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## Repatriation in university museum collections: Case studies from the Phoebe A. Hearst Museum of Anthropology

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### Abstract

University-based anthropology museums are uniquely positioned to pursue nuanced decisions concerning the disposition of collections in their care, setting best practice for the field. The authors describe a three-staged approach to repatriations that they led during their concurrent service as head of cultural policy and repatriation (Jordan Jacobs) and director (Benjamin Porter) of the University of California, Berkeley's Phoebe A. Hearst Museum of Anthropology between 2015 and 2019. Examples involving human remains and cultural objects from Australia, Canada, Democratic Republic of the Congo, Iraq, Japan, Mexico, Panama, Peru, Saipan, Senegal, Vanuatu, Venezuela, and South Carolina in the United States demonstrate the benefits of transparency, open communication, and rigorous investigation of provenance and provenience, which may or may not lead to transfer based on the criteria and priorities of potential recipients. This article also provides a history of the Hearst Museum's Cultural Policy and Repatriation division, which was disbanded in 2021.

### Introduction

University-affiliated collecting institutions face distinct opportunities and challenges relative to their civic and non-profit sector counterparts. This is especially true for anthropology and archaeology museums when conducting repatriation projects related to collections falling outside domestic legal frameworks (for example, the Native American Graves Protection and Repatriation Act (NAGPRA), its implementing regulations, and related state laws).<sup>1</sup> Universities' institutional policies, understandably concerned with managing complex educational and research enterprises, often lack awareness of repatriation, absent a compelling legal obligation or pressing reputational threat. Campus leaders may assume that policies governing tangible property and other assets are sufficient for addressing what is, in fact, a dynamic issue concerning not only legal and ethical, but also political, pragmatic, and optical, issues. The responsibility may then fall to the administrators of universities' collecting institutions to conduct provenance research and carry out repatriations.

Universities are, of course, more than bureaucracies. They consist of people representing a wide array of backgrounds and ideas, which can conflict no matter how substantially justified in their practical, ethical, legal, and scientific reasoning. As academic and popular

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<sup>1</sup> Native American Graves Protection and Repatriation Act, 16 November 1990, 104 Stat. 3048 (NAGPRA).

media stories increasingly emphasize the colonial and racial legacies of university collections, staff and students have come to view them as local and tangible examples of institutional violence.<sup>2</sup> Clarion calls for repatriation often accompany surprise from university administrators who claim to be unaware of these issues. Campus leaders, furthermore, may not be prepared to respond and may point to a lack of policy to govern the disposition of such collections. As a result, a high degree of autonomy is both enjoyed by, and demanded of, university museums, which stand both to benefit directly from the relationships established through repatriation efforts and to take the brunt of condemnation due to real or perceived missteps.

The particular composition of university collections, too, is unique among cultural institutions. University acquisitions often favor collections of known provenience and clear provenance.<sup>3</sup> This preference for objects with rich documentation is, in part, due to universities' intentions to prioritize collections for research and teaching, often over that of exhibition. These relatively informed collecting narratives support research efforts surrounding repatriation. The more discernible an object's past lives, the more comprehensive any evaluation of repatriation as its potential disposition.<sup>4</sup> The legality and ethics of an object's acquisition, for example, can better be appraised when those circumstances were thoroughly documented. A meticulous record of an object's source community will more easily identify a recipient for its potential return. Descriptions of an object's deduced or observed use, *in situ*, can better support its classification and return on ethical or legal grounds.

Yet while university collecting institutions may have the clearest cases for repatriation – and the most fervent voices calling for that outcome – they still find themselves operating in gray areas in which their own local policies about repatriation, often based on professional and international standards, are neither in alignment with, nor articulated by, those of the university. Questions arise as to how the administrators of these units are to proceed. In this article, we present case studies based on our experiences carrying out repatriations at the Phoebe A. Hearst Museum of Anthropology (Hearst Museum) at the University of California, Berkeley. While the implementation of NAGPRA is not the focus here, this legislation's articulated considerations – including “right of possession,” affiliation, and object classification as well as a preponderance standard of evidence and, generally, a museum-shouldered burden of proof – informed the Hearst Museum's broader approach. Our structure also resembles the phased recommendations of the 2018 Sarr-Savoy report related to the restitution of African cultural material in French museums.<sup>5</sup>

Further, just as NAGPRA's authors sought a compromise between multiple legitimate, but long imbalanced, interests in Native American human remains and cultural objects,<sup>6</sup> so did

<sup>2</sup> Alexander Sage, “Grave Robbing at UC Berkeley: A History of Failed Repatriation,” *The Daily Californian*, 5 December 2020; Ryan N. Gajarawala, “The Crime Scene of Stolen Objects at the Peabody,” *The Harvard Crimson*, 24 March 2021; Gabriela Portillo Alvarado, “The Penn Museum Must End Abuse of the Morton Collection,” *The Daily Pennsylvanian*, 25 June 2020.

<sup>3</sup> Boylan 1999; Stanbury 2000.

<sup>4</sup> Jacobs 2009.

<sup>5</sup> First, “restitution of several largely symbolic pieces whose return has been requested”; second, the “inventorying [and] intensive transcontinental dialogue”; and, third, an open-ended period to allow for claims when the “political situation or the museum landscape finally allows.” Felwine Sarr and Bénédicte Savoy, *Rapport sur la restitution du patrimoine culturel africain. Vers une nouvelle éthique relationnelle*, 2018, <http://restitutionreport2018.com/> (accessed 2 January 2021).

<sup>6</sup> “[NAGPRA] represents a true compromise. ... In the end, each party had to give a little in order to strike a balance and to resolve these very difficult, emotional issues. ... This legislation effectively balances the interest of Native Americans in the rightful and respectful return of their ancient ancestors with the interests of our nation's museums in maintaining our rich cultural heritage, the heritage of all American peoples.” 136 Cong. Rec. S17,

the Hearst Museum seek an equitable, structured approach to repatriation considerations across its global and non-Native American holdings. As stated in its approved collections management policy, the Hearst Museum's director possesses the delegated authority to make determinations about the accessioning and deaccessioning of collections, which includes final determinations about the repatriation of collections not implicated by NAGPRA. To this end, between 2015 and 2019, Benjamin Porter, as museum director, and Jordan Jacobs, as head of the Cultural Policy and Repatriation (CPR) division, sought to apply a defensible and consistent approach to proposing repatriation of collections in its care to identified potential recipients. This proactive work fell generally into three overlapping efforts: first, seeking to resolve known legacy issues; second, pursuing resolution of cases identified in a survey led by the CPR division of non-Native American human remains in the museum's care; and, third, reconciling a backlog of in-process collections. The following discussion follows this tripartite construction. We hope that these examples, and the museum's concurrent efforts to welcome and systematically consider future claims, will provide transferable best practices for the benefit of other institutions – particularly university museums – and practitioners of cultural policy.

Our experiences in carrying out these cases lead us to propose that repatriation be regarded as a “normal” – rather than an extraordinary – responsibility of museums, much like other institutional activities that bring about the movement of objects (for example, exhibition loans) and that it should be presented to public audiences as such. Importantly, we also argue that it is the sharing of actionable information with potential recipients, not the physical transfer of collections, that should drive a museum's repatriation efforts and be used to gauge its success. As the cases below well demonstrate, not all of our suggested repatriations resulted in transfer; nevertheless, stakeholders were provided with all available information with which they could make their decisions according to their own needs and priorities and on their own timelines.

Relevant cultural property legislation, where it exists, provides one source of information as to what kinds of material are of special significance to a source country and in what year such importance was officially conferred. Accordingly, we propose that, rather than use the bright line of the 1970 UNESCO Convention's date or the United States's 1983 implementing legislation to guide repatriation determinations, relevant source country legislation be followed if its implementation predates 1970 and is unambiguous in purpose and scope.<sup>7</sup> We also recognize that colonial power structures or other obstacles may have delayed the passage of such laws, so that in some cases other standards must be sought, especially when a collection activity coincided with a hostile or traumatic event. Above all, we argue that no matter the level of public attention on a given museum's repatriation activities – or perceived lack thereof – repatriation work merits both rigor and nuance, both in the necessary provenance research as well as in identifying potential recipients and ascertaining their wishes and priorities.

## Background

Founded in 1901 as the University of California Museum of Anthropology,<sup>8</sup> the Hearst Museum today cares for an estimated 3.8 million objects. These collections are considered

173 (1990) (statement of Senator McCain). One of NAGPRA's aims was “to strike a balance between the interest in scientific examination of skeletal remains and the recognition that Native Americans, like people from every culture around the world, have a religious and spiritual reverence for the remains of their ancestors.” Inouye 1992.

<sup>7</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231 (1970 UNESCO Convention).

<sup>8</sup> Jacknis 2000. The museum was named the Robert H. Lowie Museum of Anthropology from 1959 until 1991.

the property of the University of California's Board of Regents and are cared for in two facilities on and near the Berkeley campus where they are available for research, teaching, and exhibition. Descendent communities frequently accept the museum's proactive invitations to visit and interact with the collections as part of its community-driven programs. Heightened attention to issues of ethics, museum best practices, due diligence, and space limitations has greatly curtailed the museum's acquisition program, most notably since 2012. Aside from skeletal material transferred from other University of California, Berkeley units in the 1990s, the museum has not accessioned human remains since the 1980s.

The Hearst Museum's CPR division was created by Director Mari Lyn Salvador in 2013, with Jordan Jacobs as its head. Jacobs previously served as the Hearst Museum's senior repatriation specialist and had worked on similar issues at the American Museum of Natural History, the United Nations Education, Science and Culture Organization (UNESCO), and the Smithsonian National Museum of the American Indian. The CPR division's broad and intersectional portfolio aimed to identify, acknowledge, account for, and mitigate cultural sensitivities for the mutual benefit of the museum and its various stakeholders. Responsibilities ranged from due diligence research for potential acquisitions, to forming and then liaising with the museum's Native American Advisory Council (NAAC), to stakeholder outreach for exhibitions and educational programs, to vetting communications, to providing informal advice to campus colleagues, and to triaging crises.<sup>9</sup>

The two-person division's close working relationship with the museum director's office was strengthened with the arrival of Benjamin Porter as director, whose prior research in heritage, tourism, and museum anthropology, and experience leading archaeological field projects in the Middle East with substantial community-based components brought an applied understanding of cultural policy issues. The CPR division also drew on the expertise of the Hearst Museum's wider staff and curators as well as the Berkeley campus and system-wide University of California administrators.

Concurrent to these staffing actions was the 2018 development of the Hearst Museum's online collections portal – an overhaul of an earlier public-facing database, Delphi – which enabled members of the public to conduct remote collections research.<sup>10</sup> With descendant communities being a principal audience, the portal made accessible digital meta-data as well as supporting paper legacy documentation (for example, catalog cards) that may contain information not described digitally. Images, with NAAC-approved restrictions implemented, were also published, with policies to respond to requests that additional content be obscured. Crucially, the portal increased the agency of potential claimants for repatriation, who could now access key information without museum intermediaries.

<sup>9</sup> NAGPRA activities composed the balance of the Cultural Policy and Repatriation (CPR) division's workload and, while not the focus of this article, informed its non-NAGPRA projects. Still adhering to NAGPRA's nuanced principles, and working within its delegated authority, the museum adopted a more proactive approach than it had in past decades: increasing consultation activities and initiating mailings to Tribes to which human remains and associated funerary objects had been long affiliated in published notices. These practices aimed to maintain communication, not to pressure Tribes to repatriate at a time not of their choosing. By October 2019, 51 Tribes were affiliated to human remains still in the museum's care, compared with 66 when the practice began in 2017. This included what may have been the largest NAGPRA repatriation in California history: the transfer, after many years of tribal-approved research, of some 1,029 sets of human remains and 27,390 associated funerary objects to the Santa Ynez Band of Chumash Indians in 2018.

<sup>10</sup> Hoffman, Porter, and Black 2022. See the Hearst Museum Collections Portal, <https://portal.hearstmuseum.berkeley.edu/> (accessed 6 December 2021). For transparency, deaccessioned collections remain visible, marked with a "deaccession" tag. Readers can explore the collections described below by entering "Acc.[number]," with no spaces, into the portal's search bar. Links to specific accession numbers or catalog numbers in the portal, whichever is more specific, are provided in footnotes below.

## Addressing known legacy issues

Specific cases in the Hearst Museum's institutional memory – as well as the authors' professional backgrounds and the larger conversation in the museum field around provenance, due diligence, and international repatriation<sup>11</sup> – informed efforts to ascertain the degree to which extra-NAGPRA repatriation work should draw from the museum's limited staff time and resources. Early in Porter's directorship, the museum's leadership recognized that questions of provenance and due diligence had not been a consistent priority of previous administrations, even in the recent past. In one case, this inattention had caused the museum serious reputational harm; in another, a long-expressed interest had languished for several years without resolution.

### Human skeletal remains from Saipan and Japan

In 1974, former US Naval Reserve medical corpsman Max E. Childress donated to the museum the human remains of a minimum of four individuals he had collected in 1945 from Saipan in the Northern Mariana Islands.<sup>12</sup> The associated catalog record described these remains as those of “Japanese who committed suicide during the American invasion.”<sup>13</sup> The same accession also included skeletal elements collected by Childress while serving in Japanese hospitals in 1945. This collection and its provenance were known to some, but not all, museum staff, and then-director Judson King later described the case as having “jumped out of the box with no warning.”<sup>14</sup> Press reports<sup>15</sup> and King's 2013 oral history indicate that in 2008 one or more museum staff members wrote letters bearing King's forged signatures to both the US Department of Defense and the Yasukuni Shrine in Tokyo presenting a fabricated plan to return the remains to Japan. Later that year, King was surprised to receive a letter from Masao Nakayama of the Yasukuni Shrine, explaining that war dead recovery efforts were the purview of Japan's Ministry of Health, Labour and Welfare, which was copied on the response. Tipped off, King later surmised, by the same museum staff, the *San Francisco Chronicle's* Jim Doyle reported on the matter in August 2009, stating that the collection represented a violation of the Geneva Conventions.<sup>16</sup> Official condemnation was swift and significant, including censure and criticism from the California State Legislature and Nancy Pelosi, the speaker of the US House of Representatives.

Japan, however, was not ready to pursue a transfer. Japanese law then in force forbade the import of non-cremated human remains and, as documented in Doyle's 29 August 2009 *San Francisco Chronicle* article, required positive identification of remains as “Japanese” before pursuing their repatriation. Accordingly, in September 2009, the Hearst Museum sent the remains to the Joint Prisoner of War/Missing in Action Accounting Command Central Identification Laboratory (CIL) in Hawaii. The CIL's subsequent report determined that

<sup>11</sup> Prott 2009; Felch and Frammolino 2011; Kersel 2011; Gerstenblith 2013; Leventhal and Daniels 2013; Reed 2013; Yates 2014.

<sup>12</sup> Where noted, some cited sources are maintained by the Hearst Museum's Registration Division in physical accession folders, organized by accession number. Access to these files can be requested through a form located at <https://hearstmuseum.berkeley.edu/request-a-research-visit/> (accessed 6 December 2021).

<sup>13</sup> Accession no. 3076, <https://portal.hearstmuseum.berkeley.edu/?q=acc.3076>.

<sup>14</sup> A full account can be read in a 2013 interview with Judson King, *C. Judson King: A Career in Chemical Engineering and University Administration, 1963–2013*, 2013, 731–35, [https://digitalassets.lib.berkeley.edu/roho/ucb/text/king\\_jud\\_2013.pdf](https://digitalassets.lib.berkeley.edu/roho/ucb/text/king_jud_2013.pdf) (accessed 6 December 2021).

<sup>15</sup> Jim Doyle, “Japanese War Dead Skulls at UC Museum: Apparent Geneva Violation,” *San Francisco Chronicle*, 16 August 2009.

<sup>16</sup> Doyle, “Japanese War Dead.” Notably, the article references documents from the accession file available only to staff and select researchers at that time.

the bones represented the remains of male individuals. The CIL assigned racial identifications to the various remains, using a methodology that the authors of this article do not endorse and using terms that we do not reproduce here. The CIL identified most of the bones either as likely of Asian ancestry or as indeterminately of either Asian or European ancestry. However, one bone – a human mandible – was identified as that of an individual of African ancestry and an embedded metal fragment indicated perimortem impact by a projectile. The CIL recommended that only more detailed analysis, such as DNA testing, would positively identify the Japanese origin of any of the remains. The human remains were returned to the Hearst Museum, and the matter was suspended due to the Japanese law.

In 2014, new Japanese legislation declared the repatriation of World War II dead as a state priority and allocated funds both for recovery efforts outside Japan and for repatriation, including remains that had not been cremated. In February 2014, officials from Japan's San Francisco consulate resumed contact with Berkeley administrators, forecasting these changes to policy. Correspondence continued intermittently until August 2015, and, each time, the university indicated its eagerness to proceed. When communication dropped off, however, campus administrators advised the museum that it need not pursue any further action unless contacted again by Japanese officials.

Given its serious nature, the gravity of its legal and ethical implications, and the stain on the museum's reputation, resolution of this case was a founding priority of the CPR division, and Porter identified it as an early focus of his directorship. The CPR division reviewed the matter against relevant precedent and case law<sup>17</sup> and, after conferring with University of California, Berkeley campus authorities, initiated its own proactive communication with the consulate to propose resumption of the repatriation effort. On 1 February 2017, the Japanese consul received the human remains at the museum.

Included in the initial transfer were the human remains identified by the CIL as being of African or indeterminate ancestry. The authors' skepticism about the prior racial determinations had led to the decision that the written documentation in this case – that the human remains were those of Japanese individuals – outweighed the CIL's analysis. Though this decision and its reasoning were explained to consulate staff at the time of the transfer, Japanese officials subsequently determined that these remains could not be positively considered to be Japanese "war dead." After consulting with campus administrators, the Hearst Museum accepted these three sets of human remains back from consular staff in June 2017.

### *Human skeletal remains of Aboriginal Australian individuals*

The skulls of two individuals – from Lower Murray River and the junction of Loddon and Murray Rivers in Victoria, Australia – were received by the Hearst Museum (then the Lowie Museum) from A. S. Kenyon of Melbourne in 1928,<sup>18</sup> upon Lowie Curator Edward Gifford's request for "some aboriginal Australian skulls." Precisely how Kenyon had acquired the

<sup>17</sup> Hague Convention IV on Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land 1907, 187 CTS 227; Convention Relative to the Treatment of Prisoners of War, 27 July 1929, 6 UST 3316; Geneva Conventions 12 August 1949, 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) 8 June 1977, 1125 UNTS 3; Military Commission at Yokohama, *Kikuchi & Mahuchi*, Judgment, 20 April 1946; Military Commission at the Mariana Islands, *Yochio & Others*, Judgment, 2–5 August 1946; General Military Court at Dachau, *Schmid*, Judgment, 19 May 1947; *US Army Field Manual*, No. 27-10, 1956; *US Naval Handbook*, 1995, para. 6.2.5; and various codes of professional ethics.

<sup>18</sup> Accession no. 631, <https://portal.hearstmuseum.berkeley.edu/?q=acc.631> (accessed 6 December 2021).



human remains is unclear.<sup>19</sup> In a separate accession, Sidney Sutherland of the University of Melbourne's Anatomy Department donated the crania and mandibles of two Aboriginal individuals in 1964.<sup>20</sup>

The Hearst Museum had been among several institutions to receive official expression of interest from the Australian government concerning Aboriginal and Torres Strait Islander human remains and other holdings in its care. A letter in the accession file dated 24 June 1993 to then Hearst Museum Director Burton Benedict, Christopher Sweeney, counselor for public affairs of the Embassy of Australia in Washington, conveyed Australia's intent to work with "institutions in the United States which are believed to be legally holding collections or items of Aboriginal and Torres Strait Islander skeletal remains ... with a view to having them repatriated to Australia" for the subsequent return of "all such material to the Aboriginal or Torres Strait Islander community from which it came." In May 2019, the museum wrote to Australian Ambassador Joe Hockey, proposing the repatriation of all four sets of human remains. The embassy's Cultural and Public Affairs Office responded, requesting all documentation associated with both accessions, which the museum then provided. At the time that the authors ended their respective positions at the museum, embassy staff were awaiting instruction from Canberra.

### Proactive provenance research opens potential for repatriation

The reactive efforts described above aimed not only to mitigate the museum's legal and reputational risk but also to adopt practices keeping with the museum's current mission. Many of the same processes and protocols applied to the museum's concurrent efforts to identify collections proactively for return. To this end, and given the sensitivities surrounding human remains, in March 2019, the CPR division conducted a survey of human remains in the museum's care that were not subject to NAGPRA. The division used sequenced database queries to identify a noncomprehensive listing of human remains that came to the museum through means divergent from modern standards and that were potentially problematic – ethically and optically – and should be considered for possible repatriation.

Human remains obtained as part of archaeological excavations were deemed to be outside this initial survey's remit, with the hopes that a more comprehensive review would occur when resources allowed. Using NAGPRA's parameters as guidance, the CPR division did not include in the survey any parts of the human body – such as loose, deciduous teeth and human hair – that were likely to have been "freely given" or "naturally shed." Also eliminated were human remains incorporated into other ethnographic objects (for example, Tibetan skull bowls) and all human remains known to have been given with the decedent's consent.<sup>21</sup> Throughout this admittedly subjective process, the CPR division took special notice of any recorded racial classifications – absent some evidence of (now controversial) craniometric racial analysis – as possible indicators of the collection of the recently deceased; any clear evidence of illicit collecting activity according to the source country's laws in force at the time; and any identification of human remains as those of named individuals.

<sup>19</sup> A. S. Kenyon's letter to Edward Gifford states that "I have Victorian skulls only. They are now very scarce, burials having been Christian for some 60 years. Most of those buried before being shallow and in sand, are quite decayed and fall to pieces when exposed." A. S. Kenyon's letter to Edward Gifford, 28 June 1928, Accession no. 631 file.

<sup>20</sup> Accession no. 1924, <https://portal.hearstmuseum.berkeley.edu/?q=acc.1924> (accessed 6 December 2021).

<sup>21</sup> For instance, the museum cares for the self-donated remains of a former employee, Llewellyn Lemont Loud. Accession no. 1923, Catalog no. 12-11127, <https://portal.hearstmuseum.berkeley.edu/ark:/21549/hm21120011127>.

Certain cases encountered in the course of the survey presented or suggested particularly problematic provenances. Of these, some cases – such as what the catalog identifies as the skull of a “Negro” purchased from the Berkeley Junk Company in 1933;<sup>22</sup> those human remains from the above-described Childress collection that Japan had declined to receive; and human remains purchased in the early twentieth century from a variety of scientific supply companies<sup>23</sup> – presented no clear way forward but were documented in the survey as impetus for later resolution.

Presented below are some cases proposed for repatriation as a part of this effort. The museum’s primary goal in each instance was transparency – namely, not to compel a transfer if such a course did not align with the identified recipient’s current desires or priorities.

### *Human skeletal remains of Black individuals from South Carolina*

The survey identified human remains listed in the museum’s catalog as a “Negro skull and jaw” from South Carolina.<sup>24</sup> The word “Negro” was written in pencil on the bone surfaces. The museum received these remains in 1930 from Spencer Atkinson, a student and then instructor at the Atlanta-Southern Dental College – later absorbed into Emory University – who had amassed a large comparative collection for use in research and teaching. Atkinson’s collection accompanied him to his new position at the University of the Pacific (UoP), where much of it remains as the Spencer R. Atkinson Library of Applied Anatomy.

Correspondence between the museum and Emory and UoP archivists in early 2019 did not illuminate Atkinson’s collection methods. However, the “Negro” designation suggested that these remains were those of an individual known to have been Black at time of collection and possibly, therefore, either recently deceased or from a known Black context, such as a Black cemetery. Concerned by this potential provenience, and aware that protection of Black cemeteries and repatriation of Black human remains had become a focus of active, urgent discussion in American cultural policy,<sup>25</sup> the museum contacted South Carolina’s State Archaeologist Office for guidance on appropriate next steps. With that office’s staff acting as intermediaries, the case was presented to the South Carolina African American Heritage Commission, which was then actively seeking appropriate final disposition for all historically derived burials of Black people. In July 2019, the museum transferred the human remains to the State Archaeologist’s Office, with the understanding that they would be reburied in a designated cemetery when circumstances allowed.

### *Mummified human remains of an individual from “Congo”*

The survey effort also found information related to a mummified human head, identified in the catalog as being from “Congo Africa.”<sup>26</sup> Received as a gift from *San Francisco Chronicle* journalist George R. Hyde in 1931, the remains had been a theatrical prop at San Francisco’s Alcazar Theatre and had passed to Hyde through an intermediary, an artist for the *San Francisco Examiner*. After inspecting the head at Hyde’s San Francisco apartment and declaring it genuine, Edward Gifford brought it back to the museum where it was

<sup>22</sup> Accession no. 500BG, <https://portal.hearstmuseum.berkeley.edu/?q=acc.500BG> (accessed 6 December 2021).

<sup>23</sup> Account nos. 612, 4638, <https://portal.hearstmuseum.berkeley.edu/?q=acc.612> and <https://portal.hearstmuseum.berkeley.edu/?q=acc.4638> (accessed 6 December 2021).

<sup>24</sup> Accession no. 100KE, <https://portal.hearstmuseum.berkeley.edu/?q=acc.100KE> (6 December 2021).

<sup>25</sup> Rainville 2009; Blakey 2020; Smith 2020.

<sup>26</sup> Accession no. 500YY, <https://portal.hearstmuseum.berkeley.edu/ark:/21549/hm21120004774> (accessed 6 December 2021).



accessioned and catalogued. Prior to the survey, these remains were already well known to museum staff, in part because of the feelings of horror and revulsion they produced. The well-preserved head of a young woman – with intact soft tissue, teeth, and hair, the neck wrapped with cloth – was mounted in the small glass case that accompanied its transfer to the museum. A handwritten ink label affixed to the glass surface refers to its contents as a “[m]ummified head ... from Congo Africa” and includes a word meant to describe a Black female, which we have decided not to reproduce here.

The CPR division was unable to locate any information pertaining to the Alcazar Theatre’s acquisition of the remains in question, the identity of the *San Francisco Examiner*’s artist intermediary, or performances involving the use of a human head that could have provided a clear *ante quem* date for collection and the date of the individual’s death. While several “Alcazar” theaters have existed in San Francisco, museum staff determined that the Alcazar Theatre at issue was likely the one built at 260 O’Farrell Street in 1911, which became a movie theater in 1932. Dissolution of the props department may have occurred in the lead up to this transition.

The sole documentation for the remains’ original collection is the aforementioned label. Whether “Congo Africa” refers to what was then the Belgian Congo, to the neighboring and much smaller French Congo (later Republic of the Congo and Congo-Brazzaville), to the geographical region abutting the 3,000 mile long Congo River, or to the entire Central African Congo drainage is uncertain. Further, the issuance of cultural property laws of the Democratic Republic of Congo (DRC), which was formerly Zaire, in 1971; the Republic of the Congo in 1956; and the Republic of Angola, which borders the Congo River, in 1976 all postdate the remains’ collection and accession. Still, given the region’s specific and brutal European colonial history, and the practices of decapitation and dismemberment during the period of Belgian rule, the museum offered repatriation to the DRC’s Washington Embassy in June 2019.

The embassy responded in November 2019, asking how the museum had determined that the remains were from the DRC, how they had come to be in the United States, and from where in the DRC they had originated. In its response, the museum was forthcoming in its lack of certitude. Embassy staff wrote back, stating that the remains could not be requested for repatriation using the “Congo Africa” label alone but that they remained open to discussions. The museum received no response to its subsequent invitations to a telephone meeting, but it did not press the issue. While the DRC’s ultimate determination was pending at the end of the authors’ respective tenures, the museum’s primary aim in the matter – transparency – had been achieved, and communication channels opened, if and when the DRC should choose to proceed. In this matter, as in the Childress case, the museum had identified the affiliation of the human remains and their appropriate disposition based on the preponderance of the available evidence – namely, the scant geographical information in the associated documentation. In both cases, however, the museum’s comfort level with the resulting uncertainty was greater than that of the identified recipients.

### **Human skeletal remains of named First Nations individual from Canada**

As part of the survey effort, the CPR division’s staff linked information on one of several handwritten display labels in a 1903 accession file to a single human skull, described in the museum catalog only as “Calavarium, deformed.”<sup>27</sup> The particular accession grouped several skulls acquired by the museum prior to 1901. According to the label located in the

<sup>27</sup> Accession no. 78, <https://portal.hearstmuseum.berkeley.edu/ark:/21549/hm2112000090> (accessed 6 December 2021).

accession file, this was the “[s]kull of Yasall (Longhead) Chief of the Cape Cook Indians. Vancouver Island, BC. Yasall was killed and beheaded by the Kyuquot Indians in retaliation for a murderous night attack he made upon them. Presented by M. Braverman Esq, Visalia CA.” The acquisition is also mentioned in the 1882 annual report of the secretary to the Board of Regents of the University of California, which notes a donation from “Braverman, M., Visalia, California – The skull of Yasalt, Chief of the Cape Cook Indians.”<sup>28</sup> Physical examination of the remains noted cranial modification consistent with the “longhead” descriptor.

The identity and collection methods of “M. Braverman” could not be ascertained. Anecdotal reports of European settlers described their removal of decapitated heads from sand pits on Vancouver Island,<sup>29</sup> but the association of the decedent’s name suggested that Braverman had employed a different collection method. Further information on “Yasall” or “Yasalt,” too, could not be located. Research suggested that Yasall likely led the Klaskino people, a Kwakwaka’wakw group. The Kunquot or Kyuquot people – identified in museum records as Yasall’s beheaders – were the Klaskino’s southern neighbors and belonged to the Nuuchahnulth (formerly “Nootka”) group. Kwakwaka’wakw living by Quatsino Sound were popularly known as the “longheads” due to their custom of flattening the skull during childhood, a practice that continued through the end of the nineteenth century.<sup>30</sup> Retaliation and revenge were motivators for warfare between the neighboring Kwakwaka’wakw<sup>31</sup> and Nuuchahnulth,<sup>32</sup> and removing heads as trophies was an important part of these encounters.

The Klaskino suffered a steep decline in population beginning in the mid-nineteenth century due to disease and war, which included conflict with the neighboring Kyuquot.<sup>33</sup> By 1885, the Klaskino numbered only 14 individuals and had largely intermarried with the Koskimo.<sup>34</sup> Reportedly, the last person of Klaskino ancestry died about 1920.<sup>35</sup> However, the Klaskino belonged to the same dialect and ethnic group as the Quatsino people, a more inclusive Kwakwaka’wakw group living on the west coast of Vancouver Island. Today, the Quatsino First Nation “represents five tribes from the Quatsino Sound area who speak or once spoke the same dialect of the Kwakwala language,” including both the Klaskino and Koskimo.

Identifying the Quatsino First Nation as the most closely affiliated descendant community of Yasalt – and noting increased repatriation activities within British Columbia – the museum initiated contact with the Canadian embassy in Washington, DC, and its San Francisco consulate in May 2019 to propose repatriation. Consular staff responded, and, in subsequent communication, the museum provided copies of all known documentation as well as the museum’s own assessment of cultural affiliation. Concurrently, the museum contacted the Quatsino First Nation to inform them of the skull’s existence, the known collection history, and the museum’s desire to effect repatriation. While neither the First Nation nor the Canadian government further engaged on the matter, the museum aimed to provide enough information so that repatriation could proceed at a time of the Quatsino First Nation’s choosing.

<sup>28</sup> University of California, Berkeley 1882, 59.

<sup>29</sup> Jewitt 1896.

<sup>30</sup> Cybulski 2006, 536–38.

<sup>31</sup> Codere 1950, 98–117.

<sup>32</sup> Swadesh 1948.

<sup>33</sup> Galois 1994, 355.

<sup>34</sup> Galois 1994, 364; cf. 367.

<sup>35</sup> Galois 1994.

### **Human skeletal remains from Vanuatu**

A human skull collected from the Vanuatu (formerly “New Hebrides”) archipelago by American naval officer Edward S. Elias in 1943 was also identified in the survey as a likely subject for repatriation.<sup>36</sup> The Hearst Museum received these remains as a donation from Elias himself. File correspondence indicated that Elias was, at the time of his 1945 donation, stationed at the US Naval Base Hospital no. 6 in Vanuatu and that he had collected the remains from “above the ground” two years prior. In a letter dated 17 February 1945, Elias stated that “[t]he enclosed skull was found on an island in the New Hebrides group. I am sorry I can not state the islands [sic.] name. It was found above the ground in 1943.” Given the above description, and Elias’s inability to identify the precise location of the skull’s collection, museum staff could not account for the catalog card’s specific given provenience of “Espiritus Santo,” a likely reference to “Espiritu Santo,” an island in the northernmost part of the Vanuatu archipelago, and the assignment could have simply reflected Elias’s 1945 return address.

The legal status of American presence on the island was unclear to museum staff. According to the terms of an 1887 condominium, the islands were jointly administered during World War II by Britain and a Gaullist faction of then occupied France. American troops arrived in May 1942 to establish a bulwark against Japanese expansion, with the largest proportion of soldiers stationed on Espiritu Santo until American withdrawal in 1945. While the age of the remains was not established, the museum felt that they were unlikely to be those of a war casualty, given that there were no military engagements in Vanuatu during World War II, and, therefore, probably not subject to specific international law concerning the spoliation of war dead. However, while it was not clear whether American presence on the island in this period constituted a military occupation, several international legal instruments and the professional codes of ethics of various international and national professional organizations related to collection during wartime suggest that repatriation was the most appropriate action. On 26 June 2019, the museum contacted the Republic of Vanuatu’s embassy, proposing repatriation. On the ambassador’s positive response and recommendation, the museum initiated contact with the Vanuatu Cultural Centre in Port Vila, but it received no direction from the Cultural Centre’s staff during the authors’ respective tenures.

### **Collections reconciliation projects**

Additional repatriation work was driven by a collections move in 2012–16 to upgraded storage facilities. This effort brought attention to several unaccessioned or “orphaned” collections, some of which had been awaiting processing for decades. While common in a collecting institution of the Hearst Museum’s size and, in many instances, justifiable, it was obvious that the museum needed a clearer view of what, exactly, was in its care and to determine appropriate ultimate disposition. Porter organized the already standing Loans and Acquisitions Committee to begin a review of these collections so that disposition determinations could be made. The CPR division played a key role in this process, conducting object-by-object due diligence concerning the known and unknown collecting histories and chains of custody; the cultural property laws and other export legislation of the relevant source country; and a literature review for commentary on specific ethical concerns related to the object types at issue or the relevant sensitivities and expressed needs of the related source and descendant communities. The CPR division and the director also sought guidance

<sup>36</sup> Accession no. 1945I, <https://portal.hearstmuseum.berkeley.edu/ark:/21549/hm21120005281> (accessed 6 December 2021).

from the museum's Council of Faculty Curators and other campus experts and administrators and drew on resources from neighboring collecting institutions (for example, the Bancroft Library, which maintains the archives of several Hearst Museum-related collectors and faculty members) in determining appropriate actions.

Collective patterns emerged during this work. Some collections were in need of accessioning and cataloging; some collections had been accessioned but not catalogued; other collections were determined to be outside of the museum's scope, and more appropriate collecting institutions were found following best practices for collection disposition.<sup>37</sup> But a number of other collections were identified that required further thought as to whether repatriation to source countries represented the most suitable way forward.

Legal instruments now in effect in the United States mandate the repatriation of archaeological material from the United States to foreign states, or to communities within those states, only if specific conditions are met. The US 1983 Cultural Property Implementation Act (CPIA), for example, which implements elements of the 1970 UNESCO Convention, provides for forfeiture only if objects are considered "stolen," which requires their prior listing in the inventory of a source country museum or similar institution.<sup>38</sup> Additionally, sections 2602 and 2603 of the CPIA allow for forfeiture based on foreign export regulations and bilateral treaties, circumscribing the law's effect on extant museum collections. General application of other import laws, such as the National Stolen Property Act (NSPA) – discussed below in more detail – are similarly limited in museum settings.<sup>39</sup>

Without a specific, legal requirement toward which to turn, the Hearst Museum considered professional guidelines and encountered similar lacunae. While the standards and practices of the American Alliance of Museums<sup>40</sup> and the Association of Art Museum Directors<sup>41</sup> provide that it is the burden of museums to prove that collections come into their care in an ethical manner, the focus is almost entirely on new acquisitions; their due diligence proscriptions do not extend to the appropriateness of repatriating already accessioned collections outside the specific requirements of applicable laws. In the absence of codified principles – legal or professional – most museums have used the 1970 UNESCO Convention – or the United States's adoption of it in 1983 – as a "bright line." The Hearst Museum during Porter's administration instead adopted a consistent, more restrictive approach – using either 1970 or the date of the source country's relevant cultural property legislation, whichever came first.

In the Hearst Museum's process, national patrimony laws were deemed to be relevant when their intended purpose and demonstrated effect were clear. From an early stage, the museum recognized that, while some national property laws generally seek to restrict the illicit collection and export of cultural property, their language is sometimes too broad to

<sup>37</sup> *Guidelines of the International Council of Museums*, <https://icom.museum/wp-content/uploads/2019/10/Guidelines-on-Deaccessioning-of-the-International-Council-of-Museums.pdf> (accessed 6 December 2021).

<sup>38</sup> Cultural Property Implementation Act, 19 US Code § 2607.

<sup>39</sup> National Stolen Property Act, 18 US Code § 2314.

<sup>40</sup> "[T]he museum ensures that the ... acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials." American Alliance of Museums, *Code of Ethics for Museums*, 2020, <https://www.aam-us.org/programs/ethics-standards-and-professional-practices/code-of-ethics-for-museums/> (accessed 27 April 2021).

<sup>41</sup> "Member museums should thoroughly research the ownership history of a Work prior to its acquisition, including making a rigorous effort to obtain accurate written documentation with respect to its history, including import and export documents. ... Member museums normally should not acquire a Work unless provenance research substantiates that the Work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970." Association of Art Museum Directors, *Guidelines on the Acquisition of Archaeological Material and Ancient Art*, 2013, <https://aamd.org/sites/default/files/document/AAMD%20Guidelines%202013.pdf> (accessed 27 April 2021).

convey intended real-world applicability.<sup>42</sup> For this reason, the museum's review included a careful read of each law's plain text and a review of news and scholarly sources regarding its actual implementation. With this step, the Hearst Museum's diligence efforts generally resembled the process applied in forfeiture cases under the NSPA. Such cases also served to interrogate the distinction between general and unambiguous cultural property legislation and to examine the legislation's specificity and scope.<sup>43</sup> The museum, however, erred on adopting a broader view of each law's relevance. Similarly, the museum considered bilateral agreements between source countries and the United States not for the legal constraints they imposed – as such restrictions focus on imports – but, rather, as official demonstrations of a source country's priorities in protecting its cultural property.

Finally, in cases where the objects in the museum's care had never been processed fully into the museum's collection, the CPR division and the director reexamined the circumstances under which they came to the museum, so as not to put a contemporary stamp of approval on unjustifiable past practices. This approach reflected the relationship that the museum wished to have with source countries and descendant communities, appreciated the discipline of anthropology's reliance on context, and sought to protect the museum and university from controversy.

### *Cuneiform tablets from Iraq*

Perhaps the most significant case to be resolved as part of the reconciliation effort pertained to a collection of cuneiform tablets.<sup>44</sup> With their detailed accounts of ancient governance and daily activities on such small portable objects, cuneiform tablets in recent decades have been especially vulnerable to looting<sup>45</sup> and were identified in the International Council of Museums's 2008 Red List as an artifact type “most favored by the illegal antiquities market.”<sup>46</sup> In late 2006, the Hearst Museum accessioned, but did not catalog, a donation of 18 cuneiform tablets from San Francisco Bay Area collector Elizabeth Warrick. While no documentation exists regarding the tablets' archaeological provenience, epigraphic analysis indicated that they originated from southern Iraq and date to between 2050 and 300 BCE. When museum staff encountered the unprocessed collection in 2013, the CPR division began correspondence with Warrick and her family regarding the tablets' provenance.

The conflicting narratives that resulted raised new concerns. The museum had been told in 2006 that Warrick's grandfather had purchased the collection at auction in London between 1925 and 1945, but subsequent correspondence from Warrick family members – conveying the assessment of Cornell University's David Owen – stated that, on the basis of these tablets' description and the boxes in which they were housed, they were among the 11,000 tablets sold by Edgar Banks in the United States during the early twentieth century.<sup>47</sup> It is important to note that the museum located no positive information suggesting that the

<sup>42</sup> For example, in 2019, the museum determined that Papua New Guinea's National Cultural Property Act of 1965 – which requires authorization to export “any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of any of the peoples of the country, past or present” – need not restrict accession of modern personal adornments. Accession no. 4686, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4686> (accessed 6 December 2021).

<sup>43</sup> E.g., *Schultz v. United States*, 178 F.Supp (2d) 445 (SDNY 2002), affirmed 333 F. (3d) 393 (2d Cir. 2003), certiorari denied 540 U.S. 1106 (2003), in which expert witnesses testified to the scope and implementation of Egypt's Law no. 117 of 1983 and whether its intent truly was “to vest absolute and true ownership of all antiquities found in Egypt after 1983 in the Egyptian government.” The court decided that this reading was correct.

<sup>44</sup> Accession no. 4756, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4756> (accessed 6 December 2021).

<sup>45</sup> E.g., Bogdanos 2008; Moss and Baden 2017.

<sup>46</sup> International Council of Museums 2008, 3.

<sup>47</sup> Brodie 2011, 417–20; Crossen 2013.

cuneiform tablets were illicitly excavated, stolen, or unlawfully exported, nor any evidence suggesting wrongdoing on the part of the donor or her grandfather. Still, the tablets' origin in Iraq, their lack of established provenance, and possible relevance of – and standards suggested by – Iraq's National Antiquities Law no. 59 of 1936, the 1970 UNESCO Convention, the 1995 Convention on Stolen or Illegally Exported Cultural Objects, and the UN Security Council's Resolution 1483 of 2003 put the museum in a precarious position.<sup>48</sup> The museum decided that it could not shoulder the burden of proof of the collection's licit origins and that it would instead aim to return them to Iraq.

For guidance, the CPR division wrote to UNESCO's 1970 office, and on that office's suggestion, provided photographs of the tablets to the Iraq Museum in Baghdad in April 2014 to ensure that they did not match any of those known to have been looted from its collection in 2003. No matches were subsequently reported. Still, the museum's own standards and concerns – elevated by considerations that Iraq's own 1936 antiquities law could serve as a basis for a potential Iraqi lawsuit to recover the tablets and that the "Banks Collection" provenance (for which no catalog exists) would not hold up to scrutiny in court – led the museum to contact officials of the Iraqi embassy in Washington, DC, in a letter dated May 2017, describing the collection and requesting an opinion on how to proceed. On 20 July 2017, embassy staff supplied a formal request for repatriation.

A potential complicating factor, and the cause of some delay, was language in the museum's 2006 gift acceptance form, which included the museum's then-standard clause that, as a condition of the gift, the objects were to become the "permanent property of the Regents [of the University of California]." However, the apparent conflict between this language and other legal frameworks did not need to be tested since the Warrick family consented to repatriation on learning of Iraq's request. After ensuring that all the cuneiform tablets had been photographed to a professional standard, the transfer occurred at the museum on 19 September 2017, with officials from Iraq's embassy in Washington, DC, and its consulate in Los Angeles in attendance. A subsequent meeting took place at the Washington embassy in April 2018, in which Ambassador Fareed Yasseen acknowledged the museum's proactive, good faith effort.

### *Archaeological material, reproductions, and fakes from Peru*

Similar considerations framed the museum's 2019 repatriation of archaeological objects – some of questionable authenticity – to the Republic of Peru. More than 200 objects had been identified in 2018 as part of the larger reconciliation effort and had entered the museum's care through three donations: from Charles Eby in 1988,<sup>49</sup> from Arthur and Evelyn Beynon in 1993,<sup>50</sup> and from Sonoma State University in 1986.<sup>51</sup> The Eby Collection consisted of textile fragments with no associated documentation and ceramic vessels – the latter described in Eby's correspondence as having been collected during construction of a fishmeal plant near Ilo at an unknown date and offered to Eby by the construction foreperson. The Beynon Collection – made up of ceramics, metal, wooden, gold and silver objects, textiles, and other materials – had been assembled by the Beynons from unknown sources between 1959 and 1976, when Beynon worked in Peru as a mining engineer. Some of the objects had been catalogued on receipt, while others were noted as possible fakes or reproductions and set aside "for loan and study." The textile, a "mummy wrapping" received from Sonoma State University, had been a gift to that university from a Mimi Orr at an unknown date.

<sup>48</sup> Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

<sup>49</sup> Accession no. 4311, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4311> (accessed 6 December 2021).

<sup>50</sup> Accession no. 4620, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4620> (accessed 6 December 2021).

<sup>51</sup> Accession no. 4130, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4130> (accessed 6 December 2021).



Associated documentation noted that the object had been collected from “Pacho Conae,” a locale that the museum could not identify.

The CPR division’s review identified several applicable Peruvian cultural property laws supporting restitution of these objects to Peru. Dating to the early twentieth century, and strengthened in 1958, relevant legislation forbids the permanent export of archaeological material in most cases, and a 1997 United States/Peru bilateral agreement – extended in 2002, 2007, 2012, and 2017 – enshrines similar restrictions in US law. While documentation suggested that field collection, export from Peru, and import into the United States of some of the objects predated the more stringent of these legal instruments, the museum would not be able to demonstrate the collection’s legitimacy and shoulder the burden of proof.

The museum wrote to Peru’s San Francisco consulate in May and September 2018, proposing the restitution not only of the non-accessioned material identified in reconciliation but also the accessioned and catalogued objects acquired through the same donations. The museum informed the consulate that some of the objects were of questionable authenticity. Using photographs provided by the museum, Ministry of Culture staff in Lima identified the majority as modern forgeries or as objects that could not be positively distinguished as having been collected in Peru. The ministry claimed for repatriation 48 of the proffered objects as Peruvian cultural heritage. Transfer took place by diplomatic pouch across two shipments in May 2019 and February 2020.

### *Archaeological material, reproductions, and fakes from Mexico*

In 2017, the museum sought to reconcile a large collection of material donated in 1997 by Elizabeth M. Friedenthal, which included 30 small stone and ceramic objects identified by the donor as having been collected from several locales throughout Mexico during the mid-twentieth century.<sup>52</sup> While several objects were associated with detailed provenance narratives in the donor’s correspondence (for example, “Flat pottery figure. Colima. Found on shore of Bahia de Santiago by Friedenthals 1965”), others were accompanied by little explanation (for example, “Clay figure, heavy. Foot missing. Crude workmanship”) or no contextual information at all.

The museum first sought guidance from Berkeley staff with subject area expertise, hoping that additional information could be ascertained through a visual inspection. This review identified 20 of the 30 objects as modern reproductions, but it confirmed many identifications noted in the archive, assigned likely modern dates for some of the surface-collected material and revealed other objects that had seemingly been made to deceive – such as the Colima dog figurine typical of fakes that pervade the art market. The remaining 10 objects were identified as likely authentic, like a sixteenth-century “seal/stamp fragment from Tulum Ruins. Found by E. Friedenthal 1950,” a partial ceramic headdress from a Mayan figurine, and the fragmentary foot of a tripod carved in the shape of an animal’s head. Donor-provided information and expert analysis suggested geographical associations with locales throughout Mexico, including Chichen Itza, Tulum, Oaxaca, and other locations.

The museum weighed removing the reproductions and fakes from consideration when approaching Mexican authorities, so as not to overwhelm them with information that would later prove irrelevant. Transparency, though, took precedence; the museum chose to disclose all objects in its initial outreach, describing the expert assessment and inviting authorities “to make these final determinations about the objects’ authenticity and their final disposition.” With a prior case and established relationship<sup>53</sup> in mind, the museum’s

<sup>52</sup> Accession no. 4686, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4686> (accessed 6 December 2021).

<sup>53</sup> The museum previously worked with the Instituto Nacional de Antropología e Historia to return archaeological material from Cuicuilco that had been exported for study on the condition of its eventual return.

first outreach was to the Instituto Nacional de Antropología e Historia (INAH) in Mexico City. When those communications stalled, the museum next contacted several INAH regional offices with jurisdiction over the identified locales in question. When this effort, too, proved unsuccessful, the museum followed the practice it had adopted for other cases described herein and contacted Mexico's San Francisco consulate in June 2019 to offer repatriation. This approach yielded the response of the consul general, her visit to the museum to view the objects, and an invitation for future collaborative exhibitions between the museum and the Mexican government. A plan to transfer the objects was in development at the end of Porter's directorship but was curtailed due to the COVID-19 pandemic.

### Other cases

The museum proactively offered repatriation of other cultural material identified in its reconciliation and survey projects, which – due to space limitations – are only summarized below. Physical transfer occurred where indicated, but, in each case, the museum achieved its primary aims of transparency and open communication:

- In November 2016, the museum offered Guatemala's Washington embassy to repatriate unaccessioned archaeological material collected in 1976 from the site of Tak'alik Ab'aj, Retalhuleu, in recognition of Guatemalan cultural property laws dating to 1947.
- The same month, the museum offered Venezuela's Washington embassy to repatriate archaeological material collected in the 1960s from Margarita Island, Nueva Esparta, Venezuela.<sup>54</sup> An associated 1964 letter from Venezuelan officials authorized only temporary export of the materials for study, in accordance with Venezuela's cultural property legislation of 1945.<sup>55</sup>
- In September 2017, the museum offered to repatriate to Panama both unaccessioned and associated accessioned archaeological material collected at an unknown date from a rice plantation in Coclé Province, in accordance with standards described in Panama's Ley no. 67 of 1941 and Ley no. 14 of 1985.<sup>56</sup> These objects were transferred to officials of Panama's Los Angeles consulate in November 2019.
- In May 2019, the museum proposed repatriation to Senegal's Washington embassy of both unaccessioned and associated accessioned archaeological material collected from Diallowali in 1976.<sup>57</sup> Senegal's 1971 cultural property legislation prohibits the export of cultural materials except where authorized, and the CPR division could not locate documentation of such authorization.
- In June 2019, the museum proposed repatriation to Angola's Washington embassy of human remains donated to the museum in 1964, prior to Angola's independence from Portugal in 1975.<sup>58</sup> While both countries' cultural property legislation – Angola's of 1976 and Portugal's of 1985 – postdated the skull's export from Angola, the remains were flagged in the survey effort because of their "Negro" racial assignment, a possible indication of their recent age.

<sup>54</sup> Accession no. 3160, <https://portal.hearstmuseum.berkeley.edu/?q=acc.3160> (accessed 6 December 2021).

<sup>55</sup> Transparency was the primary aim of this outreach; given political and humanitarian crises in Venezuela, the museum did not expect its offer to lead to immediate return.

<sup>56</sup> Accession no. 4270, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4270> (accessed 6 December 2021).

<sup>57</sup> Accession no. 4233, <https://portal.hearstmuseum.berkeley.edu/?q=acc.4233> (accessed 6 December 2021).

<sup>58</sup> Accession no. 1927, <https://portal.hearstmuseum.berkeley.edu/?q=acc.1927> (accessed 6 December 2021).

## Discussion

Repatriation has seized the public imagination in recent years and no wonder, paired as it is with emergent campaigns to redress colonial legacies, mitigate cultural trauma, and combat racial supremacy. This flood of interest has reinvigorated what largely had become an insular, industry conversation. Discussions of repatriation and related strategies are now laid open to public scrutiny, and decisions are increasingly made in the public eye. While the resulting transparency has been profoundly beneficial, the associated shedding of rigor decidedly has not. Nuance has escaped the zeitgeist, led as it is by groups and individuals that privilege organic, collective action and who demonstrate distrust and impatience toward institutions and the laws and policies they follow. In his book *The Brutish Museums*, for instance, meant for a public audience, Dan Hicks includes the Hearst Museum in a “Provisional List of Museums ... that may Currently Hold Objects Removed from Benin City in 1897.”<sup>59</sup> The museum’s only bronze objects from Benin are two nineteenth-century bells purchased in 1963 from a market in Abidjan, Côte d’Ivoire. This documented provenance would suggest an extraordinary chain of custody for materials looted in the 1897 raid, and Hicks’s specific, improbable charge deserves at least the same degree of scrutiny as the cases described above.

Lobbyists,<sup>60</sup> government officials,<sup>61</sup> popular articles, and student-led university newspapers<sup>62</sup> speciously present repatriation as a one-size-fits-all process with the predetermined goal of liquidating problematic collections and decry museums’ pace in reaching absolution. Such oversimplification subverts not only the intent of relevant legislation and the delicate balance of legitimate interests it aims to achieve but also the varied wishes and priorities of source and descendant communities. On whose timeline should repatriation be undertaken? Who are such actions meant to serve? More often than not, these questions go unasked when repatriation enters the public square. As our case studies demonstrate, repatriation is not a process with a universal beginning or end point or with uniform milestones along the way. We contend that, just as tired arguments against repatriation weaponize racist tropes and colonial condescension, so do blanket calls for repatriation do disservice to it as a practice.

Museum professionals are well aware of the regular movement of collections around the planet – not only for repatriation but also for exhibition loans, research, or specialized analysis. Yet, of these circumstances, repatriation stands apart in its susceptibility to politicization and sensationalism in media reports written to castigate legacy institutions as bad actors. The history of the Hearst Museum’s CPR division, and the case studies detailed herein, demonstrate that repatriation work is best achieved not in damaging, ad hoc scrambles to address claims or scandal but, rather, by “normalizing” it as part of institutional practice. For university-based museums, structured, defined processes fill gaps in campus policies and enable proactive approaches from a position of strength. Such a stance meshes well with the needs of university administrators, who are often receptive to strategies that mitigate risk.

<sup>59</sup> Hicks 2020. On 26 March 2021, Hicks tweeted a photo of this list, with the caption: “How near are you right this minute to a looted Benin Bronze?” (removing any caveat that the original use of “provisional” may have conveyed).

<sup>60</sup> E.g., letter from the Association on American Indian Affairs to Harvard University president, 18 February 2021, <https://www.indian-affairs.org/harvard.html> (accessed 6 December 2021).

<sup>61</sup> “I don’t think anyone had any idea how large the task would be,” says Melanie O’Brien, National Park Service manager for NAGPRA, “or that we would be here, 30 years [after NAGPRA’s passage], with so much still to do.” See “After Decades, U of M Is Finally on Track to Return Native Burial Objects Dug Up in 1920s,” *Star Tribune*, 31 December 2020, <https://www.startribune.com/after-decades-u-of-m-is-finally-on-track-to-return-native-burial-objects-dug-up-in-1920s/600005642/> (accessed 6 December 2021).

<sup>62</sup> Sage, “Grave Robbing at UC Berkeley.”

Museums can prioritize cases effectively through a staged approach. Just as the Sarr/Savoy report recommends – and NAGPRA mandates – successive processes, the Hearst Museum’s approach was a sort of triage: seeking first to resolve known legacy claims; next, to identify human remains whose specific collection histories demanded priority in redressing; and then, to propose repatriation as a means to reconcile historic, unprocessed collections that do not meet contemporary standards for accession. Transparency and the restoration of agency, not physical transfer, should frame a museum’s repatriation goals. As the above case studies demonstrate, repatriation may not be the identified recipient’s desired, immediate outcome. While the circumstances of every museum will vary, we believe this approach represents a reasonable and replicable best practice. To this end, we propose a higher standard in due diligence than the bright line of the 1970 UNESCO Convention or the 1983 US implementing legislation would require. Instead, we argue that 1970 be used only when it predates relevant source country legislation that is unambiguous and clear in purpose and effect. If collection histories are linked to a particular trauma in the source country’s past, repatriation should be proposed regardless of the date of collection. This latter standard is especially important when a particularly egregious collection event was technically legal, due to colonialist structures, but violates contemporary ethical standards.

Pragmatic best practices also emerged from these cases. Initiating consultation with US-based embassies and consulates often yields more consistent and actionable responses than does direct outreach to in-country cultural authorities, perhaps because of the lack of authority and comfort of the latter offices to conduct diplomatic negotiations. Further, while valid concerns can be raised about fraught relationships between ethnic minority groups and the state,<sup>63</sup> and while a utopian view might see the museum initiating communication directly with descendant communities, the reality of repatriation is that the complexities of soft diplomacy usually necessitate an institution-to-government first contact in order to begin a transfer. Similarly, while diaspora communities with legitimate interests in the repatriation process may be represented on the museum’s university campus, and while engagement with these groups may provide local teaching and community-building opportunities, museums must weigh whether outreach might inform or confuse the diplomatic work required to engage with sovereign governments. A close, transparent relationship with campus counsel should be maintained, given the legal elements of the work.

The preemptive provision of all available information – including, but not limited to, accession documentation, condition reports, authentication assessments, photographs, and any internal analysis that led to the repatriation proposal – avoids unnecessary iteration and allows the source country to make informed decisions and arrangements. Once this information is shared, and in hoping to maintain a sense of purpose, it can be difficult to determine how much communication is appropriate and respectful and what form that communication should take. In our experience, written outreach yields fewer responses than do telephone communications but creates a useful paper record, while phone calls sometimes lead to initial planning that does not then take shape. Our efforts favored a written approach, with occasional phone calls to prompt and remind. Once a physical repatriation is agreed to, transfer via “diplomatic pouch” helps to avoid some complexities inherent in the international shipping of cultural or biological material.

Admittedly, cultural practitioners bring their own perspectives to their work. We might not have prioritized repatriation of the mummified head to the DRC, for instance, had we not been aware of the specific horrors of Belgium’s colonial enterprise and moved viscerally by the remains in question. Many other human remains, or objects, may have escaped our

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<sup>63</sup> Jacobs 2009.

attention, because we missed clues in the documentation that others would have caught. We therefore advocate an iterative approach and increased transparency to allow for outside claims. Data-rich collection portals, in the model of the Hearst Museum's, allow countries and communities to identify objects of interest and submit evidence-supported claims on their own initiative.

## Conclusion

The projects described above were intended as preliminary steps in a multi-year program in which the museum's entire collection would be reviewed for objects most suitable for repatriation, while, at the same time, establishing a process by which new external claims could be assessed. However, in 2019 and 2020, respectively, this article's authors departed their roles as the museum's director and head of the CPR division for other positions on the Berkeley campus, and – with NAGPRA efforts now overseen by non-museum staff – the CPR division was disbanded in early 2021. We urge the museum's current and future leadership to continue this important work with all the rigor and nuance it deserves.

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