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NEWS

Peru v. Yale: A Battle Rages Over Machu Picchu

Lawsuit claims university must return artifacts

By *David Glenn*

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In early 1916, the legendary Yale University archaeologist Hiram Bingham III completed his third and final expedition in southern Peru. He shipped home 74 boxes of artifacts from Machu Picchu, a spectacular site in the Andes that is believed to have been the last major settlement of the Inca empire.

Those boxes were supposed to be on temporary loan and sent back to Peru by July 1917, according to the government decree that authorized their export.

But toward the end of 1916, Bingham, who would soon be pulled into service as a pilot in World War I, began to worry that he would not have time to study the artifacts. In a letter to a colleague, he confessed that he had thought about cheating on the deal. “I am almost tempted to let the Peruvians ‘whistle for it,’” he wrote.

The Peruvians are whistling for it now.

Arguing that Yale improperly holds thousands of objects from all three of Bingham's Machu Picchu expeditions, the government of Peru filed a federal lawsuit against the university in December, just over a year after the parties appeared to have settled the dispute. Yale now has moved to dismiss the case, saying that Peru filed in the wrong court and that its claims would be "stale and meritless" in any venue. Peru must respond by April 20.

Museum directors and archaeologists around the world are watching the case with intense interest. A victory for Peru, some believe, might encourage other nations to try to take back artifacts that are now valuable parts of collections. "I don't think it's too much of a stretch to say, 'Well, if these objects are questioned, what other legal claims might exist for objects that are in American museums and collections?'" says Derek Fincham, a fellow at the Loyola University New Orleans College of Law who studies the international antiquities trade.

Few observers expect the Machu Picchu lawsuit to move very far toward trial. Most say they expect Peru and Yale to reach a final negotiated settlement sooner rather than later. But a peace treaty has seemed in sight before: In September 2007, Peru and Yale announced a resolution to the dispute — only to see it collapse under pressure from Peruvian activists.

As in other conflicts about antiquities, scholarly inquiry, and national patrimony, passions about Machu Picchu can run very high.

"Many people in Peru are deeply invested in Machu Picchu as a national symbol," says Amy E. Cox, a graduate student in anthropology at the University of Florida who is completing a dissertation on Bingham's expeditions. "Hundreds of academics signed petitions against the 2007 deal."

A Devil in the Details

Yale asserts that in 1921 or 1922, Bingham finally fulfilled his legal promise to return the 74 boxes from his final expedition. The only Machu Picchu artifacts still at Yale, the university says, are from Bingham's first two expeditions, which took place in 1911 and 1912. (The collection at Yale now consists of several thousand lots of ceramics, stone and metal objects, and animal and human bones — almost all of which are in fragments.)

But Peru's advocates are skeptical that the materials from the three expeditions were always clearly marked and clearly segregated from one another. While Bingham was away during World War I, the Yale building where the artifacts were stored was requisitioned by the Red Cross, and the artifacts were moved across the campus. Letters written after Bingham's return suggest that the collection was in disarray.

"I must break in a new secretary and try to find out where all the material is," he wrote to a colleague in 1921. "You have no idea how much there is of it."

Peru's lawsuit also demands the return of objects from Bingham's 1911 and 1912 expeditions. Those early ventures, unlike the final one, did not involve an explicit promise to return artifacts by a certain date. But the 1912 decree that authorized that year's expedition (and retroactively authorized the previous year's) did grant the Peruvian government the right to demand the return of "los objetos únicos y los duplicados."

In a recent public statement, Yale translated that phrase as "certain 'unique' or 'duplicate' objects" — in other words, not the entire collection. In its lawsuit, Peru says that "únicos" means "individual," not "unique," and argues that the phrase was meant to encompass all of the objects Bingham collected.

Then there is the question of whether Peru ever actually exercised its rights under the 1912 decree. In 1920 and 1921, Peru made several formal demands for Bingham's Machu Picchu artifacts. Most of those demands did not explicitly mention the first

two expeditions or the 1912 decree; instead, they cited the broken promise to return the third expedition's cache by 1917.

But there was at least one exception: An October 1920 letter from Peru's consul general did cite the 1912 decree and requested the return of "the original and duplicate objects taken from Peru." The language is slightly vague, but it seems to demand any and all Machu Picchu artifacts in Yale's possession.

That October 1920 letter was unearthed in 2001 in the archives of the National Geographic Society, which co-sponsored Bingham's 1912 and 1914-16 expeditions. Partly on the basis of that letter, the society's trustees unanimously voted to support Peru's position in the Machu Picchu dispute.

Yale also makes a more audacious claim: In the end, Peru's 1912 and 1916 decrees don't really matter, because they are outweighed by the country's 1852 Civil Code.

"Peru, like the U.S., has a hierarchy of laws," says Thomas Conroy, a Yale spokesman, in an e-mail message. "Peru's Civil Code of 1852 established private rights in found objects, and the 1912 decree could not override the Civil Code."

That argument does not persuade Dale B. Furnish, an emeritus professor of law at Arizona State University, who wrote a paper in 1971 titled "The Hierarchy of Peruvian Laws." During the period of Bingham's expeditions, Mr. Furnish says, the Peruvian government routinely passed laws and decrees that placed qualifications on various elements of the Civil Code.

"It's extremely glib and facile for Yale to cite this broad provision in the Civil Code," Mr. Furnish says. "It would be like me decimating some Indian site here in Arizona and then saying, Hey, the U.S. Constitution guarantees property rights."

Claims Without Witness

Even if, as Mr. Furnish says, the documentary record favors Peru's side of the case, Peru's lawsuit still faces a severe hurdle: the statute of limitations. It is not yet clear whether the case will be governed by federal law or by Connecticut law — but in either venue, breach-of-contract claims are supposed to be filed within six years. It has been more than 90.

In Yale's motion to dismiss the case, it wrote that not only are Peru's claims without justification, but also “by waiting nearly a century to bring them, Peru has left the parties with no living witness to support or deny them.”

Between 1921 and 2001, Yale points out, Peru made no formal objections to Yale's possession of the artifacts. And in 1948, Peru invited Bingham to attend the ceremonial opening of a new road to Machu Picchu — a sign, Yale says, that there were no hard feelings at that time.

Mr. Fincham, of Loyola New Orleans, speculates that Peru might try to defeat the statute-of-limitations argument by citing the recent discovery of documents, including portions of Bingham's correspondence, that have changed Peruvians' understanding of the dispute. (Peru's lawyers did not reply to repeated requests for comment.)

But such arguments would probably be a difficult sell, Mr. Fincham says. “There is a principle known as laches,” he says. “That's kind of an arcane legal term. It has to do with the basic fairness of a proceeding. I think Yale might have a strong argument on that basis. The potential witnesses here are all no longer living. All of these events were many decades ago.”

But even if the statute of limitations gives Yale a strong legal hand, some scholars believe Peru holds the ethical high ground. “I can see why it might not be easy for Peru to win in court,” says Colin Renfrew, a senior fellow at the University of Cambridge's McDonald Institute for Archaeological Research. “But morally, I can't see how Yale

has a leg to stand on, if it did indeed make promises about the return of these objects. Yale is allowing itself to appear quite arrogant.”

Quality of Artifacts

Amid all these arguments about 90-year-old contracts, the Machu Picchu artifacts themselves can almost be forgotten.

They are not loved for their beauty. In a 1920 letter in which he contemplated returning artifacts to Peru, Bingham wrote, “There is nothing here that they will not be disappointed in. In fact when they see the material they will probably accuse us of having sent them a lot of rubbish instead of the original material.” In a recent inventory, Yale concluded that only 329 of the objects are “museum-quality.”

But scholars say that the artifacts are still a precious source of data. “The interesting thing about Machu Picchu is that it was a more cosmopolitan settlement than other Inca sites,” says Bruce Owen, a lecturer in archaeology at Sonoma State University who has analyzed metal objects from Yale’s Machu Picchu collection. “So you see quite a few things that were distinctly not Inca.”

In its public statements, Yale has suggested that new technologies have opened new avenues for studying the objects. A scholar at Dickinson College, for example, recently studied bone fragments from the collection to test her theories about how human populations genetically adapt to high altitudes. And studies like those, Yale officials say, are easier to conduct in the United States, where modern scientific equipment is more abundant.

But Haidy Geismar, an assistant professor of museum studies at New York University, says that such concerns are sometimes outweighed by the advantages of returning objects to their nations of origin. A collaborative relationship between Yale and Peru, she says, “would give Peruvian scholars the opportunity to come to the United States, and vice versa. If a few objects have to get sent back, I think it’s well worth it.”

Ms. Geismar has been involved in several museum projects that involve taking objects back to their home countries. “In archaeology,” she says, “when you actually really talk to the local people, you can learn things that you would never find out simply from excavating. That kind of social context and social networks are all part of the study. It’s not just the objects themselves.”

SKULLS, BONES, GERONIMO, AND VAN GOGH KEEP YALE U.'S LAWYERS BUSY

The Machu Picchu artifacts are not the only relics that are pulling Yale University into federal court this year. Two months ago, 20 descendants of the Apache leader Geronimo filed a lawsuit demanding the return of his remains. The lawsuit focuses on the U.S. Army, which operates the Oklahoma fort where Geronimo died in 1909. But the suit also names Yale University and its best-known secret society, Skull and Bones.

The lawsuit is based on a longstanding — but far from verified — piece of Yale lore. According to the tale, a group of Skull and Bones members who were stationed at Fort Sill, Okla., during World War I dug up Geronimo’s remains and shipped them to the society’s headquarters in New Haven, Conn. The thieves supposedly included Prescott Bush, the father and grandfather of U.S. presidents.

Three years ago, a freelance writer unearthed a 1918 letter in which a Skull and Bones member boasted about the theft. But the letter’s author had not been at Fort Sill himself, and some experts remain skeptical.

And last week, Yale filed a lawsuit to establish its title to “The Night Café,” a painting by Vincent van Gogh that has been displayed at the university since 1961. Pierre Konowaloff, a French citizen, recently claimed that the painting was stolen from his Russian ancestors by the Soviet regime in 1918.

RIVAL CLAIMS TO AN ARCHAEOLOGICAL LEGACY

c. 1450 Machu Picchu, a stone fortress containing Incan ceremonial spaces and tombs, is constructed on an Andean ridge overlooking the Urubamba River in what is now southeastern Peru.

c. 1550 The site is abandoned following the Spanish conquest of the Incas.

1893 Peru forbids the excavation or export of archaeological objects without explicit permission of the government.

July 1911 Hiram Bingham III, a Yale U. professor, arrives at Machu Picchu. His reports bring global attention to the site.

May 1912 Yale and the National Geographic Society agree to collaborate on the excavation under Bingham's leadership. That summer, Bingham leads a second expedition to Machu Picchu.

October 1912 Peru grants retroactive permission for Bingham's 1911 and 1912 expeditions. Yale and Peru disagree today about whether this decree gave Peru the right to demand the return of objects.

October 1914-January 1916 Bingham leads a third and final expedition to Machu Picchu.

January 1916 Peru gives Bingham permission to send 74 boxes of artifacts to New Haven, on the condition that he return them to Peru by July 1917.

1918-1921 Peru makes several formal demands for Yale to return artifacts.

1921-1922 Bingham returns some objects to Peru. Yale claims today that these shipments included all the material covered by Peru's 1916 decree, but Peru disputes this.

1981 For the first time in more than 50 years, scholars at Yale begin to study the Machu Picchu artifacts.

2001 Yale plans a traveling exhibit of Machu Picchu artifacts, and Peruvian scholars begin to scrutinize the 1912 and 1916 decrees. The National Geographic Society tells Yale that it believes Peru holds legal title to all of the artifacts.

2005 Peru threatens a lawsuit but then pulls back as negotiations begin.

2007 Yale and Peru announce a tentative settlement: Yale would recognize Peru's title to the artifacts, but most of them would stay in New Haven for study for an additional 99 years.

2008 After objections from Peruvian scholars and activists, the agreement collapses. In December, Peru files a federal lawsuit.

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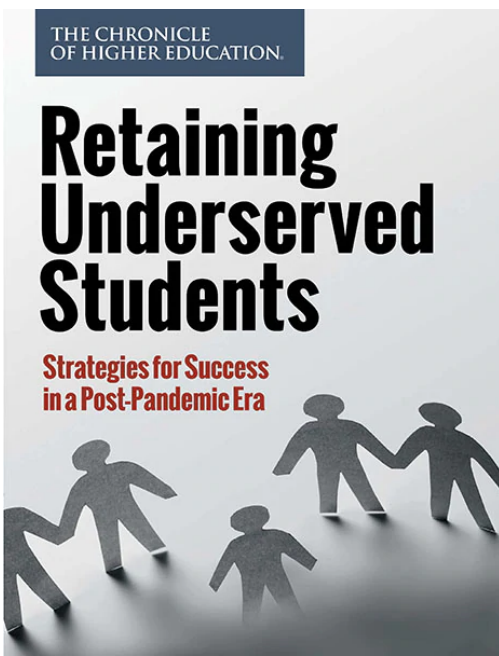
FACULTY LIFE

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David Glenn joined *The Chronicle of Higher Education* in 2002. His work explored how faculty members are trained, encouraged, and evaluated as teachers; how college courses and curricula are developed; and the institutional incentives that sometimes discourage faculty members from investing their energy in teaching.

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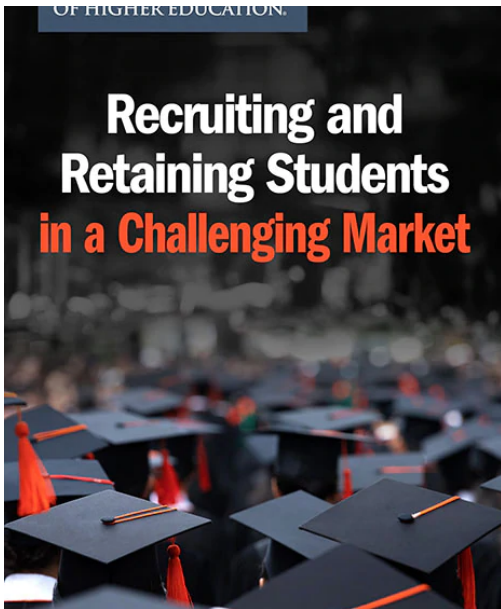


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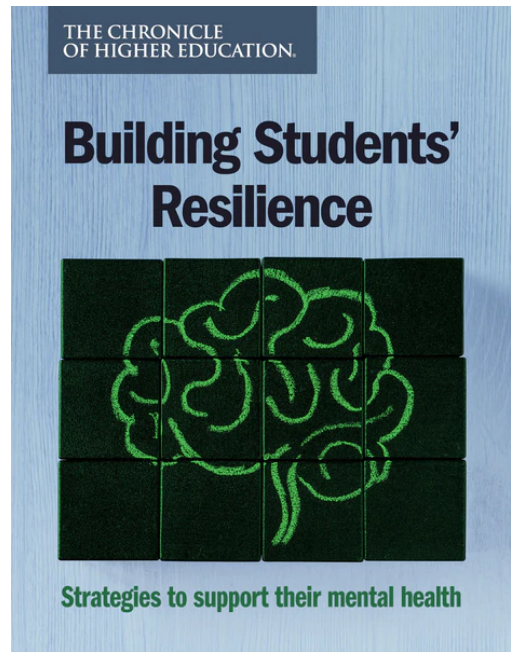


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