

Repatriation of sacred indigenous cultural heritage and the law

Citation for published version (APA):

Tünsmeijer, V. M. (2020). *Repatriation of sacred indigenous cultural heritage and the law: Lessons from the United States and Canada*. Maastricht University. <https://doi.org/10.26481/dis.20201022vt>

Document status and date:

Published: 01/01/2020

DOI:

[10.26481/dis.20201022vt](https://doi.org/10.26481/dis.20201022vt)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

www.umlib.nl/taverne-license

Take down policy

If you believe that this document breaches copyright please contact us at:

repository@maastrichtuniversity.nl

providing details and we will investigate your claim.

Valorization Addendum

V. Societal Relevance of the Research Findings

The number of indigenous cultural heritage objects that have found their way into Western museums during colonialism is substantial. In the early 2000s, Alain Godonou estimated that around 90 – 95 % of African cultural heritage from the Sub-Saharan region was located outside of Africa.¹⁹⁵¹ This number does not even take into account the displacement of indigenous cultural heritage during settler colonialism, which may have led to displacement within the country as well as the removal of cultural heritage to Europe. This happened in Canada and the United States, as well as in New Zealand and Australia. We know from the repatriation experiences in the United States that the number of objects that were displaced internally alone was in the millions.¹⁹⁵² While the precise number of dislocated objects thus remains uncertain, the scale of displacement is certainly substantial. At the same time, indigenous communities and countries that suffered colonialism have been calling for the return of cultural heritage for decades. For a long time, returns were incidental, and they were more the result of diplomatic efforts than a wider, coordinated attempt to address the effects of the colonial period. This changed somewhat for the case of internal displacements in the nineties, but European governments and museums did not emulate their overseas counterpart.

The intra-national repatriation efforts that were at the heart of this study are still ongoing. Many were designed, however, at a time when international indigenous rights standards were not yet well articulated. The research findings, in particular the observations on how to align all repatriation models closer to international human rights standards can thus help in improving existing repatriation efforts. For governments that desire the continuous improvement of their human rights record, or who might even plan to implement UNDRIP, as British Columbia intends to do, in particular the findings of this research can be an important resource on the road to achieving this.

In Europe, the discussion on whether and if so how to return indigenous cultural heritage has picked up in strength again. This is due to a number of factors, including the increased attention of European governments to their colonial history and the strengthening of indigenous rights on the international level. Both political leaders such as Emmanuel Macron, as well as the heads of major cultural institutions, such as Hermann Parzinger from the Preussische Kulturstiftung, have started to openly support the return of colonial cultural heritage. Dutch museums in turn have adopted a code on returning colonial cultural heritage. There is thus significant societal momentum for the return of colonial heritage.

This research contributes to the present discussion in two ways: First, many heritage actors in Europe are insufficiently aware of the experiences and lessons learned in Canada and the United States. The research gathers and summarizes the lessons learned and illustrates their legal context to actors who are likely to be unfamiliar with them or the reasons for specific repatriation choices. Repatriation efforts in the future can build upon these experiences and avoid repeating past mistakes. However, this is only possible if one is aware of past examples of repatriation frameworks. Second, by analysing past and present repatriation efforts in light

¹⁹⁵¹ Françoise Rivière et al., 'Unesco Forum on Memory and Universality, Unesco Headquarters Paris, 5 February 2007', in Lyndel Prott (ed.), *Witnesses to History* (Paris: UNESCO, 2007), 45-77 at 61.

¹⁹⁵² For a more in-depth consideration of these numbers please consult Chapter 4.

of contemporary indigenous rights standards, the research builds an important bridge between cultural heritage and human rights law. It appears from the findings that past practices were not adopted with connected human rights standards in mind. Future repatriation mechanisms, be they European and international or adopted in other countries with intra-national repatriation in mind, would do well to keep contemporary human rights standards in mind. Many (European) museums are unfamiliar with the human rights landscape. European governments, in turn, are unlikely to consider the human rights impact of their repatriation efforts, because they do not incur legal responsibilities under contemporary treaties for cultural rights of indigenous communities abroad that would be affected by the absence of heritage. Their actions, however, i.e. the display contrary to religious practices or the refusal to repatriate an object, do of have an impact on the human rights of the communities concerned.

VI. Intended Audience of the Research

This research seeks to reach both academics as well as policy-makers and heritage actors who are active in repatriation. This includes, in particular, museum actors and policy-makers who may have encountered repatriation requests but lack the knowledge of the wealth of experience that exists (especially in the legal sphere) and the time to familiarize themselves with all of the material next to their regular duties. It is my hope that this research can serve as a gateway to the valuable lessons learned and can prevent the repetition of mistakes that were made in intra-national repatriation in the past. Experiences in the United States and Canada have shown that even with the best of intentions, misunderstandings arise, and legislation can be drafted in a way that hinders open and engaged collaboration. Section IV provides actors with different models for how to structure legislation, in the realization that there can be no “one-size-fits-all” rule for the repatriation of indigenous heritage. It also contains guidelines to help the different actors, including policymakers, to align their repatriation with contemporary human rights law. These are structured to match the different phases of repatriation processes, starting with the drafting phase and continuing to the content of repatriation legislation and its implementation.

The analysis of the respective national laws should also sensitize the various actors engaged in repatriation to the difficulties indigenous communities already experience in many different legal aspects of their lives. These include trying to translate one’s culture and history into not only a different language but also a different legal culture, and encountering remainders of colonial attitudes in the people they interact with and the law that governs their relations with them. Indigenous communities that are engaged in intra-national repatriation are likely to experience similar frustrations. For communities that are engaged in international repatriations, heritage actors in Europe should be mindful that these difficulties and experiences with law and policy-makers may exist on top of other difficult relationships that exist against the background of their own colonial past. Arguments made based on national (European) heritage law thus fit into a wider legal narrative of colonially shaped law that often operates to the detriment of indigenous communities.

VII. Outreach and Dissemination of Research Findings

Parts of this research have already been presented in front of an interdisciplinary audience of heritage actors and academics at various international conferences, including in the Netherlands, Germany and Belgium. The author also engaged with museum actors on an individual level to share lessons from her research. Future engagement with political and various other stakeholders (including museums) in Europe will contribute to the current debate.

The current discussions on future repatriations from European collections provide an opportunity to learn from the lessons analysed in this research and to implement the guidelines developed. To contribute to this process, the research findings will be published and shared not only as academic publications, but also in the form of a policy briefs and general articles for European policy-makers and museums.