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Marta Kania

Krakow

WHO OWNS, WHO DECIDES  
AND WHY NOT US? THE DEBATE  
ON THE OWNERSHIP  
OF ARCHAEOLOGICAL HERITAGE:  
OLD QUESTIONS, NEW SOLUTIONS

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**Abstract:** *In this very short article, two cases relating to the restitution of archaeological heritage will be presented. Political, ideological and moral issues will be deliberated alongside the problem of human rights and the recommendations of the UNESCO Conventions (1970; 1972). The first is the well-known and still unresolved discussion between the Greek government and representatives of the British Museum over the return of the 'Elgin Marbles'. This debate, which has been ongoing for many years, has not yet to reach a satisfactory conclusion and the economic and political crisis that Greece has been experiencing over recent years has not aided the Greek case. The second is the probably lesser-known debate between the Peruvian government and representatives of Yale University in New Haven (USA) concerning the return of artifacts from the 'Machu Picchu collection', which were taken out of the Republic of Peru by the team of the American professor, Hiram Bingham, one hundred years ago. It is an unusual case, since the right to possession and access to national cultural heritage was eventually respected and the collection of exported artifacts returned.*

**Keywords:** 'Elgin Marbles'; 'Machu Picchu collection'; heritage; Greece; Peru

## Introduction

Who is the appropriate curator of the material remains of ancestral generations? Who is the owner of the past and its symbols, including therein objects of material culture? The beginning of the 21st century has not brought any answers to these difficult questions concerning the right of every nation to dispose of objects from its past and the right to possess its own cultural heritage. Many controversies stem from the ethics of collecting and maintaining the most precious antiquities and this concerns museums and galleries all over the world. A significant number of requests and demands for the return of archaeological objects to the territory from whence they were taken are based on arguments which focus on the weak point of many of such institutions, namely the fact that the objects entered into their possession in an illegal way or at least in a manner at odds with the ethical standards of museology and scientific research. It is an open secret that even the most prestigious museums acquired some of their most valuable exhibit items on the 'black market', thanks to illicit excavations or by taking advantage of the complicated legal situation during the colonial era, when nobody considered the legal and ethical aspects of the export of antiquities from their country of origin. Over the course of many discussions on the right to both possession and access to archaeological heritage (and to cultural heritage in general), the fundamental principles of human rights, as guaranteed by the Universal Declaration of Human Rights (Article 27.1), have often been forgotten. Their contravention thus involves a violation of the principles of international coexistence and cooperation. In many cases, the specific interests of institutions dominate and their rationale is dictated by purely economic considerations, namely the benefits derived from tourism to museum revenue.

In this very short article, I will consider two classic examples of disputes over the return of archaeological collections which are perceived as an important element of national identity and pride: the first one is the well-known Greek controversy over the 'Elgin Marbles' and the second is the lesser-known Peruvian one over the return of the 'Machu Picchu collection'. Despite the fact that these two cases represent vastly different regions and cultures, the same political and ideological arguments were presented and the same accusations of neo-colonial attitudes, seemingly incompatible with current international relations and the universal principles of human rights, appeared.

### Between arguments of morality and lawfulness

The debate between Greece and the British Museum is one of the classic examples of controversies concerning European collections of antiquities and it contains the typical arsenal of grievances, questions and arguments. The debate concerns the 'Elgin Marbles' (also known as the 'Parthenon Marbles'), a series of marble sculptures and low reliefs that adorned the Parthenon and other ancient buildings in the Athens Acropolis until the beginning of the 19th century. The story begins in 1799, when Thomas Bruce, the seventh Earl of Elgin, was appointed British ambassador to the Ottoman Empire. He received a special permit (*firman*) from one of the Sultan's ministers to complete drawings and plaster casts of ancient sculptures from various part of Athens (then under the rule of Ottomans) in order to use them as prototypes for the decorations of his new house in Scotland. Lord Elgin organized a team of workers to this end, who from 1800 onwards worked in Athens under the supervision of the ambassador's personal secretary, William Hamilton. Since the Acropolis hill was used as a fortress for a Turkish garrison at this time, access to the most precious and beautiful monuments was not easily obtained. However, by taking advantage of the favorable political situation (the Turkish authorities recognized Britain as their ally), Earl Elgin was able to obtain a second special permit (*firman*) on the basis of which he could not only organize exploration of the Acropolis, but also could take away some loose lying objects (fragments of inscriptions and figures). After obtaining the second *firman* (and probably bribing Turkish officials), Lord Elgin's team started to work around Parthenon, but they went far beyond their supposed remit. They not only collected material lying around the temple, but also removed 56 plates and 15 metopes from the Parthenon's frieze. These were marble sculptures showing scenes from Athenian mythology and considered to be among the most important works of ancient art.

The way the sculptures and low reliefs were torn away from the Parthenon frieze remains controversial to this day – metal tools were used for the chipping off of pieces by force and a part of the cornice was removed in order to break off all the metopes from the upper part. Thomas Bruce later explained that he had decided to take so many elements of decoration after he had seen how badly the monument had been preserved and how much damage it had suffered over the centuries. In fact, the team hired by Lord Elgin had been working for many months before he appeared for the first time in Athens and had his first chance to assess the condition

of the Parthenon (the first metopes were removed in July 1801, while Lord Elgin came to Athens in early summer 1802). Therefore, he must have decided to plunder the temple decoration pieces before he even saw them. The actual content of the authorization which legitimized the work of Elgin's people is also questionable. The original of the document has not been preserved and it is known only from an Italian copy (Hitchens 1997, 24-36; Skeates 2004, 30-37; Harrison 2010, 174-179).

In 1816, on the verge of bankruptcy, Lord Elgin decided to sell his Greek collection of metopes, pediment figures and sculptures from the Parthenon and the surrounding buildings to the British government. Following a recommendation by a parliamentary special committee, it was decided that Elgin had acted lawfully with the permission of the Ottoman government and the 'Elgin Marbles' were thus purchased by the British Museum. Today, some sculptural elements from the Parthenon temple remain on the temple itself, some have been distributed across Europe (they are housed in the Copenhagen National Museum, the Louvre in Paris, the Vatican Museums and the Munich Glyptothek amongst others), but the largest part of the Parthenon frieze and other decorations constitutes a collection of the British Museum and is located in the purpose-built Duveen Gallery.

The Greek government initiated efforts to repatriate the 'Elgin Marbles' soon after achieving independence from the Ottoman Empire in 1832, although it was not until 1965 that the Greek Minister of Culture officially called for the return of all Greek antiquities to Greece and not until 1983 that the first formal request for the return of the artifacts appeared on a United Nations agenda. Since then, the subject of the 'Elgin Marbles' has become an important subject in international political debate.

Although the formal request was made directly to the British government, the government has maintained the position that this is a matter for the British Museum's Trustees, who are the legal owners of the Parthenon sculptures. Almost from the beginning, the British have argued that by removing the decorations from the Parthenon, Lord Elgin contributed to their retention. They claim that they have survived throughout the centuries precisely because they were stored at the British Museum and that if they had not been, they would probably have been damaged during the wars and independence insurrections that took place in Greece a few years after

Lord Elgin's activities.<sup>1</sup> The British thus claim that the export of Greek artifacts from the chaos which engulfed the Balkans in the 19th century significantly contributed to the development of archaeology and classical studies in Western Europe. It was, therefore, an 'act of boon' to humanity. The British Museum Trustees also stress that, after so many years of funding conservation and exhibition costs, the Parthenon sculptures are now part of the museum's own heritage and that they are an integral part of the museum's role of being one of the most prestigious global institutions presenting the story of human cultural achievement. They also question the concept of cultural continuity and the right of the Greek people of today to the archaeological heritage of the Classical Greek period. Instead, they emphasize the legality of the special permit issued by the authorities controlling the Greek territory (*firman*) at the time. They state that any possible restitution of the Parthenon marbles is dependent on the fulfillment of several provisions, which include the creation of appropriate conditions for their storage and proper maintenance, covering the costs of transport from the British Museum to Greece and covering the costs of copying pieces that should remain in the British Museum. The British thus clearly present themselves as the sole owner and principal curator of the collection, leaving the Greek side virtually no room to maneuver (Hitchens 1997, 45-90; Kobyliński 2009, 155-163; Harrison 2010, 179-181).

In 1982, an active advocate of the return of the Parthenon marbles was the famous Greek actress, Melina Mercouri, who was then Minister of Culture. She made the issue of the marbles' repatriation one of the main objectives of national and international Greek policy. The arguments presented by the Greek side were based primarily on moral grounds and on demands for the respect of the Greek nation's right to possess and have open access to its cultural heritage. Radical supporters of the return of the marbles emphasized that they were presented out of their cultural context in the British Museum and that they thus became mere museum pieces, whereas in Greece they would be seen as one of the most important elements of Greek cultural heritage and that they would play an important visual role in the country's national pride. Accusations were also levelled of neo-colonial politics, the unjustified discrediting of Greek museum

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<sup>1</sup> During the Greek War of Independence, parts of the Acropolis were destroyed. The Greeks besieged the hill in 1821-1822 and the Turks followed suit in 1826-1827. During these two sieges, further damage to the Parthenon occurred when Turkish soldiers began to break the marble slabs and surviving walls of the cella in order to extract the lead clamps and melt them into bullets. The Greeks even offered bullets to their enemies on the provision that they left the Parthenon undamaged and stopped devastating monuments.

and conservation institutions and a disregard for international agreements prescribed in the UNESCO Conventions of 1970 and 1972.<sup>2</sup> As part of the campaign, the New Acropolis Museum was designed, in which the Parthenon sculptures were to be arranged in the same manner as they were positioned on the Parthenon temple. The new and highly modern museum was supposed to be proof of Greek readiness to look after the collection by providing the appropriate protection for the recovered artifacts.

The main argument put forward in recent years by representatives of the British Museum, as well as some representatives of the British Parliament, has been that the return of the 'Elgin Marbles' would set an 'unwelcome precedent' in the history of museology and would trigger an avalanche of claims, depriving almost all major galleries and museums of their greatest treasures. The director of the British Museum, Sir David Wilson, even described the Greek position as an example of 'cultural fascism' (Hitchens 1997, 85). As a result, despite international opinion favorable to Greece and a series of recommendations put forward by UNESCO, despite an unofficial promise made by the British government in 1941 when Greece was the only ally of Britain in the war against the Axis, despite official appeals made by the Minister of Culture, Melina Mercouri, in the 1980s, despite the hopes of recovering the sculptures for the occasion of the Athens Olympic Games in 2004 and despite the construction of the modern New Acropolis Museum in Athens, whose official inauguration took place in 2009, the 'Elgin Marbles' are still exhibited in the Duveen Gallery of the British Museum.

Finally, it should be mentioned that the matter has come to a standstill due to the serious economic and social crisis which is currently gripping Greece. Recent reports of violent riots and clashes between demonstrators and the police in Athens, which have caused the destruction and torching of buildings of public institutions, have not aided the Greek cause. Neither have illegal excavations conducted by specialized gangs, the destruction of archaeological sites, increased theft from museums and the sale of artifacts to foreign collectors. This unstable socio-political situation has a negative impact on any assessment of how well Greece can protect and secure its own cultural heritage and provides arguments to all those who are against the return of the 'Elgin Marbles' to Athens.

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<sup>2</sup> The UNESCO recommendation on the return of cultural property to the country of its origin was also emphasized. The UNESCO Conventions are openly favorable to the state of origin of artifacts, instructing the signatory states to recognize the indefeasible right of each state to classify and declare certain cultural property as inalienable, and to facilitate the return of illegally exported objects (UNESCO Convention of 1970).



## Historical and cultural justice

Unlike the case of the ‘Elgin Marbles’, the legality of the removal of artifacts from Machu Picchu and later from Peru has never been in doubt. The dispute over the right to the artifacts of the Incan city has its origins in 1912, when a cooperation agreement between Yale University and the National Geographic Society was concluded, establishing the interdisciplinary scientific Yale Peruvian Expedition. Its objective was extensive archaeological exploration of the Vilcabamba region (Department of Cusco, in the southern part of the country), which included the newly discovered ruins of the Inca city, Machu Picchu. A few months before the expedition started its work (1911), a new decree relating to archaeological investigations was passed (*Decreto Supremo* no 2612). According to the new decree, the undertaking of any archaeological or geological work in the territory of the Republic of Peru required a special license and had to be monitored by a supervisor appointed by the Peruvian government. The new decree also restated that all objects and finds from pre-Columbian times belonged to the State and that it was prohibited to export them out of the country without the authorization of Congress (this did not, however, apply to duplicated artifacts – see Ávalos de Matos and Ravines 1974, 388). As archaeological exploration and the acquisition of a collection of antiquities for the Peabody Museum of Yale University were the main motivating factors behind the work of the Yale Expedition, its director, Hiram Bingham, had to work around the limitations of the new act. After months of endeavor and largely thanks to the efforts of Bingham himself, as well as an intercession by the President of Yale University and the then President of the United States, Howard Taft (who brought up the matter with President Augusto B. Leguía), a collection of bone material, ceramics and objects made of metal and stone from Machu Picchu was given to Yale University and the National Geographic Society for their exclusive use. However, the Peruvian government reserved the rights to all the artifacts, as well as to all the written and photographic documentation. It was thus settled that all the material and documentation had to return to Peru after the necessary conservation work and laboratory studies in New Haven were completed. The date of return was not, however, never specified (Mould de Pease 2003, 149-150; see also Bingham 1915; Bingham 1989, 284-287).

During the years 1914-1915, another American Scientific Expedition to Peru was organized under the same auspices of Yale University and

the National Geographic Society. The artifacts and bone material obtained during exploration in the southern part of Perú (74 boxes, whose content was inventoried in the Museum of National History in Lima before being sent to New Haven) were once again explicitly described by the Peruvian government as being on loan and their export was only allowed in order that the necessary laboratory studies and conservation work could be carried out. It was decreed that all archaeological material and documentation of the exploration had to return to Peru after a period of 18 months (*El Comercio* 1914, 3; Gutiérrez de Quintanilla 2012 (1916); Kania 2013, 141-142). After World War I, the Peruvian administration invoked the clause of return in the contract. Yale University initially refused to comply, but over the years 1921-1923, part of the material from the 1914-1915 campaign returned to Peru and was subsequently deposited in the stores of the National Museum of Archaeology and Anthropology in Lima. However, nothing was said about the artifacts and documentation of the campaign of 1912.

During the rest of the 20th century, the Peruvian government was not particularly interested in the fate of the objects from Machu Picchu and it was not until Alejandro Toledo Manrique's presidency (2001-2006) that a serious discussion and public debate between the administration of Peru and representatives of Yale University began. Under this presidency, the Inca site became an icon of the 'golden age' in the history of the Peruvian Nation, a symbol of *andinismo* and *incaísmo* ideology and a key issue in populist government policy, which based itself on ethnocentric pride in the Inca civilization. In 2002, the then director of the National Institute of Culture, Guillermo Luís Lumbreras, made an official statement whereby the Peruvian administration demanded the immediate return of all objects from Machu Picchu that had been retained illegally in New Haven for almost one hundred years. Representatives of Yale University reacted in a passive manner, continuously canceling meetings or postponing negotiations relating to the Machu Picchu collection and making it impossible to reach any decision. They also refused to recognize the most important argument of Alejandro Toledo Manrique's administration, which was the fact that the Republic of Peru was the sole proprietor of the entire collection and that only the administration of Peru could take decisions regarding where the objects should be retained, displayed or investigated. The behavior of the American institution was perceived very negatively in Peru and was criticized as a return to imperialism, paternalism and



a demonstration of a neo-colonial attitude that should not be tolerated in modern times. The first stage of negotiations thus ended in a fiasco.

In 2005, an official demand for the return of the 'stolen items' (as the Peruvian side had begun to define the Machu Picchu collection) was put forward again. It is worth mentioning that, from the beginning of the dispute, the National Geographic Society – the institution that participated in the organization of Bingham's expeditions and was also their patron – sided with Peru. Terry García, the executive director of the society, had carried out an investigation in their archives and, amongst several documents on the matter dating to the beginning of the 20th century, he had found a letter from Hiram Bingham to the National Geographic Society director, Gilbert H. Grosvenor, as well as the agreement of collaboration between the government of Peru and the Yale Expedition, which was dated to 1912. The content of the documents clearly showed that material obtained during the work of the expedition in the area of Machu Picchu was only given to Yale on loan and that Peru reserved full rights to its possession in the future. As the *Santuario Histórico de Machu Picchu* was included on the famous 'List of World Heritage Sites' of 1983, the issue of the return of Inca artifacts to Peru thus came under the remit of UNESCO. Invoking the provisions of the 1970 and 1972 conventions, representatives of UNESCO expressed their concern that the conflict could damage the collection and the site of Machu Picchu. It was emphasized that Machu Picchu was not just one of many Inca sites within the territory of Peru, but that it was an exceptional place representing part of the cultural heritage of humanity. Katherine Muller Marin, a representative of UNESCO, supported the claims of the Republic of Peru and pointed out that, regardless of any difficulty in determining the legal possession of the objects unequivocally, it was desirable that the Peruvian people should have free access to symbols of their own cultural heritage that formed the basis of their cultural identity (*El Comercio* 2008).

Nevertheless, the American side argued that the objects from Machu Picchu had been kept carefully for many years by the one of the best American museums and that they had received preservation and restoration work from the best specialists available. As a result, representatives of Yale University claimed that it was legitimate to retain the collection in New Haven, because after so much effort and a great financial outlay, Yale had the same right to the objects as the inhabitants of Peru, who called themselves the heirs of the Inca civilization. In addition, the question of whether cultural property could truly belong to a country that was not even

in existence during pre-Colombian times was put forward. After all, the Inca state *Tahuantinsuyu* ceased to exist long before the Republic of Peru established its government. The debate over the artifacts of Machu Picchu also touched on a very delicate and painful issue for the Peruvian administration, namely the problem of providing adequate protection for pre-Columbian archaeological heritage, as the country already had a long and infamous tradition in this matter. It is generally held that the Peabody Museum is one of the institutions with the best conditions for the maintenance and protection of archaeological collections, while Peru still cannot resolve the serious problem of inadequate preservation of its historical cultural achievements.<sup>3</sup>

In July 2006, when Alan García Pérez assumed the position of President of the Republic of Peru, the controversial issue of the return of the artifacts from Machu Picchu was no longer to be postponed *ad acta*. On the contrary, the imminent arrival of the year 2011 and the planned celebrations of the centenary of the scientific discovery of Machu Picchu (1911-2011) turned the 'case of Machu Picchu' into a 'case of honor' in Peruvian public opinion. García Pérez admitted publicly that the return of the 'Machu Picchu collection' was a fundamental objective of his government's cultural policy, describing the situation as a 'robbery' perpetrated against the Peruvian nation. A specially assembled commission created Law no. 28,778, according to which the demands of the Republic of Peru would take legal force. However, no decision was taken for several months and the conflict continued unresolved. In July 2009, due to the absence of any satisfactory decision and the passive position of the American side, the administration of Alan García Pérez denounced Yale University in the State Court of Hartford, Connecticut, accusing it of breaking the contract signed at the beginning of the 20th century and thus violating Peruvian law concerning the protection and preservation of archaeological heritage. In November 2010, an official national campaign for the restitution of the Machu Picchu artifacts was launched. On 5 November, Peruvians from Lima and Cusco took to the streets

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<sup>3</sup> The territories of the present Republic of Peru have been plundered by '*huaqueros*' – robbers of graves and places of worship – since colonial times. The destruction and looting of archaeological sites remains a serious problem and, regrettably, valuable relics and documents also still disappear from museums and archives. The most precious pre-Columbian artifacts are often mostly sold to foreign private collectors. The insufficient number of specialists in the field, the inadequate protection of archaeological material and the lack of sufficient financial resources has led to the constant depletion of Peruvian cultural heritage.

in protest marches. In Lima, more than 3000 people participated in a demonstration held in Campo Marte, which was led by President Alan García Pérez and Secretary of State José Antonio García Belaúnde. Demonstrators on the march presented banners bearing slogans such as: 'Machu Picchu belongs to Peru, not to the gringos', 'Machu Picchu is Peruvian. Justice!', 'Yale University, return it immediately!' (*El Comercio* 2010).

On the 19th November 2010, probably as a result of the political climate, ethical considerations and negative public opinion, a Yale University spokesman announced the decision to return the entire Machu Picchu collection to Peru. Objects of particular value were to move at the beginning of July 2011 (around 360 artifacts) and the rest of the 'study collection' would be returned before the end of 2012. Although Yale University representatives recognized Peru's right to the ownership of the collection, the process of the collection's return would only occur if certain conditions were met. The university agreed to pay for the transport of the collection, but Peru had to take responsibility for its appropriate protection, had to guarantee appropriate and professional maintenance in a purpose-built museum in Cusco and finally had to allow professionals access to the archaeological material in order to continue the work of conservation and inventorization. The first set of archaeological material from Machu Picchu arrived in Lima on the 30th March 2011. 30 boxes with 363 objects were moved from the airport in Callao to the Government Palace in the center of the city with the assistance of the national police. President Alan García Perez received them personally on the stairs in front of the palace. In his moving speech, he argued that the return of part of the 'Machu Picchu collection' boosted the self-esteem of all Peruvians. He also referred to the right of all nations to maintain and protect their cultural heritage: 'Its return represents our dignity. (...) This collection has no precious stones, but they are treasures made by the hands of our ancestors and they represent the dignity and pride of Peru. The arrival of these archaeological vestiges of Inca culture strengthens our national pride and shows that with conviction anything can be achieved' (*El Comercio* 2011). García Perez also pointed out that it was a very significant moment, not only for the Peruvian people, but also for other nations which have not ceased in their efforts to recover their history and heritage. According to the president, Peru could set a good example that this goal could be achieved by any country. Three months later, the boxes containing the artifacts and bones were transported on a special plane to Cusco, the historical capital of the Incas, and deposited at

the Museum of Casa Concha in Santa Catalina Street, where a new International Center for the Study of Machu Picchu and Inca Culture had been created. On 11th August 2011, to the background of the centenary celebrations of the ‘scientific discovery of Machu Picchu’, the rector of the National University San Antonio Abad in Cusco, Dr Victor Raúl Aguilar, inaugurated the exhibition of the more than 300 artifacts returned by Yale University. Further parts of the collection were brought to Cusco in July 2012 and the remaining boxes from the ‘study collection’ were deposited in the Museo Casa Concha in December 2012 (see more Kania 2013).

### **Final considerations**

In any discussion on the ownership of archaeological heritage, political (nationalistic), scientific, ‘curatorial’ and even sentimental arguments are used, which make it very difficult to resolve matters with total clarity and avoiding material or moral losses. Without doubt, each nation has a duty to adequately protect cultural property that is widely recognized as a part of world heritage. However, it must also be stressed that each nation has the right to demand recognition of the integrity and inviolability of its historical heritage, as it forms the basis of national tradition and identity. Ambition, a sense of offended national pride, the delicate problem of the domination of powerful nations in the past, accusations of neo-colonialism or imperialism, the will to regain national dignity and cultural identity and the desire to retrieve a ‘visual’ part of national identity – all these arguments are used as parts of the ‘ideological arsenal’ supporting countries of origin in debates all over the world. Opponents of repatriation, on the other hand, put forward arguments of access and custodianship. The nature of the relationship between ancient objects, artifacts and human remains and today’s societies and states, as well as the question of whether everything within a nation’s borders is its property, remain ‘popular’ arguments in the inquiry into who owns cultural property and if restitution is really justified. All these points were made in the Machu Picchu controversy and are still being made in the case of the ‘Elgin Marbles’. It must be noted that objects which are globally considered as being the most important in demonstrating the development of human civilization are all part of our common heritage as humans and thus should not be the property of either nations or states, or of museums or galleries. I am inclined to concur with the argument that archaeological heritage should

be considered as part of mankind's common heritage and that the main goal should therefore be its conservation for future generations. It is to be hoped that this task will be accomplished by the new International Center for the Study of Machu Picchu and Inca Culture in Cusco, where the Machu Picchu collection has now been stored and exhibited since 2011.

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Marta Kania  
Institute of American and Polish Diaspora Studies  
Jagiellonian University  
martha.kania@uj.edu.pl