

FACILITATING THE RETURN OF HUMAN
REMAINS: MUSEUM POLICY CASE
STUDIES ACROSS THE UNITED STATES
AND UNITED KINGDOM

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In January 2024, the United States made landmark regulatory updates under the Native American Graves Protection and Repatriation Act (NAGPRA) amidst intensifying scrutiny on human remains stewardship and calls for repatriation. Museums across the United States and United Kingdom currently hold hundreds of thousands of human remains in their collections, many of which were acquired through colonial exploitation, thefts of cultural heritage, grave robbing, and other unethical acquisitions from marginalized communities. The dark history of these collections and their perpetuation of harm to marginalized communities necessitates improved mechanisms for human remains repatriation.

This Note examines the current state of museum human remains policies and makes the case for improved regulations and social sanctions. Museums across the United States and United Kingdom implement a wide range of policies for human remains stewardship, and the analysis of four key case studies—the American Museum of Natural History, the Denver Museum of Nature and Science, the British Museum, and the Manchester Museum—demonstrates the need for interventions to facilitate the return of human remains. Specifically, the learnings from these case studies highlight the need for public pressure and improved regulations that carry concrete mandates, are enforced, and address key regulatory gaps.

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INTRODUCTION

In January 2024, the United States made landmark regulatory updates under the Native American Graves Protection and Repatriation Act (NAGPRA).¹ Originally passed in 1990, NAGPRA governs museums’ stewardship and repatriation of Native American remains and cultural artifacts.² However, the regulations under this Act have been historically insufficient, with Indigenous communities like the Unkechaug Nation waiting decades with no response to their repatriation requests.³ With the 2024 regulatory update, museums in the United States are facing increased scrutiny for their approaches

¹ See *Interior Department Announces Final Rule for Implementation of the Native American Graves Protection and Repatriation Act*, U.S. DEP’T OF THE INTERIOR (Dec. 6, 2023), <https://www.doi.gov/pressreleases/interior-department-announces-final-rule-implementation-native-american-graves> [<https://perma.cc/UU8B-LYV6>]; 25 U.S.C. §§ 3001–3013.

² See Deborah F. Buckman, *Validity, Construction, and Applicability of Native American Graves Protection and Repatriation Act* (25 U.S.C.A. §§ 3001–3013 and 18 U.S.C.A. § 1170), 173 A.L.R. Fed. 585, § 2[a] (2001) (summarizing the history, purpose, and scope of NAGPRA).

³ See Jenna Kunze, *New York Museum Unveils Repatriation Overhaul After Ethical Awakening*, NATIVE NEWS ONLINE (Oct. 17, 2023), <https://nativenewsonline.net/sovereignty/new-york-museum-unveils-repatriation-overhaul-after-ethical-awakening> [<https://perma.cc/6Y2E-LEM6>] (discussing various tribal nations’ difficult repatriation journeys under NAGPRA).

to human remains stewardship, raising questions of whether remains should be held in collections and the ethical considerations of returning remains.⁴ These discussions come at a time of growing public outcry around issues of cultural heritage repatriation⁵ generally, with high-visibility disputes over objects like the Parthenon Marbles and Benin Bronzes at the British Museum.⁶ When it comes to repatriation disputes, museums in the United States and United Kingdom are often implicated due to their history as colonial powers.⁷

Similarly, United States and United Kingdom museums are central to the discussion of human remains stewardship, as the countries' deep-rooted histories of colonialism and archeological exploitation have led to large museum collections of human remains.⁸ Today, United States and United Kingdom museums hold hundreds of thousands of human remains acquired through looting, grave robbing, and imperial conquest.⁹ These collections perpetuate a deep and enduring pain for the ancestral descendants and marginalized communities from whom these remains were taken.¹⁰ For example, the United States' Penn Museum had been holding the remains of two African American children killed in the MOVE bombing of 1985¹¹ without the knowledge or consent of their living parents for decades.¹² While this grave injustice was finally brought to light in 2021 following the increased scrutiny of recent years,

⁴ See Zachary Small, *Facing Scrutiny, a Museum That Holds 12,000 Human Remains Changes Course*, N.Y. TIMES (Oct. 18, 2024), <https://www.nytimes.com/2023/10/15/arts/american-museum-natural-history-human-remains.html> [<https://perma.cc/SEB2-C4GM>] (highlighting the increased scrutiny and recent actions of museums like the American Museum of Natural History).

⁵ Cultural heritage repatriation refers to the “act or process of returning art or artifacts to their origins. Repatriated materials can be returned to countries, governments, individuals, or communities.” *Repatriation of Cultural Heritage*, MIDWEST ART CONSERVATION CTR., <https://preserveart.org/services/repatriation> [<https://perma.cc/J2RN-6XPB>].

⁶ See Danielle B. Sinn, Comment, “*Finders Keepers, Losers Weepers!*”: Why the United Kingdom Should Respond to Repatriation Claims and the Lesson the United States Can Teach, 128 PENN ST. L. REV. 603, 605–08 (2024) (discussing the repatriation controversies around the Parthenon Marbles and Benin Bronzes).

⁷ See *id.* at 618–19, 624–25 (explaining the roles of the United States and United Kingdom in the repatriation dialogue).

⁸ See *id.* at 618–27 (discussing the history of human remains collections in museums).

⁹ See discussion *infra* Section I.A.

¹⁰ See discussion *infra* Section I.B.

¹¹ In 1985, the Philadelphia police bombed a house occupied by MOVE, an African American liberation organization, killing eleven people, including five children aged seven to fourteen. In 2020, the city apologized for the “immeasurable and enduring harm” of the bombing. Ed Pilkington, *Bones of Black Children Killed in Police Bombing Used in Ivy League Anthropology Course*, THE GUARDIAN (Apr. 23, 2021), <https://www.theguardian.com/us-news/2021/apr/22/move-bombing-black-children-bones-philadelphia-princeton-pennsylvania> [<https://perma.cc/K4ZE-T8UK>].

¹² *Id.*

the remains had already been held for over thirty years and had even been used by a Princeton professor as a “case study” for her forensics course.¹³ In this way, with new levels of public scrutiny, recent regulatory changes, and intensifying debate over the ethics of human remains collections, human remains stewardship has become an increasingly salient and contentious issue that must be addressed.

Museums must now grapple with whether to repatriate or retain these remains, especially in the face of requests for return.¹⁴ Despite the current legal framework in these countries, museums maintain much discretion in drafting their policies for human remains stewardship and repatriation.¹⁵ This Note examines four museums across the United States and United Kingdom that have been especially prominent in the human remains stewardship discussion, whether in support of or against repatriation: the American Museum of Natural History (AMNH), the Denver Museum of Nature and Science (DMNS), the British Museum, and the Manchester Museum.¹⁶ While these four case studies do not perfectly encapsulate the entire spread of museums, they represent a wide range of considerations, constraints, and approaches with which museums grapple. Over time, each of these museums developed unique processes and focal areas for human remains stewardship.¹⁷ While some museums have become strong proponents of voluntary repatriation, others have adopted policies that make repatriation nearly impossible.¹⁸ Claimants for ancestral remains at these museums are often left with little recourse, as they are faced with the museums’ stonewalling and regulatory loopholes.¹⁹ As such, these four case studies highlight the need for amended regulations with concrete mandates for museums, actual enforcement by governmental bodies, and an improved scope that fills key regulatory gaps.²⁰ Further, while improved regulations are necessary for these efforts, public pressure will be critical to both catalyze these regulatory shifts, as well as to effectuate ethical repatriation in the long run.²¹

This Note discusses the current state of museum human remains policies and makes the case for improved regulations and social sanctions. Part I provides an overview of the current human remains

¹³ *Id.*

¹⁴ See discussion *infra* Part II.

¹⁵ See discussion *infra* Section I.B.

¹⁶ See discussion *infra* Part II.

¹⁷ See discussion *infra* Part II.

¹⁸ See discussion *infra* Section II.B.1.

¹⁹ See discussion *infra* Sections II.A.1, II.B.1.

²⁰ See discussion *infra* Section IV.A.

²¹ See discussion *infra* Section IV.B.

stewardship landscape, including the historical context, debate over repatriation, and regulations in the space. Part II explores the scope of museums' policies on human remains through four case studies: the AMNH, the DMNS, the British Museum, and the Manchester Museum. Part III highlights key takeaways and learnings from these case studies, focusing on museum location considerations, dynamics of scale, and the implications of a policy's focus area. Part IV closes by arguing for necessary interventions to facilitate the return of human remains, especially the need for public pressure and improved regulations that carry concrete mandates, are enforced, and address key regulatory gaps.

I

HUMAN REMAINS STEWARDSHIP

The issue of human remains stewardship highlights the dark history of colonialism and exploitation that has shaped many museum collections, leaving museums to grapple with how to handle repatriation requests today.²² When used in museum scholarship, the term “human remains stewardship” refers to any museum practices or policies that engage with human remains, including for the care, display, or return of these remains.²³ Within this realm of human remains stewardship, the potential return of these remains is by far the most contentious, as it involves not only removing the remains from the museum collection altogether, but also determining the appropriate party to whom to return the remains.²⁴ This return can take many forms, such as a repatriation to the nation from where the remains came, a return to ancestral descendants, or a reburial when there are no appropriate living claimants.²⁵ This Note uses the term “repatriation” to refer to these return practices broadly, as repatriation has become colloquially used to generally refer to the “process by which important cultural items and human remains are returned to lineal descendants or descendant

²² See discussion *infra* Section I.A.

²³ Sean Decatur, *Human Remains Stewardship*, AM. MUSEUM NAT. HIST. (Oct. 12, 2023), <https://www.amnh.org/about/human-remains-stewardship> [<https://perma.cc/5QP4-WV48>] (outlining the components of the AMNH's human remains stewardship approach); see also *Code of Ethics and Professional Practices for Collections Professionals*, AM. ALL. MUSEUMS (Feb. 24, 2021), https://www.aam-us.org/wp-content/uploads/2021/03/Code_Ethics_Collections_Professionals_2021_02_24.pdf [<https://perma.cc/4YV9-LXAA>] (discussing collections stewardship, including for human remains).

²⁴ See Geraldine Kendall Adams, *Perspectives on Human Remains*, MUSEUMS ASS'N (June 7, 2024), <https://www.museumassociation.org/museums-journal/features/2024/06/perspectives-on-human-remains> [<https://perma.cc/5HAS-LRDZ>] (explaining that it is not “always obvious where the remains should go; competing claims and local politics can complicate matters”).

²⁵ *Code of Ethics and Professional Practices for Collections Professionals*, *supra* note 23, at 5.

communities.”²⁶ This Part summarizes the historical context, ethical considerations, and regulatory landscape that govern human remains stewardship in United States and United Kingdom museums today, emphasizing the need for improved repatriation practices.

A. Historical Context

The United States and United Kingdom both have a long history of holding and displaying human remains in their museums.²⁷ However, this history is intrinsically tied with ethically suspect practices, as these collections were often amassed through colonial exploitation, thefts of cultural heritage, grave robbing, and other unethical acquisitions from marginalized communities.²⁸ In the United Kingdom, much of the museums’ human remains collections can be tied to the United Kingdom’s classic colonial history of imperial conquest and resource exploitation.²⁹ For example, these remains have included Egyptian mummies looted from tombs,³⁰ *tsantsas* or shrunken heads created from Indigenous Ecuadorian and Peruvian peoples,³¹ and the remains of an Ethiopian emperor taken during an Imperial British punitive expedition.³² While there are no comprehensive studies, scholars

²⁶ *What is Repatriation?*, FIELD MUSEUM, <https://repatriation.fieldmuseum.org/narrative/6525> [<https://perma.cc/SV2F-7NSK>]; see also Justin Dunnivant, Delande Justinvil & Chip Colwell, *Craft an African American Graves Protection and Repatriation Act*, 593 NATURE 337 (2021) (using the term repatriation to refer to the process of returning African American remains to lineal descendants or community organizations, even though the return is not to a separate nation).

²⁷ Sinn, *supra* note 6, at 618, 624 (detailing the history of the United States’ removal of Native cultural property and the British collection of cultural property from around the world).

²⁸ See CHIP COLWELL, *PLUNDERED SKULLS AND STOLEN SPIRITS: INSIDE THE FIGHT TO RECLAIM NATIVE AMERICA’S CULTURE* 5 (2018) (“[M]useum collections violated the dignity of Native Americans and often hindered, rather than honored, their cultures. Museums suddenly seemed to me less a triumph of Western science and more a breach of Native American human rights.”); Christine Ro, *Is It Ever Ethical for Museums to Display Human Remains?*, BBC (Jan. 19, 2024), <https://www.bbc.com/future/article/20240118-is-it-ever-ethical-for-museums-to-display-human-remains> [<https://perma.cc/QT8-PBGB>] (discussing “human remains in museums . . . acquired illegally or unethically”).

²⁹ See, e.g., Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 SOCIO. RACE & ETHNICITY 52, 55 (2015) (defining classic colonialism); see also Nancy Shoemaker, *A Typology of Colonialism*, AM. HIST. ASS’N (Oct. 1, 2015), <https://www.historians.org/perspectives-article/a-typology-of-colonialism-october-2015> [<https://perma.cc/BQ92-7AVW>] (discussing settler colonial theory and how “many places experienced colonialism without an influx of foreign settlers”).

³⁰ Heather Gill-Frerking, *Showing Respect to the Dead: The Ethics of Studying, Displaying, and Repatriating Mummified Human Remains*, in THE HANDBOOK OF MUMMY STUDIES 59, 68–69 (Dong Hoon Shin & Raffaella Bianucci eds., 2021).

³¹ *Shrunken Heads Removed from Pitt Rivers Museum Display*, BBC (Sept. 14, 2020), <https://www.bbc.com/news/uk-england-oxfordshire-54121151> [<https://perma.cc/XR9D-QWZT>].

³² Lucia Patrizio Gunning & Debbie Challis, *The Plunder of Maqḍala: Ethical Concerns Around Belongings and Ancestral Remains in Museums*, 74 MUSEUM INT’L 60, 63–64 (2022).

have estimated over 100,000 human remains held in UK museums at minimum.³³ Further, these collecting practices are not just an artefact of the past, as scholars estimate that European museums have acquired over 500,000 remains since the nineteenth century alone.³⁴ As such, UK museums' human remains collections are an enduring reminder of the United Kingdom's classic colonial history.

In contrast, the United States' history is one of settler colonialism, which has led to unique dynamics of exploitation and marginalization in terms of the resulting human remains collections. Compared to the classic colonialism practiced by the United Kingdom, settler colonialism's objective is to permanently settle in new land despite the existing Indigenous population.³⁵ As such, even in the realm of human remains collections, the exploitation in the United States has been largely concentrated on Native American communities.³⁶ Scholars have estimated as much as ninety percent of human remains held in U.S. museums to be of Native American origin due to the United States' long history of looting Native American grave sites.³⁷ The remaining percentage, which still amounts to tens of thousands of human remains, is often attributed to enslaved individuals, recent immigrants, and impoverished peoples whose bodies were stolen or sold into these collections.³⁸ Estimates have ranged to over 500,000 human remains held in U.S. museums, with that number almost completely comprised of individuals from marginalized communities and populations.³⁹ Scholars have called the creation of these human remains collections a "type of

³³ Myra Giesen, *Introduction: Human Remains Curation in the United Kingdom*, in *CURATING HUMAN REMAINS: CARING FOR THE DEAD IN THE UNITED KINGDOM* 1, 7 (Myra Giesen ed., 2013) (discussing a 2011 study that estimated "a minimum of 111,065 to 113,217 individuals/human remains were present in English museums").

³⁴ Samuel Redman, *When Museums Rushed to Fill Their Rooms With Bones*, *SMITHSONIAN MAG.* (Mar. 15, 2016), <https://www.smithsonianmag.com/history/when-museums-rushed-fill-their-rooms-bones-180958424> [<https://perma.cc/LU3U-LG3M>] (estimating an additional half a million sets of Native American remains alone).

³⁵ See Glenn, *supra* note 29, at 55 (discussing classic and settler colonialism).

³⁶ See Stephen E. Nash, *The Skeletons in the Museum Closet*, *SAPIENS* (Oct. 29, 2018), <https://www.sapiens.org/archaeology/natural-history-museum-human-remains> [<https://perma.cc/2HWG-P5QZ>] ("[A]rchaeologists excavated Native American graves and stole their remains with impunity while generally leaving everyone else's graves untouched.").

³⁷ *Id.*

³⁸ See Sabrina B. Sholts, "To Honor and Remember": An Ethical Awakening to African American Remains in Museums, *AM. J. BIOLOGICAL ANTHROPOLOGY*, Jan. 2025, at 1, 3 (discussing the high percentages of marginalized populations within human remains collections).

³⁹ See Jennifer Schuessler, *What Should Museums Do with the Bones of the Enslaved?*, *N.Y. TIMES* (June 23, 2023), <https://www.nytimes.com/2021/04/20/arts/design/museums-bones-smithsonian.html> [<https://perma.cc/HK8U-Y25W>] (estimating 500,000 Native American remains in the United States alone).

structural violence against . . . marginalized people.”⁴⁰ These collections are intrinsically tied to histories of colonialism and marginalization, representing the power imbalance that allowed institutions ownership over others’ remains.⁴¹

B. Repatriation Debate

Despite the suspect practices that built these human remains collections, there is an ongoing debate within the museum industry about the value and future of these collections.⁴² Although some scholars and museum stakeholders argue that there are scientific and educational benefits of these collections, the ethical considerations and ongoing harm perpetuated by these collections often outweigh the potential benefits.

1. Scientific and Educational Justifications

Some museums and scholars justify maintaining human remains collections by arguing that they enable a wide range of benefits to society. These justifications range across arguments for scientific research, public education, cultural connection, and better care for the remains.⁴³ Of this range of justifications, most proponents hold the scientific and educational aspects to be the strongest arguments in favor of maintaining human remains collections. For example, the British Museum displays the skeleton of an ancient Egyptian child with “brittle bone” disease, expounding the role of human remains in studying ancient diseases.⁴⁴ The UK’s Natural History Museum argues that studying the chemical signatures in bones provides insights on past population movements.⁴⁵

⁴⁰ Sholts, *supra* note 38, at 2.

⁴¹ See *id.* at 1–2 (discussing how marginalized populations were particularly vulnerable to anatomy legislation and other unethical means for building human remains collections).

⁴² See, e.g., Adams, *supra* note 24.

⁴³ From a cultural connection and care perspective, proponents argue that maintaining human remains collections in museums serves a conservation function, in preserving the history and value of the remains for future generations. See *id.* (“Most scientists argue that, along with the research value of historic human remains, it is important for the public to be able to view the real human body.”); Allison C. Meier, *Human Remains and Museums: A Reading List*, JSTOR (Dec. 28, 2023), <https://daily.jstor.org/human-remains-and-museums-a-reading-list> [<https://perma.cc/WN4R-U3TB>] (summarizing the various perspectives and justifications for human remains collections); *Reckoning with Human Remains in the Smithsonian Collection*, SMITHSONIAN, <https://www.si.edu/collections/human-remains> [<https://perma.cc/F3E3-A5HL>] (explaining that the Smithsonian acquires human remains for scientific research).

⁴⁴ Ro, *supra* note 28.

⁴⁵ *Id.*

The United States' Smithsonian credits human remains collections with broadly advancing forensic science and modern medical practices.⁴⁶ In this way, the research conducted on human remains collections can shed light on the dynamics of past societies and human development, as well as enable new discoveries that advance modern scientific practices.⁴⁷ According to the British Museum, "[t]his scientific analysis offers information that other archaeological sources usually do not provide, such as age-at-death, ancient diseases, diet, genetics and past burial practices."⁴⁸ Further, in holding and displaying these remains, museums can educate the public and make these insights broadly accessible.⁴⁹

However, it is unclear whether human remains collections are actually that valuable for scientific research or education. As Samuel Redman, a historian of anthropology at the University of Massachusetts, Amherst explained: "Oftentimes, remains are brought to museums with grandiose visions of what they would accomplish, and the scientific research has very rarely lived up to those goals."⁵⁰ Many remains were not collected for specific research purposes but out of curiosity or for the sake of collection.⁵¹ Today, some museums retain remains purely for the hypothetical possibility of future use.⁵² However, this justification could potentially be satisfied by merely collecting a small DNA sample from the remains, rather than keeping the entire remains indefinitely.⁵³ As such, even if scientific value is a valid justification, it is a limited one; the scientific value justification does not apply across all of the hundreds of thousands of remains that continue to sit in U.S. and UK museum collections.

Further, the supposed invaluable scientific research can also lead to negative educational outcomes. Historically, many of these human

⁴⁶ *Reckoning with Human Remains in the Smithsonian Collection*, *supra* note 43.

⁴⁷ *Human Remains*, BRIT. MUSEUM, <https://www.britishmuseum.org/our-work/departments/human-remains> [<https://perma.cc/K9B3-USVF>] ("Analysis of the human remains in the Museum's collection helps advance important research in fields such as archaeology, social anthropology, human biology, the history of disease, palaeoepidemiology, bioarchaeology, physical anthropology and genetics.").

⁴⁸ *Id.*

⁴⁹ *Id.* ("The information and insight gained through the archaeological and scientific analysis of human remains . . . continues to inform our understanding of past societies and can then be shared with Museum visitors.").

⁵⁰ Small, *supra* note 4.

⁵¹ See SAMUEL J. REDMAN, *BONE ROOMS: FROM SCIENTIFIC RACISM TO HUMAN PREHISTORY IN MUSEUMS* 146–47, 152 (2016) (discussing competitive efforts to create comprehensive collections and the motivating curiosity of the public).

⁵² See, e.g., Small, *supra* note 4 ("Hammond [the AMNH anthropology chairwoman] said she believed there might still be merit to holding on to the . . . remains. 'We don't know what the future of science holds . . .'").

⁵³ Ro, *supra* note 28.

remains collections were used to further racist scientific ideologies. For example, in the United States, the Penn Museum's Morton Collection of over 1,300 human remains was used to justify scientific racism on the basis of skull measurements.⁵⁴ This collection, which was on display until 2020, included over fifty enslaved individuals whose remains were stolen from their graves in the United States and Cuba.⁵⁵ Even human remains collections that are purportedly meant to address racial histories through cultural connection and public education often have the opposite effect. For example, in 2020, the UK's Pitt Rivers Museum removed its exhibit of *tsantsa*—or South American shrunken heads—after realizing that “the way they were displayed did not sufficiently help visitors understand the cultural practices related to their making and instead led people to think in stereotypical and racist ways about Shuar culture.”⁵⁶ In this way, the educational value of human remains collections is not only limited, but in some cases, counterproductive and harmful.

This is not to say that there is no value in studying human remains. However, not all human remains in museum collections have scientific or educational value, and even when they do, perhaps museums are not the right setting for this work to be done.⁵⁷ Indeed, museums like the Smithsonian are still apologizing for the past “pain caused by [those] who acted unethically in the name of science.”⁵⁸ The history of exploitation shows that, while there may be some scientific value to studying human remains, this has proven an insufficient justification to maintain these museum collections.

2. *Ethical Considerations*

Additionally, even if human remains collections hold scientific value or other educational benefits, the ends do not necessarily justify the means. Museums and scholars are increasingly considering the ethical ramifications of human remains collections.⁵⁹ As Ellen Stofan

⁵⁴ Sholts, *supra* note 38, at 3.

⁵⁵ *Id.* at 2 (discussing the increased spotlight on this collection in the wake of the 2020 Black Lives Matter protests).

⁵⁶ Ro, *supra* note 28.

⁵⁷ For example, this human remains research could instead be limited to dedicated research facilities or academic institutions like medical schools. *See, e.g.*, Vicki Cassman, Nancy Odegaard & Joseph Powell, *Preservation of Human Remains*, 26 WAAC NEWSLETTER, no. 1 (W. Assoc. for Art Conservation), Jan. 2004, at 9, <https://cool.culturalheritage.org/waac/wn/wn26/wn26-1/wn26-104.pdf> [<https://perma.cc/9XS9-H7UQ>] (discussing the use of institutionalized human remains in academic institutions).

⁵⁸ *See* Adams, *supra* note 24.

⁵⁹ *Id.*

of the Smithsonian explained: “The field had, frankly, a fairly colonial attitude of ‘we’re expanding science, we’re understanding people, we’re understanding humanity and this is an important thing to do,’ without thinking ‘this is a human, not a specimen.’”⁶⁰ More recently, scholars like Justin Dunnivant, an archeologist and professor at UCLA, have expressed the view that “[t]he promise of expanding knowledge must be considered alongside the perils of medical exploitation and biocolonialism.”⁶¹ In other words, the potential scientific value must be weighed against the dignity of the person and the community from which any remains were taken. Specifically, these human remains collections raise ethical issues of dehumanization, the perpetuation of harm, and the absence of consent.

Historically and even now, many of the remains in these collections were dehumanized as objects of spectacle. For example, the Hunterian Museum in the UK displayed the remains of Charles Byrne, an Irish man with gigantism, for over 200 years.⁶² When he was alive in the 1700s, Byrne was viewed as a curiosity, and he was horrified at the idea of his body being put on display after his death.⁶³ Despite making his wishes clear, his remains were stolen on the way to his funeral and were then displayed for the next two centuries.⁶⁴ Byrne’s dignity and bodily autonomy were disrespected, with his body put on display among the objects and artifacts in the museum. Scholars have argued that these remains must be returned to the descendants or community from which they were taken or otherwise buried such that they can no longer be exploited.⁶⁵ No matter the care museums may or may not show to the remains under their stewardship, the very act of collecting and displaying these remains reduces human beings to mere items in a collection.

Further, given the dark history of human remains collecting practices, the continued existence of these collections perpetuates the harm of past events. As Sean Decatur, the president of the AMNH, explained: “These are ancestors and are in some cases victims of violent tragedies or representatives of groups who were abused and exploited,

⁶⁰ *Id.*

⁶¹ Dunnivant, Justinvil & Colwell, *supra* note 26.

⁶² Alexandra Topping, ‘He Did Not Want This’: One Man’s Two-Decade Quest to Let the ‘Irish Giant’ Rest in Peace, *THE GUARDIAN* (Jan. 14, 2023), <https://www.theguardian.com/culture/2023/jan/14/he-did-not-want-this-one-mans-two-decade-quest-to-let-the-irish-giant-rest-in-peace> [<https://perma.cc/QT3W-RFBC>].

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See Thomas L. Muinzer, *A Grave Situation: An Examination of the Legal Issues Raised by the Life and Death of Charles Byrne, the “Irish Giant,”* 20 *INT’L J. CULTURAL PROP.* 23, 40–41 (2013).

and the act of public exhibition extends that exploitation.”⁶⁶ The two MOVE bombing victims, whose remains were held in the collection of the United States’ Penn Museum for over thirty years, are one such example of this cruel dynamic.⁶⁷ One of the surviving MOVE members bluntly summarized the horror and injustice of this pain spanning decades: “The professor is holding the bones of a 14-year-old-girl whose mother is alive and grieving.”⁶⁸ In this way, museums’ continued ownership and display of these remains not only dehumanizes the human beings, but also perpetuates the deep-rooted pain of the communities these remains were taken from.

Finally, when it comes to human remains, there is a pervasive issue of consent. These remains can be held against express consent, like with Charles Byrne, or in the absence of consent, like those stolen for the Morton Collection. Often, as was the case with the MOVE bombing victims, the museum does not even know where the remains came from, let alone anything about consent. As Edward Halealoha Ayau, an attorney advocating for Indigenous repatriation explained: “[S]ince consent cannot be presumed, museums have the responsibility never to display people who are deceased.”⁶⁹ While not all scholars and museum stakeholders draw such a hard line against all human remains display, most agree that there must be stronger consideration for the consent and dignity of these individuals.⁷⁰

When weighed against these ethical issues of consent, dehumanization, and the perpetuation of systemic harms, the dubious scientific value of these collections becomes a tenuous justification. Some museums argue that, even if they wanted to return their human remains collections, doing so would be impractical due to the delicate nature of some remains or the museums’ lack of resources.⁷¹ However, just because returning the remains may be difficult, that does not make it acceptable for museums to hold onto these remains in their collections indefinitely. Merely holding the remains, even if they are not displayed, can perpetuate the harm embodied in the remains’ painful past. Indeed, the continued storage of these remains in collections dehumanizes the individuals,

⁶⁶ Small, *supra* note 4.

⁶⁷ See *supra* notes 11–13 and accompanying text.

⁶⁸ Cassidy Steele, Human Remains in Museums and Institutions: Laws and Policies 13 (July 2022) (M.A. thesis, Kennesaw State University), https://digitalcommons.kennesaw.edu/cgi/viewcontent.cgi?article=1000&context=art_etd [<https://perma.cc/2SFS-Z646>].

⁶⁹ Ro, *supra* note 28.

⁷⁰ See Adams, *supra* note 24 (discussing the informed consent approach that many museums have adopted).

⁷¹ *Id.* (“Repatriation of remains requires resources and time on both sides, and the process can take up to five years. Nor is it always obvious where the remains should go; competing claims and local politics can complicate matters.”).

conflating the ancestral remains of marginalized communities with artifacts and objects. As such, critics have held that these practices are morally and ethically indefensible, arguing that museums must return these human remains in order to start repairing painful histories and treating the remains with the dignity they deserve.⁷² Human remains stewardship in museums is a deeply sensitive and increasingly salient issue that must be addressed through facilitating the return of these remains.

C. Regulatory Landscape

Museums' human remains policies are primarily governed by national regulations surrounding human remains stewardship and repatriation.⁷³ These regulations vary greatly by country, with many regulations shifting over the last fifty years as countries become more enlightened to issues of human remains stewardship and repatriation.⁷⁴ This Note does not seek to outline the entire history of human remains regulation in the United States and United Kingdom, but rather aims to provide enough context on the regulatory landscape in order to evaluate the subsequent museum policy case studies⁷⁵ and potential interventions.⁷⁶

To note, there are also a number of international treaties and resolutions that have touched on the issue of human remains stewardship,⁷⁷ such as the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷⁸ which discusses the repatriation of human remains to Indigenous communities.⁷⁹ However, the principles

⁷² See *id.*; see also Small, *supra* note 4 (“None of the items on display . . . are so essential to the goals and narrative of the exhibition as to counterbalance the ethical dilemmas presented by the fact that human remains are in some instances exhibited alongside and on the same plane as objects.”).

⁷³ See Sinn, *supra* note 6 at 616–24 (discussing the lack of a mandatory international framework for repatriation and the national regulations that govern repatriation in the United States and United Kingdom).

⁷⁴ See discussion *infra* Sections I.C.1 and I.C.2.

⁷⁵ See discussion *infra* Part II.

⁷⁶ See discussion *infra* Part IV.

⁷⁷ In the twentieth century, global views around human rights developed and produced a number of international declarations and conventions: the 1948 Universal Declaration of Human Rights (UDHR) which sets out fundamental rights for all human beings; the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention which covers the illicit trafficking of cultural property; and the 1995 International Institute for the Unification of Private Law (UNIDROIT) Convention which focuses on the return of stolen cultural property. See Lynda Knowles, *National and International Legislation, in THE FUTURE OF NATURAL HISTORY MUSEUMS* 184, 185–86, 189 (Eric Dorfman ed., 2017).

⁷⁸ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

⁷⁹ *Id.*

outlined in these international guidelines are often non-binding, leaving museums primarily governed by the national regulations of their respective countries.⁸⁰ There are also regional and state-level regulations in this space,⁸¹ but—given this Note’s focus on United States and United Kingdom case study comparisons—this Part will focus on regulations at the national level.

1. *United States*

The U.S. regulatory landscape on human remains repatriation is largely shaped by the country’s colonial history of Native American exploitation. Federal regulations are focused on addressing the country’s long history of desecrating Native American heritage sites, as well as facilitating the repatriation of hundreds of thousands of Native American remains in museum collections.⁸² However, with the scope of these regulations limited to Native American remains, there is no equivalent federal regulation for the remains of African Americans or other individuals.⁸³

As such, the prevailing regulation that governs most U.S. museums is the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).⁸⁴ The dual purpose of NAGPRA is to “protect Native American or Native Hawaiian ownership rights to items of cultural significance” and to “provide for the repatriation of culturally significant items currently held by federal agencies and museums.”⁸⁵ Under NAGPRA, museums are required to repatriate applicable human remains and cultural items upon the request of a tribe, with the statute laying out a process for inventorying items and working with tribes.⁸⁶

⁸⁰ *Id.*

⁸¹ See, e.g., *NAGPRA and CalNAGPRA*, UC SANTA BARBARA, <https://nagpra.ucsb.edu/nagpra-and-calnagpra/nagpra-and-calnagpra> [https://perma.cc/8DQQ-BRBB].

⁸² See COLWELL, *supra* note 28, at 6–9 (discussing the history of exploitation and passage of NAGPRA); Logan Jaffe, Mary Hudetz, Ash Ngu & Graham Lee Brewer, *America’s Biggest Museums Fail to Return Native American Human Remains*, PROPUBLICA (Jan. 11, 2023), <https://www.propublica.org/article/repatriation-nagpra-museums-human-remains> [https://perma.cc/MVL9-HF7V] (outlining the framework for repatriation under NAGPRA); Ash Ngu & Andrea Suozzo, *The Repatriation Project: Does Your Local Museum or University Still Have Native American Remains?*, PROPUBLICA, <https://projects.propublica.org/repatriation-nagpra-database> [https://perma.cc/HMS8-BHVC] (Jan. 6, 2025) (cataloguing repatriation progress under NAGPRA).

⁸³ See Sholts, *supra* note 38, at 1, 3.

⁸⁴ See COLWELL, *supra* note 28.

⁸⁵ Buckman, *supra* note 2, at Introduction.

⁸⁶ See *id.* §§ 5–21 for a discussion of the requirements under NAGPRA. It is unclear how many unrepatriated remains were held in museum collections at the time of the Act’s passage, as one of the key goals of NAGPRA was to incentivize accurate cataloguing and inventories of the museums’ Native remains collections. Since the Act’s passage, museums

In 1990, when the Act was passed, the government estimated that it would take about a decade to complete this repatriation.⁸⁷ However, more than three decades later, over 100,000 Native American remains reported as falling under NAGPRA are still unrepatriated, with critics attributing this glacial rate to a number of obstacles and loopholes in the Act.⁸⁸ Specifically, these issues include the narrow scope of the Act,⁸⁹ lack of communication with tribes,⁹⁰ high evidentiary burdens on tribes,⁹¹ and ineffective enforcement mechanisms.⁹² These shortcomings created the need for improved regulations to accelerate repatriation and address the practical gaps of NAGPRA.

have inventoried and reported over 200,000 Native American remains. U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106870, NATIVE AMERICAN PRIORITIES: PROTECTION AND REPATRIATION OF HUMAN REMAINS AND OTHER CULTURAL ITEMS (2023), <https://www.gao.gov/assets/d24106870.pdf> [<https://perma.cc/WH8S-4QAW>].

⁸⁷ Jaffe et al., *supra* note 82; H.R. REP. NO. 101-877, at 21–22 (reprinting a Congressional Budget Office estimate that enacting the legislation would cost the federal government \$20–\$50 million over five years).

⁸⁸ See, e.g., *id.*; Christopher Zheng, *31 Years of NAGPRA: Evaluating the Restitution of Native American Ancestral Remains and Belongings*, CTR. FOR ART L. (May 18, 2021), <https://itsartlaw.org/2021/05/18/31-years-of-nagpra-evaluating-the-restitution-of-native-american-ancestral-remains-and-belongings> [<https://perma.cc/7QUY-TZTV>]; Emily Bergeron, *The Native American Graves Protection and Repatriation Act: Where Are We Now?*, 49 HUM. RTS. 10, 10 (2024). While the 100,000 estimate refers to the number of unrepatriated remains reported as falling under NAGPRA, the number of overall Native remains historically held in U.S. collections has been estimated to be up to 500,000, with the disparity potentially representing unreported remains or those that do not fall under NAGPRA. See discussion *supra* note 39.

⁸⁹ See, e.g., B. Stephen Jones, *Strengthening NAGPRA*, 41 CARDOZO ARTS & ENT. L.J. 883, 892 (2023) (international repatriation gap); *Castro Romero v. Becken*, 256 F.3d 349, 354 (5th Cir. 2001) (NAGPRA inapplicable for remains found on non-federal lands); Gabriella Angeleti, *US Museums Cover Native American Displays as Revised Federal Regulations Take Effect*, ART NEWSPAPER (Jan. 29, 2024), <https://www.theartnewspaper.com/2024/01/29/us-museums-nagpra-native-american-displays-new-regulations> [<https://perma.cc/G4DP-Q78L>] (NAGPRA only applicable for federally funded museums).

⁹⁰ See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-466T, NATIVE AMERICAN ISSUES: EXAMPLES OF CERTAIN FEDERAL REQUIREMENTS THAT APPLY TO CULTURAL RESOURCES AND FACTORS THAT IMPACT TRIBAL CONSULTATION (2020), <https://www.gao.gov/assets/gao-20-466t.pdf> [<https://perma.cc/B4US-XD2K>] (discussing how tribal input is limited to general public meetings).

⁹¹ See, e.g., *Bonnichsen v. United States*, 367 F.3d 864, 877 (9th Cir. 2004) (highlighting “NAGPRA’s requirement that Native American remains bear some relationship to a presently existing tribe”); 25 U.S.C. § 3005 (requiring tribes to show cultural affiliation by a preponderance of evidence); Mary Hudetz, *New Federal Rules Aim to Speed Repatriations of Native Remains and Burial Items*, PROPUBLICA (Dec. 8, 2023), <https://www.propublica.org/article/interior-department-revamps-repatriation-rules-native-remains-nagpra> [<https://perma.cc/2QKN-39XH>] (noting “‘culturally unidentifiable’ [remains] . . . allowed . . . to be used for scientific research over tribes’ objections”).

⁹² See Jaffe et al., *supra* note 82 (discussing the limited resources for enforcement and “minuscule fines” for violations); Angeleti, *supra* note 89 (less than \$60,000 in civil penalties collected from 20 museums since NAGPRA’s inception).

In 2023, the U.S. government announced NAGPRA regulatory updates to close the loopholes that enabled the glacial rate of repatriation over the last three decades.⁹³ These changes went into effect in January 2024⁹⁴ and included eliminating the “culturally unidentifiable”⁹⁵ category, increasing transparency and reporting of museum collections, and requiring museums to obtain consent from tribes before exhibiting human remains.⁹⁶ In addition, museums must consult with tribes to update their inventories within five years of the final rule.⁹⁷ One of the primary goals of this 2024 NAGPRA regulatory update was to address the exclusion of tribal voices by increasing tribal access and involvement in the repatriation process.⁹⁸ In response, many museums have announced that they are reviewing their human remains collections, shuttering their Indigenous exhibits, or revisiting their museum policies.⁹⁹ In this way, the 2024 NAGPRA update marks a step in the right direction, although the long-term success of these changes remains to be seen.

2. *United Kingdom*

The UK human remains regulatory landscape is characterized by limited mandates for repatriation and broad discretion for museums to determine their own policies.¹⁰⁰ In fact, some UK regulations actually prohibit the deaccessioning of human remains, even when museums wish to do so.¹⁰¹ Notably, the British Museum Act of 1963¹⁰² limits the ability of the British Museum to deaccession objects from its collection unless the object is a “duplicate,” “unfit,” or “useless.”¹⁰³ Under this Act, the Board of Trustees is legally bound to preserve the museum’s

⁹³ *Interior Department Announces Final Rule for Implementation of the Native American Graves Protection and Repatriation Act*, *supra* note 1.

⁹⁴ 43 C.F.R. § 10 (2024).

⁹⁵ *Interior Department Announces Final Rule for Implementation of the Native American Graves Protection and Repatriation Act*, *supra* note 1. *See supra* note 91 for discussion on “culturally unidentifiable” category.

⁹⁶ *Interior Department Announces Final Rule for Implementation of the Native American Graves Protection and Repatriation Act*, *supra* note 1.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *See* Angeleti, *supra* note 89.

¹⁰⁰ *See* Sinn, *supra* note 6, at 624–28.

¹⁰¹ *See id.*, at 624–25.

¹⁰² British Museum Act 1963, c. 24 (UK).

¹⁰³ THE BRIT. MUSEUM, BRITISH MUSEUM POLICY: DE-ACCESSION OF OBJECTS FROM THE COLLECTION (2018), https://www.britishmuseum.org/sites/default/files/2019-10/De-accession_Policy_Nov2018.pdf [<https://perma.cc/P6CQ-NCBC>].

collection as part of their fiduciary duty.¹⁰⁴ This Act was the prevailing regulation governing the UK's largest museum for decades.¹⁰⁵

In 2004, Parliament enacted the Human Tissue Act (HTA), which finally allowed the British Museum more leeway and mandated some human remains repatriation for other museums.¹⁰⁶ The HTA was enacted in response to the Alder Hey organs scandal and resulting public outcry.¹⁰⁷ The HTA regulates the use, storage, and removal of human tissue, which implicates museum human remains stewardship when it comes to research, display, and deaccessioning.¹⁰⁸ Under the HTA, museums—including the British Museum—must have explicit consent to use human remains from deaths within 100 years of the HTA's passage (i.e., deaths that occurred on or after November 15, 1904).¹⁰⁹ Additionally, Section 47 of the HTA enables the British Museum, amongst others, to deaccession human remains aged between 100 and 1,000 years old upon an affirmative vote by the Board of Trustees.¹¹⁰ However, the HTA does not require the repatriation of these remains; rather, the Act leaves repatriation decisions at the discretion of the museums.¹¹¹ In this way, the HTA was a step towards human remains repatriation, albeit highly limited in scope and mandate.

In 2005, the Department for Culture, Media and Sport published its *Guidance for the Care of Human Remains in Museums* (DCMS 2005), which provides a legal and ethical framework for human remains stewardship.¹¹² While this guidance is not binding regulation, it is the official governmental interpretation of relevant binding law and highly influential for UK museums.¹¹³ The DCMS 2005 provides a framework

¹⁰⁴ *Id.*; Sinn, *supra* note 6 at 625.

¹⁰⁵ Sinn, *supra* note 6 at 625.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 625–26, 625 n.195 (“Alder Hey secretly harvested the organs of approximately 850 babies without obtaining consent from the parents or keeping records of the removals.”).

¹⁰⁸ *Id.* at 625–26; Human Tissue Act 2004, c. 30 (UK).

¹⁰⁹ Human Tissue Act 2004, c. 30 §§ 1(1), 1A(5)(b), 1A(6)(c) (UK); Sinn, *supra* note 6, at 626 n.198 (“[T]he HTA only applies to deaths that occurred on or after November 15, 1904, and mandates the return of remains where no consent was given.”).

¹¹⁰ See Human Tissue Act 2004, c. 30 § 3(47) (UK); Sinn, *supra* note 6, at 626.

¹¹¹ See Human Tissue Act 2004, c. 30 § 3(47) (UK); see also Sinn, *supra* note 6, at 626 n.201 (explaining the British Museum's control over whether to repatriate these remains).

¹¹² DEP'T FOR CULTURE, MEDIA AND SPORT, GUIDANCE FOR THE CARE OF HUMAN REMAINS IN MUSEUMS (2005), <https://www.britishmuseum.org/sites/default/files/2019-11/DCMS-Guidance-for-the-care-of-human-remains-in-museum.pdf> [<https://perma.cc/FNU2-GD78>] (providing UK governmental guidance for museums and other institutions).

¹¹³ See *id.* at 7; Giesen, *supra* note 33 at 1, 6 (discussing the influence of the DCMS 2005 in standardizing practices within the UK); *Policy for the Care and Use of Human Remains*, THE UNIV. OF MANCHESTER: THE MANCHESTER MUSEUM (Oct. 19, 2017), <https://documents.manchester.ac.uk/display.aspx?DocID=34045> [<https://perma.cc/LF6U-6QYG>] (noting that the museum follows the DCMS 2005 guidance).

for handling human remains return requests.¹¹⁴ However, rather than urging museums to facilitate the return of remains or highlighting any binding regulatory obligations, the guidance largely raises considerations for museums to weigh as they undergo a case-by-case review of claims.¹¹⁵ In this way, the DCMS 2005 provides a helpful discussion but still leaves the discretion for repatriation in museum hands.

Recently, there has been a dispute over whether the Charities Act of 2022¹¹⁶ grants national museums more power to repatriate cultural objects.¹¹⁷ Experts at the Institute of Art and Law (IAL) posited that certain provisions in the Act would allow national museums to “dispose of items on moral grounds with permission from the Charity Commission,” which would have provided a critical new route for repatriating human remains.¹¹⁸ However, in January 2024, the government clarified that national museums are excluded from these regulatory updates.¹¹⁹ As such, many UK museums are still highly restricted in their ability to repatriate the human remains in their collections.¹²⁰

II

MUSEUM POLICY CASE STUDIES

Museums are increasingly forced to grapple with issues of human remains stewardship as regulations and public scrutiny force them to

¹¹⁴ DEP’T FOR CULTURE, MEDIA AND SPORT, *supra* note 112 at 23.

¹¹⁵ *Id.* (raising considerations like the cultural, spiritual, and religious significance of the remains and the scientific, educational, and historical importance of the material).

¹¹⁶ The Charities Act of 2022 is legislation that governs charities in the United Kingdom by amending the Charities Act of 2011 to reduce the administrative burden on charities. Charities Act 2022, c. 6 (UK); The Charity Comm’n, *Guidance: Charities Act 2022 Changes*, Gov.UK (Aug. 4, 2022), <https://www.gov.uk/guidance/charities-act-2022-guidance-for-charities> [<https://perma.cc/M6WA-7GCE>] (outlining the changes that the 2022 legislation would effectuate); Sarah Clune, *Watch: Charities Act 2022 - Final Update*, STONE KING (Mar. 7, 2024), <https://www.stoneking.co.uk/literature/video/watch-charities-act-2022-final-update> [<https://perma.cc/7AJJ-E26Y>] (discussing the aim to reduce administrative burdens).

¹¹⁷ See Geraldine Kendall Adams, *Past the Point of No Returns*, MUSEUMS ASS’N (Mar. 21, 2024), <https://www.museumsassociation.org/museums-journal/analysis/2024/03/past-the-point-of-no-returns> [<https://perma.cc/7U6S-KTUV>] (discussing IAL conclusions); Geraldine Kendall Adams, *National Museums To Be Excluded from Law Enabling Restitution on Moral Grounds*, MUSEUMS ASS’N (Feb. 13, 2024), <https://www.museumsassociation.org/museums-journal/news/2024/02/national-museums-to-be-excluded-from-law-enabling-restitution-on-moral-grounds> [<https://perma.cc/W2TE-9KWT>] (discussing UK government guidance); Margaret Carrigan, *The U.K. Amends Law for Museums and Galleries Seeking to Repatriate Objects*, ARTNET (Feb. 5, 2024), <https://news.artnet.com/art-world/government-amends-charities-act-2428160> [<https://perma.cc/Z5N5-JJVD>] (discussing potential to apply Charities Act of 2022 to national museums).

¹¹⁸ Adams, *Past the Point of No Returns*, *supra* note 117.

¹¹⁹ Adams, *National Museums to Be Excluded*, *supra* note 117.

¹²⁰ *Id.*

develop human remains policies.¹²¹ These policies seek to address a wide range of questions¹²²: What human remains does the museum hold? How did the museum acquire this collection? How should the museum weigh the benefits versus the harms of keeping these remains? Should museums hold or display human remains at all? How can and should the museum go about returning these remains, if it chooses to do so?

These are immense questions that museums are forced to confront, and they have done so through a wide range of museum policies. Some museums have chosen to return nearly their entire human remains collections, while others have elected to retain their current collections or even to continue acquiring human remains.¹²³ Additionally, some museums have adopted policies that make it exceedingly difficult for claimants to request their ancestors' remains—either through highly restrictive repatriation policies or by stipulating a multitude of eligibility criteria and evidentiary hurdles that make returns nearly impossible.¹²⁴ In this way, human remains repatriation is an important area of developing museum governance that is only becoming more pressing.

This Part explores four case studies across the United States and United Kingdom¹²⁵: the American Museum of Natural History (AMNH), the Denver Museum of Nature and Science (DMNS), the British Museum, and the Manchester Museum. Each of these museums has been especially prominent in the human remains stewardship discussion, whether by facilitating public discourse, leading repatriation efforts, or being resolute against repatriation requests.¹²⁶ Additionally, the selection of these specific case studies allows for comparisons across multiple dimensions of museums: United States versus United Kingdom, national versus regional, and public versus private. Specifically: The AMNH is a national U.S. private museum that has made recent repatriation progress despite its historical resistance;¹²⁷ the DMNS is a regional U.S. private museum that has led repatriation efforts and innovations;¹²⁸ the British Museum is a national UK public museum

¹²¹ See Small, *supra* note 4 (discussing increased scrutiny of natural history museums).

¹²² See Meier, *supra* note 43.

¹²³ See discussion *infra* Section II.A–B.

¹²⁴ See discussion *infra* Section II.B.1.

¹²⁵ See *supra* Section I.A for discussion on how United States and United Kingdom museums are particularly relevant to the discussion of human remains stewardship, as the countries' deep-rooted histories of colonialism and archeological exploitation have led to large museum collections of human remains.

¹²⁶ See discussion *infra* Section II.A–B.

¹²⁷ See discussion *infra* Section II.A.1.

¹²⁸ See discussion *infra* Section II.A.2.

that continues to be one of the most resistant to repatriation;¹²⁹ and the Manchester Museum is a regional UK public museum that facilitated human remains stewardship discussions twenty years ago, but has since taken a step back.¹³⁰ While these case studies do not represent a comprehensive study across all museums, they illustrate the wide range of museum policies on human remains stewardship, highlighting interesting dynamics driven by each museum's location, size, and policy area of focus.

A. United States

1. American Museum of Natural History (AMNH)

The American Museum of Natural History is one of the largest museums in the world, with over 30 million specimens and artifacts in its collection.¹³¹ Within this collection, the AMNH holds approximately 12,000 human remains, including more than 3,500 Native American remains, as well as those of historically enslaved or impoverished individuals.¹³² Given the size of its human remains collection and its reputation as one of the world's leading natural history museums, the AMNH often faces scrutiny and criticism for its history and policies for human remains stewardship.¹³³ As such, the AMNH is a critical case study for discussions of human remains stewardship in the United States, as well as on a global scale.

The AMNH does not have a standalone human remains policy on its website. Rather, the museum has a brief section on *NAGPRA and Human Remains Stewardship*, which includes three letters from the museum's president providing updates on the museum's efforts in 2023 and 2024.¹³⁴ In its October 2023 letter, the AMNH announced a new approach to human remains stewardship¹³⁵ along with updated repatriation procedures.¹³⁶ This new approach is included as part of the museum's larger Collections Policy, with the human remains approach

¹²⁹ See discussion *infra* Section II.B.1.

¹³⁰ See discussion *infra* Section II.B.2.

¹³¹ *Shelf Life 01: 33 Million Things*, AM. MUSEUM OF NAT. HIST., <https://www.amnh.org/explore/videos/shelf-life/33-million-things-museum-collection> [<https://perma.cc/PBL2-EX2P>].

¹³² Small, *supra* note 4; *The Repatriation Database: American Museum of Natural History*, PROPUBLICA (Jan. 6, 2025), <https://projects.propublica.org/repatriation-nagpra-database/institution/american-museum-natural-history> [<https://perma.cc/24KJ-G3Q2>].

¹³³ Small, *supra* note 4; *The Repatriation Database: American Museum of Natural History*, *supra* note 132.

¹³⁴ *About the Museum*, AM. MUSEUM OF NAT. HIST., <https://www.amnh.org/about> [<https://perma.cc/X7R6-3FFU>].

¹³⁵ This new approach includes providing new storage to house the human remains collection and removing exhibition elements. Decatur, *supra* note 23.

¹³⁶ *Id.*

discussed in four pages of the larger sixty-two page document.¹³⁷ The AMNH human remains policy touches on a wide range of topics within those few pages, including general provisions, acquisitions, research loans, access for scientific research, conservation, display, deaccessioning, and repatriation procedures.¹³⁸

When it comes to acquisitions and deaccessioning, the AMNH's policy takes a measured approach. Notably, the museum specifies that it only acquires human remains "in exceptional circumstances[,] . . . only with the express written consent of the Indigenous peoples to whom the remains are ancestral," and only with "specific approval of the President and Provost."¹³⁹ The museum also outlines the three ways that human remains may be deaccessioned: (1) pursuant to NAGPRA; (2) "under circumstances that render the claim of AMNH to right of possession invalid"; and (3) "in response to approved claims for repatriation."¹⁴⁰ When it comes to repatriation, the AMNH states that it "must give priority to compliance with its legal obligations under NAGPRA . . . [but] will next give full consideration to other repatriation requests on a case-by-case basis."¹⁴¹ Non-NAGPRA human remains repatriation requests will only be considered upon demonstration that "the remains are of Ancestors of the requesting group or . . . that the requesting group is otherwise an appropriate group to request and receive the human remains."¹⁴² However, even if the request meets this threshold for consideration, there is no guarantee or requirement for the museum to grant the repatriation if it is not covered under NAGPRA.¹⁴³

In this way, the AMNH's human remains policy is highly NAGPRA-focused. Mentions of NAGPRA and the museum's legal obligations under NAGPRA are interwoven throughout the museum's four-page discussion of human remains.¹⁴⁴ Indeed, most of the recent updates to the museum's human remains policy have been spurred by the 2024 NAGPRA update, with the museum reviewing its approach to Native American remains and artifacts specifically.¹⁴⁵ In January 2024, the

¹³⁷ AM. MUSEUM OF NAT. HIST., COLLECTIONS POLICY AND PROCEDURES 21–24 (2023), <https://www.amnh.org/content/download/417834/6039663/file/collections-policy-and-procedures.pdf> [<https://perma.cc/R2M2-FHN9>].

¹³⁸ *Id.*

¹³⁹ *Id.* at 22.

¹⁴⁰ *Id.* at 23.

¹⁴¹ *Id.* at 3.

¹⁴² *Id.* at 4.

¹⁴³ *See id.* at 3.

¹⁴⁴ *Id.* at 21–24.

¹⁴⁵ *See* Decatur, *supra* note 23 (letter from the AMNH President acknowledging the "pseudo-scientific, racist, and xenophobic theor[ies]" that undergird the Museum's existing human remains collection).

AMNH announced that they would be closing two exhibition halls, covering a number of display cases, and halting school field trips while they reviewed their collections.¹⁴⁶ In July 2024, the AMNH reported that the institution had “held more than 400 consultations, with approximately 50 different stakeholders, including hosting seven visits of Indigenous delegations, and eight completed repatriations,” returning 124 human remains.¹⁴⁷ These actions are positive early responses to the 2024 NAGPRA update.

However, this heightened consideration and action does not extend to the rest of the AMNH’s human remains collection, many of which also stem from a history of colonization and exploitation. The AMNH’s collection of 12,000 human remains includes remains dug up from a Manhattan cemetery for enslaved people in 1903, as well as a medical collection of around 400 poor New Yorkers’ remains given to the museum in a legally suspect process.¹⁴⁸ These remains could be eligible for return through the second or third prongs of the AMNH’s human remains policy, which allow for non-NAGPRA returns.¹⁴⁹ However, while the AMNH has been focused on its legal obligations under NAGPRA, little has been done in terms of returning or reburial of the other human remains in the collection.¹⁵⁰ Indeed, the AMNH president has stated that, given the scope of this work to review human remains stewardship broadly, it “will not be completed in a matter of months or even a few years.”¹⁵¹ Thus, while the AMNH has been trying to improve its human remains policy, that attention has been largely concentrated on its obligations under NAGPRA.

2. *Denver Museum of Nature & Science (DMNS)*

The Denver Museum of Nature & Science is a regional museum in the United States with a mission focused on serving its local community.¹⁵²

¹⁴⁶ Sean Decatur, *Statement on New NAGPRA Regulations*, AM. MUSEUM OF NAT. HIST. (Jan. 26, 2024), <https://www.amnh.org/about/statement-new-nagpra-regulations> [https://perma.cc/HNH7-MSPF].

¹⁴⁷ Sean Decatur, *July 2024 Update from the President*, AM. MUSEUM OF NAT. HIST. (July 25, 2024), <https://www.amnh.org/about/july-2024-update-president> [https://perma.cc/239T-7VEB]; Zachary Small, *Museum of Natural History Says It Is Repatriating 124 Human Remains*, N.Y. TIMES (July 26, 2024), <https://www.nytimes.com/2024/07/26/arts/design/american-museum-natural-history-native-american.html> [https://perma.cc/SD6T-WM5T] [hereinafter Small, *Museum of Natural History*].

¹⁴⁸ Small, *supra* note 4.

¹⁴⁹ See AM. MUSEUM OF NAT. HIST., *supra* note 137, at 3.

¹⁵⁰ See, e.g., Small, *supra* note 4 (explaining that the Museum has claimed to pursue change while still retaining large amounts of the collection).

¹⁵¹ Small, *Museum of Natural History*, *supra* note 147.

¹⁵² See DENVER MUSEUM OF NAT. & SCI., COLLECTIONS MANAGEMENT POLICY 3 (2023), <https://www.dmns.org/media/ftrh5ojs/manual-of-collections-policy-2023.pdf> [https://perma.cc/

According to the Repatriation Database, the DMNS has made 100% of its Native American human remains collection available for return.¹⁵³ Through these efforts, the DMNS has made 153 Native American remains available for return to 199 tribes.¹⁵⁴ The DMNS offers a case study of one of the most proactive institutions in the repatriation of human remains.

The DMNS's human remains policy is grounded in ethical repatriation.¹⁵⁵ In a recent interview, Chip Colwell—the former DMNS Senior Curator of Anthropology who led repatriation efforts—explained the museum's commitment to “repair[ing] past wrongs by doing things right today,” and “getting [the museum] not only in line with the law, but also to embrace the spirit of it.”¹⁵⁶ After Colwell joined the museum in 2007, the museum was able to get in compliance with NAGPRA within a year, but that was just the beginning for the DMNS's repatriation efforts.¹⁵⁷ In his book *Plundered Skulls and Stolen Spirits*, Colwell discusses the museum's approach to voluntary repatriation.¹⁵⁸ In one notable example, Colwell describes the museum's decision to go beyond what was required by NAGPRA in repatriating a Calusa skull to the Miccosukee tribe of Florida in 2011, despite the tribe being unable to meet the cultural affiliation evidentiary burden.¹⁵⁹ This ethical repatriation mindset continued to drive the museum's actions over the next decade, with the museum repatriating nearly its entire human remains collection during that time.¹⁶⁰

N8QL-AK39] (“The DMNS mission: Be a catalyst! Ignite our community's passion for nature and science.”).

¹⁵³ *The Repatriation Database: Denver Museum of Nature and Science*, PROPUBLICA (Jan. 6, 2025), <https://projects.propublica.org/repatriation-nagpra-database/institution/denver-museum-nature-and-science> [<https://perma.cc/S54H-NPWQ>].

¹⁵⁴ The number of tribes exceeds the number of human remains because multiple tribes may have claim to a single set of remains. *Id.*

¹⁵⁵ *Repatriation at the Denver Museum of Nature & Science*, DENVER MUSEUM OF NAT. & SCI., <https://www.dmns.org/science/repatriation-at-dmns> [<https://perma.cc/6DLE-UU4X>] (“The Denver Museum of Nature & Science is committed to the principles of respect, reciprocity, justice, and dialogue to address any and all claims for repatriation[.]”).

¹⁵⁶ *Former Museum Curator Explains How He Returned Items to Native American Tribes*, CREATED EQUAL, at 22:25–23:00 (Aug. 19, 2024), <https://wdet.org/shows/created-equal> [<https://perma.cc/M9XU-5G3M>].

¹⁵⁷ See *id.* (“[W]e worked really hard, and within about a year, we were able to get the museum back in compliance with the law . . . now that we're doing the bare minimum . . . [w]hat can we do to actually take the responsibility of history on our shoulders?”).

¹⁵⁸ COLWELL, *supra* note 28, at 254–58.

¹⁵⁹ *Id.* at 247–51; see also Emily Moore, *Plundered Skulls and Stolen Spirits: Inside the Fight to Reclaim Native America's Culture*, 4 PANORAMA: J. ASS'N HISTORIANS AM. ART, no. 1, Spring 2018, <https://journalpanorama.org/article/plundered-skulls-and-stolen-spirits> [<https://perma.cc/QRF9-AM3B>] (reviewing COLWELL, *supra* note 28).

¹⁶⁰ See *supra* note 153 and accompanying text.

Further, although the DMNS has been a leader in repatriation, the museum does not have a detailed or extensive human remains policy publicly available. The museum has a page on its website that lays out the ethical repatriation ethos that Colwell described,¹⁶¹ as well as a single line dedicated to human remains in its Collections Policy: “No human remains will be acquired or kept in the collection other than those acquired from reputable scientific supply companies or acquired with the informed consent of the individual allowing them to be used for educational purposes.”¹⁶² Rather than relying on a policy mirroring the language of human remains regulations, the DMNS has led the way with an approach grounded in ethical repatriation and focused on actual repatriation outcomes, whether required or voluntary.

B. United Kingdom

1. British Museum

The British Museum was founded in 1753 as the world’s first national public museum.¹⁶³ With a permanent collection of over eight million objects from every continent, the British Museum’s history of acquisition and current collection are deeply tied to the UK’s colonial history.¹⁶⁴ In recent decades, the British Museum has increasingly been under scrutiny for repatriation issues, with the museum notoriously taking a strong stance of ownership in the face of repatriation disputes like the Parthenon Marbles, Benin Bronzes, and Rosetta Stone.¹⁶⁵ This repatriation-resistant stance has also carried over to the museum’s human remains policies. The British Museum has over 6,000 human remains in its care.¹⁶⁶ Additionally, this practice of holding human remains is actually expanding, with a significant portion of these remains entering the collection during the last century through recent excavations or gifts and purchases.¹⁶⁷ As such, the British Museum presents a critical case study in the discussion of human remains stewardship.

¹⁶¹ See *Repatriation at the Denver Museum of Nature & Science*, *supra* note 155.

¹⁶² COLLECTIONS MANAGEMENT POLICY, *supra* note 152.

¹⁶³ *The British Museum Story*, BRIT. MUSEUM, <https://www.britishmuseum.org/about-us> [<https://perma.cc/QFD2-QR7P>].

¹⁶⁴ *British Museum*, Gov.UK, <https://www.gov.uk/government/organisations/british-museum> [<https://perma.cc/43SB-Y2AC>].

¹⁶⁵ See Sinn, *supra* note 6, at 605–08 (discussing the UK government’s and the British Museum’s approach to repatriation).

¹⁶⁶ *Human Remains*, *supra* note 47.

¹⁶⁷ See JD Hill, *Preface to REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM* v—vi (Alexandra Fletcher, Daniel Antoine & JD Hill eds., 2014) (discussing recent excavations, gifts, and purchases).

Despite—or perhaps because of—the museum’s repatriation-resistant stance, the British Museum has one of the most detailed human remains approaches that is publicly available. Not only does the museum have a dedicated human remains policy, but that policy is published on the museum’s website in a twelve-page document that details the policy’s purpose, definitions, legal powers, principles, and review cycle.¹⁶⁸ The policy is regularly reviewed every five years, with the most recent version published in March 2025.¹⁶⁹ In addition, the museum has a dedicated webpage on human remains stewardship, including a general summary, research information, governance information, and links to additional resources.¹⁷⁰ The British Museum also publishes all transfer requests and outcomes on its website.¹⁷¹ In sum, this is more publicly available information than any of the other museums discussed in this Note.

However, just because the British Museum has a comprehensive human remains stewardship approach does not mean that the policy facilitates the return of human remains. The British Museum’s human remains policy was developed according to the HTA 2004 and following the recommendations of the DCMS 2005 guidance.¹⁷² This policy lays out the museum’s principles for the “holding, display, care for and study of human remains in the Museum Collection,” as well as its obligations “under section 47 of the Human Tissue Act.”¹⁷³ As such, the policy is largely limited to the scope and minimum threshold of legal repatriation outlined in the HTA.

The HTA’s scope covers a very narrow period of time. Under the HTA, the British Museum is only required to return remains of individuals who (1) died within 100 years preceding the HTA’s passage (i.e., on or after November 15, 1904) and (2) did not consent.¹⁷⁴ Beyond this limited mandate, any returns are permitted but not required.

¹⁶⁸ See *British Museum Policy: Human Remains in the Collection*, BRIT. MUSEUM, (Mar. 20, 2025), <https://www.britishmuseum.org/sites/default/files/2025-03/Human-remains-policy.pdf> [<https://perma.cc/U5MA-TN9W>].

¹⁶⁹ *Id.*

¹⁷⁰ See *Human Remains*, *supra* note 47.

¹⁷¹ See Daniel Antoine, *Chapter 1: Curating Human Remains in Museum Collections: Broader Considerations and a British Museum Perspective*, in REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM, *supra* note 167, at 3, 6.

¹⁷² *Human Remains: Policy and Governance*, BRIT. MUSEUM, <https://www.britishmuseum.org/our-work/departments/human-remains#policy-and-governance> [<https://perma.cc/7XE2-3777>]; Human Tissue Act 2004, c. 30 (UK); DEP’T FOR CULTURE, MEDIA AND SPORT, *supra* note 112.

¹⁷³ *British Museum Policy: Human Remains in the Collection*, *supra* note 168, at 1.

¹⁷⁴ See Human Tissue Act 2004, c. 30 §§ 1(1), 1(4), 1(5)(b), 1(6)(c) (UK) (forming the requirements of consent applicable throughout the statute and clarifying that those requirements do not apply to individuals who died more than 100 years before the statute’s passage); see also Sinn, *supra* note 6, at 626 n.198 (“[T]he HTA only applies to deaths that

Under Section 47 of the HTA, the British Museum is allowed to return remains between 100 and 1,000 years old if the Board of Trustees votes to do so.¹⁷⁵ Any remains predating that 1,000 year threshold, like the British Museum's Egyptian mummies and other ancient remains, are not covered under the HTA, which means their return is still restricted by the British Museum Act of 1963, which prevents the museum from deaccessioning its collection except in very limited instances.¹⁷⁶ As a result, the British Museum is not able to return much of its human remains collection, even if it wanted to.

Further, even within that limited scope, the British Museum's policy sets out a restrictive list of criteria and a test that disinclines the return of disputed remains. The museum will typically only consider requests from governments or community representatives that can meet certain evidentiary hurdles, including "demonstrat[ing] *cultural continuity* with the remains," and "that the remains have *cultural importance* for them."¹⁷⁷ Each of these terms have restrictive definitions and additional evidentiary burdens. If the requestor can meet these criteria, then the museum's Trustees will apply the Public Benefit Test, which asks "whether . . . the weight of the applicant's claim outweighs the public benefit to the world community of retaining the human remains in the Collection."¹⁷⁸ Framed as a balancing test of the interests of a single party against that of the entire "world community," the test naturally skews towards the museum retaining the disputed remains. The museum further drives this point home by explicitly stating that "the balance will normally lie . . . more strongly in favour of . . . retention . . . for human remains over 300 years old" and "*very strongly* in favour . . . for human remains over 500 years old."¹⁷⁹ In this way, the museum's policy is highly restrictive, merely fulfilling the minimum requirements under the HTA and setting many obstacles for parties requesting human remains repatriation or reburial.

While the British Museum acknowledges its newfound ability to deaccession human remains in its collection after the 2004 passage of the HTA,¹⁸⁰ returning implicated human remains does not appear to be the museum's goal. Rather, the museum's human remains policy emphasizes the public benefit of having human remains in its collection

occurred on or after November 15, 1904, and mandates the return of remains where no consent was given.").

¹⁷⁵ Human Tissue Act 2004, c. 30 § 3(47) (UK); Sinn, *supra* note 6, at 626.

¹⁷⁶ See generally British Museum Act 1963, c. 24 (UK); Human Tissue Act 2004, c. 30 (UK). For academic discussion of the statutory framework, see Sinn, *supra* note 6, at 626.

¹⁷⁷ *British Museum Policy: Human Remains in the Collection*, *supra* note 168, at 8.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* (emphasis added).

¹⁸⁰ *Id.* at 6.

and explicitly notes that “the primary legal duty of the Trustees is to safeguard the Museum’s collection for the benefit of present and future generations.”¹⁸¹ Similarly, in 2014, the museum published a collection of essays about the benefits of its human remains collection, titled *Regarding the Dead: Human Remains in the British Museum*.¹⁸² Instead of grappling with the question of whether the museum should hold and display human remains, the essays instead focus on the research benefits of its human remains collection.¹⁸³ As such, while the British Museum makes available a comprehensive policy and discussion of human remains stewardship, that documentation ossifies the retention—rather than the return—of the human remains in its collection.

2. Manchester Museum

The Manchester Museum is a regional museum and the UK’s largest university museum, with a collection of 4.5 million objects covering archeology, natural history, and human culture.¹⁸⁴ As of 2010, the museum had over 1,700 human remains in its collection, with 370 human remains of British or European origin with unknown provenance or minimal associated information.¹⁸⁵ The Manchester Museum is a valuable case study of a regional museum with a powerful impact on the human remains stewardship landscape in the UK.

From 2006 to 2009, the Manchester Museum was one of the institutions driving the discussion around the ethics of museums preserving and displaying human remains.¹⁸⁶ The museum held multiple

¹⁸¹ *Id.* at 3.

¹⁸² See Hill, *supra* note 167, at v–vi.

¹⁸³ Antoine, *supra* note 171, at 1–2; Daniel Antoine & Janet Ambers, *Chapter 3: The Scientific Analysis of Human Remains from the British Museum Collection, Research Potential and Examples from the Nile Valley*, in REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM, *supra* note 167, at 20, 20–30; Clark S. Larsen, *Part 3: Researching the British Museum Collection, Introduction*, in REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM, *supra* note 167, at 75, 75–76.

¹⁸⁴ See *About Us*, MANCHESTER MUSEUM, <https://www.museum.manchester.ac.uk/about> [<https://perma.cc/872N-QN85>] (describing the Museum’s academic history); *Collections*, MANCHESTER MUSEUM, <https://museumcollections.manchester.ac.uk> [<https://perma.cc/7ZL9-KJ6X>] (Manchester Museum’s collections database, available for the public to survey the Museum’s 4.5 million objects); *Policy for the Care and Use of Human Remains*, *supra* note 113.

¹⁸⁵ See *Manchester Human Remains Public Consultation*, HONOURING THE ANCIENT DEAD, <https://www.honour.org.uk/manchester-human-remains-public-consultation> [<https://perma.cc/D4LY-5P3V>].

¹⁸⁶ See Karen Exell, *Covering the Mummies at the Manchester Museum: A Discussion of Authority, Authorship, and Agendas in the Human Remains Debate*, in *ARCHAEOLOGISTS AND THE DEAD: MORTUARY ARCHAEOLOGY IN CONTEMPORARY SOCIETY* 233 (Howard Williams & Melanie Giles eds., 2016) (referring to the Museum as a leader in “the debate surrounding the ethics of preserving and displaying the dead in museums”).

public consultations on the issue of human remains stewardship.¹⁸⁷ In 2007, the museum presented an exhibit of the Lindow Man—the remains of an Iron Age individual found preserved in a bog—which sparked a public debate about whether museums should display human remains at all.¹⁸⁸ In 2008, the museum published a human remains policy, which stated that it would “[o]nly accession human remains in exceptional circumstances and be proactive in disposing of existing holdings.”¹⁸⁹ Piotr Bienkowski, the deputy director of Manchester Museum at the time, argued that the prevailing DCMS 2005 guidance did not go far enough in representing community interests.¹⁹⁰ In announcing the new policy, Bienkowski stated that the museum had “deliberately gone beyond the [DCMS 2005] guidance,” especially in involving relevant communities in the decision-making process rather than forcing them to jump through evidentiary hurdles.¹⁹¹ In doing so, the Manchester Museum was a groundbreaking voice in the debate over whether museums should hold human remains in their collections, as well as in advancing ethical practices for deaccessioning human remains.

However, the Manchester Museum’s 2008 policy innovations stirred criticism from the scientific community and English Heritage,¹⁹² and the museum has since dialed back to much more measured policies. The museum published its most recent policy on October 19, 2017, titled *Policy for the Care and Use of Human Remains*.¹⁹³ In this policy, the museum states that it abides by the HTA, endorses the DCMS 2005 guidelines, and follows the advice from the Museum Association’s *Code*

¹⁸⁷ *Manchester Human Remains Public Consultation*, *supra* note 185 (documenting the procedure for one public consultation, circa 2010).

¹⁸⁸ See, e.g., Bryan Sitch, *Consultation or Confrontation: Lindow Man, A Bog Body Mystery*, in *THE NEW MUSEUM COMMUNITY: AUDIENCES, CHALLENGES, BENEFITS* 366 (2010) (Manchester Museum’s Head of Human Cultures recounting his experiences with the Lindow Man); Rose Drew, Piotr Bienkowski, Malcolm J. Chapman & Samuel J. Alberti, *Should We Display the Dead?*, 7 *MUSEUM & Soc’y* 133 (2009) (an example of the kind of academic debate that followed the display of the Lindow Man).

¹⁸⁹ Sharon Heal, *Human Remains Policy Is Criticized*, *MUSEUMS ASS’N* (Nov. 13, 2009), <https://www.museumsassociation.org/museums-journal/news/2009/11/15456-2> [<https://perma.cc/B2H4-JYVQ>] (quoting the 2008 Manchester Museum’s human remains policy).

¹⁹⁰ Piotr Bienkowski, *Care Assistance*, *MUSEUMS ASS’N* (Nov. 13, 2009), <https://www.museumsassociation.org/museums-journal/opinion/2009/11/14522-2> [<https://perma.cc/52DT-GU6S>].

¹⁹¹ Heal, *supra* note 189.

¹⁹² *Id.* (“‘Human remains make up an important part of the archaeological archive,’ said [English Heritage’s chief scientist].”). English Heritage is an influential UK-based charity focused on preserving the historic sites and cultural property of England. *About Us*, *ENG. HERITAGE*, <https://www.english-heritage.org.uk> [<https://perma.cc/7J6B-6DZT>].

¹⁹³ *Policy for the Care and Use of Human Remains*, *supra* note 113, at 1.

of *Ethics*.¹⁹⁴ However, as noted in the title, this policy focuses on the care and use of human remains, rather than on the acquisition or deaccession of human remains in its collection. The policy emphasizes the “value of human remains in museums for learning about past people.”¹⁹⁵ The brief provisions on acquiring and deaccessioning human remains promise only to “consult[] with appropriate communities” and consider decisions on a case-by-case basis.¹⁹⁶ Compared to the 2008 version, the current policy no longer promises to “[o]nly accession human remains in exceptional circumstances.”¹⁹⁷ In addition, the current policy now only purports to “be proactive in *discussing* the *possible* repatriation of relevant human remains”¹⁹⁸ rather than the previous 2008 promise to be proactive in actually “disposing of existing holdings.”¹⁹⁹ In this way, the Manchester Museum has brought its human remains policy back closer in line with the minimum threshold of DCMS guidance, rather than pushing for proactive returns.

III

TAKEAWAYS FROM CASE STUDIES

These case studies highlight interesting dynamics that impact and shape museum policies towards human remains stewardship. They are by no means a comprehensive or predictive study; however, they do generate valuable learnings on how museum policies differ based on the history and characteristics of the museum. These discrepancies in museum behavior are helpful in isolating driving factors and in determining effective interventions, whether regulatory or otherwise.²⁰⁰ While there are a multitude of factors that affect museum behavior, this Part will discuss the factors that are particularly emphasized by these case studies: location, scale, and policy focus.

A. Location Considerations

Of the four case studies, two of the museums—AMNH and DMNS—are located in the United States, while the other two—British

¹⁹⁴ *Id.* at 4; *Code of Ethics for Museums*, MUSEUMS ASS’N, <https://archive-media.museumassociation.org/20012016-code-of-ethics-single-page.pdf> [<https://perma.cc/A8K2-RUF6>].

¹⁹⁵ *Policy for the Care and Use of Human Remains*, *supra* note 113, at 2.

¹⁹⁶ *Id.* at 4; see also *Collections Development Policy*, UNIV. OF MANCHESTER: THE MANCHESTER MUSEUM (Jan. 8, 2015), <https://documents.manchester.ac.uk/display.aspx?DocID=24714> [<https://perma.cc/MFN7-CL2T>].

¹⁹⁷ Heal, *supra* note 189.

¹⁹⁸ *Policy for the Care and Use of Human Remains*, *supra* note 113 (emphasis added).

¹⁹⁹ Heal, *supra* note 189.

²⁰⁰ See discussion *infra* Part IV.

Museum and Manchester Museum—are located in the United Kingdom. American and British museums are particularly relevant for discussions of human remains stewardship, as both countries have a deep-rooted history of colonialism that has shaped their museums' human remains collections.²⁰¹ However, while these countries were both historically colonial powers, the current landscape for human remains stewardship in the United States and United Kingdom look very different.²⁰² As exemplified by these case studies, museum policies in each country are shaped by the country's unique cultural history, national regulations, and public opinions.

Although American and British museums alike must grapple with legacies of colonialism and historical exploitation, each country has a unique historical context that has shaped its museums' policies. While UK museums largely grapple with issues of repatriation to other countries, U.S. museums often face issues of colonialism within the country, such as with the remains of Native Americans and historically enslaved individuals.²⁰³ In fact, the British Museum explicitly highlights this distinction. In the museum's book on its human remains practices, the British Museum notes that, unlike in other countries where museums "collected human remains of indigenous minorities from largely within their own country, a distinctive feature of the British Museum collection is the range of countries, cultures and time periods from which human remains derive."²⁰⁴ Piotr Bienkowski of the Manchester Museum also noted that British human remains regulations and guidelines were "written primarily in response to claims from overseas originating communities," covering "foreign repatriation, not claims by British communities."²⁰⁵ This dynamic not only potentially subjects more of the British museums' collections to international regulation, but also increases the likelihood of global scrutiny.²⁰⁶ On the other hand, U.S. museums are often faced with stronger scrutiny closer to home, as many of the museums still sit on the very land of the parties that they historically wronged.²⁰⁷ As such, museums tailor their policies to address the unique historical context and needs within their country.

²⁰¹ See generally Sinn, *supra* note 6, at 618–27.

²⁰² *Id.*

²⁰³ See discussion *supra* Sections II.A.1, II.B.1.

²⁰⁴ Gaye Schulthorpe, *Part 2: Caring for, Conserving and Storing Human Remains, Introduction, in REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM*, *supra* note 167, at 31.

²⁰⁵ Bienkowski, *supra* note 190.

²⁰⁶ See Knowles, *supra* note 77, at 185–86 (international regulation); Hannah R. Godwin, *Legal Complications of Repatriation at the British Museum*, 30 WASH. INT'L L.J. 144, 144–47 (2020) (global scrutiny).

²⁰⁷ See discussion *supra* Sections I.A, II.A.2.

Additionally, each of these museum policies are highly shaped by the strength and scope of its country's legal regulations. Scholars have noted that human remains regulations in the United Kingdom are weaker than those in the United States due to limited coverage and lack of repatriation requirements.²⁰⁸ Unlike NAGPRA's requirements in the United States, the United Kingdom's HTA is limited in coverage based on the age of the remains: Anything beyond 1,000 years old is not covered under the HTA.²⁰⁹ Further, the HTA does not mandate the return of implicated human remains older than 100 years old, but rather leaves the decision in the hands of the museums.²¹⁰ This has allowed the British Museum to maintain its repatriation-resistant stance and the Manchester Museum to dial back its repatriation approach to the minimum threshold requirements under the HTA and the DCMS 2005 guidance.²¹¹ As a result, the British Museum and the Manchester Museum have been able to reject repatriation requests, even if the claimants are able to demonstrate their ancestral ties to the requested remains.²¹² British museums are empowered with much more discretion due to the narrower scope and weaker requirements of UK regulations.

Further, museum policies are shaped by the public opinion of its country. In its 2014 book, the British Museum cited English Heritage's polls showing that 91% of survey participants "supported museums that wished to display and retain human bones for research purposes."²¹³ Additionally the scientific community and English Heritage pushed back when the Manchester Museum shifted towards human remains repatriation in its 2008 policy.²¹⁴ In the decade following, the Manchester Museum stepped back from this repatriation focus, largely dialing back its policies to the minimum legal requirements under the HTA and DCMS.²¹⁵ However, in recent years, British public opinion has been shifting towards repatriation, with scholars noting that the "British public [now] largely abhors their government's strong stance of ownership over previously colonized countries' cultural property."²¹⁶ Further, a 2019 poll showed that about 85% of British respondents believe museums are "not responding well to the growing pressure

²⁰⁸ Sinn, *supra* note 6, at 603, 631–32.

²⁰⁹ See discussion *supra* Section I.C.2.

²¹⁰ See discussion *supra* Section I.C.2.

²¹¹ See discussion *supra* Section II.B.

²¹² See discussion *supra* Section II.B.

²¹³ Antoine, *supra* note 171, at 6.

²¹⁴ See discussion *supra* Section II.B.2.

²¹⁵ See discussion *supra* Section II.B.2.

²¹⁶ Sinn, *supra* note 6, at 603.

to repatriate.”²¹⁷ Indeed, Esme Ward—the director of the Manchester Museum—emphasized the importance of museums’ “willingness to embrace the tide of change and open up a new chapter in [their] history of reconciliation.”²¹⁸ The United States has seen a similar public attitude shift towards repatriation, with increasing attention on museum actions and the recent NAGPRA revisions.²¹⁹ In this way, museum policies are highly influenced by the public opinion in its country, along with the country’s unique cultural history and legal landscape.

B. Dynamics of Scale

While larger museums—like the AMNH and the British Museum—often gain more attention on a national and international basis, smaller regional museums can often be incubators and thought leaders for change. The DMNS is a prime example of this potential, with the smaller museum successfully repatriating 100% of the Native American remains in its collection, compared to the AMNH’s 50%.²²⁰ Additionally, through its mission of serving the local community, the DMNS has developed a meaningful culture of proactive collaboration with local tribes and communities.²²¹ These actions have established the DMNS’s reputation as one of the most proactive U.S. museums in the repatriation space.²²²

²¹⁷ See *id.* at 615.

²¹⁸ See Esme Ward, *The Tide of Change: Open Letter from Esme Ward*, MUSEUM-ID (Nov. 26, 2019) (emphasis omitted), <https://museum-id.com/the-tide-of-change-open-letter-from-esme-ward> [<https://perma.cc/7RJT-T83N>].

²¹⁹ See, e.g., Devorah Lauter, *Restitution, Repatriation Efforts See Halting Progress Across Europe and the US, Amid Shifts in Public Opinion*, ARTNEWS (Feb. 19, 2024, 10:00 AM), <https://www.artnews.com/art-news/news/restitution-repatriation-art-efforts-europe-united-states-progress-1234696438> [<https://perma.cc/T3YN-GAA5>] (“The impulse to err on the side of returning objects is visibly spreading, particularly at large institutions.”); Ro, *supra* note 28 (describing that museums are increasingly “reckoning with their responsibilities” for exhibiting or retaining human remains).

²²⁰ See *The Repatriation Database: Denver Museum of Nature and Science*, *supra* note 153; *The Repatriation Database: American Museum of Natural History*, *supra* note 132.

²²¹ While the AMNH also included consultation with tribes in its repatriation policies, the AMNH largely only did so reactively, when mandated under NAGPRA (if that). See *supra* notes 148–51 and accompanying text. Indeed, even when tribal nations like the Unkechaug Nation reached out to the AMNH, they often did not hear a response. See Kunze, *supra* note 3. In contrast, the DMNS incorporated respect for and deference to Indigenous cultures into their very ethos. See, e.g., *Repatriation at the Denver Museum of Nature & Science*, *supra* note 155 (“[T]he Museum is . . . committed to repatriations that fall beyond the law’s purview. Whether repatriation occurs nationally or internationally, the Museum will continue to defer to the legal and governing practices of the community of origin . . .”); Chip Colwell-Chanthaphonh, Rachel Maxson & Jami Powell, *The Repatriation of Culturally Unidentifiable Human Remains*, 26 MUSEUM MGMT. & CURATORSHIP 27, 29–30 (2011) (discussing proactive collaboration between DMNS and tribal representatives).

²²² See discussion *supra* Section II.A.2; Colwell-Chanthaphonh, Maxson & Powell, *supra* note 221, at 28 (describing DMNS’s efforts as “an ideal case study” in how museums can navigate the repatriation regulatory framework).

Similarly, the Manchester Museum—another regional museum—led early discussions of human remains ethics in the United Kingdom in the 2000s by inviting public consultation and publishing bold policies for repatriation.²²³ Indeed, the Manchester Museum continues to be a crucial part of the UK human remains repatriation discussion, through both its positive and negative actions.²²⁴ As such, the DMNS and the Manchester Museum show that smaller museums can often have more flexibility in shifting their policies quickly—especially under motivated leadership like that of Chip Colwell or Piotr Bienkowski—compared to the entrenched policies of larger museums like the AMNH or the British Museum which take years of review to shift.²²⁵ A regional museum’s relatively smaller size can actually bolster its repatriation efforts, as museums like the DMNS and the Manchester Museum can often work closer with local communities and have the flexibility to take more innovative approaches.²²⁶

The DMNS and the Manchester Museum also serve as exemplars of how far the resources of a regional museum can go. Many museums—even larger institutions with significant endowments—have argued that they are disadvantaged by a lack of resources, which makes cataloguing and repatriating their human remains collections impracticable.²²⁷ However, the Manchester Museum has been able to comprehensively catalog its human remains collection for publication on its website.²²⁸ Similarly, the DMNS was able to not only inventory its entire collection pursuant to NAGPRA, but also voluntarily repatriate nearly its entire human remains collection.²²⁹ In fact, Colwell stated that, following his 2007 arrival at the museum, they were able to get the museum in line with the law within just a year, which he called the “bare minimum.”²³⁰ While some museums may certainly be more resource constrained,

²²³ See discussion *supra* Section II.B.2.

²²⁴ See discussion *supra* Section II.B.2.

²²⁵ See discussion *supra* Part II.

²²⁶ See discussion *supra* Sections II.A.2, II.B.2; see also COLWELL, *supra* note 28, at 250–52 (discussing DMNS efforts to repatriate Calusa skull, bones, and artifacts in contrast to efforts of larger museums).

²²⁷ See *Why Won't Museums Return Native American Human Remains?*, SCI. FRIDAY (Feb. 24, 2023), <https://www.sciencefriday.com/segments/museums-wont-return-native-american-remains/#segment-transcript> [<https://perma.cc/4ZER-WU5F>].

²²⁸ See *Policy for the Care and Use of Human Remains*, *supra* note 113, at 3 (discussing “searchable collections management system”).

²²⁹ See discussion *supra* Section II.A.2; *Former Museum Curator Explains How He Returned Items to Native American Tribes*, CREATED EQUAL, at 21:30–23:00, 41:00–42:45 (Aug. 19, 2024), <https://wdet.org/shows/created-equal> [<https://perma.cc/M9XU-5G3M>] (stating that the museum was able to get in compliance with NAGPRA within a year).

²³⁰ *Former Museum Curator Explains How He Returned Items to Native American Tribes*, *supra* note 156, at 22:52.

the DMNS and Manchester Museum show how far the resources of a regional museum can go. These case studies serve as illustrative examples that it is indeed possible to catalog and repatriate museums' human remains collections with a regional museum's resources.

C. *Implications of Policy Focus*

Finally, the case studies emphasize how drastically museum policies can differ in terms of purpose. These distinctions in purpose can be drawn along multiple axes: (1) legal versus ethical repatriation; (2) transparency versus outcomes; and (3) care and use of human remains versus accession and deaccession processes.

First, these case studies highlight the distinction between legal and ethical repatriation. Museums often only do what is required of them under the law, which frequently does not extend as far as ethics would advise. This apathy is evident in the British Museum's policy of meeting the minimum threshold of repatriation under the HTA.²³¹ Similarly, the AMNH focuses its policy on its legal obligations under NAGPRA, continuing to hold many non-Native human remains that are nonetheless ethically suspect.²³² In contrast, the DMNS grounds its policy in ethical repatriation, voluntarily returning human remains in its collection even if not mandated by law.²³³ In this way, the British Museum and the DMNS emphasize how museums have taken drastically different approaches when it comes to the goals of their human remains policies.

Similarly, the British Museum and the DMNS illustrate the mirage of transparency—in other words, the fact that policies for transparency do not necessarily lead to tangible outcomes. Among the case studies, the British Museum is by far the most transparent museum, with a comprehensive and publicly available human remains policy, all repatriation requests published on its website, and a 148-page book expounding the benefits of its human remains practices.²³⁴ However, this wealth of information and documentation actually serves to ossify the museum's human remains collection, promoting the continuation of its current practices rather than fundamental introspection or innovation.²³⁵ In contrast, the DMNS does not have a dedicated human remains policy on its website, but instead focuses on the ethos of ethical

²³¹ See discussion *supra* Section II.B.1.

²³² See discussion *supra* Section II.A.1.

²³³ See discussion *supra* Section II.A.2.

²³⁴ See discussion *supra* Section II.B.1; see also REGARDING THE DEAD: HUMAN REMAINS IN THE BRITISH MUSEUM, *supra* note 167.

²³⁵ See discussion *supra* Section II.B.1.

repatriation.²³⁶ In doing so, the DMNS has been able to drive actual outcomes and repatriation, with its flexible approach allowing the museum to arrive at innovative resolutions for difficult repatriations.²³⁷ This unbounded approach may not work for all museums, but these case studies illustrate that transparency alone is insufficient to drive meaningful change towards repatriation.

Finally, some museums focus their policies on the care and use of human remains, while others focus on processes for accessioning and deaccessioning its human remains collections. For example, the current Manchester Museum policy is titled *Policy for the Care and Use of Human Remains*, and it focuses on practices for and benefits of retaining human remains in the museum's collection.²³⁸ In doing so, the museum policy does not seriously address the question of whether museums should hold human remains collections at all. Rather, it is a foregone conclusion that the museum will continue to hold human remains, as evidenced by the language of the Manchester Museum's Collections Policy: "As the museum holds or intends to acquire human remains from any period, it will follow the procedures in the 'Guidance for the care of human remains in museums' issued by DCMS in 2005."²³⁹ This is a sharp contrast from the DMNS's Collections Policy, which states that "[n]o human remains will be acquired or kept in the collection other than those acquired from reputable scientific supply companies or acquired with the informed consent of the individual allowing them to be used for educational purposes."²⁴⁰ That the DMNS's policy focuses on strict accession and deaccession guidelines evinces the museum's reluctance to hold human remains in its collection.²⁴¹ While the Manchester Museum asks how they can best care for the human remains in their collection, the DMNS asks if there are rationales sufficient to justify having human remains in their collection at all. This difference in mindset highly shapes repatriation outcomes, with the DMNS repatriating its entire collection of Native American remains under this framework.²⁴² These distinctions highlight the importance of museum policies and how museums must carefully draft the language, phrasing, and emphasis within them.

²³⁶ See discussion *supra* Section II.A.2.

²³⁷ See discussion *supra* Section II.A.2.

²³⁸ See *Policy for the Care and Use of Human Remains*, *supra* note 113.

²³⁹ *Collections Development Policy*, *supra* note 196, at 6.

²⁴⁰ DENVER MUSEUM OF NAT. & SCI., *supra* note 152, at 20.

²⁴¹ See discussion *supra* Section II.A.2.

²⁴² See discussion *supra* Section II.A.2.

IV NECESSARY INTERVENTIONS TO FACILITATE HUMAN REMAINS RETURNS

Finally, this Part applies these case study takeaways to identify interventions to facilitate human remains returns. Specifically, the case studies shed light on why some museums are much more able or willing to repatriate than others, highlighting the need for regulatory interventions to address these discrepancies and pain points.²⁴³ Additionally, the case studies and history of human remains regulation show that the shifting public opinion towards repatriation is not only critical to catalyzing these regulatory updates, but also to effectuating ethical repatriation in the long run.²⁴⁴ This Note does not aspire to draft specific regulations or solutions, but rather endeavors to highlight key considerations and areas for future exploration.

A. *Regulatory Updates*

The case studies illustrate the power of national regulations to shape museum policies and repatriation outcomes.²⁴⁵ However, these case studies also show that the current regulatory frameworks in the United States and the United Kingdom are insufficient to facilitate the ethical return of human remains, with the AMNH and the British Museum still holding collections of 12,000 and 6,000 remains, respectively.²⁴⁶ In order for repatriation regulation in these countries to be effective, the United States and United Kingdom must implement regulatory updates that focus on (1) concrete mandates, (2) attention to loopholes and enforcement, and (3) coverage of key gaps.

1. *Criticality of Concrete Mandates*

Effective repatriation regulation requires not just enablement, but concrete mandates for museums to follow. As the case studies have shown, current regulations in both the United States and United Kingdom leave museums with significant discretion in whether to return the remains in their collections.²⁴⁷ For example, the Human Tissue Act 2004 is a law of enablement: The Act enables, but does not require,

²⁴³ See discussion *infra* Section IV.A.

²⁴⁴ See discussion *infra* Section IV.B.

²⁴⁵ See *supra* notes 208–12 and accompanying text.

²⁴⁶ See Small, *Museum of Natural History*, *supra* note 147 (discussing AMNH); *Human Remains*, *supra* note 47 (discussing British Museum).

²⁴⁷ See discussion *supra* Section I.C.

museums to repatriate any remains between 100 and 1,000 years old.²⁴⁸ Scholars have critiqued this Act as a “weak law[],” pointing out that it paradoxically “leave[s] the decision of whether to repatriate to the museums benefiting from possessing the property.”²⁴⁹ As evidenced by the Manchester Museum case study, without concrete mandates or requirements to return, museums will often default to the legal minimum repatriation standards.²⁵⁰

As such, proposed regulations focused on enablement are unlikely to be sufficient in effectuating repatriation. For example, one museum professional and scholar published a briefing urging the UK to uphold its commitment to UNDRIP through updated policies and regulations.²⁵¹ The proposed updates would include: (1) “enabling [national museums] to repatriate cultural items on moral grounds”; (2) revising the DCMS 2005 guidance to reflect best practices; and (3) increasing funding for repatriation efforts.²⁵² This first prong of enablement may not be sufficient to effectuate change by merely empowering museums, as the British Museum and Manchester Museum case studies demonstrate that museums often default to the minimum legal requirements when decisions are left to their discretion without mandates.²⁵³ The second prong may be the most influential, as both the British Museum and Manchester Museum repeatedly emphasize how their policies are tailored to the DCMS 2005 guidelines.²⁵⁴ However, the best practices must include concrete and specific mandates for repatriation in order to be effective, rather than just a general statement that “repatriation is an important part of their work,” as proposed.²⁵⁵ The third prong is likely helpful, but the impact is limited when the lack of resources is often an excuse, rather than the primary obstacle to repatriation. This is exemplified by regional museums like the DMNS and Manchester Museum making great strides in repatriation, while much larger museums with extensive resources, such as the British Museum and the

²⁴⁸ See Human Tissue Act 2004, c. 30 §§ 1(1), 1(5)(b), 1(6)(c), 3(47) (UK); Sinn, *supra* note 6, at 626; *see also supra* notes 108–11 and accompanying text.

²⁴⁹ See, e.g., Sinn, *supra* note 6, at 603.

²⁵⁰ See discussion *supra* Section II.B.2.

²⁵¹ See AMY SHAKESPEARE, UNIV. OF EXETER, THE REPATRIATION OF ANCESTORS AND CULTURAL ITEMS FROM UK MUSEUMS AS A HUMAN RIGHTS ISSUE FOR INDIGENOUS NATIONS (2024), <https://routestoreturn.com/policy-briefing-for-the-uk-government> [<https://perma.cc/DN9G-AMVP>].

²⁵² See *id.* at 1.

²⁵³ See discussion *supra* Section II.B.

²⁵⁴ See *Human Remains: Policy and Governance*, *supra* note 172 (discussing British Museum policies); DEP'T FOR CULTURE, MEDIA AND SPORT *supra* note 112, at 14 (describing “framework” that “builds on the work of the DCMS 2003 report”).

²⁵⁵ SHAKESPEARE, *supra* note 251, at 1.

AMNH, have historically chosen not to prioritize repatriation efforts.²⁵⁶ In this way, the case studies illustrate that, even if regulatory changes for enablement were put into effect, there is no guarantee that museums will actually increase repatriation. While enablement is a good first step, especially for the highly restricted UK repatriation landscape, regulations like these would likely be insufficient in the long run.

As such, effective regulation requires concrete mandates, like some of those found in NAGPRA. For example, under NAGPRA's 2024 update, museums must now inventory their Native American remains collections with tribal consultation within five years of the 2024 update's final rule, as well as acknowledge repatriation requests within ninety days.²⁵⁷ As a result, museums like the AMNH, whose repatriation efforts have been stagnant for decades, are suddenly exhibiting a flurry of activity in shuttering exhibits and reviewing their collections.²⁵⁸ The AMNH announced its updated repatriation policy last October ahead of the anticipated NAGPRA revisions.²⁵⁹ Before then, tribal representatives from the Unkechaug Nation and the Shinnecock Nation Graves Protection Warrior Society had been waiting for responses to their requests for years and even decades.²⁶⁰ However, within twenty-four hours of the announcement, the AMNH finally responded to these long-standing requests.²⁶¹ It remains to be seen whether this revitalized activity results in actual repatriations in the long run, as other factors like enforcement and public pressure are at play. However, these case studies make evident that mere enablement is insufficient. Concrete mandates are a necessary, even if not unilaterally sufficient, aspect of effective regulation towards human remains repatriation.

2. *Importance of Addressing Loopholes and Enforcement*

Additionally, even with concrete mandates, repatriation regulation must also address potential loopholes and include enforcement in order to be successful. Some scholars argue that the United States' human remains repatriation law is relatively stronger than the United Kingdom's because NAGPRA provides a practical framework and

²⁵⁶ See discussion *supra* Section III.B.

²⁵⁷ See Native American Graves Protection and Repatriation Act Systematic Processes for Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 43 C.F.R. § 10.10(d), (g) (2023).

²⁵⁸ See *supra* notes 144–47 and accompanying text.

²⁵⁹ See Decatur, *supra* note 23.

²⁶⁰ See Kunze, *supra* note 3.

²⁶¹ *Id.* (discussing letter written on October 12 and response to Shinnecock Nation Graves Protection Warrior Society on October 13).

processes that limit temporal and discretionary loopholes.²⁶² These scholars have even proposed UK legislation modeled after NAGPRA, arguing that a similar practical framework would drive increased repatriation.²⁶³ While such a framework may indeed improve the UK regulatory landscape, there is still much work to be done to actually effectuate repatriation.

Even in the United States, NAGPRA has been riddled with critical loopholes and a fatal lack of enforcement. This dynamic is evident from the case studies, especially in how U.S. museums have circumvented their obligations under NAGPRA over the last three decades.²⁶⁴ For example, over the last three decades, museums like the AMNH had designated thousands of remains and objects as “culturally unidentifiable,” a label that became used as a loophole from repatriation and allowed museums to keep the remains in perpetuity.²⁶⁵ Further, despite widespread violations and a glacial pace of repatriation, less than \$60,000 of civil penalties were collected from twenty museums since NAGPRA’s inception.²⁶⁶ The 2024 NAGPRA update closed a number of key definitional and evidentiary loopholes, including eliminating the “culturally unidentifiable” category.²⁶⁷ However, even under the new update, museums still have potential temporal loopholes and avenues to delay repatriation.²⁶⁸ Further, it remains to be seen whether the Department of the Interior—which is in charge of administering this regulation—will step up enforcement and hold museums accountable

²⁶² See Sinn, *supra* note 6, at 603 (describing NAGPRA as a “practical repatriation framework”); *id.* at 626–27 (explaining that the British Museum takes advantage of “a multitude of criteria,” including temporal considerations, to “deny many repatriation requests”); *id.* at 631–32 (proposing NAGPRA as an alternative model).

²⁶³ See *id.* at 631–32.

²⁶⁴ See discussion *supra* Section II.A.1.

²⁶⁵ See Hudetz, *supra* note 91 (discussing “‘culturally unidentifiable [remains]’ . . . allowed . . . to be used for scientific research over tribes’ objections”); Rebecca Mountain, *The Future of the Past: Reclassification of ‘Culturally Unidentifiable’ Human Remains Under NAGPRA*, 28 ARIZ. ANTHROPOLOGIST 66, 69–70 (2017).

²⁶⁶ See Jaffe et al., *supra* note 82 (discussing the limited resources for enforcement and “miniscule fines” for violations); Angeleti, *supra* note 89 (explaining that less than \$60,000 in civil penalties has been collected from twenty museums since NAGPRA’s inception).

²⁶⁷ See Emily Yan, *A Revised NAGPRA: Evaluating Progress Towards Repatriating Native American Ancestral Remains and Belongings in the Wake of Revised Federal Regulations*, CTR. FOR ART L. (Jan. 21, 2025), <https://itsartlaw.org/2025/01/21/a-revised-nagpra-evaluating-progress-towards-repatriating-native-american-ancestral-remains-and-belongings-in-the-wake-of-revised-federal-regulations> [<https://perma.cc/CEF9-KL6Y>] (discussing the addition of specific deadlines, the tailoring of the evidentiary standard, and the removal of the culturally unidentifiable category).

²⁶⁸ See *id.* (“Indeed, even the revisions allow for extensions to the five-year timeline if museums can show a good faith effort to inventory their collections. These extension allowances could potentially create another loophole for museums to delay repatriation processes.” (footnote omitted)).

to repatriation outcomes.²⁶⁹ As such, while the 2024 update addresses key issues that have emerged over the last three decades, NAGPRA is still an imperfect regulation. So, while the United States' human remains repatriation law is relatively stronger, both the U.S. and UK regulatory landscapes leave room for improvement. Repatriation regulation cannot be effective without improved attention to loopholes and enforcement.

3. *Need to Address Key Regulatory Gaps*

Further, it is also critical to ensure that the scope of repatriation regulation in the United Kingdom and the United States meets the needs of the country. As exemplified in the case studies, UK museums must grapple with repatriation requests spanning a wide range of countries, while the United States has a much higher concentration of disputed human remains from within its own country.²⁷⁰ While the repatriation of Native American remains is the regulatory focus in the United States, it is by no means the only area of relevant human remains returns. United States museums also hold thousands of African American remains, including of many enslaved, formerly enslaved, or impoverished individuals.²⁷¹ However, these remains are not protected by NAGPRA or any equivalent legislation.²⁷² As such, scholars have proposed an African American Graves Protection and Repatriation Act (AAGPRA), modeled after NAGPRA, to create accountability for these remains.²⁷³ This likely would be impactful, as museums like the AMNH often focus only on the repatriation required by NAGPRA.²⁷⁴ Even though the AMNH holds hundreds of remains of impoverished and enslaved individuals in its collections, there has been very little movement to return or rebury these remains without a specific mandate to do so.²⁷⁵ These remains are a stark legacy of the U.S. history of colonialism and racism, and the fact that human remains regulations do not cover their protection is a critical oversight.

Further, while it is critical to ensure that repatriation regulation covers a wide enough scope, that does not mean that a blanket regulation will suffice. In the United States, NAGPRA governs Native American

²⁶⁹ See *id.* (“Institutions that fail to comply with these deadlines are potentially subject to fines, but the extent to which the DOI enforces these deadlines remains to be seen.”).

²⁷⁰ See *supra* notes 203–07 and accompanying text.

²⁷¹ See Sholts, *supra* note 38, at 1–2.

²⁷² See Steele, *supra* note 68, at 13 (noting that NAGPRA does not require the return of the MOVE victims' remains).

²⁷³ See, e.g., Dunnivant et al., *supra* note 26.

²⁷⁴ See discussion *supra* Section II.A.1.

²⁷⁵ See discussion *supra* Section II.A.1.

remains specifically, while the limited UK regulations apply to all human remains broadly.²⁷⁶ Part of what makes NAGPRA relatively stronger is that it is specifically tailored to the goal of repatriating Native American remains. This is not to say that Native American tribes in the United States are a monolithic group, but simply that the targeted U.S. regulations are better able to address the complex dynamics specific to Native American remains. For example, one of the key aspects of NAGPRA is that it requires consultation with tribes and other Native representatives to counteract the historic silencing of tribal voices.²⁷⁷ The 2024 NAGPRA update also highlights how critical it is to have these specific guidelines and tailored requirements, as the presence of vague terminology and the erasure of tribal evidentiary mechanisms were among NAGPRA's original shortcomings.²⁷⁸ As such, addressing the key regulatory gaps requires not only a broad scope of coverage, but also tailoring regulations for a country's specific needs by understanding the dynamics for actualizing change. Because of this issue's complexities, effective repatriation regulation requires a combination of: (1) concrete mandates, (2) attention to loopholes and enforcement, and (3) coverage of key gaps.

B. Industry Norms and Public Pressure

While regulatory updates are critical to effective repatriation, these updates are likely not possible or sufficient without pressure from the museum industry and the public. Meaningful improvements to national regulations often require shifts in public opinion or a targeted public outcry, as illustrated by the legislative history of the HTA and the 2024 NAGPRA revisions.²⁷⁹ Especially in the United Kingdom, any regulatory change may be difficult to actuate with the UK's long-standing "stance of ownership over previously colonized countries' cultural property."²⁸⁰ As evidenced by the case studies, U.S. museums have historically been more open to the repatriation discussion than UK institutions like the British Museum.²⁸¹ However, even in the United States, it took thirty years of glacial repatriation and tribal pressure for the United States to

²⁷⁶ See discussion *supra* Section I.C.

²⁷⁷ See discussion *supra* Section I.C.1.

²⁷⁸ See discussion *supra* Section I.C.1; see also Zheng, *supra* note 88 (noting the dismissal of tribal oral history traditions in repatriation efforts related to "the Ancient One").

²⁷⁹ See discussion *supra* Section I.C.

²⁸⁰ See Sinn, *supra* note 6, at 603; see also *supra* notes 213–19 and accompanying text.

²⁸¹ Cf. discussion *supra* Section III.A (discussing that museums often face stern public scrutiny because they are located on the lands of Indigenous peoples but noting also that public support of repatriation is fairly recent).

issue the 2024 NAGPRA update.²⁸² The United Kingdom's HTA was passed much more recently in 2004, and only in response to the public outcry following the Alder Hey organs scandal.²⁸³ It may take a similar catalyst or overwhelming public pressure to actualize the necessary regulation innovations.

Additionally, even with regulatory updates, public pressure will still likely be necessary to help fill any outstanding regulatory gaps and motivate museums to shift their priorities from legal to ethical repatriation. The case studies highlight the impact of industry norms and public opinion, especially when repatriation regulations leave room for discretion.²⁸⁴ Industry norms can be driven by industry associations, influential museums, or even specific individuals in the museum space. For example, the Manchester Museum's human remains policy specifically quoted the Museums Association's *Code of Ethics*, highlighting that it follows the advice found therein.²⁸⁵ Organizations like the UK's Museums Association, the International Council of Museums, and the American Alliance of Museums hold important influence over museum policies.²⁸⁶ However, many of these organizations' guidelines either do not address human remains specifically,²⁸⁷ or only briefly acknowledge the category as deserving "unique and special" consideration.²⁸⁸ Updated codes of ethics emphasizing the importance of human remains repatriation could motivate U.S. and UK museums to consider repatriation requests more carefully. Similarly, specific museums leading the charge can also be highly influential. The Manchester Museum showed that just one museum can greatly advance ethical discussions around human

²⁸² See discussion *supra* Section I.C.1.

²⁸³ See discussion *supra* Section I.C.2.

²⁸⁴ See discussion *supra* Section III.A.

²⁸⁵ *Policy for the Care and Use of Human Remains*, *supra* note 113, at 4.

²⁸⁶ See *Code of Ethics for Museums*, *supra* note 194 ("The [Museums Association] has acted as the guardian of UK museum ethics since . . . 1977."); *ICOM Code of Ethics*, INT'L COUNCIL OF MUSEUMS, <https://icom.museum/en/resources/standards-guidelines/code-of-ethics> [<https://perma.cc/5Z7J-HE23>] ("The *ICOM Code of Ethics for Museums* sets minimum professional standards and encourages the recognition of values shared by the international museum community."); *AAM Code of Ethics for Museums*, AM. ALL. OF MUSEUMS, <https://www.aam-us.org/programs/ethics-standards-and-professional-practices/code-of-ethics-for-museums> [<https://perma.cc/32T3-F7SP>]; see also Mackenzie E. Roach, *Keeping Your Head Above Water: Are Museums Really Able to Sell Artwork from Their Collections to Survive?*, THE CIRIC L. FIRM, PLLC (Apr. 23, 2020), <https://www.ciriclawfirm.com/articles/2020/4/23/keeping-your-head-above-water-are-museums-really-able-to-sell-artwork-from-their-collections-to-survive> [<https://perma.cc/WCK4-862A>] (discussing how museum policies "are typically guided by the ethical standards set by . . . major museum associations").

²⁸⁷ See, e.g., *Guidelines on Deaccessioning of the International Council of Museums*, INT'L COUNCIL OF MUSEUMS (2019), <https://icom.museum/wp-content/uploads/2019/10/Guidelines-on-Deaccessioning-of-the-International-Council-of-Museums.pdf> [<https://perma.cc/U7TJ-WLU2>].

²⁸⁸ See, e.g., *AAM Code of Ethics for Museums*, *supra* note 286.

remains repatriation.²⁸⁹ Proactive institutions like the DMNS can serve as exemplars of what is possible and what the process can look like.²⁹⁰ Finally, Piotr Bienkowski and Chip Colwell illustrated how individuals in the museum world can drive change and bring attention to the issue of human remains repatriation.²⁹¹ In this way, industry associations, leading museums, and museum individuals hold the power to greatly influence the human remains repatriation space.

Public opinion is another critical element to drive human remains repatriation. The British Museum and Manchester Museum examples illustrate the power of public opinion to justify or shape a museum's policies.²⁹² Scholars and industry authorities in the United States and United Kingdom have highlighted the "tide of change" in public opinion, as museums increasingly face criticism for inadequate repatriation policies.²⁹³ Public pressure can motivate museums to go beyond what the law strictly requires by, for example, bridging the gap between legal and ethical repatriation.²⁹⁴ Continued public discussion and increased scrutiny can help fill regulatory gaps by acting as enforcement mechanisms.²⁹⁵ In this way, industry and public pressure are critical components to effectuate change in the human remains repatriation space.

CONCLUSION

The AMNH, DMNS, British Museum, and Manchester Museum illustrate key factors influencing museums' policies on human remains stewardship. Specifically, the disparities across these museums highlight the impact of a museum's location, dynamics of scale, and implications of a policy's focus. These case studies across the United States and United Kingdom also bring to light the need for improved regulation of human remains repatriation. While these case studies do not represent a comprehensive study of the museum landscape, they do generate important learnings for evaluating potential interventions and outcomes. In order for repatriation regulation to be effective, any regulatory updates must have concrete mandates, pay attention to loopholes and enforcement, and address key regulatory gaps within a given country. Further, increased pressure from the museum industry and the public will be necessary to not only effectuate any regulatory updates, but also to ultimately bridge the gap between legal and ethical repatriation.

²⁸⁹ See discussion *supra* Section II.B.2.

²⁹⁰ See discussion *supra* Section II.A.2.

²⁹¹ See discussion *supra* Sections II.A.2, II.B.2.

²⁹² See discussion *supra* Section II.B.

²⁹³ See Ward, *supra* note 218 (emphasis omitted); see also discussion *supra* Section III.A.

²⁹⁴ See *supra* notes 231–33 and accompanying text.

²⁹⁵ See discussion *supra* Section III.A.