

Europe's Contested Heritage: Who Owns the Past When Empire Shaped the Present?
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Europe increasingly frames cultural heritage as a matter of sovereignty, historical continuity, and national identity. Yet these principles become deeply contested when applied to objects created in territories subjected to European conquest and colonial rule, or when those objects were transported through imperial systems before being lost, recovered, and claimed centuries later.

The politics of heritage is therefore no longer confined to museums and archaeological institutions. It increasingly touches questions of sovereignty, international law, historical memory, Indigenous rights, cultural diplomacy, and the legitimacy of states' claims over the past.

The coins from the Spanish frigate *Nuestra Señora de las Mercedes* provide an exceptional testimony to the economy and connections of the Spanish Empire in the early 1800s. Most of the recovered coins came from mints in the American territories, especially Lima and Potosí, although other pieces were minted in places such as Mexico, Popayán (Colombia), and Santiago de Chile. Among them were the famous silver pieces of eight reales, as well as gold coins minted mainly between 1772 and 1804. These coins represented more than material wealth. They reflected the movement of precious metals and money within an imperial system that connected the economies of the Americas with Spain.

The destination of this cargo was Spain. After leaving the port of Callao, in present-day Peru, on April 3, 1804, the *Nuestra Señora de las Mercedes* carried money and other goods toward Spain, following a route that passed through Montevideo and was expected to end in Cádiz.

However, on October 5, 1804, off the coast of Portugal, the Spanish fleet was intercepted by British ships. The *Mercedes* exploded and sank, taking much of its cargo to the bottom of the sea.

More than two centuries later, in 2007, the American company Odyssey Marine Exploration located the wreck and recovered approximately 500,000 coins. Spain then began a long legal battle to prove that the cargo belonged to the Spanish frigate and ultimately succeeded in having the coins returned to Spain.

At first sight, the case appears to be a question of ownership over a Spanish state vessel and its cargo. Yet the history of the coins makes the question considerably more complex. Most of the recovered pieces were not minted in Spain. They were produced in American territories, particularly in Lima and Potosí, and became part of a transatlantic monetary system through which precious metals and wealth circulated within the Spanish Empire. The nationality of the vessel therefore provides only one layer of the story. The economic and historical provenance of the cargo provides another.

The *Nuestra Señora de las Mercedes* consequently raises questions that go far beyond the economic value of the treasure. Who owns heritage created in the Americas, transported by Spain, sunk in international waters, and recovered by an American company? Can the nationality of the ship determine the historical legitimacy of the objects it carried? And when the wealth aboard a state vessel originated within a colonial economic system, should sovereignty over the vessel automatically settle every question concerning the history and meaning of its cargo?

These questions are particularly important because international heritage law has developed unevenly across time. Modern legal instruments provide increasingly sophisticated mechanisms for protecting cultural heritage, including underwater heritage, but

many of the objects at the center of contemporary disputes were acquired or displaced centuries before these rules existed.

The legal status of an object and the historical legitimacy of its acquisition are therefore not necessarily identical. A state may possess a defensible legal claim while the history of an object may nevertheless remain ethically and politically contested.

This distinction becomes even more significant when the *Mercedes* is considered alongside the Spanish galleon *San José*. The *San José* sank near Cartagena (Colombia) in 1708 carrying valuable cargo within the Spanish imperial trading system. Spain maintains that the vessel was a Spanish state ship and invokes sovereign immunity, while Colombia considers the wreck protected underwater cultural heritage under Colombian law. The dispute therefore involves sovereignty, archaeological preservation, jurisdiction, and competing claims over underwater heritage.

Yet it cannot be reduced simply to Spanish versus Colombian ownership. The cargo was connected to a colonial economy built on the extraction of American resources and Indigenous labor. The deeper question is whether European sovereignty over colonial-era heritage can be asserted through the historical identity of a vessel while the colonial circumstances that produced its cargo are treated as irrelevant.

The comparison between the *Mercedes* and the *San José* demonstrates why the nationality of a ship cannot always provide a complete answer to questions of heritage. The legal status of a state vessel is clearly relevant, particularly under international law. But the identity of the vessel does not necessarily exhaust the history of the cargo. The origin of the objects, the circumstances in which resources were extracted, the communities connected to them, and the cultural meaning they acquired must also be considered. A sophisticated heritage regime should therefore distinguish between sovereign title, physical provenance, economic provenance, cultural significance, and historical legitimacy.

The Muisca¹ provide an equally important counterpoint. When Spanish and German forces arrived in Muisca territory in 1539, the Cundiboyacense confederation was already a sophisticated political, economic, and religious society. Gold was embedded in its economy and worldview. For the Muisca and many other Indigenous peoples, however, the arrival of European forces marked the beginning of a long period of conquest, dispossession, subjugation, and systematic extraction. The significance of this history lies not simply in the amount of wealth extracted but in the transformation of the cultural meaning of that wealth.

For the Muisca, gold was not simply a commodity. It was used in ceremonies, offerings, and objects carrying political and spiritual meaning. The European search for El Dorado transformed this cultural heritage into a narrative of treasure to be discovered, extracted, and transported. Objects and resources that had meaning within Muisca society were increasingly valued through a colonial lens focused on gold and imperial wealth. The famous Balsa Muisca illustrates this difference particularly well. Its significance lies not merely in the gold from which it was made, but in the ritual and cultural tradition it represents.

The Muisca case therefore raises a fundamental principle for contemporary heritage policy: heritage cannot be evaluated solely by its material value or by the legal title of whoever currently possesses it. Cultural heritage is also memory, identity, spirituality, historical continuity, and the authority of communities to define their own relationship with the past. The transformation of sacred or culturally meaningful objects into colonial "treasure" demonstrates that the history of an object includes not only where it was physically located, but also how political power changed the meaning attributed to it.

¹ Arango, Ó.A. (2013), *Prince of Chía: The Clash of Two Worlds*, Villegas Ed.

Across continents, European colonial expansion repeatedly disrupted political systems, appropriated resources, and severed communities from their cultural heritage. Colonialism did not merely move objects. It also changed the language surrounding them. Gold, sculptures, ceremonial objects, and archaeological material were frequently described as treasures, antiquities, or spoils, while their religious, political, and communal significance was diminished.

This historical transformation remains relevant today because the terminology used to describe heritage can influence whether an object is perceived primarily as property, archaeological evidence, cultural heritage, or a symbol of collective identity.

The issue becomes clearer when viewed alongside European restitution debates. Britain continues to defend its possession of the Parthenon Sculptures, while Greece maintains its claim for their return. France has returned significant cultural objects to African states, including royal treasures to Benin. Germany has supported the return of substantial numbers of Benin Bronzes to Nigeria and increasingly linked restitution to confronting its colonial past. These cases reveal an important policy evolution, but they also raise questions about consistency.

When European heritage is taken abroad, European states and institutions may invoke national history, cultural identity, unlawful removal, historical continuity, and the right of recovery. When heritage was taken from colonized societies, however, debates have often shifted toward legal title, the passage of time, and whether the acquisition violated the law as it existed at the time.

The result can be a hierarchy of historical legitimacy in which sovereignty and continuity are treated as powerful principles when applied to European claims but become more difficult to recognize when invoked by societies whose heritage was displaced through European colonialism.

The issue is not whether every object outside Europe should be returned. Such an approach would ignore the complexity of individual histories and the legitimate role of museums, researchers, and states in preserving cultural heritage. The more fundamental question is whether the principles invoked to defend European heritage claims should be applied consistently to the heritage of formerly colonized peoples. If sovereignty matters, it should matter consistently. If cultural identity matters, it should matter consistently. If historical continuity matters, it should matter consistently. If provenance matters, it should matter consistently.

This principle also requires a more sophisticated understanding of the relationship between legality and legitimacy. The fact that an object was acquired before modern international rules existed does not automatically establish that the acquisition was legitimate. At the same time, historical injustice cannot simply be presumed in every case involving colonial-era objects. A credible international heritage system must therefore examine the circumstances of acquisition rather than relying exclusively on either present-day legal ownership or retrospective moral judgment.

The international heritage regime has advanced significantly through instruments such as the 1970 UNESCO Convention and the 2001 Convention on the Protection of the Underwater Cultural Heritage. The latter recognizes the importance of protecting underwater cultural heritage and promotes preservation, scientific investigation, international cooperation, and protection against commercial exploitation. Yet the convention does not itself determine ownership, and it preserves existing rules concerning sovereign immunity and state vessels. This distinction is essential because protecting archaeological heritage and determining ownership are related but separate questions.

The policy gap therefore lies not simply in international law but in the absence of a consistently applied framework for evaluating historical legitimacy. European museums and states should

develop systematic colonial-provenance reviews capable of identifying objects acquired from territories under colonial rule and documenting the circumstances in which they were obtained. Where evidence indicates coercion, military seizure, colonial confiscation, or profoundly unequal acquisition, institutions should move toward negotiation rather than placing the entire burden on source countries or Indigenous communities to pursue lengthy and expensive litigation.

Indigenous communities should also have a formal role whenever heritage has Indigenous, ancestral, or sacred significance. Heritage governance cannot remain exclusively a matter of state-to-state diplomacy when the communities most directly connected to an object may possess their own historical, cultural, or spiritual claims. Consultation should therefore extend beyond governments to the communities whose identities and traditions are represented by the heritage in question.

Underwater heritage requires the same consistency. Colonial shipwrecks should not be assessed solely according to the nationality of the vessel. The origin of the cargo, the circumstances of its acquisition, the communities whose labor and resources produced it, the archaeological integrity of the wreck, and the applicable rules of international law should all form part of the assessment. This would not automatically override sovereign immunity or existing legal rights. It would ensure, however, that sovereign claims are considered alongside the broader historical provenance of the heritage concerned.

Restitution should likewise not be understood as a simple choice between permanent return and permanent retention. Depending on the circumstances, legitimate solutions may include permanent restitution, shared custody, long-term loans, rotating exhibitions, joint research, collaborative conservation, and shared interpretation. The appropriate remedy should depend on the evidence, the cultural significance of the object, the wishes of source communities, and the capacity of institutions to preserve and provide meaningful access to the heritage.

The politics of heritage is reinforced not only by laws and institutions but also by popular culture. For decades, European and Western adventure narratives have often portrayed the discovery, recovery, and removal of foreign antiquities as heroic exploration. From treasure-hunting adventures to films centered on European archaeologists, the finder is frequently presented as the hero while the original communities appear merely as part of the landscape. This matters because popular narratives influence whose relationship to the past is considered legitimate.

The language of "treasure hunting" is particularly revealing. It can transform an object from something embedded within a community's history into something apparently waiting to be discovered by an outsider. The story of the *Nuestra Señora de las Mercedes* demonstrates how powerful this narrative can become in the modern era. The ship disappeared beneath the sea in 1804, its cargo became inaccessible for generations, and technological innovation eventually allowed an American company to locate and recover it. The resulting dispute was not simply about coins. It was also about who possessed the authority to define what those coins represented and who had the right to control their future.

Heritage policy should therefore ask not only "Where is the object?" but also "Whose history does the object represent?" and "Whose story is being told?" These questions are not merely philosophical. They affect the legitimacy of museums, the credibility of states, the future of restitution negotiations, and the ability of cultural institutions to act as trusted custodians of global heritage.

The geopolitical implications are increasingly significant. Heritage disputes involve sovereignty, national identity, Indigenous rights, international law, cultural diplomacy, museum legitimacy, historical memory, and soft power. For European states, restitution policy can influence their international reputation and their relationships with countries in Africa, Latin America, and the wider Global South.

For countries and Indigenous communities whose heritage was displaced during colonialism, heritage diplomacy can become a means of asserting cultural sovereignty and challenging historical narratives inherited from imperial rule.

This means that heritage should no longer be treated as a marginal cultural issue. Museums are increasingly diplomatic institutions, shipwrecks are historical archives, and restitution can become an instrument of reconciliation or a source of diplomatic confrontation. The state that controls an object does not necessarily control the narrative surrounding it. Conversely, a state or community seeking restitution must also demonstrate a credible historical and cultural basis for its claim.

The most credible policy response is therefore neither unconditional restitution nor unconditional retention. It is a common framework in which provenance, historical circumstances, cultural significance, Indigenous participation, and proportional remedies are evaluated together. Such a framework would allow European states to maintain legitimate claims to heritage while acknowledging that historical possession does not automatically establish moral legitimacy.

The broader objective should be to establish one standard for European and non-European claims. European states and institutions should apply the same principles of provenance, historical circumstances, cultural significance, and historical legitimacy when assessing heritage claims abroad that they expect other states to apply to European claims. Consistency would not weaken European cultural institutions. On the contrary, it could strengthen their legitimacy by demonstrating that sovereignty and cultural identity are universal principles rather than privileges inherited from historical power.

The *Nuestra Señora de las Mercedes*, the *San José*, the Muisca heritage of Colombia, the Parthenon Sculptures, and the Benin Bronzes are very different cases. Yet together they expose the same unresolved principle. The *Mercedes* demonstrates the power of sovereignty and historical continuity as arguments for heritage claims.

Spain successfully established its connection to a Spanish state vessel and recovered approximately 500,000 coins more than two centuries after the ship sank. But the same case also demonstrates the complexity of colonial provenance, because most of those coins were produced in the Americas and entered an imperial system that connected American resources to Spanish power.

The *San José* raises similar questions about the relationship between the nationality of a vessel and the origins of its cargo. The Muisca experience reveals another dimension: objects and resources that possessed religious and cultural meaning within an Indigenous society could be transformed by colonialism into “treasure.” The European restitution debates demonstrate that historical identity, provenance, sovereignty, and cultural continuity remain politically powerful concepts. The unresolved issue is whether those concepts can be universalized.

If historical sovereignty and cultural identity justify European claims to heritage abroad, those principles cannot logically be denied to societies whose heritage was displaced through European empire. The objective should not be to empty European museums or declare every historical transfer illegitimate. It should be to establish a more symmetrical rule: heritage acquired under colonial domination deserves scrutiny wherever it is held, regardless of how long ago the acquisition occurred or which state currently claims ownership.

Such an approach does not eliminate legal title. It places legal title within a larger framework of historical responsibility. The future of heritage policy should therefore move from a narrow question of ownership toward a broader concept of responsibility. Who has the right to possess an object? Who has the right to interpret it? Who has the right to decide where it belongs? And, ultimately, who has the responsibility to ensure that the injustices embedded in its history do not become invisible simply because centuries have passed?

Europe does not need to choose between preserving its museums and confronting its colonial past. It needs a heritage policy in which history is preserved without allowing historical injustice to become permanent ownership. A credible international heritage system can only emerge when sovereignty and historical continuity are treated as universal principles rather than protections reserved primarily for those who historically possessed the power to define the rules.

The central question is therefore no longer simply “Who owns the past?” It is “Who has the responsibility to preserve, interpret, and, when necessary, return it?” That shift—from ownership to responsibility—offers a more constructive basis for resolving the heritage disputes that continue to connect Europe with the societies shaped by its imperial past.

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