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Museums as Duty-Bearers of Human Rights

*Shifting Museological Practice and the Assertion of a Regulatory
Governance Model*

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Abstract

For decades there has been a push to bring museums into alignment with current thought on how history can be shared in a way that is more relevant for society today. This thesis draws on recent thought and theories of practice in museums that coincide with these shifting perspectives, centering on the questions of how museums are already acting as de facto human rights duty-bearers, and how they might come to be viewed on a broader scale as duty-bearers for human rights. I opted to situate my research in relation to Indigenous rights in the United States, as an updated version of NAGPRA (Native American Graves Protection and Repatriation Act) regulations has created a moment in time when those involved in the museum sector have a strong focus on Indigenous-museum relations, drawing attention to practices and policies that may be out-of-date. With Historic St. Mary's City as a starting point for this research, I interview museum professionals, many of whom are Indigenous, to explore perspectives on the themes of shifting museum practices towards a human rights museology. Through the data, I came upon the idea that regulatory governance could be utilized in museums, or the museum sector writ large, and by utilizing grounded theory, I posit potential answers to the question of how museums could be viewed more broadly as duty-bearers of human rights.

Keywords: museums, human rights museology, duty-bearer, human rights, Indigenous rights, regulatory governance, Historic St. Mary's City

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Introduction

Museums, since their inception, have been engaged in the exploitation of historically marginalized communities, particularly Indigenous communities. As ‘cabinets of curiosities’,¹ museums have obtained and exhibited in extraordinary amounts collections of Indigenous artifacts and remains, placing them on display for members of the upper class. There has been a push in recent years to bring museums into alignment with current thought on how history can be shared in a way that is both more relevant and respectful for people not just of the past, but of today. Museum practice and museology, which is defined as ‘the science or profession of museum organization and management’,² has been shifting in response to continuous advocacy and changing paradigms of theory. New museological theories such as the new museology,³ appropriate museology,⁴ and human rights museology⁵ have evolved through the years, gaining practitioners among museum professionals. As museums throughout the sector seek to shift their museological practice, deciding which direction their museology will take must actively be considered.

1.1 Research Aims

Through an exploration of literature and interviews conducted with museum professionals, this thesis aims to understand how museums have been and continue to reassess their practices as they relate to historically marginalized communities. Indigenous community angles receive the focus of this study, as issues of Indigenous rights are what is currently at the forefront of driving factors that are pushing museums to reevaluate their practice. The issuance of updated regulations of the Native American Graves Protection and Repatriation Act (NAGPRA) that occurred in January 2024 has

¹ S. E. Weil, ‘A cabinet of curiosities: inquiries into museums and their prospects.’, Washington, Smithsonian Institution Press, 1995.

² Merriam-Webster, ‘Museology’, *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/museology>, (accessed 18 May 2024).

³ P. Vergo, *The New Museology*, London, Reaktion Books, 1989.

⁴ C. F. Kreps, ‘Appropriate museology in theory and practice’, *Museum Management and Curatorship* vol. 23, no. 1, 2008.

⁵ J. Carter and J. Orange, ‘Contentious terrain: defining a human rights museology’, *Museum Management and Curatorship*, vol. 27, no. 2, 2012.

caused museums to turn even more starkly towards reassessment of their practices. While NAGPRA itself is not central to the research, the release of new regulations has provided a moment in time where those involved in the museum sector have a strong focus on Indigenous-museum relations, drawing attention to out-of-date practices and policies. Pulling from recent thought and theories of practice in museums that coincides with these shifting perspectives, this thesis endeavors to explore potential answers to the primary research question: how are museums already acting as de facto human rights duty-bearers, and how they might come to be viewed on a broader scale as duty-bearers for human rights?

Historic St. Mary's City (HSMC), a museum of archaeology and historical interpretation in southern Maryland, is used as a starting point and case study for this research. HSMC is currently working within these shifts of museum practice with heavy consideration to Indigenous-museum relations. Utilizing HSMC personnel and connections as the initial foray into conducting interviews, a snowballing technique to find other interviewees for the thesis led to a broader image of the museum sector.

Through an inductive process, the notion that perhaps through regulation museums could be considered more broadly, and perhaps even beyond a moral or ethical notion, as duty-bearers of human rights began to develop. Via discussion with interlocutors, the formulation of a grounded theory relating to how one might answer the second half of the research question began to emerge. Further research led to the exploration of how it could be possible for regulatory theory to be employed in museums, or the museum sector writ large. Based on data collected from the interviews, as well as a substantial body of previous literature, this thesis articulates a potential way that museums might come to be viewed as duty-bearers of human rights via the assertion of a regulatory governance model.

Context

This section provides context for the issues and frames that are engaged with throughout the thesis. Background information on current restructurings within the United States museum sector, Historic St. Mary's City, and the politics of language within United States museums is presented.

2.1 Current United States Museum Restructurings

The restructuring of museums is not a new phenomenon. The United States has seen, since 1960s, open advocacy for changes in museum practices. Much of this has focused on Indigenous rights, and measures have been enacted by the federal government that addressed mounting pressure for changes in museum practice. The National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 both address museums directly and 'provide for the return of Native American human remains and funerary objects to proper Native parties; and NAGPRA also includes other cultural items such as sacred objects and cultural patrimony within its provisions'.⁶ The creation of NAGPRA regulations was a tremendous step towards implementing Indigenous rights in the US context, as 'NAGPRA is seen as human rights legislation since it embodies the basic principles and concerns expressed in human rights instruments such as the United Nations Draft Declaration on the Rights of Indigenous Peoples.'⁷ This references the draft declaration of UNDRIP because UNDRIP was not confirmed at the United Nations (UN) until 2007.

The establishment of such legislation was prolific, causing ripples throughout the museum world as alterations to museological practice began taking shape to accommodate for the new regulations.

⁶ W. Echo-Hawk, 'Preface', in *Mending the Circle: A Native American Repatriation Guide: Understanding and Implementing NAGPRA and the Official Smithsonian and other Repatriation Policies*, edited by B. Meister, New York, The American Indian Ritual Object Repatriation Foundation, 1996, p. 1.

⁷ C. F. Kreps, *Liberating Culture: Cross-cultural perspectives on museums, curation and heritage preservation*, London and New York, Routledge, 2003, p. 83.

The Act, in addition to protecting burial sites, provides a process for museums and Federal agencies to repatriate human remains, sacred objects, and other items of cultural patrimony to lineal descendants and culturally affiliated tribes. NAGPRA requires museums to make inventories of Native American human remains and cultural materials in their collections, and in consultation with tribal representatives to determine their “cultural affiliation.” Under the law, museums are then required to make these inventories and pertinent information available to tribes who, in turn, can make requests for repatriation.⁸

Repatriation was central to advocacy and is seen reflected here in how museums are required to proceed regarding Indigenous collections. ‘This is a basic human rights conversation as well, and of course it was after years and years of, you know, Native protest and activism that the law passed’.⁹

Although decades have passed since its initial introduction, there are many museums with Indigenous collections and ancestral remains that are still resistant to abiding by NAGPRA regulations and have found loopholes to exploit and maintain their hold on collections. With continued advocacy efforts from Indigenous communities, the Department of Interior issued a new, updated version of NAGPRA, which came into effect earlier this year. This has caused yet another ripple across the museums sector as museums scramble to assess and redesign their exhibitions and practice in order to be in compliance with the new regulations. In discussing the original NAGPRA document, Kreps claims that ‘NAGPRA represents a profound shift in power relations between museums and source communities, and has led to a radical rethinking of museological practice and ethics’.¹⁰ This remains true as we witness the effect of new NAGPRA regulations across the sector, as even institutions that technically are not required to abide by NAGPRA, due to lack of collections that relate to federally recognized tribes, are taking pause to reassess their practices.

⁸ C. F. Kreps, ‘Appropriate museology and the “new museum ethics”: Honoring diversity’, *Nordisk Museologi*, vol. 2, 2015, p. 13-14.

⁹ ‘Fight at the Museum’, *Today Explained* [podcast], interview with Mary Hudetz and Catherine Roberts Shteynberg, Vox, 22 Feb 2024, (accessed 9 March 2024).

¹⁰ Kreps, ‘Appropriate museology and the “new museum ethics”’, 2015, p. 14.

2.2 Historic St. Mary's City

Historic St. Mary's City (HSMC) is a museum of archaeology and living history interpretation in southern Maryland, situated at the site of the first permanent colonial settlement and capital, until 1695, in what is now Maryland. HSMC was created via Governor appointment in 1965 and 'in 1997, it was made an independent agency within the office of the Governor [...]'.¹¹ The official mandate of the HSMC Commission is 'with emphasis on the 17th century, [that it] studies the history of St. Mary's City, interprets that history for the public, and preserves its archaeological evidence'.¹² As this mandate might indicate, 'stories of life before and after the capital period, while investigated and reported during the typical archaeological research process, have not been a strong focus of HSMC's public interpretation plan until relatively recently'.¹³ In recent years, HSMC has been making efforts to shift its museological practice to be more in line with current standards of best practice and looking to the future of best practice through their continued efforts.

HSMC recognizes that they are in the early stages of enacting a shift in their museological practice, but is committed to seeing it through, despite any bumps in the road they may encounter along their journey.

Historic St. Mary's City began in 2018 with earnest efforts to realign its narrative by working with local communities. The work has only just begun. However, the opening of the exhibition in the visitors' center that resulted from collaboration with African Americans, Native people, advocates for people with disabilities, and representation from the local Naval base will make evident the broader, deeper, and more inclusive interpretation of the history of the place called St. Mary's City.¹⁴

¹¹ Maryland State Archives, 'Historic St. Mary's City Commission', *Maryland Manual On-line: A Guide to Maryland and Its Government*, Annapolis, MD, Maryland State Archives, 2023, <https://msa.maryland.gov/msa/mdmanual/25ind/html/43hsmf.html>, (accessed 11 January 2024).

¹² Maryland State Archives, 'Historic St. Mary's City Commission', 2023.

¹³ R. Faden and T. Parno, 'Chipping Away at the Colonialist Lens: Collaborative Research and Interpretation of Early Colonial Maryland', *The Public Historian*, vol. 44, no. 4, November 2022, p. 128.

¹⁴ Faden and Parno, 'Chipping Away at the Colonialist Lens', 2022, p. 131.

HSMC maintains an enthusiastic optimism throughout this shifting process and continually pursues their goals, knowing that the road to true, sustainable change in practice requires an often-slow-moving pace that must remain persistent. With HSMC embarking on this journey of transition, the museum is in the process of enacting a shift in museological practice that closely aligns with my interests and as such, HSMC is an excellent case study for this thesis.

2.3 A Politics of Language

It is important to provide a brief context for the politics of language at play in the United States as it relates to museums and the notion of duty-bearer. It is necessary to provide a working definition that is utilized to frame the conceptualization of what exactly is a duty-bearer. Duty-bearers are understood to be ‘those actors (sectors, organisations and networks) who have a particular obligation or responsibility to respect, protect and fulfil human rights, and to abstain from human rights violations’.¹⁵ It is recognized that the dominant legal view within the global context of a duty-bearer is more limited, applying only to States, as they are the only signatory actors to UN treaties. For the purposes of this thesis, a broader stance is taken that encompasses the obligation of actors that extend beyond the reach of the highest levels of government and pervade other aspects of society, such as museums.

In the US context, there is a butting of heads when it comes to the language of human rights and that of civil rights. Whereas the language of human rights is used in the European context, the US prefers to operate via civil rights language. This can be attributed to a low US ratification rate of human rights documents at the UN level and an insistence at the federal level that the US does a good enough job addressing human rights while utilizing their preferred language of civil rights, although this is a highly refuted position. In order to make clear the distinction between the two,

[a] simple definition is that human rights are the rights you have simply for

¹⁵ H. A. McGhie, ‘Museums and Human Rights: human rights as a basis for public service’, *ResearchGate*, UK, Curating Tomorrow, 2020, https://www.researchgate.net/publication/347495583_Museums_and_Human_Rights_2020 (accessed 28 December 2023), p. 24.

being a human being. Comparatively, civil rights are contextual, meaning you are entitled to specific civil rights through being a citizen of a particular country, nation, or state. Civil rights are proclaimed by the government for the citizens of that country, while human rights are derived from natural law and are universally protected and applied.¹⁶

Although there is debate regarding human rights as derived from natural law and being universally protected and applied,¹⁷ the sentiment expressed here holds; that civil rights are the rights assigned to citizens and human rights are those applied to all humans, regardless of citizenship status. The similarities and connection between civil rights and human rights is also a fine line, '[...] as civil rights are determined by the laws or constitutions of an individual country, and human rights are considered universal to any human being, some human rights become civil rights when governments choose to put those rights into national laws'.¹⁸ The process in which human rights become implemented into national law is known as ratification. However, it is argued that signatory States have an obligation to implement human rights in their countries even if they have not yet achieved full ratification within their national legal systems.

The significance of the distinction between civil and human rights, as well as reasonings for using one over the other, are detailed in the discussion section as they relate to museums and the status of duty-bearer. Choice in language usage has implications, as can be seen in fields such as law, where language is the building block upon which law is built. The language of law is incredibly important as it is highly scrutinized to determine what is permissible and what is not, and every nuance can give rise to significant arguments. Therefore, the language we use matters and choosing to omit certain words or phrases can drastically impact meanings and permit greater fluidity in interpretation, which is not always a good thing, particularly where issues of a person's rights are concerned.

¹⁶ Usidhr.org, 'Human Rights vs Civil Rights', *US Institute of Diplomacy and Human Rights*, 2021, <https://usidhr.org/human-rights-vs-civil-rights/>, (accessed 17 February 2024).

¹⁷ M. Freeman, *Human Rights*, Cambridge and Malden, Polity Press, 2017.; M. Halme-Tuomisaari and P. Slotte, *Revisiting the Origins of Human Rights*, Cambridge, Cambridge University Press, 2015.

¹⁸ Usidhr.org, "Human Rights vs Civil Rights", 2021.

Previous Research

In this section, a background within literature is provided that will be used as a stepping-stone for this thesis. Much of the background for the literature that is used is woven throughout the theory section as well. Therefore, included within this section is other relevant information related to the theories and topics discussed throughout the thesis, such as an explanation of museology and earlier notions of what museums are, as well as a grounding for regulatory governance, inclusive of the origins of regulatory studies as a field and the pairing of regulation and governance.

3.1 Museums and Museology

Museums are facing a dramatic shift in how they operate and what they exhibit. Although the changes themselves may be new, the shifting of museums in some way or other to better fit within society has been around for decades. In the early history of museums in the Western world, museums were ‘cabinets of curiosities’,¹⁹ where they ‘[...] served as the receptacles of Indigenous objects and took on the role of representing Indigenous peoples and cultures’.²⁰ The crowds to which they catered were upper-class white folks, and if studies of museum attendance in the United States today are to be believed, not much has changed in terms of demographic appeal.²¹ However, museums have been making shifts in practice for decades, leaving behind older, outdated styles of museum practice for ones that fit with a more contemporary society within which they find themselves, with ‘[...] increased emphasis on inclusion and diversity that are the hallmarks of postmodern museology [...]’.²² ‘This rise of issues-based museology has challenged the eighteenth-century conception of the museum premised upon a collection of physical objects, with the core functions of collecting, conserving, exhibiting, and interpreting these objects’.²³ Museums are now

¹⁹ Weil, ‘A cabinet of curiosities’, 1995.

²⁰ C. Gordon-Walker, ‘Beyond Inclusion: Canadian and Indigenous Sovereignties in Mainstream Museums’, *BC Studies*, no. 199, Autumn 2018, p. 136.

²¹ A. Olivares and J. Piatak, ‘Exhibiting Inclusion: An Examination of Race, Ethnicity, and Museum Participation’, *Voluntas*, vol. 33, 2022, p. 122.

²² Carter and Orange, ‘Contentious terrain’, 2012, p. 111.

²³ Carter and Orange, ‘Contentious terrain’, 2012, p. 114.

attempting to shift away from the cabinet of curiosities model that categorizes their colonial and imperial legacy and ‘[...] are now challenged with confronting the historical imbalances of power that have marked their relationships with indigenous people, and are forced to redefine their strategies, roles, policies, and programs as they affect people and their cultural heritage’.²⁴ As museums pivot away from these outdated practices, it is important that museums maintain an awareness ‘about liberating our thinking from a Eurocentric view of what constitutes a museum and museological practice’,²⁵ particularly as they endeavor to alter their relationship to historically marginalized communities, such as those of Black, Queer, and Indigenous peoples.

There is much literature in existence that involves the development of various museologies over the past several decades. The bulk of this literature has been focused on the practices employed in museum settings, as that is what museology is all about. As this relates to rights, curation, repatriation, and exhibition have been central, with conversation revolving around ways to decolonize the work that museums do, such as engagement with communities that have historically been marginalized.²⁶ In regard to how museums go about efforts to alter their practice, community engagement and shared authority are at the core of narratives of self-representation and self-determination.²⁷

Rather than belabor the various museological theories that have emerged in recent years, as those relevant ones are detailed in the theory section, this focuses on

²⁴ Kreps, ‘Liberating Culture’, 2003, p. 2.

²⁵ Kreps, ‘Liberating Culture’, 2003, p. 19.

²⁶ S. B. Anderson, ‘Museums, Decolonization and Indigenous Artists as First Cultural Responders at the new Canadian Museum for Human Rights’, *Museum & Society*, vol. 17, no. 2, July 2019, pp. 173-192.; A. Lonetree, *Decolonizing Museums: Representing Native America in National and Tribal Museums*, Chapel Hill, University of North Carolina Press, 2012.; L. Phillips et al., ‘Dazhiikigaadeg Maanendamowin: Wanichigewin gaye Wijiwidwin gii-ayaag COVID-19 / Transforming Grief: Loss & Togetherness in COVID-19 Exhibition at Fort York in Tkaronto/ Toronto, Ontario, Canada, 24 March 2023 – 07 January 2024’, *Museum & Society*, vol. 21, no. 3, November 2023, pp. 131-153.; G. Tayac, ‘Authoring Indigenous Studies in Three Dimensions: An Approach to Museum Curation’, in *Sources and Methods in Indigenous Studies*, edited by C. Andersen and J. M. O’Brien, London, Routledge, 2016, pp. 230-238.; I. Vamanu, ‘Indigenous Museum Curatorship in the United States and Canada: Roles and Responsibilities’, *De Gruyter*, 2020, pp. 1-15.

²⁷ Gordon-Walker, ‘Beyond Inclusion’, 2018.; A. Perla, ‘Centering the Human in Human Rights Museology’, *COMCOL Newsletter*, no. 36, January 2021, pp. 4-17.; L. Van Broekhoven, ‘On Decolonizing the Museum in Practice’, *Journal of Museum Ethnography*, no. 32, March 2019.

some of the foundational aspects of human rights museology. Human rights museology has been defined ‘[...] as an evolving body of theory and professional practices underlying the global phenomenon of museums dedicated to the subject of social injustices, one that is fundamentally changing the form and nature of museum work’.²⁸ As an emerging theory of museological practice, there are still plenty of minor issues to be worked out, such as how the theory can best be implemented. In relating museum practice to human rights, some have been attempting to marry the two since UNDRIP was in its drafting phases. Even before it came into force, UNDRIP was being utilized by some museum professionals as an ethical guideline for work involving Indigenous peoples and collections,²⁹ situating human rights within museological practice. The incorporation of human rights into museum practice was logical then as it is logical now, because ‘[...] if museums are to continue to help us understand the past and navigate our future, then museum studies must engage critically with legal and cultural governance debates in local and global contexts’.³⁰ Such debates of legal and cultural governance lead directly to human rights, as they are an overarching, international standard, particularly when it comes to debate on ethics and moral obligation. One can argue that ‘as museums continue to negotiate their changing relationships with indigenous peoples they are being increasingly drawn into the human rights arena’.³¹ This is one example of human rights becoming more enmeshed with museums as they relate to both cultural governance and society, establishing the need for a human rights museology as it unfolded within the field.

As mentioned above, there is well documented evidence of the growth of human rights making its way into museology, with attempts to utilize human rights during the drafting of UNDRIP. Human rights, and UNDRIP in particular, receive much attention in the present-day context of museums globally. The Canadian Museums Association has created a guideline for implementing UNDRIP in museums across Canada that lists thirty standards of practice.³² Interestingly, another document relating to implementing

²⁸ Carter and Orange, ‘Contentious terrain’, 2012, p. 112.

²⁹ A. Galla, ‘Indigenous Peoples, Museums and Ethics’, in *Museum Ethics*, edited by G. Edson, London and New York, Routledge, 1997, p. 140-155.; Kreps, ‘Liberating Culture’, 2003.

³⁰ J. N. Erni, ‘Discerning the Human Rights Museum’, *European Journal of Humanities and Social Sciences*, vol. 2, no. 4, July 2022, p. 7.

³¹ Kreps, ‘Liberating Culture’, 2003, p. 80.

³² S. Danyluk and R. MacKenzie, *Moved to Action: Activating UNDRIP in Canadian Museums*,

human rights standards in museum contexts was published in the United Kingdom a couple years prior, indicating that individuals and institutions alike are at work figuring out how to utilize human rights in museum practice.³³ ‘Museums have duties regarding human rights wherever they impinge on people’s human rights through their ability or potential to contribute to the attainment of those rights, and where they undermine, or could undermine, those rights’.³⁴ The notion that museums have duties regarding human rights is illustrated here, calling attention to their position within society and the possibility of their infringing on a person’s or group’s rights. The standards set in both guidelines speak of the need for, among other things, continuous community engagement and even the need to ‘bring museum engagement and partnership activities beyond formal museum space by going into the community with whom the museum wants to engage’.³⁵ Both of these documents advocate for the inclusion of human rights in all aspects of museum work, from day-to-day business to how museums are structured and operate. It is a cornerstone belief of human rights museology that ‘[...] incorporating rights and rights-based approaches into museum’s activities can help them provide transparent, effective and transformative public service. The extent to which museums help people attain their rights is arguably the most profound measure of their value to society’.³⁶

3.2 Regulatory Governance

In order to understand regulatory governance, we must first look at regulation. Coming from the world of economics and business, regulation can be viewed as being ‘[...] about bureaucratic and administrative rule making and not about legislative or judicial rule making’.³⁷ Depending on which field you look at regulation from, it can have different characteristics. ‘For some, regulation is something that is done exclusively by government, a matter of the state and legal enforcement; while for

Canadian Museums Association, 2022, p. 34.

³³ McGhie, ‘Museums and Human Rights: human rights as a basis for public service’, 2020.

³⁴ McGhie, ‘Museums and Human Rights: human rights as a basis for public service’, 2020, p. 24.

³⁵ Danyluk and MacKenzie, *Moved to Action: Activating UNDRIP in Canadian Museums*, 2022, p. 34.

³⁶ McGhie, ‘Museums and Human Rights: human rights as a basis for public service’, 2020, p. 87.

³⁷ D. Levi-Faur, ‘Regulation and Regulatory Governance’, *Jerusalem Papers in Regulation & Governance*. Working Paper No. 1, February 2010, p. 9.

others, regulation is mostly the work of social actors who monitor other actors, including governments'.³⁸ No matter how you frame it, regulation involves the stipulation of rules or guidelines that the stated party must follow. It can be a tool of government or a tool of private social responsibility. In either case, there is strong argument for why regulation is needed, and that is for the separation of expert knowledge from government control, whether it be in relation to economic practices, good business standards, or maintenance of social order. There is sometimes a sense of unease when it comes to regulation, as some actors have been known to run away with the power and authority granted to them, but others insist that 'good regulation can control problems that might otherwise lead to bankruptcy and war, and can emancipate the lives of ordinary people'.³⁹ Further, 'regulation is a field where innovative moves are being made to integrate explanatory theory (ordered sets of propositions about the way the world is) and normative theory (ordered sets of propositions about the way the world ought to be)'.⁴⁰ In recognizing that much of human rights can be normative in nature, pairing it with regulation could be a way in which governments are held to account for their responsibility to act upon their international human rights obligations.

The use of regulation in concert with governance has been at the forefront of implementation of regulatory practices. "Regulatory Governance" is policies, tools, processes and institutions that are primarily concerned with developing, implementing, administering, enforcing new rules/decisions, and reviewing/revising regulation over time'.⁴¹ Regulatory governance in public social institutions is likely to focus on developing and implementing new rules or regulations that relate to the function they serve, whatever that may be. When it comes to the regulation of subject matter that occupies a global space, 'the notion of regulatory capitalism suggests that the study of regulatory governance should proceed beyond states, markets and societies into the identification of hybrid forms of regulation and towards the creation of autonomous

³⁸ Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 4.

³⁹ J. Braithwaite, C. Coglianese, and D. Levi-Faur, 'Can Regulation and Governance Make a Difference?', *Regulation & Governance*, no. 1, 2007, p. 4.

⁴⁰ Braithwaite, Coglianese, and Levi-Faur, 'Can Regulation and governance Make a Difference?', 2007, p. 4.

⁴¹ 'Principles for the Governance of Regulators', *Body of Knowledge on Infrastructure Regulation*, <https://regulationbodyofknowledge.org/revitalizing-and-reforming-regulatory-governance-for-infrastructure-in-post-fcv-environments/principles-for-the-governance-of-regulators/>, (accessed 11 February 2024).

regulatory spaces that blur the distinctions between the global and the national'.⁴² The implementation of human rights standards through the use of regulatory governance would be one such hybridization that bridges the global and the national. For those who do choose to take this angle of governance at the global level, regulatory governance is all about the setting of standards and implementation of soft law.⁴³

Regulatory agencies are:

[...] non-departmental public organization[s] mainly involved with rule making, which may also be responsible for fact-finding, monitoring, adjudication, and enforcement. It is autonomous in the sense that it can shape its own preferences; of course, the extent of the autonomy varies with its administrative capacities, its ability to shape preferences independently, and its ability to enforce its rules.⁴⁴

The regulatory agency, often separate from government, is still connected to government through limited oversight and appointment ability by either the president (at the federal level) or governor (at the state level). They are created with the purpose of overseeing the regulation of a certain aspect of government or society that can be conducted outside the direct oversight of the government. Often, experts are appointed to positions of authority over the agency and they are set up with boards and commissions who guide the trajectory of the agency and are responsible for dealing out its policies and regulations. While these are the main tenets of a regulatory agency, there are several different variations of regulatory agency. One such variation is 'integrity regulatory agencies (or pro-accountability regulation agencies) [which] deals with moral issues at the public sphere and safe guard accountability and other norms of conduct in the public sphere. Examples include autonomous corruption control bodies, independent electoral institutions, auditing agencies, and human rights ombudsmen'.⁴⁵ The inclusion of human rights ombudsmen in this variation of regulatory agency makes it unique and draws its connection to a hybridized version of regulatory governance that

⁴² Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 3.

⁴³ Levi-Faur, 'Regulation and Regulatory Governance', 2010.

⁴⁴ Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 15.

⁴⁵ Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 16-17.

bridges the international standards of human rights law to a national level of regulation.

Theory

In this section, the theories that are engaged with through the analysis to frame the argumentation and use as a starting point for the grounded theory are discussed. The museological approach that situates the analysis is discussed, explaining traditional museology of museums and how they have shifted in recent decades towards new theories of museology, culminating in the human rights-based approach to human rights museology. An overview of regulatory theory and how it may be utilized in this context is provided. The intention to use regulatory governance to argue for a grounded theory is elaborated, illustrating how it might be used to further advance the influence of a human rights museology.

4.1 Museological Theory

In the museum world, within the sector of historic cultural preservation and conservation, specifically in the North American context, there is a long history of museology, often referred to as a traditional museology, rooted in colonial and imperial ideals that focus more on collections and less on the people involved. Indigenous peoples in particular have experienced the harm done by the museum sector more than perhaps any other demographic, with items, so-called artifacts, and even people themselves being taken and utilized throughout the colonial period, extending into the present. Emphasis was placed on the production of knowledge, and museums acquired collections to conduct research, which often had racial undertones. In recent decades, since the 1980s-90s, there have been efforts made to shift beyond this notion of a traditional collections-focused museum towards a future where museums are more people-focused. Turning towards community in this way is, in the minds of many, essential to keeping museums alive, as there has been a steady decline in the relevance of museums. Museum professionals and institutions have been reassessing how best to alter their former practice and shift towards a new method of knowledge creation, interpretation, and presentation. With expanding understandings of where knowledge can come from and what counts as knowledge, museums have been attempting to broaden their horizons, so to speak, opening themselves to different perspectives that

for so long were rarely given the light of day beyond a recognition that these other perspectives existed. As institutions set up for the benefit of the public, at least in a more current understanding of the formulation of museums and their purpose, their missions are often aimed at preservation, conservation, and education of the public, specifically the local community in which they are located. With this vision, it is logical that museums should desire to create a more people-focused institution. The question remains, however, how best such an adjustment might be accomplished.

This question has been the primary focus for many who both work in and study museums and other historic preservation and conservation organizations. Social scientists across the sector have taken to theorizing new methods of practice, or museologies. One of the early, more dominant approaches is that of new museology, which is a people-focused approach that embodies the shift in the sector. Developed from the International Council of Museums (ICOM) and solidified by the Declaration of Quebec in 1984, ‘the new museology is primarily concerned with community development and social progress’.⁴⁶ The new museology movement has greatly influenced the sector and has acted as a catalyst for further advancement in theorizing museological practice. At its root, and what has been key in enabling further development, is that ‘new museology is fundamentally concerned with the democratization of museum practices and bottom-up, participatory approaches. It stresses the importance of community or public participation in museums, not only as visitors, but also as participants in all aspects of museum work’.⁴⁷ It is precisely this centering of community and the public through democratization that has solidified new museology as the epicenter of further museological development.

From this point, other developments in museological practice have been given the space to emerge. One such emergence is that of appropriate museology, which takes new museology as a stepping-stone.

Appropriate museology is an approach to museum development and training that adapts museum practices and strategies for cultural heritage preservation

⁴⁶ Kreps, ‘Liberating Culture’, 2003, p. 9.

⁴⁷ Kreps, ‘Liberating Culture’, 2003, p. 10.

to local cultural contexts and socioeconomic conditions. It is a bottom-up, community-based approach that combines local knowledge and resources with those of professional museum work to better meet the needs and interests of a particular museum and its community.⁴⁸

In other words, appropriate museology utilizes professional museum practice and decides on a case-by-case basis which aspects of professional practice are best suited to the specific needs of the context, or the local dynamic the museum is situated within. Emphasis is placed on the community and takes what knowledge and methods are already being utilized and merges that with an appropriate level of professional museum practice and technique. This is a beneficial approach that can be used to adjust practices as needed given the local context, which is essential when working with Indigenous peoples, as well as other communities in which different ways of knowing may be employed in terms of handling objects and understanding the cultural perspectives that would otherwise be overlooked or ignored by museum professionals. Therefore, having an understanding of appropriate museology is essential to understanding the development of practice in the field.

The concepts of new museology and appropriate museology are utilized in this thesis as a way to view how museums are currently engaging in shifting museological practices. Whether they are doing so intentionally or not, the way in which museums operate currently is closely linked to these two styles of museology as they shift away from traditional museological practice.

4.2 Human Rights Museology

Another museological practice that has been building and gaining ground over the past couple decades is that of a human rights museology. This theoretical framing was developed from the growth of issue-based museums, particularly, those that came into being in the aftermath of atrocities such as apartheid in South Africa and the Holocaust, as well as other institutions established to address human rights abuses in

⁴⁸ Kreps, 'Appropriate museology in theory and practice', 2008, p. 23.

Lithuania, Cambodia, Chile, and Canada.⁴⁹ The Federation of International Human Rights Museums (FIHRM), established in 2010, is considered as a foundational organization from which the human rights museology has blossomed. David Fleming, a founding director of FIHRM, attributes 3 factors that illustrate the shift towards a human rights museology in practice:

“First, museums have adopted a greater focus on people versus collections, with the result that museums are increasingly ‘about’ stories and ideas. Second, museums have embraced a more emotive approach to communicating ideas. And third, through their increased work with minority, oppressed, alienated and excluded societal groups, museums have become more implicated in cultural diversity.”⁵⁰

These three factors that point to a shift in museological practice are central to later argumentation in this thesis. It provides a method of framing museology in a way that aligns both intention and manifestation of practice. The centering of human rights issues in how museums go about their business is a fundamental shift toward addressing societal concerns of the community which museums serve and connecting the past with the present-day.

The work of Perla takes this notion of a human rights museological theory and further elaborates the ways in which such theory might be put into practice. There is perhaps no better phrasing than the title of Perla’s 2021 article, ‘Centering the Human in Human Rights Museology’.⁵¹ This articulates their idea of how museums and other institutions might go about implementing a human rights museology, by centering the human aspect and keeping that as the central tenant by which all museum acts are assessed. Building on the works of the FIHRM and Carter and Orange’s theory, Perla contends that in order to best implement a human rights museology, one must do so in a manner consistent with a human rights-based approach (HRBA). Speaking from their extensive experience as both a human rights lawyer and a museum professional, Perla asserts that ‘museum practitioners have, intentionally or not, used a HRBA to help

⁴⁹ Carter and Orange, ‘Contentious terrain’, 2012.

⁵⁰ Carter and Orange, ‘Contentious terrain’, 2012, p. 114.

⁵¹ Perla, ‘Centering the Human in Human Rights Museology’, 2021.

them prioritize the meaningful participation and empowerment of historically marginalized voices in all processes of museum work'.⁵² While museums may already be doing this, likely without conscious intent, turning the consciousness toward this line of thinking (utilizing a HRBA) and beginning to use a HRBA intentionally will strengthen the work of museums and provide a stable footing for the continued implementation of a human-centered human rights museology.

As human rights museology is still expanding as a concept and practice, and there is an inevitable trial and error period of putting theory into practice, other elements may be added to diversify and strengthen the functionality of the theory. Beyond simply slapping on a HRBA to human rights museology, other theoretical aspects may be used in conjunction with this approach.⁵³ 'Human rights museology goes beyond using codified articulations of human rights and includes anti-oppression, anti-racism, decolonization, and Indigenization as the tenets of museum work'.⁵⁴ As museums begin to work more with marginalized communities that have been subject to numerous violations of their rights, marginalized perspectives also come to the foreground and need to be addressed and represented in appropriate manners. Issues of oppression, racism, and colonization that consistently linger in institutional spaces pose areas of conflict in merging the voices and perspectives of diverse groups as meaningful engagement urges institutions to confront these head on. In order to address possible issues that arise in an effective and human-centered manner, Perla asserts that a commitment to the principles of anti-oppression, anti-racism, decolonization, and Indigenization must be embedded in museums' approach. The blending of these principles, which are often overlooked or undervalued in human rights work, into a human rights museology could strengthen its efficacy.

The adoption of these principles into museological practice is essential and is best illustrated through explanation of decolonization versus Indigenization. Within both the museum and human rights sectors, there is often misunderstanding and

⁵² A. Perla, 'Democratizing Museum Practice Through Oral History, Digital Storytelling, and Collaborative Ethical Work', *Santander Art and Culture Law Review*, vol. 2, no. 6, 2020, p. 202.

⁵³ Perla, 'Centering the Human in Human Rights Museology', 2021.

⁵⁴ Perla, 'Democratizing Museum Practice Through Oral History, Digital Storytelling, and Collaborative Ethical Work', 2020, p. 202-203.

conflation regarding the two terms and why both are necessary in order to move forward effectively with a HRBA. Decolonization is the act of dismantling colonization, the stripping away of aspects that perpetuate colonial dominance. The work of decolonization is necessary, but this is where many seemingly end, believing that decolonial acts are enough of a change to right wrongs, that repatriation of objects and remains is the end goal and once that has been accomplished, the work is essentially complete, and museums can go about their business.⁵⁵ Indigenization importantly challenges this notion and calls for further action.

If decolonization is the removal or undoing of colonial elements, then Indigenization could be seen as the addition or redoing of Indigenous elements.... Power, dominance and control are rebalanced and returned to Indigenous peoples, and Indigenous ways of knowing and doing are perceived, presented, and practiced as equal to Western ways of knowing and doing.⁵⁶

In the practice of Indigenization, the focus is shifted away from simply dismantling colonialism, where emphasis is still on the colonizer, and is re-centered on building up and instituting Indigenous ways of knowing and doing. Understanding the distinction between the two is vital to the success of a HRBA and how a human rights museology could be applied.

The concept of human rights museology, and particularly a HRBA to human rights museology, are utilized in this thesis to frame how some museums are already acting in accordance with some key aspects of this museological theory. Further, this framing of museological practice is also utilized in assessing how museums could become viewed more broadly as duty-bearers and, in conjunction with the following theory, be used to assert this broader viewing of museums as duty-bearers.

4.3 Regulatory Theory

⁵⁵ Perla, 'Centering the Human in Human Rights Museology', 2021.

⁵⁶ Centre for Teaching and Learning, 'What is Decolonization? What is Indigenization?', Queen's University, Kingston, 2023, <https://www.queensu.ca/ctl/resources/decolonizing-and-indigenizing/what-decolonization-what-indigenization#:~:text=If%20decolonization%20is%20the%20removal,meaningfully%20change%20practices%20and%20structures.,> (accessed 8 March 2024).

As illustrated in the previous research section, there are numerous ways to situate what regulatory agencies are, what they look like, and what they do. Broadly speaking, most regulatory agencies deal with the creation and adjudication of regulations or policies. Beyond that, and to arrive at the deliberation of what aspects of regulation are relevant in the museum context, it is necessary to cover the elements of regulatory theory that will be utilized for analysis. There is no one set idea of how regulation can be defined, with all variations seeming to lack one element or another. One way of looking at it is that ‘regulation occurs, we might say, when a public body issues directives and enforces them’.⁵⁷ However, this view leaves out how regulation can be utilized in the private sector, illustrating the lack of a satisfactory definition for regulation.

The use of regulation in museums has potential. ‘Regulatory approaches require government agencies to restrict or direct the activities of regulated parties using terms and conditions within statutory and regulatory instruments, operating permits, licences, approvals or codes of practice’.⁵⁸ Through regulatory governance frameworks, regulations could be set forth and adhered to based on standards that are set by the regulatory authority. If federal and state museums that are already identified as independent agencies are reformulated through a framework of regulatory governance, the de facto status of museums as human rights duty-bearers can be shifted into something more substantial. ‘Regulation can be conceived as that large subset of governance that is about steering the flow of events and behavior [...]’.⁵⁹ This line of thought that views regulatory governance as a steering mechanism and apply this to how it might be used in conjunction with a human rights museology to strengthen museums’ status as duty-bearers is engaged with. How this might look in implementation will be further detailed in the discussion section.

⁵⁷ M. D. Adler, ‘Regulatory Theory’, *All Faculty Scholarship*, Penn Carey Law: Legal Scholarship Repository, no. 301, 2009, p. 591.

⁵⁸ Environmental Tools Guide, ‘Regulatory approaches’, *Alberta*, <https://www.alberta.ca/regulatory-approaches#:~:text=Tool%20limitations-,Overview,approvals%20or%20codes%20of%20practice.,> (accessed 23 March 2024).

⁵⁹ Braithwaite, Coglianese, and Levi-Faur, ‘Can Regulation and governance Make a Difference?’, 2007, p. 3.

Method

This section highlights how method was selected, the process of finding interviewees, ethical considerations, analytical method used, and how the grounded theory came about.

5.1 Method Selection

In considering the methodological options, I knew I wanted to conduct interviews as the main method of a case study focusing on HSMC, as this would provide insight beyond what is possible in a purely bibliographic study. The idea to consider framing museums as duty-bearers of human rights, and particularly Indigenous rights, was central. Exploring the possibility of conducting interviews, who would be interviewed and for what purpose was considered. Having had the opportunity to do a year-long internship at HSMC from 2021-2022, there were a few connections that served as the starting point. However, the internship was primarily independent and archival in nature. Interaction and engagement with the different departments was quite limited. As such, my understanding of the functioning of museums, the day-to-day work conducted in different departments, and how museum governance and management plays out was lacking.

Due to this limited exposure to museum processes, there was an awareness that it would be important to speak with museum staff to obtain insight into their perspective, beyond preconceived assumptions as to the work they engage in and how it is managed. Additionally, given the focus on museums as duty-bearers, particularly in relation to Indigenous rights, it was decided there was no better place to start than at the museum of which I have the most knowledge. A key aspect considered in this selection was the fact that in recent years, since 2018, HSMC has been undergoing a fundamental shift in how their museum is structured, engages with stakeholders, formulates exhibitions and interpretations, and proceeds in archaeological practice.⁶⁰

⁶⁰ Faden and Parno, 'Chipping Away at the Colonialist Lens', 2022.

5.2 Selection of Interviewees

With HSMC as the starting point, I pulled on my previous knowledge of the museum and developed the list of persons/groups to speak with, should they agree to be interviewed. For the purpose of reducing unintentional harm, the interlocutors are anonymized. However, for the project to be well rounded, interviewees needed to be selected who were stakeholders at the selected institution (HSMC). With that in mind, interlocutors were contacted from within the institution. Additionally, persons from the local Indigenous American communities that have worked in some capacity with the museum in the past were reached out to requesting interviews. A list of potential interviewees grew, based on their status as academics, advocates, and known collaborators with HSMC. Beyond these few people initially contacted during the formulation of the thesis design, I recognized that more interviewees would be required. It was decided that, in addition to conducting more research online about who is involved in work with HSMC, a snowball interview technique would be utilized, a decision that served the project well.

After discussion with advisors, it was decided to aim for fifteen interviews as a maximum number, eleven as acceptable, and nine as a minimum. The decision was made to stop seeking interviews after the month of March came to an end. As reaching out to potential interviewees began in December, it was thought this would be ample time to achieve the desired fifteen interviews. However, the deadline was extended into the first couple weeks of April, as only eight interviews had been conducted by the end of March. In total, the minimum number of interviews was reached. The interviewees identify themselves as among the many stakeholders of HSMC as an institution, as well as those who have experience and interest in the broader American museum world, with two interviewees providing an international perspective from within the Canadian museum sector. The choice of inclusion amongst the other interviewees of international museum professionals was strategic, and also by chance, as some were discovered through literature on the subject matter.

The interviewees span a diverse array of intersectional identities beyond that of stakeholder: Indigenous, non-Indigenous, Elder, tribal member, State-recognized

Indigenous status, non-State-recognized Indigenous status, museum employee, museum contributor and consultant, historian, archaeologist, anthropologist, human rights lawyer, cisgender, non-binary, female, male, POC, colonizer, neurodivergent, etc. While not identifying the individuals, it is important to name the Indigenous communities to which the various interviewees claim to belong, some of whom claim multiple tribes within their identity, as Indigenous persons are not monolithic. Persons interviewed claim identity among the Piscataway Conoy Tribe, Choctico Band of [Piscataway] Indians, Pocomoke Indian Nation, Kiowa, Isanti Dakota, Ohkay Owingeh, and Nahua. Additionally, those interviewed also represent a broad spectrum of museum experience. Interviewees have experience at all levels of museum practice, including contractual employee, board members and directors, executive director, vice president, and specialist; local, state, and national museums, as well as tribal museums; other cultural heritage conservation and preservation institutions; and a national human rights museum. It is important to mention that the perspectives shared by the interviewees do not stand as official tribal stances, but as the thoughts and opinions of those individuals. Despite attempts to contact leadership of the Piscataway Conoy Tribe and the Piscataway Indian Nation, via both email and phone call, I was unsuccessful in speaking with them directly. However, information was provided as to the study so that leadership of these communities may be aware of the research being conducted.

5.3 Ethical Considerations

Immediately, there were concerns about how to conduct interviews in an ethical way, particularly when interviewing Indigenous interlocutors. Early research was turned towards best practices and a standard that identified these was sought out. After reviewing materials on the matter of ethical interviewing,⁶¹ an online resource from the University of Alberta, the Indigenous Research Guide: Indigenous Data Sovereignty⁶²

⁶¹ S. Brinkmann, 'Unstructured and Semi-Structured Interviewing', in *The Oxford Handbook of Qualitative Research*, edited by P. Leavy, Oxford, Oxford University Press, 2014, pp. 277-299.; G. Ulrich, 'Research ethics for human rights researchers', in *Research Methods in Human Rights: A Handbook*, edited by B. A. Andreassen, H. Sano, and S. McInerney-Lankford, Cheltenham and Northampton, Edward Elgar Publishing, 2018, pp. 192-221.

⁶² 'Indigenous Research: Indigenous Protocols', *University of Alberta Library*, Edmonton, <https://guides.library.ualberta.ca/c.php?g=715568&p=5102315>, (accessed 2 January 2024).

was selected as a reference. It contained an outline of recommended methodology for conducting interviews with Indigenous persons and communities, as well as how to manage the data collected during these interviews. This was used as a template for conducting the research, allowing it to inform how I approach and engage in interviews with Indigenous persons, while also permitting critically reflect on my own ontology and how that might impact my research and my perspective.

In reflection, time was dedicated to constructing an introduction to open the interviews. As an illustration of how this standard of practice was put into practice, an excerpt from a transcription of one of the interviews is included below, where I open with my own introduction that takes into account an Indigenous perspective on greetings and introducing oneself:

Hello – how are you? Before we begin, I'd like to ask if you mind if I record this interview, strictly for my own use in this research project? So, my name is Alexander Smith, or simply Alex. I was born and raised in Cumberland, Maryland, on land that is the traditional territory of the Massawomeck, as well as the Shawnee and other peoples of the Monongahela culture. I recognize that I am a descendent of some of the first colonizers of what is now known as the state of Maryland in the United States, as well as the states of West Virginia, Virginia, Pennsylvania, New Jersey, and New York. My ancestors on both sides of my family are primarily German (my father's family name being Smith) and English (my mother's family name being Shipley), as well as Dutch, Scottish, Irish, Scots-Irish, Swiss, French, Pennsylvania Dutch, and Scandinavian. Today, my family and I identify ourselves as Appalachian Americans. Thank you for joining me here today, and I welcome you to introduce yourself as you would like.⁶³

Comparing this to how I would open an interview and introduce myself if I were not interviewing someone with an Indigenous background is telling. The acknowledgement of the traditional land I now occupy and the introduction of myself through my family history would not be included in how I, as a non-Indigenous, Euro-ancestry American

⁶³ Interview Transcript: Natar, [interviewed by Alexander Smith], 18 January 2024.

would typically open an introduction of any kind, let alone a meeting in a professional setting such as this. However, I have for many years questioned the standards of what is considered professional and acceptable, and as such, I found myself to be fond of this style of greeting and introducing oneself. After my first time using this introduction in an interview, I switched all my introductions to be this way, rather than only the ones with Indigenous interviewees.

It was not possible to offer an honorarium to interviewees and to my chagrin, I did not inform potential interviewees of this in the correspondence requesting an interview, only realizing this oversight after speaking with later interviewees.⁶⁴ There is an understanding that the expectation that interviewees freely donate their time, expertise, and experience is unacceptable, particularly when interviewees hail from Indigenous communities, which have a long history of unequal power dynamics, mistreatment, and use without consent of their knowledge gathered by non-Indigenous researchers such as myself. While some academics might insist that the co-construction of knowledge, inclusion of informants in referencing and acknowledgements, and the reward of providing that knowledge to society via the final work of the research is enough, given the historical record of damage done to Indigenous communities through research and by researchers, acknowledging this and paying the respect of monetary supplement is perhaps more necessary when engaging in research with Indigenous collaborators than when with non-Indigenous collaborators.⁶⁵

Aside from merely an introduction, the style of conducting the interview itself to better align with the ethical considerations of interviewing Indigenous persons was adjusted. The primary difference compared to typical interviewing style was an awareness of the importance of an oral tradition, and as such, I refrained from cutting off any individuals if the initial timeframe was being encroached upon. Whereas others may have interrupted when someone was talking for longer than was necessary and attempted to steer the conversation, the decision was made not to do this, as it could be

⁶⁴ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.; Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.; Interview Transcript: Karina, [interviewed by Alexander Smith], 28 March 2024.

⁶⁵ T. Bear, 'A Humble Commentary on the Topic of Elders, Honoraria, and Protocol', *aboriginal policy studies*, vol. 2, no. 1, 2012, pp. 125-131.

considered disrespectful and cause unintentional harm. Therefore, ample time was blocked out when scheduling interviews, in case an interviewee had a rather lengthy style. As it so happened, an interview that was scheduled to last less than one hour and had taken only slightly over half an hour with other interviewees, turned into a two-hour interview. As this person was an Elder of their community, I knew better than to attempt to cut them short. Among many Indigenous American communities, storytelling is a way of knowing, a way of communicating, and a way of articulating a point that in the moment might not be obvious, but after the telling, the story being told informs well on what is being discussed. I found this to be true with the Elder, as there were several occasions where a question was posed and they would talk, seeming to get off topic with a side story, but the story always came around, albeit after a while, and connected well with the question posed. It was clear how an entire way of knowing could be dismissed and all the insight that is contained within the story would be lost if the interviewer was not privy to this way of knowing and expressing. Implementing this methodological style into the work of this thesis has been critical to the success of the selected method of interviewing.

While the awareness of different styles of interviewing was essential to the methodological approach, it would be remiss not to mention how the data collected from these interviews was handled. Protecting qualitative data is essential to any qualitative study, and protecting qualitative data collected from Indigenous communities adds another dimension of urgency. As Indigenous knowledge and data has historically not been used in ethical ways, the mere notion of a non-Indigenous person coming to Indigenous communities and persons and conducting research and collecting data can itself cause unintentional harm. In an effort to address this harm, it is necessary to apprise interviewees of the intention for use of the data collected as well as how the knowledge to which was granted insight is protected. Anonymization assured, via randomization of coded names, all recordings and transcriptions are kept under password protected locks. This is done to ensure that no others can view or use the data collected for unauthorized purposes.

5.4 Analytical Method

Designing this thesis, a singular primary research question had not yet been defined, thus the proper method to analyze the data collected from the interviews was undetermined. After several weeks into the process, through an iterative approach, the research questions narrowed and the primary question for exploration was decided: How are museums already acting as de facto human rights duty-bearers, and how might they come to be viewed on a broader scale as duty-bearers for human rights?

With the formulation of how to frame the research question now out of the way, consideration was given to how might be best to analyze the data. Upon pondering the various methods for a qualitative study such as this, it was decided to utilize a thematic content analysis as the analytical method. This method was selected because of its ability to sort the data into categories that fit the two themes of the research question: how museums are already acting as de facto duty-bearers and how museums might come to be viewed more broadly as duty-bearers. As such, in order to conceptualize how museums are acting, a thematic analysis of current thought from museum professionals and stakeholders could provide the necessary insight to assess how the actions museums are taking could point to evidence in making a case for viewing museums as duty-bearers more broadly. As will be discussed in the analysis portion of this thesis, the importance of the politics of language cannot be overstated when it comes to how museums conduct their work and put their shifting mission into practice. Due to the significance of a politics of language in discussion of viewing museums as duty-bearers, the possibility of selecting a discourse analysis as the analytical method for this study was considered. However, other aspects of the research question, such as how museums are already acting as de facto duty-bearers, required going beyond discussion of mere discourse to fully analyze current practices within museology. For this reason, the method of thematic content analysis was selected to best explore the viability of the research question posed.

The categories for the coding were selected after much review of the collected data. The themes identified for categorization were civil/human rights, role of museums related to rights, law/legal obligation, community engagement, language usage by museums, authority/respect, ethics, core document changes, individuals pushing for institutional shifts, and funding/resources. These themes were expressed across a large

portion of the data collected, and a thematic analysis utilizing these particular codes was decided upon given their relevance in assessing potential answers to the research question.

5.5 Grounded Theory Method

It was not initially decided that this thesis research would consist of grounded theory. As exploration began by delving into interviews and literature, it was via an inductive process that grounded theory was introduced to the thesis. What opened the pathway of the grounded theory method, and grounded theory as a result of the thesis, was the interviews conducted with HSMC employees and the text written by two HSMC personnel.⁶⁶ The text aligned perfectly with what the research was intended to explore (i.e.: how the museum has been shifting in order to align with and implement new standards of practice, particularly regarding engagement with stakeholder communities). This article and the interviews conducted with museum employees is where the questions that would inform the grounded theory were first developed.

As research and interviewing continued, the realization was had that there is essentially already a community that views museums as de facto duty-bearers and is attempting to shift museological practice towards a new norm that favors human rights and emphasizes the social justice and restorative justice approaches to museum work. Thoughts explored how this might be achieved in practice. As investigation began, the work of Perla, an academic, museum professional, and human rights lawyer who presents their own theory of how one might put a human rights museology into practice was discovered. Perla believes that through the utilization of a HRBA to a human rights museology, with the inclusion of anti-racist, anti-oppression, Indigenization, and decolonization practices, it is possible to take a human rights museology from theory to practice.⁶⁷

I agree with Perla's notion of how an institution might put a human rights

⁶⁶ Faden and Parno, 'Chipping Away at the Colonialist Lens', 2022.

⁶⁷ Perla, 'Democratizing Museum Practice Through Oral History, Digital Storytelling, and Collaborative Ethical Work', 2020, p. 203-204.

museology into practice. Proponents of how to put theory into practice could be framed in a manner that positions museums as taking on the role of human rights duty-bearer. This thesis makes the case, drawing upon the collected data, that museums are primarily seen as being a duty-bearer in the sense of moral obligation or social responsibility; an ethics of the day necessitating, and even demanding, this shift in museological practice and responsibility to society and the communities it serves. Adding to that, this thesis posits that through the inclusion of a regulatory governance model, museums could potentially be viewed as primary duty-bearers responsible for upholding human rights. Through the evidence in the data collected from the interviews, it will be illustrated how the introduction of a model of regulatory governance could drive forward and even further mandate a shift in museological practice towards recognition of museums as human rights duty-bearers.

Analysis

This section illustrates how the analysis was conducted and what form it took through the analytical process. It lays out how the interview data was coded and organized into a spreadsheet, then further analyzed and separated into the two main themes of the research question.

After the interviews had been conducted and transcribed, work began on a thematic analysis of the collected data. Following a thorough review of the transcriptions, it was decided what codes would be utilized. As the coding was done for a thematic analysis, not all codes required the use of the specific words of the code, but rather required that the content of the data be related to that subject matter. The categories for the coding were as follows: civil/human rights, role of museums related to rights, law/legal obligation, community engagement, language usage by museums, authority/respect, ethics, core document changes, individuals pushing for institutional shifts, and funding/resources. Within these categories were a few sub-categories, such as relationship building and trust within the community engagement category and acceptability, anti-wokeness, and risk within the language usage by museums category. The coding was then inputted into a spreadsheet for simpler data viewing and organization.

Once this process was completed, the coded data was reviewed, and observations were made. Firstly, it was noted which categories of code had the largest number of references. The category with the highest number of mentions across all the interviews was community engagement, with a total of twenty-one separate mentions. The second highest number of mentions was the category of role of museums related to rights with a total of fifteen mentions. Third highest was a tie between three different categories, law/legal obligation, funding/resources, and relationship building, all of which received twelve mentions across the data collected. It is relevant to note that relationship building was a sub-category of community engagement and contributed to its high volume. The next highest category was that of individuals pushing for institutional shifts, claiming eleven total mentions. The remaining categories, which

provide some insight later on in the analysis, received ten or less mentions in the data, in order of high to low volume as follows: authority/respect (10), ethics (8), language usage by museums (7), civil/human rights (5), and core document changes (5).

The codes for categorization provide various insights into how museums are rethinking their role in society, as well as how they operate as institutions. These categories, in turn, relate to how museums are and can be duty-bearers of human rights. The coded data was then divided into the two themes of the research question: ‘already acting as duty-bearers’ and ‘to be viewed more broadly as duty-bearers’. As the codes began being sorted, it was observed that there is significant overlap in how the codes fit into the two themes. ‘Already acting as duty-bearers’ is comprised of community engagement, language usage by museums, authority/respect, ethics, core document changes, individuals pushing for institutional shifts, law/legal obligation, and funding/resources. ‘To be viewed more broadly as duty-bearers’ is comprised of civil/human rights, role of museums related to rights, law/legal obligation, language usage by museums, ethics, core document changes, and funding/resources. This overlap is quite simple to understand, as a lot of what is already being done regarding shifting museum practice simply needs to be done on a larger scale for museums to be viewed more broadly as duty-bearers. However, there is, of course, more to it than that, as will be laid out in the discussion section.

Discussion

In this section, the main arguments of the thesis are discussed, drawing on the data to illustrate each point. The first section answers the research question of how museums are already acting as de facto duty-bearers of human rights, addressing this from the perspectives of both HSMC as a case study and the broader museum sector. The second section answers the research question of how museums might come to be viewed on a broader scale as duty-bearers of human rights, addressing how museums view themselves and how those outside the museum sector view museums, as well as the issues of language and legal obligation. The final section poses a grounded theory that seeks to answer how museums might come to be viewed more broadly as duty-bearers and thus take on that role, addressing application of regulatory governance, which institutions could take on this role, and providing authority as duty-bearer.

7.1 De Facto Duty-Bearer Actions

As the previous research and theory sections of this thesis have detailed, museums have been undergoing a shift in museological practice for decades now. Numerous museologies have been theorized and put into action in various institutions across the museum sector. Human rights museology has been around for over a decade now but has not been picked up by museologists in a manner that would bring it into a majority practice. However, many individuals, and in turn institutions, have begun going about their work in museums in a way that aligns with the core principles of a human rights museology and human rights standards at large, marking a shift in the practice of some towards a human rights museology, even if they are not aware of how they are adhering to these principles. The results of the data analysis illustrate this fact. In discussing changes in practice with interview participants, what stood out was the number of stories told of how practices have changed in their institutions and the way they work as individuals, both at HSMC and the broader museum sector. Calling back to Kreps, ‘introspection on the part of museum professionals and collaborations with indigenous communities are leading to a reassessment of museum practices within the

larger framework of indigenous people's human and cultural rights'.⁶⁸ Through the stories collected in the data, it is possible to extrapolate threads that indicate alignment with a human rights museology and, by extension, illustrate how some museums are acting already as de facto duty-bearers of human rights.

7.1.1 Historic St. Mary's City

HSMC is a museum that is currently in the early stages of implementing a shift in their practice towards a museology that is more in line with international human rights. Admittedly, this is not a direction that the institution would claim, *per se*, but is moving in that direction, nonetheless. Despite not setting out with the intention of shifting towards a more human rights-based approach to their museological practice, the shift that has been taking place seems to be in step with a turn towards a human rights focus. One major way this is evident is in the uptick of community engagement that the institution has been conducting. Several examples of community engagement are elaborated on in the article written by Faden and Parno, detailing new heights in reaching out to members of various communities, with particular emphasis on Indigenous American communities, and holding one-on-one, small group, and larger community meetings to engage with often marginalized stakeholders on new projects as a way to embark with renewed vigor on efforts of community engagement.⁶⁹ Upon analysis of data gathered from interviews, several individuals, both those directly employed by and those who have worked with or are currently working with HSMC, corroborate and reflect the efforts being made in recent years by HSMC in regard to community engagement.

Several persons interviewed referenced the new visitor's center that is currently under construction. An employee of HSMC explained that:

What we're trying to do with this exhibit is tell the whole history of this place, from 12,000 years [ago] to the present, interweaving stories of Indigenous people, Europeans, Africans, African-Americans, looking at the profound

⁶⁸ Kreps, 'Liberating Culture', 2003, p. 81.

⁶⁹ Faden and Parno, 'Chipping Away at the Colonialist Lens', 2022.

effects of colonialism, both from the past and their effects on contemporary society, with videos of contemporary community members scattered throughout so that you get the sense of the past that's not remote, but it's connected to today. So that exhibit project really was kind of a catalyst, and that started in 2018, to get the museum to really take a hard look and rethink the way it's doing things.⁷⁰

The explanation references that this visitor's center has been a catalyst for a shift in museum practice that has been in the works for several years now. This sets the stage for an early period of museological shifts that inevitably sees both successes and shortcomings in finding their footing along the path of altering practice. Keeping that in mind, one of the areas that has seen highs and lows in attempts to shift how their work is conducted is community engagement. Another HSMC employee accepts that 'Historic [HSMC] has not done the best job of working in partnership with indigenous populations and bringing their perspectives and discuss and how we interpret. That is something the museum would like to change, and the board supports that'.⁷¹ This acknowledgement of the shortcomings of the institution regarding engagement with Indigenous communities shows that they are not hiding the fact that they have missed the mark and that they are not allowing past failures to stand in the way of their continued efforts to better their practice. Additionally, this quote also refers to the support for this change in practice at an institutional level, not only at the level of individuals doing the work on the ground, which has implications for how serious HSMC is about striving for change and making the shift in practice.

Going beyond the level of HSMC employees, other interviewees shared their experiences as Indigenous American museum professionals and community members who were engaged in consultation with HSMC on the visitor's center project. One interviewee spoke of HSMC's community engagement efforts with them, saying 'I did meet with them and look over their plans for their new visitor center, new exhibits, and have supported from an advisory perspective on the, how they're sharing the Indigenous

⁷⁰ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

⁷¹ Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

and Piscataway story in that area'.⁷² Another interviewee told of one of their experiences of consultation with HSMC:

[referring to a director at HSMC] We've met, had coffee. He showed me the plans that they are developing for this big facility, I've met with him on several occasions. Coffees, showing me the graphics of what they're doing, and I've been able to, in looking at what they did, making up some little, minuet little changes that people would ordinarily overlook, or not pay attention to. Something as simple as showing the graphic of this fort, and within the fort they had these wigwams, or wigwams [pronounced differently], as some people would say, and I immediately noticed how they were acclimated, that that was wrong. You know, native wigwams would not be acclimated the way they showed in that drawing, which would give people misinformation. Acclimating them the way they should be would give them an opportunity to discuss something culturally that otherwise would be missed. And they made the change, which was a good thing.⁷³

The impact, insight, and value that community engagement and consultation can provide are clearly demonstrated in this story. Through community engagement such as consultation, something as seemingly small as changing the orientation of a structure opens an entire perspective of cultural discussion that would otherwise have been excluded. This ties in with the notion of shared authority and respect for the knowledge and expertise that is held by those Indigenous knowledge keepers who are often dismissed by Western experts who do not value the knowledge they carry or regard them as experts. This shift towards respecting authority links to:

[...] the new regulations [NAGPRA], [which] require museums to give more deference to tribes and their histories. One of the things that had been missing for so many decades in the museum world was, you know, that not enough credence was given to Native people about their understanding of who they are, and where they come from, and the time that they had in their

⁷² Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

⁷³ Interview Transcript: Natar, [interviewed by Alexander Smith], 18 January 2024.

homelands.⁷⁴

Referencing again the above story, the interviewee hints at something more than just community engagement. In stating that they have met together and talked, had coffee, on several occasions, they hint at efforts that go beyond consultation; attempts at relationship building. Another interviewee who engages in consultation and occasional direct work with HSMC stated that ‘[...] I’m in very close conversation with [unnamed director] all the time, I consider [them] a colleague and a friend’.⁷⁵ This illustrates a relationship that has been cultivated over time with mutual respect at its core. In much of the literature on how to engage in a human rights museology, particularly Perla’s notion of a human-centered human rights museology,⁷⁶ seeking relationship building is how museums can best engage with communities to foster trust and mutual respect, leading towards a shared authority in various aspects of museum work. As one interviewee put it, ‘don’t pick up the phone and don’t just send emails on November 20th because you realize that you’re almost at the end of Native American heritage month and you haven’t sent anything or done anything, right?’.⁷⁷ The aim is to move past tokenizing engagement that only happens once a year or when the institution realizes it hasn’t done anything with Indigenous peoples for a while. Making stronger strides in community engagement and relationship building is exactly what HSMC and other museums are striving for. In doing so, museums are endeavoring towards fulfillment of their role as duty-bearers of human rights, illustrating one such way they are operating as de facto duty-bearers.

A change in institutional attitude has also been key in moving forward HSMC’s shift in practice.

I think if you were to ask the administration of our organization, they would say that our objective is to tell the entire history of this place. We are more, I think we view our mission as more place-based than time period-based, which does seem to be a shift in perspective if not a shift in explicit mission

⁷⁴ ‘Fight at the Museum’, *Today Explained* [podcast], 2024.

⁷⁵ Interview Transcript: Jay, [interviewed by Alexander Smith], 1 February 2024.

⁷⁶ Perla, ‘Centering the Human in Human Rights Museology’, 2021.

⁷⁷ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

statement or legislation or core documents, that kind of stuff.⁷⁸

While the institution has not quite reached the pivotal move of fully altering their mission statement on paper (at least to this point), it is clear that the working environment, attitude, and way of thinking has already made the shift among several individuals. The question thus remains ‘how do we change the core of the museum, not just cause, you know, it's been staff changing, and staff attitudes changing. But how is that sustainable?’⁷⁹

7.1.2 Broader Museum Sector

Looking outside HSMC, zooming out to the museum sector at large, numerous museums are also enacting similar changes in how they practice museology. As with HSMC, community engagement towards relationship building has seen an increase. One interviewee speaks of a museum professional who ‘has dinner with one of the tribal leaders on a regular basis you know. It's not part of the community, but she's invested in these relationships’.⁸⁰ There has been a slow move in US museum practice towards more community engagement and attempts to widen the perspective that museums often exhibit, which is a white nationalist perspective.⁸¹ The new museology and appropriate museology are more widely utilized than traditional museological practice, but increasingly, as museums engage in new ways of practice, there is an alignment with a human rights museology. When it comes to the rights of Indigenous peoples, the evidence of shifts in practice are most visible. NAGRPA and the establishment of the National Museum of the American Indian (NMAI) marks the beginning of such changes:

You're seeing paradigm shifts in the museum field of working with Indigenous populations and how they do their work. One of the examples, the National Museum of the American Indian and how they manage their collections. It's,

⁷⁸ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

⁷⁹ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

⁸⁰ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

⁸¹ J. Bryant et al., ‘The White Supremacy Elephant in the Room’, *Museum Magazine*, January 2021, <https://www.aam-us.org/2021/01/01/the-white-supremacy-elephant-in-the-room/>, (accessed 2 May 2024).

managing those collections is not how typical collections are usually handled. You know, separating items because of how they are used ceremoniously, that some of them shouldn't be mixed or they're associated with a certain gender or something like that, so only certain people can handle them or see them or some artifacts, you know, need to be fed or placed in a certain way. So, you're seeing more of that, whereas you've got...that all started with NAGPRA, but now the big shift is doing more work.⁸²

With NAGPRA as a catalyst and the NMAI as a museological ground zero, other museums have looked at how this institution has gone about rethinking museological practice and are using it as a reference guide for how they might advance their own practice. However, as one of the first institutions to endeavor to utilize a more rights-focused museum practice, NMAI was not always successful in abiding by rights standards and is an example of progress, not perfection. The same is true of NAGPRA, as it is limited greatly as only being applicable to cases where federally recognized tribes are involved.⁸³ Outside of that, NAGPRA simply acts as a suggestion of best practice rather than law, and legally, institutions could argue that they do not need to abide by those standards, if they so decided. Additionally, NAGPRA is limited regarding its relation to the implementation of Indigenous rights as it is only applied to ancestral remains, funerary objects, and objects of cultural patrimony.⁸⁴ Anything beyond this is not included in this legislation, making only a dent in the full implementation of Indigenous rights. Despite this limitation of applicability, the Act received an update in January this year, with new standards going into effect. The ripple effect of these updates has been seen across the sector as several institutions have either closed or covered up exhibits that are interpreted as not compliant with the new standards, which stipulated a timeline to remove or update them before they would incur fines.⁸⁵ With these new standards in place, museums are now being forced to

⁸² Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

⁸³ B. Meister, *Mending the Circle: A Native American Repatriation Guide: Understanding and Implementing NAGPRA and the Official Smithsonian and other Repatriation Policies*, New York, The American Indian Ritual Object Repatriation Foundation, 1996.

⁸⁴ 25 USC Ch. 32: *Native American Graves Protection and Repatriation 1990*, ss. 3001-3013

⁸⁵ Office of the Secretary of the Interior, 'Native American Graves Protection and Repatriation Act Systematic Processes for Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony', *Federal Register: Rules and Regulations*, vol. 88, no. 238, 13 December 2023, pp. 86452-86540.

reevaluate their museological practice as it relates to Indigenous rights, at least as far as the US has implemented these rights in legislation. Not all institutions are legally bound by NAGPRA for one reason or another, yet these institutions as well are beginning to interrogate how they have been operating regarding Indigenous communities and related collections and are pausing to reassess their practice. This is another aspect of the shift in practice that can be viewed as a way in which some museums are already beginning to act as de facto duty-bearers, ensuring that their practice is up to standard, even if they are not directly within NAGPRA purview.

Although community engagement, which is fundamental to a human rights practice of museology, is witnessing growth across the sector, in many instances it is individuals who are making the push for their institutions to move in this direction. Often, they might be the only person at the institution engaging in human rights museological practices and are the sole driving force behind any shifts that are being seen. Institutions are, predictably, resistant to much of the changes in practice that come with a shift towards a human rights museology. It's individuals 'who themselves are pushing against their own bureaucracies within their own institutions'⁸⁶ in order to effect change. The sector itself is not necessarily moving in this direction, but individuals are, from the bottom up, pushing for these changes at their own institutions, causing a commotion within the sector that is drawing attention and gaining momentum. This parallels with the idea of a human-centered human rights museology, positioning individual people as the driving force for shifting practices in their institutions. However, that is not to say that changes have not been occurring at higher levels, merely that much of the shifts being made are emanating from individuals within the institutions.

7.2 Broader Duty-Bearer Status Acknowledgement

While some institutions are already making strides in tandem with being a duty-bearer of human rights, broadly, it is not an accepted or even well received notion that museums should, or can, be viewed as duty-bearers of human rights. As I interviewed

⁸⁶ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

various persons from within the sector, both Indigenous and non-Indigenous, it became clear that it is mostly individuals who are at the forefront of their institutions pushing for their museum to shift its practice towards new museum standards that are in alignment with international human rights standards. Within the sector, as well as beyond the sector into government and the general public, there is a lack of understanding of ‘the role that museums can play into, the role that some museums are playing into, helping government fulfill those obligations that they have committed themselves to’⁸⁷ when they sign and ratify various UN documents, whether that be the treaties of international law or declarations that comprise international soft law. Arguments can be made that museums have a legal obligation as duty-bearers based on a number of reasons, be it that they are federal and state museums, and thus linked to government that has committed itself to abide by certain international standards, or slightly more indirectly via receiving public funding from the government and therefore must abide by the same standards. Either way, these arguments point to ways in which museums can be viewed more broadly as duty-bearers of human rights.

7.2.1 Internal Institutional Role Acceptance

If museums are to be viewed on a broader level as duty-bearers for human rights, there are internal changes needed for that shift in how museums are viewed to occur. As the data showed, some of these changes are taking place in a few institutions, but largely those who push for institutional change are met with resistance. I have identified a few of these changes as engagement with shifts at the highest levels of the institution, changes to core documents, and a willingness to share authority. All these actions are being done on a small scale, institution to institution, but there is no collective movement in this yet as a field. I mention these aspects but would note the caveat that even though these actions should be taken to implement the role of duty-bearer, doing these actions does not explicitly mean the institution is recognizing their role as such. As is the case with many institutions, HSMC included, these actions are being considered and implemented, but there is no connection being drawn to their being a duty-bearer of rights in any form. Some institutions, however, have a stronger

⁸⁷ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

acceptance of the role of human rights duty-bearer in that they believe that their institution is beholden to certain human rights standards. The National Museum of the American Indian, within the larger Smithsonian Institute, is one such institution, with an interviewee from the museum stating that ‘NMAI does believe its work should be upholding the rights of Indigenous people’.⁸⁸ Nevertheless, I highlight these aspects of practice as indicators of movement in that direction.

You know, museums are considered a trusted source of information, so being able to explain human rights and what they are and how [...] different things impact different rights, different things, you know. More and more museums are, and the museum field in general, is moving in that direction that you should do these things. We should be proponents of this, you know.⁸⁹

This quote shows how internal museum perspective is shifting regarding their role within society. As this interviewee put it, the sector seems to be ‘moving in that direction’, the direction of acting as proponents of rights and educating the public on these rights, and in order to do that, museums need to be fully committed. The governing bodies of museums, boards of executives and commissions, are required to be on the same level of engagement as are the people pushing for institutional change on the ground. Without support at the level of the board, institutional change will not occur. Temporary or minor shifts may take place, but sustained change requires support at the highest level. One factor in this is a lack of diversity on many museums’ executive boards and commissions, which are predominantly white and male across both the United States and Canada.⁹⁰ This is not to say that support cannot be found on predominantly white male boards, but that is not the most common occurrence. However, some institutions are moving to diversify their boards and bring in persons with varying backgrounds and perspectives, particularly those of historically marginalized communities that are representative of their stakeholder communities. As one interviewee told, the executive board at their institution has:

[...] gone from 100% all white board, all white organization, to kind of having

⁸⁸ Interview Transcript: Rodney, [interviewed by Alexander Smith], 6 February 2024.

⁸⁹ Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

⁹⁰ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

more majority black and Indigenous folks on the board, and we're really trying to seek intentionality around how we invite, not just invite, but bring in other perspectives and respect it. It has not been easy.⁹¹

By diversifying at the highest levels, one of the goals is to impact what shifts in practice receive traction. 'You need the people in power to be not just invested in it, but you need your partners to be in power at an institution. That's really what you need in order to, I think, affect real, long, sustained change'.⁹² Diversifying, however, is only one example of how shifts at the highest level are happening.

Engagement in the museum's work and function, as well as how they organize themselves, is another way the executive and commission level support shifts in museums. At HSMC 'we are engaged all the way from our board chair all the way up, executive director, etc. So, we're taking it very seriously, but we have some cautious optimism for the future'.⁹³ This engagement can take many forms, one of which is that of reassessing and altering core documents. Core documents are those that serve as the guiding documents for all aspects of the museum. These can be mission statements, internal codes of conduct or ethics, planning, budgeting, etc. Mission statements are often a first step, as altering the mission of the institution will have sustainable impacts at every level thereafter, making this act a major step in any shifting that may transpire internally. When asked if they thought museums are or could be reworked into institutions capable of upholding human rights, one interviewee responded that 'It might be currently outside of the scope of museums' missions, but museums' missions are just, they are documents, right? Museums have boards, boards can rework missions'.⁹⁴ The power of institutional boards to rework missions and other core documents is an essential element that is necessary for the realization of a sustained shift in institutional practice.

In looking at how the commission of HSMC altered the museum's master plan, spotting the relation to a shift towards a human rights museology is made easy. 'The

⁹¹ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

⁹² Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

⁹³ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

⁹⁴ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

Commission began a master plan founded on recognition of the Native peoples, the effects of colonialism, and an aspiration for diversity and inclusion'.⁹⁵ The human rights, and particularly Indigenous rights, correlation, although not explicitly stated, is evident in the inclusion of words like 'recognition', which is tantamount to Indigenous rights, and the subject matter of Native peoples, colonialism, and diversity and inclusion. In the broader context of the museum world, an interviewee engaged in work with a Canadian museum recounted their efforts to draft a new strategic plan with the help of consultants: 'What I need is for you to frame our strategic plan on international human rights law obligations'.⁹⁶ This shows how some museums, albeit not in the United States, are actively attempting to assert human rights standards and the accompanying human rights museology within their institutions. However, access to resources such as funding is often cited as a barrier to making these shifts. 'I think it really depends on the will of leadership, which isn't always there, because it takes money and it takes time and then it takes time and money away from other, you know, museum initiatives and programming and things'.⁹⁷ As funding can be competitive within the sector, it is difficult for the leadership of many institutions to justify designating the required funds out of the existing budget to account for work that would need to be dedicated towards making such a substantial institutional shift.

Museums and the individuals within them must also have a willingness to share authority and allow others to lead and have final say when it comes to matters related to certain topics about which they would be considered experts. In work that relates to Indigenous people, one interviewee stressed the importance that:

the native voice gets to be heard. Not just from someone who has the academic tools, the vitae that's, that they should be able to interpret, but from the person that's actually lived, felt it, to the extent that they're willing to share. [...] We want to have a seat at the table, to have our voices heard, to have some input. And sometimes that conflicts with those who are the experts. You know, people's egos, if not their titles and their education level, will get in the

⁹⁵ Faden and Parno, 'Chipping Away at the Colonialist Lens', 2022, p. 137.

⁹⁶ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

⁹⁷ Interview Transcript: Karina, [interviewed by Alexander Smith], 28 March 2024.

way because they are perceived as the experts.⁹⁸

As these quotes indicate, it is essential that museums and museum professionals respect the authority of Indigenous persons who are in positions to provide expert information. The ego, particularly among academics who have studied and trained for their credentials, often gets in the way of truly respecting the lived experiences of others, especially those from historically marginalized communities. One interviewee expresses their thoughts on this topic as they view it from their experiences of trial and error, saying:

[...] it's about ceding power, and it's all about acknowledging the fact that there's other types of History, there's other ways of knowing, other epistemologies out there, and you have to give up the control and the power to people who have command over their own history and give them the opportunity to tell it the way they want to tell it.⁹⁹

It is imperative that those who are typically considered the experts in the Western style are able to take a step back and share authority, if not hand over authority entirely, to those who are experts from other perspectives, such as Indigenous ways of knowing and knowledge systems. In ceding authority in this way, this is another act that runs parallel to a human rights museology as it relates to Indigenous rights, as doing so adheres to the Indigenous right to self-determination.

7.2.2 External View of Museums

Aside from museums turning inward and striving to accept the role of duty-bearer, the way museums are viewed from an outside perspective is just as important. Government in particular is in a position of authority over museums, as they connect through creation of museums, their mandates, oversight, and funding. As such, it is essential that the way in which government at all levels views museums matches the shift in practice that is occurring within the sector. In considering how human rights museologies are implemented and the reliance of institutions on government in

⁹⁸ Interview Transcript: Natar, [interviewed by Alexander Smith], 18 January 2024.

⁹⁹ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

whatever capacity it may be, it is important that the external view of museums shifts in tandem with their shift in practice. As human rights are increasingly becoming a focus within the sector, discussion on who has an obligation to adhere to human rights standards must be had. As governments are, in a traditional legal view of the United Nations, the sole duty-bearers of human rights, one interviewee stresses the need ‘[...] for the government to become aware that museums can help the government to fulfill those obligations’.¹⁰⁰ Becoming aware of the possible ways in which museums could be utilized to implement government obligations to human rights is a good first step towards a broader implementation of museums as duty-bearers. This shift in external view could propel forward a new model of museum capabilities and practice.

A shift in external view in this direction would also serve to expand new avenues for resources. ‘I think it's important to understand that there's not enough funding allocated to museums to do this work [...]’.¹⁰¹ As it stands, museums simply do not have the funding to divert to achieve the lofty tasks of institutional restructuring and museological practice that accompany a turn towards human rights museology. Getting the government and other funders on board with a new vision of museums as duty-bearers has the potential to create new funding opportunities specifically for this work to be done. There would also be more of a willingness for museums to make the shift in this direction, as it is a way to obtain more resources. When asked if they thought that museums had the capacity to be reworked into institutions capable of upholding and adhering to human rights, a common answer was both yes and no. Yes, because museums as institutions of public education and stewards of both collections and lands could absolutely make the transition to duty-bearers, but no, because of access to resources. ‘Some smaller museums simply do not have the capacity to be reworked because of limited staff, funding and resources’.¹⁰² Additionally, it may be difficult for museums to navigate the delicate balance of the state as both funder and duty-bearer, as pushing in this direction might meet with resistance if the state does not share the same vision. ‘The museum – an institution often created and funded by the state – may find itself in the midst of conflict between its funder and the population it is mandated to

¹⁰⁰ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹⁰¹ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹⁰² Interview Transcript: Rodney, [interviewed by Alexander Smith], 6 February 2024.

serve'.¹⁰³ In the opinion of those interviewed, to put it as plainly as possible, while shifting practice and policy towards becoming a recognizable human rights duty-bearer status would be a positive change, quite simply, its '[...] not going to happen without funding'.¹⁰⁴ Therefore, in order to achieve the funding required, the external view of museums and what they could be capable of must first be broadened.

7.2.3 Language

Through conversation with those who work in museum spaces in the United States, language was a common thread when discussing how individuals go about their work. In these discussions, a politics of language came to the foreground as being a major hurdle many come up against when it comes to shifting practice in museums. Firstly, before diving deeper into questions of how museums could be viewed as duty-bearers, there was contention over the language of human rights in general. In the United States, the language of human rights is not the dominant discourse. Civil rights reigns as the most widely utilized language of rights in the US. This fact itself could account for why human rights museologies are not more dominant in the US museum sector. At HSMC, an interviewee reflected on this, stating:

I don't think we have, you know, explicitly used the phrase human rights. I think it's been more of a civil rights focus, and maybe that's the American-ness of us, that we as a country tend to be a little more civil rights oriented, at least in the last 60 years, whereas human rights often feels, at least personally to me, more of an [...] international term that gets leveraged more on that stage.¹⁰⁵

The US has historically been open to supporting international human rights and the United Nations as an institution, but when it comes to ratifying treaties, the US has been less than forthcoming. Civil rights, which are focused on the rights of citizens, rather than all people, are often the lens through which museums in the US context focus their efforts towards a more rights-focused practice. However, there are many

¹⁰³ Carter and Orange, 'Contentious terrain', 2012, p. 121.

¹⁰⁴ Interview Transcript: Natar, [interviewed by Alexander Smith], 18 January 2024.

¹⁰⁵ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

parallels between civil and human rights, and a turn towards a civil rights focus is also closely aligned with a human rights museological approach. In recent years HSMC has:

taken a slight bend towards the civil rights angle [...]. We have stories of immigration, of voting rights, of gender, of race [...]. We cover so many aspects of civil rights, and what I guess you could argue are human rights, that that lens seems to be really useful and has a way of getting people to think about it.¹⁰⁶

In this way, the museum is illustrating its shift in practice towards civil rights, which are arguably nearly identical to international human rights, as evidenced by the areas of focus being turned to, such as immigration, voting, gender, and race, all of which are critical topics within human rights.

As language is used now in the US context, there is a precedence set where civil rights take priority over human rights, as civil rights are the law of the land. There is sometimes conflation between what language is used to discuss and address these topics, and one interviewee commented that '[...] once a solid establishment of what the human/civil rights are, I think absolutely museums and historical sites would be very keen on following those things'.¹⁰⁷ However, simply adding in or beginning to utilize the language of rights, whether civil or human, poses some issues for institutions attempting to implement such language.

I do think there's a risk to, a political risk, to using a term like civil rights [...]. That could cause some issues for us. We're a state agency. We're supposed to be politically, you know, not veering one direction or the other, and civil rights is a term that has political baggage associated with it, so that's why when we talk about what we do, we talk about telling a full history, cause that's something people can't really argue about no matter what side of the political spectrum they're on.¹⁰⁸

¹⁰⁶ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

¹⁰⁷ Interview Transcript: Jay, [interviewed by Alexander Smith], 1 February 2024.

¹⁰⁸ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

The United States, like any nation, is wrought with political pettifogging. Rather than focusing on the subject matter and fully addressing it, objectives and goals are often thrown off course due to the use of a certain language that one side or another might be averse to, such as the language of rights. This is best illustrated in how one interviewee told of their awareness of the impacts of language in their work:

You can do this certain type of work if you're not using certain phrases, right? As soon as you put in a certain phrase, it's going to shut everything down. But you can do all that work and just don't call it that, right? You can be all DEAI [Diversity, Equity, Accessibility, and Inclusion] all you want, just don't use those terms. Because as soon as you use DEAI, that's going to cause people to be like, "oh, that's some woke communist stuff. We're not going to do it". But if you say, "we're going to tell everyone's history, the good, the bad, and the ugly, cause that's how we learn from the past" then people are like "oh, that makes sense". And we see that a lot that, you know, people are willing to talk about the ugly parts of the past, it's just how you do it and staying away from these trigger buzzwords. [...] certain words, by calling it something, you're going to trigger people and they're automatically going to turn off, so [...] I'm mindful of that, to be careful of...yeah, certain words and phrases that get popularized in academia that to the general public cause them to lose their minds. I find it better not to use those words, but to do the same work, just without all that.¹⁰⁹

Interestingly, the interviewee suggests that all the same work can be done without having to utilize the language that comes with it. They point out that if the use of a certain language (i.e.: the language of human/civil rights) serves to shut down audiences and prevents that work from being done, it is better to find ways to do that work without using that language. However, it can be questioned whether the work of human rights can be done without utilizing the language of human rights, which will be elaborated upon in the next section.

This worry that by utilizing rights language, certain demographics might be

¹⁰⁹ Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

alienated is valid, but the work itself can still be done, as previously indicated. In telling of how a group of museumgoers did not want to hear the story of an enslaved woman, one interviewee responded that:

[...] it is important to not erase it, to not ignore it, because it is hard to hear it. And I think there is a way to also make the rougher parts of our history more palatable without glossing over it. And I think that's the real challenge that museums have; is how do you reach the unreachable? When I'm talking to people who get it, I love ya, but you're not the one I need to reach.¹¹⁰

The last sentence here is of particular importance, as it indicates a driving factor behind why the language of rights is being left behind in the implementation of rights, and that is because the ones who are opposed to the language are the ones who most need to hear it, and therefore leaving off some specific language, without sacrificing the core of them, could be an effective method through which the broader public is educated on various aspects of rights and how those rights are upheld. 'I'm a firm believer in "honey works better than vinegar", and bashing people over the head and telling them how much they've messed up and how horrible they are is going to cause people to dig in and they're not going to listen [...]'.¹¹¹ The 'honey works better than vinegar' technique is what is at play in many current shifts in museum practice. Although these shifts may be in the direction of human rights museologies, the language of human rights has yet to be brought along.

7.2.4 Law and Obligation

In the previous section, it is questioned whether it was possible to do the work of human rights without utilizing its language. To a certain extent, I am inclined to agree. It is possible to act in a manner that is adherent to human rights standards without having to actively engage with the language of human rights. This can be beneficial when attempting to engage in this work within certain demographics that would ruffle their feathers at the mere mention of certain language that triggers a negative reaction

¹¹⁰ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

¹¹¹ Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

from them. However, while recognizing this benefit, I also recognize how the lack of rights language could be detrimental to efforts being made, and that is in the legal sense. When it comes to law, language matters. Without having it clearly stated that museums need to adhere to human rights standards, whether national or international, institutions are legally not beholden to these standards. This is a large part of what tamps down pushes for the implementation of rights in museums, and the United States as a whole. Due to the haphazard record of US ratification, the US is only signatory to many international human rights law documents, making it more difficult for certain rights to be claimed as obligatory for the State, and distances international human rights law even further from state law. Within the United States,

[states] always abide by whatever state law is, and not always federal. So, a state site usually is at the behest, obviously it's owned by the state, it's at the behest of the state. It has its own board of directors. And they're really going to go off through state standards. Now, federal sites are going to go off of federal law, which may adopt some UN practices [...],¹¹²

but due to the low ratification rates of UN treaties by the US, even federal sites that operate on federal law have a low inclusion for direct implementation of international human rights law.

Despite this, being signatory is arguably an expression of intent, and there is as much room for a claim to obligation of the rights in these signatory treaties as there is room for a claim to obligation of the rights of non-legally binding declarations. While declaring intention is not a solid legal grounding, it has been enough in other circumstances to argue in favor of why certain rights should be held as relevant to uphold. This is the case of numerous declarations, including the United Nations Declaration on the Rights of Indigenous Peoples. In President Obama's speech in December 2010, he announced the United States support for UNDRIP, with written support being provided by the Department of State: 'The United States supports the Declaration, which—while not legally binding or a statement of current international

¹¹² Interview Transcript: Jay, [interviewed by Alexander Smith], 1 February 2024.

law—has both moral and political force’.¹¹³ This moral and political force has been what drives moves towards respecting human rights and has played a significant role in influencing new policies with the force of law that do adhere to international human rights, as is evidenced by the recent updates to NAGPRA regulations that coincide with strides made in Indigenous rights in recent years.

Human rights museology, however, aims at going beyond mere moral obligation arguments. Moral obligation as argument can be effective at times, but it is flimsy at best, and can easily be picked up and left behind from one moment to the next. This is the case for many institutions that have swings in the way their institutions operate, changing as easily as personnel. One interviewee points to the museological notion of the benevolent museum model, telling a story of interaction with someone who followed this model:

I do not think we are benevolent, because that’s confusing to approach us, like a sort of needs-based approach as opposed to the human rights-based approach. Like, if you're saying that we're benevolent, we're just confusing legal obligations with charity. We are equating those obligations that, as museums we do have, because we have received public funding [...].¹¹⁴

The interviewee counters the notion of museums as benevolent, asserting that they do have legal obligations to act in a manner consistent with international human rights. They hit the nail on the head as they mention the idea that doing work related to rights as benevolent is equating it as an act of charity, calling out white saviorism at play in the museum sector. They state that museums have a legal obligation to act in accordance with international human rights, claiming there is more than the usual moral obligation, going further to link this to the receipt of public funds. They go further, stating that ‘[...] do agree that museums are duty bearers’¹¹⁵ and that while not entirely needed for the argument, the link to public funding is significant in drawing this

¹¹³ US Department of State, ‘Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples’, *US Department of State*, 12 January 2011, <https://2009-2017.state.gov/s/srgia/154553.htm>, (accessed 2 February 2024).

¹¹⁴ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹¹⁵ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

conclusion. I found my own thoughts reflected back at me when they elaborated, stating that:

[...] because that public funding that is attached to a government that has committed itself to implement, fulfill, and protect the obligations and the rights within international human rights law, [...] it's binding for these museums to also implement, fulfill, and protect these obligations of the state, because they are becoming an extension of the state, of the government, because of that funding that they received.¹¹⁶

The work of Perla reflects this argumentation, as they assert the legal obligations of museums to adhere to human rights as linked to funds received from the government.¹¹⁷ Although Perla's work focuses on the Canadian context, the same logic tracks in the US context. Admittedly, as stated, the US legal context does not have the same strength for connection to international human rights via ratification as Canada, but the argumentation holds.

One of the primary issues with this public funding argument is a lack of awareness at all levels, 'that we are legally bound because we are receiving government, public funding'.¹¹⁸ Contributing to this lack of awareness of the obligation to abide by international human rights '[...] is that there's no strings attached to this funding. So, museums, the government gives the money and then doesn't have any oversight of what happens'.¹¹⁹ Government funds going into museums often have little or no stipulations or oversight mechanisms built in, leaving plenty of room for museums to use the funds as they see fit. While this can be a good thing in certain circumstances, one way in which museums could be viewed more broadly as duty-bearers of human rights would be if the funding they were receiving was granted with more explicit standards as to how the funds should be used, as they can be utilized to the benefit of implementing human rights standards. Without such stipulations in place,

¹¹⁶ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹¹⁷ Perla, 'Democratizing Museum Practice Through Oral History, Digital Storytelling, and Collaborative Ethical Work', 2020.

¹¹⁸ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹¹⁹ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

institutions have a greater ability to skirt these obligations and they can continue to go unimplemented within the sector. Linking back to previous sections, an aspect contributing to this oversight in how the connection through funds makes museums duty-bearers by extension is the lack of government ‘understand[ing] museums as agents that can help fulfill those legal obligations they have committed themselves to, and the second part is museums understanding that because they are receiving public funding, they have an obligation, they have a legal obligation’¹²⁰ to abide by and implement those international human rights standards that their governments are obliged to uphold.

7.3 Asserting a Regulatory Governance Model

As I began interviewing, there were several moments that propelled my thinking and pushed me to dig deeper in thinking about the second portion of my research question of how museums might come to be viewed more broadly as duty-bearers of human rights. One of those moments was when I asked an interviewee if they thought that museums could be shifted or reworked to become institutions capable of upholding or adhering to human rights and being human rights duty-bearers. Their response was as follows:

I don't know how much museums really can be, cause museums are, have no authority. They're not government, they're not, you know, there might be museums that are government run but we don't have any legislative or executive authority to uphold any laws.¹²¹

This is a well-reasoned point, as being a duty-bearer is understood to mean that the one acting as such has the authority to ensure compliance. This was thought-provoking and led to the question of: how could this be changed so museums *do* have that authority? This question led the way to regulatory governance, and in particular the integrity regulatory agency structure that bridges the global and the national.¹²²

¹²⁰ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

¹²¹ Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

¹²² Levi-Faur, ‘Regulation and Regulatory Governance’, 2010.

Assessment began with the facts of what the HSMC is at the current moment. HSMC is a state agency of Maryland, but the level of authority they held was not known. After exploring their website and that of the state of Maryland, it was discovered that HSMC is an independent agency. However, it was unclear what an independent agency was, and research began anew. Various definitions were found, each as confusing as the last. Almost every source, when talking about independent agencies, was referring to independent regulatory agencies, mostly in reference to the federal level. A satisfactory definition for an independent agency, with no tie to regulatory agencies, was not found. 'Independent federal agencies occupy a special constitutional position in the governmental structure. Their stock-in-trade is the expert, apolitical resolution of regulatory issues'.¹²³ The two terms seemed to be conflated and so intertwined no matter what sources were explored, whether speaking of federal or state-level agencies.

Eventually, an interviewee from HSMC was contacted to inquire their perspective as to whether they view HSMC as simply an independent agency or a regulatory agency. They stated that they were not a regulatory agency. 'HSMC is not a regulatory agency. We're an independent agency under the Governor's Office'.¹²⁴ Inquiring then about the difference between the two, they replied that 'HSMC is not a regulatory agency in that we are not responsible for establishing and enforcing regulations'.¹²⁵ In simply looking at the two terms, this would be a satisfactory answer for most individuals, but having gone over numerous definitions that do not separate the two so easily, possibility sparked. An independent agency is all about its separation from oversight of the main government body, whether it be at the federal or state level. Regulatory agencies are characterized in the same way, with the stipulation of their ability to create and enforce regulations. However, it is stated that not all regulatory agencies need to have authority to create regulations over groups, although that is their dominant purpose in the business and economics world from which the term is derived.¹²⁶ It is possible to be a regulatory agency if the only authority you hold as an

¹²³ M. J. Breger and G. Edles, 'Independent Agencies in the United States: The Responsibilities of Public Lawyers', *The Public Lawyer*, Winter 2016, p. 14.

¹²⁴ Interview Transcript: Russell, [interviewed by Alexander Smith], 8 April 2024.

¹²⁵ Interview Transcript: Russell, [interviewed by Alexander Smith], 8 April 2024.

¹²⁶ Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 6-8.

institution is over your own institution.¹²⁷ Following this logic, it is pondered if HSMC, as well as other museums that are independent agencies, such as the Smithsonian at the federal level, could be argued as regulatory agencies. If so, could that mean that museums *do* have the authority to be duty-bearers, if not over the sector, then at least certain museums over their own institutions? The aim of this thesis is not to fully and adequately answer this question. Rather, it endeavors merely to pose it as a potential option for how museums could possibly come to be viewed more broadly as duty-bearers, and that is through the assertion that, at least some museums, can be viewed as regulatory agencies, and as such, be considered duty-bearers.

In any case, whether an independent agency, independent regulatory agency, or neither, it can be argued that any museum could have a regulatory governance model asserted over their individual institutions. Below, in figure 1, is a diagram that illustrates a regulatory governance model. I propose that the same model can be used in museums as a method to implement Perla's HRBA to human rights museology and offer it as a model to be followed in implementation of this museological theory.¹²⁸ If applied over a single institution for internal purposes, the regulatory agency of the middle box in the diagram would be the museum itself, the board and execs would be the museum executives and/or commission, the operators would be the museum employees, policy makers would be the representatives consulted, and the rights-holders would be the larger community the museum serves. By utilizing this model as an approach, museums would have a solid guideline for action and how to put this museology into practice, ensuring that they are doing their part in acting as duty-bearers. As in the model, communication is a two-way street that flows from both ends, from the museum and its employees to those consulted and the community they represent. In accordance with a human rights-based approach, authority comes from the community, and particularly those consulted, with the museum and its employees respecting that authority. The museum employees, the museum, and its board and/or commission are responsible for accountability. As authority and accountability flow here, it is clear this model can be instituted well within a framework of a human rights-

¹²⁷ Levi-Faur, 'Regulation and Regulatory Governance', 2010, p. 14.

¹²⁸ Perla, 'Centering the Human in Human Rights Museology', 2021.

based approach to human rights museology. For example, place this model over the work of an institution that, like HSMC, is engaged in museum work involving aspects

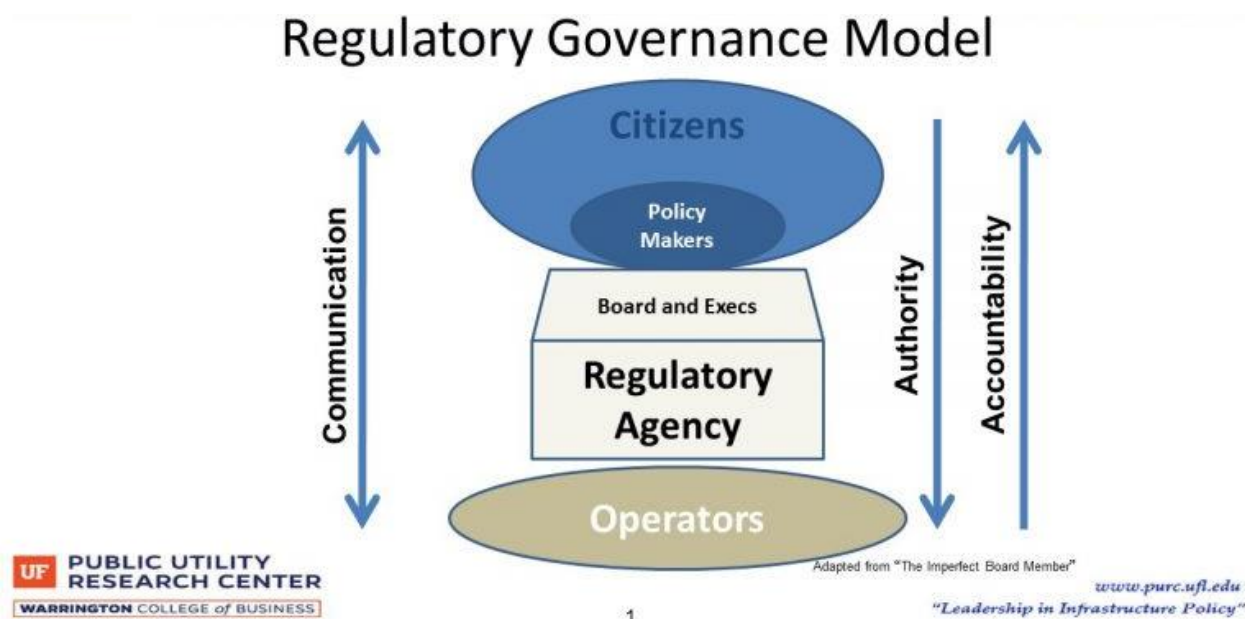


Figure 1: Diagram illustrating a regulatory governance model, as used in the governance of such agencies.¹²⁹

of Indigenous rights. The use of the regulatory governance model holds, with the community being the larger Indigenous community and the representatives consulted being those engaged with the museum in tribal consultation. The use of authority in the model is exactly key, as one of the major aspects discussed as being central to human rights museology is the idea that authority needs to be shared with those who have the expertise beyond the Western formulation of what constitutes an expert. With authority flowing from the community and those involved in consultation, the model fits perfectly in line with the human rights-based approach to human rights museology.

7.3.1 Who Becomes a Regulatory Agency?

In addition to the proposal that certain individual institutions utilize a regulatory governance model and be recognized as independent regulatory agencies for their own

¹²⁹ 'Principles for the Governance of Regulators', *Body of Knowledge on Infrastructure Regulation*, <https://regulationbodyofknowledge.org/revitalizing-and-reforming-regulatory-governance-for-infrastructure-in-post-fcv-environments/principles-for-the-governance-of-regulators/>, (accessed 11 February 2024).

museums, I would also propose a second option for who becomes a regulatory agency. In terms of practicality, the assertion that museums can be duty-bearers and regulatory agencies might be a hard sell to some, but there is another option. This could be implemented separately from the first proposed notion, or simultaneously, with the proposal of museums as regulatory agencies only applying to those who are already independent agencies. The second proposal I posit is that of museum associations taking on the role of regulatory agency and, thus, duty-bearer. In the US context, the American Alliance of Museums (AAM), which ‘is the only organization representing the entire museum field, from art and history museums to science centers and zoos’,¹³⁰ is an ideal candidate to have the take on the mantle of duty-bearer through adoption of a regulatory governance model and recognizing it as such at the level of government. The AAM is an organization that proports to strive for ‘a just and sustainable world informed and enriched by thriving museums that contribute to the resiliency and equity of their communities’.¹³¹ Through the adoption of a regulatory governance model and advocacy to be recognized as an independent regulatory agency, the AAM could work towards achieving this vision by implementing a shift in museum practice towards the HRBA to human rights museology.

Whereas institutions implementing a regulatory governance model in tandem with human rights museology could be beneficial from institution to institution, having an organization becoming recognized as an independent regulatory agency over the museum sector could be the best way to position museums as duty-bearers of human rights, provided that they also utilize a human rights museology as their standard for practice. While this may seem a bit far-fetched, the United States has a long history of utilizing regulatory agencies to oversee their individual sectors, providing some distance from direct government involvement and allowing the experts of the field to lead the way in setting regulations for operation. In implementing this suggestion, the United States government would be acting on its duty to ‘implement, fulfill, and protect the obligations and the rights within international human rights law’.¹³² For this reason,

¹³⁰ American Alliance of Museums, *About AAM* [website], <https://www.aam-us.org/programs/about-aam/>, (accessed 28 April 2024).

¹³¹ American Alliance of Museums, *About AAM* [website].

¹³² Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

the assertion of a regulatory governance model in concert with a HRBA to human rights museology and recognition of a sector-wide organization as a regulatory agency is the strongest answer to the question of how museums might come to actually be duty-bearers of human rights.

7.3.2 Giving Teeth to Moral Obligation

This section addresses the moral obligation argument that came up in the previous legal section. For decades, much of international human rights law has been predicated on moral obligation and advocacy for implementation of these rights often hinges on arguments that have their root in moral obligation. While the political force behind arguments such as these can be influential, there is little permanence in such argumentation. In the museum sector, moral obligation is often how human rights are framed and are then presented through the establishment of Codes of Ethics. It is common practice for individual institutions to have their own code of ethics, as well as the codes of ethics that are created by sector-wide organizations such as AAM in the US and ICOM on the global scale. Starting at a simpler level, ‘[...] museums have a responsibility to educate the broader audience, the broader community, the public [...]’,¹³³ as they are institutions of public education. From here, moral obligation comes into play, with questions of what it is museums are trying to communicate to the public and how they then go about doing that. An interviewee who works within the ethics departments of museums commented that:

[...] it's sort of within the mandates of museums, whether or not it's stated explicitly, to teach and uphold kind of the most recent set of ethical standards and guidelines that exist, and I think we see that in the constant updating of ethical guidance from museum associations, you know like the British Museums Association, and in the US.¹³⁴

Drawing attention to the obligation of museums to teach and uphold the most current ethical standards, this interviewee strikes right to the core of why international human

¹³³ Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

¹³⁴ Interview Transcript: Karina, [interviewed by Alexander Smith], 28 March 2024.

rights, which are often viewed as the highest standard of ethics, run parallel to much of the shifting practice of museums, even within those museums whose shifting practice has no explicitly stated connection to human rights.

With human rights as the highest attainable standard of ethics, and in the case of the Canadian context, which is already attempting to implement international human rights into their standards and guidelines for the sector,¹³⁵ it is evident that human rights have a strong connection to shifting museum practice already. Considering the role museums play within their communities, one interviewee claims that ‘[...] it is our ethical responsibility to try to do what we can to invoke positive change in the world, in human rights, civil rights, whatever the case may be’.¹³⁶ I argue that museums might best be able to work towards effecting such positive change by shifting to a HRBA to human rights museology that utilizes a regulatory governance model as a framework for implementation. After all, ‘human rights are not only the responsibility of nations, but of institutions, including museums, and of every individual’.¹³⁷

Ethics may currently be working to influence this shift in museological practice, but it also has a way of keeping the language of human rights at bay, preferring to synthesize rights language through the language of ethics. This, while seemingly a benefit for those who argue in favor of keeping human rights language out of it, also has impacts that are not ideal. One such impact is that the authority of ethics language is not as strong as the authority of human rights language. Human rights language:

[...] is useful because it provides something beyond, it provides, like...what am I trying to...not a linkage, but like, some teeth, I guess, beyond just ethics. And that's why we really use UNDRIP. We reference self-determination, we reference rights and legal obligations as much as possible to show people that it's like.... You see, ethics can feel like a choice sometimes, I think. And this makes it, this asserts that this is, like, really not a choice.¹³⁸

¹³⁵ Danyluk and MacKenzie, ‘Moved to Action’, 2022.

¹³⁶ Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.

¹³⁷ McGhie, ‘Museums and Human Rights’, 2020, p. 23.

¹³⁸ Interview Transcript: Karina, [interviewed by Alexander Smith], 28 March 2024

These words have rung inside my head since I heard them spoken. Ethics can often seem as though they are a choice, like they are merely a suggestion of best practice, but are not necessarily something that has to be followed and which actors must abide. This can be a major issue if ethics alone is left to guide institutions in their practice, affecting communities along the way. Shifting museum practice towards human rights museology should not leave behind the language of human rights for this reason. The notion of teeth seems a fitting metaphor. Ethics might be best categorized as the mouth paying lip service to the idea of rights, only bringing them in when institutions and individuals decide that they want to pick it up and use it. The language of human rights provides teeth to the work of human rights within institutions, taking what is often viewed as choice and asserting it as obligation.

It's making sure that museum workers understand that this isn't just because they are good people that they're doing this work. That it is a legal obligation that they have, and I think that is going to change things significantly.¹³⁹

In doing so, the adoption of a regulatory governance model on top of the utilization of a HRBA to human rights museology could serve to aid museums in providing teeth to their already shifting museological practices.

¹³⁹ Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024

Conclusion

Through the adoption of a regulatory governance model and framing the implementation of a HRBA to human rights museology, museums could be viewed more broadly as duty-bearers of human rights. Additionally, the same can be said for the entire museum sector if this frame and implementation is adopted by sector-wide organizations, such as the AAM. In doing so, museums, or a museum organization, as duty-bearers would be given teeth when it comes to their ability to uphold and adhere to human rights that are currently viewed commonly as a moral obligation associated with ethical codes of conduct, which are understood as optional, thereby making their ability to implement human rights standards obligatory, or more substantial. For this to be achieved, broader acknowledgement of museums as duty-bearers must be promoted, with both internal and external views of museums being shifted in this direction. Two aspects that heavily influence this are language and law. The way in which language is used, such as the language of human or civil rights, impacts how both institutions and government view museums and how they are capable of acting. Law is also impacted by language, and the status of federal government ratification of international human rights documents affects what claims can be made as to the obligation of the State and those duty-bearers that exist via extension.

The ways in which museums are already acting as de facto duty-bearers of human rights are evidenced by the shifts in museological practice, which closely align with human rights museological approaches even if the museums in question do not outwardly acknowledge that their shifting actions are in line with such museology. The alteration of core documents and mission statements show the involvement of the highest institutional levels, directors and commissioners, supporting these shifts in museological practice and the role that museums play in society related to rights. While some museums are already moving in this direction and instituting these changes, such as HSMC, many are not. Efforts being made to establish sustained community engagement based on relationship building and the rebuilding of trust are largely the result of individuals who are themselves pushing forward these practices that emphasize alignment with human rights museological practice. This indicates that there is a shift happening, meaning that the movement in this museological direction is

currently happening, not that it has been achieved. In answering these questions, this thesis contributes to the growing body of literature that reflects the current changes in the museum sector towards a human rights museology in practice.

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Interview Transcripts

Interview Transcript: Dan, [interviewed by Alexander Smith], 9 January 2024.

Interview Transcript: Jay, [interviewed by Alexander Smith], 1 February 2024.

Interview Transcript: Karina, [interviewed by Alexander Smith], 28 March 2024.

Interview Transcript: Lily, [interviewed by Alexander Smith], 20 February 2024.

Interview Transcript: Natar, [interviewed by Alexander Smith], 18 January 2024.

Interview Transcript: Rodney, [interviewed by Alexander Smith], 6 February 2024.

Interview Transcript: Russell, [interviewed by Alexander Smith], 8 April 2024.

Interview Transcript: Taylor, [interviewed by Alexander Smith], 7 March 2024.

Interview Transcript: Wes, [interviewed by Alexander Smith], 23 January 2024.