BOOK REVIEWS

Erik Jayme, *Gesammelte Schriften Band 1: Nationales Kunstwerk und Internationales Privatrecht. Vorträge—Aufsätze—Gutachten [Collected Writings, Volume 1: National Art Object and Private International Law. Lectures—Articles—Memoranda].* Pp. ix, 304. Müller, Heidelberg 1999. ISBN 3-8114-8299-8. DM 138.00. Reviewed by Kurt Siehr.*

Erik Jayme, professor of law at the University of Heidelberg (Germany) and former president of the Institute of International Law, edited his writings on art and law. Jayme, a leading scholar in this field, has two important messages dealt with in several articles reproduced in the present volume of his collected writings. The first message is that there are national art objects that may be exclusively attributed to a certain nation.[1] Several international instruments on art trade or trade in general refer to the "cultural heritage of a State,"[2] to "national treasures,"[3] and to cultural objects of "significant cultural importance" for a state.[4] Still open is the question how to determine the "nationality" of an art object. Erik Jayme, as an art historian, is well equipped to answer this question. Already the French archaeologist Antoine Chrysostome Quatremère de Quincy (1755–1849) and the Italian artist Antonio Canova (1757–1822), while fighting against any illegal displacement of art objects during the Napoleonic wars[5] and corresponding about the Elgin Marbles in London,[6] held that art objects should be kept at the place of their origin and that this attribution to a certain place (e.g., Rome) should be supported by all educated people. The "nationality" of an art object is more or less determined by its environment (e.g., the temple of an ancient city), by its being part of an ensemble (wing of an altar-piece), having been commissioned for a specific place (e.g., frescos for a certain place or church). Even an art object may become the treasure of a certain nation by lapse of time because since time immemorial it has been associated with a certain place of exhibition (*Mona Lisa* of Leonardo da Vinci and the Louvre; *Sixtine Madonna* of Raphael and the Dresden Gemäldegalerie; *View of Toledo* by El Greco and the Metropolitan Museum of Art in New York). How about the Elgin Marbles in the British Museum? Are they British, Greek, or both? It is important that Erik Jayme does not determine the nationality of an art object according to the artist's nationality and does not support an absurd idea that all Raphaels should be located in Italy, all Poussins in France, all Dürers in Germany, all Rembrandts in the Netherlands, and all Hodlers in Switzerland. This would lead to a very boring specialization of art museums and would be an attack against any universally oriented museum. Imagine if we had not visited our local museums

* Professor of Law, University of Zürich.

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with Assyrian, Egyptian, Greek, and Roman art objects! Would we have had any strong incentive to visit the Orient, Egypt, Greece, and Italy? But why should we determine the nationality of an art object? Every qualification of this kind should reveal the purpose and the consequences of such distinctions. The "nationality" of an art object may help to fight a certain acquisitiveness of national museums disguised as a tireless care of national treasures. Is a *gouache* by Matisse an Italian "*bene del patrimonio nazionale*,"[7] are paintings by Liotard or van Gogh French "*trésors nationaux*,"[8] or is a collection of bugs a German "*nationales Kulturgut*"?[9] Such controversies rather make fun of a serious problem concerning genuine national treasures and should be avoided. But even if national treasures are at stake, a certain object-oriented policy should govern the national and international export and trade policy.[10]

The other message of Erik Jayme originates from his collaboration in the 1991 Basel Resolution of the Institute of International Law on the "International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage."[11] This resolution provides in article 2: "The transfer of ownership of works of art belonging to the cultural heritage of the country of origin shall be governed by the law of that country."[12] This rule of the *lex originis* replaces the common conflicts rule of *lex rei sitae*. The law of the respective location of a piece of movable property should not govern the transfer of title and other matters of the law of property. The law of the "country of origin" refers to the country "with which the property concerned is most closely linked from the cultural point of view" [article 1 (1) (b)]. Shifting to such a conflicts rule would carry all limitations of free circulation (*res extra commercium*), of restrictions as to prescription or statutes of limitation and even as to export into foreign countries, and would require recognition of qualities attributed by the *lex originis*.[13] Good faith purchasers would have to return stolen or illegally exported art objects and be compensated by the owner or by the country of origin. There is no problem with respect to stolen property. It should be returned unless the owner is estopped by laches. Export barriers, however, should be limited to significant objects of the cultural heritage of the country of origin. Every state may try to keep art objects within its boundary and to spend money for exercising any right of redemption. But importing states should not be obliged to yield to excessive foreign export regulations. Here the idea of "national treasures" may be used to restrain exuberant cultural nationalism and to reduce it to an internationally accepted policy of retention of significant national treasures.

Finally an important contribution of Erik Jayme's should be mentioned. He devoted a lecture in the Heidelberg Academy of Sciences to legal problems of objects of "degenerate art."[14] Stirred by the court case on Paul Klee's *Sumpflegende*, brought by the son of the Russian constructivist El Lissitzky (1890–1941),[15] Jayme deals with domestic and international law aspects of recovery proceedings concerning objects of "degenerate art." Is the 1937 campaign an illegal expropriation

or even a violation of human rights of artists and collectors? Are the transactions in objects of "degenerate art" null and void? Other studies have also devoted research to legal problems of "degenerate art,"[16] and there still are no clear-cut answers. Erik Jayme's collected essays on art law are an important contribution to worldwide efforts to preserve and care for art treasures. It would be completely wrong and misleading to call Erik Jayme a supporter of nationalism in art law. He encourages all nations to take care of their cultural heritage and he encourages other states to support legitimate efforts to preserve such national heritage by returning significant objects. Erik Jayme, as a legal scholar, art historian, specialist in comparative and private international law, and universally interested *homme de lettre* is far from questioning international art trade, exchanges, and supranational efforts to save the common cultural heritage for future generations. Erik Jayme could have written Quatremère de Quincy's letters to Antonio Canova and Francisco Miranda.

NOTES

1. Jayme, *Kunstwerk und Nation: Zuordnungsprobleme im internationalen Kulturgüterschutz*, 54–74, of the volume under review.

2. Art. 4 of the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 823 UNTS 231.

3. Art. 30 Treaty of Rome, establishing the European Community (version of Amsterdam); the same expression is used for the trade barriers permitted by Art. XX lit. f GATT-Agreement of 1947, by Art. 12 lit. b EFTA Convention of 1960; by Art. 132 (1) Lomé-Convention of 1984, and by Art. 13 of the European Economic Area-Convention of 1992.

4. Art. 5 (3) Unidroit Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects, 5 *International Journal of Cultural Property* 155 (1996).

5. Quatremère de Quincy, *Lettres à Miranda sur le déplacement des monuments de l'art de l'Italie (1796)* (E. Pommier, ed., Paris 1989). General Francisco Miranda (1750–1816) seems to have suggested to Quatremère these letters to him (*cf.* Pommier, *supra*, at 13). As to Miranda, *cf.* Jacques de Cazotte, *Miranda 1750–1816, Histoire d'un séducteur* (Perrin, Paris 2000).

6. Quatremère de Quincy, Lettres sur l'enlevement des ouvrages de l'art antique à Athènes et à Rome écrites les unes au célèbre Canova, les autres au général Miranda, in: id., *Considérations morales sur la destruction des oeuvres de l'art* 87–247 (Fayard, Paris 1989).

7. Jeanneret v. Vichey 693 F. 2d 259 (2d Cir. 1982).

8. *Cf.* Hans Hanisch, Der Fall Liotard und die nationale Zuordnung eines Kunstwerks, *Recht und Kunst, Symposium aus Anlass des 80. Geburtstags von Wolfram Müller-Freienfels* 19–36 (Heidelberg 1996); Timothy P. Ramier, Agent Judiciaire du Trésor v. Walter; Fait du Prince and a King's Ransom, 6 *International Journal of Cultural Property* 337–42 (1997).

9. *Cf.* Käfersammlung endlich in Basel, *Neue Zürcher Zeitung* of October 25/26, 1997, p. 20.

10. *Cf.* John Henry Merryman, The Nation and the Object, *3 International Journal of Cultural Property* 61, 64 (1994).

11. The Basel Resolution is reprinted in 6 *International Journal of Cultural Property* 376 (1997).

12. Erik Jayme, Protection of Cultural Property and Conflict of Laws: The Basel Resolution of the Institute of International Law, 6 *International Journal of Cultural Property* 376 (1997), and pp. 155–57 of the book under review.

13. A similar rule had already been advocated by Montesquieu in 1729: *"Il faudroit faire une loi dans Rome, que les principales statues seroient immeubles et ne pourroient point se vendre qu'avec les maisons où elles seroient, sous peine de la confiscation de la maison et autres effets du vendeur. Sans cela, Rome sera toute dépouillée."* [A statute should be enacted for Rome by which principal statues would be made immovables and could be sold only with the palaces where they are. Without such a statute Rome will be completely pillaged.] *Cf.* Montesquieu, 2 *Oeuvres complètes* 1101 (A. Masson, ed., Paris 1950). (Voyage en Italie VII: Rome).

14. Erik Jayme, *"Entartete Kunst" und das Internationale Privatrecht* (Heidelberg 1994); reproduced in the volume under review at 109–130.

15. Landgericht München December 8, 1993, *Die deutsche Rechtsprechung auf dem Gebiet des Internationalen Privatrechts im Jahr 1993* no. 52.

16. Boris Grell, *Entartete Kunst, Rechtsprobleme der Erfassung und des späteren Schicksals der sogenannten Entarteten Kunst* (Huber, Entlebuch 1999); Hans Hennig Kunze, *Restitution "Entarteter Kunst," Sachenrecht und Internationales Privatrecht* (de Gruyter, Berlin 2000).

Sibel Özel, *Uluslararası Alanda Kültür Varlıklarının Korunması [The Protection of Cultural Objects in the International Sphere].* Pp. xiii, 461; English summary pp. 435–440; bibl. pp. 441–461. Alkım, Istanbul 1998. Reviewed by Hans W. Baade*

Cultural property legislation has been traditionally a product (and in the last three or four decades, a mass product) of art-rich, money-poor countries. Cultural property law as an academic discipline, however, is still almost exclusively a creation of scholars and, more recently, of courts in art-importing countries, most prominently France, Germany, the United Kingdom, the United States, and Switzerland. Since the main purpose of cultural property legislation is to keep indigenous art objects at home, where enforcement is largely a matter of allocation of competent administrative resources, art law jurisprudence has been almost entirely the province of courts in art-importing countries where art-rich, money-poor countries seek to vindicate their cultural patrimony in reliance on title conferred or confirmed by their own legislation. All too frequently, they have been unable to

* Professor of Law, University of Texas at Austin, School of Law.