



# What's Yours is Mine: Yale, Peru and the Ownership of Cultural Property

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What's Yours is Mine:  
Yale, Peru and the Ownership of Cultural Property

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A Thesis in the Field of History  
for the Degree of Master of Liberal Arts in Extension Studies

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## Abstract

Objects of material can be an invaluable source of information on the past, as well as a tool to help forge cultural identity. Such objects have value from aesthetic to academic, and from economic worth to political capital. There is often a lot at stake over their ownership. This is the case for many objects of pre-European Andean material. This thesis examines the dispute between Peru and Yale University over a collection of Incan material held by Yale.

At times, this dispute was quite acrimonious, with protestors marching in the streets of Lima and Cuzco, lawsuits waging in U.S. Federal Courts, and accusations and defenses sprawling across the opinion pages of *The New York Times*. Just as it appeared to be at a deadlock, a series of innovative agreements resolved the century-long dispute with rapidity.

This thesis explores the contested ownership and eventual resolution of the dispute over these artifacts. The particular focus is on the decisions that several key Yale personnel made that led to the return of the objects to Peru. While this cultural property dispute was covered in the media, to date no analysis has been made of why Yale chose to follow its course of action. Despite frequent portrayals by Yale as “colonial” in the popular media, a closer examination reveals that key Yale professors and administrators were internationally collaborative, working with colleagues across borders to advance scholarship and dialogue, over several decades.

The examination of the Yale-Peru dispute offers a chance to examine the specifics of what it means to curate objects and study cultures and peoples. A university, especially a research university, must reckon with the realities of geopolitics and international legal frameworks. Given the pervasiveness of cultural property disputes, the Yale-Peru example offers a unique success story, by which all parties appear to have achieved their goals. This thesis thus concludes with an examination of ways in which this case can be applied to other cultural property disputes.

## Dedication

To Erin, Ethan, Everett, and Harper, with gratitude for all their love and support.

And to Bette Hoskins, who first took me to Harvard's campus, and urged me to challenge myself.

## Acknowledgments

Perhaps the hardest thing I've had to do in the completion of this program is to find the right way to thank the people to whom I am so grateful.

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I also am short of words in expressing my thanks to the incredible faculty and administration of Yale University central to this thesis, including Dr. Richard Levin, Dorothy Robinson, and Dr. Derek Briggs. Finally, a special note of appreciation to Dr. Richard Burger and Professor Lucy Salazar, who were candid and generous in equal measure, and who have done so much to help us all see the past a little clearer.

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## Chapter I.

### Overview

On July 24, 1911, Yale Professor Hiram Bingham climbed up through the Andean rainforest and into the ruins of the ancient Incan citadel of Machu Picchu. Year after year, he journeyed back to Peru, in search of new discoveries. With each expedition, Bingham crated up artifacts and antiquities, and shipped them back to his employer.<sup>1</sup>

A few months shy of the one hundredth anniversary of Bingham's "scientific discovery" of Machu Picchu, Yale entered into an agreement with the Peruvian government to return thousands of artifacts from these expeditions. This came as a surprise to many, given the acrimony over the ownership of these artifacts. The Peruvian government had demanded their return. Yale steadfastly refused. Lawsuits were filed. Protesters marched in the streets of Cuzco and Lima. The Peruvian government claimed the artifacts as part of their people's cultural heritage. Yale declared that Bingham's donations were legally exported, in full compliance with Peruvian law. The 4,000-mile distance between Lima and New Haven was more than a physical gap; it was ideological as well.<sup>2</sup>

And yet, the seemingly intractable gulf evaporated in a series of historic agreements that sent thousands of artifacts back to Peru in time for the one hundredth anniversary of Bingham's ascent to Machu Picchu. How did this come to pass? By what

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<sup>1</sup> Antonio Regaldo, "Yale Agrees to Return Machu Picchu Artifacts to Peru," *Science*, February 14, 2011, <https://www.science.org/content/article/yale-agrees-return-machu-picchu-artifacts-peru>.

<sup>2</sup> Dana Ford, "Peru Sues Yale to Get Back Ancient Incan Artifacts," *Reuters*, December 10, 2008, sec. U.S. News, <https://www.reuters.com/article/us-peru-yale-idUSTRE4B966K20081210>.

means did the two sides find common ground and reach their historic accord? There are countless cultural property disputes around the world. This thesis will explore the Yale-Peru case, from its origins to its resolution.

The Yale-Peru dispute was prominently covered in the media, as well as legal and academic journals. Beyond the legal dispute, Machu Picchu is the most iconic, best known, and most visited Inca site. Therefore, it has a hold on the public's imagination beyond any other place or thing in Peru. Yale's possession of artifacts from Machu Picchu and Peru's claims are therefore already more than a dispute over proper possession; they automatically are the crucible of patrimonial claims. Therefore, the successful resolution to the apparent mutual satisfaction of all parties was an outcome that far exceeded many expectations. However, as will be seen, the coverage of this dispute told an incomplete picture. In order to consider this case's implications for the broader landscape of cultural property ownership debates, a closer examination is required.

Going further, while the issue of repatriation received a lot of attention as it unfolded, the post-facto examination of this resolution remains largely unaddressed. Specifically, how and why Yale University officials followed their course of action is little explored. Nor has there been a look back on the agreements, more than a decade after their completion. An examination of these agreements, and an assessment of their effectiveness, is therefore important to fully considering the impact of this case.

There are numerous examples where the repatriation of artifacts is of acute focus and is often contentious. From Parthenon marbles to Egyptian mummies, and from the megalithic Moai statues of Easter Island to sacred remains of Indigenous Americans,

countries and people around the world are seeking to reclaim artifacts of their cultural heritage.<sup>3</sup> Some of these artifacts sit in museums thousands of miles from home, others in storage, preserved for scholarly study. How does the Yale-Peru disagreement, and its ultimate resolution, sit within the discussion of cultural property ownership, and how might this example inform other contested repatriation situations around the world?

With origins dating back more than a century ago, the conflict between Yale and Peru has a long history. The disagreement between the two stakeholders can be examined through a variety of sources. The *outcome* of the decision to return the artifact is known: the structure of the agreements and how they were carried out. However, little is known about the *input*, i.e., the specific process by which Yale and Peruvian officials broke their deadlock, how Yale officials came to make their decisions, and what motivations led them to do so.

In the relationship between Yale and Peruvian officials, there is a clear before and after. Before: Yale officials held steadfast to the claim that they owned legal title to the Machu Picchu artifacts and declined repatriation demands. After: Yale agreed to return the entirety of the collection and arrange a program of mutual scholarship in Peru and in conjunction with Peruvian institutions. The transition from “before” to “after” represented a significant achievement in the custodianship of and scholarship on cultural property. What led to this shift? Examining this process represents opportunity to conduct

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<sup>3</sup> See Maya Margit, “Archaeologist Launches Repatriation Campaign for Egyptian Treasures,” *The Media Line*, January 29, 2020, <https://themedialine.org/life-lines/archaeologist-launches-repatriation-campaign-for-egyptian-treasures/>; Amy Woodyatt, “British Museum Delegates Travel to Easter Island to Discuss Fate of Statues,” CNN, June 4, 2019, <https://www.cnn.com/style/article/easter-island-statue-return-museum-statue-scli-intl/index.html>; “Greece and UK Agree to Discuss Repatriation of Parthenon Marbles,” *Artforum*, May 19, 2022, <https://www.artforum.com/news/greece-and-uk-agree-to-discuss-repatriation-of-parthenon-marbles-88583>; Zachary Small, “Push to Return 116,000 Native American Remains Is Long-Awaited,” *The New York Times*, August 6, 2021, sec. Arts, <https://www.nytimes.com/2021/08/06/arts/design/native-american-remains-museums-nagpra.html>.

original research and add depth to the knowledge of this conflict and its subsequent resolution.

Beyond policy or ethical considerations, from a legal standpoint, Yale did not have to negotiate. Numerous legal review journals have explored the case's details, and there is near universal consensus that Peru had little standing in either U.S. or international courts.<sup>4</sup> And yet, Yale officials did in fact opt to return the Bingham collection.

Identifying and analyzing this decision point, the factors that lead up to it, and the ways in which it was brought about, is vital to adding depth to the understanding of the Yale-Peru deadlock and subsequent agreement, and may have applications to other contested repatriation situations around the world. For Yale and Peruvian officials to have reached their agreements, an internal dialogue between parties led to Yale officials to follow their course of action. This decision could not have happened without discussion, consideration of consequences, planning, etc.

An examination of the existing scholarship highlights several resources that can be informative to this project. The specific example of Yale and the Machu Picchu artifacts received a measure of focus in current scholarship in the time periods immediately preceding and following the 2011 agreement. As mentioned above, much of

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<sup>4</sup> See Stephanie Swanson, "Repatriating Cultural Property: The Dispute between Yale and Peru over the Treasures of Machu Picchu," *San Diego International Law Journal* 10, no. 2 (2009 2008), <https://heinonline.org/HOL/P?h=hein.journals/sdintl10&i=475>: 481–85; Kimberly Alderman, "Machu Picchu Artifacts: Repatriation," in *Encyclopedia of Global Archaeology* (New York: Springer International Publishing, 2020), 6646–50, [https://doi.org/10.1007/978-3-030-30018-0\\_280](https://doi.org/10.1007/978-3-030-30018-0_280); Molly L. McIntosh, "Exploring Machu Picchu: An Analysis of the Legal and Ethical Issues Surrounding the Repatriation of Cultural Property," *Duke Journal of Comparative & International Law* 17, no. 1 (2006): 2. [https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/djcil17&men\\_hide=false&men\\_tab=toc&kind=&page=199](https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/djcil17&men_hide=false&men_tab=toc&kind=&page=199).

this examination seems to be legal, rather than historical or anthropological scholarship. As such, legal journals represent key sources for this topic, but may have a limit on their utility, as they tend to focus on the technicalities of the case, but not the values and opinions behind decisions of key stakeholders.<sup>5</sup>

Taking a wider view of the scholarship offers another way to explore this topic. Repatriation is germane to museum management and curation, as exported cultural property often ends up on display in museums. When cases of contested ownership arise, museums are often at the center of such controversies. The strongest arguments against repatriation are often made by museum directors.<sup>6</sup>

Museum management is its own field of study; the American Alliance of Museums has a code of ethics that informs questions of cultural property.<sup>7</sup> The relationship between cultural property and museums is itself deeply contentious, with several critics calling for the dismantling of “colonial” museums.<sup>8</sup> In some cases, the Yale-Peru situation is explored in this literature as evidence that claims of cultural patrimony are often modern, nationalist claims disconnected from the nature of ancient civilizations. In essence, this argument is that just because modern Peru is geographically

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<sup>5</sup> See Patty Gerstenblith and Lucille Roussin, “Art and International Cultural Property,” *The International Lawyer* 42, no. 2 (2008): 729–43, [https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/intlyr42&men\\_hide=false&men\\_tab=toc&kind=&page=729](https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/intlyr42&men_hide=false&men_tab=toc&kind=&page=729); McIntosh, “Exploring Machu Picchu,” 2006; Swanson, “Repatriating Cultural Property.”

<sup>6</sup> For a collection of essays by museum directors arguing against repatriation, see James Cuno, *Whose Culture?: The Promise of Museums and the Debate over Antiquities* (Princeton, NJ: Princeton University Press, 2012).

<sup>7</sup> “AAM Code of Ethics for Museums,” American Alliance of Museums, December 12, 2017, <https://www.aam-us.org/programs/ethics-standards-and-professional-practices/code-of-ethics-for-museums/>.

<sup>8</sup> For examples, see Shimrit Lee, *Decolonize Museums* (New York: OR Books, 2022); Dan Hicks, *The British Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (London: Pluto Press, 2020).



contemporaneous with the ancient Incan Empire, does not mean Peru should own Incan artifacts.<sup>9</sup>

Understanding the scholarship on museum curation will provide a landscape in which this dispute existed. This exploration will include examination of the arguments against repatriation deployed by many leading curators, including the claim that cultural artifacts cannot belong to anyone and therefore ownership claims are facile, that if museums export objects to countries of origin, then museums risk being hollow and devoid of important works, and that western museums may do a better job of preserving objects than countries of origin.<sup>10</sup>

The goal of this thesis is to identify and analyze the specific decision of Yale University officials to sign a series of agreements that led to the return of the entire Bingham collection of objects to Peru. In doing so, this thesis will trace these artifacts from their excavation and exportation by Bingham through and beyond their return one century later.

Set against this timeline, this project will contextualize the final agreements with an examination of the key milestones that preceded it. These include a failed agreement between Yale and Peru in the year 2007, organized protests in Peru calling for repatriation, various attempts by Peru to achieve the return of the object dating back to the early twentieth century, Peruvian attempts to litigate the dispute in U.S. courts, and the various ways that Yale addressed the Peruvian demands for return. Specifically, this

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<sup>9</sup> James Cuno, "Antiquity Belongs to the World," *The Chronicle of Higher Education* 54, no. 43 (2008): B.6-B.7.

<sup>10</sup> See James Cuno, "Culture War: The Case Against Repatriating Museum Artifacts," *Foreign Affairs* 93, no. 6 (2014): 119–29; James Cuno et al., *Whose Muse?: Art Museums and the Public Trust* (Princeton, NJ: Princeton University Press, 2018).

thesis will seek to answer the question: *Why did Yale University Officials decide to return to Peru the artifacts taken from Machu Picchu by Hiram Bingham in the 1910s?*

This thesis will approach this question by examining the context in which cultural property debates exist. This will include the history of the modern concept of cultural property and the robust debate around repatriation in the several academic fields that confront this issue, including archaeology, anthropology, law, and art history. It will then examine the laws and multi-lateral treaties that have developed roughly commensurate with the timeframe of the Yale-Peru dispute.

With this established, the Yale-Peru debate will be contextualized in two further ways. The first is by examining both the Peruvian political conditions that have existed over the course of the acrimony and resolution. This is important as the prime drivers of the repatriation demands have been Peruvian politicians and the political realities in Lima had direct bearing on the decisions being made in New Haven. The second way this dispute will be contextualized will be a brief examination of how other peer institutions have been affected by and dealt with the issue of cultural property ownership and return.

The second half of this thesis will focus solely on the Yale-Peru dispute: its origins, the key people involved, their engagement with the topic, and, ultimately, Yale's decision to return the Bingham collection in its entirety to Peru. In addition, there is an examination of the agreements from the time of their completion to the present. This thesis concludes with an evaluation of the ways that this case unique, and how it can be applied to the broader landscape of cultural property dispute resolution.

However, before all of this, it is vital to establish how and why Yale came to be in the possession of these artifacts in the first place.

## Chapter II.

### Historical Background

In 1904, U.S. President Theodore Roosevelt issued the Roosevelt Corollary to the Monroe Doctrine, projecting U.S. hegemony into South America.<sup>11</sup> At the same time, American and European academic institutions were competing to be the first to make new anthropological and archaeological discoveries in the region.<sup>12</sup> One such institution, Yale University, was entering the 20<sup>th</sup> century in a state of transformation, adding graduate programs and expanding its research agenda, including beginning to conduct international research.<sup>13</sup>

It was amidst these swirling changes that Hiram Bingham III mounted the first Yale Peruvian Scientific Expedition in 1911. When he boarded his ship for his journey south, Bingham had no awareness of Machu Picchu. By the time his ship docked back in the United States, he brought with him news of the “discovery” that would come to define his career. The site was occupied by local farmers, but Bingham’s expedition started the process by which Machu Picchu came to be known to the wider world. Shortly after returning home, Bingham, crafted a heroic discovery narrative with himself as the protagonist.<sup>14</sup> He subsequently mounted two additional expeditions, in 1912 and in 1915.

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<sup>11</sup> “Milestones: 1899–1913 - Office of the Historian,” accessed September 18, 2022, <https://history.state.gov/milestones/1899-1913/roosevelt-and-monroe-doctrine>.

<sup>12</sup> Swanson, “Repatriating Cultural Property,” 473.

<sup>13</sup> Swanson, 473.

<sup>14</sup> José Carlos Díaz Zanelli, “Writing Machu Picchu. Epistemological Extractivism and the Citadel Through the Lens of *Indigenismo Cusqueño*,” *Journal of Latin American Cultural Studies* 30, no. 4 (October 2, 2021): 570, <https://doi.org/10.1080/13569325.2021.2005003>.

With these second and third expeditions, Bingham led excavations that yielded tens of thousands of artifacts, including human remains and several hundred museum-quality pieces. He secured permits from the Peruvian government to both conduct the digs and to export artifacts. For the third Yale Peru Scientific Expedition, the agreements between Bingham and the Peruvians allowed for artifact export, so long as he acknowledged that they were on loan for an eighteen-month period.

As early as 1916, Bingham commented on the artifacts from his recently completed third expedition, writing to a colleague that the objects:

do not belong to us but to the Peruvian government, who allowed us to take them out of the country on condition that they be returned in 18 months...The whole matter has assumed a very large importance to the Peruvians, who feel that we are trying to rob them of their country of its treasure.<sup>15</sup>

And yet, the eighteen-month window lapsed, and Yale held fast to Bingham's spoils.<sup>16</sup>

By 1917, Peru began demanding the return of the artifacts. Yale declined. Peru persisted. In 1922, Yale sent several crates of artifacts back to Peru, including human remains, declaring the issue resolved.<sup>17</sup> What Peruvian authorities did with the objects will be discussed below. Not satisfied, Peruvian authorities demanded full transfer of all the artifacts still in Yale's possession. Despite mounting calls for their return through the 1920s, Yale held to its position that it had returned everything it was obligated to return. By the time the decade ended, Peruvian authorities gave up.<sup>18</sup> The issue would remain dormant for seven decades.<sup>19</sup>

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<sup>15</sup> Alderman, "Machu Picchu Artifacts," 6649.

<sup>16</sup> Alderman, 6649.

<sup>17</sup> Alderman, 6649.

<sup>18</sup> Alderman, 6649.

<sup>19</sup> Zanelli, "Writing Machu Picchu. Epistemological Extractivism and the Citadel Through the Lens of *Indigenismo Cusqueño*," 580.

In the intervening time, however, there was a growing awareness in the international community that cultural property was an issue of significance. Several multi-lateral treaties were completed establishing the regime of law on artifacts and their repatriation. Primary among these were the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague 1954), the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970), and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Artifacts of 1995 (UNIDROIT 1995).<sup>20</sup> Within the U.S., lawmakers passed the landmark Native American Graves Protection and Repatriation Act (NAGPRA) in 1990.<sup>21</sup> These major frameworks shaped the international values and debates about ownership of cultural property in the second half the 20<sup>th</sup> century, when the issue of the Bingham collection of Machu Picchu artifacts would reemerge.

In the early 2000s, Peruvian officials resumed the call for the return of the artifacts. At first, the issue received little attention. Then, in 2003, Yale announced a major exhibition of the contested artifacts. The highest-quality pieces from its collection would tour the country before taking place of honor in a new permanent exhibit built at Yale's Peabody Museum.<sup>22</sup> To Peruvian officials, including President Alejandro Toledo,

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<sup>20</sup> For treaty frameworks, see "1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict," UNESCO, July 25, 2021, <https://en.unesco.org/protecting-heritage/convention-and-protocols/1954-convention>; "About 1970 Convention," UNESCO, February 12, 2020, <https://en.unesco.org/fighttrafficking/1970>; "1995 Convention - UNIDROIT," June 19, 2021, <https://www.unidroit.org/instruments/cultural-property/1995-convention/>.

<sup>21</sup> "Native American Graves Protection and Repatriation Act (U.S. National Park Service)," accessed September 18, 2022, <https://www.nps.gov/subjects/nagpra/index.htm>.

<sup>22</sup> "Major Exhibition on Machu Picchu Opens January 26 at Yale Peabody Museum," *YaleNews*, January 15, 2003, <https://news.yale.edu/2003/01/15/major-exhibition-machu-picchu-opens-january-26-yale-peabody-museum>.

who used this issue to boost his internal popularity, this was an affront. To Toledo, if the artifacts were to travel anywhere, it should have been back to Peru. Aided by his wife, cultural anthropologist Eliane Karp-Toledo, Toledo positioned himself as Peru's first Indigenous President, holding a second inauguration ceremony, steeped in Indigenous language, dress, symbolism and ritual, at Machu Picchu.<sup>23</sup>

Calls for repatriation grew louder. Peruvians protested in the streets of Lima and Cuzco.<sup>24</sup> Peruvian officials threatened lawsuits.<sup>25</sup> This happened even as the stewardship of Machu Picchu flagged, and private, commercial interests superseded protection of the sacred site. For example, a beer commercial filmed at Machu Picchu damaged an irreparable, sacred sun dial, the only known example to have survived destruction by Spanish conquistadors.<sup>26</sup> Still, Yale signaled their willingness to come to open negotiations.

Representatives from Yale and Peru put aside the rancor and sat down at the negotiating table. By February 2007, the two sides had agreed to the broad parameters of an agreement in a Memorandum of Understanding. Hopes for a successful resolution were dashed when the deal soon thereafter fell apart, as will be discussed in detail below.<sup>27</sup>

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<sup>23</sup> "Peru's Toledo Sworn in as Indian President," *Indianz*. Accessed September 27, 2022, <https://www.indianz.com/News/show.asp?ID=intl/7302001-1>.

<sup>24</sup> "Protesters Demand Yale Return Machu Picchu Artifacts to Peru," *The Boston Herald*, May 9, 2006, [http://archive.boston.com/news/local/connecticut/articles/2006/05/09/protesters\\_demand\\_yale\\_return\\_machu\\_picchu\\_artifacts\\_to\\_peru/](http://archive.boston.com/news/local/connecticut/articles/2006/05/09/protesters_demand_yale_return_machu_picchu_artifacts_to_peru/).

<sup>25</sup> Jane Gordon, "NOTICED; A Dispute Over Peruvian Artifacts at Yale," *The New York Times*, December 18, 2005, sec. New York, <https://www.nytimes.com/2005/12/18/nyregion/noticed-a-dispute-over-peruvian-artifacts-at-yale.html>.

<sup>26</sup> Sheila Pulham, "Commercial Lager Louts Damage World Heritage Site," *The Guardian*, September 11, 2000, sec. World news, <https://www.theguardian.com/world/2000/sep/11/sheilapulham>.

<sup>27</sup> Bruce Fellman, "Peru v. Yale," January / February 2009, <https://yalealumnimagazine.org/articles/2305-i-peru-v-yale-i>.

In 2008, Peru filed a lawsuit in U.S. Federal Court seeking redress for what hyperbolic politicians and reporters described as Yale's intransigence.<sup>28</sup> While numerous legal scholars analyzing the case concluded that Peru had little legal standing, there was a growing chorus that it had a strong moral and ethical case, especially against the backdrop of other high-profile repatriation situations. Even runners in the New York City Marathon donned t-shirts calling for repatriation.<sup>29</sup>

In what has been described as finally yielding to local and international pressure, Yale sent a delegation to Peru to negotiate a new settlement. Signed in November 2010, a second Memorandum of Understanding arranged for the transfer of all artifacts back to Peru, the highest-quality pieces to be housed in a museum purpose-built for their display. Yale scholars would enjoy full access to the entirety of the collection and continue to conduct research on the artifacts.<sup>30</sup> As will be seen, this depiction of Yale's actions tells an incomplete story.

With the agreements that resolved the dispute, which was completed and enacted in time to observe the one hundredth anniversary of Hiram Bingham's first expedition, a decade of acrimony gave way to a new era of cooperation, and mutual admiration.

The Yale-Peru case unfolded over decades, and against the backdrop of an evolving academic debate about cultural property. An examination of this literature will be addressed before analyzing the specific decisions of the Yale administrators and faculty.

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<sup>28</sup> Diane Orson, "Finders Not Keepers: Yale Returns Artifacts To Peru," *NPR*, December 18, 2011, sec. History, <https://www.npr.org/2012/01/01/143653050/finders-not-keepers-yale-returns-artifacts-to-peru>.

<sup>29</sup> Alderman, "Machu Picchu Artifacts," 6650.

<sup>30</sup> Orson, "Finders Not Keepers."

## Chapter III.

### Historiography

The Yale-Peru dispute sits inside the broader topic of the repatriation of cultural property. This is addressed across multiple academic disciplines and a continuum of perspectives. The various arguments about this topic took shape while the Yale-Peru dispute was in its dormant period of roughly 1929 to 2003. Thus, in evaluating the historiography of the topic, it is necessary to start with the broad development of the literature on cultural property, before narrowing focus to the specific analysis of and debate about the Yale-Peru case.

The topic of cultural property ownership within market nation literature is expansive, and it connects to the work of many fields of study, including anthropology, archaeology, art history, journalism, law, and politics.<sup>31</sup> Many of the individuals who contributed to the discussion on cultural property reflected this multidisciplinary lens. While the concept of cultural property ownership is not new, it took on a deeper resonance, and thus became the subject of much debate, following the enactment of the UNESCO framework in 1970 (more below in chapter IV).

Through the review of the historiography on cultural property, there are three broad arguments that emerge in the scholarship. The first, typified by the work of art historian and museum curator James Cuno, is that repatriation generally should be

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<sup>31</sup> The distinction between “market” and “source” nations for artifacts and antiquities is important to the literature, and will be described below.



rejected. The second, starting with the work of scholars such as art historian Luis Monreal and legal scholar John Merryman is that cultural property repatriation is complex, that pragmatism should resolve disputes, and that absolute positions should be set aside. The final, argued by, for example, professor of art law Marc-André Renold, is that parties should put the need to own an artifact aside, find common ground, and work together to seek mutually beneficial compromise.

Each broad argument has its proponents and detractors. An exploration of the various arguments for and against repatriation will provide important context for understanding the motivations of Yale officials with regards to the Machu Picchu dispute. Occasionally, the Yale-Peru dispute is specifically mentioned within the literature on cultural property ownership and repatriation. Therefore, while this chapter will provide an examination of the academic discussion on cultural property ownership in general, it will periodically reference attempts by different academics to place the Yale-Peru dispute within the framework of their arguments. However, any specific perspectives by Yale professors or administrators appears in chapter VIII below.

The tension between Yale and Peru was acute from 1916 to the close of the 1920s. As will be seen below, since the 1920s, Yale has steadfastly maintained the position that their return of the 1915 artifacts fulfilled their obligation to return any objects to Peru. Eventually, Peruvian officials dropped the matter and it lay dormant for nearly seven decades. As the artifacts sat in crates in the basement of the Yale Peabody Museum, awaiting rediscovery, so too did the issue of their provenance.

The issue of the Machu Picchu artifacts remained unexplored in this fallow period. However, that did not mean that the broader issue of repatriation was likewise

overlooked. It was following the consummation of the UNESCO 1970 framework that art historians, legal scholars, archaeologists, and anthropologists began to consider the issues of cultural property and repatriation.

Following UNESCO 1970, the international regime of law was underdeveloped in terms of regulating the way cultural property crossed international borders. In 1971, immediately following the signing of the UNESCO convention, Stanford law professor John Merryman began bringing attention to the legal issues surrounding the possession of cultural artifacts. Merryman designed and taught a class that challenged students to consider the interplay between the law and ethics where cultural property was concerned, the first college course dedicated specifically to the topic of ownership of cultural property.<sup>32</sup> This class would lay the foundation to further advances in Merryman's scholarship and contributions to the international debate over the ownership of cultural property. In short time, he would publish several seminal works that would dramatically advance the thinking about these complex issues. But before he did, another multidisciplinary thinker helped reframe an important aspect of the cultural property landscape.

Display in a venerable museum tends to give the possession of artifacts in a collection the veneer of legitimacy. After all, if someone cannot trust, say, the Metropolitan Museum of Art, then who could they trust? Following UNESCO 1970, the question of how objects came to be acquired, both by institutions and by private collectors, began to take on more scrutiny. One of the first works to question

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<sup>32</sup> "John Henry Merryman: Art Law Pioneer and Much-Loved Colleague," Stanford Law School, August 15, 2015, <https://law.stanford.edu/press/john-henry-merryman-art-law-pioneer-and-much-loved-colleague/>.

acquisition practices was Karl E. Meyer's 1973 book *Plundering the Past*.<sup>33</sup> Meyer was a political scientist and a journalist. He deployed this combination of disciplines to explore the issues of art and cultural patrimony. The work was principally focused on the inner workings of the art and artifact black market, and Meyer travelled to several sites rich in archaeological treasures to find and track the way illicitly acquired goods flowed through the dark recesses of the shadow economy, some of which ended up in the collections of august institutions.

*Plundering the Past* was vital to the consideration of objects of cultural property as it directly linked illegal goods to venerable museums, shining a light on the methods by which these institutions acquired some of their prized possessions.<sup>34</sup> Meyer's work helped establish a framework by which source nations could challenge the possessions of cultural property by market nations' institutions. This linkage between institution and the ethics of acquisition would come to be of key significance once the Yale-Peru debate reemerged. Of note, Meyer would continue to contribute to the growing debate around cultural property, over time becoming a voice against repatriation.<sup>35</sup>

For all his insights, Meyer was neither an art historian nor a museum curator. His critique was important, but just how museums should rethink their relationship with cultural property ownership remained theoretical. To translate the reframing of the issues that Meyer raised into the operations of museums and their acquisition practices required

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<sup>33</sup> Karl E. Meyer, *The Plundered Past* (New York: Atheneum, 1973).

<sup>34</sup> S.K. Oberbeck, "Psst!! Hey, Mister: THE PLUNDERED PAST. By Karl E. Meyer.," *The Washington Post*, 1973, BW11.

<sup>35</sup> For Meyer's arguments against repatriation, see Karl E. Meyer, "Who (Really) Owns the Past?," *World Policy Journal* 23, no. 1 (2006): 85–91, <https://doi.org/10.1215/07402775-2006-2004>.

considerations of those responsible for such institutions. In the late 1970s, one of the most prominent art historians in the world would do just that.

As the 1970s drew to a close, art historian and archaeologist Luis Monreal expanded the view of possession of art and artifacts beyond legal considerations, into moral and ethical ones.<sup>36</sup> In “Problems and Possibilities in Recovering Dispersed Cultural Heritage,” Monreal strongly argued for restitution of cultural property. He challenged the international community not to look at possession as a zero-sum issue. Rather, while contending that cultural heritage is central to cultural identity:

the restitution of dispersed cultural property is an act of international solidarity which concerns not only belligerent States or former colonial powers, but also those who, often by legitimate methods, have benefited from the dispersal of these heritages.<sup>37</sup>

This was a meaningful argument coming from Monreal, who, at the time, was serving as the Secretary General of the International Council of Museums (ICOM).<sup>38</sup> The ICOM had been founded in 1946 with a goal of bringing together, “museum professionals whose mission is the conservation and transmission of natural and cultural heritage, present and future, material and immaterial.”<sup>39</sup> This charter brought ICOM squarely into the discussions about ownership of cultural property. During Monreal’s tenure as Secretary General, ICOM took proactive steps to engage with institutions in, “Asian, African and Latin America developing countries for the training of museum staff

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<sup>36</sup> Luis Monreal, “Problems and Possibilities in Recovering Dispersed Cultural Heritage,” *Museum International* 53, no. 4 (1979), <https://doi.org/10.1111/1468-0033.00350>.

<sup>37</sup> Monreal, “Problems and Possibilities in Recovering Dispersed Cultural Heritage.”

<sup>38</sup> “Luis Monreal,” accessed June 21, 2023, <https://www.culturalforum.ru/en/participants/luis-monreal>.

<sup>39</sup> Abdoulaye Camara, “International Council of Museums (ICOM): Code of Ethics,” in *Encyclopedia of Global Archaeology*, ed. Claire Smith (New York, NY: Springer, 2014), 3966–69, [https://doi.org/10.1007/978-1-4419-0465-2\\_1049](https://doi.org/10.1007/978-1-4419-0465-2_1049).

and restorers.”<sup>40</sup> Thus as Monreal was framing his argument about cultural property, he did so as a leading voice on the evolving standards from within the curatorial community.

Monreal’s argument dramatically widened the aperture for considering issues of cultural property. By expanding beyond the consideration of goods acquired through warfare or illicit trade, he intruded a moral framework that also considered issues of ethics and fairness. Monreal also invited the perspective of and engagement with people and institutions from developing nations. Such considerations would prove central to the issue of the Machu Picchu artifacts. Monreal’s work, while seminal, did not address a key issue that would become a focal point of the Yale-Peru disagreement: the legality of ownership. Fortunately, contemporaneous to Monreal, another academic was furthering the development of an emerging field of study.

While Monreal was building ethical considerations into the discussion on cultural property, Merryman took his contributions beyond the Stanford campus. In 1979, he and fellow Stanford professor and art historian Albert Elsen published their seminal book *Law, Ethics and the Visual Arts*.<sup>41</sup> This work brought together the disciplines of law and art history and examined various aspects of cultural patrimony, exportation and repatriation. Scholars from both law and art history contributed essays about several cases, and Merryman and Elsen added their own analysis to each. While the topic of the contested ownership of artifacts from Machu Picchu was still in its fallow period, and, thus not addressed, Merryman and Elsen addressed key issues that would play out in the forthcoming dispute.

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<sup>40</sup> “History of ICOM,” International Council of Museums, accessed June 21, 2023, <https://icom.museum/en/about-us/history-of-icom/>.

<sup>41</sup> John Henry Merryman and Albert E. Elsen, *Law, Ethics, and the Visual Arts: Cases and Materials* (New York, N.Y.: M. Bender, 1979).

At first, their work did this not advocate for any specific position on the topic of cultural property, but, critically, connected the international regime of law with questions of cultural property. They gave agency to nations of origins, i.e., source nations, and helped expand the lens through which these issues were considered. Their work began to lay the intellectual foundation upon which later calls for repatriation would rest, both within the law and the humanities. As important as this work was, Merryman was just getting started.

In 1986, Merryman took to the *American Journal of International Law* to publish his landmark paper “Two Ways of Thinking About Cultural Property.” In this paper, Merryman distinguished between cultural property internationalism, and cultural property nationalism.<sup>42</sup> In his framing, cultural property internationalism is a view in which objects of cultural property are, “...components of a common human culture, whatever their places of origin or present location, independent of property rights or national jurisdiction.”<sup>43</sup> This framework set up the argument against repatriation, which states that if something belongs to all mankind, then it follows that it cannot be owned by any nation or national institution. Merryman also defines the antithetical framework, cultural property nationalism, as the view that such objects are part of a national cultural heritage:

This gives nations a special interest, implies the attribution of national character to objects, independently of their location or ownership, and legitimizes national export controls and demands for “repatriation” of cultural property.<sup>44</sup>

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<sup>42</sup> John Henry Merryman, “Two Ways of Thinking about Cultural Property,” *The American Journal of International Law* 80, no. 4 (1986): 832–33, <https://doi.org/10.2307/2202065>.

<sup>43</sup> Merryman, 831.

<sup>44</sup> Merryman, 832.

In evaluating the merits of each perspective, Merryman explicitly criticized Peru for what he calls “destructive retention, or covetous neglect.” Merryman suggested that, at the time of publication, Peru was seeking to hold onto or reclaim cultural property that it could not adequately care for, and that the nationalist perspective could ultimately be ruinous to the preservations of priceless artifacts.<sup>45</sup> While conceding that both ways of viewing cultural property have merit, Merryman called for pragmatic approaches to ensure that objects are safe and secure as the highest order consideration when debating ownership of such objects. However, in defining the approach to cultural property in such bifurcated terms, he came down decidedly on the side of internationalism, stating, “The values of internationalism—preservation, integrity and distribution / access—seem to carry greater weight.”<sup>46</sup> It’s not clear why Merryman believed that values such as preservation and integrity were not shared by cultural property nationalists. The belief that the preservation of and access to cultural artifacts is the highest order criteria in such debates will be clearly seen as part of Yale’s decision-making criteria.

*Two Ways of Thinking about Cultural Property* was a vital contribution to the literature on cultural property ownership. Not only did it frame the argument in nationalist vs. internationalist terms, but it provoked responses and debate from a range of scholars, curators, and academics. In 1992, Merryman established the *International Journal of Cultural Property*.<sup>47</sup> This journal provided space for the continuation of the cultural property debate. Merryman continued to refine his arguments in subsequent

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<sup>45</sup> Merryman, 846.

<sup>46</sup> Merryman, 853.

<sup>47</sup> Alexander A. Bauer, “International Journal of Cultural Property,” in *Encyclopedia of Global Archaeology*, ed. Claire Smith (New York, NY: Springer, 2014), 3987–88, [https://doi.org/10.1007/978-1-4419-0465-2\\_1044](https://doi.org/10.1007/978-1-4419-0465-2_1044).

papers, and many scholars responded with agreement and disagreement.<sup>48</sup> As the discussion continued, the Yale-Peru dispute came to the attention of the public and debates about it entered the discourse. John Merryman would be joined by several other legal scholars, who would take the lead in exploring the key factors of this unique case.

Initial considerations in the renewed Yale-Peru disagreement were grounded in the legal technicalities. An important contribution to the debate came in 2006 with the publication by Molly McIntosh of “Exploring Machu Picchu: An Analysis of the Legal and Ethical Issues Surrounding the Repatriation of Cultural Property.”<sup>49</sup> In this work, McIntosh contextualized the Yale-Peru disagreement within the broader scholarship of repatriation and cultural property. Analyzing the legal realities of the case, she concluded that:

While Yale is not legally bound to return the Machu Picchu artifacts to Peru, precedent, ethics, and politics dictate that they should compromise with Peru to at least share the artifacts or return them in exchange for the loan of other important cultural property for display.<sup>50</sup>

This argument was common among legal scholars analyzing the case in the period preceding repatriation. However, “precedent, ethics and politics” are subjective terms, and it is unclear if argument such as those made by McIntosh and other legal scholars had any bearing on Yale officials’ motivations.

By 2006, Yale had long contended that it returned to Peru everything that it was obligated to return, and even if it had not, the statute of limitations that would give Peru

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<sup>48</sup> See John Henry Merryman, “Cultural Property Internationalism,” *International Journal of Cultural Property* 12, no. 1 (2005): 11–39. <https://doi.org/10.1017/S0940739105050046>; Nora Niedzielski-Eichner, “Art Historians and Cultural Property Internationalism,” *International Journal of Cultural Property* 12, no. 2 (2005): 183–200; Claire L. Lyons, “Thinking about Antiquities: Museums and Internationalism,” *International Journal of Cultural Property* 21, no. 3 (2014): 251–65, <https://doi.org/10.1017/S0940739114000149>.

<sup>49</sup> McIntosh, “Exploring Machu Picchu,” 2006.

<sup>50</sup> McIntosh, 200.



legal standing had long since expired.<sup>51</sup> McIntosh contributed to the scholarship on this topic by aggregating and succinctly summarizing the various reasons Yale cited as to why it elected to retain the contested artifacts. These include that Yale had invested in their preservation, the academic scholarship that Yale had overseen for nearly a century was significant, and Yale's preservation and display of the artifacts was a net benefit to Peru, as it stimulated interest in and tourism to the country. Besides all these, Yale claimed it had rightful title to the objects in question, mooting the calls for repatriation.<sup>52</sup>

Rejecting these claims, McIntosh concluded with an argument by analogy, stating that, "Just because a thief polishes the silver he stole every day does not make him more worthy of possession than the rightful owner."<sup>53</sup> By grounding the Yale-Peru disagreement in the burgeoning field of cultural property, McIntosh set the stage for an important consideration within that debate. If the values around repatriation could shift, then a national identity could as well.

Peruvian society changed substantively in the time between Hiram Bingham's expeditions and the renewed call for repatriation. In "That Obscure Object of Desire: Machu Picchu as Myth and Commodity," then PhD candidate in Comparative Literature, and current New York University professor, Geoffrey Shullenberger examined the role that Machu Picchu has played in the popular imagination, including the role archaeology and the fate of its cultural artifacts in the formation of Peruvian national identity.<sup>54</sup>

Shullenberger contended that Bingham saw himself as a more worthy custodian of the

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<sup>51</sup> McIntosh, 201.

<sup>52</sup> McIntosh, 204.

<sup>53</sup> McIntosh, 219.

<sup>54</sup> Geoffrey Shullenberger, "That Obscure Object of Desire: Machu Picchu as Myth and Commodity," *Journal of Latin American Cultural Studies* 17, no. 3 (December 2008): 317, <https://doi.org/10.1080/13569320802544237>.

Peruvian artifacts than the Peruvians themselves, and that he also engaged in a relentless publicity campaign, simultaneously pushing narratives tailored to the different audiences of both academic and popular publications.<sup>55</sup>

Shullenberger's work sought to evaluate the impact of Yale's possession of the Machu Picchu artifacts. On one hand, foreign archaeologists denied Peru key cultural artifacts by exportation. On the other, doing so helped Peru in the process of forging their national identity, as the *absence* of the artifacts came to represent the *presence* of U.S. interference in Peruvian society. Taken in this light, Peru can said have gained from the exportation of their artifacts. For many Latin American intellectuals, the "discovery" of Machu Picchu was allegorical to their own self-discovery.<sup>56</sup> Shullenberger argued that archaeology has been instrumental in the formation of the Peruvian national identity.

Various schools of thought among Peruvian intellectuals and scholars have found common ground by reacting to the excavation and exploitation of Machu Picchu at the hands—and spades—of foreigners.<sup>57</sup> Shullenberger offers an important insight into the exploration of the Yale-Peru disagreement by providing an overview of what these artifacts meant to the Peruvians nationalists, how they interpreted the work of Bingham, and the psychology behind why repatriation came to mean so much to so many.

Shullenberger did not make the claim that Peru should forgo claims to its cultural property, just that their view of that cultural property was shaped, in some measure, by their reaction against its appropriation at the hands of Bingham, Yale and others. Other scholars examining the Yale-Peru dispute would pick up this thread of logic and more

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<sup>55</sup> Shullenberger, 324.

<sup>56</sup> Shullenberger, 326.

<sup>57</sup> Shullenberger, 318.

fully articulate the need for “ethics-based repatriation.” However, before these arguments could fully crystalize, James Cuno, a prominent art historian mounted a stirring defense of museums, curatorial practices, and the need to fight the groundswell of repatriation. He lined up art historian colleagues from prominent museums to join the debate.

As the ground began to shift in favor of repatriation, such agreements posed a significant disruption to museums and academic institutions. Sensing the threat, beginning in 2006, art historian James Cuno commenced the publication of a series of works that in aggregate laid out the case against repatriation as represented by the curatorial community. In 2004, his book *Whose Muse?: Art Museums and the Public Trust*, Cuno defended museums from criticism about acquisition practices.<sup>58</sup> While conceding that museums had an obligation to gain and maintain the public trust, he argued that “encyclopedic museums,” that is, museums that offer a complete panorama of human history, bind us to one another. Repatriation of artifacts from such collections are a threat to these collections, and thus to the study and dissemination of human history, as repatriation threatens to denude museums of important pieces in their collections and leave gaps in the cumulative story of human history.<sup>59</sup> To support his claims, Cuno gathered directors and curators from some of the world’s most prestigious museums and published their collective essays to strengthen their arguments.

Cuno followed this work with the 2008 *Who Owns Antiquity?: Museums and the Battle over Our Ancient Heritage*. Perhaps Cuno hoped that readers judged this book by its cover, as it provocatively shows heavily armed security personnel standing vigilant next to display case of ancient monumental sculpture. The cover photo was, perhaps, a

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<sup>58</sup> Cuno et al., *Whose Muse?*

<sup>59</sup> Cuno et al.

signal that Cuno was ready to fight, to do battle. Dispensing with collaborators, Cuno deepened his own arguments against repatriation. He argued that antiquity cannot be owned and any connection between the deep past and the modern day is dubious. Therefore, claims on artifacts under the aegis of cultural patrimony are moot.<sup>60</sup>

He followed this book up with an article titled “Antiquity Belongs to the World,” in which he applied his framework for museum curation specifically to the discussion on the Yale-Peru dispute. Cultural artifacts, such as those excavated from Machu Picchu, he insisted, and in an echo of Merryman, are the common property of all humankind. In addressing the Yale-Peru situation, Cuno described the Peruvians as politically motivated with shifting demands, while Yale officials, in particular then-President Richard C. Levin, were cooperative and willing to compromise.<sup>61</sup>

According to Cuno’s argument, the Yale-Peru disagreement typified repatriation efforts in being driven by nationalist politics. He argued that:

laws impose nationalist characteristics on antiquity when none could possibly exist. And they distort the truth of culture, which is that it is and always has been fluid and mongrel, the results of contact with new and strange things, never static or pure.<sup>62</sup>

Because culture constantly ebbs and flows, any modern political claim on an ancient culture is facile. By exporting antiquities and distributing them broadly across institutions, there is a much-reduced risk of losing precious cultural artifacts.<sup>63</sup> Cuno cited Iraq under Saddam Hussain and Afghanistan under the Taliban as examples of the dangers posed by keeping antiquities in their country of origin. As Cuno fired his salvos

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<sup>60</sup> James Cuno, *Who Owns Antiquity?: Museums and the Battle over Our Ancient Heritage* (Princeton: University Press, 2010).

<sup>61</sup> Cuno, “Antiquity Belongs to the World,” B6.

<sup>62</sup> Cuno, B7.

<sup>63</sup> Cuno, B7.

in the debate, legal scholars would renew their exploration of the Yale-Peru disagreement, this time set against the backdrop of the failed 2007 Memorandum of Understanding (MOU) and the subsequent legal actions taken by Peru to reclaim the Machu Picchu artifacts.

With Peru and Yale's disagreement spilling into the courts, legal scholars took the opportunity to explore the history of the disagreement with more depth and nuance. As the case was wending its way through the U.S. courts system, legal scholar Stephanie Swanson, writing in the *San Diego International Law Journal* published "Repatriating Cultural Property: The Dispute Between Yale and Peru Over the Treasures of Machu Picchu." Swanson performed an excavation of her own, adding new focus to the disagreement by reviewing various Peruvian legal codes dating back to Peru's Civil Code of 1852 and their 1893 executive decree addressing cultural property.<sup>64</sup> By grounding the modern legal disagreement in the laws of Peru, Swanson deepened considerations for Peruvian legal agency in the landscape of the disagreement.

Importantly, the work also analyzes the failed 2007 MOU. After the agreement was completed, but before it could be fully executed, Yale and Peru issued a joint statement calling their draft agreement a "new model for resolving competing interests in cultural property."<sup>65</sup> The Peruvian delegation that negotiated the agreement even thanked Yale for their partnership. However, once a broader set Peruvian stakeholders got a deeper look at the agreement, any support quickly vanished. Swanson identified that one

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<sup>64</sup> Swanson, "Repatriating Cultural Property," 481–82.

<sup>65</sup> Swanson, 487.

of the paramount issues was whether Yale or Peru would have title over repatriated artifacts, with each side claiming the artifacts as legally theirs.<sup>66</sup>

And yet, Swanson argued that another reason was causal, “the proposed settlement failed to recognize the arguably colonial manner through which the artifacts were originally acquired.”<sup>67</sup> Swanson thus identified an attempted agreement over cultural property at the very moment in which Peruvians were changing how they saw themselves, from colonial subservience to national equality with inviolable rights.

In the span of one negotiation, Peru went from allowing Yale to retain title and expressing gratitude to Yale for agreeing to send some artifacts back to Peru, to demanding full repatriation and clear title of all the Bingham artifacts. This analysis offered important evidence that the mindset toward repatriation was evolving quickly, with Peruvian officials expanding their aperture in terms of rights and ownership of cultural property, and in a compressed time cycle. Less than a year after the publication of Swanson’s analysis, Yale and Peruvian officials resumed negotiations.

This time, Yale sent a delegation to Peru. The rapidly shifting attitude toward the return of the Machu Picchu artifacts and the subsequent agreement between the parties provided fresh opportunities for scholars to consider the history of the Machu Picchu artifacts.

Understanding how the negotiators representing Yale and Peru came to an agreement where prior discussions had failed was an interesting project for scholars. In 2010, University of Wisconsin law professor Kimberly Alderman published “Yale Agrees to Return Machu Picchu Artifacts: Ethics-Based Repatriation Efforts Gain

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<sup>66</sup> Swanson, 485.

<sup>67</sup> Swanson, 487.

Steam.”<sup>68</sup> In this brief but consequential article, Alderman started by trodding upon familiar ground: the outline of the history of the artifacts and their contested ownership. She then added to the scholarship by describing the support that Peru received from other South American nations, domestic American politicians, and American social activists.<sup>69</sup> This contextualized the Yale-Peru disagreement in the broader social and political opinions of the time immediately preceding the final agreement, as well as demonstrating that other nations were finding common cause with Peru in terms of their cultural property. Alderman argued that these pressures provide a more powerful tool for repatriation cases around the world, and concluded that “Yale’s willingness to return the Machu Picchu artifacts to Peru demonstrates that the ethics-based repatriation movement is still a viable means for source nations to reclaim their extant cultural property.”<sup>70</sup>

Notably, Alderman pointed out Peru’s political and social pressure—the approach described as “ethics-based repatriation”—have been applied successfully by other nations of origin, including Egypt, Italy, and Greece.<sup>71</sup> The agreement between Yale and Peru to return the Bingham collection to Peru was signed in 2010. However, that did not stop scholars from continuing to fight against repatriation. Once again, James Cuno would seek to rally the global community of art historians to make their case.

By 2012, Peru had opened a museum in Cuzco to showcase the contested Machu Picchu artifacts. As the debate regarding repatriation and cultural patrimony seemed to shift in favor of repatriation, Cuno rallied a group of eminent art historians and scholars

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<sup>68</sup> Kimberly Alderman, “Yale Agrees to Return Machu Picchu Artifacts to Peru: Ethics-Based Repatriation Efforts Gain Steam,” *Cultural Heritage & Arts Review*, Fall / Winter 2010 (January 3, 2011), <https://doi.org/10.2139/ssrn.1734420>.

<sup>69</sup> Alderman, 4.

<sup>70</sup> Alderman, 4.

<sup>71</sup> Alderman, 4.

and led them back into the fray. Cuno and his collaborators dismissed repatriation and defended the importance of encyclopedic museums in the third book in his series, 2012's *Whose Culture?: The Promise of Museums and the Debate over Antiquities*.<sup>72</sup> Returning to the concept of compiling essays from leading curators, this work furthered the arguments Cuno made in his prior work, namely, the connections between modern nations and the ancient cultures from which they are derived are tenuous, and that claiming an ancient culture as a cornerstone of a present nationalistic identity is a fallacy. No one can own a culture; culture transcends humanity.<sup>73</sup> Taken together, Cuno's works, supported by the clout of respected museum directors, fought back against the international trend toward repatriation.

Just as Hiram Bingham pushed his narrative in both scholarly and popular publications, Cuno has taken his arguments in a range of publications, including the bluntly titled "Culture War: The Case Against Repatriating Museum Artifacts," which graced the venerable pages of *Foreign Affairs*.<sup>74</sup> Whether as part of a collaborative publication, or a solo missive, Cuno has been leading the fight against repatriation with great energy. However, in the middle of this either-or struggle for or against repatriation, another eminent scholar offered a novel solution: compromise.

Moral and ethical arguments for and against repatriation are well-represented in the scholarship. Disputes often found their way to the courts, with sides fighting for either retention or repatriation. Both are zero-sum solutions. However, in 2015, looking back on the landscape of repatriation disputes, University of Geneva professor and UNESCO

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<sup>72</sup> Cuno, *Whose Culture?*

<sup>73</sup> Cuno, 2, 26-29.

<sup>74</sup> Cuno, "Culture War."



executive Marc-André Renold, put forth a novel argument: that co-ownership of artifacts could be transformative to solving cultural property disputes.<sup>75</sup> In this way, Renold modified the core argument of Cuno, which is that cultural property belongs to everyone and therefore specific claims on ownership should be rejected.

Renold agreed with the first part of the premise, but rather than using this mindset as an argument against repatriation, Renold repurposed the idea of the “*res commune* of humanity” as a tool that can be used to build mutual understanding and agreement.<sup>76</sup> Co-owning artifacts is a way for all parties to be whole. Even Cuno found a measure of common ground in this idea, lamenting that archaeologists and host nations used to share the results of excavations, with each group keeping some. This measure of cooperation was not a zero-sum solution and could lead to both parties feeling content.<sup>77</sup> Renold built on this idea by proposing that both parties share everything. But how should the parties consider the legal battles over cultural property?

In his analysis, Renold made a unique insight: courts are an ineffective tool in solving such disputes, because no matter the outcome of any such case, at least one party feels as though a ruling was insufficient. Faced with the prospect of capitulating to an unwelcome ruling, parties tend to simply disregard what they don’t agree with and pursue alternative channels through which to seek redress.<sup>78</sup> The failure of the courts to provide an adequate vehicle for remedy in the Yale-Peru disagreement supports this conclusion.

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<sup>75</sup> Marc-André Renold, “Cultural Co-Ownership: Preventing and Solving Cultural Property Claims,” *International Journal of Cultural Property*, 22, no. 2–3 (2015): 163–76, <https://doi.org/10.1017/S0940739115000223>.

<sup>76</sup> Renold, 172.

<sup>77</sup> Cuno, “Antiquity Belongs to the World,” B6.

<sup>78</sup> Renold, “Cultural Co-Ownership,” 164–65.

Between the work of Renold looking at cultural property cases in the courts in general, and legal scholars such as Alderman looking at the Yale-Peru case specifically, the evidence in the scholarship that courts are an ineffective tool for adjudicating cultural property disputes comes into focus. Renold's simple yet unique insight, that both parties in such disputes should find a way to co-own cultural property, was a simple and elegant solution. None of the scholarship considered addresses a vital consideration: *why* did Yale reverse course? What decisions did they make that led to the eventual outcome? Any what might these decisions mean for the broader debate about the ownership of cultural property?

While many repatriation disputes remain open and contested, the case of the Machu Picchu artifacts is a settled matter. The artifacts excavated by Hiram Bingham more than one century ago are in Peru, on display and in laboratories, objects of admiration and scholarship alike. As the preceding review of the historical literature has shown, there is an opportunity to build upon it by applying the study of cultural property more specifically to the Yale-Peru dispute and exploring further what motivated Yale University to return the Bingham collection to Peru.

This decision was not made in a vacuum, and the debates about cultural property ownership were more than theoretical. In many cases, actions had the force of international law. To explore the decision made by the Yale administrators and professors, it is necessary to examine the various treaties, codes, laws, and decrees that, taken together, sought to govern how institutions and individuals interacted regarding cultural property.

## Chapter IV.

### Review of Multi-Lateral Treaty Frameworks

The Yale-Peru case unfolded in the first decade of the twenty first century. However, the topic of cultural property had been debated between international parties for a considerable time. The debate between scholars, curators and academics is discussed above. This, however, does not complete the picture of the international conversation around cultural property, as the debates manifested in laws and treaty frameworks that bound signatories to a certain range of actions and outcomes.

Part of what made the Yale-Peru case so complicated was the application of different laws and jurisdictions. Understanding the various efforts to define cultural property as an international diplomatic issue is highly germane to any complex repatriation case.

The question of cultural property ownership and protection was not new or novel by the time Yale and Peru took up their discussions. Rather, the issues associated with cultural property had been debated, defined, and redefined for more than a century. Cultural property repatriation necessarily spans international borders. The regime of law surrounding cultural property evolved substantively in the century of Yale's possession of the Machu Picchu artifacts. Over time, the shift in various legal codes, and the international treaties that sought to bind countries to a common set of values grew in complexity and tended to shift power to source nations.

As the Yale-Peru dispute unfolded, it did so in the context of this international framework. It is important to consider the history of the regime of law. This consideration demonstrates an evolving consciousness of the concept of cultural property and tends to show a leveling of power dynamics between market nations, which tend to be more powerful, and source nations, which tend to be less so. These power dynamics certainly existed between U.S. and Peruvian institutions.

An international treaty only has the force of law for a nation if that nation is a signatory. The cultural property codes and treaties did not uniformly affect the United States, Peru, or any of their respective institutions. However, regardless of whether these treaties carried the force of law for any of the stakeholders in the Yale-Peru case, they provide an important framework for the international values guiding the interaction between nations with regards to cultural property. The review that follows highlights the key milestones that led to the international treaty framework up to and through the Yale-Peru dispute. The concept of cultural property protection finds its origins in an unexpected place: The U.S. Civil War.

#### Lieber Code of 1863

The United States Civil War (1861-1865) seems like an unlikely source for the birth of cultural property protection. Yet, amidst the carnage of that gruesome conflict arose questions about the consequences of war for cultural property. Was seizure of property a right of conquest? A violation of ethics? Should and where could a line be drawn? Certainly, questions such as these must have been pondered before, but for the first time, key stakeholders sought to codify their answers into a formal set of policies.

Defining the rules of engagement for soldiers became a priority for the Union leadership, and in 1863, President Abraham Lincoln issued General Orders No. 100. Prepared by Francis Lieber, General Orders No. 100 would come to be known as the “Lieber Code.” The Code, which is comprised of 157 articles in ten distinct sections, sought to clarify questions of ethics and propriety in warfare.<sup>79</sup>

In his attempt to identify the origins of cultural property legalism, Merryman declared that “The Lieber Code was the first attempt to state a comprehensive body of principles governing the conduct of belligerents in enemy territory.”<sup>80</sup> These principles extended to defining rules of engagement for soldiers regarding cultural property. Notably, Section II includes provisions for the treatment of cultural property.<sup>81</sup> While granting a victorious army the right to seize public money and property, Article 34 states that:

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character such property is not to be considered public property.<sup>82</sup>

Article 36 further clarifies that:

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.<sup>83</sup>

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<sup>79</sup> “Avalon Project - General Orders No. 100 : The Lieber Code,” accessed June 19, 2023, [https://avalon.law.yale.edu/19th\\_century/lieber.asp](https://avalon.law.yale.edu/19th_century/lieber.asp).

<sup>80</sup> Merryman, “Two Ways of Thinking about Cultural Property,” 834.

<sup>81</sup> “Avalon Project - General Orders No. 100 : The Lieber Code.”

<sup>82</sup> “Avalon Project - General Orders No. 100 : The Lieber Code.”

<sup>83</sup> “Avalon Project - General Orders No. 100 : The Lieber Code.”

By creating rules around cultural property for troops in time of war in areas where none previously existed, the promulgation of the Lieber Code was a foundational moment in the creation of an ethical framework for the protection and ownership of cultural property. The legacy of the code endures, as it still guides debates about rules of engagement in warfare in the present day.<sup>84</sup> While the last shot in the Civil War was fired on the battlefield in 1865, the echo of the Lieber Code resonated for years to come, and with the turn of the century, international organizations began to take up the questions of ethics in warfare, including those of cultural property.

#### Hague Conventions of 1899 and 1907

Drawing on the Lieber Code for inspiration, a series of nations gathered in The Hague to take up the debate over the rules of warfare. In 1899, and again in 1907, nations convened to enhance the international frameworks governing the rules of warfare and the goals of peacetime diplomacy. Both the 1899 and 1907 conventions dedicate substantive focus to the ethical dilemmas posed by rapidly evolving technologies and their implications for warfare, such as chemical weapons, air, and maritime power.<sup>85</sup> In a strict sense, the successes of the treaties were limited. For example, they did not stop Germany from using deadly chemical weapons in World War 1.<sup>86</sup> However, they did two important things for the topics of cultural property. First, they created the foundations for

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<sup>84</sup> Rick Beard, "The Lieber Codes," *The New York Times*, April 24, 2013, <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2013/04/24/the-lieber-codes/>.

<sup>85</sup> Stanislas Jeannesson, "International Hague Conferences of 1899 and 1907," accessed June 19, 2023, <https://ehne.fr/en/encyclopedia/themes/international-relations/europe-and-legal-regulation-international-relations/international-hague-conferences-1899-and-1907>.

<sup>86</sup> Jeannesson.

international multilateralism in general, and second, they adopted specific language on cultural property.<sup>87</sup>

Both milestones were foundational. One created the mechanism for international debate on cultural property, the other the awareness of the international nature of the topic. Seeking to further define the rules of the international order, various nations would gather intermittently in the decades leading up to the outbreak of World War II. Cultural property was occasionally considered as part of these discussions, but only as a small subset of much broader discussions. That would change in 1935 when the topic of cultural property became the sole focus of discussion.

#### 1935 Roerich Pact

Described as, “The first convention dedicated exclusively to the protection of cultural property in times of war,” the Roerich Pact was an epochal event in the international treatment of cultural property.<sup>88</sup> An inter-American treaty, the Pact, which was signed in April 1935, sought to protect “historic monuments, museums, scientific, artistic, educational and cultural institutions,” by declaring them and their attending personnel as neutral in times of conflict.<sup>89</sup> While a brief document—it contained eight short articles of one to two sentences—the Roerich Pact created a pan-Americas consciousness of the necessity of identifying and preserving cultural property as a distinct imperative.

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<sup>87</sup> John Merryman, “Two Ways of Thinking about Cultural Property,” 834–35.

<sup>88</sup> “U.S. Committee of the Blue Shield - 1935 ROERICH PACT - Protecting Cultural Heritage Worldwide,” accessed February 7, 2023, <https://uscbs.org/1935-roerich-pact.html>.

<sup>89</sup> “Roerich’s Pact,” accessed June 19, 2023, <https://en.icr.su/evolution/pact/>.

Implicit in this pact was the idea that cultural property supersedes national sovereignty, and that it is a unifying concept of shared humanity. The Pact thus laid the groundwork both for a deeper international governance of cultural property protection, and one of the common arguments against repatriation. Before that and other pro- and anti-repatriation agreements could crystalize, the international community had to suffer through the nightmares of World War II, which derailed further attempts at strengthening the international regime of law for the protection of cultural property.<sup>90</sup> It took the cataclysm of the war and the slow recovery from its effects before the international community could reconsider the international rules and ethics of cultural property protection.

### Nuremberg Trials

The shock of World War II continued to reverberate long after the last shot was fired. Among countless other horrors, the world got a close look at the kleptocracy of the Nazi regime. Art, artifacts, and antiquities were stolen in incalculable numbers. In the aftermath of the war, Alfred Rosenberg faced judgement at the Nuremberg trials. Rosenberg led the “Einsatzstab Rosenberg,” a systematic effort to seize cultural property from private collections and institutions. Rosenberg was found guilty of war crimes and executed.<sup>91</sup> The major innovation of the Nuremberg trials from a cultural property standpoint was that it broadened the legal regime for its protection. Where prior agreements were principally focused on protection of cultural property, Nuremberg

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<sup>90</sup> Merryman, “Two Ways of Thinking about Cultural Property,” 835.

<sup>91</sup> Ana Filipa Vrdoljak, “The Criminalisation of the Intentional Destruction of Cultural Heritage,” in *Forging a Socio-Legal Approach to Environmental Harms*, 1st ed. (Routledge, 2017), 5, <https://doi.org/10.4324/9781315676715-1>.



started a process by which theft and destruction of that property could be criminalized.<sup>92</sup> With the war over, and nations guardedly hopeful for a protracted period of peace, attention turned anew to the protection of cultural property, not only in war, but also in times of peace.

#### Hague 1954

While the Roerich Pact dealt with the protection of cultural property in times of war, it was limited to signatory nations in the Americas. The horrors of World War II exposed the need for an expanded international concept of cultural property protection. The lingering memory of the devastation of a half-century of global conflict, and the exhausted hopes for a more peaceful future, combined to create the conditions for a renewed focus on protecting cultural property. In 1954, nations from across the globe again convened in the Netherlands for The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague 1954). Despite its name, Hague 1954 included notable provisions for the protection of cultural heritage in peace as well as conflict, and the notion that culturally sensitive sights should retain their protection should the polities in which they are located devolve into warfare.

The importance of Hague 1954 on the international mindset toward the treatment of cultural property cannot be overstated. It was the first international treaty dedicated to the protection of cultural property in times of war, and it developed the international consideration of the societal importance of cultural property. In its opening statement, the Convention stated: “Damage to cultural property belonging to any people whatsoever

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<sup>92</sup> Vrdoljak, 5–6.

means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”<sup>93</sup> This is a much more sweeping claim than in prior attempts to govern and address issues of cultural property. It goes further. In a subsequent clause, the Convention states that: “The preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection.”<sup>94</sup>

This is a significant development in the international mindset toward cultural property, as it represents the first reference to “cultural heritage” in any international treaty.<sup>95</sup> By defining cultural property as part of the shared heritage of mankind, the Convention states that its purpose is “to protect the cultural heritage of all people for future generations.”<sup>96</sup> This stakes out a claim by the international community over the cultural property inside any one nation’s borders, a concept that would come to be the bedrock of the internationalist view of cultural property as articulated by the likes of John Merryman and James Cuno.

Hague 1954, as the first international treaty focused on cultural property protection, was foundational in establishing the international considerations of the concepts of cultural property and cultural heritage. As it did so, the Convention enshrined the internationalist viewpoint in the foundation of those considerations. Nearly a century had lapsed from the Roerich Pact to Hague 1954. Over that time, the concept of cultural property had taken root in the international consciousness. In a sense, however, it was

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<sup>93</sup> “1954\_Convention\_EN\_2020.Pdf,” 2 accessed June 19, 2023, [https://en.unesco.org/sites/default/files/1954\\_Convention\\_EN\\_2020.pdf](https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf).

<sup>94</sup> “1954\_Convention\_EN\_2020.Pdf,” 2.

<sup>95</sup> Vrdoljak, “The Criminalisation of the Intentional Destruction of Cultural Heritage,” 5.

<sup>96</sup> Vrdoljak, 5–6.

limited in scope. “Conflict” and “peace” are statuses that are limited to relationships between nations. Following Hague 1954, there was growing recognition in the international community that human conflict and geopolitics were only part of the threat posed to artifacts. Pillaging of archaeological sites and illicit trade of cultural property were generally being conducted by non-state actors. It was an attempt to check these activities that led to the most consequential development in the international regime of law on cultural property.

#### UNESCO 1970

Empires built in the seventeenth, eighteenth, and nineteenth centuries were largely dismantled in the twentieth. One result of this global phenomenon was a dramatic increase in the number of sovereign nations, many of whom sought to find ways to unite their people or strengthen their regimes by establishing and building their national cultural identities. Other countries sought to redefine themselves amidst the dramatic upheaval in the world order. For many such countries, turning to their ancestors as a focal point of cultural inspiration was a logical step. Countries around the world, long-established and fledgling nations alike, found themselves combatting the illegal trade in antiquities, and the pillaging of important archaeological sites used to find and sell objects to meet the insatiable international demand.

A scan of economic data from 1970 highlights the challenges facing some of these countries. Many nations rich in antiquities, such as Cambodia, Egypt and Peru were

among the poorer nations on earth.<sup>97</sup> These economic conditions left many countries vulnerable to archaeological pillaging and black market dealing.

It was amid these conditions that the United Nations Educational, Scientific and Cultural Organization—UNESCO—convened to take a dramatic step forward in the protection of cultural property. The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO 1970) was a watershed development in the international governance of cultural property. Whereas Hague 1954 relied on a foundation of internationalism, UNESCO 1970 strongly established nationalist perspectives on cultural property. Gone are the florid appeals to the common heritage of mankind; instead, UNESCO 1970 declares that “cultural property constitutes one of the most basic elements of civilization and national culture.”<sup>98</sup> The Convention then makes a big leap by establishing that “traditional setting,” i.e., maintaining presence at the point of origin, is important to the appreciation and scientific value of cultural property.<sup>99</sup>

This was a momentous development in the international regime of cultural property, as UNESCO 1970 shifts the focus from the commonality of the international community to the specificity of modern nations states. Certainly, this empowerment was intended to come with a set of obligations. Countries of origin were challenged to “become increasingly alive to the moral obligations to respect its own cultural heritage

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<sup>97</sup> “GDP - Gross Domestic Product 1970,” Countryeconomy.com, accessed June 19, 2023, <https://countryeconomy.com/gdp?year=1970>.

<sup>98</sup> “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; Adopted by the General Conference at Its Sixteenth Session, Paris, 14 November 1970 - UNESCO Digital Library,” 4, accessed June 19, 2023, <https://unesdoc.unesco.org/ark:/48223/pf0000133378>.

<sup>99</sup> “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; Adopted by the General Conference at Its Sixteenth Session, Paris, 14 November 1970 - UNESCO Digital Library.”

and that of all nations” and that “it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export.”<sup>100</sup>

It was indeed theft and illegal trade that was the stated focus of UNESCO 1970, and, intentional or not, the Convention divided nations into two types: source nations, i.e., producers of cultural property, and market nations, i.e., consumers of cultural property, while diminishing the possibility that a nation could be both simultaneously. It is little surprise, therefore, that for its first two decades, the only signatories to the convention were source nations with limited resources for protecting their cultural property, such as Ecuador, Cameroon, Iraq, and Mexico.<sup>101</sup>

The only major market state to adopt the Convention in its first twenty years was the United States, which adopted it in 1983, with the rest of the large market states—Germany, Japan, Switzerland and the U.K.—conspicuously absent from the list of signatories.<sup>102</sup> Perhaps as a result of its participation in the Convention, policy makers in the U.S. began to reconsider the tenants of cultural property, the meaning of cultural heritage, and how to think about Indigeneity in relation to modern nation states. The result would be a landmark piece of legislation that, while not directly impacting the relationship with other nation states, such as Peru, would demonstrate a shift in values and attitudes toward ancient cultures and claims of ownership of the material culture they produced.

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<sup>100</sup> “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; Adopted by the General Conference at Its Sixteenth Session, Paris, 14 November 1970 - UNESCO Digital Library.”

<sup>101</sup> Alexander Herman, “Fifty Years on: The Meaning of the 1970 UNESCO Convention,” *Institute of Art and Law*,” June 18, 2020, <https://ial.uk.com/fifty-years-on-unesco-convention/>.

<sup>102</sup> Herman.

## Native American Graves Protection & Repatriation Act of 1990

Among other things, UNESCO 1970 sought to define the rules of engagement for transfer of objects of cultural property on international markets. But how should any nation consider such objects when their ownership was contested from within its own borders? In the late 1980s, the U.S. federal government took up consideration of this topic as it pertained to the cultural patrimony of Indigenous people. Many federally owned institutions were in possession of Indigenous objects, including human remains, and sacred, funerary, and other of cultural patrimony.

Many Indigenous tribes called for the return of these objects to their possession. In November 1990, the U.S. federal government enacted the Native American Graves Protection & Repatriation Act (NAGPRA). The NAGPRA framework created a seismic shift in the way U.S. institutions approached cultural property and directly impacted Universities with extensive collections of Native American artifacts, remains and grave goods.

This legislation principally did two things. The first was to create a process by which objects already in the possessions either federal institution, or any private institution that had received federal funding, would be returned to tribes with a claim to them. The second was a protocol for how newly discovered objects on public lands would be handled. The scope of NAGPRA extended beyond federal institutions. Any institutions that received federal funding were subject to its provisions. These included museums, universities, and state and local governments. NAGPRA was limited to Indigenous remains and objects within the United States and thus did not have direct bearing on international countries, cultures, and peoples.

However, NAGPRA shows that the policy makers of the U.S. federal government were changing their views on ownership of cultural property in general and rethinking the concepts of indigeneity specifically. NAGPRA de-couple the modern nation state from the history of political sovereignty, acknowledging the existence of distinct cultures and political entities apart from modern geopolitical entities.

This is an important distinction, as one of the critical arguments against repatriation is that ancient polities are extinct, and any claims to ownership of those polities by modern descendants are facile. NAGPRA gives historical agency to Native American Indigenous tribes separate from current nationalist American history. While a U.S. federal law does not mean universal support for its underlying concepts, NAGPRA does show that, at least in some significant measure, attitudes toward Indigeneity and the ownership of Indigenous cultural property were being rethought at the institutional level.<sup>103</sup>

Hague 1954 demonstrated that members of the international community recognized that war presented an existential threat to the common heritage of all mankind, and that provisions needed to be made for both war and peacetime for the preservation of cultural property. UNESCO 1970 demonstrated that some parties in the international community sought greater protection for source nations with regards to cultural property. NAGPRA of 1990 provided an example of a nation evolving its understanding of its own history, and the cultural property of its people. Complicating the landscape was the simple fact that no set of agreements had a common set of signatories.

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<sup>103</sup> “Native American Graves Protection and Repatriation Act (U.S. National Park Service).”

By 1995, the focus on the regime of law would again become an international focus. Given the tepid pace of acceptance of the UNESCO 1970 Convention, members of the international community reconvened to strengthen protection of cultural property and the source nations from which it originated.

#### 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

By the 1990s, these various frameworks left the international regime of law with regards to cultural property fragmented. A private intergovernmental organization would take up the challenge and produce one of the strongest frameworks for the protection of cultural property.

The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organization. Its charter is to:

study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.<sup>104</sup>

Given the fragmentation and various stages of adoption of international cultural property law, UNIDROIT was uniquely poised to take up this issue. In 1995, the organization developed the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT 1995).

This framework represented a dramatic shift toward the rights of source nations. The framework was created to protect: “both these objects (of cultural property)

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<sup>104</sup> “About UNIDROIT - UNIDROIT,” January 30, 2017, <https://www.unidroit.org/about-unidroit/>.



themselves and to the cultural heritage of national, tribal and indigenous or other communities, and also to the heritage of all peoples.”<sup>105</sup>

The Convention positions the internationalist view of cultural property—that such property is the common property of all mankind—as an outflow of the nationalist point of view, by which source nations take primary position in the ownership and ties of connection to objects of cultural property originating within their modern geopolitical borders. Among other outcomes, UNIDROIT 1995 provides a definition for what constitutes “illegal” possession of cultural property, clarifies long-standing questions over proof of provenance, and establishes timelines for resolution for repatriation claims.<sup>106</sup>

The Convention was met with a tepid response from the international community. While UNIDROIT 1995 created a potential mechanism to achieve repatriation for countries whose regime of law was too weak to prohibit theft and plunder, there was pervasive fear that it would stifle international trade and cultural exchange.<sup>107</sup> The response was so pensive from most market nations, that an older framework began to be seen in a new light.

One of the unintended outcomes of UNIDROIT 1995 was that many countries that had declined to ratify UNESCO 1970 now rushed to do so. UNIDROIT 1995 was seen by many nations as more onerous, and UNESCO 1970 became more tolerable by comparison. Given the difference between the two frameworks, it was apparent to many in the international community that the values around cultural property ownership and repatriation were shifting, with source nations asserting themselves more strongly. To

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<sup>105</sup> “1995 Convention - UNIDROIT.”

<sup>106</sup> “1995 Convention - UNIDROIT.”

<sup>107</sup> L.V. Prott, “The Arguments for and against Unidroit,” *The Art Newspaper*, January 1, 1997, <https://www.theartnewspaper.com/1997/01/01/the-arguments-for-and-against-unidroit>.

keep up with the times, several market nations ratified UNESCO 1970 only after the passage of UNIDROIT 1995, including the UK (2002), Japan (2003), Germany (2007), Belgium and The Netherlands (2009).<sup>108</sup>

Before UNIDROIT 1995, UNESCO 1970 had eighty signatory nations, almost all source nations. By 2020, it had 140, including most major market nations.<sup>109</sup> Thus UNESCO 1970, with its strong emphasis on the rights and responsibilities of source nations over their cultural property, became the most pervasive and important international framework. Of note, today UNIDROIT 1995 has fifty-four contracting parties. While Peru is a signatory, conspicuously absent are the major market nations, including the United States.<sup>110</sup>

#### UNESCO in 2001

Following UNIDROIT 1995, the international regime on cultural property has continued to proliferate. For example, in 2001 alone, three new UNESCO frameworks were enacted: the UNESCO Convention of Protection of the Underwater Cultural Heritage, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage. As the topic gained greater focus within national and international communities, the regime of law and discourse surrounding cultural property ownership grew correspondingly complex.

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<sup>108</sup> Herman, "Fifty Years On."

<sup>109</sup> Herman.

<sup>110</sup> "States Parties - UNIDROIT," June 19, 2021, <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>.

In the roughly one century leading up to the renewal of the Peruvian demands for the repatriation of the Machu Picchu artifacts, the international regulatory landscape around cultural property had undergone a seismic shift. These various conventions and treaty organizations had considered the implications of cultural property in times of war and in times of peace, both domestically and internationally. Ownership of objects of cultural significance was reconsidered, and the propriety of the markets on which such objects were traded was re-examined. Also newly considered was the concept of Indigeneity, and the relationship between it and national sovereignty and international law.

In Bingham's time, the concept of cultural property was vague, far off in the collective imagination. By the 2000s, when the calls came for repatriation of the artifacts from his expeditions, cultural property was an established concept, still quite subject to an evolving—and often highly subjective—ethic. While the rules and regulations surrounding cultural property title were and are still dynamic, the sense of claim to objects had become calcified. It was within this newly energized and much-deepened international regulatory framework that the calls from Peru for repatriation of cultural property grew louder.

## Chapter V.

### Brief Review of Peruvian Geopolitics

By the time Peruvian officials resumed their demands for repatriation of the Machu Picchu artifacts in the early 2000s, the issue had been dormant for seven decades. However, that did not mean that Peru itself was placid. In fact, Peruvian geopolitics in the decades before the repatriation issue resurfaced had been chaotic and violent, with factions rising and falling, dictators purging enemies, and kleptocrats growing rich at the expense of the poor.

The political history of Peru is complex and its own distinct topic of historical examination. Much of the detail is out of scope for this thesis. The examination that follows will thus necessarily be a simplification. However, given that Yale officials engaged in complex multi-stakeholder negotiations with various Peruvian government and academic officials, a cursory description of the political situation in Peru at the time of and immediately preceding the negotiations provides context for the environment in which these negotiations took place.

In the twentieth century, Peruvian governments rose and fell with alarming frequency, with the country witnessing countless coups and wild swings from one extreme to the other: military autocracy, socialism, dictatorships, neoliberal modernization, and so on. Furthering the chaos, many protest and revolutionary movements were founded on the vow of the violent overthrow of the government. The

consequences of this instability were dire: mounting debt, violent factionalism, extreme poverty.

This cycle of chronic instability took a particularly dark turn in 1980, when the Maoist guerilla revolutionary movement Shining Path escalated to violence against the state, and any perceived enemies. Founded in 1969 by a university philosophy professor named Abimael Guzmán, Shining Path aimed to overthrow the Peruvian government, dismantle capitalist structures, and install a radical Communist regime.<sup>111</sup> Their shift to guerilla violence rapidly spread across the countryside. The movement seized large swaths of territory with shocking violence and numerous atrocities.

While many of the rural Peruvian poor were sympathetic to the ideological foundations of the movement, the horrors of their violence limited the support it garnered. Of note, one of the behaviors that led to the increasing unpopularity of Shining Path was their brutality toward Indigenous people and communities.<sup>112</sup> Shining Path's charismatic leader was arrested in 1992, and the movement fell into steep decline. It was, however, still dangerous and continues to be responsible for violent acts of terrorism to this day. As Shining Path reached their apogee, one of the most impactful figures in Peruvian political history would enter the stage.

In 1990, Alberto Fujimori ascended to Peru's presidency. His ten-year tenure was eventful and traumatic. He crusaded against Shining Path and other insurgencies, meeting violence with violence. He was also accused of ordering the killing of political enemies. By some estimates, nearly 70,000 Peruvians were killed in the violence that was the

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<sup>111</sup> "Shining Path," accessed May 12, 2023, [https://www.cs.mcgill.ca/~rwest/wikispeedia/wpcd/wp/s/Shining\\_Path.htm](https://www.cs.mcgill.ca/~rwest/wikispeedia/wpcd/wp/s/Shining_Path.htm).

<sup>112</sup> "Shining Path."

hallmark of his time in office.<sup>113</sup> His economic reforms were sweeping, but of varied effectiveness.

When the momentum and popularity of his administration flagged halfway through his first term, Fujimori suspended the Peruvian constitution, aligned himself with the military and assumed the stance of a dictator.<sup>114</sup> By 2000, Fujimori was barely clinging to power. He ran for and won a third term as President, but the legality of the election was dubious and evidence of fraud rampant.

Fujimori fled Peru to Japan under a warrant for his arrest for corruption and human rights violations, and the government was handed to a provisional leader, pending the full restitution of the constitutional election process.<sup>115</sup> It was into the aftermath of these chaotic and often bloody decades that Alejandro Toledo was elected to the Presidency, a shift in the Peruvian political landscape with specific consequences for the still-dormant Machu Picchu artifact dispute. For, it was Toledo, and his French wife, that would begin the calls for repatriation.

Toledo is a consequential figure in Peruvian politics for several reasons, though his political ascendancy was never a foregone conclusion. His first campaign for President netted just four percent of the vote.<sup>116</sup> He was certainly persistent. One of sixteen children from an impoverished family, Toledo claimed—falsely—that his election marked the first democratic election of an Indigenous head of state for any Latin

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<sup>113</sup> “Alberto Fujimori Profile: Deeply Divisive Peruvian Leader,” *BBC News*, December 8, 2011, sec. Latin America & Caribbean, <https://www.bbc.com/news/world-latin-america-16097439>.

<sup>114</sup> “Commanding Heights : Peru Overview,” PBS, accessed May 12, 2023, [https://www.pbs.org/wgbh/commandingheights/lo/countries/pe/pe\\_overview.html](https://www.pbs.org/wgbh/commandingheights/lo/countries/pe/pe_overview.html).

<sup>115</sup> “Alberto Fujimori Profile.”

<sup>116</sup> “Profile of Alejandro Toledo | Peru Reports,” *Peru Reports* (blog), accessed May 12, 2023, <https://perureports.com/alejandro-toledo/>.

American country.<sup>117 118</sup> Following his inauguration in Lima, Toledo demonstrated the importance he placed on his Indigenous origins by hosting a second inauguration at the sacred citadel of his Incan ancestors: Machu Picchu.<sup>119</sup> Accompanying him on this pilgrimage was his wife, anthropologist Eliane Karp-Toledo, who would also feature in the Yale-Peru dispute, which will be discussed more fully below.

The Peruvian constitution of 1979 prohibits a President for serving consecutive terms. It was in part due to this clause that Fujimori suspended the constitution in his power consolidation. So, while Toledo lit the fuse to reignite the Yale-Peru dispute, his term expired well before its conclusion. The end of his term in 2006 did nothing to temper the roiling disagreement. If anything, his successor, Alan García would ratchet up the hyperbole.

Despite Eliane Karp-Toledo's claim that Garcia was "frankly hostile to indigenous matters," Garcia ambitiously pursued repatriation of cultural property.<sup>120</sup> Garcia took an aggressive stance with international cultural property claims, threatening and filing lawsuits, not only with Yale, but also in far-off Sweden.<sup>121</sup> Garcia's administration also formalized the bureaucratic mechanisms for cultural property repatriation, as will be discussed in the section that follows.

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<sup>117</sup> "Profile of Alejandro Toledo | Peru Reports."

<sup>118</sup> Brian R. Hamnett, "Benito Juárez, Early Liberalism, and the Regional Politics of Oaxaca, 1828-1853," *Bulletin of Latin American Research* 10, no. 1 (1991): 3–21. <https://doi.org/10.2307/3338561>.

<sup>119</sup> "Peru's New President Replays Inauguration In Ancestral Andes," *The New York Times*, July 30, 2001, sec. World, <https://www.nytimes.com/2001/07/30/world/peru-s-new-president-replays-inauguration-in-ancestral-andes.html>.

<sup>120</sup> Eliane Karp-Toledo, "Opinion: The Lost Treasure of Machu Picchu," *The New York Times*, February 23, 2008, sec. Opinion, <https://www.nytimes.com/2008/02/23/opinion/23karp-toledo.html>.

<sup>121</sup> "Garcia Surprises Sweden with Plans for Legal Action to Recover Paracas Textiles," *Peruvian Times*, July 6, 2011, <https://www.peruviantimes.com/06/garcia-surprises-sweden-with-plans-for-legal-action-to-recover-paracas-textiles/12933/>.

As Peruvians entered the twenty first century, they did so against a complex backdrop of the proceeding decades: a fragile but growing economy, rampant poverty, revolution, atrocities, fraud, corruption, and regimes that rose and fell with alarming frequency. In the early 2000s, the newly elected President moved his Indigeneity, and the national symbolism of Machu Picchu, to the center of his political identity. His successor fanned the flames in the press, and in the courts. It was in this context that the Yale-Peru disagreement reached its apogee. The following sections will explore the actions and motivations of these and other Peruvian officials specific to the Yale-Peru dispute.



## Chapter VI

### Repatriation and Ivy League Institutions

Examining the issues of repatriation in other Ivy league universities further contextualizes the Yale-Peru case. Yale was certainly not the only university grappling with the complexities of cultural property. On the contrary, this is a topic that has affected every Ivy League school, and one that is still thorny and resonant today. By an order of magnitude, the biggest challenge for this set of universities is compliance with the Native American Graves Protection and Repatriation Act of 1990 (NAGRPA). This monumental legislation, discussed in greater detail above, has had a profound effect on each Ivy League school. However, the topic of cultural property became a focal point for Ivy League Universities even before NAGRPA's 1990 passage.

In early 1970, the University of Pennsylvania issued "The Pennsylvania Declaration," which avowed the Universities commitment to decline acquisition of pieces of unknown provenance. It was the first such declaration of a museum.<sup>122</sup> Of note, this declaration preceded the completion of UNESCO 1970 by six months, putting University of Pennsylvania at the forefront of the cultural property discussion. However groundbreaking the Pennsylvania Declaration and UNESCO 1970 were, these and similar frameworks guiding the acquisition of antiquities remained largely theoretical. However,

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<sup>122</sup> Alessandro Pezzati, Jane Hickman, and Alexandra Fleischman, "A Brief History of the Penn Museum," *Expedition* 53, no. 3 (2012): 16, [https://www.penn.museum/documents/publications/expedition/54-3/A\\_Brief\\_History.pdf](https://www.penn.museum/documents/publications/expedition/54-3/A_Brief_History.pdf)

specific cases of cultural property provenance and ownership would soon test the ethical and legal frameworks of several Ivy League schools.

One of the early cases of a peer institution grappling with repatriation of cultural property involves Princeton University. In 2000, the curator of Princeton's Art Museum uncovered an issue with the provenance of one of its prized pieces, a fragment of a second century CE Roman funeral monument.<sup>123</sup> While acknowledging that the piece was a significant part of their collection, University officials concluded that voluntarily returning the sculpture to Italy was "the right thing to do."<sup>124</sup> After contacting Italian authorities, a wide and complex set of stakeholders began discussing the outcome. Even with full cooperation between all sides, and a proactive attempt by Princeton to voluntarily surrender the piece, the process took more than two years to reach resolution.<sup>125</sup>

This case is useful to highlight the bureaucratic intricacies that can delay action even when all parties are aligned on the anticipated outcome. It's also worth noting that in this case, Italy's geopolitical environment was relatively stable as compared to Peru's of the same time. If this example was so complicated, then the conclusion is that the one involving Yale and Peru would be even more protracted and required greater diligence.

While this singular case was highlighted by productive and proactive discussion, the ownership and provenance of other objects in their collection would come under scrutiny several times in the ensuing years. The subsequent case would provide a

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<sup>123</sup> "Princeton University Art Museum Voluntarily Returns Ancient Sculpture to Italy," Princeton University, July 1, 2002, <https://www.princeton.edu/news/2002/07/01/princeton-university-art-museum-voluntarily-returns-ancient-sculpture-italy>.

<sup>124</sup> "Princeton University Art Museum Voluntarily Returns Ancient Sculpture to Italy."

<sup>125</sup> "Princeton University Art Museum Voluntarily Returns Ancient Sculpture to Italy."

framework for international agreement that would echo similar concepts in agreements between Yale and Peruvian negotiators.

In 2007, Italian officials demanded of Princeton the return of eight ancient Italian artifacts which it claims were looted and exported illegally.<sup>126</sup> Again seeking frictionless relationships with the Italian authorities, Princeton officials agreed to return the objects in question. The agreement, however, contained two key innovations that show a creative approach to cultural property ownership and repatriation. First, Princeton officials agreed to repatriate four of the objects within 60 days but retained physical possession of the other four for a period of four years. Second, Italy agreed to send to Princeton objects of “equal historical value,” on an extended loan to replace the repatriated objects.<sup>127</sup>

This example of a university negotiating the complexities of cultural property demonstrates the distinction between ownership and possession. At least in the case of the Italian authorities, demonstrated ownership of objects of cultural property was a higher-order goal than physical possession. While both ownership and possession of cultural property would be demands from Peruvian officials, the Princeton case is a reminder that these are two separate dimensions that each required consideration and negotiation. Princeton has continued to define and redefine its relationship to antiquities, and since the 2007 agreement has repatriated additional artifacts, as well as had further parts of their collections seized by authorities due to those objects’ questionable

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<sup>126</sup> “Princeton Museum, Rome Sign Repatriation Deal over Looted Artifacts,” *CBC*, October 30, 2007, <https://www.cbc.ca/news/entertainment/princeton-museum-rome-sign-repatriation-deal-over-looted-artifacts-1.658741>.

<sup>127</sup> “Princeton Museum, Rome Sign Repatriation Deal over Looted Artifacts.”

provenance.<sup>128</sup> And yet, the issue of cultural property repatriation for Ivy League universities is hardly confined to Princeton's collection of Italian antiquities.

The 1991 Gulf War was catastrophic for the fragile stability of the Middle East. Likewise, the turmoil was a disaster for cultural anthropology, as it unleashed a sustained wave of looting and plundering of cultural property. This continued unabated as U.S. troops bore down on Baghdad during the Iraq War. Seeking to check the coming disaster, curators at the National Museum of Iraq frantically sought to safely store thousands of priceless artifacts. As the armies advanced, the curators fled, leaving the museum unattended.

On April 10, 2003, looters breached the doors of the museum and began plundering its treasures.<sup>129</sup> The looting that ensued has been described as “one of the worst acts of cultural vandalism in modern history.”<sup>130</sup> The Gulf Wars led to a flood of antiquities making their way through the conduits of the black market. One unintended consequence of the looting is that it brought new scrutiny to the ownership and provenance of collection of Iraqi antiquities in American museums. Additionally, the aftermath of the looting led to Iraq broadly asserting its broadly calling for repatriation of cultural property.

Beginning in 2000, Cornell University began accepting donations and loans of Mesopotamian artifacts from Jonathan Rosen, a lawyer and antiquities collector. Of note, the collection was allegedly initially offered to Yale, who declined the donation due to its

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<sup>128</sup> Sandeep Mangat, “Artifacts Valued at over \$200K Seized from University Art Museum,” *The Daily Princetonian*, accessed April 7, 2023, <https://www.dailyprincetonian.com/article/2023/04/princeton-art-museum-seized-artifacts-manhattan-district-attorneys-office>.

<sup>129</sup> “Iraq Museum Looting: 15 Years On,” The University of Sydney, April 10, 2018, <https://www.sydney.edu.au/news-opinion/news/2018/04/10/iraq-museum-looting--15-years-on.html>.

<sup>130</sup> “Iraq Museum Looting.”

uncertain provenance. For his donation to Cornell, Rosen received a significant tax break.<sup>131</sup> Almost immediately after Cornell took possession of the artifacts, the collection became the subject of a U.S. Department of Homeland Security Investigation. No wrongdoing could be established, in large part because the provenance of the artifacts could not be determined.<sup>132</sup> This is a demonstration that in international cultural property disputes, unclear title tends to favor continuity of possession.

For nearly a decade after the donation, Cornell's faculty embarked on an ambitious research and conservation program to "carefully conserve, photograph and study the tablets, publishing their work in more than sixteen volumes over six years."<sup>133</sup> Once this momentous feat of scholarship was accomplished, Cornell officials were increasingly willing to consider repatriation. However, some of their faculty argued the objects should be retained to further their access to scholars, as well as due to the tenuous ability of Iraqis to look after the security and preservation of their cultural property.<sup>134</sup>

Despite these objections, in 2013 Cornell agreed to repatriate approximately 10,000 artifacts to Iraq. This case is noteworthy in the many similarities to the Yale-Peru dispute. First, the artifacts were collected at a time of political instability in the source nation, and the laws governing their export at the time have a tenuous connection to current regime of law. Second, scholars and administrators wrestled with if and how to return objects to countries that have undergone massive geopolitical turmoil. Third,

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<sup>131</sup> "Collector Gets Tax Break for Donating Cylinder Seals to University," *The Art Newspaper*, August 31, 2003, <https://www.theartnewspaper.com/2003/09/01/collector-gets-tax-break-for-donating-cylinder-seals-to-university>.

<sup>132</sup> Jason Felch, "Cornell to Return 10,000 Ancient Tablets to Iraq," *Los Angeles Times*, November 3, 2013, <https://www.latimes.com/entertainment/arts/culture/la-et-cm-iraq-tablets-cornell-university-20131103-story.html>.

<sup>133</sup> Felch.

<sup>134</sup> Felch.

scholars and administrators had a range of perspectives on the repatriation issue. Finally, repatriation was a complex, multi-stakeholder and multi-year process that came only after a comprehensive work of scholarship was published on the artifacts and administrators had assurances the artifacts could be properly conserved. Echoes of each of these will be seen in the analysis of the Yale-Peru case below.

These examples show that Yale officials were not forging alone into a wilderness as they navigated complex repatriation challenges. Their peers in other notable institutions were doing the same. Certainly, these cases had many variables in common with the Yale-Peru dispute. However, each repatriation case is truly unique. While one case can inform another, there is no direct overlap between any two cases. However, there was, and still is, one common repatriation challenge facing every Ivy League institution.

Enacted in 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) was a watershed piece of legislation. Discussed more fully above, NAGPRA created a framework by which lineal descendants of Indigenous tribes can claim objects of cultural heritage from any institution that receives federal funding. It also created a mechanism by which institutions would repatriate such claimed objects. As each one had objects in its holdings impacted by NAGPRA, the law universally impacted every Ivy League school.

Certainly, each school faced different applications of the law. However, it's worth noting that every single school necessarily began reconsidering its relationship to the cultural property in its collections as a result of the legislation. Additionally, NAGPRA made the concept of repatriation more tangible and applicable to academia. It elevated

and legitimized the claims of Indigenous people to the physical and psychological connection to their cultural property. NAGRPA put repatriation of cultural property on the agenda of every Ivy League University, including Yale, whether they were prepared for it or not. Since the enactment of NAGPRA, Yale has engaged with several Indigenous tribes, and has filed numerous intentions to repatriate cultural property with U.S. government authorities.<sup>135</sup>

By the time Yale officials and professors began confronting the details of the Peruvian demands, the topic of repatriation was not only already under consideration at the school, but also on the agenda of all their peer institutions. These considerations including Indigenous, Italian, Middle Eastern and many other nations and cultures of origin. It was a universal and global issue, that, while debated in the literature and academia, had very real impact on the university and the people that ran its various functions.

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<sup>135</sup> For examples, see United States: National Archives and Records Administration: Office of the Federal Register, United States: Department of the Interior, and United States: National Park Service, “Notice of Intent to Repatriate Cultural Items: Peabody Museum of Natural History, Yale University, New Haven, CT. Notices,” *Federal Register*. Vol. 73, No. 228, November 25, 2008, 71521–907; “Federal Register, Volume 76 Issue 196 (Tuesday, October 11, 2011),” accessed May 10, 2023, <https://www.govinfo.gov/content/pkg/FR-2011-10-11/html/2011-26179.htm>.

## Chapter VII.

### Peruvian History with Ethnography, Cultural Property, and Repatriation

The Yale-Peru repatriation case did not sit in a vacuum. Examining Peru's geopolitical landscape aids in its contextualization, but it does not complete the picture. The Machu Picchu artifacts are but one part of a rich and expansive Peruvian cultural patrimony, and examining the relationship that Peru has to its cultural property will further clarify the Yale-Peru case. Yale was not the only institution in possession of Peruvian artifacts. Nor were the Machu Picchu artifacts the only objects of cultural property Peruvian ethnographers sought to possess and conserve. Rather, these artifacts were a thread in the rich fabric of Peruvian history. It is thus important to explore Peru's relationship with its cultural history, with a specific emphasis on the time frames adjacent to the Yale-Peru negotiations and agreements.

Machu Picchu is the most famous Incan archaeological site. As discussed above, the mystique of the sacred citadel was in part due to the careful cultivation of its image by Hiram Bingham's narratives, not to mention its spectacular beauty. By the time the world at large became aware of Machu Picchu, the site was nearly half of a millennium old. Alejandro Toledo sought to evoke his direct descent from his ancient Incan forebearers by conducting a second inauguration at Machu Picchu. But while the site is a physical connection to a time long-since lapsed, the view of Peruvian history must necessarily use a wider lens. For while Incan culture and archaeology has captured the collective imagination, modern Peru is steeped in ancient history.



The modern Peruvian state has had a complicated relationship with archaeological sites and anthropological objects. Poverty and geopolitical instability have denuded the country of the ability to consistently protect, excavate, preserve, and study the objects of its cultural heritage. These sites and objects are extensive. Peruvian history stretches back more than 10,000 years, and includes extensive and powerful pre-Incan societies, such as the Moche and the Nazca. These societies, and hundreds more besides, produced monumental architecture, infrastructure, and objects of material culture of an astonishing variety, quality, and sophistication.

Peru gained independence from Spain in 1821. From the onset of its establishment as an independent nation, Peru has fostered a conscious connection to its long and rich history. Within a year of its founding, the country passed laws declaring all pre-Columbian artifacts and monuments the property of the nation, banned the export of artifacts, and prohibited any non-state-sponsored excavations. The decree read, in part: “Dolefully, invaluable goods have been known to be sold here to be taken to where their value is known, depriving us of the opportunity to own what is ours.”<sup>136</sup> Protection of cultural property was thus part of the founding ethos of Peru. From the time of its founding until the present day, Peru has promulgated laws and asserted its ownership of cultural property.

Peru has endured countless cycles of geopolitical chaos, including enacting twelve constitutions, in its two-century history. Through its legal code, the country has declared its connection to its ancestral past and its relationship to cultural property. Its 1979 constitution states:

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<sup>136</sup> Blanca Alva Guerrero, “Repatriation of Cultural Properties: The Peruvian Experience,” *Museum International* 61, no. 1–2 (2009): 145, <https://doi.org/10.1111/j.1468-0033.2009.01679.x>.

The deposits and archeological sites, buildings, monuments, artistic objects and testimonies with historical value, which have been declared Cultural Heritage of the Nation, are under the protection of the State. The law regulates their conservation, restoration, maintenance and restitution.<sup>137</sup>

This shows an expansive view of cultural heritage and shifts the burden for its preservation onto the state. However, as seen above, shortly after this constitutional framework became law, revolutionary insurgency exploded across the country. At the outbreak of the violence, hundreds of foreign academics working in various ethnographic disciplines were spread throughout the country. Their experience provides useful context for understanding Peru's relationship with cultural heritage, and its connection to foreign academics and institutions.

In *Missing the Revolution: Anthropologists and the War in Peru*, then-Stanford Professor Orin Starn argues that the outbreak of the Shining Path insurgency “came as a complete surprise” to many of the hundreds of international ethnographers working in Peru at the time.<sup>138</sup> By highlighting their failure to anticipate the outbreak of violence, Starn calls into question the validity of these scholars' claims to expertise on Peruvian society.<sup>139</sup> How could such ethnographers claim expertise about Peru and Peruvians if they didn't anticipate this unrest? This question has overtones for the topic of Peru and cultural property. It demonstrates a disconnect between those conducting scholarship and those being studied. Certainly not all Andean scholars were contemporary

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<sup>137</sup> Kate Fitz Gibbon, “Peru Asks to Extend 25 Year Long Art Blockade,” *Cultural Property News* (blog), October 15, 2021, <https://culturalpropertynews.org/peru-asks-to-extend-25-year-long-art-blockade/>.

<sup>138</sup> Orin Starn, “Missing the Revolution: Anthropologists and the War in Peru,” *Cultural Anthropology* 6, no. 1 (1991): 63, <https://doi.org/10.1525/can.1991.6.1.02a00030>.

<sup>139</sup> Starn, 63.

anthropologists, but all conducted their research in and among the people who would be caught up in the apocalyptic vortex of the Shining Path violence.

One of the root causes of this disconnect is what Starn calls “Andeanism,” which “refers to the representation that portrays contemporary highland peasants as outside the flow of modern history...little changed since the Spanish conquest.”<sup>140</sup> Some scholars and members of the Shining Path alike stubbornly clung to the notion of a timeless and unchanging society, even as spasms of violence convulsed across the country.<sup>141</sup>

This argument has implications for the consideration of Peru’s relationship to its cultural property. The disconnect between international scholars and Peruvian society shows that the link between academia and Peruvian social constructs was tenuous, more so than some of those scholars might have suspected or believed. If this connection was weak, or less strong, then it demonstrates that the trust placed by domestic Peruvian stakeholders in international academics was also prone to be weak. This contextualizes the loud and aggressive demands of the Peruvians for the return of their cultural property, not only in the case of Yale, but also in all their claims. For, far from being integrated members of Peruvian society, ethnographers in their varied fields of study could be on the outside looking in.

If the scholars living and working in the country were not seen as part of the fabric of Peruvian society, then it follows that foreign Andean scholars working outside of Peru would be even more so. As the Shining Path insurgency raged on, the chasm between Peruvians and Andean scholars was shown to be wide. However, while the gap

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<sup>140</sup> Starn, 64.

<sup>141</sup> Starn, 67.

between them is useful for providing context, it was clandestine excavations occurring outside of academia that represented a bigger threat to Peruvian cultural property.

Amid the violent chaos of the Shining Path insurgency, when many Andean scholars were left wondering what happened, the country faced another stark reality: the plundering of its past. Driven by a combination of local poverty and an international boom in antiquities, looters set to pillaging Peru's countless archaeological sites, raiding tombs, digging up artifacts, and carrying away anything they could. While such acts were and are against Peruvian law, the government either had no reach in the jurisdictions where these thefts were occurring—due to Shining Path occupation of contested territory—or had no resources to pursue the culprits. Once in hand, the thieves found a ready pool of buyers in the international market.<sup>142</sup> Looting skyrocketed, but it wasn't the only way profiteers seized cultural property.

In the still, dark hours of Wednesday, November 25, 1981, thieves crept toward the National Museum of Anthropology and Archeology in Lima. They came upon and subdued three sleeping guards and disabled the alarm system. Heading into the museum, the thieves plundered pre-Colombian gold and silver artifacts, including a solid gold ceremonial knife, which a former director of the museum said was, “worth more than all the other gold objects in all of Peru's museums.”<sup>143</sup> The then director of the museum, Victor Pimentel, declined to give a value to the thirty-four stolen objects, stating, “We cannot talk about a money value because it does not correspond to this case. What I can

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<sup>142</sup> Jo Ann Lewis, “Smugglers’ Treasure! At National Geographic, The Case Against the Plundering of Peru,” *Washington Post*, May 17, 1983, <https://www.washingtonpost.com/archive/lifestyle/1983/05/17/smugglers-treasure-at-national-geographic-the-case-against-the-plundering-of-peru/6f8701fc-2822-4196-b7d8-ef504597f3ae/>.

<sup>143</sup> “Peru Is Searching for Thieves Who Took Museum Treasures,” *The New York Times*, November 29, 1981, sec. World, <https://www.nytimes.com/1981/11/29/world/peru-is-searching-for-thieves-who-took-museum-treasures.html>.

tell now is that their worth is invaluable.”<sup>144</sup> Priceless objects vanished out the doors of Peru’s national museum. A national manhunt failed to nab the culprits. Confidence in Peru’s ability to protect its cultural heritage further eroded. While the authorities turned the country upside down in their futile search, another government would find itself unexpectedly in possession of a trove of Peruvian antiquities.

In 1983, U.S. Customs officials seized a collection of Peruvian antiquities being smuggled into the country by an art dealer named David Bernstein. It led to a search of Bernstein’s property, which turned up hundreds of artifacts worth millions of dollars.<sup>145</sup> The scope of the theft was so staggering that the Smithsonian expert brought in by Customs officials to appraise the collection died of a heart attack after seeing it.<sup>146</sup> The artifacts—more than 800 in total—were from Inca, Moche, Nazca and other pre-Columbian Peruvian societies. The U.S. and Peruvian governments agreed that, while the objects belonged to Peru, they could stay in the U.S. for display.

Curators arranged an exhibit that not only displayed the artifacts, but also showcased the crisis of theft and illegal export facing Peru’s objects of cultural heritage. The exhibit started at the National Geographic Society, notably, the principal sponsor of Bingham’s expeditions, and then toured the country, with stops at eight museums. Funds raised by the tour were used to help fund the construction of adequate facilities for the careful storing and preservation of the artifacts in Peru.<sup>147</sup> The initial name for the tour

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<sup>144</sup> “A Museum Official Said Today the More than 15... - UPI Archives,” accessed May 16, 2023, <https://www.upi.com/Archives/1981/11/27/A-museum-official-said-today-the-more-than-15/7765375685200/>.

<sup>145</sup> Cathleen McGuigan et al., “The Booming Trade in Smuggled Art: Belatedly, World Governments Try to Crack down on Archeological Plundering,” *Newsweek* (New York, United States: Newsweek Publishing LLC, May 30, 1983), 84.

<sup>146</sup> Lewis, “Smugglers’ Treasure! At National Geographic, The Case Against the Plundering of Peru.”

<sup>147</sup> Lewis.

was "Stolen Treasures--Missing Links," but David Bernstein, the collector from whom the artifacts were seized, objected, and filed suit to defend his name, disavowing any illegality to his actions. In a settlement with Bernstein, the National Geographic Society changed the name of the exhibit to "Peru's Artistic Heritage" and struck all mention of Bernstein.<sup>148</sup> Semantics aside, the objects remained in the U.S. for some time, and the plundering of antiquities raged on. Bernstein still maintains a pre-Columbian gallery in New York City.

In this example, it becomes clear that even while the Peruvian government was fighting an existential battle for its survival, some members of their government were engaged in discussions with international entities about the ownership of and goals for its cultural property. While its military was fighting a guerilla campaign against the Shining Path, its civil servants were planning construction of modern facilities to house antiquities.

Even amidst the revolutionary chaos, dedicated antiquarians in Peru were taking the long view about cultural anthropology. The ownership of these antiquities was thus part of a long-term project for the eventual physical possession and display of those objects. This example is a strong indication that when the geopolitical situation improved, a set of Peruvian stakeholders would intend to call for the return of all Peruvian artifacts.

The same year that the National Geographic exhibition went on display, the *New York Times* took a critical look at the state of Peruvian antiquities. In an article titled *Peru's Rich Antiquities Crumbling in Museums*, the *Times* shined a stark light on the state

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<sup>148</sup> Phil McCombs, "Peru Exhibit Dispute," *Washington Post*, January 13, 1984, <https://www.washingtonpost.com/archive/lifestyle/1984/01/13/peru-exhibit-dispute/46dfa10a-a42d-4dcf-8698-034f46c72882/>.

of Peruvian antiquities. While acknowledging the admirable efforts to excavate and store priceless objects from its millennia of rich history, the results of Peru's efforts to preserve its past were tragic. Poorly funded facilities left millions of objects crumbling to dust, eaten by worms, and destroyed by fungi.<sup>149</sup> Woven fabrics, some 8,000 years old and among the oldest in the world, were disintegrating due to inadequate facilities and conservation capabilities, irreparable damage to irreplicable objects.<sup>150</sup>

In 1983, Peru had nearly 250 public museums, not an insignificant number. However, the total budget for staffing, maintenance, and preservation for all 250 museums was a scant \$600,000 USD. Ambitious plans were announced for an aggressive \$40 million USD modernization of the national archaeology museum, but its funding mechanism was hazy and, even if realized, it would only provide superficial solutions to a bottomless national challenge.<sup>151</sup>

Between the plundering by thieves and the deterioration from inadequate facilities, Peruvian antiquities were in a critical state, so much so that a subset of Peruvian archaeologists believed selling antiquities in legal markets could be a funding mechanism to raise much needed money for its museums. At the same time, there was an acknowledgement that such a solution was both against Peruvian law and politically delicate, thus unlikely to be a solution to the country's antiquities challenges.<sup>152</sup> Cultural property was not safe in museums, in state-run warehouses, or even in situ. Once an

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<sup>149</sup> Edward Schumacher, "Peru's Rich Antiquities Crumbling in Museums," *New York Times, Late Edition (East Coast)*, August 15, 1983, sec. C.

<sup>150</sup> Schumacher, "Peru's Rich Antiquities Crumbling in Museums."

<sup>151</sup> Schumacher.

<sup>152</sup> Schumacher.

object was excavated, it was endangered. Certainly, looting and illicit excavations represented a threat to cultural property, but how pervasive was the issue?

Looting of ancient sites in Peru is not a recent challenge. It dates at least to the Spanish colonial era, and it accelerated when the international market took an interest in pre-Columbian artifacts. So pervasive is the history of Peruvian looting, that it is considered a tradition, and Peruvians have a name for those that seek profit from trading in illicit antiquities: *Huaqueros*, from the Quechua word “*huaca*,” meaning sacred thing or place.<sup>153</sup> Recent scientific work has sought to quantify the scope of looting.

By comparing historical arial photographs with Google Earth data, scientists have been able to quantify the scale of the problem in key archaeological zones. For example. In one region of Peru’s Virú Valley, the looting that has occurred between 1947—the date of earliest available arial photography—and 2006 more than doubled.<sup>154</sup> These objects tend to make their way out of the country and into illegal collections. It is estimated that ninety-five percent of foreign-held Peruvian antiquities originate in illegal looting.<sup>155</sup> Critics contend that academics are complicit in this tragedy, by largely remaining silent. This silence enables the illegal activities.

Even as the country stabilized following the cataclysms of the Shining Path insurgency and the Fujimori dictatorship, tomb raiders and pillagers remained largely out of reach of the law. The Peruvian government’s National Institute for Culture has led an initiative to stem the tide of pillaging, not through legal enforcement, but through cultural inclusion. Their hypothesis was that if local communities gained a greater sense of their

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<sup>153</sup> Daniel A. Contreras, “Huaqueros and Remote Sensing Imagery: Assessing Looting Damage in the Virú Valley, Peru,” *Antiquity* 84, no. 324 (2010): 545–46, <https://doi.org/10.1017/S0003598X0006676X>.

<sup>154</sup> Contreras, 550.

<sup>155</sup> Guerrero, “Repatriation of Cultural Properties,” 149.



own history, then those communities would be more likely to be protective of culturally important sites. In 2007, the National Institute for Culture created training programs to help these communities police and protect these sites.<sup>156</sup> This was an innovative approach to an intractable problem, and shows that Peruvians capable of being adaptive to local conditions and using the mechanisms of government to protect cultural property. This had the added benefit of partially addressing one of the prime challenges facing Peruvian cultural property: working around the ideological gulf between Lima-based politicians and the rest of the country's citizen and academics.

Another chronic issue facing the Peruvian government and its ability to protect and conserve objects of cultural property was financial. Aside from the chronic underfunding of its museums and cultural institutions, pursuing legal claims for foreign-help objects was and is expensive. Beyond the obvious legal fees, repatriation claims also carry heavy costs for warehousing, preparation for and completion of travel for the objects and accompanying personnel, insurance, etc.<sup>157</sup>

To offset these challenges, beginning in 2007, the Peruvian government began allocating specific budgetary resources for the costs associated with repatriation, a first for the country. Their program yielded immediate success, as the country retook possession of 815 objects in twelve separate repatriations in the first year alone.<sup>158</sup> Thus as the Yale-Peru negotiations were unfolding, Peru was simultaneously pursuing other claims, innovating its approach to protecting and reclaiming cultural property, funding its programs, and deploying international law enforcement to assert its claims. It led to a

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<sup>156</sup> Guerrero, 147.

<sup>157</sup> Guerrero, 147.

<sup>158</sup> Guerrero, 147.

steady tide of cultural property crossing back into the country, and emboldened leaders in their further calls for repatriation.

Thus, the Yale-Peru negotiations, while certainly unique, were part of a broader pattern of increasingly aggressive Peruvian claims for cultural property restitution. By the time the Yale-Peru dispute flared up after its long dormancy, Peruvians had become self-consciously aware of their country's history of raiding its own ancient history for modern profit, which in turn is largely derived from international demand from art collectors.

Given this history of looting and illicit export, Peruvian officials were prone to distrust the legitimacy of the collections held by international individuals and institutions. In turn, those paying attention to the situation in Peru, including museum curators and international academics, were justified in skepticism of Peru's ability to preserve and protect objects of its cultural heritage. Peruvian officials responded by going on the offensive, claiming title to internationally held objects, demanding repatriation, and asserting their rights at every turn. Seen in this light, it is hardly surprising that Toledo would make his vocal demands, and that his successors, Indigenous or not, would continue the policy of demanding repatriation of artifacts, wherever and by whomever they were held.

Examining the long view of Peruvian history with regards to its cultural heritage, it is clear that ownership of cultural property was an aim of the nation from its inception. What was lacking was not will or desire, nor a deep cultural connection to its pre-Columbian history. Rather, the challenges associated with Peruvian management of cultural property came down to financial resources and political stability. While the nature of the Peruvian government opened time and time again, and the country endured

slow economic growth and widespread poverty, there was often a core group of Lima politicians on Peruvian possession and ownership of objects cultural property at the various stages throughout its history.

Seen through this light, Peru's demands for the return of cultural property, from Yale or any other source, comes as no surprise. Like any other polity, Peru has had a range of opinions and perspectives from its politicians and academics, but the broad examination of its history with cultural property demonstrates a clear and pervasive trend toward physical possession of objects, primarily, and conservation and preservation of those objects secondarily, as well as a uniform rejection of any claims of ownership title by any foreign entity.

Each case of cultural property repatriation is unique. Each has its own parameters, its own history. The parameter set for examining any case includes countless factors, including the political motives of the stakeholders making and receiving the claims, power balances between various entities, domestic law, international law, provenance of objects, a wide span of cultural norms, and so on. There are too many independent variables for there to be absolute comparability between any two cases. To further complicate any case, all these variables are subject to change from the beginning of a demand forward in time. In the case of Yale-Peru, the Peruvian government at the conclusion of the repatriation process was almost unrecognizable from the one at the outset. Every repatriation case sits on shifting sands; every case is unique. Because it is impossible to draw conclusions from other cases, this makes the exploration of paradigmatic cases, such as the Yale-Peru case, more important, not less.

## Chapter VIII.

### Yale & Peru: Dispute and Resolution

This chapter seeks to apply the Yale-Peru dispute within the context provided above. It does so by tracing the origins of the dispute from the original Bingham expeditions, the scholarship conducted on the artifacts, the various attempts at negotiated settlement, the political, social, and academic motivations of the key stakeholders, and through to the ultimate resolution of the dispute and return of the objects to Peru. As will be demonstrated, while several parties described Yale's actions in unflattering terms, these oversimplifications ignore the reality: that Yale was and remains a respectful internationally collaborator, and that this spirit permeated their approach to this delicate issue.

#### Framing the Dispute

The topic of cultural property ownership and repatriation is pervasive. Many specific cases, such as the Elgin Marbles and Benin Bronzes are known, discussed, and debated around the world. Aside from occasional quotes in academic journals and newspaper articles from a stakeholder in such cases, most of the discussions remain at the superficial level. They do not penetrate to the very heart of the discussions within the institutions themselves. Given the lack of trust, and the frequency with which media level accusations of "colonialism" and "imperialism" at such institutions, it is not surprising

that the key people within them prefer to keep the mechanics of their decisions away from the public eye.

For a few years, the Yale-Peru case was likewise a topic of much debate. There were legal reviews about the technicalities of the case, articles in newspapers, and discussions in academic circles. However, very little attention has been paid the motivations for and criteria used to make decisions. “Yale” is often portrayed as a monolithic institution acting on one set of principles. This is reductionist and overly simplistic. The result of this dispute, the several separate agreements that resolved all the details, stemmed from the inputs from several key people. How these individuals that collectively made up “Yale” acted, thought, reasoned, etc., is a topic that has not been explored in detail. This hinders the utility of the literature on this specific dispute, as it, ironically, diminishes agency from Yale personnel from the process. If this case is to be used to inform other repatriation situations, then it is necessary to understand the motivations and decisions of the individuals on the Yale “side.”

This chapter will seek to address this gap, by examining in fine detail the Yale-Peru dispute. Specifically, it will look at the decisions made by the key figures at the center of Yale’s involvement.<sup>159</sup> While the topic of cultural property ownership and repatriation is pervasive, it is also often prone to hyperbolic treatment from interested observers. For example, so much ink has been spilled denouncing the “colonialism” of U.S. and European institutions and museums. Repatriation can be viewed as a proxy issue

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<sup>159</sup> One of the challenges in this thesis is how to refer to the various individuals that represented Yale during this time. This chapter will variously refer to the Yale “team,” or “officials,” or “representatives,” etc. These terms are all a little misleading as the overemphasize the group at the expense of the individual. Furthermore, Yale does not appear to have formed an organized or centralized committee for working through this dispute, as each had played their own roles, and they communicated in different ways through different types of interaction. However, in many cases, it is necessary to refer to these key people as a group.

in the calls from source nations for post-colonial national sovereignty, and liberal self-criticism from within market nations.

The specific example of Yale-Peru seems to offer a chance to get past the hyperbole and into the specifics of what it means to curate and study cultures and peoples. Academia cannot and does not exist in a vacuum, and how a university must reckon with the realities of geopolitics and international legal frameworks affects how it approaches scholarship. It is also interesting to consider how an institution changes over time. As universities push to expand their international reach, how Yale approached the Machu Picchu artifact topic may have implications for how universities conduct themselves going forward.

Superficial treatments of complex situations may do more harm than good by creating a false sense of simplicity where solutions are concerned. This, in turn, can lead to entrenchment from opposing parties, rendering already difficult situations intractable. The Yale-Peru dispute provides insight that may be useful in considering solutions for other complex repatriation discussions. It is unique. Notably, the resolution of the case went beyond simple transfer of artifacts from one party to another. Rather, the agreements that concluded the dispute simultaneously initiated a new model for ongoing collaboration. The agreements were not narrow; they were expansive. The ultimate resolution between the parties reframed their relationship in a way that allowed each to continue to create shared value for themselves, for each other, and all interested parties.

Central to this focus is an analysis of the decisions that the Yale University officials, administrators, and academics made within the course of the repatriation dispute. This chapter seeks to examine the thoughts, opinions and mindsets of several

individuals affiliated with Yale. To do so, this chapter will necessarily rely on first-person perspectives from the central figures in the decision-making processes. Providing insight into these views will be enhanced by direct quotes from the principles, some of which will be extensive. The cumulative effect of quoting Yale administrators and academics in length will be the emphasis of one “side” in this dispute.

In all such disputes, certain key events and facts are subject to interpretation. In this case, the wide range of stakeholders involved included both Yale and Peruvian academics, as well as an international assemblage of university administrators, politicians, journalists, alumni, and lawyers. As the objective of this chapter is to understand the decisions that led to Yale’s return of the Machu Picchu artifacts and how they were returned, the principle focus of this chapter will be on those people who made those decisions in an official Yale capacity. Stakeholders from outside Yale may have held different opinions or perspectives. This variance is outside the scope of this chapter, as their decisions are not the area of focus.

A specific example may further demonstrate this point. As will be seen, one of the key criteria of the Yale delegation was their suspicion of the motivations of certain Peruvian counterparts.<sup>160</sup> For example, Richard Burger and Lucy Salazar both highlighted their distrust of former Peruvian first lady Eliane Karp-Toledo, wife of former President Alejandro Toledo.<sup>161</sup> For this thesis, Ms. Karp-Toledo’s actions and opinions are only germane to the point that they affected the actions of the Yale group. However, it is the

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<sup>161</sup> Note: The former First Lady of Peru is variously referred to, and variously refers to herself, in several different ways: Eliane Karp, Eliane Karp Toledo, and Eliane Karp-Toledo. For consistency, she is generally referred to in this thesis as Eliane Karp-Toledo, principally because this is the format she chose when publishing editorials about the Yale-Peru dispute. Biographical details about her prior to her marriage to Alejandro Toledo may refer to her as Eliane Karp.

opinions of the individuals within that group about Ms. Karp-Toledo that are key. Those opinions shaped their decisions. Therefore, this chapter must only explore the opinions and decisions of those within the Yale group, not to also do so from those without. Ms. Karp-Toledo's opinions are germane only when evoking a reaction or decision from the key Yale personnel.

Going further, in this case it can be argued that the aggregate Yale point of view is the more important one to analyze for the simple fact that Yale possessed the artifacts, and as will be seen, legal pressures were unlikely the force Yale to return them. The consequences of their actions or inactions were thus higher in terms of finding a resolution to the dispute. For the objects to undertake their 4,000-mile journey southwest, the Yale team had to decide that was the course of action they deemed best. Only choice can overcome inertia. There was no resolution to the artifact dispute without the decisions of the Yale team. Exploration and understanding of these choices, these decisions, is both missing from the literature and a necessary ingredient in analyzing the utility of this case as an informative example for other repatriation disputes.

From the time of the renewed Peruvian demands for the return of the Bingham collection, through the arrival of the final shipment of artifacts in Peru, the Yale-Peru dispute took a decade to resolve. At times, the statements made by some of the stakeholders in this dispute veered into hyperbole. Involving the courts through litigation added an edge of contentiousness. These realities tend to cast a pall over the relationship between Yale and Peruvian officials as consistently acrimonious. Looking back over the course of a century, it is easy to see the relationship between Yale and Peruvian stakeholders through this jaundiced lens. This tells an incomplete, and unfortunate story.



To understand the ultimate resolution of the Yale-Peru dispute, it's important to understand the ways in which Yale officials saw their long-standing relationship with their Peruvian counterparts.

### The Necessity of Hiram Bingham

It is not necessary to describe in precise detail the expeditions of Bingham. However, a basic overview is important for two reasons. The first is that the provenance of the Machu Picchu artifacts, and thus the origins of the dispute over their ownership and possession, find its roots in these adventures. There is no Yale-Peru dispute and subsequent resolution without Hiram Bingham. The second, and perhaps more important reason, is that Yale academics and administrators viewed the Machu Picchu collection as a resulting from Bingham's work and the Yale officials were conscious that these artifacts originate in this work. As an institution, Yale has maintained archives from the Bingham family, and he is often counted among the school's noted alumni. As will be seen, protecting the reputation of Bingham was an element of the various negotiated attempts for settling the dispute.

Bingham carefully crafted the image of Machu Picchu in the popular imagination, in part to burnish his own reputation. As a result, Bingham can be said to have influenced the views about Machu Picchu specifically and the Inca in general. However, as values about cultural property ownership have shifted, and as arguments around colonization and imperialism have entered the lexicon, Bingham's reputation has likewise shifted. In some sources, he is described as imperious, dismissive of Peruvian contributions, and

prone to take credit for other people's work.<sup>162</sup> Yale's subsequent approach to the Yale-Peru dispute has been described as an extension of "the neocolonial aspects of Bingham's original expeditions."<sup>163</sup>

However, key figures in the Yale-Peru dispute have maintained a more positive view of Bingham and his work. As the dispute intensified, the descriptions of Bingham and his actions by Yale officials increasingly stood in stark contrast to those in the U.S. and Peruvian press and academia. In describing Bingham's expeditions and possession of the Machu Picchu artifacts, Yale officials demonstrate an aspect of how Yale framed the entirety of the issue. Therefore, a cursory exploration of Bingham's expeditions, the provenance of the artifacts discovered and exported by those expeditions, and the initial disagreements between Yale and Peruvian officials over their ownership, will frame the modern dispute that is the primary focus of this chapter. The key milestones that provide the foundation for the dispute will now be briefly reviewed, with a special emphasis on the artifacts.

### 1911: First Yale Peruvian Scientific Expedition

In 1911, Yale Professor Hiram Bingham III led the Yale Peruvian Scientific Expedition. Searching for Incan ruins was one of his objectives, which also included geographic surveying and mountain climbing.<sup>164</sup> This expedition was but one of several university-sponsored explorations in Latin America, with schools such as Harvard and

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<sup>162</sup> See Shullenberger, "That Obscure Object of Desire," 320–21; Zanelli, "Writing Machu Picchu. Epistemological Extractivism and the Citadel Through the Lens of *Indigenismo Cusqueño*," 570.

<sup>163</sup> Swanson, "Repatriating Cultural Property," 470.

<sup>164</sup> Swanson, 472.

Stanford sending their own expeditions south in search of scholarship and discovery.<sup>165</sup>

Contrary to the image of him as a kind of neo-colonialist, Bingham worked in partnership with Peruvian government, business and academic officials, and he received direct support and assistance from the Peruvian government:

From the Peruvian government, the Expedition received free use of the state telegraph system, duty free entry into Peru as a scientific expedition, and a Peruvian military escort throughout the majority of the expedition. Upon arrival in Peru, Bingham was even granted an audience with President Augusto Leguía.<sup>166</sup>

It was on this expedition that Bingham was guided to the ruins that would later become the focus of so much of his career. Led to the site by a local guide named Melchor Arteaga, Bingham found the name of local explorer Agustín Lizárraga carved in rock, and two families of farmers living among the ruins.<sup>167</sup> By the time Bingham came to Machu Picchu, he was conscious that he was following in the footsteps of others. He visited the site only briefly, did not conduct excavations and did not collect any artifacts. But he was aware of Machu Picchu, and the site took on greater significance as he planned his subsequent expeditions.

### 1912: Second Yale Peruvian Scientific Expedition

As he planned his return, Bingham received support from several quarters. National Geographic pitched in substantial funds to sponsor the second Yale Peruvian Scientific Expedition. Peru's President, understanding the potential for tourist revenue that could be garnered by the site, granted Yale an exclusivity period of ten years for

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<sup>165</sup> Swanson, 473.

<sup>166</sup> Swanson, 473.

<sup>167</sup> Christopher Heaney, "Finders Keepers?," *Legal Affairs*, April 2006, [https://www.legalaffairs.org/issues/March-April-2006/scene\\_Heaney\\_marapr06.msp](https://www.legalaffairs.org/issues/March-April-2006/scene_Heaney_marapr06.msp).

excavations at Machu Picchu, which was central to the expedition's agenda.<sup>168</sup> Bingham and his team dug and crated up thousands of artifacts, including pottery sherds, grave goods, household items and human bones. However, intellectual and political headwinds intensified before these objects could be exported.

The term of Bingham's principal Peruvian supporter, President Augusto Leguía, expired in 1912. He was succeeded by Guillermo Billinghurst, who was tepid toward Bingham and his expeditions.<sup>169</sup> More concerning to Bingham, the intellectual elite of Peru opposed the export of artifacts. They successfully lobbied the Peruvian parliament to table the concessions Bingham had secured from Leguía. Bingham aggressively fought for a resolution to the issue. It came in the form of a decree from the Peruvian government granting Bingham an exception to its claims of universal ownership of all pre-Columbian artifacts, and that it: "reserves to itself the right to extract from Yale University and the National Geographic Society of the United States of America the return of the unique specimens and duplicates."<sup>170</sup> Bingham crated the objects and shipped them to New Haven. Bingham was not yet done and set to planning his final expedition.

### 1915: Third Yale Peruvian Scientific Expedition

By the time the third Yale Peruvian Scientific Expedition set foot in Peru, the headwinds facing Bingham had grown to gale force. Permits for excavations were only obtained with great difficulty. Local regulations shifted. Rumors about the expedition

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<sup>168</sup> Andrew Mangino, "Peru Dispute Has Long, Murky Past," *Yale Daily News*, April 14, 2006, <https://yaledailynews.com/blog/2006/04/14/peru-dispute-has-long-murky-past/>.

<sup>169</sup> Swanson, "Repatriating Cultural Property," 476.

<sup>170</sup> Heaney, "Finders Keepers?"

swirled, with grandiose claims of their illegal theft of treasure creating even greater tensions between the expedition team and Peruvians.<sup>171</sup> The expedition's work was conducted in a tense atmosphere of uncertainty. By the time the expedition concluded its work, Bingham entered fraught negotiations to not only secure export license for his latest excavated artifacts, but also for himself. Before leaving the country, Bingham:

agreed that all the excavated materials would be brought to Lima for examination at the National Museum before anything was shipped to Yale, and that all the excavated materials would be recognized as national property of Peru and would be returned upon request.<sup>172</sup>

Bingham's export agreement contained an extraordinary clause that would have implications for the future of the artifacts, "Yale University and the National Geographic Society pledge to return, in the term of 18 months from today, the artifacts whose export had been authorized."<sup>173</sup> In these strong terms, Peruvians claimed a more comprehensive set of rights with regards to ownership of their objects of cultural property. It would not take long before they sought to assert these rights, and for the origins of the repatriation dispute to take root.

#### The First Peruvian Calls for the Return of Artifacts: 1917 – 1929

Not long after Bingham and the artifacts of the third Yale Peruvian Scientific Expedition returned to New Haven, the Peruvian government began demanding their return. Bingham acknowledged the tenuous legality of maintaining possession of the artifacts, stating in a personal letter that the artifacts "do not belong to us, but to the Peruvian government, who allowed us to take them out of the country on condition that

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<sup>171</sup> Heaney.

<sup>172</sup> Swanson, "Repatriating Cultural Property," 480.

<sup>173</sup> Swanson, 480.

they be returned in eighteen months.”<sup>174</sup> Yale demurred, at first ignoring these initial demands.

The difficulties increased during World War I, when the relationship between the two nations soured.<sup>175</sup> Peruvian officials maintained their calls for the return of the objects. Yale relented in 1922 and send back boxes of artifacts from the 1915 expedition; none of the 1912 objects were returned.<sup>176</sup> The Peruvians were not satisfied. They wanted the full return of all artifacts Bingham had exported.

They renewed their calls for the full repatriation of what they claimed as their cultural property, but the requests were declined. For its part, Yale believed that returning the 1915 artifacts fully satisfied its legal obligations to return any objects to Peru. Throughout the 1920s, Peru called for return of the artifacts. Their pleas were ignored.<sup>177</sup> By 1930, the issue lapsed into what became its seven-decade fallow period.

#### Retrospective from the First Yale Peruvian Scientific Expedition to 1929

Hiram Bingham did not claim to have been the discoverer of Machu Picchu. Rather, from the outset, he acknowledged the role Peruvians played in guiding him toward the ruins. Bingham drew a distinction between “discovery,” which connotes primacy of knowledge, with “scientific discovery,” which describes the process by which something known to a select few came to be known by a larger audience.<sup>178</sup> In his book *The Discovery of Machu Picchu*, by which he sought to share with the world the results

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<sup>174</sup> McIntosh, “Exploring Machu Picchu,” 201.

<sup>175</sup> Mangino, “Peru Dispute Has Long, Murky Past.”

<sup>176</sup> Heaney, “Finders Keepers?”

<sup>177</sup> Alderman, “Machu Picchu Artifacts,” 6649.

<sup>178</sup> Amy Cox Hall, “Collecting a ‘Lost City’ For Science: Huaquero Vision and the Yale Peruvian Expeditions to Machu Picchu, 1911, 1912, and 1914–15,” *Ethnohistory* 59, no. 2 (April 1, 2012): 293, <https://doi.org/10.1215/00141801-1536894>.

of his field work, Bingham concludes his very first paragraph by sharing that the key to his expedition's discovery was asking local Peruvians for guidance in finding lost ruins.<sup>179</sup>

Through the course of his time in Peru, Bingham collaborated with Peruvian officials, including the country's President, local guides, academics, and officials. He was conscientious in seeking the proper permits for excavations and, in the case of the 1915 artifacts, only undertook their export after local officials carefully reviewed the artifacts gave their ascent. Bingham acknowledged the Peruvian claim of title for the 1915 artifacts, and while it took closer to five years than eighteen months to facilitate their return, the objects were sent back to Peru. Viewed through this lens, the accusations of colonialist behavior become tenuous. As will be seen below, the objects returned to Peru from the 1915 expedition were not destined to reveal hidden secrets of Incan society through careful academic study by Peruvian academics.

Bingham's work is relevant to the events that would manifest nearly a century later for one crucial reason. It provided the foundation upon which much of the later dispute would rest. Thus, to understand the renewed demands from Peru in the 2000s, which will be explored shortly, it is necessary to contextualize these demands in the events of the 1910s and 1920s.

In addition, in many ways, the Yale negotiating teams faced similar challenges to their institutional counterparts nearly one century earlier. For example, in Chapter VI, the issue of Peruvian political instability was briefly summarized. While this created a difficult operating environment for the Yale delegation, this was not a new challenge with

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<sup>179</sup> Richard L. Burger and Lucy C. Salazar, eds., *Machu Picchu: Unveiling the Mystery of the Incas*, 1st Edition (New Haven: Yale University Press, 2004), 7.

respect to the relationship between Yale and Peruvian representatives. Rather, tumult in Peruvian politics has been a constant since the country first gained independence in 1821, with no less than twelve constitutions enacted, one lasting as few as four months.<sup>180</sup> This doesn't factor the expiration of elected terms, coup d'états, resignations and firing of officials, and, especially recently, accusations of bribery and corruption.<sup>181</sup> Not only would this challenge come to face the Yale negotiators in the 2000s, but they also confronted Bingham even during and immediately following his expeditions. It was a constant in the century-long dispute.

Jurisdictional questions and Peruvian political volatility further muddied the waters. As the Yale team weighed up their actions in the escalating conflict over the artifacts, the context of Peruvian law was among their considerations. Understanding the decision to return the artifacts requires examining all the factors that weighed into this decision, this necessarily includes getting to the essence of past laws and legal entanglements.

By their nature, the agreements between Yale and Peru, including the failed 2007 MOU and the eventual successful agreements, were legal in nature. This is not a legal thesis, nor is it an analysis of the legalistic aspects of the dispute. What is germane is that there was and is deep ambiguity in the Peruvian legal code, with each side claiming the force of law of specific regulations and decrees that had been promulgated, redacted, repealed, overwritten, and selectively enforced.

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<sup>180</sup> "Peru, Constitutions," accessed May 23, 2023, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/peru-constitutions>.

<sup>181</sup> Marcelo Rochabrun, "Peru Is Running Out of Space to Keep Its Jailed Ex-Presidents," *Bloomberg*, February 24, 2023, <https://www.bloomberg.com/news/articles/2023-02-24/peru-is-running-out-of-space-to-keep-its-jailed-ex-presidents#xj4y7vzkg>.



It does appear that Peru had a strong legal historical basis for its claims, with sufficient laws and edicts to which it could point.<sup>182</sup> However, Yale likewise claimed to have a strong legal foundation for its retention of the Machu Picchu artifacts, and various legal journals seem to support the conclusion that Yale would have won out in the courts.<sup>183</sup> Key to any litigation was the simple fact that Peru had not sought the return of the artifacts for more than seventy years.<sup>184</sup> The repatriation demands would begin anew after those seven decades. However, the events that set the dispute in motion began years before.

#### New Scholarship on Old Artifacts

While the issue of ownership of the Machu Picchu artifacts lay dormant, public interest in the site grew steadily over the twentieth century. In part sparked by Bingham's narratives, this trend was further aided by Peruvian tourism concerns in the 1930s and 1940s, who cultivated an image of Bingham as a romantic adventurer.<sup>185</sup> Slowly, the citadel worked its way into the collective consciousness. Despite its allure, Machu Picchu remained shrouded in mystery. Who built it? When was it built? What purpose did it serve? Thanks in large part to the artifacts in storage in New Haven, scholars would begin making headway against these and countless other questions.

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<sup>182</sup> Swanson, "Repatriating Cultural Property," 481.

<sup>183</sup> See Kimberly Alderman, "Machu Picchu Artifacts: Repatriation," in *Encyclopedia of Global Archaeology* (New York: Springer International Publishing, 2020), 6649–51; Swanson, "Repatriating Cultural Property"; McIntosh, "Exploring Machu Picchu," 199-219.

<sup>184</sup> Alderman, "Machu Picchu Artifacts," 6649.

<sup>185</sup> Elizabeth Matsangou, "Machu Picchu Is Struggling under the Weight of Legend," *Business Insider*, August 14, 2019, <https://www.businessdestinations.com/destinations/machu-picchu-is-struggling-under-the-weight-of-legend/>.

Richard L. Burger and Lucy C. Salazar joined Yale in 1981. Both archaeologists specializing in Andean cultures, Burger and Salazar would make significant contributions to the understanding of Machu Picchu and the people who lived, worshiped, and died there. They would also become the central figures not only in the scholarship on the Machu Picchu artifacts, but also of the dispute between Yale and Peru. Given their centrality to so many key aspects of this case, it is worth briefly summarizing their careers prior to their arrival in New Haven.

Richard Burger received his undergraduate degree in archaeology from Yale. While working to complete his PhD at University of California Berkeley, he spent considerable time in Peru. It was at this time that he had his first engagement with the Machu Picchu artifacts. Working out of the Museo Nacional de Arqueología Antropología e Historia del Perú, Burger

became affiliated with them as a sort of visiting investigator, and I would come in every day to work. I had my collections there, and I was able to share an office with the head of investigations and to do my analysis. In the courtyard there was a big, open plaza. It was just an open, unroofed space. There were these giant wooden boxes. They had “Yale Peruvian Scientific Expedition” stamped on them. I asked about them and was told that they were the Bingham collections (from the 1922 return). They hadn't been integrated into the museum's collections. They just were, were sitting there, unopened.<sup>186</sup>

Burger was careful to clarify that he has great respect and affection for Peru and for its historical and anthropological institutions:

You know, I have a huge affection for them. Both Lucy (Salazar) and I have deep attachments to the place. It is a frustration that things like this occur. There are other very good things that have happened in the same institution. But I was struck by the fact that it meant so little to them that

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<sup>186</sup> Richard L. Burger (Charles J. MacCurdy Professor of Anthropology, Director of Graduate Studies in Archaeology, Yale University), in discussion with the author, May 26, 2023.

they hadn't wanted to invest the resources to go through the collection and see what exactly what it was.<sup>187</sup>

Burger completed his PhD in 1978, and a few short years later, joined Yale's faculty.<sup>188</sup>

Lucy C. Salazar took a very different path. Born and raised in Peru, Salazar described her father as an amateur archaeologist, who would bring her with him on his digs from an early age. This experience sparked a life-long interest in archaeology, and she entered The National University of San Marcos in Lima as one of only five archaeology students, and the only woman. As a student, she was conducting field work in her late in her late teens. When she joined Yale in the early 1980s, she brought with her a significant amount of hands-on experience, and she sought ways to apply her knowledge of archaeology and Andean culture in her new setting.<sup>189</sup>

A member of Yale's faculty suggested that she investigate the Bingham collection, then in storage in the basement of Yale's Peabody Museum. What she found was extraordinary. Aside from a small exhibit at the Yale Peabody Museum in the 1970s, the artifacts had barely been touched. Salazar described finding many of the pieces in the original newspapers in which they had first been wrapped. These untouched and unstudied artifacts represented a tremendous opportunity for scholarship, and for Salazar. Her initial investigations culminated in her master's degree which was focused on analyzing the artifacts from the burial sites at Machu Picchu.<sup>190</sup>

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<sup>187</sup> Burger, discussion.

<sup>188</sup> "Richard L. Burger | Department of Anthropology," accessed May 29, 2023, <https://anthropology.yale.edu/people/richard-l-burger>.

<sup>189</sup> Lucy C. Salazar (Research Associate, Machu Picchu Project, Yale University), in discussion with the author, May 26, 2023.

<sup>190</sup> Salazar, discussion.

## Early Joint Scholarship on Machu Picchu

When Burger and Salazar arrived at Yale in 1981, the Machu Picchu artifacts in Yale's collection had been carefully packed, safely stored, and little studied.<sup>191</sup> Little was known about the construction, purpose, and history of Machu Picchu. Much of Bingham's speculative interpretation of the site prevailed in the popular and academic imagination.<sup>192</sup> These objects became a focal point for Burger and Salazar, as part of what they described as a "new wave of research on the Bingham collections from Machu Picchu."<sup>193</sup> They made an immediate impact on the understanding of Machu Picchu, contesting the view that it was the last strong hold of the Incan resistance to the Spanish conquistadors. Rather, they argued, "After a preliminary analysis of the documentation and archaeological materials deposited at the Yale Peabody Museum,"<sup>194</sup> Machu Picchu

could best be understood as an example of an Incan royal estate that would have been used by members of the Inca court as a country palace, a place to which they could go in order to escape from the capital for rest, relaxation, and other elite activities.<sup>195</sup>

Thus, in short order, Burger and Salazar's examination of the Bingham artifacts, began clarifying the understanding of the enigmatic site, paving the way for renewed energy in the interpretation of Machu Picchu. Of note, their early work was not a cloistered effort. Rather, they involved a range of collaborators, both from within the Yale community, and from other institutions. This stands in stark contrast to the press

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<sup>191</sup> Burger and Salazar, *Machu Picchu*, 2.

<sup>192</sup> "Major Exhibition on Machu Picchu Opens January 26 at Yale Peabody Museum."

<sup>193</sup> Lucy C. Salazar and Richard L. Burger, "The Machu Picchu Solution: A New Approach to Cultural Patrimony Disputes," in *Finding Solutions for Protecting and Sharing Archaeological Heritage Resources*, SpringerBriefs in Archaeology (Cham: Springer International Publishing, 2015), 89, [https://doi.org/10.1007/978-3-319-20255-6\\_7](https://doi.org/10.1007/978-3-319-20255-6_7).

<sup>194</sup> Richard L. Burger, Craig Morris, and Ramiro Matos Mendieta, eds., *Variations in the Expressions of Inka Power*, Dumbarton Oaks Other Titles in Pre-Columbian Studies (Cambridge, MA: Harvard University Press, 2008), 167.

<sup>195</sup> Burger and Salazar, *Machu Picchu*, 2.

coverage of Yale during the artifact dispute as closed-off, imperialistic and uncooperative. Describing the collaborative nature of their early work on the artifacts, they stated:

In order to fill out this picture, we involved Yale undergraduate and graduate students in the laboratory analysis and engaged colleagues, such as geologist Robert Gordon, from other departments at Yale to help us. We also brought specialists from other universities to carry out research on poorly understood portions of the collections, such as the animal and human bone remains.<sup>196</sup>

Experts in a range of disciplines joined the collaboration. Burger and Salazar also emphasized the scholarship being conducted by Peruvian academics, including field work to further excavate, restore, and preserve Machu Picchu.<sup>197</sup> While the contested issue of the ownership and possession of the Bingham artifacts remained dormant, the early and mid 1980s witnessed a renewed focus on international collaboration on Incan archaeology, osteology, anthropology, and ethnology. Far from isolated in a New Haven ivory tower, Yale students and professors were engaged in an international effort to further knowledge about and scholarship on Incan culture. The Machu Picchu artifacts were a key part of this effort, but certainly not its sole focus. Professors Burger and Salazar described this period as collaborative and were careful to give credit to the important multi-disciplinary contributions of archaeologists and Andean scholars, such as Robert R. Gordon, Professor John Verano, Professor George R. Miller, and Nicholas van der Merwe.<sup>198</sup> This shows the view of the objects and their role in scholarship as a thread in fabric.

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<sup>196</sup> Burger and Salazar, 2.

<sup>197</sup> Burger and Salazar, 2.

<sup>198</sup> Salazar and Burger, "The Machu Picchu Solution," 91.

Richard Levin, Dorothy Robinson, and Derek Briggs

In analyzing Yale's decision to return the Machu Picchu artifacts, it's necessary to introduce three other key members of the Yale community that were at the center of the issue.

Burger and Salazar joined the Yale faculty in the early 1980s. Richard Levin preceded them by several years, having joined as a professor of economics in 1974. Levin attained degrees in history and politics from Stanford and Oxford, respectively, before getting his PhD in economics from Yale.<sup>199</sup> In 1993 Levin became Yale's twenty-second President, beginning a twenty-year term that would span the entirety of the renewed cultural property dispute. As the President of the University, much of the pressure to deal with the Peruvian demands would fall on him.

Reflecting on the first half of his presidency, Levin said, "I had no direct exposure to this issue (the Machu Picchu artifacts) before I became President, and frankly, not much exposure for the first ten years."<sup>200</sup>

But that did not mean that Levin was insulated from the topic in general. In addition to the Yale Peabody Museum, the University also runs the Yale Center for British Art and the Yale University Art Gallery. Levin's first direct experience with the topic of cultural property ownership

was before the Machu Picchu issue assumed prominence. We had a couple of restoration claims made by descendants of Jewish families that had been confiscated by the Nazis. One settlement foreshadowed the principles of the Machu Picchu resolution in a certain way. In this case, we gave title to the paintings back to the descendants of the family. In return, they put them on permanent loan to Yale. It solved the problem of clarifying that

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<sup>199</sup> "Rick Levin | LinkedIn," accessed June 7, 2023, <https://www.linkedin.com/in/rick-levin-249165a9/>.

<sup>200</sup> Richard C. Levin (President Emeritus and Senior Fellow, Jackson Institute for Global Affairs, Yale University), in discussion with the author, March 16, 2023.

the property was rightfully theirs. On the other hand, it ensured that they were still available to the public.<sup>201</sup>

This spirit of recognition and compromise would loom large in Yale's approach to the forthcoming negotiations with Peru.

Like Levin, Dorothy Robinson joined Yale well before the conflict with Peru reemerged. She joined Yale in 1978 and was appointed its General Counsel in 1986. She became an officer of the university in 1987—only the second woman ever to do so—and Vice President in 1995.<sup>202</sup> Robinson served under five presidents before her 2014 retirement from the university.

Robinson was also a fixture in several multi-institutional groups, such as being a member of the boards of the National Association of Independent Colleges and Universities and the National Association of College and University Attorneys.<sup>203</sup> Her board service also extended to multiple nonprofit organizations.<sup>204</sup> She was well-respected both within and outside of Yale.

In many ways, Robinson was the central hub in the repatriation negotiations, as she would communicate through internal and external channels throughout the process, and lead or advise the negotiations with Peru at every turn.

A paleontologist and taphonomist, Dr. Derek Briggs received his bachelor's in Geology from Trinity College Dublin in 1972, and his Ph.D. from University of Cambridge in 1976. He held a variety of positions at the Universities of Cambridge,

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<sup>201</sup> Levin, discussion.

<sup>202</sup> "General Counsel Dorothy Robinson Retiring after 29 Years," *YaleNews*, April 23, 2014, <https://news.yale.edu/2014/04/23/general-counsel-dorothy-robinson-retiring-after-29-years>.

<sup>203</sup> "General Counsel Dorothy Robinson Retiring after 29 Years."

<sup>204</sup> "Dorothy K. Robinson," accessed June 8, 2023, <https://www.klgates.com/Dorothy-K-Robinson>.

London, and Bristol, before coming to the United States for a post with the University of Chicago in 2001.

Briggs joined the Yale faculty in 2003, making him the last member of the central group of Yale stakeholders to join the University. From 2008 – 2014, Briggs was the Director of the Yale Peabody Museum of Natural History, a position Burger had held from 1995 – 2002.

Briggs assumed the directorship of the Peabody as the dispute was unfolding. He recalled: “I was aware that it was something I would have to deal with.”<sup>205</sup> Briggs was serving as the director at the outset of the litigation, and for the entirety of the subsequent negotiations that led to the resolution of the dispute. He also oversaw the eventual transfer of the objects from Yale to Peru.

One of the interesting aspects of the Yale team was the wide range of professional and academic disciplines. Levin, in addition to leading Yale’s administration, was a professor of economics. Burger and Salazar are archaeologists. Robinson is an accomplished lawyer. Briggs is a paleontologist, Salazar is Peruvian; Briggs is Irish. Thus, in a relatively small group of individuals, there was diversity of thought and experience to ensure that all sides of the issue could be explored, debated, and decided upon.

This is the group of individuals that was in place by the time the dispute was renewed. However, before those events unfolded, Burger and Salazar continued to lead collaborative scholarship with the Bingham collection at the center.

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<sup>205</sup> Derek Briggs (G. Evelyn Hutchinson Professor of Earth & Planetary Sciences, Yale University), in discussion with the author, May 9, 2023.



## Dumbarton Oaks Symposium: Variations in the Expressions of Inka Power

In the mid 1990s, Richard Burger teamed up with several colleagues to plan a symposium titled “Variations in the Expressions of Inka Power” to convene a robust group of Andean scholars for a series of talks specifically dedicated to Inca civilization. They did so for several reasons. First, because the Inca were the dominant political power in the region at the time of the Spanish conquest, scholars have relied on Spanish chronicles. This tended to present an incomplete, and often inaccurate, understanding of Incan culture.<sup>206</sup> Second but related, was that earlier periods in Andean history tended to receive more attention from scholarship. A third reason was that, driven in measure by the collaboration referenced above, there was an opportunity to “take advantage of emerging research and to call attention to the extraordinary potential that archaeological investigations had for our understanding of the Inka period.”<sup>207</sup>

Reflecting the multi-disciplinary approach to Incan studies, the Symposium was held at Dumbarton Oaks, because, as the organizers said, it

is one of the few institutions that encourages the interaction of art historians, with their distinct humanistic perspective; archaeologists working within a social science framework; and scientists engaging in the laboratory study of material culture remains.<sup>208</sup>

After decades of neglect, the research catalyzed by the renewed focus on the Machu Picchu artifacts helped accelerate Incan studies, yielding insights and breakthrough across a variety of disciplines, institutions, and borders. In her talk at the Symposium, Salazar discussed how the style, location and quality of the Machu Picchu artifacts were helpful in contextualizing the archaeological interpretation of the site, the

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<sup>206</sup> Burger, Morris, and Mendieta, *Variations in the Expressions of Inka Power*, vii.

<sup>207</sup> Burger, Morris, and Mendieta, xiii.

<sup>208</sup> Burger, Morris, and Mendieta, xiv.

ethnic makeup of the city's residents, the social classes of those interred within the tombs, and several other key insights.<sup>209</sup> Notably, it was not solely the analysis of the artifacts that yielded these advances; rather, it was the interaction between the analysis of the artifacts with insights from other scholarship that helped create a new and richer understanding of Machu Picchu.

Armed with a new abundance of insight, curators set their sights on bringing the exciting new interpretations of Machu Picchu and Incan culture to the public. Planning got underway for a new way to share the latest insights with the world.

#### Machu Picchu: Unveiling the Mystery of the Incas

With the successful scholarly symposium concluded, Burger and Salazar set themselves to a new use-case for the Machu Picchu artifacts. In the late 1990s, they began planning a new traveling exhibit featuring the Bingham artifacts and the latest breakthroughs in scholarship. The vision for the exhibit was bold; it required financing.

Funding for the exhibit fell to Burger, who served as curator of the Yale Peabody Museum from 1995 – 2002. Support for the exhibit that would come to be titled “Machu Picchu: Unveiling the Mystery of the Incas” came from a wide range of sources, including, “the National Science Foundation. National Endowment for the Humanities, Connecticut Humanities Council, and the William Bingham Foundation, as well as numerous individual donors.”<sup>210</sup>

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<sup>209</sup> Lucy C. Salazar, “Machu Picchu’s Silent Majority: A Consideration of the Inka Cemeteries,” In *Variations in the Expression of Inka Power*, 169–74. Dumbarton Oaks Other Titles in Pre-Columbian Studies, Cambridge, MA: Harvard University Press, 2008.

<sup>210</sup> “Major Exhibition on Machu Picchu Opens January 26 at Yale Peabody Museum.”

Aside from financial support, Yale also received political support. Looking back on the dispute years later, it is perhaps surprising that encouragement for the exhibition came from high quarters within the Peruvian government itself. Ricardo Luna, who served as the Peruvian ambassador to the United Nations from 1989 – 1993, then to the United States from 1993 – 1999, was enthusiastic in his support of the project.<sup>211</sup>

The exhibition also received support from an additional source. The overwhelming majority of the artifacts in the Yale Machu Picchu collection were fragmentary, such as pottery sherds or bone pieces. A very small part of the collection—approximately 350—were deemed to be museum quality. Lacking from this collection were metal objects, which the curators felt was an important component of Incan material culture, and important to draw interest from prospective visitors. Salazar stated, “people want to see gold and mummies. That’s what they come to see.”<sup>212</sup> Machu Picchu was, after all, an estate for the Incan Emperor. To round out the collection of artifacts in the exhibit, and to tell the complete story of Machu Picchu, Salazar and Burger welcomed the collaboration of fifteen museums from around the world. These museums each contributed additional artifacts to complete the picture presented by the exhibit.<sup>213</sup>

This multi-institution collaboration for the Machu Picchu exhibit is important for two primary reasons. The first, this demonstrates that, as with their early collaborative approach to the study of the objects, and with the Dumbarton Oaks symposium, the Yale team approached their work in a multi-disciplinary, multi-institutional, collaborative manner. The second reason is that this openness presents a different picture from that

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<sup>211</sup> Salazar and Burger, “The Machu Picchu Solution,” 91.

<sup>212</sup> Salazar, discussion.

<sup>213</sup> Salazar, discussion.

which is portrayed in the subsequent media coverage of the cultural property ownership dispute. As will be shown below, it was this traveling exhibit that first brought out critique from Peruvian government representatives, and this critique was focused squarely on Yale.

There was, therefore a disconnect between how the Yale curators viewed themselves: open, collaborative, and multi-stakeholder, and how they were portrayed by critics and media alike: closed, inflexible and institutionally arrogant. When assessing the process by which Yale chose to return the contested artifacts to Peru, it is imperative to consider that the Yale team did not see themselves in the same light as their critics, and as they were portrayed in the media coverage of the dispute.

The plan for the exhibit was for it to open in New Haven, then to make its way around the United States, stopping at several cities, before returning to the Yale Peabody Museum for permanent installation.<sup>214</sup> The concept of the traveling tour was again met with the support of Ambassador Lima, who aided in the selection of host cities. The tour would travel to Pittsburgh, Los Angeles, Denver, Houston, Chicago, and Tulsa. Ambassador Lima suggested cities with “large Peruvian immigrant populations,” and these groups “responded warmly to the show.”<sup>215</sup>

The exhibition was a huge success, being viewed by more than one million people across the country.<sup>216</sup> It captivated imaginations across the country and focused eyes on Peru’s most famous tourist attraction. The tour generated “endless publicity” for Peru.<sup>217</sup>

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<sup>214</sup> “Major Exhibition on Machu Picchu Opens January 26 at Yale Peabody Museum.”

<sup>215</sup> Salazar and Burger, “The Machu Picchu Solution,” 91.

<sup>216</sup> Hugh Eakin, “Inca Show Pits Yale Against Peru,” *The New York Times*, February 1, 2006, sec. Arts, <https://www.nytimes.com/2006/02/01/arts/design/inca-show-pits-yale-against-peru.html>.

<sup>217</sup> Mangino, “Peru Dispute Has Long, Murky Past.”

As a Peruvian, the tour was a personal triumph for Salazar. She spoke about one particularly poignant memory from the tour. As it prepared to close in Los Angeles, Salazar arrived to oversee the dismantling and preparation of the exhibit for its transit to the next host city. Just before the 5 p.m. closing of the exhibit on its final day, “there were still 200 people in line. People were crying and said, “I traveled two hours or three hours to see the exhibit.””<sup>218</sup>

Salazar also described an emotional experience while the exhibit was on display in the Field Museum in Chicago. Noting that the tour

was so big with the people in Chicago, the Latin American people, the Hispanic people. Schools with students of Latin and Hispanic heritage were bringing kids to see the exhibit. It was the first time that the students saw a person like me in a role like mine. They felt, “you know, I could be like her.” The teachers told me that it was great for the kids, because they have to feel their value, to know that they have value in this country. They gave me an award. That prize went straight to my heart.<sup>219</sup>

The connection that the Yale team felt to the local Peruvian communities was tangible. The tour created an opportunity for further dialogue, and for Peruvians to gain a deeper sense of identity and self-acceptance.

### The Origins of the Dispute

It was while the exhibition was on display in Chicago that the origins of the renewed dispute over the Machu Picchu artifacts originated. Salazar recalled that members of the Peruvian consulate informed her that Peruvian first lady Eliane Karp-Toledo had visited the exhibit and was displeased. Though without a formal role in the government, Karp-Toledo instructed the Peruvian officials from the Chicago consulate

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<sup>218</sup> Salazar, discussion.

<sup>219</sup> Salazar, discussion.

not to conduct any publicity or communications efforts to support the exhibit. She further commanded the consulate staff to refrain from speaking about the exhibit publicly.<sup>220</sup> As Karp-Toledo is a central figure to the dispute, it is worth providing a brief summary of her background.

Eliane Karp was born in Paris in 1953. She received her bachelor's degree in anthropology from the Hebrew University of Jerusalem, and her master's and PhD, also in anthropology, from Stanford University. It was while at Stanford that she met and shortly thereafter married Alejandro Toledo. She became involved in a series of policy groups and initiatives, and variously took courses at several Latin American universities, with a focus on Latin American history and public policy.

Karp and Toledo divorced in 1992 but remarried in 1995 as he began his pursuit of the Peruvian presidency.<sup>221</sup> At first embraced by Peruvians, Karp-Toledo encouraged Toledo's ambitions, and helped him foster his connection to Peruvian Indigeneity. She strived to learn Quechua and helped position Toledo as Peru's first elected Indigenous President.<sup>222</sup> She was at his side when he held his second, unofficial inauguration at Machu Picchu, in which Toledo evoked the imagery and rituals of his Incan ancestors to cement his ties to Peruvian nationalist identity.<sup>223</sup>

The First Lady has no official powers in the Peruvian government.<sup>224</sup> However, Karp-Toledo was a figure of influence and power. She was outspoken, bombastic, and

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<sup>220</sup> Salazar, discussion.

<sup>221</sup> Beatriz Uberland, "Don't Cry for Me, Peru," *Ynetnews*, October 22, 2006, <https://www.ynetnews.com/articles/0,7340,L-3318035,00.html>.

<sup>222</sup> "Peru's Toledo Sworn in as Indian President."

<sup>223</sup> "After Inauguration, Toledo to Honor Roots in Machu Picchu Rite," *Haaretz*, accessed May 28, 2023, <https://www.haaretz.com/2001-07-29/ty-article/after-inauguration-toledo-to-honor-roots-in-machu-picchu-rite/0000017f-db4e-db5a-a57f-db6e08140000>.

<sup>224</sup> "Peru 1993 (Rev. 2021) Constitution - Constitute," accessed May 28, 2023, [https://www.constituteproject.org/constitution/Peru\\_2021?lang=en](https://www.constituteproject.org/constitution/Peru_2021?lang=en).

confrontational; Karp-Toledo shouted down critics, occasionally to great international embarrassment.<sup>225</sup> She was, and remains, a controversial figure in Peruvian politics, and this controversy seemed to follow her wherever she went. At the same time, she was influential, and a useful and trusted partner to her husband, who ascended to the Presidency following the chaos of the Fujimori administration. She was a force to be reckoned with, and she brought her considerable energy to bear on the possession of the Machu Picchu artifacts.

The first indication the Yale team had of misaligned expectations between parties was the tip that Salazar received from the Peruvian consulate in Chicago. For the time being, however, the exhibition continued its tour. After Chicago, the exhibit continued to its remaining stops, before returning to Yale, where it was to be permanently installed in the Yale Peabody Museum.

By the time the exhibit returned to New Haven, the curators could reflect on what they felt was a tremendous success, in terms of popularity, diplomacy, and collaborative scholarship. The traveling exhibit had been planned with the guidance of a key Peruvian government official. It fostered, for many of its more than one million visitors, a deeper connection to Latin American identity in general, and Peruvian nationality specifically. Seen in this light, the Machu Picchu artifacts were less a display of Yale's imperialistic ownership, and more a conduit to dialogue with and broad engagement from the Peruvian diaspora. This exhibit came on the heels of the initiation of multi-institutional and multi-national scholarship on the artifacts, as well as the Dumbarton Oaks symposium on Incan

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<sup>225</sup> Jacob Kessler, "Jewish Former First Lady of Peru Flees to Israel after Extradition Request," *The Times of Israel*, May 13, 2023, <https://www.timesofisrael.com/former-jewish-first-lady-of-peru-flees-to-israel-after-extradition-request/>.

studies. The Yale faculty was continuing to leverage its possession of the artifacts to be inclusive and collaborative with academics, policy makers and the general public. All of this, however, did not amount to much, in the eyes of Eliane Karp-Toledo.

### One Exhibit, Two Interpretations

The exhibit had been presented in such a way as to give primacy to museum-quality pieces, both those from Yale's collection, as well as those loaned by other institutions. For the Yale curators, these pieces were just a small part of the overall collection. The thousands, or tens of thousands, of artifacts that comprised most of the collection were less sensational: bone fragments, pottery sherds, stone tools.<sup>226</sup> For the Yale team, this was significant, as their focus tended to be on the totality of the collection, which had a smaller public appeal. Levin said of the artifacts:

There was another thing that distinguished the Machu Picchu collection, which is that these artifacts are not particularly distinguished as works of art. These are anthropological artifacts of considerable interest to scholarship, but there were only a handful you could truly call museum worthy. Their worth is not from an aesthetic point of view, but from a cultural and archaeological perspective. I'm not trying to diminish them; I'm just saying that it was a little different from arguing about, say, the Elgin Marbles.<sup>227</sup>

The exhibit thus had the unintended effect of decontextualizing a miniscule number of pieces from the collection and changing the way it could be interpreted by third party observers. It was perhaps with this perception of the collection in mind that such a third party entered the dispute.

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<sup>226</sup> Note: Exactly how many artifacts were in the complete collection was a matter of both speculation and debate. This was complicated by the ambiguity of what exactly comprised an 'artifact.' For example, if a piece of pottery was broken into seven pieces, was that counted as one or seven artifacts? The latter interpretation skewed the number of artifacts higher; the former, lower. See Appendix 4 for an agreement between Yale and Peru on the final tally of artifacts from the concluding inventory.

<sup>227</sup> Levin, discussion.



## Discussions with National Geographic

Financial gain or profit had not been Yale's motive for, nor an outcome of, the traveling exhibit. But others saw in this exhibit inspiration for leveraging the artifacts for commercial gain. National Geographic had been one of the primary sponsors of Bingham's 1912 expeditions. Thus, it was under their sponsorship that many of the artifacts in question had come into Yale's possession. National Geographic envisioned a similar exhibit, not traveling around the world, but to be housed permanently in Peru. This wasn't a concept they developed in a vacuum. Rather, Robinson recalled:

National Geographic had some previous conversations with (Peruvian) government officials involved with tourism. They had an idea of working with real estate developers to develop an interpretive center that would have the Hiram Bingham materials as a draw. This had a commercial development associated with it, and a potential proposal that was of mutual interest between National Geographic and the Peruvian government from a tourist perspective.<sup>228</sup>

Lawyers from National Geographic reached out to Robinson to participate in preliminary discussions about the artifacts. The focus was on whether Yale would contribute the museum quality pieces to the project; there was no interest in or discussion about the remainder of the collection. In this meeting, Robinson put forth Yale's principles of stewardship and scholarship:

Yale had been stewards of this material for ninety years at that point, and we had active scholarly work going on. We wanted to talk about—or just at least put on the table—our fundamental interest in ongoing stewardship of the materials and their accessibility for continued scholarly work.<sup>229</sup>

In this meeting, there was a clear misalignment of goals. National Geographic aimed to create a tourist destination near the sacred citadel, and television and other

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<sup>228</sup> Dorothy K. Robinson (Senior Counsel, K&L Gates, Former General Counsel, Yale University), in discussion with the author, June 16, 2023.

<sup>229</sup> Robinson, discussion.

media content. The Peruvians, for their part, aimed to develop their tourist infrastructure, and use the artifacts as a further draw to their most well-known attraction. They had much in common. Yale, however, did not feel that their goals could be achieved by providing the pieces to the museum project in the manner it was outlined. Robinson described the discussions as “not productive.”<sup>230</sup> They never advanced to any stage of formal planning.

#### Scholarship Continues while the Dispute with Peru Take Shape

The period following the conclusion of the traveling exhibit was particularly fruitful for the scholarship of Burger and Salazar. Seeking to keep the world current with the latest research and insight on Machu Picchu, they edited a companion book to the exhibit, also titled *Machu Picchu: Unveiling the Mystery of the Incas*. This work contained a series of essays reflecting recent breakthroughs in scholarship. Notably, and continuing the pattern of multi-institutional and multi-national collaboration, these essays were not only written by Burger and Salazar, but also by scholars from other Universities, both from the United States and Peru.

Following the essays, the book provides a catalog of objects displayed in the exhibit, including the museum-quality pieces from the Bingham collection, key artifacts on loan from other museums, and historical artifacts from the Yale Peru Scientific Expeditions.<sup>231</sup> Reviews of the book were positive, focusing on its contents, the tour that

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<sup>230</sup> Robinson, discussion.

<sup>231</sup> Burger and Salazar, *Machu Picchu*, 125.

proceeded it, and the advances in scholarship that Burger and Salazar had spearheaded. The dispute over the provenance of the artifacts was not addressed.<sup>232</sup>

Following the book's publication, Burger and Salazar continued to make advances in the scholarship on Machu Picchu, in large measure by furthering the analysis of the Bingham collection, publishing several papers to share the latest original research. Also, following up on the successful 1997 symposium at Dumbarton Oaks, in 2007, Burger co-edited a volume containing the talks given and research shared at the conference. Yet, while the research continued at a fevered pace, a current below the surface was beginning to strengthen: Peru's insistence that Yale return the Machu Picchu artifacts.

#### Initial Private Dialogue Between the Parties

Shortly after being elected in July of 2001, Alejandro Toledo gave an interview to CNN, in which he promised to honor Peru's complex past through an enthusiastic embrace of multiculturalism, and to energize the tourism industry as the twin pillars of his administration.<sup>233</sup> This plan relied on deploying Machu Picchu as a unifying symbol, which was one of the reasons behind his second inauguration held at the sacred site. In a short time, the return of the Machu Picchu artifacts would become a keystone of Toledo's populist program.

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<sup>232</sup> See Humberto Rodríguez-Camilloni, "Machu Picchu: Unveiling the Mystery of the Incas (Review)," *Journal of Latin American Geography* 8, no. 2 (2009): 230–32, <https://doi.org/10.1353/lag.0.005>; Scott Whitney, "Machu Picchu: Unveiling the Mystery of the Incas," *The Booklist* 100, no. 13 (March 1, 2004): 1122.

<sup>233</sup> Micaela Bullard, "Repatriating Machu Picchu: On the Yale Peruvian Expedition and the Imperialism of Archaeology," *The Yale Review of International Studies* (blog), May 27, 2016, <http://yris.yira.org/essays/1818>.

The Yale representatives first became engaged directly with Peru regarding the return of the Bingham collection through a private conversation with Eliane Karp-Toledo as the exhibition was making its tour across the United States. This initial conversation initiated a series of back-and-forth discussions, with Peruvian and Yale representatives holding meetings in New Haven, Washington D.C., and Lima.<sup>234</sup>

From the outset of this process, the Yale team spoke of the preference to seek a diplomatic solution but indicated that they felt a strong sense of obligation to ensure continuity of scholarships on the objects. When framing up his initial response to the emergent dispute, Levin recalls:

The whole world derives value from cultural treasures. Obviously, there's intense nationalistic pride in particular treasures that are created in a local environment. Yale is a good steward of three great museums. We're very conscious of the fact that our audience is not a local audience; the people that care about our collections are from all over the world, in particular, the scholars who come from all over the world to study them. We're an institution devoted to higher learning and to scholarship. And that was paramount. The main inhibition about patrimonial objects early on was the fear that they would not be properly stored and maintained. Indeed, past experience in Peru was that objects were often looted from museums.<sup>235</sup>

This shows that Yale considered Peru's often fraught history with antiquities as it weighed up its response to the dialogue.

Early in the discussions, Karp-Toledo invited Burger and Salazar to come to Peru for a meeting that would include President Toledo. Salazar recalled that she was crestfallen following her initial meeting with Toledo, as she quickly came to believe that his motives were not entirely sincere, and that he did not seek to represent all the people of Peru. She recalled, "The moment I first spoke with him in the first round on

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<sup>234</sup> Eakin, "Inca Show Pits Yale Against Peru."

<sup>235</sup> Levin, discussion.

negotiations, I said, ‘we don't have a president.’ I left the palace after five p.m. and I knew this was going to be hard. I saw the problems coming immediately.”<sup>236</sup>

At this same meeting, Toledo informed Burger and Salazar that Karp-Toledo was going to “be in charge of culture.”<sup>237</sup> For Salazar, the subsequent discussion with Karp-Toledo was particularly problematic.

We had this personal interview with her (Karp-Toledo). It was Richard, me, and her. She started talking about “our national patrimony,” and “Indigenous people.” I said, “Excuse me, I am Peruvian. I know what national patrimony means to *me*.” We clashed in that moment because I told her that she was not going to patronize me.<sup>238</sup>

That that French-born Karp-Toledo was lecturing the Peruvian Salazar on Peruvian heritage, national patrimony and Indigeneity contributed to a rocky start to the diplomatic process. But there was a more complicated, and intractable, challenge, facing the parties as they continued to discuss the return of the artifacts.

### Misalignment of Goals

The Yale delegation approached the negotiation with their Peruvian counterparts with one goal at the center of their agenda: the continued preservation, access to and study of the artifacts. Burger stated, “Yale had one hundred years of taking care of them. We didn’t want the care for the collections to have been in vain. You want the collection to stay together and stay intact and the scholarship to be developed.”<sup>239</sup>

And yet, the Yale team did not feel that the Peruvian negotiators had the same goal. In one discussion, Luis Lumbreras, a high-level Peruvian official and an

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<sup>236</sup> Salazar, discussion.

<sup>237</sup> Salazar, discussion.

<sup>238</sup> Salazar, discussion.

<sup>239</sup> Burger, discussion.

archaeologist told Burger, “When you give the collection back and we're the owners, if we want to stick it in the basement of a sixteenth century convent, that's our right. It's Peruvian stuff and maybe that's what we will do.”<sup>240</sup>

To Burger, this was “totally inappropriate; it gave you the feeling that, that to the (Peruvian politicians) the value of the collection was really as a trophy.”<sup>241</sup>

These contrasting points of view give a clear indication of the central criteria at the heart of Yale's decision making. In a sense, the Yale team gave the objects themselves agency in the process. While they were not opposed to returning the objects to Peru, the Yale negotiators staked out clear lines of demarcation for if and when they would do so. As the possessor of the artifacts, the Yale team had power to determine the criteria around which they would center their actions. The opinion held by some Peruvians, that Yale had no say in determining what should be done with objects that belonged in and to Peru, may have been worth debating in theory. But in the reality of this situation, this mindset had little bearing on Yale's chosen course of action.

Given the clear differences in approach to the possession of the artifacts, it is not surprising that little headway was made. In September 2005, the traveling exhibit concluded, and the artifacts returned to the Yale Peabody Museum, intended for permanent display but with their future uncertain. By November, Peru began threatening to sue Yale over the artifacts.<sup>242</sup>

In late 2005 or early 2006, the Peruvian government tasked their U.S. counsel Greg Craig with initiating discussions with Yale around the return of the objects. Craig

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<sup>240</sup> Burger, discussion.

<sup>241</sup> Burger, discussion.

<sup>242</sup> Kim Martineau, “Peru Presses Yale on Relics; Nation's First Lady Keeps Issue in Public Eye,” *The Hartford Courant*, March 14, 2006.

had come to Yale to meet with Robinson. Subsequently, Robinson traveled to Washington D.C. to meet with Craig.<sup>243</sup> These discussions surfaced a challenge that both parties would need to address as part of any agreement.

Under Peruvian law, artifacts to which Peru had title could not be out of the country for more than one year. Should Yale recognize Peruvian title to the objects, that would require those objects to be returned to Peru. Yale was unwilling to return the objects without assurances that its essential criteria were met in any agreement. Title to the objects thus was less an issue of pride and ownership, but a key factor in determining if and how they could remain in New Haven for further study without violating Peruvian law. This undermines the accusations leveled at Yale that their insistence on title was intransigent. However, while this was a significant challenge, it did not dissuade representatives from Yale and Peru from sitting down to discuss potential solutions. Repeating the refrain that Yale's preference was for a diplomatic resolution, Robinson recalled:

I met with Greg Craig, representing the Peruvian government, in Washington to discuss the position of the Government and whether an agreement would be possible. It was always our hope that this could be resolved amicably, if we understood each other and what we were trying to accomplish. We talked about the problems that had been raised regarding title and ownership.<sup>244</sup>

The parties worked on the outline of an agreement. The conversations were productive, but the Toledo administration was nearing the end of its term. Robinson described these discussions:

We received a draft agreement from him [Craig], but we had comments and started in a somewhat different place. We went back and forth and got pretty close to where we were willing to land. But it was toward the end of

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<sup>243</sup> Robinson, discussion.

<sup>244</sup> Robinson, discussion.

President Toledo's term, and they just didn't want to go for this at the end of their term.<sup>245</sup>

These talks have never been mentioned in the press coverage of the dispute. From Yale's point of view, the discussions were productive and promising. While they did not yield an agreement, the talks had given each party the chance to lay out their criteria for any agreement. Yet, given the shifts in Peruvian politics, momentum evaporated as the Toledo administration prepared to vacate the presidential palace. This would not be the first time the Peruvians would walk away from the negotiating table. As the negotiations ground to a standstill, the dispute spilled out from behind closed doors and into the public.

#### The Dispute Goes Public

In the first months of 2006, the discussions in private became a dispute in public. The issue captured local and international attention. By February of 2006, the *New York Times* was covering the issue. With an article titled *Inca Show Pits Yale Against Peru*, the *Times* portrayed the issue in the bi-lateral terms of "Yale vs. Peru" that would come to define the coverage of the dispute.<sup>246</sup> This article is exemplary of the coverage that the dispute received in other media.

The scholarship conducted on the artifacts was not a primary area of focus in press coverage of this period. For example, in trying to defend Yale, the *Times* article offers the following quote:

"The irony is that for years, the collection was just left in cardboard boxes," said Hugh Thomson, a British explorer who has written about the early-20<sup>th</sup>-century Yale expeditions to Machu Picchu. "It's only when they

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<sup>245</sup> Robinson, discussion.

<sup>246</sup> Eakin, "Inca Show Pits Yale Against Peru."



rather conscientiously dusted it off and launched this rather impressive exhibition that the whole issue has surfaced again.”<sup>247</sup>

While Mr. Thomson was attempting to defend Yale, articles such as this diminished the significant scholarly accomplishments stemming from Yale’s engagement with and purpose for possessing the artifacts. By portraying Yale’s engagement with the artifacts as unpacking boxes, arranging the exhibit, and taking it on the road, the coverage of the dispute left Yale vulnerable to the criticism that its motives for organizing the exhibit was profit. Seeking to deflect this critique, a Yale spokesman said:

Preserving, restoring, and researching the collection over many decades at Yale has cost money. The same has been true of creating and mounting the exhibition. Yale resources had to be secured and grants had to be found. It has not been a profitable exhibit, nor was that the design.<sup>248</sup>

This quote is illuminating as in a few short sentences, the Yale spokesman is consciously evoking Yale’s scholarship on the artifacts, while at the same time, downplaying any suggestion that the exhibit was allowing Yale to profit off Peru’s cultural patrimony, a critique that would continue to be leveled at the institution.

The February 1, 2006, *New York Times* article does concede that the research led by Burger and Salazar had clarified the understanding of Machu Picchu. On a state visit that occurred shortly after the press began covering the issue, the topic of research would fade further to the background, overshadowed by the looming presence of Eliane Karp-Toledo.

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<sup>247</sup> Eakin.

<sup>248</sup> Martineau, “Peru Presses Yale on Relics; Nation’s First Lady Keeps Issue in Public Eye.”

## Political and Diplomatic Pressure

In March 2002, U.S. President George W. Bush traveled to Lima, the first sitting U.S. President to visit Peru.<sup>249</sup> The intention of the meeting was to discuss ways to strengthen the relationship between the two countries, including reintroducing the Peace Corps to Peru. In March of 2006, Alejandro Toledo traveled to the United States for what the U.S. State Department classified as a “working visit,” including private meetings with Bush.<sup>250</sup> Toledo used a working lunch to discuss the Machu Picchu artifacts with Bush.<sup>251</sup> Whether this aspect of their conversation had any effect on Bush, a Yale alumnus, cannot be said.

After Toledo returned to Peru, first lady Karp-Toledo remained in Washington. She accompanied U.S. First Lady Laura Bush to the National Museum of Women in the Arts.<sup>252</sup> Joined by Marta Sahagun de Fox, then First Lady of Mexico, Bush and Karp-Toledo toured the traveling exhibit titled “Divine and Human: Women in Mexico and Peru.”<sup>253</sup>

Karp-Toledo used her visit to the U.S. to continue to draw attention to the dispute over the Machu Picchu artifacts. Repeating the refrain about Peru’s claim to the objects, Karp-Toledo used strong language in asserting, “This is ours. There is no more

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<sup>249</sup> “President Bush Meets with President Toledo in Peru,” accessed May 31, 2023, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/03/images/20020323-13-600h.html>.

<sup>250</sup> “Peru - Visits by Foreign Leaders - Department History - Office of the Historian,” accessed May 31, 2023, <https://history.state.gov/departmenthistory/visits/peru>.

<sup>251</sup> Martineau, “Peru Presses Yale on Relics; Nation’s First Lady Keeps Issue in Public Eye.”

<sup>252</sup> Martineau.

<sup>253</sup> “Mrs. Laura Bush, Accompanied by Mrs. Marta Sahagun de Fox and Mrs. Eliane Karp de Toledo, Talks with Reporters Following Her Tour of the Divine and Human: Women in Mexico and Peru Exhibit, Tuesday, March 14, 2006 at The National Museum of Women in the Arts in Washington. White House Photo by Shealah Craighead,” accessed May 31, 2023, [https://georgewbush-whitehouse.archives.gov/news/releases/2006/03/images/20060314-6\\_p031406sc-0111-2-515h.html](https://georgewbush-whitehouse.archives.gov/news/releases/2006/03/images/20060314-6_p031406sc-0111-2-515h.html).

colonialism in the 21<sup>st</sup> century.”<sup>254</sup> French-born Karp-Toledo used the term “ours,” while evoking colonialism, apparently without intended irony.

At the same time the dispute was ratcheting up, a surge of national unity swept across Peru when Machu Picchu was nominated as one of the New Seven Wonders of the World. A coordinated multimedia campaign permeated every aspect of Peruvian life, and rallied the people to action, urging them to vote in online polls and ensure that their friends, family, and neighbors did the same.<sup>255</sup> This campaign pushed Machu Picchu to the forefront of the collective consciousness, and put a new urgency to the reclamation of the artifacts that had been excavated from the sacred site.

#### The Artifact Dispute Takes Hold in the Press

As the dispute became a matter of public focus, Yale and Peruvian officials began defining their public positions. The Yale delegation stated that they were open to compromise, offering collaborative scholarship and to ensure that the materials could be viewed in both countries. Peru’s position was that all agreements had to start with Yale’s acknowledgement of Peruvian title to the complete collection of artifacts. Peru was unwilling to frame out a collaborative agreement without full title, and Yale was unwilling to grant title as a prerequisite to developing a collaborative agreement.<sup>256</sup> As the press latched onto the dispute, its coverage tilted toward hyperbole.

From the Yale team’s perspective, the hyperbole of the Peruvian politicians calcified Yale’s position. Burger viewed the Peruvians’ motives through a skeptical lens.

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<sup>254</sup> Martineau, “Peru Presses Yale on Relics; Nation’s First Lady Keeps Issue in Public Eye.”

<sup>255</sup> Bullard, “Third Place – Repatriating Machu Picchu.”

<sup>256</sup> Martineau, “Peru Presses Yale on Relics; Nation’s First Lady Keeps Issue in Public Eye.”

Burger suspected the Peruvians were not deeply interested in finding a resolution to the disagreement, as, he felt they gained from the attention, stating:

The people who were making the demands were benefiting politically from their actions. Whether Yale gave it (the collection) back or not, they were going to benefit. They were perfectly happy to have this go on forever, because it was a good theme for them, for the different politicians.<sup>257</sup>

This skepticism was typical of how the Yale delegation viewed the motives of the Peruvian politicians. But the politicians were not the only interested party in Peru. Burger and Salazar had fostered long-standing and highly productive collaborative relationships with Peruvian scholars. Increasingly, the Yale team saw their academic counterparts as allies, not adversaries. This would eventually bear fruit for the resolution of the dispute.

Alas, whether or not the Peruvian politicians wanted the repatriation issue to go on forever, Toledo's term of office could not, as the Peruvian constitution does not allow Presidents to run for consecutive terms. As Toledo's Presidency was set to expire, Yale remained open to collaboration, and Peru insisted on clear ownership of title to the artifacts. If the goal of the Toledo and Karp-Toledo truly was to achieve the return of the Machu Picchu collection, then they failed to accomplish it during Toledo's administration. But that did not mean that they would cease to seek to influence events.

Just before leaving office, Toledo pushed through a piece of legislation that allocated funds in the Peruvian federal budget for Peru to pursue its claims in U.S. Federal Court.<sup>258</sup> This would come to have significant importance to the dispute and the attempts to negotiate a mutually agreeable settlement.

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<sup>257</sup> Burger, discussion.

<sup>258</sup> Salazar and Burger, "The Machu Picchu Solution," 91.

## Transition to García Administration; First Agreement

Alan García first served as President of Peru from 1985 – 1990. He left office with ballooning hyperinflation and the chaotic violence of insurgency movements such as the Shining Path. He then ran afoul of his successor, Alberto Fujimori and went into self-imposed exile.<sup>259</sup> Like many politicians, his fortunes waxed and waned over time. By 2001, he was back in the country and seeking his second term as President. He was elected and succeeded Toledo in July 2006.

From the outset, the García administration took a more conciliatory tone to the simmering dispute between Lima and New Haven. At Yale, there was a renewed hope that diplomacy would prevail, and that litigation could be avoided.<sup>260</sup> In 2007, García sent prominent members of his administration to New Haven to resume negotiations, including Hernán Garrido Lecca, a cabinet member serving as Minister of Housing, Construction and Sanitation, and Cecilia Bakula, the director of the National Institute of Culture.<sup>261</sup>

Robinson led Yale's negotiations. The discussions were immediately productive. After one day, both parties agreed to terms of an agreement for the custodianship and possession of the artifacts. The terms reflected genuine compromise; Yale would transfer legal title of the artifacts to Peru and a significant portion of the collection would be returned. Yet, many artifacts would remain in New Haven for further study and

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<sup>259</sup> "Exiled Ex-President of Peru Alan Garcia Returns to Cheers," *Los Angeles Times*, January 28, 2001, <https://www.latimes.com/archives/la-xpm-2001-jan-28-mn-18092-story.html>.

<sup>260</sup> Salazar and Burger, "The Machu Picchu Solution," 91.

<sup>261</sup> Salazar and Burger, 91.

display.<sup>262</sup> The parties signed a draft Memorandum of Understanding (MOU), intended to be the guidepost for the completion and execution of a legally binding agreement.

The September 14, 2007, MOU provided a path for the resolution of the dispute, not only by resolving issues of title and physical possession, but also by addressing concerns about financing for facilities, the security and preservation of the artifacts, collaboration for future scholarship, governance of joint projects, timeframes, and venue for dispute resolution. It also considers certain intangibles, such as expressions of goodwill and good faith, appreciation by each party for the other, and acknowledgement of the contributions of Hiram Bingham.<sup>263</sup>

The focal point of the agreement was the return of the museum quality pieces, which were intended to be housed at the Machu Picchu Museum and Research Center in Cuzco. This \$5 Million USD Research Center would be built at Peru's expense. As the Research Center did not exist at the time of the agreement, Yale would organize and pay for another traveling exhibit, with cities selected by mutual agreement and that would last two years. Ultimately, the artifacts would be housed in Cuzco. Proceeds from the exhibit would help finance the continued construction.<sup>264</sup>

Robinson confirmed that Peruvian interested had been piqued by the traveling exhibit that Burger and Salazar had organized and curated. She stated that:

Peru had initially expressed a lot of interest in the Yale exhibition that had been put together. We thought, fine, let's make that a collaboration. We'll do an exhibition together. If you want to present it in different places, that's fine. We'll let it travel for two years or so, until the home for the

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<sup>262</sup> Alderman, "Yale Agrees to Return Machu Picchu Artifacts to Peru," 3.

<sup>263</sup> "Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-14-September-2007.Pdf," accessed June 6, 2023, <https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/memorandum-of-understanding-between-the-government-of-peru-and-yale-university-14-september-2007>.

<sup>264</sup> "Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-14-September-2007.Pdf."

whole objects is ready, as well as the other objects that would be going back to Peru. At that point, Peru's representatives expressed some interest in pieces that we had thought were only of research interest to Yale. We thought, fine, if we're done with them for now, i.e., the research is completed, and would have access to them, return them (those pieces).<sup>265</sup>

Once built, the Machu Picchu Museum and Research Center would be the depository for the museum quality pieces, as well as other artifacts from the collection. This center would be governed by a five-member advisory board, with each party appointing two members, and fifth member and Chair selected by a majority of the other four. Yale would acknowledge Peru's title to the collection and would retain possession of non-museum quality pieces for a period of ninety-nine years, on a rotating basis, at which time all of Yale's rights for possession of all artifacts would expire and the entirety of the collection would be returned to Peru.<sup>266</sup>

But the agreement was no simple matter. Much of its form and structure was a response to Peruvian law, and the need to ensure compliance with the time that certain objects could remain outside of Peru. Robinson described the structure of the agreement as creative attempt to solve thorny challenges:

In order to work out the problem that was presented, in terms of objects being out of the country and recognition of ownership, that being that archaeological materials *owned* by Peru would not be permitted outside the country for more than one year, it was not an easy thing to solve. So, in that iteration, we solved it by the possibility of some small set of the whole objects remaining at Yale. Then, some rotating, if you will, with other objects that would come to Yale as they went back to Peru. When you think about it, it's really not a good way to deal with material that can be damaged in transit. It would be better to not have things moving around so much.<sup>267</sup>

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<sup>265</sup> Robinson, discussion.

<sup>266</sup> "Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-14-September-2007.Pdf."

<sup>267</sup> Robinson, discussion.

Robinson drove home the point that to make the agreement work for Yale, the MOU contained an innovation that offered a work-around for the regulatory hurdles.

It certainly represented to us a constructive framework for resolution. It was a bit complicated. To address the issue of ownership and title, it invoked the notion of usufructuary rights. That would split title and possession.<sup>268</sup>

This MOU was a compromise between two parties. Yale and Peru each acknowledge the validity of the position of the other; both yielded, and both gained. Dorothy Robinson signed on behalf of Yale, her Peruvian counterpart, Hernán Garrido Lecca, did the same, and the Peruvian delegation returned home.<sup>269</sup>

Yale was satisfied that its most important criteria had been achieved. Referring to the 2007 Memorandum of Understanding, Robinson said:

It [the MOU] allowed material that hadn't yet been studied to stay in the United States and stay within Yale for research purposes. Professors Burger and Salazar would have access, as would other scholars, without coming under this one-year requirement that would apply if ownership by Peru were granted or acknowledged. It also allowed the whole objects to not be returned to Peru until there was a place—a museum—to put them.<sup>270</sup>

A Memorandum of Understanding is not a final agreement unto itself. Rather, its purpose is to inform the terms of a binding agreement. The next step after the signing of the MOU was to begin drafting the final agreement. Unfortunately, the conclusion of the MOU did not so much as close the book on the dispute, as open a new chapter.

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<sup>268</sup> Robinson, discussion.

<sup>269</sup> The September 14, 2007 Memorandum of Understanding can be found in its entirety in Appendix 1

<sup>270</sup> Robinson, discussion.



## Collapse of the First Agreement

When the Peruvian delegation returned from their negotiations in New Haven, they were greeted with the realities of Lima politics. Toledo / Karp-Toledo ally Luis Lumbreras was particularly active in undermining the success of the Peruvian negotiators. While in the Toledo administration, Lumbreras had preceded Cecilia Bakula as the director of the National Institute of Culture. A staunch Toledo ally, Burger described Lumbreras as having political power that transcended any official role or title. Lumbreras led the effort to undermine the first agreement. Burger recalled that:

The allies of the people who were against it (the agreement), began to leak elements of it, not the entire agreement, but just those elements that seemed least favorable to Peru. They got all these intellectuals to sign their opposition to the agreement, even though they hadn't actually seen it.<sup>271</sup>

For her part, Robinson likewise understood the progress made by the completion of the MOU to be imperiled. In describing the Peruvian engagement following the MOU, she observed that:

The MOU, which was signed, contemplated a definitive agreement that would be entered into. There was backsliding happening while the definitive agreement was being drafted. They were stepping away from it. There was political sensitivity. Things were being ginned up, in the press over the number of pieces, which was always ambiguous (e.g., how to count fragments or sherds).<sup>272</sup>

The disconnect between Yale and Peru over the number of artifacts took on significance. Burger believed that the hyperbole around the artifacts sowed the seed of discontent:

During the dispute, the Peruvian government kept describing these things as treasures. There are 11,000 or 11,500 treasures. In people's minds they thought of museum quality display objects with a high market value. From the point of view of an archeologist who's interested in the Incas, this is

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<sup>271</sup> Burger, discussion.

<sup>272</sup> Robinson, discussion.

the evidence that allows you to gain insight into these ancient times. These are two different ways of looking. If people are always thinking of money, everything has to be thought of in monetary terms, then there's no way of changing their worldview.<sup>273</sup>

The Yale delegation viewed the marginalization of the MOU as due, not to the structure of the agreement itself, but to politics. This continued frustration only decreased the likelihood of future success. If Lima-based politicians were unwilling to compromise, and Yale, in turn, had its own set of non-negotiables, then how could any solution be found? From this discord emerged the origins of what would become the key to breaking the deadlock: support from Peruvian academics not based in Lima, but in the former Incan capital of Cuzco.

The distance between Lima and Cuzco was more than geographic. It was ideological as well. Burger, Salazar, and the rest of the Yale team found common cause with the Cuzco-based scholars. Burger recalled that Victor Raúl Aguilar, then the Rector of the Universidad Nacional San Antonio de Abad, Cuzco (UNSAAC)

took out an advertisement. He paid for an advertisement in a Lima newspaper, in which he denounced Lumbreras. He said, “These are the same people in Lima who want to control everything and who have denigrated the academics in Cuzco. They have never shown the appropriate respect for the Inca capital and its importance. Why should they be the ones claiming these artifacts?”<sup>274</sup>

Aguilar even intimated that Lumbreras had been responsible for museum theft discussed in Chapter VII above. Chastened, at least privately, Lumbreras sent a letter of apology to Aguilar, though it was a private letter that did not enter the public discourse.<sup>275</sup>

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<sup>273</sup> Burger, discussion.

<sup>274</sup> Burger, discussion.

<sup>275</sup> Burger, discussion.

Despite this, Lumbreras and his allies made the implementation of the MOU politically untenable in Peru. In turn, Eliane Karp-Toledo tried to continue to apply pressure in the United States. In February 2008, she published an Op-Ed in the *New York Times* titled *The Lost Treasure of Machu Picchu*. In the article, Karp-Toledo accused of Yale bad faith during their previous negotiations, acting with a “colonial way of thinking,” and pushing for a deal unfair and unfavorable to Peruvians. She further opined that Yale stalled its negotiations with the Toledo, “Peru’s first elected indigenous president,” favoring García, “who is frankly hostile to indigenous matters.”<sup>276</sup> Karp-Toledo was relying on her common refrains of Yale’s colonialism and institutional arrogance. Yet her criticisms did little to affect the Yale team. Responding to Karp-Toledo, Yale Associate Vice President Helen Klasky stated in a New York Times letter to the editor:

Peru and Yale share the premise that Machu Picchu belongs to humanity as a cultural patrimony of the world declared by Unesco. Yale recognizes the importance of Machu Picchu to Peruvian identity and history and has always sought an amicable resolution that recognizes a shared interest in stewardship and scholarship.

The memorandum of understanding between the government of Peru under the leadership of President Alan García and Yale University provides that Peru will have sole title to the Machu Picchu materials, including research materials at Yale.

The memorandum also provides for the creation of an international traveling exhibit at Yale’s expense and the return to Peru of almost all museum-quality objects currently held at Yale.

The memorandum further provides for Yale’s participation in advising a Peruvian museum and research center and scholarly exchanges. All of this will be in a collaborative framework.<sup>277</sup>

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<sup>276</sup> Karp-Toledo, “Opinion | The Lost Treasure of Machu Picchu.”

<sup>277</sup> Helen Klasky, “Opinion: Yale and the Machu Picchu Artifacts,” *The New York Times*, March 3, 2008, sec. Opinion, <https://www.nytimes.com/2008/03/03/opinion/lweb03peru.html>.

While the tone of this letter to the editor is matter of fact, it is striking for a different reason. The positions that Yale put forward in this public letter directly correspond to the private opinions of the core Yale delegation. In seeking to understand the decisions that led to the final return of the artifacts to Peru, this provides further evidence of the Yale team's set of standards and criteria for any agreement, and that they were determined to not be swayed by hyperbolic politicking.

The García administration had to contend with the campaign to undermine the MOU within Peru. Lumbreras, Karp-Toledo and their allies had portrayed the deal in the worst possible light and, while members of the Cuzco-based academic community were sympathetic, the agreement became politically untenable. García declined to implement it, and the first MOU collapsed.

With the transition to the García administration, Burger, Salazar, Levin and all the Yale representatives had hoped for a calmer and more collaborative approach to resolving the issue of the Machu Picchu artifacts. While the first negotiations between Yale and the García officials were initially very promising, political machinations in Lima had sapped the parties of their momentum.

As referenced above, Burger believed that Lumbreras, Karp-Toledo and their allies had a political incentive to keep the artifact issue contentious. The dispute allowed them to create a narrative that was politically expedient. By undermining the first MOU, this faction allowed that narrative to continue indefinitely while scoring points against the political opponents.

The collapse of the MOU also took a diplomatic success of the García administration and turned it into a political liability. Portraying the deal as unfavorable to

Peru, Lumbreras, Karp-Toledo and their allies cast García in a negative light. However, the effects went beyond the collapse of the first MOU and triggered a major escalation in the dispute.

### Republic of Peru v. Yale University

On December 5, 2008, attorneys representing the Republic of Peru filed suit in U.S. Federal Court to force the return of the Machu Picchu artifacts. In the original complaint, Peru contends that Yale was both guilty of violating international law, and violating the spirit of multilateral treaties, such as UNESCO 1970 and UNIDROIT 1995.<sup>278</sup> The suit demanded the full and immediate return of the artifacts, stating:

Peru, as the rightful owner of this property, seeks to defend its legal property rights concerning its cultural heritage. Peru seeks the Court's recognition of Peru's legal rights as well as this Court's declaration the property in questions belongs lawfully to Peru and should be returned. Peru seeks the immediate return of all such property as well as damages that it has suffered on account of Yale's persistent breach of its of its obligations and profit at the expense of the people of Peru.<sup>279</sup>

This lawsuit was a significant escalation in the Machu Picchu artifact dispute. However, while the suit was portrayed in the press as the García administration taking a more aggressive stance toward Yale, the attitude of the Yale team was that García had been boxed in by the actions of the outgoing Toledo administration. Just before leaving office Toledo had pushed through a law that required Peru to pursue legal action and allocating funds for it to do so. Salazar's opinion on the matter was that "it was political.

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<sup>278</sup> "COMPLAINT against YALE UNIVERSITY for REPUBLIC OF PERU v. YALE UNIVERSITY," Justia Dockets & Filings, accessed June 3, 2023, <https://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2008cv02109/134251/1>.

<sup>279</sup> "COMPLAINT against YALE UNIVERSITY for REPUBLIC OF PERU v. YALE UNIVERSITY," 2.

That particular law was passed a week or even a few hours before the Toledo regime ended. The suit was required by Peruvian law.”<sup>280</sup>

The consensus from various legal experts is that Peru’s lawsuit was unlikely to succeed.<sup>281</sup> The suit faced two principle legal challenges. The first was that given the overlapping and often conflicting legal codes in Peru, proving ownership of the artifacts would be exceedingly difficult. The second was the length of silence between the suit and Peru’s initial call for the objects to be returned in the 1920s.<sup>282</sup>

This assessment of the lawsuits was shared by the Yale administration. Levin said:

We thought we would prevail on the merits and the lawsuits. We could have successfully retained the objects. But, you know, that wasn't the main driver of our decisions. The main driver was what's the right resolution for stewardship and preservation of these objects in safe places where they could be studied over the long term by scholars from around the world.<sup>283</sup>

Thus, even as the dispute entered the courts, and the issue became litigious, Yale’s administration was still focused less on litigation and more on their understanding of an ideal outcome. Still, the lawsuit hampered the progress that had been made in establishing diplomacy as the path to resolution. Reflecting on the consequences of the lawsuit, Burger and Salazar stated:

As the problem over the collections became framed as a legal one, there was an increasingly strident and adversarial tone to the discussion. History was distorted and motivations were impugned in order to undermine the legitimacy of the other side...In this contentious atmosphere, it began to be increasingly difficult to imagine a resolution.<sup>284</sup>

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<sup>280</sup> Salazar, discussion.

<sup>281</sup> See Alderman, “Machu Picchu Artifacts”; Carrie Golden, “Peru, Yale, and Cultural Property: Understanding the Dispute Through an Engaging Tale of Adventure,” McIntosh, “Exploring Machu Picchu,” 2006.

<sup>282</sup> Alderman, “Machu Picchu Artifacts,” 6649.

<sup>283</sup> Levin, discussion.

<sup>284</sup> Salazar and Burger, “The Machu Picchu Solution,” 92.

Robinson likewise believed Yale's case to be strong. As the University's General Counsel, it was her role to lead Yale's defense. While building the strongest case possible was important, she said:

Really, at the top of our mind was achieving all of our key objectives. For instance, whether the lawsuit would have achieved our long-term objectives of enabling researchers and scholars at Yale and abroad to have access to material that were of ongoing scholarly interest.<sup>285</sup>

Of concern to Yale was the conditions their academics might face in Peru amid this contentious atmosphere. One of the reasons the Yale team remained open to a diplomatic solution, even amid the litigation, was to ensure that their researchers would not face adversarial conditions in their field work. Even had Yale prevailed in court, Robinson recalled that there was concern that:

Were there to be an ongoing hostile relationship, Peru could try to block Yale researchers and scholars from activities that they might want to conduct in the country. Retaliation was a possibility that one had to be aware of. Anthropologists and archeologists always have to be concerned with conditions on the ground. Certainly, a litigation posture is an adversarial one. It's really not the way a university wants to work. It's not a good environment for their scholars to be working in or under. We did respect the Peruvian sense of national identity in the Bingham Machu Picchu material. We felt that if that, if there was a better way to resolve it than litigation, we were always open to that.<sup>286</sup>

Whether or not García had wanted to pursue a lawsuit-based course of action, it became the path his administration was committed to following. Perhaps sensing the opportunity to seize the political initiative, García became increasingly vocal in his public statements and actions, seeking to apply pressure to Yale wherever he could.

Within Peru, García organized popular protests in both Lima and Cuzco. Thousands of people took to the streets, marching in unity to demand the return of the

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<sup>285</sup> Robinson, discussion.

<sup>286</sup> Robinson, discussion.

objects.<sup>287</sup> The local government in the town adjacent to Machu Picchu distributed postcards to tourists, informing them of the situation and demanding the return of the objects.<sup>288</sup> Burger viewed these actions through a jaundiced lens, dismissing them as so much politicking:

We viewed the so-called protest as simply a strategy that specific politicians were using to apply pressure. We didn't see them as spontaneous or legitimate protests. There were people in Peru that you could pay to go to the airport with signs either in favor or against specific politicians. This kind of crass manipulation is common. And so, we didn't really give all that much importance to it.<sup>289</sup>

If the protests in the streets didn't influence Yale's decision-making, then perhaps further escalation of the legal situation could. The Peruvians threatened to bring criminal charges against Levin, though on which basis such charges could be pursued was not articulated.<sup>290</sup> Yale responded with a tepid statement that while they appreciated:

Peru's interests in archaeological material from Machu Picchu, (Yale had) a duty to academic and cultural institutions everywhere to recognize their important contributions to the study and understanding of all the world's cultures.<sup>291</sup>

Levin saw the protests as both politically convenient for the organizers and removed from the reality of the situation. At the same time, the protests further complicated the negotiations, as they increased the political pressure on the Peruvian officials working toward resolution of the issue, resulting in more turnover in government officials and muddying the waters further still. He described the situation:

It's so easy to whip up populist sentiment, by making Yale a villain and claiming that, that Yale won't recognize our rightful patrimony. And that's what happened. Each time we had these tentative agreements, some

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<sup>287</sup> Alderman, "Machu Picchu Artifacts," 6650.

<sup>288</sup> Swanson, "Repatriating Cultural Property," 486.

<sup>289</sup> Burger, discussion.

<sup>290</sup> Alderman, "Machu Picchu Artifacts," 6650.

<sup>291</sup> "Statement by Yale University," *YaleNews*, August 26, 2008, <https://news.yale.edu/2008/08/26/statement-yale-university>.



politicians stirred things up and claimed this was a bogus and incomplete settlement. In both cases (the first two attempts at settlement), the Peruvians walked (away).<sup>292</sup>

In this comment, Levin offers insight into Yale's mindset about the protests and their political origins. The Yale team involved in the negotiations, from internal communication, to dealing with Peruvian officials, remained stable and consistent over the duration of the dispute. In turn, they saw their counterparts as fluid, with Peruvian officials coming and going, and politicians prone to resort to populist politicking. From Yale's perspective, this made for a difficult negotiating environment, as they could not approach any renewed negotiations with certainty that their counterparts would long remain in their official capacities, or that any agreements reached would not be undermined for political ends.

Yale seemed to be waiving off any concerns about legal and criminal challenges from Peru. Aside from the litigation, additional attempts would be made to apply pressure to Yale.

#### Political Escalation by Peru

Peru also sought to apply pressure through international channels. García sent a formal diplomatic letter to the White House, appealing directly to then President Barak Obama.<sup>293</sup> No response from the Obama administration has been recorded.

García then obtained a formal statement of support from then-President of Ecuador Rafael Correa, who asserted that if Yale did not return all the artifacts, Ecuador

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<sup>292</sup> Levin, discussion.

<sup>293</sup> "Peru Seeks Help from Barack Obama in Dispute with Yale over Inca Artefacts," *Elginism* (blog), November 22, 2010, <http://www.elginism.com/similar-cases/peru-seeks-help-from-barack-obama-in-dispute-with-yale-over-inca-artefacts/20101122/3299/>.

would bring the issue before the Union of South American Nations.<sup>294</sup> Such saber rattling could only be viewed as performative. For one, the United States was not a member of the Union. Second, at the time this threat was made, the Union had not yet gone into force, as the organizing treaty would not go into effect until March 11, 2011.<sup>295</sup>

Most of the pressure that Peru sought to exert was seen by the Yale team as either performative or legally unenforceable. Nonetheless, Peru did find support from another senior American politician, Connecticut Senator Chris Dodd. Dodd traveled to Peru in June 2010, and his Peruvian hosts took advantage of the opportunity to plead their case to the powerful Senator. In an interview following his visit, Dodd pledged to aid the Peruvians in their pursuit of the artifacts.<sup>296</sup>

Dodd followed up on his promise, visiting Yale, the institution from his home state. On this trip, he came to the Peabody Museum and spoke with Burger. Burger said of Dodd:

He didn't know anything. He had no idea of what this was about. It was as though one of his assistants had given him a two-sentence summary, and he just echoed it. You couldn't talk to him about the subject. He thought it was a politically appropriate issue for him.<sup>297</sup>

This opinion is illuminating because it shows that one of the central members of the Yale team was unfazed by the popular and political pressures. In fact, Burger's reaction to the press coverage of the dispute only further calcified his point of view.

Stating that at the time:

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<sup>294</sup> Alderman, "Yale Agrees to Return Machu Picchu Artifacts to Peru," 4.

<sup>295</sup> "Union of South American Nations (UNASUR)," Cancillería, accessed June 3, 2023, <https://www.cancilleria.gov.co/en/union-south-american-nations-unasur>.

<sup>296</sup> "Senator Chris Dodd Backs Peru's Claim to Artifacts Taken by Yale University," *Adventure Travel Trade Association*, June 15, 2010, <https://www.adventuretravelnews.com/senator-chris-dodd-backs-peruvian-claims-to-artifacts-taken-by-yale-university>.

<sup>297</sup> Burger, discussion.

I was disillusioned by journalism. It seemed that they just had one or two meta narratives, and they were going to force this dispute into those slots no matter what the actual facts were. No matter what you said, no matter how you tried to clarify that these narratives were inaccurate, they simply couldn't accept it. The truth didn't work with this preexisting story that they had sold to the public. I hoped newspapers would do a really serious job of finding the facts and then writing an accurate account, but that rarely, rarely occurred.<sup>298</sup>

Burger's opinion of Dodd appeared to be well-founded. In his statement in support of Peru, Dodd said, "The Machu Picchu artifacts do not belong to any government, to any institution, or to any university. They belong to the people of Peru."<sup>299</sup> How Dodd proposed to negotiate a settlement without involving Yale and the Peruvian governments was left unsaid.

#### Additional Criticism of Yale

Yale also faced pressure from within its own community. One alumnus, Christopher Heaney, B.A. Latin American Studies, 2003, took an active interest in covering the ongoing dispute. Set against the backdrop of his work documenting the Bingham expeditions, Heaney criticized his alma mater in a 2007 *New York Times* op-ed titled *Stealing From the Incas*. In it, he claims, "Yale broke Bingham's agreement (over possession of artifacts)" and that Yale's approach "compromised Yale's moral high ground."<sup>300</sup>

Heaney claims for himself a key role in the ultimate resolution between Yale and Peru. Currently an assistant professor of Modern Latin American History at the

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<sup>298</sup> Burger, discussion.

<sup>299</sup> "Connecticut Senator Sides with Peru Against Yale," *Cultural Property Observer* (blog), June 10, 2010, <http://culturalpropertyobserver.blogspot.com/2010/06/connecticut-senator-sides-with-peru.html>.

<sup>300</sup> Christopher Heaney, "Opinion: Stealing From the Incas," *The New York Times*, October 7, 2007, sec. Opinion, <https://www.nytimes.com/2007/10/07/opinion/nyregionopinions/07CTheaney.html>.

Pennsylvania State University, Heaney claims that his book about the Bingham expeditions, *Cradle of Gold: The Story of Hiram Bingham, a Real-Life Indiana Jones, and the Search for Machu Picchu*, “shaped negotiations between Yale and Peru over the final status of Machu Picchu's artifacts in 2010, motivating Yale alumni to seek the settlement of the longstanding legal feud.”<sup>301</sup> It is worth noting that none of the principals involved in Yale’s decisions referenced Heaney or attributed to his work any measure of influence in the process.

Heaney was not the only member of Yale’s alumni community to wade into the controversy. A group of twenty three alumni living in Peru wrote a stern letter urging the University to return the objects. While acknowledging Yale’s stronger legal case, the letter argued that Yale stood to suffer serious reputational damages should it fail to do so. One of the signatories was John Bingham, grandson of Hiram Bingham, who said, “I’m hoping that this particular situation won’t foul Yale’s reputation in dealing with cultures and other nations.”<sup>302</sup>

Levin responded by pointing out that Yale and Peru had come to agreement previously, and that it was Peru, not Yale, that walked away. Levin said, “We’re happy to start with the agreement we reached before and try to understand if any of those terms need modification.”<sup>303</sup> Robison likewise responded by stating that the letter would not change Yale’s legal strategy, that it remained committed to a diplomatic resolution, and

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<sup>301</sup> “About,” Christopher Heaney, accessed June 6, 2023, <http://www.christopherheaney.net/author-bio>.

<sup>302</sup> Drew Henderson, “Yale Alumni Demand the Return of Contested Machu Picchu Artefacts to Peru,” *Elginism* (blog), November 17, 2010, <http://www.elginism.com/similar-cases/yale-alumni-demand-the-return-of-contested-machu-picchu-artefacts-to-peru/20101117/3254/>.

<sup>303</sup> Henderson.

that the authors of the letter may not have fully grasped the complexities of the situation.<sup>304</sup>

Levin believed that despite the political and press coverage, the issue loomed larger outside of Yale than within it:

This was not an issue that had a lot of salience on the Yale campus. It was obviously a major issue in Peru and got occasional national press in the United States, but there was not a big political controversy on campus about whether or not we should give them (the artifacts) back or not. The *Yale Daily News* sporadically wrote articles about the progress of this situation, but that didn't seem to influence a lot of people one way or the other.<sup>305</sup>

Burger likewise did not put much stock in the attempts to shame Yale into action, stating: “The Americans who tried to give their opinion and apply pressure to Yale, they were people who knew nothing about it.”<sup>306</sup> Yet, the criticism continued.

More than 45,000 runners entered the 2010 New York City Marathon.<sup>307</sup> Among the participants were nine Peruvians, who sought to highlight their protest of Yale’s continued possession of the artifacts by wearing white shirts emblazoned with the slogan “Yale, return Machu Picchu artifacts to Peru.”<sup>308</sup> Sentiment against Yale found expression in yet more ways.

Yale’s partner in the original expedition weighed in on the topic. National Geographic had been one of the original sponsors of Bingham’s expeditions. Terry Garcia, then serving as their Executive Vice President; Chief Science & Exploration

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<sup>304</sup> Henderson.

<sup>305</sup> Levin, discussion.

<sup>306</sup> Burger, discussion.

<sup>307</sup> “New York City Marathon Race Results 2010,” November 10, 2010, <https://www.marathonguide.com/results/browse.cfm?MIDD=472101107>.

<sup>308</sup> “Yale urged to ‘return Machu Picchu artifacts’ in New York marathon,” *Andina*, November 7, 2010, <https://andina.pe/agencia/noticia-yale-urged-to-return-machu-picchu-artifacts-in-new-york-marathon-326488.aspx>.

Officer, opined that the objects belonged to Peru and called for repatriation, stating, “National Geographic was there, we know what was said, the objects were lent and should be returned.”<sup>309</sup>

While the press was covering dispute with an anti-Yale tilt, and as both Peruvian and U.S. politicians were seeking to affect the course of events, Yale held steadfast. This did not mean that Yale was entirely impervious to the pressure being applied from various channels. Burger recalled:

Rick Levin had wanted to be known as the president who really opened up Yale to a global perspective. He had all sorts of global initiatives. Yale wasn't just New Haven; it wasn't even just the United States. It was really an international university with an international vision. When he saw these public displays of concern about this dispute, I think he realized that it created an inconsistency, what seemed to be an incongruity, between what he wanted to stand for and how Yale was being perceived.<sup>310</sup>

For his part, Levin stated that Yale strived to “demonstrate leadership in the international area, in a way that balances the legitimate interests of Peru against the worldwide interest in the preservation and conservation of these important historical artifacts.”<sup>311</sup>

The Yale administration wanted the issue resolved, but only in a way that did not compromise its standards for scholarship. Briggs reinforced this sentiment:

We (the Peabody) were on board with the notion that, regardless of the demands of the Peruvian government, we had a duty to the material. There was no point in keeping material that Bingham had collected for a hundred years, material that might have some significant archeological merit, and then returning it somewhere where it wouldn't be looked after. There was a real concern that, one, the material would be fine thereafter, and two, that it would be accessible to researchers internationally.<sup>312</sup>

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<sup>309</sup> Bullard, “Third Place – Repatriating Machu Picchu.”

<sup>310</sup> Burger, discussion.

<sup>311</sup> Bullard, “Third Place – Repatriating Machu Picchu.”

<sup>312</sup> Briggs, discussion.

Briggs also reinforced the consensus that the protests in Peru and the politicking in the U.S. had little effect on the Yale decision-making process. At the same time, the external pressures did not close Yale off to the idea of returning the artifacts. Their criteria remained consistent. He recalled:

We were very much trying to do the right thing. In those days, the protests would have had little influence over Yale's thinking. Before I was Director (of the Peabody Museum) there was an agreement to return the material to Peru that broke down. Thus, we were committed to this course of action before I started having anything to do with it and we remained open to sending these artifacts back. So, the question was under what circumstances and, would the collection be looked after?<sup>313</sup>

Throughout this process, the Yale team kept in constant communication. Burger and Salazar met regularly with Yale General Counsel Dorothy Robinson and other attorneys representing Yale. Robinson and the legal team met with Levin and his team. Occasionally, they would all meet.<sup>314</sup>

Yet, while the Yale team was meeting in various combinations and with regular frequency, the disagreement with Peru seemed to be heading for complete deadlock. Academics and administrators in New Haven were at loggerheads with politicians and officials in Lima. The gears had ground to a halt. By early 2010, the dispute seemed to be destined to be one more never-ending cultural property dispute. But then a new stakeholder came to the forefront, and a solution began to materialize.

### The Second Agreement Takes Shape

By late 2010, the gulf between the Yale and the García administration was as wide as ever. The Yale team was committed to not yielding to what they perceived to be

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<sup>313</sup> Briggs, discussion.

<sup>314</sup> Burger, discussion.

false media, legal, and political narratives. Time and again, in the face of such extrinsic pressures, they held firm to their stance, and their commitment that the Bingham artifacts would not become victory trophies for Peruvian politicians. Not only did they see this as potentially damaging for future scholarship, but also caving to political pressure would validate what the Yale team saw as invalid arguments. Burger stated:

Who is in possession of the artifacts is only important in terms of what that means in terms of the way they are used. No one at Yale wanted these collections to go back as trophies. Sending them back as trophies would sort of confirm the argument that this was illegal, ill-gotten booty.<sup>315</sup>

There appeared to be little hope of a resolution to the artifacts before García would leave office, and the Yale team would face the prospect of addressing the dispute with yet another shifting set of Peruvian officials and political motives.

Into this yawning chasm stepped Victor Raúl Aguilar, Rector of the Universidad Nacional San Antonio de Abad, Cuzco (UNSAAC). As an academic, Aguilar was ideologically closer to his Yale counterparts than to the Lima politicians. But as the head of a venerable Peruvian university, he had commonalities with the Lima group that the Yale team could not. In a sense, Aguilar was situated in between the Yale and Lima stakeholders, and this proved to be a key factor in unlocking the impasse.

Aguilar reframed the discussions not around where the parties disagreed, but by highlighting the common values held by both Yale and UNSAAC. By focusing on what they had in common, as opposed to where they differed, Aguilar was able to create a sense of common purpose that accelerated the likelihood of success in renewed negotiations. In discussions between the two universities, it became apparent that both schools had the same commitment to all aspects of archaeological scholarship, including

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<sup>315</sup> Burger, discussion.



training, research, conservation, access, curation, and public display.<sup>316</sup> Burger and Salazar reflected:

Aguilar observed that Yale might be able to accomplish many of its goals regarding Bingham's Machu Picchu collections through a partnership with UNSAAC, and arrangement that would be based on a foundation of mutual respect and cooperation.<sup>317</sup>

The key Yale stakeholders had come to see the public narratives around the dispute as inaccurate, and the Bingham objects as being used as for political capital, not scholarship. Rather than yield to the pressures, the Yale team had chosen to fight. This zero-sum approach limited Yale's options; in this contentious atmosphere a "win" for one side would necessarily be a "loss" for the other. Both were determined not to lose. A direct partnership between the two universities gave Yale a way out of their refusal to return the objects as a form of political capitulation.

This became the foundation of the solution. However, for Burger, the benefit of this different approach was not only who would be involved, but also who wouldn't. Noting that the renewed negotiations offered a chance to change the voices at the negotiating table, Burger noted:

We felt much better dealing with the people from Cuzco. The initial demands came from people like Lumbreras, Toledo, and Eliane. I saw it as crass political posing. It was hard not to be totally cynical about it. When you looked at the claims they were making, they were so inaccurate, and that you could only understand them as political gestures, political claims. But then, as we began to deal with the University of Cuzco and the Rector there, we really came to better appreciate the sincere desire of Cuzqueños to have the collections back. In Cuzco, they really meant an enormous amount to them. This wasn't sort of being feigned for political gain. This was a reflection of their sense of identity and their relationship with the Incas and Machu Picchu as an icon of Inca culture.<sup>318</sup>

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<sup>316</sup> Salazar and Burger, "The Machu Picchu Solution," 93.

<sup>317</sup> Salazar and Burger, 93.

<sup>318</sup> Burger, discussion.

This did not mean that UNSAAC and Yale could cut Lima out of the process. As such, with informal talks between academic colleagues providing the first breakthrough since the first failed MOU, Levin sent a delegation to Peru to meet with representatives from UNSAAC and the García administration.

From the outset, Levin was determined that these negotiations would succeed where the prior MOU had failed. Yale was dealing with all the external pressures, and despite the pending litigation, they remained open to negotiation. Still, they were conscious of the history. As they evaluated their options, they considered what had stopped the first MOU from succeeding. Levin realized that the Peruvians were comfortable walking away from agreements that were not personally overseen by or agreed to at the highest political levels. Said Levin, “you (Peru) could walk away from (an agreement negotiated by) the Minister of Culture.”<sup>319</sup>

As the parties discussed the parameters around how they would resume negotiations, the Peruvians had a condition. According to Levin, the Peruvians demanded that Yale cease to have Dorothy Robinson lead the negotiations, whom Levin described as “a fantastic lawyer and a tough negotiator.”<sup>320</sup> In this demand, Levin saw an opportunity. He told the Peruvians that he would personally be involved in a delegation to conduct high-level discussions. With the intention of further demonstrating Yale’s flexibility, Levin offered to have the Yale delegation travel to Lima, or meet somewhere in between, such as Mexico. Levin was asked who would lead Yale’s delegation. Said Levin:

This is where I played my ace in the hole. I said that (former Mexican) President Zedillo will lead our delegation. He was on our faculty and was

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<sup>319</sup> Levin, discussion.

<sup>320</sup> Levin, discussion.

a longtime friend. He was actually my student when he was a graduate student at Yale. We had confirmed with Ernesto in advance that he would be willing to do this. I heard an audible gasp from the Foreign Minister on the other end of the line. He said he would get right back to me. Twenty minutes later he called back, and he said, “President Garcia will lead our delegation.” This is what I was maneuvering for, obviously, because they couldn’t easily walk away from an agreement made by their President.<sup>321</sup>

This anecdote, aside from being amusing, further highlights the criteria important to Yale as they approached the renewed discussions. For Levin and his colleagues, they considered not just the terms of any agreement, but also how to manage the conditions to ensure that the Peruvians would follow through. In the opinion of the Yale team, it was the Peruvians that had walked away from the previous agreement, and this had soured Yale’s belief in the good faith negotiating capabilities of some of their counterparts.

#### A New Agreement, And New Hope for Success

The team led by President Zedillo made rapid progress. According to Levin, one of the keys to success was that the Yale team had held considerable discussions amongst themselves so that the delegation could arrive in Lima with a proposed framework drafted as a starting point.<sup>322</sup> Robinson recalled that the delegation was aided by the fact that Yale’s criteria were now well-defined and straightforward.<sup>323</sup> The parties reached an agreement quickly. On November 23, 2010, Yale signed another MOU with the Peruvian government.<sup>324</sup> Perhaps learning from the failure of the prior agreement, in which

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<sup>321</sup> Levin, discussion.

<sup>322</sup> Levin, discussion.

<sup>323</sup> Robinson, discussion.

<sup>324</sup> The full text of the English translation of the November 23, 2010 Memorandum of Understanding is in Appendix 2.

political adversaries selectively leaked portions of the agreement, the parties released the new agreement directly to the public.<sup>325</sup>

The November 23, 2010 MOU is direct and to the point. In three brief pages, the broad terms for an agreement between Yale and Peru are outlined. Yale recognizes the “historic value and national identity that the Machu Picchu materials represent to the State of Peru.” For their part, “Peru has expressed its conviction that Yale has been a dedicated and worthy steward of the materials.” Unlike the 2007 MOU, there are no complexities around shared possession, traveling exhibitions, and usufructuary rights. Yale will “recognize the Peruvian State’s ownership of all the materials once the terms of this Agreement are implemented.” Yale will return all the artifacts to Peru; Peru’s Congress will appropriate money to finance the adequate facilities, and UNSAAC will be the depository of the materials.<sup>326</sup>

For their part, the Yale team appreciated the change in how the Peruvians approached the negotiations. In the discussions that led to the first MOU, the Yale team described a haphazard process. Burger cited this as a big reason the negotiations were more productive and grounded in a deeper sense of compromise:

If you look at the difference between who negotiated the first MOU that didn't work, the one that was killed by Lumbreras and his people, and compare it to the later negotiations, the National Institute of Culture was absent from the negotiations. What then became the Ministry of Culture was absent from the negotiations. The people at the table negotiating with us were from foreign relations, the equivalent of the (U.S.) State Department. They were diplomats and direct representatives of the President. That was a change. That wasn't because we demanded that. We couldn't say who they should send to negotiate, but they obviously thought that that would allow for a more productive kind of conversation and set

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<sup>325</sup> Salazar and Burger, “The Machu Picchu Solution.”

<sup>326</sup> See the November 23, 2010 MOU in Appendix 2

of compromises than if they had the National Institute of Culture people there.<sup>327</sup>

With the right people approaching the negotiations driven by a renewed sense of compromise and diplomacy, the framework for solving the century-long impasse came not with one agreement, but with three. Reflective of the different nature of the multiple stakeholders, the solution was for each distinct party to form an agreement with one another, in a sort of three-legged stool. Yale and Peru enacted their own direct agreement. Yale and UNSAAC agreed to terms. UNSAAC struck a deal with the Peruvian government. Each of the three parties thus defined its obligations to and commitments from the other two. This allowed each to narrow the scope of its agreement to the areas of direct relevance.

These agreements did not all happen at once. The first accord was between Yale and the Peruvian government. Yale committed to return the approximately 350 museum quality pieces to Peru in time for the 2011 centennial of Bingham's scientific discovery, and all the Bingham artifacts by the end of 2012. In exchange, Peru acknowledge Yale's role in preserving and studying the collection. In addition to the obligations outlined, the agreement also laid the groundwork for a more productive and collaborative relationship between the parties by each expressing appreciation for and goodwill toward the other.<sup>328</sup>

The first agreement provided the context for further negotiations between Yale and UNSAAC, by which the Universities would spell out the specifics of how the objects would be transferred, displayed, preserved, and studied. It was in the structure of this agreement that the depth of the shared values between the two institutions could be fully

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<sup>327</sup> Burger, discussion.

<sup>328</sup> Salazar and Burger, "The Machu Picchu Solution," 94.

seen. Emphasizing the peer-to-peer nature of the discussions, Aguilar traveled to New Haven for direct negotiations with Levin, President to President, 400-year-old University to 400-year-old University.

As the rounds of negotiations moved Yale and Peru closer together, the realities of returning the objects began to unfold within Yale. As the Director of the Peabody Museum, Briggs was a key stakeholder in navigating these practical considerations. To ensure that all perspectives were being considered, Briggs assumed the position of independent negotiator. His role was not to directly engage in the cross-border negotiations; rather, as the Director of the Museum, he negotiated with Yale about the terms by which the artifacts could be released and returned.

This operating framework further undermines the notion that “Yale” was a single, monolithic entity, moving in a collective lockstep. Briggs negotiated with administration in his capacity as Director. His criteria were straightforward:

I was negotiating with the University on behalf of the Museum to make sure we had the right kind of support once an agreement was crafted...My negotiations with the Yale administration were largely to ensure that we had the resources to achieve what we needed to achieve. Rick (Levin) was supportive of this. We had to justify expenditure to the University administrators who run the budgets. They certainly won't write you a blank check!<sup>329</sup>

Briggs recalled that Burger was similarly focused on ensuring that any agreement would be supported by the funding to ensure the full realization of the Yale community's long-term goals for the artifacts. Briggs describes that he and Burger were also internally aligned on the need to guarantee the continued academic engagement with the artifacts after their return:

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<sup>329</sup> Briggs, discussion.

Richard Burger quite properly was seeking some reassurances that the Peabody and Yale would be able to establish ongoing collaboration around all kinds of science based in Cuzco, geology, botany, etc. I was involved in those kinds of discussions.<sup>330</sup>

Levin cited an important factor that had changed with Yale that helped the university advance the negotiations more assertively than in previous attempts.

The other reason we were willing to give these objects back by the end of the decade was that Lucy and Richard had completed their cataloging. One of the reasons we had wanted continued possession of many of the objects was that this comprehensive catalog, that they've been working on for twenty years, wasn't complete. By the late 2000s, they had had finished that work.<sup>331</sup>

With the cataloging complete, the requirements outlined by Briggs, Burger, Salazar, and others within Yale were reflected in the agreement that Levin struck with Aguilar, which was sweeping and comprehensive in scope. It called for the schools to jointly form the UNSAAC-Yale International Center for the Study of Machu Picchu and Inca Culture in Cuzco. The Center would contain a public museum about Machu Picchu, including the history of the Yale Peruvian Scientific Expeditions, and the ongoing research of the archaeological site. The Center would also contain state of the art storage and preservation facilities to ensure the safety of the artifacts, and laboratory and research facilities for scholars from both schools, as well as visitors from other institutions.<sup>332</sup>

The center would be overseen by an administrative board of five members, with two appointed by Yale, two appointed by UNSAAC, and the final chosen by the other

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<sup>330</sup> Briggs, discussion.

<sup>331</sup> Levin, discussion.

<sup>332</sup> "Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-11-February-2011.Pdf," accessed June 6, 2023, <https://plone.unige.ch/art-adr/cases-affaires/machu-picchu-collection-2013-peru-and-yale-university/memorandum-of-understanding-between-the-government-of-peru-and-yale-university-11-february-2011>.

four appointees. The agreement also detailed plans for joint efforts between the schools, including conferences, exhibitions, field work and faculty exchanges.<sup>333</sup> The Center would be housed in the Casa Concha, an iconic historic building in Cuzco that belonged to the University. This was a fitting destination, as the foundations of Casa Concha date to the Inca period, and the building may have originated as a palace for an Incan emperor.<sup>334</sup> The material culture of that great civilization was truly set to go home.

As with the September 2007 MOU, this document expressed mutual appreciation between the parties. It is grounded in the language of mutual respect and anticipation of productive collaboration. Perhaps what is most striking about this MOU is the numerous ways in which it is similar in form and structure to the prior agreement. Both agreements call for the transfer of Bingham collection artifacts from Yale to Peru, the establishment of a permanent museum and research center, the individual ability to appoint members to the research center board, and the commitment to access to the artifacts for ongoing scholarship.<sup>335</sup>

There were differences as well. In the 2007 MOU, Yale would acknowledge Peruvian title to the artifacts but still retain possession of many. In the 2011 agreement, Yale would transfer the entirety of the collection. The 2011 agreement also is more detailed in terms of how future collaborative efforts will take shape, including the

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<sup>333</sup> “Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-11-February-2011.Pdf.”

<sup>334</sup> “Machupicchu Museum - Casa Concha,” Google Arts & Culture, accessed June 4, 2023, <https://artsandculture.google.com/story/machupicchu-museum-casa-concha/sAVRKt5ce2F1IQ>.

<sup>335</sup> “Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-11-February-2011.Pdf.”



exchange of faculty between Yale and UNSAAC, student exchange, website language and loans of pieces to Yale for display.<sup>336</sup>

When comparing the two MOUs, what is striking is how the similarities outweigh the differences. The form and structure of the two agreements is remarkably similar. The differences are not insignificant. However, in examining the events between the failure of the first agreement and the completion of the second, including protests, diplomatic pressure, hyperbolic press statements, expressions of disaffection by alumni, press coverage, etc., it is striking how little actually changed between the two agreements. This gives credence to the Yale officials' assertions that the protests little swayed their decisions, and that their commitment to do "right" by the artifacts was a core guiding principle.

A further interpretation is that much of the angst in the time between the 2007 and 2010-2011 agreements was wasted energy. The Peruvian officials in the García administration may have arrived at the ultimate agreement faster if, instead of lawsuits and protests, they remained focused on diplomacy. Even if the 2007 agreement was untenable after Peruvian re-consideration, the two sides remained ideologically aligned on the most important principles.<sup>337</sup>

The Peruvian government and UNSAAC completed a third and final agreement which finalized the terms around governing how the university and government would work together to actualize the other two agreements.

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<sup>336</sup> "Memorandum-of-Understanding-between-the-Government-of-Peru-and-Yale-University-11-February-2011.Pdf."

<sup>337</sup> The full text of the February 2011 Memorandum of Understanding signed between Yale and UNSAAC can be found in Appendix 3.

As the issue lurched its way toward its conclusion, Levin described the central Yale team as having had strong alignment. Aside from the central stakeholders, he sought to keep adjacent parties informed as well. At first, one of the curators was a bit skeptical about the University's consideration of returning the artifacts:

Jock Reynolds, the Director of the University Art Gallery, was not wildly enthusiastic about this, as he considered implications for potential repatriation on the collection for which he was responsible. But he came around in the end and understood the virtue of the final resolution. We kept him and his counterpart in the Center for British Art very much engaged in the discussion throughout.<sup>338</sup>

From the time that Aguilar prodded all parties back to the table in November of 2010, to the agreement between Yale and UNSAAC, a scant three months elapsed. After a century of on again, off again disputes, and recently of increasing intransigence, the issue of what to do with the Bingham artifacts turned into a complete diplomatic and academic triumph for all parties. No one had to compromise on their core values. It was a stunning turn of events, celebrated in the press, and in the streets. Of note, however, the agreements were confined to Bingham collection. Little covered in the press was that Peru had initially made a wider set of demands. Briggs observed that:

The Peruvians were keen to scrutinize all our Peruvian holdings. We did a careful job to parse out anything that was acquired under a different set of circumstances from those from Machu Picchu. (Objects that were acquired) legitimately, from other localities, from other people, possibly purchased. We don't have any of Bingham's materials from Machu Picchu now.<sup>339</sup>

Yale therefore confined the scope agreements specifically to the Machu Picchu artifacts. Whether intentionally or not, this mitigated one of the concerns often cited by

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<sup>338</sup> Levin, discussion.

<sup>339</sup> Briggs, discussion.

opponents of cultural property repatriation, namely, that once established, precedent for return would eventually leave museums denuded of their collections.

Briggs did state that there was pressure from other departments to retain a few of the Bingham specimens. While the Peabody administrations had to include these among the returned artifacts, they did seek to deploy technology to ameliorate the loss of access to important specimens:

These were zoological rodent specimens that Bingham brought back to the Peabody, which were in our collections, and which had become through publication the voucher specimens for the particular animals in question, what we call holotypes. The curators here were very anxious to retain the originals, but that didn't play out. The Peruvians insisted that they were part and parcel of the agreement. We scanned those in significant detail; we also made printed replicas. We have very high-resolution copies of those bones here. Thus, should any specialist want to check them out, he or she would not necessarily need to go to Peru. They wouldn't be able to get chemical data out of the reproductions, of course, because they're essentially plastic! I can remember chairing meetings with the curators, which happened essentially every month during semester, and the dismay expressed that we had lost these bones, but we did our best to retain the data.<sup>340</sup>

With these boundaries sharply defined, the series of agreements promised to permanently resolve the issues of the Machu Picchu artifacts. It must, however, be considered that the success of these agreements was no sure thing. Just a few short years earlier, similar hopes were dashed when the first MOU collapsed. Why did these negotiations succeed where previous efforts had failed?

#### Ensuring Success of the Agreements

Once the framework for the agreements were in place, Burger recalled that one of the keys to success was that Aguilar was a vocal supporter, speaking up on behalf of the

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<sup>340</sup> Briggs, discussion.

agreement. “He actively defended the agreement in the newspapers, on TV, and to the people in Lima. He really played a heroic role in all of this, in my opinion.”<sup>341</sup>

The moral gravity that Zedillo brought to bear could not be overstated. As Levin summarized:

The impact of involving Ernesto Zedillo is hard to overstate in the context of Latin American democracy. Peru for all, its tumultuous politics and corruption is a democracy. It has orderly transitions between presidents on a regular basis. Zedillo’s great contribution was to end the stranglehold of the PRI (political party) on Mexican politics and open it up to free and fair elections for the first time in decades. In Latin American democracies, he’s a cultural hero. He is a great man, and amazing person. That’s why involving him had so much impact.<sup>342</sup>

Aside from tapping Ernesto Zedillo to lead the negotiations, Levin cited another reason why the agreement succeeded: compromise. Each side offered concessions; neither got the entirety of what they wanted; both got much of what they needed. Yale wanted to be sure the Cuzco-based museum would operate with a measure of independences from the Lima-based government. The Peruvian government wanted to maintain full control of the objects, but they yielded when UNSAAC stepped in. For Yale, said Levin, simply “returning one hundred percent of the objects” was itself quite a concession.<sup>343</sup>

According to Burger, there was a less overt reason that this agreement succeeded: common cause from withing the archaeological community. He recalled that:

If you look back to the newspaper accounts of this when it was still underway, the large archeological community in Peru never denounced Yale never, never attacked us. They never actively supported us, because I think they realized that politically it would be suicide. But, you know, our colleagues in Peru realized that these (false narratives) didn’t really have intellectual validity, so they simply stepped back. I’m sure they were under

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<sup>341</sup> Burger, discussion.

<sup>342</sup> Levin, discussion.

<sup>343</sup> Levin, discussion.

pressure to attack us, but they didn't, to their credit. I think that if there'd been more basis to these (narratives) from a Peruvian standpoint, they would've been more active in this whole dispute; but they didn't play.<sup>344</sup>

### Objects Return to Peru

When the first objects arrived in Peru in March 2011, the Peruvians demonstrated their commitment to the safety and security of the collection by deploying 600 police officers to oversee their transfer to Peruvian custody.<sup>345</sup> As the collection made its way from Lima to Cuzco, citizens gathered in the streets to cheer and celebrate.<sup>346</sup>

Reflecting on the reception of the artifacts, Briggs recalled that:

My understanding is that there were tremendous emotional reactions from the public, who were lining the streets, cheering, and all that sort of thing. Of course, that was in part because it was transported through the streets in a vehicle convoy. The Peruvians had some significant emotional connection to this material. There were politics going on as well. The individuals who brokered the agreement and brought the stuff back to Peru were hoping to gain political advantage. I'm not being cynical; I think there was true political advantage from having succeeded in this apparently impossible endeavor.<sup>347</sup>

Ceremonies were held in Cuzco and at UNSAAC to mark the return of the artifacts, the opening of the Center, and the spirit of collaboration that permeated between all the parties.<sup>348</sup> USAAC honored Burger and Salazar as honorary faculty members.<sup>349</sup>

As an expression of gratitude, Yale received another honor when the Peruvian government award Levin its highest civilian award, “The Sun of Peru” in the grade of

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<sup>344</sup> Burger, discussion.

<sup>345</sup> “Artifacts from Machu Picchu Returned to Peru,” *Americas Quarterly* (blog), accessed June 4, 2023, <https://www.americasquarterly.org/blog/artifacts-from-machu-picchu-returned-to-peru/>.

<sup>346</sup> “Yale Returns All Machu Picchu Artifacts to Peru,” ICT News, September 13, 2018, <https://ictnews.org/archive/yale-returns-all-machu-picchu-artifacts-to-peru>.

<sup>347</sup> Briggs, discussion.

<sup>348</sup> Alison Griswold et al., “Incan Exhibit Opens in Peru,” *Yale Daily News*, September 30, 2011, <https://yaledailynews.com/blog/2011/09/30/incan-exhibit-opens-in-peru/>.

<sup>349</sup> Salazar and Burger, “The Machu Picchu Solution,” 95.

“Great Cross.” The Peruvian ambassador to the United States, Harold Forsyth, said of Levin, “He forced our possibilities to be ahead of our time and took care of the heritage of Peru as if he were a Peruvian himself. If there were one person who deserves this honor, it’s him.”<sup>350</sup> Levin, while expressing gratitude for the award, was careful to shine a light on the work of others, stating:

I am grateful for the honor you bestow upon me today, but what is truly worthy of celebration is the steadfast commitment of the government of Peru, made manifest through our agreements with the government and University National San Antonio Abad del Cuzco (UNSAAC), to preserving and increasing the world’s knowledge and awareness of Machu Picchu and its history.<sup>351</sup>

Looking back on the completion of the agreement, Robinson acknowledge that Yale had overcome difficulties to attain their goals. Discussing the journey of the dispute, she stated:

Our challenges included a lot of turnover in the people who were involved, and the environment was politicized in various ways over time. Our way of dealing with that was to stick to the principles that we felt were important, and to make sure that we wrapped them in mutual respect. We felt that we had a solid understanding of what was important to Peru, as well as what was important to us. In the 2010 MOU, these matters would be reflected in an arrangement that had the prospect of stability over time. We certainly did our best to maximize the possibility.<sup>352</sup>

The sharp transition from acrimony to adulation was complete. As the afterglow of the academic and diplomatic triumph subsided, all parties could return their attention to other issues. For Burger and Salazar, that meant getting back to what they had been doing for decades: studying the Machu Picchu artifacts, collaborating with colleagues,

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<sup>350</sup> Caroline Tam, “Dispute over, Peru Honors Levin with Award,” *Yale Daily News*, September 16, 2011, <https://yaledailynews.com/blog/2011/09/16/dispute-over-peru-honors-levin-with-award/>.

<sup>351</sup> Tam.

<sup>352</sup> Robinson, discussion.

teaching students, and pulling the veil back just a little further on the mysteries of the Inca. All that really changed was the venue.

## Chapter IX.

### Retrospective: 2011 - Present

The century long dispute between Yale and Peru seems to have been resolved to all party's mutual satisfaction, at least, publicly. Much of the acrimony in the 2006 – 2010 timespan was instigated by Karp-Toledo, Lumbreras and their political allies. They seem to have fallen silent on the matter since the second MOU was signed between Yale and Peru in late 2010. They are not quoted in any major new articles announcing the resolution of the dispute. This is noteworthy for Karp-Toledo in particular, as she had been a frequent commentator on the subject in the op-ed pages of publications like *The New York Times* and *Miami Herald*. This may support the conclusion of Burger that their motive was not a genuine interest in Peruvian cultural property. Rather, the motivations behind their actions were less about the country, and more about how they could personally gain from the dispute.

Then again, after the initial excitement about the resolution of the dispute and the return of the artifacts, scant attention has been paid to the case since. It was a dramatic topic, well-covered in the U.S. and in Peru, full of intrigues and complexities. However, even as attention shifted to other topics, the impact of the agreements on Yale, Peru, and academia continued to be felt.

The final artifacts from the Bingham collection arrived in Peru in November 2012. The shipment contained 127 crates and was transported by Peruvian military aircraft. Unlike in previous shipments, the artifacts did not first arrive in Lima, to be



paraded through the streets. Rather, they went straight to Cuzco, to be inventoried, stored, and prepared for future study.<sup>353</sup> The artifacts' life as an object of political discord was over; their new life as a tool for international scholarship and academic collaboration could begin. Or, more precisely, it could resume. For, while the objects themselves had often been the subject of great controversy, they had also been the stimulus for great scholarship spanning more than three decades. All that changed was the venue. Salazar met with UNSAAC officials at the Casa Concha, and together, they got to work on the inventory.<sup>354</sup>

For most members of the Yale community, the resolution of the dispute over the Machu Picchu artifacts moved the issue away from day-to-day consideration. However, for Burger and Salazar, their work continued, as they are the ones on whom the agreements had the biggest impact. For Peruvians, access to the collection has had deep resonance. Within the first few years of opening, the Museo Machu Picchu had welcomed 200,000 visitors.<sup>355</sup> Schools have made field trips. Tourists have included the museum on their itineraries.

The Bingham collection continues to be a hub of international scholarship. From the moment that Salazar first opened the crated Bingham collection in the basement of the Yale Peabody Museum, she established a pattern of multi-disciplinary collaboration on the artifacts and their interpretation. Before the dispute broke into the public, that

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<sup>353</sup> "Yale Returns Final Shipment of Machu Picchu Artifacts to Peru," *Peru Travel Blog*, November 12, 2012, <https://www.fertur-travel.com/blog/2012/yale-return-final-shipment-of-machu-picchu-artifacts-to-peru/5547/>.

<sup>354</sup> "Yale Returns Final Shipment of Machu Picchu Artifacts to Peru."

<sup>355</sup> Salazar and Burger, "The Machu Picchu Solution," 96.

work continued. Amid all the ups and downs of the negotiations and lawsuits, that work continued. Now housed in La Casa Concha in Cuzco, that work continues.

This does not mean that nothing changed. Rather, Burger acknowledged that, in addition to the psychological benefits of returning the collection to Peru, this shift to Cuzco has had academic benefits as well. He reflected that:

The reason why Yale had wanted the collection could be, in a way, better accomplished in Cuzco than it could be in New Haven. Having the maximum number of people see the material, having the maximum number of people interested in studying the material, having it cared for because it was important them, all those things were possible in Cuzco. They were also possible in New Haven, but to a lesser degree. There was this change in venue and in many ways that shift has been beneficial.<sup>356</sup>

The results of this new venue for collaboration have borne fruit. Burger and Salazar have been working on new analyses of the artifacts. In a recent paper, Burger, Salazar, and their co-authors enhanced the understanding of the date of occupation of Machu Picchu. They did so by drawing on radiocarbon dating of the artifacts.<sup>357</sup> Prior to this analysis, the consensus had been that Machu Picchu was first occupied in 1438. They were able to establish that it was occupied twenty-five years earlier. Salazar reflected:

The science and radiocarbon data that we didn't have many years ago couldn't tell us what population was living in Machu Picchu, where they came from. That is important. Now (we know) Machu Picchu was very cosmopolitan and had people from all over Peru that the Inca wanted to have there as retainers, as workers, doing different activities. So, this research, really will make a big difference. The continuation of the research is amazing.<sup>358</sup>

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<sup>356</sup> Richard L. Burger (Charles J. MacCurdy Professor of Anthropology, Director of Graduate Studies in Archaeology, Yale University), in discussion with the author, May 26, 2023.

<sup>357</sup> Richard L. Burger et al., "New AMS Dates for Machu Picchu: Results and Implications," *Antiquity* 95, no. 383 (October 2021): 1265–79, <https://doi.org/10.15184/aqy.2021.99>.

<sup>358</sup> Lucy C. Salazar (Research Associate, Machu Picchu Project, Yale University), in discussion with the author, May 26, 2023.

Notably, the scholarship underway is not solely being led by Yale academics. Salazar discussed the ongoing collaborative approach to excavating in Peru. Speaking about an upcoming project, and the impact of the agreements that resolved the disputes, she said:

I'm going to go to Peru to do some excavations in Cuzco, (to support) someone else's project...a UNSAAC professor, to excavate another famous site. So, you see these agreements are very productive from the scientific point of view.<sup>359</sup>

For Burger, while the current research being conducted is providing new insights, such analyses were only available because the artifacts were preserved in the first place. Yale had, "a hundred years of taking care of them. You don't want that to have been in vain. You want the collection stay together and stay intact and be developed."<sup>360</sup>

With the Bingham collection intact, and collaborative models for their access, study and analysis built, the work can continue. For Burger and Salazar, this is an exciting time for the continuation of scholarship. Burger observed:

All sorts of techniques are continually being introduced that didn't exist in Bingham's Day, and didn't exist when I began to study archeology, but now exist. We are working on an article on DNA analysis of the Machu Picchu burials. The technology used to get the ancient DNA from the skeletal material that the Yale Peruvian Scientific Expedition excavated, that has only come to exist in the last five or six years. You know, they couldn't even imagine asking the questions that we can now ask. That's why it's so important that these collections have been taken care of and are carefully curated.<sup>361</sup>

The work continues. Salazar and Burger recently finalized the paper mentioned above, which shares the results of DNA analysis and deepens the understanding of Machu Picchu and the people that lived there. Their work closely examined DNA

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<sup>359</sup> Salazar, discussion.

<sup>360</sup> Burger, discussion.

<sup>361</sup> Burger, discussion.

analysis of the burials at Machu Picchu and other important Inca sites. Notably, the study was conducted in partnership with several other universities, U.S. and Peruvian alike.

Highlighting the collaborative nature of the project, and with a mind toward the return of the Bingham collection, the press release announcing the study stated:

Researchers from Yale, Universidad Nacional de San Antonio Abad del Cusco (UNSAAC), the University of California-Santa Cruz (UCSC), Tulane University, the Max Planck Institute for Evolutionary Anthropology, and other institutions conducted the study, under an agreement to return artifacts and human remains from the Hiram Bingham collection back to Cusco for exhibition, conservation, and study.<sup>362</sup>

With the benefit of retrospect, it becomes apparent that the topic of ownership was not a key criterion for Yale. Ownership was a means to achieve academic goals: the ability to preserve, study and display the artifacts. When applying this filter to the decisions that Yale made over the course of the dispute, many of their decisions take on a new clarity.

Looking back on the dispute, the agreement, and the new ways of collaborating on the continued study of the artifacts, Burger and Salazar deem the process to have yielded a positive result. They see the collection as being in the right place for the right reasons. However, they also assert that had the objects been returned to Peru without the proper safeguards in place, the ability to advance the scholarship, and to simply ensure the protection of objects of psychological resonance with the Peruvian community, may have been imperiled. While the dispute itself had aspects that were regrettable, they seem to suggest it was worth it in the end.

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<sup>362</sup> Jim Shelton, "DNA Analysis Offers New Insights into Diverse Community at Machu Picchu," YaleNews, July 26, 2023, <https://news.yale.edu/2023/07/26/dna-analysis-offers-new-insights-diverse-community-machu-picchu>.

For Robinson, one of the key measures of success of the 2010-2011 agreements is that they endure despite other changes. Speaking of the agreement between Yale and UNSAAC, Robinson reflected:

The UNSAAC MOU is a living agreement with the University. It is carried in the hands of the people and at Yale over time. Professor Burger and Lucy Salazar will have their academic successors and others at UNSAAC will want to be involved. Things will change over time.<sup>363</sup>

Back in New Haven, the approach to repatriation and cultural patrimony continues to adapt to the times. Like most Ivy League schools, the specific issue of NAGPRA compliance remains a key area of focus for Yale. Despite the significant progress many such schools have made in building repatriation frameworks, full compliance with NAGPRA remains difficult.<sup>364</sup> Yale has taken a proactive step to address this challenge, and to be more forward-thinking about cultural heritage and its institutional relationship, not just to objects, but also to the people to whom those objects are sacred. Briggs described Yale's new approach to cultural property:

Yale's moved on. The University is in the process of establishing a central repatriation office, which will operate on behalf of the museums and art galleries. The idea will be to sequester objects that will come under the jurisdiction of NAGPRA in a central repository. They will be out of the museums and ready to go once their destination has been established. I think that's a very sensible way forward because it means we're going to be proactive as opposed to reactive. That's the way to go because there's much more going on in that regard now, and it's a good thing too.<sup>365</sup>

As Yale sets to reopen the Peabody Museum after an extensive renovation, it has also reconsidered the way Indigenous people can engage with artifacts in its collection.

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<sup>363</sup> Dorothy K. Robinson (Senior Counsel, K&L Gates, Former General Counsel, Yale University), in discussion with the author, June 16, 2023.

<sup>364</sup> Juan Siliezar, "Peabody Museum's Repatriation Efforts Encounter Complications," *Harvard Gazette* (blog), March 30, 2021, <https://news.harvard.edu/gazette/story/2021/03/peabody-museums-repatriation-efforts-encounter-complications/>.

<sup>365</sup> Derek Briggs (G. Evelyn Hutchinson Professor of Earth & Planetary Sciences, Yale University), in discussion with the author, May 9, 2023.

Recognizing that some of these objects have cultural and sacred significance for some, Briggs shared that the Peabody Museum will have dedicated space for Indigenous people to engage with materials in its collection.<sup>366</sup>

In the decade plus since the completion of the agreements and the return of the Bingham collection, Peru has continued to pursue repatriation of cultural property. Peruvian officials have been effective in partnering with law enforcement agencies to track down illegally exported goods and arrange for their return.<sup>367</sup> Peru has also been successful in repatriating objects of more nuanced provenance.<sup>368</sup> This has continued despite ongoing instability in the structures of government. For example, the country recently undertook an ambitious project to design and build a massive new national museum. From the groundbreaking to the completion of the project, Peru had five presidents, and has had twenty-three Ministers of Culture in a period of thirteen years.<sup>369</sup>

At first glance, the ambition for the museum is sweeping. It is designed to last at least 500 years, house hundreds of thousands of artifacts, and contains advanced technology to mitigate against uncertainties from climate change to electric power reliability. Funding for its construction was provided by a UN program. Operation of the museum is to be funded by the Peruvian government. On the heels of the devastating COVID-19 pandemic, and continued economic shocks, the country has not been able to transfer any objects to the museum, nor hire a staff of curators to handle antiquities. Even

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<sup>366</sup> Briggs, discussion.

<sup>367</sup> “Paintings, Stone Axes Repatriated to Peru in LA Ceremony,” AP NEWS, April 22, 2022, <https://apnews.com/article/california-los-angeles-united-states-5a3f81d977acc8df25ae1ce2c7d74fde>.

<sup>368</sup> “Return of the First Paracas Textiles from Gothenburg,” *Peruvian Times*, June 17, 2014, <https://www.peruviantimes.com/17/return-of-the-first-paracas-textiles-from-gothenburg/22328/>.

<sup>369</sup> Kristina Rapacki, “The Empty Museum: Museo Nacional Del Perú in Lima, Peru by Leon Marcial Arquitectos,” *Architectural Review* (blog), June 5, 2023, <https://www.architectural-review.com/buildings/the-empty-museum-museo-nacional-del-peru-in-lima-peru-by-leon-marcial-arquitectos>.

its location hampers its utility. The museum is outside the city in an area unlikely to draw visitors, should it ever be able to open. It sits empty, its grounds barren and unlandscaped.<sup>370</sup>

The Peruvian antiquities infrastructure is certainly more developed than in the 1980s, when objects were crumbling for lack of care and facilities. However, the challenges with the new national museum show that concerns for the sustainable preservation and study of antiquities were, and are, well-founded. The insistence that the Yale-Peru dispute be resolved with adequate facilities, and the funding to operate them, has proved prescient.

From the outset of the dispute to its resolution, the key individuals at the center of Yale's efforts were guided by two core principles: the long-term safety and preservation of the Machu Picchu artifacts, and the continued access to the Bingham collection for study and analysis by the international academic community. They were willing to accept, ignore or deflect criticism from both within and outside the Yale community in order to insist that those conditions be met. This left them vulnerable to critique, which was often quite hyperbolic, as they chose the more difficult path to resolution.

While the agreements that returned the Bingham Collection to Peru were seen as a success for all parties, further patrimony challenges in the country sit in stark contrast. These challenges highlight the singular success of the Yale-Peru agreements and emphasize that challenges remain for future repatriation considerations. For example, a group of nearly two hundred prominent scholars signed a letter protesting the construction of a new airport, which is being built in part to further facilitate tourism to

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<sup>370</sup> Rapacki.

Machu Picchu. The project threatens a critical Inca site, thus potentially destroying one site to hasten the access to another.<sup>371</sup>

Not only have key archaeological sites in Peru become imperiled, but so too have the careers on many of the Lima-based politicians at the center of the Yale-Peru case. Alejandro Toledo is currently in prison in Peru, having been extradited from the United States to face charges that include bribery and corruption. He has denied all wrongdoing. Seeking to avoid the same fate, Eliane Karp-Toledo has fled to Israel to avoid facing money laundering charges in Peru. Each face sixteen years and six months for their alleged crimes. Israel does not have an extradition treaty with Peru. For the time being, she does not seem likely to face trial in Peru. Alan García likewise faced the prospect of extensive criminal charges stemming from actions taken during his time in office. Rather than submit to arrest and trial, García shot and killed himself in 2019.<sup>372</sup>

The examples of political and archaeological challenges present in Peru underscore the difficult environment in which all parties negotiated the settlement of the dispute. At any point, the Yale team could have thrown their hands up, packed the artifacts up, shipped them south, and moved on. Such an act could have saved them time, money, and frustration.

While capitulating to the pressures being applied might have given pundits and politicians a victory at their expense, it also would have saved the Yale delegation from the accusations and attacks from those same people. Yet, at no point does anyone from Yale

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<sup>371</sup> Lizzie Wade, "Airport Construction Threatens Unexplored Archaeological Sites in Peru," *Science*, February 5, 2019, <https://www.science.org/content/article/airport-construction-threatens-unexplored-archaeological-sites-peru>.

<sup>372</sup> "Alan García: Peru's Former President Kills Himself Ahead of Arrest," *BBC News*, April 17, 2019, sec. Latin America & Caribbean, <https://www.bbc.com/news/world-latin-america-47965867>.



seem to have considered giving in and moving from their solidly held ground. The artifacts were what mattered. Everything was an outflow from their permanent and assured preservation. More than a decade since the completion of the agreements that resolved the dispute, these artifacts continue their journey, five centuries after they were first used, broken, discarded, lost, buried, or forgotten by the people that walked the streets and alleys of Machu Picchu.

## Chapter X.

### Conclusions: Ten Lessons from the Yale-Peru Case

No two repatriation cases are the same. Each involves such an enormous number of variables as to make comparisons difficult; from when and where objects were taken, by whom, and under what circumstance; what culture or civilization produced the objects; what that culture or civilization's relationship is to the modern polity geographically commensurate; the relationships between modern polities, and between other modern institutions, such as museums and universities; the geopolitical stability in the source and market nations; the history of both in terms of preserving antiquities. The list goes on and on.

For the purposes of the Yale-Peru dispute, this means that the specific case cannot explicitly provide a direct analogy for resolving other cases. However, this does not mean there are not conclusions to be drawn for broader application in the debate about cultural property ownership and restitution. After all, the Yale-Peru dispute is unique for another reason; it was ultimately resolved to all party's declared satisfaction. There are ten important considerations when examining the Yale-Peru case as a guide to other disputes.

#### Focus on Common Values

The first such consideration is that focusing on common values can be more powerful in dispute resolution than arguing over points of disagreement. The solution to the Yale-Peru case arose from reframing the discussion around common values. These

values, scholarship, preservation, public access, and academic collaboration, proved to be stronger in bonding the parties than the differences were in dividing them. By restarting the discussion with all that the parties agreed upon, they were able to resolve a century of dispute in a manner of months. Of course, this did not happen in a vacuum, and another key consideration needs to be explored.

### Add the Right People to the Discussions

The second factor to consider is that introduction of additional stakeholders can expedite a solution to an impasse. At first, this might seem counterintuitive, as more people means more complexity. But in this case, Rector Aguilar was uniquely situated between his Yale colleagues and the Peruvian government officials. Ideologically, he was able to position himself in the distance that existed between two sets of stakeholders. As an academic, he found a lot of common cause with his university colleagues from Yale. As a Peruvian from Cuzco, he could find common ground with the Lima-based government politicians in ways not available to academics in New Haven.

For the Yale team, the ideological distance they had to “travel” in order to meet Aguilar was shorter. Likewise, the Peruvian government could accommodate a fellow national more easily than they could a foreign university. In cases where the ideological gap between parties is wide, and seemingly intractable, finding a third-party situated between the two can be a helpful step toward resolution. Understanding the politics of a nation is critical.

### Identify Non-Negotiables

A third consideration is that non-negotiables can be a catalyst to solutions. From the very beginning of the dispute, the Yale parties identified the essential conditions that they required in the construct of any agreement: preservation of an access to the artifacts. These were non-negotiables and acted as a filter for evaluating their decisions over the decade of the dispute. For the Peruvians in the early phase of the dispute, there was less of a clearly defined set of must-haves.

The Toledo faction never clearly spelled out their goals nor provided a rationale for their actions. In Lumbreras's comment that the Peruvians could stash the objects in a convent courtyard, it is apparent that to this faction, they did not need to justify their demands. But without a clear set of goals, there was not a clear negotiating environment. Each party should approach negotiations with a clear understanding of their non-negotiables. Far from creating obstacles, such elucidations define the constraints within which agreements can be constructed.

### Avoid Misalignment of Objectives

The fourth conclusion is that the opposite of the above conclusion is also true; misalignment of motivations can be an obstacle to productive dialogue. The greater the similarity between negotiating parties, the more productive a discussion is likely to be. Discussions with institutional counterparts can increase the productivity of negotiations. Negotiations with different types of stakeholders can lead to an imbalance in motivations. A group of politicians negotiating with, for example, a museum curator, could introduce higher than necessary variability in motivations, goals, even language. This suggests that those involved in repatriation cases should seek to do the same. Museum to museum.

Diplomat to diplomat. Politician to politician. The greater the common ground on which a negotiation rests, the greater the probability of success.

### Construct Multiple Agreements

A fifth outcome of this case that may have broader applicability is the nature of the agreements themselves. The Yale-Peru case was not resolved by one agreement. Rather, the final resolution was accomplished by three separate agreements. One between Yale and the Peruvian government, one between Yale and UNSAAC, and a final agreement between UNSAAC the Peruvian government. Isolating the specific interaction between different parties and organizing agreements specific to those dynamics was a key factor enabling success of the agreement. This empowered each of the stakeholders and created greater opportunity for finding common ground. A benefit of this approach is that it eliminated the need to resolve all the issues at once. There was a three-month lag between the first agreement, negotiated in Peru, and the second, which was negotiated in New Haven, CT. This lowered the stakes by eliminating the need to have all issues resolved in one broad framework.

### Look Beyond Media Narratives

The sixth insight to consider in repatriation cases is that media coverage can exacerbate an issue, as any situation is more complex than portrayed in the media. A review of the Yale-Peru dispute highlights some significant shortcomings in the media's coverage of the situation.

First, despite being consistently portrayed as imperialistic and occasionally being called colonialist, Yale academics were always collaborative in their approach to the

artifacts. This decades-long history of international scholarship is rarely, if at all, addressed. This tended to diminish the impact of this scholarship and overlook a prime reason for Yale's decisions.

Second, there were those within Peru more sympathetic to Yale than to their government's actions. As Burger pointed out, some academics were vocal in their support of Yale; others withheld their critique. But in both cases, the perspective of the Peruvian academic community rarely enters the press coverage of the dispute.

Third, from the time of Bingham to the conclusion of the final agreement, Yale officials acted with demonstrable respect for and deference toward Peruvian law, culture, and academia. In U.S. and Peruvian press, no attention is paid to Yale's respect for Peruvian institutions. From Bingham's diligent attention to Peruvian permitting requirements, to Yale's deference to Peruvian law regarding the length of time antiquities can remain out of the country, and in numerous other examples, Yale demonstrated respect for Peruvian institutions.

Fourth, almost no sources that address the Yale-Peru dispute mention that Richard Burger had extensive experience working in Peru and with Peruvians. To the extent that he is mentioned directly, it is often in the context of the Peabody Museum, or simply as a Yale Professor. This tends to distort the nature of Burger's academic career, which can only be described as collaborative and multi-national. His experience working in Peru and with Peruvians was germane to the artifact dispute, as he had direct experience working in the field, with many of the key members of the Peruvian delegation and collaborating with his Peruvian counterparts.

Fifth, neither do the same sources tend to focus on Salazar's contributions to the scholarship. In fact, she is rarely mentioned in the newspaper and journal coverage of the dispute. To the extent that members of the Yale community are quoted or mentioned in press coverage, the focus tend to be on Burger and Levin. It is a matter of speculation while Salazar is mentioned less frequently in media coverage of the dispute. Perhaps she was less available for interviews. However, one possible interpretation is that Salazar's Peruvian heritage might undermine the sensationalist claims of Yale's imperialism and neo-colonial recalcitrance.

Media coverage of repatriation cases can create narratives of those cases. Critical examination of the narratives, and an exploration of whether those narratives impact negotiations, should be a consideration with any contested cultural property.

### Resist Oversimplifications

A seventh consideration is the importance of avoiding oversimplifying disputes. Cultural property disputes are often portrayed as two "sides" in direct and intractable opposition to one another. Media and academic coverage of the Machu Picchu artifacts tended to reinforce this point of view, often describing the case as "Yale" vs. "Peru," giving specific agency to each at the neglect of the range of people and institutions contained within these too-broad categories. The case of Yale and Peru is useful in demonstrating the tendency to oversimplify such disputes, as well as the importance of a deeper level of critical examination. The range of stakeholders was varied, and within each group were individuals with a continuum of opinions and perspectives.

For example, if an article simply states that "Peru" demanded the return of objects, it overlooks that within the broad category of "Peru," there were individual

politicians, elected officials, local administrators, university rectors, professors, journalists, citizens, etc. Within the category of “Yale,” there were university professors, lawyers, administrators, individual and groups of students and alumni, etc., each with a different role to play as the course of events unfolded. To find resolution to, or even a more complete understanding of, complex repatriation cases, the example of the Yale-Peru dispute demonstrates the need to go beyond reductionist categories and to conduct a comprehensive mapping of stakeholders, their motivations and actions. Otherwise, what seems like a simple us-vs-them debate can bog down due to a lack of understanding of the multitude of currents flowing beneath the surface. If the goal of any repatriation dispute is to find resolution—something that is not always a part of the agenda—then to do so, a mapping such as this should be undertaken.

### Engage with People, Not Institutions

An eighth conclusion from the Yale-Peru case is that it is important to remember that behind every dispute, involved in every discussion, are individual people. Each of these people has agency. Distilling a dispute down to, for example, “Yale,” and “Peru” denies the individual parties of their agency. This is important because it is these individuals who must debate, decide, and act.

One thing absent from the coverage of the Yale-Peru dispute specifically, and the literature regarding cultural property ownership in general, is a discussion on the psychological effects of repatriation on the market nations, specifically, those connected with contested cultural property, such collectors, curators, administrators, and academics. By engaging with artifacts, no matter what their provenance, these individuals may form



strong emotional bonds to them. In the case of Yale-Peru, scholars such as Professors Burger and Salazar have been conducting original research on these artifacts for decades.

It is reasonable to assume that in any such cases, those artifacts are imbued with emotional and psychological significance to those who dedicate so much time studying, curating, presenting, etc. such objects. This is not to say that the psychological impacts of cultural property repatriation are not considered at all, rather, to emphasize that these considerations are incomplete.

The academic debate around cultural property repatriation is emotionally one-sided. Certainly, there are references to the psychic impact of repatriation back to source nations. A restitution of cultural pride, a healing of a long-festering wound, a new way to engage with the concepts of Indigeneity, national identity, community ethos, etc., are all reasons cited to argue in favor of cultural property repatriation. These arguments have merit and should be considered. However, to date, there is little observable discussion about the reverse, about the emotional effect on those conducting the repatriation.

This should not be interpreted as an argument against repatriation. This is not a claim akin to “cultural property should not be repatriated because it could hurt the feelings of a curator.” Rather, it is a frank acknowledgement that repatriation of cultural property has a complexity that transcends the more technical aspects of these cases that garner attention: title of ownership, methods of export, provenance, colonialism, and post-colonialism, etc. For example, Salazar spoke of her connection to the Bingham collection, recalling her responsibility for their care and safety in transit from one exhibition site to the next: “With the traveling exhibit, I started to feel that they (the

artifacts) were my kids. They were my children to take care of. I started saying, like you might if you put your kids in a van, ‘Quiet! Put on your seatbelt!’”<sup>373</sup>

Understanding and acknowledging the emotional implications of repatriation on all stakeholders may facilitate smoother processes and avoid certain obstacles to negotiation. Empathy can be a powerful tool in negotiations, and empathy is only possible with an understanding of the psychological conditions of all parties. Failure to acknowledge emotional conditions of stakeholders may exacerbate already difficult challenges. As Burger and Salazar state in “The Machu Picchu Solution: A New Approach to Cultural Patrimony Disputes”: “As these (cultural property) problems languish, antagonism and polarization only seem to increase, thereby making a final solution harder to achieve.”<sup>374</sup> Negative emotions complicate difficult negotiations.

#### Design Agreements with the Future in Mind

Ninth, one of the remarkable aspects of the conclusion of the dispute is that the agreements were designed to facilitate ongoing collaboration. The results of this framing have enabled scholarship to advance and knowledge of the Inca to expand. This is critical, as it avoids the zero-sum trap that can accompany ownership and possession of objects. The framing of the agreements, especially the MOU between Yale and UNSAAC, gave all parties a road map for how they could proceed once all the objects had been returned to Peru.

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<sup>373</sup> Lucy C. Salazar (Research Associate, Machu Picchu Project, Yale University), in discussion with the author, May 26, 2023.

<sup>374</sup> Salazar and Burger, “The Machu Picchu Solution,” 87.

Going further, the agreements opened the door for the possibility of loan and display of artifacts to Yale from Peru. “Possibility” is a powerful diplomatic tool. It allows all sides to avoid being or feeling boxed in and keeps open the potential for a change in conditions at some point in the future. Even if such possibilities never become realities, this kind of language gives all parties the opportunity to feel whole in the present by anticipating the future.

In the case of Yale and Peru, the unique provisions calling for additional construction and provision of facilities greatly eased the process. However, it may not be in the capabilities of every such nation to build or augment museum facilities for the purposes of the display or study of repatriated objects. Nor should a repatriation dispute be settled only in the case the source nation can prove access of the artifacts to any constituency. However, if the display and study of objects is feasible, offering a plan or demonstration of how these considerations can be accomplished could be useful in facilitating dialogue between parties.

#### Celebrate the Successes

The final lesson to be drawn from the Yale-Peru dispute is that mutual celebration of positive outcomes opens the door for future collaboration. Consider what would have happened had, after the conclusion of the final agreements, either party been hypercritical of the other in the media. This could have had a chilling effect on future collaboration. In this case, at the conclusion of the dispute, all parties managed to be complimentary to one another publicly.

This goodwill may have additional benefits beyond the resolution of the specific dispute. For example, should Peru engage in repatriation discussions with other nations or

institutions, those parties will look to the grace and diplomacy with which the Peruvians marked the completion of the Yale-Peru dispute. This sets Peru up to be seen as a good faith negotiating partner. No nation is or should be under any obligation to praise those on the other side of the negotiating table. However, it's good politics to shine the best light on yourself as possible.

The celebrations marking the return of the artifacts and the honors bestowed upon the Yale group were smart politics. They created more commonality and helped ensure the post-agreement framing of the dispute would yield positive, not adversarial tones. Certainly, the dispute was often heated, the quotes in the press from some stakeholders accusatorial. The retrospective celebration and public displays of honors, mutual admiration and participation in celebrations increased the likelihood that all parties, those involved and those who witnessed them, would view the outcomes positively.

It warrants consideration that this approach also helped pave the way for the realization of the full scope of the agreements. For example, much collaborative scholarship has been and continues to be done on the artifacts and in the facilities that house them. Had the retrospective tone with regards to the case and its resolving agreements been adversarial or negative, this could have inhibited the ability of the parties to collaborate amicably.

Just as public expressions of mutual respect can aide in creating ideal future negotiating conditions, so too can celebration of the successes of repatriation agreements. For example, and as cited previously, in the first four years of operation, the museum housing the artifacts hosted more than 200,000 visitors. These include school children,

who are engaging with the artifacts of their ancestors.<sup>375</sup> This can be viewed as a success. Repatriation claims in the future might be eased by similar engagement of the artifacts with local populations.

This kind of local engagement gives Peru, and all source nations, the ability to demonstrate the meaning of returned objects to local populations. Claims of importance of an object to national identity can be bolstered by evidence of it. For some, what happens after objects are returned is immaterial. For these people, the principle of possession of objects of one's heritage is the only argument necessary; everything that follows is either irrelevant or subsidiary. There are arguments to be made for this position. However, solutions to difficult challenges can rarely be found in stark black and white. Calls for repatriation can be supported by presentation of what that return will mean for a local or national population. Success in one case can be used to demonstrate the potential for success in others.

### Final Thought

The recent ten-year dispute over the possession and ownership of the Machu Picchu artifacts offers parallels that may be drawn to other cultural property repatriation disputes. Many descriptions of Machu Picchu use the language of uncertainty, mystery, and wonder. Terms like "cloud forest," or "shrouded in fog," evoke an ethereal, unknowable past. But the work of Salazar and Burger, and the collaborations they formed with other scholars around the world, has helped lift the veil, solve some of the mysteries, and better understand the wonder that is Machu Picchu. Likewise, the international

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<sup>375</sup> Salazar and Burger, 96.

landscape of cultural property disputes points to countless examples that defy easy solution. But, once again, thanks to the work of Burger, Salazar, and all their Yale colleagues, perhaps that veil has been lifted a bit, too.

## Appendix 1.

### September 2007 Memorandum of Understanding

#### MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding (this "MOU"), dated as of September 14, 2007, between the Government of Peru ("Peru") and Yale University ("Yale").

**Whereas**, Peru and Yale have undertaken discussions to create a new long-term collaborative relationship centered around research, education, and the artifacts and related materials excavated by Hiram Bingham in Machu Picchu (the "Materials"); and

**Whereas**, Yale and Peru acknowledge that the Materials are treasured by humanity, and that the monuments of Machu Picchu were properly declared Cultural Patrimony of the World by UNESCO; and

**Whereas**, Peru has rightly and justly honored the achievements and memory of Hiram Bingham, whose discoveries and contributions to archaeology and geography are respected worldwide; and

**Whereas**, for more than ninety years Yale has acted as steward of the Materials, and has conserved, preserved, researched and made available to the public and international scholarly community for viewing and study this historically recognized cultural patrimony; and

**Whereas**, Peru and Yale wish to amicably resolve all questions concerning ownership and possession of the Materials; and

**Whereas**, in the spirit of cooperation, Yale and Peru wish to create a collaborative relationship that will assure the future conservation, study and exhibition of the Materials;

**NOW THEREFORE**, it is the mutual intention of Yale and Peru to work expeditiously and in good faith toward the negotiation, execution, and implementation of an Agreement for Collaborative Stewardship of Inca Archaeological Materials from Machu Picchu (the "Agreement"), and, to that end, hereby agree in principle that the Agreement shall contain the following terms:

**Section 1. Principles of Cooperation, Collaboration and Friendship.** The Agreement shall be entered into in a spirit of friendly collaboration between Peru and Yale. It is intended to create a model for the ongoing cooperative stewardship of materials that are of historical importance to Peru and Yale, and of cultural importance to the people of Peru and the world. Peru expresses its gratitude for the stewardship, conservation and intellectual contribution of Yale in connection with these Materials for over nine decades, and for the groundbreaking scholarship and exhibition of the Materials that has occurred under Yale's sponsorship. Yale expresses its gratitude to the Peruvian people, whose ancestors created the historical materials that scientists and curators at Yale have conserved, displayed and studied in those nine decades.

## Section 2. Definitions.

Museum Quality Pieces, as used in this MOU, means those pieces within the Materials that, at the time of this Agreement, are suitable for and capable of being displayed in a museum exhibition. The Museum Quality Pieces specifically contemplated by this Agreement are those documented in the *Inventory of Museum-Quality Objects from the Excavations at Machu Picchu by the 1912 Yale-Peruvian Scientific Expedition* delivered to representatives of Peru on September 14, 2007.

Non-Museum Quality Pieces, as used in this MOU, means those pieces within the Materials that, at the time of this Agreement, are not suitable for and capable of being displayed in a museum exhibition.

Usufructuary Rights, as used in this MOU, means the rights to possess, use and enjoy for academic, scientific, curatorial or museological purposes, including but not limited to these explicit rights: the rights to study, restore, assemble, date through chemical or physical means, exhibit, lend for traveling exhibits, publish research related to, and publish depictions or make reproductions or copies in any media or format; no monetary payment shall be required for such rights.

**Section 3. Future Collaborations in Archaeology and Natural History.** Peru and Yale intend to create a collaborative relationship for the future study, education, joint research, and exhibition centered around the Materials and similar artifacts. This collaborative relationship shall include a Traveling Exhibit of the Materials, the construction of a Museum and Research Center in Cuzco, and extend to other collaborative activities.

(a). **Traveling Exhibit Provisions.** Within one year of the date of the execution of the Agreement, Yale agrees to re-constitute at its expense the exhibition of Materials that was created under the auspices of Yale's Peabody Museum, to serve as a Traveling Exhibit that shall spend two years visiting various venues in the United States, Canada and other countries jointly selected by Peru and Yale. The final venue of the Traveling Exhibit shall be Cuzco, Peru, unless construction of the Machu Picchu Museum and Research Center is not then complete, in which event the temporary venue shall be the Peabody Museum in Connecticut, U.S.A., where the Materials will be housed until construction is completed. The Traveling Exhibit shall include the Museum Quality Pieces (excluding pieces that are duplicative or inconsistent with the narrative structure of the exhibit), other artifacts lent by Yale, and at least 40 other objects of similar quality and interest to be loaned (at its expense) by Peru. The parties intend that the Traveling Exhibit shall serve as a vehicle to promote understanding of Inca life and culture, and tourism to Inca sites in Peru. Peru and Yale shall collaborate in promoting and publicizing the Traveling Exhibit. The Traveling Exhibit shall also promote the sale of suitable merchandise created by Peruvian artisans and industry. Peru and Yale have designated Richard Burger to serve as the curator of the Traveling Exhibit. Net revenue realized from special admission charges and from merchandising of Peruvian materials as part of the Traveling Exhibit shall be used to underwrite the planning and construction of



the Machu Picchu Museum and Research Center. Peru shall designate a representative responsible for promotion of the Traveling Exhibit and its merchandise program, and to facilitate the loan process.

**(b) The Machu Picchu Museum and Research Center.** Peru agrees to plan and construct at its expense a museum in or around Cuzco (the "Machu Picchu Museum and Research Center") to house the Museum Quality pieces, which shall meet standards of security, and other technical specifications agreed upon by the parties. Once the Museum is completed as specified and reviewed as ready for operation, but not sooner than the Traveling Exhibition shall have made its agreed-upon international tour, the Museum Quality pieces shall be transferred to that facility. An Advisory Board of five experts in archaeology or related fields shall be involved in the planning and operation of the Machu Picchu Museum and Research Center. The Advisory Board shall consist of two members appointed by Peru and two members appointed by Yale, and a fifth person selected by majority vote of the appointed members, who shall serve as Chair. The Machu Picchu Museum and Research Center shall include a suitable memorial acknowledging the life and work of Hiram Bingham.

**(c) Future and Continuing Collaboration.** The Agreement shall include such other plans for collaborative activities as the parties may agree to.

**(d) Disposition of the Materials.**

(i) The Agreement shall provide that Yale will acknowledge Peru's title in the Materials; and

(ii) The Agreement shall convey to Yale Usufructuary Rights in the Materials, which rights shall extend for a term as provided in subparagraph (iv) below, except as subparagraph (iii) may otherwise provide.

(iii) Upon Peru's fulfillment of its obligations relating to the Traveling Exhibit and completion of the Machu Picchu Museum and Research Center and its readiness for operation, Yale's Usufructuary Rights in the Museum Quality Pieces, except for certain pieces which as agreed by both parties shall be exhibited by the Yale Peabody Museum, and in a portion of the Non-Museum Quality Pieces which shall be pieces as to which Yale has no research plans in contemplation and which shall be designated in the Agreement, shall terminate. The pieces as to which Yale's Usufructuary Rights so terminate will be returned to Peru at that time.

(iv) The term of the Usufructuary Rights referred to in subparagraph (ii) shall be 99 years.

(v) Subparagraph (i) shall be dependent and conditioned upon simultaneous occurrence of subparagraph (ii) above.

(vi) Yale shall be assured access for research purposes to pieces returned to Peru under the Agreement, and Peruvian scholars shall have access for research purposes to the Materials housed at the Peabody Museum of Natural History.

**Section 4. Choice of Forum and Jurisdiction.**

(a) The Agreement shall provide that any dispute arising out of or related to this Agreement, or involving matters that are the subject of this agreement, shall be adjudicated in the United States District Court for the District of Connecticut. Both Parties expressly acknowledge that the United States District Court for the District of Connecticut has personal jurisdiction over them and jurisdiction in rem over the property that is the subject of this Agreement. Both Parties further expressly acknowledge that the property that is the subject of this dispute has value far beyond \$200,000, and that their citizenship is diverse. If and only if, notwithstanding the foregoing, the United States District Court for the District of Connecticut were to lack subject matter jurisdiction, then any dispute arising out of or related to this Agreement shall be adjudicated by the Superior Court of the State of Connecticut, Judicial District of New Haven; or, if and only if neither of the two aforementioned courts shall have jurisdiction to hear such a dispute, in whatever court has jurisdiction.

(b) The Agreement shall be governed by Connecticut law, without regard to its conflict of laws principles.

**Section 5. General Provisions**

(a) Definitive Agreement. The parties shall diligently work to produce a final agreement within 60 days; provided, however, that the provisions of this agreement shall not be binding upon the parties unless and until a final and definitive agreement satisfactory to the parties has been negotiated, fully executed and delivered.

(b) The parties agree that with the execution of the Agreement contemplated herein, the Government of Peru shall release Yale from any legal claims to the Materials resulting from prior circumstances.

(c) This MOU:

(i) Constitutes the entire agreement among the parties concerning the subject matter hereof, and supersedes all other and prior agreements, writings, or understandings, oral or written, with respect thereto;

(ii) May be amended only by a writing signed by both parties;

(iii) Has been reviewed and negotiated by both parties and their counsel, and shall be construed without regard to any presumption or other rule requiring construction against the party drafting the provision to be interpreted, and

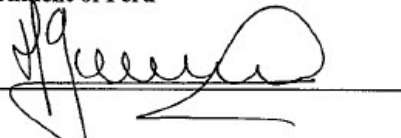
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(iv) May be executed in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

(d) Each of the parties represents that it has the full power and authority to enter into, have executed, and deliver this MOU. Each person executing this MOU represents that he or she has full right, authority and capacity to act on behalf of the party for which the MOU is executed.

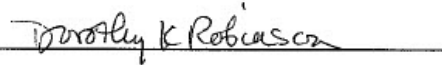
**Government of Peru**

By: \_\_\_\_\_



**Yale University**

By: \_\_\_\_\_



## Appendix 2.

### November 2010 Memorandum of Understanding

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#### MEMORANDUM OF UNDERSTANDING

##### Whereas:

The Republic of Peru (hereinafter "Peru") and Yale University (hereinafter "Yale") have reinitiated conversations intended to amicably resolve the existing controversy between the Parties regarding the materials excavated by Hiram Bingham in Machu Picchu, and to establish the foundation for a long term collaborative relationship centered on matters of research and education related to the materials in question;

This exceptional decision has been made by Yale University in recognition of the great historical value and national identity that the Machu Picchu materials represent to the State of Peru;

Recognizing the good will of both Parties, that consider this agreement a gesture of friendship, Peru has expressed its conviction that Yale has been a dedicated and worthy steward of the materials, and at the same time Yale shall recognize the Peruvian State's ownership of all the materials once the terms of this Agreement are implemented;

Both Parties adopt the following Agreement:

##### 1. Definitions

"Materials" shall mean the artifacts and pieces excavated from Machu Picchu pursuant to the terms of Resolution No. 1529, dated October 31, 1912. With regard to Resolution No. 31, dated January 27, 1916, authorizing Hiram Bingham's excavation in Cusco, Yale, in good faith, believes that the objects removed in these excavations have been returned. If, in the course of future investigations, pieces are found that correspond to the 1916 loan, these shall be returned to Peru.

"Museum Quality Pieces" shall mean those pieces among the Materials which, at the time of this Agreement, are suitable for and capable of being displayed in a museum exhibit.

"Other Study Pieces" shall mean materials other than those considered Museum Quality Pieces.

##### 2. Purpose of the Agreement

Peru and Yale adopt the following Agreement regarding the pieces excavated by Hiram Bingham in Machu Picchu, pursuant to the authorization granted by Resolution No. 1529, dated October 31, 1912, such as it appears in the inventory verified by experts of the National Institute of Culture in March of 2008.

With regard to the authorization of Resolution No. 31, dated January 27, 1916, authorizing Hiram Bingham to excavate in Cusco, Yale University believes that the objects removed in these excavations have already been returned. If, in the course of future investigations, pieces are found that correspond to the 1916 loan, these shall be returned to Peru.

M  
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**3. Disposition of the Materials and Schedule of Return**

- a. Yale shall return the Museum Quality Pieces suitable for and capable of being shown in an exhibition and Other Study Pieces in time for the commemoration of the centennial anniversary of the scientific discovery of Machu Picchu.
- b. At the end of 2011, Yale shall return another quantity of fragments and Other Study Pieces.
- c. The deadline for the return of the totality of the pieces covered by this Agreement shall be December 31, 2012.

Yale shall be responsible for the care of the Materials until they are returned to Peru. This return shall occur in conformity with the inventory verified by experts of the National Institute of Culture in March of 2008. All costs incurred in the return of the Materials shall be borne by Yale.

**4. Collaboration**

Through this Agreement, Peru and Yale establish the foundations for a fruitful collaboration both for the conservation of the Materials and for development of studies, research and scholarship of the international scientific community.

Peru will facilitate access to the returned Materials for research and academic scholarship in a manner consistent with Peruvian law and the rules and procedures of the Ministry of Culture.

Yale expresses its satisfaction with the announcement made by the Peruvian Government in the sense that it will ask the University San Antonio Abad of Cusco to be the depository of the Materials, and to the Congress of the Republic to make an extraordinary appropriation to establish a Museum and Research Center of Study in the City of Cusco to allow for the permanent location of these pieces.

Yale and Peru consider this Agreement to be a gesture of good faith that should be accompanied by a program of cooperation and joint research.

**5. Applicable Law and Jurisdiction**

This Agreement shall be governed by and be subject to Peruvian law.

The Parties will use their best efforts to work together, in the spirit of collaboration and friendship that animates this Agreement, to resolve and settle amicably any dispute arising from or related to the interpretation and execution of this Agreement. If the Parties are unable to reach a mutually satisfactory resolution regarding the execution of this Agreement, the disputed issues shall be settled in private by arbitration in accordance with the Rules of Arbitration and Conciliation of the International Chamber of Commerce by arbitrators appointed in accordance with said Rules.



## 6. Final Provisions

Nothing in this Agreement, or in any negotiations or correspondence between Peru, its Ministry of Culture, or any authority or representative of the Government of Peru and Yale University regarding the subject matter contained in this Agreement will be construed as an admission of civil, administrative or criminal liability. The above mentioned documents will not be received or voluntarily produced as an explicit or implicit admission, concession or presumption of any type, in any civil, criminal, administrative, arbitral or other proceedings, whether under the laws of Peru, the United States or elsewhere, and shall not be used for any purpose other than the execution of the Agreement itself. The Agreement, the negotiations and the correspondence between the Parties shall in no case be used as evidence of negligence or other wrongful conduct.

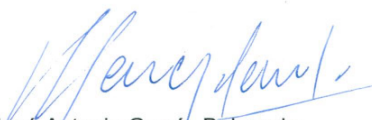
With regard to the lawsuit pending before the Federal Court in Connecticut by the Republic of Peru against Yale University, both Parties agree to request the suspension of this proceeding, subject to the performance of the terms of this Agreement, after which both Parties will request the termination of the proceeding. On this occasion, both Parties shall exchange the Agreement by which the Parties relinquish any civil, administrative or criminal claims existing between themselves regarding the facts subject of the present Agreement.

This Agreement constitutes the entire Agreement between the Parties concerning all of the Materials and supersedes all other and prior written Agreements or verbal or written understanding between the Parties.

This Agreement may be amended only by means of another written document signed by both Parties.

The Agreement will be made in English and Spanish, being both equally valid. The Signatories assure that they have full representation and authority to sign and carry out the present Agreement.

Signed this 23rd day of November 2010



José Antonio García Belaunde  
Minister of Foreign Affairs of Peru



Richard Levin  
President of Yale University

## Appendix 3.

### February 2011 Memorandum of Understanding

#### **Memorandum of Understanding**

**Universidad Nacional de San Antonio Abad del Cusco-Yale University**

**Regarding the**

**UNSAAC-Yale University  
International Center for the Study of Machu Picchu and Inca Culture**

WHEREAS, the United Nations Educational, Scientific and Cultural Organization in 1983 declared Machu Picchu and Cusco, being places of unique significance to the Inca Empire, to be Cultural Patrimony of Humanity; and the archaeological material excavated by Hiram Bingham III at Machu Picchu must be understood in this context; and

WHEREAS, Dr. Alan Garcia Perez, President of the Republic of Peru ("Peru") has recognized the good will of Yale University ("Yale") which, in a gesture of friendship and in recognition of the unique place that Machu Picchu has come to hold for the people of Cusco and the Peruvian nation, has decided to return to Peru the pieces that were excavated by Hiram Bingham III at Machu Picchu that have been conserved and maintained in the Peabody Museum of Natural History at Yale University for the last century; and Yale University will return such materials (the "Materials") in accordance with a Memorandum of Understanding between the Republic of Peru and Yale University dated November 23, 2010; and

WHEREAS, President Garcia has asked the University San Antonio Abad of Cusco ("UNSAAC") to be the depository of the Materials and has stated that he will request from the Congress of Peru a special appropriation to create a museum and research center in the city of Cusco which will constitute the permanent home for these pieces, and which will be coordinated with a program of research cooperation between Yale University and UNSAAC; and

WHEREAS, UNSAAC throughout many decades has demonstrated experience in museum management and archaeological investigations, for example in forming the Archeological Museum of Cusco, which was later converted into the current Inca Museum; and similarly, many notable researchers have undertaken investigations at UNSAAC with the participation of others from Cusco, thereby continuing the investigative tradition of Dr. Albert A. Giesecke, Rector of the UNSAAC in his relationship with Dr. Bingham; and

WHEREAS, a series of meetings were held between Yale and UNSAAC in December 2010 to guide the return of the Materials and to ensure their preservation and the continuation of scientific research through a program of ongoing collaboration between Yale University and UNSAAC to be called the "UNSAAC-Yale University International Center for the Study of Inca Culture" (the "Center"); and

WHEREAS, Yale University wishes to offer its friendship and collaboration in the creation of this Center, so as to help lay the foundation for future research and educational exchanges between these two remarkable institutions of higher learning and the wider scientific community.

Therefore:

In this Memorandum of Understanding ("MDE"), Universidad Nacional de San Antonio Abad del Cusco ("UNSAAC") of the city of Cusco, Department of Cusco, Peru and Yale University in the city of New Haven, state of Connecticut, United States of America, set forth their joint commitment to the creation and development of the UNSAAC-Yale University International Center for the Study of Machu Picchu and Inca Culture ("Center").

This international Center, which shall be located in the historic center of the modern city of Cusco and administered by the UNSAAC with the technical and scientific guidance of the Advisory Board (described below in Paragraphs 1-7) will include three components: 1) a museum exhibit designed for the general public devoted to the archaeological site of Machu Picchu, with a special focus on the investigations there by the Yale-Peruvian Scientific Expeditions of 1911 and 1912 and the subsequent study of the site and its remains by investigators from Yale University and UNSAAC; 2) a storage facility of approximately 500 sq. meters where the archeological artifacts (stone tools, ceramics, etc.) and organic specimens such as human osteological remains and animal bones recovered at Machu Picchu by the 1912 Expedition will be stored in appropriate environmental and security conditions, and 3) a laboratory and research area of approximately 500 sq. meters designed to facilitate collaborative investigations of the aforementioned collections by the signing institutions and visiting scholars. The Center will be co-located with other UNSAAC facilities that will include meeting rooms, offices and other spaces, as appropriate.

1. **The Center.** UNSAAC and Yale wish to collaborate and jointly develop an international facility and associated programs designed to serve as a base for the display, conservation and study of the Machu Picchu collections as well as for the interchange of students, scholars and scholarship regarding Machu Picchu and Inca culture. Accordingly, they agree to establish the Center, to be located in the center of the city of Cusco on land belonging to UNSAAC, and to undertake the activities described below in Paragraph 4.
2. **Advisory Board and Lead Members.** To guide the development of the Center, UNSAAC and Yale will appoint an Advisory Board, comprised of scholars from each of UNSAAC and Yale and from the community of scholars of international reputation in the study of Machu Picchu and the more general investigation of Inca culture in the Cusco region. The Advisory Board, shall initially be made up of five members, including two Lead Members, one from the faculty of UNSAAC and one from the faculty of Yale. The Rector of UNSAAC shall appoint two members, including the UNSAAC Lead Member, and the President of Yale shall appoint two members, including the Yale Lead Member; and the fifth member shall be appointed jointly by the two Lead Members. The Lead Members shall serve as Co-Directors of the Center, and the Lead Member from the faculty of UNSAAC shall be convenor of the Advisory Board.
3. **Activities of the Center.** UNSAAC and Yale envision that the Center will provide the opportunity for a permanent display of the Hiram Bingham III Machu Picchu collection currently housed at the Yale Peabody Museum of Natural History. Yale is prepared to co-curate with UNSAAC scholars in scientific and technical matters and co-sponsor at least two exhibitions in the Center in its first five years, using funds which Yale, with UNSAAC's cooperation, will raise for the purpose. The Center will also provide opportunities for international scholars and students to conduct research on these collections and to advance understanding of Inca culture in the Machu Picchu region. Accordingly, the Center will endeavor to perform the additional general activities:
  1. Make available to visiting scholars the Inca collections housed at the Center and other UNSAAC facilities;
  2. Make available to visiting scholars the UNSAAC library collections and documentary resources at the Center;
  3. Maintain laboratory facilities sufficient for the study of the collections at the Center;
  4. Organize and host academic conferences on topics related to Machu Picchu and Inca culture;
  5. Maintain security measures agreed upon by the Advisory Board as appropriate for the protection of the museum display and the study collections at the Center;
  6. Maintain environmental conditions agreed upon by the Advisory Board as appropriate for the conservation of the objects in the Museum display and those in the study collection.
  7. UNSAAC agrees to make sufficient staff available to allow the Center to accomplish these functions.



8. Those funds acquired through admission fees from visitors will belong to UNSAAC with the understanding that they will be used primarily to cover the cost of maintaining the Center.
  9. Help visiting scholars arrange their archaeological and other fieldwork in the Machu Picchu region and surrounding areas, subject to Peruvian law;
  10. Understanding that UNSAAC will have other funding sources, Yale will collaborate in fund-raising for the creation and support of Center activities.
4. **Exchange of Students and Faculty.** Subject to review and approval of the Lead Members, and in consultation with the Advisory Board, the Center will host visiting students and faculty from Yale for training, individual research projects and fieldwork, and Yale will host visiting students and faculty from UNSAAC. The parties envision that this process will include, but not be limited to, a series of fellowships for graduate and post-graduate students, as well as support for visiting faculty members being exchanged between UNSAAC and Yale. Specifically, Yale is prepared to host at its expense a faculty member or post-graduate fellow from UNSAAC to conduct studies and research at Yale for a period of up to one semester in each of the next ten years. Decisions regarding the selection of visiting faculty and other fellows will be made by the Co-Directors with the advice of the Advisory Board, based on submitted proposals, and with consideration of available funding. Yale further is prepared to send, at its expense, a researcher to undertake research and collaborate at the Center during at least six semesters in the first ten years of the Center's existence. The annual programs of the Center shall be determined by the Co-Directors, following consultation with the Advisory Board, and will reflect an annual budget prepared and submitted by them to UNSAAC, and approved by UNSAAC.
  5. **Loan of Museum Pieces.** In recognition of Yale's historic role in the scientific investigation of Machu Picchu, at the request of Yale, the Center will loan a small number of pieces for display at the Yale Peabody Museum of Natural History, subject to Peruvian law and for certain time periods.
  6. **Website.** The parties will work together to develop a suitable website to publicize the Center, with links to appropriate sites at UNSAAC and at Yale. Any website or other publication containing the name, marks or symbol of either UNSAAC or Yale must first be reviewed and approved by the applicable institution prior to any publication or posting.
  7. **Ceremonial visits.** To strengthen the ties between UNSAAC and Yale, UNSAAC will invite the President or other senior officers of Yale to visit the Center at a convenient time and Yale will invite the Rector or other senior officers of UNSAAC to visit Yale at a convenient time.

In Witness Whereof, the duly authorized representatives of the parties have signed this Agreement,

SIGNED by for and on behalf of the \_\_\_\_\_ SIGNED by for and on behalf  
 Universidad Nacional de San Antonio Abad del Cusco \_\_\_\_\_ of Yale University

## Appendix 4.

### Final Inventory of Artifacts



PERÚ

Ministerio de Cultura

"Año de la Promoción de la Industria Responsable y del Compromiso Climático"

#### ACTA DE SUBSANACIÓN DE OBSERVACIONES

#### ENTREGA DE MATERIAL ARQUEOLÓGICO POR PARTE DE LA UNIVERSIDAD DE YALE AL ESTADO PERUANO

En la ciudad de Lima, a las 4:00 de la tarde del jueves 30 de enero de 2014, estando presentes por parte del Ministerio de Cultura el señor Viceministro de Patrimonio Cultural e Industrias Culturales, Dr. Luis Jaime Castillo Butters; y en representación de la Universidad de Yale, el Dr. Richard Burger; para tratar sobre las observaciones planteadas por el Ministerio de Cultura en torno a la ejecución del Memorando de Entendimiento suscrito el 23 de noviembre del año 2010 entre el Gobierno del Perú y la Universidad de Yale, sobre la restitución del material arqueológico excavado por Hiram Bingham en Machu Picchu durante el año 1912, y trasladado a la Universidad de Yale el mismo año por autorización de la Resolución N° 1529 de la Dirección General de Instrucción Pública.

El Doctor Luis Jaime Castillo Butters manifiesta que luego de la revisión del material arqueológico restituido por la Universidad de Yale entre los años 2011 y 2012, comparándolo con la verificación realizada por el equipo técnico del ex Instituto Nacional de Cultura - INC; habiéndose formulado distintas observaciones mediante Oficio N° 045-2013-DGDP-VMPCIC/MC las cuales han sido sucesivamente levantadas por la Universidad de Yale, encontrando que a la fecha la Universidad ha cumplido con restituir **5,938 lotes con un total de 49,329 piezas.**

No obstante y como se hizo conocer a la Universidad de Yale mediante carta a la Sra. Dorothy Robinson, Vicepresidenta de dicha institución, suscrita por el Viceministro Castillo Butters con fecha 27 de diciembre del 2013; quedaba pendiente la devolución de dos especímenes *Abrocoma oblativa* (*Cuscomys oblativus*) y *Agouti thomasi* (*Cuniculus taczanowskii*) considerados como holotipos, clasificados como "F2" y "F4" en el inventario de "restos de fauna" procedentes de Machu Picchu.

En la fecha, el Dr. Richard Burger, en representación de la Universidad de Yale, hace entrega de dos (02) cajas conteniendo dichos especímenes, con lo cual se considera que se han levantado todas las observaciones y ambas partes dan por concluida la ejecución de la restitución del material arqueológico de Machu Picchu extraído por Hiram Bingham el año 1912.

DR. LUIS JAIME CASTILLO BUTTERS  
Viceministro de Patrimonio Cultural e Industrias  
Culturales - Ministerio de Cultura

RICHARD BURGER  
Profesor representante  
Universidad de Yale

Yale University

Peabody Museum of Natural History  
Richard L. Burger, Curator  
Division of Anthropology  
P.O. Box 208118  
New Haven, Connecticut 06520-8118

Campus address:  
170 Whitney Avenue  
Telephone: 203 432-6517  
Fax: 203 436-4434

Lima, 22 de Enero de 2014

Doctor  
**LUIS JAIME CASTILLO BUTTERS**  
Viceministro de Patrimonio Cultural e Industrias Culturales  
de la Republica del Perú  
Presente.


Ref. Carta de fecha 27DIC2013


Estimado doctor:

Nos dirigimos a Ud. en relación a su comunicación de la referencia, por la cual, nos solicitan la entrega de los lotes de "restos de fauna" signado como F2 y F4 en su calidad de "Holotipos" en custodia del Museo Peabody.

Al respecto, debemos de indicar que la Universidad de Yale estricto cumplimiento del Memorándum de Entendimiento suscrito con el Estado Peruano con fecha 23 de Noviembre del 2010, ha cumplido con entregar las piezas arqueológicas de Machu Picchu, por ello, bajo el mismo espíritu en la fecha hemos procedido a entregar el material solicitado, con lo cual, se ha completado la devolución de todas piezas conforme al citado acuerdo.

Atentamente,

  
Richard Burger  
Charles J. MacCurdy Professor of Anthropology &  
Curador, Peabody Museum of Natural History  
Yale University

30/01/14  


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