

Who owns history? The issue of the National Estate

Jo-Marie Rabe

A few weeks ago the second of two annual art auctions dedicated to South African Art were held in London by auctioneering firm, Bonhams. It was their fifth exclusive South African Art sale.

“South African art, as proved by previous successful sales at Bonhams, is no longer of purely domestic interest. The continuing strength of the market has produced exceptional record-breaking prices.

Such record-breaking prices and worldwide bidding have propelled modern South African art into the front lines of the global art market. Bonhams' sales of South African art offer a valuable indication of the position of modern South African art internationally” This blurb on the Bonhams website

(www.bonhams.com) says it all. South African art has hit the world, but not everyone is in agreement as to whether this new internationalization is a blessing or a curse.

Bonhams is not the only international auction house that has branched out to include SA art. Christies London has held Contemporary and Modern South African Art auctions since December 2007.

A lot of people are excited about this turn of events. For South African sellers the allure is obvious. It's about the money. Both Christies and Bonhams hold price records for many South African art masters.

In December 2007 Christie's sold “Irma Stern's *Congolese Woman* R 7,7 million”, their website boasts (www.christies.com).

At the most recent Bonhams sale, four lots (lots 1,31,32 and 42) attracted attention for a particular reason. Each came with a special advisory note: “The South African Heritage Resources Agency (SAHRA) has declined an export permit for this lot. Therefore it is not subject to VAT on either the hammer price or the buyer's premium. It is available for viewing at the Everard Read Gallery in Johannesburg, RSA. Please contact the department for further information”. The refusal meant that these four lots could still be sold in London (and were indeed, sold), but that they could not leave South Africa. It is not the first time that export permits had been refused.

What is behind the decision to decline the export permits for these works? To start with, the regulation of and control over cross-border movement of antiques and objects of an artistic nature is not a uniquely “South African” issue. It merely forms part of an intricate and complex international debate that has raged for quite some time. In essence, the debate centers around ownership of items of national importance. It concerns the question: “Who really owns cultural property?”

In *Going Going Gone: Regulating the market in illicit antiquities*, Simon Mackenzie, explores this debate and identifies the two directly opposing schools of thought underlying this ownership/custodianship debate as the “cultural nationalists” and the “cultural internationalists”. To the cultural nationalists, historical ownership always takes precedence. Based on the nationalist ideals of the 19th Century, they favor a retentionist approach, arguing for total control over all cross-border trade in any cultural property, claiming that “cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting” (to quote from the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property) (www.unesco.com).

At the other end of the opinion spectrum the cultural internationalists believe that the free market is the only fair distributor and regulator – even when it comes to cultural property. Based on the 18th century premise of cosmopolitanism (with Diderot's “that great city, the world” their motto) they maintain that “all consequential culture becomes international”. To them, the person or institution willing to pay the highest price for an item are more than likely the most suitable for the conservation and care of such an object.

In his book *Who owns Antiquity*, **exponent of the internationalist attitude**, James Cuno, argues in favor of these so-called “Encyclopedic” or “International” Museum - institutions like the British Museum, where the cultural property of many different nations and ages are exhibited together to create an international context in which the development of civilizations and the achievement of man can be showcased.

In reality, few people, organizations and countries are either fundamentally one or the other. In the majority of cases, each individual situation or object or group of objects will warrant its own approach situated somewhere on the continuum between the two extremes: total control versus total freedom of trade. Arguing along the lines of “some things can go and some should stay” all depending on how “important” the object/s are.

According to Barbara Hoffmann, editor of *Art and Cultural Heritage*, as a rule, “source” nations (Egypt, Greece, South America, Africa amongst others) tend to have more stringent regulations and tighter control over exports than the “market” nations (England, America, Canada, the Scandinavian Countries). It is understandable.

As a potential source country, the position taken by the South African authorities are one of tight regulation and constant vigil – this mammoth task resting on the shoulders of the South African

Resources Heritage Agency (SAHRA).

In accordance with The National Heritage Resources Act (No 25 of 1999) (NHRA) - the legislation concerned with the protection and regulation of cultural property - very few items are banned from export, but all items of an artistic nature that has been in South Africa for longer than 50 years or more has to be issued with an export permit before it can leave the country. And yes, that includes your inheritance in case you decide to emigrate!

Notice No 1512 published by the Department of Arts, Culture, Science and Technology in the Government Gazette Volume 450, No 24116, 6 December 2002, includes a provisional list of the types of Heritage Objects requiring export permits. Point 6 relates to objects of an artistic nature: “South African items of artistic interest (that have been in SA for 50 or more years) including paintings and drawings; original prints, posters and photographs; artistic assemblages and montages; statuary art and sculpture; applied art in glass, ceramics, metal and wood; objects of ritual and symbolic significance and personal adornment”. The list include various other categories; it is vast and generic and contains illusive words like “or of national importance” a number of times. (www.sahra.org.za/Government%20Notice_HeritageObjects.pdf).

In this culturally diverse nation of ours, what does “of national importance” mean and who decide what it constitute? Regina Isaacs of the South African Heritage Resources Agency (SAHRA) explains:

“The SAHRA Council appoints the Permit Committee who makes decisions concerning permit applications. Since heritage objects are diverse, advisory panels made up of experts from museums, galleries, relevant organizations, academics, etc. form part of the Advisory Panels who advises the Permit Committee on whether to export or to prohibit export.” The board consists of 17 members. Their identities were not divulged.

Why did SAHRA withheld export permits on these four works specifically?

Isaacs states that the four artworks are of outstanding significance by reason of its close association with South African history and culture and that being exceptionally fine paintings, it qualify for retention in South Africa on aesthetic grounds. In all four cases she indicates that the artworks are of a degree of national importance in view of its importance in the study of the arts and that its loss to South Africa would thus diminish the National Heritage.

No other reasons were given for the refusal of the export permit for Lot 1 “Adderley Street” by

Thomas Bowler. In the case of lot 31, “Portrait of David Dumbleton aged 5” by Bertram Dumbleton, both the artist and the subject matter seem to hold significance to the decision makers. “Although trained in London in the 1930s, Bertram Dumbleton was largely domiciled in the Cape. He was an unusual artist in that he preferred to work most of the time in the time-consuming medium of egg tempera, a painting process seldom used since the Renaissance and eclipsed by the invention of oil paints in the 15th century. Dumbleton's achievements in this medium are of a unique aesthetic quality seldom seen in South African art.”

As to the value of the painting itself, the following arguments are offered: “New discourses on images of childhood in art history are now showing us that images of children tell us much more about a society and its historical evolution than previously thought. Such works ought to be paid serious attention to and should not be dismissed as merely sentimental. An image of colonial childhood in South Africa of such quality presents a case for its retention, preferably in a public collection”. For the purpose of academic discourse, does one need direct access to the original work or would a pictorial references (a photographic rendition of any artwork) suffice? one could wonder.

Lot 32 “Abdul in Cape Town Docks” by Bertram Dumbleton is indeed an interesting work. “ The portrait shows the sitter at an older age than another tiny child-portrait of him already held by the SA National Gallery. Sympathetic representations of members of the Muslim community in Cape Town are limited in our collections, and this work should, if possible, be acquired by a local public collection in the Cape. Such a work, for example, would be highly relevant to the Iziko Bo-Kaap Museum in Cape Town. It has a close association with the history and the culture of this community”

For Lot 42, the painting by Gerard Sekoto “Boy with a yellow cap”, the reasons for an export ban also seem very interesting and valid. “The work pre dates Sekoto’s exile in 1947 and the body of work produced by him in South Africa is of major importance in terms of the history of South African art. The significance of works by Sekoto from this period lies in the fact that they mark the beginnings of an urbanized black visual arts culture as distinct from one based on rural traditions and origins. The adoption of oils on canvas by Sekoto and other artists like George Pemba mark the start of black artists wishing to compete with European artists and tradition on their own terms, using media that were previously not employed in traditional black cultures.”

What role does the commercial value play in deciding which pieces are given an export permit? The facts speak for themselves. It seems to play a minor role. Only one of the four works on offer were sold for a sizable sum. Sekoto's “Boy with a yellow cap” fetched £ 102 000 (approximately R12 million).

The others were not expensive. The Bowler fetched £ 12 000 and the two Dumbletons each fetched £ 2400.

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 Paris, 20 October states that “[...] cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value.” Being party to the Convention, this sentiment seems to be a strong guideline for SAHRA.

For more information and a copy of an export permit visit www.sahra.org.za

(My sincerest appreciation to Ms Regina Isaacs of SAHRA for her assistance and the information she supplied regarding the four paintings.)