

Cultural Heritage and Diplomatic Partnerships Between the United States and Peru

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Abstract

The United States and Peru have worked collaboratively and independently to create bilateral programs, which include museum studies internships, anti-trafficking initiatives, exhibit exchanges, and professional exchanges, aimed at returning the research, stewardship, and interpretation of Peruvian cultural heritage property back to Peru. Cultural heritage property includes movable objects of importance to cultural identity, such as archaeological artifacts. This capstone explores how diplomatic relationships influence cultural heritage policies, and shows how these policies have facilitated the shift of study and inquiry of Peruvian archaeological artifacts back to Peruvian institutions.

Much literature is devoted to the development of cultural heritage law and anti-trafficking initiatives in the international arena, Latin America, and Peru, but there is a lack of literature exploring the programs that the United States has created in cooperation with Peru (Guerrero, 2009; Hoffman, 2006; Luke, 2012). This document looks specifically at how two countries that did not have a direct colonial relationship have worked together to create programming for the interpretation, repatriation, and exhibition of Peruvian cultural heritage property. Exploring the influences of cultural diplomacy and soft power that impact the decisions made in the protection, funding, and management of cultural heritage property, we see that programming between these two countries is evolving in a way that aligns with U.S. foreign policy agendas. Through a critical analysis of the foundations of the policy, laws and programs, this research seeks

to identify trends in cultural heritage property programming that have developed as a result of the Memorandum of Understanding between the U.S. and Peru.

Keywords: Peru, repatriation, museum studies, cultural diplomacy, cultural heritage property, soft power

Cultural Heritage and Diplomatic Partnerships Between the United States and Peru

The United States and Peru have collaborated to create bilateral legislation and cooperative cultural heritage programs, which return the research, stewardship, and interpretation of Peruvian cultural heritage back to Peruvians. Many people have addressed the decolonization of cultural heritage from the perspective of a native society working with a direct colonizer, but this situation is different. It is not a traditional postcolonial situation, but instead involves two countries that have a diplomatic relationship and trade relations, who have a history of litigation, with Peru requesting the return and protection of archaeological artifacts and colonial-era artwork.

Cultural diplomacy is a form of soft power that nations use in foreign policy and negotiations with one another. Nye (2008) defines soft power as, "... the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment." He points out that, "[A] country's soft power rests on its resources of culture, values, and policies." Famous examples of U.S. cultural diplomacy include the U.S. Fulbright exchange program, the US' Jazz Ambassadors, and the Peace Corps (Institute for Cultural Diplomacy, n.d.). Cultural diplomacy is often seen in the form of cultural outreach and exchange designed to raise awareness and cultivate understanding between nations (Luke, 2013).

Cultural heritage policies vary greatly from country to country. The cultural heritage policies concerning the United States and their relationship to Peru are for the most part negotiated in a diplomatic setting with the U.S. Embassy and the Peruvian Ministry of Culture. These policies cover repatriation, trade restrictions, cultural

understanding, and aid to cultural causes, show a relationship between these two entities that is cyclical. Peru requests the return of artifacts and art discovered in the U.S., and the U.S. facilitates the return of objects of cultural patrimony and attempts to prevent further trafficking of artifacts, while helping Peru steward, interpret and house returned artifacts. The U.S. is also assisting in the development of Peruvian programs of cultural heritage interpretation, research, traveling exhibitions, excavation, conservation, and protection at archaeological sites and museums.

Much literature is devoted to the study of the development of cultural heritage law and anti-trafficking programs in the international arena, Latin America, and Peru, but there is a lack of literature exploring the programs that the United States has created in cooperation with Peru (Guerrero, 2009; Hoffman, 2006; Luke, 2012). Much of the existing literature focuses on high profile repatriation cases such as the repatriation of the collection of artifacts housed in the Yale Peabody Museum from the Yale Peruvian Expedition to Machu Picchu. In this case the Peruvian government specifically requested the return of objects that had been removed in violation of a contract made in the early 20th century. Together the two groups crafted a legal tool called a Memorandum of Understanding to help resolve the issue and build a collaborative relationship (Guerrero, 2009; Swanson, 2009). Contemporary Peruvian cultural heritage policy and repatriation requests are concentrated on protecting archaeological sites from looting, protecting cultural heritage, and promoting Peruvian culture domestically and abroad, while U.S. policies, especially post Iraq War, are focused on building diplomatic relationships through assistance with cultural heritage preservation (Federal Preservation Institute, 2004).

Methodology

This capstone is the culmination of research completed through two University of Oregon graduate courses, “Art Law” and “Development and Social Change in Latin America.” These courses were selected to deepen the author’s understanding of art and cultural property law while contextualizing these topics in contemporary socio-economic and political issues in Latin America. The coursework provided an opportunity to explore the evolution of cultural heritage management in Peru, while looking at the influences of pluriculturalism and international diplomacy.

The methodological viewpoint of this paper is interpretivist and will look at the influence of diplomatic relationships between the policy makers in the U.S. and Peru, and their influence on the stewardship of cultural heritage. Looking at these programs and laws through a critical lens, this paper aims to highlight the unique aspects of these programs that might be applicable to other countries involved in postcolonial or neocolonial cultural heritage negotiations. These legal and cultural negotiations do not fit neatly into the discussions of traditional decolonization but are part of a hybrid conversation of cultural identity and agency. “The concept of hybridity has aided archaeologists dissatisfied with traditional representations of colonialism that reify a binary opposition of colonizer versus colonized, opening up a theoretical third space in which the ambiguous “in-between” (Bhabha 1994:38) of hybrid cultural formations can be examined” (Liebmann & Rizvi, 2008, p.5). Peru was not directly colonized by the U.S. in the traditional sense so their diplomatic relationship operates in this hybrid space under the influence of economic, political, and military concerns.

The main research question addressed in this capstone is: What bilateral and cooperative diplomatic programs exist between the U.S. and Peru, relating to cultural heritage policy? Sub-questions explore what makes these programs unique and if are they applicable elsewhere. The methods used to form a foundation for this research were document analysis, website analysis, and literature review.

This paper explores three main nodes of information regarding the programs, laws and cultural policy related to repatriation, trade, research and exhibition of Peruvian cultural heritage as it relates to the United States. The program section covers what the two countries have developed with regard to cultural heritage repatriation, study, exhibition, and collaborative partnerships. Laws are the legislation each country has that influenced these interactions, and a background overview of relevant international policies. Cultural policy issues are the cultural policy questions that influence these two other items such as self-representation, diplomacy, history, and other issues that make this discussion unique from other repatriation discussions.

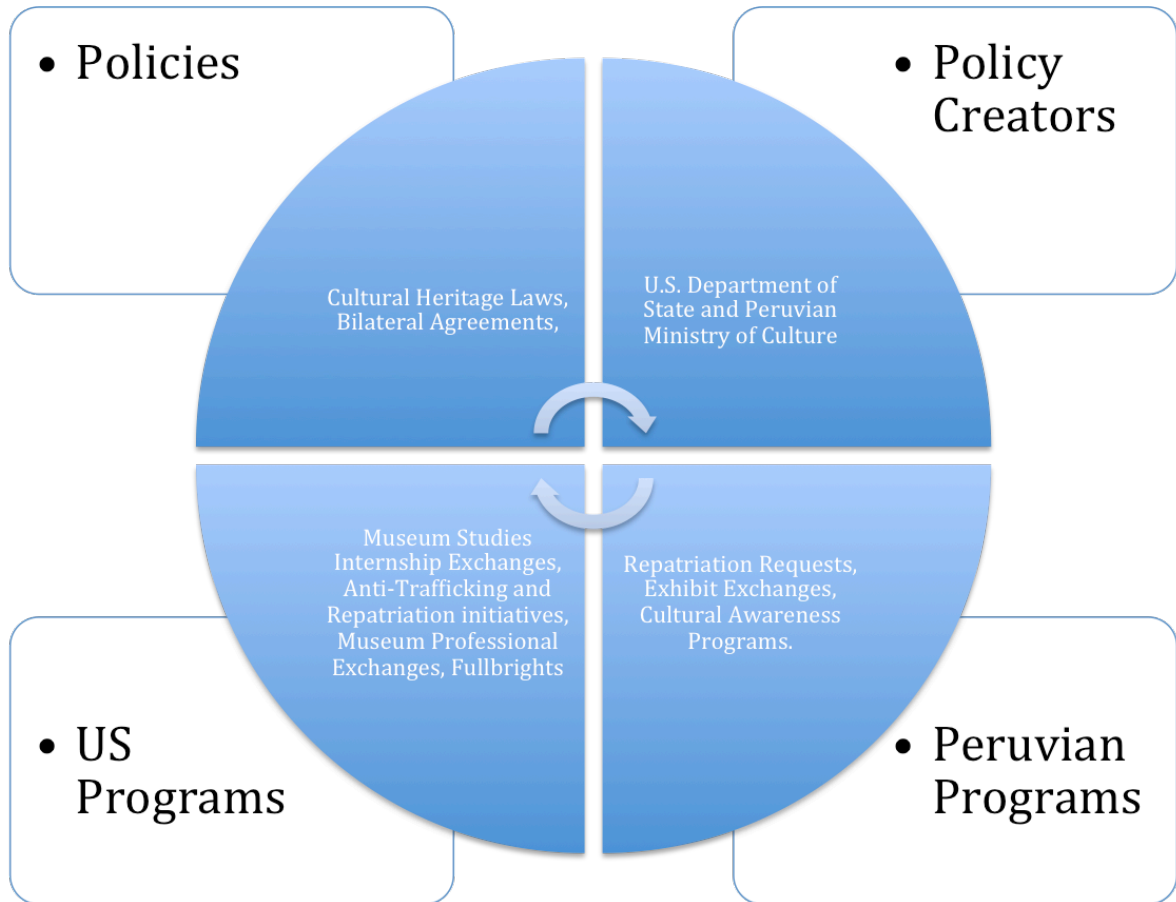


Figure 1

Background

There are two key organizations that make the majority of decisions relating to cultural heritage diplomacy. In the United States various branches of the U.S. Department of State manage this activity, while in Peru it is currently administered by the Ministry of Culture. The Peruvian Ministry of Culture is a government organization dedicated to cultural policy and cultural administration. The ministry was created in 2010 and it replaced the National Institute for Culture (INC), which was in operation from 1971-2010.

The focus of the Peruvian Ministry of Culture is diverse, as it ranges from protection of cultural heritage, to promotion of contemporary and performing arts. Current initiatives listed on the Ministry of Culture website related to cultural heritage include: the promotion of culture, registration and tracking of cultural patrimony, regulation of archaeological sites, objects, export and enforcement or trafficking prevention. The preservation of physical cultural heritage is not their sole focus, which is a change from previous cultural management strategies in Peru (Instituto Nacional de Cultura, 1977). The Ministry of Culture expands on the INC's work to promote cultural management, cultural industries, tourism, contemporary art, performing arts, traditional arts, and addresses issues of diversity and ethnic identity.

In the United States, issues regarding cultural heritage policy and funding mostly are managed by sections of the U.S. State Department. The Office of Public Diplomacy and Foreign Affairs, which manages the Bureau of Educational and Cultural Affairs, who through the Cultural Heritage Center administers funding to the Ambassador's Fund for

Cultural Preservation, is most notable for its influence in cultural diplomacy (U.S. Department of State, n.d.). This office combines cultural heritage policy and programing with diplomacy to improve relationships with other countries, while addressing issues of national security and national policy advancement (Cultural Heritage Center, n.d.).

Additionally, enforcement of anti-trafficking initiatives is executed through the Department of Homeland Security, which houses the U.S. Immigration and Customs Enforcement (ICE), Customs and Border Patrol, and Immigration and Customs Enforcement, and the Department of Justice, which houses the Federal Bureau of Investigation (Luke, 2012).

There are a few significant moments to note in the history of Peruvian and U.S. cultural property negotiations. These are the looting of the archaeological site Sipán in the early 1980s, the legal battle between Yale University and the Republic of Peru, and several cases involving the repatriation of art found in private and public U.S. collections in the late 1900s.

Cultural Policy

During the late 1980's early 1990's the market for plundered Peruvian artifacts exploded after the discovery and looting of pre-Hispanic gold from the archaeological site Sipán in Lambayeque, Peru (Atwood, 2004). In response to this rise in black market trade, Peru and the United States authored emergency legislation designed to prohibit the movement of these artifacts into the United States. This legislation took the form of import restrictions and included a list of items that, from that point forward would be considered illegal to import into the United States. The U.S. Department of the Treasury, U. S.

Customs Department published the, “1990 Emergency Restriction, Federal Register Notice of Import Restrictions,” which paints a picture of concern for foreign relations and diplomacy as motivators for creating this legislation.

The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce. (Federal Register, May 7, 1990; 55(88): 19029-19030)

This is only part of the story though, according to Atwood, during the late 1980’s and early 1990’s, there were other motivating factors behind the United States interest in Peruvian policy decisions in general, including military and narcotics concerns (2004, p.91). It was at this time that the United States increased its funding to Peru dramatically on the contingency that Peru would allow the United States military to be present in the country for the purpose of fighting the narcotics trade. “U.S. aid increased from \$8.7 million in fiscal year 1989 to \$168.8 million in fiscal year 1992” (Atwood, 2004). In fiscal year 2012, total U.S. Government Assistance to Peru was US\$ 132.8 million. 55% of that assistance was devoted to anti-narcotics efforts, making it the largest area of aid. The smallest category of this funding is for projects relating to cultural patrimony, which received US\$ 0.1 million. The United States Embassy in Peru states this funding is designated for the “preservation of heritage sites and cultural works”

and “conservation training for staff of museums and heritage sites” (USG Assistance to Peru, 2011). This funding is separate from the funding distributed through the grant process of the U.S. Ambassadors Fund.

There are different motivations for U.S. participation in matters of cultural administration, but Thomas Pickering, a former State Department Undersecretary for Political Affairs, as quoted by Atwood, explains, “Frankly, if looted or stolen artifacts appear in U.S. museums and auction houses, they can harm our bilateral relations with other countries” (Atwood, 2004, p. 159). If our country blatantly ignored requests for return of Peruvian artifacts that are part of their cultural heritage, we would not have positive foreign relations with them (Luke, 2012). Trafficking is an area that is accessible to foreign intervention and can be situated in terms of anti-terrorism and security rhetoric, which help it secure funding. Outwardly it appears the U.S. is fighting for the rights of Peruvians to manage their own cultural heritage. But diplomatic support of cultural administration in foreign countries has been shown as an effective soft power tool, used to garner support and build positive relationships (Nye, 2008). When one looks at the language used to describe the purpose of American diplomacy as promoted by the Under Secretary for Public Diplomacy and Public Affairs, they see a direct linkage between diplomatic outreach, cultural initiatives, and national security.

The mission of American public diplomacy is to support the achievement of U.S. foreign policy goals and objectives, advance national interests, and enhance national security by informing and influencing foreign publics and by expanding and strengthening the relationship between the people and Government of the United States and citizens of the rest of the world.

The Under Secretary for Public Diplomacy and Public Affairs leads America's public diplomacy outreach, which includes communications with international audiences, cultural programming, academic grants, educational exchanges, international visitor programs, and U.S. Government efforts to confront ideological support for terrorism. (Under Secretary for Public Diplomacy and Public Affairs)

The U.S. uses cultural property and cultural heritage as tools of negotiation in cultural diplomacy. “The modern concept of ‘cultural property’ was coined by the Hague Convention of 1954 and is based on the belief that ‘damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind since each people makes its contribution to the culture of the world’” (Barkan, 2002, p. 22). But, beyond the idea of preserving the worldwide heritage, there is the topic of self-identification through cultural heritage. “Negotiation of identities often takes place through the medium of cultural property, such as art, religious and other artifacts, sacred sites, and even human remains. Possession of one’s cultural property seemingly creates a level playing field among powerful nations and weaker nations or minorities within nations” (Barkan, 2002, p. 16).

Peru is seeking to control both its property and identity. Peruvian cultural identity has changed throughout cultural heritage policies implemented since independence in the country. Past policies and programs have been criticized as being too top-down and modeled on European ways of management (Losson, 2013). Focusing on the Ministry of Culture, Losson (2013) warns that, “The Ministry inherits the flaws of the National Institute of Culture, and must address various challenges: the improvement of heritage

management; the inclusion of indigenous populations in a never established national identity; a renewed scheme of promotion of the arts and incentives to cultural industries” (p.20).

Postcolonial cultural heritage management is evolving around the world. “By the late twentieth century, newly independent States internalized the dynamic of their colonial predecessors, on a lesser scale, to unify all peoples within one territory and one national identity. They inherited territorial boundaries defined by the former colonial powers. They strove to establish national museums to house and represent a national identity circumscribed by these boundaries. The campaign for restitution of cultural objects from imperial collections was deployed by these governments to enable the (re)constitution of a national cultural patrimony. It was used as a political tool to galvanize diverse communities behind a unified national identity.” (Vrodljak, 2006, p. 197). Peru is a pluricultural country and over the years way the cultural administration’s definition of what it means to be culturally Peruvian has evolved. At times Peruvian cultural administration has been focused on the country’s indigenous roots, at the exclusion of Criolla, Afro-Peruvian, and other ethnic groups. For the past decade there has been a movement away from preserving “folkloricized” ideals about cultural groups, towards self-identified and pluricultural definitions of culture that embrace the diversity of Peru’s postcolonial history (Silverman, 2002).

With the advent of the new Ministry of Culture and the expanded collaborative programs, we see a movement away from funding of just preservation programs from both the U.S. and Peru. As Barkan points out, “The desire to ‘preserve’ is not merely altruistic, since often ‘protection means control,’ and some advocates are motivated

more by ‘controlling’ than by ‘protecting’ the objects. This relates back to the issue of restitution as a form of neocolonialism.” (2002, p. 27). There are many proposed justifications for the theft and trade of artifacts. Some believe that international institutions and private collectors who have more resources to care for the artifacts are more entitled to them (Atwood, 2004). This rationalization bypasses the right of a group of people to determine what to do with their own cultural heritage, but is a part of the history of the illicit artifact trade.

While the U.S. may agree that a country has a right to its cultural property, it may not have laws in place that support the restitution of those objects unless they have additionally negotiated a Memorandum of Understanding with that country. These agreements are formed with the intent to preserve cultural identity at the request of the source country, or to improve diplomatic relations.

Laws

The most important thing to take away from a study of Peruvian cultural property legislation development is that there were complications. As they sought to regain control of their patrimony they struggled with laws that were at times contradictory or unenforceable. There are no international laws, but there are international agreements that influenced the development of cultural property law in both the U.S. and Peru. The three main legal considerations when studying international repatriation are U.S. Import restrictions, source country export restrictions, and bilateral agreements.

The first international convention that had a major influence on cultural property law was the “Hague Convention for the Protection of Cultural Property in the Event of

Armed Conflict” in 1954. This was a post war reaction that called for protection of cultural property during war and conflict. (Hoffman, 2006, p. 11). Following that in 1970 was the “UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,” which was a treaty negotiated between several countries that aimed to slow illegal trade of cultural heritage. It was initially spurred on by concerns for looting in Mexico and Peru. The convention sparked the use of bilateral agreements for negotiating import restrictions on cultural heritage on a country-by-country basis. (Brodie, 2006, p.41).

The United States and Peru have authored several laws respectively, and collaboratively created bilateral agreements, such as “Memorandum of Understanding between the Government of the United States of America and the Government of Peru concerning the imposition of import restrictions on archaeological material from the Pre-Hispanic cultures and certain ethnological material from the colonial period of Peru” (MOU), which address the issue of illicit trade in Peruvian artifacts in the United States and restricts importation of Peruvian artifacts from 12,000 B.C. to approximately 1532 A.D.

There are a few considerations that must be made when looking at the legal issues of cultural heritage negotiations between the United States and Peru. How the case is pursued depends on how the artifacts were excavated, when they came to the United States, and under what circumstances. The disputed art and artifacts may be part of the black market antiquities trade, part of an archaeological excavation that did not have proper export authorization, or may be of unknown provenance and part of a title dispute. Legislation has been adopted internationally and in the United States in response to the

international trade in plundered artifacts. The United States previously did not enforce other countries export laws, and still will only enforce them when they have some form of additional agreement such as a memorandum of understanding that lists specific prohibited items.

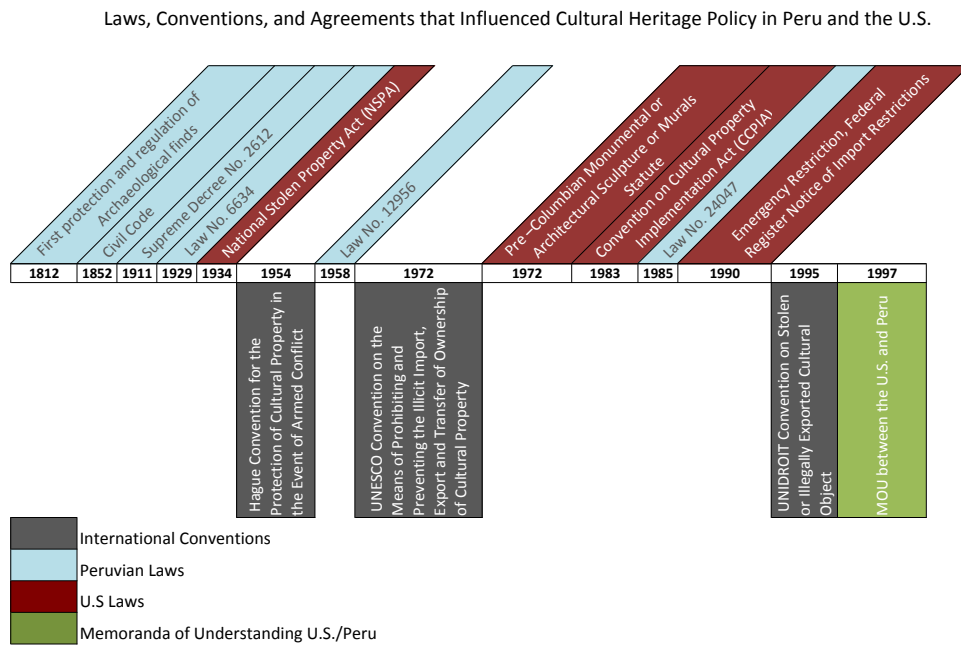


Figure 2

Past Peruvian legislation begins in 1821 with the earliest protection and regulation of archaeological finds and excavations. This code was modified later by the 1852 Civil Code, which gave title of archaeological finds to the discoverer unless the excavation was on private land and then the title was shared between the landowner and the discoverer (Hoffman, 2006, p. 100). Continued changes to this concept were put into

place during the time that Hiram Bingham and his Yale Peruvian Expedition were excavating Machu Picchu (Swanson, 2009). Supreme Decree No. 2612 (1911) vested title of undiscovered objects to Peru, but was not retroactive and still allowed for private ownership of artifacts previously excavated. Following a decade later Peru again attempted to lay claim to its cultural property with Law No. 6634 in 1929. This law gave title to all cultural property to the state (Hoffman, 2006, p. 100). “Declaring cultural artifacts as patrimony transforms a particular object or a site into an essence of the nation...Both material and spiritually, the artifacts are adopted by the nation and are invested with the historical memory to become national symbols. The physical objects evoke national historical imagination and provide a focus for communal emotions. While the objects themselves are often aesthetically pleasing and even universally esteemed, their exquisite quality is surpassed by their national significance” (Barkan, 2002, p.22). These laws signal a rising concern for the liquidation of cultural heritage.

Peru continued the battle to gain sovereignty over its cultural heritage and in 1958 issued Law No. 12956, which addressed a national registration of cultural property. This registration system was not well funded and was criticized as ineffective (Hoffman, 2006, p. 101). Moving forward to the 1980s, the emphasis shifts from domestic legislation to international agreements. The final law of note in that era is Law No. 24047 (1985), which defined all pre-Hispanic artifacts, both private and state owned, as cultural property. Free trade of these items was allowed in Peru with some limitations. Exports required a Supreme Resolution, and this was in hopes of essentially locking down all trade (Hoffman, 2006, p. 101). Previously, in order for an importer to be prosecuted in the

U.S. under the National Stolen Property Act (NSPA), the foreign country must have laws that state they own their cultural heritage and not just prohibit the exportation of these objects (Kobrinski, 2011, p.6). This has been overcome through the use of bilateral agreements between the two countries.

In the past, conflicting Peruvian laws made it difficult for U.S. courts to rule in favor of returning artifacts. Issues with Peruvian law in the U.S. include the fluidity of modern political boundaries versus historical boundaries, and language that did not stand up to translation. In case of *Peru v. Johnson*, modern political boundaries varied from historic ones and there was difficulty proving that an unregistered item came from a certain country. This is an issue in particular with cultures that had historically extended into other territories which differ from current political boundaries. Experts could not conclusively prove that the items in question did not come from other neighboring countries.

The United States deals with cultural property repatriation through U.S. statutes, international agreements, and bilateral agreements. Before specific cultural heritage policies were created the, “National Stolen Property Act, 18 U.S.C. §2314-2315” was used to pursue repatriation. “That act made it a crime to receive or sell, in U.S. or foreign commerce, goods known to the holder to have been stolen...” (Atwood, 2004, p.164). But one had to prove the property was actually stolen from the original country. If the source country did not have patrimony laws clearly protecting cultural heritage or an agreement with the U.S. an artifact might not necessarily be considered stolen (Hoffman, 2006, p. 165).

Specific U.S. cultural heritage legislation began with the “Pre -Columbian

Monumental or Architectural Sculpture or Murals statute of 1972 Public Law No. 92-587, 19 U.S.C. § 2091 et seq.” which “...prohibited the import of pieces of aboveground structures from most of Latin America without a permit from the source country” (Atwood, 2004, p.146). This legislation did not cover underground artifacts. Like many other laws, it hinges on who has legal title to the property. “This law authorizes the customs to seize a monumental or architectural sculpture or mural...unless the importer can show it was legally exported or was outside the jurisdiction prior to 1979....shall be seized and subject to forfeiture under the customs laws” (Hoffman, 2006, p.164). The seized property is offered for return at the expense of the source country or it will, “...be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws” (Hoffman, 2006, p.164). This law was rather limited in scope and a more powerful U.S. act, the “Convention on Cultural Property Implementation Act, 19 U.S.C. §2601,” (CCPIA) followed in 1983.

The CCPIA “...implements the 1970 UNESCO convention” (Bureau of Educational and Cultural Affairs). It is a civil statute that applies to post 1983 imports of cultural property. It is considered an additional tool in preventing cultural heritage trafficking and not a replacement for the NSPA. (Brodie, 2006, p.46). CCPIA only implements two sections of the UNESCO convention, Article 7(b), and Article 9. These two sections deal with stolen property and call for all participating states to prevent the importation of illicit artifacts. Unfortunately, the definition of stolen property in CCPIA only covers registered or inventoried items. (Kobriniski, 2011, p. 9). Other limitations include that it only applies to parties of the UNESCO Convention who make formal requests and the requirement of provenance to prove time of

excavation and export (Brodie, 2006, pp. 50-51). Later critics of this policy point out that it fails in times of war or crisis. "...the final legislation embodies a policy of prohibiting the importation of cultural property and returning it to the source nation only if (1) it was previously identified and then stolen from an institution or public monument (19 USC § 2607), or (2) pursuant to a request from a foreign country to the extent necessary to prevent pillage (19 USC §2602-06)" (Hoffman, 2006, p.160).

Beyond purely domestic legislation is the realm of the bilateral agreement. This type of agreement is negotiated between two countries seeking to solve some sort of problem that is beyond the reach of their respective domestic laws. The United States has bilateral cultural heritage agreements with twelve other countries.

In the late 1980s Peru and the United States developed this emergency legislation to slow the trade of artifacts from Sipán. Though the United States had signed into effect the "Convention on Cultural Property Implementation Act" in 1983, which was based on the "1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property," it had not created legislation specific to Peru until 1990, when emergency import restrictions were authored that outlined the types of items most likely to be taken from looted sites. These import restrictions were created in response to a request from the Peruvian government and include a list of items that from that point forward would be considered illegal to import into the U.S. Peru already had legislation that was designed to prevent export, but we did not enforce it in our courts. The "1990 Emergency Restriction, Federal Register Notice of Import Restrictions," was published by the Department of the Treasury, Customs Department.

In 1997 the “Designated List” was expanded and a bilateral agreement was signed by Peru and the U.S, called the “Memorandum of Understanding between the Government of the United States of America and the Government of Peru concerning the imposition of import restrictions on archaeological material from the Pre-Hispanic cultures and certain ethnological material from the colonial period of Peru” (MOU). This agreement was considered to be, “the strongest statement of action against looting by any government since the UNESCO convention itself” (Atwood, 2004). The original MOU restricts import based on the UNESCO convention and the “Designated List”, but also calls for cooperation and collaboration from academic institutions, non-governmental, and private organizations in the protection and promotion of the cultural patrimony of Peru. It addresses exceptions to the import restrictions for study and exhibition and calls for the creation of training programs for local archaeologists and museum staff, as well as collaborative efforts to conserve and protect the cultural heritage of Peru. This document has been renewed every five years since it was originally authored and in the most recent version drafted in 2012 it now has been amended to include terminology related to security, “...focusing on the criminal organizations that drive the looting, and on devising and imposing appropriate penalties on those convicted of crimes against the heritage” (MOU 2012).

What is most important to note about the MOU is that it only applies to preventing imports after the date it was signed. It does not cover items that were brought in before that 1997 and it is not directed at general repatriation claims, but at the prevention of trafficking. The items on the designated list and the MOU have expanded over time to include not just the Sipán artifacts but, also other pre-Columbian, and some

colonial items. The limitations were “...applied to the country’s entire ancient heritage...applied to virtually every kind of artifact, object, or trinket from the vast sweep of Peruvian pre-Conquest history, seven thousand years of progress from hunter-gatherers to Pizarro’s landing in 1532. For the first time, Spanish colonial artifacts were also covered, although only those objects that showed indigenous cultural influences or were related to evangelization of the Indians” (Atwood, 2004, p.158).

The MOU requires U.S. Customs and Border Patrol to seize listed objects and initiate forfeiture action regardless of proof of ownership by Peru, which is a departure from previous U.S laws. (Kobriniski, 2011, p. 10).

Programs

There are collaborative cultural heritage programs that originate in the U.S. or Peru, and programs that are created through bilateral diplomatic means between the two countries. The U.S. Department of State houses several units focused on cultural affairs including the U.S. Bureau of Educational and Cultural Affairs and the Public Affairs Section of the American Embassy. The most familiar program of the U.S. Bureau of Educational and Cultural Affairs is the Fulbright Program, which sends scholars, students, and artists abroad as part of an international exchange program.

Bilateral cooperative diplomatic programs cultivated by the Public Affairs Section of the American Embassy and the Ministry of Foreign Affairs of Peru and the Ministry of Culture of Peru serve several purposes: prevention of trafficking, cultural awareness and promotion, academic collaboration, institutional collaboration, and education.

Funding for cultural heritage preservation around the world is provided by the U.S. Ambassadors Fund For Cultural Preservation, which is administrated by the Cultural Heritage Center, a part of the U.S. Department of State's Bureau of Educational and Cultural Affairs. "The U.S. Ambassadors Fund for Cultural Preservation provides direct grant support for the preservation of cultural sites, cultural objects, and collections, as well as forms of traditional cultural expression, in eligible countries around the world. Each year, U.S. ambassadors in more than 130 countries are invited to submit project proposals that address important cultural preservation needs." The U.S. Ambassadors Fund is not the only cultural heritage funding under the management of the Cultural Heritage Center.

In 2004 the Cultural Heritage Center was given funding by congress to create the Cultural Antiquities Task Force (CATF). This funding is separate from the Ambassador's Fund, and in recent years has been around \$1,000,000.00 (Luke, 2013). This group was originally focused on recovering, documenting, and protecting Iraqi artifacts and increasing security of at-risk cultural heritage (Luke, 2012). It continued on and expanded its security and heritage management training efforts to other regions. The CATF partners with other U.S. and international anti-trafficking organizations.

Trafficking prevention efforts in the U.S. are housed in the Department of Homeland Security (DHS) in the branch of the U.S. Immigration and Customs Enforcement (ICE), which serves as, "...the principal investigative arm of the U.S. Department of Homeland Security" (ICE, n.d.). While U.S. Immigration and Customs Enforcement is responsible for investigating and repatriating artifacts found to be in violation of our terms of agreement with other countries, U.S. Customs and Border

Protection (CBP), works at the U.S. borders and ports of entry preventing the import of stolen or prohibited artifacts assisting U.S. Immigration and Customs Enforcement with investigations. According to the Cultural Heritage Center, these groups also collaborate with INTERPOL, the international police organization and the FBI Art Crime Team who investigate, and recover illicit cultural property.

In addition to preventing the illegal trade of archaeological artifacts and cultural patrimony, the United States and Peru have created several collaborative programs aimed at training specialists, improving museum conditions, educating, and creating museum exhibitions. The United States Embassy in Lima, Peru previously sponsored an internship for graduate students in museum studies and conservation programs, to help with projects at Peruvian museums since 2002. “For the tenth consecutive year, the U.S. Embassy in Lima is undertaking a series of programs to support cultural preservation under the Memorandum of Understanding (MOU) for Cultural Patrimony between Peru and the United States” (Museum Internship Program brochure 2011).

The U.S. Department of State previously collaborated with Peruvian and other museums through the IPAM Exchange Program. The Arizona State Museum explains that the group, “International Partnerships Among Museums (IPAM) is an institutional linkage program through the American Association of Museums (AAM) that gives museums in the United States and other countries an opportunity to become acquainted, develop a project together, and carry out that project during consecutive one-month visits of a staff member from each institution.” The IPAM program ended and was replaced in 2007 by the new Museums and Community Collaborations Abroad Program, now known as the Museums Connect program (MCP). The MCP is a partnership between U.S. State

Department, who funds the program and American Alliance of Museums (formerly the American Association of Museums), who manages the program. “The Museums Connect program strengthens connections and cultural understanding between people in the United States and abroad through innovative projects facilitated by museums and executed by their communities. The program’s mission is to build global communities through cross-cultural exchanges while also supporting U.S. foreign policy goals, such as youth empowerment, environmental sustainability and disability rights awareness” (AAM, n.d.).

Museums in the United States partner with a museum abroad that has been pre-approved by application to and review by the foreign institution’s U.S. Embassy. Only museums that have received an endorsement from the U.S. Embassy are allowed to submit proposals to receive support in facilitating these exchanges (AAM, 2013). This led to some criticism in the field, which claimed the State Department had too much influence in selecting which countries receive funding (Ledbetter, 2007). The AAM responded to this public criticism and explained that the museum self-selection process and final review of proposals by a group of professional peers countered this influence (Ledbetter, 2007). However the public only sees the proposals that are coming from institutions preapproved by the U.S. Embassy.

Exhibits and loans are the final facet of the collaborative bilateral diplomatic programs inspired by the MOU between the U.S. and Peru. The export restrictions on Peruvian cultural property are so specific that in the past there were very few situations that will allow artifacts out of the country. Exceptions to these export restrictions, as

outlined by the MOU, allow for artifacts to be loaned out for exhibitions in foreign institutions.

The Government of Peru will consider granting, within current Peruvian law, long-term loans of objects of archaeological and ethnological interest for exhibit or study at museums and academic institutions in the United States, under circumstances in which such exchange does not jeopardize the cultural patrimony of Peru (MOU 2012). Other exceptions include a provision that allows Peruvian Diplomats to have these objects in their diplomatic residences.

Exhibitions of Peruvian artwork are also organized by the Public Diplomacy Department of Peru, Washington D.C. The Public Diplomacy Department supports and coordinates cultural activities from Peruvian artists who come to the United States for presentations and exhibitions in all artistic fields. It organizes cultural and artistic performances at the Embassy's Art Gallery. It also assists and provides American citizens with information about Peru's culture (Peruvian Public Diplomacy Department).

Conclusion

The bilateral and collaborative programs created to support efforts to stop trafficking, promote cultural awareness, and preserve cultural heritage, stem from many desires on both sides. U.S. programs have an underlying focus on security and diplomacy, while Peruvian programs are aimed at preserving national identity, promoting cultural awareness, and reclaiming their past. U.S. efforts in this realm are not focused solely on Peru, with the exception of the mandates of their collaboratively created MOU. The only bilateral cultural heritage program profiled in this paper that is unique to Peru is the

now discontinued U.S. Embassy in Peru Museum Internship Program. A large issue that is brought up by this study, and many other investigations of international cultural heritage legislation, is the lack of universal international legislation that is more holistic and than the current conventions.

International criticism of the MOU and CCPIA asks us to consider if these measures are even effective at stemming the flow of trafficked artifacts out of Peru or if they just shift the trade to countries with less strict regulations. Luke and Kersel explain that, “the collecting and dealing communities argue that over the 28 years of the CCPIA the intended outcome—a reduction in looting in the requesting countries – has not occurred and that CCPIA increasingly serves only political goals, not in-country concrete objectives like the cessation of looting” (2013). The MOU at least offers more comprehensive measures aimed at programmatic support that extend beyond mere trade restrictions.

International legislation regarding cultural heritage has been difficult to create and institute. Barkan (2002), points out that, “Not surprisingly, global cultural diversity frustrates efforts for homogenous generalizations and international agreements regarding cultural property” (p.41). In the U.S. we struggle to find a way to work within our legal system while still respecting the rights of other countries’ to their cultural property. While the solution to comprehensive international cultural property legislation may not be easily achieved, it is possible that the U.S. could replicate its already existing programs and legislation like the MOU.

Unfortunately, the U.S. Embassy’s Museums Internship Program in Peru, which was a direct result of the MOU, will not be offered in 2014. Perhaps the model of this

type of collaborative program could be refined and expanded to other countries. But, it is possible that that style of support has run its course. Perhaps instead, embassies should continue to develop programming and support designed to cultivate sustainable international partnerships, while discontinuing the efforts to employ American researchers and staff in international institutions. If their motivations are to improve the impression of the U.S. abroad, then they should allow the shift to occur where we withdraw from our past of academic colonization and allow Peruvian institutions to guide the process of caring for and interpreting their past. This would be much more beneficial than continuing to fund exchanges that send American students to work in these institutions.

Overall we see a movement in U.S. programing that is leading away from programs that exist to support the transition of stewardship and study of Peruvian artifacts back to their home country, towards programs that are focused on security and protection or cross-cultural exchange (Luke 2013, 2014). Outside of the Museums Connect program, which fosters cross-cultural exchange, we are seeing a major increase in the linkage between national security and trafficking prevention.

As long as issues of cultural heritage management and trafficking prevention are tied to funding that in 2012 was 82% aimed at anti-narcotic and military efforts, there will be a question about what is the true purpose of U.S. support for Peruvian cultural administration (Embassy of the U.S. in Lima, Peru, 2012). If the U.S. continues to embrace the shift towards building sustainable relationships with Peru regarding cultural property, and does not get lost in the idea of tying national security to heritage

preservation, they will achieve more successful culturally diplomatic results in the long run.

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Appendix A

Bilateral Agreement – According to lawdictionary.org a bilateral agreement is, “a term, used originally in the civil law, but now generally adopted, denoting a contract in which both the contracting parties are bound to fill obligations reciprocally towards each other.”

Cultural Diplomacy - The use of culture as a tool of soft power. Includes cultural exchanges or funding of cultural initiatives in other countries.

Cultural Heritage - Objects of importance to cultural identity, such as archaeological artifacts or art, also known as cultural property. In this paper, it refers to movable objects. “...the term ‘cultural heritage’ is able to encompass a wide range of cultural manifestations from the transient, perishable and moveable through to the immovable. The term ‘cultural property’ places emphasis on the property law aspects of cultural expressions.” (Vrodljak, 2006, p. 7).

Cultural Heritage Property - Objects of importance to cultural identity, such as archaeological artifacts or art. In this research I am looking specifically at moveable cultural heritage, also known as cultural property

Cultural Property - For the purposes of this study cultural property will be defined by the “UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,” article I. (1971).

“...the term ”cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material
(excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;

- (iii) original engravings, prints and lithographs;
- (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest
(historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

Cultural Patrimony - Another term for cultural property that refers to objects of importance to national identity, can include archaeological artifacts, artwork, dance, performance, or intangible heritage.

Neocolonial - “The use of economic, political, cultural, or other pressures to control or influence other countries, especially former dependencies.”

(www.oxforddictionaries.com)

Postcolonial - “At the most basic level postcolonial approaches challenge traditional colonialist epistemologies, questioning the knowledge about and the representation of colonized “Others” that has been produced in colonial and imperial contexts. Postcolonial theories address the complex effects of colonization, colonialism, and decolonization on cultural formations acknowledging that long periods of forced

dependency and hegemony have profound impacts not only on the societies of the colonized but on those of the colonizers as well.” (Liebmann & Rizvi, 2008, p.2).

Repatriation – The return of archaeological artifacts or objects of cultural patrimony to the source country or community.

Soft Power - “Soft power is the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment. A country’s soft power rests on its resources of culture, values, and policies” (Nye, 2008)

Source Country - Country of origin of cultural heritage property.