

Returning Looted Cultural Heritage

Elena Baylis*

* Associate Dean of Experiential Learning and Professor of Law, University of Pittsburgh School of Law. Thanks to the participants in the American Association of Law Schools Annual Meeting, the American Society of International Law Research Forum, and the Leiden University Changing Approaches Towards Restitution and Return of Colonial Heritage Workshop for their valuable comments; thanks also for outstanding research assistance to Sydney Repasky, Samuel Boudreau, Benjamin Malloy, Minu Nagashunmugam, Mark Okocha, and Craig Verniest.

Table of Contents

Introduction	3
I. International and Comparative Context.....	9
A. Comparative Repatriation Aims	10
B. International Justice Models.....	12
C. Global Intergroup Contact Theory	18
II. NAGPRA Dialogue.....	22
A. NAGPRA Dialogue as Designed.....	25
1. Statutory Structure	25
2. Key Characteristics	27
B. NAGPRA Dialogue in Practice	30
1. Quality of Dialogue.....	30
2. Conflicts and Mutual Understanding Within Dialogue	31
C. NAGPRA Dialogue Outcomes	35
1. Relationships and Trust.....	36
2. Museum Caretaking Practices	38
3. Collaborations.....	40
D. Complementary NAGPRA Dialogue Venues	41
1. Review Committee.....	42
2. Communities of Practice.....	44
III. International Implications	47
A. International Repatriation Settings.....	47
1. France	48
2. Belgium.....	51
3. The Netherlands.....	53
4. Germany	56
5. Museums and Museum Associations	60
B. Comparative Takeaways.....	61
1. International Repatriation Contexts	62
2. International Justice Models.....	67
IV. Conclusion.....	69

INTRODUCTION

When the bust of Nefertiti was unearthed in Egypt, the lead archaeologist described her as “absolutely exceptional.”¹ “Description is useless, must be seen,” he wrote.² But since then, Nefertiti has not been seen within Egypt again. Instead, she was taken from Egypt to Germany, where she has been on display in a German museum for over 100 years.³ The story of Nefertiti’s acquisition illustrates how contested cultural heritage comes to be displayed in museums. It also highlights the need to further examine whether and how this cultural heritage should be returned.

When Nefertiti was found in 1912, Egypt was under British administration. The then-extant law called for the equal division of newly discovered antiquities fifty-fifty between Egypt and the foreign archaeologists who made the find. But that did not mean that Egypt or Egyptians had any voice in the fate of their cultural heritage. Instead, the proper division of antiquities was determined by a French official, under the auspices of British regulations, based on the recommendations of the foreign archaeologists themselves. Egypt had no say in the matter at all.⁴

Even within the context of this imperial process, the way these proceedings unfolded was suspect. The German archaeologists who found Nefertiti gamed the system to ensure they would be the ones to keep her. They hid Nefertiti’s value from the French administrator. They gave a misleading description of her on the inventory. They packed the bust away in a crate and showed the administrator only unflattering photographs. They waited several years to display her publicly after taking her to Germany, so as to present Egypt and its French and British administrators with a *fait accompli*.⁵

¹ Eli Wizevich, *German Archaeologists Discovered the Iconic Bust of Nefertiti in an Ancient Egyptian Sculptor’s Studio. Find Out Why Their Discovery Is Now One of Archaeology’s Most Controversial*, SMITHSONIAN MAG. (Dec. 6, 2024), <https://perma.cc/P35K-PFKE> (last visited Mar. 20, 2026).

² *Id.*

³ Wizevich, *supra* note 1; Elizabeth Grenier, *Should Germany Return Nefertiti Bust to Egypt?*, DEUTSCHE WELLE, Nov. 5, 2025, <https://perma.cc/FN5V-4S2H>; (last visited Mar. 20, 2026); Dunja Ramadan, *Egypt Says It’s Time for Nefertiti to Come Home*, SPIEGEL INT’L. (Oct. 11, 2025), <https://perma.cc/22H6-AZV9> (last visited Mar. 20, 2026); Aaron Wiener, *New Egyptian Museum Brings Fresh Pressure for Return of Nefertiti’s Bust*, WASH. POST (Dec. 26, 2025), <https://perma.cc/5UMC-DTPD> (last visited Mar. 20, 2026).

⁴ Nadine Waldman, *The Egyptian Icon in Berlin: The Bust of Queen Nefertiti*, DAILYART MAG. (Jan. 7, 2026), <https://perma.cc/8ND8-57XJ> (last visited Mar. 20, 2026); Ramadan, *supra* note 3; Wiener, *supra* note 3; Grenier, *supra* note 3.

⁵ The Stiftung Preussischer Kulturbesitz, which owns the bust, contests that its removal was in any way illicit. See Grenier, *supra* note 3; Ramadan, *supra* note 3; Wizevich, *supra* note 1; Wiener, *supra* note 3. An Egyptian cultural heritage scholar contends that the archaeologists’ actions were illegal

Upon realizing what they had lost, Egyptian leaders immediately protested, demanding Nefertiti's return, but to no avail. Today, Nefertiti still resides in a Berlin museum. She has been well preserved and cared for all this time. She is beautifully displayed in a place of honor. She draws hundreds of thousands of visitors annually from around the world—including from Egypt.⁶

Germany is not oblivious to the sociopolitical issues associated with continuing to keep its colonial collections. To the contrary, Germany's 2019 Framework Principles for Dealing with Collections from Colonial Contexts indicate that Germany is willing to return colonial-era items that were acquired in unethical or illegal ways.⁷ Under the auspices of those Principles, Germany has restituted cultural heritage taken under German colonial rule to Ghana, Samoa, and other formerly colonized states.⁸

But Germany is still determining what procedures to adopt for systematic consideration of repatriation claims by former colonies.⁹ In the meantime, whether and how Nefertiti and the many other contested cultural objects in German museums should be returned remains in the discretion of museums and German government officials.¹⁰

Was Germany's acquisition of Nefertiti legal? Should the bust be repatriated, whether on the grounds of ethics or law? And, most importantly for this Article, how should these decisions be made? With whose input, and by what process, should the question of Nefertiti's fate, and the fate of other colonial-era cultural objects, be decided?

at the time, as well as unethical. Monica Hanna, *Contesting the Lonely Queen*, 30 INT'L J. CULTURAL PROP. 245, 246–47 (2023).

⁶ Grenier, *supra* note 3; Waldman, *supra* note 4; Ramadan, *supra* note 3; Wiener, *supra* note 3.

⁷ FRAMEWORK PRINCIPLES FOR DEALING WITH COLLECTIONS FROM COLONIAL CONTEXTS, FEDERAL GOVERNMENT COMMISSIONER FOR CULTURE AND THE MEDIA, FEDERAL FOREIGN OFFICE MINISTER OF STATE FOR INTERNATIONAL CULTURAL POLICY, CULTURAL AFFAIRS MINISTERS OF THE LÄNDER AND THE MUNICIPAL UMBRELLA ORGANISATIONS 2 (Mar. 13, 2019), <https://perma.cc/F2R9-NX8Q> (last visited Mar. 20, 2026); *see also* Joint Guidelines, *infra* note 19.

⁸ Grenier, *supra* note 3; Ramadan, *supra* note 3; Sulamanaia Manau Faulalo, *German museum returns taken 'measina'*, SAMOA OBSERVER, Mar. 5, 2024, <https://perma.cc/T6QM-5AEL>; *Rückgaben und Gespräche, News vom 02.12.2025*, Stiftung Preussischer Kulturbesitz (Dec. 2, 2025), <https://perma.cc/JZU4-BFAF> (last visited Mar. 20, 2026) (discussing the case of Ghana); *Historic Breakthrough for German Restitution Policy on Colonial Contexts*, DEKOLONIAL ERINNERUNG, <https://perma.cc/P9FU-DQ3R> (last visited Mar. 20, 2026) (discussing the case of Cameroon).

⁹ *Germany: New Guidelines on the Treatment of Cultural Property and Human Remains*, RESTITUTION MATTERS, (Oct. 24, 2025) <https://perma.cc/UN5S-53Y4> (quoting Julia von Sigsfeld).

¹⁰ Ramadan, *supra* note 3 (referring to the bust of Nefertiti); *Germany*, ROUTES TO RETURN (Nov. 11, 2025), <https://perma.cc/L64P-ZPQ2>.

I first examined these questions in an article in the *Columbia Law Review Forum*. As described there, these questions are not unique to Germany and Egypt. Rather, they are constantly arising, elsewhere in Europe, within the United States, and in other countries around the world.¹¹

Indeed, vast numbers of cultural objects that were taken from formerly colonized peoples under the auspices of colonial power are still held by museums, universities, governments, and private collectors. For decades, formerly colonized peoples have demanded the return of their cultural heritage. For many years, museums and other collectors were rarely responsive to those requests. But now, there has been a shift in this dynamic. Museums in the U.S. and Europe have developed new guidelines for ethical return of looted cultural heritage to source communities. Museums have made some high-profile voluntary repatriations.¹² In addition to Germany, the Netherlands and Belgium have developed new laws and policies to facilitate returns from their government holdings; France and Austria have commissioned reports that recommend creating new legal frameworks to systematically enable restitutions.¹³

Thus, governments and museums have begun committing to repatriate some cultural heritage from their collections to formerly colonized states and peoples. The next step is to evaluate how best to do so.

In so doing, there is an earlier set of repatriation laws that governments and museums can consult.¹⁴ Of these, the most robust is a U.S. law, the Native American Graves Protection and Repatriation Act (“NAGPRA”).¹⁵ As with other formerly colonized peoples, Native American¹⁶ cultural heritage was stolen, taken

¹¹ Elena Baylis, *Looted Cultural Objects*, 124 COLUM. L. REV. F. 183 (2024); see also Elena Baylis, *Repatriation as Reparations*, 119 AM. J. INT’L L. UNBOUND 165 (2025).

¹² Baylis, *Looted Cultural Objects*, *supra* note 11, at 183–94.

¹³ *Understanding the European Museum Landscape*, ROUTES TO RETURN: WORKING TOWARD INT’L REPATRIATION, <https://perma.cc/BFL7-DRQC> (last visited Mar. 20, 2026).

¹⁴ Before the recent movement favoring returns to formerly colonized peoples overseas, several settler colonial states developed laws and policies concerning repatriations to formerly colonized Indigenous peoples within their borders. See, e.g., First Nations Sacred and Ceremonial Repatriation Act, R.S.A. 2000, c F-14, § 2 (Can. Alta.); *Australian Government Policy on Indigenous Repatriation*, AUSTRAL. GOV’T DEP’T COMM’N & ARTS, 5–6 (2016), <https://perma.cc/K9YU-HZKC> (last visited Mar. 20, 2026). See also Ley 25517, Dec. 20, 2001, [29800] B.O. 3 (Arg.), <https://perma.cc/XV5S-LXYJ> (last visited Mar. 20, 2026) (concerning Indigenous human remains).

¹⁵ Native American Graves Protection and Repatriation Act, Pub. L. No. 101–601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. §§ 3001–3013); see also 20 U.S.C. §§ 80q–9–12 (codifying Smithsonian Institution’s repatriation obligations).

¹⁶ NAGPRA uses the term “Native American” to refer to “a tribe, people, or culture that is indigenous to the United States.” 25 U.S.C. § 3001(9). This Article follows suit by using “Native American,” as well as “Native” and “Indigenous.” The statute also refers to Native American “tribes” and to “Native Hawaiian organizations.” This Article also uses these terms, as well as “Nations” and

by force, robbed from graves, sold under duress, and given away by individuals without authority to do so. As with other formerly colonized peoples, Native American nations have long sought the return of their looted cultural heritage.¹⁷

As I argued in my previous article, NAGPRA represents a valuable example for other repatriation contexts. It offers not just a model of a statute, but also 35 years of implementation experience. In some ways, this implementation has been highly successful; in others, implementation has been unsuccessful or even counterproductive. As such, case studies of NAGPRA offer both constructive lessons and cautionary tales for governments and museums currently developing their repatriation laws and policies.¹⁸

This paper develops such a case study, focusing on one distinctive aspect of NAGPRA's repatriation mechanism: the dialogue¹⁹ that it mandates between Native nations and museums. Rather than requiring trials, arbitrations, or a government commission to decide repatriation requests, NAGPRA's legal repatriation mechanism is built on direct engagement between museums and source communities. Following the statutory framework, museums and tribes consult about the Native cultural heritage in museums' collections, and museums determine whether the statutory criteria for repatriation are met. If so, the items must be repatriated, and museums and communities jointly determine how to carry out the return.²⁰

NAGPRA dialogue is important for other repatriation contexts, because this type of direct engagement is central to the design and execution of cultural heritage repatriation laws. Indeed, Germany's new 2025 Joint Guidelines on Dealing with Cultural Property and Human Remains from Colonial Contexts aspire to a dialogue-based approach:

"communities." I recognize that individuals and groups have different preferences about these language choices, and my intention is to use language that is respectful and widely accepted.

¹⁷ Baylis, *Looted Cultural Objects*, *supra* note 11, at 195–96.

¹⁸ *Id.* at 197–220.

¹⁹ This Article uses "dialogue" in its ordinary sense of "an exchange of ideas and opinions" or "a discussion between representatives of parties to a conflict that is aimed at resolution." *Dialogue*, MERRIAM-WEBSTER, <https://perma.cc/E8PN-J6F5> (last visited Mar. 20, 2026). NAGPRA participants commonly use the word "dialogue" to describe their interactions. *E.g.*, Stephen E. Nash & Chip Colwell, *NAGPRA at 30: The Effects of Repatriation*, 49 ANN. REV. ANTHROPOLOGY 225, 230, 232 (2020). Foreign governments and museums also regularly use "dialogue" to characterize their intended engagement with formerly colonized states and communities. *E.g.*, JOINT GUIDELINES FOR DEALING WITH CULTURAL PROPERTY AND HUMAN REMAINS FROM COLONIAL CONTEXTS AGREED BY THE FEDERAL GOVERNMENT COMMISSIONER FOR CULTURE AND THE MEDIA, MINISTER OF STATE AT THE FEDERAL FOREIGN OFFICE, CULTURAL AFFAIRS MINISTERS OF THE LÄNDER, AND MUNICIPAL UMBRELLA ORGANISATIONS 3, 4, (Oct. 4, 2025) [hereinafter JOINT GUIDELINES] (translation provided by the German Contact Point for Cultural Property and Human Remains from Colonial Contexts), <https://perma.cc/7K6D-XS2U>.

²⁰ 25 U.S.C. §§ 3003–05.

It is not possible to address colonialism without discussion in a spirit of partnership with representatives of the countries and communities of origin. Dialogue with the countries and communities of origin is thus essential for public museums and collections, their governing bodies and those in positions of political responsibility in order to develop an appropriate approach to cultural property and human remains from colonial contexts.²¹

The new German Guidelines affirm the centrality of dialogue with communities and states of origin and call for a “unified procedure”²² for this dialogue. That unified procedure now needs to be designed and implemented.²³

Internationally, there is also an emphasis on dialogue among the other governments and museums that are actively developing repatriation laws and policies.²⁴ In the U.S., while NAGPRA addresses Native American cultural heritage, there is not a law concerning international repatriations to other formerly colonized peoples. Accordingly, U.S. museums are also creating their own guidelines, which likewise highlight dialogue as serving a key role.²⁵

This Article’s case study of NAGPRA’s dialogue mandate thus relates directly to the decisions states and museums must make about how to structure and effectuate their own dialogues. It also contributes to theories of reparative justice, human rights, transitional justice, and other justice models that provide remedies for severe, intergenerational social harms.

Overall, the NAGPRA dialogue example offers several key takeaways:²⁶

First, the inclusion of the dialogue mandate is proof of concept that it is possible to require collectors to engage directly with source communities and nations, and possibly thereby to produce repatriation of significant numbers of cultural objects. Since 1990, NAGPRA has returned more than 3.5 million cultural

²¹ JOINT GUIDELINES, *supra* note 19, at 3.

²² *Germany: New Guidelines*, *supra* note 9 (quoting Julia von Sigsfeld).

²³ *Id.*

²⁴ *E.g.*, ADVISORY COMM. ON THE NAT’L POL’Y FRAMEWORK FOR COLONIAL COLLECTIONS, COUNCIL FOR CULTURE, COLONIAL COLLECTION: A RECOGNITION OF INJUSTICE 65, (2021) [hereinafter COLONIAL COLLECTIONS REPORT], <https://perma.cc/ZT28-Z76V>; FELWINE SARR & BÉNÉDICTE SAVOY, THE RESTITUTION OF AFRICAN CULTURAL HERITAGE: TOWARDS A NEW RELATIONAL ETHICS 2 (Drew S. Burk trans., 2018) (France) [hereinafter SARR AND SAVOY REPORT], <https://perma.cc/P685-MF5L>.

²⁵ *E.g.*, SMITHSONIAN ETHICAL RETURNS WORKING GRP., SHARED STEWARDSHIP AND ETHICAL RETURNS POLICY 1, (Apr. 29, 2022) [hereinafter SMITHSONIAN POLICY], <https://perma.cc/3BE6-2B52>.

²⁶ There are hundreds of federally recognized tribes and NHOs, as well as hundreds of federally funded institutions and federal agencies with relevant collections. Each of these entities has its own interests, preferences, policies, and procedures. Thus, in practice, mandatory NAGPRA dialogue is a highly variable experience, although there are overarching patterns and themes. *See infra* Part III.

objects and more than 125,000 human remains (“ancestors”)²⁷ to Native communities.²⁸

Next, mandatory NAGPRA dialogue has produced important transformations in museum perspectives and actions, in addition to repatriation itself. Engaging in NAGPRA dialogue has expanded museums’ frameworks for understanding and preserving cultural heritage. It has also facilitated far-reaching collaborations between Native communities and museums.²⁹ But the statutory dialogue mandate has also had detrimental impacts. In particular, the relatively unstructured nature of the mandated dialogue, especially in the early consultation stage, has allowed space for conflict and obstruction. Sometimes the NAGPRA process has heightened tension and conflict rather than ameliorating it.³⁰ To mitigate this problem, amended regulations that took effect in January 2024 update the dialogue framework to provide additional structure, direction, and requirements.³¹

Studying NAGPRA dialogue also contributes to our understanding of how to effectively redress severe, intergenerational human rights abuses and social harms. Reparative justice, transitional justice, restorative justice, and other international justice models aim both to address past harms and to improve communities’ future interrelationships and well-being. These international justice models all advocate dialogue as a central mechanism to achieve their goals of reparation and reconciliation. As I argued in an essay in the *American Journal of International Law Unbound*, for reparative justice to be successful, the process is vitally important, not only the outcome. Restitution of cultural heritage and other reparations for severe, intergenerational harms to communities must be embedded in processes with a central role for those affected communities.³² NAGPRA offers a test case for these ideas.

Finally, intergroup contact theory (“ICT”) provides the empirical grounding for justice models’ aims of promoting positive future relationships and well-being. ICT is a globally applied, socio-psychological theory that identifies specific factors that promote positive engagement between social groups that are in tension with

²⁷ NAGPRA uses the term “human remains,” however, many tribes find this disrespectful and prefer the term “ancestors.” This Article uses “human remains” when referring to the statutory mandate, and “ancestors” in other contexts. As with other contested language used in this Article, I recognize that individuals and groups have different preferences about these language choices, and my intention is to use language that is respectful and widely accepted.

²⁸ NAT’L PARKS SERV., FISCAL YEAR 2024 REPORT: NATIONAL NAGPRA PROGRAM 1, 2 (Nov. 6, 2024), <https://perma.cc/RG7K-A9LN>.

²⁹ E.g., Jordan Kerber, *Introduction*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES xxi, xxi (Jordan Kerber ed., 2006).

³⁰ See *infra* Part III.A.2.

³¹ 43 C.F.R. pt. 10 (2024) (as promulgated by 88 FED. REG. 86,452 (Dec. 13, 2023)); see *infra* Part II.

³² Baylis, *Repatriation as Reparations*, *supra* note 11, at 168.

each other. It thereby offers a useful lens for understanding why the results of NAGPRA dialogue are so variable. By applying ICT to NAGPRA dialogue, this Article identifies key structural changes that could improve the quality of dialogue in NAGPRA and other repatriation settings and thereby achieve more consistent positive impacts. It also contributes to ICT scholarship by affirming the significance of ICT factors in NAGPRA participants' accounts of their experiences, as well as to international justice models like reparative justice by offering insights that are broadly applicable to the use of dialogue in those frameworks.

Part I of this Article provides international and comparative context on the aims of repatriation, the prominent international justice models for redressing severe intergenerational social harms, and the global research on intergroup contact theory. Part II outlines NAGPRA's statutory dialogue mandate and explains how its design converges with and diverges from the theoretical models discussed in the previous section. It then explores NAGPRA dialogue in practice, reviewing participants' reports on their experiences and evaluating these reports through the lens of the international justice models and ICT discussed above. It also considers two forms of advisory dialogue that complement the mandatory dialogue process. Part III assesses the international implications of NAGPRA's experience for other international repatriation contexts and for the relevant international justice frameworks.

I. INTERNATIONAL AND COMPARATIVE CONTEXT

Acquiring the cultural heritage of colonized peoples was an integral part of the colonial project. Taking the symbolic and sacred patrimony of colonized peoples was a form of domination and cultural destruction. Museums were not merely bystanders in this process. Rather, some museums actively sought out cultural objects by participating in and soliciting items from military and scientific expeditions. Some of these—like the bust of Nefertiti—are high-profile objects on prominent display in famous museums. But the scale of this phenomenon is far greater than these few, well-known objects. Much of this lost cultural heritage consists of smaller items kept in long-term storage, inaccessible and largely unknown to the public.³³

Formerly colonized peoples' claims for repatriation of their cultural heritage have usually been based on ethics and politics rather than law. There are now international treaties and national laws protecting cultural heritage from illicit looting, theft, and export. But these legal mandates were enacted after the colonial period and do not operate retrospectively. Colonial-era international agreements

³³ CARSTEN STAHN, CONFRONTING COLONIAL OBJECTS: HISTORIES, LEGALITIES, AND ACCESS TO CULTURE 43–46 (2023); SARR AND SAVOY REPORT, *supra* note 24, at 49–59; ANA FILIPA VRDOLJAK, INTERNATIONAL LAW, MUSEUMS AND THE RETURN OF CULTURAL OBJECTS 53–63, 67–71 (2006).

protecting cultural heritage during armed conflict excluded conflicts with then-colonized peoples. Accordingly, these protective cultural heritage laws do not provide a legal basis for repatriation claims by formerly colonized peoples. Moreover, in some European states, national legal codes prohibit deaccession of artworks and cultural objects from public collections absent some form of special legislation. In other countries, the law is silent on this issue.³⁴

As a result, until recently, it has been up to governments, museums, and other collectors to determine whether to accede to source communities' calls for restitution of their looted cultural heritage on a case-by-case basis. But new laws and policies concerning repatriation are slowly changing this. By creating mandatory procedures, governments and museums ensure that repatriation is subject to uniform processes and standards rather than ad hoc, case-by-case decisions.³⁵

Part A considers the comparative goals of repatriation from the perspectives of source communities and museums. Part B describes the prominent international justice frameworks for addressing significant social harms like loss of cultural heritage and discusses the role of dialogue in these frameworks. Part C introduces the underlying global research on Intergroup Contact Theory that supports these international justice frameworks and provides an analytic lens for this Article.

A. Comparative Repatriation Aims

Communities that have lost significant parts of their cultural heritage to colonization describe experiencing many kinds of harms. Taking cultural heritage was a mechanism and symbol of power, and the continued holding of those objects communicates a continued legitimization of that power dynamic.³⁶ Rather than having access to cultural symbols and artworks in their own country, artists and other community members can engage with them only by traveling overseas.³⁷ Without sacred objects and other tangible cultural patrimony, important cultural knowledge and a sense of shared identity have been lost.³⁸ Access to cultural heritage is needed for communities to be able to tell their own histories, including the history of the colonial period.³⁹ The possession, study, and display of looted

³⁴ Baylis, *Looted Cultural Objects*, *supra* note 11, at 183–91.

³⁵ *Id.*

³⁶ Victor Ehikhamenor, *Give Us Back What Our Ancestors Made*, N.Y. TIMES (Jan. 28, 2020), <https://perma.cc/5ZV4-R3FK>.

³⁷ *Id.*

³⁸ COLONIAL COLLECTIONS REPORT, *supra* note 24, at 55–56.

³⁹ *Id.* at 51.

cultural objects is seen as an act of profound disrespect.⁴⁰ Restitution enables formerly colonized peoples to exercise their human rights to access their cultural heritage and engage in cultural life.⁴¹ For all of these reasons, formerly colonized peoples and states have been demanding return of their cultural heritage for decades.

For their part, museums and states that are in possession of looted cultural heritage repatriate it to source communities for several intersecting reasons. Providing justice for a past wrongdoing and redressing the harm that was caused is, of course, a primary purpose.⁴² Other aims focus on the present and future. Over time, professional, cultural, and legal norms have evolved to recognize the importance of cultural heritage to communities and protect it. Restituting cultural heritage that was taken under conditions that would not be tolerated today brings museums and governments' present-day actions concerning their collections into alignment with their present-day ethical commitments and professional standards.⁴³ As states that were formerly colonial powers acknowledge the harms that were done by colonization and attempt to improve their relationships with the states that were formerly their colonies, returning cultural heritage can function as a way of "showing contrition."⁴⁴ Restituting cultural heritage ends the ongoing relational, cultural, and social harms caused by museums continuing to hold, display, and study looted objects.⁴⁵ It facilitates a change in the role and function of museums away from a reliance on items taken by force or coercion and toward the voluntary exchange of cultural property.⁴⁶

The U.S. Congress invoked several of these purposes in enacting NAGPRA's legal repatriation provisions. NAGPRA was intended to redress the past wrongs of graverobbing, battlefield looting, theft, and coercive purchases of Native American cultural heritage and human remains. It acknowledged the discriminatory treatment of Native American bodies, property, religions, and cultures that was inherent in taking, keeping, studying, and displaying Native human remains and cultural objects without consent. NAGPRA was meant to

⁴⁰ Catherine Hickley, *Gold Star Medal Taken from an Ethiopian War Hero Surfaces at Auction*, ART NEWSPAPER (Dec. 2, 2024), <https://perma.cc/3STC-6K3K>.

⁴¹ Human Rights Council Res. 33/20, U.N. Doc. A/HRC/RES/33/20 (Sept. 30, 2016); International Covenant on Economic, Social and Cultural Rights art. 15, Dec. 16, 1966, 993 U.N.T.S. 3.

⁴² COLONIAL COLLECTIONS REPORT, *supra* note 24, at 65.

⁴³ SMITHSONIAN POLICY, *supra* note 25, at 1; COLONIAL COLLECTIONS REPORT, *supra* note 24, at 29.

⁴⁴ Franziska Boehme, *Normative Expectations and the Colonial Past: Apologies and Art Restitution to Former Colonies in France and Germany*, 2 GLOBAL STUDS. Q. 1, 4 (2022).

⁴⁵ SMITHSONIAN POLICY, *supra* note 25, at 1.

⁴⁶ DAN HICKS, THE BRITISH MUSEUMS: THE BENIN BRONZES, COLONIAL VIOLENCE AND CULTURAL RESTITUTION 239–40 (2020).

improve the future relationships between museums and Native American communities and to align the U.S. government's present-day collections and funding with its present-day commitment to its relationships with Native American communities.⁴⁷

In order to achieve these aims of repatriation, not only must cultural heritage be returned, but *how* it is returned is also important. NAGPRA's dialogue requirements represent a way of integrating source communities' perspectives, interests, and expertise into the heart of the repatriation process. As described in Part III below, NAGPRA's repatriation process relies on direct, unmediated dialogue between source communities and museums as the core mechanism of repatriation.

B. International Justice Models

These repatriation purposes align with international models of how justice processes can redress severe social harms and contribute to constructive social transformation. These include transitional justice,⁴⁸ restorative justice,⁴⁹ post-conflict peacebuilding,⁵⁰ reparative or reparatory justice,⁵¹ social healing through justice,⁵² and human rights.⁵³ These models overlap considerably; they are not discrete categories but rather complementary conceptual frameworks that endorse interrelated mechanisms and goals.⁵⁴ Like NAGPRA, these models have two

⁴⁷ It was also intended to protect Native American graves and property from looting in the present and future with provisions providing for custody and ownership of human remains and cultural items found on tribal and federal land. *See* S. REP. NO. 101-473 (1990); H.R. REP. NO. 101-877 (1990); 136 CONG. REC. 31,935-40 (1990); 136 CONG. REC. 36,814-15 (1990).

⁴⁸ *See* LUCAS LIXINSKI, *LEGALIZED IDENTITIES: CULTURAL HERITAGE LAW AND THE SHAPING OF TRANSITIONAL JUSTICE* 20-22, 135-36 (2021).

⁴⁹ *See* Moira Simpson, *Museums and Restorative Justice: Heritage, Repatriation and Cultural Education*, 61 MUSEUM INT'L 121, 122 (2009); Trevor Reed, *Restorative Justice for Indigenous Culture*, 70 UCLA L. REV. 516, 565 (2023) (addressing intangible Indigenous cultural property); Mark S. Umbreit et al., *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251 (2005) (discussing the criminal context).

⁵⁰ *See* Melanie Esta Sarah Garson, *The Third Pillar: The Role of Reconciliation in Supporting Peace Agreements* 175 (May 2017) (Ph.D. dissertation, University College London) (<https://perma.cc/7G7E-GRW6>); Elena Baylis, *Protection and Repatriation of Cultural Objects*, in ELGAR CONCISE ENCYCLOPEDIA OF LAW AND PEACE (Louise Mallinder et al. eds., forthcoming 2026).

⁵¹ *See* Baylis, *Repatriation as Reparations*, *supra* note 11; PATTY GERSTENBLITH, *CULTURAL OBJECTS AND REPARATIVE JUSTICE: A LEGAL AND HISTORICAL ANALYSIS* 249-52 (2023).

⁵² *See* ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE* 62-91 (2021).

⁵³ *See* Karima Bennouna (Special Rapporteur in the Field of Cultural Rights), *Report of the Special Rapporteur in the Field of Cultural Rights*, ¶¶ 6-10, U.N. Doc. A/71/317 (Aug. 9, 2016).

⁵⁴ Of necessity, the summary descriptions below do not address the nuances of these frameworks; rather, they are intended to provide a snapshot of a few key features.

interrelated aims focused on the past and the future. They try to acknowledge and remedy the past harms that have occurred. And through the process of redressing past harms, they also aspire to facilitate improved future social relationships and community wellbeing. Importantly, these justice models are not solely theoretical; each one has been implemented in numerous settings around the world.

Transitional justice endeavors to enable a successful transition to a more stable and equitable society by grappling with human rights abuses and other severe harms committed during an armed conflict or oppressive political regime. It aims to account for past wrongdoing, redress the resulting harms, develop a shared historical narrative, prevent future recurrence, and facilitate positive future social and political relationships. Transitional justice utilizes a wide variety of mechanisms, such as truth commissions, trials, memorialization, public education, rule of law initiatives, and government reforms.⁵⁵ Transitional justice processes have been implemented in numerous countries in all regions of the world, including Argentina, Cambodia, Colombia, Kosovo, Lebanon, Nepal, and Sierra Leone.⁵⁶ In many instances, colonization constituted both an oppressive political regime and an armed conflict that would have been appropriate for transitional justice processes when colonization ended. But transitional justice for the harms of colonialism did not take place immediately after the conflict or transition. Although much time has passed since some of these harms were committed, the harms and their ongoing effects could be reviewed in a transitional justice process.⁵⁷

Peacebuilding focuses predominantly on the aim of improving the future relationships between communities that have been in violent conflict with each other, so as to facilitate mutual understanding and respect and thereby forestall future conflict.⁵⁸ In this model, redress of past harms is significant primarily as a means to that end. As such, measures that will produce positive interactions between social groups are often preferred to accountability measures that focus on past conflict, harm, and wrongdoing, and thus may serve as ongoing reminders of past negative experiences.⁵⁹ Peacebuilding processes are often used in the immediate aftermath of violence, but they are relevant to any setting with a history of past violent conflict that has produced lingering effects. Peacebuilding

⁵⁵ LIXINSKI, *supra* note 48, at 18–21; Alessandro Chechi, *The Return of Cultural Objects Displaced During Colonialism: What Role for Restorative Justice, Transitional Justice and Alternative Dispute Resolution?*, 6 INT'L J. RESTORATIVE JUST. 95, 102–03 (2023).

⁵⁶ See *Where We Work*, INT'L CTR. FOR TRANSITIONAL JUST., <https://perma.cc/LLN8-YLQK> (last visited Mar. 20, 2026).

⁵⁷ Chechi, *supra* note 55, at 103–04.

⁵⁸ Garson, *supra* note 50, at 38–39.

⁵⁹ *Id.* at 40–41.

initiatives have been implemented in Cameroon, Ecuador, Haiti, Liberia, the Philippines, and Serbia, among many other countries worldwide.⁶⁰

Restorative justice prioritizes restoring community relationships through a process of jointly identifying and agreeing on how to redress individual and community harms. To accomplish this, it facilitates mediated engagement among all stakeholders, including victims, perpetrators, and their communities.⁶¹ Restorative justice is used in some Indigenous justice systems, and restorative justice models have been advanced as an alternative to criminal prosecution in many countries, particularly in Europe.⁶² Restorative justice processes have also been proposed as a mechanism to enable social groups to remedy cultural harms from colonization.⁶³

Reparative or reparatory justice concerns the aim of making victims of wrongdoing whole if possible, and if not, ameliorating the harm insofar as possible and appropriately supporting the affected community's future wellbeing.⁶⁴ It traditionally has focused primarily on offering appropriate forms of tangible reparations to affected individuals and communities.⁶⁵ For example, collective reparations have been granted to Indigenous communities by Canada, Colombia, and New Zealand, as well as by Germany to Namibia.⁶⁶ Improvement of future society-wide relationships has typically been a byproduct of successful reparations rather than a primary goal. For severe human rights abuses like those experienced in colonization, reparations may include not only property restitution and monetary compensation but also other measures, such as acknowledgment and

⁶⁰ See *Design, Monitoring and Evaluation*, UNITED NATIONS PEACEBUILDING, <https://perma.cc/FU3D-2XUH> (last visited Mar. 20, 2026).

⁶¹ Reed, *supra* note 49, at 565; Umbreit et al., *supra* note 49, (criminal context); Chechi, *supra* note 55, at 100–02.

⁶² Reed, *supra* note 49, at 562–63, 574–75; Umbreit et al., *supra* note 49, at 258; Chechi, *supra* note 55, at 101.

⁶³ Simpson, *supra* note 49, at 122 (tangible cultural heritage); Reed, *supra* note 49, at 574–75 (intangible Indigenous cultural property); Chechi, *supra* note 55, at 103–04, 109–10.

⁶⁴ Pablo de Greiff, *Justice and Reparations*, in THE HANDBOOK OF REPARATIONS 451, 465–66 (Pablo de Greiff ed., 2006).

⁶⁵ GERSTENBLITH, *supra* note 51, at 249–52.

⁶⁶ See *Indian Residential Schools Settlement Agreement*, GOVERNMENT OF CANADA, <https://perma.cc/7XVF-QFZE> (last visited Mar. 20, 2026); NELSON CAMILO SANCHEZ AND ADRIANA RUDLING, REPARATIONS IN COLOMBIA: WHERE TO? (Luke Moffett and Peter Dixon eds., 2019), <https://perma.cc/X79Q-J5GH> (last visited Mar. 20, 2026); *What are Treaty Settlements and Why Are They Needed?*, TE TAI TREATY SETTLEMENT STORIES, <https://perma.cc/CRY7-PV2T> (last visited Mar. 20, 2026) (New Zealand); Henning Melber, *Germany and reparations: the reconciliation agreement with Namibia*, 111 THE ROUND TABLE 475 (2022).

apologies, rehabilitation services, and non-monetary collective benefits.⁶⁷ As I argued in a recent essay, pursuing reparative justice for collective, non-monetary harms like loss of cultural heritage requires attention not just to outcomes but also to the process by which those outcomes are produced, with a central role for all affected communities in those reparative processes.⁶⁸

Social healing through justice is concerned with healing intergenerational harms to communities due to past injustices by engaging all the stakeholders in a “dynamic process of recognition, responsibility, reconstruction and reparation.”⁶⁹ It encompasses both addressing past harms and promoting positive future relationships. It combines many mechanisms into a comprehensive, long-term approach that is intended to remedy deep-seated cultural, economic, social, and psychological community harms.⁷⁰ In this sense, it is like transitional justice. However, the context for social healing through justice is different; rather than concerning a transitional setting, it focuses on long-unresolved harms that have had intergenerational effects on entire communities, like loss of cultural heritage under colonization.⁷¹ A social healing through justice initiative has been implemented to address intergenerational, communal harms in South Korea.⁷²

Human rights assert the rights of groups and individuals to core protections and benefits, including the right to engage in their culture and to have access to their cultural heritage.⁷³ It enforces those rights through accountability for past violations and develops mechanisms for future protection of human rights. The recognition of a human right often serves as the basis for invoking the other justice mechanisms discussed above to fulfill those rights. 173 countries have recognized cultural rights as human rights by ratifying the International Covenant on Economic, Social, and Cultural Rights.⁷⁴

Like NAGPRA, these international justice models use dialogue as a tool to enable groups to address past harms and develop better future relationships. For example, transitional justice and peacebuilding initiatives establish truth and

⁶⁷ GERSTENBLITH, *supra* note 51, at 466–69; G.A. Res. 60/147, ¶ 18 (Dec. 16, 2005); Fabián Salvioli (Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence), *Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*, ¶¶ 13–17, U.N. Doc. A/76/180 (July 19, 2021).

⁶⁸ Baylis, *Repatriation as Reparations*, *supra* note 11, at 167–68.

⁶⁹ YAMAMOTO, *supra* note 52, at 72.

⁷⁰ *Id.* at 62–91.

⁷¹ *Id.*

⁷² *See generally id.*

⁷³ *See* Bennoune, *supra* note 53, at 6–10.

⁷⁴ *Status of Ratification Interactive Dashboard*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., <https://perma.cc/8TQD-BN7C> (last visited Mar. 20, 2026).

reconciliation commissions to “invite[] dialogue between former enemies.”⁷⁵ South Africa famously established a truth and reconciliation commission to address the harms of apartheid, and truth commissions have been implemented in many other countries as well.⁷⁶ Truth and reconciliation commissions allow participants to publicly testify in a formal setting about the harms they have experienced due to armed conflict, authoritarian regimes, or other harmful socio-political events. The aim of truth commissions is to develop a shared historical narrative and facilitate mutual understanding among all affected communities.⁷⁷

Another transitional justice and peacebuilding example is community dialogue, such as facilitated dialogue groups and facilitated storytelling forums. These bring together members of conflicting social groups to directly discuss mutual issues or to share their own stories from the conflict. They are meant to enable participants to better understand each other, develop trust, and form positive associations with each other, so as ultimately to transform the relationship between the groups.⁷⁸ Community dialogue has been implemented as a peacebuilding mechanism in Northern Ireland and Bosnia, among other global contexts.⁷⁹

Restorative justice uses dialogue between victims and wrongdoers to address a specific instance of a wrongdoing and harm. It originated in the criminal justice context, as an alternative to criminal trials. The purpose of restorative justice dialogue is to jointly identify the wrongdoing and the harms it caused, enable the wrongdoer to take responsibility, and collectively determine a plan for appropriate redress, with the aim of repairing not only the victim’s tangible injury, but also the harm to the victim and wrongdoer’s relationship.⁸⁰ In addition to one-on-one interactions between individual victims and wrongdoers, restorative justice dialogue can include engagement between the concerned communities.⁸¹ Restorative justice dialogue has been implemented in many countries worldwide,

⁷⁵ Pumla Gobodo-Madikizela, *Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission*, in *THE SOCIAL PSYCHOLOGY OF INTERGROUP RECONCILIATION* 57, 60 (Arie Nadler et al. eds., 2008).

⁷⁶ *Id.*; Priscilla B. Hayner, *Truth Commissions: A Schematic Overview*, 88 INT’L REV. OF THE RED CROSS 295 (2006).

⁷⁷ LIXINSKI, *supra* note 48, at 20–22, 135–36.

⁷⁸ Nevin T. Aiken, *Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland*, 4 INT’L J. TRANSITIONAL JUST. 166, 184 (2010); DONALD G. ELLIS, *TRANSFORMING CONFLICT: COMMUNICATION AND ETHNOPOLITICAL CONFLICT* 169–75 (2006); Garson, *supra* note 50, at 175.

⁷⁹ *See generally* Aiken, *supra* note 78 (Northern Ireland); Garson, *supra* note 50 (Northern Ireland, Bosnia, Israel-Palestine).

⁸⁰ Reed, *supra* note 49, at 575; Umbreit et al., *supra* note 49, at 269.

⁸¹ Reed, *supra* note 49, at 562–63, 577; Umbreit et al., *supra* note 49, at 257–58.

“including Australia, Canada, numerous European countries, Japan, New Zealand, South Africa, several South American countries, South Korea, and Russia... [as well as through the] United Nations, the Council of Europe, and the European Union.”⁸²

Both reparative justice and social healing through justice require representatives of all the concerned communities to meet with each other, first to jointly identify the wrongdoing and harm, and then to develop the necessary reparations and other measures.⁸³ Finally, human rights implementation makes use of facilitated dialogue that convenes participants who hold contrasting perspectives on a human rights issue to enable mutual understanding and promote joint action.⁸⁴

Importantly, in these international justice models, dialogue is understood to present a significant risk of counterproductive outcomes, renewed tension, and conflict. Accordingly, in practice, dialogue measures are carefully selected and designed to facilitate positive interactions and diminish the risk of negative ones. In Northern Ireland, for example, among the possible modes of peacebuilding and transitional justice dialogue, policymakers eschewed a truth commission or other comprehensive national public conversation about the violent conflict itself as too contentious and destabilizing.⁸⁵ Instead, facilitators organized local storytelling forums. These have been “carefully mediated” events “in which a small number of nationalists and unionists are brought together to share their personal experiences of past conflict and hear those of the other community.”⁸⁶

Finally, due to the risk of negative interactions, the dialogue in these international justice models is never unmediated. To the contrary, such dialogue is designed to rely on a highly skilled, third-party facilitator who is responsible for shaping the engagement between the participants. For example, in restorative justice, “[a]ll [forms of dialogue] have in common . . . the presence of at least one additional person who serves as mediator, facilitator, convener, or circle keeper.”⁸⁷

⁸² Umbreit et al., *supra* note 49, at 261.

⁸³ Baylis, *Repatriation as Reparations*, *supra* note 11, at 167–68 (reparative justice); Chechi, *supra* note 55, at 101–03 (reparative justice) (multiple international examples); YAMAMOTO, *supra* note 52, at 62–64 (social healing through justice) (South Korea).

⁸⁴ Human Rights Council, *Interactive Dialogue on the Report of the Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association, on Promoting and Protecting Human Rights in the Context of Peaceful Protests*, (Mar. 6, 2024), <https://perma.cc/P9SW-ND3X> (including 49 country delegations); Sandra Epal-Ratjen & Nicolas Agostini, *The Kind of Human Rights Dialogue We Need*, OPENGLOBALRIGHTS, (Feb. 16, 2024), <https://perma.cc/7WHK-B5BT> (including “practitioners from all over the world”).

⁸⁵ Aiken, *supra* note 78, at 175.

⁸⁶ *Id.* at 185; see also YAMAMOTO, *supra* note 52, at 70–71.

⁸⁷ Umbreit et al., *supra* note 49, at 269; see also ELLIS, *supra* note 78, at 169; Reed, *supra* note 49, at 564.

C. Global Intergroup Contact Theory

The use of dialogue in the international justice models is supported by extensive, worldwide, socio-psychological research concerning intergroup contact theory (ICT).⁸⁸ Many decades of well-validated ICT research demonstrates the effectiveness of direct, positive interaction in promoting mutual understanding and reducing prejudice and conflict among social groups.⁸⁹ It has been tested in studies collectively involving hundreds of thousands of participants in dozens of countries and applied in international contexts including Iraq, Nigeria, Northern Ireland, Israel, and South Africa.⁹⁰

This global ICT research identifies the particular structural characteristics that foster positive interactions among members of conflicting groups. This is foundational to designing effective dialogue as part of a justice mechanism.⁹¹ These international research findings indicate that the following structural characteristics are crucial to an interaction's success:⁹²

- “*Equal status within the situation*”: All participants must have equal rights to engage in the interaction. They must expect that they will be treated equally by the other participants, and they must actually be treated equally.⁹³
- “*Common goals*”: The participants should be engaged in “an active goal-oriented effort” in which they must rely on each other in order to achieve their goal. Sports

⁸⁸ Thomas F. Pettigrew, *Intergroup Contact Theory*, 49 ANN. REV. PSYCH. 65, 66 (1998); Stefania Paolini et al., *Intergroup Contact Research in the 21st Century*, 77 J. SOC. ISSUES 11, 16 (2021).

⁸⁹ Linda R. Tropp & Thomas F. Pettigrew, *Relationships between Intergroup Contact and Prejudice among Minority and Majority Status Groups*, 16 PSYCH. SCI. 951, 951 (2005); Thomas F. Pettigrew, *Future Directions for Intergroup Contact Theory and Research*, 32 INT'L J. INTERCULTURAL REL. 187, 189 (2008).

⁹⁰ See, e.g., Jack Lippei Tang et al., *Intergroup contact, contact heterogeneity, and cross-group friendship: evidence from a global prosocial mobile game*, 31 J. OF COMPUT.-MEDIATED COMMUN. 1 (2026) (global study of 3,612 participants worldwide); Linda R. Tropp & Thomas F. Pettigrew, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. OF PERSONALITY AND SOC. PSYCH. 751 (2006) (meta-analyzing studies from 38 countries with hundreds of thousands of participants); Miles Hewstone et al., *Intergroup Contact, Forgiveness, and Experience of ‘The Troubles’ in Northern Ireland*, 62 J. OF SOC. ISSUES 99 (2006); Salma Mousa, *Building social cohesion between Christians and Muslims through soccer in post-ISIS Iraq*, 369 SCI. 866 (2020); Alexandra Scacco & Shana S. Warren, *Can Social Contact Reduce Prejudice and Discrimination? Evidence from a Field Experiment in Nigeria*, 112 AM. POL. SCI. REV. 654 (2018); Lipaz Shamo-Nir, *Exploring contact theory in intergroup dialogue*, 10 COGENT SOC. SCI. 1 (2024) (Israel); Hermann Swart et al., *Affective mediators of intergroup contact: a three-wave longitudinal study in South Africa*, 101 J. OF PERSONALITY AND SOC. PSYCH. 1221 (2011).

⁹¹ Paolini, *supra* note 88; Pettigrew, *Future Directions*, *supra* note 89, at 187–89.

⁹² The first four factors were proposed when intergroup contact theory was first developed. GORDON ALLPORT, *THE NATURE OF PREJUDICE* (1954). The remaining factors were developed thereafter through research.

⁹³ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 66; Tropp & Pettigrew, *supra* note 89, at 952.

games with teams that include members of both communities are a prototypical example.⁹⁴

- “*Cooperation*”: The participants must need to work together cooperatively rather than competitively to achieve their common aim. The activity should not set the groups at odds with each other in any way.⁹⁵
- “*Support of authorities, law or custom*”: The activity will have a substantially stronger effect if it is sanctioned by the government or another authoritative institution. This signals social approval of the interaction.⁹⁶
- *Repeated interactions over a long period of time*: Long-term, iterative experiences have a cumulative effect that is much stronger than a brief, one-time interaction.⁹⁷
- *Enabling meaningful, trusting relationships*: According to renowned ICT scholar Thomas Pettigrew, the most influential factor is whether the dialogue structure enables meaningful, trusting relationships among the participants. Intense, close relationships, like significant friendships, have much more of an impact than casual day-to-day interactions. This is cumulative of the previous factors, which tend to facilitate such relationships.⁹⁸
- *Previous experience as a limiting factor*: Finally, a limiting factor on what can be achieved in any interaction, no matter how positive, is the participants’ previous experience with the other group. Of course, dialogue does not occur in a vacuum; participants’ past experiences continue to influence their views.⁹⁹ Importantly for NAGPRA and other repatriation contexts, this seems to be particularly significant for participants from nondominant social groups. Past experiences of prejudice, discrimination, or devaluation tend to strongly affect the dialogue and its impact for those participants, even if the dialogue itself is well-designed to promote positive engagement.¹⁰⁰

⁹⁴ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 66; Tropp & Pettigrew, *supra* note 89, at 952.

⁹⁵ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 67; Tropp & Pettigrew, *supra* note 89, at 952.

⁹⁶ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 67, 78–79; Tropp & Pettigrew, *supra* note 89, at 952.

⁹⁷ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 69.

⁹⁸ *Id.* at 72.

⁹⁹ Sarina J. Schäfer et al., *Does Negative Contact Undermine Attempts to Improve Intergroup Relations?*, 77 J. SOC. ISSUES 197, 202–03 (2021); Pettigrew, *Future Directions*, *supra* note 89, at 78.

¹⁰⁰ Tropp & Pettigrew, *supra* note 89, at 955–56; Pettigrew, *Future Directions*, *supra* note 89, at 189.

These ICT factors are well-established. Numerous studies and meta-studies worldwide have confirmed their significance.¹⁰¹ Why do these characteristics have such a significant effect? According to the global research, the most important underlying dynamic is that they foster mutual empathy and mutual understanding of each other's perspectives.¹⁰² Mutual understanding and empathy enable participants to alter their viewpoints to encompass not only their own group's experience, but also the experience of the other group, and then to act from that expanded viewpoint. Participants also benefit from learning more about the other group and from practicing cooperative behavior patterns with members of the other group.¹⁰³

However, it is important to note that there is an inherent limit to how fully ICT can be integrated into international justice models like reparative or transitional justice. ICT is focused solely on the future-oriented goal of enabling positive interactions and thereby changing participants' future attitudes. It is not attempting to redress past harms. Accordingly, the subject of ICT interactions—the nature of the participants' common goal and the activities required to pursue it—is not itself important. What matters is simply that the participants are brought into the experience of this carefully calibrated, shared activity.

But in justice contexts, dialogue is typically intended to redress past harms, as well as to improve future relationships. Indeed, often, the very aim of the dialogue is to improve the relationships between the groups *by* addressing a contentious issue.¹⁰⁴ Accordingly, the content of the interactions is often extremely important. This limits how fully ICT can be implemented. It is difficult to ensure that the groups consistently cooperate and to avoid having them be at odds with each other within the dialogue if they are discussing the very matter on which they disagree. In addition, they may not share common goals concerning the harm that has occurred, and it may not be possible to design the dialogue so that the parties are working together cooperatively on the issue. ICT is nonetheless valuable for structuring such justice interactions insofar as possible. But the ICT factors cannot always be fully adopted in a justice context in which the participants are of necessity addressing a divisive topic.

With that caveat, many of the international justice models discussed above do in fact build on ICT's findings insofar as possible in designing their dialogues.

¹⁰¹ Pettigrew, *Future Directions*, *supra* note 89; Tropp & Pettigrew, *supra* note 89. Some researchers have suggested additional factors. There is also some disagreement about the relative importance of the factors. Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 72, 79.

¹⁰² This connects to the “enabling meaningful, trusting relationships” factor, which is based in mutual empathy and understanding. Pettigrew, *Future Directions*, *supra* note 89, at 190; Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 70–72.

¹⁰³ Pettigrew, *Intergroup Contact Theory*, *supra* note 88, at 71.

¹⁰⁴ See *supra* Part II.B.

The community storytelling forums conducted in Northern Ireland, for example, are specifically designed to facilitate increased understanding and empathy for the other group's experience through mutually respectful interactions. They bring all participants together on an equal basis with the sanction of the government and community organizations. Many have repeated meetings. Participants have a common aim of sharing and hearing stories. These elements are considered crucial to the success of the venture. But by focusing on discussion of painful episodes of the past, these forums often will not require participants to work together cooperatively. The common aim of sharing stories is process-oriented and incremental, rather than something tangible and specific that can be completely accomplished, yielding a sense of jointly achieved success. Whether these meetings would provide an opportunity for meaningful relationships to form is accordingly hard to assess from their structure alone.

The many truth commissions that have been held around the world, likewise, have been designed to fulfill many of the ICT factors. They are typically organized and sanctioned by the government. Many provide for equal participation in testimony and for balanced representation among the commissioners. The proceedings take place repeatedly over the course of weeks, months, or years. Participants' experience concerning the other factors varies, as commissioners, witnesses, and the audience all have different roles to play. The commissioners have the experience of working cooperatively to attain the goal of producing a report, but the witnesses and audience do not. As with community dialogue, it is hard to say in the abstract whether there are opportunities for friendship between participants from different groups, although it seems relatively likely among the commissioners, who work closely together with a shared purpose.

It is notable that ICT does not focus on the need for facilitation that is considered foundational to implementing the international justice models. Of course, many ICT interactions are, in fact, facilitated, but not all. This is likely because ICT interactions are intended to be innocuous and cooperative in nature, whereas the justice models are often invoking dialogue to address a hotly disputed issue. Because the nature of the goal and the activity in the justice models increases the risk of a negative interaction, there is a greater need to have a neutral mediator present to help mitigate that risk by guiding the interaction in a constructive direction and deescalating should a conflict arise.

Thus, although Congress, in establishing NAGPRA's dialogue mandate, seems to have assumed that simply putting museums and Native nations into direct contact with each other to discuss restitution would not only achieve effective repatriations but also promote better relationships, global ICT research

and international justice models indicate that, in fact, such interactions could produce either positive or negative interactions and either better or worse relationships. The outcomes depend not just on the fact of engagement but also on the structure and quality of that engagement. As discussed below, variable experiences and outcomes are part of the reality of NAGPRA dialogue. For these reasons, understanding the structure and qualities of NAGPRA repatriation dialogue and the effects of those qualities is valuable, both for policymakers designing repatriation policies and to contribute to the scholarship on intergroup contact and remedying significant social harms.

II. NAGPRA DIALOGUE

In 1913, just one year after the bust of Nefertiti was unearthed in Egypt, the Museum of Archaeology and Anthropology at the University of Pennsylvania (“Penn Museum”) purchased a new item for its collection. That item was a wampum belt from the Passamaquoddy tribe.¹⁰⁵

Wampum belts are weavings of white and purple beads in meaningful pictographic and abstract patterns. The belts “were symbols of agreements between nations.”¹⁰⁶ They “serve[d] as material records of alliances, political gifts among and between allies, and ritual tools of internal governance.”¹⁰⁷ By means of the messages in the belts, “[k]nowledgeable elders and wampum keepers preserved the memory of historical events.”¹⁰⁸ Accordingly, wampum belts were “brought out as reminders during councils, both between Indigenous nations and in treaty renewals with the Crown’s colonies.”¹⁰⁹ Wampum’s “origins are sacred, and therefore the message symbolized and preserved by it is also to be respected . . . [i]n nations whose councils are opened and closed with wampum, it is said that it acts as a symbolic fire, calling the attention of the Creator to what is being transacted.”¹¹⁰

¹⁰⁵ Lucy Fowler Williams & Stacey Espenlaub, *A Wampum Belt Returns to the Peskotomuhkati/Passamaquoddy Nation*, 66 EXPEDITION 58, 58, (2024) <https://perma.cc/EDY2-VS9C> (last visited Mar. 20, 2026); Notice of Intent to Repatriate Cultural Item, 89 Fed. Reg. 26,906 (Apr. 16, 2024) [hereinafter Wampum Belt Repatriation Notice].

¹⁰⁶ *Wampum*, Peskotomuhkati Nation, <https://perma.cc/PRA7-AAYL> (last visited Mar. 20, 2026).

¹⁰⁷ Margaret M. Bruchac, *Broken Chains of Custody: Possessing, Dispossessing, and Repossessing Lost Wampum Belts*, 162 PROC. AM. PHIL. SOC’Y 56, 68 (2018).

¹⁰⁸ *Id.*

¹⁰⁹ *Wampum*, *supra* note 106.

¹¹⁰ *Id.*

Penn Museum's director bought the Passamaquoddy wampum belt from a New York art dealer. How the art dealer acquired it is unknown.¹¹¹ What is known is that neither the art dealer nor the museum *should* have been able to obtain the wampum belt. This wampum belt was communally owned by the whole tribe, safeguarded and cared for by the tribe's Wampum Keeper. It was so central to the history, culture, politics, and sacred beliefs of the tribe that it could never be legitimately sold or given away:

It is a link to the Great Council Fire, an alliance of peace created in the early 19th century by the Seven Nations Iroquois and Wabanaki Confederate Tribes of Maine in response to pressures of European encroachment. Its sacred purple and white shell beads include 14 diamonds representing the alliance.¹¹²

Nevertheless, the New York art dealer did acquire the belt somehow, and the museum director did buy it, and it entered the museum's collection.¹¹³ Like the bust of Nefertiti, the wampum belt was carefully preserved and kept secure by the museum for more than 100 years. Like Nefertiti, the wampum belt's source community sought its restitution. Unlike Nefertiti, the wampum belt has returned home.

As required by NAGPRA, Penn Museum initiated dialogue with the Passamaquoddy about the wampum belt. The tribe shared its traditional knowledge of the wampum belt and expressed the importance of returning the belt to the community:

The belt represents a living spirit that must be used during tribal ceremonies. It is owned communally by the tribe and its energy is needed back home in its rightful community.¹¹⁴

As a result of this consultation, the museum relied on the Passamaquoddy's traditional knowledge to determine what to do with the wampum belt. It applied NAGPRA's legal standards for repatriation. It concluded that the wampum belt was an item of cultural patrimony that rightfully belonged to the tribe, and it agreed to return the belt. Two museum curators joined the great-grandson of the

¹¹¹ Williams & Espenlaub, *supra* note 105, at 58; Wampum Belt Repatriation Notice, 89 Fed. Reg. 26906 (Jan. 16, 2024).

¹¹² Williams & Espenlaub, *supra* note 105, at 58 (quoting Dr. Donald Soctomah, Tribal Historic Preservation Officer of the Passamaquoddy Tribe).

¹¹³ This was not an isolated event; there was a pattern of wampum belts being taken illicitly during this time period. Bruchac, *supra* note 107, at 70–72.

¹¹⁴ Williams & Espenlaub, *supra* note 105, at 58 (quoting Dr. Donald Soctomah, Tribal Historic Preservation Officer of the Passamaquoddy Tribe).

Passamaquoddy's last Wampum Keeper and other tribal members in a ceremony welcoming the belt back to the tribe.¹¹⁵

Just as the example of Nefertiti is representative of many other looted cultural objects around the world, so too is the Passamaquoddy wampum belt. Millions of cultural objects and hundreds of thousands of ancestors were looted from Native American communities under the auspices of settler colonialism. Through NAGPRA dialogue, more than 3.5 million cultural objects and 125,000 ancestors have been returned.¹¹⁶

NAGPRA requires federal and federally-funded museums, universities, agencies, and other institutions to repatriate Native American human remains ("ancestors") and cultural objects from their collections. These items must be returned to lineal descendants and to culturally affiliated tribes and Native Hawaiian organizations (NHOs).¹¹⁷ Like the Penn Museum, museums must carry out these restitutions in direct, unmediated dialogue with source communities and descendants, following the procedures and criteria set by the statute.¹¹⁸

NAGPRA was enacted in 1990, and implementing regulations were issued by the Department of the Interior in 1995.¹¹⁹ The statute sets out the general requirements for repatriation, and the regulations provide detailed direction on how to implement those statutory requirements.¹²⁰ Significant amendments to the regulations took effect in January 2024.¹²¹ Some of these changes are aimed at more effectively structuring NAGPRA dialogue to meet its intended purposes. Of course, this is also exactly the function of ICT research, and an important consideration for international justice models.

Section A describes the statutory design of NAGPRA dialogue. It identifies key characteristics and considers how these relate to the international justice models and ICT factors. Section B reviews participants' descriptions of NAGPRA

¹¹⁵ Williams & Espenlaub, *supra* note 105, at 58; Wampum Belt Repatriation Notice, 89 Fed. Reg. 26906 (Jan. 16, 2024).

¹¹⁶ NAT'L NAGPRA PROGRAM, NAT'L PARK SERV., FISCAL YEAR 2024 REPORT 2, <https://perma.cc/TX4Z-B7US> (2024).

¹¹⁷ 25 U.S.C. § 3005. So as to streamline the language used, this Article refers collectively to the entities that are required to repatriate as "institutions," "collectors," and "museums," and refers collectively to the groups and individuals that are entitled to receive repatriated items as "tribes/NHOs," "requestors," "Nations," and "communities."

¹¹⁸ *Id.*

¹¹⁹ 25 U.S.C. §§ 3001–3013; 60 Fed. Reg. 62134 (Dec. 4, 1995) (codified at 43 C.F.R. pt. 10).

¹²⁰ The statute itself has never been substantively amended, but the regulations have been updated several times. *The Regulations*, NAT'L PARK SERV., <https://perma.cc/E24J-MFVZ> (last visited Mar. 20, 2026).

¹²¹ 88 Fed. Reg. 86452 (Dec. 13, 2023).

dialogue in practice.¹²² NAGPRA participants describe highly varying NAGPRA dialogue experiences. In response to this variability, the new regulations take several measures to direct NAGPRA dialogue to be more consistently beneficial.

Section C discusses several outcomes that NAGPRA participants identify as emerging from their repatriation dialogue; these outcomes are also valued by ICT and the international justice models. NAGPRA participants also highlight several factors that ICT research predicts will be important. Section D assesses two alternative NAGPRA dialogue venues. These complement the mandatory NAGPRA repatriation dialogue by addressing aspects of the justice models and ICT characteristics that the mandatory dialogue cannot.

A. NAGPRA Dialogue as Designed

1. Statutory Structure

NAGPRA creates a multi-stage repatriation process and requires dialogue at each stage.¹²³ Initially, institutions must develop summaries of the parts of their collections that may contain Native American cultural items.¹²⁴

1st Stage—Consultation: Once it has completed its summary, a museum must proactively contact any tribes or NHOs that might be culturally affiliated with the items in its collection and invite those communities to consult.¹²⁵ Consultation is intended to identify which objects are in actuality Native cultural heritage associated with present-day communities, as well as to enable successful

¹²² This section is based on a review of written descriptions of NAGPRA dialogue experiences and a comprehensive set of NAGPRA Review Committee primary sources. Some descriptions were written by the participants themselves; others were recorded by researchers based on interviews or surveys of participants. Citations of researchers' work include the names of any quoted participants. The Review Committee primary sources comprise annual reports to Congress, meeting minutes, and meeting transcripts. All depictions of tribe/NHOs' and museums' experiences come directly from participants from those groups. As a White scholar and an outsider to museums, I do not attempt to characterize participants' experiences myself, but rather, report their descriptions.

¹²³ The statute and regulations differentiate between two categories of repatriable items: (1) human remains and the associated funerary objects, and (2) all other protected cultural items, comprising unassociated funerary objects, sacred objects, and objects of cultural patrimony. 25 U.S.C. §§ 3003–05; 43 C.F.R. §§ 10.9–10.10. In many respects the repatriation process is the same for both categories, but there are some significant differences. To avoid unnecessarily complicating this brief explanation, the text describes the requirements for the second category only. Relevant provisions concerning human remains and associated funerary objects, as well as any significant differences in treatment, are noted in the footnotes.

¹²⁴ 43 C.F.R. § 10.9(a). Itemized inventories are required for human remains and associated funerary objects. 25 U.S.C. §§ 3003(a), 3004(a); 43 C.F.R. §§ 10.9(a), 10.10(a).

¹²⁵ For summaries, consultation must begin within 30 days after the summary is completed, whereas for inventories, consultation occurs before the inventory is finalized. 25 U.S.C. §§ 3003(b)(1)(A), 3004(b)(1)(B); 43 C.F.R. §§ 10.9(b)–(c), 10.10(b)–(c).

repatriation by facilitating mutual understanding and agreement before a formal repatriation request is made.¹²⁶ The regulations largely leave it up to the parties to determine how they wish to engage with each other.¹²⁷ Importantly, museums are required by the 2024 amendments to mutually agree with communities about how to proceed with consultation, rather than unilaterally establishing their own procedure.¹²⁸

2nd Stage—Repatriation Requests: The second stage of dialogue begins when a tribe or NHO submits a request for repatriation. The amended regulations require that this interaction take place in writing, so as to ensure transparency and accountability. The museum evaluates the repatriation request against the legal criteria and issues a written response, publishing a notice of intended repatriation if the request is granted and providing an explanation if it is denied.¹²⁹

3rd Stage—Returns: The third stage of dialogue is triggered if a museum determines that repatriation of a cultural item is required by the statutory criteria. It must then engage with the community about how to carry out the physical return. As with the consultation stage, the format of this dialogue is left up to the participants.¹³⁰

In addition, the statute establishes a Review Committee. The Review Committee does not have any authority over repatriation processes; its role is purely advisory.¹³¹ Nonetheless, it plays an important role in hosting alternative NAGPRA dialogue, as discussed below.¹³²

¹²⁶ 43 C.F.R. § 10.9(c)(2)–(3). *See also id.* § 10.10(c)(2)–(3) (establishing similar requirements for human remains and associated funerary objects). Under the 2024 amendments, there is also a new requirement to address the collector’s duty of care. 43 C.F.R. §§ 10.1(d) & 10.9(c)(2); *see also id.* § 10.10(c)(2) (human remains and associated funerary objects).

¹²⁷ There are some minimum requirements for institutions, however, such as issuing consultation invitations in writing and providing relevant records upon request. 43 C.F.R. § 10.9(b)(2), (c)(4). *See also id.* § 10.10(b)(2), (c)(4) (human remains and associated funerary objects).

¹²⁸ 43 C.F.R. § 10.9(b)(2)(iii), (c)(1)(i). *See also id.* § 10.10(c) (human remains and associated funerary objects). The amendments also establish a new requirement that museums maintain a record indicating the parties’ agreement or disagreement during consultation. 43 C.F.R. § 10.9(c)(3). *See also id.* § 10.10(c)(3) (human remains and associated funerary objects).

¹²⁹ 43 C.F.R. § 10.9(d)–(f). *See also id.* § 10.10(f), (g), (i) (human remains and associated funerary objects).

¹³⁰ For the sake of accountability, under the amended regulations, the institution must also send a written repatriation statement to the requestor and the NAGPRA Program Manager. 43 C.F.R. § 10.9(g). *See also id.* § 10.10(h) (human remains and associated funerary objects); 87 Fed. Reg. 63225.

¹³¹ 25 U.S.C. § 3006(a), (c).

¹³² *See infra* Part II.D.

2. Key Characteristics

Central Role of Dialogue: The most notable aspect of NAGPRA's mechanism is the most fundamental: NAGPRA's repatriation mechanism is carried out directly between museums and Native American nations. The required dialogue between the parties is thus central to the repatriation process. It is the way that repatriation happens, not an ancillary activity or side benefit.

Participant-Determined Format: It is also notable that the statute and regulations do not provide much direction on how dialogue should be carried out. The method of engagement is explicitly left up to the parties in the consultation stage and implicitly left up to them in the returns stage. Likewise, while there are some indicators of what *must* be discussed—the first consultation stage is aimed at identifying cultural objects and culturally affiliated groups, for example—the range of topics and information exchanged can be minimal or expansive. This is important because, as discussed later, NAGPRA participants report that robust dialogue can give rise to fundamental changes of perspective on the part of collectors.¹³³ It is also significant because it seems to be common for repatriation policies in other countries to provide minimal direction on how dialogue should be implemented, as discussed below.¹³⁴

Structural Power Imbalances Impact Dialogue: Another core aspect of NAGPRA dialogue is that the museums are both dialogue participants and decisionmakers, and there is not a third-party facilitator or decisionmaker involved. This creates a fundamental power imbalance between the participants. This is mitigated somewhat by the limited discretion that institutions have in exercising their authority: they are required to repatriate if the statutory standards are met. Under the amended regulations, they are also clearly required to defer to Native American traditional knowledge as expert opinion.¹³⁵ However, there is still ample institutional control over the process. As discussed below, this has at times been a source of conflict and dissatisfaction. This is also important because many other governments and museums have enacted a similar structural power imbalance in their own repatriation policies, as further discussed below.¹³⁶

Each of these choices could, of course, be different. Indeed, in an earlier version of the NAGPRA legislation, the bill created a government committee to make repatriation determinations.¹³⁷ If that version had been enacted, the form and content of dialogue would likely have been far more prescribed, any direct

¹³³ See *infra* Part II.C.

¹³⁴ See *infra* Part III.A.

¹³⁵ 43 C.F.R. § 10.1(a)(3), (d)(2).

¹³⁶ See *infra* Part III.A.

¹³⁷ TIMOTHY McKEOWN, IN THE SMALLER SCOPE OF CONSCIENCE: THE STRUGGLE FOR NATIONAL REPATRIATION LEGISLATION 1986–90 (2012).

dialogue between collectors and communities would likely have been ancillary to the repatriation process itself, and collectors might be solely participants in the process and not decisionmakers. This is one of the fundamental structural decisions for governments and museums in other repatriation contexts.

The structural inequality and lack of facilitation that is inherent in NAGPRA dialogue is distinctly different than the preferred structure of dialogue in the international justice models discussed above. In restorative justice, for example, direct dialogue is also the core mechanism of redress.¹³⁸ But restorative justice does not require the parties to engage without any facilitation; instead, it relies on a third party mediator to “create a safe place” for that dialogue.¹³⁹ In addition, in restorative justice models, both parties are equal participants and any decisions must be mutually determined.¹⁴⁰ Likewise, truth commissions hold hearings that are overseen by commissioners, not by the witnesses themselves. The truth commission’s report accounting for past harms and making future recommendations is also produced by the commissioners, not by the witnesses. Similarly, community dialogue is not only a facilitated process, but one in which “the skills of the third party [facilitator] in creating an atmosphere of open discussion” are considered critical to the dialogue’s effectiveness.¹⁴¹ Furthermore, in community dialogue, “equality among participants should be maintained as much as possible.”¹⁴²

While NAGPRA’s structural inequality deviates from these international justice models, such inequality is not unusual in repatriation policies.¹⁴³ NAGPRA thus presents a useful opportunity to assess the results of an unfacilitated, unequal dialogue, and thereby to contribute both to repatriation policies and to the literature on dialogue in justice models.

Overall, the NAGPRA structure fully meets only two of the ICT criteria for facilitating positive dialogue:

- *Equal status*: Participants do not have equal status; instead, museums are decisionmakers as well as participants.

¹³⁸ Reed, *supra* note 49, at 563–64; Umbreit et al., *supra* note 49, at 269–70.

¹³⁹ Reed, *supra* note 49, at 564 (internal quotation marks omitted); Umbreit et al., *supra* note 49, at 269–70.

¹⁴⁰ Reed, *supra* note 49, at 564, 574–76.

¹⁴¹ ELLIS, *supra* note 78, at 169. *See also* Scott Drimie et al., *Facilitated Dialogues*, in THE ROUTLEDGE HANDBOOK OF RESEARCH METHODS FOR SOCIAL ECOLOGICAL SYSTEMS 136, 138 (Reinette Biggs et al., eds., 2021).

¹⁴² ELLIS, *supra* note 78, at 172.

¹⁴³ *See infra* Part III.A.

- *Common goals:* In some instances, collectors and requestors share a common goal of repatriation; in others, collectors would prefer to keep cultural heritage and contend that they are legally and ethically in possession of the contested items.
- *Cooperation:* While it is possible for the participants to cooperate toward repatriation, NAGPRA's dialogue process is structured to allow and even engender disagreement. Requestors must assert their rights to objects that collectors may wish to keep. In addition, multiple communities may have cultural connections with the same items, creating the risk of competition, and requiring museums to choose among competing requests.
- *Support of authorities, law, or custom:* The repatriation process was created by law and is implemented by a federal agency. It also has the support of many tribes, NHOs, museums, and universities.
- *Repeated interactions over a long period of time:* The process requires repeated interactions between collectors and requestors, which usually take years to complete.
- *Enabling meaningful, trusting relationships:* As discussed in detail below, participants report widely divergent experiences concerning the relationships that form through the NAGPRA process. Some collectors and requestors develop meaningful, trusting relationships, and some of these continue beyond the repatriation process and evolve into collaborations or professional friendships; others do not.
- *Limits from prior experience:* The predicate for enacting NAGPRA was that there had been many negative interactions between museums and Native nations seeking repatriation. These negative experiences continue to affect participants' views.

Thus, as considered through the lens of ICT, the statutory structure of NAGPRA dialogue has considerable potential to foster negative experiences as well as positive ones.

Overall, NAGPRA's reliance on direct, relatively unstructured engagement between institutions and communities creates a different dynamic than would a formal, adversarial process or a facilitated mediation. It is a choice, as argued in the next section, that opens up a wide range of outcomes, not only for repatriation determinations, but also for the relationships between the participants.

B. NAGPRA Dialogue in Practice

The international justice models and ICT factors provide a valuable analytical framework for understanding NAGPRA dialogue as it has evolved in practice. For their part, NAGPRA dialogue participants' experiences offer insights into how these justice models and ICT factors can be implemented, as well as presenting lessons for other repatriation contexts.

Because there has been only limited statutory and regulatory guidance for NAGPRA engagement, particularly before the recent regulatory amendments, it has largely been up to the parties to determine the details of how they engage with each other.¹⁴⁴ As discussed throughout this section, the recent amendments to the regulations include changes that are meant to respond to participants' concerns and frustrations with NAGPRA dialogue in practice.

1. Quality of Dialogue

Museum and tribal representatives describe NAGPRA interactions that can be either minimal or robust. Interactions may be limited to letters or e-mails, or they may instead include extensive in-person meetings, video meetings, and telephone calls. A collector may provide detailed records and host visits to view the institution's collections, or instead, it may offer only the minimum required information. Interactions may focus on exchanging logistical and evidentiary information, or they may instead encompass a sweeping discussion of the museum's collections and of its acquisition, care, display, and research practices. Communication may be aimed solely at reaching a repatriation outcome, or it can extend to developing interpersonal relationships.¹⁴⁵

The regulatory amendments establish heightened expectations that NAGPRA dialogue will be extensive and in-depth. Of particular importance, "consultation or consult" is newly defined as:

the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to: (1) Seek, discuss, and

¹⁴⁴ See *infra* Part II.A.

¹⁴⁵ See *Hollowed to Hallowed Ground: The 1999 Pecos Repatriation*, APPLE PODCASTS (Feb. 4, 2023), <https://perma.cc/B54L-MB98>; Richard W. Hill, Sr., *Making a Final Resting Place Final: A History of the Repatriation Experience of the Haudenosaunee*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES 3 (Jordan Kerber ed., 2006); Eric Hemenway, *Finding Our Way Home*, in ACCOMPLISHING NAGPRA: PERSPECTIVES ON THE INTENT, IMPACT, AND FUTURE OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT 83, 92 (Sangita Chari & Jaime M.N. Lavalley eds., 2013); Brady Wolf, *Modern Approaches to NAGPRA* 34 (2020) (Master's thesis, University of Washington) (quoting Laura Phillips, Burke Museum of Natural History and Culture); Lydia Degn-Sutton, *Stories of Return: A Collection of Repatriation Narratives* 118, 129–30, 133–34 (2021) (Ph.D. dissertation, University of Denver) (quoting Ellen Lofaro, Curator of Anthropology, University of Tennessee Knoxville Department of Anthropology; Claire Barker, Repatriation Coordinator, Arizona State Museum).

consider the views of all parties; (2) Strive for consensus, agreement or mutually acceptable alternatives; and (3) Enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes and Native Hawaiian organizations.¹⁴⁶

This establishes a requirement of a highly robust form of dialogue. Participants are now expected to engage in a comprehensive consideration of all viewpoints that is aimed, not merely at reaching a decision, but at reaching mutual agreement on a decision. This slightly ameliorates the unequal status of the parties; while museums are still the decisionmakers, they are not given *carte blanche* to impose their own judgment but rather, must try to achieve consensus.

The call for consensus and mutually acceptable outcomes corresponds to the ICT positive dialogue factors of pursuing a shared goal through cooperative engagement. It also promotes mutual understanding and empathy, the two underlying dynamics that ICT identifies. This definition is also in keeping with the international justice models' emphasis on using dialogue to develop a shared understanding of the harm that has occurred and to jointly develop a mutually agreeable remedy.¹⁴⁷

2. Conflicts and Mutual Understanding Within Dialogue

Developing mutual understanding of each other's perspectives and experiences is a central purpose of dialogue in international justice models; this is intended to promote better future relationships in addition to remedying past harms. Mutual understanding is also a key dynamic promoting positive interactions in global ICT research findings. Of course, the very goal of developing mutual understanding suggests that there is a lack of such understanding to begin with. Certainly, that is often the case in the NAGPRA context, where engaging in dialogue regularly exposes fundamental differences in perspective between the participants. How museums and communities grapple with those differences and whether they can reach some degree of mutual understanding about them is, accordingly, critical to the progression and outcome of the dialogue. Of course, the particular examples related below are not exactly the same as those that will arise in other repatriation contexts. But the question of whether and how differences in perspective can be effectively addressed and mutual understanding promoted is common to other repatriation frameworks and vitally important to the aims of dialogue.

One difference in perspective that has arisen repeatedly in NAGPRA dialogue is the divergence between institutions' and communities' relationships

¹⁴⁶ 43 C.F.R. § 10.2 (definition of consultation or consult). *See also* 88 Fed. Reg. 86469.

¹⁴⁷ To promote accountability for this enhanced form of dialogue, the new amendments create additional recordkeeping and reporting requirements. 43 C.F.R. § 10.9(c)(3). *See also id.* § 10.10(c)(3) (human remains and associated funerary objects); 87 Fed. Reg. 63202, 63224 (Oct. 18, 2022).

with the concerned items. Institutions like museums and universities typically treat cultural heritage as objects of study and sources of information. In contrast, for community members, personally encountering their cultural heritage is often an emotional experience, particularly if it is not only objects, but ancestors, that are in an institution's holdings.¹⁴⁸ As discussed above, the ongoing emotional harm of displaced cultural heritage is one of the very reasons raised by source communities for seeking repatriation.¹⁴⁹ As such, it is a known aspect of the cultural harm to be remedied that needs to be accommodated and addressed within repatriation dialogue.

Another tension that arises regularly in the NAGPRA context concerns confidentiality. This also stems from differing perspectives on the meaning of cultural heritage items. Whereas museums regard information about sacred objects' cultural meaning and role as useful information and evidence, some Native American knowledge concerning sacred cultural heritage and practices is not meant to be shared publicly.¹⁵⁰ Nonetheless, communities have at times felt compelled to share confidential information within the NAGPRA process. Such information might substantiate their cultural connection with an object or explain why an object is sacred or functions as cultural patrimony. In turn, museums have at times felt compelled to disclose this information in reporting repatriation outcomes.¹⁵¹

The new regulations made several changes to adjust the NAGPRA process to be more protective of Native perspectives on confidentiality.¹⁵² However, these

¹⁴⁸ Wendy Giddens Teeter et al., *Creating a New Future: Redeveloping the Tribal-Museum Relationship in the Time of NAGPRA*, 28 INT'L J. CULTURAL PROP. 201, 207 (2021) ("witnessing the historical ill treatment of the ancestors and the preparation of the ancestors and their belongings for reburial is a grueling process, taking an emotional, physical, mental, and spiritual toll on all involved"). See also Hemenway, *supra* note 145, at 89; Jan Bernstein, *The Impact of NAGPRA on Communities*, in ACCOMPLISHING NAGPRA: PERSPECTIVES ON THE INTENT, IMPACT, AND FUTURE OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT, *supra* note 148, at 265, 276; Ramona Peters, *Consulting with the Bone Keepers: NAGPRA Consultations and Archaeological Monitoring in the Wampanoag Territory*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES, *supra* note 29, at 32, 39.

¹⁴⁹ See *supra* Part I.A.

¹⁵⁰ Rather, such knowledge is meant to be held only by those with a particular caretaking relationship to the concerned object, a responsibility to engage in the relevant cultural practices, and a corresponding duty to use that information appropriately and wisely. Chip Colwell, *Curating Secrets: Repatriation, Knowledge Flows, and Museum Power Structures*, 56 CURR. ANTHROPOLOGY S263, S269–70 (2015); Peters, *supra* note 148, at 40.

¹⁵¹ Colwell, *supra* note 150, at S269–70.

¹⁵² These include eliminating certain information disclosure requirements and strengthening museums' obligations to protect sensitive information from public disclosure. Compare 43 C.F.R. § 10.10(f)(2) (2022) to § 10.9(g)(1)(iii); see 43 C.F.R. § 10.8(d)(4)(iii) (2022) (prior requirement); 87 Fed. Reg. 63224; 88 Fed. Reg. 86458.

measures cannot address the core issue that communities may need to disclose confidential information as evidence for their repatriation requests. This is driven by the statute's designation of museums as the sole decisionmakers; it is thus a consequence of the structural inequality of museums and Native nations, which ICT identifies as an obstacle to positive interaction. This is all the more problematic because the power imbalance reenacts the colonial power dynamic that caused the original cultural harm and that repatriation is meant to redress. Many other states and museums adopt the same structural power imbalance with the same relationship to colonial dynamics, making this general concern relevant for other repatriation settings as well.¹⁵³

Another gap in mutual understanding that highlights the same problematic power dynamic arises when museums do not accept a source community's information concerning their own cultural heritage as a sufficient basis for repatriation. Often, source communities will introduce oral history and traditional knowledge as evidence to support their cultural affiliation with an object and the importance of the object to the community, as the Passamaquoddy did in their dialogue with Penn Museum. As with the previous issue, the ramifications of rejecting these forms of community knowledge are all the more significant because doing so reifies existing power structures and invokes past and ongoing harms. As a tribal NAGPRA representative describes it:

Having people that are not part of your tribe tell you that they know more about your tribe than you do is a problem that has plagued Indian people for hundreds of years . . . We hear the opinions of outsiders and are impacted by their power to interfere with our communities and ways of life on a daily basis. We are accustomed to others telling us that we are wrong and that what they believe is better for us . . . So when a museum says an item is not sacred in their opinion, I am not surprised.¹⁵⁴

Responding to this issue, several of the revisions to the regulations explicitly require museums to defer to Native expertise concerning their own cultural heritage.¹⁵⁵ This is significant because, as discussed below, developing new, equitable post-colonial relationships is a core purpose expressed by other governments and museums for their own repatriation dialogues.¹⁵⁶

Finally, perhaps the most divisive failure of mutual understanding in NAGPRA dialogue has concerned the disposition of Native American ancestors and cultural heritage whose cultural affiliation is uncertain.¹⁵⁷ Uncertainty about

¹⁵³ See *infra* Part III.A.

¹⁵⁴ Hemenway, *supra* note 145, at 89; Peters, *supra* note 148, at 39–40.

¹⁵⁵ 43 C.F.R. §§ 10.1(a)(3), 10.2.

¹⁵⁶ See *infra* Part III.A.

¹⁵⁷ Logan Jaffe et al., *The Repatriation Project: America's Biggest Museums Fail to Return Native American Human Remains*, PROPUBLICA (Jan. 11, 2023), <https://perma.cc/RM5D-G9KA>.

provenance is of course an issue common to many repatriation settings, due to unethical collection practices and incomplete recordkeeping.¹⁵⁸ Until the recent regulatory amendments, U.S. museums could choose to designate Native human remains and cultural objects in their collections as “culturally unidentifiable” if their provenance was uncertain; they could thereby “avoid the responsibility of consultation” and continue to keep these ancestors and items in perpetuity on the grounds that it was not known to whom they should be returned.¹⁵⁹ Native participants’ anger at this unilateral designation once again highlights the negative effects of unequal status.

Heightening this effect was a fundamental disjunct in perspective: in addition to the great respect that virtually all cultures give to human remains, many Native American tribes view ancestors as living beings. Their ancestors’ storage in museum basements and warehouses is thus not only profoundly disrespectful but a deep spiritual and cultural harm. In contrast, most museums and universities have treated these skeletal human remains as they have treated cultural heritage: as sources of information and objects of scientific study that can be stored and studied like any others. This difference in viewpoint is profound, making dialogue toward mutual understanding on this subject all the more important.

Thus, even though justice models and ICT research correctly consider introducing contentious topics in dialogue to be risky, entirely foreclosing dialogue on controversial subjects has its own costs. In effect, the previous version of the NAGPRA regulations allowed museums to avoid dialogue with tribes about ancestors and funerary objects by designating them as culturally unidentifiable. Over the course of the succeeding years, the issue of ancestors who had been designated culturally unidentifiable became “the central contentious issue” between museums and tribes.¹⁶⁰ In the updated regulations, the agency “agree[d] with the voluminous comments that described museum and federal agency practices as overly expansive in designating human remains and associated funerary objects as culturally unidentifiable.”¹⁶¹ It eliminated the category entirely and instructed museums to engage in the ordinary consultation process to affiliate

¹⁵⁸ *Id.* at 157; Margaret Bruchac on *Erasure and the Unintended Consequences of Repatriation Legislation*, in SPEAKING OF INDIGENOUS POLITICS: CONVERSATIONS WITH ACTIVISTS, SCHOLARS, AND TRIBAL LEADERS 52, 54 (J. Kēhaulani Kauanui ed., 2018) [hereinafter *Bruchac on Erasure*].

¹⁵⁹ NAT’L CONG. OF AM. INDIANS, WRITTEN COMMENTS ON NAGPRA PROPOSED RULEMAKING, NAT’L PARK SERV., RIN 1024-AE19, at 2 (Jan. 31, 2023), <https://perma.cc/LV3B-7TFK>; Jaffe et al., *supra* note 157.

¹⁶⁰ AMY LONETREE, DECOLONIZING MUSEUMS: REPRESENTING NATIVE AMERICA IN NATIONAL AND TRIBAL MUSEUMS 158–64 (2012); *see also* Jaffe et al., *supra* note 157; *Bruchac on Erasure*, *supra* note 158, at 51–56.

¹⁶¹ 88 Fed. Reg. 86452, 86483 (Dec. 13, 2023).

ancestors and cultural heritage according to whatever information was available, even if it was solely geographic.¹⁶²

Overall, how the parties grapple with their inevitable divergences in perspective and the resulting conflicts that arise during their conversations is crucial to the success of NAGPRA dialogue. But as with other aspects of NAGPRA dialogue, the limited structure and direction for NAGPRA dialogue has meant that progressing toward mutual understanding has been largely up to the parties themselves. As one NAGPRA representative observes:

Consultation affords all parties the opportunity to listen with a good mind, to learn from each other, and to build mutual respect. However, consultation does not guarantee consensus or success every time. The true test of the process will be in how conflicts are mediated and by whom.¹⁶³

The changes to the structure of NAGPRA dialogue in the updated regulations represent a shift in a collaborative direction. The amendments attempt to ameliorate particular sources of tension and conflict. They integrate characteristics that better comport with the findings of ICT research, such as requiring robust dialogue that is aimed at meaningful consideration of all viewpoints and consensus-based outcomes. But what the agency can do in its regulations is limited by the requirements that are written into the statute itself, which the agency cannot change. NAGPRA's statutory structure includes constructive elements, like the requirement for consultation throughout the repatriation process. It also includes elements that are counterproductive to positive interaction, like the inequality in the status of the dialogue participants. As discussed below, these features and their impacts offer an object lesson for other governments and museums that are still designing their own processes, as well as for international justice frameworks.¹⁶⁴

C. NAGPRA Dialogue Outcomes

When NAGPRA dialogue participants describe the outcomes of their NAGPRA interactions, several themes arise repeatedly in their reflections and

¹⁶² *Id.*; see also AM. ALL. OF MUSEUMS, NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT PROPOSED RULE (RIN 1024-AE19) 1 (Jan. 31, 2023), <https://perma.cc/FB3F-9LF2>; ASS'N OF ART MUSEUM DIRS., COMMENT ON PROPOSED, UPDATED NAGPRA REGULATIONS 2 (Jan. 31, 2023), <https://perma.cc/LV3B-7TFK>.

¹⁶³ Nina M. Versaggi, *Tradition, Sovereignty, Recognition: NAGPRA Consultations with the Iroquois Confederacy of Sovereign Nations of New York*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES 18, *supra* note 29.

¹⁶⁴ See *infra* Part III.B.

descriptions: (1) impacts on relationships and mutual trust; (2) transformation of museums' caretaking frameworks and practices; and (3) development of museum-community collaborations. Notably, participants' observations correlate closely to the findings of ICT and the aims of the justice models.

1. Relationships and Trust

As discussed in Part I, one of the core motivations for museums and governments to repatriate cultural heritage is to improve their relationships with source communities and states. In addition to that aspiration for its own sake, NAGPRA dialogue participants characterize the quality of the relationship that develops between a collector and a source community during dialogue as fundamental to successful repatriation. These relationships also provide the basis for the other outcomes discussed in this section, affirming the findings of ICT research that developing interpersonal relationships of trust is foundational to improving intergroup relationships.

As discussed above, the use of direct dialogue as a tool in a justice setting is acknowledged to come with potential benefits and risks. On the one hand, direct engagement can assist groups in developing mutual understanding of each other's needs and interests. On the other hand, it can also reinvigorate tension and conflict. This danger is particularly acute if the topic concerns a matter in dispute between the parties, rather than subjects of mutual benefit or interest.¹⁶⁵

Accordingly, it is not surprising that participants report both positive and negative impacts on relationships and mutual trust from their engagement in NAGPRA dialogue, which focuses on the controversial question of contested cultural heritage. On the positive side, a university representative identifies the consultation process as an opportunity to build trust and enable cooperation:

While phrased as a mandate or requirement, the instructions to consult offer a unique opportunity for archaeologists and Native peoples to share information, to have a meaningful dialogue, and repair a past of mutual mistrust. When applied in good faith, the law and regulations encourage a spirit of cooperative engagement.¹⁶⁶

Another museum curator characterizes the consultation process as "an opportunity to reconfigure colonial relationships to postcolonial ones."¹⁶⁷ But a survey of Native NAGPRA representatives identifies both positive and negative effects on relationships from NAGPRA consultations, with one respondent

¹⁶⁵ See *supra* Part II.B.

¹⁶⁶ Versaggi, *supra* note 163, at 18–19 (internal citations omitted).

¹⁶⁷ Patricia Capone, *Amending Wonder: Museums and Twenty Years of the Native American Graves Protection and Restoration Act*, in ACCOMPLISHING NAGPRA: PERSPECTIVES ON THE INTENT, IMPACT, AND FUTURE OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT 115, 128 (Sangita Chari & Jaime M.N. Lavalée eds., 2013).

reporting she had “built stronger relationships with tribal and museum professionals” and another indicating his NAGPRA interactions had generated “bad feelings toward museum scum” and “[h]atred for archaeologists.”¹⁶⁸ Similarly, another tribal NAGPRA representative describes a wide range of positive and negative interactions with museums.¹⁶⁹ He highlights the negative long-term effects that being treated in a “disrespectful manner, either by a museum or a tribe,” can have, describing museums “feeling gun-shy” about contacting tribes and tribes “harboring assumptions” about it being useless to contact museums, based on past negative interactions.¹⁷⁰ These descriptions affirm the justice models’ expectation that engaging in dialogue presents risks as well as rewards. It also tends to confirm the findings of ICT global research that negative intergroup interactions can be as impactful on intergroup relationships as positive ones.

A repeated theme in many participant accounts is that incorporating informal, interpersonal interactions into NAGPRA dialogue supports the development of positive relationships and enables participants to better navigate the conflicts within the process, like those described above.¹⁷¹ Concerning such casual interactions, a university NAGPRA coordinator observes: “In my experiences with compliance with NAGPRA . . . it is the [less formal, everyday conversations] that are the most fruitful, paving the way to building mutual respect and trust and thus facilitating the negotiation of formal decisions.”¹⁷²

These observations suggest a synergistic feedback loop between NAGPRA dialogue and the growing relationships between the participants. NAGPRA dialogue enables the development of increasingly trusting relationships, and the relationships then in turn enable better interactions within the NAGPRA dialogue, and thereby better repatriation results. This is commensurate with the ICT finding that it is when intergroup contact enables development of friendships and other meaningful, trusting relationships that it produces the most significant results.

In addition, these observations suggest that in justice contexts, it may be by pairing dialogue concerning the harm to be redressed with other interactions

¹⁶⁸ Chip Colwell-Chanthaphonh, *The Work of Repatriation in Indian Country*, 71 HUMAN ORG. 278, 281 (2012).

¹⁶⁹ Hemenway, *supra* note 145, at 88–91.

¹⁷⁰ *Id.* at 91; Peters, *supra* note 148, at 40.

¹⁷¹ See *supra* Part II.A.

¹⁷² Versaggi, *supra* note 163, at 19 (internal citations omitted); see also Jessica Ulmer, *Introducing Respect in NAGPRA Repatriation Efforts* 57 (2022) (Master’s thesis, University of Maryland) (describing a monthly call in which “repatriation efforts were only a short portion of the agenda” and the group discussed “widely varied” topics of interest); Degn-Sutton, *supra* note 145, at 129–30 (quoting Ellen Lofaro, Curator of Anthropology for the University of Tennessee, Knoxville Department of Anthropology concerning formal and informal interactions).

concerning other, uncontroversial topics, that dialogue will garner the best results. Informal conversations or interactions may be able to include some additional features promoted by ICT, like shared goals and cooperative activity. The positive associations produced by those innocuous interactions can then provide relational support for the potentially more fraught repatriation dialogue. This is in keeping with the peacebuilding uses of dialogue discussed above that incorporate mutually beneficial activities like joint economic development initiatives or sports. It is also commensurate with the ICT finding that another dynamic promoting improved attitudes toward the other group is the opportunity to practice positive patterns of behavior together.

This also relates to the discussion of alternate forums for NAGPRA-related dialogue discussed below. These alternate venues adopt additional ICT characteristics that are not permissible within the mandatory NAGPRA dialogue structure. In so doing, they also serve to complement and support the mandatory dialogue by fostering positive relationships and enabling cooperative efforts toward a shared goal.¹⁷³

2. Museum Caretaking Practices

NAGPRA dialogue has facilitated the transformation of museum caretaking practices. Caretaking practices have been an issue in NAGPRA repatriation dialogue in two ways. First, many cultural objects and human remains have been stored in conditions that do not meet museums' own standards. NAGPRA participants describe finding human bones in unmarked boxes and envelopes mixed in with other items, and even "skulls stored in cigar boxes on a museum shelf with melted wax on their crowns."¹⁷⁴

Secondly, many communities have expectations about how ancestors should be prepared for burial and how sacred objects should be kept and handled that are different than museum standards. This again implicates a fundamental difference in how each entity conceives of the items in question. As discussed above, while museums have typically regarded both human remains and cultural heritage as objects of study and sources of information, some Native communities regard ancestors and sacred objects as living beings; they are accordingly in need of special respect and care.¹⁷⁵

¹⁷³ See *infra* Part III.D.

¹⁷⁴ Peters, *supra* note 148, at 40. See also Robert G. Goodby, *Working with the Abenaki in New Hampshire: The Education of an Archaeologist*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES 94, 107 *supra* note 29; Teeter et al., *supra* note 148, at 202–03.

¹⁷⁵ Jan Bernstein, *supra* note 148, at 276.

Discussing museums' duty of care was not required under NAGPRA until the latest regulatory amendments went into effect. However, engaging in the NAGPRA process naturally brings storage conditions to light. Accordingly, some museums and communities have reported voluntarily discussing the appropriate care of ancestors and cultural objects, even before the new amendments.¹⁷⁶

Through this discussion, NAGPRA dialogue has contributed to an evolution in museum caretaking, in several senses. It has drawn museums' attention to failures in implementation of their own caretaking standards. It has highlighted the harm that such failures cause to museums' relationships with Native American communities and to museums' ability to carry out their conservation and education roles.¹⁷⁷ In some instances, it has also promoted a voluntary transformation from a duty of care that is defined by museum curatorial standards to one defined by source communities' standards.¹⁷⁸ For example, at the University of Denver, "it is now standard practice . . . to ask consulting tribes how best to care for their relatives."¹⁷⁹ Finally, the emergence of caretaking as a significant issue in the several decades of NAGPRA implementation prompted the inclusion of this issue in the regulatory amendments. Not only is caretaking now a mandatory subject for all NAGPRA consultations, the new regulations also require museums to try in good faith to adopt consulting communities' caretaking standards.¹⁸⁰

These developments corroborate the ICT claim that positive dialogue produces mutual understanding and empathy, as evidenced by the transformation of museums' viewpoints to encompass tribes' perspectives on caretaking, as well as their own. As with the collaborations discussed next, engaging in conversations about caretaking and enabling source communities to visit museums to engage in caretaking activities can also serve as additional forms of voluntary positive dialogue. These can then produce "deeper partnerships"¹⁸¹ that in turn synergize with NAGPRA dialogue, in another positive feedback loop of relationship and dialogue.

¹⁷⁶ Degn-Sutton, *supra* note 145, at 112–13 (quoting Lindsey Vogel-Teeter, Museum Curator). *See also* Teeter et al., *supra* note 148, at 205.

¹⁷⁷ Ulmer, *supra* note 172, at 40–42, 50–52.

¹⁷⁸ *Id.* at 31–32.

¹⁷⁹ Degn-Sutton, *supra* note 145, at 82–85; *see id.* At 102–05 (At the Museum of Northern Arizona, "[r]espect for the Hopi understanding of belongings as active participants in kinship networks and in the life cycles of humans has led MNA to be more flexible in its understanding of what is authentic, accurate, and appropriate with regard to collections stewardship.").

¹⁸⁰ 43 C.F.R. § 10.1(d)(2); *see also* 88 Fed. Reg. at 86461–86465.

¹⁸¹ Teeter et al., *supra* note 148, at 205.

3. Collaborations

One of the intended functions of repatriation is to facilitate a pivot toward artistic, educational, and cultural collaborations between museums and source communities in the present day, rather than museums solely collecting and exhibiting source communities' past cultural heritage. When relationship-building during NAGPRA dialogue has been successful, those relationships have sometimes formed the foundation for such collaborations.¹⁸² Museums and communities have leveraged relationships developed from NAGPRA consultations to develop collaborative exhibits.¹⁸³ Museums have commissioned new works from source community artists to replace repatriated cultural heritage in their galleries.¹⁸⁴ Other diverse projects stemming from NAGPRA consultations have included educational programs for high school students, partnerships on digital collections, and collaborations to conduct tribe-directed archaeological research.¹⁸⁵

Over time, these collaborations can also feed back into NAGPRA repatriations in a positive way, as the collaborations strengthen interconnections that then facilitate effective future work on repatriation: "The goal of NAGPRA is repatriation, but along the way, during consultations, relationships developed that can sometimes blossom into partnerships that have the potential to be a catalyst for positive changes."¹⁸⁶ These collaborative enterprises thereby serve an analogous function to the peacebuilding strategy of engaging participants in mutually beneficial activities, like joint economic development initiatives.¹⁸⁷ Such approaches are meant to provide positive relational links between communities that not only produce beneficial outcomes but also encourage constructive interdependence and trust.

In effect, these collaborations once again serve as an additional venue for intergroup contact that, as with casual interactions and caretaking arrangements, can produce positive relational effects. Artistic and educational collaborations may complement NAGPRA dialogue in part because they can more readily fulfill

¹⁸² Julia Mallory Lucas, *Indigenous Relationships and Repatriation at American Museums in a Post-NAGPRA Context*, 5 PENN UNDERGRADUATE L.J. 39 (2017) (based on interviews with museum repatriation officers); Bernstein, *supra* note 148, at 278.

¹⁸³ Wolf, *supra* note 145, at 35.

¹⁸⁴ Teeter et al., *supra* note 148, at 205–06.

¹⁸⁵ Bernstein, *supra* note 148, at 278; Capone, *supra* note 167, at 127; Kurt E. Dongoske, *The Native American Graves Protection and Repatriation Act: A New Beginning, Not the End, for Osteological Analysis—A Hopi Perspective*, 20 AM. INDIAN Q. 287, 291 (1996).

¹⁸⁶ Jordan Kerber, *Case Studies in Collaborative Archaeology: The Oneida Indian Nation of New York and Colgate University*, in CROSS-CULTURAL COLLABORATION: NATIVE PEOPLES AND ARCHAEOLOGY IN THE NORTHEASTERN UNITED STATES 233, *supra* note 29; Bernstein, *supra* note 148, at 278.

¹⁸⁷ Elena A. Baylis, *Post-Conflict Reconciliation in Ukraine*, 4 REVUE EUROPEENNE DU DROIT 71, 72–73 (2023).

certain ICT factors than NAGPRA dialogue can. Such initiatives are typically sanctioned by the participants' institutions. Collaborators share a common goal of the desired artistic exhibit or educational program. They rely on each other and cooperate to achieve that goal. These kinds of projects require repeated interactions over a long period of time. The close interactions required to produce a joint exhibit or educational program offer the opportunity for development of "relationship[s] of trust and respect." The work of collaborative exhibits lends itself more readily to the ICT factors than a controversial topic like repatriation—and thus to fostering relationships that are valuable within the NAGPRA process as well.

A consistent theme among NAGPRA participants' observations about NAGPRA in practice is that NAGPRA consultations provide an opening for constructive relationships to develop between museum and tribal NAGPRA practitioners that lend themselves to other mutually beneficial activities. These activities serve as additional venues for positive intergroup interactions that promote the development of trusting relationships in contexts that are less fraught than NAGPRA repatriation dialogue. Those relationships in turn support participants' engagement in NAGPRA dialogue with each other. This synergy between NAGPRA repatriation dialogue and these organic interactions tends to affirm the findings of ICT research and the expectations of the international justice models about the beneficial effects of enabling positive dialogue that does not necessarily concern controversial matters. It also suggests that governments and museums in other repatriation contexts might benefit by supplementing their repatriation dialogue with other forms of related, mutually beneficial engagement.

D. Complementary NAGPRA Dialogue Venues

In addition to the legally mandated NAGPRA repatriation dialogue, there are also other contexts in which NAGPRA-related dialogue takes place. As with the other forms of collaboration and engagement discussed in the previous section, these voluntary and advisory forms of dialogue complement the mandatory dialogue by offering opportunities for developing trusting relationships among museum and tribal NAGPRA representatives that then can carry over into the mandatory NAGPRA dialogue setting. Participants' descriptions of these venues also tend to support the findings of ICT and the international justice models. These advisory forms of dialogue build on the conclusions of the previous section by highlighting such alternative venues as a potentially valuable strategy for other repatriation settings.

1. Review Committee

The dialogue that takes place in Review Committee meetings is advisory and non-authoritative. The Committee's statutory role includes a set of monitoring, advising, and facilitating functions that require it to engage regularly with tribes, NHOs, museums, universities, federal agencies, and the National NAGPRA Program in the U.S. Department of the Interior.¹⁸⁸ It also submits annual reports to Congress with observations and recommendations.¹⁸⁹ It does not have authority to make binding determinations, nor does it have any enforcement power.¹⁹⁰ However, it is constantly consulted by NAGPRA stakeholders and provides influential advice.¹⁹¹

The Committee serves several dialogue functions based in its statutory responsibilities:

Enabling Public Participation: At each meeting, the Committee hears public comments as well as scheduled presentations from museums, universities, tribes, NHOs, and agencies.¹⁹²

Facilitating Dispute Resolution: The Committee regularly helps to resolve disputes between tribes/NHOs and collectors by hosting structured dialogues during its public meetings. Unlike mandatory NAGPRA dialogue, which is carried out directly between the parties without facilitation, this engagement is facilitated by the Committee. The Committee cannot authoritatively resolve disputes but does make findings of fact and recommendations.¹⁹³

¹⁸⁸ The Review Committee is established as a Federal Advisory Committee under the Federal Advisory Committee Act. *Review Committee*, NAT'L PARK SERV., <https://perma.cc/N3S4-MM6N> (last visited Mar. 20, 2026). It consists of seven unpaid members appointed by the Secretary of the Interior: three nominated by tribes, NHOs, and Indian religious leaders; three nominated by museums and scientific organizations; and one nominated by the other Committee members. 25 U.S.C. § 3006(b); 43 C.F.R. § 10.12(b). It meets multiple times per year, and its meetings are open to the public. *Meetings*, NAT'L PARK SERV., <https://perma.cc/P7Q2-4F7U> (last visited Mar. 20, 2026).

¹⁸⁹ 25 U.S.C. § 3006(c).

¹⁹⁰ 25 U.S.C. § 3006(c)(4); 43 C.F.R. § 10.12(a).

¹⁹¹ *Requests and Recommendations*, NAT'L PARK SERV., <https://perma.cc/JT2T-638F> (last visited Mar. 20, 2026); *Reports to Congress*, NAT'L PARK SERV., <https://perma.cc/G768-Z4VG> (last visited Mar. 20, 2026).

¹⁹² NAT'L NAGPRA REVIEW COMM., MEETING PROCEDURES OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE 2 (2021); *see, e.g.*, Nat'l NAGPRA Review Comm., Meeting 33 Transcript, 110–40 (Nov. 4, 2006) (public comments from attendees and museum curators); Nat'l NAGPRA Review Comm., Meeting 61 Transcript, 53–59 (Dec. 6, 2016) (scheduled presentation by a university).

¹⁹³ 43 C.F.R. § 10.12(c); *see, e.g.*, NAGPRA Review Comm., Meeting 33 Transcript, *supra* note 192, Volume I, at 15–105; NAGPRA Review Comm., Meeting 33 Transcript, *supra* note 192, Volume

Reflecting on Long-term Issues: At its meetings, the Committee discusses and hears public input on long-term and strategic issues. It advises Congress and the Department of the Interior on these issues and makes recommendations for policy, regulatory, and statutory changes.¹⁹⁴

In many ways, the structure of the Committee and the role it plays are more commensurate with the ICT model than mandatory NAGPRA dialogue:

- *Equal status:* All Committee members have equal status within the Committee and equal authority to engage in the Committee's work. There is balanced representation of all stakeholders on the Committee.¹⁹⁵
- *Common goals:* As the Review Committee describes its own work, it has the shared goal of promoting "[t]he development of long-term positive collaborations and cooperation among these different communities as part of their compliance and involvement with the law."¹⁹⁶ It does this through goal-oriented activities such as "public meetings, oversight of implementation of the Act, review and recommendations regarding the resolution of disputes, and recommendations to the Secretary of the Interior."¹⁹⁷
- *Cooperation:* In order to achieve these aims, the Committee members must work together to hear and respond to public input, and to develop written recommendations, findings, and reports. While Committee members regularly disagree about particular issues, reaching consensus on Committee recommendations and findings requires interdependent action.¹⁹⁸

II, at 35–109 (dispute between the Field Museum and the White Mountain Apache Tribe); Nat'l NAGPRA Review Comm., Meeting 61 Transcript, *supra* note 192, at 53–59 (scheduled presentations providing updates on dispute resolution).

¹⁹⁴ NAT'L NAGPRA REVIEW COMM., ANNUAL REPORT TO CONGRESS, FY2024, 6–16 (2024) (raising concerns about protection of sensitive information and institutional noncompliance and making recommendations for statutory amendments).

¹⁹⁵ NAT'L NAGPRA REVIEW COMM., MEETING PROCEDURES, *supra* note 192, at 1; 43 C.F.R. § 10.12(a); 25 U.S.C. § 3006(a).

¹⁹⁶ NAT'L NAGPRA REVIEW COMM., ANNUAL REPORT, *supra* note 194, at 3.

¹⁹⁷ *Id.*

¹⁹⁸ *E.g.*, Nat'l NAGPRA Review Comm., Meetings 81 & 82 Minutes 5–6 (May 2022) (discussing proposed revisions to the regulations as a step toward agreeing on the Committee's comments on the proposed draft).

- *Support of authorities, law, or custom:* The Review Committee was created by statute and is actively supported by the National NAGPRA Program in the U.S. Department of the Interior.¹⁹⁹
- *Repeated interactions over a long period of time:* The Committee holds meetings multiple times a year, and Committee members serve an initial term of four years with the possibility of renewal for two-year terms.²⁰⁰
- *Enabling meaningful, trusting relationships:* The structure of Review Committee dialogue has the potential to foster meaningful, trusting relationships among Committee members, because it enables them to cooperatively engage with each other over the course of years in pursuit of their joint aim of promoting community collaboration and compliance.

Overall, the Review Committee provides a venue for advisory public discussion of NAGPRA dialogue that much more closely follows the findings of ICT theory and thereby complements the one-on-one mandatory discourse of the NAGPRA repatriation process.

2. Communities of Practice

In the 35 years since NAGPRA took effect, the field of NAGPRA repatriation has professionalized in many ways.²⁰¹ This has facilitated the development of venues for professional dialogue about NAGPRA outside the statutory process, most prominently in the National NAGPRA Community of Practice (CoP).²⁰²

While the Review Committee offers a venue for formal, albeit advisory, engagement, the CoP serves as a context for organic NAGPRA dialogue. The

¹⁹⁹ 25 U.S.C. § 3006; *Review Committee*, NAT'L PARK SERV., *supra* note 188.

²⁰⁰ *Meetings*, NAT'L PARK SERV., *supra* note 188; U.S. DEP'T OF THE INTERIOR & NAT'L PARK SERV., NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REVIEW COMMITTEE CHARTER 3 (2024).

²⁰¹ See ROGER ECHO-HAWK, KEEPERS OF CULTURE: REPATRIATING CULTURAL ITEMS UNDER THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT v (2002) (experience); *Contact Us*, FIELD MUSEUM, <https://perma.cc/3B2J-WBTE> (last visited Mar. 20, 2026) (specialized positions); TERESA NICHOLS ET AL., LEARNING FROM NAGPRA: NATIONWIDE SURVEY RESULTS FROM EDUCATORS AND STUDENTS, <https://perma.cc/8KMK-VMPP> (last visited May 21, 2026); *Training*, NAT'L PARK SERV., <https://perma.cc/K8RN-BAC8> (last visited Mar. 20, 2026).

²⁰² The popularity of the CoP has sparked the creation of regional and state communities of practice; other professional organizations also have NAGPRA working groups and workshops. *Additional NAGPRA Communities*, NAGPRA CMTY. OF PRACTICE, <https://perma.cc/E7WE-QFLT> (last visited Mar. 20, 2026); *Abstract: Four Decades of NAGPRA Part 3: Where It All Began: Celebrating Six Years of North American NAGPRA Communities of Practice*, in SYMPOSIA ABSTRACTS OF THE 2025 SAA 90TH ANNUAL MEETING, DENVER, COLORADO (listing numerous NAGPRA panels).

CoP holds twice-monthly public video meetings, as well as hosting a website and listserv. The participants include people working for tribes, NHOs, government agencies, museums, and universities.²⁰³ Topics are determined by the participants; anyone can suggest a subject for a meeting or send a message to the listserv raising an issue for discussion. The subjects of this organic dialogue overlap considerably with those in the mandatory dialogue, but they also identify overarching issues and raise other interrelated topics. Among the many subjects that have been discussed are collaboration, delays, contamination, gender, international repatriation, and NAGPRA comics.²⁰⁴

By enabling discussion of NAGPRA issues outside the context of individual consultations or repatriation requests, the organic dialogue promotes generalization of knowledge, the opportunity to consider best practices, and sharing of experience and advice among practitioners from many diverse institutions. This then informs participants' statutory NAGPRA dialogue with each other.

The CoP also complements statutory NAGPRA dialogue by facilitating development of trusting relationships among practitioners on all sides of NAGPRA work. NAGPRA professionals who work in their positions long-term will often interact with each other repeatedly over multiple repatriation inquiries, and the CoP provides an opportunity for informal engagement outside the formal process.

Like the Review Committee, in some ways the CoP's structure better matches the ICT factors than the mandatory NAGPRA dialogue does:

- *Equal status:* All CoP members have equal status and equal rights to participate.
- *Common goals:* CoP members share the goal of exchanging information and developing expertise. While this is a shared goal, it is not tangible and achievable but progressive and incremental.
- *Cooperation:* Cooperation is required for effective information sharing. The CoP's voluntary conversations do not put participants at odds with each other.
- *Support of authorities, law, or custom:* The CoP is independent and does not have the approval or disapproval of a government body.

²⁰³ *Welcome Page*, NAGPRA CMTY. OF PRACTICE, <https://perma.cc/NDT3-KWFF> (last visited Mar. 20, 2026).

²⁰⁴ *UNIV. OF DENVER, NAGPRA CMTY. OF PRACTICE*, <https://perma.cc/2VGN-8BAE> (video archive of meetings) (last visited Mar. 20, 2026).

- *Repeated interactions over a long period of time:* The CoP has held twice-monthly video meetings since 2019.²⁰⁵
- *Enabling meaningful, trusting relationships:* The structure of CoP dialogue creates the possibility of developing meaningful, trusting relationships, because it enables participants to repeatedly, cooperatively engage with each other over a matter of shared interest.

Because the CoP's structure meets many of the ICT factors, it can facilitate increasingly smooth repatriation processes as mutual understanding and confidence are created among participants.

Overall, NAGPRA dialogue has facilitated several results, including impacts on relationships, enabling collaborations, changes in museum caretaking practices, and knowledge exchange. These have in turn contributed to the effectiveness of the dialogue process and repatriation outcomes. The limited structure and direction of statutory NAGPRA dialogue before the recent regulatory amendments created space for fostering constructive relationships that enable mutual understanding. But it also permitted negative interactions in which conflicts are heightened rather than addressed effectively. By facilitating equal, collaborative interactions toward shared goals, the NAGPRA Review Committee and CoP have complemented and supported mandatory NAGPRA dialogue. They provide venues in which participants can more readily develop meaningful, trusting relationships that then have had a positive effect on their mandatory NAGPRA dialogue experiences and repatriation outcomes.

By adjusting the structure of NAGPRA dialogue to make it more commensurate with the recommendations of ICT, the new regulatory amendments should strengthen NAGPRA dialogue's capacity to serve positive relational functions and diminish the frequency of negative encounters. These amendments responded to participants' reports on what was proving effective and ineffective in their NAGPRA consultations. They thus represent a pragmatic evolution of NAGPRA's implementation, in reaction to its real-world functioning. This evolution can, accordingly, inform ICT and the justice models' understandings of dialogue, the characteristics that will promote its aims, and the role it can play in redressing severe social harms and rebuilding social relationships. It can also provide a strategic blueprint for other repatriation settings.

²⁰⁵ NAGPRA CMTY. OF PRACTICE, *supra* note 203.

III. INTERNATIONAL IMPLICATIONS

The NAGPRA example offers valuable lessons learned for addressing contested colonial cultural objects—like the bust of Nefertiti—that are held in other contexts. It also has implications for the international justice models that promote redress of severe, intergenerational social harms like loss of cultural heritage under colonialism.

Part A evaluates and compares several prominent new repatriation policies in France, Belgium, the Netherlands, and Germany, as well as in international museums. Each of these policies relies on dialogue as part of its repatriation mechanism, and each can accordingly gain some insight from the NAGPRA experience. Part B assesses the takeaways that NAGPRA offers for these international repatriation settings. Part C evaluates NAGPRA's implications for the international justice models.

A. International Repatriation Settings

Many governments and museums are now actively developing repatriation policies for cultural heritage taken from formerly colonized peoples overseas. Of these governments, France, Belgium, the Netherlands, and Germany have taken the most substantive steps toward national repatriation laws and policies that create uniform restitution standards and procedures.²⁰⁶ In addition, these states'

²⁰⁶ There are also other countries with related policies or guidelines that are either in effect or under consideration. Apart from NAGPRA in the U.S., the most robust policies on Indigenous peoples belong to New Zealand and Australia, which have policies concerning returns to Indigenous peoples within their borders, but not to other formerly colonized peoples overseas. *E.g.*, DEP'T OF COMMC'N & THE ARTS, AUST'L. GOV'T, AUSTRALIAN GOVERNMENT POLICY ON INDIGENOUS REPATRIATION 5–6 (2016), <https://perma.cc/6CQV-KZBQ>; Museum of New Zealand Te Papa Tongarewa Act 1992, (N.Z.), <https://perma.cc/27EV-6U2A> (last visited Mar. 20, 2026). Other states have taken measures short of formal laws or policies. *E.g.*, *New Advisory Committee on the Restitution and Repatriation of Cultural Heritage*, GOVERNMENT OF IRELAND, <https://perma.cc/JD34-YRQG> (June 20, 2023) (last visited Mar. 20, 2026); SWEDISH NATIONAL HERITAGE BOARD, GOOD COLLECTIONS MANAGEMENT: GUIDANCE FOR MANAGING THE RETURN OF CULTURAL OBJECTS (2020), <https://perma.cc/P9JE-XDF2>; FEDERAL MINISTRY REPUBLIC OF AUSTRIA, RECOMMENDATIONS OF THE ADVISORY COMMITTEE FOR GUIDELINES FOR COLLECTIONS IN AUSTRIAN FEDERAL MUSEUMS FROM COLONIAL CONTEXTS (2023), <https://perma.cc/RJ68-6ZHE>; *Austria Puts the Brakes on Return*, RESTITUTION MATTERS (Oct. 24, 2024), <https://perma.cc/VXX3-AQD8>. There are also many countries that have not yet established any systematic repatriation processes. *E.g.*, *Portugal*, ROUTES TO RETURN, <https://perma.cc/25NX-H6YC> (last visited Mar. 20, 2026); *Spain*, ROUTES TO RETURN, <https://perma.cc/6RTW-TVKC> (last visited Mar. 20, 2026); *Finland*, ROUTES TO RETURN, <https://perma.cc/5KTC-JWZB> (last visited Mar. 20, 2026); *Italy*, ROUTES TO RETURN, <https://perma.cc/AF3D-4JNK> (last visited Mar. 20, 2026); *Poland*, ROUTES TO RETURN, <https://perma.cc/CB6W-2YNH> (last visited Mar. 20, 2026); *Vatican City*, ROUTES TO RETURN, <https://perma.cc/C3K6-5AMW> (last visited Mar. 20, 2026).

policies all incorporate dialogue into their repatriation mechanisms in various ways.

Because the question of how best to engage with source states and communities arises in all repatriation contexts, the NAGPRA example offers useful guidance for any repatriating states and museums. But of course, it is most immediately relevant to states that, like these, have adopted some form of dialogue as an integral aspect of their repatriation mechanisms. This section reviews several such states and the various forms of dialogue they endorse. It also considers dialogue-oriented repatriation policies established by international museums.²⁰⁷

1. France

In 2017, a bold statement by French President Emmanuel Macron inspired a regional wave of new repatriation policies in the European Union.²⁰⁸ Describing restitution of African cultural heritage as a “top priority,”²⁰⁹ he asserted:

I cannot accept that a large share of several African countries’ cultural heritage be kept in France. There are historical explanations for it, but there is no valid, lasting and unconditional justification. African heritage cannot solely exist in private collections and European museums. African heritage must be showcased in Paris but also in Dakar, Lagos and Cotonou; this will be one of

²⁰⁷ While the analysis in this paper focuses on laws and policies developed by countries that, like the example of the United States and NAGPRA, are in possession of cultural heritage that they are considering returning, the NAGPRA/ICT principles could also be useful for states and museums that are *requesting* return of cultural heritage. Many governments and regional organizations have developed laws, policies, and commissions to facilitate such repatriation requests. Because this paper is focused on the NAGPRA example, which presents a repatriation policy for engaging in returns rather than accepting returns, it does not delve into the considerations and criteria for requesting countries. This would be a rich area for further research. *See, e.g.,* Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas, art. 16, Diario Oficial de la Federación [DOF] 6-5-1972, últimas reformas DOF 14-11-2025 (Mex.), <https://perma.cc/66N3-4CYS>; DEPARTMENT: ARTS AND CULTURE, REPUBLIC OF SOUTH AFRICA, DRAFT NATIONAL POLICY ON THE REPATRIATION AND RESTITUTION OF HUMAN REMAINS AND HERITAGE OBJECTS (2021), <https://perma.cc/BFC7-9J8U> (approved 2021); *More on the Exile Repatriation Project*, SOUTH AFRICA HERITAGE RESOURCES AGENCY, <https://perma.cc/FN54-3F77> (confirming 2021 approval of National Policy) (last visited Mar. 20, 2026); Gracia Lwanzo Kasongo, *Symposium on Confronting Colonial Objects: Charting a Cultural Relational Justice – Unraveling the Complexity of Human Remains Restitution in the Democratic Republic of Congo*, OPINIO JURIS (Apr. 18, 2024), <https://perma.cc/SKS8-RBCV> (last visited Mar. 20, 2026); *10-Point Reparation Plan*, CARICOM REPARATIONS COMMISSION, <https://perma.cc/2S4N-QVR3> (last visited Mar. 20, 2026).

²⁰⁸ Emma Jacobs, *France Promised to Return Cultural Objects Back to Africa. Is It Still Happening?*, NPR (Feb. 2, 2025), <https://perma.cc/G6TZ-JL96>.

²⁰⁹ Anna Codrea-Rado, *Emmanuel Macron Says Return of African Artifacts Is a Top Priority*, N.Y. TIMES (Nov. 29, 2017), <https://perma.cc/5REM-9GGH>

my priorities. Within five years I want the conditions to exist for temporary or permanent returns of African heritage to Africa.²¹⁰

Macron acted on this statement by commissioning the Sarr and Savoy Report, which set out recommendations for a French repatriation policy concerning colonial-era African cultural heritage. Overall, the report envisioned a transformative, relationship-oriented approach that echoed core purposes of the international justice models: “[t]o openly speak of restitutions is to speak of justice, or a re-balancing, recognition, of restoration and reparation, but above all: it’s a way to open a pathway toward establishing new cultural relations.”²¹¹

The Sarr and Savoy Report’s strategy for achieving this new relationship was centered in dialogue between France and source states and communities.²¹² It recommended the creation of bilateral “joint commissions between France and each of one of the concerned African nation-states” to “structure and moderate the dialogue between the French institutions and the representatives of the museums and the [source] communities.”²¹³ These joint commissions were intended to make recommendations on restitution claims and provide advice on joint research and procedures.²¹⁴ The need for an ongoing “intensive transcontinental dialogue” pervades the report and its recommendations.²¹⁵

However, the Sarr and Savoy Report’s recommendations did not achieve political consensus within France. For seven years, no legislative action was taken to implement it. Instead, repatriation requests continued to be considered on a case-by-case basis and to require individualized Parliamentary approval. As a consequence, while France holds an estimated 90,000 colonial-era African objects in its collections, only thirty cultural heritage items were returned between 2017 and 2025.²¹⁶

In January 2026, France’s Senate passed a bill to establish a new repatriation law for colonial-era cultural heritage.²¹⁷ As of this writing, that bill is before the

²¹⁰ Emmanuel Macron, Pres., Fr., Speech at the University of Ouagadougou (Nov. 28, 2017), <https://perma.cc/T4PB>.

²¹¹ SARR AND SAVOY REPORT, *supra* note 24, at 29.

²¹² *Id.* at 2.

²¹³ *Id.* at 68.

²¹⁴ *Id.*

²¹⁵ *Id.* at 66. *See also id.* at 66–68, 85–86.

²¹⁶ Kate Fitz Gibbon, *France Sets Conditions for Colonial Restitution—but Not Without Control*, CULTURAL PROPERTY NEWS (Aug. 5, 2025), <https://perma.cc/U3TH-G2KK>.

²¹⁷ Projet de Loi Relatif à la Restitution de Biens Culturels Provenant d’États qui, du fait d’une Appropriation Illicite, en Ont Été Privés, n° 2408, Dix-Septième Législature (2026) (France), <https://perma.cc/DP37-49D7> [hereinafter Bill No. 2048].

French National Assembly for consideration.²¹⁸ If it passes, it would substantially change French repatriation law concerning cultural heritage—but without adopting the Sarr and Savoy Report’s transformative, relationship-oriented approach. The primary functions of the legislation are: (1) to create an exception to the existing legal principle of inalienability of public collections that prohibits French public museums from deaccessioning items without a vote of Parliament; and (2) to establish generally applicable repatriation standards for qualifying colonial-era acquisitions.²¹⁹

The proposed legislation does provide for dialogue between representatives of source states and French institutions. However, the role for dialogue is substantially more limited than the dialogue-centered approach recommended by the Sarr and Savoy Report. The bill requires the initial evaluation of a restitution request to be by a joint scientific committee with balanced representation from both states, formed in consultation with the requesting state. However, the bilateral commission merely makes a recommendation, not a final determination. As under NAGPRA, decision-making power remains in the hands of the French government.²²⁰ The other expansive forms of dialogue and cooperation recommended by the Sarr and Savoy Report are not mentioned.²²¹

In further contrast to the Sarr and Savoy Report, the French bill does not provide for dialogue with communities. The initial repatriation request must be made by a state, not a community; the government can only return items to a state, not a community, and the contemplated dialogue is also entirely state-to-state. While scientific experts from the source state are included as members of the advisory commission, they are participating as technical specialists, not as interested community members.²²² As discussed further below, most other governments also limit their engagement to source states’ governments and will not communicate directly with communities or peoples that wish to reclaim their heritage.²²³ In contrast, NAGPRA does not require museums and government

²¹⁸ *Dossier législatif, Restitution de biens culturels* [Legislative File, Restitution of Cultural Property], SÉNAT (Mar. 21, 2026) <https://perma.cc/WL6K-ESVL> (indicating “Text No. 2408 sent to the National Assembly on 29 January 2026,” as of February 22, 2026).

²¹⁹ Bill No. 2048, *supra* note 217, art. 1. See also Gibbon, *supra* note 216.

²²⁰ After the joint scientific committee provides a report, the request and report are evaluated by a French national repatriation commission, and then by the Minister of Culture, before going before the *Conseil d'État*. See Bill No. 2048, *supra* note 217, art. 1.

²²¹ Bill No. 2048, *supra* note 217, arts. 1–3.

²²² *Id.* art. 1.

²²³ This has emerged as a significant dialogue-related concern in many contexts. It is a particularly significant issue for Indigenous communities; all the more so if the state takes the position that all cultural heritage originating within the state is the property of the state and is unwilling to return items to communities.

agencies to elect between discussions with states and with communities, because in the U.S., federally recognized tribes constitute sovereign nations as well as communities.²²⁴

Overall, the structure of France's repatriation process is significantly different from NAGPRA's; it relies mainly on a series of reviews by government actors rather than direct engagement between museums and requestors. However, France's proposed legislation would require dialogue in the formation and work of a bilateral scientific commission as the first evaluative stage of any repatriation proceedings. As of this writing, the structure and procedures of that commission are yet to be determined. The proposed legislation also does not preclude more expansive voluntary dialogue and cooperation between French institutions and source communities and states, for example through museum-to-museum collaborations. Accordingly, the NAGPRA principles outlined below could be beneficial in several ways: they identify considerations for the structure and procedures of the bilateral commission—apart from those relating to technical qualifications or review—and they also propose principles for voluntary dialogue to accompany the mandated review process.

2. Belgium

In 2022, Belgium passed a law authorizing repatriations to its former colonies.²²⁵ Around the same time that the Sarr and Savoy Report was published in 2018, the reopening of the vast colonial collections of the Belgian Africa Museum sparked public interest in the issue of repatriation. Reports issued in other European countries also contributed to a political consensus for action.²²⁶

Like the French legislation, the law provides for an exception to the inalienability of items in Belgium's public collections and sets forth in broad terms the steps and standards for addressing a repatriation request.²²⁷ The Belgian law is centered on a particular form of dialogue: diplomatic engagement with each source state to culminate in an individualized bilateral treaty. Each treaty will establish the key mechanisms by which a restitution decision will be reached in

²²⁴ In the context of Hawaii, which does not have federally recognized sovereign nations, NAGPRA requires engagement with designated NHOs, which are neither governments nor organic communities. 25 U.S.C. § 3005(a)–(b). NAGPRA also requires engagement with individual lineal descendants. *Id.* But neither of these presents similar concerns to the government-community distinction in the international context.

²²⁵ Loi du 3 juillet 2022 reconnaissant le caractère aliénable des biens liés au passé colonial de l'État belge et déterminant un cadre juridique pour leur restitution et leur retour, M.B., Sep. 28, 2022, <https://perma.cc/R96S-EKRU> [hereinafter *Loi de 3 juillet 2022*].

²²⁶ Marie-Sophie de Clippele & Bert Demarsin, *Retourner le patrimoine colonial: Proposition d'une lex specialis culturae*, 19 J. TRIBUNAUX 645, 646 (2021).

²²⁷ Loi de 3 juillet 2022, *supra* note 225, art. 2.

matters concerning the individual source state.²²⁸ As with both NAGPRA and France, Belgium maintains exclusive decision-making authority.²²⁹

The Belgian law provides a general framework; it does not offer specific direction concerning the procedures to be followed or the modes of engagement with the source state. At the time the law was passed, experts within Belgium expressed concern about the lack of specific parameters for the intended dialogue. They argued that, while “the Federal Government has portrayed its legislative initiative as a deliberate attempt to foster dialogue and cooperation between the Belgian State and its former colonies,”²³⁰ the law was not well-designed to promote constructive dialogue. Instead, “[t]he relative lack of procedural rules renders the process less transparent and more political.”²³¹ The Belgian law has also been criticized in the Democratic Republic of Congo, a former Belgian colony, for failing to produce equal dialogue between the parties: “[t]he focus . . . [ought to] be on open dialogue, with multiple voices, between Belgian and Congolese museums, between their scientific experts, and also between Congolese civil society and Belgium’s institutions, which must be prepared to listen to this plurality of views.”²³²

Like the French legislation, the Belgian law does not contemplate direct engagement with source communities or peoples; rather, all dialogue takes place directly with source states. This too has been criticized within Belgium. It limits the opportunity to pursue reparative justice by restituting heritage to the communities who suffered the cultural harm of its loss; it also constrains subnational communities’ human rights to access their cultural heritage.²³³

Finally, like the French legislation, the Belgian law was also preceded by an independent expert report that recommended a more expansive approach to repatriation, including a more capacious role for dialogue.²³⁴ However, as in

²²⁸ *Id.* arts. 4(1), 5; *see also* Marie-Sophie de Clippele & Bert Demarsin, *Pioneering Belgium: Parliamentary Legislation on the Restitution of Colonial Collections*, 8 SANTANDER ART & CULTURE L. REV. 323, 333 (2022).

²²⁹ Loi de 3 juillet 2022, *supra* note 225, art. 4(1); *see also* De Clippele & Demarsin, *Pioneering Belgium*, *supra* note 228, at 332.

²³⁰ De Clippele & Demarsin, *Pioneering Belgium*, *supra* note 228, at 280.

²³¹ *Id.*

²³² Bettina Zourli, *Restitution of Historical Objects Between DR-Congo and Belgium: Beyond Symbols, the Need for Lasting Cooperation*, EQAL TIMES (Nov. 8, 2023) (trans. Louise Durkin), <https://perma.cc/483T-E6LL>.

²³³ De Clippele & Demarsin, *Pioneering Belgium*, *supra* note 228, at 328.

²³⁴ Restitution Belgium, *Ethical Principles for the Management and Restitution of Colonial Collections in Belgium* (Jun. 14, 2021), <https://perma.cc/Y42R-UYQ8>.

France, the law that was passed has a significantly more limited scope, including substantially narrowing the mandated repatriation dialogue.²³⁵

In practice, since 2022, little progress has been made toward agreeing on bilateral treaties. Some initial engagement took place between the Democratic Republic of Congo and Belgium, but this dialogue now seems to have stalled, with no diplomatic agreement in evidence as of late 2025.²³⁶

Although the scope of dialogue is limited to diplomatic negotiations, the Belgian law's adoption of an unfacilitated, direct negotiation between Belgium and its former colonies bears some conceptual similarities to NAGPRA's unfacilitated direct dialogue with Native nations. The fact that the Belgian law does not set forth many parameters for how that dialogue should proceed means that there is space for it to consider and potentially benefit from the takeaways offered by NAGPRA through the lens of ICT. Furthermore, because the law requires that the form of repatriation process be adopted by the parties to the treaty, NAGPRA and ICT can also provide useful guidance on how that process could be designed and implemented.

3. The Netherlands

The Netherlands has adopted a repatriation policy that emphasizes engaging in dialogue and cooperation with source countries to agree on bilateral repatriation processes and priorities.²³⁷ Following the Sarr and Savoy Report, the Dutch Minister of Culture, Education and Science ("Culture Minister") commissioned a Dutch colonial repatriation report.²³⁸ In 2020, the Advisory Committee on the National Policy Framework for Colonial Collections produced the report with recommendations.²³⁹ Unlike in France, where implementation of the Sarr and Savoy Report did not gain political traction, the Dutch Culture Minister promptly adopted the Advisory Committee's recommendations as the Ministry's policy.²⁴⁰ And unlike in Belgium, where restitution seems to have stalled, the Netherlands has since returned hundreds of cultural heritage items to its former colonies.²⁴¹

²³⁵ See generally De Clippele & Demarsin, *Pioneering Belgium*, *supra* note 228.

²³⁶ See Zourli, *supra* note 232; *AfricaMuseum director visits DRC to discuss Belgium returning cultural artefacts*, BRUSSELS TIMES (Sep. 24, 2023) <https://perma.cc/G7W5-3SSZ>; *Belgium*, ROUTES TO RETURN (Nov. 11, 2025), <https://perma.cc/S97E-SZFL>.

²³⁷ COLONIAL COLLECTIONS REPORT, *supra* note 24; MINISTER OF EDUCATION, CULTURE AND SCIENCE, POLICY VISION ON COLLECTIONS FROM A COLONIAL CONTEXT 2 (2021), <https://perma.cc/77SV-327K> [hereinafter POLICY VISION].

²³⁸ COLONIAL COLLECTIONS REPORT, *supra* note 24, at 14.

²³⁹ *Id.*

²⁴⁰ POLICY VISION, *supra* note 237, at 2.

²⁴¹ E.g., *Colonial collections to be returned to Indonesia and Sri Lanka*, GOVERNMENT OF THE NETHERLANDS (Jun. 7, 2023), <https://perma.cc/VEC8-34HP>.

The Advisory Committee's report emphasizes bilateral dialogue and consultation founded on principles of equality. It endorses developing individualized "shared polic[ies]" with "a bespoke approach being taken to each [source] country when possible" and for which "[source] countries' views must be respected and accommodated."²⁴² The Culture Minister's Policy affirmed and implemented this priority on equal dialogue and collaboration by consulting the governments of former colonies and ensuring that they approved of the report's recommendations before adopting them.²⁴³

The Advisory Committee also recommends prioritizing museum-level cooperation and integrating repatriation into that collaboration: "appropriate handling of requests for return [is] not an end in itself, but should be part of cooperation between the Netherlands and the source countries in which they work together to tell the story of the colonial period from different perspectives."²⁴⁴ The Culture Minister's policy document picks up this theme in promoting the aim "that the colonial collections are accessible and tell the stories related to them from various perspectives."²⁴⁵

In practice, the Netherlands' description of how it has actually carried out returns emphasizes its "cooperation" and "dialogue" with source countries throughout the repatriation process.²⁴⁶ The Rules of Procedure for considering repatriation claims contemplate contact with the source country at several stages; they also emphasize the importance of cooperation in undertaking and evaluating provenance research.²⁴⁷ The Culture Minister's policy describes an active practice

²⁴² COLONIAL COLLECTIONS REPORT, *supra* note 24, at 6, 51.

²⁴³ POLICY VISION, *supra* note 237, at 4.

²⁴⁴ COLONIAL COLLECTIONS REPORT, *supra* note 24, at 8. The Committee also notes that different formerly colonized states have contrasting interests and concerns, rather than all seeking the same outcomes or forms of cooperation, and some of these will best be served with museum-to-museum engagement. COLONIAL COLLECTIONS REPORT, *supra* note 24, at 52.

²⁴⁵ Policy Vision, *supra* note 237, at 3.

²⁴⁶ *Colonial Collections to be returned*, *supra* note 241.

²⁴⁷ The Rules also provide for mediation in the event of disagreement about the historical facts following the provenance research. See COLONIAL COLLECTIONS COMMITTEE, RULES OF PROCEDURE GOVERNING THE PROCESSING OF APPLICATIONS FOR THE RESTITUTION OF COLONIAL COLLECTIONS 2–3 (2024), <https://perma.cc/A562-LY8B> [hereinafter RULES OF PROCEDURE]. Because the Netherlands does not have a principle of inalienability that bars deaccessioning items from public collections, there was no need to pass a law to create an exception to that rule, as in Belgium and France: see COLONIAL COLLECTIONS REPORT, *supra* note 24, at 64 and POLICY VISION, *supra* note 237, at 8. The policy also sets substantive standards for repatriation. See COLONIAL COLLECTIONS REPORT, *supra* note 24, at 63 and POLICY VISION, *supra* note 237, at 4–5. In implementing this policy, the Netherlands has also established a Collections Consortium which provides support to Dutch museums for provenance research. See *Colonial Collections Consortium: Home Page*, COLONIAL COLLECTIONS CONSORTIUM, <https://perma.cc/U6BA-N46Z>; see also POLICY VISION, *supra* note 237, at 8.

of consultation with source states on both the diplomatic and expert levels in every restitution matter.²⁴⁸ The policy also notes approvingly that Indonesia and Suriname (both former Dutch colonies) are establishing expert committees and working groups to facilitate this dialogue.²⁴⁹ The Dutch government's announcement about its first repatriations indicates that its engagement with sources states has in fact taken repatriation as a starting point for further collaboration: "We're not only returning objects; we're also embarking on a period of closer cooperation with Indonesia and Sri Lanka in areas like collection research, presentation and exchanges between museums."²⁵⁰

Nonetheless, as in the other countries discussed above and in NAGPRA, most aspects of the repatriation process are ultimately controlled by the Netherlands. In particular, decision-making is carried out by the Culture Minister.²⁵¹ Also, like in France and Belgium, the Netherlands' policy permits returns only to states, not to communities—although the report also acknowledges the importance of engaging in communication with communities and especially with Indigenous communities.²⁵²

Like the Sarr and Savoy Report, the Committee's report also invokes core principles from the international justice models discussed above. It notes that "depriving a community of access to objects essential to its culture is a violation of human rights and therefore constitutes an argument in favour of return."²⁵³ It highlights the importance to source countries of developing the sort of shared historical narrative that is also regarded as significant in transitional justice.²⁵⁴

²⁴⁸ POLICY VISION, *supra* note 237, at 3.

²⁴⁹ *Id.* at 6.

²⁵⁰ *Colonial Collections to be returned*, *supra* note 241.

²⁵¹ POLICY VISION, *supra* note 237, at 6; COLONIAL COLLECTIONS REPORT, *supra* note 24, at 7; RULES OF PROCEDURE, *supra* note 247; *see also* *Committee Members*, COLONIAL COLLECTIONS COMMITTEE, <https://perma.cc/X639-Z2RP> (last visited Mar. 21, 2026).

²⁵² COLONIAL COLLECTIONS REPORT, *supra* note 24, at 52–53. It further acknowledges that among the underlying principles and values that should be considered are international declarations concerning the rights of Indigenous peoples to access their own cultures. COLONIAL COLLECTIONS REPORT, *supra* note 24, at 62; *see also* *The Netherlands*, ROUTES TO RETURN, <https://perma.cc/8LHD-NL56> (last visited Mar. 21, 2026) (describing the process for repatriation claims by Indigenous peoples).

²⁵³ COLONIAL COLLECTIONS REPORT, *supra* note 24, at 63.

²⁵⁴ *Id.* at 51. The report also points to the values endorsed in international cultural heritage law as "an ethical framework," noting that "[t]hese conventions are based on the principle that cultural heritage objects deserve special protection" and that "the principles that underpin these conventions ... reflect the way in which the international community currently thinks about the importance of respecting culture and cultural heritage and the importance of protecting ownership." *Id.* at 61. It relies on the International Council of Museums' Code of Ethics for Museums as establishing a professional ethical responsibility for museums "to engage in a dialogue regarding the return of cultural heritage" and on the Principles for Cooperation in the Mutual Protection and Transfer of

All in all, the Netherlands focuses on bespoke agreements with particular source countries, as well as a commitment to dialogue throughout the entire repatriation process and mutual agreement on priorities and processes. The NAGPRA examples takeaways on dialogue are potentially relevant to many aspects of the Dutch repatriation mechanism.

4. Germany

Although the government foundation that owns the bust of Nefertiti has resisted any suggestion that her acquisition might have been illicit, overall,²⁵⁵ Germany's national repatriation policy evinces a strong commitment to dialogue-based restitution.²⁵⁶

Germany's 2019 Framework Principles repeatedly place dialogue at the heart of the repatriation process. The Principles begin by asserting that a "sincere, credible and sensitive approach to these challenges [associated with addressing Germany's colonial history] is a task for the whole of society. Such an approach should be based on dialogue in a spirit of partnership, understanding and reconciliation with the societies affected by colonialism."²⁵⁷ The Principles repeatedly emphasize the importance of "dialogue in a spirit of partnership," "close coordination," and "cooperation" with source communities and states throughout the colonial collection research, management, and repatriation processes.²⁵⁸

The 2025 Joint Guidelines build on the Framework Principles by providing more detailed direction on repatriation of cultural heritage and human remains as well as international cooperation.²⁵⁹ They begin by characterizing engagement about repatriation as a starting point for more expansive, ongoing dialogue with formerly colonized peoples:

A fundamental readiness to return cultural property is a prerequisite for a dialogue based on partnership with the formerly colonised communities and an important aspect of addressing and overcoming colonialism and its repercussions. Experience gleaned to date shows that returns can often form the starting-point for a further-reaching dialogue with the countries and communities of origin. They offer an opportunity to address a shared history from different perspectives. We therefore regard returns not as the

Cultural Material of the International Law Association as "encourag[ing] parties to work together on restitution matters in good faith through negotiation." *Id.* at 62.

²⁵⁵ *Reimagining Contested Objects: To Whom Does Nefertiti Belong?*, CULTURE&, <https://perma.cc/C5F2-XYMX> (last accessed Apr. 12, 2026).

²⁵⁶ Framework Principles, *supra* note 7; Joint Guidelines, *supra* note 19.

²⁵⁷ Framework Principles, *supra* note 7, at 1.

²⁵⁸ *Id.* at 2, 6–7.

²⁵⁹ Joint Guidelines, *supra* note 19, at 9.

culmination of the dialogue to process the repercussions of colonialism, but as part of a further-reaching overall process.²⁶⁰

This aspiration is consonant with the experience of NAGPRA participants that NAGPRA repatriation dialogue in some instances has enabled other mutually beneficial collaborations.²⁶¹

Like the NAGPRA statute, the Joint Guidelines set out a set of general standards for repatriation, including some direction on the scope and nature of the dialogue.²⁶² In general, “[t]he public museums and collections will endeavour to establish an intensive dialogue with the communities of origin.”²⁶³ More specifically, they are to: initiate dialogue “at an early stage,”²⁶⁴ involve source communities in provenance research,²⁶⁵ consider the source communities’ perspectives on the context and circumstances of acquisition,²⁶⁶ and reach “the broadest possible consensus with the country and community of origin.”²⁶⁷

Next steps in implementing the Principles and Guidelines include establishing an international council of experts “to include . . . representatives of communities of origin.”²⁶⁸ However, like NAGPRA and the other examples above, the Guidelines maintain sole decision-making authority in “the governing bodies of museums and collections.”²⁶⁹

One important aspect of Germany’s Framework Principles and Joint Guidelines in comparison to many of the other repatriation policies discussed above is that they endorse dialogue with both governments and communities. While the Guidelines require the agreement of the source state to repatriate directly to communities or peoples, they nonetheless authorize and encourage direct engagement with those communities and peoples.²⁷⁰ This creates the opportunity for considerably more expansive dialogue than in a purely state-centric model, as well as the possibility of working more directly toward the

²⁶⁰ *Id.* at 9–10.

²⁶¹ *See also id.* at 10 (concerning the potential divergences in perspective also highlighted by NAGPRA participants).

²⁶² *See id.* at 10–14.

²⁶³ *Id.* at 11.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 14.

²⁶⁹ *Id.* The Guidelines also establish substantive repatriation standards, although of course these are not legally binding like NAGPRA’s. *See id.* at 10–14.

²⁷⁰ Joint Guidelines, *supra* note 19, at 9–10; *see also* Framework Principles, *supra* note 7, at 1–2, 6–7.

restorative and reparative justice goals that are emphasized by the international justice frameworks.

Finally, the German example also illustrates the complexity of implementing repatriation principles in any particular context. In Germany, cultural heritage law is not determined on a national level. Instead, Germany is a federal system with decentralized authority over many matters, including museums. Most museums in Germany are public, and most of those public museums are controlled by the Länder (Germany's sixteen federal states) and municipalities, rather than by the national government.²⁷¹ Accordingly, “[e]ach of the [federal] states have their own laws around heritage.... These national policies are not law, but they should have some influence on future [state] laws that may be passed around repatriation.”²⁷² Notwithstanding the decentralized authority over these issues, the Joint Guidelines direct that the governing bodies with authority over returns “will strive to take a uniform approach and will coordinate regularly.”²⁷³ The Guidelines also refer to numerous implementation initiatives already underway.²⁷⁴

The governance of decision-making concerning the bust of Nefertiti is particularly complex. Nefertiti is owned, not by an individual federal state or municipality, but by the Stiftung Preußischer Kulturbesitz [SPK], a federal foundation that is jointly financed and governed by the national government and

²⁷¹ See Framework Principles, *supra* note 7, at 1, 6; Joint Guidelines, *supra* note 19, at 1, 12; Germany, ROUTES TO RETURN, <https://perma.cc/WJW2-RP4V> (last visited Mar. 21, 2026). In addition, the German Museum Association has published its own voluntary Guidelines for Care of Collections from Colonial Contexts and Care of Human remains in Museums and Collections, both of which were last updated in 2021. Deutscher Museums Bund, *Guidelines for German Museums: Care of Collections from Colonial Contexts* (TechniText Translations trans., 3d ed., Feb. 2021), <https://perma.cc/DX6U-BAME> [hereinafter DMB COLONIAL COLLECTIONS GUIDELINES]; Deutscher Museums Bund, *Guidelines: Care of Human Remains in Museums and Collections* (Tradukas GbR trans., 2d ed., Jun. 2021), <https://perma.cc/CAH6-76HK> [hereinafter DMB HUMAN REMAINS GUIDELINES].

²⁷² Germany, ROUTES TO RETURN, *supra* note 271. The Framework Principles and Joint Guidelines were issued jointly by Ministers from the Länder and municipal umbrella organizations, in addition to the national government, indicating agreement in principle from all levels of government. See Framework Principles, *supra* note 7, at 1; Joint Guidelines, *supra* note 19, at 1. But legally implementing repatriations “depend[s] on the Federal, Land and organisational law applicable to these institutions.” Framework Principles, *supra* note 7, at 6 (original emphasis). The Framework Principles direct that “[w]here there is a need for legal action to facilitate the return of artefacts from colonial contexts, such action is taken.” *Id.* But this instruction is no more legally binding than the rest of the policy. It also does not reflect the extensive legislative, bureaucratic, and institutional action that may be required to put that instruction into effect.

²⁷³ Joint Guidelines, *supra* note 19, at 12. The Federal Foreign Office and the centralized German Point of Contact are to be informed of any repatriation requests or repatriation determinations and to take the lead on initiating dialogue with the formerly colonized states and communities of origin on behalf of the concerned museum and Land. *Id.* at 13.

²⁷⁴ Joint Guidelines, *supra* note 19, at 5–7.

all the Länder collectively.²⁷⁵ The SPK is managed by a Foundation Board comprising representatives from the federal government and the Länder and an Executive Board comprising museum directors and a Presidential representative, as well as an Advisory Board.²⁷⁶ The SPK has already engaged in some repatriations under the Framework Principles, including a high-profile repatriation of hundreds of Benin Bronzes to Nigeria, demonstrating that the foundation is prepared to act on repatriation requests in some instances.²⁷⁷ Nonetheless, the foundation's complex joint governance structure requiring agreement by many stakeholders poses an additional hurdle to engaging in dialogue and reaching repatriation determinations.

This description focuses solely on the political relationship between Germany's federal government and its states and on the legal prerequisites for repatriation. There are also many other conditions affecting repatriations within Germany—such as the institutional requirements of individual museums, the German Museum Association's 2021 Guidelines on Dealing with Collections from Colonial Contexts, and the competing interests of the involved museums and institutions, donors, constituents and Länder and municipalities.²⁷⁸

Furthermore, the legal requirements, socio-political considerations, and interests of the formerly colonized peoples and states who are seeking return of their heritage present a parallel and equally nuanced set of determinative dynamics in any particular repatriation situation. Germany colonized multiple African and Pacific countries and has colonial artifacts from numerous other states, including the bust of Nefertiti from Egypt. Of course, each source state and community presents a different context for repatriation dialogue.

Overall, Germany's Framework Principles and Joint Guidelines set out a commitment to a dialogue-based process, that, like NAGPRA, seems to be direct and unfacilitated, while maintaining decision-making authority in museums' governing bodies rather than sharing it with source communities or states. While the Principles and Guidelines provide some specific requirements, they indicate that the state and municipal governments that govern most public museums are

²⁷⁵ See *Ägyptisches Museum und Papyrussammlung*, STAATLICHE MUSEEN ZU BERLIN, <https://perma.cc/8Z9D-XQZV> (last visited Mar. 21, 2025); *Profile of the Stiftung Preussischer Kulturbesitz*, STIFTUNG PREUSSISCHER KULTURBESITZ, <https://perma.cc/A8G9-PXVB> (last visited Mar. 21, 2026).

²⁷⁶ *Foundation Board*, STIFTUNG PREUSSISCHER KULTURBESITZ, <https://perma.cc/6BSC-GBWF> (last visited Mar. 21, 2026); *Executive Board*, STIFTUNG PREUSSISCHER KULTURBESITZ, <https://perma.cc/ZB4Y-TP86> (last visited Mar. 21, 2026). *Advisory Board*, STIFTUNG PREUSSISCHER KULTURBESITZ, <https://perma.cc/Q3B2-TERR> (last visited Mar. 21, 2026).

²⁷⁷ *Return of the Berlin Benin bronzes*, STIFTUNG PREUSSISCHER KULTURBESITZ, <https://perma.cc/345V-VLGF> (last visited Mar. 21, 2026).

²⁷⁸ DMB COLONIAL COLLECTIONS GUIDELINES, *supra* note 271.

to “develop a structured process;” they also point to ongoing collaborative efforts from which such processes might emerge.²⁷⁹ Overall, some parameters for the dialogue are established, but many are left to be determined and implemented. This leaves an opening in which the NAGPRA principles can be of use.

The German example also highlights the complexity of integrating a commitment in principle to repatriation and dialogue into the web of legal, bureaucratic, political, and institutional rules and processes that predate that commitment and intersect with any attempt to implement that commitment. It is the experts and stakeholders in the states, museums, and communities that are considering and seeking restitution who are best placed to assess whether and how the NAGPRA and ICT principles presented below can be integrated into their contexts. Accordingly, the analysis in Part B below presents takeaways and principles with suggestions as to how they could apply in other repatriation settings, leaving it to the national and local experts to determine how best to adapt and implement these principles in their own settings.

5. Museums and Museum Associations

Finally, many museums and museum associations in various countries have now also developed repatriation policies.²⁸⁰ These policies play a particularly significant role in states where the national government has not established a repatriation policy and where there are many institutions that are not covered by government policies, for example, because they are privately owned. Some of these museum and museum association policies center dialogue as the mechanism for consideration of repatriation.

For example, the Horniman Museum in London has a cultural heritage repatriation policy that centers on open discussion with communities.²⁸¹ In contrast to the government policies above, the Horniman Museum’s policy solely concerns dialogue with and repatriation to communities, not governments.²⁸² As with all of the other laws and policies discussed above, while the museum

²⁷⁹ Joint Guidelines, *supra* note 19, at 14.

²⁸⁰ See, e.g., ICOM CODE OF ETHICS FOR MUSEUMS 11, <https://perma.cc/E6F3-LWP2> (adopted 2025) (last visited Mar. 21, 2026) (advising museums to develop deaccessioning and repatriation policies and emphasizing engagement with communities throughout the code).

²⁸¹ HORNIMAN MUSEUM AND GARDENS, RESTITUTION AND REPATRIATION POLICY (May 2023), <https://perma.cc/5D7A-QB7J> [hereinafter Horniman Policy].

²⁸² Horniman Policy, *supra* note 281, at 1–3 (encouraging communities to reach out informally at first, because: “[o]ur experience is that the development of a relationship of mutual respect and understanding is fundamental to the exploration of issues of future management of collections, including return.”).

highlights the many ways in which it will engage with a community, the procedure, research, expert analysis, and ultimate decision are in the hands of the museum.²⁸³

Similarly, the Smithsonian Institution's Shared Stewardship and Ethical Returns Policy affirms that: "The Smithsonian is committed to working transparently and in consultation with descendants, communities, and relevant governmental and regional stakeholders to consider matters of shared stewardship and the potential return of collections, based on ethical considerations."²⁸⁴ Under the auspices of that institution-wide commitment, individual museums have developed their own policies.²⁸⁵

In addition, museum associations like the International Council of Museums, the Arts Council of England, and the American Association of Museum Directors have also developed repatriation guidelines to advise their members.²⁸⁶ Some of these advise members to engage in open dialogue with source states and communities when reviewing collections and considering repatriation requests. For example, the Arts Council's guidelines emphasize the importance of collaboration and dialogue throughout the process.²⁸⁷

Accordingly, museums and museum associations could also put into effect key principles established through the NAGPRA/ICT analysis below, in structuring the engagement that their policies and guidelines call for.

B. Comparative Takeaways

What does the NAGPRA example, as assessed through the lens of ICT, offer for these other repatriation contexts? Having identified international settings in which states and museums have made commitments to dialogue-based restitution, this section recommends key principles and structures that those governments and museums can use as a strategic blueprint when determining, based on their own expertise, how to effectively integrate and implement their

²⁸³ The policy also sets forth considerations for repatriation, and the procedures that the museum will follow in considering a claim. Horniman Policy, *supra* note 281, at 3–6.

²⁸⁴ Smithsonian Policy, *supra* note 25, at 1.

²⁸⁵ E.g., *Shared Stewardship and Ethical Returns*, NATIONAL MUSEUM OF THE AMERICAN INDIAN, <https://perma.cc/WXA3-JNCV> (last visited Mar. 21, 2026). Domestic returns are governed by the National Museum of the American Indian Act, which has similar provisions to NAGPRA.

²⁸⁶ ICOM CODE OF ETHICS, *supra* note 280; INTERNATIONAL COUNCIL OF MUSEUMS & UNIVERSITY MUSEUMS AND COLLECTIONS, GUIDANCE FOR RESTITUTION AND RETURN OF ITEMS FROM UNIVERSITY MUSEUMS AND COLLECTIONS, <https://perma.cc/6JGF-TXX6> (last visited Mar. 21, 2026); ASSOCIATION OF ART MUSEUM DIRECTORS, GUIDANCE ON ART FROM COLONIZED AREAS (Oct. 2022), <https://perma.cc/L7SC-JTCV>; Arts Council of England, *Restitution and Repatriation: A Practical Guide for Museums in England* (Sep. 2023), <https://perma.cc/YQ3T-8QQU>.

²⁸⁷ Arts Council of England, *supra* note 286, at 2–3, 10–12, 19.

dialogue commitments. It also considers the relevance of the NAGPRA example for the international justice models' visions of the role of dialogue.

1. International Repatriation Contexts

NAGPRA's design incorporates several core characteristics that make it a useful touchpoint for other repatriation settings. First, as noted above, the original NAGPRA statute has two key features that cannot readily be altered: (1) direct, unfacilitated dialogue between the parties plays a central role, and (2) there is a structural power imbalance between the parties, in that museums are both decisionmakers and participants in the dialogue. Because these characteristics are required by the statute itself, they cannot be changed by later implementing regulations.²⁸⁸

These features are similar to the other repatriation laws and policies described above. Most fundamentally, in all of the above examples, the governments and museums that are in possession of the contested cultural heritage maintain their own control over decision-making in their repatriation laws and policies.²⁸⁹ As a consequence, their dialogue with source states (and, where applicable, communities) takes place within the same structural power imbalance as under NAGPRA.

The contexts in which dialogue takes place in other repatriation settings are more varied, with some dialogue occurring on a diplomatic level or within an advisory committee, in addition to on a one-to-one basis with counterparts. But a fundamental commonality with NAGPRA is that in all of the above examples, the described dialogue takes place on a direct, unfacilitated basis, without a third-party mediator.²⁹⁰

A third central aspect of NAGPRA as designed is something that can be adjusted by later regulations: (3) the format is largely participant-determined and there is little direction on how to carry out NAGPRA dialogue effectively.²⁹¹ Concerning this feature, some of the laws and policies described above provide more direction than others; the Dutch policy, for example, sets out a series of steps to be followed once a repatriation request is made. It is also possible that some governments and museums have developed internal, unpublished

²⁸⁸ See *supra* Part II.A.

²⁸⁹ See *supra* Part III.A. The Belgian law allows for mutual agreement on procedure, which could accordingly vary.

²⁹⁰ For example, among the many variations is that the Dutch and proposed French protocols provide for an advisory committee to conduct an evaluation of the repatriation request in the first instance and make a recommendation to the decisionmaker. See *supra* Part III.A.

²⁹¹ This can be changed because this lack of explicit direction is a gap left by the statute, rather than a statutory mandate that participants be permitted to choose their own procedures. See *supra* Part II.A.

guidelines; for example, Germany refers to the existence of ongoing working groups, which would provide an appropriate context for such internal guidance. Nonetheless, all the established laws and policies allow for considerable discretion in the nature and process of engagement, particularly in the early stages of dialogue before a formal repatriation request.²⁹²

These similarities indicate that the NAGPRA example can offer some constructive guidance for these other repatriation contexts.

Takeaway #1: Design repatriation dialogue to incorporate the ICT criteria insofar as possible—including equal status, common goals, and cooperation.

The most fundamental takeaway from NAGPRA's design is that it is, in fact, valuable to structure the repatriation dialogue to meet the ICT criteria insofar as possible within the particular context. This is evident in looking at the evolution in NAGPRA's implementing regulations, the way that alternate venues for NAGPRA dialogue have developed, and the observations participants offer concerning NAGPRA dialogue in practice.

Concerning the evolution of NAGPRA's implementing regulations, as described above, the original statutory structure meets just two of the ICT criteria for facilitating positive dialogue: (1) Support of authorities, law, or custom, and (2) Repeated interactions over a long period of time. It does not offer: (3) Equal status, (4) Common goals, or (5) Cooperation. Accordingly, NAGPRA's original design did not have the structure in place to consistently and predictably achieve the final, cumulative factor: (6) Enabling meaningful, trusting relationships.²⁹³

Therefore, it is notable that the new regulatory amendments adjust NAGPRA's dialogue structure—where possible under the statutory framework—to more fully satisfy the other ICT criteria of equal status, common goals, and cooperative activities. Specifically, the regulatory changes foster equality and cooperation by requiring participants to engage in consultation that takes into account all viewpoints and reaches outcomes based on consensus and mutual agreement. They create accountability measures to support this approach, such as requiring museums to report on their agreement or disagreement within the consultation process. They require museums to cooperate by deferring to Native traditional knowledge rather than relying preferentially on their own sources and methodologies to assess cultural heritage and its relationship to present-day communities.²⁹⁴

²⁹² See *supra* Part III.A.

²⁹³ See *supra* Part II.B.

²⁹⁴ See *supra* Part II.A.

Accordingly, museums and governments in repatriation settings, even while maintaining decision-making authority, can promote more effective dialogue by providing guidelines requiring consultation to:

- (a) promote equal status and cooperation by taking into account all viewpoints, including integrating source communities/states' methods and sources into their analysis;
- (b) promoting shared goals, equal status, and cooperation, by making findings, recommendations, and decisions on the basis of consensus and mutual agreement; and
- (c) establishing accountability measures to ensure these steps are followed, particularly in settings in which dialogue takes place privately behind closed doors.

This will be more achievable in some contexts than others, but all the models discussed above could incorporate these principles at some stages of their dialogue. Under the proposed French legislation, the bilateral scientific committee that conducts the first analysis of a repatriation request could readily adopt these principles into its rules of procedures. In the Netherlands, while the committee that initially reviews repatriation requests is made up of Dutch experts, it is permitted to add temporary members to consider particular requests and also to consult whatever experts it deems appropriate, raising the possibility of establishing joint committees with source-state experts. More broadly the Dutch Culture Minister has committed to engaging in ongoing dialogue and museum-to-museum collaborations with source states. This provides many opportunities to establish voluntary working groups and relationships that operate on these principles. Because Belgium's law permits diplomatic agreement on any repatriation procedure, it has the broadest possible discretion to implement an equitable, collaboration-oriented design, should it and its partner states choose to do so. Similarly, Germany's 2025 Joint Guidelines call on the federal states and municipalities to adopt a unified procedure "in a spirit of dialogue and partnership," providing not only discretion but an endorsement of structures like these that encourage positive dialogue.²⁹⁵

Takeaway #2: Anticipate conflict within the repatriation dialogue and provide mechanisms and guidelines to address conflict and facilitate mutual understanding.

²⁹⁵ See *supra* Part III.A.

Concerning NAGPRA in practice, participants have identified particular tensions that stem from two factors: (1) the structural power inequality, and (2) pre-existing, fundamental differences in perspective between the parties. Prominent examples include disclosure of confidential tribal information and museum designation of some ancestors and cultural heritage as “culturally unidentifiable” and therefore off limits for dialogue and repatriation. The regulatory amendments make changes that require museums to embrace a more cooperative approach that better aligns with tribes’ interests, rather than using their unequal decision-making authority as leverage to further their own perspectives.²⁹⁶

These particular tensions point to the broader issue raised by participants: that conflict and disagreement are inevitable within repatriation dialogue. As such, what matters is whether participants respond to it in a way that intensifies the dispute or promotes mutual understanding. Accordingly, it would be valuable for NAGPRA and other repatriation frameworks to provide more direction to the parties on how to address such conflicts. NAGPRA does provide participants with the option of requesting facilitation of disputes from the Review Committee, but it does not provide guidelines or procedures for participants on resolving disagreements amongst themselves. Certainly, the Review Committee is a useful option for dispute resolution, but because going to the Review Committee is a fairly significant step, it is not likely to occur until a conflict has become intractable.

This is a particularly problematic gap, because developing mutual understanding is a central dynamic identified as facilitating positive interactions in ICT, as well as a core aim of the justice models. Addressing conflict within dialogue is also an especially significant issue within the repatriation context. While ICT recommends avoiding topics that might stir up conflict, that is not possible when the purpose of the dialogue is to address a subject that is already in dispute between the parties, as is often the case both in repatriation dialogue and in the international justice models. NAGPRA’s regulatory amendments solely address particular controversial topics one by one. While this is helpful in addressing existing, known issues, it does not address the general dynamic. Accordingly, on this subject, NAGPRA offers a cautionary tale as well as lessons learned.

Thus, there are also several takeaways for other repatriation contexts from the NAGPRA experience concerning conflict within dialogue:

- (a) The most fundamental is to anticipate and provide general guidance on addressing conflicts within the dialogue process, so as to promote mutual understanding and empathy, rather than entrenched tension. NAGPRA’s experience demonstrates that unanticipated disagreements will inevitably arise,

²⁹⁶ See *supra* Part II.B

and so guidelines should be in place for addressing such disagreements from the outset.

- (b) In addition, some highly contested topics may be known from the outset; when so, it is useful to adopt specific rules that establish shared aims and incentivize cooperation on these issues from the beginning. The changes that NAGPRA's regulations made to the categorization of cultural heritage and ancestors whose provenance is uncertain is an example of this; the new rules require museums to engage in dialogue on these ancestors and items. They also incentivize museums to reach agreement with Native nations by prohibiting any study or exhibition of cultural heritage without explicit consent. Without such rules, the unequal structural power dynamic among the participants enables museums and governments to readily disregard source states' interests in favor of their own.
- (c) Museums and governments may benefit from adopting NAGPRA's approach of establishing an advisory body to facilitate dispute resolution when the participants are unable to resolve a conflict. The international justice models all rely on skilled facilitators and carefully structured facilitated dialogue when dialogue must address controversial topics. While NAGPRA and the other international examples discussed above all rely on directed, unfacilitated engagement for the most part, an entrenched conflict over a particularly controversial topic is exactly the circumstance in which facilitation will be most valuable.

As with the first takeaway, while these principles are not evidently contemplated by the governments and museums that have adopted repatriation laws and policies, they could certainly be adopted by those states and institutions. Within systems that have joint advisory committees, like France's proposed legislation, conflict-resolution mechanisms might be formalized into the rules of procedure for these commissions. For countries like the Netherlands that incorporate dialogue through less structured forms of exchange throughout the repatriation process, guidelines might be a more appropriate format for these principles.

Museums might particularly benefit from authorizing a mediation venue to conduct facilitated dialogue when direct dialogue has reached an impasse. Because, as described above, museum curators often conceive of cultural heritage through the lens of their professional values, there can be significant disjuncts in perspective with source communities and states. Such disjuncts can be particularly difficult to navigate in unfacilitated dialogue. Skilled facilitation by a neutral third party may enable the participants to move toward mutual understanding that allows them to encompass each other's viewpoints within their own perspectives.

Takeaway #3: Establish alternative, voluntary venues and mechanisms for ICT-compliant dialogue.

Another takeaway from the NAGPRA example for other repatriation settings is that, because repatriation dialogue itself is unlikely to be able to fully satisfy the ICT criteria, it is useful to create alternative, voluntary venues for ICT-compliant dialogue to take place.

In the NAGPRA context, such dialogue has complemented mandatory dialogue by presenting opportunities for NAGPRA participants to develop trusting relationships. The Review Committee and the CoP have both facilitated the development of close professional relationships among NAGPRA participants representing tribes, NHOs, museums, universities, and federal agencies. These relationships have then benefitted the mandatory dialogue by facilitating shared perspectives and trust within the repatriation process. Other constructive venues for voluntary dialogue have included collaborations on educational programs and exhibits and sponsorship of newly created art by source communities.²⁹⁷

This strategy is particularly valuable for states and museums because it promotes one of the core aims of repatriation: enabling present-day interactions that align with present-day values and developing stronger future relationships. Some state and museum repatriation policies already do this in some way. The Dutch policy promotes museum to museum collaborations. The German Principles and Guidelines similarly anticipate a wide range of cooperative enterprises beyond repatriation as such. In the museum context, the Smithsonian Museum of African Art has created an exhibit that showcases its cooperative return of Benin Bronzes to Nigeria and displays the items that have been loaned back to the museum by the Nigerian government.²⁹⁸

2. International Justice Models

NAGPRA's aims align with the international justice models in multiple ways. It seeks both to redress past harms suffered by source communities and to promote better future relationships between museums and Native nations in a context of severe, intergenerational cultural losses. In addition, NAGPRA incorporates dialogue in a way that correlates to the international justice models by deploying direct dialogue as a means of promoting mutual understanding and mutually agreeing on appropriate remedies.

Accordingly, there are several findings from the experience of NAGPRA implementation that are relevant to the international justice models. Overall, the

²⁹⁷ See *supra* Part II.C–D.

²⁹⁸ See *supra* Part III.A.

observations of NAGPRA participants tend to affirm the expectations and key principles of these international frameworks.

Finding #1: NAGPRA participants' experience affirms the international justice models' warnings about the risks of dialogue.

The negative outcomes that have sometimes resulted from NAGPRA dialogue suggest that the justice models' caution about such dialogue is appropriate. Engaging in dialogue is a risky strategy for addressing severe social harms, because it places groups that are already in tension with each other into direct, extended contact. International justice models like peacebuilding and transitional justice seek to mitigate this by ensuring skilled facilitation of direct dialogue, and by carefully assessing whether engaging in dialogue will be helpful or counterproductive given the details of particular contexts. Dialogue is often reserved to address non-controversial topics, as when peacebuilding focuses on mutually beneficial initiatives like joint economic development, rather than discussing the history of the conflict.

NAGPRA takes none of these precautions, and as described above, its outcomes are decidedly mixed. It would be useful to evaluate in future research whether the measures taken by NAGPRA's regulatory amendments to more carefully direct and structure the mandatory repatriation dialogue produce more consistent results. If so, this may have further implications for the international justice models.

Finding #2: The NAGPRA example affirms the international justice models' premise that dialogue can be a necessary mechanism to address controversial issues.

NAGPRA's experience with addressing highly controversial repatriation issues highlights a key difference between ICT and the justice models. As discussed above, ICT is predicated on avoiding contentious issues within dialogue. In contrast, several of the justice models, like restorative justice, are premised on engaging in carefully structured and facilitated dialogue to address highly contentious issues.

In the NAGPRA context, the regulations originally took the approach of avoiding dialogue about ancestors and cultural heritage whose cultural identity was not yet known. The regulations allowed museums to designate such human remains and cultural objects as "culturally unidentifiable" and thereby to end dialogue with tribes about them. But taking this matter off the table did not resolve it. Rather, as outlined above—and as suggested by the international justice

models—the issue only became more divisive.²⁹⁹ This tends to affirm that it is not possible to fully implement ICT within a justice context, where addressing difficult issues is one of the aims and failing to do so can be counterproductive.

As with the previous takeaway, it would be useful for future research to assess the impact of removing the “culturally unidentifiable” designation; this could provide a case study about whether and how dialogue can effectively address such controversial issues. In considering this, it will be important to keep in mind that this NAGPRA dialogue is still unmediated and still leaves it to the parties to pursue this discussion without additional direction. As such, the amended regulations’ new approach to this topic does not follow either ICT (which would avoid the discussion altogether) or the international justice models (which would carefully structure and facilitate such a conversation).

Finding #3: Incorporating uncontroversial, mutually beneficial dialogue into repatriation dialogue supports positive tangible and relational outcomes.

Finally, the NAGPRA example affirms the expectation of justice models like peacebuilding that incorporating mutually beneficial dialogue will promote positive engagement. Like joint development initiatives and sports, NAGPRA participants report that the CoP, voluntary collaborations, and casual, informal interactions have had a significant positive effect both on their repatriation dialogue and on their relationships as a whole.³⁰⁰ While repatriation dialogue must directly address controversial issues to achieve its aims, it need not be limited to such issues. Indeed, NAGPRA’s experience suggests that repatriation dialogue will be most effective if the parties have the opportunity to engage in noncontroversial dialogue as well.

Increasingly, scholars have suggested that international justice models like transitional justice, reparative justice, and restorative justice can contribute to redress of cultural harms like loss of cultural heritage. The experience and ongoing evolution of NAGPRA dialogue tends to affirm these expectations, suggesting that these models can contribute constructively to the design and implementation of repatriation dialogue.

IV. CONCLUSION

The thirty-five year history of NAGPRA’s dialogue mandate reveals the benefits and pitfalls of requiring collectors and source communities to engage directly with each other as the primary mechanism for repatriating looted cultural heritage. It offers insights for governments like Germany that are developing

²⁹⁹ See *supra* Part III.

³⁰⁰ See *supra* Part II.C–D.

repatriation laws and policies, as well as for museums and museum associations. It also contributes to the broader legal literature on justice models for redressing severe social harms, like transitional, reparative, and restorative justice, as well as to the body of socio-psychological writing on ICT.

When it has worked well, putting repatriation stakeholders in direct conversation with each other has enabled them to develop meaningful, trusting relationships that have facilitated restitutions. Direct dialogue has also had ramifications beyond its immediate repatriation outcomes. For some museum practitioners, the dialogue experience has shifted their understanding of their role vis-à-vis Indigenous cultural objects, so as to incorporate Indigenous viewpoints and practices. Such changes in museums' conceptual frameworks are visible in reforms to museum caretaking practices and in collaborative initiatives. These practices and collaborations tend in turn to serve as venues for voluntary dialogue that complements and supports mandatory NAGPRA repatriation dialogue. The advisory dialogue that takes place in the CoP and the Review Committee often promotes shared understandings, a common sense of purpose, and ongoing cooperative relationships among practitioners working for museums and tribes/NHOs. Like transformed museum practices and collaborations, this advisory dialogue and its effects also function synergistically with mandatory NAGPRA dialogue.

However, the reported experience of statutory NAGPRA dialogue is highly variable. NAGPRA dialogue participants indicate that several aspects of the statute's framework have tended to exacerbate rather than alleviate tensions. In particular, the dual role of museums as both decision-makers and participants reifies the colonial power dynamic by placing museums in the position of making judgments about communities' cultural practices and determining communities' rights to access to and control of cultural heritage. Native American participants have regularly expressed profound dissatisfaction with the inequality of the NAGPRA dialogue framework. This feature and its effects are particularly relevant for other repatriation contexts. New restitution laws and policies, like Germany's, typically maintain decision-making authority in the hands of museums or of officials from the state currently in possession of the objects. Their dialogue with source communities and states usually takes place on unequal terms.

In addition, NAGPRA dialogue participants' experiences of conflict tend to support the concerns of justice models and ICT about the risks of dialogue. In particular, they confirm that centering repatriation processes on direct interaction between communities that are already in tension with each other raises the possibility of catalyzing disagreement and intensifying conflict.

The observations of the participants suggest that there are several key qualities promoting positive outcomes within the NAGPRA process. The dialogue should be robust, discussing all relevant topics, incorporating all participants' perspectives, and including casual as well as directed interactions. The

parties need to acknowledge and address the disparities in viewpoint that are surfaced by the dialogue process and address them constructively rather than allowing them to trigger enduring conflicts. As the designated decision-makers, museums must understand, accept, and include communities' knowledge, input, and interests. This is in keeping with the factors identified by ICT research: that the parties should treat each other equally and engage cooperatively toward a shared goal through repeated interactions that allow for the development of meaningful, trusting relationships—at least, to the extent permitted by the strictures of the NAGPRA statutory framework.

The legislative history suggests that Congress's aspiration was for museums and communities to engage meaningfully. As such, it is striking that the statute did not include mechanisms designed to foster those qualities. To the contrary, several aspects of the statutory framework, and especially the structural inequality between museums and Native nations, run counter to the qualities that enable groups to engage with each other constructively.

The recent amendments to the regulations, in contrast, deliberately nurture these characteristics. In particular, the new regulatory definition of consultation characterizes it as "meaningful engagement" and describes what makes for such engagement. Museums are given much stronger direction to defer to Native American traditional knowledge. New recordkeeping obligations require museums to account for the character of their engagement, for example, by explaining whether a resolution was mutually agreed upon or not. The amendments to the regulations thus fill some of the gaps in the statutory process by directing participants more clearly toward constructive qualities in their interactions. However, the new regulations still do not address all such concerns, even within the bounds of what is possible under the statutory framework. For example, they do not provide guidance on means of reconciling the participants' conflicting frameworks and preferences, although participants have identified conflict resolution as a critical aspect of the NAGPRA process. As participants engage with each other under the amended regulations, the impact of those changes should gradually become apparent in their descriptions of the revised process and its outcomes, enabling further assessment of this evolution.

The drafters of the statute and original regulations also did not foresee certain issues that have arisen within the repatriation process, such as the problem of tribes feeling compelled to divulge confidential information to support their repatriation claims. This underscores the need for reaching the most complete possible mutual understanding at the outset when designing a repatriation process. It also highlights the importance of building in the capacity to revise the repatriation process, since the implementation experience will inevitably reveal some unanticipated concerns.

Thus, for those designing repatriation mechanisms, the NAGPRA experience suggests that dialogue must be supported by clear direction and

structures to promote constructive engagement, rather than simply mandating that the parties engage. The NAGPRA example also indicates that it is advisable to fully explore the interests of each party at the outset, account for disjuncts in viewpoint when designing the repatriation process, and establish mechanisms for working through remaining conflicts. NAGPRA's failure to do so has left such differences in perspective intact, requiring museums and communities to grapple with them on an ad hoc basis, with widely varying results.

The NAGPRA example also contributes to ICT. Participants' descriptions of their experiences largely corroborate the predictions of ICT regarding the characteristics that promote and undermine positive group interactions. While NAGPRA itself does not closely follow the ICT model, the NAGPRA Review Committee and NAGPRA Community of Practice correspond more closely to the ICT framework. They appear to often facilitate constructive engagement among the participants. This affirms the extensive sociopsychological research findings supporting the ICT factors as a mode of facilitating positive interactions and thereby promoting improved future relationships among social groups. Further research could evaluate the effects of the assorted NAGPRA venues on repatriation outcomes and relationships among the participants.

Finally, this NAGPRA dialogue case study represents a contribution to the literature on the justice models for promoting repair of significant social traumas, like restorative justice, transitional justice, and reparative justice. The NAGPRA example reconfirms these justice models' consensus that dialogue has the potential either to contribute to such repair or to undermine it. In addition, NAGPRA also offers a lens on redress of cultural harms, which have long received less attention than violent harms in transitional justice and other justice processes. It thereby contributes to the growing literature on protection and restitution of cultural heritage as an aspect of human rights, peacebuilding, transitional justice, and reparative justice. The experience of implementing NAGPRA dialogue supports the viability of dialogue as a mechanism for addressing not only repatriation to formerly colonized peoples, but also other significant cultural and community harms—so long as that dialogue is designed to promote its aims of relationship-building and redress. Dialogue is a risky choice for a restitution mechanism, presenting the danger of fomenting conflict instead of building trust. But if carefully structured, it can achieve both the tangible return of looted cultural heritage and the intangible repair of colonial harms.