

## OPINION ON THE DISSERTATION

JULIA STEPNOWSKA, THE VALUE OF CULTURAL PROPERTY: THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS AS AN EXAMPLE OF A VALUE-BASED APPROACH TO CULTURAL PROPERTY RESTITUTION

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This paper aims to submit my opinion on and evaluation of Julia Stepnowska's dissertation thesis.

### 1. Research question of the thesis

The candidate characterizes the restitution of cultural property as a legally hard case, following Dworkin's theory, due to the complex nature of the objects concerned, the values assigned to them by various parties, and the context of the dispute itself. In addition, all these aspects are dynamic, and the solution depends on emotional or political factors. Although many legal instruments for heritage protection and restitution have been made, establishing a single definition with a scope applicable to any and all objects seems to be very difficult. The answers to where an object really belongs are often nowhere to be found if we look at legal acts concerning ownership rights. One needs to go beyond positive law to realize that the solution to restitution disputes often lies in the values that each individual object holds. The candidate tries to develop a value-based model that may serve for restitution.

### 2. Methodology and arguments of the thesis

#### 2.1.

According to the candidate, the definition and the connotative layer of terms used in different languages and sources vary from country to country and from one legal area to another. Even direct equivalents do not guarantee that same scope of application. The candidate takes an approach of linguistic comparison of legal terms in national laws, international conventions, and EU laws. The concepts such as cultural heritage, cultural property, objects, and goods, national treasures, monuments, and artworks are analyzed. The candidate's view is that the approach to cultural heritage is hierarchical, while the central point of the analysis from the perspective of individual rights is the intrinsic features and personal attachment to the object. In general, cultural property may be considered the most open-ended category.

The candidate advocates creating a catalog of values assigned to cultural property as the first step to understanding what value-based restitution arguments could be. International heritage law is not concerned with the methods of establishing market value. Hence, intellectual property law is taken into consideration. The candidate argues that, despite linguistic discrepancies between various legal terms and their translations, the bottom line for the terms utilized in cultural law is the value and the interest of particular parties in a dispute that can determine the scope of application.

## 2.2.

In Chapter 2, the candidate characterizes the 1995 UNDRIT Convention as a comprehensive instrument focusing on the importance of the protection of cultural goods, regardless of their ownership status, and lists the means of performing due diligence. Hence, the candidate chooses this Convention as a point of reference for the analysis of particular provisions illustrating the values of cultural property. In addition, the relationship with other international instruments is complementary. The 1995 Convention and the 1970 UNESCO Convention act as a complex framework for the protection and restitution of cultural property. The EU legislation in the field of cultural property restitution was strongly inspired by the Convention. Soft law forms an integral part of the broader cultural heritage law.

## 2.3.

In Chapter 3, the candidate suggests creating a value-based model and, for this purpose, making a catalog of values and corresponding principles and arguments. This endeavor aims at dealing with the problems encountered when analyzing particular restitution cases. The model would make possible the selection of adequate elements for building further argumentation and analysis of the overall value of cultural property.

The list of the values assigned to the cultural property in question is: *aesthetic, anthropological, archaeological, artistic, diverse, diversification, educational, emotional, ethnological, financial, historical, identity-building, integrity, political, propagandist, religious, scientific, status-setting, strategic, and other*. While many of the abovementioned values may be synonymous, they can also be separated from one another depending on the context.

The principles of cultural heritage law are a point of reference for restitution arguments based on values assigned to cultural property. The following principles can be listed: *cultural heritage protection, sustainable development, social utility of cultural heritage, and the change of social utility of heritage over time, protection of integrity, protection of diversity, property protection, protection of diversity, social utility of cultural heritage, good faith and*

*equity, as well as the principle of financing monuments from public funds, or financing monuments by the owner.*

According to the candidate, it may be concluded that every cultural object plays a vital role in the development of society in its broadest sense, and thus should be preserved for future generations. Thus, the preservation of any and all products of human creativity is in the interest of us all. Regardless of ownership, e.g. public or private, the main value behind every restitution dispute should be its preservation in the best condition possible.

#### 2.4.

Chapter 4 presents a selection of both real and hypothetical case studies, which illustrate various values driving the parties of restitution and return disputes. The candidate concludes that only by applying unified measures to safeguard property, do the provisions regulating the return or restitution of cultural goods respect the social significance and the unique nature of these items. The 1995 UNIDROIT Convention not only responds to the problem of legal gaps between various systems but also encourages interstate cooperation in order to find balanced solutions for restitution and/or return disputes. In order to achieve the aim of strengthening international cooperation in the effort to protect cultural property and to increase the number of cultural objects returned to the source country, the model needs to be applied regardless of the legal grounds assumed by parties, as it is in the process of alternative dispute resolution. Furthermore, the candidate argues that the model is not only intended to answer questions in the context of restitution disputes but also serves as a point of reference for cataloging cultural values for other fields of study, especially for the purpose of promoting culture and its social significance to a wider audience. The values assigned to particular items or item categories were either strengthened by the attention caused by the dispute or newly emerged as a result of the publicity.

### 3. Comments and Evaluation

The research question of this thesis is pertinent. Generally speaking, going to the level of the underlying considerations of legal concepts makes the analysis more detailed and precise. Law and economics are one of the methods in a similar direction. But economic terms and concepts such as efficiency, costs, benefits, or others of economics would not suit well culture, especially cultural heritage. For intrinsic aspects of cultural heritage such as history or emotion, economics would not be well-suited. However, discussions remaining on the level of legal concepts and terms would be less constructive. Hence, an innovative approach to go one level deeper would be very much needed, which would enable more precise and objective

discussions about the restitution or return of cultural property.

To materialize this idea, the candidate takes a sort of comparative approach in twofold. The one is comparing terms and concepts in various cultural heritage laws, focusing on the scope of objects of the regulations. The other is to identify the meaning of values, referring to the previous discussions developed in ethics, aesthetics, religion, or other relevant fields. The latter exercise is crucial since the candidate proposes later a value-based restitution model as an analytical tool. Impressive is the range of investigation, which covers various fields of philosophy, including the Greek classics, axiology, phenomenology, as well as cultural economics. A question is whether this expansive investigation is so clearly articulated and structured that the values identified through this exercise become useful. This 38-page-long subchapter *Value summary* (pp.38-76) is without subheadings. Hence, those readers who are not familiar with the cited literature would feel that they would be taken to the forest of philosophers and left alone without any guidance. This part of the thesis should have been presented in more structured manner, clarifying the aim of this subchapter.

Chapter 2 is titled *The 1995 UNIDROIT Convention as a Model Instrument*. In this Chapter, the candidate put the subchapter *Context definition scope* (2.1), and analyzes *Restitution* (2.1.1), and *Return and Repatriation*, covering various instruments (2.1.2). Then the candidate analyzes the Convention paragraph by paragraph (2.2), comparing the Convention with other instruments (2.3.). Although the candidate argues that the UNIDROIT Convention is a model document of value-based restitution (p.25), “value-based restitution” is mentioned only at the very end of Chapter 2, *Effect* (2.2.8). Values are mentioned in Chapter 2 several times not only in relation to the UNIDROIT Convention but also in the context of other documents as well. This is confusing. If the candidate argues that the UNIDROIT Convention is a model of value-based restitution, it should have been explained how the UNIDROIT Convention is adequately designed, compared with other documents, in terms of value-based restitution. Hence, Chapter 2 does not connect well with Chapter 3 with the title *Value-Based Restitution*.

At the same time, the candidate lists values, principles of cultural heritage law, and restitution arguments as factors to be taken into consideration regarding restitutions. They are pretty long lists as cited above. Diverse factors are supposed to be taken into consideration. On the other hand, the candidate sometimes refers to the World Heritage Convention, its Operational Guidelines as well as some documents developed by ICCROM and ICOMOS besides some documents adopted by ICOM. Since the World Heritage Convention exclusively deals with immovable properties, while ICOM’s focus is movables, does it imply that the value-based model should cover both movable and immovable properties? If this is the case, should the model also cover cases on the restitution of indigenous land or sites, for instance?

Or since the candidate takes the UNIDROIT Convention as a model instrument, should it be restricted to movables only? In any case, the model needs to get better structured. Without a doubt, when a value-based model is established, it will help stakeholders in ADR very much. Once the model is completed, it will be highly appreciated by practitioners and scholars. Last, but not least, I enjoyed reading the case studies collected in Chapter 4. They are helpful in getting a better and bigger picture about value-based restitution, although they are descriptive rather than analytical.

The thesis of Julia Stepnowska has some shortcomings explained above. Inter-connectedness between Chapters should be elaborated and improved. But the research question is pertinent. The balance in the thesis is fine. The candidate demonstrates her knowledge of not only relevant laws but also related areas of humanities.

Hence, I conclude that the doctoral dissertation submitted by Julia Stepnowska demonstrates the candidate's general theoretical knowledge in a discipline (or disciplines) and the ability to conduct research or artistic work independently.

November 10th, 2023

Fukuoka, Japan

A handwritten signature in black ink, consisting of a stylized symbol followed by the Japanese characters '3343'.

Toshiyuki Kono

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