**Factors determining the repatriation of cultural heritage from museums; the place of cultural rights in British museums practice**

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**Factors determining the repatriation of cultural heritage from museums; the place of cultural rights in British museums practice.**

**Abstract**

The cultural heritage of many former subaltern peoples and states resides in museums of their former colonial masters whether abroad or in the countries where they live. This can serve as a potent symbol of loss and humiliation. Repatriation of this heritage presents a significant challenge. Most museums operate policies that presume retention of heritage irrespective of the circumstances of its acquisition. Criteria are set which privilege the holding institution and which do not acknowledge the beliefs, custom and practise of the claimants. The contest over repatriation engages complex interacting systems. The museum operates within powerful systems of Western law, and its own ontology. The claimant group has little power other than its moral authority. Cultural rights would help redress that balance. But the recognition of cultural rights is not an international norm. This research paper uses a mixed methods approach to examine whether museum practise, and particularly museum practise in the United Kingdom, recognises cultural rights as indicated by their practise on repatriation.

**Introduction**

“The return of a work of art or record to the country which created it enable people to recover part of its memory and identity, and proves that the long dialogue between civilisations which shapes the history of the world is still continuing in an atmosphere of mutual respect between nations.”

The Director General of UNESCO made this plea for the return of irreplaceable cultural heritage in 1979. Since then, efforts by newly independent States and indigenous peoples to achieve the restitution of their cultural heritage have been largely ineffectual. Much of this cultural heritage continues to reside in museums in the West through a history of compound historical and personal injustices, particularly colonisation (Matthews, 2014. pp.121).

Decolonisation in the 60’s saw an emergence of cultural and national consciousness in former colonies (Tythacott & Arvantis 2014, pp. 3). As newly sovereign States, they established their own museums and began to seek the repatriation of their cultural heritage from abroad. Indigenous groups began making similar claims, not only from abroad, but also from museums where they live. This is because former colonial countries had often replicated the behaviour of their former colonial rulers and appropriated the cultural heritage of indigenous groups living within their national territory.

It is clear that cultural property is most important to the people who created it or for whom it was created. It is also clear that this importance outweighs the academic interests of holding institutions such as museums (Greenfield, 2007). However, requests for the repatriation of cultural heritage face significant challenges. The repatriation process privileges the holding institution (Bienkowski, 2014, pp. 37). These institutions, inevitably, operate a policy which presumes their continued retention of the cultural heritage. Applicants for restitution have to prove their legitimacy and right to ownership according to criteria and values set by the holding institution and without any external oversight.

Repatriation was defined by the former Museums and Galleries Commission in the United Kingdom as the return of an object to a party “found to be the true owner or traditional guardian, or their heirs and descendants” and for whom the object is “deemed essential to the identity and to the cultural and spiritual well-being or history of the party” (Legget 2000, pp.29).

Nations and indigenous groups base their claims for repatriation on a stated inability to represent their sovereignty, spirituality, identity and history without the appropriate objects (Gorman, 2013, pp.79). They are thus an assertion of cultural rights as human rights. Claims for restitution by States or indigenous groups are also a way for them to affirm their legal right to self-determination in international law.

The loss of cultural heritage signifies loss of control of land, resources and identity (Vrdoljak, 2006, pp.2) . It can also serve as a potent symbol of humiliation and grievance for the source community with a resonance that penetrates to the present. As a result, restitution between and within states can form part of transitional justice, contributes to rehabilitation and marks the transition within the international community “from policies promoting cultural Darwinism to cultural pluralism”(Vrdoljak, 2006, pp. 3).

In contests over repatriation, acknowledgment of the cultural rights of indigenous peoples or other cultural groups would shift the balance in favour of the claimants. However as Logan has pointed out, the linkage between the protection and preservation of cultural heritage and “cultural rights” as a form of human rights is too often ignored or inadequately understood by scholars working in the cultural heritage field (Logan 2007, pp. 33 ; 2012). He states his agreement with the Smithsonian (2005) that “the concept of cultural heritage is vastly under-theorized; has lacked an academic, disciplinary base; has generated only an attenuated theoretical literature; and has generally left the bearers of cultural heritage out of the discussion.”

This dissertation will, it is hoped, contribute to a better understanding on that link between cultural rights and cultural heritage. The dissertation will analyse the following question:

Does museum practice internationally and specifically in the United Kingdom recognise cultural rights and specifically a right to repatriation of cultural heritage ?

Chapter 1 of the dissertation explains the underlying definitions and concepts which inform the two contrasting positions in this dissertation – cultural rights vs. retention of cultural heritage by museums. What do we mean when we talk about cultural rights? What is cultural heritage? What is the history of repatriation? What is the legal justification for the appropriation of cultural heritage during colonialism and currently? What is current practise with regard to repatriation in the United Kingdom ?

Chapter II assesses the recognition given to cultural rights in international human rights law, particularly with regard to the cultural rights of indigenous peoples. It is they who are most affected by the appropriation of their cultural heritage. The concept of inalienable cultural heritage and whether it is a useful concept is discussed. UNESCO is the principal international body in cultural heritage. It has a problematic role in repatriation. This is analysed.

Chapter III commences with an examination of how policies and ethical codes of practice on repatriation can be culturally biased, are not value neutral and can contribute to the failure of museum practise to recognise cultural rights. This is an issue that arises in the case study on the decision of the British Museum to refuse a request for repatriation which is analysed in the Research Section.

This is followed by a description of the sociological issues affecting repatriation and the recognition of cultural rights. This dissertation asserts that there is a very important and influential narrative between two contrasting ontological positions in museology - Universalism, based on Positivism, and the “New Museology”, based on Interpretivism. It is contended that both of these traditions see cultural heritage in fundamentally different ways which affect their decision-making on repatriation.

Chapter IV is the research section and Chapter V the conclusions.

It is not the remit of this dissertation to provide a thorough analysis of the legal remedies available for the realisation of cultural rights in international law. Some of the mechanisms in international human rights law are, however, included because they inform the debate on the legitimacy of cultural rights.

Repatriation can have a role in transitional justice and this is acknowledged, but a more complete analysis of this issue is not germane to the subject of this dissertation.

**Chapter I Cultural Rights , Cultural Heritage and the Law**

1. **The Meaning of Cultural Rights**

The United Nations Special Rapporteur, Ms. Farida Shaheed, has pointed out that there is no official definition of cultural rights, just as there are no official definitions of “civil”, “political”, “economic” or “social” rights. Cultural rights have often been described as underdeveloped in comparison to other human rights, but they must be fully understood to be part of the wider human rights system and are therefore grounded in existing norms and principles of international human rights law. They are not rights of lesser priority (Human Rights Council, 2011).

The Universal Declaration on Cultural Diversity lists rights expressly categorized as cultural (UNESCO, 2001). Article 5 of the Declaration states:

“....and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.”

The Fribourg Declaration on Cultural Rights (2007) also enumerates cultural rights (Fribourg Declaration 2007). The Declaration is a civil society initiative which enumerates eight cultural rights that relate to identity and cultural heritage. These include rights to respect for one’s cultural identity and culture, expressions of that identity and culture, access to cultural heritage, the right to participate in the cultural community; access to and participation in a cultural life, including the freedom to exercise one’s own cultural practices.

Cultural rights can have a collective dimension either as the collective exercise of individual rights or as collective rights in the sense of group rights. Article 27 of the Universal Declaration of Human Rights refers to the cultural life of “the community” which is interpreted to mean “communities” (United Nations 1948). The collective dimension of cultural rights has also been recognized in instruments such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Declaration on the Rights of Indigenous Peoples (Human Rights Council, 2010). In addition, the Committee on Economic, Social and Cultural Rights, has recognised group rights in two of its general comments: General Comment No. 17and General Comment No. 21 both of which underline that cultural rights may be exercised alone, or in association with others or as a community (Human Rights Council, 2010).

1. **The Meaning of Cultural Heritage**

The terms “cultural property” and “cultural heritage” were first used in the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, 1954). The concept of cultural heritage evolved from the concept of cultural property because of the interaction of cultural property law with human rights law. It was a recognition of the associative social value of cultural property to a cultural community and a recognition of their cultural identity. Prior to that, the predominant concept within the framework of international instruments that dealt with culture, or the protection of cultural heritage, was that of cultural property. This implied the existence of private property rights as compared to the notion of cultural heritage, which involves the need to preserve an inherited asset for future generations (Intl.Court of Justice, 2015).

Cultural heritage was first defined in the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage - World Heritage Convention (UNESCO, 1972). This defines cultural heritage as “monuments, groups of buildings and sites [...] which are of outstanding universal value from the point of view of history, art or science.” It defines **monuments** as “architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science”.

The 1972 Convention refers to tangible cultural heritage. This was supplemented by a subsequent convention which refers to intangible cultural heritage - the Convention for the Safeguarding of Intangible Heritage (UNESCO 2003). Intangible cultural heritage is defined as “practices, representations, expressions, knowledge, skills”, in other words heritage that is embodied in people rather than in inanimate objects. Human remains are also seen as cultural heritage (World Archaeological Congress, 1990). But human remains are unique. This point was made in the Human Remains Working Group Report of the Department of Culture Media and Sport in the United Kingdom (DCMS 2003, pp.166).

This dissertation only deals with tangible cultural heritage including human remains.

1. **The History of Repatriation**

Repatriation as a process originated in the early 19th century. Beginning with the Congress of Vienna in 1815, victorious European Powers sanctioned the return of cultural objects to the countries of defeated empires (Vrdoljak, (2008, pp.2). But repatriation has only been implemented in the context of armed conflict. Repatriation was not applied by the same European powers following decolonisation. In addition, despite the fact that since 1815 there was a consistent practice in European international law to enable State succession to cultural property and archives following territorial reconfiguration, the treaties concluded between colonial powers and their former territories did not provide for this (Vrdoljak, 2008, p. 200).

Legal justification for the appropriation of cultural heritage by Western governments, which ended up in their museums, is to be found in their legal justification for colonisation. To understand this legal justification it is necessary to go back to the late 1800s and the development of Legal Positivism.

Legal Positivism is a legal philosophical approach which sees law as the sum total of binding norms. Legal Positivism saw itself as a science. It expressed Enlightenment ideas which were current at the time. Enlightenment ideas, and particularly Positivism, came to pervade International law, anthropology and economics in the 19th century providing the justification for colonialism (Vrdoljak, 2008, pp.45)

Vrdoljak, (2008, pp.47) describes how the development of Positivism had a radical effect on the Law of Nations which became reformulated into International Law. The Law of Nations was based on the Natural Law which had been the pre-eminent theory governing relations between States. The Law of Nations held that all states had equal rights and were entitled to mutual respect. However, despite proclaiming a Universalist approach, International Law systematically excluded non-European peoples. The purpose of this was to control their territory and resources. The universalising tendency of European international law became all-encompassing so that by the turn-of-the-century there was only one International Law.

 With colonisation, a territory’s legal personality in International Law was extinguished; the limited legal protection which had been afforded by the Law of Nations disappeared and the principle of state sovereignty of the colonising power applied. The subjects of International Law excluded all entities except states. States were sovereign, independent and equal. The only protection available to indigenous peoples was confined to “international morality”. Indigenous peoples changed from being subjects of the Law of Nations to objects of International Law and from sovereign nations to dependent peoples absorbed into the sovereignty of the State (Vrdoljak, 2008, pp.51). The same applied to their cultural objects, which also became the property of the State, to be appropriated at will.

In response to the Positivist theory of law, an “institutional” theory of law developed in the beginning of the 20th century. This is also an Interpretivist approach. It holds that the law comprises the underlying social structure, including the shared beliefs and practices of members of the society, its structure and organisation (Francioni, 2013, pp.9-10). The contrast, therefore, is between law, as enacted by the legislative authority of the State, versus the law as a legal order, a product of any given society within, outside, and above the state. Viewed from this perspective, the unwritten laws, beliefs and practices of an indigenous society are also law.

These two contrasting ontological positions in law parallel the fundamental dichotomy between those from a Positivist perspective who see cultural heritage as the property of all mankind; the subject of individual legal rights, having economic value and part of the heritage of humankind which can be exported and traded versus the Interpretivist position of “institutional law” who see it as public patrimony; the product of the society that produced it, an indicator of membership of that society. It therefore transcends its economic value as an object of art. It is an embodiment of the society that created it. Interpretivism sees cultural heritage as an important dimension of human rights, specifically cultural rights, which find their fullest expression in the Declaration on the Rights of Indigenous Peoples (United Nations 2007) (Francioni, 2013, pp.12). It will be shown later in this dissertation that this ontological dichotomy in law has its parallel in the ontology of museums.

1. **Repatriation in the 20th Century**

## The exclusion of cultural property from the process of State succession on decolonisation continued into the 20th century. In 1968 the International Law Commission (ILC) began a process which would lead to the *1983 Vienna Convention on the Succession of States in respect of State Property, Archives, Debt* (United Nations 1983). However cultural objects were excluded from the Convention and were not subject to the principle of State succession. Their exclusion was because of the influence of former colonial powers and their museums (Vrdoljak, 2008, p.200). The ILC proposed that title to disputed cultural objects would be dealt with by the UNESCO *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation.* (UNESCO 1978). The functions of this committee will be examined later in the dissertation

## The UK government has legislated to return cultural objects taken during the Second World War. The *Holocaust (Return of Cultural Objects) Act 2009* (UK Parliament 2009) permits the return to their rightful owners of objects unlawfully acquired during the Nazi era and which are held in national institutions specified in the Act.

## In the last 25 years the general refusal by most Western States to deaccession cultural heritage has changed, but only in respect of human remains. In 1990 the US government enacted the Native American Graves Repatriation Act (NAGPRA, 1990). This legislation compelled the inventory of human remains and associated material from all federally funded institutions and the transfer to lineal descendants and culturally affiliated groups (Jenkins, 2011 p.3).

## In 2004 United Kingdom government passed The *Human Tissue Act* (UK Parliament 2004) to allow the deaccession of human remains. This legislation is dealt with in the next section.

1. **Repatriation in the United Kingdom.**

Museum practice in the United Kingdom is governed by five Acts of Parliament[[1]](#footnote-1). With regard to the deaccession of cultural heritage, legislation had prohibited Trustees from disposing of items in their collections, except in very limited circumstances. This prohibition on the deaccession of cultural heritage changed with the enactment of the *Human Tissue Act 2004* and the *Holocaust (Return of Cultural Objects) Act 2009* – already referred to, but the prohibition on the deaccession of other cultural objects remains in force.

The *Human Tissue Act 2004* (UK Parliament 2004) was passed following a number of organ retention scandals in some hospitals in the United Kingdom. Coincidentally, requests had also been made by Australia for the repatriation of human remains to the indigenous peoples of Australia. The *Human Tissue Act* governs the removal, storage and use of human organs and tissue, as well as any activities involving human tissue, wherever they are located. Section 47 of the Act provides legal authority to nine specified national museums in the United Kingdom, including the British Museum and the Natural History Museum, to deaccession human remains and other items with which human remains may be mixed up or bound. It is noteworthy, however, that the decision to deaccession is entirely at the discretion of the museum. The Act does not permit the release of all human remains by those nine museums, it only applies to those less than 1000 years old from the date on which the Act came into force.

## The effect of the Human Tissue Act on rates of repatriation is unknown. There has been no published survey to ascertain rates of repatriation in the United Kingdom since its enactment.

## Chapter II Cultural Rights in International Law

1. **Cultural rights and their Realisation in International Human Rights Law**

The right to cultural heritage both as an individual and a group right is enunciated in many international human rights instruments. However in most instruments the reference is solely to cultural rights or the right to participate in cultural life. The right to cultural heritage is not specified. It is also true to say that enforcement mechanisms for the realisation of cultural rights in international human rights instruments are weak (Chechi, 2013, pp. 185).

The Universal Declaration of Human Rights (UDHR) at Art.22 states:

“Everyone as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” (United Nations 1948)

Article 27 of the UDHR states:

“everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to sharing scientific advancement and its benefits.”

This article, in particular, introduced the idea that culture was an aspect of human rights.The International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) both refer to cultural rights although not specifically to cultural heritage (United Nations 1966; United Nations 1966a). The ICESCR refers to cultural rights at Art. 15.1 (a) where it provides a general, normative framework for a catalogue of cultural rights, but does not specify what the concrete entitlements are. The ICCPR refers to cultural rights more obliquely with the non-discrimination clause (Art.2 .1), and the minorities provision (Art. 27).

Compared to the ICCPR, the ICESCR has been regarded as weak with respect to implementation. The ICESCR states that Governments only need to take “all appropriate means” to work towards stated ends. For that reason, the rights contained in the ICESCR are often described as “programmatic rights”. This contrasts with the ICCPR where under Art 2 , States Parties are required “to adopt such legislative or other measures […] to give effect to the rights recognised in the present covenant.” This means that the rights contained in the ICCPR are justiciable, whereas those in the ICESCR are not (Steiner & Alston, 1996).

The 1st Optional Protocol to the ICCPR established an individual complaints mechanism (United Nations 1966b). It is noteworthy that it applies even to events that ante-date the ratification by a State of the Protocol. In theory an individual or a group of individuals could take a case to the Human Rights Committee as a violation under Art. 27 which gives an individual the right “to enjoy their own culture”. However, it would be difficult to prove that the retention by a museum of a particular cultural object constituted a continuing violation of a person’s right to enjoy their own culture.

In 2008 the 1st Optional Protocol to ICESCR was adopted (United Nations 2008c). This established a complaints mechanism to consider complaints from individuals and groups of individuals who claim that their rights under the Covenant have been violated. However, complaints which refer to events which predate ratification by a country of the Optional Protocol are not permitted. This would prevent the making of any complaint in relation to the retention of cultural heritage, for example cultural heritage taken during colonialism.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 21, does refer specifically to cultural heritage (United Nations 2009). It draws attention to States’ obligations to respect and to protect freedoms, that cultural heritage and diversity are interconnected, and that ensuring the right to participate in cultural life includes the obligation to respect and protect cultural heritage in all its forms and of all groups and communities.

The African Charter on Human and Peoples Rights replicates the concept of the right to participate in cultural life of the community contained in UDHR and the ICESCR. Article 22 (1) states: “all people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and an equal enjoyment of the common heritage of mankind” (Organisation African Unity 1981). This is seen by some to increase the formal scope of rights recognition to encompass cultural heritage as a group right (Schmidt, 1996, pp. 18-28; Shylon,1998, pp.110).

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights under article 14 states that everyone has the right “to take part in the cultural and artistic life of the community” (Organisation of American States 1988). There is no mention of a right to cultural heritage. Article 14 is not included in the individual petition mechanism to the Inter-American Court of Human Rights.

Cultural rights, as group rights, have been asserted most specifically in the context of the rights of minorities and indigenous peoples. The rights of indigenous peoples to a range of economic, social and cultural rights are guaranteed in various international instruments e.g. The Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities (Human Rights Council 2010). [The International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx) also contains provisions relating to cultural rights.

The [Convention concerning Indigenous and Tribal Peoples in Independent Countries](http://www2.ohchr.org/english/law/indigenous.htm), (No. 169) of the International Labour Organisation also refers to cultural rights (International Labour Organisation 1989). Under art. 2 at 2 (b) it states that Governments have the responsibility to promote “the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions”. The convention has been heavily criticised because its limited scope and content (Barelli, 2009) . It has a low number of ratifications. However, despite its limitations, the Convention’s recognition of the collective rights of indigenous peoples is significant because it is the only multilateral treaty to do so (Vrdoljak, 2008, p.232)

The Human Rights Council in its General Comment 23 on article 27 of the CCPR has promoted a progressive interpretation of the right to culture. It states that:

 “although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group” (Human Rights Council, 1994).

1. **Minority Rights and the Rights of Indigenous Peoples**

The most specific reference to a right to cultural heritage is contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIPS). This is the foremost instrument on indigenous peoples’ rights (United Nations, 2007). Particular articles of the Declaration confer rights to indigenous groups with regard to tangible cultural heritage. Art. (11) provides for their right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. Art. (12) gives the right to the use and control of their ceremonial objects; the right to the repatriation of their human remains; that states must enable the access and repatriation of ceremonial objects and human remains in their possession through “fair transparent and effective mechanisms developed in conjunction with indigenous people concerned”. Art. 31(1) states they have the right to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge and traditional cultural expression.

The Declaration emphasises that “indigenous peoples are equal to other peoples”. It states that indigenous peoples have the right not to be subjugated to forced assimilation or destruction of their culture. The purposeful lack of a definition of indigenous peoples in the Declaration is also related to the principle of equality. It reflects a growing trend whereby self identification is the norm in identifying an indigenous group (Vrdoljak, 2008). It will be seen in the research section that this has implications for ethical codes which require continuity between an indigenous group and the previous owners of an object making a claim for repatriation. It is, invariably, the holding institution who decide this.

A fundamental tenet of indigenous rights is the assertion of the link between peoples, land and cultural objects. UNDRIPS asserts the right of indigenous peoples to their land and, by extension, to the cultural objects. The right to determine the preservation and development of their culture is also part of the right to self-determination

As a Declaration, UNDRIPS is “soft law”. It does not provide legally binding obligations (Barelli, 2009). It also does not qualify as customary international law (Nykolaishen, 2012) . Despite this, “soft law” cannot be dismissed as non-law. UNDRIPS is at least part of developing customary international law and does have normative content. The Declaration does incorporate different legal standards which have been elaborated by different international, regional and national bodies. In doing so, it derives a measure of authenticity from existing international law (Barelli, 2009). This is especially true with regard to those rights already accepted under general international law including under the minority rights regime, such as the right of a group to practice its own traditions and customs (Article 11 of the Declaration).

The importance of UNDRIPS in International Law will be derived from the endorsement of States, which is what ultimately confers treaties and other international legal instruments with legitimacy. This will have an impact in affecting how courts decide cases (Barelli, 2009).

1. **Cultural Rights and UNESCO**

UNESCO has enacted a number of Conventions on the subject of cultural heritage and/or cultural property (UNESCO 2015). None of them apply to the restitution of cultural property acquired by a colonising state. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property provides for the restitution of cultural objects exported or transferred in contravention of the laws of the country of origin, but only after the Convention came into force (UNESCO 1970). Vrdoljak (2006, p.206) states that this was because former colonial powers insisted on the inclusion of a provision confirming the non-retroactivity in the Convention in order to protect their museums.

Article 15 encourages states to enter bilateral negotiations to resolve claims for cultural objects removed prior to 1970. In 1978, UNESCO established the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (UNESCO 1978). The purpose of the committee is to facilitate the resolution of restitution claims for objects removed prior to the operation of the Convention. However only States can make a claim or sit on the Committee. The Committee does not have jurisdictional powers to rule in interstate disputes. It can only act in an advisory capacity and simply offers a framework for bilateral negotiation. States are not compelled to bring a case before it and are not bound by its recommendations. To date, it has only advised in eight cases (Chechi, 2013,p.192).

1. **Cultural Heritage and Inalienability**

There are particular types of cultural heritage which, like identity, are regarded as inalienable. Such an object is characterised as part of the identity of groups of people. It is a concept of ownership which relies on a moral justification for its possession, rather than property rights (Coleman, 2010, pp. 82-95) . When a demand is made for restitution it is based on an assertion that irrespective of political or even demographic changes over time, the cultural property remains part of the identity of its original owners as determined, primarily, by geographical or cultural affinity. In addition, the circumstances through which the object was alienated are immaterial. The object is meaningful because it conveys the group’s identity to which they have cultural rights. (Barkan, 2002, p.32). Claims by indigenous groups for repatriation are sometimes based on this concept of inalienability who state it as a group right. It is a controversial concept because group rights not recognised in common law and as a result UNESCO conventions have had to make many compromises in order to accommodate Western concerns about its use.

**Chapter III Cultural Rights, Museum Practice and Repatriation**

1. **Cross-cultural Issues and Ethical Codes of Practice Governing Repatriation**

This dissertation now turns to repatriation as it is practiced internationally, but more especially in the United Kingdom. Fundamental to this discussion is whether the retention of cultural heritage by a museum constitutes an ongoing violation of cultural rights. Any indigenous group, who considers the retention by the museum of their cultural heritage as a violation of their cultural rights, will meet formidable obstacles in asserting their right to its return as provided for in UNDRIPS. In order to establish the legitimacy of a claim, an indigenous group seeking repatriation of cultural heritage will usually have to comply with the legal or ethical requirements set by the country in which the museum is situated, or by the museum itself. The code of practice issued by the DCMS’s Working Group on Human Remains (DCMS 2005), in the UK which sets specific criteria, is an example of that.

As will be seen later in the research section of this dissertation, the criteria used by museums to decide on whether or not to repatriate cultural heritage do not refer to cultural rights. Rather, the criteria they use have an ethical dimension which purports to be value neutral and independent. They are not. Differences over how one should define and assess, for example, property rights, cultural continuity and the value of the cultural object serves to illustrate the fallacy of this assumption. In addition, these differences operate at intercultural, institutional, national and international levels, all of which can affect a decision. For example, museums, and particularly National museums, are symbols of the nation state and used to affirm national identity (Bienkowski, 2014, pp.44). As such, claims by indigenous peoples within the state or from within another state can re-enact the contentious debates around the recognition, legitimacy and status of indigenous peoples that preceded the adoption of the Declaration on the Rights of Indigenous Peoples.

Different concepts of ownership illustrate the issue of cultural interpretation. The cultural property in western museums was either purchased or vested in the museums according to the Western concepts of property rights based on individual ownership. This can be in marked contrast to an indigenous understanding of ownership which can emphasise responsibilities rather than rights. For an indigenous community the responsibility may be to protect their cultural property. This is frequently underpinned by traditional legal systems. The inability or unwillingness of international and national legal systems to recognise these traditional legal systems has caused a good deal of conflict. When it is understood in these terms, cultural property that was appropriated by whatever means and was then sold outside the indigenous community breaches traditional law (Al Attar, Aylwin and Coombe, 2009, pp.321).

In order to establish legitimacy, codes of practice, require an assessment of the status of those making the request and their continuity with human remains. This can be problematic. Requests from a number of aboriginal groups for the repatriation of human remains have been declared invalid because the claimants did not live on traditional lands. They were perceived as “non-traditional” or “urban” people. They were accused of being politically motivated rather than acting on genuine cultural and religious concerns (Hubert, 1992).

This raises an important point about authenticity. Claims may be assessed on the basis of traditions and customary practice as it existed in some form of “pristine”, pre-contact culture. As a result, claims can be rejected and declared invalid because the claimants no longer adhere to those practices. Other requests have been declared invalid because, according to the museum, the claim had no basis in “traditional” beliefs or practice (Fforde, 2002, pp.37).

The British Museum decided that a claim by the Torres Strait Island group, to be analysed later in the dissertation, was invalid because it did not interrupt the traditional practice which existed at the time the human remains were removed. This denies the possibility, and indeed the necessity, that if it is to survive, a living traditional culture will have to change over time, as do all cultures. It seems deeply unjust that change or destruction of traditional practices, which may have resulted from colonisation, becomes the justification to retain the cultural heritage which was removed in pursuit of that colonisation. Professor of Archaeology in Stanford University, Lynn Meskell, writes that indigenous communities have certain rights and claims to culture but that “they are not trapped by ancient identities and necessarily expected to perform them in the present [...] there is no single path to cultural legitimacy” (Meskell, 2009,pp. 23).

Another requirement to establish legitimacy is that the indigenous group making the request for repatriation must have the agreement of their national government. Experience has shown that indigenous groups and minorities within and across states cannot necessarily rely on national governments to protect or return cultural heritage (Vrdoljak, 2006, pp. 3).

 Finally, being indigenous does not mean membership of a homogenous peoples. It does not necessarily fit into a Western-defined understanding of indigenous people. Indigenous peoples have a wide variety of experiences and beliefs. For example, Western concepts of “indigenous” assume linear descent from an ancestral population in a particular place. As a result people who claim an indigenous status have to express this in terms that are incompatible with their traditions.

1. **Cultural Rights and the Cultural Object as Agent.**

Museums, and the objects within them, have undergone a transformation over recent decades. Post-colonial politics has led to a radical re-evaluation of their role and function. Post-structuralism has re-defined the interpretation of objects contained within them. In his book “The Social life of Things” Appadurai (1986, pp.4) challenged the previous tendency to regard the world of things as inert and mute, “set in motion and animated, indeed knowable, only by persons and their words.” This previous tendency of museums has now been abandoned in favour of objects being seen in “conceptual schema that emphasise their mobility, multivocality and malleability” (Harris & O’ Hanlon, 2013). Objects are now also seen by anthropologists to have a role in social processes and particularly so when the objects are considered by an indigenous group to be animate beings (Strathern, 2004; Matthews, 2014, pp.122). It is striking how closely the animation of an object by an indigenous group parallels the “actor network theory” of Latour, (2005) and Law (2009) in sociology which sees all objects, whether animate or inanimate, as “actants” in social systems.

In his seminal article “The genealogical method of anthropological enquiry” Rivers (1910) proposed that the genealogical method could be applied to objects as well as people, that there was a biography of things in terms of ownership. The ownership of land as it is passed from one person to another in a kinship is an example of that. The anthropologist Igor Kopytoff (1986, pp.66) has extended this idea of a biography of an object. He asks the same questions of objects that are used with people: what is its social status within that culture and time period? What are the sociological possibilities conferred by that status and how are they realized? Where did the object come from and who made it? What has its career been so far and what does the culture regard as its ideal career? Does the use or meaning of the objects change with age and what should be its eventual destiny? Such an epistemology, which animates and confers a biography on a cultural object, gives it a positive valence in contests over repatriation.

Most objects in museums were originally commodities which had use value. They were produced, bought and exchanged for other things or for money. Kopytoff (1986, pp.73-75). points out, however, that in every society there are objects that are publically precluded from being commoditized. They are what he calls, “singularised”. He states that this process is culturally sanctioned and endorsed collectively. He describes how an object can be prohibited from further exchange or trade in what he calls “terminal commoditisation”. This is usually dictated by legal or cultural diktat. Most of the contested objects in museum collections are objects that were used for ceremonial or religious ritual. Such sacralisation is a particular form of singularisation and usually brings with it terminal commoditisation.

This issue of competing singularities and cultural relativism is important for the realisation of cultural rights. An indigenous group seeking the return of their sacralised heritage is facing an institution who have sacralised the object in terms of its aesthetic value to civilisation or science and not just to the museum. That is the argument used by the Universal or Encyclopedic museums to justify their retention of cultural heritage, as will be seen later in this dissertation.

1. **An Ontology of Museums as it Affects Their Practice on Repatriation**
2. History of Museums

The public museum is a unique European creation. The collections in museums originate four hundred years ago in the scholarly and aristocratic collections of the Renaissance. Subsequently, in the early 19th century, nation states used public museums to establish a national cultural identity, thereby defining the nation to itself and others (Vrdoljak, 2008, pp. 19). This was done by incorporating cultural objects from all peoples within their territories into national collections (Vrdoljak, 2008, pp.20). Removing the “title deeds” and lodging them in a museum was a symbolic representation of the transfer of sovereignty.

In Britain, unequal power relations, particularly colonialism, enabled State museums to accumulate huge quantities of ethnographic and archaeological objects (Besterman, 2011, pp.240; Tythacott and Arvanitis, 2014, pp.2-3). These became a theoretical justification for colonialism (Vrdoljak, 2008, pp.46). The interpretations and representations by Western museums of their collections played a significant part in forming Western cultural perspectives on source communities and their cultures. In the 19th century museum collections were used for the scientific justification of colonial domination, the promotion of the colonial economy and to disseminate information about the colonised (Van Geert 2015). This was especially true of the colonial museums, whereas the ethnological museums, which were usually created in parallel, presented the ethnological nature of a colony’s inhabitants.

Science, as understood in the 19th century, played an important part in the justification for colonial expansion. It relied on Social Darwinism, whereby European society was seen as the “standard of civilisation”. European powers saw it as their responsibility to facilitate the “development” of the most primitive cultures so that they would reach the standard of the most advanced (European) culture (Vrdoljak, 2006, pp.8). The racist overtones are obvious (Tythacott. 2011, pp.3). These attitudes permeated every knowledge system, including that of museums.

Decolonisation in the 60s and subsequent immigration had a profound effect on European museums. The resulting reconfiguration of international and national politics forced a re-examination of the role and function of these colonial and ethnographic museums. Van Geert (2015) describes how in response to this challenge, many museums began to aestheticise their ethnographic collections. This has now progressed to the point that these museums exhibit objects as works of art “highlighting a universal aesthetic value rather than privileging their historical and cultural relevance”. This practice reaches its apotheosis in the ‘Universal’ or ‘Encyclopaedic’ Museum. These are the classical collections-focused museums.

By contrast other museums adapted and began to give new representations of cultural diversity, recognising multiculturalism in their practice. This has led to a movement in museum practise called “New Museology”. Proponents of the “New Museology” see traditional museums as isolated and elitist institutions, which function as a cultural authority serving narrow sectional interests (McCall and Gray, 2014). The “New Museology” focuses on the social and political roles of museums (Mairesse and Desvallees, 2010).

1. The Universal Museum

There is a long held and widespread view in both anthropology and museology which rejects the idea of cultural heritage being linked to any human rights, and specifically to cultural rights. In 1999 the anthropologist J.L.King (1999, pp.199) wrote “cultural property is a highly perishable, non-renewable resource for international research and scholarship. There is no way ... that we can recognise the absolute power, or the absolute sovereignty, of a state over its cultural patrimony”. This attitude is echoed in the claims of some museums to be ‘universal museums’. These museums regard the idea of cultural patrimony as antithetical to universal knowledge and cultural understanding. The concept of the universal museum is a powerful force in museum practice and is highly influential argument against the repatriation of cultural heritage.

The concept of universality originated with the Enlightenment. It is an ontological position whereby encyclopaedic thought is seen “to inform comparative methodologies or descriptions of similarly structured phenomena which links humanity as a whole” (Vieregg,2007). The belief is that presenting antiquities from disparate times and cultures in the same place promotes an all-encompassing world view of peoples and their cultures in all their diversity. It is frequently stated by Western museums, particularly the British Museum, as a reason to retain cultural heritage belonging to other cultures.

‘Enlightenment’ ideas have been heavily critiqued by both post-structural and post-colonial theorists. Post-colonial criticism sees it as emphatically Eurocentric, whereby the ideas are inextricably bound up with imperialism. In their critique, Festa and Carey, (2013, pp.8) state “in its quest for the universal, Enlightenment occludes cultural difference and refuses moral and social relativity”. They contend that it considers non-Western ‘savage’ or ‘primitive’ populations to have no agency or any history that could equate with civilised advancement. Enlightenment is seen as a civilising mission which, in turn, legitimates imperial conquest.

In Dec. 2002 the Directors of nineteen museums major museums in Europe and North America, known as the Bizot Group[[2]](#footnote-2), signed the “Declaration on the Importance and Value of Universal Museums” (ICOM News, 2004). It is a robust, if misguided, defense of the Universal Museum. The Declaration states, inter alia, that: requests for repatriation had become an important issue for museums; [but that] “objects acquired in earlier times must be viewed in the light of different sensitivities and values reflective of that earlier era; museums serve not just the citizens of one nation but the people of every nation” and that objects require contextualisation which the universal museum provides.

Not surprisingly, the Declaration was roundly criticized for many reasons not least because the signatories to the Declaration are all Directors of museums in the West (Fiskesjö, 2010; 2004; Piotrovsky, 2005). The International Council of Museums (ICOM)[[3]](#footnote-3) commented on the Declarations lack of “wise and thoughtful judgement”.

The Declaration was considered to be an attempt by the British Museum and others, who were subject to increasing pressure for repatriation, to justify their retentionist policies. Geoffrey Lewis, Chair of ICOM’s Ethics Committee wrote in the ICOM Newsletter that the ‘real purpose’ of the Declaration was: “to establish a higher degree of immunity from claims for repatriation”; it constituted “a statement of self-interest, made by a group representing some of the world’s richest museums” and that these museums “do not, as they imply, speak for the “international museum community”. (Lewis, 2004: 3).

 The Director of the British Museum, Neil MacGregor admitted in a subsequent interview that the dispute over the Parthenon sculptures lay behind the Declaration (Forbes Magazine, 2003). He explained how Enlightenment ideas informed the establishment of the British Museum. He stated that the museum was created by parliament to show that: “ knowledge and understanding were indispensable ingredients of civil society, and the best remedies against the forces of intolerance and bigotry that led to conflict, oppression and civil war.”

The concept of the universal museum continues to polarize debate in museology. Although the validity of the Declaration itself has been heavily criticised, the underlying ideals of a universal museum are very influential. The topic is invariably raised at UNESCO’s biannual meetings by signatories of the Declaration (Gorman, 2013, pp. 81).

1. New Museology-Ethics, Social Justice and Human Rights.

New Museology emerged in the late 1970s. It proposes a major reorientation of the museum’s primary goal into an educational instrument rather than one of research and collecting (Boast, 2011). It was a radical change from previous museum practice. It emphasises “the social and political nature of the processes by which knowledge is produced and reproduced in the museum” (Boast, 2011). Rather than the universalist view of the museum, a new concept of the museum as a site of “moral activism” (Marstine, 2011, Sandell 2011) or “cultural equity” (Besterman 2011) has since emerged. This new approach places ethics at its centre and, although it is not usually made explicit, one can also discern an engagement with cultural rights with its emphasis on universality, participation, representation, equity, marginalisation, accountability and transparency.

Besterman (2011, pp. 239), for example, advances a role for museums as “beacons of cultural equity to mitigate the deep divisions in society that they may otherwise represent”. For him, cultural equity requires a museum to be both participatory with its public and accountable in its exercise of power. He challenges the signatories to the Declaration on the Importance and Value of Universal Museums “to go beyond the polemic of intercultural aesthetics and to open a more democratic debate around transcultural accountability”.

Sandell (2011,pp.131), also recognises the role of human rights in the “new museology”. The concept of museums as agents of social justice means that many museums have begun to represent the lives, cultures and contributions of diverse communities more equitably and in ways that affirm their rights. He states that the change in museum practice has come about “because of new social movements, the influence of human rights and demographic shifts arising from transnational migration”. He sees museums as change agents in promoting social inclusion and human rights both inside and outside the museum.

Marstine (2011, pp. 13), echoes these sentiments and argues that the museum “can be an ideal laboratory for promoting social justice and human rights”. She describes “a new museum ethics” that challenges the “othering” that underpins museum policy and practice. She also challenges the binary relationships which, traditionally, have existed between, for example, museum staff and their publics or between museums and source communities. Instead, she proposes “a process of engagement, mutuality and fluidity” underpinned by a “radical transparency” that is not hierarchical.

The “new museology” tries to engage communities who are usually marginalised and excluded by current museum practice. This activist type of museum practice directly challenges the fundamental purposes and obligations of museums and what should be collected and displayed, for whom, by whom, and to what end. The involvement of source communities in the representation and interpretation of their cultural heritage is now commonplace (Boast, 2011. As a result, source communities have come to be defined as authorities on their own cultural heritage (Galla, 1997, pp.149; Peers and Brown, 2009, pp.124).

This new Museum ethics not only reconfigures the relationship between the Museum and a source community but also between the museum and its collections. The relationship changes from one of “possession” of cultural heritage to one of “guardianship” (Geismar, 2008; Marstine, 2011, pp.17-20). Marstine defines this concept of “guardianship” as “a means towards respecting the dynamic, experiential and contingent quality of heritage and towards sharing in new ways, the rights and responsibilities to this heritage”. This concept of “guardianship” eschews the notion of cultural “property” and, instead, promotes a position of temporal caretaking, in partnership with source communities. In this way, the dynamic or experiential quality of heritage is acknowledged. Her position on repatriation is that guardianship prioritises repatriation as a human right and that the return of cultural “property” strengthens relationships with the source community.

Geismar (2008) describes the concept of guardianship which emerged in the museum practice of the Museum of New Zealand Te Papa Tongarewa Maori, regarding their *taonga* or cultural treasures. This concept of guardianship, called *kaitiakitanga* in Maori, acknowledges both the rights and responsibilities of both the museum and the source community in the care and management of the collection. It recognises that objects are enmeshed in cultural and social relations vital to their identities. This hearkens back to the ideas of Appadurai and Kopytoff , referred to earlier in this dissertation, who describe the object as animate and with a biography. This concept of guardianship permits both repatriation and also retention within the museum where the museum holds and cares for the object in trust for the indigenous community.

In the United Kingdom most museums, both encyclopedic and local, actively involve source communities in their practice but whether this amounts to a recognition of their cultural rights is another matter.

The Social Justice Alliance for Museums (SJAM)[[4]](#footnote-4) was founded in 2013 by the University of Leicester School of Museum studies, and National Museums Liverpool. It now has a membership of more than 80 museums worldwide. In the United Kingdom, Glasgow Museums, National Museums Liverpool, National Museum Wales, and University College London museums are members. The Museum Association, the representative body for museum professionals in the United Kingdom, is also a member. Human rights are a specific focus of their mission statement.

The Federation of International Human Rights Museums (FIHRM) was established in 2010 by National Museums Liverpool whose Director was interviewed in the research for this dissertation. FIHRM has been endorsed by UNESCO and accepted as a member by the International Council of Museums (ICOM).

**Chapter IV Research**

**A. Research Question**

The underlying hypothesis in this study is that: the discipline of museology, and particularly British museology, does not acknowledge cultural rights in their practice on the repatriation of tangible cultural heritage.

The Primary question is what role, if any, do cultural rights play in museology in the West, particularly with regard to the retention or return of cultural heritage to requesting countries or minority groups?

1. **Methodology**

This study used mixed methods research. It used a combination of both a quantitative deductive approach and also a qualitative inductive approach. Mixed methods research was used because it would increase the validity of the findings (Bryman, p.622).

The four measures chosen for this research are likely to be valid indicators of museum practice for the question being studied. The reasons for the choice of these particular measures was because, with regard to the quantitative indicators, they were easily accessible and amenable to quantitative analysis. In addition, intuitively, they are likely to reflect current attitudes to the recognition of cultural rights. Qualitative data were derived from two sources - the four semistructured interviews with museum professionals and the case study. The interviews provided the contextual and interpretive information on the recognition of cultural rights in museum practice. The choice of a case study was to: give additional information in both quantitative and qualitative domains. It would permit an analysis of the criteria used to assess an application for repatriation and whether the assessment included any recognition of indigenous rights or any cultural rights. It also provided qualitative information on what were the attitudes of the Trustees to the merits of the application.

However there are some caveats: this research does not claim to provide a valid and reliable analysis of the recognition given to cultural rights in current museum practice internationally or in the UK. But the research is indicative of current practice.. The analysis of the two journals to find articles on a human rights theme and the assessment of the codes of ethics and policies is valid and reliable. The four interviewees did give a wide range of opinions, but such a small sample could not claim to be representative of museum practice. Likewise, one case study could not be said to be representative of the overall practice of a particular museum.But it does give useful information on what are a major British museum’s attitudes towards indigenous rights.

The measures used were:

Quantitative data indicators were derived from the following:

1. A manual search was carried out on two leading journals in museology to identify articles addressing any human rights theme. This was to ascertain whether there is any academic interest in human rights or cultural rights in the field of museology. The two journals were identified using the Social Science Citation Index. They are leading journals in museology. The journals are: *Museum Management and Curatorship[[5]](#footnote-5)* and *Museum International[[6]](#footnote-6) .* The journals were searched for articles addressing human rights topics Museum Management and Curatorship was searched between the years 2005 and 2015. Museum International was searched between 2002 and 2013 which is the last year available online.
2. Primary source documents were examined to find any references to any typology of human rights. (See Appendix A for the list of documents).These primary sources were ethical codes and policies with regard to human remains and/or cultural objects in:

1. The ethical codes and policies of National (UK) and International museums.
2. The ethical codes and policies of National and International professional associations of museum or allied professionals.
3. UK Government documents.

Qualitative Data

1. Twelve interviewees, who could provide data on the place of Human Rights in museology were identified and approached. Four agreed to be interviewed. One interview was carried out in person and three by Skype. A semistructured interview was administered (See Appendix B). Items for this interview were generated from the ethical code of practice published by the Museum Association which is the professional organisation for museum professionals, and from UNDRIPS (Museum Association 2006) ; (United Nations 2007). The interviews were tape-recorded and transcribed. Written consent was given in one and verbal recorded consent was given in the three others. A record of the date and time of the interviews is given in Appendix C together with the names of the interviewees and the reasons they are considered to be reliable and valid informants.

The transcribed interviews were subjected to critical thematic analysis comparing the content against the research questions (Bryman, 2012 p.624). The themes that were used were derived from the international human rights instruments described in Chapter II (A) and (B) of this dissertation.

1. A case study of a repatriation request to the British Museum which was refused was analysed to ascertain the reasons for refusal and, particularly, whether the assessment considered any human rights norms in their determination. This provided both qualitative and quantitative data.
2. **Results**
3. **Ethical Codes and Policies on Deaccession**
4. **United Kingdom**

 **Policy Document: Guidance for the Care of Human Remains in Museums (DCMS)**

In May 2001 the UK government established the Working Group on Human Remains. In 2003 the Working Group issued its report (DCMS 2003). This was followed by the enactment of the Human Tissue Act (UK Parliament 2004) and in 2005 the Government issued its “Guidance for the Care of Human Remains in Museums” (DCMS 2005).

The guidance recommends best practice and although is not statutory it does establish normative practice. It is referred to in the Deaccession Policy of the British Museum and of University College London, among others which will be analysed later.

The “Guidance for the Care of Human Remains in Museums” issued by the DCMS referred to international human rights instruments but stated that these did not apply in UK law. It also states: “UK legislation does not recognise the principle of group rights; human rights are only exercisable by the individual. The report also states: “It is important for museums to be willing to consider the views of all those with interests, but no one view will have automatic pre-eminence.” It did, however, state the need to respect fundamental human rights.

The Guidance sets out criteria for museums to follow in deciding a repatriation request. For example, representatives of a community making a request for repatriation must have the support of the relevant national government although where that is not done they will take account of reasons. The representatives must also show that they have the authority to submit a request on behalf of that community.

Where the human remains are more than 100 years old, the community making the request must demonstrate *cultural continuity* with the remains in question; and that the remains have *cultural importance* for them. The policy defines c*ultural continuity*, as a continuity of: (a) religious/spiritual belief; and/or (b) cultural customs and practices. It states that this will sometimes, but not necessarily, be associated with land occupation. It states that this is because archaeological and historical studies show that in the vast majority of cases it is very difficult to demonstrate *cultural continuity* and *cultural importance* far into the past between applicants and the community from which the human remains originate.

For the human remains to have *cultural importance*, the report states that it is expected but not essential that the claimants can demonstrate that: (a) the human remains and their treatment have particular significance to them (for example, because the human remains were removed in circumstances outside the normal laws, customs and practices of the claimant community; or that the customary ceremonies for “laying to rest” of a deceased person were not followed); and that (b) the continued holding of the human remains by the Museum perpetuates strong feelings among the claimants community.

**The Museum Association**

The Museum Association is the professional body for museums, galleries and professionals who work in museums in Great Britain. In 2006 they published a Policy Statement on the Repatriation of Cultural Property and in 2015 they published a draft code of ethics Museum Association 2006;2015). There is no reference to “rights” in any form which could relate to human rights in these documents. However the code does recognise some norms contained in UNDRIPS in that it encourages its members to: acknowledge “source communities” as the originators of the cultural object with whom a museum should develop constructive relationships; inform them of the presence of items relevant to them in the museum’s collections; respect their interests; involve them in decisions about how the museum stores researchers presents or otherwise uses collections and information about them.

With regard to repatriation the code urges its members “to deal sensitively and promptly with requests for repatriation both within UK and from abroad of items in the museum’s collection, taking into account: the law; current thinking on the subject; the interests of actual and cultural descendants; the strength of claimants relationship to the item; their scientific educational, cultural and historical importance; their future treatment.”

The code, therefore, does not recognise the right to the repatriation of their ceremonial objects and human remains which is contained in Article 12 of UNDRIPS.

**The British Museum**.

The British Museum is regulated by the British Museum Act (UK Parliament 1963). The Deaccession Policy of the museum states that objects vested in the Trustees as part of the collection of the Museum cannot be disposed of by them except as provided in the Act. As a result, the document states that the Trustees power to deaccession objects from the collection is limited and there is a strong legal presumption against it (British Museum 2013; 2013a; 2013b).

With regard to human remains the Museum’s policy reiterates much of the content of the Guidance for the Care of Human Remains in Museums. In addition, it states that the primary legal duty of the Trustees is to safeguard the museum’s collection for the benefit of “present and future generations throughout the world”. The policy states that the Trustees are unlikely to accept any request for the transfer of human remains unless they are satisfied that: the request is for human remains that were originally subjected to a mortuary practice, or were intended for a mortuary practice. This requirement will be referred to again in the case study. It was the reason given for the refusal of the request for repatriation. This is not a requirement of the DCMS Guidance. Requests for deaccession must be assessed by independent experts nominated by the Trustees.

**University College London**

The policy of University College London on the deaccession of human remains is, different to that of the British Museum and to a remarkable extent (University College London 2007). It states that where the University believes human remains may be contested they will be “proactive” in seeking out potential claimants. It specifically states that they anticipate they will receive claims for the return of human remains removed during the colonial era from overseas without the consent of the source communities. They state that they will work constructively with source communities to establish partnerships, exchanges and shared research.

This “proactive policy” means that they try to establish the status of the “claimant community” which might be either the genealogical descendants or cultural communities of origin. Indeed, when they are unable to identify a “claimant community”, but can identify a country of origin, they will identify relevant institutions which are nationally recognised in the country of origin as representing the indigenous group and work with them.

The policy goals go so far as to state that when remains can be identified as having come from a claimant community, which contests their removal and possession by UCL and who want their return, UCL “recognises the pre-eminent rights of the recognised representatives of those communities to claim their ancestors remains” . Their guiding principle is “to proceed from a stance that is sympathetic to the case for return where evidence of consent is non-existent, unproven or equivocal”.

1. **International**

**International Council of Museums (ICOM)**

ICOM was created in 1946 for museum professionals. It has more than 35,000 members. It has representation from 136 countries. It is a diplomatic forum and has consultative status with the United Nations Economic and Social Council.

The ICOM code of ethics recommends that museums should be prepared to communicate with a country or people of origin in order to return cultural property (ICOM 2013). It states that repatriation is appropriate where objects still confer a spiritual and/or cultural significance, They list the criteria on which decisions should be made: impartiality, scientific, professional and humanitarian principles as well as applicable local, national and international legislation.

With regard to human remains the code recommends that requests for the return of human remains must be addressed expeditiously with respect and sensitivity and that museum policies should clearly define the process for responding to such requests.

**World Archaeological Congress**

The policy of the World Archaeological Congress acknowledges that indigenous cultural heritage (including human remains) “rightfully belongs to the indigenous descendants of that heritage” (World Archeological Congress 1990). It acknowledges the right of communities to determine disposition and that repatriation of human remains to communities is an appropriate outcome. However, whilst stating this recognition of indigenous rights, the policy then seems to equivocate stating that mutual respect for “the legitimate concerns” of science and the “legitimate concerns” of communities are the key factors in enabling acceptable agreements to be reached and honoured.

1. **The United States of America**

**The National Museum of the American Indian**.

The stated policy of The National Museum of the American Indian is that it will repatriate any human remains that can be reasonably identified as those of a particular individual or of an individual “culturally affiliated” with a particular American Indian tribe (Nat. Museum of Amer.Indian 2012). The request for repatriation must originate from living descendants of the individual or of the particular tribe or organisation. This is a presumption of repatriation and an acknowledgement of indigenous rights.

1. **Australia**

**National Museum of Australia**

The National Museum of Australia policies state that indigenous peoples have Indigenous Cultural and Intellectual Property (ICIP) rights (Nat Museum Australia 2011; 2011a; 2011b; 2011c; 2011d). They state that these refer to the rights that indigenous peoples have in their cultural heritage. The policies of the museum refer specifically to Articles 12 and 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*, to which Australia is a signatory. It lists those rights stating that they are ongoing.

With regard to human remains, the policies state that, notwithstanding the fact that legal title may be vested in the museum for all are some of the human remains in its custody, the museum considers that it has a moral obligation to return human remains to the relevant community upon request. Tellingly, the museum does not place any conditions about

the future of those remains on the community to whom human remains are returned. This is a clear recognition of indigenous rights.

1. **New Zealand**

**The National Museum of New Zealand, Te PapaTongarewa (Te Papa)**

Te Papa policies state that the museum “actively seeks to repatriate human remains where provenance can be identified” (Museum of New Zealand Te Papa 2010). It states that: Te Papa recognises the interests of indigenous peoples in their ancestral remains; does not recognise the Maori and Moriori human remains it holds as artefacts or collection items; recognises that these human remains have an ongoing connection with the peoples and cultures from which they originate. It states that these remains are regarded as ancestors and will remain in the care of Te Papa until such time as matters of provenance and long term care have been discussed and agreed upon with

Maori/Moriori.

1. **Interviews with Museum Professionals**

In the following thematic analysis of the interviews, the interviewees are assigned a letter to preserve confidentiality.

## Interviewees Understanding of Cultural Rights

All of the interviewees understood the concept of cultural rights or human rights but had different views about their salience. Z actively incorporated cultural rights into his museum practice and was actively involved in promoting their recognition internationally in museology.

##  X had active exhibition programmes on rights, one on children’s rights and another on poverty. He knew about and acknowledged the importance of indigenous rights. He has written on the subject of cultural rights and particularly the right to cultural participation.

Y was more equivocal. She said that cultural rights had arisen as a way for indigenous groups to establish their cultural identity. She acknowledged, however, that people had the right to establish their identity by whatever means they wish. She said that, with decolonisation, indigenous groups needed something to “peg” their identity to, given that the newly independent state was not going to grant them their own land back.

S was dismissive of cultural rights. She said that cultural rights were “a kind of a made-up idea actually”. She said that when people wanted to claim things, they authorise that claim by putting a concept of rights next to it.

**Salience of Human Rights in British Museum Practise**

Three of the interviewees were emphatic that human rights were discussed in museum practice. The fourth said they were discussed” a little” but very loosely and without real attention paid to what they meant . She said:

 “there is a kind of importing of fashionable theories and ideas such as human rights, cultural rights, but little interrogation of what those things actually are and whether they really can apply in museums. I mean how could human rights really apply in museums unless you’ve got a very loose and generous definition of what that is and what that means? I mean really I think it’s just a way of using buzz words.”

**The Role of Museums in Social Justice**

Two the interviewees spoke enthusiastically about the role of the museum in social justice and actively promoted this in their own museums. One spoke passionately about the, at times, very tense debate between the London national museums and museums who espouse social inclusion-“New Museology”. He said this debate is played out at a professional but also national political level within arts and culture organisations.

Y said that museums could have a role in social justice but it wasn’t axiomatic, that it depended on what the society or country wanted. S queried the whole meaning of social justice and why museums should involve themselves in at all.

**The Concept of the Universal Museum.**

Three of the interviewees questioned the validity of the concept of “Universal museums”. Two of them said that the term had attracted such opprobrium that it had now been quietly dropped although the practice continued. A third said the purpose of self-designating as a Universal or world museum was to further its claim on funding. One criticised the museums that did it as “self-serving”. He was referring to the London national museums.

S said she thought there had been a shift in the role of the universal museum to one which now promotes them as having a political role. She said that the British Museum and the Victoria & Albert Museum both talk about how objects can help international relations. She said they talk about how the encyclopaedic museum can promote tolerance and tackle nationalism.

Z said he could see both the universalist and “new museology” perspectives but that museums nowadays are more and more likely to be engaged in contemporary issues which arise out of what collections they have. He said he thought that the traditional 20th century museum attempted to find some “spurious neutral ground where politics didn’t ever enter into anything [where], it was all about aesthetics and scholarship”. He said he thought museology had moved on from that now and that it was proving a particular challenge for many of the older institutions. He said there was only one direction where all museums were going and that was to become more and more interested “obsessed with” human rights issues and everything that that entails. He said that if any British museum should think that somehow or other it can avoid the controversies and dilemmas that would arise as a result, they were really mistaken

**Repatriation of Tangible Cultural Heritage.**

Overall, the interviewees, with one exception, favoured repatriation of cultural heritage but to different degrees. Y said there were occasions when things should be repatriated and that it should be assessed on a case-by-case basis. X said he operated on a presumption of repatriation when requests were made. S said she was not in favour of it. She stated her dislike of “righteous claims” which didn’t take a nuanced view of the issues involved in repatriation.

Z said that his museum look on repatriation favourably provided the request is approved by the national government of the source community. Z said that his ethical or moral opinion, as an individual, might differ from his statutory role as director of the museum. He said that human remains and cultural objects are dealt with differently in museum practice with human remains being more favourably regarded for repatriation than cultural objects. He said the fact that cultural heritage had been taken during colonialism, meant that there was a case to answer but he tries not to take sides on the issue. He also said that the way some sacred objects are stored for preservation in the museum do not accord with indigenous groups wishes.

Z said that objections are raised to the repatriation of human remains when the source community intends to bury them thereby making them unavailable for scientific research. He said that his view that it should be up to the source community to decide what to do with the repatriated remains but he could also see the other side of the argument. He said that who’s asking and what they are asking for are the important questions, rather than what they want to do with the remains. He said he’s heard the argument that scientific value should outweigh all other considerations but he disagrees with that. In fact, he feels that the cultural, moral and ethical considerations should outweigh scientific value. He reiterated that each application should be considered on a case-by-case basis.

**British Museums Practise on Maintaining Constructive Relationships with Cultural Groups or Indigenous Groups.**

All of the interviewees said that this was standard practice. S said that she was comfortable with this as a practice but queried how a group could be identified and who benefits. She said she thought museums did it to establish an identity and an authority for themselves. She said that being involved with indigenous groups could be problematic because it could mean the museum doesn’t have an open approach to knowledge . She said that, for example, somebody could be given greater authority to speak about the past and the object because of their identity as an indigenous person, rather than what they know about the object.

S said she felt uncomfortable about the process in the USA and in Australia where indigenous people are encouraged “to act the native” and encouraged “to talk up all their wounds of history - so kind of urban aboriginals”. She said that, as a result, those that don’t follow certain cultural practices are ignored and side-lined in favour of those that “play up the kind of native role”. She said this created a kind of victim identity which was backward. She said she thought that museums were involved in a kind of myth which was being constructed of what it is to be an indigenous person and, as a result indigenous people are really being created by their past. She said that this was as dubious as the old colonial myth of what indigenous people are like.

**Familiarity with the Declaration on the Rights of Indigenous Peoples**

None of the interviewees knew about UNDRIPS. When asked about it, Y replied “that UNESCO thing”? S replied - is that the one from the 80’s? , I’m not hugely familiar with it. Z replied “that’s new to me“. When some of the rights were read to Z he replied that, whereas his personal moral code would agree “wholeheartedly” with the rights, it was a different matter from his institutional museum perspective. He expressed the view that acknowledgement of those rights could make the Government very fearful that, were they to be acknowledged,because reparations would have to be paid. He said he didn’t think that any of the rights in UNDRIPS were followed in British museum practise.

X said he could see that the British Museum would be “petrified” of the British government finding that [UNDRIPS] operational because they would be “terrified” that half of the collections would be stripped out of their galleries. He then spontaneously spoke about particular objects of cultural heritage which had been looted from source communities and how great a loss it was for them.

Having been read the rights enumerated in UNDRIPS, S said that five or 10 years ago there were professionals within museums who “wanted to do that sort of thing” but they were less concerned about it now. She said she thought things had moved on, that the director of the British Museum had helped change the discourse by using a language that some campaigners feel a bit more comfortable with. She said he has shown the advantage of diversity, that showing cultural artefacts from different cultures together helps us understand each other. She said this had helped to humanise what museums do.

1. **Journal Search**

**Museum Management and Curatorship[[7]](#footnote-7)**:

This journal has published 319 articles from 2005 to date. There were two articles on a human rights based theme. Both referred to human rights museums. There were no articles on cultural rights or indigenous rights.

**Museum International[[8]](#footnote-8)**:

This journal published 388 articles between 2002 and 2013 (the last date available online). There were three articles with a human rights based theme and these were on cultural rights.

1. **Minutes of the Board of Trustees British Museum[[9]](#footnote-9)**

There is no reference to any typology of human rights in the minutes.

1. **Minutes of the Board of Trustees Victoria & Albert Museum[[10]](#footnote-10)**

There is no reference to any typology of human rights in the minutes.

1. **Case Study-Rejection of an Application for Repatriation by the British Museum**

The British Museum received a claim from the Torres Strait Islanders Repatriation Working Group for the return of two modified skulls in the British Museum’s collection. It was first considered by the Board of Trustees in June 2011 . The minutes quote the Trustees’ power under s.47 Human Tissue Act 2004 and their policy on human remains which proceeds from a presumption in favour of retention. The Trustees minutes state that they agreed to consider the claim because: it had been made with the authority of a community having cultural continuity with the remains; it was supported by the community’s national government; the remains were human, between 100 and 200 years old and the remains had significance for Torres Straits Islanders. Two reports from independent researchers were commissioned.

The Deputy Director of the Museum wrote to the claimants and asked them for further information on the claimants understanding of late 19th century mortuary ritual “as practised in Nagir and Mer” as it relates to these remains. He also asked for further information on “the genealogical links” between the individuals whose remains were the subject of the claim and the Torres Strait islanders who were making the claim.

In reply the Australian High Commission, which was acting on behalf of the claimants, said that information on late 19th century mortuary ritual might be best sought from other means, rather than “through this claimant process [and that] perhaps this issue, if of interest to the Board, could be investigated further by the two independent researchers to be engaged”. The reply also stated that the Australian Government [or claimant groups] had never made a claim based on genealogical links but rather [on] “cultural community of origin”.

Two independent reports were commissioned and received. The Executive Summary of the report from the Anthropologist Prof Richard Davies, University of Western Australia is appended to this report at Appendix D.

In summary, Prof Davis states, inter alia, that “the Torres Strait Islanders are likely to be concerned about the skulls continued location in the Museum for at least three reasons: they have not received a Christian burial; they are out-of-place; they are not anyplace where their descendants can easily communicate with them”. He states that the skulls of ancestors still have the power to mediate between living people (such as between Islanders, Museum staff and Australian government officials) and between local organisations and institutions (such as between the Torres Strait Islander Repatriation Working Group, the British Museum and Australian Commonwealth Government).

He states: the presence of the skulls in the British Museum would be a reminder to Torres Strait Islanders that they were once colonised subjects; that the request for the repatriation of the two skulls can be seen as part of the larger process of decolonization and Torres Strait Islander autonomy; that Islanders would no doubt regard their return as a gesture of respect and recognition of equality on the part of the British Museum towards all Torres Strait Islanders.

The other independent expert was by Simon Hillson, Prof of Bio-archaeology University College London. Prof Hilson’s report is not appended to this dissertation. His report is a scientific analysis of the skulls, their morphology and anatomical detail etc..

The minutes of the Board of Trustees of November 22, 2012 states that they noted that the information available about the circumstances of the transfer of these skulls to Haddon [a marine biologist] was consistent with ethnographic evidence that skulls were traded as objects of power by Torres Straits Islanders, and served in their negotiations with Europeans.

The minutes state that based on the information and advice before them, including that obtained from a meeting with the claimants on 8 October 2012, the Board agreed that it had not been shown that, on balance of probabilities, the sequence of events by which the two skulls had eventually come to form part of the Museum’s collection represented an interruption in the Torres Strait islanders’ pre-modern mortuary disposal practices. Therefore, after considering the issues put to it by the claimants in the dossier and at the meeting with them on 8 October, the Board concluded that the evidence presented to it was not sufficient to outweigh the presumption of retention, as set out in the policy.

The minutes of the board for March 2013 noted “that there had been no formal response to the Trustees decision and the claim. However there is a report in the New York Times of May 24, 2013[[11]](#footnote-11) on the subject of repatriation of human remains which includes the following:

“Mr. David, of the Torres Strait Islands, said he was still reeling from the British Museum’s rejection last fall of a reburial claim for two “divining skulls” that had been decorated with pearl shells, beeswax and wood. They were collected by a 19th-century British marine biologist who wrote in vivid detail about trading a tomahawk and calico for a skull from a native family that he said had removed it from a burial site and transformed and decorated it in tribute to a dead male relative named Magau.”

Mr David said that the reburial claim was rejected because it was not clear “that the process of the mortuary disposal of the skulls had been interrupted”. The Times contacted the British Museum for comment. Hannah Boulton, a spokeswoman for the British Museum, explained that this means that “these skulls were possibly created for trade or sale rather than burial.”

 **Chapter V Discussion**

**Ethical Codes and Policies**

The ethical codes and policies give information on the recognition of cultural rights and, specifically, on the practice of repatriation, an indicator of the recognition of cultural rights. The most striking finding is that there is wide variation between the recognition accorded to cultural rights in England and by museums in Australia, New Zealand and the United States. The United States, Australia and New Zealand museums all view repatriation favourably with the United States and Australia operating a policy which presumes return of cultural heritage.

The museums in the USA, Australia and New Zealand all make specific reference to indigenous rights in their policies and/or codes of ethics.

The policy of Te Papa New Zealand is not as specific as that of the National Museum of Australia in its recognition of cultural rights. However, Te Papa is a unique bicultural institution. It is led by the Chief Executive and Kaihautū (Māori leader), who share responsibility for the strategic leadership of Te Papa, including the bicultural development of the organisation. In that sense, therefore, the museum expresses its recognition of cultural rights in its governance.

The code of ethics of ICOM seem to indicate that ICOM regard the repatriation of human remains to be a matter for individual museums rather than stating its own policy. The code lists the applicable international law that applies with regard to repatriation. The list only refers to UNESCO Conventions. There is no reference to international human rights law and particularly none to UNDRIPS. These omissions appear regrettable given its consultative status with the United Nations Economic and Social Council.

England made it legally possible to deaccession human remains with the Human Tissue Act. However in the DCMS Guidelines it sets criteria which a claimant group could find difficult to meet. The Guidelines do mention the existence of group rights but then state that UK law does not recognise the principle of group rights and that human rights are only exercisable by the individual (DCMS 2005). This is a trenchant rejection of indigenous rights.

In the Human Tissue Act the UK government chose not to mandate repatriation even with safeguards. Rather, it left the decision to the individual museum. In so doing the government has established a process that is not independent and there is no appeal mechanism. The Report of the Working Group recommended that the government should also provide a policy on the deaccession of cultural/sacred objects not covered by the Human Tissue Act. They have not done so.

The ethical code of the Museum Association does not refer to rights in any form. However, it does recommend practices which provide weak endorsement of the rights stated in UNDRIPS recommending consultation, acknowledgement and cooperation with source communities.

Based on the ethical codes of the two museums in England, which were examined for this research, one can say that museum practice in the United Kingdom seems to vary a great deal with regard to the repatriation of cultural heritage. This was confirmed in the interviews with museum professionals. Three of the four were in favour, two strikingly so. The British Museum adheres strictly to the guidelines and add their own criteria. The criteria are so high that in the Torres Strait Islanders claim, (to be examined later in this dissertation), could not meet them. So, despite the recommendations of their independent experts to release the remains, the museum still decided not to do so.The policy of the Museum of University College London takes a completely opposite stance and has a policy with presumes repatriation. The UCL policy refers specifically to “rights” in recognising source communities.

**Interviews**

The interviewees replicated the ontological positions in the Universalist vs. “New Museology” debate. One was an avowed Positivist who rejected the very idea of any rights-based approach espoused by indigenous groups. She viewed it as illegitimate. She was an enthusiastic supporter of the British Museum as an encyclopaedic museum. Two of the interviewees were in the “New Museology” side of the debate. They both felt that museums which adopted the Universal approach couldn’t continue with that ontological position. Another interviewee, who works closely with indigenous groups recognised cultural rights but was cautious about the motivation behind the assertion of such rights.

Three of the interviewees were enthusiastic about maintaining constructive relationships with source communities in a way that indicated parity of esteem and recognition of rights. They said that this was standard practice in the museums in the UK. The fourth interviewee was in favour but cautiously so.

None of the interviewees knew anything about UNDRIPS.

**Journal Search**

The manual search of the two journals over the ten-year period found three articles out of over 700 in total with a human rights theme.

**Minutes of the Board of Trustees of the British Museum and Victoria & Albert Museum**

There is no mention of rights and, specifically, no reference to rights in the few claims that were made over the period of time that was examined for this research.

**Case Study - Rejection of an Application for Repatriation by the British Museum**

The rejection by the British Museum of the application from the Torres Straits Island Repatriation Working Group perfectly illustrates the difficulty faced by an indigenous group seeking repatriation of cultural heritage, in this case human remains. The reason given for the rejection, “that it had not been shown that, on balance of probabilities, the sequence of events by which the two skulls had eventually come to form part of the Museum’s collection represented an interruption in the Torres Strait islanders’ pre-modern mortuary disposal practices” is arcane. The application did, in fact, satisfy all the requirements set by the DCMS Guidelines. The reason given for the rejection is a criterion set only by the British Museum.

The Museum is punctilious in applying their criteria and, most importantly, in the author’s opinion, it wants to appear to be so. The response to the questions set by the British Museum from the Australian High Commission appear to indicate that the Australians thought the questions were unnecessary and had no precedent. It appears to the author that this punctilious pursuit of information is defensive. It gives the impression that the museum is doing everything possible to be fair whereas, in truth, they will find a reason to reject the application save when the claimants are able to satisfy every criterion, in which case a rejection would be evidently unjust and then they will grant the request.

With regard to the recognition of cultural rights, it is telling that in rejecting the application, the Museum rejected the case made by its own independent expert which recommended the return of the skulls. The experts opinion explained what the skulls meant from the cultural perspective of the Torres Strait Island group which, in effect addressed their right to their cultural practises as they were in the past and as they are now. This illustrates the points that were made earlier in this dissertation about the cultural relativism of ethical codes and criteria for repatriation. In its rejection of the claim, the Museum did not refer to the group’s cultural perspective. The museum had their own cultural perspective about what constituted culturally authentic mortuary practise. When the group couldn’t produce evidence as to whether mortuary practise had been interrupted the claim was rejected.

In the author’s opinion, the rejection speaks to the ontological position taken by the British Museum as a Universal/Uncyclopaedic museum. The rejection is made on ethnological/scientific grounds, thereby supporting the ontological position of the museum .Viewed from the perspective of the claimants it is likely to be seen as a continuing colonialist policy.

 **Chapter VI** **Conclusions**

In response to the question set for this dissertation:

Does museum practice internationally and specifically in the United Kingdom recognise cultural rights explicitly or implicitly?

The answer to this question is that museums in countries with an indigenous population do recognise cultural rights in their ethical codes, policies and national legislation. Museums in the United Kingdom do not formally recognise cultural rights although they do have a strong commitment to engage with indigenous groups and this goes some way towards recognition of their rights. Museum practice in the United Kingdom is changing particularly in those museums who have adopted the “new museology”. Whilst this is an ontological position it is also a pragmatic socio-political response to the cultural diversity of the population in the United Kingdom.

The poor recognition given to cultural rights in museum practise reflects the fact that internationally, cultural rights do not have full recognition in international law. The concept of inalienable cultural heritage does not apply in common law jurisdictions. UNESCO Conventions only apply to heritage removed prior to 1970. Indigenous groups seeking the return of their cultural heritage face significant difficulties therefore unless they are seeking the repatriation of human remains and then only if they seek them in the USA, Australia and New Zealand. Repatriation of cultural objects is almost impossible and has to depend on moral arguments. Post-colonial states and their museums have no difficulty applying different norms with regard to the repatriation of cultural heritage looted during armed conflict, for example during the Nazi era, compared to heritage looted during colonialism.

**APPENDIX A**

**List of Ethical Codes and Policies on Deaccession**

 **United Kingdom**

1. British Museum De-accession of objects from the collection July 2013 (British Museum. 2013 a)
2. British Museum Acquisitions policy July 2013 (British Museum. (2013b)
3. British Museum Human remains in the collection policy July 2013 (British Museum. 2013c)
4. Museum Association Policy statement on repatriation of cultural property (Museum Association. 2006).
5. Department of Culture Media & Sport “Guidance for the Care of Human Remains in Museums” (DCMS 2005).
6. University College London. Policy, Principles and Procedures for the Care and Treatment of Human Remains at UCL (University College London.2007)

**International**

1. ICOM Code of ethics for Natural History Museums (ICOM, 2013)
2. World Archeological Congress Code of Ethics on human remains (World Archeological Congress 1989)

 **Australia**

1. National Museum of Australia Indigenous Cultural Rights & Engagement Policy. (National Museum of Australia. 2011)
2. National Museum of Australia Collections-Return of Cultural Objects policy. (National Museum of Australia. 2011a)
3. National Museum of Australia De-accessioning and Disposal Policy (National Museum of Australia. 2011b)
4. National Museum of Australia Aboriginal and Torres Strait Islander human remains policy . (National Museum of Australia. 2011c)
5. National Museum of Australia Aboriginal and Torres Strait Islander secret/sacred and private material policy. (National Museum of Australia. 2011d)

 **New Zealand**

1. The Museum of New Zealand Te Papa Tongarewa Koiwi Tangata (Human Remains) Policy (Museum of New Zealand Te Papa.2010)

 **United States**

1. Smithsonian National Museum of the American Indian, Repatriation Policy. (Smithsonian National Museum of the American Indian, 2014)

**APPENDIX B SEMI-STRUCTURED INTERVIEW**

This questionnaire is to aid research on whether or what role has human rights in museum practise in the United Kingdom. There is no right or wrong answer. It is not about the particular practise of the museum where you now work although this is likely to inform your replies to the questions. Your replies to the questions are confidential and will not be disclosed without your consent.

1. What is your understanding of the concept of cultural rights ?
2. Are human rights and specifically cultural rights ever discussed in the context of museum practise in the UK?
3. If they are – in what ways?
4. If they are not, why do you think that is?
5. Do you think museums have a role in social justice - defined as "... promoting a just society by challenging injustice and valuing diversity” ?.
6. What is your opinion on the concept of the universal or encyclopaedic museum ?
7. How do they differ from other museums ?
8. A role for museums in cultural diplomacy has been proposed. Does compliance with human rights standards figure in this ?
9. Is compliance with human rights standards considered in lending policy or exhibition touring?
10. Do museums in the UK acknowledge cultural diversity in their practise ?
11. Are human rights, either as sociology or law, taught in museum or anthropological education.
12. In Section 9 of the draft code of the MA under the heading “Combating the illicit trade in items” it is stated that members must:

“Reject any item if there is any suspicion that it was wrongfully taken during a time of conflict, unless allowed by treaties or other agreements, or where the museum is co-operating with attempts to establish the identity of the original owners of an item”.

1. What is your opinion of that requirement ?
2. Do you think it should apply to items obtained by a museum prior to the UNESCO 1970 Convention ?
3. If you do not why is that?
4. This next question is about building or maintaining relationships with source communities:
5. To your knowledge do museums ever develop constructive relationships with cultural groups or indigenous groups who contributed to collections, or with representatives of these people, or their cultural descendants?
6. If they do, is this standard practise in museology?
7. If it is not, why is that?
8. Do museums ever inform originating communities of the presence of items relevant to them in the museum’s collections, wherever practical ?
9. If they do, is this standard practise in museology ?
10. If it is not, why is that?
11. It is sometimes stated that source communities rarely request the return of their cultural heritage ? Why do you think that is ?
12. Some museums will only consider requests for de-accession if there is agreement by the national government where the indigenous people live.
13. What is your opinion of that?
14. If you do think this is required does this mean that the cultural rights of indigenous peoples do not exist in their own right ?

1. Do you think this could be a reason why indigenous peoples rarely seek the return of cultural heritage?
2. The next series of questions are about respecting the traditions or religion of source communities:
3. Given that a great deal of cultural heritage originating from indigenous groups was developed to be used in religious ritual do you think holding such objects in museums respects that function of the objects.

1. If you think it does in what way does it do so ?
2. Do you think originating communities should, if possible be involved in decisions about how the museum stores , researches, presents or otherwise uses collections and information about them .
3. Are you familiar with The Declaration on the Rights of Indigenous Peoples ?
4. Articles 11 & 12 of the Declaration on the Rights of Indigenous Peoples (2007) gives Indigenous Peoples the right to maintain, protect and develop the past, present and future manifestations of their cultures, including their artefacts and ceremonies. It also states that States must provide redress, which may include restitution of their property taken without their consent or in violation of their laws and customs.

The Declaration states that indigenous peoples have the right to the use, control and repatriation of their ceremonial objects; and the right to the repatriation of their human remains.

1. Do you think that museum practise in the UK currently acknowledges any of those rights?
2. If it does, in what ways?
3. If it does not, why not?
4. The National Heritage Act prohibits the return of cultural heritage from the national museums. What do you think of that ? D you think museums would want to do so ?
5. Do you think a museum’s policy on de-accession is ever influenced by the value of requested objects in generating income for the museum ?
6. Some museums see a role for the museum in cultural diplomacy. Do you think a museum could encompass a role in furthering human rights ?
7. Do you think that de-accession has any role in transitional justice ?
8. Have your thoughts on this matter of human rights and museums changed as a result of this interview?

**APPENDIX C**

 **Interviewees credentials and dates of interview:**

1. Lissant Bolton, Keeper of Antiquities, Africa & Oceania, British Museum.

Dr. Bolton collaborates with the Vanuatu Cultural Centre and has collaborated with the National Museum Australia. She has published on museums and indigenous communities. She was consulted by the DCMS Committee on the care and treatment of Human Remains (2000). Interviewed on 30/07/2015

1. David Anderson Director General, National Museum Wales. Dr. Anderson was previously head of Learning & Interpretation, Victoria & Albert Museum. Interviewed on 16/08/2015.
2. David Fleming Director, National Museums, Liverpool. Dr Fleming is the founding member of the Federation of Human Rights Museums and The Social Justice Alliance for Museums. Interviewed on 25/08/2015
3. Tiffany Jenkins Sociologist, author of “Contesting Human Remains in Museum Collections” (Jenkins,2011). Dr. Jenkins interviewed 37 professionals who were involved in the repatriation debate over human remains for the purposes of her book.

Interviewed on 01/09/2015.

 **APPENDIX D**

**Report on the Cultural Significance of Torres Strait Islander Ancestral Remains Held By the British Museum**

**Dr Richard Davis**

**Anthropology and Sociology, University of Western Australia 12 December, 2011**

**Executive Summary**

1. In 1888 the marine biologist Alfred Cort Haddon obtained two skulls from the islands of Naghir (Near Western cluster) and Mer (Eastern Islands cluster). These skulls are the subject of this Report.
2. Haddon's interest in skulls was driven by evolutionist inspired ideas regarding races and peoples.
3. At the time Haddon received these skulls, skulls were used and traded by Islanders between each other and Papuans to the north.
4. Skulls were two different types of media; one being communication and the other representation. Depending on whether they were the skulls of family or an enemy killed in battle they were used for divination, trade and exchange, memorial portraitures, personal, clan and family status enhancement, improvement of masculine qualities, and conferral of ancestral beneficence on descendants.
5. Skulls gained these uses and capacities as a consequence of mortuary rituals that took place over a few months that were largely concerned with recreating a new person of a deceased person. During the rituals the skull was cleaned and decorated to mimic the deceased person's face.
6. None of the above capacities and uses of skulls are in contemporary operation.
7. Changes brought about through colonialism, including adoption of Christianity, legislation of dead body laws, and development of public cemeteries contributed to the decline of interest in skulls.
8. Contemporary mortuary rituals are similarly concerned with the recreation of a new person after death but the head of the deceased plays no part in any of the rituals.
9. Skulls have symbolic influence in contemporary Islander art.
10. The presence of the skulls in the in the British Museum would be a reminder to Torres Strait Islanders that they were once colonised subjects.
11. .Torres Strait Islanders are likely to be concerned about the skulls continued location in the Museum for at least three reasons: they have not received a Christian burial; they are out-of-place; they are not anyplace where their descendants can easily communicate with them.
12. .While skull-divination plays no part in contemporary Islander relationships with their deceased, the skulls of ancestors still have the power to mediate between living people (such as between Islanders, Museum staff and Australian government officials) and between local organisations and institutions (such as between the Torres Strait Islander Repatriation Working Group, the British Museum and Australian Commonwealth Government).
13. The request for the repatriation of the two skulls can be seen as part of the larger process of decolonisation and Torres Strait Islander autonomy.Islanders would no doubt regard their return as a gesture of respect and recognition of equality on the part of the British Museum towards all Torres Strait Islanders.

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1. The British Museum Act (UK Parliament 1963), the Public Libraries and Museums Act (UK Parliament 1964), the National Heritage Act (UK Parliament 1980) and (UK Parliament 1983), the Museums and Galleries Act (UK Parliament 1992). [↑](#footnote-ref-1)
2. The Bizot Group "is a limited and exclusive group that features antiquities dealers as prominently as museum directors"- (Gorman, 2013, pp. 76) [↑](#footnote-ref-2)
3. ICOM is an international organisation created in 1946 by and for museum professionals. It has a membership of more than 35,000 museum professionals and has consultative status to the Economic & Social Council. [↑](#footnote-ref-3)
4. For more information see: http://sjam.org/ [↑](#footnote-ref-4)
5. Museum Management and Curatorship is an international journal published quarterly by Routledge. [↑](#footnote-ref-5)
6. Museum International is an international journal published quarterly by UNESCO since 1948. [↑](#footnote-ref-6)
7. Available at: http://www.tandfonline.com/loi/rmmc20 [↑](#footnote-ref-7)
8. Available at: <http://portal.unesco.org/culture/en/ev.php-> URL\_ID=2291&URL\_DO=DO\_TOPIC&URL\_SECTION=-465.html [↑](#footnote-ref-8)
9. Available at: http://www.britishmuseum.org/about\_us/management/trustees.aspx [↑](#footnote-ref-9)
10. Available at: http://www.vam.ac.uk/content/articles/t/trustees/ [↑](#footnote-ref-10)
11. Available at: http://www.nytimes.com/2013/05/25/arts/design/museums-move-to-return-human-remains-to-indigenous-peoples.html?\_r=0 [↑](#footnote-ref-11)