# Framing Cultural Patrimony as Art: Art Museums and Native American Repatriations

**Core Coursework:** *Values and Communities* with Dr. Tonia Sutherland, fall 2023

The United States Immigration and Customs Enforcement, also known as ICE, features a page on their website dedicated to Cultural Property, Art and Antiquities (CPPA) Investigations. The site describes Homeland Security special agents' responsibilities to investigate and prosecute the importation and distribution of stolen or looted cultural property, with the stated goal of "…dismantling [of] transnational criminal organizations, including those that may use cultural property trafficking to launder money and fund terrorist activities." [1] Additional training on proper identification and handling of cultural property is provided to agents by the Smithsonian Institution.

The agency boasts an extensive list of artifacts seized at or shortly after entering the U.S. boarder: "U.S. repatriates pre-Columbian Mayan artifact to Guatemalan government", "Vase seized from Getty museum returned to Italy", "Ancient alabaster stele goes home to Yemen after criminal investigation". From 525 million-year-old Chinese fossils to Peruvian skulls to Paul Klee paintings, Homeland Security agents have repatriated more than 20,000 artifacts to over 40 international institutions since 2007. [2] The agency continues, "Cultural heritage is finite and irreplaceable…once a piece of history is destroyed, it is lost to the world forever. Once a cultural property investigation is complete, the CPAA Program coordinates the return or repatriation of the object or artifact to its rightful owner, often in a formal ceremony." [3]

While the agency identifies only nations and institutions as rightful owners of cultural heritage material, the language on ICE's website describes those who steal or traffic cultural heritage material in criminal terms, even linking them to forms of terrorism. Yet, as of October of this year, more than half of reported Native American human remains and about thirty percent of reported Native American funerary objects held by federally funded institutions across the country have yet to be made available for return to tribal communities.[4] The Museum Act of 1989, a precursor to much of the legislative framework for the Native American Graves Protection and Repatriation Act established the following year, was spurred when Northern Cheyenne leaders found out that nearly 18,500 human remains were housed within the Smithsonian Institution. The law required the Smithsonian to create an extensive inventory of the remains and funerary objects and to notify affiliated communities promptly to coordinate their return.[5]

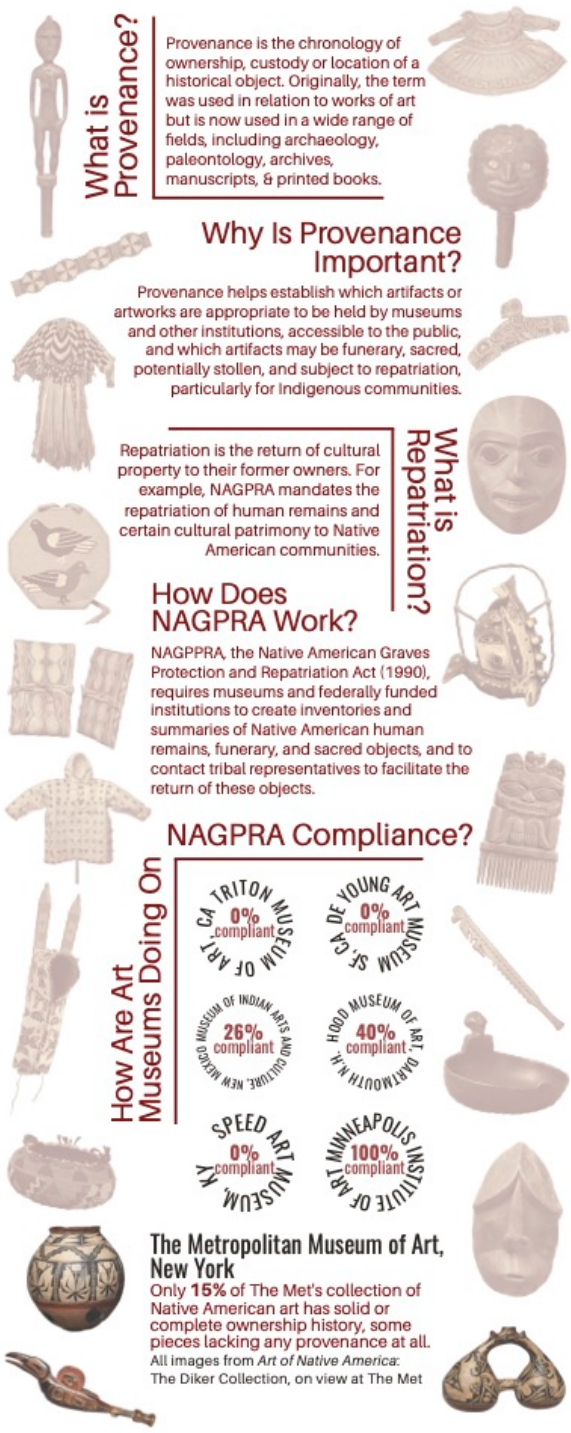
The Native American Graves Protection and Repatriation Act, NAGPRA, was first and foremost human rights legislation broadening the scope of the Museum Act and attempting to mend the harms institutions have facilitated or been complicit with for decades. NAGPRA requires federally funded institutions and museums to complete an item-by-item inventory of human remains and associated funerary objects owned or possessed by them, including details regarding where the remains and objects are from, their cultural affiliation, and the story of how and when each item was acquired by the museum. As for sacred objects and cultural patrimony, museums must provide a summary of the items. The museums have an on-going obligation to consult with tribal leaders about the objects included in both summaries.[6]

Yet the law leaves space for interpretation as well as for institutions to evade due diligence in their research. Many institutions have been able to skirt repatriation responsibilities by deeming that artifacts cannot be traced to a specific tribal community. By claiming objects as "culturally unidentifiable" or by narrowly interpreting the definition of "cultural affiliation", museums can dismiss Native communities' connections to ancestors and retain these objects.[7] Upon NAGPRA's passing in 1990, the Congressional Budget Office estimated it would take ten years to repatriate all heritage objects and remains to Native American tribes, yet thirty years later, Congress has never fully funded the federal office tasked with overseeing the law and administering consultation and repatriation grants.[8] The law is administered by the National Parks Service, a bureau of the U.S. Department of the Interior. One might wonder where NAGPRA might be today if the funding, support and enforcement strategies were on par with that of ICE's CPPA program.

Scorched-earth expansionist military policies[9], ethnographic and scientific research testing notions of unilinear, progressive evolution following Charles Darwin's *Origin of Species*, and archeological ventures spurred by the nations budding natural history museums all led to the period between 1860 and 1930 representing the peak of the of collection of Native American cultural heritage items and human remains.[10] Yet, another legacy of institutional appropriation remains, that embodied by an aesthetic shift in the valuation of indigenous patrimony. New York's Museum of Modern Art made a powerful precedent of this trend in their 1941 exhibition, "Indian Art in the United States," which linked "salvaged" artifacts, many from indigenous burial mounds in the Ohio and Mississippi River valleys, to Modernist art traditions.[11]

In 2017, the Metropolitan Museum of Art in New York moved their Native American Art collection from the Arts of Africa, Oceania, and the Americas Wing to the American Wing, a decision The New York

Times lauded as a revolutionary paradigm shift.[12] Charles Diker, The Met's primary donor of indigenous patrimony along with his wife Valerie Diker, stated, "We always felt that what we were collecting was American art…and that it [the pieces] should be exhibited in that context."[13] Aside from increases in monetary value the re-framing likely imparted on the Dikers' collection, one might ask why the museum or collectors believe that the migration of these objects to the American Art Wing constituted a symbolic elevation of the pieces considering the material and symbolic genocide the United States has perpetrated against native communities, not to mention how Native communities the pieces belong to might feel having their sacred and funerary objects subsumed into a national American art canon.




Infographic created by the author, 2023

This is further complicated by a ProPublica report which found that only 15 percent of 139 works donated or loaned to The Met by the Dikers have solid or complete ownership histories, "… some lacking any provenance at all. Most either have no histories listed, leave gaps in ownership ranging from 200 to 2,000 years, or identify previous owners in such vague terms as an 'English gentleman' and 'a family in Scotland.' "[14] In 2021, The Met published a land acknowledgement to the Lenape people whose unceded territory the museum sits upon[15], but considered alongside its collection practices of indigenous cultural heritage objects, where do the museum's values lie?

There is an inherent and pernicious form of distancing that occurs when many of these objects are framed as art. The narratives museums build around indigenous patrimony often straddle between exemplifying some research has been done to situate the artifacts in a cultural context but not being too specific as to make them liable to be returned to indigenous community members. As for The Met's historical framing of the works within the exhibition, many of the wars, occupations, and massacres that dominated the tribes' pasts are minimized are omitted entirely.[16] Wendy Teeter, former curator of the Fowler Museum at the University of California, Los Angeles, referred to The Met's indigenous art displays as existing "in the land of make-believe," adding, "The public won't have a clue as to what a piece really is or how it got there." This, Teeter said, "perpetuates stereotypes and bias against Native people."[17]

The Met is far from exceptional in their handling of indigenous cultural patrimony, yet they exemplify

many of the shortfalls of NAGPRA while simultaneously offering a view on who benefits and who is further dehumanized by de- and re-territorializing cultural patrimony and funerary objects as art.

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[1] "Cultural Property, Art and Antiquities (CPAA) Investigations" U.S. Immigration and Customs Enforcement, Department of Homeland Security, last modified April 14, 2023, https://www.ice.gov/factsheets/cultural-artifacts.

[2] ibid.

[3] ibid.

[4] "Native American Priorities: Protection and Repatriation of Human Remains and Other Cultural Items" U.S. Government Accountability Office, published Oct 10, 2023, https://www.gao.gov/products/gao-24-106870.

[5] Jack F. Trope and Walter R. Echo-Hawk, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, Arizona State Law Journal, 24:35 (1992): 54-57.

[6] US Congress, Senate, *Providing for the Protection of Native American Graves and the Repatriation of Native American Remains and Cultural Patrimony: Report (to Accompany S. 1980),* 101st Congress, 2d sess., 1990, S. Rep. 101-473 https://www.nps.gov/subjects/nagpra/upload/SR101-473.pdf.

[7] "America's Museums Fail to Return Native American Human Remains," ProPublica, January 11, 2023, https://www.propublica.org/article/repatriation-nagpra-museums-human-remains.

[8] ibid.

[9] ibid.

[10] Robert E. Beider, "A Brief Historical Survey of the Expropriation of American Indian Remains," Native American Rights Fund, typed manuscript, April 1990, http://www.narf.org/nill/documents/narf_bieder_remains.pdf.

[11] Museum of Modern Art, "Exhibition of Indian Art of the United States Opens at the Museum of Modern Art," press release, January 22, 1941. https://assets.moma.org/documents/moma_press-release_325212.pdf?_ga=2.104176009.825573251.1702586110-917685773.1702586110.

[12] Randy Kennedy, "Native American Treasures Head to the Met, This Time as American Art," *The New York Times*, April 6, 2017, https://www.nytimes.com/2017/04/06/arts/design/native-american-treasures-head-to-the-met-this-time-as-american-art.html.

[13] Ibid.

[14] Kathleen Sharp, "Is the Metropolitan Museum of Art Displaying Objects That Belong to Native American Tribes?," ProPublica, April 25, 2023, https://www.propublica.org/article/the-met-museum-native-american-collections.

[15] "The Metropolitan Museum of Art Expands Commitment to Indigenous American Art with Land Acknowledgement Plaque on Fifth Avenue Facade and New Exhibition Programming," May 12, 2021, https://www.metmuseum.org/press/news/2021/land-acknowledgment.

[16] Sharp, "Metropolitan."

[17] Ibid.

Bibliography


Beider, Robert E. "A Brief Historical Survey of the Expropriation of American Indian Remains." *Native American Rights Fund*. Typed manuscript, April 1990. https://www.narf.org/nill/documents/NARF_bieder_remains.pdf.

Jaffe, Logan, Mary Hudetz, Ash Ngu, and Graham Lee Brewer. "America's Museums Fail to Return Native American Human Remains." *ProPublica*, January 11, 2023. https://www.propublica.org/article/repatriation-nagpra-museums-human-remains.

Kennedy, Randy. "Native American Treasures Head to the Met, This Time as American Art." *New York Times*, April 25, 2017. https://www.nytimes.com/2017/04/06/arts/design/native-american-treasures-head-to-the-met-this-time-as-american-art.html.

Metropolitan Museum of Art, The. "The Metropolitan Museum of Art Expands Commitment to Indigenous American Art with Land Acknowledgement Plaque on Fifth Avenue Facade and New Exhibition Programming." *The Metropolitan Museum of Art* (press release), May 12, 2021. https://www.metmuseum.org/press/news/2021/land-acknowledgment.

Metropolitan Museum of Art, The. *Art of Native America: The Charles and Valerie Diker Collection*. New York: The Metropolitan Museum of Art, 2017. https://www.metmuseum.org/exhibitions/art-of-native-america-diker-collection/exhibition-objects.

Museum of Modern Art. "Exhibition of Indian Art of the United States Opens at the Museum of Modern Art." *Museum of Modern Art* (press release), January 20, 1941. https://assets.moma.org/documents/moma_press-release_325212.pdf?_ga=2.104176009.825573251.1702586110-917685773.1702586110.

Ngu, Ash, and Andrea Suozzo. "Does Your Local Museum or University Still Have Native American Remains?" *ProPublica*, January 11, 2023. https://projects.propublica.org/repatriation-nagpra-database/.

Sharp, Kathleen. "Is the Metropolitan Museum of Art Displaying Objects That Belong to Native American Tribes?" *ProPublica*, April 25, 2023. https://www.propublica.org/article/the-met-museum-native-american-collections.

Trope, Jack F., and Walter R. Echo-Hawk. "The Native American Graves Protection and Repatriation Act: Background and Legislative History." *Arizona State Law Journal* 24, no. 1 (1992): 54–57.

United States Congress. Senate. *Providing for the Protection of Native American Graves and the Repatriation of Native American Remains and Cultural Patrimony: Report (to Accompany S. 1980)*. 101st Congress, 2nd sess., 1990. S. Rep. 101-473. https://www.nps.gov/subjects/nagpra/upload/SR101-473.pdf.

United States Government Accountability Office. *Native American Priorities: Protection and Repatriation of Human Remains and Other Cultural Items*. Washington, D.C.: U.S. GAO, October 23, 2023. https://www.gao.gov/products/gao-24-106870.

United States Immigration and Customs Enforcement, Department of Homeland Security. *Cultural Property, Art and Antiquities (CPAA) Investigations*. Last modified April 14, 2023. https://www.ice.gov/factsheets/cultural-artifacts.