

Returning Stolen Cultural Property

Tomb of Wang Chuizi Marble Wall Relief

S ometime in the summer of 1994, thieves crept through the mountains of western Xiyanchuan Village in the Hebei Province of the People's Republic of China to the 10th-century underground tomb of Wang Chuizi, a high ranking Five Dynasty ruler. The tomb raiders came laden with excavation tools and enough explosives to blast through the tomb's stone covering. Entered through the blasted opening, an underground tunnel led to the front chamber, which divided into two side chambers and a rear room at the opposite end. The rooms and passageways were adorned with intricately carved marble wall reliefs, painted murals and landscapes, and numerous other precious contents placed there to guide the spirit of Wang Chuizi to the afterlife. The looters stripped the tomb walls of approximately 10 relief sculptures and wall paintings, damaging much of the surrounding art as they worked. Local villagers later discovered the break-in and the local police summoned archeological experts to assess and investigate the plunder. The thieves were never caught.

But the stolen treasures may not be lost forever. About six years after the theft, in 1999, a Hong Kong art gallery placed a marble wall relief depicting a guardian up for auction at Christie's in New York, NY. The catalog photographs of the relief caught the attention of Chinese cultural officials who suspected that the photographs showed one of the reliefs looted from the tomb of Wang Chuizi. The matter was referred to the U.S. Customs Service and the U.S. Attorney's Office in the Southern District of New York for further investigation. Archeologists who had participated in the post-theft excavation of the tomb of Wang Chuizi rendered strong opinions, based on style, pigment, and quality, that the relief for sale in New York was the same relief stolen from the tomb of Wang Chuizi. In addition, the dimensions were a perfect fit with the empty space on the tomb wall where the relief had been removed. The tomb of Wang Chuizi also proved to be a protected cultural monument, declared under

Chinese local and national law to be state-owned property.

Based on this and other information, in March 2000 the U.S. Government filed forfeiture proceedings in New York Federal court¹ relying on a 1983 law known as the Convention on Cultural Property Implementation Act² (CPIA). CPIA is the legislative means by which the United States implemented the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, an international convention that includes requiring its parties to respect each others' cultural property export restrictions. The purpose of CPIA is to achieve greater international cooperation towards preserving cultural treasures that not only are important to their nations of origin, but also contribute to greater international understanding of our common heritage.³ To accomplish that purpose, CPIA authorizes the President to enter into agreements with other UNESCO convention parties to restrict the importation of certain categories of archeological artifacts and to unilaterally restrict importation in "emergency" situations. CPIA also prohibits importation, and provides for the seizure and return of cultural property stolen from monuments, museums, or institutions.⁴ CPIA's provisions relating to "stolen cultural property" provided the legal basis for recovering and returning the Wang Chuizi tomb relief to the People's Republic of China.

Generally, to seize and repatriate "stolen cultural property" under CPIA, the government must demonstrate that —

- First, the object is "cultural property," as defined in the statute. CPIA incorporates the broad definition of cultural property found in the UNESCO convention, which encompasses most archeological artifacts such as the tomb relief.
- Second, the cultural property at issue is "[d]ocumented as appertaining to the inventory of a museum or religious or secular public

monument or similar institution in any State party.”⁵

In the tomb relief case, local and national governmental agencies had marked and specifically designated the entire tomb site as a protected, state-owned cultural monument prior to the 1994 theft. It was not until after the theft, however, that archeologists with the People’s Republic of China’s Cultural Relics Administration conducted a formal excavation. The government’s complaint alleged that the relief was nonetheless “documented as part of the inventory” because the tomb site itself was known and documented and the relief was physically attached to the monument wall. An alternative theory alleged that the relief was documented during the post-theft excavation, albeit as an empty crater on the wall.

- Third, the cultural property was “stolen.”⁶ To forfeit and repatriate stolen cultural property under CPIA, the government must establish that the property was stolen, although it is not necessary to prove who stole the property. In the case of the tomb relief, police reports and archeological expertise, among other things, supplied proof that the relief was from the tomb of Wang Chuizi and was stolen from the tomb in 1994.
- Fourth, the cultural property must have been stolen after either April 1983, the effective date in the United States of CPIA, or after the state party requesting the return of property entered into the convention — whichever is later.⁷

Significantly, under CPIA the critical date is that of the theft, not the date of importation. This provision can limit the application of the statute, as items stolen before April 1983 or before the other nation became a party to the UNESCO convention — whichever is later — are not subject to seizure in the United States under CPIA, even if they are imported after the effective date. Thus, it is critical in CPIA cases to be able to document the date of the theft, proof that can be elusive where the cultural property is looted from undiscovered or unexcavated archeological sites. For the marble tomb relief, however, the date of theft could be established because the tomb was in a known and protected location, and law enforcement authorities promptly learned about its invasion, permitting them to document the time period within which the looting occurred.

Under CPIA’s stolen cultural property forfeiture provision, the government does not need to demonstrate that the property was imported to the United States with knowledge that it was stolen. A bona fide purchaser without reason to believe or knowledge that the property is stolen, or a person who acquired legal title to stolen cultural property under the laws of another jurisdiction, cannot assert an “innocent owner defense” under CPIA.⁸ Thus, the Government did not need to investigate or prove whether or not the marble tomb relief was imported to the United States with knowledge or reason to believe that it was stolen. An innocent owner or possessor without knowledge might have a claim for compensation, although such claims are available under CPIA only in very limited and rare circumstances. It is worth mentioning that stolen cultural property held in the United States for 20 consecutive years is exempt from the forfeiture provisions. There are also various exemptions in CPIA for pieces held publically by recognized museums for certain time periods.⁹

The litigation over the Wang Chuizi tomb relief was ultimately amicably resolved, as all relevant parties agreed that the piece should be forfeited to the United States and repatriated to the People’s Republic of China. On March 7, 2001, a Federal district court judge signed an order to that effect and the United States delivered the relief to the People’s Republic of China at a ceremony in New York on May 23, 2001. The damage inflicted on the tomb of Wang Chuizi is immeasurable and irreparable. Yet perhaps legal action under statutes like CPIA to seize and repatriate looted treasures such as the Wang Chuizi marble tomb relief will help to deter looting and trafficking and ultimately promote the preservation of cultural property worldwide.

Notes

- ¹ *United States v. One Tenth Century Marble Wall Panel Sculpture of a Guardian From The Tomb of Wang Chuizi Located at Christies, 20 Rockefeller Plaza, New York, NY*, 00 Civ. 2356 (AKH).
- ² Title 19, United States Code, Sections 2601-9.
- ³ S. Rep. 97-564 at 21 (2d Sess. 1982)
- ⁴ 19 U.S.C. §§ 2607-10
- ⁵ 19 U.S.C. § 2610(2)(A)
- ⁶ 19 U.S.C. § 2610(a)(B)
- ⁷ *Ibid.*
- ⁸ 19 U.S.C. § 2609(c)
- ⁹ See 19 U.S.C. § 2611.

Jane A. Levine is as an assistant U.S. attorney in the Southern District of New York. The views in this article are her own and do not necessarily reflect those of her employer.