

Will the God Win?: The Case of the Buddhist Mummy

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Abstract: This article concerns the case of a stolen 1,000-year-old Buddhist mummy, known as the statue of Zhanggong-zushi, which caught the attention of the international community. The statue of Zhanggong-zushi is the embodiment of God in the eyes of the locals, and the treatment of human remains is controversial and sensitive. This case opens a discussion as to how Western courts should consider religious interests in the disputes of stolen cultural property. It is very important for the art world to understand how locals feel about the loss of their culture or religion.

INTRODUCTION

It seems as if virtually overnight the “Zhanggong-zushi,” “Yangchun village,” and “mummified sitting Buddha” are on the lips of many Chinese people. Countless Chinese cultural items have been looted, stolen, or illegally exported from China during the modern Chinese era, and many have been smuggled out of the country since the inception of China’s open-door policy. How has the case of the Zhanggong-zushi statue gained instant, international notoriety? What is driving the Yangchun villagers to spare no effort in recovering the statue? With these questions in mind, in December 2015, I paid a two-day visit to Yangchun village and interviewed the villagers, which helped me to understand the persistence of the locals in seeking the return of the statue. My original motivation for writing this article for an international audience is to explore the locals’ attachment to this statue and to bridge the gap of understanding between these two groups of people.

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This case may remind people of the Chinese claims for the restitution of cultural relics looted from the Old Summer Palace. In 2009, a group of lawyers filed a suit in Paris seeking to enjoin the auction of various bronze statues of the Chinese Zodiac symbols, which had been looted from the Old Summer Palace in 1860. The request for the injunction was denied by the court. Although almost all of the Chinese people knew about the looting of the Old Summer Palace, before it was widely reported in March 2015, very few of them knew of the Zhanggong-zushi statue except for the Yangchun villagers. But how does the case of the Zhanggong-zushi statue differ from the case of the bronze Zodiac statues stolen or looted from the Old Summer Palace? Both cases reflect the legal obstacles to restitution of stolen or looted cultural objects through civil litigation. But what makes the claim for the restitution of the Zhanggong-zushi statue different from the case of the bronze Zodiac statues is the cultural meanings of the objects. Viewed as reminders of national humiliation, the auctions of the bronze Zodiac statues stirred up Chinese nationalism. For most Chinese, the destruction of the Old Summer Palace represented a heavy blow leveled upon traditional Chinese high culture by imperialists, tantamount to a national tragedy. The restitution of cultural relics looted from the Old Summer Palace was, to a great extent, a matter of Chinese national dignity. However, the case of the Zhanggong-zushi statue concerns the folk religion of a rural community and the issue of the treatment of human remains. In essence, the claim for the Zhanggong-zushi statue is a religious or spiritual matter for the locals.

This article consists of three parts. The first part discusses the cultural and religious meaning of the statue of Zhanggong-zushi in order to explain the persistence of the locals in seeking the return of the statue. In the second part, the legal nature of human remains is investigated since the statue of Zhanggong-zushi contains a mummified body. In the third part, it looks into civil law rules concerning restitution of stolen property in both Chinese and Dutch law systems and also discusses how a court considers religious elements in disputes over cultural objects.

BACKGROUND

Oscar Van Overeem, a Dutch collector, purchased a Buddhist statue for 40,000 Dutch guilders (US \$20,500) in 1996 in Amsterdam from a collector who had acquired it in Hong Kong. The statue was displayed as part of the “Mummies: Life beyond Death” exhibition mounted by the Drents Museum in the Netherlands in 2014. While the statue was on display at the Hungarian Natural History Museum in the spring of 2015, it was recognized as the statue of Zhanggong-zushi by Yangchun villagers from Fujian Province. “Zhang” is the last name of the Buddhist monk, and “gong” is a grandfatherly honorific title; “Zushi” is an honorific title in southeast Chinese culture. The statue of Zhanggong-zushi was stolen in 1995 from Puzhao Temple in the village of Yangchun. Since the spring of 2015, the villagers of Yangchun have been engaged in the difficult task of recovering the statue.

Responding to pressure brought on by international attention, Van Overeem stated through a social network in May 2015 that he was willing to return the statue to the village. However, in late 2015, Van Overeem attached three conditions to his return of the statue. First, he demanded the statue be enshrined at a grand temple such as Nanputuo Temple in Xiamen. Second, he demanded the Chinese government provide him assistance in research on a subject completely unrelated to the statue. Third, Van Overeem insisted the statue be included with other items of Chinese cultural heritage so that if someone were to buy all of the items for China, no one could determine the price paid for the statue. While agreeing to the second condition of research assistance, the Chinese authorities refused the first and third conditions. Following the collapse of diplomatic efforts at the end of 2015, fearing their case might be barred by a statute of limitation, the Yangchun villagers hired lawyers to sue Van Overeem for the restitution of the statue at the Sanming Intermediate People's Court in Fujian Province. And, in June 2016, a lawsuit was also filed in the Netherlands for the restitution of the statue.¹ The Dutch Court will hold a first hearing for the dispute in July of 2017.

WHY THE LOCALS CARE ABOUT THE STATUE

Statue of Zhanggong-zushi: Embodiment of God

Today it seems to be a truism that cultural objects are instruments of people's cultural identity, and cultural heritage, as an element of cultural identity, has been reiterated in many legal instruments on cultural heritage.² In China, cultural relics are often linked to two concepts: history and culture. The statue of Zhanggong-zushi, in the eyes of the Yangchun villagers, represents the 1,000-year-old history of the village and symbolizes the culture of "zushi gong" in Fujian Province.³ However, first and foremost, the Zhanggong-zushi has been *shen* (神) for the villagers—that is, the village's "god," "spirit," or "deity"—for more than a thousand years.

¹See Liu Fang and Zindziwe Janse, "Spotlight: Lawsuit to Repatriate Chinese Buddhist Mummy Starts in the Netherlands," *New China*, http://news.xinhuanet.com/english/2016-06/15/c_135439900.htm (accessed 1 September 2016).

²In the United Nations Educational, Scientific and Cultural Organization's introduction of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240 and its two protocols, it provides: "The cultural heritage reflects the life of the community, its history, and identity. Its preservation helps to rebuild broken communities, re-establish their identities, and link their past with their present and future." The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231 (UNESCO Convention), states in the preamble 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."

³The culture of *zushi gong*, a mixture of Buddhist culture and folk religion in southeast China has had profound influence in Fujian and Taiwan. The best well-known *zushi* are Qingshui Zushi Gong from the city of Quanzhou and Sanping Zushi Gong from the city of Zhangzhou. See Kuah-Pearce Klun Eng 2006, 125–26.

With a population of approximately 2,000 inhabitants, the Yangchun village is 150 kilometers from the nearest Quanzhou railway station. The landscape is dominated by high and low mountain ranges on which locals grow tea. Due to the village's relative isolation, most of the village's young seek opportunities in big cities. Those who stay home rely on tea planting. The villagers' income averages approximately €1,000 per year. All of the Yangchun natives return to the village for the traditional Chinese Spring Festival and again on 5 October of the Chinese lunar calendar to commemorate the birth of the village's Zhanggong-zushi. The villagers consider the celebration of their Zhanggong-zushi's birthday their most significant annual event because their Zhanggong has been honored as their village's holy god for more than 1,000 years.

For the Yangchun villagers, 5 October of the Chinese lunar calendar is comparable to 25 December for Christians. On that day, all of the village families place vegetarian dishes as offerings for the presumably vegetarian Buddhist monk Zhanggong-zushi on long tables. Because Zhanggong-zushi is also believed to have been an opera fan, the villagers stage operas in front of the Puzhao Temple to entertain him on his birthday. These traditions are part of the Yangchun villagers' collective memory. During the dark ages of the Cultural Revolution, the villagers risked their lives to protect the Zhanggong-zushi and performed their annual observances of his birthday secretly at midnight. Today, the villagers believe that even though his body is no longer there the spirit of Zhanggong-zushi is still in the Puzhao Temple.

Lin Wenqing, a member of the restitution group organized by the village, explained that Zhanggong-zushi is their village's most sacred god. Zhanggong-zushi knows all. He not only protects the villagers, but he also makes the villagers' wishes come true. No one dares to lie to Zhanggong-zushi. When they have done something wrong, people confess to Zhanggong-zushi and ask for his forgiveness. Zhanggong-zushi is also like a gentle and beloved grandfather. He smiles all the time and listens. Some villagers call Zhanggong-zushi "Grandpa." Zhanggong-zushi embodies the idea that the village of Yangchun is a homeland for all of its villagers. Villagers who no longer live in the village take ashes of joss sticks from the Puzhao Temple as a means to enshrine Zhanggong-zushi, and, therefore, their homeland, in their homes.

To a person, the villagers display a strong determination to pursue the restitution to completion. Although aware of the challenges presented by the restitution, all the villagers view the re-emergence of the statue of Zhanggong-zushi as a spiritual manifestation and a sign that Zhanggong-zushi wants to come home. No matter how long it takes, or how difficult the restitution becomes, all of the villagers say they will never give up hope of bringing Zhanggong-zushi back home. One villager told me: "If our generation cannot bring Zhanggong-zushi home, our children and our children's children will continue our work. We hope through our insistent efforts the collector will understand our deep feelings towards Zhanggong-zushi and change his attitude."

According to Lin Lemiao, a retired teacher, when the statue of Zhanggong-zushi was stolen, all of the villagers were shocked and frustrated, and it was the most momentous event in the village's history. The statue of Zhanggong-zushi had survived several storms in the prior millennium, but he was lost during their watch. The villagers felt both guilty and angry: "We tried every possible means to find the statue, but we had no clue until March 2015. We have no idea how to beg our ancestors' pardon if Zhanggong-zushi is lost forever. We feel deeply guilty." Lin Lemiao also spoke of Lin Juren, whose father was in charge of the renovation of the statue in 1944. Lin Juren had passed away a few days before my visit. He insisted upon being wheeled to the Puzhao Temple to light joss sticks to Zhanggong-zushi and said his greatest regret was not being able to see the authentic Zhanggong-zushi back in the temple.

Lin Lemiao's son, Lin Jianfei, a high school teacher in Datian county, says the villagers have complex feelings toward Van Overeem, a mixture of gratitude and anger. On the one hand, they are grateful to Van Overeem for preserving their Zhanggong-zushi: "Mr. Van Overeem has taken good care of Zhanggong-zushi. We really appreciate that. If Zhanggong-zushi was not on exhibition in the museum, we would have never known his whereabouts." On the other hand, he expressed deep resignation and anger:

Although at first we thought Mr. Van Overeem would be willing to return Zhanggong-zushi to us, gradually he gave us the cold shoulder. Mr. Van Overeem evidently wants twenty million euros for the statue, which, obviously, particularly for our village, is an enormous figure. We could sell all the property in our village and still not raise such a large amount.

Lin Yongtuan, who used to work as a doorman at the Puzhao Temple and is the person who first recognized that the Buddhist mummy on display at the Hungarian National Museum was the statue of Zhanggong-zushi, expressed his gratitude to Van Overeem for preserving the statue but cannot understand why he has refused to let the villagers see their god. In 2015, the villagers had planned to send some delegates to the Netherlands to celebrate Zhanggong-zushi's birthday, but they failed to obtain the necessary visas: "Zhanggong-zushi should be enshrined with offerings, joss sticks and candles. Every time I think of that Zhanggong-zushi has not been enshrined for twenty years while in a foreign country, I grieve."

UNDERSTANDING FOLK RELIGIOUS RELICS IN CHINESE CULTURE

In order to understand why the statue of Zhanggong-zushi commands such unparalleled devotion among Yangchun villagers, one must first understand the nature of folk religious relics in Chinese culture. Folk religion, popular beliefs, or shenism, is not regulated in Chinese law, but folk religious relics are subject to the laws protecting cultural relics. Folk religion has existed widely for a long history in China and is presumed to be the most predominant religion among Chinese. Chinese folk

religion has combined with institutional religions such as Taoism and Buddhism to constitute the Chinese religious system. Although practices such as the worship of ancestors and local deities predate history, Chinese folk religion has over time incorporated elements of institutional religions. Similarly, Confucianism and Taoism have assimilated elements of Chinese folk religion. Elements of Buddhism, Taoism, ancient divination, and witchcraft are apparent in Chinese folk religion's practices and rituals.⁴ The Yangchun village has also deified and enshrined a second god, known as Chenggong Zushi, but the original statue of Chenggong Zushi was destroyed during the Cultural Revolution in order to protect the statue of Zhanggong-zushi as a substitute. The fact that Zhanggong-zushi has survived so many campaigns to destroy diffused religion during the past millennium is regarded as a miracle.

Although, to a certain extent, Chinese religious practices and beliefs are pragmatic and practical to the point of sometimes being materialistic, worshiping Zhanggong-zushi is an integral part of the religious and cultural life of the Yangchun villagers. They recall the miracles of Zhanggong-zushi. Traditional rituals remain vital. During the Spring Festival, a celebrating deity parade is held so that all the villagers can welcome Zhanggong-zushi and other deities into their houses; each summer, villagers hold a ceremony at the Puzhao Temple to pray for a good harvest; and all Yangchun villagers return home each year to celebrate Zhanggong-zushi's birthday at the temple. Typical of this process, Zhanggong-zushi was a Buddhist monk in his life, and the statue containing his mummified body is in the shape of a Buddha. However, unlike other Buddhist statues in other places in China, the statue of Zhanggong-zushi, when he was enshrined at the Puzhao Temple, features hair on the top of his head and he is fully clothed and wears a golden crown.

The worship of Zhanggong-zushi also typifies the worship of flesh body bodhisattvas in Chinese Buddhist culture. Chinese Buddhists worship two types of "*sariras*" (the remains from cremation of Buddha's or a saint's body). The first are pearl or crystal-like bead-shaped objects that are purportedly found among the cremated ashes of Buddhists; the second are called flesh-body bodhisattvas, Buddhist mummies, whole-body *sariras*, or living Buddhas, which are the corpses of Buddhist monks and nuns that have not decomposed. Although this peculiarly Chinese Buddhist worship of flesh-body bodhisattvas contradicts the fundamental Buddhist concept of impermanence, Buddhism has undergone a long process of localization in China since its arrival there from India. Traditional Buddhist teachings and practices have mixed with local Chinese culture to create a distinct Chinese Buddhist tradition.

The worship of flesh-body bodhisattvas is a distinctive feature of Buddhism's localization in China. Although strongly advocated in traditional Buddhism, cremation runs counter to ancient Chinese funeral rituals and the early Taoist belief in the immortality of life and body. Cremation also runs counter to the Confucian

⁴See Yang and Hu 2012, 505–21; Chen and Xiaolong 2009, 115–23. For a general account of Chinese folk religion in English, see de Groot 1897–1910.

doctrine of filial piety since it is held that the body, hair, and skin have all been received from the parents, and the idea that everyone shall take good care of his own body is the foundation of filial piety. The intactness of the body was regarded as sacred in pre-Qin Confucianism. Upon being introduced into China during the Han Dynasty, Buddhism gradually recognized and adopted such local Chinese ideas and elements. The worship of flesh-body bodhisattvas began in the Six Dynasties (222–589) and prevailed in the Tang Dynasty (618–907).⁵

Chinese flesh-body bodhisattva worship serves a number of purposes. Such worship commemorates eminent monks and heroes whose flesh bodies are considered emblematic of their superior spiritual achievement. The worship of flesh-body bodhisattvas goes beyond the adoration of sacred relics in Western religions in so far as it embodies Chinese ancestral veneration. Showing respect to one's ancestors is a well-known aspect of filial piety and is deeply rooted in Chinese culture. Worshipping flesh-body bodhisattvas also involves praying for blessings. The principle of *dukkha*, meaning suffering or unsatisfactoriness, is one of the most important Buddhist concepts. The Buddha is reputed to have said: "I have taught one thing and one thing only, *dukkha* and the cessation of *dukkha*." Flesh-body bodhisattvas are believed to have extraordinary powers that can bring blessings to devotees, which will allow them to transcend the *dukkha* of painful experience. In addition, flesh-body bodhisattvas are sacred relics in Chinese Buddhism, embodying and attesting to the transmission of the teachings of the Buddha from one generation to the next. Finally, the souls of flesh-body bodhisattvas are believed to persist inside the mummy, and they are worshiped as fully conscious agents capable of bestowing favors and providing guidance as they communicate and interact with their devotees.⁶

Acknowledging and giving thanks for people's good deeds is highly praised in Fujian culture. It is said that Zhanggong-zushi was a skilled doctor who healed many patients and saved the villagers from an outbreak of the plague. Due to the village's remoteness, it was difficult to get medical assistance, and doctors were highly esteemed by the villagers. Because he saved their ancestors, generations of the Yangchun villagers have revered Zhanggong-zushi. Because the villagers consider Zhanggong-zushi to be their benefactor, they consider themselves obligated to return the favor that Zhanggong-zushi conferred upon their ancestors. And the worship of Zhanggong-zushi is more than ordinary ancestor worship in so far as Zhanggong-zushi's body's resistance to decay has been deemed a miracle. As a result, Zhanggong-zushi is worshiped by the villagers as their god.

TREATMENT OF HUMAN REMAINS

Since the statue of Zhanggong-zushi contains a mummified human body, the claim for the restitution of the statue is reminiscent of claims for the return of the

⁵See Huang 2009, 142–46; Shen 2011, 100–1.

⁶See Huang 2009, 142–46; Shen 2011, 102–3.

Mokomokai, the preserved heads of the Maori, the Indigenous people of New Zealand, because both cases concern the treatment of human remains. Since the 1980s, New Zealand has officially requested the return of the Maori heads that are held in museums and private collections around the world. Among these cases of Maori heads, the case of the return of a Maori head from the collection of the Rouen Museum to New Zealand is worthy of attention, as it has signaled a sea change in the attitudes to the repatriation of human remains held in French museums.⁷

In this case, the Maori head entered into the city of Rouen's museum collection in 1875 and was displayed as an exotic curiosity. For Europeans, the head exemplified an ethnographic interest, even an artistic one, while Maori Aboriginals believe their ancestors' remains should be respected in their home area without being disturbed. On 19 October 2007, the municipality of Rouen voted to adopt a resolution authorizing the return of the head to New Zealand.⁸ However, the French minister of culture was publicly opposed to the return, and a petition was filed to the administrative tribunal of the city of Rouen for summary judgment to halt the execution of the city council's resolution. The opposition referred to two sections of the French Heritage Code, which provides that "the collections of the museums of France are inviolable (Article L 451-3)" and that "goods constituting collections of the museums of France, and belonging to a legal person, are in the public domain and are hence inalienable. Any decision to declassify such goods cannot be made without the assent of a scientific body (Article L 451-5)." Thus, they argued that the head was a chattel in the public domain and needed to be declassified by the National Scientific Commission before its return.⁹ However, according to the city of Rouen, the declassification proceedings were unnecessary because the head was not a part of the museum collection or public domain. The municipal council's resolution specified that "regarding human remains, Article 16-1 of the Civil Code, enacted pursuant to the Bioethics Bill of July 29, 1994, as modified, stipulates that they cannot be objects of proprietary rights: so the principle of inalienability of public collections cannot be applied to them."¹⁰ However, the resolution was overruled by the summary court. In the decision, the judge stated that the human remains that constitute the Maori head were not within the scope of application of the foregoing sections of Article 16-1 of the Civil Code, subject to provisions of the Heritage Code; instead it was subject to the provisions of the Heritage Code. The return of the head required a declassification following the assent of the National Scientific Commission of Museum Collections of France.¹¹

From the foregoing debate on the applicable law of the Maori head, we can see that the legal nature of human remains is a controversial issue. On the one hand, whether

⁷See Amiel 2008.

⁸Amiel 2008, 371.

⁹Amiel 2008, 372.

¹⁰Amiel 2008, 372.

¹¹Amiel 2008, 374.

human remains can be of property interest is an issue provided in civil law. According to Jie Huang, in both the common law and civil law systems, the law on dead human bodies generally outlaws the sale of dead corpses and a person cannot own somebody else's corpse even if he or she is a bona fide purchaser.¹² On the other hand, some human remains are treated as cultural objects, which are subject to laws on cultural property. In addition, the legal trade of cultural property is allowed in almost all countries. In the concurrence of civil law and cultural property law in this particular case, the French judge deemed that the Maori head was subject to French cultural property law.

In Dutch civil law, the question whether or not human remains can be an asset is also difficult to answer. It has been written by the Dutch lawyer L.P.W. van Vliet that

it is highly controversial whether a dead body is an asset or not. A mummy, on the other hand, is more easily seen as an asset. The fact that a mummy is an archaeological find seems to overshadow the fact that these are dead persons. Objects made from human remains themselves can be seen as assets more easily than human remains themselves, e.g. a beaker made from a skull, or ashes of a cremated corps which have been used to make a diamond.¹³

So under Dutch law, the Zhanggong-zushi statue, which is a mummy, can be seen as an asset more easily than human remains themselves, and the trade of the statue, as a result, has been treated probably as the trade of a chattel.

In China, a dead body shall not be disposed as a commodity for profit. In special situations, a state may take appropriate measures to dispose of a dead body, but such disposition shall consider the decedent's will and the heirs' feelings and should comply with public interests and humanitarianism.¹⁴ Nevertheless, historic human remains discovered in ancient tombs or enshrined in religious sites are protected as cultural relics, while the Cultural Relics Protection Law of China does not distinguish human remains from other kinds of cultural relics.¹⁵

In the last two decades, some laws have been developed to regulate the treatment of human remains. In France, in order to expedite the many red tape issues around the repatriation of human remains, two Rouen senators proposed a new bill that would allow the repatriation of the Maori heads from France, and it was passed by the French government on 5 May 2010. It signals a sea change in the attitude toward the repatriation of human remains in French museums. On 9 May 2011, the Maori head from the Rouen Museum was handed back to New Zealand, which was the first repatriation of Maori human remains from France.¹⁶

¹²Huang 2015, 723.

¹³Van Vliet 2006, 112.

¹⁴Huang 2015, 724.

¹⁵Law on the Protection of Cultural Relics of the People's Republic of China, No. 76, 1982. It was recently amended on 29 June 2013.

¹⁶See "First Repatriation of Maori remains from Rouen Museum, France," <https://www.tepapa.govt.nz/about/press-and-media/press-releases/2011-news-and-media-releases/first-repatriation-maori-remains> (accessed 2 September 2016).

The International Council on Museums's 2006 Code of Ethics for Museums defines human remains and sacred significance as "sensitive materials," and it requires that the acquisition, research on, and exhibition of such sensitive materials shall be "accomplished in a manner consistent with professional standards and take into account the interests and beliefs of the community, ethnic or religious groups from whom the objects originated."¹⁷ In the United States, the Native American Graves Protection and Repatriation Act was adopted in 1990, which requires federal agencies and institutions that receive federal funding to return Native American "cultural items" to lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations.¹⁸ In the United Kingdom, the Department for Media, Culture and Sport has produced non-statutory guidance on the implementation of the provisions of the Human Tissue Act 2001 relating to the return of human remains. The aim of the guidance is to

ensure that the future treatment of indigenous remains in museums balances the need to respect the culture and wishes of indigenous communities with the need for scientific research, and that decisions in response to requests for return are made equitably and transparently.¹⁹

In the Netherlands, the Dutch government has not yet developed any legislation concerning the collection, exhibition, or repatriation of human remains.²⁰ In 2005, the Ethnographic Museum of Leiden returned a Maori head to New Zealand, which signals the first official restitution of human remains in the Netherlands.²¹ Since museums have been increasingly confronted with these complex issues, the Ethical Committee of the Netherlands Museums Association adopted the Code of Ethics on Collecting and Exhibiting Human Remains, a guideline for all associated Dutch museums in 2007.²² In principle, human remains may only be exhibited for educational, scientific, or research purposes. In 2009, a restitution claim of six human skulls of Urk from the collection of the University Museum of Utrecht was presented to the Ethical Committee of the Netherlands Museums Association. In the verdict, the Ethical Committee advised the University Museum to return the skulls to the people of Urk, thereby acknowledging the important role of humans as the performative embodiment of local culture and religion. On 5 June 2010, the Urker skulls were officially returned to the people of Urk.²³ The return of the Urker skulls reflects that the Dutch museum's adherence to the Code of Ethics and

¹⁷Code of Ethics for Museums, 2006, http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf (accessed 16 May 2017), ss 2.5, 3.7, 4.3.

¹⁸See Native American Graves Protection and Repatriation Act, 16 November 1990, 104 Stat. 3048 Public Law 101-601, <https://www.nps.gov/nagpra/mandates/25usc3001etseq.htm> (accessed 2 September 2016).

¹⁹Department for Culture, Media and Sport, *Guidance for the Care of Human Remains in Museums*, 2005, <http://www.culture.gov.uk/images/publications/GuidanceHumanRemains11Oct.pdf> (accessed 2 September 2016).

²⁰Van der Maas 2016, 143.

²¹Van der Maas 2016, 144.

²²Code of Ethics on Collecting and Exhibiting Human Remains, 2007. Van der Maas 2016, 141.

²³Van der Maas 2016, 149.

demonstrates that it is in favor of the restitution of human remains if such human remains are of cultural or religious importance for a cultural group.

In the case of the Zhanggong-zushi statue, Van Overeem is a private person, not a museum, and the Code of Ethics for associated Dutch museums is not binding on him. In addition, to the extent that no international convention respecting cultural property applies to this case, the dispute has been characterized simply as being a dispute over the ownership of an object by a Dutch court.²⁴

THE GOD'S DIFFICULT JOURNEY BACK TO THE VILLAGERS

If the claim for the return of Zhanggong-zushi is characterized as simply being a dispute over the ownership of an asset, the rules regarding good faith acquisition and statutes of limitation will come into play. Chinese civil law has not yet established a rule whether stolen goods are subject to good faith acquisition.²⁵ In China, the original owners of stolen goods mainly recover their goods from the judicial organs. For example, if an object is stolen from an original owner and then sold to a third person, the police or courts will restore the object to the original owner when the case is solved, even if the third person has acted in good faith. If the original owner cannot be found, the goods will be delivered to the national coffers.²⁶ Even though this practice has been criticized, there is no rule protecting the interest of the bona fide purchaser of stolen goods in China. In addition, cultural relics are

²⁴The Netherlands and China are contracting parties to the UNESCO Convention. China acceded to the convention on 28 November 1989, but the Netherlands acceded to this convention on 17 July 2009, and the convention is of no retroactive effect. The Netherlands signed the Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457, in 1996, but it has not ratified it. This means that this convention is not legally binding on the Netherlands.

²⁵Article 89 of the Opinion (for Trial Use) of the Supreme People's Court on Questions Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China, 1988, is also deemed a provision on good faith. But it is only dealing with the situation of joint ownership. Article 106 of the Property Law of the People's Republic of China, No. 62, 2007, provides that, "[i]n case a person unauthorized to dispose a realty or chattel alienates the realty or chattel to an assignee, the owner is entitled to recover the realty or chattel. The assignee shall obtain the ownership of the realty or chattel if meeting all of the following conditions, unless it is otherwise prescribed by law: (a) to accept the realty or chattel in good faith; (b) to purchase the realty or chattel at a reasonable price; and (c) in case registration is required by law, the alienated realty or chattel shall have been registered, while in case registration is not required, the delivery thereof shall have been accomplished. In case, according to the preceding paragraph, an assignee obtains the ownership of a realty or chattel, the original owner may require the person unauthorized to dispose of the realty or chattel to compensate for his losses. In case a related party obtains any other form of real right in good faith, the preceding two paragraphs shall apply by reference." And Article 107 provides an exception to the good faith acquisition. If it is a lost property, the original owner can reclaim it within two years from the date when he knows, or should know, who the assignee is. If the assignee purchases the lost property through auction or from a qualified shop, the original owner shall pay the assignee the amount purchasing the property.

²⁶This general rule does not apply to some cases that concern fraudulence governed by the law of bills. See Bingwan 2008.

limited merchantable goods provided by Chinese law, the circulation of which is subject to administrative law.²⁷ The flow of cultural relics is subject to the Law on the Protection of Cultural Relics and other administrative regulations.²⁸ As a general rule, only privately owned cultural relics are subject to trade, and the exportation of all cultural relics has to be authorized by the Chinese custom authority. If Van Overeem were a Chinese citizen and the statue of Zhanggong-zushi was situated in China, it is clear that the villagers would get the statue back to the temple by resorting to the Chinese police. However, this case involves foreign elements since the defendant is a Dutch citizen and the subject matter is situated in the Netherlands. In accord with Chinese conflict of law, this is a foreign-related civil case.

Property rights are protected in the law of torts and property law in China. Article 2 of the Tort Law provides that infringement upon the rights to ownership is subject to tort liability, and Article 15 specifies the methods of assuming tort liability, include the return of property.²⁹ Meanwhile, Article 34 of the Property Law stipulates: "As for the untitled possession of a real property or movable property, the right holder may petition for returning the original object."³⁰ In view of the lack of a unified Civil Code when the lawsuit was filed, claims for the restitution

²⁷In contemporary Chinese civil law, goods are categorized into merchantable goods and limited merchantable goods. Merchantable goods can be freely circulated between different civil persons; but the circulation of limited merchantable goods are prohibited or limited by law. These limited merchantable goods at least include two categories: (1) property exclusively owned by the state, such as mineral deposits, waters, and sea areas; (2) goods that are not exclusively owned by the state but their circulation is prohibited or limited, such as military explosives, firearms, ammunition, narcotics, drugs, gold, cultural relics, pornographic publications and audio-visual products, and so on. Goods that are deemed to be merchantable unless it is otherwise prescribed by law. In China, the circulation of goods between equal civil persons is subject to civil law (including contract law and property law), and properties exclusively owned by the state are prohibited to be circulated, which is specified in Article 81 of the General Principles of the Civil Law of the People's Republic of China. Citizens can be the owner of limited merchantable goods in the second category, and the circulation of such limited merchantable goods are subject to administrative law. Legislation on limited merchantable goods are dispersed in various administrative regulations in order to protect the public interest, state ownership, and the right of the weak parties. See Zhenying 2006, 125.

²⁸The Law on the Protection of Cultural Relics of the People's Republic of China provides that citizens, legal persons, and other organizations, except institutions for the collection of cultural relics, may collect cultural relics obtained through the following channels: (1) lawfully inheriting or accepting as gifts; (2) purchasing from cultural relics stores; (3) purchasing from auction enterprises engaged in the auction of cultural relics; (4) mutually exchanging or transferring in accordance with the law of cultural relics lawfully owned by individual citizens; or (5) other lawful channels prescribed by the state. Cultural relics, as specified in the preceding paragraph, which are in the collection of citizens, legal persons, and other organizations, except the institutions for the collection of cultural relics, may be circulated according to the law (Article 50). And Article 51 reiterates the inalienability of state-owned cultural relics, stating: "[N]o citizens, legal persons or other organizations may purchase or sell the state-owned cultural relics, except ones with the approval of the State." Due to the special feature of limited merchantable goods, it is generally accepted in Chinese judicial practice that limited merchantable goods including cultural relics are not subject to good faith acquisition.

²⁹Tort Law of the People's Republic of China, No. 21, 2009.

³⁰Property Law of the People's Republic of China, No. 62, 2007.

of stolen property can be based on tort liability or rights in *rem* in China, and the claimant who is aiming to recover property can choose to file a lawsuit pursuant to the law of torts or property law. If the claimant chooses to sue the defendant pursuant to tort liability, he has to demonstrate that the loss was caused by the negligence of the defendant according to the Chinese laws of tort, while there is no such requirement in property law.³¹

Tort liability is governed by the law of the place of tortious act. In this case, the lawyers opted to sue the defendant pursuant to the law of torts for the restitution of the statue of Zhanggong-zushi, which has been accepted by the Sanming Intermediate People's Court. It is not known why the lawyers filed the suit under tort law, but it has been reported that the lawsuit in China was meant to interrupt the limitation of action. The last day that the Chinese court can protect the rights to restitution of the statue of Zhanggong-zushi is 16 December 2015; otherwise, the claim will have lapsed the maximum 20-year limitation period in Chinese law.³²

Even though the Chinese court, in all probability, will rule in favor of the claimant, according to Chinese law, it is highly likely that the judgment as such will not be enforced in the Netherlands due to the jurisdictional issue. Under Chinese law, a court has jurisdiction if the tortious act occurs in the place where the court is located. However, under Article 431 of the Dutch Code of Civil Procedure (CCP), a foreign judgment shall not be enforced within the territory of the Netherlands in the absence of a treaty or a statutory provision.³³ Thus, if no treaty applies, the enforcement of a foreign judgment is not possible in the Netherlands, and the case will have to be adjudicated again by the competent Dutch court.³⁴ As explained by Dutch lawyers, according to judgments in 1993 and 1995, the Supreme Court considerably narrowed the scope of Article 431 of the CCP. At present, in cases in which no treaty applies, the Dutch courts in general do not recognize a foreign forum as the *forum non conveniens*, the procedural rights of the defendant are safeguarded in the procedure, and the judgment does not violate public order.³⁵

³¹See Hongliang 2014.

³²There are three types of limitation in Chinese civil law: general limitation, special limitation, and maximum limitation. The general limitation of actions is two years as of the date that the claimant knows, or should have known, that his rights have been infringed upon. Exceptions are made for disputes over contracts of international trade and the import/export of technology, for which the limitation of action is four years; and for claims for personal injuries, claims for the sale of standard goods, rent-related claims, and claims for the loss of, or damage to, property left in the care of another person, all of which expire after one year. See General Principles of the Civil Law of the People's Republic of China.

³³Dutch Code of Civil Procedure (CCP), 2011. See Van Mierlo and Hoebeke 2010.

³⁴According to Van Mierlo and Hoebeke, in the Netherlands, the most important statutory rules with respect to recognition and enforcement of foreign money judgment are to be found in Articles 431 and 985, para. 1, of the CCP. Article 431 of the CCP provides: "1. Except as provided for in Article 985 through 994, foreign judgments and foreign authentic deeds shall not be enforced in The Netherlands. 2. Disputes may be litigated again in the Dutch courts." See Van Mierlo and Hoebeke 2010, 5.

³⁵Van Mierlo and Hoebeke 2010, 6.

In this case, neither bilateral nor multilateral treaties concerning the enforcement of foreign civil judgments exist between China and the Netherlands. With respect to foreign judgments that are not subject to a treaty in the Netherlands, one of the conditions that must be met is that the judgment is rendered by a convenient forum. Whether the Chinese court will be accepted in the Netherlands as a convenient court is one of the issues since the plaintiff has sued in a Chinese court.

Under Dutch law, a foreign court can be considered a convenient forum according to internationally acceptable standards. Generally acceptable are the forum contractually agreed to by the parties, the *forum of rei sitae* (in matters relative to real estate), the *forum loci delicti* (in matters relative to tort), and the forum of a subsidiary or branch.³⁶ As discussed above, Chinese courts have jurisdiction to tort claims if the tortious act takes place in China and if the stolen property is based on tort liability pursuant to Chinese law. In the case of the statue of Zhanggong-zushi, the Sanming Intermediate Court is deemed the *forum of loci delicti* under Chinese law. It appears that the Sanming Intermediate Court would be accepted as a convenient court since the *forum loci delicti* is an internationally acceptable standard in consideration of convenient forum in the Netherlands. If so, the judgment rendered by the Chinese court will be enforced in the Netherlands if the other conditions are also met.

Indeed, excluding an owner from his property constitutes an infringement upon his property rights. When a person seeks to recover an asset held by another, the matter is *prima facie* within either the law of torts or the law of property. In classical Roman law, a claimant could go into court and simply assert his ownership of the goods in question: “That cow, Buttercup, is mine!” Such an assertion was called *vindicatio*, a purely proprietary claim.³⁷ Dutch law protects property rights pursuant to property law, and revindication is the principal action for the owner and other title holders against infringement.³⁸ Alternatively, there is no equivalent of *vindicatio* in English common law, and English law protects property rights pursuant to the law of torts rather than property law.³⁹ Nevertheless, the fact that a restitution claim can be based on property law and tort law in China overshadows the jurisdiction and the application of law in this case. If the Dutch court characterizes the dispute over the ownership of the statue of Zhanggong-zushi as a property dispute, the Chinese court may not be accepted as a convenient court because the plaintiff is normally expected to sue the defendant in the country where the defendant is domiciled.

³⁶Van Mierlo and Hoebeke 2010, 33, 34.

³⁷See Frisby and Jones 2011, 12.

³⁸Salomons 2011, 24, 25.

³⁹Common law is used here in its most narrow sense—that is, as opposed to equity where an action akin to *vindicatio* does exist. Although English law also recognizes vindication of property rights with which the defendant has interfered, there is most likely only one principle on which the law of restitution is dependent, namely the principle of unjust enrichment. As Virgo claims, the body of law that exists to secure the reversal of unjust enrichment is the law of restitution. See Virgo 2006.

If so, the decision made by the Chinese court would not be enforced in the Netherlands. That is probably why the lawyers have also filed a lawsuit in the Netherlands for the restitution of the statue. In general, civil law systems favor good faith possessors insofar as a bona fide purchaser may obtain valid title even from a thief. If the villagers sue him in the Dutch court, whether Van Overeem acquired the statue in good faith and whether the case has been barred by a statute of limitation would be examined. If Van Overeem can establish that he had acquired the statue in good faith or as a result of the application of a statute of limitation, the Dutch court will rule against the villagers.

CONSIDERATION OF RELIGIOUS VALUE IN A PROPERTY DISPUTE

This case also brings into stark relief the now decades long controversy surrounding the question of the ownership of cultural objects. “Culture” embodies group-oriented notions of value, while “property” focuses on the individual’s right to possess objects. If a judge rules that Van Overeem acquired the good title to the statue through a good faith acquisition or as a result of the application of a statute of limitation, the villagers will lose their god forever. Instead, their god will likely continue to be placed on display in museums, labeled as “a mummy from Fujian.” Their god will be stared at by museum visitors rather than worshiped on the altar at the Puzhao Temple, his holy home. According to the villagers of Yangchun, sacrifices should be made to worship Zhanggong-zushi rather than an admission being charged. Staring directly at Zhanggong-zushi should be prohibited as a sacrilege. However, such cultural or religious concerns are not regarded as being germane to a civil dispute over the ownership of objects. Such disputes are litigated over the manner the object was acquired, the passage of time, and the choice and application of law. Positive law frowns upon the restitution of cultural objects that were removed long ago.

Although no civil court has ever treated a dispute concerning the allocation of cultural objects as raising issues surrounding an infringement of religious rights, consideration has been shown to the cultural/religious significance by the courts. The case *Bumper Development Corporation, Ltd. v. Commissioner of Police for the Metropolis, et al.*, which concerns how to treat cultural significance in disputes over cultural property merits attention. In this case, a twelfth-century bronze Nataraja (a sculpture of Shiva dancing) was ordered returned to its Indian claimants.⁴⁰ In 1976, this object was found by a landless Indian laborer at the site of a ruined Hindu temple. The temple in the state of Tamil Nadu had lain in a ruinous state, and no one had worshipped there for centuries, but one of its surviving relics was recognized to be an object of religious worship known as a sivalingam. The bronze

⁴⁰*Bumper Development Corporation, Ltd. v. Commissioner of Police for the Metropolis, et al.*, [1991] 1 WLR 1362, [1991] 4 All ER 638. Gandhi and James had an excellent discussion of this case in the article “The God That Won.” See Gandhi and James 1992, 369–81.

Nataraja was eventually acquired by the Bumper Development Corporation in good faith in 1982. The title of Nataraja was one of the main issues tried by the judge—that is, whether any of the “claimants” had a superior title to the Nataraja than Bumper. There were five claimants in this case: the union of India, the state of Tamil Nadu, the Thiru Sadagapan who claimed to be the fit person of the temple on his behalf, the temple itself suing through Sadagapan, and Sivalingam, who was added as the fifth claimant at a late stage of the trial.

In the judgment, the judge decided that the temple, who was suing as its “fit person,” had a valid title and superior title to the Nataraja compared to that enjoyed by Bumper. Bumper appealed the findings of the judge, and the Court of Appeal upheld the judge’s decision. The court held that, in accordance with the demands of justice, the ruined temple was accepted as a party to the proceedings and, as such, was entitled to sue for the recovery of the Nataraja in the English court. In using the principles of comity, justice, and public policy, the court ruled in favor of the claimants. Public policy played a significant role in the decision:

The public policy of promoting the return of stolen artifacts and treasures (or those exported in breach of regulations) to the country of origin—at least where the country concerned is both a friendly state and a member of the Commonwealth—is to be applauded and will ensure that our courts make a significant contribution to the international protection of cultural property.⁴¹

As Sandy Ghandhi and Jennifer James note, the reasoning behind the decision and resort to the principles of comity and the criterion of public policy will ensure a wider application of this decision, and, thus, it is a most welcome development for the international protection of cultural property.⁴²

Even if the court rules in favor of the villagers, if Van Overeem fails to establish that he acquired the statue as a bona fide purchaser for value and if the villagers’ claim has not been barred by the passage of time, this case highlights the need for the courts to consider religious and cultural elements in disputes involving cultural objects. For anyone other than the Yangchun villagers, it makes no difference whether the statue is reverently ensconced in the Puzhao Temple or owned and loaned out for display from time to time by a Dutch collector. Some non-Yangchun would even argue that a collector such as Van Overeem may be better able to better preserve and study the statue. Many view folk religious beliefs as nothing more than quaint superstition and question its very legitimacy. The terrifically unaffordable sales price requested by Van Overeem is the polar opposite of the religiously motivated Yangchun villagers’ plea for the return of their god. For Van Overeem, the controversy simply involves money. For the villagers, the controversy involves the most deeply felt religiosity.

⁴¹Ghandhi and James 1992, 378.

⁴²Ghandhi and James 1992, 379.

As John Lagerwey, a scholar of Chinese religion, points out, regardless of whether it is scientific, Chinese folk religion provides psychological benefits of worship and systematically preserves and transmits accumulated wisdom. In fact, in the Chinese folk region, the faithful must locate themselves within a specific spatial system; they must be modest and prudent because the gods are watching. In a sense, fear of the gods becomes a kind of wisdom. For example, some villagers have explained they do not dare lie to Zhanggong-zushi. Unless we understand the religious meaning of the statue of Zhanggong-zushi as it functions within its cultural and religious surroundings, we cannot begin to comprehend the under-funded villagers' perseverance in pursuing their unlikely claim against Van Overeem. However, although it is highly valued by groups such as the Yangchun villagers and has been the key motivation in some instances where restitution has been accomplished, the importance to date of "culture" or "religion" has not been recognized as an independent, persuasive theory in cases concerning the restitution of cultural objects. Thus, the difficulties confronting the Yangchun villagers in their attempts to bring the statue of Zhanggong-zushi back to its altar in their village demonstrates the insufficient legal protection afforded to cultural groups and their spiritual and religious beliefs. In the real world, the power of a Chinese folk religion's god is minimal when confronted by the power of the laws and judiciaries of foreign nations. If their case goes against the Yangchun villagers, the statue of Zhanggong-zushi will remain under the control of Van Overeem, and Zhanggong-zushi's religious function will continue to be frustrated. Being separated from their god Zhanggong-zushi is spiritual torture for the Yangchun villagers. Will a court of law in a modern, Western nation ever display any meaningful deference for the spiritual beliefs and cultural traditions of a small group of people living in a remote part of a faraway, foreign, Eastern country? Will the god win this time?

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