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Ethics-Based Repatriation Efforts Gain Steam**

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## Yale Agrees to Return Machu Picchu Artifacts to Peru: Ethics-Based Repatriation Efforts Gain Steam

by Kimberly Alderman

IN 1911, Hiram Bingham cut through the Andean jungle and rediscovered the ancient site of Machu Picchu. A thick moss covered the ruins, which the world had all but forgotten. Bingham made his heroic return to the United States bearing artifacts such as pottery, jewelry, and bones, which he handed over to Yale University, where he was an adjunct professor in Latin American history.

Shortly thereafter, a dispute arose over whether Yale could properly keep the objects. In 1916, Bingham wrote to the National Geographic Society regarding the human remains: "Now they do not belong to us, but to the Peruvian government, who allowed us to take them out of the country on condition that they be returned in 18 months... The whole matter has assumed a very large importance in the eyes of the Peruvians, who feel that we are trying to rob their country of its treasures."<sup>1</sup>

In 1921, Yale returned boxes of artifacts to Peru, presumably containing the disputed human remains. In the late 1920s, Peru demanded the rest of the objects be returned, but Yale refused. The matter was quiet for some 70 years, until 2000, when Peru again demanded Yale return the remainder of the objects. Peru asserted that the loan arrangement described by Bingham applied to the full 40,000 artifacts, not just the human remains. Yale responded that it had returned all lent objects, and had kept only those artifacts to which it had full title.

1 First Am. Compl., at Ex. O, Republic of Peru v. Yale University, No. 08-02109 (D.D.C. Apr. 20, 2009) (containing reproduction of the original letter); Arthur Brice and Catherine E. Shiochet, *Peru's president: Yale agrees to return Incan artifacts*, CNN WORLD, Nov. 20, 2010, <http://tinyurl.com/3ymfao8> (last visited Dec. 19, 2010).

For the most part, the artifacts do not have inherent beauty; only 350 are museum-quality pieces. Instead, they consist largely of shards and fragments, but are valuable for research purposes. In 2007, Yale and Peru reached a tentative agreement in which Yale would transfer title to the objects to Peru, but the objects would stay at Yale for study and display. That agreement fell through the following year, and Peru filed suit in federal court, demanding that Yale return all the artifacts.<sup>2</sup>



"Ritual Offering Vessel, or Pacchu," Photo by Michael Marsland, Courtesy of Peabody Museum/Yale University

The lawsuit faced two primary obstacles from its inception. First, in order for Peru to recover improperly removed objects, it must prove that the Government of Peru was the legal owner at the time of their removal from that country. In a case involving the seizure by U.S. Customs of 89 pre-Colombian artifacts from a private individual, the Central District Court of California found that Peru had only demonstrated national ownership of cultural property back to 1929, at the earliest.<sup>3</sup>

Another obstacle for Peru's lawsuit was that the statute of limitation or *laches* might bar Peru's *replevin* action. Peru made a formal demand for the return of the objects in the late 1920s and Yale refused. This refusal likely began the 3 year statute of limitations on *replevin* actions, and yet Peru failed to file a claim for another 70 years.

Despite these known obstacles to recovering the artifacts on legal grounds, Peru mounted a national mobilization effort to reclaim the Machu Picchu artifacts from Yale in the fall of 2010, instead focusing on moral grounds. First, Peru threatened to pursue

2 Complaint, Republic of Peru v. Yale University, No. 08-02109 (D.D.C. Dec. 5, 2008); Dave Henderson, *Peru to suspend legal action against Yale*, YALE DAILY NEWS, Nov. 26, 2010, <http://tinyurl.com/22qsbl>.

3 Peru v. Johnson, 720 F.Supp. 810 (C.D. Cal. 1989).

## Machu Picchu Artifacts (*cont'd*)

criminal charges against Yale if the artifacts were not returned. What those criminal charges might have been based on was neither stated nor apparent. Next, President Alan Garcia made a formal request for President Obama's intervention. Garcia then mounted demonstrations in Lima and Cusco, where thousands marched to show solidarity in their demand that Yale return the estimated 40,000 artifacts.

These efforts generated support outside of Peru as well. Equadorian President Rafael Correa made a formal statement of support for Peru, and said he would take the issue to the Union of South American Nations. Nine runners in the New York marathon wore t-shirts demanding that Yale return the artifacts taken from Machu Picchu nearly 100 years ago. President Garcia said he also received a message of support from U.S. Senator Christopher J. Dodd.

Yale responded to the public shaming immediately by flying representatives to Peru to make another attempt at negotiating a settlement. Yale and Peru reached an accord in which Yale agreed to return the artifacts over the next two years. The museum-quality objects will be returned in time for the centennial celebration commemorating the 1911 discovery of Machu Picchu. The rest of them will be turned over to the University of Cusco, which will carry out programs for research, educational exchanges, and public exhibitions, and where Yale will have access to the artifacts for research purposes. President Garcia stated he would request a supplemental credit from parliament to fund construction of the appropriate facilities to house the objects. Peru filed their Complaint against Yale shortly after it had filed an appearance in the *Black Swan* case, currently on appeal. In that case, Spain, Odyssey Marine

Exploration, other claimants, and now Peru all claimed ownership of \$500 million worth of coins harvested from international waters. Peru made the ambitious argument that it should own the coins because they were minted in Lima using local labor, even though Peru was a Spanish colony at the time. The combination of Peru's suit against Yale and their claim in the *Black Swan* case demonstrates that Peru wants to assert itself on an international level in the movement to repatriate cultural property to source nations.



*A delegation from Peru reviews the collection at Yale*

Egypt, Italy, and Greece are all vying for center-stage in the repatriation movement. Each uses political clout to facilitate the return of archaeological objects – even when there are no apparent legal grounds to necessitate repatriation. In November 2010, for instance, the Metropolitan Museum of Art agreed to voluntarily return to Egypt 19 objects from King Tutankhamun's tomb, even though the law did not require the Met do so [see following page, Ed.].

When it became apparent that legal recourse would likely fail, Peru used techniques employed by Egypt, Italy, and Greece in the hopes of forcing Yale to return the Machu Picchu artifacts. It appears these efforts were successful, although only time will tell whether the Yale-Peru agreement will stand up, since the previous settlement fell through. Yale's willingness to return the Machu Picchu artifacts to Peru demonstrates that the ethics-based repatriation movement is still a viable means for source nations to reclaim extant cultural property.

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