

A METEORITE AND A LOST CITY: MUTUALLY BENEFICIAL SOLUTIONS THROUGH ALTERNATIVE DISPUTE RESOLUTION

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Hurling through the universe at speeds upwards of 40,000 miles per hour,¹ more than 10,000 years ago,² the fifteen and one-half-ton ball of iron³ smashed through Earth's outer atmospheric layer, realizing its terminal velocity of approximately 400 miles per hour,⁴ before it crashed in present-day Alberta, Canada.⁵ Geographic shifting eventually brought the meteorite to rest in a spot near the Willamette River in Oregon.⁶ The Willamette Meteorite, as it is known today, sits in the Rose Center for Earth and Space at the American Museum of Natural History (AMNH) in New York City,⁷ surrounded by all the modern contrivances and gift shops of a twenty-first century museum. But the Willamette Meteorite is known by another name to some—*Tomanowos*⁸—and to those who know the meteorite as this “Heavenly Visitor,”⁹ the history of the ownership of *Tomanowos* is as tumultuous as the journey from

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¹ Dean Rhodes, *A Decade of Understanding*, SMOKE SIGNALS: A PUBLICATION OF THE GRAND RONDE TRIBE, July 1, 2010, available at <http://weblink.grandronde.org/weblink8/0/doc/22903/Page1.aspx>, at 3 [hereinafter SMOKE SIGNALS].

² *Id.* at 2.

³ AMERICAN MUSEUM OF NATURAL HISTORY: WILLAMETTE METEORITE, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b-cullman-hall-of-the-universe/willamette-meteorite> (last visited Sep. 3, 2012).

⁴ AMERICAN METEOR SOCIETY – FIREBALL FAQs, <http://www.amsmeteors.org/fireballs/faqf/#12> (last visited Nov. 12, 2011).

⁵ SMOKE SIGNALS, *supra* note 1, at 2.

⁶ *Id.*

⁷ AMERICAN MUSEUM OF NATURAL HISTORY: WILLAMETTE METEORITE, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b-cullman-hall-of-the-universe/willamette-meteorite> (last visited Sep. 3, 2012).

⁸ Martha Graham & Nell Murphy, *NAGPRA at 20: Museum Collections and Reconnections*, 33 MUSEUM ANTHROPOLOGY 105, 111 (2010).

⁹ *Id.*

the asteroid belt between Mars and Jupiter¹⁰ that brought it here must have been. At around the time that the Willamette Meteorite found its way to New York City,¹¹ roughly 4,000 miles south, in Peru, the famed Hiram Bingham was just stepping foot onto the ancient stones of the lost city of the Incan Empire—Machu Picchu.¹² After this first visit in 1911,¹³ Bingham made two more visits, eventually sending thousands of artifacts back to Yale University for study and catalogue.¹⁴ Similar to the Willamette Meteorite, there was a dispute as to the ownership and legal title to the artifacts from Machu Picchu sent by Bingham to New Haven.¹⁵

The disputes surrounding both the Willamette Meteorite and the artifacts from Machu Picchu have ended; in 2000, the AMNH came to an agreement with the Grande Ronde Tribe,¹⁶ and in 2010, Yale agreed to send back the Machu Picchu artifacts Bingham had found in Peru.¹⁷ While both disputes have been resolved, the road to their resolution was neither straight nor smooth. In both cases, the disagreement over the ownership of the cultural property in question first brought the parties to court; the Grand Ronde Tribe brought suit against the AMNH under the Native American Graves Protection and Repatriation Act (NAGPRA),¹⁸ while Peru had been in and out of judicial proceedings with Yale for much longer.¹⁹

But, in each case, the formal judicial proceedings were unable to adequately resolve the problem. In the case of the Willamette Meteorite, it took direct talks—negotiation, using techniques similar to those used in mediation—between the Grand Ronde Tribe and the AMNH, to arrive at a successful accord ending the disagreement.²⁰ In the case of Peru and Yale University, the parties

¹⁰ Benjamin Weiser, *Museum Sues to Keep Meteorite Sought by Indian Group*, N.Y. TIMES, Feb. 29, 2000, <http://www.nytimes.com/2000/02/29/nyregion/museum-sues-to-keep-meteorite-sought-by-indian-group.html>.

¹¹ SMOKE SIGNALS, *supra* note 1, at 2.

¹² CHRISTOPHER HEANEY, *CRADLE OF GOLD: THE STORY OF HIRAM BINGHAM, A REAL-LIFE INDIANA JONES, AND THE SEARCH FOR MACHU PICCHU* 83–96 (2010).

¹³ Stephanie Swanson, *Repatriating Cultural Property: The Dispute Between Yale and Peru Over the Treasures of Machu Picchu*, 10 SAN DIEGO INT'L L.J. 469, 472 (2009).

¹⁴ *Id.*

¹⁵ *Id.* at 481–82.

¹⁶ Graham & Murphy, *supra* note 8, at 112.

¹⁷ Sarah Nutman, *Returning to Machu Picchu*, YALE DAILY NEWS, Feb. 14, 2011, <http://www.yaledailynews.com/news/2011/feb/14/returning-to-machu-picchu/>.

¹⁸ Graham & Murphy, *supra* note 8, at 112. *See also* Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013 (2006).

¹⁹ Swanson, *supra* note 13, at 481–86.

²⁰ Graham & Murphy, *supra* note 8, at 112. *Accord* SMOKE SIGNALS, *supra* note 1, at 3–6.

were finally able to reach a successful agreement in 2010,²¹ after formal judicial proceedings had failed to achieve results, and a number of rounds of indirect and direct mediation and negotiation among government officials, outside neutrals, and the parties themselves were used.²² In the last decade, mutually beneficial agreements, like those reached by the Grand Ronde Tribe and the AMNH, as well as between Peru and Yale, have become more common in resolving cultural property disputes.²³

This Note proceeds in a number of parts. Part I will present two case studies: First, the Willamette Meteorite and the agreement between the Grand Ronde Tribe and the AMNH; and second, the recent agreement between Peru and Yale University regarding artifacts from Machu Picchu. Part II will briefly explain and outline Alternative Dispute Resolution (ADR) and the methods through which successful resolution to disputes are achieved, specifically noting that in the last decade, cultural property disputes have been increasingly resolved through ADR. Part III will compare the agreements reached in both instances, proposing several reasons why these agreements worked better than the formal judicial proceedings rejected by each party. Part IV will suggest that the use of formal judicial proceedings to resolve cultural property disputes is less effective as compared with ADR, using the aforementioned case studies as those exemplifying this resolution scheme and promoting its usage. Part V will be the conclusion to this Note.

I. THE CASE STUDIES

A. *The Willamette Meteorite and the American Museum of Natural History*

Just off of West 81st Street, between Columbus Avenue and Central Park West, stands the Rose Center for Earth and Space

²¹ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

²² Sarah Nutman, *Digging into Peru deliberations*, YALE DAILY NEWS, Feb. 15, 2011, <http://www.yaledailynews.com/news/2011/feb/15/digging-peru-deliberations/>.

²³ Stacey Falkoff, Note, *Mutually-Beneficial Repatriation Agreements: Returning Cultural Patrimony, Perpetuating The Illicit Antiquities Market*, 16 J.L. & POL'Y 265, 265 (2007). See also Joshua S. Wolkoff, Note, *Transcending Cultural Nationalist and Internationalist Tendencies: The Case for Mutually Beneficial Repatriation Agreements*, 11 CARDOZO J. CONFLICT RESOL. 709, 709 (2010).

(“The Planetarium”),²⁴ which is part of the American Museum of Natural History on Manhattan’s Upper West Side. The Planetarium itself is a gleaming glass prism,²⁵ containing exhibits,²⁶ gift shops,²⁷ and administrative offices.²⁸ About fifteen yards before the restrooms, just to the right, stands the Willamette Meteorite.²⁹ While today it is static and serene, the journey the meteorite took—both physically and legally—to arrive in New York City was inapposite. And it is at the end of this journey, with the Willamette Meteorite comfortably protected in a multi-million dollar case,³⁰ that the question must be asked: Why did the Grand Ronde Tribe want the meteorite back in Oregon?

1. Religious Practices, Oregon, and NYC

After being caught in the Earth’s gravitational pull some 13,000 years ago, the Willamette Meteorite eventually fell to Earth, likely landing in southern Canada.³¹ Thanks to flooding at the end of the Pleistocene Glacial Period, the meteorite rode the waves,³² finally ending up outside of present-day West Linn, Oregon, close to the Willamette Falls.³³ It was here that the local Native Americans, the ancient Clackamas Chinooks, likely became the first people to discover the meteorite.³⁴ When Lewis and Clark first met this tribe in 1805,³⁵ the Clackamas Chinooks had been living in the region for an unrecorded period of time. Much in the same way

²⁴ AMERICAN MUSEUM OF NATURAL HISTORY – DIRECTIONS AND TRANSPORTATION, <http://www.amnh.org/plan-your-visit/visitor-information/directions-and-transportation> (last visited Sept. 3, 2012).

²⁵ AMERICAN MUSEUM OF NATURAL HISTORY – PERMANENT EXHIBITIONS, <http://www.amnh.org/exhibitions/permanent/rose/> (last visited Nov. 14, 2011).

²⁶ AMERICAN MUSEUM OF NATURAL HISTORY – CURRENT EXHIBITIONS, <http://www.amnh.org/exhibitions/current-exhibitions> (last visited Sep. 3, 2012).

²⁷ AMERICAN MUSEUM OF NATURAL HISTORY – SHOP, <http://www.amnh.org/plan-your-visit/visitor-information/shop> (last visited Sep. 3, 2012).

²⁸ AMERICAN MUSEUM OF NATURAL HISTORY – INTERACTIVE FLOORPLAN, <http://www.amnh.org/plan-your-visit/interactive-floorplan> (last visited Sep. 3, 2012).

²⁹ AMERICAN MUSEUM OF NATURAL HISTORY – EARTH AND SPACE TOUR, <http://www.amnh.org/plan-your-visit/popular-tours/earth-and-space-tour> (last visited Sep. 3, 2012).

³⁰ Graham & Murphy, *supra* note 8, at 111.

³¹ SMOKE SIGNALS, *supra* note 1, at 3.

³² Robert W. Oliver, *How To Catch A Falling Star: Or, How to Cash in on the Discovery of the Largest Meteorite ever Found in the United States*, 54-OCT OR. ST. B. BULL. 13, 13 (1993).

³³ SMOKE SIGNALS, *supra* note 1, at 3.

³⁴ *Id.*

³⁵ NATIONAL GEOGRAPHIC: LEWIS AND CLARK—TRIBES—CLACKAMAS INDIANS, http://www.nationalgeographic.com/lewisandclark/record_tribes_084_13_22.html (last visited: Nov. 14, 2011).

many other Native American tribes venerated meteorites,³⁶ the Clackamas Chinooks dubbed the fifteen and one-half-ton ball of iron *Tomanowos*, meaning “Visitor from the Moon,” or “Heavenly Visitor.”³⁷ With this meteorite stuck in the Earth, the Clackamas Chinooks determined that *Tomanowos* had “divine qualities.”³⁸ The surface of the meteorite was cratered, evidencing its journey from the outer universe, and the craters were the source of *Tomanowos*’ divine qualities.³⁹

The Clackamas Chinooks gathered water that collected in these depressions and they believed the water to be spiritual in nature.⁴⁰ “Doctors collected and used [the water] for healing. Hunters and warriors dipped their arrows into the water to ensure their success. Young men and women went on vigils at *Tomanowos*.”⁴¹ The earliest description of the religious significance of the meteorite to the Clackamas Chinooks comes from Susap, a member of the Klickitat Tribe, testifying in a case that plays a prominent role in the legal history of the meteorite:

[W]hen it rained the water fell [into the holes] there, and that the Indians went there and washed their faces in the water, and put their bows and arrows in it that they used in time of war; that the medicine men said it came from the moon; and that the Indians called it “Tomanowos.”⁴²

In all likelihood, the Clackamas Chinooks continued these religious and spiritual practices until they relocated away from the

³⁶ H. H. Nininger, *Meteorite Collecting among Ancient Americans*, 4 AM. ANTIQUITY 39, 39 (1938). Nininger cites a number of specific examples of Native Americans placing religious importance on meteorites:

The Winona meteorite, 1928, was found in a stone cist similar to those in which the former inhabitants of Arizona buried the bodies of children. The Navajo irons, 1922, were found covered by a pile of stones and their surfaces bore numerous grooves which had been laboriously cut by the stone implements of ancient man. Under one of the irons were found certain ornaments. The Mesa Verde meteorite, 1922, was found in the ruins of the Sun Shrine House of the Mesa Verde National Park. The Pojoaque meteorite, 1930, was found buried in a pottery vessel on an old village site. It showed signs of much handling and is thought . . . to have been carried in a medicine pouch.

Id. Nininger concludes by declaring that, “The meteorites of Red River, Wichita County, Iron Creek, Willamette and Cape York, all are known to have been the objects of regular pilgrimages on the part of local tribes of early [Native Americans].” *Id.*

³⁷ Graham & Murphy, *supra* note 8, at 111.

³⁸ SMOKE SIGNALS, *supra* note 1, at 3.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Graham & Murphy, *supra* note 8, at 111.

⁴² Oregon Iron Co. v. Hughes, 47 Or. 313, 320 (1905).

area. In 1857, they moved to the Grand Ronde Reservation,⁴³ in present-day northwestern Oregon.⁴⁴ While the Clackamas Chinooks moved to their new home, *Tomanowos* stayed, buried in the ground.⁴⁵

From 1857 until 1902, the meteorite remained partially buried in the exact spot where the Clackamas Chinooks had dipped their arrowheads into the collected rainwater.⁴⁶ Following the departure of the Clackamas Chinooks in 1857, the Oregon Iron and Steel Company purchased the land;⁴⁷ in doing so, it also purchased any natural item that was part of the soil on this purchased land.⁴⁸

Ellis Hughes, in November of 1902, came upon the meteorite while chopping trees in the vicinity.⁴⁹ Mr. Hughes did not work for the Oregon Iron and Steel Company, so he attempted to buy the meteorite—thinking that he could turn a profit from selling the ability to view the space rock⁵⁰—from the Oregon Iron and Steel Company.⁵¹ Robert W. Oliver explains Mr. Hughes' position in the matter: "Having already taken wood off the company's property, Hughes apparently had no compunction about hauling away his discovery,"⁵² and Mr. Hughes did just that. Only a mile away from his own farm, it took Hughes and his family considerable time⁵³ to drag the fifteen and one-half-ton ball of iron to the shed he built for the specific purpose of housing his new find.⁵⁴ Charging a quarter to see it,⁵⁵ Mr. Hughes was able to make a considerable amount of money,⁵⁶ and the meteorite even became somewhat of a tourist attraction in town.⁵⁷ One such tourist was a lawyer from the Oregon Iron and Steel Company, who, although likely

⁴³ Stephen E. Weil, *Cloning and Copyright*, 19 CARDOZO ARTS & ENT. L.J. 137, 142 (2001).

⁴⁴ THE CONFEDERATED TRIBES OF GRAND RONDE – VISIT, <http://www.grandronde.org/visit/> (last visited Nov. 15, 2011).

⁴⁵ SMOKE SIGNALS, *supra* note 1, at 3.

⁴⁶ *Id.*

⁴⁷ Graham & Murphy, *supra* note 8, at 111.

⁴⁸ *Oregon Iron Co.*, 47 Or. 313 at 314.

⁴⁹ Oliver, *supra* note 32, at 13.

⁵⁰ SMOKE SIGNALS, *supra* note 1, at 4.

⁵¹ Graham & Murphy, *supra* note 8, at 111.

⁵² Oliver, *supra* note 32, at 13.

⁵³ Depending on the source, it took Hughes and his family anywhere from three months, *see* Oliver, *supra* note 32, at 13; Graham & Murphy, *supra* note 8, at 111, to more than a year, *see* SMOKE SIGNALS, *supra* note 1, at 3, to move the meteorite.

⁵⁴ SMOKE SIGNALS, *supra* note 1, at 4.

⁵⁵ Graham & Murphy, *supra* note 8, at 111.

⁵⁶ Oliver, *supra* note 32, at 13.

⁵⁷ SMOKE SIGNALS, *supra* note 1, at 4 ("Visitors from Oregon City and Portland would take a streetcar line to its terminus and then walk two miles to see the space rock.")

impressed by the meteorite, was more interested in the markings on the ground, highlighting where Mr. Hughes had dragged the meteorite from—land owned by the lawyer's employer.⁵⁸

After losing in circuit court to the Oregon Iron and Steel Company,⁵⁹ Mr. Hughes appealed to the Supreme Court of Oregon.⁶⁰ Defending his title to the meteorite, Mr. Hughes' defense was that the Native Americans, who had been using it for religious purposes, had effectively abandoned their own property when they were relocated to the Grand Ronde Reservation, and by law, the finder of an abandoned piece of property became the rightful owner.⁶¹ In his opinion to the court, Chief Justice Wolverton found Mr. Hughes' defense insufficient, instead agreeing with the Oregon Iron and Steel Company that, “[the meteorite] became, by falling on the earth through the course of nature, a part of the soil, and hence that the ownership was determined by the ownership of the soil.”⁶²

Interestingly enough, Chief Justice Wolverton, without meaning to rule on whether the Grand Ronde Tribe owned the meteorite, explained near the end of the holding: “[C]onceding that it was an object susceptible of Indian worship, the fact does not afford reasonable inference that it was severed from the soil and appropriated by them.”⁶³ This same argument would be echoed by the AMNH, almost a century later, to prevent the Grand Ronde Tribe from taking the meteorite from New York City.⁶⁴

The Willamette Meteorite, now back with the Oregon Iron and Steel Company, was put on display at the Lewis and Clark Exposition of 1905,⁶⁵ in Portland, Oregon.⁶⁶ While it was on display in Portland, a New York philanthropist, Mrs. William Dodge, found herself “entranced”⁶⁷ by the meteorite, so much so that the following February she gave enough money⁶⁸ to the AMNH with which to purchase the Willamette Meteorite from the Oregon Iron

⁵⁸ Oliver, *supra* note 32, at 13.

⁵⁹ *Id.*

⁶⁰ *Oregon Iron Co.*, 47 Or. 313 at 313.

⁶¹ *Id.* at 320.

⁶² *Id.* at 318.

⁶³ *Id.* at 321.

⁶⁴ Weil, *supra* note 43, at 143.

⁶⁵ Oliver, *supra* note 32, at 13.

⁶⁶ SMOKE SIGNALS, *supra* note 1, at 4.

⁶⁷ *Id.*

⁶⁸ The AMNH reportedly purchased the Willamette Meteorite for \$20,600. See Weiser, *supra* note 10.

and Steel Company.⁶⁹ Two months later, on April 14, 1906, the Willamette Meteorite arrived at the AMNH, passing throngs of spectators lining the streets.⁷⁰ Thus, the physical journey of the Willamette Meteorite had come to a close, but the legal journey was far from over.

2. The NAGPRA Claim

From 1906 until 1999, the Willamette Meteorite's legal standing went unchallenged.⁷¹ Then, in 1999, the Grand Ronde Tribe claimed the Willamette Meteorite for repatriation⁷² under the Native American Graves Protection and Repatriation Act (NAGPRA).⁷³ Enacted in 1990,⁷⁴ NAGPRA's purpose was to provide Native Americans with legislation through which they could re-

⁶⁹ SMOKE SIGNALS, *supra* note 1, at 4.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² It is worth citing John Henry Merryman in clarifying the issue of terminology:

In the international arena, where there is a great deal of legal discussion and activity, basic cultural property questions are still unresolved and terminology unsettled. Partisans, secure in their cause, substitute romance for reason and advocacy for scholarship. The resulting literature is liberally salted with prejudicial terms like "patrimony," "repatriation" and "heritage," and the dialogue is confused and obscured by chronic misuse of "protection." To assert that an object is part of the cultural "patrimony" of Peru or Greece or Indonesia implies . . . that it has a "patria," a homeland, a nation to which, and in which, it belongs. If found abroad it should, accordingly, be "repatriated," returned to the national territory. It is not surprising that source nations have found this relic of 19th century romantic nationalism congenial. It is less easy to understand how it could have been transformed into an unquestioned premise in much of the international dialogue, and even in some of the scholarship, on cultural property. Left unchallenged, it paralyzes argument. To suggest that an object is part of the cultural "heritage" of a nation has a similar paralytic effect . . . Accurate information about cultural objects is one thing; for example, it is right and important that the Elgin Marbles be known for what they are and where they came from. In the British Museum the Marbles are properly shown as made in Greece by artists of extraordinary genius for installation on the Parthenon. They are in this sense properly referred to as "Greek." But to move from this position to the conclusion that the Marbles "belong" in Greece is to leave a logical gap that terms like "patrimony," and "heritage" cannot bridge. There may indeed be good reasons why some objects found abroad should be returned to nations of origin, but there may also be good reasons why others should not. The assertion of a general right of "repatriation" is not a reason; it is an assertion that, if left unexamined, assures that reason will not come into play. That is why such terms as cultural "object" and cultural "property" . . . are preferable; they do not assume the answer to the question.

John Henry Merryman, "Protection" of the Cultural "Heritage"?, 38 AM. J. COMP. L. 513, 521–22 (1990).

⁷³ Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013 (2006).

⁷⁴ *Id.*

quest repatriation of cultural items.⁷⁵ Subparagraph 5 of Section 7 explains that,

Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—the requesting party is the direct lineal descendant of an individual who owned the sacred object; the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization.⁷⁶

The NAGPRA definition of “sacred objects” explains that that term shall “mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.”⁷⁷ In 2000, the Grand Ronde Tribe filed a NAGPRA claim in federal court.⁷⁸ The Grand Ronde Tribe explained that the Willamette Meteorite “‘is a sacred object to the people of the Willamette Valley. It was used by our ancestors. We want to bring it back here to our reservation and make it available for people to use in the traditional way.’”⁷⁹ The Grand Ronde Tribe expressed no other interest (financial or otherwise) in the meteorite.

Harkening back to the argument put forth by the Oregon Iron and Steel Company almost a century before,⁸⁰ the AMNH contended that the Willamette Meteorite “was ‘a natural feature of the landscape, rather than a specific ceremonial object.’”⁸¹ More specifically, the AMNH argument was that,

[T]he meteorite was not an “object” at all (at least back when it figured in the Clackamas observances), but a natural feature of the landscape; that the Clackamas had never (as required for a NAGPRA recovery) “owned or controlled” the meteorite; and that the Clackamas could not overcome the Museum’s showing that the method by which it had acquired the meteorite in 1906—an arm’s length purchase for value from a vendor previously declared to have good title—gave it an actual “right of possession.”⁸²

⁷⁵ Marilyn Phelan, *A History and Analysis of Laws Protecting Native American Cultures*, 45 TULSA L. REV. 45, 56 (2009).

⁷⁶ 25 U.S.C. § 3005(a)(5)(A)–(B) (1990).

⁷⁷ 25 U.S.C. § 3001(3)(C) (1990).

⁷⁸ Graham & Murphy, *supra* note 8, at 112 (citation omitted).

⁷⁹ *Id.* at 111–12.

⁸⁰ *Oregon Iron Co.*, 47 Or. 313 at 318.

⁸¹ Weiser, *supra* note 10.

⁸² Weil, *supra* note 43, at 143.

Shortly after the AMNH filed its petition for a declaratory judgment, one that would establish the Willamette Meteorite as property of the AMNH and not the Grand Ronde Tribe, the Grand Ronde Tribe and the AMNH began to negotiate out of court.⁸³ On June 22, 2000, less than a year after the NAGPRA claim was submitted, the AMNH and the Grand Ronde Tribe signed an agreement, resolving the dispute over the Willamette Meteorite's ownership.

3. The Agreement

Currently, the AMNH continues to house the Willamette Meteorite, and there have been no legal claims to the meteorite since the agreement between the museum and the Grand Ronde Tribe was signed, signifying the continued efficacy of the agreement.⁸⁴ It would seem, then, that the agreement achieved exactly what it had been designed to achieve: to begin with, the agreement was meant to resolve the legal title of the meteorite, as evidenced by the fact that the out-of-court negotiation process was occurring parallel to the in-court disagreement over the true legal ownership of the Willamette Meteorite.⁸⁵

Furthermore, the agreement was a route for the AMNH to save face in the court of public opinion, especially when the politically charged media, and public, would likely find fault with a major cultural institution trying to slight a group of Native Americans from a spiritually important object, such as the Willamette Meteorite. Additionally, the agreement was meant to achieve a resolution wherein spiritual access to the Grand Ronde Tribe was met, without moving the Willamette Meteorite back to Oregon.⁸⁶ ADR was the key to achieving this mutually beneficial agreement.

B. *Machu Picchu and Yale University*

Whereas the Willamette Meteorite fell to Earth from deep in outer space,⁸⁷ Machu Picchu's treasures are the everyday tools and

⁸³ Graham & Murphy, *supra* note 8, at 112. Graham, at the time of her article, served in the Anthropology Department at the American Museum of Natural History.

⁸⁴ *Id.*

⁸⁵ Weiser, *supra* note 10.

⁸⁶ Graham & Murphy, *supra* note 8, at 111–12.

⁸⁷ AMERICAN MUSEUM OF NATURAL HISTORY: WILLAMETTE METEORITE, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite> (last visited Sep. 3, 2012).

bone fragments of a once-great South American people—the Inca.⁸⁸ Until November 23, 2010,⁸⁹ the Incan treasures at Yale University’s Peabody Museum (the “Peabody”), excavated and sent by Hiram Bingham from Peru in the early twentieth century,⁹⁰ were seemingly lost to modern-day Peruvians, yearning for their history and cultural property to be returned.⁹¹ Today, with the recent agreement between Peru and Yale, the treasures of Machu Picchu are finally returning to their historic home; after years of failed judicial proceedings, ADR provided the eventual key to success in resolving the dispute over these artifacts.⁹²

1. Rediscovering⁹³ a Lost City

“Should anything be found . . . it would become the property of the Peruvian Government,” explained Bingham, just forty-six days before seeing Machu Picchu for the first time.⁹⁴ Bingham, a professor by trade,⁹⁵ went on three different expeditions to Peru to “search for Incan ruins, conduct a geographic survey of a large swath of the Andes, and to reach the ‘apex of America’ by climbing the unexplored mountain Coropuna.”⁹⁶ Bingham conducted his travels under the auspices of the Yale Peruvian Expedition, a university-sponsored academic exploration program in the area.⁹⁷

This first expedition, in 1911, was funded mainly by the United States and Peruvian governments, and was aimed at increasing Yale’s research overseas.⁹⁸ While the Peruvian government did provide funding for this expedition, there were many among the Peruvian population who did not like the idea of a professor from the United States digging up their cultural past. To assuage these

⁸⁸ HEANEY, *supra* note 12, at 83–107.

⁸⁹ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

⁹⁰ See generally HEANEY, *supra* note 12 (documenting the rediscovery of Machu Picchu by Hiram Bingham and the ensuing debate regarding his findings).

⁹¹ Swanson, *supra* note 13, at 481–86.

⁹² UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

⁹³ As a number of writers on the subject note, Machu Picchu’s discovery by Hiram Bingham was merely the first happening on the site by a Westerner, for the local population knew of the existence of the ruins at Machu Picchu and “aided Bingham in bringing it to the attention of the world at large.” Swanson, *supra* note 13, at 471; see generally HEANEY, *supra* note 12.

⁹⁴ HEANEY, *supra* note 12, at 73 (citation omitted).

⁹⁵ YALE PEABODY MUSEUM: COLLECTIONS: ARCHIVES: HIRAM BINGHAM III, <http://peabody.yale.edu/collections/archives/biography/hiram-bingham-iii> (last visited Feb. 18, 2012).

⁹⁶ Swanson, *supra* note 13, at 472.

⁹⁷ *Id.*

⁹⁸ *Id.*

fears, then-President Leguia of Peru declared “all Incan monuments to be ‘national property,’” and that “only duplicates” of the original objects found could be removed from Peru’s borders.⁹⁹ However, these fears were, for the time being, unfounded, since at the conclusion of the 1911 expedition, the site of Machu Picchu was essentially untouched, as only photographs and maps of the site were sent back to Yale.¹⁰⁰

The following summer, however, these fears were realized, as the second expedition, funded by the National Geographic Society, sent Bingham back to Peru so that he could “excavate and bring back a shipload of antiquities for [the Peabody].”¹⁰¹ Compared with the image of Bingham simply taking photographs and mapping the site in 1911, the expedition in 1912 conjures up a different image:

Machu Picchu swarmed with activity. Bingham’s archaeological army of American topographers and Peruvian workers cleared jungle, mapped sacred plazas, and excavated what burials the looters hadn’t destroyed. Bingham took 700 photographs of the beautiful Inca temples and ceremonial baths. By November, nearly 1,600 artifacts—ranging from elegant ceramic jars to a silver headdress—and thousands of small potsherds and bone fragments were packed into crates bound for Yale.¹⁰²

While the excavations were occurring at Machu Picchu, the new president of Peru—Billinghurst—issued an executive decree, stating that, “international etiquette and deference to [official scientific expeditions] induces the Government to accede as an exception and just this once to the demands of the [Bingham expedition].”¹⁰³ While this decree makes it clear that Bingham would be able to ship all that he found at Machu Picchu in 1912 back to Yale, the decree maintains Peru’s ability to request the return of these artifacts: “[T]he Peruvian government reserves to itself the right to exact from Yale University and the National Geographic Society of the United States of America the return of the unique specimens and duplicates.”¹⁰⁴ Even with this caveat in

⁹⁹ *Id.* at 474.

¹⁰⁰ Swanson, *supra* note 13, at 474.

¹⁰¹ Christopher Heaney, *Finders Keepers?: After almost a century, Peru revives the drama of Hiram Bingham, 5,000 artifacts, and Machu Picchu*, LEGAL AFF., Mar./Apr. 2006, http://www.legalaffairs.org/issues/March-April-2006/scene_Heaney_marapr06.msp.

¹⁰² *Id.*

¹⁰³ Swanson, *supra* note 13, at 477 (citation omitted).

¹⁰⁴ *Id.* at 478 (citation omitted).

place, the fears of Peruvians, afraid to see their cultural heritage shipped off, continued to rise.¹⁰⁵

Bingham's final expedition to Peru, in 1915, found the Peruvian government and Peruvian people less hospitable to him and his entourage.¹⁰⁶ The local population was afraid that with all of Bingham's excavations and research at the site, there would be nothing left with which to teach the Peruvians their own cultural history.¹⁰⁷ The clamor against further expeditions of the site reached a crescendo on May 25, 1915, when the Prefect of Cuzco ordered the cessation of all excavations.¹⁰⁸ In order to arrange for the artifacts of his third and final visit to Peru to be sent back to Yale, 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 materials would be recognized as national property of Peru and would be returned upon request Yale University and the National Geographic Society pledge[d] to return, in the term of 18 months from today, the artifacts whose export had been authorized."¹⁰⁹

2. Peru's Legal Battle

In 1920, Peru asked Yale for the return of everything found during the 1912 expedition.¹¹⁰ It seemed clear, at the time, that the artifacts sent back to Yale by Bingham were on loan, as the agreements between Bingham and the Peruvian government explained.¹¹¹ Even after agreeing to a two-year extension, so that Yale could raise funds for shipping costs, the objects were never returned.¹¹² For nearly eighty-one years nothing happened; then, following a successful exhibit in 2003 at the Peabody, entitled "Machu Picchu: Unveiling the Mystery of the Incas," Peru and Yale began negotiating the return of the artifacts.¹¹³

¹⁰⁵ *Id.* ("[A] November 4, 1912 letter to a Cuzco newspaper declared that 'anyone who wanted to study the riches of Peru ought to come to the country itself and leave their dollars there, for it would be the ultimate insult if Peruvians ever had to go to North America to study what used to be in Peru.'").

¹⁰⁶ Heaney, *supra* note 101.

¹⁰⁷ Swanson, *supra* note 13, at 479.

¹⁰⁸ *Id.* at 480.

¹⁰⁹ *Id.* (citation omitted).

¹¹⁰ Nutman, *supra* note 17.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Swanson, *supra* note 13, at 485.

It seemed promising that Peru and Yale attempted to solve their dispute through ADR first, rather than resorting immediately to formal judicial proceedings in court. However, the negotiations that lasted for five years were ultimately unsuccessful,¹¹⁴ ending with Peru filing suit in federal court in 2008.¹¹⁵ Peru's filing enumerated its position on the matter:

Peru, as the rightful owner of this property, seeks to defend its legal property rights concerning its cultural heritage. Peru seeks this Court's recognition of Peru's legal rights as well as this Court's declaration the property in question 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 obligations and profit at the expense of the people of Peru.¹¹⁶

After removing the case from the District of Columbia to Connecticut,¹¹⁷ Yale continued to move for dismissal on a number of legal grounds.¹¹⁸ Realizing that formal judicial proceedings would move slowly, and also recognizing its need for a quick resolution, Peru hoped that a return to the negotiating table would finally resolve this dispute.¹¹⁹

3. The Memorandum of Understanding

On November 23, 2010, Peru and Yale signed a memorandum of understanding outlining that Yale would return all of the Machu Picchu artifacts to Peru.¹²⁰ In addition to the return of the artifacts, the Peruvian government and Yale agreed to create a new research center surrounding the Machu Picchu findings.¹²¹ With this agreement in place, as well as the media attention surrounding it, it seems likely that both parties will continue to honor the agreement and finally put an end to a century-long dispute.

¹¹⁴ Nutman, *supra* note 17.

¹¹⁵ Republic of Peru v. Yale Univ., No. 1:08-CV-02109, (D.C. Cir. filed Dec. 5, 2008), <http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2008cv02109/134251/1/>.

¹¹⁶ *Id.*

¹¹⁷ Republic of Peru v. Yale University, No. 1:08-CV-02109 (D.C. Cir. July 30, 2009) (order granting motion to transfer the case to Conn.), <http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2008cv02109/134251/24/>.

¹¹⁸ Nutman, *supra* note 17.

¹¹⁹ *Id.* ("The objects would still be in New Haven in July 2011, the 100th Anniversary of Bingham's arrival to Machu Picchu.")

¹²⁰ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

¹²¹ *Id.*

II. ALTERNATIVE DISPUTE RESOLUTION AND CULTURAL PROPERTY

In recent years, there has been an increased use of ADR methods to solve many different types of conflicts.¹²² ADR is a term used to describe “the techniques or procedures for resolving disputes short of trial in the public courts.”¹²³ These techniques and procedures can include: negotiation, mediation, arbitration, minitrials, and ombuds.¹²⁴ In the last decade, ADR has been used with an increasing frequency to resolve cultural property disputes; typically, governments and institutions use negotiation and mediation as techniques to move the dispute out of formal judicial proceedings and into a more nuanced approach.¹²⁵

The benefits parties see in such alternative methods of resolving their disputes include privacy, the voluntary nature of the technique, timing, flexibility, efficiency, control, the prospect of a better, more mutually beneficial outcome, lack of precedential control, preservation of relationships, and the ability to be creative in molding remedies to suit the specific conflict at hand.¹²⁶ With these benefits in mind, this Note suggests that the agreements arrived at in each case study are constructed in a manner fitting the precise conflict, so that a more rigid, formal judicial proceeding would not have been flexible or creative enough to solve these cultural property disputes. It must also be recognized that in addition to the benefits outlined in this Note, the two case studies’ legal battles began with formal judicial proceedings. The context, that the parties chose ADR to resolve their dispute after formal judicial proceedings were underway, is essential in understanding the pressure these proceedings put on the parties as well as the refuge sought under an ADR scheme.

¹²² See, e.g., Marc Galanter, *A World Without Trials?*, 2006 J. DISP. RESOL. 7, 15 (2006).

¹²³ JAY E. GRENIG, *Alternative Dispute Resolution*, 1 ALT. DISP. RESOL. § 1:1 (3d ed.).

¹²⁴ *Id.* at §§ 1:1–13:26.

¹²⁵ Elisabetta Povoledo, *Boston Museum Returns 13 Ancient Works to Italy*, N.Y. TIMES, Sept. 29, 2006, <http://www.nytimes.com/2006/09/29/arts/design/29mfa.html>. See also Hugh Eakin, *Getty Museum Agrees to Return Two Antiquities to Greece*, N.Y. TIMES, July 11, 2006, <http://www.nytimes.com/2006/07/11/arts/11gett.html?pagewanted=all>; Elisabetta Povoledo, *Italy Makes Its Choice of Antiquities to Lend Met*, N.Y. TIMES, Mar. 15, 2006, <http://www.nytimes.com/2006/03/15/arts/design/15vase.html>; Jason Felch & Ari B. Bloomekatz, *Getty's Accord Removes Shadow*, L.A. TIMES, Aug. 3, 2007, <http://articles.latimes.com/2007/aug/03/local/me-getty3>.

¹²⁶ GRENIG, *supra* note 123, at § 1:2.

III. ANALYSIS

The reader is probably wondering: Why did these two agreements work in resolving two very different cultural property disputes? Answering this question requires a closer look at ADR methods as they relate to complex cultural property disputes, such as the ones presented by the Willamette Meteorite and the artifacts of Machu Picchu (hereinafter the “Artifacts”), and the ability of ADR processes, as opposed to more formal legal mechanisms, to arrive at a mutually beneficial solution.

The negotiations between the AMNH and the Grand Ronde Tribe lasted from February until June of 2000. The agreement reached at the conclusion of this period reads, in part¹²⁷:

[To] ensure access to the Willamette Meteorite . . . by the Grand Ronde for religious, historical, and cultural purposes while maintaining its continued presence at the Museum for scientific and educational purposes. The agreement recognizes the Museum’s tradition of displaying and studying the Meteorite for almost a century, while also enabling the Grand Ronde to re-establish its relationship with the Meteorite with an annual ceremonial visit to the Meteorite. The agreement reflects mutual recognition of and respect for the traditions of both the Tribe and the Museum.¹²⁸

Additionally, the agreement stipulates that, “the Tribe agrees to drop its claim for repatriation of the Willamette Meteorite and not to contest the Museum’s ownership of it,”¹²⁹ while following with the condition that, “the Meteorite would be conveyed to the Tribe if the Museum failed to publicly display it, except for temporary periods for preservation, safety, construction and reasons beyond the reasonable control of the Museum.”¹³⁰ Finally, the agreement requires that the AMNH display signage next to the Willamette Meteorite that describes “the Meteorite’s significance to the Clackamas . . . alongside a description of the Meteorite’s scientific importance.”¹³¹ In addition to the agreement, the AMNH established

¹²⁷ The author requested access to the full agreement, but AMNH policy does not allow the agreement to be viewed by the public.

¹²⁸ AMERICAN MUSEUM OF NATURAL HISTORY – WILLAMETTE METEORITE AGREEMENT, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite-agreement> (last visited Sep. 1, 2012).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

an internship program through which young members of the Grand Ronde Tribe are given the opportunity to work at the AMNH over the summer, allowing them to spend more time with *Tomanowos*, as well as gain experience from working at a world-class museum.¹³² What is clear after inspecting the provisions of the agreement reached by the two parties is that the AMNH and Grand Ronde Tribe were only able to come to such an understanding because each of them arrived at the negotiating table with a willing and proper understanding of the opposing party's interests in the Willamette Meteorite.¹³³

The understanding of each party's interest, and what they ultimately hope to achieve through negotiation, is crucial for successful, effective dispute resolution.¹³⁴ On the one hand, the Grand Ronde Tribe arrived at the negotiations with a very specific set of interests—to bring *Tomanowos* back to Oregon so that its members could use the meteorite for religious and spiritual purposes, just as its ancestors had done for centuries before them.¹³⁵ While the Grand Ronde Tribe would have preferred that the meteorite be housed in Oregon, they found it more important to have the ability to venerate the meteorite as members of their tribe had done prior to relocating away from *Tomanowos*, before 1857,¹³⁶ regardless of the actual site of the Willamette Meteorite.¹³⁷

On the other hand, the AMNH's interest, while not spiritual in nature, was nonetheless justifiable, insofar as a cultural institution, such as the AMNH, is concerned with scientific and educational endeavors that form from the possession of unique and rare objects, as well as the interest in financial growth from admission prices to see such aforementioned unique and rare objects.¹³⁸ Whether the Grand Ronde Tribe saw its interests as more important or valuable than the interests of the AMNH, the efficacy of the negotiation process hinged on the acceptance and understanding of each party's interests at the table, without diminishing either

¹³² SMOKE SIGNALS, *supra* note 1, at 4.

¹³³ Nate Mealy, *Mediation's Potential Role in International Cultural Property Disputes*, 26 OHIO ST. J. ON DISP. RESOL. 169, 195 (2011) (“[I]t is only with an understanding of such underlying interests that parties can negotiate to truly and creatively resolve their differences.”).

¹³⁴ *Id.*

¹³⁵ Graham & Murphy, *supra* note 8, at 111–12.

¹³⁶ Weil, *supra* note 43, at 142.

¹³⁷ As is clear from the agreement as it stands, still effective today.

¹³⁸ AMERICAN MUSEUM OF NATURAL HISTORY – TICKETS, <http://www.amnh.org/tickets/> (last visited Sep. 3, 2012). The AMNH suggests a range of prices for admission, from \$19.00 for adults, \$14.50 for students, and \$10.50 for children. Additionally, there is an added cost for viewing special exhibits and IMAX films.

sides' importance.¹³⁹ The Willamette Meteorite presented an inimitable scientific object that could be used for research and study by scientists, as well as introduced as an exciting and fascinating scientific discovery to everyone other than scientists; as the director of the Hayden Planetarium at the Rose Center for Earth and Space, Neil deGrasse Tyson, explained that “‘untold numbers of visitors . . . were turned on to science because of their encounter with this meteorite. It’s not simply an artifact on display.’”¹⁴⁰

In addition to scientific and educational interests in the Willamette Meteorite, the AMNH also had financial interests at stake, since the meteorite was, and continues to be, a very popular piece of the collection that many people visit the AMNH to view.¹⁴¹ Furthermore, the AMNH was likely worried about the media effect of having to return the Willamette Meteorite—if a federal court instructed the Museum to return the meteorite to the Grand Ronde Tribe—the public would likely interpret this to mean that the AMNH had improperly acquired cultural property from a Native American group. It is not hard to see that this sort of press, at a time when the public is especially aware of political correctness and cultural sensitivity issues, would not exactly convince visitors to pay admission and visit the museum. With each side concerned about protecting their own set of interests, and with these interests at stake, the AMNH and the Grand Ronde Tribe chose to initiate direct talks with each other, in the hopes that negotiation would lead to a mutually beneficial solution.¹⁴²

Turning to the second case study, the agreement reached between Peru and Yale explains that the Artifacts will be returned to Peru, and as the agreement reads:

[A] series of meetings were held between Yale and UNSAAC [(Universidad Nacional de San Antonio Abad del Cusco)] in December 2010 to guide the return of the [Artifacts] 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” . . . 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

¹³⁹ Mealy, *supra* note 133, at 195.

¹⁴⁰ Weiser, *supra* note 10.

¹⁴¹ *Id.*

¹⁴² SMOKE SIGNALS, *supra* note 1, at 4.

these two remarkable institutions of higher learning and the wider scientific community.¹⁴³

The opening paragraphs of the agreement make it clear that Yale spent the last century conserving and maintaining these cultural pieces for proper educational and scientific research.¹⁴⁴ The agreement also expresses the belief that while these Artifacts are important to Peru, they are also important to the world as a whole, as they relate to the world's shared cultural heritage.¹⁴⁵ In addition, Yale is to co-curate the permanent exhibition in Cuzco, as well as fund a number of exhibitions in the first five years of the Center's existence.¹⁴⁶ There will also be an ongoing exchange between Peru and Yale.¹⁴⁷ In conjunction with Yale's continued role in Cuzco at the Center, Yale will also get a number of the Artifacts on loan, and it will exhibit them at the Peabody, in New Haven.¹⁴⁸

This agreement, like the accord between the Grande Ronde Tribe and the AMNH, was achieved through negotiation.¹⁴⁹ Although the initial period of negotiation failed, and eventually led to

¹⁴³ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

¹⁴⁴ *Id.* The relevant section reads,

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

Id.

¹⁴⁵ *Id.* The relevant section reads,

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

Id.

¹⁴⁶ *Id.* ("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.")

¹⁴⁷ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012). ("[T]he 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.")

¹⁴⁸ *Id.* ("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.")

¹⁴⁹ Sarah Nutman, *Digging into Peru deliberations*, YALE DAILY NEWS, Feb. 15, 2011, <http://www.yaledailynews.com/news/2011/feb/15/digging-peru-deliberations/>.

formal judicial proceedings,¹⁵⁰ both parties realized that solving such a nuanced and unique problem required a solution that was just as nuanced and unique. Upon returning to the negotiating table the second time, both parties realized that the opposing side was not going to back down, since both had valid interests at stake. For Yale, it was, like it was for the AMNH—an educational and scientific interest—the Artifacts represented a vast quantity of information about historical peoples that could be used to learn much about the history of the Americas.¹⁵¹ Additionally, much like the AMNH, the Peabody costs money to visit,¹⁵² and it is likely that many visitors to New Haven are there to view the remnants of a once-great empire. Moreover, and in the same way, the AMNH was fearful of a public relations backlash, and Yale, especially after so many years of battling publically with Peru over its cultural heritage, saw fit to find a resolution, perhaps in the hopes of repairing its image on the world stage.

Peru's interest in the Artifacts rests squarely within the cultural history of Peru itself. The Inca represents a great empire that predated the modern state of Peru, and the remnants of such a great empire that existed in Peru should, themselves, be housed in a museum in Peru, not in Connecticut. Much like the Grande Ronde Tribe, the Peruvian interest in the Artifacts was deeply personal, for the Artifacts represent the shared cultural heritage of every Peruvian.¹⁵³ Thus, with each side understanding the opposing side's interest in the Artifacts, the negotiations were started again, but this time, a successful agreement was reached.¹⁵⁴

It has been suggested that mediation is the superior method in resolving cultural property disputes, in that there are seven distinctive attributes with which to color mediation, differentiating it from other possible avenues of dispute resolution, and elevating it above these other options.¹⁵⁵ It is probable, though, that negotiation can also display these distinctive qualities, matching the successful re-

¹⁵⁰ Swanson, *supra* note 13, at 486.

¹⁵¹ See generally HEANEY, *supra* note 12.

¹⁵² YALE PEABODY MUSEUM: VISIT: ADMISSION & HOURS, <http://peabody.yale.edu/visit/admission-hours> (last visited Feb. 19, 2012).

¹⁵³ See generally HEANEY, *supra* note 12. See also Nutman, *supra* note 17 (In 2008, protests surrounding the return of the artifacts occurred in Lima and Cusco; there were also a number of Peruvians who ran in the New York City Marathon with shirts reading “‘Yale, return Machu Picchu artifacts to Peru.’”).

¹⁵⁴ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

¹⁵⁵ Mealy, *supra* note 133, at 195–206.

turn of investment that mediation is said to be exclusive in achieving. The varied techniques and methods of ADR are highly valued in resolving disputes because of their flexibility; as such, more than one method of ADR can prove successful in carrying attributes and characteristics of another method.

As one commentator has noted, these seven characteristics help define mediation¹⁵⁶: it (1) respects state sovereignty; (2) requires mutual consent; (3) identifies party interests and shapes settlements accordingly; (4) maintains workable disputant relationships; (5) promotes interparty cultural, political, religious, and social understanding; (6) circumvents the complicated traits of arbitration and litigation; and (7) is confidential and saves disputants time and money.¹⁵⁷

The first attribute that marks mediation as a successful alternative to formal judicial proceedings is that it respects state sovereignty, because it “does not require the application of any particular substantive law . . . unless the parties agree . . . no law will force [the parties] to do anything to which they do not agree.”¹⁵⁸ The negotiation surrounding the Willamette Meteorite was no different, as each party, outside of the formal judicial proceeding already underway in court, chose to discuss an alternative solution between themselves, apart from the statutes and laws each side was arguing to a judge.¹⁵⁹ The parties at the negotiation surrounding the Artifacts found it more efficient to forego the international laws and statutes that had been creating an impasse in the formal judicial proceedings.¹⁶⁰ In doing so, negotiation, outside of the laws of either Peru or the United States, allowed Peru and Yale to find common ground and resolve their dispute.¹⁶¹

A critique leveled against negotiation, as compared to mediation, is that negotiation fails in this category, since there is no third-party moderator to cajole the opposing sides to work together.¹⁶² Although this may be objectively true, since negotiation involves

¹⁵⁶ For the purposes of this Note, the seven characteristics that are applied to mediation will be spoken of in more general ADR terms, in relation to the case studies presented above, even though in the list presented here, each speaks particularly to mediation.

¹⁵⁷ Mealy, *supra* note 133, at 195–206.

¹⁵⁸ *Id.* at 197–98.

¹⁵⁹ See Graham & Murphy, *supra* note 8, at 111–12; SMOKE SIGNALS, *supra* note 1, at 3–4.

¹⁶⁰ Swanson, *supra* note 13, at 485–89.

¹⁶¹ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

¹⁶² Mealy, *supra* note 133, at 197–98.

direct talks between the opposing sides,¹⁶³ this critique fails to consider negotiations among parties both interested and willing to work together to achieve results, as the situation presented by the Willamette Meteorite suggests. When both parties are willing, negotiation mirrors mediation in this respect. Perhaps even more than this, when both parties are active and willing participants to the negotiation process, solutions are arrived at more effectively, since their own interests are at stake; whereas a mediator's interests are not exactly in contention during the mediation process. The initial negotiation process between Peru and Yale highlights this problem with negotiation – it will fail if one party chooses not to work with the other.¹⁶⁴ However, the second round of negotiations, when each party realized formal judicial proceedings were not going to bear fruit, did work.

The second attribute enumerated is that mediation “is consensual in two ways: (1) disputants voluntarily enter into mediation and (2) in order for a settlement to bind, disputants must voluntarily agree to mutual enforcement.”¹⁶⁵ Likewise, the AMNH and the Grand Ronde Tribe initiated negotiation on their own volition to resolve the matter in a mutually beneficial manner.¹⁶⁶ Moreover, for the last decade, neither party has found fault in the agreement signed in 2000, as the Willamette Meteorite still stands in the AMNH, with the approval of the Grand Ronde Tribe.¹⁶⁷ It is because the AMNH and Grand Ronde Tribe created their own creative and unique agreement that each party was—and continues to be—more likely to comply with the outcome.¹⁶⁸ Likewise, both Peru and Yale entered into negotiation, and each party took an active voice in constructing a creative agreement that leaves each party with a successful stake in the Artifacts.¹⁶⁹

Third, and perhaps the most fundamental reason the agreement over the Willamette Meteorite was successful, is that media-

¹⁶³ *Id.* at 195.

¹⁶⁴ Swanson, *supra* note 13, at 485–87.

¹⁶⁵ Mealy, *supra* note 133, at 198–99.

¹⁶⁶ Graham & Murphy, *supra* note 8, at 112.

¹⁶⁷ AMERICAN MUSEUM OF NATURAL HISTORY – WILLAMETTE METEORITE AGREEMENT, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite-agreement> (last visited Sep. 1, 2012).

¹⁶⁸ Mealy, *supra* note 133, at 198 (“[B]ecause parties design their own settlements, the likelihood of compliance is relatively high; when parties negotiate in good faith, any mediated agreement should address the interests of both parties.”).

¹⁶⁹ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

tion and negotiation require “disputants to identify their real motivations and to cooperate to come to mutually beneficial agreements which address each disputant-stakeholder’s most critical interests. This practice is the essence of consensus-building.”¹⁷⁰ At the start of negotiation, the opportunity to learn “more about each others’ organizations”¹⁷¹ allowed the aforementioned interests of the AMNH and the Grand Ronde Tribe to be conveyed to each other, to arrive at a mutually beneficial resolution. That is, the AMNH was better able to learn, prior to the start of negotiations, just how powerful a spiritual force in the life of a Grand Ronde Tribe member the Willamette Meteorite was, while the Grand Ronde Tribe was able to understand that its own spiritual interest was not the only interest at stake, since the AMNH, as a leading scientific and educational institution, maintained interests of its own, that were just as important. Negotiation, it is argued, “fails to accomplish consensus building because, without the presence of a mediator, disputants have little impetus to discuss their interests in an honest and cooperative manner.”¹⁷² In the case of the Willamette Meteorite, however, this charge leveled at negotiation does not seem to hold water, since each side was truthful regarding what its interest in the Willamette Meteorite was; both sides were willing to cooperate to effectuate a mutually beneficial resolution, without the aid of a mediator.

The AMNH, with the knowledge gleaned from negotiation proceedings, established the Grand Ronde internship program, because through negotiation, the AMNH was able to “learn first-hand about indigenous histories and cultures.”¹⁷³ This ongoing internship program, as well as the annual religious ceremony the Grand Ronde Tribe conducts in the Rose Center for Earth and Space,¹⁷⁴ is part of the fourth attribute—maintaining a workable relationship between disputants—that is applied to mediation, but also applies to negotiation in this case. It is clear from the above that ongoing commitments between the AMNH and the Grand Ronde Tribe allow for positive future relationships.¹⁷⁵ Similarly, both Peru and Yale understood the opposing party’s interest in the Artifacts. Although there was no dialogue regarding these inter-

¹⁷⁰ Mealy, *supra* note 133, at 199–200.

¹⁷¹ Graham & Murphy, *supra* note 8, at 112.

¹⁷² Mealy, *supra* note 133, at 200.

¹⁷³ Graham & Murphy, *supra* note 8, at 112.

¹⁷⁴ *Id.* (“Since 2000, representatives from Grand Ronde have come to the museum for private ceremonies during which the Rose Center is closed to the public and museum staff.”).

¹⁷⁵ Mealy, *supra* note 133, at 201.

ests at the start of negotiation, as in the Willamette Meteorite case, Yale knew, because of the lawsuits filed, as well as the many public comments by Peru, what interests Peru held in the Artifacts.¹⁷⁶ Peru knew that Yale, as a leading cultural and research institution through the Peabody, maintained the Artifacts for the same reasons the AMNH held a continuing interest in the Willamette Meteorite. Thus, when each side chose to return to the negotiating table, it knew the opposing party's stake in resolving the matter. And much like the ongoing relationship between the Grand Ronde Tribe and the AMNH outlined in their agreement, the agreement between Peru and Yale describes a similar future relationship between the parties.¹⁷⁷

The fifth attribute enumerated is that mediation “[p]romotes [i]nterparty [c]ultural, [p]olitical, [r]eligious, and [s]ocial [u]nderstanding.”¹⁷⁸ The cultural, political, religious, and social differences between the AMNH and the Grand Ronde Tribe factored into the ultimate agreement, because both parties' aims, AMNH's scientific and educational purposes, as well as the Grand Ronde Tribe's desire to reflect its connection with the meteorite, were satisfied.¹⁷⁹ The same holds true for the agreement between Peru and Yale, in that each party's interests were met—Peru's cultural heritage at home in Peru, and Yale's ability to maintain educational and scientific research with the Artifacts.¹⁸⁰ Moreover, the annual ceremony that the AMNH closes its doors for, to allow the Grand Ronde Tribe to conduct its religious practices in privacy and in accordance with its own rules, recognizes both the AMNH's desire to keep the Willamette Meteorite within its walls, as opposed to shipping it to Oregon once a year, and the Grand Ronde Tribe's

¹⁷⁶ See generally HEANEY, CRADLE OF GOLD: THE STORY OF HIRAM BINGHAM, A REAL-LIFE INDIANA JONES, AND THE SEARCH FOR MACHU PICCHU. See also Sarah Nutman, *Returning to Machu Picchu*, YALE DAILY NEWS, Feb. 14, 2011, <http://www.yaledailynews.com/news/2011/feb/14/returning-to-machu-picchu/> (In 2008, protests surrounding the return of the artifacts occurred in Lima and Cusco; there were also a number of Peruvians who ran in the New York City Marathon with shirts reading “Yale, return Machu Picchu artifacts to Peru.”).

¹⁷⁷ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012) (“[T]he 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.”).

¹⁷⁸ Mealy, *supra* note 133, at 201.

¹⁷⁹ AMERICAN MUSEUM OF NATURAL HISTORY – WILLAMETTE METEORITE AGREEMENT, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite-agreement> (last visited Sep. 1, 2012).

¹⁸⁰ UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

need for access to conduct religious worship.¹⁸¹ As for Yale returning the Artifacts to Peru, Peru is able to control its own cultural history, but Yale is still able, through exchange programs outlined in the agreement, to conduct research and programs regarding the Artifacts.¹⁸²

Sixth, “[m]ediation allows parties to avoid the complicated legal issues associated with arbitration and litigation,”¹⁸³ and the same holds true for negotiation. Here, neither the AMNH nor the Grand Ronde Tribe had to deal with any legal issue associated with going to court, since, once the negotiation had begun, the agreement was settled out of court.¹⁸⁴ Peru and Yale chose to return to the negotiating table after realizing that formal judicial proceedings would be less able to adequately resolve their dispute.¹⁸⁵

Finally, the seventh attribute is that “[m]ediation is . . . confidential . . . [and] cheaper and less time-consuming,”¹⁸⁶ than formal judicial proceedings; just as the negotiation surrounding the Willamette Meteorite resulted in a confidential agreement,¹⁸⁷ and it took only five months for the Grand Ronde Tribe and the AMNH to come to an agreement.¹⁸⁸ When the AMNH initially filed for a declaratory judgment following the Grand Ronde Tribe’s NAG-PRA claim, a spokesman for the Grand Ronde Tribe demanded that, “[t]he museum should do the right thing . . . and resolve this dispute now directly with our tribes, instead of marching us off to a court behind a squadron of attorneys.”¹⁸⁹ The fear, of course, was that the AMNH had much deeper pockets than the Grand Ronde Tribe, which helps explain why the out-of-court negotiation successfully arrived at an agreement.¹⁹⁰ In the case of Peru and Yale, each side had likely already spent large sums of money, since the

¹⁸¹ SMOKE SIGNALS, *supra* note 1, at 4 (“Starting in 2001, Tribal members have visited Tomawos every summer, except in 2009, when the depressed economy prompted both organizations to take a one-year break. . . . ‘This is an ongoing tradition now for the Tribe,’ Sell-Sherer said. ‘It’s part of our culture.’”).

¹⁸² UNSAAC AND YALE UNIVERSITY – MEMORANDUM OF UNDERSTANDING, <http://opac.yale.edu/peru/english/mou.html> (last visited Feb. 18, 2012).

¹⁸³ Mealy, *supra* note 133, at 203.

¹⁸⁴ See Graham & Murphy, *supra* note 8, at 111–12; SMOKE SIGNALS, *supra* note 1, at 3–4.

¹⁸⁵ Sarah Nutman, *Digging into Peru deliberations*, YALE DAILY NEWS, Feb. 15, 2011, <http://www.yaledailynews.com/news/2011/feb/15/digging-peru-deliberations/>.

¹⁸⁶ Mealy, *supra* note 133, at 205.

¹⁸⁷ See Graham & Murphy, *supra* note 8, at 112.

¹⁸⁸ *Id.*

¹⁸⁹ Weiser, *supra* note 10.

¹⁹⁰ SMOKE SIGNALS, *supra* note 1, at 4 (“The agreement saved the Tribe substantial legal fees.”).

dispute had been raging for some years.¹⁹¹ But, once each party sat down to negotiate, willing to compromise and create a nuanced approach to the solution, the process took only a couple of years¹⁹²—a short time, considering the first request by Peru for the return of the Artifacts was made in 1920.¹⁹³

IV. LEARNING FROM THE AGREEMENTS

There are a number of lessons on the use of ADR as a method for resolving cultural property disputes that were presented by these case studies. First and most important, the resolution of complex cultural property disputes need not utilize the formal court system for a resolution to be found. This is not to say that cultural property disputes should not be resolved through the court system, but merely to suggest that there are other routes parties can take to satisfy a mutually beneficial resolution to their dispute. Additionally, it is hard to push into a corner any ADR method—negotiation in this case—for failing to account for an aspect of the resolution process that another ADR method considers. Each dispute is different: there is no magic bullet to every cultural property dispute, as each has many parts and interests, the people involved all come from different places and all have diverse destinations. The negotiation surrounding the Willamette Meteorite worked, but this does not mean that mediation, for example, would not have proved equally as successful. Likewise, negotiation initially failed to resolve the dispute between Peru and Yale, but, after returning to the negotiating table a second time, the parties reached a resolution.

Moreover, the negotiation process used by the AMNH and the Grand Ronde Tribe was technically negotiation, because it was comprised of direct talks between the parties, but borrowed many techniques from successful mediation sessions used in resolving cultural property disputes.¹⁹⁴ This is how ADR should work—parties should use whatever method they both agree to use, and then use the agreed-upon method however they feel is best to resolve their dispute. Without doing this, cookie-cutter methods

¹⁹¹ Sarah Nutman, *Returning to Machu Picchu*, YALE DAILY NEWS, Feb. 14, 2011, <http://www.yaledailynews.com/news/2011/feb/14/returning-to-machu-picchu/>.

¹⁹² Sarah Nutman, *Unpacking the Artifact's future in Peru*, YALE DAILY NEWS, Feb. 16, 2011, <http://www.yaledailynews.com/news/2011/feb/16/unpacking-artifacts-future-peru/?print>.

¹⁹³ Swanson, *supra* note 13, at 482–83.

¹⁹⁴ Mealy, *supra* note 133, at 195–206.

applied to many different types of cultural property disputes would fail, since the rigidity being opted out of by moving out of court would just be injected into these other methods.

Negotiation, like mediation, gives each party the power to form and mold solutions to their unique problem; the AMNH did not want to see the Willamette Meteorite leave its hallways, while the Grand Ronde Tribe wanted to use *Tomanowos* as members of the tribe had done long ago.¹⁹⁵ Prior to negotiating, each party was bringing suit in court to remove the other party from the Willamette Meteorite. If the Grand Ronde Tribe had been successful in its NAGPRA claim, the AMNH would have lost the meteorite outright. Likewise, if the AMNH had received the declaratory judgment it petitioned for, the Grand Ronde Tribe would not have been able to use the meteorite in spiritual services, as this compromise arose only out of ADR proceedings.¹⁹⁶ But neither of these outcomes occurred, since both parties chose to negotiate, and instead of arriving at an all-or-nothing answer, they agreed on a mutually beneficial resolution.¹⁹⁷ Similarly, Peru wanted the return of all of the Artifacts, and Yale, initially, did not want to send anything from its vaults. In filing suit, Peru guaranteed that only one party would successfully walk away from the problem; by shifting to a negotiated compromise and nuanced solution, both parties ensured that everyone would be happy with the arrangement.

Cultural property disputes engender emotional responses from parties that have active stakes in the resolution of the dispute, since cultural property is more than just an object.¹⁹⁸ As Merryman explains:

¹⁹⁵ Graham & Murphy, *supra* note 8, at 111–12.

¹⁹⁶ Weiser, *supra* note 10.

¹⁹⁷ AMERICAN MUSEUM OF NATURAL HISTORY – WILLAMETTE METEORITE AGREEMENT, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/dorothy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite-agreement> (last visited Sep. 1, 2012).

¹⁹⁸ John Henry Merryman, *The Public Interest in Cultural Property*, 77 CALIF. L. REV. 339, 339 (1989). Merryman goes on to explain that,

We cannot resolve cultural policy questions on rational grounds alone. . . . [C]ultural objects have a variety of expressive effects that can be described, but not fully captured, in logical terms. The phenomenon is familiar enough: No one has yet adequately explained what there is about a piece of music or a poem or a painting that produces its expressive effect—that makes it “move” the listener or reader or viewer. But the important questions can be better understood, and the arguments advanced by interested people can be more accurately evaluated, if we establish a framework for thinking about cultural property.

Id. at 340–41. Merryman continues,

A great deal of public, corporate, and individual time, effort, and money are spent in making, finding, acquiring, preserving, studying, exhibiting, interpreting, and enjoying cultural objects, more in some times and places than in others, but imposing amounts in all. Human beings are the only animals that make, collect, preserve, study, and display such objects. The practice is very old, originating long before the modern state or earlier forms of political organization.¹⁹⁹

Accordingly, the idea of an all-or-nothing resolution is not really a resolution at all for many parties, since the risk of losing the property in question simply enhances and highlights any differences and friction between the parties. Conversely, if both parties know that they may come out of the dispute with something, the chance that an effective resolution will be reached is increased exponentially. It is instructive to understand the reasons behind society's affinity for cultural property, because in doing so, it becomes evident that disputes surrounding and regarding cultural property require nuanced approaches to solve complex situations that hold an added significance for each party, as compared to a dispute over a clause in a written will, for example.

How universal is the regard for cultural objects? What is perceived as culturally valuable, and by whom, clearly varies to some extent with time and place. Thus many Americans care about the Liberty Bell, while most foreigners do not. Only a few enthusiasts really care much about the preservation of Art Deco architecture. The measures taken to express collective attachment by the Kom people in Cameroon to the Afo-A-Kom are different from those taken by the Italians for a Renaissance painting. Things that we treat as culturally precious might have little appeal for people outside the West, and vice versa. Consider modern Western art, for example. Unless influenced by Western values or aware of the market, would a Japanese or Chinese viewer respond to a cubist painting by Braque? The answer is not obvious, since many Westerners themselves would be repelled, baffled, or merely unimpressed by the same Braque. But how about an educated Chinese (somehow insulated up to this point against Western culture), knowledgeable about and interested in art; would he respond to the *quality*, the intrinsic artistic merit, of such a work?

Id. at 342–43. Merryman concludes in explaining that,

The empirical evidence that people care about cultural objects is imposing: The existence of thousands of museums, tens of thousands of dealers, hundreds of thousands collectors, millions of museum visitors; brisk markets in art and antiquities; university departments of art, archaeology, and ethnology; historic preservation laws; elaborate legislative schemes controlling cultural property in Italy, France, and most other source nations; public agencies with substantial budgets, like the National Endowment for the Arts in the United States and arts ministries in other nations; laws controlling archaeological excavations; laws limiting the export of cultural property; international conventions controlling the traffic in cultural property and protecting cultural property in war, all demonstrate that people care about cultural property.

Id. at 343.

¹⁹⁹ Merryman, *supra* note 198, at 344.

Merryman cites seven societal sources of the public interest in cultural property: (1) truth and certainty; (2) morality; (3) memory; (4) survival; (5) pathos; (6) identity; and (7) community.²⁰⁰ Merryman defines truth and certainty as a source of interest in cultural property dealing with the idea that being in the presence of an authentic work of art garners feelings of “satisfaction,” because “[t]his is the real thing, speaking truly of its time.”²⁰¹ In resolving a cultural property dispute over a specific object, one party may suggest that a copy be made, such that the object can exist in essentially two different places at once. However, Merryman suggests that such a copy clashes with the idea of truth and certainty: “[i]n part we resent having been fooled, but there is more: The magic that only the authentic object can work is dissipated. There seems something paradoxical about a reproduction of a genuine, unique artifact.”²⁰² Thus, since the value of cultural property stems from its authenticity, resolving disputes over such property must adhere to the guidelines that it is the actual object itself, more than the idea of the object, which is important. Since the actual object cannot possibly exist in more than one location at a given time, the dispute must be resolved nevertheless, just as in both case study agreements.

As for morality, “[c]ultural objects embody and express moral attitudes,”²⁰³ and “[t]his is most obviously true of religious objects.”²⁰⁴ To the Grand Ronde Tribe, the Willamette Meteorite is a religious object. As such, it embodies their community’s moral attitudes, which was understood by the AMNH at the beginning of the negotiation process, ultimately leading to a successful outcome.²⁰⁵ For the people of Peru, the Artifacts represented their shared moral history.

Memory, as a source of public interest in cultural property, is more applicable to hand-made objects,²⁰⁶ such as the Artifacts, rather than to a meteorite; but the Grand Ronde Tribe’s insistence on the return of the Willamette Meteorite stemmed, in part, from the long tradition of its members using the meteorite as a religious object.²⁰⁷

²⁰⁰ *Id.* at 345–49.

²⁰¹ *Id.* at 346.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Mealy, *supra* note 133, at 195.

²⁰⁶ Merryman, *supra* note 198, at 347.

²⁰⁷ Graham & Murphy, *supra* note 8, at 111–12.

Survival, as a source of public interest in cultural property, belongs to the notion of immortality, “[t]he object that endures is humanity’s mark on eternity.”²⁰⁸ The Grand Ronde Tribe perhaps saw its own community’s mark on time in the Willamette Meteorite, and in viewing the meteorite in this light, it was clear that only a compromise, as opposed to an all-or-nothing solution, would solve the dispute surrounding it. Peru, of course, saw in the Artifacts the once-great Inca Empire, an empire that existed in Peru before Peru’s modern-day borders were drawn; the Artifacts represent the Inca mark on world history.

The idea of pathos as a source of public interest in cultural property does not apply to the situation of the Willamette Meteorite, since it is not a hand-made cultural object, but it does apply to the Artifacts, as they invoke a sense of nostalgia of a bygone people, a people that represent Peru.²⁰⁹ Identity, though, as a source of public interest in cultural property, is acutely applicable to the Willamette Meteorite. As Merryman explains,

The need for cultural identity, for a sense of significance, for reassurance about one’s place in the scheme of things, for a “legible” past, for answers to the great existential questions about our nature and our fate—for all these things, cultural objects provide partial answers. When war or natural disaster or vandalism destroys cultural objects, we feel a sense of loss. What is lost is the opportunity to connect with others and to find our place in the grand design.²¹⁰

Looking to the Willamette Meteorite, the Grand Ronde Tribe, in addition to a religious value placed on the meteorite, saw the meteorite as the only representation of their community, since their history is one of displacement and movement.²¹¹ Therefore, at the negotiating table with the AMNH, the importance to the Grand Ronde Tribe of the meteorite was personal and introspectional to their community whereas the AMNH saw the meteorite as a scientific and educational tool. Reconciling these interests was at the heart of the AMNH agreement – the Grand Ronde Tribe is able to venerate the meteorite in private ceremonies annually while the AMNH is able to study and teach using the meteorite throughout the year.²¹² Although Peru’s sense of identity is on firmer ground

²⁰⁸ Merryman, *supra* note 198, at 348.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 349.

²¹¹ Weil, *supra* note 43, at 142–43.

²¹² AMERICAN MUSEUM OF NATURAL HISTORY – WILLAMETTE METEORITE AGREEMENT, <http://www.amnh.org/exhibitions/permanent-exhibitions/rose-center-for-earth-and-space/doro>

today, Peru is a recognized state on the world stage, its historical and cultural identity stemming from the Artifacts certainly played a part in its constant desire to have them back at home in Peru.

Finally, community as a source of public interest in cultural property is clearly established at both ends of the negotiating table for the Willamette Meteorite: the Grand Ronde Tribe saw the meteorite as a method of participation in its community rituals, “of participation in a common . . . enterprise.”²¹³ The AMNH’s community value in the Willamette Meteorite is not outdone by the Grand Ronde Tribe’s, since it is easy to see how visitors to the museum, when viewing this rock from outer space, connect with humanity, “express[ing] a shared human sensibility and purpose . . . dispell[ing] the feeling that one is lost and alone.”²¹⁴ The same applies to Peru and Yale—each found a sense of community in the Artifacts, which had to be reconciled with each other to achieve a successful agreement.

V. CONCLUSION

The negotiation between the AMNH and the Grand Ronde Tribe concluded with a workable, mutually beneficial agreement that after a decade, still thrives, thanks to each party’s willingness to understand the interests at stake, and accommodate and compromise so that an all-or-nothing scenario was avoided. Equally, the Peru-Yale agreement represents a mutually beneficial agreement that accounts for each party’s interest in the Artifacts, as well as the political context surrounding the century-long conflict.

Looking to the future, parties on either side of a cultural property dispute would do well to understand the opposing party’s interests at stake before taking action. In such a situation, both parties will be more likely to realize early on that ADR is better positioned to deal with the unique situation at play. Arriving at the negotiating—or mediation, or other ADR-related process—table, with the knowledge of the opposing party’s interests will make it easier to arrive at a solution that suits both sides. The key for each party is to realize, as the two case studies above illustrate, that the only way to solve a cultural property dispute wherein the object(s)

thy-and-lewis-b.-cullman-hall-of-the-universe/willamette-meteorite-agreement (last visited Sep. 1, 2012).

²¹³ Merryman, *supra* note 198, at 349.

²¹⁴ *Id.*

in question can only exist at one site, is by accepting this reality through compromise. If the cultural object(s) can exist at only one site, then no matter the form of conflict resolution taken, be it formal judicial proceedings or ADR, the cultural object(s) can still only exist at one site. Thus, the use of ADR, rather than formal judicial proceedings, allows for a more nuanced compromise to permit both parties to come away with their interests still satisfied, as the case studies exemplify.

From these two case studies, it is apparent that when it comes to cultural property disputes that involve pieces that can only exist in one location at any given time, and that represent very specific and unique scientific, cultural, or educational opportunities, an all-or-nothing strategy through formal judicial proceedings is likely to fail. Formal judicial proceedings are not flexible or nuanced enough to account for the unique nature of cultural property disputes; nor is an all-or-nothing strategy worth pursuing, when the party pursuing such a strategy realizes that an all-or-nothing strategy results in one or the other: all, or nothing.