MUSINGS OF THE MONTH

APRIL 2026

CONTENTS

Introducing: April Musings of the Month

Art and law meet sharply at the question of repair: who is owed it, what form it should take, and whether existing legal tools are equal to the histories they are asked to address. HALO's April *Musings of the Month* contends with these questions.

In this edition, we build upon continuing conversations on the limits of law as an instrument of cultural repair. Across Holocaust-era restitution, Indigenous repatriation, and the framework through which we view and utilize the tool of provenance, these pieces interrogate the gap between legal procedure and meaningful justice. They ask whether the doctrines and statutes designed to govern cultural property can ever fully account for histories of persecution, colonization, and communal meaning, and posit theories on what it would take to close that gap.

The first article draws on recent Supreme Court and circuit decisions to illuminate how courts have continued to dismiss Nazi-looted art claims on procedural grounds, despite Congress's efforts to dismantle those barriers through the HEAR Act. The piece analyzes the ways in which sovereign immunity and equitable defenses have become structural obstacles to merits-based adjudication of these claims. The second examines the Native American Graves Protection and Repatriation Act as a tool of reconciliation within the UNDRIP framework, tracing NAGPRA's legislative origins, the compromises that shaped its text, and the decades of uneven implementation that have both hindered and advanced the broader project of truth and repair. The third reimagines the use of provenance, contrasting its conventional use with a "relational provenance" rooted in ritual, labor, ecology, and community life utilizing the Arna Jharna Museum in Rajasthan and the Pithora paintings of the Rathwa people as case studies.

The articles expose a core problem at the heart of cultural restitution: legal frameworks designed for the resolution of property disputes often fail the communities whose losses those frameworks are asked to address. Each piece invites readers to consider how justice might require more than just the faithful application of existing law, but the willingness to rethink its foundations.

Through this series, we continue to cultivate a space for reflection and dialogue that connects scholarship, practice, and advocacy at the intersection of art and law. We invite our readers to join us as muses in this ongoing conversation and to submit their contributions as we work to uplift collective consciousness surrounding the creative arts.

Lastly, we thank our April muses, ***Sarah Boxer, Morgan Breene, and Neha Khetrapal***, for sharing their insight with the HALO community.

Sincerely,
Charlotte McCarthy

The Unkept Promise of Restitution:
Judicial Obstacles to Recovering Holocaust-Looted Art in the United States

Pictured: Pablo Picasso, *The Actor* (1904–05)
Image Source: 2018 Estate of Pablo Picasso / Artists Rights Society (ARS), New York (painting at issue in *Zuckerman v. Metropolitan Museum of Art*, 928 F.3d 186 (2d Cir. 2019)).

Sarah Boxer

Introduction

The Holocaust was one of humanity's most devastating assaults on human dignity. The genocide was not only a campaign of mass murder against the Jewish people but also an effort to erase identity and culture through the destruction and theft of art. Nazi authorities and collaborators confiscated hundreds of thousands of artworks from Jewish collectors, dealers, and families across Europe. The scale of this cultural theft was immense, and decades later a substantial number of those works remain in museums and private collections worldwide. Eighty years after the end of the Second World War, the persistence of unrestituted Holocaust-looted art represents an ongoing legal and moral failure.

At its core, this article argues that despite Congress's explicit effort to realign U.S. law with its historical commitments to Holocaust restitution, courts have continued to rely on procedural doctrines that are fundamentally mismatched to genocide-related dispossession. Courts have increasingly treated Holocaust restitution disputes as ordinary property cases governed by sovereign immunity doctrines, equitable defenses, and formal jurisdictional rules. Doctrines designed to promote efficiency and fairness in conventional litigation have therefore become structural barriers to justice when applied in cases where delay, evidentiary gaps, and displacement were themselves produced by persecution.

The United States has long acknowledged its role in advancing Holocaust-era restitution. International agreements such as the Washington Principles on Nazi-Confiscated Art and the Terezin Declaration established an international expectation that claims involving Nazi-confiscated art should be resolved through "just and fair solutions," with sensitivity to the historical realities of coercion, displacement, and destroyed records. Congress sought to give domestic legal effect to these commitments through the Holocaust Expropriated Art Recovery (HEAR) Act of 2016, which was designed to eliminate procedural barriers that had long prevented claims from being heard on their merits.

Yet recent judicial decisions reveal a persistent gap between Congress's remedial intentions and judicial implementation. Courts have continued to rely on doctrines such as sovereign immunity and laches to dismiss claims before any court reaches questions of coercion, ownership, or provenance. The result is a legal framework in which the very conditions created by genocide, such as missing records, dispersed families, and decades of silence, are treated as evidence of claimant neglect rather than as consequences of persecution.

The Moral and Legislative Origins of Holocaust Art Restitution in the United States

In the 1990s, U.S. policy on Holocaust-era art restitution gained renewed urgency as governments began reassessing their responses to Nazi-era cultural theft. When the United States convened forty-four nations for the Washington Conference on Holocaust-Era Assets in 1998, it acknowledged that the looting of cultural property during the Holocaust was not merely an

economic crime but an assault on identity and memory. The conference reflected a broader recognition that more than fifty years after the genocide, the international community had still failed to create meaningful avenues of justice for families deprived of their cultural inheritance.

At the conference, Under Secretary of State Stuart Eizenstat articulated the ethical foundation that would shape the next generation of restitution efforts. He urged governments to move beyond "endless, expensive, winner-take-all litigation" and instead pursue restitution through transparency, open archives, and proactive provenance research. His remarks reflected a growing consensus that existing legal frameworks had proven inadequate to address losses produced by systemic persecution rather than ordinary theft.

The Washington Principles on Nazi-Confiscated Art translated this moral commitment into concrete expectations. The Principles called for the identification of Nazi-confiscated artworks, the opening of archives, and the development of mechanisms capable of addressing forced sales and coerced transfers. Recognizing the destruction of records and the chaos of displacement that characterized the Holocaust, the Principles emphasized that claims should be resolved through "just and fair solutions" based on the facts and merits of each case rather than defeated by rigid procedural rules.

A decade later, the Terezin Declaration on Holocaust Era Assets reaffirmed and expanded these commitments. The declaration acknowledged that many victims never had a realistic opportunity to pursue restitution in the immediate postwar years and urged states to adopt flexible, claimant-centered procedures capable of addressing Holocaust-era dispossession.

Congress's first significant effort to translate these principles into domestic policy came with the Holocaust Victims Redress Act of 1998. Through that statute, Congress formally recognized that Holocaust survivors possessed a "compelling moral claim" to property confiscated during the war and encouraged governments and institutions to make good-faith efforts to restore looted assets.

Although these initiatives established a powerful normative framework for restitution, they remained largely aspirational. Without changes to domestic legal rules governing property claims, many restitution cases continued to fail in court on procedural grounds long before their merits could be evaluated.

The Holocaust Expropriated Art Recovery (HEAR) Act of 2016

Eighteen years after Congress passed the Holocaust Victims Redress Act, it became clear that survivors and their heirs continued to face procedural barriers that made the recovery of Nazi-looted art nearly impossible. Courts routinely dismissed restitution claims under state statutes of limitations that bore little relationship to the historical realities of wartime displacement, destroyed archives, coerced transfers, and the decades-long opacity surrounding the fate of Holocaust-era cultural property.

In enacting the Holocaust Expropriated Art Recovery (HEAR) Act of 2016, Congress directly confronted these failures. The statute recognized that claims to Nazi-confiscated art arose in "unique and horrific circumstances" and that victims faced "significant procedural obstacles" that prevented courts from reaching the merits of their ownership claims. The legislation was designed to ensure that disputes involving Nazi-looted art could finally be heard on their merits rather than dismissed at the threshold.

The central reform of the HEAR Act appears in its statute of limitations provision. The Act preempts state and federal statutes of limitations and replaces them with a uniform six-year period triggered only upon a claimant's actual knowledge of both the identity and location of the artwork and the claimant's possessory interest in it. Congress adopted this approach deliberately. By requiring "actual knowledge," rather than constructive knowledge, the statute rejected legal standards that had previously required plaintiffs to prove that they should have discovered their claims decades earlier.

This framework reflected Congress's recognition that Holocaust-era losses unfolded under conditions fundamentally unlike ordinary property disputes. The destruction of archives, the dispersal of families across continents, and the absence of centralized wartime records meant that traditional diligence standards often produced unjust results.

At the same time, Congress made a deliberate decision not to eliminate every doctrine related to delay. While the Act preempted statutes of limitations, it did not abolish equitable defenses such as laches. Earlier drafts of the legislation would have barred "any defense at law or equity (including laches) relating to the passage of time," but that language was ultimately removed during the legislative process.

This compromise reflected an assumption that equitable defenses would continue to operate as narrow safeguards against truly prejudicial delay without undermining the statute's broader remedial purpose. In practice, however, courts have often deployed laches aggressively, reintroducing through equity the very temporal reasoning Congress sought to dismantle.

As a result, the HEAR Act's promise of merits-based adjudication has proven far more fragile than Congress anticipated.

Sovereign Immunity After the HEAR Act: How FSIA Doctrine Forecloses Merits Review

The HEAR Act's promise of meaningful access to the courts meets an immediate obstacle: the Foreign Sovereign Immunities Act (FSIA). Even when plaintiffs satisfy the HEAR Act's timeliness requirements, they may still be unable to obtain judicial review because the FSIA continues to bar most claims against foreign governments and state-affiliated cultural institutions.

The FSIA provides the exclusive basis for obtaining jurisdiction over a foreign state in United States courts, and only one provision offers a potential avenue for Holocaust-era art restitution:

the expropriation exception, codified at 28 U.S.C. § 1605(a)(3). In the years following *Republic of Austria v. Altmann*, courts interpreted this exception with relative flexibility, allowing survivors and their heirs to bring claims involving Nazi-looted cultural property.

That approach changed sharply in *Federal Republic of Germany v. Philipp*.

Philipp involved claims to the Welfenschatz, a collection of medieval ecclesiastical treasures sold by Jewish art dealers to the Nazi government in 1935 under escalating conditions of persecution. The heirs argued that the sale could not be understood apart from the broader Nazi campaign to eliminate Jewish life in Germany, and that the transfer therefore constituted a taking in violation of international law.

The Supreme Court rejected this argument. The Court held that the FSIA's expropriation exception incorporates only the traditional international law of property expropriation. Under that framework, a sovereign's taking of its own nationals' property is considered a domestic act rather than a violation of international law.

Because the Jewish dealers involved in the Welfenschatz sale were German nationals at the time, the Court concluded that the claim fell outside the expropriation exception and that Germany therefore retained sovereign immunity.

The implications of this reasoning extend far beyond the facts of the case. Nazi persecution frequently targeted individuals who remained citizens of the very states that dispossessed them. By restoring the domestic-takings rule in its most uncompromising form, the Court effectively placed many Holocaust-era restitution claims beyond the jurisdiction of U.S. courts.

Although the decision was framed as an exercise in textual interpretation and judicial restraint, its practical effect was to remove a jurisdictional pathway that lower courts had relied upon for nearly two decades to hear Holocaust restitution claims on their merits. The Court's reasoning treats the genocidal context of Nazi takings as legally irrelevant at the threshold stage, even where historical evidence demonstrates that a transfer occurred under conditions of persecution.

A parallel example of how procedural doctrines continue to foreclose Holocaust restitution claims appears in *Berg v. Kingdom of the Netherlands*.

The case arose from claims to more than 140 artworks transferred by the Katz family under Nazi pressure and later retained in Dutch state and municipal collections. Rather than examining the historical circumstances of the transfers, the Fourth Circuit resolved the case entirely through jurisdictional and procedural doctrines.

Applying the judicially created "core functions" test, the court concluded that the Netherlands' Ministry of Education, Culture and Science and its Cultural Heritage Agency were political subdivisions of the Dutch state. Because political subdivisions are treated as the sovereign itself under the FSIA, they retained immunity from suit where the disputed property was not located in the United States.

The court then dismissed the remaining defendants, municipal museums, on venue grounds, concluding that none conducted sufficient business in the forum district.

Together, Philipp and Berg illustrate how FSIA doctrine has increasingly functioned as a threshold mechanism for avoiding merits-based adjudication in Holocaust-era art disputes.

Laches and the Erosion of the HEAR Act Through Equitable Defenses

Even when Holocaust restitution plaintiffs overcome jurisdictional barriers and identify the present-day possessor of their family's artworks, they confront another increasingly decisive obstacle: equitable defenses. Since passage of the HEAR Act, courts have revived laches as a mechanism capable of undermining the temporal protections Congress designed to revive claims long suppressed by war and displacement.

Congress enacted the HEAR Act to address the persistent problem of statute-of-limitations dismissals preventing courts from ever reaching the substance of Holocaust-era claims. The statute replaced divergent state accrual rules with a uniform six-year limitations period triggered only upon a claimant's actual knowledge of both the artwork's location and their possessory interest in it. By rejecting constructive-knowledge standards, Congress sought to ensure that delays attributable to persecution, displacement, and the destruction of records would not prevent claims from being heard.

Yet because the final statute barred only defenses "at law" relating to the passage of time, courts have interpreted the HEAR Act as leaving equitable doctrines such as laches fully intact. In practice, this has allowed courts to reintroduce through equity the very temporal reasoning that Congress rejected in statutory form.

Equitable doctrines are not inherently incompatible with Holocaust-era restitution. In theory, laches could apply where a claimant with actual knowledge of both the artwork's location and their claim unreasonably delayed filing suit in a way that caused concrete prejudice to the defendant. The difficulty is not that courts have carefully undertaken such inquiries and found them satisfied. Rather, courts have frequently failed to distinguish between claimant neglect and delays produced by genocide, exile, and decades of legal impossibility.

The Second Circuit's decision in *Zuckerman v. Metropolitan Museum of Art* illustrates this dynamic. Although the HEAR Act rendered the claim timely, the court held that laches remained available because Congress preempted only statutory limitations defenses. In applying the doctrine, the court treated decades of silence, produced by wartime dispossession, diaspora, and the deaths of relevant witnesses, as evidence of unreasonable delay and inferred prejudice from the evidentiary gaps inherent in Holocaust-era claims.

A similar approach appears in *Bennigson v. Solomon R. Guggenheim Foundation*. The plaintiffs alleged that their family's 1938 sale of Picasso's *La Repasseuse* occurred while fleeing Nazi persecution and therefore constituted a forced transaction. The court dismissed the claim on

laches grounds, concluding that the decades-long delay in bringing suit prejudiced the defendant. It also rejected the plaintiffs' attempt to characterize the sale as occurring under duress.

The decision illustrates a broader doctrinal tension between Holocaust-era coercion and domestic property law. Under New York law, duress generally requires a wrongful threat attributable to the counterparty that deprives a party of free will. Because the complaint did not plausibly allege that the art dealer involved in the sale was responsible for, or legally connected to, the coercive pressures created by the Nazi regime, the court concluded that the plaintiffs had not adequately pleaded duress.

Yet systems of persecution rarely produce individualized threats in the way conventional contract doctrine assumes. Instead, they create conditions in which victims have no meaningful choice but to sell. When courts apply traditional equitable doctrines without accounting for systemic coercion, they risk mischaracterizing persecution-induced transfers as voluntary transactions.

Legislative Crossroads and the Future of Holocaust Restitution

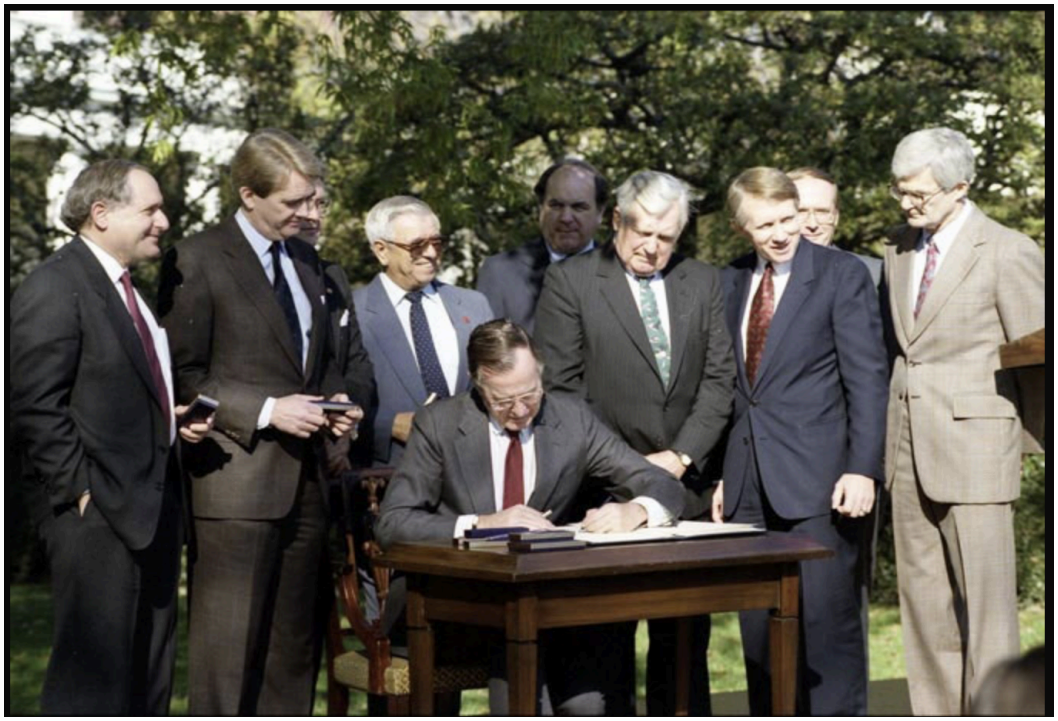
Recent legislative developments suggest that Congress has begun to recognize the widening gap between the HEAR Act's remedial purpose and its judicial interpretation. The proposed Holocaust Expropriated Art Recovery Improvements Act of 2025 would address several of the procedural barriers that courts have relied upon to dismiss restitution claims. Among other reforms, the legislation would prohibit courts from relying on time-based defenses such as laches and clarify that claims involving Nazi persecution qualify as violations of international law for purposes of the FSIA's expropriation exception.

The proposal has generated significant debate. Restitution organizations have argued that additional reforms are necessary to prevent courts from nullifying Congress's original intent, while some museums have expressed concern that eliminating traditional defenses could expose cultural institutions to expanded litigation.

Holocaust-era art restitution exposes the limits of procedural doctrines developed for ordinary disputes. Where delay, missing records, and displaced families are themselves the product of genocide, doctrines premised on neutrality and finality risk insulating possessors from scrutiny rather than facilitating justice. Whether the United States ultimately fulfills its commitment to restitution will depend on whether courts and lawmakers are willing to adapt procedural frameworks to the historical realities these claims present.

Sarah Boxer completed her J.D. at Harvard Law School after earning her LL.M. at the University of Cambridge, where she focused on international law and cultural heritage. She has worked for the British Institute of International and Comparative Law and the European Court of Human Rights, contributing to projects on international human rights, art restitution, antiquities looting, and heritage-related crimes. Her interests center on the protection of cultural heritage in conflict, the restitution of looted art—including Nazi-era art claims—the prevention of illicit antiquities trafficking, and the role of dispute resolution and transitional justice in post-conflict societies.

Assessing NAGPRA as a tool of reconciliation in an UNDRIP framework



Pictured: George H. W. Bush signed the Native American Graves Protection and Repatriation Act (NAGPRA) November 16, 1990.
Image Source: Retrieved from the Newberry library digital collection, held in the George H. W. Bush Presidential Library.

Morgan Breene

Introduction

On October 25, 2024, former President Joe Biden became the first sitting president of the United States to officially apologize for the treatment of Indigenous children in federal boarding schools in the nineteenth and twentieth centuries. Speaking from the Gila River Reservation to a largely Native American audience, President Biden spoke of the loss of respect for tribal sovereignty after the founding of the US, forced migration and assimilation, and the denial of human rights. He told the audience that "as president, I believe it's important that we do know…generations of Native children [were] stolen, taken away to places they didn't know with people they never met who spoke a language they had never heard," and concluded by saying that "it's horribly, horribly wrong. It's a sin on our soul…I formally apologize as president of the United States of America, for what we did. I formally apologize. And it's long overdue."

President Biden's apology was the culmination of an administration goal to put more time and attention into the federal government's historical and future relationship with tribal nations. The apology arose from Secretary of the Interior Deb Haaland's (Pueblo of Laguna) "Federal Indian Boarding School Initiative," which was carried out between 2021 and 2024. The goal of the program was to produce a report on the existence, locations, and treatment of Indigenous students in boarding schools between the 1890s and the 1970s. Run by Assistant Secretary Bryan Newland (Bay Mills Indian Community), the Initiative marked the first time the US government accounted for its role in operating boarding schools. The two volume report, published in 2022 and 2024, uses language of truth and healing. In his introductory letter to the second volume, Assistant Secretary Newland wrote that he anticipated that the work would "humanize this history for wide audiences" and that "it was [his] hope that this report does not mark the end of the U.S. government's work to acknowledge, understand, and heal from the impacts of these boarding schools…our shared work should mark the beginning of a long effort to heal our nation." The final report included eight concrete recommendations to chart a "Road to Healing" based on what was learned through archival and archaeological research, in consultation with tribal representatives and school survivors, and the experience of peer countries.

The work conducted under Secretary Haaland and President Biden's apology are significant in that they represent the first attempts by the federal government at explicit reconciliation with the Indigenous community within the US. While Congress issued an apology to Native Hawaiians in 1993, the Bureau of Indian Affairs director apologized for the conduct of the agency in 2000, and President Obama signed an apology as part of a large defense bill in 2009, none of these instances qualify as a genuine or meaningful attempt at apology and reconciliation. This is despite the fact that the US certified the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2011, under which nation-states with indigenous communities ought to strive to fulfill the values of recognition, reconciliation, and reparations with their indigenous populations. While some native communities in the US have a strong form of recognition in the

form of historical treaty rights, reconciliation and reparation are not concepts that are commonly used in discussions of indigenous rights in the US.

However, while reconciliation has only very recently been explicitly invoked by members of the federal government, the underlying components of reconciliation in the UNDRIP context—truth and justice—are visible in legislative actions taken by Congress in 1990 to facilitate the repatriation of hundreds of thousands of Native American Ancestors and millions of funerary and sacred objects from the museum collections of federal and federally-funded institutions. The Native American Graves Protection and Repatriation Act, or NAGPRA, passed November 16, 1990, is a unique piece of legislation that arguably facilitates the underlying values of reconciliation.

This paper examines the passage and implementation of NAGPRA for evidence of reconciliation as an underlying value. House and Senate commentary suggests that for Congress, NAGPRA was a means of starting to right a historical wrong and recognize the human rights of Indigenous Americans. But NAGPRA cannot be seen as a wholesale stand-in for broader reconciliation efforts. The law is limited in scope, and balances Indigenous with other party interests, which has hampered its effectiveness. While reconciliatory tendencies might be suggested by the process of writing the statutory language and the act of passage, some of the concessions made to non-Native interested parties and the process of implementation have damaged, but not eliminated, the usefulness of NAGPRA as a tool of reconciliation.

Reconciliation in the UNDRIP Framework

While the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) does not specifically call for recognition, reconciliation and reparations as state actions, these three values have been identified as undergirding the Declaration. In particular, its affirmation of the right to treatymaking and "enhance[ment] of harmonious and cooperative relations between the state and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination, and good faith" has been interpreted as calling for recognition, reconciliation, and reparations. The *UN Report on Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation, and reconciliation* examined different reconciliation process that were aimed at "repairing the relationships between indigenous peoples, States, and other actors." Examples given in the report included public apologies, national truth commissions, review and modification of legislation, and landmark court cases, as well as reconciliation efforts initiated by Indigenous peoples. It argued that UNDRIP had been "hailed as a vehicle for reconciliation" from its passage because it had modeled a process of involving rights holders directly in the drafting process, and noted that the Secretary General had referred to its adoption as "a historic moment when United Nations

member states and indigenous peoples reconciled with their painful histories and resolved to move forward together on the path of human rights, justice, and development for all."

The report further described reconciliation as a process of healing of relationships as much as a destination, requiring "sharing, apology and commemoration that acknowledge and redress past harm." Reconciliation also requires constructive action to address the ongoing legacies of colonialism and create a more "equitable and inclusive society by closing the gaps in social, health and economic outcomes" and "supporting indigenous peoples' cultural revitalization." Meaningful reconciliation requires "political will, joint leadership, accountability and transparency, as well as significant resources." Reconciliation is a long process that requires truth, justice, sustained engagement with other parties, and recognition of historical wrongs, aimed at healing Indigenous communities and Indigenous-state relationships.

Reconciliation has often manifested as Truth and Reconciliation Commissions (TRC), which provide forums for indigenous peoples to share their own and their communities' experiences with the state, ostensibly for the dual purposes of healing and informing the wider non-indigenous population of past and ongoing harms. But TRCs have been criticized for the rarity of concrete positive outcomes for indigenous peoples, a hyperfocus on process, rather than outcomes, and their misuse as a tool for reifying the liberal political order, rather than actually facilitating change. Other reconciliation measures, referred to by the *Report on Recognition, Reconciliation and Reparations* as "measures of satisfaction," include formal apologies, partnerships including treaties, and regional mechanisms, such as courts. Measures of satisfaction may be meaningful, but are largely symbolic in nature. As a result, they are even less likely than a TRC to have tangible, satisfactory outcomes for indigenous peoples, but may be viewed as a first step towards deeper healing and justice from the state. Sheryl Lightfoot has argued that true reconciliation can only occur when states give a "credible commitment" to change future power relations and give up real political power to Indigenous groups. Without a meaningful reset of the power dynamic, actual reconciliation is not possible.

Native American Graves Protection and Repatriation Act (NAGPRA)

The Native American Graves Protection and Repatriation Act was passed November 16, 1990, and was hailed as a landmark piece of domestic human rights legislation. The goals of the legislation were twofold: one, to protect undisturbed Native American burial sites on federal land, and two, to provide for the repatriation of human remains, associated funerary objects, sacred objects, and objects of cultural patrimony in the collections of federal or federally-funded institutions to culturally affiliated descendant groups. NAGPRA was born out of the advocacy of Maria Pearson (Yankton Sioux). Pearson began protesting archaeological treatment of Native American human remains from disturbed burial sites in Iowa in the late 1970s, eventually spearheading a national movement to end the treatment of Native American Ancestors as

scientific specimens. The movement gained traction after it was revealed in the mid-1980s that the Smithsonian Museum of Natural History alone held over 18,000 sets of Native American human remains, shocking the public conscience. The final NAGPRA language was the eighth bill introduced on the subject between 1987 and 1990, and was the result of a year of negotiations between representatives of Native American rights groups and major museums and artifact trade organizations that resisted the concept of forced repatriation. As a result, the NAGPRA language is weaker, more narrowly construed, and provides more concessions to scientific research than was originally desired by pro-repatriation groups. The law only applies to federally funded institutions, and only to human remains and objects removed from federally-owned land. It also only allows federally-recognized tribes to participate in consultations and repatriations, leaving many groups out of the process entirely. The law places most of the processual direction within the power of museums, rather than tribes, and has limited notice requirements for museums to ensure that tribes are fully aware of collections and inventory progress.

NAGPRA requires museums and institutions with federal funding to inventory their collections of affected human remains and objects and provide these inventories to possibly affiliated tribes for consultation. Tribes participate in consultation by providing evidence of cultural affiliation with the individuals and objects on the inventory, which can be drawn from a wide variety of sources, including scientific and anthropological data as well as oral histories and other sources of Tribal knowledge. While Congress intended a preponderance of the evidence standard, final determination of affiliation was left in the hands of museums, who individually decide what evidence is sufficient to make a finding of cultural affiliation. Prior to 2010, if a museum concluded that cultural affiliation could not be determined, the remains or object would be inventoried as "culturally unidentifiable." Museums were not obligated to publish or move forward with consultation on culturally unidentifiable collections; prior to the promulgation of the final rule on the repatriation of unidentifiable remains in 2010 (43 C.F.R. §10.11) museums were not required to honor tribal requests for further consultation on culturally unidentifiable remains.

Once an inventory is completed and a finding of cultural affiliation made with one or more groups, the inventory is published in the Federal Register. Publication of a Notice of Inventory Completion or Notice of Intent to Repatriate triggers a thirty-one day period in which the affiliation can be contested by unlisted tribal groups. Until January 2024, when the Department of the Interior updated the implementing rules, if no competing claim was made, legal title would transfer to the tribe(s) listed in the notice. (Under current regulations, legal title does not transfer without a written request from an affiliated tribe.) Once legal title transferred, the remains or object became available for physical transfer back to the affiliated tribe. Originally, NAGPRA had a five-year window in which all inventories were to be completed and all notices sent, but the sheer volume of collections made it impossible for almost all museums to meet the deadline,

which has essentially been extended indefinitely. In 2020, Nash and Colwell estimated that roughly 67,000 Ancestors had been repatriated, and 127,000 more, along with millions of funerary objects and sacred objects, remain in museum collections.

Reconciliation and NAGPRA—an effective framework?

NAGPRA's statutory text does not use the language of reconciliation. It does not talk about rebuilding trust, or healing communities, or changing public perceptions and increasing public knowledge of historic and modern systemic inequalities. But despite the lack of explicit reference within the text to reconciliation, legislative history from the leadup to the Act's passage in late October 1990 suggest that similar concepts, if not fully articulated, were at the forefront of the legislative process. The legislation, alongside its effects of protecting burials and facilitating the return of stolen Ancestors and objects, was clearly meant to serve a social function of healing, repair of the relationship between the federal government and tribal nations, provide justice for earlier treatment and judicial recourse, and force the museum, anthropology, and archaeology fields to reckon with their existing codes of ethics and assumptions about research and display.

Speakers in both the House and the Senate invoked reconciliatory concepts when speaking about the importance of passing NAGPRA. Representative Ben Campbell (Northern Cheyenne) of Colorado, a co-sponsor of the House version of the bill, called attention to the "desecration of countless sacred grounds in which Indian ancestors were buried in the name of the US government," arguing that the legislation would create a process for cooperative work between museums, Federal agencies, and tribes and descendants. He also tied the bill to efforts to bring the remains of Vietnam war dead home, suggesting that NAGPRA was an extension of the ethos behind that effort "so that [Native American] ancestors can finally be put to rest." Cardiss Collins, a representative from Illinois, went further, stating that the bill was necessary "to reverse several hundred years of abuses of a people, their land, and their very roots." Others spoke of protecting sites from "exploitation" and returning sacred objects "improperly taken," and supported the bill as the beginning of a process to correct having "turned our backs on the pillaging and theft of Indian remains and sacred objects," and because it "thoughtfully begins to resolve what I consider to be a national tragedy." Finally in the House, Representative Morriss Udall, who introduced the bill, argued that it "addresses our civility, and our common decency…In the larger scope of history, this is a very small thing. In the smaller scope of conscience, it may be the biggest thing we have ever done."

Senators used similar rhetoric when discussing the Senate version of the bill. Senator John McCain suggested that the legislation "establishes a process that provides the dignity and respect that our Nation's first citizens deserve" and that it "un[does] the injustice that began so long ago." Senator Daniel Moynahan called the treatment of Native Americans "one of our greatest

failures" and praised the writers of the bill for moving forward to "rightfully…restore tens of thousands of remains to the families and tribes to whom these remains ought most appropriately be entrusted." Senator Daniel Inouye of Hawaii, who sponsored the bill in the Senate, argued that "Native Americans have waited a long time for this restoration of their rights" and urged the body "not to delay any longer in undoing this injustice that began so long ago."

The language used by legislators during the vote for NAGPRA suggest reconciliatory intent. The idea that NAGPRA would initiate a process of healing and force a reckoning for a derogatory and traumatic history of collection and scientific study aligns with other reconciliation efforts under the UNDRIP framework. The Twelfth Session of the Expert Mechanism on the Rights of Indigenous Peoples (2019) found that reconciliation requires "constructive action to address the ongoing legacies of colonialism," and NAGPRA provides for actions aimed at changing colonial anthropological structures, and was framed as a means of revitalizing culture through research and the return of Ancestors and sacred objects. Representative Campbell also expressed the hope that NAGPRA would shift the relationship between museums and Native Americans to encourage collaborative research and foster trust between the two largely antagonistic groups. It required the museum world to rethink its practices and codes of ethics to incorporate Native Americans as more than just objects of study, and implementation caused an upswell in public awareness of the vast number of Ancestors and stolen sacred objects and objects of cultural patrimony in American museum collections. To be sure, NAGPRA only addressed a relatively minor aspect of the historical relationship between the federal government and Tribal nations, and was only applicable to those tribes with federal recognition, but it was still clearly aimed at improving the relationship between Native Americans and the wider public.

While the passage of NAGPRA has the markings of reconciliatory intent, it has never explicitly been framed as such by the US government, nor has its implementation been a straightforward, peaceful, or healing process. NAGPRA has created a complex, drawn out, sometimes painful, sometimes restorative, process that has far outlived the original five-year timeline. There are various reasons for its rocky implementation. Most importantly, rather than prioritizing the requests of pro-repatriation advocates, the original legislation "balanced" the interests of those in favor of repatriation with the interests of bioarchaeologists, the Association of American Museums (AAM), and other interest groups, including the Antique Tribal Arts Dealers Association (ATADA). This balancing limited the efficacy of NAGPRA implementation, particularly in the 1990s and early 2000s.

First, the balance of interests required that only objects that were demonstrably "inalienable" were eligible for repatriation, as requested by ATADA. ATADA was concerned about the destruction of their market if everything created by a Native American individual was potentially subject to NAGPRA. The solution, to subject only collectively-owned, inalienable, objects to NAGPRA, simply created more problems. It led to courts making judgement calls about whether

or not sacred artifacts were tribal cultural patrimony or individually owned, which turned on the knowledge of the dealer and created dangerous incentives for purposeful ignorance. (See, for example, *United States v. Corrow*, 119 F.3d 796 (10th Cir. 1997); *United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999)). Second, the legislation restricted the definition of "museums," leading some holding institutions to argue they fell outside the scope of the law, despite holding otherwise NAGPRA-eligible collections. Third, the law allowed for the continued scientific study of remains and objects without tribal permission as a concession to bioarchaeologists, despite the fact that many tribes did not support scientific testing, and gave museums a right of refusal to repatriate objects of great importance to their collection. Finally, NAGPRA gave holding institutions the power to make final determinations of cultural affiliation based on curatorial interpretation of the proof of affiliation provided by tribes. By allowing museums to retain a position of power, rather than requiring joint agreement or placing the onus on tribes to determine cultural affiliation, NAGPRA created a significant loophole that museums have exploited to keep Ancestors and objects, self-determined to be "culturally unidentifiable," in their collections. Furthermore, NAGPRA's enforcement mechanisms have proven to be limited in scope and impact. The NAGPRA review board, to which tribes and museums can bring consultation disagreements, cannot issue binding determinations. While the board typically decides in favor of tribal applicants, there is no enforcement mechanism to ensure museums follow through with the board's recommendations.

Not only can museums decide what constitutes sufficient evidence of affiliation, and disregard the review board, but the process of inventorying collections and consulting with tribes has proved so onerous and financially difficult for museums that most have repeatedly missed deadlines without consequence. NAGPRA includes a schedule of fines for noncompliance, but few institutions have ever been fined, and those who have paid only paltry amounts; since 1990, twenty three allegations against museums have been raised, resulting in a mere $53,111.34 in fines. Sixty-three more allegations are awaiting adjudication.

While NAGPRA also provides access to the federal courts as an enforcement mechanism, Alexandra Eynon argues that litigation is rarely pursued by tribes. Litigation in the federal court system requires administrative sophistication, costs are prohibitively high, and the historic fragmentation of tribes, forced removal from homelands, and antiquity of some Ancestors and objects are all high barriers for entry and success in the court system.

The balancing of Native American against scientific, museum, and dealer interests, alongside the relative toothlessness of enforcement mechanisms and loopholes in the law, mean that the experience of repatriation under NAGPRA has varied tremendously. Some scholars are critical of its effect and manipulation by museums, while others argue that despite its challenges, the process of implementation has improved relations between museums and tribal groups by encouraging communication between different viewpoints.

In a powerful collection of musings on repatriation published in 2017, Sonya Atalay (Anishinaabe—Ojibwe) declared that "repatriation is healing." Chip Colwell, a curator at the Denver Museum of Science, argues that while healing, reconciliation, and justice are not mentioned in the text of NAGPRA, these themes became "an implicit goal and explicit outcome of repatriation." Repatriation became a tool of closure; the display and retention of Ancestors and objects in closed collections hindered the grieving process that could be eased by the process of return. While Colwell found that healing was not a universal outcome to the repatriation process, those he surveyed who felt NAGPRA "worked," who agreed that museums operated in good faith, and, importantly, those under 50, were more likely to believe that repatriation was healing. Others thought healing a worthy goal but were less sure it could actually be achieved due to the limitations of the law and resistance of some institutions, which offset healing benefits.

NAGPRA has the potential to have other reconciliatory effects as well. Eynon has argued that pro-repatriation advocates should make broader arguments about the public good of return of Ancestors and objects to engage the wider public. She suggests that broadcasting the process of repatriation can do more for public knowledge generation and access than museums hoarding collections away in back rooms. The process of forced engagement has also contributed to healing and reconciliation in practice. NAGPRA required museum practitioners to talk to descendant communities, and vice versa, by necessity opening dialogue to help those affected understand the process. For example, in the early 2000s professors in the museum studies and American Indian studies departments at San Francisco State University used NAGPRA to guide joint lectures to graduate students in each program. Their co-teaching covered implementation, problems, and potential solutions, which ultimately developed into a workshop bringing together museum practitioners, tribal repatriation officers, and other interested tribal members, to talk about what implementation looked like and how the process could be improved. The workshop was purposefully run outside of an active consultation process to encourage participants to ask questions and express views without the pressure of a specific repatriation event looming. The workshop organizers argued that without NAGPRA, their students would never have crossed paths in a collaborative environment, and found that participants hoped for ongoing dialogue, (re)building of trust, and future "healing and understanding."

While implementation has been plagued by resistance from museum professionals, the realities of nineteenth-and early twentieth century collections management, and repeated setbacks in the consultation process, NAGPRA does represent an attempt at reconciliation that has fostered change over time in the relationship between museums and tribal nations. No other country has yet to create any repatriation legislation that approaches the nature and scale of NAGPRA. The frustratingly slow pace of implementation has also meant that more than one generation has now engaged with the repatriation process, allowing for revision, new attitudes, and the internalization of decolonial and human rights-based codes of ethics in younger practitioners. It

also means that public awareness of the presence of Ancestors in museum collections has grown and encouraged the Department of the Interior to write new guidance, reducing the loopholes in the law and putting pressure on still-recalcitrant museums. Repatriation may be a long and sometimes painful process, but it has also been a sustained process that has wrought significant change. As Stephen Nash and Chip Colwell emphasize, repatriation has "stimulated and brought about fundamental changes in anthropology, archaeology, and museum studies, not to mention tribal cultural and religious practices…NAGPRA tends to alter everyone who encounters it."

Conclusion

Reconciliation under UNDRIP—the pursuit of truth and justice—is a process, and not one that the United States has explicitly undertaken, either inside or outside of the museum world. But the enactment of NAGPRA did force a reckoning, requiring museum practitioners to confront their history and their continuing collection practices head on, while slowly, and unevenly, returning Ancestors to their homes. NAGPRA has taken far longer to have its desired effect than expected, but it has also meant that the treatment of Native Americans as objects of study and collection as *wrong* has slowly penetrated the national consciousness. NAGPRA as part of an American process of reconciliation is not without its deep and serious flaws, but in design, if not in large scale execution, it may be seen as a step towards better relations. It remains to be seen whether under the newly issued rules from the Department of the Interior, which came into effect in January 2024, museums staffed with new, younger, more diverse and better trained practitioners can move the needle and help more tribal nations to heal on their own terms.

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Plural Provenance: Legal but Relational

Pictured: Brooms for indoor spaces on display at the Arna Jharna museum in Jodhpur
Image Source: Victoria Memorial Hall and Rustom Bharucha

Neha Khetrapal

The *Arna Jharna Museum* or The Desert Museum of Rajasthan in Jodhpur hosts a variety of brooms — tools for sweeping dust — that are highly likely to be interpreted as ethnographic artefacts in the conventional sense of the term. After all, why would brooms be placed inside a museum? Adopting a museological gaze, precipitated by the museum context, visitors — familiar with the conventional provenance stance that museums embrace — are likely to look for information that is useful in explaining the brooms' chain of ownership. This is because provenance for ethnographic artefacts entails information about their origin and source coupled with a trail of their ownership akin to walking into a museum and trying to understand who donated a precious piece of artwork or an antiquity; information that, in other words, helps in establishing an artefact's authenticity and legal title. Contrary to this most conventional expectation, the display of brooms at *Arna Jharna* is not associated with tags that display information that one expects to find within museum spaces, such as the following:

Object: Ethnographic Object
Origin: "Naga Hills," ca. 1905
Collector: E. ABC, Assistant Political Officer
Acquired: Donated to the Museum of Ethnology, City, 1908
Additional Notes: Displayed in Case 14 with Southeast Asian Ethnographic Objects

The displayed brooms narrate different stories or narratives that extend beyond ownership records and archival documentation — a story of the local materials that were used in their making, their use or functionality and the people that they represent. "Rather than focusing on numbers, the collection invites visitors to reflect on how objects of everyday use connect people to the environment — how resourcefulness, labour, and tradition come together in the act of making" (*Arna Jharna* Museum). For instance, some brooms have been created for indoor use and are — accordingly — made from the tender grasses of the area. These brooms could also be associated with the Goddess of Prosperity or *Goddess Lakshmi* and, hence, prepared in accordance with established ritualistic practices. Other brooms have been designed for outdoor labour and — hence — fashioned from coarser natural materials. Many of these brooms are also paired with their local names. Importantly, the display of these brooms presents an intimate connection between the local people and the very act of broom-making. As displayed, the finished products serve as a visual reminder of the social and economic realities of their makers.

The brooms — on display — are not portrayed as static ethnographic artefacts but the museum embeds these within the ecology of the region, livelihood, and socio-economic histories of their makers. In other words, they are heritage objects; they are relational. For the visitors, the brooms are not interpreted as mere artefacts but as subjects and as embodiments of relationships (human–material–land–history-society). The brooms and their materiality, in this regard, are inalienable from the desert landscape, from the skill of their makers, and from the dignity of sanitation workers whose work sustains society yet their voices remain marginalised. A mundane broom, in this way, is transformed into a relational heritage object. Its provenance enacted through entanglements with local practices and social relations rather than through a detached system of classification — characteristic of conventional museum displays.

Similar deliberations arise if one were to see heritage objects like *Pithora* paintings — a sacred and visual ritual art of the *Rathwa* tribes (along with the other tribes located in the central parts

of India), located in the Western Indian State of Gujarat — in a museum fashioned after the *Arna Jharna Museum*. Whilst no such museum currently is in existence, imagining the original housing sites of *Pithora* paintings as museum spaces allows us to see how different forms of provenance could emerge.

Pithora paintings are not created as artworks in the conventional sense of the term. They are painted on the inner walls of homes as part of a ritual undertaken to honour a local deity — *Pithora Dev*. The paintings are commissioned collectively, executed by trained ritual painters and accompanied by ceremonial enactments. Thereafter, these are permitted to fade — as part of the cycle of ritual obligation.

If such paintings were to be removed from their original sites and placed within conventional museum spaces then legal provenance would give way questions like 'Who owns the painting?', 'Who commissioned it?', 'In which year was it made?' and 'How was it acquired?'. These questions, crucial for governance and collection, would tell us very little about why the paintings exists at all. *Pithora* paintings, just like the brooms of the *Arna Jharna* museum, resist compression into ethnographic artefacts. It's of import to underline that the significance of these paintings do not lie in their title of ownership. Instead, they draw their significance from their participation in communal life. Once severed from their communal and relational life, their provenance is compressed into a thin legal trace — dominated by a linear chain of ownership.

Legal vs. Relational Provenance

The brooms of *Arna Jharna* coupled with the imagined placement of *Pithora* paintings in conventional museum spaces reveal a divide between two different ways of 'knowing' about heritage objects:

Legal / Conventional Provenance	Relational Provenance
Ownership, acquisition, and transfer	Focuses on ritual, uses, communal knowledge, ecological relations and other communal relationships
Establishes authenticity with the help of documentation	Establishes meaning through practice and collective participation
Treats objects as static and collectible	Treats objects as living
Privileges archival records and donors	Privileges community memory and oral history
Enables legal governance and market circulation	Enables ethical engagement and cultural and even religious continuity

This table reveals what may be labelled as *provenance compression* — a process through which complex relational histories are compressed into minimal legal descriptors. Yet when assembled together, relational and conventional provenance have the potential to unearth complementary forms of knowledge. In other words, evidentiary clarity paired with relational depth. Such complementarity or *plural provenance* permits scope for a more ethically robust understanding of heritage objects and even ethnographic artefacts within museum spaces.

Plural provenance, in this regard, proposes a coupled framework —a framework that permits legal records to exist alongside relational narratives. Within such a coupled framework, the emphasis is not tilted in one direction — construing heritage objects merely as legally defined objects, supported by documents, receipts, certificates and other kinds of evidentiary materials, or focused on addressing sociocultural and socioreligious contextual details. Rather, there is an equivalent emphasis on both. At the *Arna Jharna*, a broom does not assume significance because it is hosted. It is significant and merits display because it remains connected. Along similar lines, a *Pithora* painting is also significant because it is ritualistically performed and collectively remembered.

Conclusion

Contemporary deliberations about cultural heritage are increasingly inspired by the lingual currency of legal transfer and restitution. Thoughts about the acquisition of a (heritage) object and its legal claim dominate restitution efforts and museum governance. Along these lines, justice is deciphered as a corrective transaction — when an object moves back from one holder to another. Yet, this logic of transfer is not in line with how communities may imagine the embedded-ness of their objects — as discussed with the help of brooms and *Pithora* paintings. For these and other similar communities, their heritage objects are inalienable from their ritual, social, ecological and their religious worlds. A *Pithora* painting can fade with time but these cannot be separated from the originating socioreligious worlds and, as such, cannot be transferred like an artwork or an archeological find. In a similar fashion, a broom at the *Arna Jharna* does not undergo changes in significance through ownership but its importance lies in its sociocultural and ecological embedded-ness.

Legal provenance, essentially, translates objects into transferable units but relational provenance — on the other hand — unsettles this assumption. Engagement with relational provenance reveals that displacement of heritage objects is simply not a historical wrong but a conceptual misfit. Plural provenance offers a way forward, here. By coupling legal and relational understandings together, the plural provenance framework opens space to deliberate why justice may not always lie in transfer but in recognising the embedded-ness of heritage objects. In this manner, plural provenance does not weaken legal frameworks — rather — it exposes their limits but supplements them with alternate forms of knowledge. If museums are to ethically engage with people's heritage in a global context then they must confront comparatively complex deliberations than individual ownership. For several communities, heritage objects do not exist as detachable property but as participants in ongoing social, ritual, and ecological relationships. And there are many more examples like that: *Naga skulls* that embody clan, lineage, and territorial meanings, a deity's sculpture that is blessed, worshipped, and feared, and *Māori taonga* that encode genealogies (amongst other examples). Recognising relational provenance, therefore, propels museums to re-think what justice might look like when heritage objects are involved.

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