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## HUMAN REMAINS IN MUSEUMS AND INSTITUTIONS: LAWS AND POLICIES

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HUMAN REMAINS IN MUSEUMS AND INSTITUTIONS: LAWS AND POLICIES

An Abstract of

A Thesis Presented to

The Faculty of the Art Department

by

Cassidy Steele

Associate of Arts of Criminal Justice, Georgia Highlands College, 2013  
Bachelor of Science in Anthropology, Kennesaw State University, 2018

In Partial Fulfillment

of Requirements for the Degree

Master of Art in Museum Studies

Kennesaw State University

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**Abstract:**

Human remains are a unique type of archaeological artifact because of the emotional and cultural ties to living descendants that can still affect the living today. Museums have acquired sets of human remains over the decades by various means like purchases, donations, and grave robbing. The ethical and legal process of displaying and having ownership of human remains has been questioned in countries like the United States and the United Kingdom because both have extensive human remains collections from multiple different cultures. While there are human remains in institutions other than museums that have to abide by the same laws, this thesis will focus on human remains in museums. The history of how human remain collections came to be has shaped how museums handle repatriation or possession of the remains. The laws and policies in the US and UK have changed over the decades to reflect a new attitude of how museums have begun to be more ethically acceptable.

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Master of Art in Museum Studies

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Kennesaw State University

July 2022

## **Introduction**

Human remains are a unique type of archaeological artifact because of their emotional and cultural ties to living descendants that can still affect those groups of people today. The forming of the laws and policies for museums handling human remains were influenced by the actions of how human remains are acquired. Museums have acquired human remains over the decades by various means such as purchases, donations, and grave robbing. Two countries that have collected and displayed human remains are the United States and the United Kingdom. Their ethical and legal processes of handling human remains was shaped by the cultural preferences and social conventions of what makes the human remains, human remains and how they should be treated. Changing ethical practices encouraged by marginalized communities, researchers and laws has influenced the transformation of what is acceptable in museums.

The cultural changes are a result of moral questioning of what museums have been doing and brought up a moral dilemma over how human remains should be handled in museums and institutions. While there are institutions like universities and research facilities that house human remains as well, there will be a focus on human remains in museums. The increased consideration of other cultures' religious beliefs and customs around burials and the deceased have contributed to the ethical reevaluation of working with human remains either through display, research, or storage. Each of these processes are considered differently but have the same need for human remains to be respected. Many museums have had research done on the human remains in their collections, and may go on to keep them in storage, to put them on display or in more recent years repatriate. When there is research being completed on human remains, the remains are

not on display and the work is being completed by a professional; however, when human remains are on display, they are out for all of the public to see and have different factors to take into consideration when the display is formed.

Human remains on display in museums can provide valuable information to museum visitors. When the burial situations, and objects around the remains, are all viewed together in a museum it can add context to the time frame that is being studied, but because of how they emotionally and culturally can affect living people, human remains have to be displayed differently than other artifacts. Human remains can share an abundance of information, but they were once living people and can be ancestors to the living. To be respectful to the groups of living people who may be living descendants of human remains, and who may be affected by the display of human remains, the human remains should be treated with the utmost respect. While the combination of displaying artifacts and human remains in museums can paint a full picture of life during a different time, there are policies and laws in place to ensure that the display is done respectfully. Human remains bring a humanistic view to history, and well-made displays can bring museum guests face to face with the past.

The context of life shown in human skeletal remains may show population movements, environmental impacts, diet, and injuries (Jenkins 2008, 106). Osteologists can analyze skeletal remains to find the signs of diet changes and lack of nutrition that can be caused by environmental changes like food shortages. When examining teeth, archeologist can find signs of high physiological stress through hypoplastic defects (Hillson, 2005, p. 176). Hypoplastic defects can be seen through linear enamel hypoplasia, which is when the enamel does not develop consistently so it creates linear

grooves in the teeth (Hillson, 2005, p. 169-170). Osteology provides one-of-a-kind information that cannot be found out through any other type of artifact or object.

The debate of whether or not human remains should be on display or owned by museums begins with seeking to define when the dead cease to be individuals and become human remains. While there is an educational value to researchers and educators, there is an emotional value in modern societies that identify with the human remains that are used in museums (Tradii, 2016, p. 123). Being able to determine when a deceased person becomes human remains may be difficult, but for something to be regulated, it needs to be defined. It can become an argument of weighing possible human advancement against what is ethical. That is why laws and policies are created to define ethical guidelines to be put into place to protect the rights of the living and deceased with the goal of treating human remains with the utmost respect (Jenkins, 2008, p. 110-11). Conversations over what is ethical at museums can lead to questioning their priorities. There is the struggle of weighing educational advancements to the emotional values connected to human remains. The United States and the United Kingdom both have laws and policies that attempt to define human remains and implement laws to protect their ethical treatment in institutions. While these are not the only two countries that have these types of laws, they are the two that have the most similarities of how they obtained human remains by systematic collecting for research purposes. To understand how the US and UK have made it to where they are today it is valuable to understand the history of their museums and then ask, how the ethics of the treatment of human remains has changed in museums in the US and UK over the decades.

### **United States**

From the beginning of collecting human remains, educational value outweighed the ethical concerns. The search for understanding the human body and the drive for research lead to scientific advancement, but damaged marginalized communities along the way. The history of the collecting of human remains in the United States and the United Kingdom has affected marginalized communities. In more recent years, there has been a shift in the attitude in museums towards placing a higher value on ethical and emotional concerns of marginalized communities and living decedents that can be affected by research. Understanding how museums began with collecting human remains is important for understanding the changing practices of these collections and why it matters.

In the 1800s, anthropology and archaeology were emerging as formal fields of research in North America (Riberiro, et al. 2019, 377). Samuel George Morton was one of the leading collectors of skulls of nonwhite individuals, and published several books on his research collections, including *Catalogue of Skulls of Man and the Inferior Animals*, and *Crania Americana*. Reviewing his work in a modern light, his work is pseudo-scientific, ethically debatable, and racist, but at the time influenced many medical and professional groups of people (Redman, 2016, 16). During 1839, while working on *Crania Americana*, Morton enlisted physicians and army officers from multiple states to collect skulls from Native American gravesites. Morton noted that the Native Americans had a deep respect for their dead, and with that knowledge continued to collect their remains (Rogers, 2019, 2356). Morton knew enough about Native American society to know that it would be disrespectful to collect the remains of their deceased but choose to



do so anyway. This shows the lack of respect for marginalized groups and the negative sides of a blind search for knowledge and need for legal regulations.

The skulls Morton collected were used in many ways. It is significant to note that the purpose of collecting these remains was to try to prove that the size of the brain cavity was linked to intelligence level. The way Morton measured the cranial sizes was by filling the cranial cavity with white pepper seeds. This study was recorded in his work, *Crania Americana*. After the book was published, Morton later acknowledged that the seed-based measurements led to high amounts of variation and switched to using BB shot when measuring data for later research on *Crania Aegyptiaca* and *Catalogue* (Weisber, 2014). This was an attempt to justify a racial hierarchy based on cranial size and intelligence, a connection that has been disproven over the years. Morton's work cannot be interpreted as unbiased science because of his well-known personal biases. According to the follow up research completed by other scientists (cited in Mitchell, 2018), Morton's cranial measurements do not justify racial superiority as he had intended, and "unbiased data" does not equal unbiased science or representation (pg. 11-12). Morton's biases influenced his research.

Before Morton's views were disproven, his research influenced many individuals including the US Surgeon General of the time, William A. Hammond (Rogers, 2019, p. 2357). In 1862, Hammond established the Army Medical Museum for the purpose of collecting examples of battlefield injuries during the Civil War. Once the museum opened, the curators of the museum began to apply the comparative techniques of human anatomy. Over time, the AMM split their collections of human remains into several sections, the main section being the anatomical section that focused on only human

skeletal remains for the purpose of comparing the anatomy of individuals from different races. The museum had an extensive collection of Native American remains but also had remains from Africa, Europe, Oceania, Asia, and African Americans. In 1866, the AMM moved to the recently vacated Ford's Theater, a year after it closed due to the assassination of Abraham Lincoln. This location change helped draw in the general public and slowly became one of the most popular tourist destinations in Washington, DC and was the first time museum officials began working to create displays for the general public, not just researchers. The museum did not allow for children to enter the museum, but the morbid interest continued to draw a crowd ready to see human remains (Redman, 2016). The public's interest with the morbid continues to be a topic that museums can capitalize on because the shock factors sell.

In 1868, Hammond ordered all U.S. Army field officers to send him any Native American skulls so that they could be studied, similar to Morton's research when writing *Crania Americana*. This encouragement led to over 4,000 skulls of a variety of ethnicities, including Native Americans, to be taken from graves, battlefields, POW camps, and hospitals and given to the AMM. The collectors of the bones and skulls would be paid for what they collected (Rogers, 2019, p. 2357). During the collecting of Native American remains, the AMM obtained the remains from the Sand Creek Massacre of 1864 where 150 peaceful Cheyenne natives lived (Rogers, 2019, 2357). The incentive of payment for human remains created a high influx of collection.

The skulls that were collected by military personnel and mercenaries would be accompanied with vague notes that gave little contextual information. This still affects museums' ability to be confident in the origins of the remains that are in their possession

to this day (Redman, 2016, p. 23). The medical officers working for the Army Medical Museum (AMM) were some of the first to systematically collect skeletal remains. This was encouraged by thinkers of the same mindset as Morton to push museums to compare anatomy across humankind (Redman, 2016). Skulls were not the only type of bone collected for the AMM. Since the AMM was seeking to advance the medical field, the museum often accepted a wide variety of remains.

The times when the AMM began displaying human remains in 1866, most of their collection came from the Civil War and had a variety of Caucasian remains from amputations. The museum faced the situation of veterans coming to the museum and finding their amputated limbs. One veteran, J. F. Allen found his amputated arm well preserved and on display at the AMM. (Redman, 2016, p. 131). The handling of human remains for research is a different experience for the museums, and for the individuals that could be affected by seeing them on display. While this veteran knew that their limb was amputated by medical professionals, to see it then put on display for all to see are two different experiences.

Several decades after the AMM was founded, the Smithsonian and the Army came to an agreement to transfer the ethnographic material from the AMM to the Smithsonian. In return the Smithsonian exchanged human remains relevant to the Army's research. The Smithsonian's expeditions across the US led to them working with the Bureau of American Ethnology (Redman, 2016, p. 27-28). The team up between the AMM and the Smithsonian gave more priority to protecting the human remains while excavating and led to more professionals collecting of remains instead of paid mercenaries collecting for the museum. In 1897, the AMM gave all of their non-

pathological human remains to the Smithsonian. The Smithsonian went on to start a physical anthropology division with the purpose of comparing races. This led the AMM to shift to focus again more on pathologies and modern medicine, with only a slight focus on racial difference (Redman, 2016, p. 129). The AMM changed names afterwards and is currently the National Museum of Health and Medicine (NMHM) (Redman 2016, p. 287). With the Smithsonian and AMM working together, it shows how combining research and communication can benefit both institutions. While both of these institutions are working to perform research, they have yet to include marginalized groups of people that have ties to the human remains, it was a small step of working towards policies of communication.

The idea of human remains as property for research or display can lead to objectification of the deceased. This struggle to find what is the morally acceptable thing to do with human remains can be reflected through court cases. In one of the first cases in the United States attempting to create regulations for human remains (as cited in Holland, 2015), *Meagher v. Driscoll* 1868, the Supreme Court of Massachusetts proclaimed that “a dead body is not the subject of property, and after burial it becomes a part of the ground to which it has been committed, ‘earth to earth, ashes to ashes, dust to dust,’” (Holland, 2015, p. 629). It was not until 1905, that the Supreme Court of Georgia revisited the topic to say:

A corpse in some respects is the strangest thing on earth. A man who but yesterday breathed and thought and walked among us has passed away.

Something has gone... It is not surprising that the law relating to this mystery of what death leaves behind cannot be precisely brought within the letter of all the

rules regarding corn, lumber and pig iron. And yet the body must be buried or disposed of. (Holland, 2015, p. 629)

Both of these court cases were taking an understandably Christian view of how to handle bodies after death and noted that they cannot be disposed of like any other common waste because of how the living are affected by the death of others. These cases reflect Western theology, with the Supreme Court quoting the Book of Common Prayer (Episcopal Church, 1979) with their definition of human remains' rights and placing human life as different from other living things. These laws that are being imposed on the deceased are of one ideology and may not be consistent with the ideology of the deceased or the living communities that have a connection with the deceased. After these specific laws, it was not until the 1980s that the US government revisited creating laws and policies that work with making museums more ethically acceptable.

Ethics is defined as a system of moral principles, or observations (Ethics, 2017, as cited in Turner et al., 2018). As an attempt to protect the remains in institutions and museums, professionals in fields that interact with human remains and the living began to write codes of ethics. In 1981, 241 societies that interact with human remains or living subjects, such as universities, museums, and medical offices had created ethical codes of conduct (Turner et al., 2018). Creating these codes of ethics helps protect science from individuals like Morton who were looking to support their personal biases. Even after these laws came to pass the public was still fascinated to see human remains like at the AMM.

Some of the ethical codes and policies that govern human remains in the United States in the late 1980s were passed to address the repatriation efforts of indigenous groups (Rogers, 2019, p. 2365). One of the first acts passed, National Museum of the American Indian Act of 1989, originally was for repatriation of cultural items owned by the Smithsonian. The act establishes that the Smithsonian must make a memorial to Native Americans, which lead to the creation of the National Museum of the American Indian. By creating this new museum, the Smithsonian was able to provide more direct research and study of the Native American collections that the Smithsonian had acquired (National Museum of the American Indian, 1989). Included in this act is that the Smithsonian must identify the human remains' origins, including tribal origins and then notify any affected tribe as soon as possible (National Museum of the American Indian, 1989). This act is the government stepping in to influence the Smithsonian through laws and policies to become a more ethical museum.

The National Museum of the American Indian Act 1989 only covered funerary objects and human remains that were owned by the Smithsonian (Rogers, 2019). An act that specifically addressed repatriation from the Smithsonian is not a coincidence. In the early 1900s, a large portion of the Native American remains that was stored at the AMM were moved to the Smithsonian, including the remains collected from the Sand Creek Massacre. This was a contributing factor that led the Smithsonian to hold one of the largest collections of remains with over 18,000 Native American individuals in 1987 (Rogers, 2019, p. 2357). It made sense that the Smithsonian was the first institution to receive legislative action with their known history of inheriting the human remain collections from the AMM.

On November 16, 1990, the US Congress passed the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), one year after the National Museum of the American Indian Act (1989). NAGPRA covers Native American remains in museums or non-profit institutions, unlike the National Museum of American Indian Act of 1989 that only covered the display and storage of Native American remains at the Smithsonian. Stated by NAGPRA (1990) (as cited by McManamon, 2000), any museum or federal agencies that receive funds from the federal government that have human remains or funerary objects in their inventory must give a written summary of cultural items including human remains. Afterwards, museums and federal agencies must refer with Native Hawaiians organizations and Indian Tribes to reach an agreement. The agreement has to be on repatriation or other forms of disposition, which could be reburial or long-term curation so long as it is in accordance with the wishes of culturally affiliated Tribes and lineal descendants (McManamon, 2000). The law continues to show the growing movement to place more value on ethical concerns and to mandate an open conversation with organizations with the tribes or descendants to see how those groups wish to be represented and respected. By the law saying that it is up to the wishes of the effected groups of people to decide how human remains in museums and federal institutions are to be handled, it is allowing the groups to define how they wish to experience what is respectful to the human remains.

The combination of these two federal laws continues to change the ethical standards of museums and institutions. NAGPRA's repatriation requirements include four categories: human remains, funerary objects, sacred objects, and cultural patrimony or objects that have historical value to the Native American group (Eynon, 2019, p. 38). When the

federal government first passed NAGPRA it was estimated that between 100,000 to 200,000 Native American human remains were in the possession of American museums and universities. There are 568 federally recognized tribes that can make claims for items in those four categories (Williams et al., 2016, 30). Between the private collectors, questionable origins of bone collecting, and the lack of documentation of human remains moving from one institution to another, repatriation is a slow-moving process.

While the repatriation process can take time, it has been successful. On July 10, 1993, eighteen of the 150 Cheyenne remains taken from the Sand Creek Massacre were laid to rest in the Concho, Oklahoma cemetery (Gulliford, 1996, p. 136). The lack of documentation of the movement between institutions, leaves room for error when looking to repatriate. Tribes like the Eastern Shoshone on the Wind River Reservation in Wyoming have so little faith in the record keeping of remains that they claim that they do not want the remains repatriated because they do not believe the accuracy of the Smithsonian's record keeping (Gulliford, 1996, p. 138). One of the flaws in NAGPRA is that they only work with federally recognized tribes. If a tribe is not recognized on the federal level, the tribes trying to make a claim must go through the Secretary of the Department of the Interior. These factors can all lead to culturally unidentifiable human remains (Williams et al., 2016, p. 32-33).

Aside from the Native Americans, there are also collections of remains that come from enslaved people. During the collecting of skulls in the 18<sup>th</sup> century into the 19<sup>th</sup> century, human skulls from many ethnicities were collected to try and support Morton's work. Since the 1960's, Dr. Samuel Morton's collection of more than 900 skulls has been housed at the University of Pennsylvania Museum of Archaeology and Anthropology



with many of them on display in hallways and classrooms. On April 27, 2021, the Penn Museum wrote an apology for the unethical possession of human remains and after eight months of internal discussion, has begun the process to lay these bones to rest with dignity (as cited in Crimmins, 2021). Since these remains came from grave robbing the fields in Philadelphia where poor African Americans were buried, and from African slaves in Cuba where to repatriate these remains is still being discussed. A new committee is being formed at Penn Museum that will consult and identify communities who lay claim to skulls (Crimmins, 2021).

There are groups working on having laws written by the government to support their efforts for repatriation of previously enslaved people and African Americans. A recent discovery of remains on display at the Pennsylvania Museum of Archeology and Anthropology sparked an outcry for regulations that are not provided through NAGPRA. The University of Pennsylvania Museum of Archaeology and Anthropology has been housing fragments of human remains of two children who perished in the 1985 MOVE<sup>1</sup> bombing. While the remains are physically at the University of Pennsylvania, photos of the bones are being used in online courses for Princeton University since 2019. Michael Africa Jr., (as cited in Pilkington, 2021) one of the members of the MOVE organization was quoted saying, "The professor is holding the bones of a 14-year-old girl whose mother is still alive and grieving." While the students attending UPenn and Princeton were aware that they are learning with the remains of a children from the MOVE bombing, they were not informed that the institution did not have permission from the

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<sup>1</sup> The MOVE Organization was a naturist, anti-government organization that believe people should return to the ways of nature, and reject man made government. It was based in Philadelphia in the early 1970s and founded by John Africa (Fiscella, 2022, p. 406).

living parents of the children to display or use the remains (Pilkington, 2021). While the students attending the University of Pennsylvania and Princeton University were aware that they are learning with the remains of a children from the MOVE bombing, they were not informed that the institution did not have permission from the living parents of the children to display or use the remains. Where the remains are today is not clear (Pilkington, 2021).

The other types of remains not covered by NAGPRA are remains that were excavated from other countries. Several institutions have mummies in the United States, such as Emory University's Michael C. Carlos Museum. One of the mummies is an Old Kingdom mummy that was purchased in 1921 by William Arthur Shelton, a professor of Theology at the time. The purchase was from the sacred site of Abydos in Middle Egypt and was in storage for more than 90 years (Emory University, 2021). The other mummies in the museum's collection were purchased from the Niagara Falls Museum in Ontario. They were originally purchased in Egypt by James Douglas, who later sold them to Sidney Barnett, the son of the founder of the Niagara Falls Museum. The collection included ten coffins and mummies accompanied with their funerary artifacts that dated from the 21<sup>st</sup> Dynasty to the Roman period (Lacovara et al. 2001). This flow of sales from museum to museum is well documented by comparison to the lack of bill of sales of Native American remains.

Once the mummies were in the possession of the Michael C. Carlos Museum, Emory University was able to study them with the medical equipment available at the University's medical school. In late 90s to the early 2000s, the university allowed for CT scans to be done to examine the mummies without having to be invasive or unwrap them.

These scans made it possible for examiners to distinguish likely sex, age range, and treatment of the body postmortem. This collection gained more publicity when evidence began to support that one of the mummies that was unwrapped and without a coffin was likely to be Ramesses I (Lacovara et al., 2001). It was confirmed in 2003 that this was, in fact, the mummy of Ramesses I, and was returned to Cairo. This repatriation was completed in the early 2000s but was not required by any law and given as a gesture of good faith towards Egyptian institutions. This example of repatriation could have been a result of ripple effects from the recently passed NAGPRA laws and museums' ethical priorities changing without legal guidance needed.

According to the Code of Ethics developed by the American Alliance of Museums (AAM), the care and storage of all the collections should be by collections professionals and ensure a secure environment that can be checked periodically. Their Code of Ethics repeats the importance of human remains being treated with respect, on and off display. It includes that the respect given should be in accordance with the institutions policies as well as the practices of living associated communities (American Alliance Museum, 2021, p. 3-9). By involving living associated communities in what is in storage and on display gives more transparency on what institutions have in their possession. Noting how these institutions must store human remains is important because even though the public cannot always see the remains, it does not mean they should not be properly cared for in storage and during research.

Updated on January 11, 2021, the American Journal of Biological Anthropology (AJBA) acknowledged that cultural sensitivities should be implemented for the comfort of the related living communities that have ties to human remains that are owned by

museums. These communities hold the right to determine the disposition of the humans based under US law and ethical standards. The American Association of Biological Anthropologists (AABA), formerly the American Association of Physical Anthropologists, released a Code of Ethics in 2003 that states when doing research, there is an ethical obligation to work with the descendant communities related to the human remains being studied (Turner et al., 2018). One of the goals of these Codes of Ethics is to establish and maintain working relationships with the communities with cultural ties to human remains in museums. With the Code of Ethics, the AJBA expects that research involving human remains will be accompanied by a statement identifying the legal status, method of community consultation, institutional permissions granted, and if necessary, permission for the related communities to conduct research as well. It is understood that it is not always possible to meet these goals. In some cases where descendant groups are unidentified it is not possible to abide by these policies. When this occurs, it is still important to include why it was not achievable in the statement so that it is known that there was an attempt to work with the communities (AABA, 2021).

As of 2018, there were over 1500 societies with ethical codes that have been documented by the Center for the Study of Ethics at the Illinois Institute of Technology where they maintain an archive of professional ethical codes for practitioners, scholars, and students to inform ethical decisions made in professional, scientific, entrepreneurial, and technological fields (Turner et al., 2018). These are societies that deal with the treatment of human remains as well as medical societies that work with living patients. The codes of ethics are in place to provide standards to protect patients or subject (Turner et al., 2018). The priority created through these codes of ethics of maintaining working

relationships with the living communities begins to allow a conversation to be held about how living communities wish to be represented.

While NAGPRA is a valued step in working with living communities and towards making museums more respectable establishment than they were in the past, there are critics that believe their creation was not a drastic enough step. Laws and policies that do not protect all marginalized groups of people can lead them to be ostracized as a community in museums and can lead to a negative opinion of these establishments. Many of the laws to help repatriation are underfunded and slow moving. Native American groups struggle with having active cultural preservation officers and museums are understaffed, (Williams et al., 2016, 37). The slowness of repatriation leads to lack of faith in the system that is supposed to be helping them and creates activism in those communities.

It is believed by many indigenous groups that taking human remains off display is not enough, and indigenous activist groups will not stop repatriation requests until all indigenous human remains are returned, regardless of what the institution is doing with the remains. The Seminole Tribe of Florida started a social media platform in 2021 called #NoMoreStolenAncestors to raise awareness to their struggle with the Smithsonian to have the human remains of their tribe returned. The request made by the Seminole Tribe is to have 1,500 individuals and tens of thousands of artifacts returned from the Smithsonian (Schulman, 2020). Seminole Tribe member, Tina Osceola, was interviewed by NPR about their efforts with repatriation and said that the Smithsonian cannot prove that they are doing anything to help humanity, but the Seminole people are activity

hurting because of their possession of their ancestors' remains (Demby, 2021). The Seminole people are one of many groups effected by the Smithsonian's collection.

Repatriation is not just the return of human remains, but the passing on of their responsibility and care (Clegg, 2013, 165). The Moriori and Māori communities are two groups native to New Zealand that have worked hard to have their ancestors returned. In the last 7 years, both communities achieved large returns through repatriation. In May 2016, the Moriori and Māori received 60 human remains from both the US and UK, mainly from the Smithsonian and several different museums in the UK, including the Falconer Museum in Forres, Scotland. Included in this repatriation are four of the tattooed Māori heads (Bayer, 2016). As of early July 2022, the largest Moriori return yet took place with the return of more than 100 Moriori ancestors were returned from the UK's Natural History Museum in London. Created in 2003 was New Zealand's first government-funded international repatriation program, *Karanga Aotearoa*. This was the group that worked with the Natural History Museum in London to reach this repatriation agreement in 2018, and formally returned in 2022 (Corlett, 2022). These repatriation movements reflect the shift of what is becoming more valuable to museums.

From Morton's skull collection to NAGPRA, the US has made considerable progress of what is acceptable in museums. Human remains are no longer collected to push racial superiority, but to study historically different ways of life. The US has come far in over hundred years and with information being more accessible than ever, activism groups can be informed about what to legally push for. Many marginalized groups of people are seeking the option and ability to work towards repatriation and better representation. While all of the laws and policies in place are needed for change to begin, there is a

difference between ethics and laws. For example, the displaying of the bones of children was technically legal, but debatably, unethical. After almost 30 years of NAGPRA, it could be time to create a similar set of policies for all human remains.

### **United Kingdom**

In the United Kingdom, there is also an increased amount of concern surrounding human remains in museums. Like the US, the UK has begun to experience a shift in priorities on human remains in museums. In contrast to the US, the UK expresses ethical treatment through caring and maintain the psychical integrity of the human remains while the US has a focus on repatriation and deposition. However, both countries have begun working with living descents and working groups to represent marginalized groups of people's interests. Through the continued efforts and conversations of museums and marginalized groups, they have the ability to create ethical laws to ensure communities feel valued through research and representation, whether it is through repatriation or shared studies. In both the US and UK there are emerging groups of working activists and professionals pushing to have repatriation, better guidelines and ultimately create a more respectable field of work and representation. The efforts of these groups and government agencies have influenced the shifting attitude in museums.

Like the United States, the United Kingdom has a long, problematic history with their museum collections of human remains. This section will cover the laws and policies that effect museums in the United Kingdom, with a focus on England. Until recently, the museums in the UK treated human remains like any other artifact, but with human remains receiving more attention in recent years policies have changed (Giesen, 2013, pg.

1). In the laws created, government agencies use the term museum in a broad sense to cover other institutions, but since the language of the laws do not formally state or include other institutions or private collections, they do not get held to the same standard as museums. Therefore, many laws and policies use the term repository, instead of just museums as to include institutions, private collections, and research laboratories so that human remains are protected by these laws at each location (Giesen, 2013, p. 2). By making sure that all of these entities that have human remains are covered under the same law is to create consistency of care for human remains.

One of the first laws created to address human remains in the UK was the Burial Act 1857, which also included the mandatory reburial. This was mainly to protect the citizens from exposure to the recently deceased, which would happen because of overcrowded cemeteries, growing, and grave robbing. While that was the intention of this act, many interpreted the language of the Burial Act 1857 was made to refer to the recently deceased for a quick reburial, not necessarily referring to archaeological sites (Pearson et al., 2013, 148-150). While this is how the law was intended, the Burial Act 1857 was still applied to archaeological sites.

In 1889, the Museums Association (MA) was established to protect the interests of galleries and museums; it is the oldest museum association in the world. To this day, the MA is setting the standards in the UK for museums' practices (Giesen, 2013, 2). The MA supports that museums be made accessible and the information they hold is for everyone. (Giesen et al., 2013, 24). While the MA supports that museums are created to be for the education of all, their ownership of human remains from marginalized groups can make it difficult for all to feel welcome to learn.



Museums and other places that hold human remains such as universities, government agencies, private individuals, research laboratories, and archives, can be collectively referred to as repositories. The ownership status of a repository is public or private, and if human remains are on public land, then government legislation applies, but if the repository is private, then it is up to the land owner. If it is owned by the public or private non-profit organization then museum guidelines should be upheld (Giesen & White, 2013, 15-16). Public properties would include government funded buildings such as churches and church cemeteries.

Laws in the early 1800s about human remains stated that when archaeologists are excavating on the grounds of Christian churches, the human remains must be returned to consecrated ground (Mays, 2013, 110). For the excavation of human remains to be lawful a license has to be granted by the Governmental Ministry of Justice. For excavation to happen specifically on land under the Church of England the additional legal permission is needed under the Ecclesiastical Law. The Ecclesiastical Law mandates that there is reburial after scientific study is conducted (Roberts & Mays, 2011). This only includes the Church of England until in 2005, the Church of England and English Heritage published *Guidance for Best Practice for Treatment of Human Remains Excavated from Christian Burial Grounds in England* (Mays, 2013, p. 109). This mandatory reburial has led to excavation sites to preform expedited research.

In museums, one of the first acts passed directly affected the British Museum. This was the British Museum Act of 1963 which created the Board of Trustees for the British Museum and dictated that the Museum Trustees are responsible for preserving the collections of the museums because of their financial obligations. The financial

responsibilities of the Board stresses that all museum collections should be kept together, and objects only disposed of in unusual and rare circumstances. The British Museum Act of 1963 is still in effect to this day and yet to be updated (Goodwin, 2020, p. 147-160). Since the British Museum has large collections, it made sense that the Ministry passed the first guidelines to address their collection specifically. This is similar to how the US passed laws specifically on the Smithsonian's collection before creating more inclusive laws on human remains in museum and institutions. The British Museum is directly tied to the government because of how the Board of Trustees is formed. It consists of 25 individuals, one is picked by Her Majesty, fifteen appointed by the Prime Minister, four by the Secretary of State and five by the Trustees of the British Museum (British Museum Act 1963, Appendix 1). The museum contributes to the overall wealth of the country so it makes sense that they would have an opinion on how it operates, but to be this involved with decision making could make things like repatriation more difficult.

Formed in 1998, the British Association for Biological Anthropology and Osteology (BABAO) was created to promote the study of biological anthropology and encourages the conversation to develop new standards of research (BABAO, 2022). In 2004, the BABAO and the Institute of Field Archaeologists worked together to publish the *Guidelines to the Standards for Recoding Human Remains* (Giesen, 2013, p. 4). The BABAO is a group of professionals that works with museums to uphold ethical standards by having guidelines for the care and treatment of human remains, including when human remains are put into storage.

Respect and care are important for the storage of human remains and the condition of the human remains should be monitored on and off site (Hall, 2013, p. 75) Storage is any

point post-excavation when the remains are not on display or reburied. When human remains are removed from display it is important for those objects to stay in a safe environment. The storage of human remains needs to be monitored on or off site and it is best to have regular inspection of stored collections. There are buildings called holding institutions which are places used for long term storage of human remains that are currently having research done on them. It is not essential for skeletal remains to have closely controlled conditions however, the storage area should not be liable to dramatic changes in humidity and temperature. Over exposure to humidity can cause mold growth while low humidity may cause flaking or cracking of bone (Clegg, 2013, p. 171). Depending on the location of the institution it can be harder than others to achieve these standards, but without them the human remains could risk deteriorating.

Museums are required to have policies to protect the objects that are stored in their facility by keeping them in an environmentally controlled storage area. In the United Kingdom, storage containers must have labels on the outside if they are affected by the Human Tissue Act of 2004, and there are specific step-by-step instructions for the storage of each type of skeletal remains. For example, skulls must be stored upside down, and mandibles stored separately with teeth facing up (Antoine & Taylor, 2014, p. 45). This ensures a safer storage situation for the human remains collections. Since the British Museum has a large collection of human remains, the faculty works to provide thorough, detailed reports of how human remains are handled and stored. Human remains at every stage of possession should be cared for if a museum or institution is to claim to be following the requirements of being respectful.

British Prime Minister Tony Blair and Australian Prime Minister John Howard released a joint statement in July 2000 to begin efforts of repatriation of human remains to indigenous communities in Australia. This is what helped lead to the forming of the Working Group on Human Remains in 2001, this group works to make recommendations on legislation related to policies for human remains in museums. Three main reasons why professionals, archaeologists and anthropologists work towards repatriation is to address how when amassing collections, things were stolen, as well as colonialism, and the historical use of pseudoscience as a means of racism. This is what led to the Human Tissue Act 2004 that allowed museums to deaccession human remains that date back to 1500 from museums in Wales and England (Jenkins, 2008, p. 106). These groups of professionals and activists are working to support the change of what is ethically acceptable in museums.

The Human Tissue Act 2004, (HTA) was created to be applied to the medical field as a response to numerous hospital scandals that emerged in the 1990s. That is why the majority of the HTA does not apply to museum and why the law is focused more on the recently deceased. Even so, the HTA was used by the British government to address issues at the British Museum that involved repatriation requests from the Australian/Tasmanian community. With this act being used outside its intended purpose, the British government added the Section 47 to make the HTA more applicable to museums by giving museums the power to de-accession human remains under 1000 years old. Once Section 47 was added, the British Museum was given the ability to work with groups like the Tasmanian Aboriginal Centre (TAC) to repatriate human remains (White, 2013, p. 43-47). By the HTA adding Section 47, it allowed for the priority of working

with international groups to be allowed and the continuous changing of attitudes towards human remains being in repositories' possession is taking a more direct turn into repatriation.

Also covered by the HTA of 2004 is the possession of mummies in museums and institutions. Since mummies are not considered skeletal remains, nor do they originate from the UK, they have to be considered differently than human skeletal remains that are excavated on UK soil. Like the United States' history of mummies, there is a receipt trail of purchases, but in contrast, the beginning fascination with mummies in the UK is different. Mummies were incredibly popular in the London area during the Victorian period, the same time frame where the Burial Act 1857 was being passed to protect citizens from the recently deceased. Mummies were believed to have a variety of medicinal purposes; some were believed to help heal an individual that gets poisoned and general well-being. The way to benefit from these medical aids would be to consume a crumbly substance from ancient Egyptian mummies, *mumia vera*, which would allegedly help with indigestion (Schober, 2020). The mummies were a desired commodity, even outside of the scholarly world, leading to a higher demand of mummies to come into England. Even once it was more commonly understood that mummies did not contain any medical benefits, museums still did not know how to preserve them. It was common in the British Museum in 1899 for mummies to be unraveled which destroys the chance of long preservation and destroys the context of the remains (Hopkins, 2004). This is an example of the necessity of creating universal guidelines and standards for the care of human remains in and outside of museums and intuitions. Through the creation of laws

and policies actions like destroying a mummy for consumption would never be allowed to happen today without repercussions.

The Working Group on Human Remains was formed in 2001 to work with legislators to make recommendations on the repatriation of human skeletal remains from museums as a way to develop ethical standards. The Working Group on Human Remains works with other departments in the government like the Department for Culture, Media and Sport (DCMS) to expand on ethical treatments of human remains (Jenkins, 2008, 108). An important set of guidelines published by the DCMS was the *Guidance for the Care of Human Remains in Museums* in 2005. This document covers all repositories in England, Wales and Northern Ireland; Scotland uses the *Guidelines for the Care of Human Remains in Scottish Museum Collections*, which are similar. Both documents give directions on general care as a way to create a standardized practice of human remain care across the UK (Giesen, 2013, p. 1). The ‘Advisory of Panel on the Archaeology of Burials in England’ worked to support the creation of the *Guidance* with the DCMS and professionals that work with human remains. The DCMS new set of ethics focuses on the need for balance when studying human remains (Redfern & Clegg, 2017, p. 575-579). The advisors on this panel are professionals in their related fields. All these political groups are seeking to support a professional work environment to have a respectable way to perform research on human remains.

The British Museum and other institutions that work with human remains realize that the steps for repatriation can be difficult to get started. A specific case of how the repatriation process happens through the British Museum, would be the seven skulls that came from New Zealand in the early 19th century. In 2006, a request for repatriation was

made by the Museum of New Zealand which was seeking to have human remains from the Māori tribes returned. This was important to Māori culture because the tribe preserved the heads of ancestors as the head was considered one of the most sacred parts of the body. It took two years for the Trustees of the British Museum to conclude that they would not be repatriating the skulls because, “it was unclear whether the importance of the remains to an originating community outweighed the importance of the remains as information sources about human history,” (McKinney 2014, p. 40). While the museum denied the return of the skulls, they reached a conclusion of returning nine human bone fragments (McKinney, 2014, p. 32-42). Many of the human remains returned to New Zealand are placed at the Te Papa Museum for the Māori and Moriori communities (Clegg, 2013, p. 164). The response of whether or not the emotional value outweighs educational discovery is an ongoing debate with human remains in museums. With this case of human skulls though, the group working to receive the remains was asking for the human remains so that they may be put into their museum, where they would be able to represent their own history at their place of origin instead of having them displayed in another country. It feels more like lack of faith in other institutions to care for the remains. However, the return or deaccession of any object from the British Museum goes against the previously stated law that says that the Board has a fiduciary obligation to keep as many artifacts in the museum as possible, so while it was not a completion of the full request, it was a step in the direction of a more collaborative future.

In the past ten years, museums in the UK have gone from stating that the value to the tribes was not as important as possible information that could be learned, to the Natural History Museum in London repatriating more than 100 Moriori ancestors. There are

several variable factors of these stories, but one of the similarities is that New Zealand's formed their own repatriation program, *Karanga Aotearoa*, to work with other institutions worked with both cases. The difference being that one is the British Museum and the other is the Natural History Museum in London, however through the *Guidance*, museums and repositories should have close to the same law. This reflects both how things have been rapidly changing but also the flaw of inconsistency even when operating under the same laws.

Today the Human Tissue Act and the *Guidance for the Care of Human Remains in Museums* (DCMS Guidance 2005) set the standards of mandatory care for human remains in museums and repositories. These are the guidelines that are referenced when handling remains for research, display and repatriation. While many museums have had their collections of human remains for years, researchers still perform new and active studies with them even if they are not on display. Many researchers acknowledge that working with human remains is not a right, but a privilege (Clegg, 2013, p. 160-164). While the remains are still being studied, and are not on display, many communities are still against the museum's ownership of their ancestors' remains.

When exploring the laws in both the United States and United Kingdom, there are several parallels and differences. The laws in both the US and UK reflect the countries' Christian history. The language of the court cases used in the first laws in the US related to defining human remains during the mid-1800 such as in *Meagher v. Driscoll* and the Ecclesiastical Law in the UK, both quote scripture. Ecclesiastical Law is referring to the clergy and *Meagher v. Driscoll* references the Common Prayer that states 'ashes to ashes,' (Episcopal Church, 1979). The Ecclesiastical Law states that permission is



required to disturb human remains on land that are legally consecrated under the Church of England (Mays, 2013, p. 109). This law protects and regulates remains that are only a part of the church and protect remains that are believed to be Christian. There are no other human remains protected under other religions in the same way in the UK.

Another similarity between the US and UK is that when they first started creating laws to regulate museums, they made specific laws about their largest institutions this was like a catalyst for both countries to begin to work on ethical guidelines. In the US the first laws made to protect Native American human remains were focused on the remains in the Smithsonian, and in the UK, the first laws passed were focused on the British Museum. Both the US and the UK have large collections of human remains that come from different cultures. Both countries laws state that they must confer with the groups of people who are culturally affiliated with the human remains in the possession of the museum or repository. A flaw in both the US and the UK is the lack of a specified timeline. The laws will state language like as soon as possible, but that is a relative term to most. The most beneficial process that both the US and UK went through was creating and working with focus groups that represent cultures and institutions interest while ideally maintaining integrity.

### **International**

Outside of the US and UK, there are other ways that human remains have been handled nationally and internationally. In the 1970s, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) began working on how to protect human remains and define cultural property. A simple definition of cultural property is

any property or object that holds historical significance to its place of origins. This definition of cultural property would include things like rare collections and specimens of minerals, anatomy, fossils, fauna, and flora, as well as property relating to history, products of archaeological excavations and objects of ethnological interest. Even though human remains are not directly stated in this definition, human remains are included as protected materials. By defining cultural property, UNESCO was working on making laws that would help repatriate and prevent the trade of cultural properties, this would include the buying and selling of human remains across countries. Later in 1995, the United Nations created the United Nations International Institute for the Unifications of Private Law Convention on Stolen or Illegally Exported Cultural Objects (UNIROIT), which would allow for institutions and individuals to petition to receive a reasonable compensation of stolen property (Cumback, 2016, p. 346-363). There is an importance to define what is being regulated. Just as the laws in the US and UK worked to define what are human remains, international law works to define human remains into a more encompassing term, cultural property.

With international law, it is difficult to try and implement universal ethics across cultures that may not hold the same value as others. UNESCO's approach to working towards an ethical solution of human remains that have been taken from their country of origin without permission is to have monetary compensation paid by countries who collected human remains. Aside from monetary compensation, there is little UNESCO has done to implement universal laws on human remains in museums. In the case of the Moriori human remains, while there may be no international law that compels museums or institutions to repatriate artifacts back to their place of origins that does not have to

stop people from trying (Goodwin, 2020, p.147). One of the Moriori spokesperson, Kiwa Hammond (as cited by Corlett, 2022), sums it up well by saying “At the end of the day, that institution [Natural History Museum in London] decides what they want to do. We can just knock at the door and ask.” This is a hopeful statement after years of working towards repatriation.

## **Conclusion**

It has taken decades for laws and policies to develop to what they are today in the US and the UK. Attitudes towards human remains in museums continues to change as universities and museums are having conversations about a shift in priorities to be more culturally aware and ethical. While there is valuable information that can be learned from human remains, the past shows that collecting human remains without guidelines or laws can leave room for marginalized groups of people to have their culture exploited.

In the UK, the British Museum believes that they have an ethical obligation to preserve human remain collections for future generations to learn from (Mays, 2014, p. 1). While there has been a consistent tone of prioritizing educational growth and maintaining collections over cultural objections to this treatment of human remains, the tone in museums as begun to gradually change. The growing communication between communities that are seeking repatriation from museums is allowing for groups of people to be heard and hopefully assisted with their requests.

The treatment of human remains has changed in museums in the US and UK from their origins. Both have worked to create ways of communication between museums and the working groups, like the indigenous communities and the UK’s Working Group on

Human Remains (2001), to represent marginalized communities. The US and UK express what is ethical from two different perspectives. The UK's policies set importance on the respect and care of the physical human remains to protect the ability to continue to conduct research. The US ethical standards focus more on repatriation or deposition of human remains. These approaches are both a way to express ethical and respectfully treatment of human remains, but from a different point of view.

Human remains will always provide a unique set of information for professionals and researchers to learn from and will always come up in archaeological excavation. It is not desirable to stop human remains from being handled all together, but how museums handle working with the living can be beneficial to both parties. The direction of the laws in both the US and UK reflect the ongoing efforts to work with activist groups and professionals to explore their options. While museums are ever changing and the growing direction of ethical concern expressed through the laws and policies shows that respect for other communities and ethics when working with human remains has become a higher priority.

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