A BONE TO PICK WITH INTERNATIONAL LAW:
THE GHOULISH TRADE IN HUMAN REMAINS†

Kylie Cumback

In the past few years, a handful of websites banned the sale of human remains. In 2012, Etsy updated its prohibited items list to include human bones. In 2016, eBay also banned the sale of human bones on its online marketplace. The market for human remains in the United States is actually quite large—from the use of skeletons as instructional instruments used in schools across the country to collectors’ pieces to art mediums—human bones are a hot commodity. Despite export bans in India, black markets selling human remains have become a booming industry. This paper explores the various international laws and conventions in place to regulate the sale of human remains and cultural artifacts, and it proposes a certification scheme designed to stop the illegal sale of human remains and create a pathway for nations to repatriate the remains of their ancestors.

* Kylie Cumback, J.D. Candidate 2018, Michigan State University College of Law. The author would like to thank her family and friends for their encouragement.
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I. INTRODUCTION

Zane Wylie is an Artist.¹ His work is intricate, educational, and ghoulish. His medium? Human bones. Wylie is best known for carving human skulls with historical images.² In recent years, his industry of choice has faced some challenges as online marketplaces have implemented more restrictions on the sale of human remains.³ Wylie currently owns and operates an online marketplace through which he sells his art, and his products can sell for thousands of dollars.⁴ One might find this type of product to be unsettling. Indeed, his work is quite strange but not all that uncommon—at least in some circles.

Today human bones are used for art, as collectors’ items, and, of course, for classroom instruction.⁵ The market for human remains in the United States is quite large—from the use of skeletons as instructional instruments in schools across the country to collectors’ pieces of art—human bones are a hot commodity.⁶ While there are synthetic substitutes for human skeletons, medical schools and artists still like to use authentic human remains.

³ See infra Section II.
⁴ Id.
⁵ See Richard Spillett, School Holds Belated Funeral for ‘Arthur’ the Teaching Skeleton That Turned Out To Be A Real Person, DAILY MAIL (Dec. 2, 2015, 10:43 AM), http://www.dailymail.co.uk/news/article-3342879/School-skeleton-funeral-emerged-bones-real-human-remains.html. School children in the United Kingdom discovered that their classroom skeleton was a real person. Id. Upon that discovery, the children held a funeral for him. Id. Arthur was a 17–30-year-old Indian male who died in the 1900s. Id. The school has had his remains for nearly 50 years. Id. It is unknown if Arthur’s remains were imported to the United Kingdom. Id. See also Movie Skull Props by Zane Wylie, supra note 1.
⁶ See generally Christine L. Halling & Ryan M. Seidemann, They Sell Skulls Online?! A Review of Internet Sales of Human Skulls on eBay and the Laws in Place to Restrict Sales, 61 J. FORENSIC SCI. 1322, 1323 (2016).
Humans have been intrigued by anatomy and the study of human remains for millennia.7 In India, ancient scientists studied human remains and added significantly to our knowledge of human anatomy and medicine.8 During the Renaissance Era, Leonardo Da Vinci famously studied the remains of executed criminals.9 In fact, Da Vinci’s sketches were so accurate that he is often referred to as the father of modern anatomy.10 Today, individuals like Ryan Cohn, of the television show Oddities, collect human remains for their own private collections.11 Cohn’s collection consists of over 200 human skulls.12 The continued fascination with human remains created a flourishing online market for the remains—until recently.13

In 2016, eBay banned the sale of human remains on its online marketplace.14 eBay was not the first online retailer to ban selling human remains.15 In 2012, Etsy, an online marketplace for artists, also banned the sale of products made from human remains.16 These bans sparked

12. Id.
15. Id.
scholarly interest in the legal foundations for such bans. 17 This paper analyzes the market for human remains in the international community today and provides a clear pathway for repatriation of stolen human remains. Repatriation would allow a culture to reclaim pieces of its legacy which have been unjustly been taken. When human remains have been taken from a country and commoditized without the consent of the individual’s family or community, that culture has been unjustly deprived of some piece of its legacy and history.

Section II of this note provides an overview of what the online market for bones and bone products looks like today. 18 A quick Google search can instantly provide a handful of websites through which one may purchase a full human skeleton 19 or the skull of an unborn child. 20

Section III discusses the legal implications of the sale of human remains and products made from human remains. 21 Further, this section will explain how human remains are typically classified under the law as people, property, or cultural artifacts. 22 This section explains repatriation and the movement by many indigenous groups to repatriate their ancestors’ remains. 23 Finally, this section discusses how retailers in the United States and in the United Kingdom currently interact with laws that regulate the sale, possession, and exportation of human remains through a brief overview of the shipping policies on each website. 24

Section IV clarifies some of the regulatory laws in place in the United States and India. 25 This section also addresses previous attempts by various international bodies to regulate the sale of human remains and discusses why these laws are currently inadequate. 26

18. See infra Section II.
21. See infra Section III.
22. See infra Section III.A.
23. See infra Section III.B.
24. See infra Section III.C.
25. See infra Section IV.
26. See infra Section IV.
Section V explores a potential solution to some of the prevailing issues in the industry today, such as regulating the sources of human remains and certifying that the sale of these remains complies with state, federal, and international laws. This model of certification will resemble that of the Kimberley Process, the international agreement currently in place to monitor the sale of blood diamonds. In addition to providing for a certification scheme, this solution will also provide clearly defined paths to repatriate remains illegally taken from foreign nations. Additionally, this section briefly describes how black markets and private collections could create a barrier to the proposed treaty. First, however, a deeper analysis of the industry as it stands in the United States and abroad is helpful.

II. THE ONLINE MARKET

Do people actually sell human remains online? Yes, they really do. In July 2016, the Journal of Forensic Sciences published an article reviewing the sale of human remains through online forums. For this study, scientists monitored eBay listings for human skulls for a period of seven months. The scientists observed 454 new listings for human skulls. These listings originated from 237 unique sellers, and the majority of listings came from single item sellers. Some of the remaining sellers listed as many as twenty-nine items, while other sellers listed between two and seven items. The mean opening bid was approximately $648 and the winning bid rose as high as $5,500. The skulls listed on eBay consisted of both pathological skulls and nonpathological skulls. Less desirable pathological skulls were listed at a lower value because they contained some sort of injury or injury. 27 See infra Section V. 28 See infra Section V.B. 29 See infra Section II. 30 Hugo, supra note 2. 31 Halling & Seidemann, supra note 6, at 1322. 32 Id. 33 Hugo, supra note 2. 34 Halling & Seidemann, supra note 6, at 1323. 35 Id. 36 Id. 37 Id.
abnormality. On the other hand, the nonpathological skulls, were listed at a generally higher value due to their good condition; some were of medical quality, while others were of forensic or archeological quality. Shortly after this study was published, eBay banned the sale of human remains. Christine L. Halling & Ryan M. Seidemann, researchers at the Louisiana Department of Justice, found that the sales of the human remains in the study originated from 24 states in which the sale of human remains is restricted. The eBay ban came four years after Etsy banned the sale of human remains on its website.

Etsy is an online marketplace where people all over the world can sell their crafts and buy unique goods. In 2012, Etsy added “Animal Products and Human Remains” to its prohibited items list. In a blog post, the company wrote that it implemented the changes after months of research on “offbeat and fascinating topics,” including “issues surrounding the sale of human bones.” The company also said that “when it comes right down to it, some things just aren’t in the spirit of Etsy.”

Despite the Etsy and eBay bans, other websites and online merchants still sell human bones. The Bone Room, for example, is one of many of online retailers that offer a variety of oddity items for sale. This particular retailer sells everything from meteorites, animal bones, and animal fossils to 3D-printed bone jewelry, human teeth, and human

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38. See id.
39. See id.
41. Vergano, supra note 40.
42. Prohibited Items Policy, supra note 16; Engelhardt, supra note 16.
44. Prohibited Items Policy, supra note 16; Engelhardt, supra note 16.
46. Id.
bones. Prices on The Bone Room range from just $7 for human teeth to over $5,400 for an articulated human skeleton—where all the bones are connected together to form a full skeleton. Among the plethora of human bone items for sale on The Bone Room are “post-cranial” bones—all bones found below the skull. The Bone Room also sells full human skeletons (articulated or disarticulated) and the following four categories of human skulls: normal skulls, demonstration skulls (meaning it was likely used in a medical capacity), pathological skulls, and fetal and child skulls.

Each skull is given a number and each listing comes with an annotation on the condition of the skull. For example, the listing for Human Skull #140 falls under the normal skulls section of the website and comes with the notation that it is a “Male human skull from India.

52. Post-Cranial Human Bones for Sale, supra note 50.
Upper protruding incisors.” 56 Fetal Skull #162, on the other hand, is a fetal skull listed with the caption stating, “This is a human fetal skull. The mandible is not attached to the upper part of this skull and it has a particularly large cranium making it pathological.” 57 Still other skulls list that they originated from India or China. 58 For example, Skull #1 is a male from China, 59 and Skull #140 is a male from India. 60 Section IV discusses the implications of The Bone Room and other websites selling human remains from China and India, as both countries banned the export of human remains in recent decades. 61

III. WHAT IS THE PROBLEM WITH SELLING HUMAN REMAINS ONLINE?

There are a few main issues with selling human remains online. First, human remains do not fall neatly into any particular category as a commodity. Because human remains are not living humans, the following question must be considered: are the bones of the deceased considered people or are they property? 62 A second consideration is repatriation—if the remains are cultural artifacts, must the remains be repatriated to the cultures or nations from which the deceased came? 63 Third, there is general confusion regarding how international, federal, and state laws may intertwine; thus, the consumers of such a commodity are at risk of losing out on money paid for human remains if their items are confiscated. 64

56. Id.
59. Pathological Human Skull #1 – Male, supra note 58.
60. Human Skull #140, supra note 55.
61. See infra Section IV.
63. See infra Section III.A
64. See generally, Hugo, supra note 2.
A. How Does the Law Consider Human Remains?

How the law classifies human remains is complicated. Deciding what should be done with the remains, what must be done with the remains, and what cannot be done with human remains is difficult. Tanya D. Marsh, Professor at Wake Forest University School of Law, published a comprehensive analysis of current United States laws regarding human remains in 2015. In an excerpt of her book, Marsh describes the unique considerations one must account for in this section of the law. The law generally separates people and property into two neat piles, but human remains do not necessarily fit into one pile or the other. Marsh states that human remains challenge the bifurcation of people and property because these “things” are “products of the human body that have been divorced from a living person and are not themselves alive . . . . The biological matter that remains after a human being dies is one such ‘thing’ that exists in limbo between people and property.” Marsh also states that “like the material it governs, the law of human remains does not fit neatly into any pre-existing area of law. It is distinct and unique.”

The United States recognizes the common law right to decide the method and place of final disposition. In certain transactions, humans maintain many rights over their property in death. One can put his or her assets in trusts, determine to whom his or her property should descend, decide to be interred or cremated or placed in a museum (with his or her dog’s body). One may even decide if he or she wants to

66. See generally id.
67. Id.
68. Id.
69. Id. at 1–2.
70. Id.
71. Id. at 6.
72. in mortua manu, BLACK’S LAW DICTIONARY (10th ed. 2014) (“[Law Latin ‘in a dead hand’] (Of property) perpetually controlled according to a decedent’s directions”).
73. Joseph Caputo, Grover Krantz Donated His Body to Science, On One Condition..., SMITHSONIAN (Feb. 11, 2009), http://www.smithsonianmag.com smithsonian-institution/grover-krantz-donated-his-body-to-science-on-one-condition-38726179/ (discussing Grover Krantz’s donation of his body to the Museum of Natural History on the condition that the skeleton of his dog, an Irish Wolfhound named Clyde, be displayed with him).
donate his or her body to science.74 One might choose to donate his or her body to science in order to donate specific organs for medical research projects regarding a variety of health issues: heart disease, diabetes, HIV, Alzheimer’s disease, and so many more.75 Still, the US common law protects one’s right to do with the body whatever he or she wishes.

In the United Kingdom, human remains are controlled under the Human Tissue Act of 2004 (HTA) if the remains are less than 100 years old.76 The HTA regulates activities such as the removal or storage of human tissues when such tissues are taken with the prior consent of the individual.77 The HTA contains a few exceptions for consent, including the disposition of human remains older than 100 years.78 This exception also applies to imported human remains when the remains are over 100 years old.79 The HTA may require a museum or collection holder to obtain a license to possess remains that are less than 100 years old.80 In England and Wales, it can be difficult to assert ownership rights because unless the remains have been “treated or altered through the application of skill” the laws do not recognize human bodies or tissues as property.81

The 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibition and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the UNESCO Convention) defines cultural property as any property with historical significance.82 According to the UNESCO Convention,

77. Id. at 11.
78. Id.
79. Id.
80. Id.
81. Id. at 12.
“cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archeology, 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 fossils;

(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 or of archaeological discoveries; [and]

(f) objects of ethnological interest.

The UNESCO Convention does not specifically discuss human remains, but human remains fall under protected materials within the Convention. Much like the UNESCO Convention, the Native American Graves Protection and Repatriation Act (NAGPRA) also considers human remains as cultural property. NAGPRA describes Native American “cultural patrimony” as artifacts that “have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual.” Clearly, the laws consider the bones from both a cultural and an individual perspective and when viewed as cultural artifacts, it is important to also consider how human remains can or should be repatriated.

83. Id.
84. Id.
86. Id. § 3001(3).
87. Id. at § 2(3)(D).
B. How Does Repatriation Fit In?

Another common consideration when discussing the trade in human remains is the process of “repatriation.”88 In various ways, human remains have ended up in museums, classrooms, and private collections.89 In recent decades, many cultures have begun the process to repatriate their ancestors’ bones that have found their way into obscure places all over the world.90 For example, the Maori of New Zealand91 and the Yorta Yorta Nation of Australia92 in particular have successfully repatriated their ancestors’ remains.

In Australia, the Yorta Yorta, an aboriginal tribe, believe repatriation is of the utmost importance to their cultural legacy.93 Henry Atkinson, a member of the Yorta Yorta, described the importance of repatriation by saying, “for [non-aboriginals], [the bones] have no emotional value – except in the immoral way in which Indigenous people were exploited. To me, my people and other Indigenous groups around the word, it is an entirely different matter. These skeletal remains belong to me and I belong to them.”94 For Atkinson and the Yorta Yorta, burials are incredibly important to the customs of the tribe.95 Aboriginals who were

93. Id.
94. Id.
95. Id.
not given a burial have, in a sense, been disrespected through the undignified manner in which they are scattered around the world.96

Yorta Yorta land was once all the Indigenous tribe needed to survive97 and throughout history European colonialization stripped that away from them.98 Colonialization also led to the decimation of the Yorta Yorta people, especially, according to Atkinson, by men of science.99 “Over the years numerous scientists — medical doctors, anthropologists, dentists, archaeologists, in Australia and other parts of the world — sought to procure Indigenous remains.”100 Atkinson states that the remains of his people were collected, traded, and sold across the world and deprived of a true final resting place.101 Atkinson estimates that there are over 10,000 skeletal remains of his people in the United Kingdom waiting to be repatriated.102 In 2004, Atkinson led a group of his people to the United States in an effort to repatriate his ancestors’ remains, which had been offered for sale on the internet—the seller intended to trade the remains for boomerangs and would not return the remains until he was assured that he would not be prosecuted.103 While in the United States, Atkinson discovered that the University of Michigan owned Yorta Yorta remains; in the past, the University resisted repatriating Native American

96. Id.
97. Id. at 16.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id. at 17.

For those scientists who wanted to obtain whole bodies, these were put into barrels of spirits to preserve them on the long journey overseas, while others were reduced to skeletons. My people were wrapped in brown paper or put in a rough hessian bag and shipped overseas. There was no thought of this being a person, a living human. How can the spirits of one’s ancestors rest when they have been subject to this type of inhumane treatment[?] How can they rest when, even to this day, they are still subject to the prying eyes and jabbing tools of a so-called civilised society?

Id.
indigenous remains, but Atkinson’s coalition successfully repatriated Yorta Yorta remains from the University.\textsuperscript{104}

In New Zealand, the Maori people largely control the repatriation movement.\textsuperscript{105} The Maori believe that at “death[,] one’s \textit{wairua} (spirit) left the body and went to dwell in another place . . . , but also that the physical remains still contained some important essence of the departed.”\textsuperscript{106} The Maori concept of \textit{tapu} means that the physical person is sacred and untouchable—the bones left at death are permanently \textit{tapu}.\textsuperscript{107}

In Maori tradition, the warriors would lose all \textit{tapu} if their bodies (in particular their heads) were captured by their enemy—so the Maori would go to such extremes as to cut off the heads off their own injured siblings in battle in order to preserve all \textit{tapu}.\textsuperscript{108} While the Maori would use the bones of their enemies to gain their essence,\textsuperscript{109} or use the bones of their non-\textit{tapu} slaves as tools,\textsuperscript{110} the Europeans would collect Maori human remains for profit.\textsuperscript{111} Trade in Maori remains began on James Cook’s first voyage to New Zealand in the late 18th century—this was done with remains that had no \textit{tapu} (mostly remains from enemies and scraps from cannibalism) and thus were of little importance to the Maori.\textsuperscript{112} Austrian naturalist Andreas Reischek collected remains to sell his collection in Austria.\textsuperscript{113} British army officer Horatio Robley collected Maori “tattooed heads.”\textsuperscript{114} Robley’s tattooed heads are world famous; during his time in New Zealand with the British army, Robley collected 35 Maori heads, also known as the Mokomokai—tattooed heads preserved with shark oils.\textsuperscript{115}

\begin{enumerate}
\item[104.] \textit{Id.} at 17—18 (noting that the University had imported the remains from Australia just 15 years earlier for use in medical instruction).
\item[105.] \textit{See generally} Hole, \textit{supra} note 91.
\item[106.] \textit{Id.} at 6.
\item[107.] \textit{Id.}
\item[108.] \textit{Id.}
\item[109.] \textit{Id.} at 6–7.
\item[110.] \textit{Id.}
\item[111.] \textit{Id.} at 7.
\item[112.] \textit{Id.} at 8.
\item[113.] \textit{Id.} at 7; \textit{see also} Erich Kolig, \textit{Andreas Reischek and the Maori: Villainy or the Nineteenth-Century Scientific Ethos?}, 10 PAC. STUDS. 55, 55 (1986).
\item[114.] Hole, \textit{supra} note 91, at 7.
The Maori take a curious view of repatriation; although, when one considers the belief in *tapu*, the view makes sense. The Maori only desire to repatriate the remains of individuals with strong *tapu*—meaning they do not value remains like the Mokomokai (usually preserved slave heads) which Robley sold to the Museum of Natural History in New York.\textsuperscript{116} For some repatriations though, the Maori act swiftly and effectively. For example,

\begin{quote}
[t]he repatriation of remains to Ngati Pikao occurred when [a Maori leader] proactively learnt [sic] that the [Auckland War Memorial Museum] contained remains from the *hapu*. [The leader] wrote to the museum to request their return, received a quick response, and was able to take a small delegation to collect the remains almost immediately. There was no press surrounding the repatriations.\textsuperscript{117}
\end{quote}

For many cultures, repatriation is a remedial avenue or an avenue through which the community may honor their ancestors. Once the Maori realized “that the remains of their ancestors were now of great value to both Europeans and other Maori (especially in the case of tattooed heads), many Maori began to take actions to prevent those remains from falling into the hands of others.”\textsuperscript{118}

In some cases the tribes would now bury or relocate their ancestors’ remains so that others could not find and steal them.\textsuperscript{119} The Maori also sought other avenues to protect their ancestors’ remains, such as consulting with local government officials.\textsuperscript{120} However, it is still estimated that vast numbers of Maori bones and over 200 Maori preserved heads are in foreign lands.\textsuperscript{121} The Working Group on Human Remains reports that a minimum of 187 Maori remains are in the United

\begin{flushright}
\begin{itemize}
\item \textsuperscript{116}. Hole, *supra* note 91105, at 22.
\item \textsuperscript{117}. *Id.*
\item \textsuperscript{118}. *Id.* at 14.
\item \textsuperscript{119}. *Id.* at 14. For example, “[Andreas] Reischek is especially notorious for his theft of two ‘mummies’ from a cave in the King Country region during a visit there under the protection of the Maori King Tawhiao in 1881.” *Id.* at 11. Reischek continued his operations in New Zealand, and “[w]hen Reischek’s theft from the King Country was discovered several years later for example, all of the remaining bodies were removed and reburied in secret to prevent a repetition, and the Waikato and King Country tribes refused to co-operate with local archaeologists up until the 1960s.” *Id.* at 14.
\item \textsuperscript{120}. *Id.* at 14.
\item \textsuperscript{121}. *Id.* at 15.
\end{itemize}
\end{flushright}
Kingdom and another 37 Maori heads are in the Museum of Natural History in New York City.\textsuperscript{122} Today, the Maori place great value on giving their ancestors a proper tribal burial.\textsuperscript{123} When asked if skeletons collected by archaeologists should be reburied, 82\% of New Zealanders said yes.\textsuperscript{124} When asked when the skeleton should be reburied, 65\% of New Zealanders said they should be reburied at the request of the local community.\textsuperscript{125} Only 29\% of New Zealanders thought that it was appropriate to see human remains on display in museums.\textsuperscript{126} Considering how the law currently defines human remains, and taking into consideration the growing movement toward repatriation, it is important to understand one final piece to the puzzle before we can discuss what individual nations and the global community are actually doing to regulate this industry—how do the online retailers interpret the laws?\textsuperscript{127}

C. How Do Retailers Interpret the Laws?

In the United States, there are very few state laws and regulations prohibiting the sale of human remains: three states explicitly ban the sale of human remains; however, as many as 38 states have unenforced laws that prohibit the sale,\textsuperscript{128} and NAGPRA remains the only federal regulation relating to the sale of human remains.\textsuperscript{129} Legal scholars and academics even find it difficult to ascertain which laws attach in each jurisdiction and how they function together.\textsuperscript{130} Retailers wishing to sell human remains must comply with an area of law that is entirely distinct from any other area of the law.\textsuperscript{131} Despite major forums like eBay and Etsy banning the sale, small niche sellers must still comply with tricky

\begin{itemize}
  \item \textsuperscript{122} Id.
  \item \textsuperscript{123} Id. at 21.
  \item \textsuperscript{124} Id. at 24.
  \item \textsuperscript{125} Id.
  \item \textsuperscript{126} Id.
  \item \textsuperscript{127} See infra Section III.C.
  \item \textsuperscript{128} Conor Gearin, \textit{Hundreds of Mystery Human Skulls Sold on eBay For Up to $5500}, NEW SCIENTIST (July 12, 2016), https://www.newscientist.com/article/2097171-hundreds-of-mystery-human-skulls-sold-on-ebay-for-up-to-5500/.
  \item \textsuperscript{130} See generally Hugo, supra note 2.
  \item \textsuperscript{131} \textit{The Law of Human Remains}, supra note 62, at 1–2.
\end{itemize}
state laws and the single federal law—NAGPRA. Section IV of this Note analyzes these laws in more depth. A brief analysis of the varied interpretations of these laws is illustrative of the pervasive problem. The confusion regarding the various laws in the United States and the United Kingdom manifests in the shipping Frequently Asked Questions (FAQ) pages of oddities websites.

The Bone Room displays on each page through which it sells human remains the following disclaimer,

[i]n short, it is perfectly legal to possess [sic] and sell human bones in the United States. There are a few exceptions to this: a few states have banned import and export, and of course, protected archaeological resources covered by the Native American Graves Protection and Repatriation Act. For more information and specifics please visit our Bone FAQ page. The Bone Room cannot ship any real human bones to: Georgia, Tennessee, and New York. International shipping restrictions may apply.

The Bone Room then reiterates the statement that it will not ship to Georgia, Tennessee, or New York, and the International Shipping Information page places the onus on the purchaser to determine whether human remains may be shipped to an international country. Additionally, the Bone Room states that it, “follows California State Law, U.S. Federal Law, and International Treaties regarding the possession and sale of [its] merchandise.” The Bone Room then advises “that foreign localities may have additional restrictions on some material. It is the customer’s responsibility to be aware of their own local laws.” It further places the burden on the purchaser to determine if the

133. See infra Section IV.
135. Real Human Bones, supra note 19 (emphasis omitted).
137. Id.
138. Id.
laws allow one to buy human remains and import them into their city, state, or country.\textsuperscript{139}

Several other retailers also offer human remains for sale.\textsuperscript{140} Another forum, Skulls Unlimited, sells human remains online.\textsuperscript{141} Skulls Unlimited advertises itself as “[t]he World’s Leading Supplier of Osteological Specimens.”\textsuperscript{142} According to the website’s policies, Skulls Unlimited, an Oklahoma domiciliary, will ship freely to all people in the State of Oklahoma—as all human bone products may be sold within the state.\textsuperscript{143} However, it will also sell to all other states and countries.\textsuperscript{144} Skulls Unlimited states that if one purchases an item which he may not possess under the laws of that particular entity, Skulls Unlimited will “hold [the purchaser] responsible for any penalties and legal fees incurred by Skulls Unlimited. Please be aware of your local laws before purchasing.”\textsuperscript{145}

The Bone Room and Skulls Unlimited are not alone in their use of disclaimers. Pandora’s Box, an oddities retailer in the United Kingdom, also disclaims responsibility for shipment of human remains.\textsuperscript{146} According to Pandora’s Box, the Human Tissues Act would allow for the sale of human remains, should it comply with consent requirements or fall outside the scope of the Human Tissue Authority.\textsuperscript{147} Pandora’s Box, much like The Bone Room, also places the burden on purchasers to double check with the Human Tissues Act to ensure that they are in compliance with the consent and licensing requirements under the Act.\textsuperscript{148} The FAQ page further explains the company’s interpretation of the clause “sale of bodies, body parts or tissue for other purposes” to mean

\begin{itemize}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{142} \textit{Id.}
\item \textsuperscript{144} \textit{Id.}
\item \textsuperscript{145} \textit{Id.}
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} \textit{Id.}
\end{itemize}
that the Act allows bones to be sold for private collections. The company alleges that so long as the bones are “treated with respect and dignity” and are not “sold as Halloween decorations,” the sale is protected.

Interestingly enough, Pandora’s Box also states that the United States laws “seem to be evolving in regards to human bones and remains and as such [it] can not offer these items to U.S. customers.” Pandora’s Box takes this prohibition one step further by refusing to even refer a United States customer to a retailer in the United States as it “would not want to break or even stretch the law.” In an email received on February 25, 2017, the Pandora’s Box Customer Service Team, stated that they would not sell to U.S. customers because right now the laws around bones in the US are changing . . . . It comes down to one customs official determining it objectionable and reacting as if that makes it illegal . . . . It’s just a muddy mess so best to avoid it vs [sic] having people demanding refunds when they were told [confiscation] could happen.

One common theme across these online retailers is that all seem to have slightly different interpretations of shipping regulations. This creates an unfortunate situation for consumers who could potentially purchase a human bone, human skull, or human skeleton erroneously believing that the purchase was perfectly legal. Consumers are at risk of forfeiting the cost of their purchases, should the remains be confiscated at customs. Deciding who should bear the cost of determining which laws govern the purchase and shipment of human remains is an

149. Id.
150. Id.
151. Id.
152. Id.
153. Email from Pandora’s Box Customer Service Team, Pandora’s Box, to author (Feb. 25, 2017, 6:49 AM) (on file with author).
interesting question; however, typically, in legitimate business practices, the duty to ensure compliance with state, federal, and international regulations lies with the retailer. 155 Section IV discusses where the lack of clarity across nations’ laws is creating problems in the industry and what the laws in these locations actually say. 156

IV. WHERE THE PROBLEM ARIS ES AND PRIOR INTERNATIONAL ATTEMPTS TO REGULATE THE TRADE OF CULTURAL ITEMS

In such a niche area of the law, it can be difficult to fully understand the complexities of the laws regulating the sale of human remains. To establish where the bone industry has created problems, this part discusses the laws that regulate the sale, possession, and exportation of human remains in the United States 157 and India. 158 Further, this part discusses previous international attempts to regulate this industry. 159

A. Confusion Regarding Regulations in the United States

Some retailers believe that the only restrictions in the United States are the prohibitions currently enforced in New York, Georgia, and Tennessee. 160 This is not entirely accurate. 161 In the United States, there are very few state laws and regulations prohibiting the sale of human remains: three states explicitly ban the sale of human remains; however, as many as 38 states have unenforced laws that prohibit the sale, 162 and NAGPRA remains the only federal regulation regarding the sale of human remains. 163 Legal scholars and academics even find it difficult to

156. See infra Section IV.
157. See infra Section IV.A.
158. See infra Section IV.B.
159. See infra Section IV.C.
160. Hugo, supra note 2.
161. Id.
162. Gearin, supra note 128.
ascertain which laws attach in each jurisdiction and how they work together.164

1. Lack of Clarity and Inconsistency Across State Laws

Apart from NAGPRA, the federal government left a gap in the regulations for the states to fill; thus, the regulations across the states are irregular.165 According to Halling and Seidemann, “[l]aws in 16 states specifically prohibit the possession of human remains; although four of those states specify only that Native American remains cannot be possessed.”166 Other gaps in the state laws occur because the states only regulate human remains disinterred from graves in that state—making regulation of interstate movement quite difficult.167 According to Professor Marsh,

[t]he common law and statutory law of human remains are often in tension, or, read together, leave important questions unanswered. Because state legislatures have failed for more than two centuries to consider the law of human remains in a consistent or cohesive manner, courts often struggle to reconcile statutes with common law.168

These tensions create intense confusion and misinterpretation by retailers both in the United States and abroad.169

2. The Native American Graves Protection and Repatriation Act

NAGPRA was enacted in the 1990s as an effort to prevent the disturbance of sacred Native American burial grounds and to prevent the loss of valuable Native American history.170 Under the terms of

164. Hugo, supra note 2.
165. Halling & Seidemann, supra note 6, at 1325; see also Hugo, supra note 2.
166. Halling & Seidemann, supra note 6, at 1325.
167. Id.; Hugo, supra note 2.
169. Id.
NAGPRA, museums and federal agencies that receive federal funding must inventory all Native American human remains, funerary objects, sacred objects, and items of cultural patrimony; then those museums and agencies must come to agreements with the respective tribes for repatriation.\textsuperscript{171} NAGPRA also provides greater protection for Native American burial grounds—it requires that Native American tribes are consulted whenever archeological digs encounter or potentially encounter Native American remains.\textsuperscript{172} Furthermore, NAGPRA criminalizes the trafficking of Native American Cultural remains: \textsuperscript{173}

(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains . . . shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.

(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.\textsuperscript{174}

The law was established with the goal of protecting cultural artifacts and human remains and ensuring that those artifacts do not enter the market or are held in museums without the proper tribal owner’s consent.\textsuperscript{175} The law would help protect tribal lands and artifacts from

\begin{itemize}
\item \textsuperscript{172} Id.; see also Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3002(b) (1990).
\item \textsuperscript{174} Id.
\item \textsuperscript{175} Id. § 1170(a).
\end{itemize}
cultural parsimonious practices; however, as of 2010, many agencies have yet to comply with the regulations.\footnote{176}{U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-768, NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT: AFTER ALMOST 20 YEARS, KEY FEDERAL AGENCIES STILL HAVE NOT FULLY COMPLIED WITH THE ACT 1 (2010).}

In 2010, the Government Accountability Office (GAO) published a report highlighting the fact that several key agencies had not yet fully implemented NAGPRA as it applied to historical collections.\footnote{177}{Id.} According to the GAO’s report, “[t]hrough fiscal year 2009, 55 percent of the human remains and 68 percent of the associated funerary objects that have been published in notices of inventory completion had been repatriated . . . Only three agencies—the [U.S. Army] Corps [of Engineers], the Forest Service, and NPS [the National Parks Service]—centrally track their repatriations. These three agencies . . . generally do not report any of their data on repatriations to National NAGPRA or to Congress.”\footnote{178}{Id.} The report suggests that as a result of the lack of published archives, the tribes do not have access to information on un-repatriated native objects.\footnote{179}{Id.} According to the report, the remainder of the non-repatriated native objects “have not been repatriated for a variety of reasons, such as a lack of repatriation requests and financial constraints.”\footnote{180}{Id.} Private collections would be incredibly difficult to monitor to ensure that native artifacts and remains have been repatriated but even more difficult because even museums have yet to repatriate their native objects.

As stated above,\footnote{181}{See supra Section III.A.} NAGPRA treats human remains as cultural artifacts.\footnote{182}{See Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001(3)(D), 3002(a)(1).} Cultural artifacts are treated as belonging to the cultures from which they were taken—NAGPRA, for example, treats Native American human remains as cultural artifacts and therefore such items are prohibited from being sold for profit.\footnote{183}{Id.} NAGPRA describes Native American “cultural patrimony” as artifacts that:
hav[e] ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. 184

When found, Native American human remains are first to be appropriated to lineal descendants of the decedent, then to the tribe; if the tribe cannot be ascertained, then the cultural property goes through a series of methods for determining which tribe has a stronger claim over the remains. 185 The United States is not alone in its attempts to regulate this industry, as many other countries have tried. India attempted to quell the market by stopping it at its origins. 186

B. India’s Black Market and Export Ban

To get a better understanding of the bone trade, it is necessary to examine India’s colorful history related to the topic. In 1985, India banned the export of human remains. 187 Throughout India’s history, the country has studied anatomy and has been a leading producer of human skeletons—and the market was booming there. 188 “For 150 years, India’s bone trade has followed a route from remote Indian villages to the world’s most distinguished medical schools.” 189 Journalist Scott Carney states that most skeletons in the United States come from overseas because most bodies in the States receive a prompt burial or end up on a medical dissection table. 190 Carney asserts that a serious problem in the

185. Id. § 3002(a).
186. See infra Section IV.B.
189. Inside India’s Underground Trade in Human Remains, supra note 187.
190. Id.
use of human remains in medical study is that most of the remains are used “without the informed consent of their former owners and in violation of the law of their country of origin.”

What made the Indian government outlaw what was once a multimillion dollar business? Fear of grave robbing and murder. As a direct result of the ban, the business in India crumbled—but a black market arose. One prominent Indian black market business ran for over 100 years before the authorities finally stopped it two decades after the ban. Carney argues that the weight of the laws in India depend heavily on the weight local police place on the seriousness of the illegal trade. “Despite a ban on the export of human bones by the Indian government in the mid 1980s, the illegal trade is thriving in many parts of the country as a result of ineffective laws and poverty.”

This ban has also had an impact on the market in the United States—where very few retailers have a steady supply of human remains; those that do have a supply often purchase those remains from an international

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191. *Id.*
193. *Inside India’s Underground Trade in Human Remains, supra* note 187.
194. *Id.*
195. *See Into the Heart of India’s Underground Bone Trade, supra* note 192.
A similar situation arose when China also banned the sale of human remains in 2006. Recall Skull #1 and Skull #140 discussed from the Bone Room. If India and China both have banned the export of human remains, how then does one reconcile the ban with the sale of these remains on the online marketplace in the United States? Does the global community allow the sales to continue under the assumption that the remains were exported before the bans went into effect? Or should these communities repatriate the objects?

C. Prior International Attempts to Regulate the Bone Trade

The international community has the ability to come together to address any number of issues. In the past, the international community has come together to stop human rights violations, to stop the trade in endangered species, and to prevent chemical warfare. “International conventions are treaties or agreements between states.” With regard to cultural property and human remains in particular, the international community has come together many times in the past. For example, in 1902, the United States and the Kingdom of Spain came together to address the national ownership of sunken vessels. In 1919, as part of the Treaty of Versailles, the global community again reunited to address, among other things, the items stolen or destroyed during the course of World War I. In 1954, UNESCO put forth the Convention for the

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197. See Into the Heart of India’s Underground Bone Trade, supra note 192.
198. Gearin, supra note 128; Hugo, supra note 2.
199. See Pathological Human Skull #1 – Male, supra note 58; Human Skull # 140, supra note 55.
200. Hutt & Riddle, supra note 82, at 224.
205. Hutt & Riddle, supra note 82, at 225.
206. Id.
207. Id.
Protection of Cultural Property in the Event of Armed Conflict. 208 The purpose of the convention was to shine a light on the global importance of preservation of all cultural items and the convention was successful in that goal; however, human remains not deemed “cultural property” have not reaped the protections under these conventions. 209

In 1970, UNESCO revisited the discussion of cultural property. 210 The UNESCO Convention is the major international regulation in place today, and has been ratified by 134 member states. 211 This convention took significant steps toward assisting the repatriation of cultural materials, and it also helped to make the trade in cultural properties illegal. 212 Article 5 of this convention sought to “ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake . . . to set up within their territories one or more national services . . . for the protection of the cultural heritage.” 213 The UNESCO Convention left many consumers without remedy should the country of origin confiscate artifacts purchased by consumers. 214 To combat this problem, in 1995 the United Nations developed the United Nations International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects (the UNIDROIT Convention); this convention allowed for compensation at “a reasonable amount” to the individual who returns stolen property in his or her possession. 215

The UNIDROIT Convention may seem like it benefits the consumers or owners of cultural property, and it does—a good faith purchaser of

208. Id.
209. Id.
210. Id. at 226.
212. See Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, supra note 211, at art. 3 (“The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.”) (emphasis added).
214. Hutt & Riddle, supra note 82, at 227.
215. Id.
stolen cultural property is compensated for their purchase; however, this is at the expense of victimized cultures that then pay a “reasonable” amount for the ability to buy back their own history. One positive aspect of the UNIDROIT Convention is that it incentivizes private collectors to return cultural property from their private collections. So on the one hand, some cultures must pay to have their property returned to them, but at the same time, important historical artifacts are no longer lost to a private collection and, in a sense, are returned to the light of the modern world to be studied and appreciated by the culture from which they originated.

Neither convention specifically discusses the sale or protection of human remains; the United Nations simply lumps remains under the umbrella of cultural artifacts. A better solution to combat the sale of human remains is to specifically address the sale of human remains and provide for a clear pathway to repatriate human remains.

216. *Id.; see also* Stephen F. Clarke, *Repatriation of Historic Human Remains: New Zealand*, LIBR. OF CONGRESS (July 2009), https://www.loc.gov/law/help/repatriation-human-remains/new-zealand.php (The UNIDROIT has allowed for New Zealanders to repatriate human remains from museums all over the world; however, the New Zealanders must still fight and negotiate with foreign nations, like France, to repatriate remains illegally taken from their land. New Zealanders have been successful with negotiating with the Field Museum in the United States, yet it still faces resistance from other nations.).


218. The Agreement on the Transfer of Corpses, open for signature in 1973, has since been ratified by 23 countries. *Details of Treaty No. 080, COUNCIL OF EUR.*, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/080 (last visited Nov. 13. 2017). The Agreement on the Transfer of Corpses was enacted to simplify the regulations on the transfer and admission of corpses into a particular country’s territory for purposes of burial. Agreement on the Transfer of Corpses art. 1(2), Oct. 26, 1973, E.T.S. No. 80. This treaty does not impact the sale of human remains. *See id.*

For the purpose of this Agreement, transfer of corpses is understood to be the international transport of human remains from the State of departure to the State of destination; the State of departure is that in which the transfer began; in the case of exhumed remains, it is that in which burial had taken place; the State of destination is that in which the corpse is to be buried or cremated after the transport.

*Id.*

219. *See infra* Section V.
V. PROPOSED SOLUTION: INTERNATIONAL CONVENTION AND CERTIFICATION PROCESS

While the sale of human remains is not entirely illegal, it has raised serious legal and ethical concerns, such as how the international community can collaborate to keep cultural remains off the market, how international laws can be clarified to protect both consumers and retailers, and how the international community can ensure that remains from India and other countries are not illegally taken from graves and placed on the market. Having clear laws across the international community will only do so much to ensure that remains are bought and sold legally. Therefore, an international certification specifically regarding the sale of human remains scheme is necessary to monitor and track human remains from the moment they enter the market.

A certification scheme could ensure that retailers are clearly aware of international laws, thus eliminating any risk of misinformation. By retailers coming together to ensure that human remains are ethically sourced—i.e., not illegally obtained from countries with bans, from graves or cultural sites, or from acts of murder—the industry can move forward as a more ethical trade. Ethical consumerism is a “broad label for companies providing products that appeal to people’s best selves.” 220 These products may include fair trade coffee 221 or rugs made without child labor. 222 Applying a similar sense of social and ethical responsibility to the bone trade industry will help solve some of the prevailing issues in the trade of human remains—consistency of law, repatriation, and obtaining bones from legitimate sources (not grave robbing or the black market). However, one drawback to ethical consumerism is that the movement relies on the consumers to make the right decisions and the retailers to make the necessary changes. 223 Thus, enacting this solution in the form of a treaty with criminal penalties for

221. Id.
223. Irwin, supra note 220.
non-compliance would better ensure that human remains are bought and sold ethically.

A. The Kimberley Process Certification Scheme

An international program similar to the one proposed for the sale of human remains is already in place in the global diamond industry—the Kimberley Process. The Kimberley Process is a highly effective certification scheme designed to eliminate the conflict diamond trade. Conflict diamonds are “rough diamonds traded by rebels to finance their armed conflicts against legitimate governments.” Recognizing the dangers of the conflict diamond trade, the global community collaborated to establish a certification program that promotes a precious gems market free of conflict diamonds.

Supported by a Resolution from the United Nations, the Kimberley Process took effect in January 2003. Like other ethical consumerism organizations, it is a voluntary certification scheme developed in an effort to halt the trade of conflict diamonds. The Kimberley Process works by certifying and tracking diamonds all the way from the mines to the suppliers. The Kimberley Process Certification Scheme is not a treaty; rather, it is an international agreement designed to increase corporate social responsibility, ensure that corporations in the diamond


Under the Kimberley Process, if a diamond has not funded the rebel side of a civil war, it is not considered a conflict diamond. The narrowness of this definition means that a diamond receiving Kimberley Process certification may still be tied to killings, beatings, rape, and torture by a government army. It may have been mined using child labor, or by adults earning a dollar a day.

Id.
227. Id.
228. Id. ¶ 2.
229. Bieri, supra note 225, at 104.
industry are aware of the origins of their products, and enhance consumer confidence in the diamonds they purchase.230

The Kimberley Process “imposes extensive requirements [] on its members to enable them to certify shipments of rough diamonds as ‘conflict-free’ and prevent conflict diamonds from entering the legitimate trade.”231 Currently, 54 participant organizations and 81 countries (the European Union represents a single participant) have agreed to enforce the Kimberley Process.232 The Kimberley Process protects over 99% of the world’s rough diamond production, in part due to the high number of the participating organizations and nations.233 Under the terms of the Kimberley Process, participating states must meet certain minimum requirements and put in place national legislation to monitor diamonds.234 Each participating state must implement controls to regulate the export, import, and internal movement of diamonds.235 Further, each participating state must also commit to transparency and agree to the exchange of statistical data.236 In order to remain a participating state, participants “can only legally trade with other participants who have also met the minimum requirements of the scheme, and international shipments of rough diamonds must be accompanied by a [Kimberley Process] certificate guaranteeing that they are conflict-free.”237

At its core, the Kimberley Process is a voluntary regulation scheme238 in which participant nations and diamond consumers create value in conflict-free diamonds. The Kimberley Process does not certify

231. Id. About, Kimberley Process, supra note 224.
232. Id. The United States is a participant nation. Efforts to Control: Kimberley Process, supra note 225. In 2003 the United States enacted the Clean Diamond Trade Act which implements the Kimberley Process. Id. In 2010 the Government Accountability Office reported that it stopped 14 shipments of diamonds that violated the 2003 Clean Diamond Trade Act. Id.
233. Id. About, Kimberley Process, supra note 224.
234. Id.
235. Id.
236. Id.
237. Id.
individual diamond retailers; it certifies the suppliers. The individual retailers and consumers must ensure that the suppliers they work with exclusively deal in certified conflict-free diamonds. The Kimberley Process goes one step further to prevent the conflict diamonds from entering the market by prohibiting participants from dealing with non-participants. Consumers and the global community decided that conflict diamonds that funded armed conflict in war-stricken nations like Liberia, Sierra Leone, and the Congo were no longer desirable. Consumers wanted conflict-free diamonds, and the certification scheme provided a pathway to ensure that these diamonds saturated the market. The Kimberley Process blocks conflict diamonds from ever entering the market, which eliminates the presence of conflict diamonds.

The core mission of the Kimberley Process is to halt the use of conflict diamonds in funding rebellions against legitimate governments. It was also enacted to combat unethical business and trade practices in the global diamond market; from a consumer standpoint, individuals do not want to purchase diamonds, or any product for that matter, that have been tainted by war and traditionally unacceptable practices. To regulate the sale of human remains, a similar certification scheme could make a major impact on the market. By adopting a certification program to ensure that human remains on the market are traceable to their origin and implementing trade regulations on remains coming from outside the United States, consumers on the market can ensure that the products they are purchasing are compliant with state laws, NAGPRA, various international conventions, and individual nations’ laws in place today.

240. Id.
241. Id.
242. See generally Kimberley Process Certification Scheme, supra note 238.
243. See generally About, KIMBERLEY PROCESS, supra note 224.
245. James Melik, Diamonds: Does the Kimberley Process Work?, BBC NEWS (June 28, 2010, 8:28 AM), http://www.bbc.co.uk/news/10307046 (“We want to give comfort to the consumer that the diamonds they have bought have come from legitimate sources and they can wear it with pride and with love.”).
The Certification Process I propose will go further than the Kimberley Process. This Certification will have member nations and require certificates which list the nation of origin, how the bones were obtained, and the approximate age of such remains. Like in the Kimberley Process, this certification scheme would only allow participant nations or organizations to trade with other participant nations and organizations. This treaty will serve to preempt laws in nations like the United States, where the laws are murky at best. According to the United States Constitution, treaties, along with the Constitution itself, are the supreme law of the land. Thus, a uniform legal framework for the purchase and sale of human remains will streamline the process for international retailers and simultaneously protect consumers.

For repatriation purposes, this certification scheme will do five things: first, it will provide a method for tracing the remains to point of origin and prove that the remains were ethically sourced (perhaps the remains were donated or taken with permission). Second, should a nation or its people request that remains be repatriated, remains without the certification could be easily repatriated as they are not in compliance with this certification scheme. Third, compliance with the UNIDROIT Convention, which prohibits the sale of cultural artifacts, may also be enforced when human remains are not shipped with the certification—this certification will bolster the UNIDROIT Convention as it relates to human remains as cultural artifacts. Fourth, the convention would create a registry of human remains already in private collections by imposing a disclosure mandate and implementing fines against individuals who do not register the remains in their collections. Finally, the certification process would, like the UNIDROIT convention, provide compensation for good-faith purchasers of human remains—people who purchased the remains before the convention was enacted.

246. U.S. CONST. art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”).
B. Potential Barriers to the Convention: Black Markets and Private Collections

As in any regulated market, black markets are always a concern. Carney observed black market vendors in West Bengal continuing “to supply human skeletons and skulls using the time-honored method: [r]ob graves, separate soft flesh from unyielding calcium, and deliver the bones to distributors — who assemble them and ship them to dealers around the globe.” The Kimberley Process-like certification scheme could significantly help to curtail this market by stopping the sale upon entry into any online markets. Consumers who desire ethically sourced remains will demand certification that the remains had been ethically sourced, and retailers worth their salt would exclusively trade in certified remains. Furthermore, the criminal penalties associated with this convention would deter both the consumers and the suppliers from dealing in un-certified remains. There is no possibility for complete compliance with these treaties because as long as regulations are in place, a black market will always arise; however, consumers who value certified remains will place a premium on buying such remains and the penalties may help deter those who may wish to enter the black market.

A second barrier to this convention and certification scheme is private collections. Many individuals have numerous human remains in their private collections already. This certification scheme will not be able


248. Id.

249. Davis, supra note 11.

Black markets will continue to exist as long as we have regulations and taxes. Laws that prevent people from buying and selling the goods and services they desire and taxes that prevent people from keeping what they feel is their fair share of earned income will always cause people to hide their activities from law enforcement agencies, tax authorities and other regulators.

Id.

250. Id.
to retroactively ensure that those individuals are in compliance with this convention; thus, a voluntary disclosure and certification program under the certification process may help to alleviate any concerns that private collectors may have regarding compliance. Individuals with small private collections have no incentive to report the remains in their collection as the threat of penalty is quite small. However, for individuals like Ryan Cohn with large, well-publicized private collections, a voluntary disclosure and registration under the convention may be beneficial. This voluntary disclosure would ensure that Cohn, and other collectors, are not penalized for prior purchases. The certification scheme would implement a series of penalties, such as fines, for non-disclosure of private collections; member nations would have to enact laws to ensure compliance with these penalties. The fines would help cover administrative costs of the certification scheme, and any residuals could be put toward education on the repatriation of human remains or to a trust fund from which victimized nations could draw to repatriate the remains.

VI. CONCLUSION

The market for human remains is unique and lightly regulated.\textsuperscript{251} Recent bans by popular online retailers brought attention to a largely unpublicized area of the law.\textsuperscript{252} Smaller online forums which operate within this niche market have vastly different understandings of how the laws currently operate and what can and cannot be done within the industry.\textsuperscript{253} Furthermore, a general confusion regarding how human remains are classified under the law and how repatriation affects the market has played and continues to play an important role in the success of the market.\textsuperscript{254} While black markets and private collections may create a small barrier to the certification scheme,\textsuperscript{255} an international convention mimicking the Kimberley Process will establish the things this industry currently lacks.\textsuperscript{256} It will establish uniformity in the laws across the

\textsuperscript{251} See supra Section I.
\textsuperscript{252} See supra Sections I – II.
\textsuperscript{253} See supra Section III.C.
\textsuperscript{254} See supra Section III.A.
\textsuperscript{255} See supra Section V.B.
\textsuperscript{256} See supra Section V.
international community.\textsuperscript{257} It will provide consumers with confidence that any human remains they purchase comply with the certification scheme.\textsuperscript{258} Finally, this scheme will make repatriation of human remains on the online market easier.\textsuperscript{259}

\textsuperscript{257} See supra Section V.
\textsuperscript{258} See supra Section V.
\textsuperscript{259} See supra Section V.