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**BREAKING COPPER: LEGISLATING THE REPATRIATION OF FIRST  
NATIONS CULTURAL PROPERTY TO RESTORE SELF-DETERMINATION  
AND PROMOTE RECONCILIATION**

**by**

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## **Abstract**

The repatriation of cultural property to First Nations is often guided by voluntary policy, negotiated through the treaty process, or mandated by legislation. The return of cultural property from museums to First Nations has the potential to restore aboriginal cultural self-determination rights and begin a process of reconciliation between these two groups. However, neither First Nations cultural self-determination nor reconciliation with museums can be achieved through the repatriation of cultural property alone. In order for cultural self-determination to be fully realized complete control over cultural property must be reinstated to First Nations communities. An examination of voluntary policies, treaty processes, and legislative acts demonstrates that legislation is best able to restore full cultural self-determination to First Nations and achieve reconciliation with museums.

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## Preface

This thesis originated as a result of personal observations made while working as a researcher at the Fraser Fort-George Regional Museum from 1996 to 1999.<sup>1</sup> My first introduction to repatriation was through the *Turning the Page* report, which I was tasked to review. It was still a relatively new document and the Museum, like many others institutions across Canada, was inspired by its recommendations and vision for creating strong working partnerships with First Nations. During this period a First Nations community in the region was approached by Parks Canada who informed them that the Department was closing one of its facilities, which contained cultural property collected from their traditional territory in the earlier part of the century. The items that had been gathered generally consisted of textiles such as shirts, shoes, gloves, and bags that had been made from hide and beautifully adorned with beaded patterns. Parks Canada was willing to return the materials to the community on the condition that the objects be housed in a Class A facility. The Fraser Fort-George Regional Museum was approached by the community to store the materials, as it was the closest institution with the environmental monitoring and fire suppression equipment required to meet the Class A designation. The Museum agreed to the arrangement, on the condition that the objects could also be used for display.

After the agreement was in place the Museum hosted a ceremony to mark the partnership and the properties' return to northern British Columbia, which was attended by members of the First Nations community, museum staff, and the public. Curatorial protocol was in place, as anyone wishing to handle the items, including the descendents of those who had handcrafted the materials, had to wear white gloves. A few weeks' later arrangements were made for youth from

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<sup>1</sup> The Fraser Fort-George Regional Museum is now known as Exploration Place Museum.

the community to visit the Museum and view the objects. The students arrived by school bus and were seated in a classroom like setting, while I and another researcher talked about some of the objects displayed at the front of the room. The information we presented came from texts written about the history of the area, books on indigenous handicrafts, and notes that had been sent with each item. For us the objects were beautiful foreign curiosities; however, the youth did not share our unfamiliarity with the items. At one point during the presentation one youth stepped forward and proceeded to speak in great detail about one of the objects I was holding. He stated the name of the person who had made the item and his family relationship to that person along with other information about the object's construction and use. To my knowledge this was the first time he had ever seen the object, but the connection he displayed made me feel that by keeping the material we were providing a disservice. At that moment and since, I have thought about the learning opportunities that this boy and all the other youth missed by not being able to reconnect with the objects in their own community surrounded by friends and family that were also very much tied to these materials. Instead as per museological standards each object was catalogued, wrapped in acid free tissue, and stored in a wooden cabinet in the archival room.

This thesis was inspired by these events, as I wanted to understand the forces that influenced the collection of aboriginal materials and the factors that continue to prevent the full return of most objects. I also sought to examine repatriation policies to see whether there was one best method that would support the complete return of cultural property to First Nations communities. All the while I am reminded that time continues to pass, and the youth that visited the Museum that day would now be in early adulthood.

Pam Flagel  
Prince George, 2010

## Introduction

### **Breaking Copper: A Demonstration for Cultural Self-Determination**

In February 2000, at a conference on protecting traditional knowledge at the University of British Columbia's Museum of Anthropology, a Kwakwaka'wakw group from Cape Mudge, BC expressed feelings of frustration over having to build a museum in order to have their cultural property returned.<sup>2</sup> The representatives from Cape Mudge displayed their dissatisfaction through a demonstration involving the physical act of breaking a sheet of copper. The protestors stated that the traditional practice of "breaking copper" was meant to represent a violation of trust. In this case the act represented a break in understanding between the Kwakwaka'wakw of Cape Mudge, the Federal Government, and the museum community. The group felt that because they were required to build a museum facility adhering to the standards requested by the Canadian Museum of Civilization in Ottawa, such as climate control and public access, their property was in fact still not their own. The property as the representatives put it is "attached to strings" and can be "pulled back" anytime the museum or government feel the Kwakwaka'wakw are not upholding their obligations.

The Kwakwaka'wakw of Cape Mudge were protesting against the first agreement reached in Canada between a museum and a First Nations community. In the early 1970s the Kwakwaka'wakw of Alert Bay and Cape Mudge, BC approached the National Museum of Man, now known as the Museum of Civilization, to have material returned that had been confiscated in

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<sup>2</sup> This information was gathered from a conference I attended entitled "Protecting Knowledge: Traditional Resource Rights in the New Millennium" which took place at the University of British Columbia, February 23-26, 2000. As a condition to repatriation the Kwakwaka'wakw had to build two museum facilities, one at Alert Bay and one at Cape Mudge, as the descendants of the original owners of the property were dispersed between the two communities.

1921 under anti-potlatching legislation.<sup>3</sup> The Museum agreed to return the material provided the Kwakwaka'wakw build a museum to house the items in order to ensure public access and conservation of the property.<sup>4</sup> The Kwakwaka'wakw agreed to these terms and opened the Kwakiutl Museum in Cape Mudge in 1979, and the U'mista Cultural Centre in Alert Bay in 1980.<sup>5</sup> The agreement between the Kwakwaka'wakw and the Canadian Museum of Civilization is important as it set a precedence for other repatriation settlements that followed. The breaking copper demonstration by the Kwakwaka'wakw of Cape Mudge 22 years later illustrates that this repatriation agreement, and perhaps the many others modeled after its example, have not resolved questions of ownership or reconciled relationships between museums and First Nations.<sup>6</sup> This thesis will argue that full ownership over repatriated cultural property must be returned to First Nations if reconciliation is to be achieved. It will argue further that the repatriation of cultural property is a necessary part of the effort to regain cultural self-determination, which refers to the capacity of First Nations people to decide how their traditions will be preserved and continue to be developed.<sup>7</sup>

The acquisition of First Nations cultural materials was part of the colonization process and the widely held belief that indigenous peoples would soon be assimilated by Western

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<sup>3</sup> Gloria Cranmer Webster, "The 'R' Word," *Muse*, Autumn (1988): 43; Gloria Cranmer Webster, "The Potlatch Collection Repatriation," *University of British Columbia Law Review*, Special Issue (1995): 139; James Clifford "Four Northwest Coast Museums: Travel Reflections," in *Exhibiting Cultures: The Poetics and Politics of Museum Display*, ed. Ivan Karp and Steven D. Lavine (Washington: Smithsonian Institution Press, 1991), 228; Authur J. Ray, *I Have Lived Here Since the World Began* (Toronto: Lester Publishing Limited and Key Porter Books, 1996), 230.

<sup>4</sup> Webster, "The 'R' Word," 43; Webster, "The Potlatch Collection Repatriation," 140.

<sup>5</sup> *Ibid.*, 141.

<sup>6</sup> The term indigenous and aboriginal will be employed as a general reference. The terms First Nations and Native American will also be used when discussing issues relating to Canada and the United States. The terms Indian, Inuit, and Eskimo will be employed as per the time period being reviewed or as required by the reference that is being utilized.

<sup>7</sup> Aroha Te Pareake mead Suva, "Cultural and Intellectual Property Rights of Indigenous Peoples of the Pacific," in *Protecting Knowledge: Traditional Resource Rights in the new Millennium*, Proceedings by the Union of British Columbia Indian Chiefs (Vancouver: Museums of Anthropology, 2000), 4; Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, (New York: Cambridge University Press, 2006), 266.

European society.<sup>8</sup> As a result of these views, museums collected indigenous materials in order to preserve these items as evidence of cultures thought soon to be extinct. The collection of indigenous materials also provided a common history for the newly created state, and reinforced a collective identity of settlement and progress.<sup>9</sup> Items were collected through a variety of means such as through trade, sale, donation, and theft.<sup>10</sup> Furthermore, the collection of materials by museums often worked in tandem with government policy. For example, legislation was introduced in 1884 banning the potlatch and other native ceremonies.<sup>11</sup> This legislation was enacted to stop practices central to native societies in order to hasten assimilation, and in many instances museums obtained First Nations cultural objects as a result of these laws.<sup>12</sup> After the legislation banning native ceremonies was revoked in 1951, First Nations communities slowly began the work of piecing together abandoned cultural practices from the memories of elders.<sup>13</sup> First Nations communities also began requesting that museums return objects of cultural and spiritual significance, as this material forms an essential component of cultural revitalization. The politics behind the various views surrounding repatriation will be explored in greater depth in later chapters. In most instances museum professionals continue to view preservation and education as their key duties but also agree with the importance of assisting indigenous peoples with their efforts to regain cultural self-determination.<sup>14</sup> This study will explore the

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<sup>8</sup> Douglas Cole, *Captured Heritage: The Scramble for Northwest Coast Artifacts* (Vancouver: UBC Press, 1995), 288.

<sup>9</sup> Ruth B. Phillips, "Indian Art: Where do you put it?" *Muse* VI, no. 3 (1988): 64; Deborah Doxtator, *Fluffs and Feathers: An Exhibit on the Symbols of Indianness*, (Brantford: Woodland Cultural Centre, 1992), 28, 30.

<sup>10</sup> Catherine Bell, "Restructuring the Relationship: Domestic Repatriation and Canadian Law Reform," in *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform*, eds. Catherine Bell and Robert K. Paterson (Vancouver: UBC Press, 2009), 21.

<sup>11</sup> Ray, *I Have Lived Here Since the World Began*, 222-226.

<sup>12</sup> Ibid.; George H.J. Abrams, "The Case for Wampum: Repatriation from the Museum of the American Indian to the Six Nations Confederacy, Brantford, Ontario, Canada," in *Museums and the Making of Ourselves*, ed. Flora E.S. Kaplan (London: Leicester University Press, 1994), 379.

<sup>13</sup> Terri-Lynn Williams, "Cultural Perpetuation: Repatriation of First Nations Cultural Heritage," *University of British Columbia Law Review*, Special Issue (1995): 190.

<sup>14</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 275.

connections between repatriation, cultural self-determination, and reconciliation and examine the current approaches to repatriation in Canada to determine if there is one best model suited to establishing cultural self-determination and reconciliation.<sup>15</sup>

### **Defining Cultural Property**

Throughout this thesis the term cultural property will be employed to refer to the cultural items that are the focus of repatriation discussions. For museums the term cultural property is used to describe “artifacts of antique origin and may even include ceremonies, songs, language and other forms of cultural expression.”<sup>16</sup> Although the term property is somewhat problematic due to its associations with Western European legal concepts of private ownership, the term will be employed to recognize indigenous rights to ownership whether they are communal or individual.<sup>17</sup> The term cultural property encompasses both tangible and intangible forms of cultural expression. The return of tangible objects, such as masks and medicine bundles as well as human remains, will be the focus of discussion throughout the thesis. Intangible forms of expression such as songs and stories that are often viewed by indigenous peoples as interrelated and connected to the return of tangible objects, continue to be seen in Western discourse as distinct. Such discussions usually encompass a focus on intellectual property rights as well as copyright laws and are outside the scope of this work.

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<sup>15</sup> Perhaps one of the most comprehensive discussions of the relationship between repatriation, self-determination, and reconciliation is provided by Ana Filipa Vrdoljak. The author details these connections stating that one of the rationales for repatriation is “self-determination and reconciliation – amalgamation of the preceding rationales to enable self-determination and reconciliation.” See Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 2.

<sup>16</sup> James Cuno, “Museums, Antiquities, Cultural Property, and the US Legal Framework for Making Acquisitions,” in *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, ed. Kate Fitz Gibbon (London: Rutgers University Press, 2005), 144.

<sup>17</sup> Marie Battiste and James (Sa’ke’j) Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon, Saskatchewan: Purich Publishing Ltd., 2000), 149-150; Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 270; Catherine Bell and Heather McCuaig, in consultation with the Ktunaxa/Kinbasket Tribal Council and the Ktunaxa/Kinbasket Traditional Elders Working Group, “Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources: Perspectives of Community Members,” in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 314, 315, 332, 333.

## **Repatriation, Cultural Self-Determination, and Reconciliation: A New Opportunity for Museums**

Acknowledging that values are never completely set and each group consists of many individuals whose views and beliefs may vary, broadly speaking the Western tradition has focused on the preservation and display of objects in order to promote learning. This view that “cultural objects from the past should be ‘preserved’ in glass cases with humidity controls”<sup>18</sup> is in sharp contrast to the First Nations view that history is “living.”<sup>19</sup> Cultural property is not meant to be displayed but has been created to be used.<sup>20</sup> For First Nations people this distinction is also spiritual, as every object is important to “the continuance of ceremonies, language and traditional ways of life.”<sup>21</sup> Conditions placed on returned cultural property interferes with cultural self-determination as full ownership is not restored, and communities are not free to follow their own principles in regards to the use and storage of the objects. In order to reclaim cultural self-determination First Nations must regain control over how their property is utilized once returned, and recapture responsibility for the properties’ care based on their values regarding preservation and use. Each communities’ aspirations as to how repatriated objects should be stored may vary. Some communities may want to establish museums and cultural facilities to house returned objects, while others might want to return the property to individual families. Some communities may decide to leave the materials in the museum and borrow them for use during certain ceremonies. The purpose of establishing cultural self-determination for First Nations is to allow each community to make its own decision as to what is best for its people.

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<sup>18</sup> Deborah Doxtator, “Home of Indian Culture and Other Stories in the Museum: Erasing the Stereotypes,” *Muse* 6, no. 3 (1988): 27.

<sup>19</sup> Lee Davis, “Locating the Living Museum,” *News from California* 4, no. 1 (1989): 6.

<sup>20</sup> *Ibid.*

<sup>21</sup> Williams, “Cultural Perpetuation,” 196.



The return of cultural self-determination to First Nations communities is essential if reconciliation between museums and First Nations is to be achieved. Reconciliation can perhaps be best understood as a process that entails “recognition, rights and reform.”<sup>22</sup> Often reconciliation begins as an intellectual exercise that requires the acknowledgement of past wrongs and a commitment to act more justly. In most cases museums have wholeheartedly embraced the intellectual aspects of the reconciliation process. Many institutions have admitted to the damage caused by the collection of cultural property, and have made efforts to include First Nations in exhibit planning and public programming. The commitment to these practices can be found in museum policy documents in both Canada and Australia.<sup>23</sup> These policies will be discussed in more detail in chapter three, but it is important to briefly note how they have helped to define and influence the intellectual aspects of reconciliation. Museums in both countries have made significant efforts over the last twenty years to consult and collaborate with aboriginal peoples to ensure that exhibitions not only represent indigenous worldviews but that they benefit their communities as well as the public.<sup>24</sup> According to one exhibit designer, “once he got it straight in his head that communities own their own histories . . . he realized they had every right to say how their collections should be displayed and interpreted.”<sup>25</sup> While these

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<sup>22</sup>Linda Burney, “Not Just a Challenge, an Opportunity,” in *Reconciliation: Essays on Australian Reconciliation* ed. Michelle Grattan (Melbourne, Black Inc., 2000), 68.

<sup>23</sup> For further details see Assembly of First Nations and the Canadian Museums Association, *Turing the Page: Forging New Partnerships between Museums and First Peoples*, Task Force Report on Museums and First Peoples, (Ottawa: Assembly of First Nations and the Canadian Museum Association, 1992); Council of Australian Museums Association, *Previous Possessions, New Obligations: Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples* (Melbourne, Council of Australian Museums Association, 1993); Museums Australia, *Continuous Cultures Ongoing Responsibilities: A Comprehensive Policy Document and Guidelines for Australian Museums Working with Aboriginal and Torres Strait Islander Cultural Heritage* (Canberra, Museums Australia, 2005).

<sup>24</sup> Michael Ames, “How to Decorate a House: The Renegotiation of Cultural Representations at the University of British Columbia Museum of Anthropology,” in *Museums and Source Communities: A Routledge Reader* ed. Laura Peers and Alison K. Brown (New York: Routledge, 2003), 172-175; Lynda Kelly, Carolyn Cook, and Phil Gordon “Building Relationships through Communities of Practice: Museums and Indigenous Peoples,” *Curator* 49, no. 2 (2006): 230.

<sup>25</sup> Ames, “How to Decorate a House,” 175.

changes have been profound and have helped to initiate healing between museums and First Nations communities, they only represent the beginning of a much larger process.

Linda Burney notes that, “aboriginal people have always said there can be no reconciliation without justice.”<sup>26</sup> The establishment of equality between aboriginal peoples and museums is essential if social justice is to be achieved. Enabling First Nations to participate in exhibit planning can help to create a more equal process; however, this does not address the core issue at the heart of this unequal relationship.<sup>27</sup> The central issue remains the collection and ownership of cultural property. Repatriation is the next logical step in the reconciliation process as it provides a tangible acknowledgement of past injustice and affirms indigenous cultural self-determination rights. The return of full ownership, control, and responsibility of cultural property to First Nations communities establishes equality and trust between First Nations and museums. Equality requires that First Nations be provided the same opportunity as museum professionals to shape the repatriation process. Trust has been identified as one of the key elements required for reconciliation, and is created when both indigenous and non-indigenous groups work from a place of recognized equality and share responsibility for decision making.<sup>28</sup> In the case of repatriation, in order for equality and trust to be established First Nations communities must receive full control and responsibility for the property. When First Nations are not entrusted with the care of their cultural property, the process of colonial interference continues and fosters mistrust. Another component required for reconciliation is truth, which

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<sup>26</sup> Burney, “Not Just a Challenge, an Opportunity,”69.

<sup>27</sup> *Ibid.*, 69-70.

<sup>28</sup> Tara Marsden, “From the Land to the Supreme Court, and Back Again: Defining Meaningful Consultation with First Nations in Northern British Columbia,” (MA thesis, University of Northern British Columbia, 2005), 32, 105, 107, 117-119.

begins through the acknowledgement of historical injustice by non-indigenous institutions to indigenous peoples.<sup>29</sup>

The repatriation of cultural property is part of the process of reconciling with past injustice through the return of items collected by museums. The acknowledgement of truth also requires sacrifice, which entails museums to not only return property but also control over the items and responsibility for their care. Both First Nations communities and museums benefit from repatriation agreements that work to acknowledge truth and establish trust, allowing First Nations to regain control and responsibility over their cultural property. First Nations communities that regain cultural self-determination have the power to not only determine how their culture is developed but also how it might be shared. Often under such circumstances First Nations communities have decided to continue to work with museums to present their histories and perspectives.

The Nitsitapiisinni Gallery at the Glenbow Museum in Calgary, Alberta serves as an outstanding example of how curators can actually enrich their knowledge and the information presented to the public by supporting the return of aboriginal cultural property. This collaborative display arose from the goodwill, understanding, and mutual respect that developed amongst First Nations and museum professionals as they worked to return cultural property from the Glenbow to Blackfoot communities. An in-depth description of the repatriation process and the Nitsitapiisinni exhibit will be provided in Chapter Two. However, I would like to briefly discuss two photographs that I took while visiting the display, as each picture demonstrates the richness of the information available regarding Blackfoot history and culture as a result of this partnership.

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<sup>29</sup> Paulette Yvonne Lynette Regan, "Unsettling the Settler Within: Canada's Peacemaker Myth, Reconciliation and Transformative Pathways to Decolonization" (Ph.D. diss., University of Victoria, 2006), 19-21.



Figure 1: Cyril Olds, Siksika

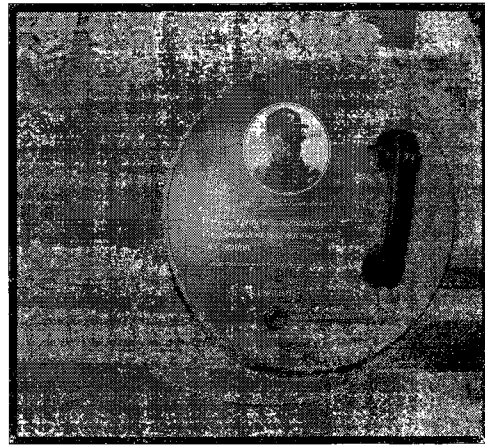


Figure 2: Andy Black Water, Kaimai

At first glance the photograph in Figure One looks very similar to a typical museum display as a traditional outfit is shown. Most often a label describing such an item would indicate what it was used for, the materials employed in its construction, and the date it was made. However, the text below the display offers a much more nuanced and personal account than usually found on labels that accompany objects on exhibit. In this case the visitor to the display learns that the outfit was owned and worn by Cyril Olds who was Siksika. The text states that he “held a strong belief in traditional ways . . . was a member of the horn society . . . kept many sacred bundles . . . [and] camped at the Calgary Stampede every year.” The text also explains that his tipi displayed an image of a painted kangaroo, as he served in the Second World War and was stationed in Australia. Arranged in front of this passage are items that might be found at a present day powwow, and behind the display contemporary photographs of Blackfoot people attending a powwow are mounted on the wall.

The photograph in Figure Two illustrates the many opportunities that are available throughout the gallery to listen to the voice of living Blackfoot people. In each instance the speaker's full name and tribe is identified along with a personal photograph. The visitor has the opportunity to listen to the speaker in Blackfoot and English, making this a great educational resource for both Blackfoot and non-Blackfoot guests alike. In this case visitors have the opportunity to listen to Andy Black Water speak about creation and the connections found in the natural world. The volume of information available and the amount of work that Blackfoot community members and museum staff have placed into the Gallery speak to a common commitment. Due to this partnership the exhibit is able to provide comprehensive information about Blackfoot history and present-day culture. The gallery serves as an example of what can be achieved when museums support the return of cultural property to First Nations.

Most First Nations see the value of educating the public about indigenous culture and are happy to share their heritage, once trust and equality with museums has been established. However, repatriation has often been viewed as the final act between museums and indigenous communities rather than the beginning of a new and stronger relationship.<sup>30</sup> Many of the positions taken against repatriation were based on fears by museums that the return of cultural property would result in a bombardment of requests for the return of all indigenous objects. Thus it was argued that the repatriation of indigenous cultural property would open the floodgates in terms of requests. If these requests were granted, museum collections would become void of all aboriginal materials.<sup>31</sup> While some of these fears continue to persist, for the

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<sup>30</sup> Chip Colwell-Chanthaphohn, "Remembrance of Things and Things Past: Museums as Memorials and Encounters with Native American History," *Museum Anthropology* 27, 1-2 (2004): 38-39.

<sup>31</sup> Kathryn Last, "Cultural Pluralism and the Return of Cultural Heritage," in *Accommodating Cultural Diversity*, ed. Stephen Tierney (Burlington, Ashgate Publishing Company, 2007), 137.

most part many refer to these concerns as the floodgate myth.<sup>32</sup> The worry that museum collections might be emptied through repatriation has been termed a myth because “thus far, [the] experience contradicts the alarms raised by some opponents of repatriation, who had feared that if repatriation were allowed, museums would soon be emptied of their collections.”<sup>33</sup> In some instances First Nations communities have decided to leave certain items in museums in order to provide educational opportunities for all people.<sup>34</sup> Moreover communities sometimes opt to continue to store items of spiritual importance in museums, which are then removed and taken back to the community during special ceremonial events.<sup>35</sup> In cases where communities decide that material should be returned, repatriation has often led to strong partnerships in research and exhibitions.<sup>36</sup> As detailed in documents such as the Mataatua Declaration and the Daes Principles and Guidelines indigenous peoples are willing to share some aspects of their culture with museums and non-indigenous peoples, and have frequently asserted they see the need for museums as places of education.<sup>37</sup> The Royal Commission on Aboriginal Peoples (RCAP) also acknowledges that First Nations do not wish to see the removal of all indigenous

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<sup>32</sup> Kelly Elizabeth Yasaitis, “Collecting Culture and the British Museum,” *Curator* 49, no. 4 (2006): 459.

<sup>33</sup> Ruth B. Phillips and Elizabeth Johnson, “Negotiating New Relationships: Canadian Museums, First Nations, and Cultural Property,” in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (New York: Rowman & Littlefield Publishers, Inc., 2003), 161.

<sup>34</sup> Gerald T. Conaty and Beth Carter, “Our Story in Our Words: Diversity and Equality in the Glenbow Museum,” in *Looking Reality in the Eye: Museums and Social Responsibility*, eds. Robert R. Janes and Gerald T. Conaty (Calgary, AB: University of Calgary Press, 2005), 53.

<sup>35</sup> W. J. Byrne, “Province of Alberta Perspective on the Sacredness of Past People and Places,” in *Kunaitupii: Coming Together on Native Sacred Sites: The Sacredness, Conservation and Interpretation: A Native and Non-Native Forum: Proceedings of the First Joint Meeting of the Archaeological Society and the Montana Archaeological Society May 2-6 1900 Waterton Lakes National Park, Alberta Canada*, eds. Brian O.K. Reeves and Margaret Kennedy (Calgary, AB: Archaeological Society of Alberta, 1993), 105.

<sup>36</sup> Joy Hendry, *Reclaiming Culture: Indigenous People and Self-Representation* (New York: Palgrave Macmillan, 2005), 35.

, 35; Phillips and Johnson, “Negotiating New Relationships,” 158.

<sup>37</sup> Miriam Clavir, *Preserving What is Valued: Museums, Conservation and First Nations* (Vancouver: UBC Press, 2002), 93; Conaty and Carter, “Our Story in Our Words,” 53; Phillips and Johnson, “Negotiating New Relationships,” 158.

cultural property from museums.<sup>38</sup> In terms of objects that might remain under the custodianship of museums the RCAP report states that items that do not possess spiritual value to First Nations or that cannot be associated with a known group will most likely continue to be held in institutional collections.<sup>39</sup> However, the Report is clear that “where repatriation is called for...museums must respect the wishes of the Aboriginal community.”<sup>40</sup>

Reg Crowshoe states “this is where the love-hate relationship with museums comes in. You hate them for what they did, but you still love them for . . . hanging on to it.”<sup>41</sup> His observations speak to a similar bond that indigenous peoples share with museums, in that both groups recognize the value and importance of the objects. Although, his assertion also hints at the damaging impact that collection of cultural property has had on indigenous communities. As long as indigenous cultural property remains in museums, despite the needs and wishes of First Nations people, division between aboriginal communities and museums will continue. Repatriation of indigenous cultural property can help heal these divisions and promote reconciliation.

### **Turning the Page: A Voluntary Approach to Repatriation**

Although the repatriation of indigenous material might provide a challenge for museums, most accept that in some cases repatriation is justified and have policies in place when requests for the return of items are made.<sup>42</sup> However, there are those that argue against repatriation on the grounds that cultural material housed in museums has become the common property of all

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<sup>38</sup> Royal Commission on Aboriginal Peoples, “Chapter 6: Arts and Heritage,” in *Report of the Royal Commission on Aboriginal Peoples: Volume 3: Gathering Strength*, 1996, 594.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Brian Nobel in consultation with Reg Crowshoe and in discussion with the Knut-sum-atak Society, “Poomaksin: Skinnipiikani-Nitsiitapii Law, Transfers, and Making Relatives Practices and Principles for Cultural Protection, Repatriation, Redress, and Heritage Law Making with Canada,” in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 299.

<sup>42</sup> Michael M. Ames, Julia D. Harrison and Trudy Nicks, “Proposed Museum Policies for Ethnological Collections and the Peoples They Represent,” *Muse* VI, no. 3 (1988): 47.

citizens. Concerns surrounding preservation and the belief that the objects should still remain available to the public have led most museums in Canada to require First Nations communities to build cultural centres before their property is returned. This policy was re-enforced in a report prepared in 1992 by a joint task force on repatriation made up of representatives from the Canadian Museums Association and the Assembly of First Nations. The report entitled *Turning the Page: Forging New Partnerships between Museums and First Peoples* outlined an “ethical framework and strategies by which Aboriginal peoples and cultural institutions [could] work together to represent Aboriginal history and culture.”<sup>43</sup> In terms of repatriation the Task Force recommended “a case-by-case collaborative approach to resolving repatriation based on moral and ethical criteria . . . rather than a strictly legalistic approach”.<sup>44</sup> The Report also provided a strong endorsement for the establishment of cultural centres in First Nations communities to store and preserve cultural property, and to act as resources for communities in their efforts to revitalize their culture.<sup>45</sup>

A number of terms have been employed to describe the approach to repatriation advocated by the Task Force. April Lemoine titles Canada’s approach to repatriation as “repatriation by ethics.”<sup>46</sup> She writes that the framework developed by the Canadian Museums Association (CMA) through their work with First Nations has created a “standard of practice” that is followed by most museums throughout Canada.<sup>47</sup> However, it has been noted that museum membership in organizations such as the CMA are not mandatory and as such museums

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<sup>43</sup> Assembly of First Nations and the Canadian Museums Association, *Turning the Page: Forging New Partnerships between Museums and First Peoples*, Task Force Report on Museums and First Peoples, (Ottawa: Assembly of First Nations and the Canadian Museum Association, 1992), 1.

<sup>44</sup> *Ibid.*, 5.

<sup>45</sup> *Ibid.*

<sup>46</sup> April J. Lemoine, “Repatriation of Cultural Property in Museums: A Balance of Values and National Agendas” (MA thesis, Baylor University, 2007), 38.

<sup>47</sup> *Ibid.*, 47.



are not obligated to accept the recommendations of the Task Force report.<sup>48</sup> This form of repatriation based on “moral imperatives rather than legal obligations”<sup>49</sup> has been described by Ana Filipa Vrdoljak as the voluntary model because museums have a choice regarding participation. Catherine Bell uses the term policy based to describe this form of repatriation and stresses that it allows for agreements to be negotiated on a case-by-case basis without legislative interference.<sup>50</sup> Throughout the thesis I will predominately employ the term voluntary to describe the approach promoted by the Task Force, although, the terms case-by-case and negotiation will also be used. I have stayed away from the word ethical as it can be defined in a variety of ways, and when distinguishing between voluntary and legislative approaches there is no evidence to suggest that one form is anymore ethical than the other. Furthermore the term voluntary best captures the aspect of a museum’s choice to participate in repatriation, which is fundamentally different from a legislative process that mandates museum involvement. While the term negotiation will sometimes be used in conjunction with the term voluntary, it should be noted that legislative policy will still require some form of negotiation between museums and indigenous peoples and so this process is not unique to one policy type.

### **Legislating the Return of Cultural Property: Repatriation Policy in Alberta and the United States**

The policies recommended by the Task Force were accepted as standard practice until the Province of Alberta introduced repatriation legislation in 2000. The *First Nations Sacred Ceremonial Objects and Repatriation Act* was the first of its kind in Canada and worked to see the return of ceremonial objects from museums to First Nations communities without conditions placed on the materials storage and use. The goal of the legislation was “to harmonize the role

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<sup>48</sup> Gerald T. Conaty and Robert R. Janes, “Issues of Repatriation: A Canadian View,” *European Review of Native American Studies* 11, no. 2 (1997): 32.

<sup>49</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 286.

<sup>50</sup> Catherine Bell, “Restructuring the Relationship,” 15.

museums play in the preservation of human heritage with the aspirations of First Nations.”<sup>51</sup> The legislation in Alberta was also introduced as museum professionals and government officials wanted to see a single set of procedures established to guide the repatriation process between all Provincial museums and First Nations.<sup>52</sup> As Pearle Calahasen, the Associate Minister of Aboriginal Affairs, noted the agreement recognized legislation was necessary as it would bring “both clarity and certainty to the repatriation process for both museums and First Nations groups.”<sup>53</sup> The law was strongly supported by the curators at the Glenbow Museum, as they noticed protocols regarding the care and preservation of returned property prevented the reintegration of the materials back into First Nations communities.

Although the legislation introduced in Alberta was the first of its kind in Canada, it is not the only example of legislation enacted to guide the repatriation process. In 1990 the United States introduced the *Native American Graves Protection and Repatriation Act* (NAGPRA). The United States is still the first country to enact legislation at the federal level to guide the repatriation of native cultural property from museums to native communities. NAGPRA requires all federally funded museums and institutions to produce inventories of any human remains or cultural materials in their collections.<sup>54</sup> The museums must provide these inventories to Native American communities who may have had a past relationship with the property.<sup>55</sup> Native American communities are then required to demonstrate a prior connection to the objects, and once this evidence is supplied and accepted by museums the material is returned without

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<sup>51</sup> Phillips and Johnson, “Negotiating New Relationships,” 158.

<sup>52</sup> Gerald Conaty, interview by author, 28 November 2000.

<sup>53</sup> Pearl Calahasen, interview by author, 14 May 2001.

<sup>54</sup> Phillips and Johnson, “Negotiating New Relationships,” 155.

<sup>55</sup> Ibid.

condition.<sup>56</sup> Even though NAGPRA is not a piece of Canadian legislation, it is still important to this discussion as currently so few examples of repatriation legislation exist.

It should be noted that some repatriation agreements have also been reached between museums and indigenous communities through the land claims treaty process. Repatriation agreements reached through the treaty process combine elements of both the voluntary and legislative model. Museums enter into these discussions on a voluntary basis, as they are not legislatively required to participate.<sup>57</sup> The position of most institutions during these negotiations are most often influenced by voluntary policies, such as the *Turning the Page* report.<sup>58</sup> However, once a treaty is ratified any repatriation agreements contained within the document become a part of constitutional law.<sup>59</sup> For the most part the treaty process is limited to First Nations in British Columbia, as the Province did not begin to pursue treaties with aboriginal communities until recently.<sup>60</sup> The Nisga'a treaty was the first to be finalized in 1998, and the arrangements made around repatriation have influenced the development of other treaty processes and repatriation agreements with museums. Although the scope of the treaty process may be limited,<sup>61</sup> other Canadian First Nations that signed treaties between the late 1700s and early 1900s are also beginning to negotiate new land claim agreements.<sup>62</sup> Those First Nations entering into these discussions will also have the opportunity to negotiate the repatriation of cultural property during this process.

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<sup>56</sup> Ibid.

<sup>57</sup> Andrea Laforet, "Repatriation and the Canadian Museum of Civilization" (Paper presented at Native Art Studies Association Conference, Berkeley, California, October, 1998), 4-5.

<sup>58</sup> Cindy Carleton, e-mail message to author, April 13, 2000; Laforet, "Repatriation and the Canadian Museum of Civilization," 1-2.

<sup>59</sup> Laforet, "Repatriation and the Canadian Museum of Civilization," 5.

<sup>60</sup> Cole Harris, "Editorial," *BC Studies* The Nisga'a Treaty, no. 120 (1998-99): 2,3.

<sup>61</sup> Catherine Bell, "Restructuring the Relationship," 15.

<sup>62</sup> Hugh Brody, *Maps and Dreams* (Vancouver: Douglas & McIntyre Ltd., 1988), 67; BC Treaty Commission, Frequently Asked Questions: What are treaties, <http://www.bctreaty.net/files/faqs.php> (accessed February 27, 2010); Laforet, "Repatriation and the Canadian Museum of Civilization," 5-6.

Repatriation agreements reached through voluntary policies, treaty processes, and legislative acts will be examined with respect to their efficacy in returning control and responsibility for repatriated cultural property to First Nations communities. The thesis will argue that NAGPRA and the *Sacred Ceremonial Objects Repatriation Act* go further to provide First Nations groups with control and responsibility for their repatriated cultural property than voluntary negotiation, as material is returned to communities without condition and community members can use the property as they wish. The analysis will demonstrate that repatriation agreements reached through the treaty process are better able to promote First Nations cultural self-determination than voluntary policies, but that this approach is still not as effective as legislative policy. It will be argued that the return of control and responsibility is essential to the cultural self-determination of First Nations communities and a necessary first step in the reconciliation process between museums and First Nations. It will be shown that in instances where repatriation legislation has been applied, First Nations communities often decide to continue to work with museums to present their histories and perspectives. Effective working relationships between these two groups is an essential component in the reconciliation process.

### **Outline of Chapters**

The thesis is divided into three chapters. The first chapter explores the history of museums and the collection of cultural property. This examination works to provide context to the values, such as preservation and public access, which often shape the ways in which museums approach repatriation requests. This discussion also demonstrates the complexity of the role of museums as institutions that have fostered education and accessibility for non-indigenous populations, while at the same time playing a role in colonization and the loss of cultural self-determination for indigenous peoples.

The second chapter explores the relationship between cultural self-determination, repatriation and reconciliation. The chapter demonstrates the connection between cultural self-determination and reconciliation, and the role that repatriation can play in returning control and responsibility over cultural property to indigenous peoples. The analysis illustrates that repatriation agreements that place conditions on the storage and the use of repatriated cultural property will fail to achieve reconciliation between aboriginal communities and museums, as full indigenous cultural self-determination is not restored.

The third chapter reviews voluntary policies, treaty processes, and legislative acts that inform current approaches to repatriation, primarily as they pertain to Canada. Examples from Australia and the United States are also presented to add further depth to the analysis. Both voluntary and legislative policies as well as agreements reached through treaty are assessed with respect to their role in advancing cultural self-determination for First Nations peoples and in fostering reconciliation between museums and aboriginal communities. The review demonstrates that legislation is best able to return control and responsibility to First Nations communities over repatriated cultural property and to bring about reconciliation.

The importance of cultural property to aboriginal people is eloquently stated by Frank Weasel Head, who upon the return of spiritual objects back to his community described the objects as:

the essence of our lives as Blackfoot people. Our lives begin with these. As children, we connect our spirituality and our everyday life [to the sacred objects] and our children have sort of lost that.<sup>63</sup>

The statement expresses the relationship between cultural property and identity for First Nations communities. Discussions of decolonization and self-determination rights of First Nations people often focus on issues of self-government and land claims. However, this work is

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<sup>63</sup> Bruce Weir, "Glenbow Returns Sacred Objects" *Alberta Sweetgrass* 7, no. 3 (2000): 3.

primarily concerned with the cultural component of self-determination. Although repatriation is only a small piece of a larger issue, it is a very important one. Decolonization and reconciliation between indigenous and non-indigenous peoples will continue to remain elusive if we cannot share our history as equals and enable First Nations to determine the course of their culture.

## Chapter One: A Historical Overview of the Dual Role of Museums as Educators and Colonizers

Museums are relatively new cultural institutions that have emerged within the last 200 years.<sup>64</sup> Over this time they have come to perform a variety of public service functions from collection and conservation to research, education, and entertainment.<sup>65</sup> However for some, museums are also viewed as institutions that are tied to colonization and cultural loss. Although individual opinions may vary, a traditional display of indigenous cultural material is likely to be perceived by non-indigenous populations as a source of education and entertainment, whereas many indigenous peoples are more apt to view the display as an example of colonial oppression.<sup>66</sup> This chapter demonstrates that museums are complex institutions that can simultaneously occupy the role of both educator and colonizer.<sup>67</sup> These perceptions are tied to the history of museums and the act of collection itself.

The importance of understanding the relationship between the history of museums and their present day function is perhaps best summarized by James J. Sheehan, who wrote that “like a complex archaeological site, the modern museum is built on layers of historical experience, which are often buried beneath the compelling activities of the present.”<sup>68</sup> This chapter will explore some of the influential themes leading to the creation of museums, including the

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<sup>64</sup> Michael M. Ames, *Cannibal Tours and Glass Boxes: The Anthropology of Museums* (Vancouver: UBC Press, 1992), 20

<sup>65</sup> Communications Canada, *Challenges and Choices: Federal Policy and Program Proposals for Canadian Museums* (Ottawa, ON: Minister of Supply and Services Canada, 1988), 28.

<sup>66</sup> These perceptions are supported by the following resources: Robyn Gillam, *Hall of Mirrors: Museums and the Canadian Public* (Banff, AB: The Banff Centre Press, 2001), XV-XVII; Canadian Museum Association, “Museums for Tomorrow: CMA’s Recommendations for the New Canadian Museums Policy,” <http://www.museums.ca/media/Pdf/muspol.pdf> (accessed September 11, 2008); Phillips and Johnson, “Negotiating New Relationships,” 153; Clavir, *Preserving What is Valued*,” 74.

<sup>67</sup> The idea that museums are complex institutions, accomplishing a wide range of objectives was influenced by Kevin Walsh’s discussion of museums as both emancipators and ideological tools. Kevin Walsh, *The Representation of the Past: Museums and Heritage in the Post-Modern World* (New York: Routledge, 1992), 38.

<sup>68</sup> James J. Sheehan, “From Princely Collections to Public Museums: Toward a History of the German Art Museum,” in *Rediscovering History: Culture, Politics, and the Psyche*, ed. Michael S. Roth (Stanford: Stanford University Press, 1994), 182.

development of cabinets of curiosities, the beginnings of scientific investigation, the advent of industrialization, the fostering of nationalism, and the promotion of public education.<sup>69</sup> Each theme will be discussed in relation to the collection of indigenous property. This chapter will then assess the impact of museum collection practices on indigenous self-determination rights and repatriation claims.

### **The Development of Museums**

The Renaissance is considered to be the starting point for the modern museum as this period saw a dramatic rise in private collecting and scholarly research related to the rediscovery of ancient Roman and Greek civilizations.<sup>70</sup> The Renaissance had its origins in Italy, where increased trade with the Middle East led to the formation of a new wealthy class of merchants.<sup>71</sup> The merchants felt that the feudal class system was preventing them from attaining a greater level of power, and they studied history to find examples of more equal societies.<sup>72</sup> In doing so, they became interested in the democratic societal structure of ancient Rome and Greece, and their search for information about this period led to the collection of antiquities related to these civilizations.<sup>73</sup> At the same time the nobility also began to collect and display Greek and Roman artifacts, as they felt threatened by the acquisition of these objects by the merchant class.<sup>74</sup> The competition between these two groups led to the grandiose display of antiquities in showcases known as cabinets of curiosities.<sup>75</sup>

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<sup>69</sup> George E. Hein, "The Role of Museums in Society: Education and Social Action." *Curator* 48, no. 4 (2005): 357; Communications Canada, *Challenges and Choices*, 28.

<sup>70</sup> Ames, *Cannibal Tours and Glass Boxes*, 26; Bruce G. Trigger, *A History of Archaeological Thought*, 2nd ed. (Cambridge: Cambridge University Press, 2006), 52-53.

<sup>71</sup> Archie F. Key, *Beyond Four Walls: The Origins and Development of Canadian Museums* (Toronto: McClelland and Stewart Limited, 1973), 23.

<sup>72</sup> Trigger, *A History of Archaeological Thought*, 53.

<sup>73</sup> *Ibid.*, 52-53; Key, *Beyond Four Walls*, 23.

<sup>74</sup> Key, *Beyond Four Walls*, 24.

<sup>75</sup> Gillam, *Hall of Mirrors*, 18-19; Key, *Beyond Four Walls*, 23; Trigger, *A History of Archaeological Thought*, 55.



Exploration also increased during the Renaissance as countries searched for new trade routes. The cabinets of curiosities were used to display the cultural materials of previously unknown peoples, as well as plants and fauna brought back by explorers from newly discovered continents.<sup>76</sup> These discoveries brought previously held knowledge about the natural world into question, which sparked an era of systematic collection as well as the scholarly study of the materials held in the cabinets.<sup>77</sup> One of the greatest proponents of systematic collection and observation was Francis Bacon, who in the 1600s proposed that a national museum be established to house and study these collections.<sup>78</sup> Bacon was particularly concerned about the loss of knowledge that might result without a designated place to collect and study newly found species.<sup>79</sup> Although it took another 100 years before a national museum was established, his work did inspire many to form natural collections.<sup>80</sup> As a result of Bacon's influence a large collection of natural specimens gathered by Hans Sloane formed the basis for the establishment of the British Museum in 1759.<sup>81</sup>

The period from the 1700s to the 1800s, often referred to as the Enlightenment, saw strong support for the establishment of natural collections and museums. By the mid-1700s, natural collections were also being amassed in France. Denis Diderot and other French scholars worked to produce a complete inventory of knowledge related to the arts and sciences.<sup>82</sup> The French Encyclopédies are often credited with contributing to the development of the modern museum, as many of the first museums endeavored to become physical manifestations of these

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<sup>76</sup> Ames, *Cannibal Tours and Glass Boxes*, 16-17; Doxtator, *Fluffs and Feathers*, 21; Cole, *Captured Heritage*, 1-2.

<sup>77</sup> Ames, *Cannibal Tours and Glass Boxes*, 16-17; Mette Bilgaard, "The Image of Denmark: Museums as Sanctuaries of Identity," in *Heritage & Museums: Shaping National Identity*, ed. J.M. Fladmark (Shaftesbury, Dorset: Donhead Publishing Ltd., 2000), 288; Key, *Beyond Four Walls*, 24.

<sup>78</sup> Ames, *Cannibal Tours and Glass Boxes*, 30.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, 31.

<sup>81</sup> Yasaitis, "Collecting Culture and the British Museum," 450-452; Jeanette Greenfield, *The Return of Cultural Treasures* (Cambridge: University Press, 1996), 91.

<sup>82</sup> Gillam, *Hall of Mirrors*, 22-23.

written works.<sup>83</sup> Like Francis Bacon, Diderot advocated for the creation of a national museum and further emphasized that it should be open to the public.<sup>84</sup> Most scholars felt that the collection, exhibition, and study of cultural materials would lead to further scientific advancements.<sup>85</sup> One of the most influential theories to arise from this focus on collection and study of the natural world came from Charles Darwin, who documented the developmental relationship between species and put forward his theory of evolution.<sup>86</sup> The idea of evolution revolutionized the way in which scientists viewed nature and humanity and changed the way history was understood.<sup>87</sup> As Elizabeth Yasaitis states, “the development of human civilization came to be understood in scientific terms, and understanding evolution and the natural world became a search for the truth.”<sup>88</sup>

Christian Jürgensen Thomsen was the first to apply Darwin’s theories to the study of objects, by ordering the collection at the Danish National Museum into a three-age system based on stone, bronze, and iron technologies.<sup>89</sup> Thomsen’s system inspired the search to find a common pattern or sequence that could explain the development of all cultures. This form of study, referred to as cultural Darwinism, viewed indigenous cultural material as a part of a universal record detailing the early progress of humankind.<sup>90</sup> Indigenous materials were often employed to explain the natural evolution of human culture.<sup>91</sup> European science and technology was taken to represent the most evolutionary advanced form of civilization, and what were

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<sup>83</sup> Ibid., 23.

<sup>84</sup> Ibid., 12.

<sup>85</sup> Yasaitis, “Collecting Culture and the British Museum,” 450; Amiria J.M. Henare, *Museums, Anthropology and Imperial Exchange* (Cambridge: Cambridge University Press, 2005), 49.

<sup>86</sup> Key, *Beyond Four Walls*, 51-52.

<sup>87</sup> Gillam, *Hall of Mirrors*, 22; Trigger, *A History of Archaeological Thought*, 127; Walsh, *The Representation of the Past*, 8-9.

<sup>88</sup> Yasaitis, “Collecting Culture and the British Museum,” 450.

<sup>89</sup> Walsh, *The Representation of the Past*, 15.

<sup>90</sup> Trigger, *A History of Archaeological Thought*, 127.

<sup>91</sup> Ibid.

viewed as more primitive indigenous societies were portrayed as living representations of the past.<sup>92</sup> Indigenous cultural property was displayed with prehistoric artifacts and ordered in a developmental sequence that placed European materials at the top of the scale.<sup>93</sup> Some social Darwinian theories postulated that indigenous peoples were biologically inferior to Europeans as demonstrated by their lack of technology. Other models proposed that indigenous peoples were not biologically inferior, but that their environmental surroundings were responsible for their technological development.<sup>94</sup> However, all theories were similar in their assessment that indigenous societies would soon vanish in the wake of European civilization.<sup>95</sup>

The origins of the colonial relationships between indigenous peoples and museums began with the development of evolutionary theories that saw indigenous peoples as a subject of study. The view of indigenous cultures as examples of human evolutionary development led to the fear that as contact increased with Europeans, indigenous cultures and their material objects would change and cease to be a pure representation of the past.<sup>96</sup> In the scientific world, these theories created a rush to find societies and objects that were considered to be the least tainted by European encroachment.<sup>97</sup> This haste to collect cultural property was also paired with the practice of collecting a large volume of objects, as it was felt that indigenous societies would soon be encompassed by European civilization.<sup>98</sup> However, as Douglas Cole notes, “the salvage impulse was to an extent self-fulfilling. Much had disappeared from the field not because

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<sup>92</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 8; Alissandra Cummins and Emmanuel Arinze, “Retrospective Curatorship: Indigenous Perspectives in Post-Colonial Societies,” in *Curatorship: Indigenous Perspectives in Post-Colonial Societies*, Proceedings by the Commonwealth Association of Museums and the University of Victoria, (Hull: Canadian Museum of Civilization, 1996), 3.

<sup>93</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 8.

<sup>94</sup> Trigger, *A History of Archaeological Thought*, 173; Kathleen S. Fine-Dare, *Grave Injustice: The American Indian Repatriation Movement and NAGPRA* (Lincoln: University of Nebraska Press, 2002), 39-40.

<sup>95</sup> Ibid.

<sup>96</sup> Cole, *Captured Heritage*, 282, 287.

<sup>97</sup> Ibid.; Clavir, *Preserving What is Valued*, 15.

<sup>98</sup> Cole, *Captured Heritage*, 287; Clavir, *Preserving What is Valued*, 31.

Indians and their culture were doomed, but because it had already been swept up by other museums.”<sup>99</sup> Moreover, the representation of indigenous objects as items from the past, familiar to museum displays, helped to promote the belief that indigenous cultures were no longer active.<sup>100</sup> This paradox was illustrated in the field notes of Franz Boas, a renowned anthropologist and collector. After attending an indigenous ceremony on the Northwest coast, Boas reflected on the fact that many of the songs and speeches he had witnessed were similar to those given at events he had attended in the past. However, he noted, the bowls which had been central to these ceremonies were no longer present as they were now in the possession of various North American museums.<sup>101</sup>

The museum as a colonizing force is further tied to its relationship with nationalism. The Enlightenment period was also a time of great social change due to scientific advances, which sparked rapid industrialization.<sup>102</sup> Greater efficiencies in crop production created a surplus in labour causing a large number of people to leave their farming communities for work in newly developing factories.<sup>103</sup> The marked growth in cities sparked a sense of nostalgia for rural life, as the loss of community and tradition created a sense of detachment that was further exacerbated by substandard living conditions and poor working environments.<sup>104</sup> Elites began to worry about the possibility of revolution, and in an attempt to keep people content they began to

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<sup>99</sup> Cole, *Captured Heritage*, 287-288.

<sup>100</sup> Doxtator, “Home of Indian Culture and Other Stories in the Museum,” 27; Clavir, *Preserving What is Valued*, 15.

<sup>101</sup> Clavir, *Preserving What is Valued*, 93, 279; Deborah Doxtator, “The Implications of Canadian Nationalism for Aboriginal Cultural Autonomy,” in *Curatorship: Indigenous Perspectives in Post-Colonial Societies: Proceedings*, by the Commonwealth Association of Museums and the University of Victoria, (Hull: Canadian Museum of Civilization, 1996), 60.

<sup>102</sup> Key, *Beyond Four Walls*, 42.

<sup>103</sup> Kevin Walsh, *The Representation of the Past*, 11.

<sup>104</sup> Bilgaard, “The Image of Denmark,” 291  
Stephan Bohman, “Nationalism and Museology: Reflections on Swedish Experience,” in *Heritage & Museums: Shaping National Identity*, ed. J.M. Fladmark (Shaftesbury, Dorset: Donhead Publishing Ltd., 2000), 275; Walsh, *The Representation of the Past*, 11.

offer more services to the public.<sup>105</sup> Governments also began to foster a vision of shared identity and purpose to subdue the threat of unrest from their populations. Interestingly, many scholars credit Napoleon Bonaparte, whose own rise to power was due to social revolt, with creating the link between museums and nationalism.<sup>106</sup> In 1793 Napoleon opened the Louvre Palace unconditionally to all, and declared it “a museum of the Republic.”<sup>107</sup> The opening of the Louvre to the masses in part worked to demonstrate a new social order of greater equality between the classes.<sup>108</sup> It also became a significant moment in the attempt “to constitute a public . . . a self-identifying collective in which members would have equal rights, a sense of loyalty to one another, and freedom from previous tyrannies and exclusions.”<sup>109</sup> For the citizens of France in particular, the museum created a sentiment of national pride through the display of the hallmarks of French and European material culture.<sup>110</sup> The museum’s link to nationalism was further reflected in its name change a few years later, from the Musée de la République to the Musée National.<sup>111</sup>

As Napoleon’s invading armies moved across Europe they gathered art and other fine objects to bring back to Paris for display. Although this looting caused great resentment throughout Europe, the continent’s middle class did find great appeal in the idea of publicly showing objects that had formerly been available only to the elite.<sup>112</sup> Even conservative forces in countries not overtaken by Napoleon, and those that eventually regained power in Germany,

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<sup>105</sup> Ames, *Cannibal Tours and Glass Boxes*, 16-17; Walsh, *The Representation of the Past*, 25.

<sup>106</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 25; Gillam, *Hall of Mirrors*, 28.

<sup>107</sup> Gillam, *Hall of Mirrors*, 28.

<sup>108</sup> Trigger, *A History of Archaeological Thought*, 167; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 25.

<sup>109</sup> Sharon J. Macdonald, “Museums, National, Postnational and Transcultural Identities,” *Museum and Society* 1, no.1 (2003): 2.

<sup>110</sup> Gillam, *Hall of Mirrors*, 30.

<sup>111</sup> Key, *Beyond Four Walls*, 41.

<sup>112</sup> Gillam, *Hall of Mirrors*, 28-29; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 24; Trigger, *A History of Archaeological Thought*, 167.

Italy, and France looked positively upon the concept of creating their own museums.<sup>113</sup> They felt that these public institutions could work to divert the “middle classes from continuing to demand political and social reform.”<sup>114</sup> Across Europe political sovereigns began to craft a common public identity within their borders that focused on distinct traits such as language, history, and artistic tradition that were viewed as unique to their majority population.<sup>115</sup> National museums and the display of cultural property helped to publicly celebrate and promote a common identity, and with these changes the protection and retention of cultural property took on new significance.

Nationalism was further linked to imperial success in the establishment of colonies abroad.<sup>116</sup> Authors such as Jeanette Greenfield, Gerald Conaty, and Robert Janes note that the formation of this imperial national identity led to the increased collection of indigenous cultural property.<sup>117</sup> The volume of material collected became a source of competition between many European nations, with each nation trying to demonstrate their success at exploration through the display of the amount of material collected.<sup>118</sup> Britain emerged as the forerunner in the race, with the British Museum employed to display a vast collection of ethnographic material.<sup>119</sup> Gradually the national identity of Britain became linked to the country’s imperial success abroad, as the objects displayed in museums demonstrated a country’s might, and fostered a sense of public pride as well as respect for the nation’s authority.<sup>120</sup>

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<sup>113</sup> Trigger, *A History of Archaeological Thought*, 167

<sup>114</sup> Ibid.

<sup>115</sup> Macdonald, “Museums, National, Postnational and Transcultural Identities,” 2.

<sup>116</sup> Annie E. Coombes, “Museums and the Formation of National and Cultural Identities,” *The Oxford Art Journal* 11, no.2 (1988): 59; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 23; Walsh, *The Representation of the Past*, 30.

<sup>117</sup> Greenfield, *The Return of Cultural Treasures*, 91; Conaty and Janes, “Issues of Repatriation,” 32.

<sup>118</sup> Ibid.

<sup>119</sup> Coombes, “Museums and the Formation of National and Cultural Identities,” 59; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 23.

<sup>120</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 44.

While there is a significant link between nationalism and the colonial aspects of museums, the creation of national identity is also tied to the support for public education and the role of the museum as educator. Britain provides a good example of a country that was very successful at both employing museums for imperial and nationalistic purposes, and at encouraging museums to become places for public education. In Britain Dr. George Birkbeck made the first link between museums and public education through the creation of Mechanics Institutes. The hardships created by industrialization inspired Dr. Birkbeck, a faculty member at the Andersonian Institute in Glasgow, to offer lectures on the natural sciences at no cost to working men.<sup>121</sup> These courses focused on science, and provided a way for adult workers to retrain themselves and mechanize their skills.<sup>122</sup> The lectures continued over a period of several years, and became the basis for the formation of what were known as Mechanics Institutes.<sup>123</sup> These institutes provided space for educational programs and libraries as well as rooms devoted to the collection of items to be used in educational demonstrations.<sup>124</sup>

Eventually these institutes and display areas were transformed into modern, public museums.<sup>125</sup> The Mechanics Institutes expanded throughout Britain, as did the belief in the necessity of education for the working classes.<sup>126</sup> The Institutes also further enforced the idea that all museums should work to educate visitors through their collections.<sup>127</sup> By the mid-1800s the British Parliament ensured that its museums were fully open to the public, in an effort to create a sense of a common past and to ease feelings of displacement.<sup>128</sup> Gerald Conaty observes

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<sup>121</sup> Ibid., 55; Key, *Beyond Four Walls*, 42.

<sup>122</sup> Key, *Beyond Four Walls*, 42.

<sup>123</sup> Gillam, *Hall of Mirrors*, 55.

<sup>124</sup> Key, *Beyond Four Walls*, 42-43.

<sup>125</sup> Gillam, *Hall of Mirrors*, 55.

<sup>126</sup> Key, *Beyond Four Walls*, 44.

<sup>127</sup> Ibid.; Gillam, *Hall of Mirrors*, 33.

<sup>128</sup> Walsh, *The Representation of the Past*, 22, 25; Ames, *Cannibal Tours and Glass Boxes*, 20.

that “by the 1850’s a new role of civic responsibility was emerging for museums in Britain.”<sup>129</sup> He indicates that the upper levels of British society felt that opening museums to the public was a way to improve the lives of the working class through exposure to objects and knowledge that had previously been unavailable.<sup>130</sup> Museums were as much emancipators as national ideological tools, as they brought people into contact with items and ideas to which they might otherwise have not been exposed.<sup>131</sup>

As in Europe, North American museums had strong ties to the advancement of public education and nationalism. Museums first developed in the United States by the middle of the 1700s, with museums in Canada being established by the late 1800s.<sup>132</sup> In both countries the national museums created were based on the scientific study of natural collections such as flora, fauna, rocks and minerals.<sup>133</sup> Museums were very well supported by the upper middle class as a way to offer the common worker “exposure to art, literature, and science.”<sup>134</sup> Indigenous materials were also considered to be a part of these collections, as aboriginals were viewed as less evolved and closer to nature than European peoples.<sup>135</sup> It was theorized that through the study of these materials human development could be explained.<sup>136</sup> Both Canada and the United States saw the formation of museums and the collection of indigenous cultural property as a reflection of their national success in scientific and cultural development.<sup>137</sup> However, the collection of indigenous material also took on further significance as it arose from a political

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<sup>129</sup> Gerald T. Conaty, “Glenbow’s Blackfoot Gallery: Working Towards Co-existence,” in *Museums and Source Communities: A Routledge Reader*, eds. Laura Peers and Alison K. Brown (New York: Routledge Taylor & Francis Group, 2003), 228.

<sup>130</sup> Ibid.

<sup>131</sup> Walsh, *The Representation of the Past*, 38

<sup>132</sup> Gillam, *Hall of Mirrors*, 55; Key, *Beyond Four Walls*, 58-60, 126, 128.

<sup>133</sup> Cole, *Captured Heritage*, 282; Gillam, *Hall of Mirrors*, 57.

<sup>134</sup> Gillam, *Hall of Mirrors*, 55 .

<sup>135</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 8, 47, 61.

<sup>136</sup> Ibid.

<sup>137</sup> Cole, *Captured Heritage*, 287.



goal to provide these states with a common past and to help foster a common identity.<sup>138</sup> It was felt that the promotion of a national history would encourage people to derive their identity through their relationship with the state and not with their ethnic group.<sup>139</sup> Because Canada and the United States were made up of populations whose historical roots lay elsewhere, indigenous people were adopted as cultural ancestors to provide an historic relationship to the land.<sup>140</sup>

In many respects the building of Canada and the United States rested on the destruction of indigenous nations.<sup>141</sup> While the collection of cultural property can be attributed to some of the damage caused to indigenous societies, these actions became most harmful when paired with governmental assimilation policies. Legislation such as the Canadian *Indian Act* passed in 1876, outlined the process by which aboriginals could gain membership to the new nation.<sup>142</sup> The Act was founded on the belief that indigenous peoples would benefit from their inclusion into Western-European society, as aboriginal cultures were viewed to be inferior.<sup>143</sup> Under this legislation the residential school system was introduced as one means to promote the civilization and assimilation of indigenous peoples.<sup>144</sup> Children were removed from their homes and placed in schools where they were forced to stop speaking their languages and practicing their customs. Moreover, to prevent indigenous peoples from practicing their cultures the Act banned traditional ceremonies such as the Sundance and the Potlatch.<sup>145</sup> In many instances museums

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<sup>138</sup> Phillips, "Indian Art," 64.

<sup>139</sup> Walker Connor, "Nation-Building or Nation-Destroying?" *World Politics* 24, no. 3 (1972): 327.

<sup>140</sup> Deborah Doxtator, *Fluffs and Feathers*, 28, 30.

<sup>141</sup> Connor, "Nation-Building or Nation-Destroying?" 336.

<sup>142</sup> John L. Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," in *Sweet Promises: A Reader on Indian-White Relations in Canada*, ed. J.R. Miller (Toronto: University of Toronto Press), 132; John S. Milloy, "The Early Indian Acts: Developmental Strategy and Constitutional Change," in *Sweet Promises: A Reader on Indian-White Relations in Canada*, ed. J.R. Miller (Toronto: University of Toronto Press), 146.

<sup>143</sup> Milloy, "The Early Indian Acts," 147.

<sup>144</sup> Tobias, "Protection, Civilization, Assimilation," 136.

<sup>145</sup> Phillips and Johnson, "Negotiating New Relationships," 152.

used the laws banning native ceremonies to obtain cultural property from indigenous groups across North America.<sup>146</sup>

It has been noted that “for colonial powers the removal of these cultural objects from colonized communities to their museums symbolically reflected the transfer of sovereignty.”<sup>147</sup> The collection and display of cultural property asserted the authority of the state to define the role that indigenous peoples would play in the nation. The removal of cultural property was one way of eroding the distinctiveness of indigenous peoples, as these materials are “the physical manifestations of indigenous knowledge and heritage [and] they help to define indigenous identity.”<sup>148</sup> Where indigenous people had once continued to manufacture ceremonial items that they had traded to European explorers, these new policies introduced by government in essence prevented them from replacing items that had been collected. The historical narrative presented in museums was employed by governments in both the United States and Canada to justify the assimilation of indigenous cultures as an inevitable result of European settlement.<sup>149</sup> Museum exhibits allowed visitors to “conceptualize Indians as outside of society, in need of control and study. . . whose domination seemed not only inevitable but desirable and necessary.”<sup>150</sup> Indeed, according to museum displays indigenous peoples and their cultures were entirely a part of the past. In both Canada and the United States, this past was relegated to museums only to be remembered through each country’s national history as a part of the primitive landscape they had conquered and changed.

The historical examination of museums details a strong relationship between these institutions and their educational and colonizing roles. From the Renaissance to the

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<sup>146</sup> Abrams, “The Case for Wampum,” 379.

<sup>147</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 149.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, 31-32; Deborah Doxtator, *Fluff and Feathers*, 22.

<sup>150</sup> Deborah Doxtator, *Fluff and Feathers*, 22.

Enlightenment and into the 20<sup>th</sup> century, the collection and study of cultural property in order to advance scientific knowledge, to promote nationalistic pride, and to provide public education came at the expense of indigenous peoples. Evolutionary theories and assimilation programs based on a belief in the inferiority of indigenous peoples worked to strip them of their identity and helped to erode their cultural heritage. While those of European descent can view the museum as an emancipating force, to indigenous peoples' museums more often contributed to a loss of freedom. Miriam Clavir writes that "although many museums preserve the surviving fragments of Western historical material culture, in the eyes of First Nations, anthropology museums preserve the history of colonialism . . . [with] museum collections stand[ing] as a symbol of the power relationships that led to cultural deterioration."<sup>151</sup> The next section will begin with an exploration of indigenous efforts to have their cultural property and self-determination rights returned, followed by an examination of how the role of museums as educator and colonizer impacted the repatriation process.

### **Repatriation and the Museum as Colonizer and Educator**

Perhaps one of the most chilling and eloquent indictments regarding museum practice was made by Minik, an Inuit youth who tried to have his father's remains returned from the American Museum of Natural History. In 1899, Minik was a child brought to New York with his father and six other members from his Inuit community.<sup>152</sup> The Museum of American Natural History had sponsored the visit as a means to interact with the Inuit; however, within a year of their arrival almost all of the party including Minik's father fell ill and passed away.<sup>153</sup> Minik was adopted by the Museum's superintendent and remained in New York.<sup>154</sup> At the age

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<sup>151</sup> Clavir, *Preserving What is Valued*, 74.

<sup>152</sup> Axel Engstfeld, *Minik, The Lost Eskimo*, DVD, Engstfeld Film GmbH/Germany, 2005.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

of 17 Minik discovered that the burial he had witnessed after his father's death had been staged by museum staff.<sup>155</sup> His father's bones had actually not been buried but had been placed on display in a gallery in the museum.<sup>156</sup> Upon learning the truth, Minik tried to have the remains returned and buried, but the Museum refused citing the scientific importance of the bones.<sup>157</sup> In 1909 Minik commented to a reporter: "You're a race of scientific criminals. I know I'll never get my father's bones out of the American Museum of Natural History. I am glad enough to get away before they grab my brains and stuff them into a jar!"<sup>158</sup> His statements capture both the injustice and surreal position in which many indigenous peoples were placed.

Minik's rally against museums is one among many made during this period when museum collection practices and assimilation programs were at their peak. Other examples of repatriation requests and appeals against assimilation programs made during this time period include: a lawsuit filed by the Onondaga Nation against a private collector in 1899 who had purchased a series of wampum belts that were sold without the community's consent,<sup>159</sup> and a letter written on behalf of the Kwakwaka'wakw community to the Superintendent of Indian Affairs in 1919 requesting that the potlatch ban be overturned.<sup>160</sup> However, it took almost 100 years before any of these requests were granted. The wampum belts were not returned to the Onondaga until 1989,<sup>161</sup> and the remains of Minik's father were not returned for burial to

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<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> Kenn Harper, *Give Me My Father's Body: The Life of Minik, The New York Eskimo* (Iqaluit, NWT: Blacklead Books, 1986), 89, 142.

<sup>158</sup> Fine-Dare, *Grave Injustice*, 41.

<sup>159</sup> Richard Hill, Sr., "Reflections of a Native Repatriator," in *Mending the Circle: A Native American Repatriation Guide*, ed. Barbara Meister (New York, American Indian Ritual Object Repatriation Foundation, 1996), 84; Fine-Dare, *Grave Injustice*, 91.

<sup>160</sup> Richard Hill, Sr., "Reflections of a Native Repatriator," 84; Fine-Dare, *Grave Injustice*, 91; People of Alert Bay, to Deputy Supt. General Of Indian Affairs, 6 April 1919, Archives, U'mista Cultural Centre, Alert Bay, BC; Ray, *I Have Lived Here Since the World Began*, 225, 230; Clifford "Four Northwest Coast Museums," 228; Webster, "The 'R' Word," 43; Webster, "The Potlatch Collection Repatriation," 140.

<sup>161</sup> Moria G. Simpson, *Making Representation: Museums in the Post-Colonial Era* (London: Routledge, 199), 199.

Greenland until 1993.<sup>162</sup> The potlatch ban was not overturned until 1951, and materials collected during an infamous RCMP raid on a Kwakwaka'wakw potlatch in 1921 were not repatriated until 1980, on the condition that a museum be built to house the items.<sup>163</sup>

One of the primary reasons that these repatriation requests were denied for so many years is that indigenous peoples were faced with a system that did not recognize their cultural rights. As already discussed, the desire to draft a common national history and assimilate indigenous peoples into the state led to the collection of aboriginal cultural property. However, the collection of indigenous objects also arose from the view that indigenous peoples were wards of the state, without the capability to control their own lives. These beliefs in part, provided the rationale for state control over aboriginal identity.<sup>164</sup> Part of the reason that the repatriation of cultural property from museums has been so contentious is that it requires some level of recognition that aboriginal peoples have rights outside the state to define their identity and cultural practice.<sup>165</sup> For indigenous communities repatriation is about regaining their authority over their identity and heritage. The return of cultural property provides an acknowledgement of their rights to ownership and control over their heritage, and of their broader right to self-determination.

Self-determination has been defined as “a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies.”<sup>166</sup> While non-indigenous populations continued to enjoy their recognized right to self-determination, indigenous populations were stripped of these

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<sup>162</sup> Engstfeld, *Minik, The Lost Eskimo*, DVD.

<sup>163</sup> Webster, “The Potlatch Collection Repatriation,” 140.

<sup>164</sup> Michael Asch, “Concluding Thoughts and Fundamental Questions,” in *Protection of First Nations Cultural Heritage: Laws Policy, and Reform* eds. Catherine Bell and Robert K. Patterson (Vancouver: UBC Press), 394.

<sup>165</sup> *Ibid.*, 395.

<sup>166</sup> James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 2000), 75.

liberties. Justice requires that self-determination rights be returned, so equality for indigenous peoples can be restored. For present day indigenous peoples regaining control over cultural property and identity is an important part of the decolonization process.<sup>167</sup> Indigenous peoples view repatriation as a means to promote and protect their own identities, and to regain “control over [their] own lives, [and their] own cultures.”<sup>168</sup> Control over cultural heritage forms a part of self-determination rights as culture and language play an important part in how indigenous peoples define their identity.<sup>169</sup> Control over decisions regarding cultural practice cannot be achieved without the return of cultural property. Jennifer Kramer illustrates the connection between repatriation and self-determination when she writes:

I believe that the desire that motivates repatriation is the desire to obtain the right to self-define as an individual and as a First Nation. Therefore, I would like to suggest that repatriation is the act of claiming metaphorical territory via control of an object . . . although ostensibly repatriation is about the return of an object to a specific place, it is also about being linked to an object and making a statement about who is in control.<sup>170</sup>

Kramer’s statement expresses how the repatriation of cultural property can work to restore identity at both the level of the individual and the community. Repatriation not only provides communities with the physical object, but it also firmly articulates that indigenous peoples have ownership and control over these materials. Repatriation is one component in the indigenous quest to regain their self-determination rights. The term cultural self-determination will be employed to indicate that only this one particular aspect of self-determination is being explored.

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<sup>167</sup> Clavir, *Preserving What is Valued*, 74; Ross Poole, “The Nation-state and Aboriginal Self-determination,” in *The Fate of the Nation State*, ed. Michel Seymour (Montreal & Kingston: McGill-Queen’s University Press, 2004), 99.

<sup>168</sup> Christopher McCormick, “Opening Remarks,” paper presented at “Preserving Our Heritage: A Working conference for Museums and First Peoples,” organized by the Assembly of First Nations and the Canadian Museums Association, (Carleton University, Ottawa, November 1988); quoted in Clavir, *Preserving What is Valued*, 75.

<sup>169</sup> Daniel Philpott, “In Defense of Self-Determination.” *Ethics* 105, no. 2 (1995): 378.

<sup>170</sup> Jennifer Kramer, *Switchbacks: Art, Ownership, and Nuxalk National Identity* (Vancouver: UBC Press, 2006), 90; quoted in Bell, “Restructuring the Relationship,” 19.

Cultural self-determination will be defined as the right of indigenous peoples to regain control over how their culture is developed, practiced, and interpreted.<sup>171</sup>

During the 1960s the articulation of indigenous rights became a part of a broad civil rights campaign.<sup>172</sup> Since then indigenous self-determination rights have gradually become recognized at both domestic and international levels. As indigenous rights have gained recognition from government and the courts, museum professionals have slowly become more open to repatriation.<sup>173</sup> In addition the civil rights activism of the 1960s inspired the “new museology movement,”<sup>174</sup> which also lent some support to the idea of repatriation. As a part of this movement many curators started to advocate that museums become places “concerned with community development and social progress.”<sup>175</sup> They began to see themselves as facilitators rather than just “keepers of collections.”<sup>176</sup> These changes in perception regarding the role of collections and the importance of community participation helped to set the stage for collaboration and partnership with aboriginal peoples. While these changes in policy have helped to end the museum’s colonial role and have lent support to the return of cultural property, mandates around education continue to stir debate amongst curators regarding repatriation.

Part of this debate stems from the fact that repatriation challenges long held professional values around preservation, scholarly research and public education.<sup>177</sup> Moreover, it should be noted that curators are not the sole locus of decision-making in museums. For the most part

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<sup>171</sup> The term cultural self-determination is used by Catherine J. Iorns Magallanes, “International Human Rights and their Impact on Domestic Law on Indigenous Peoples’ Rights in Australia, Canada, and New Zealand,” in *Indigenous Peoples’ Rights: In Australia, Canada, and New Zealand*, ed. Paul Havemann (New York: Oxford University Press, 1999), 242-43. Although the author does not provide an exact definition of the phrase it is used in relation to self-determination and indigenous control over cultural property.

<sup>172</sup> Simpson, *Making Representation*, 7.

<sup>173</sup> Philips and Johnson, “Negotiating New Relationships,” 155, 156.

<sup>174</sup> Christina F. Kreps, *Liberating Culture: Cross-Cultural Perspectives on Museums* (New York: Routledge Taylor & Francis, 2003), 11.

<sup>175</sup> *Ibid.*

<sup>176</sup> Christina F. Kreps, “Curatorship as Social Practice,” *Curator* 46, no. 3 (2003): 311.

<sup>177</sup> Clavir, *Preserving What is Valued*, 25.

museums are public institutions overseen by a voluntary board of directors.<sup>178</sup> Both the directors and the institutions are ultimately accountable to the public at large.<sup>179</sup> This can make change a slow prospect, as directors may not be versed in the latest academic discourse regarding museum operations.<sup>180</sup> Moreover, some challenges to increased First Nations involvement in exhibitions and ultimately the return of cultural property have come from board members and the public who still feel that museums should focus on preservation and the strict ethnological interpretation of collections.<sup>181</sup>

The discussion around repatriation can best be understood by reviewing the two opposing sides of the debate known as the world heritage view and the natural heritage view.<sup>182</sup> While some in the museum field align themselves on either side of this spectrum, most have views that reside somewhere in the middle. The world heritage view “holds that cultural heritage belongs to all of humankind.”<sup>183</sup> It is based on principles developed during the Enlightenment, which maintained that through the observation and study of various cultural materials the whole of human development could be better understood.<sup>184</sup> Those who support this view assert that comprehensive ethnological museum displays have increased knowledge about and respect for other peoples.<sup>185</sup> They argue that due to the ethnic and religious diversity found in most modern day societies “it is essential that there are places where the great creations of all civilizations can be seen together, and where the visitor can focus on what unites rather than what divides us.”<sup>186</sup>

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<sup>178</sup> Catherine Bell, “Restructuring the Relationship,” 15.

<sup>179</sup> Ibid.

<sup>180</sup> Robert R. Janes, “Museums, Corporatism and the Civil Society,” in *Curator* 50, no. 2 (2007): 230.

<sup>181</sup> Julia Harrison, “What Matters: Seeing the Museum Differently,” *Museum Anthropology* 28, no. 2 (2005): 36-40; Dawn Casey, “Museums as Agents for Social and Political Change,” *Curator* 44, no. 3 (2001): 230-231.

<sup>182</sup> Yasaitis, “Collecting Culture and the British Museum,” 454.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Curo, “Museums, Antiquities, Cultural Property, and the US Legal Framework,” 144.

<sup>186</sup> Ibid., 146.



Moreover, those that hold this position fear that scholarly freedom and access to information will be lost if indigenous peoples are provided the authority to decide which objects should be returned to their communities. This line of thinking has been termed the scholarly access argument. The promotion of scholarly access is rooted in the belief that it is the responsibility of trained professionals to “promote and transmit cultural information and knowledge,” and as such these professionals must be committed to the study and preservation of these objects for future scholars and learners.<sup>187</sup> Within this framework repatriation is seen as a threat to the fostering of historical knowledge and universal public education, as well as interfering with the process of free academic inquiry.

Alternatively, the natural heritage view holds that cultural property is sacred to its creators and ownership should rest with the culture of origin.<sup>188</sup> Those that support this view argue that the people who created the cultural property should be the first to benefit from the knowledge and identity that these materials reflect. They see “cultural objects as being most significant, and rightfully belonging to the nation or culture that created them.”<sup>189</sup> This position is promoted by museum curators Gerald Conaty and Robert Janes who write:

If we do not accept First Nations claims to items which are so important to their self-identity, then we impose our own world view on their culture and, worse, we impose upon them our own definition of what it means to be native. If we accept the pluralism which encompasses Western society, we must acknowledge peoples’ rights to define their own culture.<sup>190</sup>

This quote illustrates the way in which indigenous cultural self-determination rights have begun to be accepted within the museum community. Furthermore, the statement recognizes the rights

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<sup>187</sup> Karen J. Warren, “A Philosophical Perspective on the Ethics and Resolution of Cultural Property Issues in *Whose Property? Whose Culture? The Ethics of Collecting Cultural Property*, ed. Phyllis Mauch Messenger (Albuquerque: University of New Mexico Press), 7.

<sup>188</sup> J.H. Merryman, “A Licit International Trade in Cultural Objects,” in *Who Owns the Past? Cultural Policy, Cultural Property, and the Law*, ed. Kate Fitz Gibbon (London, Rutgers University Press, 2005), 275; Yasaitis, “Collecting Culture and the British Museum,” 454.

<sup>189</sup> *Ibid.*

<sup>190</sup> Conaty and Janes, “Issues of Repatriation,” 35.

of indigenous peoples to control their identity, and advocates for museums to become supportive of aboriginal peoples. Many like Conaty and Janes feel that a new era of partnership with indigenous peoples can begin through the recognition of First Nations ownership rights to cultural property.<sup>191</sup> Moreover, those who support indigenous ownership rights have found that new levels of mutual trust and respect have been created between indigenous communities and museums.<sup>192</sup> This has led to the creation of partnerships, which have provided new educational opportunities for indigenous peoples and non-indigenous peoples as they work together to return cultural property to aboriginal communities. These types of partnerships and educational opportunities will be explored in greater detail in chapter two.

While this chapter has primarily focused on the educational role of museums, it should be noted that these activities are very much tied to the research and scholarly work of museum professionals. As a whole those who work in museums have dedicated a significant portion of their lives to the study and interpretation of cultural objects and osteological materials. Often museum professionals gain a lot of new information through the repatriation process.<sup>193</sup> However, at the same time the return of cultural property and human remains can also challenge their ability to continue with certain aspects of their academic work. In order to explore some of the possible tensions that can arise between scholarly research interests and indigenous return requests I will briefly examine the Kennewick Man, Morrison Island, and Zuni Ahayu:da repatriation cases.

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<sup>191</sup> Phillips and Johnson, "Negotiating New Relationship," 149.

<sup>192</sup> Burney, "Not Just a Challenge, an Opportunity," 68.

<sup>193</sup> For example when Haida representatives visited the Chicago Field Museum in order to have ancestral remains returned, they were also given a tour of the Haida collection. The Haida visitors informed museum staff that an object inventoried with spoons and other utensils was actually a canoe bailer. *Stolen Spirits of Haida Gwaii*, DVD, (2004; Mississauga, ON: McNabb Connolly).

The Kennewick Man case is one of the most highly discussed and publicized examples of a dispute between scientists and native peoples over the ownership of human remains. In 1996 a male skeleton was discovered along the Columbia River in Washington State that was confirmed to predate European settlement in North America.<sup>194</sup> The Army Corps of Engineers held jurisdiction over the area, and as per NAGPRA contacted five Native American tribes associated with the territory.<sup>195</sup> The tribes insisted that the remains be reburied and the Army Corps agreed to this request.<sup>196</sup> However, a group of anthropologists filed a lawsuit, as they wanted the remains to be studied.<sup>197</sup> The anthropologists contested the reburial on the grounds that the remains were more than 9,000 years old and did not exhibit physical traits usually associated with native peoples.<sup>198</sup> It was suggested that the remains could be representative of someone of Polynesian, European, or African descent.<sup>199</sup> The anthropologists argued that the skeleton could provide invaluable information as to the peopling of North America, and as such the remains held significant scientific importance.<sup>200</sup> However, Native American groups claimed they had a cultural affinity to the deceased, as their histories in the area predated the age of the remains.<sup>201</sup> The tribes were against scientific testing as certain processes would cause parts of the skeleton to be damaged, and this could have harmful repercussions to the spirit of the individual in question.<sup>202</sup>

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<sup>194</sup> Suzanne J. Crawford, "(Re)Constructing Bodies: Semiotic Sovereignty and the Debate over Kennewick Man," in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 211.

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> Fine-Dare, *Grave Injustice*, 149.

<sup>199</sup> *Ibid.*, 150.

<sup>200</sup> *Ibid.*; Crawford, "(Re)Constructing Bodies," 215.

<sup>201</sup> Fine-Dare, *Grave Injustice*, 149-150; Crawford, "(Re)Constructing Bodies," 215.

<sup>202</sup> Crawford, "(Re)Constructing Bodies," 211.

In this instance the court sided with the anthropologists and in 1998 the remains were delivered to the Burke Museum of Natural History and Culture in Seattle, Washington for scientific study.<sup>203</sup> Press coverage of the Kennewick Man case and the role of NAGPRA seemed to suggest that all Native Americans and anthropologists were radically opposed.<sup>204</sup> However, this presentation was somewhat misleading. The coalition of anthropologists against the reburial of Kennewick Man did not represent the views of the entire anthropological community.<sup>205</sup> Many anthropologists have embraced NAGPRA and accepted the idea they need to change some of their professional practices in order to accommodate Native American perspectives.<sup>206</sup> In fact, some credit NAGPRA with affording them the opportunity to bring this dialogue into their profession.<sup>207</sup> They note that prior to the passage of NAGPRA it would have been almost impossible to hold a meaningful discussion about the return of Native American human remains for burial.<sup>208</sup> In retrospect many anthropologists note that the passage of NAGPRA and the provision that they consult with Native American groups when new human remains are uncovered has been positive for the profession.<sup>209</sup> Consultation in some instances has led to partnerships between Anthropologists and Native Americans on research projects that are seen as beneficial to both parties.<sup>210</sup> Such relationships have shown that the division between

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<sup>203</sup> Burke Museum of Natural History and Culture, "Kennewick Man on Trial." <http://www.washington.edu/burkemuseum/kman> (accessed November 17, 2009).

<sup>204</sup> Fine-Dare, *Grave Injustice*, 157.

<sup>205</sup> Larry J. Zimmerman, "A New and Different Archaeology? With a Postscript on the Impact of the Kennewick Dispute," in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 294-295.

<sup>206</sup> Lynne Goldstein and Keith Kintigh, "Ethics and the Reburial Controversy," in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 187.

<sup>207</sup> Zimmerman, "A New and Different Archaeology?" 296.

<sup>208</sup> *Ibid.*

<sup>209</sup> Kurt E. Dongoske, "NAGPRA: A New Beginning, Not the End for Osteological Analysis – A Hopi Perspective," in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 283; Hendry, *Reclaiming Culture*, 282-283.

<sup>210</sup> *Ibid.*, 283.

Anthropologists and Native Americans is not always so great and that NAGPRA can in part be credited with facilitating this common ground.<sup>211</sup>

In 2005 the Canadian Museum of Civilization faced a similar situation as the Algonquin First Nations requested the return of approximately 90 skeletons they felt were associated with their ancestral line.<sup>212</sup> Some of these remains were dated at more than 5000 years old, and were excavated from the Morrison Island site located on the Ottawa River.<sup>213</sup> Both the remains and the Morrison site itself are viewed in the museological and scientific communities as a significant resource in the understanding of aboriginal migration in North America.<sup>214</sup> Aside from scientific concerns, researchers also claimed that these skeletons predated Algonquin presence in the area and therefore should be exempt from the repatriation process.<sup>215</sup> However, in terms of the older remains the issue for First Nations was not so much affiliation, as it was about ensuring these individuals were returned to their place of burial so the spirits of the deceased could finally be at peace.<sup>216</sup> After weighing all the information the Canadian Museum of Civilization decided that all of the remains should be returned for reburial. A spokesman for the Museum noted that “concerns about the loss of an important scientific resource...had to be balanced with the fact that our museum depends on good relationships with aboriginal communities to conduct new research.”<sup>217</sup> Although he also noted that not everyone at the Museum was in favour of this decision, the final resolution to the conflict does speak to a growing recognition in the museum field of the fundamental right of indigenous people to their

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<sup>211</sup> Ibid.

<sup>212</sup> Randy Bowell, “Reburial of 5,000-Year-Old Remains a ‘Terrific Loss,’ Scholar Says: Museum of Civilization to Hand Over Bones of 90 Aboriginals to Quebec Algonquins,” *The Ottawa Citizen* (Ottawa) June 22, 2005, <http://www.canada.com/comonents/printstory/prinstory4.aspx?id=bd42d179-4537-4375-a773-d529922464fd>.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

ancestral remains and how supporting these goals can lead to new partnerships and research endeavors.

The return of Ahayu:da, twin War God statues, to the Zuni of New Mexico provides a similar example of conflict between museum and native interests, but this time in terms of cultural property. The Ahayu:da are common fixtures in Zuni shrines and became a common object taken by collectors to be donated to museums or sold on the open market over the last 100 years.<sup>218</sup> In Zuni culture Ahayu:da are not meant to be removed from shrines and are expected to remain in their position and deteriorate naturally over time.<sup>219</sup> Interruption of this process is thought to have grave consequences that can result in “war, violence, and natural disasters.”<sup>220</sup> In 1978 Zuni religious leaders embarked on a campaign to have all Ahayu:da held in museum collections returned, in order to try to undo some of the damage that had been done as a result of their removal.<sup>221</sup> At first museums stated they would only be willing to repatriate the Ahayu:da to the Zuni if they established cultural centres to house the objects.<sup>222</sup> Allowing the Zuni to naturally disintegrate over time was seen as a direct violation of museum interests in preservation, research, and education.<sup>223</sup>

However, the Zuni insisted that such a compromise was not possible.<sup>224</sup> Through much discussion museum personnel began to understand Zuni customs and agreed to return the Ahayu:da without condition in order to support Zuni spiritual practices and beliefs.<sup>225</sup> Since

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<sup>218</sup> T.J. Ferguson, Roger Anyon, and Edmond J. Ladd, “Repatriation at the Pueblo of Zuni: Diverse Solutions to Complex Problems,” in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 240.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*, 240-241.

<sup>222</sup> *Ibid.*, 255.

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*, 246.

1978 eighty Ahayu:da have been repatriated.<sup>226</sup> As a result of these negotiations the Zuni have developed strong relationships with many museums across the United States.<sup>227</sup> They have assisted in the interpretation of objects and instructed museum staff members on proper Zuni protocol in relation to the care of objects.<sup>228</sup> The Zuni have time and again reiterated their respect for those in the museological and anthropological field.<sup>229</sup> For example when human remains are discovered on Zuni territory as a result of new development, anthropologists are asked to excavate the remains, and after analysis return them to a place as close as possible to the original site.<sup>230</sup> Although curators have had to adapt some of their professional views in order to support the return of the Ahayu:da this compromise has resulted in new learning opportunities. While the repatriation of cultural property and human remains can create a loss for researchers, I am in support of the natural heritage view as I believe that restoring the cultural self-determination rights of indigenous peoples can only strengthen museums and research in the long term. While I acknowledge that this will create challenges and some hardships to those working in the field today, I also feel that their dedication, passion, and knowledge will lead to solutions that are in the interest of all peoples.

### **Moving Beyond History**

The historical review provided in this chapter detailed the connection between museums and scientific discovery, scholarly research, democracy, public education, and nationalism. Museums have arisen from a particular set of circumstances, and “museum mandates to collect and preserve are not universal standards but particular norms associated with specific embedded

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<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid., 258.

<sup>229</sup> Ibid., 241, 246.

<sup>230</sup> Ibid., 259.

social histories.”<sup>231</sup> While museums can take pride in their role as public educator, their actions as colonizers have left a painful legacy. However, as societal values change so to can the role of museums. The gradual recognition of indigenous self-determination rights has impacted the museum profession. Some within the museum community view repatriation as an opportunity to decolonize their relationships with indigenous peoples, by becoming more responsive to their cultural needs.<sup>232</sup> In some respects the acceptance and support of indigenous cultural self-determination rights by museum curators is compatible with the museum’s educational role. While at first glance repatriation might seem to threaten the educational mandate of museums through the loss of cultural property, it is now becoming apparent that repatriation can strengthen relationships between museums and indigenous peoples leading to greater learning opportunities for all peoples.<sup>233</sup> The way in which repatriation can advance the cultural self-determination of indigenous peoples and help to foster reconciliation between indigenous communities and museums will be further explored in chapter two. It will be shown that repatriation can assist indigenous efforts to regain cultural self-determination and create partnerships with indigenous peoples. This analysis will demonstrate that the repatriation of indigenous cultural property can actually be positive for all parties.

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<sup>231</sup> Nancy Marie Mithlo, “Red Man’s Burden: The Politics of Inclusion in Museum Settings,” *American Indian Quarterly* 28, no. 3/4 (2004): 746.

<sup>232</sup> Conaty and Janes, “Issues of Repatriation,” 35; Phillips and Johnson, “Negotiating New Relationship,” 149.

<sup>233</sup> Burney, “Not Just a Challenge, an Opportunity,” 68; Edmund Barry Gaither, “Hey! That’s Mine: Thoughts on Pluralism and America,” in *Reinventing the Museum: Historical and Contemporary Perspectives on the Paradigm Shift* ed. Gail Anderson (Walnut Creek, CA: AltaMira Press, 2004), 112.



## Chapter Two: The Importance of Cultural Self-Determination to Repatriation and Reconciliation

Repatriation is often associated with reconciliation as the return of cultural property demonstrates a commitment to make amends for past injustice.<sup>234</sup> However, repatriation alone may not be enough to begin a process of reconciliation between First Nations and museums. This chapter will demonstrate that the return of cultural self-determination is as crucial to the reconciliation process as the repatriation of cultural property itself. The connections between repatriation, reconciliation, and cultural self-determination are illustrated in a story told by Reverend Mxolisi Mpambani.<sup>235</sup> The Reverend uses the anecdote to discuss the flawed logic of trying to proceed with reconciliation when matters of ownership and self-determination are not first acknowledged. The narrative proceeds as follows:

There were two friends Peter and John. One day Peter steals John's bicycle. Then, after a period of some months, he goes up to John with outstretched hands and says 'Let's talk about reconciliation.'  
John says, 'No, let's talk about my bicycle.'  
'Forget about the bicycle for now,' says Peter. 'Let's talk about reconciliation.'  
'No,' says John. 'We cannot talk about reconciliation until you return my bicycle.'<sup>236</sup>

In the story John is asked to make amends without having his bicycle restored or being compensated for his loss.<sup>237</sup> Reconciliation for John would be impossible at this point as he is still a victim of Peter's actions.<sup>238</sup> John's rights to ownership and control over his property are not being recognized, and it is conceivable that John's resentment over Peter's actions will

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<sup>234</sup> Burney, "Not Just a Challenge, an Opportunity," 68; Lynda Kelly and Phil Gordon, "Developing a Community of Practice: Museums and Reconciliation in Australia," in *Museums, Society, Inequality*, ed. Richard Sandell (New York: Routledge Taylor & Friends Group, 2002), 157, 166, 168.

<sup>235</sup> For a summary of the bicycle story and discussion see Jeff Corntassel and Cindy Holder, "Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru," *Human Rights Review* 9, no. 4 (2008): 467.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

continue until Peter acknowledges his wrongdoing and offers reparation. Although Peter is proposing reconciliation, his offer is not sincere as he is still unwilling to treat John as an equal and acknowledge that John has rights to ownership over the bicycle and deserves fair compensation. For John's part his mistrust of Peter and the presumed negative feelings he has over the way he has been treated remain unresolved. What I find most interesting about this example is the message it offers regarding the relationship between self-determination and reconciliation. When reading the story I am not so much concerned with Peter's theft of the bicycle. For instance, I think the account would be just as poignant if Peter had taken the bicycle mistakenly thinking it was no longer in use and then given it to someone in need. John's appeal to this individual for the bicycle's return would have the same ramifications in terms of his self-determination rights and the chance for reconciliation to be achieved.

In this respect the bicycle story provides a concise analogy of many of the same processes that occur between museums and indigenous communities when First Nations come forward with repatriation requests. While present day museum personnel have not been involved in the collection process, they are responsible for making decisions around the return of the desired objects. Often museums have tried to circumvent the repatriation process completely and move directly to the reconciliation stage, or they have placed conditions on the returned cultural property. These approaches to repatriation will be assessed to show that neither establish equality nor encourage trust and forgiveness between First Nations and museums because aboriginal ownership over the property is not fully restored. This discussion will be followed by a review of a repatriation agreement that did not place conditions on the return of cultural property, thereby supporting First Nations cultural-self-determination rights. It will be shown

that this agreement helped to foster reconciliation between the museum and First Nations community, resulting in unforeseen benefits for both parties.

Repatriation has often been viewed as the final act between museums and indigenous communities rather than the beginning of a new and stronger relationship.<sup>239</sup> Those that view repatriation as the last resort often advocate for the establishment of partnerships with indigenous communities as a way to begin the reconciliation process. In these instances curators have asked indigenous peoples to forgo their desire to have their cultural property returned, and instead contribute to exhibit planning, participate in employment programs, and share in research projects.<sup>240</sup> Many museum professionals view these partnerships as a way to be more inclusive of indigenous peoples while still meeting museum mandates around preservation and public education.<sup>241</sup> However, usually museums continue to “set agendas, [and] control final editing and presentation of exhibits.”<sup>242</sup> At a conference on Indigenous Perspectives on Curatorship, held in May 1994, Lee-Anne Martin, an interim indigenous curator at the Canadian Museums of Civilization, eloquently commented on the issue of control and the power imbalance found in current partnerships, stating:

It seems to me that the earlier type of conquest and colonization is being replaced by a new colonialism: post-coloniality. It appears to be a more polite way, not so overt, physical or violent – it is the colonization of our minds . . . We are now curating more within mainstream institutions, for instance. We’re writing; We’re being invited to and organizing panels like this one. But are we really the key players? Are we really in control of it? . . . The other term being used a lot is “partnership” . . . it’s a concept I believe in. Partnership implies; however, that all parties coming to the table are coming

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<sup>239</sup> Colwell-Chanthaphohn, “Remembrance of Things and Things Past,” 38-39.

<sup>240</sup> Assembly of First Nations and the Canadian Museums Association, “Turing the Page,” 4; Kreps, *Liberating Culture*, 9; Phillips and Johnson, “Negotiating New Relationships,” 161; Janes, “Museums, Corporatism and the Civil Society,” 225, 227; Élise Dubuc, “Canada’s New Aboriginal Museology,” in *Muse* (2006): 21-22.

<sup>241</sup> Gordon Freedman, “The Changing Nature of Museums,” *Curator* 43, no. 4 (200): 297.

<sup>242</sup> Michael M. Ames, “Museology Interrupted,” in *Museum International* 57, no. 3 (2005): 48.

equally, and that there are no subversive agendas. Well, we all know that's not so. I have a very difficult time believing in the concept of equal partnership.<sup>243</sup>

Although the return of cultural property is not mentioned by Martin, like the bicycle story these partnerships fail to result in any meaningful change because the issue of ownership is not addressed. The relationship between museums and indigenous peoples remains unequal, as museums continue to retain control over the objects and retain the power to decide how these materials will be utilized. One of the most essential components of reconciliation is the correction of imbalance in the relationship of the sides reconciling.<sup>244</sup> Partnerships alone are unable to restore full control to indigenous peoples as they are based on an imbalanced power structure and as a result cannot facilitate a reconciliation process.

Nancy Mithlo, a Native American Curator who has worked in the museum field in both the United States and Canada labels the era, particularly that of the 1980s where partnerships with indigenous peoples were first emphasized by museums, as “pre-repatriation.”<sup>245</sup> Mithlo states:

The rationales developed in the 1980s that advocated the inclusion of Native Americans within the museum profession as a means of bridging conceptual divides failed to achieve significant social change. While well intended, proponents of inclusion often neglected to incorporate alternative paradigms of knowledge, resulting in unrealistic assumptions about reconciling colonialist legacies.<sup>246</sup>

Mithlo's observations support the premise of the bicycle story in that if cultural property is returned a new phase in the relationship between native peoples and museums could begin.

However, repatriation agreements that place conditions on returned objects may also fail to bring about a relationship of trust and equality. These conditions often entail restrictions around the

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<sup>243</sup> Lee-Ann Martin, Interim Curator, Canadian Museum of Civilization, Round-Table Response on Deborah Eldridge “Aboriginal People Need to Control Their Own Culture,” in *Curatorship: Indigenous Perspectives in Post-Colonial Societies Proceedings*, ed. Camilla Turner (Hull, PQ: Canadian Museum of Civilization, 1996), 28.

<sup>244</sup> Paula Girshick, “Ncome Museum/Monument: From Reconciliation to Resistance,” in *Museum Anthropology* 27, no. 1-2 (2004): 26.

<sup>245</sup> *Ibid.*, 743-744.

<sup>246</sup> *Ibid.*, 744.

use and storage of the objects, and are usually applied to ensure the continued preservation of the materials. By doing so, museums continue to maintain control over the items, at least indirectly. This hampers the ability of indigenous communities to regain full ownership, thus restricting their ability to exercise their cultural self-determination rights. Such restrictions can inhibit reconciliation almost as much as a complete refusal by museums to repatriate cultural property.

For example, returning to the bicycle story, consider an alternative scenario where Peter agreed to give John back the bike but only under certain conditions in order to ensure that the bike is properly protected. Perhaps Peter might suggest that the bicycle would be returned only if John agreed to keep it in his house and never ride it, or Peter might have offered to keep the bike and allow John to ride it on special occasions such as his birthday or Christmas. Peter might further stipulate that the bicycle be returned solely to his possession if John fails to comply with any of the above conditions. In time John might come to accept Peter's terms because this is the only way for him to be able to use his bicycle. However, once again true reconciliation between John and Peter will likely remain elusive as John has been placed in a position where he must forgo most of his ownership rights. John is not able to determine when he might ride the bicycle or how he will care for the object. His views and rights have not been given equal treatment to Peter's, and John has been left in a position where he is subordinate to Peter. Under such a situation John would most likely continue to harbour a grievance and a sense of mistrust towards Peter.

### **The Potlatch Repatriation to the Kwakwaka'wakw**

The repatriation of the potlatch material from the Museum of Civilization to the Kwakwaka'wakw of Alert Bay and Cape Mudge, BC, provides a comparable example of an 'out of balance' relationship between an indigenous community and a museum. The repatriation

agreement reached between the Kwakwaka'wakw of Alert Bay and Cape Mudge, BC and the Canadian Museum of Civilization has been used as a model for many repatriation agreements and policies that have followed in Canada.<sup>247</sup> Specifically, the condition that a museum be built to hold returned cultural property has become a common stipulation in repatriation agreements,<sup>248</sup> and such a request can have negative ramifications. The ability of the materials to be reintegrated back into indigenous cultures can be greatly impaired by the conditions that a cultural centre be built, as the materials may not be able to be used or cared for in a manner determined by the community.<sup>249</sup> The centres also bring with them financial costs, as maintaining the required preservation standards can be very expensive and can inhibit spending on social programs.<sup>250</sup> Most importantly, when these centres are imposed on communities as a part of repatriation agreements they prevent the full return of cultural self-determination.

Although the word cultural self-determination was not used during the “breaking copper” demonstration by the Kwakwaka'wakw, its theme ran throughout the speech made by Kim Recalma Clutesi during the protest. Clutesi stated:

The existence at Cape Mudge of a public museum that labels and interprets objects according to standard ethnographic practices has destroyed traditional Kwakwaka'wakw structures of authority and systems of knowledge management. It has intervened . . . in a traditional system according to which authority over the display and interpretation of important cultural artifacts is assigned to individuals who have inherited rights to the knowledge and who have been selected by elders to receive traditional knowledge.<sup>251</sup>

As demonstrated by her statement the repatriation process itself has become a destructive force. Moreover Clutesi's comments suggest that there would have been a very different outcome for

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<sup>247</sup> Philips and Johnson, “Negotiating New Relationships,” 155, 156.

<sup>248</sup> *Ibid.*, 155.

<sup>249</sup> *Ibid.*; Last, “Cultural Pluralism and the Return of Cultural Heritage,” 135.

<sup>250</sup> Élise Dubuc, “Canada's New Aboriginal Museology,” 25; James Hanson, “The Reappearing Vanishing American,” *Museum News*, 56:2 (1980): 45.

<sup>251</sup> Ruth B. Philips, “Re-placing Objects: Historical Practices for the Second Museum Age,” *The Canadian Historical Review* 86, no. 1 (2005): 102-103.

the community had they been granted cultural self-determination over the materials. This lack of control over their cultural property and heritage is at the heart of the breaking copper demonstration. During the protest Clutesi affirmed:

The performance of this ritual is the ultimate insult that a Kwakwaka'wakw leader can offer to a rival . . . Chief Dick is breaking the copper on the government of Canada, the province of British Columbia, *and the museums to challenge them to deal with the outstanding issues of repatriation.*<sup>252</sup>

I have italicized the last line in this quote, as I find it to be one of the most compelling statements made during the demonstration. The reference made to “the outstanding issues” of repatriation demonstrates that repatriation is about much more than the return of cultural property. If it were only about the return of cultural property there would not be any “outstanding issues” as in this instance the cultural property was returned. However, *control* over the property was not returned, which for the community left the issue of repatriation unresolved. Ultimately repatriation is about restoring *control* over cultural property to indigenous communities.

While the “breaking copper” demonstration by the Kwakwaka'wakw of Cape Mudge provides a good illustration of the relationship between cultural self-determination and reconciliation, it should be noted that the Kwakwaka'wakw of Alert Bay have not had such a negative reaction to the requirement that they build a museum in order to have their share of the potlatch material returned. Although there have been concerns expressed over the financial costs of maintaining the cultural centre,<sup>253</sup> the condition of building a museum has not been viewed as negatively effecting the traditional practices of the community. The differences in perception stem from the fact that the Kwakwaka'wakw of Alert Bay had already wanted to build a cultural

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<sup>252</sup> Ibid., 103.

<sup>253</sup> Philips and Johnson, “Negotiating New Relationships,” 154-155; Dubuc and Hanson also make note of the financial costs of museums for aboriginal communities. However, their comments do not make specific reference to Alert Bay. Dubuc, “Canada’s New Aboriginal Museology,” 25; Hanson, “The Reappearing Vanishing American,” 45.

centre before the conditions of repatriation were set by the Canadian Museum of Civilization.<sup>254</sup> Members of the Alert Bay community felt that it was “important to keep [the potlatch material] safe and accessible so that future generations [could] learn from them, despite the fact that, under Kwakwaka’wakw law, they belong to specific families.”<sup>255</sup> Moreover the cultural centre has been created as a resource to help renew traditional practices and language.<sup>256</sup> In this case the requirement to build a museum facility happened to be complementary to the aspirations that the community had for the material. As a result the indigenous community of Alert Bay have for the most part been able to reconcile with museums, and maintain relationships with various museums across Canada.<sup>257</sup>

Some might view the example of Alert Bay as evidence that conditions placed on the return of cultural property may not interfere with the potential for reconciliation with museums. However, the differences in the aspirations of the Cape Mudge and Alert Bay communities in terms of the repatriated material provides an example of the diversity of indigenous views around cultural property and the use of this material once it is returned to its home communities. This discussion provides a glimpse into one area of difference between two communities that share the same cultural affiliation. When considered on a larger scale the diversity between aboriginal nations can seem almost endless. For example, the return of human remains is now mostly seen in the museum community as a pretty straightforward practice. However, First Nations communities possess some drastically different views around the return of human remains.

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<sup>254</sup> 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 *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 62, 70-71.

<sup>255</sup> *Ibid.*, 72.

<sup>256</sup> *Ibid.*, 37. The Alert Bay community’s objectives for the cultural centre are very compatible with the mission of other cultural centres established in indigenous communities throughout North America for more information see Hansen, “The Reappearing Vanishing American,” 44-51.

<sup>257</sup> Clifford, “Four Northwest Coast Museums: Travel Reflections,” 229.



The documentary *The Stolen Spirits of Haida Gwaii* showcases the efforts of the Haida to have the human remains of their ancestors returned from the Field Museum in Chicago back to Haida Gwaii. Early in the film there is a discussion about the logistics around having the remains returned. It is suggested that perhaps the Field Museum should be responsible for packing and shipping the remains back to the Island. However, the elders advised that a delegation of Haida must go to the Museum and prepare the remains for return and then accompany their ancestors on the journey home.<sup>258</sup> These practices are in sharp contrast to the beliefs of the Kainai Blackfoot who find it taboo to even discuss the matter of the return of human remains.<sup>259</sup> Although there are human remains of Kainai ancestors stored in the collections of Canadian museums “protocol prevent[s] members of the Blood from handling or viewing remains, transporting remains, or executing many other logistical requirements regarding the identification of culturally affiliated remains, there may be a reluctance to retrieve these materials.”<sup>260</sup> Unlike the Haida the Kainai feel that is up to the institutions that house these remains to prepare them for shipping and reburial on Kainai territory.<sup>261</sup>

Of course these differences also extend to cultural property and its return. For example, members of the Gitanyow First Nation have expressed concern about the repatriation of old and fragile objects.<sup>262</sup> They feel it is better if these items remain in the possession of museums.<sup>263</sup> In these instances they request that museums pay to have replicas made and delivered for use in the

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<sup>258</sup> *Stolen Spirits of Haida Gwaii*, DVD, (2004; Mississauga, ON: McNabb Connolly).

<sup>259</sup> Catherine Bell, Graham Statt, and the Mookakin Cultural Society, “Repatriation and Heritage Protection: Reflections on the Kainai Experience,” in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, ed. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 241..

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Richard Overstall, in consultation with Val Napoleon and Katie Ludwig, “The Law is Opened: The Constitutional Role of Tangible and Intangible Property in Gitanyow,” in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, ed. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 107.

<sup>263</sup> Ibid.

community.<sup>264</sup> The Gitanyow have long been open to such arrangements.<sup>265</sup> In 1959 the community agreed to give a few original crest poles to the Royal British Columbia Museum, so long as the Museum financed the production of replicas for the village.<sup>266</sup> The Gitanyow feel it is more important to maintain “control over the crest images rather than simply obtaining the particular object in which they are displayed.”<sup>267</sup> These perceptions are very different from that of the Zuni who will not even allow replicas of repatriated objects to be made for display in museums. The Zuni feel that “all replicas [are] substantive artifacts.”<sup>268</sup> In one case a museum requested to replicate masks to be used for display purposes, before the original objects were returned to the Zuni.<sup>269</sup> However, the Zuni refused as “the masks embody knowledge and power that many Zuni’s consider to be proprietary to Zuni religious organizations.”<sup>270</sup> Although only a very few examples have been provided this great diversity suggests that repatriation agreements need to be less restrictive. The only way to encourage cultural self-determination for all indigenous peoples is to return cultural property outright with no conditions attached to storage or use. This will allow First Nations to be able to utilize the materials as they see fit and will help to establish an environment of trust and equality with Canadian museums.

Understanding the relationship between cultural property and self-determination is essential to the reconciliation process. For indigenous peoples the return of cultural property is important as:

from an Indigenous point of view, the continued vitality of Indigenous knowledge and heritage is dependent upon understanding and preserving Indigenous teachings. Indigenous people are seeking the return of cultural heritage held by museums and collectors as one way of reasserting control over how their cultures are depicted. These

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<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid., 97.

<sup>267</sup> Ibid., 105.

<sup>268</sup> Ferguson, Anyon, and Ladd, “Repatriation at the Pueblo of Zuni,” 253.

<sup>269</sup> Ibid., 254.

<sup>270</sup> Ibid.

objects are the physical records of history and the physical manifestation of Indigenous knowledge and heritage; they help define indigenous identity.<sup>271</sup>

Here Battiste and Henderson illustrate the indigenous relationship between cultural property, cultural objects, and identity. The authors raise the issue of control because it is directly associated with the ability of indigenous peoples to regain their cultural self-determination rights. At the most basic level cultural self-determination is about control: whether it is over the use and storage of cultural property, the interpretation of the objects, or the promotion of indigenous identity. Cultural self-determination cannot be achieved without the recognition of indigenous rights to ownership over their cultural property. Without full ownership and control indigenous peoples cannot fully reincorporate these materials into their cultural system, or achieve complete responsibility for the practice and interpretation of their culture. Deborah Doxtator, a First Nations Curator, argues that to have control over ones identity is more than a right “it’s a human responsibility: everyone has to own who they are.”<sup>272</sup> Her statement concisely conveys the message that *cultural self-determination is a basic right of all people*, and indigenous peoples should not have been stripped of their control over their cultural property and heritage. The only way to address the mistakes of the past is to return full control over cultural property to indigenous communities. The return of cultural property and cultural self-determination are critical if equality is to be achieved between museums and indigenous peoples.

Although repatriation without conditions may mean a loss to non-indigenous researchers and visitors to the museum, many curators have found that repatriation agreements that support indigenous cultural self-determination rights have actually led to stronger relationships with aboriginal communities. Paul Tacon, a Research Scientist in Anthropology at the Australian Museums in Sydney, observes:

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<sup>271</sup> Battiste and Henderson, *Protecting Indigenous Knowledge and Heritage*, 149.

<sup>272</sup> Doxtator, “The Implications of Canadian Nationalism for Aboriginal Cultural Autonomy,” 57.

The process of repatriation has led to greater confidence in the museum amongst the aboriginal communities concerned, which has sometimes resulted in further material being given to the museum, and often to improved working relationships, collaborative research and other projects. 'Instead of closing doors, or losing things, you actually gain and you open doors.'<sup>273</sup>

As Tacon notes, repatriation allows for the beginnings of reconciliation and new relationships, because repatriation requires a true sacrifice on the part of museums and ensures a tangible measure of the recognition of indigenous cultural self-determination rights. It is through this recognition that trust is established and the process of reconciliation can begin. In some instances indigenous communities have decided to leave certain items in museums in order to provide educational opportunities for all people.<sup>274</sup> Moreover some indigenous communities have opted to continue to store items of spiritual importance in museums, which are then removed and taken back to the community during special ceremonial events.<sup>275</sup> In cases where communities decide that material should be returned, repatriation has often led to strong partnerships in research and exhibitions.<sup>276</sup> Museum professionals "have found that the involvement in the repatriation process has resulted in new discoveries about the collections, greater understanding of cultures and improved relationships leading to collaborative projects."<sup>277</sup> Indigenous peoples have been willing to share aspects of their culture with museums and non-indigenous peoples and have frequently asserted that they see the need for museums as places of education.<sup>278</sup> However, they want to have control over what is displayed and what objects are to be returned. Responsibility for their culture and its patrimony is a significant step in the decolonization process between museums and indigenous peoples.

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<sup>273</sup> Simpson, *Making Representation*, 246.

<sup>274</sup> Conaty and Carter, "Our Story in Our Words," 53.

<sup>275</sup> Byrne, "Province of Alberta Perspective on the Sacredness of Past People and Places," 105.

<sup>276</sup> Hendry, *Reclaiming Culture*, 35; Phillips and Johnson, "Negotiating New Relationships," 158.

<sup>277</sup> Simpson, *Making Representation*, 245.

<sup>278</sup> Clavir, *Preserving What is Valued*, 93; Conaty and Carter, "Our Story in Our Words," 53; Phillips and Johnson, "Negotiating New Relationships," 158.

## The Nitsitapiisinni Exhibit Gallery

The Glenbow Museum provides one of the best examples of a museum that has formed a balanced relationship with indigenous peoples based on a gradual recognition of the relationship between repatriation, cultural self-determination, and reconciliation. In 1988 the Museum was at the heart of First Nations protests over an exhibit entitled the *Spirit Sings*. The protests had a significant impact on the development of repatriation policies in Canada and inspired changes in policy at the Glenbow.<sup>279</sup> As a result of these changes the Glenbow staff began to visit with aboriginal communities, and created loan agreements for the use of cultural objects in ceremonies. During the course of such visits, staff began to realize that some of the museum's protocols around loans and handling of the objects were inappropriate to the needs of the Blackfoot People. Through these meetings, friendships began to develop as well as a greater understanding of the perspectives of each group, and many staff began to advocate for outright return of the objects. Staff at the Glenbow began promoting the return of sacred cultural property to indigenous communities without conditions attached to the objects. Blackfoot communities began to trust museum staff members, as they saw the museum's recognition of the ownership rights of indigenous peoples and the commitment to equality.<sup>280</sup>

Joy Hendry writes that Alberta's Glenbow museum now has one of the strongest relationships with First Nations communities in Canada. She notes that the Glenbow museum has opened an exhibit hall in "full collaboration" with First Nations in the Province.<sup>281</sup> The permanent installation, *Nitsitapiisinni: Our Way of Life* opened at the Glenbow on November

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<sup>279</sup> Conaty and Janes, "Issues of Repatriation," 33; The exhibit is the result of "full collaboration between the Kainai, Siksika, Amsskaapipikani, Apatohsipikani, and the Glenbow," for more details see the Glenbow Museum website, [http://www.glenbow.org/exhibitions/online/blackfoot/unique\\_eng.htm](http://www.glenbow.org/exhibitions/online/blackfoot/unique_eng.htm) (accessed July 15, 2009).

The history behind these protests will be explained in greater detail in the next chapter

<sup>280</sup> Bell, Statt, and the Mookakin Cultural Society, "Repatriation and Heritage Protection," 234.

<sup>281</sup> Hendry, *Reclaiming Culture*, 35;

3<sup>rd</sup>, 2001.<sup>282</sup> The exhibit was developed over a four year period, and from the beginning it was the Museum's intention to undertake this work in full collaboration with the Blackfoot.<sup>283</sup>

Thanks to the strong partnerships developed, the new gallery stands in stark contrast to the interpretations previously available, which presented a typical display of static artifacts and the Blackfoot as a people of the past.<sup>284</sup> The *Nitsitapiisinni* exhibit showcases many aspects of Blackfoot life beginning with a presentation of some of their oral histories and conceptions of the world, to detailed examples of their connection to the environment in both the past and the present.<sup>285</sup> The gallery presents the Blackfoot history up to the present, but also works to place current Blackfoot voices and perspectives in each aspect of the display.

Conaty writes that the Museum wanted to create the exhibit with the intention of becoming "partners in presenting [the Blackfoot] story, in their words, so that it can be explained and preserved."<sup>286</sup> In terms of the display the Blackfoot team "hoped to achieve . . . the translation of oral teachings into an exhibition format that would be understood by the general public."<sup>287</sup> However, they were also adamant:

that they were not participating just to help the Glenbow create an exhibit. They saw this project as an opportunity to develop an educational place where future generations of Blackfoot youth can learn the fundamentals of their own culture.<sup>288</sup>

Since the Gallery's opening it has been utilized by Blackfoot communities throughout Canada and the United States in their educational programming, and has further served to educate countless visitors about Blackfoot culture and life.<sup>289</sup>

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<sup>282</sup> Alison Brown, "Nitsitapiisinni: Our Way of Life. The Blackfoot Gallery, Glenbow Museums, Calgary, Alberta, Canada. Opened November 2001," *Museum Anthropology* 25, no.2 (2002): 69.

<sup>283</sup> Hendry, *Reclaiming Culture*, 35.

<sup>284</sup> This comparison is based on my visit to the Glenbow in the spring of 1999 and then the summer of 2008.

<sup>285</sup> The description of the Glenbow gallery is based on my visit during the summer of 2008. See also Brown, "Nitsitapiisinni," 69-75.

<sup>286</sup> Conaty, "Glenbow's Blackfoot Gallery," 231.

<sup>287</sup> Brown, "Nitsitapiisinni," 69.

<sup>288</sup> Conaty, "Glenbow's Blackfoot Gallery," 231.

My visit to the Glenbow's *Nitsitapiisinni* exhibit gallery in the summer of 2008 highlighted the power the exhibit holds as a teaching tool. Conventional exhibit cases with objects and labels were replaced by dioramas that conveyed the feel of the landscape. Cultural materials were displayed with signage that provided information about the objects in the Blackfoot voice. Often the text offered details about the Blackfoot community member who made the item and how it was crafted. In other instances a story behind the object's use or its relationship to a broader oral history was offered. Throughout the gallery the Blackfoot language was displayed. In the middle of the exhibit space was a video theatre where community members discussed a variety of cultural practices with the option to listen in both English and Blackfoot. Stations were set up all through the gallery, where visitors could opt to listen to further recorded explanations of cultural practices presented in both languages. Continued learning opportunities were made available through photocopied leaflets expanding on Blackfoot language, cultural practice, and history that were posted throughout the exhibit to be taken away for later review. The space was immensely successful at showcasing the Blackfoot as a present people. This permanent exhibit gallery allows Blackfoot visitors to identify with their history on a personal level as "through recognizing relatives, [they] can view these images as a part of their own family histories."<sup>290</sup> At the same time the display "also adds to the sense that the non-Blackfoot visitor has of this being an exhibition about real people with distinctive identities and personalities."<sup>291</sup> Essentially the message of the exhibit is one of "co-existence."<sup>292</sup> The exhibit stands as a symbol of what can be achieved when indigenous peoples are recognized as the true owners of their histories and cultural materials.

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<sup>289</sup> Ibid., 232.

<sup>290</sup> Brown, "Nitsitapiisinni," 73.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid., 74.

The *Nitsitapiisinni* exhibit showcases the positive results that can occur when First Nations cultural self-determination is recognized. The strong and equal partnership that has been established between the Museum and the Blackfoot, provides a glimpse into the possibilities that reconciliation can provide in terms of learning opportunities for both groups. It should be noted that this type of partnership is very different from the types of partnerships described at the beginning of this chapter. The partnership between the Glenbow and the Blackfoot community arose from the Glenbow's recognition of the Blackfoot's ownership rights and the repatriation of cultural property without condition. The cultural self-determination rights of the Blackfoot were supported and a process of trust developed. The Glenbow's staff changed their practices in order to develop an equal relationship with the Blackfoot, and these concessions created an environment where indigenous perspectives set the agenda. The commitment to an equal partnership based on the promotion of indigenous cultural self-determination rights can be seen throughout the exhibit development, as the Blackfoot voice was predominant throughout the Gallery. The result was an exhibit that provides a rewarding experience for all visitors, and goes far beyond what was in place at the Glenbow previously.

### **Moving Towards a Brighter Future**

As illustrated throughout this chapter repatriation is a means for museums to demonstrate that they recognize indigenous rights to ownership, and wish to move beyond a colonial relationship. This chapter initiated the beginnings of the discussion around the relationships between repatriation and the reconciliation process. Some examples were provided to illustrate that the recognition of indigenous cultural self-determination through repatriation can help to foster a process of reconciliation between indigenous communities and museums. The next chapter will explore two of the most common approaches to repatriation, the voluntary and



legislative model. Both approaches to repatriation will be reviewed to see which process best returns control and responsibility over cultural property to indigenous peoples, thus supporting cultural self-determination and promoting reconciliation. Amareswar Galla demonstrates the relationship between repatriation, cultural self-determination, and reconciliation best when he states that the recognition of these rights by museums “will be crucial for paving the way towards reconciling the past with the future.”<sup>293</sup> The return of both cultural self-determination and cultural property can lead to a bright future for both museums and indigenous peoples.

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<sup>293</sup> Amareswar Galla, “Public Lecture: Indigenous Peoples, Museums and Frameworks for Effective Change,” in *Curtorhsip: Indigenous Perspectives in Post-Colonial Societies Proceedings* ed. Camilla Turner (Hull, PQ: Canadian Museum of Civilization, 1996), 85.

### **Chapter Three: Choosing the Most Effective Repatriation Policy: How the Legislative Model May Create Better Opportunities for Reconciliation than the Voluntary Approach**

The act of repatriation is most commonly guided by voluntary or legislative policy. Voluntary policies are those that are put in place by the museum community, while legislative policies are passed by government. The key difference between each policy type is that the voluntary approach provides museums with the option to return cultural property, while the legislative model mandates that museums participate in the repatriation process. Those that support the voluntary approach note that it can be applied on a case-by-case basis allowing for flexibility in negotiations between museums and indigenous communities during the repatriation process.<sup>294</sup> Others indicate that legislation is a superior method as it outlines the obligations of all parties in regards to repatriation, and provides legal recourse for aboriginal communities if these conditions are not followed.<sup>295</sup> In Canada the repatriation of cultural property from museums to First Nations communities can also be guided by the treaty process, which occupies a space somewhere between the voluntary and legislative approach. The negotiation of treaties employs a strategy that is often shaped by voluntary policies already in place. However, once a treaty is ratified it becomes a part of constitutional law.<sup>296</sup> This chapter seeks to determine how these different policies impact the repatriation process and the prospects for reconciliation between museums and indigenous communities. Both the voluntary and legislative policies in Canada, Australia, and the United States as well as the treaty process in Canada, will be reviewed and then assessed to determine which method can best restore cultural self-determination to indigenous peoples and begin a process of reconciliation with museums.

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<sup>294</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 275-277.

<sup>295</sup> Philips and Johnson, "Negotiating New Relationships," 157.

<sup>296</sup> Laforet, "Repatriation and the Canadian Museum of Civilization," 5.

Cultural self-determination will be measured through an examination of the ability of each approach to return full control over cultural property to aboriginal groups. The potential for reconciliation will be considered against the capacity of each process to promote equality, trust, and forgiveness.

### ***Turning the Page: Canada's Foremost Voluntary Policy***

The development of a repatriation policy by museums and First Nations in Canada was sparked by the boycott of the 1988 exhibit *The Spirit Sings: Artistic Traditions of Canada's First Peoples*, created by the Glenbow Museum in Calgary, Alberta.<sup>297</sup> The show was timed to coincide with the 1988 Winter Olympics, as the Glenbow hoped to attract an international audience with their ground breaking work, which was designed to demonstrate the impact of European contact with First Nations people.<sup>298</sup> *The Spirit Sings* took three years to prepare and required collaboration with hundreds of museums, which lent objects to the exhibit.<sup>299</sup> Many of the items came from museums outside of Canada, and the Glenbow staff wanted to use the display as a means of demonstrating the amount of First Nations cultural material held in museums abroad.<sup>300</sup> The Museum hoped to create a large-scale exhibit that would further public understanding of First Nations culture and resiliency. In order to produce such a display the Museum looked for corporate sponsorship, and in April 1986 it was received from Shell Oil.<sup>301</sup> A few weeks after Shell Oil became the sponsor for *The Spirit Sings* the Lubicon Lake Cree of northern Alberta announced their boycott of the exhibit, as Shell was drilling on land the

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<sup>297</sup> Julia Harrison, "Museums and Politics: The *Spirit Sings* and the Lubicon Boycott," *Muse* VI, no. 3 (1988): 12.

<sup>298</sup> *Ibid.*; Margaret A. Stott, "The Spirit Sings: Artistic Traditions of Canada's First People," *Muse* VI, no. 3 (1988): 78.

<sup>299</sup> Harrison, "Museums and Politics," 12.

<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid.*

Lubicon were claiming as their own.<sup>302</sup> The Lubicon also sought to focus attention on the current poor standard of living faced by native people whose past was being represented in the display.<sup>303</sup> The Lubicon protested both domestically and internationally and received support from the World Council of Churches, the European Parliament, national and regional native political bodies, and some segments of the academic community.<sup>304</sup>

The protest surrounding the show and the media attention it received placed far more attention on First Nations cultural issues than perhaps a museum exhibit alone ever could. These events have been briefly recounted because they helped to spark a dialogue between museum professionals, First Nations, and academics regarding cultural property and the interpretation of the past.<sup>305</sup> Georges Erasmus writes that when the *Spirits Sings* exhibit moved from Calgary to Ottawa indigenous people came together to discuss the next step in their protest, as he recalls: “we could have continued with the boycott; we needed to get beyond that. The reality was that two possible strong allies could have a working relationship in the future. That could be very different from what we have had in the past.”<sup>306</sup> The Assembly of First Nations (AFN) and the Canadian Museums Association (CMA) met to discuss the conflict and decided to try to repair relations by bringing museum staff and First Nations peoples together for a series of discussions.<sup>307</sup> Through these conversations the CMA and the AFN organized a task force of 25 individuals from museums and First Nations communities who identified the following areas as being of primary importance:

1. increased involvement of Aboriginal peoples in the interpretation of their culture and history by cultural institutions;

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<sup>302</sup> Ibid.

<sup>303</sup> Stott, “The Spirit Sings,” 78.

<sup>304</sup> Harrison, “Museums and Politics,” 12.

<sup>305</sup> Bruce Trigger, “Who Owns the Past?” *Muse* VI, no. 3 (1988): 15.

<sup>306</sup> Georges Erasmus, “We Want to Turn the Page,” *Museum Anthropology* 16, no.2 (1992): 8.

<sup>307</sup> Assembly of First Nations and the Canadian Museums Association, *Turing the Page*, 1.

2. improved access to museum collections by Aboriginal peoples; and,
3. the repatriation of artifacts and human remains.<sup>308</sup>

The aspirations of First Nations regarding the Task Force on Museums and First Peoples were further captured by Georges Erasmus who stated:

We want to look at [a] challenging changing relationship . . . a relationship that will look at the ways, means, the guarantees so that native people will be a full part of that presentation – from originally sitting down and dreaming about what the exhibition should look like, to participating in selecting the artifacts and pieces of art, and then making the final presentation to the public . . . we are well aware that many people have dedicated their time, careers, and their lives to showing what they believe is an accurate picture of indigenous peoples. We thank you for that. *But we want to turn the page, we really want to see some changes.*<sup>309</sup>

In order to ensure that First Nations, museums, and other cultural institutions across Canada could participate in the development of the policy the Task Force established three regional teams, which focused on Western, Central and Eastern Canada.<sup>310</sup> Each committee held public meetings in their geographical region. The Task Force also sent 4000 invitations requesting input from First Nations communities and cultural institutions across Canada with a total of 47 submissions being returned.<sup>311</sup>

The final report included suggestions gathered throughout the consultation process regarding increased aboriginal involvement and access to museums and offered some guidelines around repatriation. The Report recommended First Nations be provided with training and opportunities for employment in museums and further suggested First Nations have input into exhibitions that would highlight their past and present contributions to Canadian society.<sup>312</sup> In order to help promote increased access it was recommended that museums produce inventories

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<sup>308</sup> Ibid.

<sup>309</sup> Erasmus, “We Want to Turn the Page,” 8 (my italics).

<sup>310</sup> Assembly of First Nations and the Canadian Museums Association, *Turning the Page*, 1.

<sup>311</sup> Ibid., 1-2.

<sup>312</sup> Ibid., 4.

of all materials and objects pertaining to First Nations in their collections.<sup>313</sup> In terms of repatriation the Report advised that human remains and illegally obtained items should be returned along with certain objects of spiritual value.<sup>314</sup> The Report further instructed that First Nations communities would need to demonstrate a past connection with the objects before repatriation would be considered.<sup>315</sup> A strong endorsement was also made for the establishment of cultural centres in First Nations communities to store and preserve cultural property, and to act as resources for communities in their efforts to revitalize their culture.<sup>316</sup> The Task Force primarily advised against a legislative approach to repatriation. Although the report was written two years after the enactment of federal repatriation legislation in the United States the document stated that “while not ruling out the possibility of the creation of legislation in the future it was agreed that it was preferable to encourage museums and Aboriginal peoples to work collaboratively to resolve issues concerning the management, care and custody of cultural objects.”<sup>317</sup>

Since the release of the *Turning the Page* report, most institutions have adopted its recommendations and used it as a guide to drafting their own repatriation policies.<sup>318</sup> Many Canadian museums now have repatriation policies in place and most of these policies have been shaped in some degree by the Task Force.<sup>319</sup> This demonstrates the commitment of museum professionals to building relationships with First Nations communities, as the adoption of the

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<sup>313</sup> Ibid., 5.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

<sup>317</sup> Ibid.

<sup>318</sup> Stephanie Bolton, “The Task-Force on Museums and First Peoples, a Decade Later: A Case Study of the McCord Museum of Canadian History,” [http://www.cst.ed.ac.uk/2005conference/papers/Bolton\\_paper.pdf](http://www.cst.ed.ac.uk/2005conference/papers/Bolton_paper.pdf) (accessed August 25, 2006); Gillam, *Hall of Mirrors*, 129.

<sup>319</sup> Bell, “Restructuring the Relationship,” 45.

Report was completely voluntary.<sup>320</sup> Museums are not required to maintain membership in the CMA, which was responsible for the Report, and members are not obligated to adopt the Association's recommendations.<sup>321</sup>

Ruth Phillips states that, since the Task Force, museums have worked diligently to collaborate with indigenous groups when the decision is made to create an exhibit about their culture.<sup>322</sup> Philips' observations are supported by many First Nations who note that the Report has been successful at encouraging dialogue between the two groups.<sup>323</sup> However, there are still areas of concern amongst aboriginal communities regarding the ability of the Report to resolve some of the key issues surrounding repatriation. Some common challenges identified by First Nations include: the requirement to maintain an understanding of various repatriation policies; a continued sense that museums possess a greater amount of power during negotiations; the ability of museums to impose conditions on returned cultural property; and the expenses relating to mounting a repatriation claim and the lack of funding available.<sup>324</sup> I suggest that each of these concerns arise in part from the voluntary nature of the *Turning the Page* policy. Because the Task Force's recommendations are not enforceable they have only been adopted as general guidelines, which has resulted in the creation of a variety of repatriation policies. First Nations must become familiar with each policy should they wish to make a claim for the return of cultural property, as items are often housed at various facilities.<sup>325</sup> This impacts the ability of indigenous communities to achieve cultural self-determination, as they are always responding to institutional policy and are never in control of implementing their own processes. Although

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<sup>320</sup> Conaty and Janes, "Issues of Repatriation," 32

<sup>321</sup> Ibid.

<sup>322</sup> Heather Igloliorte, "Reflecting on the Spirit Sings: A Conversation with Ruth Phillips,"

[www.aboriginalcuratorialcollective.org/features/igloliorte2.html](http://www.aboriginalcuratorialcollective.org/features/igloliorte2.html) (accessed November 27, 2008).

<sup>323</sup> Bell, McCuaig, Ktunaxa/Kinbasket Tribal Council and the Ktunaxa/Kinbasket Traditional Elders Working Group, "Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources," 343.

<sup>324</sup> Ibid., 343-344.

<sup>325</sup> Bell, "Restructuring the Relationship," 50.

some might argue that First Nations had input into the original policy, museums have been able to choose which processes they will adopt.

In addition, this lack of control over the repatriation process may contribute to the shared sense in many First Nations communities that equality with museums has yet to be achieved.<sup>326</sup> The situation is very much like the bicycle story retold in chapter two, where Peter had possession of the bicycle and was able to dictate to John the terms of return. Museums continue to hold the objects and retain the final decision as to whether they wish to repatriate the material, and under what conditions return might take place. If First Nations want to have any chance of having cultural property returned, they must be prepared to work with the holder of the material and acquiesce to their conditions. As indicated in chapter two, this lack of control and inequality in the relationship can impact the ability to develop trust and forgiveness all of which are critical for reconciliation. Furthermore, the condition that First Nations communities establish cultural centres before cultural property is returned has implications for the attainment of cultural self-determination and reconciliation. In many respects ownership still rests with the museum, as it is making the final decision regarding the storage and use of the material. In certain instances such as the Cape Mudge example this lack of cultural self-determination can cause a deep sense of mistrust, making reconciliation all but impossible.

The frustration felt by some First Nations over conditions placed on repatriated cultural property is captured by Christopher Horsetheif of the Ktunaxa Nation who states:

They [museums] never will completely understand why it [cultural property] is important. They never saw it as part of a living, breathing thing. So it's been the case I know where some people were saying well, we'll give this back, but we want to make sure you know – like a little asterisk with the rules and conditions . . . *So it's not ever*

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<sup>326</sup> Ibid.



*going to be the case that we're going to have a good working relationship when someone is trying to tell us this is how you're going to have to take care of it.*<sup>327</sup>

The last line is italicized as it speaks to the damaging impact that conditions can have on the relationship between museums and First Nations communities. When museums place conditions on repatriated material the message conveyed is that they do not trust First Nations with its care. These conditions prevent full control from being returned to First Nations communities, which can impede cultural practice and healing and can be interpreted as a lack of respect for First Nations perspectives. This can create a sense of resentment on the part of indigenous communities towards museums, once again hindering reconciliation.

Finally the issue surrounding the cost of repatriation can have negative ramifications in terms of the achievement of cultural-self-determination and reconciliation. Without available funds many First Nations communities are not able to begin the process of requesting that cultural property be returned. As demonstrated in previous chapters cultural property is a key component of aboriginal identity and knowledge. In order to be self-determining, control over one's heritage and cultural practice is essential. When the *Turning the Page* report was released both the CMA and AFN requested that the government contribute funds to assist with repatriation, and asked for the creation of a public panel to review the effects of the Report ten years after its implementation.<sup>328</sup> Government funding was essential as neither the CMA nor its members had the resources to help indigenous peoples in their efforts to regain cultural property.<sup>329</sup> Unfortunately, monetary support from the government was not forthcoming, nor has

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<sup>327</sup> Bell, McCuaig, Ktunaxa/Kinbasket Tribal Council and the Ktunaxa/Kinbasket Traditional Elders Working Group, "Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources," 356-357 (my italics).

<sup>328</sup> Gillam, *Hall of Mirrors*, 128-129.

<sup>329</sup> *Ibid.*, 129.

a public review of the Report been conducted.<sup>330</sup> Without any form of government financial support or oversight, establishing long-term change with a voluntary policy is almost impossible. Some indigenous groups have noted that since the Report's release some of its recommendations have never come to fruition.

For example, the Report recommended that museums hire more aboriginal staff. Although this suggestion has led to a change in the hiring and consultation practices of many museums, some feel there still has not been a large overall increase in employment opportunities for First Nations in the museum field.<sup>331</sup> In 2005 a group of aboriginal trained curators formed the Aboriginal Curatorial Collective and wrote a *Proposal for A Framework for Action*, stating:

the existing status quo is silencing Aboriginal voices on Aboriginal art history. There exists a dominant group of non-aboriginal curators and academics in Canada who are identified as experts in their fields . . . and are dominating and controlling major publishing and curatorial contracts to the detriment of the Aboriginal curatorial community.<sup>332</sup>

They noted there were only a total of ten First Nations curators employed throughout art galleries and museums across Canada.<sup>333</sup> The Statistics Canada census of national occupations conducted in 2006 indicated that 1,900 people were employed in curatorial positions in both art galleries and museums throughout the Country.<sup>334</sup> The Report by the Aboriginal Curatorial Collective further argued that the lack of curatorial positions also resulted in fewer publishing opportunities

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<sup>330</sup> Bell, "Restructuring the Relationship," 51; Claudia Notzke, "Co-Managing Aboriginal Cultural Resources," *Muse* XIV, no. 3 (1996): 55.

<sup>331</sup> Dubuc, "Canada's New Aboriginal Museology," 21.

<sup>332</sup> Barry Ace, William Kingfisher, Steve Loft et al., "Aboriginal Curatorial Collective: Issues, Challenges and Opportunities: A Proposal for a Framework for Action by the Aboriginal Curatorial Collective," submitted to the Aboriginal Arts Secretariat Canada Council for the Arts, (2005): 1.

<sup>333</sup> *Ibid.* It is important to note that in reviewing the membership for the Curatorial Collective both museum and gallery curators have been included; however, it is not absolutely clear if their definition of curator also includes museums. It should also be noted that First Nations may work in museums in other occupations outside of the curatorial field (for example they may be employed as education programmers, designers etc).

<sup>334</sup> Statistics Canada, "Occupation - National Occupational Classification for Statistics 2006," Line F012 Conservators and Curators, <http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/tbt/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=92104&PRID=0&PTYPE=88971,97154&S=0&SHOWALL=0&SUB=743&Temporal=2006&THEME=74&VID=0&VNAMEE=&VNAMEF=> (accessed January 22, 2010).

for First Nations with training in the profession. They warned that this void continued to prevent academics, researchers and the general public from viewing curatorial issues from an alternative perspective.<sup>335</sup> The concerns raised by the collective speak to the role of power in the relationship between museums and First Nations. As discussed earlier many First Nations feel that museums continue to hold the balance of power in repatriation negotiations. The hiring of First Nations curators might help to change this relationship, as aboriginal perspectives would be given a permanent voice in the museum community. In addition the hiring of First Nations staff could help to further indigenous efforts to regain cultural self-determination as they would have more control over how their culture is interpreted in the museum setting. Increasing aboriginal participation especially at levels where they have institutional authority might assist with the reconciliation process, as these changes would promote equality and inspire trust. The failure of the *Turning the Page* report to bring about significant changes in staffing may result in further mistrust and questions as to the commitment of museums to promote change. The longer it takes for First Nations to play a significant role in museums, the harder it will become to achieve reconciliation with indigenous communities. Increased funding and a commitment by government to support First Nations curators would go a long way in assisting with this process, but would still remain only part of the solution.

Another barrier to repatriation and ultimately reconciliation is the absence of a central inventory that details the location and type of indigenous objects held in Canadian museums. Unfortunately, the Task Force's call for the creation of an inventory of indigenous material and human remains held in museum collections has not been achieved.<sup>336</sup> The absence of a central inventory creates further work for indigenous communities trying to gain information about

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<sup>335</sup> Ace, Kingfisher, Loft et al, "Aboriginal Curatorial Collective," 1.

<sup>336</sup> Bell, "Restructuring the Relationship," 50.

where their cultural property is located. Instead of going to one resource, communities must spend time researching the collections of separate museums. This type of search requires a significant amount of time and money, of which many communities are in short supply.<sup>337</sup> The Royal Commission on Aboriginal Peoples indicates that it is critical that each museum produce a full inventory of First Nations cultural property held in its collection.<sup>338</sup> The Report states that, “aboriginal people cannot easily gain access to these materials or, in some cases, even get information about them.”<sup>339</sup> It advises that, “establishing inventories is an essential first step in developing repatriation policies and collaborating with aboriginal peoples.”<sup>340</sup> Once again the failure to fund key objectives of the *Turning the Page* report not only directly affects the repatriation efforts of indigenous communities, but it also can create a sense that their efforts to achieve cultural self-determination are not supported. In the long term this could make reconciliation difficult.

While the implementation of the *Turning the Page* report has helped to bring the issue of repatriation forward, a lot more work remains to be done if First Nations cultural self-determination and reconciliation is to be fully achieved. The voluntary nature of the Report has led to inconsistencies in policies across Canadian museums. Moreover, it has allowed institutional perspectives regarding the care of cultural property to take precedence over indigenous needs. The ability of museums to request that communities establish cultural centres before material is returned provides an example of this inequity. As detailed previously, these factors can impede the attainment of indigenous cultural self-determination as First Nations have little control over the repatriation process, or over cultural property that is returned to their

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<sup>337</sup> Ibid.

<sup>338</sup> Royal Commission on Aboriginal Peoples, “Chapter 6: Arts and Heritage,” 593.

<sup>339</sup> Ibid.

<sup>340</sup> Ibid.

communities. While many First Nations appreciate the hard work and support given by museum professionals,<sup>341</sup> the concerns expressed by indigenous communities that have been reviewed demonstrate that significant barriers to reconciliation still remain. As a result the voluntary case-by-case model does not seem effective at restoring cultural self-determination and fostering reconciliation. A centralized system that could enforce the Report and monitor the policy would help ensure that more of the document's recommendations would be achieved. Government funding and participation would be needed to support this type of voluntary policy. My sense is that such changes might help to bring equality to repatriation negotiations, which would spur indigenous cultural self-determination and encourage reconciliation. In order to explore these possibilities, the voluntary policy established in Australia will now be examined. This policy also was created by museums, but received more government support than the Canadian model. The Australian policy will be assessed to see how these changes impact the attainment of indigenous cultural self-determination and reconciliation with museums.

### **Voluntary Policy in Australia**

The Australian policy, known as *Previous Possessions, New Obligations: Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples*, was launched in 1993 a year after Canada's *Turning the Page* report was released.<sup>342</sup> The policy was brought forth by the Council of Australian Museums Association (CAMA) in consultation with government and aboriginal groups.<sup>343</sup> The Australian model was driven by the CAMA and was inspired by the

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<sup>341</sup> Nobel in consultation with Reg Crowshoe and in discussion with the Knut-sum-atak Society, "Poomaksin," 299.

<sup>342</sup> Tim Sullivan, Lynda Kelly, and Phil Gordon, "Museums and Indigenous Peoples in Australia: A Review of Previous Possessions, New Obligations," *Curator* 46, no. 2 (2003): 208.

<sup>343</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 282.

work of the federal Council for Australian Reconciliation formed in 1991.<sup>344</sup> *Previous Possessions, New Obligations* worked to:

*Possessions, New Obligations* worked to:

1. Deal with human remains secret/sacred material and the general collections of Indigenous cultural material;
2. Include Indigenous people in research and public programs; and
3. Address issues of governance.<sup>345</sup>

The document stated that it “recognize[d] as its primary principle the right of Indigenous Australians to self-determination in respect to cultural heritage matters.”<sup>346</sup> However, the recommendation by aboriginal groups that “Indigenous Australian[s] control . . . ownership of all past, present and future cultural material,”<sup>347</sup> be included in the report went unheeded. Instead the document stated “that the issue of ownership of cultural heritage is a strongly held view by Indigenous Australians,” and underscored that the collection of indigenous cultural property by museums remained legal.<sup>348</sup> From the start the decision not to include aboriginal requests made the attainment of indigenous cultural self-determination unlikely. Moreover, the document recommended that items be repatriated to communities that establish cultural centres, to guarantee that the correct preservation measures were ensured.<sup>349</sup> This condition once again placed museum protocols and standards over aboriginal concerns.

Even though Australia’s policy included government consultation and was inspired by the work of a federal council on reconciliation, museum concerns continue to dominate policy decisions. Of the Australian document Vrdoljak observes:

The policy’s failure to recognise Indigenous Australians’ ownership and control of their cultural heritage reflects the effort of the dominant culture to ‘accommodate’ indigenous

<sup>344</sup> Sullivan, Kelly, and Gordon, “Museums and Indigenous Peoples in Australia,” 210.

<sup>345</sup> *Ibid.*, 209.

<sup>346</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 283.

<sup>347</sup> Council of Australian Museums Association, *Previous Possessions, New Obligations: Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples* (Melbourne, Council of Australian Museums Association, 1993), 4; quoted in Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 283.

<sup>348</sup> *Ibid.*

<sup>349</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 284.

claims within its existing museological and legal frameworks . . . If PPNO is part of a process of recognising past wrongs, then Australian museums must desist from asserting their legal title to indigenous collections by cloaking themselves in the validity of laws that perpetuated colonialism.<sup>350</sup>

The comment made by Vrdoljak speaks to the inconsistencies in the proposed relationships that museums were hoping to develop with aboriginal communities, and what they were willing to sacrifice in order to establish these connections. Defending past policies and refusing to return authority over cultural property to aboriginal communities perpetuates unequal relationships between museums and aboriginal communities. The trust of indigenous peoples cannot be gained so long as their cultural authority over cultural property remains unrecognized. As such *Previous Possessions New Obligations* is no more able to foster reconciliation with indigenous communities than the *Turning the Page* policy.

Nevertheless where the Australian policy has been more successful than the Canadian policy is the review process. In 2000 the policy was evaluated by the Australian Museums Association now known as Museums Australia.<sup>351</sup> The evaluation indicated that the policy was utilized mainly by larger urban museums and not smaller institutions located in more rural areas.<sup>352</sup> It also found that “museums in Australia have made a difference in promoting reconciliation principally through public learning and developing partnerships.”<sup>353</sup> Throughout the review references were made to the ability of the policy to facilitate reconciliation.<sup>354</sup> I suspect that government support for reconciliation from 1991 to 2000 helped to bring this discourse into other areas of the public sector such as museums.<sup>355</sup>

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<sup>350</sup> Ibid.

<sup>351</sup> Sullivan, Kelly, and Gordon, “Museums and Indigenous Peoples in Australia,” 218; Kelly and Gordon, “Developing a Community of Practice,” 164.

<sup>352</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 285.

<sup>353</sup> Kelly and Gordon, “Developing a Community of Practice,” 168.

<sup>354</sup> Ibid.

<sup>355</sup> In 1991 the Australian government established the Federal Council for Australian Reconciliation. The Council was created to work over a ten-year period, and was tasked with promoting reconciliation with the aboriginal

However, the problem with the observations found in the report is they only came from a museum perspective. Only museums were surveyed as indigenous people were not invited to contribute to the review.<sup>356</sup> Because the evaluation did not include participation from indigenous peoples, it is unknown as to whether they agree with the museum position that the policy promoted reconciliation. My sense is that due to some of the similarities between *Previous Possessions New Obligations* and *Turning the Page*, many of the repatriation experiences of indigenous communities in both Australia and Canada are likely to be very similar. As in Canada, aboriginal communities in Australia had to meet conditions in order to have property returned. Australian museums, like their Canadian counterparts, also were able to decide which aboriginal perspectives would be included in the policy. Museums in Australia, as in Canada, also had the choice as to whether they would adopt any of the recommendations made in *Previous Possessions New Obligations* or whether they would even consider indigenous repatriation requests.<sup>357</sup> In the Canadian experience when indigenous cultural self-determination has not been recognized the partnerships created with museums have remained unequal and unlikely to promote reconciliation. I suspect that this is probably the case in Australia.<sup>358</sup>

On the positive side of the ledger, the evaluation did lead to the creation of a new policy, which was released in 2005.<sup>359</sup> The new document entitled *Continuous Cultures Ongoing Responsibilities* (CCOR) was put in place to help further enhance the relationships between

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community. It was made up of 25 members, which were comprised of business people, academics, government officials and aboriginal peoples. They worked to establish educational programs around reconciliation and advised governments on policy matters. The Council concluded on December 2000, and became an independent body known as Reconciliation Australia. See the following for these and more details: Damien Short, "Reconciliation, Assimilation, and the Indigenous Peoples of Australia," *International Political Science Review* 24, no.4 (2003): 495; Council for Aboriginal Reconciliation Act 1919 Section 5 from [www.cultureand recreation.gov.au/articles/indigenous/reconciliation](http://www.cultureand recreation.gov.au/articles/indigenous/reconciliation) (accessed September 17, 2009); Reconciliation Australia *Keeping the Flame Alive*, [www.reconciliation.org.au/home/about-ra/who-is-ra](http://www.reconciliation.org.au/home/about-ra/who-is-ra) (accessed September 17, 2009).

<sup>356</sup> Sullivan, Kelly, and Gordon, "Museums and Indigenous Peoples in Australia," 218; Kelly and Gordon, "Developing a Community of Practice," 164.

<sup>357</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 286.

<sup>358</sup> Please note that I have not found evidence in the literature to assert or refute this contention.

<sup>359</sup> Ibid.



aboriginal communities and museums.<sup>360</sup> *Continuous Cultures Ongoing Responsibilities*

elaborates on the previous policy in the following respects:

1. It calls on museums to recognise contemporary indigenous cultural practices. It acknowledges the broader political and social importance of museums collection for indigenous self-determination, land claims and reconciliation.
2. It recognises the diversity of indigenous cultures and multiplicity of viewpoints within these communities.
3. It adopts a more holistic interpretation of culture including movable cultural property, human remains, art works, photographs, film and sound recordings ‘as cultural objects in their own right as well as being documentation of cultural practices.’
4. It affirms museums are bound to respect the cultural and intellectual property rights of Indigenous Australians and ‘relevant customary law.’<sup>361</sup>

The changes brought forward in the new 2005 policy make reference to the links between self-determination and cultural property, as well as the need for museums to recognize indigenous cultural practices in order to achieve reconciliation with aboriginal communities. The new policy also strongly articulates the need to consider the diversity of indigenous perspectives and cultural needs.<sup>362</sup> Both of these objectives go beyond the recommendations of Canadian and previous Australian repatriation policies. The 2005 policy makes a link between self-determination and reconciliation, which cannot be found in previous policies. The recognition of this connection and the value given to indigenous perspectives is cause for hope. However, *Continuous Cultures Ongoing Responsibilities* has yet to be evaluated and so it is unknown if it is more effective than *Previous Possessions and New Obligations* or *Turning the Page* at encouraging reconciliation. While the language in *Continuous Cultures Ongoing Responsibilities* is promising, some critics wonder if it will fall victim to the common

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<sup>360</sup> Museums Australia, *Continuous Cultures Ongoing Responsibilities: A Comprehensive Policy Document and Guidelines for Australian Museums Working with Aboriginal and Torres Strait Islander Cultural Heritage* (Canberra, Museums Australia, 2005), 9 and Guideline 5.1 cited in Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 286.

<sup>361</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 286 see MA, CCOR, p. 6-7, 11.

<sup>362</sup> Ibid.

weaknesses of voluntary policy.<sup>363</sup> Detractors note that *Continuous Cultures Ongoing Responsibilities* still “reaffirm[s] a central limitation of the voluntary approach. Australian museums continue to be bound by a ‘moral imperative’ rather than legal obligations.”<sup>364</sup> The central limitation to this approach is that it relies on the will of each individual museum to initiate change and meet the challenges of recognizing indigenous ownership and rights to repatriation.

While both Canadian and Australian policies have been successful at encouraging greater dialogue between museums and indigenous communities, I think that neither have been able to facilitate aboriginal cultural self-determination or reconciliation with museums. I contend that this failure is a product of the voluntary nature of each policy. As demonstrated in chapter one, while exploring the history of museums, the values of public education and scientific study are very much a part of these institutions. While some museum professionals have come to recognize that these principles are not jeopardized by repatriation, there is still a preference to return cultural property only when restrictions around the storage and use of artifacts are in place. Such conditions prevent indigenous communities from regaining full control over their cultural property, and create an atmosphere of mistrust between museums and aboriginal peoples.

Upon reflecting on the *Turing the Page* policy during a presentation at the Task Force National Conference, David Penny, a museum representative from the United States, remarked that repatriation legislation might be better able to balance museum interest with indigenous concerns. He stated that, “questions of morals and ethics are often governed by political and economic contingency. In legislating solutions to our problems, we acknowledge the belief that

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<sup>363</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 286.

<sup>364</sup> *Ibid.*

a broad-based consensus may not be possible and we establish by law the mechanisms of constraint, obligation and recourse.”<sup>365</sup> The voluntary policies of Canada and Australia demonstrate that when left to police themselves, museums often continue to adopt repatriation policies that favor institutional interests over indigenous needs and perspectives. The Canadian treaty process and repatriation legislation developed in Canada and the United States will now be examined to see if this type of policy might be more successful at fostering indigenous cultural self-determination and reconciliation with museums.

### **Legislating the Return of Cultural Property: The Treaty Process and Alberta’s *First Nations Sacred Ceremonial Objects and Repatriation Act***

For the most part treaties were established in the majority of what is now modern day Canada between the 18<sup>th</sup> century and the early 20<sup>th</sup> century.<sup>366</sup> The Royal Proclamation of 1763 defined the Crown’s policy of pursuing land use agreements with native peoples in order to ensure that European settlement efforts and resource extraction activities were successful.<sup>367</sup> The Proclamation identified the Crown as the only authority to negotiate treaties with First Nations.<sup>368</sup> However, most of present day British Columbia and parts of the Yukon were not included in the treaty process.<sup>369</sup> Very few treaties were signed in British Columbia because the Crown sold their interest in Vancouver Island to the Hudson’s Bay Company in 1849.<sup>370</sup> The Company began by purchasing territory from First Nations on Vancouver Island, making a total of 14 acquisitions between 1850-54.<sup>371</sup> These transactions were later upheld as treaties.<sup>372</sup> However, the Hudson’s Bay Company discontinued the practice of purchasing land from

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<sup>365</sup> David W. Penny, “Reflections on the Task Force,” *Museum Anthropology* 16, no.2 (1992): 10.

<sup>366</sup> Brody, *Maps and Dreams*, 67; BC Treaty Commission, Frequently Asked Questions: What are treaties?

<sup>367</sup> BC Treaty Commission, Frequently Asked Questions: Why in this day and age, are treaties being negotiated in BC? <http://www.bctreaty.net/files/faqs.php> (accessed February 27, 2010); Brody, *Maps and Dreams*, 63.

<sup>368</sup> Brody, *Maps and Dreams*, 63.

<sup>369</sup> *Ibid.*, 67.

<sup>370</sup> Harris, “Editorial,” 2.

<sup>371</sup> *Ibid.*

<sup>372</sup> *Ibid.*

aboriginal peoples by the time a second colony was established on the mainland of British Columbia in 1858.<sup>373</sup> When British Columbia entered into Confederation in 1871, the Federal Government advised that the negotiation of treaties should begin but the Province refused to initiate such a process.<sup>374</sup>

During this time period the only treaty to be established in British Columbia was Treaty 8, which was put in place between 1899 and 1915.<sup>375</sup> Treaty 8 covers a landmass encompassing a corner of northwestern Manitoba, all of present-day northern Alberta, and a section of northeastern British Columbia.<sup>376</sup> The First Nations that were signatories to this treaty include the Beaver, Cree, Chipewyan, and Slavey.<sup>377</sup> Treaty 8 was the last to be signed by any First Nations in the Province until 1982 when the new Constitution Act “affirmed that aboriginal title, and the rights that go along with it, exist whether or not there is a treaty.”<sup>378</sup> The Act helped to create an atmosphere that encouraged the negotiation of new treaties between the Province of British Columbia, First Nations, and Canada.<sup>379</sup> The Nisga’a treaty was the first to be ratified in the Province in 1998.<sup>380</sup> This section will review repatriation agreements reached through the following three treaties: the Nisga’a Final Agreement that came into effect on May 11, 2000, the Maa-nulth First Nations Final Agreement that was ratified on December 9, 2006 but has yet to be implemented, and the Tsawwassen First Nation Final Agreement that became effective on April 2, 2009.<sup>381</sup> This examination will show that while repatriation agreements reached through

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<sup>373</sup> Ibid.

<sup>374</sup> Ibid.; BC Treaty Commission, *Frequently Asked Questions: Why in this day and age, are treaties being negotiated in BC?*

<sup>375</sup> Brody, *Maps and Dreams*, 67.

<sup>376</sup> Ibid., 64, 67.

<sup>377</sup> Ibid., 64.

<sup>378</sup> BC Treaty Commission, *Frequently Asked Questions: Why in this day and age, are treaties being negotiated in BC?*

<sup>379</sup> Ibid.

<sup>380</sup> Harris, “Editorial,” 2.

<sup>381</sup> BC Treaty Commission, Home, <http://www.bctreaty.net> (accessed February 27, 2010).

treaties can be considered legislative acts, the process is more influenced by the voluntary approach. The influence of voluntary policy can lead to repatriation agreements that inhibit First Nations cultural self-determination, and in the long-term may hinder the possibility of reconciliation between museums and aboriginal communities.

Chapter 17 of the Nisga'a Final Agreement is devoted to the issue of cultural artifacts and heritage. This section of the treaty outlines two repatriation agreements with the Canadian Museum of Civilization and the Royal British Columbia Museum. The Chapter begins with the following two statements:

1. The Parties recognize the integral role of Nisga'a artifacts in the continuation of Nisga'a culture, values, and traditions.
2. The Parties recognize the Nisga'a Nation's traditional and sacred connection with Nisga'a artifacts, regardless of whether those artifacts are held by the Nisga'a Nation, a Nisga'a Village, a Nisga'a Corporation, a Nisga'a citizen, the Canadian Museum of Civilization, or the Royal British Columbia Museum.<sup>382</sup>

I have included these statements as they concisely convey the importance of cultural property and heritage to the Nisga'a Nation. By signing this legal document museums and government demonstrate their acceptance and support for these views. In the arrangement made with the Canadian Museum of Civilization it was agreed that the Museum would "transfer to the Nisga'a Nation without condition all its legal interests in, and possession of the Nisga'a artifacts set out in Appendix L-1."<sup>383</sup> It was also agreed that, "the Nisga'a Nation and the Canadian Museum of Civilization [would] share possession of the Nisga'a artifacts set out in Appendix L-2."<sup>384</sup> Under this arrangement the Museum would be responsible for the property but "at the request of the Nisga'a Nation . . . [would] negotiate and attempt to reach custodial agreements."<sup>385</sup> The

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<sup>382</sup> Nisga'a Final Agreement, Chapter 17: Cultural Artifacts and Heritage, art. 1-2, <http://www.gov.bc.ca/arr/firstnation/nisgaa/chapters/cultural.html> (accessed February 27, 2010).

<sup>383</sup> Ibid., art. 8.

<sup>384</sup> Ibid., art. 15.

<sup>385</sup> Ibid., art. 16-17.

agreement also made “provisions for enhancing public knowledge about the Nisga’a Nation through the participation of Nisga’a citizens in public programs and activities at the Canadian Museum of Civilization.”<sup>386</sup> The arrangement with the Royal British Columbia Museum is almost exactly the same in every detail as that with the Canadian Museums of Civilization. For example some artifacts were designated for return to the Nisga’a and some were to be shared with the Royal British Columbia Museum and remain with the institution until such a time as both parties might agree to other arrangements.<sup>387</sup> The agreement with the Royal British Columbia Museum also indicated that they would be open to negotiate changes to the custodial agreement in terms of the artifacts that were to remain at the Museum, and they would encourage Nisga’a participation in public programs to enhance public education.<sup>388</sup>

Shortly after the negotiation of the Nisga’a treaty I had the opportunity to speak to curators at the Canadian Museum of Civilization and the Royal British Columbia Museum about the position of both institutions regarding the agreement. The information provided by the Canadian Museum of Civilization detailed that the institution was approached by the Nisga’a Nation in 1993, when the treaty process began.<sup>389</sup> The Nisga’a originally requested that all of their cultural property held in the Museum be returned, which included an approximate total of 397 objects.<sup>390</sup> In terms of the Nisga’a request the Canadian Museum of Civilization based its decision on past agreements reached with First Nations communities and the recommendations of the 1992 Task Force report.<sup>391</sup> The Museum proceeded to categorize all the Nisga’a objects in its collection and determined that 107 Nisga’a objects, those associated with traditional curing,

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<sup>386</sup> Ibid., art. 19.

<sup>387</sup> Ibid., art. 22, 31.

<sup>388</sup> Ibid., art. 34d.

<sup>389</sup> Laforet, “Repatriation and the Canadian Museum of Civilization,” 1.

<sup>390</sup> Ibid; Andrea Laforet, interview by author, 3 April 2000.

<sup>391</sup> Laforet, “Repatriation and the Canadian Museum of Civilization,” 2, 4.

were spiritual and should be returned directly to the Nisga'a community.<sup>392</sup> This decision was made by the Museum even though they were aware that "the definition of 'sacred' presented by the Nisga'a was very much different, and included all objects of Nisga'a origin in the collection."<sup>393</sup> The Museum declared the other 280 remaining objects to be ethnographic, and that the Nisga'a must build a cultural facility to house and display these objects. Once the Nisga'a interpretative centre in the Nass Valley is complete these objects will be shared between the Nisga'a and the Canadian Museum of Civilization.<sup>394</sup>

As stated previously the agreement reached between the Nisga'a and the Royal British Columbia Museum is structured in exactly the same way as the one reached with the Canadian Museum of Civilization. In many respects the negotiation process was also similar in that Nisga'a began by requesting that the Royal British Columbia Museum return all Nisga'a objects held by the Institution.<sup>395</sup> The number of Nisga'a items in the Museum's collection totaled 431.<sup>396</sup> As a part of the treaty the Museum agreed to the unconditional return of 173 items, with the remainder to be shared with the Nisga'a until such a time that other arrangements are negotiated between the two parties.<sup>397</sup> In the meantime the shared objects were to remain in the possession of the Museum.<sup>398</sup> I do not know whether the decision around which objects were to be shared and which objects were to be returned were informed by a distinction between sacred and secular. However, like the Canadian Museum of Civilization the Royal British Columbia Museums took into account the recommendations made in the *Turning the Page* report, in its

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<sup>392</sup> Ibid.

<sup>393</sup> Ibid.

<sup>394</sup> Andrea Laforet, interview by author, 3 April 2000.

<sup>395</sup> Cindy Carleton, e-mail message to author, April 13, 2000.

<sup>396</sup> Ibid.

<sup>397</sup> Ibid; Nisga'a Final Agreement, Chapter 17: Cultural Artifacts and Heritage, art. 22, 31.

<sup>398</sup> Ibid.

eight years of negotiation with the Nisga'a.<sup>399</sup> The influence of the *Turning the Page* document can be seen from the decision by both institutions to return objects that met their definition of sacred.<sup>400</sup> The arrangement made by the Canadian Museum of Civilization to return objects once the Nisga'a built a cultural facility is also supported in the findings of the Task Force report.<sup>401</sup> Although the Royal British Columbia Museum did not request that the Nisga'a build a cultural facility, they did indicate that such a demand was not warranted as they knew that a facility was going to be established.<sup>402</sup> I do not know whether the relationship between the Canadian Museum of Civilization and the Nisga'a will be improved or worsened by the establishment of a Nisga'a cultural centre. However, I think that the Royal Commission on Aboriginal Peoples makes a salient observation regarding some of the funding challenges for First Nations communities in both establishing and maintaining centres.<sup>403</sup> While cultural centres can be an excellent resource for First Nations communities, these facilities can impair cultural self-determination and can create resentment when they are set as a condition on repatriation.

An examination of the Maa-nulth First Nations Final Agreement reveals the extensive influence of the Nisga'a agreement in terms of the arrangements around repatriation established in more recently negotiated treaties in British Columbia. Chapter 20 of the Maa-nulth Agreement is devoted to artifacts, heritage sites, and place names and begins in almost exactly the same manner as the Nisga'a agreement by stating that "the parties recognize the integral role of the Maa-nulth First Nation Artifacts of each Maa-nulth First Nation in the continuation of that Maa-nulth First Nation's and culture"<sup>404</sup> In the treaty the Maa-nulth establish terms around

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<sup>399</sup> Cindy Carleton, e-mail message to author, April 13, 2000.

<sup>400</sup> Assembly of First Nations and the Canadian Museums Association, *Turning the Page*, 5.

<sup>401</sup> Ibid.

<sup>402</sup> Cindy Carleton, e-mail message to author, April 13, 2000.

<sup>403</sup> Royal Commission on Aboriginal Peoples, "Chapter 6: Arts and Heritage," 594-595.

<sup>404</sup> Maa-nulth First Nations Final Agreement, art. 20.1.1. BC Treaty Commission, [http://www.bctreaty.net/nations/agreements/Maanulth\\_final\\_intial\\_Dec06.pdf](http://www.bctreaty.net/nations/agreements/Maanulth_final_intial_Dec06.pdf) (accessed February 27, 2010).



repatriation with the Canadian Museum of Civilization, the Royal British Columbia Museum, and Parks Canada.<sup>405</sup> The agreements that the Maa-nulth reached with both the Canadian Museum of Civilization and the Royal British Columbia Museum are almost exactly the same as the arrangements made between these two institutions and the Nisga'a. For example, the Maa-nulth treaty indicates that some artifacts will be returned to the Maa-nulth without condition and some will be shared between the Nation and both museums.<sup>406</sup> The agreement with the Royal British Columbia Museum also indicated that they would be open to negotiate changes to the custodial agreement in terms of the artifacts that were to remain at the Museum and they would encourage Maa-nulth participation in public programs to enhance public education.<sup>407</sup> In this instance I only have access to the final agreement. I do not have any information as to the Maa-nulth's original request with either museum, or how the decision was made in regards to the objects that would be returned and those that would be shared. It is unknown as to whether the Maa-nulth requested the return of all their objects and if only the ones with perceived spiritual importance were repatriated, or for that matter if a cultural facility will need to be built before the other objects will be returned. However, the great similarity between both the Nisga'a and Maa-nulth documents, and the prior influence that the *Turning the Page* report played in the Nisga'a agreement suggests that there may be some parallels.

Chapter 14 of the Tsawwassen First Nation Final Agreement also focuses on culture and heritage. The chapter begins by stating that the "Tsawwassen First Nation has the right to practice the culture of Tsawwassen First Nations, and to use the Hun'qum'I'num language, in a

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<sup>405</sup> Ibid., art. 20.2.1 to 20.2.39.

<sup>406</sup> Ibid., art. 20.2.2, 20.2.14, 20.2.24, 20.2.36.

<sup>407</sup> Ibid., art. 20.2.17e, 20.2.39d.

manner that is consistent with this Agreement.”<sup>408</sup> Although a legal statement is made defining the right of the Tsawwassen people to practice their culture and language the text does not mention a sacred relationship with cultural property that is present in the Nisga’a and Maa-nulth agreements. The Tsawwassen First Nations Final Agreement also differs from the Nisga’a and Maa-nulth agreements in that no specific repatriation arrangements are finalized with any museums. In terms of repatriation the Tsawwassen Agreement states:

1. After the Effective Date, if a Tsawwassen Artifact comes into the permanent possession or under the control of the Royal British Columbia Museum, Tsawwassen First Nation and the Royal British Columbia Museum may negotiate a custodial arrangement for the Tsawwassen Artifact.
2. Tsawwassen First Nation and the Royal British Columbia Museum may negotiate and attempt to reach agreement on arrangements outside this Tsawwassen First Nation or the Royal British Columbia Museum, in accordance with their respective policies and procedures.
3. At the request of Tsawwassen First Nation, the Royal British Columbia Museum will share, in accordance with Federal and Provincial Law, any information it has about Tsawwassen Artifacts or Tsawwassen Archaeological Human Remains in other public collections in Canada.
4. At the request of Tsawwassen First Nation, Canada will use reasonable efforts to facilitate access by Tsawwassen First Nation to Tsawwassen Artifacts or Archaeological Human Remains of Tsawwassen ancestry that are held in Canadian public collections.<sup>409</sup>

While the agreement provides provisions for later negotiation with the Royal British Columbia Museum and other museums with the support of the government of Canada, the treaty does not formalize the return of any cultural property to the Tsawwassen at this time.

In my opinion the treaty process is somewhat better than the voluntary approach at promoting cultural self-determination and reconciliation. Once ratified treaties establish the rights of the First Nations’ groups represented to have control over their cultural property and heritage. The Nisga’a, and Maa-nulth treaties detail a commitment by these groups and

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<sup>408</sup> Tsawwassen First Nation Final Agreement, art. 1. BC Treaty Commission, [http://www.bctreaty.net/nations/agreements/Tsawwassen\\_final\\_initial.pdf](http://www.bctreaty.net/nations/agreements/Tsawwassen_final_initial.pdf) (accessed February 27, 2010).

<sup>409</sup> Ibid., art. 11, 12, 16, 17.

museums to continue to work together with regards to the promotion of public education and the future return of shared property to each First Nations community. The Tsawwassen agreement also defines a commitment by the government of Canada and the Royal British Columbia museum to negotiate the return of cultural property to the Tsawwassen First Nation and to assist them with repatriation agreements with other institutions. All of these provisions set legal precedents, which can be utilized by other First Nations entering into the treaty process.

There are also some challenges posed by the treaty process in terms of the achievement of First Nations cultural self-determination and reconciliation with museums. In the case of the Nisga'a Final Agreement, the treaty process was heavily influenced by voluntary policy such as the *Turning the Page* report. This influence was acknowledged by both curators at the Canadian Museum of Civilization and the Royal British Columbia Museum,<sup>410</sup> and helped to fortify the decision by both institutions to return cultural property that they felt was necessary for spiritual purposes. Although, the treaty allows for future negotiation for the return of the remaining objects, the Nisga'a did not gain full control over all of their cultural property. I suggest that a better alternative would have been if the Canadian Museum of Civilization had agreed to return all the objects to the Nisga'a, and then negotiated a loan agreement with them for some of the objects to remain at the Museum. This would have given the Nisga'a full control over their cultural property and would have signaled a true commitment by museums to the decolonization of institutional practices. Although it is unknown whether the Nisga'a would have agreed to the loan of some objects to either museum I think such a scenario is not totally unlikely. As it currently stands the Nisga'a have already agreed to leave some objects with both institutions.

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<sup>410</sup> Laforet, "Repatriation and the Canadian Museum of Civilization," 2, 4; Cindy Carleton, e-mail message to author, April 13, 2000.

Treaties also can take a great deal of time to negotiate, as the Nisga'a were in discussions with the Canadian Museum of Civilization for three years and the Royal British Columbia Museum for eight years.<sup>411</sup> Not all First Nations communities will be able to negotiate for the repatriation of cultural property through the treaty process. Those that are signatories to older treaties will have to begin a new lands claims process, as their original agreements would not have made provision for the repatriation of cultural property. I suspect that legislation may still be a preferable option as once passed it is applicable to all, which makes the process more efficient both in time and in scale.

Alberta is the first province in Canada to pass repatriation legislation. Bill 2, *The First Nations Sacred Ceremonial Objects Repatriation Act* was introduced in the Alberta Legislature on March 1, 2000.<sup>412</sup> The day was marked as a historic occasion by both government officials and First Nations leaders not only because the Act was the first of its kind in Canada, but more importantly because it highlighted the Province's "commitment to building strong and confident First Nations communities."<sup>413</sup> Ruth Phillips and Elizabeth Johnson write that while, "the Task Force Report recommended the repatriation of sacred and ceremonial objects, Bill 2 gives more force and definition to the Task Force's recommendation that museums consider the repatriation of sacred and ceremonial objects."<sup>414</sup> One of the most critical differences between the Alberta legislation and the *Turning the Page* document is that the legislative policy mandates the return of cultural property that has spiritual significance to First Nations communities without condition. Most notably the legislation relinquishes "any legal claim to sacred ceremonial objects in both the Glenbow Museum's and Provincial Museum of Alberta's collections . . .

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<sup>411</sup> Andrea Laforet, interview by author, 3 April 2000; Cindy Carleton, e-mail message to author, April 13, 2000.

<sup>412</sup> Government of Alberta News Release, "Alberta Takes National Lead with Legislation to Return First Nations Artifacts," March 1, 2000, <http://www.gov.ab.ca> (accessed March 1, 2000).

<sup>413</sup> Ibid.

<sup>414</sup> Phillips and Johnson, "Negotiating New Relationships," 157.

allow[ing] complete repatriation of these objects to their First Nations communities of origin.”<sup>415</sup> These “transfers of ownership are unconditional . . . for example, a tribe will not have to build a museum-quality environment just to get venerated objects back.”<sup>416</sup>

This legislation arose from the initiative of the Glenbow Museum, and in many respects had its initial beginnings due to the Task Force report. Gerald Conaty, Senior Curator of Ethnology at the Glenbow Museum, and a strong proponent of the Alberta legislation, notes that after the release of *Turning the Page* the Glenbow undertook a commitment to follow the Report’s recommendations especially around promoting First Nations access to the collections.<sup>417</sup> As a part of these efforts the Glenbow began to work with First Nations communities in Alberta to loan sacred objects held in the museum for use during ceremonies, as well as creating “a First Nations Advisory Council to offer insights and advice on First Nations related issues at the Museum.”<sup>418</sup> Through the loans the Museum’s staff began to realize that conditions around the use and handling of objects were inappropriate and did not meet the needs of First Nations people.<sup>419</sup> The Glenbow developed a sacred return policy that understood that cultural objects were meant to be used by the community and museum protocols in regards to environment and handling did not apply.<sup>420</sup>

Conaty noted that such loan agreements have provided valuable information on the history of cultural material in the Museum’s collection. One such agreement involved elementary school children who wanted to borrow objects for display, and elders who spent an afternoon with school children and Museum representatives discussing the names and uses of the

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<sup>415</sup> Government of Alberta News Release, “Alberta Takes National Lead with Legislation,” <http://www.gov.ab.ca> (accessed March 1, 2000).

<sup>416</sup> Alana Mitchell, “Calgary Museum to Return Sacred Blackfoot Artifacts: Voluntary Restoration of Religious Objects Largest in Canadian History,” *The Globe and Mail* (Toronto), sec R14, January 17, 2000.

<sup>417</sup> Conaty and Janes, “Issues of Repatriation,” 33.

<sup>418</sup> Conaty, “Glenbow’s Blackfoot Gallery,” 230.

<sup>419</sup> Gerald Conaty, interview by author, 28 November 2000.

<sup>420</sup> *Ibid.*

objects.<sup>421</sup> After ten years of successful loan agreements the Museum's former President, Bob Janes, approached the Glenbow's board about making the return of sacred objects to First Nations communities unconditional.<sup>422</sup> Janes also consulted Jack Ives, Assistant Director of the Provincial Museum of Alberta, who advised that because the Glenbow's collection was a private collection gifted by Ernie Harvey in 1967 to the people of Alberta, that in fact it was owned by the Provincial Government, and the Government would have to be involved before the objects could be returned.<sup>423</sup> In order for sacred property to be returned to First Nations people without the Museum being liable, legislation would have to be drafted ceding the properties return.<sup>424</sup>

First Nations reaction to the proposed development of repatriation legislation was initially mixed. Some elders were leery that the legislation might be oppressive, as other laws have been in the past, and would not represent First Nations interests.<sup>425</sup> They argued that First Nations traditional laws and perspectives around cultural property should be respected by museums. They maintained that by adhering to indigenous values, the creation of legislation would not be necessary.<sup>426</sup> However, others in the First Nations community felt that the development of repatriation legislation was required to protect aboriginal rights to cultural property.<sup>427</sup> They felt that First Nations participation should be an integral part of the

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<sup>421</sup> Ibid.

<sup>422</sup> Ibid.

<sup>423</sup> Ibid.

<sup>424</sup> Ibid.

<sup>425</sup> Catherine Bell and Val Napoleon, "Introduction, Methodology, and Thematic Overview," in *First Nations Cultural Heritage and Law: Case Studies, Voices, and Perspectives*, eds. Catherine Bell and Val Napoleon (Vancouver: UBC Press, 2008), 5.

<sup>426</sup> Ibid.

<sup>427</sup> Ibid.

development of legislative policy.<sup>428</sup> Through this discussion, First Nations communities decided that elders would participate in the development of the Alberta legislation.<sup>429</sup>

The Glenbow's proposal that repatriation legislation be developed received strong support from the Provincial Government of Alberta. Ralph Klein, the former Premier of Alberta, recognized the importance of establishing a single set of procedures to guide the repatriation process between all museums and First Nations groups in the Province. Klein was acutely aware of the need for repatriation due to his strong ties with the Blackfoot people, by whom he had been given the name Rides Across the River.<sup>430</sup> Klein, who is also fluent in the Blackfoot language, stated:

Through my association with the Blackfoot Nations . . . it was clear that so much was lost and there was so much that needed to be returned . . . When I went through my own naming ceremonies and as I participated in some of the ceremonies of the Blackfoot Confederacy, the complaint has always been 'we can't really do it the right way because we don't have all the right equipment.' This day, the right equipment will be restored.<sup>431</sup>

Another governmental advocate for the legislation was Pearle Calahasen, who at the time was Associate Minister of Aboriginal Affairs. Calahasen noted that the legislation was necessary as it would bring "both clarity and certainty to the repatriation process for both museums and First Nations groups."<sup>432</sup> She further indicated that "this is one of the most positive pieces of legislation ever introduced to First Nations and elders."<sup>433</sup> The Minister felt that the legislation would assist First Nations people in their efforts to control their own identity, as the lack of legislation in regards to repatriation "is a sore point with some of the native leaders in

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<sup>428</sup> Bell, McCuaig, Ktunaxa/Kinbasket Tribal Council and the Ktunaxa/Kinbasket Traditional Elders Working Group, "Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources," 356-357.

<sup>429</sup> Bell and Napoleon, "Introduction, Methodology, and Thematic Overview," 5.

<sup>430</sup> Weir, "Glenbow Returns Sacred Objects," 3.

<sup>431</sup> Ibid.

<sup>432</sup> Pearl Calahasen, interview by author, 14 May 2001.

<sup>433</sup> Ibid.

Alberta.”<sup>434</sup> Pearle Calahasen noted that First Nations input into the legislation was valued.<sup>435</sup> She indicated that when *The First Nations Sacred Ceremonial Objects Repatriation Act* was introduced in the Alberta legislature, “no one took issue with what the elders brought forward.”<sup>436</sup> Consultation with First Nations groups throughout the Province focused on setting procedures to guide the return of sacred items housed in Alberta museums back to First Nations communities in a way that was agreeable to each individual First Nations group.<sup>437</sup>

Since the legislation was passed, a significant number of objects have been returned to First Nations communities in Alberta.<sup>438</sup> On July 30, 2009 a celebration took place in Lethbridge, Alberta to mark the achievements made since the passing of the repatriation legislation in 2000. During the festivities, Rick Tailfeathers, a member of the Blackfoot Nation, commented: “It’s like a revival, in a way, of our ceremonies. It’s a pretty positive thing that’s happened.”<sup>439</sup> The remarks made by Rick Tailfeathers are similar to other observations by members of the Blackfoot Nation. For example, Frank Weasel Head noted:

Before I went to boarding school, I always saw a bundle [a collection of objects that are perceived to have spiritual importance] being cared for by my mom and dad . . . they looked after it as they looked after us. They taught us by it, we learned by it, we learned respect, we learned responsibility to help care for it, but that was lost and now we have an opportunity . . . to regain those things.<sup>440</sup>

Both of these statements demonstrate the importance that these objects have to First Nations communities, and the positive impact that their return has had on First Nations. Moreover, each comment refers to the ways in which the returned objects have been able to be integrated back into ceremonies and daily life. The fact that the legislation did not place conditions on the return

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<sup>434</sup> Ibid.

<sup>435</sup> Pearl Calahasen, interview by author, 14 May 2001.

<sup>436</sup> Ibid.

<sup>437</sup> Ibid.; Jack Ives, interview by author, 6 November 2000.

<sup>438</sup> Dawn Walton, “Sacred Bundles Hold Centuries of Secrets,” *The Globe and Mail* (Toronto) July 31, 2009, <http://www.theglobeandmail.com/news/national/sacred-bundles-hold-centuries-of-secrets> (accessed July 31, 2009).

<sup>439</sup> Ibid.

<sup>440</sup> Weir, “Glenbow Returns Sacred Objects,” 3.



of materials allows First Nations communities to use and store these sacred objects as their traditions and beliefs dictate. As discussed in chapter two the return of this control to communities is as important as the return of the objects themselves. I propose that had conditions around storage and use been placed on the repatriated objects the outcome would not have been as positive.

There is also evidence to suggest that the support for First Nations cultural self-determination in the legislation has helped to foster reconciliation between aboriginal communities and museums. While it was noted in chapter two that many communities had a good relationship with the Glenbow Museum after *Turning the Page*, much of this good will was created when the Glenbow realized that loaning objects back to communities without conditions around storage and use was the appropriate course of action.<sup>441</sup> The legislation introduced helped to solidify these gains for First Nations across Alberta. In many respects the law worked to facilitate reconciliation as the Act demonstrated “the Crown’s desire to harmonize the role museums play in the preservation of human heritage with the aspirations of First Nations to support traditional values in strong, confident First Nations communities.”<sup>442</sup> The inclusion of this statement at the beginning of the Act serves as an acknowledgement that the repatriation of cultural property without conditions can bolster First Nations identity and strengthen their bonds as a people. It also demonstrates the recognition that museum interests must be balanced with First Nations needs.

While the Glenbow was already prepared to recognize First Nations ownership rights and return ceremonial objects without condition, the Alberta legislation required all public Alberta

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<sup>441</sup> Bell, McCuaig, Ktunaxa/Kinbasket Tribal Council and the Ktunaxa/Kinbasket Traditional Elders Working Group, “Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources,” 317.

<sup>442</sup> Phillips and Johnson, “Negotiating New Relationships,” 157.

museums to adopt these principles.<sup>443</sup> Although some have suggested that the enforcement of repatriation might lead to conflict between museums and First Nations communities, to the contrary all available evidence suggests that *The First Nations Sacred Ceremonial Objects and Repatriation Act* has been successful at strengthening relationships between these groups. Perhaps the enforcement of the repatriation policy has not been a source of conflict because there was such overwhelming support for the legislation by government, First Nations, and many in the museum community. Moreover, the Glenbow Museum's demonstration of the educational benefits brought about as a result of repatriation may have helped dissuade concerns about the effect of returning cultural property on the educational mandate of museums.

However, while I think Alberta's *First Nations Sacred Ceremonial Objects Repatriation Act* is better able to promote indigenous cultural self-determination and reconciliation with museums than either Canada or Australia's voluntary policies, the legislation still maintains some bias towards museum collections. For example Jack Ives, the former Assistant Director of the Provincial Museum of Alberta, stated that the Act covered sacred objects that are required for ceremonial use, and thus ethnographic material was not included.<sup>444</sup> One of the primary concerns around such a definition is that Western concepts of sacred and secular are often not transferable to First Nations worldviews or culture.<sup>445</sup> Many First Nations do not make such distinctions, as all objects can be seen as having spiritual value.<sup>446</sup> Moreover, Kathryn Last raises concerns around the restrictive language in the Alberta legislation indicating that its wording is not as strong as that of legislation in the United States, as it only works to return

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<sup>443</sup> Ibid.

<sup>444</sup> Jack Ives, interview by author, 6 November 2000.

<sup>445</sup> Last, "Cultural Pluralism and the Return of Cultural Heritage," 138; Gillam, *Hall of Mirrors*, 114.

<sup>446</sup> Williams, "Cultural Perpetuation," 196;

objects categorized as having spiritual value and continued ceremonial use to First Nations.<sup>447</sup>

Ives speculated that in the future other types of legislation might be created to deal with archaeological material and human remains, and that a form of legislation similar to the *Native American Grave Protection and Repatriation Act* (NAGPRA) in the United States might be implemented in Alberta.<sup>448</sup> Some in the First Nations community would like to see legislation similar to NAGPRA adopted in Canada at the federal level, as they are concerned that the legislation is only effective in Alberta. Dorothy First Rider states:

Canada needs to seriously examine the need for federal repatriation laws. The law would definitely require First Nation input, and Canada would have to learn from the experiences, both positive and negative, of NAGPRA, and entertain a law that would be fair to the museums and to First Nations people. A federal law would have to be pursued immediately, because resource people, mainly elders, from First Nations communities are declining.<sup>449</sup>

However, the development of federal legislation in Canada would require changes to current governmental jurisdiction.<sup>450</sup> While the Federal Government holds jurisdiction over aboriginal affairs, the Provinces are responsible for matters of heritage including First Nations cultural property located within provincial territory.<sup>451</sup> The Provinces would need to relinquish some control to the Federal Government in order for national repatriation legislation to be created or

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<sup>447</sup> Last, "Cultural Pluralism and the Return of Cultural Heritage," 139. I believe Last is referring to the following definition in the Act section 1 (d) "'repatriation' means (i) the transfer to a First Nation by the Crown of the Crown's title to a sacred ceremonial object, and (ii) the acceptance by the First Nation of that transfer; 1(e) 'sacred ceremonial object' means an object, the title to which is vested in the Crown, that (i) was used by a First Nation in the practice of sacred ceremonial traditions, (ii) is in the possession and care of the Royal Alberta Museum or the Glenbow-Alberta Institute or on loan from one of those institutions to a First Nation, or is otherwise in the possession and care of the Crown, and (iii) is vital to the practice of the First Nation's sacred ceremonial traditions." See the Canadian Legal Information Institute, *First Nations Sacred Ceremonial Objects and Repatriation Act* R.S.A. 2000 c. F-14, <http://www.canlii.org/en/ab/laws/stat/rsa-2000-c-f-14/latest/rsa-2000-c-f-14.html> (accessed November 23, 2009).

<sup>448</sup> Jack Ives, interview by author, 6 November 2000.

<sup>449</sup> Bell, Statt, and the Mookakin Cultural Society, "Repatriation and Heritage Protection," 240.

<sup>450</sup> Catherine E. Bell and Robert K. Paterson, "Aboriginal Rights to Cultural Property in Canada," *International Journal of Cultural Property*, V8:1 (1999): 169, 187.

<sup>451</sup> Bell, "Restructuring the Relationship," 43.

alternatively each Province could enact its own form of repatriation legislation.<sup>452</sup> I suggest that the federal option is preferable, as leaving legislation to be developed at the provincial level would most likely result in inconsistencies.<sup>453</sup> This could create a situation similar to that of *Turning the Page*, which would require First Nations to learn each province's repatriation laws. Some provinces might not enact legislation causing First Nations to again have to follow individual museum policy. As such federal legislation can create a more efficient and consistent process. Although this would require compromise on the part of the Provinces, in many respects such a move would not be too drastic as the Federal Government is already involved in heritage matters. Presently, the Government maintains control over four museums in the Ottawa/Gatineau region, and provides funding assistance through the Museum Assistance Program to all museums in Canada.<sup>454</sup> The Federal Government also has produced policy guides for museum and heritage programming in Canada, with the introduction of the *National Museums Policy* in 1972 and the development of an updated draft in 1990.<sup>455</sup> This participation in museum policy as well as federal jurisdiction over First Nations issues could position the Federal Government to take the lead in the development of repatriation policy.

Whether legislation is introduced at the federal or provincial level, the creation of this type of repatriation policy will most likely be guided to some degree by NAGPRA. This piece of legislation continues to remain the most comprehensive of any statute related to repatriation in the world, and overall provides an example of a successful policy. An examination of NAGPRA will begin with a brief summary of the policy's history and scope, followed by an assessment of

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<sup>452</sup> Ibid., 44.

<sup>453</sup> See also Bell, "Restructuring the Relationship," 44. The author points out the return of cultural property is tied to the "collective identity" of First Nations, and as a result repatriation legislation may require federal involvement.

<sup>454</sup> Canadian Museums Association, *Brief to the Standing committee on Canadian Heritage: the Need for a New Canadian Museums Policy*, June 20, 2006, pg 7, 8, [http://www.museums.ca/en/info\\_resources/current\\_issues/museum\\_policy\\_info/index.php](http://www.museums.ca/en/info_resources/current_issues/museum_policy_info/index.php) (accessed November 24, 2009).

<sup>455</sup> Ibid., 6.

its success at encouraging indigenous cultural self-determination and reconciliation with museums. This analysis will also include an exploration of some of the conflicts that have arisen as a result of NAGPRA, as well as a review of potential solutions to these problems. This discussion will provide a series of policy recommendations should repatriation legislation be introduced by individual provinces or by the Federal Government in Canada.

### **Repatriation Legislation in the United States**

The United States is the first country to enact legislation at the federal level to guide the repatriation process. In 1990 NAGPRA was introduced, as a result of continued lobbying by Native Americans.<sup>456</sup> The appeals for the creation of legislation began in 1986 after it was discovered by a group of Northern Cheyenne that the Smithsonian collection held approximately 18,500 indigenous human remains.<sup>457</sup> Initially, many in the museum community in the United States protested the adoption of legislation as museum professionals were “in favour of self-regulated ethical policies. They continued to insist that any restitution request could be resolved through informal case-by-case negotiations.”<sup>458</sup> Some members of the museum community further argued “that scientific knowledge benefiting all humankind would be sacrificed . . . the potential loss of repatriated items through their decay or destruction was also said to be contrary to museums roles of collecting and preserving objects for educational purposes.”<sup>459</sup> However, Congress aligned itself with the concerns brought forth by countless Native Americans. Congress was in part influenced by the *American Indian Religious Freedom Act* passed in 1978,

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<sup>456</sup> Fine-Dare, *Grave Injustice*, 47.

<sup>457</sup> Jack F. Trope and Walter R. Echo-Hawk, “The Native American Graves Protection and Repatriation Act: Background and Legislative History” in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 136.

<sup>458</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 277.

<sup>459</sup> Ibid.

which ensured that the “government recognized Indian religious values and rituals.”<sup>460</sup>

Moreover, Congress was inspired by documents produced by the United Nations that supported indigenous self-determination.<sup>461</sup> The members of Congress felt this type of legislation was necessary in order to ensure that museums would begin to recognize the cultural perspectives of Native American peoples.<sup>462</sup> Of the position taken by Congress, Jack F. Trope and Walter R. Echo-Hawk write, “Congress believed that NAGPRA would encourage a continuing dialogue between museums and Indian tribes and Native Hawaiian organizations and . . . promote greater understanding between the groups.”<sup>463</sup> Both authors note that the legislation was created to try to balance the positions of museums and the needs of indigenous people.<sup>464</sup>

NAGPRA mandates that federally funded museums create an inventory of human remains as well as religious and cultural objects in their collection.<sup>465</sup> The inventories must be provided to Native American communities, to whom these items might belong.<sup>466</sup> Native American communities are then required to demonstrate that the items are from their group, and once this evidence is supplied to the museum and accepted the material is returned without condition.<sup>467</sup> As a part of the legislation a Review Committee was established made up of Native American and museum representatives to monitor the implementation of the Act.<sup>468</sup> Of

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<sup>460</sup> Steven Vincent, “India Givers,” in *Who Owns the Past? Cultural Policy, Cultural Property, and the Law* ed. Kate Fitz Gibbon (London: Rutgers University Press, 2005), 35.

<sup>461</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 276.

<sup>462</sup> T.J. Sullivan, M. Abraham, and D.J.G. Griffin. “NAGPRA: Effective Repatriation Programs and Cultural Change in Museums,” *Curator* 43, no. 3(2000): 237.

<sup>463</sup> Trope and Echo-Hawk, “The Native American Graves Protection and Repatriation Act,” 140.

<sup>464</sup> *Ibid.*

<sup>465</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 277.

<sup>466</sup> Phillips and Johnson, “Negotiating New Relationships,” 155.

<sup>467</sup> *Ibid.*

<sup>468</sup> Jack Trope, “The Native American Graves Protection and Repatriation Act,” in *Mending the Circle: A Native American Repatriation Guide*, ed. Barbara Meister (New York, American Indian Ritual Object Repatriation Foundation, 1996), 17; Trope and Echo-Hawk, “The Native American Graves Protection and Repatriation Act,” 149.

NAGPRA's meaning to native peoples Suzan Shown Harjo who is both Cheyenne and Hodulgee Muscogee states:

The major policy achievement and the hardest-fought battle in the development of the repatriation laws has been the humanization of Native Peoples – the legal recognition that we, too, have the human right to get buried and stay buried, to recover our people and property from those who want to own them, to worship in the manner and with the objects of our choosing.<sup>469</sup>

The statements made by Suzan Shown Harjo speak to issues of control, cultural self-determination and equality. For example she indicates that NAGPRA has provided native people with legal recourse to recover cultural property and human remains. This recognition provides them with equality with museums and non-indigenous peoples who had previously been seen to have rights to display and gather indigenous cultural property and human remains. NAGPRA has allowed Native American peoples to regain control over their heritage and identity, rights that have been enjoyed without question by the non-indigenous population.

Since NAGPRA's introduction a shift has occurred in the museum community from wariness about the legislation to its support. Vrdoljak indicates that museums in the United States often apply the policies of NAGPRA to repatriation requests of indigenous communities outside the United States, such as requests made from Canadian First Nations to American museums.<sup>470</sup> Museums in the United States often follow the guidelines produced by NAGPRA, even though by law they are not required to follow the legislation in terms of repatriation requests made from indigenous communities outside the country.<sup>471</sup> Battiste and Henderson note that NAGPRA has further inspired the creation of the American Indian Ritual Object Foundation, which works to return cultural property from private collections not covered under

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<sup>469</sup> Suzan Shown Harjo, "Introduction," in *Mending the Circle: A Native American Repatriation Guide*, ed. Barbara Meister (New York, American Indian Ritual Object Repatriation Foundation, 1996), 3.

<sup>470</sup> Sullivan, Abraham, and Griffin, "NAGPRA Effective Repatriation Programs," 247.

<sup>471</sup> *Ibid.*, 281.

NAGPRA, and to educate the public about the importance of the repatriation of cultural property to Native American communities.<sup>472</sup> Of the role NAGPRA plays in reconciliation James

Nafziger writes:

Certainly one of the gratifying attributes of NAGPRA has been its catalytic role in encouraging museums and tribes to work together more closely. It is quite clear that the tribes are becoming involved not only in the actual process of repatriation but in all curatorial and other managerial decisions that relate significantly to indigenous heritage. Dialogue has become the hallmark of the new regime. NAGPRA's mandates of notification and consultation encourage a mutually productive exchange of communication. Tribal groups learn to appreciate the scientific and aesthetic value of their cultural material to the public, and the museum community demonstrates a keener awareness of the meaning of "heritage" to indigenous cultures.<sup>473</sup>

The statements made by Nafziger indicate that NAGPRA has helped to bring Native American communities and museums closer. His comments echo many others that have written on NAGPRA; however, none of the authors offer suggestions as to how NAGPRA has been able to become a force for reconciliation.<sup>474</sup> One might assume that because NAGPRA forces compliance on the part of museums that it might create a more adversarial relationship between these institutions and Native American communities.<sup>475</sup> I suggest that there are several reasons why this has not been the case. Firstly, because NAGPRA mandates compliance it is in the best interest of museums to follow the legislation rather than risk punitive action. Secondly, the act of complying requires that museums meet with Native American communities that have cultural property in the institution's collections. It has been shown that when Native American communities and museum staff begin to meet, curators often get a better understanding of indigenous perspectives around cultural property. Museum professionals also often begin to

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<sup>472</sup>Battiste and Henderson, *Protecting Indigenous Knowledge and Heritage*, 154.

<sup>473</sup> James A.R. Nafziger, "The New Fiduciary Duty of United States Museums to Repatriate Cultural Heritage: The Oregon Experience." *University of British Columbia Law Review*, Special Issue (1995): 41.

<sup>474</sup> Robert W. Preucel et al., "Out of Heaviness, Enlightenment: NAGPRA and the University of Pennsylvania Museum of Archaeology and Anthropology," *Expedition* 45, no. 3 (2003): 22; Bell, "Restructuring the Relationship," 51.

<sup>475</sup> Bell, "Restructuring the Relationship," 51.



learn more about the objects in their collections, which appeals to their educational mandate.<sup>476</sup> Instead of seeing repatriation as threatening their education role, many curators that have gone through the repatriation process begin to see the educational value of returning cultural property to indigenous communities, as well as the value of the learning opportunities that are created by working with aboriginal peoples as equals.<sup>477</sup> Thirdly, even though repatriation may be seen as threatening it does appeal to the democratic aspect of museums. Most employed in the museum field are there because of their commitment to providing education opportunities to the public. Many recognize that indigenous peoples have the same right to learning and providing educational opportunities to others in their communities, as non-indigenous peoples. They acknowledge that repatriation can assist with these goals.

However, while repatriation legislation can create common ground it does not always result in reconciliation. Some argue that NAGPRA has not worked to the advantage of Native Americans as well as it could have. These criticisms range from charges of inadequate funding, claims that the inventory process is inconsistent, and allegations that the legislation maintains a policy bias against Native American views.<sup>478</sup> In terms of funding, some feel that NAGPRA is problematic as native bands are still required to travel to museums and provide evidence that the objects and human remains in question belong to their communities.<sup>479</sup> Unfortunately, many native groups do not have the funds to conduct such research and travel to museums.<sup>480</sup> While the Federal Government provides two million dollars a year to assist Native American communities in these efforts, this support is well below the estimated requirement of ten million

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<sup>476</sup> Burney, "Not Just a Challenge, an Opportunity," 68.

<sup>477</sup> Ibid.

<sup>478</sup> Kallen M. Martin, "The Beginning of Respect: The U.S. Repatriation Law," *Native Americas* 14, no. 3 (1997): 24; Nafziger, "New Fiduciary Duty of United States Museums," 30-32; Fine-Dare, *Grave Injustice*, 130.

<sup>479</sup> Martin, "The Beginning of Respect," 24; Fine-Dare, *Grave Injustice*, 121.

<sup>480</sup> Martin, "The Beginning of Respect," 24.

dollars per year.<sup>481</sup> Tribes must compete with each other for these grants, creating discrepancies between those who receive funding and those that do not.<sup>482</sup>

Some also feel that the government has failed to allocate enough money to properly support some of its own deliverables for NAGPRA. For example, originally compliance deadlines required that each facility submit an inventory of all Native American human remains, religious items, and cultural objects to the Federal Government by November 16, 1995.<sup>483</sup> Unfortunately, the Federal Government did not correctly anticipate the costs that would be required to publish these inventories.<sup>484</sup> This miscalculation has caused delays in the publication of these lists, which in turn have hindered the repatriation process for many Native American communities.<sup>485</sup> Moreover, these deadlines have taxed the resources of many museums and public institutions that possess Native American human remains and cultural objects.<sup>486</sup> Although, a large number of inventories were submitted by the deadline many institutions have had to apply for repeated extensions.<sup>487</sup> Once again this has led to delays in the repatriation process, and has raised suspicions that in certain cases facilities may be deliberately stalling.<sup>488</sup> Although these allegations cannot be proven, the accusation of such impropriety suggests that a great deal of mistrust remains. NAGPRA was primarily enacted to support Native American cultural rights, and to correct the errors of the past.<sup>489</sup> Inadequate funding threatens these goals, exacerbates old tensions, and creates new forms of injustice.<sup>490</sup>

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<sup>481</sup> Fine-Dare, *Grave Injustice*, 121; Martin, "The Beginning of Respect," 24.

<sup>482</sup> Fine-Dare, *Grave Injustice*, 143.

<sup>483</sup> Ibid.

<sup>484</sup> Ibid.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid; Bell, "Restructuring the Relationship," 57.

<sup>487</sup> Fine-Dare, *Grave Injustice*, 143.

<sup>488</sup> Ibid.

<sup>489</sup> Ibid., 182.

<sup>490</sup> Ibid; Richard W. Stoffle and Michael J. Evans, "To Bury the Ancestors: A View of NAGPRA," *Practicing Anthropology* 16, no.4 (1994): 30.

Another common criticism of NAGPRA is that the legislation has not been able to properly represent Native American cultural knowledge and perspectives. Many of these concerns revolve around the inventory process both in terms of the cataloging method and the review of these records by Native Americans. Native people are not able to participate in the inventory process and guidelines are not provided as to how the lists should be prepared or what type of qualifications the employee preparing these accounts should have; therefore, many artifacts of spiritual significance to native people may be overlooked.<sup>491</sup> Moreover, it is the responsibility of the institution to determine the group or groups to which the items and human remains might belong.<sup>492</sup> Institutional representatives are restricted by NAGPRA in their interpretation, as only federally recognized tribes can be considered for inclusion.<sup>493</sup> While this has prevented some Native American groups from participating in the repatriation process, federally recognized tribes have come forward to assist with the return of items to unrecognized groups.<sup>494</sup> The repatriation claims of non-recognized tribes have also received support from the Review Committee, helping to address this discrepancy.<sup>495</sup>

Those preparing the lists may also be hindered by their knowledge of the federal tribes that might be eligible for consideration. Tribes presently residing in the territory corresponding to objects on the list are the most likely to be contacted.<sup>496</sup> Many Native American communities point out that traditionally they were migratory, and so certain cultural items and human remains

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<sup>491</sup> Nafziger, "New Fiduciary Duty of United States Museums," 30-32.

<sup>492</sup> Philips and Johnson, "Negotiating New Relationships," 155.

<sup>493</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 278.

<sup>494</sup> James A.R. Nafziger, "The Protection and Repatriation of Indigenous Cultural Heritage in the United States," in *Protection of First Nations Cultural Heritage: Laws Policy, and Reform* eds. Catherine Bell and Robert K. Patterson (Vancouver: UBC Press), 125.

<sup>495</sup> *Ibid.*, 126.

<sup>496</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 278; Sullivan, Abraham, and Griffin, "NAGPRA Effective Repatriation Programs," 239.

may not belong to tribes currently residing in the area.<sup>497</sup> Moreover, some Native American tribes may be at odds with each other as to which group holds the rights to certain territories.<sup>498</sup> These disputes often impact the repatriation process as more than one tribe may make a claim to cultural property and human remains that have been taken from the same area.<sup>499</sup> In instances where tribes are both claiming a geographical relationship to an area, it has been suggested that DNA testing can be used to establish a hereditary link to any human remains in question.<sup>500</sup> However, in certain cases the demonstration of a biological link may not adequately represent Native American views around cultural affinity. Membership in the tribe does not always rest with a biological relationship, as in many instances people from other tribes and cultural groups have been adopted into Native American communities.<sup>501</sup> In certain cases tribes have resolved such differences by designating a common area for the reburial of human remains.<sup>502</sup> However, NAGPRA does not provide for a resolution process.<sup>503</sup> As a result some have criticized NAGPRA for raising these issues, and then not providing Native Americans with assistance to address these painful and sometimes irresolvable matters of identity and belonging.<sup>504</sup>

The inventory review process can also create division within Native American communities, as NAGPRA requires that museum inventories be received by band councils who are provided with the authority to proceed with repatriation claims on behalf of the group.<sup>505</sup> In many communities band council members may not always be seen as having the authority or knowledge pertaining to the care of human remains and certain types of cultural property, as

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<sup>497</sup> Ibid.

<sup>498</sup> Fine-Dare, *Grave Injustice*, 131-132.

<sup>499</sup> Ibid.

<sup>500</sup> Ibid., 152, 156.

<sup>501</sup> Ibid., 156.

<sup>502</sup> Ibid., 160; Nafziger, "The Protection and Repatriation of Indigenous Cultural Heritage," 123.

<sup>503</sup> Ibid., 169-170.

<sup>504</sup> Fine-Dare, *Grave Injustice*, 169-170.

<sup>505</sup> Bell, "Restructuring the Relationship," 54.

expertise often rests with religious leaders and elders.<sup>506</sup> In these instances the legal requirements of NAGPRA have failed to capture the complexity and range of perspectives that comprise Native American communities.<sup>507</sup> For the most part communities have settled this discrepancy by requiring those that are tasked with representing the tribe on repatriation matters to report their work to various groups and consult with “the relevant clans and religious societies” before any decisions are made.<sup>508</sup>

The concerns raised regarding NAGPRA suggest that issues around funding need to be addressed and dispute resolution mechanisms need to be put in place in order to ensure that Native American cultural perspectives are recognized. Although NAGPRA is far from a perfect document, it serves as a good model of the possibilities that exist regarding the adoption of legislative repatriation policy, while also providing an example of provisions that can be avoided or improved. It often is not until legislation has been enacted that possible flaws can be identified.<sup>509</sup> I would recommend that any new repatriation legislation developed should ensure the following: that equal numbers of representatives from indigenous communities and museum institutions participate in the drafting of the policy, that a resolution committee be formed to mediate any disputes during the repatriation process once again comprised of equal numbers of museums and indigenous representatives, and that ample funding be provided by government to assist indigenous communities throughout the repatriation process as well as to support the administration of the policy.<sup>510</sup> Each of these recommendations will be explored sequentially.

For legislation to be most effective indigenous peoples need to play an equal role in its construction, in order to ensure that indigenous views and definitions around cultural property

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<sup>506</sup> Ibid.

<sup>507</sup> Fine-Dare, *Grave Injustice*, 130.

<sup>508</sup> Ibid.

<sup>509</sup> Fine-Dare, *Grave Injustice*, 174.

<sup>510</sup> See also Bell, “Restructuring the Relationship,” 55-56.

are reflected in the language of the policy.<sup>511</sup> For example indigenous participation might prevent Western distinctions such as secular and sacred from being applied to cultural property. The use of such distinctions in legal policy continues to allow restrictions to be placed on the return of materials as per curatorial definitions. These categories may prevent certain items from being returned to indigenous communities. Moreover, in order to ensure that all indigenous cultural groups are equally included in the creation of the policy, I would recommend that each group be provided the opportunity to appoint a representative. As previously demonstrated there is a lot of diversity in aboriginal communities regarding cultural property and its use.<sup>512</sup> In order to reflect the variety of indigenous views around cultural property, representatives from each group should be a part of the policy's construction.<sup>513</sup> Alternatively, Catherine Bell, a lawyer and legal expert on indigenous repatriation issues, suggests that aboriginal diversity could be supported by the creation of legislation that would allow aboriginal peoples the ability to decide whether they would implement the policy or negotiate with museums on their own terms.<sup>514</sup> She notes that some communities may wish to negotiate with museums as this may be viewed as more in keeping with traditional values.<sup>515</sup> However, if negotiation is unsuccessful First Nations then have the option of utilizing the repatriation legislation in place.<sup>516</sup>

I also recommend that all legislative policies should include a resolution panel with museum and indigenous representatives, similar to the one that has been created by NAGPRA. Such panels enable indigenous peoples to have a voice in the resolution process.<sup>517</sup> However, I think that the number of indigenous representatives on the NAGPRA's Review Committee is too

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<sup>511</sup> Ibid., 55-65.

<sup>512</sup> Ibid., 65.

<sup>513</sup> Ibid., 56.

<sup>514</sup> Ibid., 53.

<sup>515</sup> Ibid., 55-56.

<sup>516</sup> Ibid., 56.

<sup>517</sup> Ibid., 56, 65.

small, as the committee consists of only seven members.<sup>518</sup> Three of these representatives are Native American and three are museum professionals, with the seventh selected from a list composed of recommendations made by the other six committee members.<sup>519</sup> In order to provide a broader cultural perspective representative of the diversity of aboriginal communities the number of indigenous members should be higher.<sup>520</sup> Or alternatively committee membership could change to represent those with a similar cultural background to the aboriginal group that is coming forward with an issue.<sup>521</sup> For example panels could include a rotating appointment with selection based on those with similar cultural affiliation to those appealing to the resolution panel.<sup>522</sup>

Lastly, funding appears to be a critical issue in regards to the success of any policy.<sup>523</sup> It has been demonstrated that inadequate funding can negatively affect the ability of aboriginal communities to initiate repatriation requests. Rather than have indigenous communities compete for a limited number of grants, a guaranteed dollar amount should be set aside for each group should they wish to make a repatriation claim. This money could be set aside with the enactment of the legislation and could be available over a specified period of time, for example ten years. After this period alternative methods of funding could be considered. However, during the ten-year period, indigenous groups would be able to apply for their allocated funding with the assurance that the money will be available. To ensure accountability some type of audit program could be put in place. This funding method would ensure that all groups wanting to have cultural property returned would have the opportunity to receive the money required. In addition some

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<sup>518</sup> Trope, "The Native American Graves Protection and Repatriation Act," 17.

<sup>519</sup> Ibid.

<sup>520</sup> Bell, "Restructuring the Relationship," 60.

<sup>521</sup> Ibid.

<sup>522</sup> Ibid., 61.

<sup>523</sup> Ibid., 56.

grant money should also be made available to institutions over this period, as many might need to hire additional staff to assist with the repatriation process.<sup>524</sup> The provision of funding to aboriginal communities and museums could be handled in a number of ways; however, through these suggestions I am trying to show that no matter how it is achieved an adequate dollar amount should be tied to legislative policy in order to ensure a fair process.

Legislation can play an important role in the repatriation process as both NAGPRA and the *First Nations Sacred Ceremonial Objects and Repatriation Act* provide indigenous peoples with greater control over returned cultural property than either the Canadian or Australian voluntary models. Simply put, legislation is better able to promote native cultural self-determination rights than voluntary policy because it provides indigenous perspectives with legal legitimacy. This ensures that museums must treat indigenous concerns as equal to their own. Even though this level of equality is enforced it often results in a greater awareness and a new respect for Native American positions, setting the stage for new relationships. For example the ability of NAGPRA to protect native rights and promote reconciliation between tribes and museums “has been so profound that people have begun to speak of NAGPRA as more than a mere law, but as an era.”<sup>525</sup> The same can be said of Alberta’s *First Nations Sacred Ceremonial Objects and Repatriation Act*, as it is the only policy in Canada that allows for the return of cultural property to First Nations communities without condition. Alberta’s legislative act has gone far beyond any other voluntary policy in terms of the promotion of First Nations cultural self-determination rights, and as a result Calgary’s Glenbow museum has one of the strongest partnerships with First Nations in the Country. Throughout the analysis of voluntary and legislative policy it has been demonstrated that legislation provided the most effective method

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<sup>524</sup> Ibid., 54-55.

<sup>525</sup> Fine-Dare, *Grave Injustice*, 47.



for the promotion of cultural self-determination, and the development of stronger and more equal partnerships between museums and aboriginal communities. The ability of legislation to promote reconciliation demonstrates that repatriation is not an end, but a new beginning.<sup>526</sup>

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<sup>526</sup> This statement is influenced by the title of the article by Kurt E. Dongoske, "NAGPRA: A New Beginning, Not the End for Osteological Analysis: A Hopi Perspective," in *Repatriation Reader: Who Owns American Indian Remains?* ed. Devon A. Mihesuah (Lincoln: University of Nebraska Press, 2000), 282-291; and a statement made by Simpson, *Making Representation*, 245.

### **Conclusion: A New Era for Museums and First Nations Peoples**

Museums continue to occupy a prominent place in society, with more than 59 million visits to Canadian museums in the last year alone.<sup>527</sup> The messages conveyed by museums influences public knowledge and perception, and the way in which these institutions handle First Nations repatriation claims has the capacity to shape societal views. For many aboriginal communities the return of cultural property is seen as vital to their efforts to regain cultural self-determination and control over their heritage. Museums that support First Nations repatriation and cultural self-determination rights promote a relationship based on healing and equality, which is passed on not only to aboriginal communities but to the public as well.

While the breaking copper demonstration was discussed at the beginning of the thesis to illustrate how conditions placed on repatriated cultural property can inhibit First Nations self-determination rights and reconciliation with museums, it also demonstrates some of the profound changes that have occurred in the curatorial field. Ruth Philips, who was the Director of the Museum of Anthropology at the time of the protest, has since written about her perceptions during the event. She indicates that her first thought was to try to prevent Chief Dick from cutting into the copper, as this would be “the ultimate crime against a museum object.”<sup>528</sup> Philip’s initial reaction to the protest illustrates some of the lingering effects caused by the high level of importance historically placed on the physical conservation of objects. While the Kwakwaka’wakw were performing an act akin to “wishing someone dead”<sup>529</sup> in order to express

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<sup>527</sup> Canadian Museums Association, January 27, 2009 “Canadian Museums Association welcomes new federal support to arts and heritage,” [http://www.museums.ca/en/info\\_resources/current\\_issues/alerts/index.php?pid=1233032400](http://www.museums.ca/en/info_resources/current_issues/alerts/index.php?pid=1233032400) (accessed January 27, 2009).

<sup>528</sup> Philips, “Re-placing Objects,” 103.

<sup>529</sup> Gloria Cranmer Webster, “The Contemporary Potlatch,” in *Chiefly Feasts: The Enduring Kwakiutl Potlatch* ed. Aldona Jonaitis (Seattle: University of Washington Press, 1995), 236, quoted in Philips, “Re-placing Objects,” 103.

the seriousness of what they consider to be a crime committed against their community, the welfare of the object was still briefly seen as more important than the well being of a people.

However, Philip's notes that while her first instinct was to protect the object she quickly changed her mind as she realized that the protest was more important. Philip's writes that she decided not to intervene, reasoning that, "if Chief Dick were actually to alter the state of the object its materiality would then reflect a new layer of history, one imbricated in the processes of decolonization that is altering many traditions of museum practice, including paradigms of conservation and preservation."<sup>530</sup> This statement is a powerful indicator of the change that has taken place in museums. The description provided by Philips also shows the changing ways in which museums are beginning to interact with indigenous populations. Her reconsideration of the demonstration and her acceptance of the possible damage to the copper reflects the willingness of many in the museum community to move beyond long held conceptions regarding preservation, education, and research interests. These observations support a new and growing trend in the museum profession where museums are no longer seen "as repositories or storehouses, [but] rather, as places for mutual engagement, respect and trust."<sup>531</sup> This change is perhaps not surprising as museums have reflected societal values since their inception, both adapting and influencing change.

It should also be noted that as an observer of the breaking copper demonstration in February 2000, it was not until reading Philip's article that I discovered that the copper was never actually cut. Instead as Philip's writes, "Chief Dick mimed the action, holding aloft the already broken panel from our collection."<sup>532</sup> I am not sure if I missed the subtleties of this act because I was toward the back of a very large room filled with people, or if I was so moved by

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<sup>530</sup> Philips, "Re-placing Objects," 103-104.

<sup>531</sup> Kelly, Cook, and Gordon "Building Relationships through Communities of Practice," 230.

<sup>532</sup> Philips, "Re-placing Objects," 104.

the words spoken during the demonstration that the statements have continued to linger while the actions have faded. However, I now wonder if Chief Dick's decision not to break the copper can also be viewed as a gesture of good will that hints at the possibilities for reconciliation. His actions at the very least reflect an acknowledgement and respect for museum practices, and also suggest that he and his community did not want to see the copper damaged. His restraint and Philip's willingness to support the breaking of the copper illustrates how far museums and First Nations have come, and speaks to continued possibilities for improvement in the future.

Once institutions of colonialism, they are becoming places of reconciliation.<sup>533</sup> The recognition of aboriginal rights to ownership over their cultural property and the promotion of repatriation without conditions placed on the return of objects is the most important step that museums can take to work towards this change. The ability of First Nations peoples to regain cultural self-determination is directly related to the return of ownership, control, and responsibility over repatriated cultural property. For indigenous peoples "there is a direct and primary link between cultural control, heritage health and social well-being."<sup>534</sup> This statement directly enforces the conclusions of the Royal Commission on Aboriginal Peoples.<sup>535</sup> While the Commission's findings seem to have had little impact on the development of repatriation policy by museums, the Report does make some very positive recommendations around the return of cultural property. In essence the Report recommends that museums work with aboriginal peoples to develop "ethical guidelines" around repatriation and should return on "request, objects that are sacred or integral to the history and continuity of particular nations and communities."<sup>536</sup> These principles are meant to ensure that museum personnel give equal consideration to the

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<sup>533</sup> Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, 291.

<sup>534</sup> Galla, "Public Lecture – Indigenous Peoples, Museums and Frameworks for Effective Change," 83.

<sup>535</sup> Royal Commission on Aboriginal Peoples, "Chapter 6: Arts and Heritage," 585-587.

<sup>536</sup> *Ibid.*, 599, 601.

cultural needs and views of First Nations. Although the Report provides recommendations around policy content, it does not suggest how best to achieve these objectives. While it is fair to say that the legislative processes discussed in the thesis still can be improved, I believe that repatriation legislation provides the best means to achieve these goals. The analysis of voluntary and legislative policy demonstrated that repatriation laws are better able to promote equality and protect First Nations rights. Voluntary policies developed by museum associations and individual institutions continue to protect professional interest over First Nations cultural needs, and leave aboriginal communities with little recourse for appeal. While the treaty process has helped to achieve some gains for First Nations, negotiation has been informed by voluntary policy that favours museum interests. Alternatively, legislative mandates promote communication between museums and First Nations communities and ensure all parties have equal rights throughout the return process, which can inspire trust and reconciliation.

In terms of the type of legislation that should be developed, I think that a federal document as opposed to multiple provincial policies would be most effective. Federal direction would ensure that the rights of First Nations to the repatriation of their cultural property would be consistent throughout all of Canada. It is also critical that First Nations play an equal role in the development of the policy, with as much representation from the various groups as possible. Moreover, the legislation developed should not be too directive in order to support the great diversity that exists in and amongst aboriginal communities. As such I am very much in favor of Catherine Bell's recommendation that any legislation developed should be general enough to allow for First Nations to enter into discussions with museums only if they choose to do so, and at the same time be open enough to allow aboriginal communities to make arrangements with

museums that best suit their needs.<sup>537</sup> This would also allow repatriation agreements to be established during treaty negotiations, for those groups that want to approach the return of cultural property through this process. I think that most importantly legislation should make a strong statement about the inherent rights of First Nations to cultural self-determination and control over their cultural property and government support for these rights. This would provide aboriginal communities with a more solid bargaining position in discussions with museums. I also feel that the policy should provide structure and funding for an inventory process of all aboriginal cultural property held in museum collections. Such an inventory would be an invaluable resource to First Nations communities in locating objects they might wish to have returned. Lastly, the legislation should not make distinctions regarding secular or sacred property, and should ensure that objects requested by First Nations are returned without conditions placed on the storage or use of the items. Both of these elements are necessary in order to promote aboriginal cultural self-determination rights and to inspire lasting reconciliation with museums.

Those who might doubt the ability of unconditional repatriation agreements to bring about positive change for museums and First Nations communities need only look at the example the Nitsitapiisinni gallery at the Glenbow museum. The exhibit demonstrates that the full return of cultural property actually benefits the educational mandate of museums. In my opinion the Nitsitapiisinni gallery and the repatriation agreement that inspired the partnership, truly represents a new era in the relationship between First Nations and museums. It is critical that the next phase in the relationship between museums and First Nations be one of fairness and healing, which will promote learning and development for all.

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<sup>537</sup> Bell, "Restructuring the Relationship," 53.

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## Appendix 1

## Comparison of Repatriation Policy: Voluntary Approach

Policy	Details	Objectives	Strengths & Weaknesses	Cultural Self-Determination	Reconciliation
Voluntary	Canada: Turing the Page: Forging New Partnerships between Museums & First Peoples 1992 (CMA & AFN)	Increase employment and participation for FN. Improved Access to collections. Return of spiritual and illegally obtained objects.	S: Inspired museums to create policies, encourage better dialogue. W: Various repatriation policies, museums decide if they will participate and the processes they will adopt.	FN responding to institutional policy, ownership rests with museums that make decisions around return and conditions.	Lack of control indicates equality yet to be achieved, conditions can create mistrust,
	Australia: Previous Possessions New Obligations 1993 (CAMA, Gov, & Aboriginal Groups)	Respond to issues around human remains and sacred and secular objects. To include aboriginal peoples in research and programming.	S: Policy rec aboriginal right to s-d in heritage matters. W: Did not include aboriginal request to have control and ownership to cultural property. S/W: Policy evaluated by CAMA 2000, aboriginals not included.	Defending past policies and refusing to return authority over cultural property to aboriginal communities perpetuates unequal relationships between museums and aboriginal communities.	Trust of aboriginal peoples cannot be gained so long as their cultural authority over cultural property goes unrecognized.
	Continuous Cultures Ongoing Responsibilities 2005	Clarify links between self-determination and cultural property.	S: Goes beyond PPNO W: Policy still relies on will of each museum to initiate change.	Makes link between self-determination and reconciliation.	Policy not evaluated. Goes further but is still voluntary.

## Comparison of Repatriation Policy: Treaty Process

Policy	Details	Objectives	Strengths & Weaknesses	Cultural Self-Determination	Reconciliation
Treaty	BC: Nisga'a, Effective 2000	Indicated Nisga'a connection to cp and to continuation of culture.	S: Part of constitutional law. W: Nisga'a asked for all cp, CMC & RBCM only returned sacred cp.	Nisga'a felt all cp was sacred. Museums imposed their definition. CMC req'd cultural centre for secular cp. Equality not established.	Imposition of definition shows equality not established. Costs of cultural centre may also compromise trust.
	BC: Maa-nulth, Ratified 2006	Same as above.	Same as above as not all cp returned from CMC or RBCM. But no details.	Similarity suggests parallels.	Similarity suggests parallels.
	BC: Tsawwassen, Effective 2009	Tsawwassen has right to practice culture and language.	S: Federal gov will assist with future repatriation agreements. W: Does not formalize the return of cp.	Without formal agreement hard to speculate. Signatories (gov & museums) legally agree to Tsawwassen cultural rights.	Legal rec of FN rights helps to achieve equality. Conditions can compromise these gains.

### Comparison of Repatriation Policy: Legislation

Policy	Details	Objectives	Strengths & Weaknesses	Cultural Self-Determination	Reconciliation
Legislation	AB: The First Nations Sacred Ceremonial Objects Repatriation Act, 2000	Mandates the return of sacred cp without conditions.	S: FN, gov, museum support. W: Only sacred cp returned.	Ensuring that conditions are not attached to the return of cp allows FN to gain full control.	Equality & trust fostered. Strong partnership with Glenbow.
	United States: The Native American Graves Protection and Repatriation Act, 1990	Encourage dialogue between museums and NA. Ensure NA perspectives recognized.	S: Museums must inventory all NA cp. Items returned without condition. W: Lack of funding, inconsistent inventory process.	Policy has allowed NA to regain control over cp, heritage, and identity.	Trust & equality has developed. Museums support leg and better relationship with NA.