

The impact of mass media in the discrimination of Hispanic sunken heritage and the implementation of the UNESCO 2001 Convention

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Abstract

Sunken Hispanic heritage has been perceived sometimes just as an amount of gold and treasures. Unfortunately this widespread approach has prevented archaeologists to succeed in connecting the Hispanic-related cultural remains and shipwrecks with America's naval archaeological record. The treasure hunting industry took advantage on this and now we regret the destruction of dozens of sites. UNESCO's 2001 Convention for the Protection of Underwater Cultural Heritage (CUPCH) (henceforth the Convention) is still the only legal and cooperative framework available to avoid Hispanic sunken ships from looting and dissolving into the marketplace. This is why treasure hunters, from 2010, undertook coordinated attacks against the Convention, often displaying dishonest behaviors, as was demonstrated in Courts, and requesting to be considered fair archaeological contractors. They gathered unfavorable opinions against the Convention even from archaeologists who agree with the UNESCO criteria but want an enforcement of research and projects suggested in the Convention but are concerned about misreading "in situ" conservation as if it were "in situ" oblivion. Now a new Heritage Act in Colombia allows treasure hunting companies to dig colonial shipwrecks legally. This is a beachhead and a challenge for the Convention's signatory countries as well as for archaeologists. The more scientific standards we set, the more actively committed with research and sharing knowledge we must be.

Key words: Hispanic, Underwater cultural heritage, Treasure hunters, Mass media, Discrimination

Introduction

America's history can no longer be told confronting Hispanic and Anglo-Saxon visions. Revealing works such as John H. Elliott's *Empires of the Atlantic World* (2006) have focussed on the intertwined tale of both cultures, surpassing some 20th century prejudices that lost all sense in the current multi-ethnic society. Elliott shows just how the fates of both empires in the New World were closely linked, with surprising contemporary nuances. It's time to fight the wrong view on sunken Hispanic heritage as a collection of treasures just to be rescued. Perhaps the law of the sea ("finders, keepers"), conceived to justify fortuitous finds, has been shown to be harmful enough as well as inaccurate to define the premeditated and technologically-sophisticated search

of shipwrecks laden with treasure. In the name of old postulates, the new treasure-hunting businesses have committed - and are committing - one of the greatest cultural disasters to affect mankind in the 20th and 21st centuries. We are referring to what Tony Horwitz, the shrewd American columnist, expressed in his *The New York Times* article "Immigration – The Curse of the Black Legend" (2006). In that article, he quotes Carlos Fuentes, who said "The Hispanic world did not come to the United States; the United States came to the Hispanic world. It is perhaps an act of poetic justice that now the Hispanic world should return". Thus the vision we now invoke is vindicated. And this year we've had the opportunity to think deeper on this matter, after the publication of "Our America" the new book by Felipe Fernandez-Armesto (2014), who describes clearly the struggle even inside the American historiography for taking into account the Spanish branch of the past we all share. The idea that the remains of colonial Hispanic sunken vessels correspond to stolen goods, and that the people who perished in those shipwrecks were morally deficient legitimizes the virtual sacking of those very remains, and is commonplace in the pages where bounty hunters announce themselves to their would-be investors. They show no interest in the study of the people from different backgrounds and cultures that were aboard those ships, nor in the scientific consequences of such a revealing study. Such ideology has nothing to do with archaeology. Is the adventurer, surging from the deep sites, a paradigm to anyone who has seen their wildest dreams come true or to whom Providence has rewarded the greatest of efforts by being covered with shipwrecked jewels ripped out of what once was a tomb? There is nothing exemplary about those practices. No single archaeologist worthy of his title can deny the character of the real American history in each and every one of those objects. And the same goes for the moral or legal ties with the societies and people they originate from. An entire historical record has been mistreated by a destructive industry, and a whole culture discriminated.

The low or practically inexistent scientific level and methodology that have guided "traditional" treasure - hunting businesses that flaunt administrative permits is also a by-product of an "ideology" with which they argue in favor of the fruit of their labor. Back in April 2006 when Wilf Bloom, in charge of Deep Blue Marine, announced (Hollenhorst, 2006) the likely finding of the ship "El Salvador", he told the Associated Press: "There's

a lot of blood on that gold". Bloom also made a commitment to invest 10% of the bounty on hospitals and schools in "the regions of South America plundered by early Spanish explorers". Such good intentions did not go beyond paying lip service to the message, but did provide a handy justification designed to align public opinion with something similar to the idea of the redemption of a black legend... in order to turn a handsome profit. Similar harsh arguments, that painfully caricaturize the history of Spain and America have been bandied before official forums in the United States, a practice that fortunately has not affected the impeccable American archaeological and scientific policies, but has nevertheless influenced its people. Proof of this are the large mass media corporations, who act as sounding boards for those who talk about treasures and value archaeological finds in terms of how many million dollars they are worth.

We can see it in most press releases, even in the best exceptions (such as how *The New York Times* treated the story of the finding of the so-called "Black Swan" on May 19th, 2007) (Aguayo, 2007). The weight of the treasure-hunter industry is usually overwhelming - 13 out of 17 paragraphs in that article - against the few voices of marine archaeologists. In our example, the article started thus: "Explorers for a shipwreck exploration company based in Tampa said Friday that they had located a treasure estimated to be worth hundreds of millions of dollars in what may be the richest undersea treasure recovery to date". A good example of news media coverage of an important case is the litigation between Odyssey Marine Exploration (OME) and Spain over the cargo found in the remains of Spanish frigate "Mercedes", where we can readily see that in the United States - where American courts have sided with Spain and where both the U.S. government and its Navy supported Spain's position- there has been no other voice heard except for that of the Tampa Company and its media connections.

Curiously enough, as a contrast and example of the problem that we pose here, two years after the "Black Swan" story, the same company announced the finding of the English ship "HMS Victory" in the English Channel, and we were told the story of the shipwreck and its victims from the newspaper article's very first paragraph: "Sea explorers probing the depths of the English Channel have discovered what they say is a legendary British warship that sank in a fierce storm in 1744, losing more than 900 men

and possibly four tons of gold coins that could be worth \$1 billion” (*The New York Times*, February 2nd 2009). The difference in how the story is told from a heritage perspective shows how the story plays depending on its origin. While it may be a small subtlety, it has had a devastating effect on the Hispanic archaeological record. Without cultivating a mere curiosity for history, the average person only reads about tons of coins, hundreds of millions of dollars and, eventually, the tough litigation against a power that stars in this new version of the black legend. That poses a great challenge for the scientific community and the historian, who today has to bring about a change in that perception.

The 2001 Convention

After all has been said and done, it is true that the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage (CPOCH, 2001) remains at the center of the present debate as the only international legal and cooperative referent for the scientific community to approach a solution to the multiple, complex and polemical problems related to the historical underwater record. That is why we consider the implementation of its criteria as the most accessible safeguard of the endangered Hispanic heritage. Nevertheless, we shall see that in that regard, there has been a well-coordinated offensive in the last few years. In an article published in the Spanish daily ABC on November 22nd 2012, Filipe Castro and José Luis Casabán discussed the new forms adopted by the bounty-hunting industry:

- 1) The companies associated with large marine industries act in a shrouded veil of secrecy, on shipwrecks for which they already have buyers;
- 2) The traditional, ruinous companies, who are responsible for the destruction of a good part of the Spanish wrecks found off the American and African coasts in shallow waters; and
- 3) The other intermediaries, such as Odyssey Marine Exploration, who boast of being “a great company financed by its shareholders in the stock market, and are always quick to act and always reinventing themselves, with endless smokescreens to create illusions and situations, one step ahead of the mass media and of the regulating bodies, supported by important political entities in the USA” (Castro and Casabán, 2012).

It is true, as is often heard, that most of the treasure hunters are involved in a ruinous business. Ever since the industry's expansion, the ever-intelligent Peter Throckmorton (1990) understood that conservation of the heritage is a public concern. This debate, which I already touched on in a previous article entitled "Looting is not listed in the stock exchange" (García Calero, 2009), couldn't be more applicable today. The reason is that we must assume the responsibility for the collective failure that supposes that the stock exchange and markets have not been able to choose a company that engages in the best practices. A company as protean as OME has seen a good share of its "creative force" impugned by its handling of the "Mercedes" case, not only due to the decisions it took in 2007, but also due to its attitude in the litigation against Spain.

This is how the Honorable Judge Steven D. Merryday saw it when he condemned the company to pay the trial-related costs, and with harsh words said: They were searching for "a vessel and a location and a cargo all well documented and well known to Odyssey from the start and from long before the first day of this litigation". The Judge also said: "To come to court and deny the truth of these facts is, as stated earlier, an unacceptable enormity propounded and maintained in bad faith and for an improper purpose". Judge Merryday went on to say: "This bad faith conduct by Odyssey, dismissive of the applicable standards, dismissive of the court, and dismissive of the opposing party, cannot stand unaddressed by sanctions" (2007). So we would have to ask why this company who as Castro and Casabán have said (2012), pretends to be close to an archaeological dealer and hire archaeologists to supervise the work and even to publish its results, would print the "Odyssey Papers 13" in 2010.

Back in 2009 the Tampa court had already shown signs that it would side with Spain against OME, and less than a year later, OME sponsored a symposium in New Orleans and published said "Papers 13", whose main objective was to cast a reasonable doubt over the validity and the adequacy of the CPUCH. In that publication, Sean Kingsley (2010), a fine archaeologist who works for the Tampa company, makes an effort to distance the Odyssey practices from the old industry (he seems indignant when he cites Robert Grenier for referring (2006) to the old industry as one of "precious metal miners"). Kingsley goes on to justify the work done by Odyssey on the "HMS Victory": "This careful and concerned approach to underwater cultural heritage is a world apart

from the hit and run image depicted above by Robert Grenier, *although it must be acknowledged that standards are far from uniform across the entire commercial marine archaeology field*" [the underlining is ours]. Such final confession is striking when it refers to those who are directing continuous attacks against the CPUCH as an international referent due to the "irrelevance" of the *in situ* conservation criterion. Article 2.5 of the 2001 Convention states: "The preservation *in situ* of underwater cultural heritage shall be considered as the first option before allowing or engaging in any activities directed at this heritage". The ransacking of the "Mercedes" took place merely a year after Grenier's comments, but for Odyssey the problem is the Convention, as is defended in "Papers 13", made up of a combination of various authors united by a critical view. Evidently, nothing can prevent anyone from holding a contrary opinion or nuance to *in situ* conservation, above all in countries like Spain, where such criteria end up covering up for certain lack of action by civil servants regarding public initiatives to promote archaeological research of our rich underwater heritage. However, such posture is best understood in men like Kingsley when it is precisely the spirit of the Convention that the Joint Nautical Archaeological Policy Committee applied in the "HMS Victory" case, when it barred the Tampa Company from digging.

We must remember that the British Ministry of Defense contracts have raised considerable and bitter polemic between archaeologists and Her Majesty's Government, and that in Parliament, Lord Renfrew has shown this criticism at its highest level, as reflected in an interview (Bergareche, 2012) published by Spanish daily ABC. The Convention and its Annex, which regulates the necessary conditions before research can be deemed scientifically acceptable, worry the very same people whose conscience makes them say that "standards are far from uniform across the entire commercial marine archaeology". Even then, there is also criticism from the archaeological world which, without impugning the Convention's criteria, demands that it be applied in its totality, including the bases for the active research and training of a new generation of archaeologists who, out of the absence of projects and passive bureaucracy, will not have a more promising future. In Odyssey's already cited «Papers 13», Filipe Castro writes on that subject (Castro, 2010). We agree: It is the same people who subscribed and regulated the Convention who should be most active and exemplary, and not hide

behind a facade of passivity, because the heritage that we have to protect calls for knowledge as the first contribution to society. That is truly the real “treasure”. That is the permanent risk of the Hispanic heritage. It must not be touched without proper scientific method and the due respect to the sites. This makes the Convention pertinent and timely. The technology that allows us to reach the wrecks found in the depths is not enough to open a Pandora’s Box of contracting *sui generis* archaeological companies. The publications by Odyssey and other companies that warn against the danger of trawler fishing and other harmful activities are not enough to open the hunting season on the heritage. One must ask why, as in the two faces of Janus, the archaeologist and the treasure hunter live in such a narrow dialectic and increasingly confusing limits. And to understand why, we must go back to the origins. In those mythical days, when George Bass and a handful of pioneers were setting the basis for this scientific discipline, others were also laying the foundations of the treasure-hunting industry. In fact, in the case of the United States, organizations like the Council for Underwater Archeology, created in 1959, or the Sea Research Society in 1972, counted on diving experts among its founding members, like Robert Marx, who would quickly become one of the treasure hunters who has been most active on the Hispanic cultural heritage. The dichotomy between “trade goods” and “cultural artifacts” is then at the origins.

Let us turn to the present. What will be the next battlefield, then? Without a doubt the problems are not over. To begin with, a recently passed law in Colombia will allow companies from 2014 on, to dig wrecks in return for 50% of the salvaged objects. Thus Colombia has launched the most aggressive attack on the Convention, something that is not entirely casual, because that law has turned the Caribbean country into a “beach-head” for the landing of treasure-hunting industry, who will take advantage of a historical opportunity to ensure their future as contractors. Colombian Constitution protects the underwater heritage as a result of its triple consideration of inalienable, embargo-proof and non-prescriptive. That of course means that in order to make a payment the cultural goods will have to be alienated. And that is exactly the treatment of the heritage that we denounce here as a traditional practice of treasure hunters, who in fact disconnect found objects from its cultural value, turning them into mere marketable goods. How is it

possible that some coins or ingots themselves be worthy of being kept in a museum and yet not others? The magic is called “repetition criteria”.

Colombia actively participated in the creation of the CPUCH, but changed its role just right before the vote and withdrew its backing to the project, in part due to the debates raised in a country where treasure hunters have always found loyal allies. What few people remember is that Robert Marx is one of the inspiring forces behind the criteria of the new Colombian law, and has participated in the Colombian legislative debate from the very beginning. In fact, in 2003, in a hearing before that country’s Constitutional Court (2003), he stated for the first of the projects aimed at achieving the penetration of contractors to dig up treasure-bearing colonial-age shipwrecks. It is not a coincidence that in three different occasions during the last decade a legislative bill with the same purpose has gone before the Colombian parliament. As reported in *El Espectador* (“Treasure hunters eye Colombia”, June 6th, 2009) (Padilla, 2009), Marx’s presence in that Court in 2003 surprised more than a few. Curiously enough, that text was published in June 2009, right after Spain’s first-round victory over Odyssey in the Tampa court. It is as if, confronted with the likelihood of a possible defeat in the trial for the “Mercedes” cargo, where the industry risked future digs of Spanish wrecks in international waters, the powerful lobby became actively involved not only at the New Orleans congress, but also with its Colombian connections. And they achieved their objectives; the Colombian law takes effect this year.

The 50% split between the State and the contractor has been popularized by Robert Marx over his more than 50 years of activity on Hispanic wrecks. And the repetition criteria is a trick that will be specifically applied on coins, jewels and ingots dug from future sites, but not on the nails, wooden planks nor ballast stones, that are also repeated but have no market value.

What should worry those who are entrusted with protecting the heritage and also defending the CPUCH is the complete enforcement of what UNESCO dictates. Research, excavation and publication cannot be left for tomorrow, because with the available technology, we simply do not know how much longer the Hispanic underwater record will survive. Moreover, publishing becomes an urgent social responsibility for all archaeologists. We must call for action and results, while at the same time demanding

scientific standards. Not taking an active part in *in situ* conservation is to abandon the excavation to the treasure hunters. An entire generation of archaeologists will be tempted to take the non-scientific road if they want to work, a dilemma that should never be imposed on any young lover of archaeology.

Worst of all, in that case the discrimination against the Hispanic heritage will never be overcome because due to the mere fact of having arrived first to America, as John H. Elliot said. In the process of mining silver and gold, the Spaniards gathered both benefits and curses. From the beginning, the Spanish ships loaded with “treasures” (Treasury) were the favorite prey of the pirates of old. When the galleons sailed, their crews risked their lives over uncertain seas whose roads still lead to us. When they came under attack, they sold their lives and their flags dearly. Today, shipwrecked, they are helpless in light of the greed of these new, technologically super-refined pirates. The only defense we can offer them is to tell their story well and not to let a whole world of objects and artifacts that was sunk with them be dissolved, neither in the ocean nor in the market place.

Acknowledgements

I am very grateful to APCONF for the opportunity to make visible the Hispanic point of view of a problem we all share and let me speak to you from this far location. To the UNESCO for his role and commitment to the protection of the UCH. To María Cruz Berrocal and Veronica Walker Vadillo for their advice and ideas. And to all those who struggle to prevent our heritage to be destroyed by a profit motive.

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12 UNESCO, "Convention on the Protection of the Underwater Cultural Heritage, Ninth Meeting of the Scientific and Technical Advisory Body, 24 April 2018, Resolutions and Recommendations" (24 April 2018) UNESCO Doc UCH/18/9.STAB/10, RESOLUTION 8 / STAB 9. 37 See UNESCO, The Impact of Treasure-Hunting on Submerged Archaeological Sites (UNESCO 2016) 7. 38 R Frost, "Underwater Cultural Heritage Protection" (2004) 23 AustYBIL 25, 31. 39 UNESCO Convention art 1(1)(a). 40 LV Prött and PJ O'Keefe, "International Legal Protection of the Underwater Cultural Heritage" (1978) 14 Rev BDI 90. 41. Cultural heritage needs high level of protection, as it reflects the life of the communities' identity. Cultural property preservation gives a chance to rebuild broken communities, re-establish their identities, and link their past with their present and future. UNESCO then initiated a process of drafting new international convention, which was eventually adopted at The Hague in 1954. Not only The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict became the first international treaty focusing exclusively on the protection of cultural property in armed conflict, it also inspires subsequent treaties aimed at preserving cultural heritage. 42 of other conventions concerning cultural heritage rules of regional application. The impact of mass media in the discrimination of Hispanic sunken heritage and the implementation of the UNESCO 2001 Convention. Sunken Hispanic heritage has been perceived sometimes just as an amount of gold and treasures. Unfortunately this widespread approach has prevented archaeologists to succeed in connecting the Hispanic-related cultural remains and more. 43 In the spring of 2011, a clay pot was found in a field nearby the village Stizhok (Shumsk district, Ternopil region, Ukraine). The pot contained about 2500 silver coins struck in the Golden Horde, Crimean Khanate, Caffa, Principalities of Wallachia and Moldavia, and Lithuania. The significant part of oriental coins bears the Tartar, Moldavian and Lithuanian countermarks.