAGPRA’s benefits reach beyond reacquiring sacred objects to repairing past injustices.²¹

In addition to the coordinating role of the National Park Service and the transparency provided by the NAGPRA databases, federal law has recognized Indigenous oral history in the establishment of a deceased person’s genealogy or a sacred object’s source community.²² Acceptance of oral testimony and other traditional forms of evidence is an important legal victory for Indigenous peoples as some stories were never recorded in other formats. NAGPRA “... has achieved what the courts have been unwilling to set out in rulings by placing oral evidence parallel to documentary evidence... The tribal claimants may use oral traditional evidence to repatriate sacred or funerary objects or human remains through the Act’s provisions.”²³ According to Smith, more than 300 successful repatriation claims were supported with traditional oral history.²⁴ Related,

the National Park Service provides funding for Indigenous communities to research objects in museums and to subsidize the costs of taking claims to court, further empowering claimants.²⁵ The tables have turned; museums now must prove that they should *not* repatriate rather than Indigenous peoples having to prove that museums should.

Clearly an important benefit of repatriation is the repossession, reconnection, appropriate treatment, and reintegration of sacred objects back into ceremony and everyday life. With respect to sacred medicine bundles repatriated to the Blackfoot (one of the first high profile repatriations to have occurred in Canada), “Bundles which are not celebrated each year, such as those in museum collections, represent a break in the communication line; a break in the history of Niitsitapi, and a break in the spiritual and ecological balance of the Niitsitapi world.”²⁶ Re-establishing connections and practices has arguably been the most valuable aspect of repatriation and has assisted in accessing lost traditions, ceremonies and languages, as well as invoking pride and confidence in communities that recover sacred objects. Lonetree describes how the Saginaw Chippewa tribe integrated reclaimed sacred objects into the cultural centre, allowing people who had lost their languages, traditions, cultures and religions as a result of assimilation policies and boarding schools, to release the shame of loss.²⁷ Furthermore, young people became proud of their heritage and connected with Elders in new ways.

NAGPRA has so significantly increased awareness of the issue of repatriation of sacred objects to Indigenous source communities that museums outside of the US have created policies or passed laws regarding repatriation. This is critical because the NCAI estimates that between “1-2 million Native American ancestral remains, funerary objects, sacred objects, and objects of cultural patrimony currently exist in international repositories.”²⁸ Reciprocal laws elsewhere stimulate incentive for international repatriations because unfortunately, NAGPRA cannot compel another

country to repatriate.²⁹ France, for example, recently passed a law allowing the repatriation of mummified and tattooed heads of Māori warriors to Aotearoa.³⁰ New international agreements have been reached between Australia and the UK, France and Australia, and Scotland is in the process of developing a policy that may lead to practices that emulate NAGPRA, though at least one example of voluntary repatriation in Scotland was actually based on a Canadian case.³¹ While NAGPRA may only apply in the US, international awareness of this mature law has effectively extended its reach.

Finally, repatriation of sacred objects and cultural patrimony has increased the capacity of Indigenous peoples to develop cultural centres, which in turn enhances cultural revitalization, strengthens communities, and builds confidence. Cultural centres make sacred objects and cultural materials accessible to community members, often including them in contemporary religious and spiritual practice. Cultural centres are also spaces for cultural and political agency. Brenda Child writes, "...the tribal museum exists to contest and critique colonial notions of American and Canadian history that have been so disempowering to tribal nations... Tribal museums remind us that North America is still a place of hundreds of diverse nations, each possessing distinct historical traditions and ways of interpreting and defining history, with dynamic cultural practices that predate the nation-states of the United States and Canada."³² She argues that NAGPRA specifically has provided the impetus necessary to create Indigenous cultural centres that revitalize living traditions, cultures, and languages. Similarly, Whittam refers to the Pekuakamiulnuatsh Takuhikan of Mashteuiatsh who consider repatriations of cultural objects new opportunities to learn about their history and unique culture, while the Haida value sacred objects retrieved from museum collections as a way to capture forgotten teachings and memories, and transmit their culture to future generations.³³

No matter how expansive NAGPRA is in the US, it has limitations and opponents. One of the most significant limitations is its scope: NAGPRA does not extend to private or international collections, yet both represent significant repositories of sacred objects. The American Indian Ritual Object Repatriation Foundation, based in New York, NY – a private non-profit organization - was created in response to an auction of sacred Hopi masks in a private collection overseas, but is now broadly engaged in international and private repatriations on behalf of Native Americans.³⁴ The foundation also prioritizes education, and has published a suggested protocol for the repatriation of sacred objects from private collections, including guidelines on how to approach private collectors, what incentives can be offered, and alternatives if repatriation is not possible.³⁵ A particular focus of the foundation is on sensitizing private collectors about sacred objects and the importance of building relationships between collectors, museums and Indigenous peoples.

The greatest hurdle for Indigenous peoples working within the parameters of NAGPRA according to Lonetree is the challenge of non-affiliated ancestral remains, funerary, and sacred objects, referred to as “culturally unidentifiable.”³⁶ Indigenous peoples’ claims on culturally unidentifiable ancestral remains and sacred objects may be refused for insufficient evidence or because they may not be traceable to a contemporary, federally recognized tribe. Indigenous peoples have had to be creative in their efforts to repatriate culturally unidentifiable materials, especially if they are not a federally recognized tribe according to NAGPRA. One suggestion is to form alliances with related tribes that are federally recognized to make joint claims. Another is to establish cultural links to ancestors and sacred objects based on geographical proximity.³⁷ No matter how creative the argument or how much evidence is produced however, claims for culturally unidentifiable remains and sacred objects are more difficult and can be dismissed by dominant society institutions for relatively frivolous reasons.³⁸

Opposition to NAGPRA is primarily from archaeological and scientific communities, though some museums are also anti-repatriation. Jenkins notes that when NAGPRA was initially enacted, those opposed included “the museum, archaeological and anthropological disciplines and professions,” but “by the late 1990s the most vocal opponents were, primarily but not exclusively, scientists, anthropologists and archaeologists who use ancestral remains in their research.”³⁹ Many museum professionals objected to repatriation at first, arguing that ancestral remains, funerary, and cultural objects of Indigenous ancestors belonged to the public and not to specific communities. They often overlooked the fact that objects were obtained in unethical and illegal manners, and that relationships of power and dominance made it possible for the burial grounds of Indigenous peoples to be disturbed or for sacred objects to be looted, purchased, or gifted illegally by those unauthorized to do so. The scientific community in particular argued against repatriation on the grounds that research on Indigenous ancestral remains is neither racist nor imperialistic because Caucasian human remains have also been used for research.⁴⁰ This argument is ahistorical and ignores power imbalances between Euro-Americans and Indigenous peoples. While it is true that Caucasian skeletons were collected and studied, such activity does not correct the intentional, deceitful, and arrogant goal of studying Indigenous peoples without their consent or knowledge, as though consent was not even required. Scientists (and lawyers) have also argued that oral testimony and traditional stories should not constitute legal proof of genealogy or ownership of sacred objects, and that Indigenous oral traditions are too similar to distinguish between them.⁴¹ These comments reveal a suspicion of oral history and an insistence on scientific testing in order to prove genealogy. A recent example is Kennewick Man, also known as The Ancient One.⁴² The ancestral remains were originally thought by scientists to provide evidence of migration to North America (reinforcing the colonial notion of *terra nullius*), but five Pacific Northwest tribes rejected this

theory, arguing that their oral histories made no mention of migration. They claimed the ancestor under NAGPRA, and after decades of disagreement, the ancestor was finally repatriated—but only after genetic sequencing performed by Danish researchers revealed that the human remains were biologically related to Native North Americans, finally silencing the critics and affirming the oral histories of the tribes.⁴³

Having outlined some significant benefits of federal law for repatriation, the paper now turns to Canada, where case-by-case negotiations—many lasting years—provide a contrasting model for correcting historical injustices and repatriating sacred objects to source communities. Readers will note that there is no way to provide a federal level overview of procedure in Canada as each case is unique, therefore the focus is specific provincial laws, policies and recommendations that support and encourage repatriation of sacred objects from dominant society Canadian museums to Indigenous peoples.

Part Two: Canada

It is important to note as a starting point that Canadian museums often do not possess collections as significant as museums in the US, Europe, and elsewhere. There are very few federally-funded museums in Canada, and unearthing collection details is not straightforward. No reliable, publicly available, collective inventory of Indigenous artifacts in Canadian museum collections exists, which has undoubtedly impeded repatriation of sacred objects. A Canadian federal government website, *Artefacts Canada*, lists some holdings but museum participation appears to be voluntary and the search engine does not reveal sizeable collections of Indigenous cultural objects that might be sacred. A European portal to museum collections called *Europeana*, holds more promise. With nearly 52 million descriptions of artifacts and digitized items, keyword searching in *Europeana* returns a greater number of potentially sacred objects originating from Indigenous communities in

Canada than does *Artefacts Canada*.⁴⁴ While searching for Indigenous objects, I was directed away from *Europeana* to the Horniman Museum (UK), where its description of the American collection includes “59 Northwest coast pieces from the Museum of the American Indian, New York (1934), the two Kwatiutl masks and related material from the Royal Botanical Gardens, Kew (1958) ... a collection of Inuit seal skin clothing from the Church Missionary Society (1965). In 1961 the Museum acquired a Blackfoot Tipi, transferred from the Glenbow Museum, Canada.”⁴⁵ This information is unsettling in that the museum currently possesses sacred Kwatiutl masks, but the point is that there is no efficient way to identify sacred objects for repatriation.⁴⁶ Potential claimants have to locate sacred objects themselves. Despite the magnitude of the task, one researcher was able to identify sacred Blackfoot material located in international collections when “In 1994, he sat down with a fat directory of museums worldwide and sent out 4,000 form letters asking them if they had any Blackfoot material. Almost 200 museums wrote back saying they did.”⁴⁷ In another case, a Haida repatriation committee hired students to identify sacred objects by searching in international museum catalogs.⁴⁸ Such labor-intensive research is an obvious barrier to making claims.

To address this lack of coordination, a non-Indigenous Member of Parliament from Nova Scotia, Bill Casey, tabled a private member’s Bill called *The Aboriginal Cultural Property Repatriation Act* (Bill C-391) in February, 2018. Casey was inspired by a photo of a Mi’kmaq robe on a visit to the Millbrook First Nation in Truro, NS. The robe and associated regalia are in an Australian museum, while the Millbrook First Nation has been attempting for a decade to repatriate them.⁴⁹ Bill C-391 is not limited to sacred objects and specifically addresses the issue of oral history in establishing affiliation. Interestingly, it also includes a dispute resolution forum. It recognizes the need to:

- (a) implement a mechanism by which any First Nation, Inuit or Métis community or organization may acquire or reacquire Aboriginal cultural property to which it has a strong attachment;
- (b) encourage owners, custodians or trustees of Aboriginal cultural property to return such property to Aboriginal peoples and support them in the process;
- (c) support the recognition of preservation of Aboriginal cultural property and of access to that property for educational and ceremonial purposes as principles of equal importance;
- (d) encourage consideration of traditional ways of knowing rather than relying on strict documentary evidence in relation to the repatriation of Aboriginal cultural property; and
- (e) provide a forum for the resolution of conflicting claims that is respectful of Aboriginal traditional processes and forms of ownership and where claimants are self-represented.⁵⁰

It is unclear whether the Mi'kmaq participated in drafting this Bill, but as noted, part d) includes the recognition of traditional ways of knowing in establishing relationships to Indigenous cultural property. This echoes the provision in NAGPRA that allows oral history evidence in a claim⁵¹ and reinforces the Supreme Court of Canada watershed decision, *Delgamuukw v. British Columbia* (1997), that oral history “can be accommodated and placed on an equal footing with the types of historical evidence that courts are familiar with, which largely consists of historical documents.”⁵² It remains to be seen whether Bill C-391 will pass into law, but awareness of the issue of repatriation (and lack of tangible support on the part of government) is gaining traction. Donald M. Julien, Executive Director of the Confederacy of Mainland Mi'kmaq, supports Bill C-391, commenting that “We see a need for a national strategy that is sensitive to the differences among communities and cultures but that ultimately brings this issue to the forefront for all Canadians.”⁵³ Julien raises the very important point of cultural sensitivity; a one-size-fits-all strategy is disrespectful and futile because of the many Indigenous peoples in Canada and differing traditions among them.

The United Nations Declaration on the Rights of Indigenous Peoples

Canada's announcement in May 2016 that it is a "full supporter, without qualification" of the 2007 *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) should theoretically provide support for international repatriation.⁵⁴ Belatedly, Canada joined 144 states that signed the original declaration in 2007 and is among the four states that have signed since, which also includes the US. Such a large number of signatories should result in more repatriations, but without a coordinated federal strategy, it will be difficult to track the impact of the UNDRIP. Nonetheless, Article 11, section 2 clearly addresses the issue: "States shall provide redress through effective mechanisms, *which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs,*" as does Article 12 section 1: "Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; *the right to the use and control of their ceremonial objects;* and the right to the repatriation of their human remains (italics added)."⁵⁵ Given that Canada's approval of the UNDRIP is relatively recent, it is too soon to assess whether it is an effective tool for repatriation. In the meantime, Kuprecht suggests that Indigenous peoples seeking to repatriate internationally should work with international non-governmental organizations where possible, or museums in the host country to add pressure to negotiations, even if countries have signed the UNDRIP.⁵⁶

If the UNDRIP is ultimately unable to encourage international repatriations, what recourse do Indigenous peoples in Canada have to retrieve sacred objects that have been expatriated to foreign countries? UNESCO's *Convention on the Means of Prohibiting and Preventing the Illicit Import,*

Export and Transfer of Ownership of Cultural Property (1970) is an international agreement that reinforces the moral obligations of states to prevent both the import and export of historically significant religious and secular objects relating to national culture, but is not binding. UNESCO's Intergovernmental Committee can facilitate restitution of cultural artifacts among its 195 member states⁵⁷ but lists few successful cases.⁵⁸ The *International Code of Ethics for Dealers in Cultural Property* (1999) is intended to prevent the import, export, and sale of cultural property appearing illicit or lacking provenance, as well as the destruction of the integrity of cultural heritage by dealers (for example, removing individual leaves from medieval manuscripts for sale).⁵⁹ Ethical guidelines such as the International Council of Museums (ICOM) *Code of Ethics* (2017), whose purpose is to establish a baseline standard for ethical practice in museums, also encourages international repatriations for "humanitarian" reasons in section 6.2. "Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level," suggesting that international cooperation is of greater importance than local laws that may hinder the repatriation of cultural heritage to source communities.⁶⁰ The code also strongly encourages restitution of cultural property where there is evidence that it has been exported or obtained in contravention of international and national conventions. In the US, the American Association of Museums (AAM), addresses repatriation of cultural property in its *National Standards and Best Practices for U.S. Museums* (2010), but stops short of recommending repatriation, indicating that national guidelines and procedural recommendations would soon be developed, though as of 2018, no further information has yet been published.⁶¹ While not legally enforceable, the above conventions and ethical codes support the legitimacy and credibility of

repatriation claims, articulate ethical expectations, and give Indigenous communities leverage in negotiations. Unfortunately, strong opposition by some of the most significant international collections persists, as evidenced by the 2002 *Declaration of Universal Museums*. The *Declaration* widened the chasm between cosmopolitan museums claiming to serve all of humankind and Indigenous peoples, for whom restitution of cultural heritage is one part of correcting historical injustice. Adding to the challenge of international repatriation in Canada specifically, Indigenous communities must devote their own resources to research, travel, attend meetings, pay for repatriation and restore sacred objects so that they can be reintegrated into ceremonial life.⁶² Unlike in the US where NAGPRA provides funding opportunities for research and repatriations, Indigenous peoples in Canada have no such support at the federal level. Until now, the resources and persistence of a few dedicated individuals over lengthy time periods resulted in successful international repatriations. One such example is the return of eleven wampum belts to the Six Nations Confederacy in Southern Ontario from the Museum of the American Indian (MAI) in Washington, D.C (known today as the National Museum of the American Indian).⁶³ The repatriation ceremony occurred in 1988 after more than a decade of effort by the Six Nations to retrieve the belts. Eventually the MAI staff realized “there was more goodwill to be gained by returning the belts to their original owners than by resisting the claim” but since the repatriation occurred decades ago, it is difficult to say whether factors beyond the goodwill of museum staff were instrumental.⁶⁴ Another example where willingness was clearly a factor is a recent collaboration between the Haida in British Columbia, the Pitt Rivers Museum in London, England, and the British Museum, where human remains were repatriated.⁶⁵ The museums initiated negotiations in order to stimulate new diplomatic relationships and offer opportunities for long term mutual support in terms of education, access, interpretation and caring for items. Both museums had

had a prior history of facilitating access to source communities to their collections and the invitation to discuss repatriation was an effort to build on past interactions.

Repatriation within Canadian Borders

Moving away from international negotiations, most repatriations that occur within Canada are done on a case-by-case basis with much discussion and consultation between the parties. Human rights codes, provincial laws, institutional policies, and even land claim negotiations can support the return of sacred objects to source communities. In Ontario's *Human Rights Code* for example, Indigenous religious practices and related objects are protected by the *Policy on Preventing Discrimination Based on Creed*, which includes section 11, "Indigenous Spiritual Practices," and 11.3, "Access to and Use of Sacred Sites and Objects."⁶⁶ Through the consultation process to develop this section of the *Code*, Indigenous peoples identified racism, linguistic assimilation, and religious oppression as part of their experiences of colonialism. The *Code* therefore commits to "not repeat this history of denigration and denial of Indigenous peoples' spirituality, cultures and identities, and to recognize, respect and accommodate people's Indigenous spiritual practices as a human right in the present with central importance for people's dignity and well-being," and protects "instruments created to celebrate stories and ceremonies, protect medicines and honour our ancestors...[T]he definition of what is 'sacred' is determined by the First Nation community itself and [is] reflective of the community's values of what is sacred."⁶⁷ Under the duty to accommodate, institutions may be required to provide access to sacred objects. Provincial human rights codes have not yet been tested as a means to claim sacred objects but could offer new opportunities to do so.

Alberta is the only province in Canada with a repatriation law for sacred objects, and has the longest history among Canadian provinces of protection and repatriation of sacred objects since passing the *Blackfoot Sacred Ceremonial Objects Repatriation Act* in 2000. This law was updated

and expanded in 2016 and its title, *First Nations Sacred Ceremonial Objects Repatriation Act*, reflects the change. The legislation stemmed from negotiations between members of the Blackfoot Nation in Alberta and staff of the Glenbow Museum in Calgary for repatriation of sacred medicine bundles.⁶⁸ The medicine bundles were on display as part of the highly controversial *Spirit Sings* exhibit at the Glenbow Museum during the 1988 Olympic Games. Much of the controversy was generated by the Lubicon Cree who had attempted for many years to negotiate a land treaty with Alberta, though by 1988 negotiations had stalled.⁶⁹ Through a well-publicized boycott of the Olympic Games and interventions with international museums that had agreed to lend artifacts to the Glenbow for the exhibit, the Lubicon Cree raised global awareness of their struggle for land rights. As a result of writing to museums that had agreed to participate in the exhibit (which coincidentally was sponsored by Shell Oil, one of the companies that worked in tandem with the province to dispossess the Cree of their land decades earlier), 30 museums refused to lend the Glenbow artifacts.⁷⁰ The Mohawk Council of Kahnawake, Quebec, added to the controversy by obtaining an injunction against the museum to have several of its sacred objects removed from the same exhibit.⁷¹

The conflict between the Lubicon Cree, the Glenbow and the province of Alberta was the catalyst for a national conference and the creation of a Task Force (sponsored by the Assembly of First Nations and the Canadian Museum Association) that developed guidelines still in use today regarding the repatriation of ancestral remains and funerary and sacred objects or other cultural property in Canada. The report of the Task Force made various recommendations based on cross-country consultations with Indigenous groups, museum and cultural center staff, government representatives, and scholars. NAGPRA, enacted only one year earlier, was studied by Task Force members, and is referred to by name in the section on repatriation. Ultimately, because Indigenous

concepts of ownership vary, the Task Force could not recommend a uniform practice or legislative path capable of accommodating all cultures, stating that a “case-by-case collaborative approach to resolving repatriation based on moral and ethical criteria is favoured.”⁷² However, the report did not rule out the possibility of seeking law in the future and clearly acknowledged what NAGPRA set in motion the previous year: that Indigenous peoples have rights regarding their cultural property, including the right to be notified when human remains, funerary and sacred objects are discovered. It also affirmed that Indigenous peoples must be equal partners with non-Indigenous museum staff in identifying cultural affiliation, as well as determining the use, treatment, and display of cultural property in mainstream museums. Without being proscriptive, the report also included suggestions for negotiating restitution, transfer of title, material loans, and replications⁷³ of sacred objects for display in museums.⁷⁴

Another provincial approach is extensive consultation with Indigenous peoples to assess concerns and develop customized solutions to repatriation or other arrangements. In Saskatchewan, the *Royal Saskatchewan Museum Act* (2007) stipulates that “after consultation with Aboriginal peoples ... the museum is responsible for developing a policy to address the concerns of Aboriginal peoples about the access to and the care, use and repatriation of sacred and culturally sensitive objects originating with their cultures in the museum collections.”⁷⁵ The Royal Saskatchewan museum voluntarily implemented a repatriation policy in 2011 because “One of the things Elders asked was that the museum stop displaying First Nations sacred and ceremonial objects.”⁷⁶ Museum staff created an inventory of the museum collections and created customized arrangements regarding storage and use of sacred objects requested by Indigenous peoples. Such arrangements, which include co-stewardship and co-management are examples of how the flexibility of case-by-case negotiations can result in creative collaborations. The ability to negotiate arrangements that

meet Indigenous communities' needs is critical where resources or facilities to care for sacred objects are lacking. This is a clear departure from a law such as NAGPRA where repatriation is an obligation regardless of the needs and capacities of source communities.

The Royal Ontario Museum (ROM) in Toronto is a provincially-funded dominant society institution engaged in proactive and culturally sensitive repatriation practices. Its Repatriation and Indigenous Relations Department has several full time staff members who attend all federal treaty negotiations that include cultural property with the goal of repatriating sacred objects from the collection.⁷⁷ These are handled with care, protected from view, and covered in red fabric. The sacred objects are for community members' viewing only and often museum staff have never even seen them. Furthermore, the ROM, like the Royal Saskatchewan Museum, is not limited to wholesale repatriation; it discusses the needs of source communities and accommodates local requests. The Nisga'a, for example, have entered into shared custody agreements with the ROM where objects "rotate between the community and the museum, which takes them back for conservation."⁷⁸

Significant repatriations have transpired in New Brunswick, where no repatriation law exists, including a recent example of thousands of artifacts being transferred from provincial custody to the Metepenagiag Mi'kmaq Nation. The negotiations, which took years, included federal, provincial, and community members and resources. Primarily archaeological artifacts representing a span of 3,000 years of culture are being added to the existing Metepenagiag Heritage Park, which opened in 2007. The collaboration is a model of partnership where Indigenous and mainstream archaeologies are engaged in mutually respectful dialogue and various types of exchange.⁷⁹

Federally funded museums in Canada also repatriate though cases are not nearly as numerous as in the US (there are only six federally funded museums in Canada).⁸⁰ Sacred objects that have been returned include “a vast collection of masks, rattles, and other ceremonial regalia that Canadian government officials had confiscated from the Kwakwaka'wakw First Nations in 1922 in an attempt to eradicate the potlatch,” from the Canadian Museum of Civilization (now the Canadian Museum of History) to the Kwakwaka'wakw First Nations.⁸¹ The Canadian Museum of History has also returned wampums, medicine bundles and other cultural objects, and developed a policy on the return of cultural property in 2001.⁸² Through treaty agreements, the Canadian Museum of History has repatriated sacred objects and cultural property to the Nisga'a in British Columbia in a watershed agreement “that places an express obligation on governments to return Aboriginal cultural property to its community of origin”⁸³ as well as to the Inuit in Labrador,⁸⁴ though it refused a claim on behalf of the Algonquin people of Kitigan Zibi in 2003 based on lack of evidence of cultural affiliation.⁸⁵ A significant difference between NAGPRA and the Canadian Museum of History policy is that individuals may make requests for repatriation to the Canadian Museum of History, whereas in the US, requests must be made on behalf of collectives.⁸⁶ NAGPRA prevents any one individual from owning sacred objects, preferring not to risk repatriation of a sacred object to someone who may not be authorized. In Canada however, both group and individual requests may make claims. The Kainai First Nation has engaged in many repatriations that originated from a single claimant in accordance with tradition: “Our own traditional religious practices demand that requests for bundle transfers be sought on an individual basis, for reasons that often involved vows of sacrifice for the purpose of healing oneself or one's family.”⁸⁷ Not having a law that limits who can make a claim enables institutions to accommodate requests according to local customs, a distinct advantage over NAGPRA.

Where Canadian practice is deficient is with respect to coordinated, national transparency and funding opportunities. Since federally funded museums are required to disclose Indigenous sacred objects in US collections, Indigenous peoples can more easily locate them and initiate repatriation; furthermore there is a fund to help with costs. Unfortunately in Canada, the task of identifying sacred objects and researching affiliation remains the burden of the claimant. Despite these challenges, there are no obvious instances of Indigenous peoples in Canada calling for a federal repatriation law specifically. In fact, Frank Weasel Head, who was directly involved in many repatriations in Alberta and internationally, was opposed to highly specific regulations concerning repatriation: “Reluctantly, I agreed to the regulations for the Act... This is an example of the difference between our understanding and the non-Native governmental way of doing things. If I were to ask someone to do something and they agreed, I would not ask a third person to start coming up with all kinds of rules and regulations.”⁸⁸ Even codifying past practice in writing made him uncomfortable, “...what I call the “paper trail,” allows sensitive information to be available for those who might misuse it and promotes forgetfulness and misinterpretation.”⁸⁹ These misgivings indicate a very sensitive approach to negotiations, acknowledging that each is unique, and that those involved have a special responsibility to their communities. Expressing reservations in a different way, a member of the Mountain Cree Band who is an archaeologist, suggested that an Indigenous oversight committee would be required to ensure culturally relevant definitions of, and practices relating to sacred objects and cultural property.⁹⁰ He worried that the Alberta law was not clear enough regarding who has standing, how competing claims would be resolved, and how sacred objects and cultural property are cared for after repatriation. He also noted that although museums in Alberta are required to list Indigenous holdings, there was no way of knowing what items were sacred. A lingering mistrust of the colonial state, alongside growing cultural confidence mean that

Indigenous peoples feel empowered to negotiate satisfactory agreements with the institutions that hold their sacred objects.⁹¹ Museums have responded too; the Glenbow, for example, created a First Nations Advisory Council responsible for initiating repatriation negotiations with other museums in Canada and internationally.⁹² The Advisory Council also develops collaborative exhibits with Indigenous peoples who provide specifications regarding how local and foreign museums should care for and display sacred objects, and the Council arranges lending agreements when repatriation requests are not granted. Similar Councils have been implemented in various dominant society institutions such as the Royal BC Museum, the ROM, the McCord Museum, the Canadian Museum of History, the Canadian Museum for Human Rights, the Winnipeg Art Gallery, the National Gallery of Canada, and several others.

Conclusion

As discussed above, repatriation of sacred objects to Indigenous peoples in Canada has been recommended by various international declarations and protocols, the Assembly of First Nations and Canadian Museum Association Task Force Report (1994), and the UNDRIP (2007) but has never been a legal requirement. Though NAGPRA broke new ground by requiring federally funded museums to repatriate sacred objects and human remains to Indigenous peoples in the US, Indigenous peoples in Canada have not pressed for similar law. Nonetheless, certain features of NAGPRA would be beneficial in Canada. A centralized database of all Indigenous cultural property in museum collections (well beyond what is currently offered in the *Artefacts Canada* website mentioned earlier), funding for research, travel and costs, and national reporting of repatriations are recommended to support Indigenous claims for repatriation of sacred objects. Transparency and access to information are especially transformative. Only when Indigenous peoples know the full extent of museum collections will they have the information needed to repatriate what is theirs. The

burden of providing this information ought to fall to dominant society museums that have benefited economically from the pillaging of Indigenous sacred objects, and on governments that instituted assimilationist policies and laws; they must commit to repatriate without imposing overly bureaucratic regulations or inflexible requirements. Like the title of the paper suggests, repatriation, whether legislated or not, is a challenge to the colonial policies and practices that led to unethical collecting practices of early museums. Repatriation can be part of a broader effort within Canada to reconcile relationships between settlers and Indigenous peoples, but dominant society museums should take the first steps to repatriate objects that help re-establish spiritual practices and build cultural confidence.

Although Canada does not have a federal law, and only one provincial law exists concerning the repatriation of sacred objects, other creative methods, such as including repatriation in land claim negotiations, take place.⁹³ Case-by-case negotiations allow for customization to the many traditions of Indigenous peoples in Canada and do not encumber those who want flexible custody arrangements or who may not wish to repatriate at all. Despite concrete advances regarding repatriations in Canada, Indigenous peoples have not demanded federal law - some of the reasons include a lack of consensus on what constitutes ownership of cultural heritage, a preference for asserting moral rather than legal obligations, the enormous costs of repatriating sacred objects, and emphasizing ways other than repatriation to reconnect with culture, such as language revitalization.⁹⁴ So while NAGPRA has made outstanding progress on the issue of repatriation in the US, Indigenous peoples in Canada are pursuing different and creative avenues for repatriating sacred objects that correspond to their individual strengths and cultures.

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Notes

¹ **Title Note:** White man's "love of possessions" was a disease according to Sitting Bull. See Mark O'Neill, "Repatriation and Its Discontents: The Glasgow Experience," in Eleanor Robson, Luke Treadwell and Chris Gosden (eds.), *Who Owns Objects? The Ethics and Politics of Collecting Cultural Artefacts*. (Oxford: Oxbow. 2004): 115.

² Frederico Lenzerini, "Cultural Identity, Human Rights, and Repatriation of Cultural Heritage of Indigenous Peoples," *Brown Journal of World Affairs* 23, no. 1 (2016): 134.

³ Robert R. Janes, "Prologue," in *We Are Coming Home: Repatriation and the Restoration of Blackfoot Cultural Confidence*, ed. Gerald Conaty (Edmonton: Athabasca University Press, 2015), 9. Furthermore, the US, in signing the *Treaty of Amity, Commerce, and Navigation* (1794) with Great Britain (also known as the *Jay Treaty*) legally recognized the close ties that many Indigenous peoples have in Canada with their counterparts in the US. In a report of the (Canadian) Standing Senate Committee on Aboriginal Peoples, it was acknowledged that for instance, the Mohawks of Akwesasne have members in both countries and that they consider themselves "a single community." See Canada. Parliament. Senate Standing Committee on Aboriginal Peoples, *Border Crossing Issues and the Jay Treaty*, 1st sess., 42nd Parliament (Ottawa, 2016), 11, https://sencanada.ca/content/sen/committee/421/APPA/Reports/APPA-JayTreatyReport_e.pdf

⁴ William N. Fenton, "Return of Eleven Wampum Belts to the Six Nations Iroquois Confederacy on Grand River, Canada," *Ethnohistory* 36, no. 4 (1989).

⁵ Jill R. Baird, Anjuli Solanki, and Mique'l Askren, eds., *Returning the Past: Repatriation of First Nations Cultural Property, Four Case Studies of First Nations Repatriation*, (Vancouver, BC: Museum of Anthropology at the University of British Columbia, 2008), 7, <http://moa.ubc.ca/wp-content/uploads/TeachingKit-Repatriation.pdf>.

⁶ Baird, Solanki and Askren, *Returning*, 8.

⁷ Baird, Solanki and Askren, *Returning*, 3.

⁸ U.S. Department of the Interior, National Park Service, "NAGPRA Glossary," <https://www.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>.

⁹ U.S. Department of the Interior, National Park Service, "NAGPRA Glossary."

¹⁰ Baird, Solanki and Askren, *Returning*, 9.

¹¹ Amy Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums*, (Chapel Hill: University of North Carolina, 2012), 10.

¹² Karolina Kuprecht, *Indigenous Peoples' Cultural Property Claims: Repatriation and Beyond*, (New York: Springer, 2014), 5.

¹³ Lonetree, *Decolonizing*.

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- ¹⁴ Steven Platzman, "Objects of Controversy: The Native American Right to Repatriation," *American University Law Review*, 41, no. 2 (1992): 520, <http://digitalcommons.wcl.american.edu/>.
- ¹⁵ Danielle Peck and Alex Seaborn (producers), *Bones of Contention*, (London: British Broadcasting Corporation, 1995) 2:20.
- ¹⁶ Peck and Seaborn, *Bones*.
- ¹⁷ C. Timothy McKeown, *In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990*, (Tucson: University of Arizona, 2012), 4.
- ¹⁸ McKeown, *Smaller*, 10.
- ¹⁹ U.S. Department of the Interior, National Park Service, "National NAGPRA Online Databases," (2017), <https://www.nps.gov/nagpra/onlinedb/index.htm>; Sangita Chari and Jaime M.N. Lavalley, (eds.), *Accomplishing NAGPRA: Perspectives on the Intent, Impact and Future of the Native American Graves Protection and Repatriation Act*, (Corvallis, OR: Oregon State University, 2013), 8; C. Timothy McKeown, Emily Palus, Jennifer Riordan, and Richard Waldbauer, "Federal Agency Perspective," in Chari and Lavalley, *Accomplishing*, 136.
- ²⁰ U.S. Department of the Interior, National Park Service, "National NAGPRA," https://www.nps.gov/history/local-law/FHPL_NAGPRA.pdf.
- ²¹ Robyn G. Ewing, "Finding Middle Ground: Case Studies in Negotiated Repatriation" (master's thesis, Simon Fraser University, 2010), 88, <http://summit.sfu.ca/item/11568>.
- ²² Zia Akhtar, "Storytelling as Testimony and the Rule against Hearsay," *Trial Evidence*. Chicago: American Bar Association, 2017, <https://www.americanbar.org/groups/litigation/committees/trial-evidence/articles/2017/spring2017-storytelling-testimony-rule-against-hearsay.html>.
- ²³ Akhtar, "Storytelling," para 12.
- ²⁴ Cathay Y.N. Smith, "Oral Tradition and the Kennewick Man," *Yale Law Forum Journal* 126, (2016): 222-223, https://scholarship.law.umt.edu/faculty_lawreviews/135/.
- ²⁵ Sarah Harding, "Justifying Repatriation of Native American Cultural Property," *Indiana Law Journal*, 72, no. 723 (2017): 738, <https://www.repository.law.indiana.edu/>; U.S. Department of the Interior, National Park Service, "NAGPRA Grants," (2017), <https://www.nps.gov/nagpra/grants/index.htm>.
- ²⁶ Gerald Conaty, "The Effects of Repatriation on the Relationship between the Glenbow Museum and the Blackfoot People," *Museum Management and Curatorship*, 23 no. 3, (2008): 248.
- ²⁷ Lonetree, *Decolonizing*.

²⁸ National Congress of American Indians, “Support for International Repatriation: Resolution #SAC-12-008,” (2012), para 7, <http://www.ncai.org/resources/resolutions/support-for-international-repatriation>.

²⁹ NAGPRA has assisted Indigenous claimants in Canada through partnerships with US tribes and First Nations in Canada. See Emmy-Lou Campbell, “The Transformative Power of T’xwelátse: A Collaborative Case Study in Search of New Approaches to Indigenous Cultural Repatriation Processes,” (master’s thesis, University of Victoria, 2010), <http://hdl.handle.net/1828/2895>.

³⁰ France, Sénat, “LOI n° 2010-501 du 18 mai 2010 visant à autoriser la restitution par la France des têtes Maories à la Nouvelle-Zélande et relative à la gestion des collections,” (2010), <https://www.legifrance.gouv.fr/>.

³¹ Neil G.W. Curtis, “Repatriation from Scottish Museums: Learning from NAGPRA,” *Museum Anthropology*, 33 no. 2 (2010): 238, <https://doi.org/10.1111/j.1548-1379.2010.01101.x>; Honor Keeler, *A Guide to International Repatriation: Starting an Initiative in your Community*, (Rockville, MD: American Association for Indian Affairs, 2015), 9-10; 15.

³² Brenda J. Child, “Creation of the Tribal Museum,” in *Contesting Knowledge: Museums and Indigenous Perspectives*, ed. Susan Sleeper-Smith, (Lincoln: University of Nebraska, 2009), 251.

³³ Julian Whittam, “‘In a Good Way’: Repatriation, Community and Development in Kitigan Zibi,” *Anthropologica* 57, no. 2 (2015): 502.

³⁴ “*Our History*,” (New York: American Indian Ritual Object Repatriation Foundation, 2018), <https://repatriationfoundation.org/the-foundation/our-history/>.

³⁵ K. Morris, “Strategies and Procedures for the Repatriation of Materials from the Private Sector,” in *Mending the Circle: A Native American Repatriation Guide: Understanding and Implementing NAGPRA and the Official Smithsonian and Other Repatriation Policies*, ed. B. Meister (New York: American Indian Ritual Object Repatriation Foundation, 1997), 64-71.

³⁶ Lonetree, *Decolonizing*, 159.

³⁷ Katrina G. Claw, Dorothy Lippert, Jessica Bardill, Anna Cordova, Keolu Fox, et. al., “Chaco Canyon Digs Unearth Ethical Concern,” *Human Biology* 89, no. 3 (2017), <https://digitalcommons.wayne.edu/>.

³⁸ Lonetree, *Decolonizing*.

³⁹ Tiffany Jenkins, *Contesting Human Remains in Museum Collections: The Crisis of Cultural Authority* (New York: Routledge, 2011), 33.

⁴⁰ Elizabeth Weiss, *Reburying the Past: The Effects of Repatriation and Reburial on Scientific Inquiry* (New York: Nova Science, 2008), 27.

⁴¹ Weiss, *Reburying*.

⁴² “Kennewick Man, the Ancient One,” *Burke Museum Blog*, (February 20, 2017), <http://www.burkemuseum.org/blog/kennewick-man-ancient-one>

⁴³ Smith, “Oral Tradition,”; Morten Rasmussen, Martin Sikora, Anders Albrechsten, Thorfinn Sand Korneliussen, J. Victor Moreno-Mayar, “The Ancestry and Affiliation of Kennewick Man,” *Nature* 523 (2015): 455-458, <https://www.nature.com/articles/nature14625>

⁴⁴ At the time of writing, *Artefacts Canada* (<https://app.pch.gc.ca/application/artefacts/index-eng.html>) contained more than 4 million records of items in Canadian museums while *Europeana* (<https://www.europeana.eu/portal/en>) provided access to 51,375,140 records in European collections. On the Canadian site, a controlled vocabulary search for Culture = Blackfoot retrieved more than 3,000 records, however it is virtually impossible to know whether the artifacts are sacred objects without intimate cultural knowledge, as few are accompanied by photographs and description is often minimal. One medicine bundle was returned in the search (catalogue number H4-43-24). Blackfoot medicine bundles were the sacred objects that initiated discussions of museum repatriation to source communities in Alberta (See endnote 24). Searching for the keywords “medicine bundle” in *Europeana* returns seven unique artifacts (with photographs) from two different collections, all containing the description “ritual object,” indicating a ceremonial purpose. See for example <https://www.horniman.ac.uk/object/25.57>

⁴⁵ “American Collections,” (London: Horniman Museum and Gardens), <https://www.horniman.ac.uk/collections/american-collections>.

⁴⁶ Cara Krmpotich and Laura Peers, *This is Our Life: Haida Material Heritage and Changing Museum Practice* (Vancouver: UBC Press, 2013).

⁴⁷ Bob Weber, “Precious Ceremonial Objects Slowly Being Returned to First Nations from Museums,” *Global News* (Dec. 15, 2017): para 9-10, <https://globalnews.ca/news/3919726/precious-ceremonial-objects-slowly-being-returned-to-first-nations-from-museums/>.

⁴⁸ Weber, “Precious”; Krmpotich and Peers, *Our Life*, 20.

⁴⁹ Jorge Barrera, “Liberal MP’s Bill Aims to Create National Strategy for Repatriating Indigenous Cultural Items,” *CBC News* (February 3, 2018), <http://www.cbc.ca/news/indigenous/liberal-mp-s-bill-aims-to-create-national-strategy-for-repatriating-indigenous-cultural-items-1.4517725>.

⁵⁰ “Bill C-391, *An Act Respecting a National Strategy for the Repatriation of Aboriginal Cultural Property of 2018*.” 1st sess., 42nd Parliament, 2018, HCC 64-65-66, (February 1, 2018), <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-391/first-reading>.

⁵¹ U.S. Department of the Interior, National Park Service, “Determining Cultural Affiliation within NAGPRA,” sec. 43 C.F.R. 10.2 (e), http://pages.ucsd.edu/~rfrank/class_web/UnivHouse/Cultural_Affiliation.pdf.

⁵² *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para. 87 (Can.), cited in Smith, “Oral Tradition,” 221.

⁵³ “MP Bill Casey Introduces Aboriginal Cultural Property Repatriation Act,” (Feb. 1, 2018), <https://bcasey.liberal.ca/news-nouvelles/working-together-to-repatriate-cultural-property/>.

⁵⁴ Canada. Indigenous and Northern Affairs, “United Nations Declaration on the Rights of Indigenous Peoples,” (2017), para 2, <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958>.

⁵⁵ “United Nations Declaration on the Rights of Indigenous Peoples. Resolution 61/295,” <https://undocs.org/A/RES/61/295>.

⁵⁶ Kuprecht, *Indigenous Peoples*.

⁵⁷ UNESCO, “Intergovernmental Committee (ICPRCP),” <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/intergovernmental-committee/>

⁵⁸ UNESCO, “Return or Restitution Cases,” <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/return-or-restitution-cases/>

⁵⁹ UNESCO, “International Code of Ethics for Dealers in Cultural Property,” <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/legal-and-practical-instruments/unesco-international-code-of-ethics-for-dealers-in-cultural-property/>

⁶⁰ International Council of Museums, “ICOM Code of Ethics for Museums,” (2017), http://icom.museum/fileadmin/user_upload/pdf/Codes/ICOM-code-En-web.pdf

⁶¹ Caitlin S. Wunderlich, “Museum Sector Policy Deficit: Repatriation from United States Museums,” *The Museum Scholar* 1, no. 1 (2017), https://themuseumscholar.atavist.com/vol1no1wunderlich#_edn11

⁶² Catherine Bell and Heather McCuaig, “Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources: Perspectives of Community Members,” in Catherine Bell and Val Napoleon (eds.), *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives*, (Vancouver: UBC Press, 2008): 312-364.

⁶³ The repatriation of the wampum belts occurred in 1988 after several attempted negotiations, first with George Gustav Heye, the private collector whose Museum of the American Indian (MAI) in New York City, merged with the Smithsonian Institution in 1989, to create the National Museum of the American Indian (NMAI), now in Washington, DC. The Museum of the American Indian-Heye Foundation returned the wampum belts, acquired by Heye in 1910 for \$2000.00, to the traditional Chiefs of the Iroquois Confederacy after they had been the centerpieces of the Northeast Woodland collection at the MAI for seventy-five years. Questions about the belts’ provenance were originally raised in 1914 but dropped until 1977 when the Union of Ontario Indians requested that the MAI provide provenance and descriptions of the belts. The staff of the MAI were originally uncooperative, so the Chiefs of the Six Nations Confederacy provided the MAI with their own documentation, and requested a meeting to

present their claim. By this time, the MAI had a new Director and at least two trustees of Native American descent on its Board.

Two years after the repatriation, the *New York Times* announced that 12 of the 25 Board members at the new NMAI were of Native American descent, reflecting a major change in orientation of the museum. Furthermore, the *North American Indian Museum Act* was passed in 1989 and Section 11 specifically requires the museum to repatriate human remains and funerary objects, though sacred objects are not mentioned. The *North American Indian Museum Act* was said to have passed after “years of negotiation about the future of the majestic Heye collection, which contains 1,000,000 American Indian artifacts.” See Fenton, “Return”; Ira Jacknis, “A New Thing? The National Museum of the American Indian in Historical and Institutional Perspective,” in Amy Lonetree and Amanda J. Cobb (eds.), *The National Museum of the American Indian*, (Lincoln: University of Nebraska Press, 2008): 3-42; Barbara Gamarekian, “25 Named Trustees of Museum of the Indian,” *New York Times* (January 30, 1990): A16; 135 Cong. Rec. S12467 (1989).

⁶⁴ Fenton, “Return,” 408. The museum trustees also conceded that the provenance of the belts was unclear, which Fenton recounts in detail.

⁶⁵ Krmpotich and Peers, *Our Life*.

⁶⁶ Ontario Human Rights Commission, “Policy on Preventing Discrimination Based on Creed: Indigenous Spiritual Practices,” (2015), <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed>.

⁶⁷ Ontario Human Rights Commission, “Policy,” sec 11.3 para 1.

⁶⁸ Conaty, “Effects.”

⁶⁹ Christine Marie Smilie, “The People Left out of Treaty 8” (masters thesis, University of Saskatchewan, 2005), <http://hdl.handle.net/10388/etd-07102007-091310>.

⁷⁰ Smilie, “People,” 116.

⁷¹ Dan Dibbelt, “Nations Gather to Protest Glenbow’s Spirit Sings Display,” *Windspeaker* 5, no. 23 (1988): para 15.

⁷² Assembly of First Nations and Canadian Museum Association, *Turning the Page: Forging New Partnerships between Museums and First People*, (3rd ed. Ottawa: Canada Council for the Arts, 1994), 5, https://museums.in1touch.org/uploaded/web/docs/Task_Force_Report_1994.pdf.

⁷³ Replication of sacred objects has been rejected by Robert Janes as a suitable method for resolving claims by the Blackfoot peoples in Alberta, as he argues it allows museums to avoid repatriation. See Janes, “Prologue,” in *We Are Coming Home*, 12.

⁷⁴ Assembly of First Nations and Canadian Museum Association, *Turning*.

⁷⁵ Saskatchewan, *Royal Saskatchewan Museum Act* (2007), 5, <http://www.publications.gov.sk.ca/freelaw/documents/English/Statutes/Statutes/R23-01.pdf>.

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- ⁷⁶ Evelyn Siegfried, “Repatriation of Sacred and Ceremonial Objects: The Royal Saskatchewan Museum Story,” *Royal Saskatchewan Museum Blog*, (Jul. 31, 2014), <https://royalsaskmuseum.ca/trex/education/blog/repatriation-of-sacred-and-ceremonial-objects-the-royal-saskatchewan-museum-story>.
- ⁷⁷ Murray Whyte, “Long Road to Recovery for Indigenous Sacred Objects,” *Toronto Star* (Nov. 17, 2017): A1.
- ⁷⁸ Whyte, “Long Road.”
- ⁷⁹ Elizabeth Fraser, “Metepenagiag First Nation Celebrates Return of 60,000 Artifacts,” *CBC News* (August 25, 2017), <http://www.cbc.ca/news/canada/new-brunswick/artifacts-metepenagiag-return-artifacts-new-brunswick-first-nation-1.4261942>; S. Blair, T. Jarratt, P. Ward, “Weaving Together Two Ways of Knowing: Archaeological Organic Artifact Analysis and Indigenous Textile Arts,” *North American Archaeologist*, 35 no. 4 (2014).
- ⁸⁰ Marie-Claude Langlois, *Canada’s National Museums*, (Ottawa: Library of Parliament, 2013), <https://lop.parl.ca/Content/LOP/ResearchPublications/2013-06-e.pdf>.
- ⁸¹ Stacey R. Jessiman, “The Edgy State of Decolonization at the Canadian Museum of History,” *University of British Columbia Law Review*, 47 no. 3 (2014): 903.
- ⁸² Jessiman, “Edgy State.”
- ⁸³ Catherine Bell and R.K. Paterson, “Aboriginal Rights to Cultural Property in Canada,” *International Journal of Cultural Property* 8, no. 1 (1999): 166-167.
- ⁸⁴ Jessiman, “Edgy State.”
- ⁸⁵ Marty Logan, “Museum, Kitigan Zibi in Tug of War over Remains,” *Windspeaker* 20 no. 10 (2003): 24; Whittam, “In a Good Way,” 504.
- ⁸⁶ Frank Weasel Head, “Repatriation Experiences of the Kainai,” in *We Are Coming Home: Repatriation and the Restoration of Blackfoot Cultural Confidence*, ed. Gerald Conaty (Edmonton: Athabasca University Press, 2015), 151-181.
- ⁸⁷ Weasel Head, “Repatriation,” 164.
- ⁸⁸ Weasel Head, “Repatriation,” 170.
- ⁸⁹ Weasel Head, “Repatriation,” 152.
- ⁹⁰ Shari Narine, “Repatriation of Sacred Objects Should be Overseen by Indigenous Committee,” *Windspeaker* 34 no. 7 (2016): 21-22.
- ⁹¹ Catherine Bell, Heather Raven and Heather McCuaig in consultation with Andrea Sanborn, the U’Mista Cultural Society, and the ‘Namgis Nation, “Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of KwaKwaka’wakw Cultural Heritage,” in Bell and Napoleon, *First Nations*, 76.

⁹² Anita Herle, "Museums and First Peoples in Canada," *Journal of Museum Ethnography*," 6 (1994).

⁹³ Catherine Bell, Graham Statt, Michael Solowan, Allyson Jeffs, and Emily Snyder, "First Nations Cultural Heritage: A Selected Survey of Issues and Initiatives," in Bell and Napoleon, *First Nations*, 367- 414.

⁹⁴ Bell, Raven and McCuaig, "Namgis Nation," 33-91.