

Heads ... you lose

The furore over the auctioning of two sculptures looted from China has fuelled the controversy over who should own cultural items of “national importance”.

THE SALE OF THE COLLECTION OF YVES ST Laurent and his partner, Pierre Bergé, by Christie’s auctioneers in Paris earlier this year came with all the pomp and prices expected of one of the richest collections put together during the 20th century. But it also came with international controversy and dispute.

Two Qing dynasty bronzes (circa 1750) were among the lots consigned to be sold. The sculptures, the heads of a rat and a rabbit (pictured right), are part of a series of bronzes that depict the 12 animals of the Chinese zodiac and formed part of a clepsydra, or water-clock, fountain in the imperial gardens of the Old Summer Palace of the Emperor Qianlong (1736–95) in Beijing.

After English and French troops sacked and burned the palace during the Opium Wars of 1860, the 12 bronzes disappeared. The whereabouts of seven are now known; the other five are still unaccounted for.

Of the seven known pieces, five are back in China. They are on display at the Poly Art Museum, a museum set up by the China Poly Group, a company connected to the People’s Liberation Army. They bought the heads of the tiger, ox and monkey in 2000.

In 2003, Stanley Ho, a private benefactor, donated US\$1 million to the China Cultural Relics Recovery Fund to purchase the pig’s head from an American collector. In 2007, Ho bought the horse’s head for US\$8.84 million at a Sotheby’s auction. He donated it to the Poly Group to be displayed with the other four.

China’s urgency to secure the Paris pair is therefore understandable. The way the Chinese went about it, however, is interesting.

According to Xinhua, the country’s official news agency, the State Administration of Cultural Heritage (SACH) sent a letter to Christie’s on February 17 requesting that the sale of the two heads be stopped. The request was based on the “common understanding in the international community” that looted cultural objects should be returned to their country of origin, the SACH stated.

At about the same time, a group of 81 Chinese and three foreign lawyers filed a motion on behalf of the Association for the Protection of Chinese Art in Europe at the Tribunal de Grande Instance in Paris. They wanted to stop the auctions. The court rejected



the motion. The sale was to go ahead.

Perhaps Christie’s and Bergé underestimated the resolve of the Chinese people or perhaps they saw no alternative, but on February 25 the two sculptures went under the hammer. They were knocked down to Cai Mingchao, the manager of Xiamen Harmony Art International Auction Company in Fujian Province. Cai is a well-known patron of Chinese artifacts (he bought a bronze Ming dynasty Buddha sculpture in 2006 for a record price of US\$15 million). His winning bid on the heads was US\$18 million each.

What happened next must have taken the auctioneers and current owner by surprise, even taking into account the enormous furore that surrounded the sale of these two items before the auctions commenced: Cai refused to pay.

“How can this happen?” the world wondered. “Surely he must be held accountable?” But holding a Chinese national accountable under the French legal system seemed to hold more problems than either the owner or auctioneer seemed willing to undertake. Since the prospective buyer never took possession of the bronze heads, they were registered as “unsold”.

Why did Cai do this? He effectively ruined his chances of any future participation at any international auction. Cai made the sacrifice to make a point. And as a tactician, he cannot be faulted. He used the spectacle of the St Laurent/Bergé sale as a forum to raise awareness of the fate of the numerous objects of cultural value that had been looted >>

>> from China. He knew that the eyes of the world's press were focused on the sale – they were assured of all the publicity they needed!

Yes, “they” appears to be the more appropriate word, because the possibility that the whole incident was a well-orchestrated plan and not just an isolated statement by an enthusiastic individual started to present itself as an option when The New York Times reported at the beginning of March that Christie's had offered the heads to the Chinese government months earlier. According to the chief executive of Christie's International, Edward Dolman, the offer was rejected because the price was deemed too high.

Why would the Chinese suddenly refuse these two cultural gems on the grounds of “cost” (Dolman asserts that the price at which the heads were offered to the Chinese government was considerably lower than the price the under-bidder was willing to pay) when a Chinese benefactor was willing, as recently as 2007, to buy the head of the horse for US\$8.84 million at public auction. What has changed?

At the centre of this controversy is the question of ownership, specifically the ownership of cultural property and the frustration experienced by some countries in facilitating the restitution of what they consider their own. Because, unlike the assertion of a “common understanding in the international community” that looted items should be returned to their country of origin, no such understanding exists. In fact, the question “Who owns history?” is a hotly contested one.

National or international view

TO SIMON MACKENZIE, THE AUTHOR OF *GOING, going, gone: regulating the market in illicit antiquities*, the issues of ownership of cultural property are best explained by analysing the basic premises of the two opposing schools of thought. He identifies “cultural nationalists” and “cultural internationalists”.

To the cultural nationalists, historical ownership always takes precedence. They have a staunch retentionist approach, arguing for total control over all cross-border trade in any cultural property and advocating the return of all cultural property of national importance that is in foreign lands or hands.

The cultural internationalists believe that the free market is the only fair distributor and regulator – even when it comes to cultural property. To them, the person or institution that is willing to pay the highest price for an item is more than likely the most suitable for the conservation and care of such an object. Strict retentionist rules and laws, according to them, only enhance the already huge problem of black market trading and encourage looting and stealing.

In truth, few people or organisations are either one or the other. To the majority, each situation or relic or group of relics warrants its own approach, situated somewhere on the continuum between the two, depending on how “important” the object/s are.

Various legal instruments have been created in order to facilitate international co-operation. Two specifically attempt to address the issues pertaining to the trade in, and the ownership and restitution of, objects with cultural value. They are the 1970 Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the Unidroit Convention on Stolen or Illegally Exported Cultural Objects, which was adopted in Rome in 1995.

Chapter II of the Unidroit Convention specifically addresses the restitution of stolen cultural objects. Article 3 begins by stating: “The possessor of a cultural object, which has been stolen, shall return it.”

In 1999 Unesco, the United Nations agency concerned with cultural matters, even launched a fund to aid the return and restitution of such property.

Too much to lose

SO WHY DID THE CHINESE PEOPLE RESORT TO what can be construed as a form of “sabotage” in order for the world to take note of their frustration? Because a country can be held accountable to the rules of a convention only once it has become party to that convention. And in the case of the Unesco and Unidroit conventions, most countries that have lost significant cultural property through pilfering and looting have signed the conventions, while the countries in possession of these goods have not; they literally have too much to lose. None of the rules of these conventions is therefore legally enforceable, so the issue stays firmly in the diplomatic sphere, completely reliant on an agreed sense of right and wrong.

That China should play such a pivotal role in this debate is ironic. Less than 50 years ago the Chinese were forced, under the draconian rules of Mao Zedong's Cultural Revolution (1966–76), to relinquish and destroy unimaginable numbers of their own cultural goods. Today China is widely criticised for also destroying the cultural property of other cultures, such as Tibet. (If the topic of cultural property versus national cultural property interests you, read James Cuno's *Who owns antiquity?* It is fascinating.)

As to the fate of the two heads in Paris? In a cheeky move, Bergé offered the heads to the Chinese government in exchange for Tibetan independence. The Chinese refused.

But the heads will go back to China. Mark my words. Whether through trade, barter or convention, one day they will sit with the other five, patiently waiting for the lost ones to join them. Why? Because the Chinese people will not rest until this happens, because it is in keeping with the spirit of the times and because it is right. And besides, after all the hoo-ha, the heads are probably not worth a cent – who would be willing to take on what comes with them?

■ Jo-Marie Rabe is a cultural historian and she co-owns *Piér Rabe Antiques in Stellenbosch*.