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FACULTÉ DE DROIT
Centre du droit de l'art



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Andrea Wallace, Anne Laure Bandle, Marc-André Renold

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Case Two Bronze Animal Heads – China and Pierre Bergé

China/Chine – Pierre Bergé – Spoils of War/butins de guerre – Antiquity/antiquité – Negotiation/négociation – Diplomatic channel/voie diplomatique – Ad hoc facilitator/facilitateur ad hoc – State Responsibility/responsabilité internationale des Etats – Ownership/propriété – Unconditional restitution/restitution sans condition – Donation – Financial Compensation/indemnisation

In February of 2009, Christie's offered at auction two 18th-century bronze fountainheads – a rabbit and a rat – owned by the estate of Yves Saint Laurent and his longtime-partner Pierre Bergé. Stolen from the Old Summer Palace by British and French forces during the Second Opium War in 1860, the two heads' sale provoked controversial international debate, inspiring a Chinese national to bid upon the bronzes at auction and refuse payment. In June of 2013, François-Henri Pinault, owner of Christie's, returned to China the fountainheads in an effort to strengthen diplomatic and trade relations between France and China.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch – <https://unige.ch/art-adr>

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I. Chronology

Spoils of war

- **October 1860:** During the **Second Opium War**, British and French forces destroyed the Qing Dynasty's **Old Summer Palace**, also known as **Yuan Ming Yuan** (hereafter Palace) under orders from the British High Commissioner to China, **Lord Elgin**.¹ The Palace's extensive gardens featured a fountain clock with **twelve bronze animal heads** replicating the Chinese zodiac. Supposedly designed by Giuseppe Castiglione for the Qianlong Emperor, the bronze-cast heads of the clock spewed water to tell time.² All twelve heads from the **Haiyantang Zodiac fountain** disappeared after the Palace's destruction.³
- **February 2009:** Christie's auction house handled the sale of French fashion designer Yves Saint Laurent and Pierre Bergé's vast art collection after the designer's death. Featured in the sale were two of the disputed 18th-century fountainheads – the heads of a rat and rabbit. China's **State Administration of Cultural Heritage (SACH)** condemned the bronzes' sale and said it would have "serious effects" on Christie's interests in China. The SACH attempted to halt the sale by several means, including by sending Christie's a letter and filing suit.⁴
- **19 February 2013:** Ren Xiaohong, a lawyer for the **Association for the Protection of Chinese Art in Europe (APACE)**, and eighty other Chinese lawyers filed a motion in the Tribunal de Grande Instance in Paris to block the sale.⁵ Christie's insisted that the heads had a clear chain of ownership and could be resold since they had traded hands several times over the 20th century.⁶
- **23 February 2009:** A French judge threw out the motion and ordered the APACE to pay € 1000 in fines to both the auction house and the Pierre Bergé's attorneys.⁷
- **25 February 2009:** An adviser to **China's National Treasures Fund**, which seeks to retrieve looted treasures, attended the Christie's auction. The adviser, Mr. Cai Mingchao, won the heads at auction for € 28,000,000 and then refused to pay the sum bid on moral and

¹ The Palace was used by rulers of the Qing Dynasty and at that time only occupied by a few eunuchs; see Hsu, Immanuel. *The Rise of Modern China* (1985).

² See Peter Ford, "China Protests Christie's Auction in Paris of Relics," *The Christian Science Monitor*, February 20, 2009, accessed July 31, 2013, <http://www.csmonitor.com/World/Asia-Pacific/2009/0220/p07s04-woap.html>.

³ It required 3,500 British troops to set the Palace grounds ablaze, taking a total of three days to burn; see Xiong Tong, "China Tightens Control on Christie's after Auction," *China View*, February 26, 2009, accessed July 31, 2013, http://news.xinhuanet.com/english/2009-02/26/content_10901300.htm.

⁴ See Barbara Demick, "Bronze Heads Gnaw at China," *Los Angeles Times*, February 24, 2009, accessed July 31, 2013, <http://articles.latimes.com/2009/feb/24/world/fg-zodiac24>.

⁵ See "French Court Throws Out Appeal over Yves St Laurent Chinese Bronzes as Christie's Sale Begins," *The Telegraph*, February 23, 2009, accessed July 31, 2013, <http://www.telegraph.co.uk/culture/art/artsales/4788662/French-court-throws-out-appeal-over-Yves-St-Laurent-Chinese-bronzes-as-Christies-sale-begins.html>.

⁶ According to Christie's, Yves Saint Laurent and Pierre Bergé had reportedly purchased the heads from Nicolas Kugel, who had previously obtained them from the collection of pianist and arts patron, Misia Sert: see Barbara Demick, "Bronze heads gnaw at China."

⁷ See "French Court Throws Out Appeal over Yves St Laurent Chinese Bronzes as Christie's Sale Begins."

- patriotic grounds.⁸ When the bidder's identity and purpose was discovered, Pierre Bergé commented he would happily keep the items in his personal collection.
- **27 February 2009:** The Chinese government issued tighter customs rules against Christie's in response to the auction.⁹
 - **April 2013: François-Henri Pinault**, chief executive officer of Kering, the company that owns Christie's, accompanied the French President François Hollande on his first visit to China. Pinault, who had acquired the bronze heads from Bergé for an undisclosed sum, made an offer to China for their return as a gift to strengthen diplomatic and trade relations.
 - **28 June 2013:** Pinault officially returned the heads to China in a high-profile ceremony at the National Museum of China opposite Tiananmen Square.

II. Dispute Resolution Process

Negotiation – Diplomatic channel – Ad hoc facilitator

- Most of the relevant issues arising during the dispute pertained to State relations between China and France, which were already strained at the time the dispute arose.¹⁰ These controversies were exacerbated by the French court's order and dismissal of the APACE appeal to block the auction. Despite the rising tensions, Christie's went forward with the disputed sale. Consequently, the Chinese Government did not make plans to purchase the artifacts, as doing so would have acknowledged that the bronze heads were taken and held in possession legally.
- Pierre Bergé further inflamed the Chinese by offering to trade the bronze heads for political concessions. After the auction results were revealed, Bergé declared that he would voluntarily convey the antiquities to China in exchange for Tibet's freedom.¹¹ Chinese Foreign Ministry spokesman, Ma Zhaoxu, responded to the offer stating he found Bergé's linking of human rights to the return of the bronzes contrary to the international cause of human rights issues because it constituted an infringement upon "the Chinese people's cultural rights under the pretext of human rights".¹²

⁸ See "China 'Patriot' Sabotages Auction," *BBC News*, March 2, 2009, accessed July 31, 2009, <http://news.bbc.co.uk/2/hi/asia-pacific/7918128.stm>.

⁹ See Barbara Demick, "Bronze heads Gnaw at China."

¹⁰ Then-French President Nicolas Sarkozy met with the Dalai Lama in Poland in December 2008 despite China's severe opposition. Additionally, Western and Tibetan protesters had participated in a protest during the Olympic torch's relay through Paris on its way to Beijing; see *ibid*.

¹¹ "I acquired them and I am completely protected by the law, so what the Chinese are saying is a bit ridiculous. But I am prepared to offer this bronze head to the Chinese straight away. All they have to do is declare they are going to apply human rights, give the Tibetans back their freedom and agree to accept the Dalai Lama on their territory. If they do that, I would be very happy to go myself and bring these two Chinese heads to put them in the Summer Palace in Beijing. It's obviously blackmail but I can accept that." *Ibid*; See Lucien Libert, "YSL Partner Offers China Art for Human Rights," *Reuters*, February 21, 2009, accessed July 31, 2013, <http://in.reuters.com/article/2009/02/20/us-france-ysl-auction-idINTRE51J5QU20090220>.

¹² See "How 'Absurd' to 'Kidnap' Cultural Relics with Human Rights," *Xinhua News Agency*, February 26, 2009, accessed July 31, 2013, http://www.china.org.cn/international/2009-02/26/content_17336668.htm.

- These types of political tensions present common dilemmas in current-state attempts to recover control of cultural property historically looted at the hands of Western invaders. To China, the destruction and looting of the Palace epitomizes the humiliation it suffered at the hands of imperial Western powers during the Second Opium War.¹³ Unlike museum institutions which are held to a different standard of care, some auction houses maintain a more neutral attitude regarding their responsibility in repatriation.¹⁴ Because they are commercial entities, auction houses generally promote the opinion that governments and individuals have the opportunity to purchase these legally owned cultural objects at auction and repatriate them by donation.¹⁵ The auction house in the present case had responded, “Christie’s supports repatriation of cultural relics to their home country and aids in the process where possible by sourcing and bringing works of art to the auction platform to give buyers a chance to bid for them”. Regardless, source countries, like China, often protest providing compensation for cultural property on the grounds that the artefacts are part of the country’s national heritage and had been removed illegally.¹⁶
- For these reasons, it is important to note that François-Henri Pinault, as CEO of the company that owns Christie’s, made the official offer to arrange the bronze heads’ return to China. Since a private individual, Pierre Bergé, legally owned these heads, effective repatriation required the act of another private individual, rather than the French Government. France’s diplomatic intentions also seem strengthened by the fact that the party initiating repatriation was the owner of the auction house that originally facilitated the artefacts’ sale.

III. Legal Issues

State Responsibility – Ownership

- In many jurisdictions, and under French law, a purchaser can obtain valid title to stolen cultural property if he acts in good faith and exercises due diligence. Thus, valid ownership was not at issue because Pierre Bergé, and those before him, had acted with the requisite

¹³ See Edward Wong and Steven Erlanger, “Frenchman Will Return to China Prized Bronze Artifacts Looted in 19th Century,” *The New York Times*, April 26, 2013, accessed July 31, 2013. http://www.nytimes.com/2013/04/27/world/europe/frenchman-will-return-to-china-prized-bronze-artifacts-looted-in-19th-century.html?_r=0.

¹⁴ An auction house acts as an agent on behalf of its consignors, thus its duty is to the consignor to act in the utmost good-faith and interest of the consignor throughout their relationship. See *Cristallina S.A. v. Christie, Manson & Woods International, Inc*, 502 N.Y.S. 2d 165.

¹⁵ Professional associations of dealers have no strictly enforceable formulated codes of ethics. The UNESCO Code, International Code of Ethics for Dealers in Cultural Property, refers to “professional traders” and is therefore applicable to both dealers and auction houses. Available online at: <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/legal-and-practical-instruments/unesco-international-code-of-ethics-for-dealers-in-cultural-property/>. Such codes of ethics have little direct legal effect, although they may establish standards common in the industry’s trade or practice. See Gerstenblith, *Art, Cultural Heritage and the Law*, 309.

¹⁶ See Barbara Demick, “Bronze heads Gnaw at China.”

good faith when purchasing the bronze heads. Accordingly, the Chinese Government could not seek possession based on invalid title.

- Originally, APACE wanted to base its appeal on the 1995 UNIDROIT Convention which states, “the possessor of a cultural object which has been stolen shall return it”.¹⁷ Unfortunately, France had not ratified the Convention, and even if it had, it would not have applied retroactively to object looted decades or centuries ago. Moreover, its ratification would require the French government to return half of the objects in the Louvre and other museums, making any eventual ratification highly unlikely.¹⁸
- Though the French Government did not explicitly acknowledge responsibility for the Palace’s looting, the State Administration of Cultural Heritage in China said Mr. Pinault’s offer was “an expression of friendship toward the Chinese people,” according to a state news report.¹⁹ It further stated, “[t]he Chinese side offers its high praise for this action and considers that it conforms with the spirit of relevant international cultural heritage protection treaties”.

IV. Adopted Solution

Unconditional Restitution – Donation – Financial Compensation

- As previously mentioned, François-Henri Pinault secured the bronze heads from Pierre Bergé for an undisclosed amount. In April of 2013, Pinault announced the donation of the two bronze fountainheads to the Poly Art Museum.
- On June 28 of 2013, China held a highly-publicized ceremony to celebrate the return of the 18th-century relics in Beijing. At the ceremony, the chief executive of Christie’s International, Steven P. Murphy, stated, “[a]s one of the leading proponents of the importance of cultural heritage, Christie’s is delighted to have played an instrumental part in ensuring their return”.

V. Comment

- Christie’s motivations for the Chinese relics’ return have been met with criticism. The bronze head’s repatriation followed the Chinese government’s decision to grant a license to Christie’s, making it the first and only foreign auction house to operate independently in mainland China, where the art market has grown fast.²⁰ Previously, Christie’s was restricted to a licensing deal with a local Chinese auction house.

¹⁷ 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Article 3(1).

¹⁸ See Peter Ford, “China Protests Christie’s Auction in Paris of Relics.”

¹⁹ See Barbara Demick, “Bronze Heads Gnaw at China.”

²⁰ See Graham Bowley, “Christie’s Leader Returns Ancient Bronzes to China,” *The New York Times Arts Beat*, June 28, 2013, accessed July 31, 2013, http://artsbeat.blogs.nytimes.com/2013/06/28/christies-leader-returns-ancient-bronzes-to-china/?_r=0.

- In a public statement, Mr. Pinault and his family highlighted their businesses' "considerable presence in China", where Kering does close to 10% of its business. While preserving and restoring art are motivations for the Pinault family, critics have pointed out that their philanthropy is also likely to benefit the company's ventures into the huge Chinese market.²¹
- Other fountainheads have been repatriated as a result of private and governmental endeavours. With the support of the State Administration of Cultural Heritage and the Beijing Cultural Relics Bureau, China founded the Poly Art Museum in December 1998, "to develop and display traditional national culture and art, and to rescue and protect Chinese cultural relics lost abroad".²² In 2000, the Poly Art Museum retrieved the tiger, monkey and ox at auction in Hong Kong for a total of \$4,000,000.²³ In 2003, billionaire Macau gambling magnate Stanley Ho purchased the boar's head at auction in New York, and donated it to China's Poly Art Museum. Later in 2007, he did the same with the horse head in a \$9 million deal brokered by Sotheby's from Taiwan.²⁴
- The other five heads – the dragon, snake, goat, rooster, and dog – remain unaccounted for and have possibly been destroyed.

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b. Legislation

- 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Chapter II—Restitution of Stolen Cultural Objects, Article 3(1).

²¹ See Nadya Masidlover and Jason Chow, "French Billionaire Pinault to Return Controversial Chinese Statues," *The Wall Street Journal*, April 26, 2013, accessed July 31, 2013, <http://online.wsj.com/article/SB10001424127887323335404578446722150588096.html>.

²² See Barbara Demick, "Bronze Heads Gnaw at China."

²³ Ibid.

²⁴ See Peter Ford, "China Protests Christie's Auction in Paris of Relics."

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