

**PERU, YALE, AND CULTURAL PROPERTY:
UNDERSTANDING THE DISPUTE THROUGH AN
ENGAGING TALE OF ADVENTURE**

*Reviewed by Carrie Golden**

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

On July 24, 1911, an American followed a barefoot, eight year-old Peruvian boy to see Incan houses atop the terraced mountain on which the boy's family had farmed and lived for years.¹ The remains of those Incan houses now constitute one of the world's top tourist destinations, the famous Peruvian archaeological site, Machu Picchu. Christopher Heaney's *Cradle of Gold: The Story of Hiram Bingham, A Real-Life Indiana Jones, and the Search for Machu Picchu* offers a meticulously researched history of both the American explorer Hiram Bingham and the Incan artifacts Bingham brought from Machu Picchu back to the United States. Heaney's quest is to determine who owns the Incan artifacts currently resting at the Peabody Museum in New Haven. The quest is timely, given the claim pending in the District Court of Connecticut that the Republic of Peru filed against Yale University in 2008.

In Parts One and Two, Heaney's book – at once a biography, a history, and an adventure story – recounts the career influences of the explorer and his search for Machu Picchu. Bingham, the Yale-educated son of missionaries and husband to a Tiffany & Co. heiress, led various explorer missions. Interestingly, Heaney suggests that Bingham's initial adventuresome spirit came from the heavy influence of President Theodore Roosevelt's 1904 address to Congress, in which he declared that the United States had a duty to intervene in the affairs of its unstable neighbors.² Combined with President Taft's later dollar diplomacy, Heaney tells us that Bingham was inspired to build an empire of "business,

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1. CHRISTOPHER HEANEY, *CRADLE OF GOLD: THE STORY OF HIRAM BINGHAM, A REAL-LIFE INDIANA JONES, AND THE SEARCH FOR MACHU PICCHU* 88-89 (2010).

2. Theodore Roosevelt, Twenty-Sixth President of the U.S., Fourth Annual Message to Cong. (Dec. 6, 1904) (transcript available at <http://millercenter.org/scripps/archive/speeches/detail/3776>).

knowledge and culture,”³ and that he pursued exploration of Latin America as a softer, “subtler sort of diplomacy.”⁴

Inspired, Bingham proposed an expedition in 1911 to “collect the natural and human history of the Americas and bring it back” to the United States.⁵ American institutions such as the Carnegie Institution, the Winchester Arms Company, the United Fruit Company, and the Eastman Kodak Company all provided funding for Bingham’s Expedition.⁶ Even President William Taft helped outfit Bingham’s Expedition because he believed it could further U.S. foreign policy in the region.⁷ Bingham, a lecturer in the history department, also managed to convince Yale to lend him the university name, but notably received no funding.⁸ Fortunately for Bingham and the United States, Peru was in period of economic liberalization.⁹ That meant the Peruvian government had fewer restrictions on foreign involvement in the country. Thus, the Yale Expedition, without which Machu Picchu may never have been reasserted onto the world’s stage, was allowed to proceed.

In Parts Three and Four, Heaney sets out to help resolve the present dispute over who owns the Incan artifacts by carefully sifting through Peruvian law, international media reports, Bingham’s and the Expedition’s Papers, and Peruvian and American Archives in search of any indication of ownership. It seems that Bingham’s understanding prior to the expedition was that any “treasure” the expedition found would be deemed property of the Peruvian Government.¹⁰ This was in keeping with a surprisingly progressive Peruvian law, which established Government ownership over and prohibited exportation of all excavated cultural property.¹¹ However, before the Expedition began, Peruvian President Leguía granted Bingham an exemption from the Peruvian law.¹² President Leguía hoped the exemption would bring him into the good graces of American diplomats and businessmen.¹³ Under this exemption, known as the Yale Concession, President Leguía gave Bingham full permission to explore and excavate for ten to twenty years, promising that Bingham could take half of whatever was found if the other half were given to Peru’s National Museum.¹⁴ In addition, Bingham would be exempt from luggage inspection and provided with a military escort while in Peru.¹⁵ Whether satisfied with the receipt of verbal permission or merely forced to abide by a strict expedition itinerary, Bingham and the Peruvian Yale Expedition

3. HEANEY, *supra* note 1, at 38.

4. *Id.* at 71.

5. *Id.* at 70.

6. *Id.* at 70, 72.

7. *Id.* at 71.

8. *Id.*

9. *Id.* at 41.

10. *Id.* at 73.

11. *Id.* at 75, 115.

12. *Id.* at 130.

13. *Id.*

14. *Id.*

15. *Id.*

commenced their 1912 mission before the official Yale Concession was signed.

Here, the details become even more complicated. President Leguía was voted out of the Presidential Office before making the Yale Concession official. Crucially, the new President, Guillermo E. Billinghurst, did not want to sign the concession.¹⁶ Rather, President Billinghurst had his Minister of Justice and Education sign a revised concession decree that allowed Bingham to explore, excavate, and export only until December 1, 1812, and on condition that a Peruvian monitor would inventory Yale's collection prior to exportation.¹⁷ Obscuring the matter further, the final, published version of the concession, set forth on November 20, 1912, contained yet another set of allowances and conditions.¹⁸ As Heaney recites, "[T]he artifacts could leave the country but Peru reserved 'the right to exact from the University of Yale...the return of the unique and duplicate objects it has extracted.'"¹⁹ Trekking through the rainforest with machete in hand, Bingham hardly could have known of the final, published concession.

Although Heaney presents what happens next with an admirable impartiality, it is difficult to look favorably on Bingham and the Yale Expedition. Bingham sent Yale everything the Expedition excavated, but neglected to have Peruvian monitors inventory the collection.²⁰ Bingham also sent boxes of Machu Picchu cultural property that he had bought in May 1914 from a competing explorer.²¹ Believing they would be safer in Yale than in Peru, Bingham illegally smuggled them into the United States.²² In all, Yale University came into possession of over ninety-three boxes from Machu Picchu of bones and artifacts, including bronze items, ceramics, stonework, metallic objects (no gold), bronzes, silver, tin, human skulls, bones and remains.²³ The size of the collection, still in Yale's possession today, is disputed. By Peru's count, Yale has some 46,000 pieces, but by Yale's count, the University only has 5,415 pieces and another 329 "museum-quality pieces."²⁴

Heaney concludes by summarizing the proceedings of the current dispute over the cultural property. Peru has been requesting the property to be returned for decades.²⁵ After demeaning hints of Peruvian incapacity and lack of will to adequately care for the cultural property, and after distressing accounts of using bones from Machu Picchu in undergraduate osteology classes,²⁶ the Peruvian

16. *Id.* at 143-44.

17. *Id.* at 146.

18. *Id.* at 155.

19. *Id.*

20. *Id.* at 156.

21. *Id.* at 173.

22. *Id.*

23. *Id.* at 154-55.

24. *Id.* at 228.

25. 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, 482 (2009).

26. HEANEY, *supra* note 1, at 232.

government began to pursue recovery more aggressively.²⁷ Negotiations began in 2006. Peru and Yale reached a tentative agreement in 2007 that granted title of the cultural property to Peru, but stipulated long-term collaboration and allowed Yale a research collection of a certain number of pieces for study and display.²⁸ Peru backed out of the agreement upon learning that the research collection would stay in New Haven for another ninety-nine years.²⁹ In December 2008, Peru filed a civil suit in the U.S. District Court of the District of Columbia.³⁰

Most recently, the upcoming Peruvian presidential elections in April 2011 and Machu Picchu's centenary of Bingham's rediscovery have led to increased pressure on Yale and the United States.³¹ For example, Peruvians have been organizing marches in Cuzco, the city closest to Machu Picchu; and, on November 3, 2010, Peruvian President Alan Garcia submitted a formal request for American President Barack Obama to intervene on Peru's behalf.³²

Heaney breaks from his objective role in the final pages of the book when, in first person narrative, he (a Yale graduate) puts forth his view on how the dispute should be resolved. Heaney believes Yale should return the collection to Peru "as soon as possible without conditions" for several reasons.³³ For one, Peru allowed the artifacts to leave the country on loan, not under full ownership rights. Further, Heaney believes it is historically, ethically, and legally right to return the collection given the distinction that this cultural property includes human remains (skulls, bones, and funerary artifacts), not merely representative artifacts of cultural property (paintings, ceramics, and art).³⁴ In essence, the ancestral remains of Peruvians belong to Peruvians.

Unfortunately, almost two years after Peru filed, it is unclear whether the legal authorities will even reach the merits of the case. Yale successfully challenged personal jurisdiction in the spring of 2009, and the case was transferred to the U.S. District Court of Connecticut, where it is pending.³⁵ Then, in July 2009, Yale filed a Motion to Dismiss, arguing that the statute of limitations had expired.³⁶ Even if Peru surmounts that legal barrier, Peru may need to overcome

27. Drew Henderson, *Peru Steps Up Pressure on Yale*, YALE DAILY NEWS, Nov. 9, 2010, <http://www.yaledailynews.com/news/2010/nov/09/peru-steps-pressure-yale>.

28. Randy Kennedy, *Arts Beat, The Culture at Large, Peru Seeks Obama's Help in Dispute With Yale*, N.Y. TIMES (Nov. 3, 2010, 5:21 PM), <http://artsbeat.blogs.nytimes.com/2010/11/03/peru-seeks-obamas-help-in-dispute-with-yale>.

29. HEANEY, *supra* note 1, at 227.

30. Swanson, *supra* note 25, at 485.

31. Henderson, *supra* note 27.

32. Kennedy, *supra* note 28.

33. HEANEY, *supra* note 1, at 231.

34. *Id.*

35. *Peru v. Yale Univ.*, No. 1:08-cv-2109, Filing No. 24 (D.D.C. July 30, 2009) (Justia.com Dockets and Filing).

36. Press Release, Yale Office of Pub. Affairs and Comm'n's, Statement by Yale Univ. (Dec. 9, 2008), available at <http://opac.yale.edu/news/article.aspx?id=6279>.

issues of adverse possession.³⁷

Procedural difficulties aside, there is little indication of whether the merits of Peru's case, which *Cradle of Gold* shows are dauntingly complex, will prevail. The crux of the dispute will be whether Peru allowed Bingham to ship the boxes to Yale on conditional loan or Peru gave Yale the collection to own. Legal scholars already debate this. One legal scholar stated that both parties agree that Bingham removed the artifacts from Peru with permission.³⁸ However, another scholar argues that the legal ambiguity surrounding the extraction and exportation of the artifacts is central to the dispute.³⁹ That scholar further argues that if the articles were on loan to Yale, then (1) the loans "were only reluctantly agreed to after significant pressure from Yale, the United States government and powerful economic players," and (2) the university never received title.⁴⁰ Thus, the answer to Heaney's guiding question of *Who owns Inca history* remains to be seen.

As *Cradle of Gold* shows, Yale's possession is unpopular for ethical considerations, even if it is within the bounds of the law. That is, even if Peru gave Yale ownership in 1912, shifting international norms on cultural patrimony suggest that Yale may have an ethical obligation to return the collection.⁴¹ In that event, perhaps Heaney's distinction between culture or art and ancestral human remains would carry weight. After all, the human remains in the collection are, literally, the ancestors of today's Peruvians.

The unethical tinge does not blemish only Yale. It also marks Bingham, despite Heaney's painstaking efforts to give Bingham the benefit of the doubt ("There are few explorers in history who so fell in love with their subject").⁴² The reader cannot help but assign the less charitable descriptions, 'exploit' and 'plunder,' to Bingham's ideals of 'discovery' and 'treasure.' Similarly, the book creates a vague tension in the reader. As Heaney threads throughout the book that Bingham treaded unethical waters because he was carried away by the desire to be an adventuresome explorer, Heaney's own account lures the reader by appealing to those same romantic ideals of old-fashioned quests for treasure, even referring to Bingham as a "real-life Indiana Jones." The reader anxiously hopes Bingham unearths a trove of gold and silver, and yet simultaneously feels a tug of guilt for enjoying the dramatic search – or plunder – for Peru's cultural patrimony.

Ultimately, Heaney's combination of an unparalleled knowledge of Hiram Bingham and Machu Picchu with an obvious gift for storytelling lends a nuanced understanding of the complexities surrounding the litigious dispute between Peru and Yale. He successfully maintains a journalist's stance, systematically laying

37. Swanson, *supra* note 25, at 492.

38. Patty Gerstenblith, *International Art and Cultural Heritage*, 44 INT'L LAW. 487, 498 (2010).

39. Swanson, *supra* note 25 at 492.

40. *Id.*

41. *Id.* at 492-93; Molly L. McIntosh, Note, *Exploring Machu Picchu: An Analysis of the Legal and Ethical Issues Surrounding the Repatriation of Cultural Property*, 17 DUKE J. COMP. & INT'L L. 199, 220-21 (2006).

42. HEANEY, *supra* note 1, at 232.

out the details for readers to make their own conclusions, while putting the Victorian outlook of Bingham's time into a fair, twenty-first century perspective. Admittedly, the book is not tailored for legal scholars. But anyone wishing to be informed about cultural patrimony and one pending international dispute could not find a more entertaining read.