

BOOK REVIEWS

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Restitution of Cultural Property. Hard Case. Theory of Argumentation. Philosophy of Law Kamil Zeidler

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The book by Kamil Zeidler, a professor of theory and philosophy of law at Gdańsk University, was published in 2016 by Gdańsk University Press and Wolters Kluwer. The book has a Polish counterpart, as it is based on extensive sections of Zeidler's study *Restytucja dóbr kultury ze stanowiska filozofii prawa. O trudnych przypadkach na granicy kultury i prawa*,¹ which was published in 2011.

While the question of the restitution of cultural objects is by no means a new one, Zeidler's work adds another voice to the intense debate concerning this issue in recent years. Among the "classics", one could point out the works by Wojciech W. Kowalski, Jeanette Greenfield, or Ana F. Vrdoljak. The subject of restitution has been approached from the perspective of private and public international law (W. Kowalski, *Restitution of Works of Art Pursuant to Private and Public International Law*,² *Art Treasures and War: A Study on the Restitution*

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¹ Wolters Kluwer, Warszawa 2011.

² In: *Collected Courses of the Hague Academy of International Law*, Vol. CCLXXXVIII, Brill, Leiden – Boston 2001.

of *Looted Cultural Property*³) and illustrated by case examples, which were thoroughly discussed by Greenfield (*The Return of Cultural Treasures*⁴).

An in-depth study of the approach of museums toward restitution claims, as well as international law in this field, was also the subject matter of another analysis (A.F. Vrdoljak, *International Law, Museums and the Return of Cultural Objects*⁵). Therefore, on the face of it, it might appear that everything about the issue of the restitution of cultural property has already been said. The subtitle of Zeidler's book, however, directs the reader's attention to a somewhat different perspective. In this book, the issue of restitution of cultural property is addressed from the point of view of the theory and philosophy of law, which makes the book both attractive and, in a sense, "new" to the reader. The author, using the tools that the philosophy of law supplies, focuses on the legal and axiological problems that arise in the sphere of restitution of cultural property. The aim of the book is to create a theoretical model built on the foundations of contemporary concepts that are drawn from the philosophy of law. The aim of the model is to permit one to look into every individual case that relates to restitution.

It is neither necessary nor feasible to summarize the book here. I will only briefly address the main ideas the book discusses. The work consists of four chapters. At the beginning, the author states that restitution cases can definitely be placed among *hard cases* and have become the subject matter of philosophy of law. In his book, Zeidler assumes a broad understanding of the notion of restitution, including return and revindication, as is presented in the first chapter. After explaining the theory of "hard cases", the concept of the claim to restitution is reconstructed. It is also emphasized that not every restitution case is a hard one. Next, the author examines the definitions of cultural property, in particular, the legal definitions. The objects that are subject to restitution, in this case cultural objects, are of a special nature and therefore so is their restitution. While explaining the complex nature of cultural property, the author refers to the perpetual conflict between liberalism and communitarism that occurs in area of the protection of cultural heritage and in the discourse on restitution.

In the second chapter a very extensive commentary is provided on the reciprocal relations between morality, politics, economics, and the law. The author explains that the issues that are connected with restitution can be located somewhere between the above-mentioned concepts. Morality, as it is explained, is regarded as a key factor in taking a specific view on both the issue of cultural property in general as well as on actual cases regarding its restitution. Zeidler then explains how politics can affect the process of law making. Moreover, economic issues arise when

³ Institute of Art and Law, London 1998.

⁴ Cambridge University Press, New York 2007.

⁵ Cambridge University Press, Cambridge 2006.

one considers, for example, the problem of the potential rights of third parties to particular objects of cultural property.

Chapter three serves as a guide for the reader in terms of the space in which the discourse about restitution is conducted. The core of the book is an overview of the arguments that can be raised in the discourse about restitution. The innovative character of Zeidler's book stems from the interesting arrangement of arguments that exist in this debate. As it would be difficult to refer to each and every argument described in the book, I will here name only a few of them. The argument from the position of justice manifests itself in a restitution claim, which is nothing more than a demand that a desired state be restored. However, it can collapse in the face of the argument of acquisition in good faith, when the possessor of a cultural object has acquired it in good faith and paid its market value. This argument, however, often stands in opposition to the argument of the ownership of an object. At the same time, what the author aims to show is that the rights of the owner of the cultural property may collide with the argument about its social utility, which manifests itself in the necessity to preserve a particular cultural property for future generations. Among the other arguments presented in the book, one can mention the argument about the passage of time, prescription, time limitations, and discovery. The author also refers to the argument from the right to loot, illegal export, most secure location, historical eventuation, investments undertaken, obligation, and reciprocity. The interaction and interplay between the above-mentioned arguments, which have been raised in the discourse about restitution, is one of the main ideas that is accentuated in this work.

Because of the intriguing subtitle concerning "hard cases", a reader might, however, anticipate that those "hard cases" would be evoked more often to illustrate the author's reasoning. On the other hand, the book was not designed to serve as a compilation of case law, which has already been done in the above-mentioned updated work by Greenfield, for example.

Perhaps every author writing about the restitution of cultural property has to face the question of how these disputes should be resolved, and so does Zeidler. At the beginning of the book, the author issues a very stimulating invitation to participate in a discussion of numerous issues in order to find a theoretical model. In the opinion of the reviewer the aim of the book was overly ambitious, as the issue of restitution is so multifaceted that it is unlikely that such a model exists.

The author illustrates his reasoning with some examples of Polish legislation in the area of the protection of cultural property. This, however, only partially serves as a tool for comparatists. However, that was probably not the aim of this book. A comparative treatise on the laws concerning the protection of monuments is found in another publication (*Prawo ochrony zabytków*⁶), which was edited by

⁶ Wydawnictwo Uniwersytetu Gdańskiego, Wolters Kluwer, Gdańsk – Warszawa 2014.

Zeidler, but unfortunately is only available in Polish. In addition, those who know the sophisticated style of the author when he writes in Polish would expect the same thing when reading his texts after having been translated into English. What is noticeable, much to the reader's regret, is that the translation of this book lacks those things that are typical for Zeidler's style – his zest and his passion about the subject.

The book *Restitution of Cultural Property. Hard Case. Theory of Argumentation. Philosophy of Law* by Kamil Zeidler can certainly be recommended to anyone who is interested in the dilemmas surrounding cultural property. After being invited to read by the intriguing cover, which depicts Lucas Cranach's *Allegory of Justice*, readers, as well as art lovers, will not be disappointed. It is indeed a pleasant reading experience.