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

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back their assertions of ownership by reference to a body of domestic scholarly literature meeting standards generally prevailing in this branch of the law.

Turkey (a participant in three of the more important international art cases of recent years) has been somewhat more fortunate than many in this respect. Bilge Umar's art law treatise is now in its second edition, and Alimet Mumcu's account of the history of Turkish art law leaves little to add.[1] Several collections of judicial decisions (mainly administrative and criminal) help to flesh out the "living law" of Turkish antiquities. Until the appearance of the work here reviewed, however, there has been no monographic literature in Turkey on domestic or international art law—a painful gap, as is evident from the reviews of that genre of legal literature appearing in this journal.

That gap has now been closed by Dr. Özel. Perhaps more: her discussion of basic concepts in comparative perspective, of international agreements up to and including the 1995 UNIDROIT Convention, and of the history and structure of current Turkish antiquities law (pp. 6–100) is in the nature of a treatise. Thoroughly annotated to pertinent literature and case law, this part of her work should serve not only to introduce Turkish readers to the subject but also to bring them up to date and—last but not least—inspire additional studies in the field. Even this part of Dr. Özel's work, however, is clearly influenced by her intimate familiarity with the three ventures of the Republic of Turkey into foreign courts to retrieve Anatolian art treasures: Uşak-New York Metropolitan Museum,[2] OKS-Elmalı,[3] and the Basel Steles.[4] Her knowledge of these cases extends to unpublished interim orders, expert opinions, and even pleadings, some of which have a familiar ring (*see, e.g.,* pp. 61–62, 81–83 with accompanying notes).

It must be interjected at this point that I was involved on the defendants' side in the Uşak and Elmalı cases, which were settled to the satisfaction of the Turkish state, and that the legal position to which I adhere was vindicated in the Basel Steles case, which was not one with my involvement. (For a vigorous critique of that latter case, *see* pp. 368–79.) Although this is not the place for rehearsing our respective arguments, two points need to be made. First, Dr. Özel's account of these three cases is both cogent and highly informative, especially since the two settled cases are not fully reported. Secondly, the vindication of Turkey's right to recover "its" antiquities abroad is the *leitmotiv* of the operative, monographic parts of the work here reviewed. This applies especially to part 3: "The Retrieval of Cultural Objects Through Litigation" (pp. 259–328) and part 4, dealing with conflict-of-laws problems in such cases (pp. 329–419). The author's objective also casts its shadow, however, over the discussion of Turkish antiquities law in part 1 (especially at pp. 60 and following), and over the comparative survey of bona fide purchase, prescription and laches, and burden of proof (pp. 201–58).

Dr. Özel takes the position that since 1884, at any rate, even as yet undiscovered antiquities on Turkish soil were state property (pp. 71–75). She then defines

the nature of state ownership in such antiquities as being public law title *sui generis*, superior to private law and even public law title generally because of the inalienability of cultural objects in ordinary commerce (pp. 65–69). Given the obvious familiarity of the author with the pertinent literature, one would have expected discussion of *res extra commercium* at this point, and especially of the sparse but unanimous authorities holding that restraints on alienation based on this (or any) characterization are strictly territorial.

The author may have felt free to leave that consideration aside because, in her opinion, the international protection of cultural property, especially through multilateral treaties, justifies the proposition (central to this work) that cultural objects are by now a preferred sub- (or supra?) species of property, subject both in domestic law and in the conflict of laws to special rules favoring the original owner (including, prominently, "owner" states never in possession of objects discovered by others). In some respects, this proposition seems to be well established, or at least supported by the weight of recent experience, if not authority. It seems difficult to dispute Dr. Özel's contention that in countries where bona fide purchase of lost, stolen, or entrusted property is possible, the burden of proving good faith in the purchase of antiquities has now, as a practical matter, shifted to the purchaser (p. 220). It would also appear that the "discovery" rule favored by her (p. 322), which postpones the running of statutes of limitations, is well on its way to general recognition (*see* pp. 300 and following). Furthermore, as shown by the readiness of authors and governments to sidestep fundamental concepts of intertemporal law where the retrieval of "national" art treasures is at stake, there seems little doubt that the spirit of the times favors the return of cultural property to the country of origin, whatever the legal niceties.

This brings us to the second major proposition advanced by Dr. Özel, which is potentially the most important one. She argues that choice-of-law rules governing this matter should be result-selective, favoring the original owner over the bona fide purchaser (pp. 356–61). This proposition must face at least two obstacles in Turkey. First, since the *lex rei sitae* rule is mandated by statute, Dr. Özel is driven to the contention that this statutory choice-of-law rule does not apply to cultural objects, as these are *sui generis* (p. 361). Secondly, better law theories, especially if judicially developed, lose credibility (and, in this reviewer's opinion, their legitimacy) if they lead to the application of a foreign law judged to be "better" than the forum's own. Turkey, following Switzerland, recognizes bona fide purchase generally, even as to stolen objects if purchased five years after the theft (pp. 216–17). Dr. Özel's proposition is therefore tenable only if this basic legislative decision, too, is discarded because the original ownership of cultural property, especially by states pursuant to a cultural property law, is (for lack of a better word) "holier" than are property rights generally.

Despite what has been said above, this reviewer would be the last to deny that

Dr. Özel's fundamental thesis is, to say the least, compatible with the spirit of the times. Most importantly, however, the work here reviewed, with no less than 1,733 footnotes and a twenty-one page bibliography, serves as an excellent, fully documented restatement of Turkish domestic, comparative, international and "transnational" cultural property law as it stood in 1998. In particular, the author has made a detailed survey and analysis of virtually all the case law, and her coverage of the pertinent literature is exhaustive. She has set a high standard, as well as a potentially important precedent, since the legal literature of cultural property law should come in respectabIe part, if not primarily, from countries prominent in its enactment.

NOTES

1. Readily further identified in the bibliography (pp. 441–61). Unfortunately, there is no table of cases, and the bibliography is not keyed to the text. The table of contents, however (pp. I–IX) provides ready guidance. Umar/Cilingiroolu, *Eski Eseler Hukuku* (Ankara 1990); Mumcu, Eski Eseler Hukuku ve Türkiye, 26 *Ankara Universitesi Hukuk Facültesi Dergisi* 45 (1969); Mumcu, Eski Eseler Hukuku ve Türkiye, 28 *Ankara Universitesi Hukuk Facültesi Dergisi* 41 (1971).

2. Republic of Turkey v. Metropolitan Museum of Art, 762 F. Supp. 44 (S.D.N.Y. 1990); Hoving, Turkish Delight, *Art & Auction*, June 1993, 88–91, 122; Lawrence Kaye and Carla Main, The Saga of the Lydian Hoard, *in Antiquities Trade or Betrayed* (Tubb, ed., 1995) 150–61; Ilknur Özgen and Jean Öztürk (eds.), *Heritage Recovered: The Lydian Treasure* 12 (1996).

3. The Republic of Turkey v. OKS Partners, 757 F. Supp. 64 (D. Mass. 1992); 146 F.R.D. 24 (D. Mass. 1993).

4. Appellationsgericht Basel-Stadt 18 August 1995, 1997 *Basler Juristische Mitteilungen* 17 and 4 *Swiss Review of International and European Law* (SZIER) 492 (1994). Annotated by Sibel Özel, The Basel Decisions: Recognition of the Blanket Legislation Vesting State Ownership over the Cultural Property Found within the Country of Origin, 9 *International Journal of Cultural Property* 315 (2000) and Kurt Siehr, Cagla Ustün, 19 *Praxis des Internationalen Privat- und Verffahrensrechts* 489 (1999).

Bruno S. Frey, *Arts and Economics: Analysis and Cultural Policy*. Pp. vii, 240. Springer-Verlag, Berlin, Heidelberg, and New York 2000. ISBN 3-540-67342-3. £34. Reviewed by Alan Peacock.*

Bruno Frey is that rare example in the economics profession, someone who has contributed significantly to the economic analysis of human behaviour, tested his conclusions along with a number of colleagues, and then applied his considerable

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